

OUTA

ORGANISATION UNDOING TAX ABUSE

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Parliamentary Commission of Inquiry into the functioning of the Department of Water and Sanitation: Part 1



CONTENTS

A. INTRODUCTION	1
B. SUBMISSIONS	4
1. Outcome delivery of water and sanitation projects on affected citizens	4
1.1 Bucket Eradication Programme	4
1.2 Blue and green drop reports	11
1.3 War on Leaks Programme	11
2. Board appointments and issues in water boards	14
2.1 Board appointments	14
2.1.1 Multiple appointments in water entities	14
2.1.2 Chief Executive's involvement in board selection	15
2.2 Issues in water boards	16
2.2.1 Magalies Water	16
<i>Introduction</i>	16
<i>Auditor-General of South Africa's Report for 30 June 2017</i>	16
<i>Public Service Commission: Call case report</i>	17
<i>Resignation of Risk Specialist - Ms MB Marema</i>	18
<i>CE remuneration package</i>	18
<i>Appointment of Oliver Tsebane</i>	19
<i>Appointment of Tsakane Radebe</i>	22
<i>International travel</i>	23
2.2.2 Mhlatuze Water	23
<i>Introduction</i>	23
<i>Irregular expenditure</i>	23
<i>Dudu Myeni: Non-disclosure of interests</i>	23
<i>Dudu Myeni: Failure to recuse herself</i>	24
<i>Dudu Myeni: Donations</i>	24
<i>Dudu Myeni: Fruitless and wasteful expenditure</i>	25
2.2.3 Mhlatuze and Umgeni Water amalgamation	25
2.2.4 Rand Water: Incentive Bonuses awarded from 2014-2017	26
2.2.5 Trans-Caledon Tunnel Authority audit committee investigations	28

2.2.6	Umgeni Water.....	30
	<i>Introduction</i>	30
	<i>International travel</i>	30
	<i>Unlawful appointment of CE</i>	31

ANNEX A - AG

A. INTRODUCTION

1. We refer to the Draft Terms of Reference (dTOR) for the establishment of a Commission of Inquiry into the functioning of the Department of Water and Sanitation (DWS) (**ANNEX A**). The dTOR were published by the Portfolio Committee on Water and Sanitation (PCWS) and the Standing Committee on Public Accounts (SCOPA) (“Joint Commission”).
2. We have been notified that the dTOR have been adopted with minor amendments. Unfortunately, we have been unable to get a final copy and have thus leaned on the scope provided in the dTOR in making this submission.
3. As you may be aware, the Organisation Undoing Tax Abuse (OUTA) is a proudly South African non-profit civil action organisation. It comprises of and is supported by people who are passionate about improving the prosperity of our nation and sustaining the environment. OUTA was established to challenge the abuse of authority, particularly the abuse of taxpayers’ money, which includes but is not limited to abuses committed within the DWS.
4. According to the dTOR, the objectives of the inquiry are as follows:
 - “[t]o call witnesses to testify and provide evidence and submissions on alleged financial mismanagement, weaknesses in internal controls, governance failures and maladministration issues;
 - [to produce] a joint report recommendation [which] will be submitted for discussion and adoption to the National Assembly;
 - [lay] criminal charges against implicated officials, where applicable; and
 - [recover] lost money, where applicable”.
5. Among the issues to be focused on for the inquiry, OUTA’s submission will speak to the:
 - “scope, worth and outcome delivery of respective water and sanitation projects on affected citizens;
 - non-adherence to key pieces of legislation governing finances; and corrupt activities, such as the Public Finance Management Act, 1999, National Treasury Regulations, and the Prevention of Organized Crime Act, 1998;

- departmental disputes on findings of the Auditor-General on its 2016/17 financial year;
- extent to which the prescripts of the Constitution of the Republic of South Africa (Act 108 of 1996) (“the Constitution”), the Public Services Administration Act and the relevant labour law, with its associated amendments underpinning the work of the Department in terms of human resources issues (appointments, contract, suspensions, etc.) are adhered to;
- compliance and non-compliance by the Department to the prescripts of the Constitution, the relevant water related legislation (including National Water Act (Act 36 of 1998) and Water Services Act (Act 108 of 1997) in respect of oversight of efficient and effective water service delivery to all citizens of the country;
- investigation into the governance and financial status of water boards overall, but specifically looking at processes toward appointments of Board members by the Minister, aligned to the Water Services Act; and
- investigate the influence of external stakeholders in allocation of water and sanitation projects”.

6. OUTA’s submission is in two parts. The first, which is largely contained in this document, is the “narrative component” which speaks to issues mentioned in paragraph five above. In this regard, where possible, evidence is provided in the form of annexures to support the narrative. In instances where evidence cannot be provided, we aim to direct the Joint Commission on what evidence may be requested for further investigation.
7. Leaning on the submissions made in the “narrative component”, the second part will indicate the possible policy and legal contraventions per section and sub-section. This part of the submission will be made within four weeks from the date of delivery of this document.
8. Considering the operational nature of OUTA, relevant information together with evidence may be brought to our attention during the inquiry. In such a case, we would appreciate an opportunity to make further submissions to the Joint Commission. As such, you will note that this document contains no conclusion.

9. As OUTA, we are fully aware that our role is to assist the Joint Commission in its inquiry. Our intention is not to draw conclusions for the Joint Commission but rather to aid it towards its conclusions, which we hope will hold to account those responsible for the dire state of affairs of South Africa's water sector.

10. To this end, the submission below pertain to the outcome of delivery of water and sanitation projects to affected citizens, as well as board appointments and irregularities in water boards.

B. SUBMISSIONS

1. Outcome delivery of water and sanitation projects on affected citizens

1.1 Bucket Eradication Programme

11. The continuance of the Bucket Eradication Programme (BEP) is a significant human rights issue in South Africa, and the Government has consistently failed at eradicating the indignity associated with using bucket toilet systems. As such, Government, and in particular the DWS, has prolonged the indignity suffered by those who are still using bucket toilet systems in 2018.
12. In support of the above, OUTA draws from its on-going research on the programme to highlight its concerns. The research tracks the progress made on the programme thus far.
13. The information provided (which is referenced) however, does indicate that:
 - the DWS does not know exactly how many bucket toilet systems remain in use in South Africa;
 - a significant amount of overspending has occurred, translating to gross maladministration;
 - there is no explanation as to why the programme continues despite overspending and lack of results;
 - DWS has missed its own deadlines; and
 - the Government has failed to eradicate one of Apartheid's most degrading legacies.
14. In 2003/4, the Department of Water Affairs and Forestry (DWAF) indicated that it was the first year of implementation of the BEP and that R62 million had been allocated to pilot the programme.¹ At that stage, DWAF aimed to eradicate 430 000 bucket toilet systems within three to four years.

¹ See <http://www.dwa.gov.za/documents/AnnualReports/2004/AnnualReport04Part2B.pdf> (accessed 13 August 2018).

15. In February 2005, DWAF sat before the National Council of Provinces (NCOP) and indicated that there were 252 254 bucket toilet systems, with the highest backlog in the Free State, Eastern Cape and the North West provinces. During the discussions, Mr Van Rooyen asked DWAF “how it expected the provinces to eradicate the buckets if it had not allocated enough money”. The response from Ms Mbassa (from DWAF) was that the R1.2 billion allocated had not anticipated bulk infrastructure improvements (between 2005 – 2007). DWAF indicated that buckets would be completely eradicated by 2007.²

16. In 2007, DWAF’s budget lists its progress on the BEP. According to it,

“DWAF continued its programme to eradicate the bucket system in formal areas and replace it with better sanitation services, like waterborne pipe systems and treatment plant infrastructure. A total of 62 206 buckets were removed between April 2005 and June 2006 and an additional 50 565 between July and December 2006. Another R1,4 billion will be spent to make sure that the bucket system is eradicated completely by the end of 2007”.³

17. Before the select committee on Land and Environmental Affairs in the NCOP, DWAF reported that it had a backlog of 132 671 bucket toilet systems left to replace. The challenges faced included water unavailability, slow process of appointing contractors and shortfall in funding provided by National Treasury.⁴

18. The 2007/08 DWAF Annual Report indicated a backlog of 23 083 bucket toilet systems, and “the remaining backlog will be removed by September 2008 at the latest”.⁵

19. However, in the 2008/09 Annual Report, DWAF reported that

² See <https://pmg.org.za/committee-meeting/7753/> (accessed 13 August 2018).

³ See www.treasury.gov.za/documents/national%20budget/2007/ene/34%20dwaf.pdf (accessed 9 August 2018) pg 776.

⁴ See <https://pmg.org.za/committee-meeting/7753/> (accessed 9 August 2018).

⁵ See <http://www.dwa.gov.za/documents/AnnualReports/ANNUALREPORT2007-2008.pdf> (accessed 9 August 2018) pg 57.

“December 2007 was declared as a national target for the eradication of the bucket system in established settlements. The bucket eradication programme was established in February 2008 and the buckets backlog then was 252 254. This programme aimed to eradicate buckets in formal established settlements that existed prior to the dawn of the 1994 democratic dispensation. In total 243 210 buckets were removed from the start of the programme in February 2005 to March 2009. At the end of March 2008, the remaining backlog was 23 083”.⁶

20. In 2009, DWAF indicated in its budget that

“Government accelerated the eradication of bucket toilets by allocating an additional budget of R1.8 billion between 2005/06 and 2007/08. In February 2005, the backlog was 252 254 bucket toilets. At the end of November 2008, 10 395 buckets still needed to be removed. The majority are in Free State (8 839), followed by Northern Cape (1372) and Eastern Cape (634). The Department aims to remove all buckets by March 2009. Over the 2009 MTEF period, the Department will be implementing regional bulk infrastructure schemes to further expand access to basic water and sanitation services and to enable the expansion of the housing delivery programme”.⁷

21. In the Department of Cooperative Government and Traditional Affairs (CoGTA) 2010 budget, they state that

“[s]tatistics from sector departments indicate that as of December 2009, access to basic water services had increased to 92 per cent, the eradication of backlogs in basic sanitation to 69 per cent, refuse collection to 64 per cent, and access to basic electricity to 81 per cent. 244 258 buckets, or 96.8 per cent of the backlog of 252 254 buckets identified in February 2005, had been eradicated by July 2009.”

⁶ See <http://www.dwa.gov.za/documents/AnnualReports/ANNUALREPORT2008-2009.pdf> (accessed 9 August 2018).

⁷ See <http://www.treasury.gov.za/documents/national%20budget/2009/ene/34%20dwaf.pdf> (accessed 9 August 2018) pg 850.

22. The 2010 DWS budget was silent on the BEP.⁸ However, according to the Water Research Commission (WRC), at the end of July 2009, the bucket backlog was reduced to 7996,⁹ with a majority of the remaining backlog in the Free State. The 2009/10 DWS Annual Report reflects the same backlog.¹⁰
23. There is no information on bucket toilet systems in the 2011, 2012 and 2013 budgets for the DWS, neither was there any reporting on the BEP in the 2011/12 and 2012/13 Annual Reports. This is presumably because there is no longer a backlog of bucket toilet systems in formal settlements in South Africa, implying that bucket toilet systems have been eradicated.
24. In 2014, the BEP appears to have been revived with no explanation provided. The DWS 2014/15 Annual Report suggests that there is unhappiness with the type of replacements. It states that

“[w]hilst the initial scope in 2013 was to deal with eradicating buckets with dry onsite sanitation, a TROIKA of the Ministries of Human Settlements, Water and Sanitation, and COGTA directed the implementation of waterborne sanitation in all the formal settlements. This change in scope has prolonged the efforts of government to eradicate bucket toilets, however the programme is making steady progress in providing decent sanitation to the affected communities”.¹¹

25. According to the budget review for 2014,

“Government has prioritised the eradication of bucket sanitation systems. Although substantial funds are already available for the upgrading of sanitation infrastructure through the municipal infrastructure grant, these funds have not always been prioritised towards bucket eradication at a local level. To ensure this national priority is also

⁸ See <http://www.treasury.gov.za/documents/national%20budget/2010/enebooklets/bookletvote37.pdf> (accessed 9 August 2018).

⁹ See <http://www.wrc.org.za/Knowledge%20Hub%20Documents/Research%20Reports/2016-1-12.pdf> (accessed 9 August 2018) pg 9.

¹⁰ See <http://www.dwa.gov.za/documents/AnnualReports/2010AnnualReport.pdf> (accessed 9 August 2018) pg 25.

¹¹ See <http://www.dwa.gov.za/documents/AnnualReports/ANNUAL%20REPORT%202014-15.pdf> (accessed 9 August 2018) pg 8.

prioritised in municipalities, conditions will be added to the grant to require municipalities with many households served by bucket systems to prioritise sanitation upgrades. If municipalities fail to make this a priority or are unable to implement projects, funds may be converted to an indirect grant for national government to provide infrastructure on behalf of the municipality".¹²

26. The BEP was then placed under the Department of Human Settlements (DHS) in 2014 and according to its budget, the DHS aimed to replace 131 092 bucket toilet systems in 2014/15 and 142 205 in 2015/16.¹³ That is a total of 273 297 bucket toilet systems, which is more than the total of 252 254 bucket toilet systems to be eradicated by 2007.
27. R1.9 billion was allocated for the BEP under the DHS for 2014/15 and 2015/16.¹⁴ As indicated in paragraph 19 above, the original BEP was to replace bucket toilet systems existing before 1994, suggesting therefore that these 273 297 are newly introduced bucket toilet systems post 1994.
28. BEP is not mentioned in the DWS or the CoGTA budgets for 2014, yet in the 2014/15 DWS Annual Report, they indicate that they spent R281 799 million replacing bucket toilets in 20 581 households, an average cost of R13 692.00 per household.¹⁵ It is not clear whether the amount spent is included in the R1.9 billion allocated by the DHS, if not, the budget to eradicate bucket toilet systems was significantly higher. Also, the reports suggest that the BEP was moved to the DWS in 2015 with no indication of the progress made by DHS.
29. The 2015/16 DWS Annual Report indicates that in replacing 1838 bucket toilet systems, the DWS spent an average amount of R530 685.00 spent per household (R975 399 million

¹² See <http://www.treasury.gov.za/documents/national%20budget/2014/review/FullReview.pdf> (accessed 9 August 2018) pg 28.

¹³ See <http://www.treasury.gov.za/documents/national%20budget/2014/enebooklets/Vote%2031%20Human%20Settlements.pdf> (accessed 9 August 2018) pg 2.

¹⁴ See <http://www.treasury.gov.za/documents/national%20budget/2014/enebooklets/Vote%2031%20Human%20Settlements.pdf> (accessed 9 August 2018) pg 5.

¹⁵ See <http://www.dwa.gov.za/documents/AnnualReports/ANNUAL%20REPORT%202014-15.pdf> (accessed 11 August 2018) pg 143.

spent).¹⁶ It is not clear whether the expected output for 2015/16 was 29 594¹⁷ or 32 500¹⁸ bucket toilet systems as the report provides both these figures in different sections.

30. Before the Parliamentary Committee, DWS submitted that it had

“verified buckets in formal areas which amount to 58 453. All buckets in the formal areas will be eradicated by **December 2015** the programme is estimated to cost **R975 339 000,00**. To date we have eradicated 28 952 buckets in formal residential areas. The cost of providing Sanitation is guided firstly by the Human Settlement subsidy quantum on the provision of a serviced stand which is costed at R43 000 (Grade A Service) and R34 000 (Grade B Service) in the 2014/15 Financial year. This includes the provision of water, sewer, electricity and roads and stormwater drainage to the property. The Department also adopted the geotechnical variation principle from Human Settlements that in the event of hard rock, difficult soil conditions etc, up to a maximum of 15% will be afforded to the unit or project based on the soil conditions encountered”.¹⁹

31. This means that in terms of its submission to Parliament, DWS failed to eradicate 56 615 bucket toilet systems by end December 2015 yet it spent R975 339 million.

32. At this point it is also not clear as to how many bucket toilet systems have been replaced despite the 58 453-figure provided by the DWS. This is because the figure provided by DHS in 2014 does not appear to be factored in. What is clear is that the DWS, according to its reports had spent over R1 billion to replace 22 419 (20 581 + 1838) bucket toilet systems for the 2014/15 and 2015/16 financial years. It is not clear how the DWS arrived at the figure of 28 952 bucket toilets systems eradicated which it presented to Parliament. Was it over one financial year or a few?

¹⁶ See <http://www.dwa.gov.za/documents/AnnualReports/ANNUAL%20REPORT%202015-16.pdf> (accessed 11 August 2018) pgs 81 and 100.

¹⁷ See <http://www.dwa.gov.za/documents/AnnualReports/ANNUAL%20REPORT%202015-16.pdf> (accessed 11 August 2018) pg 100 or

¹⁸ See <http://www.dwa.gov.za/documents/AnnualReports/ANNUAL%20REPORT%202015-16.pdf> (accessed 11 August 2018) pg 81.

¹⁹ See <http://www.dwa.gov.za/documents/AnnualReports/ANNUAL%20REPORT%202015-16.pdf> (accessed 11 August 2018) pg 113.

33. In 2016/17 DWS Annual Report indicates that R831 390 million was spent on 6978 households, averaging R119 144.45 per household.²⁰ The Report also indicates overspending of R409 390 million for an additional 2843 bucket toilet systems. Interestingly, the 2017 Budget Review indicated that the budget estimate for the BEP for 2016/17 was R350 million,²¹ indicating significant overspending on the BEP for that particular financial year.
34. In the most recent budget vote, the DWS Minister indicates a budget allocation for the BEP of R608 175 million for the 2018/19 financial year.²² The Minister also mentioned that there has been unauthorized over expenditure on the BEP.²³
35. The Departments most recent press statement on this programme states that
- “[o]n average, the provision of a dry sanitation solution in areas without adequate infrastructure to enable the flushing of the toilet can cost up to R11 500 per toilet and R15 000 for waterborne a toilet excluding new water, sewer reticulation as well as bulk services in the affected area”.²⁴
36. Mr Sputnik Ratau, the DWS Spokesperson stated in a televised interview that one cannot provide an average for replacing a bucket toilet system per household owing to numerous factors that must be taken into account. **If this is the case, then what has informed the budget for the BEP programme every year since its inception?**

²⁰ See http://www.dwa.gov.za/documents/AnnualReports/AR%202016-17_FINAL_Inhouse_210917.pdf (accessed 11 August 2018) og 93.

²¹ See <http://www.treasury.gov.za/documents/national%20budget/2017/review/FullBR.pdf> (accessed 11 August 2018) pg 38.

²² See <http://www.dwa.gov.za/Communications/MinisterSpeeches/2018/Speech%20-%20Budget%20Vote.pdf> (accessed 11 August 2018) pg 14.

²³ See <http://www.dwa.gov.za/Communications/MinisterSpeeches/2018/Speech%20-%20Budget%20Vote.pdf> (accessed 11 August 2018) pg 5.

²⁴ See <http://www.dwa.gov.za/Communications/PressReleases/2018/MS%20-%20DWS%20refutes%20claims%20made%20by%20OUTA%20on%20the%20cost%20of%20toilets.pdf> (accessed 11 August 2018).

1.2 Blue and green drop reports

37. South Africans have been kept in the dark as to the quality of water since 2014.
38. The Blue and Green Drop Reports, which pertain to drinking and waste water respectively have not been published since 2014.
39. OUTA has submitted an application in terms of The Promotion of Access to Information Act (2 of 2000) without success on 18 January 2018 to access to the Blue and Green Drop Reports (**ANNEX B**).
40. OUTA received a response from the DWS on 16 February 2018 from the Chief Director of Water Services Regulation, Ms Lerato Mokoena (“Ms Mokoena”). The letter pertained only to the Blue Drop Reports (**ANNEX C**).
41. In the letter, Ms Mokoena indicates that the delay in publishing the reports is due “to [a] lack of capacity within the Directorate of Drinking Water Regulation, however its completion is imminent and should be expected to be communicated to all stakeholders before the end of May 2018”.
42. Owing to no publication of the Reports at the end of May 2018, OUTA sent a letter indicating that the Department has missed its own deadline in publishing the Reports and highlighted its Constitutional and legislative duties (**ANNEX D**). To date, the Department has not responded.

1.3 War on Leaks Programme

43. The War on Leaks Programme (WoLP) likely amounts to fruitless and wasteful expenditure. Should this be the case, it fails to address the issue of water security in South Africa.
44. The WoLP was launched in 2015 by former President Zuma and former DWS Minister, Nomvula Mokonyane. According to the DWS, the programme aims “at assisting Municipalities with fixing water leaks through providing essential skills of artisans, water

agents and plumbers to unemployed South African youth”. Since its inception the programme has targeted “to train 15000 youth over a period of five years across the three training [...]” (ANNEX E).

45. Accordingly, the effect of the programme is to not only strengthen South Africa’s water security but create jobs for young people whilst doing so.
46. On principle, the WoLP is a good initiative with a soundly informed objective. However, the programme enjoys no budget in the DWS²⁵ despite its projected total expenditure to amount to R3 billion (ANNEX F).
47. According to a presentation titled “Impact of Budget Cuts on WOL” dated 30 June 2018, unpaid invoices for the programme are owed to the Energy and Water Sector Education and Training Authority (EWSETA) and Rand Water for an amount of R421 954 062.00 and R128 331 966.93, respectively (ANNEX F). We have it on good authority that the EWSETA has received payment.
48. In the same presentation, the Department advocates for the payment of the above amounts as failure to do so will result in approximately 10 000 learners without a qualification. In recent parliamentary submissions on the subject, no tangible evidence has been produced that learners are receiving their qualifications and stipends for attending classes. In other words, no evidence has been produced as to who the learners are; whether stipends have been paid (receipts) or qualifications have been conferred on each learner.
49. Concerning the WoLP, the guiding question should be whether the programme amounts to fruitful expenditure. Should this be the case, OUTA has recommended to the Minister that the programme be reprioritized under CoGTA with the involvement of the Department of Higher Education and Training as it directly affects Local Governments and does not fall within the functional scope of the DWS.

²⁵ See 2018 Parliamentary Committee meeting at <https://pmg.org.za/committee-meeting/26086/> (accessed 19 July 2018).

50. Should expenditure be deemed fruitless and wasteful, we have recommended that the programme be cancelled (in its present form) and those responsible for it be held accountable.

2. Board appointments and issues in water boards

2.1 Board appointments

2.1.1 Multiple appointments in water entities

51. The following people serve on more than one water board:

- **Mr Dikoko** – Umgeni Water Interim Board,²⁶ Sedibeng Water²⁷ and Midvaal Water;²⁸
- **Dr Ellman** – Bloemfontein Water²⁹ and the Trans-Caledon Tunnel Authority;³⁰
- **Advocate Hashatse** – Rand Water³¹ and Umgeni Water Interim Board;³²
- **Ms Manase** – Umgeni Interim Water Board³³ and the Trans-Caledon Tunnel Authority;³⁴
and
- **Mr Tshivhase** – Lepelle Water and Umgeni Interim Water Board.³⁵

52. The thinking informing multiple appointments of an individual in water boards may well be that those entities benefit from the wealth of experience that individual brings. As such, it may well be anticipated that such experience will have a positive impact in how a water entity undertakes its functions.

53. However, when considering the poor state of affairs within most of South Africa's water entities, the appointment of one individual in more than one board may well be contributing to poor governance and corruption. For instance, the submissions below indicate instances of poor governance, corruption and maladministration that occurred under the watch of the individuals listed above (and in most cases are yet to be addressed). Further, with regards to

²⁶ See <http://www.umgeni.co.za/governance/bd.asp> (accessed 5 August 2018).

²⁷ See <http://new.sedibengwater.co.za/board-of-directors/> (accessed 5 August 2018).

²⁸ Umgeni Water website indicates that Mr Dikoko serves on the Midvaal Water Board, see <http://www.umgeni.co.za/governance/bd.asp> (accessed 5 August 2018).

²⁹ See <http://www.bloemwater.co.za/the-board.html> (accessed 5 August 2018).

³⁰ See <http://www.tcta.co.za/our-board> (accessed 5 August 2018).

³¹ See <http://www.randwater.co.za/AboutUs/Pages/BoardOfRandWater.aspx> (accessed 5 August 2018).

³² See <http://www.umgeni.co.za/governance/bd.asp> (accessed 5 August 2018).

³³ See <http://www.umgeni.co.za/governance/bd.asp> (accessed 5 August 2018).

³⁴ See <http://www.tcta.co.za/our-board> (accessed 5 August 2018).

³⁵ Umgeni Water website indicates that Mr Tshivhase serves on the Midvaal Water Board, see <http://www.umgeni.co.za/governance/bd.asp> (accessed 5 August 2018).

irregular expenditure, it is important to note that the Auditor-General of South Africa's Report of 23 March 2018 stated (**ANNEX G**), among other things that

“[p]rocurement through deviations from SCM regulations was highly prevalent at water boards, as some of their SCM practices were to treat directives from the Minister of Water and Sanitation as emergency cases, thereby not following the required SCM regulations. These practices are in contravention of legislative requirement and therefore lead to the incurrence of irregular expenditure at the DWS”.

54. As such, until such time where there is significant improvement in governance in water entities, it would be prudent, in an effort to contribute towards the desired state of affairs, to halt the practice of appointing an individual in more than one water board.

2.1.2 Chief Executive's involvement in board selection

55. Section 35(1) of the Water Services Act (108 of 1997) (WSA) provides for the appointment of water boards. Item 1 of Schedule 1 of the Act provides that the “Minister may require a water board to constitute a selection panel to recommend persons for appointment as members of a water board”. Item 7(a) provides that the selection panel must consist of, among other persons, “the chief executive of the board or his or her representative”.
56. It is our view that the presence of the Chief Executive (CE) in the selection panel does not reflect sound institutional oversight as well as good corporate governance principles and best practice. This is because item 7(a) creates a situation whereby the CE contributes towards the appointing of a board that will in turn appoint him or her as per section 36 of the WSA. As such, the CE can influence the selection of a board that may be favourable to his/her subsequent appointment as a CE.
57. OUTA is aware that this issue was brought before the DWS: Chief Director of Institutional Oversight by the Chief Director of Legal Services. The latter director recommended that problematic areas such as item 7(a) of Schedule 1 be amended through the natural legislative process as the WSA and its Schedules are national legislation.

2.2 Issues in water boards

2.2.1 Magalies Water

Introduction

58. In this section, we raise issues pertaining to: the report of the Auditor-General of South Africa for 30 June 2017 (AGSA Report); the Public Service Commission: Call case report; the resignation of the Risk Specialist, Ms MB Marema; CE remuneration package; appointment of Oliver Tsebane; appointment of Tsakane Radebe and international travel by members of Magalies Water.

Auditor-General of South Africa's Report for 30 June 2017

59. Most of the issues emanating from the AGSA Report have not been addressed by Magalies Water. Some of the issues were raised in previous years (See 30 June 2016: Final Management Report – **ANNEX H**). Most of the issues pertain to supply chain management (SCM) as well as “[o]ther important matters”.

60. Please note that the 2017 Report is a draft. We have been notified that there are no significant changes in the final version. We would recommend that the Joint Commission request the final document and work from it.

61. Concerning SCM, the AGSA Report indicates non-compliance of regulations in 28 matters. These include, among other things (**ANNEX I**):

- composition of the Bid Specification Committee (BSC) in contravention with the SCM policy;
- composition of the Bid Evaluation Committee (BEC) in contravention with the SCM policy;
- deviation from bid specification document;
- winning bidder did not meet minimum functionality score to be evaluated on price;
- bidder not evaluated on all criteria under functionality by individual evaluators;
- approved deviation which is not in line with the SCM policy;

- goods and services above R500 000.00 procured through quotations to avoid bidding procurement processes; and
 - bid awarded to the lowest ranking bidder, highest bidder not appointed (reported three times the three previous years).
62. The AGSA Report lists another 30 matters as “[o]ther important matters” which have not complied with regulations (**ANNEX J**). These include, among others:
- policies not approved and regularly reviewed (reported three times in the previous three years);
 - policies not detailed (reported two times in the previous three years);
 - incorrect disclosure of commitment amounts;
 - performance bonuses have been provided for vacant positions;
 - employees received a performance bonus without an approved performance contract;
 - no alignment of the employee salary to the job grade;
 - deviation from recruitment policy;
 - appointment of an employee not recommended by the Finance and Corporate Services General Managers (Appointment of Oliver Tsebane); and
 - employee’s salary scale not in accordance with the remuneration policy.

Public Service Commission: Call case report

63. Magalies Water has failed to act against a Mrs Idah Dikeledi (“Mrs Dikeledi”) and Mr Tebogo Mosete (“Mr Mosete”) for corruption.
64. On 4 August 2015, the Public Services Commission (PSC) received a report (Ref: 9920150804053921) on alleged corruption at Magalies Water (**ANNEX K**). According to the transcript, the Marketing and Communications Manager, Mrs Dikeledi and the Procurement Manager, Mr Mosete

“have been enriching themselves with suppliers’ money. They are using separate bank accounts to gain access to this money. Idah is using the FNB bank account belonging

to her child to receive bribes because an individual deposited her money after they were promised that they will get a job. The individual will not give out some of the suppliers that they know are on their ‘monthly’ payroll but one of them is Doyze Media and ABNV Laboratories. All the individual is asking is that a commission of enquiry be established to conduct a lifestyle audit on these individuals to validate my allegations. These people have been protected by management because every time we complain, we are told they are investigated yet they are still doing the same work”.

65. OUTA has been informed that an investigation into the allegations was undertaken by PWC and that the above allegation was found to be true.
66. According to our sources, PWC went as far as recommending that the matter be referred to the South African Police Service (SAPS). Magalies Water is yet to implement these recommendations.

Resignation of Risk Specialist - Ms MB Marema

67. The CE, Mr Sandile Mkhize (“Mr Mkhize”) fails to apply his mind to his tasks, particularly with regards to risk related matters.
68. The resignation letter of former Risk Specialist at Magalies Water, Ms MB Marema (“Ms Marema”) (**ANNEX L**) indicates the (then acting) CE’s failure to attend Risk Management Committee Meetings as well as his failure to apply his mind and provide inputs on risk related matters. This eventually resulted in an irretrievably broken-down relationship between Ms Marema and the CE. In this respect, we have been informed that during the tenure of Mr Mkhize as CE, five people in management have resigned owing to similar frustrations. Should this be the case, it is clear that Mr Mkhize’s continued tenure as the CE does not serve the interests of the entity and ultimately the people who it is meant to serve.

CE remuneration package

69. Mr Mkhize’s remuneration package as the CE is not accordance with the approved remuneration increase prescribed by the Minister.

70. In a letter sent to the Chairperson of Magalies Water, Advocate Mosotho Petlane (“Adv Petlane”) (**ANNEX M**), former Minister Nomvula Mokonyane approved a remuneration increase of 5.5% for the CE of Magalies Water for the 2017/18 financial year. The Former Minister attached a table indicating the recommended maximum salaries for water boards which includes Magalies Water. The table indicates that the maximum salary for the CE in Magalies Water should not exceed R2 037 031.00 for the 2017/18 financial year.
71. On 3 January 2018, Mr Mkhize signed an offer of appointment as the CE (**ANNEX N**). The offer letter indicates that Mr Mkhize’s remuneration package will amount to R2 200 000.00 per annum, which is R162 969.00 more than the recommended amount.

Appointment of Oliver Tsebane

72. Magalies Water appointed an unsuitable candidate as the Governance, Monitoring and Compliance Specialist. This matter was raised by the AGSA in the 30 June 2017 Report and has still not been attended to (**ANNEX J**).
73. On 24 November 2016, Mr Mkhize, in his capacity as acting CE approved the appointment of Mr Oliver Tsebane (“Mr Tsebane”) as the Governance, Monitoring and Compliance Specialist (**ANNEX O**).
74. According to the memorandum (“memo”) submitted to Mr Mkhize, he was requested to deviate from the procurement process by appointing Mr Tsebane, “the second internal candidate for Governance, Monitoring & Compliance Specialist”.
75. According to the background given,

“Governance, Monitoring and Compliance & Specialist, Tshegofatso Schalk, commenced employment at Magalies Water on 01 July 2016. She received an offer of employment as a Demand & Acquisition Specialist from Johannesburg Metro Bus dated 8th September 2016 as Governance, Monitoring & Compliance Specialist that expired on the 14th September 2016. She has since tendered Magalies Water her resignation with effect from the 20th October 2016, serving notice until the 31 October 2016.

The counter offer is not included in the HR policy, therefore Supply Chain Unit is hereby requesting HR Corporate Services to fill the gap deviating from the recruitment policy process, by appointing the second internal candidate namely Oliver Tsebane from the interview shortlisting outcome that was conducted on the 18th April 2016. This process will speed up the process of filling the vacancy [...], save costs of the advertisement and time. The recruitment process takes long to be completed due to the verification process [...] for an internal candidate there will be no need for that process”.

[...]

76. According to the reports given, the General Manager of Corporate Services, Mr Charles Mohala (“Mr Mohala”) and the General Manager of Finance Mr Khumo Kgatuke (“Mr Kgatuke”) did not approve the appointment (in the initial memo) for the following reasons (which are provided in **ANNEX P**):

“[o]n review of the file, it has been noted that there are two candidates who scored 6’s and a tie between the two. There are therefore two candidates who received the same score who are second. It is clear from the file that Ms Thwala has relevant procurement/SCM qualifications, experience to be appointable to the position as the second-best candidate. The recommended candidate [Mr Tsebane] as per submission does not possess [the] same, the recommendation is herewith not supported. We herewith advice the acting CE that the offer must be made to Ms Thwala if she declines, the position must be advertised urgently”.

77. Mr Mkhize did not sign this version of the memo in his capacity as acting CE.
78. Dissatisfied with the above recommendation, we have been informed that Mr Mkhize sought a legal opinion to justify the appointment of Mr Tsebane. This legal opinion served as the basis for Mr Tsebane’s appointment.
79. Indeed, in a different version of the memo (**ANNEX O**), Mr Mkhize approves and signs the document to appoint Mr Tsebane despite dissenting views from Mr Mohala and Mr Kgatuke. In this document, the following comment appears:

“[b]ased on the compelling reasons in the submission and the legal opinion obtained, despite the dissenting views of the GMs, the appointment is approved, and considered legal and justifiable.

NB: Since the candidate is operating at a P5 level on a fixed term contract, and the current position is at a P7 level; I recommend that the candidate be appointed at the maximum scale of P7”.

80. With regards to this appointment, the AGSA concluded that **(See pg 57, 58 and 61 ANNEX J)**:

- “[t]here is no approved policy that gives the CE authority to approve a deviation from the recruitment policy;
- the employee has a Masters diploma in Arts, which is not the required qualification for the position;
- the employee doesn’t have the necessary experience for the position which is highly regulated;
- through the inspection of the memo for deviation submitted to the CE, the GM: Finance and GM: Corporate Service did not recommend the employee because of the fact that the employee did not have the necessary experience and qualification, it must also be noted that there was another candidate that scored the same score as the appointed employee, and the other candidate has the necessary experience and qualification;
- the legal opinion that was used as the basis of appointment of the employee has indicated that the employee should be remunerated at 80% of the minimum salary for the position; and
- the employee was willing to accept a lower salary”.

81. OUTA has been informed that Mr Tsebane continues to serve as the Governance, Monitoring and Compliance Specialist.

Appointment of Tsakane Radebe

82. Magalies Water appointed an unsuitable candidate as General Manager for the Project Management Unit.
83. Ms Tsakane Radebe (“Ms Radebe”) has been appointed as the General Manager: Project Management Unit at Magalies Water. According to a report by an independent recruitment company, Ms Radebe was deemed unsuitable for the role in terms of her qualifications and experience (**ANNEX Q**). In fact, she was nowhere near the top ten candidates considered. For instance, Mr Bongumusa Mtshali (“Mr Mtshali”), the candidate who ranks first has the following qualifications: a BTech Degree in Civil Engineering; a National Diploma in Civil Engineering; Advanced Diploma in Management, Certificate in Project Management; and a Certificate in Development Studies. Mr Mtshali’s management experience extends as far back as 1998. Ms Radebe’s qualification(s) and professional experience are not listed in the same report.
84. Further, it has been brought to our attention that a Project Management Company named LMJ was awarded a contract to undertake functions which Ms Radebe is appointed for (**ANNEX R**). The AGSA raised tender irregularities on LMJ’s appointment.³⁶
85. OUTA has been informed that concerns on the appointment of LMJ were raised by the former Chief Financial Officer (CFO) to the CE and fell on deaf ears. An internal audit undertaken by PWC also noted procedural irregularities (**ANNEX S**).
86. As far as we are concerned, this is a clear indication that there were ulterior motives behind the appointment of Ms Radebe, and that the appointment of LMJ to perform functions which she is employed for amounts to gross maladministration.
87. Ms Radebe currently serves as the acting General Manager for Engineering Services.³⁷

³⁶ Important to note that the AGSA (See pg 35-40 **ANNEX I**) indicated that LMJ’s “did not meet minimum functionality points to be evaluated further [...]”.

³⁷ See <http://www.magalieswater.co.za/our-leadership-2/> (accessed 29 July 2018).

International travel

88. Last year 12 members of Magalies Water attended the World Water Week in Sweden. This is despite cost containment measures being communicated from the Minister's office as well concerns regarding affordability being raised (**ANNEX T**) within Magalies Water.

2.2.2 Mhlatuze Water

Introduction

89. In this section, we raise issues pertaining to irregular expenditure; Ms Duduzile Myeni ("Dudu Myeni") with regards to her non-disclosure of interests, failure to recuse herself in appointments, donations to the royal family and fruitless and wasteful expenditure.

Irregular expenditure

90. Irregular expenditure occurred at Mhlatuze in the 2014/15 financial year.
91. It has been brought to our attention that a testing of the procurement procedures for 2014/15 financial year by KPMG (**ANNEX U**) revealed that nine transactions for the procurement of goods and services through the Corporate Social Responsibility Initiative (CSI) budget did not follow SCM processes. The irregular expenditure is said to have amounted to R943 468.00.
92. The irregular expenditure is said to stem from the abuse of the CSI budget by the entity's Chairperson, Dudu Myeni.
93. Please note that the KPMG Report submitted is a draft. Please ascertain the final document and should there be any substantive amendments, enquire as to why.

Dudu Myeni: Non-disclosure of interests

94. Dudu Myeni failed to disclose her business interests which are aligned with Mhlatuze Water's interests.
95. The earlier mentioned KPMG Report highlights that

“[d]uring testing of the procurement process, CAAT’s (Computer Assisted Audit Techniques) were utilized to extract certain information by the Auditor-General. The CAAT’s identified that Dudu Myeni (Chairperson of the Board of Directors) has an interest in Siyaghopa Trading. Siyaghopa Trading is, in turn, connected to Afrostructures (Pty) Ltd through common directorship of Moses Tembe, which was awarded a contract by Mhlatuze Water. Dudu Myeni did not disclose her interest in Siyaghopa Trading”.

Dudu Myeni: Failure to recuse herself

96. It is alleged that Dudu Myeni breached the Mhlatuze Water’s Recruitment and Selection Policy and/or abused her position and authority, Board Charter (**ANNEX V**) by failing to recuse herself from specific recruitment processes.

97. These processes pertain to the:

- interview process and/or appointment of Mr Mandla Myeni, Dudu Myeni’s ex-husband and father of her two children;
- interview process and/or appointment of Executive Human Resources Manager;
- interview process and/or appointment of General Manager of Corporate Services;
- interview process and/or appointment of a Mr T. Mkhwanazi as the CFO, who is reported to be her nephew; and
- interview process and/or appointment of Ms LZ Myeni as a Laboratory Technician.

Dudu Myeni: Donations

98. Dudu Myeni used her influence to ensure that Mhlatuze CSI funds were channeled to a Royal family wedding as well as the 30-year celebration of the Reed Dance (**ANNEX W**).

99. Dudu Myeni also approved donations to a Women in Leadership Conference in 2014 and Uthungulu District Municipality in 2015 for an amount of R300 000.00 (**ANNEX X**).

100. OUTA has been informed that these donations are not in accordance with Mhlatuze Water’s CSI policy.

Dudu Myeni: fruitless and wasteful expenditure

101. OUTA has been informed that Dudu Myeni incurred fruitless and wasteful expenditure in numerous air travel, accommodation and car hire bookings.
102. It is alleged that Dudu Myeni incurred the above costs at the expense of Mhlathuze Water without the purpose of travel being recorded on travel requisitions and/or in terms of the entity's Travel Policy (section 4.1).
103. OUTA has been informed that Dudu Myeni did not follow procedure for making the above arrangements and that some of the booking were for personal use (**ANNEX Y**).

2.2.3 Mhlathuze and Umgeni Water amalgamation

104. The amalgamation of Mhlathuze and Umgeni Water is being undertaken despite serious concerns raised by National Treasury.
105. Among other things, the following concerns were raised by National Treasury in light of the Mhlathuze and Umgeni Water amalgamation (**ANNEX Z**):
 - “Umgeni Water secured a €35 million loan facility from the European Investment Bank (EIB) in 2012. The loan agreement entered into between Umgeni Water and the EIB contains various clauses relating to an event of default under the loan agreement. The proposed disestablishment of Umgeni Water may be interpreted by the EIB as an effective winding up of the water board or a material adverse change. Both of these could lead to EIB declaring an event of default”.
 - “In addition, Umgeni Water also issued the UG-21 bond, with the nominal value of R600 million, under its domestic medium term note (DMTN) programme. According to the programme, noteholders may declare an event of default if an order by an authority is given for the winding up of the issuer, whether for the purpose of amalgamation, merger or consolidation of Umgeni Water with any third party. The aforementioned can be waived if approval is sought by way of an extraordinary resolution of the noteholders before the date of amalgamation”.

2.2.4 Rand Water: Incentive Bonuses awarded from 2014-2017

106. Undue incentive bonuses were awarded to the Rand Water CE and executives between 2014-2017 financial years.
107. In the 2014/15 financial year, the Rand Water Board approved an incentive bonus for the CE of R2 126 000.00, which is 71.2% of his total cost to company remuneration (TCTC) package. This was done despite the “Policy [on] Remuneration of Chief Executives of Water Boards and Subsidiaries” providing that the awarding of incentive bonuses must be capped at 45% (See **Appendix 4 of ANNEX AA**).
108. The awarding of the above-mentioned bonus was raised by former Minister Mokonyane to the Chairperson of Rand Water, Advocate Hashatse in 2016. In the letter, the Minister indicated that
- “[a]ccording to the Policy [on] Remuneration of Chief Executives of Water Boards and Subsidiaries which I approved in 2014, the incentive bonuses to be paid to the Chief Executives of Water Boards within a specific financial year are capped at 45% of the total cost to company remuneration package of the incumbent for excellent performance”.
109. The former Minister goes on to direct Advocate Hashatse to “review the bonus paid [in] 2014/15 to the Chief Executive of Rand Water, Mr Sechemane to bring it in line with remuneration policy of the Department of Water and Sanitation”. As such, the Minister’s directive compels Advocate Hashatse to recover the monies paid above the 45% threshold. We have been informed that to this day no such recovery has taken place.
110. What is worse is that the payment of an incentive bonus above the 45% threshold was recommended for the CE by the Rand Water Board for the 2015/16 financial year (**ANNEX AB**) as well as the 2016/17 financial year (**ANNEX AC**). Indeed, in the former financial year, the Board recommended an incentive bonus R1 596 007.00, 50% of the CE’s TCTC and in the latter financial year, an incentive bonus of R1 622 796.35, 48.7% of his TCTC.

111. We can confirm that former Minister Mokonyane approved the incentive bonus for 2016/17 (ANNEX AD) and have reason to believe that she also approved the 2015/16 incentive bonus. This is despite her having protested an award above the 45% threshold in the 2014/15 financial year.
112. Concerning the 2016/17 financial year, it is important to note that Advocate Hashatse indicates that in terms of the CE's employment contract, his performance bonus is capped at 50% of his TCTC. This is to say that he may not receive more than 50% of his TCTC. We can confirm this as we have seen a signed copy of the contract. Also, the CE's employment contract has a clause which reads that the "parties agree that the code of conduct and other nominated policies and procedures [...] of RAND WATER where applicable will form part of the contract".
113. Accordingly, this means that payment of an incentive bonus not exceeding 45% of the CE's TCTC is in line with the employment contract, the above-mentioned policy and Rand Water's Short-Term Incentive (STI) Policy.
114. Furthermore, as indicated by the protest raised by former Minister Mokonyane, the aforementioned policy pertaining to remuneration is among those nominated policies that form part of the CE's employment contract.
115. It is important to note that incentive bonuses for other executives for the 2015/16 and 2016/17 financial years is in line with policy. Interestingly, among the motivating factors for awarding incentive bonuses in the 2016/17 financial year is the 1.3 "War on Leaks Programme" (mentioned above) and the "Sedibeng Regional Sewer Scheme".
116. As mentioned, the WoLP enjoys no budget from the DWS. As such, funds to implement the project flowed (in full or in part) from Rand Water. Rand Water's Strategic Human Capital Executive, Ms Wayida Mohamed indicated to parliament earlier this year that the entity had

confronted challenges which include, *inter alia*, overspending and outstanding payments which negatively affected service delivery.³⁸

117. Regarding the Sedibeng Regional Sewer Scheme (SRSS), any incentive based on the implementation of this project is questionable as none of the work has been undertaken at a scale that deserves reward. In fact, the recent exposure piece by Carte Blanche on 29 July 2018 on how poor sanitation infrastructure has resulted in raw sewage parading the streets of Emfuleni Municipality is an example of Rand Water's failure in implementing the project.³⁹ As such, the above two projects are by no means motivating factors for the incentive bonuses awarded for the 2016/17 financial year.

2.2.5 Trans-Caledon Tunnel Authority audit committee investigations

118. Recommendations emanating from an audit report by Ernst and Young ("EY Report") and an opinion by Edward Nathan Sonnenbergs Africa ("ENS Africa") have not been fully implemented by the Trans-Caledon Tunnel Authority (TCTA).

119. ENS Africa provided TCTA an opinion based on the above-mentioned EY Report titled "Investigation into allegations of irregular appointment, promotions and salary increases of key personnel without following proper procedures".

120. OUTA was informed further that another opinion was provided by ENS Africa on the findings of a report compiled by Mr Leonard Radzuma titled "Contract and Remuneration Report-Selected Executives" ("Remuneration Report").

121. The key findings of the EY Report are as follows:

- the appointment of a Professor Busari as the Chief Strategy Officer (CSO) did not follow recruitment policy and that Mr James Ndlovu ("Mr Ndlovu"), the acting CE failed to consult

³⁸ See <https://pmg.org.za/committee-meeting/26086/> (accessed 29 July 2018).

³⁹ See <https://m-net.dstv.com/show/carte-blanche/videos/carte-blanche-vaal-water-war/videos> (accessed 29 July 2018).

with the DWS Minister regarding the executive restructuring which resulted in Professor Busari's appointment;

- Mr Ndlovu failed to comply with recruitment policy for the appointments of Ms Hanje Botha ("Ms Botha") as the Executive Manager for Human Resource Management and Organizational Development ("Executive Manager: HR and OD") and Mr Lindani Gumede ("Mr Gumede") as the Executive Manager of Enterprise-Wide Support Services ("Executive Manager: EES"). Mr Gumede is said to not have met the minimum qualifications for the position; and
- Mr Ndlovu failed to comply with the relevant delegation of authority when he decided not to extend the employment contract of Ms Jeanetter Nhlapo and when he extended the employment contract of Ms Halima Nazeer ("Ms Nazeer").

122. ENS' recommended the following on EY Report:

- a criminal complaint be laid against Mr Ndlovu for his role in fraudulently altering the delegation of authority and presenting it to the Minister as a delegation of authority originally approved by the Board; and
- Mr Gumede's performance be monitored in light of his lack of qualifications so as to ensure that his lack of qualifications do not adversely affect his work.

123. Key findings of the Remuneration Report are the following:

- on Professor Busari, his appointment to the CSO position resulted in a 16% pay increase at the time;
- on Ms Nazeer, her appointment as CFO resulted in a 123.86% pay increase at the time;
- on Mr Gumede, his appointment as Executive Manager: ESS of Enterprise-Wide Support Services resulted in a 64.12% pay increase at the time; and
- on Ms Botha, her appointment as Executive Manager: HR and OD resulted in an increase of 99.86% pay increase at the time.

124. ENS recommended the following on the Remuneration Report:

- The TCTA to determine whether increases are aligned with the market value remuneration. If grossly misaligned, it was recommended that TCTA –
 1. take disciplinary action against the person who authorized or assisted in the authorization of the excessive remuneration, should they still be in the employ of the TCTA;
 2. report excessive remuneration as fruitless and wasteful expenditure in annual reports and financial statements;⁴⁰
 3. review remuneration processes to prevent future excessive remunerations; and
 4. freeze increases for the above-mentioned executives until such time that their increases become market related.

125. OUTA has been informed that the above was raised by the Chairperson of TCTA, Ms Monhla Hlahla in her resignation letter late last year.

2.2.6 Umgeni Water

Introduction

126. In this section, we raise issues pertaining to the international travel of Umgeni Water and the unlawful appointment of CE.

International travel

127. The international travel by the Umgeni Water Interim Board to Las Vegas and intended travel to Singapore and Sweden did not obtain prior Ministerial approval. It is our position that this amounts to fruitless and wasteful expenditure and those who were on the trip must be held personally liable for it.

128. Between 11 – 14 June 2018, the Umgeni Water Interim Board travelled to Las Vegas in the United States of America to attend a conference hosted by the American Water Works Association (AWWA).

⁴⁰ It is important to note that any issues raised that the appointment of EY to conduct the forensic investigation does not invalidate the findings. Indeed, the irregular appointment was condoned by the Board. See http://docs.wixstatic.com/ugd/38a8cb_3282c352cbae4cbb97c8ddfbe67ecfed.pdf (accessed 29 July 2018) pg 227.

129. In terms of a directive given by former Minister Mokonyane in 2016, no international travel may be taken without Ministerial approval (**ANNEX AE**). The directive was issued owing to financial constraints in the water sector. OUTA was informed by a reliable source that the Umgeni Water Interim Board had not obtained Ministerial approval for the trip. According to the AWWA (**ANNEX AF**), the following people formed part of the South African delegation:

- Thami Hlongwa, acting CE of Umgeni Water;
- Sbusiso Madonsela, Company Secretary, Umgeni Water;
- Ziphozethu Mathenjwa, Chairperson of the Board, Umgeni Water;
- Midiavhathu Tshivhase, Board Member, Umgeni Water;
- Monica Malungu, designation not specified, Umgeni Water;
- Sizwe Zuma, Insika Foundation;
- Bhavna Soni, Deputy Head of Engineering, eThekweni Water Entity;
- Valerie Naidoo, Water Research Commission; and
- Manjusha Sunil, Water Research Commission.

130. Further, it was brought to OUTA’s attention that Umgeni Water’s Interim Board had also planned to take trips to Singapore and Sweden, also without prior Ministerial approval. It is important to note that the Umgeni Water Board serves on an interim basis and that their primary objective as per an internal DWS memorandum was to “devise a turnaround strategy to address the current governance, oversight and accountability challenges at Umgeni Water”. None of the above trips speak to the Interim Board’s primary objective.

Unlawful appointment of CE

131. The appointment of Mr Thami Hlongwa (“Mr Hlongwa”) as the acting CE is unlawful.⁴¹

132. According to section 36 of the WSA, a water board has authority to appoint a CE. Mr Hlongwa was appointed by former Minister Mokonyane. Objection to his appointment was

⁴¹ The CE may also have been appointed as the accounting authority which ENS Africa have indicated to be unlawful.

raised in a letter directed to Mr Mkhize (former DWS acting Director-General) by a firm of attorneys (ENS Africa) on behalf of their client Futuregrowth Asset Management Propriety Limited. “Futuregrowth is an asset manager and made this submission as an agent for certain “holders of notes (‘Bondholders’) issued by Umgeni Water [...]” The letter concerned “legality and appropriateness of the Umgeni Water appointment decisions made by [...] Minister of Water and Sanitation (‘Minister’) during the period June 2017 to date, as well as the so-called ‘interim governance framework referred to in the SENS announcements issued by Umgeni Water dated 15 August 2017 (‘**first SENS announcement**’) and 5 September 2017 (‘**second SENS announcement**’) [...] (ANNEX AG).

133. The letter was received by the office of the Director-General on 14 September 2017.