AN ANALYSIS OF NUGATORY EXPENDITURE IN AUDITOR GENERAL'S REPORT FY 2014/15

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Abstract

This short analysis examines the composition of nugatory expenditure as highlighted in the auditor general's report for FY 2014/15. This analysis covers but is not limited to reviewing the sectoral composition, the causes and the impact with respect to nugatory expenditure.

Nugatory expenditure accounts for a small size of the total audited expenditure. It is largely incurred nearly by all spending agencies and is a recurring expenditure annually. Auditor General noted that these nugatory payments were to continue into 2015/2016 financial year. The largest traceable nugatory expenditure was in the ministry of agriculture and the Uganda National Roads authority, mainly attributed to contract management. The underlying causes are broad ranging from administrative and capacity weaknesses to political challenges.

Nugatory expenditure may be of a small size, but they have a spill over effect on expenditure patterns of different sectors, leading to creation of arrears, supplementary budgets and on the overall denting budget credibility. At an administrative level, the accounting officers' performance contracts should include progress towards non recurrence of nugatory expenditure along with other financial and accountability flaws.

There is need for Parliament to proactively question accounting officers over non-performance in general and on the audit queries. Institutional oversight coordination needs to be re-enforced. The general principle should be no approval of the budget before satisfactory accounting of the previous year audit queries.

I. Introduction

The Auditor General (AG) is required by article 163(3) of the Constitution of the Republic of Uganda and section 13 & 19 of the National Audit Act 2008 to audit and report on the public accounts of Uganda and of all public offices. In line with the new Public Finance Management Act 2015 (PFMA) statutory calendar, the Office of Auditor General (OAG) annual report was presented to Parliament 3 months earlier than usual before 31 March of every year. On the overall, there was an increase in unqualified opinions[1] in Central Government from 70% to 78%, in Higher Local Governments from 69% to 90%, and in Statutory Authorities from 70.5% to 79%. Three agencies had adverse opinions[2]; Ministry of Local Government, Uganda Broadcasting Corporation and the Uganda Railways Corporation.

[1] Unqualified reports are clean reports, where financial statements contain no material misstatements or errors.
[2] Adverse reports are where the financial statements contain material misstatements or errors and the Auditor has disagreed with management and as such concludes that the financial statements do not represent a true and fair position.

Both Uganda Broadcasting Corporation and the Uganda Railways Corporation had disclaimer audit opinion[3] in FY 2012/13 and 2013/14. No adverse opinions had been issued in FY 2013/14.

This analysis attempts to analyse the opinion expressed in the Auditor General's Report for Financial Year (FY) 2014/2015, with a particular bias on the sectoral composition of nugatory expenditure, across MDAs (Ministries, Department, Agencies) expenditure, and to what extent they affect sector performance and consequently the audit opinion. While the scope of the analysis is FY 2014/15, a comparative analysis with FY 2013/14 is undertaken. This analysis is divided into 5 sections; Section 1 provides a synopsis and analysis of the composition of nugatory expenditure, Section 2 handles the causes of nugatory expenditure Section 3 impact of the nugatory expenditure, Section 4 are the reforms undertaken by government and Section 5 proposes recommendations.

II. Analysis

Public Finance (Management and Accountability) Regulations 2009 section 19 states that 'Losses of public moneys may also occur through nugatory payments if the payment is unavoidable and there is no benefit to the government. The OAG report for FY 2014/2015 noted withdrawals from the consolidated fund amounting to UGX 16.95 trillion. However, according to annual budget performance report for FY 2014/115 total government spending excluding Appropriation in Aid amounted to UGX 14.5 trillion falling short of the approved budget by UGX 1.6 trillion. Of the withdrawals expenditure, government agencies paid UGX 26.1bn during the period as nugatory expenditure, accounting for 0.15% of expenditure. This expenditure is considered wasteful as the expenditure is avoidable if the payments are settled in time.

Nugatory expenses with respect to FY 2014/2015, mainly took the form of delayed settlements of obligations arising from contracts for construction services, court awards and contributions to international organisations. FY 2014/15 nugatory expenditure represents a 2065 increase from the value of FY 2013/2014 of UGX 12.7 billion, of which 80% where in foreign currency. Nugatory payments as noted in the respective Office of the Auditor General (OAG) report are likely to continue into FY 2015/2016 financial year as a number of obligations had not been fully settled and no concrete plans to clear these obligations were in place.

3 Disclaimer reports are where the financial statements contain material misstatements based on limitation of scope on the work of an Auditor to the extent that there is uncertainty on the fairness and truthfulness of the financial statements and therefore the auditor is unable to give an opinion

Table 1 gives the nugatory expenditure per sector, cumulatively to a tune of UGX 26.1 billon FY 2014/2015.

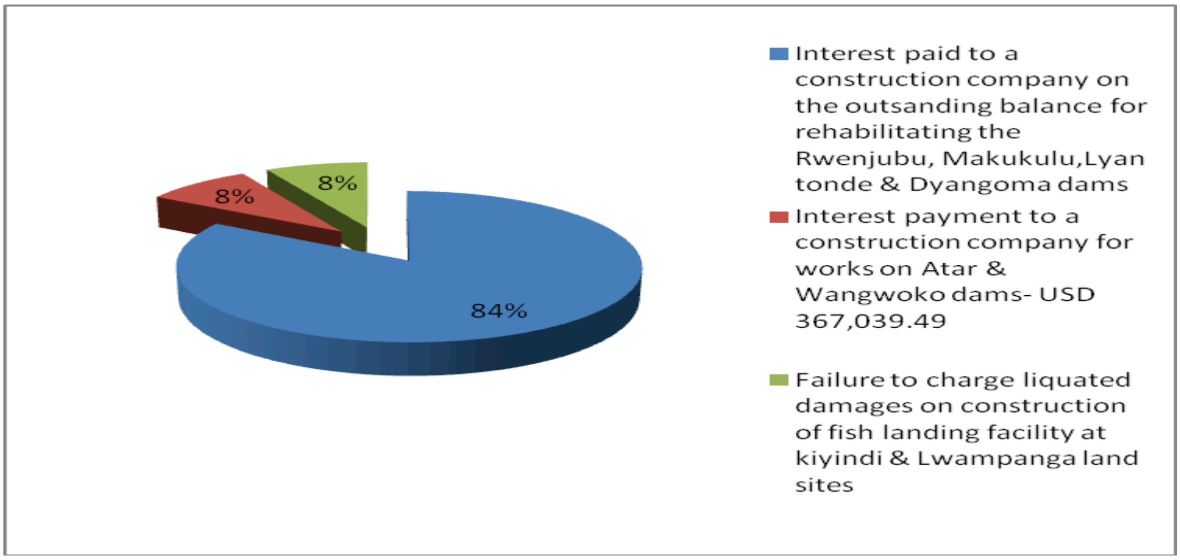
Table 1: Sectoral composition of nugatory expenditure

Vote	Nugatory Amount (UGX)	% of Total Nugatory expense	Audit Opinion
Ministry of Local Government	41,435,800	0.002	Adverse
Office of the President	10,258,920	0.039	Unqualified
Ministry of Defence	529,198,553	2.026	Unqualified
Ministry of Water & Environment	2,026,948,836	7.762	Unqualified
Ministry of Agriculture, animal industry & fisheries	15,092,189,327	57.791	Unqualified
Uganda Land Commission	50,000,000	0.191	Unqualified
Uganda National Roads Authority	8,044,936,050	30.806	Qualified
Ministry of Finance, Planning & Economic Development	168,747,557	0.646	Qualified
Kampala Capital City Authority	151,372,000	0.580	Unqualified
Total	26,115,087,043		

Source: OAG reports 2014/2015

The votes with largest nugatory expenditure were Ministry of Agriculture, Animal industry and Fisheries (MAAIF) and Uganda National Roads Authority (UNRA) accounting for 58% and 31% respectively of the total nugatory expenditure. MAAIF nugatory expenditure was dominated by interest payments related to late payments on contractual obligations (see Chart 1).

Chart 1: Nugatory expenditure in the Ministry of Agriculture, Animal industry & Fisheries



Source: OAG report FY 2014/15

Uganda National Roads Authority contributed nearly 31% of the nugatory expenditure, which expense was attributed to unwarranted arbitration awards arising from poor management of contract interest on delayed payment, unwarranted legal fees and unwarranted expenditure for due diligence. A total of UGX 6.6 billion was paid to a local firm in arbitration that resulted from a dispute by the Centre of Arbitration and Dispute Resolution against Attorney General regarding a contract for the backlog roads maintenance programme for the seven (7) roads in Kampala. The issues for arbitration included among others wrong information provided and poor management of the contract by the respondent.

Notably a total of UGX 1.1 billion was paid to an International Company as interest on delayed payments for various payment certificates. Among other nugatory expenses at UNRA was a payment of UGX 58 million made to an independent consultant to carry out due diligence on Eutaw Construction Company Incorporation for road works on mukono-katosi road even when the road works had already begun.

III. Causes of Nugatory Expenditures

The underlying are some of the causes of nugatory expenditure by the different entities as highlighted in the OAG reports;

a) **Poor planning**: The delayed payment of the settlements of GoU subscriptions notably for the EADB especially for the period between 2009 and 2012 led to accumulation of interest of USD 1.2 million which was eventually paid together with other arrears.

b) **Capacity weakness** as for example Illustrated by the laxity of not withholding tax from seven (7) service providers due to Uganda Revenue Authority (URA) and as such, funds were not remitted. Failure to withhold the tax exposed the entity to a risk of penalties and interest charges by URA which eventually lead to the nugatory expenditure.

c) **Poor budgeting:** This was as a result of the cash flow forecasts not being realistic. There is delayed review of contracts which delays are prone to foreign currency appreciations and depreciations. This problem is intertwined with the capacity weakness, as also demonstrated by poor alignment of the budget, the work plans, procurement plans and cash plans.

d) **Inadequate releases**. Under- releases in some sectors were noted, as in some re-allocations were made to fund supplementary budgets. The eventual delayed settlement of obligations, court awards and accruing interest over time as noted in the Auditor General's report.

e) **Weak detection of nugatory expenditure**: The systems[4] that could have detected wasteful expenditures were not at the level of maturity that they should have been.

f) **Weak performance management leadership**: There is lack of good financial and performance management leadership in some entities hence the rise in wasteful expenditures.

g) **Limited adherence to financial regulations**: A chronic problem in public service is that there is no sufficient emphasis on the consequences for failing to do the job properly and wasting of public money.

h) **Limited follow up**: Limited actions on administrative actions and enforcement of punitive measures arguably has nurtured an impunity trend.

i) **Lack of closure of the accountability cycle:** The last Treasury Memorandum for PAC covered years up to 2004/05 issued in 2011, despite the last issued PAC report relating to FY 2012/13.

IV. Impact of Nugatory Expenditure on Budget

Nugatory expenditure may be small when compared against the total expenditure, but they have a spill over effect on expenditure patterns of sectors and on the overall budget credibility.

Nugatory expenditure also has a bearing on the supplementary budgets consequently. It is arguably traceable in supplementary budgets making such expenditures easily avoidable. On the other end, Supplementary budgets have a bearing on nugatory expenditure. Serial over-spending by powerful spending agencies is always enabled by supplementary budget allocations and the regular source of supplementary spending, which squeezed the availability of in-year budgetary resources for spending agencies. This eventually creates shortfalls at

[4] The integrated financial Management systems, the e-procurement system, the Integrated Payroll and Pension System as well as the Single Treasury Single Account

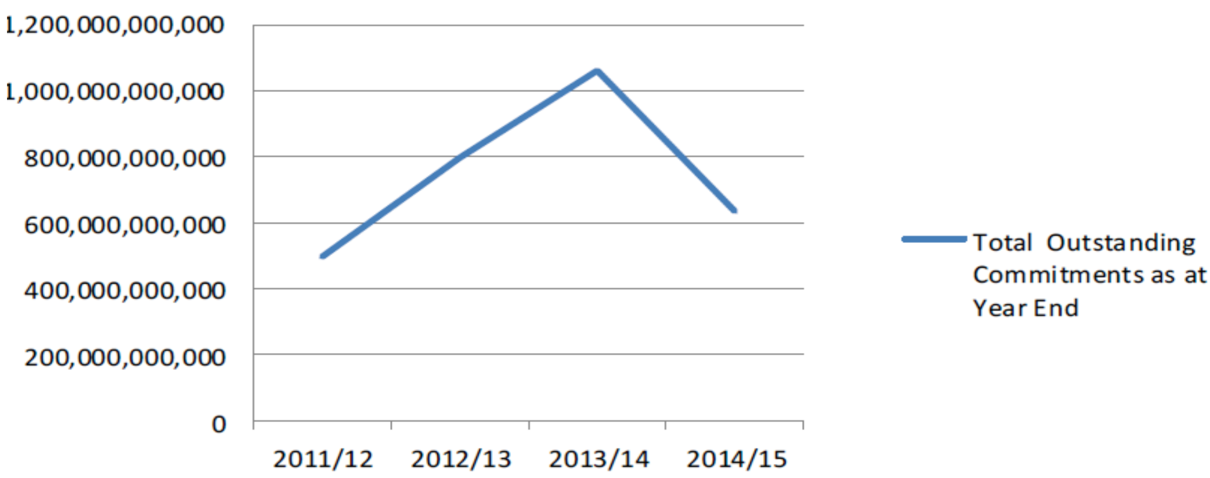
spending agency level, leading to accumulation of both arrears and nugatory expenditure. This poor planning and budget execution creates a vicious cycle of nugatory- supplementary – nugatory and poor budget discipline.

Supplementary allocations averaged almost 10% of the budget between 2009/10 and 2011/12. MoFPED significantly increased the budget allocations to sectors like State House in line with previous spending patterns as a means of heading off supplementary budget requests at source. This largely worked in 2013/14, with supplementary requests significantly reduced to an all-time low of 2% of the budget. However, in 2014/15 supplementary allocations re-emerged to constitute 7% of the budget and the supplementary budget for FY 2015/16 so far is 5.6% of the appropriated budget. Arguably, given the beneficiaries of the supplementary allocations, it goes to note that they are often politically driven, and curtailing them was challenging and beyond the scope of the technical agenda.

Nugatory spending creates short falls in other spending areas, which eventually has a bearing on the accumulation of arrears. Arrears have been an intransigent problem, although recent efforts have been made to reduce the stock (see chart 2). Accumulation of domestic arrears essentially implies the government domestic debt is increasing. The Auditor General noted that such wasteful expenditures affected the implementation of Government Programmes and service delivery and continues to affect them as some payments were to continue into the future as a number of the obligations have not been fully settled and there were no concrete plans to clear these obligations. For example the GoU has defaulted on paying annual subscriptions to a number of International Organizations such as COMESA, The South Centre Secretariat Geneva, United national Industrial Development Organization (UNIDO), World Trade Organization (WTO) up to a sum of UGX.7.8 billion, and as such has resulted into arrears.

Contingent liabilities are potential arrears and as at 30th June 2015 they stood at UGX 4.3 trillion having increased by UGX 34.7 billion from the 2013/2014 position. An example of the Bwizibwera Town Water Supply Systems contract is illustrative. The High Court ruling of 19th October 2009 awarded total sum of UGX.1.4 billion to a private contractor for unpaid principal and the cost of the suit arising from breach of contract by the Ministry of Water and Environment. Ministry delayed to settle the overdue obligation for a further 56 months. As a result, a total of UGX.1.6 billion in form of accumulated interest was invoiced by the contractor and paid during FY 2014/15.

Chart 2: Outstanding Arrears



Source: Central Government & Statutory authorities' report-30.06.2015

V. Reforms Undertaken

GoU has taken both legislative and policy measures as part of Debt Management Strategy, Public Finance Management (PFM) Strategy 2014-2018, and the Public Finance Management Act 2015. The strengthening of the internal audit department by granting it more independence has come a long way in combating the challenges. These reforms among others such as the roll out financial management systems including the integrated financial Management systems, the e-procurement system, the Integrated Payroll and Pension System as well as the Single Treasury Single Account in part explain the improvements in the audit opinions over the years.

Although PFM reforms seek to improve on strong budgeting as a major way to reduce resource wastage, it remains a problem in public service that there is not sufficient emphasis on the consequences for failing to do the job properly and wasting public money.

The public sector ought to emulate or embrace the private sector, where the success of an organisation depends on financial results. This is not to suggest that public entities should pursue profits but to rather acknowledge that public spending is an investment made by the tax payers which should be managed optimally. This is enshrined in the Public Financial Management strategy.

VI. What can be done?

a. Administratively

Government should keep track of its obligations, by creating a central database where Accounting Officers submit the status of these obligations for better planning in terms of prioritizing settlement and monitoring the causes of avoidable expenditure.

Government should take steps to streamline the process and system of compensation and do it on time to avoid interest accruing particularly were contingent liabilities are concerned.

Entities should maintain a nugatory expenditure register which contains detailed information of such expenses of the financial year to ensure that the figure is disclosed in the financial statements and is accurate to ensure proper decision making in the management of funds and accountability.

PSST to hold the accounting officers accountable; Section 53 (3) of PFMA provides that an accounting officer shall enter into an annual budget performance contract with the Secretary to the Treasury (ST) which shall bind the Accounting Officer to deliver on the activities in the work plan of the vote for a financial year. The law also provides that the Secretary to the Treasury shall not appoint /designate a person as an Accounting Officer where such a person has not accounted for public resources or assets of a vote for a FY.

b. Role of Parliament

In many African economies, Parliament's role is encapsulated as a backing toothless dog. Parliament is mandated to follow use of Government of Uganda funds but usually effectiveness of follow up starts with clean-up of the oversight institution. This entails addressing capacity constraints as new committees are envisaged in the next parliament to providing sufficient incentives and sanctions system to enforce

Parliament reforms are imminent. This is intertwined with the efforts to adhere to Parliamentary rules. For example, it is important that the budget for next FY is not passed before audit for previous FY has been discussed by Parliament.

Parliament must put in place a monitoring framework of its obligations in the budget cycle through timely tabling, discussion and adoption of the reports from the accountability committees. Parliament should also heighten the pressure on the executive to issue treasury memoranda. On the basis of the treasury memoranda, the OAG would be able to assess the steps taken to reduce re-occurrence of some audit practices and this will subsequently improve the overall government accountability process.

More open committees provide a number of opportunities for increased transparency and a form of down ward accountability to its electorate. Increased transparency can help build trust in government, in particular in systems were secrecy in budgeting in the past allowed the diversion of funds.

In a bid to promote overall budget discipline, Parliament prudently reviews supplementary budgets and hold accounting officers to account accordingly, in tandem with the PFM Act 2015. The culture of supplementary requests for foreseen activities should be rejected.

Parliament should establish a multi-stakeholder consultation week, during the first quarter of the year, to allow analytical input into their deliberations. Increased coordination with other oversight institutions in particular the Inspector General of Government is warranted.

VII. Conclusion

The nugatory expenditure is avoidable but they unfortunately remain prevalent and recurring. The size of the respective nugatory expenditure is small as share of the budget but Uganda desperately needs every coin. For example, the size of nugatory expenditure for FY 2014/15 is equivalent to the annual budget of 5 referral hospitals. The underlying causes relate to laxity in management, weakness across the entire budgeting cycle. Of particular concern are poor contract management and the politically inclined supplementary budgets. The solutions require everyone, from administrative reforms to open and transparent oversight. Parliament needs to lead by example; in house inefficiencies ought to be handled as they proactively take hard decisions. In extreme cases, approval of budgets should be subjected to satisfactory redress of previous budget audit queries.

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