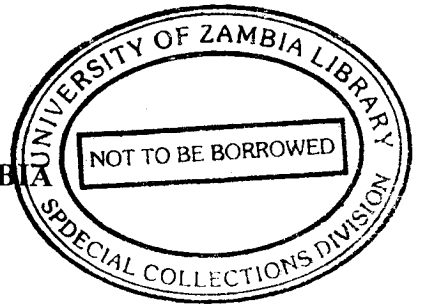


THE UNIVERSITY OF ZAMBIA



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**THE EFFECTIVENESS OF THE OFFICE OF THE AUDITOR GENERAL AS A
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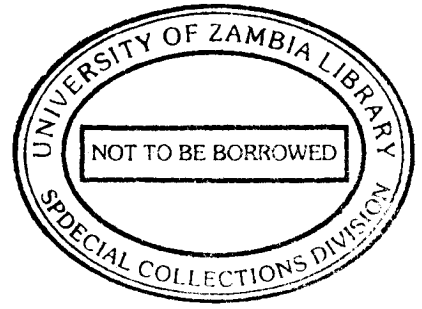
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**THE EFFECTIVENESS OF THE OFFICE OF THE AUDITOR GENERAL AS A
TOOL OF GOOD GOVERNANCE**

By

AKAPELWA JOSEPH



A Directed Research paper submitted to the University of Zambia Law Faculty in partial fulfillment of the requirements for the award of the Degree of Bachelor of Laws (LL.B.)

UNZA

NOVEMBER 2005

DECLARATION

I, Akapelwa Joseph, solemnly declare that this work represents my own ideas and is not a production of any other work produced or submitted by any other person to the University of Zambia or any other institution.

TABLE OF CONTENTS

	PAGE
DEDICATION	vii
ACKNOWLEDGEMENT	viii
INTRODUCTION	ix
 CHAPTER ONE	
RATIONALE FOR THE OFFICE OF THE AUDITOR GENERAL	
A) i) The Concept of Auditing	1
ii) Models of External Audit Systems.....	4
B) Establishment of the Office of the Auditor General	6
C) Structure and Composition of the Office of the Auditor General...	9
1) Audit and Consultancy Division	
i) Specialized Audits and Consultancy Directorate.....	9
ii) Revenue Audits Directorate.....	9
iii) Provincial Appropriation Audit Directorate.....	10
iv) Ministerial Appropriation Audit Directorate.....	10
v) The Public Debt and Investment Audit Directorate.....	11
2) Corporate Services Division	
i) Planning and Information Directorate.....	12
ii) Human Resource and Administration Directorate	
Conclusion	13

CHAPTER TWO

FUNCTIONS AND POWERS OF THE AUDITOR GENERAL

A) Functions and Powers of the Auditor General under the Constitution... 15

B) Functions of the Auditor General under the Public Audit Act and the Finance (Control and Management Act) Act..... 19

C) Powers of the Auditor General under the Public Audit Act and Finance (Control and Management Act) Act 23

Conclusion 28

CHAPTER THREE

THE EFFICACY OF THE PUBLIC ACCOUNTS COMMITTEE IN RELATION TO THE OFFICE OF THE AUDITOR GENERAL

A) Establishment and Structure of the Public Accounts Committee..... 29

B) Functions and Powers of the Public Accounts Committee..... 30

Conclusion 35

CHAPTER FOUR

THE CONCEPT OF GOOD GOVERNANCE

A) Rule of Law 38

B) Transparency 39

C) Accountability 39

D) Effective State Institutions and Procedures 40

Conclusion 41

CHAPTER FIVE

A) SUMMARY	43
B) RECOMMENDATIONS	44
i) Funding	44
ii) Mode of appointment of the Auditor General	45
iii) Personnel	45
iv) Audit Model	46
v) Public Participation	46
vi) Jurisdiction and Remedial Powers	47
Conclusion	48
BIBLIOGRAPHY	49

DEDICATION

To my entire family, especially my parents for having nurtured me into a responsible person.

I also take this opportunity to remember my late brother Wamundila Brian Akapelwa (1967-2004). Miss you big brother (M.Y.S.R.I.P)

ACKNOWLEDGEMENT

“In everything give thanks; for this is the will of God in Christ Jesus for you”

(1 Thessalonians 5:18)

First and foremost I thank my Lord and Saviour, Jesus Christ, for giving me the strength, the wisdom and the grace, not only to write this dissertation, but also for giving me the opportunity to study at the University of Zambia.

The search for knowledge has been lengthy and tough but you made it manageable and feasible. Lord I will eternally be thankful.

My sincere gratitude goes to Mrs. Anne Chewe Chanda for accepting to supervise this onerous assignment, for her patience and for being available for consultations.

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To my family once more I say thanks a million times, God Bless, especially my sister Doreen.

Lastly an assignment of this nature cannot be achieved in isolation. For that reason I am also truly indebted to all my friends and colleagues who helped me in one way or the other, to complete this challenging undertaking and without whose help I would have found it extremely difficult.

INTRODUCTION

The aim of this paper is to investigate the effectiveness of the Office of the Auditor General as a tool of good governance in Zambia.

The institution of the Auditor General is widespread and is found in many countries though it exists in various models. The concept and establishment of audit is inherent in public financial administration since the management of public funds represents a trust. Audit is not an end in itself but is part of a regulatory system whose aim is to reveal violations of the principles of legality, efficiency, effectiveness and economy of financial management so as to take corrective in individual cases and hence ensure transparency and accountability.

The first chapter of this essay shall discuss the essence of the Office of the Auditor General, and what the concept of auditing entails. It also highlighted the various forms of auditing that exist in different jurisdictions. It further discusses the establishment and structure of the Office of the Auditor General. A conclusion is then drawn.

The second chapter evaluates the functions and powers of the Auditor General and pays particular attention to some of the factors that hinder the Office from executing its functions and powers efficiently and effectively.

Chapter three considers the efficacy of the Public Accounts Committee in relation to the Office of the Auditor General. It shall look at the establishment, structure and functions of the Public Accounts Committee in public expenditure management.

Furthermore chapter four discusses the concept of good governance, what it entails and whether it is adhered to in Zambia.

Lastly, chapter five provides conclusions of the dissertation by briefly summarizing the pertinent parts of each chapter. It also provides recommendations and how best the Office of

the Auditor General can be made to work effectively and efficiently by addressing its inadequacies and weaknesses.

Chapter One

Rationale for the Office of the Auditor General

A. Introduction

This paper shall investigate the effectiveness of the office of the auditor general in Zambia as a tool of good governance.

Since independence strides have been made by successive governments in this country to establish a system that would not only assure but also sustain the culture of transparency and accountability. In this vain institutions to facilitate the growth of this culture have been established among them the office of the auditor general.¹

Chapter one discusses the subject along the following headings: who is the Auditor General and what does the concept of auditing entail? What are the various forms of auditing found in different jurisdictions, the establishment of the office of the Auditor General in Zambia, lastly the structure and composition of the office and a conclusion will be drawn.

i) The Concept of Auditing.

The office of the auditor general is an implementing agency under the transparency and accountability sub-component of the financial management, transparency and accountability component.²

Section 1 of the Lima Declaration of Guidelines on Auditing Precepts provides that:

¹ A PSRP Bulletin. Public Service Reform Programme, p.16

² Ibid

The concept and establishment of audit is inherent in public financial administration as the management of public funds represents a trust. Audit is not an end in itself but an indispensable part of a regulatory system whose aim is to reveal deviations from accepted standards and violations of the principles of legality, efficiency, effectiveness and economy of financial management early enough to make it possible to take corrective action in individual cases, to make those accountable accept responsibility, to obtain compensation, or to take steps to prevent--or at least render more difficult--such breaches.

Since the management of public funds represents a trust, those in office specifically controlling officers in ministries, are trustees and the people are the beneficiaries. Therefore the controlling officers owe a duty to the public to ensure that these resources are used for purposes for which they were appropriated failure to which sanctions should be enforced against them. In other words the concept of auditing represents the principle of checks and balances in that the auditor general's role is to ensure that government spends within the authorized framework. The essence is to prevent financial mismanagement with the sole purpose of facilitating economic development.

Currently Zambia has been ranked at number 177 of the world's poorest countries. About 80 percent of the population lives in absolute poverty. For example an estimated Basic Needs Basket for a family of six in Lusaka for the month of September as produced by the Jesuit Centre for Theological Reflection was K1, 353, 790³. Therefore the leaders must pull up their efforts so as to run the country transparently and accountably.

³ www.jctr.org.zm/bnb/sep-05.htm

Furthermore section 2 provides that Pre-audit represents a before the fact type of review of administrative or financial activities; post-audit is audit after the fact.⁴ Effective pre-audit is crucial for the sound management of public finances entrusted to the state. It may be carried out by a Supreme Audit Institution or by other audit institutions for example internal audit departments. Pre-audit by a Supreme Audit Institution has the advantage of being able to prevent damage before it occurs, but has the disadvantage of creating an excessive amount of work and of blurring responsibilities under public law. This is due to the fact that it becomes unclear as to whether the pre-audit should be carried out by the auditor general as external auditor or by the internal auditors in government departments; but since the auditor general is an officer of parliament s/he should conduct pre-audit as opposed to internal auditors who are part of government departments and institutions and therefore susceptible to partiality due to conflict of interest.

On the other hand post-audit by a Supreme Audit Institution highlights the responsibility of those accountable; it may lead to compensation for the damage caused and may prevent breaches from recurring.⁵ But this type of audit does not offer much help due to the fact that the culprit (s) may have already misused all the money and hence no compensation to the state. Moreover in Zambia the Auditor General's reports are not produced in time due to several impeding factors, chief of which are lack of funding and late submission of the financial report by the Accountant General. This therefore leaves the Auditor General with no option but to rely on sample audits for his report to the Public Accounts Committee.⁶

⁴ www.intosai.org/ The Lima Declaration of Guidelines on Auditing Precepts issued by the International Organization of Supreme Audit Institutions in 1977 and reissued in 1998.

⁵ Ibid.

⁶ Dr. Munalula's Report to Transparency International Zambia on Watchdog Institutions, p.50

As the external auditor, the Supreme Audit Institution has the task of examining the effectiveness of internal audit. If internal audit is judged to be effective, efforts shall be made, without prejudice to the right of the Supreme Audit Institution to carry out an overall audit, to achieve the most appropriate division or assignment of tasks and cooperation between the Supreme Audit Institution and internal audit.⁷

ii) Models of External Audit Systems.

The legal mandates, reporting arrangements and institutional structures of Supreme Audit Institutions vary depending on a country's legal and administrative system. The most commonly used auditing systems are based on one of the following three models: In the Napoleonic system, also known as the "court system", SAIs are part of the judiciary, have both judicial and administrative authority and are independent of the legislative and executive branches. This model is used in some European countries (such as France, Italy, Spain, Portugal and others) and most Latin American and francophone African countries.⁸ A key aspect of judicial accountability systems is that relevant government officials are normally held personally liable for the sums involved should an unauthorized or illegal payment be made. In addition to the SAI's judicial role, a complementary high-level **system** of parliamentary accountability for public expenditure is normally in place.⁹

⁷ Ibid.

⁸ Staphenurst and Tittsworth, 'Features and Functions of Supreme Audit Institutions', World Bank, Prem Note 59, World Bank: 2001)

⁹ www.dfid.gov.uk/ characteristics different external audit systems, p5

In the Westminster system, used in many Commonwealth countries, the SAI (referred to as the Auditor General) is an independent body that reports to parliament. The office serves no judicial function but, where this is warranted, its findings may be passed to legal authorities for further action.¹⁰ This is the type of audit system used in Zambia in the sense that the Auditor General is an agent of Parliament. The Auditor General works hand in hand with the Public Accounts Committee by submitting audit reports to this institution, which scrutinizes government expenditure by verifying and commenting on the Auditor General's reports. The Committee issues reports and /or recommendations, which are tabled before the house, and the government is expected to respond to issues raised in the reports.¹¹

Furthermore there is the board system, which is prevalent in Asia; it is similar to the Westminster model in that it is independent of the executive and helps parliament perform its oversight function.¹² Under the board or collegiate **system** the SAI, has a number of members who form its college or governing board and take decisions jointly. Collegiate **audit** bodies normally are part of a parliamentary **system** of accountability. Reports and opinions agreed by the college are submitted to Parliament, where there is usually some form of Public Accounts Committee to act on them. Collegiate bodies do not have judicial functions. The basic structure of the accountability model is thus similar to the Westminster model, with the key differences being in the internal structure of the **audit** institution.¹³

¹⁰ Opcit

¹¹ www.dfid.gov.uk/ characteristics different external audit systems,p.2

¹² Staphenhurst and Tittsworth, 'Features and Functions of Supreme Audit Institutions', World Bank, Prem Note 59, World Bank: 2001)

¹³ www.dfid.gov.uk/ Characteristics of different External Audit Systems, p.9

The international body that guides the work of SAIs is the International Organization of Supreme Audit Institutions (INTOSAI). It issues international guidelines for auditing and financial management, develops corresponding methodologies, provides training, and promotes the exchange of information and know-how among its membership of over 170 SAIs.¹⁴

B. Establishment of the office of the Auditor General.

Currently the office of the Auditor General is established under Part X of the Zambian constitution, which deals with public finances.

Article 121(1) of the constitution provides that:

*“There shall be an Auditor General for the Republic whose office shall be a public office and who shall, subject to ratification by the National Assembly, be appointed by the President.”*¹⁵

Furthermore article 121(6) provides that the auditor general shall not be subjected to the direction or control of any person or authority in the exercise of his functions.

The rationale behind these provisions is to ensure that the office of the auditor general is independent from government interference. The independence of the auditor general is one exacting factor seized to be fundamental to the auditing role of the office in both the private and public sectors. The Australian Statement of Practice (AUP) 32 states that:

*“The value of independent audit lies both in the fact that the auditor is, and is deemed to be, independent of the audited entity, and he is able to carry out the audit free of any externally imposed constraints”.*¹⁶

¹⁴ Opcit

¹⁵ Chapter 1 of the Laws of Zambia

And further that:

*“Independence requires a freedom from ...susceptibility to undue influence or pressure any of which could lead to a belief that the audit was determined other than by a reference to the facts of the audit alone”.*¹⁷

This entails that the office of the Auditor General in auditing public accounts should not be attached to the institution being audited so as to avoid conflict of interest. This is intended to facilitate impartiality so as to produce objective audit reports. Furthermore it entails that the OAG should not be subjected to political pressure, which would lead to the production of biased reports in favour of the government. Since the Auditor General is a watchdog institution charged with the duty to protect the people’s interest, to see to it that there is transparency and accountability in the government, its independence must be guaranteed legally.

The chief aim of the Lima Declaration of Guidelines on Auditing Precepts¹⁸ is to call for independent government auditing. A Supreme Audit Institution, which cannot live up to this demand does not come up to standard. It is not surprising, therefore, that the issue of the independence of Supreme Audit Institutions continues to be a theme repeatedly discussed within the INTOSAI community.¹⁹ Nonetheless, the demands of the Lima Declaration are not fulfilled by a Supreme Audit Institution just achieving independence; this independence is also required to be anchored in the legislation. For this, however, well-functioning institutions of legal security ought to exist; moreover these are only to be

¹⁶ Ken Coghill PhD. Auditing the Independence of the Auditor General, p.3: Seminar paper presented on 11 February 2004, Political Science Programme, Research School of Social Sciences, The Australian National University

¹⁷ Ibid.

¹⁸ www.intosai.org/ The Lima Declaration of Guidelines on Auditing Precepts issued by the International Organization of Supreme Audit Institutions in 1977 and reissued in 1998.

¹⁹ Lima Declaration of Guidelines on Auditing Precepts

found in a democracy based on the rule of law. In Zambia the independence of the office of the Auditor General is guaranteed under the constitution, but in practice the holder is not fully independent from the executive. For example the funding for OAG is provided through budgets submitted to the Ministry of Finance and National Planning for initial approval before submitting to Parliament.²⁰

Rule of law and democracy are, for that reason, critical grounds for really autonomous government auditing and are the pillars on which the Declaration of Lima is founded.²¹

In striving to comply with the principles of the Lima Declaration the office of the Auditor General in Zambia, enjoys security of tenure under article 122 of the constitution²². The auditor general shall vacate his office when he or she reaches the age of 60 years. He can only be removed from office for inability to perform the functions of his office or for incompetence or for misbehaviour.

The auditor general's salary is a direct charge on the revenues of the Republic and it is contained in an Act of Parliament. The auditor general enjoys immunity from liability in the execution of his functions.

In practice the powers of the auditor general are less impressive and his security of tenure in office is more theoretical than practical. This is based on the fact that he can be removed from office by a resolution of the National Assembly.²³ In a country where the majority of Members of Parliament are from the ruling party, his position is more insecure than it

²⁰ Final Revised Report on the Restructuring of the Office of the Auditor General-2004, p.6

²¹ Ibid.

²² Chapter 1 of the Laws of Zambia

²³ Dr. Munalula's Report to Transparency International Zambia on Watchdog Institutions, p.56

ought to be. Moreover his terms of office and his remuneration could and can still be altered by a simple amendment to the constitution.²⁴

C. Structure and Composition of the office of the Auditor General.

The office of the Auditor General is made up of two Divisions namely: The Audit and Consultancy Division and Corporate Services Division.²⁵

1) Audit and Consultancy Division

This Division is headed by a Deputy Auditor General and comprises five Directorates each headed by a Director. These are:

i) Specialized Audits and Consultancy Directorate

Its role is to carry out specialized audits and offer consultancy services. Examples of specialized audits are forensic, information technology, environmental and performance. In addition clients of the Auditor General need help in the preparation of accounts, taxation, financial mismanagement and other related areas other than the statutory audits.²⁶

ii) Revenue Audits Directorate

Its functions are to audit all the processes and procedures regarding the revenue collections in the country and to ascertain whether all the revenue collections have been brought to account. Further the Directorate verifies whether the revenue targets as stated in the budget

²⁴ Ibid

²⁵ Final Revised Report on the Restructuring of the Office of the Auditor General (2004), p.10

²⁶ Ibid, p.11

have been met and if possible makes recommendations that help the government to bring all the revenue to account.²⁷

iii) Provincial Appropriation Audit Directorate

This Directorate is responsible for the appropriation audit of all government provincial and district offices. Since 1993 the government activities have been devolved to the province and district levels. Hence the decentralization policy means that all project activities such as BESSIP, ASSIP, ROADSIP and Health Reforms designed to help communities are being implemented at those levels. This has led to an increase in the number of activities that need to be audited by the office of the Auditor General hence the need for this Directorate.²⁸

iv) Ministerial Appropriation Audit Directorate

This Directorate is responsible for auditing 21 Line Ministries, Service Commissions, Judiciary, State House, National Assembly, Cabinet Office, Office of the Vice President, Public Service Management Division, Office of the Auditor General and 187 Departments.²⁹

In addition, the Directorate is responsible for the audit of donor-funded projects in the line ministries and other institutions. For example in the 2003 budget there were 201 donor-funded projects, which had to be audited at specific stated periods in the Agreements. The

²⁷ Ibid, p.16

²⁸ Ibid, p.17

²⁹ Ibis, p.20

budgeted expenditure of the clients of the Directorate in the financial year 2003 was Kwacha 6.8 trillion, which the Directorate had to audit.³⁰

The Directorate is divided into two sections namely the Line Ministries Section and Parliamentary, Judiciary, Defence and Legal Section.³¹

v) **The Public Debt and Investment Audit Directorate**

It is responsible for the following:³²

- To audit and certify the accounts of all statutory bodies and Permanent Commissions for which the Auditor General is the appointed auditor;
- Carry out the audit of pension payments to government retirees and retrenched officers;
- Audit loans and grant payments, investments made by the government; and
- To audit public debt

As a result this Directorate is divided into four sections responsible for: audit of parastatals and statutory bodies; pension payments; public debt; and grants and loan payments.³³

2) **Corporate Services Division**

The Division is headed by a Deputy Auditor General and comprises two Directorates each headed by a Director namely:³⁴

³⁰ Ibid

³¹ Ibid

³² Ibid, p.23

³³ Ibid

³⁴ Ibid

i) **Planning and Information Directorate**

Its main objective is to ensure that audit Directorates develop and implement plans that are within the overall direction of Parliament's national vision and priorities. The Directorate provides vital support services to all other Directorates, including monitoring and evaluation of performance or work plans to enable them achieve their objectives.³⁵

Among the functions of the Directorate are to:³⁶

- Establish and maintain efficient and effective operational, decision support and dissemination of information and providing information technology (IT) logistical support services;
- Coordinating the preparation and implementation of Annual Work Plans and Budgets;
- Liaise with Parliament, Judiciary, the Executive and all other audited stakeholders and clients on all matters relating to audit.

This Directorate is headed by a Director and is subdivided into two sections namely: the Planning, Quality control, Research and Development Section; and the Information Technology Section.³⁷

The Planning Quality Control, Research and Development Section is further subdivided into two units namely:³⁸

³⁵ Ibid, p.26

³⁶ Ibid

³⁷ Ibid, p.27

- Planning Research and Development Unit; and the
- Quality Control, Reporting and Coordination Unit

Likewise the IT section is also subdivided into two units called:³⁹

- The Systems Development and Support Unit; and
- The Hardware, Networks and Communications Unit

ii) **Human Resource and Administration Directorate**

The main functions of the Directorate include to effectively and efficiently provide logistical support to Directorates, manage the utilization of resources, develop and maintain an up to date human resources database in order to facilitate effective operations of the office of the Auditor General.⁴⁰

The Directorate is headed by a Director and comprises the following sections:⁴¹

- Human Resource management and Development;
- Administration;
- Finance;
- Internal Audit; and
- Public Relations

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid,p34

⁴¹ Ibid

Conclusion

The office of the Auditor General is established under article 121 of the Zambian constitution chapter 1 of the Laws of Zambia, as a constitutional office. The office of the Auditor General as it exists in Zambia represents the Westminster system, as it is an agent of Parliament. It has no judicial function; it is intended to oversee the management of public funds and the quality and credibility of the government's financial reporting. The office supplies the information needed by the legislature and the public to hold governments accountable for stewardship of public funds and assets. As such it acts to limit opportunities for financial malpractice and the abuse of power. The office of the Auditor General is one of the pillars of a country's national integrity system, as it is intended to ensure transparency and accountability in government departments.

The office of the Auditor General is made up of two Divisions namely; the Audit and Consultancy Division and the Corporate Services Division. Each Division is headed by a Deputy Auditor General and is further divided into Directorates, which are also subdivided into sections.

Chapter two shall analyse the functions and powers of the Auditor General as provided for under the constitution, the Public Audit Act and the Finance (Control and Management) Act respectively. It shall further discuss some of the key factors that impede the effective and efficient operation of the Office.

Chapter Two

Functions and Powers of the Office of the Auditor General.

A) Functions and Powers of the Auditor General under the Constitution

The scope of the Auditor General's mandate plays a pivotal role in strengthening the effectiveness of this office, as a watchdog institution, in overseeing financial discipline in government departments. If the functions and powers of the Auditor general are narrow the effect is that the bulk of public resources may not be accounted for.

Chapter two shall therefore evaluate the functions and powers of the Auditor General paying particular attention to some of the factors that impede the office from executing its functions and powers effectively and efficiently.

Article 121(2) of the constitution provides that it shall be the duty of the Auditor-General-

- (a) *“to satisfy himself that the provisions of this Part are being complied with;*
- (b) *satisfy himself that the moneys expended have been applied to the purposes for which they were appropriated by the Appropriation Act or in accordance with the approved supplementary estimates, or in accordance with the Excess Expenditure Appropriation Act, as the case may be, and that the expenditure conforms to the authority that governs it;”⁴²*

The core function of the Auditor General thus is to ensure that the provisions of the constitution regarding collection and application of public funds are properly adhered to. This is done through the production of Auditor General's Reports, specifically the Auditor General's Annual Report. In this regard, the role of reporting to Parliament is done through the Quality Control, Reporting and Coordination Unit of the Planning

⁴² Chapter 1 of the Laws of Zambia.

and Information Directorate, whose task is to ensure that all audited materials from all Directorates are consolidated into one final report and submitted to Parliament timely.

Furthermore sub clause (c) provides that it is the duty of the Auditor General, *“to audit the accounts relating to the general revenues of the Republic and the expenditure of moneys appropriated by Parliament, the National Assembly, the Judicature, the accounts relating to the stocks and stores of the Government and the accounts of such other bodies as may be prescribed by or under any law.”*⁴³

The Revenue Audit Directorate is responsible for auditing all the processes and procedures regarding the revenue collections in the country and ascertains whether all the revenue collections have been brought to account.⁴⁴ The Directorate is responsible for tax and non-tax revenue issues, which encompass taxable revenue such as Income Tax, Customs and Excise, Value Added Tax and Non-Tax Revenue such as fees of court or office and capital grant.⁴⁵

Furthermore the Ministerial Appropriation Audit Directorate is responsible for auditing moneys expended by the National Assembly, the Judicature, State House, Cabinet Office, and Office of the Vice President, Public Service Management Division and 21 Line Ministries.

Moreover, sub clause (d) further provides that the Auditor General is obliged *“to audit the accounts relating to any expenditure charged by this Constitution or any other law*

⁴³ Ibid

⁴⁴ Final Revised Report on the Restructuring of the Office of the Auditor General, October 2004,p.16

⁴⁵ Ibid

on the general revenues of the Republic and to submit a report thereon to the President not later than twelve months after the end of each financial year.”⁴⁶

It should be noted that the Public Debt and Investment Audits Directorate carries out the audit of institutions such as the Anti-Corruption, Electoral and Permanent Human Rights Commissions, the Investigator General’s office and the Administrator General’s Office annually to enable certification of the appropriation accounts by the Auditor General.⁴⁷

Unfortunately audit reports are always late sometimes by several years. Some government institutions have not been audited for several years. The Auditor General blames the constitution for the delays in that the constitution requires the Office to audit the accounts after the end of the previous budget year. The budget year runs from January to December and the new budget must be approved between January and March. The value of the reports is thus questionable as they deal with events that occurred in the past. The abusers of public funds may have died or fled the country. For example the late Godden Mandandi was facing abuse of public funds criminal charges together with Dr. Peter Machungwa.

Article 121(3) of the Constitution further provides that *the Auditor-General and any officer authorized by him shall have access to all books, records, reports and other documents relating to any of the accounts referred to in clause (2).*⁴⁸ However, despite having this power the Auditor General argues that controlling officers, and the Ministry of Finance specifically, have very little understanding of the importance and role of his / her Office. Many officials refuse with impunity to adhere to the statutory requirement that they co-

⁴⁶ Op-cit.

⁴⁷ Final Revised Report on the Restructuring of the Office of the Auditor General, October 2004,p23

⁴⁸ Chapter 1 of the Laws of Zambia

operate with his office.⁴⁹ As a result some administrative measures to improve co-operation between the Ministry of Finance and the Auditor General were introduced due to pressure from donors.⁵⁰

Moreover clause (5) of the Constitution provides that *“the Auditor-General shall perform such other duties and exercise such other powers in relation to all accounts of the Government or the accounts of other public authorities or other bodies as may be prescribed by or under any law.”*⁵¹ Such duties include the audit of all government provincial and district offices. This helps to account for funds meant for projects like BESSIP, ASSIP, ROADSIP and Health Reforms.⁵²

*In the exercise of his functions, the Auditor-General shall not be subjected to the direction or control of any other person or authority.*⁵³

It is noteworthy that even though the constitution guarantees the independence of the Auditor General, there are other factors that affect the independence, effectiveness and efficiency of this Office, such as availability of financial and human resources and the mode of appointing the holder of the Office. As already alluded to in Chapter One, the President, subject to ratification by the National Assembly, appoints the Auditor General. Since the President is the appointing authority this makes the appointees to be loyal to the President at the expense of accountability. The appointees tend to be more political than professional as a result of conflict of interest. This lowers the standard of their work and thus does not give accurate audit reports so as to favour the government of the day and

⁴⁹ Dr. Munalula's Report on Watchdog Institutions in Zambia, to Transparency International Zambia p.56

⁵⁰ Ibid

⁵¹ Article 121, Chapter 1 of the Laws of Zambia

⁵² Final Revised Report on the Restructuring of the Office of the Auditor General, October 2004, p. 17

⁵³ Chapter 1 of the Laws of Zambia

ultimately avoid reprisals from the President. As a result even though the Auditor General is a watchdog institution, whose task is to ensure fiscal discipline, it is passive. Moreover reports have been produced but nothing has been done to bring those responsible for plunder of national resources to book.

For example the Zambia National Oil Company audit report indicates that US \$ 100 million was lost through the importation of oil feedstock under dubious arrangements. This led to the liquidation of the company but no culprits have since been brought to book due to political interference.⁵⁴

Furthermore Zambia lost about US \$ 150 million through the sale of ZCCM Copper and Cobalt to an Israeli company at below the world prices but those responsible for such illegal activities have not been prosecuted.⁵⁵

B) Functions of the Auditor General under the Public Audit Act and the Finance (Control and Management) Act.

According to Section 3 of the Public Audit Act the Auditor General is required to audit the accounts of:

- (a) *“every statutory corporation or public company;*
- (b) *every Department in which funds and working accounts are established under section eight of the Finance (Control and Management) Act; and*
- (c) *every private institution which receives Government grant, subsidy or subvention in any financial year.”*⁵⁶

⁵⁴ National Integrity Systems TI Country Study Report Zambia 2003, p.10

⁵⁵ Ibid

⁵⁶ Chapter 378 of the Laws of Zambia

The Public Debt and Investment Audit Directorate of the Office of the Auditor General, executes the above-mentioned functions. Its functions, inter alia, are:

- *To audit and certify the accounts of all statutory bodies and Permanent Commissions for which the Auditor General is appointed auditor;*⁵⁷
- *To conduct audit reviews of any parastatal organization as may be deemed necessary from time to time.*⁵⁸

Section 4 (1) provides that in *“the performance of his duty under section three, the Auditor-General shall satisfy himself that the moneys expended by each statutory corporation, public company, Department or private institution have been applied to the purposes for which they were appropriated.”*⁵⁹ However, this function is not properly executed in that public entities can avoid the direct scrutiny of the Auditor General by appointing and directly remunerating private external auditors. These may be reluctant to jeopardize contracts through negative recommendations. As a result the use of private auditors badly siphons the needed resources from the Auditor General.⁶⁰ This is due to the fact that instead of directing the funds to the office of the Auditor General, which may improve its operations, the government funds private auditors. For example the government recently appointed auditors from South Africa to audit the operations of the **task force on corruption**. Such actions are not well intended because the office of the Auditor General can also do a proper job if permitted. If anything it is meant to block the Zambian people from the truth since the report is only submitted to the government, which may decide that it is confidential for security purposes.

⁵⁷ Final Revised Report on the Restructuring of the Office of the Auditor General, October 2004, p 23

⁵⁸ Ibid.

⁵⁹ Chapter 378 of the Laws of Zambia

⁶⁰ Dr. Munalula's Report on Watchdog Institutions in Zambia, to Transparency International Zambia p.7-8

Moreover section (3) provides that *“in the performance of his duties under subsections (1) and (2), the Auditor-General shall not be subject to the direction or control of any other person or authority.”*⁶¹ As has already been alluded to previously the independence of the Auditor General depends on several factors one of which is the availability of financial and human resources. For example with regard to guarding its independence, the **Zambian** Supreme Audit Institution proposed that parliament grant funding to the office in accordance with the planned scope of its work and without interference from the Ministry of Finance in the form of budget cuts and funding delays.⁶² The office of the Auditor General also proposed a law empowering it to recruit its own staff and set its own conditions of service, ensuring the retention of competent staff.⁶³ But these recommendations have not yet been implemented by the executive hence this negatively impacts on the operations of the office of the Auditor General.

Hence the present scheme where by the financial support for the office of the Auditor General is provided through budgets submitted to the Ministry of Finance and National Planning for preliminary approval prior to submitting to Parliament compromises the independence of this office.

Besides, inadequate funding impedes the efficiency of this office and thereby negatively affects its operations. Thus a PSRP Bulletin pointed out that due to resource constraints, operations in this office became so affected that the office was unable to meet its constitutional requirements such as producing the Auditor General’s Annual Report for presentation to Parliament on time. This kind of difficulty pointed to serious logistical and

⁶¹ Op.cit

⁶² TI Anti – Corruption Handbook- Supreme Audit Institutions, p.8

⁶³ Ibid, p.8

operational problems that required urgent attention.⁶⁴ It is against this background that the office was one of the target institutions under the Public Sector Capacity Building Project. The support to the office is meant to develop its capacity to effectively carry out audits so as to contribute to improvement in the accountability and transparency in public sector financial management and service delivery.⁶⁵

Additionally the Auditor General has the mandate “*to carry out special and interim audits as provided for under section 5(1) whenever s/he has reason to believe that delay in reporting serious irregularities in the expenditure of public funds through his annual report may occasion financial loss to the Government or prejudice effective financial control, he shall forthwith prepare such special, interim or other audit report relating to audit investigation into such serious irregularities as he considers necessary to prevent or reduce any financial loss to the Government.*”⁶⁶

Subsection (2) of the same Act further provides that “*the Auditor-General shall, as soon as practicable, submit the special, interim or other audit report mentioned in subsection (1) to the President who shall, 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 Assembly; and if the President makes default in laying the report before the Assembly, the Auditor-General shall submit the report to the Speaker of the Assembly, or, if the office of Speaker is vacant or if the Speaker is for any reason unable to perform the functions of his office, to the Deputy Speaker, who shall cause it to be laid before the Assembly.*”⁶⁷

⁶⁴ A PSRP Bulletin (Public Service Reform Programme) December 2004 p.16

⁶⁵ Ibid.

⁶⁶ Chapter 378 of the Laws of Zambia.

⁶⁷ Ibid.

For example there's a probe in connection with the acquisition of shares at Nanga Farms and the alleged externalization of K 8 billion as contained in the Auditor General's report.⁶⁸

It should be noted that these special and interim audit reports represent pre-audit services, which is before the fact type of review of financial activities. Pre-audit is crucial for the management of public funds and usually prevents damage before it occurs.

Moreover the Auditor General may request the Minister of Finance to engage such agents or specialist consultants as are necessary to assist his or her office in the execution of its duties whenever the exigencies of public audit services so require.⁶⁹

But this does not mean that the government must overlook the office of the Auditor General and just appoint private auditors anyhow without consulting the office. The government must only appoint private auditors if it is established that the Office of the Auditor General cannot execute the job effectively and professionally.

C) Powers of the Auditor General under the Public Audit Act and Finance (Control and Management) Act.

Section 7 (1) of the Public Audit Act provides that in the performance of his duties under this Act, the Auditor-General and any public officer, agent or specialist consultant authorized by him shall have-

⁶⁸ www.zamnet.zm/news

⁶⁹ Section (6) Chapter 378 of the Laws of Zambia.

(a) *“access to all books, records, returns, reports and other documents relating to the accounts of any statutory corporation, public company, Department or private institution under audit examination or inspection;*

(b) *access at any reasonable time of the day to the premises of any statutory corporation, public company, Department or private institution under audit examination or inspection;*

(c) *power to call for any relevant information from persons responsible for the financial administration of any statutory corporation, public company, Department or private institution under audit examination or inspection.”*⁷⁰

Research indicates that despite the Auditor General having such powers, other authorities defy his demands when he requests for information to assist his or her office in the execution of his duties in an effective and efficient manner.

Poor maintenance of records and books of account also impedes access to information hence no transparency. If anything the delayed presentation of the statement of revenue and expenditure in the form of a financial report by the Accountant General (balance sheet) before the Auditor General leaves him or her with little option but to rely on sample audits for his or her report to the Public Accounts Committee.⁷¹

As a result the Auditor General does not give accurate audit reports due to delays caused by the Accountant General in submitting the balance sheet.

⁷⁰ Ibid

⁷¹ Op.cit p.50

Subsection (2) further provides that notwithstanding anything contained in subsection (1), the Auditor-General shall not authorize any agent or specialist consultant-

- (a) *“to have access to any books, records, returns, reports or other documents, or to enter upon any premises, of any component of the Defence Force or the Zambia Security Intelligence Service;⁷² or*
- (b) *to have access to any books, records, returns, reports or other documents, or to enter upon any premises other than those mentioned in paragraph (a), if such access or entry is likely to-*
 - (i) *prejudice the security, defence or international relations of the Republic or the investigation or detection of offences; or*
 - (ii) *involve the disclosure of any matters or deliberations of a secret or confidential nature of the Cabinet or any sub-committee of the Cabinet.”*

The Ministerial Appropriation Audit Directorate is responsible for the audit of Defence units. The Directorate is mandated to have access to any information, which is relevant in carrying out audits unless such information would prejudice the security of the nation or would impede the detection of offences. For example an audit report revealed that former President Chiluba and the former chief of Intelligence, Xavier Chungu misused at least US\$ 52 million through a Zambia National Commercial Bank Zamtrop Account held in London. The account was used to meet Chiluba’s and Chungu’s private and personal expenses as well as to bribe individuals. Among those bribed was the former Chief Justice, Mathews Ngulube, who received US\$168000 from 1998 to 2001. Other beneficiaries of these funds included Chiluba’s children, his friends and their children. They also included

⁷² Chapter 378 of the Laws of Zambia

lawyers, journalists, companies and politicians.⁷³ This has led to the prosecution of the duo (Chiluba and Chungu) for theft and abuse of office except that Xavier Chungu, the mastermind, has since fled the country.

Section 8 (1) of the said Act makes it mandatory, *“notwithstanding anything to the contrary contained in any other written law, for every contract for construction work or for the supply of equipment, machinery or materials involving the expenditure of public funds to which the Government, a public company or statutory corporation is a party, to contain a provision empowering the Auditor-General or any public officer, agent or specialist consultant authorized by him to have access to, and examine all books, records, papers, reports and other documents relating to such contract.”*⁷⁴

Subsection (2) also provides that *“no moneys appropriated for expenditure on a contract for construction work or for the supply of equipment, machinery or materials valued at an amount in excess of fifty thousand kwacha shall be released to a contractor or supplier unless the Auditor-General's prior written certification that such contract contains the provision specified in subsection (1) has been obtained.”*⁷⁵

The essence of these provisions is to ensure that the Auditor General accounts for taxpayers' money so that it is utilized for the intended purposes in order to achieve economic development.

⁷³National Integrity Systems TI Country Study Report Zambia 2003, p.10

⁷⁴ Chapter 378 of the Laws of Zambia

⁷⁵ Ibid

“Where under any written law establishing a statutory corporation or public company provision is made for the appointment of an auditor, it shall be the duty of the auditor appointed pursuant to such provision to furnish the Auditor-General with copies of such certificates, reports, documents and other relevant information in respect of the accounts of such statutory corporation or public company as the Auditor-General may require.”⁷⁶

“Upon receipt of the copies of certificates, reports, documents and other relevant information mentioned in subsection (1), the Auditor-General shall determine the nature and extent of any audit review he may consider necessary and, where desirable, he may prepare and submit to the President in the manner specified in subsection (2) of section five a report on such audit review.”⁷⁷

As has been pointed out, the office of the Auditor General provides external audit services and as the Supreme Audit Institution it has the task of probing the effectiveness of internal audit. If internal audit is judged to be effective, efforts shall be made, without prejudice to the right of the office of the Auditor General to carry out an overall audit, to achieve the most appropriate division and assignment of tasks and co-operation between the Supreme Audit Institution and internal audit. But the main problem is lack of transparency due to poor record keeping in these departments.

The Auditor-General is obliged, at the request of the President, to conduct any specific audit investigation into the accounts of any statutory corporation, public company,

⁷⁶ Ibid, Section 9(1)

⁷⁷ Ibid, section 9(2)

Department or private institution as the President may consider desirable in the public interest. This function is carried out through the Public Debt and Investment Audit Directorate.

Conclusion

Chapter two has analyzed the functions and powers of the Auditor General as provided for under the Zambian constitution, the Public Audit Act and Finance (Control and Management) Act respectively. It has also discussed some of the key factors that impede the effective and efficient running of the Office of the Auditor General such as availability of funds and personnel.

Chapter three shall consider the efficacy of the Public Accounts Committee in relation to the Office of the Auditor General. It shall look at the establishment, structure and functions of the Public Accounts Committee in public expenditure management.

Chapter Three

The Efficacy of the Public Accounts Committee in Relation to the Office of the Auditor General

It is noteworthy that good governance entails, inter alia, the existence of effective state institutions and procedures; and the objective of this essay is investigate the effectiveness of the Office of the Auditor General in Zambia as a tool of good governance. Hence the Public Accounts Committee is also a key institution since it directly works hand in hand with the office of the Auditor General in ensuring that public funds are used for the intended purpose. This is done through the review and implementation of the Reports of the Auditor General. Therefore the author in researching was of the view that this chapter must discuss whether the Public Accounts Committee is an effective checker on the executive.

A) Establishment and Structure of the Public Accounts Committee

The Public Accounts Committee is a General Purposes Committee of the House governed by rules under the Standing Orders of the National Assembly.

Rule 153(1) of the Standing Orders provides that there shall be a sessional committee to be designated the Public Accounts Committee consisting of nine members other than the Vice President, Minister, Deputy Minister or any member appointed or acting in any office prescribed by or under an Act of Parliament, appointed by the Assembly at the commencement of every session. The quorum of the committee shall be four.

Conventionally, the chairperson of the Committee belongs to an opposition party. The first meeting of the committee, at which the committee's chairperson is elected from amongst

the members themselves, is presided over by the Minister of Finance and National Planning.

B) Functions and Powers of the Public Accounts Committee

The functions of the Committee are to examine, the accounts showing the appropriation of sums granted by the National Assembly to meet the public expenditure, the Report of the Auditor General on these accounts and such other accounts, and to exercise the powers conferred on them by the House as provided for under article 117(5) of the constitution of the Republic of Zambia.⁷⁸

Additionally, the Committee being an organ of the House is a miniature Parliament with similar powers, privileges and immunities as the House itself. The committee's chairperson represents the Speaker and holds the same powers as the speaker while in the chair.

The National Assembly (Powers and Privileges) Act Chapter 12 of the Laws of Zambia, read together with Act No. 23 of 1973, has, inter alia, given powers to the House and its Committees to order the attendance of witnesses. These powers have been enhanced by the Standing Orders of the National Assembly. Witnesses summoned to appear before the committee(s) is protected and any information given shall be held in confidence and cannot be used against them.

As noted herein before, one of the major functions of the Committee is to review the Auditor General's Reports on the accounts of public funds.

⁷⁸ Rule 153(2) of the Standing Orders of the National Assembly

For example the author had the opportunity to access the Report of the Public Accounts Committee on the Report of the Auditor General on the accounts for the financial year ended 31st December 2001.

Paragraph 11 of the said Report highlighted the weaknesses in the Internal Control Systems. A review of the Government financial operations and a test check of the accounting records for the year under review revealed that the weaknesses had continued unabated.⁷⁹

The Auditor General added that successive Committees had expressed the view that unless sound internal controls were put in place in government ministries and departments, public funds would continue to be mismanaged through improper accounting practices. It was also pointed out that without commitment of controlling officers, fraudulent accounting practices and other irregularities highlighted in the Auditor General's Reports would not be eradicated.⁸⁰

As evidenced in the Report there were instances of misapplication and misappropriation of funds. For example in the course of preparing financial statements of the Republic for each financial year, the government prepares, inter alia, **Statement A** which is a consolidation of Estimated and Actual Revenue, Financing and Expenditure; **Statement B** which is a comparative statement of Estimated and Actual Revenue; **Statement C** which shows the Total Authorized Provisions and Actual Expenditure and the **Balance Sheet** which shows the assets and liabilities of the government for the year.⁸¹

⁷⁹ Report of the Public Accounts Committee on the Report of the Auditor General on the Accounts for the Financial Year ended 31st December, 2001, p.3

⁸⁰ Ibid.

⁸¹ Ibid, p.4

In paragraph 14 of the Auditor General's Report it was observed that there were discrepancies in the Financial Report in respect of the figures reflected in **statements A and C.**⁸²

Although a corrigendum was prepared to correct errors and omissions and formed part of the Financial Report, there were still more errors and omissions in the Statement. In particular it was noted that Exceptional Revenue item under Statement A was reflected as **K55,389,686,376** and Statement B indicated an amount of **K 89,789,686,373** for the same item, reflecting a difference of **K 34,399,999,997.**⁸³

The cash flow Statement reflected a figure of **K 1,978,630,120,162** as Deposit, and the Balance Sheet showed a figure of **K 1,023,122,598,353** for the same item, thus reflecting a difference of **K 955,507,521,809.**⁸⁴

Moreover the Balance Sheet reflected an increase in cash of **K 950,855,792,777** from **K649,889,339,668** in 2000 to **K1, 600,745,132,445** in 2001 resulting in an unexplained increase of 146 per cent.⁸⁵

It was further observed that under Statement B Head 215/03, External Borrowing, there was a cash inflow of **K12, 315,945,950** from IDA- other projects, which were omitted in Statement A summary.⁸⁶

Such discrepancies only show that there is lack of transparency in government departments since there is no proper record keeping system. It is such unexplained discrepancies that

⁸² Ibid, p.5

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

are draining the treasury of the much-needed resources for economic development and the betterment of people's standards of living.

The Auditor General's Report also pointed out that there were instances of unauthorized and unconstitutional expenditures. Thus it was reported that a review of Statement A and C of the Financial Report for the year under review revealed that expenditure in excess of the provisions voted by Parliament in respect of 64 Heads of expenditure amounted to **K232,320,967,906**.⁸⁷ The excess expenditure of **K 232,320,967,906** was 8.6 per cent of the actual expenditure of **K 2, 676, 398, 340, 451** for the year, compared with **K 68, 544,210,318** which was 3.7 per cent of the actual expenditure of **K 1,859,170,573,371** for the year 2000.⁸⁸

The committee noted that in future efforts should be made to ensure that adequate provisions are made under the Supplementary Provision Warrants to cater for all unauthorized expenditures. The committee therefore directed the Secretary to the Treasury to immediately follow-up the matter and ensure that relevant procedures are followed in regularizing the expenditure.⁸⁹ The committee was further concerned that the Treasury could fund some ministries more than authorized in the budget, thus reducing the credibility of the budget, which was approved by Parliament. They called for an immediate stop to this practice.⁹⁰

⁸⁷ Ibid, p.7

⁸⁸ Ibid, p.7

⁸⁹ Ibid, p.10

⁹⁰ Ibid.

It should be pointed out that the executive's failure to spend within the constitutional and authorized expenditure shows a total lack of respect for the rule of law, which requires them to act within the empowering law. The rule of law is intended to eliminate uncertainty and abuse of public funds on the ground that if the executive spent within the provisions of the law financial mismanagement would be reduced or eliminated all together.

Furthermore a Report of the Public Accounts Committee of 2004, on the Report of the Auditor General on the Review of the operations of the Public Service Pensions Fund for the period January 1997 to March, 2002, revealed that in June 2001, the Fund resolved to reduce its shareholding in Chilanga Cement Plc from **13,000,000** to **11,000,000** shares by disposing of **2,000,000** shares. However, no information was provided regarding the amount realized from the sale and how it was utilized. Similarly, **11,000,000** shares were later in July sold and an amount of **K 3,963,960,000** realized but there were no details to show how the proceeds were utilized.⁹¹

Moreover it was observed that the internal control systems of the Fund during the period under review were weak and decisions made by management, in most cases, lacked sound judgment particularly those relating to investments. Most of the decisions were made without the approval of the Fund's Board of Directors. This led the Fund to be susceptible to abuse and adversely contributed to the breakdown in the internal control systems.⁹²

⁹¹ Report of the Public Accounts Committee of 2004, on the Report of the Auditor General on the Review of the operations of the Public Service Pensions Fund for the period January 1997 to March, 2002, p.3

⁹² Ibid, p.4

Tender procedures were flouted in the award of contracts. For example, in September 2000, the fund paid an amount of K 80,757,750 to a firm of architects for preparation of working drawings for a proposed sixty-bed hospital for pensioners without tender board authority. Similarly, in October 2001 the Fund awarded a contract to an engineering company to construct a boundary wall to plot No. 12533 at a cost of K 177,090,875 without tender board authority.⁹³

The Committee recommended that the Board of the Fund should create an audit committee to enhance the supervision of the operations of the Fund.⁹⁴

It is worth noting that successive Public Accounts Committees have expressed similar views that there are no sufficient internal controls in government departments with regard to financial management; and they have even gone further to recommend that proper controls must be put in place to ensure fiscal discipline but the executive is reluctant to implement these recommendations. As a result the Public Accounts Committee is merely a toothless institution.

Conclusion.

The Public Accounts Committee is established under Rule 153(1) of the Standing Orders of the National Assembly and its functions are outlined in Rule 153(2).

The Committee works hand in hand with the Office of the Auditor General for the sole purpose of ensuring financial discipline in public expenditure management. As a result the

⁹³ Ibid.

⁹⁴ Ibid, p.12

Committee is a vital institution since it is charged with the duty of ensuring that taxpayers money is used for the authorized purpose.

However, it is worth noting that although the Public Accounts Committee is intended to act as a checker, to make the government accountable to the public, the Zambian Parliamentary committee system is not effective. This is due to the fact that observations and recommendations made by the committee(s) must be tabled before the full House for ratification. The Public Accounts Committee therefore has no power to enforce its recommendations, unless approved by Parliament.

As a result due to a Parliament that is dominated by a majority of members from the ruling party, these pledge allegiance to the executive; and hence are unlikely to ratify any recommendation that are likely to endanger their stay in power.

Besides there is a time lapse between the Auditor General's Reports and the Committee's meetings to consider these Reports. Hence the process of reviewing the Reports does not rectify any defects, as the damage would have already been done. It is a mere formality and the culprits (mainly controlling officers) are not brought to book. For example the Public Accounts Committee only considered the Auditor General's for the financial year 2001, in 2004. There is a time gap of three years.

The next Chapter shall further discuss the concept of good governance, what it entails and whether it is adhered to in Zambia with regard to financial management.

Chapter Four

The Concept of Good Governance

Good governance entails the observance of democratic values such as the rule of law, transparency and accountability. These values are cardinal in ensuring fiscal discipline in government departments; without adherence to such values there is the danger of gross financial mismanagement of public resources.

Accountability in public services includes effective accounting, auditing and decentralization, and generally making public officials responsible for their actions and responsive to consumers.⁹⁵

Koffi Annan argues that it is increasingly recognized that *“good governance is an essential building block in the transition to democracy.... Good governance comprises the rule of law, effective state institutions, transparency and accountability in the management of public affairs, respect for human rights and the meaningful participation of all citizens in the political process of their countries....”*⁹⁶

However, for the sake of brevity, the author only focused on the concepts of rule of law, transparency, accountability and effective state institutions.

⁹⁵ Public Sector Management Reforms in Africa.
http://www.uneca.org/eca_resources/Publications/dpmd/public_sector_mangt.pdf.

⁹⁶ Annan K, *Renewal and Transition*: Annual Report on the work of the United Nations Organization (UN New York: 1997)

A) Rule of Law

The rule of law entails government of laws and not of men. The principle can be traced back to the Aristotelian idea that the best government involves the rule of law, not of men. In its modern form the rule of law evolved from the struggle to limit the arbitrary discretion of the monarch and his or her officials, by requiring legal authorization for all executive action.⁹⁷

Simply put, it entails equal treatment of individuals before the law. No one including the President is above the law. The essence is to ensure that every individual is held responsible for his or her wrongs and hence eliminate discrimination. Therefore President Mwanawasa's attempt to exempt Kashiwa Bulaya from being prosecuted for corruption, contravened the concept of the rule of law.

This is based on the premise that excluding certain individuals from criminal proceedings based on momentary caprices and whims amounts to discrimination and thus defeats the essence of the rule of law.

Nonetheless, it is worth noting that the Republican President while in office enjoys immunity for actions done in his official capacity.⁹⁸ This is important in that it is intended to help the President discharge his/her functions without fear or favour.

But if the President abuses his/her office then his immunity can be lifted to facilitate for criminal prosecution as was established in the case of Fredrick Titus Jacob Chiluba v. Attorney General.

⁹⁷ Beetham D & Boyle K, Introducing Democracy: 80 Questions and Answers: UNESCO, 1995

⁹⁸ Article 43 of the Constitution, Chapter 1 of the Laws of Zambia

B) Transparency

Transparency is a means of holding public officials accountable and fighting corruption. When government meetings are open to the press and the public, when budgets and financial statements may be reviewed by anyone, when laws, rules and decisions are open to discussion, they are seen as transparent and there is less opportunity for the authorities to abuse the system in their own interest.⁹⁹

Transparency therefore means that public officers and institutions must conduct government affairs honestly and disclose their dealings to the public with minimal considerations of national security. This is intended to ensure that public officials act within the provisions of the law and thus prevent abuse of authority. For example the Auditor General in the Report pointed out that generally the Public Service Pensions Fund did not maintain a register of its assets and therefore, poor record keeping and inadequate information made it difficult to ascertain the completeness of the investments of the Fund during the period under review.¹⁰⁰

It is submitted that such discrepancies in record keeping evidence lack of transparency in government dealings and is therefore a recipe for abuse of public funds.

C) Accountability

Accountability is the principle that individuals, organizations and the community are responsible for their actions and may be required to explain them to others.¹⁰¹

In government, accountability can be thought of as enforcing or explaining responsibility.

It is often used as a synonym for “responsibility” because both are defined by the office

⁹⁹ [http://en.wikipedia.org/wiki/Transparency_\(humanities\)](http://en.wikipedia.org/wiki/Transparency_(humanities))

¹⁰⁰ Report of the Public Accounts Committee on the Report of the Auditor General on the Review of the Operations of the Public Service Pension Fund for the period January 1997 to MARCH 2002

¹⁰¹ www2.warwick.ac.uk/services/archive/rm/policies/rmpolicy/glossary/

holder's authority; they cover the same ground. Accountability involves rendering an account to someone such as Parliament or a superior, on how and how well one's responsibilities are being met, on actions taken to correct problems and to ensure they do not reoccur. ...¹⁰²

Accountability is in line with the principle of the rule of law in that both principles demand that each individual must be held responsible for their actions and decisions so as to avoid discrimination and thereby promote the concept of good governance.

Furthermore the concept of accountability is also married to the principle of transparency, in that a public officer can only be held responsible for his actions where there is transparency; that is to say where information concerning government dealings is made available to the public; otherwise the demand for accountability is futile.

It is submitted that there is no proper accountability system in Zambia due to lack of transparency and effective institutions. This has led to loss of public funds. For example Zambia National Oil Company lost about US \$ 100 million; the sale of ZCCM Copper and Cobalt about US \$ 150 million was lost but the culprits are still walking the streets due to weak watchdog institutions that are politically controlled by the executive branch. As a result, even the so called fight against corruption is selective hence not yielding any success.

D) Effective State Institutions and Procedures

In order to realise the observance of good governance there must be effective state institutions and procedures in place so as to enforce the law. The demand for such institutions is in line with the concept of the rule of law.

¹⁰² www.inspection.gc.ca/english/corpaffr/publications/riscomm/riscomm_appe.shtml

These institutions are watchdogs that act as checks and balances by holding the executive accountable for their official actions. Examples of such institutions are the Office of the Auditor General, Judiciary and Parliament.

Linkages between democratization and economic growth have become increasingly important. To remain viable, new democracies must improve the management of national economies and expand the provision of essential services. At the same time, sustainable economic growth requires not only economic restructuring but also governmental reforms to improve transparency and accountability.¹⁰³

Therefore such institutions must be independent, well funded and must have qualified staff to enable them discharge their functions effectively and efficiently; otherwise without them there is no rule of law, transparency, accountability and observance of human rights hence no good governance.

Conclusion

This chapter has discussed what the concept of good governance entails. Good governance includes the rule of law, transparency, accountability, effective state institutions, and observance of human rights and participation of the people in governance matters.

The author has shown that the executive branch does not adhere to the concept of good governance as a result this has led to massive abuse of public funds but the culprits are still on the loose. Only Richard Sakala has been convicted.

¹⁰³ Democracy and Governance: A Conceptual Framework, p.13
http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacd395.pdf.

It is such actions that impede economic development in Zambia. As a result the Zambian people continue to wallow in poverty.

The next chapter shall summarize the research and advance recommendations aimed at strengthening the office of the Auditor General. This is intended to ensure that it discharges its functions effectively and efficiently

Chapter Five

A) Summary

This paper undertook to investigate the effectiveness of the office of the Auditor General as a tool of good governance in Zambia.

Good governance entails, inter alia, the rule of law, transparency, accountability, participation of the public in governmental affairs and the availability of effective state institutions.

Consequently, efforts have been made, since independence by successive governments in Zambia to establish a system that would not only assure but also sustain the culture of transparency and accountability. Therefore institutions such as the office of the Auditor General have been established to ensure good governance in Zambia.

Moreover the concept and establishment of audit is inherent in public financial administration as the management of public funds represents a trust. The function of the Auditor General is to audit accounts relating to the general revenues of the republic. Therefore the essence of the office is to promote and facilitate the rule of law, by ensuring that public officers spend within the legal framework as authorized by Parliament.

Furthermore the aim of the Auditor General is to ensure transparency and accountability in government dealings. This is done through the preparation of audit reports.

However, the effectiveness of the office of the Auditor General is hindered by a number of factors such as inadequate funding, inadequate staff, lack of autonomy since the office holder is a Presidential appointee and lack of powers to prosecute erring public officers.

The author also had an opportunity to discuss the efficacy of the Public Accounts Committee since the Auditor General is an agent of Parliament. The Public Accounts Committee is a key institution charged with the duty of ensuring that taxpayers' money is used for the authorized purpose.

Unfortunately the Committee is not an effective check on the executive. This is due to the fact that its recommendations must be approved by Parliament before being enforced.

Moreover the same recommendations have been made and adopted by Parliament but they have not been enforced. Hence the Zambian Parliamentary system is a failure.

Lastly the paper discussed the concept of good governance, with regard to what it entails and whether the executive adheres to this principle. The author concluded that even though efforts have been made to adhere to this principle much remains to be done. Consequently, the author proposes the following recommendations designed to revamp the system so as to enable it operate independently, efficiently and effectively.

B) Recommendations

i) Funding

It is worth pointing out that in order for the office of the Auditor General to operate effectively and efficiently it must be funded adequately and timely. Otherwise inadequate funding impedes the efficiency of this office and thereby negatively affects its operations. Lack of funds causes delays in the preparation of audit reports for presentation to Parliament.

Therefore it is recommended that a law must be enacted to ensure that Parliament directly grants funds to the office of the Auditor General in accordance with the planned scope of

its work and without interference from the Ministry of Finance in form of budget cuts and funding delays.

The law is necessary due to the fact that the office can only operate efficiently and effectively if it is financially independent. This will enable the office to ensure accountability and transparency in public sector financial management and service delivery.

ii) **Mode of appointment**

The constitution provides that the President, subject to ratification by Parliament, shall appoint the Auditor General. It is submitted that this provision compromises the independence of the office of the Auditor General, on the ground that the holder of the office is likely to produce reports that are biased to the government since there is conflict of interest.

Besides even if the holder of the office must be ratified by Parliament, the Zambian Parliament has an overwhelming majority of members from the ruling party hence it is not an effective check on the executive.

It is therefore recommended that the constitution be amended so that a separate, independent adhoc body created under an Act of Parliament appoints the holder of the Office. This shall protect the Auditor General from susceptibility to undue influence or pressure from the executive.

iii) **Personnel**

The independence and effectiveness of this institution depends, inter alia, on the quality of staff. Currently the office of the Auditor General's staff is employed by the Public Service

Commission and is only entitled to civil service conditions. This has led to poor quality staff being employed at the office due to lack of motivating conditions of service. As a result even the quality of audit reports produced is compromised.

Hence it is recommended that an Act of Parliament must be enacted to empower the office to recruit its own staff and set its own conditions of service so as to retain competent staff.

This will also eliminate conflict of interest since the executive will have no say in the employment of staff at the Office and hence facilitate accurate and high quality audit reports.

iv) **Audit Model**

The audit model that currently exists in Zambia is the Westminster system under which the office of the Auditor General is an agent of Parliament and has no judicial function.

However, the Zambian Parliamentary system is a failure. Hence it is recommended that the office of the Auditor General must be adjusted so as to adopt the court system under which the Auditor General is part of the judiciary and it has judicial and administrative authority.

Since the office under the court system has judicial powers, it will ensure timely prosecution of erring officers.

v) **Public Participation**

There is minimal public participation in the budget making process in Zambia. This conflicts with the principle of good governance that requires that the people must freely participate in governance matters.

Therefore it is recommended that the government must not isolate itself as the sole determiner of what should be in the budget. The government must consult relevant

stakeholders when preparing the budget so as to ensure that the budget reflects the true needs of the Zambian people. This shall help in eliminating budget overruns since the government shall be adequately informed when making spending decisions.

vi) **Jurisdiction and Remedial Powers**

It is noteworthy that the concept of auditing is inherent in public financial administration as the management of public funds represents a trust. Therefore government officials are supposed to be trustees for and on behalf of the Zambian people.

Audit is part of a regulatory system, which seeks to reveal deviations from accepted standards and violations of the principles of legality, efficiency and effectiveness in the management of public resources. Thus auditing must be done timely to take corrective action in individual cases and to make those accountable accept responsibility.

However, on the Zambian scenario even if it is the duty of the Auditor General to audit accounts relating to general revenues of the republic, audit reports are always late sometimes by several years. The Auditor General argues that the delays flow from the requirements of the constitution that the office should audit the accounts after the end of the previous budget year. The budget year runs from January to December and the new budget must be approved between January and March. The value of the reports is thus moot as they deal with events that occurred in the past. The abusers of public funds may have died or fled the country.

Therefore it is recommended that the Auditor General must concentrate more on pre-audit (audit before the fact) rather than post audit. Pre-audit helps prevent damage before it occurs. Post audit on the other hand highlights the responsibility of those accountable. Even if it may lead to compensation for the damage caused and may prevent breaches from

recurring, post audit is not very effective in the Zambian set up due to delays in preparation of audit reports, and hence the culprits are let scot free.

Furthermore in order to strengthen the effectiveness of this office, it must have a legal department to prosecute complaints of financial abuse so as to deter would be offenders and thus preserve public funds from being abused for personal gains.

Conclusion

It is recommended that for the office of the Auditor General to be independent, efficient and effective it must be autonomous in operations, appointments and funds. It must be equipped with adequate funds and qualified staff. The office must have a wider jurisdiction and must be accorded remedial powers for the attainment of fiscal discipline.

Besides the government must give the office the support and seriousness it deserves because without the political will to see it succeed, the office is merely a façade.

Lastly it should be emphasized that for the foregoing recommendations to be effective, there is need for serious legislative and structural reforms in the set up of the office.

BIBLIOGRAPHY

BOOKS.

A PRSP Bulletin. Public Service Reform Programme Published by the Government of the Republic of Zambia, Cabinet Office: Lusaka

Beetham D & Boyle K, Introducing Democracy: 80 Questions and Answers: UNESCO, 1995

OFFICIAL PUBLICATIONS AND REPORTS.

Annan K, Renewal and Transition: Annual Report on the work of the United Nations Organization (UN New York: 1997)

Coghill K PhD. Auditing the Independence of the Auditor General, Seminar Paper, 2004, Political Science Programme: The Australian National University

<http://democratic.audit.anu.edu.au/coghill2004.pdf>.

Democracy and Governance: A Conceptual Framework.

http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnac395.pdf

Dr. Munalula M, Report to Transparency International Zambia on Watchdog Institutions in Zambia

Final Revised Report on the Restructuring of the Office of the Auditor General: 2004

International Journal of Government Auditing .28:2:2001

http://www.intosai.org/Level3/Journals/3_2001/3_200104e.pdf.

Stapenhurst and Titworth, Features and Functions of Supreme Audit Institutions, 59 World Bank: 2001

National Integrity Systems, Transparency International Country Study Report, Zambia: 2003 www.transparency.org/activities/nat_integ_systems?dnld/zambia.pdf

Public Sector Management Reforms in Africa.

http://www.uneca.org/eca_resources/Publications/dpmd/public_sector_mangt.pdf

Transparency International Anti- Corruption Handbook- Supreme Audit Institutions.
www.transparency.org

Report of the Public Accounts Committee of 2004 on the Report of the Auditor General on the review of the operations of the Public Service Pensions Fund for the period January 1997 to March 2002

Report of the Public Accounts Committee on the Report of the Auditor General on the Accounts for the Financial Year ended 31st December 2001.

www.inspection.gc.ca/english/corpaffr/publications/riscomm/riscomm_appe.shtml

[http://en.wikipedia.org/wiki/Transparency_\(humanities\)](http://en.wikipedia.org/wiki/Transparency_(humanities))

www.dfid.gov.uk

www2.warwick.ac.uk/services/archive/rm/policies/rmpolicy/glossary/

www.zamnet.zm/news

www.jctr.org.zm/bnb/sep-05.htm

www.oag-bvg.gc.ca/

LEGISLATION

The Constitution of Zambia, Chapter 1 of the Laws of Zambia

The Finance (Control and Management) Act, Chapter 347 of the Laws of Zambia

The Public Audit Act, Chapter 378 of the Laws of Zambia

Standing Orders of the National Assembly, 2005

INTERNATIONAL INSTRUMENTS

Lima Declaration of Guidelines on Auditing Precepts issued by the International Organization of Supreme Audit Institutions, www.intosai.org