

SECTION 5: ACCOUNTING REPORT OF THE CARA

Criminal Assets Recovery Account annual financial
statements for the year ended 31 March 2007

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REPORT OF THE AUDIT COMMITTEE

We are pleased to present our report for the financial year ended 31 March 2007.

Introduction

The administration and accountability for CARA falls within the responsibilities of the NPA. Accordingly, as the duly constituted Audit Committee of the DoJ&CD, we have reviewed to the extent considered necessary, the financial statements of CARA.

The effectiveness of internal control

We are unable to comment on this, as no internal audit was planned to be carried out during the year.

Evaluation of financial statements

The Audit Committee has:

- Reviewed and discussed the audited financial statements to be included in the Annual Report, with the Auditor-General and the Accounting Officer;
- Reviewed the Auditor-General's management letter and management's response thereto;
- Reviewed significant adjustments resulting from the audit.

The Audit Committee concurs and accepts the Auditor-General's conclusions on the annual financial statements and is of the opinion that the audited annual financial statements be accepted and read together with the report of the Auditor-General.

.....
Chairperson of the Audit Committee
16 August 2007

REPORT OF THE AUDITOR-GENERAL

Report of the Auditor-General to Parliament on the financial statements of the Criminal Assets Recovery Account for the year ended 31 March 2007

Report On The Financial Statements

Introduction

1. I have audited the accompanying financial statements of the Criminal Assets Recovery Account (CARA) which comprise the statement of financial position as at 31 March 2007, 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 notes, as set out on pages [134] to [141].

Responsibility of the accounting officer for the financial statements

2. The accounting officer is responsible for the preparation and fair presentation of these financial statements in accordance with modified cash basis of accounting and in the manner required by the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA) and Auditor-General Audit Circular 1 of 2005. 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.

Responsibility of the Auditor-General

3. As required by section 188 of the Constitution of the Republic of South Africa, 1996 read with section 4 of the Public Audit Act, 2004 (Act No. 25 of 2004), my responsibility is to express an opinion on these financial statements based on my audit.
4. I conducted my audit in accordance with the International Standards on Auditing read with General Notice 647 of 2007, issued in Government Gazette No. 29919 of 25 May 2007.
5. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.
6. 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 entity'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.



7. An audit also includes evaluating the:
 - appropriateness of accounting policies used;
 - reasonableness of accounting estimates made by management; and
 - overall presentation of the financial statements.
8. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Basis of accounting

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

Basis for qualified opinion

10. Forfeiture assets and monies receivable from confiscation and forfeiture orders

The Criminal Assets Recovery Unit (CARU), that administers CARA, does not have policies and procedures for maintaining assets forfeited to the State, under their control. Furthermore, CARU does not have a system or process to enable it to account and track the status of finalised confiscation and forfeiture orders. This has resulted in the following deficiencies in the management and administration of forfeited assets and monies receivable from confiscation and forfeiture orders:

Forfeited assets

- CARU did not maintain an asset register in order to account for all the assets forfeited to the State, under their control.
- CARU has been unable to disclose the value of forfeited assets due to the uncertainty of the value of the assets upon realisation. The estimated value of forfeited assets amounts to R36.9 million.

Monies receivable from confiscation and forfeiture orders

- CARU did not maintain a register that enables it to account and track the status of finalised confiscation and forfeiture orders.
- CARU has been unable to disclose the amount for cash in the custody of curators that should be deposited into CARA, due to the uncertainty of the curator fees that must be deducted prior to cash being deposited. The estimated value of monies receivable from confiscation and forfeiture orders amounts to R40.4 million.

The financial statements are therefore materially understated as forfeited assets and monies receivable from confiscation and forfeiture orders were not disclosed on the financial statement.

11. Outstanding cases on the Asset Forfeiture Unit (AFU) case register

CARU does not have policies, procedures and processes to monitor cases on the AFU case register. This resulted in some cases dating back as far as 2001 with an estimated value of R333 million still not followed up during the year. The cases are reflected as still outstanding on the AFU case register. It is therefore uncertain whether and to what extent CARA's financial statements could have been affected by these cases.

Qualified opinion

12. 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 CARA as at 31 March 2007 and its financial performance and cash flows for the year then ended, in accordance with the modified cash basis of accounting determined by the National Treasury of South Africa, as set out in the accounting policy 1 to the financial statements and in the manner required by the PFMA.

Emphasis of matters

I draw attention to the following matter:

13. Net proceeds basis

The PFMA section 2 (13)(1) requires that all revenue received must be paid into the National Revenue Fund. Section 42(2) of Prevention of Organised Crime Act No 121 of 1998 (POCA) allows the court to order that the curator's fees and expenses be deducted from the proceeds of the assets sold, prior to the deposit into the National Revenue Fund.

CARA does not receive a budget from National Treasury to pay curators fees and expenses, thus the curator's fees and expenses are deducted from the proceeds of assets sold. The funds deposited as disclosed in note 1 to the financial statements reflect the net proceeds in terms of POCA.

Other matters

I draw attention to the following matters that are ancillary to my responsibilities in the audit of the financial statements:

14. Internal control

- Control activities

over to curators and no processes and procedures to enforce accountability of curators are also in place.

Furthermore the roles and responsibilities of CARU and Asset Forfeiture Unit are not outlined. This resulted in:

- exceptional long time lapse for the curators to deposit or deliver assets to CARA for finalised cases. Some cases were finalised in 2003 and to date no deposit or asset was delivered to CARA;
- certain curators' reconciliations and supporting documentation could not be verified; and
- insufficient control over assets vesting with curators.

15. Matters of governance

No internal audits were conducted on CARA as required by the Treasury Regulation section 3.2.

16. Material corrections made to the financial statements submitted for audit

The financial statements submitted for audit on 31 May 2007, were significantly revised in respect of the following misstatements identified during the audit. The necessary corrections have been made to the financial statements:

- Outstanding transfers amounting to R33 million were previously incorrectly classified as expenditure instead of a liability in the financial statement.
- Unclassified deposits of R330 000 were previously not disclosed in note 5 to the financial statements.



17. Delay in finalisation of audit

Due to the national public sector strike action during June 2007 the Auditor-General had to delay the finalisation of affected departments. As a result, the Auditor-General's consistency review process of the audit reports could only be conducted subsequent to 31 July 2007, the consequence of which was a delay in the finalisation of the audit of CARA for the 2006/07 financial year.

Appreciation

18. The assistance rendered by the staff of CARA during the audit is sincerely appreciated.

S Cele

.....
*S Cele for Auditor-General
Pretoria, 31 August 2007*



Report of the Accounting Officer

Report of the Accounting Officer to the Executive Authority and Parliament of the Republic of South Africa

1 Establishment of the CARA

The Criminal Assets Recovery Account (CARA) is a separate account within the National Revenue Fund (NRF) into which monies and property are deposited following a judicial forfeiture or confiscation order. The confiscation and forfeiture processes, as well as the establishment of the CARA, are legislated in terms of the Prevention of Organised Crime Act (POC Act) of 1998.

The underlying hypothesis of asset forfeiture legislation is that, by confiscating or forfeiting the profits or proceeds of crime, the incentive for committing specific crimes is reduced.

Section 64 of the Act regulates the constitution of the CARA. In particular section 64(a) is of importance to the criminal asset recovery process as it determines that all confiscated and forfeited monies and property are to be deposited into the CARA.

64. Finances of Account. The Account shall consist of:

- a. all moneys derived from the fulfilment of confiscation and forfeiture orders contemplated in Chapters 5 and 6; [Para. (a) substituted by section 35 (a) of Act No. 24 of 1999.]
(aA). all property derived from the fulfilment of forfeiture orders as contemplated in section 57; [Para. (aA) inserted by section 35 (b) of Act No. 24 of 1999.]
- b. the balance of all moneys derived from the execution of foreign confiscation orders as defined in the International Co-Operation in Criminal Matters Act, 1996 (Act No. 75 of 1996), after payments have been made to requesting States in terms of that Act;
- c. any property or moneys appropriated by Parliament, or paid into, or allocated to, the Account in terms of any other Act; [Para. (c) substituted by section 35 (c) of Act No. 24 of 1999.]
- d. domestic and foreign grants;
- e. any property or amount of money received or acquired from any source; and [Para. (e) substituted by section 35 (d) of Act No. 24 of 1999.]
- f. all property or moneys transferred to the Account in terms of this Act. [Para. (f) substituted by section 35 (e) of Act No. 24 of 1999.]

2 Purpose of the CARA

Section 69A of the Act regulates for what purpose the monies and property in the Account may be utilised:

69A. Utilisation of Account and accountability. (1) The property and money allocated to, or standing to the credit of, the Account may be utilised by Cabinet, after considering the recommendations of the Committee, for:

- a. the allocation of property and amounts of money from the Account to specific law enforcement agencies;
- b. the allocation of property and amounts of money from the Account to any institution, organisation or fund contemplated in section 68(c); and
- c. the administration of the Account.



3 Management of the CARA

Section 65 of the Act establishes a Criminal Assets Recovery Committee (CARC) which is responsible for providing Cabinet with recommendations on the utilisation of the Account and providing advice on specific issues related to the criminal assets recovery process. The current Committee consists of:

Ms BS Mabandla, Minister of Justice and Constitutional Development (Chairperson)

Mr T Manuel, Minister of Finance

Ms AT Didiza, Minister of Land Affairs and Agriculture

Ms S Shabangu, Deputy Minister of Safety and Security (Deputy Chairperson)

Adv VP Pikoli, National Director of Public Prosecutions

The Committee held a meeting on the 16 March 2006 to consider the bids for CARA funds and the distribution of assets under the care of curators.

Section 69 of the POC Act provides that monies and property in the CARA may only be distributed to beneficiaries on recommendation by the CARC and after approval by National Cabinet.

According to account balance statements obtained from National Treasury, there was R78. 5 million in the CARA at the end of March 2007 (R99 million in 2006). The committee considered the bids for CARA funds on 16 March 2006 and recommended that R73. 8 million of the available funds be allocated to government departments and the balance be reserved and the new bids for funds be considered at the next CARC meeting. The recommendations of the CARC were presented and approved by the Cabinet on 11 October 2006. The South African Police Service have not utilised the funds of R33. 7 million allocated to them as at 31 March 2007.

4 CARA Financial Statements

The financial statements for the year ended 31 March 2007 have been prepared on a modified cash basis of accounting, except where stated otherwise. The modified cash basis constitutes the cash basis of accounting supplemented with additional disclosure items in accordance with the Office of the Accountant General's annual financial statements guideline, and therefore includes all monies deposited into the CARA. These amounts deposited and disclosed represent the net revenue / proceeds as the Court Order orders the deduction of curator and other related expenses from the proceeds. The request to the Accountant General for a deviation to report on a net basis was not provided for the current financial year. This refers to the disclosure requirement related to the total of outstanding cash to be deposited from confiscated cases. The proceeds of forfeited cases and cash to be deposited by the curators at 31 March 2007. The Accountant-General does not have the power to grant a deviation in terms of the POC ACT. In view of the above systems will be implemented in the 2007/08 financial year to comply with the disclosure requirements of POC ACT.

The request to the Accountant-General for a deviation regarding the disclosure of assets forfeited to the state and under the care of curators in the Annual Financial Statements was not granted for the current financial year.

Assets not yet realised are under the Control of Curators appointed by the Court, and these values are not included in the financial statements as final reports / accounts have not been received from the relevant curators. A final account is only submitted once the assets have been realised or the assets are handed over to the CARU for distribution and/or caretaking. This account details the net proceeds to be deposited into CARA and is not available at any earlier stage of the process. Any values provided by curators in interim reports, will not accurately represent the net proceeds.

The AFU's engagement in an electronic case management system to monitor amongst other priorities the assets under the care of curators was successfully piloted during the financial year. The CARU requirements were also incorporated and the initial screening of the features was done to CARU on 14 May 2007. CARU will use the system in the new financial year. The outcome of the process will enable the CARU to fast track the distribution of assets to stakeholders as guided by the provisions of the POC ACT. The tracking of performance of the curators will also enable CARU to follow up on tardy curators.

5 Prior year statements

The comparative Statement of Financial Position and the Statement of Changes in Net Assets for the prior year ended 31 March 2006 were inadvertently omitted from the published annual financial statements. The statements have been included in the current annual financial statements. The figures on the Cash Flow Statement for the prior year have been restated.

6 Acknowledgements

Our appreciation towards the loyal support and valuable contributions of the various stakeholders is hereby acknowledged.

The Financial Statements set out on pages 134 to 141 have been approved by the Accounting Officer.


Marion Spang
Chief Executive Officer: NPA
Date: 31-05-07


Adv. M. Simelane
Director General: DOJ&CD
Date: 31/5/07



ACCOUNTING POLICIES

1. Basis of preparation

The financial statements for the year ended 31 March 2007 have been prepared on a modified cash basis of accounting, except where stated otherwise. The modified cash basis constitutes the cash basis of accounting supplemented with additional disclosure items. In accordance with the Office of the Accountant General's annual financial statements guideline, and therefore include all monies deposited into the CARA. These amounts deposited and disclosed represent the net revenue / proceed as the Court Order provides for the deduction of curator fees and other related expenses from the proceeds. The request to the Accountant General for a deviation to report on a net basis was not granted for the current financial year with regard to the disclosure requirement in the AFS of the total of outstanding cash to be deposited from confiscated cases, assets forfeited to the State and the cash to be deposited into CARA by the curators at 31 March 2007. The Accountant General does not have the power to grant a deviation in terms of the POC ACT. In view of the above non-compliance issues; systems currently being developed and piloted will be implemented in the 2007/08 financial year to comply with the disclosure requirements of POC ACT.

2. Forfeited Assets

Assets not yet realised are under the Control of Curators appointed by the Court, and these values are not included in the financial statements as final reports / accounts have not been received from the relevant curators. A final account is only submitted once the assets have been realised or the assets are handed over to the Asset forfeiture Unit for distribution and/or caretaking. This account details the net proceeds to be deposited into CARA and is not available at any earlier stage of the process.

3. Revenue

Monies deposited into the CARA. These amounts deposited and disclosed represent the net revenue/ proceeds as the Court Order provides for the deduction of curator fees and other related expenses from the proceeds.

4. Expenditure Disbursements

Section 69 of the POC Act provides that monies and property in the CARA may only be distributed to beneficiaries on recommendation by the CARC and after approval by National Cabinet.

5. Presentation currency

All amounts have been presented in the currency of the South African Rand which is also the functional currency of the NPA.

6. Rounding

Unless otherwise stated all financial figures have been rounded to the nearest one thousand Rand (R'000).

7. Comparative figures

Prior period comparative information has been presented in the current year's financial statements.

8. Distribution of CARA Assets

In terms of section 69 A of the POC Act monies and property in the CARA may only be distributed to beneficiaries on recommendation by the CARC and after approval by National Cabinet. The property and money may be allocated to specific law enforcement agencies, any institution, organisation or fund established with the object of rendering assistance in any manner to victims of crime and for the administration of the Account. The distribution of assets and money effected has been in terms of the POC Act for the financial year ended 31 March 2007.

9. Cash and cash equivalents

Cash and cash equivalents consist of cash deposited in the Cara account held at the South African Reserve Bank.



Statement of Financial Performance for the year ended 31 March 2007

| | Note | 2006/07 R'000 | 2005/06 R'000 |
|--|------|------------------|------------------|
| REVENUE | | | |
| Funds brought forward from previous year | | - | - |
| Funds deposited during the year | 1 | 19 291 | 20 015 |
| Total Revenue | | <u>19 291</u> | <u>20 015</u> |
| EXPENDITURE | | | |
| Current Expenditure | | | |
| Transfers and subsidies (Funds allocated by Cabinet) | 2 | (40 100) | - |
| TOTAL EXPENDITURE | | <u>(40 100)</u> | <u>-</u> |
| SURPLUS/(DEFICIT) | | (20 809) | 20 015 |
| SURPLUS/(DEFICIT) FOR THE YEAR | | <u>(20 809)</u> | <u>20 015</u> |
| Reconciliation of Net Surplus/(Deficit) for the year | | | |
| CARA fund | | (20 809) | 20 015 |
| SURPLUS/(DEFICIT) FOR THE YEAR | | <u>(20 809)</u> | <u>20 015</u> |

Statement of Financial Position for the year ended 31 March 2007

| | Note | 2006/07 R'000 | 2005/06 R'000 |
|---|------|------------------|------------------|
| ASSETS | 6 | | |
| Current assets | | 78 475 | 99 284 |
| Criminal Assets Recovery Account | 4 | 78 475 | 99 284 |
| TOTAL ASSETS | | 78 475 | 99 284 |
| LIABILITIES | | | |
| Current liabilities | | 34 057 | - |
| Payables | 5 | 34 057 | - |
| TOTAL LIABILITIES | | 34 057 | - |
| NET ASSETS | | 44 418 | 99 284 |
| Represented by | | | |
| Retained funds (Legislatures/Parliament/CARA Fund assistance) | 3 | 44 418 | 99 284 |
| TOTAL | | 78 475 | 99 284 |



Statement of Changes in Net Assets for the year ended 31 March 2007

| | Note | 2006/07 R'000 | 2005/06 R'000 |
|--|------|------------------|------------------|
| | 6 | | |
| Retained funds | | | |
| Opening Balance | | 99 284 | 79 269 |
| Transfer from Statement of Financial Performance | | (20 809) | 20 015 |
| Cara Funds not transferred to South African Police Service | | (33 700) | - |
| Other unidentified deposits and payments due to victims of crime | | (357) | - |
| Closing Balance | | 44 418 | 99 284 |
| TOTAL | | 44 418 | 99 284 |

Cash Flow Statement for the year ended 31 March 2007

| | Note | 2006/07 R'000 | 2005/06 R'000 |
|--|------|------------------|------------------|
| | 6 | | |
| CASH FLOW FROM OPERATING ACTIVITIES | | | |
| Receipts | | 19 291 | 20 015 |
| Funds deposited during the year | 1 | 19 291 | 20 015 |
| Transfers and subsidies paid | 2 | (40 100) | - |
| Net cash flow available from operating activities | | (20 809) | 20 015 |
| Net increase/(decrease) in cash and cash equivalents | | (20 809) | 20 015 |
| Cash and cash equivalents at beginning of period | | 99 284 | 79 269 |
| Cash and cash equivalents at end of period | | 78 475 | 99 284 |



Notes to the Annual Financial Statements for the year ended 31 March 2007

| | 2006/07 R'000 | 2005/06 R'000 |
|--|------------------|------------------|
| 1. Funds deposited during the year | 19 291 | 20 015 |
| 1.1 Cara funds deposited during the year | 18 934 | 20 015 |
| 1.2 Unidentified deposits | 330 | - |
| 1.3 Payments due to victims of crime | 27 | - |
| 2. CARA funds transfer (Funds allocated by Cabinet) | (40 100) | - |
| 2.1 National Prosecuting Authority of South Africa | (31 800) | - |
| 2.2 Department of Social Development | (3 300) | - |
| 2.3 South African Revenue Service | (5 000) | - |
| 3. Retainable funds | 44 418 | 99 284 |
| Opening Balance Transfer from Statement of Financial Performance | 99 284 | 79 269 |
| Cara funds not transferred to South African Police Service | (20 809) | 20 015 |
| Other unidentified deposits and payments due to victims of crime | (33 700) | - |
| | (375) | - |
| 4. Cash and cash equivalents at end of period | | |
| Opening balance in the CARA at the South African Reserve Bank | 99 284 | 79 269 |
| Funds Deposited during the year | 19 291 | 20 015 |
| Transfers from the National Revenue Fund | (40 100) | - |
| Closing Balance in the CARA at the South African Reserve Bank | 78 475 | 99 284 |
| 5. Payables | 34 057 | - |
| South African Police Service | 33 700 | - |
| Unidentified deposits | 330 | - |
| Payment to victims of crime | 27 | - |

6. Prior Year Statements

The comparative Statement of Financial Position, the Cash Flow Statement and the Statement of Changes in Net Assets in the AFS for the year ended 31 March 2006 have been included in the current financial statements of CARA for the year ended 31 March 2007.

The Statement of Financial Position and the Statement of Changes in Net Assets was inadvertently omitted from the published financial statements in the prior year.

The figures in the Cash Flow Statement for the prior year have been restated to reflect the correct figures in the current financial statements.

Disclosure Notes to the Annual Financial Statement for the Year Ended 31 March 2007

These amounts are not recognised in the Annual Financial Statements and are disclosed to enhance the usefulness of the Annual Financial Statements.

7. Assets forfeited by to the state

Assets not yet realised are under the Control of Curators, and are not included in the financial statements as final reports / accounts have not been received from the relevant curators. A final account is only submitted once the assets have been realised or the assets are handed over to the State for distribution and/or care taking. Any values provided by curators in interim reports, will not accurately represent the net proceeds and will be misleading to the readers of the financial statements. The forfeited assets amongst others include fixed property, motor vehicles, boats, machinery, equipment, cell phones and containers. At a meeting held on 16 March 2006, the CARA recommended that certain of the assets to the value of approximately R1 million be allocated for use by crime fighting agencies, state departments and non-governmental agencies. The recommendation of the Committee were approved by Cabinet on 11 October 2006. The Cabinet approved the allocation of funds to the following Departments:

- * The National Prosecuting Authority - R31.8 million
- * The Department of Social Development - R3.3 million
- * The South African Revenue Service - R5 million and
- * The South African Police Service - R33.7 million.

The SAPS have not utilised any of the funds allocated to them as at 31 March 2007. The distribution of assets approved by Cabinet was not fully implemented by CARU as at 31 March 2007, due to problem of obtaining documentation for the transfer of motor vehicles and the transfer of certain assets that have deteriorated in condition and value due to unforeseen circumstances.

