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Enhancing Accountability in Public Resources: Legal Protection of Supreme Audit Institution Heads in Africa – A Study of Tanzania, Kenya, South Africa, Sierra Leone, and Gambia

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Supreme Audit Institutions (SAIs) are essential to promoting accountability in public resource management. As vital stakeholders in national development, they ensure that those in power remain accountable to citizens. For SAIs to fulfill this role effectively, they must operate independently, which requires autonomy in their leadership. A key element of this autonomy is the independence of the head of the SAI. This independence means that the head should have the required professional competencies, enjoy secure tenure, and be protected from arbitrary dismissal, with clear, well-defined grounds and procedures governing any removal. This article uses descriptive and normative legal research methods to examine laws and practices related to protecting the heads of SAIs in five countries: Tanzania, Kenya, South Africa, Sierra Leone, and Gambia. It explores the legal and practical issues around the tenure and removal of these leaders and offers recommendations to strengthen their independence. The article emphasizes that securing the autonomy of SAI leadership is crucial to enhancing institutional performance and accountability in public financial management.

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INTRODUCTION

One of the fundamental obligations of Supreme Audit Institutions (SAIs) is to promote and enhance accountability and predictability of the government performance. SAIs do this by promoting accountable democratic institutions, preventing financial malpractice, corruption and delivery of information to tax payers about carrying out of government policies and programs.¹

For SAIs to be effective and credible institutions that deliver on their mandate, both of *de Jure* and *de facto* independence from the audited entity (executive) both in terms are required. Well-defined legal basis is a critical prerequisite for the effective functioning of SAIs. It should cover the independence of the SAI versus the executive branch of the government and provide the SAI with sufficient operational powers to establish its role as the external auditor of the government.² Similarly, SAIs' should be able to deliver their mandate without interference and fear of repercussions. SAI independence often reflects country governance systems and can be either an enabler or an inhibitor for SAI performance.³ This is because the SAI's legal framework is decided by other state powers, and is not directly under control of the SAI itself.⁴

This article explores the how the tenure of the Head of the SAI as a key component for assurance of independency of the SAI is protected in the

selected jurisdictions namely Tanzania, Kenya, South Africa, Ghana, Siera Leone and Gambia. It explores the legal frameworks governing mandate, appointment, tenure and removal of the Head of the SAI. It also reflects on the practical aspects regarding tenure of such officers.

METHODOLOGY

This article employs both descriptive and normative research approaches. The descriptive approach involves a practical examination of how regulations are applied within the domestic contexts of the selected jurisdictions, drawing on both existing literature and relevant legal frameworks. It includes an analysis of laws and other sources of information to provide a clear understanding of the issues at hand. In this article, the descriptive approach is used to utilize relevant literature and existing studies as primary sources of information, helping to define the scope of the problem and establish the conceptual framework.

The normative legal approach is applied where legal rules, principles, and doctrines are analyzed and where the researcher's arguments are presented. Specifically, this approach is used in the examination of the legal frameworks governing the functioning and independence of Supreme Audit Institutions (SAIs). It offers a deeper analysis of the principles and doctrines that underpin the operationalization of SAIs.

¹ See Preamble to the Public Audit Act, 2008 describing the strategic role of supreme audit institution in the United Republic of Tanzania

² Camilla F., Sean B., (2020). The Global Stocktaking Report 2020. Retrieved from <https://www.idi.no/elibrary/global-sai-stocktaking-reports-and-research/global-sai-stocktaking-report-2020/1364-idi-global-sai-stocktaking-report-2020/file>

³ Ibid.

⁴ Otbo, H (2009). International Journal of Government Auditing, *INTOSAI Professional Standards Committee, and Auditor General of Denmark*) in *The International Journal of Government Auditing*, Vol. 36, No.4 of.

THE DECLARATIONS ON SAIs' INDEPENDENCE

The level of independence required to be enjoyed by the organisation (SAI) are contained in two Declarations namely Lima Declaration (INTOSAI P-1 Formerly known as ISSAI 1)⁵ and Mexico Declaration (INTOSAI P-10 Formerly known as ISSAI 10).⁶ Below is a brief narrative of the requirement for each of the declarations

Lima Declaration contain detailed standards in regard to Independence of Supreme Audit Institutions. It recognizes the fact that Supreme Audit Institutions can accomplish their tasks objectively and effectively if they are independent of the audited entity and are protected against outside influence.⁷ The declaration while recognizing the fact that state institutions cannot be absolutely independent because they are part of the state as a whole, it emphasize that the Supreme Audit Institutions to have the functional and organisational independence required to accomplish their tasks.⁸ Importantly, it requires that the establishment of Supreme Audit Institutions and the necessary degree of their independence to be laid down in the constitution and details to be set out in the legislation.⁹

The independence of Supreme Audit Institutions is further required to be inseparably linked to decision making in the Supreme Audit Institution and accountability of the Head of the SAI to the third party, that is, the members of a decision-making collegiate body or the Head of a monocratically/state.¹⁰ Likewise it requires independence of the members to be guaranteed by

the Constitution, in particular the procedures for removal from office. The method of appointment and removal of members should depend on the constitutional structure of each country. It further requires professional careers of the audit staff of Supreme Audit Institutions to be free from influence of the audited organizations and must not be dependent on such organizations.¹¹

The Mexico Declaration has two main principles on the constitutional setup of the office. The first principle requires the presence of appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework.¹²

The second Principle entails that, the independence of SAI Heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties to be specified in the constitution. In this regard the principle requires the existence of legislation that specifies the conditions for appointments, re-appointments, employment, removal and retirement of the Head of SAI and members of collegial institutions, who are appointed, re-appointed, or removed by a process that ensures their independence from the Executive. From the two declarations, it follows therefore that a constitution and legislation that spells out, in detail, the extent of SAI independence is required.

THE STANDARDS: SETTING THE GROUND FOR THE DESIRED MODEL

SAIs are uniquely suited to provide independent views on the quality of public-sector management, the extent to which the executive branch of

⁵ INTOSAI-P 10, (2019) *Mexico Declaration on SAI Independence*. Retrieved from https://www.intosai.org/fileadmin/in/downloads/documents/open_access/INT_P_1_u_P_10/INTOSAI_P_10_en_2019.pdf

⁶ *Ibid*

⁷ Section 5(1) of the Public Audit Act, 2008.

⁸ *Ibid*, Section 5(2).

⁹ Section 5(3) of the Public Audit Act, 2008. Importantly the guideline requires adequate legal protection by a supreme court

against any interference with a Supreme Audit Institution's independence and audit mandate shall be guaranteed.

¹⁰ *Ibid*, Section 6.

¹¹ *Ibid*.

¹² Principle 2 of the INTOSAI-P 10, (2019) *Mexico Declaration on SAI Independence*. Retrieved from https://www.intosai.org/fileadmin/in/downloads/documents/open_access/INT_P_1_u_P_10/INTOSAI_P_10_en_2019.pdf

government is operating within the law and on the effectiveness of its public financial management systems.¹³ It is therefore critical that SAIs develop their professional and institutional capacity to fulfil their mandates in the most efficient and effective way.¹⁴

The Institutional Capacity Building Framework (ICBF) is one of the vital regional tool that is used to measure SAIs' growth and progress to close maturity gaps as members implement learnings acquired from various interventions.¹⁵ ICBF is based on five institutional perspective domains which are legal framework and governance, organization and management, human resources, innovations and capacity development, audit standards and methodology, and communication and stakeholder management /engagement.¹⁶

The domain on independence and legal framework considers if the SAI has operational, financial and administrative independence stipulated in the law(s), as well as whether the independence of the Head of the SAI and staff is guaranteed in the same laws. The domain covers the prescripts on independence as formulated in the Lima Declaration (INTOSAI P-1 Formerly known as ISSAI 1) and Mexico Declaration (INTOSAI P-10 Formerly known as ISSAI 10).¹⁷

Among others, these elements include areas related to the appointment and removal of the Auditor-General, the mandate of the SAI and its discretion

to discharge it fully, as well as the mechanisms required to follow up on audit recommendations. According to the (ICBF) self-assessment questionnaire which is sent out annually to AFROSAI-E member-SAIs to gather the information needed to compile the annual State of the Region: ICBF Self-Assessment Report, Independence of the Head of the SAI presupposes three major components.¹⁸

- The appointment, term, removal, and dismissal of the Head of the SAI (and members, in the case of jurisdictional control bodies) and the independence of their decision-making powers, must be prescribed in the Constitution and/or comparable legal framework.¹⁹
- The Head of the SAI is appointed with a sufficiently long and fixed term to comply with the requirement that "the Head of SAI is appointed with sufficiently long and fixed terms, to allow them to carry out their mandates without fear of retaliation."²⁰
- The process of suspending and/or restoration or removal from office of the Head of the SAI or members of the jurisdictional control

¹³ The Global SAI Stock take Report (2020). Retrieved from <https://www.idi.no/elibrary/global-sai-stocktaking-reports-and-research/global-sai-stocktaking-report-2020/1364-idi-global-sai-stocktaking-report-2020/file>

¹⁴ INSIDE INTOSAI, The International Journal of Government Auditing, Vol. 49, No. 1, Winter 2022. Retrieved From https://www.intosai.org/fileadmin/downloads/about_us/IJGA_Issues/former_years/2022/EN_2022_v49n1.pdf

¹⁵ AFROSAI-E Secretariat, the State of the Region: ICBF Self-Assessment Report 2020.

¹⁶ AFROSAI-E Secretariat, the State of the Region: ICBF Self-Assessment Report 2020, see also the AFROSAI-E Institutional Capacity Building Framework Abridged Guideline 2019.

¹⁷ *Ibid.*

¹⁸ The Global SAI Stock take Report (2020). Retrieved from <https://www.idi.no/elibrary/global-sai-stocktaking-reports-and-research/global-sai-stocktaking-report-2020/1364-idi-global-sai-stocktaking-report-2020/file>; see also: Appendix 2: 2020 ICBF Questionnaire, including questions across the domains, elements, indicators and the expected results for levels 1 to 4.

¹⁹ See INTOSAI 10:2 & ISSAI 140 - Quality control for SAIs. Retrieved from <https://www.issai.org/wp-content/uploads/2019/08/ISSAI-140-Quality-Control-for-SAIs.pdf>

²⁰ principle 2, INTOSAI-P 10, (2019) Mexico Declaration on SAI Independence. Retrieved from https://www.intosai.org/fileadmin/downloads/documents/open_access/INT_P_1_u_P_10/INTOSAI_P_10_en_2019.pdf and ISSAI 11:2

institutions is prescribed, and parliament or an appropriate body has the final approval.²¹

A LOOK INTO THE LAWS AND PRACTICE OF SELECTED JURISDICTIONS

The United Republic of Tanzania

In Tanzania, the Head of SAI is one of the constitutional post. He/she is recognized as the Controller and Auditor (CAG) of the United Republic of Tanzania.²² Pursuant to provisions of Section 4(1), of the Public Audit Act, Cap 418 (here in PAA), CAG is appointed by the President from among the citizens of the United Republic of Tanzania by birth. The president is required to consider relevant professional qualifications, experience and leadership skills suitable for appointment to the post.²³ The appointee must be a Certified Public Accountant or possess relevant qualifications and have a working experience of at least 10 years in relevant field.²⁴

In the discharge of his/her functions in accordance with the provisions of constitution, the Controller and Auditor-General is not be obliged to comply with the order or direction of any other person or Government Department save the powers of the court to enquire into whether the Controller and Auditor-General has discharged his/her functions in accordance with the provisions of the Constitution or not.²⁵

Term of service of the CAG has attracted different interpretation under the existing framework. Under Article 144 of the Constitution of United Republic of Tanzania, 1977, (here in the Constitution of URT). The Controller and Auditor-General of the United Republic is required to vacate

Office upon attaining the age of sixty or any other age which shall be prescribed by a law enacted by Parliament.

Section 6(2) of the PAA stipulates that unless the question of removal becomes the subject of investigation in terms of Article 144(3) of the Constitution, the Controller and Auditor- General is required to vacate office upon attaining the age of sixty-five years. Conversely, under Section 6(1) of the PAA once appointed, the law stipulates that CAG should hold the Office for a period of five years and he/she may be re-appointed for a period of five years.²⁶

The removal of the CAG from office can be done by the President only for inability to perform the functions of his/her office (either due to illness or due to any other reason) or for misbehaviour, or for violating the provisions of the law concerning the ethics of public leaders and shall not be so removed except in accordance with the provisions of Article 144 (4) of the Constitution.²⁷

Should the President consider that the question of the removal of the CAG from office needs to be investigated, the following procedures are required; the President is required to appoint a Special Tribunal which shall consist of a Chairman and not less than two other members.²⁸ The Chairman and at least half of the other members of that Special Tribunal are required to be persons who are or have been Judges of the High Court or of the Court of Appeal in any country within the Commonwealth.²⁹

The Special Tribunal is required to investigate the matter and submit report to the President on whole matter and shall advise him/her whether or not the

²¹ INTOSAI-P 10, (2019) Mexico Declaration on SAI Independence. Retrieved from https://www.intosai.org/fileadmin/downloads/documents/open_access/INT_P_1_u_P_10/INT_OSAI_P_10_en_2019.pdf

²² Article 143 of the Constitution of the United Republic of Tanzania of 1977.

²³ Section 4(2), Public Audit Act, Cap 418.

²⁴ Regulation 4(1) of Public Audit Regulation, G.N 47 of 2009.

²⁵ Article 143(6) of the Constitution of the United Republic of Tanzania of 1977.

²⁶ Section 6(1), Public Audit Act, Cap 418

²⁷ Article 144 (2) of the Constitution of the United Republic of Tanzania of 1977.

²⁸ Ibid, Article 144 (2).

²⁹ Article 144 (3)(b) of the Constitution of the United Republic of Tanzania of 1977.

CAG should be removed from office in accordance with the provisions of this Article on the grounds of inability to perform his/her functions due to illness or any other reason or on grounds of misbehaviour.³⁰ Should the Special Tribunal advise the President that the CAG should be removed from office on grounds of inability to perform functions of his/her office required remove him from office. During this investigation the President may suspend the CAG.³¹

Since the enactment of the PAA in the year 2008, Tanzania has had three CAG's. These are Mr. Ludovick S.L. Utouh (2006-2014); Prof. Mussa J. Assad (2014-2019) and the incumbent Mr. Charles E. Kichere who is in the Office since the year 2019.³² Nevertheless, the immediate past CAG, Prof. Mussa J. Assad (2014-2019) served for one term only before the current CAG was appointed to replace him.

Following his removal, a prominent politician Zitto Kabwe instituted a constitutional case challenging the Constitution validity of Section 6(1) of the Public Audit Act which provided for a five-year tenure of the CAG. He was also seeking a declaration that the removal of the former CAG (Prof Assad) by the president was unconstitutional as it contravened the provision of Article 144(1) of the Constitution and Section 6(2) of the Public Audit Act was against the right to work and of equality before the law. Lastly the petitioner was seeking a declaration that the appointment of the incumbent CAG (Mr. Kichere) was unconstitutional as he was appointed to the office wrongful before retirement or lawful removal of the former CAG.³³

The Court held, provisions of section 6(1) of the Public Audit Act violates Article 144(1) of the constitution as it water down the security of the tenure of the CAG which was provided by the Constitution and Section 6(2) of the Public Audit Act. The court declared that once the CAG has been approved in pursuant of provision of Article 144(1) and Section 6(1), he serves until he attains the compulsory age of retirement of 65 years. The court therefore declared the removal of the former CAG was unconstitutional as was against the provision of Article 144(1) of the Constitution.³⁴ The court further declared the incumbent CAG was properly appointed into the position and had all the prerequisite qualifications for the post. The Court held that declaring otherwise is likely to result into absurdity which is not in the best interest of the country.

Kenya

Under Article 229(1) of the Constitution of Republic of Kenya the Auditor-General is nominated by the President and appointed by the President with the approval of the National Assembly. The Constitution requires the person to be appointed to the position to have extensive knowledge of public finance or at least ten years' experience in auditing or public finance management. Once appointed, the Auditor-General holds office for a term of eight years and shall not be eligible for re-appointment.³⁵

The Auditor General like any other holder of an independent office, may be removed from office only for serious violation of the Constitution or any other law, including a contravention of Chapter Six (stipulations on leadership and integrity); gross

³⁰ *Ibid*, Article 144(2)(4)

³¹ *Ibid*, Article 144(5)

³² See Controller and Auditor General (CAG). Retrieved from <https://www.nao.go.tz/about/cags>

³³ Zitto Zuberi Kabwe vs the President of the United Republic of Tanzania and Others (Misc. Civil Cause 1 of 2020) [2020] TZHC 72 Retrieved from <https://media.tanzlii.org/files/judgments/tzhc/2022/15339/2022-tzhc-15339.pdf>

³⁴ Zitto Zuberi Kabwe vs the President of the United Republic of Tanzania and Others (Misc. Civil Cause 1 of 2020) [2020] TZHC 72 Retrieved from <https://media.tanzlii.org/files/judgments/tzhc/2022/15339/2022-tzhc-15339.pdf> (Page 36, 38, 40).

³⁵ Article 229(2) (3) of the Constitution of Republic of Kenya, 2010.

misconduct, whether in the performance of the member's or office holder's functions or otherwise; physical or mental incapacity to perform the functions of office; incompetence; or bankruptcy.³⁶

The removal proceedings may be commenced by any person desiring the removal on any ground specified above by presenting a petition to the National Assembly setting out the alleged facts constituting that ground.³⁷ The National Assembly is required to consider the petition and, if it is satisfied that it discloses a ground for removal, it shall send the petition to the President.³⁸ On receiving a petition the President is required to appoint a tribunal which consist of a person who holds or has held office as a judge of a superior court, who shall be the chairperson; at least two persons who are qualified to be appointed as High Court Judges; and one other member who is qualified to assess the facts in respect to the particular ground for removal.³⁹

The tribunal will investigate the matter expeditiously, report on the facts and make a binding recommendation to the President, who will act in accordance with the recommendation within thirty days.⁴⁰ During these proceedings Auditor General may be suspended by the President pending the outcome of the complaint; however, he will be entitled to receive one-half of the remuneration and benefits of the office while suspended.⁴¹

The Republic of South Africa

In the Republic of South Africa, the office of the Auditor General is a constitutional office established in order to support constitutional democracy⁴². The office is independent and subject

only to the Constitution and the law it is obliged to be impartial and is required to exercise its powers and performs functions without fear, favour or prejudice⁴³. The office is further shielded from interference by any person or organ of state in course of performance of its functions. The office is accountable to the National Assembly, and must report on its activities and the performance of their functions to the National Assembly at least once a year⁴⁴.

The Auditor-General is appointed for a fixed, non-renewable term of between five and ten years on the recommendation of the National Assembly.⁴⁵ For a person to be appointed as Auditor-General he or she must be a South African citizen and a fit and proper person to hold that office, who possess specialized knowledge of, or experience in, auditing, state finances and public administration.⁴⁶

A person appointed as Auditor-General ceases to be the Auditor-General- when that person's term of office expires; or if that person resigns or is removed from office as per procedures provided for in the Constitution.⁴⁷

The Auditor-General may be removed from the office only on the ground of misconduct, incapacity or incompetence. For that to happen there must be a finding by a committee of the National Assembly and the Assembly must adopt a resolution calling for that person's removal from office.⁴⁸ A resolution of the National Assembly concerning the removal from office of the Auditor-General must be adopted with a supporting vote of at least two thirds of the members of the Assembly; or a member of a Commission must be adopted with a supporting

³⁶ *Ibid*, Article 251(1)

³⁷ *Ibid*, Article 251(2)(3)

³⁸ *Ibid*, Article 251 (3)

³⁹ Article 251 (3) of the Constitution of Republic of Kenya, 2010.

⁴⁰ *Ibid*, Article 251 (3)-(6)

⁴¹ *Ibid*, Article 251(2)(7)

⁴² Section 181(e) of the Public Audit Act No. 25 of 2004.

⁴³ Section 181(2)-(5) of the Public Audit Act No. 25 of 2004.

⁴⁴ *Ibid*.

⁴⁵ Section 189 of the Constitution of the Republic of South African of 1996.

⁴⁶ *Ibid*.

⁴⁷ Section 8(1) of the Public Audit Act No. 25 of 2004.

⁴⁸ Section 194(1) of the Constitution of the Republic of South African of 1996.

vote of a majority of the members of the Assembly.⁴⁹

During the proceedings of a committee of the National Assembly the president may suspend the Auditor General from office. If the resolution to remove him/her from office is reached by adoption of the Assembly of the resolution calling for that person's removal, the President will be required to remove him/her.⁵⁰

Gambia

In Gambia, the Constitution recognizes the presence of the Auditor-General whose office shall be office in the public service.⁵¹ The Auditor-General is to be appointed by the President after consultation with the Public Service Commission.⁵² Under section 16(1) of the Gambian Public Audit Act, the Auditor General shall hold office for a term not exceeding nine years.

Under Article 160 (7) of the Gambian Constitution the Auditor General shall not be subject to the direction or control of any other person or authority when exercising his or her functions under the Constitution or any law. The protection is further emphasized under the Gambian Public Audit Act which provide that the Auditor General is not to be subjected to the direction or control of any other person or authority in the exercise of his or her functions.⁵³

The Auditor-General, a person holding the office of Auditor-General shall vacate his or her office when he or she attains the compulsory retirement age, or upon the termination of his or her appointment by

the President.⁵⁴ A person holding the office of Auditor General may be removed from office only for inability to perform the functions of his or her office (whether from infirmity of mind or body or from any other cause) or for misbehaviour or incompetence).⁵⁵

The President may remove the Auditor General from office on the ground of inability to perform the functions of his or her office arising from infirmity of mind or body or from any other cause; following a report submitted by a properly constituted Medical Board.⁵⁶ The President may remove the Auditor General from office on ground of misbehaviour; or incompetence following a report submitted by a Tribunal appointed by the President.⁵⁷ The Tribunal appointed by the President shall comprise of (a) a judge of the High Court; (b) the Ombudsman; (c) a member of the Public Commission; and (d) a chartered accountant.

Sierra Leone

In Sierra Leone the Auditor-General is appointed by the President and retires from office on attaining the age of sixty-five years or such age as may be prescribed by Parliament.⁵⁸ In the exercise of his/her functions under this Constitution or any other law, the Auditor-General shall not be subject to the direction or control of any person or authority.⁵⁹ The Auditor-General is to perform his/her duties under section 119 of the Constitution of Sierra Leone empowers him/her to act independently and shall not be subject to the direction or control of any person or authority.⁶⁰

⁴⁹ *Ibid*, Section 194(2)

⁵⁰ *Ibid*, Section 194(3)

⁵¹ Section 158(1) of the Constitution of The Republic of the Gambia, 1997 Reprinted 2002.

⁵² *Ibid*, Section 158(2)

⁵³ *Ibid*, Section 14 (a)

⁵⁴ Section 158(4) of the Constitution of The Republic of the Gambia, 1997 Reprinted 2002.

⁵⁵ *Ibid*, Section 158(5) and Section 16 (4) of the National Audit Office Act, 2015

⁵⁶ Section 16 (4)(a);16 (5) of the National Audit Office Act, 2015

⁵⁷ *Ibid*, Section 16 (4)(a);16 (5)

⁵⁸ Section 70 (c), 119(10) of the Sierra Leone's Constitution of 1991, Reinstated in 1996, with Amendments through 2008.

⁵⁹ *Ibid*, Section 119(6)

⁶⁰ Section 15 of the Audit Service Act, 2014.

The removal of Auditor General like of Judge of the Superior Court of Judicature has to be done in compliance with procedures set forth in the Constitution. He/she may be removed from office only for inability to perform the functions of his/her office, whether arising from infirmity of body or mind or for statement of misconduct, and shall not be so removed save in accordance with the procedures set in the Constitution.⁶¹

The president may remove the Auditor General only by referring the question of his removal from office to a tribunal and the tribunal has recommended to the President that he/she ought to be removed from office and that his/her removal has been approved by a two-third majority in Parliament.⁶²

Where the question of removing the Auditor General from office has been referred to a tribunal under subsection (5), the President may suspend the Auditor General from performing the functions of his/her office, and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the Judge shall not be removed from office.⁶³

FORWARD LOOKING

Generally, most of the countries in the world including one's subject of this article have legal instruments (constitution and laws) that provide for the appointment, term, removal, and dismissal of the Head of the SAI and the independence of their decision-making powers particularly in relation to audit works. Must be prescribed in the Constitution and/or comparable legal framework.⁶⁴ They also prescribe for time on which the Heads of the SAI can be in office and serve. They also provide for the process of suspending and/or restoration or removal from office of the Head of the SAI.

Nevertheless, the major issue has been on the actual enforcement of the existing law so as to meet the expected and desired ends. The experience of the explored jurisdictions discloses differed approaches in this regard with generally indication that developing democracies have generally weak framework for protecting the independence of the SAI and particularly the Heads of the SAI.⁶⁵

For purpose of promoting and enhancing accountability and predictability of the Government performance, improved SAI performance is critical. This can be achieved only when it has sufficient independence, bestowed with adequate financial resources and have competent and committed human resources. The following are some of the strategies that may be used to enhance the independence and performance of a SAI particularly to enable the Heads of the SAIs better perform their works and attain the desired outcome of contributing towards enhanced accountability in utilization of public resources in given jurisdiction.

Mindful Appointment of the Head of the SAI

Most of Jurisdiction have minimum requirement for appointment of the Head of the SAI. This mostly include being a citizen of a particular country, having professional qualifications, administrative knowledge and required experience in relation to audit work or related fields. Nevertheless, a due consideration must be given to the personality of such person and his/her level of maturity including his/her age.

Heads of a SAI should be old enough to be able to save for the duration that his/her jurisdiction provides for without being fatigued. He/she should not be too young and therefore immature to appreciate the need and wisdom required for effective discharge of duties of the position. Matured professionals are likely to better

⁶¹ Section 137(4) of the Sierra Leone's Constitution of 1991, Reinstated in 1996, with Amendments through 2008.

⁶² *Ibid*, Section 137(5)

⁶³ *Ibid*, Section, 137(6)

⁶⁴ The Global SAI Stock take Report (2020) Retrieved from <https://www.idi.no/elibrary/global-sai-stocktaking-reports-and-research/global-sai-stocktaking-report-2020/1364-idi-global-sai-stocktaking-report-2020/file>;

⁶⁵ *Ibid*.

communicate with SAIs stakeholders, appreciate and handle certain complexities that may come with public audit work audits. Heads of the SAI should be freed from political associations and attachments for them to fairly and objectively discharge their duties. As such this may be a critical consideration in the process of determining the suitability for appointment.

Enhanced stakeholders' engagement approaches

SAIs have many key stakeholders critical been Auditees, Parliament, Media, Civil Society Organization and the Employees of the SAI. Stakeholder's engagement approaches aim at helping stakeholders understand how SAI's operate and how they best can engage with them. These engagement strategies are meant to improve the flow of information between the SAI and its stakeholders with ultimate goal of improving working relationships. The SAIs stakeholder's engagement strategies include approaching, engaging and positioning. These strategies express the nature and importance of the relationship between the SAI and particular stakeholders.

Approaching strategies are used where such as opening information channel with a stakeholder. Engaging approaches include identifying and deciding on the way of cooperation. Positioning approaches are used when a SAI seeks to represent its institutional goals and achievements.

Generally, SAIs needs to raise the awareness of managers and employees of SAI on effectively engagement with the selected stakeholders; engagement with Auditees in ensuring senior officials of the audited entities participates in the entire audit process; Engage with Auditee in ensuring audit recommendations are implemented on time and motivation of staff of SAI.

Approaches include, conducting discussions and seminars with audited entities and senior officials on the importance of their participation during audits, sharing complementary materials related to participatory audit practices, having formalized

framework for collaborating with the audited entities' senior officials.

Engagement with Members of Parliament include conducting discussions and seminars on SAI's audit reports, preparation and dissemination of user-friendly briefs during parliamentary sessions and discussing various areas of interest with Members of Parliament for better understanding of SAI's audit reports. It also includes sharing with MPs the complementary materials, and simplified audit report findings and recommendations.

In relation to CSOs and Media, the approach of engaging SAIs could include conducting discussions and seminars on audit issues, inviting CSOs to SAI's activities, sharing complementary materials from audit that explain operations of the SAI, circulating survey opinions about SAI's works and publicizing the SAI's work performed on the management of resources to the public.

Once the SAIs stakeholders have been well engaged, they are likely to appreciate the contribution of the SAI in promoting and enhancing accountability as well as predictability of the Government performance. They are likely to be forefront in actions required for setup of appropriate legal framework required for effective and efficient performance of a SAI and its independence including the independence of the Head of the SAI.

Improved Legal frameworks according to prevailing circumstances for each country

Key to effective and efficient performance of a SAI and particularly its Head is constitutional and legal guarantees that he/she is independent and that he/she can in practical environment better discharge his/her assignments. This requires a well written, clear and unambiguous provisions that clearly stipulates for appointment, term, removal, and dismissal of the Head of the SAI (and members, in the case of jurisdictional control bodies) and the independence of their decision-making powers. Countries should promulgate or review their constitutional and legal instruments so as to

incorporate ideal provisions required for better performance of a SAI and independence and security of tenure of the Head of the SAI.

Ideal appointment provisions must stipulate who may be appointed (citizenship, age, professional qualification and experience), by who (a special body or President) and how (interviews or appointments) and preferably existence of a confirmation by the Parliament framework.

Provisions on term of service must clearly provide for sufficient duration of service of the person appointed to the position for him/her to execute his/her strategic vision as its Head and enable him/her to better implement actions required for better performance of a SAI. Most of jurisdictions now provide for a one non-renewable term of seven years. Others provide for the age of retirement of up to sixty-five years. The later may result into a long term of service or shorter time of service.

Ideal provisions regarding removal or dismissal of the Head of the SAI must provide for grounds for removal usually for inability to perform the functions of the office due to infirmity of mind or body or from any other cause, misbehavior or incompetence. Such provision must also describe the authority that can remove (the President or the Parliament or Chief Justice). Importantly such provision should provide the authority which can undertake a proceeding leading for recommendation/ decisions to remove preferably a tribunal consisting of judges and highly respected professionals.

CONCLUSIONS

SAIs play a significant role in enhancing accountability in utilization of public resources. They are significant stakeholders for countries development. They provide for an opportunity for the ruled to make the rulers accountable. They enable the government to improve the delivery of public services through recommendations they make. SAIs needs to be independent for them to perform their mandate well.

Independence of a SAI is dependent first and foremost on the existence of legal framework which provide for ideal conditions for a SAI to discharge its mandate objectively without fear or favour and outside of interference of external forces particularly the executives and politicians. Key to independence of the SAI is the independent of its head. This presupposes that such officer has professional competencies required for the job and he/she has secured reasonably adequate time to save and that his/her removal cannot be arbitrary but rather only through well-articulated grounds and procedure.

In this article, an exploration of the law and practice regarding the protection of the head of the SAI in five jurisdictions namely Tanzania, Kenya, South Africa, Sierra Leone and Gambia was done. The objective was to identify the law and practice and determine what could be done to enhanced independence of the heads SAI and consequently performance of a SAI. It has been noted that these countries have legal instruments albeit written in different forms. Nevertheless, they all contain some stipulations regarding appointment, tenure and removal of the Head of the SAI. On the other hand, it has been observed that despite existence of the laws, the said countries had different experience in regard to tenure and removal of the Head of the SAI.

It is hereby submitted that existence of the law alone does not provide for assurance that the independence of the head of the SAI will be guaranteed. SAIs are better positioned to champion their independence through strategic engagement with their key stakeholders namely Auditees, Parliament, Media, Civil Society Organization and the Employees of the SAI. This is so as to enable them understand their business and extend the desired support to SAI.