

# AG Project Bulletin 02

## AG Project Bulletin 02

### **Setting the Framework for IFAA Auditor-General Project: Checks & Balances: Improving governance in South Africa.**

#### **A discussion paper by Dr Martin Nicol**

**IFAA Auditor General project:** Improving governance in South Africa: What checks and balances are missing?

Initial concentration on the Auditor General and Parliament: why does “nothing happen”?

The AG is the only audit institution in the country that audits and reports on how the government is spending the South African taxpayers’ money.

Auditors are “listeners” and reporters. They do not prepare the financial statements. These are produced by the management. An auditor gives an opinion (to the shareholders, Parliament, the governance authority) on whether financial statements are credible and “correct” and identifies any problems and risks the oversight/governance authority should be aware of.

It is up to the executive/ governance authority/ shareholder to take action to remedy shortcomings. You pay the auditor so you have confidence the management is not stealing – and is following your policies.

Why does government not act when is told of “rampant abuse of public resources”?

How can this situation be changed?

### **Discussion paper on the basics for Wednesday 13 November meeting at IFAA at 12 noon.**

Since the first meeting on 30 October, we have:

- Identified the laws that govern the AG and their relationship with Parliament
- Identified the relevant committees in Parliament – and their powers and procedures
- Obtained hard copies of the latest reports of the AG to Parliament – and identified the on-line AG document source as: <https://www.agsa.co.za/Reporting/AnnualReport.aspx>
- Informed the Parliamentary Monitoring Group (PMG) of the proposed project, in which the PMG is willing to assist.

Visited the Research Unit, the GCIS information outlet and the paper store in Parliament.

## **Examine the role of the Auditor General with respect to reporting to Parliament**

The Auditor General is the only audit institution in the country that audits and reports on how the government is spending the South African taxpayers' money.

The AG is one of the Chapter Nine institutions created by the Constitution. They are accountable to the National Assembly and must report on their activities and performance of their functions to Parliament at least once a year. In fact, the AG reports to Parliament on numerous occasions every year.

The Auditor General is independent and is subject to only the Constitution and the law.

The Constitution specifies the powers and responsibilities of the AG:

### **Functions of Auditor-General**

188. (1) The Auditor-General must audit and report on the accounts, financial statements and financial management of -

- (a) all national and provincial state departments and administrations;
- (b) all municipalities; and
- (c) any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.

(2) In addition to the duties prescribed in subsection (1), and subject to any legislation, the Auditor-General may audit and report on the accounts, financial statements and financial management of -

- (a) any institution funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality; or
- (b) any institution that is authorised in terms of any law to receive money for a public purpose.

(3) The Auditor-General must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public.

(4) The Auditor-General has the additional powers and functions prescribed by national legislation.

### **Tenure**

189. The Auditor-General must be appointed for a fixed, non-renewable term of between five and ten years.

Like all Chapter Nine institutions, the AG must be impartial and exercise their powers and perform their functions without fear, favour or prejudice. All other organs of state are obliged to protect the AG and ensure its effectiveness.

Parliament has passed many laws that affect the AG and their functioning. Chief amongst these are:

- Public Audit Act (PAA), No. 25 of 2004 [as amended – see current, amended PAA at [https://www.agsa.co.za/Portals/o/Public Audit Act 25 of 2004 Amended%20%281%29.pdf](https://www.agsa.co.za/Portals/o/Public%20Audit%20Act%2025%20of%202004%20Amended%20%281%29.pdf)] This has to be read with the PAA Regulations – see [https://www.agsa.co.za/Portals/o/PAA Regulations - published 1 April 2019.pdf](https://www.agsa.co.za/Portals/o/PAA%20Regulations%20-%20published%201%20April%202019.pdf)
- Public Finance Management Act (PFMA), No. 1 of 1999 [as amended]
- Companies Act No. 71 of 2008 [as amended]
- Money Bills Amendment Procedure and Related Matters Act, No. 9 of 2009 [as amended]

## **What are the relevant committees in Parliament? What are their powers and procedures?**

### **SCoAG - Standing Committee on the Auditor General**

The AG, as an institution, reports to Parliament through the Standing Committee on the Auditor General (SCoAG). The Committee is the “oversight mechanism” provided for in the Constitution and the PAA. The Committee effectively chooses the Auditor-General and sets their remuneration and conditions of service. It also chooses a private sector audit firm to audit the AG itself.

*There was a major amendment to the PAA in 2018, which came into effect from 1 April 2019. [This note may not, at present, adequately deal with all the changes. There is a huge amount of literature on the changes to consider – both from the AG and from PMG reports on the Bill, which became the Public Audit Amendment Act, No. 5 of 2018.]*

The amendment adjusted the role of SCoAG in some respects, but its main import was to extend the mandate of the AG. The original mandate of the AG was to audit government departments and entities and then to report their findings to Parliament. No one imagined that Parliament would hesitate to hold the executive to account when the AG reported findings on fruitless, wasteful, unauthorised and irregular expenditure. But that has been the case. Executive authorities of audited entities have frequently failed to take any action at all on the recommendations of the AG to deal with “the rampant abuse of public resources that we have seen in the last decade” (to quote the AG’s 2018-19 Annual Report [p12], tabled in Parliament on 26 September 2019). The amendment to the PAA allows the AG “to take binding remedial action for mismanaging public resources” [p29], to ensure that losses suffered by the State are, where possible, recovered, as well as to refer certain suspected material irregularities for investigation. Details are revealed below.

### **SCOPA – Standing Committee on Public Accounts**

In the words of the National Treasury, public accounts committees fulfil the critical and specialised role of “protector of the public purse”. The AG and their independent audit reports on all the departments and entities are the main input for their oversight work. One issue is that SCOPA has such a wide range of departments and entities to consider (numbering over 300 by a rough reckoning) that it concentrates on “large” issues. It may as a consequence neglect issues where financial expenditure for government is low, but social and economic impact for the country is large (such as the granting of rights to minerals). In these areas, portfolio committee oversight and vigilance is particularly important.

As PMG has written<sup>1</sup>: It is particularly on the point of irregular, fruitless and wasteful expenditure picked up during the audits that the role of SCOPA is paramount. SCOPA may investigate matters during hearings and the accounting officer and/or Minister must explain how problems highlighted by the Auditor-General are going to be responded to.

SCOPA, like all committees, has the power to summon anyone to appear before it. It can decide on its own procedures for questioning – within the Rules of Parliament. Committees may be constrained by decisions of the leadership of Parliament, which has been known to deny requests for meeting times and venues and to refuse to pay for the costs of external experts or lawyers to lead evidence.

Ultimately, SCOPA, like all committees, only has the power to make a report to the National Assembly on its findings and recommendations. But there is scope for innovation on the process to reach that report – which can involve public hearings, oversight visits and (in an innovation of the 5<sup>th</sup> Parliament) “colloquiums”.

[The AG says SCOPA “is still unable to pass resolutions, which inhibited the opportunity for it to have its reports debated in the House.” [p.89] – I do not know what this refers to]

**SCOA – Standing Committee on Appropriations.** *[Delete?]*

[SCOA considers and reports on proposed appropriations from the National Revenue Fund as part of the budgeting process. It may rely on reports of the Auditor-General to propose its own amendments to the Appropriation Bill, but it does not seem to have a particular connection to the AG – but I do not have practical experience of how this Committee functions]

**All National Assembly Portfolio Committees**

Portfolio committees exercise oversight as to whether departments, public entities and constitutional institutions have delivered on the service delivery promises they made in their strategic plans and which the legislature agreed to finance by appropriating public funds through the Budget. National Treasury state that portfolio committees close “the accountability loop of planning, budgeting, implementation, reporting, auditing and, finally, oversight.” (National Treasury 2005: 14)

To give effect to this role, and to compile the annual BRRRs, portfolio committees can consider as wide a range of information as they determine. A key input, however, is always the annual reports. These include the financial statements, as audited by the AG, and performance information which may or may not be audited. The AG’s audit opinion is influenced by whether the department or entity has complied correctly with relevant legislation.

---

<sup>1</sup> <https://pmg.org.za/blog/2019AuditsAnnualReportsandBRRRs>

## **Things you may not know about the AG**

- The AG is responsible for over 1,000 audits a year
- AGSA has a very significant annual revenue itself – over R3,400,000,000 in 2018/19
- AGSA is self-funding – from its audit fees – and recorded a surplus of R71 million in 2018/19
- AGSA employs a huge permanent staff – 3,556 people at present – and it also subcontracts about 17 per cent of its audits to private sector audit firms.
- Auditees are supposed to pay AGSA fees after 30 days – but AGSA has R744 million owed to it – mainly by municipalities, who owe R321 million
- AGSA itself always receives a clean audit opinion. (Its own auditors are the private audit firm, Crowe – they are selected by SCoAG for a non-renewable five year term).
- The AG (Mr Kimi Makwetu) receives a salary of R6.4 million a year – and AGSA pays the members of its governing body R3 028 per hour – 100 times the government's minimum wage!) [p.141]

## ***An enormous effort is invested by South Africa in auditing government expenditure.***

And, in general, this is done very well indeed by the AG.

Reading the annual and other reports, you find an impressive organisation, providing expert, and impartial external audits for government departments, provinces, municipalities and many government entities.

AGSA **is** independent and they have demonstrated their independence – unlike the audit firm KPMG which was complicit in state capture, and which is no longer used as a subcontractor for audits by the AG. [KPMG was associated with the black-owned firm Nkonki Ntsaluba which collapsed when AGSA took back all the audits from KPMG. AGSA generously took over bursary commitments made by Nkonki to accounting students.]

AGSA has devoted notable, sustained effort to transformation:

- 55 per cent of the 3 556 employees are women
- 90 per cent are black
- 587 of the 1227 qualified audit staff are women (48%) and 898 (73%) are black
- This almost twice the number of qualified audit staff the AG employed in 2009.
- AGSA has a serious programme for Trainee Auditors and has trained 1,000 people who now have the peak qualification, CA(SA) – Chartered Accountant. 90 per cent are from previously disadvantaged backgrounds.
- AGSA provides bursaries and employs many trainees after they have completed their articles. (Measures to deal with low recent pass rates are discussed openly in the annual report).

### ***AGSA has really upped its game in recent years.***

Apart from taking on more audits and more staff, AGSA has stepped away from the narrow “lion tamer” world view of most accounting firms (cf. Monty Python sketch!):

- AGSA implements an **education campaign** directed at oversight entities – such as Parliament. This is implemented by supplementing the dry-as-dust, impenetrable reports dictated by “international best practice” with accessible summaries and presentations, marked by cartoons, graphics and colour coding. AGSA does not “dumb down” their reports – which require concentration to understand – but it tries to explain the content by writing simply. This improves every year. (See the PMG meeting records at the time annual reports are discussed)
- AGSA emphasises the need to **work WITH auditees** to help them to improve audit outcomes. This extends right through the audit year. AGSA reports to PC’s on whether a department is following their recommendations and implementing changes.
- AGSA is **transparent and accessible to Parliament**, devoting a lot of effort in helping PCs address key issues in the Budgetary Review and Recommendation (BRRR) process. Senior AGSA officials will meet with a chair to allow them to ask questions and understand the controversial aspects of the presentation before the formal committee meeting.

The AG can proudly say “As a supreme audit institution, we increased our relevance through the credibility, simplicity and clarity of our reports and the holistic, integrated view of the auditees’ performance. In this way we contributed to the drive for good governance and clean administration...” [p.14]

### ***But the efforts of the AG have not had the impact they have deserved***

In the 2018/19 AG Annual Report, the Deputy Auditor General says in her overview:

“Our general reports indicate that audit outcomes for departments, public entities and municipalities had regressed.

“Irregular expenditure remained high, non-compliance with supply chain management (SCM) legislation continued to increase, and auditees’ financial health deteriorated.” [p.15]

The AG reports increased levels of “push back” as auditees contested unfavourable audit outcomes. AG staff members were personally threatened when audit opinions were not as wished and in some cases had to call off audits to get security support from SAPS! [p.75]

The “lack of accountability” and “rampant abuse of public resources” was seen in the “regrettable” deterioration in 2017/18 audit outcomes for departments, public entities and municipalities. “Financial health remained a challenge at most of our auditees, specifically for a number of strategic state-owned entities and municipalities.” [pp.12-13]

“The deterioration [in accountability] had a negative effect on delivering key government programmes in education, health and infrastructure, and at municipalities, which all have an impact on citizens.” [p.73]

### **What is the reason for all of this?**

The AG is clear

He says that oversight bodies do not insist on “our recommendations being implemented on time”. [p.12]

“For many years, our audit reports have supported and guided auditees to develop good financial and leadership practices by offering insight that is relevant, reliable and transparent. We achieve this by revealing the root causes for failed controls and including recommendations to improve such controls and practices.”[p.13]

### **What is the remedy?**

The present direction is to strike hard at non-compliance by implementing “consequence management” and imposing ever more stringent rules to direct actions and processes.

The AG ties his hope to the “stringent provisions of the amendment to the Public Audit Act. I believe that our recommendations will be hard to ignore in future and that the responsible officials will move faster to address audit findings.” [p.13]

“If you want to discourage corruption, act against it” [p.14], says Mr Kimi Makwetu, the AG.

This could be a call for the executive itself to act with firmness and determination against individuals employed in the public sector who are implicated in corruption and the maladministration, incompetence and thievery revealed in court cases, investigations by commissions of enquiry (such as the Baloyi Commission in the North West) and Chapter Nine institutions, including by the AG.

Government pays billions of rands in audit fees – yet it often fails to apply the recommendations made by expert auditors on how to improve compliance with its own laws.

The amendments to the PAA provide an alternative remedy, in the face of executive inaction.

This is an effort to interpret what I have read.<sup>2</sup> It seems no one loses their job. But there are strong incentives for the senior management (the “accounting officer”) to carry out what the AG recommends:

If the AG finds there is evidence of “**material irregularities**”, such as any non-compliance with legislation, fraud, theft or a breach of a fiduciary duty identified during an audit which resulted in or is likely to

---

<sup>2</sup> <https://www.agsa.co.za/AboutUs/Legislation/PublicAuditAct.aspx> - see the Frequently asked questions!

result in a material financial loss or substantial harm to a public institution or the general public;

Then: The AG can **refer the evidence to the police** or to “relevant public bodies” for further investigations in accordance with their mandate. And those bodies – critically - have to keep the AG regularly informed on progress.

If financial loss was involved and **if the department fails to implement the remedial action** for a department or entity AG has specified,

Then: **the AG can issue a “certificate of debt” to the accounting officer concerned.** This means the official (a very senior official, DG’s are accounting officers for departments) is liable in their personal capacity for the money that has been lost. (It seems the official still keeps their job, unless the relevant executive authority intervenes, with a suspension, or dismissal. The money is still owed by the individual, even if the person is dismissed.)

The AG points out that “These steps come with many checks and balances,<sup>3</sup> giving the public entity or department concerned enough opportunity to fix the flagged problem before it gets to the issuing of a certificate of debt. That action would only be taken if and when those charged with governance fail to act.”

### What does a certificate of debt look like:

The format is given in the Regulations to the PAA:

#### CERTIFICATE OF DEBT

Issued in terms of section 5B(1) of the Public Audit Act, 2004 (Act No. 25 of 2004)

1. I, the undersigned \_\_\_\_\_, Auditor-General of the Republic of South Africa, hereby issue this Certificate of Debt in terms of section 5B(1) of the Public Audit Act, 2004, in respect of the debtor and for the amount specified in this Certificate.

2. Full names of debtor:

\_\_\_\_\_

Identity number (if available): \_\_\_\_\_

3. Amount of debt:

R \_\_\_\_\_

(in words) \_\_\_\_\_

\_\_\_\_\_, together with interest applicable to the period between 30 days after this Certificate has been served on the debtor and the date of full payment of the debt due.

4. Details of material irregularity: (if empty see attached annexure)

\_\_\_\_\_

<sup>3</sup> <https://www.agsa.co.za/Portals/o/AuditPerspectiveAGApril2019.pdf> There is a forest of new PAA Regulations, including repeated notifications, hearings and advisory committees before any certificate is actually issued.

---

5. The executive authority responsible for the auditee in respect of which the material irregularity referred to in paragraph 4 of this Certificate has taken place must in accordance with section 5B(2) of the Public Audit Act, 2004, collect the amount specified in paragraph 3 of this Certificate from the debtor referred to in paragraph 2 of this Certificate. The relevant executive authority must in terms of section 5B(3) of the Public Audit Act, 2004, keep me informed of progress made in collecting the amount due on or before \_\_\_\_\_ and thereafter at least every three months until the debt is paid in full, failing which the matter will be reported to the relevant legislature.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ at \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Auditor-General of the Republic of South Africa

### **Reference documents** *[To be completed]*

#### Web sites

AGSA

PMG

Treasury

Parliament including Rules of Parliament

#### AGSA Publications

*Annual Report 2018/19*

*Consolidated General Report PFMA 2017-18*

*Consolidated General Report MFMA 2017-18*

*Citizens Report MFMA 2017-18*

#### Background documents

National Treasury (2005) *Guideline for legislative oversight through annual reports.*

[Available at:

<http://www.treasury.gov.za/publications/annual%2oreports/national%2otreasury/Guideline%2ofor%2OLegislative%2Oversight%2othrough%2OAnnual%2OReports.pdf>]

#### Legislation

(Laws and Regulations) ....

PAA Regulations 2019

- Public Audit Act (25/2004): Investigations and Special Audits Regulations. GN 525. *Gazette* No 42368. 1 April 2019
- Public Audit Act (25/2004): Material Irregularity Regulations GN 526. *Gazette* No 42368. 1 April 2019

Comparative resources (How other Parliaments approach a universal problem of ensuring responsible governance of public resources)

Hansard Society (UK)

...

### **Suspended thought 12 November**

Ben suggested that the research identify “traditions and technicalities that inhibit us” and put forward bold proposals for Parliament to consider.

This thought below, needs some panel beating.

It is based on the observation that the PAA amendment, the national call for “consequence management” and the outrage at the looting that has been going on, all lead to imposing more rules and regulations.

But that is the approach that has actually not worked in the past. It began with Treasury and the PFMA and the MFMA. Treasury responded to the problems with performance (which manifested themselves immediately, 20 years ago) by setting benchmarks, and then more guidelines, rather than by addressing performance capacity. (They meant to help!)

We have created in SA a dreadful “compliance culture” in which innovation in the public service is stifled by strict timelines and “journeys” with tick-boxes at each milestone. Batho Pele was not a rule-based concept – but we have made it one. Principles are different from rules.

In my view, “compliance” is the tradition we have established in the SA public service which inhibits progress and innovation. Compliance incentivises people to delay decisions (the path to maladministration). The threat of “consequences” does not deter thieves, but it adds to the risk a public servant is exposed to if they look for a Batho Pele solution (to get delivery done). Instead they find a rule to follow – whatever its effect may be.

Ben said no examples. I have lots from my work in local government and in the DTI. Most recently a lawyer friend was having to approach the Constitutional Court to allow children in remote areas of the Eastern Cape to be accepted in local schools. They do not have birth certificates. The Schools Act says no one may be admitted to a school without a South African birth certificate. There are harsh penalties for school principals who admit learners without birth certificates. Home Affairs have rules and procedures that make it slow and complicated to issue birth certificates for children who were not registered at birth. Mothers have to travel and retravel and nothing happens except they pay money for nothing and the child is not in school.

“Compliance”, “Consequence management” and the “Fourth Industrial Revolution”, along with the “Sustainable Development Goals” and “Agenda 2063” are all diversions.

Bring back Batho Pele!<sup>4</sup>

---

<sup>4</sup> <http://www.dpsa.gov.za/documents/Abridged%20BP%20programme%20July2014.pdf>