



AUDIT POLICY BRIEF NO.2

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Enhancing the Powers of the Auditor-General of the Federation

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1. Introduction

The effectiveness of the public audit function is to a great extent dependent on the powers bestowed on the office of the Auditor-General of the Federation (AuGF) by either the 1999 Constitution (as amended) or enabling laws. These powers could be in the form of rights, abilities, authority, faculties and they could be enumerated, express, general, special, implied and powers necessary for the enforcement of the overall audit mandate. Power is also related to duties which is an obligation directed by law on the AuGF. This is further related to function which is the proper set of activities appropriate for the fulfillment of policy goals set for the office of the AuGF¹. The definition of these powers, duties and functions (enablement) is imperative to avoid challenges to the audit function based on allegations that the AuGF is acting beyond the legal remit.

The Office of the AuGF is one of the foremost anti-corruption agencies and Nigeria's Supreme Audit Institution (SAI). It is established by the Constitution while some other anti-corruption agencies are established by statutes made by the National Assembly. It therefore requires enablement necessary for the fulfillment of its legal mandate. This Policy Brief identifies the mischief in existing law and provides recommendations for their suppression while advancing remedies. The enablement relates inter alia to a broad and modern mandate, access to information, enforcement of recommendations, adequacy of funding, human resources and oversight over the Office of the AuGF.

¹ Black's Law Dictionary, (Centennial Edition) at pages 505, 673, 1169-1171.

2. Extant Powers, Duties and Functions of the Auditor-General for the Federation

The Constitution of the Federal Republic of Nigeria 1999 (Constitution) provides general auditing powers for the AuGF. The relevant constitutional provisions on auditing are as stated in section 85 as follows:

“(2) 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.

(3) Nothing in subsection (2) of this section shall be construed as authorising the Auditor-General to audit the accounts of or appoint auditors for government statutory corporations, commissions, authorities, agencies, including all persons and bodies established by an Act of the National Assembly, but the Auditor-General shall –

a. Provide such bodies with:

(i). a list of auditors qualified to be appointed by them as external auditors and from which the bodies shall appoint their external auditors, and

(ii). guidelines on the level of fees to be paid to external auditors; and

b. comment on their annual accounts and auditor’s reports thereon.

(4) The Auditor-General shall have power to conduct checks of all government statutory corporations, commissions, authorities, agencies, including all persons and bodies established by an Act of the National Assembly.

(5) The Auditor-General shall comment on the accounts of the bodies mentioned in subsection (4) of this section and make report thereon.

(6) In the exercise of his functions under this Constitution, the Auditor-General shall not be subject to the direction or control of any other authority or person.”

The Constitution laid down the general framework, but it is silent on audit processes and procedures as well as specific powers and duties of the AuGF. The constitutional provisions are to be supplemented by a detailed legislation. The provisions of subsection (6) suggest that matters of process and procedure are at the discretion of the AuGF in

the performance of audit duties². However, Nigeria has no extant Audit Act as the old Audit Act of 1956 has been repealed³. Since the return to civil rule in 1999, three attempts to enact a new audit legislation at the federal level have failed⁴. Under the extant 2009 Financial Regulations made under the Finance (Control and Management) Act⁵, provisions have been made inter alia on the performance of the functions of the AuGF in Regulations 108 -110.

108. 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, 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 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 authorized; and

(d) essential records are maintained and the rules and procedures applied are sufficient to safe-guard and control public property and funds.

109. (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 satisfactory and faithfully kept;

² This is in keeping with the independence of the AuGF. See section 10 (a) of the Federal Audit Service Commission Bill, 2019 which states that the AuGF shall decide on the methodology to be adopted in respect of an audit.

³ The Laws of the Federation 1990 failed to reproduce the 1956 Audit Act and by S5 (1) of the Revised Edition (Laws of the Federation of Nigeria) Act 1990, it ceased to be part of Nigerian Laws. The 2004 Laws of the Federation also maintained the status quo. The duties of the Director of Audit under the 1956 Act were stated as follows: All reasonable precautions were used to safeguard the collection of revenue and the relevant laws and instructions were followed; all payments were made in line with the annual budget and the relevant regulations, and adequate regulations existed for stores.

⁴ During the Olusegun Obasanjo, Goodluck Jonathan and Muhammadu Buhari's presidency; the Audit Reform Bills were passed but the Presidents declined to give assent to the bills.

⁵ Cap F.26 Laws of the Federation of Nigeria, 2004.

(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 storekeeping with a view to preventing waste, pilferage and extravagance;

(d) Value for money (performance) Audit to ascertain the level of the 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, 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 in Chapter 25 of the Financial Regulations;

(g) Pre and post auditing of the payment of pensions 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.

110. By virtue of the responsibilities and functions of the Accountant-General and the Auditor-General, they 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.

3. The Gaps in Extant Law and Practice and New Directions

3.1 Categories of Audit; Functions and Duties of the AuGF: The Mexico Declaration on the Independence of Supreme Audit Institutions recommends in Principle 3 for a sufficiently broad mandate and full discretion in the discharge of SAI functions⁶. The Financial Regulations lists the audit categories assigned to the AuGF as financial, appropriation, financial control and value for money audits⁷. This cannot be the only audits required of the AuGF in the modern era. This list has been expanded in the Federal Audit Service Commission Bill of 2019⁸ (FASCB 2019) to include audit on classified expenditure, forensic audit, audit of international institutions to the extent of Nigeria's contributions to such bodies and audit of all Federal Government and its agencies' subsidies and their application. It also includes audit of all Federal Government and its agencies' counterpart funded projects in the country, audit of all Nigerian Embassies, Consulates and Foreign Missions, audit of performance information, audit of disaster related grants and aids, audit of public private partnership entered into by the Federal Government and its agencies, audit of donations, loans, etc.

Finally, it lists the omnibus "any other emerging audit and such audits as he may deem necessary to safeguard Federal Government and its agencies' assets and promote good governance"⁹. This omnibus provision will provide the leeway for environmental, gender, etc. audits to be done by the AuGF. The Auditor-General may also carry out special audits, investigations or any other audit he considers necessary¹⁰.

By section 17 of the FASCB 2019, the AuGF's powers have been enhanced in respect of statutory corporations to include reporting on the profitability, liquidity, stability and solvency of the parastatals, corporations or agencies and the performance of the corporation on the capital markets, where applicable. In accordance with the Lima Declaration of Guidelines on Audit Precepts, audit of electronic data processing facilities is also imperative¹¹.

⁶ The Mexico Declaration was adopted at the XIX Congress of the International Organization of Supreme Audit Institutions (INTOSAI) meeting in Mexico.

⁷ Financial Regulations 109 (a) to (d).

⁸ The bill is pending before the National Assembly.

⁹ See S. 9 (1) (c) of the FASCB, 2019.

¹⁰ See S.22 of the FASCB, 2019.

¹¹ Section 22 of the Lima Declaration states that: "*The considerable funds spent on electronic data processing facilities also calls for appropriate auditing. Such audits shall be system based and cover aspects such as planning for requirements; economic use of data processing equipment; use of staff with*

3.2 Powers Related to Access to Information: Increased functions necessitate wider powers. When the AuGF merely checked the financial statements against the payment vouchers, he needed only access to books of account and records. But value for money audit and special investigations may require more than documentary evidence. It is a welcome development that the FASCB 2019 in S.11 provided for the power to summon and to issue warrant of arrest.

11.(1) The Auditor-General may, in the course of exercising his powers or performing his functions, summon a person as witness to give evidence either orally or in writing.

(2) Subject to subsection (1), where a person is summoned as witness and the person refuses or fails to appear, without any reasonable excuse, the Auditor-General may issue warrant to the police for his arrest.

(3) The Auditor-General may administer oath or affirmation to any person who appears before him to give evidence or being examined as a witness by him.

(4) Any person who intentionally gives false evidence either orally or in writing as a witness commits the offence of perjury.

(5) Except authorised by law or the Auditor-General, any witness who refuses to take oath or affirmation prescribed in accordance with this Act commits an offence.

Beyond the foregoing, it may be imperative for the AuGF and his agents to have powers, on the order of a court of competent jurisdiction, to be obtained ex-parte, to enter premises¹² for the purpose of inspection, search and seizure of not only documents but also other items of real evidence. The AuGF needs powers to trace or follow misappropriated funds and for that purpose to inspect and examine or scrutinize bank records and books of account¹³.

3.3 Enforcement Powers: The Mexico Declaration on SAI Independence states that SAI should have their own internal follow-up system to ensure that audited entities address their observations and recommendations¹⁴. Although the Financial Regulations seem to make detailed provisions for issues around audit procedure and sanctions mechanisms, these provisions are evidently hanging because they do not have specific

appropriate expertise, preferably from within the administration of the audited organization; prevention of misuse; and the usefulness of the information produced”.

¹² See paragraph 44 of section 111 of the Schedule to the repealed Civil Service Reorganisation Act of 1988 which enjoined MDAs entering into contract agreements to include a clause enabling the AuGF to have access to sites for the purpose of auditing or contract performance monitoring.

¹³ See sections 27 and 29 of the Public Audit Act of New Zealand.

¹⁴ See paragraph 2 of Principle 7 of the Mexico Declaration.

and definite duty bearers bound to enforce the provisions¹⁵. Where duty bearers exist, they are evidently overwhelmed by the magnitude of violations and challenges within the system. It has therefore become necessary to invest the AuGF with specific enforcement powers that will facilitate the effectiveness of the Audit function.

Further justification of this approach is borne out by recent reports on the accounts of the Federation by the AuGF for the years 2016 and 2017¹⁶. The reports reveal a plethora of unaddressed violations. Under the Financial Regulations, audit queries should be answered within 21 days¹⁷ but the queries have been routinely ignored by Accounting and Sub-Accounting Officers without consequences. The duty of Accounting Officer to ensure that any revenue collected is not spent but promptly remitted to the appropriate authority has been routinely violated¹⁸. There have been cases of irregular and wrong payments, shortage or loss of stores, assets paid for but not collected etc. All these have reoccurred without remedies to the treasury.

The provision of S.10 of the FASCB 2019 is therefore a welcome development. It is in accordance with fit and good comparative practices¹⁹ when it states inter alia that that the AuGF shall have powers to:

f) surcharge the amount of any expenditure which has not been duly brought into the account or the amount of any loss or deficiency incurred;

(g) revoke any surcharge imposed by him;

(h) direct the withholding of the emoluments and allowances of any persons who fails or refuses to reply to audit queries within 30 days and for as long as the person fails to comply;

Subsections (g) and (h) are good in their present form. But subsection (f) of this provision needs to be fine-tuned for the purpose of clarity. The model in S.187 (7) of the Constitution of Ghana is recommended:

¹⁵ There are provisions for surcharge, recovery of money, transfer of responsible officers to another schedule, disciplinary proceedings. But all these are provisions collecting dust on the shelves.

¹⁶ See <https://oaugf.ng/>

¹⁷ See Financial Regulations 3103 and 3106.

¹⁸ Financial Regulation 3112 (ii): “Where an officer fails to give satisfactory reply to an audit query within 7 days for his failure to account for government revenue, such officer shall be surcharged for the full amount involved and such officers handed over to the Economic and Financial Crimes Commission or the Independent Corrupt Practices and Other Related Offences Commission”.

¹⁹ See S.34 of the Public Finance and Accountability Act of Uganda; S.187 (7) of the Constitution of Ghana and S.12 of the Audit Service Act of Ghana. See the repealed Civil Service Reorganisation Act of 1988.

In the performance of his functions under this Constitution or any other law, the Auditor-General-

(b) may disallow any item of expenditure which is contrary to law and surcharge-

(a) the amount of any expenditure disallowed upon the person responsible for incurring or authorizing the expenditure; or

(b) any sum which has not been duly brought into account, upon the person by whom the sum ought to have been brought into account; or

(c) the amount of any loss or deficiency, upon any person by whose negligence or misconduct the loss of deficiency has been incurred.

However, there may be legal challenges to the AuGF's exercise of this power which may impinge on the civil rights and obligations of the public officers who may be disciplined in accordance with this provision. Again, the Constitution of Ghana in S.187 (9) comes to the rescue.

(9) A person aggrieved by a disallowance or surcharge made by the Auditor-General may appeal to the High Court.

But in our own instance, based on the interminable and long drawn out proceedings of our courts, this needs to be modified to include a provision that the court shall employ summary proceedings to determine the matter and a timeframe of not more than 6 months fixed for the conclusion of the case. The provision in the FASCB 2019 after the power to surcharge and revoke surcharge could read as follows:

(a) A person aggrieved by a disallowance or surcharge made by the Auditor-General may apply to the High Court for review.

(b) An application made under this section shall be heard and determined summarily.

(c) The High Court shall deliver its judgement within 180 days of the filing of the application for review²⁰.

An abridged time of within 60 days of the filing of the appeal for the Court of Appeal and 60 days for the Supreme Court to determine appeals is imperative. The provision for abridgement of time within which the High Court, the Court of Appeal and the Supreme

²⁰ This is drawn from the model of S.285 of the 1999 Constitution on timeframe for the determination of election petitions. Further timeframes of 60 days could be proposed for the determination of appeals arising from this application.

Court shall determine issues brought before them will require a constitutional amendment since it abridges the right to fair hearing provided in the Fundamental Rights chapter of the Constitution.

3.4 Whistle Blower Mechanism: For the AuGF to have sufficient information to effectively carry out the duties of his office, a witness blower protection mechanism or a Whistle Blowers Act is needed to protect individuals who provide information that could curtail waste and corruption.

3.5 Powers Related to Appropriation: In the extant practice, the budget of the office of the AuGF is treated like any other budget and the procedure for its preparation is the same as that of other agencies. This has led to inadequate funding of the office where auditees determine the resources to be made available for audit. The provision of the FASCB is relevant to solve this challenge:

27. The Office shall prepare and submit to the National Assembly, six months to the end of every financial year, the estimates of revenue and expenditure of the Office for the following financial year, which shall be included in the Appropriation Act.

This is in tandem with the S7 (2) of the Lima Declaration which states that if required, SAs shall be entitled to apply directly for the necessary financial means to the public body deciding on the national budget.

3.6 Powers Related to Human Resources: The extant practice indicates that the AuGF is not stricto sensu totally in charge of the human resource issues of his office. The creation of the Audit Service Commission in the FASCB, 2019 and the duties assigned to it will facilitate effective audit work. It is provided that:

39.(1) The Audit Commission shall, on the basis of recommendations by the Auditor-General -

- (a) determine the administrative structure of the Office;*
- (b) appoint persons to offices in the Office and the Audit Commission;*
- (c) handle all matters referred to it on recruitment, promotion and discipline of members of staff of the Office and the Audit Commission;*
- (d) determine, in consultation with the National Salaries, Incomes and Wages Commission and any other relevant government agency,*

the salaries and other conditions of service of members of staff of the Office and the Audit Commission; and

(e) make rules and regulations, which shall not be inconsistent with the intendment of this Act, in order to realise the objectives of this Act.

This provision is a welcome development for effective audit practice reforms as it will attract the right calibre of staff who will be adequately remunerated and motivated for enhanced audit results.

3.7 Duty to Submit to Audit: The AuGF audits government agencies. But who audits the AuGF's expenditure and performance? Extant practice shows there is a lacuna and no authority or agency is vested with this duty. The provision of FASCB, 2019 is apposite:

29. (1) The Auditor-General shall prepare and submit the following reports to the National Assembly in accordance with sections 15 and 16 of this Act -

(a) annual financial statements of his Office prepared in accordance with generally accepted accounting principles, pursuant to section 16 of this Act;

The FASCB, 2019 further provides that the National Assembly shall appoint an independent auditor to audit the accounts of the AuGF's office.

32. (1) The accounts of the Office shall, in each financial year, be audited and reported upon by an independent auditor appointed, subject to the Public Procurement Act, by the National Assembly.

(3) Notwithstanding anything to the contrary in any law, the Office shall, within three months after the end of its financial year, prepare and submit to the auditor appointed under subsection (1), financial statements of the performance and integrity of the office.

4. Conclusions

The extant powers, duties and functions available to the AuGF are not adequate to meet the demands of a modern SAI office. It is therefore imperative that the powers, duties and functions be reviewed in line with emergent audit developments and challenges. The extant definition of audits which the AuGF should perform is not expansive enough to cover all forms of audit. The Office lacks functional powers to compel access to all the information it needs. Its recommendations are flagrantly ignored without legal or

administrative consequences. The recourse mechanisms for implementing audit recommendations are ineffective. The appropriation and disbursement procedure leave the Office open to inadequate funding. The human resource issues need strengthening through enhanced remuneration and hiring practices. Finally, the Office is not duty bound to submit to audit from another authority.

5. Recommendations

The following recommendations flow from the analysis in this Policy Brief:

- ❖ The mandate of the AuGF's office should be broad enough to cover all categories of audits necessary to enthrone accountability, transparency, value for money, gender equality and inclusivity, environmental sustainability, realisation of policy goals and improvement of systems. The FASCB 2019 is an opportunity to enhance the mandate.
- ❖ The AuGF needs powers to issue summons which must be obeyed and to issue warrants of arrest for persons failing to heed the summons, as well as taking evidence on oath – these are powers which need to be mainstreamed in audit practice. The power to trace and follow misappropriated funds is also imperative for the office of the AuGF. This should be secured in the FASCB 2019.
- ❖ The AuGF should have power to disallow any item of expenditure which is contrary to law and surcharge - (a) the amount of any expenditure disallowed upon the person responsible for incurring or authorizing the expenditure; or (b) any sum which has not been duly brought into account, upon the person by whom the sum ought to have been brought into account; or (c) the amount of any loss or deficiency, upon any person by whose negligence or misconduct the loss or deficiency has been incurred. This should be secured in the FASCB 2019.
- ❖ Establishing a Whistle Blower mechanism is imperative for the enhancement of the audit function. This should be provided in the FASCB 2019. In the interim, the Whistle Blowing mechanism can be established by a Presidential Executive Order.
- ❖ The Office of the AuGF should have the power to propose estimates of expenditure required for the effective performance of the duties of his office and in so doing, send the estimates directly to the National Assembly. This may require an amendment of S.81 of the 1999 Constitution.

- ❖ The establishment of the Audit Service Commission is imperative for the optimization of human resource needs of the office of the AuGF. This is related to staff appointment, discipline, welfare and remuneration. This should be secured in the FASCB 2019.
- ❖ The accounts of the Office of the AuGF should be audited by an independent auditor appointed by the Public Accounts Committee of the National Assembly. This should be secured in the FASCB 2019.



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This Policy Brief is produced by CSJ under the Project - *Improving the Effectiveness of Federal Audit Processes and Reforms*. The project has three core objectives:

- ❖ To advocate for the enactment of the Federal Audit Service Commission Bill into law.
- ❖ To support the Office of the Auditor-General for the Federation, the Public Accounts Committees of the National Assembly (PACs) and Ministries, Departments and Agencies of Government (MDAs) in the improvement of audit practice.
- ❖ To build the capacity of Civil Society Organizations and the media to demand and monitor compliance of MDAs with the extant audit regime.

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