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*Supreme Audit Institutions with
Jurisdictional Powers*

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Source: M. Hix

A Letter from the Journal's President

By Michael Hix, President of the International Journal of Government Auditing

Dear colleagues,

I hope this message finds you, your colleagues, and families in good health and high spirits. I would like to thank you for your continued support, contributions, and interest in the INTOSAI Journal. As Journal President, I am most grateful for your ongoing efforts to help us deliver timely, informative, and helpful content for the INTOSAI community and our key stakeholders.

LETTER FROM THE JOURNAL'S PRESIDENT

I am especially pleased that our readership and reach is greater than ever, and that we now make the quarterly editions of the Journal available online and available on mobile devices in all five of INTOSAI's official languages.

Additionally, our social media audience continues to expand and this provides an excellent platform to share information and news of interest to our community. As I write this note from Kampala, Uganda where I am attending the AFROSAI-E Governing Board and Vision 2029 Strategic Review Meeting, I am pleased to report that hundreds of you are following our coverage of this gathering on social media.

These achievements would not be possible without your continued support and interest, and the tireless and constructive efforts of the Journal staff and board members. And this leads me to recognize the outstanding contributions of Mr. Chuck Young, GAO's Managing Director of Public Affairs and INTOSAI Journal Board Member, who will retire from the U.S. GAO at the end of May 2024. Mr. Young has been a part of the INTOSAI Journal Board since 2016.



Chuck Young. Source: U.S. GAO

LETTER FROM THE JOURNAL'S PRESIDENT

Mr. Young's accomplishments and contributions to GAO, the Journal, and external stakeholders deserve special recognition. Throughout his tenure at GAO and in the eight years as a Board member of the Journal, he has been at the forefront of efforts to modernize external communication practices through concise, clear communication, and use of new technologies. Mr. Young has shared his knowledge with various INTOSAI regions to help build capacity, contributed articles to the Journal, and provided coverage to key INTOSAI events. Additionally, Mr. Young has been an enthusiastic part of the Task Force on INTOSAI Communication, sharing his expertise on communication strategy with the INTOSAI community.

I am particularly grateful for Mr. Young's guidance and insights as we modernized the Journal's website and social media operations to better meet the needs of our audience. The INTOSAI community has benefitted greatly from his expertise and experience and his contributions will live on past his tenure on the Journal board.

I would thus like to thank Mr. Young on behalf of the Journal staff and board, and wish him and his family all the very best as he enters a well-deserved retirement and new phase of life.

I likewise extend warm wishes to the Journal's audience, and will soon provide an update on the board's new composition.

– Michael Hix, INTOSAI Journal President



Pierre Moscovici, First president of the Cour des comptes.
Source: Cour des comptes

Long live the jurisdictional powers of SAIs

By Pierre Moscovici, First president of the French Cour des comptes, co-chair of the Forum of jurisdictional SAIs

Dear readers, dear colleagues,

I am proud to introduce this special issue of the International Journal of Government Auditing dedicated to jurisdictional SAIs, a topic that the French Cour des comptes proposed and I am glad and thankful that the Journal and its Vice-president, Jessica Du, endorsed it beyond our expectations.

EDITORIAL

About 25% of all supreme audit institutions (SAIs) represented in INTOSAI undertake jurisdictional activities. Most of them are found in the French-speaking, Spanish-speaking and Portuguese-speaking areas of the world. But, it's an attractive model that extends beyond these linguistic and cultural spheres: Latvia, South Africa and Thailand have recently equipped their SAIs with a new competence and an appropriate organization to sanction the misuse of public money. Others, like Indonesia or Vietnam, are willing to obtain new jurisdictional powers or similar functions. This is also a model that can evolve: The French legislator has just radically reformed the system of liability for public managers, which had been in force for decades.

Although it is quite a significant proportion of all SAIs represented in INTOSAI, SAIs vested with jurisdictional powers are not as numerous as those who adopted the model of an independent agency attached to Parliament and in charge of auditing government accounts and evaluating public policy on behalf of the parliament.

“We believe that our jurisdictional powers give us an added-value, a strengthened independence that benefits all the missions carried out by the SAI, a power that can extend and supplement the auditor's findings and recommendations.”

- Pierre Moscovici

Therefore, the nature of these jurisdictional SAIs, their missions and functions, may be widely ignored, woefully understood or underestimated, and this is the goal of this special issue to help you to better understand what they are and how they work and perform. We are also hoping to foster a better understanding of the benefits jurisdictional SAIs can provide to society. We have identified 7 essential benefits from the exercise of SAIs with jurisdictional functions, and they will be fully explained to you in this special issue.

What do we do?

A SAI has jurisdictional power when it has received the legal mandate to sanction a person on the grounds of an irregularity or damage, related to the use of public funds under the SAI's jurisdiction and which can be imputed to that person, following contradictory-adversarial proceedings.

EDITORIAL

SAIs with a jurisdictional mandate are characterized by diversity of form and procedure, and by the singularity of the national laws that determine their powers and organization. But their common purpose remains the same: to guarantee citizens the effectiveness of the principle of accountability, by enabling the SAI to act not only as an auditor, but also as a judge.

Mind it: the two functions of judgement and audit do not hinder each other but, on the contrary, complement each other.

Why do we do this?

Fundamentally, we believe that our jurisdictional powers give us an added-value, a strengthened independence that benefits all the missions carried out by the SAI, a power that can extend and supplement the auditor's findings and recommendations. The SAI's deep knowledge of the public bodies that are regularly subject to its audit and jurisdiction is an undeniable asset for identifying the most frequent irregular practices and sanctioning them itself or referring the public manager at fault to the competent authorities, if they are of a criminal nature. Consider it as if the jurisdictional function becomes the SAI's sword arm, very useful in such cases.

We achieve our missions with and thanks to the upmost independence granted by the very nature of our jurisdictional function: by virtue of the jurisdictional status it implies and the guarantees it requires, jurisdictional SAIs enjoy greater independence for the accomplishment of this function. And this independence necessarily reflects on the exercise of the SAI's non-jurisdictional tasks.

This added-value is therefore not only benefiting our SAIs but also, and moreover, to the society in its whole. Indeed, the effective exercise, in accordance with professional standards, of a SAI's jurisdictional powers improves the governance of states, strengthens citizens' confidence in the management of public funds, is a tangible sign of the accountability of public managers, and as a result, enhances the credibility and legitimacy of leaders.

How do we do it?

It is important to understand that jurisdictional functions are generally fulfilled with the help of a public prosecutor, usually responsible for what we call "initiating public action" (legal proceedings).

We, as jurisdictional SAIs, are performing our auditing tasks not only by strictly complying to the international auditing norms of INTOSAI, but also with the original culture of proof and verification, at the birth of the "adversarial" principle, and by following particularly demanding procedural rules and professional and ethical standards, guaranteeing integrated quality control.

These principles have been defined in the INTOSAI-P 50, thanks to hard work achieved within the [Forum of jurisdictional SAIs](#), created in Paris in 2015, and are now part of the INTOSAI Core Principles. [INTOSAI-P 50](#) is an integral part of the "[INTOSAI Framework of Professional Pronouncements](#)" (IFPP) and its 12 principles are intended to be used in conjunction with all the other professional positions: INTOSAI-P 50 does not contradict any of them.

EDITORIAL

On the other hand, INTOSAI-P 50 helps to fill a gap: it is the missing piece in a jigsaw made up of numerous professional positions in which the jurisdictional activity of SAIs were, up until now, mentioned without ever being defined.

Guidelines, meant to support SAIs with jurisdictional powers in developing or implementing the 12 principles set out in INTOSAI-P50, have been drafted by the Forum and might hopefully be soon officially approved by the Knowledge Sharing Committee ([KSC](#)).

Jurisdictional SAIs are determined to continue their joint efforts within INTOSAI and outside, to share their knowledge and exchange best practices, and to obtain full recognition of their specificity and benefits for society.

Convinced that they have something interesting to share with the INTOSAI community, jurisdictional SAIs are proud to present themselves to their peers throughout the world, via this special issue.

I hope you find it informative and useful.

- Pierre Moscovici

Cour des comptes





Mauricio Torres, Comptroller General of the State of the Republic of Ecuador.
Source: Ecuador State Comptroller's Office

The Forum of Supreme Audit Institutions with Jurisdictional Functions: The Significance of Its Jurisdictional Role in the Public Sphere

By: PhD. Mauricio Torres, Comptroller General of the State of the Republic of Ecuador

Supreme Audit Institutions (SAIs) with jurisdictional functions from around the world make up approximately a quarter of the International Organization of Supreme Audit Institutions (INTOSAI) membership. According to Pompe et. Al (2022), these SAIs not only audit, but also assume crucial roles in the adjudication and management of public funds. SAIs with jurisdictional functions have become a beacon of transparency and accountability, as they conduct reviews of accounts, and impose sanctions upon detecting poor management or financial irregularities in government administration.

EDITORIAL

The Forum of Supreme Audit Institutions with Jurisdictional Functions, originated from the INTOSAI Working Group on Value and Benefits (WGVB), sought to highlight the fundamental differences of these entities. The establishment of the Forum in Paris on November 13, 2015, marked a milestone by defining the values and essential characteristics of SAIs with jurisdictional functions. Furthermore, the Paris Declaration on December 9, 2016, with the participation of forty Supreme Audit Entities, committed to promoting shared values and a joint action program to consolidate the presence of these SAIs within INTOSAI. This included incorporating their characteristics into the INTOSAI professional standards, reviewing criteria related to jurisdictional activities in the INTOSAI Performance Measurement Framework, and strengthening the independence of the SAIs' prosecutors or judges.

“These foundational principles establish a solid framework that facilitates effective, fair, and independent operation, strengthening the integrity of the public sector and fostering public trust in control institutions and the justice SAIs deliver.”

- Mauricio Torres

In this regard, the 12 principles of INTOSAI-P-50 are fundamental pillars that establish how the national legal framework should provide SAIs with the necessary tools to carry out its jurisdictional activities, thereby ensuring their effectiveness, legality, and independence. These principles reinforce the value and benefit of SAIs with jurisdictional functions (Pompe et al., 2022).

For this, it is important to highlight that the pursuit of greater independence is fundamental, as it enables SAIs to function without undue influences from the state powers. This recognition is established in the Mexico Declaration, encompassing institutional, functional, and financial independence, ensuring the autonomy of SAIs in various dimensions, and is reinforced in INTOSAI-P50 by explicitly calling for the independence of judges and their decisions. Together, these foundational principles establish a solid framework that facilitates effective, fair, and independent operation, strengthening the integrity of the public sector and fostering public trust in control institutions and the justice SAIs deliver.

EDITORIAL

The Ecuadorian State Comptroller's Office has faced significant challenges in terms of financial and administrative independence, affecting its auditing work. This has involved extensive constitutional debates and judicial litigations to promote greater separation of functions and facilitate effective oversight by the Ecuadorian control entity. These conflicts, it could be said, are intensified and made evident in a model that seeks accountability through two instances: one dedicated to audit control and the other to adjudication, where state instances use unethical practices limiting access to necessary information for an audit performance or for the indications of criminal liabilities, essential evidence for the case to be presented to the Attorneys General Office.

Therefore, it is essential to highlight in this space, the emergence and development of the Forum, which has shown that it not only seeks to norm and generate standards on best practices within the exercise of jurisdictional functions of SAIs but also promotes active dialogue to effectively combat problems against independence, fraud, corruption, and inefficiency, aligning with other INTOSAI initiatives and its Regional Groups. This reflects a continuous commitment to improving the management of public funds, consolidating a solid, reasonable, and reliable financial integrity framework, calling for the advocacy of independence, and international and inter-institutional information exchange for the development of jurisdictional processes in civil, administrative matters, or those that result in indications of criminal responsibility.



Comptroller General of the State of the Republic of Ecuador, Dr. Mauricio Torres

EDITORIAL

It is important to acknowledge all the steps taken by the Forum, particularly the meeting held in Bangkok on October 16 and 17, 2023, where members opted for the creation of a new structure of the Forum, including JuriSAI as a possible attached entity. This would bring the Forum of Supreme Audit Institutions with Jurisdictional Functions closer to official recognition within the International Organization of Supreme Audit Institutions (INTOSAI).

Seeking official recognition within INTOSAI and the adoption of the INTOSAI-P 50 Guidelines are fundamental steps for SAIs with jurisdictional functions, in order to strengthening their role and legal compliance in the public sector and the global sphere.

This achievement would not only recognize the unique function of these institutions but also facilitate broader adoption and application of the INTOSAI-P 50 Principles, allowing SAIs to fulfill their mandates and serve the public interest with greater independence and professionalism.

- Mauricio Torres, PhD.

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Source: Contraloría General del Estado, Ecuador

FEATURE ARTICLE

INTRODUCING THE JURISDICTIONAL MODEL



Source: Cour des Comptes

Overview of the different models of SAIs and focus on the jurisdictional model

By Gilles Miller, Senior auditor and liaison officer of the Forum of jurisdictional SAIs at the French Cour des comptes

Introduction

There are three main models of SAIs in the world, and several variants. They have a very long history, dating back in some cases to the Middle Ages, but all three were renewed and developed between the 18th century and the beginning of the following century, when modern states were established.

FEATURE ARTICLE

1 Westminster, or Parliamentary Model:

Based on the model developed in the shadow of the Westminster Parliament, an independent agency attached to Parliament audits government accounts and evaluates public policy on behalf of the legislature. Born in the United Kingdom, this model is now widely used in all countries with a British or Anglo-Saxon culture, including the United States and in Scandinavian countries.

2 Board or Collegiate Model:

In Germany, from where it has spread to Central and Eastern Europe, a model has developed of courts of audit operating on the basis of a collegiate organization, but without jurisdictional powers.

3 Judicial or Napoleonic Model:

Lastly, some fifty countries have a SAI, which acts as both auditor and judge. SAIs with a judicial function, having shaped its collegial decision-making process, its status as an equidistant body between Parliament and Government, and its culture of evidence and adversarial proceedings, underpins respect for the rights of the defense. If France once provided the design, this model has spread to the entire Mediterranean region, as far as the Middle East, as well as to all French- and Portuguese-speaking nations, including Brazil and many Spanish-speaking countries.

Focus on the Judicial Model

The Judicial or Napoleonic model is an attractive model for SAIs: several countries that have adopted the “Westminster model” have recently equipped their SAIs with a new competence and an appropriate organization to sanction the misuse of public money. This is the case in the Republic of South Africa, Thailand and Latvia, and the list goes on... In Spanish-speaking Latin America, several “audit offices” or contralorias combine a jurisdiction (inherited from the Spanish Tribunal de cuentas) with an organization based on the Anglo-Saxon model.

FEATURE ARTICLE

But what exactly do these SAIs judge?

In detail, their responsibilities vary from country to country, but they all share a common origin and, above all, the same purpose: the accountability of all public managers for the consequences of their management.

It is safe to say that judicial control of public accounts was established with the dual birth of the State and the Treasury.

Originally, several centuries ago, the main aim was to ensure that public officials, who were responsible for collecting revenue and executing expenditure, could justify all transactions recorded in their accounts. Because such verifications required special knowledge and expertise, an institution was very soon established to specialize in control techniques. As an account is very much like “a trial between the one who renders it and the one to whom it is rendered”, as Jean-Jacques Régis de Cambacères put it when he explained the advantages of a jurisdictional audit office to Napoleon I in 1807, the rendering of accounts very soon took on a jurisdictional form.

This initial model of administration and governance became a model to be emulated and was exported around the world. With a strict separation between the functions of authorizing officer or public manager and those of accountant or cashier required to submit annual accounts to an auditor, it is still widely used, but has evolved considerably.

The focus of the courts' jurisdictional activity has shifted (at varying speeds depending on the country's national legislation and the degree of maturity of national public accounting systems), towards the accountability of managers. Managers are now seen as the main players in public management, while public accountants are, de facto if not de jure, seen as subsidiary. In many countries, the two systems of responsibility (managers on the one hand, and public accountants on the other) coexist. A few countries have unified the two into a single accountability system (Portugal was one of the first, in 1971). Countries that have recently introduced a jurisdictional liability system (e.g. South Africa and Latvia), on the other hand, immediately designed a system targeting public managers.

The volume of court rulings depends on a number of factors: the size of the country and the number of people potentially concerned, the maturity of the system, the definition of offences, the policy followed by the prosecuting authorities, etc. Most often, the number of rulings is in the dozens, but some SAIs, such as the Corte dei conti in Italy, issue several hundred rulings, and even several thousand for the Tribunal de contas in Brazil. In any case, this is not a marginal activity.

FEATURE ARTICLE

However, jurisdictional organization and procedural rules differ widely from one country to another. Here are a few examples.

In one example, the aim is for remedial action. The manager will be condemned, not for their wrongful conduct, but for the damage they have caused, which they will have to compensate. In this case, the SAI will operate on the model of a criminal court, which punishes wrongdoers with a fine or even a professional sanction. There are several mixed systems which, depending on the case, order either a fine or compensation for the damage suffered. In general, the damage justifying the sentence must be financial, but some SAIs may also sanction moral prejudice or damage to image.

Procedural rules also differ depending on whether the SAI is acting as a reparation judge, or as a repressive judge imposing penalties. In the latter case, the requirements of a “fair trial” are much more stringent.

In “repressive” SAIs, the list of offences varies according to the law of each state. There are major differences between legislation. In Morocco, the Cour des Comptes can punish any infringement of a management rule. In Senegal, the law includes “squandering” among the punishable offences. In France, on the other hand, conviction requires proof that the offence is of a certain gravity and accompanied by significant financial damage, or that its author has obtained a personal interest from it.

Furthermore, the list of those liable to prosecution varies from country to country. The main difference concerns political personnel, mainly members of the government (or even heads of state) who, in most countries, are not subject to the justiciability of the SAI, although there are some notable exceptions. Local elected representatives (mayors, for example) often benefit from a partially derogatory regime.

FEATURE ARTICLE

Finally, the role of the public prosecutor, where one exists, varies considerably from one system to another. In general, it is responsible for taking public action, which does not mean that other authorities, whether administrative, political or judicial, cannot also refer cases to the SAI's jurisdiction. In Italy, the role of the Public Prosecutor's Office appears to be the most fully developed, since it is in charge not only of prosecution, but also of the investigation and examination of the case (for which it has a large number of specialized staff), and can order precautionary financial measures. The organization of the Public Prosecutor's Office varies from one country to another, depending on national legislation: in general, there is a specific public prosecutor attached to a court of auditors; but in some countries (e.g. Spain), there is a national prosecution service (a single public prosecutor for all the country's jurisdictions) with a department dedicated to jurisdictional SAI.

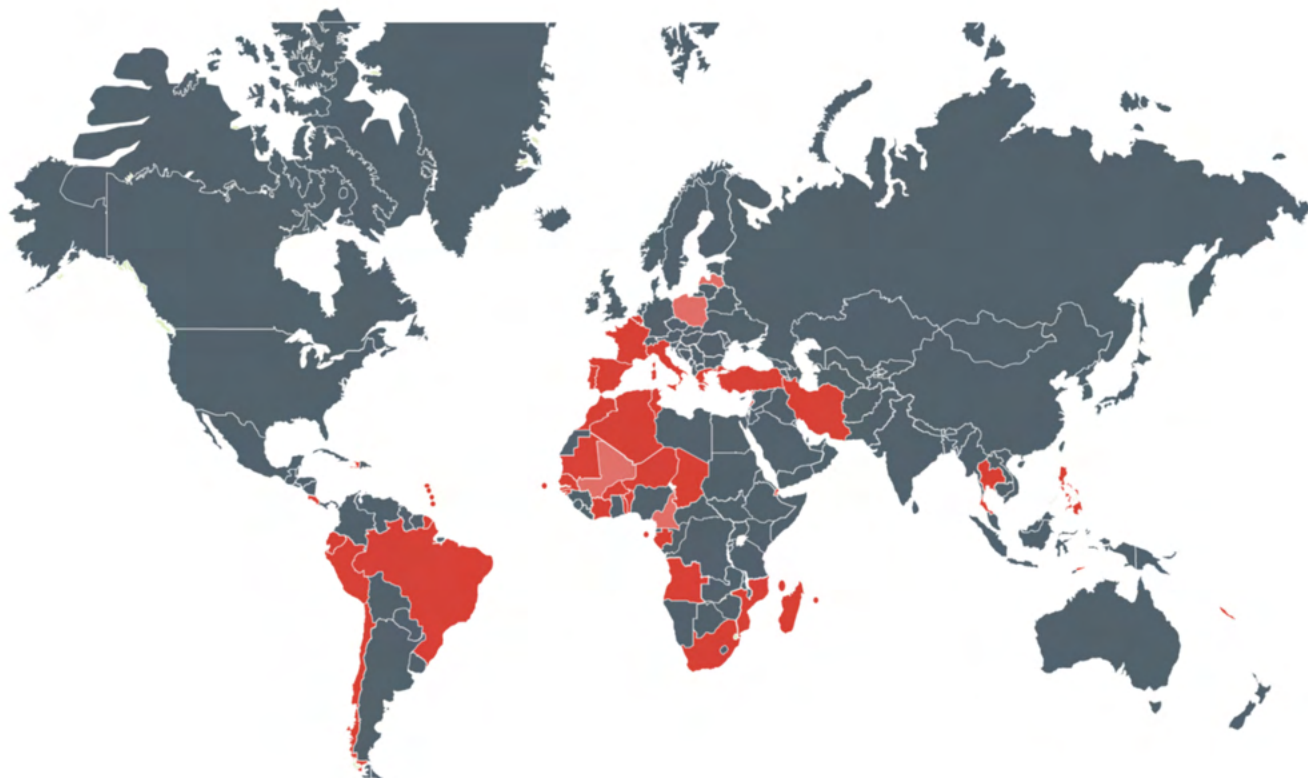
SAIs with a jurisdictional mandate are characterized by diversity of form and procedure, and by the singularity of the national laws that determine their powers and organization. But their common purpose remains the same: to guarantee citizens the effectiveness of the principle of accountability, by enabling the SAI to act not only as an auditor, but also as a judge.

The effective exercise, in accordance with professional standards, of a SAI's jurisdictional powers improves the governance of states, strengthens citizens' confidence in the management of public funds and, as a result, enhances the credibility and legitimacy of leaders.



The Author, Gilles Miller. Source: Cour des Comptes

FEATURE ARTICLE



Map of countries that have SAIs with jurisdictional powers and membership in the Forum of Jurisdictional SAIs.

Legend:

- Red: Members of the Forum of Jurisdictional SAIs
- Light Red: Observers of the Forum of Jurisdictional SAIs

Source: Cour des Comptes



The Author, Gilles Miller. Source: Cour des Comptes

Overview of the INTOSAI-P 50

By Gilles Miller, Senior auditor and liaison officer of the Forum of jurisdictional SAIs at the French Cour des comptes

The INTOSAI Core Principles are at the pinnacle of INTOSAI's professional pronouncements, just behind the Lima and Mexico Declarations, which represent the “Magna Carta” of external government auditing and define the conditions for its independent and effective functioning. To date in 2024, there are three: one is devoted to the value and benefits that SAIs bring to citizens ([INTOSAI-P 12](#)), another to transparency and accountability ([INTOSAI-P 20](#)), and the third sets out the 12 principles that should guide the actions of SAIs with jurisdictional powers, in the exercise of their functions.

FEATURE ARTICLE

INTOSAI-P 50, adopted at INCOSAI XXIII (September 2019), aims to help member SAIs with jurisdictional powers to develop their own professional approach, in accordance with their mandate and the laws and regulations of their country. It is a shared document, drawn up in consultation with the Forum for Professional Positions (FIPP), validated by INTOSAI and intended to serve as a reference for all SAIs already involved or called upon to develop a jurisdictional activity.

A SAI is considered a “jurisdictional SAI” (or a SAI with jurisdictional powers) when its mandate and organization enable it to carry out not only all the types of audit that a SAI is required to carry out, but when, in addition to these, it is vested with the power to rule on the liability of persons subject to the law in the event of irregularities or mismanagement. In this sense, jurisdictional activities differ from financial, performance or compliance audits, even though they may be carried out in conjunction with or following on from such audits. Jurisdictional procedures must therefore comply with particularly demanding principles, as they have a direct impact on the personal situation of individuals, and the violation of these principles directly threatens the jurisdictional decision itself.

The INTOSAI-P 50 is an integral part of the “INTOSAI Framework of Professional Pronouncements” (IFPP) and its principles are intended to be used in conjunction with all the other professional positions: INTOSAI-P 50 does not contradict any of them. On the other hand, INTOSAI-P 50 helps to fill a gap: it is the missing piece in a jigsaw made up of numerous professional positions (founding principles and standards) in which the jurisdictional activity of SAIs is mentioned without ever being defined. For example, the Lima and Mexico Declarations explicitly mention the need to obtain compensation for losses suffered, which is one of the functions of SAIs vested with jurisdictional powers, and the possibility of applying sanctions. Similarly, ISSAI 100 on Fundamental Principles of Public Sector Auditing, ISSAI 130 on Code of Ethics, ISSAI 400 and ISSAI 4000 on Compliance Audit Principles and Standard refer to the duties of certain SAIs, recognized as courts or legally vested with sanctioning powers, the definition of which they refer to principle documents that did not exist before INTOSAI P-50 was adopted in 2019.

FEATURE ARTICLE

The official presentation of the 12 principles, in INTOSAI-P 50, does not follow a chronological logic (i.e. describing the following principles whether they apply at the beginning, in the middle or at the end of a jurisdictional procedure). Rather, they are set out in an order that goes from the most constrained (by law, by principles external to the SAI) to the freest (principles that a SAI can implement completely autonomously). Here they are as they appear in INTOSAI-P 50.

1. The law should define the liability and sanction regime applicable to persons accountable by law before the SAI.

This is the principle of legality: it is the law that defines a system of liability before a court (nature of liability or typology of offences, penalties and methods of sanction). The SAI cannot, of course, set itself up as a court in its own right, and it cannot sanction a breach or fault if the law has not precisely defined the conditions for its intervention.

2. The member(s) of the SAI, involved in the jurisdictional activities, should benefit from guarantees legally spelled out, which explicitly ensure their independence toward the public authorities.

The principle of independence refers to the guarantees of independence of the SAI as a court or of its judicial body, as well as of its members in the exercise of their judicial functions.

3. The SAI should have legal powers or rights guaranteeing its access to information.

This principle specifies that, for the purposes of its jurisdictional activity and investigative measures, the SAI must have an absolute right of access to documents that enable the truth to be ascertained.

4. An irregular fact may be prosecuted or sanctioned only before the expiry of a reasonable time from the moment it was committed or discovered.

This principle organizes a “right to be forgotten”. Facts that are too old should benefit from the statute of limitations. It is also an invitation to bring the date of the reprehensible acts closer to that of their sanction by the jurisdictional SAI.

FEATURE ARTICLE

5. Any judgement of the SAI must be open to be objected and reconsidered and is subject to appeal or annulment in accordance with the national regulation.

The right to appeal to another jurisdiction is a guarantee of security, and therefore of quality. It can be said to be consubstantial with the act of judging.

6. The SAI must ensure that the persons accountable before it undergo a fair trial guaranteed by the legal procedures.

The right to a fair trial, guaranteeing absolute respect for the rights of the defense, is also consubstantial with the act of judging.

7. The impartiality of the judgement process must be guaranteed by regulations governing the activities of the jurisdictional SAIs and the resulting proceedings.

Whereas the principle of independence (2) was aimed at the SAI as a body, this principle of impartiality is aimed at each member of the judging panel.

8. The SAI must ensure that the exercise of the jurisdictional activities leads to notified and implemented judgement. The sanction of the personal liability of the litigant must be effective.

This is the principle of the effectiveness of jurisdictional decisions. A SAI that did not issue a decision (*res judicata*), but merely made proposals without the force of *res judicata*, would not quite be a court.

9. A person accountable by law cannot be condemned for the same irregularity to several sanctions of the same nature imposed by the SAI. A person accountable by law can only be condemned for the same irregularity to sanctions of a different nature imposed by the SAI and other courts if the law so permits.

By virtue of this principle, which is often translated into the Latin expression "Non bis in idem" or "Ne bis in idem", the same facts cannot be punished twice, at least in the same context. Similarly, no one can be ordered to pay compensation for the same loss twice.

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10. The SAI must guarantee the quality of jurisdictional procedures through an efficient and systematic quality control.

Setting up a suitable quality control system is a duty for a SAI: for jurisdictional SAIs, this obligation must be adapted to the particularities of decision-making, which can only be contested and challenged according to specific procedures. However, structures and procedures can be subject to quality control measures, thus contributing to the quality assurance of the judicial function.

11. The SAI must complete the jurisdictional procedure within a reasonable time.

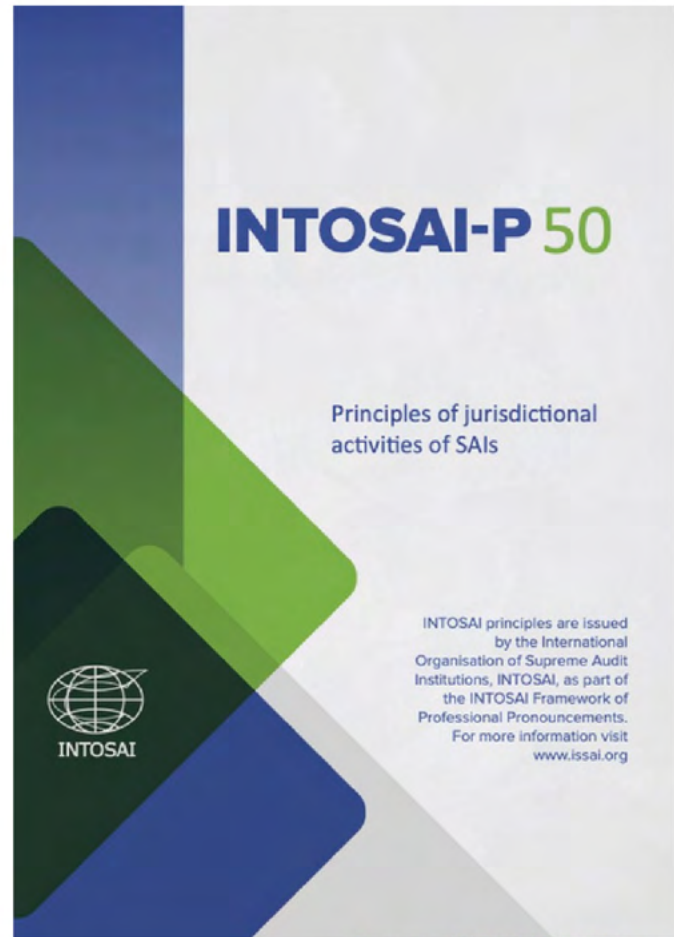
Judges and all those involved in the proceedings are urged not to delay the judicial process unnecessarily. However, the needs of the investigation and the exercise of rights of appeal may slow proceedings down, without the requirement of reasonable time being invoked.

12. The SAI must ensure that judgements, as any judicial decisions, are made publicly, respecting the secrecy and restrictions linked to confidentiality that are legally mandatory as well as the protection of personal data.

The SAI must ensure that the rules of confidentiality laid down by law are respected. At the same time, it must contribute to the dissemination of its case law, with a view to informing citizens and litigants (principle of communication).

Conclusion

Equipped with these 12 principles, the SAIs with jurisdictional attributions, gathered within the Forum of Jurisdictional SAIs, have undertaken the drafting of a guide (GUID) intended to facilitate the implementation and application of these principles, which relate to the very specific environment and nature of this activity, by providing a general framework for action. As of March 2024, this draft jurisdictional guide has been submitted to the KSC for incorporation into the INTOSAI Guidance standards (see the subsequent article in this INTOSAI Journal edition on guidelines).



Source: INTOSAI, ISSAI.org

Guidelines for the 12 principles set out in INTOSAI-P 50

By Gilles Miller, Senior auditor and liaison officer of the Forum of jurisdictional SAIs at the French Cour des comptes

At its General Assembly in Lisbon, Portugal in September 2021, the Forum of Jurisdictional SAIs adopted a set of guidelines designed to publicize and promote the exercise of jurisdictional and contentious missions by SAIs vested with this competence. These guidelines provide and illustrate in very concrete terms the frame of reference for this exercise in conditions of independence, objectivity or neutrality, legal rigor, public interest and fairness in line with the highest international standards.

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The purpose of these guidelines is to support SAIs with jurisdictional competencies in developing or implementing the twelve principles set out in [INTOSAI-P 50](#), relating to the specific environment for the activities of SAIs with such a mandate. It took almost a year to develop these guidelines, based on detailed responses to a questionnaire sent to about forty SAIs. Based on the accumulated experience of these SAIs and a comparative observation of their organization and procedures, it was possible to draw up a general framework for action, under the banner of the "highest common denominator".

These guidelines primarily concern jurisdictional SAIs (or SAIs with jurisdictional powers), i.e., as defined by INTOSAI-P 50, those mandated to directly question the responsibility of public managers or accountants when they identify irregularities or are called upon to do so by a third party.

Of course, this guide is fully in line with the fundamental principles of public sector auditing ([ISSAI 100](#)), whose § 15 it extends. It contains no additional requirements for carrying out an audit. It is aimed above all at those involved in the legal or contentious process, as defined in INTOSAI-P 50 and in the introduction to these guidelines. A few of them, relating to the means of action, are addressed to the management or presidency of the SAI.

Indeed, in some of its professional pronouncements, INTOSAI has already recognized the need to consider the specificities of SAIs that are jurisdictions ([ISSAI 100](#) "Fundamental Principles of Public Sector Auditing"; [ISSAI 130](#) "Code of Ethics"; [ISSAI 400](#) "Principles of Compliance Auditing" and [ISSAI 4000](#), on the conduct of regularity audits), but without describing or illustrating what this particular type of mandate entails.

To assist with effective implementation, it helps to clarify and illustrate these rules for SAIs. Following INTOSAI-P50, the present guidelines are therefore intended to supplement the numerous professional statements which simply refer to the possibility, for certain SAIs, of rendering a judgment.

These guidelines are a reference for all SAIs that correspond to the definition given, and even for those that wish to acquire jurisdictional powers! In this sense, it presents the best way of implementing the principles set out in INTOSAI-P 50, and can therefore also constitute a set of precepts and recommendations likely to help SAIs wishing to move closer to a jurisdictional model, or which the legislator is considering endowing with jurisdictional or contentious powers.

The guidelines were not preceded by the development of an ISSAI standard, for two reasons:

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- the twelve principles set out in INTOSAI-P 50 have been defined in terms precise enough to serve as a common normative framework (the principle with its requirements is recalled at the head of each chapter of the guide);
- the intervention of the legislator of each country, to define the organization and procedures of the SAI, in its jurisdictional functions, does not make it possible to define a single mandatory framework.

On the other hand, it has been possible to identify a broadly shared framework for action, based on the accumulated experience of jurisdictional SAIs and comparative observation of their organization and procedures, in accordance with the "highest common denominator" principle mentioned above.

The guide is now ready for official publication, and it would be desirable for this to take place without too much delay, for all the reasons already listed, which can be summarized as follows:

- A number of professional position papers (not the least of them) refer to SAIs, who exercise the powers of judges, without ever defining them. Admittedly, since 2019, INTOSAI-P 50 has filled a large part of the gap, but many SAIs with jurisdictional powers feel the need for concrete illustrations of the principles, even if they have the authority of a standard;
- The guide reflects current best practice in the field; it offers the assurance of a shared vision of all aspects of a fair trial, of an effective decision, of the powers entrusted to the judge, the investigating authority or the public prosecutor, etc.
- Finally, it encompasses the accumulated experience of more than 40 supreme audit institutions, some of which have been auditors and judges for several centuries.



The author, Denis Gettliffe. Source: Cour des Comptes

The seven essential benefits from the exercise of SAIs with jurisdictional functions

Author: Denis Gettliffe, Project manager for the promotion of international activities of the French Cour des comptes

The INTOSAI P-50 norm defines the 12 Principles of jurisdictional activities of SAIs (which is further detailed in the earlier article in this edition about the P-50 norm).

About 25% of all supreme audit institutions (SAIs) represented in INTOSAI undertake jurisdictional activities. The Forum of jurisdictional SAIs, created in Paris in 2015, is gathering these SAIs who want to explain and promote their jurisdictional mission.

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At Lisbon, in 2021, the Forum drafted an advocacy presenting the seven essential benefits from the exercise of SAIs with jurisdictional functions.

This advocacy details the particular importance of this power of sanction or reparation, as well as the benefit that it represents when the SAI is endowed with it, for the political authorities and for the citizens of the country.



A judge who can extend and supplement the auditor's findings and recommendations

A SAI's audit functions are enriched by the jurisdictional powers recognized by law, and are exercised by the SAI to impose sanctions. Depending on the State, the purpose of the judge may be remedial and/or dissuasive ("punitive"), by ordering the perpetrators of irregularities or damages to reimburse all or part of the funds involved, such as compensatory damages but also consequential damages, or to pay a fine, or to undergo disciplinary or professional sanctions.

Thus, the jurisdictional function becomes the SAI's armed tool. It allows the SAI to effectively extend, through sanctions and/or reparations, some of its critical observations on irregular or harmful acts that may have been found as a result of audits, without having to resort to the intervention of another authority, administrative or judicial.

The two functions of judgement and audit do not hinder each other but, on the contrary, complement each other. Where infringements identified as a result of audits or controls fall within the jurisdictional competence of the SAI, the timeframe for responding to the finding and sanctioning of such infringements can therefore be shortened. In this case, the means of investigation, analysis and decision making are concentrated in a single institution, which is more efficient and more economical.

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2

An additional guarantee of rigorous management given to the citizen and the taxpayer

The power of control, accountability and decision-making in matters of responsibility attributed to a SAI strengthens the conviction among managers, citizens and the public authorities. This power ensures that the SAI's action is effective and results in concrete consequences.

The jurisdictional function makes it possible to better respond to the increased demand for accountability expressed by citizens and thus contributes to the strengthening of the rule of law.

3

A tangible sign of the personal accountability of managers and the requirements associated with accountability

The SAI's deep knowledge of the public bodies that are regularly subject to its audit and jurisdiction is an undeniable asset for identifying the most frequent irregular practices and sanctioning them itself or referring the public managers to the competent authorities, if they are of a criminal nature.

The jurisdictional SAI must therefore coordinate its action with the judicial authorities responsible for the repression of criminal offences. Coordination is easier when these respective organizations, with a jurisdictional character, are similar.

This coordination is an additional guarantee of the existence of a reliable and coherent system for combating breaches of probity, which also contributes to the prevention of fraud and the promotion of integrity.

FEATURE ARTICLE

4

A relevant alternative to the "all-penalty" system

Jurisdictional functions of the SAI allow for swift and appropriate prosecution, which do not fall under the jurisdiction of the criminal courts. The functions provide an effective and proportionate solution that guarantees the sanction and/or the reparation of the manager's faulty or negligent behavior.

Thanks to its experience in both audit and judgement, the jurisdictional SAI has a deep knowledge of the political and administrative organization of a country, as well as of the complexity of the rules for the use of public funds. It is therefore able to build up a flexible jurisprudence adapted to the offences that public managers may commit.

5

A strengthened independence that benefits all the missions carried out by the SAI

The jurisdictional function of a SAI, by virtue of the jurisdictional (or related) status it implies and the guarantees it requires, allows the SAI to enjoy greater independence, and is necessary for the accomplishment of this function.

This independence necessarily reflects on the exercise of the SAI's non-jurisdictional tasks.

The political authorities can therefore rely on the SAI's findings and judgements to convince citizens of the effectiveness of the public financial and management control system.

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6

The original culture of proof and verification, at the birth of the "adversarial" principle

The traceability of the evidence supporting the jurisdictional decision and the practice of adversarial debate with the litigant are additional guarantees for public managers of the SAI's professionalism and impartiality.

This culture of evidence also contributes to reinforce the relevance and objectivity of the SAI's audit observations and recommendations. Adversarial debate also ensures that the evidence put forward is indisputable, and exposed to the objections of the other parties, and that all the arguments of each party have been heard, thus enhancing the credibility of the SAI.

In this way, not only in jurisdictional matters but also in all the SAI's functions, the political authorities have a quality assurance of the SAI's work, based on the culture of evidence that has emerged from its jurisdictional activity.

7

Particularly demanding procedural rules and professional and ethical standards, guaranteeing integrated quality control

When it has jurisdictional functions, the auditing SAI offers the audited party the same guarantees of rigor and probity as a judge in relation to any litigant. The basis of the rules of jurisdictional procedure are set by the legislator and not by the SAI itself, which constitutes an additional guarantee for the political authorities.

The jurisdictional function, by the nature of its procedural requirements, serves both as a model and a training system for all the other missions of the SAI.

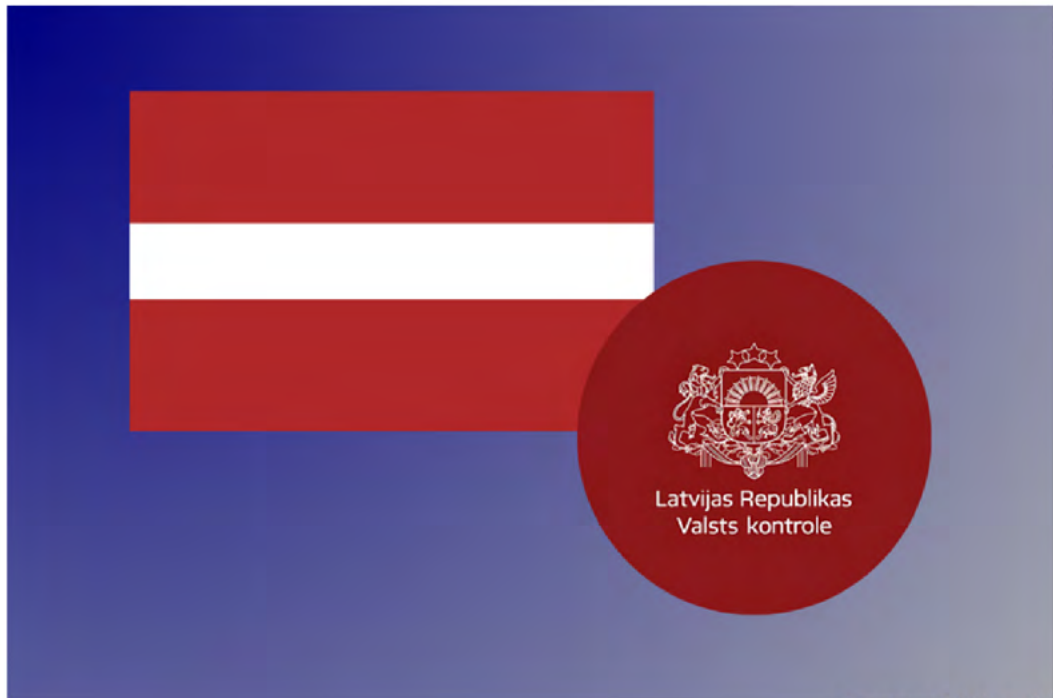
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Proving the interest of such benefits, some states have recently decided to give their SAIs jurisdictional powers, which were previously lacking (which you can read about in this special edition the contributions of SAIs of Latvia, South Africa and Thailand). Others are considering joining the Forum (in this edition's contribution of the Indonesian SAI).

In line with the United Nations' Sustainable Development Goal 16 of the 2030 Agenda, these seven benefits indeed represent considerable assets for an institutional donor and for the political authorities of a country that would like to strengthen the good governance of public finances and management, as well as the principles of accountability, transparency, equality, justice and efficiency in the use of public funds, including those loaned or donated by international partners. Additionally, the effective and professional exercise of an SAI's jurisdictional functions enhances citizens' confidence in the management of public funds by its leaders and thus their credibility and legitimacy of the latter as well as to strengthen citizens' trust in public institutions. The value of advocacy also lies in facilitating SAIs' communication with the media, citizens and public opinion.

This advocacy is therefore intended to convince political authorities and international donors it is in the common interest to protect and strengthen the jurisdictional competence of SAIs, or to endow them with such power. The effective exercise, in accordance with professional standards, of a SAI's jurisdictional powers improves the governance of states, strengthens citizens' confidence in the management of public funds and, as a result, enhances the credibility and legitimacy of leaders.

Spread the news!



Source: SAI Latvia

SAI Latvia and the Practice of Recovery of Losses

Authors: State Audit Office of the Republic of Latvia, Gustavs Gailis, Silvija Nora Kalnins, Elita Nīmande and Agnese Rūpenheite

The State Audit Office of the Republic of Latvia (SAI Latvia) is an independent and collegial supreme audit institution (SAI) with its mandate specified in the Constitution of the Republic of Latvia.

Specifically, SAI Latvia has the mandate to notify public entities of the findings on public finance management which pertain to them, and to notify law enforcement authorities of violations of legal provisions detected during an audit. However, SAI Latvia does not have the right to make decisions on punishing officials who commit unlawful actions.

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Based on findings of a study carried out by SAI Latvia on 29 of its audits performed from 2006 – 2014, it was determined that there was a fair number of cases on recovery of losses during the period studied.



Figure 1: Findings of the study performed on 29 audits in the period from 2006 to 2014
Source: SAI Latvia

Upon reflection on the role of the SAI, a proposal was drafted to amend the Law on SAI Latvia and provide SAI Latvia with a new function: to initiate the process and to take decision regarding the recovery of losses.

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SAI Latvia does not fall into the category of SAs with jurisdictional powers (see, e.g. ISSAI 4000 – Compliance Audit Standard, paras. 153-157). SAI Latvia recovers losses in accordance with the subsidiarity principle and gets involved if the audited entity itself does not take action. It should be specified that SAI Latvia auditors are not required to evaluate whether there is sufficient and appropriate evidence that the public official can be held personally liable for acts of non-compliance as mentioned in paragraph 153 of ISSAI 4000.

The new regulation was adopted and applied to audits commenced after 31 July 2019 and, inter alia, provides as follows:

- Losses shall be recovered within four years from the committed violation.
- The termination of service of the employee shall not be grounds for not recovering the losses.
- Losses shall be reimbursed if they have been caused due to gross negligence or malicious intent.
- The decision on the recovery of losses may be appealed in accordance with the Administrative Procedure Law.
- Execution of the decision on the recovery of losses shall be ensured by the bailiff.

The introduction of this new function is intended to achieve certain goals – 1) prevention of non-compliance and unlawful acts which cause losses and 2) actual recovery of losses caused to public funds (resources), and not only in minor cases.

It is important to promote responsibility and awareness that any action with the financial resources and property of a public person (which includes both public entities and officials) shall conform to the objectives and procedures provided for in laws and regulations.

SAI Latvia strives to prevent cases of unlawful action, as well as to spread awareness that any unlawful action in the public sector is not tolerated.

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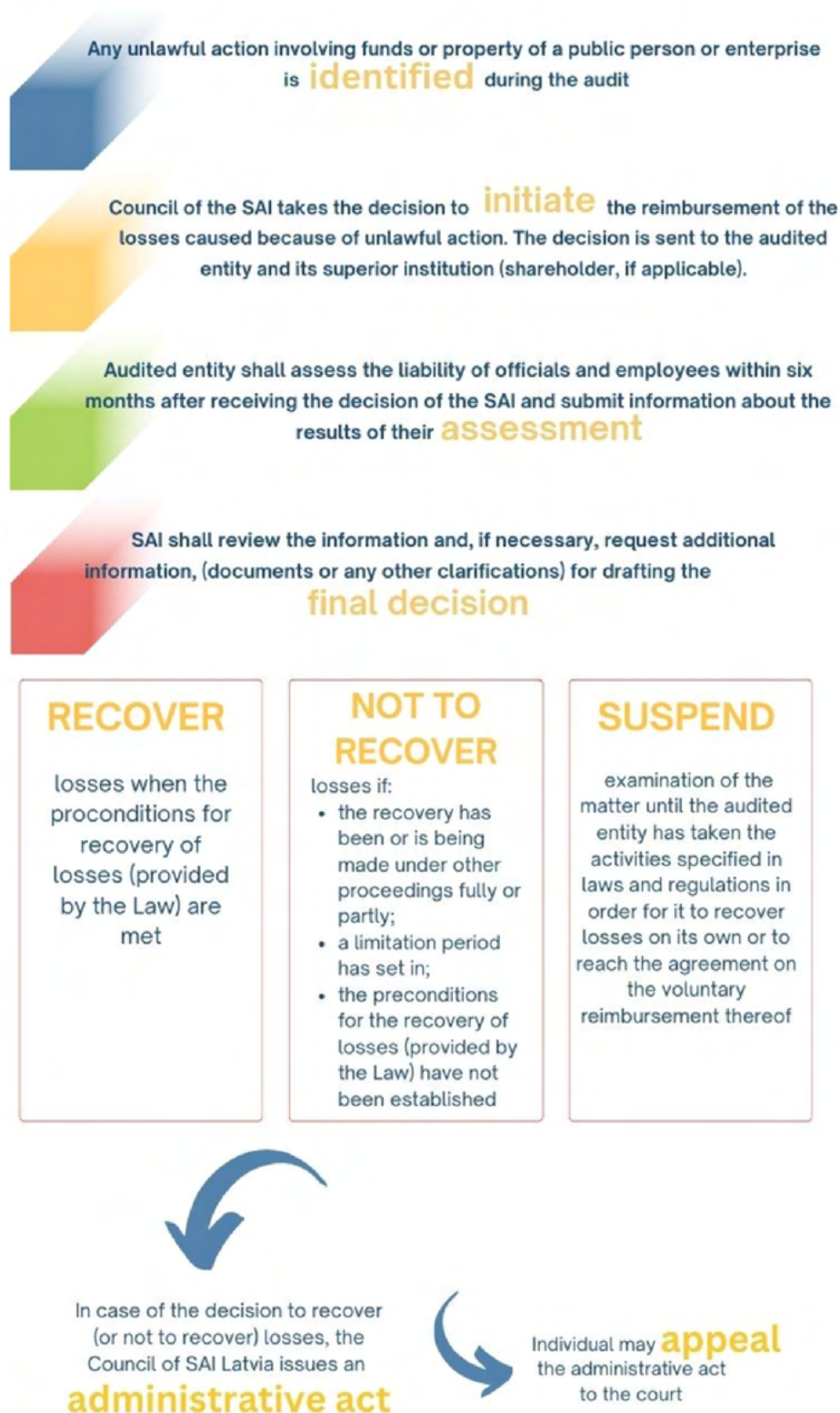


Figure 2: Recovery of losses process of SAI Latvia.
Source: SAI Latvia

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During the almost five years that have passed since the introduction of this new function, the regulation has been applied in 23 cases for losses totalling more than 273 615 euros.

(Actual application started in 2021 after the first audit reports were adopted since the entry into force of the new regulation.)



Figure 3: Statistics on recovery of losses during 2021 – 2023
Source: SAI Latvia

Although SAI Latvia has applied its new function and recovered significant losses, it still faces some challenges with the new initiative, such as:

- 1** Improving the process of recovery of losses to increase its effectiveness and to use as few resources as possible. This requires constant assessment of the level of severity attained in light of the financial impact and the importance of the case. E.g., a case where the amount of losses in question is small may seem prima facie insignificant, but may turn out to be of landmark nature for development of SAI case-law.
- 2** Establishing and proving guilt, such as gross negligence or malicious intent. Personal liability may be a necessary precondition for the recovery of losses.
- 3** The audit results and the audit report may not provide sufficient factual and legal basis for the recovery of losses. Close cooperation between auditors and legal support staff is necessary before the audit is completed.

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From the application of SAI Latvia's new function, some examples of violations resulting in losses identified are:

- Violation in paying remuneration to officials, including supplements, bonuses, extra payments in greater amount as allowed by law.
- Violation of prohibition provided by law to purchase a property or a service for an increased price.
- Rent discounts are granted to individuals in cases where it is not permitted by law.
- Remuneration paid to employees for compliance with an agreement regarding the restriction of the occupational activities of the employee (restriction on competition) after termination of the employment relationship for the time when employees were reemployed in the same workplace.
- Contracts with officials for the performance of tasks already falling within their duties as representatives of the institutions concerned, thus exceeding the maximum permitted amount of allowances for additional work which would be payable in the specific case.

Currently SAI Latvia is reviewing the data on the implementation of this function and, along with the consideration of faced challenges and benefits to society – intends to analyse the effectiveness of implementation. This pertains not only to specific savings gained but also to less tangible benefits. The impact of the successful use of this instrument by SAI Latvia in increasing the awareness and focus of government officials on the financial implications of their actions is one soft benefit which SAI Latvia will explore.

Authors:

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Elita Nīmande, Acting Deputy Head of Legal Division

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Source: Flag- Adobe Stock Images, Tarik GOK; Logo- Auditor General of South Africa

Beyond auditing and reporting – the expansion of the Auditor-General of South Africa’s powers to strengthen accountability mechanisms

Authors: Thabelo Khangale, Deputy Business Unit Leader: Material Irregularity Unit, Office of the Auditor-General of South Africa

1. Introduction

Following a number of years of deteriorating audit outcomes and a lack of consequences for the mismanagement of the public funds by those charged with the governance of government entities, the public demand for enhanced accountability and transparency saw calls from the public, media and parliamentary oversight structures for a review of the mandate and powers of the Auditor-General South Africa (AGSA) to go beyond auditing and reporting in an effort to strengthen accountability mechanisms.

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In April 2019, the Public Audit Act (PAA)(1) was amended to give the AGSA the power to identify and report on material irregularities and to take action if accounting officers and authorities in charge of the government entities fail to address the material irregularities appropriately. The amendments introduced an enforcement mechanism to strengthen public sector financial and performance management so that irregularities (such as non-compliance, fraud, theft and breaches of fiduciary duties) identified during our audits and their resultant impact can be prevented or can be dealt with appropriately and without undue delays.

When the AGSA was established more than a hundred years ago, South Africa adopted the Westminster system, also known as the Anglo-Saxon or Parliamentary model, when designing our institution. This model is employed by most Commonwealth countries.(2) Under a Westminster model, the work of the Supreme Audit Institution (SAI) is intrinsically linked to the system of parliamentary accountability. The basic elements of such a system are production of annual financial statements by all government departments and other public bodies, the audit of those accounts by the SAI and the submission of audit reports to Parliament for review by a dedicated committee.(3) With the 2019 amendments to the PAA, the AGSA is no longer a SAI based purely on the Westminster system. It also enjoys enforcement powers that are internationally recognised as jurisdictional functions. This means that we will continue to do what we have done in the past (auditing and reporting), but with the additional mechanisms of strengthening accountability as set out below in more detail.



The Author, Thabelo Khangale. Source: Thabelo Khangale

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2. Key changes brought by the amendments to the PAA

Until 31 March 2019, AGSA’s work consisted of auditing and reporting on the outcomes of audits to those accountable for public accounts, as well as to relevant oversight structures. Our audits also generated commitments from stakeholders to address the root causes giving rise to the audit findings so reported. The amendments that commenced on 1 April 2019 have not changed this position. We must continue with our auditing and reporting obligations and continue to solicit commitments for improvement. The amendments do, however, introduce a number of new mechanisms to ensure that audit findings are properly addressed and recommendations are implemented.

At the heart of the amendments is the concept of “material irregularity” (commonly referred to as “MI”). But what exactly is an MI? What happens once an MI has been identified? The definition of an MI and possible actions that can be triggered by an MI are reflected in Figure 1.

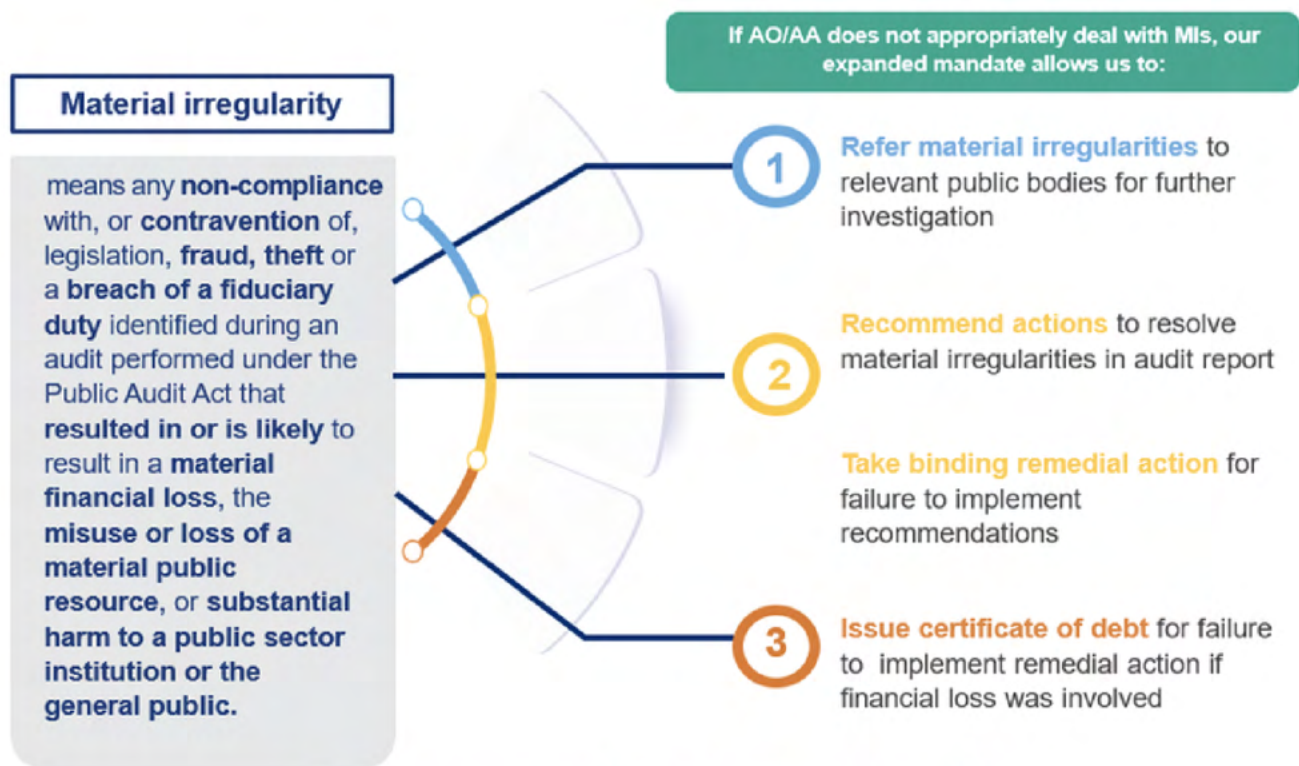


Figure 1. Source: Office of the Auditor General, South Africa

FEATURE ARTICLE

The definition contains three elements. Firstly, there must be a form of breach. The breach can come in the form of non-compliance with the law or in the form of a criminal act such as fraud or theft. Even a breach of a fiduciary duty is sufficient to satisfy this element of the definition. The second element of the definition is the proximity of an MI to the audit process. In fact, an MI can be identified during the course of an audit performed in terms of the PAA. Thirdly, not all breaches identified during the course of an audit under the PAA constitute MIs. The breach must have a material impact.

The amendments not only introduced the concept of MI in the work of the South African SAI, but also require the Auditor-General to act promptly once an MI has been identified.

Referral on MIs to relevant public bodies

The PAA provides that the Auditor-General may, as prescribed by regulation, refer any suspected material irregularity identified during an audit performed under the PAA to a relevant public body for investigation, and the public body must keep the Auditor-General informed of the progress and the final outcome of the investigation.

Remedial action

If the Auditor-General detects an MI during an audit, but decides not to refer it to a public body for investigation, he or she may make recommendations in the audit report regarding the best possible ways to address the MI. These recommendations aim to assist the accounting officers and authorities of the relevant public institution to address the MI. The Auditor-General must, within a stipulated time, follow-up on the recommendations made in the audit report. If the accounting officers and authorities fail to implement the recommendations, the Auditor-General must issue binding remedial action, instructing the accounting officer and accounting authority to act on the initial recommendations made within a stipulated time. If the MI involved a financial loss to the state, such remedial action must include a directive or instruction to the accounting officer and authority to quantify and recover the loss from the responsible person, again within a stipulated time.

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Certificate of debt

In the event that the Auditor-General issued a directive to the accounting officer and authority to quantify and recover a loss to the State from a responsible person, and the accounting officer and authority fails to do so within the stipulated time, the Auditor-General can issue a certificate of debt against the accounting officer and authority. The certificate of debt effectively renders the accounting officer and authority a debtor to the State and the amount specified in the certificate must be paid by the accounting officer and authority in his, her or their personal capacity. Once the certificate of debt has been issued, the Auditor-General must submit a copy thereof to the responsible executive authority, who is charged with the responsibility to recover the certificate amount from the accounting officer and authority. The executive authority must keep the Auditor-General informed of the progress made with the recovery of the amount.

Before the Auditor-General can lawfully issue a certificate, he or she must invite the implicated accounting officer and authority to make written representations to the Auditor-General, citing reasons why such a certificate should not be issued. If the Auditor-General, after considering the accounting officer and authority written representations, still considers a certificate of debt appropriate, he or she must establish an independent advisory committee to hear oral representations from the accounting officer and authority. The Auditor-General can only issue the certificate of debt after due consideration of the written recommendations of the advisory committee.

3. Strategies for implementation

A change in the legal framework of any SAI requires careful consideration of the potential impact thereof on the SAI's internal and external environment. Although our audit process remains largely the same, the new powers of referral, remedial action and certificates of debt required an assessment of the impact thereof on our environment, both internally on our people and operations, and externally on our stakeholders. Furthermore, the necessary practical tools, such as regulations, policies, procedures, structures, etc. for efficient and effective implementation had to be put in place prior to implementation.

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The amendments no doubt had an impact on the institution's available skills and capacity. We developed a comprehensive technical and soft skills training programme to prepare our audit and support staff prior to the commencement of the amendments and began recruiting staff with specialised expertise required to manage the MI process. The successful implementation of statutory changes often hinges on the strategies in place, and how well an institution prepares those affected by the changes. We developed a comprehensive internal and external stakeholder engagement plan that covers our staff, accounting officers and authorities of our auditees, oversight structures, regulators and professional bodies. Due to the novelty of these extended powers, and our capacity constraints, we obtained the blessing of the Parliament's Standing Committee on the Auditor-General to phase in the implementation of MI process to a certain number of our auditees during the first year of implementation.

Notably, we also aligned our organizational strategy to ensure that it complements the implementation of the new powers. The AGSA's new long-term strategy (#CultureShift 2030)(4) aspires to have a more direct, stronger and consistent impact on improving the lives of ordinary South Africans by helping to improve the public sector culture through insight, influence and enforcement of the new powers. Success in this regard does not only rest on our ability to fulfill our mandate, but also on the extent to which we are able to mobilize and bring the collective influence of the whole network of stakeholders responsible for public sector accountability to drive positive change.

4. Impact of material irregularity process

Since the implementation of the MI process, accounting officers and authorities have taken action to prevent or recover financial losses, while some of the losses are still in the process of being recovered. We have noted implementation of consequence management against officials responsible for the financial losses, including the referral of matters to law-enforcement agencies. Improvements in the systems, processes and internal controls to prevent any further financial losses have been noted. In the 2022-23 general report for national and provincial departments, their entities and legislatures tabled in Parliament, the Auditor-General reported the following actions taken to address the financial loss. (See figure 2)

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Figure 2. Source: Office of the Auditor General of South Africa

5. Conclusion

The amendment of the PAA is one of the biggest success stories for the AGSA. This would not have been possible without the strategies of implementation highlighted above. Amongst other things, we will continue to measure the success of the amendments to the PAA against the characteristics of the public sector culture that we aspire to see and work towards, that is a public sector that is underpinned by a culture of performance, accountability, transparency and integrity.

The AGSA has a constitutional mandate and, as the SAI of South Africa, exists to strengthen our country's democracy by enabling oversight, accountability and governance in the public sector through auditing, thereby building public confidence. This is our mission, but, without a shared vision for accountability by the whole of the accountability ecosystem in the public sector, no law will be able to realize this mission. The implementation of the new powers remains a continuous journey for the AGSA. However, the organization is encouraged by the positive actions that many accounting officers and authorities have already taken to ensure that MIs are addressed, resulting in an improved accountability culture within the public sector.

Footnotes

1. Act No. 25 of 2004
2. Department for International Development (2004). Characteristics of different external audit systems. Policy Division Info series.
https://www.parlAmericas.org/uploads/documents/DfID_Characteristics_of_Different_SAIs.pdf
3. Ibid
4. <https://iar-2022-23.agsareports.co.za/in-this-report/shift-public-sector/>



Source: Flag- Adobe Stock Images, ee12ee; Logo-BPKRI

The Evolution of the Honorary Council of the Code of Ethics: Strengthening SAI Indonesia's Jurisdiction

Authors: Sherlita Nurosidah, Teguh Widodo (SAI Indonesia)

Introduction

Striving for a high standard of ethical assurance has been deeply rooted as part of daily services in public institutions. Globally, INTOSAI has ISSAI 130 on the Code of Ethics, which underlines the importance of implementing an ethics control system within the SAI. The system does not only carry out ethical requirements but also other programs, such as risk identification, analysis, mitigation, educational support, assessment of misconduct allegations, and suspect protection. SAIs worldwide vie to initiate a satisfactory management climate and proactively ensure the expected morality. Invariably, SAI Indonesia believes in honouring these values.

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Various enforcement instruments are utilized to maintain integrity upon issuing Law Number 15 of 2006 on Badan Pemeriksa Keuangan, or SAI Indonesia. The law was fundamental to the early establishment of the Code of Ethics, and the Honorary Council of the Code of Ethics of SAI Indonesia (MKKE).

In 2007, SAI Indonesia issued SAI Regulation Number 2 of 2007, which governed both the Code of Ethics and MKKE. Fostering a favourable environment of trust, respect, and fairness is important. SAI Indonesia also provides several instruments to report suspicions of alleged violations of ethics, such as the technological utilisation of the whistleblowing system and wrongdoing reports (Nurosidah, 2024).

This article discusses the evolution of SAI Indonesia's regulation on MKKE, which aimed to strengthen SAI Indonesia's jurisdiction.

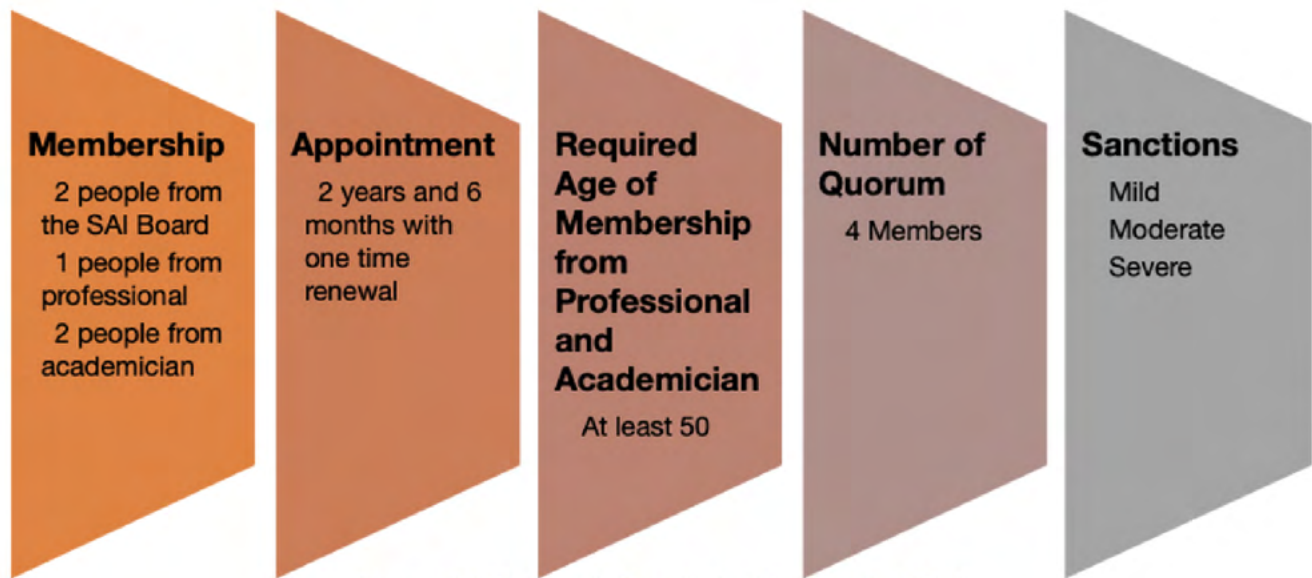
The Evolution of MKKE

The MKKE was first established under SAI Indonesia Regulation Number 2 of 2007 on the Code of Ethics. The Code of Ethics is a set of norms in line with the core values, namely independence, integrity, and professionalism. It outlines the obligations and prohibitions that each Board Member and Auditor of SAI Indonesia must adhere to when performing their duties. MKKE is a council established by SAI Indonesia to enforce its Code of Ethics. Comprising SAI Indonesia's board members, practitioners, and academicians, the MKKE assesses any indication of integrity violations that board members and auditors may encounter to establish a strong foundation for maintaining the jurisdiction.

The Code of Ethics of SAI Indonesia was then continuously amended as needed in 2011, 2016, and most recently in 2018 by SAI of Indonesia Regulation Number 2, 3, and 4, respectively.

On the other hand, after 2007, MKKE was ruled under separate regulations in 2011, 2016, and 2018. The alterations are intended to adapt to the organisation's development and needs. MKKE is currently ruled under the SAI Regulation Number 5 of 2018.

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Source: SAI Indonesia Regulation Number 5 of 2018

The MKKE regulations have evolved to keep pace with the latest developments in ethics and ensure that the council can effectively fulfil its mandate of maintaining the value of the Board and employees of SAI Indonesia. MKKE only oversees duties and authorities' implementation during the Board Hearings in the earliest regulation. Still, the scope has recently expanded to audit policy determination, functions of the secretariat general, supporting roles, and other matters that needed to be decided by the SAI. The council has also emphasised prioritising state interests over personal or group interests, which is crucial in maintaining the jurisdiction. These changes have enhanced the council's ability to uphold ethical standards and promote a culture of ethical behaviour within SAI Indonesia.

Members of MKKE consist of five persons and give more space to an open discussion from external parties. The regulations have changed so that as the number of academicians on the MKKE has increased from one to two persons, and members from the SAI Board have been reduced from three to two persons. Members, excluding the SAI Board, are to be at least 50 years old, a change from the previous age minimum of 35 years. These changes to the MKKE membership aim to make critical and mature decisions. Another difference is that MKKE Board members' appointments have changed to two years and six months, and they can be reassigned one more time. Board members also shall not be a member of any political party. They should not hold double positions and be employed by other national institutions that manage state finance and private companies.

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Decisions made by the MKKE are final and bound, which differs from prior regulations that need to be legitimated by the Board Hearing. The number of quorums was also altered from three to four members, enhancing eloquent decision-making. The MKKE has grown stronger in terms of order, management, administration, and performance. SAI Indonesia also follows international standards in conducting quality control and quality assurance to adhere to ethical accordance.

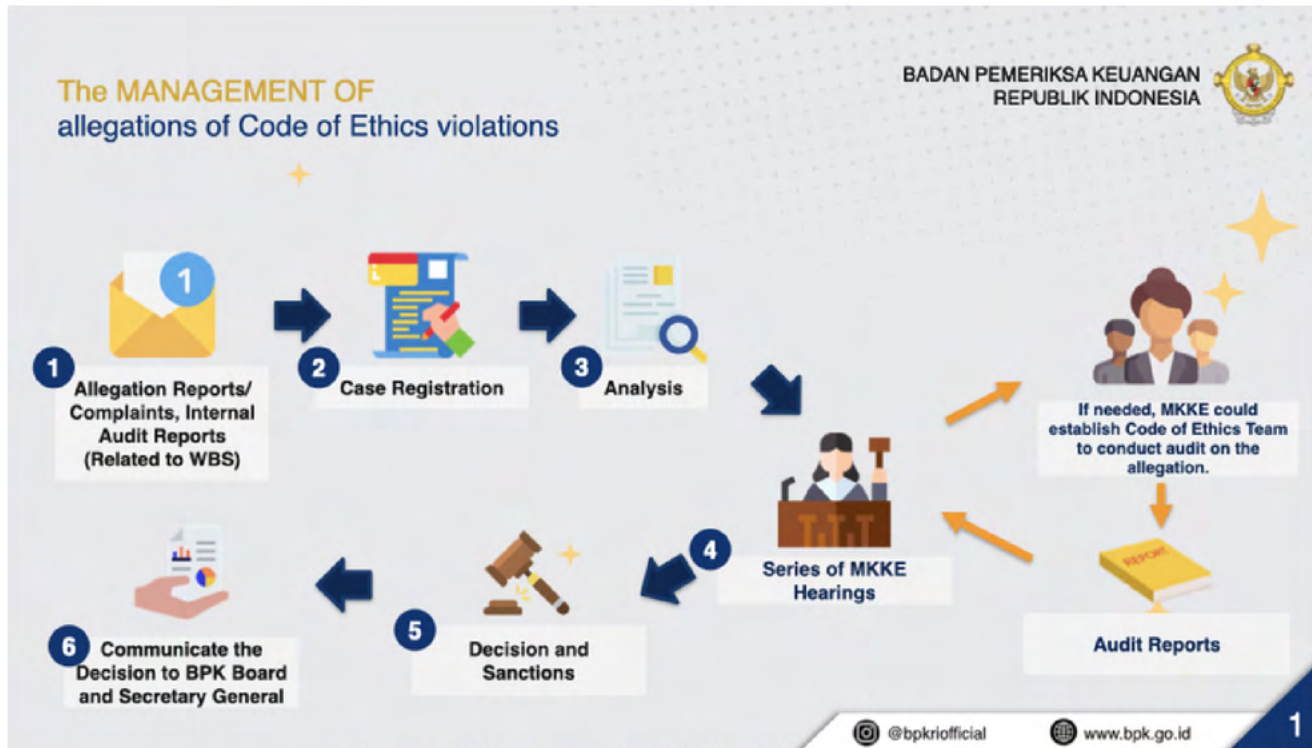
Current regulation covers the new exposure of sanctions given to auditors who are found to have disobeyed the code of ethics and harmed the team or work unit. They will be directly given mild sanctions, such as being prohibited from performing auditing for a year with a probation of 6 months. The newest ruling seems more assertive than prior regulations, which only gave written reprimands and recorded them in the system. It categorises sanctions into mild, moderate, and severe. A moderate sanction is given to any misconduct to prohibit auditing from a year to two. At least three years or even being permanently exempted from being auditors is an example of a severe sanction. The new formulation is expected to bring a sense of assertiveness.

For a detailed explanation of these regulations' amendments, see [the linked appendix at https://intosajournal.org/wp-content/uploads/2024/04/Appendix.pdf](https://intosajournal.org/wp-content/uploads/2024/04/Appendix.pdf).

The Investigative Procedure of Code Ethics Violations

SAI Indonesia Regulation Number 5 of 2018 also regulates the investigation procedure of the code of ethics violations. It is a series of activities to enforce integrity by punishing the offender and providing a deterrent effect for the perpetrators. Investigative audits should be carried out with the aim of revealing incidents of alleged integrity violations. The procedure is held to investigate and/or decide whether violations of the code of ethics have been proven and impose the sanctions. The summary of the investigative procedure conducted by MKKE and the Inspectorate General of SAI Indonesia is as follows.

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Source: SAI Indonesia Regulation Number 5 of 2018

The investigative procedure has recently been included as one of the subcomponents of the Integrity Management Framework of SAI Indonesia, issued in early 2024. The framework covers strategies and policies designed to maintain integrity within the institution, which includes developing an organisational culture of integrity, preventing, detecting, and acting against integrity violations comprehensively and measurably. It accommodates all integrity management components and initiatives currently implemented and/or being developed by the SAI.

Conclusion

Cultivating a culture by prioritising integrity, independence, competence, professionalism, and accountability, as stated in ISSAI 130, enhances the chance to uphold ethical principles. Ethics enforcement shall highly value transparency, moral, and professional values to guide decision-making, more generally and within SAI Indonesia. Establishing integrity and trust forms the cornerstone for robust relationships and collaborations, empowering the organisation to navigate complex challenges with credibility and resilience. A workforce steeped in integrity exhibits commitment, motivation, and alignment with the organisation's overarching goals, contributing to enhanced efficiency, productivity, and overall success.

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The establishment of MKKE in SAI Indonesia highlights the institution's perseverance in combating ethical misconduct. It aligns INTOSAI guidance with ethics monitoring. The commitment to integrity within the organisation not only conforms to the ethical guidelines set by the MKKE but also reinforces SAI Indonesia's role as a reliable and responsible guardian of public funds. In essence, the synergy between organisational integrity and the principles upheld by the MKKE serves as a cornerstone for a resilient and ethically sound institutional framework. Everchanging regulations on MKKE accompany the development of other policies. Hence, it is highly plausible to have another amendment in the foreseeable future as a continuous evolvement of the regulation, especially regarding the issuance of Law Number 20 of 2023 on State Civil Servants.

About the Authors

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Teguh Widodo is currently serving as the Inspector of Integrity Enforcement for the Inspectorate General of SAI Indonesia. He earned a doctoral degree in budgeting from the School of Government at the University of Birmingham, United Kingdom in 2017.

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Source : Cour des comptes

The new system of financial accountability for public managers, at the heart of the public integrity ecosystem

Author: Louis Gautier, General Prosecutor of the French Cour des comptes

The French Cour des comptes and regional and territorial chambers (CRTCs) underwent a major overhaul with the reform of the financial liability regime for public managers on 1st January 2023. Until this date, the contentious functions of these financial jurisdictions were based on two distinct liability regimes: the one specifically applicable to public accountants (who handle the public fund and keep the accounts) and the one generally applicable to “authorizing” public managers (who decide on revenue and expenditure).

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Under the system of personal and financial liability of public accounting officer, public accountants were held responsible out of their own personal funds for any shortfalls in the public purse, and could therefore be placed “en débet”, i.e. ordered to reimburse such shortfalls. In 1948, this system was supplemented by a liability regime inspired by common criminal law, under which every public manager (except ministers and elected public manager officials) who were not accountants could be fined if they failed to comply with the legal rules governing the handling of public funds. An ad hoc court was set up for this purpose, the Court of Budgetary and Financial Discipline (CDBF), made up equally of magistrates from the financial jurisdictions and members of the Conseil d’État (the supreme administrative court), before being integrated into the Cour des comptes in 2023.

These two parallel systems had become unsatisfactory. The accountability of accountants was ineffective because of frequent remissions, while the CDBF, by judging only a few cases a year due to a lack of resources and ambition, had come to seem like an exceptional form of justice. Putting an end to this dichotomy, the new regime of Liability of Public Managers (LPM) applies to all public managers, whether accountants or authorizing officers, for all their budgetary and financial acts. A new chamber dedicated to litigation has been created within the French Cour des comptes. Its judgments may be appealed to a Financial Court of Appeal, and then to the Conseil d’État.



The author, Louis Gautier. Source : Cour des comptes

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As part of the reform, ten financial offences liable to be prosecuted under the Financial Jurisdictions Code from 1st January 2023 have been redefined and grouped into four main categories:

01 Budgetary and accounting offences - which can include, for example irregular commitment of credits without having the authority to do so (ie. no clearance/ no visa);

02 The offence of giving an undue benefit to itself/somebody (directly or indirectly);

03 Breach of a of revenue, expenditure or management rule resulting in a significant financial loss through serious misconduct; and lastly,

04 Non-enforcement of a court decision and offences related to the enforcement of court rulings, making it possible to penalize public managers for failure to comply with court rulings ordering them to pay a sum of money.

These offences are all designed to punish mismanagement that undermines public financial order. Penalties are purely pecuniary, and can range up to six months' annual remuneration. They may be accompanied by publication of the judgement in the Journal Officiel. Persons liable to prosecution include anyone working in a public or private structure likely to be audited by the financial courts, whether as accountant, authorizing officer, chairman of a board of directors or head of a supervisory body. Managers of organizations receiving public subsidies or appealing to the generosity of the public are also concerned (with the exception of volunteers). Government officials and elected representatives, on the other hand, are not liable to prosecution for most offences.

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The procedure governing the application of this new system has also been renewed: from now on, the General Prosecutor's Office will be central to all stages of the litigation process. It examines cases referred to it by the chambers of the financial jurisdictions or by public authorities authorized to report (ministers, public prosecutors, prefects or state inspection services), as well as reports received directly from citizens via its online platform. The General Prosecutor then decides whether or not to prosecute, and can either issue an indictment or issue a reminder of the law. This latter warning usually proves effective!

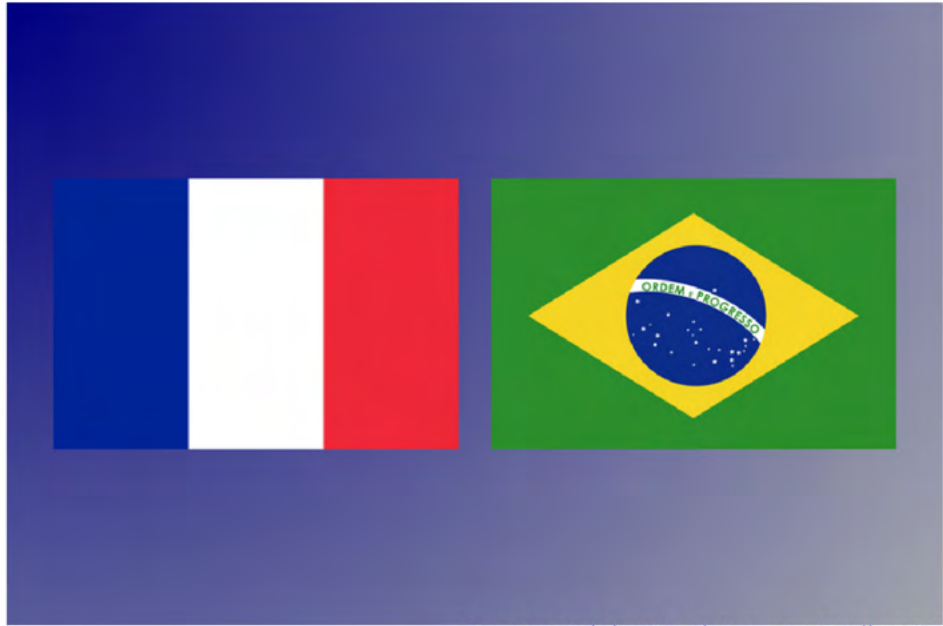
In the event of an indictment, the case is referred to the litigation chamber, which then conducts an independent investigation. At the end of the investigation, the General Prosecutor's Office decides whether to refer the accused to the litigation chamber or to close the case. The public prosecutor's office requests sanctions during the hearing, and may appeal against the decision of the litigation chamber, or appeal to the Court of Cassation. This procedure is unique in its rationale: based on the notion of "protecting public financial order", it complements the administrative and disciplinary liability regimes, sanctioning the most serious cases where necessary.

What's more, when the cases referred involve facts that could constitute a criminal offence, such as alleged corruption, misappropriation of public funds, illegal interest-taking or favoritism, the public prosecutor may decide to refer the case to the courts.

In this way, the financial and criminal courts complement each other, with the former punishing misconduct in public management, and the latter to initiate proceedings when the same facts constitute criminal offences against probity - the public prosecutor's office therefore plays an important role in coordinating their respective actions.

Through its prosecution policy, the General Prosecutor's Office of the French Cour des comptes contributes to reinforcing the credibility of financial jurisdictions by initiating public action, whether in response to reported cases or on its own initiative. This new system completes the arsenal of sanctions available for criminal, managerial or disciplinary liability. In this sense, it guarantees the usefulness of the work of the supreme audit institutions, which can find a direct jurisdictional outcome, and reassures citizens about the notion of public accountability. More than ever, financial jurisdictions are in a position to safeguard the financial and proprietary interests of the public sector, to play their part in combating breaches to the duty of probity, and to account for the proper management of public funds, in accordance with article 15 of the 1789 Declaration of the Rights of Man and of the Citizen, "Society has the right to demand an account from any public official of his administration", as inscribed on the frontispiece of the Grand'chambre of the French Cour des comptes.

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Source: Adobe Stock Images, Tarik GOK

The INTOSAI-P 50 document outlines twelve principles for the jurisdictional activities of Supreme Audit Institutions (SAIs) empowered with the corresponding mandate, which allows them to rule on the liability of individuals accountable by law in case of irregularities or mismanagement.

Under the rule of law, the potential for intervention in the sphere of rights of those under SAIs' jurisdiction requires adherence to due process of law and other related fundamental guarantees. These are enshrined in the international system of human rights protection and in most national constitutions worldwide, albeit with some variations in form.

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Due process clause, in its modern understanding, comprises the exigence of an effective contradictory procedure, allowing broad defense means, including appeals, and an impartial and reasoned judgment, in a reasonable period. These features are clearly the master line of the INTOSAI-P 50 principles, and largely justify the role of the public prosecutor as an essential actor in the implementation of SAIs' jurisdictional competences.

The referred INTOSAI document focuses the public prosecutor's mission on the defense of "the public interest and the due application of the law" (INTOSAI-P 50, item 2.2.3).

The correlation between the mission of the public prosecutor and due process is confirmed by the institutional framework and responsibilities of many Public Prosecution Offices that officiate before the SAIs' jurisdiction (hereafter referred to as PPOs). This is demonstrated by an ongoing survey led by the Brazilian PPO, as a new initiative to strengthen common knowledge to build professional bridges.

It may be important to clarify that under the European continental legal tradition, the role of the public prosecutor, or the "Ministère Public" – to use the French term –, commonly extends beyond prosecution itself, contrary to what the English language expression might suggest.

It embraces a broad defense of the public interest and, in more objective terms, of the due application of the law. Thus, the PPOs also exercises what the INTOSAI P-50 calls "quality control"(1), or, more specifically, a broad legality control of the proceeding.

Before discussing some of the findings of the aforementioned survey, it is key to highlight that the survey is the product of recent efforts to foster dialogue and exchange between the PPOs. These efforts began in 2022, in the context of the XXIV International Congress of Supreme Audit Institutions (INCOSAI) in Rio de Janeiro.

Despite the novelty of a broader interaction among PPOs worldwide, the role of the public prosecutor is not new within the SAIs' environment, at least for those that align with the Courts of Accounts model and tradition.

The role of the public prosecutor has been present since the establishment of the French Cour des comptes, in 1807, and other Courts, as the Brazilian Tribunal de Contas da União (TCU), in 1893.

As suggested and encouraged by the host of the XXIV INCOSAI, the TCU's and INTOSAI's president, Minister Bruno Dantas, the Brazilian PPO's chief, Prosecutor General Cristina Machado, invited representatives from other PPOs, bringing together representatives from six countries across three continents.

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The general goals set for that meeting were:

- to better understand these peer institutions, their similarities and differences;
- to increase visibility of PPOs' role within SAIs' jurisdiction;
- to disseminate the importance of PPOs as guarantors of due process within SAIs' jurisdiction.

The main meeting outcomes were:

- the creation of a permanent channel of dialogue among the PPOs;
- the decision to conduct a survey of each PPO's institutional features and assignments, to identify similarities and differences.

Today, the dialogue among PPOs extends, to some degree, to fourteen countries across four continents. A virtual encounter took place in January 2024 with Brazil, France, Congo, Italy, Morocco, Panama and Senegal, thus embodying the need for a perennial platform of dialogue on good practices.

The survey still ongoing, but we have already gathered relevant information from most of the countries engaged in the dialogue, specifically, Brazil, Congo, East Timor, France, Greece, Italy, Niger, Morocco, Panama, Portugal, Senegal and Turkey.

The main findings can be summarized as follows:

- most of the respondent offices are embedded within the organizational structure of the respective SAIs, having assured the necessary independence in the exercise of their legal mandate.
- In a few cases – such as in Portugal and East Timor – the PPO is part of a broader body of prosecutors, which holds broader legal attributions and functions under other jurisdictions.
- Most of the responding offices have their General Prosecutors appointed by the head of the Executive Branch, not by the SAIs, what reinforces, in most cases, the non subordination to the respective Courts.
- There is a minimal convergence among PPOs' assignments, comprising its *custos legis* and prosecutory roles (both present in at least 11 of 12 PPOs), and the related prerogative to appeal SAIs' decisions (present in at least 11 of 12 PPOs). (2)

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The *custos legis* role is considered to be the PPO's intervention in SAIs' proceedings to ensure procedural and substantive legal compliance, including due process and the related fundamental procedural guarantees established in favor of those accountable before SAIs' jurisdiction.

The prosecutory role refers to investigative actions or requests from the PPOs, and also to the pursuit of individual liabilities before SAIs' jurisdiction.

In most cases, the PPO has the authority to investigate and request information and documents from public authorities. Among the PPOs respondents, 75% (9 of 12) were clear about their investigative initiative.

Some have reported that, under their framework, their PPOs (3 out of 12) exclusively or primarily held the "public action" (or "liability action"), which means that the respective SAIs could not apply any sanctions without a request for imputation from the respective PPOs. However, we are still awaiting more survey information on this regard from most of the PPOs.

Despite the convergence noted above, it is clear that PPOs differ in their profiles. Some appear to have a more prominent prosecutorial function, while others may be more focused on the *custos legis* role, on the so-called "quality control" of SAIs' proceedings and decisions.

But even in legal frameworks where the public prosecutor figure may be more strongly associated with its prosecutory function, its prominent role in representing the public interest in the liability of those accountable by law, is also strongly associated to the due process clause, as a way of separating the State's roles of accusing and judging, in order to assure the impartiality of the judgement. This objective meets another principle from the INTOSAI-P 50 (INTOSAI-P 50, principle 7, item 4.2).

These are preliminary findings and conclusions of our survey, as we are still seeking to reach more PPOs and to refine the already gathered information. All interested PPOs should therefore not hesitate to contact us directly for further information and involvement. However, we firmly believe that it is worth sharing due to the novelty and relevance of the information, and as a means of engaging more PPOs in this undertaking.

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Access the survey report in English by visiting: <https://intosajournal.org/wp-content/uploads/2024/05/PPOs-Survey-v.-3-mai-2024.pdf>

The PPOs survey emphasizes the pivotal role of public prosecutors within this framework, highlighting their mission to safeguard the public interest and the due application of the law. (3)



The Authors. Source: Cour des comptes, Tribunal de Contas

In line with the general goals set during the PPOs' 2022 meeting in Rio de Janeiro, which aimed to increase the visibility of PPOs' role and importance, and in order to bring different perspectives to this article, we gathered some brief, but representative testimonies from some General Prosecutors:

FEATURE ARTICLE

Brazilian General Prosecutor, Mrs. Cristina Machado



Flag Image Source: Adobe Stock Images, grgroup

“The Public Prosecution Office at the Federal Court of Accounts (MPTCU) is a centennial institution with constitutional status in Brazil. Its mandate to promote the defense of the legal order is realized through the prerogatives of providing legal opinions on all matters subject to the decision of the Court and to advocate before it for pertinent measures in the public interest.

This enables us to intervene in different procedures and on a wide range of themes, especially regarding underlying legal issues. As Prosecutor General, I do not hesitate to say that we receive great respect and deference from the deliberative body of the Court in relation to our work and proceedings interventions.”

French General Prosecutor, Mr. Louis Gautier



Flag Image Source: Adobe Stock Images, Tarik GOK

“The Public Prosecution Office at the Cour des comptes ensures both a broad administrative role regarding quality control of all the Court’s works, including its program, and a legal function according to which it holds the monopoly of public action before the Court.

A recent legislative reform transformed and reinforced the capacity of sanction of our public managers’s financial liability system.

By working closely with other judicial and independent administrative authorities involved in the process of identifying possible misconducts resulting in financial loss, the PPO is at the core of the ecosystem of public financial integrity.”

FEATURE ARTICLE

Algerian General Censor, Mr. Omar Debbakh



Flag Image Source: Adobe Stock
Images, shtiel

The General Censor is a position of magistrates at the Algerian Court of auditors. That is responsible for overseeing the application of laws and regulation within the institution. The General Censor acts as the public prosecutor within the Court of Auditors and is currently assisted by six other censors (...).

(...) The General Censor's duties include monitoring the production of accounts, ensuring the timely submission of accounts, and requiring the application of fines in cases of delay, refusal, or obstruction. The Censor General also requires the declaration of management of fact and the fine for interference in the functions of the public accountant. He also requires the implementation of the judicial proceedings in Budget and Finance Disciplinary (...).

Additionally, the General Censor assists or is represented at the sessions of the judicial formations of the Court, presents his written conclusions, and, if necessary, his oral observations.

The General Censor also monitors the implementation of the Court of Auditors' judgments and ensures that its injunctions are followed; follows the execution of judgments of the Court of Auditors and ensures the action taken on its injunctions.

Finally, the General Censor is responsible for maintaining relations between the Court of Auditors and the courts and monitoring the results of any case they are involved in.

FEATURE ARTICLE

Moroccan King's General Prosecutor, Mr. Brahim Benbeh



Flag Image Source: Adobe Stock Images, G7 Stock

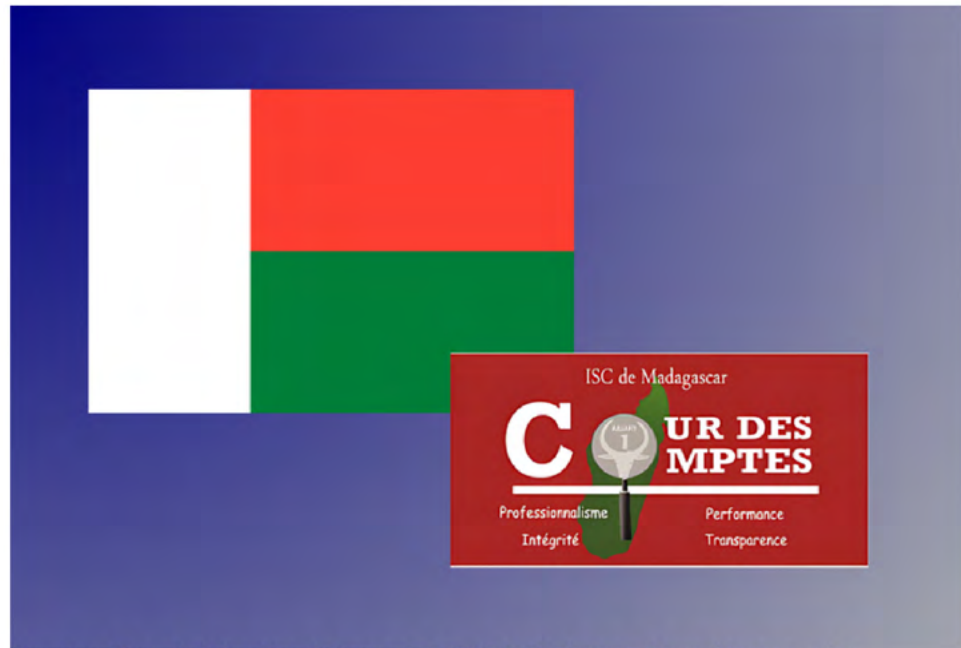
“The General Prosecution is the body entrusted by the legislature to defend the interests of society whenever a certain harm is caused to the latter. It ensures the application and defense of the law, and assists judges in the performance of their mission, which is reflected in the sound application and interpretation of the law. (...)

The General Prosecution Office is distinguished by its independence from the presidency of the SAI in exercising its judicial powers.

The General Prosecution Office exercises its functions with regard to the judicial competences related to: auditing and judgement on accounts; discipline related to the budget and finances; deciding on appeals filed against decisions and judgments issued by the SAI on national and regional level; referral to the SAI of operations that may constitute de facto management.”

Footnotes

- 1.The “quality control” of jurisdictional procedures is identified as one of the principles of jurisdictional activities of SAIs (Principle 10). According to the terms of INTOSAI-P 50, one of its means is the intervention of the public prosecutor. The principle also highlights the importance of involving “independent checks” (INTOSAI-P 50, item 5.1).
2. Due to some incomplete responses, we cannot assure that all offices respondents exercise *custos legis* role or may appeal from SAIs’ decisions. But none of them responded negatively to the correspondent questions.
3. To learn more about the work of the Brazilian Federal Court of Accounts contributes to the improvement of Public Administration and society, visit https://portal.tcu.gov.br/en_us/english/ for their latest news.



Source: Flag- Adobe Stock Images, Tarik GOK; Logo- Cour des comptes Madagascar

Jurisdictional Control of the Court of Auditors in Madagascar: Challenges and Prospects

Author: Jean de Dieu Rakotondramihamina, President of the Cour des Comptes of Madagascar

The French Cour des Comptes, created in 1807 under Napoleon, is one of France's oldest institutions. It acquired its authority through jurisdictional control of public accountants' accounts, its primary mission. This type of control was subsequently adopted by other French-speaking, Portuguese-speaking and Spanish-speaking countries. In Madagascar, the Cour des Comptes is facing challenges with a complex issue linked to jurisdictional control. This article aims to elicit questions and reactions to this situation, in order to highlight the importance of the challenge of jurisdictional control of the Malagasy Cour des Comptes, while shedding light on its *raison d'être*, in promoting the sound management of public funds.

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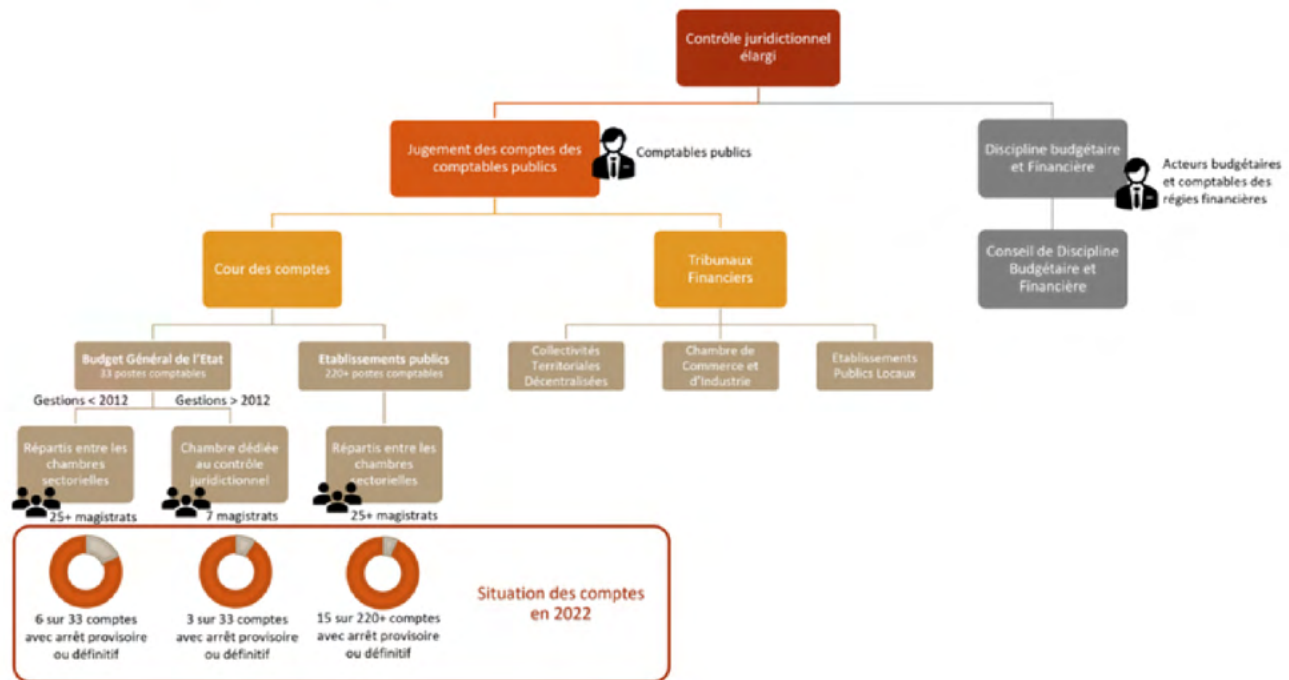


Figure 1: Overview of the powers and limits of jurisdictional control in Madagascar
Source: Cour des comptes Madagascar

Madagascar's Cour des Comptes faces systemic and procedural challenges

By way of introduction, it is essential to understand the organizational configuration and inherent responsibilities of the Cour des Comptes (or Court of Audit) of Madagascar in terms of jurisdictional control. The scope of the audit area is illustrated in Figure 1, providing an initial overview of the associated workload. Figure 2 illustrates the main stages in the implementation of jurisdictional control in Madagascar, as it stands today.

Budgetary and financial discipline (DBF): an emerging mission to balance control

Currently, two systems coexist in the world: the first entrusts the Budgetary and Financial Discipline (DBF) to a separate, independent structure, as is the case in Madagascar (see Figure 1), while the second, more widespread, integrates discipline into the Cour des Comptes itself. The duality of the first system is criticized for its complexity, resource inefficiency and ineffectiveness.

FEATURE ARTICLE

This is also confirmed in Madagascar, where the Budgetary and Financial Disciplinary Council (or Conseil de Discipline Budgétaire et Financière in French, referred to as the CDBF), as a separate body, is accused of complicating procedures, with a restricted referral and administrative decisions subject to appeal to the Council of State. The non-integration of the DBF in Madagascar thus seems to hamper the credibility and governance of the SAI, with adverse consequences for the regularity and management of public expenditure.

The international trend is towards a single structure, where the DBF is integrated into the Cour des Comptes. It then acts as a chamber within the Court of Auditors, ensuring control of compliance and financial morality. The Association of Supreme Audit Institutions sharing the use of the French language (AISCCUF) recognizes the importance of the DBF in strengthening the credibility of SAIs and improving public governance by promoting a culture of regularity and good management.

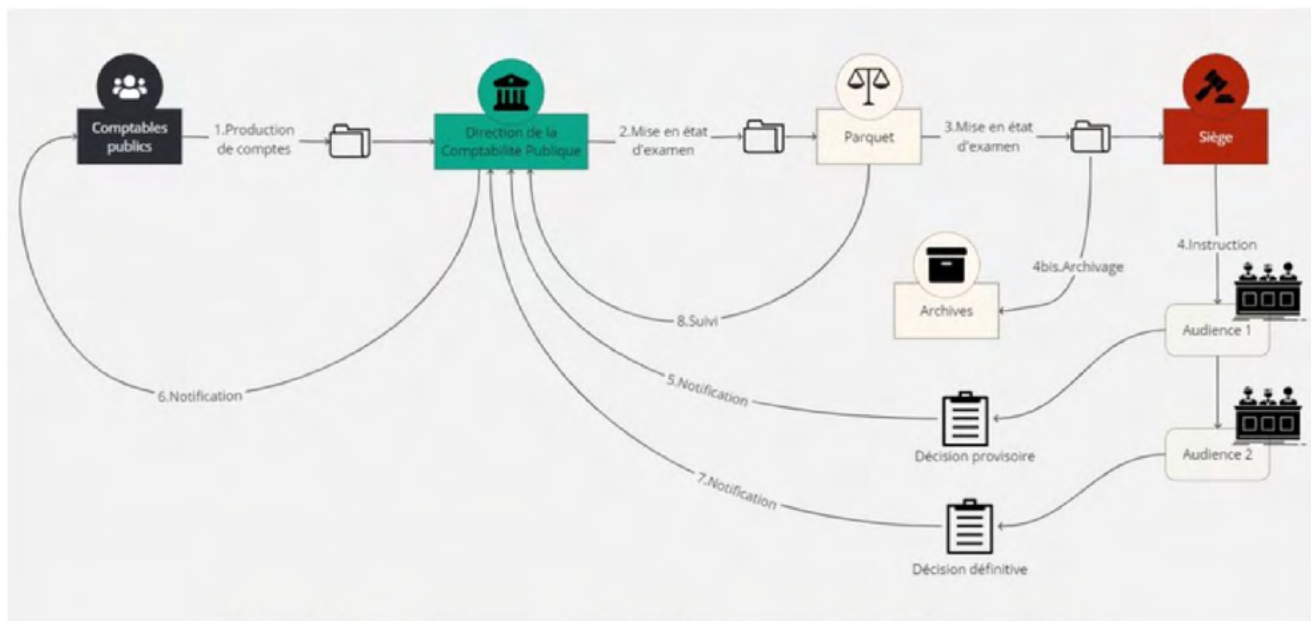


Figure 2: The main stages in judging the accounts of public accountants
Source: Cour des comptes Madagascar

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A heavy burden on the Cour des Comptes' human and material resources

The INTOSAI Development Initiative's (IDI) analysis of the legal framework of Madagascar's SAI in 2021 highlighted the Court's limitations in its human and financial resources. With current resources, it would take several years devoted exclusively to jurisdictional control to clear the accounts, despite its original and priority nature. However, non-jurisdictional control and audit work has proven to have a greater impact on the credibility and visibility of the institution, as well as on the individual development of magistrates. Focusing exclusively on jurisdictional control could jeopardize staff motivation and the visibility of the SAI.

As far as archives are concerned, the backlog of judgments is leading to a massive accumulation of bundles at the Court of Audit. Pending accounts, some of which are more than 20 years old, have led to a volume of archives in 2023 greater than that of the national archives of Madagascar, for a smaller storage space, with an annual increase of around 10% in the absence of prescription and elimination. This overcrowding is detrimental to the quality of archive conservation and management (see Figure 3), especially as the Court, with its limited resources, cannot afford to acquire more space to properly accommodate the new accounts each year.



Figure 3: Too weak and overloaded shelves in the archives room of the SAI of Madagascar
Source: Cour des comptes Madagascar

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Failure to respect the reasonable time limit due to the legal framework for judicial review

The statute of limitations, usually enshrined in the French Civil Code, is designed to protect individuals. However, within the legal framework of the judgment of accounts in Madagascar, which fall within the public financial domain, prescription is non-existent. This creates legal uncertainty for accountants, and undermines the quality of auditing. Public accountants must render accounts annually, but the SAI has accumulated a liability: delays in judging accounts penalize public accountants, depriving them of certain legitimate rights such as the recovery of deposits or the payment of retirement indemnities on leaving office. In response to a question about what accountants expect from the Cour des comptes, one Treasurer General said: "That the Court should grant the accountant an ex officio discharge when the accounts submitted to the judge have been out of date for five years", which is perfectly legitimate. However, a revision of the text on the Cour des Comptes is unavoidable, as current legislation makes no provision for the statute of limitations, whereas this has become a principle in other SAIs such as Morocco and France.

The double decision rule, a source of procedural complexity

The double decision rule applied in Madagascar's financial jurisdiction poses additional challenges (see Figure 2). Although this rule is designed to respect the rights of defense of those subject to trial, it means that the Cour des Comptes issues a provisional ruling requiring public accountants to respond within two months, before making a final decision. This leads to unjustified delays and may encourage reprehensible behavior. The two-month deadline is considered excessive, and notifications must go through the Direction de la Comptabilité Publique (Public Accounting Department), which can cause delays. By comparison, some SAIs have abandoned this rule.

What's more, in some cases, such as that of the Agent Comptable Central des Postes Diplomatiques et Consulaires (Central Accounting Officer for Diplomatic and Consular Posts), secondary accountants report to a centralizing accountant, who submits a single management account to the Cour des Comptes. This accountant can be held responsible for irregularities committed by secondary accountants. In addition to making the procedure more cumbersome, this is contrary to the principle of "no one can count for anyone else", according to which each public manager is responsible for his or her own actions, and responsibility cannot be transferred to others.

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Risk of ineffectiveness of the Cour des Comptes' sanctions through the Minister's "remise gracieuse"

The effectiveness of the Cour des Comptes' sanctions may be compromised by the "remise gracieuse", or grace period, granted by the Minister of Finance and Budget. Although this remission may serve to adjust equity, its disadvantages are considerable. Despite its legal basis, the remise gracieuse can lead to abuse, limiting the effective power of the audit judge and weakening the accountability of accountants. This practice leads to a confusion of powers, allowing the minister to apply sanctions in a discretionary manner. This can lead to discriminatory treatment, contrary to financial justice. Moreover, the remise gracieuse violates the principle of "res judicata" and "parallelism of form", calling into question the Court's decisions by an administrative authority not competent in matters of financial justice.

Prospect: The need to adapt the Court's controls

Experimenting with clearance methods

To reduce the backlog of audited accounts, the Cour des Comptes of Madagascar has considered a number of auditing techniques used by similar SAIs.

Amnesty

Madagascar has on several occasions resorted to amnesties to clear outstanding management accounts(1), not only the accounts of the general State budget, but also those of decentralized bodies such as local authorities and public establishments. This fast-track approach, similar to criminal amnesty, wipes out irregularities without legal proceedings. However, this simplicity has major drawbacks: by discharging errant accountants without investigation or prosecution, amnesty can promote a culture of impunity. Accountants unaware of their actions could repeat amnestied errors in future management. Amnesties also overlook the errors and anomalies of past management, neglecting the need to correct faulty practices.

Although these laws have made it possible to clear outstanding accounts, some, such as the 2001 law, have been repealed due to contradictions.

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Lean control

The "light audit" is a simplified audit procedure. This approach offers two options: a verification limited to general documents to establish the lines of accounts, favoring rapidity but also risking impunity; and a verification of general documents with certain supporting documents, enabling faster clearance while ensuring the regularity of management, although not exhaustive. The SAIs of Senegal and Burkina Faso have adopted this approach to clear overdue accounts.

In Madagascar, for accounts prior to 2012, a very light audit is applied, fixing the account lines without checking the supporting documents, due to the complexity linked to the age of the management. However, for management accounts between 2012 and 2017, a different approach is adopted, involving the verification of certain supporting documents to detect irregularities, in addition to the determination of account lines. Significant irregularities were discovered, requiring a more in-depth approach.

A change of strategy

More recently, faced with the pressing challenges of delays in judgments, the Malagasy Cour des Comptes has reassessed its priorities, to put the emphasis in its annual work plan on fulfilling its primary mission: jurisdictional control. While in the past, investigating magistrates were often called upon to carry out non-judicial work, they are now called upon to devote part of their resources to judging accounts, in order to avoid further backlogs.

The need to extend jurisdiction to budgetary players

As part of its 2020-2025 strategic plan, the Court is consulting various stakeholders, including public authorities, on the integration of the CDBF, to extend jurisdictional control to the budgetary and accounting actors of the financial authorities. A merger-absorption could improve the effectiveness and efficiency of control, by avoiding overlapping controls and limiting competition between bodies. The Malagasy CDBF is criticized for its administrative nature, its attachment to the Prime Minister's Office, and the exclusion of ministers from its scope. Integrating it with the Cour des Comptes would result in integrated, cost-effective and efficient control, and guarantee fair accountability for all players involved in public spending.

Furthermore, judicial control is considered to be at the heart of the Court's missions. An expanded jurisdictional control could become an effective trigger for the Court's other missions, such as compliance audit, performance audit, financial audit, certification of accounts, and evaluation of public policies. The Court suggests that the effectiveness of judicial control should feed into these missions, emphasizing the interconnection between them.

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Gradual acquisition of criminal jurisdiction by the Cour des Comptes, and long-term reform.

In the long term, reforms will be needed in the Malagasy judicial system, in particular to enable the Cour des Comptes to gradually acquire criminal jurisdiction. Indeed, the multiplication of special courts complicates the system, risking conflicts of jurisdiction. The creation of the Anti-Corruption Center (PAC) has met with challenges, notably the reluctance of certain magistrates and questions about its effectiveness in purifying deviant behavior. The personal ethics of magistrates should be the crucial element in their intrinsic motivation. However, extrinsic motivation, such as higher salaries, is not necessarily effective in driving ethical behavior.

Different options can be considered for involving financial magistrates in the handling of budgetary and financial cases with criminal connotations, each with their advantages and disadvantages. For example, a two-stage transition could be envisaged: the first involves collaboration between the Cour des Comptes and the criminal courts, with financial magistrates intervening on an ad hoc basis, either at prosecution or investigation level, during a period of experimentation followed by evaluation. The second stage would involve a complete transfer of the entire jurisdiction to the Cour des Comptes, necessitating an internal reorganization of the Court and the specialization of preliminary investigations.

Footnotes

1. Law No. 85-020 of December 11, 1985:

On the Finance Law for 1986, exempting certain entities from the financial provisions for the financial years 1972 to 1977. ;

Law No. 96-003 of December 1, 1995:

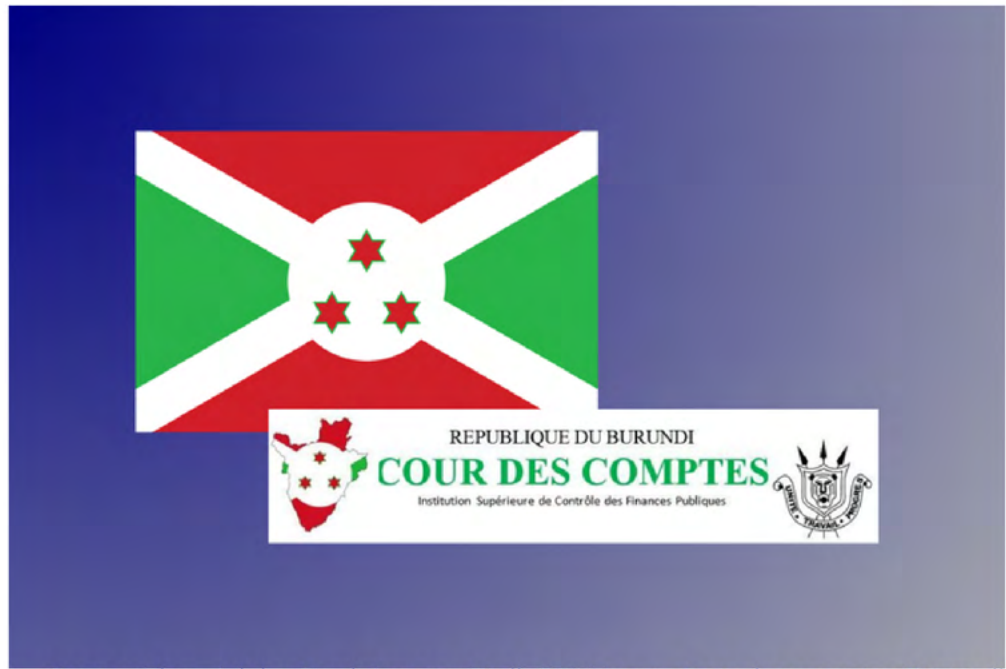
Concerning the Finance Law for 1995, excluding certain entities from the financial provisions for the financial years 1972 to 1977.;

Law n°2000-024 of January 5, 2001:

Concerning the Finance Law for 2001, exempting the production of management accounts from 2001 (repealed in 2002).;

Law n°2005-029 of December 29, 2005:

On the finance law for 2006, exempting the management accounts for the financial years 1993 to 2000 from certain financial provisions.



Source: Flag- Adobe Stock Images, Tarik GOK; Logo- Cour des comptes Burundi

Burundi's Cour des comptes aims to operationalize its jurisdictional mission and to comply with international standards for financial jurisdictions

Author: Jérôme NTUNZWENIMANA, magistrate at the Cour des comptes of Burundi

Under the terms of Article 183 of the Constitution of the Republic of Burundi, promulgated on June 7, 2018: "A Cour des comptes is established, which is responsible for examining, judging and certifying the accounts of all public services. It assists Parliament in overseeing the implementation of the Finance Act".

The Cour des comptes of Burundi is entrusted with three main missions, as set out in the 2004 Act on the Court:

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Control of public management: the Court produces reports on ministries, local authorities, public establishments and companies. These reports include recommendations;

Informing and assisting public authorities: the Court informs the National Assembly of the results of its audits, draws its attention to expenditures that do not comply with the law, and issues opinions on each draft budget; it makes recommendations to the government for improving public management and publishes its reports on its website;

A jurisdictional role towards public accountants, whose accounts it judges. Solemnly reaffirmed in the 2018 constitution, this role, which has yet to be made effective, notably requires the structuring of the network of public accountants who have exclusive responsibility for the payment of public expenditure, under the terms of the new organic law of June 20, 2022 on Public Finances, which also provides for the exercise of the jurisdictional mission by the Cour des comptes. The Burundi's Cour des comptes has therefore set itself the goal of complying with international standards for financial jurisdictions. It must also be in a position, particularly in terms of regulations, to fully exercise its jurisdictional functions.



The author, Jérôme Ntunzwenimana.

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The next stages in the Cour des comptes' development involve four major projects.

The operational deployment of its "2023-2029 strategic plan", adopted in March 2023, which focuses on three areas: (1) developing the Court's functional, administrative and financial autonomy; (2) improving the quality of audit activities; and (3) enhancing the reputation and legitimacy of the Cour des comptes.

The implementation of the Court's jurisdictional mission, now reinstated in Article 183 of the 2018 Constitution, still needs to be translated into legislation (in particular, the revision of the March 31, 2004 Act on the Cour des comptes). This essential bill, which will make public accountants responsible for their accounts before the court, will notably result in the creation of a "Commissariat au droit", and the Burundi's Cour des comptes will be equipped with procedures inherent to this mission of judging as well as its other missions. The Court's chambers are to be reorganized along sectoral lines, to ensure coverage of all public services. Additionally, a post of General Secretary is to be created to assist the President of the Court and manage the administrative and financial services, as well as the registry.

Monitoring and evaluation of the draft "[Vision Burundi, an emerging country in 2040 and a developed country in 2060](#)", which sets the Burundi government's vision for development and recommends policies and strategies from the viewpoint of sustainable development. According to this document, the Court of Accounts will participate in the monitoring and evaluation at strategic level of this major emergence plan for Burundi's future, during its implementation.

Furthering international engagement for Burundi's Cour des comptes. The Cour des comptes aims to engage with technical and financial partners, international donors, and others in the international public accountability community. With greater international collaboration, the Cour des comptes of Burundi would like to implement bilateral or multilateral cooperation projects to strengthen and share knowledge regionally and globally.



Source: Flag- Adobe Stock Images, Tarik GOK; Logo- Cour des Comptes Cameroon

The Chambre des Comptes of the Supreme Court of Cameroon benefits from diversified technical cooperation and aims for greater international cooperation

Authors: Arnaud Claude SADOA and Antoine NWAHA NWAHA, Magistrates, Auditors at the Chambre des Comptes (Chamber of Accounts) of the Supreme Court of Cameroon.

28 years after its creation by the Cameroonian constitution of 1996 and 20 years after the effective start of its activities, the Chamber of Accounts (or in French, the Chambre des Comptes) of the Supreme Court of Cameroon continues its transformation into a modern public auditing institution with the support of its peers and technical and financial partners.

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Cameroon's Chambre des Comptes, a jurisdictional auditing institution by nature



Source: Chambre des Comptes of Cameroun

From the origin, the Chambre des Comptes of Cameroun is a public auditing institution with jurisdictional competence. It is a jurisdiction whose members have magistrate status, following the jurisdictional model of the Courts of Audit. Historically, and in accordance with the provisions of the 2003 law which organizes it, its activity was centered on the control and judgment of the accounts of public accountants. At the time, its main role was to rule on the liability of public accountants by sanctioning any breaches of their obligations.

Since 2018, the Chambre des Comptes has been providing public finance control aligned with international standards.

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In 2018, the Cameroonian Parliament enacted a very significant extension of the Chambre des Comptes' area of competence through two laws of July 11, 2018 respectively on the Code of Transparency and Good Governance in the Management of Public Finances and the Financial Regime of the State and Other Public Entities. These laws strengthen the jurisdictional remit of the Chamber, which is now competent to judge not only public accountants but also authorizing officers and financial controllers. The Chamber has also been entrusted with all the other powers devolved to a Court of Audit: management review, evaluation of public policies, assistance to public authorities, certification and public information.

The laws of July 2018 also give the Chambre des Comptes its independence as an external public finance control institution, and can act autonomously from the government and Parliament. It is from this independence that the Chambre des Comptes derives its legitimacy. The Chambre des Comptes is free to define its work program, freely adopt its conclusions, and has the legal capacity to freely publish its reports.

The implementation of these new powers has considerably increased the visibility of the financial jurisdiction in the public arena, and boosted its performance. The media coverage from the audit reports on the use of resources allocated to the fight against the coronavirus is a perfect illustration of this. At the same time, however, the implementation of these new powers raises a number of challenges that the jurisdiction is striving to meet, with help from international colleagues and the support of technical and financial partners.

The Chambre des Comptes expands its capacity-building partnerships

Peer support:

Support from AISCCUF

The Chambre des Comptes became a member of the Association of Supreme Audit Institutions having in common the use of French (AISCCUF) in 2015. Since 2018, it has represented Cameroon within this body. In this capacity, the Chambre des Comptes takes part in the capacity-building activities organized every year.

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A delegation of two auditors took part in the TOP Congress of young auditors in Dakar (Senegal) in July 2022, while a delegation made up of four magistrates and a registry administrator took part in the Bucharest professional seminar in July 2023, where it was able to promote the results of the jurisdiction's work on the control of expenditure dedicated to the health crisis.



Source: Chambre des Comptes of Cameroun

The French Cour des comptes: the privileged partner

Since 2006, the French Cour des comptes has actively contributed to strengthening the capacities of the staff of the Chambre des Comptes. This dynamic cooperation was consolidated by the signing of a first agreement between the two institutions in 2015, renewed in Paris on October 26, 2022. Thanks to this agreement, the French Cour des comptes welcomes each year a minimum of four Cameroonian auditors to training sessions for newcomers to financial jurisdictions. It also welcomes delegations of Cameroonian magistrates for internships, study trips and authorizes on-site assistance missions in Cameroon.

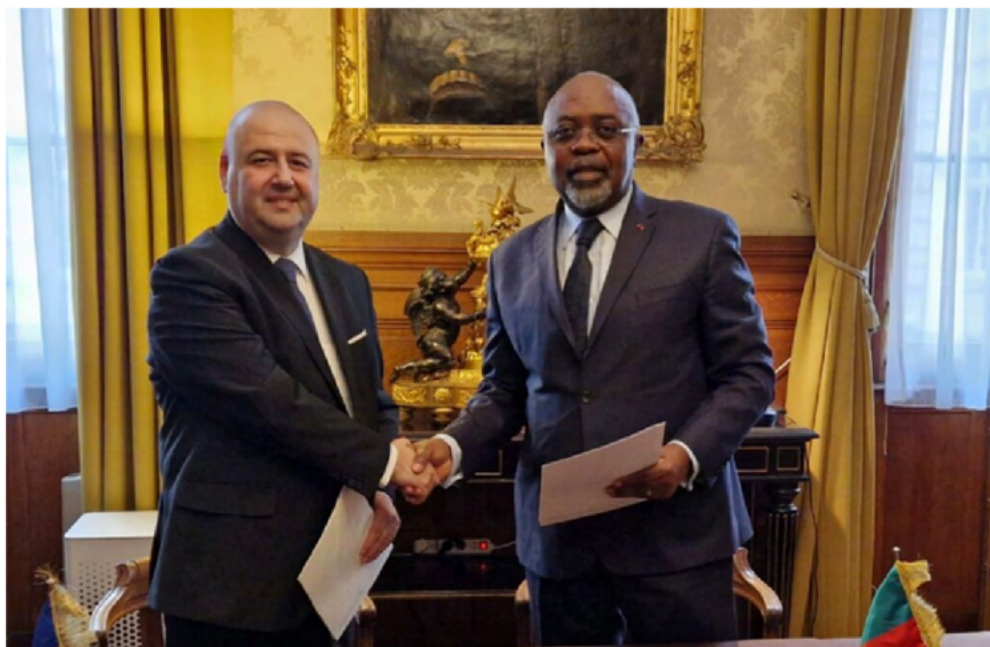
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Signing of the cooperation agreement between the SAs of Cameroon and France by YAP Abdou and Pierre MOSCOVICI. Source Cour des comptes

New partners: the Courts of Accounts of Romania, Senegal, Burundi and Morocco

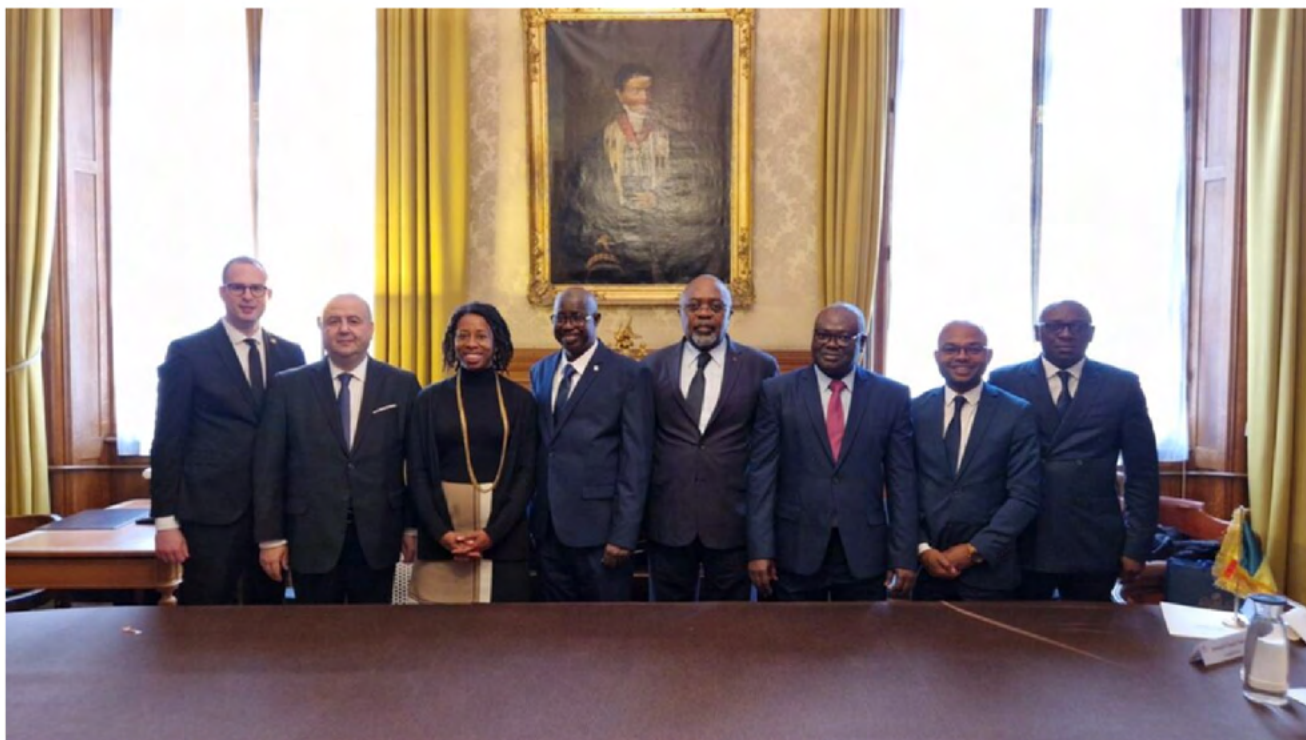
The Chambre des Comptes intends to forge new partnerships with other Court of Accounts and supreme audit institutions from around the world. On December 5, 2023, it signed a cooperation agreement with the Romanian Court of Audit. The implementation of this agreement should make it possible to strengthen the skills of the staff of Cameroon's financial jurisdiction in the field of performance auditing.



Signing of the cooperation agreement between the SAs of Romania and Cameroon by Messrs Mihai BUSUIOC and YAP Abdou. Source Cour des Comptes

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Similarly, new agreements are being negotiated with the Courts of Audit of Senegal, Burundi and Morocco.



Signing in Paris of cooperation agreements between the SAIs of Cameroon, Senegal and Romania. Source Cour des comptes

Support from foreign donors and technical partners:

The European Union's Grant and Technical Assistance Program

Through the Support Project for Strengthening Public Finance Management (PARGEFIP 2019-2023), the European Union (EU) has been supporting the Chambre des Comptes since 2019 as part of a major grant, after funding the development of its strategic and operational plan in 2018. With technical assistance from Expertise France, this grant has financed training and coaching initiatives for around a hundred magistrates, including some 80 new auditors recruited in recent years. It has also financed the development of numerous other guides and manuals of procedures.

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Source: Chambre des Comptes of Cameroun

With the permanent support of an international technical assistant and the intervention of other short-term experts recruited for specific needs, EU support has been deployed around four priority axes: institutional strengthening, reinforcement of human and material resources, digitization of processes and visibility of the institution. Among the concrete results of this grant are the acquisition of computer and video-conferencing equipment, rolling stock, the upgrading of the jurisdiction's website and the implementation of an intranet and registry software.

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Source: Chambre des Comptes of Cameroun

Support from the World Bank, the International Monetary Fund (IMF), the African Development Bank (ADB) and the German cooperation agency GIZ

The Chambre des Comptes' international cooperation has been seen through a longstanding relationship with the European Union. The Chamber's recent actions have enabled it to diversify its portfolio of international development partners. The relevance of its work and recommendations have enabled the Chamber to convince and win the confidence of public authorities and donors, so that the latter are mobilizing to support the development of this young financial jurisdiction.

In 2022 and 2023, the World Bank financed a training program for the Chambre des Comptes in computerized auditing, followed by pilot audit missions to certain public establishments.

The IMF recently published a report (IMF, Technical Assistance Report - Governance and Corruption Diagnostic, December 2023), which makes recommendations for consolidating the Chamber's status and institutional positioning.

Since 2021, the African Development Bank (ADB) has regularly entrusted the Chambre des Comptes with auditing the projects it finances in Cameroon. Since 2023, the German cooperation agency, GIZ, has also been supporting the Chambre des Comptes in training activities on auditing decentralized local authorities.

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Aim for Continued International Cooperation

The Chambre des Comptes of Cameroon is multiplying cooperation actions to establish its skills and have the means to fully play its role as a citizen institution in the public sector auditing sphere. The Chambre des Comptes would like to be a part of numerous international engagement opportunities, notably for sharing experience, training and professionalization. Further cooperation with international auditing organizations and institutions provide know-how based on the experience of other organizations and SAIs, and ensure high-quality training for the benefit of their members. Having greater international cooperation would help grow the Chambre des Comptes of Cameroon to develop greater capacity, learn from others, and have optimal implementation of its skills to provide oversight and accountability.



The authors, Arnaud Claude Sadoa and Antoine Nwaha Nwaha. Source Chambre des comptes du Cameroun



Source: Flag- Adobe Stock Images, R. Gino Santa Maria; Logo- Tribunal de Contas de Portugal

The relationship between audit and the enforcement of financial responsibilities: Experiences from SAI of Portugal

Author: Tribunal de Contas (SAI Portugal)

Introduction

The SAI of Portugal (Tribunal de Contas) is currently an institution that combines both the Anglo-Saxon and the Jurisdictional models of Supreme Audit Institutions. It means that although the audit function is a main function activity of the Court, it also complementarily has also the power to judge financial liabilities.

Thus, the enforcement of financial liabilities is one of the most relevant implications of the audits, along with the follow-up of recommendations and other developments.

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Source: Tribunal de Contas de Portugal

1. The Portuguese Court of Auditors: A brief characterization of functions and competences.

In 1976, the Portuguese Court of Auditors recovered the legal-constitutional status that had been granted to it by the Constitution of 1838. Placed among the other Courts, it has definitely become an integral part of the Portuguese judicial structure, benefiting from the prerogatives of independence typical of the courts (self-government, irremovability, irresponsibility, compulsory decisions and exclusive subjection to the law). As a result of that independence, the Court of Auditors' President is appointed by the President of the Republic on a proposal from the Government, while the other members of the Court, initially appointed by parliamentary choice, are currently appointed by its President following a public tender.

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As for the assigned tasks, the Portuguese Court of Auditors has been gradually strengthening its functional and organisational framework, asserting itself as a Court of specialised jurisdiction (financial jurisdiction), but *sui generis*, in that it also performs jurisdictional functions, like the other Courts, and, at the same time, functions of financial control. This is why it is considered the highest (or higher) institution for financial control of the Portuguese Democratic State.

Accordingly, the Constitution of the Republic expressly confers on powers of financial control and to enforce financial liabilities, powers which are densified by the ordinary law in the following terms:

Issue an opinion and certify the State Accounts, the Account of the Assembly of the Republic, the Account of the Presidency of the Republic, the Accounts of the Autonomous Regions (Azores/Madeira) and the respective Legislative Assemblies, ruling on the legality and financial regularity of all transactions carried out in the relevant economic year;

A priori control of the legality and budgetary appropriation of acts and contracts generating public expenditure;

Carry out audits, at its own initiative, at any time, of any kind or nature, in this context being able to assess the legality, but also the economics, efficiency and effectiveness of public management;

Verify the accounts of all public entities individually considered (administrative, business, foundational or associative).

In addition, the Portuguese Court of Auditors has the power to enforce financial liabilities, by demanding the reimbursement of funds or public values to all those who have made illegal use of them, to the detriment of the public funds and assets (reintegrative financial liability), and/or the payment of fines in the event of failure to comply with rules governing public financial activity (financial liability).

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2. Audit and Financial Liability

The jurisdictional activity carried out by the Portuguese Court of Auditors is complementary to the control activity. The aim is to ensure, following audits in which situations likely to constitute a financial infringement breach are identified, that the inherent liability is effectively enforced.

However, as regards the same institution which audits and holds accountable, the legitimate question is how the independence of its exercise and the right to a fair trial are ensured, as determined by national law and international conventions. In particular, we refer to compliance with the principles inherent in judicial proceedings, which include the principles of independence and impartiality, equality of legal remedies, adversarial proceedings, the presumption of innocence and the right to a double degree of jurisdiction. The answer to this question will also help us understand how the audit is linked to the enforcement of financial responsibilities.

2.1. Independence and impartiality

The Constitution of the Portuguese Republic grants the Court of Auditors the status of a sovereign body, placing it in the same category of the other Courts, thereby guaranteeing its independence, not only from the executive and legislative powers, but also from the entities subject to its jurisdiction and from the lobby groups and established interests. At the same time, it should be emphasised that the members of the Court of Auditors are judges, enjoying all the constitutionally inherent prerogatives. In addition, when recruited through a public tender, there is no possibility of external interferences by an appointment by the Government or Parliament. The same is true of its President, whose appointment, it is recalled, is a competence of the President of the Republic, before whom he takes office and gives a commitment of honour, in compliance with the Constitution of the Portuguese Republic.

From an organisational point of view, the Portuguese Court of Auditors was conceived with the aim of ensuring the necessary independence and separation between the audit and the jurisdictional functions. Indeed, the structuring of the Court of Auditors by specialized Chambers (1- A priori control; 2 – Audit; 3 - Financial Liabilities), with clearly defined powers of control and enforcement of financial liabilities, confers the guarantee that the judgment that is formed in audit on the existence of probable evidence of financial infringements, does not bind “the judge of judgment”. In this way it can be said that we are dealing with different functions, which are carried out by equally different Courts.

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In addition, the Law ensured the independence of those who have the right to file a financial liability procedure, which means that the existence of judicial proceedings is dependent on the indictment by an independent entity of the Court of Auditors. In the first place, such legitimacy is vested in the Public Prosecutor's Office; in the alternative, to the internal control bodies.

2.2. The principles of adversarial and equality of procedural means

The principles of adversarial proceedings and equality are essential elements of a fair trial. As is well known, the adversarial principle implies that each party is called upon to provide its reasons in fact and in law, to offer its evidence, to accompany the evidence submitted by the other party and to discuss the value and outcome of one and the other. For the effective implementation of this principle, it is essential that procedural parity is ensured and that the parties should benefit from the same conditions and equal opportunities for obtaining justice.

The implementation of the adversarial principle is of particular importance when, following an audit, a financial liability procedure is initiated. In such a case, the Law of the Court guarantees the persons concerned, prior to the initiation of those proceedings, the right to be heard in respect of the facts alleged against them, their consequences, the legal regime, and the amounts to be repaid or paid (Article 13, n 2, of the Law on the Court). That means that the proceedings should only be initiated if that principle is respected. Therefore, in order to ensure compliance with the adversarial principle, audits should identify and adequately substantiate the following aspects:

- The facts (actions or omissions potentially contrary to the law);
- The rules breached;
- The persons responsible, if any;
- The value and/or damage produced;
- The classification of any liabilities involved, such as reintegrative financial liability and/or financial liability for penalties;
- All supporting documents.

In addition, procedural parity is ensured through various legally established mechanisms. This, in particular, refers to the right of representation by a lawyer for the exercise of the adversarial procedure, to the possibility of requesting an extension of the time-limit for contesting, or to ensuring access to all available information necessary for the exercise of the adversarial procedure.

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2.3. The principle of the presumption of innocence

The principle of the presumption of innocence is constitutionally enshrined. This is a principle whose observance is of particular relevance in the area of criminal liability and, of course, does not overlook its impact on other liability proceedings.

Regarding the enforcement of financial liabilities, the Court of Auditors endorses this principle in all its dimensions.

2.4. The right to double jurisdiction

The right to double jurisdiction, which translates into the right to have judicial decisions reviewed by a court other than that which issued them, is equally accepted in the financial jurisdiction. Thus, in financial liability cases there is an appeal against the final decisions given at first instance, by a judge, to the Plenary of the 3rd Chamber composed of a panel of three judges.

3. Final note

Our incursion into the jurisdictional activity of the Court of Auditors is sufficiently illustrative of how its exercise is linked to the audit activity. This is ensured by the way in which the Court of Auditors is organised, in independent chambers, with clearly defined functions and mediated by an equally independent external body: the Public Prosecution Service. This context not only guarantees the necessary independence between the “audit function” and the “jurisdictional function”, but also the independence of the body entitled to bring actions for financial liabilities based on evidence of infringements collected during the audit. This ensures full protection of public financial management.

This is all the more important when one is fully aware of the positioning and role of Supreme Audit Institutions in the modern rule of law. Strictly speaking, although there are other bodies endowed with independence and responsible to monitor and ensure compliance with financial legality, Supreme Audit Institutions are specially positioned for this purpose, not only because they assume the nature of sovereign bodies, given their inclusion in the respective judicial structure, benefiting, to this extent, from all the prerogatives typical of the Courts, but also for their special purpose to ensure accountability and transparency in the management of public funds and assets, on behalf of the public interest.

In this context, we consider that the jurisdictional function of the Court is fully aligned with the principles stated in INTOSAI P50.



Source: Flag- Adobe Stock Images, Tarik GOK; Logo: Tribunal de Contas da União

The Professional Trajectory of the Judicial Function: A Case Study from the Federal Court of Accounts of Brazil

Author: Tânia Lopes Pimenta Chioato, Head of the Department of External Control for Jurisdictional Function

Since 2020, the Federal Court of Accounts of Brazil (TCU) has been structuring a policy of professional trajectories, with the aim of greater professionalization of its auditors. A professional trajectory is defined as the sequence of positions or roles occupied throughout the functional life of an auditor, encompassing qualifications, experiences, and competencies necessary to perform functions at a certain career level.

Professional trajectories at TCU cover areas such as data analysis, performance and compliance auditing, financial auditing, combating fraud and corruption, public policy control, and regulation and privatization. Each trajectory details, according to its complexity, the knowledge, skills, and critical experiences for the development and growth of professionals.

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There is an unfolding of each trajectory into competencies and behaviors, each of these associated with training to support the auditor's development, such as in-person courses, distance learning, texts, multimedia resources, and websites. Technical documents, manuals, and national and international standards on the subject are also available. To facilitate the application of acquired knowledge, there is a set of audits considered as reference by the Court.

In addition to technical competencies, there is a need for the development of personal competencies, such as professional integrity and ethics in the face of adversities, and leadership and management, in order to fulfill the trajectory.

The development of all these competencies at the professional levels required by the trajectory can grant the auditor, who wishes to join a particular trajectory, the title of a professional or specialist in the field. As an example, the professional level (intermediate) in Regulation and Privatization is granted to those who meet, at least, one of the following knowledge requirements:

100 hours required in regulation and privatization training as student or teacher, over the past ten years. The training should focus on a minimum of three of the following themes: Regulatory law, Enterprise Financial, Accounting, Regulatory Economy, Infrastructure Economy, Public policy for infrastructure, Financial Mathematics, Regulatory Governance, Project Management and Valuation (companies' assets);

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30 hours required in regulation and privatization training as student or teacher, over the past ten years. The training must focus on a specific infrastructure sector; or

20 hours required in Regulatory Control Practice, as student or teacher, over the past ten years.

As the list shows, taking specific courses and trainings in the trajectory area can help reduce the required hours. Furthermore, completion of postgraduate studies in Regulatory Control offered by TCU' corporate education center, the Serzedello Correa Institute, within the past decade can substitute 150 hours of training. Should completion of said studies exceed a decade, only 75 hours may be substituted. Similarly, completion of any other postgraduate studies in regulation or privatization within the past ten years can substitute for 80 hours, provided they are complemented by 20 hours of specific training in Regulatory Control Practice. Should completion of non-specific postgraduate studies exceed ten years, only 40 hours may be substituted.

The knowledge requirements are not enough to grant the specialist title to the auditor. To achieve the professional level (intermediate) in Regulation and Privatization it is also necessary work experience in the area, measured by one of the following criteria:

- Participation in three activities (audit, report or working group) involving the trajectory skills, over the past four years; or
- Auditing projects completed totaling 150 hours and involving trajectory skills. Of these hours, a minimum of 50 must have been spent in a coordination position.

The complete list is available on the Trajectories Portal, restricted to internal access only.

The latest professional trajectory being developed at TCU relates to the jurisdictional function. Recognizing the importance of providing leaders with skills, knowledge, and experiences related to this function, TCU, through its corporate education center, structured the professional trajectory of the jurisdictional function around the fundamental principles that govern higher control institutions with this nature of operation.

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Competencies and behaviors linked to INTOSAI P-50, an international standard that establishes the principles of jurisdictional activities of Supreme Audit Institutions (SAIs), have been suggested, as outlined below:

| INTOSAI P-50 | Competency | Behavior | Description |
|--|---|---|---|
| <p>Principle 1: Legislation must establish the regime of responsibility and sanctions applicable to individuals subject to the law before the Federal Court of Accounts.</p> <p>· principle of the legality of infractions, penalties and enforcement;</p> | <p>1. Understand the jurisdictional activity of the TCU and Supreme Audit Institutions, the international and national governing norms, and the procedural process and corporate management systems of the Court.</p> | <p>Acts in accordance with the Principles of Jurisdictional Activities of the Courts of Auditors.</p> | <p>The auditor must be familiar with and able to apply the principles of jurisdictional activities of the courts of auditors in their activities, as recommended by international standards, such as INTOSAI-P 50 – Principles of jurisdictional activities of SAI, corresponding to the Brazilian Public Sector Auditing Standard (NBASP)-50. The auditor knows the jurisdictional activity carried out in other Supreme Audit Institutions (SAIs) around the world and recognizes similarities, differences, risks, and opportunities in applying international initiatives to enhance their jurisdictional activity.</p> |
| <p>· Principle of the legality of the jurisdiction of the Federal Court of Accounts in the identification and qualification of offenses, as well as in the issuance of convictions.</p> | | <p>Knows the functions and internal and external actors involved in the execution of jurisdictional activities.</p> | <p>The employee is familiar with and applies, in addition to fundamental norms such as the Internal Regulations and the Organic Law of the TCU, specific norms related to the process, including ordinances, resolutions, normative instructions, and internal guidelines focused on the treatment of representations, complaints, special accounts, appeals, communications, filing, delegation of authority, information security, among others essential for the proper exercise of jurisdictional activity.</p> |
| | | <p>Applies the regulations governing procedural matters within the scope of the TCU appropriately.</p> | <p>The employee is familiar with and applies, in addition to fundamental norms such as the Internal Regulations and the Organic Law of the TCU, specific norms related to the process, including ordinances, resolutions, normative instructions, and internal guidelines focused on the treatment of representations, complaints, special accounts, appeals, communications, filing, delegation of authority, information security, among others essential for the proper exercise of jurisdictional activity.</p> |
| | | <p>Knows and operates, appropriately, the corporate systems related to document and process management.</p> | <p>The employee knows, identifies and operates the relevant corporate systems for the proper conduct of document management activities and external control processes, as well as for the production of management information for this activity.</p> |

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Each of the 12 principles of the standard will inspire the creation of competencies and behaviors to be internally developed, aiming to implement a culture of recognition, appreciation, and compliance with best practices in the performance of the jurisdictional function. Despite the optional nature of adhering to the trajectories, staff have incentives related to certification and professional recognition. Additionally, it is expected that training strategies, such as continuing education and postgraduate programs offered by TCU's corporate school, will be aligned with approved trajectories to contribute to their implementation.

The professional trajectories policy aims to provide assertive development, optimize team formation, identify successors for critical positions, clarify requirements for professional progression, enable employees to manage their own trajectories, and promote transparency in the criteria for professional success at TCU.

The trajectory of the jurisdictional function adds to this policy, strengthening the institution and valuing this characteristic shared with many other Supreme Audit Institutions around the world.



Source: Flag- Adobe Stock Images, Tarik GOK; Logo- Tribunal de Cuentas, Spain

The Challenges of the Jurisdictional Function of the Supreme Audit Institution of Spain in Modern Society

Author: Carlos Cubillo, Secretary-General, Supreme Audit Institution of Spain

The economic and social environment in Spain

Spanish society has undergone major changes over the last 20 years in line with other countries of the European Union. The financial crisis of 2008 strongly impacted the Spanish citizenry, and resulted in the arrival of important and fast changes: political, economic and social changes.

Spain, like the other countries of the world, had not yet overcome the consequences of that economic and financial crisis, when it was surprised by the appearance of the COVID-19 pandemic. This emergency health scenario tested the resilience of the Spanish legal and institutional system and, in particular, its national health system.

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The COVID-19 pandemic has induced interesting social changes: a greater concern of citizens for public investments in health and research, a greater ecological awareness, and a better predisposition towards technological modernization (such as teleworking) and towards the preservation of cybersecurity.

The two historical and unfortunate events mentioned, together with other circumstances that occurred both nationally and internationally, have made the public more demanding with the operation of the Public Sector, more participatory in the community and more sensitive about the future that awaits the new generations.

Changes in the organization and functioning of the Spanish Public Sector

The evolution of Spanish public opinion, described in the previous section, has forced the public authorities to adapt to the new requirements of citizenship.

To this end, in recent years there has been intense normative activity aimed at strengthening legality, efficiency, transparency, equity and ecological sustainability in the organization and functioning of public institutions. These are aspects already covered by the 1978 Constitution but which, in order to respond to the concerns of modern society, have been strengthened by the elaboration of new norms or by updating existing ones.

On the one hand, an appropriate legal framework is created to ensure compliance with the laws throughout the economic and financial activity of the Public Sector and, in particular, in terms of contracts, subsidies, town planning, public revenue, human resources expenditure and representation expenditure. This reduces corruption and fraud in the management of public assets.

On the other hand, administrations and other public sector entities are adjusting their internal organization so that they can be more efficient in the provision of public services and in the implementation of public policies. If the units are properly organized, their operating procedures can be made safer and more efficient.

In addition, a principle of transparency is required in public management, so that, without breaching the regulations governing the protection of personal data, public managers make it possible for citizens to know about the contracts that are concluded, public budgets, salaries of public officials, subsidies granted, public offers of employment...

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The public sector in Spain has also had to evolve to prevent its actions from being harmful from an environmental point of view and to promote ecological development processes.

Finally, the actions of the Public Sector have had to take a turn to satisfy a society concerned with equity and equality, especially the fight against gender discrimination. All this framed in a stage of "Public Ethics", integrated by principles and deontological values and called on to turn the Public Sector into a reference of honesty and cleanliness.

This process of evolution also implies a constant modernization of technologies and cybersecurity. This permanent update, with the horizon of artificial intelligence in the background, requires very high investments of money and initial and continuous training of professionals who provide their services in the Public Sector.

A society in permanent and rapid transformation, like the Spanish one, needs a modern and dynamic Public Sector. This presupposes an inevitable effort in the drafting of new rules, changes in the culture of administrative management, greater connection with society and a learning of the management techniques offered by international law that have produced good results.



Source: Tribuna de Cuentas, Spain

FEATURE ARTICLE

Modernization of the Spanish Supreme Audit Institution

As a result of these changes in Spanish public opinion and in the country's public sector, institutions with control and supervision functions have also had to make an important modernization effort to satisfy citizens.

The Spanish Supreme Audit Institution has been developing different lines of action to provide a quality service in this new historical stage.

The following are some of the main goals being pursued and progress being made:

- Increasing the scope of the audits. In its traditional regulation, the Supreme Audit Institution of Spain was entrusted with the audit of the economic and financial activity of the Public Sector to verify its compliance with the principles of legality, effectiveness and efficiency. As of 2015, the new legislation also entrusts it with monitoring the impact of the management of public funds on improving transparency, gender equality and environmental sustainability.
- Greater involvement with society through the adoption of initiatives that allow citizens to know how the Supreme Audit Institution of their country works and how the activity of that Institution benefits their quality of life. In this sense, for instance, there are guided visits to the facilities of the Institution, the dissemination of information in schools, universities, public transport... the modernization of the website, participation in social networks and greater proximity to the media.
- Increased collaboration between the Spanish Supreme Audit Institution and the regional Audit Institutions.
- The increased participation of the Spanish Supreme Audit Institution in international projects, especially in the field of INTOSAI, EUROSAI and OLACEFS.
- The strengthening of relations with Parliament, the executive branch and the judiciary.
- The establishment of the mechanisms necessary for the proper performance of its legally assigned function of punishing political parties whose financing violates the rules.

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Source: Adobe Stock Images, ARAMYAN

The role of the Judicial Function of the Spanish Supreme Audit Institution in modern society

The regulatory legal regime of the Judicial Function of the Supreme Audit Institution of Spain

The Spanish “Tribunal de Cuentas” has, among others, the function to prosecute the civil liability of managers of public assets who violate the laws and also of recipients of public financial aid who receive it improperly or who do not justify how they have used it or who apply it public money received for illegal purposes.

The characteristics of this function, the judicial one, are the following:

- It prosecutes civil liability, not the criminal or administrative sanction, which may be incurred by those who manage the public patrimony.
- The Judges and Chambers hearing these legal responsibilities are attached to the Supreme Audit Institution´s Trial Section. The final decisions issued in the exercise of this judicial function may be appealed to the Supreme Court of Spain.
- The procedures through which the Judicial Function of the Spanish Supreme Audit Institution is carried out are regulated by law and comply with the procedural guarantees provided for in the Spanish Constitution and in the international treaties signed by Spain on the matter.

The Spanish Supreme Audit Institution is part of the International Forum of Supreme Audit Institutions with Judicial Function constituted by INTOSAI.

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Usefulness of the Judicial Function of the Supreme Audit Institution for the current Spanish society

The legal competence of the Spanish “Tribunal de Cuentas” to judge legal responsibilities can respond to one of the great concerns of society today, that public funds lost as a result of corruption and waste are recovered.

Being a Jurisdiction that prosecutes civil responsibility, it is optimal for the achievement of that social desire for the integrity of the Public Patrimony.

On the other hand, it must be borne in mind that it is a specialized jurisdiction and therefore suitable for interpreting complex issues of budgetary law, commercial law, public audit and public accounting with professionalism and knowledge. The specialized work of this Jurisdiction may also be useful for the performance of its tasks by other Jurisdictions, offering technical solutions to the issues tried within a framework of institutional cooperation between judges and courts of the different state jurisdictions.

It should also be said, namely that the procedures of this specialised Court can be initiated by complaints from citizens and private companies, a logical legal measure that is based on the fact that the recovery of public funds unjustly spent is an important citizen concern and, therefore, the proximity of the administration of justice to the society must be enhanced.

To assume this role, the Jurisdictional Function must move in two main directions:

- A legislative reform that streamlines and modernizes procedures for judging responsibilities.
- An advance in technological modernization that qualitatively and quantitatively improves the processing of procedures.

In conclusion, it can be said that the model of a Supreme Audit Institution with a judicial function has been strengthened in recent years in several countries, among them Spain, as a consequence of the fast changes experienced by society and by the Public Sector that serves it.



Source: Flag- Adobe Stock Images, G7 Stock; Logo- Cour des Comptes, Morocco

Role of SAI Morocco in the Fight Against Fraud

By: Dr Brahim BEN BIH, General Prosecutor at the Court of Audit of the Kingdom of Morocco

Fraud in public management can be defined as the abusive use of power by a person vested with public authority or mandate, to serve their own or private interests.

Given the risks associated with fraud, the Kingdom of Morocco has spared no effort in promoting an exhaustive and integrated vision to tackle this global challenge that affects economic and social development. Morocco's particular attention to the fight against fraud is reflected in the 2011 Constitution, which has elevated good governance bodies to constitutional status, and enshrined the principles of good governance(1), transparency, accountability and the moralization of public life(2). The protection of these principles has been entrusted to the Court of Audit(3).

I- The powers devolved to the Court of Audit in the fight against fraud

Before examining the contribution of the Court of Audit to the fight against fraud, it is worth recalling that this institution is characterized by a duality of mandates. On the one hand, there are jurisdictional powers, consisting of two responsibilities: judging the accounts and exercising budgetary and financial discipline. On the other, there are non-jurisdictional powers, which focus, among other things, on assessing the quality of management, evaluating results and monitoring (performance audit). This duality leads to an integrated vision of control, consisting in building bridges between these responsibilities(4), thus enabling the public finance judge to ensure broad protection of public funds.

This being the case, the contribution of the Court of Audit to the fight against fraud has many facets, ranging from prevention to detection and denunciation. Firstly, it is manifested through the obligation of public managers to render accounts. They are required, on pain of financial penalties, to justify all the actions they take in the performance of their duties, as well as the results of these actions.

Similarly, the fight against fraud requires the guarantee of financial regularity by the Court of Audit. Fraud inevitably implies a violation of legislation or regulations and instructions specific to an organization.

The Court of Audit also uses the de facto management procedure to apprehend certain fraudulent acts, such as the issue of fictitious mandates, the misappropriation of funds and the production of inaccurate supporting documents.

Taking into account the constituent elements of public finance offences, we can conclude that when they are of a serious nature (aggravating circumstances in the case of budgetary and financial discipline, or management in bad faith), they are similar to common financial crimes such as the loss and misappropriation of funds, falsification and illegal taking of interest.

FEATURE ARTICLE

Furthermore, the Court of Audit intends, through its non-jurisdictional controls, to contribute to improving the quality of management of public bodies and to promoting good governance. These types of controls constitute an additional guarantee of security against all forms of fraud. When exercising these powers, the Court of Audit may detect risks likely to initiate fraudulent acts, such as weaknesses in internal control and in accounting and financial management systems, as well as breaches of regulations and/or professional obligations.

In the same vein, the system of assets' declaration by public officials, instituted by Article 147 of the 2011 Constitution, provides another opportunity for the Court of Audit to scrutinize the wealth's development of public officials and to contribute to the fight against fraud. Perceived as an element of transparency and information, this system is an effective tool for the Court of Audit in preventing and detecting fraud.

The same applies to the publication of the work of the Court of Audit. This constitutional prerogative⁽⁵⁾ contributes in preventing fraudulent practices by raising awareness among public managers, avoiding the recurrence of offences and setting an example through their observations and sanctions. Through the publication of its work, the Court of Audit also contribute to fostering a culture of good management and consolidating the principles and values of good governance.



The author, Dr Brahim BEN BIH

II - Detecting and reporting fraud: the role of the Public Prosecutor's Office within the Moroccan SAI

As mentioned above, the detection of fraud can be based on observations and irregularities identified in the work of the Court of Audit. It can be used to identify criteria (what should be), evidence (what is), causes (why the deviation from the criterion occurred) and effects (impacts)(6). It can also be used by deliberative bodies to identify evidence that cast doubt on the existence of fraudulent conduct. These can take many forms: organizational, accounting, analytical, transactional, personal, temporal, visual and physical, documentary, complaints, reports, reservations, etc.

In the same perspective, the King's Public Prosecutor at the Court of Audit may, in the exercise of his functions as public prosecutor, detect misappropriations, highlight cases of falsification or acts likely to lead to fraud. Thus, in addition to his authority to prosecute in matters of budgetary and financial discipline(7), it follows from the provisions of article 111 of the Court of Audit Act, that the King's Public Prosecutor at the Court of Audit has the power to denounce any facts discovered by the Court, following the exercise of various jurisdictional and non-jurisdictional powers, which may justify a criminal sanction. In this case, he or she refers the matter to the Public Prosecutor at the Court of Cassation, Chair of the Public Prosecutor's Office.

However, given that proceedings before the Court do not preclude the exercise of disciplinary and criminal action(8), certain facts may constitute both financial and criminal irregularities. Faced with these hybrid situations, the Public Prosecutor at the Court of Audit, by virtue of his discretionary power and the principle of good justice, may assess these facts to decide their fate (criminal cases or public finance irregularities), taking into account criteria including: the seriousness of the facts, the existence of a moral element, the suspicion of an unjustified advantage or other offences, and the existence of prejudice.

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Over the period of 2012-2023, 116 cases concerning presumptive acts of fraudulent behavior were revealed following controls carried out by the Court of Audit, representing an annual average of 10 cases. For example, the main cases referred to the criminal courts concerned the following: steering the award procedure for a public contract; non-compliance with the principle of equality and competition in access to public contracts; over-invoicing of public contracts; payment of expenses in the absence of service rendered; charging to the public body's budget, without legal basis, the costs of affiliation and membership of a social security fund abroad; fictitious mandates (*ratione materiae*, *ratione temporis*, *ratione personae*); presentation of inaccurate accounts; use of the organization's assets for personal purposes; a director's combined remuneration from the state-owned company he manages and his remuneration under his civil servant status in the absence of service rendered, and; purchase of equipment in the absence of a real need.

In conclusion, it is important to stress that the process of spreading the values of transparency, probity and the fight against fraud requires the adoption of a collective and participative approach. The contribution of the Court of Audit of the Kingdom of Morocco in the fight against fraud, mainly through preventive and detection measures, is fully in line with this logic. The Court of Audit aims, on the one hand, at reconciling the protection of public finance regime against all forms of abuse, the preservation of public funds and their proper use and, on the other hand, the assessment of the performance of the various public bodies and the fight against mismanagement and the positive impacts of their resulting recommendations.

Footnotes

1. The National Probity and Anti-Corruption Authority (Articles 36 and 167 of the Constitution), The Mediator (Article 162), The Competition Council (Article 166), The National Human Rights Council (Article 161). To access an English translation of the Constitution of the Kingdom of Morocco: https://www.constituteproject.org/constitution/Morocco_2011
2. Arts 36, 154, 155 and 156 of the Constitution. It should be noted that the term "Good Governance" was cited by the Constitution seven (07) times and the term "Transparency" eight (08) times.
3. Articles 147 to 150 of the Constitution. Law No. 62-99 forming Court of Audit Act establishes the attributions, organization and operating methods of the Central Court (book I) and the Regional Courts of Audit (book II), as well as the particular status of magistrates of these Courts (book III).
4. In accordance with articles 32, 37 and 84 of the Court of Audit Act.
5. In accordance with article 148 (Paragraph 4) of the Constitution, "It (the SAI) publishes all its work, including final reports and jurisdictional decisions".
6. Guide 3920 (ex-ISSAI 3200).
7. Arts 57 and 58 of the Court of Audit Act.
8. Art 111 of the Court of Audit Act.



Source: Flag- Adobe Stock Images, 12ee12; Logo- State Audit Office Thailand

Duties and Powers of the State Audit Commission of Thailand to Order an Administrative Penalty

Author: Professor Dr. Orapin Phonsuwan Sabyeroop

The concept of this article, "Duties and Powers of the State Audit Commission of Thailand to Order an Administrative Penalty" was inspired by reflections upon a similar French model. Professor Dr. Orapin Phonsuwan Sabyeroop wrote an article titled "Control of Budget Enforcement and Fiscal Administration by Judicial Bodies in the French Public Finance System" after completing her Ph.D. at the University of Paris II. Thailand adopted this concept, but adjusted it to fit the country's context at the time. Due to the inability to establish a court quickly and timely, Thailand initially adopted the model of a board, or the Board of Audit, to enforce these principles before developing a court system similar to France's in the future.

FEATURE ARTICLE

The concept of fiscal and financial discipline first appeared in the Constitution of the Kingdom of Thailand in 1997, which outlined the essence of the constitutional law concerning the audit of state finances, including the powers and duties of the Board of Audit and the Committee on Budgetary and Fiscal Discipline. This specifically involved setting criteria and methods for considering budgetary and fiscal discipline, determining administrative fines, and adjudicating disciplinary and budgetary and fiscal offenses as the supreme body.

The Organic Act on State Audit, B.E. 2542 (1999), was enacted, establishing the Board of Audit as the supervisory body and the highest decision-making body on budgetary and fiscal disciplinary offenses. The Committee on Budgetary and Fiscal Discipline was responsible for gathering and preliminarily considering matters before submitting them to the Board of Audit for disciplinary action. According to the regulations of the Board of Audit on budgetary and fiscal discipline in 2001, the penalties for those found guilty of budgetary and fiscal disciplinary offenses were set at four levels as follows:

01 First-tier penalty: A fine not exceeding one month's salary.

02 Second-tier penalty: A fine equivalent to a salary from two to four months.

03 Third-tier penalty: A fine equivalent to a salary from five to eight months.

04 Fourth-tier penalty: A fine equivalent to a salary from nine to twelve months.

These penalties are designed to be commensurate with the nature of each offense, with the maximum penalty being a fine equivalent to no more than twelve months' salary.

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Professor Dr. Orapin Phonsuwan Sabyeroopm, the State Audit Commissioner, gave her special lecture in the 7th Forum of Jurisdictional SAI during 16th -17th October 2023 at Bangkok. Source: SAI Thailand

Following the promulgation of the Constitution of the Kingdom of Thailand in 2007, the term "budgetary and fiscal discipline" was changed to "financial, fiscal, and budgetary discipline." This amendment mandated the enactment of state financial and fiscal laws to establish a framework for fiscal and financial discipline. However, until the last day this constitution was in effect, the parliament had not enacted any state financial and fiscal law.

During this period, the definition of financial and fiscal discipline was expanded to include "principles related to medium-term financial planning, revenue management, guidelines for preparing the state's expenditure budget, financial and asset management, accounting, public funds, debt incurrence or operations binding the state's assets or financial obligations, criteria for setting aside emergency or necessary reserves, and other related activities. These were to serve as a framework for revenue management and expenditure control based on principles of stability, sustainable economic development, and social equity," aiming to broaden the authority of the Committee on Financial and Fiscal Discipline in adjudicating state officials' financial actions.

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The Constitution of the Kingdom of Thailand of 2017 stipulates that the state must strictly maintain financial and fiscal discipline to ensure the stability and sustainability of the state's fiscal and financial position according to the law on state fiscal and financial discipline. This led to the enactment of the State Fiscal and Financial Discipline Act of 2018, which covers the framework for fiscal and budgetary operations of the state, fiscal discipline regarding income and expenditure (both budgetary and extra-budgetary funds), state asset management and treasury, and public debt management. This act serves as a principle for maintaining the state's financial and fiscal stability and minimizing the risk of expenditures that do not yield sustainable benefits or create excessive debt for the country. Additionally, the act specifies that in cases of financial and fiscal disciplinary offenses by the state as defined therein, administrative sanctions shall be imposed in accordance with the constitutional law on state audit, which is the State Audit Act of 2018. This act abolished the Committee on Budgetary and Fiscal Discipline but retained the power of the Board of Audit to impose administrative sanctions, with the Auditor General proposing administrative sanctions, which include:

1. Disciplinary punishment,
2. Public reprimand, and
3. Administrative fines.

In the process of considering administrative sanctions, the State Audit Commission takes into account the severity of the behavior constituting the offense and the damage resulting from such actions. The administrative fine imposed cannot exceed twelve months of the salary of the person being sanctioned. Appeals against these decisions can be made to the Supreme Administrative Court within ninety days from the date of receiving the order.

The process for considering administrative sanctions allows for the parties involved to argue, object, and present their evidence, adhering to the principles of appeal and annulment of the judgment. The State Audit Commission has established criteria and methods for considering state fiscal and financial disciplinary offenses according to the State Audit Commission's regulations on the adjudication of state financial and fiscal disciplinary offenses 2019, in line with the right to a fair trial. This includes ensuring the proceedings are conducted within a reasonable period, publicly communicated, quality-controlled, and impartially judged.

FEATURE ARTICLE

Furthermore, the State Audit of Thailand guarantees the independence of its officials (according to the principle of Independence of the SAI's members), ensures freedom of access to information, and prevents double jeopardy (according to the principle of non-accumulation of sanctions). The Organic Act on State Audit of 2018 also stipulates those proceedings for state financial and fiscal disciplinary offenses are suspended if the accused dies or if the proceedings related to the state's financial and fiscal disciplinary offenses are not completed within five years from the date the offense was committed, adhering to the principle of a reasonable period.

All these processes for considering state financial and fiscal disciplinary offenses are underpinned by legal provisions, following the principle of the legal basis of the responsibility regime. The Board of Audit does not exercise any power beyond what is legislated.

These practices demonstrate Thailand's compliance with the principles of INTOSAI P-50, with some aspects clearly reflected in the laws related to state auditing, while others are embodied in general laws that are also applied. It is hoped that these principles will mark a significant step in controlling and auditing state financial and fiscal discipline, evolving from an independent organization towards a more judicial-like entity in the future.

About the author

Professor Dr. Orapin Phonsuwan Sabyeroop is currently serving as the State Audit Commissioner of Thailand. With a comprehensive academic background that includes a Bachelor of Laws, a Master of Laws, a specialized Master's in Fiscal and Tax Law, an Advanced Certificate in Fiscal Law, and a Doctorate in Law, her expertise is grounded in extensive research and scholarship. She has significantly contributed to legal education and research as a Law Professor and the Head of the Public Law Department at Thammasat University, mentoring a new generation of scholars in the intricacies of fiscal law and policy.



Source: Flag- Adobe Stock Images, Tarik GOK; Logo- Corte dei Conti Italy

The Corte dei conti fights against fraud in European Union funds and the National Recovery and Resilience Plan through jurisdictional activities

Authors: Vice General Prosecutor Giancarlo Astegiano; Vice General Prosecutor Arturo Iadecola; General Prosecutor's Office at the Corte dei conti

The European Union needs a strong protection of its funds in order to ensure its administration, and to allocate resources to the Member States or other beneficiaries, for the implementation of its own policies. Both tax evasion and illicit conduct resulting in the receipt of undue funding or the diversion of such funds from their intended purposes cause damage to the European Union (EU)'s treasury.

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The jurisprudence of the Court of Cassation - which in Italy adjudicates on the distribution of jurisdiction among the various judicial bodies - has long been oriented towards recognizing the jurisdiction of the Corte dei conti over private entities that have unlawfully obtained, or diverted from the established purpose, public contributions. The argument is that *"where a private entity, to which public funds are disbursed, negatively affects the manner in which the program imposed by the public administration is implemented, to which it is called to participate with the grant of the contribution, and the impact is such as to lead to a deviation from the pursued purposes, it causes damage to the public entity - even from the mere perspective of depriving other companies of the funding that could have led to the implementation of the plan as formulated and approved by the public entity with the cooperation of the same entrepreneur - for which it must be held accountable before the auditing judge"* (Cass., Sez. un., ord. n. 4511/2006).



Image Source: Corte dei conti

It is worth noting that the jurisdiction of the Corte dei conti also extends to actions for the refund to the European Commission of directly disbursed contributions. According to the rules in force, *"there is no discriminatory application based on the supranational nature of the protected administration or the nature of the disbursed contribution. Instead, in accordance with the principle of assimilation, under which European financial interests are assimilated to national ones, the same measures provided by domestic law must be ensured for their protection"* (Cass., Sez. un., ord. n. 20701/2013).

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Illicit behaviors aimed at misappropriating or diverting EU resources often cause damage both to the European Union's treasury and to the national treasury. In any case, jurisdiction over actions for damages against the perpetrators of such offenses lies with the Corte dei conti, pursuant to the principle of assimilation under Article 325 of the Treaty on the Functioning of the European Union, as it is the judge responsible for determining damage to the State treasury in accordance with domestic law.

The actions of the regional Prosecutor's Offices to protect EU resources mainly involve filing lawsuits – indictments - for damages against recipients of disbursed contributions, in whole or in part, from said funds. When it comes to collective organizations (companies, associations), action can be taken not only against these entities, but also against those who, as their legal representatives or de facto controllers, have contributed to the offense by diverting public resources obtained for their own benefit.

In 2023, the Regional Jurisdictional Chambers of the Corte dei conti issued convictions for the reimbursement of treasury damages in the EU funds sector, amounting to approximately 20 million euros. The mainly affected funds include:

- The European agricultural guarantee fund (EAGF),
- The European agricultural fund for rural development (EAFRD),
- The European Maritime and Fisheries Fund (EMFF),
- The European Structural and Investment Funds (ESI),
- The European Regional Development Fund (ERDF), and
- The European Social Fund (ESF).

The Regional Prosecutors issued over 100 indictments, amounting to over 20 million euros.

At the same time, the investigative and pre-trial activities of the Prosecution Offices confirmed the importance of collaboration with other national and international organizations involved in combating the misuse of public funds, as well as the use of asset protection measures.

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The offenses also concern the National Recovery and Resilience Plan (NRRP), launched between September 2020 and April 2021, in compliance with the provisions of EU Regulation No. 241 of February 12, 2021, which established the Recovery and Resilience Facility within the framework of the Next Generation EU program.

Some of the illicit acts, concerning the improper or non-utilization of EU resources, can evidently also occur in relation to the implementation of the National Recovery and Resilience Plan and, therefore, can constitute a useful and valid reference in the verification and control proceedings of the actual use of public funds from the Plan.

In particular, illicit conduct in this sector may consist of the improper receipt of resources by implementing entities, the failure to comply with schedules for the implementation of projects under the missions provided for in the PNRR, the non-use or diversion of resources allocated for PNRR projects, and the construction of works not conforming to the projects with the diversion or waste of allocated resources.

Finally, the General Prosecutor's Office, as the supervisory office, coordinates with supranational bodies and institutions of other Countries through the International Affairs and Interinstitutional Relations Service for combating corruption and the illicit use of European funds.



The Authors. Source: Corte dei Conti, Italy

FEATURE ARTICLE

Collaboration is underway with the European Public Prosecutor's Office (EPPO), based on the Working Agreement signed by the European Public Prosecutor and the General Prosecutor at the Corte dei conti on September 13, 2021.

According to this agreement, which aims to provide a structured framework for cooperation, the preferred channel of collaboration between Criminal Prosecution Offices and Regional Prosecutors' Offices at the Corte dei conti involves the exchange of information, which extends beyond what is provided for by primary legislation. The European Prosecutor's Offices and the Regional Prosecutors' Offices at the Corte dei conti are also required to activate an additional level of coordination, if necessary through meetings or similar initiatives, in cases where, following the exchange of information, they have initiated investigations into related facts.

Another area of cooperation with supranational organizations is with the European Anti-Fraud Office (OLAF), under the Administrative Cooperation Agreement signed on September 25, 2013. According to Article 325 of the Treaty on the Functioning of the European Union, the Court of Auditors and OLAF share information on facts causing damage to EU financial interests, provide mutual technical and operational assistance, conduct joint strategic analyses, and implement training and personnel exchange programs.



Source: Flag- Adobe Stock Images, Tarik GOK; Logo- Corte dei Conti Italy

The specificities of the jurisdictional activities of the Italian Corte dei conti

Author: Mauro Orefice, President of the Chamber for the Performance Audit on the Management of the State Administrations, Head of the International Affairs Office

Background on Jurisdictional SAIs

The model of jurisdictional supreme audit institution (SAI) is recognized as that of an institution which is able to carry out all types of audit - performance, compliance, and financial audits - and, in addition, is invested with the power to issue formal rulings directly sanctioning the liability of managers of public funds when its audit findings show some irregularities, or when such irregularities are referred to the SAI by a third party.

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The relevance of jurisdictional powers has led to the establishment of a Forum - under the joint chairmanship of the French Cour des comptes and the Contraloria General de la Republica of Chile.

On November 13th, 2015, the first international Forum of SAIs with jurisdictional activities within INTOSAI adopted a solemn declaration that defined their identity, listed the values that characterize them and committed them to common actions to promote their model.

At XXIII INCOSAI, the plenary meeting of the Forum adopted the first norm on jurisdictional activities: INTOSAI-P50 establishing 12 principles that national legal framework shall provide the SAIs to undertake jurisdictional activities.



The author, Mauro Orefice, President of the Chamber for the Performance Audit on the Management of the State Administrations, Head of the International Affairs Office. Source: Corte dei conti, Italy.

The Corte dei conti's Jurisdictional functions

The SAI of Italy (Corte dei conti) carries out audit and judicial functions and holds a special position within Italy's judicial system. It has its own jurisdiction which is separate from administrative and civil courts with regard to its functions. The judicial functions have a clear and strong basis in the Italian Constitution and related laws and independence is one of its most important characteristics.

FEATURE ARTICLE

Pursuant to Article 103 of the Italian Constitution, the Corte dei conti has jurisdiction in matters of public accounting and in any other matters laid down by the law.

The Corte dei conti holds jurisdiction on the following matters:

- **Administrative and accounting liability** of civil servants (fonctionnaires), public agents or private entities managing public funds (money, goods and services, assets, etc.) for the benefit of public interest for any damage they caused to the State and the European Union or to any public entity by fraud or gross negligence.
- **Management and reports of accountants and other public agents** managing public money who are liable to render accounts. (i.e., accounts made by public, management, and government or local bodies accountants. The Corte dei conti has authority to audit individuals who act as public accountants but are not certified as such).
- **Further litigations in accounting matters established by law** (Article 172 of the Code of Accounting Procedure).
- **Litigation arising from acts bestowing or modifying pensions.**

The **Code of Accounting Procedure** (Legislative Decree no. 174/2016) duly and clearly defines the conduct of the different trials before the Jurisdictional Chambers of the Corte dei conti such as the responsibilities incumbent to persons accountable before the SAI and the relevant sanction regime applicable; the qualification and the amount of the alleged damages, the right of access to the investigative file (except for secrets or other parties' defenses) by persons accountable.

The main principles of the trial

The Corte dei Conti's accounting process implements the principles of equality of parties, impartiality, adversarial and due process provided for in Article 111, Paragraph 1 of the Italian Constitution.

Independence

The Corte dei conti is autonomous and independent from all the other powers of the Italian State (Italian Constitution, Article 100, para. 3).

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Its members are judges, they carry out their functions for the benefit of public interest, independently, honestly and avoiding any undue influence. They protect information and confidentiality, while taking into account the need for transparency and accountability.

Judicial powers

The main judicial powers of the Corte dei conti are aimed at assessing administrative and accounting liabilities of civil servants (fonctionnaires), public agents, private entities managing public “funds” (money, goods and services, assets, etc.) for any damage caused to the State or any other public body and the European Union by fraud or gross negligence, in order to safeguard the integrity and efficient use of public resources as well as the interests of public entities and citizens.

All damages caused by unlawful conduct or omission can be taken into account (e.g. corruption; fraud in the management of public funds – European, national, regional and/or local –; infringements or unlawful conduct or omission in directing and/or monitoring performance of public works, supply and service agreements causing breach of contracts, unlawful additional payments; irregular or omitted tax audits or omitted application of sanctions as well as the omitted report of committed crimes in exchange of bribes, consisting in money or other utilities for the officers involved or for third parties, etc.).

A privileged actor: The Public Prosecutor Office of the Corte dei conti

The administrative liability action can only be brought by the Regional Prosecutors of the Corte dei conti before the Corte dei conti’s Jurisdictional Chambers, and complaints are the basis for their activities. In this regard, competent authorities are subject to several specific obligations to report losses of public funds to the Regional Prosecutor’s Office, in cases where public officials are involved.

The Criminal Prosecutor has the duty to report to the Regional Prosecution Office of the Corte dei conti of any investigation or case which allegedly caused a loss to public funds. Complaints can arise from any other sources: politicians, citizens, anonymous, whistle-blowers (the law provides for the protection of the worker who reports unlawful conduct of which they have become aware within the workplace), press articles, etc.

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The Public Prosecutor has full access to documents and information held by administrative or judicial bodies and, if necessary for the investigation, can request (through its decrees): exhibition of documents, hearings of informed people, inspections and direct assessments, seizure of documents, technical advice. In a lawsuit for damages brought by one of the Public Prosecutors at the Corte dei conti (an indictment contained in a summons), at the end of investigation proceedings which may involve police forces such as the Italian Financial Police (Guardia di Finanza), the accused person can be held liable only if all the following conditions are met as regards the illegality/unlawfulness of the allegedly wrongful conduct or omission:

- 1.The harm suffered by the budgets/resources of the State or of a public body (including European Union funds) must be actual, certain and not merely potential;
- 2.There must be evidence of a direct causal link between the act and the damage alleged to have been suffered;
- 3.There must be evidence of a fraud or a gross negligence in the conduct of the accused person, and;
- 4.There must be a “qualified relationship” – an employment relationship, an empowerment, an affiliation or an ad hoc connection – between the damaged public body and the person who allegedly caused the damage. Private people and undertakings can be accused if they enter into this “qualified relationship” as they operate for the benefit of the public interest.

The Indictment and the Judgment

The indictment constitutes the final detailed statement of charges setting out in detail the facts, the accused persons, the existence of the cumulative conditions to bring the action before the Court and the qualification and amount of damages.

The Corte dei conti sets the date for the first hearing. Then the accused person and his lawyer are to receive a copy of that indictment together with a summons to that hearing.

The lawyer then has a period to prepare the defence.

After the trial, the Corte dei conti issues its first instance judgment which is made public, respecting the secrecy and restrictions linked to confidentiality that are legally mandatory as well as the protection of personal data.

The parties can appeal the sentence before the Central Chambers of Appeal.



Source: Flag- Adobe Stock Images, 12ee12; Logo- State Audit Office Thailand

The 7th Forum of Jurisdictional SAIs Convenes in Bangkok: 16-17 October 2023, Bangkok, State Audit Office of the Kingdom of Thailand

Author: Dr. Sutthi Suntharanurak

The 7th Forum of Jurisdictional Supreme Audit Institutions (SAIs), held in Bangkok on 16-17 October 2023, was inaugurated with an opening ceremony that featured a series of distinguished speakers, underscoring the global significance and collaborative spirit of the event. General Chanathap Indamra, the President of the State Audit Commission of Thailand and Chairman of the ASOSAI, extended a warm welcome to participants, setting a tone of camaraderie and shared purpose for the proceedings. Mr. Jean Yves Bertucci, Chamber President of the French Court of Accounts, contributed his insights, further enriching the dialogue with perspectives from Forum of Jurisdictional SAIs.

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General Chanathap Indamra, the President of the State Audit Commission of Thailand and Chairman of the ASOSAI. Source: State Audit Commission of Thailand



Mr. Jean Yves Bertucci, Chamber President of the French Court of Accounts. Source: State Audit Commission of Thailand

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Adding to the diversity of viewpoints, Mr. Carlos Riofrio Gonzalez, the Comptroller General of the State of Ecuador, participated through a video presentation, ensuring that the global community of SAIs was well represented, despite geographical distances. The event was also graced by the esteemed presence of Mr. Bruno Dantas, the INTOSAI Chairman and President of the Tribunal de Contas da União (TCU) of Brazil, alongside Ms. Zineb El Adaoui, President of the Court of Accounts of Morocco. Together, they presented the JuriSAI project, a landmark initiative aimed at fostering collaboration and sharing knowledge among jurisdictional SAIs worldwide.



The 7th Forum of Jurisdictional Supreme Audit Institutions (SAIs), held in Bangkok on 16-17 October 2023, host by State Audit office of the Kingdom of Thailand. Source: State Audit Commission of Thailand

Professor Dr. Orapin Phonsuwan Sabyeroop, in her keynote at the Forum, shared the transformative journey of fiscal and financial discipline within Thailand, showcasing the pivotal milestones that have shaped the nation's audit system, a testament to her profound influence in the field. Her discourse steered through the historical evolution of public finance auditing in Thailand, highlighting her own scholarly contributions that catalyzed significant reforms and the subsequent development of an auditing framework that meets global standards. She pinpointed critical developments such as the shift towards a more autonomous audit system, the creation of the State Audit Act, and the formation of the Budgetary and Financial Discipline Committee. These steps have been instrumental in bolstering efficiency and transparency within the public sector's management.

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Professor Dr. Orapin Phonsuwan Sabyeroop, the Commissioner of Thailand, as the Keynote speaker in this meeting. Source: State Audit Commission of Thailand

As the State Audit Commissioner, Professor Dr. Orapin viewed the persistent need for further reforms aimed at the establishment of jurisdiction in Thailand. She stressed the vital importance of ensuring the auditing process is characterized by independence and impartiality, principles that are crucial for aligning Thailand's auditing practices with internationally recognized standards. Her presentation not only reflected on past achievements but also set the stage for future directions in enhancing the integrity and effectiveness of Thailand's fiscal and financial governance.



Mr. Bruno Dantas, the INTOSAI Chairman and President of TCU) of Brazil, alongside Ms. Zineb El Adaoui, President of the Court of Accounts of Morocco. Together, they presented the JuriSAI project. Source: State Audit Commission of Thailand

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Mr. Miller's presentation at the SAI France Forum in Bangkok, October 2023, underscored significant advancements in three key areas:

01

Advocacy and Visibility Efforts: The advocacy paper's global dissemination to major governance organizations (IMF, World Bank, EU, etc.) in June 2023 was met with enthusiasm, reflecting a positive acknowledgment of initiatives aimed at enhancing the recognition and comprehension of jurisdictional SAIs' importance and advantages.

02

Institutionalization Efforts: Active discussions have been pursued to integrate the Forum more formally within the INTOSAI community, including steps toward establishing the Forum as a dedicated working group. There remains a steadfast dedication to fulfilling this objective.

03

Publishing Initiatives: Collaborative efforts with the INTOSAI Journal aim to highlight SAIs with jurisdictional roles in 2024 to further disseminate best practices, insights, and progress across the SAI community, emphasizing the Forum's commitment to knowledge sharing and the promotion of jurisdictional SAI functions.

Panel 1 - The Role of Jurisdictional Supreme Audit Institutions (SAIs) in Counteracting Fraud and Corruption

In his presentation for SAI Indonesia on 16 October 2023 in Bangkok, Mr. Ramadhani highlighted the organization's key role in combatting fraud and corruption in Indonesia. Major points included:

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Legal Framework and Mandate: SAI Indonesia is empowered by a comprehensive legal framework that assigns it the responsibility to audit the management and accountability of state finances, including the authority to investigate and report financial misconduct and corruption.

Scope and Types of Audits: Mr. Ramadhani detailed the broad range of audits SAI Indonesia conducts, such as financial audits, performance audits, and investigative audits specifically designed to detect fraud and corruption, showcasing the institution's thorough approach to ensuring financial integrity.

Enforcement and Collaboration: The presentation stressed the significance of collaboration with law enforcement agencies, describing how SAI Indonesia reports findings of criminal activity discovered during audits to the appropriate legal authorities and plays a role in assessing financial losses at the state and regional levels, thus actively participating in legal actions concerning financial discrepancies.

These points illustrate SAI Indonesia's contribution to improving financial transparency, accountability, and integrity within Indonesia's governance framework.

Ms. Dujols' presentation provided an insight into the collaboration between France's Cour des Comptes and judicial authorities, particularly focusing on a case of mismanagement and ethical violations at the "O" Agency, a public entity aiding victims of medical injuries. Key highlights involved identifying severe managerial and ethical problems, the cooperative efforts between financial auditors and criminal prosecutors that led to significant legal and administrative measures against the agency's management, and the consequential recoveries and reforms. This case served as a prime example of the effective partnership between auditing bodies and judicial systems in tackling corruption and mismanagement.

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From SAI Benin, Mr. Batonon's discussion during the Forum of Jurisdictional SAIs shed light on the preventive and corrective roles of SAIs in fighting fraud and corruption. He underscored the 'gendarme' effect of SAIs in preventing misconduct, their advisory role to public managers for adopting result-oriented management practices, and the necessity of penalizing poor management. Batonon advocated for SAIs to adopt a proactive stance, maintain a visible presence in public administration, and play a pivotal role in upholding accountability and fiscal discipline, emphasizing their crucial function in promoting good governance and curbing corruption.

Panel 2 - The Imperative for International Collaboration and Information Sharing

In his presentation, Mr. Batonon highlighted the essential role of international cooperation and the exchange of information in the battle against fraud and corruption. He detailed the global scope of these offenses and the critical need for Supreme Audit Institutions (SAIs) to collaborate beyond national borders. Batonon advocated for the creation of databases encompassing public financial processes with international ramifications and called for an improved sharing of insights and data among SAIs. These measures are aimed at bolstering worldwide efforts to identify and prevent corruption, emphasizing the value of joint initiatives in elevating accountability and governance in the public sector.

From SAI Senegal, Mr. Diatta's discourse highlighted the crucial role of SAIs in promoting transparency, legality, and the efficient use of public funds, while addressing the obstacles they encounter, including the sophisticated nature of fraud schemes and the vital need for cross-border cooperation. He presented instances of successful international collaborations and offered recommendations to amplify the effectiveness of SAIs in their crusade against fraud and corruption. Diatta stressed the importance of robust legal structures and global partnerships, underscoring the necessity for concerted efforts in enhancing the fight against corruption through strengthened legal and operational frameworks.

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Panel 3 - Initiatives for Corruption Prevention and Enhancing Public Awareness

Mr. Orefice's presentation highlighted the role of Italy's Corte dei conti in promoting transparency, accountability, and legal adherence. He emphasized the significance of preventive measures, raising public awareness, and partnering with educational bodies to foster democratic values and active engagement among citizens. The initiative "Educating in Legality" was showcased as a key effort to involve the youth and broaden their understanding of the Corte dei conti's role in protecting public funds, showcasing a holistic strategy to counter corruption.

Mr. Arifa's talk centered on SAI Brazil's comprehensive strategies to address fraud and corruption, focusing on prevention, detection, investigation, and ongoing monitoring. He underlined the importance of engaging with various stakeholders, particularly civil society, through educational programs, collaborations, and leveraging technology like data analytics and AI to boost the efficiency of audits and inquiries. He shared case studies to illustrate the positive effects of these strategies, including cost reductions in the electrical energy sector and considerable financial savings through persistent audit practices, highlighting SAI Brazil's forward-thinking approach to enhancing public sector transparency and accountability.



Source: State Audit Commission of Thailand

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Mr. Arifa further outlined SAI Brazil's approach, detailing:

- **Comprehensive Strategy:** A holistic plan covering prevention, detection, investigation, and monitoring to tackle corruption and fraud.
- **Stakeholder Engagement:** The critical role of civil society engagement through education and partnerships for improved transparency and accountability.
- **Technology Utilization:** The adoption of data analytics and artificial intelligence (AI) to increase the effectiveness of audit and investigative processes.
- **Impactful Outcomes:** Case studies demonstrating impactful results, such as lowered costs in the energy sector and significant savings from continuous audit activities, showcasing the concrete benefits of SAI Brazil's actions.

The discussion also included Portugal's approach to fraud and corruption prevention, outlined in three primary actions by the Council for the Prevention of Corruption (CPC): the deployment of Corruption Risk Management Plans in over 1300 public institutions, pedagogical visits to assess and suggest improvements in compliance, and the initiation of educational programs in schools to build an anti-corruption network, reaching thousands of schools and students. Furthermore, it mentioned the transition from the CPC to the National Mechanism against Corruption, maintaining these efforts and introducing a General Corruption Prevention Regime that requires compliance programs in both public and private sectors, continuing Portugal's commitment to combating corruption through education, regulation, and systemic improvement.

Conclusion

The ensemble of global leaders and experts gathered for the 7th Forum of Jurisdictions SAI's provided a fitting commencement to the forum, highlighting importance of the meeting as a platform for dialogue, exchange, and advancement in the field of public sector auditing. Their collective presence and contributions emphasized the commitment of SAIs across continents to enhance transparency, accountability, and governance through strengthened jurisdictional auditing practices.

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Source: State Audit Commission of Thailand

About the author:

Dr. Sutthi Suntharanurak is the Director of International Affairs Office of State Audit Office of the Kingdom of Thailand. Please contact sutthisun@gmail.com



Source: INTOSAI Development Initiative

Developing relevant and innovative approaches to support SAI Independence: Insights from the SAI Independence Rapid Advocacy Mechanism (SIRAM)

Author: Freddy Yves Ndjemba, Senior Manager, SAI Governance Department, INTOSAI Development Initiative

Supreme Audit Institutions (SAIs) have a vital role for public sector accountability, integrity, and transparency. To fulfill their role and build trust between the organs of the state and society, SAIs need to be independent.

SAI Independence may be understood as the ability of a Supreme Audit Institution to operate autonomously of the government, without undue influence and control. It is considered a fundamental condition for SAIs to effectively carry out their mandate. The INTOSAI Mexico Declaration on SAI Independence identifies eight conditions, known as the pillars of independence, as the benchmark against which the independence of an SAI can be assessed.

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Data from the INTOSAI Development Initiative and the World Bank show that Supreme Audit Institutions (SAIs) around the world face increased threats to their independent operation and execution of audit mandates.

For instance, the last INTOSAI Global stocktaking report showed that at least 40% of SAIs experienced major interference in the execution of their budgets, and only 44% of SAIs said that they fully experienced timely, unconstrained, and free access to information for the proper discharge of their statutory responsibilities-- a dramatic drop from the 70% who reported having full access in 2017.

Similarly, according to the most recent World Bank index on SAI Independence, most SAI budgets and financing were subject to approval by central government budgeting institution and only 22 countries out of 118 assessed, fully met the criteria on staffing autonomy.

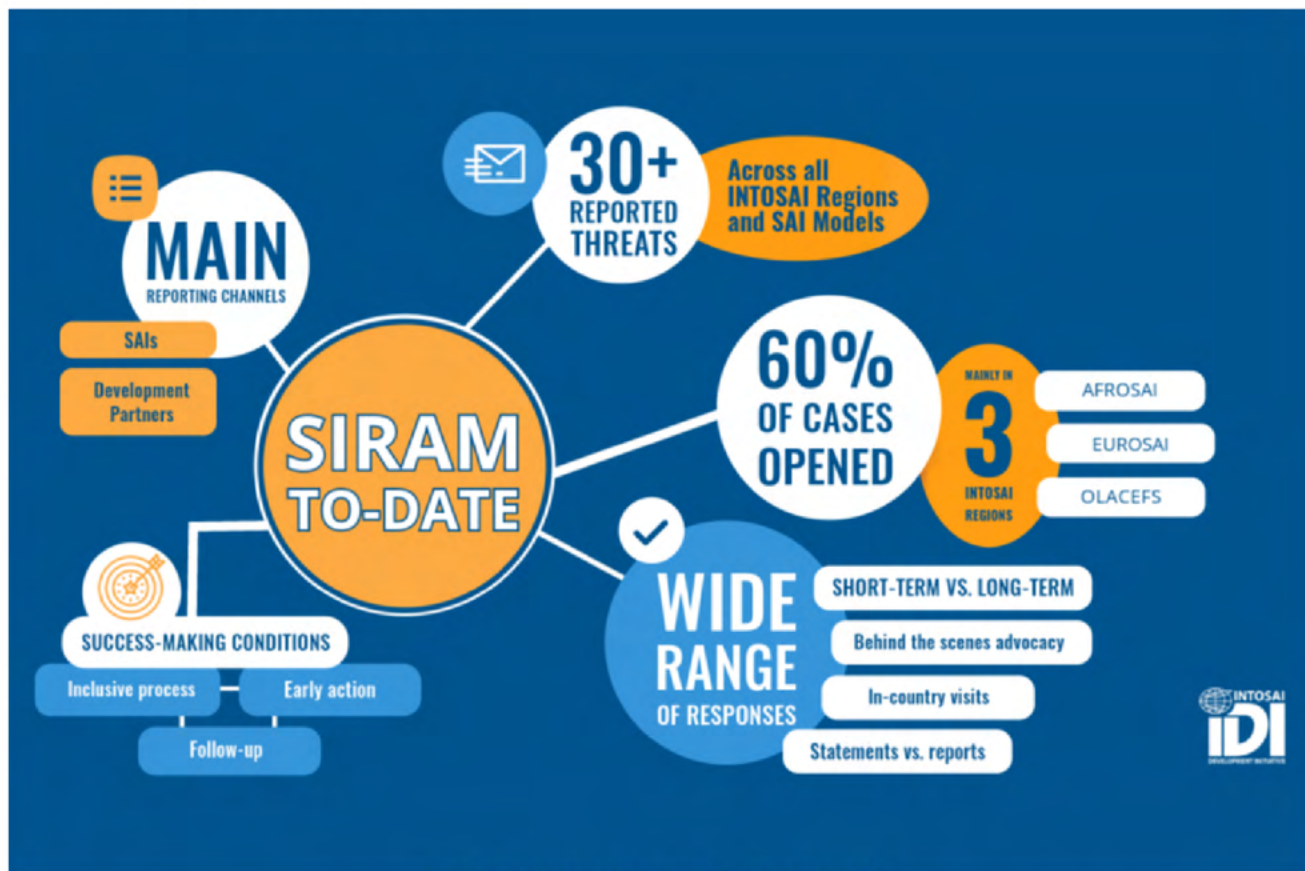
INTOSAI through its Bodies, has always been very active in advocating and supporting SAI independence. These efforts have culminated with the adoption by INTOSAI of the Lima Declaration on Audit Principles in 1977 and the Mexico Declaration on SAI Independence in 2007, several instruments have recognized the importance of SAI Independence including three UN Resolutions and other high level political declarations.

Additionally, efforts to support SAI independence were driven by SAIs taking a leading role to advocate for greater independence through legislative changes. Over time, though, it has become clear that legislative changes are just one factor in a SAI's independence. Political and institutional landscapes around the world are in a constant state of flux, and a variety of actions by the executive or legislative can threaten various aspects of SAI independence.

These threats can manifest in a variety of ways, such as through amendments to a country's constitution, changes to the upcoming budget, alterations to the audit law, and attempts to remove the current Head(s) of the SAI or delay the appointment of a new Head. In a few cases, there have even been proposals to fully abolish the SAI as an independent institution.

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The emergence of SIRAM



Source: INTOSAI Development Initiative

These ongoing risks highlight the need for the INTOSAI community and relevant stakeholders to develop tools and approaches which will help SAIs quickly and effectively respond to challenges to their independence.

It is against this backdrop that the SAI Independence Rapid advocacy Mechanism (SIRAM) was developed by IDI through the INTOSAI Donor Cooperation (IDC) to advocate and raise awareness to threats and breaches of SAI independence, as well as brokering support for SAIs facing challenges to their independence.

Over the years SIRAM has grown from a pilot initiative to a well-known and sought after mechanism. It has been mainstreamed within the INTOSAI and Donor Community and benefitted from tremendous support from various actors such as Civil Society Organizations and Academia, as the case process grew in complexity.

Reflecting on its implementation over the years several facts emerged, including:

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The Author, Freddy Yves Ndjemba. Source: INTOSAI Development Initiative

1. Although we are only seeing “a tip of the iceberg” as we are only capturing self-reported threats, the geographical dispersion of the cases indicates the globalized nature of the issue combined with a greater concentration in specific INTOSAI Regions.
2. In areas of concentration, we see a correlation with threats affecting other independent institutions i.e., judiciary and the deterioration of the conditions around accountability i.e., shrinking of civic space.
3. From a conceptual standpoint, threats to SAI Independence are generally from the perspective of Executive Interference, however, empirical evidence highlights additional drivers and angles from which SAI independence is threatened in practice.
4. The growing complexity of the cases required a deeper understanding of the country context and the SAIs’ institutional set-up (legal framework and model), which could come at the expense of the rapidity of the response.
5. Most threats evolve around specific INTOSAI principles, including security of tenure of the Auditor General, powers and mandate, timely and unrestricted access to information, as well as access to human resources and financial resources.
6. Leveraging on donors' influence, and outreach is critical in successfully advocating for SAI Independence. Similarly, effective advocacy at the country level requires expanding the breadth of stakeholders to consult with at the country level and even going beyond parliamentarians and CSOs to include politicians, media and institutional actors.

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From Reactive to Proactive Advocacy

All these findings showed the relevance of the reactive approach through SIRAM, but they also point out to a more fundamental issue.

In fact, we saw a need to complement the ad hoc and reactive advocacy provided through SIRAM with a more proactive advocacy approach, which would support INTOSAI's efforts by enabling a holistic and complete approach to Advocacy on SAI Independence.

It is in that context that we have positioned our efforts to proactively advocate for SAI Independence, including by developing relevant and innovative approaches to support SAI Independence. One example is through partnering with leading international organizations to create coalitions in support of SAI Independence.

The Masterclass on SAI Independence, organized jointly by IDI, OECD, and the French Cour des Comptes, positioned itself as an innovative approach where an eclectic constellation of SAI Heads, Development partners and thought leaders from Academia, came together to collectively brainstorm on SAI independence.

This resulted in a shared understanding of the challenges, and the identification of potential ways to strengthen SAI Independence. An additional by-product of this gathering is the launch of the joint IDI-OECD-IMF research project to support the development of OECD standards on SAI Independence.

Another example is the support provided to the Court of Accounts of Madagascar under the USAID funded TANTANA project, alongside the French Cour des Comptes and IMF.

Through effective advocacy and targeted technical support, we were able to support the SAI in changing its position in the budget structure by removing it from the Heading of the Ministry of Justice and giving the SAI its own heading in the budgetary framework.

The elevation of the SAI's position in the state's budget architecture provides the foundation for greater financial autonomy for the SAI, as it gives the Court of Accounts more leeway in planning for and managing its financial resources.

Finally, as strengthening SAI independence requires an all-hands-on deck approach, we will continuously work alongside stakeholders, and engage in relevant forums to mainstream and contextualize SAI Independence. To that end, we aim to work more closely with jurisdictional SAIs, including through the Forum of Jurisdictional SAIs, to partner and mainstream their approaches to SAI Independence.



Source: INTOSAI Development Initiative

SAI PMF a tool for all SAIs, including jurisdictional SAIs! Updated indicators to assess jurisdictional activities

Authors: Eduardo Ruiz and Irina Sprenglewski, senior managers at INTOSAI Development Initiative (IDI)

In a continuous drive to keep the SAI Performance Measurement Framework (SAI PMF) relevant and useful for SAIs, INTOSAI approved a new version of the framework in November 2022 which contains a revised set of indicators assessing jurisdictional activities.

The SAI PMF and Global Uptake



The SAI PMF and Global Uptake

Since the SAI Performance Measurement Framework (SAI PMF) was introduced in 2010, an impressive 96 SAIs have completed a SAI PMF assessment. While SAI PMF has become an established tool among SAIs globally, uptake so far has been more limited among SAIs with jurisdictional competencies, with only 12 being jurisdictional-model SAIs out of the 96.

SAI PMF is a specifically designed tool for SAIs to assess their current situation and performance across its key functions, processes, and outputs. As an assessment against the INTOSAI Framework of Professional Pronouncements (IFPP) and other established international good practices for external public auditing, SAI PMF is recognised as a basis for establishing needs to inform SAI strategic plans and capacity development efforts. Its overall objective is to help improve SAI performance to strengthen public financial management and foster accountability and transparency by leading by example.

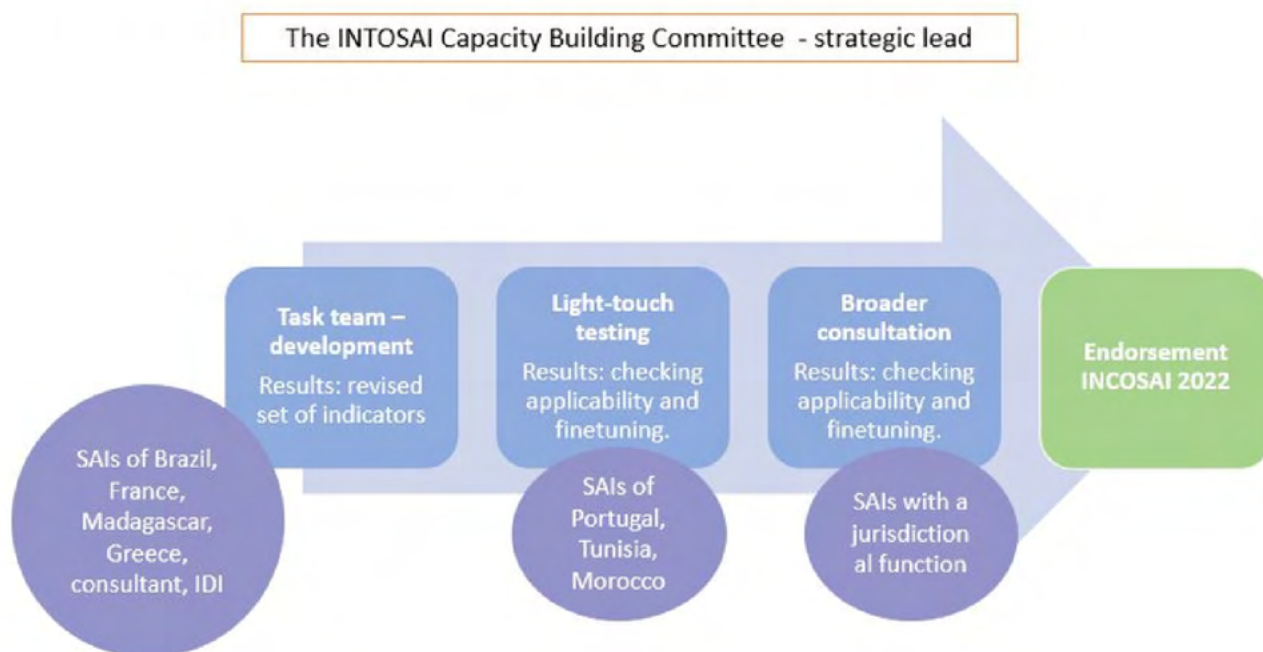
A key feature of SAI PMF is that it should be a useful tool for all SAIs. This entails revising and improving the framework when necessary, since it is not static and needs to consider changes in the environment. As a minimum, SAI PMF needs to reflect changes in the underlying INTOSAI standards to ensure an objective assessment. To that end, the adoption in 2019 of INTOSAI-P 50 “Principles of jurisdictional activities of SAIs” which integrated the jurisdictional activities into the IFPP. Moreover, feedback from assessors applying the framework and a consultation conducted in 2020 also indicated that there were some areas for improvement.

An inclusive process

The inclusive revision process involved a multitude of organizations and was conducted under the strategic lead of the INTOSAI Capacity Building Committee (CBC). The technical development was conducted by a group of senior practitioners from SAIs France, Brazil, Greece and Madagascar and from the INTOSAI Development Initiative (IDI) as the SAI PMF operational lead.

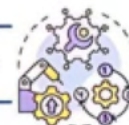
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Together, the group produced a draft set of indicators that was later tested and fine-tuned in two workshops carried out with colleagues from SAIs Portugal, Tunisia, and Morocco. The SAIs involved reflect the existing variety of jurisdictional models, which was important to ensure the revised indicators work across SAIs, and this inclusive approach has greatly contributed to the final product. Subsequently, and in accordance with INTOSAI procedures, all SAIs with a jurisdictional function were invited to provide comments on the revised indicators, with the highlight of the endorsement of the SAI PMF 2022 version at INCOSAI in Rio de Janeiro.



SAI PMF revision process. Source: INTOSAI Development Initiative

Revising the Indicators Assessing Jurisdictional Activities

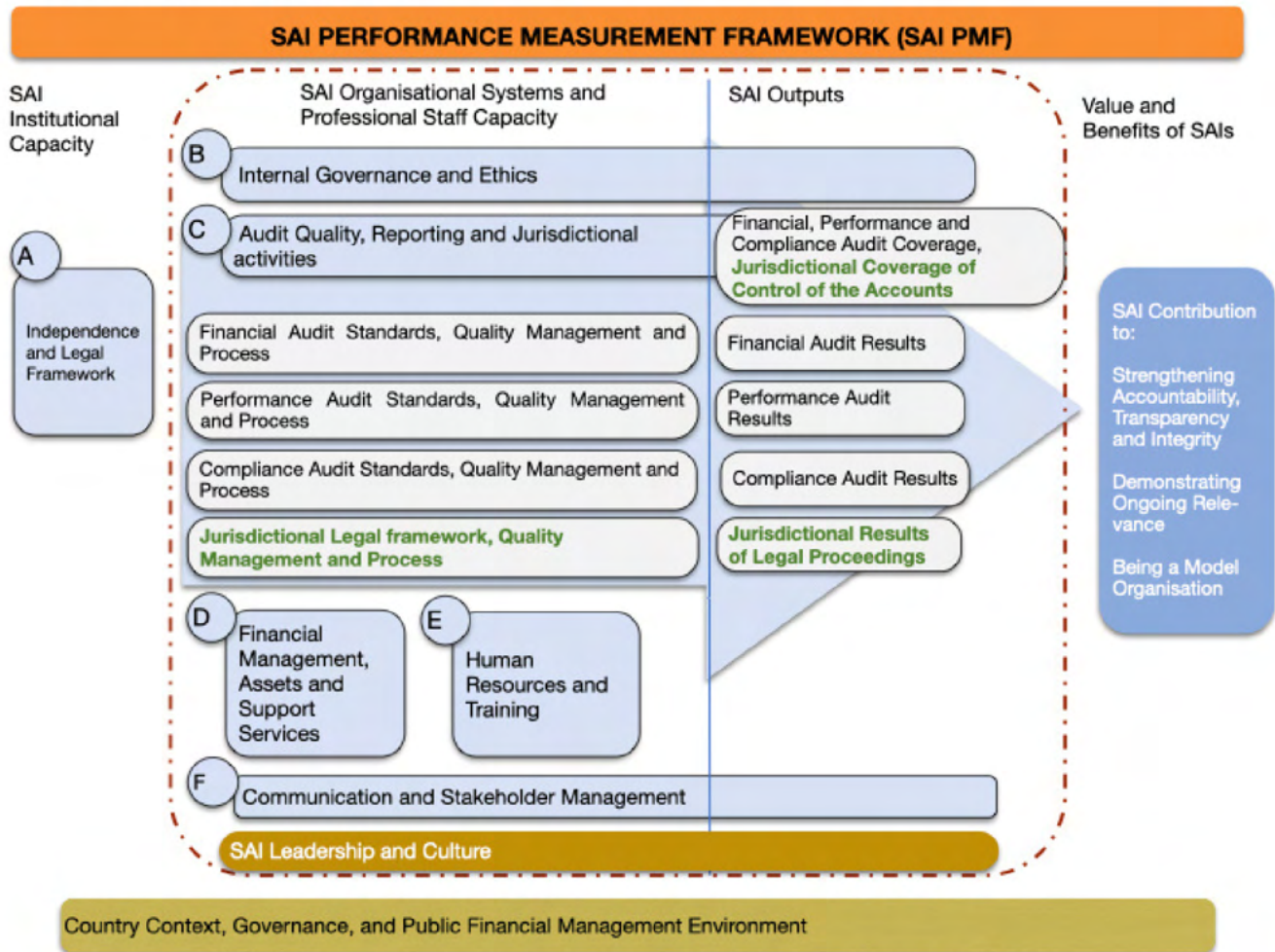


Revising the Indicators Assessing Jurisdictional Activities

Revision scope

SAI PMF outlines key areas to be assessed, represented by domains A-F. The scope of this revision were the indicators and dimensions specifically targeting SAIs with a jurisdictional function (indicators SAI-8, 18, 19 and 20).

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SAI PMF and revision scope. Source: INTOSAI Development Initiative

The indicators span the range of jurisdictional activities from control of regularity of the accounts and management operations (abbreviation: control of the accounts) and the subsequent legal proceedings. This implies that SAI PMF identifies two competences related to these two main areas. By the same token, it acknowledges that legal proceedings can be initiated in different ways: by irregularities identified in an audit or when conducting the control of the accounts, and from reports and tips from third parties.

A new set of adjusted indicators

Firstly, the review included an alignment with INTOSAI-P 50 which strengthens the framework. However, INTOSAI-P 50 mainly captures the legal proceedings and is at the “principle” level. This entails that the control of the accounts is not extensively covered and there is no standard (ISSAI) describing how the principles should be implemented. It was therefore necessary to include specific criteria based on good practices. These build strongly on the criteria developed by the earlier task team that was included in the SAI PMF 2016 version.

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Secondly, the review team needed to correct some shortcomings revealed when applying the indicators these past years - for example, reflecting newer approaches to control of the accounts, based on sampling and risk assessment. Other specific examples covered four specific indicators identified in the review process.



Revised set of indicators. Source. INTOSAI Development Initiative

SAI-8 (iv) "Coverage of the control of regularity of the accounts and management operations"

Jurisdictional activities include checking the accounts and the supporting documentation for irregularities. Which accounts shall the SAI check? There are two main scenarios.

1. Several SAIs, particularly in CREFIAF, are required to check all public accounts. In several cases, this has led to a struggle with backlogs of accounts pending to be controlled if the SAI does not have the necessary resources to conduct the controls in a timely manner. In this scenario it may still be possible for the SAI to plan and programme its controls in a manner that allows most of the accounts to be subject to control within a defined period. The remaining accounts can be sampled, based on the level of risk they represent.
2. In other countries, the legal framework allows SAIs to select the accounts that should be controlled based on considerations such as risks and materiality. In this scenario, SAIs are better positioned to allocate resources to examining the key accounts.

To assess coverage, the SAI can therefore select between two options depending on their mandate, adapting the assessment of coverage to the mandate and legal requirements of the SAIs.

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SAI-18: Jurisdictional Legal Framework and system to ensure quality of the control of the accounts

This indicator assesses the foundation for jurisdictional activities. Firstly, it assesses whether there is a legal framework in place that governs the jurisdictional activities, establishing the liability regime for its public managers (including accountants). The indicator focuses on respect for basic principles such as legality, fairness, impartiality, and contradiction.

Secondly, the indicator assesses the processes the SAI has put in place to ensure the competencies of the controllers, and the quality of the control of the accounts.

SAI-19: Jurisdictional Activities

The SAI-19 indicator assesses how jurisdictional activities are carried out in practice. It examines the planning and implementation phase of the control of the accounts as well as the subsequent legal proceedings looking into both the decision-making process and the final decision. It includes adhering to key principles such as fairness, impartiality, and collegiality as well as reflecting key roles such as the public prosecutor.

SAI-20: Results of Legal Proceedings

The aim of this indicator is to assess the performance of the SAI in ensuring that the exercise of the jurisdictional activities leads to notified and implemented judgements. Ultimately making sure that the sanction of the personal liability is effective. The results of controls and legal proceedings are decisions, such as judgments, orders, and legal ordinances against public managers (including accountants). The indicator includes the notification and publication of results, as well as the follow-up by the SAI on the implementation of results.

Use SAI PMF for Better Jurisdictional Activities



Use SAI PMF for Better Jurisdictional Activities

To a large extent, the aspiration for SAI PMF from 2010 has been fulfilled. The aim was to create a framework that can be applied in all types of SAIs, regardless of governance structure, mandate, national context, and development level. To date approximately 50% of INTOSAI SAIs have used the SAI PMF as a basis to better understand, manage and improve performance. SAI PMF has also been used to facilitate internal and external communication with key stakeholders about SAIs' capacity development needs.

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A SAI PMF assessment would allow the SAI to demonstrate how its jurisdictional activities contribute to compensate for losses suffered by a public entity and/or to sanction the personal liability, either financial or disciplinary of individuals found guilty. It also serves for making the SAIs more accountable by reporting performance and monitoring progress over time. Conducting regular repeat SAI PMF assessments is a key approach to monitor performance change.

The work does not stop there, and it is important to maintain the relevance of the framework which is highlighted in the [SAI PMF strategy 2023-28](#). SAIs with a jurisdictional function can now access the improved SAI PMF 2022 version that is even more tailored to assessing jurisdictional activities, following principles rooted in the international standards. The framework can be found on the IDI Website: [Resources \(idi.no\)](#).

Hopefully, SAI PMF will continue to help SAIs make a difference by strengthening their capacities and performance for the next many years.



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The Authors. Source. INTOSAI Development Initiative



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