

**STATEMENT BY THE MINISTER OF WATER AFFAIRS AND FORESTRY,
MR RONNIE KASRILS, TO THE BOARD OF UMGENI WATER IN
PIETERMARTIZBURG, 14 JUNE 2001**

I am pleased to have received the report of the Legal Investigating Team (LIT) appointed by the Chief Executive of Umgeni Water after consultation with me to address a number of contentious issues which have been raised by stakeholders, including local government, organised labour and the media.

I received it on June 4th and have had the opportunity to study it, to have it reviewed by my Department as well as by independent legal counsel and to discuss it with a number of relevant people.

A great deal of information has been collected and is presented for the first time. There has been full cooperation from Umgeni's directors as well as positive response from a range of other parties who have been involved in the matters under review.

In this context, I was also pleased to learn that, despite the many allegations, often wild and exaggerated, no evidence was found to support those allegations of impropriety that had been made against members of the current Board.

I also need to note that this report represents further progress on the dedicated transformation path that the Board has been following, under the leadership of Chairperson Omar Latiff and Chief Executive Cromet Molepo.

This team has already dealt with a series of the problematic issues that the Board was confronting and with this report we can now tackle the persistent, systemic set of financial problems that has bedevilled Umgeni for the past decade.

Background

While the report brings a great deal of information to the fore, there is, however, background information that is not sufficiently emphasised. It could be that it was felt to be too sensitive for detailed discussion.

We must recognise that there are very few secrets in the financial markets today. So it is hardly a secret that Umgeni is considered to be carrying "excess liquidity". Nor is it a secret that this situation, incurred by the issue of Umgeni's bonds, carries a significant cost. It is obvious that the challenge of managing this state of excess liquidity at least cost to the organisation and its consumers has created the climate in which many of the problems that are described in the report have emerged.

It is important, before I continue to address the report itself, to dispel the notion that the funding problems originated in dishonesty or wilful mismanagement. I am aware that Umgeni Water had made commendable efforts to address the challenges of providing water services in its supply area. It has taken to heart the criticism that it could not claim to be a world class institution while its local communities lacked even minimal supplies to potable water.

The Rural Areas Water Supply Plan (RAWSP) was devised to tackle the shameful apartheid backlog. The plans were developed and the financial requirements calculated. As I understand it, it was in considerable measure on this basis that the large capital requirements were estimated and the borrowing requirements determined.

It is however also a matter of record that, after the 1994 elections, the democratic government at national level came to the conclusion that it would not be possible to finance the infrastructure for rural water supplies on the basis of loans. We simply did not believe that the poor would be able to pay enough for their water to redeem such loans. That is why we elected to promote the programme, which has now benefited over seven million people, using budgetary finance – grants not loans.

Looking at the experience of Umgeni, at its difficulties in recovering costs from rural schemes, it would appear we made the right decisions. That is still not to say that it was unreasonable for Umgeni to go the way it has. Durban-Pietermaritzburg is the one major metropolitan area with a sizeable population of the rural poor, where the metropolitan area can cross-subsidise rural services, a subject to which I will return.

Whatever the justification, the point is that Umgeni borrowed more than it could responsibly deploy and yet it is now obliged to service those loans. The pressures created by that over-borrowing might have been compounded by the way in which its finances were managed in the mid-1990s but that is another story and was the subject of another investigation.

The LIT Report

Turning to the report of the Legal Investigating Team and its findings, I must start with some general comments. As I have said, it does bring together, for the first time, many of the facts about a situation that has been the subject of much speculation in recent years.

When it comes to the report's analysis, I have some discomfort.

Thus certain of the conclusions drawn do not seem to reflect the evidence that is presented. It would also appear that some basic principles that ought to be applied in the circumstances of an investigation have not been fully respected, notably the *audi alteram partem* rule. It is not obvious to me that the information presented and conclusions drawn have been presented to all the parties concerned and their responses sought.

There appears to me to be undue focus on the conflict between past and present management of the firm, Specialised Outsourcing (SOL) that, while the subject of great media interest, could distract us from the real issues at hand. On the other hand, we are only presented with preliminary estimates of the potential economic losses that Umgeni may have suffered.

A further concern I have is that the LIT may have allowed its investigative mandate to overlap with its loss control mandate and the loss control mandate to intrude into the current management of the Board, notably the management of its Treasury function.

Just as the report itself highlights the need to separate strategic services and operational services in the conduct of the Treasury, the same need for separation applies to the exercise of these three different functions. In the absence of such separation, not only is there a danger that long-term decisions on Treasury management may be unduly influenced by the short-term requirement of the investigation but also that the responsibilities of the Board itself may be undermined.

My conclusions and proposed actions are therefore as follows:

- I accept the finding that there is no evidence that the chairperson held shares in SOL and that, while two former Board members did hold such shares, there is no casual link between this and the questions under investigation.
- I accept the conclusion that the contract entered into with SOL in 1997 was unfair, unbalanced and prejudicial to Umgeni.
- I further accept that the fees paid by Umgeni were excessive in the circumstances.
- In these circumstances, I note and support the avoidance of the contract with SOL.
- I need to record that the report demonstrates that there were serious lapses in Umgeni's corporate governance in 1997 that allowed this situation to develop.
- I also agree that at this time it is virtually impossible to hold any specific role-player totally accountable for what transpired.
- I do however believe that the evidence presented identifies certain acts and omissions for which certain legal and natural persons may still reasonably be held responsible.
- I am therefore not prepared to accept the recommendations in relations to SOL and its present and past management and directors as they stand.

This has up to now been an internal investigation but the matters that have now been brought to light require a response from Government. I have discussed this matter with the Auditor-General and will now formally refer the matter to him. I will also pass the report and this statement to the Financial Services Board. My request to both agencies will be that they review the evidence to determine whether there is indeed any evidence on which they might wish to act, or recommend action, in respect of SOL, its present and

past management and directors as well as in respect of past officials and Board members of Umgeni Water.

There is prima facie evidence of serious misconduct that must be addressed. Therefore, until such time as such external reviews have been completed, and without prejudice to their outcome, I believe it would be wholly inappropriate for certain of the parties concerned, namely SOL or its former Chief Executive Mr David King to have any further engagement in the affairs of Umgeni save insofar as they may be required to provide such relevant historic information needed to prosecute further enquiries or required in order to place the future management of the Treasury functions on a firm footing.

The parties concerned have fiduciary responsibilities in this regard and I expect that they will act accordingly and also that they will understand why their further engagement would be inappropriate at this time.

Directives to the Board

I must also conclude, with regret, that much of the never-ending stream of allegations against officials and Directors of Umgeni is fuelled by parties who believe that there is an opportunity to profit from Umgeni's current financial position or because of the confusion and passion engendered by the allegations and the issues at stake. These parties seek to achieve a share of what they believe to be a lucrative business by supporting those in Umgeni whom they perceive as their allies and to undermine those whom they perceive to be opposed to them. We cannot re-establish good governance in this heady and subjective climate.

Therefore, while I do not want to intrude into the area of responsibility of the Board, I do believe I have the responsibility to act in the public interest in protecting the Board from some of the pressures that have built up over the past months and years. For this reason, and to ensure that the interest of Umgeni's stakeholders is protected, I am going to take the following measures using the powers conferred on me by the Water Services Act (1997).

1. In relation to the management of Umgeni's Treasury, in view of the prima facie evidence presented in the report that appears to demonstrate what can at best be described as improper conduct in the process of awarding the treasury outsourcing contract in 1997, I am directing the Board not to appoint or otherwise use the services of any of the companies or individuals implicated in potentially improper activities by the LIT report, including SOL, Mr D King and his current company until such time as outstanding issues have been resolved in a manner which I am satisfied protects the public interest.
2. It is clear that there must be a separation of functions of investigation, loss control and the future management of Umgeni's affairs. I therefore further direct that the Board establish a Committee of the Board to ensure an effective linkage with the legal team responsible for loss control and legal action against SOL in a manner that protects the interest of the Board and

its public and treats the establishment of future treasury management arrangements as an issue separate to the investigation and loss control.

3. In addition, I direct the Board to take immediate action to bring the treasury management under control and to report to me by the 29th of June 2001 of its proposals to this effect. Specifically, the Board should advise me of any reason why I should not then direct it to use the services of the Trans Caledon Tunnel Authority to undertake the Treasury Management of Umgeni Water on a cost-recovery basis for an interim period until an acceptable permanent arrangement can be established. In addition, the Board should at the same time advise me of the financial consequences to Umgeni's consumers of the current situation and of any possible alternative approaches that may be suggested.
4. I further expect Umgeni to defend vigorously any action launched against it by SOL and to continue to seek relief for such losses as it would appear to have suffered.

Now that the investigation has largely been completed and notwithstanding these directions, I must emphasise that I continue to hold the Board responsible to ensure the effective execution of Umgeni Water's functions by its officials. I know that I can rely on you and the members of the Board to act diligently in this regard and ask that you communicate this approach to all stakeholders.

As I have already indicated, one of the reasons that Umgeni presently faces its financial challenges is that it sought to raise funds, however ill-advised that may have been, for the provision of water services in what are now the jurisdictional areas of Durban and Maritzburg. I therefore propose to meet with the mayors of the two municipalities together with the Ministers of Finance and Provincial and Local Government together with an appropriate provincial representative to discuss the handling of water services assets and liabilities in their area as well as the proposed tariff increases.

Conclusion: Learn the lessons

We are a newly established democracy with much to learn. We need to be vigilant if we are not to fall prey to the profiteers who are always circling seeking easy pickings. This whole process should be a salutary warning to Board members of all public enterprises, not just those in the water sector. We have to recognise that directorships are not a gift, an honour or a community service but an onerous responsibility.

For this reason, I support the proposal that mechanisms be established to promote capacity building of Board members and to ensure that they are equipped effectively to perform their functions.

A new Board

Finally I should report that a new Board would be appointed on 1st July. In order to secure a Board of the necessary stature, I appointed a panel chaired by Mr JEL Potloane, Deputy Director-General in the Department of Water

Affairs and Forestry which included KwaZulu/Natal MEC of Finance, Mr P Miller as well as Mr D Hutton-Wilson who has particular expertise in corporate governance, Ms NO Mjoli, chairperson of the National Water Advisory Council and Mr NC Molepo, the CEO of Umgeni Water.

While I cannot provide the full list of names until my final consultations have been completed, I can inform you that certain members of the current Board will be replaced not as a result of any findings against them but because, in terms of good corporate governance, it is necessary to have an infusion of new blood as well as to maintain continuity.

I can, however, announce that, following the recommendation of the panel, Mr Omar Latiff will continue as chairperson. I expect him to complete the transformation of Umgeni that he, together with his Chief Executive, have begun. This has been a tough period for both of them and they many feel that, with hindsight, certain matters might have been handled differently. We need, however, to recognise that we are building leaning organisations in a learning society and we should look at our experience in this light.

With respect to the other members, I have accepted the majority of the panel's recommendations although, since they did provide me with a list which I intend to announce on Monday, 18 June 2001.

I look forward to a successful working relationship with the new Board and am confident it will rise to meet the challenges we face in the water sector and ensure that Umgeni Water retains its position as a leading organisation not just in South Africa but in Africa and beyond.