

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**

**I recommend that this obligatory essay prepared under my supervision by:**

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**entitled**

**A CRITICAL EVALUATION OF THE EFFECTIVENESS OF THE OFFICE  
OF THE AUDITOR GENERAL IN ZAMBIA**

**be accepted for examination. I have checked it carefully and I am satisfied that it fulfills the requirements relating to the format as laid down in the regulations governing directed research essays.**

**Supervisor:** 

**Dr. M. M. Munalula**

**Date:** 1.12.03

**Dedication:**

To my Father and Mother, Mr. Frederick J. Simwanza and Mrs Eunice M. Simwanza of Chilanga for all the love, care and support that they have given me throughout my life.

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Steven Kachunsi Simwanza

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## **Chapter one**

### **1.1 Introduction**

Thirty-nine years after independence Zambia is still struggling with formulating a constitution that is not only popularly accepted but also one that adequately addresses the powers and functions of all essential institutions of Government that ensure that good governance and development are attained. One such institution is the office of the Auditor General, which is created by article 121 of the Constitution.

The office of the Auditor General is one office, which has not undergone any significant legal reformation despite the fact that the country has had four constitutions<sup>1</sup> since independence.

A fifth constitution is in the offing following the appointment of forty-one (41) Constitutional Review Commissioners by the President of the Republic of Zambia in April 2003. The Constitutional Review Commission's terms of reference *inter-alia* include an examination of the effectiveness of the office of the Auditor General and to recommend means of improving its effectiveness where necessary.

### **1.2 Concept of Office of the Auditor General**

The office of the Auditor General is important in that it helps in ensuring that the Government meets its development goals by checking that Government resources are used as planned for in the national budget.

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<sup>1</sup>The four constitutions are the 1964 Independence Constitution Act, Act no.27 of 1973, Act no. 1 of 1991 and Act no. 18 of 1996.

Thus, the functions and duties of the office of the Auditor General are laid down in the Constitution of Zambia Act,<sup>2</sup> and other enabling statutes such as the Public Audit Act<sup>3</sup> and the Finance (Control and Management) Act.<sup>4</sup>

Under the above-mentioned enabling statutes, the Auditor General is mandated to audit all the accounts of Government ministries, departments, commissions, statutory boards, parastatals and any institution where Government has made investments by satisfying himself or herself that the funds are utilised as stipulated by the Appropriation Act. The audit findings are made known through reports, which are presented firstly to the President of the Republic and later to parliament for deliberations and recommendations.

It is clear that the functions of the office of the Auditor General, that is to say auditing entails ensuring that there is accountability of public finances. Accountability means answerability or the obligation to give adequate explanations of the actions and decisions for which one has responsibility to those on whose behalf one is acting. It is an essential feature of public life as it provides a means of holding public officials responsible for their actions and of requiring them to report on how they fulfill their duties.<sup>5</sup> Accountability has further been said to offer a means of correcting mistakes, inefficiencies, abuses, and failures of public officials.<sup>6</sup>

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<sup>2</sup>Chapter 1 of the Laws of Zambia

<sup>3</sup>Chapter 378 of the Laws of Zambia

<sup>4</sup>Chapter 347 of the Laws of Zambia

<sup>5</sup>G. W. Smith (1982) "Public Accountability: What have you done with Our Money ". Public Fund Digest Vol. 1 No. 1 PP 40 - 42

<sup>6</sup>ibid



It can therefore be said that the office of the Auditor General is an important institution in upholding the doctrine of "checks and balances" in Government organs as regards their financial duties and obligations which are executed by human beings who are not infallible mortals.

Thus, James Madison writing in **The Federalist** observed that:

“If men were angels no government would be necessary,  
if angels were to govern men, neither external nor internal control on government would be necessary. In framing a government which is to be administered by men, the great difficulty is this: you must enable the government to control the governed and in the next place oblige it to control it self”.<sup>7</sup>

In other words, the office of the Auditor General is an institution by which the Government is obliged to control itself.

### **1.3 Objectives**

A question that arises is whether there is need to increase the powers and functions given to the Auditor General's office in order to make it more effective. Therefore, the **objectives** of this research are:

- i. to have a clear understanding of the operations of the office of the Auditor General vis-à-vis other government organs such as, the judiciary, the executive and the legislature.
- ii. to find out the constraints that the Auditor General's office faces in the execution of its day to day duties.

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<sup>7</sup> James Madison (1788) " **The Federalist**". Paper No. 47. New York: Random House Publishers

- iii. to show how the Auditor General's office can be strengthened and therefore increase its effectiveness.

#### **1.4 Methodology**

This research has progressed by way of analysis of information on the subject which was obtained from various sources. The first step was to carry out a review of the statutes that address the functions of the office of the Auditor General. After examining the statutes a hypothesis was formulated indicating that the operations and functions of the office of the Auditor General are not well explained in the statutes currently in force. Thus, interviews with officials from the National Assembly and the Auditor General's office were conducted in order to seek information on the operations of the office as there is no literature available on the same in Zambia. Further interviews were conducted with students from various disciplines at the University of Zambia so as to assess their awareness of the role of the office of the Auditor General. It should also be stated that various works on Constitutional and Administrative law as well as reports of government institutions and non-governmental organisations on the subject were employed in progressing with this research.

## **Chapter Two**

### **2.1 Introduction**

In this Chapter this essay will attempt to give the historical development of the office of the Auditor General by looking at its genesis in England and how it subsequently came to be an established office in many former colonies of England, including Zambia. Thus the discussion as regards the developments in the office of the Auditor General in Zambia will begin from the colonial times in about 1889 to date.

### **2.2 The History of the Auditor General's Office in England**

The title of Auditor General emanates from the word "audit" which also stems from the Latin word "audire" which means to hear. The title of 'auditor' assumed prominence from the time of the ancient Romans when accounting officers were required to attend audit meetings before an officer (auditor) who "heard" their accounts.<sup>8</sup>

However, in modern times, the word audit has been taken to mean 'the official examination of accounts with verification by reference to witnesses and vouchers.'<sup>9</sup> Thus an auditor is a person who performs the functions of examining official accounts of any institution or organisation be it private or public.

The office of the Auditor General in Zambia is a creature of the constitution. According to Barnett,<sup>10</sup> Parliament in the United Kingdom did not set out to create systematic controls of public expenditure until late in the nineteenth century, although sporadic attempts had been made earlier.

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<sup>8</sup> GRZ. (1975) A Government Auditor's Guide to the Office of the Auditor General. Lusaka: Government printers. P. 5

<sup>9</sup> JE Crowther (ed)(1995) The Oxford Advanced Learners Dictionary. Oxford: Oxford University Press P. 25

<sup>10</sup> J. Barnett, (1982) "Accounting to Parliament" in Public Fund Digest Vol. 1 pp. 6 - 11

For instance, in 1667 the House of Commons passed an Act in which it was stipulated that money voted for the Dutch war should be applied only for the purposes of the first parliamentary audit to be independent of the government to a certain degree<sup>11</sup>

In 1785, the office of Commissioners for Audit of the public accounts was created by an Act of parliament; however, the duties of all the various auditors responsible for particular Government accounts were not transferred to them until 1846.<sup>12</sup> Thus, the Commissioners of Audit were firstly empowered by statute to examine the accounts of the naval service and present an annual report to parliament.<sup>13</sup> This practice was extended to army votes in 1946; wood works votes in 1951, and the revenue department in 1861.

In 1866, the Exchequer and Audit Department Act was passed and it gave legislative sanction to some of the earlier reforms .It also established the office of comptroller and Auditor General as it is known today. Sir Ivor Jennings<sup>14</sup> has pointed out that:

“The Exchequer and Audit Department Act of 1866 united two offices; the exchequer and the audit. The former, which was quite independent of the treasury was under the control of a Comptroller - General of the Exchequer... the functions of the comptroller of the exchequer's office were to provide for the safe keeping and proper appropriation of public money in accordance with the determinations of the legislature. The audit office on the other hand was more or less dependent on the treasury and it therefore audited only such accounts as were referred to it.”

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<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Sir Ivor Jennings (1970) Parliament. Cambridge : Clarendon Press. P.322

Thus, the Comptroller and Auditor General as created by the Exchequer<sup>15</sup> and Audit Department Act 1866 has two functions, hence 'he is Comptroller General of the receipts and issues of his majesty's' exchequer and Auditor General of public accounts. In the former capacity he controls issue of public money; in the latter he audits the accounts of all the departments and produces "appropriation accounts" which he submits to parliament.

The Exchequer and Audit Department Act can be said to have given the English parliament a real opportunity to control public expenditure by directing that accounts for all supply votes as well as issues from the consolidated fund for services charged directly on the fund should be audited and reported on by an independent officer, the Comptroller and Auditor General and that his reports on the accounts should be laid before the House of Commons.<sup>16</sup>

### **2.3 The Historical Development of the Public Accounts Committee**

In 1861, on the motion of the Chancellor of Exchequer, the House of Commons ordered that a select committee be appointed with very general terms of reference viz, for the examination, from year to year, of the audited accounts of public expenditure.<sup>17</sup> The terms of reference were embodied in standing orders in 1862 and

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<sup>15</sup> The Exchequer is a government department, which receives and has the care of national revenues in England see. L. Curzon (1997) **Dictionary of Law**. London: Pitman Publishers.p.148. Thus, in the Zambian setting it can be likened to the Zambia Revenue Authority and the Bank of Zambia. The former to the extent that it collects revenue for the nation and the latter that it has the care of Government Revenues.

<sup>16</sup>Supra note 5 at P. 12

<sup>17</sup>Supra note 14 at P. 333.

slightly expanded in 1870. This committee is what has come to be known as the Public Accounts Committee.

Thus, by 1870 the present structure of the present system of parliamentary scrutiny of the accounts based on the reports of the Auditor General was properly established. It has become acceptable by convention that a member of the opposition is always elected chairperson of the Public Accounts Committee so as to maintain the non-partisan examination of accounts.

The final product of the above outlined historical development of the Auditor General's office in England is what was transferred to all the colonies of England and later entrenched in the colonies' constitutions upon independence, and Zambia as a former protectorate of England was not exempted from the English system of control of public finances.

#### **2.4 The Office of Auditor General in Zambia: A Historical Perspective**

The historical development of the office of the Auditor General in Zambia can be traced back to the times of colonialism about a century ago. During the period of colonialism, some important constitutional developments vis-à-vis the administration of the colony took place, which developments have influenced the development of the office of the Auditor General, as it is presently known in modern Zambia. It is therefore impossible to look at the history of the office of the Auditor General in Zambia without taking into consideration the historical development of constitutional law of Zambia.

The development of the constitutional law and its relationship to the Auditor General's office can be divided into three phases viz:

1889 - 1924

1924 – 1963

1964 - 2003

Each of the above phases together with the constitutional changes that occurred and how such changes impacted on the development of the Auditor General's office in Zambia are discussed separately, below.

### **1889 - 1924**

Upon settling down in the conquered territory, the British settlers were faced with the problem of establishing a system of controlling the territory.

Thus, in 1889 an order in Council<sup>18</sup> was passed in England by which North Western Rhodesia was to be administered by a High Commissioner in charge of colonies in Southern Africa based at Cape Town, on behalf of the Queen of England. The High Commissioner therefore exercised legislative as well as executive functions over the colony of North-Western Rhodesia. He could appoint persons to administer over the colony.<sup>19</sup>

In 1911 another Order in Council was passed in the House of Commons in England by which North-Western Rhodesia and North-Eastern Rhodesia were amalgamated to form one big territory commonly referred to as Northern Rhodesia, which was also

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<sup>18</sup> Orders in Council were Orders made by the Queen of England or by the British Government which were sanctioned by the Privy Council, and used to bring Acts into force in the colonies. See **Curzon** at P. 272

<sup>19</sup> J.P. Sangwa (1994) The Making and Remaking of Constitutions in Zambia: The Need for a new Perspective. Unpublished LL.M. Thesis, P. 140

administered over by the High Commissioner in Cape Town. Although after the 1911 Order in Council came into force, the High Commissioner had no power to appoint an administrator of the territory. Thus, the administrative authority on day-to-day matters of the territory was vested in the B.S.A. Company, which appointed the administrator of the territory. It must be stated that an advisory council after the 1911 order in council assisted the administrator of Northern Rhodesia. Although, the administrator was appointed by the B.S.A Company, he reported to the High Commissioner in charge of the colonies of Cape Town who also reported to the Secretary of State of colonies in the House of Commons in England and eventually to the Queen.<sup>20</sup>

The B.S.A company rule over Northern Rhodesia came to an end in 1924 when the Northern Rhodesia Order in Council was passed by which the colony gained the status of British protectorate. Thus, Northern Rhodesia was after the coming into force of the 1924 order in council administered over by a governor who reported directly to the Secretary of State in charge of colonies in the House of Commons in London (England).

During the period 1889 – 1924, the director of colonial audit who was based at Cape Town did the auditing of the colonial government. The director of colonial audit services after auditing the accounts of the colonial administration was supposed to make a report of the audit, which was submitted to the High Commissioner who also in turn submitted the report to the Secretary of State of the colonies in London. It must be stated that the audit reports were made annually.

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<sup>20</sup> Ibid Pp. 146 - 151



It can be inferred from the above adumbrated procedure that even at the time that Northern Rhodesia was administered by the B.S.A Company, the director of colonial audit services could still audit the accounts of the territory and subject the said audit report to the same procedure as outlined above. It can therefore be said that the auditing or control of the colonial government funds was done through the principle of subordination; that is to say that the colonial government was subordinate to the imperial government in England.

### **1924 - 1963**

The period 1924 - 1963 was characterised by the moving away from the doctrine of total subordination of the colonial administration to the imperial government. Thus, although the colonial government was subordinate to the imperial government, it was not completely controlled by the imperial government under the constitutional setting obtaining after the passing of the 1924 Order in Council.

The most prominent change in the administration of Northern Rhodesia was the establishment of the legislative Council, which can be said to have been a mini-parliament to a certain extent.

Mwelwa Chibesakunda,<sup>21</sup> a long serving former clerk of the National Assembly of Zambia has written in relation to the history of the parliament of Zambia that the creation of the legislative Council was an advancement in the implementation of the constitutional arrangement embodied under the 1911 order in Council which provided for the creation of an advisory Council to the administrator.

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<sup>21</sup> N. Mwelwa Chibesakunda, (2001) The Parliament of Zambia. Lusaka: National Assembly of Zambia Pp. 18 -21

The same learned author<sup>22</sup> has further written that the legislative council was established mainly to accord the white settlers a large say in the running of the affairs in the territory than had been the case during the B.S.A company rule. The 1924 Order in Council which served as a constitutional provision empowered the legislative Council to establish such ordinances as were necessary for the administration of justice, the raising of revenue and generally for the peace, order and good governance of Northern Rhodesia.

The composition of the legislative council in Northern Rhodesia changed during the period 1924 - 1963 due to political pressure from various interest groups in the territory. Thus, its functions were also changing almost at the same time as its composition.

A significant contribution of the legislative council as regards the auditing of the colonial government is that it extended the parliamentary system of discussing how money was to be raised and spent in a particular year. This system can be likened to the presenting of a budget in the modern day parliament.

The audit reports of the colonial administration of Northern Rhodesia made by the director of colonial audit services during the time the colony was administered over by the B.S.A Company continued to be reported in a similar manner as before but for a few procedural changes. The changes which occurred as regards the audit procedure was that after the 1924 Order in Council came into force, an auditor from the director of colonial audit services' office would after making an audit of the accounts and stocks of the colonial administration, make an annual report and submit

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<sup>22</sup> *ibid*

the same to the governor of the territory. The governor would then make a response to the queries raised by the auditor and thereafter submit the same to the Secretary of State for the colonies in London.<sup>23</sup>.

The above outlined procedure can be compared to the procedure obtaining at the time the territory was controlled by the B.S.A Company whereby the administrator of the colony could not make a response directly to the secretary of state for the colonies in London but rather to the High Commissioner at Cape town who was given very wide powers as regards administrative matters over the colonies.

There was political pressure in the protectorate of Northern Rhodesia to an extent that the composition and objectives of the legislative council were forced to change, that is to say, from protecting chiefly the interests of white settlers to include the interests of natives. This is evidenced by the debates in the legislative council where elected members such as Leopold Moore argued that: "we hold that the people of this territory who pay the piper should also call the tune. We hold that the people of this country should have a say in the spending of revenue than they have hitherto been allowed."<sup>24</sup>

The result of such debates was that a member was nominated to the legislative council who was to represent African interests in 1932. By 1945, there was an amendment to the constitutional order to allow three more members to represent African interests

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<sup>23</sup> These facts have been inferred by analysing the Report of the Auditor to the Director of Colonial Audit Services on the Public Accounts of Northern Rhodesia for the year 1938. Luaska: Government Printers. P.1

<sup>24</sup> Legislative Council Debates Col. 135 - 145 "20<sup>th</sup> July, 1927

since the territory was very vast, although all the members nominated for such purpose were all whites.<sup>25</sup>

Africans could only be eligible for election to the legislative council if they were elected by the African Representative Council (A.R.C), which was established in 1946. The first two Africans to be elected by the A.R.C to become members of the Legislative Council took office in 1948<sup>26</sup>. This year was very important in the history of the legislative council because, for the first time the legislative council had a speaker who was appointed by the Governor of Northern Rhodesia. This new constitutional arrangement continued to exist even during the time of the Federation of Rhodesia and Nyasaland, which is from 1953 - 1963.

In terms of financial control, during the Federation, there were two funds that were controlled by the Governor of Northern Rhodesia viz; the Native Treasuries and the Public Accounts of the colonial Government. The former was supposed to be applied to African interests in the territory whereas the latter to the European interests.

The auditing procedure for Northern Rhodesia during the federation period was provided for under section 79(4) of the Constitution of the Federation of Rhodesia and Nyasaland wherein it stated that:

“The Governor of Northern Rhodesia, with the consent of the Governor General of the Federation shall entrust the audit of the Public Accounts of Northern Rhodesia to the Federal Comptroller and Auditor General. ...

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<sup>25</sup> J. W. Davidson (1946) The Legislative Council of Northern Rhodesia. London: Faber and Faber publishers.P. 52

<sup>26</sup> *ibid*

The Governor - General for the purposes of Section 7(1) of the constitution shall designate, the Audit Department of Northern Rhodesia with effect from 1<sup>st</sup> June 1954 from which date, the Director General of overseas Audit relinquished, and the federal comptroller and Auditor General assumed responsibility for the Audit of accounts of Northern Rhodesia.”<sup>27</sup>

Thus, the Federal Comptroller and Auditor General made two reports, one on the native treasuries and another on the public accounts of the colonial government. It is interesting to note that the reports of the Federal Comptroller and Auditor General were presented to the legislative council which scrutinized the report of the Governments' expenditure for the year, and hence ensuring that the expenditure was in line with the legislative council's earlier plan.<sup>28</sup>

The legislative council and its expansion throughout the period in which the federation of Rhodesia and Nyasaland was in force played an important role in that it introduced to Northern Rhodesia *Mutatis Mutandis* the system which was obtaining in England.

Thus at the break up of the Federation in 1963, and shortly thereafter when Northern Rhodesia gained independence from the imperial Government in England, the parliamentary scrutiny of Government expenditure was already established in Northern Rhodesia. In fact, it was almost similar as regards its structure and operations with what was obtaining in England. Hence upon being granted independence, the system of parliamentary scrutiny of Government expenditure

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<sup>27</sup> "Introductory remark" in the Report on the Audit of Public Account of Northern Rhodesia for 1953-1954 on the Accounts of Native Treasuries. Lusaka: Government Printers. P. 1

<sup>28</sup> The Legislative Council though performing the functions of a parliament was not a parliament proper. Hence the laws that it made were referred to as ordinances and not Acts of Parliament. It can be argued that some form of budget was passed in the legislative council.

through reports made by the office of the Auditor General was entrenched in the Independence Constitution Order of 1965.

### **1964 - 2003**

Since gaining independence, Zambia has had four constitutions and in all the constitutions, the office of the Auditor General has been a common feature. The office of Auditor General was planted in the Zambian laws in its present form and structure under the independence constitution of 1964. In that constitution, Article 113 created the office of the Auditor General for Zambia as a public office and whose holder was to be appointed by the President.<sup>29</sup> This was a manoeuvre which may be considered to be an advancement of the system of control of public finances that was obtaining during the Federation of Rhodesia and Nyasaland.

The powers, functions and duties of the Auditor General were provided for under Article 113, which stated *inter-alia* that it shall be the duty of the Auditor General to:

- a. satisfy himself that the provisions of the part relating to finances in the constitution were complied with.
- b. satisfy himself that the money expended has been applied to the purposes for which they were appropriated by the Appropriation Act or in accordance with the approved supplementary estimates...
- c. audit the accounts relating to general revenues of the republic and expenditure of moneys appropriated by Parliament, the accounts of the clerk of National Assembly... and the courts...

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<sup>29</sup> Independence Constitution Act of 1965

- d. to present a report of such audits of accounts charged by this constitution to the President not later than 12 months after the end of each financial year.<sup>30</sup>

*The independence constitution also provided for the security of tenure of the Auditor General and the special circumstances by which a person holding the office of Auditor General could be removed. For instance, for inability to perform the functions of his office arising from an infirmity of the mind or body or any other cause.*<sup>31</sup>

The Auditor General could be removed from office by a resolution of the National Assembly, in which case a tribunal had to be appointed for the purposes of investigating as to why the Auditor General ought to be removed from office.<sup>32</sup>

The provisions of the independence constitution relating to the duties of the Auditor General's office were reproduced in Act no. 27 of 1973 which was the country's second constitution, with a few changes. For instance, the numbering of the articles creating the office changed and further more a new clause was added to the provisions. The added clause broadened the special circumstances under which a person holding the office of the Auditor General could be removed to include a breach of the leadership code,<sup>33</sup> which breach was considered misbehavior.

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<sup>30</sup> Ibid

<sup>31</sup> The 1965 Independence Constitution of Zambia Act. Article 119(3)

<sup>32</sup> Ibid

<sup>33</sup> The Leadership code was a set of regulations made by the leadership committee appointed by the President which prescribed the responsibilities of leaders under the 1972 constitution (Article 33)

Act no.1 of 1991 created another constitution. Under the 1991 constitution the provisions relating to the duties of the Auditor General were not changed. Thus they were still in line with the independence constitution of 1964. However, the only change made to the Auditor General's office was the introduction of the clause which stipulated that: A person who holds or has held the office of Auditor General shall not be appointed to hold or to act in any other public office.<sup>34</sup>

The rationale of including such a clause is very questionable as it may be a restraint of trade and hence it shall be dealt with below.<sup>35</sup>

Act no.18 of 1996 created the country's fourth constitution. It repealed and replaced the 1991 constitution. It has been observed that no changes were made to the provisions relating to the office of the Auditor General in the 1995 constitution. Thus, the 1995 constitution is a replica of the 1991 constitution as regards the Auditor General's office. The only change is an additional clause that gives the Auditor General the option to resign from his office by giving a written notice of his intention to the President.<sup>36</sup>

The issue then is whether the recently appointed Constitutional Review Commission will make any meaningful recommendations that can change and improve the effectiveness of the office of the Auditor General in Zambia.

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<sup>34</sup> Constitution of Zambia Act no 1. of 1991. Article 108(5)

<sup>35</sup> See, chapter 4, which deals with constraints that the office faces, legal or otherwise.

<sup>36</sup> Constitution Act no. 18 of 1996. Article 122(8)



## **Chapter three**

### **3.1 Introduction**

The Office of Auditor General has submitted many audit reports since its establishment in the Republic of Zambia in 1964 at independence. This is notwithstanding the reports that were made during the Colonial period mentioned above.

Many a person would query as to how such reports are written, especially taking into consideration that the audit reports are submitted yearly and that Government institutions are very large to be audited by one person. This chapter therefore endeavors to explain the structural framework of the office of the Auditor General and how the institution coordinates with other Government organs.

### **3.2 The Structure of the Office of the Auditor General in Zambia.**

In any organisation or institution there is a hierarchical system in place by which individuals are placed in or appointed to positions in order to make an institution carry out its duties, functions or objectives. The office of the Auditor General is not excluded from such a system. Thus, the office of the Auditor General has a number of subordinate staffs that are under the Auditor General in the hierarchical structural system.<sup>37</sup> The subordinate staff are the one's responsible for assisting the Auditor General's office in carrying out its constitutionally mandated duties.<sup>38</sup> Furthermore, the Auditor General is given additional duties under the Public Audit Act of 1980 and the Finance (Control and Management) Act.<sup>39</sup>

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<sup>37</sup> There are 158 subordinate staff in the Auditor General's Office: source; Interview with the State Audit Secretary, Mr. N. Shamaila at Audit House, Lusaka, June 2003.

<sup>38</sup> Under the 1995 Constitution the functions and duties are spelt out under Article 121 and they are similar to those in the 1964 Constitution but for a few amendments. See chapter 2 pp 16-18

<sup>39</sup> Chapters 378 and 347 respectively (of the laws of Zambia 1995 edition)

The structure of the office of the Auditor General in Zambia is not complex and as such its operations are easy to comprehend. It should be stated from the outset that in analysing the structure of the office of the Auditor General, it is necessary to divide the said structure into three broad categories.

The first of the categories comprises of the Auditor General and the State Audit Secretary with the former being on top in the hierarchy. The latter is second in the hierarchy and hence, he sometimes acts as a deputy to the Auditor General.

The second category is the level of directors of audit. There are seven directors in this category and each of them is in charge of auditing particular government institutions or organs. Thus, the duties of the directors are divided amongst them so that they cover the entire Government institutions as they audit the said institutions.<sup>40</sup>

Among the directors of audit, there is one who is responsible for auditing the Central Government. This director audits all Government line ministries such as the Ministries of Health, Education, Mines and Minerals, Communications and Transport, Tourism and others.

There is also a director of audit in charge of Revenues and Parastatals (REPA). This director can be said to carry out the duties of the Auditor General stipulated in the Public Audit Act and the Finance (Control and Management) Act which include, to audit every statutory corporation or public company, to audit private institutions which receive Government grants, or subsidy or subvention in any financial year. Examples of institutions that fall under the director for REPA audits are Zambia

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<sup>40</sup> Interview with the State Audit Secretary, Mr. N. Shamaila

Revenue Authority, National Pension Scheme Authority (NAPSA) Zambia Telecommunications Company (ZAMTEL) and ZESCO.

The third director in this category is the one responsible for auditing of parliament, the Judiciary, State House (i.e. the office of the President) and Commissions. This director audits the accounts stores and stock of the National Assembly, the courts and the office of the President and Commissions such as the Drug Enforcement Commission, Securities and Exchange Commission, the Anti-Corruption Commission and other statutory bodies of that nature.

There is also a director of audits for the Local Government and the Provincial Centres. This director is in charge of the auditing of the councils established by the Local Government Act and the provincial ministerial offices, that is to say the offices of the provincial ministers and permanent secretaries thereof. Thus, there is provincial representation of the office of the Auditor General in all the provincial centres in the country and auditing the expenditure of such finances by the Auditor General's office.

In the same category of directors of audit, there is one who is responsible for auditing the accounts and stocks of the Ministries of Defence, Home Affairs and Foreign Affairs (DHOFA). This director is charged with the duty of supervising audits of the bodies or institutions that fall under the above named ministries such as the Zambia Air Force (ZAF), Zambia Army, Zambia Police, Immigration department and all of Zambia's foreign missions abroad.

Another director of audit is in charge of finance and administration of the office of the Auditor General. This is the director who has the responsibility of obtaining finances for the Auditor General's office from the Ministry of Finance. It should be noted that the office of the Auditor General is a public office and hence it is funded by the Government like any other Government department although it does not fall under any ministry. It enjoys autonomy provided for in Article 121 (6) of the constitution, which states, "in the exercise of his functions...the Auditor General shall not be subjected to direction or control of any other person or authority".

The last in the category of Directors of Audit is the one responsible for the corporate services of the office of the Auditor General. This director acts as an inspector for the other directors as he may check on the progress being made on the audits they are carrying out in accordance with the objectives in place for that particular year in the office of the Auditor General.

It is clear from the above exposition that there are no sacred cows when it comes to auditing of Government expenditure of public funds, since even the most powerful office in the land (i.e. the President's Office) is subjected to auditing. Thus the report of the Auditor General of 1998 showed that even the Presidential donations to football clubs, golf clubs and churches were audited.<sup>41</sup>

The most noteworthy issue to learn was that the Auditor General audits the accounts of the Zambia Security Intelligence and Service (ZSIS) personally and not delegated

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<sup>41</sup>Report of the Auditor General for the year 1998. Lusaka: Government printers. P117

to any other subordinate officer.<sup>42</sup> Perhaps, the reason for such a rigid procedure is the secretive nature of the operations of ZSIS.

The third category in the structure of the Auditor General's office is that which is composed by audit staff who actually go into the field to carry out the audits. This category can be said to be the largest as it has a chainlike structure with the assistant directors of audit (ADOA) for each of the above given seven directors. There are nine ADOAs with certain directors having two assistants. Those of the rank of principal Auditors follow the ADOAs. The next in the hierarchy is the rank of Senior Auditors, which are followed by the rank of Auditor. The lowest in the hierarchy of the audit staff in the Auditor General's office are the Assistant Auditors.

It is worth mentioning that in the hierarchical system of the office of the Auditor General, there used to be a rank of assistant auditors for examinations who were on the same level as assistant auditors mentioned above, only that the latter's duties were mainly of training young school leavers as auditors. The school leavers were recruited and sent to the National Institute for Public Administration (NIPA) for training after which they came to work as auditors in the office of the Auditor General. The Portfolio of assistant auditor for examinations has since been abolished in favour of employing already qualified personnel taking into account the growing number of Private College graduates possessing the qualifications required of auditors.<sup>43</sup>

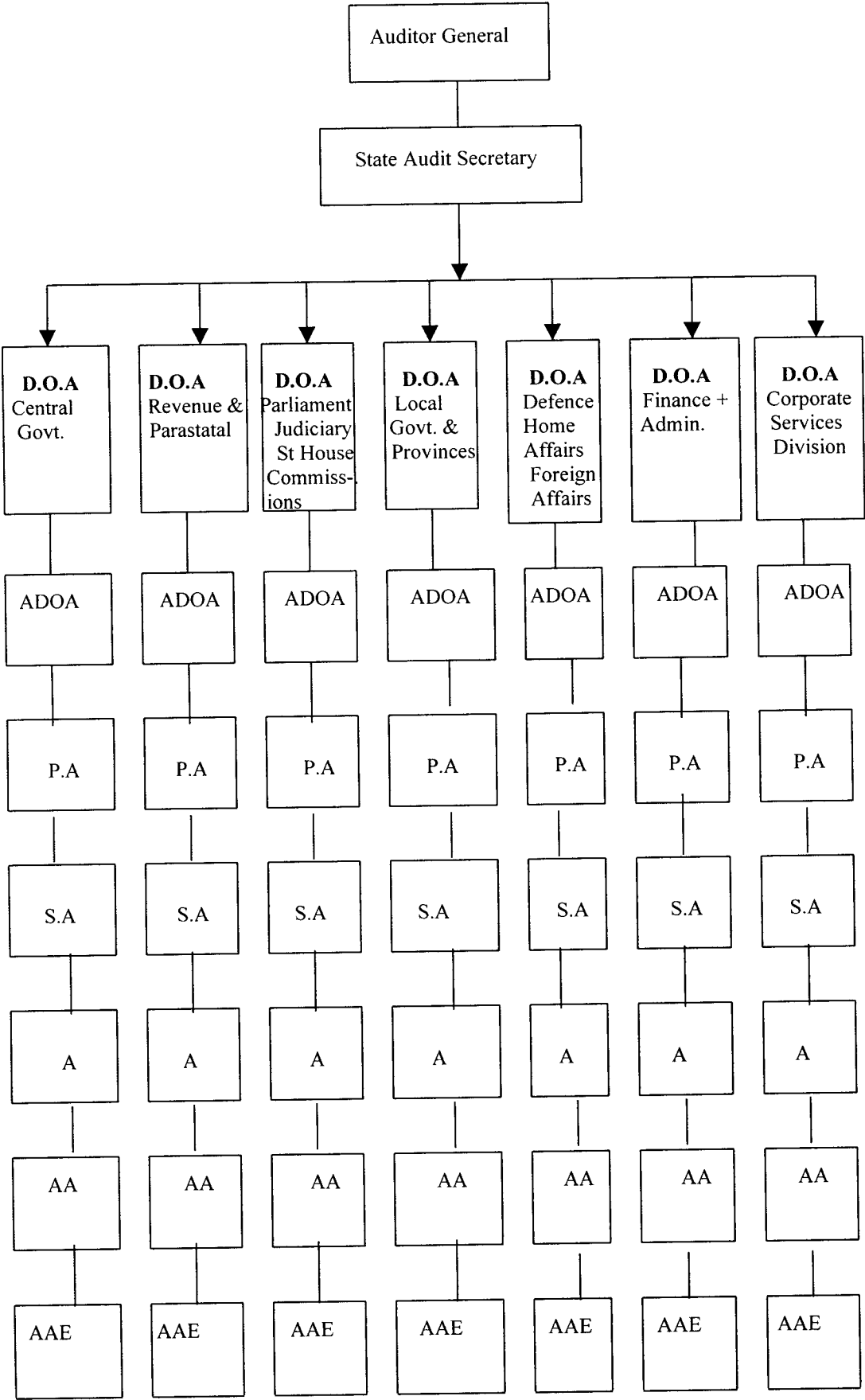
The Structural framework of the office of the Auditor General in Zambia can be presented graphically as shown below

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<sup>42</sup> Supra note 40

<sup>43</sup> Ibid.

3.3 STRUCTURAL FRAMEWORK OF THE OFFICE OF THE AUDITOR GENERAL  
IN ZAMBIA



**Key:**

<b>DOA</b>	<b>=</b>	<b>Director of Audit</b>
<b>ADOA</b>	<b>=</b>	<b>Assistant Director of Audit</b>
<b>PA</b>	<b>=</b>	<b>Principal Auditor</b>
<b>SA</b>	<b>=</b>	<b>Senior Auditor</b>
<b>A</b>	<b>=</b>	<b>Auditor</b>
<b>AA</b>	<b>=</b>	<b>Assistant Auditor</b>
<b>AAE</b>	<b>=</b>	<b>Assistant Auditor Examinations (This position has been Abolished)</b>

**3.4 The Relationship between the Office of the Auditor General and**

**Other Government Organs.**

It is evident from the above outlined structural framework of the office of the Auditor General that the office has a relation with all Government institutions, that is to say the executive, the judiciary and the legislature in that the Auditor General audits the said Government institutions expenditures of public funds.

Notwithstanding, the auditing relationship that exists between the office of the Auditor General and the Government organs, there is also a special relationship that exists between the Auditor General's office and two of the Government organs viz, the executive and the Legislature (National Assembly). The said special relationships are discussed separately below.

**3.4.1 The Auditor General and the Executive**

There is a special relationship that exists between the executive and the office of the Auditor General. It should be stated from the outset that the Constitution of Zambia

in article 33(2) vests the executive power of the Republic of Zambia in the President and that such power may be exercised by him directly or through officers subordinate to him.<sup>44</sup> Thus, in exercising executive powers, the President is given power by article 121(1) of the constitution to appoint the Auditor General subject to ratification by the National Assembly.<sup>45</sup>

The special nature of the relationship between the office of the Auditor General and the executive and in particular the office of the President lies in the fact that although the Auditor General is appointed by the President, he is not obliged to follow the directions or controls of his appointing authority or any other authority as he carries out the functions of his office. This position is buttressed by Article 121 (6) of the constitution which stipulates that in the exercise of his functions the Auditor General is not subjected to the direction or control of any other person or authority.<sup>46</sup>

It is interesting to note that the office of the Auditor General is an autonomous institution and hence it does not fall under any ministry or department. It is because of its autonomy that the office of the Auditor General is even able to audit the office of the President, its appointing authority. Thus, it is contended that if the Auditor General were controlled by another authority in the execution of his or her duties, the controlling authority would be able to direct which Government institutions to audit and which ones not to. There would therefore be sacred cows within the same Government. However, fortunately this is not the case.

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<sup>44</sup> Constitution of Zambia Act no 18 of 1996. Chapter. 1 of the Laws of Zambia

<sup>45</sup> Ibid

<sup>46</sup> Ibid



Furthermore, the Auditor General is required by law to submit a report on the audited accounts of Government expenditure to the President not later than 12 months after the end of each financial year.<sup>47</sup> The President is supposed to lay the said report before the National Assembly not later than seven days after the first sitting of the National Assembly next after the receipt of such report cause it to be laid before the National Assembly...<sup>48</sup>

There are two possible implications of the President's duty to lay the Auditor General's reports in the manner stated above. The first implication is where the National Assembly is sitting, the President is only allowed to have possession of the report of the Auditor General for a period of seven days and he is supposed to submit the said report to the National Assembly on the eighth day. The second being where the National Assembly is on recess where upon the President receives the Auditor General's report. The provisions of Article 121(4) cited above may also imply that the President may have possession of the said report until seven days after the National Assembly resumes to sit. This means that the President may possess the Auditor General's reports for longer than the seven-day period stipulated in article 121(4) of the Constitution.

It is clear that the interpretations of the law of article 121(4) both provide credible arguments on the law as regards the operations of the office of the Auditor General.

However, the law provides further that where the President is in default in laying the Auditor General's report before the National Assembly within the period allowed for

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<sup>47</sup> Constitution of Zambia Act no 18 of 1996 .Chapter 1 of the Laws of Zambia. Article 121(2) (d)

<sup>48</sup> Ibid. Article 121 (4)

by law, the Auditor General may submit the report to the speaker of the National Assembly.<sup>49</sup>

In the premises, it can be deduced that the relationship between the Auditor General's office and that of the President (Executive) is not a one-way relationship. Firstly, the President appoints the Auditor General who is later ratified by the National Assembly and whose office is a public office. The Auditor General then audits the executive and thereafter submits a report to the President on the audit of all accounts of Government expenditure. The President then has a duty to lay the said report before the National Assembly within the period stipulated above.

The rationale of submitting a report to the President first is questionable as it may itself be a constraint to the office of the Auditor General.

### **3.4.2 The Auditor General and the National Assembly**

Apart from auditing the accounts of the National Assembly, the Auditor General shares a special relationship with the National Assembly as regards the operations of the office.

Thus, upon receipt of the Auditor Generals' report, the National Assembly will adopt it and then pass it on to a specialised committee, the Public Accounts Committee which will scrutinise the report and make recommendations thereof. It should be stated that there is another specialised committee called the committee on Parastatal

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<sup>49</sup> Ibid Article 121(4)

Bodies which also deliberates on reports of the Auditor General on accounts and stores of Parastatal bodies only.<sup>50</sup>

In the course of deliberations, the select committees call upon key witnesses in ministries and parastatal organisations to explain or amplify their reports and observations contained in the reports of the Auditor General. The power to call witnesses is given by the **National Assembly Powers and Privileges Act** wherein it states that "the Assembly or any authorised committee may...order any person to attend before the Assembly or before such committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person."<sup>51</sup>

It should be mentioned that the Auditor General is a permanent witness at the sittings of both committees. After deliberating on the reports before them, the committees report on their findings in form of recommendations, views opinions or directives. The reports are in turn tabled in parliament and once tabled, the executive is called upon to respond to the findings within specified periods.<sup>52</sup> In the case of the public Accounts committee's reports, the response from the executive is in the form of Treasury Minutes and for reports of the committee on Parastatal bodies; the response is in the form of Action taken Reports.<sup>53</sup> The responses from the Executive are then tabled in parliament and where necessary, the respective committees deliberate on

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<sup>50</sup> This committee was constituted pursuant to the provisions of the Public Audit 1980. Chapter 378 of the Laws of Zambia after it was seen that organisations in which Government had an interest were too many for the Public Accounts Committee to consider at the same time as the audit of Government other institutions.

<sup>51</sup> Chapter 12 of the Laws of Zambia

<sup>52</sup> Interview with Mrs. Clare Musonda, (Principal Clerk on the Public Accounts Committee) at the National Assembly of Zambia, Lusaka. July, 2003.

<sup>53</sup> Ibid

them and where they are not satisfied, further recommendations are made for executive action.

It should be stated that the executive responds to the reports of the above mentioned committees through the office of the Secretary to the Treasury. Further, it is interesting to note that neither the Public Accounts Committee nor its sister committee can compel the executive to act on the recommendations made to it in respect of the Auditor General's reports.

The other notable feature that exists in the relationship between the Auditor General's office and the National Assembly is that the National Assembly is given powers by article 122 (3) of the constitution<sup>54</sup> to appoint a tribunal whenever a situation arises that may lead to the removal from office of the Auditor General.<sup>55</sup>

It is worth noting that the power to appoint tribunals for removal of constitutional office holders from office are different for different officers. For instance, the Director of Public Prosecutions (DPP) can only be removed from office by a tribunal appointed by the President.<sup>56</sup> The Investigator General may be removed by a tribunal appointed by the Chief Justice<sup>57</sup> and so may the President.<sup>58</sup> Whereas for the Auditor General, the tribunal is appointed by the National Assembly. However, the above outlined differences in appointing powers of tribunals must not be a source of worry as it is a means of perpetrating the doctrine of "checks and balances" within the Government organs.

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<sup>54</sup> Act no.18 of 1996 Chapter 1 of the Laws of Zambia.

<sup>55</sup> Under article 122(2) of the Constitution the possible situations that may arise include where the Auditor General is failing to perform his duties due to infirmity of the body or mind or misbehaviour

<sup>56</sup> Supra note 54. Article 58(3) (a)

<sup>57</sup> Ibid. Article 98 (3)

<sup>58</sup> Ibid. Article 36 (1)

### **3.4.3 The Judiciary and the Auditor General's Office**

The relationship that exists between the office of the Auditor General and the Judiciary is a one-way relationship. Unlike the other two Government organs, the judiciary's relationship with the Auditor General's Office extends only to the audit. Thus, the Auditor General audits the Judiciary. It must be stressed that the accounts of the Judiciary that are audited relate to the funds supplied by the National Assembly for administrative purposes and does not include salaries of Judges.

The audit of the judiciary is included in the annual report of the Auditor General, which is eventually laid before the Public Accounts Committee in the National Assembly.

## **Chapter four**

### **4.1 Introduction**

This segment of the paper is tailored to examine the effectiveness of the office of the Auditor General in Zambia and to point out the constraints that the office faces in carrying out its constitutional mandate. It should be stated at the onset that what obtains in other jurisdictions shall be used to compare and contrast with the Zambian situation, so as to borrow some ideas from such jurisdictions, which ideas may serve as recommendations for strengthening and improving on the effectiveness of the office of the Auditor General in Zambia.

### **4.2 The Effectiveness of the Office of the Auditor General in Zambia**

The key to understanding the effectiveness of the office of the Auditor General in Zambia would be to attempt to answer the question, to what extent does the office manage to execute its functions? The Auditor General is mandated to audit the accounts of public institutions and all private institutions where the Government has an interest by virtue of the Constitution of Zambia and the Public Audit Act.<sup>59</sup>

After auditing such institutions, the Auditor General is required by law to present a report of the Audit to the President of the Republic who should cause the same report to be laid before the National Assembly for deliberations.<sup>60</sup>

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<sup>59</sup> Constitution of Zambia Act no. 18 of 1996, Article 121 and the Public Audit Act, Chapter 378 of the Laws of Zambia, Section 4(1) and (2).

<sup>60</sup> Supra note 47

The issue for consideration at this point is whether or not the Auditor General's report achieves the purpose for which it is intended. It can be argued that the Auditor General's report serves not only as a means of informing the National Assembly and the general public<sup>61</sup> whether there has been compliance with the Appropriation Act in spending of public funds, but also as a starting point in the rectifying of any accounting irregularities that may have been unearthed by the audit.

Thus, in gauging the effectiveness of the office of the Auditor General, it is necessary to look at cases where a rectification or correctional measure was taken and may be attributed to the revelations in the report of the Auditor General.

It is difficult to point at many cases in which actions have been taken against erring government officials that are found wanting by the Auditor General's audit, due to various reasons. For instance, it has been revealed that most actions taken against officers found wanting by the Auditor General's audit are not known to the public because the cases are administratively tackled.<sup>62</sup> Thus, it is not strange to find that a government officer has been demoted or transferred or fired after being found erring by the Auditor General. Of-course the decision to demote or transfer or sack an officer comes after the executive receives through the Secretary to the Treasury, the recommendations from the Public Accounts Committee.

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<sup>61</sup> Note that the office of the Auditor General is a public office see Article 121 (1) of the Constitution of Zambia. Thus any Zambian citizen can go to that office and enquire on its activities

<sup>62</sup> Interview with Mrs Clare Musonda.

Another reason for lack of publicity of cases, in which action has been taken as a result of the Auditor General's report, is the lack of awareness of the role of the Auditor General's office by the general masses.<sup>63</sup>

However, the above stated, should not be taken to mean that there are no publicly known cases in which the Auditor General's reports have made a significant contribution.

For example, during the Second Republic a diplomat based at Bonn in Germany was recalled from the mission for issuing unauthorised loans to members of staff in that country following the revealing of this act by the Auditor General's report.<sup>64</sup>

And more recently, it was reported in one of the leading private newspapers that a special report of the Auditor General on the Times of Zambia (a Government owned newspaper) revealed that there were anomalies in the handling of media support funds by a former State House Press Aide, who was at the material time a Permanent Secretary in the Ministry of Information and Broadcasting. The said officer was said to have received K61 million and US\$15,000 from the media support fund for transactions, which were unsupported and had no expenditure details.<sup>65</sup> It was further

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<sup>63</sup> For instance, interviews carried out by the author with students from various disciplines at the University of Zambia revealed a general lack of awareness of the existence of the Auditor General's office and its role.

<sup>64</sup> Treasury Minute on the Report of the Public Accounts Committee of the Report of the Auditor General for the financial year ended 31<sup>st</sup> Dec. 1978.

<sup>65</sup> The Post issue No. 2374, April 17, 2003 "Yoyo in K189m Times Scandal" Lusaka: Post Newspapers Limited.



reported that there was also a breach of procedure in the purchase of second hand vehicles by the same officer, as he did not observe tender procedures.<sup>66</sup>

Consequently, after much pressure from the civil society the President sacked the State House Press Aide. The Anti-Corruption Commission (ACC) commenced a legal suit in the courts of law against the said officer.<sup>67</sup> This is a good case involving a "big fish" which can be attributed to the Auditor General's reports, thus showing the extent to which the office can be said to be effective.

Another case showing the effectiveness of the Auditor General's office is the one involving a former Secretary to the Treasury. A confidential report of the Auditor General indicated that the said officer, who was at the material time acting Permanent Secretary in the Ministry of Finance and Economic Development, was found to have been involved in the irregular issuing of public funds from the infamous "Zamtrop" account for the benefit of a political party.<sup>68</sup>

The Officer in question was suspended from his office and a legal suit was commenced in the courts of law against him for abuse of public office. The court case ended in a *nolle prosequi* entered into by the state for want of evidence.

However, notwithstanding the end result (the nolle prosequi) the above-cited case is a good example showing the effectiveness of the office of the Auditor General in Zambia.

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<sup>66</sup> The Post Issue no. 2386. April 29, 2003 "Yoyo in another K660m Scandal"

<sup>67</sup> The case was still being prosecuted at the time of writing this paper

<sup>68</sup> The Post Issue No. 2277. January 10, 2003 "I Instructed ZNCB to get Retrenchees' Money - Diangamo."

### **4.3 Constraints that the Auditor General's Office in Zambia Faces**

It would be fallacious to conclude that all the functions of the office of the Auditor General given in the constitution and other statutes are carried out without any hurdles.

Thus, the office faces some constraints that are manifested in various forms. The forms of the constraints may be broken down into three broad categories namely: financial, legal and political. Each of the above mentioned categories are discussed separately below.

#### **4.3.1 Financial Constraints**

The office of the Auditor General has been facing the problem of inadequate funding like many other Government departments. The office has been receiving a fraction of the funds it needs to operate effectively.

Thus, an eminent scholar observed that "...in 1999 the office proposed a budget of K8.8billion including an amount of K805, 773,300 in respect of donor funding for the year 2001. However, this was reduced to K3.149 billion in the Appropriation Act for that year"<sup>69</sup>

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<sup>69</sup> A. W. Chanda(2002). Transparency International Zambia - National Integrity Systems Study Report  
Lusaka: Transparency International.P.20

A similar trend to the above was seen in the 2002 budget under the New Deal Administration in which the office of the Auditor General was allocated K8.7 billion as against its request of K13.5 billion<sup>70</sup>

The problem of inadequate funding has serious ramifications on the operations of the office of the Auditor General. For instance, the office has been unable to fully monitor public expenditure as per constitutional mandate because of its inability to attract qualified personnel due to the poor working conditions prevailing at the office. Lack of qualified personnel has led to a situation where certain irregularities and abuses go undetected. It is clear that the final consequence of under funding the Auditor General's office is that the effective delivery of socio-economic goods and services by the Government is hampered, since abuses or mismanagement of public funds cannot be detected. Public funds are therefore spent on things that were not budgeted for. This definitely affects the Government's delivery of socio-economic goods and services.

Closely related to the problem of inadequate funding is the office's functional independence. The fact that the ministry of finance determines the budget of the office entails that the ministry indirectly encroaches in the operations of the office of the Auditor General. The budget of the office is cut without due regard to the nature and functions of the office.<sup>71</sup>

It is surprising that the Auditor General's office is under funded when Government departments nowadays are free to hire private auditing at a very high fee without consulting the Auditor General as is required by law. To this effect, it has been

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<sup>70</sup> Ibid

<sup>71</sup> Ibid

observed that this is a drain on resources, which may be used to strengthen the office.<sup>72</sup>

There has been an outcry on the independence of the office, because of the fact that the rest of the staff at the Auditor General Office are civil servants employed by the Public Service Commission.<sup>73</sup> It is contended that the present system where the Auditor General does not have powers to hire his or her staff should continue. One only has to imagine how many would be out of employment whenever there is a change in the holder of the office of Auditor General. In fact, nowhere in the world does the Auditor General have powers to hire his staff. Thus what is needed are better working conditions for the staff in the Auditor General's office so that they are not easily susceptible to corruption.

Thus, changing the funding system to the office of the Auditor General can increase the autonomy of the office.

#### **4.3.2 Legal Constraints**

The problems styled legal constraints that the office of the Auditor General faces arise due to the weaknesses in the legal framework addressing the operations of the office. The legal constraints that the Auditor General's office faces are highlighted and discussed separately below.

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<sup>72</sup> M.M Munalula (2001) "A critique of the Legal Framework Governing Sovereign Debt in Zambia" in Zambia Law Journal, vol. 33 Lusaka: UnzaPress. P. 76

<sup>73</sup> A.W Chanda (2002) Transparency International Zambia - National Integrity Systems Study Report P.20

a. **Tenure of Office of Auditor General**

Article 122 of the Constitution <sup>74</sup> guarantees the tenure of the office of the Auditor General. By the said article only the National Assembly has the power to appoint a tribunal to investigate the removal from office of a person holding the office of Auditor General whenever an issue warranting dismissal arises.

However, a prolific scholar <sup>75</sup> observed, "the security of tenure provided by article 122 of the constitution is more theoretical than actual. A person holding the office of Auditor General can be removed from office by a resolution of the National Assembly very easily in a country in which majority of the members of parliament are from the ruling party." <sup>76</sup> Thus the position of the Auditor General is threatened.

Furthermore, the introduction of the clause restraining a person who holds or has held the office of Auditor General from being appointed to act in or hold any other public office, <sup>77</sup> is a constraint on the office holder.

This implies that once a person retires from the office he or she cannot be nominated as a member of parliament. The act of nominating is basically appointing a person to an office.

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<sup>74</sup> Chapter 1 of the Law of Zambia. Act no. 18 of 1996.

<sup>75</sup> M.M. Munalula (2001) "A critique of the Legal Framework Governing Sovereign Debt in Zambia" in Zambia Law Journal vol. 33 P. 75

<sup>76</sup> For instance, there were 125 MPs from the ruling party and only 25 MPs from the opposition in the seventh National Assembly i.e. (1991 - 1996)

<sup>77</sup> Chapter 1 of the Laws of Zambia 1995 edition. Article 122(5)

It is this author's opinion that the said clause does not preclude a former Auditor General from standing for an election as a member of parliament, although upon election he or she does not qualify to be appointed to a ministerial position.

The contentious issue is therefore on what constitutes a public office. According to article 139 of the constitution, which deals with interpretations, public office means an office of emolument in the public service. In fact, it seems the said clause only serves as a restraint to holding any other public office by appointment and not by election. It follows to state that a person who has led the office of Auditor General may stand for election either as a councillor, Member of Parliament or even President.

It has been noted that the clause restricting a person who has held the office of Auditor General from appointment to any other public office was copied from Britain, where "his appointment is for life subject to good address by both Houses of Parliament to the Crown."<sup>78</sup>

It is clear that the said clause is a legal constraint on the officeholder as the restriction of appointment to any other public office is a restraint of trade. Furthermore it is a waste of human resource where such restricted persons can still serve the public in another portfolio.

#### **b. Reporting Period and Procedure**

Article 121 (2) (d) of the constitution<sup>79</sup> requires the Auditor General to submit a report on the General revenues to the President not later than twelve months after the end of

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<sup>78</sup>G.A. Campbell (1965) The Civil Service in Britain. London: Duckworth and Co.P. 142

<sup>79</sup> Supra note 77

each financial year. It has been pointed out that the audit reports of the Auditor General are always late and sometimes by several years.<sup>80</sup> Infact, the Auditor General blamed the constitution for the delays for it requires the office to audit the accounts after the end of a preceding budget year. The budget year is from January to December and a new budget must be approved between January and March.<sup>81</sup>

A direct consequence of the late submission of reports is that the Public Accounts Committee of the National Assembly also deliberates on matters that occurred way too much in the past that it is difficult to make any meaningful recommendations or correctional measures.

One most vexing problem is the issue of unconstitutional expenditure incurred by the executive without the authorisation of Parliament. Article 117(4) (b) and (5) of the constitution provides for such expenditure.<sup>82</sup> The said provisos allow for supplementary and unauthorised expenditures to be tabled in the National Assembly and thus made legitimate fifteen months and thirty months after the end of a financial year, respectively. However, this author is of the view that the period required for legitimatising of such expenditure is too long. It should be reduced to a reasonable period of say six months after the end of a financial year so that there is ample time for the Auditor General to audit such expenditure. Reducing the period for legitimatising supplementary and unconstitutional expenditure is a measure that prevents the reports of the Auditor General from being too late, leading to a situation

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<sup>80</sup> A. W. Chanda (2002) Transparency International Zambia - National Integrity Systems study Report P. 20

<sup>81</sup> Ibid

<sup>82</sup> Constitution of Zambia Act no 18 of 1996 Chapter 1 of the Laws of Zambia.

where correctional measures in respect of such expenditures are difficult to make. In fact, unauthorised expenditure should only be allowed in emergency situations.

It is clear from the foregoing that there is need to change the law on the period in which the Auditor General's reports are supposed to be submitted to the President and the National Assembly. *One of the methods that may be employed to make the six-month reporting period a reality would be to change the auditing system.*

Currently, the minister responsible for finance designates senior officers in the ministries as controlling officers for each of the expenditures. A controlling officer has the responsibility of preparing and submitting financial statements of that ministry to the Auditor General for audit and certification before inclusion in the financial report.<sup>83</sup>

Perhaps, a leaf may be taken from Britain where there is an on going audit system. The said audit system entails having a number of the Auditor General's staff permanently in the ministries and engaged on a running audit. These men and women are at any moment auditing the accounts made up during the previous month or six weeks.<sup>84</sup> The main advantage of this system is that errors in the accounts are corrected almost immediately they occur.

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<sup>83</sup> Report of the Auditor General on the Account for the year ended 31<sup>st</sup> December, 2000. Lusaka: Government Printers. P1

<sup>84</sup> W.J.M. Mackenzie and J. W. Grove (1957) Central Administration in Britain. London: Longman Green and co. P. 307



The permanent representatives of the Auditor General are supposed to present their audit findings to the Auditor General, who in turn includes such findings in the annual report. The adoption of this system in Zambia would therefore make the reports of the Auditor General more useful since they will not be addressing issues that happened way too much in the past.

The procedure stipulated in article 121(2) of the constitution whereby the auditor General is required to submit his audit report on the accounts of the government firstly to the President who must later cause the same report to be laid before the National Assembly for adoption and deliberations is questionable. In a country where the President is very powerful, one cannot help but imagine what can stop the President from ordering the Auditor General to remove certain parts of the report, particularly those that touch on his expenses of public money, before it is presented to the National Assembly.

c. **Powers of the Office**

The Auditor General's powers should be increased to include functions similar to those of the Comptroller and Auditor General of England. In England, the functions of the Comptroller of the Exchequer are not only safekeeping of public funds but also proper appropriation of public funds in accordance with the determinations of the legislature through the appropriation Act.<sup>85</sup>

As comptroller of the public purse he is responsible for issuing funds from the consolidated fund to all Government departments. Thus no payments are made

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<sup>85</sup> Ibid at P.306.

without the consent of the comptroller of the exchequer. This way the office of the *comptroller and Auditor General ensures that all expenses are as per appropriation* Act. It follows therefore to say that it is easier for the office to carry out an audit of the funds advanced to a particular ministry or Government department.

The legislation currently in force in Zambia does not give the Auditor General's office the powers of the comptroller of the public purse. Instead the said powers are vested in the President of the Republic by article 115 (1)(a) of the constitution, which stipulates that "moneys shall not be expended from the general revenues of the republic unless the expenditure is authorised by a warrant under the hand of the President," who is supposed to present a copy of such warrant to the Auditor General.<sup>86</sup>

It is only fair that the person who gives out the funds must be the one to check whether there are any mishandlings of the funds. In fact, transferring of the functions of the comptroller from the President is one of the ways of reducing the powers of the President, which many people have been advocating, to curtail. It is impossible to look at the powers of the Auditor General's office comprehensively without considering those of the Public Accounts Committee of the National Assembly. The two institutions work hand in hand.

As already alluded to in chapter three,<sup>87</sup> the law requires that the Auditor General's reports should be presented to the President who should cause the said reports to be laid before the National Assembly. Once tabled in the National Assembly, the report

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<sup>86</sup> Constitution of Zambia Act no. 18 of 1996. Article 115 (5)

<sup>87</sup> See pp 28 – 31 above.

of the Auditor General is passed on to the Public Accounts Committee, a specialized committee looking at public expenditure. The Public Accounts Committee scrutinises the Auditor General's report and makes recommendations thereof.

The powers of the office of the Auditor General and its sister parliamentary committee are less impressive as regards making correctional measures against officers who are discovered to have embezzled or misused public funds.

The Auditor General's role ends at reporting the findings of his audit. Although the Public Accounts Committee makes recommendations as to what action must be taken against officers found wanting by the Auditor General, it has no power to prosecute or compel the executive to act. The consequence of this is that the Auditor General's reports are always ignored with impunity.

In fact in its latest reports on the accounts for the year ended 31<sup>st</sup> December 2000, the Auditor General's office observed that agricultural loans repayment for the 1996/97 farming season have not been made. Thus, Government is owed a colossal sum of K 2.142 billion for the 1996/97 farming season.<sup>88</sup>

It was also reported that fuel levy deposited in the Governments main account, “control 99”, amounting to K26.1 billion was not remitted to the National Road Board. As a result of non-remittance of the money the National Roads Board has been affected adversely in its road maintenance programs.<sup>89</sup>

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<sup>88</sup> Report of the Auditor General on the accounts for the year Ended 31<sup>st</sup> December, 2000. P.18

<sup>89</sup> Ibid at P.39

The above are but some of the many queries that have been raised by the Auditor General's reports that have remained unattended to despite being reported.

Thus, it is evident that the Public Accounts Committee needs to be strengthened if the reports of the Auditor General are to be put to good use and benefit of the country.

#### **4.3.3 Political Constraints**

The efforts of the Auditor General in attempting to ensure that public funds are utilised as authorised by the appropriation Act are frustrated by political constraints, sometimes. Problems created by politics are the most difficult to deal with. For instance, the National Assembly could not sit for most of 2001 due to the third term debate.<sup>90</sup> The House had adjourned *sine die* for about seven months. The result was that the committees of the house, including the Public Accounts Committee, were unable to sit and deliberate on issues of national importance. This is one of the main reasons why the Public Accounts Committee is still debating on the accounts of 2000. Thus, there is need to introduce legislation that may insulate the National Assembly from political constraints. For instance, a law may be enacted to oblige the committees of the National Assembly to continue carrying out their functions even when the house has adjourned its sittings.

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<sup>90</sup> Interview with Mrs. Clare Musonda.

## **Chapter five**

### **5.1 Conclusion**

The preceding chapters have attempted to show the importance of the office of the Auditor General in a democracy. The institution is one of the offices by which the doctrine of checks and balances is fostered. The Auditor General's office ensures that there is accountability of public funds by those who carry out Government programmes.

It has been brought to light that the first attempt to control public expenditure through parliament was made as far back as 1667 in England when an Act of parliament was passed to the effect that money voted for the Dutch war should be applied for that specific purpose only. The idea of the office of the Auditor General was brought to Zambia by her British colonial masters through a gradual constitutional development order. It would therefore be erroneous to say that auditing of Government financial expenditure in Zambia only commenced in 1964 upon being granted independence. Auditing of the Government's expenditure has been an on going practice since the colonial times.

It has been shown that the office of the Auditor General is one institution that has undergone very little legal transformation since its establishment as a constitutional office at independence and in the subsequent constitutions that the country has had.

The hierarchical structure of the Auditor General's office in Zambia has also been explained. In a nutshell, the Auditor General is assisted by the following officers in carrying out his functions, in their order of seniority, the State Audit Secretary, Seven

Directors of Audit and their assistants. The assistant directors are followed by Principal Auditors who are also followed by those of the rank of Senior Auditors. The next in the hierarchy are Auditors, with Assistant Auditors being at the bottom of the ladder.

The Auditor General's office is ideally supposed to be an autonomous institution, which enjoys special relations with the other organs of the Government. For instance, although the Auditor General is appointed by the President he is mandated to audit the entire executive without any direction from the appointing authority.

Similarly, the relationship between the Auditor General and the legislature (National Assembly) is special in that it is the National Assembly through its Public Accounts Committee that recommends what must be done about the findings made in the Auditor General's reports. The Public Accounts Committee has power to summon any person to answer the queries raised in the Auditor General's report. Furthermore, the National Assembly is also the only body that can appoint a tribunal for the removal from office of the Auditor General whenever a problem arises. However, the relationship between the Auditor General's office and the judiciary is simple in that the auditor general audits the judiciary like any other Government institution that receives funding from parliament.

The office of the Auditor General like most Government departments faces a number of constraints that affect its delivery of an effective service. Among the problems that the office faces that have been highlighted in this paper are: under funding, and lack

of powers to influence correctional measures. Other constraints include a weakness in the auditing system created by the law and lack of insulation from political actions.

However, it is worth noting that the many problems that the office of the Auditor General in Zambia faces can be eradicated by changing the law so that it matches with the changes occurring in the auditing discipline. Such changes in the law would surely strengthen the Auditor General's office and consequently increase its effectiveness.

Thus stated, the following **Recommendations** are made:

## **5.2**

### **i. Under funding**

As already noted, the problem of underfunding affects the operations of the Auditor General's office. The budget office usually cuts down the budget of the Auditor General's office without regard to the nature of the operations that the office carries out. This problem is so grave that it also affects the autonomy of the office as the Auditor General's staff are constantly "begging" for funds from the budget office in the ministry of finance.

It is therefore suggested that the funding of the office of the Auditor General in Zambia should be improved by enacting a law that allows the funds of the office to be determined by a separate vote in the National Assembly. The budget of the office has to be presented to the Public Accounts Committee. This system has been implemented in England.<sup>91</sup> An improved funding would

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<sup>91</sup> See John J. Glynn (1987) Public Sector Financial Control and Accounting New York: Basil Blackwell Publishers P. 100

enable the office to attract skilled and well motivated staff. The office would also then strive to be autonomous.<sup>92</sup>

## **ii. Tenure of the Office of the Auditor General**

The law as it is on the tenure of office of Auditor General offers enough security to the office holder. However, a problem is created when there are floor crossings in parliament, particularly when members of parliament from the opposition resign or are expelled from their parties and later on join the ruling party. This creates a situation where the ruling party has an overwhelming majority in the house. This may affect the tenure of the Auditor General as it would be easy to make a resolution to appoint a tribunal for his removal from office.

Thus, the Constitution or the National Assembly (Powers and Privileges) Act must be amended to include a clause that prevents crossing floors by members of parliament. For instance, adopting the British system in which a political party is voted for and not an individual could be adopted. In this system if a political party sees that a member of parliament is not following the rules of that party, the party simply drops that member of parliament and replaces him with another person from the same party, without any need for by-elections, in which there is a risk that the composition of political party representation may change in the National Assembly.<sup>93</sup> A stable composition in the National

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<sup>92</sup> Deloitte and Touche (Dec 2001) Giving More Bite to the Office of the Auditor General. Lusaka: Deloitte and Touche P.12

<sup>93</sup> Sir Ivor Jennings (1967) The Queens Government. London: Penguin Publishers P. 63



Assembly means concrete security of tenure for the office of Auditor General and hence he or she may do their work without fear.

The clause restraining a person who has held the office of Auditor General from being appointed to any other public office must be done away with, as it is unnecessary.

### **iii. Reporting Period and Procedure**

The law addressing the time frame in which the Auditor General's reports must be presented to parliament must be changed from the current twelve months to six months after the end of the financial year, so as to make the Auditor General's reports useful. The Auditor General's office must adopt the running audit system, which allows for accounting errors to be corrected almost immediately it happens. This system entails having a permanent representative of the Auditor General's office in every ministry. It has been employed in England with much success.<sup>94</sup> It is a better system compared to the one currently in use in Zambia where auditors are sent to audit the accounts of the Government at the end of a financial year. Thus there must be a combination of the two systems in order to ensure efficiency.

Similarly, the period for legitimatising unconstitutional or unauthorised expenditure must be changed from the current thirty months after the end of a financial year to at least three to six months. Indeed, it is easy for the government to know before the end of a financial year that they will overshoot their budget,<sup>95</sup> and hence they should take necessary measures and therefore

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<sup>94</sup> See Page 41 above.

<sup>95</sup> This has been demonstrated by the infamous K612 billion overrun of the 2003 budget.

prevent the National Assembly from being used as a rubberstamp. Consequently the Audit reports will also be finished on time.

Article 121(2) which requires the Auditor General's report to be submitted to the President first and later to the National Assembly must be amended so that the Auditor General's report should go straight to the National assembly where it is adopted and deliberated on. This would reduce the chances of the almost omnipotent President of manipulating what is reported in the Auditor General's report, particularly issues pertaining to the President's expenditure of public money.

**iv. Power to Compel the Executive to Act**

The Auditor General's office and its sister parliamentary committee do not have any power to compel the executive to act on the findings made in the Auditor General's reports. This lack of political will to act on the audit reports findings on the part of the executive has led to a situation where the operations and findings of the Auditor General's office and the Public Accounts committee are reduced to an academic exercise.

Thus, it is suggested that the public accounts committee should be given powers to order or instruct the enforcement agencies of the Government to act on the findings made by the Auditor General's reports.

Furthermore, the Auditor General should be given the power of the comptroller of the Government's funds that are currently exercised by the

President. If these powers are added to the Auditor General's office, it would be easy to combine them with the running audit system, suggested above.

v. **Political Constraints**

There is also need to enact a law that will oblige the committees of the National Assembly to continue sitting even when the house has adjourned so that the findings of the Auditor General's reports are not frustrated by political acts as was the case during the third term debate.

vi. **Checking the Auditor General's Office**

Apart from giving the office of the Auditor General the powers suggested above, there is need to introduce legislation that will enable external audit of the office so as to check the office.<sup>96</sup> It would be tantamount to creating a monster if the office is given all the above-suggested powers without having any body to check it. External auditing of the office is one of the sure ways of ensuring that there is accountability and financial discipline in all Government institutions.

It is this author's belief that if the above recommendations are implemented, the office of the Auditor General would not only be strengthened but also made more effective.

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<sup>96</sup> Supra note 92

## **BIBLIOGRAPHY**

- Barnett J. (1982) "Accounting to Parliament" in Public Fund Digest Vol. 1
- Campbell G.A. (1965) The Civil Service in Britain, London: Gerald Duckworth & Company.
- Chanda, A. W. (2002) National Integrity Systems Report: Lusaka: Transparency International Zambia.
- Chibesakunda, M. N. (2001) The Parliament of Zambia. Lusaka: National Assembly of Zambia.
- Crowther, J.E. (ed) (1995) The Oxford Advanced Learners Dictionary. Oxford: Oxford University Press.
- Curzon, L. B. (1997) Dictionary of Law London: Pitman Publishing.
- Davidson, J. W. (1946) The Legislative Council of Northern Rhodesia. London: Faber and Faber Ltd.
- Deloitte and Touche (2001) Giving more Bite to the Office of the Auditor General. Lusaka: Deloitte and Touche.
- Glynn, John J. (1987) Public Sector Financial Control and Accounting. New York: Basil Blackwell Publishers.
- G.R.Z. (1975) A Government Auditor's Guide to the Office of the Auditor General. Lusaka: Government Printers.
- \_\_\_\_\_ (1938) Report of the Auditor to the Director of Colonial Audit Lusaka: Government Printers.
- \_\_\_\_\_ (1955) Report on the Audit of Public Accounts for Northern Rhodesia 1953 – 54 on the Native Treasuries. Lusaka: Government Printers.
- \_\_\_\_\_ (2000) Report of the Auditor General on the Accounts for the year Ended 31<sup>st</sup> December 2000. Lusaka: Government Printers.
- \_\_\_\_\_ (1978) Treasury Minute on the Report of the Public Accounts Committee on the Report of the Auditor General. Lusaka: Government Printers.
- Legislative Council Debates col 135 - 145 24<sup>th</sup> July 1927.
- Mackenzie, W. J. M & Grove J. W. (1957) Central Administration in Britain. London: Longmans Green and Co.