

LEGAL REGULATION OF AUDITING PUBLIC ACCOUNTS OF THE FEDERAL GOVERNMENT OF NIGERIA¹

1.0. Introduction

Auditing of government accounts has always been regulated in Nigeria right from colonial times. In 1956 a specific legislation, the Audit Ordinance, was enacted for the Federation². The Audit Ordinance which later became the Audit Act did not survive the review of the Laws of the Federation of Nigeria in 1990. Curiously, the Act was considered superfluous and unnecessary vis-à-vis the terse provisions of the 1979 Constitution on the subject.

The Audit Act of 1956 had fifteen sections. It dealt with such matters as appointment, tenure, duties, powers and salary of the Director of Federal Audit; appointment of acting Director of Federal Audit; time for submission of accounts to the Director of Federal Audit; audit of accounts of the Regions and statutory bodies; time for presentation of the annual certificate and report of the Director of Federal Audit to the Minister of Finance and the House of Representatives.

All the fifteen sections in the 1956 Act were said to have been superseded and replaced by three sections of the 1979 Constitution. The result of this quirk on the part of the law reviewers at the Federal Ministry of Justice is that currently Nigeria does not have an Audit Act³.

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² It came into force on the 1st day of April 1957.

³ As at the time the 1979 Constitution came into force, the Audit Act of 1956 was an existing law whose continued validity was provided for under section 274 of that Constitution. The Act could not have been superseded by that Constitution simply because the latter established the office of the Auditor –General for the Federation and made skeletal provisions for its independence and scope of activities.

In *INEC v. Musa* [2003] 3 NWLR (Part 806) 72 at 158, the Supreme Court held that although the Constitution does not state that an Act of the National Assembly cannot duplicate the provisions of the Constitution, by judicial interpretation, verging on policy, the consequence of such duplication has been variously described as “inoperative”, “in abeyance”, “suspended”. Their Lordships declared that, where the Constitution has covered the field as to the law governing any conduct, the provision of the Constitution is the authoritative statement of the law on the subject. “The Constitution would not have ‘covered the field’ where it had expressly reserved to the National Assembly or other legislative body the power to expand on or add to its provisions in regard to the particular subject.”

Section 4 (2) of the 1979 Constitution gave the National Assembly the power to make laws with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to the Constitution. Item 1 in the Part 1 of the Second Schedule reads: “Accounts of the Government of the Federation, and of offices, courts and authorities thereof, including audit of those accounts”.

If the 1979 Constitution had covered the field and therefore superseded the Audit Act of 1956, the Constitution would not have given the National Assembly the legislative competence to make laws relating to audit of Accounts of the Government of the Federation, and of offices, courts and authorities.

This paper aims to first examine the extant position of our law on auditing of public accounts of the Federal Government. The problems inherent and manifest in the present framework will be highlighted against the backdrop of emerging issues in the proposed legislation on the subject.

2.0. The existing legal and policy framework: critique and recommendations

The Constitution: The legal order that existed under 1979 Constitution was abrogated by the military in 1983 and after several attempts Nigeria returned to democratic governance in 1999 under a new Constitution⁴. Sections 79, 80 and 81 of the 1979 Constitution were replaced with sections 85, 86 and 87 of the 1999 Constitution. There are, however, textual differences which have serious implications for the scope of the responsibilities of the Auditor-General of the Federation (AuGF)⁵.

Section 85 of the 1999 Constitution provides:

- (1) There shall be an Auditor-General for the Federation who shall be appointed in accordance with the provisions of section 86 of this Constitution.
- (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 periodic 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, within ninety days of receipt of the Accountant-General’s financial statement, submit his reports under this section to each

⁴ The Constitution of the Federal Republic of Nigeria, 1999 (1999 Constitution).

⁵ See sections 125, 126 and 127 of the 1999 Constitution for establishment of the office of the Auditors – General for the States as well as their powers, duties, tenure of office, etc.

House of the National Assembly and each House of the National Assembly shall cause the reports to be considered by a committee of the House of National Assembly responsible for public accounts.

- (6) In 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.

Section 86 provides:

- (1) The Auditor-General for the Federation shall be appointed by the President on the recommendation of the Federal Civil Service Commission subject to confirmation by the Senate.
- (2) The power to appoint persons to act in the office of the Auditor-General shall vest in the President.
- (3) Except with the sanction of a resolution of the Senate, no person shall act in the office of the Auditor-General for a period exceeding six months.

Section 87 provides:

- (1) A person holding the office of the Auditor-General for the Federation shall be removed from office by the President acting on an address supported by two-thirds majority of the Senate praying that he be removed for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct.
- (2) The Auditor-General shall not be removed from office before such retiring age as may be prescribed by law, save in accordance with the provisions of this section.

Independence of the Audit Function

The office of the Auditor –General of the Federation is directly established by the Constitution. This underscores the important role the office ought to play in our democracy⁶. The Constitution gives the impression that the Auditor-General is an officer of the legislative arm of government, this is why the office appears in Chapter Five which deals with the Legislature. But the reality is that over the years the office has always been occupied by career civil servants who rose through the ranks. This is emphasized by the requirement of the Constitution that the appointment of the Auditor-General shall be on the recommendation of the Federal Civil Service Commission (FCSC) ⁷. However, it is submitted that nothing limits the FCSC to the civil service in its search for candidates to be recommended to the President. The National Assembly could therefore by legislation make it mandatory for the FCSC advertise the position and call for applications from all qualified persons, not limited to officers of the public service. This will ensure that the best candidate who emerges will be recommended to the President for appointment. It is not clear whether the President could reject a candidate recommended by the FCSC, but wordings of section 86(1) does not suggest that the President is bound to accept the recommendation of the FCSC.

⁶ Also created by the Constitution is the office of the Attorney General of the Federation (s.150). Other executive bodies established by the Constitution (s. 153) are: Code of Conduct Bureau; Council of State; Federal Character Commission; Federal Civil Service Commission; Federal Judicial Service Commission; Independent National Electoral Commission; National Defence Council; National Economic; National Judicial Council; National Population Commission; National Security Council; Nigeria Police Council; Police Service Commission; and Revenue Mobilization, Allocation and Fiscal Commission.

⁷ Section 86 (1)

The Constitution does not specify the requisite academic and professional qualification(s) and cognate experience expected from aspirants for the office of the Auditor-General for the Federation. The assumption appears to be that the FCSC would have taken the issue of qualification and experience into consideration before recommending a candidate to the President⁸. The appointment is subject to confirmation by the Senate, it is expected that the confirmation process will ensure that candidate possesses the right qualification. However, to reduce the margin of discretion, the minimum professional qualification and experience for the office could be laid down by an Act of the National Assembly.

The Constitution guarantees the holder of the office job security to a very large extent but does not make him irremovable. The President has to secure the concurrence of two-thirds majority of the Senate before removing the Auditor-General from office; and the removal has to be for cause : inability to discharge the functions of his office or misconduct.⁹ The right of person holding the office of Auditor-General to resign is preserved.

Under the present legal regime, the length of the tenure of the Auditor-General depends on his biological age at the time of his appointment; he is subject to the retirement age limited by the Federal Government Public Service Rules. The Rules provide that the compulsory retirement age for all grades of in the Service shall be 60 years or 35 years of pensionable service whichever is earlier¹⁰. This requirement which accounts for the high turnover of Auditors-General came up for consideration in **Omoyemi v. Governor of Edo State**¹¹. The appellant who had joined the civil service of the defunct Mid-Western State in 1965, was appointed the Auditor-General of Edo in 1991. On the 30th day of September 2000 when he was 54 years of age he was retired pursuant to a letter signed by the Governor. The appellant challenged his purported retirement on the grounds that it was unconstitutional and ultra vires the power of the Governor. He argued that he could only be removed from office in accordance with the provisions of section 127 of the 1999 Constitution¹². The Respondent's position was that although the Appellant was 54 years old, he had been in the service for 35 years and therefore was due for retirement and that section 280 of the 1999 Constitution gives the Governor the power to remove heads of ministries and departments of the State Government. The trial court dismissed the appellant's claims. But on appeal, the Court of Appeal, per Muntaka- Coomasie, J.C.A.(as he then was) held¹³:

"It is clear therefore the section 127 (2) of the 1999 Constitution is the central provision governing the retirement of the appellant. That section speaks of 60 years. It is clearly established that both parties including the respondents all agree that even though the appellant has put up 35 years of service, he has not attained the age of 60 years. Therefore, section 127 (2) of the 1999 Constitution (supra) and the Pensions Act...both talk of 60 years of age. That being the case, act of the Governor in disengaging the

⁸ Section 150 of the Constitution provides that a person shall not be qualified to hold or perform the functions of the office of the Attorney-General of the Federation unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for not less than ten years.

⁹ The Federal Government Public Service Rules (030301) defines misconduct as a specific act of wrongdoing or improper behaviour which is inimical to the image of the service and which can be investigated and proved.

¹⁰ Rule 020810

¹¹ [2004] 5 NWLR (Part 865) 175 (CA)

¹² In pari material with section 87 of the 1999 Constitution

¹³ At page 197 of the Report

appellant from service was not valid. The appellant cannot be lawfully removed from office as an Auditor-General of the State until he attains the age of sixty years. I have nothing to say other than the removal of the appellant was not justified.”

The implication of this decision is that it for the Auditor-General the overriding consideration is his physical age and not the number of years he has been a civil servant.

On the issue of compensation as a factor of independence, the office of the Auditor General for the Federation is included in section 84 (3) of the Constitution. Accordingly, his remuneration, salaries and allowances are prescribed by the National Assembly, although they are not expected to exceed the amounts determined by the Revenue Mobilization, Allocation and Fiscal Commission¹⁴. Again his emoluments constitute a charge on the Consolidated Revenue Fund of the Federation, and its quantum cannot be altered to his disadvantage after his appointment or during his tenure.¹⁵

However, the assurances offered the Auditor-General by the Constitution may guarantee his personal fidelity, but independence of his office as an entity comprising other individuals cannot *ipso facto* be said to have been guaranteed. This is because the Auditor-General does not personally carry out the auditing and investigation of the accounts and processes of the Ministries, Agencies and Departments (MDAs) of the Government. He acts through officers whose compensations and welfare are not guaranteed. This is why there has been persistent clamour for the establishment of a Federal Audit Service Commission. It is expected that such a Commission will satisfactorily handle matters relating to recruitment, welfare and discipline of staff of the Auditor-General. This is particularly important if the office of the Auditor-General is to assume and effectively play its role as an anti-corruption agency.

At the moment the office of the Auditor-General is only permitted by the Public Service Rules to engage the service of personnel not above Level 06; power to recruit senior officers is reserved for the Federal Civil Service Commission. The office is not in a position to attract and retain the right type of manpower because of funding challenges. Accordingly, it is suggested that the entire amount standing to the credit of the office of the Auditor-General of the Federation in the Consolidated Revenue of the Federation should constitute a first line charge which should be directly made available to it , like is the case with the Independent National Electoral Commission, the National Assembly and the National Judicial Council¹⁶.

A situation where the office of the Auditor-General depends on warrants and releases from the Federal Ministry of Finance and the Accountant General of the Federation does not augur well for the independence of the audit function, notwithstanding the provisions of Section 85 (6) of the Constitution that in 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.

Continuity

¹⁴ Section 84 (1) of the 1999 Constitution

¹⁵ Sections 84 (2) and (3) of the 1999 Constitution

¹⁶ See section 81 (3) of the 1999 Constitution

The Constitution gives the President the power to appoint persons to act in the office of the Auditor-General for the Federation but except with the sanction of a resolution of the Senate, no person shall function in an acting position for more than six months.¹⁷

Comprehensiveness of the mandate of the Auditor – General

The present regime imposes a constraint on the scope of the power of Auditor-General. Section 79 (2) of the 1979 Constitution was open-ended. It provided as follows:

*“The public accounts of the Federation and of all offices, courts and authorities of the Federation, including all persons and bodies established by law entrusted with the collection and administration of public moneys and assets, shall be audited and reported on by the Auditor-General; and for that purpose, the Auditor-General or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to those accounts.”*¹⁸

Section 85 (3) provides that 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.

Section 85(4) provides that the Auditor-General shall have power 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.

Corporations, commissions, authorities, agencies and bodies established by the legislation are loosely referred to as parastatals. A parastatal is defined as an executive body under a separate Accounting Officer and operates outside normal government operations¹⁹. In **Board of Management of F.M.C. Makurdi v. Abakume**,²⁰; the Court of Appeal accepted the definition of parastatal as an organization sponsored by the state, e.g., an authority. The Court also recognized the fact that parastatals are specifically created to enable them operate autonomously as part of a wider public service framework, but independent of civil service control.

Consistent with the provisions of the Constitution on the subject, the Federal Government Financial Regulations allows the Board of each Parastatal to appoint an external auditor who shall audit and report on the affairs of the organisation to the Board. The responsibility of the Auditor-General is to provide (a) list of external auditors qualified to be appointed by the

¹⁷ Section 86 (2)

¹⁸ Underlining supplied

¹⁹ Regulation 3201

²⁰ [2016] 10 NWLR (Part 1521) 536 at 567

Parastatals; (b) guidelines on the level of fees to be paid to external auditors. The Regulations provide that the statement of Accounts of parastatals for each financial year should be submitted to the External Auditor within two months after the end of the financial year²¹. The Regulations provide that within sixty (60) days from the receipt of the Accounts from the Accounting Officer, an external auditor is expected to submit the Audited Accounts and Management Report to the Board.

The Accounting Officer of a Parastatal is expected to 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. The Auditor-General then incorporates his comments on the Annual Accounts and Management Report of the Parastatals in his Annual Report to the Public Accounts Committee.

The extractive industry is made up parastatals which are outside the remit of the Auditor-General of the Federation. In addition to the work of their external auditors, the Nigerian Extractive Industries Transparency Initiative subjects accounts extractive companies /corporations to thorough scrutiny.

The Nigerian Extractive Industries Transparency Initiative Act: This legislation domesticates a global programme initiated by resource bearing nations to ensure openness, transparency and due process in financial relationships between extractive industries and their host governments. The international body which is known as the Extractive Industries Transparency Initiative (EITI) was established in June 2003 to achieve sustainable development and poverty reduction in resource-rich countries plagued by the phenomenon of ‘resource curse’.²² The Act provides for the establishment of a statutory body to be known as the Nigerian Extractive Industries Transparency Initiative (NEITI) whose main responsibility will be to develop a framework for transparency and accountability in reporting and disclosure by all extractive industry companies of revenues due and payable to the Federal Government. As conceived, NEITI is to be an autonomous, self-accounting agency whose objectives will include:

- a. Ensuring due process and transparency in revenue receipts from the extractive industry companies;
- b. Elimination of all forms of corrupt practices in determination, payment, receipts and posting of revenue accruing to government from the extractive industry;
- c. Monitoring and ensuring accountability in revenue received from the extractive industry companies;
- d. Ensuring transparency and accountability by government in the application of resources from payments received from the extractive industry companies;
- e. Ensuring conformity with the principles of the global extractive industries transparency initiative.

NEITI has the statutory mandate to, among other things, develop a framework for transparency and accountability in reporting and disclosure by all extractive industry companies of revenues due or paid to the Federal Government.²³

²¹ Regulation 3210 (2)

²² NETI Handbook, 2011, p.7

²³ Section 3 of NEITIA

The NEITI Act defines an extractive industry company to mean any company in Nigeria that is engaged in the business of prospecting, mining, and extracting. Processing, and distributing minerals and gas including oil, gold, coal, tin, bitumen, diamonds, precious stones, and such like; and include any agency or body responsible for payment of extractive industry proceeds to the Federal Government or its statutory recipients. A statutory recipient is defined as any entity to whom by law extractive industry companies or the government is obliged to make payments²⁴. The importance of the work of NEITI cannot be overstressed, given the proportion of revenues that flow from the extractive industry to the Federation Account. It has been noted that in simple terms the idea behind the NEITIA is to impose legal duties on: (i) the extractive industry companies to disclose what they are paying government; (ii) the government to declare what is receiving from the extractive industry companies (iii) and independent auditors to verify and reconcile the reported payments and receipts.²⁵

Timeliness of reports

As we have seen, the Constitution requires the Auditor – General to submit his Report to each House of the National Assembly within ninety days of receipt of the Accountant- General’s financial statement. The present regime is a remarkable improvement on the position under the 1979 Constitution which left it open-ended by not specifying any time- line. However, it falls short of the position under the Audit Act of 1956. The Act²⁶ provided that the Director of Federal Audit has eight months after the end of the financial year “or within such longer time as the House of Representatives may by resolution appoint” to transmit to the Minister of Finance copies of the accounts signed and presented by the Accountant – General together with his certificate of audit and a report upon his examination and audit of the accounts.

Under the 1999 Constitution time begins to run from the day the Auditor-General receives the Accountant- General’s financial statements; but under the 1956 Audit Act the time for submission of the auditor’s report to the Minister of Finance was fixed²⁷.

The Finance (Control and Management) Act: The provisions of the Constitution audit of public accounts of the Federation are supplemented by those of the Finance (Control and Management) Act, a legislation which came into force on the 31st day of July 1958²⁸. The Act contains elaborate provisions for control and management of the public finances of the Federation. It enjoins the Minister to supervise the expenditure and finances of the Federation as to ensure that a full account is made to the Legislature²⁹.

The Act provides that 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 Consolidate Revenue Fund and of other funds specified in the Act³⁰.

²⁴ Section 21 EITIA

²⁵ See the NEITI Handbook, p.14

²⁶ Section 14 (1)

²⁷ Although the House of Representatives could by Resolution extend the time

²⁸ It is deemed an existing law under section 316 of the 1999 Constitution

²⁹ Section 3

³⁰ Section 24

The Act does not stipulate the timeframe within which the Accounts are to be presented to the Auditor-General. This lacuna is understandable given that the Finance (Control and Management) Act was came into force in 1958 and as at that year the Audit Act of 1956 had already become operative. Section 13(1) of the Audit Act provided: “Within a period of seven months after the close of each financial year the Accountant – General of the Federation shall sign and present to the Director of the Federal Audit accounts showing the financial position of the Federation of Nigeria on the last day of such financial year...” There was, therefore, no need to repeat the same provision in the subsequent legislation.

The Fiscal Responsibility Act: The Fiscal Responsibility Act’s provisions regarding reporting and disclosure of budget implementation measures are apposite here. Section 48 of the Act provides:

- (1) The Federal Government shall ensure that its fiscal and financial affairs are conducted in a transparent manner and accordingly ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their implications for its finances.
- (2) The National Assembly shall ensure transparency during the preparation and discussion of the Medium Term Expenditure Framework, Annual Budget and the Appropriation Bill.

More germane to this dialogue is section 49 which provides:

- (1) The Federal Government shall *publish their audited accounts not later than six months following the end of the financial year.*
- (2) Federal Government shall, not later than two years following the commencement of this Act and thereafter, *not later than 7 months following the end of each financial year, consolidate and publish in the mass media, its audited accounts for the previous year.*
- (3) The publication of general standards for the consolidation of public accounts shall be the responsibility of the office of the Accountant-General of the Federation.

The Act also makes provisions for publication of summarized reports on budget execution. Section 50 provides that the Federal Government through its budget office shall *within 30 days after the end of each quarter*, publish a summarized report on budget execution in such form as may be prescribed by the Fiscal Responsibility Commission and *not later than 6 months after the end of the financial year*, a consolidated budget execution report showing implementation against physical and financial performance targets shall be published by the Minister of Finance for submission to the National Assembly.

Clearly, the timelines in section 49 (1) and (2) of the Fiscal Responsibility Act regulate publication and dissemination of audited accounts. In this context “audited account” would mean Accounts audited by the Auditor-General for the Federation. However, as at today the Auditor –General for the Federation is still working on the Audited Account for 2017. The Auditor-General’s Report for 2016 was recently submitted to the National Assembly and made public.

How the Auditor- General Executes its Mandate

It is true that the Constitution provides that while discharging his functions, the Auditor – General should be independent and free from the control and/or direction any other person or authority, yet he is not expected to fly by the seat of his pants or operate as the spirit moves him. The Audit Act of 1956 made detailed provisions for the work of the Director of Federal Audit (now known as the Auditor- General for the Federation). For instance, section 7(2) of the Act enjoined the satisfy himself that:

- All reasonable precautions were taken to safeguard the collection of public moneys and that the laws relating thereto have been duly observed and that all directions or instructions relating thereto had been obeyed.
- All money appropriated or otherwise disbursed had been expended for the purpose or purposes for which the grants made by the Legislature were intended to provide, and that the expenditure conforms to the authority which governs it.
- Adequate regulations exist for the guidance of store-keepers and stores accountants, and they have been duly observed.

Section 12 of the Act provided, inter alia, that in the exercise of his duties, the Director of Federal Audit had the power to:

- Examine upon oath, declaration or affirmation (“which oath, declaration or affirmation the Director of Federal Audit is hereby empowered to administer”) all persons whom he may think fit to examine respecting the receipt or expenditure of money or the receipt or issue of any stores affected by the provisions and respecting all other matters and things necessary for the due performance and exercise of the duties and powers vested in him.
- Any person examined by the Director of Federal Audit who gives a false answer to any question put to him or makes a false statement on any matter not knowing or believing it to be true shall be deemed guilty of perjury and shall be liable to be prosecuted and punished for accordingly.

In the absence of the Audit Act, the office of the AuGF relies on rules and regulations developed both internationally³¹ and locally to serve as guides and standards in the discharge of its functions. Indeed, the Federal Government Financial Regulations has come in to largely fill the gap.

The Federal Government Financial Regulations: The Regulations recognize the Auditor – General for the Federation as the officer of government responsible under the Constitution for the audit and report on the public accounts of the Federation including all persons and bodies established by law who are entrusted with the collection, receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other property of the Government of the Federation³². The Auditor-General is empowered to examine and ascertain in such manner as

³¹ Nigeria belongs to the International Organisations of Supreme Audit Institutions (INTOSAI)

³² Regulation 103

he may deem fit the accounts relating to public funds and property and shall ascertain whether in his opinion³³:

- (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) Essential records are maintained and the rules and procedures applied are sufficient to safeguard and control public property and funds.

Under Regulation 105, the Auditor- General is required to carry out the following:

- (a) Financial Audit in accordance with the laws in order to determine whether the 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 storekeeping with a view to preventing waste, pilferage and extravagance; and
- (d) Value-for-Money (Performance) Audit to ascertain the level of economy, efficiency and effectiveness derived from Government Projects and Programmes.

Under the Financial Regulations the work-scope of Auditor-General includes:

- (a) Audit of books, accounts and records of Federal Ministries and Extra- Ministerial Offices and other Arms of the 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.
- (g) Pre and Post auditing of 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.
- (i) Revenue Audit of all Government institutions.

³³ Ibid

The Regulations also provide that the Auditor – General shall have free access to Books, Accounts and Information at all reasonable times, to all files, safes, documents, books and other records relating to the accounts of all Federal Ministries/ Extra – Ministerial Offices and other Arms of Government or Units. The Auditor- General and his staff are entitled to require and receive from members of the Public Service such information, reports and explanations as they may deem necessary for proper performance of their functions.³⁴

Any Accounting officer or Public Officer who fails to give satisfactory explanations to the Auditor General’s queries within the stipulated time is liable to appropriate sanctions³⁵. Any Public Officer, on receipt of a query from the Auditor-General for a poor quality work carried out by a contractor has 42 days to get the contractor to rectify the abnormalities or he would be liable to refund the amount over paid to the contractor as a result of the poor job. If the query remains unanswered after the time limit, the Officer(s) that satisfied the job for payment shall be demoted in rank while the contractor would be blacklisted and reported to the Economic and Financial Crimes Commission for prosecution³⁶.

Where a storekeeper or an Officer –in-charge of store fails to answer a query from the Auditor General on a shortage or loss of stores within 14 days of issue , such Officer (s) shall not only be surcharged the total cost of the loss or shortage , but also be removed from the schedule³⁷.

A public officer who authorizes the payment of public fund to ghost –workers and knowingly processes such payment , shall be charged for gross misconduct , removed from the schedule and reported to the Economic and Financial Crimes Commission for prosecution³⁸. A public officer who fails to respond to the Auditor-General’s query satisfactorily within 21 days for failure to collect Government Revenue due shall be surcharged and be transferred to another schedule³⁹. 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(s) shall be handed over to the Economic and Financial Crimes Commission⁴⁰.

The Financial Regulations were made by the President but it is not clear whether they were made pursuant to any principal legislation. The Regulation appears to be a stand-alone policy document without statutory flavour. Public policies are statements outlining a course of action that would be taken to achieve certain objectives. Put simply they are statements of decisions taken by public bodies as to what they intend to do, what they are doing, what they are not going to do or what they would never do. Public policies may consist of a body of rules and regulations guiding conduct in a particular activity or problem area. They are critical decisions because they determine and guide the course of action usually taken by the governments in resolving social problems⁴¹.

³⁴ Regulation 105

³⁵ Regulation 3101

³⁶ Regulation 3105

³⁷ Regulation 3107

³⁸ Regulation 3110

³⁹ Regulation 3112 (1)

⁴⁰ Regulation 3112(2)

⁴¹ A.O. Ikelegbe. Public Policy Making and Analysis, Uri Publishing Ltd, Benin,1996,p.4

The general perception is that policies are inferior to laws; because while the courts enforce the later, the former serves as non-binding guide to decision making. It has been noted that anyone writing on ‘law and policies’ in a common law jurisdiction is immediately on the horns of a dilemma. He is confronted at the outset with two difficulties (i) the details of policies are not comprehensively set out in any single document; and (ii) common law Judges have always expressed unconcern with policy in guiding the exercise of judicial powers or interpretation of statutes⁴². The attitude of most Judges is that public policy is an unruly horse and that questions of policy are not matters for the legal tribunal because common law courts are courts of law, not policy; and justice must be according to law, not according to public policy. “The assumption is that there is a dichotomy between law and policy, rather than that law is the handmaiden of policy. However, at a closer study of individual cases it is apparent that judges, whilst expressing a lack of concern with policies, invariably, in their decisions support one or other of possible competing policies.”⁴³

Effectiveness

“Effectiveness” speaks to the issue of whether the right thing is being done, it complements “efficiency” which is about doing things right. In order to determine the effectiveness of the present regime it is important to understand the *raison d’être* of having the office of the Auditor – General of the Federation. His role is to oversee the ex-post activities of fiscal and value for money auditing. The role of fiscal auditing involves making sure that funds have been expended in accordance with the annual budget or Appropriation Act and the accounts showing the expenditures were properly prepared in line with extant rules. On the other hand, value for money audit tends to extend the scope of the public audit to assessment or determination of whether departments and agencies manage their operations efficiently and whether their the programmes are effective having regard to their objectives and missions.⁴⁴

The office of the Auditor-General has not been very effective with respect to its traditional role of conducting fiscal audit of public accounts, not to talk of the added responsibility of undertaking value for money audit. Clearly, the audit function is not an end in itself. It is rather a means to an end. The office of the Auditor-General is expected to act as a hub or clearing house for information and feedback on budget implementation. Its annual report to the legislature is supposed to inform investigations by the National Assembly. Section 88 of the Constitution gives the National Assembly the power to direct or cause to be directed, *inter alia*, into: (a) the conduct of affairs of any person, authority, Ministry or government department charged, or intended to be charged, with the duty or responsibility for disbursing moneys appropriated or to be appropriated by the National Assembly; and (b) exposing corruption,

⁴² R.W. James, *Nigerian Land Use Act: Policy and Principles*, University of Ife Press Ltd, Ile-Ife, 1987, p.2

⁴³ See the views of Eso, J.S.C., in *Sonnar (Nigeria) Ltd v. Nordwind* [1987] 4 NWLR (Part 66) 522 and 523; and Ngwuta, J.C.A. (as he then was) in *Edet v. Chagoon* [2008] 2 NWLR (Part 1070) 85 at 104-105. But in *Onwuchekwa v. N.D.I.C*⁴³ the Supreme Court of Nigeria, per Ayoola, J.S.C., came out openly to express the view that the court is not precluded from weighing competing aspects of public policy and after so doing deciding which one should be overriding public policy in each particular case. The implication of this pronouncement, in our view, is that where a particular public policy is not competing with another, it should be applied as then the issue of trying to balance it against its rival would not arise.

⁴⁴ I.E. Johnson: *Public Sector Accounting & Financial Control*, 3rd Edition., p.75

inefficiency or waste in the execution or administration of laws and disbursement or administration of funds appropriated by the National Assembly. The Public Accounts Committees of the National Assembly play pivotal roles in this regard.

Transparency and accountability

The Auditor-General of the Federation plays a significant role in ensuring transparency and accountability. It has been noted that if men were angels, no government would be necessary and if angels were to govern men, neither external or internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty, it has been observed, lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself⁴⁵. Again it has also been observed that in politics as in government, first comes power and then comes the need to control it. The concept of accountability together with the institutions through which the concept is articulated and implemented, is perhaps the single most important factor that controls holders of political and public administrative power.⁴⁶ There is a distinction to be made between the accountability imposed on government by its citizens, and the accountability that a government imposes on itself through the creation of public institutions whose mandate is precisely to act as a restraint on government. This distinction is referred to by some theorists as vertical accountability (to citizens directly) versus horizontal accountability (to public institutions of accountability). Vertical accountability includes citizens acting directly through the electoral process or indirectly through civic organisations (civil society) or the news media. Horizontal accountability which covers the range of public entities that check abuses by the executive branch of government may be initiated and pursued by the legislature, the judiciary, electoral commissions and tribunals, auditing agencies, anticorruption bodies, ombudsmen, human rights commissions, and central banks.⁴⁷

It has been noted that a Supreme Audit Institution (SAI) such as the office of the Auditor-General for the Federation fulfils the independent and technical public sector external audit function that is typically established within a country's constitution or by the supreme law-making body. "An SAI is responsible for overseeing and holding government to account for its use of public resources, together with the legislature and other oversight bodies."⁴⁸

Protection

Under the present legal regime there is no protection for the Auditor-General for the Federation and his staff both in terms of civil liability for acts or omissions committed in course of performance of their duties and criminal prosecution for whistleblowing⁴⁹. It could be argued that until published the accounts transmitted to the Auditor-General as well as his working papers are classified documents. The Official Secrets Act⁵⁰ provides that any person who transmits classified matter to a person to whom he is not authorized on behalf of the government to transmit; or obtains, reproduces, or retains any classified matter which he is not authorized on behalf of the government to obtain, reproduce or retain, as the case may be,

⁴⁵ The Federalist, No.51, in Rossiter 1961

⁴⁶⁴⁶ Mark Schacter: A Framework for Evaluating Institutions of Accountability, in Public Sector Governance and Accountability Series- Fiscal Management, edited by Anwar Shar, the World Bank, 2005

⁴⁷ Ibid

⁴⁸ OECD (2011)

⁴⁹ Public Officers enjoy limited immunity under the Public Officers Protection Act

⁵⁰ Section 1

is guilty of an offence; it is also an crime to for a public officer to fail to comply with any instruction given to him regarding the safeguarding of classified matters.

However, such a public officer may escape liability if he made the disclosure in good faith. He will also not be liable to criminal or civil sanction if he demonstrates that the information disclosed shows violation of any law, rule or regulation; or mismanagement , gross waste of funds, fraud and abuse of authority.⁵¹

It is proposed in the Federal Audit Services Commission Bill that all documents presented by the Auditor-General should be deemed to be National Assembly reports and documents and should be “accorded the same rights and privileges enjoyed by the reports and other documents emanating from the National Assembly by the Legislative Houses (Powers and Privileges) Act”. This provision appears to be unnecessary in view of the position of the law that such communications are privileged at common law⁵².

Control and oversight of the Auditor-General

Who audits the Auditor-General’s office? Going by the provisions of section 85 (2) of the 1999 Constitution, the mandate of the Auditor-General is audit the public accounts of the Federation and all the offices and courts of the Federation. Accounts of the office of the Auditor –General for the Federation falls clearly falls within the said constitutional mandate, more so as it is not expressly excluded. Nevertheless, it is strongly recommended that the Accounts and affairs of the office of the Auditor-General be subjected to thorough audit by an independent auditor. Section (1) of the Audit Act of Grenada provides: “each year an auditor entitled by law to practice in Grenada who is appointed by the Minister after consultation with the Public Accounts Committee, and with the approval by resolution of the House of Representatives, shall examine and audit the accounts of the Audit Department and shall prepare a report on his or her finding”. In the Federal Audit Service Commission Bill, it is proposed that the independent auditor should be appointed by the National Assembly and that the Auditor – General should submit his Accounts to the independent auditor within three months after the end of the financial year.

3.0. Conclusion

Governments, like individuals and corporate entities, have to earn and spend money. However, governments, unlike individuals and corporate entities, are constrained by laws and regulations to go about earning and spending money in planned and structured ways. The key instrument for ensuring that government expenditure proceeds in a planned and structured manner in the short term is the budget. Without the feedback loop represented by monitoring and evaluation as well as a thoroughgoing and methodical audit, the budget becomes a mere shopping list which annually give politicians cover to divert taxpayers’ monies to their private pockets through bogus public procurement contracts and constituency projects.

⁵¹ See section 27 of the Freedom of Information Act

⁵² Chatterson v. Secretary of State for India [1895] 2 Q.B. 189; Szalatnay – Stacho v. Fink [1946] 1 All E.R. 303; and Neville v. Fine Art and General Insurance Co. [1897] 68

As we have seen the present legal regime underpinned by the Constitution is weak; little wonder that the office of the Auditor- General of the Federation as an institution of accountability is also weak. There is an urgent need to hive off the office the Auditor – General for the Federation from the mainstream of the civil service and make it an independent agency capable of discharging its timely feedback function and playing its contemporary anti-corruption role.

It is hoped that the proposed legislation will take care of some of identified lapses in the existing legal framework.

Thank you.

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