CONVERSATIONS
A Global Forum

# Tsakani Maluleke

in conversation with
Ann Bernstein

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To mark 25 years since its establishment, in November 2020, CDE initiated a series of discussions with global experts and prominent individuals in South Africa on important questions on democracy, business, markets and development. The series was relaunched in 2022 as CDE Conversations. This is the 34th event in the series.

**Ann Bernstein**: I am delighted to host Tsakani Maluleke, South Africa's auditor-general. She was born in Diepkloof, raised in Soshanguve, and spent her teenage years in Johannesburg. Tsakani graduated from the University of Cape Town. In the 113-year history of the Auditor-General of South Africa (AGSA), she is the first woman to hold the office.

I want to start by mentioning a disturbing reality. Two weeks ago, Mpho Mafole, the forensic auditor of the City of Ekurhuleni, was murdered. In August 2021, Babita Deokaran, the chief director of financial accounting in the Gauteng Department of Health (and a whistleblower on corruption) was assassinated. These are only two of the auditors and accounting officers who have been killed in the past few years. Is the public sector auditing and accounting function – and its personnel – under attack in South Africa today?

**Tsakani Maluleke**: As South Africans, we live with a very high degree of violence all the time. Professionals trying their best to serve society in different roles are often subjected to undue pressure. It's not just auditors and accountants. The situation affects police officers and others in law enforcement. We must find ways to address our high crime levels and to protect every individual working in the country's integrity systems, whether in the public or private sector.

I sincerely hope that, in time, we will uncover the truth about what happened, especially in the Mafole case, because he worked with us for about 15 years before joining the City of Ekurhuleni. We must identify the individuals responsible for his murder and ensure they face the consequences.

**Ann Bernstein**: Government spending as a share of gross domestic product has surged over the past 25 years. What role does the AGSA play, as a Chapter 9 institution, to hold our government accountable for this spending?

**Tsakani Maluleke**: Our Constitution established institutions such as the Public Protector and the AGSA to support and strengthen constitutional democracy. The auditor-general's role is to audit and report on public financial management and the performance of all government entities. We audit all public sector institutions annually, and we do so independently. Chapter 9 of the Constitution is emphatic about the independence of the supreme audit institution, because for the AGSA to assure the credibility of the information we present, we must be – and be seen to be – independent.

Our reports are directed towards four key constituencies. First, they inform citizens about the public institutions that have been set up to serve them. They provide insights about how these institutions are being managed by the people appointed as their stewards. This enables citizens to hold public officials accountable. Secondly, the reports are aimed at parliamentarians, because they are the public representatives who exercise oversight over how government functions. Our third constituency is the executive authority, made up of the President as head of the Cabinet, the Deputy President and Ministers. Ministers are accountable to Parliament, and they use our reports to assist in the performance of their functions as political heads of government departments.

Fourth, the reports are geared towards the bureaucrats who manage different government departments, because our work is about providing credible, independent information that can help people run institutions better, and of course, help hold those who run those institutions to account.

**Ann Bernstein**: It's a very important role. Now, as I understand it, South Africa is one of the few countries in the world where the auditor-general is constitutionally mandated to audit every single public institution annually. That is an enormous job. What power does that give your office and how do you use it?

**Tsakani Maluleke**: I don't do it all by myself. The AGSA has over 4 000 staff members, including more than 900 qualified chartered accountants, who are members of the South African Institute of Chartered Accountants. They are highly qualified people, tasked with conducting over a thousand audits annually across the three spheres of national, provincial and local government, as well as state-owned entities.

The annual audits cover several aspects, which sometimes tend to be overlooked. Unlike private sector auditors who only audit and provide an opinion on the credibility of financial statements, the law stipulates that the auditor-general must audit the performance reports too. These are report cards, which provide an account of whether government entities have acted in accordance with their mandate and stated objectives. That's important because public institutions are about more than the credibility of financial statements alone. They must also be able to show what they have actually done in response to citizens' needs.

As auditors, we evaluate whether or not the rule of law has been observed in the course of deploying public funds. We check compliance with key laws and regulations relating to financial and performance management. Every one of our audit reports also includes a statement on the state of internal controls, and that is a provision of law. In sum, our audit reports provide a comprehensive, independent review of public institutions. They reveal trends across the public sector, transcend institutional boundaries, and give a sense of what is happening throughout government.

The broad, integrated perspective we are able to offer is the envy of auditors general across the world. In many ways, we are setting the benchmark for AGs globally, showcasing how to add value to the system of governance. The World Bank has rated the AGSA as one of two supreme audit institutions worldwide that are 'fully independent'.

About six years ago, the Public Audit Act was amended to strengthen our ability to follow up on the implementation of our recommendations. Now, we have the powers to address any material irregularity (MI) identified during an audit that results in, or is likely to result in, a material financial loss, misuse of public resources, or substantial harm to a public sector institution or the public. Our expanded powers include referring suspected cases to relevant investigative bodies and taking binding remedial action. These powers have augmented the nature of the institution in terms of best practice; we operate at the cutting edge of what makes an independent and effective AG.

**Ann Bernstein**: Let's dig deeper into the state of our country and what's being revealed through your audits. You've said that many municipalities are in dire straits, which is well-known. What are the most common problems you keep finding in local government audits?

**Tsakani Maluleke**: Having analysed the audit outcomes for several years now, poor governance stands out as one of the critical problems plaguing local government. And I'm not just talking about municipal officials. Our governance arrangements place considerable authority in the hands of the council, led by the speaker, as well as in the hands of the executive political leadership, led by the mayor. When a council is unstable, it translates into serious governance lapses within the administration, resulting in ineffective financial management practices. A weak or unstable council is unlikely to attract and retain competent administrators who will ensure projects are implemented on time, comply with quality standards, and remain within budget. Furthermore, poor financial management practices hinder administrative capacity as municipalities face financial viability problems due to unfunded budgets and unauthorised expenditure. This increases the probability of wrongdoing and, in turn, perpetuates a culture of impunity.

Many municipalities are not even planning for basics, like maintaining infrastructure, and so service delivery suffers. Our governance framework needs attention if we are to build institutional capacity and ensure there are consequences for wrongdoing. That is the only way to build a better delivery-oriented culture.

**Ann Bernstein**: You recently said that since 2021, the AGSA has consistently highlighted the lack of careful spending and the eroding of the limited funds available. Funds, including grant funding, are spent, but service delivery does not improve. What is going on exactly? What are you finding out that is concerning?

**Tsakani Maluleke**: We're finding that basic management principles, which help to align budgets with performance objectives, are not in place. There's no proper planning. If critical priorities such as infrastructure maintenance are not planned for, the municipality will struggle to meet its performance objectives, let alone have the funds available to pay for them. And poor service delivery makes it less likely that consumers will pay.

This is further complicated when businesses cease operating because of long periods of service delivery failures. As a result, municipalities cannot raise revenue. Instead of maintaining infrastructure and prioritising service delivery, they spend money on employing a lot of personnel. Grants end up being diverted to pay other expenses – last year's creditors or last year's Eskom debt, for example. The right contractors aren't appointed or overseen properly. As infrastructure continues to deteriorate, so too does the municipality's ability to generate revenue, along with its financial health.

**Ann Bernstein**: The question then becomes, why do so many municipalities continue to receive poor or disclaimed audits year after year, despite repeated recommendations from your office? For example, in your latest report, you indicate that the overall audit outcomes of the eight metros have continued to regress since 2020/21. What does that tell you?

**Tsakani Maluleke**: It tells us that, even at the level of metros, we have not yet built municipalities into institutions that are strong and capable of doing what they are supposed to do. Only one of the eight metros, the City of Cape Town, attained a clean audit. Its financial statements were credible, its performance report was reliable, and we identified no significant compliance issues. Does it mean things are perfect? No. But it indicates that the basics are in place, and that is critical. That should be the norm for every public institution. To have only one of the eight metros attain a clean audit suggests we have significant work ahead of us to build our metros into the type of institutions that meet expectations.

Of the seven other metros, three received unqualified audited opinions. The City of Johannesburg was unable to even prepare credible financial statements when we began our audit, a clear indication that the city lacks the key controls. Four metros received qualified audits: their performance reports were disclaimed because the information was exceptionally poor and we couldn't find any credible evidence of performance.

We also found tremendous leakage in the financial management and financial health of these metros. What this tells us is that the culture of the leadership in the metros is inconsistent with stewardship over public funds. We must always push back against the misuse of public resources.

**Ann Bernstein**: Many South Africans feel there are no real consequences for officials who waste or misuse public money. If year after year, a city, for example, receives a qualified audit, what powers do you have? Can you fire anybody?

What powers does your office have to enforce accountability, and are they sufficient? One journalist asked if your recommendations are mere suggestions. Let's get to the nub of it. What you are telling us is horrific, that public money is being spent appallingly, and that you don't get all the information you're supposed to get, whether it's deliberate or due to a lack of capacity or just inadequate accounting. How much power do you really have at the end of the day?

**Tsakani Maluleke**: Our powers are to audit and report. They were augmented a few years ago to enable us to monitor and follow up, to ensure that accounting officers resolve any material irregularities. We do not interfere in resolving MIs, as this is the accounting officer's role. If they fail to act, we can escalate matters by issuing a stronger recommendation that alerts Parliament or the relevant council or provincial legislature. In other instances, we may compel the officer to take remedial action, such as disciplining individuals or referring the matter to law enforcement.

Our powers complement those of existing law enforcement agencies, and we can refer matters to the Public Protector and the Hawks and the Special Investigating Unit. Even though I strongly believe our powers are adequate, I concede that we need to collaborate more with other public bodies, through referrals, so that they can then take matters forward.

Public officials do not always act in the public interest, and they are not always held accountable. By the time the AG conducts an audit, there should have been reviews by a mayor because the law says mayors must monitor the implementation of the budget. We are often left wondering why a mayor would allow an unfunded budget to pass, or why they would allow unauthorised expenditure to continue being incurred. Why would they allow a situation where key creditors such as Eskom are not being paid? What are they doing?

Then there are also key questions about the role of the speaker and the council. They are supposed to hold management accountable and ensure that management responds to the previous year's audit outcomes. In far too many instances, mayors, speakers and the council do not know what they are supposed to do; they are ill-equipped and not disciplined enough to execute their functions.

The law also ascribes certain responsibilities to the provincial government. The provincial department of Cooperative Governance and Traditional Affairs (Cogta), the Member of the Executive Council for Cogta and the provincial executive are mandated to review a municipality's performance plan, its Service Delivery and Budget Implementation Plan, and to check coherence across all provincial plans. They frequently fail to do that; instead, they tick a box and say, we have seen the plan. You never see any evidence that there have been suggestions of what needs to be amended to ensure more coherent planning.

Many of these plans are cut-and-paste jobs put together by consultants. And yet they pass! During the implementation phase, all manner of adjustments are made, which takes the municipality onto a different course, far away from where it should be. You end up with projects like sports stadiums being constructed while water infrastructure is degrading. We often wonder where the individuals are who are supposed to monitor and supervise local government.

We must look at all the players in the accountability ecosystem. Local government is a different sphere of government from provincial or national government, but it is not meant to be autonomous or operate as an island where no one else oversees and supervises it, because we are dealing with public resources.

Too many municipalities are never held to account. They wait for the AG to come every year, lament about the same issues, and then start the cycle again. We keep spiralling instead of regularly correcting things.

**Ann Bernstein**: I take your point about an accountability ecosystem. You've said the mayor has a big role, the speaker and the council at the local level have a big role, the provincial legislature has a role, and the provincial government has a role. Many of them are not fulfilling their roles. But recently, you also appealed to the Speaker of Parliament. Can you explain what role the Speaker of Parliament has and what issue you were trying to deal with, and what you think they should have done that they didn't do?

**Tsakani Maluleke**: The law stipulates that the AG is accountable to Parliament. If I have delayed concluding an audit, I must communicate to the Speaker of the National Assembly (Parliament) about which municipalities failed to submit financial statements within the legislated timeframe. Then I can ask her to refer the matter to the relevant portfolio committee to exercise the appropriate oversight and follow up with the provincial and municipal authorities.

My letter to the Speaker of the National Assembly this time around had more passion than usual because I believe we should be much more impatient with municipal leaders who simply don't submit financial statements. We must never tolerate that. After all, we are dealing with public funds. The very least you can do, even before we talk about whether the financial statements are credible, is to submit a set of financial statements in the first place.

**Ann Bernstein**: Does the Speaker have any powers to tackle your concerns? For example, if the National Student Financial Aid Scheme refuses to provide any financial statements year after year, who has the power to act besides the minister responsible? What role can the Speaker play? What role does Parliament play?

**Tsakani Maluleke**: Parliament would, at the very least, be able to call the minister to come and account for why those financial statements have not been submitted and what he or she is doing about it.

**Ann Bernstein**: Let's go back to the metros. You tell us that major cities awarded tenders worth more than a billion rand to suppliers with close ties to municipal employees or councillors, with the City of Johannesburg leading the way in this terrible practice. I think this should be against the law. But if we know this information, who is responsible for allowing it to happen and who is not acting?

**Tsakani Maluleke**: The law prohibits council members and employees of the municipality, as well as employees of other state bodies, from entering into contracts with the municipality. The law does not prohibit the municipality from trading with family members of a councillor or an employee. What they are supposed to do is to report where they have traded with such people, especially if the transaction is of a value over R2000. The R1 billion relates to transactions between the city and contractors that had close relationships with employees and/or councillors. It is undesirable because it creates a series of conflicts and raises questions as to whether that contract is truly in the interest of the city. That would have to be investigated, and the council would take a view.

**Ann Bernstein**: Do you think it should be outlawed? How wide would the circle go in your view?

**Tsakani Maluleke**: I do not know that you can outlaw family members from dealing with the municipality. But I am not sure that a contract to the value of R1 billion rand is appropriate; it just looks wrong. That is probably not so much a matter of law, but a matter of governance and what the council tolerates. The City of Johannesburg, as you would have seen, has high levels of irregular expenditure year on year, and it doesn't seem to be getting better. It raises questions about whether the council, the speaker, and the mayor are doing enough to create the right culture.

**Ann Bernstein**: You've talked about wasteful expenditure, and one example that struck me was where R700 million was paid to a service provider for training that was never delivered. Why does the government pay people before the service has been delivered? I've never heard of this in the private sector; you pay after you receive the service. Why would the government be allowed to do this?

**Tsakani Maluleke**: Sometimes they do it when they are trading with somebody who doesn't have the resources to start the project. Perhaps they've taken the view that this is a small supplier that needs some cash to start the project. Treasury regulations allow for prepayments only if the underlying contract provides for it.

In the example you cite, we flagged it as a material irregularity, and we compelled the Energy and Water Sector Education and Training Authority (SETA) to act on it. They are currently engaged in mediation with the supplier to see how much money can be retrieved. It's an undesirable practice and we have seen it in several places, especially amongst the SETAs, because many of their transactions tend to be cash-based, which leads to instances where the training is not provided, or there is very little value for money, which is an unethical practice.

**Ann Bernstein**: Are there examples where the work that you've done has resulted in real change in a municipality, in a government department, in a public institution? Is there any good news? Give us some examples that give you hope.

**Tsakani Maluleke**: A positive trend is that the number of disclaimers is decreasing. We've come down from 28 disclaimers a couple of years ago to 14. That's still 14 too many, but it's progress. We have also been able to recover funds from the transactions flagged as material, around 20 per cent of the amount we flagged.

What keeps us going is identifying systemic weaknesses and encouraging the right improvements, such as controls to prevent problems in the first place. We flag projects that are going in the wrong direction, and this has led to wastewater treatment plants being sorted out so people now get better sanitation services in their municipalities. Landfill sites that were causing harm to the public (because they were operating outside of licenced conditions) have also been fixed thanks to our MIs.

Overall, we've clawed back about R4.5 billion in roughly five years in terms of the Public Finance Management Act (PFMA) (which deals with national and provincial government) and the Municipal Finance Management Act (which deals with local government). We take our wins, but we know that there is a mountain ahead of us. It's going to take not just the AG's office, but better, more efficient action by different players. I would include the law enforcement agencies in that.

**Ann Bernstein**: Are there any mayors (or municipalities) and institutions that consistently do well in your view? Are there some good news stories in terms of financial management around the country?

**Tsakani Maluleke**: Midvaal has consistently had clean audits for over a decade. There's a responsiveness there, a sense of stewardship, and that's what you want in every public institution. There are a few others across the country that have had clean audits for many years and maintained them. Some public officials make it their business to do their jobs, to do them well, consistently so, and to be responsive when we raise matters.

**Ann Bernstein**: Let me come back to where I started. There have been politicised attacks on the AGSA's office over the years. There have also, no doubt, been times when you've been under pressure to sugarcoat findings. How do you protect the auditor-general's independence?

**Tsakani Maluleke**: As auditor-general I operate within teams, and ensure the work we do is backed up by evidence and informed by a credible methodology and strict auditing standards. That makes it difficult for anyone to deny a particular audit outcome. In this process, all I do is ask certain questions and offer support, but the technocrats, who are all highly trained professionals, must interrogate the audit evidence and arrive at a conclusion, which I never change. That helps to insulate me from attacks.

Does that mean that we are never put under pressure by people who might try to bribe our staff or influence them? That's always going to be the case. Fortunately, it's not that pervasive. We make sure that we sensitise our teams to these threats and equip them with the necessary skills to manage these pressures.

**Ann Bernstein**: Let me ask about public procurement. We know that preferential procurement has opened a highway for corruption in South Africa, and in many respects, decimated public institutions. One response has been the passing of the Public Procurement Act in 2024. How do you regard this law? Does it deal with all the loopholes that you have identified and does it go far enough in tackling corruption?

**Tsakani Maluleke**: I think it moves us in the right direction. I'm excited about the focus on using technology to improve controls, transparency and oversight. But it doesn't matter how good a piece of legislation is: without an environment where legislation is respected and implemented appropriately, it is an exercise in futility. For as long as people flout the rules and get away with it, for as long as there's a culture where we tolerate people not operating the way that we expect, then we can change the laws and have the Rolls-Royce of public procurement acts, but things won't change for the better. Along with implementing the Act, we must sort out the skills problem in all our public institutions and develop a code of ethical conduct. We need to make sure that there are proper internal controls. There must be leadership that expects that the law will be observed, that doesn't interfere with processes, and that allows people to implement processes, monitors them, and holds them accountable so that you build a culture where people observe the rule of law.

**Ann Bernstein**: Do you think it would help if we had, say, five big cases around the country of offenders who've stolen public funds, who are charged and found guilty and sent to jail? Would that help create a better environment for all you are trying to do?

**Tsakani Maluleke**: It certainly would. There are some precedents. Remember when we had the personal protective equipment corruption in the context of COVID-19? What people forget is that in a short space of time we saw prosecutions. We saw people in the dock. We saw assets seized. Stolen public money was recovered. Within a matter of months, these things happened. At the moment, we're watching several prosecutions that the National Prosecuting Authority is dealing with, associated with public procurement matters. Unfortunately, in some of these cases there seems to be a deluge of problems and only a trickle of justice.

**Ann Bernstein**: I learned a new acronym from reading about your work, which is FWE, Fruitless and Wasteful Expenditure. How big is this problem? How much should we worry about it?

**Tsakani Maluleke**: The PFMA describes it as expenditure that could have been avoided had due care been taken. Is it a crime? Not necessarily. I think you've got to check what the substance of the matter is. In local government, we're seeing a lot of fruitless and wasteful expenditure associated with interest and penalties paid to Eskom and the water boards.

What's the underlying issue? Well, many municipalities have cash flow pressures, so they don't pay their big suppliers. These municipalities are actually financially unviable because of how they're designed, and worse still, they don't manage the resources that they do have properly. They end up with a huge staff complement that doesn't do its work. Then they go and hire consultants to do that work, so they double up on their operational expenditure. Then they run out of money, and they're unable to pay suppliers.

**Ann Bernstein**: Thank you very much, Tsakani. The AGSA is an institution we can be proud of, and is doing a vitally important job. I would like you to have more power, but thank you so much for sharing your expertise and knowledge with us today. Hopefully, it will soon lead to some drastic improvements in how the public sector manages public money.

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