

Addressing Challenges of Supreme Audit Institutions: The Case of the Office of the Auditor-General in Ghana

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Abstract

The International Organisation of Supreme Audit Institution (INTOSAI) places key emphasis on the independence of Supreme Audit Institutions (SAIs). These are spelt out in the 1977 Lima Declaration of Guidelines on Auditing Precepts and the 2007 Mexico Declaration on SAI Independence. SAIs, however, cannot be totally independent because they are part of the state as a whole. Nonetheless, SAIs can accomplish their tasks objectively and effectively, if they are independent of the audited entity and are protected against external interference.

This study sought to examine the challenges facing the office of the Auditor-General (A-G) in executing its oversight responsibility of promoting financial accountability in Ghana. The research methodology applied to the study was qualitative. Secondary sources of information for this study was gathered through literature review, whereas interview guides structured on thematic basis were used to gather primary data. The study revealed the A-G lacks total independence to perform his functions as provided in the 1992 Constitution of Ghana and other Public Financial Management (PFM) Acts. This is due to the executive wielding so much power that impacts negatively on the functions and performance of the office of the Auditor-General.

Keywords: Public Financial Accountability, Public Financial Management, Oversight Role

1.0 Introduction

Supreme Audit Institutions are national agencies responsible for auditing government revenue and spending. Their legal mandates, reporting relationships, and effectiveness vary, reflecting different governance systems and government policies (Stapenhurst, 2001). However, their primary purpose is to oversee the management of public funds and the quality and credibility of governments' reported financial data.

The independence of SAIs must be laid down in the constitution or legislation of the given state, and is of primary importance for guaranteeing the transparency and integrity of public sector administration, thereby strengthening trust in public institutions. Auditors must carry out the audits impartially and perform their tasks in full compliance with the relevant legislative, professional and ethical rules.

In Ghana, key constitutional-legal framework that guides the office of the A-G in ensuring Public Financial Accountability (PFA) are enshrined in the 1992 Republican Constitution of Ghana, under Article 184 that deals with Foreign Exchange; Article 187, the Auditor-General; Article 188, The Audit Service; Article 189, The Audit Service Board; Article 253, District Assemblies Audit and Articles 286, Declaration of Assets and Liabilities by Public Officers. Other Acts have been passed to support the office of the A-G in discharging its PFA duties. They include the Public Office Holders Declaration of Assets and Disqualification Act, 1998 (Act 550), Audit Service Act, 2000 (Act 584), Internal Audit Agency Act, 2003 (Act 658), Financial Administration Act, 2003 (Act 654) and the Financial Administration Regulations, 2004 L.I. 1802. The Financial Administration Act and Financial Administration Regulations

have been repealed and consolidated into the Public Financial Management Act, 2016 (Act 921). Notwithstanding the numerous constitutional-legal powers backing the office of the A-G, it is still bedeviled with challenges that prevents it from discharging its mandate of promoting financial accountability. In light of the above, this study makes enquiries into the challenges facing the office of the A-G and recommends possible solutions to the challenges that have been identified.

2.0 Functions of the Auditor-General

The A-G performs several key functions. The first major function has to do with the audit of Public Accounts as spelt out in the 1992 Constitution. Article 187 Clause 2 provides that the public accounts of Ghana and of all public offices, including the courts, the central and local government administrations, of the universities and public institutions of like nature, of any public corporation or other body or organisation established by an Act of parliament shall be audited and reported on by the Auditor-General. Moreover, section 16 of the Audit Service Act, 2000 (Act 584) states that “the Auditor-General may in addition to the audit of public accounts, carry out in the public interest such special audits or reviews as he considers necessary and shall submit reports on the audits or review undertaken by him to Parliament”. Notwithstanding the responsibilities stated above, Section 14 (2) of the Audit Service Act, 2000 (Act 584) further states that the Auditor-General or any person appointed by the Auditor-General to audit the accounts of statutory corporations, shall in addition to the audit report draw attention to the following; the profitability, liquidity, stability and solvency of the corporation and also the performance of the shares of the corporation on the capital markets, where relevant. Additionally, to ascertain whether there have been delays in the payment of government’s portion of any declared dividend, if any, into the Consolidated Fund; to identify any significant cases of fraud or losses and their underlying causes; any internal control weakness noted; and the general corporate performance indicating achievement against set targets and objectives; and whether the finances of the state have been conducted with due regard to economy, efficiency and effectiveness having regard to the resources utilized.

Secondly, the Auditor-General is responsible for the approval of form in which public accounts of Ghana shall be kept. Article 187, Clause 4, of the 1992 Constitution demands that; the public accounts of Ghana and of all other persons or authorities shall be kept in such form as the Auditor-General shall approve. This clause has been expanded in the Audit Service Act 2000 (Act 584) Section 11(3) to include computerised financial and accounting systems and electronic transactions, which shall be kept in such form as the Auditor-General shall approve and shall be subject to review by the Auditor-General.

The third significant responsibility of the A-G is the submission of the A-G’s Report to Parliament. Article 187, Clause 5, of the 1992 Constitution of Ghana provides that the A-G shall, within six months after the end of the immediately preceding financial year, submit his report to Parliament and shall, in that report, draw attention to any irregularities in the accounts audited and to any other matter which in his opinion ought to be brought to the notice of Parliament. Article 187 further states that, the A-G in his report to Parliament on the public accounts shall draw attention to any case in which he has observed that an officer or employee of Government has wilfully or negligently omitted to collect or receive any public money due to the Government; any public money that was not duly accounted for and paid into the Consolidated Fund or designated public account; an appropriation that was exceeded or applied

for a purpose or in a manner not authorised by law; an expenditure not authorised or properly vouched for or certified; a deficiency through fraud, default or mistake of any person; inefficient or ineffective application of internal control and management measures; the use or custody of property, money, stamps, securities, equipment, stores, trust money, trust property or other assets occurred in a manner detrimental to the state; resources not being used with due regard to economy, efficiency and effectiveness in relation to the results attained. In the public interest, such issues should be brought to the notice of Parliament.

The fourth crucial duty of the A-G relates to Disallowance and Surcharge. Article 187 Clause 7(b) of the 1992 Constitution states that in the performance of his functions, the A-G may disallow any item of expenditure, which is contrary to law and surcharge. According to Section 17 (1) of the Audit Service Act, 2000 (Act 584) the Auditor-General shall specify to the appropriate head of department or institution the amount due from any person upon whom he has made a surcharge or disallowance and the reasons for the surcharge or disallowance.

The fifth duty of the A-G is the Custody of Assets Declaration Forms by Public Office Holders. Article 286(1) states: “A person who holds a public office shall submit to the Auditor-General a written declaration of all property or assets owned by, or liabilities owed by, him whether directly or indirectly, within three months after the coming into force of this Constitution or before taking office, as the case may be; at the end of every four years; and at the end of his term of office”.

The sixth responsibility of the A-G is the receipt of Internal Auditors Reports. Section 11, subsection 4 of the Audit Service Act, 2000 (Act 584) requires that an internal auditor of an organisation or body shall submit a copy of each report issued as a result of internal audit work carried out to the A-G.

Seven, the A-G is also responsible for authorising the approval of all financial and accounting systems. All financial and accounting systems in respect of the accounts provided under shall be subject to prior approval of the A-G and shall be subject to prior approval before implementation.

The eighth responsibility of the A-G is the auditing of foreign exchange transactions. This function is spelt out in the Audit Service Act, 2000 (Act 584), Section 12 (1) states, The Bank of Ghana shall, not later than three months; (a) after the end of the first six months of its financial year; and (b) after the end of its financial year, submit to the A-G for audit, a statement of its foreign exchange receipts and payments or transfers in and outside Ghana. Moreover, the Audit Service Act, 2000 (Act 584), Section 12 (2), states that the A-G shall, not later than three months after the submission of the statement, submit his report to Parliament on the statement.

The ninth function entrusted to the A-G is the examination of government accounts. The Audit Service Act, 2000 (Act 584), Section 13, provides that the A-G shall examine in such manner as he thinks necessary the public and other government accounts and shall ascertain whether in his opinion; a) the accounts have been properly kept; b) all public monies have been fully accounted for, and rules and procedures applicable are sufficient to ensure an effective check on the assessment, collection and proper allocation of the revenue; c) monies have been expended for the purposes for which they were appropriated and the expenditures have been made as authorised; d) essential records are maintained and the rules and procedures applied are sufficient to safeguard and control public property; and e) Programmes and activities have been

undertaken with due regard to economy, efficiency and effectiveness in relation to the resources utilised and results achieved.

Finally, the A-G is also responsible for the certification of Controller and Accountant-General's report on public accounts. According to Section 15 of the Audit Service Act, 2000 (Act 584), the A-G shall, upon receipt of annual statement of public accounts required, under sections 40 and 41 of the Financial Administration Decree, 1979, to be made by the Controller and Accountant-General, examine the statement and certify whether in his opinion the statements present fairly financial information on the accounts in accordance with accounting policies of the Government and consistent with statements of the preceding year in accordance with best international practices, and may state such reservation or comment that he considers necessary. The rationale behind the discussion of the A-G's functions is to find out the extent to which the A-G has applied such responsibilities effectively to ensure public financial accountability in Ghana.

3.0 Assessment of the challenges

First, Article 70(1) (b) of the 1992 Constitution of Ghana places emphasis on the appointment of the A-G. Inter alia, it states that the President shall, acting in consultation with the Council of State appoint the Auditor-General. However, the Council of State members that the President consults in the appointment process are nominated by the president, and are part and parcel of the Executive arm of Government. This implies that the A-G who is responsible for the independent audit of state's account is appointed by the President in the same way as Ministers of State are appointed. In an interview with the former A-G, he revealed that such practices influence their ability to perform independently. There seems to be a lacuna in the 1992 Constitution, since best practices require the independence of the auditor from the audited entity.

Second, Article 71(1) (c) of the 1992 Constitution delves into the emoluments of the A-G. It states, the salaries and allowances payable, and the facilities and privileges available to the Auditor-General being expenditure charged on the Consolidated Fund, shall be determined by the President on the recommendation of a Committee of not more than five persons appointed by the President, acting in accordance with the advice of the Council of State. However, in an interview with an officer of the Audit Service, it came to light that the current provision on the emoluments of the A-G was contrary to the provision of the 1954 Constitution of Ghana. The 1954 Constitution vested the A-G's remunerations in the hands of Parliament. Thus the determination of the remunerations of the A-G by the Executive as spelt out in the 1992 Constitution could affect negatively the objectivity of the A-G who may be tempted to work at the pleasure of the President in order to secure his emoluments. Thus, apart from the Executive determining its emolument and by implication compromising its independence, making the Auditor-General a public officer as per Article 187 (1) of the 1992 Constitution subject it to further manipulation by the appointing authority.

Moreover, the office of the A-G has occasionally witnessed some form of interference from the executive in terms of its budget. For instance, the Audit Service Board is required to submit to the President the financial estimates of the Service. The President then lays the estimates before Parliament without revision, but with any recommendations that the President may deem necessary. However, the Ministry of Finance (MOF) interferes by exerting considerable amount of influence on the process, leading to significant unconstitutional revision by the President. In

addition to the above constraint is the problem of release of approved budget funds and payments to the A-G. After Parliamentary approval of the budget appropriation of the A-G, the Ministry of Finance releases funds to the Controller and Accountant-General to be paid to the A-G. The release of funds is often delayed and this hinders efficiency and effectiveness of the A-G. Thus apart from the budget cuts, the erratic payment patterns, as to when the funds are received also affect the A-G's independence

Third, the A-G faces a major challenge of obtaining "financial clearance" before employing a new staff of the Ghana Audit Service (GAS). The Audit Service Act, 2000 (Act 584), Section 4 (1) (a) provides that the Audit Service "Board shall determine the structure and technical expertise required for the efficient performance of the functions of the Ghana Audit Service." Notwithstanding this provision, the Ministry of Finance insists that the GAS obtain "financial clearance" from the ministry before employing the needed staff to the Service. Moreover, the Ministry of Finance further insists that in the absence of "financial clearance", the GAS could only replace a separated staff with another of the same or similar status. For instance, a messenger could only be replaced with a messenger, while a director can only replace a director.

Fourth, Article 187(1) of the 1992 Constitution reads, there shall be an Auditor-General whose office shall be a public office. This statement implies that the position of A-G is considered as a post in the Public Services of Ghana, one of the divisions of public office as broadly defined under Article 295 of the Constitution. However, the constitutional mandate of the Auditor-General goes beyond the public services of Ghana to cover all 'public offices' such as the Ghana Armed Forces and the Bank of Ghana. In line with modern practices, the Office of the A-G should stand alone as part of the public offices of Ghana to safeguard its independence from the Public Services.

Fifth, Article 187 (2) of the 1992 Republican Constitution of Ghana states that the public accounts of Ghana and of all public offices, including the courts, the central and local government administrations, of the Universities and public institutions of like nature, of any public corporation or other body or organisation established by an Act of Parliament shall be audited and reported on by the Auditor-General. Based on this enormous mandate, there are enough evidence to suggest that the Ghana Audit Service (GAS) is understaffed. The need to attain sufficient numbers of competent staff and qualified human resources, working under a conducive environment, characterizes the quest for effective control systems to enhance Public Financial Accountability. In an interview with an official of the GAS, he lamented that "out of the two hundred and thirty six districts in Ghana, GAS has only sixty eight district offices countrywide". This implies that GAS has offices in only 28% out of the total number of districts in Ghana. The effect is that most of the accounts of the Ministries, Departments and Agencies (MDAs) are not audited within the required stipulated time. Additionally, the under-staffed officials are unable to prepare financial reports on schedule, as well as to effectively identify the misappropriation of resources and breach of financial regulations.

Sixth, Article 187 (5) of the Constitution states that the A-G shall, within six months after the end of the immediately preceding financial year, submit his report to Parliament and shall, in the report, draw attention to any irregularities in the accounts audited and to any other matter which in his opinion ought to be brought to the notice of Parliament. Generally, the accounts of all public offices are required by law to be presented to the A-G three months after the end of the

financial year. This gives the A-G only three months to conduct the audit of all the accounts, clear issues with their clients and present the report to Parliament. In an interview with an official of the Audit Service, he expressed concern that the rush to meet such deadlines tends to compromise quality control and assurance reviews of the audit reports.

Seventh, Article 187(15) of the 1992 Constitution of Ghana states that the accounts of the Office of the Auditor-General shall be audited and reported upon by an auditor appointed by Parliament. However, a member of the Public Accounts Committee (PAC) of Parliament in an interview revealed that their role is limited to financial auditing. Advancing on this, he was of the view that there is an urgent need for Parliament to extend their mandate to other forms of audit and reviews on performance, structure and operations of the Audit Service.

Eighth, Article 187 (7) clearly stipulates that: “in the performance of his functions under this Constitution or any other law the A-G may disallow any item of expenditure which is contrary to law and surcharge: (i) The amount of any expenditure disallowed upon the person responsible for incurring or authorising the expenditure; or (ii) 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 (iii) The amount of any loss or deficiency, upon any person by whose negligence or misconduct the loss or deficiency has been incurred.” Unfortunately, this mandate given to the A-G has seldom been applied since the advent of the Fourth Republic in 1993. For the first time in the history of the country, the current Auditor-General, Mr. Daniel Yaw Domelevo with determination and hard work successfully applied the surcharge clause. Perhaps, the non-application of this clause in the past tends to account for the impunity with which public funds were embezzled by public officials.

Finally, Article 286 (1) of the Constitution declares that a person who holds a public office shall submit to the A-G a written declaration of all property or assets owned by, or liabilities owed by him, whether directly or indirectly; within three months after the coming into force of this Constitution or before taking office, as the case may be; the end of every four years; and at the end of his term of office. The present provision in the constitution with regards to Assets Declaration as stated in Articles 286 to 287 have been hard to carry out arising out of ambiguities on these provisions. Furthermore, Article 286 (1) requires a public officer to submit a written declaration of all property or assets owned by, or liabilities owed by, him whether directly or indirectly to the A-G within a specified period. Article 286 (4) of the 1992 Constitution of Ghana, however, states that after the initial declaration, any property or assets acquired by an officer which is not reasonably attributable to income, gift, loan or inheritance shall be deemed to have been acquired in contravention of the Constitution.

There is thus an implicit obligation on the A-G to use Article 297(c) of the Constitution to compare the subsequent declaration against the initial declaration presented to him by a public official and to refer inexplicable inconsistencies to the Commission on Human Rights and Administrative Justice (CHRAJ) for further actions. This interpretation has been challenged by some Members of Parliament (MPs). Therefore, clear requirements are needed to give understanding on the roles that are expected of the A-G and all public officials with regards to the declaration of assets as enshrined in the Constitution.

4.0 Recommendations

The independence of the A-G should always be linked to the freedom given to an audit body and its auditors to act in line with the audit powers conferred on them without interference. The 1992 Republican Constitution of Ghana clearly spells out the independence of the A-G with regards to their appointment, removal and determination of emoluments. The contentious issue with regards to appointment is that, though the A-G enjoys a secured tenure of office, the President may appoint a person in acting position for any period of time. A long stay in acting position as A-G could compromise one's independence, as the confirmation to a substantive position is dependent on a perception of being loyal to and at the discretion of the President. This study recommends that no A-G should serve in an acting position for more than six months. For instance, from 2006-2009, the then Auditor-General Mr. Richard Quartei Quartey acted as the A-G for three years. Such long periods in acting position is inimical to the independence of the office of the A-G.

Secondly, the A-G enjoys a secured tenure of office. The 1992 Constitution states that the Auditor-General shall not be removed except for stated misbehaviour such as incompetence, infirmity of the body or mind (Article 146, Act 584 s. 10(8)). However, there have been attempts to investigate the A-G that could subsequently lead to his dismissal. The A-G, Daniel Yao Domelevo has in a letter to the Economic and Organised Crime Office (EOCO), said that he will no longer cooperate in the investigations into alleged procurement breaches at his office. The study recommends that the tenure of office of the A-G should not be politicized, leading to wrongful dismissal of the Auditor-General. Moreover, the study proposes the involvement of Parliament in the appointment of the A-G. In this direction, the President should act in consultation with members of the Council of State and also on Parliament's recommendations appoint the A-G. The appointment of the A-G should thus be on merit, and not on patronage basis. The position of the AG should only be for serving public officials. Such a personality should have continuously served as a public official for a minimum period of twenty-five years, while holding a top managerial position for at least five years.

Thirdly, the study recommends the non-interference by the Ministry of Finance (MOF) in the organization's budget in order to ensure that the Audit Service achieves its core objective of promoting good governance, transparency and accountability.

Fourthly, under article 71(1) of the 1992 Constitution, the salaries and allowances payable, and the facilities, and privileges available to the A-G, shall be determined by the President on the recommendation of a committee of not more than five persons appointed by the President, acting in accordance with the advice of the Council of State. Under the Audit Service Decree (NRCD 49) of 1972, the Auditor-General and Supreme Court Judge were placed on the same salary structure. However, since the inception of the 1992 Constitution, the emoluments of the A-G have been downgraded to that of an Appeal Court Judge. The independence of the A-G could have been strengthened if the 1992 Constitution had picked from the 1954 Constitution and left the determination of the A-G's emolument in the hands of Parliament. Even though the 1954 Constitution is a colonial relic, the adoption of the relevant provision regarding which authority determines its emolument could have cured the inherent mischief in the emolument being determined by the President. The study thus recommends the reinstatement of the Audit Service Decree since the emolument and funding for the GAS has been woefully inadequate to a large extent. Thus, the study proposes the attachment of the emoluments of the A-G to that of

Supreme Court judges, as being practiced in Canada and South Africa. The current practices whereby the salary and allowances of the A-G have been downgraded to those of an Appeal Court Judge should be reviewed.

Lastly, in connection with Articles 286 and 287 on Assets Declaration, the study recommends this function should be given to another independent accountability institution such as the CHRAJ, because the A-G's office, is already overburdened with a chunk of work load.

5.0 Conclusion

Supreme Audit Institutions (SAIs), can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence (INTOSAI, 1998). This study provided a critical analysis of the oversight role of the office of the Auditor-General in ensuring sound public financial accountability in Ghana. The results of the study revealed that to a large extent the office of the A-G has played a crucial role in promoting financial accountability to the state. However, there are many challenges threatening the work of the office of the Auditor General. Some challenges facing the office of the A-G includes the mode of appointment, emolument, staff strength, retention of staff, workload, political interference and the need for legislative reviews to promote the work of the A-G. The action suggested includes the need for the allocation of more resources for the office of the Auditor-General and non-interference in the work of the A-G by the executive arm of government. This study concludes that, the office of the Auditor-General lacks total independence to perform his functions as provided in the 1992 Constitution of Ghana and other Public Financial Management Acts. This is due to the executive wielding so much power that impacts negatively on the functions and performance of the office of the Auditor-General.

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