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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

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

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

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

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| THE NATIONAL ASSEMBLY PAPERS LAID | |
| DATE: 14 NOV 2024 | DAY: Thursday |
| TABLED BY: | Hon. (CPA) Kuria Kironani (Chair, Finance & National Planning) |
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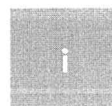
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PARLIAMENT BUILDINGS
NAIROBI

OCTOBER, 2024

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LIST OF ABBREVIATION

| | | |
|-------|---|---|
| MP | - | Member of Parliament |
| PFM | - | Public Finance Management |
| ICPAK | - | Institute of Certified Accountants of Kenya |
| IHRM | - | Institute of Human Resource Management |
| SRC | - | Salaries and Remuneration Commission |

ANNEXURES

Annexure 1: Adoption Schedule

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to submit memoranda on the Bill

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CHAIRPERSON'S FOREWORD

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

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

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

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

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

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

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

HON. CPA KURIA KIMANI, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ACKNOWLEDGMENT

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

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

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

On behalf of the Departmental Committee on Finance and National Planning and pursuant to Standing Order 199 (6), it is both a privilege and an honor to present to the House, the Report of the Departmental Committee on Finance and National Planning on its Consideration of the Public Audit (Amendment) Bill, 2024 (National Assembly Bills No. 4 of 2024). This report represents the culmination of rigorous deliberations, careful consideration of diverse viewpoints, and a commitment to ensure the Office of Auditor General operates under sound accountability policies while preserving its independence. The Committee trusts that this report will serve as a valuable resource for informed debate and decision-making by the members of this House.

CHAPTER ONE

1.0 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

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

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

1.2 MANDATE OF THE COMMITTEE

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

3. In executing its mandate, the Committee oversees the following government Ministries and Departments:

- i. State Department of National Treasury;
- ii. State Department of Economic Planning;
- iii. Commission on Revenue Allocation; and
- iv. Office of the Controller of Budget; and

1.3 COMMITTEE MEMBERSHIP

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

Chairperson

Hon. CPA Kuria Kimani, MP
Molo Constituency

UDA Party

Vice-Chairperson

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

UDA Party

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

Jubilee Party

Hon. Andrew Okuome, MP
Karachuonyo Constituency

ODM Party

Hon. David Mwalika Mboni, MP
Kitui Rural Constituency

Wiper Party

Hon. CPA. Joseph Oyula, MP
Butula Constituency

ODM Party

Hon. Joseph K. Makilap, MP
Baringo North Constituency

UDA Party

Hon. Umul Ker Kassim, MP
Mandera County

UDA Party

Hon. CPA Julius Rutto, MP
Kesses Constituency

UDA Party

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

Jubilee Party

Hon. Paul K. Biego, MP
Chesumei Constituency

UDA Party

Hon. Joseph Munyoro, MP
Kigumo Constituency

UDA Party

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

ODM Party

Hon. Mohamed S. Machele, MP
Mvita Constituency

ODM Party

Hon. George Sunkuyia, MP
Kajiado West Constituency

UDA Party

1.4 COMMITTEE SECRETARIAT

5. The following staff facilitates the Committee:

| | |
|--|-----------------------|
| Mr. Benjamin Magut | |
| Principal Clerk Assistant /Head of Secretariat | |
| Ms. Jennifer Ndeto | Mr. Salem Lorot |
| D/Director, Legal Service | Legal Counsel I |
| Mr. James M. Macharia | Ms. Peninnah Simiren |
| Media Relations Officer I | Legal Counsel II |
| Ms. Winfred Kambua | Mr. George Ndenjeshe |
| Clerk Assistant III | Fiscal Analyst III |
| Mr. Benson Kamande | Ms. Nelly W.N Ondieki |
| Clerk Assistant III | Research Officer III |
| Mr. Benson Muthuri | Ms. Joyce Wachera |
| Serjeant-At-Arms | Hansard Officer III |

CHAPTER TWO

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

2.1 BACKGROUND

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

2.2 SUMMARY OF LEGAL PROVISIONS

7. The principal object of the Bill is to amend the Public Audit Act, 2015 to align it with the Constitution following a declaration issued by the High Court (*in the case of Transparency International (TI) v Attorney-General & Auditor-General interested party, Africa Centre for Open Governance (Africog)...*² *interested party, Petition No. 388 of 2016*) that sections 4(2), 8, 12, 17(1), 18, 27, 40, 42, and 70 of the Public Audit Act 2015 are unconstitutional. Additionally, the National Assembly has expressed concern over the provision relating to the recruitment of the Auditor-General, where it was observed that the Act creates an undesirable vacuum between an existing holder of the office and an incoming one. It is, therefore, necessary in these circumstances to update the Act as proposed and improve the efficiency in discharging the Auditor-General's duties.
8. The salient provisions of the Bill are as follows:
- Clause 2 of the Bill contains amendments to definitions in alignment with the new proposals
 - Clause 6 of the Bill seeks to repeal section 8 of the Act following the declaration of section 8 as unconstitutional and replace with a new provision, setting out the administrative functions of the Auditor-General, *inter alia*—
 - developing an organizational structure and staff establishment for the Office of the Auditor-General;
 - recruiting and promoting qualified and competent staff to perform the Office's functions;
 - establishing and abolishing offices in the Office of the Auditor General;

- vi. appointing persons to hold or act in those offices and to confirm appointments; and
- vii. determining, in consultation with Salaries and Remuneration Commission, the remuneration and benefits of each member of staff.
- viii. Clause 8 of the Bill proposes to amend section 11 of the Act by providing for the conditions under which the position of the Auditor General shall fall vacant and the process of filling it for clarity.
- ix. Clause 9 of the Bill seeks to repeal section 14 and replace it with a section that clarifies the role of the Audit Advisory Board in development of the organizational structure by the Auditor-General.
- x. Clause 10 of the Bill seeks to amend section 15 of the Act by introducing the position of a Deputy Auditor-General to be recruited by the Auditor-General. This provision abolishes the position of Senior Deputy Auditor-General.
- xi. Clause 12 of the Bill seeks to amend section 17 of the Act by substituting the provisions of section 17(1) which was declared unconstitutional
- xii. Clause 17 of the Bill amends the Act by deleting section 25 and substituting there for a new section 25 redefining the establishment and composition of the Audit Advisory Board.
- xiii. Clause 18 of the Bill proposes to amend the Act by introducing a new section 27A setting out the functions of the Audit Advisory Board.
- xiv. Clause 27 of the Bill further proposes to amend the Act by introducing new sections 38A, 38B and 38C defining different types of audit including Citizen Accountability audits within the provisions of Article 229 (6) of the Constitution
- xv. Clause 30 of the Bill seeks to amend the Act by introducing a new section 41 A establishing a Fund to be funded from appropriated provisions of the Office of the Auditor General within the fiscal framework limits.

9. Other provisions of the bill

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

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

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

(b) It is mandatory unlike currently where the report may be copied to the Auditor-General.

(c) Inserts an additional cross-reference to Article 229(5) of the Constitution which provides, "The Auditor-General may audit and report on the accounts of any entity that is funded from public funds"

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

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

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

However, the Act does not contain the cross-referencing error since it refers to the correct provision (section 43) on the accounts of the Office of the Auditor-General. Section 44(1) provides the following: The accounting officer of the office of the Auditor-General shall submit the accounts of the office to the appointed auditor under section 43 within three months after the end of the financial year to which the accounts relate.
- xxv. Clause 33 of the Bill amends section 45 of the Act (Reporting by the appointed auditor). Auditor-General to publish and publicize the report (NB: Publish is not expressly provided for in the provision)
- xxvi. Clause 34 of the Bill amends section 46 of the Act (Debating and considering the report of appointed auditor) by replacing accounts with financial statements and Annual Reports with Audit Report
- xxvii. Clause 35 of the Bill amends section 48 of the Act (Accounts for audit). Clarifies that the Auditor-General may audit and report on the accounts of any entity that is funded or entrusted with public resources. The current provision is limited to public funds.
- xxviii. Clause 36 of the Bill amends section 49 of the Act (Special reports in the course of the annual audit of the accounts of State organs) by introducing the element of Auditor-General publishing the report. Increasing the period from 60 days to 3 months within which Parliament or relevant county assembly discusses a special report and introducing the aspect of Parliament or relevant county assembly issuing recommendations on the report (NB: In the Act, it provides for review of the report)
- xxix. Clause 37 of the Bill repeals section 50 of the Act providing for final audit reports on a State organ or public entity including national or county government's accounts.

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

CHAPTER THREE

3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION

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

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

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

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

(a) inviting submission of memoranda;

(b) holding public hearings;

(c) consulting relevant stakeholders in a sector; and

(d) consulting experts on technical subjects.

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

3.2 MEMORANDA RECEIVED ON THE BILL

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

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

Clause 6

Institute of Certified Accountants of Kenya (ICPAK)

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

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

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

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

Committee Observation

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

Hon. Oku Kunya

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

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

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

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

Committee Observation

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

Clause 8

The Bowmans

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

Committee Observation

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

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

New clause 12A

Institute of Certified Accountants of Kenya (ICPAK)

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

12. Acting Auditor-General

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

Committee Observation

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

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

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

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

Clause 10

Institute of Certified Accountants of Kenya (ICPAK)

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

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

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

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

Committee Observation

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

New Clause

23. Insert a new section immediately after section 11

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

- (a) a monthly pension equal to seventy per cent of the monthly salary of the entitled person's last monthly salary while in office.
- (b) a lump sum payment on retirement calculated as a sum equal to one year's salary paid for each term served in office.

(c) one four-wheel drive vehicle of an engine capacity not exceeding 3000 cc which shall be replaceable once every four years.

(d) a fuel allowance equal to fifteen per cent of the current monthly salary of the office holder.

(e) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the entitled person and the entitled person's spouse.

(f) the additional benefits set out as follows-

- i. one driver.
- ii. one personal assistant.
- iii. one housekeeper.
- iv. one senior support staff.
- v. one gardener.
- vi. one cleaner.

(g) Two-armed security guards shall be provided at request by the entitled person.

(h) Diplomatic passports for the entitled person and his spouse.

(i) Maintenance expenses for the vehicles provided pursuant to this Act.

(j) Access to the V.I.P. lounge at all airports within Kenya.

Committee Observation

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

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

Transparency International

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

Committee Observation

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

Clause 10

Institute of Certified Accountants of Kenya (ICPAK)

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

Committee Observation

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

Clause 17- The Bowmans

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

Committee Observation

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

Clause 17

The Transparency International Kenya

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

Committee Observation

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

Clause 17

Institute of Certified Accountants of Kenya (ICPAK)

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

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

Committee Observation

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

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

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

The Bowmans

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

Committee Observation

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

The Transparency International Kenya

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

Committee Observation

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

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

Clause 19

Institute of Certified Accountants of Kenya (ICPAK)

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

Committee Observation

The Committee agreed with the stakeholder.

The Transparency International Kenya.

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

Committee Observation

The Committee agreed with the stakeholder.

Clause 20

The Bowmans

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

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

Committee Observation

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

The Transparency International Kenya.

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

Committee Observation

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

Clause 21

The Transparency International Kenya.

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

Committee Observation

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

Clause 22

Institute of Certified Accountants of Kenya (ICPAK)

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

Committee Observation

The Committee agreed with the stakeholder.

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

Institute of Certified Accountants of Kenya (ICPAK)

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

Committee Observation

The Committee agreed with the stakeholder.

Clause 25

The Bowmans

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

Committee Observation

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

Clause 25

The Transparency International Kenya

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

Committee observation

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

Clause 25(b)

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

Committee Observation

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

Clause 27

Institute of Certified Accountants of Kenya (ICPAK)

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

Committee Observation

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

Clause 37

The Transparency International

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

Committee Observation

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

Clause 38

The Transparency International

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

Committee Observation

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

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

The Transparency International

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

Committee Observation

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

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

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

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

Clause 42- The Transparency International

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

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

Committee Observation

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

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

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

Clause 43

The Transparency International

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

Committee Observation

The Committee agreed with the stakeholder.

New clause

The Transparency International Kenya

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

Committee Observation

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

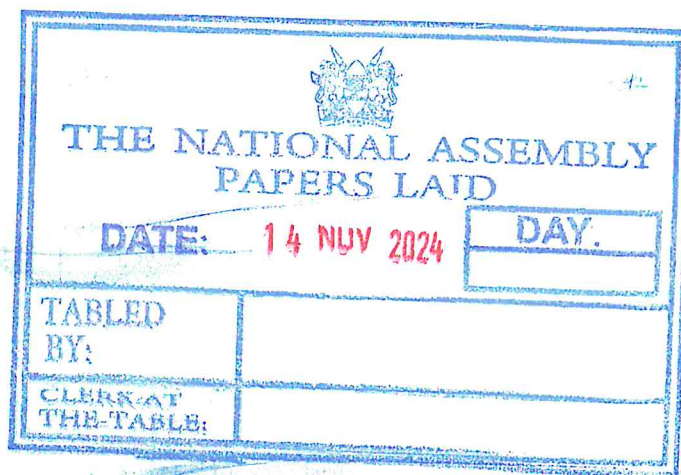
CHAPTER FOUR

4.0 COMMITTEE RECOMMENDATION

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

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

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



CHAPTER FIVE

5.0 SCHEDULE OF PROPOSED AMENDMENTS

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

CLAUSE 10

THAT, clause 10 of the Bill be amended—

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

Justification

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

CLAUSE 11

THAT, clause 11 of the Bill be amended—

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

Justification

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

NEW CLAUSE

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

Repeal of section 12
of No. 34 of 2015.

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

Justification

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

NEW CLAUSE

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

Repeal of section 18
of No. 34 of 2015.

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

Justification

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

CLAUSE 17

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

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

Justification

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

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

NEW CLAUSE

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

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

Justification

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

CLAUSE 17

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

Justification

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

CLAUSE 19

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

Justification

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

NEW CLAUSE

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

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

Justification

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

NEW CLAUSE

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

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

Justification

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

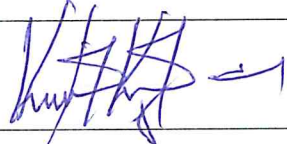
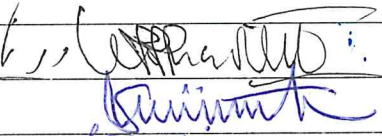
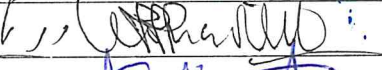
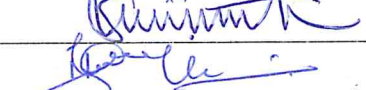

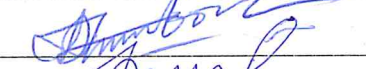



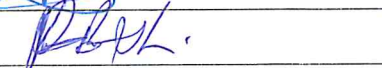
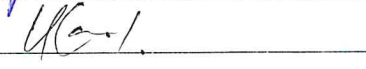


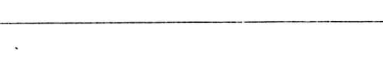



**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024**

**DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.
ADOPTION LIST**

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

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

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

