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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:
THE CONSIDERATION OF
THE PUBLIC AUDIT (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 4 OF 2024)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	14 NOV 2024
TABLED BY:	Hon (CPA) Kuria Kironani (Chair, Finance & National Planning)
CLERK-AT THE-TABLE:	Anastacia
DAY:	Thursday

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on the consideration of the Public Audit (Amendment) Bill (National Assembly Bill No. 4 of 2024) sponsored by the Leader of the Majority party, Hon. Kimani Ichungwah, EGH, MP. The Bill was published on 2nd February, 2024. The Bill was read a First Time on Thursday, 29th February, 2024 and was then committed to the Committee on 5th March, 2024 for consideration and tabling of report to the House pursuant to Standing Order 127.

The principal object of the Bill is to amend the Public Audit Act, 2015, in order to align it with the Constitution following a declaration issued by the High Court (*in the case of Transparency International (TI) v Attorney-General & Auditor-General interested party, Africa Centre for Open Governance (Africog) ...2nd interested party, Petition No. 388 of 2016*) that sections 4(2), 8, 12, 17(1), 18, 27, 40, 42, and 70 of the Public Audit Act 2015 are unconstitutional. Additionally, the National Assembly has expressed concern over the provision relating to recruitment of the Auditor-General, where it was observed that the Act creates an undesirable vacuum between an existing holder of the office and an incoming one. It is, therefore, necessary in these circumstances to update the Act as proposed and to improve the efficiency in the discharge of the Auditor-General's duties.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on 8th March, 2024 inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Clerk of the National Assembly vide letter Ref. No.NA/DDC/F&NP/2024/041 dated 8th April 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on 16th April, 2024. The memoranda were to be received on or before 15th April, 2024 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received four memoranda.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to the provisions of Standing Order 199(6), it is my singular honour to present to this House the Report of the Committee on its consideration of the Public Audit (Amendment) Bill, 2024 (National Assembly Bills No. 4 of 2024). The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made invaluable contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Public Audit (Amendment) Bill 2024 (National Assembly Bills No. 4 of 2024) and wishes to report to this August House with the recommendation that the House approves the Bill with amendments as contained in the schedule of amendments.

HON. CPA KURIA KIMANI, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ACKNOWLEDGMENT

The Committee extends its sincere gratitude to the Office of the Speaker of the National Assembly and the Clerk of the National Assembly for their invaluable logistical and technical support throughout its sittings. Their assistance facilitated the Committee's deliberations and ensured the smooth progress of its work.

The Committee especially acknowledges and appreciates the participation of all stakeholders and members of the public who diligently submitted their comments on the Bill. Their insights and contributions have enriched the Committee's understanding of the various perspectives on the proposed measures.

Further, the Committee wishes to express its heartfelt appreciation to the Honourable Members of the Committee and the dedicated Committee Secretariat whose commitment, expertise and collaborative efforts were instrumental in preparing and producing this report. I particularly commend the Secretariat for their diligent work that enabled the Committee to fulfill its constitutional mandate by providing a thorough analysis of the Bill to the Committee.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to Standing Order 199 (6), it is both a privilege and an honor to present to the House, the Report of the Departmental Committee on Finance and National Planning on its Consideration of the Public Audit (Amendment) Bill, 2024 (National Assembly Bills No. 4 of 2024). This report represents the culmination of rigorous deliberations, careful consideration of diverse viewpoints, and a commitment to ensure the Office of Auditor General operates under sound accountability policies while preserving its independence.

The Committee trusts that this report will serve as a valuable resource for informed debate and decision-making by the members of this House.

CHAPTER ONE

1.0 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216 (5)** whose mandate is as follows:

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the program and policy objectives of Ministries and departments and the effectiveness of their implementation;*
- iii. **To study and review all the legislation referred to it;**
- iv. *To study, access, and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- v. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on Appointments);*
- vii. *To examine treaties, agreements and conventions;*
- viii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- ix. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- x. *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.

3. In executing its mandate, the Committee oversees the following government Ministries and Departments:
 - i. State Department of National Treasury;
 - ii. State Department of Economic Planning;
 - iii. Commission on Revenue Allocation; and
 - iv. Office of the Controller of Budget; and

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning comprises of the following Members:

Chairperson

Hon. CPA Kuria Kimani, MP
Molo Constituency

UDA Party

Vice-Chairperson

Hon. (Amb). Benjamin Langat, CBS, MP
Ainamoi Constituency

UDA Party

Hon. (Dr). Adan Keynan, CBS, MP
Eldas Constituency

Jubilee Party

Hon. Andrew Okuome, MP
Karachuonyo Constituency

ODM Party

Hon. David Mwalika Mboni, MP
Kitui Rural Constituency

Wiper Party

Hon. CPA. Joseph Oyula, MP
Butula Constituency

ODM Party

Hon. Joseph K. Makilap, MP
Baringo North Constituency

UDA Party

Hon. Umul Ker Kassim, MP
Mandera County

UDA Party

Hon. CPA Julius Rutto, MP
Kesses Constituency

UDA Party

Hon.(Dr.) Shadrack Ithinji, MP
South Imenti Constituency

Jubilee Party

Hon. Paul K. Biego, MP
Chesumei Constituency

UDA Party

Hon. Joseph Munyoro, MP
Kigumo Constituency

UDA Party

Hon. Dr. John Ariko Namoit, MP
Turkana South Constituency

ODM Party

Hon. Mohamed S. Machele, MP
Mvita Constituency

ODM Party

Hon. George Sunkuyia, MP
Kajiado West Constituency

UDA Party

1.4 COMMITTEE SECRETARIAT

5. The following staff facilitates the Committee:

Mr. Benjamin Magut

Principal Clerk Assistant /Head of Secretariat

Ms. Jennifer Ndeto
D/Director, Legal Service
Mr. James M. Macharia
Media Relations Officer I
Ms. Winfred Kambua
Clerk Assistant III
Mr. Benson Kamande
Clerk Assistant III
Mr. Benson Muthuri
Serjeant-At-Arms

Mr. Salem Lorot
Legal Counsel I
Ms. Peninnah Simiren
Legal Counsel II
Mr. George Ndenjeshe
Fiscal Analyst III
Ms. Nelly W.N Ondieki
Research Officer III
Ms. Joyce Wachera
Hansard Officer III

CHAPTER TWO

2.0 OVERVIEW OF THE PUBLIC AUDIT (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 4 OF 2024)

2.1 BACKGROUND

6. The Public Audit (Amendment) Bill, 2024 (National Assembly Bills No. 4 of 2024), is sponsored by the Leader of the Majority Party, Hon. Kimani Ichungwah, EGH, MP. The Bill was published on 2nd February, 2024. It was read a First Time on Thursday, 29th February, 2024 and was then committed to the Committee on 5th March, 2024 for consideration and tabling of report to the House pursuant to Standing Order 127.

2.2 SUMMARY OF LEGAL PROVISIONS

7. The principal object of the Bill is to amend the Public Audit Act, 2015 to align it with the Constitution following a declaration issued by the High Court (*in the case of Transparency International (TI) v Attorney-General & Auditor-General interested party, Africa Centre for Open Governance (Africog)...2nd interested party, Petition No. 388 of 2016*) that sections 4(2), 8, 12, 17(1), 18, 27, 40, 42, and 70 of the Public Audit Act 2015 are unconstitutional. Additionally, the National Assembly has expressed concern over the provision relating to the recruitment of the Auditor-General, where it was observed that the Act creates an undesirable vacuum between an existing holder of the office and an incoming one. It is, therefore, necessary in these circumstances to update the Act as proposed and improve the efficiency in discharging the Auditor-General's duties.

8. The salient provisions of the Bill are as follows:

- i. Clause 2 of the Bill contains amendments to definitions in alignment with the new proposals
- ii. Clause 6 of the Bill seeks to repeal section 8 of the Act following the declaration of section 8 as unconstitutional and replace with a new provision, setting out the administrative functions of the Auditor-General, inter alia—
- iii. developing an organizational structure and staff establishment for the Office of the Auditor-General;
- iv. recruiting and promoting qualified and competent staff to perform the Office's functions;
- v. establishing and abolishing offices in the Office of the Auditor General;

- vi. appointing persons to hold or act in those offices and to confirm appointments; and
- vii. determining, in consultation with Salaries and Remuneration Commission, the remuneration and benefits of each member of staff.
- viii. Clause 8 of the Bill proposes to amend section II of the Act by providing for the conditions under which the position of the Auditor General shall fall vacant and the process of filling it for clarity.
- ix. Clause 9 of the Bill seeks to repeal section 14 and replace it with a section that clarifies the role of the Audit Advisory Board in development of the organizational structure by the Auditor-General.
- x. Clause 10 of the Bill seeks to amend section 15 of the Act by introducing the position of a Deputy Auditor-General to be recruited by the Auditor-General. This provision abolishes the position of Senior Deputy Auditor-General.
- xi. Clause 12 of the Bill seeks to amend section 17 of the Act by substituting the provisions of section 17(1) which was declared unconstitutional
- xii. Clause 17 of the Bill amends the Act by deleting section 25 and substituting there for a new section 25 redefining the establishment and composition of the Audit Advisory Board.
- xiii. Clause 18 of the Bill proposes to amend the Act by introducing a new section 27A setting out the functions of the Audit Advisory Board.
- xiv. Clause 27 of the Bill further proposes to amend the Act by introducing new sections 38A, 38B and 38C defining different types of audit including Citizen Accountability audits within the provisions of Article 229 (6) of the Constitution
- xv. Clause 30 of the Bill seeks to amend the Act by introducing a new section 41 A establishing a Fund to be funded from appropriated provisions of the Office of the Auditor General within the fiscal framework limits.

9. Other provisions of the bill

- i. Clause 4 of the Bill Amends section 5 of the Act to include an additional qualification requirement for the Auditor-General: being a practicing member of good standing of a professional body of accountants recognized by the Accountants Act.
- ii. Clause 5 of the Bill Amends section 7 of the Act to provide an additional function for the Auditor-General: satisfy himself or herself that public resources have been applied or used in an economic, efficient, effective, transparent and sustainable manner

- iii. Clause 7 of the Bill Amends section 9(1) (f) of the Act on the general powers of the Auditor-General by replacing "telephone access" with the broader term "communication connectivity" to keep abreast with technological changes that include Wi-Fi.
- iv. Clause 9 of the Bill repeals section 14 of the Act to provide for the Office of the Auditor-General to develop and appropriate organizational structure. It cures the problem in the provision that provided that organizational structure was to be considered and approved by the Audit Advisory Board.
- v. Clauses 10 & 11 of the Bill makes amendments to sections 15 and 16 seek to provide for the recruitment of a Deputy Auditor-General in place of a Senior Deputy Auditor-General. It now states the correct position that the recruitment shall be by the Auditor-General and not the Advisory Board, then appointment by the Auditor-General. It further aligns the responsibilities with the Constitution.
- vi. Clause 13 of the Bill amends section 19 of the Act (Delegation of powers) by deleting subsection (3) which provides, "The Auditor-General may confirm, vary or revoke any decision taken by a member of staff in consequence of a delegation or instruction under this section."
- vii. Clause 14 of the Bill amends section 20 of the Act (Budget estimates and plans of the office of the Auditor-General) to provide:
 - (a) Copy of Budget estimates of revenue and expenditure to be submitted to the National Assembly when it is being submitted to the Cabinet Secretary responsible for finance
 - (b) The Auditor-General to submit a special report to be presented to BAC if expenditures are insufficient to carry out the Auditor-General's mandate
- viii. Clause 15 of the Bill amends section 21 of the Act (Power to obtain information from others)
 - (a) The amendment now clarifies that information to be obtained will be from an entity or any person receiving or being funded from public funds
 - (b) "Public body" was not specific enough
 - (c) The amendment also addresses how to obtain information from private entities. The proposal is to apply to the courts.
- ix. Clause 16 of the Bill amends section 24 of the Act (Professional assistance and consultancy)
 - (a) Cleans up the marginal note

- (b) Enriches subsection (2) to provide that the purpose of using experts is to ensure economy, efficiency and effectiveness in the management of public resources
- x. Clause 17 of the Bill repeals section 25 of the Act (Establishment and composition of the Audit Advisory Board) and substitutes it with a new section.
 - (a) Nominee of the Association of Professional Societies of East Africa removed
 - (b) The nominee of LSK removed
 - (c) Chairperson of the Public Service Commission removed
 - (d) Chairperson of BAC of the National Assembly included
 - (e) Two representatives (one from the National Assembly and one from the Senate) from Committees in charge of public finance and audit
 - (f) Auditor-General to be the Chairperson (In the Act, the Chair is elected from amongst members and shall not be the Auditor-General)
 - (g) Only the tenure for the nominee of ICPAK is given as 3 years and a further term of 3 years (the Act provided for this tenure for all members)
 - (h) Auditor-General to provide secretariat services
- xi. Clause 18 of the Bill repeals section 26 of the Act (Meetings and procedure of the Audit Advisory Board)
 - (a) It clarifies the quorum to be 3 members instead of 5
 - (b) Deletes frequency of holding meetings
 - (c) Deletes references to who shall be the secretary to the Audit Advisory Board since this has been addressed in the Bill
 - (d) Deletes references on who convenes and presides at the meetings of the Board
- xii. Clause 20 of the Bill repeals and substitutes section 31 of the Act (Certification audit process steps)
 - (a) It makes the audit process clearer
 - (b) It provides for the consequences of an accounting officer failing to address issued raised by the Auditor-General
- xiii. Clause 21 of the Bill repeals section 32 of the Act which provides for audit reports to be submitted to Parliament and the relevant county assembly
- xiv. Clause 22 of the Bill amends section 33 of the Act (Use of work of internal auditor)
 - (a) Clarifies that reports by an internal auditor shall be submitted to the Auditor-General

- (b) It is mandatory unlike currently where the report may be copied to the Auditor-Genera.
- (c) Inserts an additional cross-reference to Article 229(5) of the Constitution which provides, "The Auditor-General may audit and report on the accounts of any entity that is funded from public funds"
- xv. Clause 23 of the Bill amends section 34 of the Act (Periodic Audits). Replaces "periodic audits" with "special audits"
- xvi. Clause 24 of the Bill amends section 35 of the Act (Annual financial audits). It clarifies that annual financial audits are to be carried out on "entities funded and receiving public funds". The current provision refers to "public entities".
- xvii. Clause 25 of the Bill amends section 36 of the Act (Performance Audit)
 - (a) Expands the scope of performance audit
 - (b) Replaces "public money" with "public resources" which is broader
 - (c) Performance audits to be done at any time after completion of any National or County project instead of within six months as currently provided
- xviii. Clause 26 of the Bill repeals and substitutes section 37 of the Act (Forensic Audit)
 - (a) Auditor-General to carry out forensic audit on own initiative or upon request unlike currently where it is upon request by Parliament
 - (b) Includes misuse of public resources in the scope of the audit
- xix. Clause 27 of the Bill amends section 38 of the Act (Procurement audits) to expand the audit scope to include whether procurements were done economically and efficiently.
- xx. Clause 28 of the Bill Provides for additional types of audits. New sections 38A (Citizen accountability audits), 38B (Compliance audits), 38C (Any other audit)
- xxi. Clause 29 of the Bill amends section 39 of the Act (Audit reports to be submitted to Parliament and the relevant county assembly)
 - (a) The amendments seek to address the question, "After the Auditor-General has submitted reports of an audit to Parliament or the relevant county assembly, what next?"
 - (b) Provides for the invitation of the Auditor-General to present the audit report
 - (c) State organ or public entity audited to submit a report on how it has addressed Auditor-General's recommendations (Within 1 month, preliminary.

(d) State organ or public entity audited to submit report on how it has addressed Auditor-General's recommendations (Within 6 months)

- xxii. Clause 30 of the Bill amends section 41 of the Act (Sources of funds of the Office of the Auditor-General). Clarifies one of the sources of funds to be rental income instead of the more general "assets"
- xxiii. Clause 31 of the Bill inserts new section 41A establishing the Public Audit Fund to be used to meet the expenditure of the audit mandate as provided in the Constitution and the Act
- xxiv. Clause 32 of the Bill amends section 44 of the Act (Audit of accounts). The clause proposes to amend section 44(1) by deleting the expression "section 41" and substituting, therefore, the expression "section 43" to correct a cross-referencing error.

However, the Act does not contain the cross-referencing error since it refers to the correct provision (section 43) on the accounts of the Office of the Auditor-General. Section 44(1) provides the following: The accounting officer of the office of the Auditor-General shall submit the accounts of the office to the appointed auditor under section 43 within three months after the end of the financial year to which the accounts relate.

- xxv. Clause 33 of the Bill amends section 45 of the Act (Reporting by the appointed auditor). Auditor-General to publish and publicize the report (NB: Publish is not expressly provided for in the provision)
- xxvi. Clause 34 of the Bill amends section 46 of the Act (Debating and considering the report of appointed auditor) by replacing accounts with financial statements and Annual Reports with Audit Report
- xxvii. Clause 35 of the Bill amends section 48 of the Act (Accounts for audit). Clarifies that the Auditor-General may audit and report on the accounts of any entity that is funded or entrusted with public resources. The current provision is limited to public funds.
- xxviii. Clause 36 of the Bill amends section 49 of the Act (Special reports in the course of the annual audit of the accounts of State organs) by introducing the element of Auditor-General publishing the report. Increasing the period from 60 days to 3 months within which Parliament or relevant county assembly discusses a special report and introducing the aspect of Parliament or relevant county assembly issuing recommendations on the report (NB: In the Act, it provides for review of the report)
- xxix. Clause 37 of the Bill repeals section 50 of the Act providing for final audit reports on a State organ or public entity including national or county government's accounts.

- xxx. Clause 38 of the Bill repeals section 51 of the Act providing for other reporting by the Auditor-General.
- xxxi. Clause 39 of the Bill amends section 54 of the Act (Withholding of funds by Parliament or county assembly) to correct grammar. However, the word "recommend" needs to be amended too.
- xxxii. Clause 40 of the Bill amends section 58 of the Act (Disclosure of fraud and corruption) to ensure the consistency of usage of words and terms.
- xxxiii. Clause 41 of the Bill amends section 59 of the Act (Disclosure of interest)
The amendment seeks to ensure consistency in the usage of the words "staff" and "audited entity" in place of "officer" and "auditee" respectively. Subsection (2) should also be amended to replace "officer" with "staff" in pursuit of the same logic.
- xxxiv. Clause 42 of the Bill amends section 61 of the Act (Offences by officers of the office of the Auditor-General). The amendment seeks to ensure consistency in the usage of "staff" in place of "officer".
- xxxv. Clause 43 of the Bill repeals and substitutes section 64 of the Act (Powers to report to police, etc.) in subsection (1) to introduce aspect of collaboration instead of reporting and expands the scope of collaboration and amends subsection (2) to make the provision neater without altering the substance
- xxxvi. Clause 44 of the Bill repeals and substitutes section 67 of the Act (Disallowable expenditure), the amendment does not alter the substance but makes the provision crisp, changes "any sum which ought to have been, but was not brought to account" to "any sum which ought to have been collected, but was not" and changes "call in question the sum concerned and make a report on the sum to Parliament and the relevant county assembly" to "make a report on the disallowable expenditure and uncollected revenue to Parliament and the relevant County Assembly"
- xxxvii. Clause 45 of the Bill amends section 68 of the Act to clarify that it is the Auditor-General to make Regulations and not the Cabinet Secretary responsible for matters relating to finance.
- xxxviii. Clause 46 of the Bill amends section 72 of the Act (Public right of access to official audits reports) to provide that the right of access to official reports of the Auditor-General shall be subject to section 6 of the Access to Information Act, 2016.

CHAPTER THREE

3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION

10. Article 118 (1)(b) of the Constitution provides that:

"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

11. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

*"(3) The Departmental Committee to which a Bill is committed shall **facilitate public participation on the Bill** through an appropriate mechanism including-*

- (a) inviting submission of memoranda;*
- (b) holding public hearings;*
- (c) consulting relevant stakeholders in a sector; and*
- (d) consulting experts on technical subjects.*

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 MEMORANDA RECEIVED ON THE BILL

12. Pursuant to the aforementioned provisions of law, the Clerk of the National Assembly placed an advertisement in the print media on 8th March 2024 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Clerk of the National Assembly vide letter Ref. No. NA/DDC/F&NP/2024/041 dated 8th April, 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on 16th April 2024 respectively.

13. The Committee received memoranda from the Transparency International Kenya, the Institute of Certified Public Accountants of Kenya (ICPAK), the Bowmans, the National Treasury and Hon. Oku Kunya, M.P., Member for Teso North Constituency. The memoranda are annexed to this report as Annexure 8.

Clause 6

Institute of Certified Accountants of Kenya (ICPAK)

14. Amend clause 6 to include additional information as follows:

- (a) Approve charging of reasonable audit fee, receive and manage revenues, custodian of all assets, seek partnership with stakeholders, development partners manage and account for public funds.*

(b) Prepare and submit an annual report on the state of accountability of public resources to the president and parliament.

15. This will be in compliance with Article 254 of the constitution, which stipulates that as soon as practicable after the end of each financial year, each commission and each holder of an independent office shall submit a report to the president and Parliament.

Committee Observation

The Committee agreed with the stakeholder on item (b) as it is a requirement under Article 254(1) of the Constitution. However, it was the view of the Committee that item (a) was beyond the scope of Article 229 of the Constitution providing for the Auditor-General whereas fostering partnerships and collaborations with stakeholders and development partners was feasible.

Hon. Oku Kunya

16. Hon. Oku Kunya, M.P., Member for Teso North Constituency, proposed an amendment to clause 6 of the Bill to provide for the establishment of the Public Service Human Resource Audit Directorate, to empower the office to conduct human resource audits of offices in the public service, to prepare human resource audits of offices in the public service and to submit the reports to Parliament annually for consideration.

17. The Member stated that there was a need for an office that on a regular basis, conducts internal and external auditing of human resource management in the Ministries, Departments and Agencies to ensure that these institutions comply with the constitutional provisions specified in Article 232 and Article 10 and other relevant operational Acts of parliament. Article 232 of the Kenya Constitution on values and principles of public service and Article 10 of the Kenya Constitution on national values and principles of governance set out performance standards that guide performance in the public service in Kenya.

18. He further stated that there was a deep concern that over ninety percent (90%) of Ministries, Departments and Agencies of our Government have not complied with constitutional provisions on values as specified in the Constitution, relating to treatment of minorities: gender, youth, people with disabilities, and ethnic and regional minorities. The proposed amendments therefore aim to address

this challenge by ensuring that regular audits are undertaken to ascertain compliance by institutions.

Committee Observation

The Committee is of the view that the proposed amendment particularly the establishment of the Public Service Human Resource Audit Directorate by the Public Service Commission is likely to interfere with the independence of the Auditor General office. However, the Committee is proposing to enlist Human Resource Audit as one key Audit function to be undertaken by Auditor General annually.

Clause 8

The Bowmans

19. Bowmans proposed that the clause be amended to clarify that the procedure under section 11(2) to section 11(11) of the Public Audit Act applies regardless of the reason for the vacancy in the office of the Auditor General. The distinction between the two procedures leads to ambiguity and lack of clarity on the procedure to follow in the event of a vacancy in the office of the Auditor General by reason of expiry of the term of office. With the proposal in the Public Audit Amendment Bill, there is an apparent lack of clarity on the procedure to be followed when the office of the Auditor General falls vacant by virtue of expiry of the term of office of the officeholder. The proposal requires the Auditor General to give a notice of three (3) months prior to expiry of the term. However, the subsequent steps are not clear. In our view the procedure should be the same after the three (3) months' notice is issued such that the process set out under section 11(2) to section 11(11) of the Public Audit Act will also apply in the event that the office of the Auditor General becomes vacant due to expiry of the term. Additionally, the Public Audit Act should also clarify the effect of death, resignation or removal of the Auditor General from office after the three-month notice has been issued.

Committee Observation

The Committee was of the view that the amendments in paragraphs (b) and (c) in clause 8 of the Bill have addressed the concerns by the stakeholder thereby providing clarity on the application of section 11(2) to section 11(11) of the principal Act in relation to when the term of office of the Auditor-General is due to expire.

Further, in relation to clarity on the effect of death, resignation or removal of the Auditor General from office after the three-month notice has been issued, the Committee was of the view that clause 8(d) of the Bill provides that the appointment is to be done upon expiry of the Auditor-General's term.

New clause 12A

Institute of Certified Accountants of Kenya (ICPAK)

20. Given Clause 10 of the Bill, amend Section 12 of the Principal Act by inserting the following new section,

12. Acting Auditor-General

- (1) Where-
- (a) the office of the Auditor-General becomes vacant.
 - (b) the Auditor-General has been suspended in accordance with the Constitution.
 - (c) the appointment of a person as Auditor-General is pending; or
 - (d) the Auditor-General is for any reason unable to perform the function of his or her office, then until a person is appointed to and has assumed the functions of that office in accordance with section 11, or until the Auditor-General has resumed the performance of those functions, the President shall appoint and designate the Deputy Auditor General as the acting Auditor-General. This is to provide a seamless transition.

Committee Observation

The Committee noted that in the case of *Transparency International (TI Kenya) v Attorney General & 2 others* [2018] eKLR, *Petition No. 388 of 2016*, the High Court held section 12 of the Public Audit Act (providing for the Acting Auditor-General) was unconstitutional. Paragraph 97 of the Judgement stated as follows:

“97. In my respectful view, there cannot be an Acting Auditor General because the Constitution only recognizes Auditor General appointed in accordance with Article 229(1). Any attempt to create a substantive position of Acting Auditor General by statute, appoint a person otherwise than as contemplated by the Constitution, and allow him/her to exercise constitutional functions and powers of the Auditor General amounts to an unconstitutional office and unconstitutional exercise of functions and powers of the constitutional independent office. Appointing an Acting Auditor General as proposed by section 12 violates Article 229 (1). For that reason, I

find and hold that section 12 of the Act is inconsistent with Articles 229 of the Constitution and is valid.”

Therefore, the Committee was of the view that the proposal by the stakeholder would be unconstitutional, as held by the High Court.

Clause 10

Institute of Certified Accountants of Kenya (ICPAK)

21. Amend the clause by inserting the following new section:

A person shall be qualified for appointment as the Deputy Auditor-General if such person-

a) is a citizen of Kenya.

b) holds qualifications as that of the holder of the Office of Auditor General specified in Article 229(2) of the Constitution.

c) holds a degree in finance, accounting or economics from a university recognized in Kenya and demonstrates a verifiable and logical progression in the attainment of his or her educational qualifications.

d) meets the requirements of Chapter Six of the Constitution; and

e) is a practicing member of good standing of a professional body of accountants recognised by law.

22. This will help ensure there is someone equally capable of managing the transition.

Committee Observation

The Committee noted that the proposal was already catered for in the Act. Section 15(2) of the Public Audit Act makes reference to section 5 which provides for the qualification requirements of the Auditor-General which are to also apply to the Deputy Auditor-General.

New Clause

23. Insert a new section immediately after section 11

11A. A retired Auditor-General shall, during his lifetime, be entitled to-

(a) a monthly pension equal to seventy per cent of the monthly salary of the entitled person's last monthly salary while in office.

(b) a lump sum payment on retirement calculated as a sum equal to one year's salary paid for each term served in office.

- (c) one four-wheel drive vehicle of an engine capacity not exceeding 3000 cc which shall be replaceable once every four years.
- (d) a fuel allowance equal to fifteen per cent of the current monthly salary of the office holder.
- (e) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the entitled person and the entitled person's spouse.
- (f) the additional benefits set out as follows-
 - i. one driver.
 - ii. one personal assistant.
 - iii. one housekeeper.
 - iv. one senior support staff.
 - v. one gardener.
 - vi. one cleaner.
- (g) Two-armed security guards shall be provided at request by the entitled person.
- (h) Diplomatic passports for the entitled person and his spouse.
- (i) Maintenance expenses for the vehicles provided pursuant to this Act.
- (j) Access to the V.I.P. lounge at all airports within Kenya.

Committee Observation

The Committee noted that the proposal expands the subject matter of the Bill and has financial implications which is not tenable in the current circumstances.

Additional proposal (Deletion of section 12 of the Public Audit Act)

Transparency International

24. Section 12 of the Public Audit Act should be repealed. This provision is deemed inconsistent with the stipulations outlined in Article 229 of the Constitution, rendering it unconstitutional. The Constitution expressly recognizes the Auditor General's appointment in accordance with Article 229(1). Therefore, any endeavor to establish a substantive position of Acting Auditor General through legislation, appointing an individual outside the parameters set by the Constitution, and granting them the authority to exercise the constitutional functions and powers of the Auditor General, constitutes an unconstitutional creation of an office and an unlawful exercise of the Auditor General's functions and powers.

Committee Observation

The Committee agreed to delete section 12 of the Public Audit Act, noting that in the case of *Transparency International (TI Kenya) v Attorney General & 2 others [2018] eKLR, Petition No. 388 of 2016*, the High Court held section 12 of the Public Audit Act (providing for the Acting Auditor-General) was unconstitutional.

Clause 10

Institute of Certified Accountants of Kenya (ICPAK)

25. Amend the clause to state a definite number of Deputy Auditor Generals. This is because if left open, office holders may create unnecessarily many positions for rewards.

Committee Observation

The Committee noted that clause 10(a) of the Bill provides for one Deputy Auditor-General. However, the Committee recommended the deletion of Clauses 10 and 11 of the Bill in order to retain the position of Senior Deputy Auditor-General as currently provided in the Act.

Clause 17- The Bowmans

26. Amend Clause 17 to have the National Assembly retain the nominee of the Association of Professional Societies of East Africa and a nominee of the Law Society of Kenya as members of the Board and delete the membership of the Chairperson of the Budget and Appropriation Committee of the National Assembly or his or her nominee and two representatives from Parliament (one from the National Assembly and one from the Senate from Committees in charge of public finance and audit) as members of the Board from Parliament (one from the National Assembly and one from the Senate from committees in charge of public finance and audit).

Committee Observation

The Committee agreed to delete the representation of the Chairperson of the Budget and Appropriation Committee of the National Assembly and two representatives from Parliament, one from the National Assembly and one from the Senate, from Committees in charge of public finance and audit as this will infringe on the separation of powers. The Committee further proposed to include a nominee from the Institute of Human Resource Management (IHRM) and the Institute of Internal Auditors of Kenya.

Clause 17

The Transparency International Kenya

27. Amend the clause to remove the Attorney General, The Chairperson of the Budget and Appropriation Committee representatives Parliament, and one from the National Assembly and one from the Senate, as part of the Board and replace the Attorney General with a representative from the Law Society of Kenya. This is to ensure its impartiality and independence.

Committee Observation

The Committee agreed to delete the representation of the Chairperson of the Budget and Appropriation Committee of the National Assembly and two representatives from Parliament, one from the National Assembly and one from the Senate, from Committees in charge of public finance and audit as this will infringe on the separation of powers. The Committee further proposed to include a nominee from the Institute of Human Resource Management (IHRM) and the Institute of Internal Auditors of Kenya. However, the Committee proposed to retain the Attorney-General and noted that this will not hinder the independence of the office of the Auditor-General.

Clause 17

Institute of Certified Accountants of Kenya (ICPAK)

28. Amend the clause by removing the Chairperson of the Budget and Appropriation Committee of the National Assembly or his or her nominee and two representatives from Parliament and Senate and replace with;

- d. two nominees from the Institute of Certified Public Accountants of Kenya*
- e. a nominee from the Institute of Human Resource Management (IHRM) Kenya to advise the board on HR matters. This is because suggesting Attorney General to be at advisory level will interfere with the independence of Auditor General's office.*

Committee Observation

The Committee agreed to delete the representation of the Chairperson of the Budget and Appropriation Committee of the National Assembly and two representatives from Parliament, one from the National Assembly and one from the Senate, from Committees in charge of public finance and audit. The Committee further proposed to include a nominee from the Institute of Human Resource Management (IHRM) and the Institute of Internal Auditors of Kenya. However, the

Committee proposed to retain the Attorney-General and noted that this will not hinder the independence of the office of the Auditor-General.

Additional proposal (Repeal section 18 of the Public Audit Act)

The Bowmans

29. Repeal section 18 of the Public Audit Act. The Public Audit Amendment Bill does not address section 18 of the Public Audit Act despite the High Court Judgment which declared this section to be unconstitutional. The Public Audit Amendment Bill should propose to delete the section 18 of the Public Audit Act to align with the High Court Judgment which declared section 18 of the Public Audit Act to be unconstitutional. In addition, the Public Audit Amendment Bill should introduce a clause prohibiting the secondment of officers to or from the office of the Auditor General.

Committee Observation

The Committee agreed with the stakeholder. In *Transparency International (TI Kenya) v Attorney General & 2 others [2018] eKLR, Petition No. 388 of 2016*, the High Court held section 18 of the Public Audit Act (providing for the secondment of officers) was unconstitutional. The Court had stated that secondment of staff, under the terms of section 18 of the Public Audit Act, would be improper as it would lead to familiarity, undermine the independence of individual staff and interfere with institutional independence. Therefore, the section was declared unconstitutional. The Committee further observed that the Bill had not provided for the repeal of the section but the Committee recommends its repeal.

The Transparency International Kenya

30. This provision should be repealed. The provision in question should be entirely removed, primarily due to its detrimental impact on the independence of the Office of the Auditor General. It's crucial to recognize that the Auditor General employs staff specifically to execute their duties and fulfill their functions. Consequently, it would be inappropriate for the Auditor General to second their staff to other public bodies, especially considering that their primary mandate involves auditing these same state organs and public entities.

Committee Observation

The Committee agreed with the stakeholder. In *Transparency International (TI Kenya) v Attorney General & 2 others [2018] eKLR, Petition No. 388 of 2016*, the High Court held section 18 of the Public Audit Act (providing for the secondment of

officers) was unconstitutional. The Court had stated that secondment of staff, under the terms of section 18 of the Public Audit Act, would be improper as it would lead to familiarity, undermine the independence of individual staff and interfere with institutional independence. Therefore, the section was declared unconstitutional. The Committee further observed that the Bill had not provided for the repeal of the section but the Committee recommends its repeal.

Clause 19

Institute of Certified Accountants of Kenya (ICPAK)

31. Amend the clause and add a strategic planning function to the advisory board. This is because budgeting and Human resource management and development functions should be contained and derived from a strategic plan.

Committee Observation

The Committee agreed with the stakeholder.

The Transparency International Kenya.

32. Retain the Clause since the revisions are in conformity with the guidance in constitutional petition no. 388 of 2016. It creates a clear demarcation on the independence of the office vis-a-vis the functions of the Board.

Committee Observation

The Committee agreed with the stakeholder.

Clause 20

The Bowmans

33. Amend section 31 of the Public Audit Act to expressly provide for the issuance of the audit report to the accounting officer of the state organ or public entity audited. As currently drafted, the Public Audit Act only provides for the issuance of the audit report to Parliament or the relevant county assembly. In addition, the Public Audit Amendment Bill should increase the time limit within which an accounting officer is required to submit a response to the Auditor General's report. This is because the lack of an express statement requiring the issuance of the Auditor General's report to the accounting officer of a state organ or public entity being audited leaves a gap since it imposes no express obligation on the Auditor General to issue the audit report to the state organ or public entity being audited. This may hinder the preparation of the responses to the audit findings by the state organ or public entity.

34. State organs or public entities require adequate time to prepare and submit a response to the audit report and to address all the issues raised together with implementing proper remedial actions to address the audit findings. We would propose that the fourteen (14) days deadline for submitting responses to the audit findings be increased to one (1) month to allow the state organ or public entity sufficient time to formulate remedial actions to address the audit findings.

Committee Observation

The Committee noted that clause 20 of the Bill proposes to amend Section 31(2) to provide for the submission of the response to an audit report by the Accounting Officer to be done within fourteen days. The Committee was of the view that the fourteen-day period was sufficient to respond to audit queries.

The Transparency International Kenya.

35. Delete the clause and the original provisions in the Act be retained because the proposed amendments skip out critical audit steps provided for in the principal Act that should be maintained.

Committee Observation

The Committee was of a different view that the audit process proposed was more straightforward and that the clause provides for the consequences of an accounting officer failing to address issues raised by the Auditor-General.

Clause 21

The Transparency International Kenya.

36. Delete the proposal to amend the clause and the original provisions in the principal Act be maintained. The provision not to publicize the reports will curtail the right to Access to information by the public as espoused under Article 35 of the Constitution of Kenya 2010.

Committee Observation

The Committee noted the stakeholder's proposal but clarified that clause 21 was to be deleted because section 32 and section 39 of the Public Audit Act are similar. Both provide for audit reports to be submitted to Parliament and the relevant county assembly. Therefore, clause 21 of the Bill seeks to delete section 32 of the Public Audit Act. Section 39 of the Public Audit Act will be retained.

Clause 22

Institute of Certified Accountants of Kenya (ICPAK)

37. This is a welcome proposal. it will help reinforce the works of Heads of Internal Audit Functions.

Committee Observation

The Committee agreed with the stakeholder.

New proposal (Amendment of section 23 of the Public Audit Act)

Institute of Certified Accountants of Kenya (ICPAK)

38. Amend the proposal to include the competitive selection of outsourced audit firms as per procurement laws. This will provide transparency in the selection process.

Committee Observation

The Committee agreed with the stakeholder.

Clause 25

The Bowmans

39. Amend the clause to retain the timeline for the performance audits under section 36(2) of the Public Audit Act at six (6) months. This is because the timeline for conducting audits under Article 229 of the Constitution is six (6) months after the end of the financial year.

Committee Observation

The Committee noted that the proposed amendment sought to give the Auditor-General flexibility to conduct performance audits on projects at any time deemed necessary to provide assurance on the usage of public funds. The Committee further noted that section 35 of the Public Audit Act refers to annual financial audits under Article 229 of the Constitution which is different from performance audits as contemplated in section 36 of the Public Audit Act.

Clause 25

The Transparency International Kenya

40. Retain the clause because the inclusion of the word “among others” expands the scope of the performance audit envisioned to be undertaken by the Auditor General. The amendment expands the scope of the audit to encompass aspects of public resources.

Committee observation

The Committee noted that the proposed amendment seeks to expand the scope of performance audit. The stakeholder had not given the justification to buttress their proposal for the deletion of the clause.

Clause 25(b)

41. This amendment is welcomed with the following revisions: "within six months" and substituting therefore the words "From time to time" to replace "at any time". The period of six months after end of a project has not been effective in addressing loopholes during the implementation phase. The introduction of this provision will help in curbing any leakages, value for money etc before completion of projects

Committee Observation

The Committee agreed with the stakeholder; however, it was of the view to retain the phrase "at any time" since it was more appropriate.

Clause 27

Institute of Certified Accountants of Kenya (ICPAK)

42. The proposed insertion should be done as "economical efficient" immediately after the words "lawfully and in an". This will be in order to have proper flow of tense that is to read: "Lawfully and in an economical efficient and effective way".

Committee Observation

The Committee noted the stakeholder's proposal but was of the considered view that the proposed amendment in clause 27 was proper as read together with the intended meanings of the words as defined in clause 2 of the Bill.

Clause 37

The Transparency International

43. The amendment should be rejected and the original provision in the principal Act retained. Article 229(7) of the Constitution shall be submitted to Parliament and the relevant county Assemblies, and therefore by repealing section 50, it would be denying parliament from exercising its constitutional mandate.

Committee Observation

The Committee noted that clause 37 of the Bill seeks to repeal section 50 of the Public Audit Act since its subject matter is covered under section 39 of the Public Audit Act. Therefore, it was of the view that the clause was proper.

Clause 38

The Transparency International

44. The amendment should be rejected and the original provision in the principal Act retained. Article 229(7) of the Constitution shall be submitted to Parliament 1 and the relevant county Assemblies, and therefore by repealing section 50, it would be denying parliament from exercising its constitutional mandate.

Committee Observation

The Committee noted that clause 38 of the Bill sought to repeal section 51 of the Public Audit Act since its subject matter is covered elsewhere in the Bill.

New proposal (Deletion of section 40 of the Public Audit Act)

The Transparency International

45. Section 40 of the Public Audit Act should be repealed. This provision is unconstitutional since according to Article 229(4)(h) of the Constitution, the Auditor General is constitutionally mandated to audit and report on the accounts of state organs, public bodies, and any entities funded by public money. Introducing a requirement for the Auditor General to seek permission, as proposed by section 40, before conducting audits would hinder the fulfillment of this constitutional obligation. Furthermore, subjecting auditors to vetting before carrying out audits could potentially compromise the independence and integrity of the audit process. It creates a situation where state organs and public bodies have the authority to influence or even obstruct the selection of auditors tasked with scrutinizing their financial records. This undermines the principle of accountability and transparency, which are fundamental to the Auditor General's role in safeguarding public finances.

Committee Observation

The Committee agreed with the stakeholder. The unconstitutionality of section 40 of the Public Audit Act was canvassed in paragraphs 118 and 119 in *Transparency*

International (TI Kenya) v Attorney General & 2 others [2018] eKLR, Petition No. 388 of 2016, where the Court held as follows—

“118. Flowing from the exposition above, it leaves no doubt on the unconstitutionality of sections 40 and 42 of the Act. Section 40 requires the Auditor General to hold a pre audit meeting at the highest level to agree on areas to audit and appropriate audit approach when auditing national security organs and even allows vetting of officers to conduct the audit. Section 42 bars the Auditor General from questioning government policy objectives during audits. The section provides that “Notwithstanding the provisions of this Act, in an examination under this Act, the Auditor-General shall not question the merits of a policy objective of the national government or county government or any other public entity.

119. The Auditor General has a constitutional obligation under Article 229(4) (h) to audit and report on the accounts of state organs public bodies and any entity funded by public money. This cannot be done if the Auditor General has to seek permission by holding meetings with higher authorities as proposed by section 40 before carrying out the audit. Subjecting officers to vetting before audit would leave room for state organs and public bodies to decide who to audit them. The Auditor General cannot also confirm the viability of the policy objectives funded by the people of Kenya when section 42 suggests that he should not question policy objectives funded by the people. This has the effect of stifling his independence. A statute cannot seek to impose conditions on the Auditor General's audit approaches when the Constitution gives him mandate to do his work without direction or control from any person or authority. This violates national values and principles of governance including integrity, transparency and accountability in Article 10 and financial openness in Article 201 of the Constitution.”

Clause 42- The Transparency International

46. This provision should be repealed. This provision is unconstitutional for as it restricts the Auditor General's ability to assess the viability of policy objectives funded by the people of Kenya. Section 42 implies that the Auditor General should refrain from questioning such policy objectives, thereby limiting their independence in scrutinizing public expenditures. This restriction undermines the Auditor General's constitutional mandate, as enshrined in Article 229, to conduct audits without interference or control from any person or authority. Furthermore, imposing conditions on the Auditor General's audit approaches

violates the national values and principles of governance outlined in Article 10 of the Constitution. These values include integrity, transparency, and accountability, which are essential for effective public financial management. By inhibiting the Auditor General's ability to thoroughly evaluate the use of public funds, this provision runs counter to the principles of financial openness articulated in Article 201.

Committee Observation

The Committee agreed with the stakeholder. The unconstitutionality of section 42 of the Public Audit Act was canvassed in paragraphs 118 and 119 in *Transparency International (TI Kenya) v Attorney General & 2 others [2018] eKLR, Petition No. 388 of 2016, where the Court held as follows—*

“118. Flowing from the exposition above, it leaves no doubt on the unconstitutionality of sections 40 and 42 of the Act. Section 40 requires the Auditor General to hold a pre audit meeting at the highest level to agree on areas to audit and appropriate audit approach when auditing national security organs and even allows vetting of officers to conduct the audit. Section 42 bars the Auditor General from questioning government policy objectives during audits. The section provides that “Notwithstanding the provisions of this Act, in an examination under this Act, the Auditor-General shall not question the merits of a policy objective of the national government or county government or any other public entity.

119. The Auditor General has a constitutional obligation under Article 229(4) (h) to audit and report on the accounts of state organs public bodies and any entity funded by public money. This cannot be done if the Auditor General has to seek permission by holding meetings with higher authorities as proposed by section 40 before carrying out the audit. Subjecting officers to vetting before audit would leave room for state organs and public bodies to decide who to audit them. The Auditor General cannot also confirm the viability of the policy objectives funded by the people of Kenya when section 42 suggests that he should not question policy objectives funded by the people. This has the effect of stifling his independence. A statute cannot seek to impose conditions on the Auditor General’s audit approaches when the Constitution gives him mandate to do his work without direction or control from any person or authority. This violates national values and principles of governance including integrity, transparency and accountability in Article 10 and financial openness in Article 201 of the Constitution.”

Clause 43

The Transparency International

47. This is a welcome amendment since the section will promote collaboration between independent offices and support in addressing corruption related cases

Committee Observation

The Committee agreed with the stakeholder.

New clause

The Transparency International Kenya

48. Section 70 of the Public Audit Act should be repealed. The Constitution of Kenya which establishes the office of the Auditor General and outlines its functions, is the supreme law and therefore this section is unnecessary and superfluous.

Committee Observation

The Committee noted that the provision that the stakeholder seeks to repeal is not one of the clauses in the Bill. In any case, the Committee observed that section 70 of the Public Audit Act does not contravene the Constitution since it doesn't indicate that it supersedes the Constitution. The provision was therefore proper.

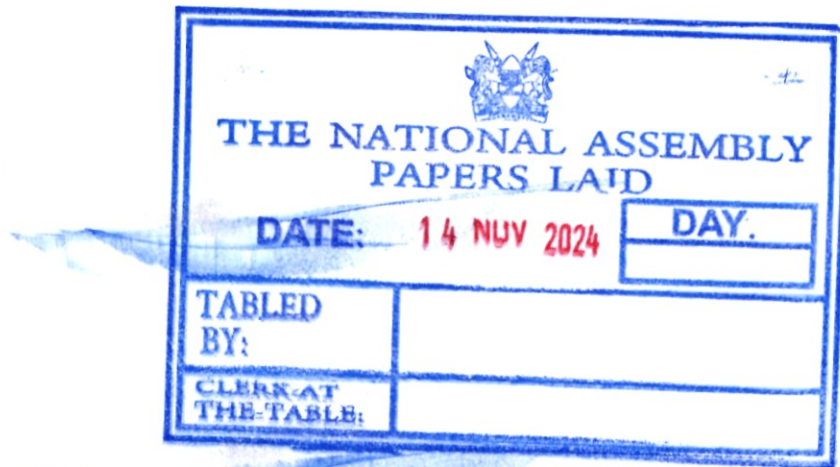
CHAPTER FOUR

4.0 COMMITTEE RECOMMENDATION

49. The Committee having considered the Public Audit (Amendment) Bill, 2024 (National Assembly Bills No. 4 of 2024) recommends that the House approves the Bill with amendments as proposed in the schedule.

SIGNED..........DATE.....

**HON. CPA KURIA KIMANI, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**



CHAPTER FIVE

5.0 SCHEDULE OF PROPOSED AMENDMENTS

50. The Committee proposed the following amendments to be considered by the House in the Committee stage:

CLAUSE 10

THAT, clause 10 of the Bill be amended—

- (a) in by paragraph (a) by inserting the word “Senior” immediately after the words “shall be a”;
- (b) by deleting paragraph (b).

Justification

The clause had sought to provide for a Deputy Auditor-General without taking into consideration the existing structure in the office where there are seven (7) Deputy Auditor Generals in place. Therefore, the Committee has recommended that the position of Senior Deputy Auditor-General, as currently obtained in the Act, be retained.

CLAUSE 11

THAT, clause 11 of the Bill be amended—

- (a) in paragraph (a)(i) by deleting the words “The Deputy Auditor-General” and substituting therefor the words “The Senior Deputy Auditor-General”;
- (b) by deleting paragraph (b).

Justification

The clause had sought to provide for a Deputy Auditor-General without taking into consideration the existing structure in the office where there are seven (7) Deputy Auditor Generals in place. Therefore, the Committee has recommended that the position of Senior Deputy Auditor-General, as currently obtained in the Act, be retained.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 11—

Repeal of section 12
of No. 34 of 2015.

11A. The principal Act is amended
by repealing section 12 of the Act.

Justification

In the case of *Transparency International (TI Kenya) v Attorney General & 2 others [2018] eKLR, Petition No. 388 of 2016*, the High Court held that section 12 of the Public Audit Act (providing for the Acting Auditor-General) was unconstitutional.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 12—

Repeal of section 18
of No. 34 of 2015.

12A. The principal Act is amended
by repealing section 18 of the Act.

Justification

In *Transparency International (TI Kenya) v Attorney General & 2 others [2018] eKLR, Petition No. 388 of 2016*, the High Court held section 18 of the Public Audit Act (providing for the secondment of officers) was unconstitutional. The Court had stated that secondment of staff, under the terms of section 18 of the Public Audit Act, would be improper as it would lead to familiarity, undermine the independence of individual staff and interfere with institutional autonomy. Therefore, the section was declared unconstitutional.

CLAUSE 17

THAT, clause 17 of the Bill be amended in the proposed new section 25—

- (a) by deleting paragraph (d);
- (b) by deleting paragraph (e);
- (c) by inserting the following new paragraphs immediately after paragraph (c)—
 - (ca) a nominee of the Institute of Human Resource Management;
 - (cb) a nominee of the Institute of Internal Auditors of Kenya.

Justification

The amendment deletes the representation from Parliament in the Audit Advisory Board to protect the independence of the two institutions and their

distinct roles. Further, the proposed additional members seek to bring on board representation that will enhance the functions of the Board.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 15—

Amendment of **15A**. Section 23 of the principal Act section 23 of No. 34 of 2015. is amended by inserting the words “competitively” immediately after the words “the Auditor-General may”.

Justification

The proposed amendment seeks to ensure that audit services outsourcing by the Auditor-General shall be competitively done in compliance with procurement laws.

CLAUSE 17

THAT, clause 17 of the Bill be amended in the proposed new section 25 by deleting the words “The Deputy Auditor-General” appearing in subsection (3) and substituting therefor the words “The Senior Deputy Auditor-General”.

Justification

This is a consequential amendment arising from amendments made to clauses 10 and 11 of the Bill.

CLAUSE 19

THAT, clause 19 of the Bill be amended in paragraph (b) of the proposed section 27 by inserting the words “, strategic planning” immediately after the word “management”.

Justification

The proposed additional function arises because budgeting and human resource management and development functions are contained and derive from a strategic plan.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 29—

Repeal of section 40 of No. 34 of 2015. **29A.** The principal Act is amended by repealing section 40.

Justification

In *Transparency International (TI Kenya) v Attorney General & 2 others [2018] eKLR, Petition No. 388 of 2016*, the High Court declared section 40 of the Public Audit Act unconstitutional.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 30—

Repeal of section 42 of No. 34 of 2015. **30A.** The principal Act is amended by repealing section 42.

Justification

In *Transparency International (TI Kenya) v Attorney General & 2 others [2018] eKLR, Petition No. 388 of 2016*, the High Court declared section 42 of the Public Audit Act unconstitutional.



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.
ADOPTION LIST

REPORT ON THE PUBLIC AUDIT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL,
NO 3 OF 2024)

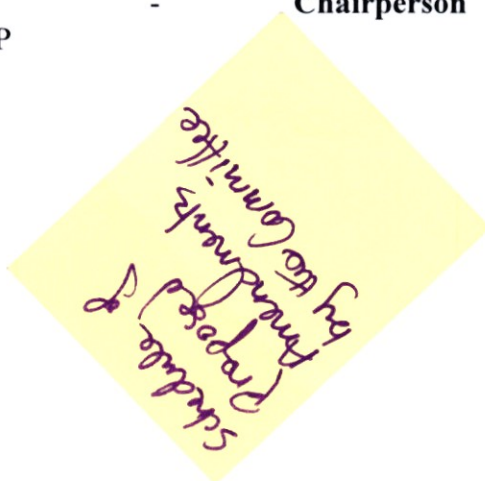
We, the Members of the Departmental Committee on Finance and National Planning have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, Tuesday, 13th August 2024.

S/NO.	NAME	SIGNATURE
1.	HON. (CPA). KURIA KIMANI, MP - CHAIRPERSON	
2.	HON. (AMB). BENJAMIN KIPKIRUI LANGAT, MP - VICE CHAIRPERSON	
3.	HON. DR. ADAN KEYNAN WEHLIYE, MP	
4.	HON. GEORGE SUNKUYIA RISA, MP	
5.	HON. (CPA) JOSEPH MAERO OYULA, MP	
6.	HON. ANDREW ADIPO OKUOME, MP	
7.	HON. DAVID MWALIKA MBONI, MP	
8.	HON. JOSEPH MAKILAP KIPKOROS, MP	
9.	HON. JOSEPH KAMAU MUNYORO, MP	
10.	HON. (CPA) JULIUS KIPLETING RUTTO, MP	
11.	HON. PAUL KIBICHIY BIEGO, MP	
12.	HON. UMUL KER SHEIKH KASSIM, MP	
13.	HON. DR. SHADRACK MWITI ITHINJI, MP	
14.	HON. DR. JOHN ARIKO NAMOIT, MP	
15.	HON. MOHAMED SOUD MACHELE, MP	

MINUTES OF THE 84TH SITTING OF DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON TUESDAY, 13TH AUGUST 2024 IN COMMITTEE ROOM 21, BUNGE TOWER, AT 10.00 A.M

PRESENT

1. Hon. CPA. Kuria Kimani, MP - **Chairperson**
2. Hon. (Dr.) Adan Keynan Wehliye, CBS, MP
3. Hon. David Mwalika Mboni, MP
4. Hon. Julius Kipletting Rutto, MP
5. Hon. George Sunkuyia Risa, MP
6. Hon. Andrew Adipo Okuome, MP
7. Hon. CPA. Joseph Maero Oyula, MP
8. Hon. Joseph Munyoro, MP
9. Hon. Paul Kibichiy Biego, MP
10. Hon. Umul Ker Sheikh Kassim, MP
11. Hon. (Dr.) John Ariko Namoit, MP
12. Hon. Joseph Makilap Kipkoros, MP



ABSENT WITH APOLOGY

1. Hon. (Amb.) Benjamin Kipkirui Langat, CBS, MP - **Vice-Chairperson**
2. Hon. Mohamed Soud Machele, MP
3. Hon. (Dr.) Shadrack Mwiti Ithinji, MP

COMMITTEE SECRETARIAT

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. Benjamin Magut | - | Principal Clerk Assistant II |
| 2. Mr. Salem Lorot | - | Legal Counsel I |
| 3. Mr. Benson Kamande | - | Clerk Assistant III |
| 4. Ms. Winfred Kambua | - | Clerk Assistant III |
| 5. Ms. Nelly Ondieki | - | Research Officer III |
| 6. Ms. Joyce Wachera | - | Hansard Officer |
| 7. Mr. Muchiri Mwangi | - | Audio Officer |
| 8. Mr. Benson Muthuri | - | Serjeant-At-Arms |
| 9. Mr. Ian Kinuthia | - | Intern |
| 10. Mr. Allan Kimani | - | Intern, Audio Services |

AGENDA

1. Prayers
2. Preliminaries/Introductions
3. Confirmation of Minutes/Matters Arising
Consideration and adoption of the Report on the Public Audit (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024)
4. Any other Business
5. Adjournment/Date of the Next Sitting.

MIN No. NA/F & NP/2024/204:

PRELIMINARIES

The meeting was called to order at 10.14 a.m. with a word of prayer by the Hon. Joseph Kamau Muniyoro, MP. The Chairperson then invited the meeting to deliberate on the day's agenda.

MIN No. NA/F & NP/2024/205:

CONFIRMATION OF MINUTES

Agenda deferred

MIN No. NA/F & NP/2024/206:

**CONSIDERATION AND ADOPTION THE
REPORT ON THE PUBLIC AUDIT
(AMENDMENT) BILL, 2024 (NATIONAL
ASSEMBLY BILLS NO. 3 OF 2024)**

The meeting deliberated at length and agreed on the observations and recommendations contained in Chapter Four and Five of the Report.

Committee Observations;

1. The Committee noted that the proposed amendment to retain the timeline for the performance audits under section 36(2) of the Public Audit Act at six (6) months sought to give the Auditor-General flexibility to conduct performance audits on projects at any time deemed necessary to provide assurance on the usage of public funds. The Committee further noted that section 35 of the Public Audit Act refers to annual financial audits under Article 229 of the Constitution which is different from performance audits as contemplated in section 36 of the Public Audit Act.
2. The Committee noted that clause 21 of the Bill was to be deleted because section 32 and section 39 of the Public Audit Act are similar. Both provide for audit reports to be submitted to Parliament and the relevant county assembly. Therefore, clause 21 of the Bill seeks to delete section 32 of the Public Audit Act. Section 39 of the Public Audit Act will be retained.
3. The Committee agreed to delete section 12 of the Public Audit Act noting that in the case of Transparency International (TI Kenya) v Attorney General & 2 others [2018] eKLR, Petition No. 388 of 2016, the High Court held section 12 of the Public Audit Act (providing for the Acting Auditor-General) was unconstitutional.
4. The Committee noted that clause 10(a) of the Bill provides for one Deputy Auditor-General hence the stakeholder's proposal to amend the clause to state a definite number of Deputy Auditor Generals had been catered for.

Committee Resolution.

The Committee, having considered the Public Audit (Amendment) Bill, 2024 (National Assembly Bills No. 4 of 2024) recommended that the House approves the Bill with amendments as proposed in the schedule of the report.

The Report was then adopted having been proposed by Hon. David Mboni, MP and seconded by Hon. Andrew Adipo, MP.

(Comprehensive details of the Committees Observations and Justifications are contained in chapter Four of the Report on the Public Audit (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024)

MIN No. NA/F & NP/2024/207:

ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business the meeting was adjourned at 12.00 p.m. The next meeting will be held on notice.

SIGNED:  DATE: 12th Nov 2024

**HON. CPA. KURIA KIMANI, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL
PLANNING.**

SPECIAL ISSUE

Kenya Gazette Supplement No. 208 (Acts No. 34)

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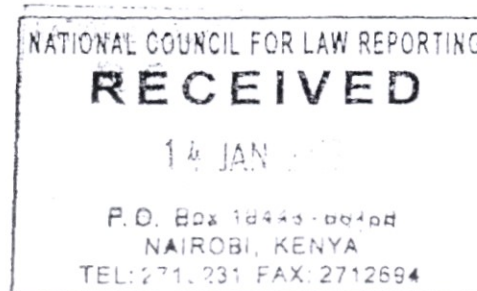
KENYA GAZETTE SUPPLEMENT

ACTS, 2015

NAIROBI, 24th December, 2015

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THE PUBLIC AUDIT ACT

No. 34 of 2015

Date of Assent: 18th December, 2015

Date of Commencement: 7th January, 2016

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1— Short title.
- 2— Interpretation.
- 3— Guiding values and principles.

**PART II—ESTABLISHMENT OF THE OFFICE OF
THE AUDITOR-GENERAL**

- 4— Establishment of the Office of the Auditor-General.
- 5— Qualification for appointment as Auditor-General.
- 6— Common Seal.
- 7— Functions and powers of the Auditor-General.
- 8— Administrative powers of the office of the Auditor-General.
- 9— General powers of the Auditor-General.
- 10— Independence of the Auditor- General.
- 11— Vacancy in office.
- 12— Acting Auditor-General
- 13— Oath of office
- 14— Development and approval of organisational structure.
- 15— Recruitment of the Senior Deputy Auditor-General.
- 16— Responsibilities of the Senior Deputy Auditor-General.
- 17— Recruitment of other Staff.
- 18— Secondment of officers.
- 19— Delegation of powers.

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- 20—Budget estimates and plans of the office of the Auditor-General.
- 21—Power to obtain information from others.
- 22—Power to examine bank accounts
- 23—Outsourcing audit services.
- 24—Professional assistance and consultancy.

**PART III – ESTABLISHMENT OF THE AUDIT
ADVISORY BOARD**

- 25—Establishment and composition of the Audit Advisory Board
- 26—Meetings and procedures of the Audit Advisory Board
- 27—Functions of the Audit Advisory Board
- 28—Allowances and expenses of the Audit Advisory Board members

**PART IV—AUDIT PROCESS AND TYPES OF
AUDIT**

- 29—Guiding principles, practices and standards of auditing.
- 30—Scope of audit.
- 31—Certification audit process steps.
- 32— Audit reports to be submitted to Parliament and the relevant county assembly.
- 33—Use of work of internal auditor.
- 34—Periodic Audits.
- 35—Annual financial audits.
- 36—Performance Audit.
- 37—Forensic Audit.
- 38—Procurement audits.
- 39—Audit reports to be submitted to Parliament and the relevant county assembly.
- 40—Auditing of national security organs.

**PART V—ACCOUNTS OF THE OFFICE OF THE
AUDITOR-GENERAL**

- 41—Sources of funds of the office of the Auditor-General.

2015

- 42—Auditor-General not to question Government policy objective.
- 43—Accounts of the office of the Auditor-General.
- 44—Audit of accounts.
- 45—Reporting by the appointed auditor.
- 46—Debating and considering report of the appointed auditor.

PART VI—REPORTING BY THE AUDITOR-GENERAL

- 47—Time limits for submission of accounts.
- 48—Accounts for audit.
- 49—Special reports in the course of annual audit of the accounts of State Organs.
- 50—Final audit reports on a State Organ or public entity including national or county governments accounts.
- 51—Other reporting by Auditor-General.
- 52—Use of media in publicizing of reports.
- 53—Implementation of reports by an accounting officer.
- 54—Withholding of funds by Parliament or county assembly.

PART VII—THE CODE OF CONDUCT AND ETHICS

- 55—Determination of Code of conduct and Ethics.
- 56—Observance of Code of Conduct and Ethics
- 57—Administrative action.
- 58—Disclosure of fraud and corruption.
- 59—Disclosure of interest.
- 60—Confidential reporting of unlawful acts.

PART VIII—OFFENCES AND SANCTIONS

- 61—Offences by officers of the office of the Auditor-General.
- 62—Other Offences.
- 63—General penalty.

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- 64— Power to report to police, etc.
- 65— Surcharge.
- 66— Ineligibility to hold public office.
- 67— Disallowable expenditure.

PART IX—GENERAL PROVISIONS

- 68— Power to make Regulations.
- 69— Legal opinion and advice by the Attorney-General.
- 70— Supremacy of this Act.
- 71— Protection from personal liability.
- 72— Public right of access to official audits reports.

**PART X—REPEAL, SAVINGS AND TRANSITION
PROVISIONS**

- 73— Repeal of No.12 of 2003.

SCHEDULE

AN ACT of Parliament to provide for the functions and powers of the Office of the Auditor-General in accordance with the Constitution, and for connected purposes

ENACTED by Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Public Audit Act, 2015. Short title.
2. In this Act, unless the context otherwise requires— Interpretation.
- “Accounting Officer” means—
- (a) an Accounting Officer of the Office of the Auditor-General referred to under section 16 (1)(b);
- (b) an Accounting Officer as defined under section 2 of the Public Finance Management Act, 2012; No. 18 of 2012.
- “Audit Committee” means an audit committee established under sections 73(5) and 155(5) of the Public Finance Management Act, 2012; No. 18 of 2012.
- “Auditor-General” means the Auditor-General appointed in accordance with Article 229 of the Constitution and section 11 of this Act; No. 8 of 2011.
- “Appropriation” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; No. 18 of 2012.
- “county government entity” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; No. 18 of 2012.
- “effectiveness” means prudent, efficient, economic, transparent and accountable use of public funds to ensure government achieves value for money and that such funds are applied for intended purpose;
- “financial year” has the meaning assigned to it under Article 260 of the Constitution:

“lawful” includes compliance with a state organ’s internal regulations, internal policies, programmes and the prescribed measures for securing efficient and transparent fiscal management;

“office” means the Office of the Auditor-General established under section 4 of this Act;

“public officer” has the meaning assigned to it in Article 260 of the Constitution;

“public funds” means—

- (a) all money that comes into possession of, or is distributed by, a State organ including the national or county governments and intergovernmental entities and money raised by a private body under statutory authority;
- (b) money held by State organ or public entities in trust for third parties and any money that can generate liability for the government;

“public debt” has the meaning assigned to it under Article 214 of the Constitution;

“public entity” includes any department or agency of the government and any authority, body or other entity declared to be a government entity under the Public Finance Management Act; No. 18 of 2012.

“Receiver of Revenue” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; No. 18 of 2012.

“State Organ” has the meaning assigned to it under Article 260 of the Constitution; and

“Wasteful Expenditure” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012. No. 18 of 2012.

3. (1) In discharging its functions under this Act, the Office of the Auditor -General and any person to whom this Act applies, shall be guided by the values, principles and requirements of the Constitution, including— Guiding values and principles.

- (a) the national values and principles provided for under Article 10 of the Constitution;
- (b) the equality and freedom from discrimination provided for under Article 27 of the Constitution;
- (c) the responsibilities of leadership provided for under Article 73 of the Constitution;
- (d) the principles governing the conduct of State officers provided for under Article 75 of the Constitution;
- (e) the principles of public finance under Article 201 of the Constitution; and
- (f) the values and principles of Public Service as provided for under Article 232 of the Constitution.

(2) In addition to the values and principles in subsection (1), the Auditor-General shall promote efficiency, accountability, effectiveness and transparency on use of public resources.

PART II—ESTABLISHMENT OF THE OFFICE OF THE AUDITOR-GENERAL

4. (1) There is established an office to be known as the Office of the Auditor-General which shall be a body corporate in accordance with Article 253 of the Constitution and shall be capable of—

Establishment of the
Office of the
Auditor-General.

- (a) suing and being sued;
- (b) acquiring, safeguarding, holding, charging and disposing of moveable and immoveable property; and
- (c) doing or performing all such other duties or acts for the proper discharge of its functions under this Act, which may be lawfully done by a body corporate.

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(2) The office shall comprise the Auditor-General as its statutory head and all other staff appointed by the Auditor-General as may be delegated in accordance with Article 234 of the Constitution.

(3) The Office of the Auditor-General shall ensure reasonable access to its services in all parts of the Republic.

(4) The headquarters of office of the Auditor-General shall be in the capital city but the office may establish branches at any place in Kenya.

5. (1) A person shall be qualified for appointment as the Auditor-General if such person:-

Qualification for
appointment as the
Auditor-General

- (a) is a citizen of Kenya;
- (b) holds the respective qualifications for the office specified in Article 229 (2) of the Constitution;
- (c) holds a degree in finance, accounting or economics from a university recognized in Kenya and demonstrates a verifiable and logical progression in the attainment of his or her educational qualifications;
- (d) meets the requirements of Chapter Six of the Constitution; and
- (e) is a practicing member of good standing of a professional body of accountants recognised by law.

6. (1) The Common seal of the Office shall be kept in the custody of the Auditor-General or in the custody of such other person as the Auditor-General may direct.

Common Seal.

(2) The Common Seal of the Office when affixed to a document and duly authenticated shall be judicially and officially noticed, and unless and until the contrary is provided any necessary order or authorization by the Office under this section shall be presumed to have been duly given provided that express authority of the Auditor-General is procured.

7. (1) In addition to the functions and responsibilities of the Auditor-General as set out in Article 229 of the Constitution, the Auditor-General shall—

Functions and
powers of the
Auditor-General

- (a) give assurance on the effectiveness of internal controls, risk management and overall governance at national and county government;
- (b) undertake audit activities in state organs and public entities to confirm whether or not public money has been applied lawfully and in an effective way;
- (c) satisfy himself or herself that all public money has been used and applied to the purposes intended and that the expenditure conforms to the authority for such expenditure;
- (d) confirm that—
 - (i) all reasonable precautions have been taken to safeguard the collection of revenue and the acquisition, receipt, issuance and proper use of assets and liabilities; and
 - (ii) collection of revenue and acquisition, receipt, issuance and proper use of assets and liabilities conforms to the authority;
- (e) issue an audit report in accordance with Article 229 of the Constitution;
- (f) provide any other reports as may be required under Article 254 of the Constitution; and
- (g) perform any other function as may be prescribed by any other written legislation.

(2) Without prejudice to the generality of subsection (1), the Auditor-General may undertake any audits required under the Constitution, this Act or any other relevant law.

8. In addition to the powers and functions conferred under the Constitution, this Act and other relevant laws, and pursuant to Articles 252 (1) (c) and 232 of the Constitution, the Auditor-General shall —

Administrative powers of the office of the Auditor-General.

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- (a) develop an organisational structure and staffing establishment for the Office of the Auditor-General subject to Article 234(5) of the Constitution;
- (b) subject to Article 234(5) of the Constitution, recruit and promote qualified and competent staff to perform the Office's functions;
- (c) subject to Article 234(5) of the Constitution, exercise disciplinary control over staff;
- (d) subject to Article 234(5) of the Constitution, develop human resource of the office;
- (e) subject to Article 230 (4)(b) and 234 of the Constitution, determine the remuneration and benefits of each member of staff;
- (f) in addition to what is provided for under any other relevant law, develop and maintain a code of conduct and ethics for the office, specific to auditing, guided by the International code of practice, and code of Ethics issued by the International Organization of Supreme Audit Institutions and in consultation with the Public Service Commission and the National Treasury;

9. (1) Without prejudice to the powers given under the Constitution and this Act and for the purposes of carrying out his or her duties effectively, the Auditor-General, or an officer authorized for the purpose of this Act, shall have powers —

General powers of
the Auditor-General.

- (a) to conduct investigations on his or her own initiative, or on the basis of a complaint made by a third party;
- (b) to obtain professional assistance, consultancy or advice from such persons or organizations whether within or outside public service as he/she considers appropriate;

- (c) of conciliation, mediation and negotiation;
- (d) to issue summons to a witness for the purposes of his or her investigation;
- (e) of unrestricted access to—
 - (i) all books, records, returns, reports, electronic or otherwise and other documents of entities listed under Article 229 (4) of the Constitution;
 - (ii) any property or premises used or held by State Organs or public entities covered by Article 229 (4) of the Constitution and subject to audit under this Act.

Provided that such access is reasonably necessary, in the opinion of the Auditor-General, in carrying out his or her functions;

- (f) to request any public officer that is subject to this Act to provide explanations, information and assistance in person and in writing;
- (g) to locate any of his or her staff or an agent, for a time period to be determined by the Auditor-General, at the premises of any State Organ or public entity that is the subject of an audit or examination or review and that entity shall provide access to staff or agent and adequate office space, furniture and telephone access at the expenses of that State Organ or public entity;
- (h) to identify the origin of a transaction or officer who directed or approved it, where he or she has determined inaction, omissions, misuse or abuse of public resources by a public officer; and
- (i) to perform any function and exercise any powers prescribed by any other legislation, in addition to the functions and powers conferred by the Constitution.

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(2) In addition to the powers under the Constitution, and subsection (1), the Auditor-General may without payment of a fee—

- (a) require a search to be made of any records in a public office;
- (b) require copies to be made of, or extracts to be taken from, any records in a public office;
- (c) seize or access or obtain official electronic messages to the extent that it is necessary for purposes of undertaking an investigation or forensic audit in entities listed under Article 229 (4) of the Constitution ; and
- (d) solicit assistance of other National and County governments agencies in the exercise of his/her responsibilities under the Constitution, this Act or any other written law.

10. (1) The Auditor-General shall not be subject to direction or control by any person or authority in carrying out his or her functions under the Constitution or under this Act.

Independence of the Auditor-General.

(2) Without prejudice to the generality of subsection (1), the Auditor-General and his or her staff shall perform their functions impartially, without fear, favour or prejudice and shall exercise their powers independently subject to the provisions of the Article 249 (2) of the Constitution, the provision of this Act and any other written law.

11. (1) The office of the Auditor-General shall become vacant, if the Auditor-General—

Vacancy in office.

- (a) dies;
- (b) by a notice in writing addressed to the President, resigns from office; or
- (c) is removed from office under any of the circumstances specified in Article 251 or Chapter Six of the Constitution.

(2) Where a vacancy occurs under subsection (1), the President shall within seven days, by notice in the Gazette, in at least two newspapers of national circulation and in at least two national radio and television stations, declare vacancies in the office of the Auditor-General and invite applications.

(3) An application under subsection (2) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any:

- (a) qualified person;
- (b) person, organisation or group of persons proposing the nomination of any qualified person.

(4) The names of all applicants under subsection (2) shall be published in the Gazette.

(5) The President shall, within fourteen days of the expiry of the period prescribed under subsection (3), constitute a selection panel comprising a chairperson and one representative from –

- (a) the Ministry for the time being responsible for matters relating to finance;
- (b) the Office of the Attorney General;
- (c) the Ministry for the time being responsible for matters relating to the public service;
- (d) the Institute of Certified Public Accountants of Kenya;
- (e) the Association of Professional Societies of East Africa; and
- (f) the Law Society of Kenya,

for the purpose of considering the applicants and selecting at least three persons qualified for appointment as Auditor General:

Provided that for the purpose of selection and shortlisting of the said three persons, the selection panel shall hold its proceedings in public and submit to Parliament a report of the interview proceedings, which should include inter alia the scores of each candidate interviewed by individual members of the interviewing panel together with the criteria used in selecting the names forwarded.

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(6) The selection panel shall within seven days of the selection of candidates under subsection (5), forward the names of the selected candidates to the President for nomination.

(7) The President shall, within seven days of the receipt of the names of the selected candidates under subsection (6), nominate one candidate for appointment as the Auditor-General and forward the name to the National Assembly.

(8) The National Assembly shall consider the nomination and may approve or reject the nomination.

(9) Where the National Assembly:

(a) approves the nominee, the Speaker shall, within three days of the approval, forward the name of the approved nominee to the President for appointment;

(b) rejects the nomination, the speaker shall, within three days of the rejection, communicate the decision to the President, who shall submit a fresh nominee from amongst the candidates forwarded by the selection panel under subsection (6).

(10) If the National Assembly rejects all or any subsequent nominee submitted by the President for approval under subsection (9), the provisions of subsections (1) to (7) shall, with the necessary modifications, apply.

(11) The President shall, within seven days of the receipt of the approved nominee from the National Assembly, by notice in the Gazette, appoint the Auditor-General approved by the National Assembly.

(12) For the avoidance of doubt, the Public Service Commission shall only provide secretariat services for the selection panel convened under subsection (5).

(13) Despite the foregoing provisions of this section, the President may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

12. (1) Where-

- (a) the office of the Auditor-General becomes vacant;
- (b) the Auditor-General has been suspended in accordance with the Constitution;
- (c) the appointment of a person as Auditor-General is pending; or
- (d) the Auditor-General is for any reason unable to perform the function of his or her office,

then until a person is appointed to and has assumed the functions of that office in accordance with section 11, or until the Auditor-General has resumed the performance of those functions, the Public Service Commission shall recommend the most senior officer in the office of the Auditor-General to the President to designate such a person as the acting Auditor-General.

(2) A person designated under subsection (1) shall meet the minimum qualifications for appointment to the office of the Auditor-General and shall serve for a period not exceeding ninety days.

(3) When acting in terms of subsection (1), the acting Auditor-General shall have all the powers of the Auditor-General.

13. The Auditor General shall, before assuming office, make and subscribe to the oath or affirmation set out in the Schedule before the Chief Justice.

Oath of Office.

14. The Office of the Auditor General shall develop an organizational structure for consideration and approval by the Audit Advisory Board.

Development and approval of organisational structure.

15. (1) There shall be a Senior Deputy Auditor-General who shall be competively recruited by the Advisory Board and appointed by the Auditor General.

Recruitment of the Senior Deputy Auditor-General.

(2) A person shall be qualified for appointment as the Senior Deputy Auditor- General, if that person meets all the qualifications for appointment as outlined in section 5 of this Act.

16. (1) The Senior Deputy Auditor-General shall deputize the Auditor General and —

Responsibilities of the Senior Deputy-Auditor General.

- (a) be the head of administration and management of the office of the Auditor-General;
- (b) be the accounting officer of the Office of the Auditor-General; and
- (c) perform such duties and exercise such other powers as the Auditor- General may delegate to him or her or perform other duties as spelt out by the office of the Auditor-General.

(2) In performance of his or her responsibilities under subsection (1) (a), the Senior Deputy Auditor General shall report to the Auditor-General.

17. (1) The office of the Auditor General may recruit such other staff as may be necessary for proper discharge of his or her functions under the Constitution, this Act and any other written law, upon such terms and conditions as he/ she may determine in consultation with the Salaries and Remuneration Commission and subject to Articles 230 and 234(5) of the Constitution.

Recruitment of other Staff.

(2) The remuneration of such staff should reflect prevailing remuneration of staff performing similar duties in the audit profession in other public and private institutions.

(3) The staff of the Office of the Auditor-General shall be competively recruited in accordance to the organisation structure developed by the office of the Auditor-General.

(4) The recruitment and appointment of staff shall take cognisance of regional, ethnic and gender balance including equal opportunities to persons with disabilities and marginalized groups and shall comply with the value and principles of public service as contemplated in Article 232 of the Constitution.

18. (1) A State Organ or public entity may upon such request by the Auditor-General, second to the office such number of public officers as may be necessary for proper performance of the functions of the Office.

Secondment of officers.

(2) A public officer seconded to the office shall, during the period of secondment, be deemed to be an officer of the office and be subject to the policies and regulations of the office of the Auditor-General.

(3) The Auditor-General may, upon the request of a State Organ or public entity second his or her staff who shall, for the period of such secondment, be under the direction and control of the concerned State Organ or public entity and such an officer shall not audit that State Organ or public entity within a period of twenty-four months after the expiry of the secondment.

19. (1) The Auditor-General may, subject to such conditions as he or she may impose in writing, delegate any power and assign any duty conferred on him or her in terms of this Act or any other written law to a subordinate officer.

Delegation of powers.

(2) A delegation or instruction in terms of subsection (1) shall not absolve the Auditor-General of the responsibility concerning the exercise of his or her power or the performance of the duty.

(3) The Auditor-General may confirm, vary or revoke any decision taken by a member of staff in consequence of a delegation or instruction under this section.

20. (1) The accounting officer shall prepare annually budget estimates of revenue and expenditure and work plans for the next financial year for consideration.

Budget estimates and plans of the office of the Auditor-General.

(2) The budget estimates of revenue and expenditure referred to under sub-section (1) shall be submitted to the Cabinet Secretary responsible for finance not later than the

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30th March each year for review and submission to the National Assembly in accordance with Article 221 of the Constitution, and the National Assembly shall, pursuant to Article 249 (3) of the Constitution, allocate adequate funds to the office of the Auditor General.

(3) The budget estimates submitted under sub-section (2) shall include the following—

- (a) estimates of revenue and recurrent expenditure for the coming fiscal year;
- (b) estimates for the development expenditure for the coming fiscal year; and
- (c) any other matter considered relevant by the Auditor-General in the consideration of the budget and plans of the Office.

21. (1) For the purposes of exercising or performing his or her functions, duties or powers under the Constitution or this Act, and subject to the law relating to data protection, the Auditor-General shall require a public body or any person employed by the public body—

Power to obtain information from others.

- (a) to produce any official document in the body's or person's custody, care or control; and
- (b) to provide the Auditor-General with information or an explanation about any official information, system or asset.

(2) The Auditor-General may obtain such official information as he or she considers necessary to fulfil his or her functions, duties and powers from a person who is not a member, employee or office holder of the public body, within fourteen days and in doing so, the Auditor-General may—

- (a) advise the person in writing of the nature of the information and why it is needed;
- (b) state that the information is required under this Act;
- (c) ask for further information where necessary;

- (d) summon the person, if necessary; or
- (e) reimburse the person for any reasonable costs incurred in travelling where such person is summoned to appear, as may be determined by the Office.

(3) Where the information required is not official, then the Auditor General will have to apply to the courts to obtain such information.

(4) In cases where the Auditor-General suspects fraud or corruption, he or she may invite the relevant organs for their appropriate action.

22. (1) The Auditor-General may in the course of exercising his or her functions, duties or powers, track a transaction into the account of any person in any bank through an order of the courts, if the Auditor-General has reason to believe that the money belonging to a public body has been fraudulently or wrongfully paid into such person's account.

Power to examine bank accounts.

(2) When required under this section, the bank shall produce any documents or provide requested information relating to the account in the bank's custody or control.

(3) In exercising the authority under this section, the Auditor-General shall ensure that any information obtained is not used for any other purpose other than that legally intended and the Auditor-General shall keep in safe custody all the documents and information so obtained.

(4) The Auditor-General may make copies of any documents so produced.

23. (1) For purposes of carrying out his or her functions under this Act, the Auditor-General may outsource audit services from duly registered audit firms whose partners and staff are not employees of the Office of the Auditor-General and the public service to assist in an examination and audit of accounts.

Outsourcing audit services.

(2) Only a person registered and practising as an accountant under the Accountants Act, 2008, shall be

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qualified for the purpose of provision of a financial audit opinion under this section.

(3) An auditor appointed under this section shall comply with any lawful directions given by the Auditor-General and shall report to the Auditor-General.

(4) For purposes of his or her appointment, an auditor appointed under this section exercises delegated powers of the Auditor-General relating to examinations and audit.

(5) An auditor appointed under this section shall not certify the results of the examination and audit and shall not submit any report required under this Act other than the report under subsection (2).

(6) During the period of performing the work outsourced, the staff of the outsourced firm shall conform to the provisions of this Act and Code of Ethics developed under this Act.

(7) An officer who previously worked for an organ that is being audited by the Auditor-General shall not audit that organ until after thirty-six months from the time he or she ceased working for that organ.

(8) Outsourcing of any audit services under this section shall not absolve the Auditor-General of any responsibility concerning the exercise of his or her powers under this Act.

24. (1) The Auditor-General may, in the performance of his or her duties and functions under this Act, engage the services of or work in consultation with professional or technical experts or consultants, whether in the public service or not, to enhance the performance of the Auditor-General.

Professional
assistance and
consultancy.

(2) The engagement of service under sub-section (1) shall be for purposes of ensuring effectiveness in the application of public funds.

**PART III—ESTABLISHMENT OF THE AUDIT
ADVISORY BOARD**

25. (1) There is established an unincorporated board to be known as the Audit Advisory Board which shall comprise of—

Establishment and composition of the Audit Advisory Board.

- (a) the Auditor-General or a person nominated by him or her;
- (b) the Attorney-General of Kenya or a person nominated by him or her;
- (c) a nominee of the Institute of Certified Public Accountants of Kenya;
- (d) a nominee of the Association of Professional Societies of East Africa;
- (e) a nominee of the Law Society of Kenya;
- (f) the Chairperson of the Public Service Commission or his or her nominee:

Provided that the nominee under paragraph (d) shall not be a member of a professional body provided for under subsection 1(c) and (e).

(2) A person shall be qualified to be nominated under subsection (1) (c) to (e) above if such person—

- (a) has a degree from a university recognised in Kenya;
- (b) has a minimum of fifteen years' experience in matters relating to public finance, auditing, accounts, law, governance or public management ; and
- (c) meets the requirements of Chapter Six of the Constitution

(3) The Auditor-General may co-opt two other members with the necessary expertise.

(4) The members of the Audit Advisory Board shall elect a chairperson from among themselves, who shall not be the Auditor General.

(5) The nomination and appointment of members under this section shall take cognisance of regional, ethnic, and gender balance and people with disabilities and marginalised groups.

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(6) The Auditor-General shall, within fourteen days of receipt of names of qualified persons pursuant to subsection (1), by notice in the Gazette, appoint members of the Board.

(7) The members of the Audit Advisory Board shall hold office for a term not exceeding three years from the date of appointment and may be eligible for reappointment for a further one term of three years.

26. (1) The Audit Advisory Board shall meet at least four times in every financial year and not more than twelve times in every financial year and not more than four months shall elapse between one meeting and the next meeting.

Meetings and
procedure of the
Audit Advisory
Board.

(2) The quorum at the meeting of the Audit Advisory Board is five members of the Board or a greater number determined by the Audit Advisory Board in respect of an important matter.

(3) The Senior Deputy Auditor-General of the office of the Auditor-General shall be the Secretary of the Audit Advisory Board.

(4) The Chairperson shall convene and preside at meetings of the Board.

(5) The proceedings of the Audit Advisory Board shall not be invalidated by reason of a vacancy among the members.

27. (1) Subject to section 10, the principal function of the Audit Advisory Board shall be to advise the Auditor-General on the exercise of his or her powers and the performance of his or her functions under the Constitution and this Act.

Functions of the
Audit Advisory
Board.

(2) Subject to the generality of subsection (1) the Board shall, in addition to any other function that may be conferred by this Act or any other law, advise the Auditor-General on—

- (a) the recruitment of senior managers into the Office of the Auditor-General;
- (b) the development and review of organizational development issues;
- (c) the budget estimates and plans of the office of the Auditor-General;
- (d) the remuneration and other terms of appointment of the staff of the Office of the Auditor-General in consultation with the Salaries and Remuneration Commission; and
- (e) any other matter that the Auditor-General may refer to the Board from time to time.

28. The members of the Audit Advisory Board shall be paid such allowances and expenses as are provided by the Salaries and Remuneration Commission from monies appropriated to the Office of the Auditor General.

Allowances and expenses of the Audit Advisory Board members.

PART IV—AUDIT PROCESS AND TYPES OF AUDIT

29. Subject to the Constitution and any written law, the Office of the Auditor-General shall apply the applicable international standards, principles and practices in their audits.

Guiding principles, practices and standards of auditing.

30. Subject to the provisions of Articles 201 and 232 of the Constitution, the Auditor-General shall determine the scope and extent of the examination or inspection of accounts and any other documents or information related to public expenditures or any audits under this Act, which he considers necessary in carrying out his or her responsibilities and functions specified under this Act.

Scope of Audit.

31. (1) The certification audit process steps shall be as follows—

Certification audit process steps.

- (a) within three months after Parliament or the County Assembly has debated and considered the final report of the Auditor General and made recommendations, a State Organ or a public entity

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that had been audited shall, as a preliminary step, submit a report on how it has addressed the recommendations and findings of the previous year's audit.

- (b) at the beginning of the audit examination of the financial statements of a State Organ or public entity, an inception meeting shall be held to deliberate on the scope of the financial audit, between the Auditor-General and the accounting officer and the financial statements to be audited should have been signed by the accounting officer and the substantive head of that entity, if different from the accounting officer and the Chairperson of the governing body, where applicable;
- (c) at the conclusion of the audit examination of the financial statements of each State Organ, an exit meeting shall be held at which the Auditor-General shall submit a draft management letter which shall include findings and recommendations to the accounting officer and comments of the accounting officer on the Auditor-General's findings and recommendations and the Auditor-General shall provide a copy of the report to the substantive head of that entity, if different from the accounting officer and, the Chairperson of the governing body, where applicable.

(2) For all other audits or investigation, the Auditor General shall inform the State organ or public entity to be audited or investigated in writing before commencement of the audit or investigation.

(3) The Auditor-General shall include in his or her report under this section—

- (a) recommendations on how a State Organ or public entity may improve the application of funds in a lawful and in an effective way; and
- (b) how responsive the State organ or public entity has been to past audit findings and recommendations.

(4) The accounting officer shall within fourteen days from the date of receipt of the draft management letter, submit a response to the Auditor-General including remedial actions that have been undertaken to address any qualifications in the draft management letter.

(5) If within fourteen days the Auditor General will not have received a response, the Auditor-General shall proceed with the finalisation of the final management letter.

(6) Where an audit report has been tabled, the Speaker of the National Assembly shall invite the Auditor-General to present the report before the National Assembly.

32. (1) All reports of an audit shall be submitted to Parliament or the relevant county assembly.

Audit reports to be submitted to Parliament and the relevant county assembly

(2) Within seven days of receiving the report, Parliament shall publicize it on its official website and other public spaces.

(3) Within fourteen days after submitting the report to Parliament or the relevant county assembly, the Auditor General shall publicize the report on the official website and other public spaces.

33. (1) The final report by an internal auditor which has been deliberated on and adopted by an audit committee of a State Organ or public entity, may be copied to the Auditor-General.

Use of work of internal auditor.

(2) The Auditor-General shall have unhindered access to all internal audit reports of a State Organ or any public entity, under subsection (1) above, which is subject to audit by the Auditor-General as provided for under Article 229 (4) of the Constitution.

34. The Auditor-General may, upon request or at his or her own initiative conduct periodic audits which shall be proactive, preventive, and deterrent to fraud and corrupt practices, systemic and shall be determined with a view to evaluating the effectiveness of risk management, control and governance processes in State Organs and public entities.

Periodic Audits.

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35. The Auditor-General shall conduct audits of financial statements under Article 229 of the Constitution for State Organs and public entities and report annually to Parliament and relevant county assembly.

Annual financial audits.

36. (1) The Auditor-General shall conduct performance audit to examine the economy, efficiency and effectiveness with which public money has been expended pursuant to Article 229 of the Constitution.

Performance Audit.

(2) The Auditor-General may undertake a comprehensive performance audit within six months after the completion of any National or County project to evaluate, whether the citizen has gotten value for money in the project and submit the report to Parliament or County Assembly for tabling and debate.

37. The Auditor-General may, upon request by Parliament, conduct forensic audits to establish fraud, corruption or other financial improprieties.

Forensic Audit.

38. The Auditor-General may examine the public procurement and asset disposal process of a state organ or a public entity with a view to confirm as to whether procurements were done lawfully and in an effective way.

Procurement audits.

39. (1) All reports of an audit shall be submitted to Parliament or the relevant county assembly.

Audit reports to be submitted to Parliament and the relevant county assembly.

(2) Within seven days of receiving the report, Parliament or the relevant county assembly shall publicise it on their official website and other public spaces.

(3) Within fourteen days after the expiry of seven days upon submitting the report to Parliament or the relevant county assembly, the Auditor-General shall publicise the report on their official website and other public spaces.

40. (1) In auditing national security organs, the Auditor General and his or her representatives shall hold an inception meeting at the highest level, pursuant to section 31(1) (b), to agree on areas which may touch on national security and determine the appropriate audit approach that shall ensure confidentiality of information.

Auditing of national security organs

(2) The audit reports on national security organs may be redacted to shield identities of persons as well as assets and liabilities as the case may be.

(3) All staff of the Auditor-General carrying out audit under this section shall be vetted by the authorised government vetting agency.

PART V—ACCOUNTS OF THE OFFICE OF THE AUDITOR-GENERAL

41. (1) The funds of the Office of the Auditor-General shall consist of—

Sources of funds of the Office of the Auditor-General.

- (a) monies appropriated by Parliament for the purposes of the Office of the Auditor-General;
- (b) such monies or assets as may accrue to the office of the Auditor-General in the course of the exercise of the Auditor-General's powers or the performance of his functions under this Act;
- (c) audit fees charged at the rates prescribed by the Auditor-General;
- (d) investment income subject to annual approval by Parliament; and
- (e) all monies from any other source provided or donated or lent to the office of the Auditor-General and such monies shall be disclosed to Parliament.

(2) The receipts, earnings or accruals of the office of the Auditor-General shall not be paid into the Consolidated Fund but shall be retained for purposes of this Act in accordance with Article 206 (1) of the Constitution.

(3) The Auditor-General may open and maintain such bank accounts in accordance with section 28 of the Public Finance Management Act, 2012, as are necessary for the exercise of the functions of the office of the Auditor-

No. 18 of 2012.

General and shall pay into them all monies received from the Government, or from any other source, for the purposes of this Act.

42. Notwithstanding the provisions of this Act, in an examination under this Act, the Auditor-General shall not question the merits of a policy objective of the national government or county government or any other public entity.

Auditor General not to question Government policy objectives.

43. (1) For each financial year, the Accounting Officer of the office of the Auditor-General shall prepare and submit upon approval by the Auditor-General, for audit the financial statements of the office of the Auditor-General to an external auditor appointed by the National Assembly in accordance with Article 226 (4) of the Constitution.

Accounts of the Office of the Auditor General.

(2) The financial statement shall include the following—

- (a) a statement of financial performance;
- (b) a statement of financial position;
- (c) a statement of changes in net assets;
- (d) a statement of accounting policies and notes to the financial statements; and
- (e) a statement of performance of the Office of the Auditor-General including statements on processes and systems audit against predetermined objectives.

(3) Without prejudice to subsection (2), the Accounting Officer shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed and published by the Public Sector Accounting Standards Board in accordance with the Public Finance Management Act, 2012.

44. (1) The accounting officer of the office of the Auditor-General shall submit accounts of the office to the appointed auditor under section 41, within three months

Audit of accounts

after the end of the financial year to which the accounts relate.

(2) The appointed auditor shall examine and audit the submitted accounts of the office of the Auditor General within six months after the end of the financial year in accordance with the provisions of Part IV of this Act, express an opinion and certify the result of that examination and audit.

(3) The appointed auditor shall examine whether or not public money has been applied lawfully and in an effective way.

45. (1) The appointed auditor shall prepare a report on the examination and audit and submit the report to each relevant Clerk of Parliament, with a copy to the Cabinet Secretary responsible for finance and the Auditor-General.

Reporting by the
appointed auditor.

(2) Subject to Article 35 of the Constitution, Parliament shall publicise it on their official website and other public spaces.

(3) Within fourteen days after the expiry of seven days upon submitting the report to Parliament, the Auditor-General shall publicise the report on their official website and other public spaces.

(4) Without limiting what may be included in the report—

- (a) the report shall indicate whether—
 - (i) the information and explanations that were required to perform the examination and audit were received;
 - (ii) proper books of accounts have been kept and the accounts are in agreement therewith;and
 - (iii) the accounts present a true and fair view of the financial position of the office of the Auditor-General;

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- (b) the report shall identify cases in which—
- (i) money has been spent in a way that was not lawful, economical, efficient and effective; and
 - (ii) the rules and procedures followed or the records kept were inadequate to safeguard assets, liabilities and the collection of revenue.

46. Within three months after receiving an audit report for the accounts of the Office of the Auditor-General, the National Assembly shall debate and consider the Annual Report of the office of the Auditor-General, comprising the financial statements and the activities of the office and take appropriate action.

Debating and considering report of appointed auditor.

PART VI—REPORTING BY AUDITOR-GENERAL

47. (1) The financial statements required under the Constitution, the Public Finance Management Act, 2012 and any other legislation, shall be submitted to the Auditor-General within three months after the end of the fiscal year to which the accounts relate.

Time limit for submission of accounts.

No. 18 of 2012.

(2) The financial statements shall be in the form and content as prescribed by the Public Sector Accounting Standards Board.

48. Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on the accounts specified in Article 229 of the Constitution.

Accounts for audit.

(2) Without prejudice to the provisions of subsection (1), the Auditor-General may audit and report on the accounts of any entity that is funded from public funds.

49. (1) If, in the course of an examination and audit, a matter comes to the attention of the Auditor-General that he or she feels should be brought to the attention of the Parliament or the relevant county assembly, the Auditor-General shall submit a special report to Parliament or the relevant county assembly in accordance with the protocols developed in the Regulations.

Special reports in the course of annual audit of the accounts of State organs.

(2) Within seven days of receipt, Parliament or the relevant county assembly, shall publicize that report on their official website and any other public notice and shall publish a notice in the gazette to inform the public of the availability of the report.

(3) Within fourteen days following the expiry of the seven days referred to under subsection (2), the office of the Auditor-General shall publicize that report on its official website and any other public notice.

(4) Within sixty days following the expiry of the seven days referred to under subsection (2), Parliament or relevant county assembly shall discuss and review the report.

50. (1) The final audit report of the Auditor-General shall be submitted to Parliament or the relevant county assembly, with copies to the Cabinet Secretary responsible for finance and the relevant County Executive Committee member for finance, as the case may be, and the accounting office of the entity that is subject of the audit.

Final audit reports on a State Organ or public entity including national or county governments accounts.

(2) Within three months of receiving an audit report referred to under subsection (1), Parliament or the relevant county assembly shall debate and consider the report and take appropriate action.

51. (1) Within thirty days following the expiry of the seven days of publication period, Parliament or the relevant county assembly shall discuss and review other reports submitted to them.

Other reporting by the Auditor-General.

(2) Within fourteen (14) days following the expiry of the seven days publication period, the office of the Auditor-General shall publicize the report on its official website and any other public notice.

52. Where Auditor-General makes use of national or local media to publicise the reports under this Act, he or she shall take into consideration the following factors—

Use of media in publicizing of reports.

- (a) the general nature of the report or document;
- (b) how and where it has been published and how it may be accessed and read by members of the public;
- (c) the need to widely circulate a summarized version of the report;
- (d) accessibility of the document at public libraries or offices of State Organs and public entities; and
- (e) any other forum that the Auditor-General may consider appropriate.

53. (1) The relevant accounting officer of a state organ or public entity shall within three months after Parliament has considered and made recommendations on the audit report—

Implementation of reports by an accounting officer.

- (a) take the relevant steps to implement the recommendations of parliament on the report of the Auditor-General; or
- (b) give explanations in writing to the Parliament on why the report has not been acted upon.

(2) Failure to comply with the provisions of subsection (1), the accounting officer shall be in contempt of Parliament or County Assembly and upon determination by Parliament or relevant County Assembly, Parliament or relevant County Assembly may recommend administrative sanctions such as removal as the Accounting Officer, reduction in rank among others.

54. Where there is a serious material breach or persistent material breaches of the provisions of this Act, the Auditor-General may in his audit report to Parliament or the relevant county assembly pursuant to the Public

Withholding of funds by Parliament or county assembly. No. 18 of 2012.

Finance Management Act, 2012, recommend the withholding of funds to any State Organ or public entity.

PART VII—THE CODE OF CONDUCT AND ETHICS

55. The Auditor – General in discharging his or her functions and responsibilities shall determine the code of conduct and ethics for all public officers in the Office if the Auditor General, which shall be in line with those prescribed by the Constitution, this Act and the Public Officer Ethics Act, 2003.

Observing the code of conduct.

No. 3 of 2003.

56. It shall be the obligation of every officer of the Office of the Auditor-General to observe the Code of Conduct and Ethics developed by the Auditor-General under section 55.

Observance of Code of Conduct and Ethics.

57. Any staff of the Office of the Auditor-General or an auditor outsourced by the Office who may be proven to have been compromised, bribed or corrupted in any way in consideration for suppressing a fraud or corrupt practice by the Auditee client shall be liable to administrative action under this Act or by the relevant professional body over and above any criminal proceedings which may be preferred against him or her in accordance with this Act or any other written law.

Administrative action.

58. (1) All staff of the Office of the Auditor-General are duty bound to disclose any fraud or corruption that comes to their attention immediately and disciplinary action shall be taken against any officer who knowingly covers up any acts of fraud or corruption.

Disclosure of fraud and corruption.

(2) Despite the provisions of subsection (1), an officer of the Office of the Auditor-General shall not divulge any information which relates to the business secret of the Auditee which comes to his or her knowledge in the course of duty unless is for official purposes as provided for under this Act or any other written law.

59. (1) An officer of the Office of the Auditor-General who has an interest in a matter under consideration by the auditee client shall disclose in writing, the nature of

Disclosure of interest.

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that interest and shall not participate in any auditing exercise relating to that client.

(2) An officer who fails to disclose an interest in a matter in accordance with subsection (1) shall be subject to administrative action under the provisions of this Act or Regulations made thereunder.

60. (1) The Auditor-General shall put in place a mechanism for confidential reporting about the officers of the Office of the Auditor-General relating to unlawful acts or orders relating to violation of laws in relation to public funds, gross wastage, mismanagement and abuse of authority.

Confidential
reporting of
unlawful acts.

(2) Any person reporting a corrupt practice or misconduct by an audit officer with knowledge or good faith or belief that the allegation or information is true, shall be treated with utmost confidentiality.

(3) Allegations and concerns reported anonymously shall be reviewed and considered as appropriate and some of the factors to be considered by the Auditor-General shall include the seriousness of the allegation, its credibility, and the extent to which the allegation can be confirmed or corroborated by attributable sources.

(4) Subject to the Witness Protection Act, 2006 the Auditor-General shall not disclose the identity of a person under this section, unless—

Act 16 of 2006.

- (a) such person agrees to be identified;
- (b) identification is necessary to allow appropriate law enforcement official to investigate or respond effectively to the disclosure;
- (c) is required by law where a false accusation has been maliciously made; or
- (d) the person accused is entitled to the information as a matter of legal right and in such an eventuality the Auditor-General, shall inform the person prior to revealing his or her identity.

PART VIII—OFFENCES AND SANCTIONS

61. (1) Any officer of the Office of the Auditor-General commits an offence if that officer—

Offences by officers of the office of the Auditor-General.

- (a) engages in a corrupt act;
- (b) knowingly and willfully conceals information on audit findings for whatever reason, including in order to obtain a financial benefit for the officer or an accomplice or another person;
- (c) knowingly and willfully fails to disclose audit information on fraud or corrupt practice by the audited entity;
- (d) fails to disclose any conflict of interest in any matter under consideration in the course of discharging any functions under this Act; or
- (e) knowingly and wilfully discloses ,publishes or publicizes the Auditor General's audit report or its contents to third parties including the media before the report is finalized and formally submitted to Parliament or County Assembly and copied to the audited entity and other authorized offices;

(2) Any officer of the Office of the Auditor-General who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both.

62. (1) A person shall not—

Other Offences.

- (a) without reasonable cause or lawful excuse, obstruct or hinder, assault or threaten a member of staff of the Office of the Auditor-General or professional acting under this Act;
- (b) without justification, fail to provide information required under this Act:

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- (c) without justification, fail to provide information within reasonable time that is required under this Act;
- (d) submit false or misleading information;
- (e) misrepresent to or knowingly mislead a member of staff of the Office of the Auditor-General or professional acting under this Act; or
- (f) interfere with or exert undue influence on any staff of the Office of the Auditor-General or on any person authorized by the Auditor-General to perform functions under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both.

63. Except as otherwise provided for under this Act, a person who is found guilty of an offence under this Act for which no other punishment is given, is liable on conviction to a fine not exceeding two million shillings or to a term of imprisonment not exceeding one year or, to both.

General penalty.

64. (1) Where the Auditor-General establishes that any person, supplier or company has been involved in fraud or corrupt practice, the Auditor-General shall report to the police, Ethics and Anti-Corruption Commission or the Public Procurement Oversight Authority for their action.

Powers to report to police, etc.

(2) Where the matter is referred to the Public Procurement Oversight Authority, the Auditor-General may make recommendation for debarment from future public procurement and asset disposal proceedings of a state organ or public entity with a copy to the relevant accounting officer.

65. If it is established by the Auditor-General that there has been any deficiency in respect of any money or assets subject to its audit, the Auditor-General may recommend to Parliament or county assemblies that the

Surcharge.

person in default or responsible should be surcharged with the amount of the deficiency or loss.

66. A person who is convicted of an offence under this Act shall not be eligible to hold public office or work with an entity owned in whole or part by the State for a period of ten years following the conviction.

Ineligibility to hold public office.

67. Where the Auditor-General becomes aware of—

Disallowable expenditure.

- (a) any payment made without due authority; or
- (b) any deficiency or loss occasioned by negligence or misconduct; or
- (c) any sum which ought to have been, but was not brought to account,

he or she shall, in the case of expenditure, call in question the sum concerned and make a report on the sum to Parliament and the relevant county assembly.

PART IX—GENERAL PROVISIONS

68. The Cabinet Secretary responsible for matters relating to finance may make Regulations not inconsistent with this Act respecting any matter that is necessary or convenient to be prescribed under this Act or for the carrying out or giving effect to this Act.

Power to make Regulations.

69. The Auditor-General may make a written request to the Attorney-General seeking a legal opinion or advice on matters of law or fact, as the case may be.

Legal opinions and advice by the Attorney-General.

70. This Act shall prevail in case of any inconsistency between this Act and any other legislation relating to the functions and powers of the Auditor-General.

Supremacy of this Act.

71. The Auditor-General and his or her staff, or a person acting on the directions of the Auditor-General shall not be personally liable for any act or omission done or omitted in good faith in carrying out any duty, or exercising any power or function of the Auditor-General under this Act or the Constitution.

Protection from personal liability.

72. The Public shall have right of access to official reports of the Auditor-General in line with Article 35 of the Constitution for transparency and accountability, except where such access may unduly jeopardize state security.

Public right of access to official audits reports.

PART X—REPEAL, SAVINGS AND TRANSITION PROVISIONS

73. (1) The Public Audit Act, 2003, is repealed.

Repeal of No.12 of 2003.

(2) Despite subsection (1) —

- (a) any proceedings taken against or by the Kenya National Audit Office or pending against that office or any other person immediately before the commencement of this Act may be continued by or against the Kenya National Audit Office as if instituted under this Act:
Provided that criminal proceedings shall be regarded as pending if the person concerned had pleaded to the charge in question.
- (b) any administrative investigation or inquiry instituted in terms of the repealed Act which was pending before the commencement of this Act shall be continued or disposed of as if instituted under this Act;
- (c) all disciplinary proceedings which immediately before the commencement of this Act were pending shall be continued or concluded as if instituted under this Act;
- (d) all appeal processes, which immediately before the commencement of this Act were pending, shall proceed as if instituted under this Act;
- (e) the persons employed by the Kenya National Audit Office shall be transferred to the Office of the Auditor-General established under this Act;
- (f) a contract subsisting between the Kenya National Audit Office and another person before the commencement of this Act shall continue to exist

as if it was a contract entered into between the Office of the Auditor General and that other person; and

- (g) the Kenya National Audit Commission established by the repealed Act shall cease to exist within thirty days from the day of commencement of this Act;

(3) Any references to the words "Controller and Auditor-General" under any written law shall be construed to refer to the words "Auditor-General".



THE JUDICIARY
OFFICE OF THE CHIEF REGISTRAR OF THE JUDICIARY

TENDER NOTICE

The Judiciary invites sealed bids from eligible tenderers to offer the following works and services.

Tender Number	Description	Tender Security (Kshs.)	Pre Bid Conference	Tender Opening Date
JUD/07/051/2023-2024	Provision of Cleaning Services for the Judiciary under a Framework Contract for a period of three (3) years (Reserved for Youth)	Tender Securing Declaration Form	13 th March, 2024 at 10.00am View the link: https://shorturl.at/cehs0	25 th March, 2024 at 10.00 a.m.
JUD/07/052/2023-2024	Proposed Completion of Amagoro Law Courts	Kenya Shillings One Million Only (Kshs. 1,000,000.00)	13 th March, 2024 at 2.00pm View the link: https://shorturl.at/cehs0	26 th March, 2024 at 10.00 a.m.
JUD/07/053/2023-2024	Provision of Conference Facilities under a framework contract for a period of three (3) years	Kenya Shillings One Hundred Thousand Only (Kshs. 100,000.00)	14 th March, 2024 at 10.00am View the link: https://shorturl.at/cehs0	27 th March, 2024 at 10.00 a.m.

Interested and eligible candidates may view or obtain tender documents from the Judiciary's website: www.judiciary.go.ke and from the Public Procurement Information Portal (PIIP) website: www.tenders.go.ke. Any request for clarifications must be made in writing at least five (5) days prior to the tender closing date. All clarifications and addenda will be posted on the Judiciary and PIIP websites. Tenderers are encouraged to attend virtual pre-bid conferences as scheduled above. Tenderers are also encouraged to visit the sites to familiarize with the scope of the works and services as applicable.

Prices quoted shall be inclusive of all taxes and must be expressed in Kenya Shillings that shall remain valid for one hundred and twenty (120) days from date of the tender closing. Tenderers must also be accompanied with a Tender Securing Declaration Form or a Tender Security as indicated above valid for a period 150 days from the date of tender closing and in the form of a guarantee from institutions approved by the Public Procurement Regulatory Authority (PPRA) addressed and payable to the Chief Registrar of the Judiciary. Tenderers MUST ensure ALL pages of the tender documents are duly paginated sequentially.

Completed tender documents are to be enclosed in a plain sealed envelope, clearly marked with the respective tender number and description and deposited in the Tender Box located at the Main Gate, Supreme Court Building Entrance, City Hall Way, Nairobi or addressed and posted to:

CHIEF REGISTRAR OF THE JUDICIARY
ATT: SUPPLY CHAIN MANAGEMENT SERVICES
P.O BOX 30041-00100,
NAIROBI, KENYA

to be received on or before the dates indicated above.

Tenders will be opened immediately thereafter in the presence of the designated tenderers representatives at the Boardroom located at the 2nd floor, Room 74, Supreme Court Building or as may be advised. Late tenders shall be rejected.

PAUL N. MAINA, OGW, 'NDC' (K)
Ag. DEPUTY CHIEF REGISTRAR OF THE JUDICIARY



KENYA NATIONAL ASSURANCE COMPANY (2001) LIMITED

SALE OF 1413 PLOTS DERIVED FROM PLOT L.R MN/397/1 BAMBURI - (KWABULO)

Kenya National Assurance Company (2001) Limited and Kenent Holdings Limited are offering for sale 1413 Plots derived from L.R Number MN/397/1 Bamburi (Kwa Bulu) through competitive bidding. This offer is open to everyone including those to whom the offer had been made earlier but for whatever reason failed to take up the offer.

The bidding procedure

(a) Bid forms

Interested parties can obtain bid documents from the company office situated in Social Security House, Mombasa 1st Floor Room 103, upon payment of a non-refundable fee of Kshs 1000/=. The form will describe the Plot and indicate the reserve price.

(b) Completion of Bid Forms

The Bid for each plot must be made in a separate bid form clearly indicating the plot number, the name of the bidder and the amount offered. Incomplete bid forms will be rejected.

(c) Submission of Bids

Completed bid forms should be enclosed in a sealed envelope addressed to the Principal Officer, Kenya National Assurance Company (2001) Limited and shall be deposited in the Tender Box at the KNAC (2001) Limited Offices situated in Social Security House, Mombasa, 1st Floor, Room 103 Reception Area. All bids should be received on or before 2nd April, 2024 at 10.00 A.M. Any submission received after the deadline will be disqualified.

(d) Opening of Bids

Bidders and their representatives who may choose to attend are invited to witness the opening of the bids at the company offices situated at Social Security House, Mombasa, 1st Floor, Room 103 at 10.00 A.M on the 2nd April 2024. The Company reserves the right to accept or reject any bid.

NB: Those who responded to the earlier offer and have fully paid for their plots are invited to collect their titles.



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - THIRD SESSION (2024)
THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118(1) (b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF-

1. THE UNIVERSITIES (AMENDMENT) (NO. 5) BILL (NATIONAL ASSEMBLY BILL NO. 79 OF 2023);
2. THE PUBLIC AUDIT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2024);
3. THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2024);
4. THE AGRICULTURAL AND LIVESTOCK EXTENSION SERVICES BILL (SENATE BILL NO. 12 OF 2022);
5. THE MUNG BEANS BILL (SENATE BILL NO. 13 OF 2022);
6. THE START-UP BILL (SENATE BILL NO. 14 OF 2022);
7. THE LEARNERS WITH DISABILITIES BILL (SENATE BILL NO. 4 OF 2023);
8. THE PERSONS WITH DISABILITIES BILL (SENATE BILL NO. 7 OF 2023); AND
9. THE KENYAN SIGN LANGUAGE BILL (SENATE BILL NO. 9 OF 2023);

INVITATION TO SUBMIT MEMORANDA

WHEREAS Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS The Universities (Amendment) (No. 5) Bill (National Assembly Bill No. 79 of 2023); the Public Audit (Amendment) Bill (National Assembly Bill No. 3 of 2024); the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 10 of 2024); the Agricultural and Livestock Extension Services Bill (Senate Bill No. 12 of 2022); the Mung Beans Bill (Senate Bill No. 13 of 2022); the Start-up Bill (Senate Bill No. 14 of 2022); the Learners with Disabilities Bill (Senate Bill No. 4 of 2023); the Persons with Disabilities Bill (Senate Bill No. 7 of 2023); and the Kenyan Sign Language Bill (Senate Bill No. 9 of 2023) have been read a First Time and referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED THAT:

1. The Universities (Amendment) (No. 5) Bill (National Assembly Bill No. 79 of 2023) is a Bill sponsored by Hon. Benjamin Gathiru, MP, that seeks to amend the Universities Act, 2012 to limit universities from offering certificate and diploma courses.
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 - (a) amend the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 to increase the membership of the selection panel from seven to nine to accommodate a wide spectrum of stakeholders and interest groups;
 - (b) amend section 6 of the Act to include additional professional qualifications for appointment as a member of the Independent Electoral and Boundaries Commission;
 - (c) amend section 10 of the Act to provide that the secretary of the IEBC shall hold office for a term of three years that is renewable once;
 - (d) replace the current Fifth Schedule to the Act to provide for the procedure for delimitation of boundaries in an updated Schedule; and
 - (e) delete obsolete provisions and make consequential amendments intended to align the Act to the decision of the court in *Katiba Institute & 3 Others v Attorney-General & 2 Others* (2018) eKLR.
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8. The Persons with Disabilities Bill (Senate Bill No. 7 of 2023) is a Bill sponsored by Sen. Crystal Asige, MP that seeks to provide the institutional framework for protecting, promoting and monitoring the rights of persons with disabilities and to provide incentives and reliefs that give effect to Article 54 of the Constitution.
9. The Kenyan Sign Language Bill (Senate Bill No. 9 of 2023) is a Bill sponsored by Sen. Crystal Asige, MP that seeks to give effect to Article 7 (3)(b) of the Constitution on the promotion and development of the use of Kenyan Sign Language. The Bill provides for the inclusion of sign language in the education curriculum and the use of sign language in legal proceedings.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3) the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below—

NO.	BILL	COMMITTEE
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The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to ena@parliament.go.ke to be received on or before Thursday, 21st March 2024 at 5.00 p.m.

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings and on: www.parliament.go.ke/the-national-assembly/house-business/bills.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
8th March 2024

"For the Welfare of Society and the just Government of the People"

Noble Women governors caucus to focus on mentorship

Ruto: Let's make two-thirds gender principle a reality



President William Ruto during the launch of the G7 strategy at Safari Park Hotel in Nairobi yesterday. PHOTO: PCS

He says women should be effectively represented in leadership positions across the board

BY NICHOLAS MURURI

President William Ruto has said his administration is committed to achieving the two-thirds gender principle.

He said he is doing this through constitutional amendments to ensure that women are effectively represented in leadership positions in various arms of government.

Dr Ruto, who joined the seven lected women governors at the launch of the G7 strategy in Nairobi, urged MPs to support the proposals aimed at making the principle a reality.

"In the Bill that will be tabled in Parliament, we will ensure that more women are elected to Parliament for representation. This will be the official position of the Kenya Kwanza coalition and all MPs are expected to support the Bill. We have spoken to many leaders, including men, and for the first time they are committed to this cause," he said.

The Head of State has also called 11 political parties to support women leaders, revealing that the United Democratic Alliance (UDA) is planning to introduce new rules in its constitution to allocate gender when fielding candidates for governorship and the presidency in the upcoming elec-

tions.

"We have to lead from the front as a party and we have to make rules that when Deputy President Rigathi Gachagua and I have decided on our line-up, we must also agree that if a man is the presidential candidate in our party, a woman must be the deputy and if a woman is the candidate, the running mate must be a man. And we have to cascade it down to the governors. We must be conscious and deliberate about it, otherwise it will not happen," Dr Ruto said.

The seven women governors, led by Council of Governors Chairperson Anne Waiguru, said the caucus will focus on mentorship programmes. The caucus is currently focusing on increasing the number of women governors to at least 16 in the 2027 polls.

Ms Waiguru also called on the Head of State to support women in various capacities, especially in winning the presidential seat.

"We fully support the President to achieve his 10-year development vision and immediately after his two terms, there is no other

We must also agree that if a man is the presidential candidate in our party, a woman must be the deputy...

President William Ruto



er promise to support anyone else. We urge him to hold the hand of a woman so that she can also clinch the top seat in this country because as women we are ready," said Ms Waiguru.

Previous legislative attempts to implement the two-thirds gender principle have stalled due to lack of support from MPs.

In 2020, former Chief Justice David Maraga recommended that Parliament repeal the law because it did not meet the two-thirds requirement.

The National Dialogue Committee report adopted by Parliament has recommended the implementation of the two-thirds rule as a way of ensuring gender parity in electoral processes.

A multi-sectoral working group on the two-thirds gender principle, led by Gender Cabinet Secretary Aisha Jumwa, last week submitted a report, which is currently before Parliament, with a number of recommendations on how to achieve gender parity.

The report recommends a constitutional amendment to appoint 53 more women to the National Assembly and two more to the Senate to meet the constitutional threshold.

It also proposes the amendment of the Political Parties Act 2011 to establish the Women's Inclusion and Political Participation Fund to finance the training, mentoring and empowerment of women seeking elective positions.

The team also recommended that the Electoral Act 2011 be amended to provide for the submission of party lists that meet the gender rule.



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S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY

8th March 2024

"For the Welfare of Society and the just Government of the People"



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote
Ref: NA/DDC/F&NP/2024/051

23rd April 2024

Dr. Chris K. Kiptoo, CBS
Principal Secretary
The National Treasury
Ministry of National Treasury and Economic Planning
Treasury Buildings
NAIROBI.

FCPA Nancy Gathungu, CBS
Auditor General
Office of the Auditor General
3rd Floor, Anniversary Towers, University Way
NAIROBI.

**RE: STAKEHOLDER ENGAGEMENT ON THE PUBLIC AUDIT (AMENDMENT)
BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 3 OF 2024). BY THE
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**

The Departmental Committee on Finance and National Planning is established pursuant to National Assembly Standing Order 216 which mandates it *inter alia*, to **study and review all the legislation referred to it.**

The **Public Audit (Amendment) Bill, 2024 (National Assembly Bill No. 3 of 2024)**, (*copy attached*), underwent the First Reading pursuant to Standing Order 127(3) on **Thursday, 29th February 2024** and was committed to the Departmental Committee on Finance and National Planning consideration and reporting back to the House.

The principal object of the Bill is to amend the Public Audit Act, 2015, in order to align it with the Constitution following a declaration issued by the High Court (*in the case of Transparency International (TI) v Attorney-General & Auditor-General interested party, Africa Centre for Open Governance (Africog)...2nd interested party, Petition No. 388 of 2016*) that sections 4(2), 8, 12, 17(1), 18, 27, 40, 42, and 70 of the Public Audit Act 2015 are unconstitutional. Additionally, the National Assembly has expressed concern over the provision relating to the recruitment of the Auditor-General, where it was observed that the Act creates an undesirable vacuum between an existing holder of the office and an incoming one. It is, therefore, necessary in these circumstances to update the Act as proposed and to improve the efficiency in the discharge of the Auditor-General's duties.

Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127 (3), the Committee hereby invites you for a meeting to make your submission and comment on the said Bill.

The meeting will be held on **Tuesday, 30th April 2024 in Committee room No 21, 5th Floor, Bunge Tower at 10.00 am.**


You are requested to prepare a comprehensive submission on any presentations you may have on the Bill and email a soft copy to cna@parliament.go.ke on or before the day of the meeting.

The Committee's Liaison Officers for the meeting are **Mr. Benjamin Magut**, who may be contacted on **Tel. No. 0712974966** or **email address: benjamin.magut@parliament.go.ke**; **Ms. Winfred Kambua** on Tel. No **0720571777** or email address winfred.kilonzo@parliament.go.ke or **Mr. Benson Kamande** of telephone number **0789459387** or **email address: benson.kamande@parliament.go.ke**

Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy:

 **Prof. Njuguna Ndung'u, EGH**
Cabinet Secretary
Ministry of National Treasury and Economic Planning
Treasury Buildings
NAIROBI

CABINET SECRETARY
THE NATIONAL TREASURY & PLANNING
629
06 MAY 2020
RECEIVED
P. O. Box 30007 - 00100, NAIROBI



THE PRESIDENCY
EXECUTIVE OFFICE OF THE PRESIDENT
HEAD OF THE PUBLIC SERVICE

Telegraphic Address
Telephone: +254-20-2227436
When replying please quote

STATE HOUSE
P.O. Box 40530-00100
Nairobi, Kenya

Ref. No. **OP.CAB/14/31A**
and date

30th April, 2020, 20.....

Hon. Ukur Yatani, EGH ✓
Cabinet Secretary
The National Treasury & Planning
Treasury Building
NAIROBI

Hon. Justice (Rtd.) Paul Kihara Kariuki, EGH
Attorney General
State Law Office
NAIROBI

CS/Sec
draft a letter of
nominating 2
Besmond Ndungu
6/5/20

Dear *Hon. Yatani;*

RE: REVIEW OF THE PUBLIC AUDIT ACT, 2015

As you are aware, a number of sections in the Public Audit Act, 2015 were challenged at the High Court in February, 2018, subsequent upon which certain provisions in the Act were declared unconstitutional. The provisions are located in Sections 4(2), 8, 12, 17(1), 18, 27, 40, 42 and 70.

More recently, the National Assembly expressed concern over the provision relating to recruitment of Auditor-General, where it was observed that the law as it is presently creates an undesirable vacuum between an exiting holder of the office and an incoming one.

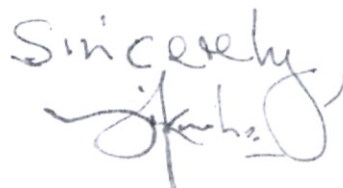
In view of the above, and in order to address this lacuna, it has been decided that a small team comprising officers from the National Treasury, Office of the Attorney General and the

Executive Office of the President be constituted, with a mandate to critically review the Act, and in particular the offending provisions. The team would then come up with a proposal on how best this issue could be addressed and resolved.

The purpose of this letter therefore is to request both the National Treasury and the Office of the Attorney General, to each nominate one (1) officer preferably at the level of management, who will be part of the team assigned to undertake the exercise.

This matter should be accorded the necessary priority.

Yours:



Joseph K. Kinyua, EGH
HEAD OF PUBLIC SERVICE

Copy to:

Mr. Kennedy W. Kihara, CBS
Principal Administrative Secretary/
Assistant Secretary to the Cabinet
Executive Office of the President
Harambee House
NAIROBI.

Mr. Jasper Mbiuki
Secretary, Legal & Legislative Affairs
Harambee House
NAIROBI

SPECIAL ISSUE

Kenya Gazette Supplement No. 28 (National Assembly Bills No. 4)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2024

NAIROBI, 2nd February, 2024

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THE PUBLIC AUDIT (AMENDMENT) BILL, 2024

A Bill for

**AN ACT of Parliament to amend the Public Audit Act,
2015 and for connected purposes**

ENACTED by Parliament of Kenya, as follows—

1. This Act may be cited as the Public Audit (Amendment) Act, 2024.

Short title.

2. The Public Audit Act, 2015 (hereinafter referred to as the “principal Act”) is amended in section 2—

Amendment of
section 2 of No.
34 of 2015.

(a) in paragraph (a), in the definition of the words “accounting officer”, by deleting the expression “16(1)(b)” and substituting therefor the expression “4(2A)”.

(b) by deleting the definition of “Auditor-General” and substituting therefor the following new definition—

“Auditor-General” means the Auditor-General appointed in accordance with Article 229 of the Constitution;

(c) by deleting the definition of “effectiveness” and substituting therefor the following new definition—

“effectiveness” means the extent to which a programme attained, or is expected to attain, its objectives, efficiency in a sustainable manner;

(d) by deleting the definition of “lawful” and substituting therefor the following new definition—

“lawful” includes compliance with relevant laws, regulations, policies and guidelines;

(e) by deleting the definition of “office”;

(f) by deleting the definition of “public entity” and substituting therefor the following new definition—

“public entity” includes any state organ, department or agency of the government and any authority, body, or other

entity declared to be a government entity under the Public Finance Management Act, 2012 and any other public entity entrusted with public resources;

No. 18 of 2012.

(g) by deleting the definition of “public funds”;

(h) by inserting the following new definitions in their proper alphabetical sequence —

“Audit” means an objective and systematic assessment or evaluation of financial and other information reported by or obtained from public entities, to determine whether information or actual conditions on the performance of the public entities conform to established criteria;

“disallowable expenditure” means wasteful, irregular, unauthorized and nugatory expenditure;

“economy” means minimizing the cost of resources used or required to achieve priority objectives;

“efficiency” means a measure of how economically resources or inputs including fund, expertise and time are converted to results;

“grant” has the meaning assigned to it under section 47 of the Public Finance Management Act, 2012;

No. 18 of 2012.

“irregular expenditure” has the meaning assigned to it under the Public Finance Management Act, 2012;

No. 18 of 2012.

“Office of the Auditor-General” means the independent office of the Auditor-General incorporated in accordance with Article 253 of the Constitution;

“public money” means —

(a) all money that comes into possession of, or is distributed by, a State organ including the national or county governments and intergovernmental entities and money raised by a private body under statutory authority;

(b) money held by State organ or public entities in trust for third parties and any money that can generate liability for the government; and

(c) any grant disbursed by government to third parties or non-public entities to pursue a government policy objective;

“public resources” includes land, buildings, facilities, funds, equipment, supplies and inventories, human resource, state compensated time and intangible property received or entrusted to an entity on behalf of the public; and

“unauthorized expenditure” has the meaning assigned to it under the Public Finance Management Act, 2012.

No. 18 of 2012.

3. Section 4 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 4 of No. 34 of 2015.

“(2) The Office shall comprise the Auditor-General, who shall be the accounting officer, and the staff appointed by the Auditor-General.”

4. Section 5 of the principal Act is amended—

Amendment of section 5 of No. 34 of 2015.

(a) by deleting the expression (1); and

(b) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) is a practicing member of good standing of a professional body of accountants recognized by the Accountants Act.”

5. Section 7 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (c) —

Amendment of section 7 of No. 34 of 2015.

(ca) satisfy himself or herself that public resources have been applied or used in an economic, efficient, effective, transparent and sustainable manner;

6. The principal Act is amended by repealing section 8 of the Act and substituting therefor the following new section—

Repeal and substitution of section 8 of No. 34 of 2015

Administrative functions of the Auditor-General.

8. (1) In addition to the powers and functions conferred under the Constitution, this Act and other relevant law, the Auditor-General shall—

(a) develop an organizational structure and staff establishment for the Office of the Auditor-General;

- (b) recruit and promote qualified and competent staff to perform the Office's functions;
- (c) establish and abolish offices in the Office of the Auditor-General;
- (d) appoint persons to hold or act in those offices and to confirm appointments;
- (e) exercise disciplinary control over staff;
- (f) develop human resource of the office;
- (g) determine, in consultation with Salaries and Remuneration Commission, the remuneration and benefits of each member of staff; and
- (h) develop and maintain a code of ethics issued by the International Organization of Supreme Audit Institutions and in accordance with the Code of Conduct as envisaged in the Public Officer Ethics Act, 2003 and guided by the international best practice.

(2) In performance of administrative functions provided for under sub-section (1), the Auditor-General may, where he or she deems fit, seek advice of the Audit Advisory Board established under section 25 of this Act and shall be guided by Article 47 (1) and (2) of the Constitution.

7. Section 9 of the principal Act is amended in subsection (1) by deleting the words "telephone access" in paragraph (g) and substituting therefor the words "communication connectivity".

Amendment of section 9 of No. 34 of 2015.

8. Section 11 of the principal Act is amended—

Amendment of section 11 of No. 34 of 2015.

- (a) by deleting subsection (1) and substituting therefor the following new subsection—

- (1) The position of the Auditor-General shall become vacant—
- (a) upon expiry of the Auditor-General's term of office;
 - (b) if the Auditor-General dies;
 - (c) where, by a notice in writing addressed to the President, the Auditor-General resigns from office; or
 - (d) if the Auditor-General is removed from office under any of the circumstances specified in Article 251 or Chapter Six of the Constitution.

(b) by inserting the following new subsection immediately subsection (1) —

“(1A) Where the term of office of the Auditor-General is due to expire, the Auditor-General shall notify the appointing authority in writing of the contemplated vacancy, three months prior to expiry of the term.”

(c) in subsection (2), by deleting the expression “subsection (1)” and substituting therefor the words “subsection (1)(b),(c) and (d) or upon notification under subsection (1A)”.

(d) in subsection (11), by inserting the following proviso—

Provided that where the appointment is to be done upon expiry of the Auditor-General's term, such appointment shall strictly be done as such.

9. The principal Act is amended by repealing section 14 of the Act and substituting therefor the following new section—

Organizational structure.

14. (1) The Office of the Auditor-General shall develop an appropriate organizational structure.

(2) For the purposes of sub-section (1), the Auditor-General may seek advice of the Audit Advisory Board.

Repeal and substitution of section 14 of No. 34 of 2015.

10. Section 15 of the principal Act is amended —Amendment of
section 15 of No.
34 of 2015.

- (a) by deleting subsection (1) and substituting therefor the following new subsection—

“(1) There shall be a Deputy Auditor-General who shall be competitively recruited by the Auditor-General”.

- (b) in subsection (2), by deleting the word “senior”.

11. Section 16 of the principal Act is amended—Amendment of
section 16 of No.
34 of 2015.

- (a) in subsection (1)—

- (i) by deleting the opening statement and substituting therefor the following—

“(1) The Deputy Auditor-General shall be the principal assistant to the Auditor-General and—”

- (ii) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) shall deputize for the Auditor-General in the execution of the Auditor-General’s function save for the express powers provided under the Constitution.”

- (iii) by deleting paragraph (b); and

- (b) in subsection (2) by deleting the word “senior”.

12. Section 17 of the principal Act is amended—Amendment of
section 17 of No.
34 of 2015.

- (a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) The Auditor-General may recruit such staff as may be necessary for proper discharge of his or her functions under the Constitution, this Act and any other written law, upon such terms and conditions as he or she may determine in consultation with the Salaries and Remuneration Commission.

- (b) by deleting subsection (4) and substituting therefor the following new subsection—

(4) The recruitment of staff under this section shall take cognizance of affirmative action and shall comply with the values and principles contemplated in Articles 10 and 232 of the Constitution.

13. Section 19 of the principal Act is amended by deleting subsection (3).

Amendment of section 19 of No. 34 of 2015.

14. Section 20 of the principal Act is amended—

Amendment of section 20 of No. 34 of 2015.

(a) in subsection (2), by inserting the words “with a copy to the National Assembly” immediately after the word “finance”; and

(b) by adding the following new subsection immediately after subsection (3) —

(4) If the expenditures provided under sub-section (3) of this section are, in the opinion of the Auditor-General, insufficient to allow the Office of the Auditor-General to properly carry out its mandate, the Auditor-General shall submit to the Speaker of the National Assembly and the Senate a special report to be presented to the Committee responsible for matters related to budget and appropriation.

15. Section 21 of the principal Act is amended—

Amendment of section 21 of No. 34 of 2015.

(a) in subsection (1) —

(i) in the opening statement, by deleting the words “a public body or any person employed by the public body” and substituting therefor the words “any entity or any person receiving or being funded from public funds”;

(ii) in paragraph (a), by deleting the word “body’s” and substituting therefor the word “entity’s”; and

(b) by deleting subsection (3) and substituting therefor the following new subsection—

(3) Where the information required is from a private entity or person, the Auditor-General may apply to the courts to obtain such information.

16. Section 24 of the principal Act is amended—

Amendment of section 24 of No. 34 of 2015.

- (a) in the marginal note, by deleting the words “professional assistance and consultancy” and substituting therefor the words “Use of experts”;
- (b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) The engagement of services under sub-section (1) shall be for purposes of ensuring economy, efficiency and effectiveness in the management of public resources.

17. The principal Act is amended by repealing section 25 of the Act and substituting therefor the following new section—

Repeal and substitution of section 25 of No. 34 of 2015

Establishment and composition of the Audit Advisory Board.

25(1) There is established an unincorporated board to be known as the Audit Advisory Board which shall comprise of—

- (a) the Auditor-General who shall be the Chairperson;
 - (b) the Attorney-General or a person nominated by him or her;
 - (c) a nominee of the Institute of Certified Public Accountants of Kenya;
 - (d) the Chairperson of the Budget and Appropriation Committee of the National Assembly or his or her nominee; and
 - (e) two representatives from Parliament, one from the National Assembly and one from the Senate, from Committees in charge of public finance and audit.
- (2) The Auditor-General may co-opt other members as necessary from time to time.
- (3) The Deputy Auditor-General shall be the Secretary of the Audit Advisory Board.

(4) A person shall be qualified to be nominated under subsection (1)(c) and appointed by the Auditor-General if such person—

(a) has a degree from a university recognized in Kenya;

(b) has a minimum of fifteen years' experience in matters relating to public finance, audit, accounts, law, governance or public management, and

(c) meets the requirements of Chapter Six of the Constitution.

(5) The nomination and appointment of a member under subsection (1)(c) shall take into consideration affirmative action.

(6) A member of the Audit Advisory Board nominated under subsection(1)(c) shall hold office for a term not exceeding three years from the date of appointment and may be eligible for reappointment for a further one term of three years.

(7) The Auditor-General shall provide secretariat services to the Board and assign or appoint such support staff as may be necessary for the Board to effectively perform its functions.

18. The principal Act is amended by repealing section 26 of the Act and substituting therefor the following new section—

Meetings and procedure of the Audit Advisory Board.

26. (1) The quorum for the meeting of the Audit Advisory Board shall be at least three members of the Board.

(2) The Chairperson shall convene and preside over meetings of the Board.

(3) The proceedings of the Audit Advisory Board shall not be invalidated by reason of a vacancy among the members.

Repeal and substitution of section 26 of No. 34 of 2015.

19. The principal Act is amended by repealing section 27 of the Act and substituting therefor the following section—

Repeal and substitution of section 27 of No. 34 of 2015.

Functions of the Audit Advisory Board

27. Subject to section 10 of this Act and upon approval by the Auditor-General, the Audit Advisory Board shall generally be responsible for providing advisory on—

- (a) budget plans and estimates;
- (b) human resource management and development; and
- (c) any other matter that might be referred to the Board by the Auditor-General.

20. The principal Act is amended by repealing section 31 of the Act and substituting therefor the following section—

Repeal and substitution of section 31 of No. 34 of 2015.

Audit process steps.

31. (1) The audit process shall be as follows—

- (a) for all audits or investigations, the Auditor-General shall inform the accounting officer of an entity to be audited or investigated before commencement of the audit;
- (b) at the beginning of an audit of a State Organ or public entity, an entry meeting shall be held to deliberate on the scope of audit between the Auditor-General and accounting officer; and
- (c) the Auditor-General shall prepare and issue a report to Parliament and the relevant County Assembly.

(2) The Accounting Officer shall within fourteen days from receipt of any audit report submit a response to the Auditor-General including remedial actions undertaken to address audit findings.

(3) Where an accounting officer fails to address issues raised by the Auditor-General to the satisfaction of the Auditor-General, the accounting officer is liable to disciplinary action in accordance with—

(a) the terms and conditions of that accounting officer's appointment or employment; or

(b) any provisions prescribed by this Act and any other Act or Regulations made thereunder for the purposes of this section.

32. **21.** The principal Act is amended by repealing section

Repeal of section 32 of No. 34 of 2015.

22. Section 33 of the principal Act is amended—

Amendment of section 33 of No. 34 of 2015.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) Reports by an internal auditor which have been deliberated on and adopted by an Audit Committee of an entity shall be submitted by the accounting officer to the Auditor-General.

(b) in subsection (2), by inserting the expression “and (5)” immediately after expression “Article 229(4)”.

23. Section 34 of the principal Act is amended—

Amendment of section 34 of No. 34 of 2015.

(a) in the marginal note, by deleting the word “periodic” and substituting therefor the word “special”; and

(b) by deleting the word “periodic” and substituting therefor the word “special”.

24. Section 35 of the principal Act is amended by deleting the words “public entities” and substituting therefor the words “entities funded and receiving public funds”.

Amendment of section 35 of No. 34 of 2015.

25. Section 36 of the principal Act is amended—

Amendment of section 36 of No. 34 of 2015.

(a) in subsection (1) —

- (i) by inserting the words “among others” immediately after the word “examine”; and
- (ii) by deleting the words “public money” and substituting therefor the words “public resources”;

(b) in subsection (2), by deleting the words “within six months” and substituting therefor the words “at any time”.

26. The principal Act is amended by repealing section 37 and substituting therefor the following new section—

Repeal and substitution of section 37 of No. 34 of 2015.

Forensic Audits.

37. The Auditor-General may, on his or her initiative or upon request, conduct forensic or investigative audits to establish any fraud, corruption, financial improprieties or misuse of public resources.

27. Section 38 of the principal Act is amended by inserting the words “economically, efficiently and” immediately after the word “lawfully and in”.

Amendment of section 38 of No. 34 of 2015.

28. The principal Act is amended by inserting the following new sections immediately after section 38—

Insertion of new sections in No. 34 of 2015.

Citizen accountability audits.

38A. The Auditor-General may conduct periodic citizen accountability audits upon request, or at her or his own initiative, to ensure public contribution or participation in the audit process pursuant to Article 10 and 201 of the Constitution.

Compliance audits.

38B. The Auditor-General may conduct compliance audits to examine whether a public entity has complied with relevant laws, regulations and policies in the management of public resources.

Any other audit.

38C. The Auditor-General may conduct any other audit that he or she may deem necessary for better carrying out of his or her functions under this Act.

29. Section 39 of the principal Act is amended—

Amendment of section 39 of No. 34 of 2015.

(a) by inserting the following new subsections immediately after subsection (3) —

“(4) Where an audit report has been submitted to Parliament or the relevant County Assembly, the Speakers of Parliament or relevant County Assembly shall invite the Auditor-General to present the report before Parliament or relevant County Assembly.

(5) Within one month after Parliament or a County Assembly has debated and considered the report of the Auditor-General and made recommendations, a State Organ or a public entity that had been audited shall, as a preliminary step, submit a report to Parliament or the relevant County Assembly with a copy to the Auditor-General on how it has addressed the recommendations.

(6) Within six months after Parliament or a relevant County Assembly has made recommendations, the State Organ or public entity that had been audited shall submit a report to Parliament or the relevant County Assembly with a copy to the Auditor-General on how it has addressed the recommendations of the previous year's audit.”

30. Section 41 of the principal Act is amended in subsection (1) by deleting the word “assets” in paragraph (b) and substituting therefor the words “rental income”.

Amendment of section 41 of No. 34 of 2015.

31. The principal Act is amended by inserting the following new section immediately after section 41 —

Insertion of new section in No. 34 of 2015.

Establishment of Public Audit Fund.

41A. (1) There is established a Fund to be known as the Public Audit Fund.

No. 18 of 2012.

(2) The administration of the Public Audit Fund shall be in accordance with the Public Finance Management Act, 2012.

(3) The Auditor-General shall use the Fund to meet the expenditure of the audit

mandate as provided in the Constitution and this Act.

32. Section 44 of the principal Act is amended in subsection (1) by deleting the expression “section 41” and substituting therefor the expression “section 43”.

Amendment of section 44 of No. 34 of 2015.

33. Section 45 of the principal Act is amended by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of section 45 of No. 34 of 2015.

(3) Within seven days upon submitting the report to Parliament, the Auditor-General shall publish and publicize the report on the official website or other public spaces.

34. Section 46 of the principal Act is amended—

Amendment of section 46 of No. 34 of 2015.

- (a) by deleting the word “accounts” and substituting therefor the words “financial statements”; and
- (b) by deleting the word “annual” and substituting therefor the word “audit”.

35. Section 48 of the principal Act is amended in subsection (2) by deleting the words “from the public funds” and substituting therefor the words “or entrusted with public resources”.

Amendment of section 48 of No. 34 of 2015.

36. Section 49 of the principal Act is amended—

Amendment of section 49 of No. 34 of 2015.

- (a) by deleting subsection (3) and substituting therefor the following new subsection—

(3) Within seven days of submitting the report, the Auditor-General shall publish and publicize the report on the official website or other public spaces.

- (b) by deleting subsection (4), and substituting therefor the following new subsection—

(4) Within three months following the expiry of the seven days referred to under subsection (2), Parliament or the relevant county assembly shall discuss and issue recommendations on the report.

37. The principal Act is amended by repealing section 50.

Repeal of section 50 of No. 34 of 2015.

38. The principal Act is amended by repealing section 51. Repeal of section 51 of No. 34 of 2015.

39. Section 54 of the principal Act is amended by deleting the words “in his audit report” and substituting therefor the words “prepare a report”. Amendment of section 54 of No. 34 of 2015.

40. Section 58 of the principal Act is amended— Amendment of section 58 of No. 34 of 2015.

(a) in subsection (1), by deleting the word “officer” and substituting therefor the word “staff” ; and

(b) in subsection (2) —

(i) by deleting the words “an officer” and substituting therefor the words “a staff”; and

(ii) by deleting the words “auditee” and substituting therefor the words “audited entity”.

41. Section 59 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection— Amendment of section 59 of No. 34 of 2015.

(1) A staff of the Office of the Auditor-General who has an interest in a matter under consideration by the audited entity shall disclose in writing, the nature of that interest and shall not participate in any auditing exercise relating to that entity.

42. Section 61 of the principal Act is amended in subsection (1) by deleting the word “officer” wherever it appears and substituting therefor the word “staff”. Amendment of section 61 of No. 34 of 2015.

43. The principal Act is amended by repealing section 64 and substituting therefor the following new section— Repeal and substitution of section 64 of No. 34 of 2015.

Powers to engage other agencies.

64(1) Where the Auditor-General establishes that any person, supplier, company or audited entity has been involved in fraud or corrupt practice, the Auditor-General may collaborate with other investigative, enforcement, regulatory and oversight agencies including the National Police Service, Ethics and Anti-Corruption

Commission, Office of the Director of Public Prosecution and Public Procurement Administrative Review Board and the National Treasury for their action.

(2) Where the Auditor-General refers a matter to the Public Procurement Administrative Review Board, the Auditor-General may make recommendations for debarment from future public procurement and asset disposal proceedings of a State organ or public entity with a copy to the relevant accounting officer.

44. The principal Act is amended by repealing section 67 and substituting therefor the following new section—

Repeal and substitution of section 67 of No. 34 of 2015.

Disallowable expenditure and uncollected revenue.

67. Where the Auditor-General becomes aware of—

- (a) any payment made without due authority; or
- (b) any deficiency or loss occasioned by negligence or misconduct; or
- (c) any sum which ought to have been collected, but was not,

he or she shall make a report on the disallowable expenditure and uncollected revenue to Parliament and the relevant County Assembly.

45. Section 68 of the principal Act is amended by deleting the words “Cabinet Secretary responsible for matters relating to finance” and substituting therefor the words “Auditor-General”.

Amendment of section 68 of No. 34 of 2015.

46. Section 72 of the principal Act is amended by inserting the words “subject to section 6 of the Access to Information Act, 2016” at the beginning of the sentence.

Amendment of section 72 of No. 34 of 2015.
No. 31 of 2016.

MEMORANDUM OF OBJECTS AND REASONS

The purpose of the Bill is to amend the Public Audit Act, 2015, in order to align it with the Constitution following a declaration issued by the High Court (in the case of *Transparency International (TI) v Attorney-General & Auditor-General (1st interested party)*, *Africa Centre for Open Governance (Africog)...2nd interested party*, *Petition No. 388 of 2016*) that sections 4(2), 8, 12, 17(1), 18, 27, 40, 42, and 70 of the Public Audit Act 2015 are unconstitutional. Additionally, the National Assembly has expressed concern over the provision relating to recruitment of the Auditor-General, where it was observed that the Act creates an undesirable vacuum between an existing holder of the office and an incoming one. It is, therefore, necessary in these circumstances to update the Act as proposed and to improve the efficiency in the discharge of the Auditor-General's duties.

The salient provisions of the Bill are as follows—

Clause 2 of the Bill contains amendments to definitions in alignment with the new proposals.

Clause 6 of the Bill seeks to repeal section 8 of the Act following the declaration of section 8 as unconstitutional and replace with a new provision, setting out the administrative functions of the Auditor-General, *inter alia*—

- (a) developing an organizational structure and staff establishment for the Office of the Auditor-General;
- (b) recruiting and promoting qualified and competent staff to perform the Office's functions;
- (c) establishing and abolishing offices in the Office of the Auditor-General;
- (d) appointing persons to hold or act in those offices and to confirm appointments; and
- (e) determining, in consultation with Salaries and Remuneration Commission, the remuneration and benefits of each member of staff.

Clause 8 of the Bill proposes to amend section 11 of the Act by providing for the conditions under which the position of the Auditor-General shall fall vacant and the process of filling it for clarity.

Clause 9 of the Bill seeks to repeal section 14 and replace it with a section that clarifies the role of the Audit Advisory Board in development of the organizational structure by the Auditor-General.

Clause 10 of the Bill seeks to amend section 15 of the Act by introducing the position of a Deputy Auditor-General to be recruited by the Auditor-General. This provision abolishes the position of Senior Deputy Auditor-General.

Clause 12 of the Bill seeks to amend section 17 of the Act by substituting the provisions of section 17(1) which was declared unconstitutional.

Clause 17 of the Bill amends the Act by deleting section 25 and substituting therefor a new section 25 redefining the establishment and composition of the Audit Advisory Board.

Clause 18 of the Bill proposes to amend the Act by introducing a new section 27A setting out the functions of the Audit Advisory Board.

Clause 27 of the Bill further proposes to amend the Act by introducing new sections 38A, 38B and 38C defining different types of audit including Citizen Accountability audits within the provisions of Article 229 (6) of the Constitution.

Clause 30 of the Bill seeks to amend the Act by introducing a new section 41A establishing a Fund to be funded from appropriated provisions of the Office of the Auditor General within the fiscal framework limits.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates legislative powers but does not limit fundamental rights and freedoms.

Statement of whether the Bill concerns county governments

The Bill does not affect the functions of the county governments as set out in the Fourth Schedule of the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill will not occasion additional expenditure of public funds.

Dated the 29th January, 2024.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

Section 2 of No. 34 of 2015, which it is proposed to amend—

2. Interpretation

“Accounting Officer” means—

- (a) an Accounting Officer of the Office of the Auditor-General referred to under section 16(1)(b);
- (b) an Accounting Officer as defined under section 2 of the Public Finance Management Act, 2012 (No. 18 of 2012);

“**Audit Committee**” means an audit committee established under sections 73(5) and 155(5) of the Public Finance Management Act, 2012 (No. 18 of 2012);

“Auditor-General” means the Auditor-General appointed in accordance with Article 229 of the Constitution and section 11 of this Act;

“**Appropriation**” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012 (No. 18 of 2012);

“**county government entity**” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012 (No. 18 of 2012);

“effectiveness” means prudent, efficient, economic, transparent and accountable use of public funds to ensure government achieves value for money and that such funds are applied for intended purpose;

“**financial year**” has the meaning assigned to it under Article 260 of the Constitution;

“lawful” includes compliance with a state organ's internal regulations, internal policies, programmes and the prescribed measures for securing efficient and transparent fiscal management;

“office” means the Office of the Auditor-General established under section 4 of this Act;

“**public officer**” has the meaning assigned to it in Article 260 of the Constitution;

“public funds” means—

- (a) all money that comes into possession of, or is distributed by, a State organ including the national or county governments and intergovernmental entities and money raised by a private body under statutory authority;

- (b) money held by State organ or public entities in trust for third parties and any money that can generate liability for the government;

"**public debt**" has the meaning assigned to it under Article 214 of the Constitution;

"public entity" includes any department or agency of the government and any authority, body or other entity declared to be a government entity under the Public Finance Management Act;

"**Receiver of Revenue**" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012 (No. 18 of 2012);

"**State Organ**" has the meaning assigned to it under Article 260 of the Constitution;

"**Wasteful Expenditure**" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012 (No. 18 of 2012);

Section 5 of No.34 of 2015, which it is proposed to amend—

5. Qualification for appointment as the Auditor-General

(1) A person shall be qualified for appointment as the Auditor-General if such person—

- (a) is a citizen of Kenya;
- (b) holds the respective qualifications for the office specified in Article 229(2) of the Constitution;
- (c) holds a degree in finance, accounting or economics from a university recognized in Kenya and demonstrates a verifiable and logical progression in the attainment of his or her educational qualifications;
- (d) meets the requirements of Chapter Six of the Constitution; and
- (e) is a practicing member of good standing of a professional body of accountants recognised by law.

Section 9 of No. 34 of 2015, which it is proposed to amend—

9. General powers of the Auditor-General

(1) Without prejudice to the powers given under the Constitution and this Act and for the purposes of carrying out his or her duties effectively, the Auditor-

General, or an officer authorized for the purpose of this Act, shall have powers—

- (a) to conduct investigations on his or her own initiative, or on the basis of a complaint made by a third party;
- (b) to obtain professional assistance, consultancy or advice from such persons or organizations whether within or outside public service as he/she considers appropriate;
- (c) of conciliation, mediation and negotiation;
- (d) to issue summons to a witness for the purposes of his or her investigation;
- (e) of unrestricted access to—
 - (i) all books, records, returns, reports, electronic or otherwise and other documents of entities listed under Article 229 (4) of the Constitution;
 - (ii) any property or premises used or held by State Organs or public entities covered by Article 229 (4) of the Constitution and subject to audit under this Act,

Provided that such access is reasonably necessary, in the opinion of the Auditor-General, in carrying out his or her functions;

- (f) to request any public officer that is subject to this Act to provide explanations, information and assistance in person and in writing;
 - (g) to locate any of his or her staff or an agent, for a time period to be determined by the Auditor-General, at the premises of any State Organ or public entity that is the subject of an audit or examination or review and that entity shall provide access to staff or agent and adequate office space, furniture and telephone access at the expenses of that State Organ or public entity;
 - (h) to identify the origin of a transaction or officer who directed or approved it, where he or she has determined inaction, omissions, misuse or abuse of public resources by a public officer; and
 - (i) to perform any function and exercise any powers prescribed by any other legislation, in addition to the functions and powers conferred by the Constitution;
- (2) In addition to the powers under the Constitution, and subsection (1), the Auditor-General may without payment of a fee—
- (a) require a search to be made of any records in a public office;

- (b) require copies to be made of, or extracts to be taken from, any records in a public office;
- (c) seize or access or obtain official electronic messages to the extent that it is necessary for purposes of undertaking an investigation or forensic audit in entities listed under Article 229 (4) of the Constitution; and
- (d) solicit assistance of other National and County governments agencies in the exercise of his/her responsibilities under the Constitution, this Act or any other written law.

Section 11 of No. 34 of 2015, which it is proposed to amend—

11. Vacancy in office

(1) The office of the Auditor-General shall become vacant, if the Auditor-General—

- (a) dies;
- (b) by a notice in writing addressed to the President, resigns from office; or
- (c) is removed from office under any of the circumstances specified in Article 251 or Chapter Six of the Constitution.

(2) Where a vacancy occurs under subsection (1), the President shall within seven days, by notice in the Gazette, in at least two newspapers of national circulation and in at least two national radio and television stations, declare vacancies in the office of the Auditor-General and invite applications.

(3) An application under subsection (2) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any:

- (a) qualified person;
- (b) person, organisation or group of persons proposing the nomination of any qualified person.

(4) The names of all applicants under subsection (2) shall be published in the *Gazette*.

(5) The President shall, within fourteen days of the expiry of the period prescribed under subsection (3), constitute a selection panel comprising a chairperson and one representative from—

- (a) the Ministry for the time being responsible for matters relating to finance;

- (b) the Office of the Attorney-General;
- (c) the Ministry for the time being responsible for matters relating to the public service;
- (d) the Institute of Certified Public Accountants of Kenya;
- (e) the Association of Professional Societies of East Africa; and
- (f) the Law Society of Kenya, for the purpose of considering the applicants and selecting at least three persons qualified for appointment as Auditor-General:

Provided that for the purpose of selection and shortlisting of the said three persons, the selection panel shall hold its proceedings in public and submit to Parliament a report of the interview proceedings, which should include inter alia the scores of each candidate interviewed by individual members of the interviewing panel together with the criteria used in selecting the names forwarded.

(6) The selection panel shall within seven days of the selection of candidates under subsection (5), forward the names of the selected candidates to the President for nomination.

(7) The President shall, within seven days of the receipt of the names of the selected candidates under subsection (6), nominate one candidate for appointment as the Auditor-General and forward the name to the National Assembly.

(8) The National Assembly shall consider the nomination and may approve or reject the nomination.

(9) Where the National Assembly:

- (a) approves the nominee, the Speaker shall, within three days of the approval, forward the name of the approved nominee to the President for appointment;
- (b) rejects the nomination, the speaker shall, within three days of the rejection, communicate the decision to the President, who shall submit a fresh nominee from amongst the candidates forwarded by the selection panel under subsection (6).

(10) If the National Assembly rejects all or any subsequent nominee submitted by the President for approval under subsection (9), the provisions of subsections (1) to (7) shall, with the necessary modifications, apply.

(11) The President shall, within seven days of the receipt of the approved nominee from the National Assembly, by notice in the *Gazette*, appoint the Auditor-General approved by the National Assembly.

(12) For the avoidance of doubt, the Public Service Commission shall only provide secretariat services for the selection panel convened under subsection (5).

(13) Despite the foregoing provisions of this section, the President may, by notice in the *Gazette*, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

Section 14 of No. 34 of 2015, which it is proposed to amend—

14. Development and approval of organisational structure.

14. The Office of the Auditor-General shall develop an organizational structure for consideration and approval by the Audit Advisory Board.

Section 15 of No. 34 of 2015, which it is proposed to amend—

15. Recruitment of the Senior Deputy Auditor-General

(1) There shall be a Senior Deputy Auditor-General who shall be competitively recruited by the Advisory Board and appointed by the Auditor-General.

(2) A person shall be qualified for appointment as the Senior Deputy Auditor-General, if that person meets all the qualifications for appointment as outlined in section 5 of this Act.

Section 16 of No. 34 of 2015, which it is proposed to amend—

16. Responsibilities of the Senior Deputy-Auditor-General

(1) The Senior Deputy Auditor-General shall deputize the Auditor-General and—

(a) be the head of administration and management of the office of the Auditor-General;

(b) be the accounting officer of the Office of the Auditor-General; and

(c) perform such duties and exercise such other powers as the Auditor-General may delegate to him or her or perform other duties as spelt out by the office of the Auditor-General.

(2) In performance of his or her responsibilities under subsection (1) (a), the Senior Deputy Auditor-General shall report to the Auditor-General.

Section 17 of No. 34 of 2015, which it is proposed to amend—

17. Recruitment of other Staff

(1) The office of the Auditor-General may recruit such other staff as may be necessary for proper discharge of his or her functions under the Constitution, this Act and any other written law, upon such terms and conditions as he/ she may determine in consultation with the Salaries and Remuneration Commission and subject to Articles 230 and 234(5) of the Constitution.

(2) The remuneration of such staff should reflect prevailing remuneration of staff performing similar duties in the audit profession in other public and private institutions.

(3) The staff of the Office of the Auditor-General shall be competitively recruited in accordance to the organisation structure developed by the office of the Auditor-General.

(4) The recruitment and appointment of staff shall take cognisance of regional, ethnic and gender balance including equal opportunities to persons with disabilities and marginalized groups and shall comply with the value and principles of public service as contemplated in Article 232 of the Constitution.

Section 19 of No. 34 of 2015, which it is proposed to amend—

19. Delegation of powers

(1) The Auditor-General may, subject to such conditions as he or she may impose in writing, delegate any power and assign any duty conferred on him or her in terms of this Act or any other written law to a subordinate officer.

(2) A delegation or instruction in terms of subsection (1) shall not absolve the Auditor-General of the responsibility concerning the exercise of his or her power or the performance of the duty.

(3) The Auditor-General may confirm, vary or revoke any decision taken by a member of staff in consequence of a delegation or instruction under this section.

Section 21 of No. 34 of 2015, which it is proposed to amend—

21. Power to obtain information from others

(1) For the purposes of exercising or performing his or her functions, duties or powers under the Constitution or this Act, and subject to the law relating to data protection, the Auditor-General shall require a public body or any person employed by the public body—

- (a) to produce any official document in the body's or person's custody, care or control; and
- (b) to provide the Auditor-General with information or an explanation about any official information, system or asset.

(2) The Auditor-General may obtain such official information as he or she who is not a member, employee or office holder of the public body, within fourteen days and in doing so, the Auditor-General may—

- (a) advise the person in writing of the nature of the information and why it is needed;
- (b) state that the information is required under this Act;
- (c) ask for further information where necessary;
- (d) summon the person, if necessary; or
- (e) reimburse the person for any reasonable costs incurred in travelling where such person is summoned to appear, as may be determined by the Office.

(3) Where the information required is not official, then the Auditor-General will have to apply to the courts to obtain such information.

(4) In cases where the Auditor-General suspects fraud or corruption, he or she may invite the relevant organs for their appropriate action.

Section 24 of No. 34 of 2015, which it is proposed to amend—

24. Professional assistance and consultancy

(1) The Auditor-General may, in the performance of his or her duties and functions under this Act, engage the services of or work in consultation with professional or technical experts or consultants, whether in the public service or not, to enhance the performance of the Auditor-General.

(2) The engagement of service under sub-section (1) shall be for purposes of ensuring effectiveness in the application of public funds.

Section 25 of No. 34 of 2015, which it is proposed to amend—

25. Establishment and composition of the Audit Advisory Board

(1) There is established an unincorporated board to be known as the Audit Advisory Board which shall comprise of—

- (a) the Auditor-General or a person nominated by him or her;
- (b) the Attorney-General of Kenya or a person nominated by him or her;

- (c) a nominee of the Institute of Certified Public Accountants of Kenya;
- (d) a nominee of the Association of Professional Societies of East Africa;
- (e) a nominee of the Law Society of Kenya;
- (f) the Chairperson of the Public Service Commission or his or her nominee;

Provided that the nominee under paragraph (d) shall not be a member of a professional body provided for under subsection 1(c) and (e).

(2) A person shall be qualified to be nominated under subsection (1)(c) to (e) above if such person—

- (a) has a degree from a university recognised in Kenya;
- (b) has a minimum of fifteen years' experience in matters relating to public finance, auditing, accounts, law, governance or public management; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The Auditor-General may co-opt two other members with the necessary expertise.

(4) The members of the Audit Advisory Board shall elect a chairperson from among themselves, who shall not be the Auditor-General.

(5) The nomination and appointment of members under this section shall take cognisance of regional, ethnic, and gender balance and people with disabilities and marginalised groups.

(6) The Auditor-General shall, within fourteen days of receipt of names of qualified persons pursuant to subsection (1), by notice in the Gazette, appoint members of the Board.

(7) The members of the Audit Advisory Board shall hold office for a term not exceeding three years from the date of appointment and may be eligible for reappointment for a further one term of three years.

Section 26 of No. 34 of 2015, which it is proposed to amend—

26. Meetings and procedure of the Audit Advisory Board

(1) The Audit Advisory Board shall meet at least four times in every financial

year and not more than twelve times in every financial year and not more than four months shall elapse between one meeting and the next meeting.

(2) The quorum at the meeting of the Audit Advisory Board is five members of the Board or a greater number determined by the Audit Advisory Board in respect of an important matter.

(3) The Senior Deputy Auditor-General of the office of the Auditor-General shall be the Secretary of the Audit Advisory Board.

(4) The Chairperson shall convene and preside at meetings of the Board.

(5) The proceedings of the Audit Advisory Board shall not be invalidated by reason of a vacancy among the members.

Section 31 of No. 34 of 2015, which it is proposed to amend—

31. Certification audit process steps

(1) The certification audit process steps shall be as follows —

- (a) within three months after Parliament or the County Assembly has debated and considered the final report of the Auditor-General and made recommendations, a State Organ or a public entity that had been audited shall, as a preliminary step, submit a report on how it has addressed the recommendations and findings of the previous year's audit.
- (b) at the beginning of the audit examination of the financial statements of a State Organ or public entity, an inception meeting shall be held to deliberate on the scope of the financial audit, between the Auditor-General and the accounting officer and the financial statements to be audited should have been signed by the accounting officer and the substantive head of that entity, if different from the accounting officer and the Chairperson of the governing body, where applicable;
- (c) at the conclusion of the audit examination of the financial statements of each State Organ, an exit meeting shall be held at which the Auditor-General shall submit a draft management letter which shall include findings and recommendations to the accounting officer and comments of the accounting officer on the Auditor-General's findings and recommendations and the Auditor-General shall provide a copy of the report to the substantive head of that entity, if different from the accounting

officer and, the Chairperson of the governing body, where applicable.

(2) For all other audits or investigation, the Auditor-General shall inform the State organ or public entity to be audited or investigated in writing before commencement of the audit or investigation.

(3) The Auditor-General shall include in his or her report under this section—

(a) recommendations on how a State Organ or public entity may improve the application of funds in a lawful and in an effective way; and

(b) how responsive the State organ or public entity has been to past audit findings and recommendations.

(4) The accounting officer shall within fourteen days from the date of receipt of the draft management letter, submit a response to the Auditor-General including remedial actions that have been undertaken to address any qualifications in the draft management letter.

(5) If within fourteen days the Auditor-General will not have received a response, the Auditor-General shall proceed with the finalisation of the final management letter.

(6) Where an audit report has been tabled, the Speaker of the National Assembly shall invite the Auditor-General to present the report before the National Assembly.

Section 32 of No. 34 of 2015, which it is proposed to repeal—

32. Audit reports to be submitted to Parliament and the relevant county

(1) All reports of an audit shall be submitted to Parliament or the relevant county assembly.

(2) Within seven days of receiving the report, Parliament shall publicize it on its official website and other public spaces.

(3) Within fourteen days after submitting the report to Parliament or the relevant county assembly, the Auditor-General shall publicize the report on the official website and other public spaces

Section 34 of No. 34 of 2015, which it is proposed to amend—

34. Periodic Audits

34. The Auditor-General may, upon request or at his or her own initiative conduct periodic audits which shall be proactive, preventive, and

deterrent to fraud and corrupt practices, systemic and shall be determined with a view to evaluating the effectiveness of risk management, control and governance processes in State Organs and public entities.

Section 35 of No. 34 of 2015, which it is proposed to amend—

35. Annual financial audits

35. The Auditor-General shall conduct audits of financial statements under Article 229 of the Constitution for State Organs and public entities and report annually to Parliament and relevant county assembly.

Section 36 of No. 34 of 2015, which it is proposed to amend—

36. Performance Audit

(1) The Auditor-General shall conduct performance audit to examine the economy, efficiency and effectiveness with which public money has been expended pursuant to Article 229 of the Constitution.

(2) The Auditor-General may undertake a comprehensive performance audit within six months after the completion of any National or County project to evaluate, whether the citizen has gotten value for money in the project and submit the report to Parliament or County Assembly for tabling and debate.

Section 37 of No. 34 of 2015, which it is proposed to amend—

37. Forensic Audit

37. The Auditor-General may, upon request by Parliament, conduct forensic audits to establish fraud, corruption or other financial improprieties.

Section 38 of No. 34 of 2015, which it is proposed to amend—

38. Procurement audits

The Auditor-General may examine the public procurement and asset disposal process of a state organ or a public entity with a view to confirm as to whether procurements were done lawfully and in an effective way.

Section 39 of No. 34 of 2015, which it is proposed to amend—

39. Audit reports to be submitted to Parliament and the relevant county

(1) All reports of an audit shall be submitted to Parliament or the relevant county assembly.

(2) Within seven days of receiving the report, Parliament or the relevant county assembly shall publicise it on their official website and other public spaces.

(3) Within fourteen days after the expiry of seven days upon submitting the report to Parliament or the relevant county assembly, the Auditor-General shall publicise the report on their official website and other public spaces.

Section 41 of No. 34 of 2015, which it is proposed to amend—

41. Sources of funds of the Office of the Auditor-General

(1) The funds of the Office of the Auditor-General shall consist of—

- (a) monies appropriated by Parliament for the purposes of the Office of the Auditor-General;
- (b) such monies or assets as may accrue to the office of the Auditor-General in the course of the exercise of the Auditor-General's powers or the performance of his functions under this Act;
- (c) audit fees charged at the rates prescribed by the Auditor-General;
- (d) investment income subject to annual approval by Parliament; and
- (e) all monies from any other source provided or donated or lent to the office of the Auditor-General and such monies shall be disclosed to Parliament.

(2) The receipts, earnings or accruals of the office of the Auditor-General shall not be paid into the Consolidated Fund but shall be retained for purposes of this Act in accordance with Article 206 (1) of the Constitution.

(3) The Auditor-General may open and maintain such bank accounts in accordance with section 28 of the Public Finance Management Act, 2012 (No. 18 of 2012), as are necessary for the exercise of the functions of the office of the Auditor-General and shall pay into them all monies received from the Government, or from any other source, for the purposes of this Act.

Section 44 of No. 34 of 2015, which it is proposed to amend—

44. Audit of accounts

(1) The accounting officer of the office of the Auditor-General shall submit accounts of the office to the appointed auditor under section 41, within three months after the end of the financial year to which the accounts relate.

(2) The appointed auditor shall examine and audit the submitted accounts of the office of the Auditor-General within six months after the end of the financial year in accordance with the provisions of Part IV of this Act, express an opinion and certify the result of that examination and audit.

(3) The appointed auditor shall examine whether or not public money has been applied lawfully and in an effective way.

Section 45 of No. 34 of 2015, which it is proposed to amend—

45. Reporting by the appointed auditor

(1) The appointed auditor shall prepare a report on the examination and audit and submit the report to each relevant Clerk of Parliament, with a copy to the Cabinet Secretary responsible for finance and the Auditor-General.

(2) Subject to Article 35 of the Constitution, Parliament shall publicise it on their official website and other public spaces.

(3) Within fourteen days after the expiry of seven days upon submitting the report to Parliament, the Auditor-General shall publicise the report on their official website and other public spaces.

(4) Without limiting what may be included in the report —

(a) the report shall indicate whether—

(i) the information and explanations that were required to perform the examination and audit were received;

(ii) proper books of accounts have been kept and the accounts are in agreement therewith; and

(iii) the accounts present a true and fair view of the financial position of the office of the Auditor-General;

(b) the report shall identify cases in which—

(i) money has been spent in a way that was not lawful, economical, efficient and effective; and

(ii) the rules and procedures followed or the records kept were inadequate to safeguard assets, liabilities and the collection of revenue.

Section 46 of No. 34 of 2015, which it is proposed to amend—

46. Debating and considering report of appointed auditor

46. Within three months after receiving an audit report for the accounts of the Office of the Auditor-General, the National Assembly shall debate and consider the Annual Report of the office of the Auditor-

General, comprising the financial statements and the activities of the office and take appropriate action.

Section 48 of No. 34 of 2015, which it is proposed to amend—

48. Accounts for audit

(1) Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on the accounts specified in Article 229 of the Constitution.

(2) Without prejudice to the provisions of subsection (1), the Auditor-General may audit and report on the accounts of any entity that is funded from public funds.

Section 49 of No. 34 of 2015, which it is proposed to amend—

49. Special reports in the course of annual audit of the accounts of State organs

(1) If, in the course of an examination and audit, a matter comes to the attention of the Auditor-General that he or she feels should be brought to the attention of the Parliament or the relevant county assembly, the Auditor-General shall submit a special report to Parliament or the relevant county assembly in accordance with the protocols developed in the Regulations.

(2) Within seven days of receipt, Parliament or the relevant county assembly, shall publicize that report on their official website and any other public notice and shall publish a notice in the gazette to inform the public of the availability of the report.

(3) Within fourteen days following the expiry of the seven days referred to under subsection (2), the office of the Auditor-General shall publicize that report on its official website and any other public notice.

(4) Within sixty days following the expiry of the seven days referred to under subsection (2), Parliament or relevant county assembly shall discuss and review the report.

Section 50 of No. 34 of 2015, which it is proposed to repeal—

50. Final audit reports on a State Organ or public entity including national or county governments accounts

(1) The final audit report of the Auditor-General shall be submitted to Parliament or the relevant county assembly, with copies to the Cabinet Secretary responsible for finance and the relevant County Executive Committee member for finance, as the case may be, and the accounting office of the entity that is subject of the audit.

(2) Within three months of receiving an audit report referred to under subsection (1), Parliament or the relevant county assembly shall debate and consider the report and take appropriate action.

Section 51 of No. 34 of 2015, which it is proposed to repeal—

51. Other reporting by the Auditor-General

51. (1) Within thirty days following the expiry of the seven days of publication period, Parliament or the relevant county assembly shall discuss and review other reports submitted to them.

(2) Within fourteen (14) days following the expiry of the seven days publication period, the office of the Auditor-General shall publicize the report on its official website and any other public notice.

Section 54 of No. 34 of 2015, which it is proposed to amend—

54. Withholding of funds by Parliament or county assembly

54. Where there is a serious material breach or persistent material breaches of the provisions of this Act, the Auditor-General may in his audit report to Parliament or the relevant county assembly pursuant to the Public Finance Management Act, 2012 (No. 18 of 2012), recommend the withholding of funds to any State Organ or public entity.

Section 58 of No. 34 of 2015, which it is proposed to amend—

58. Disclosure of fraud and corruption

58. (1) All staff of the Office of the Auditor-General are duty bound to disclose any fraud or corruption that comes to their attention immediately and disciplinary action shall be taken against any officer who knowingly covers up any acts of fraud or corruption.

(2) Despite the provisions of subsection (1), an officer of the Office of the Auditor-General shall not divulge any information which relates to the business secret of the Auditee which comes to his or her knowledge in the course of duty unless is for official purposes as provided for under this Act or any other written law.

Section 59 of No. 34 of 2015, which it is proposed to amend—

59. Disclosure of interest

59. (1) An officer of the Office of the Auditor-General who has an interest in a matter under consideration by the auditee client shall disclose in writing, the nature of that interest and shall not participate in any auditing exercise relating to that client.

(2) An officer who fails to disclose an interest in a matter in accordance with subsection (1) shall be subject to administrative action under the provisions of this Act or Regulations made thereunder.

Section 61 of No. 34 of 2015, which it is proposed to amend—

61. Offences by officers of the office of the Auditor-General

(1) Any officer of the Office of the Auditor-General commits an offence if that officer —

- (a) engages in a corrupt act;
- (b) knowingly and willfully conceals information on audit findings for whatever reason, including in order to obtain a financial benefit for the officer or an accomplice or another person;
- (c) knowingly and willfully fails to disclose audit information on fraud or corrupt practice by the audited entity;
- (d) fails to disclose any conflict of interest in any matter under consideration in the course of discharging any functions under this Act; or
- (e) knowingly and wilfully discloses, publishes or publicizes the Auditor-General's audit report or its contents to third parties including the media before the report is finalized and formally submitted to Parliament or County Assembly and copied to the audited entity and other authorized offices;

(2) Any officer of the Office of the Auditor-General who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both.

Section 64 of No. 34 of 2015, which it is proposed to amend—

64. Powers to report to police, etc.

64(1) Where the Auditor-General establishes that any person, supplier or company has been involved in fraud or corrupt practice, the Auditor-General shall report to the police, Ethics and Anti-Corruption Commission or the Public Procurement Oversight Authority for their action.

(2) Where the matter is referred to the Public Procurement Oversight Authority, the Auditor-General may make recommendation for debarment from future public procurement and asset disposal proceedings of a state organ or public entity with a copy to the relevant accounting officer.

Section 67 of No. 34 of 2015, which it is proposed to amend—

67. Disallowable expenditure

Where the Auditor-General becomes aware of—

- (a) any payment made without due authority; or
- (b) any deficiency or loss occasioned by negligence or misconduct; or
- (c) any sum which ought to have been, but was not brought to account, he or she shall, in the case of expenditure, call in question the sum concerned and make a report on the sum to Parliament and the relevant county assembly.

Section 68 of No. 34 of 2015, which it is proposed to amend—

68. Power to make Regulations

The Cabinet Secretary responsible for matters relating to finance may make Regulations not inconsistent with this Act respecting any matter that is necessary or convenient to be prescribed under this Act or for the carrying out or giving effect to this Act.

Section 72 of No. 34 of 2015, which it is proposed to amend—

72. Public right of access to official audits reports

The Public shall have right of access to official reports of the Auditor-General in line with Article 35 of the Constitution for transparency and accountability, except where such access may unduly jeopardize state security.

EXPLANATORY MEMORANDUM FOR THE PUBLIC AUDIT (AMENDMENT) BILL, 2023

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
PART 1- PRELIMINARY					
1		Short title	This Act may be cited as the Public Audit Act, 2015.	This Act may be cited as the Public Audit (Amendment), Act 2023	The Act was reviewed in 2023 and will be submitted to Parliament as a Bill.
Interpretation					
2		'accounting officer' means	<p>In this Act, unless the context otherwise requires-</p> <p>(a) An accounting officer of the Office of the Auditor-General referred to under Section 16 (1) (b);</p> <p>(b) An accounting officer as defined under Section 2 of the Public Finance Management Act, 2012 (No 18 of 2012).</p>	<p>an accounting officer as defined under Section 4 (2A) of the Public Audit (Amendment) Act, 2021 and <u>Section 67 (2)</u> of the Public Finance Management Act, 2012 (<u>No. 18 of 2012</u>).</p> <p>As defined above.</p>	<p>Section 16 (1) (b) of the Public Audit Act, 2015 was not referring to the Auditor-General as the accounting officer. Section 67 (2) of the Public Finance Management Act, 2012 (No 18 of 2012) defines an accounting officer for an Independent office/ Commission as the person in-charge of administration hence the need to harmonize the two laws.</p> <p>As explained in (a) above.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
		“Audit”	Newly introduced.	“Audit” means an objective and systematic assessment or evaluation of financial and other information reported by or obtained from public entities to determine whether information or actual conditions on the performance of the public entities conform to established criteria.	The term was not defined in the Public Audit Act, 2015.
		“Audit Committee”	“Audit Committee” means an Audit Committee established under Section 73 (5) and Section 155 (5) of the Public Finance act, 2012 (No. 18 of 2012).	“No amendment”.	The meaning of the term Audit Committee was in harmony with other laws hence no change was suggested.
		“Auditor-General”	“Auditor-General” means the Auditor – General appointed in accordance with Article 229 of the Constitution and Section 11 of this Act.	Auditor- General means the Auditor – General appointed in accordance with Article 229 of the Constitution.	This amendment was meant to harmonize the definition of Auditor-General with the Constitution.
		“Appropriation”	“Appropriation” has the meaning assigned to it by Section 2 of the Public Finance Management Act, 2012 (No 18 of 2012).	This subsection was left as it is currently in the Public Audit Act, 2015.	No amendment.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
		“county government entity”	“County government entity” has the meaning assigned to it under Section 2 of the Public Finance Management Act, 2012 (No. 18 of 2012).	This subsection was left as it is currently in the Public Audit Act, 2015.	No amendments.
		“disallowable expenditure”	Newly introduced.	“Disallowable expenditure” means wasteful, irregular, unauthorized and nugatory expenditure.	The purpose of the introduction of this term is to recognize a critical area of audit.
		“economy”	Newly introduced.	“economy” means minimizing the cost of resources used or required to achieve objectives without compromising on quality.	The purpose of introducing the term is to facilitate performance audits.
		“efficiency”	Newly introduced.	“efficiency” means a measure of how resources or inputs including funds, expertise and time are converted to outputs.	The purpose of introducing the term is to facilitate performance audits.
		“effectiveness”	“effectiveness” means prudent, efficient, economic, transparent and accountable use of public funds to ensure government achieves value for money and that such funds are applied for intended purpose.	“effectiveness” means the extent to which a programme attained or is expected to attain its objectives efficiently in a sustainable manner.	The purpose of the amendment is to harmonize definition of the term in both the PFM Act and the Public Audit Act.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
		“ financial year”	“financial year” has the meaning assigned to it under Article 260 of the constitution.	This subsection was left as it is currently in the Public Audit Act, 2015.	No amendment.
		“grant”		<p>“grant” has the meaning assigned to it under Section 47 of PFM Act. It may be financial or other assistance by a national or a county government which is not repayable and-</p> <p>(i) where public money is paid to or used by a grant recipient;</p> <p>(ii) which is intended to finance the development of projects or delivery of services or otherwise assist the grant recipient to achieve goals that are consistent with the policy objectives of the national or</p>	The purpose of enhancing the definition is to align with PFM Act, 2012.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				county government; and; (iii) where the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement.	
		“irregular expenditure”		“irregular expenditure” has the meaning assigned to it by the PFM Act.	The purpose of the amendment is to harmonize definition of the term in the PFM Act and the Public Audit Act.
		“lawful	“lawful” includes compliance with a state organ’s internal regulations, internal policies, programmes and the prescribed measures for securing efficient and transparent fiscal management.	“lawful” includes compliance with relevant laws, regulations, policies and guidelines.	The purpose of the amendment is to enhance clarity of the word “lawful”.
		“office”	“office” means the Office of the Auditor-General established under Section 4 of this act.	Deleted	The definition has been subsumed under the definition of “Office of the Auditor-General” in accordance with Article 253 of the Constitution.
		“Office of the Auditor-General”	Newly introduced.	“Office of the Auditor-General” means the	The purpose of the amendment is to enhance and align the

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				independent Office of the Auditor-General incorporated in accordance with Article 253 of the Constitution.	definition of the office of the Auditor – General in the Constitution.
		“public officer”	“public officer” has the meaning assigned to it in Article 260 of the Constitution.	No amendment.	No amendment.
		“public funds”	(a) All money that comes into possession of, or is distributed by, a state organ including the national or county governments and intergovernmental entities and money raised by a private body under statutory authority; and, (b) money held by State organ or public entities in trust for third parties and any money that can generate liability for the government.	(a) “Public funds” deleted and substituted with “public money”. (b) Inserting a new proviso under (c) to read “any grant disbursed by government to third parties or nonpublic entities to pursue a government policy objective”.	The purpose of the change was to differentiate the term “money” and “funds”. The rationale for the proviso is to take account of public money disbursed to nonpublic entities and third parties.
		“public debt”	“public debt “ has the meaning assigned to it under Article 214 of the Constitution.	No amendments.	No amendments.
		“ public entity”	“public entity” includes any department or agency of the government and any	Delete the definition of “public entity” and	The purpose of the re-definition is to enhance

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
			authority, body, or other entity declared to be a government entity under the Public Finance Management Act.	replace with new definition:- “public entity” for the purpose of this Act includes any state organ, department or agency of government and any authority, body or other entity declared to be a government entity under the PFM Act, 2012 and any other public entity entrusted with public funds.	the meaning within the context of the public audit.
		“public resources”	Newly introduced.	“public resources” means land, buildings, facilities, funds, equipment, supplies or inventories, human resources, state compensated time and intangible property received or entrusted to and entity on behalf of the public.	The purpose of introducing the term is to broaden the meaning of the term.
		“Receiver of Revenue”	“Receiver of Revenue” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012 (No 18 of 2012).	No amendments.	No amendments.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
		“Unauthorized expenditure”	Newly introduced.	“Unauthorized expenditure” has the meaning assigned to it by the PFM Act.	
		“Wasteful Expenditure”	“Wasteful Expenditure” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012 (No. 18 of 2012).	No amendments.	No amendments.
PART 11 - ESTABLISHMENT OF THE OFFICE OF THE AUDITOR-GENERAL					
4	Establishment of the Office of the Auditor-General				
	2		The office shall comprise the Auditor-General as its statutory head and all other staff appointed by the Auditor-General as may be delegated in accordance with Article 234 of the Constitution.		Section 4 (2) was annulled by the High Court for subjecting the Office of the Auditor-General under the Public Service Commission on matters of staff recruitment yet it is an independent Office exempted from such a provision.
	2A			Section 4 of the principal Act is amended by inserting the following new subsection immediately after Section (2)- The Office shall comprise the Auditor	The reason for introducing 2A is to remedy Subsection 4 (2) which was declared unconstitutional. Section 4 (2) subjected the Auditor-General to the direction of the Public Service

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				-General who shall be the Accounting Officer, and the staff appointed by the Auditor-General.	Commission on matters of staff recruitment under Article 234.
5		Qualification for appointment as the Auditor-General			
	1		<p>A person shall be qualified for appointment as the Auditor-General if such person-</p> <p>(a) is a citizen of Kenya;</p> <p>(b) holds the respective qualifications for the office specified in Article 229 (2) of the constitution;</p> <p>(c) holds a degree in finance, accounting or economics from a university recognized in Kenya and demonstrates a verifiable and logical progression in the attainment of his or her educational qualifications;</p> <p>(d) meets the requirement of the of Chapter Six of the Constitution; and,</p> <p>(e) is a practicing member of good standing of a professional body of accountants recognized by law.</p>	<p>Section 5 (1) of the principal Act is amended by deleting paragraph (e) and substituting therefor the following paragraph-</p> <p>(e) is a practicing member of good standing of a professional body of accountants recognized by the accountants Act.</p>	<p>Section 5 (1) (e) is recommended for amendment to provide clarity that any person applying for the position of the Auditor-General should be recognized specifically by the Accountants Act.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
7	Functions and powers of the Auditor-General				
	1		(c) satisfy himself or herself that all public money has been used and applied to the purposes intended and that the expenditure conforms to the authority for such expenditure;	Section 7 (1) of the principal Act is amended by inserting the following new paragraph immediately after paragraph (c)- (ca) satisfy himself or herself that public resources have been applied or used in an economic, efficient, effective, transparent and sustainable manner;	Section 7(1) (ca) was introduced to enhance value for money audits.
8	Administrative Powers of the Office of the Auditor-General				
	1		In addition to the powers and functions conferred under the Constitution, this Act and other relevant laws, and pursuant to Article 252 (1) (c) and Article 232 of the Constitution, the Auditor-General shall— (a) develop an organizational structure and staffing establishment for the Office of the Auditor-General subject to Article 234 (5) of the Constitution;		Section 8 of the Act was declared unconstitutional by the High Court. However, and due to the need for ensuring good governance in the Office of the Auditor-General, redemption of the annulled section is recommended to give the Auditor-General

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
			<p>(b) subject to Article 234 (5) of the Constitution, recruit and promote qualified and competent staff to perform the Office's functions;</p> <p>(c) subject to Article 234 (5) of the Constitution, exercise disciplinary control over staff;</p> <p>(d) subject to Article 234 (5) of the Constitution, develop human resource of the office;</p> <p>(e) subject to Article 230 (4) (b) and 234 of the Constitution, determine the remuneration and benefits of each member of staff;</p> <p>(f) in addition to what is provided for under any other relevant law, develop and maintain a code of conduct and ethics for the office, specific to auditing, guided by the International code of practice, and code of Ethics issued by the International Organization of Supreme Audit Institutions and in consultation with the Public Service Commission and the National Treasury.</p>		<p>control over staff and the opportunity to seek advice without being seen to be under control of the Audit Advisory Board. The functions of the Board have been reformulated to make them Constitutional. This then informed the introduction of Section 8A to provide the remedy.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
8A	Administrative Powers of the Office of the Auditor-General				
	1	Administrative functions of the Auditor-General	<p>In addition to the powers and functions conferred under the Constitution, this Act and other relevant laws, and pursuant to Articles 252 (1) (c) and 232 of the Constitution, the Auditor-General shall—</p> <p>(a) develop an organisational structure and staffing establishment for the Office of the Auditor-General subject to Article 234 (5) of the Constitution;</p> <p>(b) subject to Article 234 (5) of the Constitution, recruit and promote qualified and competent staff to perform the Office's functions;</p> <p>(c) subject to Article 234 (5) of the Constitution, exercise disciplinary control over staff;</p> <p>(d) subject to Article 234(5) of the Constitution, develop human resource of the office;</p> <p>(e) subject to Article 230 (4) (b) and 234 of the Constitution, determine the remuneration and benefits of each member of staff;</p> <p>in addition to what is provided for under any other relevant law, develop and</p>	<p>The principal Act is amended by inserting the following new section immediately after Section 8-</p> <p>In addition to the powers and functions conferred under the Constitution, this Act and other relevant laws, the Auditor-General shall—</p> <p>(a) develop an organizational structure and staff establishment for the Office of the Auditor-General;</p> <p>(b) recruit and promote qualified and competent staff to perform the Office's functions;</p> <p>(c) establish and abolish offices in the</p>	<p>The new Section 8A was meant to re-introduce the administrative functions of the Office of the Auditor-General which had been declared unconstitutional.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
			<p>maintain a code of conduct and ethics for the office, specific to auditing, guided by the International code of practice, and code of Ethics issued by the International Organization of Supreme Audit Institutions and in consultation with the Public Service Commission and the National Treasury.</p>	<p>Office of the Auditor-General;</p> <p>(d) appoint persons to hold or act in those offices and to confirm appointments;</p> <p>(e) exercise disciplinary control over staff;</p> <p>(f) develop human resource of the office;</p> <p>(g) determine, in consultation with SRC the remuneration and benefits of each member of staff;</p> <p>(h)in addition to what is provided for under any other relevant law, develop and maintain a code of ethics issued in line with the International Organization of</p>	

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				Supreme Audit Institutions, and guided by international best practice.	
	2			In performance of Administrative functions provided under Sub-section (1), the Auditor-General may, where he or she deems fit, consult the Advisory Board established under Section 25 of this Act and shall be guided by Article 47 (1) and (2) of the Constitution.	
9	General powers of the Auditor-General				
	1		(g)to locate any of his or her staff or an agent, for a time period to be determined by the Auditor-General, at the premises of any state organ or public entity that is subject of an audit or examination or review and that entity shall provide access to staff or agent and adequate office space, furniture and telephone access at the expenses of that state organ or public entity;	Section 9 (1) of the principal Act is amended in paragraph (g) by deleting the words “telephone access” and substituting therefor the words “communication connectivity”.	Section 9 (1) (g) was amended by replacing the words “telephone access” with “communication connectivity” in order to appreciate the diversified Information Communication Technology.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
11		Vacancy in office			
	1		<p>The Office of the Auditor-General shall become vacant, if the Auditor-General—</p> <ul style="list-style-type: none"> (a) term expires; (b) dies; (c) by a notice in writing addressed to the President, resigns from office; or (d) is removed from office under any of the circumstances. <p>specified in Article 251 or Chapter Six of the Constitution</p>	<p>Section 11 of the principal Act is amended –</p> <ul style="list-style-type: none"> (i) by deleting subsection (1) and substituting therefor the following new subsection - <p>The position of the Auditor-General shall become vacant-</p> <ul style="list-style-type: none"> (a) upon expiry of Auditor –General’s term of office; (b) if the Auditor-General dies; (c) where by notice in writing addressed to the President, the Auditor-General resigns from Office; or (d) if the Auditor-General is removed 	<p>Section 11(1) recognizes falling of vacancy in the Office of the Auditor-General only on emergency circumstances and does not envisaged other circumstances such as expiry of term of Office of Auditor-General. This therefore informs the need to introduce Section 11(1) (a) to provide for falling of vacancy in the Office when the term of office of Auditor-General expires.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				from Office under any of the circumstances specified in Article 251 or Chapter Six of the Constitution.	
	1A			Section 11 is amended by inserting the following subsection immediately after subsection (1)- Where the term of office of the Auditor-General is due to expire, the Auditor-General shall notify the appointing Authority in writing of the contemplated vacancy three months prior to the expiry of the term.	Section 11 (1A) was introduced to provide for smooth transition from an incumbent Auditor-General to the new holder of the Office.
	2		Where a vacancy occurs under subsection (1), the President shall within seven days, by notice in the Gazette, in at least two newspapers of national circulation and in at least two national radio and television stations, declare vacancy in the Office of the Auditor-General and invite applications.	In subsection (2) by deleting the expression "subsection (1) and substituting therefor the words subsection (1) (b), (c) and (d) or upon notification	

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				under subsection (1A)".	
	5		(e) the Association of Professional Societies of East Africa; and,	Section 11 5 (e) of the principal Act is amended by deleting the whole of Section 11 5(e)	The Association of Professional Societies of East Africa is represented by other professional bodies in the Panel hence the decision to remove it from the Panel.
	11		The President shall, within seven days of the receipt of the approved nominee from the National Assembly, by notice in the Gazette, appoint the Auditor-General approved by the National Assembly.	Section 11 of the principal Act is amended by – (a) inserting the following proviso: Provided that where the appointment is to be done upon expiry of the Auditor-General's term, such appointment shall strictly be done as such.	
14	Organizational structure				
	1		The Office of the Auditor-General shall develop an organizational structure for consideration and approval by the Audit Advisory Board.	The principal Act is amended by repealing section 14 of the Act and substituting therefor the following new section-	The purpose of the amendment is to give the Office of the Auditor-General the full mandate of developing the organizational

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				The Office of the Auditor-General shall develop an appropriate organizational structure.	structure for his/her office.
	2			For purposes of sub section (1), the Auditor-General may consult the Audit Advisory Board.	The purpose of the amendment is to give the Auditor-General the independence in the development of an organizational structure for the Office including the freedom to consult when she deems necessary.
15		Recruitment of the Deputy Auditor-General			
	1		There shall be a Senior Deputy Auditor-General who shall be competitively recruited by the Advisory Board and appointed by the Auditor-General.	Section 15 of the principal Act is amended – (a) by deleting subsection (1) and substituting therefor the following new section- There shall be a Deputy Auditor-General who shall be	For purposes of effective administration of the Office, the position of Senior Deputy Auditor-General has been changed to Deputy Auditor-General. There will be no need for the position of the Senior Deputy Auditor-General as the Public Audit (Amendment)

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				competitively recruited by the Auditor-General.	Bill, 2021 designates the Auditor-General as the Accounting Officer for the Office.
	2		A person shall be qualified for appointment as the Senior Deputy Auditor- General, if that person meets all the qualifications for appointment as outlined in Section 5 of this Act.	in subsection (2) by deleting the word "senior".	The suggested amendment is to align subsection (2) with subsection 1.
16	Responsibilities of the Senior Deputy-Auditor-General				
	1		The Senior Deputy Auditor-General shall deputize the Auditor-General and— (a) be the head of administration and management of the office of the Auditor-General; (b) be the accounting officer of the Office of the Auditor-General; and, (c) perform such duties and exercise such other powers as the Auditor-General may delegate to him or her or perform other duties as spelt out by the office of the Auditor-General.	Section 16 of the principal Act is amended – (a)in subsection (1)- (i) by deleting the opening statement and substituting therefor the following - (a) The Deputy Auditor-General shall be the principal assistant to the Auditor-General; (b) by deleting paragraph (a) and substituting therefor the following new paragraph-	

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				shall deputize for the Auditor-General in the execution of the Auditor-General's function save for the express powers provided under the Constitution. (a) by deleting paragraph (b); and (c).	
	2		In performance of his or her responsibilities under subsection (1) (a), the Senior Deputy Auditor-General shall report to the Auditor-General.	In subsection (2) by deleting the word "senior".	To align with subsection 1.
17	Recruitment of other staff				
	1		The Office of the Auditor-General may recruit such other staff as may be necessary for proper discharge of his or her functions under the Constitution, this Act and any other written law, upon such terms and conditions as he/ she may determine in consultation with the Salaries and Remuneration Commission and subject to Articles 230 and 234 (5) of the Constitution.	Subsection declared unconstitutional in Petition No 388 of 2016.	(Declared unconstitutional)
	1A			Section 17 of the principal Act is amended by inserting	Section 17 (1) was declared unconstitutional for

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				<p>the following new section immediately after subsection (1)- The Auditor-General may recruit such other staff as may be necessary for proper discharge of his or her functions under the Constitution, this Act and any other written law, upon such terms and conditions as he or she may determine in consultation with the Salaries and Remuneration Commission.</p>	<p>subjecting the Office of the Auditor- General under the Public Service Commission and averring that it recruits staff under the delegated power of the PSC in accordance with Articles 230 and 234 (5) of the Constitution. This then informed the need for introducing Section 17 (1A).</p>
	4		<p>The recruitment and appointment of staff shall take cognizance of regional, ethnic and gender balance including equal opportunities to persons with disabilities and marginalized groups and shall comply with values and principles of public service as contemplated in Article 232 of the Constitution.</p>	<p>Section 17 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection – The recruitment of staff under this section shall take cognizance of the affirmative action,</p>	<p>This amendment seeks to realign the text in subsection 4 with the Constitution.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				and shall comply with values and principles contemplated in Article 10 and Article 232 of the Constitution.	
19	Delegation of Powers				
	3		The Auditor-General may confirm, vary or revoke any decision taken by a member of staff in consequence of a delegation or instruction under this section.	Section 19 of the principal Act is amended by deleting subsection (3).	Section 19 (3) is deleted as it conflicts with section 19 (2).
20	Budget Estimates and Plans of the Office of the Auditor-General				
	2		The budget estimates of revenue and expenditure referred to under subsection (1) shall be submitted to the Cabinet Secretary responsible for finance not later than the 30th March each year for review and submission to the National Assembly in accordance with Article 221 of the Constitution, and the National Assembly shall, pursuant to Article 249 (3) of the Constitution, allocate adequate funds to the Office of the Auditor-General.	Section 20 of the principal Act is amended – (a) in subsection (2) by inserting the words” with a copy to the National Assembly” immediately after the word “finance”; and’	
	4			(a) by adding the following new subsection immediately after subsection (3)-	Amendment is meant to allow the Auditor-General to seek support of Parliament for the

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
PART III – ESTABLISHMENT AND COMPOSITION OF THE AUDIT ADVISORY BOARD					
25		Establishment and Composition of the Audit Advisory Board			
	1		<p>There is established an unincorporated board to be known as the Audit Advisory Board which shall comprise of—</p> <p>(a) the Auditor-General or a person nominated by him or her;</p> <p>(a) the Attorney-General of Kenya or a person nominated by him or her;</p> <p>(b) a nominee of the Institute of Certified Public Accountants of Kenya;</p> <p>(d) nominee of the Association of Professional Societies of East Africa;</p> <p>(e) a nominee of the Law Society of Kenya;</p> <p>(f) the Chairperson of the Public Service Commission or his or her nominee;</p>	<p>The principal Act is amended by repealing section 25 of the Act and substituting therefor the following new section-</p> <p>There is established an unincorporated board to be known as the Audit Advisory Board which shall comprise of—</p> <p>(a) the Auditor-General who shall be the Chairperson;</p> <p>(b) the Attorney-General of Kenya or a person nominated by him or her;</p> <p>(c) a nominee of the Institute of Certified Public Accountants of Kenya;</p>	<p>The purpose of the amendment is to enable reconstitution of the Board.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				to obtain such information.	
24	Professional Assistance and Consultancy				
			The Auditor-General may, in the performance of his or her functions under this Act, engage the services of or work in consultation with professional or technical experts or consultants, whether in the public service or not, to enhance the performance of the Auditor-General.	Section 24 of the principal Act is amended - (a)in the marginal note, by deleting the words “professional assistance and consultancy” and substituting therefor the words “use of experts”;	
	2		The engagement of service under sub-section (1) shall be for purposes of ensuring effectiveness in the application of public funds.	(a)by deleting subsection (2) and substituting therefor the following new subsection- The engagement of services under subsection (1) shall be for purposes of ensuring economy, efficiency, and effective management of public resources.	This amendment is meant to capture value for money audits.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
			<p>require a public body or any person employed by the public body—</p> <p>(a) to produce any official document in the body's or person's custody, care or control; and</p> <p>(b) to provide the Auditor-General with information or an explanation about any official information, system or asset.</p>	<p>deleting the words “a public body or any person employed by a public body” and substituting therefor the words” any entity or any person receiving or being funded from public funds”.</p> <p>(b) in paragraph (a) by deleting the word “body’s” and substituting therefor the word “entity’s; and ”</p>	
	3		<p>Where the information required is not official, then the Auditor-General will have to apply to the courts to obtain such information.</p>	<p>(a) by deleting subsection (3) and substituting therefor the following new subsection-</p> <p>where the information required is from a private entity or person, the Auditor-General may apply to Courts</p>	<p>The purpose of the amendment is to remove ambiguity by removing the words “is not official”. This implies that any information sought by the Auditor-General for purposes of audit is official and should be provided.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				<p>If the budget estimates provided under subsection (3) of this section is, in the opinion of the Auditor-General insufficient to allow the Office of the Auditor-General, to properly carry out its mandate, the Auditor-General shall submit to the speaker of the National Assembly and the Senate, a special report to be presented to the Committee responsible for matters related to budget and appropriation.</p>	<p>purpose of budgetary requirements.</p>
21		Power to Obtain Information from others			
	1		<p>For the purposes of exercising or performing his or her functions, duties or powers under the Constitution or this Act, and subject to the law relating to data protection, the Auditor-General shall</p>	<p>Section 21 of the principal Act is amended - (a) In subsection – (i) in the opening statement, by</p>	<p>Amendment is meant to enhance clarity and remove doubt on who should be audited.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				<p>(d) the chairperson of the Budget and Appropriation Committee of the National Assembly or his or her nominee; and,</p> <p>(e) two representatives from Parliament one each from the National Assembly and Senate from Committees in charge of public finance and audit.</p>	
	2			The Auditor-General may coopt other members as necessary from time to time.	The purpose of this amendment is to allow more flexibility for Auditor-General in co-opting representatives to the Board
	3			The Deputy Auditor-General shall be the Secretary of the Audit Advisory Board.	

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
	4			<p>A person shall be qualified to be nominated under subsection (1) (c) and appointed by the Auditor-General if such person-</p> <p>(a)has a degree from a university recognized in Kenya;</p> <p>(b)has a minimum of fifteen years' experience in matters relating to public finance, auditing, accounts, law, governance or public management; and</p> <p>(c)meets the requirements of Chapter Six of the Constitution.</p>	<p>The purpose of this amendment is to ensure that the board gets the necessary competence in respect of nominations under subsection 1(c)</p>
	5			<p>The nomination and appointment of a member under sub section (1) (c) shall take into</p>	

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				consideration affirmative action.	
	6			A member of the Audit Advisory Board nominee under subsection (1) (c) shall hold office for a term not exceeding three years from date of appointment and may be eligible for reappointment for a further one term of three years.	
	7			The Auditor-General shall provide secretariat services to the Board and assign or appoint such support staff as may be necessary for the Board to effectively perform its functions.	
26	Meetings and Procedure of the Audit Advisory Board				
	1		The Audit Advisory Board shall meet at least four times in every financial year and not more than twelve times in every financial year and not more than four months shall elapse	The principal Act is amended by repealing Section 26 of the Act and substituting therefor the	The whole of Section 26 was repealed and reconstituted to provide clarity in the operations of the Audit Advisory Board.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS	
			between one meeting and the next meeting.	following new section- The chairperson shall convene and preside over meetings of the Board.		
	2		The quorum at the meeting of the Audit Advisory Board is five members of the Board or a greater number determined by the Audit Advisory Board in respect of an important matter.	The quorum for the meeting of the Audit Advisory Board shall be at least three members of the Board.	The purpose of amendment is to give Auditor-General power and flexibility in determining board rules and procedures.	
	3		The proceedings of the Audit Advisory Board shall not be invalidated by reason of a vacancy among the members.	The proceedings of the Audit Advisory Board shall not be invalidated by reason of a vacancy among the members.		
27	Functions of the Audit Advisory Board (Section 27 declared Unconstitutional)					
	1		Subject to <u>section 10</u> , the principal function of the Audit Advisory Board shall be to advise the Auditor-General on the exercise of his or her powers and the performance of his or her	Unconstitutional.	Entire section declared unconstitutional.	

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
			functions under the Constitution and this Act.		
	2		<p>Subject to the generality of subsection (1) the Board shall, in addition to any other function that may be conferred by this Act or any other law, advise the Auditor-General on—</p> <p>(a) the recruitment of senior managers into the Office of the Auditor-General</p> <p>(b) the development and review of organizational development issues;</p> <p>(c) the budget estimates and plans of the office of the Auditor-General;</p> <p>(d) the remuneration and other terms of appointment of the staff of the Office of the Auditor-General in consultation with the Salaries and Remuneration Commission; and</p> <p>(e) any other matter that the Auditor-General may refer to the Board from time to time.</p>	Unconstitutional.	Entire section declared unconstitutional.
27A	Functions of the Audit Advisory Board				
	1			The principal Act is amended by inserting	Section 27A was introduced to provide

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				the following new section after section 27- Subject to section 10 of this Act, and upon approval by the Auditor-General, the Advisory Board shall generally be responsible for providing advisory on- (a) budget plans and estimates (b) human resource management and development; and, (c) any other matter that might be referred to the Board by the Auditor-General.	for functions of the Audit Advisory Board and which are not offensive to the Constitution.
PART IV- AUDIT PROCESS AND TYPES OF AUDIT					
31		Certification Audit Process Steps			
	1		The certification audit process shall be as follows- (a) Within three months after Parliament or the County Assembly has debated and considered the final report of the Auditor-General and made recommendations, a	The principal Act is amended by repealing section 31 of the Act and substituting therefor the following section	The purpose of the amendment is to streamline the audit processes to make them more responsive to the audit function and facilitate effective

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
			<p>State Organ or a public entity that had been audited shall, as a preliminary step, submit a report on how it has addressed the recommendations and findings of the previous year's audit.</p>	<p>(a) for all audits or investigations, the Auditor-General shall inform the accounting officer of an entity to be audited or investigated before commencement of the audit;</p> <p>(b) at the beginning of an audit of a state organ or public entity, an entry meeting shall be held to deliberate on the scope of audit and timelines between the Auditor-General and accounting officer;</p> <p>(c) at the conclusion of an audit of an entity, an exit meeting shall be</p>	<p>management of public resources.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				held with the accounting officer to discuss the audit findings; and,	
	2			(2) An Accounting Officer shall within fourteen days from receipt of a management letter submit a response to the Auditor-General including remedial actions undertaken to address audit findings.	The purpose of the amendment is to streamline the audit processes to make them more responsive to the audit function and facilitate effective management of public resources.
	3			(3) The Auditor-General shall prepare and issue a report to Parliament and the relevant County Assembly.	The purpose of the amendment is to streamline the audit processes to make them more responsive to the audit function and facilitate effective management of public resources.
	4			(4)The Auditor-General shall include in his or her report recommendations on how a State Organ or	The purpose of this provision is to ensure the Auditor-General is able to appraise parliament on how a

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				public entity may improve the application of funds in a lawful and in an effective way, as may be guided by the respective auditing standards.	state organ or entity has responded to the recommendation of the previous period.
	5			<p>(5) Where an Accounting Officer fails to address issues raised by the Auditor-General to the satisfaction of the Auditor-General, the Accounting Officer is liable to disciplinary action in accordance with—</p> <p>(a) the terms and conditions of that Accounting Officer's appointment or employment; or</p> <p>(b) any provisions prescribed by this Act and any other Act or Regulations made</p>	

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				thereunder for the purposes of this section.	
32	Audit reports to be submitted to Parliament and the Relevant County Assembly				
	1		All reports of an audit shall be submitted to Parliament or the relevant county assembly.	Section 32 of the principal Act is repealed.	Section 32 of the Act is repealed as it is covered in section 39 of this Act.
	2		Within seven days of receiving the report, Parliament shall publicize it on its official website and other public spaces.	Section 32 of the principal Act is repealed.	
	3		Within fourteen days after submitting the report to Parliament or the relevant county assembly, the Auditor-General shall publicize the report on the official website and other public spaces.	Section 32 of the principal Act is repealed.	
33	Use of work of Internal Auditor				
	1		The final report by an internal auditor which has been deliberated on and adopted by an audit committee of a State Organ or public entity, may be copied to the Auditor-General.	Section 33 of the principal Act is amended- (a) by deleting subsection (1) and substituting therefor the following new subsection-	The purpose of this amendment is to ensure that internal audit reports are submitted to the Auditor-General as and when required.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				Reports by an internal auditor which have been deliberated on and adopted by an Audit Committee of an entity shall be submitted by the accounting officer to the Auditor-General, upon request.	
	2		The Auditor-General shall have unhindered access to all internal audit reports of a state organ or any public entity, under subsection (1) above, which is subject to audit by the Auditor-General as provided for under Article 229 (4) of the Constitution.	In subsection (2), by inserting the expression “and (5)” immediately after expression “Article 229 (4)”.	The amendment introduces the words “and (5)” immediately after the expression “Article 229 (4) of the Constitution to enhance clarity.
34			Periodic Audits	Special Audits	
			The Auditor-General may, upon request or at his or her own initiative conduct periodic audits which shall be proactive, preventive, and deterrent to fraud and corrupt practices, systemic and shall be determined with a view to evaluating the effectiveness of risk management, control	Section 34 of the principal Act is amended by deleting the word” periodic” and substituting therefor the word “special”.	This section’s heading was amended to read “Special” Audits. The change to special audit was informed by need to expound the range of audits undertaken on the basis of request or at the Auditor-General’s

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
			and governance processes in State Organs and public entities.		initiative. It also allows the Auditor-General the flexibility to determine the time he or she may conduct the audits.
35		Annual financial audits			
			The Auditor-General shall conduct audits of financial statements under Article 229 of the Constitution for State Organs and public entities and report annually to Parliament and relevant county assembly.	Section 35 of the principal Act is amended by deleting the words “public entities” and substituting therefor the words “entities funded and receiving public funds”;	The purpose of the amendment is to re-align the section with the Constitution.
36		Performance Audit			
	1		The Auditor-General shall conduct performance audit to examine the economy, efficiency and effectiveness with which public money has been expended pursuant to Article 229 of the Constitution.	Section 36 of the principal Act is amended – (a) in subsection (1) - (i) by inserting the words “ among others” immediately after the word “examine” and;	The purpose of the amended is to re-arrange and enhance the various types of audit undertaken by the Office of the Auditor-General. This amendment is meant to broaden the

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				(ii)by deleting the words “public money” and substituting therefor the words “public resources”.	definition of the public assets.
	2		The Auditor-General may undertake a comprehensive audit within six months after the completion of any National or county project to evaluate whether the citizen has gotten value for money in the project and submit the report to Parliament or County Assembly for tabling and debate.	In subsection (2), by deleting the words “within six months” and substituting therefor the words ” any time”;	This subsection was amended by deleting the words “within six months” and replacing them with the words “at any time “. This amendment will give the Auditor-General flexibility to conduct performance audits on projects at any time deemed necessary to provide assurance on the usage of public funds.
37		Forensic Audit			
			The Auditor-General, may upon request by Parliament, conduct forensic audits to establish fraud, corruption or other financial improprieties.	The principal Act is amended by repealing section 37 and substituting therefor the following new section-	The purpose of the amendment is to re-arrange and expound the definition and coverage of forensic audits.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				The Auditor-General, may on his or her initiative or upon request conduct forensic or investigative audits to establish any fraud, corruption, financial impropriety or misuse of public resources.	
38		Procurement audits			
			The Auditor-General may examine the public procurement and asset disposal process of a state organ or a public entity with a view to confirm as to whether procurements were done lawfully and in an effective way.	Section 38 of the principal Act is amended by – (i) inserting the words economically, efficiently and” immediately after the word “lawfully and in”.	The purpose of the amended is to re-arrange and enhance the various types of audits undertaken by the Office of the Auditor-General.
38A		Citizen Accountability Audits			
				The principal Act is amended by inserting the following new sections	The purpose of the amended is to re-arrange and enhance the various types of audit undertaken by the Office of the Auditor-

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				<p>immediately after section 38-</p> <p>The Auditor-General may conduct periodic Citizen Accountability audits upon request, or at her or his own initiative to ensure public contribution or participation in the audit process pursuant to Article 10 and 201 of the Constitution.</p>	<p>General. It is an emerging audit endeavor seeking to involve the public in matters of governance and accountability.</p>
38B		Compliance Audits			
				<p>Section 38 is amended by inserting the following new section 38B immediately after section 38A as follows-</p>	<p>The purpose of the amendment is to ensure compliance with policies, laws and regulation governing use of public funds.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				<p>The Auditor-General may conduct compliance audit to examine whether a public entity has complied with relevant laws, regulations and policies in the management of public resources.</p>	
38C		Any other Audits			
				<p>Section 38 is amended by inserting the following new section 38C immediately after section 38B reading-</p> <p>The Auditor-General may conduct any other audit that he or</p>	<p>The purpose of the amendment is open up any other area of audit not covered by this Act.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				she may deem necessary for better carrying out of his or her functions under this Act.	
39	Audit Reports to be Submitted to Parliament and the Relevant County Assembly				
	1A			<p>Section 39 of the principal Act is amended-</p> <p>(a) in Sub section 1 by adding the following words “ with copies to Cabinet secretary responsible for finance and the relevant County Executive Committee member for finance, as the case maybe, and the</p>	<p>The purpose of introducing a new subsection 1A is to provide for a requirement that the Auditor-General presents his or her report before the National assembly or county assembly.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				<p>accounting officer of the entity that is subject of audit”</p> <p>(b) by inserting the following new subsection after subsection (1)-</p> <p>Where an audit report has been tabled, the Speaker of the National Assembly shall invite the Auditor-General to present the report before Parliament or the relevant county assembly.</p>	
	4			<p>Section 39 of the principal Act is amended –</p> <p>(a) by inserting the following new</p>	<p>The purpose of this new amendment is to monitor implementation of recommendations of Parliament or county assembly by state organs.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				<p>subsection immediately after subsection (3)-</p> <p>(3) Within one month after Parliament or county assembly has debated and considered the report of the Auditor-General and made recommendations, a state organ or a public entity that has been audited shall, as a preliminary step submit a report to Parliament or the relevant county assembly with a copy to the Auditor-General on how it has addressed the recommendations.</p>	
	5			Section 39 of the principal Act is amended –	The purpose of this amendment is to monitor implementation of recommendations of

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				<p>(I) by inserting a new section immediately after the new section 39 (4)-</p> <p>(4) Within three months after Parliament or the relevant county assembly has made recommendations, a state organ or public entity that has been audited shall submit a report to Parliament or the relevant county assembly with a copy to the Auditor-General on how it has addressed the recommendations of the previous year's audit.</p>	Parliament or county assembly by state organs or public entities.
PART IV – ACCOUNTS OF THE OFFICE OF THE AUDITOR-GENERAL					
Sources of funds of the Office of the Auditor-General					
41	1		(1) The funds of the Office of the Auditor-General shall consist of—	Section 41 (1) of the principal Act is amended in paragraph	The purpose of amendment is to be specific on the type of

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
			(b) such monies or assets as may accrue to the Office of the Auditor-General in the course of the exercise of the Auditor-General's powers or the performance of his functions under this Act;	“(b)” by deleting the word “ assets” and substituting therefor the words ” rental income”.	or form of resource received by the Office of the Auditor-General.
41A				Section 41 of the principal Act is amended by inserting the following new Section 41A (1)- 41A (1) Subject to the Public Finance Management Act, 2012, there is established a Fund to be known as the Public Audit Fund.	The purpose will be to facilitate emergency audits and related activities previously not contemplated.
				Section 41 of the principal Act is amended by inserting the following new Section 41A (2)- (2) The Auditor-General shall use the Fund to meet the	

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				expenditure of the audit mandate as provided in the Constitution and this Act.	
44		Audit of accounts			
	1		The accounting officer of the office of the Auditor-General shall submit accounts of the office to the appointed auditor under section 41, within three months after the end of the financial year to which the accounts relate.	Section 44 of the principal Act is amended in subsection (1) by deleting the expression “section 41” and substituting therefor the expression “ section 43”.	The purpose of the amendment is to correct an error of reference.
45		Reporting by Appointed Auditor			
				Section 45 of the Principal Act is amended in Subsection 4 (a) by adding the following new paragraph- any other relevant information on performance of the Office of the Auditor-General as contained in the annual	To allow the appointed Auditor to audit and report on performance information in the Office of the Auditor-General annual corporate report

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				corporate report provided	
46		Debating and Considering Report of Appointed Auditor			
			Within three months after receiving an audit report for the accounts of the Office of the Auditor-General, the National Assembly shall debate and consider the Annual Report of the Office of the Auditor-General, comprising the financial statements and the activities of the office and take appropriate action.	Section 46 of the principal Act is amended – (a) by deleting the word “accounts” and substituting with the words “financial statements”; and (b) by deleting the word “annual” and substituting therefor the word “audit”.	Provide clarity and enhance the audit report submitted to Parliament by the Auditor-General.
PART VI – REPORTING BY AUDITOR-GENERAL					
48		Accounts for audit			
	2		Without prejudice to the provisions of subsection (1), the Auditor-General may audit and report on the accounts of any entity that is funded from public funds.	Section 48 of the principal Act is amended in subsection (2) by deleting the word “from public funds” and substituting therefor the words “or entrusted with public	The purpose of the amendment is to expound the scope of public assets by using the words public resources instead of money.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				resources received from government”.	
50	Final Audit Reports on a State Organ or Public Entity including National or County Governments Accounts				
	1		The final audit report of the Auditor-General shall be submitted to Parliament or the relevant county assembly, with copies to the Cabinet Secretary responsible for finance and the relevant County Executive Committee member for finance, as the case may be, and the accounting office of the entity that is subject of the audit.	The principal Act is amended by repealing section 50 of the Act.	Section 50 is repealed as its subject matter is covered under section 39.
	2		Within three months of receiving an audit report referred to under subsection (1), Parliament or the relevant county assembly shall debate and consider the report and take appropriate action.	The principal Act is amended by repealing section 50 of the Act.	Section 50 is repealed as its subject matter is covered under section 39.
51	Other reporting by the Auditor-General				
	1		Within thirty days following the expiry of the seven days of publication period, Parliament or the relevant county assembly shall discuss and review other reports submitted to them.	The principal Act is amended by repealing section 51 of the Act.	Section 51 is repealed as its subject matter is covered elsewhere.
	2		Within fourteen (14) days following the expiry of the seven days publication period, the office of the Auditor-General shall publicize the report on its official website and any other public notice.	The principal Act is amended by repealing section 51 of the Act.	Section 51 is repealed as its subject matter is covered elsewhere.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
54		Withholding of Funds by Parliament or County Assembly			
	1		Where there is a serious material breach or persistent material breaches of the provisions of this Act, the Auditor-General may in his audit report to Parliament or the relevant county assembly pursuant to the Public Finance Management Act, 2012 (No. 18 of 2012), recommend the withholding of funds to any State Organ or public entity.	Section 54 of the principal Act is amended by deleting the words “in his audit report” and substituting therefor the words “prepare a report”.	The purpose of this amendment is to engender the provision.
58		Disclosure of fraud and corruption			
	1		All staff of the Office of the Auditor-General are duty bound to disclose any fraud or corruption that comes to their attention immediately and disciplinary action shall be taken against any officer who knowingly covers up any acts of fraud or corruption.	Section 58 of the principal Act is amended – (a) in subsection (1), by deleting the word “officer” and substituting therefor the word “staff”;	The purpose is to encompass all officers working in the Office of the Auditor-General are covered.
	2		Despite the provisions of subsection (1), an officer of the Office of the Auditor-General shall not divulge any information which relates to the business secret of the Auditee which comes to his or her knowledge in the course of duty unless is for official purposes as provided for under this Act or any other written law.	Section 58 of the principal Act is amended – (b) in subsection (2)- (i) by deleting the words “an officer” and substituting	The purpose of the amendment is to enhance clarity in the provision.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				<p>therefor the words "a staff";</p> <p>(ii) by deleting the words "auditee" and substituting therefor the words "audited entity".</p>	
59		Disclosure of Interest			
	1		<p>An officer of the Office of the Auditor-General who has an interest in a matter under consideration by the auditee client shall disclose in writing, the nature of that interest and shall not participate in any auditing exercise relating to that client.</p>	<p>Section 59 of the principal Act is amended in subsection (1) –</p> <p>(a) by deleting the words "an officer" and substituting therefor the words "a staff";</p> <p>(b) by deleting the words "auditee client" and substituting therefor the words "audited entity"; and</p>	

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				(c) by deleting the word “client” and substituting therefor the word “entity”.	
61		Offences by Officers of the Office of the Auditor-General			
	1		<p>Any officer of the Office of the Auditor-General commits an offence if that officer—</p> <p>(a) engages in a corrupt act;</p> <p>(b) knowingly and willfully conceals information on audit findings for whatever reason, including in order to obtain a financial benefit for the officer or an accomplice or another person;</p> <p>(c) knowingly and willfully fails to disclose audit information on fraud or corrupt practice by the audited entity;</p> <p>(d) fails to disclose any conflict of interest in any matter under consideration in the course of discharging any functions under this Act; or</p> <p>(e) knowingly and wilfully discloses, publishes or publicizes the Auditor-General's audit report or its contents to third parties including the media before the report is finalized and formally submitted to Parliament or County Assembly and copied to the audited entity and other authorized offices;</p>	<p>Section 61 of the principal Act is amended in subsection (1) by deleting the word “officer” wherever it appears and substituting therefor the word “staff”.</p>	<p>The purpose of the amendment is consistency in the Act.</p>

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
64			Powers to Report to Police, etc	Powers to Engage other Agencies	
	1		(1) Where the Auditor-General establishes that any person, supplier or company has been involved in fraud or corrupt practice, the Auditor-General shall report to the police, Ethics and Anti-Corruption Commission or the Public Procurement Oversight Authority for their action.	The principal Act is amended by repealing section 64 and substituting therefor the following new section - where the Auditor-General establishes that any person, supplier, company or audited entity has been involved in fraud or corrupt practice, the Auditor-General may collaborate with other investigative, enforcement, regulatory and oversight agencies including the National Police Service, Ethics and Anti-Corruption Commission, Office of the Director of Public Prosecutions and Public Procurement	The name of Public Procurement Oversight Authority was changed to Public Procurement Regulatory Authority to align with the change of name of the entity arising from Revised Public Procurement Act.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
				Administrative Review Board and the National Treasury for their action.	
	2		Where the matter is referred to the Public Procurement Oversight Authority, the Auditor-General may make recommendation for debarment from future public.	Where the Auditor-General refers a matter to the Public Procurement Administrative Board, the Auditor-General may make recommendations for debarment from future public procurement and asset disposal proceedings of a state organ or public entity with a copy to the relevant accounting officer.	The name of Public Procurement Oversight Authority was changed to Public Procurement Regulatory Authority to align with the change of name of the entity.
67		Disallowable expenditure			
			Where the Auditor-General becomes aware of— (a) any payment made without due authority; or (b) any deficiency or loss occasioned by negligence or misconduct; or	The principal Act is amended by repealing section 67 and substituting therefor the following new section- Where the Auditor-General becomes aware of—	Section 67 is amended to enhance clarity.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
			(c) any sum which ought to have been, but was not brought to account, he or she shall, in the case of expenditure, call in question the sum concerned and make a report on the sum to Parliament and the relevant county assembly.	(a) any payment made without due authority; or (b) any deficiency or loss occasioned by negligence or misconduct; (c) any sum which ought to have been collected, but was not, he or she shall make a report on the disallowable expenditure or uncollected revenue to Parliament or the relevant county assembly.	
PART IX — GENERAL PROVISIONS					
68		Power to Make Regulations	The Cabinet Secretary responsible for matters relating to finance may make Regulations not inconsistent with this Act respecting any matter that is necessary or convenient to be prescribed under this Act or for the carrying out or giving effect to this Act.	Section 68 of the principal Act is amended by deleting the “words” Cabinet Secretary responsible for matters relating to finance” and substituting therefor the words “Auditor-General”.	This amendment is made to shift responsibility and power to make regulations from the Cabinet Secretary, Treasury to the Auditor-General.

SECTION	SUB-SECTION	TITLE	CURRENT READING IN THE PUBLIC AUDIT ACT, 2015	PROPOSED AMENDMENTS	RATIONALE FOR THE AMENDMENTS
72			Public Right of Access to Official Audits Reports	Public Right of Access to Official Audits Reports	
			The Public shall have right of access to official reports of the Auditor-General in line with Article 35 of the Constitution for transparency and accountability, except where such access may unduly jeopardize state security.	Section 72 of the principal Act is amended by inserting the words “subject to section 6 of the Access to Information Act, 2016” at the beginning of the sentence.	This amendment is meant to anchor the provisions of Information Act, 2016 in this legislation.

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SPECIAL ISSUE

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ACTS, 2015

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THE PUBLIC AUDIT ACT

No. 34 of 2015

Date of Assent: 18th December, 2015

Date of Commencement: 7th January, 2016

ARRANGEMENT OF SECTIONS

Section

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- 3—Guiding values and principles.

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- 51—Other reporting by Auditor-General.
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SCHEDULE

AN ACT of Parliament to provide for the functions and powers of the Office of the Auditor-General in accordance with the Constitution, and for connected purposes

ENACTED by Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Public Audit Act, 2015. Short title.
2. In this Act, unless the context otherwise requires— Interpretation.
- “Accounting Officer” means—
- (a) an Accounting Officer of the Office of the Auditor-General referred to under section 16 (1)(b);
- (b) an Accounting Officer as defined under section 2 of the Public Finance Management Act, 2012; No. 18 of 2012.
- “Audit Committee” means an audit committee established under sections 73(5) and 155(5) of the Public Finance Management Act, 2012; No. 18 of 2012.
- “Auditor-General” means the Auditor-General appointed in accordance with Article 229 of the Constitution and section 11 of this Act; No. 8 of 2011.
- “Appropriation” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; No. 18 of 2012.
- “county government entity” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; No. 18 of 2012.
- “effectiveness” means prudent, efficient, economic, transparent and accountable use of public funds to ensure government achieves value for money and that such funds are applied for intended purpose;
- “financial year” has the meaning assigned to it under Article 260 of the Constitution;

No. 34

“lawful” includes compliance with a state organ’s internal regulations, internal policies, programmes and the prescribed measures for securing efficient and transparent fiscal management;

“office” means the Office of the Auditor-General established under section 4 of this Act;

“public officer” has the meaning assigned to it in Article 260 of the Constitution;

“public funds” means—

- (a) all money that comes into possession of, or is distributed by, a State organ including the national or county governments and intergovernmental entities and money raised by a private body under statutory authority;
- (b) money held by State organ or public entities in trust for third parties and any money that can generate liability for the government;

“public debt” has the meaning assigned to it under Article 214 of the Constitution;

“public entity” includes any department or agency of the government and any authority, body or other entity declared to be a government entity under the Public Finance Management Act;

No. 18 of 2012.

“Receiver of Revenue” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

No. 18 of 2012.

“State Organ” has the meaning assigned to it under Article 260 of the Constitution; and

“Wasteful Expenditure” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012.

No. 18 of 2012.

3. (1) In discharging its functions under this Act, the Office of the Auditor -General and any person to whom this Act applies, shall be guided by the values, principles and requirements of the Constitution, including—

Guiding values and principles.

- (a) the national values and principles provided for under Article 10 of the Constitution;
- (b) the equality and freedom from discrimination provided for under Article 27 of the Constitution;
- (c) the responsibilities of leadership provided for under Article 73 of the Constitution;
- (d) the principles governing the conduct of State officers provided for under Article 75 of the Constitution;
- (e) the principles of public finance under Article 201 of the Constitution; and
- (f) the values and principles of Public Service as provided for under Article 232 of the Constitution.

(2) In addition to the values and principles in subsection (1), the Auditor-General shall promote efficiency, accountability, effectiveness and transparency on use of public resources.

PART II—ESTABLISHMENT OF THE OFFICE OF THE AUDITOR-GENERAL

4. (1) There is established an office to be known as the Office of the Auditor-General which shall be a body corporate in accordance with Article 253 of the Constitution and shall be capable of—

Establishment of the
Office of the
Auditor-General.

- (a) suing and being sued;
- (b) acquiring, safeguarding, holding, charging and disposing of moveable and immoveable property; and
- (c) doing or performing all such other duties or acts for the proper discharge of its functions under this Act, which may be lawfully done by a body corporate.

(2) The office shall comprise the Auditor-General as its statutory head and all other staff appointed by the Auditor-General as may be delegated in accordance with Article 234 of the Constitution.

(3) The Office of the Auditor-General shall ensure reasonable access to its services in all parts of the Republic.

(4) The headquarters of office of the Auditor-General shall be in the capital city but the office may establish branches at any place in Kenya.

5. (1) A person shall be qualified for appointment as the Auditor-General if such person:-

Qualification for
appointment as the
Auditor-General

- (a) is a citizen of Kenya;
- (b) holds the respective qualifications for the office specified in Article 229 (2) of the Constitution;
- (c) holds a degree in finance, accounting or economics from a university recognized in Kenya and demonstrates a verifiable and logical progression in the attainment of his or her educational qualifications;
- (d) meets the requirements of Chapter Six of the Constitution; and
- (e) is a practicing member of good standing of a professional body of accountants recognised by law.

6. (1) The Common seal of the Office shall be kept in the custody of the Auditor-General or in the custody of such other person as the Auditor-General may direct.

Common Seal.

(2) The Common Seal of the Office when affixed to a document and duly authenticated shall be judicially and officially noticed, and unless and until the contrary is provided any necessary order or authorization by the Office under this section shall be presumed to have been duly given provided that express authority of the Auditor-General is procured.

7. (1) In addition to the functions and responsibilities of the Auditor-General as set out in Article 229 of the Constitution, the Auditor-General shall—

Functions and
powers of the
Auditor-General.

- (a) give assurance on the effectiveness of internal controls, risk management and overall governance at national and county government;
- (b) undertake audit activities in state organs and public entities to confirm whether or not public money has been applied lawfully and in an effective way;
- (c) satisfy himself or herself that all public money has been used and applied to the purposes intended and that the expenditure conforms to the authority for such expenditure;
- (d) confirm that—
 - (i) all reasonable precautions have been taken to safeguard the collection of revenue and the acquisition, receipt, issuance and proper use of assets and liabilities; and
 - (ii) collection of revenue and acquisition, receipt, issuance and proper use of assets and liabilities conforms to the authority;
- (e) issue an audit report in accordance with Article 229 of the Constitution;
- (f) provide any other reports as may be required under Article 254 of the Constitution; and
- (g) perform any other function as may be prescribed by any other written legislation.

(2) Without prejudice to the generality of subsection (1), the Auditor-General may undertake any audits required under the Constitution, this Act or any other relevant law.

8. In addition to the powers and functions conferred under the Constitution, this Act and other relevant laws, and pursuant to Articles 252 (1) (c) and 232 of the Constitution, the Auditor-General shall—

Administrative powers of the office of the Auditor-General.

- (a) develop an organisational structure and staffing establishment for the Office of the Auditor-General subject to Article 234(5) of the Constitution;
- (b) subject to Article 234(5) of the Constitution, recruit and promote qualified and competent staff to perform the Office's functions;
- (c) subject to Article 234(5) of the Constitution, exercise disciplinary control over staff;
- (d) subject to Article 234(5) of the Constitution, develop human resource of the office;
- (e) subject to Article 230 (4)(b) and 234 of the Constitution, determine the remuneration and benefits of each member of staff;
- (f) in addition to what is provided for under any other relevant law, develop and maintain a code of conduct and ethics for the office, specific to auditing, guided by the International code of practice, and code of Ethics issued by the International Organization of Supreme Audit Institutions and in consultation with the Public Service Commission and the National Treasury;

9. (1) Without prejudice to the powers given under the Constitution and this Act and for the purposes of carrying out his or her duties effectively, the Auditor-General, or an officer authorized for the purpose of this Act, shall have powers—

General powers of
the Auditor-General.

- (a) to conduct investigations on his or her own initiative, or on the basis of a complaint made by a third party;
- (b) to obtain professional assistance, consultancy or advice from such persons or organizations whether within or outside public service as he/she considers appropriate;

- (c) of conciliation, mediation and negotiation;
- (d) to issue summons to a witness for the purposes of his or her investigation;
- (e) of unrestricted access to—
 - (i) all books, records, returns, reports, electronic or otherwise and other documents of entities listed under Article 229 (4) of the Constitution;
 - (ii) any property or premises used or held by State Organs or public entities covered by Article 229 (4) of the Constitution and subject to audit under this Act.

Provided that such access is reasonably necessary, in the opinion of the Auditor-General, in carrying out his or her functions;

- (f) to request any public officer that is subject to this Act to provide explanations, information and assistance in person and in writing;
- (g) to locate any of his or her staff or an agent, for a time period to be determined by the Auditor-General, at the premises of any State Organ or public entity that is the subject of an audit or examination or review and that entity shall provide access to staff or agent and adequate office space, furniture and telephone access at the expenses of that State Organ or public entity;
- (h) to identify the origin of a transaction or officer who directed or approved it, where he or she has determined inaction, omissions, misuse or abuse of public resources by a public officer; and
- (i) to perform any function and exercise any powers prescribed by any other legislation, in addition to the functions and powers conferred by the Constitution.

(2) In addition to the powers under the Constitution, and subsection (1), the Auditor-General may without payment of a fee—

- (a) require a search to be made of any records in a public office;
- (b) require copies to be made of, or extracts to be taken from, any records in a public office;
- (c) seize or access or obtain official electronic messages to the extent that it is necessary for purposes of undertaking an investigation or forensic audit in entities listed under Article 229 (4) of the Constitution ; and
- (d) solicit assistance of other National and County governments agencies in the exercise of his/her responsibilities under the Constitution, this Act or any other written law.

10. (1) The Auditor-General shall not be subject to direction or control by any person or authority in carrying out his or her functions under the Constitution or under this Act.

Independence of the Auditor-General.

(2) Without prejudice to the generality of subsection (1), the Auditor-General and his or her staff shall perform their functions impartially, without fear, favour or prejudice and shall exercise their powers independently subject to the provisions of the Article 249 (2) of the Constitution, the provision of this Act and any other written law.

11. (1) The office of the Auditor-General shall become vacant, if the Auditor-General—

Vacancy in office.

- (a) dies;
- (b) by a notice in writing addressed to the President, resigns from office; or
- (c) is removed from office under any of the circumstances specified in Article 251 or Chapter Six of the Constitution.

(2) Where a vacancy occurs under subsection (1), the President shall within seven days, by notice in the Gazette, in at least two newspapers of national circulation and in at least two national radio and television stations, declare vacancies in the office of the Auditor-General and invite applications.

(3) An application under subsection (2) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any:

- (a) qualified person;
- (b) person, organisation or group of persons proposing the nomination of any qualified person.

(4) The names of all applicants under subsection (2) shall be published in the Gazette.

(5) The President shall, within fourteen days of the expiry of the period prescribed under subsection (3), constitute a selection panel comprising a chairperson and one representative from –

- (a) the Ministry for the time being responsible for matters relating to finance;
- (b) the Office of the Attorney General;
- (c) the Ministry for the time being responsible for matters relating to the public service;
- (d) the Institute of Certified Public Accountants of Kenya;
- (e) the Association of Professional Societies of East Africa; and
- (f) the Law Society of Kenya,

for the purpose of considering the applicants and selecting at least three persons qualified for appointment as Auditor General:

Provided that for the purpose of selection and shortlisting of the said three persons, the selection panel shall hold its proceedings in public and submit to Parliament a report of the interview proceedings, which should include inter alia the scores of each candidate interviewed by individual members of the interviewing panel together with the criteria used in selecting the names forwarded.

(6) The selection panel shall within seven days of the selection of candidates under subsection (5), forward the names of the selected candidates to the President for nomination.

(7) The President shall, within seven days of the receipt of the names of the selected candidates under subsection (6), nominate one candidate for appointment as the Auditor-General and forward the name to the National Assembly.

(8) The National Assembly shall consider the nomination and may approve or reject the nomination.

(9) Where the National Assembly:

- (a) approves the nominee, the Speaker shall, within three days of the approval, forward the name of the approved nominee to the President for appointment;
- (b) rejects the nomination, the speaker shall, within three days of the rejection, communicate the decision to the President, who shall submit a fresh nominee from amongst the candidates forwarded by the selection panel under subsection (6).

(10) If the National Assembly rejects all or any subsequent nominee submitted by the President for approval under subsection (9), the provisions of subsections (1) to (7) shall, with the necessary modifications, apply.

(11) The President shall, within seven days of the receipt of the approved nominee from the National Assembly, by notice in the Gazette, appoint the Auditor-General approved by the National Assembly.

(12) For the avoidance of doubt, the Public Service Commission shall only provide secretariat services for the selection panel convened under subsection (5).

(13) Despite the foregoing provisions of this section, the President may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

12. (1) Where-

- (a) the office of the Auditor-General becomes vacant;
- (b) the Auditor-General has been suspended in accordance with the Constitution;
- (c) the appointment of a person as Auditor-General is pending; or
- (d) the Auditor-General is for any reason unable to perform the function of his or her office,

then until a person is appointed to and has assumed the functions of that office in accordance with section 11, or until the Auditor-General has resumed the performance of those functions, the Public Service Commission shall recommend the most senior officer in the office of the Auditor-General to the President to designate such a person as the acting Auditor-General.

(2) A person designated under subsection (1) shall meet the minimum qualifications for appointment to the office of the Auditor-General and shall serve for a period not exceeding ninety days.

(3) When acting in terms of subsection (1), the acting Auditor-General shall have all the powers of the Auditor-General.

13. The Auditor General shall, before assuming office, make and subscribe to the oath or affirmation set out in the Schedule before the Chief Justice.

Oath of Office.

14. The Office of the Auditor General shall develop an organizational structure for consideration and approval by the Audit Advisory Board.

Development and approval of organisational structure.

15. (1) There shall be a Senior Deputy Auditor-General who shall be competitively recruited by the Advisory Board and appointed by the Auditor General.

Recruitment of the Senior Deputy Auditor-General.

(2) A person shall be qualified for appointment as the Senior Deputy Auditor-General, if that person meets all the qualifications for appointment as outlined in section 5 of this Act.

16. (1) The Senior Deputy Auditor-General shall deputize the Auditor General and —

Responsibilities of the Senior Deputy-Auditor General.

- (a) be the head of administration and management of the office of the Auditor-General;
- (b) be the accounting officer of the Office of the Auditor-General; and
- (c) perform such duties and exercise such other powers as the Auditor-General may delegate to him or her or perform other duties as spelt out by the office of the Auditor-General.

(2) In performance of his or her responsibilities under subsection (1) (a), the Senior Deputy Auditor General shall report to the Auditor-General.

17. (1) The office of the Auditor General may recruit such other staff as may be necessary for proper discharge of his or her functions under the Constitution, this Act and any other written law, upon such terms and conditions as he/ she may determine in consultation with the Salaries and Remuneration Commission and subject to Articles 230 and 234(5) of the Constitution.

Recruitment of other Staff.

(2) The remuneration of such staff should reflect prevailing remuneration of staff performing similar duties in the audit profession in other public and private institutions.

(3) The staff of the Office of the Auditor-General shall be competitively recruited in accordance to the organisation structure developed by the office of the Auditor-General.

(4) The recruitment and appointment of staff shall take cognisance of regional, ethnic and gender balance including equal opportunities to persons with disabilities and marginalized groups and shall comply with the value and principles of public service as contemplated in Article 232 of the Constitution.

18. (1) A State Organ or public entity may upon such request by the Auditor-General, second to the office such number of public officers as may be necessary for proper performance of the functions of the Office.

Secondment of officers.

(2) A public officer seconded to the office shall, during the period of secondment, be deemed to be an officer of the office and be subject to the policies and regulations of the office of the Auditor-General.

(3) The Auditor-General may, upon the request of a State Organ or public entity second his or her staff who shall, for the period of such secondment, be under the direction and control of the concerned State Organ or public entity and such an officer shall not audit that State Organ or public entity within a period of twenty-four months after the expiry of the secondment.

19. (1) The Auditor-General may, subject to such conditions as he or she may impose in writing, delegate any power and assign any duty conferred on him or her in terms of this Act or any other written law to a subordinate officer.

Delegation of powers.

(2) A delegation or instruction in terms of subsection (1) shall not absolve the Auditor-General of the responsibility concerning the exercise of his or her power or the performance of the duty.

(3) The Auditor-General may confirm, vary or revoke any decision taken by a member of staff in consequence of a delegation or instruction under this section.

20. (1) The accounting officer shall prepare annually budget estimates of revenue and expenditure and work plans for the next financial year for consideration.

Budget estimates and plans of the office of the Auditor-General.

(2) The budget estimates of revenue and expenditure referred to under sub-section (1) shall be submitted to the Cabinet Secretary responsible for finance not later than the

30th March each year for review and submission to the National Assembly in accordance with Article 221 of the Constitution, and the National Assembly shall, pursuant to Article 249 (3) of the Constitution, allocate adequate funds to the office of the Auditor General.

(3) The budget estimates submitted under sub-section (2) shall include the following—

- (a) estimates of revenue and recurrent expenditure for the coming fiscal year;
- (b) estimates for the development expenditure for the coming fiscal year; and
- (c) any other matter considered relevant by the Auditor-General in the consideration of the budget and plans of the Office.

21. (1) For the purposes of exercising or performing his or her functions, duties or powers under the Constitution or this Act, and subject to the law relating to data protection, the Auditor-General shall require a public body or any person employed by the public body—

Power to obtain information from others.

- (a) to produce any official document in the body's or person's custody, care or control; and
- (b) to provide the Auditor-General with information or an explanation about any official information, system or asset.

(2) The Auditor-General may obtain such official information as he or she considers necessary to fulfil his or her functions, duties and powers from a person who is not a member, employee or office holder of the public body, within fourteen days and in doing so, the Auditor-General may—

- (a) advise the person in writing of the nature of the information and why it is needed;
- (b) state that the information is required under this Act;
- (c) ask for further information where necessary;

- (d) summon the person, if necessary; or
- (e) reimburse the person for any reasonable costs incurred in travelling where such person is summoned to appear, as may be determined by the Office.

(3) Where the information required is not official, then the Auditor General will have to apply to the courts to obtain such information.

(4) In cases where the Auditor-General suspects fraud or corruption, he or she may invite the relevant organs for their appropriate action.

22. (1) The Auditor-General may in the course of exercising his or her functions, duties or powers, track a transaction into the account of any person in any bank through an order of the courts, if the Auditor-General has reason to believe that the money belonging to a public body has been fraudulently or wrongfully paid into such person's account.

Power to examine bank accounts.

(2) When required under this section, the bank shall produce any documents or provide requested information relating to the account in the bank's custody or control.

(3) In exercising the authority under this section, the Auditor-General shall ensure that any information obtained is not used for any other purpose other than that legally intended and the Auditor-General shall keep in safe custody all the documents and information so obtained.

(4) The Auditor-General may make copies of any documents so produced.

23. (1) For purposes of carrying out his or her functions under this Act, the Auditor-General may outsource audit services from duly registered audit firms whose partners and staff are not employees of the Office of the Auditor-General and the public service to assist in an examination and audit of accounts.

Outsourcing audit services.

(2) Only a person registered and practising as an accountant under the Accountants Act, 2008, shall be

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qualified for the purpose of provision of a financial audit opinion under this section.

(3) An auditor appointed under this section shall comply with any lawful directions given by the Auditor-General and shall report to the Auditor-General.

(4) For purposes of his or her appointment, an auditor appointed under this section exercises delegated powers of the Auditor-General relating to examinations and audit.

(5) An auditor appointed under this section shall not certify the results of the examination and audit and shall not submit any report required under this Act other than the report under subsection (2).

(6) During the period of performing the work outsourced, the staff of the outsourced firm shall conform to the provisions of this Act and Code of Ethics developed under this Act.

(7) An officer who previously worked for an organ that is being audited by the Auditor-General shall not audit that organ until after thirty-six months from the time he or she ceased working for that organ.

(8) Outsourcing of any audit services under this section shall not absolve the Auditor-General of any responsibility concerning the exercise of his or her powers under this Act.

24. (1) The Auditor-General may, in the performance of his or her duties and functions under this Act, engage the services of or work in consultation with professional or technical experts or consultants, whether in the public service or not, to enhance the performance of the Auditor-General.

Professional assistance and consultancy.

(2) The engagement of service under sub-section (1) shall be for purposes of ensuring effectiveness in the application of public funds.

**PART III—ESTABLISHMENT OF THE AUDIT
ADVISORY BOARD**

25. (1) There is established an unincorporated board to be known as the Audit Advisory Board which shall comprise of—

Establishment and composition of the Audit Advisory Board.

- (a) the Auditor-General or a person nominated by him or her;
- (b) the Attorney-General of Kenya or a person nominated by him or her;
- (c) a nominee of the Institute of Certified Public Accountants of Kenya;
- (d) a nominee of the Association of Professional Societies of East Africa;
- (e) a nominee of the Law Society of Kenya;
- (f) the Chairperson of the Public Service Commission or his or her nominee:

Provided that the nominee under paragraph (d) shall not be a member of a professional body provided for under subsection 1(c) and (e).

(2) A person shall be qualified to be nominated under subsection (1) (c) to (e) above if such person—

- (a) has a degree from a university recognised in Kenya;
- (b) has a minimum of fifteen years' experience in matters relating to public finance, auditing, accounts, law, governance or public management ; and
- (c) meets the requirements of Chapter Six of the Constitution

(3) The Auditor-General may co-opt two other members with the necessary expertise.

(4) The members of the Audit Advisory Board shall elect a chairperson from among themselves, who shall not be the Auditor General.

(5) The nomination and appointment of members under this section shall take cognisance of regional, ethnic, and gender balance and people with disabilities and marginalised groups.

(6) The Auditor-General shall, within fourteen days of receipt of names of qualified persons pursuant to subsection (1), by notice in the Gazette, appoint members of the Board.

(7) The members of the Audit Advisory Board shall hold office for a term not exceeding three years from the date of appointment and may be eligible for reappointment for a further one term of three years.

26. (1) The Audit Advisory Board shall meet at least four times in every financial year and not more than twelve times in every financial year and not more than four months shall elapse between one meeting and the next meeting.

Meetings and
procedure of the
Audit Advisory
Board.

(2) The quorum at the meeting of the Audit Advisory Board is five members of the Board or a greater number determined by the Audit Advisory Board in respect of an important matter.

(3) The Senior Deputy Auditor-General of the office of the Auditor-General shall be the Secretary of the Audit Advisory Board.

(4) The Chairperson shall convene and preside at meetings of the Board.

(5) The proceedings of the Audit Advisory Board shall not be invalidated by reason of a vacancy among the members.

27. (1) Subject to section 10, the principal function of the Audit Advisory Board shall be to advise the Auditor-General on the exercise of his or her powers and the performance of his or her functions under the Constitution and this Act.

Functions of the
Audit Advisory
Board.

(2) Subject to the generality of subsection (1) the Board shall, in addition to any other function that may be conferred by this Act or any other law, advise the Auditor-General on—

- (a) the recruitment of senior managers into the Office of the Auditor-General;
- (b) the development and review of organizational development issues;
- (c) the budget estimates and plans of the office of the Auditor-General;
- (d) the remuneration and other terms of appointment of the staff of the Office of the Auditor-General in consultation with the Salaries and Remuneration Commission; and
- (e) any other matter that the Auditor-General may refer to the Board from time to time.

28. The members of the Audit Advisory Board shall be paid such allowances and expenses as are provided by the Salaries and Remuneration Commission from monies appropriated to the Office of the Auditor General.

Allowances and expenses of the Audit Advisory Board members.

PART IV—AUDIT PROCESS AND TYPES OF AUDIT

29. Subject to the Constitution and any written law, the Office of the Auditor-General shall apply the applicable international standards, principles and practices in their audits.

Guiding principles, practices and standards of auditing.

30. Subject to the provisions of Articles 201 and 232 of the Constitution, the Auditor-General shall determine the scope and extent of the examination or inspection of accounts and any other documents or information related to public expenditures or any audits under this Act, which he considers necessary in carrying out his or her responsibilities and functions specified under this Act.

Scope of Audit.

31. (1) The certification audit process steps shall be as follows—

Certification audit process steps.

- (a) within three months after Parliament or the County Assembly has debated and considered the final report of the Auditor General and made recommendations, a State Organ or a public entity

that had been audited shall, as a preliminary step, submit a report on how it has addressed the recommendations and findings of the previous year's audit.

- (b) at the beginning of the audit examination of the financial statements of a State Organ or public entity, an inception meeting shall be held to deliberate on the scope of the financial audit, between the Auditor-General and the accounting officer and the financial statements to be audited should have been signed by the accounting officer and the substantive head of that entity, if different from the accounting officer and the Chairperson of the governing body, where applicable;
 - (c) at the conclusion of the audit examination of the financial statements of each State Organ, an exit meeting shall be held at which the Auditor-General shall submit a draft management letter which shall include findings and recommendations to the accounting officer and comments of the accounting officer on the Auditor-General's findings and recommendations and the Auditor-General shall provide a copy of the report to the substantive head of that entity, if different from the accounting officer and, the Chairperson of the governing body, where applicable.
- (2) For all other audits or investigation, the Auditor General shall inform the State organ or public entity to be audited or investigated in writing before commencement of the audit or investigation.
- (3) The Auditor-General shall include in his or her report under this section—
- (a) recommendations on how a State Organ or public entity may improve the application of funds in a lawful and in an effective way; and
 - (b) how responsive the State organ or public entity has been to past audit findings and recommendations.

(4) The accounting officer shall within fourteen days from the date of receipt of the draft management letter, submit a response to the Auditor-General including remedial actions that have been undertaken to address any qualifications in the draft management letter.

(5) If within fourteen days the Auditor General will not have received a response, the Auditor-General shall proceed with the finalisation of the final management letter.

(6) Where an audit report has been tabled, the Speaker of the National Assembly shall invite the Auditor-General to present the report before the National Assembly.

32. (1) All reports of an audit shall be submitted to Parliament or the relevant county assembly.

Audit reports to be submitted to Parliament and the relevant county assembly

(2) Within seven days of receiving the report, Parliament shall publicize it on its official website and other public spaces.

(3) Within fourteen days after submitting the report to Parliament or the relevant county assembly, the Auditor General shall publicize the report on the official website and other public spaces.

33. (1) The final report by an internal auditor which has been deliberated on and adopted by an audit committee of a State Organ or public entity, may be copied to the Auditor-General.

Use of work of internal auditor.

(2) The Auditor-General shall have unhindered access to all internal audit reports of a State Organ or any public entity, under subsection (1) above, which is subject to audit by the Auditor-General as provided for under Article 229 (4) of the Constitution.

34. The Auditor-General may, upon request or at his or her own initiative conduct periodic audits which shall be proactive, preventive, and deterrent to fraud and corrupt practices, systemic and shall be determined with a view to evaluating the effectiveness of risk management, control and governance processes in State Organs and public entities.

Periodic Audits.

35. The Auditor-General shall conduct audits of financial statements under Article 229 of the Constitution for State Organs and public entities and report annually to Parliament and relevant county assembly.

Annual financial audits.

36. (1) The Auditor-General shall conduct performance audit to examine the economy, efficiency and effectiveness with which public money has been expended pursuant to Article 229 of the Constitution.

Performance Audit.

(2) The Auditor-General may undertake a comprehensive performance audit within six months after the completion of any National or County project to evaluate, whether the citizen has gotten value for money in the project and submit the report to Parliament or County Assembly for tabling and debate.

37. The Auditor-General may, upon request by Parliament, conduct forensic audits to establish fraud, corruption or other financial improprieties.

Forensic Audit.

38. The Auditor-General may examine the public procurement and asset disposal process of a state organ or a public entity with a view to confirm as to whether procurements were done lawfully and in an effective way.

Procurement audits.

39. (1) All reports of an audit shall be submitted to Parliament or the relevant county assembly.

Audit reports to be submitted to Parliament and the relevant county assembly.

(2) Within seven days of receiving the report, Parliament or the relevant county assembly shall publicise it on their official website and other public spaces.

(3) Within fourteen days after the expiry of seven days upon submitting the report to Parliament or the relevant county assembly, the Auditor-General shall publicise the report on their official website and other public spaces.

40. (1) In auditing national security organs, the Auditor General and his or her representatives shall hold an inception meeting at the highest level, pursuant to section 31(1) (b), to agree on areas which may touch on national security and determine the appropriate audit approach that shall ensure confidentiality of information.

Auditing of national security organs

(2) The audit reports on national security organs may be redacted to shield identities of persons as well as assets and liabilities as the case may be.

(3) All staff of the Auditor-General carrying out audit under this section shall be vetted by the authorised government vetting agency.

PART V—ACCOUNTS OF THE OFFICE OF THE AUDITOR-GENERAL

41. (1) The funds of the Office of the Auditor-General shall consist of—

Sources of funds of the Office of the Auditor-General.

- (a) monies appropriated by Parliament for the purposes of the Office of the Auditor-General;
- (b) such monies or assets as may accrue to the office of the Auditor-General in the course of the exercise of the Auditor-General's powers or the performance of his functions under this Act;
- (c) audit fees charged at the rates prescribed by the Auditor-General;
- (d) investment income subject to annual approval by Parliament; and
- (e) all monies from any other source provided or donated or lent to the office of the Auditor-General and such monies shall be disclosed to Parliament.

(2) The receipts, earnings or accruals of the office of the Auditor-General shall not be paid into the Consolidated Fund but shall be retained for purposes of this Act in accordance with Article 206 (1) of the Constitution.

(3) The Auditor-General may open and maintain such bank accounts in accordance with section 28 of the Public Finance Management Act, 2012, as are necessary for the exercise of the functions of the office of the Auditor-

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General and shall pay into them all monies received from the Government, or from any other source, for the purposes of this Act.

42. Notwithstanding the provisions of this Act, in an examination under this Act, the Auditor-General shall not question the merits of a policy objective of the national government or county government or any other public entity.

Auditor General not to question Government policy objectives.

43. (1) For each financial year, the Accounting Officer of the office of the Auditor-General shall prepare and submit upon approval by the Auditor-General, for audit the financial statements of the office of the Auditor-General to an external auditor appointed by the National Assembly in accordance with Article 226 (4) of the Constitution.

Accounts of the Office of the Auditor General.

(2) The financial statement shall include the following—

- (a) a statement of financial performance;
- (b) a statement of financial position;
- (c) a statement of changes in net assets;
- (d) a statement of accounting policies and notes to the financial statements; and
- (e) a statement of performance of the Office of the Auditor-General including statements on processes and systems audit against predetermined objectives.

(3) Without prejudice to subsection (2), the Accounting Officer shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed and published by the Public Sector Accounting Standards Board in accordance with the Public Finance Management Act, 2012.

44. (1) The accounting officer of the office of the Auditor-General shall submit accounts of the office to the appointed auditor under section 41, within three months

Audit of accounts.

after the end of the financial year to which the accounts relate.

(2) The appointed auditor shall examine and audit the submitted accounts of the office of the Auditor General within six months after the end of the financial year in accordance with the provisions of Part IV of this Act, express an opinion and certify the result of that examination and audit.

(3) The appointed auditor shall examine whether or not public money has been applied lawfully and in an effective way.

45. (1) The appointed auditor shall prepare a report on the examination and audit and submit the report to each relevant Clerk of Parliament, with a copy to the Cabinet Secretary responsible for finance and the Auditor-General.

Reporting by the
appointed auditor.

(2) Subject to Article 35 of the Constitution, Parliament shall publicise it on their official website and other public spaces.

(3) Within fourteen days after the expiry of seven days upon submitting the report to Parliament, the Auditor-General shall publicise the report on their official website and other public spaces.

(4) Without limiting what may be included in the report—

(a) the report shall indicate whether—

- (i) the information and explanations that were required to perform the examination and audit were received;
- (ii) proper books of accounts have been kept and the accounts are in agreement therewith; and
- (iii) the accounts present a true and fair view of the financial position of the office of the Auditor-General;

- (b) the report shall identify cases in which—
- (i) money has been spent in a way that was not lawful, economical, efficient and effective; and
 - (ii) the rules and procedures followed or the records kept were inadequate to safeguard assets, liabilities and the collection of revenue.

46. Within three months after receiving an audit report for the accounts of the Office of the Auditor-General, the National Assembly shall debate and consider the Annual Report of the office of the Auditor-General, comprising the financial statements and the activities of the office and take appropriate action.

Debating and considering report of appointed auditor.

PART VI—REPORTING BY AUDITOR-GENERAL

47. (1) The financial statements required under the Constitution, the Public Finance Management Act, 2012 and any other legislation, shall be submitted to the Auditor-General within three months after the end of the fiscal year to which the accounts relate.

Time limit for submission of accounts.

No. 18 of 2012.

(2) The financial statements shall be in the form and content as prescribed by the Public Sector Accounting Standards Board.

48. Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on the accounts specified in Article 229 of the Constitution.

Accounts for audit.

(2) Without prejudice to the provisions of subsection (1), the Auditor-General may audit and report on the accounts of any entity that is funded from public funds.

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*Public Audit***No. 34**

49. (1) If, in the course of an examination and audit, a matter comes to the attention of the Auditor-General that he or she feels should be brought to the attention of the Parliament or the relevant county assembly, the Auditor-General shall submit a special report to Parliament or the relevant county assembly in accordance with the protocols developed in the Regulations.

Special reports in the course of annual audit of the accounts of State organs.

(2) Within seven days of receipt, Parliament or the relevant county assembly, shall publicize that report on their official website and any other public notice and shall publish a notice in the gazette to inform the public of the availability of the report.

(3) Within fourteen days following the expiry of the seven days referred to under subsection (2), the office of the Auditor-General shall publicize that report on its official website and any other public notice.

(4) Within sixty days following the expiry of the seven days referred to under subsection (2), Parliament or relevant county assembly shall discuss and review the report.

50. (1) The final audit report of the Auditor-General shall be submitted to Parliament or the relevant county assembly, with copies to the Cabinet Secretary responsible for finance and the relevant County Executive Committee member for finance, as the case may be, and the accounting office of the entity that is subject of the audit.

Final audit reports on a State Organ or public entity including national or county governments accounts.

(2) Within three months of receiving an audit report referred to under subsection (1), Parliament or the relevant county assembly shall debate and consider the report and take appropriate action.

51. (1) Within thirty days following the expiry of the seven days of publication period, Parliament or the relevant county assembly shall discuss and review other reports submitted to them.

Other reporting by the Auditor-General.

(2) Within fourteen (14) days following the expiry of the seven days publication period, the office of the Auditor-General shall publicize the report on its official website and any other public notice.

52. Where Auditor-General makes use of national or local media to publicise the reports under this Act, he or she shall take into consideration the following factors—

Use of media in publicizing of reports.

- (a) the general nature of the report or document;
- (b) how and where it has been published and how it may be accessed and read by members of the public;
- (c) the need to widely circulate a summarized version of the report;
- (d) accessibility of the document at public libraries or offices of State Organs and public entities; and
- (e) any other forum that the Auditor-General may consider appropriate.

53. (1) The relevant accounting officer of a state organ or public entity shall within three months after Parliament has considered and made recommendations on the audit report—

Implementation of reports by an accounting officer.

- (a) take the relevant steps to implement the recommendations of parliament on the report of the Auditor-General; or
- (b) give explanations in writing to the Parliament on why the report has not been acted upon.

(2) Failure to comply with the provisions of subsection (1), the accounting officer shall be in contempt of Parliament or County Assembly and upon determination by Parliament or relevant County Assembly, Parliament or relevant County Assembly may recommend administrative sanctions such as removal as the Accounting Officer, reduction in rank among others.

54. Where there is a serious material breach or persistent material breaches of the provisions of this Act, the Auditor-General may in his audit report to Parliament or the relevant county assembly pursuant to the Public

Withholding of funds by Parliament or county assembly. No. 18 of 2012.

Finance Management Act, 2012, recommend the withholding of funds to any State Organ or public entity.

PART VII—THE CODE OF CONDUCT AND ETHICS

55. The Auditor – General in discharging his or her functions and responsibilities shall determine the code of conduct and ethics for all public officers in the Office if the Auditor General, which shall be in line with those prescribed by the Constitution, this Act and the Public Officer Ethics Act, 2003.

Observing the code of conduct.

No. 3 of 2003.

56. It shall be the obligation of every officer of the Office of the Auditor-General to observe the Code of Conduct and Ethics developed by the Auditor-General under section 55.

Observance of Code of Conduct and Ethics.

57. Any staff of the Office of the Auditor-General or an auditor outsourced by the Office who may be proven to have been compromised, bribed or corrupted in any way in consideration for suppressing a fraud or corrupt practice by the Auditee client shall be liable to administrative action under this Act or by the relevant professional body over and above any criminal proceedings which may be preferred against him or her in accordance with this Act or any other written law.

Administrative action.

58. (1) All staff of the Office of the Auditor-General are duty bound to disclose any fraud or corruption that comes to their attention immediately and disciplinary action shall be taken against any officer who knowingly covers up any acts of fraud or corruption.

Disclosure of fraud and corruption.

(2) Despite the provisions of subsection (1), an officer of the Office of the Auditor-General shall not divulge any information which relates to the business secret of the Auditee which comes to his or her knowledge in the course of duty unless is for official purposes as provided for under this Act or any other written law.

59. (1) An officer of the Office of the Auditor-General who has an interest in a matter under consideration by the auditee client shall disclose in writing, the nature of

Disclosure of interest.

that interest and shall not participate in any auditing exercise relating to that client.

(2) An officer who fails to disclose an interest in a matter in accordance with subsection (1) shall be subject to administrative action under the provisions of this Act or Regulations made thereunder.

60. (1) The Auditor-General shall put in place a mechanism for confidential reporting about the officers of the Office of the Auditor-General relating to unlawful acts or orders relating to violation of laws in relation to public funds, gross wastage, mismanagement and abuse of authority.

Confidential
reporting of
unlawful acts.

(2) Any person reporting a corrupt practice or misconduct by an audit officer with knowledge or good faith or belief that the allegation or information is true, shall be treated with utmost confidentiality.

(3) Allegations and concerns reported anonymously shall be reviewed and considered as appropriate and some of the factors to be considered by the Auditor-General shall include the seriousness of the allegation, its credibility, and the extent to which the allegation can be confirmed or corroborated by attributable sources.

(4) Subject to the Witness Protection Act, 2006 the Auditor-General shall not disclose the identity of a person under this section. unless—

Act 16 of 2006.

- (a) such person agrees to be identified;
- (b) identification is necessary to allow appropriate law enforcement official to investigate or respond effectively to the disclosure;
- (c) is required by law where a false accusation has been maliciously made; or
- (d) the person accused is entitled to the information as a matter of legal right and in such an eventuality the Auditor-General, shall inform the person prior to revealing his or her identity.

PART VIII—OFFENCES AND SANCTIONS

61. (1) Any officer of the Office of the Auditor-General commits an offence if that officer—

Offences by officers
of the office of the
Auditor-General.

- (a) engages in a corrupt act;
- (b) knowingly and willfully conceals information on audit findings for whatever reason, including in order to obtain a financial benefit for the officer or an accomplice or another person;
- (c) knowingly and willfully fails to disclose audit information on fraud or corrupt practice by the audited entity;
- (d) fails to disclose any conflict of interest in any matter under consideration in the course of discharging any functions under this Act; or
- (e) knowingly and wilfully discloses ,publishes or publicizes the Auditor General's audit report or its contents to third parties including the media before the report is finalized and formally submitted to Parliament or County Assembly and copied to the audited entity and other authorized offices;

(2) Any officer of the Office of the Auditor-General who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both.

62. (1) A person shall not—

Other Offences.

- (a) without reasonable cause or lawful excuse, obstruct or hinder, assault or threaten a member of staff of the Office of the Auditor-General or professional acting under this Act;
- (b) without justification, fail to provide information required under this Act;

- (c) without justification, fail to provide information within reasonable time that is required under this Act;
- (d) submit false or misleading information;
- (e) misrepresent to or knowingly mislead a member of staff of the Office of the Auditor-General or professional acting under this Act; or
- (f) interfere with or exert undue influence on any staff of the Office of the Auditor-General or on any person authorized by the Auditor-General to perform functions under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both.

63. Except as otherwise provided for under this Act, a person who is found guilty of an offence under this Act for which no other punishment is given, is liable on conviction to a fine not exceeding two million shillings or to a term of imprisonment not exceeding one year or, to both.

General penalty.

64. (1) Where the Auditor-General establishes that any person, supplier or company has been involved in fraud or corrupt practice, the Auditor-General shall report to the police, Ethics and Anti-Corruption Commission or the Public Procurement Oversight Authority for their action.

Powers to report to police, etc.

(2) Where the matter is referred to the Public Procurement Oversight Authority, the Auditor-General may make recommendation for debarment from future public procurement and asset disposal proceedings of a state organ or public entity with a copy to the relevant accounting officer.

65. If it is established by the Auditor-General that there has been any deficiency in respect of any money or assets subject to its audit, the Auditor-General may recommend to Parliament or county assemblies that the

Surcharge.

person in default or responsible should be surcharged with the amount of the deficiency or loss.

66. A person who is convicted of an offence under this Act shall not be eligible to hold public office or work with an entity owned in whole or part by the State for a period of ten years following the conviction.

Ineligibility to hold public office.

67. Where the Auditor-General becomes aware of—

Disallowable expenditure.

- (a) any payment made without due authority; or
- (b) any deficiency or loss occasioned by negligence or misconduct; or
- (c) any sum which ought to have been, but was not brought to account,

he or she shall, in the case of expenditure, call in question the sum concerned and make a report on the sum to Parliament and the relevant county assembly.

PART IX—GENERAL PROVISIONS

68. The Cabinet Secretary responsible for matters relating to finance may make Regulations not inconsistent with this Act respecting any matter that is necessary or convenient to be prescribed under this Act or for the carrying out or giving effect to this Act.

Power to make Regulations.

69. The Auditor-General may make a written request to the Attorney-General seeking a legal opinion or advice on matters of law or fact, as the case may be.

Legal opinions and advice by the Attorney-General.

70. This Act shall prevail in case of any inconsistency between this Act and any other legislation relating to the functions and powers of the Auditor-General.

Supremacy of this Act.

71. The Auditor-General and his or her staff, or a person acting on the directions of the Auditor-General shall not be personally liable for any act or omission done or omitted in good faith in carrying out any duty, or exercising any power or function of the Auditor-General under this Act or the Constitution.

Protection from personal liability.

72. The Public shall have right of access to official reports of the Auditor-General in line with Article 35 of the Constitution for transparency and accountability, except where such access may unduly jeopardize state security.

Public right of access to official audits reports.

PART X—REPEAL, SAVINGS AND TRANSITION PROVISIONS

73. (1) The Public Audit Act, 2003, is repealed.

Repeal of No.12 of 2003.

(2) Despite subsection (1) —

- (a) any proceedings taken against or by the Kenya National Audit Office or pending against that office or any other person immediately before the commencement of this Act may be continued by or against the Kenya National Audit Office as if instituted under this Act:
Provided that criminal proceedings shall be regarded as pending if the person concerned had pleaded to the charge in question.
- (b) any administrative investigation or inquiry instituted in terms of the repealed Act which was pending before the commencement of this Act shall be continued or disposed of as if instituted under this Act;
- (c) all disciplinary proceedings which immediately before the commencement of this Act were pending shall be continued or concluded as if instituted under this Act;
- (d) all appeal processes, which immediately before the commencement of this Act were pending, shall proceed as if instituted under this Act;
- (e) the persons employed by the Kenya National Audit Office shall be transferred to the Office of the Auditor-General established under this Act;
- (f) a contract subsisting between the Kenya National Audit Office and another person before the commencement of this Act shall continue to exist

as if it was a contract entered into between the Office of the Auditor General and that other person; and

- (g) the Kenya National Audit Commission established by the repealed Act shall cease to exist within thirty days from the day of commencement of this Act;

(3) Any references to the words "Controller and Auditor-General" under any written law shall be construed to refer to the words "Auditor-General".

ICPAK SUBMISSIONS ON THE PUBLIC AUDIT (AMENDMENT) BILL, 2024.

Clause 8- Amendment of section 11

Given Clause 10 of the draft Bill, amend Section 12 of the Principal Act by inserting the following new section,

12. Acting Auditor-General

(1) Where- (a) the office of the Auditor-General becomes vacant.
(b) the Auditor-General has been suspended in accordance with the Constitution.
(c) the appointment of a person as Auditor- General is pending; or
(d) the Auditor-General is for any reason unable to perform the function of his or her office, then until a person is appointed to and has assumed the functions of that office in accordance with section 11, or until the Auditor-General has resumed the performance of those functions, the President shall appoint and designate the Deputy Auditor General as the acting Auditor-General. This is to provide seamless transition.

Clause 8 (1) Amending section 11

Amend the clause to include additional information as follows:

- (a) Approve charging of reasonable audit fee, receive and manage revenues, custodian of all assets, seek partnership with stakeholders, development partners manage and account for public funds.
- (b) Prepare and submit an annual report on state of accountability of public resources to the president and parliament.

This will be in compliance with article 254 of the constitution which stipulates that as soon as practicable after the end of each financial year, each commission and each holder of an independent office shall submit a report to the president and to parliament.

Clause 10

Amend by inserting the following new section:

A person shall be qualified for appointment as the Deputy Auditor-General if such person-

- a) is a citizen of Kenya.*
- b) holds qualifications as that of the holder of the Office of Auditor General specified in Article 229(2) of the Constitution.*
- c) holds a degree in finance, accounting or economics from a university recognized in Kenya and demonstrates a verifiable and logical progression in the attainment of his or her educational qualifications.*
- d) meets the requirements of Chapter Six of the Constitution; and*
- e) is a practicing member of good standing of a professional body of accountants recognised by law.*

This will help ensure there is someone equally capable to manage transition.

New Clause

Insert a new section immediately after section 11

11A. A retired Auditor-General shall, during his lifetime, be entitled to-

- (a) a monthly pension equal to seventy per cent of the monthly salary of the entitled person's last monthly salary while in office.
- (b) a lump sum payment on retirement calculated as a sum equal to one year's salary paid for each term served in office.

(c) one four-wheel drive vehicle of an engine capacity not exceeding 3000 cc which shall be replaceable once every four years.

(d) a fuel allowance equal to fifteen per cent of the current monthly salary of the office holder.

(e) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the entitled person and the entitled person's spouse.

(f) the additional benefits set out as follows-

- i. one driver.
- ii. one personal assistant.
- iii. one housekeeper.
- iv. one senior support staff.
- v. one gardener.
- vi. one cleaner.

(g) two-armed security guards who shall be provided on request by the entitled person.

(h) diplomatic passports for the entitled person and his spouse.

(i) maintenance expenses for the vehicles provided pursuant to this Act.

(j) access to the V.I.P. lounge at all airports within Kenya.

Clause 15

The section should state definite number of Deputy Auditor Generals. This is because if left open, office holder may create unnecessarily many positions for rewards.

Clause 17

Amend by removing the Chairperson of the Budget and Appropriation Committee of the National Assembly or his or her nominee and two representatives from Parliament and Senate and replace with;

d. two nominees from the Institute of Certified Public Accountants of Kenya

e. a nominee from the Institute of Human Resource Management (IHRM) Kenya to advise the board on HR matters. This is because suggesting Attorney General to be at advisory level will interfere with the independence of Auditor General's office.

Clause 19.

Amend the clause and add a strategic planning function to the advisory board. This is because budgeting and Human resource management and development functions should be contained and derived from a strategic plan.

Clause 22

This is a welcome proposal. it will help reinforce the works of Heads of Internal Audit Functions.

Clause 23

Amend the proposal to include competitive selection of outsourced audit firms as per procurement laws. This will provide transparency in the selection process.

Clause 28.

The proposed insertion should be done as "*economical efficient*" immediately after the words "*lawfully and in an*". This will be in order to have proper flow of tense that is to read: "*Lawfully and in an economical efficient and effective way*"

TRANSPARENCY INTERNATIONAL KENYA MEMORANDUM TO THE CLERK OF THE NATIONAL ASSEMBLY ON THE PUBLIC AUDIT (AMENDMENT) BILL 2024 (NATIONAL ASSEMBLY BILL NO.4 OF 2024)

Organization

Transparency International - Kenya (TI-Kenya) is a not-for-profit organization founded in 1999 in Kenya to develop a transparent and corruption free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement bound by a common vision of a corruption-free world. The vision of TI-Kenya is that of a transparent, accountable, and

corruption-free society.

Introduction

The Public Audit (Amendment) Bill, 2024 (National Assembly Bill No. 4 of 2024) proposes a series of amendments to The Public Audit Act No. 34 of 2015 to give effect to the decision of the High Court in the case of Transparency International v Attorney General & Auditor General (1 Interested Party), Africa Centre for Open Governance (AFRICOG) (2 Interested Party), Petition No. 388 of 2016, where the court established that Sections 4(2), 8, 12, 17 (1), 18, 27, 40, 42, and 70 of the Public Audit Act 2015 are unconstitutional. Additionally, it addresses the concerns by the National Assembly over the provision relating to the recruitment of the Auditor General, where it was observed that the Act creates an undesirable vacuum between an existing holder of the office and an incoming one.

TI-Kenya acknowledges and commends the efforts of the National Assembly in integrating some of the recommendations from our Petition No. 388 of 2016. We particularly appreciate the introduction of new sections after Section 38, emphasizing Citizen Accountability Audits, which ensures active participation of ordinary citizens in audit processes. Furthermore, we endorse the proposed amendments that aim to establish the Office of the Auditor General as an independent entity, as envisioned by the constitution. However, there remain recommendations stemming from the High Court's decision in Petition No. 388 of 2016 that have yet to be incorporated into the Bill. We strongly advocate for their inclusion to comprehensively rectify all deficiencies in the current Act. In adherence to the constitutional imperative for public involvement and participation, we have formulated a set of recommendations in accordance with Article 118 of the Constitution of Kenya 2010. These recommendations align with Article 229, which outlines the establishment. and functions of the Office of the Auditor General. Our recommendations are as follows:

Section	Provision of the Amendment	Proposed Amendment/Recommendation	Justification/Rational for Recommendation
17	<p>The Principal Act is amended by repealing Section 25 and substituting therefore the following new section:</p> <p>25 (1) There is established an unincorporated board to be known as the Audit Advisory Board which shall comprise of -</p> <p>(a) The Auditor-General who shall be the Chairperson;</p> <p>(b) The Attorney General or a person nominated by him or her,</p> <p>(c) A nominee of the Institute of Certified Public Accountants of Kenya;</p> <p>(d) The Chairperson of the Budget and Appropriation Committee of the National Assembly or his or her nominee;</p> <p>(e) Two representatives from Parliament, one from the National Assembly and one from the Senate, from Committees in charge of public finance and audit</p>	<p>This amendment should be revised to remove the Attorney General, The Chairperson of the Budget and Appropriation Committee representatives Parliament, and one from the National Assembly and one from the Senate, as part of the Board and replace the Attorney General with a representative from the Law Society of Kenya.</p> <p>The representatives from A parliament and Senate should be replaced by independent persons other</p>	<p>We propose a revision to the composition of the Advisory Board to ensure its impartiality and independence. We recommend that the current inclusion of the Attorney General and representatives from parliament and Senate in the Advisory Board be reconsidered.</p> <p>Instead, we suggest appointing a representative from the Law Society of Kenya to replace the Attorney General and other independent individuals to represent the representatives from the National Assembly and the Senate. This adjustment is crucial to mitigate potential conflicts of interest as the Attorney General serves as the principal advisor to the Government. The Attorney General, may face conflicts of interest when advising on matters related to the Auditor General's functions, potentially compromising the Auditor General's independence.</p> <p>The Law Society of Kenya brings in a non-partisan entity with expertise in legal matters. The Law Society's focus on upholding legal ethics and the rule of law aligns well with the objective of ensuring transparency and accountability in the audit process. Their inclusion could enhance the credibility of the Advisory Board and contribute to more</p>

			<p>impartial and objective advice on recruitment, budgeting, and other pertinent matters.</p> <p>The decision in Constitutional Petition No. 388 of 2016 also declared the inclusion of the Attorney General in the Board as unconstitutional</p>
19	<p>The Principal Act is amended by repealing Section 27 of the Act and substituting therefore the following section:</p> <p>27. Subject to Section 10 of this Act and upon approval by the Auditor - General the Audit Advisory Board shall generally be responsible for providing advisory on-</p> <p>(a) budget plans and estimates;</p> <p>(b) human resource management and development; and</p> <p>(c) any other matter that might be referred to the Board by the Auditor General.</p>	The proposal is welcomed	<p>The revisions are in conformity with the guidance in constitutional petition no. 388 of 2016. It creates a clear demarcation on the independence of the office vis-a- vis the functions of the Board</p>
20	<p>The Principal Act is amended by repealing section 31 of the Act and substituting it therefore with the following section.</p>	<p>Amendment should be rejected and the original provisions in the Act retained</p>	<p>The proposed amendments skip out critical audit steps provided for in the principal Act that should be retained</p>

	<p>31 (1) The audit process shall be as follows:</p> <ol style="list-style-type: none"> 1. For all audits or investigations, the Auditor General shall inform the accounting officer of an entity to be audited or investigated before commencement of the audit; 2. At the beginning of an audit of a state organ or public entity, an entry meeting shall be held to deliberate on the scope of audit between the Auditor-General and accounting officer; and 3. The Auditor-General shall prepare and issue a report to parliament and the relevant county Assembly. <p>The Accounting Officer shall within fourteen (14) days from receipt of any audit report submit a response to the Auditor-General including remedial actions undertaken to address audit findings.</p>		
21	The principal Act is amended by repealing section 32	This amendment should be rejected and the original provisions in the principal Act be maintained.	The provision not to publicize the reports will curtail the right to Access to information by the public as espoused under Article 35 of the Constitution of Kenya 2010.

25	Section 36 of the principal Act is amended in subsection (1) i) by inserting the words "among others" immediately after the words "examine"; and ii) by deleting the words public money and substitute therefore the words "public resources"	This proposal is welcomed. We agree with this proposal	The inclusion of the word "among others" expands the scope of the performance audit envisioned to be undertaken by the Auditor General The amendment expands the scope of the audit to encompass aspects of public resources
25(b)	Section 36 of the Principal Act is amended in subsection (2) by deleting the words 'within six months and substituting therefore the words' at any time'	This amendment is welcomed with the following revisions: "within six months' and substituting therefore the words' "From time to time "to replace "at any time"	The period of six months after end of a project has not been effective in addressing loopholes during the implementation phase. The introduction of this provision will help in curbing any leakages, value for money etc before completion of projects
37	The principal Act is amended by repealing section 50	The amendment should be rejected and the original provision in the principal Act retained	Article 229(7) of the Constitution shall be submitted to Parliament 1 and the relevant county Assemblies, and therefore by repealing section 50, it would be denying parliament from exercising its constitutional mandate
38	The principal Act is amended by repealing section 51	The amendment should be rejected and the original provision in the principal Act retained	Article 229(7) of the Constitution shall be submitted to Parliament 1 and the relevant county Assemblies, and therefore by repealing section 50, it would be denying parliament from exercising its constitutional mandate

43	The Principal Act is amended by repealing Section 64 and substituting therefore the following new section: 64(1) Where the Auditor-General establishes that any person, supplier, company or audited entity has been involved in fraud or corrupt practice, the Auditor - General may collaborate with other investigative, enforcement, regulatory and oversight agencies including the National Police Service, Ethics and Anti-Corruption Commission, Office of the Director of Public Prosecution and Public Procurement Administrative Review Board and the National Treasury for their action.	This amendment is welcomed.	The section will promote collaboration between independent offices and support in addressing corruption related cases
Section	Provision of the Act	Proposed Amendment/Recommendation	Justification/Rationale for Recommendation
12	Section 12 provides that; where the office of the Auditor General becomes vacant for whatever reason, or where his appointment. is pending, the Public Service Commission will recommend the most senior officer in the office of the Auditor General to the President to designate such a person as Acting Auditor General for 90 days subject to meeting the	The provision should be repealed.	This provision is deemed inconsistent with the stipulations outlined in Article 229 of the Constitution, rendering it unconstitutional. The Constitution expressly recognizes the Auditor General's appointment in accordance with Article 229(1). Therefore, any endeavor to establish a substantive position of Acting Auditor General through legislation, appointing an individual outside the parameters set by the Constitution, and granting them the authority to exercise the constitutional functions and

	<p>qualifications for appointment as Auditor General.</p>		<p>powers of the Auditor General, constitutes an unconstitutional creation of an office and an unlawful exercise of the Auditor General's functions and powers.</p>
18	<p>Section 18 provides: A State Organ or public entity may upon such request by the Auditor-General, second to the office such number of public officers as may be necessary for proper performance of the functions of the Office.</p>	<p>This provision should be repealed.</p>	<p>The provision in question should be entirely removed, primarily due to its detrimental impact on the independence of the Office of the Auditor General. It's crucial to recognize that the Auditor General employs staff specifically to execute their duties and fulfill their functions. Consequently, it would be inappropriate for the Auditor General to second their staff to other public bodies, especially considering that their primary mandate involves auditing these same state organs and public entities.</p> <p>Such secondments could result in familiarity between the Auditor General's staff and the entities they are meant to audit, potentially compromising the independence and objectivity of individual staff members. This would not only undermine the institutional independence of the Office of the Auditor General but could also have unintended consequences for the integrity of audits conducted.</p> <p>Therefore, the inclusion of this provision poses a significant risk to the independence and effectiveness of the Auditor General's office,</p>

			and its deletion is imperative to safeguard the integrity of the audit process and uphold the constitutional mandate of the Auditor General.
40	Section 40 requires the Auditor General to hold a pre -audit meeting at the highest level to agree on areas to audit and appropriate audit approach when auditing national security organs and even allows vetting of officers to conduct the audit.	The provision should be repealed.	This provision is unconstitutional for several reasons. Firstly, according to Article 229(4)(h) of the Constitution, the Auditor General is constitutionally mandated to audit and report on the accounts of state organs, public bodies, and any entities funded by public money. Introducing a requirement for the Auditor General to seek permission, as proposed by section 40, before conducting audits would hinder the fulfillment of this constitutional obligation. Furthermore, subjecting auditors to vetting before carrying out audits could potentially compromise the independence and integrity of the audit process. It creates a situation where state organs and public bodies have the authority to influence or even obstruct the selection of auditors tasked with scrutinizing their financial records. This undermines the principle of accountability and transparency, which are fundamental to the Auditor General's role in safeguarding public finances.
42	Section 42 bars the Auditor General from questioning government policy objectives	This provision should be repealed.	This provision is unconstitutional for as it restricts the Auditor General's ability to assess

	<p>during audits. The section provides that "Notwithstanding the provisions of this Act, in an examination under this Act, the Auditor-General shall not question the merits of a policy objective of the national government or county government or any other public entity."</p>		<p>the viability of policy objectives funded by the people of Kenya. Section 42 implies that the Auditor General should refrain from questioning such policy objectives, thereby limiting their independence in scrutinizing public expenditures. This restriction undermines the Auditor General's constitutional mandate, as enshrined in Article 229, to conduct audits without interference or control from any person or authority.</p> <p>Furthermore, imposing conditions on the Auditor General's audit approaches violates the national values and principles of governance outlined in Article 10 of the Constitution. These values include integrity, transparency, and accountability, which are essential for effective public financial management. By inhibiting the Auditor General's ability to thoroughly evaluate the use of public funds, this provision runs counter to the principles of financial openness articulated in Article 201.</p>
70	<p>The section provides that: "This Act shall prevail in case of any inconsistency between this Act and any other legislation relating to the functions and powers of the Auditor-General."</p>	<p>This section should be repealed</p>	<p>The Constitution of Kenya which establishes the office of the Auditor General and outlines its functions, is the supreme law and therefore this section is unnecessary and superfluous.</p>



**PRESENTATION TO THE NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE AND
NATIONAL PLANNING DURING STAKEHOLDER
ENGAGEMENT ON THE PUBLIC AUDIT (AMENDMENT)
BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 3 OF 2024) on
30 APRIL, 2024**

30 APRIL, 2024

**PRESENTATION TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE
ON FINANCE AND NATIONAL PLANNING DURING THE STAKEHOLDER
ENGAGEMENT FORUM TO CONSIDER THE PUBLIC AUDIT (AMENDMENT)
BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 3 OF 2024)**

The Chairperson Finance and

National Planning Committee – Hon. Francis Kimani Kuria

Honourable Members of the Committee

1. I thank the Departmental Committee on Finance and National Planning of the National Assembly for according me this opportunity to present my views on the Public Audit (Amendment Bill), 2024 (National Assembly Bill No. 3 of 2024). Indeed, this Bill improves the efficiency and discharge of my oversight role as the Auditor-General and by extension effective and efficient oversight of public resources by Parliament and County Assemblies.

Independence of the Office of the Auditor-General

2. My Office is the Supreme Audit Institution (SAI) of Kenya and is constitutionally charged with the responsibility of fiscal oversight over the three arms of government including Constitutional Commissions and Independent Offices. My Office assists the Government through Parliament to improve its performance, enhance transparency, ensure accountability, maintain credibility, fight corruption, promote public trust and foster efficient and effective receipt and management of public resources for the value and benefits of the citizens of Kenya.
3. The United Nations General Assembly (UNGA), in its Resolutions 66/209 of 2011 and 69/228 of 2014 has recognized the important role of Supreme Audit Institutions (SAIs) in promoting the efficiency, accountability, effectiveness and transparency of public administration, which is conducive to the achievement of national development objectives and priorities, as well as the internationally agreed development goals.

4. Indeed, Kenya is a party to United Nations General Assembly Resolution 66/209, adopted by the General Assembly on 22 December, 2011, that-

- promotes the efficiency, accountability, effectiveness and transparency of public administration by strengthening Supreme Audit Institutions.

Kenya is also a party to the United Nations General Assembly Resolution 69/228, adopted by the General Assembly on 19 December, 2014 that similarly promotes the independence and strengthening of supreme audit institutions.

Honorable Chair

Honorable Members

5. My Office is established as an Independent Office under Article 229 of the Constitution of Kenya. Article 249 indicates that the Office is only subject to the Constitution and the law and is not subject to direction or control by any person or authority.

6. The Office is guided by **International Standards of Supreme Audit Institutions (ISSAI)**, which are the authoritative international standards on public sector auditing. These standards guide in ensuring the quality of the audits conducted, the strengthening of the credibility of the audit reports for users and enhancement of transparency of the audit process. The Standards also specify the auditor's responsibility in relation to other parties involved and define the different types of audit engagements and the related set of concepts that provides a common language for public sector auditing.

7. In October, 1977 The Lima Declaration (INTOSAI-P1), which was adopted at the International Congress for Supreme Audit Institutions in Lima (Peru). The Declaration calls for independent government auditing, and this independence should be anchored in legislation. SAIs can only be objective and effective if they are independent from the audited entity and are protected from outside influence. The Lima Declaration further recognizes that SAIs should have functional and organizational independence required to carry out their mandate.

8. Similarly, in 2007, International Congress for Supreme Audit Institutions passed the Mexico Declaration (INTOSAI-P-10) on Supreme Audit Institutions Independence of 2007. The Declaration, calls for the following core principles on SAI Independence-

- The existence of an appropriate and effective constitutional/statutory/legal framework
- The independence of SAI Heads including security of tenure and legal immunity in the normal discharge of their duties
- A sufficiently broad mandate and full discretion, in the discharge of SAI functions
- Unrestricted access to information
- The rights and obligations to report on work done
- The freedom to decide the content and timing of audit reports and to publish and disseminate them
- The existence of effective follow-up mechanisms on SAI recommendations
- Financial and managerial/administrative autonomy and the availability of appropriate human, material and monetary resources

The Public Audit Act of 2015 brought about tremendous improvements and enhancement of independence and aligning the same with the Constitutional requirements of the Office of the Auditor-General as guided by Article 229 and Chapter 5 of the Constitution and we applaud Parliament for this.

B. Mandate of the Office

9. My Office is mandated by Article 229(4) of the Constitution of Kenya, to audit the accounts of the National and County Governments, National Assembly and County Assemblies, all Funds and authorities of National and County Governments, accounts of all Courts, Public debt and all institutions, programmes or projects funded by public funds. Article 229(6) further mandates the Auditor-General to confirm whether or not public money has been applied **lawfully** and in an **effective** way.

10. Article 252 of the Constitution also empowers my Office to:

- Conduct investigations on own initiative or complaint by a member of the public and to;
- Carry out conciliation, mediation and negotiation

11. Ultimately, the mandate of the Office of the Auditor-General is to influence the development of our nation and the delivery of quality and sustainable services to the people by overseeing the use and management of public resources, without exception.

12. The Public Audit Act, 2015, requires the Auditor-General and her staff to perform their functions impartially, without fear, favour or prejudice and to exercise the powers given by the constitution independently. The Auditor-General enjoys operational independence including determining the applicable standards, principles and practices in undertaking public sector audits.

Honorable Chair

Honorable Members

C. Scope of Audit

13. In addition, and subject to the provisions of Article 201 on Principles of Public Finance and Article 232 on Values and Principles of Public Service of the Constitution, the Auditor-General determines, the scope and extent of examination or inspection of accounts and any other documents or information related to public expenditures or any other audits undertaken by the Office. Article 226(3) clearly states that the accounts of all governments and state organs shall be audited by the Auditor-General except for the Accounts of the Auditor-General which are directly under the purview of Parliament as guided by Article 226(4). For avoidance of doubt, Article 229(5) states that the Auditor-General has jurisdiction in auditing and reporting to Parliament on the accounts of any entity that is funded from public funds.

D. Power to Obtain Information

14. Section 21 of the Public Audit Act, 2015, requires that in the course of exercising or performing the functions, duties and powers under the Constitution, the Auditor-General shall require production of official documents in the custody, care or control of a public body or any person employed by the public body, as well as to provide the Auditor-General with information or an explanation about any official information, system or assets.

E. Rights and Obligations on Audit Reporting

15. Article 229(5) of the Constitution requires the Auditor-General to submit audit reports to Parliament and the relevant county assemblies. Further Article 254 requires the Auditor-General to submit an annual report and submit special reports required by the President, National Assembly and Senate. All reports should be published and publicized. The Auditor-General is not restricted on the type of reports to submit concerning the use and management of public resources.

Honorable Chair

Honorable Members

F. Financial Independence

16. Article 249(3) of the Constitution requires Parliament to allocate adequate funds to enable each Commission and Independent Office to perform its functions. The Public Audit Act, 2015 under section 41, provides for the source of funds of the Office of the Auditor-General, to include monies appropriated by Parliament for the purposes of the Office, audit fees as well as monies from other sources including donations, all of which are required to be disclosed to Parliament. However, despite these provisions the Office continues to experience budgetary constraints on availability of allocated resources to plan and conduct audits including insufficient funds to carry oversight on behalf of Parliament. This effectively erodes the operational independence of the Office of the Auditor-Generals and affects the progressive reforms already achieved.

17. The Budget and Appropriation Committee, in its report on the Budget Policy Statement for FY 2023/2024 dated 15 March, 2023 recommended that, The National Treasury should facilitate the Office of the Auditor General to have a **single line budget** to enhance our efficiency in responding to emerging audit needs. My Office subsequently wrote to The National Treasury requesting for this facilitation but we are yet to get any response on the same. We request the Committee to facilitate implementation of this resolution and that it is also included in the Public Audit Amendment Bill, 2024.
18. The Public Accounts Committee has also similarly made recommendations on the allocation of funds to the Office of the Auditor-General. These recommendations were adopted by The National Assembly on 9 June, 2022 and we request that the resolutions are implemented. This will also ensure that the Office of the Auditor - General is empowered to prepare our budget independently without having to compete for resources under the sectoral funding limits and present our budget direct to this Committee to enhance our independence.
19. **The World Bank, Supreme Audit Institutions Independence Index, 2021, Global Synthesis Report**, ranks the Office of the Auditor-General Kenya, as having only a substantial level of independence. The report unfortunately is in comparison to South Africa, which is ranked as having a very high level of independence. However, our neighboring SAI and a member of the East Africa Community has been ranked as High-level independence. Our low ranking is attributed, to lack of financial autonomy.

Honorable Chair

Honorable Members

Background to the Public Audit (Amendment) Bill, 2024

20. The Public Audit (Amendment) Bill 2024 is a culmination of a long and widely engaging process that followed the High Court decision rendered on 16 February 2018 declaring various sections of the **Public Audit Act, 2015 (the Act)** unconstitutional. Ensuing therefrom, a Multi-Agency Team comprising of the Executive Office of the President, the National Treasury, Office of the Attorney General and Department of Justice and the Office of the Auditor-General was

constituted to review the Act and make the necessary recommendations to align the Public Audit Act to the Constitution.

21. The Team has reviewed the **Public Audit Act, 2015**, with the purpose of addressing the issues that were raised in the High Court's decision in ***Petition No.388 of 2016***.
22. The amendments are also expected to remedy other gaps identified in the course of implementing the Act over the last nine (9) years, with a view to enhancing the overall responsiveness of the legislation to the audit function and the nature of public service.
23. The amendments will also provide a framework for enhancing the independence and autonomy of the Office of the Auditor-General, that is aligned to the Constitutional imperatives of independence, transparency and accountability.
24. I am pleased to note that the **Public Audit Act (Amendment) Bill, 2024**, is, therefore, part of holistic reforms initiatives of the public finance management in Kenya, and addresses the growing public sector demands in the public sector for sustainable economic growth and delivery of quality services.

Honorable Chair

Honorable Members

25. The **Public Audit (Amendment) Bill, 2024** is crucial in fortifying the independence of the Office of the Auditor-General by curing the sections that were declared unconstitutional and also stating with clarity the mandate of the Office where there has been ambiguity. The Bill seeks to enhance the operational independence and autonomy of the Office. The Public Audit Fund, will ensure that oversight operations are conducted continuously to enhance accountability and timely reporting to Parliament. Indeed, this will unlock the remaining parameters for independence of the office and support all other reforms that have taken place.
26. The sections declared unconstitutional by the High Court were Sections 4(2), 8, 12, 17 (1), 18, 27, 40, 42 and 70 of the **Public Audit Act, 2015**. These sections were an impediment on the Auditor-General's independence.

27. The High Court based its decision to annul the cited provisions on the following grounds;

- i. Annulled Section 4(2) that defines the Auditor-General as '**statutory head**' since Article 229 (1) has already created a 'Constitutional Office of the Auditor-General.
- ii. Annulled Section 8 for limiting the independence of the Auditor General through reference to Article 234 (5) on the delegated powers of the Public Service Commission (PSC). The Bill seeks to align the administrative functions and powers of the Auditor-General to the Constitution hence safeguarding the independence of the Auditor-General.
- iii. Annulled Section 12 for creating the position of '**Acting Auditor General**' a position that is not contemplated by the constitution and that in which the holder would discharge the constitutional mandate of the Auditor-General. Further, the Court held there is no constitutional provision for the Public Service Commission (PSC) to appoint an '**Acting Auditor General**';
- iv. Annulled Section 17 (1) that subjects the recruitment of staff by the Auditor-General to Article 235 (5) (on delegated powers from PSC) of the Constitution; This section was in violation of Article 252(1)(c) that grants the Auditor-General the powers to recruit staff of the Office;
- v. Annulled Section 18 on secondment of officers from other State Organs or public entities on the need to safeguard the independence of the Office of the Auditor General by not seconding staff of the Auditor-General to work for the audit clients as this would create a conflict of interest. ;

- vi. Annulled Section 27 on the functions of the Audit Advisory Board as unconstitutional based on Article 249(2)(b) which grants the Auditor-General functional Independence. However, although the functions of the Advisory Board were declared unconstitutional to the extent of infringement of the independence of the Auditor-General, the Court retained the Advisory Board. To cure this infringement, the Bill seeks to amend Section 27 of the Act to provide for functions of the Audit Advisory Board that do not impede the independence of the Auditor-General.
- vii. Annulled Section 40 on limitation of scope in the audit of national security organs that use public resources as it is a breach of Article 229(4)(h):
- viii. Annulled Section 42 that inhibits the Auditor-General from questioning government policy as it was in breach of Article 229 (4) (h) on scope and independence;
- ix. Annulled Section 70 that state that the Act shall prevail in case of inconsistency with any other Act, as unnecessary and superfluous.

Honorable Chair

Honorable Members

28. The Multi Agency Team drawn from the cited The Executive Office of the President, The National Treasury, The Attorney General and Department of Justice and The Office of the Auditor-General was also expected to resolve various other gaps identified in the course of implementing the Public Audit Act with a view to enhancing the overall responsiveness of the legislation to the public audit function.

29. The purpose of this Statutory Instrument is to amend the Public Audit Act, 2015 as recommended proposed by the Multi Agency Team and as discussed and approved by Cabinet.

30. The proposed amendments seek to;

- a) ensure that the Public Audit Act is aligned to the Constitution,
- b) safeguards the independence of the Auditor General with respect to governance, staff establishment and funding,

- c) proposes the establishment of a Public Audit Fund to be funded from appropriated provisions of the Office of the Auditor General within the fiscal framework limits; indeed, Parliament through the Budget and Appropriation Committee adopted the Public Accounts Committee recommendations on enhanced funding of the Office of the Auditor-General;
- d) cures the lacuna in law on an outgoing Auditor-General and an incoming one at end of tenure. This is based on the experience of between 2019 and 2020 that created a vacuum in the Office and led to delayed reporting to Parliament;
- e) redefines the establishment, composition and functions of the Audit Advisory Board;
- f) expressly provides for the different types of audit including Citizen Accountability Audits or Social Accountability Audit, Compliance audits and any other audits related to the lawful use and effective management of Public resources and for enhancing transparency within the provisions of Article 229(5) and 229(6) of the Constitution.
- g) Enhances for the ethical standards and other offences for Officers serving under the Office of the Auditor General, among many others.
- h) Improves communication between the Office of the Auditor-General, the Public Sector entities and Parliament.

31. The gaps identified include the concerns explored by the Nationals Assembly including the general public on the constitutional lacuna created when the tenure of the Auditor-General expires.

32. I therefore submit that my Office supports the proposed amendments with regard to improving effectiveness in the discharge of the Auditor-General's duties with regard to oversight as well as enhancing the financial independence of the Office.

33. I do therefore submit, that in keeping with the declaration of unconstitutionality the said sub-sections be repealed.

34. Section 42 of the Public Audit Act, 2015, which provides for the Auditor-General not to question the merits of a policy objective of the national government or county government or any other public entity was also declared unconstitutional. The Court held that the Auditor-General cannot confirm the viability of the policy objectives funded by the people of Kenya when Section 42 prohibits the Auditor-General from questioning policy objectives funded by the people. Indeed, Parliament calls upon my Office to give views on government policy objectives, and I also highlight audit findings on implementation of existing policies, which findings serve to improve or inform the effective future implementation and ensures timely corrective action.

35. We, do therefore submit that in keeping with the declaration of unconstitutionality Section 40(1), Section 40(3) and Section 42 of the Public Audit Act, be repealed to the extent of their unconstitutionality.

Honorable Chair

Honorable Members

Establishment and Composition of the Audit Advisory Board

36. Clause 17 of the Bill proposes to amend Section 25 of the Act and substituting it with a new section. Section 25(1)(c) provides for a nominee of the Institute of Certified Public Accounts of Kenya. We note that the new proposed composition of the Advisory Board is to ensure that the Auditor-General's independence is not impeded.

I therefore recommend that a proviso be introduced to the effect that the nominee from the Institute of Certified Public Accounts, shall not be an employee of a public entity.

Conclusion

Honorable Chair

Honorable Members

37. Consequently, the Public Audit (Amendment) Bill, 2024 now seeks to address these gaps as herein below:

- i. The proposed amendments make provision for the conditions under which the position of the Auditor-General shall fall vacant and the process for filling the position seamlessly and for clarity.
- ii. The amendments make provision for the position of Deputy Auditor-General who will be the Principal Assistant to the Auditor-General and who may perform such other functions to enable the management of the Office except for the functions expressly conferred by the Constitution on the Auditor-General.
- iii. The Bill now expressly provides for the different types of audits within the provisions of Article 229(6) of the Constitution and the evolving public sector environment.
- iv. The Bill now redefines the establishment and composition of the Audit Advisory Board to perform high level oversight over the functions of the Office and render advisory services to the Auditor-General whenever the same is sought. Further, the Board will now be chaired by the Auditor-General to enable alignment with the Constitutional independence of the Auditor-General.
- v. The Bill seeks to establish a Public Audit Fund to be funded from the appropriated provisions of the Office of the Auditor-General by Parliament within the fiscal framework limits. This will allow for the ring fencing of the funds of the Office by not limiting the other activities of the Office.

Honorable Chair

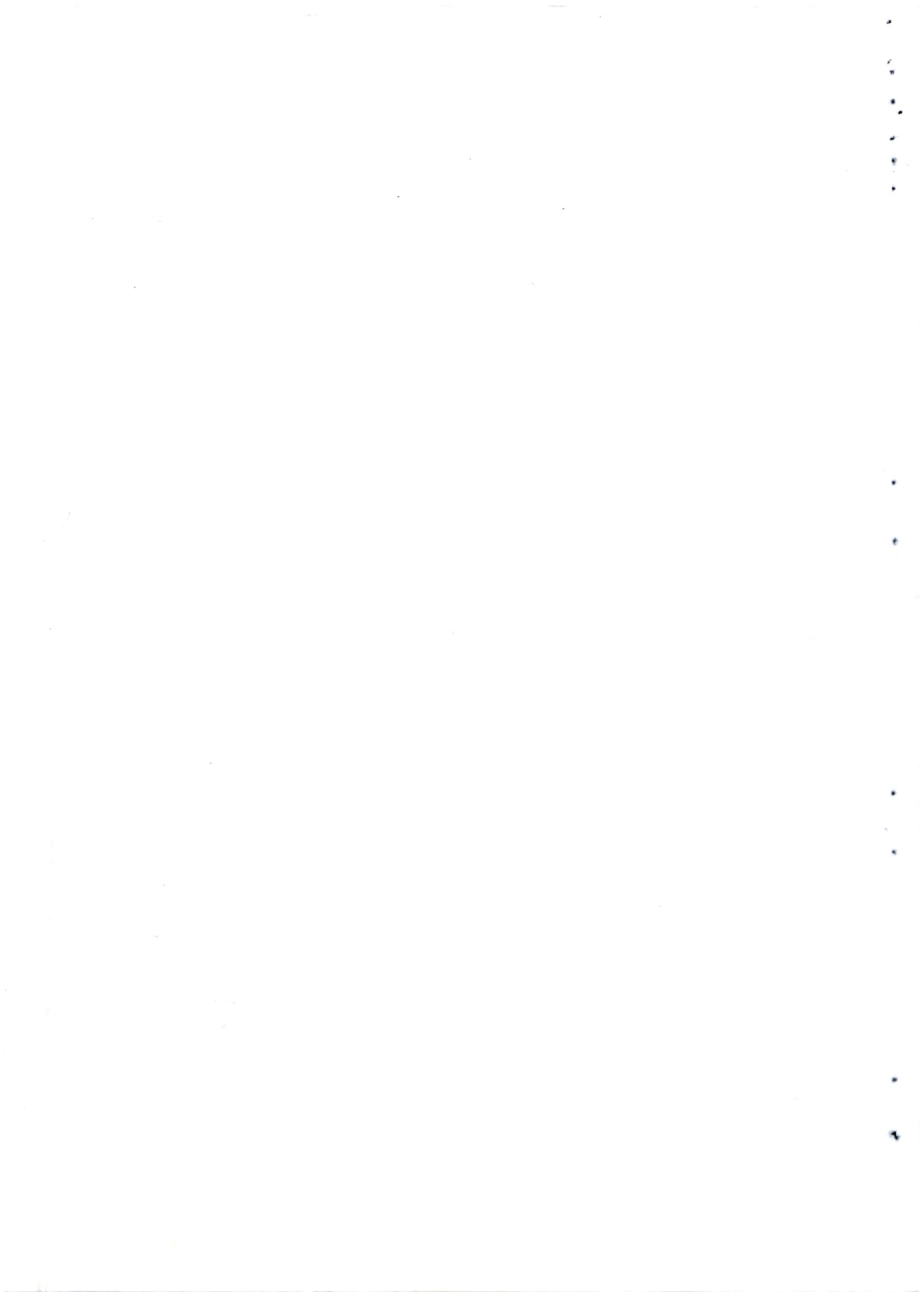
Hon Members,

The enactment of these amendments shall not occasion additional expenditure of public funds save for funds already appropriated by Parliament to the Office of the Auditor-General for operationalisation of the Fund.

I thank you for this opportunity and the support accorded to the Office to enable service to Parliament and the people of Kenya.

FCPA Nancy Gathungu, CBS

AUDITOR-GENERAL



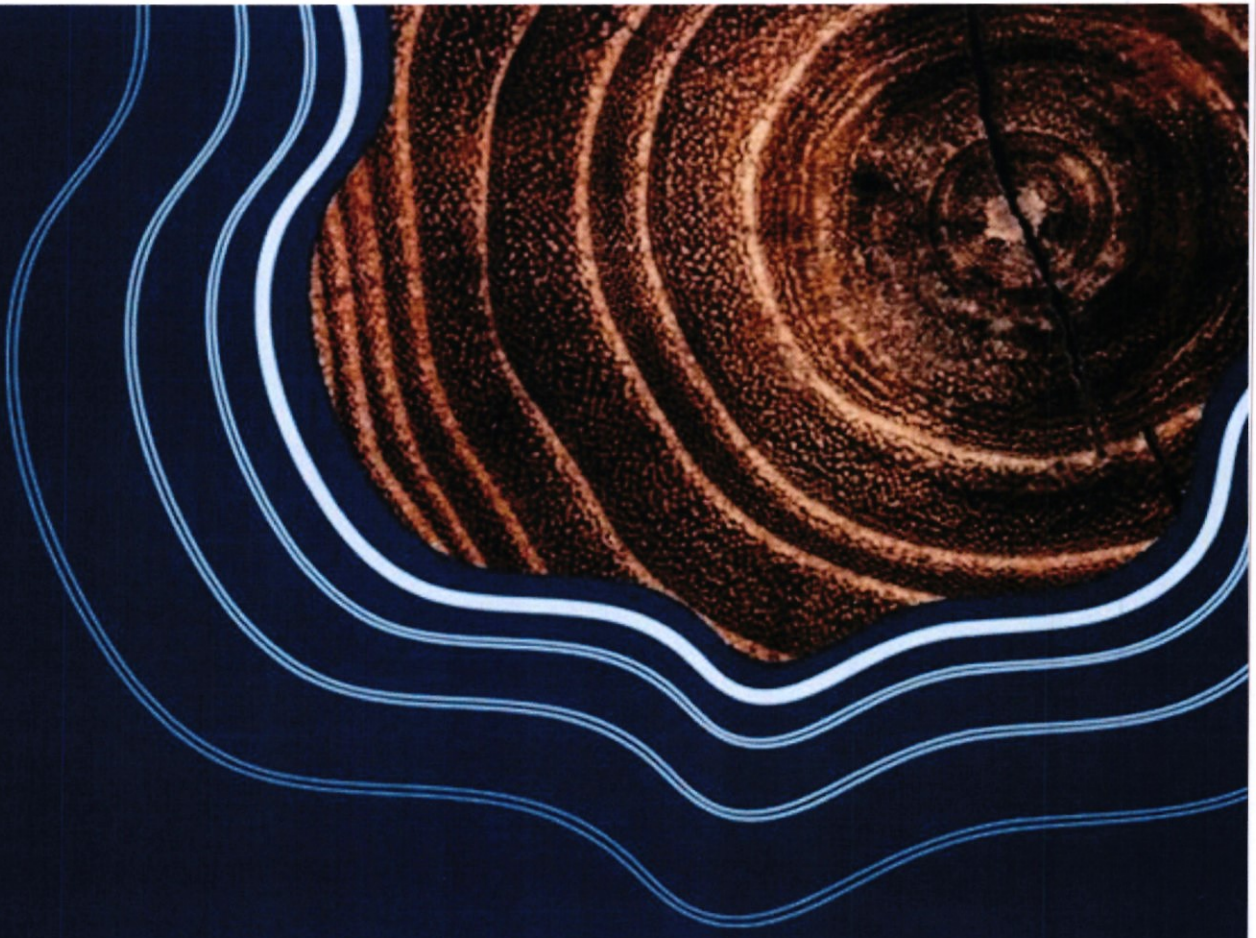


BOWMANS
THE VALUE OF KNOWING

THE PUBLIC AUDIT (AMENDMENT) BILL, 2024

Submissions on The Public Audit (Amendment) Bill, 2024

22 April 2024



Our Reference: AM/GEN
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Your Reference: TBC
Date: 22 April 2024

The National Assembly
Office of the Clerk
P.O Box 41842 – 00100
Nairobi, Kenya

Dear Sirs

Submissions on The Public Audit (Amendment) Bill, 2024

We refer to your letter dated 08 April 2024 where you invited us to participate in the stakeholder engagement on the Public Audit (Amendment) Bill, 2024 organized by the Departmental Committee on Finance and National Planning.

We hereby enclose our detailed submissions as an Appendix to this letter. These submissions are made pursuant to Article 118 (1) (b) of the Constitution of Kenya 2010 and the National Assembly Standing order 127(3).

Please do not hesitate to reach out to Alex Mathini on alex.mathini@bowmanslaw.com or Brian Otieno on brian.otieno@bowmanslaw.com should you require clarifications or additional information with regards to our submissions.

Yours faithfully



Alex Mathini
Coulson Harney LLP

1. Background

- 1.1 Pursuant to article 253 of the Constitution of Kenya, 2010 (the **Constitution**), the office of the Auditor General was established as an independent office and a body corporate with perpetual succession, a seal and the capability of suing or being sued in its corporate name.
- 1.2 Article 229 of the Constitution provides for, among others, the appointment, qualifications and functions of the Auditor General. The main function of the Auditor General is to audit and report on the accounts of any entity that is funded from public funds.
- 1.3 On 18 December 2015, the President of the Republic of Kenya assented to the Public Audit Act, Chapter 412B of the Laws of Kenya (the **Public Audit Act**). The commencement date of the Public Audit Act was 01 January 2016.
- 1.4 The Public Audit Act, among others, set out the meaning of the Auditor General, established the Audit Advisory Board as an unincorporated body and established the position of a Senior Deputy Auditor General.
- 1.5 On 16 February 2018, the High Court of Kenya at Nairobi delivered a judgment in Petition No. 388 of 2016: **Transparency International (TI Kenya) versus the Attorney General** with the Auditor General and Africa Centre for Open Governance (AFRICOG) as interested parties (the **High Court Judgment**) on a Petition challenging the constitutionality of various provisions of the Public Audit Act. In particular, the High Court Judgment declared sections 4(2), 8, 12, 17(1), 18, 27, 40, 42 and 70 of the Public Audit Act unconstitutional.
- 1.6 The High Court Judgment together with the concerns about the transition in the office of the Auditor General prompted the National Assembly to introduce the Public Audit (Amendment) Bill, 2024 (the **Public Audit Amendment Bill**) to align the Public Audit Act with the Constitution.
- 1.7 Accordingly, we have made our submissions by considering the Public Audit Amendment Bill which is currently before the Departmental Committee on Finance and National Planning.

2. Executive summary

- 2.1 Adoption of the amendments proposed under the Public Audit Amendment Bill will be beneficial to Kenya in ensuring compliance of the Public Audit Act with the Constitution and ensuring that actions performed under the Public Audit Act are not susceptible to legal challenge. Additionally, the amendments proposed under the Public Audit Amendment Bill will ensure smooth transition in the office of the Auditor General in the event of expiry of the term of office of the person occupying the office of the Auditor General.
- 2.2 We would however highlight the following:
- 2.2.1 section 18 of the Public Audit Act should be amended in accordance with the High Court Judgment to safeguard the independence of the office of the Auditor General by prohibiting secondment of officers from the office of the Auditor General to other state organs and public entities;
- 2.2.2 the timeline for conducting performance audits under section 36(2) of the Public Audit Act should remain six (6) months to ensure there is certainty in the period when the audit is to be conducted. This will ensure relevance of the audit information;
- 2.2.3 section 31 of the Public Audit Act on the audit process should be amended to expressly provide that the Auditor General should issue the relevant state organ or the public entity audited with a copy of the audit report to facilitate preparation of responses to the audit findings. Additionally, the fourteen (14) days' deadline for submitting responses to the audit findings should be increased to one (1) month to allow the state organ or public entity sufficient time to formulate remedial actions to address the audit findings; and
- 2.2.4 the Composition of the Audit Advisory Board (the **Board**) should maintain the nominees of professional bodies such as the Association of Professional Societies of East Africa, and the Law Society of Kenya since the professionals have technical expertise in areas where the Auditor General may require technical assistance on. Additionally, introduction of new members to the Board such as the Chairperson of the Budget and Appropriation Committee of the National Assembly or his or her nominee and two (2) representatives from Parliament (one from the National Assembly and one from the Senate, from Committees in charge of public finance and audit) may have the effect of compromising the independence of the office of the Auditor General since the Auditor General is required to audit the accounts of Parliament.

3. Submissions

3.1 Our submissions are as follows:

Bowmans Submission on the Public Audit Amendment Bill

Secondment of officers

Section 18 of the Public Audit Act

Section 18 of the Public Audit Act provides that the Auditor General, may upon request by a state organ or public entity, second staff from the office of the Auditor General to such state organ or public entity. Section 18 of the Public Audit Act then provides that during such secondment period, the staff from the office of the Auditor General would be under the direction and control of the respective state organ or public entity. The seconded staff would however be prohibited from auditing the state organ or public entity to which they were seconded to until the lapse of a period of twenty-four (24) months from the lapse of the secondment.

The Public Audit Amendment Bill

The Public Audit Amendment Bill does not address section 18 of the Public Audit Act despite the High Court Judgment which declared this section to be unconstitutional.

Our proposal

The Public Audit Amendment Bill should propose to delete the section 18 of the Public Audit Act to align with the High Court Judgment which declared section 18 of the Public Audit Act to be unconstitutional. In addition, the Public Audit Amendment Bill should introduce a clause prohibiting the secondment of officers to or from the office of the Auditor General.

Justification for our proposal

Paragraph 102 of the High Court Judgment explained that secondment of staff from the office of the Auditor General to various state organs and public entities compromises the independence of the individual staff as follows:

Bowmans Submission on the Public Audit Amendment Bill

"Regarding section 18, the petitioner's complaint was that secondment of officers from other state organs to his office or from his office to state organs and public bodies. It must be appreciated that the Auditor General employs staff for the purpose of carrying out his duties and performing his functions. It would be improper for him to second his staff to other public bodies yet his core mandate is to audit the same state organs and public bodies. This will not only lead to familiarity but also compromise the independence of individual staff. This will interfere with institutional independence and therefore may have an unintended consequence in so far as the independent office of the Auditor General is concerned."

Additionally, section 18 violates article 249(1)(b) of the Constitution which provides for the independence of the office of the Auditor General and prohibits the office from being directed or controlled by any person or authority.

Vacancy in the Office of the Auditor General

Clause 8 of the Public Audit Amendment Bill

Clause 8 of the Public Audit Amendment Bill proposes to amend section 11 of the Public Audit Act to clarify transition in the office of the Auditor General in the event of expiry of the term of office of the Auditor General. The proposal in the Public Audit Amendment Bill distinguishes between the procedure to be followed when the office of the Auditor General becomes vacant by virtue of expiry of the term of the office-holder and when the office becomes vacant on account of death, resignation or removal of the Auditor General from office. In the former, the Public Audit Amendment Bill states that it shall strictly be done as such in the proviso to section 11(11), whereas in the latter, the procedure is clearly outlined under section 11(2) to section 11(11).

Our proposal

Section 11 of the Public Audit Act should be amended to clarify that the procedure under section 11(2) to section 11(11) of the Public Audit Act applies regardless of the reason for the vacancy in the office of the Auditor General.

Justification for our proposal

The distinction between the two procedures leads to ambiguity and lack of clarity on the procedure to follow in the event of a vacancy in the office of the Auditor General by reason of expiry of the term of office.

Bowmans Submission on the Public Audit Amendment Bill

With the proposal in the Public Audit Amendment Bill, there is an apparent lack of clarity on the procedure to be followed when the office of the Auditor General falls vacant by virtue of expiry of the term of office of the officeholder. The proposal requires the Auditor General to give a notice of three (3) months prior to expiry of the term. However, the subsequent steps are not clear. In our view the procedure should be the same after the three (3) months' notice is issued such that the process set out under section 11(2) to section 11(11) of the Public Audit Act will also apply in the event that the office of the Auditor General becomes vacant due to expiry of the term.

Additionally, the Public Audit Act should also clarify the effect of death, resignation or removal of the Auditor General from office after the three-month notice has been issued.

Timeline for performance of audits

Clause 25 of the Public Audit Amendment Bill

Clause 25 of the Public Audit Amendment Bill proposes to amend section 36(2) of the Public Audit Act to provide that the Auditor General may conduct performance audits at any time after completion of a National or County government project.

Our proposal

The timeline for the performance audits under section 36(2) of the Public Audit Act should remain six (6) months.

Justification for our proposal

The timeline for conducting audits under article 229 of the Constitution is six (6) months after the end of the financial year. Borrowing from the same principle, the Public Audit Act was drafted to align with the constitutional timeline of six (6) months. Additionally, providing for an open timeline may lead to loss of relevance of the report published beyond six (6) months due to the passing of time.

Certification of the audit process

The Public Audit Amendment Bill

Clause 20 of the Public Audit Amendment Bill proposes to repeal section 31 of the Public Audit Act and changes the audit process to be carried out as follows;

(a) the Auditor General shall inform the accounting officer of a state organ or public entity to be audited before the commencement of the audit, (b) an entry

Bowmans Submission on the Public Audit Amendment Bill

meeting shall then be held at the beginning of the audit by the Auditor General and the accounting officer, (c) the Auditor General shall then issue an audit report to Parliament and the relevant county assembly and (d) the accounting officer shall then respond to the Auditor General within fourteen (14) days from receipt of the audit report.

Our proposal

The Public Audit Amendment Bill should amend section 31 of the Public Audit Act to expressly provide for the issuance of the audit report to the accounting officer of the state organ or public entity audited. As currently drafted, the Public Audit Act only provides for the issuance of the audit report to Parliament or the relevant county assembly. In addition, the Public Audit Amendment Bill should increase the time limit within which an accounting officer is required to submit a response to the Auditor General's report.

Justification for our proposal

The lack of an express statement requiring the issuance of the Auditor General's report to the accounting officer of a state organ or public entity being audited leaves a gap since it imposes no express obligation on the Auditor General to issue the audit report to the state organ or public entity being audited. This may hinder the preparation of the responses to the audit findings by the state organ or public entity.

State organs or public entities require adequate time to prepare and submit a response to the audit report and to address all the issues raised together with implementing proper remedial actions to address the audit findings. We would propose that the fourteen (14) days' deadline for submitting responses to the audit findings be increased to one (1) month to allow the state organ or public entity sufficient time to formulate remedial actions to address the audit findings.

Establishment and composition of the Board

Section 25 of the Public Audit Act

Section 25 of the Public Audit Act establishes an Audit Advisory Board which comprises of the Auditor General, the Attorney General, one nominee from the Institute of Certified Public Accountants of Kenya, one nominee from the Association of Professional Societies of East Africa, one nominee from the Law Society of Kenya and the Chairperson of the Public Service Commission or his or her nominee.

The Public Audit Amendment Bill

Bowmans Submission on the Public Audit Amendment Bill

Clause 17 of the Public Audit Amendment Bill proposes to repeal section 25 of Public Audit Act and removes some of the previously mentioned members of the Board such as the nominee of the Association of Professional Societies of East Africa and a nominee of the Law Society of Kenya and introduces new members such as the Chairperson of the Budget and Appropriation Committee of the National Assembly or his or her nominee and two representatives from Parliament (one from the National Assembly and one from the Senate from committees in charge of public finance and audit).

Our proposal

The National Assembly should retain the nominee of the Association of Professional Societies of East Africa, and a nominee of the Law Society of Kenya as members of the Board and delete the membership of the Chairperson of the Budget and Appropriation Committee of the National Assembly or his or her nominee and two representatives from Parliament (one from the National Assembly and one from the Senate from Committees in charge of public finance and audit) as members of the Board.

Justification for our proposal

Paragraph 117 of the High Court Judgment explained that the composition of the members of the Board with persons in public office such as the Attorney General and the Chairperson of the Public Service Commission violated the independence of the office as the Auditor General since these were public bodies funded from state funds. The inclusion of the Chairperson of the Budget and Appropriation Committee of the National Assembly or his or her nominee and two representatives from Parliament as members of the Board would also compromise the independence of the office of the Auditor General.



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