



Uncovering the Truth - Overstrand Local Municipality Investigation by the Auditor-General into Alleged Fraud and Corruption

22 November 2024

'Accountability serves as the foundation of democracy, empowering citizens to trust their leaders and the institutions that serve them'.

'Without transparency, there is no accountability. And without accountability, trust is lost'.

'Robust structures and systems for oversight, accountability, and consequence management are essential, not only to prevent misuse of public funds, but also to ensure that services are delivered equitably, resources are utilized efficiently, and local development initiatives are sustainable'.

Deputy Minister Dr Namane Dickson Masemola
COGTA Summit on Accountability in Local Government

16 October 2024



The Backdrop

Following protracted attempts by OCAN (represented by Errol van Staden) and Advocate Edmund Wessels SC (ratepayer) to engage the Auditor-General (AG) in respect of alleged fraud and corruption within the Overstrand Local Municipality, the Western Cape office of the AG finally responded to questions in a report dated 6 November 2024.

The receipt of the report was followed by a Teams-conversation (11 November 2024) with the AG-business unit leader for the Western Cape, one of her deputies and an in-house legal advisor.

Towards the end of the Teams-conversation, the in-house legal advisor recommended that the Auditor-General be requested to conduct a comprehensive **Section 5(1)d investigation** (in terms of the Public Audit Act 25 of 2004 - PAA) into alleged fraud and corruption within the Overstrand Local Municipality.

A formal request was lodged on 22 November 2024.

It must be noted that investigations of this nature are time-hungry.

What We Know

Fraud, relating to the abuse of fuel cards by Municipal officials, was publicly confirmed by the Executive Mayor and the Municipal Manager (MM).

There are also allegations of fraud relating to overtime pay.

The Mayor first reported 'the matter' (fuel card fraud) to MEC Bredell a full year after she had taken office.

A case (related to fuel card fraud) was evidently opened by the Municipal Manager with the South African Police Service (SAPS) on 13 December 2022. Neither SAPS Hermanus nor the HAWKS could confirm this action.

Under duress, the MM provided a CAS-number (8/3/2023) during 2024. It subsequently transpired that the CAS-number relates to a case of gender-based violence that happened in Gansbaai.

On 11 April 2023 the Executive Mayor submitted to MEC Bredell an Internal Auditor's report on alleged fraudulent and/or corrupt conduct committed by a merchant under the RT46/2020 Transversal Contract. The details of this report are unknown.

The full scale of the alleged fraud is NOT known (speculations range from R10m to R66m).

Ratepayers have NO information about an 'internal investigation'.

The fraud issue is shrouded in secrecy.



Role of the Auditor-General

The role of the AG is to perform 'regularity audits', the purpose of which is to provide reasonable (not absolute) assurance that the financial statements of a municipality do not contain material misstatements, and that it complies with the regulatory framework.

The annual audit process involves enquiring from various role players (within the Municipality) to declare any knowledge of actual, suspected or alleged fraud.

It is not the aim of an audit process to identify fraud, but to respond to indicators of fraud risk that may come to the attention of the auditor during the audit process.

If the OM had disclosed in its financial statements the misstatement caused by fraud (both qualitatively and quantitatively), the AG must assess whether the disclosed fraud still allows for the financial statements to be transparent and fairly represented in accordance with the applicable financial reporting framework. **The BIG question: Did the OM disclose fraud in its financial statements for the years under review?**

By their own admission (6 November report, paragraph 12), **the AG must highlight the disclosure of fraud** (which evidently happened) **in its auditor report**. The AG-reports for both financial years under review make no mention of alleged fraud, or an investigation into same.

Important: If the fraud is significant enough to be mentioned in the AG-report, it could serve as a basis for a modification of an audit opinion.



Fraud Prevention and Detection – Whose Responsibility?

According to the AG:

- The primary responsibility for the prevention and detection of fraud within a municipality rests with those charged with governance (Executive Mayor and Municipal Manager) and management (Chief Financial Officer).
- However, the AG has a responsibility to consider the risk of material misstatements in the financial statements due to fraud.
- **Indemnity (quote AG):** *Owing to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements of the financial statements relating to error or fraud may NOT be detected.*

Question

- What are the chances of a cover-up by those charged with governance?



Questions Asked



Did the OM disclose fraud (committed during the period 1 July 2020 to 30 June 2023) to the Auditor-General?



If fraud was disclosed, when was it disclosed and by whom?



What is the AG's modus operandi when fraud is disclosed? For example, do you highlight it in your Audit Opinion?



What are the implications if said fraud was NOT disclosed to the Auditor-General?



How does non-disclosure impact a Clean Audit Opinion?



AG's Answers to Our Questions

Q1 - Did the OM disclose fraud (committed during the period 1 July 2020 to 30 June 2023) to the Auditor-General?

'During the performance of the 2021 | 22 audit of the OLM, the auditors were alerted to an investigation into allegations of theft of fuel, using the municipality's fuel card. The amount investigated and the scope of the investigation was not disclosed to the auditors'.

Q2 - If fraud was disclosed, when was it disclosed and by whom?

Unable to answer. Auditors are bound by a Code of Conduct that prevents them from disclosing sensitive information.

Q3 -What is the AG's modus operandi when fraud is disclosed? For example, do you highlight it in your Audit Opinion?

The AG has discretionary functions, which allow it to perform appropriate investigations or special audits.

Q4 - What are the implications if said fraud was NOT disclosed to the Auditor-General?

No clear answer.

Q5 - How does non-disclosure impact a Clean Audit Opinion?

A municipality can receive a Clean Audit even if indicators of fraud are present.



More Questions than Answers

Why did the AG not probe when they were alerted to '*an investigation into allegations of theft of fuel using the Municipality's fuel card*' during the 2021 | 22 audit of the OM's financial performance?

Why were the AG's audit reports for the 2021 | 22 and 2022 | 23 financial years silent on an internal investigation into alleged fraud (assuming there was a formal internal investigation)?

Why did the AG not pick-up on the fact that alleged fraud was not disclosed in the OM's financials? Or was it hidden somewhere?

How is it possible for the AG (in the know about a fraud investigation) to issue a Clean Audit Opinion without probing the full extent of alleged fraud?

Who is leading the internal investigation into alleged fraud and corruption?

What is the extent of the alleged fraud (fuel card abuse, overtime abuse, FNB-transversal contract, other) in Rand-value?

What is the status of the internal investigation?

Have criminal charges been laid to recover stolen monies?

Why is the OM silent on their investigation (if indeed there is | was one)?

Why did JAPAC (Joint Audit and Performance Audit Committee) not flag alleged fraud in their annual oversight reports (appended to the OM's audited financial reports for the financial years under review)?



Some Revelations

A municipality can receive a Clean Audit despite evidence or indicators of fraud

Even though fraud and corruption is endemic to the local government sector, **proactive fraud detection** is not a primary AG-function

It would seem that the AG is not familiar with the OM's internal investigation – if indeed there is (or was) one

Statement by AG (6 November 2024): *The status of the internal investigation is currently considered during the performance of the 2023 | 24 audit. It raises the question: Why only now, and not earlier?*

Only once the internal investigation is completed, a determination will be made as to whether additional steps need to be taken in the context of a material irregularity (another AG-statement)

In terms of Section 5 of the Public Audit Act (25 of 2004), the AG has the discretion to perform an investigation or special audit. **Why did the AG not exercise this discretionary function earlier on?**



The findings of the AG-investigation will be shared in the public domain when it becomes available.
OCAN undertakes to keep you posted as the process unfolds.

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About OCAN

The Overstrand Community Action Network is a new data-driven civil society coalition that is registered with CIPC as a non-profit company. It functions under the leadership of a small Advisory Board and is modelled along the lines of OUTA (Organisation Undoing Tax Abuse).

Acting on behalf of ratepayers and residents from across the Overstrand, OCAN's primary aim is to exercise oversight and coordinate efforts to drive meaningful change, transparency and accountability within the Overstrand Municipality through a collective and legitimate voice.

OCAN has a specific focus on financial management and good governance. It draws on the expertise of SMEs (subject matter experts) from across the Overstrand.

Whilst it is primarily an oversight body, it also offers strategic support in areas where the Overstrand Municipal requires pro bono external input. This is possible via the establishment by the Executive Mayor of Section 79 committees.

