

SPECIAL ISSUE

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



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2024

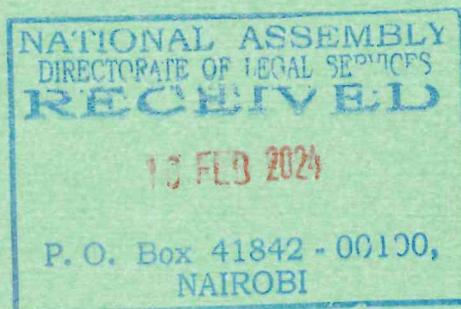
NAIROBI, 2nd February, 2024

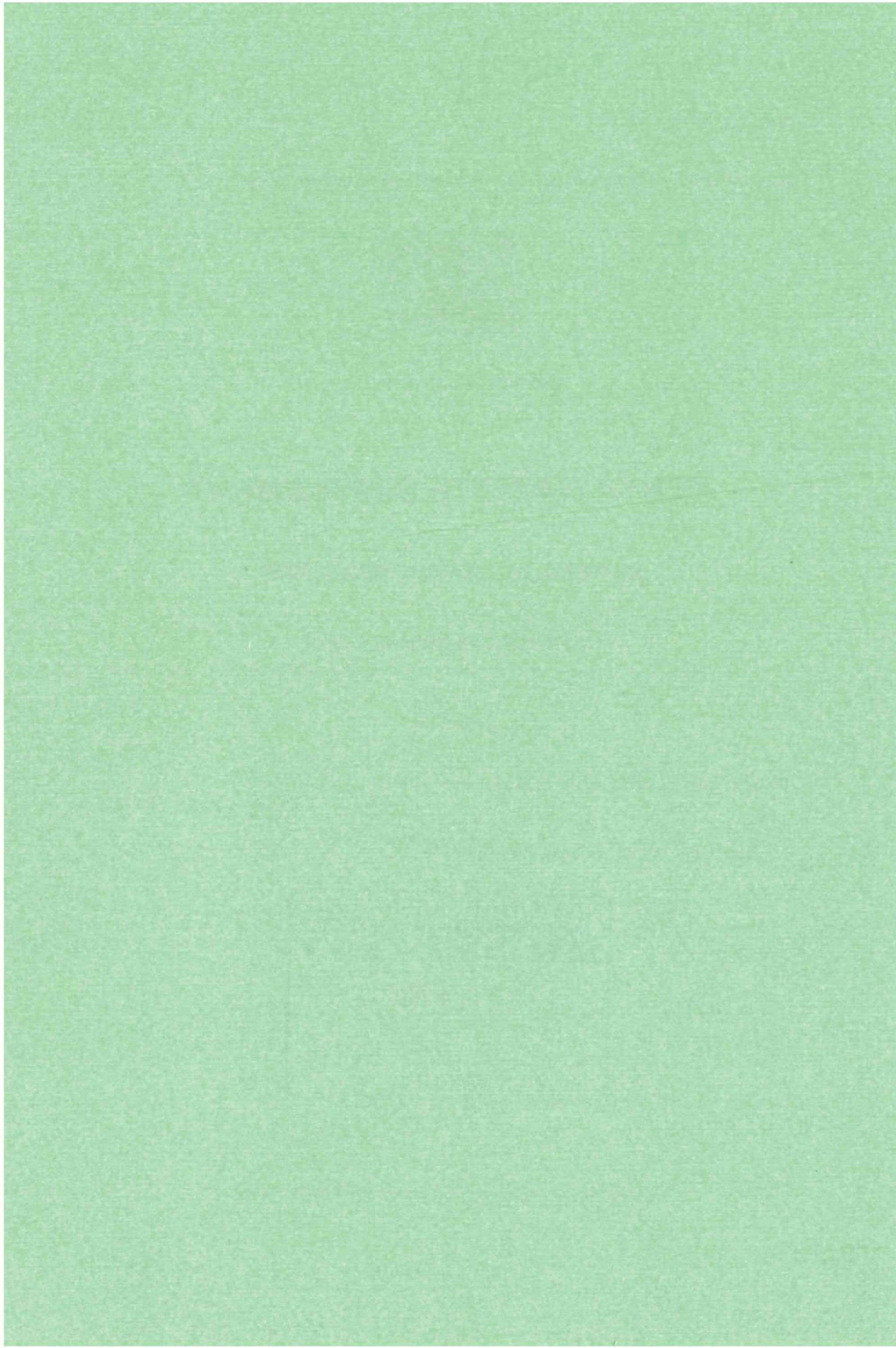
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THE PUBLIC AUDIT (AMENDMENT) BILL, 2024

A Bill for

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

ENACTED by Parliament of Kenya, as follows—

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

Short title.

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

Amendment of section 2 of No. 34 of 2015.

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

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

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

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

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

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

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

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

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

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

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

No. 18 of 2012.

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

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

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

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

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

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

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

No. 18 of 2012.

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

No. 18 of 2012.

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

“public money” means—

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

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

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

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

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

No. 18 of 2012.

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

Amendment of section 4 of No. 34 of 2015.

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

4. Section 5 of the principal Act is amended—

Amendment of section 5 of No. 34 of 2015.

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

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

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

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

Amendment of section 7 of No. 34 of 2015.

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

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

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

Administrative functions of the Auditor-General.

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

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

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

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

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

Amendment of
section 9 of No.
34 of 2015.

8. Section 11 of the principal Act is amended—

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

Amendment of
section 11 of No.
34 of 2015.

(1) The position of the Auditor-General shall become vacant—

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

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

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

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

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

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

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

Organizational structure.

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

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

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

10. Section 15 of the principal Act is amended —

Amendment of
section 15 of No.
34 of 2015.

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

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

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

11. Section 16 of the principal Act is amended —

Amendment of
section 16 of No.
34 of 2015.

- (a) in subsection (1)—

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

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

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

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

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

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

12. Section 17 of the principal Act is amended —

Amendment of
section 17 of No.
34 of 2015.

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

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

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

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

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

Amendment of
section 19 of No.
34 of 2015.

14. Section 20 of the principal Act is amended —

Amendment of
section 20 of No.
34 of 2015.

- (a) in subsection (2), by inserting the words “with a copy to the National Assembly” immediately after the word “finance”; and
- (b) by adding the following new subsection immediately after subsection (3) —

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

15. Section 21 of the principal Act is amended —

Amendment of
section 21 of No.
34 of 2015.

(a) in subsection (1) —

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

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

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

16. Section 24 of the principal Act is amended —

Amendment of
section 24 of No.
34 of 2015.

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

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

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

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

Establishment and composition of the Audit Advisory Board.

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

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

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

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

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

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

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

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

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

Meetings and procedure of the Audit Advisory Board.

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

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

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

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

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

Functions of the Audit Advisory Board

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

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

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

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

Audit process steps.

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

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

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

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

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

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

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

Repeal of section 32 of No. 34 of 2015.

22. Section 33 of the principal Act is amended—

Amendment of section 33 of No. 34 of 2015.

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

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

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

23. Section 34 of the principal Act is amended—

Amendment of section 34 of No. 34 of 2015.

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

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

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

Amendment of section 35 of No. 34 of 2015.

25. Section 36 of the principal Act is amended—

Amendment of section 36 of No. 34 of 2015.

(a) in subsection (1) —

(i) by inserting the words “among others” immediately after the word “examine”; and

(ii) by deleting the words “public money” and substituting therefor the words “public resources”;

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

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

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

Forensic Audits.

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

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

Amendment of section 38 of No. 34 of 2015.

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

Insertion of new sections in No. 34 of 2015.

Citizen accountability audits.

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

Compliance audits.

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

Any other audit.

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

29. Section 39 of the principal Act is amended—

Amendment of
section 39 of No.
34 of 2015.

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

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

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

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

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

Amendment of
section 41 of No.
34 of 2015.

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

Insertion of new
section in No. 34
of 2015.

Establishment of
Public Audit Fund.

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

No. 18 of 2012.

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

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

mandate as provided in the Constitution and this Act.

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

Amendment of
section 44 of No.
34 of 2015.

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

Amendment of
section 45 of No.
34 of 2015.

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

34. Section 46 of the principal Act is amended—

Amendment of
section 46 of No.
34 of 2015.

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

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

Amendment of
section 48 of No.
34 of 2015.

36. Section 49 of the principal Act is amended—

Amendment of
section 49 of No.
34 of 2015.

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

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

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

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

37. The principal Act is amended by repealing section

Repeal of section
50 of No. 34 of
2015.

38. The principal Act is amended by repealing section 51. Repeal of section 51 of No. 34 of 2015.
39. Section 54 of the principal Act is amended by deleting the words “in his audit report” and substituting therefor the words “prepare a report”. Amendment of section 54 of No. 34 of 2015.
40. Section 58 of the principal Act is amended— Amendment of section 58 of No. 34 of 2015.
- (a) in subsection (1), by deleting the word “officer” and substituting therefor the word “staff”; and
- (b) in subsection (2) —
- (i) by deleting the words “an officer” and substituting therefor the words “a staff”; and
- (ii) by deleting the words “auditee” and substituting therefor the words “audited entity”.
41. Section 59 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection— Amendment of section 59 of No. 34 of 2015.
- (1) A staff of the Office of the Auditor-General who has an interest in a matter under consideration by the audited entity shall disclose in writing, the nature of that interest and shall not participate in any auditing exercise relating to that entity.
42. Section 61 of the principal Act is amended in subsection (1) by deleting the word “officer” wherever it appears and substituting therefor the word “staff”. Amendment of section 61 of No. 34 of 2015.
43. The principal Act is amended by repealing section 64 and substituting therefor the following new section— Repeal and substitution of section 64 of No. 34 of 2015.
- Powers to engage other agencies. **64(1)** Where the Auditor-General establishes that any person, supplier, company or audited entity has been involved in fraud or corrupt practice, the Auditor-General may collaborate with other investigative, enforcement, regulatory and oversight agencies including the National Police Service, Ethics and Anti-Corruption

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

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

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

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

Disallowable expenditure and uncollected revenue.

67. Where the Auditor-General becomes aware of—

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

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

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

Amendment of section 68 of No. 34 of 2015.

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

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

MEMORANDUM OF OBJECTS AND REASONS

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

The salient provisions of the Bill are as follows—

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

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

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

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

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

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

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

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

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

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

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

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

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

Statement of whether the Bill concerns county governments

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

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

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

Dated the 29th January, 2024.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

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

2. Interpretation

“Accounting Officer” means—

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

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

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

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

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

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

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

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

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

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

“public funds” means—

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

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

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

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

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

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

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

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

5. Qualification for appointment as the Auditor-General

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

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

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

9. General powers of the Auditor-General

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

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

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

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

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

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

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

11. Vacancy in office

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Where the National Assembly:

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

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

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

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

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

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

14. Development and approval of organisational structure.

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

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

15. Recruitment of the Senior Deputy Auditor-General

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

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

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

16. Responsibilities of the Senior Deputy-Auditor-General

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

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

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

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

17. Recruitment of other Staff

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

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

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

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

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

19. Delegation of powers

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

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

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

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

21. Power to obtain information from others

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

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

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

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

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

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

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

24. Professional assistance and consultancy

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

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

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

25. Establishment and composition of the Audit Advisory Board

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

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

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

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

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

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

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

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

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

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

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

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

26. Meetings and procedure of the Audit Advisory Board

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

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

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

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

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

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

Section 31 of No. 34 of 2015, which it is proposed to amend—

31. Certification audit process steps

- (1) The certification audit process steps shall be as follows—
 - (a) within three months after Parliament or the County Assembly has debated and considered the final report of the Auditor-General and made recommendations, a State Organ or a public entity that had been audited shall, as a preliminary step, submit a report on how it has addressed the recommendations and findings of the previous year's audit.
 - (b) at the beginning of the audit examination of the financial statements of a State Organ or public entity, an inception meeting shall be held to deliberate on the scope of the financial audit, between the Auditor-General and the accounting officer and the financial statements to be audited should have been signed by the accounting officer and the substantive head of that entity, if different from the accounting officer and the Chairperson of the governing body, where applicable;
 - (c) at the conclusion of the audit examination of the financial statements of each State Organ, an exit meeting shall be held at which the Auditor-General shall submit a draft management letter which shall include findings and recommendations to the accounting officer and comments of the accounting officer on the Auditor-General's findings and recommendations and the Auditor-General shall provide a copy of the report to the substantive head of that entity, if different from the accounting

officer and, the Chairperson of the governing body, where applicable.

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

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

(a) recommendations on how a State Organ or public entity may improve the application of funds in a lawful and in an effective way; and

(b) how responsive the State organ or public entity has been to past audit findings and recommendations.

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

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

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

Section 32 of No. 34 of 2015, which it is proposed to repeal—

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

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

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

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

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

34. Periodic Audits

34. The Auditor-General may, upon request or at his or her own initiative conduct periodic audits which shall be proactive, preventive, and

deterrent to fraud and corrupt practices, systemic and shall be determined with a view to evaluating the effectiveness of risk management, control and governance processes in State Organs and public entities.

Section 35 of No. 34 of 2015, which it is proposed to amend—

35. Annual financial audits

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

Section 36 of No. 34 of 2015, which it is proposed to amend—

36. Performance Audit

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

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

Section 37 of No. 34 of 2015, which it is proposed to amend—

37. Forensic Audit

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

Section 38 of No. 34 of 2015, which it is proposed to amend—

38. Procurement audits

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

Section 39 of No. 34 of 2015, which it is proposed to amend—

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

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

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

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

Section 41 of No. 34 of 2015, which it is proposed to amend—

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

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

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

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

(3) The Auditor-General may open and maintain such bank accounts in accordance with section 28 of the Public Finance Management Act, 2012 (No. 18 of 2012), as are necessary for the exercise of the functions of the office of the Auditor-General and shall pay into them all monies received from the Government, or from any other source, for the purposes of this Act.

Section 44 of No. 34 of 2015, which it is proposed to amend—

44. Audit of accounts

(1) The accounting officer of the office of the Auditor-General shall submit accounts of the office to the appointed auditor under section 41, within three months after the end of the financial year to which the accounts relate.

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

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

Section 45 of No. 34 of 2015, which it is proposed to amend—

45. Reporting by the appointed auditor

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

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

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

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

(a) the report shall indicate whether—

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

(b) the report shall identify cases in which—

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

Section 46 of No. 34 of 2015, which it is proposed to amend—

46. Debating and considering report of appointed auditor

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

General, comprising the financial statements and the activities of the office and take appropriate action.

Section 48 of No. 34 of 2015, which it is proposed to amend—

48. Accounts for audit

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

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

Section 49 of No. 34 of 2015, which it is proposed to amend—

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

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

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

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

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

Section 50 of No. 34 of 2015, which it is proposed to repeal—

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

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

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

Section 51 of No. 34 of 2015, which it is proposed to repeal—

51. Other reporting by the Auditor-General

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

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

Section 54 of No. 34 of 2015, which it is proposed to amend—

54. Withholding of funds by Parliament or county assembly

54. Where there is a serious material breach or persistent material breaches of the provisions of this Act, the Auditor-General may in his audit report to Parliament or the relevant county assembly pursuant to the Public Finance Management Act, 2012 (No. 18 of 2012), recommend the withholding of funds to any State Organ or public entity.

Section 58 of No. 34 of 2015, which it is proposed to amend—

58. Disclosure of fraud and corruption

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

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

Section 59 of No. 34 of 2015, which it is proposed to amend—

59. Disclosure of interest

59. (1) An officer of the Office of the Auditor-General who has an interest in a matter under consideration by the auditee client shall disclose in writing, the nature of that interest and shall not participate in any auditing exercise relating to that client.

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

Section 61 of No. 34 of 2015, which it is proposed to amend—

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

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

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

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

Section 64 of No. 34 of 2015, which it is proposed to amend—

64. Powers to report to police, etc.

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

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

Section 67 of No. 34 of 2015, which it is proposed to amend—

67. Disallowable expenditure

Where the Auditor-General becomes aware of—

- (a) any payment made without due authority; or
- (b) any deficiency or loss occasioned by negligence or misconduct; or
- (c) any sum which ought to have been, but was not brought to account, he or she shall, in the case of expenditure, call in question the sum concerned and make a report on the sum to Parliament and the relevant county assembly.

Section 68 of No. 34 of 2015, which it is proposed to amend—

68. Power to make Regulations

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

Section 72 of No. 34 of 2015, which it is proposed to amend—

72. Public right of access to official audits reports

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

