

Approved for tabling
By SNA
27/5/15

REPUBLIC OF KENYA



PARLIAMENT OF KENYA



ELEVENTH PARLIAMENT-THIRD SESSION

Paper laid
By the Hon B. Langat,
Chair-Mediation
Committee on
Wed 27/5/15
WN

MEDIATION COMMITTEE ON THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)

MEDIATION REPORT ON THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)



**JOINT CLERKS' CHAMBERS
PARLIAMENT OF KENYA
NAIROBI**

MAY 2015

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1.0 INTRODUCTION

1.1 Establishment of the Committee

The Mediation Committee on the Public Audit Bill (National Assembly Bill No. 38 of 2014) was constituted by the Speaker of the National Assembly and the Speaker of the Senate on 26th May, 2015 pursuant to Standing Order 149 (2) of the National Assembly and Standing Order 154 of the Senate which outlines the functions of the Committee as follows:-

- i. *To consider Bills where the Houses do not agree on all or any of the amendments made by either Houses;*
- ii. *To consider Bills where either House rejects a Motion that a Bill which originated in the other House be read a Second or Third time; and,*
- iii. *To attempt to develop a version of the Bill that both Houses will pass.*

The members of the Committee were:-

1. Hon. Benjamin Langat, M.P. - Chairperson
2. Hon. Sen. Billow Kerrow, M.P. - Vice Chairperson
3. Hon. Sakaja Johnson, M.P. - Member
4. Hon. Sen. Stephen Sang - Member
5. Hon. Makali Mulu, M.P. - Member
6. Hon. Sen. Mutula Kilonzo Jnr, M.P. - Member

1.2 Mandate of the Committee

The Mediation Committee derives its mandate from Article 113 of the Constitution of Kenya and the National Assembly Standing Order No. 149 and Senate Standing Orders No. 154.

The Committee was established to develop a version of the Public Audit Bill (National Assembly Bill No. 38 of 2014) and in particular Clause 5, 11, 19, 24, 32 and 39 that would be presented to both Houses for approval as provided for under National Assembly Standing Order No. 149 (6) and the Senate Standing Order 154.

The specific clauses of the Bill that were in contention were Clause 5, 11, 19, 24, 32 and 39

1.3 Committee Sittings and Methodology

The Committee held one sitting on 27th May, 2015. During the sitting the Committee conducted the election of the Chairperson and the Vice-

Chairperson where Hon. Benjamin Langat, M.P and Hon. Sen. Billow Kerrow, M.P were elected as Chairman and Vice Chairman respectively.

At this meeting the Committee made reference to the report of the pioneering Mediation Committee that recommended that in future, the Chair of the mediation Committee should be elected from amongst members of the House that originated the Bill.

The Committee thereafter deliberated on Clause 5, 11, 19, 24, 32 and 39 of the Public Audit Bill (National Assembly Bill No. 38 of 2014) which were in contention.

1.4 Committee Resolutions

The Committee deliberated on the contentious clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. The agreed version of the bill is hereby appended to this report.

1.5 Acknowledgment

The Committee thanks the Offices of the Speakers and the Clerks of the National Assembly and the Senate for the necessary support extended to it in the execution of its mandate.

The Chairperson thanks all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process that culminated in the concurrence report by the Mediation Committee.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Senate Standing Order 155 (1) and the National Assembly Standing Order 150, to present a report of the Mediation Committee on the Public Audit Bill (National Assembly Bill No. 38 of 2014) for consideration and adoption by the House.

SIGNED.....

Hon. Benjamin Langat, M.P.- Chairman

SIGNED.....

Sen. Billow Kerrow, M.P.- Vice Chairman

DATE.....

2.0 BACKGROUND

The Public Audit Bill (National Assembly Bill No. 38 of 2014) was published in the Kenya Gazette Supplement 8th December, 2014 as a Bill originating in the National Assembly. The Bill underwent the First and Second readings and subjected to public participation as required by the Constitution and National Assembly Standing Orders and was passed on 2nd of April, 2015 and then referred to the Senate for consideration pursuant to National Assembly Standing Order No. 142 where it was read for the first time on 28th April, 2015.

The Senate subjected the Bill to a public participation forum which was held on 13th May, 2015 at County Hall, Mini Chamber; Parliament Buildings to take into account the views and recommendations of the public. The Bill was passed by the Senate with amendments on 20th of May, 2015.

Pursuant to Article 110 (4) of the Constitution and the provisions of Standing Orders 40 (1) and 149 of the Senate Standing Orders, the Senate conveyed a message to the National Assembly on 22nd May, 2015, seeking the concurrence of the National Assembly to the amendments made to the Audit Bill (National Assembly Bill No. 38 of 2014).

The National Assembly, at its Sitting held on 26th May, 2015 considered the proposed amendments by the Senate and by a resolution rejected the Senate's amendments on Clauses 5, 11, 19, 24, 32 and 39 of the Bill. Consequently, and pursuant to National Assembly Standing Order No. 149 and Senate Standing Order No. 154, the Bill and specifically Clauses 5, 11, 19, 24, 32 and 39 of the Bill were referred to a Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval.

3.0 SENATE AMENDMENTS TO THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014) as REJECTED BY THE NATIONAL ASSEMBLY ON 26TH MAY, 2015

Clause 5

THAT clause 5 be amended in-

- (a) paragraph (b) by deleting the words “Article 229” appearing immediately after the words “specified in” and substituting therefor the words “Article 229(2)”; and
was passed by the assembly.
- (b) paragraph(c) by inserting the words “post graduate” immediately after the words “holds a”.
Assembly rejected: the constitution is clear on the qualifications of the Ag-post graduate is not part of the requirements

Clause 11

THAT clause 11 be amended by inserting the following new sub-clause immediately after sub-clause (5)-

- (5A) The members of the selection panel appointed under subsection (5) shall elect a chairperson from among themselves.

Assembly rejected: the amendment excludes the president from choice of the chairperson

Clause 19

THAT clause 19 be amended in sub-section (2) by deleting the words “review and” appearing immediately after the words “each year for” at the end of the paragraph.

Assembly rejected: the National Treasury should be allowed to do fiscal consolidation of all government agencies since it's the only government body that is in charge of the economy. In case of any reservations on the allocated resources, the National assembly has powers to appropriate resources as and when required by the Auditor general.

Clause 24

THAT clause 24 be amended in-

- (a) paragraph (a) of sub-section (1), by inserting the words “who shall be the chairperson” at the end of the paragraph; and

- (b) sub-section (3) by deleting the words “shall appoint a chairperson from among the persons under subsection (1) above and” appearing immediately after the words “the Auditor-General”.

Assembly rejected: the Auditor General cannot be the chair of the board that will be advising him. He should not even be part of the audit advisory board as provided for under 24(1)(a).

Clause 32

THAT clause 32 be amended in sub-clause (1) by deleting the word “may” appearing immediately after the words “public entity” and substituting therefor the word “shall”.

Assembly rejected: this is already provided for/covered under clause 32(2)-the AG has unlimited access to all audit reports as and when he/she requires them.

Clause 39

THAT clause 39 be amended-

- (a) by deleting sub-clause (1); and
- (b) by deleting sub-clause (2) and substituting therefor with the following new sub-clause-
 (2) Sections of the audit reports on national security organs may remain confidential to the Auditor-General but may, on demand, be submitted to Parliament.

assembly rejected: (a) it is a common practice that an exercise of auditing starts with a meeting with the auditee. Therefore the amendment is not necessary. (b) subclause 2 does not prohibit release of the audit information-in uses the word “may” meaning it will depend on circumstances

4.0 RESOLUTIONS OF THE MEDIATION COMMITTEE

The Mediation Committee met on the 27th May, 2015 and unanimously resolved the contention on Clauses 5, 11, 19, 24, 32 and 39 as follows:

(i) Clause 5 – mediated version

Qualification for appointment	<p>5. (1) A person shall be qualified for appointment as the Auditor-General if such person:-</p> <p>(a) is a citizen of Kenya;</p>
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as the Auditor-General	<p>(b) holds the respective qualifications for the office specified in Article 229 (2) of the Constitution;</p> <p>(c) holds a degree in finance, accounting or economics from a university recognized in Kenya and demonstrates a verifiable and logical progression in the attainment of his or her educational qualifications;</p> <p>(d) meets the requirements of Chapter Six of the Constitution; and</p> <p>(e) is a practicing member of good standing of a professional body of accountants recognised by law.</p>
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(ii) Clause 11 – mediated version

Vacancy in office.	<p>11. (1) The office of the Auditor-General shall become vacant, if the Auditor-General—</p>
	(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 (1) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any—
	<p>(a) qualified person;</p> <p>(b) person, organisation or group of persons proposing the nomination of any qualified person;</p>
	(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 (2), constitute a selection panel comprising a chairperson and one representative from –

	<p>(a) the Ministry for the time being responsible for matters relating to finance;</p> <p>(b) the Office of the Attorney General;</p> <p>(c) the Ministry for the time being responsible for matters relating to the public service;</p> <p>(d) the Institute of Certified Public Accountants of Kenya;</p> <p>(e) the Association of Professional Societies of East Africa; and</p> <p>(f) the Law Society of Kenya,</p> <p>for the purpose of considering the applicants and selecting at least three persons qualified for appointment as Auditor General:</p> <p>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.</p>
	<p>(6) The selection panel shall within seven days of the selection of candidates under subsection (4), forward the names of the selected candidates to the President for nomination.</p>
	<p>(7) The President shall, within seven days of the receipt of the names of the selected candidates under subsection (5), nominate one candidate for appointment as the Auditor-General and forward the name to the National Assembly.</p>
	<p>(8) The National Assembly shall consider the nominations and may approve or reject the nominations.</p>
	<p>(9) Where the National Assembly:</p> <p>(a) approves the nominee, the Speaker shall, within three days of the approval, forward the names of the approved nominee to the President for appointment;</p> <p>(b) reject the nomination, the speaker shall, within three days of the rejection, communicate the decision to the President, who shall submit a fresh</p>

	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 (8), 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.

(iii) Clause 19 – mediated version

Budget estimates and plans of the office of the Auditor-General.	19. (1) The accounting officer shall prepare annually budget estimates of revenue and expenditures and work plans for the next financial year for consideration.
	(2) The budget estimates of revenue and expenditure referred to under sub-section (1) shall be submitted to the Cabinet Secretary responsible for finance not later the 30 th March each year for submission to the National Assembly, with Cabinet Secretary's comments, in accordance with Article 221 of the Constitution, and National Assembly shall, pursuant to Article 249 (3) of the Constitution, allocate adequate funds to the office of the Auditor General.
	(3) The budget estimates submitted under sub-section (2) shall include the following—
	(a) estimates of revenue and recurrent expenditure for the coming fiscal year; (b) estimates for the development expenditure

	<p>for the coming fiscal year; and</p> <p>(c) any other matter considered relevant by the Auditor-General in the consideration of the budget and plans of the Office.</p>
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(iv) Clause 24 – mediated version

Establishment and composition of the Audit Advisory Board.	<p>24. (1) There is established an unincorporated board to be known as the Audit Advisory Board which shall comprise of-</p> <p>(a) the Auditor-General or a person nominated by him or her;</p> <p>(b) the Attorney-General of Kenya or a person nominated by him or her;</p> <p>(c) a nominee of the Institute of Certified Public Accountants of Kenya;</p> <p>(d) a nominee of the Association of Professional Societies of East Africa;</p> <p>(e) a nominee of the Law Society of Kenya;</p> <p>(f) the Chairperson of the Public Service Commission or his or her nominee:</p> <p>Provided that the nominee under paragraph (d) shall not be a member of a professional body provided for under subsection 1(c) and (e).</p>
	<p>(2) A person shall be qualified to be nominated under subsection (1) (c) to (e) above if such person—</p> <p>(a) has a degree from a university recognised in Kenya;</p> <p>(b) has a minimum of fifteen years’ experience in matters relating to public finance, auditing, accounts, law, governance or public management ; and</p> <p>(c) meets the requirements of Chapter Six of the Constitution</p>
	<p>(3) The Auditor-General may co-opt two other members with the necessary expertise.</p>
	<p>(4) The members of the Audit Advisory Board shall elect a chairperson from among themselves, who shall not be the Auditor General.</p>
	<p>(5) The nomination and appointment of members under this section shall take cognisance of regional, ethnic, and gender balance and people with disabilities</p>

	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.

(v) Clause 32 – mediated version

Use of work of internal auditor.	32. (1) The final report by an internal auditor which has been deliberated on and adopted by an audit committee of a State Organ or public entity, may be copied to the Auditor-General.
	(2) The Auditor-General shall have unhindered access to all internal audit reports of a State Organ or any public entity, under subsection (1) above, which is subject to audit by the Auditor-General as provided for under Article 229 (4) of the Constitution.

(vi) Clause 39 – mediated version

Auditing of national security organs	<p>39. (1) In auditing national security organs, the Auditor General and his or her representatives shall hold an inception meeting ,at the highest level, pursuant to section 30(1) (b), to agree on areas which may touch on national security and determine the appropriate audit approach that shall ensure confidentiality of information.</p> <p>(2) The audit reports on national security organs may be redacted to shield identities of persons as well as assets and liabilities as the case may be.</p> <p>(3) All staff of the Auditor-General carrying out audit under this section shall be vetted by the authorised Government vetting agency.</p>
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Appendix 1: Minutes of the Mediation Committee

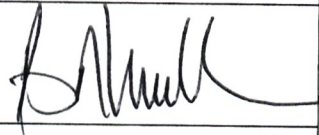
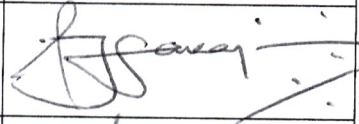
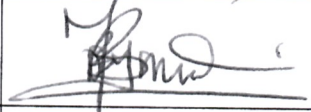
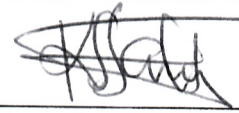
Appendix 2: Agreed Version of the Public Audit Bill (National Assembly Bill No. 38 of 2014)

ATTENDANCE REGISTER, THE MEDIATION COMMITTEE ON THE ON THE
CONSIDERATION OF

THE PUBLIC AUDIT BILL, 2014

MEETING DATE: 27/5/2015

TIME: 8.00AM

NAME	DESIGNATION	SIGNATURE
Hon. Sen. Billow Kerrow, M.P.	Member (vice chair)	
Hon. Benjamin Langat, M.P.	Member (chair)	_____
Hon. Johnson Sakaja, M.P	Member	
Hon. Makali Mulu, M.P	Member	
Hon. Sen. Mutula Kilonzo Jr., M.P	Member	
Hon. Sen. Stephen Sang, M.P	Member	

MINUTES OF THE 1ST SITTING OF THE MEDIATION COMMITTEE ON THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014) HELD IN THE MAIN BOARDROOM, ON THE GROUND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS, ON WEDNESDAY, 27TH MAY, 2015 AT 8.00 A.M.

PRESENT

1. Hon. Benjamin Langat - **Chairman**
2. Hon. Sen. Billow Kerrow - **Vice Chairman**
3. Hon. Sen. Stephen Sang
4. Hon. Makali Mulu, M.P

ABSENT WITH APOLOGY

Hon. Sen. Mutula Kilonzo (Jnr)

IN ATTENDANCE- PARLIAMENTARY STAFF

1. Mr. Njenga Njuguna - Director, Committee Services, Senate
2. Ms. Emmy Chepkwony - Senior Clerk Assistant, Senate
3. Mr. Evans Oanda - First Clerk Assistant, National Assembly
4. Mr. Victor Bett - Clerk Assistant III, Senate
5. Mr. Nicodemus Maluki - Clerk Assistant III, National Assembly
6. Ms. Josphine Kusinyi - Senior Legal Counsel, Senate
7. Ms. Doreen Karani - Legal Counsel, National Assembly
8. Mr. Ng'etich Robert - Fiscal Analyst , Budget Office
9. Mr. Simon Muinde - Audio Recording - Joint Services

MIN. NO. 1/2015: PRELIMINARIES

The Committee meeting commenced at 8.15am. Prayers were said by Hon. Benjamin Langat, M.P. Chairman Departmental Committee on Finance, Commerce and Budget.

MIN. NO. 2/2015: ADOPTION OF THE AGENDA

The agenda was adopted by the Committee having been proposed by Sen. Billow Kerrow, M.P and seconded by Hon. Makali Mulu, M.P

The agenda was adopted as follows:-

1. Prayer
2. Election of the Chairperson and the Vice Chairperson
3. Mediation on the Public Audit Bill (National Assembly Bill No. 38 of 2014)

4. Approval of the amended version of the Bill
5. Adjournment

MIN. NO. 3/2015: ELECTION OF THE CHAIRPERSON AND THE VICE CHAIRPERSON

Hon. Benjamin Langat, M.P was unanimously elected by Members present as the Chairperson of the Mediation Committee after being proposed by the Hon. Sen. Billow Kerrow, M.P and seconded by the Hon. Makali Mulu, M.P

Sen. Billow Kerrow, M.P was unanimously elected by Members present as the Vice Chairperson of the Mediation Committee after being proposed by the Hon. Makali Mulu, M.P and seconded by Sen. Stephen Sang, M.P

At this meeting the Committee made reference to the precedent set in the report of the pioneering Mediation Committee that recommended that in future, the Chair of the mediation Committee should be elected from amongst members of the House that originated the Bill.

MIN. NO. 04/2012: MEDIATION ON THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)

1. Mandate of the Mediation Committee

The Mediation Committee noted that it derives its mandate from Article 113 of the Constitution of Kenya and the National Assembly Standing Order No. 149 and Senate Standing Orders No. 154.

The Committee was tasked to develop a version of the Public Audit Bill (National Assembly Bill No. 38 of 2014) and in particular Clause 5, 11, 19, 24, 32 and 39 that would be presented to both Houses for approval as provided for under National Assembly Standing Order No. 149 (6) and the Senate Standing Order 154.

2. Deliberations on the clauses as proposed by the Senate and rejected by the National Assembly (Clause 5, 11, 19, 24, 32 and 39).

The Committee deliberated on the following clauses and provided an agreed version of the amendments as follows:

The Mediation Committee identified Clauses 5, 11, 19, 24, 32 and 39 as being contentious and agreed on the following amended version:-

(i) Clause 5 – mediated version

Qualification for appointment as the Auditor-General	<p>5. (1) A person shall be qualified for appointment as the Auditor-General if such person:-</p> <ul style="list-style-type: none"> (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.
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(ii) Clause 11 – mediated version

Vacancy in office.	<p>11. (1) The office of the Auditor-General shall become vacant, if the Auditor-General—</p>
	(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.

	<p>(3) An application under subsection (1) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any-</p> <ul style="list-style-type: none"> (a) qualified person; (b) person, organisation or group of persons proposing the nomination of any qualified person;
	<p>(4) The names of all applicants under subsection (2) shall be published in the Gazette.</p>
	<p>(5) The President shall, within fourteen days of the expiry of the period prescribed under subsection (2), constitute a selection panel comprising a chairperson and one representative from -</p> <ul style="list-style-type: none"> (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, <p>for the purpose of considering the applicants and selecting at least three persons qualified for appointment as Auditor General:</p> <p>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.</p>
	<p>(6) The selection panel shall within seven days of the selection of candidates under subsection (4), forward the names of the selected candidates to the</p>

	President for nomination.
	(7) The President shall, within seven days of the receipt of the names of the selected candidates under subsection (5), nominate one candidate for appointment as the Auditor-General and forward the name to the National Assembly.
	(8) The National Assembly shall consider the nominations and may approve or reject the nominations.
	(9) Where the National Assembly: (a) approves the nominee, the Speaker shall, within three days of the approval, forward the names of the approved nominee to the President for appointment; (b) reject 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 (8), 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.

(iii) Clause 19 – mediated version

Budget estimates and plans of the office of the Auditor-General.	19. (1) The accounting officer shall prepare annually budget estimates of revenue and expenditures and work plans for the next financial year for consideration.
	(2) The budget estimates of revenue and expenditure referred to under sub-section (1) shall be submitted to the Cabinet Secretary responsible for finance not later than the 30 th March each year for submission to the National Assembly, with Cabinet Secretary's comments, in accordance with Article 221 of the Constitution, and National Assembly shall, pursuant to Article 249 (3) of the Constitution, allocate adequate funds to the office of the Auditor General.
	(3) The budget estimates submitted under sub-section (2) shall include the following—
	(a) estimates of revenue and recurrent expenditure for the coming fiscal year; (b) estimates for the development expenditure for the coming fiscal year; and (c) any other matter considered relevant by the Auditor-General in the consideration of the budget and plans of the Office.

(iv) Clause 24 – mediated version

Establishment and composition of the Audit Advisory Board.	24. (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;
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	<p>(d) a nominee of the Association of Professional Societies of East Africa;</p> <p>(e) a nominee of the Law Society of Kenya;</p> <p>(f) the Chairperson of the Public Service Commission or his or her nominee:</p> <p>Provided that the nominee under paragraph (d) shall not be a member of a professional body provided for under subsection 1(c) and (e).</p>
	<p>(2) A person shall be qualified to be nominated under subsection (1) (c) to (e) above if such person—</p> <p>(a) has a degree from a university recognised in Kenya;</p> <p>(b) has a minimum of fifteen years' experience in matters relating to public finance, auditing, accounts, law, governance or public management ; and</p> <p>(c) meets the requirements of Chapter Six of the Constitution</p>
	<p>(3) The Auditor-General may co-opt two other members with the necessary expertise.</p>
	<p>(4) The members of the Audit Advisory Board shall elect a chairperson from among themselves, who shall not be the Auditor General.</p>
	<p>(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.</p>
	<p>(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.</p>
	<p>(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.</p>

(v) Clause 32 – mediated version

Use of work of internal auditor.	32. (1) The final report by an internal auditor which has been deliberated on and adopted by an audit committee of a State Organ or public entity, may be copied to the Auditor-General.
	(2) The Auditor-General shall have unhindered access to all internal audit reports of a State Organ or any public entity, under subsection (1) above, which is subject to audit by the Auditor-General as provided for under Article 229 (4) of the Constitution.

(vi) Clause 39 – mediated version

Auditing of national security organs	<p>39. (1) In auditing national security organs, the Auditor General and his or her representatives shall hold an inception meeting ,at the highest level, pursuant to section 30(1) (b), to agree on areas which may touch on national security and determine the appropriate audit approach that shall ensure confidentiality of information.</p> <p>(2) The audit reports on national security organs may be redacted to shield identities of persons as well as assets and liabilities as the case may be.</p> <p>(3) All staff of the Auditor-General carrying out audit under this section shall be vetted by the authorised Government vetting agency.</p>
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MIN. NO. 05/2012: APPROVAL OF THE AMENDED PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)

The Committee approved the amended version of the Pubic Audit Bill, (National Assembly Bill No. 38 of 2014).

MIN. NO.06/2014: ADJOURNMENT

There being no other business to consider and the time being forty minutes past Ten O'clock, the Chairperson adjourned the meeting.

SIGNED:
HON. BENJAMIN LANGAT, M.P -CHAIRPERSON

SIGNED:
SEN. BILLOW KERROW, M.P – VICE CHAIRPERSON

DATE:

REPUBLIC OF KENYA



PARLIAMENT OF KENYA
ELEVENTH PARLIAMENT
(THIRD SESSION)

**EXCERPT OF THE MEDIATED VERSION OF THE
PUBLIC AUDIT BILL, 2014 SHOWING THE AGREED-
UPON VERSIONS OF THE CONTENTIOUS CLAUSES**

The Mediation Committee identified Clauses 5, 11, 19, 24, 32 and 39 as being contentious and agreed on the following version:

(i) Clause 5 – mediated version

Qualification for appointment as the Auditor-General	<p>5. (1) A person shall be qualified for appointment as the Auditor-General if such person:-</p> <ul style="list-style-type: none">(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.
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(ii) Clause 11 – mediated version

Vacancy in office.	<p>11. (1) The office of the Auditor-General shall become vacant, if the Auditor-General—</p>
	<ul style="list-style-type: none">(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 (1) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any— <ul style="list-style-type: none"> (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 (2), constitute a selection panel comprising a chairperson and one representative from — <ul style="list-style-type: none"> (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, <p>for the purpose of considering the applicants and selecting at least three persons qualified for appointment as Auditor General:</p> <p>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.</p>
	(6) The selection panel shall within seven days of the selection of candidates under subsection (4), 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 (5), nominate one candidate for appointment as the Auditor-General and forward the name

	to the National Assembly.
	(8) The National Assembly shall consider the nominations and may approve or reject the nominations.
	(9) Where the National Assembly: (a) approves the nominee, the Speaker shall, within three days of the approval, forward the names of the approved nominee to the President for appointment; (b) reject 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 (8), 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.

(iii) Clause 19 – mediated version

Budget estimates and plans of the office of the Auditor-General.	19. (1) The accounting officer shall prepare annually budget estimates of revenue and expenditures and work plans for the next financial year for consideration.
	(2) The budget estimates of revenue and expenditure referred to under sub-section (1) shall be submitted to the Cabinet Secretary responsible for finance not later the 30 th March each year for submission to the National Assembly, with Cabinet Secretary's comments, in accordance with Article 221 of the Constitution, and National Assembly shall, pursuant to Article 249 (3) of the Constitution, allocate adequate funds to the office of the Auditor General.
	(3) The budget estimates submitted under sub-section (2) shall include the following—
	(a) estimates of revenue and recurrent expenditure for the coming fiscal year;

	<p>(b) estimates for the development expenditure for the coming fiscal year; and</p> <p>(c) any other matter considered relevant by the Auditor-General in the consideration of the budget and plans of the Office.</p>
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(iv) Clause 24 – mediated version

<p>Establishment and composition of the Audit Advisory Board.</p>	<p>24. (1) There is established an unincorporated board to be known as the Audit Advisory Board which shall comprise of–</p> <p>(a) the Auditor-General or a person nominated by him or her;</p> <p>(b) the Attorney-General of Kenya or a person nominated by him or her;</p> <p>(c) a nominee of the Institute of Certified Public Accountants of Kenya;</p> <p>(d) a nominee of the Association of Professional Societies of East Africa;</p> <p>(e) a nominee of the Law Society of Kenya;</p> <p>(f) the Chairperson of the Public Service Commission or his or her nominee:</p> <p>Provided that the nominee under paragraph (d) shall not be a member of a professional body provided for under subsection 1(c) and (e).</p>
	<p>(2) A person shall be qualified to be nominated under subsection (1) (c) to (e) above if such person—</p> <p>(a) has a degree from a university recognised in Kenya;</p> <p>(b) has a minimum of fifteen years’ experience in matters relating to public finance, auditing, accounts, law, governance or public management ; and</p> <p>(c) meets the requirements of Chapter Six of the Constitution</p>
	<p>(3) The Auditor-General may co-opt two other members with the necessary expertise.</p>
	<p>(4) The members of the Audit Advisory Board shall elect a chairperson from among themselves, who shall not be the Auditor General.</p>
	<p>(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.</p>
	<p>(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.</p>
	<p>(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.</p>

(v) Clause 32 – mediated version

Use of work of internal auditor.	32. (1) The final report by an internal auditor which has been deliberated on and adopted by an audit committee of a State Organ or public entity, may be copied to the Auditor-General.
	(2) The Auditor-General shall have unhindered access to all internal audit reports of a State Organ or any public entity, under subsection (1) above, which is subject to audit by the Auditor-General as provided for under Article 229 (4) of the Constitution.

(vi) Clause 39 – mediated version

Auditing of national security organs	39. (1) In auditing national security organs, the Auditor General and his or her representatives shall hold an inception meeting ,at the highest level, pursuant to section 30(1) (b), to agree on areas which may touch on national security and determine the appropriate audit approach that shall ensure confidentiality of information. (2) The audit reports on national security organs may be redacted to shield identities of persons as well as assets and liabilities as the case may be. (3) All staff of the Auditor-General carrying out audit under this section shall be vetted by the authorised Government vetting agency.
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