

Prosecution of corruption in local government

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Corruption in local government

- previous webinar: **disciplinary** approach
 - codes of conduct, disciplinary proceedings etc.
- corruption in local government as a **criminal** offence:
 - police investigation
 - prosecution
 - trial

Situation in 2020

- June 2020, Minister of Justice:
 - between 2006-2020: “67 prosecutions”
 - “4 convictions” in “4 municipalities”

Two questions

- **Why** is it so hard?
- **Improvement** since then?

This presentation

Observations, based on

- (2020) De Visser, Beukes, Chonco & Chigwata
*Combating Corruption in Local Government in
the Western Cape*

(available at www.dullahomarinate.org.za)

Research project

- **Interviews** with officials and politicians from 10 municipalities, and provincial government in the Western Cape
- When? June - August 2020
- Focus: experience in **referring alleged financial misconduct** for criminal investigation and prosecution

Observations, concerns from interviewees

- Concern about **duration** of investigation, prosecution & trial

“There is a [pending] investigation that has been coming on since 2011. Only one senior investigator has been assigned to this case. The same individual has also been responsible for investigations in two other municipalities. That is one of the reasons why these investigations are taking so long to complete.”

- Concerns about **capacity and prioritisation** within SAPS / Hawks
 - intersection with municipal disciplinary processes
 - allegations of political interference with investigations

“There were allegations that this traffic officer accepted bribes for passing vehicles that were not roadworthy. There were affidavits, and even though the case was reported to SAPS, there was a reluctance on their part to investigate the matter because the SAPS official was a family member of one of the councillors. So, nothing came from the case.”

Capacity constraints within NPA

- Resources & prioritisation

“One of my employees had committed a corrupt act. We hired a forensic auditor and used the report to discipline him and he was dismissed. I also laid a charge and didn’t hear anything for a few years. Then the senior prosecutor phoned me and asked if I can “make the forensic auditors available”. I wanted to give him their number but he wanted me to pay for the forensic auditor! I told him that I lost money due to the corruption, I lost money paying for the forensic investigation to prepare the disciplinary, I lost money conducting the disciplinary, and now I have to pay again to assist the NPA with their investigation? At some point it is no longer justifiable.”

Capacity constraints within NPA

- Proving the unlawfulness – need for specialised expertise in the NPA

“The criminal justice response to fraud and corruption in municipalities is lacking. Prosecutors are not trained in the MFMA, so if your prosecutor doesn’t understand the MFMA and local government legislation, they will forever try to use ordinary commercial law.”

“I first had to explain to them how these projects gets approved in the municipality. The prosecutor asked me: When did it start being unlawful? They must know the policies when it comes to these type of projects. The prosecutor had to be made aware of that policy. They wouldn’t know the policies of the municipality. Then I must relate that to supply chain: where does it say in the supply chain policy that you can do this? That changes for each municipality, it is not necessarily the same across the municipalities... all of the intricacies of the interactions between policies, by-laws, legislation, practice, delegations - all of those you must know as a prosecutor.”

Expansion of investigative activity by municipalities?

- Is/should there be **more scope** for municipalities to investigate corruption? Could the municipality 'prepare the docket'?
 - metro's already have investigative capacity
- Lower courts are overburdened - what about prosecuting smaller corruption in **municipal courts**?
- What about greater **collaboration** between municipalities/cities and the NPA?

Expansion of investigative activity by municipalities?

- **Independence** of the NPA – legal basis for municipal investigation?
- Different aim (mostly to prepare **disciplinary** charges)
- **Limits** to municipality's investigative reach – no access to bank accounts/ intercept communication

*“What was frustrating about that [process of recovering funds] was it was one of the cases which we eventually gave to the Hawks because it's very difficult to seize documents at companies etc. That's what **we needed the Hawks** for. So we could only operate with the information that we had, and what we could scrape together through our own processes.”*

- Municipalities '**too close for comfort**'

*“Potentially [a good idea] yes, but what if those guys [in the municipality] are **crooks**? I would be very careful.”*

Greater collaboration between provinces and the NPA?

- For example: MEC for LG exercises oversight and institutes commissions of inquiry

“We have handed all our 106-investigations over to the Hawks and the NPA. I haven’t yet seen any outcome, nobody has even appeared in court. But theoretically it could speed up the process...”

- A more decentralised approach for the NPA?

Thank You

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