



Briefing Paper 456

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Empowering the Auditor-General

1. Introduction

South Africa's municipal finances are in a mess. This was confirmed by the Auditor-General of South Africa (AGSA) when he released the 2016-17 audit results for local government. Of the 257 municipalities, only 33 (13%) received clean audits (in the previous financial year there were 48 clean audits), while irregular spending by municipalities has increased by 75% to R28.4 billion. This despite the fact, the AG said, that his office has been pointing out for several years that there are serious accountability fault-lines in local government.

As a means to stem the financial rot in municipalities, and to address financial management problems at other levels of government, the National Assembly recently passed the Public Audit Amendment Bill, which is aimed at providing the AGSA's office with the kind of firepower that befits the 'sheriff' of state finances.

This briefing paper will unpack how the new Bill (when enacted) will help the AGSA in his fight to improve local government financial management.

2. Municipal Finance Legislative Framework

The Municipal Systems Act,¹ together with the Municipal Structures Act,² and Chapter 7 of the Constitution,³ oblige municipalities to provide basic services such as water supply; electricity supply; sewage collection and disposal; refuse removal; municipal health services; municipal roads and storm water drainage; street lighting; and the maintenance of municipal parks. The Constitution and the Municipal Finance Management Act⁴ (MFMA) make it clear that, in providing these services, municipal councils and their officials are accountable to ensure good financial governance. Provincial governments

(and the national government) are also obliged to monitor the financial performances of the municipalities, to ensure that proper standards of financial management are maintained at local government level.

Within this financial accountability chain between the three spheres of government sits the office of the AGSA. The office is established in terms of Chapter 9 of the Constitution, which deals with 'Institutions Supporting Constitutional Democracy'. The functions and powers of the AGSA are described in section 188 of the Constitution, and are further regulated in the Public Audit Act 25 of 2004,⁵ which mandates the AGSA to perform constitutional and other functions. Constitutional functions are those which the AGSA performs to comply with the broader mandate described in the Constitution. The AGSA's office is not only responsible for auditing the accounts of all three spheres of government, it can also make recommendations to assist government entities to improve their financial reporting and solve their problems.

3. In Dire Straits

In May 2018, the AGSA released his 2016-17 audit results⁶ for the 257 municipalities audited. The picture it painted was not a pretty one. It was depressing:

- only 33 municipalities received clean audits;
- 112 municipalities received an 'unqualified with findings' audit. This means that their financial statements contained misleading information that could affect the financial decisions of those who rely on the statements when working with them.

- 215 municipalities spent funds irregularly to the tune of R28.27 billion, a considerable increase from the R16.2 billion of irregular expenditure in 2015-16. Spending is termed 'irregular' when occurs in excess of a budget or not in accordance with budget or grant conditions;
- 204 municipalities were guilty of fruitless and wasteful expenditure, i.e. expenditure which was made in vain and would have been avoided had reasonable care been exercised. Fruitless and wasteful expenditure for 2016-17 rose by 71% - from R890 million the previous year to R1.5 billion; and
- 161 municipalities were guilty of unauthorised spending – expenditure that municipalities incurred without provision having been made for it in their budgets, or which did not meet the conditions of a grant. This category actually showed a small decline, from R13.8 billion in 2015-16 to R12.6 billion in 2016-17.

The AGSA's report paints a picture of neglect, corruption, abuse of resources, and poor governance, often due to appointing unqualified people in key positions, all of which have combined to give rise the dire straits municipalities find themselves in. In his report, the AGSA laments the fact that since the publication of the 2011-12 audit outcomes in 2013, not much has been done despite the many recommendations to resolve issues:

"When we released the 2011-12 municipal audit outcomes in August 2013, we highlighted, amongst others, a lack of decisive leadership to address the lack of accountability by ensuring consequences against those who flouted basic processes that hampered effective municipal governance. We reported weaknesses in internal control and the risks that needed attention in local government by providing root causes for audit findings and recommendations to remedy these underlying causes. It is now five years later, and we are still faced with the same accountability and governance challenges we had flagged throughout these years. There has been no significant positive change towards credible results; instead

we are witnessing a reversal in audit outcomes."⁷

A key part of what the AGSA said is that municipalities are still struggling with many of the same challenges highlighted by his office for the last five years. A contributing factor, perhaps, is that those who are responsible for the financial neglect, the corruption and the abuse of resources in local government, do not fear being caught because nothing happens to the guilty. With few exceptions, municipalities do not act on the AGSA's audit recommendations, and neither do they investigate findings that flag irregularities in supply-chain management or that indicate possible fraud or improper conduct. And the AGSA cannot force them to do so because – up to now – his office has not had the power to enforce its recommendations.

4. Changing the Rules of the Game

The Public Audit Act (PAA) assigns supreme auditing functions to the AGSA. The AGSA's office enjoys a large degree of independence, which allows it to select the most effective manner in which to execute its constitutional mandate. The PAA, however, limits the AGSA's powers of intervention to the making of remedial recommendations. The Act does not give it authority to implement its recommendations, to investigate undesirable audit outcomes, or to recover losses to the State. The AGSA depends on the executive to implement its recommendations and this, as argued above, is a weakness that has allowed the crumpling of municipal financial governance to continue unabated.

The Public Audit Amendment Bill, which was passed by both houses of Parliament and is awaiting to be signed into law, seeks to give the AGSA effective powers of intervention. Firstly, it will empower the AGSA to refer undesirable audit outcomes to an appropriate investigating body such as the public protector, the Directorate for Priority Crime Investigation (the Hawks), or the South African Police Service. These investigating agencies are then required to report back to the AGSA on the progress of the investigations.

Secondly, the AGSA will also be empowered to recover money lost to unauthorised, irregular or fruitless and wasteful expenditure from the relevant accounting officers or authorities.⁸ If the relevant officials fail to comply with a remedial action, for example by failing to recover the money

and cannot provide the auditor general with a satisfactory explanation for the failure to collect these funds, they will be served with a certificate of debt that will make them liable in their personal capacities.⁹ Those issued with a certificate of debt can seek relief from a court by making representations as to why such a debt certificate ought not to have been issued.

In effect, this provision will render the accounting officers of public entities – municipal managers, directors-general of government departments, chief financial officers of state-owned enterprises – personally liable for improper expenditure if such expenditure cannot otherwise be recovered. The importance of the Bill was highlighted by the fact that it was welcomed by all political parties. An utterance by a Member of Parliament during the debate in the National Assembly that it would ‘transform the AGSA from a Chihuahua to a Pitbull’, neatly summed up essence of the Bill.

5. Conclusion

The theme of the AGSA’s municipal audit outcomes report for 2016-17 was that ‘accountability continues to fail in local government,’ and that the AGSA’s recommendations over the last 13 years to remedy this problem had not been adhered to. This was so because many of the failing municipalities merely took the AGSA’s recommendations as ‘advice’ – to be acted upon if they chose to do so. Now, however, there is hope that the new powers of the AGSA will compel both politicians and officials in the municipalities to ensure that they dispense public funds in a lawful manner; and that they will begin to take the AGSA’s recommendations a lot more seriously.

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¹ Act 32 of 2000

² Act 117 of 1998

³ Act 108 of 1996

⁴ Act 56 of 2003

⁵ Act 25 of 2004

⁶ Auditor-General of South Africa (2018): *Consolidated General Report on the Local Government Audit Outcomes 2016-17*. Available online at <https://tinyurl.com/y7heerpb>

⁷ Auditor-General of South Africa (2018): *MFMA 2016-17 Media Release*. Available online at <https://tinyurl.com/y8zeafzw>

⁸ Public Audit Amendment Bill. Available online at <https://tinyurl.com/yc63t5tv>

⁹ Lynley Donnelly (2018): *Crackdown On Obdurate local councils*. Available online at <https://tinyurl.com/y9umeohv>