

Public Financial Accountability: The Case of the Financial Administration Courts in Ghana

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Abstract

This paper focused on the Financial Administration Courts (FAC), an independent oversight institution responsible for the enhancement of financial accountability in the public sector. In Ghana, the Auditor-General's reports have persistently blamed public financial accountability failures on weak internal control systems, despite the existence of oversight horizontal accountability institutions. This paper, however, argues that public financial accountability failures in Ghana denote poor internal control systems that signify deficits in oversight institutions. This study adopted a largely qualitative research approach. Face-to-face Interviews, document reviews and the direct observation methods were employed as tools for data collection. The study reveals the presence of a good and detailed constitutional-legal framework that promotes and enhances PFA in Ghana. However, the absence of applying sanctioning mechanisms to wrongdoers, deficiencies in institutional capacity of the FAC, coupled with financial and human resource limitations, have had an adverse impact on PFA. The study also argues that the persistent failure of the Financial Administration Courts in applying sanctions to wrongdoers has the tendency to retard any efforts towards the improvement of PFA in Ghana.

Key Words: Public Financial Accountability, Financial Administration Courts, Public Financial Management Act

Introduction

Finance or money lies at the heart of operations and activities of the public sector. This is because the public sector is the largest spender and employer in virtually every developing country and it sets the policy environment for the rest of the economy (Owalla & Luanga, 2014). Unfortunately, the approach to mobilizing and managing public finance in most developing countries has been met with challenges such as corruption, misapplication and misappropriation of funds, over-spending and lack of compliance with existing legislative frameworks. In an effort to overcome these challenges, developing countries have attempted to introduce reforms in public sector financial mobilization and management systems. These reforms have mainly dealt with areas of legal and institutional framework, resource generation, improved resource allocation, transparency, accountability and fiscal discipline aimed at improving efficiency, effectiveness and value for money (Owalla & Luanga, 2014).

The presence of sound public financial accountability (PFA) has numerous indicators. First, a country is likely to manifest sound PFA if its legislative committees and audit committees provide for its citizens crucial oversight of the country's public finance (Sahgal & Chakrapani, 2000). Second, is the existence of budgeting and accounting systems that promote performance and that capture public organizations' transactions and their actual and contingent assets and liabilities accurately and in a timely way (Sahgal & Chakrapani 2000). Third, a country may be publicly accountable financially if it maintains internal control and performance reporting systems that check bad recordkeeping, noncompliance with rules and regulations, lack of due regard for economy and efficiency, weak evaluation and internal audit capacity, breaches in codes of ethics, and misrepresentations of performance information (Sahgal & Chakrapani, 2000). The fourth indicator is a country's reporting of external audits and reviews to the legislature and the stakeholders on how government manages risk. Finally, a country is publicly

financially accountable, if it has the “capacity for evaluation that ensures that it can capture its lessons from experience and act on them in a timely way” (Sahgal & Chakrapani, 2000).

In an effort to enhance effective and sound PFA in Ghana, the Financial Administration Act, (FAA) 2003, and the Financial Administration Regulation (FAR) 2004, which have been consolidated into Public Financial Management Act, Act 921 of 2016, were enacted to regulate PFM in Ghana. The PFM Act of 2016 prescribes the responsibilities of persons entrusted with financial management (FM) in the public sector. This is to ensure the effective and efficient management of State revenues, expenditures, assets, liabilities, resources of the government, the Consolidated Fund and other public funds and to provide for matters related to these. Notwithstanding the measures put in place, public financial accountability failures persist in Ghana. Against this background, this paper seeks to examine the role of the Financial Administration Courts (FAC) in promoting and enhancing public financial accountability (PFA).

Research Problem

Section 15 (1) of the PFM Act, 2016 (ACT 921) requires the Minister of Finance to put in place a functional public financial management (PFM) system with sufficient controls, checks and balances, as a measure of promoting accountability, ensuring adherence to standards and regulations, promoting civil society alertness and participation, and effective resource allocation and utilisation. The FAA, 2003, Act 654 on the other hand, established the Financial Administration Courts (FAC) to enforce recommendations of the Public Accounts Committee (PAC) on the Auditor-General’s (A-G) reports as approved by Parliament.

In spite of the systems put in place, the Auditor- General’s (A-G) reports which are readily available and covering the periods 1993-2015 reveal low levels of compliance with existing legislative framework, misapplication and misappropriation of funds, managerial lapses and weak monitoring procedures leading to the loss of billions of Ghana Cedis- a situation that suggests significant managerial and capacity handicaps. For instance, the latest A-G’s report of 2015, reveals that Ghana lost GH¢505,179,135 as a result of financial errors and irregularities committed by public boards, corporations and other statutory institutions. The loss, according to the A-G’s Report for the 2015 fiscal year, arose out of the breakdown of internal controls. The loss, according to the report, occurred between January 1 and December 31, 2015.

While the reports of the A-G persistently condemn the weak internal control systems within the Ministries, Departments and Agencies (MDAs), hardly have there been any empirical research that assess the role and contributions of the Financial Administration Courts (FAC) to the promotion and enhancement of public financial accountability.

Accordingly, this paper examines the constitutional-legal and institutional framework for promoting and enhancing public financial accountability (PFA) in Ghana since the advent of the Fourth Republic in 1993. More specifically, the paper discusses how the Financial Administration Courts (FAC), comprising the institutional framework, enforce PFA in Ghana under the Fourth Republic.

Objective

The general objective of this paper is to evaluate the constitutional-legal and institutional framework for promoting and enhancing public financial accountability (PFA) in Ghana since the advent of the Fourth Republic in 1993. The four specific objectives are:

To assess the constitutional-legal framework (1992 Constitution, Financial Administration Act, 2003, Financial Administration Regulations, 2004 and Public Financial Management Act, 2016) for PFA in Ghana including their design and implementation;

To assess the institutional framework (in terms of mandates, capacity, independence, personnel and funding) of the Financial Administration Courts (FAC)

To examine some of the challenges facing the FAC and how it can be addressed to ensure effective PFA in Ghana.

Highlight the lessons and their implications for the theoretical, comparative and empirical literature on PFA and accountability in general

The Financial Administration Courts in Ghana

The institution responsible for implementing the recommendations of the Public Accounts Committee (PAC) is the Financial Administration Court. Section 66 (1) of the Financial Administration Act (FAA), 2003 states that “there is established by this Act a Financial Administration Tribunal referred to in this Act” as the “Tribunal”. The phrase “tribunal” was later amended as “court” (The courts are also known as specialised financial and organised crime courts). By the FAA Act, the Court “shall comprise, a Justice of the High Court who shall be the chairperson; a chartered accountant; and a management accountant or a professional valuer.” Section 66 (3) of the FAA further stipulates that the members of the court “shall be nominated by the Chief Justice in consultation with the Judicial Council and shall be appointed by the President.”

Section Three of Act 760 of the Financial Administration (Amendment) Act, 2008 (Act 760) repealed the Panel System, “made up of a Justice of the High Court as chairperson, a Chartered Accountant or a professional valuer” as member, and introduced the Single Judge System. This amendment notwithstanding, the court still has jurisdiction to “enforce recommendations of the Public Accounts Committee on the Auditor-General’s report as approved by Parliament.” The Financial Administration Act, 2003 stipulates that the court has power to;

- a) “Hear and determine matters that fall for determination under this Act;
- b) Enforce recommendations of the Public Accounts Committee on the Auditor-General’s reports as approved by Parliament.”
- c) “Enforce contracts and bonds entered into in pursuance of this Act;
- d) Make such orders as it considers appropriate for the recovery of monies, assets or other property due to the State;
- e) Prohibit any individual whether a public officer or not from managing public accounts or funds if the individual is unqualified professionally or has been persistently negligent in the management of public funds;
- f) Prohibit any person from participating as a bidder in any government procurement or contract where the person has a record of defrauding the State.”

It is pertinent to note that the Orders of the FAC “shall be enforced in the same manner as an order of the High Court.” (FAA, 2003, Section 66). This clause definitely strengthens the FAC. However, other clauses in the FAC Act tend to downplay the importance about the essence of severe punishment as a deterrent to wrongdoers. For instance Section 69 (1) of the FAA Act states that “a person adversely affected by an audit report may accept liability and offer to pay compensation or make restitution”.

Method

This study relied on both primary and secondary data. Generally, for case study design, six key techniques of data collection are used. These are physical artefacts, interviews, documentation, archival records, direct observation and participant observation (Welman, Kruger & Mitchell,

2005). This study, however, used three of the above- mentioned methods, namely direct interviews using semi structured open ended interview guides, documents/records review and direct observation method.

Study Population

The study population was taken from key organisations including; the office of the Auditor-General (A-G), Parliament's PAC, the FAC and civil society organisations (CSO) that focuses on issues with regards to public financial accountability (PFA). The study population was classified under four groups. The first group involved heads of departments and units of the Audit Service, Ministry of Finance, Controller and Accountant-General's Departments and past Auditor-Generals. The group mentioned above formed part of the study population because the nature of their duty is such that they are involved with issues relating to PFA. Moreover, they tend to understand, as they deal with issues relating policy implementation on a day-to-day basis. Also, by virtue of their position of authority and responsibility as well as their control of public resources, accountability is sought from them.

The second group of people were the elected representatives (politicians): This group involved ten present and former members of the PAC and three members of the finance committee of parliament. Members of the two committees formed part of the study due to the fact that the public accounts committee and finance committee are key financial accountability committees of the Parliament of Ghana, whose activities are geared towards promoting accountability, combating corruption, strengthening budgetary oversight and improving resource allocation. Members of the PAC have been entrusted with the responsibility of auditing the accounts of government presented by the Auditor-General. Secondly, members of the above committees serve as representatives of the people, and are responsible for giving satisfactory explanation to the public on issues that relates to financial accountability and institutional performance.

The third group are members of the financial administration court, who have the mandate to enforce recommendations of the PAC and to make orders for the recovery of monies, assets or other property due to the State. Respondents were selected on the basis of their specialised knowledge of public financial accountability, rather than they being selected at random. Selecting respondents on the basis of their specialised knowledge and background which are relevant to the study enhances the quality of data for analysis and discussion. Also, Tremblay (1995) argues that this technique is effective when defining the essential characteristics of some issues by drawing on personal experience and understanding of the people involved. Their inclusion in the study seeks to reveal the extent to which the application of sanctions have either enhanced accountability or otherwise.

The fourth group is the CSOs, which though do not form part of the arms of government, offer a significant and autonomous bridge with governmental organisations. Six key civil society organisations (think-tanks and pressure groups) namely the Institute of Economic Affairs (IEA), the Centre for Democracy and Development (CDD), the Institute for Democratic Governance (IDEG), the Ghana Integrity Initiative (GII), Ghana Anti-corruption Coalition (GACC) and Occupy-Ghana were purposely selected on the basis of their keen interest and focus on issues relating to public financial accountability. Their inclusion was purposely to ascertain (from their perspective) how far the Financial Administration Courts have assisted in championing sound financial accountability and its enforcements in the public sector. It must also be noted that civil society organisations are sometimes regarded as the "community's voice" and are required to fight against financial malpractices.

The respondents were purposely selected, using a criterion sampling method. The criterion sampling method is very useful as it enhances quality assurance. The criteria for selection was

based on respondents with comprehensive insight and understanding with regards to the thematic ideas on PFA. In sum, thirty-five participants were interviewed as shown in Figure 1.

Figure 1: RESPONDENTS USED IN THE STUDY

Designation	Organisation	Frequency
Auditor-General (former)	Office of the Auditor-General	2
Heads of units/department	Audit Service	1
Heads of Unit/department	Ministry of finance	1
Heads of unit/department	Controller and Accountant General's Department	1
Senior Principal Auditors	Audit Service	3
Chief Finance Officer	Ministry of Finance	1
Chief Finance Officer	Controller and Accountant General's Department	1
Members of PAC	Parliament	5
Former Members of PAC	Parliament	5
Members of Finance Committee	Parliament	3
Members of Financial Administration Court	FAC, Accra	3
Member	Judiciary	1
Member	Attorney-General's Department	1
Directors and Members	Civil-Society Organisations	5
Member	Pressure Group, Occupy-Ghana	1
Member	Public Interest Accountability Committee (PIAC)	1
TOTAL		35

Source: Author's work

Results and Findings of the Study

The key findings of the study can be summarised as follows. First, internal financial control systems are weak in Ghana, not as a result of ignorance about PFM laws or incapability on the part of public officials, but as a result of deliberate disregard towards the systems that have been put in place. Such impunity stems from the fact that the enforcement of sanctions is not effective. Indeed, the former A-G in his 2011 Report to Parliament stated that "The cataloguing of financial irregularities in my Report on MDAs and Other Agencies has become an annual ritual that seems to have no effect because affected MDAs are not seen to be taking any

effective action to address the basic problems of lack of monitoring and supervision and non-adherence to legislation put in place to provide effective financial management of public resources” (A-G’s report, 2011: 15). From 2005 up to 2015 (latest A-G’s report), Ghana has lost over Two Billion Ghana Cedis (GHC2,000,000,000) through the MDAs alone.

Second, the institutional framework under which the Financial Administration Courts operate needs to be strengthened in terms of their mandates, capacity, independence, personnel and funding. There is an absence of a well-structured institutional framework to enhance proper coordination among other horizontal accountability institutions in enforcing sanctions, monitoring and reporting activities. Finally, the study revealed that since the inception of the Financial Administration Courts, the courts are yet to hear cases referred to it by findings of the Public Account Committee of Parliament in respect of public officers found culpable of financial malfeasance by the Auditor General’s Report, as approved by Parliament.

Conclusion

A fundamental question that engages our attention in this paper is whether the constitutional-legal and institutional framework put in place to enhance public financial accountability in Ghana has actually achieved its purpose? There is no easy answer to this question. Ghana has invested in programmes aimed at strengthening PFM. The result is that the country is guided by sound Public Financial Management laws that have been enshrined in the 1992 Constitution of Ghana, the Financial Administration Act (2003), the Financial Administration Regulation (2004), and Public Financial Management Act (2016) among others. However, the prevalence of corruption in Ghana tends to be a consequence of institutional (in our study the Financial Administration Courts) failures. Therefore, safeguarding the integrity of the PFM system necessitates rigorous enforcement of the regulatory framework and putting in place effective mechanisms to strengthen horizontal accountability institutions.

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