



INTERNATIONAL BUDGET PARTNERSHIP  
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13/07/2014

## SUBMISSION ON PUBLIC AUDIT BILL 2014

This document details the International Budget Partnership's queries and concerns related to the Public Audit Bill 2014. For further questions, please contact Dr. Jason Lakin at +254729937158 or [jason.lakin@gmail.com](mailto:jason.lakin@gmail.com).

1. Section 8(1) refers to appointment of a Deputy Auditor who shall be a "principal assistant" to the Auditor. Section 8(4) refers to other Deputy Auditors, but does not clarify their roles. It may be that their principal role is to serve on the Executive Committee. It is not clear why there is a Deputy Auditor in the normal meaning of the term, and then additional deputies but without deputy responsibilities. It may be more appropriate for these additional deputies to have different designations to maintain clarity of roles. If the deputies are meant to be thematic, that could also be mentioned. While it was argued that these deputies could be recruited competitively from outside the Audit Office at the CIC stakeholder meeting, it is not clear from the current language if that is really allowed.
2. 15(1)a refers to a responsibility of the AG to "give assurance" on effectiveness of internal controls. It may be necessary to define what is meant by give assurance. Does this imply a systems audit of all public entities? Is this a certification process? It seems that there should be more precise language used here.
3. Section 2(f) gives the Auditor the power to issue "regulations, directives or guidelines" to deal with misuse of funds. It does not appear to allow for engagement with the Attorney General, DPP, EACC or any other body that might actually be able to pursue and prosecute public officials for misuse of fund. In tandem with later provisions discussed below, it is not clear that the Act provides sufficient tools to the Auditor to ensure compliance with audit findings.
4. Section 18(1) allows the Auditor extraordinary powers to investigate individual's bank accounts. While the provision is justifiable, it would be appropriate to create a threshold of some sort to avoid undue violations of privacy. The language "reason to believe" could be replaced by some reasonable threshold of evidence before such actions can be taken.
5. Section 19(1) speaks of the Auditor following up on "a complaint made by a member of the public." Section 20(1) speaks of the public making written submissions to request a special audit/investigation. There is no further mention of the public or how a member of the public can engage with the Auditor. The law could require that the Auditor set up a hotline, a web portal, or at least some mechanism for regular engagement, particularly at county level, to ensure that the public is able to raise complaints in a structured manner for follow up. A recent unpublished report from the International Organization of Supreme Audit Institutions (INTOSAI),

which sets best practice guidelines for Auditors General globally, noted some of the recent innovative practices for public engagement that AGs have adopted around the world:

- a. creating frameworks for citizens to report (anonymously if preferred) fraud, waste, and abuse, e.g., the U.S. SAI's use of an advertised "hot line" through which citizens and government officials can anonymously identify areas for investigations and audits;
  - b. Conducting trainings and providing guidance on audits for government agencies, legislative staff, and citizens groups. For example, the U.K. auditor has developed a note to inform legislative staff how to use audit reports.
  - c. Convening citizen groups to gather information and data for specific audits. Several Latin American SAIs use social audit techniques to engage citizens in their audit investigations;
  - d. Consulting with citizen advisory groups to gather their views on topics such as SAIs' plans and auditing standards;
  - e. And conducting joint/participatory audit projects with citizen groups. A few years ago, the Philippines SAI implemented a participatory audit project with local nongovernmental organizations to investigate rural infrastructure projects.
6. Section 26 covers the composition of the Audit Advisory Board. There is no representative of civil society nor any representation from counties on this Board. Some questions have arisen around the wisdom of having such a Board, or of having politicians on this Board. At a minimum, it would make sense to establish some professional qualifications to sit on the Board. A Board of this type could primarily consist of private sector, citizen groups and other professionals.
  7. Section 42 mentions publication of reports and states that this should be on "approval of Parliament or the relevant county assembly." It is not clear what is meant by this. Audit reports should be published when they are tabled in Parliament, not after approval. Moreover, while this section seems to apply only to standard financial audits, it should apply to all audits also mentioned in Part VII. And all reports should be made available on the Auditors' website immediately upon publication.
  8. Building on the issue raised in point 3 above, the process for following up on recommendations in the AG reports is unclear, and potentially too weak. The Constitution states, and the law reiterates, that the AG has 6 months to table reports after the close of the financial year, and Parliament then has three months to "debate and consider the report and take appropriate action." No further action on a regular financial audit report appears to be envisioned by the Bill. In the case of a performance audit, which is covered under Part VI, there appears to be an additional set of steps. In this case, Parliament must report back to the Auditor General (44(1)), and the Auditor must then report back to Parliament after three months, also making this report available to the public. The only sanction that can be considered after this is a recommendation of withholding of funds.

It appears that the back and forth between the AG and Parliament for a performance audit is more extensive than what is prescribed for a regular audit. In neither case, however, is there a discussion of what may be done when there is no follow up to the recommendations of the Auditor, and the issues have not been resolved by Parliament itself.

9. Part VII purports to speak to the relationship between external and internal audit. However, while this section basically allows the AG access to internal audit reports, it does not say more about how the AG and the internal auditors should coordinate. In light of the fact that the section also demands that the AG engage in continuous audits, and that the guidelines on internal audit in the PFM Act are weak, especially for counties, it is not clear where the nature of the internal audit and its relationship with the AG is meant to be spelled out further. It seems that the requirement for continuous audit demands some further elaboration of this relationship to avoid duplication and conflict.
10. Part VII generally creates arbitrary distinctions between types of audits, possibly due to sloppy use of language. For example, most audit types are “may” audits, meaning the AG is not obligated to do them unless needed. But environmental audits, defined quite broadly in 51, are a “shall” audit, meaning that the AG must conduct them regularly. This may or may not have been intended, but it isn’t clear why performance, forensic or budget process audits are “may” audits while environmental audits are “shall” audits. The disclosure standards for these various audits also appear to differ for unclear reasons. Performance audits have specific mention of submission to parliament, while this is not mentioned for other types of audits. The discussion of procurement audits refers to auditing of “mega” contracts, but this is not defined. It may be preferable to leave it to the discretion of the Auditor to determine which contracts are worth investigating.
11. The law makes it an offence to “fail to provide information” to the Audit Office, but does not speak to the timeliness of the provision. In many cases, it is not the lack of information, but the delay which poses substantial challenges to the Audit Office. Should delay be added as a lesser offence?