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Auditing and Corruption in Nigeria: A Review of the Legal Weight of the Audit Act of 1956

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Abstract
This paper proceeds on the proposition that the Nigerian Audit Act of 1956, which is the only extant statutory provisions for auditing and reporting on Federal Government financial transactions is weightless both in arresting corruption and in the prevention of wastes in the use of public financial resources. The paper argues that the Act is not punitive enough to discourage official corruption and that with increasing sophistry with which corrupt acts are perpetrated in government, it is completely bereft of the legal teeth to bite and make appropriable impact on the public desire to promote transparency and accountability. The paper analyses the important provisions of the Act and suggests what is considers remedial provisions that should be inserted in the Act by way of an amendment to make it better positioned to be used as an instrument for curbing corruption and wastes in the public sector.

Introduction

A plethora of works exist on the subject of corruption in Nigeria and the failure of public officials to observe the basic rules of accountability (Brownsberger, 1983, Ijewere, 1999, Lawal, 2006, Odekunle, 1983, Omolehinwa, 2001). But the place and role of the Audit Act (LFN, 1990: CAP 17), which is the only law on the policing of the budgetary processes and the reporting on government financial activities to parliament, appears to have escaped the attention of scholars. It is only very recently that a consideration of the law on public financial auditing in comparison to its Ghanaian equivalent was analysed from a purely legal perspective (Ogunyemi, 2011:31-54). It has become very important therefore that the place of the Nigerian Audit Act of 1956 be examined in the light of current complaints on the lack of appropriate actions by the judiciary and the legislature to deal with corruption in government This present study attempts to do this first, by analysing the important provisions of the Act and second by identifying both the obsolete and inadequate provision or lack of it, against corrupt acts. The study concludes by suggesting amendments to the Act especially in the face of current accountability challenges in the country.

Conceptual clarification

To audit is to examine and make pronouncements on the quality, suitability or truism of a thing. In that sense, there can be a financial audit, programme or project audit or even an audit of power, authority and the competence of a person to do a thing. Financial auditing, the subject matter of this paper is a process of examining, inquiring into, monitoring and reporting on the use of public funds to determine the extent to which public officials have conformed with extant rules and procedures on those uses (Audit Act, 1956: section 7, Oshisami, 1992). Public financial auditing lies at the core of public accountability. It is the fulcrum of transparency in the use of resources and the minimum irreducible condition for responsible governance. It involves the examination of books of account, records of transactions such as contract papers, vouchers and receipts of government. By law, in Nigeria, the Accountant-General of the Federation must transmit to the Auditor-General for the Federation financial transcripts at the end of every fiscal year (Audit Act, 1956: section 13(1)). The latter is expected to scrutinise and report on this to the National Assembly. This form of auditing is called “Treasury Accounts Audit”.

However, the Auditor-General also has the duty and power to investigate, monitor and report on the financial activities of Ministries, Departments and Agencies of government (Audit Act, 7(1), CFRN, 1999: section 85(1-2)). This include the courts and offices of the Federation but excluding those of the States of the Federation. The accounts of the judiciary, civil service and the legislature are all included in this category of auditing referred to as “Agency Audit”. In addition, prior to the promulgation of the 1979 Constitution, the Auditor-General also had the duty and authority to examine the books of accounts of parastatals, corporations and Federal Government owned business organisations. His audit of these public bodies formed part of the “Public Enterprise Audit” which the Auditor-General must accomplish on behalf of the legislature. The ultimate

purposes of these functions are to prevent fraud, detect any possibility of fraud and apprehend any corrupt official who misuses public funds or converts the same to his personal use.

Corruption in the public service has been defined as the application of public resources to private ends (Rose-Ackerman, 1997:35). Lawal also defines it as "an unsanctioned, illicit and unacceptable act of the use of public resources for private ends" (2006: 3). Corrupt acts in government is one of the most destructive crimes a nation may have . It is indeed a negation of the social contract between the government and the governed. Non-accountable government is the same as a government of rogues and charlatans. Hence, laws are enacted and procedures are prescribed by which corrupt acts and all forms of non-accountability can be arrested and punished. Some of the laws on financial accountability but not auditing in Nigeria are the: (1) Finance (Control and Management) Act, 1958 (LFN, 2004: CAP F26) (2) Criminal Code Act (LFN, 1990: CAP 77) (3) Independent Corrupt Practices and other Related Offences Act, 2000 (4) Economic and Financial Crimes Act (Money Laundry Act), (5) Public Procurement Act, 2007 (Act No. 14) and the Fiscal Responsibility Act, 2007 (Act No. 31).

Origin of the Audit Act

The Nigerian audit Act evolved from financial practices of the British Colonial and Overseas Audit Department. The Department had derived its powers and duties from the British Settlement Act of 1843 and its counterpart imperial ordinance of Foreign Jurisdiction Act of the same year (Ogunyemi, 2011: 43). Rather than be a law that evolved from constitutional provisions, the Nigerian Audit Act was actually a product of a British Ordinance enacted in 1956 (LFN & Lagos, 1958). Since its enactment in the latter year, constitutional law since 1963 has however recognised it as an integral part of the laws of Nigeria on financial management and has gone ahead to codify its essential stipulates in the Nigerian constitutional law. For example, the first Constitutional reference to the functions and powers of the Auditor was made in the Constitution of the Federation of Nigeria (CFN), 1963 when it provided that:

1. There shall be a Director of Audit for the Federation, whose office shall be an office in the public service of the Federation
2. The public accounts of the Federation and of all offices, courts and authorities of the Federation shall be audited and reported on by the Director of Audit of the Federation, and for that purpose, the Director of Audit or any person authorized by him in that behalf shall have access to all books, records, returns and other documents relating to those accounts.
3. The Director of Audit of the Federation shall submit his reports to the Minister of the Government of the Federation responsible for finance, who shall cause them to be laid before both Houses of Parliament.
4. In the exercise of his functions under this constitution, the Director of Audit of the Federation shall not be subject to the direction or control of any other person or authority (CFN, 1963: section 79 (1-4))

Also, the Constitution of the Federal Republic of Nigeria (CFRN), 1979 and the current Constitution of the Federal Republic of Nigeria (CFRN) 1999, both, in their respective provisions also acknowledge and recognise the position of the Auditor-General (he was originally called Director of Audit under the Audit Act) and his duties in the public service of the Federation (CFRN, 1979: section 79, CFRN 1999: section 85 (1-6)). Thus, in both statutory and constitutional terms, the centrality of the office of the Auditor-General to the accountability process in Nigeria has always been recognised. But the Audit Act of 1956 promulgated during the decolonisation years in Nigeria, is much older than any constitutional law on public financial auditing. Nonetheless, whether it is in the constitutional or statutory law, the ultimate purposes of the Nigerian Audit Act are to: (1) inquire into the finances of the Federation to see whether they have been carried out in accordance with extant budgetary approvals, (2) assess cost control in the Ministries, Departments and Agencies (MDAs) to see whether approved expenditure correlates with actual expenditure by the MDAs (3) report on whether disbursement of funds is applied to programmes or projects that have been expressly approved in the government expenditure budget and (4) show whether the accounting and financial statements submitted to it reflect fully and fairly, the conditions of the finances of the Federation of Nigeria in the year so indicated (Oshisami, 1992, Omolehinwa, 2001).

Analysis of the Main Provisions of the Audit Act

Functions and Powers of the Director of Audit:

The 1956 Audit Act is very straight forward in directing the Auditor-General to perform the functions of his office. It provides:

> The Director of Federal Audit shall on behalf of the House of Representatives inquiries into and audit under the general supervision of the Director General of the Overseas Audit Service, the accounts of all accounting officers and of all persons entrusted with the collection, receipt,

> custody, issue or payment of federal public moneys, or with receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other property of the government of the Federation ...(Audit Act, 1956: section 7(1)).

In simple terms therefore, the Act empowers the Director of federal Audit to primarily, investigate and conduct enquire into the accounts of the Federal government of Nigeria and its offices and agencies. But he could not just do this arbitrarily or based only on his intellect or preferences. He is expected to be guided by three basic canons of auditing by which he should measure whether accounting officers have kept proper books of account and whether they have spent public moneys strictly on the authority of approved budget and financial warrants.

Thus, the Act provides that:

The Director of Federal Audit shall satisfy himself –

(a) that all reasonable precautions have been taken to safeguard the collection of Federal Public moneys and that the law relating thereto has been duly observed and that all directions or instructions relating thereto have been obeyed; and
(b) that all money appropriated or otherwise disbursed has been expended and applied for the purpose or purposes for which the grants made by the legislature of the Federation were intended to provide and that the expenditure conforms to the authority which governs it, and
(c) that adequate regulations exist for the guidance of storekeepers and store accountants and that they have been duly observed (Audit Act, 1956: section 7(2) (a-c)).

However, the Director of Audit is not just supposed to inquire and audit government account guided only by the three canons enumerated above, he is also levied the duty of reporting his findings, observations and exceptions to the Minister of Finance or the legislature. Thus, the Act expects him to file any notification of unauthorised spending, abuse or misuse of government assets first, to the "Governor-General" (now president) or the Minister of Finance for onward transmission to the legislature. Hence the Act stipulates:

> If at any time it appears to the Director of Federal Audit that any irregularities have occurred in the receipt, custody or expenditure of federal public moneys or in the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other property of the Government of the Federation, or in the accounting for the same, he shall immediately bring the matter to the notice of the Governor-General or of the Minister as he may consider appropriate (Audit Act, 1956: section 11).

In addition, if the report to be filed concerns those of the financial statements required to be made and presented to the Director of Audit by the Accountant-General of the Federation ((Audit Act, 1956: section 13), including the final audit comments on such statements together with an audit certificate, copies of such comments and certificates are required to be made and transmitted by the Director of Audit, and to the Minister of finance in furtherance of his duty to report on his findings. The Minister is expected to lay before the legislature within sixty days, the comments and audit certificate (Audit Act, 1956: section 14(2)). That is why the Act directs that:

> Within eight months of the close of each financial year or within such longer period as the House of Representatives may by resolution appoint, the Director of Federal Audit shall transmit to the Minister, copies of the accounts signed and presented by the Accountant-General of the Federation in pursuance of the provisions of section 13 together with a certificate of audit and a report upon his examination and audit of all accounts relating to the public moneys, stamps, securities, stores and other property of the Government of the Federation (Audit Act, 1956: section 14(1)).

Therefore the functions and duties imposed on the Director of Federal Audit are indeed enormous. They require from him such a level of responsibility that for him to significantly and efficiently achieve them, he will require a high level of authority. But the problem which arises from the requirement that the Auditor transmit his findings and report to the Minister is a situation in which the same Minister may be the one indicted by the report and statements of accounts. This is a major flaw of the Act for a man cannot sit in judgement over his own matter. This is a minimum irreducible requirement of justice and fair play. However, the framers of the Audit Act were not oblivious of the possibility of government agencies and officers deliberately refusing to cooperate with the Director of Audit in the discharge of his functions. They, therefore, provided for the authority and powers by which the Auditor-General may requisition such cooperation or demand obedience to his directives as duly served. Hence, the Act provides a list of five clearly enumerated powers which it confers on the Director of Audit in the discharge of his duties. These are presented *in extenso* below:

In the exercise of his duties under this ordinance, the Director of Federal Audit may –

(a) call upon any Federal or Regional officer to furnish forthwith, any explanations and information which he may require in order to enable him to discharge his duties;
(b) authorise any Federal or Regional officer on his behalf to conduct any inquiry, examination, or

audit and such officer shall report, thereon to the Director of Federal Audit.,

(c) without payment of any fee, cause search to be made in and extracts to be taken from any book, document or record in any public office,

(d) 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 store affected by the provisions of this ordinance and respecting all other matters and things necessary for the due performance and exercise of the duties and powers vested in him (Audit Act, 1956: section 12(1)(d)

(e) lay before the Attorney General of the Federation; a case in writing as to question regarding the interpretation of any ordinance or regulation concerning the powers of the Director of Federal Audit or the discharge of his duties; and the Attorney-General of the Federation shall give a written opinion on such case (Audit Act, 1956: section 12(1)(e)).

Thus, the Audit Act of 1956 does not only make the Director of Federal Audit responsible for the reporting of all irregularities in the use of public resources but also confers the authority on him to discharge the duty expeditiously and equitably. However, the relevance and potency of such powers in dealing with the ills of corruption in contemporary times in Nigeria are what we discuss in the next part of the paper under the fundamental deficiencies of the Act.

The Fundamental Deficiencies in the Audit Act

Legal Construction of the Act

The deficiencies of the Audit Act lie in two major areas. The first is in the construction or drafting of the Act itself. In this regard are the non-provision for a sanction on corruption or misuse of public funds, anachronistic and obsolete provisions and the lack of full autonomy for the office of the Auditor-General. The second lies in the limitation imposed on the Act itself by the extant provision of the 1999 constitution which forbids the Auditor-General to investigate or report on certain accounts of some government agencies. All these points are discussed in the following paragraphs.

Non-provision of Sanction for Corrupt acts

Perhaps, the greatest deficiency of the Act is its failure to provide for any sanction howsoever mild for an infraction of the provisions of the Act or for punishing any non-accountable act in the use of Nigeria's financial resources. Although the Act provides in section 12 (3) that any person who gives false information or statement under oath " shall be deemed to be guilty of perjury and shall be liable to be prosecuted and punished accordingly" (Audit Act, 1956: section 12(3)), it fails to provide for the sanctioning of fraud itself or the negligent use of public resources occasioning losses to public accounts and assets, which is the main object of the law. At any rate, perjury is not, in the strict sense of it, a financial or audit crime. It has, since 1916 been codified under the Criminal Ordinance of that year as part of the general crimes against the state that were brought under the national laws of Nigeria. It is therefore not a financial crime as one may conceive fraud or embezzlement for instance.

Thus, the Nigerian Audit Act, unlike what obtains under a similar Ghanaian Audit Service Act, fails to sanction acts that are detrimental to the real object and purposes of the law itself: corruption, waste, fraud, illegal virement, unapproved excess expenditure or expenditure in default of appropriation. The Ghanaian Audit Service Act for instance provides in its relevant section that:

> Any person who fails to produce for inspection by the Auditor –General or otherwise fails to give the Auditor-General access to any book, record, return or other document relating or relevant to any account to be audited by the Auditor-General when so requested by the Auditor –General...or wilfully suppresses any information required by the Auditor-General in the performance of his functions under this Act or any other enactment, commits an often and is liable on summary conviction to a fine not less than 500 penalty units or to imprisonment for a term not exceeding 2 years or both (Audit Service Act, 2000: section 33(1)(a-e)).

The Nigerian Audit Act needs to be amended to provide for appropriate sanctions against its provisions otherwise, the Auditor-General will be powerless to arrest or reduce non-accountable acts which ridicules the due process of budgetary accountability. The fact that the non-provision of such sanctions can render the Auditor helpless in arresting fraudulent acts has been demonstrated in the refusal of the National Assembly to take any steps in addressing the cases of fraud reported to it from 1999 to 2011 by the Auditor-General for the Federation.

Contradiction of the Principle of Natural Justice

Another flaw of the Audit Act is that the power to act on the findings of the Auditor General is vested in the arms of government that are the major subject of the Auditor's investigation, that is the legislature and the executive. This very inappropriate legal procedure can only produce a situation of atrophy in which the indicted who is empowered to act on his indictment simply refuses to act. In fact, it contradicts the sacred judicial

principle of equitable justice and fair dealings summarised in the legal maxim of *nemo judex in causa sua,* a major requirement of the due process of law (Shyllon, 1986: 5)). Only last year, the Auditor- General raised an alarm that all the annual Audit Reports from 1999 to 2011 submitted to the National Assembly have been left unattended to in any way whatsoever. No action has been taken even as at the time of writing on bringing the indicted officers whose names and sums corruptly cornered from government treasury are clearly stated in the Report. The Auditor-General had complained to the Speaker of the House of Representatives, Honourable Aminu Tambuwal in June 2011 that:

> Several annual audit reports had been submitted to both chambers with the view to ensuring that these reports are considered at the plenary sessions, following recommendations by the Public Accounts Committee of both chambers. However, records had shown that none of the said audit reports , the current one inclusive, has been discussed at the plenary sessions and I am not sure whether any has been considered at the plenary session or passed to the president for implementation (*Nigerian Tribune*, 2011: 30 June).

The reports which the Auditor-General referred to above was for the twelve fiscal years of 1999-2011. The Reports simply lay in the archives of the Assembly without being considered. It is argued here that one of the reasons for the refusal to act on the reports is because no provision exist in the Act for a time-frame within which the Assembly should act on the report. Another reason is that the reports indict some principal officers of the Assembly both serving and past on the misuse of public funds. It goes without saying that naturally, the Assembly could not be expected to proceed against itself or any of its own members. This clearly shows a grave flaw in the procedure for dealing with the report of the Auditor-General provided in the Act.

In other words, if the process of accountability is to be held sacrosanct and unbiased, a report of the Auditor-General indicting any officer of government should not be submitted to the same government officials or their appointees for action. In fact, and for the sake of emphasis, the same report should not be submitted to the legislature for validation or vetting or to the executive for action because that will contradict one of the sacred principles of equity and justice under the natural law and the Nigerian legal system, i. e. the principle of *nemo judex in causa sua* (i.e. no one should preside over his own cause) (Oluyede, 1988: 383). But such a report should be made available or laid simultaneously before the Independent Corrupt Practices Commission (ICPC) and the Press for investigation. The ICPC should thereafter, prosecute in a court of competent jurisdiction, the indicted persons.

Obsolescence of the Conceptual Framework in the Act

On the issue of the legal constructions of the Act, there are five (5) significant deficiencies in the Act which yearn either for urgent repeal or amendment. The first is in the obsolescence of the concepts, descriptions and currency used in the Act, which are utterly inapplicable to contemporary Nigerian situations. Concepts like "Governor –General", Director of Federal Audit", Overseas Audit Service", "Ordinance" and the currency used (the Nigerian pounds), are totally obsolete (Audit Act, 1956: section 2). They ceased being applicable names to Nigerian polity since the enactment of the 1963 Republican constitution. The terms "Region" and "Regional Officer", which is also liberally used in the Act is obsolete (Audit Act, 1956: section 2, 7(1)). Nigeria ceased to be a Federation of Regions but a Federation of twelve states in 1967 (FMG, 1967: Decree No. 14). The retention of all these concepts in the law, regardless of the provisions of the *Interpretation Act* tends to confuse today's users of the law. In fact, any mischievous interpretation based on technicality of the law or its strict construction can defeat the object of the law itself. For example, a person who stands to be damnified by the application of the Audit Act may plead the anachronism of the concepts to the effect that they vitiate the application of the law to the present circumstances. In saying this one is not unmindful of the provision of the Interpretation Act of 1964 which enjoins one to construe the terms used in an old Act with respect to officers and offices in the light of the changing realties of the present. For the purpose of emphasis the Act provides:

> A reference in an enactment in relation to any functions by an official described by a designation which under the system of government in a particular part of Nigeria is no longer appropriate in relation to the functions, shall be construed in relation to those functions and that part, as a reference to the person on whom the functions have devolved under the system of government for the time being in force in that part (Interpretation Act, 1964: section 18(4)).

However in the light of the decisions in *Umar Ali & Co. Nigeria Ltd. v. Commissioner of Land and Survey & Others* (BOM/82/81) and in the matter of *J. M. Aina & Co. Ltd v. Commissioner for Land and Survey & Others* (Lagos: Suit No. I/439/81), it is clear that one can no longer rely only on the provision of the Interpretation Act shown above to explain away any anachronistic or obsolete concepts contained in a law. In both cases, in 1982, the High Courts of Borno and Lagos States, respectively, came to the conclusion that since the term "power" and "military Governor" which were the exact terms used in the Land Use Decree, 1978 (now Land Use Act, 1978) (LFN, 1990: CAP 203), did not apply to situations under the 1979 democratic civilian

government, which succeeded the military government that promulgated the Decree, then the Civilian Governors who succeeded the Military Governors that exercised power under the Decree to withdraw without question, any certificate of occupancy granted to a possessor of land, could not exercise that power granted to the "military Governors" under the Decree because the 1979 Constitution did not contemplate a situation in which a military governor would exercise power of revocation of land instruments under it.

In addition, the Nigerian pounds in which the Act codifies the annual salary of the "Director of Federal Audit" has since April 1972 gone out of currency, having been replaced by the decimalised Nigerian Naira in that year (LFN, 2004: CAP D2). All these facts point to the urgent need for an amendment of the Act to be in tandem with current realities.

Constitutional Limitation on Powers of the Auditor-General

By far the most profound of all debilitating factors against the ability of the Auditor-General relying on the provision of the Audit Act to apprehend corrupt acts in government is the express limitation imposed on him by the 1999 constitution. Even its predecessor constitution, the 1979 constitution also contained such a limiting provision. The 1999 constitution provides among other things that the Auditor General shall not audit the accounts of government statutory corporations, parastatals and agencies established by law in Nigeria. The relevant provisions of section 85 of the constitution declare:

> 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 other person authorised by him in that behalf shall have access to all the books, returns and other documents relating to those accounts CFRN, 1999: section 85(2)).
>
> 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... (underlining supplied) (CFRN, 1999: section 85(3)).

The above provisions of the constitution cited above are indeed confusing if not frustrating. They mean that on the one hand, the Constitution gives to the Auditor-General the power to audit the accounts and books of "all offices and courts of the federation" (CFRN, 1999: section 85(2)), which creates no exception to the extent of the operations of the powers of the Auditor-General and on the other hand, takes away such extensive powers by providing that such powers shall not extend to government statutory bodies, Corporations and agencies such as the Nigerian National Petroleum Corporation, Railway Corporation, Power Holding Company of Nigeria, etc. These corporations and agencies are some of the main revenue generating and spending agencies of government in Nigeria. They account for more than 80% of the total receipts of government every year. Now, since constitutional rules are superior to statutory rules, it means that the provision of the Audit Act which directs the Auditor-General to audit the accounts of all offices, courts and agencies of government cannot be implemented, creating another debilitating scenario for the audit law. The overall effect of all these limitations on the powers of the Auditor-General is that he cannot apprehend corrupt acts in government nor report fairly and truthfully on the state of the accounts of the Federation.

Summary and conclusion

The Nigerian Audit Act of 1956 is the law on conducting an enquiry into the public accounts of Nigeria for the purposes of detecting fraud and reporting on the extent to which actual expenditure correlates to budgetary approvals. The law is, in fact, the only instrument promulgated since the colonial times for arresting infractions to the Finance (Control and Management) Act of 1958, which is the law guiding the approval and disbursement of funds for every federal budget. But the Act, which since 1956 has neither been amended, repealed or re-enacted has become utterly inadequate in addressing issues of corruption in government. Except the Auditor-General must go outside of the law to derive his powers and functions, he cannot arrest fraudulent dealings with the resources of the public by government officials. This is because the law has too many obsolete provisions that make its application anachronistic in today's Nigeria and several other legal debilities such as the failure to provide for punitive measures against infraction of the audit law itself, constitutional limitations on the extent of the powers of the Auditor-General and the contradiction of some of its provisions to the justice principle of equity and fair play. The law therefore needs an urgent amendment in order to cope with the changing circumstances of Nigeria and the level of economic development which the country has achieved since its enactment in 1956.

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