



AUDITOR-GENERAL
SOUTH AFRICA

DAG briefing to the Standing Committee on the Auditor-General

16 September 2022

OUR MISSION AND VISION



OUR MISSION

We have a constitutional mandate and, as the supreme audit institution of South Africa, exist to strengthen our country's democracy by enabling oversight, accountability and governance in the public sector through auditing, thereby building public confidence.



OUR VISION

To be recognised by all our stakeholders as a relevant supreme audit institution that enhances public sector accountability.



Introduction

The role of Scoag in relation to the AG and the institution

- Section 55(2)(b)(ii) of the Constitution requires the National Assembly to provide for a mechanism to hold organs of state accountable
- Scoag is established in terms of section 55(2)(b)(ii), read with section 10(3) of the Public Audit Act (PAA)
- PAA section 2(c) states that the objects of the PAA are *To provide for an oversight mechanism established in terms of section 10(3) to*
 - (i) *assist and protect the Auditor-General in order to ensure the independence, impartiality, dignity and effectiveness of the Auditor-General; and*
 - (ii) *advise the National Assembly*
- Scoag's role is therefore twofold – to hold the AG accountable, and to assist/protect

Scoag's role in relation to salary, allowances and benefits of AG

- The AG is independent and subject only to the Constitution and the law
- Independence ≠ freedom from oversight and accountability

Scoag role prior to 1 April 2019	Reference	Scoag role since 1 April	Reference
Scoag must consult the person recommended for appointment as AG and make recommendations to the President for the determination of the conditions of employment of that person, including an appropriate salary, allowances and other benefits.	7(1)	The AG is entitled to such salary, allowances and benefits as determined by the President, after taking into consideration the recommendations of the Independent Commission and approved by the National Assembly. The Independent Commission must consult Remco and the Minister of Finance	7(1)

Background to the investigation and legal review

- The AG raised issues of **non-performance** with the CPO on a number of occasions
- The AG's engagement with the **People Portfolio leadership** team triggered the chain of events
- CPO requested a meeting with the AG which was granted on **27 June 2022** where he presented the allegations and threatened to hurt her by making these public. At this engagement, the CPO requested a mutual separation
- The AG reported the incident to the DAG as accounting officer. The DAG commissioned an **independent assessment** –
 - ❖ An investigation into the CPO's threats against the AG
 - ❖ A legal opinion on whether the AG's decisions met the requirements for legality and, if not, whether they amounted to corrupt, unethical and unprofessional behaviour
- The investigation has been concluded and **CPO's disciplinary hearing** is set down for 21 to 23 September 2022
- The remainder of this briefing will focus on the legal opinion



Procedures to deal with allegations

Procedural requirements for complaints/allegations @ the AG

Complaints or allegations against the AG are dealt with in terms of the AGSA Complaints Policy and Procedures, June 2021

Complaints against the AG are category 4 complaints

Procedural requirements –

- Complainant must submit complaint to the BUL: Risk and Ethics
- BUL: Risk and Ethics must submit complaint to the DAG, after consultation with the CRO
- The DAG must within 7 days notify the AG and submit complaint to the chairperson of Scoag
- Scoag will determine the next steps

THEREFORE – in “submitting” the document to the AG directly is a material breach of the Complaints Policy and Procedure

Was the CPO's submission a protected disclosure?

The external legal team considered whether the CPO's document to the AG was a protected disclosure. Tested against the following provisions of the Protected Disclosures Act, 2000 -

PDA section	PDA requirements	Met the PDA requirements?
Made to the employer (6)	Disclosure must be made within policy established by the employer	No. Complaints policy not followed
Made to the AG (8)	Must be made in good faith and with intention to investigate within mandate	No. Made with intention to threaten and extort, not to investigate
Made anywhere else	May not be made for personal gain	No. Expected a financial separation package

THEREFORE – the CPO's submission to the AG does not meet any of the PDA requirements, therefore the submission is not a protected disclosure



The allegations categorised

High level summary of the opinion

Category	Allegation
Salary, allowances and benefits of the former AG	In April 2014, Ms. Maluleke (DAG) approved "relocation costs" for AG Makwetu to the value of R575 358 which in reality was transfer and bond costs for his new house
	In 2017 and 2018, Ms. Maluleke (DAG) approved salary increases for AG Makwetu that were above what the Independent Remuneration Commission recommended for public office-bearers
	In November 2018, Ms. Maluleke (DAG) approved an R860 000 advance for AG Makwetu against his deferred compensation, without Scoag approval.
	In December 2020, the AG approved the payment of interest on AG Makwetu's deferred compensation to Mrs. Makwetu, without Scoag's approval.
Recruitment, selection and appointment of key personnel	In June 2021, the AG appointed Ms. Bongzi Ngoma to the role of Head of Audit, without following a proper recruitment procedure. Ms. Ngoma did not apply for the position and she did not meet the minimum qualifications for the position.
	In June 2021, the AG appointed Mr. Solly Segooa to the role of Chief Risk Officer, without following a proper recruitment procedure. Mr. Segooa did not apply for the position.
	In December 2020, the AG appointed Mr. Harold Maloka to the role of Business Unit Leader: Communication. Mr Maloka did not meet the minimum qualifications, as per the job advertisement.
Supply chain management	In May 2021, the AG attempted to influence the CPO to appoint her personal coach to assist with the institution's leadership alignment programme.



Salary, allowances, benefits

Vacuum in the law and its application

- Section 219(5) of the Constitution states that **national legislation** must establish a framework for the salary, allowances and benefits of the AG.
- Section 7 PAA (prior to 2019 amendment) - **Scoag** must consult the person recommended for appointment as Auditor-General and make recommendations to the **President** for the determination of the conditions of employment of that person, including an appropriate **salary, allowances and other benefits**.
- Scoag only made recommendations in respect of a **salary and termination bonus** in line with that of the Chief Justice. Scoag made no recommendations on allowances and benefits.
- The law was **silent** on the position where no recommendation or determination made.
- The DAG (accounting officer) in the circumstances had an **implied duty and authority** to provide for the allowances and benefits of the AG.
- The AG signed a document titled “**remuneration and conditions of employment: AG**” to close the vacuum, which provided for some certainty (the conditions document).
- The conditions document regulated **various conditions** such as leave, official vehicle, Cape Town accommodation etc. Where this document was silent, normal AGSA policy would apply.

Security costs

Allegation

In April 2014, Ms. Maluleke (DAG) approved “relocation costs” for AG Makwetu to the value of R575 358 which in reality was transfer and bond costs for his new house

- AG’s appointment increased his security risk; needed to move into a secured complex
- No determination on security arrangements made by the President
- Ito the conditions document, the AGSA relocation policy was considered (no security policy)
- The policy did not provide for bond and transfer costs, but specified that matters outside of the policy ought to be approved by the DAG.
- The DAG formally approved the deviation, consulted with the Remco chair and approved
- Annual audit did not identify any discrepancies

Opinion

The move from one home to another was a security requirement, not a relocation, and was directly linked to the appointment. The approval of the expenses was lawful and did not indicate corrupt, unethical or unprofessional behaviour

Salary increases

Allegation

In 2017 and 2018, Ms. Maluleke (DAG) approved salary increases for AG Makwetu that were above what the Independent Remuneration Commission recommended for public office-bearers

- The Commission had no power to make recommendations in 2017 or 2018
- The Independent Remuneration Commission recommendations only applied to the AG from 1 April 2019 onwards when the Remunerations Amendment Act commenced
- AGSA total reward policy does not provide for the AG's salary increases
- AG's conditions document proposed adjustments in line with Commission recommendations
- DAG had authority to deviate from total reward policy
- DAG considered – performance; AG funds not linked to national budget; increases to other staff etc.
- She only had to demonstrate that she acted reasonably and rationally

Opinion

DAG's deviation from policy was lawful and the approval of salary increases was reasonable and rational. The Commission had no jurisdiction at the time and there was no legal duty to obtain approval from Scoag. The DAG's actions were not corrupt, unethical or unprofessional

R860 000 interest free loan

Allegation

In November 2018, Ms. Maluleke (DAG) approved an R860 000 advance for AG Makwetu against his deferred compensation, without Scoag approval.

- The DAG understood that deferred compensation would only become due in November '20
- Granted an interest free loan based on the following –
 - The amount was insignificant and did not depart from conditions of service
 - Amount did not pose a risk to the AGSA as the deferred compensation offered collateral
 - The amount was recoverable
 - There would be no impact on the AGSA's resources over the remaining two years
- The amount was duly taxed on a monthly basis
- Remco chair consulted and supported
- Payment was disclosed in the AFS as an interest-free loan and the deferred compensation was collateral to ensure recoverability

Opinion

The DAG acted lawfully and rationally. No Scoag approval was required. The approval does not amount to corrupt, unethical or unprofessional behaviour.

Interest paid on deferred compensation

Allegation

In December 2020, the AG approved the payment of interest on AG Makwetu's deferred compensation to Mrs. Makwetu, without Scoag's approval.

- AG initially agreed to pay simple interest to settle a dispute with Mrs. Makwetu in December 2020, however, the simple interest offer was not accepted.
- According to the legal opinion, interest was paid in July 2021 to the deceased's estate.
- The AGSA will investigate the matter and take appropriate action

Opinion

Scoag is not legally required to approve decisions or transactions of this nature. Interest was indeed payable as a matter of law, but only from the date of termination of the AG's term until the date of payment. The approval and payment do not amount to corrupt, unethical or unprofessional behaviour.



Recruitment of key personnel

Head of Audit (National)

Allegation

In June 2021, the AG appointed Ms. Bongi Ngoma to the role of Head of Audit, without following a proper recruitment procedure. Ms. Ngoma did not apply for the position and she did not meet the minimum qualifications for the position.

- DAG and HoA recruitment processes ran concurrently
- Applied for DAG role for which she met the criteria and proceeded to the second round
- Ms. Ngoma has the CA(SA) qualification
- Ms. Ngoma had 8 years and 8 months executive experience in AGSA and 7 years as Head of Internal Audit of the IDC (= nearly 16 years). The AGSA's HoA role required 15 years
- Ms Ngoma was offered the position as part of restructuring and in line with policy applicable to our retention strategy and succession planning

Opinion

Ms. Bongi Ngoma met the qualification and experience requirements. She also met the recruitment waiver policy requirements – internal, suitably qualified with a proven track record. Her appointment was not corrupt, unethical or unprofessional.

Chief Risk Officer

Allegation

In June 2021, the AG appointed Mr. Solly Segooa to the role of Chief Risk Officer, without following a proper recruitment procedure. Mr. Segooa did not apply for the position.

- Mr. Segooa applied for the role of HoA but was unsuccessful
- The CRO role was lower than what he applied for, and at the same level as his previous role
- Mr. Segooa has a CA(SA) qualification, which was required for the role
- Mr. Segooa was offered the position as part of restructuring and in line with policy applicable to our retention strategy and succession planning

Opinion

Mr. Segooa met the qualification and experience requirements. He also met the recruitment waiver policy requirements – internal, suitably qualified with a proven track record. His appointment was not corrupt, unethical or unprofessional.

Business Unit Leader: Communication

Allegation

In December 2020, the AG appointed Mr. Harold Maloka to the role of Business Unit Leader: Communication. Mr Maloka did not meet the minimum qualifications, as per the job advertisement.

- Job requirements – B degree; post graduate diploma in communication/PR/journalism/public administration; registered with professional body; 5 to 10 years experience
- Mr Maloka did not have a bachelors degree, but Wits Business School Management Advance program certificate (NQF level 8, equal to honours degree)
- Not registered with a relevant professional body, but had more than 20 years experience
- He has vast experience in management and executive roles Director, Chief Director, Deputy Director-General in government and Managing Director of a private firm.
- Mr. Maloka scored the most points in the interview; the panel was unanimous that he was best suited for the position

Opinion

Mr Maloka did not meet the qualification requirements and was not registered with a professional body. His appointment did not meet the recruitment waiver requirements. His appointment did not meet legality requirements. However, no evidence that his appointment amounted to corrupt, unethical or unprofessional behaviour



Supply Chain Management

Attempted Influencing to appoint a personal coach

Allegation

In May 2021, the AG attempted to influence the CPO to appoint her personal coach to assist with the institution's leadership alignment programme.

- The AG found her coach very knowledgeable and experienced; could possibly assist to enhance exco cohesion
- AG shared her thinking with the CPO and DAG, but advised them to follow due procurement process
- Another company was subsequently appointed

Opinion

There was no evidence that supported the CPO's version. The AG in sharing her thinking did not commit an act of corruption or unethical/unprofessional behaviour



Corrective action

High level plan of action

- The AGSA takes the outcome of the legal opinion seriously and is in the process of identifying areas where governance and controls should be tightened
- The AGSA will prepare a time-bound plan of action to address governance and internal control weaknesses
- The plan of action will be shared with the audit committee for comment and tracking
- The AGSA is investigating the matter relating to interest payment, and appropriate action will be taken
- Similarly, the AGSA notes the finding on the procedural flaw in the process of appointing the head of communications. We will attend to the HR management weaknesses that led to this flaw, amongst these being the crafting of job descriptions in the support side of our organisation. In this specific instance, we are comfortable that we ended up with the right candidate for the job, who was appointed following a normal interview process.



Thank You