



REPUBLIC OF KENYA



THE SENATE

*Paper laid on the table
of the Senate by
Sen (Prof.) Njoroge
On 14th May 2015.*



ELEVENTH PARLIAMENT – THIRD SESSION

**REPORT OF THE SENATE STANDING COMMITTEE
ON FINANCE, COMMERCE & BUDGET ON THE CONSIDERATION
OF
THE PUBLIC AUDIT BILL, 2014**

**PARLIAMENT BUILDINGS
NAIROBI**

MAY, 2015

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PREFACE

Mr. Speaker, Sir

The Standing Committee on Finance, Commerce and Budget is established pursuant to Standing Order No. 208 and is mandated, *to investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to:*

- a) Discuss and review the estimates of County governments and make recommendations to the Senate;*
- b) Examine the Budget Policy Statement presented to the Senate;*
- c) Examine and report on the Budget allocated to constitutional commissions and independent offices*
- d) Examine bills related to the Counties;*
- e) Examine the Budget, including the Division of Revenue Bill; and*
- f) Examine and consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance, monetary policies and public debt, trading activities and commerce, tourism, investment and divestitures policies, planning and development policy.*

Mr. Speaker, Sir

The Committee on Finance, Commerce and Budget was constituted by the House on Thursday 13th March 2014 during the Second Session of the Eleventh (11th) Parliament and comprises of the following members:

1. The Hon. Sen. Billow Kerrow, MP. **-Chairperson**
2. The Hon. Sen. Peter Ole Mositet, MP. **-Vice-Chairperson**
3. The Hon. Sen. G. G. Kariuki, EGH, MP.
4. The Hon. Sen. Moses Wetang'ula, EGH, MP.
5. The Hon. Sen. Beatrice Elachi, CBS, MP.
6. The Hon. Sen. Mutahi Kagwe, EGH, MP.
7. The Hon. Sen. Boni Khalwale, MP.
8. The Hon. Sen. (Prof.) Peter Anyang' Nyong'o, EGH, MP.
9. The Hon. Sen. (Dr.) Zipporah Kittony, MP.

10. The Hon. Sen. James Mungai, MP.
11. The Hon. Sen. Catherine Mukiite Nabwala, MP.
12. The Hon. Sen. Mutula Kilonzo Junior, MP.
13. The Hon. Sen. (Prof.) John Lonyangapuo, CBS, MP.
14. The Hon. Sen. Paul Njoroge Ben, MP.
15. The Hon. Sen. (Dr.) Wilfred Machage, MGH, MP.
16. The Hon. Sen. (Dr.) Agnes Zani, MP

Mr. Speaker, Sir,

This House received the Public Audit Bill 2014 with amendments from the National Assembly and subsequently tabled in the House and committed to the Standing Committee on Finance, Commerce and Budget for consideration pursuant to Standing Order 130, where it stipulates the Committal of Bills to Committees and public participation, among other provisions.

Mr. Speaker, Sir,

The Committee at its sittings of 13th and 14th May, 2015 held deliberations on the Public Audit Bill, 2014, and noted the following pertinent issues:

1. That the Public Audit bill, 2014 was passed by the National Assembly, with amendments on 2nd April, 2015; and,
2. That the Bill has constitutional timelines and the Speaker subsequently committed the Bill to the Committee, for examination and scrutiny, and to facilitate timely processing of the Bill.

In addition, the Committee made the following key observations from the Bill in its present form and content:

- (a) It establishes Office of the Auditor General as body corporate and which shall replace the existing Kenya National Audit Office- Clause 4;
- (b) It provides for the convening of a selection committee for consideration of applicants for appointment as Auditor-General-Clause 11(5);
- (c) It creates a position of Senior Deputy Auditor-General who shall be the accounting officer of the Office of the Auditor General -Clause 14 (1);

- (d) It establishes the Audit Advisory Board with a general function of advising the Auditor General, among others - Clauses 24- 27;
- (e) It defines the audit process and types of audit- Clauses 28-39;
- (f) Defines the time limit within which Parliament or relevant County Assembly should debate and consider the report of the Auditor-General- Clause 48 (1)(2); and,
- (g) Outlines the code of conduct for the officers of the Office of the Auditor-General Clause 53-58.

Mr. Speaker, Sir,

The Committee looked at and compared practices in other countries including Tanzania, South Africa, United Kingdom and United States of America where the independence of this critical office as the auditor and protector of public funds are properly legislated for and anchored in relevant laws.

The import of these comparative analyses is to ensure the proper management of public resources and enhance fiduciary management and oversight in line with the Constitution and relevant supporting laws once this Bill is enacted.

Mr. Speaker, Sir,

The Committee proposes to move some appropriate amendments to the Bill in clauses 1, 32(1) 39 (1), 41 (2) (e), 47 (1) and sub clauses with a view to improving the Bill.

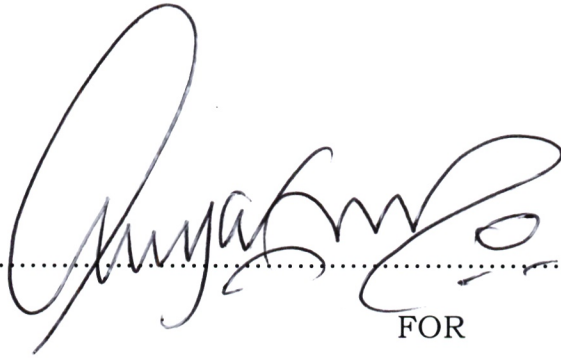
Mr. Speaker, Sir,

The Committee thanks the Offices of the Speaker and Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Chairperson of the Committee also takes this opportunity to thank all Members of the Committee for their patience, sacrifice and commitment to public service, which enabled the Committee complete the assigned task within the stipulated time.

Further, the Committee acknowledges the non-state actors and members of the public who expressed interest in the Bill and submitted memoranda for consideration by the Committee.

Mr. Speaker Sir, It is now my pleasant duty and privilege, on behalf of the Standing Committee on Finance, Commerce and Budget, to present to the Senate, this Report of the Committee on the Public Audit Bill, 2014 (National Assembly Bill No. 38 of 2014).

Signed



FOR

CHAIRPERSON,

STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET

Date: 14th May, 2015

CHAPTER ONE

INTRODUCTION

The principle object of the Bill is to establish the Office of the Auditor-General as outlined in Article 229 of the Constitution of Kenya, 2010. It establishes the Office as a corporate legal entity capable of suing and being sued; acquiring, safeguarding, holding, charging and disposing of moveable and immovable property; and doing or performing all such acts for the proper discharge of its function in accordance with Article 253 of the Constitution.

The Bill provides for the mandate, functions and powers of the Office of the Auditor-General. It is divided into ten (10) parts and a schedule for an oath for affirmation to the Office of the Auditor General. It also establishes an Audit Advisory Board and the principle role of the Board is to advise the Auditor-General on the exercise of his/her powers, recruit senior managers of the office, review and make recommendations on budget estimates of the office, review the recommendations of the audit committee among others.

Some of the key observations from the Committee on the Bill in its present form and content includes:

- (a) It establishes Office of the Auditor General as body corporate and which shall replace the existing Kenya National Audit Office- Clause 4
- (b) It provides for the convening of a selection committee for consideration of applicants for appointment as Auditor-General-Clause 11(5).
- (c) It creates a position of Senior Deputy Auditor-General who shall be the accounting officer of the Office of the Auditor General -Clause 14 (1)
- (d) It establishes Audit Advisory Board with a general function of advising the Auditor General, among others - Clause 24- 27
- (e) It defines the audit process and types of audit- Clauses 28-39
- (f) Defines the time limit within which Parliament or relevant County Assembly should debate and consider the report of the Auditor-General-Clause 48 (1)(2).

- (g) Outlines the code of conduct for the officers of the Office of the Auditor-General Clause 53-58

International practices within and outside the region provide lessons and best practices in the auditing of public resources and management. It helps to offers appropriate legislative responses in a fast evolving information and technology (IT) based and dynamic fiscal environment in line with fiscal responsibility principles of the Constitution and financial objectives of our key policy documents. Some of these countries include Tanzania, South Africa, the United Kingdom and the United States of America where the independence of these critical offices as the auditor and protector of public funds are properly anchored in relevant laws. Below are the key highlights of case studies on public audit systems in the mentioned countries:

1. **Tanzania** where there is a Controller and Auditor General who is responsible for public sector auditing. The Public Audit Act, 2008 provides for the powers, the functions and responsibilities of the Controller and Auditor-General. Similar to the Kenyan case, the Office is independent from control of any person.
2. **South Africa.** There is an Auditor-General Office set in line with Chapter 9 of South African Constitution. There exists Public Audit Act which outlines the powers, function, and appointment process of the Auditor-General through Parliament just like the case in Kenya. The Auditor-General produces audit reports on all government departments, public entities, and municipalities every year.
3. **United Kingdom.** There exists the Comptroller and Auditor General (CAG) who is in charge of the National Audit Office (NAO) of the United Kingdom. The Controller and Auditor-General scrutinizes public spending on behalf of Parliament and reports to Parliament. However, the Controller and Auditor-General is independent from the control of Parliament or anybody. The major role of the CAG is to supervise the accounting and the financial reporting of public sector accounts. There is no written Constitution in the UK; however the Office of the CAG is established by an Act of Parliament known as the Government Resources and Accounts Act. The Auditor General is appointed by Her Majesty, the Queen.

4. **United States of America (USA).** There exists a Government Accountability Office (GAO) which is an independent agency responsible for auditing the public sector accounts. The office was initially established as the Government Accounting Office by the Budget and Accounting Act, 1921. The office is headed by the Comptroller General of the US. This is a professional and a non-partisan position in the government and the individual is usually appointed by the President for a 15- year term which is non-renewable.

The import of these is to ensure the proper management of public resources and enhance fiduciary management and oversight in line with Constitution and relevant supporting laws once this Bill is enacted.

CHAPTER TWO

SUBMISSIONS FROM STAKEHOLDERS AND PUBLIC HEARING

Pursuant to Standing Order 130 of the Senate and Article 118 of the Constitution, the Committee also facilitated public participation by engaging the general public and key stakeholders, including the Auditor General, on the content of the Bill. Among the main observations, both from the oral and written submissions include the need to enhance the independence of the Office of the Auditor-General, provision of timelines on audit reports as well as the need to properly audit security projects and investments.

The Committee received written memoranda addressing different clauses of the Bill. In that Regards, the Auditor General submitted that:

1. **Clause 19 of the Bill** does not reinforce the Auditor-General's financial autonomy thereby subjecting his/her Office to limitations in terms of allocation of resources. The National Assembly should therefore decide on the budget estimates for the Office prior to the consideration of the Budget Policy Statement;
2. **Clause 26 of the Bill** expands the work of the Audit Advisory Board outside the advisory function and therefore portends a conflict of roles between the Office of the Auditor-General and the Board. We therefore recommend that the Board's role should be confined to advisory to safeguard the independence of the Auditor-General;
3. **Clause 30 of the Bill** is a bit ambiguous on the time of tabling of the report and we recommend clarity on the matter so that the Auditor-General presents the findings of the report minutes after it is tabled. This will satisfy members' and public interest;
4. **Clause 59 of the Bill** proposes sanctions that are draconian and will intimidate auditors in the course of their work. We therefore recommend that officers who commit an offence be disciplined in line with the Code of Ethics of the profession and where necessary criminal proceedings preferred against them.

In addition, a Member of the Institute of Certified Public Accountants of Kenya (ICPAK), , submitted and proposed amendments through a memorandum on various clauses in the Bill which is herein provided as an annexed.

CHAPTER THREE

COMMITTEE OBSERVATIONS

The Committee made the following observed the following salient and pertinent issues raised as far as this Bill is concerned. Among them includes:

- (a) Public Audit Fund- The Bill proposes in Clause 40(2) the retention (not to be paid into the Consolidated Fund) receipts, earnings or accruals of the Office of the Auditor-General in line with Article 206(1) of the Constitution. This is necessary to promote financial independence of the Office. However, there is need to create Public Audit Fund into which these monies shall be paid into; and,
- (b) Chairperson of the Selection Committee- the Bill in Clause 11 provides that there shall be established a selection panel for the recruitment of the Auditor-General. The Bill does not provide for the Chairperson of such a panel;
- (c) The Audit process for the Auditor-General financial statements is provided for in Article 226(4) of the Constitution. It is also important to include other areas of audit by external auditors such as processes audit, systems audit to enhance performance and service delivery against set objectives;
- (d) The matters under which the Auditor-General is compelled to prepare a special audit report should not be subject to the auditor's own timeline or discretion and that the timeline for submitting the special report should be provided clearly.

COMMITTEE RECOMMENDATIONS

Arising from the Committee's interaction with the stakeholders and its own deliberation, the following amendments are being proposed for consideration by the House at the committee Stage:

- (a) Amend Clause 11 by adding a new Clause 11(5) "The Chairperson of the selection committee convened under sub-clause (5) shall be selected from among members of the selection panel. **Justification:** This is to protect the independence and sanctity of the selection process of the office holder;
- (b) Amend Clause 39 by deleting Clause 39(1) and renumbering the sections accordingly. **Justification:** to provide the Auditor General with freedom necessary to establish if public money was applied to the purpose intended, and whether or not public money has been applied lawfully and in an effective way;
- (c) Amend Clause 32(1) by deleting the word " may" immediately before the word "be" and replacing therefore with the word " shall" to read the clause as follows: " The final report by an internal auditor which has been deliberated on and adopted by an audit committee of a State Organ or public entity, Shall be copied to the Auditor-General. **Justifications:** The use of the word "may" does not obligate the State Organ or public entity to copy the report to the Auditor-General;
- (d) Amend Clause 41 (2) (e) by inserting the following words "including statements on processes and system audit immediately after the word "Auditor-General". **Justification:** Ensure compliance; and,
- (e) Amend Clause 47 (1) by deleting the following words "in accordance with the protocols developed in the Regulations" and replacing with the following words "not later than three weeks or agreed timeline in writing with the Auditor General if the scope of the special audit demands otherwise". **Justification:** The Bill should provide for timelines within which special audits are submitted.

ANNEXES

Annex 1: Minutes

Annex 2: Submissions from Auditor General

Annex 3: Submissions from a member of the Public

**MINUTES OF THE 114TH SITTING OF THE STANDING COMMITTEE ON FINANCE,
COMMERCE AND BUDGET HELD AT COUNTY HALL, GROUND FLOOR BOARD
ROOM ON THURSDAY, 14TH MAY, 2015 AT 9.30 AM**

PRESENT

- | | |
|--------------------------------|-----------------------|
| 1. Sen. Peter Ole Mositet | -Vice Chairman |
| 2. Sen. Mutula Kilonzo Jnr. | -Member |
| 3. Sen. Zipporah Kittony | -Member |
| 4. Sen. (Dr.) Wilfred Machage | -Member |
| 5. Sen. Moses Wetangula | -Member |
| 6. Sen. (Prof.) Anyang Nyong'o | -Member |

ABSENT WITH APOLOGY

- | | |
|-----------------------------------|------------------|
| 1. Sen. Billow Kerrow | -Chairman |
| 2. Sen. Mungai James | -Member |
| 3. Sen. Paul Njoroge Ben | -Member |
| 4. Sen. (Dr.) Boni Khalwale | -Member |
| 5. Sen. Catherine Mukiite | -Member |
| 6. Sen. Mutahi Kagwe | -Member |
| 7. Sen. G.G. Kariuki | -Member |
| 8. Sen. Beatrice Elachi | -Member |
| 9. Sen.(Dr.) Agnes Zani | - Member |
| 10. Sen. (Prof.) John Lonyangapuo | -Member |

IN ATTENDANCE

- | |
|--------------------------|
| 1. Mr. Victor Bett |
| 2. Mr. Mwaniki Gichohi |
| 3. Mr. Gorod Abdi |
| 4. Ms. Josphine Kusyinyi |
| 5. Mr. Chelang'a Maiyo |

SENATE SECRETARIAT

- | |
|------------------------------|
| -Committee Clerk |
| -Parliamentary Budget Office |
| -Parliamentary Budget Office |
| -Legal Counsel Senate |
| -Research and Policy Analyst |

MIN. NO. 137/2015**PRELIMINARIES**

The chairperson called the meeting to order at 9.45 a.m., followed by a word of prayer.

MIN. NO. 138/2015 ADOPTION OF THE AGENDA

Members adopted the agenda of the sitting after it was proposed by Sen. Zipporah Kittony and seconded by Sen. (Prof.) Anyang' Nyong'o

The Chairperson then proceeded and invited all members to the meeting.

MIN. NO. 139/2015 CONFIRMATION OF PREVIOUS MINUTES

Minutes of the 113th sitting were confirmed as having been proposed by Sen. Mutula Kilonzo Jnr. and seconded by Sen. (Dr.) Wilfred Machage.

**MIN. NO. 140/2015 CONSIDERATION OF THE COMMITTEE REPORT ON THE PUBLIC
PROCUREMENT AND ASSET DISPOSAL BILL, 2014 (NATIONAL
ASSEMBLY BILL NO. 40 OF 2014)**

The Committee debated and deliberated on the draft report for onward submission to the House for consideration in the special sitting.

The Chairman of the committee requested members on their concurrence of the recommendations in the draft report made in the public hearing and views given by the committee members.

The Committee Members made the following conclusions and recommendations:

The Committee having deliberated on the Public Procurement and Asset disposal Bill, 2014 proposed the following amendments:

i. by inserting the following new sub-clause in clause 33

33 (h) Ensure that same criteria for promotion of citizen contractors when competing for a tender contract with foreign tenderers at national level be replicated at the county level so that the local contractors are also preferentially considered in awards of tenders in their respective home counties.

Justification: To further entrench and promote equity in procurement

ii. inserting the following new sub-clause in clause 126

126 (6) in evaluation of all tenders by public entities, both the financial and technical capability of the tenderer shall be given equal weights with respect to aspects scores.

Justification: To ensure that neither financial capacity nor technical capability outweighs the other in awarding tenders and thereby promotes fairness

- iii. Deletion of the number 2014 in the title of the bill and in Clause 1 and replace it with 2015.

Justification: To make correct reference to the year when the Act is enacted.

- iv. In Clause 43(5), deletion of the word 'promises' and replacing it with the word 'premises'.

Justification: To correct the typographical error.

- iv. In Clause 84(1) of the bill be amended by deleting the words 'to the' appearing immediately after the word report and be replaced with the word 'of'. **Justification:** to correct the semantic error.

- v. In Clause 51 of the bill be amended by deleting the words 'and licensed' appearing immediately after the words "agents registered". **Justification:** to avoid professionals being licensed twice.

- vi. In Clause 165 of the bill be amended by deleting sub-clause (1). **Justification:** to correct the contradiction with clause 166.

The Committee members collectively agreed and adopted the report.

**MIN. NO. 141/2015 CONSIDERATION OF THE COMMITTEE REPORT ON THE PUBLIC
AUDIT BILL, 2014 (NATIONAL ASSEMBLY BILL NO.38 OF 2014)**

The Committee debated and deliberated on the draft report for onward submission to the House for consideration in the special sitting.

The Chairman of the committee requested members on their concurrence of the recommendations in the draft report made in the public hearing and views given by the committee members.

The Committee Members made the following conclusions and recommendations:

Arising from the Committee's interaction with the stakeholders and its own deliberation, the following amendments are being considered for possible introduction to the House at the committee Stage:

- (a) Amend Clause 11 by adding a new Clause 11(5) "The Chairperson of the selection committee convened under sub-clause (5) shall be selected from among members of the selection panel.

Justification: This is to protect the independence and sanctity of the selection process of the office holder.

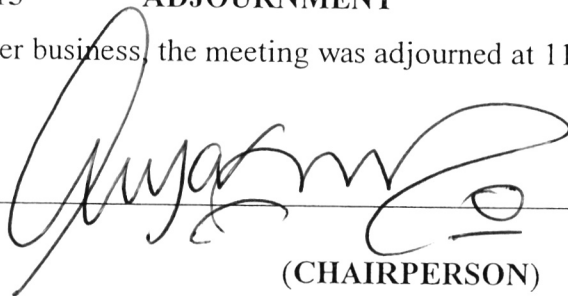
- (b) Amend Clause 39 by deleting Clause 39(1) and renumbering the sections accordingly.
Justification: to provide the Auditor General with freedom necessary to establish if public money was applied to the purpose intended, and whether or not public money has been applied lawfully and in an effective way.
- (c) Amend Clause 32(1) by deleting the word “ may” immediately before the word “be” and replacing therefore with the word “ shall” to read the clause as follows: “ The final report by an internal auditor which has been deliberated on and adopted by an audit committee of a State Organ or public entity, Shall be copied to the Auditor-General. Justifications: The use of the word “may” does not obligate the State Organ or public entity to copy the report to the Auditor-General.
- (d) Amend Clause 41 (2) (e) by inserting the following words “including statements on processes and system audit immediately after the word “Auditor-General”. **Justification:** Ensure compliance
- (e) Amend Clause 47 (1) by deleting the following words “in accordance with the protocols developed in the Regulations” and replacing with the following words “not later than three weeks or agreed timeline in writing with the Auditor General if the scope of the special audit demands otherwise”. **Justification:** The Bill should provide for timelines within which special audits are submitted.

The Committee members collectively agreed and adopted the report.

MIN. NO. 142/2015 ADJOURNMENT

There being no other business, the meeting was adjourned at 11.28am.

SIGNED



(CHAIRPERSON)

DATE

14th May, 2015

**MINUTES OF THE 113TH SITTING OF THE STANDING COMMITTEE ON FINANCE,
COMMERCE AND BUDGET HELD AT COUNTY HALL, MINI CHAMBER ON
WEDNESDAY, 13TH MAY, 2015 AT 9.00 AM**

PRESENT

- | | |
|--------------------------------|-----------------------|
| 1. Sen. Peter Ole Mositet | -Vice Chairman |
| 2. Sen. Mutula Kilonzo Jnr. | -Member |
| 3. Sen. Zipporah Kittony | -Member |
| 4. Sen. Paul Njoroge Ben | -Member |
| 5. Sen. (Dr.) Wilfred Machage | -Member |
| 6. Sen. (Dr.) Boni Khalwale | -Member |
| 7. Sen. Catherine Mukiite | -Member |
| 8. Sen. (Prof.) Anyang Nyong'o | -Member |

ABSENT WITH APOLOGY

- | | |
|----------------------------------|------------------|
| 1. Sen. Billow Kerrow | -Chairman |
| 2. Sen. Mungai James | -Member |
| 3. Sen. Mutahi Kagwe | -Member |
| 4. Sen. G.G. Kariuki | -Member |
| 5. Sen. Beatrice Elachi | -Member |
| 6. Sen. Moses Wetangula | -Member |
| 7. Sen.(Dr.) Agnes Zani | - Member |
| 8. Sen. (Prof.) John Lonyangapuo | -Member |

IN ATTENDANCE

- | |
|-------------------|
| 1. Waweru Njoroge |
| 2. Kennedy Mogeni |
| 3. Kinya Mogaka |
| 4. Claudia Gakuru |

MEMBERS OF THE PUBLIC

- | |
|---|
| -Member of the Public |
| -Member of the Procurement Practitioners |
| -Kenya Association of Women Business Owners |
| -Kenya Association of Women Business Owners |

SENATE SECRETARIAT

- | | |
|------------------------|------------------------------|
| 1. Mr. Victor Bett | -Committee Clerk |
| 2. Mr. Mwaniki Gichohi | -Parliamentary Budget Office |
| 3. Mr. Gorod Abdi | -Parliamentary Budget Office |

- | | |
|--------------------------|------------------------------|
| 4. Mr. Thomas Ogwel | -Parliamentary Budget Office |
| 5. Mr. Robert Ng'etich | -Parliamentary Budget Office |
| 6. Ms. Josphine Kusyinyi | -Legal Counsel Senate |
| 7. Mr. Chelang'a Maiyo | -Researcher |

MIN. NO. 131/2015 PRELIMINARIES

The chairperson called the meeting to order at 9.25 a.m., followed by a word of prayer.

MIN. NO. 132/2015 ADOPTION OF THE AGENDA

Members adopted the agenda of the sitting after it was proposed by Sen. Zipporah Kittony and seconded by Sen. Catherine Mukiite.

The Chairperson then proceeded and invited the public to share the views on the two bills

MIN. NO. 133/2015 PUBLIC HEARING ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL, 2014 (NATIONAL ASSEMBLY BILL NO. 40 OF 2014)

Presentation by Kennedy Mogeni - Member of the Procurement Practitioners;

The proposal was that;

- The appointment of a procuring or asset disposal agent under subsection (2) shall be done only from amongst a list of agents registered and licensed by the Authority and should be done by a professional body. *(Reference made to article 51(3) of the Act)*
- All procurement and asset disposal planning shall reserve a minimum of thirty per cent of the budgetary allocations for enterprises owned by women, youth, persons with disabilities and other **disadvantaged**. The appropriate definition of a disadvantaged group should be clearly defined. *(Reference made to article 53(6) of the Act)*
- The head of procurement function of a procuring entity shall, alongside the report to the evaluation committee as secretariat comments, review the tender evaluation report and provide a signed professional opinion to the accounting officer on the procurement or asset disposal proceedings. Therefore the word “to” be replaced with the word “of”. *(Reference made to article 84(1) of the Act)*

- There's a contradiction between two articles in the Bill, that subject to prescribed provisions, an accounting officer of a procuring entity may dispose assets by a method which may include any of the following —
 - (a) transfer to another public entity or part of a public entity, with or without financial adjustment;
 - (b) sale by public tender;
 - (c) sale by public auction;
 - (d) sale to employees of a procuring entity;**
 - (e) trade-in;
 - (f) waste disposal management; or
 - (g) as may be prescribed.
- The other article states that an accounting officer who, pursuant to artificial valuation, **disposes off assets to an employee of the public entity or a member of a board or committee of the public entity commits an offence.** (*Reference made to article 165(1) (d) and article 166(2) of the Act respectively*)



Presentation by Kinya Mogaka - Kenya Association of Women Business Owners;

The proposal was that;

- When a person submitting the successful tender is notified under subsection (1), the accounting officer of the procuring entity shall also notify in writing all other persons submitting tenders that their tenders were not successful, disclosing the successful tenderer as appropriate and reasons thereof. The concern was that there is no timeline by which the tenderers will be informed and therefore a timeline should be included. (*Reference made to article 87(3) of the Act*)

MIN. NO. 134/2015 PUBLIC HEARING ON THE PUBLIC AUDIT BILL, 2014 (NATIONAL ASSEMBLY BILL NO.38 OF 2014)

Presentation by Waweru Njoroge;

The proposal was that, any impediment on the way of the Auditor General should be cleared and that leaks on staff from the Auditor General's Office should be clearly put such that there are no loopholes for the Auditor General to be compromised.

MIN. NO. 135/2015 BRIEF BY THE BUDGET OFFICE ON THE PUBLIC AUDIT BILL, 2014 (NATIONAL ASSEMBLY BILL NO.38 OF 2014) & THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL, 2014 (NATIONAL ASSEMBLY BILL NO. 40 OF 2014)

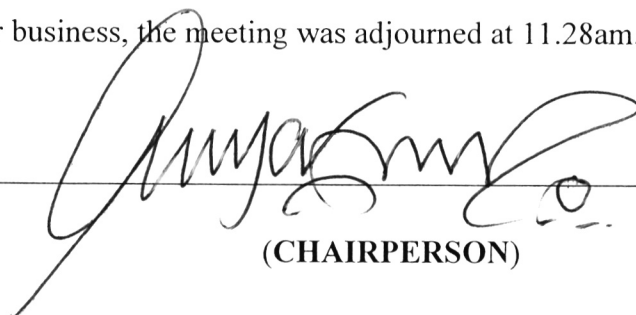
The Members of the Committee were taken through both Bills and had the following views;

- That the Public Procurement and Disposal Bill shouldn't be open but priority should be given to locals of a particular County first.
- That the Public Procurement and Disposal Bill should have the redistribution of the 30% on the disadvantaged groups be done equally such that each group would benefit equally.
- That the Public Audit Bill should be able to make the office of the Auditor General deliver without being compromised.
- That the Public Audit Bill should address the timelines on special audits on particular issues referred to the office of the Auditor General.
- That the Public Audit Bill should compel the Auditor General to embrace technology so as to curb irregularities in systems on time.
- That the Public Audit Bill should be able to address the insulation of the budget of the Auditor General since it's subject to the Cabinet Secretary National Treasury yet the Auditor General is expected to oversight the National Treasury at the same time.

MIN. NO. 136/2015 ADJOURNMENT

There being no other business, the meeting was adjourned at 11.28am.

SIGNED



(CHAIRPERSON)

DATE



ANNEX 2



Telephone: +254-20-342330
Fax: +254-20-311482
E-Mail: oag@oagkenya.go.ke
Website: www.kenao.go.ke

REPUBLIC OF KENYA



P.O. Box 30084-00100
NAIROBI

OFFICE OF THE AUDITOR-GENERAL

Promoting Accountability in the Public Sector

Hon. Jeremiah Nyegenye CBS
Clerk of the Senate,
Parliament Building
P.O Box 41842 – 00100,
NAIROBI.

13 May 2015

Dear *Clode*

MEMORANDUM TO THE COMMITTEE ON FINANCE, COMMERCE AND BUDGET ON THE PUBLIC AUDIT BILL, 2014

The Office of the Auditor-General considers the Senate a worthy partner in promoting good governance and accountability in the public sector. This role is critical in safeguarding public resources that public officers are entrusted with. The Public Audit Bill, 2014 which is currently before the Senate, is one major step of strengthening the Office of the Auditor-General's operations in promoting accountability in the public sector.

My Office has scrutinised the Bill and identified key areas that we feel will hamper the operations of the Office in carrying out its constitutional mandate. Such areas are highlighted below for amendments:

Budget estimates

Clause 19 of the Bill: The Clause does not reinforce the Auditor-General's financial autonomy thereby subjecting his/her Office to limitations in terms of allocation of resources. National Assembly should therefore decide on the budget estimates for the Office prior to the consideration of the Budget Policy Statement.

Audit Advisory Board

Clause 26 of the Bill: This Clause expands the work of the Audit Advisory Board outside the advisory function and therefore portends a conflict of roles between the Office of the

Auditor-General and the Board. We therefore recommend that the Board's role should be confined to advisory to safeguard the independence of the Auditor-General.

Tabling of the Audit report

Clause 30 of the Bill: The Clause is a bit ambiguous on the time of tabling of the report and we recommend clarity on the matter so that the Auditor-General presents the findings of the report minutes after it is tabled. This will satisfy members' and public interest.

Offences and sanctions

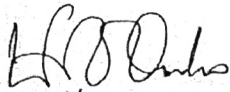
Clause 59 of the Bill: The proposed sanctions in this Clause are draconian and will intimidate auditors in the course of their work. We therefore recommend that officers who commit an offence be disciplined in line with the Code of Ethics of the profession and where necessary criminal proceedings preferred against them.

These are some of the key areas we have identified in the Bill and we humbly request the Committee to amend them to enhance the independence of the Office. Detailed justifications of various Clauses we propose amendments on are as per the annex.

We also request your good Committee to accord us a meeting for further elaboration on a date convenient for the Committee.

Thank you for your continued support.

Yours sincerely



Edward R.O. Ouko, CBS

Auditor-General

Encl.



Office of the Auditor-General

Promoting Accountability in the Public Sector

Proposed amendments to the Public Audit Bill, 2014, submitted to the Senate Committee on Finance, Commerce and Budget

CLAUSE	Public Audit Bill, 2014	Amendments	Justification
Clause 19 Budget estimates and plans of the Office of the Auditor General	(2) The budget estimates of revenue and expenditure referred to under sub-section (1) shall be submitted to the Cabinet Secretary responsible for finance not later than the 30 th March each year for review and submission to the National Assembly in accordance with Article 221 of the Constitution, and National Assembly shall, pursuant to Article 249 (3) of the Constitution, allocate adequate funds to the office of the Auditor General.	Delete to read: (2) (A) <i>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</i>	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. Parliament as the

		<p><i>Office of the Auditor General, not later than 30th November each year</i></p> <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>primary oversight institution should be the primary decider on budget estimates and by extension the level of intervention it requires from 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</p>
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			capped by National Treasury for reasons other than fiscal austerity. Parliament therefore should shield the office against such possibilities.
		Add Clause 20 (3) <i>Funds meant for the recurrent expenditure of the Auditor General under this section shall be disbursed to the office in equal quarterly installments.</i>	This is to ensure that operations of the Office, which sometimes are hampered by releases of exchequer are not unduly interrupted if the Office is to respect the constitutional reporting deadline.
		Or delete “ <i>for review and submission</i> ” and replace with “ <i>for submission</i> ”	This will guarantee some level of independence to the Office. This is also the provision in

			Public Audit Act, 2003.
PART III - ESTABLISHMENT OF THE AUDIT ADVISORY BOARD			
Clause 26(1) Functions of the Audit Advisory Board	<p>26 (1) The principal function of the Auditor-General shall be to advise the Auditor-General on the exercise of his or her powers and performance of his or her function under the Constitution and this Act and shall, in particular but without prejudice comprise of the foregoing-</p> <ul style="list-style-type: none"> (a) Recruitment of senior managers into the office of the Auditor-General; (b) Develop, review and advise the organizational development issues; (c) Consider and approve the budget estimates and plans of the office of the Auditor-General; (d) Determine the remuneration and other terms of appointment of the staff of the Auditor-General in consultation with the Salaries and Remuneration Commission; (e) Give any advice that may be sought by the Auditor-General from time to time; and <p>on the exercise of his or her powers and performance of his or her function under the Constitution and</p>	<p>Proposed amendments: Delete: <i>“on the exercise of his or her powers and performance of his or her function under the Constitution and,”</i> to read 26 (1): <i>“The principal function of the Audit Advisory Board shall be to advise the Auditor-General subject to Article 10(1)(2) of this Act and shall, in particular but without prejudice comprise of the foregoing-</i></p> <p>b) Delete <i>“develop, review and”</i></p>	<p>26(1), as phrased gives room to potential interference with the provision of 10(1) unless the Clause is subordinated to 10(1)(2) accordingly. The Advisory Board is a creation of this Act and not the Constitution hence should be limited to the provisions of the Act. Hence this is to confine the Audit Advisory Board’s role to advisory to safeguard the independence of the Auditor-General. Advisory Board cannot develop or review but advise. This</p>

			would contradict the independence of the AG.
PART IV - AUDIT PROCESS AND TYPES OF AUDIT			
Clause 30 Certification audit process steps	6) Where an audit report has been tabled, the Speaker of the National Assembly shall invite the Auditor-General to present the report before the National Assembly.	<p>Delete "6" and replace with "7".</p> <p>Delete the entire sub clause 6 and replace with: <i>"Immediately the Auditor-General submits an audit report to National Assembly, the Speaker of the National Assembly shall invite the Auditor-General to present the report before a Committee of the Whole House."</i></p> <p>Insert sub-clause 8 to read: <i>"Immediately the Auditor-General submits a summarized audit report of the County</i></p>	Once a report is submitted, there will be a lot of MPs', public and media interests and giving the Auditor-General an opportunity to elaborate the findings of the report will set matters straight and add value to the process. Timely presentation of the report will also eliminate speculation and distortion of the contents of the report.

		<i>governments to the Senate, the Speaker of the Senate shall invite the Auditor-General to present the report before the Senate.”</i>	
Clause 35	Clause 35(3)	Insert new Clause 35 (3) to read: <i>“The Auditor-General shall conduct environmental audit to ascertain as to whether public money has been expended with due regard to the environmental impact of those expenditures.</i>	This is to ascertain whether public money has been expended effectively and that the actions of management do not impact the environment negatively. The inclusion of this provision in the Bill does not necessarily usurp NEMA’s mandate.
PART VIII - OFFENCES AND SANCTIONS			
Clause 59 Offences by officers of the office of the Auditor-General	(2)Any officer of the Office of the Auditor-General who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both.	Delete “shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not	This is draconian

		exceeding five years, or to both.” To read: <i>(2) Any officer of the Office of the Auditor-General who commits an offence under subsection (1), including disclosure of unauthorized information, 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>	
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CLAUSES/SUB-CLAUSES	AMENDMENTS PROPOSED	RATIONALE FOR THE AMENDMENTS PROPOSED
15(2)	A person shall be qualified for recruitment and appointment as the Senior Deputy Auditor-General to the Office if that person (INSERT) <i>meets the minimum qualifications for appointment as the Auditor-General as stipulated under Section 5(1) of the Act.</i> DELETE provisions under Clauses 15(2) a, b, c & d.	It makes sense for a person who may be called upon to act as Auditor-General in case of a vacancy in the Office to have the same job specifications as the Auditor-General.
PART III	DELETE "ESTABLISHMENT OF THE AUDIT ADVISORY BOARD" and replace with ESTABLISHMENT OF THE OFFICE OF THE AUDITOR GENERAL [OAG] BOARD	The phrase "Audit Advisory Board" is misleading because the board envisaged shall be advising the Auditor General not on audit but financial, management and governance issues.
25(1)	REPLACE "Audit Advisory Board" WITH Office of the Auditor General Board	AS ABOVE
25(3)	DELETE "The Auditor-General shall appoint a chairperson from among the persons under subsection (1) above and may co-opt two other members with the necessary expertise" AND REPLACE WITH <i>The Auditor-General shall be the chairperson to the Board.</i>	To create synergy in the Board by including the Auditor-General as the chairperson. Secondly, to reduce total allowances and expenses of the Board by excluding two other co-opted members because the Board as composed has sufficient relevant expertise.
26, 27 & 28	REPLACE "Audit Advisory Board" WITH Office of the Auditor General Board	AS ABOVE
27(1)(a)	DELETE "Recruitment of senior managers into the Office of the Auditor-General" AND REPLACE WITH <i>Recruitment, appointment, promotion and discipline of members of staff of the Office of the Auditor-General;</i>	To enhance good corporate governance by expanding the advisory functions of the Board to the Auditor-General.
27	INSERT CLAUSE 27(2) <i>The Board may delegate, in writing, with or without conditions, any of its functions under this section to any of its member(s) or to any officer, staff or committee of the Office of the Auditor-General.</i>	To speed up the process of decision making on matters within the remit of the Board through delegation.
27	INSERT CLAUSE 27(3) <i>The Auditor-General shall have regard to any advice given by the Board under this Act.</i>	To ensure that the advice given by the Board in which the Auditor General is the Chair and a member is binding on the Office.
74	INSERT A NEW CLAUSE 75 IMMEDIATELY AFTER CLAUSE 74 (1)	To improve clarity by restricting Section 74 (1) to repeal of Act No.12 of 2013 and the new Section 75 to savings and transition provisions
74(2)	REPLACE CLAUSE 74 (2) "Despite subsection (1)" WITH A NEW CLAUSE 75 (1) <i>Despite Section 74 (1)-</i>	AS ABOVE
74(3)	AND RETAIN PROVISIONS UNDER a, b, c d and e. CHANGE TO 75 (2) BUT RETAIN THE PROVISIONS.	AS ABOVE
74 (2)(e)	REPLACE CLAUSE 74 (2) (e) "the persons employed by the Kenya National Audit Office shall be transferred to the Office of the Auditor-General under this Act" WITH A NEW CLAUSE 75 (3) On the commencement of this Act-	To preserve the existing terms and conditions of service and pension rights of the present employees of the Kenya National Audit Office. This is consistent with the normal practice in the public service whenever there is a transition from an old to a new public body or entity. You may wish to refer to PART VII of Office of the Director of Public Prosecutions Act No. 2 of 2013 in this connection.
	(a) <i>all persons who immediately before the commencement of this Act were employed in the Kenya National Audit Office shall continue to be employed in the Office of the Auditor General;</i>	
	(b) <i>the terms and conditions of service, including the salary of a person referred to in sub-section 3(a), shall be no less favourable than those that applied to that person's office immediately before the commencement of this Act;</i>	
	(c) <i>there is no break or interruption in the employment of such a person because of the enactment of this Act;</i>	
	(d) <i>a person referred to in sub-section 3 (a) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he or she has continued to be such an officer, contributor or person during his or her service as an employee of the Office of the Auditor-General; and</i>	
	(e) <i>nothing in this Act affects the pension rights under the Pensions Act or any law under which those rights accrued or were accruing to that person.</i>	

74(2)(f)	<p>REPLACE CLAUSE 74 (2) (f) "a contract subsisting between the Kenya National Audit Office and another person before the commencement of this Act shall cease to exist within (30) days from the day of commencement of this Act; and" WITH A NEW CLAUSE 75 (1) (f) <i>a contract subsisting between the Kenya National Audit Office and another person before the commencement of this Act shall remain valid under this Act unless invalidated by a court of law;</i></p>	<p>To avoid unnecessary massive law suits if the existing contracts whether in respect of employment, service, procurement or technical assistance and cooperation becomes invalid within thirty days from the commencement of the Act as indicated in the bill.</p>
75[NEW]	<p>INSERT A NEW CLAUSE 75 (1) (h) <i>all property and assets of the Kenya National Audit Office before the commencement of this Act shall, on the commencement of the Act, remain vested in the Office of the Auditor-General subject to all interests, liabilities, obligations and trusts affecting the property.</i></p>	<p>To transfer legally the assets and liabilities of the Kenya National Audit Office to the successor Office.</p>
75[NEW]	<p>INSERT A NEW CLAUSE 75(1)(i) <i>any examination or audit instituted under the repealed Parts II, III, IV and V and Section 39 of the Public Audit Act, 2003 shall be continued as if instituted under this Act.</i></p>	<p>To protect the current on-going audits from legal challenges in future.</p>

11th May, 2015