



SIU_{SA}
STRIKING AGAINST CORRUPTION

Presentation to SCOPA on the Status of SIU's investigations relating to the Department of Water and Sanitation in the Giyani Area

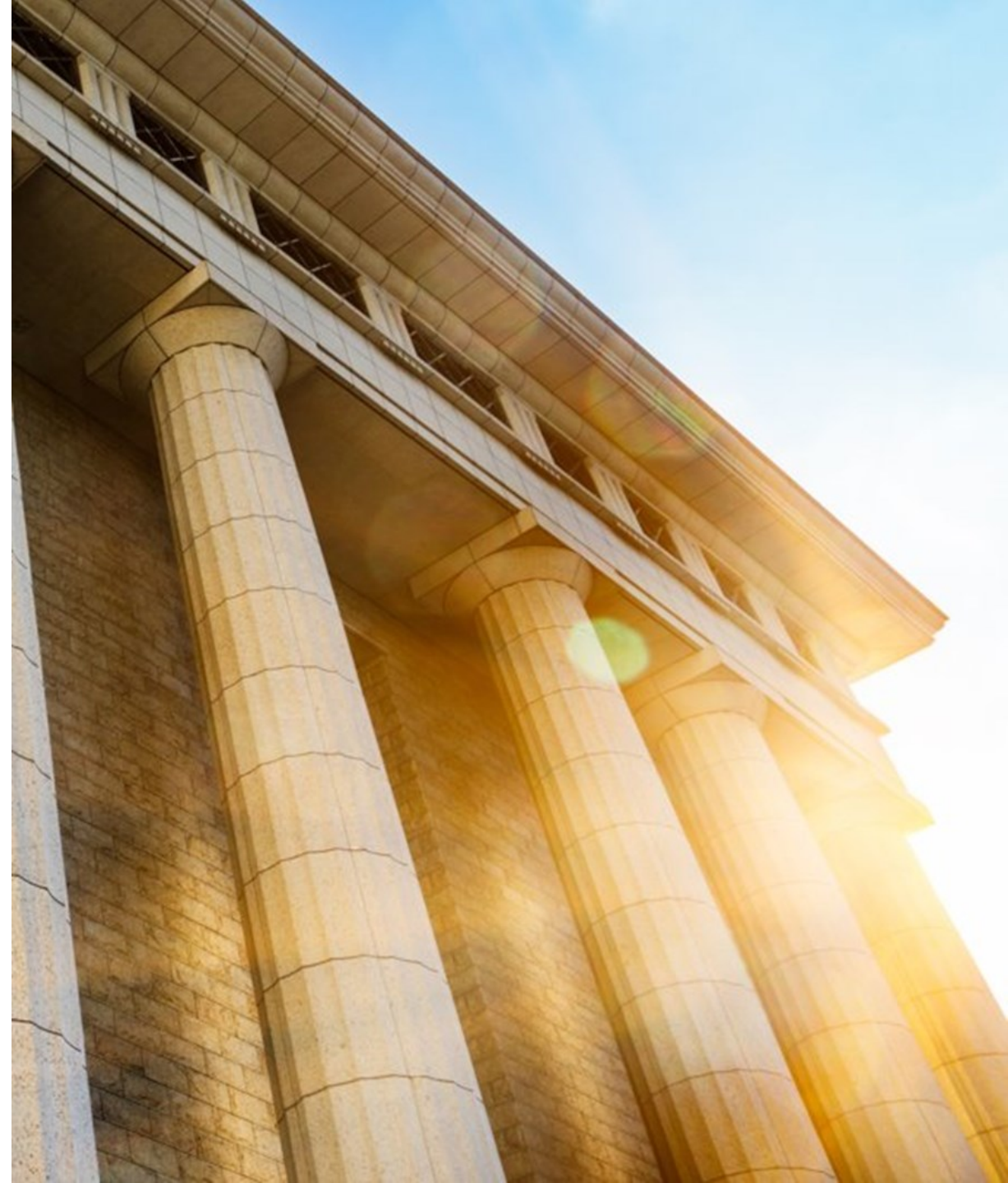
By Adv. Andy Mothibi

14 November 2023



Outline

- 1. Legislative Mandate**
- 2. SIU Operating Model**
- 3. SIU Proclamations**
- 4. Status and Outcomes of SIU Investigations on the Giyani Projects**
 - The awarding of contracts by LNW to LTE Consulting
- 5. Movement on completed investigations**
 - Vuwani Pipeline contract





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ABOUT THE SIU

Legislative Mandate

The SIU

Empowering Legislation

Special investigating units and special tribunals act, 1996 (act no. 74 of 1996) (“SIU act”).

Vision

“The State’s preferred and trusted forensic investigation and litigation agency.”

Mission

“We are the State’s preferred provider of forensic investigating and litigating services working together with other agencies in the fight to eradicate corruption, malpractice and maladministration from society.”



Major Functions

- Investigate corruption, malpractice and maladministration
- Institute civil proceedings



SIU Powers

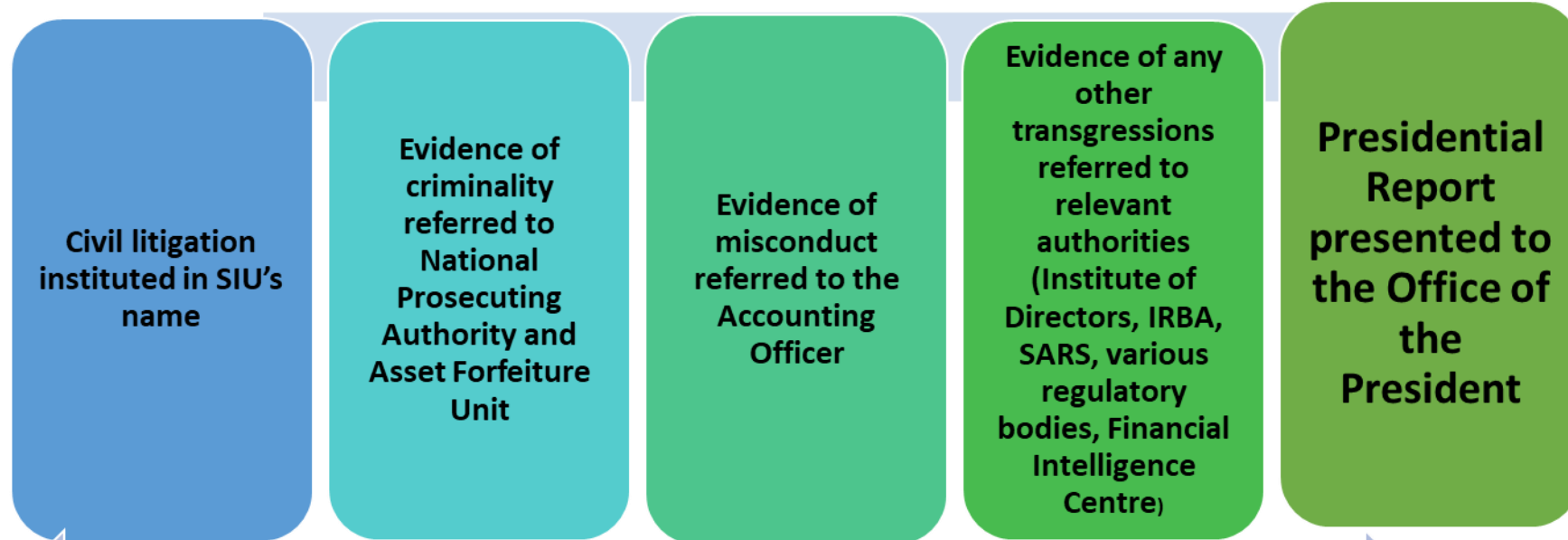
- Able to subpoena, search and seize evidence, and interrogate witnesses under oath (once a proclamation has been issued)
- Institute civil litigation to recover state funds lost or to prevent future losses



Out of SIU Mandate

- Arrest or prosecute offenders
- Implement disciplinary actions
- Works closely with other relevant agencies where its powers fall short

SIU Investigation Outcomes



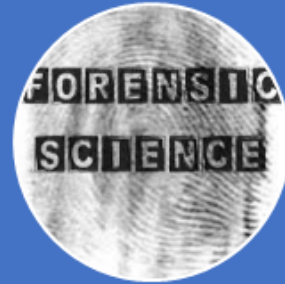
- SIU does not wait until the Presidential Report is issued, we take immediate remedial action as soon as evidence is sufficient.
- SIU will pursue officials who are employed elsewhere within government service when they resign from the Department to avoid disciplinary action.



Forensic
Data
Analytics



Forensic
Accounting



Forensic
Investigation



Civil
litigation



Legal's



Cyber
Forensic

SIU KEY SKILLS



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PROCLAMATIONS

Proclamations

The proclamations are;

1. **Proclamation No R35 of 2008: Allegations at the Mhlathuze Water Board**
2. **Proclamation No R54 of 2012: Various allegations at the Department of Water Affairs**
3. **Proclamation No R22 of 2016: The awarding of contracts to LTE Consulting by the Lepelle Northern Water and Gauteng Department of Human Settlements (extended by Proclamation No R27 of 2019 to include Blackhead Consulting)**
4. **Proclamation No R27 of 2018: The awarding of a contract by the DWS to SAP (SA) (extended by R44 of 2019)**
5. **Proclamation No R4 of 2019: Umgeni Water**
6. **Proclamation No R28 of 2019: Thukela Goedertrouw Water Scheme**
7. **Proclamation No R33 of 2021: 4 contracts awarded to EOH**



Proclamations

The proclamations are;

1. **Proclamation R 23 of 2020: Amatola Water Board**
2. **Proclamation R82 of 2022: LNW & AWB R82 of 2022**
3. **Proclamation R122 of 2023: Umgeni extension**
4. **Proclamation R96 of 2022: Grootfontein and Grootdraai Pump Station Contracts**
5. **Proclamation R138 of 2023: Rooiwal Wastewater Treatment Works at the City of Tshwane Metropolitan Municipality**



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OUTCOMES ON GIYANI INVESTIGATIONS



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**Lepelle Northern Water: Contract awarded to LTE
Consulting (Pty) Ltd:
Mopani and Giyani Water and Wastewater Schemes**

The Schedule provides for the investigation of the following matters:

2. *The appointment of LTE by Lepelle Northern Water (LNW) to render services to LNW in respect of the **Mopani Water and Waste Water Emergency Intervention** which includes Giyani Water and Waste Water Schemes on a turnkey basis and payments made to LTE in a manner that was:*

(a) not fair, equitable, transparent, competitive or cost-effective; or

(b) contrary to applicable-

(i) legislation;

(ii) manuals, guidelines, practice notes or instructions issued by the National Treasury; or

(ii) manuals, policies, procedures, prescripts, instruction or practices of or applicable to LNW; and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by LNW.

Background



On 14 August 2014 Mr Thulani Majola from LTE attended the imbizo called by former Minister of Water and Sanitation to address the water challenges in Giyani. During the Section 5(2)(b) and (c) hearing held at the SIU offices, Mr Thulani Majola confirmed that he was present at the imbizo held in Giyani on 14 August 2014. He further mentioned that after the imbizo was concluded, he met with the CEO of LNW, Mr Legodi and proposed ideas that can resolve water challenges in Giyani through in Company, LTE.

On the following day, 15 August 2014, LTE representatives were present at the Task Team meeting called by the Minister even though the task team was supposed to be attended by officials from Mopani District Municipality, the Department and LNW. It should be noted that LTE was present at the task team meetings before LNW started with the supply chain management process to appoint a service provider for the project.

Background Continues



LTE was initially appointed on an emergency basis on the 20 August 2014 for the repair and refurbishment of the water and waste-water works for the value of R90 150 000, 00. The appointment dated 20 August 2014 was informed by a directive issued by the Minister on 25 August 2014 requesting LNW to intervene on emergency with regards to the water challenges in Giyani. The Minister indicated that Giyani Water Treatment Works should be completed by no later than 30 September 2014.

Background Continues



On 25 September 2014, LNW appointed LTE for non-emergency works to the value of R2,2 billion excluding tax. It should be noted that no procurement processes were followed when the project was extended from R90 150 000.00. to R2.2 billion. It must further be noted that the directive issued by the Minister on 25 August 2014 was not extended to include non-emergency projects. LNW thus extended the project to include non-emergency works increasing the amount from R90 150 000. 00. to R2.2 billion, without authorisation from the Department as there was no extension to the directive issued on 25 August 2014.

The SIU is of the view that if a new directive was issued to include the non – emergency works, LNW would have been required to go out on a competitive bid.

Background Continues



Investigation into the extension of the Giyani/Mopani project

The appointment of LTE by LNW can effectively be divided into two stages:

- The first stage was for the appointment of LTE by LNW for the refurbishment and repair of the Giyani Water and Wastewater Scheme with a combined total value of **R90 150 000**.
- The second stage was for the appointment of LTE by LNW for the refurbishment and repair of the Mopani Water and Wastewater Scheme with a combined total value of **R2 211 425 000** on a turnkey basis.

Allegations



The following allegations were reported to the SIU:

- There was a reason to believe that the award was made to LTE without any competitive bidding or SCM process having been followed; and
- That LTE is a professional services engineering firm, which rendered consultancy services to its clients and **did not** have the capacity or experience to execute or manage a “turnkey project”.

Focus Areas of the investigation



The investigation was structured into the following six focus areas in respect of the Giyani/Mopani projects:

1. SCM investigation;
2. Investigation into the extension of scope the Giyani/Mopani projects;
3. Construction Industry Development Board compliance;
4. Corruption investigation;
5. Investigation into payments made to LTE and determine the value for money; and
6. Investigation into payments made to other contractors or service providers and determine the value for money.

Findings



Findings into the SCM investigation

On 20 August 2014, LNW issued an appointment letter to LTE Consulting (Pty) Ltd ("**LTE**"), through a deviation from the normal procurement process, for the refurbishment and repair of Giyani water and wastewater schemes at an estimated amount of R90 Million.

On 25 September 2014, LNW issued yet another appointment letter to LTE in respect of Giyani water works and Giyani wastewater works at a total estimated cost of R.2.2 billion excluding vat.

On 13 October 2014 LNW issued a revised appointment letter to LTE (from the letter of 25 September 2014) and a service level agreement for Mopani water and wastewater emergency intervention which includes Giyani water and wastewater schemes on a turnkey basis.

Findings



Findings into the SCM investigation

Our investigation revealed that:

- the second appointment was concluded without following any SCM processes,
- the project cost was increased from the approved project budget of R90 Million to R2.2 Billion,
- this was contrary to the directives of the Minister, and
- without approved budget plan.

In light of the above, the appointment of LTE by LNW at a contract value of R2.2 Billion was irregular and unlawful as it was concluded without due regard to section 217 of the Constitution, the LNW SCM Policy and the directives of the Minister.

Findings into the CIDB investigation

It was found that the appointment of LTE by LNW both on 18 August 2014 and 25 September 2014 were irregular and unlawful in that:

- LTE was not registered with the CIDB to undertake/carry out construction work for public sector contracts, and
- LNW was prohibited in terms of section 18 of the CIDB Act read together with Regulation 30(c) of the CIDB Regulations, to appoint contractor to carry out construction works without a valid registration certificate issued by the CIDB

Findings



Findings into the payments made by LNW

The investigation has uncovered that the LNW has paid an amount of approximately R4.1 billion to the service provider, which far exceeds the original contract value of R2,2 billion.

Findings into the corruption investigation

The SIU has identified a corrupt relationship between the LNW officials, service provider and Departments officials.

Findings into the value for money assessment: borehole sample (5 of 167)

- The SIU has contracted the services of an expert to conduct the value for money exercise by sampling of five of the 167 boreholes installed by the service provider.
- The report obtained from the Quantity Surveyor identified:
 - excessive overpricing on the boreholes amounting to **R7 048 712.35** and
 - non-functional water purification plants charged at **R2 503 300.00**.
- The expert quantified that the LNW did not received value for money for the five sampled boreholes and overpaid a total of **R9 552 012.35** due to either non-performance or significantly inflated project costs.
- The findings submitted by the Quantity Surveyor are tabled in the next slide.



Report on 5 sampled boreholes

	Village	Borehole Id	Actual Cost charged by service provider	DCE Estimated Amount (Quantity Surveyor)	Variance in Cost
1	Mphagani	H14- 0051	R1 250 646.45	R1 192 787.94	R57 858.51
2	Bambeni	H14- 0785	R2 117331.68	R1 252 272.01	R865 059.67
3	Mninginisi (BB)	MN-001	R2 678969.58	R1 013 873.67	R1 665 095.91
4	Mapayeni	H14 -0488	R3 029 636.06	R1 093 207.52	R1 936 428.54
5	Phalaubeni	H14 – 0164	R4 010 466.02	R1 486 196.30	R2 524 269.72
Total			R6 038 337.44	R13 087 049.79	R7 048 712.35

Findings

Findings into the value for money assessment: infrastructure at Mopani and Giyani

In respect of the infrastructure listed below the SIU contracted the services of an expert to conduct a value for money exercise on the work done by the service provider:

- Refurbishment of existing Water and Water Treatment Works (WWTW)
- Upgrading of Electro-Mechanical Equipment at Water Pump Stations
- Installation of pipelines
- The balance of the 167 boreholes

The expert found that the costs had been inflated by the service provider by **R893 422 148.17** (excluding vat) on the above work that was reviewed.

Civil Litigation Case No. 1: SIU's main application against LTE and co

The investigation into the SCM has been completed, SIU found that the contract was irregularly awarded, and as a result:

- The **SIU issued summons on 26 November 2018 in the High Court, Limpopo Division, Polokwane**, case number 7209/18 refers.
- The civil litigation action is to have the contract to the value of **R2,2 billion** declared unconstitutional, invalid and set aside.
- The quantum of the contract has subsequently been increased to **R4,1 billion**.
- The parties to the litigation are SIU v LNW, LTE Consulting (Pty)Ltd, Khato Civils (Pty) Ltd, South Zambezi Engineering (Pty) Ltd, Mopane District Municipality, Department of Water and Sanitation.

Outcomes



Civil Litigation Case No. 1: SIU's main application against LTE and co contd...

The status of this civil case:

- On 26 May 2023, senior counsel advised the SIU to file an Objection against the proposed amendment filed by the Defendant, which Notice of Objection was served on 26 May 2023.
- On 20 September 2023, the SIU consulted with Senior Counsel. Counsel will settle a letter to be dispatch to the DJP of the High Court of South Africa (Gauteng Division, Pretoria) under Case No. 7760/2018 in order to enrol the matter on the interlocutory motion roll.
- On 16 October 2023, the SIU Applied for a Trial/Hearing Date and filed a Directive Compliance Affidavit as part of that Application. The SIU awaits directives from the Acting Judge President of the Polokwane High Court following the request by the SIU to allocate a preferential hearing date for the case.

Civil Litigation Case No. 2: Interdict by Legodi and LNW to stop the SIU's investigation

Mr Legodi and the former LNW Board applied for an interdict against the SIU to prevent the Unit from conducting further investigations. The interdict proceedings against the SIU requested the court to order the following terms:

- a) The purported investigation by the SIU of the private/ personal financial affairs of Legodi is not authorised by the Proclamation;
- b) The purported investigation by the SIU of the private/ personal financial affairs of Legodi is unlawful and unconstitutional.
- c) The SIU is directed to desist and refrain from carrying on with the said investigation.

The former LNW Board withdrew as a party to the proceedings and Legodi later abandoned the process.

The matter is considered closed.

Civil Litigation Case No. 3: SIU's damages claim against former LNW officials

- On 6 October 2020 the **SIU instituted civil proceedings by way of a damages claim in the Special Tribunal** with case number LP/01/2020 against former employees of LNW:
 - Mr Carel Schmahl, Mr Phineas Legodi and Mr J Killian for the value of **R1.9 billion**.
 - This is in relation to the unlawful conduct, breach of financial duty or duty of care towards LNW by the above-mentioned employees in the process led to the appointment of LTE Consulting by the LNW.
- The matter has been enrolled for hearing on 20 November 2023 in the Special Tribunal.

Civil Litigation Case No. 4: SIU's action to freeze assets & pensions of implicated officials

- The SIU successfully submitted court applications to the Special Tribunal to preserve the pensions of the two implicated LNW officials:
 - Mr Legodi's pension R2 463 341 and four immovable properties have been frozen, and
 - Mr Schmahl's pension valued at R10 Million has been frozen.
- The above will remain frozen pending the outcome of the damages claim against the former officials in the Special Tribunal (the previous slide refers)

Disciplinary referrals

- The SIU made a disciplinary referral in respect of the **LNW CEO** on 26 February 2018 for negligence and contravening the PFMA.
- Mr Legodi **resigned** before the disciplinary hearing was held.
- The SIU made a disciplinary referral in respect of the **Manager: Planning GIS** at LNW on 20 September 2018 for collusion, fraud and forgery.
- The disciplinary hearing was held by LNW in November 2022, he was **dismissed** in December 2022.

Criminal and other referrals

- **The SIU has made the following criminal referrals:**
 - **NPA referral** was made on 3 April 2018 against the former CEO for contravening the PFMA.
 - **NPA referral** was made against the Manager: Planning GIS on 20 September 2018 for collusion, and fraud, in particular forgery.
 - The SIU has been working closed and in collaboration with the Specialized Commercial Crime Unit to accelerate the prosecution of all matters referred to the NPA. The criminal prosecution has been prioritized into two stages and significant progress has been made.
- The SIU has referred evidence to the **Construction and Industry Development Board** pointing toward a contravention of the CIDB Act on 6 December 2017. The CIDB is currently investigating the matter based on the SIU's recommendation.
- The SIU's investigation has been concluded and the Final Presidential Report is being finalised for submission to the Presidency.

SCOPA and SIU oversight visit to Giyani



During April 2023, the SIU attended an oversight visit conducted by the Standing Committee on Public Accounts in Giyani. The SIU team and SCOPA visited the following sites/projects:

- Nandoni Dam,
- Xikukwani Canal, and
- Giyani Wastewater Treatment Works – Thomo Village

The Following villages form part of the works where one service provider was appointed for 37 villages:

- Bambanani Village, Homu Village , Nkomo Village, Mbambeni Village, Ngove Village

On conclusion of the 3-day oversight visit the SIU undertook to provide feedback on the following deliverables:

1. Finalization of the Presidential Report on the Giyani Water Project.
2. Status of consequence management arising from the findings of the SIU investigation.
3. New motivation for a proclamation iro allegations at the Mopani Reticulation Projects.

SCOPA and SIU oversight visit to Giyani



Status update on SIU's site visit undertakings

1. Finalizing the Presidential Report on the Giyani Water Project

The Presidential Report is in the final stages of being finalized and will thereafter be submitted to the President.

2. Status of the consequence management arising from the findings of the SIU investigation

- The SIU immediately refers evidence pointing towards the findings of irregularities for consequence management to commence. These actions are not reliant on the conclusion of the Presidential Report, which serves to inform the President of the remedial actions and consequence management already taken.
- To summarise the details provided in the SIU's Outcomes slides, the consequence management taken has resulted in:
 - 2 civil cases launched in the High Court (R4,1 billion) and Special Tribunal (R1,9 billion)
 - 2 orders from the Special Tribunal freezing 2 pensions and 4 properties
 - 2 implicated officials no longer in the employ of LNW, 1 resigned before DC, 1 dismissed
 - Criminal and CIDB referrals done; the SIU is collaborating with the SCCU Task Team to accelerate criminal prosecution in respect of Giyani Intervention Project.

SCOPA and SIU oversight visit to Giyani



Status update on SIU's site visit undertakings

3. New motivation for a proclamation iro allegations at the Mopani Reticulation Projects.

It was discovered during the oversight that 37 water reticulation projects in Mopani were allocated to one service provider and about two years later villagers still do not have water.

The SIU is in the process of drafting a Motivation for Proclamation as the allegation does not fall within the scope of the current Proclamation.

SCOPA and SIU oversight visit to Giyani



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Giyani Water Treatment Plant



- LNW paid R77 million for the revitalization of Giyani wastewater treatment plant.
- The wastewater treatment plant was constructed in October 2014 and worked for only four months
- Mopani District Municipality had to resort to the use of the old treatment plants that existed before it.
- The R77 million paid to Khato did not benefit the community.

SCOPA and SIU oversight visit to Giyani



Vandalised Building - Giyani Wastewater treatment works



- The Giyani water treatment works was officially opened by the Former President in 2014.
- R77 million was paid for the revitalization of the wastewater treatment works.
- The building attached to the treatment works has since been vandalized and is not fully functional.

SCOPA and SIU oversight visit to Giyani



Giyani Wastewater Treatment Works (WWTW) Revitalization of Package Plant

- The revitalization of the package plant formed part of works investigated in Proclamation No. R22 of 2016.
- The investigation established that;
 - Khato Civils (Pty) Ltd was contracted to build the Giyani Wastewater Treatment Works Revitalization at a total cost of R75 million
 - LNW paid Khato an advance of R15 million two months after the signing of the contract.
 - Even though the contract price was R75 million, LNW paid Khato a total of R247 217 188.14.
 - The treatment works were functional for only four months after completion in 2015.
 - After that Municipality reverted to relying on the old Wastewater Treatment.

SCOPA and SIU oversight visit to Giyani



Water leakages

Water leakages – Giyani water treatment works



- Water leakages have been identified in Giyani wastewater treatment plant and Nandoni treatment plant.
- No proper management of the plants; water is lost due to leakages.

Water leakages – Nandoni Dam



SCOPA and SIU oversight visit to Giyani



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Pipes abandoned near Nandoni Dam



- Hundreds of bulk water pipes were found abandoned in and around Nandoni Dam.
- It was identified that the pipes were left by the service provider who was appointed by Mopani District Municipality prior to 2014 whose contract was subsequently declared unconstitutional by the court and was terminated in 2014.
- The new service provider was appointed and bought new bulk water pipes.
- The SIU established that the Hawks are at an advanced stage of their investigation into the Nandoni Nsami dam bulk water pipeline project. SIU is providing support to the Hawks Task Team meeting led by the Special Commercial Crime Unit of the NPA.



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Proclamation R54 of 2012

Department of Water and Sanitation

Vuwani Pipeline

Mandate Department of Water Affairs



The Proclamation No. R.54 must be read with the Schedule thereto. The Schedule provides for investigation of the following matters:

The procurement of, and contracting for, goods, works or services by the Department and payments made in relation thereto, in a manner that was-

- (a) Not fair, equitable, transparent, competitive and/ or cost – effective; or*
- (b) Contrary to the applicable –*
 - (i) legislation;*
 - (ii) manuals, guidelines, practice notes and instructions issued by the National Treasury; or*
 - (iii) manuals, policies, procedures, instructions or practices of, or applicable to, the Department.*

Mandate Department of Water Affairs



2. Maladministration in respect of the affairs of the Department and any losses or prejudice suffered by it as a result of such maladministration by its officials or employees (hereinafter collectively referred to as "the Department's personnel") or its agents in relation to –

(a) Variation orders being granted which exceeded the allowable percentage of the original contract price in respect –

(i) the Forest Fire Association (WP9191)

(ii) Syringa Bioscience (Pty) Ltd (WP9341)

(iii) Buca Management and Projects; and

(iv) Brainwave CC projects;

(b) the appointment of 86 contract labourers (which followed the dismissal of the originally appointed 104 contract labourers) in respect of the Expanded Public Works Programme, which included the construction of infrastructure in the Province of Mpumalanga;

Mandate Department of Water Affairs



(c) *the involvement of the Department in –*

(i) the Sundays River Municipality Regional Bulk Water Scheme; and

(ii) the Patterson Bulk Water Supply Project

(d) the lease by the Department of the Continental Building in Pretoria;

(e) Payments made to TWM Projects (Pty) Ltd; and

(f) Conflicting interests of the Department's personnel or agents in entities contracting with the Department, including the causes of such maladministration.

3. Any undisclosed or unauthorised interest the Department's personnel may have had with regard to-

(a) contractors, suppliers or service providers who bid for work or did business with the Department;

or

(b) contracts awarded by or on behalf of the Department.

Mandate Department of Water Affairs



- Proclamation No R54 of 2012 was published on 21 September 2012.
- The SIU conducted the investigation into approximately **34 allegations** all of which were completed with significant and successful outcomes.
- The investigations are completed and the Presidential Report on the outcomes was presented to the Presidency on **15 December 2016**.
- Prior to the finalisation of the Presidential Report new allegations were received by the SIU relating to the procurement process of **the Vuwani Steel Pipeline**, which the SIU commenced investigating in late 2014 under the same proclamation.
- The SIU presented the **Final Presidential Report** to the President on the Vuwani Steel Pipeline **on 28 October 2018**.

Department of Water Affairs: Vuwani Pipeline



SIU's observations of the state of service delivery (observed late 2018)

- There was no water going through the pipeline and the communities are still not getting the benefit;
- The 3km part of the pipeline that was damaged had not been repaired;
- There are parts of the lining inside the pipe that are loose and must be repaired;
- This confirmed, by the project managers, Bigen Africa; and
- The Department doesn't have funds to pay the Ascul or Bigen.
- As at June 2022, the DWS's construction unit is on site to repair the defects in the pipeline.

Department of Water Affairs: Vuwani Pipeline



Project Management Issues Identified by the SIU

Investigations revealed serious maladministration and malpractice as follows:

- The Department's supervising engineer (Bigen Africa) duly alerted the Department timeously to the risks involved, they cannot be held accountable for the officials' refusal to heed to their advice. The officials concerned, for example cited the promotion of BEE as justification to irregularly split the tender and thereupon extend the contractor's contract despite Bigen's advices to the contrary. This official is in the process of being disciplined.
- Failure to comply with Public Service management and its regulations with regard to supply chain management.
- Failure to heed professional engineering advice
- Poor Project Management and oversight by the Department
- Poor financial management and poor record keeping

Status of Vuwani Investigation: Contract W0497 WTE (Part B) Luvuvhu River GWS: Construction of the 800mm diameter Vuwani Steel Pipeline

- The SIU investigation has been completed. The Final Presidential Report on the Vuwani Pipeline investigation was submitted to the Office of the President on **26 October 2018**.
- The contract was awarded in 2012 with a value of **R50 048 759.01**, with a construction completion period of 45 weeks. A total of **R29 million has been paid** to Ascul to date .
- After the award of the contract, Ascul Construction, as from 6 July 2012 onwards, failed to perform on time. Instead of enforcing the penalty clauses, the Department allegedly unlawfully entered into a supplementary agreement which made provision for the waiving of the penalties.
- The agreement also provided for a R16 million advance payment to Ascul Construction with a view to improve its cash flow. The extension is alleged to constitute a complete disregard of and/or contravention of the provisions of the original contract and the PFMA.

Status of Vuwani Investigation (continued...)

- On 9 February 2016, SIU advised the Director General of the Department, not to proceed with the payment of R8 500 000 to Ascul Construction.
- The Director General accepted the SIU's recommendation and instructed the two DWS CFO's not to approve the R8 500 000 payment to Ascul Construction, thereby **saving the DWS R8 500 000.**
- The SIU further advised the Department that the **R13 242 998.10 paid to Ascul Construction** under the premises of it being an "advance payment" was **irregular as well as fruitless and wasteful expenditure.**

Department of Water Affairs: Vuwani Pipeline



Status of Vuwani Investigation Outcomes (continued...)

- **NPA referral** of evidence pointing towards **fraud** involving the company, Ascul Construction and the Director on 18 September 2018.
- **Disciplinary referral** of evidence pointing towards possible misconduct of **DDG** at the Water Trading Entity, at the Department on 30 July 2018. The disciplinary hearing was finalised, and Ms Mathe was found not guilty.
- The DWS has filed a review application at the Labour Court.
- The misconduct involved: Gross negligence in the performance of her duties, contravening various prescripts including the PFMA, Constitution, Treasury Regulations, the Department's SCM Policy and the CIDB Act.

Status of Vuwani Investigation Outcomes (continued...)

- **3 SARS referrals** against the Ascul Construction and the two DWS officials for tax discrepancies and unexplained income. SARS pursuing the matters as per letter received from SARS on 17 July 2019.
- **Referred evidence to the Construction and Industry Development Board** in February 2018 pointing towards fraud committed by the company in the grading process. Follow up letter received by CIDB on 17 July 2019 confirming that the CIDB is conducting their inquiry. Status as on 3 November 2020; CIDB will soon institute a formal inquiry against Ascul and inform SIU of the outcome in due course.

Status of Vuwani Investigation Outcomes (continued...)

Civil litigation:

- The SIU has instituted **civil action** by way of a claim for damages to the **value of R140 million, which was amended to R95 631 945.35** and the particulars of claim were amended following an exception that was raised.
- The **summons was issued on 6 February 2018 in the name of the SIU** as the plaintiff against out of the High Court of South Africa, Gauteng Division, Pretoria, Case No 7760/18 refers:
 - Ascul Construction, Dan Lucas Sikhosana (Director of Ascul), **Zandile Yvonne Mathe nee Makhathini (DDG at DWS)** and **Mpho Joseph Mofokeng (Former CFO at DWS)**

Department of Water Affairs: Vuwani Pipeline



Status of the Civil litigation continued:

- Following an exception raised by one of the Defendants, amended Particulars of Claim were filed on 24 July 2018. The Defendants responded to this with amended Pleas, which were filed during November 2018.
- To refute the defences raised, which were of a highly technical nature, an engineer was procured to perform an additional investigations and to revise the quantification of the damage suffered. This process resulted in a delay. The engineer has since provided his preliminary report

Department of Water Affairs: Vuwani Pipeline



Status of the Civil litigation continued:

Following the engineer's report and the appointment of a judge in respect of the case management process, the SIU has filed a Notice to further amend its Particulars of Claim. Third Defendant's attorneys has since withdrawn from record.

During the latter part of 2022, Mr Sikhosana, the 2nd Defendant in the matter and the owner of Ascul Construction CC (the First Defendant) passed away. In addition, there is an application pending for the liquidation of the First Defendant (Ascul).

Whereas the Thirst Defendant (Ms Mathe) has filed an initial plea in the civil matter, she as to date not filed any plea to the SIU's amended particulars of claim. A range of interlocutory applications followed. The matter did not proceed on 15 December 2022 as Ms Mathe's attorneys withdrew. A punitive costs order was made by the court against Ms Mathe and the matter was postponed to 26 April 2023 for the hearing of the SIU's application to strike out Ms Mathe's defense.

Department of Water Affairs: Vuwani Pipeline



Status of the Civil litigation continued:

During the course of the above, it came to the SIU's attention that, to address problems relating to the completion of the pipeline, the DWS had embarked on steps that could be considered as amounting to a repudiation of their obligations in terms of the contract concerned.

The SIU assisted the DWS with legal advice as to the correct manner in which the contract could be terminated, which the Department accepted and undertook to implement.

Department of Water Affairs: Vuwani Pipeline



Status of the Project currently

During the course of the litigation proceedings, it came to the SIU's attention that the Department had embarked on steps that could be considered as amounting to a repudiation of their obligations in terms of the contract concerned.

This was done to address the lack of service delivery caused by the failure of the Vuwani Pipeline being operational and delivering water to the community.

The SIU assisted the Department with the provision of legal advice as to the correct way in which the contract should be terminated, which the Department has accepted and undertook to implement.



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Thank you

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www.siu.org.za | Email: info@siu.org.za | SIU Hotline: 0800 037 774

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