

IV. Control and Management of Public Funds:

This review demonstrates the conventional wisdom that no-one is beyond the practice of corruption and that the issue of tightening access and control is especially pertinent in relation to persons who have *principal* access and control over public funds. Such individuals occupy positions in which a high level of public trust is invested and deal with massive sums of money. This section is therefore concerned with *controlling the financial controllers*. *Unquestionably, checks/restrictions and control over their access to and expending of public funds are found in the GBAA 2005 and FMR 2007.*¹ Indeed it is the GBAA and the FMR that set out the legal requirements/controls applicable to every phase of the treatment/handling public funds; including their safeguarding, their circulation, their conversion into employable forms and their being fed into the governance process. However, this section's analysis of financial controls is not an exercise of strictly identifying and weighing the relevant legal provisions, nor does it undertake such an exercise based exclusively on a methodological appraisal of the unique facts of each individual case. This, like previous sections is a wholesale and collective analysis of all 8 judgments through the identification of commonalities across cases. This section is concerned with commonalities discernible in the facts surrounding the exercise or non-exercise of financial controls. Therefore, on the basis of a collective analysis, it commences by descriptively chronicling *the trajectory common* to public funds, once a "budgetary agency"² has expressed designs over a specified sum. It is in chronicling this *common trajectory* that instances of lapsed exercises of control are identified *with the aid of* the applicable but sidelined regulatory provisions.

At the risk of stating the obvious, the control and management of public funds can first and foremost be conceived of as determined by and dependent upon the extent to which such controls are expressed, set out, encompassed and instituted by regulatory instruments. Secondly, more realistically, control and management can be seen as determined by and dependent upon those offices/bodies which the very regulatory instruments assign the responsibility of effecting observance of the provisions which bear upon efficient financial management. Thirdly, control and management of public funds can be seen as the operation of certain mechanisms/devices, created by such regulatory instruments, at different phases/episodes of the trajectory. This threefold conceptualisation hints at the theory/practice divide, revealing a truism that; *"things only have the value/importance we give them."* Clearly then, since practical matters depend on practicalities and not documented abstractions, *ensuring* effective financial control depends to a greater extent on the second and third conceptual modes. *In support of this view is the review's finding that in most but not all instances here, the existing legal restrictions on accessing and handling public funds were simply not observed.* In attempting to suss out the reasons for instances of non-observance, the place of the latter two modes in such instances, will be a starting point for consideration (*why did the designated enforcement body not fulfil its enforcement role, or, why did the designated device not function?*) which may lead to the uncovering of other causative factors. Only at this point of addressing *the why*, does it become necessary to *not only* scrutinize identified commonalities, but also to scrutinize identified distinctiveness in the most pertinent circumstances surrounding the commission of the offence.

As stated above, this section first chronicles the *common trajectory* by setting out the transactional/transitional phases which public funds undergo during the course of seeking to employ them as part of the governance process/in the provision of social amenities. Although each of these transactional/transitional phases may involve one or more financial controls, the first overview presents a mainly temporally descriptive perspective as discerned from the judgments reviewed; *i.) "Access to and Maintenance of Public Funds"* *ii.) "The Administration and Management of Public Funds"* and *iii.) "The Retirement/Accountability for Expenditures"* phases. The second part of this section then goes on to describe in a moderately chronological manner, financial controls as discernible from the judgments reviewed, exercised during the identified transitional phases; for e.g. it starts with the control of "*Budgetary Allocations*", then addresses "*Donor Control*" since these two mostly coincide with transitional phase i.) above, of; "*Access to and Maintenance of Public Funds.*" Subsequently, the exercise of "*Control by the Central Government*" and "*Control by Banks*" are addressed since they correspond in large part to transitional phase ii.) above, of; the

¹ The Government Budgeting and Accountability Act 2005 (GBAA 2005) states in its preamble that it is an Act to secure transparency and accountability in the appropriation, control and management of the finances and other financial resources of Sierra Leone and to provide for other related matters. S. 82 of the GBAA 2005 states that a Minister may make regulations generally for carrying out the purposes of this Act. The Financial Management Regulations 2007 (FMR 2007) which were made under s. 82 GBAA by the Minister of Finance (see FMR 2007 Preamble), state at Part 1, Regulation 1 that, these Regulations shall apply to Government, Ministries, Departments, Agencies and bodies corporate in which the government is either the sole shareholder or majority shareholder.

² S. 2 GBAA states that, "*'budgetary agency' means a government department or other public body to which a specific head or division or both of expenditure is allocated in the annual estimates.*"

"*Administration and Management of Public Funds*". Latter discussion points are the roles of the "*Finance Officer*", the "*Directorate of Financial Resources*" of the MOHS and "*Audits*" as a means of control, since *although* these may be viewed as being relevant throughout the various transitional stages, they are especially relevant to the final transitional phase iii.) above, of; *The Retirement/Accountability for Expenditures*. Admittedly, these are roughly hewn sequences. As already stated, attempts are made to identify the precise locus of legal non-compliance/failure to exercise diligence across these transitional phases and control modes, by referencing throughout applicable provisions from the FMR 2007 and GBAA 2005, and to further uncover the reasons behind these lapses.

A lax system of control over public funds suggests laxity at each seminal/transitional phase. An effective system suggests that the controls present at each of these phases present opportunities for clamping down on inappropriate practices, so that the detection of such practices, whether due to incompetence/negligence on one hand or malice/dishonesty on the other, pre-empts such shortcomings from occurring further down the sequence of phases. This may be even more relevant, where there are a number of sub-transactions underlying a single programme or even project. In short, an effective system of financial control enjoys the benefits of early detection.³

➔ **This brings us to the issue of Information/Knowledge Management:**

Section I. of this review entitled; "*Information/Knowledge Management*" described the criticality of Knowledge and Information management commenting on the role of IM as a factor engendering or facilitating the conditions in which the contested corrupt acts in the judgements occurred. The prism of that analysis was as such, *organisational culture*; that is to say, IM was conceived of as being multiply relevant and as serving a much wider purpose than financial control. It was described as the means and methods of assembling and compartmentalizing information in a logical and accessible manner to users and making such information available to them. Through IM, organizational memory is created and preserved, on which the distinctive institutional personality depends. An IM system comprises a centralized base, decentralized bases and has a peripheral reach; it is a network which enables information to be pumped all along its arteries to its various organs or enables their retrieval of such. An IM system is the overall efficiency mechanism, essentially the hard-drive, brain/heart of an institution, the hub of all administrative activity. It is the basis on which purpose is cyclically fashioned out and consequently objectives, means and desired outcomes also. Ideally, it should be the basis of all decision making and ensuing action. It enables sequenced, coherent and cohesive decision making. In this wide sense, IM aims at generally enhancing efficiency, effectiveness and functionality. Naturally then, IM has an overarching salience to all sections in this Report.

Section IV. approaches IM specifically as a means of control and management of public funds. In enhancing the efficiency of decision making processes, IM increases the efficient use of financial resources. *But beyond this*, IM is a means of financial control in MDAs, by recording information generated around all transactional processes; access, administration, management, retirement. This enables proper budget implementation, financial forecasting and most saliently, the exercise and enforcement of personal responsibility for financial decisions. It enables questions to be asked and answered and for the attribution of blame or allocation of individual and collective responsibility.⁴ *In short, it enables accountability.*⁵ Specifically as a financial control, IM reinforces other financial controls; such as internal and external audits.⁶ It can provide verifiable evidence of fraud and so lead investigators to the root of corruption.⁷ As such IM can serve as a cost effective restraint to corruption and fraud.⁸ Therefore, "*well-managed records systems*

³ Barata K, Cain. P, Thurston A., (1999), *From Accounting to Accountability: Managing Accounting Records as a Strategic Resource*, World Bank infoDEV Programme 980121-257, International Records Management Trust, p. 52, http://www.irmt.org/documents/research_reports/accounting_recs/IRMT_acc_rec_background.PDF; "*Through early detection, records can aid in the reduction of financial losses attributed to repetitive (i.e. drip-feed) fraud.*"

⁴ ARMA International, (2014), *Generally Accepted Recordkeeping Principles*, <http://www.arma.org/r2/generally-accepted-br-recordkeeping-principles>; "*Only through records can an organization know what it has done and effectively plan what it will do in the future (...) Records (...) effectively support(s) the activity of that organization, including: facilitating and sustaining day-to-day operations, supporting predictive activities such as budgeting and planning, assisting in answering questions about past decisions and activities.*"

⁵ Barata K, Cain. P, Thurston A., (1999), *From Accounting to Accountability: Managing Accounting Records as a Strategic Resource*, World Bank infoDEV Programme 980121-257, International Records Management Trust, p. 44, http://www.irmt.org/documents/research_reports/accounting_recs/IRMT_acc_rec_background.PDF; "*The ability to remove ambiguity and firmly establish who did what, when, why and how is a powerful means of constraining individuals from engaging in corruption and enforcing accountability. Records underpin accountability - they are unbiased in recording responsibility and therefore liability.*"

⁶ Ibid at p. 2.

⁷ Ibid at p. 52.

⁸ Ibid at p. 56.

are vital to the success of anti-corruption strategies.⁹ Since corruption is best identified through records, sound record management systems are key to corruption prevention. Poor records management systems on the other hand aid in corrupt practices and "**good governance is dependent on good records management.**"¹⁰ "A study by Barata, Bennett, Cain and Routledge (2001) established that the financial systems with the weakest controls are those that are traditionally key targets for fraud in most countries."¹¹ The bottom line therefore is that any attempt to strengthen financial controls, must begin by strengthening IM systems. The next logical step is that tools should be developed for providing orientation to government anti-corruption agencies on how to fully maximise employ of the existing IM systems in MDA's under investigations.¹²

Again, the findings of the GAVI draft audit concerning the Health System Strengthening grant as articulated in **Ken Gborie** make clear the role of IM as a financial control; *lack of accountability in financial management **including** lack of basic book keeping, weak record management, a lack of supporting financial programmatic documentation relating to programme expenditure and unjustified disbursements/cash withdrawals without supporting documentation.*¹³

The GBAA 2005 and FMR 2007 create and lengthily explain how to comply with IM and record keeping obligations. Generally, financial legislation/regulations provide the foundation for designing financial management systems. However, the following problems have been noted as being associated with the former; 1.) That in developing countries, records professionals have not been trained to understand how legislation affects the creation and use of financial records; 2.) That legislation tends to specify what records should be kept but not **how** to keep them; 3.) That aside the implementation of financial regulations on IM, there is a need for capacity building so that **changes** in wider legal requirements and even in the very financial regulations **can be handled and effected into practical systems**, that which is achievable only through training and education. These issues should be borne in mind when reviewing the events as transpired in the case studies. As some commentators put it, the very existence of informal/chaotic systems is a sign that financial regulations are not working¹⁴ and might suggest a need for review; "*if corruption is to be deterred, new methods of combating malfeasance must be employed and existing, but dysfunctional, controls must be restructured and then implemented properly.*"¹⁵

The problem of IM was generally relevant in 7 of the 8 judgments (**The Al-Jazeera case** not included) and more specifically relevant **in its role as a financial control, in 5 of the 8 judgments; the ABC, the SLMA, the FCC, the Daoh and the Ken Gborie** cases, all discussed below.

1. Chronicling the Common Trajectory of Public Funds/ Transactional or Transitional Phases:

A. Access to and Maintenance of Public Funds:

The judgments reviewed throw up 2 modes of accessing public funds by senior public officials. First, they may access parliamentary budgetary allocations/appropriations to their agency maintained in the Consolidated Fund¹⁶ by submitting requests, framed in a manner demonstrating consistency with the purposes for which such allocations were made, with their agency's Board of Directors i.e. for agencies that are so structured as transpired for e.g. in **Lukuley**, or they may submit a PET 1 form to MOFED.¹⁷ It also depends on the thresholds.¹⁸ The PET 1 form submitted for

⁹ Ibid at p. 2.

¹⁰ Omolla J. O., (2011), *Strategies to Fight Corruption with Particular Reference to Records Management*, Paper presented during a workshop for Administrators at the University of Nairobi, Kenya, p.4; http://legaloffice.uonbi.ac.ke/sites/default/files/centraladmin/legaloffice/Records%20Manager%20-%20corruption%20prevention%20ccu%201%20%5BCompatibility%20M_0.pdf

¹¹ Keorapetse D.L., Keakopa S.M, (2012), *Esarbica Journal*, Volume 31.

¹² Barata K, Cain. P, Thurston A., (1999), *From Accounting to Accountability: Managing Accounting Records as a Strategic Resource*, World Bank infoDEV Programme 980121-257, International Records Management Trust, pp. 1 and 7; http://www.irmt.org/documents/research_reports/accounting_recs/IRMT_acc_rec_background.PDF

¹³ **The GAVI Funds Case**/The State v. Dr. Magnus Ken Gborie, Dr. Edward Magbity and Lansana S.M. Roberts, 2 July 2014, pp. 20-21.

¹⁴ Barata K, Cain. P, Thurston A., (1999), *From Accounting to Accountability: Managing Accounting Records as a Strategic Resource*, World Bank infoDEV Programme 980121-257, International Records Management Trust, p. 42; http://www.irmt.org/documents/research_reports/accounting_recs/IRMT_acc_rec_background.PDF

¹⁵ Ibid at p. 22.

¹⁶ Interview with Desk Officer for Tertiary Hospitals (Accountant), MOHS, Fayia Musa Tucker, 12 November 2015; Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015.

¹⁷ Interview with Desk Officer for Tertiary Hospitals (Accountant), MOHS, Fayia Musa Tucker, 12 November 2015.

¹⁸ Ibid.

employ of parliamentary budgetary allocations/appropriations goes to the Accountant-General who then forwards it with the cheque after seeing that all the documents are in place to the Bank of Sierra Leone instructing them to disburse the money, so that it is then sent to the account of the requesters.¹⁹

Secondly, grants may be applied for from donors either by the budgetary agency itself, or by the Ministry under which it falls.

Relevant Law: On grant seeking see the following:

S. 24 (1) GBAA 2005 includes as government revenue; taxes, fines, profits, fees, loan repayments, loans and s. 24 (1) (c) specifically includes domestic and external grants as revenue. S. 24 (3) states that exceptionally, and where the Minister deems it acceptable, a budgetary agency may be permitted to spend in support of Government budget programme, any revenues the agency raises as long as such revenues and expenditures had been included in the approved budget estimates. S.24 (4) states that the approved budget should have had a separate column under revenue and expenditure to show the external grants the budgetary agency is likely to receive from donors. Simply put, budgetary agencies may apply for and receive grants to support their programmes, where these have been included in revenue forecasts in their approved budget.

Regulation 69 (1) of the FMR 2007 states that, where a government project receives from a donor, an advance (...) by way of grant (...), the actual amount received shall be classified and brought to account in accordance with the chart of accounts, a responsibility set out under Reg. 69 (2) as belonging to the department and Accountant-General. Reg. 69 (3) states that, where a donor makes a payment on behalf of a government project, out of a grant (...), the actual amount paid shall be notified to the responsible department and the Accountant-General, classified and brought to account in accordance with the chart of accounts by the department and Accountant-General.

What the above mentioned legal provisions seek to enable is simply put, a situation where the central government knows the worth of incoming donations and what they are to be used for. This would be achieved where units within ministries must pre-communicate the fact of their intended grant applications, as well as the fact of an actual grant award. Clearly then, a budgetary agency can take it upon itself to seek funding and the central government²⁰ would, all things being equal, be in the know. The above mentioned provisions are the only rules of the GBAA 2005 and FMR 2007 that directly bear upon grant seeking and receipt. They raise the following issues:

¹⁹ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015; "The official term for monies sent to programme account by GOSL via the Accountant-General is 'grants', whilst where the Accountant-General instructs the Bank of Sierra Leone to directly pay the supplier, the official term for such monies from the GOSL are 'appropriations.'"

²⁰ Its respective Ministry and MOFED itself.

- I. *Use of the word, "exceptionally", in s. 24 (3), makes it is apparent that grant seeking is primarily dealt with at a central government level.*
- II. *According to s.24 (4), the requirement for expected grants to be depicted in separate columns under revenue and expenditure in the approved budget, only applies to "external grants" the budgetary agency is likely to receive from donors. Read in conjunction with s. 24 (3), it's clear that although domestic grants need not be presented in a separate column in the approved budget, they do need to be included in the approved budget.*
- III. *S. 24 GBAA 2005 is framed in a manner that suggests that grants cannot be sought by budgetary agencies for anything other than programme support, for example may not be sought to cover the agency's general running and administrative costs. Although in the ABC case, the ABC is faulted for not complying with s.129 (1) FMR 2007 requiring notifying the Accountant-General about the setting up of an separate account,²¹ no mention is made in the judgment, of the ABC's having breached s. 24 by soliciting grants for general administrative costs instead of programmatic costs. However, even assuming the ABC had complied with the notification requirement in s. 24, prior to grant seeking, s. 24 still implies that the ABC should not have received grants for general administration. In that hypothetical, a grant intended for general administration could only then be received and so employed legitimately, where the budgetary agency itself is construed as a government programme, plausible given the nature of the ABC.*
- IV. *What is not expressly stated but implied from a joint reading of Regulations 69 (1) and 69(2) of the FMR 2007 is that receipt of grants for/by government projects should be communicated to the department and the Accountant-General, since the latter can only update the chart of accounts to reflect grants, where they are aware of them.*
- V. *Further, the terms used in s. 24 GBAA and Reg.69 FMR on the employ of grants, are inconsistent and give rise to some, at least theoretical complications; while s. 24 permits budgetary agencies to seek grants for programme support, Reg. 69 speaks of situations where grants are actually made to government projects. This inconsistency is curious given that projects are popularly perceived as subcomponents of programmes.²² This inconsistency is even worsened by the fact that these terms are not defined in the GBAA and FMR in the context of public administration/financial management in the governance arena. If projects and programmes are construed synonymously, Reg. 69 implies that it is the budgetary agency that must communicate to the Accountant-General, the making of a grant to a government project. This interpretation would make sense since there is no provision made in either instrument for grant seeking by projects conceived of as separate entities in and of themselves. If projects and programmes are construed differently and even assuming grants to government projects are made entirely on the initiative of the donor, government projects necessarily remain located in*

²¹ The ABC also appears to have breached Reg. 69 (1) and (3) FMR which made it incumbent on it to notify the responsible department and the Accountant-General of any grant it received.

²² Confirmed by the following interviewees; Interview with Finance Officer for Directorate of Nutrition, MOHS, David Kargbo, 4 November 2015; Interview with Desk Officer for Tertiary Hospitals (Accountant), MOHS, Fayia Musa Tucker, 12 November 2015; Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015; Interview with Senior Accountant, MOHS, Foday Kande Kamara, 5 November 2015.

budgetary agencies. The fact that Reg. 69 requires notification in these circumstances, underlines the fact that a grant made to a government project, is not being made directly through/to the central government. The danger with the project /programme inconsistency may also illogically be misinterpreted to mean that receipt of grants to programmes need not be communicated, since there is no such express obligation. The reality is that "donor agencies can support a project and a programme. Projects are more time bound than programmes. Projects and programmes can receive funds from the GOSL and from donors."²³

VI. As to how Reg. 69 grants for government projects could be maintained, it is submitted that they could be maintained in government programme accounts, see discussion below concerning Ken Gborie, or in an account exclusive to the grant, see s. 8(1) (ii) GBAA which makes clear that an account can be set up for external grants, if a donor requires and that such an account would be considered as part of the Consolidated Fund.²⁴

It is submitted that the above gaps in clarity, may be dimensions of the contributory causative factors concerning corruption, touched on and framed broadly above. As with all causal analysis, broadly framed causal factors may be quite dynamic inhering a multitude of other interactive causative elements. It is submitted that the above identified literal inconsistencies, may well be part of the interplay of determinants underlying lapses of diligence generally, although they do not appear to be directly relevant to the cases reviewed herein.

Common sense demands that all initiatives at grant seeking originating from various quarters should be centrally channelled within a Ministry or Dept. before ever being submitted with a donor and never dispatched outside of this channel. Centrally channelling all donor applications would allow all such applications to be streamlined, (both in terms of their content and in terms of organizational management), and logged prior to being sent out and then upon their success, to be monitored.

Within the MOHS, this would be the donor coordination unit²⁵, called the donor liaison office.²⁶ "Programme implementers may go directly to the fund provider. At the MOHS, the seeking of grants must be communicated to the Permanent Secretary, so that the application is made on behalf of the actual grant seekers, formally through the Permanent Secretary, who is Vote Controller."²⁷

Additionally, there does exist an aid coordination and management division within MOFED under s. 3 (3) (a) GBAA which states that: "there shall be established or continue to exist within the Ministry, as the case may be, (...) an aid coordination management division as the Minister may consider necessary or expedient."

"Moreover, MOHS has IHPAU, an Integrated Health Projects Administration Unit" currently,

²³ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015. However, note interview with Senior Accountant, MOHS, Foday Kande Kamara, 5 November 2015; "As far as I know, I do not know of donors funding strictly projects within the context of the MOHS."

²⁴ Note that under s. 7 GBAA the Consolidated Fund is composed in essence of all government revenues and that under s. 8 GBAA it is comprised of different bank accounts.

²⁵ Interview with Senior Accountant, MOHS, Foday Kande Kamara, 5 November 2015.

²⁶ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015.

²⁷ Ibid.

"non-functional. It came about as a result of donors' dissatisfaction with the MOHS' human resources problems, i.e. capacity to properly financially manage grants. It was suggested to donors to employ a financial management specialist that donors would pay to ensure the administration according to donor specifications. It was set up in late 2012."

"MOFED's IPAU is also a unit that integrates all projects and takes care of all donor funds."²⁸

In addition to the 4 offices already cited, there is a National Directorate Development Assistance Coordinating Office (DACO) created in 2004 by the government for the coordination of aid at a national level. However, note that in spite of DACO, it has been recognised that the coordination of aid has been fragmented; there is no national policy on aid coordination.²⁹

Pertinent to analyses of the causality of corruption in the context of aid, is a consideration of the interplay between, the facts of the fragmented coordination of aid, the sidelining or bypassing of the aforementioned devices and the potential failure of these offices to exercise the necessary level of due diligence.

In *Ken Gborie*, the particular GAVI grant the handling of which prompted the GAVI draft audit and the more widely defined ACC investigations,³⁰ was programme specific, termed the GAVI Health Sector Support (HSS) grant. The GAVI HSS grant was paid into a pre-existing *Expanded Programme for Immunization* (EPI) account, Sierra Leone Commercial Bank (SLCB).³¹ Trial evidence describes the EPI account as a "GAVI account"³² into which the MOHS told GAVI to pay the HSS grant, but the evidence is also that there was no specific GAVI account,³³ which suggests that the former phrase actually meant that the EPI already contained GAVI funds prior to the arrival of the GAVI HSS grant.³⁴ The evidence makes clear that the EPI held funds from Global Fund, WHO and the World Bank,³⁵ although the evidence also states that *all donor funds, not just those named*, were kept in the EPI account.³⁶ That all donor

²⁸ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015.

²⁹ Unnamed, (2007), Network for Integrity in Reconstruction, *Sierra Leone Executive Summary*, p.4; <http://www.integrityaction.org/sites/www.integrityaction.org/files/documents/files/Sierra%20Leone%20Summary.pdf>. See also, Unnamed, (2006), Awareness Times, *What the Development Assistance Coordination Office is all about in Sierra Leone*, <http://news.sl/drwebsite/exec/view.cgi?archive=3&num=1913&printer=1>;"DACO has established a Development Assistance Database (DAD) to track and monitor all donor commitments and all disbursements to Sierra Leone."

³⁰ The focus of ACC investigation of the DPI was the management by the DPI of all projects supported by grants maintained in the DPI account, UTB and not just GAVI supported programmes/projects, see The *GAVI Funds Case*/The State v. Dr. Magnus Ken Gborie, Dr. Edward Magbity and Lansana S.M. Roberts, 2 July 2014, pp. 22, 28, 48.

³¹ The State v. Kizito Daoh, Alhassan L. Sesay, A.A. Sandy, Edward Bai Kamara, Duramani Conteh before Hon. Mr. Justice Abdulai Charm 24 October 2013, p.19; Joseph Teckman Kanu/PW2, former Permanent Secretary of the MOHS testified that, the two implementing arms of the MOHS are the DPI and the EPI.

³² Magbity in his interview statement to ACC investigators states; "When the proposal was approved by GAVI, we were asked to submit details of account to which GAVI should deposit the funds for the project. Management agreed that we use an existing GAVI account in the Ministry, that is, the GAVI EPI account"; The *GAVI Funds Case*/The State v. Dr. Magnus Ken Gborie, Dr. Edward Magbity and Lansana S.M. Roberts, 2 July 2014, p. 86.

³³ "It was made clear by PW1 (ACC Investigator, Musa Jamiru Bala Jawara) in answers to questions posed under cross-examination by M.P. Fofanah Esq. that after the approval of GAVI project, the Ministry of Health and Sanitation, rather than open a separate account decided to use an already existing account, the EPI account at SLCB. He made clear that there is nothing like GAVI account (...) PW2 (ACC Investigator, Felix Lansana Tejan Kabba) said likewise in answer to question posed to him under cross-examination by Mr. Fofanah"; The *GAVI Funds Case*/The State v. Dr. Magnus Ken Gborie, Dr. Edward Magbity and Lansana S.M. Roberts, The *GAVI Funds Case*, 2 July 2014, pp.48-49.

³⁴ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015; *the EPI account used to be called the GAVI/EPI account because although it contained mixed funds, prior to receipt of the HSS grant, GAVI grants were paid therein to support immunisation.*"

³⁵ "It was in evidence that the DPI account was fed with donor funds transferred from the Expanded Programme for Immunisation (EPI) account held and operated by the Ministry of Health and Sanitation at the Sierra Leone Commercial Bank for the implementation of GAVI Alliance *and other donor projects*. The donors include World, Bank, Global Fund, WHO and other donor institutions"; The *GAVI Funds Case*, p. 48.

³⁶ "He (PW1) made clear that the EPI account is a central account for donor funds operated by the MOHS at the SLCB (...) He made clear that the EPI account is the only account into which GAVI and other donor funds are lodged (...) PW2 said likewise in answer to question posed to him under cross-examination by Mr. Fofanah"; The *GAVI Funds Case*, p.49. The letter of the Senior Permanent Secretary MOHS dated 26th October 2011 to the Programme Manager, CH/EPI and Director, DPI suggests UNFPA ("*not managed by fiduciary agents*") was also a relevant donor, The *GAVI Funds Case*, pp. 62-63.

funds, were maintained in the EPI account is however untrue; "a good number of programmes have accounts for themselves, for running and administrative costs."³⁷ There appears to have been no real reason for maintaining grants from different donors in a single account other than that the GOSL tries to discourage the proliferation of GOSL accounts.³⁸ However, grants can be maintained in a grant-exclusive account specifically set up for the purpose of their receipt, see point VI. above and s. 8(1) (ii) GBAA. Accounts in which public funds including grants are maintained, whether on a grant-exclusive or mixed basis, can only be set up with the authorisation of the Accountant-General;³⁹ see the ABC case where the grant account was established illegitimately. Where grants are programme driven, such programmes are effectuated by means of a series of projects, drawn up on the basis of time considered obligations, part of donor conditionalities.⁴⁰

The indictment in Ken Gborie comprises 19 counts. In every charge against the two, it erroneously describes Ken Gborie as the "Director of Planning and Information of the GAVI HSS Support Project with the MOHS" and Magbity as the "Principal Monitoring and Evaluation Officer of GAVI HSS Support Project with the MOHS." The Director and M and E Officer of the DPI, MOHS, were in reality responsible for ensuring the implementation of donor funded programmes including the GAVI HSS support project. Since, the indictment does not in any of the counts name the grants that are the source of the funds forming the subject matter of the charges, it suggests that all charges implicating the above two concern GAVI funds. Attempts by the Defence to raise this as an argument that there was, "lack of clarity in the charges" affecting its preparation to meet evidence uncovering withdrawals from grants other than GAVI, were dismissed in the judgment, since the misdescription was deemed not to affect the substance of the charges so as to be prejudicial to the Defence. What mattered was that the act of misappropriation had been committed and not the source of the grants.⁴¹

The evidence itself best established the donor/grant source, by reference first, to (the dates of) the requests for project implementation approval/transfer of funds, secondly, by reference to the dates of the concerned cheques/withdrawals; these would make clear the names of the concerned programmes/projects and thus the precise donor or grant source. The projects for which the funds, which form the subject matter of the charges, were purportedly drawn were those supported by Global Fund, World Bank and WHO. The evidence established that the Le51,375,000 in count 2 was for a GAVI HSS grant funded activity,⁴² that the Le242,400,000 for the *Service Availability and Readiness Assessment*

³⁷ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015.

³⁸ Interview with Senior Accountant, MOHS, Foday Kandeh Kamara, 5 November 2015; Interview with Desk Officer for Tertiary Hospitals (Accountant), MOHS, Fayia Musa Tucker, 12 November 2015.

³⁹ See FMR 2007, Part 10, Bank Accounts and Cheques etc; Regulation 129 (1), Accountant-General to Authorize Opening of Bank Accounts; "No Public Officer shall, except with the authority of the Accountant-General, open a bank account for the deposit, custody or withdrawal of public moneys or other moneys for which he is responsible as a public officer or for the transaction of official banking business."

⁴⁰ Confirmed by the following interviewees; Interview with Finance Officer for Directorate of Nutrition, MOHS, David Kargbo, 4 November 2015; Interview with Desk Officer for Tertiary Hospitals (Accountant), MOHS, Fayia Musa Tucker, 12 November 2015; Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015; Interview with Senior Account, MOHS, Foday Kandeh Kamara, 5 November 2015.

⁴¹ There is no denial that the Accused occupied the positions described in the particulars of offence in the DPI and were involved in the implementation, not only of programmes funded by GAVI Alliance but also of other programmes implemented by the DPI funded by other donors such as the WB and Global Fund while they occupied the said positions. There is no denial that the donor programmes however described, were implemented with Donor Funds kept in the DPI, UTB account to which the 1st and 2nd accused were signatories. If the various bank instruments related to donor funds other than GAVI Alliance, it was a fact within their knowledge as they were directly involved in the implementation of the donor programmes. The 1st and 2nd accused persons were never misled or prejudiced in the conduct of their defence. They knew at all times what donor funded programme or activity the charges relate to and who the donors were. All the counts in the indictment are offences known to the Law; The GAVI Funds Case, p. 28. "So, whether the allegations of misappropriation and so on relate to GAVI Alliance funded activity or not, if there is evidence before this Court, in support of the offences charged, and such evidence go to prove misappropriation of funds donated by other donors as noted above, the submissions on behalf of the 1st and 2nd accused persons will not avail them"; The GAVI Funds Case, p. 29. "So whether or not an activity is sponsored by a particular donor, the structure at DPI remains, that is, the 1st accused and the 2nd accused remained Director and Principal Monitoring and Evaluation officer respectively. The *modus operandi* remained the same. That is, expenditures were meant to be documented and disbursements were meant to be justified. In other words, full accountability was required in the application of all donor funds for all donor activities "; The GAVI Funds Case, p. 49. "(...) All donor funds ought to be accounted for and not limited only to GAVI Funds"; The GAVI Funds Case, p. 66. "It changes nothing that the funds for the activity were transferred from the IPA Unit of the Ministry of Finance. I venture to say that even if the money had been granted by the WB to Sierra Leone so that it can be said that it is money belonging to the GOSL, it remains a donor fund and a charge can be brought against the 1st accused under S. 37(1) ACA 2008"; The GAVI Funds Case, p. 43.

⁴² A letter dated 24th March 2009 from Ken Gborie to the Senior Permanent Secretary requested Le127,870,000 to conduct an assessment of the impact of newly harmonised forms, on data quality and timeliness of reporting, i.e. a GAVI HSS programme; consequently the equivalent of \$41,821.75 was transferred into the DPI account; The GAVI Funds Case, pp. 40-41. Then, the assessment of impact of newly harmonized forms, on data quality and timeliness of reporting was conducted by the DPI from 5th to 19th April, 2009; The GAVI Funds Case, p. 40. Note also, an

(SARA) activity in April 2011 in count 3 was sourced from the Global Fund,⁴³ the Le62,500,000 in count 4 and the Le 47,500,000 in count 5 (replicated in counts 18 and 19) for the PBF Monitoring which took place between April and May 2012, was sourced from the World Bank through MOFED's Integrated Projects Administration Unit,⁴⁴ the sums in counts 6 through 14, totalling Le399,320,000, withdrawn by Magbity at various points from January to July 2008, were sourced from the GAVI HSS grant.⁴⁵ Apart from the sums in counts 4 and 5, all these sums had been maintained in the EPI account, transferred upon request to the DPI account.⁴⁶

Mixing differently sourced grants in a single account may imply different things depending on the purpose/s for which the grants were made. Mixing grants purposed for distinct areas/programmes in health care in a single account does seem unusual, but not fated to impropriety, since it is implicit that where funds from such a shared account are routed into programmes/projects, this financial routing is being done in accordance with donor instructions, so that programmes/projects would then be implemented by the *specific sums (grants) initially designated by donors* for their implementation. Likewise, mixing grants purposed for the same area/programmes in health care could be workable and practical especially where a programme is initially drafted by the MOHS or budgetary agency as involving differently sourced grants. Accountability is workable in the latter scenario as it is in the former, where for example, a specific grant is exclusively used to implement a specific project, as part of the programme, in accordance with donor instructions. Similarly, differently sourced grants maintained in a shared account, to be employed in jointly funded projects, would be administered in accordance with donor instructions pre-emptively stipulating the financial breakdown of such projects, i.e. qualifying and quantifying individually specified grant support on a percentage/specific amount basis, in relation to the overall project cost. Any query seeking to quantify loss, allocate or apportion responsibility in relation to specific donors/grants for a jointly funded project/programme would recognise such financial breakdowns; *"the monies are tagged i.e. divided into different portions as to how to be used."*⁴⁷ *"The maintenance of grants depends on the accountant attached to the programme and the requirements of the donor; the people who run the project rely on the advice of the accountant, but donors do not like mixed accounts; they prefer each grant to be given its own account."*⁴⁸ **Mixing of funds however, need not be a sticking point in ensuring accountability for donor funds.**

Ken Gborie and Magbity in their respective capacities were signatories to the DPI account and at times project implementers, e.g., they were team leaders of the WB, PBF survey.⁴⁹ This function overlap might suggest a

email from the GAVI Alliance Secretariat, addressed to the Senior Permanent Secretary, MOHS, "summarizing the misused amounts which form part of the particulars of the offence in count 2"; The **GAVI Funds Case**, p. 43. "There is before this Court, evidence of payment to the 3rd accused, the sum of Le51,375,000 by the DPI out of GAVI HSS donor fund"; The **GAVI Funds Case**, p. 44.

⁴³ Defence Counsel for the 1st accused submitted that count 3 related to funds donated by Global Fund; The **GAVI Funds Case**, p. 22. This is what the Court also concluded, that the Le242,400,000 in count 3 related to the Service Availability and Readiness Assessment (SARA) done in April, 2011, an activity funded by Global Fund; The **GAVI Funds Case**, pp. 50& 56. The 3rd accused told investigators that he was paid for car hire in connection with the SARA activity funded by Global Fund; The **GAVI Funds Case**, pp. 58 & 61.

⁴⁴ Defence Counsel for the 1st accused submitted that count 4 related to the funds donated by Global Fund; The **GAVI Funds Case**, p. 22, but later it appears he also submitted that count 4 and corresponding count 18 related to funds donated by the World Bank; The **GAVI Funds Case**, p. 29. The Court found that "Counts 18 and 19 make reference to a specific donor activity"; The **GAVI Funds Case**, p. 28. Gborie's letter of 17th April 2012 requests funds for Performance Based Funding (PBF) Monitoring of Implementers at Health Facility level country-wide, otherwise known as PBF. Magbity in his interview statement stated that it was a programme funded by WB from the Reproductive and Child Health Project Phase 2 through the Integrated Projects Administration Unit at the MOFED; The **GAVI Funds Case**, p. 67. The source of the payment to 78 Enterprises from the DPI account was donor funds made available for the PBF Programme by MOFED; The **GAVI Funds Case**, p. 68. The PBF activity took place between April and May 2012 for all Peripheral Health Unit (PHU) in the country; The **GAVI Funds Case**, pp. 71, 73, 76, 77, 78.

⁴⁵ Defence Counsel for the 2nd Accused submitted that counts 6 to 14 relate to funds donated by Global Fund and WHO, The **GAVI Funds Case**, p. 22. However, **the Court held** that Counts 6-14 relate to the GAVI HSS grant. "It is easy to see that the funds misappropriated by the 2nd Accused in collusion with his colleague Medical Doctors were GAVI Funds." The Court concludes thus, "given the relevant period in which the withdrawals were made"; The **GAVI Funds Case**, pp. 90-91. When the ACC requested in its notice to MOHS, documents related (generally) to the investigations; records of disbursements, **including** receipts and payment vouchers regarding GAVI Alliance cash support to MOHS, they were never provided with documents relating to these huge withdrawals by Magbity; The **GAVI Funds Case**, pp. 84 and 87. According to the Court, this absence of supporting documentation confirmed the GAVI draft audit report finding that there were cash withdrawals without supporting documentation; The **GAVI Funds Case**, pp. 87-88. **More practically however, the Court's conclusion would have been even more compelling if it were to attest to the fact that there were only GAVI funds in the DPI account during the period relevant to Magbity's sporadic withdrawals.** Note also that the Prosecution conceded counts 15 and 16, which respectively had charged Ken Gborie with misappropriation of donor funds of first, Le50, 000,000 in January 2012 and of Le 49,070,000 in May 2012.

⁴⁶ The **GAVI Funds Case**, pp. 48-49.

⁴⁷ Interview with Senior Accountant, MOHS, Foday Kandeh Kamara, 5 November 2015.

⁴⁸ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015.

⁴⁹ As per the evidence of PW5, Momoh Gboa, the proprietor of 78 Ents, The **GAVI Funds Case**, pp. 69, 70 and 77.

detrimental concentration of power in the hands of the "*controllers*." This is because in Ken Gborie, the reasons proffered by Ken Gborie and Magbity to skilfully profit from cheques made out to contractors, (that they were involved in helping contractors sublease vehicles) is arguably why the capacity of programme implementers to also act as account signatories might not be as credible as once thought. **Further, the fact that the choice of signatories did not reflect MOHS standard good practice strongly suggests a weakness incipient from the very point of opening the account and setting up a mandate card**; the instruction from the account holder to the bank indicating the requisite signatories. Ken Gborie was a category A signatory and from the professional wing of the MOHS, Magbity was a category B signatory and also from the professional wing. MOHS standard good practice is that every account should have 4 signatories; 2 from the administrative wing i.e. the Permanent Secretary and the Director of Financial Resources and 2 from the professional wing; the Chief Medical Officer and the Programme Manager/Director/Coordinator. These must be further divided into subsets of category A and B signatories, so that accessing an account requires one from each category; one category A and one category B signatory who come from the professional and administrative wing respectively.⁵⁰ These are the default signatories for most programmes, although donor conditions may differ.⁵¹

Of course, the DPI comprised other project implementers; Magbity said in his statement that on arrival of the GAVI HSS grant, he allocated to units of the DPI, the responsibility for implementing grant supported activities and lodging implementation requests and confirmed to them the required quantum.⁵² Therefore references in the judgement to the submissions of implementation requests by Ken Gborie **may not all** have involved him as a project implementer and likely imply that his final endorsement of such requests pre-submission was required.⁵³ Implementation requests formally submitted by both Accused were to go through a chain of command,⁵⁴ being submitted through the Chief Medical Officer to the Permanent Secretary for approval.⁵⁵ The Permanent Secretary reviews the request, then forwards it to the Director of Financial Resources (DFR) authorising the latter to process it. The DFR reviews the request, ascertains whether there are funds for the programme in question, assesses the compatibility of the request with donor instructions; the DFR would assess the clarity, numerical accuracy, financial prudence/reasonableness, consistency between request, grant instructions and wider ministerial policy.⁵⁶ Requests would flesh out the framework for project modalities in the grant instructions. *"If the request is compatible with donor instructions, the DFR minutes the request to the Finance Officer (FO). At this juncture, the FO plays a due diligence role by reviewing the request as against the necessary requirements; the FO brings any lapses discovered to the DFR's attention for e.g. erroneous budget calculations, lapses concerning procurement procedure where the requests are for procurement payments, etc. If there are no such lapses, the FO goes ahead and processes the request, meaning he prepares a payment voucher and writes out the cheque, takes the payment voucher back to the DFR who verifies whether the FO fulfilled his due diligence role and signs the cheque."*⁵⁷ *"The FO does not handle the request at the submission stage; his only involvement at the submission stage is that s/he may only be called upon to prepare a payment schedule i.e. a list of persons that will be paid as a result of the implementation of the project."*⁵⁸

Once the programme/project budget was transferred from the EPI to the DPI account, it should have been directly accessible by the DPI account signatories by means of cheques.⁵⁹ However, the above described **chain** was not properly observed here; instead of cheques being drawn up by the FO according to the instructions in the approval and given to the signatories, Ken Gborie and Magbity for signing,⁶⁰ the FO was in reality bypassed.⁶¹ The Director and the M and E Officer DPI took on the responsibility of administering project funds without the aid of an FO. In Daoh, funds appear to have been accessed in the same manner as in Ken Gborie; project implementation request for GAVI funds submitted by persons who signed payment vouchers for receipt of the funds. It's not clear from the Daoh

⁵⁰ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015.

⁵¹ Interview with Finance Officer for Directorate of Nutrition, MOHS, David Kargbo, 4 November 2015.

⁵² The GAVI Funds Case, p. 86.

⁵³ References to requests being made by Ken Gborie at, pp. 40, 43, 67 and 98.

⁵⁴ The GAVI Funds Case, pp. 43, 49.

⁵⁵ The GAVI Funds Case, pp. 40, 52 and 64.

⁵⁶ Interview with Senior Account, MOHS, Foday Kandeh Kamara, 5 November 2015; Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015.

⁵⁷ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015.

⁵⁸ Interview with Alusine Kargbo, Director of Financial Resources, MOHS, 4 November 2015.

⁵⁹ The GAVI Funds Case, p. 49.

⁶⁰ The GAVI Funds Case, pp. 43-49.

⁶¹ The GAVI Funds Case, pp. 52, 64, 65, 78, 98, 99.

judgement who the signatories to the cheques may have been, but the Prosecution did allege an obligation to retire to the DPI.

Donor consultants already are part of the procurement apparatus of MDAs so that the possibility of them also being made signatories to grant/programme accounts, as part of the conditions in donor instructions, does not seem implausible. As one government official put it: the donors "ask you to take the driver's seat, but they retain the steering wheel."⁶² It's worth considering whether this approach could be extended to area of account signatories.

B. Administration and Management of Public Funds:

Monitoring and control occur principally at the request and retirement stages; at both these stages there must be alignment with the original purpose of the allocation. Actual project implementation of long term projects/programmes could allow for intermittent audits. For shorter term projects, ongoing control and monitoring during implementation seems challenging and only practicable through requirements for contractual payments to comply with lawful procurement procedure; cheques should only be signed as contractual payments,⁶³ where a legitimate procurement process has taken place.

In essence, the actual exercise of the check of procurement occurs at the retirement stage (below), upon verification that the procurement process was observed. In practical terms, the awareness of signatories that this verification exercise is inevitable, should, while project implementation is ongoing, regulate expenditures of public funds, effected by cheque withdrawals. In *Ken Gborie*, Ken Gborie and Magbity were found guilty of signing cheques for withdrawals from the DPI Account, while providing no evidence of the authority on which they signed them, or on what supporting documents.⁶⁴

Relevant Law: Concerning public funds generally, Reg. 70(2) FMR states: "*Payments; Expenditure commitments shall be controlled against approved procurement plans and allocations from approved budgets and a Vote Controller shall make an expenditure commitment only against the procurement plan approved by the Budget Bureau for his head and within the cumulative allocations for the year.*" **This means public funds cannot even be expended on contracts without just the procurement plans first of all being approved.** Also relevant, Reg.70 (3) FMR states that: "*At a minimum, a procurement plan shall include proper description of the procurement item, the estimated contract value, when the item is needed and the procurement method.*" More importantly, Reg.70 (9) FMR states that: "*The procurement committee of the budgetary agency shall invite bids and select a supplier in accordance with the agency's procurement plan and any procurement regulations.*" Documents related to this procurement process should be maintained together and appended to the copy of the cheque and payment voucher on retirement. Concerning public funds generally, Reg. 80 (2) FMR states that: "*unless a budgetary agency has adopted a computerized on-line system of payment, a vote-controller shall, for the purposes of payment, submit payment vouchers to the Treasury (...) copy retained as the departmental record.*" Reg. 80 (3) FMR states: "*On receipt by the Treasury of the vouchers referred to in sub regulation 2, they will be checked*" and the treasury officer shall acknowledge receipt of the vouchers to the Vote Controller.

⁶² Unnamed, (2007), Network for Integrity in Reconstruction, *Sierra Leone Executive Summary*, p.4; <http://www.integrityaction.org/sites/www.integrityaction.org/files/documents/files/Sierra%20Leone%20Summary.pdf>

⁶³ As concerns public funds generally, see s. 29 (1) GBAA 2005, Payment for work done, which states that, "No payment shall be made for work done, goods supplied or services rendered, whether under a contract or not, in connection with any part of the public service, unless in addition to any other voucher or certificate that is required, the head of the budgetary agency concerned, or any other officer authorised by such head of the agency certifies—(a) that the work has been performed, the goods supplied or the service rendered, as the case may be, and that the price charged by the contract, is reasonable; or (b) where payment is to be made before the completion of the work, delivery of the goods or rendering of the service, as the case may be, that the payment is in accordance with the contract.

⁶⁴ The *GAVI Funds Case*, pp. 64, 77-78.

C. Retirement/Accounting for Expenditures:

Documentation supporting expenditures is crucial since in its absence, it is indeterminate that the monies were expended in accordance with the legitimate reasons initially proffered for transfers.

In **Ken Gborie**, issues of impropriety arose at the retirement stage; the stage of final accounting. Both Accused together endorsed various cheque withdrawals but failed to comply with GBAA and FMR obligations to account for these expenditures; there was no supporting documentation attesting to a legitimate purpose, as proof of expenditure. This failure to retire/account concerned both the appending of procurement documents and the appending of payment vouchers and/or receipts.

Relevant Law: Reg. 74 (1) FMR states that: "*For payments on procurement of goods and services, the voucher shall be supported with a certification that the procurement was carried out in accordance with the approved or revised plan as provided for in sub regulation 3 of regulation 70 and shall also be supported by the relevant minutes of the Procurement Committee meetings.*"

There were no procurement documents supporting the payment in count 2 of Le51, 375,000 from the GAVI HSS grant to Rolaan Ents. in April 2009 for vehicles for the assessment of forms' impact. There were no procurement documents supporting the payment in count 3 of Le242, 400,000 from the Global Fund again to the same Rolaan Ents. in April 2011 for vehicles for the SARA activity. There were no procurement documents supporting the payments on which counts 4 and 5 (18, 19) and 17 were based; 2 cheques worth Le180, 180,000 and Le235,420,000 respectively, from the World Bank grant made out to 78 Ents. in April and May 2012 for vehicles for the PBF Monitoring. Both Accused signed cheques making out these contractual payments to Rolaan and 78 Ents., knowing that the PPA had not been complied with. **For all these cheques, MOHS and MOFED could provide no supporting documentation. The FCC case** also evinced convictions for bypassing procurement procedure in contracting Morgan Heritage for \$130,000 and Rugged Musical Set, for \$35,000.

In most cases concerning the bypassing of procurement procedure, it is basically the signatories to accounts that can make payment happen/award contracts, that bypass the correct procedure. A simple suggestion is that contracts that bypass the normal procurement procedure should be null and void if discovered in time and that this could be stipulated in the internal regulatory instruments of MDAs.⁶⁵

However, interviews with government employed accountants suggest the method of retirement is contingent on a number of factors including the source and pathway of funds. Specifically at MOHS, the practice is that vouchers (retirement documents) are submitted to the FO and then further submitted to the DFR for verification.⁶⁶ Where donor funds have been channeled through MOFED to the Ministry concerned, vouchers are likely retired to MOFED and where the funds are non-donor funds from the GOSL, they may be retired to MOFED;⁶⁷ "GOSL funded programmes/projects go through the normal MOHS procurement procedure, but the documents are retired to the Accountant-General and MOFED; normally a whole bundle of documents and a cheque list at a time."⁶⁸ However, some GOSL sourced funds can also be retired to the MOHS.⁶⁹ For donor funds remitted directly into a ministry/programme account, the Ministry, e.g. MOHS, keeps the supporting documents, although in the past such documents were retired with donors, but the latter is now more the exception than the rule.⁷⁰ The manner in which

⁶⁵ Interview with the Head of Capacity Building, NPPA, Mr. Mohamed J. Musa, 12 August 2014; "*Regarding the possibility of voiding a contract where the procurement process was not adhered to, one of the changes in the Public Procurement bill is that the Independent Procurement Review Panel (IPRP) should be able to at any point put an injunction in the contract. The IPRP would now be able to sit as a court (...)*"

⁶⁶ Interview with Finance Officer for Directorate of Nutrition, MOHS, David Kargbo, 4 November 2015.

⁶⁷ Interview with Desk Officer for Tertiary Hospitals (Accountant), MOHS, Fayia Musa Tucker, 12 November 2015.

⁶⁸ Interview with Senior Accountant, MOHS, Foday Kande Kamara, 5 November 2015.

⁶⁹ Interview with Finance Officer for Directorate of Nutrition, MOHS, David Kargbo, 4 November 2015.

⁷⁰ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015.

documents are retired, whether as the programme progresses or whether at the end of the programme, depends on the donors' discretion, but the donor may intermittently send to check on the supporting documents.⁷¹

The proprietors of both Rolaan and 78 Ents., testified that the payments they made to the 2 Accused, sourced from the aforementioned contractual payments, were meant as payments to persons who'd also made available vehicles for loan hire, **but the MOHS/MOFED could provide no payment vouchers or even receipts signed by such persons.** 9 DPI cheques sourced from GAVI HSS fund, not signed by either of the Accused, but made out in favour of and encashed by Magbity, were the subject of counts 6 through 14. **Here also, the MOHS could provide no supporting documents and Magbity could provide no credible explanation.** **The SLMA case** concerned payments made by the Executive Director (ED), vaguely termed, "Facilitation and Protocol" and "Community Relations" and for which most payment vouchers had been destroyed on the instructions of the ED. For the few that were retrieved, the payee was dubiously indicated as, "cash". None of the retrieved vouchers included the names of the providers of *these services*, seemingly in violation of Reg. 73 (3) FMR above; in effect sham vouchers whose purpose did not correspond with their payees. **The FCC case** also evinced convictions of persons to whom cheques were made out, who spent them without providing supporting documents; Brimah, the Development Planning Officer was convicted on count 12 for misappropriating Le9, 800,000 for the purported councillors' needs assessment and Garber, FCC civil engineer was convicted on count 13 for misappropriating Le9, 225,000 for rehabilitation work at Hargan Street. However, in the **FCC case**, witness evidence was accepted in the absence of supporting documents; Prosecution witness evidence was the basis of acquittal of Williams on Count 11 for misappropriating Le10, 000,000 from FCC account at Skye Bank, purporting to be payment for Morgan Heritage Concert. In the **ABC case**, 89 cheques were cashed and spent without supporting docs.⁷²

Relevant Law: Reg. 73 (1) FMR is ignored across **the ABC, SLMA, FCC, and Ken Gborie** cases. It states: "*All disbursements of public money shall be properly supported by payment vouchers.*" Further Reg. 73 (3) FMR states that; "*All payment vouchers shall (...) contain or have attached thereto full particulars of the service for which payment is made including dates, numbers, distances, and rates, so that they can be checked without reference to any other document.*" Also related is Reg. 74 (1) FMR: "*An officer, including a Minister or a Chairman of a statutory body who signs a voucher shall ensure that; a.) the services specified in the voucher have been duly and competently performed; b.) the prices charged are either according to contracts or approved scales or are fair and reasonable according to local rates; c.) authority has been obtained as quoted; d.) the calculations and castings have been verified and are arithmetically correct; (...) g.) the persons named in the voucher are those entitled to receive payment.*" Reg. 80 (2) FMR appears to require submission with MOFED: "*Unless a budgetary agency has adopted a computerized on-line system of payment, a vote-controller shall, for the purposes of payment, submit payment vouchers to the Treasury (...) copy retained as the departmental record (...).*"

The rule on vouchers also extends to payment of government staff.

Relevant Law: Reg. 96 (2) FMR states that: "*A salary voucher in the form determined by the Accountant-General shall be prepared for each month and a paying officer nominated by the vote controller.*" Reg. 96 (3) FMR states: "*The salary voucher shall show full details of basic salary, all allowances, income tax deduction, social security contribution by employer and employee, all other deductions and the net amount payable to the employee.*" Reg. 96 (5) FMR states: "*Subject to sub-regulation (6), payment shall only be made to the person listed on the salary voucher after proper identification and signing.*"

⁷¹ Ibid.

⁷² The Attitudinal Behavioural Change (The ABC) Case/The State v. Philip Conteh, Allieu Kamara, Lansana Zanto Kamara before Hon. Mr. Justice N.C. Browne-Marke 19 May 2011, p. 13.

In the ABC case, staff did not always sign payment/salary vouchers,⁷³ facilitating the ABC's claiming of salaries for August 2010 twice from London Mining, **and** an overlap between this latter request of London Mining for salaries i.e. for August to December 2010, with the period for which the GOSL provided salaries, i.e. for September to December 2010.⁷⁴

Moreover, staff that do sign vouchers, should only do so at the point of receipt of cash, unlike what transpired with Rogers at the ABC, who was made to sign, then promised later payment.⁷⁵

Charges for misappropriation brought as a result of failure to retire public funds resulted in convictions in Ken Gborie but acquittals in Daoh. The convictions in Ken Gborie resulted from contractual payments without documentary proof of observing the procurement process, payments received by the 1st and 2nd Accused for so-called 3rd parties without documentary proof of onward payments to such 3rd parties and withdrawals by the 2nd Accused **without any reason proffered** and without documentary evidence of expenditures. In Daoh, all 5 Accused were acquitted because there was no legal obligation to "retire" per diem and fuel funds for supervisory activities or submit activity reports; "omissions" which the Prosecution had argued constituted the proof of dishonesty required for misappropriation. The absence of documentation seemingly qualified as proof of misappropriation in Ken Gborie but not in Daoh, for the following reasons. In Ken Gborie, not only were there legally prescribed obligations in the FMR/GBAA applicable to contractual payments from public funds and direct withdrawals from public funds, (whereas in Daoh, there were no such legal obligations to retire per diem/fuel funds and provide activity reports), but more importantly in Ken Gborie, **there was evidence of material benefit accruing to the Accused as a result of their having bypassed the appropriate processes**. Further, prosecutorial diligence was exercised in Ken Gborie, but not in Daoh; in Ken Gborie the Prosecution sought to no avail, supporting documents for DPI related expenditures from the MOHS/MOFED, especially for cheques endorsed by both or either of the Accused; "They produced all the documents made available to them by the MOHS (...) The prosecution was not to conjure up documents from the sky where none exists. It would be an absurdity to require the prosecution to go further than they did in the name of discharging the standard of proof beyond reasonable doubt, as required of them by law."⁷⁶ The Prosecution was less diligent in Daoh; although during the investigation, various notices were served to institutions including MOHS for the production of documents,⁷⁷ the Prosecution did not verify the source of fuel receipts appended to the relevant mission document bundles submitted to MOHS. In Daoh, although the Prosecution sought to employ the "omissions" as proof that no activities were conducted, it did not adduce any evidence in support of its allegations that the Accused did not visit mission sites; it did not follow up assertions from 3 Accused that they had submitted reports to DPI. In Daoh, the only source that created obligations to account for per diem, fuel funds and to provide activity reports was the GAVI Draft Audit Report which concerned the GAVI grant for 2008 to 2011. This audit did not however mention an obligation to "retire" anything, but rather required fuel invoices, list of signatures confirming receipt by per diem recipients, mission orders with proof of visits, supplier invoices for any external purchases, all within a technical activity report. Moreover, the audit report only came about in 2012, after the concerned missions had been held.

⁷³ Although departmental records of staff payments were kept; The ABC Case, p. 11. "We do not have a voucher system....they disburse the salaries and the staff sign for it"; The ABC Case p. 12. "There are no vouchers to verify to whom payments were made"; The ABC Case, p. 24. "Schedule of payment of salary made to the ABC staff"; The ABC Case, p. 26. "The 1st and 2nd Accused have not actually given any clear explanation in their respective statements as to why there are no vouchers, invoices or other documents to support any of their expenditures"; The ABC Case, p. 29.

⁷⁴ Though the 1st Accused has acknowledged receipt of salary support from LMC for August 2010, that same month is the beginning of the period, August to December 2010, for which payment/ salary needs, were requested; The ABC Case, p. 20. Roger's salary was included in this latter budget; The ABC Case, p. 23. As to August 2010, funding must have been received because PW7 was asked to sign exhibit 4; The ABC Case, p. 24. According to PW9 and exhibit 37, a departmental record/ schedule of payments of salary made to ABC staff, indicate that salaries were paid to ABC staff for September through December 2010; The ABC Case, p. 23. These salaries in exhibit 37 were sourced from the consolidated fund; The ABC Case, p. 28.

⁷⁵ Rogers said he signed the payment vouchers for August and September 2010, but received no salaries for these months. He signed them at the behest of the 2nd Accused in late October 2010, but received no such salaries and the 2nd Accused said that Rogers would hear from him later; The ABC Case, pp. 21-22.

⁷⁶ The GAVI Funds case, pp.60-61.

⁷⁷ The State v. Kizito Daoh, Alhassan L. Sesay, A.A. Sandy, Edward Bai Kamara, Duramani Conteh before Hon. Mr. Justice Abdulai Charm 24 October 2013, p.15.

Relevant Law: Specifically "retirement" obligations in the FMR/GBAA concern imprests; lump sums for the implementation of entire projects, ("What is subject to retirement is an imprest, which is a bulk amount given for an activity (ies) (...) the recommendation in the draft audit does not say that DSA's should be retired"; The Daoh case; p. 29). Reg. 83 (5) FMR on the issuance of imprests states: "All imprests shall be issued in the names of the officers who will hold them and the imprests shall remain their personal responsibility until they are refunded or discharged by the submission of properly completed payment vouchers or handed over to another officer in accordance with regulation 88." Reg. 85 FMR on duties of imprest holders states: "An officer holding an imprest shall- a.) ensure that an imprest issued to him is used wholly and exclusively for the purpose for which it is issued; b.) account for the imprest in accordance with these regulations and the terms under which it is issued; **d?!Illegible;** e.) obtain proper receipts of or payment vouchers for disbursements from the imprests." Reg. 89 (1) FMR on retirement of imprests states: "Except as otherwise provided in regulation 91, all imprests shall be retired as soon as the necessity for them ceases to exist or by the close of business on the last working day of the financial year in which they were issued, whichever first occurs." Reg. 89 (4) FMR states: "Officers holding imprests are not relieved of their responsibilities in respect of the imprests until payment vouchers submitted to the Treasury have been examined and found to be correct." There are no obligations in the FMR/GBAA to account specifically for the retirement of per diem and fuel funds or for submitting reports for donor funded activities. **However note that although the FMR/GBAA do not talk of retiring donor funds, the FMR does express generalised obligations in relation to public funds, which donor funds do qualify as;** Reg. 73 (1) FMR states: "All disbursements of public money shall be properly supported by payment vouchers."

Daoh brought to the fore, the need to avoid depending on any popular understandings of the term "retirement". Although used in the FMR, it is not therein defined; a point worthy of consideration. The Prosecution's case may well have been strengthened by use of a more neutral term such as, "an obligation to account," as well as by making clear the distinctive nature/source of the said obligations and by making clear that all obligations relating generally to public funds expressed in the relevant regulatory instruments, were by default applicable to donor funds.

The Prosecution's case in Daoh could only have stood a chance, had it firstly sought to counter the assertions by the Accused by properly investigating all their leads, by accurately defining the nature of the obligations in question and their source, by making it clear that these obligations had prior to the GAVI audit, been expected and recognized as best practice at the MOHS,⁷⁸ so that the ex post facto nature of their articulation in the audit was simply an encapsulation of tacit understandings. Lastly, the Prosecution could have drawn attention to the very practical consequences of not observing these practices.⁷⁹

2. Modes of Control:

The above exercise of tracing the key phases through which public funds go, makes it clear that, in the cases reviewed, there are failings all along the transactional chain. The glitch here is systemic so that blame cannot be laid at the doorstep of a single individual/body. "Systemic flaws" here refer not just to flaws in the formal process, but also to

⁷⁸ PW2, Joseph Teckman Kanu, Permanent Secretary MSWGCA, former Permanent Secretary, MOHS, testified that there are two ways to tell if an official has gone on assignment: (1) The Official's absence from post and (2) the back to office report that would **normally** be submitted on the outcome of the mission. He testified that for good accounting practice, the beneficiary of a DSA should sign and receive his DSA; **The State v. Kizito Daoh et al.** p.20. Lawrence Sawber Caulker, Deputy Accountant-General in the MOFED testified that what is required with respect to a per diem is to *report* on the activity the per diem is given for; **The State v. Kizito Daoh et al.** p. 22.

⁷⁹ "It is about whether the Accused gave the money they received as the DSA to the rest of their team or simply kept it for themselves. It is about whether the money received for fuel was spent as was intended"; **The State v. Kizito Daoh et al.** p. 24.

instances of failure by these various agencies along the transactional chain to exercise due diligence to prevent or detect impropriety.⁸⁰ **The exercise of due diligence by bodies along the transactional chain and clear lines of communication and collaboration may well have worked towards nipping impropriety in the bud.**⁸¹ The review evinces failure to exercise due diligence by Parliament, Directors' Boards, Donors, Ministries/Departments (Central Government), Banks, Finance Officers and MOHS' Directorate of Financial Resources. These are modes of control, improperly employed.

A. Budget Allocations:

In **Lukuley**, Lukuley as the Executive Director (ED) of the SLMA was the head of that budgetary agency and therefore was the Vote Controller; as per s. 45 (1) GBAA. As Vote Controller he was obligated under s. 45 (2) **to comply with** financial instructions/directions from the Minister of Finance or the Accountant-General and **any regulations made under the GBAA** concerning the handling of public monies/properties. Such obligations should have governed the submission of Lukuley's requests for funds with the SLMA accountant. His requests were made firstly, pursuant to his powers under s. 15 SLMA Act, which makes the ED responsible for the conduct and management of the daily business or activities of the SLMA, and secondly, pursuant to s. 46 (1) GBAA, which states that; the Vote Controller shall control and be accountable for all public moneys received, held or spent by or on account of the budgetary agency as provided for by the expenditure heads/divisions with an Appropriation Act.

Lukuley's **requests submitted with his Board of Directors for access to budgetary allocations should have been subject to two forms of control**; i.) assessing the internal financial accuracy of the requests and ii.) assessing their consistency with Parliamentary approved budgetary/expenditure heads, i.e. ensuring that the proffered reasons/causes of the requests were indeed the same as those for which public monies were allocated to the agency by Parliament. Practically then, it would seem that both assessments should require the requests to be detailed in terms of appending financial calculations and elaborating on exactly how their purpose was compatible with the purported budget head. It is unclear from the **Lukuley** judgment whether there was any such requirement or whether this practice was observed.

With regard to assessing internal financial accuracy, a number of Lukuley's requests lodged with the SLMA accountant were for the processing of salaries and allowances of the ED and SLMA board members and their respective rates of per diem. No convictions resulted from any of the charges brought against Lukuley for payments made subsequent to these particular requests; since he it was held he could not have fraudulently misappropriated amounts that had already been approved by the Board even prior to Parliamentary budget approval.

Relevant Law: There are relevant legal provisions recognising the need for accuracy in such requests. **As concerns salaries**, Reg. 95 (1) FMR states that a Vote Controller shall ensure that the personnel emoluments records maintained for all the employees in his budgetary agency **are correct**, and personnel emoluments mean salaries, allowances and all employee benefits as stated in, Reg. 94 FMR. Reg. 14 FMR states that each allowance shall be described in a separate line and not included with salary. **As concerns per diem**, Reg. 14 (3) GBAA makes clear that per diem is not a personnel emolument, since "*transport and travelling allowances shall not be regarded as personnel emoluments.*"

It is unclear from the **Lukuley** judgment whether there was requirement for documents containing the calculations of salaries and allowances to be appended to any request for processing and payment. As to whether the calculation of per diem requires supporting documents post a trip, to provide conclusive proof of dates of arrival and departure, proof of engagement and lodging, the Senior Accountant MOHS responds that, in the processing of per diem, the accountants must verify that the individual's itinerary is attached to the request for payment.⁸²

⁸⁰ Interview with the Head of Capacity Building, NPPA, Mr. Mohamed J. Musa, 12 August 2014; "There is a failing all along the chain."

⁸¹ Barata K, Cain. P, Thurston A., (1999), *From Accounting to Accountability: Managing Accounting Records as a Strategic Resource*, World Bank infoDEV Programme 980121-257, International Records Management Trust, p. 52, http://www.irmt.org/documents/research_reports/accounting_recs/IRMT_acc_rec_background.PDF; "*For corruption to be contained, governments need to strengthen the systems that manage financial and other state resources and enable governments to account effectively to the people.*"

⁸² Interview with Senior Accountant, MOHS, Foday Kande Kamara, 5 November 2015.

Lukuley also lodged numerous requests with the SLMA accountant under the expenditure head of "facilitation and protocol" and "community relations," both ambiguous budget heads, so that the issue of financial control here goes as far back as the actual budget approval process. ***It is curious how such vague budget headings managed to get past the SLMA's budget committee*** instituted under s. 20 (2) GBAA,⁸³ as responsible for preparing the agency's annual budget and monitoring its expenditure and results. ***Management*** can also be faulted for including vague headings in a budget proposal especially in a context where corruption is rife.⁸⁴ After the fact, the Board upon its consideration of such requests could also have been more active in requiring more them to be more detailed. ***It is even more curious how such vague budget headings managed to get past MOFED's internal audit department and budget bureau***, two organs who in turn, according to s. 20 (3) GBAA, are to monitor budget committees. Additionally, s. 20 (1) GBAA states that the budget bureau within MOFED shall, under the supervision of the Financial Secretary, be responsible for preparing and monitoring the budget in collaboration with the budgetary agencies.

Most of all, it is curious how such vague budget headings managed to secure Parliamentary approval.

Relevant Law: The budget documents laid before Parliament include estimates of expenditure and revenue of each budgetary agency under s. 23 GBAA. According to Reg. 11 (1) FMR, the estimates of expenditure shall show, as nearly as can be predicted the amounts expected to be spent during the financial year. ***These estimates shall be divided into heads of expenditure, under Reg. 11 (2) FMR. Vague budget headings appear to have been envisaged and addressed in Reg. 12 FMR which states that, the purposes of expenditure and the services to be provided under each head shall be outlined in a preamble to the head to be called, "the Ambit of the Vote." Importantly, Reg. 12 (2) FMR states that no expenditure shall be charged to the head unless it falls within the ambit of the vote.*** The heads of expenditure shall be divided into programmes considered necessary for the services thereunder to be provided efficiently, as per Reg.13 (1) FMR. Further, the programmes shall include all the items relating to the particular service to be provided under that programme, as per Reg. 13 (2) FMR.

Although provision is made for a category of personnel emoluments under the expenditure within each programme, as per Reg.13 (3) FMR, none of the disbursements Lukuley made under the headings concerned here, whether to *chiefdom elders* or *Parliamentarians*, could legitimately fall under that category.

PW1, the SLMA accountant, testified that the ED would usually request funds under the heading of "facilitation and protocol" and "community relations," by sending her a memo to that effect. As per the regulations cited above, such requests would have to have been clearly in accordance with, or within the bounds of the "the Ambit of the Vote" for either of these budget headings. Although the vagueness of these budget headings is lamented in the ***Lukuley*** judgment, their "Ambits" as per the relevant SLMA budget are not provided in the judgment to add substance to their meaning. ***Were Lukuley's disbursements under these expenditure headings in line with the figures submitted in the budget as part of these headings?***

Relevant Law: As far as stipulating **numerical accuracy** in budgets proposals, Reg. 7 (3) FMR states, that a Vote Controller shall in preparing draft estimates of revenue and expenditure, set up and chair a budget committee in his budget entity to **ensure that the estimates are realistic and accurate in all respects (...).**Reg.7 (2) (b) FMR states that the budget call circular requires every Vote Controller to **submit detailed work** plans for (...) recurrent and capital expenditure for the following three years. Specifically with regards to capital expenditure which the above headings in ***Lukuley*** could not have qualified as, Reg. 17 (1) FMR stipulates that capital expenditures being presented to Parliament through an Appropriation Bill **shall contain sufficient detail** as to enable Parliament to identify them.

⁸³ S. 20 (2) GBAA states that; (2) Each budgetary agency shall establish a budget committee comprising the Vote Controller, the professional head, if any, programme managers and provincial and district managers, to be responsible for preparing the strategic plans and annual estimates of the agency, apportioning quarterly allocations and monitoring expenditure and results.

⁸⁴ The annual budget for the SLMA is put together by the various heads of depts. and decided upon by management who then submit it to the board for approval (...), then MOFED, then Parliament. It follows therefore that if, management keeps it expenditure within that approved budget, management cannot be said to have wrongfully utilised funds which have been budgeted for; The ***SLMA case***; p.12. His management presented figures to the board for their approval; The ***SLMA case***, p.23.

What is clear is that requests for funds under the aforementioned headings were made for widely varying purposes, ranging from entertainment of Parliamentarians, to the payment of *shake hand fees* in the provinces, to responding to the storms in Kono. These disparate reasons advanced for the use of funds requested under these headings, in addition to the fact that, payment vouchers for such cheques were not signed by the ultimate recipient of their proceeds/providers of the service as they should have been, as per Regs. 73 (1) and (3) and 74 FMR but were instead always made out generally to; "payee" so that Lukuley himself personally handled these proceeds, and the fact that Lukuley requested his subordinates to remove documents relating to payments under these headings, makes it clear that, the vagueness of these headings was an intentional ploy for the misuse of public funds.

Lastly, it is curious that none of the oddities concerning the expenditures made under "facilitation and protocol" and "community relations" were ever remarked by the office of the Financial Secretary, the office of the Minister of Finance or members of Parliament; this in spite of the Vote Controller's obligation under s. 53 (1) to submit at the end of each month information on revenue and expenditure of that ending month, to the Financial Secretary, and the Minister of Finance's obligation under s. 53 (2) to submit a summary of government receipts and payments on a quarterly basis to Parliament.

Payments made under the budget headings for "*facilitation and protocol*" and "*community relations*," potentially breached a host of regulatory provisions.

Relevant Law: Firstly, under Reg. 23 (1) FMR, the Vote Controller is obligated to control the expenditure in respect of any service under his control and to ensure that the provision authorized for that service by a budget warrant is not exceeded. Under Reg. 23 (2), excess expenditure incurred without proper authority, shall be the personal and pecuniary responsibility of the Vote Controller. Additionally, Reg. 37 (3) (a) and (b) states that overspending of a head of expenditure or a main division within a head, or, expenditure not in accordance with the purpose of a head or, not in accordance with the purpose of the main division amounts to "*unauthorized expenditure*," required by s. 39 (4) FMR to be addressed by the Financial Secretary. Since Lukuley claimed to have once disbursed funds under the above headings for the storms in Kono, note that for emergency disbursements which cannot be postponed without detriment to the public service or appropriately charged to an existing appropriation, a Vote Controller shall first seek approval/authority from the Minister of Finance as per Reg. 24 (1) FMR. Further, under s. 25 (4) and (5) GBAA, it is the Minister of Finance that has a vote over an unallocated expenditure head for emergencies and unforeseen exceptional situations. Ss. 39 through 41 GBAA also provide for public emergencies through a contingencies fund subject to the control of the Minister of Finance, sourced from the consolidated fund.

The following provisions might also be relevant: Reg. 39 (2) FMR: "*Accounts which are intended for use during the financial year shall not delay the reporting of any unauthorized expenditure to Parliament.*" Reg. 39 (3) states that: "*If the appropriate authority of Parliament cannot be identified by the time of closure of the accounts, then such payments shall be treated as an unauthorized expenditure and shall be dealt with in accordance with sub-regulation (2) of regulation 37.*" Reg. 39 (4) FMR: "*If no appropriate head of expenditure can be identified, such expenditure shall be included in a programme for which the Financial Secretary is responsible, as an unauthorized expenditure and dealt with in accordance with sub-regulation (2) of regulation 37.*" Reg. 37 (2) FMR states: "*Where it is discovered that a Vote Controller has taken any action which anticipates the approval of expenditure by Parliament, when any payment made as a result of such action shall be treated as unauthorized expenditure, a new programme entitled; "Unauthorized Expenditure" shall be opened for the head in question, and such unauthorized expenditure shall be the responsibility of the Vote Controller.*"

Clearer and unequivocal budget headings and "Ambits" would prevent misuse of the kind described above; there would be no leeway for these sorts of miscellaneous disbursements. This really depends on Parliament's approval being based on its recognition of its role as a vigilant guardian of national resources and not a self-interested rubber stamping body. A more vigilant Parliament would demand for such vague headings to be reformulated. With regards to the discrepancy between Lukuley's account that he never took possession of monies withdrawn as "facilitation and protocol" and "community relations", and the testimony of the SLMA accountant that she handed over these monies to him, one simple suggestion where money is handed over in person to the requester, is the practice of logging events and having witnesses sign; whether the money is handed over or kept in a safe. It is plausible to also consider requiring the presence of the same witness for any further withdrawals/expenditures from the said sum.

B. Donors:

Donors themselves should be partly responsible for demanding and seeking to enforce the thorough retirement of their funds donated to MDAs/GOSL. This is nothing unusual; "*some donors demand periodic updates and like to work in partnership (hands-on) with implementers.*"⁸⁵ "*Most donor demand financial and technical reports periodically.*"⁸⁶ In the **ABC case**, the ABC submitted with London Mining prior to the donation, forecasts of activities and expenditures for given periods. After having received London Mining's (LMC) donations and after these stipulated periods had passed, the ABC would again submit a statement of activities undertaken and monies expended, purporting to be in line with its prior budget forecast, ***but without documentation supporting the expenditures.***⁸⁷ Had the donors adamantly and outrightly remarked that proper retirement was not taking place, the ABC may have tried to be more efficient. Alternatively, the LMC could have alerted the MOIC that one of its units, was failing to properly retire donor funds. LMC did not appear to make retirement part of its **initial conditions/instructions** and appeared to simply accept the ABC's claims of expenditure without actual proof. From a supra-national level, donor control might be enhanced by the employ by donors of assessment tools for evaluating the capability of government record keeping systems to support financial management requirements, including "*tools to assess the vulnerability of records systems to corruption and fraud.*"⁸⁸

C. Ministry/Department:

Central government authorities that is the Ministry or Department within which the alleged offence was committed, can also be faulted for not exercising due diligence. In the ABC case, it was in evidence that MOIC did provide the ABC with funds for specific purposes, to be achieved within a specific time frame.⁸⁹ It was also in evidence that there were meetings held between the MOIC budget committee and the 2nd Accused, Allieu Kamara during which they discussed budget related matters.⁹⁰ ***It is therefore curious that during discussions concerning the forecasting of expenditure and activities, there would be no recap of completed or ongoing activities including the sources of***

⁸⁵ Interview with Desk Officer for Tertiary Hospitals (Accountant), MOHS, Fayia Musa Tucker, 12 November 2015.

⁸⁶ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015.

⁸⁷ The **ABC Case**, p.20; Letter dated 27 September 2010 addressed by Philip Conteh to London Mining's Managing Director, states that; "*We are presenting our proposals and support request for the period October 2010 to December 2010 (...) As usual we will produce an end of quarter report outlining our achievements in line with our set plans.*"

⁸⁸ Barata K, Cain. P, Thurston A., (1999), *From Accounting to Accountability: Managing Accounting Records as a Strategic Resource*, World Bank infoDEV Programme 980121-257, International Records Management Trust, p. 7, http://www.irmt.org/documents/research_reports/accounting_recs/IRMT_acc_rec_background.PDF

⁸⁹ The **ABC Case**, pp. 25 through 27 details how MOFED provided Le149, 800,000 through MOIC for the ABC for 2010. This was to be provided on a quarterly basis. MOIC budget committee meetings were held at the end of each quarter to determine the amount of each quarterly allocation and the purposes/activities for which they were to be used. Most often the expenditures envisaged appear to be, imprest, stationery, fuel, oil, public relations, office, general and towards the end of 2010, salaries. Specifically, Le1, 000, 000 was given to ABC per month as imprest. The accountant had a notebook in which all the amounts given to the ABC were entered, **although receipts were not maintained for all such allocations.**

⁹⁰ Ibid.

funds sustaining such activities. In short, it is curious that the MOIC never detected that the ABC was conducting and engaged in activities which it itself had never provided funds for, for e.g., "National Pride Week."⁹¹

Had the MOIC been well-informed or rather sought to inform itself thoroughly of the activities of the ABC, it would have picked up on this, would have sought to identify the source of financial support of these activities and sought to clarify the fund raising process in this respect. Having clarified that the fund raising process was not centralised, it would naturally then have been lead to query the receipt and maintenance of such donor funds. This would have readily made evident the discrepancies and irregularities in ABC's approach. In this vein it should be noted that the MOIC accountant, PW9 testified that the ABC should have reported its receipt of funds to the Permanent Secretary,⁹² which appears to mean "including grants." **Yet what is truly curious is that the central government did not detect sooner that ABC was in receipt and control of donor funds from LMC, especially given that PW9 himself testifies that the ABC's allocation fell under the MOIC's head of expenditure, the bulk of the ABC's allocation was actually disbursed by the MOIC on its behalf and, given LMC's CEO had written to HE the President, committing his company to supporting the ABC to the tune of USD 200,000 per year for 2 years.**⁹³

D. Banks:

The ABC was in receipt of government funding from budgetary allocation through the Consolidated Fund to the MOIC's account at the Bank of Sierra Leone,⁹⁴ which the MOIC mostly disbursed on the ABC's behalf.⁹⁵ In his evidence, the 1st Accused in the ABC case, Philip Conteh said that he was unaware of the aforementioned obligations under the GBAA/FMR. Conteh's alleged ignorance about the ABC's obligations under the aforementioned provisions is less than credible, unrealistic and impractical; one would reasonably assume that the ABC leadership must have between themselves discussed financial matters including accessing donor funds. Further, one would reasonably assume that the ABC leadership, had it been constituted of reasonable persons, would in the normal course of events have inquired with other public officers, into the necessary procedures for setting up an ABC specific account at the Sierra Leone Commercial Bank (SLCB). The ABC judgment tends to indicate that the ABC SLCB account ended up containing exclusively donor funds from London Mining and Comium. This strongly suggests that the ABC account was set up specifically for receipt of donor funds and that the bypassing of any higher level approval for its establishment was intended, so as keep superiors in the dark about such grants. It also strongly suggests that the circumventing of the Attorney General was intentional so that the Accused as signatories to their own separate account would not have to ask for approval from for e.g. the Permanent Secretary prior to endorsing cheques.⁹⁶ The bypassing also meant there would be no Finance Officer attached to grants/programmes who would supervise their disbursements (see description on the Finance Officer below).

The ABC account was set up at the SLCB which is a 100% owned by the GOSL⁹⁷ and where the Consolidated Fund is located. It is strongly desirable that the staff of any bank handling the business of the GOSL be au fait with legal prescriptions and banking regulations concerning transactions by the GOSL and its MDAs. It is not too farfetched to expect that bank staff from the Bank of Sierra Leone and the SLCB to know the requirements concerning the setting up of a separate account by an MDA, **or at least to know that a distinct set of rules applies to MDAs.** What transpired with the ABC raises commonsense and highly practical questions like; "Didn't the banking staff that processed the ABC's application for opening its own separate account at the SLCB, first seek to verify whether the Accountant-General had given her approval? Did the relevant banking staff not know that the Accountant-General's approval was

⁹¹ The **ABC Case**, p. 11; The ABC received the sum of Le 150 Million from Comium SL as sponsorship for the programme entitled, "National Pride Week", covering the country's independence anniversary celebration in April 2009.

⁹² The **ABC Case**, p. 27.

⁹³ The **ABC Case**, p. 16; "I have today met with Philip Conteh and Allieu Kamara from the ABC secretariat who discussed the need for a credible sponsor and partner in this programme (...) we have today discussed a support plan for the next 2 years of USD 200,000 per year based on a specific plan and regular reviews of its achievements."

⁹⁴ The **ABC Case**, p. 25; "The MOIC received 4 allocations for the ABC in 2010" and p. 26; "The MOIC operates an account at the Bank of Sierra Leone." Reg. 128 states; "Appointment of Bankers to Government; Subject to the instructions of the Minister, the Financial Secretary may appoint one or more banks in SL to be bankers to the government for the custody of public moneys and other official funds and for the transaction of official banking business."

⁹⁵ The **ABC Case**, p. 27; "The bulk of the ABC's allocation was actually disbursed by the Ministry on its behalf."

⁹⁶ Refer to The **GAVI Funds case**, where the Accused as signatories to the DPI account had to lodge project implementation requests with the Permanent Secretary of the MOHS for funds to be transferred to the DPI account.

⁹⁷ Interview with the Head of Capacity Building, NPPA, Mr. Mohamed J. Musa, 12 August 2014.

a prerequisite for the opening of bank accounts by MDAs? Did the relevant banking staff not know or seek to verify the status of the ABC as an agency under the MOIC?" These sorts of questions highlight the need for greater responsibility and a higher level of diligence to be exercised by banks/bank staff when dealing with MDAs. **Bank staff should be alive to the fact that specific sets of rules likely apply to specific types of transactions sought to be carried out by MDAs.**

Banks are obviously third parties to whatever procurement process may have been conducted. In spite of the fact that 3rd parties may not infringe on private business relationships, banks are entitled to take certain steps to verify that cheque payments for contracts which they are being asked to process, have been made pursuant to a legitimate procurement process, see Ken Gborie, the FCC case, and the NRA case. Contractual payments are not only processed via cheques as in the FCC case, Ken Gborie and Sesay's cheques to his wife in the NRA case, but there is also a specific committee⁹⁸ within MOFED that processes advances/payments for contractual awards, based on the notification of contractual award and the contract document drafted by the Procurement Committee that determines the award. **Normally, banks also require the same set of documents** if they are to collaborate in the process either by processing cheques for contractual payments or by providing securities to contractors. Winning bidders must take out an *advance security* commensurate to the advance MOFED would have processed for them based on contractual terms, and which is returned after the contract is performed and the contractors paid. They must also take out *performance security* which would be forfeited where there is poor/non performance and *retention security* which is held on to by the procuring entity for contractual defects during the warranty period. Banks are therefore heavily involved and would be expected to perform due diligence checks in every relevant sphere; verifying the contractual award and the background of the contractor.⁹⁹

Relevant Law: Further, Reg. 74 (1) FMR states that: "*For payments on procurement of goods and services, the voucher shall be supported with a certification that the procurement was carried out in accordance with the approved or revised plan as provided for in sub regulation 3 of regulation 70 and shall also be supported by the relevant minutes of the Procurement Committee meetings.*"

If, presumably the voucher and all the aforementioned attendants are to be appended to cheques for contractual payments, query therefore how cheques for illegitimate contractual payments in the Ken Gborie, FCC and NRA cases surmounted these hurdles.

In the FCC case the Accused had to resort to a reserve in a foreign bank account for payment of the Morgan Heritage concert, which they easily accessed in spite of its being a reserve account. Reserve accounts are only to be employed in exceptional circumstances. Yet this special account had no special access procedure as one would expect, for e.g. a more public process requiring more signatories, or requiring a statement of confirmation that the signing of the cheque was based on a collective decision and not just the whim of a couple of higher uppers. Also, William's withdrawal of USD10,000 on which count 19 was based, also raises the question of how/whether withdrawal thresholds for signatories of MDA accounts are determined and what sort of approval processes are put in place, if any, where thresholds are exceeded.

In the Ken Gborie and Lukuley cases, there was a tendency for some cheques to be made out to "cash" or "payee." Greater specificity could be demanded by banks for all such cheques to be made out to a named individual or institution, anticipating any possible future enquiries and attempts to establish accountability.

Katta recognized that Ecobank was duty bound to protect and collect NRA taxes in a suspense account and transmit to the Consolidated Account, Central Bank in accordance with its MOU with the NRA. Here, the Addax cheque payable to the NRA was paid ultimately into the Magsons' account, but first converted into a manager/ banker's cheque, so

⁹⁸ Interview with the Head of Capacity Building, NPPA, Mr. Mohamed J. Musa, 12 August 2014. Also, interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015; "*What I can say is that MOFED's responsibility is to verify that the procurement process was carried out.*" Interview with Senior Accountant, MOHS, Foday Kandeh Kamara, 5 November 2015; "*For GOSL sourced programmes/projects, after verification of the procurement documents, the Accountant-General signs cheques that he sends to the Bank of Sierra Leone for payment to contractors.*"

⁹⁹ Interview with the Head of Capacity Building, NPPA, Mr. Mohamed J. Musa, 12 August 2014.

that the Magsons' account would be credited from the manager's cheque account. The Defence argued that payment into the Magsons' account was a 3rd party transaction and/or mis-posting;¹⁰⁰ Ecobank's internal audit and the Court held it was a cheque diversion and that the conversion of the Addax cheque into a manager's cheque and payment into the Magsons' account breached all bank procedures.¹⁰¹

A legitimate conversion of the Addax cheque to a manager's cheque required a signed request letter from an account holder (payer/payee) addressed to the branch manager/head of operations and technology. There was no written instruction from Addax or the NRA to convert the cheque and the NRA lacked the capacity to make such a request holding only a transit account and having no say over the employ of taxes. Turay, an employee of 6 years, was head of Retail Operations and head of Rapid Transfer. He supervised the Bank's Ops dept., being its Assistant Manager. He instructed Emmanuel Ngegba, a treasury officer of 7 months to convert the Addax cheque to a manager's cheque, debiting the Addax account and crediting the manager's cheque account. Ngegba complied as Turay was the most senior staff in the absence of the head of ops. Ngegba asked Turay to confirm the conversion with the Ecobank relationship officer for Addax, the latter's authorisation normally not being sought for such conversions although cc'd in on requests. Since Turay's email suggested that Addax had already requested a conversion, the RO confirmed the authenticity of the Addax cheque. Turay and bank authorised signatory Issa Daramy co-signed the manager's cheque.

A 3rd party transaction means the actual payee of a cheque endorses it be paid to someone else, but the NRA lacked that capacity and the head of Ops did not designate Turay to authorize payment into the Magsons' account. Turay said he could authorize payment into the Magsons' account as the then immediate authority in the absence of the head of ops. Turay would assign work to Emmanuel Sesay who worked the Funds Transfer Desk in the Bank Ops Department, and would supervise him. Sesay would transfer funds from one account to another and process cheques. Sesay was directly answerable to the Head of Ops. Sesay credited the manager's cheque into the Magsons' account as instructed by Turay because, he claimed, there was an authorizing NRA letter. Sesay agreed that his compliance was improper practice in banking regulations. Turay said that King provided an NRA authorizing letter (not produced at trial) and told him that payment into Magsons' account was for clearing and forwarding services. He said he spoke to King's boss on the phone, who said he had confirmed with an unspecified bank director and that he Turay also spoke to an unspecified bank director/s.¹⁰²

Mrs. Katta was acting branch Manager, Ecobank, Waterloo and signatory to the Magsons' account. The references section in the Magsons' account opening application was not completed since both signatories were already known to Ecobank; Mrs. Katta as a bank employee and Mr. Katta as an existing account holder.¹⁰³ It was held that as a bank insider, Mrs. Katta was the facilitator of transactions on the Magsons' account. Hence the bank's breach of its own procedure by not appointing the Kattas signatories by means of a bank resolution and not requiring references.¹⁰⁴ The bank tended to make her a go-to person regarding the account;¹⁰⁵ PW7 David John, a cashier testified to confirming a Le45 million cheque from the Magsons' account by calling up Mrs. Katta, after noting she was a signatory to the account. This was a due diligence measure but it was unclear whether she confirmed in her capacity as senior staff or signatory.¹⁰⁶

It was held that Turay had constructive knowledge due to his high position at the bank and awareness of the MOU, that Mrs. Katta and Sesay also had constructive knowledge. The Court held that these Accused breached the trust held in them as bank employees and that their conduct failed the standard of even the ordinary honest person. It held that

¹⁰⁰ The Katta handwritten judgment does not clearly define "mis-posting", but the context suggests an erroneously processed 3rd party transaction.

¹⁰¹ The Katta handwritten judgment; "*He (Turay) breached all known bank procedures to ensure the diversion of NRA cheques into Magsons' account*"; p. 86, "*The Addax cheque was converted to a Manager's or banker's cheque in breach of all laid down procedures on 29th May 2013 and on 30th May 2013 when the Manager's cheque was paid into Magsons' account, also in breach of all banks' laid down procedures*"; p. 109, "*The fourth Accused authorised its conversion to a manager's cheque in breach of all bank's procedures*"; p.122.

¹⁰² The Katta handwritten judgment, pp. 78-79.

¹⁰³ The Katta handwritten judgment, pp. 96-97; evidence of PW4, Allie Mohamed Sillah, Head of Operations and Technology, Ecobank.

¹⁰⁴ The Katta handwritten judgment, p. 97; "*The absence of such a board resolution which appears to be a breach of the bank's procedure (...) (suggests) that there was a relaxation by the bank of its own procedure by reason of its involvement in the company of the 6th Accused who is a member of their staff (...) I would consider this rather disconcerting and reckless on the part of the bank (...)*."

¹⁰⁵ The Katta handwritten judgment, p. 108.

¹⁰⁶ The Katta handwritten judgment, p. 105-107; "*I needed a confirmation from a senior staff of Ecobank before I could pay (...) I recognised that my colleague staff is a signatory to the account (...) before a cheque is processed above Le5m you need to call on signatories of that account to confirm (...)*."

there were lapses of internal control procedures by the bank.¹⁰⁷ The Court held such acts were probably widespread and involved either active collaboration from bank staff or a breach by banks of their; "know your customer" obligations in the exercise of their required due diligence.¹⁰⁸

Indeed the lapses in internal control procedures were either intentional as in the case of Turay, Sesay and Mrs. Katta's actions, or by contrast breaches in due diligence obligations. Apart other indicia, Sesay's intention/constructive knowledge is evident in his admission that his compliance here was improper banking practice and Turay's intention is evident in the taking advantage of the absence of the head of Ops. and the relative inexperience of Ngegba.¹⁰⁹ As concerns due diligence obligations, query why the co-signatory of the manager's cheque did not detect the irregularity in its conversion and note that Ngegba who converted the cheque had doubts about Turay's instruction, deeming Turay's email to the relationship officer to be the first of its kind, but he complied since the payee was the same. Note also that David John is unclear about the capacity in which he contacted Mrs. Katta to confirm payment, and note the bank's own failure to effect the standard account application procedure to the Kattas due to Mrs. Katta's affiliation. All the above make it abundantly clear that the need for banks and their staff to exercise due diligence cannot be over-exaggerated. The exercise of due diligence by banks, militates against "*informal and often ad hoc work methods*" which it is documented, have a tendency to creep in and erode more formal ways of working in sub-Saharan Africa (public) services, undermining the legitimacy of systems.¹¹⁰

E. Finance Officers (FOs):

Discussions on this office feature prominently in Ken Gborie and it is briefly mentioned twice in Daoh, although it is absent in the other cases reviewed. Ken Gborie's evidence was that the FO in charge of the GAVI Project Fund for 2008 through 2011 was Paul Kamara, later replaced.¹¹¹ Ken Gborie's evidence also suggested that FOs are attached to units, stating that Sahr Amara was FO for the Unit/DPI,¹¹² as Magbity's evidence also suggested, by stating that, "Sahr Amara was Finance Officer at DPI" and that Paul Kamara and Osman Bangura were at different times FOs at the EPI.¹¹³ The reality is that FOs are attached to programmes, although a single accountant may act as FO to several smaller programmes simultaneously and so appear to be attached to a unit.¹¹⁴ Ken Gborie's evidence is that project implementation requests go to the Chief Medical Officer and the Permanent Secretary and upon their approval, the funds are **disbursed** by the "FO."¹¹⁵ Magbity also testified that the "DPI FO" Sahr Amara **disbursed** funds for supervision.¹¹⁶ PW1/ACC Investigator described the FO's role as; "*raising the cheque*" based on the instructions in the approval and submitting the cheque to the Ken Gborie and Magbity or to Dr. Michael Amara i.e. the DPI account signatories, for endorsement, after which it could be cashed.¹¹⁷ In Daoh, although the 5 Accused were attached to various units of the MOHS,¹¹⁸ the "Audit Report (GAVI HSS1Grant, Phase 1, 2008-2011) required recipients of "advances" to retire donor funds to the "HSS FO."¹¹⁹

¹⁰⁷ The Katta handwritten judgment, p. 123; "*Learned Counsel further pointed to the testimony of PW11 and Exhibit QQ which highlighted lapses in the bank's internal control procedures*", p. 126; "(...) there was lapse of internal control procedures by the bank (...)", pp. 44-45: "*He (PW4) said that investigations in the internal control process of the bank revealed there were no supporting documents from ADDAX instructing the bank to convert the cheque*", p. 62; "*He (PW11, Abdulai Jalloh, Head Internal Audit Ecobank) said the investigation also revealed certain internal control lapses in the bank.*"

¹⁰⁸ The Katta handwritten judgment, pp. 146-146.

¹⁰⁹ See **Section I.**, p. 3, on the need for a thorough understanding of the requisite interaction with one's subordinates and superiors in MDAs and banks.

¹¹⁰ Barata K, Cain, P, Thurston A., (1999), *From Accounting to Accountability: Managing Accounting Records as a Strategic Resource*, World Bank infoDEV Programme 980121-257, International Records Management Trust, p. 42, http://www.irmt.org/documents/research_reports/accounting_recs/IRMT_acc_rec_background.PDF.

¹¹¹ The GAVI Funds case, p. 52.

¹¹² The GAVI Funds case, p. 53; "Sahr Amara was Finance Officer for the Unit."

¹¹³ The GAVI Funds case, p. 90.

¹¹⁴ Interview with Alusine Kargbo, Director of Financial Resources, MOHS, 4 November 2015.

¹¹⁵ The GAVI Funds case, p. 52.

¹¹⁶ The GAVI Funds case, p. 90.

¹¹⁷ The GAVI Funds case, pp. 43 and 49; PW1/ACC Investigator.

¹¹⁸ For example one Accused was the Director of Primary Health Care, another Accused was the Director of Hospital and Laboratory Services, whilst another was Director of Human Resources and Nursing Services.

¹¹⁹ The State v. Kizito Daoh, Alhassan L. Sesay, A.A. Sandy, Edward Bai Kamara, Duramani Conteh before Hon. Mr. Justice Abdulai Charm 24 October 2013, pp.17 and 29. The GAVI Funds case, pp. 17 and 29. It was from the DPI that each of the Accused received monies for supervision purposes; The State v. Kizito Daoh, p. 27. According to the Prosecution, the Accused were not only under an obligation to retire the amount given to them, but also to provide end of activity Report to the DPI; The State v. Kizito Daoh, p. 24. "What was required of each of them

"Overall responsibility for a programme lies with the programme manager. The role of the FO is to manage the books, advice programme managers on the appropriate/legitimate procurement processes, **although the actual implementation of the procurement process is left with programme manager.**"¹²⁰ "Programme Officers submit implementation requests with the Permanent Secretary, from whence it goes to the DFR, and finally to the FO who draws up a cheque. FOs therefore have the liberty of demanding a procurement process."¹²¹ Generally, Programme Officers call FOs when they want to make out a cheque and the FO issues out the cheque. As concerns retirement, the FO takes retirement documents back to the DFR who can clarify/advice on any areas the FO finds unclear. This process by the DFR is called verification; the DFR tells the FO if the right processes have not been followed. After verification, the FO goes back to the Programme Manager and shows him the financial report. The FO then can either retire documents with the agency or in some cases, with donors. It is the FOs that should always be part of the liquidation process. Also, on a quarterly basis, the FO captures all the income and expenditures as part of the Treasury and other government agency reports; TOGAS."¹²²

The office of the FO appears to be entirely absent in the regulatory instruments; neither the GBAA nor FMR refer to an FO. There is no other legal provision thereupon. There is on the other hand a Reg. 6 (1) FMR on a distinct office, called the Chief Finance Officer, which states that: "Unless directed otherwise by the Accountant-General, each budgetary agency shall have an accounting officer (hereafter called the Chief Financial Officer) serving on the senior management team." Reg. 6 (2) FMR states that: "The Accountant-General is responsible for determining the level of qualification, skills, knowledge and experience required by a CFO in a budgetary agency." Reg. 6 (3) FMR states that: "The CFO is directly accountable to the Vote Controller." Reg. 6 (4) FMR states that: "Without limiting the right of the Vote Controller to assign specific responsibilities, the general responsibility of the CFO is to assist the Vote Controller in discharging the duties prescribed in regulation 1 **which relate to the effective financial management of the budgetary agency including the exercise of sound budgeting and budgetary control practices, the operation of internal controls and the timely production of financial reports.**" Most aspects of Reg. 6 FMR on the CFO's role and relationship with colleagues can be construed as relating to keeping tabs on programme/project expenditures.¹²³ Yet, according to the Senior Accountant MOHS; "although there should be a CFO at the MOHS, there isn't one. The functions of the CFO are performed at times by the DFR, at times by the Senior Accountant."¹²⁴

It is curious that in the **FCC case**, which resulted in the conviction of Garber, the FCC civil engineer for failure to account/retire his project expenses re a Le9, 225,000 rehabilitation project at Hargan Street Market, no mention is made of an FO that could have reminded this project implementer of this responsibility. In **Ken Gborie**, it was repeatedly held that the FO was bypassed by the Accused, notably **in the signing of cheques**, for contractual payments worth Le51, 375,000 in May 2009 and Le242, 400,000 in April 2011 made out to Rolaan Ents., worth Le415, 600,000 in April and May 2012 made out to 78 Ents., **and in the signing of cheques** collectively worth Le399, 320,000 from January to July 2008 made out to Magbity. Indications that Ken Gborie bypassed the FO and did not deal with him¹²⁵ are as follows; Ken Gborie signed **the Rolaan cheques** without supporting documents/authority,¹²⁶ he did not know the name/surname of the "FO - DPI"¹²⁷ and said he could not tell what the functions of the FO were,¹²⁸ although he did say that the **disbursement** of funds is the function of the FO post approval of implementation requests¹²⁹ confirmed by

according to the exhibits relied upon by the Prosecution was end of supervision Report, which must be submitted to the DPI within a given deadline"; The **State v. Kizito Daoh**, p. 29. 2 of the Accused claimed to have submitted such reports to the DPI; The **State v. Kizito Daoh**, p.32.

¹²⁰ Interview with Alusine Kargbo, Director of Financial Resources, MOHS, 4 November 2015.

¹²¹ This would be in relation specifically to requests for procurement payments; Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015.

¹²² Interview with Finance Officer for Directorate of Nutrition, MOHS, David Kargbo, 4 November 2015.

¹²³ Reg. 6 (4) FMR states that; "the general responsibility of the CFO includes; (i.) supervising all officers entrusted with the receipt and expenditure of the budgetary agency's funds and taking precautions, by the maintenance of frequent checks, including surprise audits, against the occurrence of fraud, embezzlement or carelessness; (j) supervising the expenditure and other disbursements of the budgetary agency and ensuring that no payment is made without proper authority, and in case of any apparent extravagance calling this to the attention of the officer concerned and his superiors; (n) after consultation with the Vote Controller, monitoring the budgetary agency's procedures for the procurement of goods, services and works in accordance with the Public Procurement Act 2004 and regulations made under it.

¹²⁴ Interview with Senior Accountant, MOHS, Foday Kandeh Kamara, 5 November 2015.

¹²⁵ Ken Gborie did not deal with the FO concerning Rolaan; The **GAVI Funds case**, p. 66. Ken Gborie did not deal with the FO concerning 78 Ents; The **GAVI Funds case**, p. 90.

¹²⁶ The **GAVI Funds case**, p.64.

¹²⁷ The **GAVI Funds case**, p. 64; "He did not know the surname of the Finance Officer in the Directorate of which he is head."

¹²⁸ The **GAVI Funds case**, p. 64.

¹²⁹ The **GAVI Funds case**, p. 64.

Magbity who identified Sahr Amara as the "FO, DPI" responsible for this.¹³⁰ Also, there was no evidence of the involvement of the FO in the procurement of the services of 78 Ents.¹³¹ Ken Gborie's evidence is that instead of the FO presenting the cheques to signatories, it was Dr. Michael Amara, an alternate signatory to the DPI account who prepared the 2 cheques paid to 78 Ents. and presented them to him for signature for unlawful procurements.¹³² Michael Amara then instructed the proprietor of 78, to pay Ken Gborie and Magbity out of what had been paid him.¹³³ It was held that Ken Gborie and Magbity dealt with Michael Amara instead of the FO to deliberately circumvent procurement rules.¹³⁴ Again, with regards to the cheques made out to Magbity, these were written and signed by Drs. Duramani Conteh and Clifford Kamara, usurping the function of the FO; none of the persons Magbity identifies as FOs, whether at the DPI or the EPI "appear to have played any role in the systematic withdrawals of the monies."¹³⁵

The Senior Permanent Secretary's (SPS) letter of October 2011 to the EPI and DPI, and the GAVI Draft Audit Report (above) both note the non-involvement of the Directorate of Financial Resources in the financial management of donor funds. The SPS's letter calls for a change in this regard.¹³⁶ However, neither this letter, nor any other evidence in the Ken Gborie judgement, nor the relevant regulatory instruments indicate the necessary/appropriate relationship between the FO and this Directorate. In Daoh, where the Prosecution argued that not all the Accused had complied with their purported obligations to retire funds/reports to the DPI through the FO, the issue of bypassing the FO is also implicit there.

From the evidence of the 1st and 2nd Accused in Ken Gborie, the mentions of the FO in Daoh and interviews of MOHS accountants, it's clear that the FO is a crucial financial management control by overseeing/ensuring the retirement of programme/project expenditures. Practically, overseeing/ensuring the retirement of programme/project expenditures would involve keeping tabs on project implementers and knowing the deadlines for submission of such retirements/reports and alerting implementers to the fact of such impending deadlines. Various software packages allow for pre-programmed electronic reminders, for e.g. Microsoft Outlook for alerts sent at various intervals before an actual deadline to the project implementers and/or the FO who would then take further action. Daoh also underscores that the FO should know precisely the obligations attached as per the type of funds/project involved i.e. the appropriate manner and forms of retirement required and that the FO should underline these fine lines for the benefit of project implementers. As always, it is best practice to have such correspondences preserved in writing. This could be a standardized procedure for every project implementation request that is approved, i.e. a pre-implementation obligation to clarify the precise, requisite form(s) of retirement and a post-implementation obligation to remind. Prompts for retirement from the FO that are ignored could then prompt an internal audit or complaint to the ACC.

Although the very thorough FMR does not mention FOs, the practice appears to be that; "the FO directly reports to the DFR. The FO falls within the office of the DFR and is under the DFR's authority. You work with the DFR who delegates responsibilities to you and you serve as an eye for your boss. As FO, your other immediate boss is the Programme Manager, but the authority of the DFR trumps the latter."¹³⁷ However, there is no legal provision on the role of the FO anywhere and no legal provisions on the necessary relationship between the Director of Financial Resources and the FO.¹³⁸

¹³⁰ The GAVI Funds case, p. 90.

¹³¹ The GAVI Funds case, p. 98.

¹³² The GAVI Funds case, p. 99-101.

¹³³ The GAVI Funds case, p. 76; From the evidence of PW5 (Momoh Gbao) which I accept, he was simply instructed by Dr. Michael Amara to issue cheques in favour of the 1st and 2nd accused persons as team leaders for the survey.

¹³⁴ The GAVI Funds case, pp. 64- 65, 99-101.

¹³⁵ The GAVI Funds case, p. 90.

¹³⁶ The GAVI Funds case, p. 63.

¹³⁷ Interview with Finance Officer for Directorate of Nutrition, MOHS, David Kargbo, 4 November 2015.

¹³⁸ Confirmed in interview with Senior Accountant, MOHS, Foday Kandeh Kamara, 5 November 2015.

The above evidence then begs the question as to why and how, in both Ken Gborie and Daoh, it became possible to bypass the FO if he had been truly, diligently and exhaustively performing his role. Although, "at certain points in the past at the MOHS, there were not enough accountants and so there not enough FOs, to be able to assign one for every programme"¹³⁹ which may well have impacted accountability in certain cases, in Ken Gborie, there's no question that there was an FO attached to the GAVI HSS grant/programme since the judgment repeatedly states; "the FO was bypassed."¹⁴⁰ Unfortunately, the undeniable fact is that bypassing of what should otherwise be the lynchpin of the disbursement of programme funds, is a deeply entrenched, intentional and calculated practice at the MOHS. Interviews with accountants at the MOHS, confirm this disturbing fact as a longstanding, and even post Ken Gborie, ongoing "culture."¹⁴¹ "Before GAVI, Programme Managers would hog the financial management of funds."¹⁴² "Currently, liquidation for some programmes is indeed done through the FO, but for others, programme managers just want to grab everything. Most times, the programme managers don't allow the FOs to do their jobs. Generally, for some programmes, sometimes Programme Officers are very hard to deal with; for e.g. not going through the procurement process and withholding of tax."¹⁴³ Another adds; "Programme Managers seem intent on conducting procurement in the way they want and even though we try to advice, sometimes they disregard our advice, so we just limit our role to verifying procurement/retirement document and leave the final assessment about whether the procurement process was followed to the auditors."¹⁴⁴ Even more irksome is that the DFR continues to states that the; "Programme Managers are responsible for the disbursement of funds." However, Ken Gborie may or may not have something to do with the fact that; "some Programme Officers are very cooperative (...) some programme managers are now asking for FOs to take them though their jobs."¹⁴⁵

F. The Directorate of Financial Resources:

In Ken Gborie, the GAVI Draft Audit Report dated 7th December 2012 (GAVI HSS1Grant, Phase 1, 2008-2011) produced by the GAVI Transparency Accountability Policy Team (TAP) found amongst others, that (a) the Directorate of Financial Resources (DFR) of the MOHS, had been up to that point totally uninvolved in the financial management of the HSS grant/programme and that there was an absence of clear accountability in the financial management of the programme.¹⁴⁶ The judgment states that; "management of funds for GAVI HSS grant and disbursement of same as planned upon request to implementers was meant to be the responsibility of the Director of Financial Resources of the MOHS"¹⁴⁷ and that; "the evidence (...) is that it is the Directorate of Financial Resources, MOHS which was responsible for effecting payments to implementers of donor funded projects."¹⁴⁸ The evidence was that this function of effecting payments to implementers of donor funded projects was usurped by Ken Gborie,¹⁴⁹ Magbity¹⁵⁰ and Michael Mathew Amara;¹⁵¹ this finding of the ACC Investigation corresponded with the GAVI Draft

¹³⁹ Interview with Finance Officer for Directorate of Nutrition, MOHS, David Kargbo, 4 November 2015.

¹⁴⁰ The GAVI Funds Case, pp. 52, 64, 65, 78, 98, 99.

¹⁴¹ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015; "Among Programme Managers, the hogging culture had long existed."

¹⁴² Interview with Alusine Kargbo, Director of Financial Resources, MOHS, 4 November 2015.

¹⁴³ Interview with Finance Officer for Directorate of Nutrition, MOHS, David Kargbo, 4 November 2015.

¹⁴⁴ Interview with Senior Accountant, MOHS, Foday Kandeh Kamara, 5 November 2015.

¹⁴⁵ Interview with Finance Officer for Directorate of Nutrition, MOHS, David Kargbo, 4 November 2015.

¹⁴⁶ The GAVI Funds case, p. 20.

¹⁴⁷ The GAVI Funds case, p. 21.

¹⁴⁸ The GAVI Funds case, p.62.

¹⁴⁹ Director DPI, whose actual responsibility was to approve proposals for activities for donor funded projects and to coordinate them; The GAVI Funds case, pp. 20, 94.

¹⁵⁰ The Principal Monitoring and Evaluation Officer, DPI, whose actual responsibility was to coordinate all DPI programme activities; The GAVI Funds case, pp. 20 and 85.

Audit Report finding (above) that the DFR had been uninvolved. The non-involvement of the DFR was equally true of other donor funded activities.¹⁵² Formally, at least the DPI was meant to be responsible for the **implementation** of donor funded programmes/activities.¹⁵³ The judgment also states that "*the DPI was **required** to follow through the process (...) for making payments to implementers (...)*"¹⁵⁴

Prior to the GAVI Draft Audit Report, the Senior Permanent Secretary MOHS, recognized the disruptive murkiness in this area. His letter dated 26th October 2011¹⁵⁵ to the EPI Programme Manager, copied to the Director of Planning and Information among others,¹⁵⁶ instructed for management of health projects/programme funds, including from GAVI, Global Fund, UNFPA, the World Bank and others not managed by fiduciary agents recruited by the fund providers, to be **transferred to**, and even centralized within the Office of the Director of Financial Resources MOHS. The letter instructed that "*people should do the work for which they are best suited*," i.e. for medical personnel to focus their attention fully on programmatic issues and for "*financial management*" to be left with the financial director.¹⁵⁷ The SPS' letter also required that all documents relevant to the operations of the GAVI Fund and other accounts to be immediately submitted to the DFR.¹⁵⁸ "*Financial management*" of donor funds had indeed been taken up by Ken Gborie and Magbity; it was held that Gborie and Magbity were undoubtedly involved in the administration, **management** and receipt of public funds,¹⁵⁹ since they would sign cheques drawn up and presented to them by Michael Amara who was not a FO.¹⁶⁰ This was made possible since the Accused were signatories to account.¹⁶¹

The GAVI Draft Audit report, the ACC Investigations, the SPS' letter and the facts of the case converged on the fact of **financial mismanagement** of donor funds, an aspect of which was that the FO and the appropriate processes for contractual awards kept being bypassed. **However, the imperative need of spelling out the lien/link between the role of the DFR and that of the FO appears to have been shockingly ignored in both the SPS' letter and the entire Ken Gborie judgment and that lack of clarity may well be a critical factor behind the events as they transpired,¹⁶² especially since neither the office of the DFR, nor FO, nor the necessary relationship between the two is to be found in any regulatory instrument.**

The term, "*financial management*" would also have benefited from greater clarity and elaboration here. The SPS' use of the term raises key questions like; in this context, did "*financial management*" only signify the drawing up and signing of cheques for disbursement of project funds? Did "*financial management*" extend as far back in time as the actual preparation, submission and approval of a project implementation request? Did "*financial management*" include the funds transfer into the DPI account, post- approval of a project implementation request? Did "*financial management*" encompass the process of retiring project funds, and also encompass the means to ensure that project funds were retired? Did "*financial management*" encompass the ensuing courses of action in the event of non-retirement of project funds? Was "*financial management*" inclusive of all these facets of project implementation or did it concern exclusively only one such facet? As simplistic as these questions may seem, failure to address them may work in conjunction with other instances lacking clarity, and may give rise to opportunities seized upon by project managers/officers and persons intent on plying such sources of murkiness and the ignorance/confusion they engender to their own ends.

¹⁵¹ The Principal Health Economist, DPI; The **GAVI Funds case**, p.94.

¹⁵² The **GAVI Funds case**, p.62; Evidence of PW1/ACC Investigator, Musa Bala Jawaara.

¹⁵³ There is no denial of the fact that the Accused were involved in the implementation of donor funded activities implemented by the DPI; The **GAVI Funds case**, pp. 27-28. "The DPI account was used to implement the GAVI HSS project and other donor projects"; The **GAVI Funds case**, p.49. "The DPI submitted requests for supervision for both national and district levels"; The **GAVI Funds case**, p. 86. "The DPI was required to follow through the process of obtaining approvals from the Ministry for donor activities"; The **GAVI Funds case**, p.49.

¹⁵⁴ The **GAVI Funds case**, p. 49.

¹⁵⁵ The **GAVI Funds case**, p. 62. At p.89; "There was absence of clear accountability in the financial management of GAVI donor programmes and, in particular, the total non-involvement until December, 2012, of the Directorate of Financial Resources of the MOHS."

¹⁵⁶ The **GAVI Funds case**, pp. 62-63.

¹⁵⁷ The **GAVI Funds case**, p. 63.

¹⁵⁸ The **GAVI Funds case**, p. 63.

¹⁵⁹ The **GAVI Funds case**, p. 94.

¹⁶⁰ The **GAVI Funds case**, pp. 51, 63, 64, 65, 69, 70, 72, 76, 78, 99.

¹⁶¹ Ken Gborie was a category A signatory to the DPI account, Magbity was a category B signatory to the same account; The **GAVI Funds case**, pp. 19, 20. Michael Amara was a category B signatory; The **GAVI Funds case**, p. 94.

¹⁶² This has been noted above under the discussion concerning the role of the Finance Officer.

Specifically as concerns the DFR, the unavoidable question one is prompted to ask, is that if the DFR MOHS already existed at the time of Ken Gborie and Magbity's criminal acts, (which it did) wasn't it therefore necessarily the case that it had failed to exercise due diligence in the "financial management" of donor funds and that it was this failure that had prompted the SPS' letter? This seems an inevitable conclusion, unless by some unlikely stroke of fortune, the DFR had initially been only charged with managing MOHS funds other than donor funds or even donor funds other than those donor funds identified in the SPS' letter; that was not the case.

The finding of the GAVI Draft Audit Report suggests that there might have been a lack of clarity regarding the identification of responsible party for the financial management of donor funds,¹⁶³ but that this should be the case, is also odd, given that that is the whole point of the DFR. The judgment also suggests that that responsibility may well have been specifically assigned to the DFR by donors/ GAVI?¹⁶⁴ However, the fact that the SPS' letter does not refer to any prior understanding about the allocation of responsibilities in the area of the financial management of donor funds (regulatory instruments/policy documents) and actually uses the words "Transfer of Management"¹⁶⁵ is not only a demand to change the then operational status quo, but also suggests that the approach to financial management in Ken Gborie that spawned the offences, was simply part of a probably ongoing and longstanding tacit understanding of the suitable manner of managing donor funds, taken advantage of by the Accused (Reference Section I. on IM) As one interviewee puts it; "among Programme Managers, the hogging culture had long existed."¹⁶⁶

G. Audits:

Audits feature in 3 of the 8 cases reviewed; The FCC, Ken Gborie and the Daoh cases. S. 6 (3) (a) GBAA states; "for the purposes of this section, "internal audit" means the function within an organisation which measures, evaluates and reports upon the effectiveness of internal controls, both financial and otherwise, as a contribution to the efficient use of resources within the organization." There's no definition of external audit as such in the GBAA or FMR. There are discussions of audits at several points in the FCC case, although there is some inconsistency in the Court's approach to their salience; audit findings were considered too insubstantial for grounding convictions for some charges, but served as the basis of some convictions, while they were demanded as essential for the substantiation of at least one charge (discussed below). The FCC judgment's descriptions of the responses of the FCC management to audit queries and findings compound the viewpoint that the full salience of audits may not have been given the pride of place they deserve.

¹⁶³ See FN 146.

¹⁶⁴ See FN 147.

¹⁶⁵ The GAVI Funds case, p. 63. The letter appears to however be referring to a prior instruction to transfer management of these donor funds to the DFR: also at p 63; "If, however, you were not aware of this instruction..."

¹⁶⁶ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015.

i. Audit Findings Considered Insubstantial For Grounding Convictions; Counts 8,9,15: **Count 8** charges Williams, the FCC Mayor, Philips, the FCC Chief Administrator, and Thomas, the FCC Head of Cashier's Office, with misappropriating Le55, 589,100 collected as **market dues** on a date unknown between January and December 2009. **Count 9** charges the same Accused with misappropriating Le24, 317,300 collected as **municipal licences** on a date unknown between October and December 2009. **Count 15** charges the same Accused with misappropriating Le2, 063, 4000 collected as **wharf landing fees** on a date unknown between October 2009 and December 2009.

a. Internal Audit Findings on Counts 8, 9, 15: These provisions appear to be the basis of the internal audit conducted by Abdul Karim Fofanah/PW11 in the **FCC** case, the findings of which formed the basis of the Prosecution case.¹⁶⁷ PW11 testified to the established process of revenue collection, transmission and safeguarding. According to PW11, revenue collectors would collect revenues, take them daily to the internal audit department to be verified where revenue collectors would be issued with a stamped daily collection analysis form. The revenue collectors would then take this form and proceed to pay in these revenues at the cashier's office, where they would be issued with receipts by the cashiers. The process as described by PW11 is aligned with Reg. 42 FMR which states that, departmental revenue collectors who receive taxes (...) or other public moneys, whether of a revenue nature or otherwise, shall pay (in) such moneys either daily or at the earliest opportunity (...).¹⁶⁸ See also Reg. 62 (1) FMR which states that all departmental revenue or other public moneys collected shall be paid either daily or if it is not possible, at the earliest opportunity, into a bank account authorized by the Accountant-General or into the Treasury, (presumably the revenues in question here, since daily paid in, went on to be deposited in an account).

Relevant Law: Note that under s. 6 (2) GBAA, the Minister of Finance may require any Vote Controller to establish or maintain an internal audit division or other unit in the budgetary agency under him, and such division or unit shall be responsible to the Minister responsible for that budgetary agency. Internal audit units are meant to make periodic audit reports; s. 6 (4) (c) GBAA, report promptly on any irregularity; s. 6 (4) (b) GBAA, continuously review systems and procedures to ensure adequacy, effectiveness and efficiency; s. 6 (4) (g), **and ensure strict adherence to all control procedures introduced to safeguard the assets and records of Government**; s. 6 (4) (a) GBAA. Generally, the internal audit unit reports to the Vote Controller, unless the matter concerns the management of internal controls by the Vote Controller, when it otherwise reports to the Minister (MOFED); s. 6 (5) GBAA. The reports from the internal audit unit are made on a quarterly basis, identifying means of preventing irregularities, submitted to the Vote Controller; Reg. 163 (6) FMR 6, and the Chief Internal Auditor and the Auditor-General; Reg. 163 (7) FMR.

¹⁶⁷ The **FCC case**, p. 15; "The Prosecution can be said to be grounded chiefly on his findings."

¹⁶⁸ The rest of that Regulation reads; "...into a bank authorized by the Accountant-General for the credit of the Consolidated Fund."

PW11's audit report found that the receipts issued to revenue collectors by cashiers for payment of revenues, specifically market dues and municipal licence fees,¹⁶⁹ tallied with the daily collection analysis form. PW11's audit report found therefore that the revenues collected by the revenue collectors were actually received by the cash office. PW11's audit report also found that there was: "*Improper Recording of Cash into the Cash and Deposit Register.*" This signified discrepancies worth Le2, 630,400 between, on one hand, the two sources already mentioned (receipts/daily analysis collection form) which evidenced what was collected and paid into the cashier's, and on the other, the cash deposit ledger/analysis, used to record the cash received.¹⁷⁰

Relevant Law: The recording of cash received into a daily collection register accords with Reg. 45 (1) FMR which states that; "*the date of receipt of any sum of money determines the date of record of the transaction in the accounts*", and Reg. 58 FMR, which states that; "*Receipt of departmental moneys shall be posted into the cash book at the time of the actual transaction or as soon as possible thereafter on the day of the transaction.*" Likewise, Reg.45 (5) FMR states; "*The register shall be in the charge of an officer to be designated by the Vote Controller and such officer shall ensure that details of receipt books are fully and correctly entered in it as soon as they are received.* Similarly, Reg. 45 (4) FMR states that; "*a register in the form prescribed by the Accountant-General shall be kept in each department or office for departmental revenues as the Accountant-General may direct.*" Further, under Reg. 61 FMR, if the officer who posts departmental revenue assessment registers (...),ledgers (...) notes a difference between the amount collected and the amount due, he shall inform the officer in charge of revenue collection and such difference shall be immediately investigated and appropriate action be taken.

PW11 concluded that any misappropriation had to have been by the cashiers and revenue collectors.¹⁷¹ In this regard it should be noted that Reg. 44 (1) FMR prohibits "*use of any public money by a public officer in any manner between the time of its receipt and payment into the bank, Treasury or other public office designated by the Accountant-General and prohibits public money from being lent or borrowed in any manner or for any purpose by any person.*" PW11 submitted his report to Williams and Philips, **recommending that they ensure frequent on the spot checks to ensure transparency in the cash office.**¹⁷² There is no evidence of the FCC's response to this internal audit recommendation and it's unclear from the **FCC** judgment whether the FCC did comply with PW11's recommendation.

b. External Audit Findings on Counts 8, 9, 15: An external audit was conducted by Albert Lamin/PW14, Senior Auditor with Audit Services SL, to enable the Auditor General to express an opinion on the FCC's financial statement for the Financial Year January - December 2009.¹⁷³ The external audit found that there was; "**Inadequate Control over the Collection, Recording and Reporting of Financial Transactions.**" The focus of the external audit was **a sample** of daily market dues collection sheets and corresponding receipts issued by FCC cashiers and the timeline was January to December 2009;¹⁷⁴ no findings were made on municipal fees and wharf landing fees. PW14 testified that he found a discrepancy of Le 60,813,600,¹⁷⁵ between the record of the market supervisor and the record of the cashier.¹⁷⁶

¹⁶⁹ The **FCC case**, p. 16; There is however some inconsistency in PW11's testimony since he states at p. 16 that; "*During his exercise of auditing, I looked at the cash receipts. I did not check the amount on these receipts against the daily analysis form recorded therein.*" Yet PW11 also continues in the same breath at p.16; "*I don't have the receipts issued by the Head Cashier for the market dues and Municipal licence fees. I saw them during the audit. The receipt issued by the cashier had the same figure – the same with the daily collection analysis form verified by the internal audit department.*" It is the latter stance that is accepted by the Court, perhaps because it reiterates the finding at p. 3 of his report that; "*Correct receipts were issued for monies collected and paid into cash office*"; The **FCC case**, pp.17-18.

¹⁷⁰ The **FCC case**, p.18.

¹⁷¹ The **FCC case**, p.15.

¹⁷² The **FCC case**, pp. 17-18.

¹⁷³ The **FCC case**, p. 18; This audit to enable the Auditor-General to perform its functions was required by s. 81 (3) Local Government Act.

¹⁷⁴ The **FCC case**, p. 16; "*Our findings in regard to market dues for January to December 2009.*" However, also note that Appendix B of the external audit report is marked; "*market dues between the 27-28 of 2009 to 29/12/09.*" The dates of the latter statement make no sense.

¹⁷⁵ The **FCC case**, p. 16.

¹⁷⁶ The **FCC case**, p.16; There's no further elaboration on whether the record of the market supervisor is the same as the daily market collection analysis form or whether it is separate, but the different terms are used in the judgment to refer to the focus of the external audit and the sources forming the basis of its findings.

Relevant Law: That the market supervisor may have maintained a record is in accordance with s. 11 (3) GBAA which states that; "every person who collects or receives any public moneys shall keep a record of receipts and deposits thereof in such form and manner as the Accountant-General may determine" and Reg. 60 (1) FMR which states that; "departmental revenue collectors shall keep records of moneys collected in such form as the Accountant-General may determine". Reg. 60 (2) FMR states that; "these records shall show the person from whom revenue is due, the amount payable, the date, location, receipt number and amount of the collections made". Of interest, Reg. 60 (3) FMR; states that; "these records shall (...) be reconciled with the cash collections monthly."

The Court quoting from the report, noted an inconsistency in the discrepancy PW14 purported to have uncovered, i.e. it pointed out that at paragraph 3 of the external audit findings, the discrepancy is Le 60,748,700, between sample daily market collection sheets and receipts¹⁷⁷ while in appendix B, the discrepancy is down as, Le60,821,700.¹⁷⁸ This external audit report was sent to Philips, since according to PW14, the Chief Administrator was the Vote Controller and the audit recommended that the Vote Controller ensure that missing monies be retrieved from the parties concerned.¹⁷⁹ The FCC responded to the findings of the external audit by stating that it could not dismiss the occurrence of leakages in revenue collection due to some ineffective control mechanisms, but did not suggest the point at which these leakages in revenue collection may have occurred. The FCC however disputed the difference of Le60, 821, 700,"observed between the sample of daily market collection sheets and receipts issued for the same day by the cashier."¹⁸⁰ The FCC in fact recapitulated PW14's calculations and forwarded this to him, arguing that it indicated a likely duplication supporting the external audit findings. PW14 adamantly denied this suggested duplication in court.¹⁸¹

c. The Court's Approach to weighing the facts underlying Counts 8, 9, 15 as against the Internal and External Audit Findings Thereupon:

The Court's approach to reconciling the internal and external audit findings is somewhat disconcerting. It contests the internal accuracy and consistency of PW11's internal audit report, by declaring his findings inconsistent with each other and it contests the accuracy of PW14's external audit report finding by declaring it inconsistent with a finding of the internal audit. Among the lot of findings noted in the judgment as generated by both audits, the Court appears conveniently to prize and accept as authentic only a single finding among the lot.

It held that PW14's finding of a discrepancy between the sample of daily market collection sheets¹⁸² and corresponding receipts for January to December 2009 was inconsistent with PW11's finding that the receipts issued to revenue collectors by cashiers for payment of revenues, specifically market dues and municipal licence fees, tallied with the daily collection analysis form. What the Court does not openly query in its assessment of this purported inconsistency, is that although PW11's audit appeared to be more widely drawn by looking at two instead of one type of revenue, whether the temporal scope of PW11's audit differed from that of PW14's (unclear from judgment). The Court also did not address whether the comparative analyses here was exactly the same; i.e. looked at exactly the same sources of information since PW14 at a certain point uses the term, "record of the market

¹⁷⁷ The *FCC case*, 18; Since here the comparative analysis appears to have been made between the "daily market collection sheets and receipts issued for the same by the cashier," one would presume that the daily market collection sheets accord in meaning with the record of the market supervisor (see preceding footnote).

¹⁷⁸ The *FCC case*, p.18.

¹⁷⁹ The *FCC case*, p.16.

¹⁸⁰ The *FCC case*, p.19.

¹⁸¹ The *FCC case*, p.19.

¹⁸² Note the discussion on the differing terms used in PW14's report above.

supervisor." The Court should have first clarified these areas before categorically stating that these two findings on the co-relation of receipts to sales were inconsistent with each other. More importantly, the Court could have sought to clarify the production dates of each report and asked PW11 and PW14 whether the latter in time was aware of a preceding report and referenced that report in its own work processes, whether there was a legal obligation on public auditors to liaise with each other where they were investigating the same situation especially where their findings differed and whether there were regulatory provisions on the relationship between public internal and external auditors generally.

Relevant Law: On the relationship between internal and external audit units, see Reg. 163 (5) FMR which states that; "*the (internal audit) unit shall review external audit queries and reports (...) and draft responses for the vote controller's consideration.*" This means that where an internal audit report happens to be the latter in time, any preceding external audit report would have been taken note of, in its production. See also s. 6 (4) (d) GBAA which states that internal audit units shall review management response to Auditor-General's report and s. 6 (4) (e) GBAA, which states that internal audit units shall review external audit reports. Reg. 163 (8) FMR states that, the Chief Internal Auditor (MOFED) shall ensure that the status and powers of the internal audit function (in governmental agencies) conform to internationally accepted standards, in particular its independence from operational management and its access to information. Similarly, under s. 6 (1) (b) GBAA, it is *the Internal Audit Department within (MOFED); "which shall be responsible for (b) ensuring that the internal audit unit in every budgetary agency (...) is appropriate to the needs of the organisation concerned and conform to internationally recognised standards.*" Note, that it is the Chief Internal Auditor (MOFED) that under Reg. 162 FMR sets standards and develops *instructions for internal audit units in budgetary agencies*, and, that as per Reg. 39 (6) FMR; "*all budgetary agencies shall use uniform accounting practices approved by the Accountant-General.*"

It is submitted that only where the clarifications noted above were made, with the aid of law cited above, could it categorically be stated that these particular findings were inconsistent inter se.

The Court also held that PW11's finding that there were discrepancies between monies collected by revenue collectors and paid into the cash office, on one hand, and the cash deposit register on the other, is "surprising" given that PW11 also found that monies collected are actually received by the cash office and correct receipts issued.¹⁸³ The Court appeared to attribute this apparent inconsistency to the fact that PW11 had admitted the internal audit report was a draft and that there were inconsistencies therein and yet PW11 never admitted that there was an inconsistency regarding this particular finding. These apparent inconsistencies were construed as a reasonable doubt used to exculpate at least one Accused (see below). The Court did not appear to appreciate the niceties of PW11's findings. Monies collected, as down in the daily collection form, could easily have been paid to the cashier, as evidenced by the receipts, with cashiers still going on to incorrectly log the amount in the cash register. In this regard, PW11's statement that he believed any misappropriation would have been attributable to the revenue collectors or cashiers, is salient (see above).

¹⁸³ The FCC case, p.18.

Williams was acquitted on all three of these charges since although as the FCC Mayor he did have obligations under s. 11 (3) (E) of the Local Government Act 2004 (LGA) to ensure that the financial affairs of the local council were properly managed and controlled, it was however held that **it was impracticable to expect the Mayor to exercise (hands on) control over revenue collection and the recording of finances and to be responsible for discrepancies therein.** PW11 confirmed that Williams as Mayor had nothing to do with the collection of the aforementioned fees. Philips was also acquitted on all three charges. As Chief Administrator, he was under s.31 (4) LGA, responsible for financial and resource management **and daily administration.** He was under s.31 (5) LGA to ensure in the administration of his duties, the accountability and transparency in the management and delivery of local council services. Further, under s. 33 (2) LGA, other staff of the FCC were responsible to the Chief Administrator. However, in spite of all these obligations, the Court found that **Philips played only administrative roles and was not part of the FCC revenue collection mechanism. The fact that Philips did not act on the external auditors' recommendation to recover the money from those concerned for its misappropriation, did not beyond a reasonable doubt, amount to misappropriation under s. 36 (1) ACA 2008.** Thomas was Head Cashier and his office was responsible for collecting revenue from revenue collectors. Thomas' evidence talks about his supervision of sub-cashiers and a licences officer and how the cash office received revenues and issued corresponding receipts but he did not address the alleged discrepancy between the records of the revenue collectors¹⁸⁴ and the cash register's record. **The Court construed the "inconsistencies" in the findings of the internal and external audits (above) as constituting a reasonable doubt, which operated in Thomas' favour, resulting in his acquittal on all 3 charges.**¹⁸⁵ Oddly enough, the **FCC** judgment later states that Thomas is convicted on count 8,¹⁸⁶ a likely typo.

ii. **Audit Findings as the Basis of Convictions For Counts 10, 12, 13: Count 10 charges Alimamy Turay, the Municipal Trade Officer with misappropriation on a date unknown between December 2009 and June 2010 of Le22, 470, 000 collected as market dues. PW11's internal audit found that market tickets issued to Turay were not recorded as sold in the market dues issue ledger, neither was there any other indication that these tickets had been sold and the books could not be located or accounted for.**

Relevant Law: Reg. 50 (4) FMR states that: "*all revenue of Government shall be documented on receipts on specially pre-printed and serially numbered forms printed by the Government Printer.*" Reg. 48 (2) (d) FMR states that; "*receipts shall be given from the official books or forms bearing printed consecutive numbers for every sum paid to the Government.*" Reg. 51 (3) FMR states that; "*no (...) copy of a receipt shall be destroyed; but that they shall be retained and produced for inspection when required.*" Reg. 52 (1) FMR states that; "*a receipt in the proper form shall be issued immediately after public money is received*" and Reg. 42 (2) FMR states that; "*the revenue collectors shall give receipts for (public) moneys paid (...).*" **More importantly, Reg.45 (6) FMR states that; "all issues of receipt books shall be acknowledged in writing by the officer to whom the issue is made."** Reg. 47 (2) FMR also states that; "*the officer in charge shall lock up at the close of each working day all receipt books actually in use.*" Reg. 49 (2) states that; "*a departmental revenue collector shall return early enough to his office to enable him to lodge the receipt books and collections safely in the office.*" Reg. 47 (3) states that; "*any officer in charge who makes collections outside the office shall return to his office before the close of business so that his receipt books and collections can be lodged in safe custody.*" As per Reg. 125 (5) (e) FMR, states that; "*when not in use, revenue receipt books shall be kept in a strongroom, safe or strongbox.*" As per Reg. 111 (3); "*if a Vote Controller is not satisfied that there are adequate facilities in his department for the safe custody of (...) valuables, he shall report to the Accountant- General.*"

The ticket books had been issued to Turay from December to May 2010 and were worth Le22, 470,000.¹⁸⁷ The Court holds that uncontroverted evidence showed that ticket books worth Le22, 470,000 were issued to Turay¹⁸⁸ whereas

¹⁸⁴ The **FCC case**, p.17; "*The amount recorded (as received), by the revenue collectors.*" There is no mention at this point in the judgment of a daily collection record, but one assumes this is what is meant.

¹⁸⁵ The **FCC case**, p.19; "*The Court finds 5th Accused not guilty and he is accordingly acquitted.*"

¹⁸⁶ The **FCC case**, p.34.

¹⁸⁷ The **FCC case**, p.19.

PW11 at one point states that he has no evidence that the books were received by the Accused;¹⁸⁹ the Court appears to only heed the first of these facts. It held that the Prosecution had discharged its burden of proof by proving that Turay was issued with ticket books for which he could not account and concerning which he chose to exercise his right to silence, an unfeasible choice in the face of adverse audit conclusions. He was therefore deemed to have caused the FCC to be deprived of revenue and convicted on count 10.

Count 12 charges Aiah Brimah, the FCC Development and Planning Officer, with misappropriating on a date unknown in May 2009, Le9,800,000 made payable on cheque No. 1007508 and payment voucher No. 4131 purporting to be "payment for allowances to Councilor's Needs Assessment."¹⁹⁰ Count 13 charges Franklyn Garber, the FCC Civil Engineer with misappropriating on a date unknown in May 2009 Le 9,225,000 made payable on cheque No. 1007494 and payment voucher No. 4025 purporting to be payment for rehabilitation work and steel doors at Hargan Street market. PW14's external audit found that apart from the cheques and payment vouchers made out in the names of the Accused for the amounts in both counts 12 and 13, there were no other documents supporting further expenditures. The Prosecution contended that Brimah and Garber cashed the aforementioned cheques. Brimah called only one witness, Alusine Allieu, who testified to being paid Le200,000 out of the Le9,800,000 without signing for it, but he was deemed by the Court to be generally of dubious credibility. Garber's statement talked about work that was to be done or done and problems in payments but did not refer to the Le9, 225,000 or how it was spent. In relation to both situations, PW14's external audit recommended that "all these payments without supporting documents be presented to the Audit Service SL before the response date," presumably meaning, be presented with documents supporting expenditures attached. The FCC responded to this query within 30 days, appreciating the importance of supporting evidence, but apparently not providing the requested documents. Note that for external audit queries, specifically by the Auditor-General, there is an obligation to respond within 30 days as per ss. 64 (3) and 65 GBAA. The other more generalised obligations to respond to audit queries, potentially both internal and external, are found in Reg. 2 FMR and s. 46 (2) GBAA.

A week after the FCC response, PW14 and team conducted a verification exercise with the FCC but were still not given supporting documents. The FCC told them that the absence of supporting documents may have been due to an inappropriate archiving system or movement of documents, concerning which PW14 testified that tardiness has never prevented Audit SL from accepting (requested) supporting documents. The Prosecution proved its case against both Accused through their failure to account for public monies which they undoubtedly received; Brimah was convicted of count 12 and Garber of count 13.

Counts 2, 3,5,6,7 concern allegations that Williams, Philips, Konnehi, the acting treasurer and Kwesi-John, the Deputy Chief Administrator failed to pay PAYE tax to the National Revenue Authority for and on behalf of FCC staff at various points in 2009 and 2010 and count 4 alleges that the same Accused failed to pay the National Social Security and Insurance Trust (NASSIT) contribution for and on behalf of its staff in 2010. All these counts allege a violation of s. 48 (1) (d) ACA 2008.¹⁹¹ These charges failed for several reasons¹⁹² including the evidence of the PW11, who "carried out the audit that culminated into these charges,"¹⁹³ that; "the reason why the City Council could not meet its obligations to NASSIT and NRA is because of the financial constraints they found themselves in."¹⁹⁴ It appears, although it is not fully certain from the judgment, that this may have been PW11's audit finding.

¹⁸⁸ The FCC case, p.19.

¹⁸⁹ The FCC case, p. 19; "the witness said; 'I have no evidence that the books were received by the Accused.'"

¹⁹⁰ The FCC case, p. 21.

¹⁹¹ S. 48. (1) (d) ACA 2008, on the Protection of Public Property states; "Any person who fraudulently or otherwise unlawfully fails to pay any taxes or any fees, levies or charges payable to any public body or effects or obtains any exemption, remission, reduction or abatement from payment of any such taxes, fees, levies or charges, commits an offence."

¹⁹² These charges failed because; ACC prosecutions are not part of the enforcement mechanisms in the NRA and NASSIT's governing statutes; because s. 48 (1) (d) ACA criminalizes failure to pay taxes, levies, charges, but NASSIT social security contribution does not qualify as PAYE tax; because the ACC failed to establish the Accused's responsibility for payment of taxes and failure to pay due to fraudulent or unlawful reasons; because the 4 Accused could not have been simultaneously responsible for remitting sums withheld from employees; because the FCC like other MDAs had set up a payment plan with the NRA in 2011 due to financial constraints so that failure to pay was not unlawful or fraudulent and because no evidence indicates that the monies withheld from salaries of FCC employees left the FCC coffers.

¹⁹³ The FCC case, p.14.

¹⁹⁴ The FCC case, p.14.

iii. Audit Findings Demanded as Essential for the Substantiation of Charges For Count 14:

Count 14 charges Aiah Brimah, the FCC Development Planning Officer with misappropriating on a date unknown between July 2010 and March 2011 Le2,815,000, purported to have been paid to participants at the 3 day sectoral, strategic planning residential retreat at Hill Valley Hotel as daily subsistence allowance (DSA). In evidence is a document indicating that Le151, 397,000 was requested for the retreat and indicating a breakdown of how it was to be used; Le26, 025,000 was for DSA for 78 participants.¹⁹⁵ In evidence also was the cheque made out to Brimah for Le46, 672,000 dated 29 September 2010 and a copy of his ID card from when he cashed it. The Prosecution alleged that it was from this cashed amount that the Le26, 025,000 meant for DSA was to be taken. In evidence is a list of the signatures of retreat participants who received DSA. The Prosecution contended, apparently on the basis of this list of recipients, that Brimah actually expended only Le23, 210,000 as DSA on 88 participants, leaving him with an unspent and unaccounted for Le2, 815,000. Referring to the erroneous statement of ACC investigator, Maada Konneh/PW3 that Brimah withdrew the whole of the Le46, 672,000 for DSA (an inaccurate conclusion against the admitted breakdown of figures),¹⁹⁶ and PW3's statement that the unaccounted for money "was about Le2, 000, 000",¹⁹⁷ the Court refused to rely on the indictment's allegation of an outstanding unaccounted for balance of Le2, 815,000. PW3's erroneous statement regarding DSA was held to call into question his reliability concerning the status of these monies. **Consequently, the Court disregarded PW3's statement that documents submitted by the FCC to the ACC indicated that part of the Le 46,672,000 remained unaccounted for since, it held, PW3 was an investigator and not an auditor. Therefore, it held there was a need for evidence independent of PW3's claim, i.e. an audited account on the issue, for the Prosecution to meet its burden of proof.** Brimah was therefore acquitted of count 14.

In the FCC case, the Court's approach to audits as stated above is slightly labyrinthine. On one hand, it underlines the importance of having audits conducted (see count 23) and of having the FCC cooperate in facilitating audits by complying with requests for information (see counts 12 & 13 above). On the other hand, it designates itself as fully capable of or entitled to accept, interpret or dismiss audit findings (see counts 8,9,10, 15) without seeking further illumination on the technicalities underlying them. Its message is that audits should be carried out where there are allegations/suggestions of corruption but that their calculations/computations/findings may be rubbished without asking incisive questions aimed to clarify.

Hence, the Court reinforces the need to comply with audit requests for information, (counts 12 and 13), but does not discuss the implications of the FCC's near lax responses to audit recommendations once an audit has generated actual findings. Re counts 8 and 9, it did not discuss whether the internal audit recommendation was complied with and does not make much of Philips noncompliance with the external audit recommendation, in spite of its implications for due diligence obligations and intent underlying the facts of the charges, neither did it seek to ascertain who was responsible for the FCC's recapitulation of the external audit findings.

Both the internal and external audit recommendations re counts 8, 9 and 15 highlight the fact that audits and other devices/obligations in the relevant regulatory instruments, the FMR and GBAA for example, are mutually reinforcing forms of financial control. This is not surprising given that s. 6(3)(a) GBAA cited above, states that the point of audits is to evaluate the effectiveness of internal controls, including financial controls. "Internal Controls" are defined in s. 6 (3) (b) GBAA as' "a system which ensures- (i) that financial and other records are reliable and complete, and (ii) adherence to the organisation's management policies, the orderly and efficient conduct of the organization and the proper

¹⁹⁵ The **FCC case**, p.23; Exhibit GG is described as giving the breakdown of how the sum (above) requested for the retreat was to be used. However, what it is not stated is the nature of the document that exhibit GG was. It is unclear whether or not it is a sort of budget statement.

¹⁹⁶ The breakdown in exhibit GG that is.

¹⁹⁷ The **FCC case**, p. 23; "The unaccounted for money was about Le2, 000,000. The Witness did not show how he came to this figure of Le2, 000, 000; in any case he says it was about that."

recording and safeguarding of the assets and other resources of the organisation." According to s. 163 (3) FMR, the internal audit unit annually prepares a programme of audit which factors in the budgetary agency's existing system of internal controls; i.e. it refers back to the obligations in the FMR/GBAA.

It is unclear if the internal audit recommendation to ensure frequent on the spot checks to ensure transparency in the cash office was observed by the FCC, unlikely since not raised as a supporting argument by the Defence.

Relevant Law: A similar obligation exists under Reg. 63 (1) FMR which states that; "a Vote Controller shall ensure that his accounts are properly maintained and are correct at all times" and Reg. 63 (2) GBAA which states that; "a Vote Controller shall in relation to sub regulation 1 appoint an officer who shall examine and check daily, all entries in cash books and other books of account, the counterfoils, or copies of receipts or original documents to verify the correctness of the transactions." As per Reg. 63 (3) FMR; "the officer appointed under sub regulation 1 shall not have taken part in the work to be checked" and as per Reg. 63 (4) FMR; "The checking officer shall after checking the cash books and receipt books initial and date them in such a way that the period and items covered by the check may be clearly identified." Further, the Vote Controller has an obligation under Regs. 64 (1) through (3) GBAA to arrange at least quarterly, a surprise check.

Similarly, although the Chief Administrator did not comply with the external audit recommendation to retrieve the missing monies from the parties concerned, similar obligations do exist under the FMR and GBAA

Relevant Law: Obligations to pay monies due to a department or institution or to retrieve monies do exist under s. 64 (6) GBAA, and Reg. 165 (2) FMR, although these apply more specifically to demands made in audit reports by the Auditor-General.

This mutual reinforcement between audit recommendations and the above cited provisions of statutory instruments underscore that the crux of corruption cases concerning multiple senior level Accused within organizations often concern the failure to exercise due diligence obligations. Audit recommendations tend to relocate the very due diligence obligations of a statutory instrument that were initially ignored, tend to simply revert back to these or the next logical course of action. The more similar the audit recommendation to a pre-existing statutory obligation, the more compelling the Prosecution case should be, in terms of attributing fault for a loss, since that audit recommendation underscores the breach of a statutory obligation. Breaches of statutory obligations of diligence can then be construed conjunctively with the ACA 2008, to reinforce the elements of offences under this latter Act; for e.g. recklessness.

Where audit recommendations tend to revert back to a legal/statutory obligation and these recommendations are not complied with, it is submitted that that inaction could infer guilt, since at the very least, it demonstrates an all encompassing lack of diligence

towards professional obligations i.e. general professional negligence. At the most, it demonstrates wilful/ intentional breaches of that legal obligation.

As concerns the findings that the Accuseds' statutory obligations, e.g. under the Local Government Act (LGA), only imposed administrative roles/responsibilities on them in relation to financial/organisational management, this is disputable since the Accused have extensive and detailed co-relative obligations on these areas in other statutes.

Relevant Law: In this light see the following:

- Reg. 49 (1) FMR makes the Vote Controller responsible for ensuring that a proper system exists for the safe custody, recording and proper use of all departmental revenue receipts, licences and other documents issued for the receipt of public moneys in his Department/office.
- Reg. 156 (3) FMR states that in the case of any loss/ failure to collect revenue or debts in which defects in systems, procedures or instructions appear to have been either wholly or partially responsible, the Vote Controller, Accountant-General or Financial Secretary, as appropriate, shall take necessary action to correct the fault.
- Reg. 103 (3) FMR states that, a Vote Controller shall be responsible for the keeping of proper accounts in his department or office (...).
- Reg. 2 FMR states that, (...) A Vote Controller shall -a) check all cash in his charge and verify the amounts with the balances in the cash books; c.) Promptly make good any deficiency in cash for which he is responsible; d.) ensure that all books of account under his control are correctly posted and kept up to date e.) report to the Financial Secretary any apparent defect in the procedure for revenue collection (...); i.) maintain efficient systems of financial management and control; p.) collect departmental revenues efficiently; q.) report promptly to his Minister or other appropriate authority or both, instances of fraud or corruption; r.) initiate the disciplining of staff who contravene the law.
- Similarly under S. 46 (2) GBAA, it shall be the function of the Vote Controller to; (b) maintain efficient systems of financial management and control; (i) collect departmental revenues efficiently; (j) report promptly to his Minister or other appropriate authority or both instances of fraud and corruption; (k) initiate the disciplining of staff who contravene the law.
- S. 46 (5) GBAA states that the delegation of any (of his) functions (...) shall not relieve the Vote Controller of any personal accountability or responsibility.
- Reg. 40 (1) FMR states that the Vote Controller is personally responsible for ensuring that adequate safeguards exist and are applied for the assessment, collection of and accounting for such revenues and other public moneys relating to their departments or offices.
- S. 61 GBAA states that the responsibility of the Auditor-General for examining and certifying the public accounts, or for auditing other Government accounts does not relieve any officer responsible for the keeping or rendering of such accounts from his duty to comply and to ensure the compliance of his subordinates with the provisions of this or any other enactment or with any regulations made or directions issued thereunder.

- Reg. 3 (2) FMR states that (...) any public officer whose duties require him to render accounts shall be responsible for any inaccuracies in those accounts.
- Reg. 150 (3) FMR states that the Vote Controller shall, on receiving the report (of loss or shortage of public monies...receipts) submit a report thereon to the Accountant-General and Auditor-General, and if the loss or shortage is of a large or unusual nature, a copy of this report shall also be submitted to the Financial Secretary.
- Reg. 150 (5) FMR states that the Vote Controller shall immediately on receiving the report of the loss or shortage arrange for an investigation to be conducted.
- Reg. 150 (6) FMR states that without prejudice to sub-regulation 5, where the Vote Controller suspects that misappropriation, theft or fraud is involved, he shall make an immediate report to the Police.
- Reg. 151 (1) FMR states that, the Vote Controller shall, after investigating the loss or shortage, submit a report thereon to the Accountant-General with a copy to the Auditor-General.
- Reg. 151 (2) FMR states that, the Report which shall bear the signature of the Vote Controller, shall state; a.) The nature of the loss or shortage and the amount involved; b.) the place, and if known, the date on which the loss or shortage occurred; c.) the date and if applicable, time of the discovery of the loss or shortage; d.) the exact circumstances in which the loss or shortage arose; e.) whether the loss or shortage was the result of a failure to observe current accounting instructions; f.) whether the loss or shortage was due to a fault in the accounting system; g.) whether the loss or shortage was discovered as a result of an internal check and if not, why the internal check failed to reveal it; h.) whether misappropriation, fraud, negligence or other irregularity was involved; i.) the name and designation of the officer considered to be responsible for the loss or shortage; j.) whether the officer involved or responsible has made good the loss or shortage; k.) whether the officer's suspension or interdiction from duty is recommended. l.) whether disciplinary or surcharge action is recommended and against whom and if not why not; m.) whether the loss or shortage was reported to the police and (if so, the Police report shall be attached); and n.) the measures taken or recommended to prevent the recurrence of a similar loss or shortage.

Taken together, all these legal provisions strongly suggest that the Accused were expected to act to guarantee/ensure certain desired outcomes, including the efficient and legitimate employ of resources; these expected acts often involve the exercise of control over subordinates. Compliance with audit recommendations demonstrates a belated attempt to exercise these very powers/duties and that any prior lapse was inadvertent. Although complete compliance may be rendered impracticable by circumstances, steps taken towards that end, may well serve as proof of diligence.

Regulations on audits are meant to maximize their impact. They are not only financial investigations clarifying the accuracy of accounts; expenditures, revenue, losses etc. but also as per their recommendations may serve to remedy inconsistencies detected and prevent recurrences of the ineptitudes that lead to such inconsistencies. It is this criticality of the function of audits that makes it shocking that the FCC appeared to brush off audit queries and recommendations, notably requests for information, without which the function of audits is totally undermined.

Although the FCC seemed to respond with a certain ambivalence/laxity to audit queries and recommendations in counts 7,8,12 and 13, the GBAA and FMR do create obligations for compliance with audits in the following sections. Popularly, audits tend to be seen as the most crucial form of financial control since, being a practical computation, they are not dependent on human discretion/will and may "save the day" where all else fails. As one interviewee puts it, since the advice of government accountants is sometimes disregarded, they "just limit their role to verifying retirement documents and leave the final assessment about whether" the (legitimate) process was followed to the auditors.¹⁹⁸ Another interviewee describes internal and external auditors as the means and mechanisms in place for monitoring the monitors including the DFR and the FO.¹⁹⁹

Relevant Law: On obligations for compliance with audits see the following:

- Reg. 163 (8) FMR states that, the Chief Internal Auditor shall ensure that the status and powers of the internal audit function in each agency of government conform to internationally accepted standards, in particular (...) its access to information.
- Reg. 2 FMR states that, in the performance of his functions under the GBAA 2000; a Vote Controller shall (k) ensure effective internal audit and the operation of an audit committee; f.) produce, when required by the Accountant General, Head of Internal Audit Unit of the Ministry, or Auditor General or by such officers as may be authorized by any of the above, all cash books, records, vouchers or other items of value in his charge; s.) submit timely financial reports; u.) promptly answer all audit queries.
- S. 46 (2) GBAA states that, it shall be the function of a Vote Controller to, d.) ensure effective internal audit and the operation of an audit committee; l.) submit timely financial reports; n.) promptly answer all audit queries.
- Reg. 4 (1) FMR states that, the Accountant-General shall maintain or cause to be maintained by each Vote Controller a register of all audit queries and audit inspection reports. Reg. 4 (2) FMR states that, the register shall contain, a.) the reference and the date of the audit query or report and, b) the date on which the audit query or report was answered or otherwise dealt with. Reg. 4 (3) FMR states that, the Vote Controller concerned shall examine and initial the register at the end of every month.
- S. 9 (4) GBAA states that, notwithstanding the other provisions of this Act or any other enactment, the Accountant-General shall have free access at all reasonable times to all files, documents and other records relating to the accounts of every budgetary agency and shall be entitled to require and receive from members of a budgetary agency such information, reports and explanations as he may deem necessary for the proper performance of his functions.
- S. 64 (2) GBAA states that, the Auditor-General shall as a result of the audit conducted by him, make such queries and observations addressed to the Accountant-General or any other person and call for such accounts, vouchers, statements, documents and explanations as he may think necessary.

¹⁹⁸ Interview with Senior Accountant, MOHS, Foday Kande Kamara, 5 November 2015.

¹⁹⁹ Interview with Accountant, Ministry for Youth Affairs, Bashiru Kamara, 13 November 2015.

- S. 64 (3) GBAA states that, every query or observation under subsection (2) received by the Accountant-General or any other person shall, within thirty days after its receipt by that person, be returned by him, with the necessary reply to the Auditor-General.
- S. 65 GBAA states that, (...) every person who fails or refuses to reply to an audit query or observation within the appropriate period specified in subsection (3) of section 64 shall, if the Auditor-General so directs, have his emoluments and allowances withheld for so long as the officer fails to reply.
- S. 64 (6) GBAA states that, every sum specified (...) by the Auditor-General to be due from any person shall be paid by that person to the department, or institution, as the case may be, within thirty days after it has been so specified.
- Reg. 165 (1) FMR states that, a Vote Controller, after consultation with the head of his internal audit department and other relevant officers, shall respond to a report or management letter from the Auditor General and to relevant provisions of a Public Accounts Committee report within 30 days of receipt, explaining how each irregularity cited in the report or letter arose and the corrective action taken or to be taken, with copies to the Accountant General and Chief Internal Auditor.
- Reg. 165 (2) FMR states that, failure to respond within 30 days or to take effective corrective action, including initiation of changes to strengthen systems, disciplinary action against culpable officers and recovery of public monies shall be treated as financial misconduct.
- Reg. 246 (1) FMR states that a Vote Controller or accounting officer and any other public officer for a budgetary agency commits an act of financial misconduct if he is willfully or negligently; a.) fails to comply with the requirements of these Regulations or any other financial instructions issued by the Ministry (...).
- Reg. 246 (2) FMR states that, a charge of financial misconduct against a Vote Controller, an accounting officer or any other public officer shall be investigated, heard and disposed of in terms of the conditions of appointment or employment applicable to that officer.
- Reg. 246 (3) FMR states that, where an act of financial misconduct is alleged, the matter shall be immediately reported to the Financial Secretary and the Establishment Secretary.
- Reg. 246 (4) FMR states that, if a Vote Controller, an accounting officer or any other public officer is alleged to have committed financial misconduct, the establishment secretary shall ensure that an investigation is conducted into the matter and if misconduct is confirmed, shall ensure that a disciplinary hearing is held in accordance with the terms and conditions of appointment or employment applicable.
- Reg. 246 (5) FMR states that, the establishment secretary shall ensure the investigation is instituted within 30 days from the date of discovery of the alleged financial misconduct.
- Reg. 246 (6) FMR states that, if the allegations are confirmed, the Vote Controller shall ensure that appropriate disciplinary or criminal proceedings are initiated immediately.

- Reg. 246 (8) FMR states that, the responsible Vote Controller shall promptly advise the Minister and the Auditor General of any criminal charges laid against any person for financial misconduct under this regulation and the act.
- Reg. 246 (9) FMR states that the Ministry may direct a budgetary agency to lay charges of criminal financial misconduct against a public officer if the responsible Vote Controller fails to take appropriate action.

What is evident from the above provisions is that although there are time-bound legal obligations to respond to the audit queries and recommendations from the Auditor-General, there appear to be no such parallel sanctionable obligations in regard to internal and external audits (not undertaken by the Auditor-General), other than the obligations specified in Reg. 2 FMR and 46 (2) GBAA incumbent on the Vote Controller. A breach of these provisions, in light of Reg. 246 (1) FMR, may amount to financial misconduct which could incur either disciplinary hearings or criminal proceedings under Reg. 246 (6) FMR. Possible suggestions in this regard would be for there to be more regular internal audits and detailed compelling obligations attached to both internal and external audits (not undertaken by the Auditor-General), to respond to audit queries/recommendations within specified time frames.

Also notable is that, the FMR require public auditors to be separate from management and the accounting functions of a budgetary agency; for example, Reg. 163 (2) states specifically that, the head of a budgetary agency's internal audit unit *shall be independent of the finance and accounting function of the agency*; and Reg. 163 (8) states more generally that, the Chief Internal Auditor shall ensure, that the status and powers of the internal audit function in each Ministry, Department and agency of government conform to internationally accepted standards, in particular *its independence from operational management* (...). The testimony of PW11 in respect of count 23 raises questions as to whether this requirement for independence was observed. Count 23 charged Williams and Philips with misappropriation of Le7, 640,000 purporting to be payment made to one Ibrahim Kamara as "*incentive for Revenue Enforcement team.*" The Prosecution contended that there was no such genuine incentive and that this was in reality a scheme enabling misappropriation of public funds by the Accused. PW11 testified that in 2009 the FCC decided to remunerate people who had put in extra hours and done special work, so it gave incentives to revenue collectors and he, PW11 signed for Le 100,000 on the list of recipients. The Court acquitted Williams and Philips of count 23 based on PW11's evidence and corroborating evidence of the incentive from PW7 and the ACC investigator. The question is how could PW11 have been an internal auditor and also a revenue collector and whether this dual function did not violate the aforementioned provisions.²⁰⁰ However, it is submitted that such dual functions could be permissible if the activity concerned, comprised more than the simple collection of revenue, so that there was scope for PW11's auditing function within it; for example, the evidence refers to not just to revenue collectors but to a revenue *enforcement team.*

²⁰⁰ There would be a violation for example if he were the head of the agency's internal audit unit. However, a revenue enforcement team does appear to be unlikely to be part of "operational management."

Overview

- *The key question is how to control the controllers, i.e. those with principal access to public funds?*
- *Financial management/control problems can either be the absence of written relevant financial controls, the unclear or incomplete expression of written applicable financial controls or the ignoring of existing written financial controls.*
- *An effective system of financial controls means you have opportunities spanning different transactional phases to clamp down on inappropriate practices.*
- *Strengthening information and knowledge management systems and aiding ACC investigators in developing their knowledgebase of the employ of IM systems for investigations is key to improving accountability.*
- *Legal obligations on IM/KM must be clear, thorough, clearly understood and human capacity in this field (IM/KM/Record Management) beefed up.*
- *Ss. 24 (1), 24 (1) (c), 24 (3) and 24 (4) of the GBAA and Regs. 69 (1), (2), (3) of the FMR on the seeking, receipt and maintenance of grants should be harmonized and the meaning of key terms and concepts made more explicit. These include; "external grants," "domestic grants," "support of government budget programme," "programme," as opposed to "government project," and there could be more clarity on whose personal responsibility it is to "notify the department" of the receipt of a grant. These apparently slight instances of haziness may work collectively to foster corruption.*
- *There are aid coordination bodies at various levels; Ministerial, Central Government and Nation-wide. The MOHS or e.g. hosts a donor liaison office and the Integrated Health Programmes Administration Unit, for now non-functional. MOFED hosts an aid coordination and management division. At the national level, there is DACO, the National Directorate Development Assistance Coordinating Office. If these bodies are to do more than facilitate and organize grant seeking, for e.g. aid in the monitoring of disbursements and in ensuring proper retirement through the programme Finance Officer and the Director of Financial Resources, then it would be necessary, to have a single regulatory instrument/policy statement spelling out the roles of these distinct bodies, their relationship with each other; demarcating the bounds of their unique responsibilities and the possible areas of overlap or more direct coordination/ interaction.*

- *The situation that arose in Ken Gborie where during the trial the defence sought to use the mixing of funds in the account in its favour arguing the imprecision of the particulars of the charges, and the challenges to evidential clarity apparent in the judgement, on the issue of the source of funding of individual programmes, could be avoided where separate grants intended for separate programmes, are paid into separate programme accounts, which is what donors actually prefer and which is possible under s. 8(1) (ii) GBAA.*
- *It's also worth considering whether heads of department/units, should also be Programme Implementers/Officers and account signatories simultaneously. This coincidence of roles in single individuals created a situation in Ken Gborie, wherein the Accused were enabled to overstep the bounds of their distinctive roles as Director and M & E officer respectively, and even their distinctive roles as Programme Implementers, into the domain of financial management. It's worth considering alternate possible scenarios which do not amount to the threefold coincidence.*
- *MOHS standard good practice for account signatories is that there should be 2 signatories from the professional wing of the MOHS and 2 from the administrative wing and that these should be further subdivided into category A and category B signatories; all transactions that require signatures must be signed by one category A and one Category B signatory, each from either wing. The default signatories for most programmes are the Permanent Secretary and the Director of Financial Resources from the administrative wing and the Chief Medical Officer and the Programme Manager/Director/ Coordinator from the professional wing. Since Ken Gborie and Magbity were both from the professional wing, the choice of signatories suggests a weakness incipient at the very point of opening the account and setting up a mandate card. The choice of signatories therefore, should be particularly heeded to avoid any similar recurrence.*
- *Monitoring and control occur principally at the request and retirement stages and in between, there is the obligation to comply with the legitimate procurement process for contractual payments/ the disbursement of public funds; Reg. 70 FMR.*
- *Reg. 73 (1) FMR states:"All disbursements of public money shall be properly supported by payment vouchers" Reg. 74 (1) FMR states that such vouchers for contractual payments shall be supported by documentary proof of having followed the legitimate procurement procedure. Retirement of these stipulated documents can be made to the concerned unit within MOHS, to the donor or to MOFED, depending on the source and pathway of the funds.*

- *The absence of supporting documents for the disbursement of public funds was the crux of the case, in the ABC, the SLMA, the FCC, the Daoh and the Ken Gborie cases.*

- *It is suggested that contracts that bypass the normal procurement procedure should be deemed to be null and void if discovered in time, that this could be stipulated in the internal regulatory instruments of MDAs and that the current review of the Public Procurement Bill offers an unmissable opportunity for this change.*

- *The rule on vouchers also extends to payment of government staff as per Reg. 96 (2), (5), (3) FMR. As per the experience in the ABC case, staff members that do sign salary vouchers, should only do so at the point of receipt of cash and not before.*

- *The absence of a definition for the term, "retirement" in the regulatory instruments may have contributed to the confusion in the Prosecution's in case in Daoh. In Daoh, the Prosecution failed to observe the basic legal principle of; establishing the existence of an obligation and its source ("retirement" of fuel expenses and per diem), establishing a breach of said obligation and establishing that the Accused were at fault in causing in the breach. The Prosecution failed to meet the burden of burden of proof with regard to step 1; establishing the obligation and its source.*

- *It's unclear from the judgments reviewed whether for requests for access to budgetary allocations submitted with Boards of Directors, for those MDAs that are so structured, there are requirements for their internal financial accuracy and their consistency with Parliamentary approved expenditure heads. Since there are no such requirements in the FMR and GBAA, they should at the very least be expressed in internal policy documents.*

- *In Lukuley, parliamentary appropriations were made to the SLMA under the expenditure heads of, "facilitation and protocol" and "community relations." There is no further description in the judgment of what Parliament understood these terms to mean. How such vague budget headings made it into the Parliamentary approved budget, and why the Board of Directors when processing such requests for payment did not require more detail, is shocking especially in a context where corruption is rife. There are also a number of legal provisions that should have arrested this situation, but did not; s. 20 (2) GBAA makes a budgetary agency's budget committee responsible for preparing the agency's annual budget and monitoring its expenditure and results. Management also has a role in putting together a budget proposal. S. 20 (3) GBAA requires MOFED's internal audit department and budget bureau to monitor budget committees. S. 20 (1) GBAA states that MOFED's budget bureau shall, under the supervision of the Financial Secretary, be responsible for preparing and monitoring the budget in collaboration with the budgetary agencies. It is even more shocking that such vague budget headings*

managed to secure Parliamentary approval; Reg. 12 FMR requires each expenditure head to be described in the "ambit to the vote." S. 53 (1) GBAA obliges the Vote Controller to submit at the end of each month, information on revenue and expenditure to the Financial Secretary or members of Parliament. S. 53 (2) GBAA obliges the Minister of Finance to submit a summary of government receipts and payments on a quarterly basis to Parliament.

- *Donors must also clearly stipulate in their conditions/instructions that funds sourced from their grants must be retired either with donors, the Department/Ministry concerned or to MOFED; whichever it is, it must be clearly spelled out. Donors should also actively liaise with the concerned department so that they are all on the same page; London Mining Corp. apparently failed to do this in the ABC case. From a supra-national perspective, donors must pre-assess the financial management capacity of recipients.*
- *The Central Government i.e. Departments and Ministries should also exercise due diligence. In the ABC case, in spite of making appropriations to the agency and holding meetings for budget discussions, the MOIC was never able to discern the ABC's receipt of LMC's grants, or the fact that the ABC was engaged in activities unsupported by the MOIC.*
- *Banks must also exercise due diligence when dealing with MDAs and public funds. Bank staff must at least know that distinct sets of rules likely apply to specific types of transactions sought to be carried out by MDAs as distinct from regular Bank customers, or even private non-natural persons. The exercise of due diligence by banks would uncover contractual payments where legitimate procurement processes have not been conducted. This is especially because there are a number of securities which contractors must take out once they have been awarded a contract and which require banks to be diligent in verifying that the legitimate procurement process was observed. Additionally, should due diligence background checks conducted by banks on contractors reveal attempts to deceive, banks should be obliged to communicate this to the MDA concerned.*
- *The experience in the FCC case suggests that reserve accounts should only be accessed following collective decisions by either a Board of Directors or Management. The establishment of withdrawal thresholds with regards to the principal signatory/Vote Controller should be actively discussed and achieved by a collective decision and the knowledge thereof be thoroughly circulated in the MDA.*
- *Cheques issued by MDA's should be made out to named individuals/institutions and never to payee/cash as was the case in some of the judgments reviewed; Lukuley, Ken Gborie and the ABC case.*

- FOs are attached to programmes and are responsible for the disbursement of programme funds. In Ken Gborie, the FO was repeatedly bypassed and the Director and M & E Officer DPI took on the responsibility of disbursing/administering project funds. At the MOHS, programme/project implementation requests are submitted by programme implementers through the Chief Medical Officer to the Permanent Secretary for approval. The Permanent Secretary reviews the request, then forwards it to the Director of Financial Resources (DFR) authorising the latter to process it. The DFR assesses the request and if valid, minutes it to the Finance Officer (FO) who also reviews the request's validity; checks budget accuracy and adherence to procurement procedure, and then processes it, by preparing a payment voucher and writing out a cheque in line with the DFR's instructions. These are then reviewed by the DFR. The cheque is then signed by the account signatory. Before retiring documents, the FO must take them to the DFR to be verified.
- The GAVI Draft Audit Report of 2012 and the ACC investigation into the Ken Gborie case and the judgment itself, found that the DFR had been uninvolved in the financial management of GAVI HSS programme funds at the DPI. The financial management had been taken up by the Director of the DPI and the M & E officer.
- It appears that the approach to financial management in Ken Gborie that spawned the offences was simply part of a probably ongoing and longstanding tacit understanding of the suitable manner of managing donor funds, taken advantage of by the Accused. The fact that there are no provisions on the FO, the DFR or the relationship between them in the GBAA or FMR or anywhere else may well be a critical factor behind what all interviewees confirm in different ways; that there is a culture of programme officer/managers hogging the financial management of public/donor funds bypassing FOs and disregarding the advice of FOs/accountants with regards to following the legitimate procurement process. Apart from the obvious suggestions of encapsulating these roles and their interrelationship in regulatory instruments or internal policy documents, another possible suggestion could be to make donor representatives signatories to programme accounts.
- FOs may also consider making it a standard practice to put in writing pre-and post implementation clarifications made to programme implementers, of the requisite form of retirement attached to specific sums.
- Reg. 6 FMR states that each budgetary agency shall have a Chief Finance Officer (CFO) to assist the Vote Controller in the effective financial management of an agency, but there is no CFO at the MOHS. The functions of CFO are said to be performed by the Senior Accountant and DFR. The review makes crystal clear that the existence of designated offices in and of themselves matter little, rather what matters is that, the functions they have been assigned necessarily must be fulfilled one way or the other. If therefore the functions of the CFO as assigned by the FMR are to be divided up between the Senior Accountant and the DFR of the MOHS for e.g. then, this fact should be expressly recognised by these offices again ideally in writing. Clearly the fact of the absence of a CFO at the MOHS is further complicated

by the absence of written provisions on the offices of the DFR, the FO and the Senior Accountant in the GBAA and FMR. Where internal policy documents encapsulate these roles, it should be clear in what way they assume the necessary functions of the CFO.

- *The term, "financial management" would also have benefited from greater clarity and elaboration in the FMR, GBAA or internal policy documents and judgments concerning this issue would do well to refer to such sources where relevant, since the sense to be derived from terms is necessarily always contextual.*

- *Audits feature in 3 of the 8 cases reviewed; The FCC, Ken Ghorie and the Daoh case. Audits measure, evaluate and report upon the effectiveness of internal controls. In the FCC case, the Court based some charges on audit findings, considered some audit findings too insubstantial for grounding convictions for some charges, and demanded audit findings as essential for the substantiation of at least one charge. The Court underlined the importance of having audits conducted and of having the FCC cooperate in facilitating audits by complying with requests for information, but designated itself as fully capable of or entitled to accept, interpret or dismiss audit findings without seeking further illumination on the technicalities underlying them. Thus, it signalled that audits should be carried out where there are allegations/suggestions of corruption but that their findings may be rubbished without asking incisive questions aimed to clarify.*

- *In the FCC case, the Court did not discuss the implications of the FCC's near lax responses to audit recommendations once an audit has generated actual findings. It did not discuss whether the internal audit recommendation was complied with and does not make much of noncompliance with the external audit recommendation, in spite of its implications for due diligence obligations and intent underlying the facts of the charges and in spite of the fact that the GBAA and FMR do create obligations for compliance with audits.*

- *In the FCC case, the Court declared PW11's internal audit findings inconsistent with each other and contested the accuracy of PW14's external audit finding by declaring it inconsistent with a finding of the internal audit. The Court appeared conveniently to prize and accept as authentic only a single finding among the lot of findings generated by both audits. This it did without clarifying the temporal scope of the internal audit, the sources (interchangeable terms used) and the inter-relationship between the 2 reports. There was, literally, no inconsistency the findings of PW11; it was possible for receipts issued to revenue collectors by cashiers to tally with the daily collection form, whilst the amount logged into the cash register as received differed from these.*

- *All the above inconsistencies in the Court's approach to the issue of audits in the FCC case, suggests that their salience as the last bastion of financial control was*

not really given the pride of place it deserves.

- *Popularly, audits tend to be seen as the most crucial form of financial control which when all else fails "save the day." They are the only means of monitoring the monitors including as in Ken Gborie, the DFR and the FO. This criticality of the function of audits makes it shocking that in the FCC case, the FCC appeared to brush off audit queries and recommendations, notably requests for information, without which the function of audits is totally undermined.*
- *The FCC told Audit SL that the absence of supporting documents may have been due to an inappropriate archiving system OR movement of documents. This alternate explanation shows clearly that the FCC was in complete darkness about the location of the required documents/had not kept tabs on them.*
- *In the FCC case, the Court appears to let slide the fact that auditor witnesses employ different terms interchangeably to refer to the documentary sources forming the bases of their audits. This was also the approach taken to some contradictions in testimony of PW11. Diligent clarifying approaches cost little and would go a long way especially in the long term towards enhancing the cause of justice.*
- *It is surprising that the Court in examining the liability of the Accused in the FCC case especially the Vote Controller as concerns issues of administration, financial management; the collection and recording of revenue, found that they could only have been expected to exercise purely administrative roles and not hands on control over financial matters. It is surprising that the Court did not seek to ascertain what their roles and responsibilities were in other public administration/financial management related laws such as the more obvious GBAA and FMR; provisions in the latter suggest that a more hands on role was indeed legally mandated.*
- *Re the preceding point; compliance with audit recommendations would have demonstrated a belated attempt to exercise these very powers/duties and that any prior lapse was inadvertent. Although complete compliance may be rendered impracticable by circumstances, steps taken towards that end, may well serve as proof of diligence.*
- *In the FCC case, both the internal and external audit recommendations highlight the fact that audits and other devices/obligations in the relevant regulatory instruments, the FMR and GBAA for example, are mutually reinforcing forms of financial control.*

- *This mutual reinforcement between audit recommendations and the controls in regulatory instruments underscore that the crux of corruption cases concerning multiple senior level Accused within organizations often concern the failure to exercise due diligence obligations. Audit recommendations tend to relocate the very due diligence obligations of a statutory instrument that were initially ignored, tend to simply revert to these or the next logical/practical course of action. The more similar the audit recommendation to a pre-existing statutory obligation, the more compelling the Prosecution case should be, in terms of attributing fault for a loss, since that audit recommendation underscores the breach of a legal, written obligation. Breaches of statutory obligations of diligence could then be construed conjunctively with the ACA 2008, to reinforce the elements of offences under this latter Act; for e.g. recklessness.*

- *Where audit recommendations tend to revert to a legal/statutory obligation and these recommendations are not complied with, it is submitted that that inaction could infer guilt, since at the very least, it demonstrates an all encompassing lack of diligence towards professional obligations i.e. general professional negligence. At the most, it demonstrates wilful/ intentional breaches of that legal obligation.*

- *What is evident from the GBAA and FMR is that although there are time-bound legal obligations to respond to the audit queries and recommendations from the Auditor-General, there appear to be no such parallel sanctionable obligations in regard to internal and external audits (not undertaken by the Auditor-General), other than generalised obligations in Reg. 2 FMR and 46 (2) GBAA incumbent on the Vote Controller, to "promptly answer all audit queries." A breach of these provisions, in light of Reg. 246 (1) FMR, may amount to financial misconduct which could incur either disciplinary hearings or criminal proceedings under Reg. 246 (6) FMR. Possible suggestions in this regard would be for there to be more regular internal audits and detailed compelling obligations attached to both internal and external audits (not undertaken by the Auditor-General), to respond to audit queries/recommendations within specified time frames.*