

AG Project Bulletin 03

Three notes “for the record”

1. SCOPA aims to have former Prasa board members declared delinquent, following AG report

On 5 February 2020, SCOPA resolved to pursue a proposal that all the former directors of PRASA should be formally declared “delinquent” under the Companies Act. This would prevent them from ever again serving as directors of registered companies and would compel them to resign as directors if they currently hold such a position in any other companies.

The ‘exhibits’, below, include a press cutting from *Business Day*, the media statement from SCOPA and an account of the SCOPA meeting, as reported by PMG.

This could be a sanction promoted by SCOPA when it fails to compel the executive to act against directors of state-owned companies who fail in their fiduciary duties.

2. The AG celebrates a 100-year history – just as its effectiveness lessens

In 2014, the Auditor General South Africa published a fascinating historical reflection on the work of auditors general to recognise the centenary of the appointment of the first Auditor General by the Union of South Africa in 2011. Hidden in plain sight – on the AGSA website – the 110 page book has no acknowledged author and no ISBN.

An ironic theme is that after the democratic government specified new, world class rules for the governance of public entities and the management of public finances, corruption erupted like never before. The book covers the transition of public finance auditing from being a government function to the independent Chapter Nine institution created by the Constitution.

Amidst all the celebratory and self-congratulatory puffing, an elephant image lurks. How can auditing and monitoring be so much better resourced and so very professional when public assets are looted on a large and increasing scale?

3. Former SCOPA head highlighted many of the corruption and weak accountability problems a decade ago!

Almost a decade ago, on 26 October 2010, a former chair of SCOPA, Dr Gavin Woods gave his inaugural lecture as Professor in public finance at Stellenbosch University, where he had also been appointed Director of the Centre for Anti-corruption Education and Research.

Woods stated that “levels of [public sector] corruption are at an unprecedented high and are continuing to rise strongly in many countries – with South Africa being a particularly serious case in point. This is explained partially by the fact that corruption has become more organised and more sophisticated in recent years.”

In addition, corruption was caused by the “weak management situation in the South African public sector” which had been “shown to provide opportunities with **low risks for those public officials who are inclined to behave in a corrupt way.**

Woods cites Auditor-General reports which “regularly reveal serious management shortcomings.” In particular, “the 2009 report on ‘Consolidated audit outcomes for National Departments and Entities’ highlighted the following non-performance levels in national departments:

- Non-compliance with regulatory requirements 44%
- Prevention of fruitless and wasteful expenditure 43%
- Creditors settled late 79%
- Irregular expenditure not disclosed 36%
- Safeguarding of assets 36%
- Monthly clearance of suspense accounts 57%
- Usefulness of reported information 47%

Woods comments: “A considered scanning of Auditor-General reports over the past four years [2006 to 2010] shows a clear and growing incidence of senior management indiscretions and short-comings, and also of systems failure due to managers not ensuring the full and proper application of the mandatory systems”

“The Auditor-General stressed that there were warning signs across the areas of human resources, information systems, non-compliance issues, material misstatements – all of which pointed to further problems within departments. In particular, he pointed out that there was a lack of understanding of the prescripts of human resource management. The report ends by stating that the main causes of non-compliance with financial regulation are “insufficient supervision of day-to-day activities by all levels of management and a failure of leadership”. It said “it is necessary to have a leadership that cared and knew what was happening.”

Woods identifies the reason for the eruption of corruption in the way the transition to democracy worked itself out. Experienced public servants resigned – or were pushed out – and were replaced by people without institutional memory, adequate experience or qualifications. He says “prior to 1994, the public sector in South Africa was ... a highly functional sector that achieved most of its objectives – including those that were ideologically controversial. This was due largely to a stable, generally experienced and tightly regulated bureaucracy that possessed a basic civil service mentality – albeit only towards a part of the population. The conditions and circumstances of this situation produced a considerably more efficient government than what exists today. That this is so can be deduced from the delivery record of the then government and from the Auditor General’s reports produced in the ten years leading up to 1994.

“...[T]he policies introduced by the post-1994 government for transforming the racial make-up of the public service have left it more prone to incompetence and corrupt behaviour – simply due to the serious loss of hard management experience and crucial institutional memory.’

Reference List

Phakathi, B. (2020) MPs aim to have former Prasa board members declared delinquent. Business Day. 05 February 2020

Former board members of the embattled Passenger Rail Agency of SA (Prasa) could soon be banned from holding directorships, should parliament's finance watchdog committee have its way.

During a meeting of the standing committee on public accounts (Scopa) on Wednesday [05-Feb-2020] to discuss the crisis at the rail agency, ANC MP Mervyn Dirks said previous boards and the interim board led by Khanyisile Kweyama should be declared delinquent, a suggestion backed by committee chair Mkhuleko Hlengwa.

Other notable directors who could be declared delinquent if the committee has its way include Sango Ntsaluba, founder of audit and advisory firm SizweNtsalubaGobodo; Louis Wessie; Jenny Schreiner; Nazir Alli, former CEO of the SA National Roads Agency Limited; Doris Tshepe and Mashila Matlala.

Under the Companies Act, directors can be declared delinquent if they grossly abuse their position or act in a manner that amounts to gross negligence, wilful misconduct or breach of trust regarding the performance of their functions and duties as a director. Delinquent directors are automatically disqualified from company directorships.

Hlengwa said a report to that effect will be prepared and tabled in the National Assembly after an inquiry.

Disclaimer from auditor-general

Prasa, which is responsible for delivering rail services, a vital ingredient to boost productivity and stimulate economic growth, has over the years been engulfed in allegations of corruption and mismanagement. This is while the country's rail services continue to flounder, with Cape Town rail lines being the hardest hit.

In Prasa's delayed 2018-2019 annual report, tabled in parliament late in 2019, the auditor-general slapped the state-owned company with a disclaimer — the worst possible audit outcome. It received a qualified audit opinion the year before.

In the report, auditor-general Kimi Makwetu detailed the extent of the rot at Prasa, finding that the troubled state-owned company had incurred R26bn in irregular expenditure.

The situation was so dire that minutes of board meetings were not adequately recorded, in contravention of the Companies Act. Minutes provide evidence that directors have met their statutory and regulatory obligations.

Doubts also remain about Prasa's ability to continue as a going concern.

In the annual report, Makwetu said Prasa did not maintain complete governance records, including minutes of meetings of the board, its subcommittees and executive committee.

This, he said, has had a negative effect across the audit as resolutions and other decisions taken could not be confirmed.

“The lack of governance records ... is a matter of significant concern and requires urgent intervention,” Makwetu said.

Court application

Late in 2019, transport minister Fikile Mbalula placed the agency under administration for a year. Mbalula announced the appointment of Bongisizwe Mpondo, who has served on the boards of other state-owned enterprises such as SAA and SA Express, as administrator. A permanent board would be put in place six months into the administrator’s term to “allow for a seamless transition”....

SCOPA to table a Resolution Declaring former PRASA Board Members Delinquent MEDIA STATEMENT Parliament, Wednesday, 5 February 2020

– The Standing Committee on Public Accounts (Scopa) has committed to table a resolution to the National Assembly that will request Parliament to declare the former Interim Board and previous Boards of the Passenger Rail Agency of South Africa (Prasa) as delinquent directors to prevent their appointment in any other Board of Directors in future.

The committee came to this decision after it was informed by Prasa that the previous Interim Board prevented management from operating to its full capacity particularly when it came to risk management and financial management.

The committee will begin a process of a fully-fledged Parliamentary Inquiry in an effort to gather facts that will assist in establishing when did these problems start at Prasa, as it doesn’t believe that they started with the former Interim Board. Furthermore, the committee believes that it is important to go as far back as necessary.

The Parliamentary Legal Services will be asked by the committee to draw a roadmap that will assist it to reach the desired outcome for this process. The committee wants to conduct an age analysis that will also include scrutinising the past reports of the Auditor-General, and Prasa management reports to determine the beginning of the challenges currently faced by the agency. This is to ensure that all the previous Prasa boards are held accountable.

Scopa is satisfied with the plans presented today by the new Administrator, Mr Bongisizwe Mpondo and by the commitments made by the Minister of Transport, Mr Fikile Mbalula on this process. The committee has also resolved to meet with law enforcement agencies, particularly the Hawks, to check progress on all Prasa cases currently under investigation.

ISSUED BY THE PARLIAMENTARY COMMUNICATION SERVICES ON BEHALF OF THE CHAIRPERSON OF SCOPA, MR MKHULEKO HLENGWA.

Parliamentary Monitoring Group PMG (2019) PRASA financial management and regression: follow-up meeting; with Minister & Administrator. Records from meeting of the Standing Committee on Public Accounts (SCOPA) 05 February 2020. Available at: <https://pmg.org.za/committee/42/> [Accessed 09-Feb-20]

PMG reported that “SCOPA welcomed the Minister’s decision to remove the board [of PRASA] and, in December 2019, to place PRASA under administration. ...The Committee indicated that it would discuss with the parliamentary legal services **the possibility of having members of the previous board or boards declared delinquent directors**. SCOPA could not allow the board to be dismissed and that be the end of it. There needed to be far-reaching consequences to remind directors that they could not destroy an entity and that was the end of that. None of those directors should be allowed to become directors anywhere in future. Parliament needed to impose its authority. However, before taking legal action, the Committee would request permission to hold a parliamentary inquiry to determine the facts so that all previous boards and management implicated in wrongdoing could also be brought to book.”

The meeting considered a litany of findings that proved the inadequate performance of the previous board. This included: “**A compilation of the minutes of the board and its committees showed that 101 sets of minutes had not been approved, which was a serious non-adherence to governance.**”¹

In addition, Mr Bongisizwe Mpondo, the Administrator of PRASA said:

- It’s important to highlight that **Questionable Decisions** have been taken by Leadership with disastrous consequences
 - Late last year, **the Board cancelled the security contracts without a contingency plan in place**
 - This has led to untold damage to our infrastructure and rolling stock
 - This vandalism practically means that parts of the track are stripped
 - Live Electrical cables are stolen
 - This leads to our lines not being usable
 - We are losing train sets daily as the vandals target the copper cables

[Mr Mpondo later revealed that the contracts had originally been irregular.]

“The Chairperson said there was no record of resolutions. ... There was merit to SCOPA instituting a process to deal with those people [ie the previous board, dismissed in December 2019]. The resolution would be drafted so that the Committee could debate it and so that Parliament entrenched its authority. People had to be held accountable even if they had left the company. None of those directors should be allowed to become directors anywhere if they could not even deal with minutes. SCOPA had to engage with the parliamentary legal services and with the entity in terms of the information that they were providing. SCOPA needed a resolution of Parliament so that it could take court action against the directors. ... “The Chairperson foresaw court action to have the directors declared delinquent so that a dismissal was not redemption so that one could go elsewhere...”

¹ Also see the PMG record on the SCOPA meeting on 21-Nov-2019: The Chairperson quoted page 72, item 20, of the PRASA Annual Report [2018/19]: “PRASA did not maintain complete governance records, including minutes of meetings of the Board, its subcommittees and executive committee. This had a negative impact across the audits as resolutions and other decisions taken could not be confirmed, including those taken subsequent to year end.”

...”On issue of the declaration of board members as delinquent, he proposed that the Committee move ahead with the intention but first hold a Parliamentary inquiry to establish the facts. It would not be a long-winded inquiry but it could not just be about the immediate previous board. The Committee would look at prior boards and rely on the Auditor-General and his audit outcomes and management reports. The Chairperson would contact parliamentary legal services.”

Auditor General South Africa (2014) 100 Years Legacy and Legends 1911-2011. pp.110 Available at: <https://www.agsa.co.za/AboutUs/CorporateInformation/TheLegacyBook.aspx>

Woods, Gavin. (2010) Public sector corruption: Behavioural origins and counter-behavioural responses. Inaugural lecture delivered on 26 October 2010. Prof G Woods, School of Public Leadership, Faculty of Economic and Management Science, Stellenbosch University. Available at: <http://scholar.sun.ac.za/handle/10019.1/4836>

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