

Consequence Management

**A Neglected Aspect of Nigerian
Public Financial Management**

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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.



Introduction



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.

Public Financial Management (PFM)¹ 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,² Aggregate Fiscal Discipline³ and Operational Efficiency⁴ and these objectives in and of themselves have links to broader macroeconomic objectives.⁵ 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. Also, where these rules are breached, there should be investigation and prosecution to follow when it has been demonstrated that the rules have been breached. This predictability and certainty add strength to the system and empower the rule of law. This has the quality of creating a sense of reliability in the rules and the system in which they operate by local and international actors. The figure below, describes the PFM cycle and the groups and entities involved.

1. PFM is a portmanteau of concepts, practices, actions, sets of entities and sets of rules that bridge Accounting, Law, Public Administration, Program management, Economics, International Relations, Monetary and Fiscal policy, to name a few. Lawson defines PFM in the following way: "[T]he set of laws, rules, systems and processes used by sovereign nations (and sub-national governments), to mobilise revenue, allocate public funds, undertake public spending, account for funds and audit results." See Lawson, A. (2015). Public Financial Management, at p. 1. GSDRC Professional Development Reading Pack no. 6. Birmingham, UK: GSDRC, University of Birmingham. Available at: https://gsdrc.org/wp-content/uploads/2015/07/PFM_FP.pdf.

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 driving down the cost of providing any given output. See generally, Harris, G. (1995). Allocative inefficiency, X-inefficiency, Bureaucracy and Corruption in Developing Countries. *Journal of Interdisciplinary Economics*, 6(1), 55-79. <https://doi.org/10.1177/02601079X9500600103>.

3. The Asian Development Bank states that 'Aggregate Fiscal Discipline' refers to: "[T]he optimal positioning of public expenditures with total revenues (domestic revenues in addition to a sustainable level of foreign borrowing); roughly speaking, it means keeping government spending within sustainable limits. In layman's terms, it means "don't spend more than what you can afford". See the Asian Development Bank. (2001). What is Public Expenditure Management (PEM)?, at p. 1. The Governance Brief. A Quarterly Publication, The Governance Unit Strategy and Policy Department Asian Development Bank Issue 1-2001. Available at: <https://www.adb.org/sites/default/files/publication/28648/governancebrief01.pdf>.

4. Operational Efficiency has been stated to mean: "[T]he 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 (PEM)?, op.cit.

5. See Van Rijn, H. (2019). Principles for Public Financial Management, at p. 6. Asia-Pacific Finance and Development Institute. International Lecture Series, 2019 8 October. East Asia Department Asian Development Bank. Available at: <https://rksi.adb.org/wp-content/uploads/2021/01/ADB-AFDI-Lecture-Series-2019-01-Hans.pdf>.

Figure 1. The Public Financial Management Cycle⁶



Source: Lawson

“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.”

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

6. See Lawson, A. Public Financial Management, op.cit.



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.

rest of the economy and investor perceptions of the country”⁷. 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.⁸ 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.⁹ In fact, empirical evidence is often equivocal on the direction of causality between macroeconomic variables, political variables and PFM reform elements.¹⁰ 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.¹¹

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)¹² 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

7. See “How Strong Public Financial Management in Nigeria Will Support Sustainable Growth”, by Gillian Fawcett, on June 14th, 2018, in the International Federation of Accountants (Online). Available at: <https://www.ifac.org/knowledge-gateway/contributing-global-economy/discussion/how-strong-public-financial-management-nigeria-will-support-sustainable-growth>.

8. See generally Zubairu, S.A. Office of the Accountant General of the Federation, Federal Republic of Nigeria. (2016). Public Financial Management Reforms In Nigeria. Being a Paper presented at the 23rd East and Southern African Association of Accountant-General (ESAAG) Annual International Conference, Held At Kenyatta International Conference Centre, Nairobi, Kenya, on the 7th -10th March 2016. Available at: <https://cutt.ly/XwiBntED>.

9. See Zubairu, S.A. Office of the Accountant General of the Federation. Public Financial Management Reforms In Nigeria, at slides 8 - 9, op.cit.

10. See Kristensen, Jens Kromann, Martin Bowen, Cathal Long, Shakira Mustapha, and Urška Zrinski, eds. (2019). PEFA, Public Financial Management, and Good Governance. International Development in Focus. Washington, DC: World Bank. doi: 10.1596/978-1-4648-1466-2 Licence: Creative Commons Attribution CC BY 3.0 IGO.

11. See Allen, R. (2013). Challenges of Reforming Budgetary Institutions in Developing Countries, at p. 412. In Public Financial Management and its Emerging Architecture, by Marco Cangianno, Teresa Curristine and Michel Lazare, (eds.). Washington, D.C. Published by the International Monetary Fund (IMF).

12. See the Paradigm Leadership Support Initiative. (2023). 2022 Annual Report, at p. 19. Published by the PLSI. Available at: https://plsiinitiative.org/wp-content/uploads/2023/03/2022-Annual-Report_PLSI.pdf.

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.

Institutional Actors and their Compliance Mechanisms



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.

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)¹³ 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. For instance the breach of Expenditure ceilings by federal MDAs appears to be a continuing challenge for the Budget Office.¹⁴ Again, the National Assembly (by virtue of s.89(1)(c) & (d) of the Constitution of the Federal Republic of Nigeria 2011, as amended) has the inherent powers to summon anyone it deems fit, in the pursuance of its oversight function where it perceives a policy or implementation failure. However, even where serious claims of financial impropriety are made before the Parliament, the summons issued by the latter are often ignored. Such breaches and violations of rules and guidelines do not augur well for the development of a sustainable PFM system, nor good governance. The sub-sections below provide additional context and appraise the challenges of the identified entities.

13. See the Auditor General of the Federation, (October, 2020), Performance Audit On Federal Government of Nigeria Budget Preparation Process and Its Implementation, at pages 13 - 14. Federal Republic of Nigeria. Available at: <https://oauaf.ng/docman/39-performance-audit-on-fgn-budget-preparation-process-2020-6/file>. The AuGF notes that: "The Fiscal Responsibility Act of 2007 is the only enactment that assigns the responsibility of monitoring and reporting on budget implementation in the Country to the Budget Office. Specifically, Sections 30 and 50 of the Act require the Budget Office of the Federation to prepare and submit quarterly budget implementation Reports to the joint Finance Committee of the National Assembly (NASS) and the Fiscal Responsibility Commission (FRC)".

14. See Akeni, A., Kwaga, V., Usen, I., Onemano, D. (2021), Leveraging Budget Reforms for Economic Development: Key Insights from FG's 2022 Budget Proposal Analysis, at p. 12. Published by the Budget Foundation, Lagos. Available at: <https://budget.org/wp-content/uploads/2022/12/2022-PROPOSED-BUDGET-ANALYSIS.pdf>. Regarding the breach of expenditure ceilings by federal MDAs, Budget highlights that: "[A] total of 29 Ministries breached their respective budget ceilings by a cumulative of N1.75 trillion, including projects that may not be compliant with the Medium Term National Development Plan. Only 15 Ministries complied with their budget ceilings".

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



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.

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. The office has the mandate to carry out Audit of a financial nature, i.e., to ensure the accuracy of government financial statements (for example Budget Implementation Reports) and Audits of compliance, i.e., to ensure the financial and operational controls of government and its activities are in consonance with existing laws, guidelines, policies, or regulations. However, there is a third species of Audit: Value for Money (VFM).¹⁵ VFM Audits (or Performance Audits)¹⁶ are carried out at the Federal level (the Auditor General of the Federation carries out what appears to be selective performance audits of some agencies of the federal government), and provide a detailed appraisal of federal initiatives, programs and governance. For instance, just last year, the AuGF executed a performance audit of the Federal Emergency Road Maintenance Authority (FERMA) on Monitoring of the Maintenance of Federal Roads in Nigeria, for the period 2016–2018.¹⁷ While the findings of the AuGF in the FERMA report were consequential,¹⁸ there appears to be no traction for the implementation of the recommendations. But, even if there was implementation, the lack of regularity in performance auditing means that improvements cannot be measured in a timely manner. This is despite the fact that the performance review itself came on the heels of calls by the National Assembly for the scrapping of the authority.

15. Value for Money has been described as: "[A] term used to assess whether or not an organisation has obtained the maximum benefit from the goods and services it both acquires and provides, within the resources available to it. It not only measures the cost of goods and services, but also takes account of the mix of quality, cost and resource use, fitness for purpose, timeliness, and convenience to judge whether or not, together, they constitute good value. In addition, VFM aims to achieve the 3 'Es', namely: Economy - Careful use of resources to save expense, time or effort; Efficiency - Delivering the same level of service for less cost, time or effort; and Effectiveness - Delivering a better service or getting a better return for the same amount of expense, time or effort. See Eze, N.M., and Ibrahim, M.M. (2015). Value for Money Audit: A Veritable Tool for Expenditure Management, at p. 4. International Journal of Financial Research, Vol. 6, No. 3; 2015. Available at: <https://www.sciedu.ca/journal/index.php/ijfr/article/viewFile/7466/4458>.

16. The International Organisation of Supreme Audit Institutions (INTOSAI) defines a performance audit as: "[A]n independent, objective and reliable examination of whether government undertakings, systems, operations, programmes, activities or organisations are operating in accordance with the principles of economy, efficiency and/or effectiveness and whether there is room for improvement". See the International Organisation of Supreme Audit Institutions (INTOSAI), (2019). International Standards of Supreme Audit Institutions (ISSAI) 3000 Performance Audit Standard, at p. 8. Published by INTOSAI. Available at: <https://www.issai.org/wp-content/uploads/2019/08/ISSAI-3000-Performance-Audit-Standard.pdf>. See also Eze, N.M., and Ibrahim, M.M. (2015). Value for Money Audit: A Veritable Tool for Expenditure Management, at p. 3. International Journal of Financial Research, Vol. 6, No. 3; 2015. Available at: <https://www.sciedu.ca/journal/index.php/ijfr/article/viewFile/7466/4458>.

17. See generally, Office of the Auditor General of the Federation. (September, 2022). 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). Federal Government of Nigeria. Available at: <https://oaugf.ng/docman/37-ferma-final-report-published/file>.

18. The AuGF noted that: "Responses from interviews of staff and management of FERMA and document reviews 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 2018, 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., at p. xi.



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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 MDAs¹⁹ for improper spending (running into billions of naira)²⁰ and unsubstantiated balances,²¹ 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)²². 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.²³ However, the chief problem is the inability, refusal and failure of the relevant Minister (whom the errant MDA reports to) or the President²⁴ 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, 2022.²⁵ 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.²⁶ This

19. Some of the MDAs are: The National Agency for Food and Drugs Administration (NAFDAC), Federal Ministry of Finance, National Identity Management Commission (NIMC), the Bank of Industry (BoI), Financial Reporting Council of Nigeria (FRCN), the Nigerian Social Insurance Trust Fund (NSITF), the Nigerian Maritime Administration and Safety Agency (NIMASA), Small and Medium Enterprises Development Agency of Nigeria (SMEDAN), Petroleum Products Pricing Regulatory Agency (PPPRA) and the Federal Ministry of Works and Housing. See "Auditor-General Indicts MDAs for Improper Spending of N105.66bn", by James Emejo, on February 24th, 2021, in *ThisDay* (Online) Newspapers. Available at: <https://www.thisdaylive.com/index.php/2021/02/24/auditor-general-indicts-mdas-for-improper-spending-of-n105-66bn>.

20. See "Auditor-General Indicts MDAs for Improper Spending of N105.66bn", by James Emejo, in *ThisDay* (Online) Newspapers, op.cit.

21. See "Auditor-general: N4.9trn unsubstantiated balances uncovered in 2019 audit report", by Wasilat Azeze, on August 19th, 2021, in the *Cable* (Online) Newspapers. Available at: <https://www.thecable.ng/auditor-general-n4-9trn-unsubstantiated-balances-uncovered-in-2019-audit-report>.

22. See s.85(5) of the Constitution of the Federal Republic of Nigeria, 2011 (as amended).

23. See the Centre for Social Justice. (2019). *Legal Regulation of Auditing Public Accounts of the Federal Government of Nigeria*, at p. 5. Paper delivered at the Capacity Building Workshop organised by Centre for Social Justice on the 26th and 27th day of August 2019 at Top Rank Hotels Galaxy, Plot. 245 Mafemi Street, Off Solomon Lar Way, Utako, Abuja. Available at: <http://csj-ng.org/wp-content/uploads/2020/02/LEGAL-REGULATION-OF-AUDITING-ACCOUNTS-OF-THE-FEDERAL-GOVERNMENT-OF-NIGERIA.pdf>.

24. See "Buhari Failed to Act on Audit Reports Meant to Fetch Nigeria Over N1tn, Senate Committee Laments", by Sunday Aborisade, on May 11th, 2023 in *ThisDay* (Online) Newspapers. Available at: <https://www.thisdaylive.com/index.php/2023/05/11/buhari-failed-to-act-on-audit-reports-meant-to-fetch-nigeria-over-n1tn-senate-committee-laments>.

25. See "Group urges Buhari to Sign Nigeria's Audit Law", by Oluwakemi Adelagun on June 20th 2022, in *Premium Times* (Online) Newspapers. Available at: <https://www.premiumtimesng.com/news/more-news/539970-group-urges-buhari-to-sign-nigerias-audit-law.html?tztc=1>.

26. The Centre for Social Justice notes that: "Also, the Finance (Control and Management) Act in s.24 merely mandates the Accountant-General to sign and present to the Auditor-General accounts showing fully the financial position of the government on the last day of each financial year. The Act failed to assign a timeline for the performance of this act". See generally, the Centre for Social Justice. (December, 2019). *Timeliness of Audit Reports*. The Centre for Social Justice (Online) Blog. Available at: <https://csj-ng.org/timeliness-of-audit-reports/>.



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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.²⁷ 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.²⁸ 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.²⁹ 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.³⁰

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".³¹ 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.

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)³² 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

27. See the Centre for Social Justice, *Timeliness of Audit Reports*, op.cit.

28. Ibid.

29. See "2019 Audit Report: Federal Government and its Agencies Fail to Comply with Regulations", by Denis Amata, on November 26th 2021, in Dataphyte (Online). Available at: <https://www.dataphyte.com/latest-reports/governance/2019-audit-report-federal-government-and-its-agencies-fail-to-comply-with-regulations/>.

30. See "2019 Audit Report: Federal Government and its Agencies Fail to Comply with Regulations", by Denis Amata, in Dataphyte (Online), op.cit.

31. See Bukola, S., Adebayo, A., and Elemo, O. (2022). The Sub-national Audit Efficacy Index 2022: Sustaining Accountability Reforms for Subnational Development in Nigeria, at p. 11. Published by the Paradigm Leadership Support Initiative. Available at: <https://plsinitiative.org/79c0db071-efa4-4624-a81c-e648b650347a>. See also "Why 30 states re-enacted improved audit laws. — NGF", by Luminous Jaanamike, on March 30th, 2023 in the Vanguard (Online) Newspapers. Available at: <https://www.vanguardngr.com/2023/03/why-30-states-re-enacted-improved-audit-laws-ngf-2/>

32. This component of the budget process has the BOF engage with the Federal Inland Revenue Service, Nigerian Customs Service and the Nigerian National Petroleum Corporation as well as key economic agencies, including National Planning Commission, National Bureau of Statistics, and Central Bank of Nigeria. See Illoh, E., and Nwokedi, M. (2016). Budget Processes and Participatory Budgeting in Nigeria: Lessons from Latin America, at p. 7. ANSU Journal of Arts and Social Sciences, Volume 5, Number 1, 2016. pp. 135-154. Available at: https://oidp-afrique.org/wp-content/uploads/2020/04/Nigeria-Budget_Processes_and_Participatory_Budget.pdf.



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 is a consequential fiscal policy office.

is a consequential fiscal policy office. Because of this responsibility and discharge of the budget function of the Presidency,³³ one can construe that the BOF has a supervisory responsibility, along with a corresponding power to enforce compliance with its regulations and guidelines.³⁴ 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 2022.³⁵ The Bill aimed to provide the new Office of Budget Management with powers to ensure effective regulation of budget preparation, presentation, implementation and auditing.³⁶ 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.³⁷ While the BOF routinely aims to improve the capacity of MDAs,³⁸ it appears it is not winning the battle for compliance.³⁹ 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 GOEs⁴⁰ (some of whom are fiscally semi-autonomous or fully autonomous)⁴¹ do not pass through the BOF, nor does the BOF provide any input into their budget formulation, enactment, implementation, auditing process and

33. See s.80 and s.82 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: "[W]as established to provide budget [sic] 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 conceive of this 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 this duty in a representative function.

35. See "Budget Management Office bill scales second reading at Reprs", by Wale Odunsi, on September 29th, 2022, in the Daily Post (Online) Newspapers. Available at: <https://dailypost.ng/2022/09/29/budget-management-office-bill-scales-second-reading-at-reprs/>.

36. A budget law for the federation is not a new proposal and is over a quarter of a century old. The West African Economic and Monetary Union (UEMOA, 1997) directed its eight member countries to adopt an organic budget law, modelled largely on the Organic Budget Law (1959) used (until recently) by France for its State budget. See the Organisation for Economic Cooperation and Development, (2004). The Legal Framework for Budget Systems: An International Comparison, at p.129. In the OECD Journal on Budgeting (Special Issue), Vol. 4, No. 3. Published by the OECD. Available at: <https://www.oecd.org/gov/budgeting/43487903.pdf>.

37. See Akeri, A., Kwaga, V., Usen, I., et al. Leveraging Budget Reforms for Economic Development: Key Insights from FG's 2022 Budget Proposal Analysis, op.cit.

38. See Budget Office of the Federation: Federal Ministry of Finance, Budget and National Planning, 19th August, 2021. FGN 2022 Budget Call Circular, at p.19. Federal Republic of Nigeria. Available at: <https://www.budgetoffice.gov.ng/index.php/resources/internal-resources/call-circular?task=document.viewdoc&id=94>.

39. See Akeri, A., Kwaga, V., Usen, I., et al. Leveraging Budget Reforms for Economic Development: Key Insights from FG's 2022 Budget Proposal Analysis, op.cit.

40. These GOEs include but are not limited to: the Bank of Agriculture (BOA); Federal Superphosphate Fertiliser Company Limited; Galaxy Backbone Plc.; Nigerian Deposit Insurance Corporation (NDIC); Nigerian Liquefied Natural Gas Corporation (NLNG); Nigerian Mining Corporation; and Save Sugar Company (SCC), 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 raise 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 Faso⁴². 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



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.

42. See Pritchett, L., Andrews, M., and Woolcock, M. (2017). *Building State Capability: Evidence, Analysis and Action*, at p. 216. Oxford University Press, Great Clarendon Street, Oxford, OX2 6DP, United Kingdom.

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 lawmaking body of the republic. This lawmaking function is part of the more critical duty of serving as a ‘check and balance’ to another arm of government: the Executive. The lawmaking 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

43. See “Budget: Osinbajo responds to Senate ultimatum; directs NNPC, others to comply”, by Taiwo-Hassan Adebayo, on May 19th, 2017, in Premium Times (Online) Newspapers. Available at: <https://www.premiumtimesng.com/news/231610-budget-osinbajo-responds-to-senate-ultimatum-directs-nnpc-others-to-comply.html?tztc=1>.

44. See generally, Section 1 above.

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.⁴⁵ 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.⁴⁶ 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.⁴⁷ 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.



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.

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, 2004:⁴⁸ 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 moreso in the context of a NASS that is even unwilling to make itself accountable where serious allegations against it are raised.⁴⁹ This notwithstanding, the 10th Assembly must see itself

45. See the Centre for Social Justice, Timeliness of Audit Reports. The Centre for Social Justice (Online) Blog, op.cit.

46. Ibid.

47. See the Fiscal Responsibility Commission (Website). "Time To Amend The Fiscal Responsibility Act", by Admin, on May 25th, 2022. The Presidency, Federal Republic of Nigeria. Available at: <https://fiscalresponsibility.ng/?p=3608>.

48. See Public Accounts Committee Act, 2004. Laws of the Federal Republic of Nigeria.

49. See "SPECIAL REPORT: How National Assembly's Public Account Committees Engage in Massive Money Laundering", by Festus Owete and Richard Akinwunmi, on January 24th, 2016, in Premium Times (Online) Newspapers. Available at: <https://www.premiumtimesng.com/news/headlines/197260-special-report-how-national-assemblys-public-account-committees-engage-in-massive-money-laundering.html>.

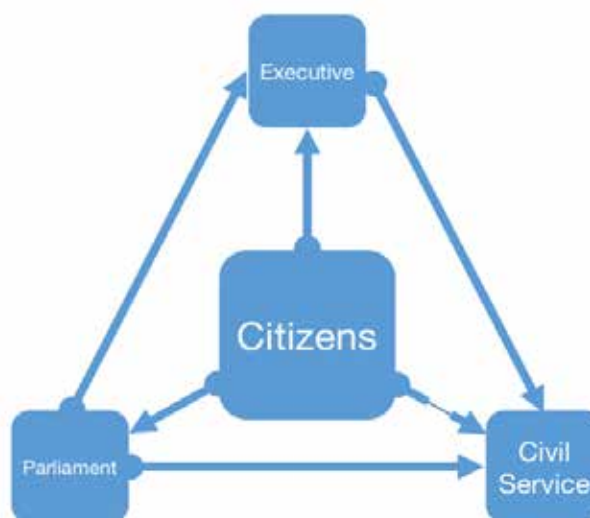
as able and willing to correct the impropriety of the past. These decisions have the potential to create a governance framework where rules exist and consequences matter.

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:⁵⁰ 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.

Figure 2. Directionality of Accountability



Source: Authors Framework

50. See the Policy and Legal Advocacy Centre. (2016). Guide To Effective Representation In the National Assembly, at p. 8. Published by the Policy and Legal Advocacy Centre (PLAC) Abuja, Nigeria. Available at: <https://placng.org/wp-content/uploads/2019/12/Guide-to-Effective-Representatio-for-Lawmakers.pdf>.



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 custodiet 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.⁵¹ 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.⁵² 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 custodiet ipsos custodes?” (who watches the watchmen?). The latter function is key for situations where entities that need to be checked are checked though coordinate entities with different but harmonising powers over each other. Yet, the Nigerian case presents a concrete dilemma due to glaring state capture and inappropriate relationship between the members of the NASS and the Executive.⁵³ This has effectively resulted in complicity between the Executive and the NASS, as was embarrassingly shown to the whole country during the infamous deposition of the then Minister for Niger Delta Affairs before a House Committee of the 9th Assembly.⁵⁴

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

51. See “MATTERS ARISING: No ‘penalty’ for absence — and other reasons MDAs ignore n’assembly summons”, by Samuel Akpan, 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-nassembly-summons>.

52. See generally, Udemezue, S.C., and Chioke, N.A. (2021). Does the Nigerian Federal Legislature Have Constitutional Powers to Summon the President of the Republic Over Matters of National Importance? In the SSRN. Available at: <https://rb.gy/jta3f>.

53. See “How National Assembly’s weak oversight role encouraging poor governance in Nigeria”, by Dozie Emmanuel on February 28th, 2021, in Business Day (Online) Newspapers. Available at: <https://businessday.ng/politics/article/how-national-assemblys-weak-oversight-role-encouraging-poor-governance-in-nigeria/>.

54. See “Has the microphone been turned off on the national assembly’s N81bn probe of NDDC?”, by Frederick Nwabufu, on November 18th, 2020, in the Cable (Online) Newspapers. Available at: <https://www.thecable.ng/has-the-microphone-been-turned-off-on-national-assemblys-n81bn-probe-of-nddc>.



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.

Withholding Proposals for Approval of Funds Submitted by the President.⁵⁵ In general, it has been observed that: “Analysis of the political economy of PFM suggests that actors with incentives to obstruct reforms are a more critical bottleneck than weak capacity. Political incentives to reforming the PFM system often stem from the wider political and institutional environment”⁵⁶. This means that the compromised stance of the NASS and its unwillingness to provide timely and adequate oversight, is likely a symptom of broader social and cultural norms of behaviour. Moreover, 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.⁵⁷ 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.⁵⁸ Though the legislature is powerful, there are entry points for improving the quality of their governance. The Policy and Legal Advocacy Centre (PLAC) holds that these include: “[P]etitions, complaints procedures, legal redress, citizens’ feedback and advocacy, and even the exercise of the right to recall their representatives”⁵⁹. 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.

55. See Udemezue, S.C., and Chioke, N.A. Does the Nigerian Federal Legislature Have Constitutional Powers to Summon the President of the Republic Over Matters of National Importance?, at pages 10-12, op.cit.

56. See Kristensen, Jens Kromann, Martin Bowen, Cathal Long, et al., eds. PEFA, Public Financial Management, and Good Governance. International Development in Focus, at p. 54, op.cit.

57. See generally Bakare, A.R., and Bello, M.L. (2020). Reforming the Nigerian National Assembly for Legislative Effectiveness: Issues, Constraints and Way-Forward. Acta Universitatis Danubius. Vol. 12, No. 1/2020. Available at: <https://dj.univ-danubius.ro/index.php/AUDA/article/download/315/601/1856>.

58. See generally Tobii, A.A., Ayodeji, G.I., and Odeh, B.H. An Assessment of the Oversight Role of the National Assembly, 1999-2019. In Two Decades of Legislative Politics and Governance in Nigeria’s National Assembly Issues, Achievements, Challenges and Prospects by Fatai Ayinde Aremu and Adesola Rafiu Bakare (eds.). Publisher: Springer Singapore. See also Saliu, H. A., and Bakare, A. (2020). An Analysis of the Role of the National Assembly in Nigeria’s Fourth Republic and its possible reform. Studia Politica: Romanian Political Science Review, 20(2), 271-290. <https://nbn-resolving.org/urn:nbn:de:0168-ssoc-69930-2>.

59. See the Policy and Legal Advocacy Centre. Guide To Effective Representation In the National Assembly, at p. 31, op.cit.

The Administration of Justice— Investigation and Prosecution



Not having consequences following infractions of PFM rules creates instability in the system. It signals that actions do not have repercussions and where this is the (dis)order of things; resources, finance and commercial activity would generally be suboptimal.

Not having consequences following infractions of PFM rules creates instability in the system. It signals that actions do not have repercussions and where this is the (dis)order of things; resources, finance and commercial activity would generally be suboptimal. The arm of government with the responsibility to adjudicate the breach of PFM rules (effectively, the delivery of punishments or ‘consequences’) where circumstances allow, is the judiciary. The latter is the Constitutional arm empowered to rule in a number of matters concerning the breach of PFM laws. This responsibility to adjudicate and dispense justice, in turn, is supported by the Executive through the instrumentality of its investigatory and prosecutorial agencies: the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC), among others. These two bodies, in the discharge of their functions, aim to ensure that corrupt acts and financial crimes are investigated and prosecuted to the fullest extent of the law. While these institutions may be able to provide evidence of numerous investigations⁶⁰ and even convictions⁶¹ (though this is debatable);⁶² it has been observed that it is difficult to appropriately measure their effect on the PFM system and even anti-corruption generally in Nigeria.⁶³ This might be because not all breaches of PFM stipulations are 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

60. See “Establishment, Achievements and Challenges of Anti-corruption and Transparency Units (ACTU) in Ministries, Departments and Agencies of Governments” by Femi L. Gold, on August 6th, 2021, in the Independent Corrupt Practices Commission (ICPC) Website. Available at: <https://icpc.gov.ng/2021/08/06/establishment-achievements-and-challenges-of-anti-corruption-and-transparency-units-actu-in-ministries-departments-and-agencies-of-governments-by-femi-gold/>.

61. See “ICPC filed 70 cases, secured 11 convictions from 1, 569 petitions in 2016”, by Evelyn Okakwu, on February 13th 2017, in Premium Times (Online) Newspaper. Available at: <https://www.premiumtimesng.com/news/top-news/223425-icpc-filed-70-cases-secured-11-convictions-1-569-petitions-2016.html?tztc=1>. See also “Anti-corruption fight: EFCC records 603 convictions, recovers N500b in 3 years” by Soni Daniel, on May 28th, 2018, in the Vanguard (Online) Newspaper. Available at: <https://www.vanguardngr.com/2018/05/997081/>. See again “Nigeria Sees More High Level Corruption Convictions Under Buhari”, by John Campbell, on May 31st, 2018; Africa In Transition. Council Of Foreign Relations (Online). Available at: <https://www.cfr.org/blog/nigeria-sees-more-high-level-corruption-convictions-under-buhari>. Also see “Anti-graft Agency, EFCC Secures Over 3000 Convictions In Corruption Cases In 2022”, by Sahara Reporters, on November 26th, 2022, in Sahara Reporters (Online) Newspapers. Available at: https://saharareporters.com/2022/11/26/anti-graft-agency-efcc-secures-over-3000-convictions-corruption-cases-2022#google_vignette. See again, “EFCC Arrests 81, Convicts 68 over Corruption Allegations”, by Ahmad Sorodinko, on July 26th, 2023, in Thisday (Online) Newspapers. Available at: <https://www.thisdaylive.com/index.php/2023/07/26/efcc-arrests-81-convicts-68-over-corruption-allegations>.

62. See “EFCC has the most inconclusive cases globally – Official”, by Ameh Ejekwonyilo, on July 31st, 2023, in Premium Times (Online) Newspapers. Available at: <https://www.premiumtimesng.com/news/top-news/613241-efcc-has-the-most-inconclusive-cases-globally-official.html>. See also “EFCC secures six per cent conviction in nine years”, by Olugbenga Adanikin, on November 23rd, 2021, in the International Centre for Investigative Reporting (Online) Newsletter. Available at: <https://www.icimigeria.org/efcc-secures-six-percent-conviction-in-nine-years/>.

63. See generally, Page, M. (2021). Innovative Or Ineffective? Reassessing Anti Corruption Law Enforcement in Nigeria. GI-ACE Project: Fighting High Level Corruption In Africa: Learning From Effective Law Enforcement. Working Paper, 9. Chatham House. Available at: <https://ace.globalintegrity.org/wp-content/uploads/2021/02/Page-Nigeria-workingpaper9-1.pdf>.

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,⁶⁴ 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,⁶⁵ reduction in its scope of authority⁶⁶ and relatively low conviction rates, it is often accused of being tainted by political interference.⁶⁷ In addition to tirades in the media by public analysts,⁶⁸ the operation of the EFCC as an institution meant to check Financial Crime has been seriously called into question.⁶⁹ This is as a result of the alleged political colouration of some of their investigations and prosecutions.⁷⁰

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 "Analysis: ICPC may become toothless as senate wields the hammer", by Malik Abdulganiyu, on June 2nd, 2023, in the Cable (Online) Newspapers. Available at: <https://www.thecable.ng/analysis-icpc-may-become-toothless-as-senate-wields-the-hammer>.

65. See "EFCC blames antics of defence counsels, other hurdles for slow pace of financial crimes prosecution", by Mohammed Bukar, on December 1st, 2022, in the Daily Post (Online) Newspapers. Available at: <https://dailypost.ng/2022/12/01/efcc-blames-antics-of-defence-counsels-other-hurdles-for-slow-pace-of-financial-crimes-prosecution/>.

66. See generally, Ogunbamila, B. (2022). Nigeria: Supreme Court Whittles Down EFCC Powers In Dr Joseph Nwobike SAN v FRN SC/CR/161/2020. Olisa Agbakoba Legal. Mondaq (Online). Available at: <https://www.mondaq.com/nigeria/white-collar-crime-anti-corruption-fraud/1171218/supreme-court-whittles-down-efcc-powers-in-dr-joseph-nwobike-san-v-frn-sccr1612020>.

67. See Bello, M.F., and Coomas, A.O. (2022). The Role of Economic and Financial Crime Commission (EFCC) in Combating Corruption in Nigeria. Musamus Journal of Public Administration. 2022, Vol. V, No.1, Available at SSRN: <https://ssrn.com/abstract=4242894>.

68. See "Corruption in Nigeria: Scrap the EFCC, it's part of the problem!", by Olu Fasan, on June 12th, 2023, in Business Day (Online) Newspapers. Available at: <https://businessday.ng/columnist/article/corruption-in-nigeria-scrap-the-efcc-its-part-of-the-problem/>.

69. See Page, M. (2021). Innovative Or Ineffective? Reassessing Anti Corruption Law Enforcement In Nigeria, op.cit.

70. See "EFCC Has Derailed, Now a Political Tool, CACOL, Others Tell Buhari", by Thisday, on February 11th, 2023, in Thisday (Online) Newspapers. Available at: <https://www.thisdaylive.com/index.php/2023/02/11/efcc-has-derailed-now-a-political-tool-cacol-others-tell-buhari>. See also, "Stop acting like [sic] political tool' – activists fault EFCC's probe of Kogi's finances", by Ayodele Oluwalami, on December 20th, 2022, in the Cable (Online) Newspapers. Available at: <https://www.thecable.ng/stop-acting-like-political-tool-activists-fault-efccs-probe-of-kogis-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



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 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.⁷¹

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

71. See Jayawickrama, N. Transparency and Accountability for Public Financial Integrity, at p. 190. In *Governance, Corruption, and Public Financial Management*. (1999). Edited by Salvatore Schaiwo-Campo. Published by the Asian Development Bank. Available at: <https://www.adb.org/sites/default/files/publication/27900/governance-corruption-public-financial-management.pdf>.



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.

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.

72. See Bicchieri, C. (2002). Covenants Without Swords: Group Identity, Norms and Communication in Social Dilemmas, at p. 1. In the Journal of Rationality and Society, Volume 14(2): 192-228. Sage Publications.

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