Consequence Management

A Neglected Aspect of Nigerian Public Financial Management

While there are various entities and actors involved in the cyclical diagram above, there are obvious interests and goals of the persons and groups above that will be at variance with the purport of sound PFM rules. This is why adherence to PFM rules and enforcement of consequences for those rules is non-negotiable. In short: “Strong PFM is essential because it boosts the public's confidence and trust in government. Poor PFM allows waste, encourages corruption, reduces the ability to collect taxes, and has an adverse impact on services, the rest of the economy and investor perceptions of the country.”

From 2004, the federal government has embarked on a series of reforms in the rudiments of public finance. Some of the interventions and new initiatives include: the Integrated Payroll and Personnel Information System (IPPIS), Government Integrated Financial Management Information System (GIFMIS), Treasury Single Account (TSA), E-Payment and the adoption of the International Public Sector Accounting Standards (IPSAS). These initiatives have led to substantial savings and elimination of a significant number of ‘ghost workers’ from the personnel database of the government.

While these gains may be obvious, attempts to bring in more technical (or ‘domain-specific’) PFM reforms in developing countries, which seek to improve components of the PFM system, like Budgeting, is far from straightforward. In fact, empirical evidence is often equivocal on the direction of causality between macroeconomic variables, political variables and PFM reform elements. Despite this, the medium and long term gains from PFM reforms resulting in improved capacity of the Civil Service, government savings and the signals to the domestic (and even international) private sector, that it emits are cogent reasons for its continuance as they can improve the prospects of developing and emerging economies.

Notwithstanding, the pressure points of the PFM system that lay at specific joints on the PFM iterative framework ought to be assessed to determine their constraints and potential paths to their improvement. Some of these constraints are political hence not easily amenable to technical solutions (i.e., the Paradigm Leadership Support Initiative reviewed and analysed the 2018 and 2019 reports of the Auditor-General for the Federation of Nigeria and highlighted 820 audit issues across 149 government agencies, for which the sum of N1.072tn was not accounted for) and will require much more sustained engagement. While others can be perceived to be more technical (for instance, improvements in the Revenue Forecasting function of the Budget Office, as this capacity primarily hinges on the availability of information and the competence required to run analyses on large data sets). The following sections consider the purpose of compliance with fiscal rules, the institutions under review and the potential reasons why they do not enjoy substantial compliance with their rules. The paper ends with possible recommendations that could assist in the betterment of the compliance landscape of PFM in Nigeria.
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Country Director: Gabriel Okeowo

Researcher: Vahyala Kwaga

Creative Development: Michael Pabiekun

Contact: info@budgit.org
+234-803-727-6668, +234-908-333-1633

Address:
55, Moleye Street, Sabo, Yaba, Lagos, Nigeria.

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Overview

This article assesses the role of consequence management (use of penalties, punishments and even incentives for breaches of regulations or non-compliance of fiscal rules and norms of public finance) in Nigerian Public Financial Management (PFM). Briefly noting the substance of PFM, the article appraises the oversight and internal coordination provided by the Budget Office of the Federation, the oversight of the Office of the Auditor General of the Federation, the supervision and oversight of the National Assembly and the investigatory and prosecutorial functions of the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC). In addition, the article will generally evaluate the administration of justice, especially the role of the judiciary in providing consequences. These entities and institutions will be considered vis-a-vis the tenets of ‘good government’ and the purpose of consequences for infractions of established rules and guidelines. The article will conclude with recommendations for improving the public sector financial management system and the importance of sending strong signals to the private sector and the international community.
While there are various entities and actors involved in the cyclical diagram above, there are obvious interests and goals of the persons and groups above that will be at variance with the purport of sound PFM rules. This is why adherence to PFM rules and enforcement of consequences for those rules is non-negotiable. In short: "Strong PFM is essential because it boosts the public's confidence and trust in government. Poor PFM allows waste, encourages corruption, reduces the ability to collect taxes, and has an adverse impact on services, the rest of the economy and investor perceptions of the country." From 2004, the federal government has embarked on a series of reforms in the rudiments of public finance. Some of the interventions and new initiatives include: the Integrated Payroll and Personnel Information System (IPPIS), Government Integrated Financial Management Information System (GIFMIS), Treasury Single Account (TSA), E-Payment and the adoption of the International Public Sector Accounting Standards (IPSAS). These initiatives have led to substantial savings and elimination of a significant number of 'ghost workers' from the personnel database of the government. While these gains may be obvious, attempting more technical ('domain-specific') PFM reforms in developing countries, which seek to improve components of the PFM system, like Budgeting, is far from straightforward. In fact, empirical evidence is often equivocal on the direction of causality between macroeconomic variables, political variables and PFM reform elements. Despite this, the medium and long term gains from PFM reforms resulting in improved capacity of the Civil Service, government savings and the signals to the domestic (and even international) private sector, that it emits are cogent reasons for its continuance as they can improve the prospects of developing and emerging economies. Notwithstanding, the pressure points of the PFM system that lay at specific joints on the PFM iterative framework ought to be assessed to determine their constraints and potential paths to their improvement. Some of these constraints are political hence not easily amenable to technical solutions (i.e., the Paradigm Leadership Support Initiative reviewed and analysed the 2018 and 2019 reports of the Auditor-General for the Federation of Nigeria and highlighted 820 audit issues across 149 government agencies, for which the sum of N1.072tn was not accounted for) and will require much more sustained engagement. While others can be perceived to be more technical (for instance, improvements in the Revenue Forecasting function of the Budget Office, as this capacity primarily hinges on the availability of information and the competence required to run analyses on large data sets). The following sections consider the purpose of compliance with fiscal rules, the institutions under review and the potential reasons why they do not enjoy substantial compliance with their rules. The paper ends with possible recommendations that could assist in the betterment of the compliance landscape of PFM in Nigeria.
Introduction

Public Financial Management (PFM) covers numerous aspects of public decision-making, public policy, fiscal management, revenue and expenditure policy, planning and budgeting. The objectives of PFM range from Allocative Efficiency, Aggregate Fiscal Discipline and Operational Efficiency and these objectives in and of themselves have links to broader macroeconomic objectives. While countries are at liberty to decide what their rules are, there are general rules applicable to most jurisdictions. These rules are in place to ensure the actions of the government are done predictably, in an orderly fashion and in a manner that ensures problems when they arise can be traced to breaches of rules.


2. Allocative Efficiency means the ability of an actor to use her inputs in such a way that they are “allocated” optimally and productively while not compromising the quality of a particular good or service but shoring down the cost of providing any given output. See generally, Hanks, G. (1995), Allocative inefficiency, Inefﬁciency, Bureaucracy and Corruption in Developing Countries. Journal of Interdisciplinary Economics, 6(1), 55–79. https://doi.org/10.1177/02601079X9500600103.


4. Operational Efficiency has been defined to mean: “The provision of public services at a reasonable quality and cost. The relevant question here is whether the country is getting the best buy for its money.” See the Asian Development Bank, (2001). What is Public Expenditure Management (PFM)? op.cit.

Figure 1. The Public Financial Management Cycle

Source: Lawson

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rest of the economy and investor perceptions of the country”. From 2004, the federal government has embarked on a series of reforms in the rudiments of public finance. Some of the interventions and new initiatives include: the Integrated Payroll and Personnel Information System (IPPIS), Government Integrated Financial Management Information System (GIFMIS), Treasury Single Account (TSA), E-Payment and the adoption of the International Public Sector Accounting Standards (IPSAS). These initiatives have led to substantial savings and elimination of a significant number of ‘ghost workers’ from the personnel database of the government. While these gains may be obvious, attempting more technical (or ‘domain-specific’) PFM reforms in developing countries, which seek to improve components of the PFM system, like Budgeting, is far from straightforward. In fact, empirical evidence is often equivocal on the direction of causality between macroeconomic variables, political variables and PFM reform elements.

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Institutional Actors and their Compliance Mechanisms

The PFM arena contains various methods and approaches for ensuring compliance and more specifically, there are public sector institutional arrangements that ensure compliance for internal budgetary consistency. For instance, Budget Call Circulars (which emanate from the Ministry of Finance, Budget and National Planning-FMFBNP) contain copious guidelines, memoranda on the forms of submission and general expectations from Government Owned Enterprises, Ministries, Departments and Agencies on budget preparation and execution. The FMFBNP and the Budget Office of the Federation (the latter, an institution without any enabling legislation) often publish Call Circulars to guide the preparation of budgets for the aforementioned reasons. While these Circulars are meant to ensure compliance, it is uncertain if it has led to a direct improvement in the spending quality of the federal budget.

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The Office of the Auditor General of the Federation (AuGF)

The Office of the Auditor General of the Federation is the key entity to ensure the accuracy, efficiency and integrity of government spending. An office of the Constitution of the federal republic, the Auditor General is in some way the ‘last man’ in the budget cycle; this office is meant to ensure that inputs (money) have been used and used judiciously (allocative and operational efficiency). Despite the high profile of the Auditor General, the impact of the office has left much to be desired.

15. Value for Money has been described as: “P)term used to assess whether or not an organisation has obtained the maximum benefit from the goods and services it obtains, and provides, with the resources available to it. It is not only the measure of cost of goods and services but also takes account of the time of quality, cost, and resource use, fitness for purposes, timeliness, and convenience to judge whether or not, together, they constitute good value. In addition, VFM aims to achieve the 3 Cs, namely: economy - efficient use of resources to save expenses, time, and effort; efficiency - delivering the same level of service for less cost, time, or effort; and effectiveness - delivering better service or getting a better return for the same amount of expense, time, or effort. See Eme, N. M., and Ibrahim, M. M. (2011). Value for Money Audit: A Verbal Tool for Expenditure Management, pp. 19. International Journal of Financial Research, Vol. 6, No. 3, 2015. Available at: https://www.academia.edu/3259566/Value_for_Money_Audit.


18. The AuGF noted that: “Responsible from the outset of staff and management of FERMA and document review revealed that FERMA, rather than carrying out the full scale road maintenance works as provided in its Operations Manual, most commonly carried out Emergency maintenance for the years 2016 to 2019, i.e. maintenance work was carried out to repair sudden failures on the road. The Agency attributed this to poor funding by the Federal government. However, inability of the Agency to provide reliable operational and financial reports of Monitoring and Evaluation activities for the years under audit proved that there was no proper routine monitoring to forestall sudden failures of the federal roads”. See the Office of the Auditor General of the Federation. Performance Audit Report of the Auditor General For the Federation On Monitoring of the Maintenance of Federal Roads in Nigeria by the Federal Roads Maintenance Agency (FERMA), op. cit., pp. e.

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In addition to this specific challenge with performance auditing, the AuGF also suffers from a general lack of compliance with directives by MDAs. It has been reported that despite indicting MDAs for improper spending (running into billions of naira) and unsubstantiated balances, there has been minimal to little punishment, penalty or reprimand for the errant MDAs. The reasons behind the routine non-compliance with the queries of the AuGF are not far fetched. They range from the absence of a Federal Audit Service Law, inadequate funding and poor accommodation for Audit Officers. The Centre for Social Justice describes the context in which the AuGF is hamstrung by a lack of managerial control over the appointment and compensation of officers who actually carry out audit functions (the AuGF, by the provisions of the Constitution, does not discharge this function himself). This creates a difficult situation as the mere compensation of these officers is not guaranteed and does not bode well for the retention of capable and skilled manpower. However, the chief problem is the inability, refusal and failure of the relevant Minister (whom the errant MDA reports to) or the President to enforce compliance with the queries of the AuGF. Flowing from this, it can be observed that the pivotal role of the AuGF requires a modern enabling legislation: one that addresses the numerous gaps and challenges faced by the Constitutional office. Hence, it had been urged that ex-President Buhari sign the proposed Audit Bill, 2022. The bill would have provided a specific time period (say, 18 months at the most) after the Financial year, within which Audit Reports would be published.

Looking more closely at the challenges faced by the AuGF regarding the timeliness of Audit Reports, one can notice silence on the part of the law. While the AuGF has a specific time period within which his office is to submit its Audit report to the legislature (the Constitution in s.85(5) specifies the time), neither the same Constitution nor any other law provides the time within which a key actor is meant to provide its own input. That actor is the Accountant General of the Federation’s Office. Quite surprisingly, the Office of the AccGF regularly breaches the stipulated time frame within which it is meant to submit its report to the AuGF. This...
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The Budget Office of the Federation (BOF)

Contained within the Ministry of Finance, Budget and National Planning, the BOF is instrumental in overseeing a significant portion of the national budget process. From the preparation of the Medium Term Expenditure/Revenue Framework (which informs the annual budget) to the preparation of the Executive budget proposal (flowing from earlier MDA proposals) and then to the monitoring and evaluation of the implemented budget: the Budget Office

consequential report, which is directly meant to support the work of the AuGF, is routinely delayed. Interestingly, the old Audit Act (which predated Independence) provided a time for submission of the AccGF’s report, though it could also be circumvented. In this instance, what is needed is not only a time limit within which the AccGF shall submit its own reports but an anterior (and extremely) strict duty for MDAs to submit their reports to the AccGF. In addition, s.49(1) of the Fiscal Responsibility Act, 2007 which should have come to the aid of transparency and timeliness in the reporting of Audited Accounts, appears to be constantly ignored. Neither the AccGF nor the MDAs (that should supply information to the AccGF) do so in a swift and coherent manner. The AuGF then has the unenviable position of being the recipient and entity required to communicate, oftentimes, faulty and insufficient information.

To conclude this section, there may be light at the end of the tunnel, at least concerning auditing at the sub-national level. The PLSI has stated that: “34 States enacted and/or amended their audit laws to guarantee independence of Supreme Audit Institutions and strengthen public audit practices in their states”. In a twist of ‘behaviour’, the federal government should learn from the states as the former ought to tow the line of the states, reconsider the Audit Bill and pass same to empower the AuGF.

27. See the Centre for Social Justice, Timelessness of Audit Reports, op.cit.
28. Ibid.
is a consequential fiscal policy office. Because of this responsibility and discharge of the budget function of the Presidency, one can construe that the BOF has a supervisory responsibility, along with a corresponding power to enforce compliance with its regulations and guidelines. A duty therefore exists for the BOF to maintain, from the MDAs, quality and coordination of budget preparation, implementation and monitoring and evaluation. This may be the reason why a Bill for an Act to establish the Office of Budget Management had passed second reading at the House of Representatives, in 2022. The Bill aimed to provide the new Office of Budget Management with powers to ensure effective regulation of budget preparation, presentation, implementation and auditing. The Office would be granted the ability to evaluate the effectiveness of programs, policies and procedures of MDAs to ensure consistency with governing priorities. In addition, the Bill sought to improve the budget process by imposing compliance with strict timelines for the process in the National Assembly.

However, the BOF, in reality elicits minimal compliance from MDAs, despite distributing Budget Circulars that contain guidelines and provisions for the formulation of the budget. While the BOF routinely aims to improve the capacity of MDAs, it appears it is not winning the battle for compliance. This is concerning, seeing that the BOF, during the budget formulation process, conducts sessions consisting of the BOF and the MDAs, allowing for formal exchange between the two on MDA proposals (and potential discrepancies that may exist). As it stands, the BOF has the Budget Circulars and the Budget Bilateral Discussion Sessions as avenues that the MDAs can have their proposals vetted and the responsible government officials corrected and rightly guided. It is therefore troubling that the BOF is unable to use these two platforms to insist on compliance from the MDAs. This is all the more significant, considering the seeming silence of the BOF regarding the budgets of Government/State Owned Enterprises. The budgets of a number of GOEs (some of whom are fiscally semi-autonomous or fully autonomous) do not pass through the BOF, nor does the BOF provide any input into their budget formulation, enactment, implementation, auditing process and

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33. See s.60 and s.62 of the Constitution of the Federal Republic of Nigeria, 2011 as amended.

34. The website of the Budget Office of the Federation (https://budgetoffice.gov.ng/index.php/about/budget-office-of-the-federation) states that the BOF “is established to provide budgetig function such as preparation of Executive budget, oversee budget implementation, and budget monitoring. Other functions include the implementation of fiscal policies of the Federal Government of Nigeria to maintain aggregate fiscal discipline, allocate resources in accordance with government priorities, and promote the efficient delivery of services”. It is difficult to discern the level of administrative oversight without a corresponding power to enforce compliance. Though, it could be argued that the ultimate power of sanction rests with the President. This is because the BOF only exercises the duty in a representative function.

35. See “Budget Management Office bill scales second reading at Reps”, by Wale Odunsi, on September 29th, 2022, in the Daily Post (Online) Newspapers. Available at: https://dailypost.ng/2022/09/05/budget-management-office-bill-scales-second-reading-at-reps/.


40. These GOEs include but are not limited to: the Bank of Agriculture (BOA); Federal Superphosphate Fertilizer Company Limited; Galaxy Backbone Plc.; Nigerian Deposit Insurance Corporation (NDIC); Nigerian Liquefied Natural Gas Corporation (NLNG); Nigerian Mining Corporation; and Sani Sugar Company (SSC), Benin Republic.

41. By fiscally semi-autonomous, we mean those GOEs that may be allocated some amount of funding from the yearly Federal Appropriation Act. While those that are fiscally autonomous take their own revenue and do not receive any form of allocation from the yearly Federal Appropriation Act.
publication of their budget implementation reports. The BOF appears to be silent on this curious state of affairs where the budget of a government agency is passed and approved behind the eyes of the public.

So, must the country wait for the passage of a Bill empowering the BOF to sanction MDAs (or GOEs) that may never come? The short answer is: not necessarily. Pritchett and his colleagues described two scenarios in which a government reform was implemented. The idea was the same: ensure a PFM reform is implemented and make it work. In the first country, despite the implementation of the reform and its ‘adoption’ by the government department, it hardly had any success. On the other hand, the other country did not rush to implement a reform but adopted an incremental approach and within several months (though with some support of the Prime Minister), the reform efforts began to bear fruit. The country in which it succeeded was Burkina Faso. These case studies are meant to show that reform works in Africa and that policy changes may be more sustainable and legitimate where they are done incrementally. The Organisation for Economic Cooperation and Development (OECD), suggests that there are certain budget laws that are more appropriate for the Constitution, others for primary laws and still others for secondary legislation. There is no ‘one-size-fits all’ but rather, countries must continue to experiment with reforms and measure their impact.

It is proposed that while the BOF, the Minister of Finance and Civil Society push for the passage of the Budget Bill to law before the new NASS, the following mechanism can be put in place to ensure compliance with the Circulars from the BOF. It is proposed that the President issue formal Executive Orders on Budget Management that mandate compliance with instructions from the BOF. As the latter represents the President and his function of budget management, it follows that the Office of the President can send a clear signal to MDAs on the level of compliance required. The flouting of the Order should be followed by swift sanctions of suspension of the head of the agency (the latter, who in any case functions at the pleasure of the President) and the devolving of powers to the second in command. This may be challenging to implement in practice, as the errant official may decide to challenge his suspension in court, on the

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grounds that the suspension is from a violation that is not known to law. This was exemplified in the “Executive Order On Budgets — May 18, 2017” of ex-Vice President Yemi Osinbajo. Being a response to an ultimatum given by the NASS, Yemi Osinbajo swiftly passed 3 Orders that fundamentally changed the landscape of budgeting, among other things.\(^43\) Though it is difficult to trace the early submission of the budgets of the Buhari administration to this act, it demonstrated that mechanisms can be deployed and leadership is key to empowering the budget process. It also sends a signal on the significance of the fiscal rules.

The National Assembly of the Federal Republic of Nigeria

There are a number of Nigerian laws relating to PFM that require urgent attention. For instance, the Audit Law (1959) ought to be amended to grant better and more comprehensive powers to the AuGF. The Fiscal Responsibility Act, 2007 can be amended to mandate all GOEs/MDAs to submit and pass their budgets before the NASS.

The National Assembly (referring to the Senate and the House of Representatives or NASS) is the chief appropriation body and the principal federal lawmakers of the republic. This lawmakers function is part of the more critical duty of serving as a ‘check and balance’ to another arm of government: the Executive. The lawmakers function extends to not only the passage of laws but the amendment of existing laws and the repeal of laws that do not represent the current position of the government or national aspiration. There are a number of Nigerian laws relating to PFM that require urgent attention. For instance, the Audit Law (1959) ought to be amended to grant better and more comprehensive powers to the AuGF.\(^44\) The Fiscal Responsibility Act, 2007 can be amended to mandate all GOEs/MDAs to submit and pass their budgets before the NASS. This amendment should include feasible times and deadlines for the submission of reports and expenditure frameworks and provide realistic penalties for noncompliance by GOEs. Also, since the efficient reporting of the
Also, since the efficient reporting of the AuGF is dependent on the submission of financial statements by the AccGF, the FRA should have an insertion regarding mandatory deadlines for the submission of Financial Statements by the AccGF.

AuGF is dependent on the submission of financial statements by the AccGF, the FRA should have an insertion regarding mandatory deadlines for the submission of Financial Statements by the AccGF. This mandatory deadline can be limited to 60 days or three months after the end of the fiscal year. The amendment can go further to include requirements for MDAs to submit their financial reports to the Accountant-General, with a deadline of 30 days after the end of the fiscal year. It should also be recalled that a Fiscal Responsibility Amendment Act was laid before the 9th Assembly that only got to the 2nd reading stage. The bill should be laid once more before the NASS 10th Assembly for passage. These amendments, among others, would create a better foundation for the enforcement of fiscal discipline and consequences so severely needed in Nigeria’s PFM space.

While the NASS has its own Standing Rules, Orders and Procedures, it must be willing to subject itself to the spirit of justice, efficiency, effectiveness and compliance. It not only functions as an arm of government; it represents a critical symbol of a modern state. Hence, the Appropriation function of the NASS is one that requires review. The Public Accounts Committee (PAC) of both upper and lower houses in the NASS must amend the Public Accounts Committee Act, 2004 specifically s.4 of the Act. This amendment will provide for the length of time the PAC has to conclude deliberations on the report of the AuGF and other statutory bodies. The amendment should also provide for clear guidelines and penalties for the PAC where breaches occur. As it stands, the PACs of both houses, theoretically, have unlimited time within which it can “review” and complete its deliberations on the report of the AuGF. This creates an absurd situation, regularly exploited by the NASS, where reports on the Federal government’s finances become public only after years have elapsed. This does not demonstrate that the NASS is concerned with timeliness nor regularity of public reporting. It can be claimed that expecting the NASS to ‘restrain’ itself by designing rules against the free exercise of its duties is a tall order. This is more so in the context of a NASS that is even unwilling to make itself accountable where serious allegations against it are raised. This notwithstanding, the 10th Assembly must see itself
as able and willing to correct the impropriety of the past. These decisions have the potential to create a governance framework where rules exist and consequences matter.

Looking more closely at the doctrine of separation of powers is a foundation of Nigerian governance. In essence, where the Executive implements the budget (or carries out the day-to-day actions of government) the Legislature carries out its ‘Oversight’ function and reviews the actions of the Executive. This function is more concretely to prevent and expose corruption, inefficiency and waste: all the while promoting accountability and transparency. Accountability is not just between the Legislature and the Executive but also the Civil Service and Citizens. The diagram below depicts a stylized rendition of the direction of accountability among the key actors in Nigerian government.

"Accountability is not just between the Legislature and the Executive but also the Civil Service and Citizens."

[Diagram: Figure 2. Directionality of Accountability]

Source: Authors Framework

This power to summon the Executive (this includes the heads of MDAs) is a critical function of the NASS that represents the core of its oversight powers and the non-trivial principle of separation of powers. This power is consequential, as it essentially confirms the participatory nature of public governance and also is a mechanism to solve the problem of “Quis custodet ipsos custodes?” (who watches the watchmen?).

However, in recent times the camaraderie between the National Assembly and the Executive has been observed to be the cause of refusal by the latter to appear before the NASS, even when the National Assembly had issued summons to the respective parties. For instance, during the tenure of President Muhammadu Buhari, the 9th NASS summoned the President. Though the President promised to appear before the NASS, he eventually did not. This refusal, has been argued to contravene the spirit and intent of the powers of the NASS, as given by the Constitution of the Federal Republic. This is because the doctrine of separation of powers, necessitates the use of discretion and power by one arm over the other. Hence, for those powers to be exercised appropriately, other capabilities must ensue. This power to summon the Executive (this includes the heads of MDAs) is a critical function of the NASS that represents the core of its oversight powers and the non-trivial principle of separation of powers. This power is consequential, as it essentially confirms the participatory nature of public governance and also is a mechanism to solve the problem of “Quis custodet ipsos custodes?” (who watches the watchmen?).

The NASS is not powerless in the performance of its Oversight function, as it possesses numerous powers and ‘check and balance’ mechanisms at its disposal. These powers must be exercised within the bounds of what is fair and just but must also represent the desires and aspirations of the people who elected the legislators. Some of these powers, summarised by Udemezue and Chioke, are as follows: Impeachment (removal from office) of the President; and

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51. See “MATTERS ARISING: No ‘penalty’ for absence — and other reasons MDAs ignore n’assembly summons”, by Samuel Ajanan, on June 16th, 2022, in the Cable (Online). Available at: https://www.thecable.ng/matters-arising-no-penalty-for-absence-and-other-reasons-mdas-ignore-naa-summons.


54. See “Nass the microphone been turned off on the national assembly/illinton probe of NDDC”, by Frederick Nwabueze, on November 16th, 2020, in the Cable (Online) Newspapers. Available at: https://www.thecable.ng/nass-the-microphone-been-turned-off-on-national-assembly-illinton-probe-of-nddc.
The errant official may decide to challenge his suspension in court, on the second in command. This may be challenging to implement in practice, as the members of the NASS have an incentive not to uphold the tenets of good governance. However, it is not clear if weak capacity weighs less than the variable of incentives. In summary, the NASS has been unable to serve as a reliable monitor to the Executive—hence the question of why it even exists in the first place. The performance of Oversight by the NASS is only one of its major roles (the other two being Representation and Law making) but this performance has been lacklustre. These remedies may not elicit immediate change but such monumental change is not often known to happen swiftly.

In general, the NASS has a responsibility to demonstrate the highest degree of probity, transparency and accountability. It is these principles that create a situation where the purport and application of consequences would have a meaningful impact. Where the arms of government refuse to bind themselves by legal provisions, what obtains is rule by law and not rule of law. The latter breeds conditions for the political and economic development of a country while the former simply undermines it. The need for the application of consequences and their management must be seen as a fundamental and serious component of Nigeria’s governance. Without it the nation, its development and its future will simply hang in the balance.


The Administration of Justice—Investigation and Prosecution

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63. The Administration of Justice—Investigation and Prosecution

64. See “EFCC has the most inconclusive cases globally—Official”, by Ameh Ejekwonyilo, on July 31st, 2023, in Premium Times Online Newspapers. Available at: https://saharareporters.com/2022/11/26/anti-graft-agency-efcc-secures-over-3000-convictions-corruption-cases-2022#google_vignette. See also “Anti-corruption fight: EFCC records 643 convictions, recovers over N500bn in 3 years”; by Soni Daniel, on May 28th, 2018, in the Vanguard (Online) Newspaper. Available at: https://www.vanguardngr.com/2018/05/997081/.

Working in silos, especially within government does not have any advantage. Agencies could provide support to the other in areas that they may lack capacity. This would also be an efficient use of government resources and personnel, as the amount of work available to them will be increased and the rate of conviction will increase. In any case, the effectiveness of the EFCC and the ICPC is hampered in other respects. For instance, the ICPC investigates corrupt practices relating to high level crimes provided by law: many are rules, obligations and ‘efficiency promoting’ acts. However, there is often the issue of public trust and the compromise of that trust. It is in this sphere that these institutions operate and pursue their mandate. But they are only as effective as the Executive and the Legislature permits, since the former may unwittingly influence the investigations of the agencies and the latter may whittle down their powers through an amendment of their enabling legislation. In addition to the work...
of these agencies and the judiciary, is the government’s perspective on the role of corrections and reform of convicts. Where the latter are treated in a subhuman fashion while incarcerated and not provided with any support upon serving their time, recidivism will likely be in the offing.

In any case, the effectiveness of the EFCC and the ICPC is hampered in other respects. For instance, the ICPC investigates corrupt practices relating to public servants and public duty bearers. While they possess relatively sufficient powers of investigation and prosecution, they cannot convict. They can also only make recommendations concerning the punishment of individuals. This means that a Civil Servant can be under investigation, not be found guilty and simply return to their job. Or consider a scenario where a group of officials are found to be guilty of an infraction but the punishment involves a fine. Even if the ICPC recommends dismissal, the wrongdoers can still be reinstated to their jobs. This is because the power to determine the fate of any Civil Servant resides with the Civil Service Commission and the Head of Service. This creates a curious situation where the ‘consequence’ is delayed or even deferred and does not depict a system that is serious with punishment. To make matters worse, the ICPC appears to be under fire, as the 10th Senate is moving to erode the powers of the Commission. The reduction of the amount of certain fines and the reduction in the discretion of the Chairman, are not actions of the Senate that are expected in a country that is struggling with fraud, graft and abuse of power. In the case of the EFCC, as the latter struggles with effective prosecution of accused persons, reduction in its scope of authority and relatively low conviction rates, it is often accused of being tainted by political interference. In addition to tirades in the media by public analysts, the operation of the EFCC as an institution meant to check Financial Crime has been seriously called into question. This is as a result of the alleged political colouration of some of their investigations and prosecutions.

While these institutions may be able to provide evidence of numerous investigations and even convictions (though this is debatable), it has been observed that it is difficult to appropriately measure their effect on the PFM system and even anti-corruption generally in Nigeria.

64. See: “Corruption in Nigeria: Scrap the EFCC, it’s part of the problem”, by Olu Funan, on June 12th, 2020, in Business Day (Online) Newspapers. Available at: https://businessday.ng/anti-corruption-efforts-in-nigeria-scrap-the-efcc-the-icpc-also-be-part-of-the-problem/
70. See: “EFCC Has Deviated, Now a Political Tool”, by Ayodele Oluwafemi, on June 2nd, 2023, in the Cable (Online) Newspapers. Available at: https://www.thecable.ng/stop-acting-like-political-tool-activists-fault-efccs-probe-of-kogis-finances. See also, “Stop acting like [sic] political tool” — activists fault EFCC’s probe of Kogi’s finances, by Ayodele Oluwafemi, on December 30th, 2022, in the Cable (Online) Newspapers. Available at: https://www.thecable.ng/stop-acting-like-political-tool-activists-fault-efccs-probe-of-kogi-finances.
Be that as it may, the current administration has an urgent mandate to ensure that corruption in Nigeria reduces considerably. While it can be argued that PFM is only an incidental mandate of the 2 agencies, they nonetheless have some form of engagement with it. In order for them to discharge their functions optimally, it is proposed that the EFCC and ICPC collaborate with other agencies and institutions in the PFM space. The EFCC, ICPC, Fiscal Responsibility Commission, the AuGF and the BOF should frequently consult and partner with each other. The amount of information, knowledge and expertise that these agencies and offices have and can share, would go a significant length in improving the effectiveness of good PFM. It would also be an efficient use of government resources and personnel, as the agencies could provide support to the other in areas that they may lack capacity. Working in silos, especially within government does not have any advantage.

"In order for them to discharge their functions optimally, it is proposed that the EFCC and ICPC collaborate with other agencies and institutions in the PFM space. The EFCC, ICPC, Fiscal Responsibility Commission, the AuGF and the BOF should frequently consult and partner with each other."
Conclusion

The above Offices and Institutions, though powerful and influential, have been unable to properly secure governmental integrity in a dynamic way that positively reinforces itself. This is in spite of a range of mechanisms and frameworks (including Constitutional provisions and principles of justice and good governance), that can ensure compliance with PFM rules and regulations. While it is important to see that the breach of rules follows a process and those that have been found to have broken them face a form of penalty, it is also important to identify the underlying causes. The proliferation of fraud and other financial crimes may have once been seen as a problem that could be solved by the creation of specialised agencies. But, despite their conviction rates, the volume of these offences has not abated and this is because the root causes behind the crimes must be met.

Though it is beyond the scope of this paper, the existence of financial crimes are likely indicative of a broader problem of societal corruption and its tolerance. Societal corruption itself has a legion of causes, definitions and intervening variables but we can be sure that socialisation plays a role in the normalisation of entitlement, duplicity and dishonesty. The latter are, again, only manifestations of a deeper Social Dilemma that exists in societies that have found it difficult to cohere around a set of ideals. The Social Dilemma is a situation in which each member of a group gets a higher outcome if they pursue
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Though it is beyond the scope of this paper, the existence of financial crimes are likely indicative of a broader problem of societal corruption and its tolerance. Societal corruption itself has a legion of causes, definitions and intervening variables but we can be sure that socialisation plays a role in the normalisation of entitlement, duplicity and dishonesty. The latter are, again, only manifestations of a deeper Social Dilemma that exists in societies that have found it difficult to cohere around a set of ideals. The Social Dilemma is a situation in which each member of a group gets a higher outcome if they pursue their individual interest but everyone in the group is better off if all of them pursue a common interest.72 In societies where being smart (a euphemism for ‘gaming’ a system, protocol or set of rules to the disadvantage of the system and the gain of the perpetrator) is seen as a ‘rational’ social trait, such suboptimal norms will continue. This society will continue to struggle with imposing consequences. This is because the act of being smart must first be seen as a socially undesirable action before its subsequent ‘downstream’ manifestations can be addressed by society and government actors. Hence, the campaign against rule-breaking within the PFM space by the government, has to understand that the problem is a systemic one and does not have simple solutions. Consequences, as a logical reaction to behaviour that has been deemed to be contrary to social norms and extant regulations, have to be applied in an impartial and dispassionate manner.

In any case, the importance of all these rules and normative expectations must be viewed within the context of national planning and growth: key guiding notions for optimal public governance. There may be some scepticism at the potential for improved public governance, since governments (at all levels and all arms) are powerful and impactful. However, this does not mean that citizens are powerless. It means that citizens have to understand the role they play keeping the institutions of government in check. This activity can be on the platform of citizen’s groups, CSOs or combinations of the two. Governments can be positioned to work in the interest of citizens but citizens need to be aware of the tools and institutions they can leverage.

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