

PART 4: REPORT OF THE AUDITOR-GENERAL

REPORT ON THE FINANCIAL STATEMENTS

Introduction

I have audited the accompanying financial statements of the Department of Justice and Constitutional Development, which comprise the appropriation statement, the statement of financial position as at 31 March 2010, the statement of financial performance, statement of changes in net assets and cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory information, as set out on pages 239 to 292.

Accounting officer's responsibility for the financial statements

The accounting officer is responsible for the preparation and fair presentation of the financial statements in accordance with the modified cash basis of accounting determined by National Treasury, as set out in Note 1 to the financial statements and in the manner required by the Public Finance Management Act, 1999 (Act No. 1 of 1999) of South Africa (PFMA). This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor-General's responsibility

As required by section 188 of the Constitution of South Africa and section 4 of the Public Audit Act, 1994 (Act No. 103 of 1994) of South Africa, my responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with International Standards on Auditing and *General Notice 1570 of 2009 issued in Government Gazette 32758 of 27 November 2009*. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures

in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the department's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

BASIS FOR QUALIFIED OPINION

Departmental revenue, receivables for departmental revenue and contingent liability

In the course of administering justice, the Department established the Third Party Funds (the Fund), which acts as a conduit for the receipt and payment of funds on behalf of other parties and the state (for example, bail, maintenance money, various types of fines, payments into court and legal costs) through court processes by virtue of its mandate. Whilst there is no defining legislation that governs the existence of the Fund, the department has consistently accounted for the Fund as a separate entity.

For the purpose of my audit I could not rely on the adequacy of the Fund's financial and control system and the system did not permit the application of alternative audit procedures to determine whether:

- the departmental revenue amounting to R296 million (2008/09: R272 million), as disclosed in Note 3.2 to the financial statement, had been properly collected and recorded by the Fund and surrendered to the department;
- the potential claims against the Fund as a result of fraud theft and loss to be paid by the department,

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amounting to R67 million (2008/09: R41 million) as disclosed in Note 21 to the financial statements are complete; and

- the money collected on behalf of the state and not yet paid to the department as at 31 March 2010, amounting to R74 million (2008/09: R41 million), as disclosed in Note 21.1 (unconfirmed interdepartmental balances) and Note 26 (receivables for departmental revenue) had been properly collected and recorded by the Fund.

Consequently, I did not obtain all the information and explanations I considered necessary to satisfy myself as to the completeness, accuracy and valuation of the above amounts as disclosed in the financial statements.

Irregular expenditure

Section 38(1)(a)(iii) of the PFMA requires the department to implement and maintain an appropriate procurement and provisioning system, which is fair, equitable, transparent, competitive and cost-effective. Payments in contravention with the Preferential Procurement Framework Act and regulations were identified relating to the current and previous financial years. The department did not revisit the population to identify the total amount of irregular expenditure incurred and the quantification of the total possible irregular expenditure is impracticable.

Consequently, I was unable to obtain sufficient appropriate audit evidence to satisfy myself as to the completeness of irregular expenditure amounting to R812 million (2008/09: R26 million) as disclosed in Note 27 to the financial statements.

Opinion

In my opinion, except for the effects of the matters described in the basis for qualified opinion paragraphs, the financial statements present fairly, in all material respects, the financial position of the Department of Justice and Constitutional Development as at 31 March 2010 and its financial performance and cash flows for the year then ended in accordance with the modified cash basis of accounting determined by National

Treasury, as set out in the accounting policy described in Note 1 and in the manner required by the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Emphasis of matter

I draw attention to the matters below. My opinion is not modified in respect of these matters:

Basis of accounting

The department's policy is to prepare financial statements on the modified cash basis of accounting determined by National Treasury, as set out in the accounting policy Note 1.

Fruitless and wasteful expenditure

As disclosed in Note 28 to the financial statements, fruitless and wasteful expenditure amounting to R2 million was incurred that could have been avoided, had reasonable care been exercised.

Restatement of corresponding figures

As disclosed in the following notes to the financial statements, the corresponding figures for 31 March 2009 have been restated as a result of errors discovered during 2010 in the financial statement of the department at, and for the year ended, 31 March 2010:

- Note 25.1: operating lease commitments comparative restated with R1 495 million
- Note 21: contingent liabilities comparative restated with R414 million
- Note 24: employee benefits comparative restated with R352 million
- Note 31: other provisions comparative restated with R43 million
- Note 27: irregular expenditure's comparative restated with R20 million
- Note 26: receivables for departmental revenue comparative restated with R25 million
- Note 25.2: finance lease commitments comparative restated with R21 million

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Accruals

Accruals that exceed the payment terms of 30 days as detailed in Treasury Regulation 8.2.3 amount to R86 million as per Note 23 to the financial statements. This amount, in turn, exceeds the voted funds to be surrendered of R14 million as per Note 15 to the statement of financial performance by R61 million. The amount of R61 million would therefore have constituted unauthorised expenditure had the amounts due been paid in time.

Additional matters

I draw attention to the matter below. My opinion is not modified in respect of this matter:

Unaudited supplementary schedules

The supplementary annexures 1 to 6 as set out on pages 286 to 292 do not form part of the financial statements and are presented as additional information. I have not audited these schedules and, accordingly, I do not express an opinion thereon.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

In terms of the Public Audit Act (PAA) of South Africa and *General Notice 1570 of 2009*, issued in *Government Gazette No. 32758 of 27 November 2009*, I include below my findings on the report on predetermined objectives, compliance with the PFMA and financial management (internal control).

FINDINGS

Predetermined objectives

Non-compliance with regulatory requirements

Public Finance Management Act

• *Submission of strategic plan*

The accounting officer of the department did not provide Parliament or the relevant legislature with the strategic plan at least 10 days prior to the discussion of the department's budget vote, as required by Treasury Regulation 5.2.1 and 5.2.2.

• *Inadequate content of strategic plan*

The strategic plan of the department did not include the measurable objectives, expected outcomes, programme outputs, indicators and targets for all of the department's programmes, as required by Treasury Regulation 5.2.3(d).

• *Lack of effective, efficient and transparent systems and internal controls regarding performance management*

The accounting officer did not ensure that the department has and maintains an effective, efficient and transparent system and internal controls regarding performance management, which describe and represent how the institution's processes of performance planning, monitoring, measurement, review and reporting will be conducted, organised and managed, as required in terms of section 38(1) (a)(i) and (b) of the PFMA.

• *Inadequate quarterly reporting on performance information*

Inspection of the department's quarterly reports revealed the following shortcomings:

- Not all indicators were monitored quarterly;
- Inconsistency between the information reported in the quarterly reports and the information in the annual report.

Presentation of reported performance information

• *Inadequate presentation of reported information*

The reported performance information to be included in the annual report is not presented in a simple, accessible format, relevant and useful to the intended user; and in accordance with the requirements of Treasury Regulation 18 or 28.2 and the relevant guidance applicable to reporting for the financial year-end.

Usefulness of reported performance information

The following criteria were used to assess the usefulness of the planned and reported performance:

- Consistency: Has the department reported on its performance with regard to its objectives, indicators

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and targets in its approved strategic plan, i.e. are the objectives indicators and targets consistent between planning and reporting documents?

- **Relevance:** Is there a clear and logical link between the objectives, outcomes, outputs, indicators and performance targets?
- **Measurability:** Are objectives made measurable by means of indicators and targets? Are indicators well defined and verifiable, and are targets specific, measurable, and time bound?

The following audit findings relate to the above criteria:

Planned and reported performance targets not specific, measurable

For the selected Programme 2:

- 22% of the targets were not specific in clearly identifying the nature and the required level of performance
- 36.5% of the targets were not measurable in identifying the required performance

Planned and reported indicators not well defined

For the selected programme Court Services, 29% of the planned and reported indicators were not clear, with an unambiguous definition to allow for data to be collected consistently.

Reliability of reported performance information

The following criteria were used to assess the usefulness of the planned and reported performance:

- **Validity:** Has the actual reported performance occurred and does it pertain to the entity, i.e. can the reported performance information be traced back to the source data or documentation?
- **Accuracy:** Amounts, numbers and other data relating to reported actual performance have been recorded and reported appropriately.
- **Completeness:** All actual results and events that should have been recorded have been included in the reported performance information.

The following audit findings relate to the above criteria:

Reported indicators not reliable as no supporting source information was provided

For the selected programme Court Services the validity, accuracy and completeness for 22% of the reported indicators could not be established as sufficient appropriate audit evidence and relevant source documentation could not be provided for audit purposes.

Compliance with laws and regulations

Non-adherence

Treasury Regulations of 2005 and Public Finance Management Act of South Africa

- Contrary to the requirements of Treasury Regulation (TR) 8.2.3 and section 38(1)(f) of the PFMA, not all invoices were paid within 30 days from receipt of the invoice.
- The department did not report irregular and fruitless and wasteful expenditure to National Treasury as required by TR 9.1.2.
- Contrary to the requirements of TR 3.2.11 and sections 38(1)(a) (i) and 76(4)(e) of the PFMA, the internal audit function did not assist the accounting officer in maintaining efficient and effective controls as it did not fulfil its responsibilities as set out in legislation and in accordance with accepted best practice and standards.

Public Service Regulations (PSR)

- Contrary to the requirements of PSR 4/III/B1, not all senior managers had entered into performance contracts.
- Contrary to the requirements of PSR 1/V/F(b), not all leave taken by officials was recorded timeously and accurately.

INTERNAL CONTROL

I considered internal control relevant to my audit of the financial statements and the report on predetermined objectives and compliance with the PFMA, but not for the purposes of expressing an opinion on the effectiveness of internal control. The matters reported below are limited to the deficiencies identified during the audit.

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- **Leadership**

The internal policies and procedures of the department pertaining to the planning and monitoring of performance information are not sufficient to ensure reliable reporting. Furthermore, the department did not have sufficient monitoring controls to ensure compliance with all applicable laws and regulations and internal control.

- **Governance**

Internal Audit did not fulfil its responsibilities as set out in legislation and in accordance with accepted best practice and standards. Furthermore, they did not assist the accounting officer by evaluating internal controls related to compliance with laws, regulations and controls, and by developing recommendations for their enhancement and improvement.

OTHER REPORTS

Investigations in progress

An investigation is being conducted into the procurement processes at the department. The investigation aims to establish procurement irregularities and possible fruitless and wasteful expenditure. The investigation was still ongoing at the reporting date.

Various other allegations of financial misconduct and irregularities are currently being investigated.

Auditor-General

Pretoria

30 July 2010



AUDITOR - GENERAL
SOUTH AFRICA

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