



AUDITOR - GENERAL
SOUTH AFRICA

MEDIA RELEASE

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Auditor-general presents outcome of legal investigation to Parliament

PRETORIA –The office of the Auditor-General of South Africa (AGSA) today presented to the Standing Committee on the Auditor-General (Scoag) the outcome of the independent investigation and legal review into allegations of ‘corruption, unethical and unprofessional behaviour’ made against the auditor-general (AG), Ms Tsakani Maluleke, by the AGSA’s chief people officer (CPO), Mr Mlungisi Mabaso.

Welcoming the submission of the findings, **AG Maluleke** said, “I am pleased that we can today present the findings of the investigation and legal opinion into the allegations made against me. These were serious allegations which needed to be tested independently. The AGSA will strive to uphold – and to be seen to uphold – the very standards of transparency, accountability, integrity and due process that we expect of others”.

The deputy auditor-general (DAG), **Mr Vonani Chauke**, who commissioned the legal investigation and review, said, “We have followed a rigorous and independent legal process to consider each of the allegations. I am satisfied with the legal opinion we have received, which concluded that there was no ‘corruption, unethical and unprofessional behaviour’. These allegations had the potential to undermine the very same values we uphold as a chapter 9 institution”.

In its submission to Scoag, **the AGSA audit committee said**, “The audit committee commends the AG for living up to the constitutional values of transparency and accountability. Even though the CPO failed to follow the correct process, she considered the substance of the allegations serious enough to subject her decisions to independent and objective scrutiny. The audit committee further appreciates the

strong message sent by the AG that she would not be intimidated, but will fulfil her role without fear, favour or prejudice".

Origin and conduct of the investigation and legal reviews

The allegations and subsequent investigations arose after a meeting requested by Mr Mabaso with Ms Maluleke in which he raised concerns about the manner in which she had addressed his and his team's performance. At this 27 June 2022 meeting, Mr Mabaso presented Ms Maluleke with a list of nine of her decisions in which he accused her of 'corrupt, unprofessional and unethical conduct'. These decisions were made both in her current role of AG as well as when she was DAG. The CPO did not follow a set standard procedure for making a complaint or allegation against the AG. The CPO also wanted mutual separation (financial settlement) in exchange for him not exposing allegations to the public, which Ms Maluleke turned down.

Ms Maluleke reported the CPO's conduct, along with the allegations he had made against her, to the AGSA's accounting officer – DAG, Mr Vonani Chauke. She subsequently requested the DAG to initiate an independent investigation. Mr Chauke then commissioned independent law firm, Bowmans, to conduct the review. Bowmans, in turn, instructed independent legal counsel, advocate Werner Krull, to provide a legal opinion on these matters. The legal investigation consisted of a systematic review of the applicable constitutional provisions, legislation, policies, relevant documents and interviews with the relevant staff. It resulted in:

1. a legal opinion as to whether the AG's decisions met the requirements for legality and, if not, whether they amounted to corrupt, unethical, and unprofessional behaviour
2. an investigation into the CPO's conduct
3. a Bowmans report on the control weaknesses identified during the assessment.

Mindful of the need for transparency and procedural accountability, the AG and DAG brought the allegations to the attention of the executive committee (exco) of the AGSA, the audit committee of the AGSA, the chairperson of Scoag and, at its next meeting, the whole of Scoag, on the steps taken to institute and conduct the

independent legal investigation. The legal investigation and process initiated by the DAG was endorsed by the audit committee and Scoag. Both the audit committee and Scoag endorsed the legal investigation and the process initiated by the DAG.

Findings

On Friday, 16 September, the AGSA, represented by the AG, Ms Maluleke, the DAG, Mr Chauke, and the chairperson of the AGSA audit committee, RJ Biesman-Simons, and committee member Cedrick Mampuru, presented the findings of the legal opinion, along with the audit committee's and DAG's report on the matter. These representatives of the AGSA took questions and presented the following documents to Scoag:

- The legal opinion by independent legal counsel, advocate Werner Krull
- The report by the AGSA audit committee
- A presentation by the deputy auditor-general (DAG)

Regarding allegations of 'corruption, unethical and unprofessional behaviour'

The legal opinion considered the nine allegations made by the CPO and assessed whether the AG's decisions met the requirements for legality and, if not, whether they amounted to corrupt, unethical and unprofessional behaviour. The legal opinion concluded and that there was no merit in the allegations that the AG's conduct amounted to corruption or unprofessional, unethical behaviour.

Regarding the allegations relating to payments made to the late former AG or his deceased estate for various salary increases, relocation costs and an interest-free loan (an advance against deferred compensation), the legal opinion concluded that these payments were lawful, reasonable and rational, and did not indicate corrupt, unethical or unprofessional behaviour, nor did they require Scoag approval.

The AGSA is investigating the matter relating to interest payment, and appropriate action will be taken once these investigations have been concluded.

The legal opinion also considered the allegations relating to the staff appointments to the AGSA, again concluding that there was no evidence of corrupt, unethical or unprofessional behaviour.

With respect to the head of communications appointment, the opinion concluded that while he had scored the most points in the interview and that the panel was unanimous that he was best suited for the position, the appointment did not meet the recruitment waiver requirements. They also concluded that he did not meet the formal criteria set out in the published job description. Consequently, this appointment did not meet legality requirements. However, the AGSA notes the finding on the procedural flaw in the process of appointing the head of communications and has committed to attend to the human resource management weaknesses that led to this flaw, which include the crafting of job descriptions for support services.

“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,” said the DAG

The audit committee of the AGSA regards this as procedural and technical weakness in the AGSA recruitment process. As recommended in the legal opinion, the AGSA's legal team is considering the labour law implications of the appointment, and what could be the remedy, and will report back to Scoag.

Regarding the CPO

Following the Bowmans investigation into his conduct, Mr Mabaso was charged with gross misconduct and is undergoing the AGSA independent disciplinary action. He remains on precautionary suspension. The CPO's disciplinary hearing is due to be heard by independent senior counsel appointed for this purpose in late September 2022.

Regarding the powers of the AG and DAG

The opinion found that, in some instances, the applicable national legislation “was silent” on certain conditions of service of the AG, and that uncertainty with respect to the AG's and DAG's discretionary powers in this regard should be removed. That will probably require legislative amendments to effect.

Commenting on the finding, the audit committee said, “There are, however, matters requiring the attention of the AGSA namely the resolution of the miscalculated

interest payment and the labour law implications of one flawed recruitment process. The audit committee regards these as procedural and technical weaknesses. We will provide the necessary counsel to management, if and where appropriate."

The DAG, Mr Chauke, said, "We will study the various inputs we have received in this process from our lawyers, independent counsel, the audit committee and Scoag to identify those 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 for the audit committee, and will report back in due course to Scoag."

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About the AGSA: The AGSA is the country's supreme audit institution. It is the only institution that, by law, has to audit and report on how government is spending taxpayers' money. This has been the focus of the AGSA since its inception in 1911 – the organisation celebrated its 100-year public sector auditing legacy in 2011.