POSITION PAPER ON INDEPENDENCE OF THE AUDITOR GENERALôS OFFICE KENYA

INTRODUCTION

The Office of the Auditor General in Kenya draws its mandate from Article 229 of the Constitution. In addition, Article 248(3a) categorizes the Office of the Auditor General as an independent office.

Its tasked with auditing and reporting, in respect of that financial year, on the accounts of the National and County Governments; all funds and authorities of the national and county governments; all courts; every commission and independent office established by the Constitution; the National Assembly, the Senate and the County Assemblies; political parties funded from public funds; public debt; and the accounts of any other entity that legislation requires the Auditor-General to audit. This is to be submitted within six months after the end of each financial year. Article 229(6) of the Constitution further requires the Auditor-General to confirm whether or not public money has been applied lawfully and in an effective way.

Moreover, Article 249(3) of the Constitution of Kenya provides that parliament shall allocate adequate funds to enable each Commission and Independent Office to perform its functions.

It is worth noting that for the Auditor Generalôs Office to effectively discharge its duties and mandate, it has to be independent. However, at present, the Office's budget is negotiated with officials of the National Treasury. Although this has not yet done any harm, it could lead to unwarranted pressure on the Office and result in the withholding of necessary funds thus comprising its independence.

This paper seeks to address this question by focusing on the Officeôs financial autonomy and the role of the Auditor General in examining the merits of a policy objective of the government, a state corporation or another authority.

INDEPENDENCE OF THE AUDITOR GENERALôS OFFICE

The nature of the Auditor Generalôs functions requires guaranteed independence. This aspect has been recognized by the International Organization of Supreme Audit Institutions (INTOSAI). In its XIX Congress meeting in Mexico, dubbed the *Mexico Declaration on SAI Independence*, INTOSAI recognized eight core principles as essential requirements for proper public sector auditing. These are:

1. The existence of an appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework;
2. The independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties;
3. A sufficiently broad mandate and full discretion, in the discharge of SAI functions;
4. Unrestricted access to information;
5. The right and obligation to report on their work;
6. The freedom to decide the content and timing of audit reports and to publish and disseminate them;
7. The existence of effective follow-up mechanisms on SAI recommendations;
8. Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources.

Kenya has adopted and implemented some of these principles. Nevertheless, there is still along way to go in realizing Principle 6, 7 and 8.

FINANCIAL AUTONOMY OF THE AUDITOR GENERAL

In Kenya, the Auditor General Officeôs annual budget estimates are prepared and submitted to the Cabinet Secretary responsible for finance who then submits to the National Assembly estimates of the revenue and expenditure of the National government.

In the current set-up, under Article 221(3) of the Constitution, the National Assembly considers the estimates of revenue and expenditure of the national government together with the estimates submitted by the Parliamentary Service Commission and the Chief Registrar of the Judiciary.

This arrangement undermines the OAGôs absolute independence given that the National Treasury is an entity subject to its statutory audit. To assure independence, there is need for the Public Audit law to **provide for direct submission of Auditor General's annual budget estimates to the National Assembly**. This model has been implemented in other jurisdictions successfully. In this section we assess the models applied in Canada and United Kingdom.

CANADA

The Office of the Auditor General in Canada operates as a Department of the Public Service under the Public Sector Management Act (1994), thus receiving an annual appropriation from Treasury. The Public Accounts and Expenditure Review Committee in its 1992 Report, recommended that the Office of the Auditor General should not be constituted as a department of the public service .Opinion from other sources went further to suggest that the Office should be established as a statutory authority to provide more autonomy and independence .

Denis Desautels the former auditor general in the Capstone Report in February 2001 stated that *'…the independence of the Office of the Auditor General needs stronger protection. At present, the Office's budget is negotiated with officials of the Treasury Board. Although this has not yet* *done any harm, I believe it is an uncomfortable arrangement. It could lead to unwarranted pressure on the Office and result in the withholding of necessary funds'*.

Overtime, a number of models have been suggested in efforts to ensure independence of the Auditor General as illustrated below:

(a) The first was modeled after the United Kingdomôs National Audit Office mechanism. The National Audit Office presents its budget to an all-party Public Accounts Commission. The membership of the Commission includes the Chairman of the Public Accounts Committee, the Leader of the House of Commons, and seven other members of the House, appointed by it. None of the seven is a minister. The NAO prepares an estimate of its expenses annually. The Commission examines this estimate and lays it before the House of Commons with such modifications as it sees fit. The Commission is required to take into consideration any advice given by the Public Accounts Committee and the Treasury;

(b) The second model that would also require legislative changes is that provided for in the Parliament of Canada Act for the Senate Ethics Officer and the Ethics Commissioner. Both of these officers are to prepare annual estimates of the expenses to run their respective offices. These estimates are considered by their respective speakers and then transmitted to the President of Treasury Board who lays them before the House of Commons with the Estimates of the government for the fiscal year;

(c) The third approach proposes a blue ribbon panel that would be appointed to review and challenge the OAG spending plans and report to the Treasury Board. The panel members would be drawn from retired high-profile public servants, accounting professionals with established credentials and experience, academics, and former speakers of the House of Commons. The report setting out the panelôs recommendation with respect to the Officeôs estimates would be submitted to Treasury Board on behalf of the Office. While Treasury Board Secretariat would retain its challenge role with respect to the amounts requested by the OAG, it would be generally understood by all parties to the process that the OAG estimates had been ñsubstantiatedò by the panel.

Subsequently, the OAG budget for each financial year is determined in consultation with the parliamentary committee concurrently with the annual plan.

UNITED KINGDOM

The United Kingdom National Audit Office (NAO) presents its budget to an all-party Public Accounts Commission. The membership of the Commission includes the Chairman of the Public Accounts Committee, the Leader of the House of Commons, and seven other members of the House, appointed by it. None of the seven is a minister.

The NAO prepares an estimate of its expenses annually. The Commission examines this estimate and lays it before the House of Commons with such modifications as it sees fit. The Commission is required to take into consideration any advice given by the Public Accounts Committee and the Treasury.

RECOMMENDATION

To assure absolute independence of the Office of the Auditor General, The Public Audit law should provide for the full financial autonomy of the Office. This will be achieved by instituting mechanisms that provide for direct submission of Auditor General's annual budget estimates to the National Assembly and not through the National Treasury;