

AG Bulletin 09.

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Notes from a conversation with Murray Michel

Murray Michel had a backroom role in government, particularly working with the Treasury, until he was appointed the first director of the Financial Intelligence Centre (FIC) in 2004. The FIC is the key agency in the fight against money laundering and terror financing – it is also the agency responsible from those repeated warnings from your bank and insurance providers that all services will be withdrawn unless you provide certified proof of your identity and place of residence – even if nothing has changed. Murray was head of the FIC for 14 years. I phoned him to talk about his experience rolling out the PFMA in the late 1990s when he was an advisor on contract to the Treasury – and worked with the prime Treasury movers Momo (Ismail Momoniat) and Andrew Donaldson.

Murray was clear about the failings of the PFMA – particularly in retrospect – and the toothlessness of Parliament in addressing ongoing problems with the law, or in insisting on its overhaul. We will go into this more below.

But the surprise was his vehement indignation at many of the actions and practices of the Auditor-General. Murray was the accounting officer for the FIC for fourteen years and his annual exposure to the ministrations of the Auditor-General had left deep scars.

AG produces antagonistic relationships with departments

He found the relationship with the Auditor-General overwhelmingly antagonistic. “The AG was never seen as an ally in sorting out problems. The audit staff were combative. They did not understand the work being done”. They would sample less than ten percent of transactions and focus only on compliance in term of numbers and legislation without understanding the big picture and the need for exceptions – not to game the system, but to improve the effectiveness of the work. The AG was very narrow in their approach and hard to engage with. To avoid the annual stand-off, there were interim audit reports during the year. FIC relied on the Auditing Standards Board guidelines and, with the Accountant General in Treasury,¹ tried to engage the AG on what reporting was possible and what was not. The AG would indicate agreement, but when the audit came around they would back-track and say ‘We are independent. We cannot take the Treasury view here and you have transgressed regulations A, B and C.’ FIC would then have to roll back these transactions in an expensive and energy-absorbing process. It was Murray’s experience that the AG was not interested in what needs to be achieved [in dealing with crime and money laundering]. The only interest was in narrow compliance. “A lot of the AG staff have little experience. They come from accounting colleges. They have no background in public service.”

“When you are in the public service and you are confronted by the AG, experience tells you to stand back. Push them away. Box them. Undermine their report so it does not impact on

¹ <https://oag.treasury.gov.za/Pages/default.aspx>

you.” Murray said it was very hard for him to get his staff not to see the AG as antagonistic. The AG would press really hard for additional information – even when there were confidentiality concerns.

The AG does just three things (Murray said he was not fully aware of the expanded mandate powers of the AG)

1. They get the accounts sorted out – ensure their veracity
2. They investigate whether you have complied with the legislation
3. They look at whether you have met the performance targets in place (Murray regards the performance system here ‘ridiculous’ – I totally agree but we did not discuss this.)

The AG ask: Have you followed the rules you set for yourself? Have you followed your policies?

No quarter is given if you do not follow the rules.

The AG’s remedies are not proportionate. One year the SA Police Service could not account for ten brooms that went missing. The AG used this as the reason to qualify the SAPS financial statements!

The AG and their staff don’t understand the ‘big picture’ and the need for flexibility to ensure that the work of the agency is done in the most effective way that it can be.

PFMA – need for “a complete and utter overhaul”

Murray worked on the roll-out of the Public Finance Management Act to government departments and entities from the late 1990’s. The PFMA marked a distinct change in public finance management – geared towards democracy and flexibility in implementing policy decisions. He had recommended the establishment of a Compliance Department in the office of the Accountant General in Treasury which would deal swiftly with transgressions. But he was fobbed off. The need was then for the PFMA to be rolled out and problems could be reviewed after ten years.

The capability to deal with PFMA transgressions and even to monitor implementation was never there – even within Treasury. This was combined with push-back against the AG [whose reports were not welcomed]. Transgressions were seen as internal matters and consequence management was never put in place.

In a department, when a Director General (i.e. accounting officer) becomes aware of a financial problem, they act independently to correct it, before any AG report. The reports of the AG are not used for a consequence management process. Ministers effectively turn a blind eye to the AG reports, [relying on their DG to do whatever is necessary.] (When Pravin Gordhan became Minister of Finance for the second time, in 2015, he was stopped by Jacob Zuma when he tried to get Treasury to intervene.) Each department was responsible for its own situation.

In Murray’s view the PMFA needs complete and utter overhaul. But there is no political will at present to drive such a process. Lower-level administrators working within the PFMA

have lost sight of the ‘big picture’ and don’t have a clue [on what needs to be achieved overall].

Parliament lacks the teeth to address problems [in the way the PFMA is operating]. There is no mechanism for Parliament to intervene, and no will.

The PFMA is very flexible. Its main requirement is that you follow a process. If you follow the process and this results – as it does in the Eastern Cape – in Disprin being procured at widely differing prices between [hospitals, each of which have their own procurement process], the AG has no problem with that. The idea was to open up government procurement to provide opportunities for small and emergent suppliers, [but the effect has been to raise costs and reduce efficiency.]

Treasury has been very much weakened by events. Momo is the last repository of institutional memory since Andrew Donaldson left.

Murray was cautious about the “**Accountability Court**” approach as he said that countries like Brazil, France and Spain have a legal system with a different basic approach from SA. In those countries, judges normally operate within an inquisitorial process. He worked with Brazilians a decade ago on the Operation Car Wash money laundering scandal. They appointed judges to pursue matters very quickly and there were quick results – although this was definitely driven by politics.

In 2011-2012 there was an anti-corruption task force which initially included the AG. The AG then withdrew, citing a need to remain independent, and worked separately from the task force. The two streams did, however, share information. There was a lot of pressure, five deaths.

In conclusion, Murray recommended we try to speak to two particular people:

- **Mr Freeman Nomvalo**,² can respond to issues on why the executive has been unable to enforce the recommendations of the AG. Between 2004 and 2013, Mr Nomvalo was South Africa’s accountant-general (not to be confused with the Auditor General) at the National Treasury where he set up accounting and reporting standards for all government entities and state enterprises. As accountant general, he also oversaw and supported internal audit and risk management functions for the entire South African government. In 2019 he was appointed the CEO of the South African Institute of Chartered Accountants (Saica),³ and then as Eskom’s chief restructuring officer.
- **Mr Michael Acres**, would have an interesting view “inside departments” and the problems departments face in governance and administration / working with the AG. He is a senior programme official at Government Technical Advisory Centre (GTAC) in the Treasury.

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AG Project Bulletin List

² <https://www.businessinsider.co.za/freeman-nomvalu-saica-eskom-chief-restructuring-officer-unbundling-accountant-general-2019-7>

³ Ms Tsakani Maluleke CA(SA), Deputy Auditor-General, is the non-executive Board Chairman of SAICA.

- AG Project Bulletin 09. 16 April 2020 [Notes from a conversation with Murray Michel]
- AG Project Bulletin 08. 07 April 2020. [Parliament is an unlikely champion of the Auditor General]
- AG Project Bulletin 07. 19 March 2020. [MN Reflection on Parliament's lack of effective response to the intimidation of AG staff in Nelson Mandela Bay in November 2019 and on 18 March 2020 *City Press* article by Kimi Makwetu: *How SA can rid itself of wasteful, fruitless, unauthorised and irregular expenditure*]
- AG Project Bulletin 06. 29 March 2020 [Interview with Mr Wessel Pretorius, champion of the independence of Auditors General, 17 March 2020].
- AG Project Bulletin 05. 16 March 2020 [Notes from our Interview with Mr Mkhuleko Hlengwa MP, Chairperson of the Select Committee on Public Accounts (SCOPA)]
- AG Project Bulletin 04. 13 March 2020 [Reflection on AGSA 100 year legacy book]
- AG Project Bulletin 03. 10 February 2020 [Reflection on SCOPA's efforts to have former Prasa board members declared delinquent]
- AG Project Bulletin 02. 12 November 2019/ [Draft discussion paper - Auditor General project: Improving governance in South Africa: What checks and balances are missing?]
- AG Project Bulletin 01. 31 October 2019/ [list of the relevant legislation related to the role of the Auditor General w r t reporting to Parliament; example of the information on AGSA reports on departments that is summarised by Parliament for the information of SCOPA]