

DIMENSIONS IN CONSTITUTIONAL REFORMS IN THE COMMISSION ON AUDIT

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This article will focus on the audit laws of the Philippines, the influence of the resolutions of the International Organization of Supreme Audit Institutions (Intosai) on the audit laws and the reforms embodied in the proposed 1986 Constitution for the Commission on Audit.

Present Laws and Intosai Resolutions

One of the most vital institutions of government is the Commission on Audit (COA). It has a significant role in nation building and, through the zealous exercise of its vast powers, can contribute immensely to effective public administration. Gerald Caiden observes that state audit prevents chaos in public bookkeeping and ensures open, regular, efficient and responsive government. The COA has been developing into a facilitative and alert institution, having been endowed with substantial powers under Article XII of the 1973 Constitution and the Government Auditing Code, including the power to undertake audits that will improve the efficiency and effectiveness of government operations.¹

A country's laws are enriched by innovations from its own experiences as from the positive experiences of other countries in law reform. The audit laws of the Philippines are also the product of years of experience and con-

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¹ Article XII of the 1973 Constitution has the following provisions, the powers and functions:

"Section 2(1) Examine, audit, and settle, in accordance with law and regulations, all accounts pertaining to the revenues and receipts of, and expenditures or uses of funds and property owned or held in trust by, or pertaining to, the government, or any of its subdivisions, agencies or instrumentalities, including government-owned or controlled corporations, keep the general accounts of the government and, for such period as may be required by law, preserve the vouchers pertaining thereto, and promulgate accounting and auditing rules and regulations including those for the prevention of irregular, unnecessary or extravagant expenditures or uses of funds and property."

(2) "Decide any cases brought before it within sixty days from the date of its submission for resolution. Unless otherwise provided by law, any decision, order or ruling of the commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof."

(3) "Submit to the President, the Prime Minister, and the National Assembly, within the time fixed by law an annual financial report of the Government, its subdivisions, agencies and instrumentalities, including government-owned or controlled corporations, and recommend measures necessary to improve the efficiency and effectiveness. It shall submit such other reports as may be required by law."

(4) "Perform such other duties and functions as may be prescribed by law."

cepts derived from the resolution of other countries' audit institutions which have presented the legal reforms undertaken in their own countries in the congresses held by the International Organization of Supreme Audit Institutions (Intosai).²

The Intosai, comprised of 152 member countries, is a major source of reforms in audit laws and serves as a forum for the exchange of views on public auditing and management controls. It also sponsors the exchange of audit experts and consultants among member countries. Changes in the national audit laws encompassing innovations such as comprehensive or effectiveness audits and measures to enhance the independence of the supreme audit institutions were among the major topics in the past congresses held.

In the 1974 Congress in Montreal, Canada, the Intosai pointed out that audits must respond to the needs of the various levels of the organization and the clients that the organizations are mandated to serve; and that audits must be conceived, interpreted and oriented towards the attainment of the goals of the auditee.³ Similarly, the "Lima Declaration of Guidelines of Auditing Precepts" adopted by Intosai member countries in its 1977 Congress, stated among other things, that audit should result in profound changes in public administration, including the enhancement of managerial effectiveness in decision-making as well as the establishment of internal administrative controls and norms that regulate the different aspects of an organization such as personnel, systems, supply, treasury, accounting and planning.⁴ Thus, audit recommendations are the basis for administrative improvements and effectiveness in public management.

To ensure and maintain its effectiveness in auditing the various agencies of government, Intosai suggested in its conference in Brussels (1959) and Lima, Peru, (1977), that certain measures be adopted by the countries. These include the establishment of the audit body in the constitution itself, providing for its structure and powers or jurisdiction, the qualifications, terms of appointment and security of tenure of the highest officials of the supreme audit institutions, and budgetary autonomy.⁵ A study conducted in

² The International Organization of Supreme Audit Institutions (Intosai) was organized in Havana, Cuba 1953 by supreme audit institutions of various countries, under the leadership of Emilio Fernandez Camus of Cuba. Membership is open to supreme audit institutions of countries which are members of the United Nations or its specialized agencies. Its General Secretariat is in Vienna, Austria. Cruz, Domingo, (ed.) *Thirty years of Intosai*, Commission on Audit xxxp.xv-xvii, Commission on Audit, Quezon City, 1983.

³ Intosai encourages the broader approach to audit. This approach has the following elements: (1) fiscal accountability which should include fiscal integrity, full disclosure, and compliance with applicable rules and regulations; (2) Managerial accountability, which should be concerned with efficiency and economy in the use of public funds, property personnel and resources; and (3) program accountability which should be concerned with whether government program and activities are achieving the objectives established for them with minimum costs and maximum results. *Ibid*, p. 68.

⁴ *Ibid*. p. 98-100.

⁵ *Ibid*. p. 33, 87-89.

1984 covering 60 member countries of the Intosai, showed that 57% of the supreme audit institutions were created by the constitutions while 43% came about by legislation.⁶ Undoubtedly, the Government Auditing Code of the Philippines bears the influence of innovations suggested by Intosai, as the Code embodies a number of reforms, including the distinctive feature of independence, a well-defined jurisdiction, and clear statements of auditing and accounting policies and principles.⁷

The 1973 Constitution clearly defines the structure and powers of the Commission on Audit and prescribes the qualifications and tenure of the Chairman and the Commissioners, but is silent on fiscal autonomy. Nevertheless, subparagraph (1) of Section 24 of the Government Auditing Code states that:

"The amount of appropriations for the annual operating expenses of the Commission including salaries, allowances of all its officials and employees in its central and regional offices as well as in the auditing units in the various national and local agencies, including government-owned or controlled corporations, shall be included in the annual general appropriations law. The usage of these funds shall be governed by the general appropriations and other budget laws."⁸

Fiscal autonomy is now embodied in Section 5-A, Article IX of the proposed Constitution.

To ensure greater accountability on the part of public officials and personnel, the Intosai, in its "Lima Declaration of Guidelines of Auditing Precepts," adopted a comprehensive definition of audit in this wise:

"The concept and establishment of audit is inherent in public financial administration as the management of public funds represents a trust. Audit

⁶ Ancog, Amelia C. "A Survey of Auditing Legal Systems of Member-Countries of Supreme Audit Institutions," a paper submitted to Intosai, 1984.

⁷ Presidential Decree No. 1445.

⁸ Additionally, the succeeding subparagraphs of the same section provides:

"(2) All government-owned or controlled corporations including their subsidiaries, and self-governing boards, commissions or agencies of the government shall appropriate in their respective budgets and remit to the National Treasury an amount at least equivalent to the appropriation for the salaries and allowances of the representative and staff of the Commission during the preceding year."

"(3) A maximum of one-half of one per centum ($\frac{1}{2}$ of 1%) of the collections from the national internal revenue taxes not otherwise accruing to Special Funds or Special Accounts in the General Fund of the National Government, upon authority from the Minister (Secretary) of Finance, shall be remitted to the National Treasury to cover the cost of auditing services rendered to local government units."

"(4) The amount estimated to be earned as a result of the assessments on government-owned or controlled corporations, local government units, and other agencies as provided in this Section shall be taken into consideration in the preparation of the annual budget of the Commission, in accordance with pertinent budget laws. The General Appropriations Law shall provide each year for the cost of Commission operations as may be supported by available funds, in order to meet the audit requirements of national and local government units and government-owned or controlled corporations and other agencies covered by this Code."

is not an end in itself but an indispensable part of a control system whose aim is to reveal deviations from accepted standards and violations of the principles of legality, efficiency, effectiveness and economy of resource management early enough so as to make it possible to take corrective measures in individual cases, to make accountable parties accept responsibility, to obtain compensation, or to take steps to prevent such violations from recurring or at least to make it more difficult."⁹

Section 25 of the Government Auditing Code operationalizes this in the following provisions:

"In keeping with the constitutional mandate, the Commission adheres to the following primary objectives:

(1) To determine whether or not the fiscal responsibility that rests directly with the head of the government agency has been properly and effectively discharged;

(3) To institute control measures through the promulgation of rules and regulations governing the receipts, disbursements, and uses of funds and property, consistent with the total development effort of the government;"

It will be noted that the duty of the agency head includes not only compliance with statutory requirements in the management of public resources but also the effective discharge of such duty. Complementing these provisions is the responsibility of COA to issue rules that take into account the development goals and programs of the country.

Section 25 is reinforced by Section 102 of the Code which states that:

"(1) The head of an agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

"(2) Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him without prejudice to the liability of either party to the government."

It is clear that a broader perspective of public accountability is envisioned by the Code to protect the public from abusive and wanton mismanagement or misuse of resources by government personnel, as well as to instill among public officials and personnel honesty and fidelity in public service.

Intosai also focused its attention on public enterprises. It recognized the varied role of government-owned or controlled corporations (public enterprises) in national development and the range of their operations which are often determined by the socio-economic and political circumstances of each country. It also recognized the desirability of providing some flexibility to public enterprises so that they may function successfully. It adopted the position that supreme audit institutions should evaluate the performance of such enterprises in relation to the social, economic and

⁹ Cruz, Domingo, *op. cit.* p. 87, 90-100.

commercial objectives for which they were established. Hence, they should be subject to performance audit to determine their effectiveness in attaining their goals.¹⁰ Norms of effectiveness, efficiency and economy are to be defined in the context of their charters and the nature of the functions of each specific public enterprise and, wherever possible, consistently with comparable industry standards.

Article XII of the 1973 Constitution specifically authorized COA to audit government-owned or controlled corporations. Nevertheless, in the past administration, a number of subsidiaries of such entities sought exemption from COA's jurisdiction. One of the reasons offered for the resistance to COA's coverage is the perception that COA's policies and rules tend to bureaucratize operations or to delay the smooth flow of transactions because of the review processes.¹¹ To speed up decision, COA instituted post-audit for the transactions of some public enterprises, in the late seventies, but retained pre-audit for crucial financial matters. Even regular ministries were allowed to function under post-audit but were monitored for deviations from the rules.¹² In the proposed constitution, post-audit is permitted to the specified government agencies and autonomous organizations, subject to the restoration of special pre-audit, if weaknesses in controls are unearthed.

Constitutional Reforms

The proposed Constitution, under Section 5, A of Article IX provides greater autonomy to COA:

"The Commission shall enjoy fiscal autonomy. Their approved annual appropriation shall be automatically and regularly released."

Once the appropriation law is passed by Congress and approved by the President, it is expected that COA's budget will be automatically implemented, eliminating the delays in the release of funds.

Similarly, Section 3 of the same article reiterates the principle embodied in Section 2, A, of Article XII of the 1973 Constitution on the non-diminution of salary of the Chairman and the Commissioners during their

¹⁰Section 2, Presidential Decree No. 1445 pronounces the policy of the State that all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguard against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government.

¹¹The concept of corporate flexibility of public enterprises often clashes with pre-audit requirements. Since quick decisions are essential in the operation of many government-owned or controlled corporations, prior review of financial actions by the supreme audit institutions is frequently perceived as a bureaucratic measure. There are occasions when delay in the implementation of decisions of public enterprises is laid at the doors of COA. The phrase "differential treatment" was coined by a study committee on corporate reorganization, to apply to flexible policies that may be formulated by COA, the Civil Service Commission and the other government bodies that somehow regulate the operations of such enterprises. The adoption of policies with "differential treatment" content may lead to greater dynamism in the functioning of public enterprises and agencies requiring a business orientation.

¹²Subparagraph (1), Section 2, D, Article XII.

term of office. Independence is also strengthened by the disqualification of COA officials from engaging in the practice of any profession or in the management of any business, or being financially interested directly or indirectly in any contract with, or in any franchise or privilege granted by the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations. Thus, Section 2,A, of Article XII of the 1973 Constitution is reflected in Section 2,D of Article IX of the proposed Constitution.

The scope of jurisdiction and powers of COA are clarified in Sections 2 to 4, D of Article IX of the proposed Constitution. This provision expands and clarifies the coverage of COA's jurisdiction. Specifically, subparagraph (1) of Section 2 states that:

"The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenues and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporation and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto."

Section 3, D of the same article provides that:

"No law shall be passed exempting any entity of the government or its subsidiary in any guise whatever or any investment of public funds, from the jurisdiction of the Commission on Audit."

The essence of these provisions is the assertion of COA's authority over all autonomous government institutions, commissions and public enterprises as well as non-governmental entities which receive public funds in the form of subsidy or equity contributions. It is noteworthy, however, that the principle relating to the post-audit approach is not found in Article XII of the 1973 Constitution. Post audit is the audit of transactions after their implementation. It strengthens the principle of fiscal responsibility of the agency head in the administration of the resources of his office and removes the auditor from the processes of purely management functions concerned with day-to-day operations. This also meets squarely the objection relating to perceived delays occasioned by pre-audit.

The experience of COA during the martial law regime indicates that some subsidiaries or government-funded entities sought to escape COA's

jurisdiction through Presidential exemptions embodied in a letter of instruction, as in the case of the Kidney Foundation of the Philippines. Apparently, some of the offsprings of public enterprises (subsidiaries) desired exemption due to the perceived rigidities of auditing rules which are equally applied to regular ministries and public enterprises. These entities seek flexibility to operate according to comparable norms of the private sector, especially in situations where such enterprises perform functions which are basically commercial or industrial in nature.

In this regard, Section 3, D of Article IX of the proposed Constitution does not permit any exclusion from COA's jurisdiction by the offsprings or subsidiaries of public enterprises even if they are registered with the Securities and Exchange Commission pursuant to the provisions of the Corporation Law. The phrase *any guise whatever* or *any investment of public funds* closes the doors to escape from COA's audit powers.

In the implementation of the constitutional provisions, it is desirable that COA's policies and rules for audit should be responsive, relevant and consistent with commercial, business or social objectives of the agencies, entities or commissions which are subject to audit. These policies and rules should be fair and sufficiently flexible, permitting areas for differences in approaches, especially where the environment require innovative strategies or where economic or social factors warrant a more pragmatic approach to audit.

Audit need not be adversarial. In fact it is a powerful tool for the development of administrative capabilities and innovations within the bureaucracy. Thus, the COA is duty bound to strike a balance between the needs of the institutions to attain their goals (without being hemmed in by over-rigid rules) and the imperatives of public accountability.

The reportorial requirements under Section 4, D of Article IX of the proposed Constitution are similar to subparagraph (3) of Section 2, D, of Article XII of the 1973 Constitution. However, the phrase "non-governmental entities," were included to emphasize the broader jurisdiction of COA and the obligation of COA to render audit reports on such entities. It will likewise be noted that the audit reports should recommend measures necessary to improve effectiveness and efficiency reiterating the principle that audits should encompass evaluation efficiency, economy and effectiveness of the auditees.

Conclusions

Article IX of the proposed Constitution strengthens the constitutional bodies. A significant reform is the grant of fiscal autonomy to them, freeing them from the problem of financial stress arising from delays in budgetary releases. The COA's jurisdiction is clarified and amplified, leaving no room

for doubt as to its sphere of action. The explicitness of its coverage will discourage attempts to subvert the accountability requirement in the management and use of public funds or property. Thus, for the purposes of evading the powers of COA, it will no longer be possible for public enterprises to channel their funds to their offsprings through the creation of subsidiaries and registering them with the Securities and Exchange Commission. Neither will it be possible to contribute through equity investments in private enterprises and free such invested funds from COA's audit.

The reach of COA is extensive and comprehensive. But the methodology and audit approaches must respond to the specific needs of government bodies or government-owned or controlled corporations. These bodies or government-owned or controlled corporations are endowed with ample flexibility in undertaking their activities without the prior review by COA of some major decisions relating to financial operations. However, the Constitution reserves to the COA the right to institute pre-audit, when weaknesses in controls are discovered or where there are deficiencies in the internal control system.

Since COA occupies a crucial role in government, it is desirable that it reject the temptation to bureaucratize its audit policies by making such policies end in themselves. This means that as far as possible, COA's policies should be practical, relevant and developmental as well as duly responsive to the requirements of public accountability. A sensitive balancing is critical in COA's future audit policies. They should be viewed as tools for innovations and enhancement of the capacity of government to deliver services to the public, to produce goods and to fulfill the duty to serve the people to which it owes its existence.