



***Accountability and the management of public funds
toward delivery of services***

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The Vice-Chancellor of the University, the Executive Dean of the Faculty of Business and Economic Sciences and the leadership of the Nelson Mandela University, members of the University community, students, distinguished guests, ladies and gentlemen.

Thank you for the privilege of joining you for this lecture, at a University that carries the name of one of the exceptional leaders of South-Africa and, for that matter, the world – Nelson Rolihlahla Mandela. His legacy of fighting for the ideal of a democratic and free society, in which all persons live together in harmony and with equal opportunities, sets an example for all of us to work tirelessly to strengthen and protect our young democracy and to uphold the promises of our Constitution.

The principles of a democratic state and the promises of the South-African Constitution need to be more than just theoretical concepts, but needs to translate in the very real daily experiences of the South-African community.

Typically, in a democracy, structures are created and elected representatives are empowered to implement the will of the people and act on their behalf through legislative and executive bodies. They accept a critical stewardship responsibility to manage public resources on behalf of and to the benefit of the citizenry. This carries an inherent risk that power and resources can be mismanaged or misused, leading to an erosion of trust that can undermine the essence of the democratic system. It is therefore critical that the citizens of a country are able to hold their representatives accountable.

Democratically elected representatives can only be held accountable if they, in turn, can hold accountable those who implement their decisions.

This theme of accountability is the essence of what I want to share with you today. More specifically, I want to reflect on the essence of our Constitution as a promise to the people of South-Africa, after which I want to explore the central role that the concept of accountability plays in making these promises to the citizens, a reality. I also want to deal with the role of an independent supreme audit institution (SAI) in a democratic state and its role in a democratic state, together with others, to strengthen accountability, to provide assurance around the stewardship of public resources and build public confidence.

I further want to address the eroding of the principle of accountability over the years, through ongoing attacks on the integrity of systems of financial and performance management, disrespect for the letter and intent of law and the fairly blatant lack of consequences related to these failures. Lastly, I will reflect on the way forward in ensuring that, as a SAI, we remain relevant in this, with specific reference to the recent amendments to the Public Audit Act.

The South African democracy

Democracy is generally defined as a system of government by the whole population or all the eligible members of a state, typically through elected representatives. Citizens living within a democracy can expect features such as basic human rights, economic freedom, citizen participation, accountability, transparency, control over the abuse of power and many others. In our unique South African context, the expectations of citizens are best expressed in a Bill of Rights, which deals with similar concepts.

The authors of the Constitution, 1996, also addressed the delivery mechanisms related to the expectations of the citizens in outlining a number of principles of stewardship and accountability in section 195 of the document dealing with an ideal public service.

Former president Nelson Mandela captured this sentiment aptly:

Whether you change the linen or stitch up wounds, cook the food or dispense the medicines, it is in your hands to help build a public service worthy of all those who gave their lives for the dream of democracy.



These delivery mechanisms are extensively backed by other legislation, such as the Public Finance Management Act, 1999 and the Municipal Finance Management Act, 2003

As an ultimate safeguard to our young democracy, the Constitution also contains a section dealing with organisations specifically created to protect the principles of democracy and the rights and expectations of people – the so-called “chapter 9 institutions”. Among these, the Constitution makes mention of the Auditor-General.

The constitutional mandate of the Auditor-General (AG) is to strengthen democracy. This is done through auditing and reporting on all national and provincial state departments and administrations, all municipalities, and any other institution or accounting entity required by national or provincial legislation to be audited by the AG. The tools provided by this regulatory framework are used to enable oversight, accountability and governance in the public sector.

In short, the AGSA is mandated to report on government’s accountability for the use of public resources, with specific emphasis on financial management, performance management, and respect for the law. While this independent reflection does not directly comment on service delivery, it does deal with the very foundation of service delivery. Without an ability to responsibly manage and account for public resources, there is a very real threat that service delivery may remain a dream.

Public sector auditing, as championed by an audit office, is an important factor in making a difference to the lives of citizens. The auditing of government and public sector entities by an audit office has a positive impact on trust in society because it focuses the minds of the custodians of public resources on how well they use those resources. Such awareness supports desirable values and underpins accountability mechanisms, which in turn leads to improved decisions. Once an audit office’s audit results have been made public, citizens are able to hold the custodians of public resources accountable. In this way an audit office promotes the efficiency, accountability, effectiveness and transparency of public administration. An independent, effective and credible audit office is therefore an essential component in a democratic system where accountability, transparency and integrity are indispensable parts of a stable democracy.

Over time, especially given certain failures in the system of accountability (as I will reflect on later) the reporting by the AGSA also started focusing on government's inability to effect consequences for these failures.

The role of an independent supreme audit institution in a democracy

In the late 1970s, the International Organisation for Supreme Audit Institutions (INTOSAI), a global organisation for the public sector external audit community, issued the Lima Declaration. This document contains the first globally accepted reference to the importance of the function of an independent audit institution in the public sector, as a credible commentator on government's stewardship over public resources.

Thirty years later, the Mexico Declaration confirmed the importance of independence of Supreme Audit Institutions, as this speaks directly to the credibility of the work these institutions do. This declaration specifically commented on eight core pre-requisites for independence, namely:

1. *The existence of an appropriate and effective constitutional/statutory/legal framework and the de facto application provisions of this framework,*
2. *The independence of SAI heads and members of collegial institutions, including security of tenure and legal immunity in the normal discharge of their duties,*
3. *A sufficiently broad mandate and full discretion, in the discharge of SAI functions,*
4. *Unrestricted access to information,*
5. *The rights and obligation to report on their work,*
6. *The freedom to decide the content and timing of audit reports and to publish and disseminate them,*
7. *The existence of effective follow-up mechanisms on SAI recommendations, and*
8. *Financial and managerial/administrative autonomy and the availability of appropriate human, material and monetary resources.*

The SAI of South-Africa has been fortunate to measure up very well against all the requirements of this declaration.

Principle 7 of the above declaration, dealing with follow-up mechanisms, has, over time, proved to be one of the more complex requirements in the South-African context. By not acting on the audit



recommendations of the Auditor-General, the very essence of the democratic system – accountability – is being eroded. I will reflect on this challenge in a later part of today’s discussion.

The relevance of SAIs has been top of mind within INTOSAI. In 2010, during a gathering of all global Auditors-General in Johannesburg, South Africa, the community of public sector auditors adopted a framework for the relevance of SAIs. This framework aims to define and formalise the key requirements against which an audit office should measure itself in its quest to live up to the expectations of the citizens of the country within which it operates. Three years later, this community adopted an auditing standard – International Standard for Supreme Audit Institutions (ISSAI) 12, *The value and benefits of SAIs – making a difference to the lives of citizens*.

The principles set out in this document are constructed around the fundamental expectation of SAIs making a difference to the lives of citizens. The extent to which a SAI is able to make a difference to the lives of citizens depends on the SAI:

- Strengthening the accountability, transparency and integrity of government and public sector entities (dealing, amongst others, with the independence of SAIs, the right to hold government accountable for their stewardship over and use of public resources, the responsibility to enable those charged with governance to discharge their responsibilities to respond to audit findings and recommendations, and to take corrective action and reporting on audit results to allow the public to hold government accountable),
- Demonstrating ongoing relevance to citizens, parliament and other stakeholders (dealing with, amongst others, being a credible source of insight and guidance to support change in government), and
- Being a model organisation through leading by example (showing that it adheres to the same rules than the rest of government, executed at a level of excellence).

This detail that sits behind this framework was instrumental in guiding the AGSA in its quest to be relevant to the citizens of South-Africa.

Is the work of the independent government audit office the only voice that comments on accountability? A SAI cannot fulfil this very important role in the accountability cycle in isolation. Ideally, multiple stakeholders are involved in the process of providing assurance on government's accountability to safeguard public resources.

The AGSA's journey to be a relevant audit office

Any reflection of the AGSA's first century of existence must touch on the three interrelated journeys: achieving independence; coping with the responsibilities of that independence; and taking the lessons learned in this process to the rest of the public sector – all in the name of the quest to be more relevant to the citizens of the country.

1. The journey to independence

A decade after the confirmation of the Lima Declaration in 1977, the South African audit office started to investigate the possibility of gaining independence for this office. At that stage, the AG's office was still part of the public service and reported to the Minister of Finance. Parliament accepted the recommendations of an advisory group that investigated granting independence and the Auditor-General Act of 1989 represented the first step towards legislative independence. This journey culminated in full independence with the promulgation of the Auditor-General Amendment Act, 1992 (Act No. 123 of 1992), which removed the executive's right to rule on the AG's access to resources for its functions as the auditor of government. This principle was reconfirmed in the Constitution of 1996.

For the AGSA, the concept of independence represents the foundation of the credibility of what it does. It creates a platform for an objective audit process, positions the organisation as a custodian of a wealth of information and insight, and challenges it to use its unique positioning and access to information to improve the lives of the citizens of our country. Over time, the interpretation of independence evolved. Where it was originally seen as a position where the work done required very little if any engagement with the auditee (a time when, quite correctly, the office was known as 'the Taxpayers' Watchdog'), it now became a position that allowed for unique, objective insights, which could be shared with auditees and stakeholders in an attempt to improve accountability in South Africa. Accordingly,

international developments in auditing standard-setting saw this evolve from an almost 'prohibitive' stance in earlier days to a highly empowering concept in the new millennium.

2. Coping with the responsibilities of independence (professional competencies)

Having gained complete independence, the AGSA's office had to live up to the responsibilities of such a privileged status by transforming and professionalising itself.



SAI SA's efforts to build on the foundation of independence towards a relevant organisation, can be summarised in the way INTOSAI defines professionalism – at hand of four basic fundamentals. The first fundamental speaks to the specific preconditions that must be in place in terms of **working environment**. Over and above independence, this is where the emphasis needs to be on having a comprehensive audit mandates, having access to all information needed to fulfil the audit mandate, facing no restrictions on the publication of SAI reports, and so forth. The second fundamental reminds us of the need to have a set of audit requirements or **standards** that all members of the profession should follow. In the case of SAI SA legislation allows the organisation to select the most appropriate standards, which we have defined as compliance with the International Standards for Auditing (the ISAs), while it also takes note of the application guidance provided in the INTOSAI Framework for Professional Pronouncements.

The third fundamental relates to the **competencies** that members of a profession must have or develop to implement the applicable standards in line with their mandate. Here SAI SA has embarked on a massive training effort to train audit professionals, such as chartered accountants and registered government auditors, on an in-house basis – a project that culminated in the AGSA currently being the biggest training ground for trainee auditors in South-Africa. The fourth and essential last step in the professionalisation process is the existence of a regulatory mechanism that can **test or measure** compliance with the requirements defined in the standards of the profession, and to measure the performance of the SAI holistically.

This same journey also led to many developments to broaden the ‘product range’ of the organisation – ranging from the introduction of performance auditing just over 30 years ago, the establishment of a dedicated information systems auditing function and tailoring of the audit reports to a longer-form, public sector-specific format, to the introduction of new concepts such as the auditing of reporting against predetermined objectives and compliance auditing.

3. Taking the lessons learned in coping with these responsibilities to the rest of the public sector

One of the strategic values of the AGSA is leading by example, meaning that it must practise what it preaches. Perhaps the most difficult part of coping with the responsibilities of independence was the realisation that independence did not imply a journey towards isolation in the name of ‘forming an objective view’, but rather a journey towards sharing information and insights in an effort to give momentum to transformation in public sector financial and performance management as a way to improve government’s accountability over public resources.

One can also look at the evolution of the AGSA’s general reports (the so-called ‘state of the nation’ reports that the AG tables per audit cycle) – reports that only existed at the level of a basic activity report a decade or so ago – to understand the wealth of information, insights and recommendations that the AGSA can bring to the South African public sector in an attempt to improve accountability in the country.

Eroding accountability (our most recent experiences)

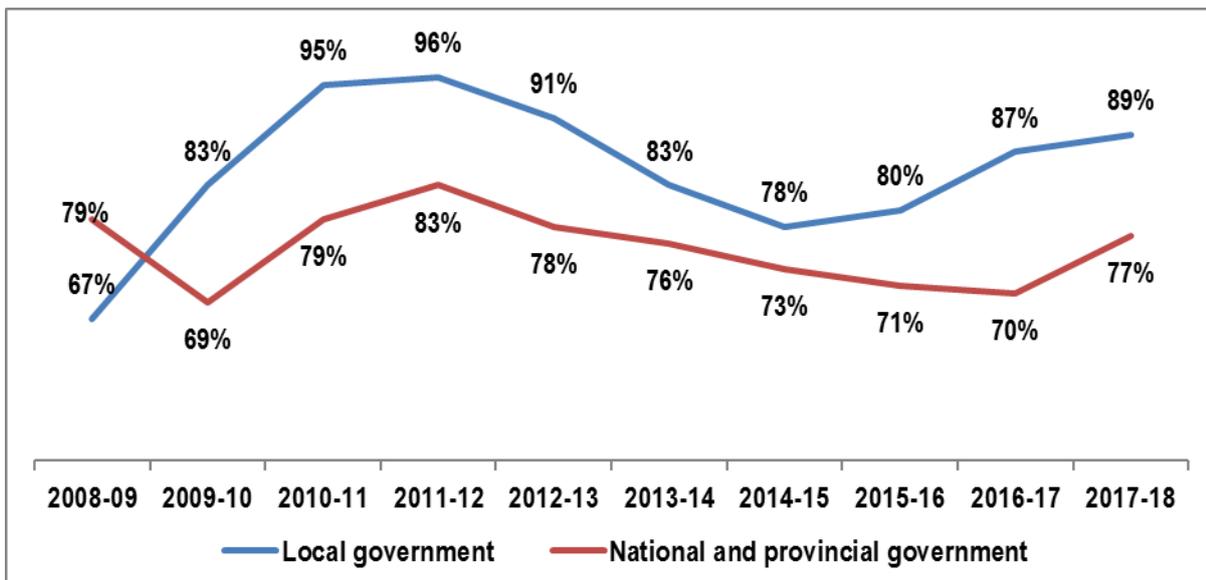
Over the years the AG has used all the available powers and innovative thinking to encourage public accountability for the way in which the executive arm of government spent public money and utilise public resources. The institution has gone far beyond the call of a regularity audit to facilitate the implementation of initiatives aimed at the administration of public financial resources.

Since the commencement of the Public Audit Act in 2004, the institution has adopted several initiatives to ensure the acceptance and implementation of its recommendations. These range from an open and transparent internal quality assurance processes, modern audit methodologies, management reports with proper root cause analysis, quarterly key control and pro-active status of record reviews at auditees and extensive stakeholder engagements.

Despite these, the South African public service still battles with poor financial and performance management disciplines. Those areas where our audits and additional efforts yielded unsatisfactory results are characterised by waste of public money and a lack of consequences for bad behaviour, which ultimately lead to civil action such as widespread protests over government's broken promises.

Let's for a moment review a couple of key indicators that speaks directly to these break-downs in basic disciplines.

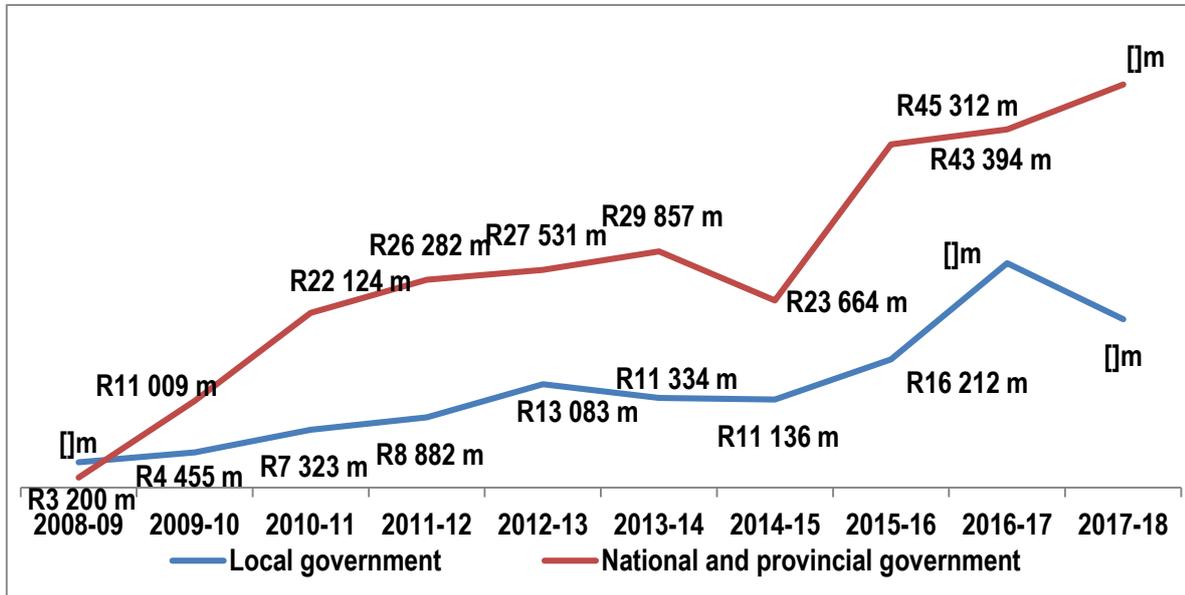
A prime indicator of a functioning system of accountability is to look at those auditees that obtain **clean audit opinions**. A clean audit outcome means the that the auditee's financial statements are free from material misstatements (unqualified opinion), with no material findings on the reporting of performance information and compliance with legislation.



During the last 10 years we have seen short periods of improved performance, although the percentage of auditees with clean audits, as an indicator of accountability, has remained low for both the national and provincial, as well as the local government audit cycles. The portion of national and provincial government auditees with clean audits is hovering around just 30%, while this indicator is barely 15-20% for the municipalities.

Various factors contributed to the accountability failures. In general, leadership's inaction, or inconsistent action, created a culture of 'no consequences', often due to inadequate performance systems and processes. Vacancies and instability in key positions slowed down systematic and disciplined improvements and resulted in insufficient implementation and maintenance of financial and performance management systems by the administration. A disregard for controls (including good record keeping) and compliance with key legislation in various parts of the public sector enabled an environment in which it would be easy to commit fraud. Political infighting and interference in the administration led to weakened oversight and poor to no implementation of consequences for transgressions.

Another good indicator of accountability failures, is to look at the **trend of irregular expenditure** over the years. Broadly defined, irregular expenditure (in a South African context) means expenditure incurred in contravention of or not in accordance with a requirement of any applicable legislation.



Since the 2008-09 financial year, the country has experienced an upward trend in irregular expenditure which over the 10-year period reached R390 billion. During that period, irregular expenditure increased seven-fold at local government level from R3 billion in 2008-09 to R21 billion in 2017-18, while at the national and provincial government level irregular expenditure increased 50-fold from R1 billion in 2008-09 to R51 billion in 2017-18.

The impact of these failures is immense. In 2018, Andrew C Canter wrote the following about state-owned enterprise (SOE) governance, a statement that captures the situation perfectly:

The systemic implications of poor governance are not merely academic or emotional, but has real-world, on-the-ground consequences. As a result, South Africa's global credit quality has deteriorated, confidence has been shattered, there has been a paucity of capital investment and the cost of borrowing to fund houses, education, infrastructure and businesses has risen – for all South Africans. The economy is not growing, and is not globally competitive. The cost of governance failures is real, tangible and terrible.

Put bluntly, poor audit outcomes that are indicative of accountability failures, if sustained over a number of years, will manifest in service delivery challenges, deteriorating financial health and governance failures (in its worst scenario what South Africa now calls 'state capture'). All these combined, hit the economy very hard – small businesses go bankrupt, poverty increases and employment figures nosedive). This will ultimately be evident to the outside world, as already evident in economic downgrades and lack of investment – matters that can bring a democracy, and all its related promises to its citizens, to naught.

The real-world consequences can be seen in many indicators, but an extract from a recent IMD competitiveness study provides a good snapshot of the impact of these accountability failures. It rates South-Africa as follows:

- 59 out of 63 regarding economic performance,
- 49 out of 63 regarding government efficiency,
- 46 out of 63 regarding business efficiency, and
- 57 out of 63 regarding infrastructure development.

Reviewing the powers of the Auditor-General (the road ahead)

In October 2016, I had the privilege to host the Capacity Building Committee of the INTOSAI. In his keynote address, Chief Justice Mogoeng emphasised the important role that SAIs play in any democracy, including ours, saying that:

Audit follow-ups should not be a loose arrangement dependent on the mercy or reasonableness of the incumbent affected by a negative audit report. People should know in advance that it is a matter of compliance with the Constitution, it is a matter of compliance with a statute, and there are serious consequences if you don't do it. In that way, I believe they would be incentivized to do much more than they would otherwise have done absent that provision.

Two months later, the Standing Committee on the Auditor-General (Scoag) in Parliament mandated the Auditor-General to review its powers and the suitability thereof to adequately address systemic failures in public sector financial and performance management systems.

The Auditor-General embarked on an intensive research project and considered the various ways and means that other SAIs in the world employed to effectively follow up on their audit findings and recommendations. SAI Ghana's mandate and powers proved to be an appropriate benchmark of what the South African public sector needed. The Constitution of Ghana mandates the Auditor-General to disallow any item of expenditure which is contrary to the law and to surcharge such expenditure upon the person responsible for incurring or authorising the expenditure. With this example in mind, SAI South Africa engaged the Office of the Chief State Law Adviser of the Republic and produced the Public Audit Amendment Bill, 2018 for the standing committee to consider. The sole purpose of the bill was to restore the administrative integrity of financial and performance management systems aimed at service delivery and the achievement of government's strategic goals.

In May 2018, the National Assembly unanimously adopted the bill, followed by the National Council of Provinces' unanimous concurrence a mere month later. On 18 October 2018, the President signed the bill into law and published it in the South African *Government Gazette*. According to the notice, the commencement date thereof would be proclaimed. On 18 March 2019, the President proclaimed 1 April 2019 as the official commencement date of the Public Audit Amendment Act, 2018 (Act No. 5 of 2018) (the "Amendment Act").

Until 31 March 2019, the AGSA's work consisted of auditing and reporting on the outcomes of audits to those accountable for public accounts, as well as to relevant oversight structures. Audits also generated commitments from stakeholders to address the root causes giving rise to the audit findings so reported. The Amendment Act which commenced on 1 April 2019 has not changed this position. The organisation will continue to meet its auditing and reporting obligations and to solicit commitments for improvement. The Amendment Act does, however, introduce a number of new mechanisms to ensure that audit findings are properly addressed and recommendations are implemented.

Material Irregularities

At the heart of the Amendment Act is the concept of “material irregularity” (commonly referred to as “MI”). An MI is defined as any non-compliance with, or contravention of, legislation, fraud, theft or a breach of a fiduciary duty identified during an audit performed under this Act that resulted in or is likely to result in a material financial loss, the misuse or loss of a material public resource or substantial harm to a public sector institution or the general public. The Amendment Act not only introduced the concept of MI in the work of the South African SAI, but also requires the Auditor-General to act once an MI has been identified. Once detected, an MI will trigger one of the three possible actions:

Referral of MIs to relevant public bodies

The Auditor-General may exercise his or her discretion to refer matters for further investigation for numerous reasons. The nature, scope and timing of an audit do not always allow for a full appreciation of the root causes of a suspected MI or the gathering of sufficient and appropriate evidence to prove the existence and impact thereof. Furthermore, the complexity of some contracts and transactions often requires more detailed scrutiny by teams who are specifically trained to perform such scrutiny. It is of course also possible that officials in key management or oversight positions may be implicated in a suspected MI. Expecting a person in such a role to act against him- or herself, his or her leader or political office-bearers will defeat the purpose of the exercise. If another public body has a legal mandate and powers that better suit the nature of an MI than the mandate and powers of the Auditor-General, it will be appropriate to refer a matter to such public body.

Once a suspected MI has been referred to a public body, such body will perform the investigation and, depending on the outcome thereof, take appropriate action against those guilty of the identified transgressions. Although the Auditor-General’s role in the resolution of an MI will be limited once referred, the Amendment Act requires the Auditor-General to report on the progress made with the investigation to Parliament. The Auditor-General will also during subsequent audits follow up on the implementation of any recommendations made by the public body.

Binding remedial action

If the Auditor-General detects an MI during an audit but decides not to refer it to a public body for investigation, he or she may make recommendations in the audit report regarding the best possible ways to address the MI. These non-binding recommendations aim to assist the accounting body of the relevant auditee to address the MI without any further action by the Auditor-General or any public body. The Auditor-General must, within a stipulated time, follow up on the recommendations made in the audit report. If the accounting body failed to implement the recommendations, the Auditor-General must demand binding remedial action, instructing the accounting body to act on the initial recommendations made within a stipulated time. If the MI involved a financial loss to the state, such remedial action must include a directive or instruction to the accounting body to calculate and recover the loss from the responsible person, again within a stipulated time.

The accounting body of the relevant auditee is legally bound to adhere to the Auditor-General's demand for remedial action, which can only be set aside by a court of law.

Certificate of debt

In the event that the Auditor-General issued a directive to the accounting body of an auditee to calculate and recover a loss to the state from a responsible person, and the accounting body fails to do so within the stipulated time, the Auditor-General must issue a certificate of debt against the relevant accounting body. The certificate of debt effectively renders the accounting body a debtor to the state and the amount specified in the certificate must be paid by the debtor in his, her or their personal capacity. Once the certificate of debt has been issued, the Auditor-General must submit a copy thereof to the responsible executive authority who is charged with the responsibility to recover the certificate amount from the accounting body. The executive authority must keep the Auditor-General informed of the progress made with the recovery of the amount.

The Auditor-General must table a copy of the certificate to Parliament or the relevant provincial legislature, thereby making the certificate of debt public.

The issuing of a certificate of debt has dire implications for accounting bodies of auditees and cannot be issued without following a structured legal process. Before the Auditor-General can lawfully issue a certificate, he or she must invite the implicated accounting body to make written representations to the Auditor-General, citing reasons why such a certificate should not be issued. If the Auditor-General, after considering the accounting body's written representations, still considers a certificate of debt appropriate, he or she must establish an independent advisory committee to hear oral representations from the accounting body. The Auditor-General can only issue the certificate of debt after due consideration of the written recommendations of the advisory committee.

Concluding comments

The Amendment Act would have achieved its objectives if, in five years' time, the public sector is known for its accurate and empowering financial and performance reporting, its appreciation of the role of applying consequences for transgressions and poor performance, and improved accountability.

Improved accountability speaks directly to government's ability to appropriately manage public resources to the benefit of the citizens they serve. It created a solid foundation for service delivery to take place and for the citizens to tangibly experience and feel the vision set by the South-African Constitution.

The AGSA must always protect its independence, regularly measure itself against the Constitution, international standards and best practices, be responsive to key stakeholders and lead by example. If necessary, it must question its legislative mandate and actively work to change it to better serve the nation and to remain relevant to the citizens of the country.

In similar vein, there is an expectation that Government will value accountability as a cornerstone of the democratic system, and in giving effect that this principle, will serve the citizens of the country well.

We all have a role to play in making this a reality.



Here at the Nelson Mandela University, accountability should also be a focal point in all that we do. When Robert Klitgaard penned down his well-known “corruption formula” (corruption equals monopoly plus discretion minus accountability) he positioned accountability as that one ever-enduring constant that stands between the realisation and the failure of our country and corporate ideals. Despite the onslaughts of an ever-changing world, where we often hear about the impact of disruptive technologies on the essence of our working lives and the detrimental effect of climate change on our existence, accountability remains a foundation to success. We owe it to ourselves and the generations that come after us, to actively promote this in all we do – ranging from our studies graduate and post-graduate studies to our research, our thought leadership, etc.

Let me, in closing, restate this challenge in the words of the man that gave his name to this university:

*“What counts in life is not the mere fact that we have lived.
It is what difference we have made to the lives of others that will determine
the significance of the life that we lead.”*

Let’s rise to that challenge!

Ladies and gentlemen, I thank you.

