

Approved for tabling



REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

REPORT ON

THE CONSIDERATION OF THE PUBLIC AUDIT BILL, 2014

PARLIAMENT BUILDINGS
NAIROBI

MARCH, 2015

Paper laid by
Hon. Cecilia Vice-Chair
of the Committee on
Finance, Planning &
Trade today, Wednesday
March 18, 2015 at
9:30 a.m.
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1. PREFACE

1.1. Committee Mandate

The Departmental Committee on Finance, Planning & Trade is one of the twelve Departmental Committees of the National Assembly established under Standing Order 216 and mandated to:-

- (a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (b) Study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- (c) Study and review all legislation referred to it;
- (d) Study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) 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;
- (f) Vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

1.2. Committee Membership

The Committee comprises following members:-

- | | |
|---|----------------------------------|
| 1. Hon. Benjamin Langat, MP (Chairman) | 15. Hon. Tiras N. Ngahu, MP |
| 2. Hon. Nelson Gaichuhie, MP (Vice Chairman) | 16. Hon. Sakaja Johnson, MP |
| 3. Hon. Jones M Mlolwa, MP | 17. Hon. Jimmy Nuru Angwenyi, MP |
| 4. Hon. Anyanga, Andrew Toboso, MP | 18. Hon. Ronald Tonui, MP |
| 5. Hon. Timothy M .E. Bosire, MP | 19. Hon. Mary Emase, MP |
| 6. Hon. Shakeel Shabbir Ahmed, MP | 20. Hon. Joseph Limo, MP |
| 7. Hon. Joash Olum, MP | 21. Hon. Lati Lelelit, MP |
| 8. Hon. Dr. Oburu Oginga, MP | 22. Hon. Kirwa Stephen Bitok, MP |
| 9. Hon. Patrick Makau King'ola, MP | 23. Hon. Sammy Mwaita, MP |
| 10. Hon. Abdullswamad Sheriff, MP | 24. Hon. Daniel E. Nanok, MP |
| 11. Hon. Sumra Irshadali, MP | 25. Hon. Eng. Shadrack Manga, MP |
| 12. Hon. Ogendo Rose Nyamunga, MP | 26. Hon. Abdul Rahim Dawood, MP |
| 13. Hon. Iringo Cyprian Kubai, MP | 27. Hon. Sakwa John Bunyasi, MP |
| 14. Hon. Dennis Waweru, MP | 28. Hon. Alfred W. Sambu, MP |
| | 29. Hon. Sammy Koech, MP |

1.3. Consideration of the Bill

On 10th December 2014, the Public Audit Bill, 2014 was read a First Time by the Leader of the Majority party in the National Assembly and thereafter committed to the Departmental committee on Finance, Planning and Trade for consideration Pursuant to Standing Order 127. The public Audit Bill is one of the legislations to be enacted by Parliament as a requirement under Article 126 (1) of the Constitution.

This Bill was supposed to have been passed last year but the National Assembly extended the timeline to allow for drafting of a comprehensive Bill in wide consultation with the stakeholders. The Bill seeks to repeal the current Public Audit Act and in its new form, provide for the functions and powers of the office of the Auditor –General in accordance with Article 229 of the constitution.

1.4. Key provisions of the Bill

Clause 7 of the Bill sets out the functions and powers of the Office of the Auditor-General in addition to functions and responsibilities set out in Article 229 of the Constitution. Among them, the Auditor-General shall:

1. Give assurance on the effectiveness of internal controls, risk management and overall financial systems by state organs and public entities;
2. 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; and
3. Satisfy himself or herself that all public funds have been used and applied to the purposes intended and that the expenditure conforms to the authority for such expenditure.

Clause 8 of the Bill further sets out administrative functions and powers of the Auditor-General in addition to any other powers conferred under the Constitution, and any other relevant law. Among them being:

- development of an organisation structure and staffing establishment for the Office of the Auditor-General;
- recruitment and promotion of qualified and competent staff to perform the Office's functions;
- subject to Article 230(4)(b) of the Constitution, determination of the remuneration and benefits of each member of staff; and
- development and maintenance of a Code of Conduct and Ethics for the Office, specific to auditing, guided by the international code of practice

To ensure that the Auditor-general carries out his or her work effectively, **clause 9** of the Bill empowers the Auditor-General to:-

- conduct investigations on his or her own initiative;
- obtain professional assistance, consultancy, or advice from such persons or organizations whether within or outside public service;
- issue summons to a witness for the purposes of his or her investigation; and

- request any public officer who is subject to this Act to provide explanations, information and assistance in person and in writing

The Bill in **clause 10** cushions the Auditor-General from any interference in performance of his or her functions. The Clause provides that the Auditor-General shall not be subject to direction or control by any person or authority in performance of his or her functions under the Constitution or the Act.

Clause 12 of the Bill provides for the new position of the Senior Deputy Auditor-General to be recruited by the Office of the Auditor-General and appointed by the Public Service Commission. This will ensure proper administration and management of the Office of the Auditor-General. Clause 13 outlines the functions of this officer among them being to:

- (a) being the head of administration and management of the Office of the Auditor-General; and
- (b) being the accounting officer of the Office of the Auditor-General.

Clause 20 of the Bill provides for the process of preparation of the Budget estimates of revenue and expenditures and work plans for the Office of the Auditor-General for next financial year to be submitted to the Cabinet Secretary for finance for onward transmission to the National Assembly in accordance with Article 221 of the Constitution.

Clause 22 of the Bill empowers the Auditor-General to examine bank accounts for the purpose of tracking any transaction into the account of any person through an order of the court where he or she has reason to believe that the money belonging to a public body has been fraudulently or wrongfully paid into such person's account.

Part III of the Bill (clauses 25 to 28) establishes the Audit Advisory Board with mandate to generally advise the Auditor-General on the exercise of his or her responsibilities. Membership will be drawn from the relevant institutions.

Clauses 29-39 of the Bill provides for the audit process and types of audit. Among the types of audit shall include periodic audits, annual financial audit, performance audit, forensic audit, and procurement audit among others.

Clause 40 of the Bill provides for the auditing of the national security organs. However, it is proposed here that any information gathered under this audit shall not be included into the public report if, among others, it is likely to prejudice the security, defence or international relations of the Government of Kenya.

Clauses 46-59 of the Bill further deals with the reporting by the Auditor-General and the provisions on determination of the Code of Conduct and its application.

Part VIII of the Bill (Clauses 60-66) deals with the offences and during the auditing process and the penalties therein.

The Committee processed the legislative proposal within the provisions of Standing Order 114 placing the advertisements in the Daily Nation and Standard Newspapers on

16th February, 2015 calling for memoranda from the general public. The following institutions sent their memoranda:

- The Auditor General;
- The Institute of Certified Public Accountants of Kenya (ICPAK);
- Katiba Katiba Institute; and
- Commission on Implementation of the Constitution
- Article 19
- Ministry of Interior and Co-ordination of National Government

While examining the Bill, the following issues arose:

- 1. Public Service Commission:-** The issues on this matter revolve around whether the Public Service Commission should be involved in the appointment of public officers under the office of the Auditor General in line with Article 234 (2); whether this will comprise the independence of the office of the Auditor General given that the Public Service Commission is also an auditee; and whether, Article 252 (1) (c) of the Constitution which require the independent office of the Auditor General to recruit his/her own staff and appoint them. The Auditor General is appointed by the president as expressly provided under Article 229(1). Though Article 234 (3) of the Constitution exempts specific institutions to recruit and appoint public officers, Article 252 gives the offices of the Auditor General Powers to recruit.

Therefore for Clauses 4(2), 14, 15 and 17 (1), (2) of the Bill to derogate the powers of appointing the officers under the office of the Auditor General to the Public Service Commission would be unconstitutional.

In the same light, the powers to discipline, develop code of conduct and determine human resource requirements within the Office of the Auditor General should only be handled by the office of the Auditor General and not involvement of the Public Service Commission as clauses 8©, (d), and (j) to suggest.

- 2. Budget Approval Process:-** Article 221 of the Constitution provides that the national government, Parliamentary Service Commission and the Chief Registrar of the Judiciary shall present their budgets directly to parliament. This model works in some other jurisdictions like the United Kingdom, Newzealand, and Canada. Clause 20 (2) provides that the annual budget estimates for the Office of the Auditor General should be prepared and submitted to the Cabinet Secretary for the National Treasury for review. The question therefore is whether the budgets of the Office of the Auditor General can be submitted to Parliament alongside these to cure some fear that the National government may underfund the Office?

The Powers of allocating appropriating resources to MDAs is an exclusive role of Parliament. This must be done within the confines of the law especially Article 249(3) that obligates parliament to allocate adequate resources to independent office to finance their operations.

3. **Government Policy Objectives:** The issues on this matter revolve around whether the Auditor General can question Government policy objectives; which is on the negative under **clause 72** of the Bill. There is nowhere in the world the external auditor has powers to question the merits or demerits of Government policy objectives. This principle also applies in the private sector. There are choices set out in a party manifesto and political parties are elected on the basis of pledges to deliver to the people etc. however, in the course of his work, the Auditor General can ascertain and report on whether public resources appropriated for a specific government were prudently utilized.
4. **Submission of Audit Reports to Parliament or Relevant County Assembly:** The issues on this matter revolve around whether Article 229 (4) envisaged a situation where the Speaker of the National Assembly or the relevant Speaker of a County Assembly can determine a period longer or shorter, than the six months provided for in the Constitution to facilitate the Auditor General to be invited to a Committee of the whole House to table his report either at the National level or County level. What will happen, if the speaker had decided a longer date than the six months provided for in the Constitution?

This notwithstanding, nothing stops Parliament or County Assembly to provide in their standing orders the process of inviting the Auditor General to a Committee to discuss any matter relating to audit reports prepared by him/her.

5. **Establishment of the Office of the Auditor General Fund:** Questions as to whether the Office of the Auditor General can form Fund arose. Article 249 (3) states that the budget of the Auditor General shall be a Vote. This implies that the detailed budget of the office of the Auditor General is subject to review and approval by Parliament and the approved budget shall lapse at the end of the financial year.
6. **Confidential Expenditure on National Security Related Expenditures:- Clause 40:** The issues on this matter relate to five things: 1. Restricted disclosure of information in public interest- New Zealand, Australia etc, 2. Restricted disclosure of confidential information e.g. New Zealand, Canada 3. Requirement for vetting of officers as well as taking oath of office for the officers of the Auditor General depending on the Government departments they are auditing to ensure privileged information is kept as required by law e.g. Canada, New Zealand, and South Africa 4. Approval of a list of classified security related

expenditures for purposes of audit e.g. South Africa; and 5. A select committee of Parliament to be sworn to secrecy to oversee expenditures relating to national security e.g. New Zealand, Australia, Canada.

It was the opinion of stakeholders that this Clause is too prescriptive and appears to gag the Auditor General. The Auditor-General owes allegiance to the public and has a right to audit entities (security organs) where public money is spent. The Attorney General is not under the current constitution an independent office holder and therefore cannot have powers to issue certificates that certain information should not be published. It further dictates to the Attorney General the level of staff to audit such entities. This is impractical because such high level staff is scarce. The AG should therefore decide on the availability of staff to audit such entities based on competence.

When the Cabinet Secretary approves security related projects, it limits the areas audited. The Cabinet is composed of auditees who are interested parties. This is tantamount to the Cabinet Secretary presenting what the Auditor-General can audit which may be contrary to Article 229 (4)(h) of the Constitution. This Clause also overrides the constitutional right of the public to know how public resources have been expended.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. Finally, I wish to express my appreciation to the Honourable Members of the Committee who made useful contributions during the consideration of the Bill by the committee.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade, to table its report in the House on its consideration of the Public Audit Bill, 2014, Pursuant to Standing Order 127

Signed..........Date.....17-03-2015.....
(HON. BENJAMIN LANGAT, MP)

**CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE**

2. COMMENTS FROM THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

The representatives of the Kenya Institute of Public Accountants of Kenya appeared before the Committee and presented the following:

2.1. Background

Article 229 of the Constitution of Kenya 2010 established the Office of the Auditor General with the principal mandate to audit and report on the accounts of any entity that is funded from public funds both at the national and county levels. The Constitution envisaged that public accountability is critical and can be better realized with proper systems and structures. The Constitution further separated the budgetary control function under the Office of the Controller of Budget. The thinking is driven by the desire to enhance effectiveness of both accountability functions.

2.2. Key Concerns in review of the Bill

In previous years, one of the major challenges the Office of the Auditor General (OAG) has had to deal with is the shortage of technical staff to undertake audits of inadequately presented accounts and financial records. This directly resulted in delayed audit reports which in effect hampered Parliament scrutiny of the government accountability reports. This has to greater extent impaired public sector accountability. The situation is compounded by the inability of the auditees in the past, to develop their own capacity to streamline financial reporting and accounting systems that complement the efforts from the Office of the Auditor General.

Whilst the Constitution of Kenya 2010 created additional layer at the county level giving rise to more institutions with spending powers all of which must be audited, it has gone ahead to prescribe strict audit timelines. A review of the legal framework underpinning public audit must address the arising issue on capacity development.

2.3. Independence of the Office of the Attorney General

The Office of the Auditor General in Kenya draws its mandate from Article 229 of the Constitution. In addition, Article 248(3) (a) categorizes the Office of the Auditor General as an independent office. Article 249 (2) (b) is express in providing for the independence of the office that shall not be subject to direction and control of any person or authority. It is of critical importance to ensure that security of both functional and to a greater extent, the financial independence of the Office of the Auditor General.

The nature of the Auditor General's functions requires somewhat absolute independence. This aspect has been recognized by the International Organization of Supreme Audit Institutions (INTOSAI). In its XIX Congress meeting in Mexico, dubbed the Mexico Declaration on SAI Independence, INTOSAI recognized eight core principles as essential requirements for proper public sector auditing. They included among others unlimited access to information and the freedom to decide the content and timing of audit reports

and to publish and disseminate among others. Therefore clause 40 as drafted negates all these.

In Kenya, the Auditor General Office's annual budget estimates are prepared and submitted to the Cabinet Secretary responsible for Finance who then transmits to the National Assembly as part of the estimates of the revenue and expenditure of the National government. This cannot be independence. It would be better for the budget of the office of the Auditor general to be submitted directly to National Assembly as is the case with the United Kingdom, Canada, Tanzania and Newzealand.

The bill should therefore be amended to take care of the above concerns.

3. COMMENTS FROM THE AUDITOR GENERAL

The Kenya Auditor General, Mr. Edward Ouko, appeared before the Committee and presented the following.

3.1. Recruitment and discipline of staff within the Office of Auditor General

The Office of the Auditor General, as provided for in Article 229 of the constitution, is an independent office which is mandated to recruit its staff as contained provided in Article 252. Therefore it presupposes that the Auditor General would recruit and appoint officers serving under him/her independent of the Public Service Commission.

The development of a code of conduct and disciplinary mechanisms for officers serving in the office of the Auditor General should be an exclusive mandate of the Auditor General. This should be guided by the existing relevant laws such as the Public Ethics Act. As this is an independent office, the Public service has no role in determining the structure, establishment and the disciplinary mechanisms.

Therefore it will be important to introduce amendments to clauses 4, 8, and 14 will require to be amended to reflect the above concerns.

3.2. Budgets for the Office of the Auditor General

The current framework provides that the Auditor-General's estimates are prepared, forwarded and reviewed by the National Treasury like any government entity within the executive. This has had an effect capping the budgetary provisions to the office thereby crippling the audit operations. Notwithstanding Article 221, the budgets of the Auditor General can be presented to the National Assembly alongside Parliamentary Service Commission and the Judicial Service Commission.

Therefore clause 20 of the bill should be amended to enable the Auditor General to directly present his/her budget to Parliament.

3.3. Scope of audit

The Auditor-General owes allegiance to the public and has a right to audit entities (security organs) where public money is spent. This is clearly provided for under Article 229 of the constitution. The Bill as drafted under clause 40, tries to restrict the scope of

audit with regard to security related agencies and whether such audit reports can be made public or not. Clause 40 should be amended to remove any caveat that may impede the Auditor General from performing his/her work.

4. COMMENTS FROM THE COMMISSION ON IMPLEMENTATION OF THE CONSTITUTION

The Commission for Implementation of the Constitution sent its comments through its Chairman, Mr. Charles Nyachae, with the following highlights:

(i) On Clauses 4(2), 8(d), 14, 15 and 17 on the role of the Public Service Commission in the appointment and discipline of staff in the Office of the Auditor General

The Commission's view which is reflected in the Bill and arose out of a tripartite consultations meeting between the Commission, the National Treasury and the Auditor General, is that whereas Article 252 of the Constitution allows the Auditor General as an independent office to recruit his own staff, Article 234 grants extensive mandates to the Public Service Commission (PSC) over officers in the public service. The public service under the constitution is defined as "*individuals and persons performing a function within a state organ...other than state officers*" There is no doubt that the Auditor General's office is a State organ.

The mandate of the Public Service Commission over the public service is only excluded from State officers and the offices set out in Article 234(3) (c) which does not include staff in the Office of the Auditor General. Consequently the PSC has a constitutional role over the staff of the Auditor General's office, though not on the Auditor General himself. That role includes the establishment of offices and appointment to those offices and the exercise of disciplinary control.

To balance between the need for independence of the Auditor General and the need to allow the Public Service Commission to perform its role as set out in Article 234 the following suffices as provided for in the Bill:

- (a) That the staff establishment and organization structure of the Office of the Auditor General be developed by the Auditor General but that the same be subject to approval by the Public Service Commission. This allows the Auditor General the pre-eminent role in the structure and staffing of his office but subject to overall oversight of the Public Service Commission in its role of establishing offices seeks a rationalization of the public service generally. This is necessary to imbue checks and balances for State organs and does not compromise the Auditor General's independence.
- (b) That in view of Article 252, the Auditor General be the one to recruit the staff to serve in his office but that the actual appointments be made by the Public Service Commission as required under Article 232(2). Naturally the PSC under Article 234(5) can delegate the appointment of any cadre of officers to the Auditor General. To the extent that the Public Service Commission can only appoint

officers that the Auditor General has recruited, this does not compromise the independence of the Auditor General.

- (c) On disciplinary control, it is clear that Article 234(2) (b) grants the mandate to the Public Service Commission to exercise disciplinary control in respect of members of the public service. However, nothing stops the PSC under Article 234(5) from delegating that power to the Auditor General. It is on this basis that Clause subjects the role of the Auditor General in exercising disciplinary control to Article 234(5).

Consequently Commission believes the Clauses as drafted sufficiently protect the Auditor General's independence whilst recognizing that staff in his office are part of the public service and therefore under the jurisdiction of the Public Service Commission.

(ii) Clause 20 on the presentation of the Auditor General's budget estimates to the National Assembly

Article 221 of the Constitution mandates the Cabinet Secretary to the Treasury to submit the budget estimates of the National government and entities under it to the National Assembly. The process by which this is done is provided in the Public Finance Management Act, which under Section 6 is the overriding Act on issue of budget making. The National Assembly is not bound by the views of the Cabinet Secretary and therefore there is sufficient opportunity for the Auditor General to ventilate his issues with the National Assembly if his allocation is not reasonable.

Nothing stops the National Assembly from adjusting either the Budget Policy Statement or the Budget estimates and allocating more funds to the Auditor General notwithstanding the views of the Cabinet Secretary for the National Treasury.

If the Auditor General was to submit his/her budgets directly to National Assembly, this will compromise the separation of powers principle between the Executive and Legislature by involving the Chair of the Budget Committee who is a State Officer in the Legislature, in a part of the budget preparation process that is the exclusive preserve of the Executive.

The Commission supports the clause as provided drafted.

(iii) Clause 25, 27 on the Auditor General as member of the Advisory Board and on the functions of the Board

The Advisory Board exists to give advice to the Auditor General. To have him/her as Chairperson or even as a member of the Board would negate the intention of the Board and be contrary to the constitutional principles of good governance especially when one takes into account that his/her deputy is the Board's secretary. To the extent that the Board does not carry out any of the Auditor General's mandate or unduly compromise his independence, and to the extent that he appoints the Chair of the Board, the Commission is of the view that the existing provisions are reasonable.

However, further amendments to Clause 27(1) should be made to leave no doubt that the role of the Advisory Board is restricted to advising the Auditor General.

(iv) Clause 31 on the appearance by the Auditor General in Parliament;

Whereas the Commission is agreeable with the need for the Auditor General to appear before the House and present the Audit reports, the Commission believes that it is not possible under this Act to mandate the House to call the Auditor General. The Standing Orders should deal with this aspect sufficiently.

(v) Clause 40 and 48 on audit of security organs

Clause 40 as drafted in the Bill does not in any way restrict the Auditor General from auditing security organs. On the contrary it allows him unfettered discretion in auditing the security organs and allows him to report on the findings of the Audit to Parliament and its committees. The Clause only restricts the manner of reporting of that part of the information that may compromise national security. Even then Clause 40(2) defines the remit of that exclusion and Clause 40(1) (b) requires a formal opinion from the Attorney General prior to any restriction.

For further transparency, Clause 40(4) requires that the Auditor General publishes the fact of non-disclosure of any part of the report and the reasons thereof. This is consistent with international practice and balances between the need for audit on all security organs but recognizes that in limited circumstances national security will be compromised by disclosure to the public generally.

In CIC's view the proposal made by the Auditor General actually amounts to a restriction of his mandate by intimating that there may be areas that may lie outside his "audit scope". That would be contrary to the Constitution as all expenditure of public funds however sensitive is subject to audit, the only restriction relates to publication of the audit information to the general public.

However, Clause 40(2) (d) which applies to commercial interests has no relationship with national security and should be deleted. Clause 40 should be framed as a limitation of right to information provided for under Article 35 so that it meets the requirements of Article 24 on limitation of rights.

Clause 48 only deals with publication of Security related information and does not prevent the Auditor General from carrying out any audit and presenting any reports on security organs to Parliament. The clause is reasonable and should remain as it is.

(vi) Clause 41(c) on the levy of fees by the Auditor General.

It is important that Parliament approves any fees that will be levied by public offices. The Clause as contained in the Bill is reasonable.

(vii) Article 60 on criminal remedies

Clause 60(e) is too broad. Only release of information on security organs contrary to the provisions of the Act should be punishable.

On Clause 60 (1) (f): criminal action should only be to officers who intentionally release information.

(viii) Clause 72 on government policy

The Auditor General has a right to question merits of government policy objectives if they have financial implications that conflict with the Constitution. Therefore clause 72 should be deleted.

5. COMMENTS FROM THE MINISTRY OF INTERIOR

The Principal Secretary for the Ministry of Interior, Amb (Dr). Monica Juma, appeared before the Committee and presented the following with regard the Bill:

The Ministry of Defense & Foreign Relations and Ministry of Interior and Coordination of National Government constituted a team including the Office of the Auditor General to benchmark on the best practices on how to handle confidential matters in relation to auditing in seven countries. The team was to look at the users of the confidential expenditure. The team made the following findings:

1. There is no specific law that govern confidential expenditures, the expenditure is anchored in Financial Regulations
2. Issues of integrity are well taken care of by ensuring that the Auditors and Auditees handling confidential matters are carefully vetted and they sign oath of secrecy.
3. There is a dedicated select committee of the Parliament mandated to interrogate the confidential expenditure.
4. The budget follows the normal process although the amount is presented in blocks for the confidential matters
5. The Audit team is trained annually and they are highly trained internal auditors.

She requested the Committee to adopt the following amendments:

CLAUSE 23

THAT the Bill be amended by inserting the following new sub-clause immediately after sub-clause (7)-

(8) The provisions of this Section shall not apply to audit of national security organs.

CLAUSE 24

THAT the Bill be amended in sub-clause (1) of Clause 24 by inserting the words "Subject to section 23(8)" immediately before the words "The Auditor -General".

THAT the sub-clause be renumbered to read Clause 24.

CLAUSE 32

THAT the Bill be amended in sub-clause (2) of Clause 32 by inserting the words “Subject to section 40 and any written law” immediately before the words “The Auditor-General shall”.

CLAUSE 36

THAT the Bill be amended in Clause 36 by inserting the words “by the Ethics and Anti-Corruption Commission” immediately after the words “upon request”.

CLAUSE 37

THAT the Bill be amended in Clause 37 by inserting the words “in consultation with the Public Procurement and Oversight Authority” immediately before the words “examine the public procurement..”

CLAUSE 39

THAT Clause 39 of the Bill be amended-

- (i) In sub-clause (1) of Clause 39 by inserting the words “Subject to section 40” immediately before the words “All reports of an audit”.
- (ii) By deleting sub-clauses (2) and (3).
- (iii) By renumbering sub-clause (1) as Clause 39.

CLAUSE 40

THAT Clause 40 of the Bill be amended-

- (i) In sub-clause (1) of Clause 40 by deleting the word “public” and substituting therefor the word “audit”
- (ii) In paragraph (a) of sub-clause (1) deleting the words “public interest” and substituting therefor the words “national security”
- (iii) In paragraph (b) of sub-clause (1) deleting the words “Attorney General” wherever they occur and substituting therefor the words “National Security Council”
- (iv) In paragraph (b) of sub-clause (1) deleting the words “public interest” and substituting therefor the words “national security”

(v) In sub-clause(2) by deleting the word “may” and substituting therefor the word “shall”.

(vi) In sub-clause (2) by deleting paragraphs (c) – (e)

(vii) By deleting sub-clause (3) and substituting therefor the following:

“The Auditor-General may be required under a closed door session , and is permitted , to disclose to a special committee of Parliament, some but not necessarily entire information that sub-section(1) prohibits in the audit report”.

(viii) By deleting sub-clause (4).

(ix) In sub-clause (5) by inserting the words “and members of the special committee of Parliament” immediately after the words “under this Section” appearing in the second line.

(x) In sub-clause (6) by deleting the word “Cabinet” and substituting therefor the words National Security Council”

(xi) By deleting sub-clause (7) and substituting it with the following new sub-clause-

“(7) For the avoidance of doubt and notwithstanding any provision to the contrary-

(a) Audit under this Section shall be conducted by staff of the Office of the Auditor- General referred to in sub-section (5);

(b) Audit under this Section shall be limited to the processes and procedures and shall not extend to operational details and activities;

(xii) In sub-clause (8) by deleting the term “public report”

CLAUSE 50

THAT the Bill be amended in Clause 51 by inserting the following new sub-clause immediately after sub-clause (2)-

“(3) This Section shall not apply to audit of national security organs or information of any classified activity.

CLAUSE 51

THAT the Bill be amended by deleting Clause 51.

CLAUSE 52

THAT the Bill be amended in sub-clause(1) of Clause 52 by deleting paragraph (b) and substituting therefor the following:

“(b) give a progress report on the implementation of the recommendations”

CLAUSE 60

THAT the Bill be amended in sub-clause (2) of Clause 60 by deleting the word “five” appearing in the fourth line and substituting therefor the word “ten”

CLAUSE 68

THAT the Bill be amended in Clause 68-

- (i) By renaming the present Clause as sub-clause (1);
- (ii) By inserting the following new sub-clause immediately after sub-clause (1)-

“(2) Notwithstanding the generality of sub-clause (1), the Cabinet Secretary shall in consultation with the Auditor-General and heads of national security organs develop regulations for the conduct of audit of national security organs and related matters.”

6. COMMENTS FROM THE NATIONAL TREASURY

The Committee met with the Cabinet Secretary for the National Treasury, Dr. Kamau Thugge, to consider the amendments to the Bill as per the provisions of Article 114 of the Constitution. After tabling his presentation (**Annex 2**), he highlighted the following:

1. **Public Service Commission:-** The issues on this matter revolve around whether the Public Service Commission should be involved in the appointment of public officers under the office of the Auditor General in line with Article 234 (2) and whether, Article 252 (1) (c) of the Constitution which require the independent office of the Auditor General to recruit his own staff, envisaged that the office will also appoint its own staff given the provisions of Article 234 (3) of the Constitution, which expressly exempts specific institutions shall recruit and appoint public officers. In this case, it is only the Auditor General exempted from the Article, but the Constitution expressly states that the Auditor General will be appointed by the President under Article 229 (1).

2. **Budget Approval Process:** Article 221 of the Constitution envisaged only three institutions will submit their budgets directly to Parliament. These institutions are Cabinet Secretary on behalf of the national government, Parliamentary Service Commission and the Chief Registrar of the Judiciary.
3. **Government Policy Objectives:** The issues on this matter revolve around whether the Auditor General can question Government policy objectives. There is nowhere in the world the external auditor has powers to question the merits or demerits of Government policy objectives. This principle also applies in the private sector.
4. **Submission of Audit Reports to Parliament or Relevant County Assembly:** The issues on this matter revolve around whether Article 229 (4) envisaged a situation where the Speaker of the National Assembly or the relevant Speaker of a County Assembly can determine a period longer or shorter, than the six months provided for in the Constitution to facilitate the Auditor General to be invited to a committee of the whole House to table his report either at the national level or county level. What will happen, if the speaker had decided a longer date than the six months provided for in the Constitution?. This notwithstanding, nothing stops Parliament or County Assembly to provide in their standing orders the process of inviting the Auditor General to a committee to discuss any matter relating to audit reports prepared by him.
5. **Establishment of the Office of the Auditor General Fund:** Article 249 (3) states that the budget of the Auditor General shall be a Vote. This implies that the detailed budget of the office of the Auditor General is subject to review and approval by Parliament and the approved budget shall lapse at the end of the financial year.
6. **Confidential Expenditure on National Security Related Expenditures:** The issues on this matter relate to five things: 1. Restricted disclosure of information in public interest- New Zealand, Australia etc, 2. Restricted disclosure of confidential information e.g. New Zealand, Canada 3. Requirement for vetting of officers as well as taking oath of office for the officers of the Auditor General depending on the Government departments they are auditing to ensure privileged information is kept as required by law e.g. Canada, New Zealand, and South Africa 4. Approval of a list of classified security related expenditures for purposes of audit e.g. South Africa; and 5. A select Committee of Parliament to be sworn to secrecy to oversee expenditures relating to national security e.g. New Zealand, Australia, Canada.

7. COMMITTEE RECOMMENDATIONS

Having considered the views of the stakeholders, including the Cabinet Secretary for the National Treasury, the Committee is in the process of considering the following amendments for possible introduction at the Committee Stage of the Bill-

CLAUSE 4

THAT, clause 4 of the Bill be amended—

- (a) in subclause (1) (c) by deleting the word “things” and substituting therefor the word “duties”;
- (b) in subclause (2) by deleting the expression “subject to Article 234(5) of the Constitution”;
- (c) in subclause (3) by deleting the words “ as far as it is appropriate to do so” appearing immediately after the words “ the Republic”.

CLAUSE 5

THAT, clause 5 of the Bill be amended in subclause (1) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) is a practising member of good standing of a professional body of accountants recognized by law.”

CLAUSE 7

THAT, clause 7 of the Bill be amended in subclause (1) (a) by deleting the words “financial systems of state organs” appearing immediately after the words “and overall” and substituting therefor the words “governance at national and county governments”.

CLAUSE 8

THAT, clause 8 of the Bill be amended—

- (a) in paragraph (a) by deleting the words “subject to section 11 of this Act”;
- (b) in paragraph (c) by deleting the expression “subject to Article 234(5) of the constitution”;
- (c) in paragraph (d) by deleting the expression “subject to Article 234(5) of the Constitution”;

(d) in paragraph (j) by deleting the words “ and in consultation with the public Service Commission and the National Treasury,” appearing immediately after the words “relevant laws,”;

(e) by inserting a new paragraph immediately after paragraph (k)—

“(ka) provide information that may be needed in investigation accordance with the provisions of this Act.”

CLAUSE 11

THAT, clause 11 of the Bill be amended—

(a) by deleting subclause (5) and substituting therefor the following new subclause—

“(5) The President shall, within fourteen days of the expiry of the period prescribed under subsection (2), constitute a selection panel comprising one representative from—

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

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

Provided that for the purposes 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, scores of each candidate interviewed by individual members of the interviewing panel together with the criteria used in selecting the names forwarded”;

(b) in subclause (6) by deleting the words “public Service Commission” and substituting therefor the words “selection panel”;

(c) in subclause (9) (b) by deleting the words “Public Service Commission” and substituting therefor the words “selection panel”;

(d) in subclause (12) by deleting the words “ selection committee convened under subsection (4).” and substituting therefor the words “ selection panel convened under subsection (5).”

CLAUSE 14

THAT, clause 14 of the Bill be deleted and replaced with the following new clause—

Development and approval of organizational structure.

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

CLAUSE 15

THAT, clause 15 of the Bill be amended—

(a) in subclause (1), by deleting the words “Public Service Commission” and substituting therefor the “Advisory Board”;

(b) In subclause (2), by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) holds the same minimum qualifications as required for the appointment of Auditor General as specified in section 5 of this Act”.

CLAUSE 16

THAT, clause 16 (1) of the Bill be amended by inserting the words “deputize the Auditor General and” immediately after the words “Auditor-General shall”.

CLAUSE 17

THAT, clause 17 of the Bill be amended—

(a) in subclause (1) by deleting the words “and the Auditor-General may appoint such staff subject to Article 234 (5) of the Constitution” appearing immediately after the words “Salaries and Remuneration Commission” and substituting therefor “ and subject to Article 230 of the Constitution”;

(b) in subclause (2) by deleting the words “ under this Act and approved by the Public Service Commission.” appearing immediately after the words “the Auditor-General”.

CLAUSE 21

THAT, clause 21 of the Bill be amended in subclause (1) by deleting the word “may” appearing immediately after the words “the Auditor-General” and substituting therefor “shall”.

CLAUSE 22

THAT, clause 22 of the Bill be amended in subclause (3) by deleting the words “What will happen if this is abused?” appearing immediately after the words “information so obtained”.

CLAUSE 25

THAT, clause 25 of the Bill be amended—

(a) in subclause (1) by —

(i) inserting a new paragraph immediately after paragraph (g)—

“(ga) the Senior Deputy Auditor General who shall be the secretary to the Board and an ex-officio member”;

(ii) deleting paragraphs (e) and (g);

(b) in subclause (2) by deleting the expression “subsection (2)(c) to (g)” and substituting therefor the expression “subsection (1)(c) to (g)”;

(c) by deleting subclause (3) and substituting therefor the following new subclause—

“(3) The members under subsection (1) shall appoint a chairperson from amongst themselves.”

CLAUSE 27

THAT, clause 27 of the Bill be amended in subclause (1) by deleting the word “generally” appearing immediately before the words “to advice”.

CLAUSE 30

THAT, clause 30 of the Bill be amended by inserting the words “or information” immediately after the word “documents”.

CLAUSE 31

THAT, clause 31 of the Bill be amended by inserting the following new subclause immediately after subclause (6)—

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

NEW CLAUSE

THAT, the following new clause be inserted immediately after clause 31—

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

31A. (1) All reports of an audit shall be submitted to Parliament or the relevant county assembly and made available to any person who applies for information or part thereof, except in cases where access to such information is restricted by law.

CLAUSE 35

THAT, clause 35 of the Bill be amended by—

- (a) renumbering the existing provision as subclause (1);
- (b) inserting a new subclause immediately the renumbered subclause (1)—

“(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 got value for money in the project and submit that report to Parliament or county assembly for tabling and debate.”

CLAUSE 36

THAT, clause 36 of the Bill be amended by inserting the words “by Parliament” immediately after the words “upon request.

CLAUSE 37

THAT, clause 37 of the Bill be deleted.

CLAUSE 38

THAT, Clause 38 of the Bill be amended by deleting the word “may” appearing immediately after the words “The Auditor-General” and substituting therefor “shall”.

CLAUSE 39

THAT, clause 39 of the Bill be deleted.

CLAUSE 40

THAT, clause 40 of the Bill be amended—

- (a) by renumbering subclause (1) as subclause (1A);
- (b) by inserting the following new subclause immediately before the renumbered subclause (1A)—
 - “(1) The Auditor General shall audit national security organs and confidential expenditure in the process of carrying out his or her mandate under the Constitution, this Act and any other written law”;
- (c) in the renumbered subclause (1A)(b), by—
 - (i) inserting the words “in consultation with the National Security Council,” immediately before the words “has issued a certificate”;
 - (ii) deleting the words “Attorney General” appearing immediately after the words “opinion of the” and substituting therefor the words “National Security Council”;
- (d) in subclause (2) by—
 - (i) deleting the words “or relations between the two levels of government” appearing in paragraph (c);
 - (ii) deleting paragraph (d);
 - (iii) inserting the word “foreign” immediately before the word “persons” appearing in paragraph (e);
- (e) in subclause (3), by deleting the words “special or joint committee of Parliament and the President” appearing immediately after the words “disclose to a” and

substituting therefor the words “ a relevant committee of Parliament and the National Security Council”;

(f) in subclause (5) by—

(i) deleting the words “carrying out” appearing immediately after the word “Auditor-General” and substituting therefor the words “ and staff of the relevant security organ involved in”;

(ii) deleting the words “and such officers shall be at a grade equivalent to deputy Director of Audit or above.” appearing immediately after the words “oath of confidentiality”;

(g) in subclause (6), by deleting the word “Cabinet” appearing immediately after the words “purposes of this section” and substituting therefor the words “National Security Council”;

(h) in subclause (7) by—

(i) deleting the word “ Cabinet” appearing immediately after the words “decision of the” and substituting therefor the words “ National Security Council”;

(ii) inserting the words “in charge” immediately after the words “the Cabinet Secretary”.

CLAUSE 48

THAT, clause 48 be amended in subclause (4) by deleting subclause the phrase “thirty (30)” and substituting therefor the word “sixty”.

CLAUSE 54

THAT, clause 54 of the bill be deleted and replaced with the following new clause—

Observing code
of conduct.

54. The Auditor-General in discharging his or her functions and responsibilities shall determine the code of conduct and ethics for all the Public Officers of the Office of the Auditor General which shall be in line with those prescribed by the Constitution, this Act, the Public Officer Ethics Act, 2003 and the relevant professional bodies.

CLAUSE 57




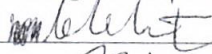


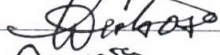
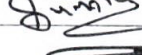



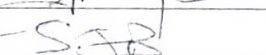

THAT, clause 57 of the Bill be amended in subclause (1) by inserting the words “without prejudice” immediately after the words “bound to disclose”.

Annex 1 (minutes)

MEMBERS ATTENDANCE REGISTER

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

DATE: 17/3/2015
 AGENDA: CONSIDERATION OF COMMITTEE'S AMENDMENTS TO PUBLIC AUDIT BILL, 2014

	NAME	TITLE	SIGNATURE
1	Hon. Benjamin Eyo	Chair	
2	Nelson Garchu	V/Chair	
3	Hon. A. Rahim Dawood	member.	
4	Hon. Lati Lelelit	"	
5	Hon. Dr. Oburu Oginge	"	
6	Hon. Kubai Inngo	"	
7	Hon. Andrew Tobaso Anyango	"	
8	Hon. Isahad Sumra	"	
9	HON. RONALD TORVI	"	
10	Hon. Rose Nyamunga	"	
11	Hon. J. ANAEM	"	
12	Hon. TIMI BIRI	"	
13	Hon. SAKWA BUNYISI	"	
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**MINUTES OF THE 8TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE,
PLANNING & TRADE HELD ON THURSDAY 19TH FEBRUARY, 2015 IN SMALL DINNING,
MAIN PARLIAMENT, AT 10:00AM**

Present

1. Hon. Benjamin Langat, MP
(**Chairperson**)
2. Hon. Nelson Gaichuhie, MP(**Vice-
Chairperson**)
3. Hon. Jimmy Nuru Angwenyi, MP
4. Hon. Sammy Mwaita, MP
5. Hon. Eng. Shadrack Manga, MP
6. Hon. Shakeel Shabbir Ahmed, MP
7. Hon. Ronald Tonui, MP
8. Hon. Timothy Bosire, MP
9. Hon. Anyanga Andrew Toboso, MP
10. Hon. Mary Emase, MP
11. Hon. Joseph Limo, MP
12. Hon. Kirwa Stephen Bitok, MP
13. Hon. Ogendo Rose Nyamunga, MP
14. Hon. Iringo Cyprian Kubai, MP
15. Hon. Sumra Irshadali, MP

16. Hon. Abdul Rahim Dawood ,MP
17. Hon. Jones Mlolwa, MP
18. Hon. Patrick Makau King'ola, MP
19. Hon. Abdullswamad Shariff, MP
20. Hon. Dennis Waweru, MP
21. Hon. Sakwa John Bunyasi, MP

Apologies

1. Hon. Dr. Oburu Oginga, MP
2. Hon. Lati Lelelit, MP
3. Hon. Joash Olum, MP
4. Hon. Sammy Koech, MP
5. Hon. Sakaja Johnson, MP
6. Hon. Tiras Ngahu, MP
7. Hon. Daniel Epuyo Nanok, MP
8. Hon. Alfred Sambu, MP

IN ATTENDANCE

Kenya National Assembly

1. Mr. Benjamin Ngimor - Fiscal Analyst
2. Mr. Josephat Motonu - Fiscal Analyst
3. Mr. Nicodemus Maluki - Third Clerk Assistant
4. Mr. Fredrick Otieno - Third Clerk Assistant
5. Mr. Abdinasir Moge - Fiscal Analyst
6. Mr. Thomas Ogwel - Fiscal Analyst

Office of the Auditor General

1. Mr. Edward R.O. Ouko - Auditor General
2. Mr. H.O. Wanyama - Deputy Auditor General
3. Mr. David O. Gichana- Deputy Auditor General
4. Mr. Francis Keguango - OAG
5. Mr. Dennis T. Kariuki- OAG
6. Ms. Milcah A. Ondiek - OAG
7. Mr. S. N Kiini - OAG
8. Mr. Wilfred Marube - OAG

Institute of Certified Public Accountants of Kenya (ICPAK)

CPA Dr. Patrick Ngumi - CEO
 CPA Fredrick Riaga - Manager
 CPA Edwin Makori - Chief Manager
 CPA Georgina Malombe - Manager

MIN.NO. DCF/032/2015: PRELIMINARIES

The Chairperson called the meeting to order at 10.30am followed by a word of prayer from Hon. Cyprian Iringo, MP. He then asked everyone present to do self-introduction.

MIN.NO.DCF/033/2015: PRESENTATION BY THE AUDITOR GENERAL ON PUBLIC AUDIT BILL, 2014

The Auditor General, Mr. Edward Ouko, appeared before the Committee and presented the following proposed amendments to the Bill:

INDEPENDENCE OF THE OFFICE OF THE AUDITOR GENERAL				
No.	Issue	Clauses of the Public Audit Bill 2014	Proposal	Justification
1	Functional Independence of the Auditor General	Clause 4(2) Establishment of the Office of the Auditor General	<i>(2) The Office shall comprise the Auditor-General as its Statutory head and all staff including the staff appointed by the Auditor-General.</i>	Public Service Commission and Office of the Auditor-General are independent of each other therefore PSC should not dictate to the Auditor-General on appointment of staff. The clause as it is in the Bill is likely to interfere with the independence of the Auditor-General as PSC may cap numbers of staff to Office of the Auditor-General and even second them to other entities thus interfering with the operations of the Office of Auditor-General. PSC is an auditee of the AG and having a hand in the appointment of staff amounts to conflict of interest. The Constitution at Article 252 (1) (c) gives powers to the Office of the Auditor-General to recruit its own staff.
		Clause 8 (c), (d), (j) Administrative powers of the Office of the Auditor General.	<i>“(c) to exercise disciplinary control over staff”</i>	It impinges on the independence of the Office of the Auditor General. PSC, is an auditee of the Auditor General, should not have a hand in the discipline of staff of the Auditor General. This clause further contradicts clause 10 of the Bill and Article 249(2) of the Constitution.

			<p><i>(d) to develop human resource of the office;</i></p> <p><i>(j) In addition to what is provided for under any other relevant law, develop and maintain a Code Conduct and Ethics for the Office, specific to auditing, guided by the international code of practice, and code of Ethics issued by the International Organisation of Supreme Audit</i></p>	<p>Article 252(1) (c) gives the Auditor General powers to recruit his own staff without making reference to Article 234(5) thus it's not necessary to mention article 234(5) of the constitution.</p> <p>The International Organisation of Supreme Audit Institutions (INTOSAI) and ICPAK set professional standards for auditors.</p> <p>Public Service Commission and National Treasury should have nothing to do with professional standards on ethics.</p> <p>The two entities are also auditees of the Office and such involvement amounts to a conflict of interest.</p>
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		<i>Institutions;</i>	
	Clause 14 Development and submission of organizational structure	14. <i>The Office of the Auditor-General shall develop the organizational structure for consideration and approval by the Audit Advisory Board.</i>	<p>The Organisational Structure is a tool by which the Office of the Auditor General organizes itself to ensure that its functions and responds to management and auditing operations. Subjection of the Organizational Structure to the Public Service Commission gives PSC a say in how audit operations will be delivered.</p> <p>The clause as it is in the Bill compromises the independence of the Auditor General and is not related to Article 234(2) of the Constitution.</p> <p>PSC is an auditee and therefore is an interested party.</p>
	Clause 15 Recruitment of the Senior Deputy Auditor General	<p>(1) <i>There shall be a Senior Deputy Auditor-General who shall be competitively recruited by the Advisory Board and appointed by the Auditor-General.</i></p> <p>15 (2)(b) <i>The qualifications are the same as those of the auditor General as outlined in the Independent Offices</i></p>	<p>The Senior Deputy Auditor General is the principal assistant to the Auditor General and shall act as the Auditor General in his absence and as such his/her allegiance should be to the Office of the Auditor-General and not PSC.</p> <p>The Senior Deputy Auditor-General acts as the Auditor-General in his/her absence and should have the same qualifications as the Auditor General.</p>

			<p><i>Appointment Act</i></p>	
		<p>Clause 17 Recruitment of other staff</p>	<p><i>(1)The office of the Auditor General may recruit such other staff as may be necessary for proper discharge of his/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 subject to Article 230 of the constitution.</i></p> <p><i>(2) The staff of the Office</i></p>	<p>It contravenes Article 252(1)(c) Constitution thereby eroding the independence of the Auditor General.</p> <p>It contravenes Article 252(1)(c) of the Constitution</p>

			<p><i>of the Auditor-General shall be competitively recruited in accordance to the organization structure developed by the office of the Auditor-General under this Act</i></p>	
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		<p>Clause 25 Establishment and composition of the Audit Advisory Board</p>	<p><i>To have the Auditor General as the Chair of the Board.</i></p>	<p>This is to avoid a potential friction between the leadership of the board and the Auditor-General. A parallel centre of power may be created.</p> <p>This proposed amendment can also be benchmarked against the Judicial Service Commission where the Chief Justice is the Chairperson. In India where there is a similar Board, the Auditor General chairs the deliberations.</p>
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BUDGET ESTIMATES AND PLANS

2.	Budget Estimates and Plans	<p>Clause 20 Budget estimates and plans of the Office of the Auditor General</p>	<p><i>(a) The Auditor General shall discuss, in a tripartite meeting, the Budget estimates with the chairman of the Budget and Appropriations Committee together with the Cabinet Secretary responsible for finance and agree on the budgetary allocation to the Office of the Auditor General, not later than 30th November each year</i></p> <p><i>b) Pursuant to the above</i></p>	<p>Review of the Auditor-General's estimates by the National Treasury alone does not assure the spirit and intention of the Constitution on independence of the office, National Treasury being a primary auditee of the Office.</p> <p>Parliaments as the</p>
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			<p><i>tripartite meeting the budget estimates shall be included in the Budget Policy Statement without change by the Cabinet Secretary responsible for Finance</i></p> <p><i>c) In the event of any change on the agreed budget estimates, the Auditor-General shall inform the Chairman of Budget and Appropriations Committee in writing not later than 15th January every year.</i></p>	<p>primary oversight institution should decide the level of accountability of resources hence determine the level of funding for the Office of the Auditor General.</p> <p>The proposed amendment does not violate the budgetary cycle/process other than giving Parliament the responsibility to determine the budgetary estimates for the Office prior to the cycle.</p> <p>It is conceivable that in future there is a risk of the AG's resources being capped by National Treasury for reasons other than fiscal austerity. Parliament therefore should shield the office against such possibilities.</p>
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LIMITATION IN SCOPE OF AUDIT

3.	Limitation in Scope of Audit	Clause 40 Auditing of National Security Organs	<i>In auditing national security organs, the Auditor-General and/or his/her representatives shall hold an inception meeting, at the highest level, to agree on the areas which may touch on national security and consequently determine the scope of the audit coverage.</i>	<p>This Clause is too prescriptive and appears to gag the Auditor General.</p> <p>The Auditor-General owes allegiance to the</p>
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			<p><i>The audit reports on National Security Organs may be redacted to shield the identities of persons as well as assets and liabilities as the case may be.</i></p> <p><i>All staff of the Office of the Auditor-General carrying out audit under this Section shall undergo a vetting process carried out by the appropriate security agency."</i></p>	<p>public and has right to audit entities (security organs) where public money is spent. S/he can however, avoid going into details of security matters.</p> <p>It further dictates to the AG the level of staff to audit such entities. This is impractical because such high level staff is scarce. The AG should therefore decide on the availability of staff to audit such entities based on competence.</p> <p>When the Cabinet Secretary approves security related projects, it limits the areas audited. The Cabinet is composed of Auditees who are interested parties. This is tantamount to the Cabinet Secretary presenting what the Auditor-General can audit which may be contrary to Article 229 (4)(h) of the</p>
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				<p>Constitution.</p> <p>This Clause also overrides the constitutional right of the public to know how public resources have been expended.</p>
		<p>Clause 72 Auditor-General not to question policy objectives</p>	<p><i>Delete the entire Clause</i></p>	<p>Performance Audit may require questioning of a policy. This clause is nugatory to the constitutional mandate of the Auditor General as provided for under Article 229(6) to report on whether public funds have been used lawfully and effectively and Article 249(1) of the Constitution.</p> <p>Sometimes, therefore it will be necessary for the Auditor General to question policy objectives.</p>
<p>OFFENCES AND PENALTIES</p>				
4.	<p>Offences and Sanctions</p>	<p>Clause 60 Offences by officers of the office of the Auditor-General</p>	<p><i>We propose a deletion of 1 e, f, g and an amendment of (2) to read: (2) Any officer of the Office of the Auditor-General who commits an offence under subsection (1) shall be disciplined in line with the Code of Ethics of the profession and where necessary the code of ethics of the profession and where</i></p>	<p>This is draconian. Matters of professional misconduct should be referred to internal disciplinary mechanisms and the professional code of conduct for the Auditors.</p>

			<i>necessary criminal proceedings preferred.</i>	
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MIN.NO. DCF/034/2015 COMMITTEE OBSERVATIONS

1. It is not clear whether clause 20 on review of the budget estimates for the office of the Auditor General by the National treasury will compromise on the independence of the Office considering that it is the role of parliament to appropriate resources.
2. That the functions of Auditor General are restricted by clause 40. The clause restricts the Auditor General from revealing some information to the public and whether to come up with amendments to include special security auditors to help identify the security related projects and products.
3. The independence of the Office of the Auditor General will be compromised if the recruitment of staff of the Office is subject to Public Service Commission as indicated in clauses 4,8,25 and 27 of the and will further negate the Article 252 (1) (c) of the constitution.

MIN.NO. DCF/035/2015: SUBMISSINS BY ICPAK ON PUBLIC AUDIT BILL, 2014

The Chief Executive Officer of EO ICPAK made the following submissions to the Committee:

1. On the efficiency and effectiveness, one of the major challenges the Office of the Auditor General has had to deal with was the shortage of technical staff to undertake audits of inadequately presented accounts and financial records. This directly resulted in delayed reports which in effect hampered Parliament scrutiny of the government accountability reports. This has to greater extent impaired public sector accountability.
2. Concerning the independence of the Office of the Auditor General, the office draws its mandate from Article 229 of the Constitution. In addition, Article 248 (3) (a) categorizes the office as an independent office. Article 249 (2) (b), is express in providing for independence of the office that is only shall not be subject to direction and control of any person or authority. He further stated that it was of critical importance to ensure that both functional and to a greater extent, the financial independence of the Office of the Auditor General are secured.
3. He further mentioned that they were of the opinion that the Public Audit Law be used to provide the framework for financial independence of the Office of the Auditor General by empowering the Office to submit its annual budget estimates to the National assembly. He gave examples of other jurisdictions like:
 - i. United Kingdom where the National Audit Office prepares and submits annual budget estimates to the Public Accounts Commission which examines this estimate and lays it before the House of Commons with such modifications as it sees fit. The Commission is required to take into consideration any advice given by the Public Accounts Committee and the Treasury.
 - ii. In Canada, the Office of the Auditor General for a long time operated as a Department of the Public Service under the Public Sector Management Act (1994), thus receiving an annual appropriation from Treasury. The Public Accounts and Expenditure Review Committee in its 1992 Report recommended that the Office of the Auditor General should not be constituted as a department of the public service. Opinion from other sources went further to suggest that the Office should be established as a statutory authority to provide more autonomy and independence.
 - iii. In New Zealand, Section 36 of the Public Audit Act 2001 of New Zealand provides that the Auditor General within specified timelines, prepare and submit to the Speaker of the

House of Representatives, a draft annual plan which is then tabled before the House of Representatives for consideration. In the case of New Zealand, the Supreme Audit Institution has financial independence and the Parliament decides on the level of funding for the Auditor-General, who submits his annual budget through the Speaker to Parliament directly.

- iv. In Tanzania, Section 33 of the Public Audit Act of Tanzania provides that the Auditor General shall prepare and submit to the President, estimates for the year of administrative and development expenditures and estimates of revenues of the office of the Auditor General. The president upon receiving this shall cause the estimates to be laid before Parliament without revision but with recommendations that the Executive may have on them.

Summary of Issues on the Public Audit Bill 2014

	Issue	Clauses of the Public Audit Bill, 2014	Proposal	Justification
1	Qualification for Appointment as Auditor General	Clause 5 (1) provides for the qualification for appointment to the Office of the Auditor General. Sub clause (e) provides that one must be a member of good standing of a Professional body of accountants recognized by law.	Amend (e) to read... is a practicing member of good standing of a professional body of accountants recognized by law.	In its policies and procedures on registration and issuance of audit practicing certificate, the professional body of accountants recognized by law in Kenya requires that applicants for practicing certificates must demonstrate prior experience in external audit. We are of the view that it is a relevant criterion that should be a requirement for appointment. The same should apply to Senior Deputy Auditor General.
2	Functional independence of the Office of the Auditor General	Clause 8 (c) and (d) provides that the Office of the Auditor General shall only exercise its administrative powers in relation to disciplinary control and establishment of human capital compliment of to the extent that it is permissible by the powers of the Public Service Commission as per Art 234 of the	Delete any limitations introduced by reference to Art. 234	Limit executive control of OAG with a view to protecting functional independence of OAG. For the OAG to protect sovereignty of the people as envisioned in Art 249(1) (b), executive control should be limited. This will also be in line with Art. 249(2) that Guarantees functional independence of commissions and holders of independent

		<p>Constitution.</p> <p>Clause 14 provides that Public Service Commission shall approve the organization structure proposed by the Auditor General</p> <p>Clause 15 (1) on appointment of the Senior Deputy Auditor General by the Public Service Commission</p> <p>Clause 15(2) qualifications for the Senior Deputy Auditor General less stringent</p> <p>Clause 17 (1) to the extent that it requires the OAG to recruit</p>	<p>Delete part of the provision requiring approval by Public Service Commission. Since Office of Auditor General is accountable to Parliament, any such approval should by Parliament.</p> <p>Make this one of the powers of the Advisory Board hence re-word to have the Advisory Board recruit and recommend names to the Auditor General for formal appointment.</p> <p>Align the qualifications to requirements for the Office of the Auditor General as per Clause 5(5).</p> <p>Delete references to the Public Service Commission.</p>	<p>offices-</p> <p>(a) Are subject only to this Constitution and the law and (b) Independent and no subject to direction or control by any person or authority.</p> <p>Clause 8 in its current form is in conflict with Clause 10 of the Bill.</p> <p>Safeguard the functional independence of the Office of the Auditor General.</p> <p>This is guaranteed under Article 249(2) as above. Of particular importance 249(b)-commissions independent offices independent and not subject to direction or control by any person or authority.</p> <p>Article 234 sets out the powers of the Public Service Commission. However 234 (3) provides that the powers of the Public Services Commission in relation to establishment and abolition of offices, disciplinary control shall not apply to commissions and independent offices. On this basis, the Constitution thus protects the independence of the office of Auditor General.</p> <p>Building on independence and competence of the persons appointed to the Office of Auditor General</p>
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		staff in accordance with Art. 234 of the Constitution brings it into conflict with 252 (1) c and Art. 249 (2) b of the Constitution.		Article 252(1)(c) provides that each Commission, and each holder of an independent office shall recruit its own staff, therefore the appointment of the Senior Deputy Auditor General should not be done by the Public Service Commission
3	Vacancy in the Office of the Auditor General	Clause 11 (c) provides for removal of Auditor General from office under any circumstance specified in Art. 251 of the Constitution or Chapter Six of the Constitution	Delete or Chapter Six of the Constitution...it an unnecessary repetition.	Article 251 (1) (a) of the Constitution already makes to reference to breach of the provisions of Chapter Six. Hence no need for the repetition.
4	Appointment of the Auditor General	Clause 11 (5) it is not clear whether it is the selection Committee constitute by the Public Service Commission or the Commission that has the ultimate responsibility to recommend names.	Replace Public Service Commission with the Selection Panel in the second paragraph ... provided for the purpose of selection and short-listing of the said three persons, the Public Service Commission shall hold its proceedings in public and submit a report of the interview proceedings to Parliament...	Let us retain the responsibility of appointment under the independent Selection Panel. A contra suggestion as proposed in the second paragraph would serve to negate this. Clause 11 (12) actually designates the PSC as the Secretariat to the Selection Panel. The spirit is have this power vest in the Selection Panel.
5	Responsibilities of Senior Deputy Auditor General	Clause 16 (1) b provides that the Senior Deputy Auditor General shall be the accounting officer for the Office of the Auditor General.	Delete this from the responsibilities of the Senior Deputy Auditor General and have it vest in the Auditor General himself.	By good practice, the buck stops with the senior most officer in an entity. The responsibility of accounting Officers as defined under Section 66 of the PFM Act and further the reporting line defined by Section 68 (1) of the PFM Act 2012 point to the Auditor General. Section 68 of PFM Act is express in stating that the


				<p>accounting officer for among others, the independent offices shall be accountable to the National Assembly. In light of this, let us retain the role of accounting officer under the Auditor General who can be removed through an administrative action appointing the Senior Deputy to act as such but knowing very well that the person of the Auditor General maintains the role as the accounting officer report to Parliament.</p>
6	<p>Financial Independence of the Office of the Auditor General- Budget Estimates and plans of the Office of Auditor General</p>	<p>How does independence of the office of the Auditor General crystallize effectively?</p> <p>Does this include financial independence and if so, are there arrangements to safeguard financial independence of the office of the Auditor General?</p> <p>Clause 20(1) provides for OAG to submit budget to Cabinet Secretary for Finance, this impedes on independence of OAG.</p>	<p>Let us think of appropriate provisions on funding of the Office of the Auditor General.</p> <p>In light of lack of proper address to the anticipated independence of the OAG and the fact that the Constitution providing that OAG reports directly to Parliament in accordance with Art 229 (7) of the Constitution and Clause 39 of this Bill, can the Bill go ahead and provide that in accordance with Art. 249 (3) of the Constitution, the Auditor General as a special independent office shall hold discussions with the appropriate Committee of Parliament on its annual budget</p>	<p>We propose that independence of the Office of the Auditor General should be envisaged beyond the letter of the provision. We must think of the spirit and the intension of the provision on independence.</p> <p>Financial independence of the Office of the Auditor General is a key consideration to realize functional independence of the office and entrench the space for the holder to conduct annual examination of financial records of all government agencies without fear of reprisal at the budgeting stage.</p> <p>It is critical that the National Treasury is an office subject to audit by the office of the Auditor General, it is unprecedented to have the same office determines and allocates resources to the Auditor General.</p> <p>Financial independence of the Office of the Auditor General is a key consideration to</p>

			<p>projections and expenditure ahead of time. plans</p>	<p>realize absolute independence of the Office of the Auditor General.</p> <p>Best practice:-</p> <p>United Kingdom We need to borrow from the UK, where the National Audit Office prepares and submits annual budget estimates to the Public Accounts Commission. The Commission examines this estimate and lays it before the House of Commons with such modifications as it sees fit.</p> <p>In UK, NAO has control over resources/budget.</p> <p>In Tanzania, the Auditor General's budget is discussed with the President and the agreed budget is then forwarded to Treasury which in turn submits the agreed budget to Parliament without amendments but providing recommendations on divergent opinion to Parliament.</p> <p>In New Zealand, the Auditor General submits his expenditure estimates directly to Parliament. If borrowed from the above best practice, will contribute to the realization of Art. 249 of the Constitution on functional independence.</p>
7	<p>Limitation of Scope of work of the Office of the Auditor General</p>	<p>Blanket exclusion of national Security organs is a huge limitation of scope in the work of the</p>	<p>Let us only restrict exemptions from disclosure of financial records of security organs to cases that are</p>	<p>We appreciate the need to differentiate what would be described as administrative policies against other government policies</p>

		<p>Auditor General.</p> <p>Under Clause 40(1), the requirement for a certificate of disclosure by the Attorney General in our view amounts to gagging the Auditor General.</p> <p>Clause 72.. Auditor General may not question the merits of a policy of Government..</p>	<p>objectively ascertainable as posing a threat to national security. Those criteria should be well defined.</p> <p>Amend to read; the Auditor General may not question the merits of a policy objective of government or any other state organ or public entity... to the extent that in doing so, such actions will bring into jeopardy, the security of the nation.</p>	<p>which are subject to political debate. We are of the opinion that a blanket limitation would to a great extent negate the necessity for audit.</p> <p>Whilst we appreciate the sensitivity around what is deemed as political policies and hence prescribe a cautionary approach. Administrative policies should be by all means open for scrutiny by the Auditor General. The review of such policies underpin audit.</p>
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MIN.NO. DCF/036/2015 ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 12.25 p.m.

Signed.....

Chairperson

Date.....17-03-2015.....

MINUTES OF THE 11TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE,
PLANNING & TRADE HELD ON MONDAY 23RD FEBRUARY, 2015 IN COUNTY HALL, MINI
CHAMBER PARLIAMENT BUILDINGS, AT 4.30PM

Present

1. Hon. Nelson Gaichuhie, MP
(Vice-Chairperson)
2. Hon. Jimmy Nuru Angwenyi, MP
3. Hon. Eng. Shadrack Manga, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Timothy Bosire, MP
6. Hon. Daniel Epyuo Nanok, MP
7. Hon. Mary Emase, MP
8. Hon. Ogendo Rose Nyamunga, MP
9. Hon. Patrick Makau King'ola, MP
10. Hon. Anyanga Andrew Toboso, MP
11. Hon. Ronald Tonui, MP
12. Hon. Joseph Limo, MP
13. Hon. Lati Lelelit, MP
14. Hon. Kirwa Stephen Bitok, MP
15. Hon. Sumra Irshadali, MP

16. Hon. Dennis Waweru, MP
17. Hon. Sammy Koech, MP
18. Hon. Alfred Sambu, MP
19. Hon. Sakwa John Bunyasi, MP

Apologies

1. Hon. Benjamin Langat, MP
(Chairperson)
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Sammy Mwaita, MP
4. Hon. Abdul Rahim Dawood ,MP
5. Hon. Tiras Ngahu, MP
6. Hon. Jones Mlolwa, MP
7. Hon. Joash Olum, MP
8. Hon. Iringo Cyprian Kubai, MP
9. Hon. Sakaja Johnson, MP
10. Hon. Abdullswamad Shariff, MP

IN ATTENDANCE

Kenya National Assembly

- | | | |
|-------------------------|---|-----------------------|
| 1. Mr. Evans Oanda | - | First Clerk Assistant |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 4. Ms Catherine Burure | - | Fiscal Analyst |
| 5. Mr. Abdinasir Moge | - | Fiscal Analyst |
| 6. Mr. Alex Kanyi | - | Fiscal Analyst |
| 7. Ms. Brigita Mati | - | Legal Officer |

The National Treasury

- | | | |
|-------------------------|---|--------------------------------------|
| 1. Dr. Kamau Thuge, CBS | - | PS National Treasury |
| 2. Mr. Geoffrey Mwau | - | National Treasury - DG BF&EA |
| 3. Mr. M.J. Juma | - | PPOA - DG |
| 4. Mr. C.A. Otunga | - | Director Public Procurement TNT |
| 5. Mr. Bernard Ndungu | - | Director General Accounting Services |
| 6. Mr. Geoffrey Malimbe | - | Senior Assistant Accountant |
| 7. Mr. Albert Mwenda | - | Advisory Asst. General |
| 8. Mr. Evans Nyacho | - | SAD/PPD |
| 9. Mr. Peter N. Momanyi | - | SAD/PPD |

MIN.NO. DCF/052 /2015: PRELIMINARIES

The Vice Chairperson called the meeting to order at 4:30 pm .

MIN.NO. DCF/053/2015: CONSIDERATION OF THE PUBLIC AUDIT BILL, 2014

The Permanent Secretary for National Treasury Mr. Kamau Thugge appeared before the Committee to present the views of the Ministry on the proposed amendments from the stakeholders on the Public Audit Bill. His comments are itemized in a table below:

S/No	Section	Proposed amendment	Rationale for retention of the Proposed Amendment / rejection	Recommendation (s)
1.	Section 4 (4) (2)	Clause 4 of the Bill be amended in sub clause (2) by deleting the words "subject to Article 234(5)" and substitute therefor "subject to Article 234(2)";	<ol style="list-style-type: none"> 1. Article 252 (1) (c) gives powers to the independent Office of the Auditor General to recruit his own staff but the constitution does not allow the independent office to appoint the staff. 2. The powers to appoint public officers is vested in the public Service Commission under Article 234 (2) (a) (ii) of the constitution which provides for the power to appoint persons in the public service. 3. This position is confirmed by Article 234 (3) which provides for exceptions for appointments. In addition, where the constitution expressly stated that. 4. This is in line with many private organizations where they outsource the recruitment process of staff being but retain the appointment powers. The practice of recruitment of the staff being undertaken by the an independent body and appointment being undertaken by a different body is not unique to this office. for example, the private sector in Kenya has been outsourcing the services for recruitment of staff from professional human resource firms such as KPMG, Manpower Services and the private firm after identification of the suitable persons gets a shortlist of the recommended persons for appointment. This is the same situation envisaged by the Constitution. 	<i>The proposed amendment should be rejected</i>
2.	4(2)	In – Sub clause (3)by deleting the words "as far as it is appropriate to do so"	Meaning of the clause.	
7	Section 8 (1) (a)	Clause 8 of the Bill Be amended (a) In paragraph (a) by	<ol style="list-style-type: none"> 1. The reference to "subject to section 11 of this Act" should be amended to read " Subject to section 14 of this Act" since this is the correct 	The Clause

		deleting the words 'subject to section 11 of the Act'	<p>reference.</p> <p>2. The Constitution assigns the duty to establish and abolish public offices to the public service Commission under the Article 234(2)</p> <p>(a) (i) By stating "establish and abolish offices in the public service.</p> <p>In this respect, the organizational structure and staffing of the office of the AG should be done in consultation with the Public Service Commission since it relates to establishment and abolishment of public office.</p> <p>3. Further, public officers should only be established after sufficient justifications given they translate into a long term recurrent expenditure and may lead to unsustainable wage bill of the office of Auditor General.</p> <p>4. It is important to appreciate an establishment of the public office means an increase in the public expenditure</p>	
5.	17 (1)			
6.	Section 21	Clause 21 of the Bill be amended by deleting the word "may" and substituting therefor "shall".	1. Agreed with the proposed amendments.	<i>Agreed</i>
7.	Section 22	<p>Clause 22 of the Bill be amended by inserting a new subclause immediately after subclause (1)—</p> <p>"(2) Before the Auditor decides to track a transaction contemplated in subsection (1), the Auditor shall, before he/she seeks a court order, give reasons in writing and submit to the Audit advisory Board as to why such a transaction is fraudulent."</p>	<p>1. Agreed</p> <p>2. However, we propose further amendments to make it clear</p>	<p><i>We therefore propose further amendment of the Bill by inserting a new subclause immediately after subclause (1)—:</i></p> <p><i>"(2) prior to the Auditor General deciding to track a transaction contemplated in subsection (1), the Auditor General shall,</i></p>

				<i>before he / seeks a court order, giving reasons in writing and submit them to the Audit Advisory Board for advise on the matter</i>
8.	Section 25	Clause 25 of the bill be amended in subclause (1) by deleting paragraphs (e) and (g) .	<ol style="list-style-type: none"> 1. The Institute of Internal Auditor is to oversee the implementation of internal auditing international standards in Kenya as well as regulate the professional conduct of professional internal auditors. International Auditing Standards for supreme audit institutions require that the Auditor General may rely on the work of internal auditor to ensure public resources are used efficiently, effectively and value for money has been achieved. 2. The Public Sector Accounting Standards Board is established under the Public Finance Management Act, 2012 to provide standards and formats of reporting, which impact directly on the quality of financial statements submitted to the Auditor General for Audit. 3. As clearly demonstrated above, these institutions are complementary to the Auditor General and they will add a lot of value when sitting at the Advisory Board. This synergy is important to improve the quality of work of the Auditor General as well as make it more efficient. 4. We therefore propose that the proposed amendment should be dropped. 	The Section should be maintained in the current form.
9.	Section 27	Clause 27 subclause (1) of the Bill be amended by deleting the word “generally” and substitute therefor the word “only”	<ol style="list-style-type: none"> 1. Agreed 	<i>Agreed.</i>
10.	Section 31	Clause 31 of the Bill be amended — (a) In subclause (1) by deleting paragraph (b) and (c);	<ol style="list-style-type: none"> 1. The Constitution assigns the responsibility to audit public funds to the Auditor General. 2. However, we appreciate that the Auditor General may be overwhelmed by the magnitude of audit and therefore, Auditor General may delegate the inception meeting and exit to senior managers under his office, depending on the institution he is auditing at that particular moment. 3. This is also the international best practice in both the public and private sectors. It is 	The Section should be retained in the current form.

			also expressly provided for under International Auditing Standards for Supreme Audit Institutions.	
11.	Section 31	<p>Clause 31 of the Bill be amended —</p> <p>(a) by inserting a new subclause immediately after subclause (6)—</p> <p>“(6A) The National Assembly may invite the Auditor General to table the report before the committee of the whole House.”</p>	<ol style="list-style-type: none"> 1. This is a matter to be addressed under Standing Orders of Parliament on how to invite persons to address the House. 2. This proposed amendment is not consistent with the Article 229 (4) of the Constitution which requires the Auditor General to submit audit reports within six months after the end of the financial year. 3. The proposal to amend the law to provide that reports can only be tabled after the Speaker of the National Assembly has determined and invited the Auditor General is an affront to the Constitutional provisions. Suppose the Speaker does not determine within six months, what happens? 	The clause should be retained in the current form.
12.	Section 37	<p>Clause 37 of the Bill be amended by deleting the word “shall” and substituting therefor “may”.</p>	<ol style="list-style-type: none"> 1. Agreed 	Agreed
13.	Section 38	<p>Clause 38 of the Bill be amended by deleting the word “may” and substituting therefor “shall”.</p>	<ol style="list-style-type: none"> 1. Procurement is part of public financial management and therefore the Auditor General has a mandate to Audit. 2. This notwithstanding, it is not possible for the Auditor General to audit all aspects of procurement and therefore the clause is intended to give the Auditor General discretion to determine the scope of audit on procurement as and when necessary. 3. Further, it should be noted, if we make it mandatory somebody may go to court to compel the Auditor General to audit all aspect of procurement. 4. Therefore the proposed amendments should be dropped. 	The clause should be retained in the current form.
14.	Section 39	<p>Clause 39 of the Bill is amended by deleting subclauses (2) and (3).</p>	<ol style="list-style-type: none"> 1. Article 201 (a) of the Constitution requires openness on matters finance. 2. Today all audits reports of the Auditor General are published by the Government Printer. 3. It is also international best practice to publish audit reports. 	The clause should be retained in the current form.
15.	Section 40	<p>Clause 40 of the Bill be amended —</p> <p>(a) in subclause (1)—</p> <p>(i) by inserting a new paragraph immediately</p>	<ol style="list-style-type: none"> 1. First, it should be understood clearly that the Auditor General shall audit all national security organs as required by the Constitution under Article 229 (4) and (6). 2. Second, the audit reports shall be submitted to Parliament as required by the Constitution under Article 229 (4). 3. Thirdly, the issue under consideration is 	<i>We propose that Section 40 of the Bill be deleted and replaced with the following</i>

	<p>after paragraph (a)—</p> <p>“(aa) the Auditor-General is of the opinion that the disclosure of such information may have negative effects on investor confidence in relation to reporting adverse audits;”</p> <p>(ii) by deleting paragraph (b);</p> <p>(b) by deleting subclause (2) ;</p> <p>(c) by deleting subclause (4)</p> <p>(d) in subclause (5) by deleting the words “Deputy Director of Audit” and substituting therefor “Senior Deputy Auditor”</p>	<p>about disclosure of information on national security related expenditure which may harm public interest if released to the general public, but this information should be released to a select committee of Parliament to exercise oversight on behalf of Parliament as envisaged in the Constitution that the oversight of public funds is the preserve of Parliament.</p> <p>4. Fourth, given the nature of such security related expenditure, the relevant accounting officer should submit a certificate to the Auditor General before commencement of Audit confirming that documents or information being shared is confidential and therefore throughout the audit process such information should be treated so until Parliament decides otherwise.</p> <p>5. Fifth, the Auditor General will be required under this Section to report on such expenditures in the main report to Parliament in a redacted manner but prepare a comprehensive non-redacted report for sharing with the select committee on all issues relating to the National Security Related Expenditures</p> <p>6. The select committee of Parliament will make decisions and recommendations on whether the information should continue being held as confidential or it should be made public and at the same time hold the accounting officer under which the national security related expenditures relates accountable and responsible for such expenditure.</p> <p>7. We therefore propose to make further amendments to this Section to reflect the above.</p>	<p>new Section</p> <p>—</p> <p>Auditing of national security related expenditure</p>
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16.	Section 52 (1)	Clause 52 of the Bill be amended by inserting a proviso immediately after subclause (1)— “Provided that where such recommendations require a longer time frame in implementation, the Auditor-General shall in writing explain such recommendations and reasons for extension of the three months period.”	<ol style="list-style-type: none"> 1. Agreed 2. This allows consultations between the accounting officer and the Auditor General to agree on the specific matter during the exit meeting. 	Agreed
17.	Section 57	Clause 57 of the Bill be amended in subclause (1) by inserting the words “without prejudice” immediately after the words “bound to disclose”.	<ol style="list-style-type: none"> 1. Agreed 2. This will protect, potential whistle blowers from victimization. 	The clause should be amended as proposed.
18.	Section 60 (1) (f)	Clause 60 of the Bill be amended in subclause (1) by deleting paragraph (f) and substituting therefor	<ol style="list-style-type: none"> 1. We agree with the proposed amendment in principle. 2. The Auditor General is working on behalf Parliament and therefore he should only share public information 	We therefore propose a further amendment or

		<p>the following new paragraph— “(f) knowingly and willfully releases any information that may prejudice the security, defence or international relations of the government contrary to the provisions of this Act.”</p>	<p>after submitting it to Parliament.</p> <ol style="list-style-type: none"> Further, the Auditor General by sharing information before submitting it to Parliament, may also be misinterpreted to mean that Parliament is not performing its duty of oversight on management of public affairs and therefore the Auditor-General publishes his/her report before Parliamentary approval to put pressure on Parliament. It is the same standard provided for in the Public Finance Management Act, 2012 that the Cabinet Secretary can only publish and publicize information, seven days after the information has been submitted to Parliament. However, we propose further amendments to the proposed amendments to capture the original spirit. 	<p>the clause read as follows</p> <p>“knowing and willfully discloses or publishes or publicizes the Auditor General’s audit report or its contents to third parties including the media before the report finalized and formally submitted to Parliament county assembly and copied to the Auditee entity and other authorized offices; or”</p>
19.	Section 61	<p>Clause 61 of the Bill be amended in— (a) subclause (1) paragraph (b) by inserting the words “on time” immediately after the words “provide information”;</p>	<ol style="list-style-type: none"> The requirement of submitting information on time is vague and is subject to misuse and misunderstanding. Indeed it is difficult clause to enforce e.g. if the Auditor General requires any information within two days from a public officer, who happens to be on official duty outside his duty station for ten days, will it be possible for such an officer to provide the information within two days. The provision makes it mandatory for information to be provided within a reasonable duration and therefore this statutory requirement is sufficient. The proposed amendment should therefore be dropped. 	<p>The clause should be retained in the current form.</p>
20.	Section 61 (2)	<p>Clause 61 of the Bill be amended in— (b) subclause (2) by deleting the words—</p>	<ol style="list-style-type: none"> Agreed 	<p>Agreed</p>

		<p>(i) “two million shillings” and substituting therefor the words “ten million shillings”;</p> <p>(ii) “one year” and substituting therefor “five years”.</p>		
21.	Section 72	Clause 72 (To be amended as proposed by the Auditor General)	<ol style="list-style-type: none"> 1. The issues on this matter revolve around whether the Auditor General can question Government policy objectives. 2. There is nowhere in the world the external auditor has powers to question the merits or demerits of Government policy objectives. This principle also applies in the private sector. 3. For instance can the Auditor General question why Parliament allocated State Department of Agriculture Kshs. 10 Billion and not State Department of Livestock which is allocated Kshs. 5 Billion and vice versa, or the roll-out of Free Maternity Health Care. 4. There are choices set out in a party manifesto and political parties are elected on the basis of pledges to deliver to the people etc. 	The clause should be retained in the current form.

MIN.NO. DCF/054/2014 COMMITTEE OBSERVATIONS

The Committee observed as follows;

- i) The Public Service Commission (PSC) and the office of Auditor- General are independent of each other therefore the PSC should not be involved in the appointment of staff working in the office of the Auditor General.
- ii) The International Organization of supreme Audit Institutions (INTOSAI) and ICPAK set professional standards for auditors. The Public Service Commission should has no role in it.
- iii) Clause 40 will require to be relooked at by considering the views of all the stakeholders proposed amendments.

MIN.NO. DCF/055/2014 ADJOURNMENT

The Vice Chairperson adjourned the meeting at 5.30 pm.

Signed.....Date 17-03-2015

Chairperson

MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE,
PLANNING & TRADE HELD ON TUESDAY 3RD MARCH, 2015 IN THE COMMITTEE ROOM
4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 11.00 AM

Present

1. Hon. Nelson Gaichuhie, MP (Vice-Chairperson)
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Jimmy Nuru Angwenyi, MP
4. Hon. Timothy Bosire, MP
5. Hon. Ronald Tonui, MP
6. Hon. Mary Emase, MP
7. Hon. Ogendo Rose Nyamunga, MP
8. Hon. Sakwa John Bunyasi, MP
9. Hon. Joseph Limo, MP
10. Hon. Lati Lelelit, MP
11. Hon. Abdullswamad Shariff, MP
12. Hon. Abdul Rahim Dawood, MP
13. Hon. Anyanga Andrew Toboso, MP
14. Hon. Jones Mlolwa, MP
15. Hon. Joash Olum, MP

16. Hon. Sumra Irshadali, MP
17. Hon. Sammy Koech, MP
18. Hon. Sammy Mwaita, MP

Apologies

1. Hon. Benjamin Langat, MP (Chairperson)
2. Hon. Sakaja Johnson, MP
3. Hon. Dennis Waweru, MP
4. Hon. Tiras Ngahu, MP
5. Hon. Alfred Sambu, MP
6. Hon. Iringo Cyprian Kubai, MP
7. Hon. Patrick Makau King'ola, MP
8. Hon. Daniel Epuyo Nanok, MP
9. Hon. Kirwa Stephen Bitok, MP
10. Hon. Shakeel Shabbir Ahmed, MP
11. Hon. Eng. Shadrack Manga, MP

IN ATTENDANCE

Kenya National Assembly

- | | | |
|-------------------------|---|-----------------------|
| 1. Mr. Evans Oanda | - | First Clerk Assistant |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 4. Mr. Erick Osoi | - | Research Officer |
| 5. Ms. Brigita Mati | - | Legal Council |

MIN.NO. DCF/075/2015: PRELIMINARIES

The Vice Chairperson called the meeting to order at 11.35 am and prayed.

**MIN.NO. DCF/076/2015: CONSIDERATION AND ADOPTION OF THE AMENDMENTS TO
PUBLIC AUDIT BILL, 2014**

Having considered the views of the stakeholders, including the Cabinet Secretary for the National Treasury, the Committee adopted the following amendments to the Public Audit Bill, 2014:

CLAUSE 4

THAT, clause 4 of the Bill be amended –

- (a) In Sub-clause (1) paragraph (c) by deleting the word “things” and substitute therefor “duties

Justification: (this is a clean-up)

- (b) In subclause (2) by deleting the words “subject to Article 234(5) of the Constitution”;
Justification: to remove the PSC from the whole process of staffing the Office of the Auditor General as this is an independent office (Article 252(1) and Article 229)

- (c) In subclause (3) by deleting the words “ as far as it is appropriate to do so”.

Justification: This is a clean up

CLAUSE 5

THAT, clause 5 of the Bill be amended in subclause (1) by deleting paragraph © and substituting therefor the following new paragraph” –

“© is a practicing member of good standing of a professional body of accountants recognized by law.

Justification: The professional body of accountants require by law that applicants for practicing certificate must demonstrate prior experience in external audit.

CLAUSE 7

THAT, clause 7 of the Bill be amended in sub clause 1(a) by deleting the words “financial systems of state organs and public entities” and substituting therefor the words “governance at national, county governments and public entities”;

Justification:

CLAUSE 8

THAT, clause 8 of the Bill be amended–

- (a) Sub clause 1(a) by deleting the words “subject to section 11 of this Act”;

Justification: Reference to section 11 is erroneous. Also removes the requirement of submitting the organization structure to PSC for approval.

- (b) In Subclause 1(c) by deleting the words “ subject to Article 234(5) of the constitution”;

Justification: Removes the requirement that PSC should be involved in disciplinary control of staff working under the office of the Auditor General

- (c) In subclause 1(d) by deleting the words “ subject to Article 234(5) of the Constitution”;

Justification: Removes the requirement that PSC should be involved human resource development in the office of the Auditor General

(d) In subclause 1(j) by deleting the words “ in consultation with the Public service Commission”

Justification: Removes the requirement that PSC should be consulted in development of the code of conduct for staff Office of the Auditor General

(e) By inserting a new paragraph immediately after paragraph (L)—

“(m) provide information that may be needed in an investigation according to the provisions provided for under this Act

Justification: Obligates the Ag to provide any information required in the Act

CLAUSE 11

Was held in abeyance

CLAUSE 14

THAT, Clause 14 of the Bill be deleted and substituted therefor the following new clause—

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

Justification: to remove the PSC from the approving the organizational structure and instead give that function to the Audit advisory Board.

CLAUSE 15

THAT, clause 15 of the Bill be amended in sub clause 2(b) by deleting it and substituting therefor the following new Clause—

“(b) Shall hold the same minimum qualifications as required for the appointment of Auditor General as specified in Section 5 of this Act.”

Justification: qualifications of the Ag and his/her deputy should be similar.

CLAUSE 16

THAT, clause 16 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause –

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

Justification: to make it clear that the senior deputy auditor general shall deputize the AG

CLAUSE 17

THAT, clause 17 of the Bill be amended –

(a) In Sub-clause (1) by deleting the words “subject to Article 234(5) of the Constitution”.

Justification: PSC should have no role in staff recruitment and appointment in the Office of the Auditor General

(b) In subclause (2) by deleting the words “under this Act and approved by Public Service Commission”

Justification: to remove the PSC from the whole process of staffing the Office of the Auditor General and development of organizational structure

CLAUSE 21

THAT, clause 21 of the Bill be amended by deleting the word “may” and substituting therefor with the word “shall”

Justification: Obligates the AG to obtain information from anybody working for the public entity for the purposes of auditing.

CLAUSE 22

THAT, clause 22 of the Bill be amended in subclause (3) by deleting the words “what will happen if this is abused?”

Justification: clean-up.

CLAUSE 25

THAT, Clause 25 of the Bill be amended—

- (a) In subclause (1) by inserting a new paragraph immediately after paragraph (g)—
“(ga) the Senior Deputy Auditor-General as an ex-officio member.”

Justification: it is important for representative of the Office of the Auditor General to be part of the Advisory Board as an ex-officio member –not legible to chair the board

- (b) By deleting subclauses (1)(e) and (1)(e)

Justification: Remove conflicts of interest

- (c) In subclause (2) by deleting the expression “subsection (2) (c) to (g) and replacing therefor “subsection (1) (c) to (g)”;

Justification: correction of referencing

- (d) By deleting subclause (3) and replacing therefor with the following new clause: “3. The chairperson shall be elected from among the persons nominated under section 25 of this Act”

Justification: to provide that the chair should be elected and not chaired by AG

The Committee resolved to meet at 4:00pm in the same evening consider the remaining amendments. The Secretariat was asked to seek approval from the Speaker in line with Standing Order 186(2).

MIN.NO. DCF/077/2015: ADJOURNMENT

The Vice Chairperson adjourned the meeting at 1.40pm.

Signed..........date.....17-05-2015.....

Chairperson

MINUTES OF THE 16TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE,
PLANNING & TRADE HELD ON TUESDAY 3RD MARCH, 2015 IN THE COMMITTEE ROOM 7,
PARLIAMENT BUILDINGS, AT 4.00 PM

Present

1. Hon. Benjamin Langat, MP
(Chairperson)
2. Hon. Nelson Gaichuhie, MP(Vice-Chairperson)
3. Hon. Dr. Oburu Oginga, MP
4. Hon. Eng. Shadrack Manga, MP
5. Hon. Ogendo Rose Nyamunga, MP
6. Hon. Sakwa John Bunyasi, MP
7. Hon. Joseph Limo, MP
8. Hon. Lati Lelelit, MP
9. Hon. Abdullswamad Shariff, MP
10. Hon. Anyanga Andrew Toboso, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Sakaja Johnson, MP
13. Hon. Iringo Cyprian Kubai, MP
14. Hon. Dennis Waweru, MP

15. Hon. Kirwa Stephen Bitok, MP
16. Hon. Sammy Mwaita, MP
17. Hon. Jimmy Nuru Angwenyi, MP

Apologies

1. Hon. Tiras Ngahu, MP
2. Hon. Alfred Sambu, MP
3. Hon. Patrick Makau King'ola, MP
4. Hon. Daniel Epuyo Nanok, MP
5. Hon. Shakeel Shabbir Ahmed, MP
6. Hon. Timothy Bosire, MP
7. Hon. Ronald Tonui, MP
8. Hon. Jones Mlolwa, MP
9. Hon. Joash Olum, MP
10. Hon. Abdul Rahim Dawood, MP
11. Hon. Sammy Koech, MP
12. Hon. Mary Emase, MP

IN ATTENDANCE

Kenya National Assembly

1. Mr. Evans Oanda - First Clerk Assistant
2. Mr. Nicodemus Maluki - Third Clerk Assistant
3. Mr. Fredrick Otieno - Third Clerk Assistant
4. Ms. Brigita Mati - Legal Council

MIN.NO. DCF/078/2015: PRELIMINARIES

The Chairperson called the meeting to order at 4.50pm then he prayed.

**MIN.NO. DCF/079/2015: CONSIDERATION AND ADOPTION OF THE AMENDMENTS TO
PUBLIC AUDIT BILL, 2014**

The Committee adopted the following amendments to the Bill:

CLAUSE 30

“THAT, Clause 30 of the Bill be amended the by inserting the words “or information” immediately after the word “documents”

Justification: to widen the scope of information to be provided

CLAUSE 31

THAT, Clause 31 of the Bill be amended by inserting a new subclause immediately after subclause (6)—

“(6A) The Speaker of the National Assembly shall invite the Auditor General to make a presentation before the Committee of the Whole House within forty five days of tabling the report”

Justification: to make it mandatory for the Ag to brief KNA on the contents of his audit and give a timeline rather than leave it to the discretion of the SNA

CLAUSE 35

THAT, Clause 35 of the Bill be amended by inserting a new clause immediately after clause (1)—

“(1A) 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 got value for money in the project and submit that report to Parliament or County Assembly for tabling and debate.

Justification: to provide that the AG may report on any public project completed within six months and report

CLAUSE 36

THAT, Clause 36 of the Bill be amended by deleting the word “may” and replacing therefor with the word “shall” and again inserting the words “by parliament” between the words “request” and the word “conduct”

Justification: to obligate the AG undertake a forensic audit upon request by parliament.

CLAUSE 37


THAT, Clause 37 be deleted

Justification: the AG should have no role in environmental audit-role of NEMA

The Committee will consider other amendments when it next sits. The Secretariat was asked to seek approval from the Speaker in line with Standing Order 186(2) to sit on Wednesday 4th March, 2015 at 11.00am.

MIN.NO. DCF/080/2015: ADJOURNMENT

The Vice Chairperson adjourned the meeting at 6.37pm.

Signed.....

Chairperson

Date.....

MINUTES OF THE 17TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE,
PLANNING & TRADE HELD ON WEDNESDAY 4TH MARCH, 2015 IN THE COMMITTEE ROOM
7, PARLIAMENT BUILDINGS, AT 11.00 AM

Present

1. Hon. Benjamin Langat, MP
(Chairperson)
2. Hon. Nelson Gaichuhie, MP(Vice-
Chairperson)
3. Hon. Eng. Shadrack Manga, MP
4. Hon. Sakwa John Bunyasi, MP
5. Hon. Timothy Bosire, MP
6. Hon. Joseph Limo, MP
7. Hon. Abdullswamad Shariff, MP
8. Hon. Anyanga Andrew Toboso, MP
9. Hon. Sumra Irshadali, MP
10. Hon. Sakaja Johnson, MP
11. Hon. Abdul Rahim Dawood, MP
12. Hon. Iringo Cyprian Kubai, MP
13. Hon. Sammy Mwaita, MP
14. Hon. Mary Emase, MP

15. Hon. Kirwa Stephen Bitok, MP

Apologies

1. Hon. Tiras Ngahu, MP
2. Hon. Alfred Sambu, MP
3. Hon. Patrick Makau King'ola, MP
4. Hon. Daniel Epuyo Nanok, MP
5. Hon. Shakeel Shabbir Ahmed, MP
6. Hon. Jimmy Nuru Angwenyi, MP
7. Hon. Ronald Tonui, MP
8. Hon. Jones Mlolwa, MP
9. Hon. Joash Olum, MP
10. Hon. Dr. Oburu Oginga, MP
11. Hon. Ogendo Rose Nyamunga, MP
12. Hon. Sammy Koech, MP
13. Hon. Lati Lelelit, MP
14. Hon. Dennis Waweru, MP

IN ATTENDANCE

Kenya National Assembly

- | | | |
|-------------------------|---|-----------------------|
| 1. Mr. Evans Oanda | - | First Clerk Assistant |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 4. Mr. Erick Osoi | - | Research Officer |
| 5. Ms. Brigita Mati | - | Legal Council |

MIN.NO. DCF/081/2015: PRELIMINARIES

The Chairperson called the meeting to order at 12.15pm followed by a prayer from Hon. Iringo Cyprian Kubai, MP.

**MIN.NO. DCF/082/2015: ADOPTION OF THE AMENDMENTS TO PUBLIC AUDIT BILL,
2014**

The Committee adopted the following amendments to the Bill:

CLAUSE 53

THAT, Clause 53 of the bill deleted and replaced with the following new clause—

53. Where there is a serious material breach or persistent material breaches of the provisions of this Act or Public Finance Management Act, 2012, the Auditor General may in his audit report

to the Cabinet Secretary pursuant to Article 225 (3) of the Constitution and the Public Finance Management Act, 2012, recommend the withholding of funds to any state organ or public entity

Justification: the report recommending withholding of funds should be made to the Cabinet secretary and not parliament

CLAUSE 54

THAT, Clause 54 of the bill be deleted and replaced with the following new clause—

“54. The Auditor General in discharging his or her functions and responsibilities shall determine the code of conduct and ethics for all the Public Officers of the Office of the Auditor General which shall be in line with those prescribed by the Constitution, this Act, Public Officers Ethics Act, 2003 and the relevant professional bodies.”

Justification: clean up since clause 54 was a repetition of clause 52. Also to provide that the AG will develop code of conduct of officers working under his/her office

CLAUSE 57

THAT, Clause 57 of the Bill be amended in subclause (1) by inserting the words “without prejudice” immediately after the words “bound to disclose”.

Justification: protect the officers in AG

CLAUSE 60

THAT, Clause 60 of the Bill be amended -

(a) In subclause (1) by deleting it and substituting therefor with the following: paragraph (e) *divulges any information relating to national security organs and confidential expenditures as per the Official Secrets Act*”

(b) In subclause (1)(f) by deleting it and substituting therefor with the following : “knowingly and willfully discloses or 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 Auditee entity and other authorized offices; or”

Justification: is an office releasing audit reports before being given to agencies named

(c) By deleting subclause (1)(g)

Justification: avoid repletion as this is in the constitution (article 226)

CLAUSE 61

THAT, Clause 61 of the Bill be amended in—

(a) subclause (1) paragraph (b) by inserting the words “ on time” immediately after the words “provide information”;

(b) subclause (1) by inserting the following new clause (1) (f)

“without justification, fail to provide information required under this Act”

Justification: include timeliness and required information

(c) subclause (2) by deleting the words—

(i) “two million shillings” and substituting therefor the words “five million shillings”;

(ii) “one year” and substituting therefor “three years”.

Justification: increase penalties

CLAUSE 65

THAT, Clause 65 of the Bill be amended by deleting the word “ten” and substituting therefor with the word “five”

Justification: reduce the duration within which one will have to wait once found with an offence before holding public office.

CLAUSE 68

THAT, Clause 68 of the Bill be amended by deleting the words “The Cabinet Secretary responsible for finance in consultation with the Auditor General” and substituting therefor with the words “The Auditor General in consultations with the Cabinet Secretary responsible for finance”

Justification: AG to develop regulations and not the CS

CLAUSE 72

THAT, Clause 72 of the Bill be amended by deleting the words “or any other state organ or public entity”

Justification: clean up-state organs or public entities is subsets of the government

CLAUSE 74

THAT, Clause 74 of the Bill is amended in subclause (2) by deleting paragraph (f) and substituting therefor with:

74 (1) (f) a contract subsisting between the Kenya National Audit Office and any other person before the commencement of this Act, shall continue to exist as contract entered into between the office of the Auditor General and that other person.”

Justifications: contracts entered must be honored after the repeal of the former act.

Clause 11, 40 and 48 were differed to be considered when the Committee next sits.

MIN.NO. DCF/083/2015: ADJOURNMENT

The Chairperson adjourned the meeting at 2.10pm.

Signed.....Date.....

Chairperson

MINUTES OF THE 19TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 10TH MARCH, 2015 IN COMMITTEE ROOM 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 10.00 AM

Present

1. Hon. Benjamin Langat, MP
(Chairperson)
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Jimmy Nuru Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Eng. Shadrack Manga, MP
6. Hon. Jones Mlolwa, MP
7. Hon. Daniel Epuyo Nanok, MP
8. Hon. Ogendo Rose Nyamunga, MP
9. Hon. Lati Lelelit, MP
10. Hon. Patrick Makau King'ola, MP
11. Hon. Sakwa John Bunyasi, MP
12. Hon. Timothy Bosire, MP
13. Hon. Abdul Rahim Dawood, MP
14. Hon. Kirwa Stephen Bitok, MP
15. Hon. Joseph Limo, MP
16. Hon. Ronald Tonui, MP

17. Hon. Sammy Mwaita, MP

Apologies

1. Hon. Nelson Gaichuhie, MP (Vice-Chairperson)
2. Hon. Alfred Sambu, MP
3. Hon. Joash Olum, MP
4. Hon. Sammy Koech, MP
5. Hon. Abdullswamad Shariff, MP
6. Hon. Sumra Irshadali, MP
7. Hon. Sakaja Johnson, MP
8. Hon. Dennis Waweru, MP
9. Hon. Mary Emase, MP
10. Hon. Tiras Ngahu, MP
11. Hon. Anyanga Andrew Toboso, MP
12. Hon. Iringo Cyprian Kubai, MP

Kenya National Assembly

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|-------------------------|---|-----------------------|
| 1. Mr. Evans Oanda | - | First Clerk Assistant |
| 2. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 3. Ms. Brigita Mati | - | Legal Council |
| 4. Mr. Josephat Motonu | - | Fiscal Analyst |
| 5. Ms. Catherine Burure | - | Fiscal Analyst |
| 6. Mr. Abdinasir Moge | - | Fiscal Analyst |

MIN.NO. DCF/088/2015: PRELIMINARIES

The Chairperson called the meeting to order at 10.30 am followed by a prayer from Hon. Shakeel Shabbir, MP.

MIN.NO. DCF/089/2015: CORRESPONDENCES

The Chairperson informed Members of the following correspondences:

1. Request for a meeting with brand Kenya Board: It was resolved that the meeting will be organized at an opportune time.
2. Letter from the Ministry of Foreign Affairs and International Trade requesting the Committee to nominate one Member to attend a retreat on National Trade Negotiation

in Mombasa from 16th – 18th March, 2015. Hon. Shakeel Shabbir, MP was nominated to attend and the secretariat was asked to facilitate his travel arrangements.

3. Meeting with the Attorney General on the Intellectual Property to be held on 18th March 2015. The Chairperson was advised to liaise with his colleagues (chairpersons of Legal and the defense and inform the Committee at its next meeting.
4. Letter from Cabinet Secretary, National Treasury sending his apologies for not attending the question time and requesting for rescheduling of the meeting since he was attending Cabinet meeting the same day and same time.

MIN.NO. DCF/090/2015: CONSIDERATION AND ADOPTION OF AMENDMENTS TO PUBLIC AUDIT BILL, 2014

The Committee considered and adopted the following clauses in the Public Audit Bill, 2014:

CLAUSE 11

THAT, clause 11 of the Bill be amended—

- (a) by deleting subclause 3(b)
- (b) by deleting subclause (5) and substituting therefor the following new subclause—

“(5) The President shall within fourteen days constitute a selection panel comprising one representative from—

- (a) office of the President;
- (b) ministry for the time being responsible for matters relating to finance;
- (c) state law office;
- (d) ministry for the time being responsible for matters relating to the public service;
and
- (e) institute of certified Public Accountants of Kenya; and
- (f) association of Professional Societies of East Africa,

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

Provided that for the purposes 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, scores of each candidate interviewed by individual members of the interviewing panel together with the criteria used in selecting the names forwarded.”

- (c) in subclause (6) by deleting the words “public Service Commission” and substituting therefor “selection panel”
- (d) in subclause (9) paragraph (b) by deleting the words “Public Service Commission” and substituting therefor “selection panel”
- (e) in subclause (12) by deleting the words “ selection committee convened under subsection (4).” and substituting therefor “ selection panel convened under subsection (5).”

CLAUSE 40

THAT, Clause 40 of the Bill be deleted and replaced with the following new clause—

1. The Auditor-General shall not include particular information in a public report if he or she is of the opinion that disclosure of such information would be contrary to public interest.
2. The Auditor-General shall be required under a closed door session, and is permitted, to disclose to a special or joint committee of Parliament and the President information that subsection (1) (a) prohibits being included in a public report.
3. If the Auditor-General omits particular information from a public report he or she must state in the report—
 - (a) that information (which does not have to be identified); and
 - (b) the reason or reasons for that omission.
4. The audit reports on national security organs may be redacted to shield the identities of persons as well as assets and liabilities as the case may be.
5. All staff of the Office of the Auditor-General carrying out audit under this section shall undergo a vetting process carried out by the appropriate security agency.

MIN.NO. DCF/091/2015: PRESENTATION BY THE SOLICITOR GENERAL

The Solicitor General, Njee Muturi, appeared before the Committee and requested for time for his office to make a presentation on the Public Audit Bill, 2014 at time convenient to the Committee. He informed the Committee that his office had done research on some provisions of the Bill and sought for an opportunity to share them with the Committee before concluding with the amendments.

In the end, the Committee resolved to afford him an opportunity to present his views before the Committee in a day and time to be decided later. The Committee further resolved to hold clause 40 in abeyance pending a presentation from the solicitor general on the same.

MIN.NO. DCF/092/2015: ADJOURNMENT

Chairperson adjourned the meeting at 12.30pm.

Signed.....

Chairperson

Date.....17-03-2015

MINUTES OF THE 20TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE,
PLANNING & TRADE HELD ON THURSDAY 12TH MARCH, 2015 IN COMMITTEE ROOM 5TH
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 10.00 AM

Present

1. Hon. Benjamin Langat, MP
(Chairperson)
2. Hon. Nelson Gaichuhie, MP (Vice-Chairperson)
3. Hon. Dr. Oburu Oginga, MP
4. Hon. Jimmy Nuru Angwenyi, MP
5. Hon. Shakeel Shabbir Ahmed, MP
6. Hon. Daniel Epuyo Nanok, MP
7. Hon. Lati Lelelit, MP
8. Hon. Patrick Makau King'ola, MP
9. Hon. Sakwa John Bunyasi, MP
10. Hon. Timothy Bosire, MP
11. Hon. Abdul Rahim Dawood, MP
12. Hon. Mary Emase, MP
13. Hon. Dennis Waweru, MP
14. Hon. Sumra Irshadali, MP
15. Hon. Sakaja Johnson, MP

16. Hon. Kirwa Stephen Bitok, MP
17. Hon. Joseph Limo, MP
18. Hon. Ronald Tonui, MP
19. Hon. Sammy Mwaita, MP

Apologies

1. Hon. Alfred Sambu, MP
2. Hon. Joash Olum, MP
3. Hon. Sammy Koech, MP
4. Hon. Abdullswamad Shariff, MP
5. Hon. Tiras Ngahu, MP
6. Hon. Anyanga Andrew Toboso, MP
7. Hon. Ogendo Rose Nyamunga, MP
8. Hon. Iringo Cyprian Kubai, MP
9. Hon. Eng. Shadrack Manga, MP
10. Hon. Jones Mlolwa, MP

IN ATTENDANCE

Ministry of Interior & Coordination of National Government and Defence & Foreign Relations

- | | | |
|-----------------------------|---|------------------|
| 1. Amb. (Dr) Monica Juma | - | PS Interior |
| 2. Mr. E. Mutea Iringo, CBS | - | PS Defence |
| 3. Mr. K.W. Kihara | - | Sec – Presidency |
| 4. Mr. Bernard Masiga | - | SCFO – Interior |
| 5. Mr. N.K. Rono | - | NIS |
| 6. Mr. C.K. Muhia | - | MOD |
| 7. Mr. Jeremy Ndola | - | NIS |
| 8. Mr. Philip M. Gathuya | - | SAAG Interior |

Kenya National Assembly

- | | | |
|------------------------|---|-----------------------|
| 1. Mr. Evans Oanda | - | First Clerk Assistant |
| 2. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 3. Ms. Brigita Mati | - | Legal Council |
| 4. Ms. Doreen Nkatha | - | Legal Council |
| 5. Mr. Erick Ososi | - | Research Officer |

MIN.NO. DCF/093/2015: PRELIMINARIES

The Chairperson called the meeting to order at 10.30 am followed by a prayer from Hon. Lati Lelelit, MP. He then welcomed the visitors and asked for self-introduction.

MIN.NO. DCF/094/2015: PRESENTATION BY THE MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVERNMENT ON PUBLIC AUDIT BILL, 2014

Amb. Dr. Monicah Kathina Juma, Principal Secretary, Ministry of Interior and Coordination of National Government appeared before the Committee and informed it on the following concerning Public Audit Bill, 2014, that:

The Ministry of Defense & Foreign Relations and Ministry of Interior and Coordination of National Government constituted a team including the Office of the Auditor General to benchmark on the best practices on how to handle confidential matters in relation to auditing in seven countries. The team was to look at the users of the confidential expenditure.

The team made the following findings, that:

1. There is no specific law that govern confidential expenditures, the expenditure is anchored in Financial Regulations
2. Issues of integrity are well taken care of by ensuring that the Auditors and Auditees handling confidential matters are carefully vetted and they sign oath of secrecy.
3. There is a dedicated select committee of the Parliament mandated to interrogate the confidential expenditure.
4. The budget follows the normal process although the amount is presented in blocks for the confidential matters
5. The Audit team is trained annually and they are highly trained internal auditors.

The following are the proposed amendments by the Ministry:

CLAUSE 23

THAT the Bill be amended by inserting the following new sub-clause immediately after sub-clause (7)-

(8) The provisions of this Section shall not apply to audit of national security organs.

CLAUSE 24

THAT the Bill be amended in sub-clause (1) of Clause 24 by inserting the words "Subject to section 23(8)" immediately before the words "The Auditor -General".

THAT the sub-clause be renumbered to read Clause 24.

CLAUSE 32

THAT the Bill be amended in sub-clause (2) of Clause 32 by inserting the words “Subject to section 40 and any written law” immediately before the words “The Auditor- General shall”.

CLAUSE 36

THAT the Bill be amended in Clause 36 by inserting the words “by the Ethics and Anti-Corruption Commission” immediately after the words “upon request”

CLAUSE 37

THAT the Bill be amended in Clause 37 by inserting the words “in consultation with the Public Procurement and Oversight Authority” immediately before the words “examine the public procurement.”

CLAUSE 39

THAT Clause 39 of the Bill be amended-

- (i) In sub-clause (1) of Clause 39 by inserting the words “Subject to section 40” immediately before the words “All reports of an audit”.
- (ii) By deleting sub-clauses (2) and (3).
- (iii) By renumbering sub-clause (1) as Clause 39.

CLAUSE 40

THAT Clause 40 of the Bill be amended-

- i. In sub-clause (1) of Clause 40 by deleting the word “public” and substituting therefor the word “audit”
- ii. In paragraph (a) of sub-clause (1) deleting the words “public interest” and substituting therefor the words “national security”
- iii. In paragraph (b) of sub-clause (1) deleting the words “Attorney General” wherever they occur and substituting therefor the words “National Security Council”
- iv. In paragraph (b) of sub-clause (1) deleting the words “public interest” and substituting therefor the words “national security
- v. In sub-clause (2) by deleting the word “may” and substituting therefor the word “shall”.
- vi. In sub-clause (2) by deleting paragraphs (c) – (e)
- vii. By deleting sub-clause (3) and substituting therefor the following:

“The Auditor-General may be required under a closed door session, and is permitted, to disclose to a special committee of Parliament, some but not necessarily entire information that sub-section (1) prohibits in the audit report”.

- viii. By deleting sub-clause (4).

- ix. In sub-clause (5) by inserting the words “and members of the special committee of Parliament” immediately after the words “under this Section” appearing in the second line.
- x. In sub-clause (6) by deleting the word “Cabinet” and substituting therefor the word “National Security Council”
- xi. By deleting sub-clause (7) and substituting it with the following new sub-clause-
 - “(7) For the avoidance of doubt and notwithstanding any provision to the contrary-
 - (a) Audit under this Section shall be conducted by staff of the Office of the Auditor-General referred to in sub-section (5);
 - (b) Audit under this Section shall be limited to the processes and procedures and shall not extend to operational details and activities;
- xii. In sub-clause (8) by deleting the term “public report”

CLAUSE 50

THAT the Bill be amended in Clause 51 by inserting the following new sub-clause immediately after sub-clause (2)-

“(3) This Section shall not apply to audit of national security organs or information of any classified activity.

CLAUSE 51

THAT the Bill be amended by deleting Clause 51.

CLAUSE 52

THAT the Bill be amended in sub-clause(1) of Clause 52 by deleting paragraph (b) and substituting therefor the following:

“(b) give a progress report on the implementation of the recommendations”

CLAUSE 60

THAT the Bill be amended in sub-clause (2) of Clause 60 by deleting the word “five” appearing in the fourth line and substituting therefor the word “ten”

CLAUSE 68

THAT the Bill be amended in Clause 68-

- (i) By renaming the present Clause as sub-clause (1);
- (ii) By inserting the following new sub-clause immediately after sub-clause (1)-
 - “(2) Notwithstanding the generality of sub-clause (1), the Cabinet Secretary shall in consultation with the Auditor-General and heads of national security organs develop regulations for the conduct of audit of national security organs and related matters.”

MIN.NO. DCF/095/2015: MEMBERS CONCERNS

Having considered the recommendations by the NASC, Members raised the following:

1. The Committee will meet to relook at the proposals for clause. There was however strong feelings that officers auditing confidential expenditure should sign a non disclosure document as opposed to the suggested taking a oath of secrecy.
2. It will be prudent to vet officers auditing security related expenditure after every two years rather than 3 years as provided in the Bill.
3. The Public Audit Data should not be put on website due to confidentiality of some information.
4. The issue of the third generation Identity cards was raised and noted that some vendor have been using dubious means to extend the contract

MIN.NO. DCF/096/2015: ADJOURNMENT

The Chairperson adjourned the meeting at 12.27pm.

Signed B. [Signature]

Chairperson

Date 17-03-2015

MINUTES OF THE 21ST SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE,
PLANNING & TRADE HELD ON TUESDAY 17TH MARCH, 2015 IN THE SMALL DINING
ROOM, PARLIAMENT BUILDINGS, AT 10.00 AM

Present

- | | |
|--|------------------------------------|
| 1. Hon. Benjamin Langat, MP
(Chairperson) | 1. Hon. Patrick Makau King'ola, MP |
| 2. Hon. Nelson Gaichuhie, MP(Vice-Chairperson) | 2. Hon. Dennis Waweru, MP |
| 3. Hon. Dr. Oburu Oginga, MP | 3. Hon. Sammy Mwaita, MP |
| 4. Hon. Jimmy Nuru Angwenyi, MP | 4. Hon. Mary Emase, MP |
| 5. Hon. Lati Lelelit, MP | 5. Hon. Shakeel Shabbir Ahmed, MP |
| 6. Hon. Sakwa John Bunyasi, MP | 6. Hon. Joseph Limo, MP |
| 7. Hon. Timothy Bosire, MP | 7. Hon. Daniel Epuyo Nanok, MP |
| 8. Hon. Abdul Rahim Dawood, MP | 8. Hon. Kirwa Stephen Bitok, MP |
| 9. Hon. Sumra Irshadali, MP | 9. Hon. Alfred Sambu, MP |
| 10. Hon. Ogendo Rose Nyamunga, MP | 10. Hon. Joash Olum, MP |
| 11. Hon. Iringo Cyprian Kubai, MP | 11. Hon. Sakaja Johnson, MP |
| 12. Hon. Anyanga Andrew Toboso, MP | 12. Hon. Sammy Koech, MP |
| 13. Hon. Ronald Tonui, MP | 13. Hon. Abdullswamad Shariff, MP |
| | 14. Hon. Tiras Ngahu, MP |
| | 15. Hon. Eng. Shadrack Manga, MP |
| | 16. Hon. Jones Mlolwa, MP |

Apologies

IN ATTENDANCE

Kenya National Assembly

- | | | |
|------------------------|---|-----------------------|
| 1. Mr. Evans Oanda | - | First Clerk Assistant |
| 2. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 3. Ms. Brigita Mati | - | Legal Council |
| 4. Ms. Doreen Nkatha | - | Legal Council |
| 5. Mr. Erick Osoi | - | Research Officer |

MIN.NO. DCF/097/2015: PRELIMINARIES

The Chairperson called the meeting to order at 11.15 am followed by a prayer.

MIN.NO. DCF/098/2015: CONFIRMATION OF MINUTES

- (1) Minutes of the 1st meeting held on 27th January, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Ronald Tonui, MP and seconded by Hon. Lati Lelelit, MP.
- (2) Minutes of the 2nd meeting held on 29th January, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Benjamin Langat, MP and seconded by Hon. Rose Nyamunga, MP.

- (3) Minutes of the 5th meeting held on 11th February, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Ronald Tonui, MP and seconded by Hon. Dr. Oburu Oginga, MP.
- (4) Minutes of the 6th meeting held on 12th February, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Cyprian Iringo, MP and seconded by Hon. Ronald Tonui, MP.
- (5) Minutes of the 7th meeting held on 17th February, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Abdul Rahim Dawood, MP and seconded by Hon. Dr. Oburu Oginga, MP.
- (6) Minutes of the 8th meeting held on 19th February, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Cyprian Iringo, MP and seconded by Hon. Sumra Irshadali, MP.
- (7) Minutes of the 9th meeting held on 20th February, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Timothy Bosire, MP and seconded by Hon. Sumra Irshadali, MP.
- (8) Minutes of the 10th meeting held on 23rd February, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Rose Nyamunga, MP and seconded by Hon. Ronald Tonui, MP.
- (9) Minutes of the 11th meeting held on 23rd February, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Jimmy Angwenyi, MP and seconded by Hon. Andrew Toboso, MP.
- (10) Minutes of the 12th meeting held on 24th February, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Dr. Oburu Oginga, MP and seconded by Hon. Abdul Rahim Dawood, MP.
- (11) Minutes of the 13th meeting held on 24th February, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Ronald Tonui, MP and seconded by Hon. Rose Nyamunga, MP.
- (12) Minutes of the 15th meeting held on 3rd March, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Ronald Tonui, MP and seconded by Hon. Abdul Rahim Dawood, MP.
- (13) Minutes of the 16th meeting held on 3rd March, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Nelson Gaichuhie, MP and seconded by Hon. Sumra Irshadali, MP.
- (14) Minutes of the 17th meeting held on 3rd March, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Ronald Tonui, MP and seconded by Hon. Abdul Rahim Dawood, MP.
- (15) Minutes of the 18th meeting held on 5th March, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Rose Nyamunga, MP and seconded by Hon. Abdul Rahim Dawood, MP.
- (16) Minutes of the 19th meeting held on 10th March, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Jimmy Angwenyi, MP and seconded by Hon. Ronald Tonui, MP.

- (17) Minutes of the 20th meeting held on 12th March, 2015 was confirmed as a true record of the proceedings after being proposed by Hon. Jimmy Angweny, MP and seconded by Hon. Sumra Irshadali, MP.

MIN.NO. DCF/099/2015: MATTERS ARISING

- (1) Under supplementary Budget 2015, the Committee noted that the information provided by the Ministries was not sufficient to enable the Committee arrive at objective conclusions. It would be important that adequate information is available whenever the Committee deals with the matter.
- (2) On Min. No. DCF/090/2015 regarding amendments to Clause 40, the Committee noted that the amendments recorded were not adopted but held in abeyance pending further information from the Ministry of Interior.

MIN.NO. DCF/100/2015: CONSIDERATION OF THE AMENDMENTS TO THE PUBLIC AUDIT BILL, 2014

The Committee considered the amendments proposed by the stakeholders on clauses 40 and 48 and adopted the following amendments:

CLAUSE 40

THAT, clause 40 of the Bill be amended—

- (a) by renumbering subclause (1) as subclause (1A);
- (b) by inserting the following new subclause immediately before the renumbered subclause (1A)—
- “(1) The Auditor General shall audit national security organs and confidential expenditure in the process of carrying out his or her mandate under the Constitution, this Act and any other written law”;
- (c) in the renumbered subclause (1A)(b), by—
- (i) inserting the words “ in consultation with the National Security Council,” immediately before the words “has issued a certificate”;
- (ii) deleting the words “Attorney General” appearing immediately after the words “opinion of the” and substituting therefore the words “ National Security Council”;
- (a) in subclause (2) by—
- (i) deleting the words “or relations between the two levels of government” appearing in paragraph (c);
- (ii) deleting paragraph (d);
- (iii) inserting the word “foreign” immediately before the word “persons” appearing in paragraph (e);

(b) in subclause (3), by deleting the words “special or joint committee of Parliament and the President” appearing immediately after the words “disclose to a” and substituting therefor the words “ a relevant committee of Parliament and the National Security Council”;

(c) in subclause (5) by—

(i) deleting the words “carrying out” appearing immediately after the word “Auditor-General” and substituting therefor the words “ and staff of the relevant security organ involved in”;

(ii) deleting the words “and such officers shall be at a grade equivalent to deputy Director of Audit or above.” appearing immediately after the words “oath of confidentiality”;

(d) in subclause (6), by deleting the word “Cabinet” appearing immediately after the words “purposes of this section” and substituting therefor the words “National Security Council”;

(e) in subclause (7) by—

(i) deleting the word “ Cabinet” appearing immediately after the words “decision of the” and substituting therefor the words “ National Security Council”;

(ii) inserting the words “in charge” immediately after the words “the Cabinet Secretary”.

CLAUSE 48

THAT, clause 48 be amended in subclause (4) by deleting subclause the phrase “thirty (30)” and substituting therefor the word “sixty”.

In the end, the Chairman signed the report on the bill for tabling. The Secretariat was asked to forward the report to the Speaker for approval.

MIN.NO. DCF/101/2015: ADJOURNMENT.

The Chairperson adjourned the meeting at 1.27pm.

Signed.....

Chairperson

Date.....

Annex 2 (comments from the National
Treasury)

PROPOSED AMENDMENTS TO PUBLIC AUDIT BILL, 2014

THEMATICS AREAS FOR PROPOSED AMENDMENTS:

1. **Public Service Commission:-** The issues on this matter revolve around whether the Public Service Commission should be involved in the appointment of public officers under the office of the Auditor General in line with Article 234 (2) and whether, Article 252 (1) (c) of the Constitution which require the independent office of the Auditor General to recruit his own staff, envisaged that the office will also appoint its own staff given the provisions of Article 234 (3) of the Constitution, which expressly exempts specific institutions shall recruit and appoint public officers. In this case, it is only the Auditor General exempted from the Article, but the Constitution provides expressly states that the Auditor General will be appointed by the President under Article 229 (1).
2. **Budget Approval Process:-** Article 221 of the Constitution envisaged only three institutions will submit their budgets directly to Parliament. These institutions are Cabinet Secretary on behalf of the national government, Parliamentary Service Commission and the Chief Registrar of the Judiciary;
3. **Government Policy Objectives:** The issues on this matter revolve around whether the Auditor General can question Government policy objectives. There is nowhere in the world the external auditor has powers to question the merits or demerits of Government policy objectives. This principle also applies in the private sector. For instance can the Auditor General question why Parliament allocated State Department of Agriculture Kshs. 10 Billion and not State Department of Livestock which is allocated Kshs. 5 Billion and vice versa, or the roll-out of Free Maternity Health Care. There are choices set out in a party manifesto and political parties are elected on the basis of pledges to deliver to the people etc.
4. **Submission of Audit Reports to Parliament or Relevant County Assembly:** The issues on this matter revolve around whether Article 229 (4) envisaged a situation where the Speaker of the National Assembly or the relevant Speaker of a County Assembly can determine a period longer or shorter, than the six months provided for in the Constitution to facilitate the Auditor General to be invited to a committee of the whole House to table his report either at the national level or county level. What will happen, if the speaker had decided a longer date than the six months provided for in the Constitution?. This notwithstanding, nothing stops Parliament or County Assembly to provide in their standing orders the process of inviting the Auditor General to a committee to discuss any matter relating to audit reports prepared by him.
5. **Establishment of the Office of the Auditor General Fund:** Article 249 (3) states that the budget of the Auditor General shall be a Vote. This implies that the detailed budget of the office of the Auditor General is subject to review and approval by Parliament and the approved budget shall lapse at the end of the financial year.
6. **Confidential Expenditure on National Security Related Expenditures:** The issues on this matter relate to five things: 1. Restricted disclosure of information in public interest- New Zealand, Australia etc, 2. Restricted disclosure of confidential information e.g. New

Zealand, Canada 3. Requirement for vetting of officers as well as taking oath of office for the officers of the Auditor General depending on the Government departments they are auditing to ensure privileged information is kept as required by law e.g. Canada, New Zealand, and South Africa 4. Approval of a list of classified security related expenditures for purposes of audit e.g. South Africa; and 5. A select committee of Parliament to be sworn to secrecy to oversee expenditures relating to national security e.g. New Zealand, Australia, Canada.

S/No	Section	Proposed amendment	Rationale for retention of the Proposed Amendment / rejection	Recommendation (s)
1.	Section 4 (4) (1) (c)	Clause 4 of the Bill be amended in— (a) subclause (1) paragraph (c) by deleting the word “things” and substitute therefor “duties	This is a better construction.	Agreed
2.	Section 4(2)	Clause 4 of the Bill be amended in— subclause (2) by deleting the words “subject to Article 234(5) of the Constitution”;	<ol style="list-style-type: none"> 1. Article 252 (1) (c) gives powers to the Independent Office of the Auditor General to recruit its own staff but the Constitution does not allow the Independent office to appoint the staff. 2. The powers to appoint public officers is vested in the Public Service Commission under Article 234(2)(a)(ii) of the Constitution which provides for the power to appoint persons in the public service. 3. This position is confirmed by Article 234 (3) which provides for exceptions for appointment of persons to hold public office, or 	The proposed amendment should be rejected.

			<p>act in those positions, and to confirm appointments. In addition, where the Constitution envisaged an institution to recruit and appoint, the Constitution expressly stated that.</p> <p>4. This is in line with many private organizations where they outsource the recruitment process but retain the appointment powers. The practice of recruitment of staff being undertaken by an independent body and appointment being undertaken by a different body is not unique to this office. For example, the private sector in Kenya has been outsourcing the services for recruitment of staff from professional human resource firms such as KPMG, Manpower Services and the private firm after identification of the suitable persons gets a shortlist of the recommended persons for appointment. This is the same situation envisaged by the Constitution.</p>	
3.	Section 4(2)	<p>Clause 4 of the Bill be amended in—</p> <p>subclause (3) by deleting</p>	This amendment does not change the meaning of the clause.	Agreed

		the words “ as far as it is appropriate to do so”.		
4.	Section 5 (1)	<p>Clause 5 of the Bill be amended in subclause (1) by deleting paragraph (e) and substituting therefor the following new paragraph—</p> <p>“(e) is a practising member of good standing of a professional body of accountants recognized by law.</p>	<p>Its not just sufficient to be a member. The member should be practicing.</p>	Agreed
5.	7(1) (a)	<p>Clause 7 of the Bill be amended in subclause (1)—</p> <p>(a) in paragraph (a) by deleting the words “financial systems of state organs and public entities” and substituting therefor the words “governance at national, county governments and public entities”;</p>	<ol style="list-style-type: none"> 1. The Constitution under Article 229 (4) and (6) limits the scope of the Auditor General to “audit and report on accounts as well as confirm whether public money has been applied lawfully and in an effective way”. Therefore the Constitution limits the function of the Auditor General to financial management as far as this Article is concerned. 2. Each Constitutional Commission and independent office has a mandate to deal with matters governance depending on its functions such as the Parliamentary 	The Section should be retained in its current form

			<p>Service Commission will deal with governance matters relating to Hon. Members of Parliament and the Senate as well as the Ethics and Anti-Corruption Commission.</p> <p>3. Therefore the Auditor General's functions and responsibilities should be related to and limited to the functions assigned under Article 229 of the Constitution.</p>	
6.	Section (7) (1) (f)	<p>Clause 7 of the Bill be amended in subclause (1)—</p> <p>(a) by deleting paragraph (f).</p>	<p>1. Financial statements are used for a variety of purposes and decisions. For example, financial statements are used by owners to evaluate management's stewardship, by investors for making decisions about whether to buy or sell securities, by credit rating services for making decisions about credit worthiness of entities, and by bankers for making decisions about whether to lend money.</p> <p>2. The auditor's responsibility is to express an opinion on whether management has fairly presented the information in the financial statements. In an audit, the financial statements are evaluated by the auditor, who is objective and knowledgeable about auditing, accounting, and financial reporting matters.</p> <p>3. Further, during the audit, the auditor collects evidence to obtain</p>	In this respect, the Section (7) (1) (f) should be retained.

			<p>reasonable assurance that the amounts and disclosures in the financial statements are free of material misstatement.</p> <p>4. Through the audit process, the auditor adds credibility to management's financial statements, which allows owners, investors, bankers, and other creditors to use them with greater confidence and therefore the auditor expresses his assurance on the financial statements in an auditor's report</p>	
7.	Section 8 (1) (a)	<p>Clause 8 of the Bill be amended—</p> <p>(a) in paragraph (a) by deleting the words “subject to section 11 of this Act”;</p>	<p>1. The reference to “subject to section 11 of this Act” should be amended to read “subject to section 14 of this Act” since this is the correct reference.</p> <p>2. The Constitution assigns the duty to establish and abolish public offices to the Public Service Commission under Article 234 (2) (a) (i) by stating “establish and abolish offices in the public service. In this respect, the organizational structure and staffing of the office of the AG should be done in consultation with the Public Service Commission since it relates to establishment and abolishment of public offices.</p> <p>3. Further, public officers should only be established after sufficient</p>	<p>The clause should be retained replace the reference to ‘section 11’ with ‘section 14’.</p>

			<p>justifications given they translate into a long term recurrent expenditure and may lead to unsustainable wage bill of the office of the Auditor General.</p> <p>4. It is important to appreciate an establishment of a public office means an increase in the public expenditure</p>	
8.	Section 8 (1) (c)	<p>Clause 8 of the Bill be amended—</p> <p>(a) in paragraph (c) by deleting the words “subject to Article 234(5) of the constitution”;</p>	<p>1. Article 234 (2)(b) assigns powers to Public Service Commission (PSC) to exercise disciplinary control over and remove persons holding or acting in those offices.</p> <p>2. In this regard, the Auditor General should exercise disciplinary control of officers under him in line with Article 234 (2) (b), however, it should be noted that the PSC can delegate those powers with conditions or without conditions to the Auditor General under Article 234 (5).</p> <p>3. It is important to provide for checks and balances when dealing with human resource matters and this was envisaged in the Constitution under Article 249 when the Constitution assigned powers for each commission and independent offices to recruits its own staff, but denied them powers to appoint after recruitment. It is in the same spirit that the Constitution limited</p>	<i>Retain the Section as constructed in the Bill.</i>

			the powers to recruitment and left the power to appoint to the Public Service Commission as well as exercise disciplinary control over public officers.	
9.	Section 8 (1) (d)	<p>Clause 8 of the Bill be amended—</p> <p>(a) in paragraph (d) by deleting the words “subject to Article 234(5) of the Constitution”;</p>	<ol style="list-style-type: none"> 1. The Constitution under Article 234 (2) (f) states that <i>“The Commission shall develop human resources in the public service”</i> 2. Staff development is one of the most expensive projects of an organization especially where certain skills and competences are required by an office to deliver on its mandate. 3. However, if it is not checked, public funds can be used to develop human resource and immediately the officers leave the service without being bonded hence using public resources in a non-prudent manner. 	The Section should be maintained in the current form.
10.	Section 8 (1) (f)	<p>Clause 8 of the Bill be amended—</p> <p>(a) by deleting paragraph (f);</p>	<ol style="list-style-type: none"> 1. The Constitution assigns the responsibility to audit public funds to the Auditor General. However, we appreciate that the Auditor General may be overwhelmed by the magnitude of audit and therefore, the Auditor General may procure audit services from third parties (Audit Firms) to assist him to audit state organ or public entities. 2. In this regard, the primary 	The Section should be retained in the current form.

			<p>responsibility is vested to the Auditor General and therefore before any draft financial statements is released to third parties, it is incumbent on the Auditor General to approve release of the submitted financial statement by the state organ or public entity to the contracted Auditor.</p> <p>3. Further, state organs and public entities are required to submit their financial statements to the Auditor General, how else will a private entity get seized of public financial statements for audit without the Authority of the Auditor General who is Constitutionally mandated to audit accounts of Government.</p>	
11.	Section 8 (1) (j)	<p>Clause 8 of the Bill be amended—</p> <p>(a) in paragraph (j) by deleting the words “ and in consultation with the public Service Commission and the National Treasury”.</p>	<p>1. First, the code of conduct governing public officers form part of their employment contract and therefore it is customized to the specific needs of the institution.</p> <p>2. Second, public officers code of conduct is regulated by the Public Officers Ethics Act and therefore any code of conduct should be aligned to this Act.</p> <p>3. Thirdly, enforcement of code of conduct for public officers is assigned to various institutions by the Constitution and various</p>	The clause should be retained in the current form.

			<p>statutes and therefore officers serving in the office of the Auditor General are governed by this Act and not international code of conduct which is generic and only applies to enhance professionalism.</p> <p>4. Further, the officers of the office of the Auditor General interact on a daily basis with other PFM staff and therefore their codes of conduct should be fashioned in a manners that secures the integrity of the Public finance management officers generally.</p>	
12.	Section 11 (1) (c)	<p>Clause 11 the Bill be amended—</p> <p>(a) in subclause (1) paragraph (c) by deleting the words “or Chapter Six of the Constitution”;</p>	<p>1. Article 251(1) (a) of the Constitution provides that a <i>“A member of a commission (other than an ex-officio member), or the holder of an independent office, may be removed from office only for—</i></p> <p><i>“a serious violation of this Constitution or any other law, including a contravention of Chapter Six”</i></p> <p>2. The provision is only restating what is provided for in the Constitution to consolidated circumstances which can lead to removal from office under one roof.</p>	The clause should be retained in the current form.
13.	Section 11 (5)	<p>Clause 11 the Bill be amended—</p>	<p>1. The selection committee if comprised of a representative of</p>	The proposed amendment is not necessary and therefore proposed for deletion.

		<p>(b) in subclause (5)—</p> <p>(i) by inserting a new paragraph immediately after paragraph (e)—</p> <p>“(ea) Association of Professional Societies of East Africa.”</p>	<p>the Institute of Certified Public Accountants of Kenya, who are also members of the Association of Professional Societies of East Africa.</p> <p>2. In addition, by including the Association of Professional Societies of East Africa to be part of panel, we shall increase the membership to six, which can lead to a tie, in case of a vote and therefore, we do not see the extra skills and competence the Association will bring on the table, which the Institute of Certified Public Accountants of Kenya does not have.</p>	
14.	Section 11 (5)	<p>Clause 11 the Bill be amended—</p> <p>(a) in subclause (5)—</p> <p>the proviso by deleting the words “Public Service Commission” and substituting therefor “selection committee”</p>	<p>1. This proviso is already an existing clause in law under “the appointment of independent offices Act, 2011” which Parliament agreed to given that the selection committee is a an adhoc temporary committee convened as and when a need arises.</p> <p>2. The Audit function is a very critical function in accountability framework and therefore the institution given this responsibility should have the capacity and experience to handle public recruitment processes at short notices to fill the office of the Auditor General by providing the</p>	The clause should be retained in the current form.

			secretariat services. 3. The intention was to have Public Service Committee constitute the selection committee as and when necessary.	
15.	Section 11 (6)	Clause 11 the Bill be amended— (a) in subclause (6) by deleting the expression “subsection (4)” and substituting therefor “ subsection (5)”;	This is the correct reference.	<i>Agreed to be amended to capture the correct reference</i>
16.	Section 11 (5A)	Clause 11 the Bill be amended— (a) by inserting a new sub clause immediately after subclause (5)— “(5A) The chairperson of the selection committee convened under subsection (5) shall be from the Institute of Certified Public Accountants of Kenya.”	1. The Institution assigned the power to appoint the Auditor General is the President and therefore, it is only fair to allow the president to appoint the Chairperson of the selections panel after nominations from the nominating bodies. 2. In addition, the Institute of Certified Public Accountants of Kenya nominee will also have an equal chance to be nominated for appointment as the Chairperson. 3. Given that the Independent Offices Appointment Act, 2011 did not provide for who shall appoint the Chairperson, it is important that this responsibility is expressly assigned to the President by amending the proposed amendment further.	We recommend further amendment to the proposed amendment to read <i>“The Chairperson of the selection committee convened under subsection (5) above, shall be appointed by the President on the recommendation of the Cabinet Secretary from among the nominated persons”</i>
17.	Section 13	Clause 13 of the Bill be amended	1. The constitution has assigned the	The clause should be retained in the current

		by deleting the word “Chief-justice” and substituting therefor “President”.	<p>duty for swearing in public officers to the Chief Justice and therefore the proposed amendment contravenes the provisions of the Constitution.</p> <p>2. Further, we are not aware of any precedent where the president has sworn in a public officer before assuming his duties, but we are aware of the president witnessing the swearing in of public officers by the Chief Justice in his presence.</p>	form.
18.	Section 14	<p>Clause 14 of the Bill be deleted and substituted therefor the following new clause—</p> <p style="padding-left: 40px;">“14. The office of the Auditor-General shall develop the organizational structure for consideration and approval by the Audit Advisory Board.”</p>	<p>1. First, See comments under Section 4</p> <p>2. Secondly, the Advisory Board as the name suggests has no executive powers and therefore cannot be involved in the approval process unless it is given the status of executive board.</p> <p>3. Third, an organization structure involves the process of establishing and abolishing public offices, which power is assigned to the Public Service Commission under Article 234 (2) (a).</p>	The clause should be retained in the current form.
19.	Section 15 (1)	<p>Clause 15 of the Bill be amended in—</p> <p style="padding-left: 40px;">(a) subclause (1) by deleting the words “Public Service Commission” and</p>	<p>1. See comment on Section 14.</p> <p>2. The Senior Deputy Auditor General is a public officer.</p> <p>3. The Auditor General will be responsible for the recruitment process and forward the identified person to the Public Service</p>	The clause should be retained in the current form.

		substituting therefor “Advisory Board”;	<p>Commission for appointment.</p> <p>4. Public Officers should owe allegiance to the Constitution, statutes and professional code of conduct as provided for under Article 10 of the Constitution on National Values and Principles of Governance</p> <p>5. Therefore, it is important for the Public Service Commission to be involved to exercise their duty as assigned by the Constitution.</p>	
20.	Section 15 (2)	<p>Clause 15 of the Bill be amended in—</p> <p>(a) by deleting subclause (2) paragraph (b) and substituting the following new paragraph— “(b) holds the qualifications of an Auditor-General as specified in the Independent offices Appointment Act;”.</p>	<p>1. We agree in principle that the Senior Deputy Auditor General should have the same qualifications as the Auditor General.</p> <p>2. The provision should make reference to the Section under this Act that related to qualifications of the Auditor General instead of a different Act of Parliament.</p>	<p>We therefore recommend a further amendment to the proposed amendment to read as follow—</p> <p><i>(b) Shall hold the same minimum qualifications as required for the appointment of Auditor General as specified in Section 5 of this Act.</i></p>
21.	Section 16 (1)	<p>Clause 16 (1) of the Bill be amended—</p> <p>(a) in paragraph (1) by inserting the words</p>	<p>1. We agree in principle that the Senior Deputy Auditor General shall deputize the Auditor General as well as be in charge of administration for the office of the Auditor General.</p>	<p>We recommend a further amendment to the proposed amendment to read as follows— <i>“16 (1) The Senior Deputy Auditor General shall deputize the Auditor</i></p>

		“deputy to the Auditor-General” immediately after the words “be the”;	2. In this respect, we propose a further amendment to the proposed amendment.	<i>General and....”</i>
22.	Section 16 (1) (a)	Clause 16 (1) of the Bill be amended— (b) in paragraph (a) by inserting the words “deputy to the Auditor-General” immediately after the words “be the”;	1. See comment under Section 16 (1).	The clause should be retained in the current form.
23.	Section 16 (1) (b)	Clause 16 (1) of the Bill be amended— (a) in paragraph (b) by inserting the word “deputy” immediately after the words “ be the”;	1. See comment under Section 16 (1).	The clause should be retained in the current form.
24.	Section 16 (1) (c)	Clause 16 (1) of the Bill be amended— (a) inserting a new paragraph immediately after paragraph (c)— “(ca) be the administrator of the	1. The Constitution under Article 249 (3) provides that the budget of the office of the Independent office of the Auditor General shall be a Vote. 2. This means that Parliament shall appropriate the expenditure of the office of the Auditor General to the extent possible and the	The clause should be retained in the current form.

		Public Audit Act fund created under section 41(2)”	<p>authority granted by Parliament shall lapse at the end of the financial year.</p> <p>3. In this respect, the proposal to have the expenditure of the office of the Auditor General be managed under a national public fund is against the letter and spirit of the Constitution.</p>	
25.	Section 17 (1)	<p>Clause 17 of the Bill be amended in—</p> <p>(a) subclause (1) by—</p> <p>(i) deleting the words “and the Auditor-General may appoint such staff subject to Article 234 (5) of the Constitution” and substituting therefor “subject to Article 230 of the Constitution”;</p>	1. See comment under Section 4	The clause should be retained in the current form.

26.	Section 17 (2)	<p>Clause 17 of the Bill be amended in—</p> <p>(a) subclause (2) by deleting the words “ under this Act and approved by the Public Service Commission.”.</p>	1. See comments under Section 4	The clause should be retained in the current form.
27.	Section 20 (2)	<p>Clause 20 of the Bill be amended by—</p> <p>(a) deleting subclause (2) and substituting therefor the following new clause—</p> <p>“(2) The budget estimates of revenue and expenditure referred to under subsection (1) shall be submitted to Parliament and reviewed by the Budget and Appropriation Committee, the Auditor-General and the Cabinet Secretary responsible for finance not later than 30th November each year.”</p> <p>(b) inserting new subclauses immediately after</p>	<p>1. The Constitution under Article 221 envisaged three institutions to submit their budgets to Parliament namely:-</p> <p>(i). Cabinet Secretary responsible for Finance on behalf of the national government;</p> <p>(ii). The Chief Registrar of Judiciary on behalf of Judiciary; and</p> <p>(iii).The Parliamentary Service Commission on behalf of the Legislature.</p> <p>2. The spirit of the Constitution as clearly indicated above was to separate the budget process for the three arms of government and ensure a coordinated process of budget formulation and preparation.</p> <p>3. Further, it is important to appreciate that there is only one pot, where all state organs and other public entities expect their budgetary needs to be met and therefore it is important to ensure</p>	The clause should be retained in the current form.

		<p>subclause (2)—</p> <p>“(2A) Pursuant to the review under subsection (2) the budget estimates shall be included in the Budget Policy Statement without change by the Cabinet Secretary responsible for Finance.</p> <p>(2B) Where a change on the agreed budget estimates is realised, the Auditor-General shall inform the Chairman of Budget and Appropriations Committee in writing not later than 15th January every year.”</p>	<p>the institution in-charge of budget formulation has the big picture of Government.</p> <p>4. In addition, under Article 249 (3), the Constitution provides a safeguard by stating that Parliament shall allocate adequate funds to Constitutional Commissions and Independent Offices, implying that in the process of review of the budgets of these institutions, if Parliament is persuaded that they were not allocated adequate resources, it will do so at the time of approving the budget estimates.</p> <p>5. It is also important to note that, nothing stops the Auditor General to appeal to Parliament in line with the provisions of Article 249 (3) to be allocated more resources to discharge his / her mandate for effectively and efficiently.</p> <p>6. In this respect, it is clear that the office of the Auditor General will not be prejudiced in any way by submitting its budget to the Cabinet Secretary like any other Constitutional Commission and Independent Office.</p>	
28.	Section 20 (3A)	<p>Clause 20 of the Bill be amended by—</p> <p>(a) inserting a new clause</p>	<p>1. This provision is not consistent with the provisions of the Constitution on principles of public under Article 201 on</p>	<p>The proposed amendment should be dropped, since it is retrogressive.</p>

		<p>immediately after clause (3)—</p> <p>“(3A) Funds meant for the recurrent expenditure of the Auditor General under this section shall be disbursed to the office in equal quarterly installments.”</p>	<p>prudent financial management and Public Finance Management Act on Treasury Single Account.</p> <ol style="list-style-type: none"> 2. Further, the provision is not in line with best international practice for cash management, where it intends to keep money idle in a bank after being released on quarterly disbursements. This alone, indicated Government will be borrowing to keep idle cash in commercial bank accounts, basically paying interest on its money. 3. In addition, Government has progressively moved away from releasing cash to Government entities periodically. Resources are released just in time under the G-Pay system, where cash is availed as and when MDAs are ready to pay suppliers electronically and this has has drastically idle cash held in bank accounts of MDAs. 	
29.	Section 22 (3)	Clause 22 of the Bill be amended in subclause (3) by deleting the words “What will happen if this is abused”.	<ol style="list-style-type: none"> 1. The intention was to create an administrative offence to deter officers from leaking information to third parties without the relevant authorization. 	We agree with the proposal to delete the words
30.	Section 25 (1)	Clause 25 of the Bill be amended—	<ol style="list-style-type: none"> 1. In principle we are in agreement that the Auditor General can be a member of the Advisory Board. 2. However, when the Auditor 	We propose a further amendment to the proposed amendment to replace the Auditor General with the Senior Deputy Auditor General to read as follows:

		<p>(a) in subclause (1) by inserting a new paragraph immediately after paragraph (g)—</p> <p>“(ga) the Auditor-General.”</p>	<p>General is a member of the Advisory Board, who does it advise since he is part and parcel of those deliberations?</p> <p>3. It is our view, that the Senior Deputy Auditor General be nominated to sit in the Advisory Board so that the Board can advise the Auditor General on matters governance under his office.</p> <p>4. The Auditor General can take or reject the advice of the Advisory Board . Theboard is permitted by law to advise and nothing in this Act compels the Auditor General to take the advice of the Advisory Board.</p>	<p>“(ga) the Senior Deputy Auditor-General.”</p>
31.	Section 25 (2)	<p>Clause 25 of the Bill be amended—</p> <p>(a) in subclause (2) by deleting the expression “subsection (2) (c) to (g) and replacing therefor “subsection (1) (c) to (g)”;</p>	<p>1. This is the correct reference.</p>	<p>Agreed</p>
	Section 25 (3)	<p>Clause 25 of the Bill be amended—</p> <p>(a) by deleting subclause (3) and replacing therefor the</p>	<p>1. The desired ideal position is an independent person who can see things from a different perspective.</p> <p>2. The nature of the Board is advisory and therefore, it is made</p>	<p><i>We propose further amendment to the proposed amendment to read as follows:-</i></p> <p><i>“The Chairperson shall be appointed by the President on the recommendation of the Cabinet Secretary from among the persons</i></p>

		<p>following new paragraph—</p> <p>“(3) The Auditor-General shall be the chairperson of the Board.”</p>	<p>to advise the Auditor General unless we change the nature of the Board.</p> <p>3. The Chairperson, granted that he/she should be an independent person, and in order to make it objective, then the President should appoint the Chairperson, so that the Auditor General is functionally independent from the advice received from the advisory Board</p>	<p><i>nominated under Section 25 of this Act.</i></p>
32	Section 27	<p>Clause 27 subclause (1) of the Bill be deleted and substituted therefor the following new subclause—</p> <p>27. (1) The principal function of the Audit Advisory Board shall be generally to advise the Auditor-General on the foregoing—</p> <p>(a) review and advise the organizational development issues;</p> <p>(b) recruitment of top management into the office of the Auditor-General;</p> <p>(c) consider and approve the estimates for the</p>	<p>1. This is an Advisory Board and therefore it cannot have executive functions unless we change the nature of the Advisory Board.</p> <p>2. The Auditor General has been assigned the duty of being the final person to approve the budget before submission to the Cabinet Secretary. If this is still the case, then this function proposed under this Section is in conflict with the principal duties of the Auditor General under Section 8 (g) of this Act.</p> <p>3. There is need to make a decision, on whether we need an executive board or non-executive board so that we do not assign functions that should be performed by an executive board.</p>	<p>The clause should be retained in the current form and the proposed amendment should be dropped.</p>

		<p>Office of the Auditor General;</p> <p>(d) determine the remuneration and other terms of appointment of the staff of the Office of the Auditor General; and</p> <p>(e) give any advice that may be sought by the Auditor General from time to time.</p>		
33.	Section 30	<p>Clause 30 of the Bill be amended by deleting the word “documents and replacing therefor “information”.</p>	<ol style="list-style-type: none"> 1. We agree with the proposal to amend the section by inserting the words “or information” immediately after the word “documents” 2. Our understanding is that the two words have different meaning and therefore we need to use both of them to make the bill more progressive. 	<p>We agree with the proposed but we propose a further amendment to the proposed to read as follows—</p> <p>“Section 30 of the Bill be amended the by inserting the words “or information” immediately after the word “documents””</p>
34.	Section 31 (6A)	<p>Clause 31 of the Bill be amended by—</p> <p>(a) inserting a new subclause immediately after subclause (6)—</p> <p>“(6A) The Speaker of the National Assembly shall</p>	<ol style="list-style-type: none"> 1. This is a matter to be addressed under Standing Orders of Parliament on how to invite persons to address the House. 2. This proposed amendment is not consistent with the Article 229 (4) of the Constitution which requires the Auditor General to submit audit reports within six months after the end of the financial year. 3. The proposal to amend the law to 	<p>The clause should be retained in the current form and the proposed amendment should be dropped.</p>

		determine and invite the Auditor General to table the report before the committee of the whole House.”	provide that reports can only be tabled after the Speaker of the National Assembly has determined and invited the Auditor General is an affront to the Constitutional provisions. Suppose the Speaker does not determine within six months, what happens?	
35.	Section 31 (31A)	<p>Clause 31 of the Bill be amended by—</p> <p>(a) inserting a new clause immediately after clause 31—</p> <p>Audit reports to be submitted to Parliament the relevant county assembly.</p> <p>31A. (1) All reports of an audit shall be submitted to Parliament or the relevant county assembly.</p> <p>(2) Within seven (7) days of receiving the report, Parliament or the relevant county assembly shall publicise it on their official website and other public spaces.</p>	<ol style="list-style-type: none"> 1. This is Section 39 of the Bill. 2. The proposed amendment relates to placement of the Section in a sequential manner. 3. In our view and the view of the technical task force which was working on this Bill, the placement of Section 39 is in the right place using logical sequence of audit for reporting comes after all audit process have been finalized. 	Proposed amendment should be dropped given the placement of the Section is in logical order of Audit.

		<p>(3) Within fourteen (14) days after the expiry of (7) 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.</p>		
36.	Section 35	<p>Clause 35 of the Bill be amended by—</p> <p>(a) deleting the word “may” and substituting therefor “shall”;</p>	<ol style="list-style-type: none"> 1. The Section as constructed gives discretion to the Auditor General to decide whether to carry out performance audits or not. 2. This discretion further allows the Auditor General to determine the regularity of these performance audits, be it monthly, quarterly, semi-annually or annually. This is important given the nature, time taken and the complexity of performance audits in other jurisdictions. 3. It should also be noted this type of audit is not mandatory under the Constitution and therefore it should be left to the Auditor General to decide when to carry out performance audits. 	<p>The clause should be retained in the current form and the proposed amendment should be dropped.</p>

37.	Section 35 (1A)	<p>Clause 35 of the Bill be amended by—</p> <p>(a) inserting a new clause immediately after clause (1)— “(1A) 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 got value for money in the project and submit that report to Parliament or County Assembly for tabling and debate.</p>	<ol style="list-style-type: none"> 1. See comments under Section 35. 2. The regularity on when a performance audit can be done is left to the Auditor General to determine administratively under Section 35. 3. This proposed amendment therefore is not necessary given the Auditor General is sufficiently facilitated by Section 35 to perform his functions. In fact, the proposed amendment gags the Auditor General in how and when he can carry out a performance audit. 	<p>The proposed amendment should be dropped given that it can be achieved administratively and it gags the Auditor General.</p>
38.	Section 36	<p>Clause 36 of the Bill be amended by deleting the word “may” and substituting therefor “shall”.</p>	<ol style="list-style-type: none"> 1. This proposed amendment contradicts Article 252 (1) of the Constitution that gives discretionary powers to the Auditor General to decide when a complaint is made, whether, it deserves an investigation or not. 2. Further, making it mandatory for the Auditor General to carry forensic audits whenever, 	<p>The proposed amendment should be dropped</p>

			<p>requested could be also used to ensure the Auditor General does not perform his core mandate as given under Article 229 (4) and (6) and prepare the grounds for his removal from office.</p> <p>3. In addition, this may impose serious financial and human resource constraints to the office of the Auditor General, if he receives many requests to carry out forensic audits during a financial when it is mandatory.</p> <p>4. It is important to note that, when we make it mandatory, we are preparing for grounds for persons or institutions to take the Auditor General to court to enforce their requests for the Auditor General to carry out the forensic audit.</p> <p>5. We need to give discretionary powers to the Auditor General on this matter.</p>	
39.	Section 37	Clause 37 of the Bill be deleted.	<p>1. The provision in this Section is made to facilitate the office of the Auditor General to conduct environmental audits when necessary for state organs or other public entities.</p> <p>2. This is necessitated by the fact that NEMA set the policies, norms and standards but does outsource the services of audit from private firms. This has been costing</p>	<p>We therefore propose an amendment to Section 37 of the Bill :-</p> <p>“by deleting the word <i>“shall”</i> and replacing with the word <i>“may”</i> to make it discretionary for the Auditor General.</p>

			<p>government a fortune whenever, public entities want environmental audits to be carried out before commencement of projects.</p> <p>3. However, we do propose an amendment to this Section by replacing the word shall with the word may to make it discretionary for the Auditor General to determine whether, he / she want carry out an environmental audit from time to time.</p>	
40.	Section 39	Clause 39 of the Bill be deleted.	<p>1. This is the same provision proposed for insertion under the proposed amendment Section 31A.</p> <p>2. See comments on proposed Section 31A</p>	The proposed amendment should be dropped
41.	Section 40	<p>Clause 40 of the Bill be deleted and replaced with the following new clause—</p> <p>Auditing of national security organs</p> <p>40. (1) The Auditor-General shall not include particular information in a public report if he or she is of the opinion that disclosure of such information would be contrary to public interest.</p>	<p>1. First, it should be understood clearly that the Auditor General shall audit all national security organs as required by the Constitution under Article 229 (4) and (6).</p> <p>2. Second, the audit reports shall be submitted to Parliament as required by the Constitution under Article 229 (4).</p> <p>3. Thirdly, the issue under consideration is about disclosure of information on national security related expenditure which may harm public interest if released to</p>	<p><i>We propose that</i> Section 40 of the Bill be deleted and replaced with the following new Section —</p> <p>Auditing of national security related expenditure</p> <p>40. (1) The Auditor-General shall audit national security organs and confidential expenditure in the process of carrying out his mandate under the Constitution, this Act and any other written law.</p> <p>(2) Despite the provisions</p>

		<p>(2) The Auditor-General shall be required under a closed door session, and is permitted, to disclose to a special or joint committee of Parliament and the President information that subsection (1) (a) prohibits being included in a public report.</p> <p>(3) If the Auditor-General omits particular information from a public report he or she must state in the report—</p> <p>(a) that information (which does not have to be identified); and</p> <p>(b) the reason or reasons for that omission.</p>	<p>the general public, but this information should be released to a select committee of Parliament to exercise oversight on behalf of Parliament as envisaged in the Constitution that the oversight of public funds is the preserve of Parliament.</p> <p>4. Fourth, given the nature of such security related expenditure, the relevant accounting officer should submit a certificate to the Auditor General before commencement of Audit confirming that documents or information being shared is confidential and therefore throughout the audit process such information should be treated so until Parliament decides otherwise.</p> <p>5. Fifth, the Auditor General will be required under this Section to report on such expenditures in the main report to Parliament in a redacted manner but prepare a comprehensive non-redacted report for sharing with the select committee on all issues relating to the National Security Related Expenditures</p> <p>6. The select committee of Parliament will make decisions and recommendations on whether the information should continue</p>	<p>of subsection (1) above, the Auditor -General shall audit national security organs and confidential expenditures subject to the following —</p> <p>(a) where the information is likely to be contrary to public interest for any of the reasons set out in subsection (3) of this section, an accounting officer in-charge of national security organ and confidential expenditure shall present a certificate issued by the Attorney- General stating the same; and</p> <p>(b) the Auditor-General shall ensure that all staff of the Office of the Auditor-General carrying out audit under this section have undergone a vetting process carried out by the appropriate security agency.</p>
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		<p>(4) The audit reports on national security organs may be redacted to shield the identities of persons as well as assets and liabilities as the case may be.</p> <p>(5) All staff of the Office of the Auditor-General carrying out audit under this section shall undergo a vetting process carried out by the appropriate security agency.</p>	<p>being held as confidential or it should be made public and at the same time hold the accounting officer under which the national security related expenditures relates accountable and responsible for such expenditure.</p> <p>7. We therefore propose to make further amendments to this Section to reflect the above.</p>	<p>(3) The Auditor -General shall exclude any information from the audit report under subsection (1) of this section, if the report—</p> <ul style="list-style-type: none">(a) is likely to prejudice the security, defence or international relations of the Government of the Republic of Kenya;(b) is likely to involve the disclosure of confidential deliberations or decisions of the Cabinet or of a committee of the Cabinet;(c) is likely to divulge any confidential information communicated in confidence by the national government to a county government or a by a county government to the national government and
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				<p>which would prejudice national security or relations between the two levels of government.</p> <p>(d) would unfairly prejudice the commercial interests of anybody or person;</p> <p>(e) is likely, for any other reason, to form the basis for a claim by a foreign state or persons on the national government or county government in a judicial proceeding.</p> <p>(4) The Auditor-General shall be required under a closed door session, and is permitted, to disclose to a special or joint committee of Parliament and the President information that subsection (1) (a) prohibits being included in a public report.</p> <p>(5) If the Auditor-General omits particular</p>
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				<p>information from a public report he or she must state in the report—</p> <ul style="list-style-type: none">(a) that information (which does not have to be identified); and(b) the reason or reasons for that omission. <p>(6) The audit reports on national security organs and confidential expenditures may be redacted to shield the identities of persons as well as assets and liabilities as the case may be.</p> <p>(7) For purposes of this section, Cabinet shall approve the national security organs and confidential expenditures and after such approval only the approved national security organs and confidential expenditures shall qualify for audit under this section.</p>
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				<p>(8) In this Section—</p> <p><i>“information”</i> includes written comments on the proposed audit report or the extract that are received by the Auditor General under this Section.</p> <p><i>“public report”</i> means a report that is to be tabled in either House of Parliament.</p>
42.	Section 41 (1) (c)	<p>Clause 41 of the Bill be amended—</p> <p>(a) in subclause (1) paragraph (c) by deleting the words “and approved by Parliament”</p>	<ol style="list-style-type: none"> 1. The power to levy fees and charges lies with Parliament and should only be expressly delegated through provision in law. 2. Further, many public entities have been complaining that do not know the basis of audit fees charged by the office of the Auditor General or outsourced audit firms which has been varying by between 150 to 300 % from year without justifiable cause. 3. In addition, there is need for public entities to be helped to ensure proper planning on administrative costs such as audit fees by Parliament approving a range under the Auditor General 	<p>The clause should be retained in the current form and the proposed amendment be dropped</p>

			can charge audit fees depending on the category of various state corporations e.g. Regulatory, commercial etc.	
43.	Section 41 (1) (c)	Clause 41 of the Bill be amended— (a) in subclause (2) by inserting the words “into the Public Audit Fund” immediately after the words “shall be retained”.	<ol style="list-style-type: none"> 1. See comments under Section 20 2. The Constitution under Article 249 (3) provides that the budget of the office of the Auditor General shall be a vote and therefore it cannot be a vote and at the same time a Fund. 	The clause should be retained in the current form and the proposed amendment be dropped
44.	Section 48 (5)	Clause 48 subclause (5) of the Bill be deleted.	<ol style="list-style-type: none"> 1. The provisions of the subsection are made to safeguard national security related expenditures in line with Section 40 of this Bill. 2. See comments on Section 40 3. We however, propose further amendment to Section 48 (5) to capture only national security related expenditures. 	We therefore propose a further amendment to Section 48 (5) by deleting the entire section and replacing with— <i>(5) for the avoidance of doubt, if the audit under this Section relate to national security organs or confidential expenditures, the provisions under Section 40 of this Act shall apply.</i>
45.	Section 49	Clause 49 of the bill deleted and replaced with the following new clause— 49 (1) The final audit report of the Auditor General shall be submitted to Parliament or the relevant County Assembly, with	<ol style="list-style-type: none"> 1. This is to facilitate the Cabinet Secretary responsible for matters relating to finance, get a report of all county governments in order to discharge his mandate efficiently and effectively under Article 225 (3). 	We therefore propose amendment to Section 49 by deleting the entire section and replacing with— <i>49 (1) The final audit report of the Auditor General for both national and county government entities shall be submitted to Parliament or the relevant</i>

		<p>copies to the Cabinet Secretary responsible for finance and the accounting officer of the entity that is subject of the Audit.</p> <p>(2) The final audit report of the Auditor General shall be submitted to the relevant County Assembly, with copy to the relevant County Executive Committee Member for Finance and the accounting officer of the entity that is subject of the Audit.</p> <p>(3) Within three months of receiving an audit report referred to under subsection (1) and (2), Parliament or the relevant county assembly shall debate and consider the report and take appropriate action.</p>		<p><i>County Assembly, with copies to the Cabinet Secretary responsible for finance and the accounting officer of the entity that is subject of the Audit.</i></p> <p><i>(2) The final audit report of county government entities under subsection (1) above shall be with copies to the relevant County Executive Committee Member for Finance.</i></p> <p><i>(3) 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.</i></p>
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46.	Section 53	<p>Clause 53 of the bill deleted and replaced with the following new clause—</p> <p>53. Where there is a serious material breach or persistent material breaches of the provisions of this Act or Public Finance Management Act, 2012, the Auditor General may in his audit report to the Cabinet Secretary pursuant to Article 225 (3) of the Constitution and the Public Finance Management Act, 2012, recommend the withholding of funds to any state organ or public entity</p>	<ol style="list-style-type: none"> 1. This responsibility of stoppage of funds to a state organ or any other public entity is assigned to the Cabinet Secretary responsible for finance under Article 225 (3) of the Constitution. 2. This is to facilitate the Cabinet Secretary responsible for finance to discharge his mandate under Article 225 (3) of the Constitution and Sections 92 to 102 of the Public Finance Management Act, 2012. 	<p>We therefore propose amendment to Section 49 by deleting the entire section and replacing with—</p> <p><i>53. Where there is a serious material breach or persistent material breaches of the provisions of this Act or Public Finance Management Act, 2012, the Auditor General may in his audit report to the Cabinet Secretary pursuant to Article 225 (3) of the Constitution and the Public Finance Management Act, 2012, recommend the withholding of funds to any state organ or public entity</i></p>
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47.	Section 54	<p>Clause 54 of the bill be deleted and replaced with the following new clause—</p> <p>“54. The Auditor General in discharging his or her functions and responsibilities shall determine the code of conduct and ethics for all the Public Officers of the Office of the Auditor General which shall be in line with those prescribed by the Constitution, this Act, Public Officers Ethics Act, 2003 and the relevant professional bodies.”</p>	<ol style="list-style-type: none"> 3. We agree that the Section was wrongly captured and therefore an amendment is necessary. 4. Further, we propose a further amendment to the proposed amendment to require the Auditor General to develop the code of conduct in consultation with the Public Service Commission, being the body responsible for appointment of public officers as well as exercising disciplinary control and the National Treasury being the institution responsible for oversight of public finance national management and given auditors interact on a daily basis with other PFM staff, their code of conduct should be managed in a harmonized manner. 5. Further, to require the code of conduct to take into account the provisions of the Public Finance Management Act, 2012 being the law that regulates and governs public finance management in Kenya. 	<p>We propose an amendment of Section 54 (2) to read as follows:-</p> <p><i>“The Auditor General in discharging of his / her functions and responsibilities, shall, in consultation with the Public Service Commission and the National Treasury, develop the code of Conduct and Ethics for all the public officers of the office of the Auditor General, which shall be in line with those prescribed by the Constitution, this Act the Public Officers Ethics Act, 2003, the Public Finance Management Act, 2012 and the relevant professional bodies”</i></p>
49.	Section 60 (1)	<p>Clause 60 of the Bill be amended in subclause (1) by deleting paragraph—</p> <p style="text-align: center;">(i) (e);</p>	<ol style="list-style-type: none"> 1. The Auditor General should carry out his mandate with due care and diligence to protect the strategic interest of the state, by not recklessly releasing information that is likely to harm or affect the country’s interests. 	<p>We therefore propose an amendment of Section 60 (1) (e) by deleting it and replacing with—</p> <p><i>(1) (e) divulges any documents or information relating to national security organs and confidential expenditures”</i></p>

			<ol style="list-style-type: none"> 2. This is a requirement in the Constitution that national values should be observed at all times by state officers as well as public officers. 3. We therefore propose a further amendment, given that not all expenditure to a national security organ is confidential to only capture the bit which is confidential and facilitate the Auditor General to interrogate it. 	
50.	Section 60 (1)	<p>Clause 60 of the Bill be amended in subclause (1) by deleting paragraph—</p> <p style="padding-left: 40px;">(i) (f);</p>	<ol style="list-style-type: none"> 1. The Auditor General is working on behalf Parliament and therefore he should only share public information after submitting it to Parliament. 2. Further, the Auditor General by sharing information before submitting it to Parliament, may also be misinterpreted to mean that Parliament is not performing its duty of oversight on management of public affairs and therefore the Auditor-General publishes his/her report before Parliamentary approval to put pressure on Parliament. 3. It is the same standard provided for in the Public Finance Management Act, 2012 that the Cabinet Secretary can only publish and publicize information, seven days after the information has 	The clause should be retained in the current form and the proposed amendment be dropped

			been submitted to Parliament.	
51.	Section 60(1)	<p>Clause 60 of the Bill be amended in subclause (1) by deleting paragraph—</p> <p style="text-align: center;">(i) (g);</p>	<ol style="list-style-type: none"> 1. Article 226 (5) provides that any person who approves expenditure or uses public resources contrary to lawful shall make good the loss whether that person remains in office or not. 2. This provision is only restating what is provided for in the Constitution. 3. Further, the proposed amendment contravenes this Article of the Constitution and therefore it should be dropped. 4. Further, public officers are expected to make decision based on due diligence and rule of law and therefore , the question of making decision, which leads to loss of public resource more so by the office of the Auditor General is double speak who is the custodian of the Public Finance Management Act, 2012 should not be entertained at all. 	The clause should be retained in the current form and the proposed amendment be dropped
52.	Section 65	<p>Clause 65 of the Bill be amended by deleting the clause and substituting therefor the following new clause—</p> <p>“A person who is convicted of an offence under this Act shall not be eligible to hold office or work</p>	<ol style="list-style-type: none"> 1. We do not agree with the proposed amendment, given that in principle the essence of a punishment is made to deter persons from repeating / committing the same mistake again. 2. The duration provided for in this section is made to make public 	The clause should be retained in the current form and the proposed amendment be dropped

		with an entity owned in whole or part by the State.”	<p>officers to suffer for a certain period and deter them not to repeat the same mistakes but not to convict them to eternal suffering.</p> <p>3. It is also important to note this clause also applies to officers working under the office of the Auditor General, Hon. Members of Parliament or any other public officer who is subject to audit as per the provisions of the Constitution, this Act or any other Act and therefore the clause should be seen as a deterring clause.</p>	
53.	Section 67	Clause 67 of the Bill be deleted.	<p>1. This is made to restate that independent offices holders are subject to the laws of this country given the clamour by most of constitutional commissions and independent offices that are independent and subject to other institution.</p> <p>2. Further, this is compounded by the fact that the office of the Auditor General has been persistently and consistently saying that “an auditee” cannot purport to oversee his operations neither can that office be guided by other institutions by law on other topical issues not touching on the subject of his / her</p>	The clause should be retained in the current form and the proposed amendment be dropped

			<p>independent function of audit such as procurement law, public finance management Act, 2012 etc.</p> <p>3. In addition, it should be clarified, in law that these constitutional commissions and independent office holders are subject to the laws of this country in their enabling legislations, otherwise we are courting disaster.</p>	
54.	Section 67	<p>Clause 68 of the Bill be amended by—</p> <p>(a) deleting the words “ the Cabinet Secretary responsible for finance”;</p>	<p>1. The Cabinet Secretary is in-charge of national policy on public finance matters and also is the sponsor of this Bill.</p> <p>2. The Cabinet Secretary, in consultation with the Auditor General is in a better position to harmonize all provisions in PFM laws and come up with regulations which are in harmony with other national legislations.</p> <p>3. Finally, all proposed legislations on PFM, the Cabinet Secretary has been involving the office of the Auditor General not only in the subject of audit but all other legislations and therefore PFM matters including Regulations should be addressed in broad manner.</p>	The clause should be retained in the current form and the proposed amendment be dropped
55.	Section 68 (1A)	<p>Clause 68 of the Bill be amended by—</p>	<p>1. The approval process of any regulations are clearly spelt out in the “Statutory Instruments Act”</p>	The clause should be retained in the current form and the proposed amendment be dropped

		<p>(a) by inserting a new subclause immediately after clause 68—</p> <p>“(1A) The power to make Regulations shall be exercised only after a draft of the proposed Regulations have been approved by the National Assembly.”</p>	<ol style="list-style-type: none"> 2. This provision is trying again to provide for same approval process of regulations, which is not necessary. 3. Under, the Statutory Instruments Act, Parliament is the only body vested with powers to approve regulations. 	
56.	Section 72	Clause 72 of the Bill be amended by deleting the words “or any other state organ or public entity”	<ol style="list-style-type: none"> 1. Government is comprised of state organs and public entities and the spirit of the clause was only made to provide clarity on the matter. 2. We do not have a problem with the proposed amendment, only that the clarity will be lost. 	We clause can be left as it is or amended given the message is the same.
57.	Section 74	Clause 74 of the Bill is amended in subclause (1) by deleting paragraph (f).	<ol style="list-style-type: none"> 1. First, Government is going concern and therefore the transition Section is important to safeguard public interest. 2. Second, the fact that there are existing contracts which were signed lawfully; the more important this clause is, to ensure public resources are safeguarded and securing such existing contracts for continued service delivery. 3. We propose further amendment 	<p>We propose a further amendment to sub-section 74 (1) (f) by deleting the entire sub-section and replacing with a new sub-section to read as follows—</p> <p><i>“74 (1) (f) a contract subsisting between the Kenya National Audit Office and any other person before the commencement of this Act, shall continue to exist as contract entered into between the office of the Auditor General and that other person.”</i></p>

			to this Subsection to secure any existing contract between KENAO to be a contract entered between the contractor and the office of the Auditor General.	
58.	Schedule	The Schedule of the Bill be amended by— (a) deleting the word “Chief Justice” and substituting therefor “President”;	<ol style="list-style-type: none"> 1. See earlier comments and oaths are administered by the Judicial Service Commission in the presence of the president and any other person. 2. The question of Judiciary being an auditee here does not arise, we need to respect, the independence and jurisdiction of other institutions in the letter and spirit of the Constitution. 	The clause should be retained in the current form and the proposed amendment be dropped
59.	Schedule	The Schedule of the Bill be amended by— (a) deleting the expression “2014” and replacing therefor “2015”.	1. Agreed	Agreed

RESPONSES TO PROPOSED AMENDMENTS TO PUBLIC AUDIT BILL, 2014:- ADDENDUM

THEMATICS AREAS FOR PROPOSED AMENDMENTS:

From our analysis, the additional proposed amendments revolve around three themes which (we addressed in our memorandum, which had six thematic areas as shared with Parliament) which are:-

- 1. Public Service Commission:-** The issues on this matter revolve around whether the Public Service Commission should be involved in the appointment of public officers under the office of the Auditor General in line with Article 234 (2) and whether, Article 252 (1) (c) of the Constitution which require the independent office of the Auditor General to recruit his own staff, envisaged that the office will also appoint its own staff given the provisions of Article 234 (3) of the Constitution, which expressly exempts specific institutions that shall recruit and appoint public officers. In this case, it is only the Auditor General exempted from the Article, but the Constitution provides expressly that the Auditor General will be appointed by the President under Article 229 (1).
- 2. Government Policy Objectives:** The issues on this matter revolve around whether the Auditor General can question Government policy objectives. There is nowhere in the world the external auditor has powers to question the merits or demerits of Government policy objectives. This principle also applies in the private sector. For instance can the Auditor General question why Parliament allocated State Department of Agriculture Kshs. 10 Billion and not State Department of Livestock which is allocated Kshs. 5 Billion and vice versa, or the roll-out of Free Maternity Health Care. There are choices set out in a party manifesto and political parties are elected on the basis of pledges to deliver to the people etc.
- 3. Confidential Expenditure on National Security Related Expenditures:** The issues on this matter relate to five things: 1. Restricted disclosure of information in public interest- New Zealand, Australia etc, 2. Restricted disclosure of confidential information e.g. New Zealand, Canada 3. Requirement for vetting of officers as well as taking oath of office for the officers of the Auditor General depending on the Government departments they are auditing to ensure privileged information is kept as required by law e.g. Canada, New Zealand, and South Africa 4. Approval of a list of classified security related expenditures for purposes of audit e.g. South Africa; and 5. A select committee of Parliament to be sworn to secrecy to oversee expenditures relating to national security e.g. New Zealand, Australia, Canada.

S/No	Section	Proposed amendment	Rationale for retention of the	Recommendation (s)
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			Proposed Amendment / rejection	
1.	Section 4 (4) (2)	Clause 4 of the Bill be amended in sub clause (2) by deleting the words “subject to Article 234(5)” and substitute therefor “subject to Article 234(2)”;	<ol style="list-style-type: none"> 1. We agree in principle that the original powers are vested to Public Service Commission under Article 234 (2) of the Constitution. 2. However, it is important to appreciate that Article 234 (5) provides that the Public Service Commission can delegate these powers if it deems so, with or without conditions. 3. In this respect, we propose a further amendment to provide for both Article 234 (2) and (5) in this clause. 	<p>The National Treasury therefore proposes a further amendment to Section 4 (2) by deleting the entire clause and replacing it with the following subsection—</p> <p><i>“Section 4 (2) the office shall comprise the Auditor General as its statutory head and all staff including the staff appointed by the Auditor General, subject to Article 234 (2) and (5) of the Constitution”</i></p>
2.	Section 8(f)	<p>Clause 8 of the Bill be amended—</p> <p>(a) in paragraph (f) “subject to Article 234(2)”;</p>	<ol style="list-style-type: none"> 1. Section 8 (f) has no reference to Article 234 (5). 2. However, we do note that Section 8 (c) and (d) have reference to Article 234 (5) which deal with delegated powers of the Public Service Commission. 3. In this regard, we do appreciate that the original powers are assigned under Article 234 (2) but Article 234 (5) provides that the Public Service Commission can delegate some of these powers with conditions or without conditions. 4. We therefore propose further amendments to both clauses (c) 	<p>We therefore propose further amendments by deleting the words “subject to Article 234(5)” and substitute therefor —</p> <p><i>“Subject to Article 234 (2) and (5) before the word “of”</i></p>

			and (d) to capture the assignment of original powers as well as the powers to delegate.	
3.	Section 8(f)	<p>Clause 8 of the Bill be amended—</p> <p>(a) by inserting a new paragraph immediately after paragraph (k)—</p> <p>“(ka) provide information that may be needed in an investigation according to the provisions provided for under this Act.”</p>	Agreed	Agreed
4.	Section 6	<p>Clause 16 of the Bill be deleted and replaced by the following new clause—</p> <p>“16. The Auditor- General shall—</p> <p>(a) be the head of administration and management of the office of the Auditor-General;</p> <p>(b) be the accounting officer of the Office of the Auditor-General; and</p> <p>(c) perform any other duties in</p>	<p>1. The proposed arrangement poses a conflict of interest concern, which is:-</p> <p>(a). the Auditor General will be expected to implement and oversee financial management operations within the office of the Auditor General and at the same time, will be expected to oversee the audit of accounts and other financial management operations for both levels of Government.</p> <p>(b). It is likely that, immediately</p>	The Section should be retained in its current form

		<p>connection with or incidental to any other functions of the Auditor-General pursuant to this Act.”</p>	<p>the Auditor General gets involved in administrative matters of the office of the Auditor General, governance issues may arise and his office may come under attack from other accounting officers and institutions.</p> <p>(c) This will expose the Auditor General and consequently will lack the moral authority to question governance issues on financial management by other accounting officers.</p> <p>(d). To avoid this scenario, the office of the Senior Deputy Auditor General was established to perform the administrative functions including being the accounting officer of the office of the Auditor General.</p> <p>2. This is the practice in other jurisdictions such as South Africa, New Zealand etc. This is the same approach which has been adopted by other constitutional commissions in Kenya, by appointing a chief executive officer such as CRA, CIC, PSC, etc</p>	
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5.	17 (1)	Clause 17 of the Bill be amended in subclause (1) by deleting the words “subject to Article 234(5)” and substitute therefor “subject to Article 234(2)”;	<ol style="list-style-type: none"> 1. We agree with the proposal and we suggest that it be amended in line with comments under Section 4 & 8 above. 2. We therefore propose further amendment to Section 17 (1) to capture the original powers of the Public Service Commission. 	<p>We therefore propose a further amendment to Section 17 (1) by deleting the words “subject to Article 234(5)” and substitute therefor —</p> <p><i>“subject to Article 234 (2) and (5) of the Constitution”</i></p>
6.	Section 21	Clause 21 of the Bill be amended by deleting the word “may” and substituting therefor “shall”.	<ol style="list-style-type: none"> 1. Agreed with the proposed amendments. 	Agreed
7.	Section 22	<p>Clause 22 of the Bill be amended by inserting a new subclause immediately after subclause (1)—</p> <p>“(2) Before the Auditor decides to track a transaction contemplated in subsection (1), the Auditor shall, before he/she seeks a court order, give reasons in writing and submit to the Audit advisory Board as to why such a transaction is fraudulent.”</p>	<ol style="list-style-type: none"> 1. Agreed 2. However, we propose further amendments to make it clear 	<p><i>We therefore propose further amendment of the Bill by inserting a new subclause immediately after subclause (1)—:</i></p> <p><i>“(2) prior to the Auditor General deciding to track a transaction contemplated in subsection (1), the Auditor General shall, before he /she seeks a court order, give reasons in writing and submit them to the Audit Advisory Board for advise on the matter”</i></p>
8.	Section 25	Clause 25 of the bill be amended in subclause (1) by deleting paragraphs (e) and (g) .	<ol style="list-style-type: none"> 1. The Institute of Internal Auditor is to oversee the implementation of internal auditing international standards in Kenya as well as regulate the professional 	The Section should be maintained in the current form.

			<p>conduct of professional internal auditors. International Auditing Standards for supreme audit institutions require that the Auditor General may rely on the work of internal auditor to ensure public resources are used efficiently, effectively and value for money has been achieved.</p> <p>2. The Public Sector Accounting Standards Board is established under the Public Finance Management Act, 2012 to provide standards and formats of reporting, which impact directly on the quality of financial statements submitted to the Auditor General for Audit.</p> <p>3. As clearly demonstrated above, these institutions are complementary to the Auditor General and they will add a lot of value when sitting at the Advisory Board. This synergy is important to improve the quality of work of the Auditor General as well as make it more efficient.</p> <p>4. We therefore propose that the proposed amendment should be dropped.</p>	
9.	Section 27	Clause 27 subclause (1) of the Bill be amended by deleting the word “generally” and substitute therefor the	1. Agreed	<i>Agreed.</i>

		word “only”		
10.	Section 31	<p>Clause 31 of the Bill be amended —</p> <p>(a) In subclause (1) by deleting paragraph (b) and (c);</p>	<ol style="list-style-type: none"> 1. The Constitution assigns the responsibility to audit public funds to the Auditor General. 2. However, we appreciate that the Auditor General may be overwhelmed by the magnitude of audit and therefore, Auditor General may delegate the inception meeting and exit to senior managers under his office, depending on the institution he is auditing at that particular moment. 3. This is also the international best practice in both the public and private sectors. It is also expressly provided for under International Auditing Standards for Supreme Audit Institutions. 	The Section should be retained in the current form.
11.	Section 31	<p>Clause 31 of the Bill be amended —</p> <p>(a) by inserting a new subclause immediately after subclause (6)—</p> <p>“(6A) The National Assembly may invite the Auditor General to table the report before the committee of the</p>	<ol style="list-style-type: none"> 1. This is a matter to be addressed under Standing Orders of Parliament on how to invite persons to address the House. 2. This proposed amendment is not consistent with the Article 229 (4) of the Constitution which requires the Auditor General to submit audit reports within six months after the end of the financial year. 3. The proposal to amend the law 	The clause should be retained in the current form.

		whole House.”	to provide that reports can only be tabled after the Speaker of the National Assembly has determined and invited the Auditor General is an affront to the Constitutional provisions. Suppose the Speaker does not determine within six months, what happens?	
12.	Section 37	Clause 37 of the Bill be amended by deleting the word “shall” and substituting therefor “may”.	1. Agreed	Agreed
13.	Section 38	Clause 38 of the Bill be amended by deleting the word “may” and substituting therefor “shall”.	<ol style="list-style-type: none"> 1. Procurement is part of public financial management and therefore the Auditor General has a mandate to Audit. 2. This notwithstanding, it is not possible for the Auditor General to audit all aspects of procurement and therefore the clause is intended to give the Auditor General discretion to determine the scope of audit on procurement as and when necessary. 3. Further, it should be noted, if we make it mandatory somebody may go to court to compel the Auditor General to audit all aspect of procurement. 4. Therefore the proposed amendments should be dropped. 	The clause should be retained in the current form.

14.	Section 39	Clause 39 of the Bill is amended by deleting subclauses (2) and (3).	<ol style="list-style-type: none"> 1. Article 201 (a) of the Constitution requires openness on matters finance. 2. Today all audits reports of the Auditor General are published by the Government Printer. 3. It is also international best practice to publish audit reports. 	The clause should be retained in the current form.
15.	Section 40	<p>Clause 40 of the Bill be amended —</p> <p>(a) in subclause (1)—</p> <p>(i) by inserting a new paragraph immediately after paragraph (a)— “(aa) the Auditor-General is of the opinion that the disclosure of such information may have negative effects on investor confidence in relation to reporting adverse audits;”</p> <p>(ii) by deleting paragraph (b);</p> <p>(b) by deleting subclause (2) ;</p> <p>(c) by deleting subclause (4)</p> <p>(d) in subclause (5) by deleting the words “Deputy Director of Audit” and substituting therefor</p>	<ol style="list-style-type: none"> 1. First, it should be understood clearly that the Auditor General shall audit all national security organs as required by the Constitution under Article 229 (4) and (6). 2. Second, the audit reports shall be submitted to Parliament as required by the Constitution under Article 229 (4). 3. Thirdly, the issue under consideration is about disclosure of information on national security related expenditure which may harm public interest if released to the general public, but this information should be released to a select committee of Parliament to exercise oversight on behalf of Parliament as envisaged in the Constitution that the oversight of public funds is the preserve of Parliament. 4. Fourth, given the nature of such 	<p><i>We propose that Section 40 of the Bill be deleted and replaced with the following new Section —</i></p> <p>Auditing of national security related expenditure</p> <p>40. (1) The Auditor-General shall audit national security organs and confidential expenditure in the process of carrying out his mandate under the Constitution, this Act and any other written law.</p> <p>(2) Despite the provisions of subsection (1) above, the Auditor - General shall audit national security organs and confidential expenditures subject to the following —</p> <p>(a) where the</p>

		<p>“Senior Deputy Auditor”</p>	<p>security related expenditure, the relevant accounting officer should submit a certificate to the Auditor General before commencement of Audit confirming that documents or information being shared is confidential and therefore throughout the audit process such information should be treated so until Parliament decides otherwise.</p> <p>5. Fifth, the Auditor General will be required under this Section to report on such expenditures in the main report to Parliament in a redacted manner but prepare a comprehensive non-redacted report for sharing with the select committee on all issues relating to the National Security Related Expenditures</p> <p>6. The select committee of Parliament will make decisions and recommendations on whether the information should continue being held as confidential or it should be made public and at the same time hold the accounting officer under which the national security related expenditures relates accountable and</p>	<p>information is likely to be contrary to public interest for any of the reasons set out in subsection (3) of this section, an accounting officer in-charge of national security organ and confidential expenditure shall present a certificate issued by the Attorney- General stating the same; and</p> <p>(b) the Auditor-General shall ensure that all staff of the Office of the Auditor-General carrying out audit under this section have undergone a vetting process carried out by the appropriate security agency.</p> <p>(3) The Auditor - General shall exclude any information from the audit report under subsection (1) of this section, if the report—</p>
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			<p>responsible for such expenditure.</p> <p>7. We therefore propose to make further amendments to this Section to reflect the above.</p>	<p>(a) is likely to prejudice the security, defence or international relations of the Government of the Republic of Kenya;</p> <p>(b) is likely to involve the disclosure of confidential deliberations or decisions of the Cabinet or of a committee of the Cabinet;</p> <p>(c) is likely to divulge any confidential information communicated in confidence by the national government to a county government or a by a county government to the national government and which would prejudice national security or relations between the two levels of government.</p>
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				<p>(d) would unfairly prejudice the commercial interests of anybody or person;</p> <p>(e) is likely, for any other reason, to form the basis for a claim by a foreign state or persons on the national government or county government in a judicial proceeding.</p> <p>(4) The Auditor-General shall be required under a closed door session, and is permitted, to disclose to a special or joint committee of Parliament and the President information that subsection (1) (a) prohibits being included in a public report.</p> <p>(5) If the Auditor-General omits particular information from a public report he or she must state in the report—</p>
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				<p>(a) that information (which does not have to be identified); and</p> <p>(b) the reason or reasons for that omission.</p> <p>(6) The audit reports on national security organs and confidential expenditures may be redacted to shield the identities of persons as well as assets and liabilities as the case may be.</p> <p>(7) For purposes of this section, Cabinet shall approve the national security organs and confidential expenditures and after such approval only the approved national security organs and confidential expenditures shall qualify for audit under this section.</p> <p>(8) In this Section—</p>
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				<p><i>“information”</i> includes written comments on the proposed audit report or the extract that are received by the Auditor General under this Section.</p> <p><i>“public report”</i> means a report that is to be tabled in either House of Parliament.</p>
16.	Section 52 (1)	<p>Clause 52 of the Bill be amended by inserting a proviso immediately after subclause (1)—</p> <p>“Provided that where such recommendations require a longer time frame in implementation, the Auditor-General shall in writing explain such recommendations and reasons for extension of the three months period.”</p>	<ol style="list-style-type: none"> 1. Agreed 2. This allows consultations between the accounting officer and the Auditor General to agree on the specific matter during the exit meeting. 	Agreed

17.	Section 57	Clause 57 of the Bill be amended in subclause (1) by inserting the words “without prejudice” immediately after the words “bound to disclose”.	<ol style="list-style-type: none"> 1. Agreed 2. This will protect, potential whistle blowers from victimization. 	The clause should be amended as proposed.
18.	Section 60 (1) (f)	<p>Clause 60 of the Bill be amended in subclause (1) by deleting paragraph (f) and substituting therefor the following new paragraph—</p> <p>“(f) knowingly and willfully releases any information that may prejudice the security, defence or international relations of the government contrary to the provisions of this Act.”</p>	<ol style="list-style-type: none"> 1. We agree with the proposed amendment in principle. 2. The Auditor General is working on behalf Parliament and therefore he should only share public information after submitting it to Parliament. 3. Further, the Auditor General by sharing information before submitting it to Parliament, may also be misinterpreted to mean that Parliament is not performing its duty of oversight on management of public affairs and therefore the Auditor-General publishes his/her report before Parliamentary approval to put pressure on Parliament. 	<p>We therefore propose a further amendment on the clause to read as follows</p> <p><i>“knowingly and willfully discloses or 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 Auditee entity and other authorized offices; or”</i></p>

			<p>4. It is the same standard provided for in the Public Finance Management Act, 2012 that the Cabinet Secretary can only publish and publicize information, seven days after the information has been submitted to Parliament.</p> <p>5. However, we propose further amendments to the proposed amendments to capture the original spirit.</p>	
19.	Section 61	<p>Clause 61 of the Bill be amended in—</p> <p>(a) subclause (1) paragraph (b) by inserting the words “ on time” immediately after the words “provide information”;</p>	<p>1. The requirement of submitting information on time is vague and is subject to misuse and misunderstanding.</p> <p>2. Indeed it is difficult clause to enforce e.g. if the Auditor General requires any information within two days from a public officer, who happens to be on official duty outside his duty station for ten days, will it be possible for such an officer to provide the information within two days.</p> <p>3. The provision makes it mandatory for information to be provided within a reasonable duration and therefore this statutory requirement is sufficient.</p> <p>4. The proposed amendment</p>	<p>The clause should be retained in the current form.</p>

			should therefore be dropped.	
20.	Section 61 (2)	<p>Clause 61 of the Bill be amended in—</p> <p>(b) subclause (2) by deleting the words—</p> <p>(i) “two million shillings” and substituting therefor the words “ten million shillings”;</p> <p>(ii) “one year” and substituting therefor “five years”.</p>	1. Agreed	<i>Agreed</i>
21.	Section 72	Clause 72 (To be amended as proposed by the Auditor General)	<p>1. The issues on this matter revolve around whether the Auditor General can question Government policy objectives.</p> <p>2. There is nowhere in the world the external auditor has powers to question the merits or demerits of Government policy objectives. This principle also applies in the private sector.</p> <p>3. For instance can the Auditor General question why Parliament allocated State</p>	The clause should be retained in the current form.

			<p>Department of Agriculture Kshs. 10 Billion and not State Department of Livestock which is allocated Kshs. 5 Billion and vice versa, or the roll-out of Free Maternity Health Care.</p> <p>4. There are choices set out in a party manifesto and political parties are elected on the basis of pledges to deliver to the people etc.</p>	

THE PUBLIC AUDIT BILL, 2014

CLAUSE 23

THAT the Bill be amended by inserting the following new sub-clause immediately after sub-clause (7)-

(8) The provisions of this Section shall not apply to audit of national security organs.

CLAUSE 24

THAT the Bill be amended in sub-clause (1) of Clause 24 by inserting the words “Subject to section 23(8)” immediately before the words “The Auditor -General”.

THAT the sub-clause be renumbered to read Clause 24.

CLAUSE 32

THAT the Bill be amended in sub-clause (2) of Clause 32 by inserting the words “Subject to section 40 and any written law” immediately before the words “The Auditor- General shall”.

CLAUSE 36

THAT the Bill be amended in Clause 36 by inserting the words “by the Ethics and Anti-Corruption Commission” immediately after the words “upon request”.

CLAUSE 37

THAT the Bill be amended in Clause 37 by inserting the words “in consultation with the Public Procurement and Oversight Authority” immediately before the words “examine the public procurement..”

CLAUSE 39

THAT Clause 39 of the Bill be amended-

- (i) In sub-clause (1) of Clause 39 by inserting the words “Subject to section 40” immediately before the words “All reports of an audit”.
- (ii) By deleting sub-clauses (2) and (3).
- (iii) By renumbering sub-clause (1) as Clause 39.

CLAUSE 40

THAT Clause 40 of the Bill be amended-

- (i) In sub-clause (1) of Clause 40 by deleting the word “public” and substituting therefor the word “audit”
- (ii) In paragraph (a) of sub-clause (1) deleting the words “public interest” and substituting therefor the words “national security”
- (iii) In paragraph (b) of sub-clause (1) deleting the words “Attorney General” wherever they occur and substituting therefor the words “National Security Council”
- (iv) In paragraph (b) of sub-clause (1) deleting the words “public interest” and substituting therefor the words “national security”

- (v) In sub-clause(2) by deleting the word “may” and substituting therefor the word “shall”.
- (vi) In sub-clause (2) by deleting paragraphs (c) – (e)
- (vii) By deleting sub-clause (3) and substituting therefor the following:

“The Auditor-General may be required under a closed door session , and is permitted , to disclose to a special committee of Parliament, some but not necessarily entire information that sub-section(1) prohibits in the audit report”.

- (viii) By deleting sub-clause (4).
- (ix) In sub-clause (5) by inserting the words “and members of the special committee of Parliament” immediately after the words “under this Section” appearing in the second line.
- (x) In sub-clause (6) by deleting the word “Cabinet” and substituting therefor the words National Security Council”
- (xi) By deleting sub-clause (7) and substituting it with the following new sub-clause-
 - “(7) For the avoidance of doubt and notwithstanding any provision to the contrary-
 - (a) Audit under this Section shall be conducted by staff of the Office of the Auditor- General referred to in sub-section (5);
 - (b) Audit under this Section shall be limited to the processes and procedures and shall not extend to operational details and activities;
- (xii) In sub-clause (8) by deleting the term “public report”

CLAUSE 50

THAT the Bill be amended in Clause 51 by inserting the following new sub-clause immediately after sub-clause (2)-“(3) This Section shall not apply to audit of national security organs or information of any classified activity.

CLAUSE 51

THAT the Bill be amended by deleting Clause 51.

CLAUSE 52

THAT the Bill be amended in sub-clause(1) of Clause 52 by deleting paragraph (b) and substituting therefor the following:

“(b) give a progress report on the implementation of the recommendations”

CLAUSE 60

THAT the Bill be amended in sub-clause (2) of Clause 60 by deleting the word “five” appearing in the fourth line and substituting therefor the word “ten”

CLAUSE 68

THAT the Bill be amended in Clause 68-

- (i) By renaming the present Clause as sub-clause (1);
- (ii) By inserting the following new sub-clause immediately after sub-clause (1)-
 - “(2) Notwithstanding the generality of sub-clause (1), the Cabinet Secretary shall in consultation with the Auditor-General and heads of national security organs develop regulations for the conduct of audit of national security organs and related matters.”

Annex 3 (comments from the Auditor General)

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No.	Issue	Clauses of the Public Audit Bill 2014	Proposal	Justification
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INDEPENDENCE OF THE OFFICE OF THE AUDITOR GENERAL

No.	Issue	Clauses of the Public Audit Bill 2014	Proposal	Justification
1	Functional Independence of the Auditor General	Clause 4(2) Establishment of the Office of the Auditor General	<i>(2) The Office shall comprise the Auditor-General as its Statutory head and all staff including the staff appointed by the Auditor-General.</i>	<p>Public Service Commission and Office of the Auditor-General are independent of each other therefore PSC should not dictate to the Auditor-General on appointment of staff.</p> <p>The clause as it is in the Bill is likely to interfere with the independence of the Auditor-General as PSC may cap numbers of staff to Office of the Auditor-General and even second them to other entities thus interfering with the operations of the Office of Auditor-General. PSC is an auditee of the AG and having a hand in the appointment of staff amounts to conflict of interest.</p> <p>The Constitution at Article 252 (1) (c) gives powers to the Office of the Auditor-General to recruit its own staff.</p>

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No.	Issue	Clauses of the Public Audit Bill 2014	Proposal	Justification
		<p>Clause 8 (c), (d), (j) Administrative powers of the Office of the Auditor General.</p>	<p><i>“(c) to exercise disciplinary control over staff”</i></p> <p><i>(d) to develop human resource of the office;</i></p> <p><i>(j) In addition to what is provided for under any other relevant law, develop and maintain a Code Conduct and Ethics for the Office, specific to auditing, guided by the international code of practice, and code of Ethics issued by the International</i></p>	<p>It impinges on the independence of the Office of the Auditor General.</p> <p>PSC, is an auditee of the Auditor General, should not have a hand in the discipline of staff of the Auditor General.</p> <p>This clause further contradicts clause 10 of the Bill and Article 249(2) of the Constitution.</p> <p>Article 252(1) (c) gives the Auditor General powers to recruit his own staff without making reference to Article 234(5) thus it's not necessary to mention article 234(5) of the constitution.</p> <p>The International Organisation of Supreme Audit Institutions (INTOSAI) and ICPAK set professional standards for auditors.</p> <p>Public Service Commission and National Treasury should have</p>

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No.	Issue	Clauses of the Public Audit Bill 2014	Proposal	Justification
			<i>Organisation of Supreme Audit Institutions;</i>	<p>nothing to do with professional standards on ethics.</p> <p>The two entities are also auditees of the Office and such involvement amounts to a conflict of interest.</p>
		<p>Clause 14 Development and submission of organizational structure</p>	<p><i>14. The Office of the Auditor-General shall develop the organizational structure for consideration and approval by the Audit Advisory Board.</i></p>	<p>The Organisational Structure is a tool by which the Office of the Auditor General organizes itself to ensure that its functions and responds to management and auditing operations. Subjection of the Organizational Structure to the Public Service Commission gives PSC a say in how audit operations will be delivered.</p> <p>The clause as it is in the Bill compromises the independence of the Auditor General and is not related to Article 234(2) of the Constitution.</p> <p>PSC is an auditee and therefore is an interested party.</p>

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No.	Issue	Clauses of the Public Audit Bill 2014	Proposal	Justification
		<p>Clause 15 Recruitment of the Senior Deputy Auditor General</p>	<p>(1) <i>There shall be a Senior Deputy Auditor-General who shall be competitively recruited by the Advisory Board and appointed by the Auditor-General.</i></p> <p>15 (2)(b) <i>The qualifications are the same as those of the auditor General as outlined in the Independent Offices Appointment Act</i></p>	<p>The Senior Deputy Auditor General is the principal assistant to the Auditor General and shall act as the Auditor General in his absence and as such his/her allegiance should be to the Office of the Auditor-General and not PSC.</p> <p>The Senior Deputy Auditor-General acts as the Auditor-General in his/her absence and should have the same qualifications as the Auditor General.</p>
		<p>Clause 17 Recruitment of other staff</p>	<p>(1)<i>The office of the Auditor General may recruit such other staff as may be necessary for proper discharge of his/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 subject to Article 230 of the constitution.</i></p> <p>(2) <i>The staff of the Office of the Auditor-General shall be competitively recruited in accordance to the organization structure developed by the office of the Auditor-</i></p>	<p>It contravenes Article 252(1)(c) Constitution thereby eroding the independence of the Auditor General.</p> <p>It contravenes Article 252(1)(c) of the Constitution</p>

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No.	Issue	Clauses of the Public Audit Bill 2014	Proposal	Justification
			<i>General under this Act</i>	
		<p>Clause 25 Establishment and composition of the Audit Advisory Board</p>	<p><i>To have the Auditor General as the Chair of the Board.</i></p>	<p>This is to avoid a potential friction between the leadership of the board and the Auditor-General. A parallel centre of power may be created.</p> <p>This proposed amendment can also be benchmarked against the Judicial Service Commission where the Chief Justice is the Chairperson. In India where there is a similar Board, the Auditor General chairs the deliberations.</p>
BUDGET ESTIMATES AND PLANS				
2.	Budget Estimates and Plans	<p>Clause 20 Budget estimates and plans of the Office of the Auditor General</p>	<p><i>(a) The Auditor General shall discuss, in a tripartite meeting, the Budget estimates with the chairman of the Budget and Appropriations Committee together with the Cabinet Secretary responsible for finance and agree on the budgetary allocation to the Office of the Auditor General, not later than 30th November each year</i></p>	<p>Review of the Auditor-General's estimates by the National Treasury alone does not assure the spirit and intention of the Constitution on independence of the office, National Treasury being a primary auditee of the Office.</p>

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No.	Issue	Clauses of the Public Audit Bill 2014	Proposal	Justification
			<p><i>b) Pursuant to the above tripartite meeting the budget estimates shall be included in the Budget Policy Statement without change by the Cabinet Secretary responsible for Finance</i></p> <p><i>c) In the event of any change on the agreed budget estimates, the Auditor-General shall inform the Chairman of Budget and Appropriations Committee in writing not later than 15th January every year.</i></p>	<p>Parliaments as the primary oversight institution should decide the level of accountability of resources hence determine the level of funding for the Office of the Auditor General.</p> <p>The proposed amendment does not violate the budgetary cycle/process other than giving Parliament the responsibility to determine the budgetary estimates for the Office prior to the cycle.</p> <p>It is conceivable that in future there is a risk of the AG's resources being capped by National Treasury for reasons other than fiscal austerity. Parliament therefore should shield the office against such possibilities.</p>
LIMITATION IN SCOPE OF AUDIT				
3.	Limitation in Scope of Audit	Clause 40 Auditing of National Security Organs	<i>In auditing national security organs, the Auditor-General and/or his/her representatives shall hold an inception meeting, at the highest level, to agree on the</i>	This Clause is too prescriptive and appears to gag the Auditor General.

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No.	Issue	Clauses of the Public Audit Bill 2014	Proposal	Justification
			<p><i>areas which may touch on national security and consequently determine the scope of the audit coverage.</i></p> <p><i>The audit reports on National Security Organs may be redacted to shield the identities of persons as well as assets and liabilities as the case may be.</i></p> <p><i>All staff of the Office of the Auditor-General carrying out audit under this Section shall undergo a vetting process carried out by the appropriate security agency.”</i></p>	<p>The Auditor-General owes allegiance to the public and has a right to audit entities (security organs) where public money is spent. S/he can however, avoid going into details of security matters.</p> <p>It further dictates to the AG the level of staff to audit such entities. This is impractical because such high level staff is scarce. The AG should therefore decide on the availability of staff to audit such entities based on competence.</p> <p>When the Cabinet Secretary approves security related projects, it limits the areas audited. The Cabinet is composed of Auditees who are interested parties. This is tantamount to the Cabinet Secretary presenting what the Auditor-General can audit which may be contrary to Article 229 (4)(h) of the Constitution.</p>

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No.	Issue	Clauses of the Public Audit Bill 2014	Proposal	Justification
				This Clause also overrides the constitutional right of the public to know how public resources have been expended.
		<p>Clause 72 Auditor-General not to question policy objectives</p>	<p><i>Delete the entire Clause</i></p>	<p>Performance Audit may require questioning of a policy. This clause is nugatory to the constitutional mandate of the Auditor General as provided for under Article 229(6) to report on whether public funds have been used lawfully and effectively and Article 249(1) of the Constitution.</p> <p>Sometimes, therefore it will be necessary for the Auditor General to question policy objectives.</p>
OFFENCES AND PENALTIES				
4.	<p>Offences and Sanctions</p>	<p>Clause 60 Offences by officers of the office of the Auditor-General</p>	<p><i>We propose a deletion of 1 e, f, g and an amendment of (2) to read:</i> <i>(2)Any officer of the Office of the Auditor-General who commits an offence under subsection (1) shall be disciplined in line with the Code of Ethics of the profession and where necessary the code of ethics of the profession and where necessary criminal proceedings preferred.</i></p>	<p>This is draconian. Matters of professional misconduct should be referred to internal disciplinary mechanisms and the professional code of conduct for the Auditors.</p>

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No.	Issue	Clauses of the Public Audit Bill 2014	Proposal	Justification
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