



Centre for Social Justice

## Audit Policy Brief No. 3

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### UNDERSTANDING DUTIES AND RESPONSIBILITIES IN FEDERAL AUDIT

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#### 1. The Mandate of the Auditor General for the Federation

Audit is part of the cycle and chain of public expenditure management. It is not an optional process but a mandatory process stipulated in the *grundnorm*,<sup>1</sup> being the highest in the hierarchy of Nigerian law vis, the Constitution of the Federal Republic of Nigeria 1999 (as amended). The Constitution is supreme and if any law, policy or practice is inconsistent with the Constitution, the Constitution prevails and such law, policy or practice will be void to the extent of its inconsistency with Constitution.<sup>2</sup> By S.85 (2) of the Constitution:

*“The public accounts of the Federation and of all offices and courts of the Federation shall be audited and reported on by the Auditor-General who shall submit his reports to the National Assembly; and for that purpose, the Auditor-General or any person authorised by him in that behalf shall have access to all the books, records, returns and other documents relating to those accounts”.*<sup>3</sup>

This subsection creates a mandate and a duty incumbent on the Auditor General for the Federation (AuGF) to audit the accounts of the Federation. It also confers power on the AuGF to access all the books, records, returns and other documents to facilitate the performance of that duty. By the Federal Financial Regulations (FR) made under the authority of the Finance (Control and Management) Act,<sup>4</sup> the AuGF’s power to access documents and information needed for audit is further amplified as follows:

<sup>1</sup> Kelsen H, *Society and Nature: A Sociological Inquiry*, London, Routledge and Kegan Paul, 1946; *Pure Theory of Law*, 50 LQR, 51 (1953).

<sup>2</sup> S.1 (3) of the Constitution.

<sup>3</sup> The word used in line 2 is the mandatory “shall” and not the discretionary “may”.

<sup>4</sup> Cap. F26, *Laws of the Federation of Nigeria 2004*.

*“By virtue of the responsibilities and functions of the Accountant General and the Auditor-General or their representatives shall, at all reasonable times, have free access to books of accounts, files, safes, security documents and other records and information relating to the accounts of all federal ministries/extra ministerial offices and other arms of government or units. They shall also be entitled to require and-receive from members of the Public Service such information, reports and explanations as they may deem necessary for the proper performance of their functions”.*<sup>5</sup>

For government statutory corporations, commissions, authorities, agencies, including all persons and bodies established by an Act of the National Assembly, they are not to be directly audited by the AuGF. They are to appoint their auditors from a list provided by the AuGF. He is to provide guidelines on the level of fees to be paid to external auditors; and comment on their annual accounts and auditor's reports thereon.<sup>6</sup> He is also empowered to conduct periodic checks of all government statutory corporations, commissions, authorities, agencies, including all persons and bodies established by an Act of the National Assembly.<sup>7</sup> He is to comment on the accounts of these aforementioned bodies and make a report thereon and his comments and recommendations are to be included in his annual statutory report.

Beyond the mandate of the AuGF, the Constitution and FRs quoted above create implicit obligations for public servants entrusted with the management and supervision of Ministries, Departments and Agencies of government (MDAs) to cooperate and make available to the AuGF the books of accounts, files, safes, security documents and other records aforementioned. It is not the AuGF that collects and prepares the financial statements and accounts. The Constitution states that:

*“The Auditor-General shall, within ninety days of receipt of the Accountant-General's financial statement, submit his reports under this section to each House of the National Assembly and each House shall cause the reports to be considered by a committee of the House of the National Assembly responsible for public accounts”.*<sup>8</sup>

By S. 24 of the Finance (Control and Management) Act:

*“The Accountant-General shall sign and present to the Auditor-General for the Federation accounts showing fully the financial position on the last day of each financial year of the Consolidated Revenue Fund and of the funds specified in the First Schedule to this Act and such accounts shall form part of the accounts referred to in section 85 of the Constitution...”*

For statutory corporations, parastatals, etc., FR 3210 makes the following provisions:

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<sup>5</sup> See FR 110.

<sup>6</sup> S.125 (3) of the Constitution.

<sup>7</sup> S.125 (4) of the Constitution.

<sup>8</sup> S.125 (5) of the Constitution.

*“(i) The Board of each parastatal shall appoint an External Auditor who shall audit and report on the affairs of the organization to the Board”.*

*“(iii) The Auditor-General shall incorporate comments on the Annual Accounts and Management Report of the Parastatal to the Public Accounts Committee of the National Assembly”.*

*“(v) The Chief Executive Officer shall submit both the Audited Accounts and Management Report to the Auditor-General and the Accountant General not later than 31st May of the following year of Account”.*

These provisions make it clear that it is the Accountant General who through the financial statement activates the mandate of the Auditor General while the Auditor General's report activates deliberations by the Public Accounts Committee of the National Assembly. Apart from periodic checks on statutory corporations, it is the report of the auditors appointed by these corporations that activates the work of the AuGF to comment on the reports. The foregoing provisions raises the poser in terms of nomenclature; who is the AuGF? To understand the AuGF should start with understanding the role of the legislature in the control and management of public finances. The legislature is vested with the power of appropriation and the purse and exercises oversight over the use, allocation and management of public revenues and expenditure within the concept of checks and balances in the trinity of the arms of government in the executive, legislature and judiciary.<sup>9</sup> The Finance (Control and Management) Act in S.3 provides for legislative control and management of public finances in the following words:

*“The Minister shall supervise the expenditure and finances of the Federation as to ensure that a full account is made to the Legislature and its financial control is maintained and for such purpose shall, subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and of this Act, have the management of the Consolidated Revenue Fund and the supervision, control and direction of all matters relating to the financial affairs of the Federation which are not by law assigned to any other Minister”.*

The AuGF is that layer of authority, supervision, review, reportage and Supreme Audit Institution (SAI) that reports to the legislature for its determination whether a full account has been made by the executive and judiciary and whether its financial control is maintained. Essentially when plans and policies manifest in appropriation, the AuGF

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<sup>9</sup> See sections 80, 81 and 88 of the Constitution.

reviews and reports whether the plan, policy, budget continuum is properly aligned indeed. FR 108 details the responsibility of the AuGF:

*“The Officer responsible under the Constitution of the Federation for the audit and report on the public accounts of the Federation including all persons and bodies established by law entrusted with the collection, receipt, custody, issue or payment of Federal Public moneys or with the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other property of the government of the Federation is the Auditor-General for the Federation, hereinafter referred to as the Auditor-General. The Auditor-General shall examine and ascertain in such manner as he may deem fit the accounts relating to public funds and property and shall ascertain whether in his opinion: (a) the accounts have been properly kept; (b) all public monies have been fully accounted for, and the rules and procedures applied are sufficient to secure an effective check on the assessment, collection and proper allocation of revenue; (c) monies have been, expended for the purposes for which they were appropriated and the expenditure have been made as authorised; and (d) essentials records are maintained and the rules and procedures applied are sufficient to safe-guard and control public property and funds”.*

Key words emanating from this responsibility are regularity, legality, accountability, transparency. Furthermore FR 109 provides for the duties of the Auditor General:

*“(i) The Auditor-General shall carry out the following statutory functions: (a) Financial Audit in accordance with extant laws in order to determine whether government accounts have been satisfactorily and faithfully kept (b) Appropriation Audit - to ensure that funds are expended as appropriated by the National Assembly. (c) Financial Control Audit - to ensure that laid down procedures are being observed in tendering, contracts and store-keeping with a view to preventing waste, pilferage and extravagance. (d) Value-for-Money (Performance) Audit - to ascertain the level of economy, efficiency and effectiveness derived from government projects and programmes. (ii) The scope of work of the Auditor-General include: (a) audit of the books, accounts and records of federal ministries, extra-ministerial offices and other arms of government; (b) vetting, commenting and certifying audited accounts of all Parastatals and government statutory corporations in accordance with the Constitution of the Federation; (c) audit of the accounts of federal government establishments located in all states of the federation including all Area Councils in the Federal Capital Territory, Abuja; (d) audit of the Accountant-General's Annual Financial Statements; (e) auditing and certifying the Federation Account; (f) deliberation, verification and reporting on reported cases of loss of funds, stores, plants and equipment as stipulated in Chapter 25 of the Financial Regulations; (g) pre and post auditing of the payment of pensions and gratuities of the retired military and civilian personnel; (h) Periodic checks of all Government Statutory Corporations, Commissions, Authorities, Agencies, including all persons and bodies established by an Act of the National Assembly; and (i) revenue audit of all government institutions”.*

These duties are quite extensive ranging from regularity and legality to value for money audit, audit of remuneration, pension and gratuities and revenue audit, etc. These extensive duties require collaboration, openness and cooperation from MDAs for the AuGF to perform the duties effectively. The law has provided an anchor point in MDAs - the accounting officer whose mandate will now be reviewed.

## **2. The Mandate of the Accounting Officer**

It is imperative to note that public servants who are managers of public resources hold such resources in trust for the wider public. The resources are the proverbial tax payer's money, money from natural resources and other sources. In charge of every MDA is an Accounting Officer. FR 111 defines the Accounting Officer:

*“(i) The Term "Accounting Officer" means the Permanent Secretary of a ministry or the head of extra-ministerial office and other arms of government who is in full control of, and is responsible for human, material and financial resources which are critical inputs in the management of an organization. (ii) The Accounting Officer shall: (a) be responsible for safeguarding of public funds and the regularity and propriety of expenditure under his control; (b) observe and comply fully with checks and balances spelt out in existing Financial Regulations which govern receipts and disbursement of public funds and other assets entrusted to his care and shall be liable for any breach thereof and; (c) note that his accountability does not cease by virtue of leaving office and that he may be called upon at any time to account for his tenure as Accounting Officer”.*

There are key words which give the overall picture of the accounting officer vis, full control, responsible, liable, accountability, etc. Essentially, the Accounting Officer is the leader, who is in full control of an MDA and has been granted human and material resources at the public expense to achieve set results. As such, he is expected to be accountable and report on the achievement of these results to the people and authorities, of which the AuGF is a representative. The duties of the Accounting Officer are further clarified in FR 112:

*“(i) The functions of the Accounting Officer shall include: (a) ensuring that proper budgetary and accounting systems are established and maintained to enhance internal control, accountability and transparency; (b) ensuring that the essential management control tools are put in place to minimise waste and fraud; (c) rendering monthly and other financial accounting returns and transcripts to the Accountant -General of the Federation as required by the Financial Regulations; (d) ensuring the safety and proper maintenance of all government assets under his care; (e) ensuring personal appearance before the Public Accounts Committee to answer audit queries to ministry/extra-ministerial department or agency; (f) ensuring accurate collection and accounting for all public moneys received and expended; (g) ensuring prudence in the expenditure of public funds; (h) ensuring proper assessments, fees, rates and charges are made where necessary; (i)*



*ensuring internal guides, rules, regulations, procedures are adequately provided for the security and effective check on the assessment, collection and accounting for revenue; (j) ensuring that any losses of revenue are promptly reported and investigated; (k) ensuring that all revenue collected are compared with the budgeted estimates with a view to highlighting the variances, positive or otherwise and the reasons for them; and (l) ensuring that any revenue collected are not spent, but remitted to the appropriate authorities promptly”*

The above provision re-emphasises authority, responsibility, accountability, officially imbued capacity, attributes of good governance - rule of law, efficiency, effectiveness, responsiveness, etc.

FR 115 uses the term Sub-Accounting Officer and this is described as follows:

*“(l) The term "Sub-Accounting Officer" means an officer who is entrusted with the receipt, custody and disbursement of public money and who is required to keep one of the recognised Cash books together with such other books of accounts as may be prescribed by the Accountant-General (see Regulation 801), the transactions in respect of which are subsequently embodied in the final accounts rendered by the Accountant-General. (ii) The term "Sub-Accounting Officer" which applies to the Director of Finance and Accounts or Head of Accounts includes the Sub Treasurer of the Federation, the Federal Pay Officer, the Police Pay Officer, the Customs Area Pay Officer and Pensions Pay Officer”.*

The designation of Sub-Accounting Officer is an important one since it relates to receipt, custody and disbursement of money. Furthermore, there is a pecuniary responsibility of a public officer to secure compliance with regulations within the scope of his authority. But there is a further layer of authority which is the political head. This discourse reviews this layer of authority.

### **3.The Mandate of the Political Head**

By FR 116:

*“The Political Head of a Ministry shall be the Minister while that of a parastatal, extra-ministerial office and other arms of government shall be the Chairman of the parastatal or extra-ministerial office and other agencies of government or as defined in the extant laws that govern their operations”.*

The idea of a Political Head means that the Accounting Officer is the “Technical Head” and it signifies a divide between the day to day running of an MDA by the Technical Head in the person of the Accounting Officer and the Political Head who is the Minister.

FR 117 is on directives by Political Heads:

*“(i) Any directive to the Accounting Officer by a Political Head having financial implications on the ministry, agency or parastatal shall be in writing. (ii) Should the implementation of a directive from a Political Head result in an unauthorised expenditure, and/or contravene extant rules and regulations, the Accounting Officer shall be responsible for such an unauthorised expenditure unless a report had been made by the Accounting Officer to the Head of Service, in the case of ministries/extra-ministerial offices, or to the Minister, in the case of Parastatals”.*

In the case of expenditure contravening the rules on the directive of the Political Head, the liability and accountability rests with the Accounting Officer unless he has made a prior report to the Head of Service. The Political Head is given further powers in FR 118:

*(i) It shall be the responsibility of the Political Head to supervise and control the activities of his ministry, agency and/or parastatal. (ii) Pursuant to sub-section (i) above, the Political Head shall exercise the responsibilities for supervision and control of the activities of his ministry/ extra-ministerial office and other arms of government as follows: (a) endorsing the annual budget proposals of his ministry/extra ministerial office and other agencies of government to the Budget Office; (b) ensuring the implementation of the political programmes of government as they relate to his ministry/extra-ministerial office and other arms of government; and (c) ensuring compliance with the extant rules and regulations and policies of the executive arm of government.*

The Political Head exercises supervision and control and ensures compliance with the extant rules, regulations and policies of government.

#### **4. Deductions from the Duties of the AuGF, Accounting Officer and Political Head**

The public duty vested by the Constitution on the AuGF was not vested in a vacuum. It has been vested in a context of powers and duties creating imperatives for the AuGF to make demands for records, information, responses, etc., from a set of stakeholders in a bid to perform his constitutional duty. On the other hand, the Accountant General is the principal person that prepares financial statements which the AuGF works on. After this stage, the AuGF engages the Accounting Officers who are the leaders and principal officers of the MDAs, who in the first place provided information to the Accountant General. The AuGF should also engage, where necessary with the Political Heads considering the wide powers vested in them by the FR. It is therefore clear that there are individuals (Accounting Officer and Political Head) upon who claims and demands related to the work of the AuGF can be legally and legitimately made.

There is no vacuum in the accountability chain as the laws and policies especially the FR make provisions for responsible officers at every stage of the public expenditure and revenue collection system. This means that there is always a person or office to be held

responsible for any violation and who should be brought to account. The current apparent state of impunity and non-responsiveness of public officials to audit recommendations is not a product of a gap in laws and policies but the lack of political will to enforce existing laws and policies.

#### **4. Conclusion and Next Steps**

The decibels of civil society demand for increased accountability and transparency especially in the implementation of the AuGF's audit recommendations should be increased. Contrary to current impressions that no one is accountable for infractions of public finance management rules, there are officials to be held responsible at every stage and for every infraction. Those who violate public finance management rules are human beings. Therefore, every report of the AuGF should be made a living document and:

- ❖ Discussed across the length and breadth of Nigeria in all of society wide approach to demand fiscal justice for the majority of Nigerians who have been victimized by the porous public expenditure management system.
- ❖ Be the basis of demands for the return of looted funds and prosecution of offenders and the imposition of administrative sanctions as stipulated in the FR.
- ❖ The basis for advocacy for the reform of audit laws until the legislature and executive give Nigeria a legislation that complies with international standards on the establishment of Supreme Audit Institutions.



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