

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 17<sup>th</sup> February, 2015

The House met at 2.30 p.m.

*[The Speaker (Hon. Muturi) in the Chair]*

### PRAYERS

#### ZAMBIAN DELEGATION IN SPEAKER'S ROW

**Hon. Speaker:** Hon. Members, I wish to introduce to you a delegation from the Parliament of Zambia who are seated at the Speaker's Row. The delegation comprises of the following hon. Members and staff:-

1. Hon. P.M Mucheleka, MP - Committee Chairperson and Leader of Delegation.
2. Hon. C.K Banda, S.C, MP- Deputy Chairperson of Committees of the Whole House and member.
3. Hon. S. Katuka, MP- Member.
4. Hon.K.N Simbao, MP -Member.
5. Hon. I.K Banda, MP- Member.
6. Hon. M. Lubezhi, MP - Member.
7. Hon. (Dr.) E.C. Lungu, MP- Member

*(Applause)*

Hon. Members, the delegation is accompanied by the following members of staff:- Mr. T. Kamanga, Principal Clerk who is the Delegation Secretary and Mr M.K Phiri, Assistant Programme Officer. The Committee is in the country to benchmark, learn and share experiences with Members of this House.

On my own behalf and that of the House, I wish to welcome them to the National Assembly. I wish them fruitful engagements.

Thank you.

### MESSAGES

#### NOMINATION OF J.K. BOINETT FOR APPOINTMENT AS INSPECTOR GENERAL OF POLICE

**Hon. Speaker:** Hon. Members making your way please do so quickly because this Communication is long.

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

Hon. Members, I wish to give this Message from His Excellency the President, No. 3 of 2015. It relates to the nomination of Joseph Kipchirchir Boinett for appointment to the position of Inspector General of Police.

Hon. Members, pursuant to the provisions of Standing Order No. 42(1) of the National Assembly Standing Orders, I wish to convey a Message from His Excellency the President asking Parliament to approve one Joseph Kipchirchir Boinett for appointment as the Inspector General of Police. In the Message, His Excellency the President conveys that, in exercise of powers vested in him under Article 245(2)(a) of the Constitution and Section 12 (2) of the National Police Service Act (No. 11A of 2011) as amended by the Security Laws (Amendment) Act 2014, he nominates Joseph Kipchirchir Boinett for appointment to the position of Inspector General of Police.

Article 245(2) (a) of the Constitution states: “The Inspector-General is appointed by the President with the approval of Parliament.” Further, Section 12 of the National Police Service Act (No. 11A of 2011) as amended by Section 11 of the National Police Service (Amendment) Act 2014 and further amendment by Section 86 on the Security Laws (Amendment) Act 2014 reads and I quote-

“12(1) Pursuant to Article 245(2) (a) of the Constitution, the Inspector-General of the Service shall be appointed by the President with the approval of the Parliament.

(2) The President shall, within fourteen days after a vacancy occurs in the office of the Inspector-General, nominate a person for appointment as an Inspector-General and submit the name of the nominee to Parliament.”

Hon. Members, you may recall that the approval of appointment of the immediate former Inspector-General of Police was granted by the National Assembly acting as both the National Assembly and the Senate in terms of Paragraph 11 of the Sixth Schedule to the Constitution. I wish therefore to note that this is the first instance that the two Houses of Parliament are required to approve the appointment of a candidate to a public office during the existence of the two Houses of Parliament. In this regard, a couple of unprecedented aspects with regard to the process would be expected to arise.

However, as Members are aware, Parliament is not helpless as the two Speakers are well empowered to deal with such scenarios. Consequently, in order for Parliament to effectively conduct the vetting process, the Speaker of the Senate and I have consulted on the most judicious manner of facilitating Parliament to discharge this important task. In the interest of economy of time and resources, the requirements of the Public Appointments (Parliamentary Approval) Act of 2011, Standing Orders of both Houses and the practices of Parliament, we have agreed as follows:-

(i) THAT, the vetting of the nominee for appointment as Inspector -General of Police shall be conducted jointly by the Committees of the two Houses mandated to deal with matters of national security. The vetting process will, therefore, be conducted by the Departmental Committee on Administration and National Security of the National Assembly sitting jointly with the Standing Committee National Security and Foreign Relations of the Senate;

(ii) THAT, the Chairpersons of the two respective committees will co-Chair the joint sittings and the Secretariat will comprise officers of the two Houses;

(iii) THAT, the quorum of the joint sittings will be the respective quorums of each of the committees as stipulated in the respective Standing Orders;

(iv) THAT, as contemplated under Rule 9(6) of the Joint Rules unless a decision is reached by consensus, any vote to be taken in the joint sitting of the Committees shall be by separate Houses. This will ensure that the numerical difference of the individual Members representing the Houses in the joint sittings has no effect on the decisions of the joint sittings of the Committees;

(v) THAT, the Committees shall, having conducted the vetting hearings, submit a Joint Report to the respective Houses in the manner contemplated by Paragraph 7 of the Joint Rule No.9.

Honourable Members, Section 8 (1) of the Public Appointments (Parliamentary Approval) Act, 2011 states:-

“Unless otherwise provided in any law, a Committee shall consider a nomination and table its report to the relevant House for debate and decision within 14 days from the date on which the notification of the nomination was given in accordance with Section 5.”

Further Section 9 of the said law provides thus:-

“If after the expiry of the period for consideration specified in Section 8, Parliament has neither approved nor rejected a nomination of a candidate, the candidate shall be deemed to have been approved.”

In this regard, the period of the matter that is now before Parliament starts running from tomorrow, Wednesday 18<sup>th</sup> February, 2015. In order to facilitate the commencement of the deliberations, the first joint sitting of the Committees will be held tomorrow, Wednesday 18<sup>th</sup> February at 9.30 am in the Mini Chamber of County Hall in Parliament Buildings. It is also advisable that the concerned committees expeditiously proceed to jointly notify the nominee and the public and conduct the joint sittings so as to conclude the exercise within time. The Committees should table the Joint Report on or before Thursday, 26<sup>th</sup> February, 2015 to enable the Houses of Parliament to consider the Report in good time.

This Message, therefore, together with the resume of the nominee stands committed to the Departmental Committee on Administration and National Security of the National Assembly sitting jointly with the Senate Committee on National Security and Foreign Relations of the Senate.

I thank you.

## PETITIONS

### CONSTRUCTION OF FOOTBRIDGE ALONG WAIYAKI WAY

**Hon. Mwaura:** Thank you, hon. Speaker. I hereby wish to present a petition by persons with disabilities on the construction of a footbridge along Waiyaki Way to link ABC Place Bus Stage to the offices of the National Council for Persons with Disabilities (NCPWD).

I, the undersigned, on behalf of citizens of Kenya and in particular persons with disabilities draw the attention of the House to the following:-

1. That, the National Council for Persons with Disabilities (NCPWD) which promotes the rights of persons with disabilities in Kenya amidst disability issues in all aspects of national development is allocated along the busy Waiyaki Way;

2. That, the NCPWD offices are located across the ABC Place main stage along Waiyaki Way making the organisation inaccessible when one is arriving from the city;

3. Cognisant of the fact that persons with disabilities and in particular those who are physically challenged, or visually impaired who use assisting devices such as wheel chairs, crutches and white canes encounter challenges when crossing over to and from the Council as well as other disability affiliated organisations operating in the vicinity;

4. Noting that such a predicament poses a great risk to the lives of not only these persons with disabilities but also to other pedestrians in the area who have to come over four lanes against oncoming traffic which usually comprises of speeding motorists;

5. Further noting that there is no other accessible and safe means that one can use to reach the Council and other establishments in the area;

6. That the matter in respect of which this petition is made is not pending before a court of law.

Therefore, your humble petitioners pray that the National Assembly through the Departmental Committee on Transport, Public Works and Housing recommends:

(a) That the Ministry of Transport and Infrastructure urgently fast tracks the erection of speed bumps as a temporary measure to slow down the traffic and mitigate further loss of lives along that stretch of the road;

(b) Intervenes to ensure that the petitioners' plight is addressed by ensuring that money is budgeted for and allocated for the next financial year towards the construction of a disability-friendly footbridge to ease access to the institution and address the danger that this predicament poses to the lives of Kenyan road users particularly persons with disabilities along that area.

Your petitioners will always pray. Thank you.

**Hon. Speaker:** The Petition is committed to the relevant Departmental Committee which is Transport, Public Works and Housing. Even as I do that, hon. Members, allow me to draw your attention to the fact that there are several petitions which have been referred to various committees and whose reports have not been filed. I will be shortly issuing some directives as to what is going to happen with those committees which may include, but not limited to barring those committees from sitting until they produce those reports. Kenyans who are petitioning expect that once the petition has been referred to us, there will be some reports. It is not meant to excite us so that Members do not take the petitions with the seriousness that is expected. So, those Departmental Committees which are sitting on reports relating to petitions, take note that very soon, we will be moving in that direction.

**Hon. Speaker:** Hon. Dawood, what is your point of order?

**Hon. Dawood:** Hon. Speaker, it is with regard to a petition and what you have just talked about. I put forward a petition on 14<sup>th</sup> August, 2014. I have reminded this House about it. Initially, the petition was forwarded to the Departmental Committee on

Administration and National Security. Later on, I was told it was forwarded to the Departmental Committee on Justice and Legal Affairs. I want to withdraw this petition because it is of no use now. It is over four months now and the person is now going to be compensated from outside this House. This petition has been rendered useless.

**Hon. Speaker:** Are you saying that the person is going to be compensated?

**Hon. Dawood:** The petition which I had brought to this House was for compensation of a police officer who was killed. The court had ordered for the compensation but it has not come through for the last seven or eight years. I brought this petition twice initially. I was told it was the Administration and National Security Committee that was concerned but the Chairman did not get it. Then I was directed by the Director of Committees to the Justice and Legal Affairs Committee. The Justice and Legal Affairs Committee has never called. I have spoken to the Chairman of the Justice and Legal Affairs Committee, hon. Chepkong'a and to date, nothing has happened. The person on whose behalf I was putting this petition has asked me to withdraw it because Parliament could not do anything and he has already managed to do something about it from elsewhere. I feel helpless because I and the person have never been asked to appear before the Committee. It has been going round and we do not know anything about it.

It is not just this Mr. Speaker. In 2013, with regard to my Motion on health, I was taken round. I was told it was in the Budget and Appropriations Committee and when I spoke to the Chairman of the Budget and Appropriations Committee, it was not there today or this week. Last week, I gave a notice but it has not even gone to your office. I have checked in your office and it is nowhere to be found. It is like animal farm here. Some animals are more equal than others. I feel it is not right because it has been happening from 2013. In 2013 I presented a notice of Motion and in 2014 it was on the Order Paper. Now I am told it is going to the Budget and Appropriations Committee again. It was on the Order Paper in the last Session and now it cannot even be found. I gave a notice of Motion last week. I complained to the Deputy Speaker, hon. Joyce Laboso and she told me it would be there. Today I checked but it has not even gone to your office. It is nowhere to be found.

I want to withdraw this petition because I feel it is not going to serve any purpose now.

**Hon. Speaker:** Are you the one who had presented the petition?

**Hon. Dawood:** Yes, hon. Speaker. You even directed---

**Hon. Speaker:** Do not worry about what happened thereafter. If you desire to withdraw it because you are pursuing other quarters so be it.

**Hon. Dawood:** It is going to be paid.

**Hon. Speaker:** If you say you are withdrawing because you are pursuing other avenues, then that is your prerogative.

**Hon. Dawood:** Hon. Speaker, we are given a time limit of 60 days. It is already more than 120 days and it has not even been prosecuted.

**Hon. Speaker:** Whether you are frustrated or not, if you say you want to withdraw, you will be bound by your own statements. It is immaterial that you are withdrawing because of frustration or because you do not want to prosecute it. Do you want to withdraw the petition?

**Hon. Dawood:** Hon. Speaker, it is out of frustration---

**Hon. Speaker:** Do not tell me the reasons. Do you want to withdraw?

**Hon. Dawood:** Yes, I would want to withdraw it.

**Hon. Speaker:** I have just given notice that I need reports on all those petitions because the House needs to know what became of them. Having done so, you rise and say that you want to withdraw. We cannot force you to pursue it. There is nothing out of order. I will not listen to anyone.

**Hon. Dawood:** The Table Office gave me this paper today. It says it should go to the Administration and National Security Committee. At a later date, I am told that it should go to the Justice and Legal Affairs Committee. Are they not aware of where it is supposed to go? Is it the Committee on Justice and Legal Affairs or the Committee on Administration and National Security?

**Hon. Speaker:** Where was it referred?

**Hon. Dawood:** Here it says Administration and National Security Committee but the Committee says it should go to the Justice and Legal Affairs Committee.

**Hon. Speaker:** Have they made a report here? Hon. Kamama. We should not even engage in this because this is not a court of law. If you want to withdraw a petition for whatever reasons, hon. Dawood, do not tell me you are frustrated. If you want to withdraw just rise in your place and withdraw. You have said that you are pursuing other avenues. Is that the route you want to travel?

**Hon. Dawood:** I wish to withdraw.

**Hon. Speaker:** The petition stands withdrawn.

**Hon. Dawood:** Out of frustration.

**Hon. Speaker:** It does not matter. That is not part of the record. The petition stands withdrawn. There is nothing out of order about that. Let us proceed.

*(Petition presented by hon. Dawood withdrawn)*

## PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table:-

The National Treasury Medium Term Budget Policy Statement, February 2015 (pursuant to section 25 of the Public Finance Management Act, 2012).

The National Treasury Medium Term Debt Management Strategy, 2015 (pursuant to section 33 of the Public Finance Management Act, 2012).

The National Treasury Quarterly Economic and Budgetary Review (QEBR) for the First Half, Financial Year 2014/2015, period ending 31<sup>st</sup> December 2014.

The Public Private Partnerships Regulations, 2014 and the Explanatory Memorandum (pursuant to section 15 of the Public Private Partnership Act, 2013).

The Council of Governors Statutory Annual Report for the period 2013/2014 (pursuant to section 22 (1) of the Intergovernmental Relations Act, 2012).

The East African Community (EAC) Protocol on Peace and Security and the Mutual Peace and Security Pact of the Northern Corridor Integration Projects and the accompanying Memoranda (pursuant to section 8 of the Treaty Making and Ratification Act, 2012).

**Hon. Kamanda:** Hon. Speaker, I beg to lay the following Paper on the Table:-

Report of the Departmental Committee on Transport, Public Works and Housing on consideration of the amendment of the Traffic Amendment Bill, 2014.

### NOTICE OF MOTIONS

#### ADOPTION OF PIC SPECIAL REPORT ON TELKOM KENYA

**Hon. Keynan:** Hon. Speaker, I beg to give notice of the following Motions:-

THAT, this House adopts the Public Investments Committee Special Report on Recapitalization and Balance Sheet Restructuring of Telkom Kenya Limited laid on the Table of the House on Tuesday 29 April, 2014.

#### ADOPTION OF PIC SPECIAL REPORT ON TASSIA II PROJECT

THAT, this House adopts the Public Investments Committee Special Report on the Procurement and Financing of the National Social Security Fund Tassia II Infrastructure Development Project laid on the Table of the House on Wednesday 30 April, 2014.

#### ADOPTION OF PIC SPECIAL REPORT ON RESTRUCTURING OF KPR LIMITED

THAT, this House adopts the Public Investments Committee Special Report on the Restructuring of Kenya Petroleum Refinery Limited laid on the Table of the House on Tuesday, 29 April, 2014.

#### ADOPTION OF PIC SPECIAL REPORT ON KBS COAST REGIONAL OFFICES

THAT, this House adopts the Public Investments Committee Special Report on the Procurement of the tender for the proposed Kenya Bureau of Standards Coast regional offices and laboratories in Mombasa laid on the Table of the House on Wednesday, 4 June, 2014.

### STATEMENT

#### MURDER OF FORMER HON. PHILIP GODANA

**Hon. Dido:** Hon. Speaker, I wish to bring to the notice of the House that on the morning of Saturday, 14<sup>th</sup> February, 2015, hon. Philip Godana, a former Member of Parliament for Moyale who served from 1988 to 1992, was killed in his House in Syokimau, Machakos County. Four men broke into his House and executed him in front of his family, including his mother of 90 years. What we have so far established is that

the criminals had the sole intent of eliminating hon. Godana. It took the police many hours to respond to the distress call.

As a community, we wish to thank the President and the Deputy President because as soon as they heard about the incident, they got in touch with us, as the leaders of the community. We also wish to thank the Independent Electoral and Boundaries Commission (IEBC) who helped in the interment of the deceased in the area of Sololo.

Hon. Speaker, five days after that incident, we have not seen any serious attempt by the police to take any action aimed at bringing the culprits to book. There appears to be a lull. Now that hon. Nkaissey is in charge, it appears that the solution to the problem of insecurity in this country has been found. That is far from the truth. I call upon hon. Nkaissey and his team to work with speed so that the culprits who committed this heinous crime can be brought to book.

Finally I believe that as leaders and Members of the National Assembly, and also as general citizenry, we do not feel safe in this country. Therefore, something must be done.

Thank you, hon. Speaker.

**Hon. Speaker:** Yes, hon. Kamama!

**Hon. Abongotum:** Thank you, hon. Speaker. The Statement given by the Member is quite correct. As a Committee, last week we tasked the Cabinet Secretary in charge of security and the Director of Criminal Investigation Department (CID) to get to the bottom of what happened to the late hon. George Muchai, which they have done. I want to thank the Director of CID for moving with speed and arresting those who killed hon. George Muchai even though we have not gotten the motive of the killing so far.

On the matter raised by hon. Rasso, we wish to promise, as a the Committee, that we will task the Director of CID with the duty of working round the clock to ensure that the killers of hon. Philip Godana are arrested and brought to book. As a Committee, we will take up the matter and push the Director of CID to deliver.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Kigo Njenga. Sorry we overlooked your paper for notice of motion

## NOTICE OF MOTION

### MEASURES TO ENSURE PROPER DISPOSAL OF ALCOHOLIC CONTAINERS

**Hon. Njenga:** Hon. Speaker, I beg to give notice of the following Motion;-

THAT, aware that there has been an increase of alcohol use and abuse in Kenya especially in urban areas; further aware that over 2.2 million Kenyans are addicted to alcohol; noting that improper disposal of alcoholic containers has been on the rise leading to unintended exposure and use of containers for vending illicit brews, especially to school-going children; deeply concerned that this is both an environmental and a health risk; this House urges the Government, in conjunction with all relevant authorities, particularly the NACADA, to institute and ensure proper disposal of alcoholic containers and organise recreational activities during school holidays in all constituencies.



Thank you, hon. Speaker.

## BILLS

### *Second Reading*

#### THE PUBLIC AUDIT BILL

*(Hon. A.B. Duale on 11.2.2015)*

*(Resumption of Debate interrupted on 12.2.2015)*

**Hon. Speaker:** Hon. Wamalwa, I am informed that you have a balance of six minutes.

**Hon. Speaker:** What is your point of order, hon. Ochieng?

**Hon. Ochieng:** Thank you, hon. Speaker. I rise under Articles 94(4), 229, 249 and 250 of the Constitution. I know that debate on this Bill has been going on, but there are some pertinent issues you ruled on. If you allow me, I could ventilate on them before we proceed. My main reason for rising is that this Assembly is obligated to observe the Constitution. While going through the particular Bill before the House, I identified not less than eight instances it fundamentally goes away from the principles of the Constitution. I wanted to persuade you, if you allow me---

**Hon. Speaker:** Principles of what?

**Hon. Ochieng:** Hon. Speaker, it goes away from the principles of the Constitution as set out in the various Articles that I have mentioned. I want you to allow me to persuade you on them before we continue with the debate on this Bill.

Having looked through the Bill, I realize that several clauses would, in my opinion, not fit the current requirement of the Constitution; and if we debate it the way it is, we will be going against our role as indicated in Article 94(4).

Clauses 7, 8, 10, 14, 15, 25, 60, 68, and 72 of this Bill, in my opinion, fundamentally depart from the requirements of the Constitution. It is your duty to ensure that whatever we debate in this House is within the four corners of our Constitution. The Office of the Auditor-General is set out under Article 229 as an independent office. In this debate, without going into the merits or demerits, we are purporting to introduce foreign bodies like the one proposed under Clause 8 of the Bill.

The Constitution says that the Office of the Auditor-General shall recruit its own staff but under Clause 8 of the Bill we are saying that the Office of the Auditor-General will only recruit after consulting the Public Service Commission, which is constitutionally an office that is at the same level with the Office of the Auditor-General. Going ahead, Clause 15 says that we are going to appoint a Senior Deputy Auditor-General. That office may not have a problem but we are saying that, in the appointment of this officer, the Auditor-General must, again, consult the Public Service Commission, thus eroding the independence of the Office of the Auditor-General.

Clause 25 says that there shall be something called 'Audit Advisory Board'.

I do not have an issue with that board but I have an issue with a board that is set up but is not chaired by the Auditor-General himself but then advises the Auditor-

General. How can we have a body advising the Auditor-General whom we have established as an independent office? Going ahead, we are now saying that at Article 229(5) the Auditor-General will audit any office that is funded from public funds but at clause 40 we are now saying that we limit the capacity of the Auditor-General to audit security agencies. These agencies currently if you look at our Budget take more than 10 per cent of our Budget. And you are now saying that 10 per cent of our Budget will have limitation on how this will be audited.

If you go on to clause 60, we are now creating offences that are going to prevent the auditors of this office from carrying out their duties.

*(Loud consultations)*

**Hon. Speaker:** Order, hon. Members!

**Hon. Ochieng:** Clause 72 is very fundamental. It is really sad, it says that the Auditor-General cannot question any Government policy; that this person can only question expenditure but cannot question any Government policy. If you allow me to read, I will read for you so that you understand the breadth of what I am talking about. It says:-

“In performance of his or her functions and duties under this Act, the Auditor-General may not question the merits of a policy objective of government or any other state organ or public entity.”

The Constitution requires that this person must look at the effective and efficacious expenditure of Government money. How can he do this without being able to question whether the policy being set out will result in good use or bad use of public money?

If you look at Clause 68, it again says that the Auditor-General will only act under what is said there. He will only make regulations if he consults the Cabinet Secretary (CS). In the last two Sessions, we have had this Parliament debating and passing laws that, in my opinion and sometimes even in your opinion hon. Speaker, have gone against the Constitution. At the end of last Session when we were discussing the Security Laws (Amendment) Bill, one of the issues raised that time was similar to what I am raising today. Could you please look at this Bill and rule on the areas I have mentioned? If we go into the Third Reading and pass the Bill, we risk reducing the role of the Auditor-General as envisaged in the Constitution. The reason for creating the Office of the Auditor-General was so that we could create confidence and allow the person to work independently.

Hon. Speaker, I so beg to move.

**Hon. Speaker:** Hon. Ochieng, looking at Article 229, what you say is perfect, that the Auditor-General audits:-

- “(a) the accounts of the national and county governments;
- (b) the accounts of all funds and authorities of the national and county governments;
- (c) the accounts of all courts;
- (d) the accounts of every commission and independent office established by this Constitution.”

Of course there was an omission “except his own office”, but it goes:-  
“(e) the accounts of the National Assembly, the Senate and the county assemblies;  
(f) the accounts of political parties funded from public funds;  
(g) the public debt; and,  
(h) the accounts of any other entity that legislation requires the Auditor-General to audit.”

Now, those functions are not being interfered with even from what you are reading. You are saying that the proposed Bill contains clauses which may limit the Auditor-General in due execution of his functions under that Article. Is it not the reason why it is just a Bill? As the National Assembly, you are required to look through it and where you think the provisions are likely to infringe on those powers, you propose their deletion? In any event, it is both this House and the Senate which will consider this Bill so that if there is anything that you rightly think is likely to compromise the office, you propose their deletion. But we cannot say that the Bill should be withdrawn. Indeed, this Bill came from the consultations that the Commission for the Implementation of the Constitution (CIC) had. They are the ones who are supposed to present this Bill to us. So, I would advise that we proceed with the Bill as it is and propose amendments even by way of deletion of any provisions that in your view - I am sure your colleagues are people who care to know that the Committee of the whole House is a serious stage of a Bill - appear to compromise the independence of the Office of the Auditor-General.

I am sure thereafter the Bill will be referred to the Senate for their consideration as well in the form that we, as the National Assembly, will have passed it so that they will give their input on it. If it passes in both Houses and people do not see the points that you are raising then it is unfortunate. But I would agree with you that clauses that may appear to compromise the independence of the Office of the Auditor-General should not be entertained. But of course that is merely my agreement with you. At the end of the day, you know I have no vote. Your own Constitution, Article 122(2)(a), says so. I will leave it to the good judgment of you hon. Members but I think it is important to pay attention to the points raised by hon. Ochieng.

**Hon. Wakhungu:** Thank you, hon. Speaker. I had spoken on this Bill but I had some few minutes remaining. As I had said earlier, I support the Bill.

I bring to the attention of the House Article 226(4) of the Constitution. This is about who audits the Auditor-General. He is such a powerful person but we have not heard who is going to audit him. When you read Article 226(4) of the Constitution, it says:-

“The accounts of the office of the Auditor-General shall be audited and reported on by a professionally qualified accountant appointed by the National Assembly.”

When you go through the Bill, there is no provision on how this accountant will be appointed. I discussed this with the respective Chairman and so when it comes to the Committee of the whole House, we are going to introduce amendments so as to provide for appointment of this person.

In other jurisdictions, for example, India the Auditor-General has a term of six years while the rest have five years. This Bill talks of eight years. This is too long. When it comes to the Committee of the whole House, we shall reduce it to two terms of six

years. For example, when you read the State Corporations Act, for most of their CEOs, the terms are three years. Two terms add up to six years. When it goes beyond eight years, it will be on the higher side especially bearing in mind the fact that this person enjoys tenure of office.

From research we have seen that 30 per cent of the GDP goes to waste---

**Hon. Speaker:** Hon. Wakhungu, are you saying that this is a provision in the Constitution? Article 229(3) says that the Auditor-General holds office subject to Article 251 for a term of eight years and shall not be eligible for reappointment.

**Hon. Wakhungu:** Hon. Speaker, the jurisdiction---

**Hon. Speaker:** You want to bring a constitutional amendment?

**Hon. Wakhungu:** Yes, hon. Speaker.

**Hon. Speaker:** But surely that is not open at this stage.

**Hon. Wakhungu:** But just to mention so that hon. Members can also take note of that.

Hon. Speaker, as I was saying, in terms of the 30 per cent that goes into wastages of corruption, the only good way of prevention of corruption is through the Auditor-General who should produce timely reports.

Many a times the Auditor-General has said that he has a shortage of manpower. This is to request this honourable House that in terms of allocation to the Auditor-General, we should be able to allocate enough funds so that the Auditor-General has enough staff. We have cases of corruption in counties. When we raise this issue with the Auditor-General he says he does not have enough manpower to deploy to these counties. An example is Narok County where things came to a standstill. The Auditor-General says that the report will come out, maybe, in two weeks' time because of staff shortage. Given that there is devolution and the fact that we have so many counties, when it comes to budgeting, we should allocate enough funds to this office of the Auditor General so that we look at issues of corruption and save this country the 30 percent wastages which comprise money that goes into corruption.

Hon. Speaker, the Auditor-General is supposed to be independent. We have a provision for an advisory board. When you look at its functions and roles, it renders the Auditor-General not to be independent. I do not know on what note the Committee decided to bring in the issue of an advisory board. This beats the logic of this Auditor-General to become independent. It is, again, my humble request that when this Bill gets to the Committee of the whole House we should look at the merits and demerits of this matter. Do we really need this advisory board? Many hon. Members who contributed earlier agree with me that this will render this body not to be independent.

There was also the issue of setting up of offices. We had indicated that it will be good for the Auditor-General to have presence in every county; that is, to devolve and have a functional office in every county.

Thank you, hon. Speaker and I support.

**Hon. Speaker:** Hon. Pukose, the Floor is yours.

**Hon. (Dr.) Pukose:** Thank you, hon. Speaker for allowing me to contribute to this Public Audit Bill, National Assembly Bill, No.38 of 2014.

Hon. Speaker, this is a very important Bill. As we talk about the Office of the Auditor General, we know that we faced a lot of challenges especially in many Ministries

in terms of auditing. This Bill has come timeously so that we can look at, especially, the independence as provided in the constitution of the Office of the Auditor-General. The Auditor-General ought to be independent and in this Bill we are talking about how we should finance the Office of the Auditor-General. The Bill states that the Treasury shall appropriate money to the Office of the Auditor-General.

I think this one takes away the independence because Treasury is one of the offices the Auditor-General is supposed to audit. If you are auditing an office that is supposed to give you money then it takes away your impartiality. When you are giving a report and it happens not to favour the person who gives you the money, then that person has the capacity to cripple you so that in the following financial year you will not be able to perform well! Therefore, I think this is an area that we are going to bring amendments so that we empower the Office of the Auditor-General for its independence. It should be the National Assembly that is appropriating it.

Who audits the Auditor-General? Is it the Public Investments Committee (PIC) or Public Accounts Committee (PAC)? If it is these two committees, then they should give a report concerning the Auditor-General's Office.

Hon. Speaker, the main challenge facing auditors is the fight against corruption. Auditors need to be answerable to the disciplinary system within the Office of the Auditor-General. It should be the Auditor-General to employ and fire those auditors within a system of their own human resource. That way, it will be possible to maintain discipline. When we say that the Office of the Auditor-General, in consultation with the Public Service Commission (PSC), is going to hire employees, then that takes away the independence. What this means is that the staff are going to be answerable to the PSC. When a complaint is raised about the staff within the Auditor-General's Office, it means that it is another body that regulates them and, therefore, it would be very difficult to maintain discipline.

Many of the auditors, especially when they go to Ministries, they become like Traffic Police officers. As much as they are doing audit they also want to be given something so that they can look the other way. Therefore, this is an area that Parliament needs to look into. How do we seal these loopholes? Many a time auditors have blackmailed heads of parastatals or heads of departments to part with some money so that they can write favourable reports. This is an area that this House needs to look into. As we bring these amendments we should rein in the auditors and have a disciplined office of the Auditor-General.

One of the biggest challenges is how to link up the report of the Auditor-General so that it is timeously presented to the PAC and discussed within the financial year. This Parliament has tried. Previously we used to talk of reports which delayed for three, four or five financial years. That has been a big problem.

With those few remarks, I want to support this Bill.

**Hon. Speaker:** Hon. Maanzo, the Floor is yours.

**Hon. Maanzo:** Thank you, hon. Speaker for giving me an opportunity to contribute to this Bill.

Hon. Speaker, the Public Audit Bill, 2014 is one of the very important Bills in the country under the new Constitution. The role of the Auditor-General will go a long way to assist in solving the problem of corruption in the country and misuse of public funds.

That is why it covers a wide range under the Constitution in terms of public organs, including Parliament.

I have looked through the Bill and I am greatly concerned with part 8 where they talk about offences and sanctions. Clause 60 creates offences and sanctions. The officers employed under that office can commit certain offences, including corruption. If you look at the offences and the punishment proposed, any officer found in contravention of the law will be charged in a court of law by the DPP's Office. The punishment proposed is a fine of Kshs10 million or five years in jail. I do not think this is commensurate and at the Committee stage we will be proposing amendments in terms of giving serious penalties to people who have the responsibility to stop corruption, but instead engage in corruption and enrich themselves. If they are going to look the other side in order to help a corrupt Government official, then that is a serious offence. Therefore, you cannot just be punished by being slapped a fine of Kshs10 million or being handed a sentence of five years in jail.

There should be strict penalties so that the people involved in the Auditor-General's Office know that if they commit these offences then there is a serious matter at stake. However, if it is just Kshs10 million, which most probably they have already raised in what they are doing, since we are talking of a budget of over Kshs1 trillion and it is being managed by these people who are the ones doing oversight, then the penalties have to be serious. It should be mandatory that we not only have just a fine but both a fine and jail term so that we can strictly be able to prevent any corrupt practices.

Hon. Speaker, under Clause 61(1)(a) there are other offences and general penalties also given: It states:-

“A person shall not –

(a) without reasonable cause or lawful excuse, obstruct or hinder, assault or threaten a member of staff of the State Audit Office acting under this Act.”

These are public officers who stop officers from the Auditor-General's Office from conducting business as usual. The punishment given for such an offence is a fine of Kshs1 million or one year in jail. Again, because a lot of money is involved in these matters, when you look at the Bill we need to put strict penalties so that we can stop corruption in this country and public monies can be put into good use. Kenyans need to safeguard their monies.

I believe and a lot of Kenyans do that if we used public funds properly to serve the people of Kenya then we would have solved a lot of problems including irrigation issues and water problems which face a lot of parts of the country including my constituency. Many people are expressing doubts on the usage of money allocated to counties. Again, all these issues will be subjected to the Office of the Auditor-General which we are going to be setting up soon under the Act once the Bill goes through.

I support and will be looking forward to propose further amendments to most parts of this Bill to make it more useful to the country and to make sure that the Auditor-General is also audited and is accountable to the country.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Njoroge Baiya.

**Hon. Baiya:** Thank you, hon. Speaker, for giving me an opportunity to contribute to the Bill. This is one of the Bills which have a constitutional implementation timeline. It was supposed to have been enacted before 26<sup>th</sup> August, 2014, but time was extended by nine months which is going to lapse around May. It is my hope that the National Assembly will be through with this Bill in time so that it can be referred to the Senate and hopefully there will be sufficient time to facilitate mediation in case any is needed so that we can meet those time constraints given that under the Constitution we can extend time only once which we have already done.

The Auditor-General's Office as reformed under the new Constitution and within the new Act is a very important office. This office is supposed to offer oversight over all State institutions. Under the new constitutional dispensation where Parliament and the National Assembly in particular, is no longer sitting in the Executive, Parliament is the one that really requires a strong Auditor-General's Office. We have seen instances where Members of Parliament have attempted to exercise oversight over a State institution, but acting as a committee means they do not have the requisite opportunity, competence and staff. So, in a situation where the Auditor-General's Office is sufficiently empowered and funded, the Auditor-General will work with the relevant committees of Parliament. He will make reports on the relevant State institutions audited and avail the reports before the committees so that they are able to take the necessary action against the Executive or the concerned Government department. That is the way this institution is supposed to work.

Hon. Speaker, when we look at parallel jurisdictions like Germany, you find that the institution of the Auditor-General's Office is very strong and a parliamentary committee works very closely with this institution. They are also sufficiently funded. For instance, when it comes to functions of auditing, in the country we have focused only on financial auditing in the past, but this Bill proposes other aspects of auditing including value for money audit. The kind of skills needed for auditing goes beyond mere financial auditing. It may involve auditing the infrastructure where the country is now spending enormous amount of resources. The Auditor-General's Office will need to employ people with specific technical skills including engineers who can assist the office, for instance to audit those infrastructure projects. They will need architects who can also audit compliance with the specifications of designs as well as the implementation.

I, therefore, urge the House to recognise that an empowered Auditor-General will be a very important assistant to Parliament to exercise its oversight role together with the other independent commissions. This goes on to just illustrate what happened, for instance, during the Narok tussle involving the Senate and the Members of Parliament. The Senate Standing Committee on Finance, Commerce and Budget called the Auditor-General and requested him to make a report on the controversy over the corruption cases in Narok. However, the Auditor General came out saying that he could not afford to give a report to the Committee because he does not have the requisite manpower to conduct particularly case by case audit as would be needed and as was the case in Narok. This, therefore, means that Parliament will also need, during budget allocation as we operationalise this Act, to ensure that the Auditor-General's Office is sufficiently funded to be able to discharge the mandate expected of it even to assist various committees of both Houses with the requisite information whenever needed.

Hon. Speaker, under Clause 20 I believe the framers of the Constitution were wondering whether it is prudent to give the Auditor-General power to access bank accounts. There is a comment on the Bill to the effect that if the Auditor-General has such powers, he may end up abusing them. However, as Parliament we ought to appreciate that the person who will be audited is basically the Executive because it is the one which has resources and implements projects and, therefore, requires to be audited.

If a case arises where public resources have been misappropriated, the right thing to happen is that the Auditor-General should have unlimited access to information requisite for the investigation he is conducting, including access to bank accounts held by suspects. That does not mean that he is not going to do any conviction. It only means that he is going to make the information available to whichever other organs of the State that may be called upon to act on it. I know a lot of concerns have been raised. Therefore, this Bill requires to be looked at especially at the Committee Stage, so that we can sufficiently give the Auditor-General power not only to audit, but even in the process of conducting investigation, to have access to information including to bank accounts held by private individuals who may have conducted business with the Executive or with public funds.

With regard to the security provisions which have been provided under the current Bill, there is clearly an attempt to over-restrict access of information on security from the Auditor-General-General's report. Whereas it is true that there may be security-sensitive information that may not, in the public interest, be put to the public there is over-restriction. For instance, when the Bill provides that disclosure would harm some people's business interests, that provision is very dangerous. It would negate completely the whole idea of auditing if somebody is going to be harmed. Even in all the cases where we are talking about corruption, be it in the recent "chicken" case involving the Independent Electoral and Boundaries Commission (IEBC), some individuals are being mentioned who are Kenyans. So, if the legislation was to be passed the way it is, it would mean that even the "Chicken" Report and the persons mentioned would be excluded merely because the assets or property which were acquired happen to have an element of security. So, we should only confine ourselves to non-disclosure of vital information.

I see my time has run out. I beg to support this very important Bill.

**Hon. Speaker:** Hon. Chanzu.

**Hon. Chanzu:** Thank you, hon. Speaker for giving me an opportunity to support the Public Audit Bill. This is one of the independent offices which are provided for in the Constitution, the other one being the Controller of Budget. Initially, they were together, but for very good reasons, they were split, so that the Controller of Budget deals with providing what is supposed to be spent and the Auditor-General checks how it has been utilized.

The only problem is that there is too much of postmortem when this is being done. The same Constitution has also provided for those who commit certain offences. The nature of Kenyans now is that when there is commission of an offence or misappropriation of funds and the matter comes up, some people run up and down the streets saying that their people are being finished. The money is already spent at that point.



There should be a way for us to facilitate these officers as we operationalise what is in the Constitution through this Bill. We should facilitate it fast enough, so that we can move with speed and as the expenditure is being incurred, there is also a timely way of checking on what is going on. Then we can apprehend before it gets too far. If you look at the recent report that was published by the World Bank on how the county governments had spent the money that was appropriated by the National Assembly and the Senate, in some sections the report states that they have spent less than 15 per cent on development. Others spent more on development. When you ask some of them, they say that they spent a lot of money on salaries. I was wondering whether there is a part of Kenya where you do not employ workers. Some of them spent over 50 per cent on development. However, that is just post mortem and huge amounts of money are involved.

When you talk about misappropriation of, for example, the Constituencies Development Fund (CDF), it will be about Kshs60 million or Kshs70 million, but when you talk about the county governments, you are talking about Kshs5 billion or Kshs3 billion. So, in terms of percentages, when this money gets lost, a lot of money is lost. For effective management of internal controls, risks and the overall function of the systems by the State organs, it is important that the capacity of the Auditor-General is enhanced early enough. This means that we must provide adequate funds for the establishment of offices both at the head office and also the ones that we need to create at the county level. The other day I was talking to the Auditor-General about how he follows up the money that goes to Government institutions and county governments and he was talking about underfunding. They are proposing to have Kshs1.5 billion in order to do their work effectively.

Funding is a very important issue as we come to discuss this Bill. Officers at the Auditor-General's Office must be Kenyans who are above board. There is a lot of temptation. When some of these officers go to the offices where they are supposed to audit, those whom they are supposed to audit dangle a carrot, the officers get tempted and are not able to do their work effectively. The issue of recruiting officers to the Auditor-General's Office must be taken seriously, so that we can get officers of high integrity who can withstand the temptation of the little kickbacks that are given in order for them not to do their work properly. I know some of them who are taken to hotels instead of going to audit where they are supposed to audit. They work from hotels and are given some little money and they do not do the correct job. It is necessary that we get people of high caliber and patriots who care about the welfare of the country as a whole. I have talked about the issue of timeliness. It is necessary that the audits are done on time, so that we do not lose as a country and a lot of money does not go down the drain.

The Bill also talks about the administrative powers of the Auditor-General in the organisational structure and staffing. That is quite good. I hope that when this comes out, they will come out with a proper structure which covers all that we need to audit as a country bearing in mind that our country is growing very fast. If you look at the period between 2003 and this year, you will find that in the year 2003, this country operated at an annual Budget of Kshs283 billion.

Today, we are talking about a Budget of more than Kshs1.7 trillion, which is a tremendous growth. Therefore, our systems of control must grow in the same proportion,

so that we do not leave anything unattended to. It means that, as we get people of high calibre to work in those offices, their earnings should also be taken care of adequately. Their earnings and promotion should be commensurate to their qualifications. They should be competent people who are committed to serving the country.

The other important aspect is the independence of the Office of the Auditor-General. That aspect has been provided for in the Constitution and we need to uphold it. It is provided that the Office of the Auditor-General shall be independent. However, as one of colleagues has asked, how do you check the Auditor General's Office? I have already said that if we can get high calibre people – selfless people who are well-motivated – we can get the right results from the Office of the Auditor-General.

Hon. Speaker, I hope that the rest of the staff will be taken care of, so that the institution can be well staffed and effectively serve the nation, especially at the county-level, where we are putting a lot of money. That way, the country can grow right from the grassroots in the manner that is envisaged by the Constitution.

With those few remarks, I beg to support.

**Hon. Speaker:** Yes, hon. Mwaura!

**Hon. Mwaura:** Thank you, hon. Speaker. I rise to support this timely Bill, which seeks to entrench whatever is already provided for by the Constitution and strengthen the roles of the Auditor-General. In fact, a cursory look at the Bill, one would note that the drafters have gone ahead to not only elaborate the functions of the Auditor-General, but also provide for further functions that will enable his office to expedite its mandate.

We, as Members of Parliament and Kenyans at large, are concerned about the increased wastage of public resources. In fact, if we were to have a Motion on the extent of corruption in Government Ministries, departments and other public agencies, it would be in-exhaustive because of the nature in which this is compromising service delivery. This Bill, therefore, will go a long way in delineating the mandate of the Auditor-General and his office and ensure that we strengthen this very critical arm in terms of accountability for public monies and having value for money for Kenyans.

Hon. Speaker, if you look at the Bill, you will realise that there is a proposal for creation of the position of Senior Deputy Auditor-General, who is supposed to be the head of management and administration as well as the Accounting Officer of the Kenya National Audit Office (KENAO). While this is welcome, it is important that we look at Clause 15 and ensure that the holder of this office is recruited by the PSC rather than the way it is framed; where it is proposed that the person be recruited by the Office of the Auditor-General and appointed by the PSC. I find this an anomaly.

Further, in terms of management, we have seen some friction in the independent offices. We have seen the case of the National Gender and Equality Commission and others, including the National Police Service Commission, with regard to the secretaries and chairs of such commissions. It is also important to ensure that we do not put some provisions in law that would be a matter of debate and confusion. When we expressly provide that the Senior Deputy Auditor-General shall be the one in charge of management and administration, I do not know where that leaves the Auditor-General himself. Is it that his role, for example, will only be to provide policy guidelines? It is important for the Auditor-General to have this role because somebody will be in charge of the day-to-day accountability of the organisation. As it may have been reported in the

past, indeed, there have been questions that were asked about the procurement of software at the Office of the Auditor General – a matter which was not fully concluded. It is, therefore, important to have somebody who will answer to questions of audit within the KENAO.

Hon. Speaker, one of the things that this Bill speaks on is the fact that the Auditor-General is given powers to establish offices across the country, wherever he may deem fit. However, one of the challenges that come from this Bill is in terms of how the Office of the Auditor-General will be allocated money. There have been concerns because the National Treasury is supposed to allocate resources. Of course, that is the rightful role of the National Treasury. However, being one of the clients and in fact subjects of KENAO, it is important that we establish a procedure where there is a tripartite consensus among the Auditor-General's Office, the National Treasury and the Budget and Appropriations Committee of the National Assembly to ensure that KENAO is not denied resources that would be very important in terms of expediting its mandate.

There is also the question of timely disbursements. Audits have been one of the greatest bottlenecks even in the determination of the Division of Revenue Bill. It is important to ensure that such monies allocated to that office are disbursed from the Exchequer in good time.

There has also been concern about auditing at the county-level. It is important that through this Bill, we strengthen KENAO not only for the purpose of generation of reports and accessing of bank accounts, as has been proposed in this legislation, but also for ensuring that the Auditor-General's Office assists the county governments in establishing proper systems and structures. There is a lot of wastage of resources at the county-level. Most hon. Members will attest to the fact that a lot of money is being spent in ways we do not expect.

The Auditor-General's Office should also ensure that there is timely procurement of goods and services through the establishment of proper procurement plans and also the adherence of management letters that they derive from time to time.

This Bill also recognises the need for securing the tenure of the Auditor-General. There has been a mission on the Floor of the House to reduce the tenure of the Auditor-General from eight to six years. Personally, I beg to differ because, previously, holders of the Office of the Controller and Auditor-General used to last in office forever. Therefore, eight years is a good period of time for one to set up systems and structures. Eight years is also good because it almost compares with parliamentary terms. It does not make economic sense for us to effect constitutional amendments to provide for a difference of just two years.

Therefore, we need to give adequate time to the holder of this Office so that he is able to look at the issues of systemic corruption.

Hon. Speaker, this Bill, in a way, seeks to limit the scope within which the policies of the Government can be questioned by the Auditor-General, I think part of the reason why we have lost a lot of monies as a country is because of the fact that some of those endemic corruption practices have been embedded in Government policy. If you look at, for example, the fact that Salaries and Remuneration Commission (SRC) was able to reduce many allowances that were amounting to Kshs125 billion per year, this can only change if there are proper questions that are raised with regard to policies that seek

to remunerate public servants and civil servants without due value to Kenyans in terms of service delivery.

If you also look at this Bill, it establishes a proper structure. But I find it very interesting that it requires that the Auditor-General should submit an organizational structure to the Public Service Commission (PSC). I think some of those provisions, in my opinion, are fairly administrative and so, they will obviously be adhered to without recourse to legislation in that order.

Another thing that I find in this Bill is that it is important to strengthen the role of the Auditor-General in sanctioning his own staff. We have had situations where officers of the Kenya National Audit Office (KENAO) are engaged in cover-up. They are bribed and so, they are not able to report effectively on what exactly is happening at the spending agency.

Hon. Speaker, because my time is up, I rise to support.

**Hon. Speaker:** Very well, Hon. Katoo.

**Hon. Katoo:** Thank you, hon. Speaker. I also rise to support this very important Bill. A lot has been said about the Bill and, maybe, it is now good to talk about the general accountability of public resources. I would like to say - because this is what this Bill is trying to address - that in the recent days, the public interest in the management of resources of the public sector requires us to rethink our approach to public finance oversight.

If you look at recent concerns of the public through the print and electronic media as well as the social media, people are really questioning financial malpractices covering the entire public sector. This is a sad state of affairs as we strive to become a middle income country in terms of economy by 2030. I am informed that we have already attained that but as we act on our blue print of Vision 2030, it will not be right to continue having such malpractices of public financial resources of that magnitude.

Hon. Speaker, if you read the Constitution, we have so many commissions and State organs that are set up to check on those malpractices, especially with regard to financial misuse of public resources. We do not really want that trend to continue because every time, we are seeing increasing amounts of money going to waste despite having all those State agencies that have been set up to control it.

The other question which this Bill should try to answer is: Should we continue using the same methods we have been using in yester-years to fight the war against fraud, corruption, wastage and abuse of public resources? Therefore, as we debate this Bill, I expect the concerned Parliamentary Committees of this House to ensure that we should depart from the past because we have not been efficient and effective in the war against wastage and abuse of public resources. For instance, what is happening with regard to corruption? I really do not want to blame anyone or pour cold water onto the ongoing fight against corruption and the objective of restoring order, good governance and accountability in the public sector, but the point I am trying to make here is that those institutions have either been too slow or too late in reacting to those malpractices in a very deterrent manner. Therefore, we need to empower that institution through this Bill so that it can always act on real time. It should become proactive. They should act on real time and stop the misuse of public resources.

Hon. Speaker, the problem we have in those institutions, including the Office of the Auditor-General whom this Bill is trying to address or empower, is that they come into the picture too late when the horse has bolted. It is not good enough to keep talking about where and how much money has been lost and service delivery compromised while the perpetrators of those crimes always drag the oversight institutions or offices in long protracted litigations. This has been witnessed before and such litigations have been frustrating. They take a lot of time and run into years and continue denying the public justice and service that they deserve. Therefore, I want to reiterate the need for us, as a House, through this Public Audit Bill, 2014, to strengthen institutional mechanisms of ensuring that most of those anomalies are detected, deterred and acted upon before it is too late. The relevant oversight agencies need to be very proactive. We need to sustain the fight against graft.

This Bill also talks about financial accountability which has been the major focus of the Office of the Auditor-General. There is need to continue auditing; not just one auditing in the whole financial year. This is too bulky and in terms of time, it is not effective. Therefore, we must support the Office of the Auditor-General to do what is called continuous auditing, if we are to respond to managerial accountability and assessment on service delivery.

Our new Constitution does not only require the Auditor-General to determine whether the books of accounts are correct or not, but it also requires the Auditor-General to report on how the resources are managed and the impact in terms of changing the lives of ordinary Kenyans.

Article 229 of the Constitution requires that the Auditor-General reports and confirms whether or not public money has been applied lawfully and in an effective manner. Therefore, this Bill should go a long way in strengthening such Articles of the Constitution. Focus on managerial accountability is going to be important to Kenyans because it responds to their urge to see the top management in the public sector uphold the principles of leadership and integrity as required under Chapter Six of the Constitution, and the values and principles of public service under Chapter 13 of our Constitution.

Hon. Speaker, I also want to emphasize the fact that the Auditor-General's involvement should no longer be a seasonal exercise as I said earlier; that is done only once in a year. It should, instead, be continuous in order to make it relevant, timely and advisory and, therefore, make appropriate recommendations to deter future malpractices.

Therefore, if you look at the Bill - and I want to agree with hon. David Ochieng in his earlier intervention - some clauses of this Bill require to be addressed through amendments or even deletions. Clause 11 is so critical because one of the very important aspects of the Office of the Auditor-General is to make it independent through appointment, status and protect the management from manipulation. If you look at Clause 11 of the Bill, I do not think the whole of that clause is necessary, especially from Sub-clause 1 to Sub-clause 7. That is where it is calling for the convening of a committee that will do the selection and then forward it to the Public Service Commission (PSC). If you look at the PSC, the appointment of the Auditor-General is so clear in the Constitution.

Just as you have read the message from the President to this House this afternoon on the appointment of the Inspector-General (IG), that is the same case in the appointment of the Auditor-General. The President just proposes the names and takes them to the National Assembly and that is final. When you talk of a selection committee making its recommendations to the PSC; which in turn sends three names to the President, it is not necessary. I expect the House Committee on Finance to look into those issues and remove those clauses.

**Hon. Speaker:** Hon. (Ms.) Rose Nyamunga. Hon. Members, pay attention to the lights. The yellow one should alert you to move with speed to finish and the red means that you are on borrowed time. Sorry, Ms. Nyamunga I have taken your one minute with that.

**Hon. (Ms.) Nyamunga:** It is okay. Thank you, hon. Speaker. I stand to support the new Bill. It is very important as a country that if we want to move forward and help the county governments, we should not sit back and wait after so many mistakes have been made, and then run all over and cry foul over the mistakes that have been made.

Any institution should be run by a very important and strong audit unit. Kenya is a National Government and, therefore, it is important that the Office of the Auditor-General is strong. If the Office of the Auditor-General is strong, it means that all the activities and important decisions that will be made by the national Government will be based on figures. The actual importance of auditing is the fact that it is meant to verify and certify the figures for any institution and, in this case, the national Government and county governments. The audit is not meant to catch a thief. But in the process of the work of the auditors, they should be able to see where there are anomalies and point them out.

For any Government or institution to make decisions, the decisions must be guided by the facts and figures as they are. So, if we have a very strong auditing office, it means that we will get it right from day one. When we had an opportunity as the Committee on Finance to host the Auditor-General, he raised so many issues that are making it difficult for him to perform his duties. One of them is the staff that he has and the fact that his office is not independent. This Bill is going to give independence to the Office of the Auditor-General and, at the same time, it will give the Auditor-General the leeway to hire the right staff. It will not only be hiring the staff, but training them as and when it is necessary. We believe that Kenya is moving at a very high speed and it is a *dot.com* age that cannot rely on the old trainings. It is important that we move at par with the level of training that we need. If the Auditor-General is allowed to hire and train the staff whenever it is necessary, I think that will be a very good move and I want to support this Bill.

Another important thing is that there is a lot of real or perceived corruption at the county level. We are hearing a lot about corruption in our counties. A lot of nothing is being done with the funds that have been allocated to our counties. So, if we sit back the first, second and third year and start making noise on the fourth year, then it will mean that we, the nation and the counties, will have lost a lot. It is important that we have a proper and functioning independent office of the Auditor-General not only at the national level, but also at the county levels. If that is done, it will reduce the rate of corruption and

enhance the performance of all the county governments. The counties will be audited at the right time and any decisions and corrections made at the right time.

In my view, therefore, I think that is very important and I support this Bill. The independence of the Office of the Auditor-General and the fact that it is going to be a body corporate means that it will purely operate on its own, make its own decisions, sue and be sued and gives it a lot of credibility. It is now the responsibility of this Parliament to make sure that we oversee something that has been audited. It will allow us to use figures. Therefore, it should be done speedily and on time. We should not be given the auditing reports of 2011/2012 or 2012/2013 financial years five years down the line. I am, at least, glad now that we are up to speed and all the accounts are on time and, with the strengthening of the Auditor-General's Office, I believe that this country will perform wonders.

Now, if you look at the old Bill, it was meant for national Government and did not include the county governments. With the amendments, the auditing levels at the two levels of Government will be strengthened.

With that, hon. Speaker, I would like to support this Bill.

Thank you.

**Hon. Speaker:** Hon. Korei ole Lemein.

**Hon. ole Lemein:** Thank you, hon. Speaker, for giving me this opportunity. I rise to support this Bill. This Bill is, indeed, timely. I would also like to join my colleagues in saying that, of course, this is an independent office and this piece of legislation will actually bring sanity to the management of resources in this country.

Hon. Speaker, my concern again is on Clause 15 where the Bill is talking about the position of Senior Deputy Auditor-General, who shall be recruited by the Office of the Auditor-General and appointed by the Public Service Commission. When I look at that, it deprives the Office of the Auditor-General its independence.

Hon. Speaker, the Bill states that the Auditor-General and his or her staff, or a person acting on the directions of the Auditor-General shall not be personally liable for any act or omission done or omitted in good faith in carrying out any duty, or exercising any power or function of the Auditor-General under this Act or the Constitution. Again this depends on the level of integrity or honesty of the staff hired in that particular office.

Hon. Speaker, however, there are a number of clauses that are exceptionally good. Clause 73 states that 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 jeopardise state security.

I totally concur with that.

Clause 63 states that 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. I say that is in order.

Hon. Speaker, Clause 59(1) states that the Auditor-General shall put in place a mechanism for confidential reporting about the officers of the Office of the Auditor-General relating to unlawful acts or orders relating to violation of laws in relation to public funds, gross wastage, mismanagement and abuse of authority.

That calls forth the same question which my colleagues were asking; which was: Then, who audits the Auditor-General?

Clause 57(1) states that 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 a disciplinary action shall be taken against any officer who knowingly covers up any acts of fraud or corruption.

Again, that one calls for people of integrity, honesty and the right people to be hired for that particular office.

Hon. Speaker, I also agree with what hon. Kato was talking about in Clause 11. What is so important is the issue of continuous audit. When you look at the current scenario in this country, where we have devolved governments--- I want to use an example of Narok County where I come from. In Narok County at the moment, there are a lot of fights and the basic reasons for those fights are issues of management and accountability. If the Office of the Auditor-General was doing continuous auditing, those issues which we are experiencing in Narok would not take place.

Hon. Speaker, however, this Bill is good. It is timely and I believe it is going to save this country from the menace of corruption.

I support.

**Hon. Speaker:** Hon. Members, even as we debate this, I think it is fair to also just remind ourselves that the Office of the Auditor-General is not being created by this Bill. It is in Chapter 15 of the constitutional offices and, specifically Article 248(3) (a) - the Office of the Auditor-General. We must differentiate that this law is not creating a new office and, indeed, there is already an Auditor-General of the Republic of Kenya appointed in accordance with our Constitution.

However, I think it is fair, since this Bill is supposed to be one of those that are supposed to be enacted to actualise the Constitution in its new form, that we draw comparisons between the current laws under which the Auditor-General operates so that we can see whether there are any improvements that have been proposed in this Bill. I am saying this because the next speaker is somebody who is supposed to be a consumer of the services of the Auditor-General, specifically to see which areas we need to improve on, especially either in this law, or if there are issues that are there in the other law that we can import into this Bill. Let us suggest them even though it is a debate but we need to have that in mind.

Hon. Ababu Namwamba, the Chair of the Public Accounts Committee (PAC).

**Hon. Ababu:** Thank you, hon. Speaker. From the outset, let me first of all commend the progressive provisions of this very important law. As you have rightly guided the House, this Bill does not recreate anything. The Bill is merely attempting to augment the very important constitutional Office of the Auditor-General and, especially to align the law with the new constitutional reality of the county governments which really was not contemplated in the Public Audit Act that this Bill seeks to replace and also take cognizance of new realities like international standards and best practices that have emerged since the Public Audit Act was first enacted.

Hon. Speaker, allow me to commend the provisions in this Bill that are definitely quite progressive and in this sense, I want to single out Clause 33 of the Bill that talks



about periodic audits of a proactive, preventive and deterrent nature that are intended to deter fraud and corrupt practices in advance.

Hon. Speaker, this is truly progressive and it is very much in line with international best practices and standards where the Office of the Auditor-General is not merely a mortician or a post-mortem exercise, but one that can actually be used and deployed to prevent fraud or corruption before it takes place.

Hon. Speaker, I also commend Clause 35 on performance audit. It is another very important best practice. I also commend Clause 36 on forensic audit, Clause 37 on environmental audit and Clause 38 on procurement audits.

Hon. Speaker, I, therefore, support all the progressive provisions that this Bill is definitely bringing to the table but I also want to express concern, and I believe those are concerns which we will have opportunity to address as a House during the Committee Stage. I have concerns on the new innovative provisions that this Bill is bringing to the fore. Let me dwell on Clause 40 of the Bill which speaks to the very critical question of auditing national security organs.

Hon. Speaker, anybody who has served in Public Accounts Committee (PAC) and Public Investments Committee (PIC) of which you have been a chairman yourself, would understand the very serious challenges when it comes to auditing that particular area of Government. Indeed, anybody looking at the PAC Report for the annual accounts for the year 2012/2013 will notice that the Committee made some very specific recommendations regarding the conduct of audits around national security organs. In fact, PAC makes a very specific recommendation that legislation may be brought that will provide a framework and mechanism that will enable the Auditor-General to handle that particular area of public audit. I am, therefore, very happy that this Bill answers to that need and concern.

However, it is an area where I invite the House to help us think through because it is very grey. In fact, when you look at various jurisdictions, the only countries that have made an attempt to effectively deal with this matter through legislation are South Africa and, to some extent, Uganda.

Hon. Speaker, my concern with that provision is that the Auditor-General is empowered to audit. When you look at Article 229 of the Constitution where the Office of the Auditor-General is empowered to conduct audit, the Auditor-General is given the power to audit. But the Constitution does not contemplate a scenario where he would express an opinion as to what should be national security or not. What I invite the House to do is for us to think a little bit further in terms of what office, organ or authority could be mandated to express that opinion. It is important that the Bill goes on to include the Office of the Attorney-General in terms of giving that legal advice. But it would be difficult and this is a challenge to us. I will be bringing some proposals at the Committee Stage on how we can improve this provision in section 40(1)9(a) on who and how that opinion ought to be expressed.

I also have concerns on extending that protection to the county governments. It makes a lot of sense to be worried about disclosing information that may cause difficulty between us, as a sovereign nation, with other sovereign countries. But when it comes to county governments, I believe there should not be anything that could be elevated to a level that could be a concern to national security because national security is a matter that

is purely within the province of the national Government. Therefore, that is another area again which may require us to look at.

My other concern extends to Sub-sections 6 and 7 of Section 40 of the Bill. When you look at Sub-section 6, the Cabinet is given the power to approve categories of security related projects which shall qualify for special treatment under audit under this section. The role of oversight belongs to the Legislature. This section, if passed in its current form, will turn the Constitution on its head. It would transfer the oversight role of this House back to the Cabinet so that the Cabinet would then determine what is subject to oversight and what is not. We need again to think a little bit more keenly on how the Legislature can be part of this process of identifying areas that may benefit from non-disclosure. If we allow this section to go as it is, we run the risk of offending Article 229(5) and (6) of the Constitution by reason of exclusion; that we are allowing the Executive to exclude certain expenditures from audit. That section of the Article of the Constitution provides that the Auditor-General may audit and report on the accounts of any entity that is funded from public funds. To allow the Executive to exclude any entity or to protect any entity would be unconstitutional. But this House, as the oversight organ, can serve to protect national interest by identifying areas that may be protected.

Let me conclude - because my time is up - by quickly mentioning Section 27 on the Audit Advisory Board. My concern is that by giving that board the power to supervise the audit committee, it may violate the spirit of the Constitution that protects the Office of the Auditor-General from the direction of any other organ. All the other provisions can pass, but that supervision of the audit committee would be a concern. Otherwise, this is a progressive law. I invite hon. Members to expedite the passage of this law and, as we do that, let us also look into ways of giving an avenue for the Office of the Auditor-General to receive direct funding that would enable it function effectively.

Thank you, hon. Speaker.

**Hon. ole Ntutu:** Thank you, hon. Speaker, for giving me this opportunity. I also rise to support this very important Bill. Being a constitutional Bill, it will go a long way in improving the performance of the existing Office of the Auditor-General.

Let me begin by saying that the Auditor-General has been appearing before the Budget and Appropriations Committee. Most of the time, the complaint has been lack of resources to enable the officers of Kenya National Audit Office (KENAO) do their job. Therefore, the passage of this Bill will enable the Auditor-General to employ the staff he needs. What this House needs to do is give the Auditor-General resources in terms of funding. The problem we have in this country is lack of audit of our institutions.

We now have devolved units, namely, the county governments. Hon. Members have been complaining that a huge amount of money has been sent to the counties, but they can hardly see anything happening on the ground. If the Office of the Auditor-General was doing its job, we would not be having the problem of people misusing a lot of public monies. I am very sure hon. Members have heard that most of the county governments do not deposit the money that they collect in bank accounts. Rich counties like Narok, which has a big resource in the name of the Maasai Mara National Reserve, collect so much money. However, the county government does not deposit the money into its fund account. That is the cause of the complaints that we have been having.

When you look at the organisational structure of the Office of the Auditor-General, one appreciates that it has not been up-to-date. It does not have professionals who are capable of doing the job efficiently. That is the cause of the problem that we have. I am not quite sure whether we need the Audit Advisory Board. As a country, we have been complaining that we do not need very many boards. We need an efficient and effective Office of the Auditor-General. Establishing more offices within the Office of the Auditor-General would be creating more levels of bureaucracy – which may not help us. After all, we do not have the money to pay the people who will be serving in so many boards.

As a country, we need to look at the number of the boards that we have. Having too many boards will not help this country prosper. We will be doing a lot of work on this Bill during the Committee Stage. We will give our input to it and see if we can get rid of some the provisions that may not help us.

All I want to say about this Bill is that it is a big improvement on the existing Act and, more so, because it seeks to give the Office of the Auditor-General teeth to bite. As it is, the Office of the Auditor-General does not help much. The other day, I was shocked by the response of the Auditor-General when the Senate called upon his office to go and carry out an audit of the accounts of Narok County. The Auditor-General told the Senate that they did not have the capacity and resources required for them to carry out the audits.

As a Member of Parliament, I was really shocked by that response. That is because those are the independent offices that we are running in this country. We are wondering why the auditors cannot carry out audits in order to establish the fact that public resources are being managed. When the Auditor-General says that he does not have the resources necessary to carry out audits, where should the citizens go for recourse? That is a very important office which we, as Members of Parliament, need to support, so that we can help this country to move on.

With those few remarks, I beg to support the Bill.

**Hon. (Dr.) Oginga:** Thank you, hon. Speaker, for giving me this opportunity. This is a very important Bill, particularly originating from Parliament, in performance of its oversight role. As we all know, one of the roles of Parliament is to oversight the Executive.

It is a well known fact that nobody would like to be audited. In fact, even when an auditor comes to audit your own company, you always feel threatened. That is why for a very long time in this country, the Office of the Controller and Auditor-General – which is no longer there – had a very big problem in two areas. One of those areas, which is being addressed by this Bill, is that of financing. The second area is that of staffing. Those are areas which are cardinal for the performance of the duties of the Auditor-General. The Office of the Auditor-General cannot work well if it is understaffed.

Hon. Speaker, you have been a Chairman of PIC and you are aware that most of the work which was being done by PAC and PIC in this Parliament was to deal with very old accounts. There were accounts of five or even ten years. Parliament was discussing those very old accounts. I remember, as a Member and a Vice-Chairman of PAC, we were discussing some accounts which recommended punishment of some officers who had retired from Public Service long time ago. So, when you tell them that they should not hold public office, they really laugh at you because they are no longer anyway near

the Public Service. They are doing their own businesses and when you ask them to give you any information; they say that they did not retire with Government files to their private lives. So, they cannot give you any information.

I am particularly concerned about the employment of staff. We are still referring the Office of the Auditor-General to the Public Service Commission. It is that same Public Service Commission that has been a thorn in the flesh of the Controller and Auditor-General's Office before the Auditor-General came into being. I am concerned that the independence of that office is going to be compromised if they still have to refer employment of staff to the same Public Service Commission.

Hon. Speaker, on the area of financing, I feel very strongly that the Office of the Auditor-General should prepare the accounts and budgets and submit them directly to Parliament. Compromising and telling them to go back to the Treasury for negotiations is going to be the same thing of starving them of funds. Parliament has the capacity to rationalise and give them money which is reasonable within the given ceilings which are normally determined or negotiated with the Treasury.

Although the Bill is good in general and I support it, I am also concerned about over-extending the role of the Auditor-General to cover environmental issues. Environmental issues are specialised issues which require technical staff and giving that function to the Auditor-General is going to over-extend his functions. I strongly feel that this should be removed. One of the things that have been provided here for the functions of the Auditor-General, which is in Clause 35 of the Bill, is on performance audit. This is the key to pinning down criminals. It is important that this function has been given to the Auditor-General. As Parliament, our role is oversight and this is very important for us. It is very important that the Auditor-General is enabled to perform this function of performance or value for money audits.

I am also concerned, particularly, about Clause 40(b) of the Bill, which says that the Auditor-General shall not include particular information in a public report if the Attorney-General has issued a certificate to the Auditor-General stating that in the opinion of the Attorney-General, disclosure of the information would be contrary to the public interest or any of the reasons set out in Sub-section (2). I feel that this is removing the independence of the Auditor-General. The Attorney-General should only come in if the Auditor-General requires his opinion on a legal issue. This, of course, has been provided for elsewhere in this Bill. The provision that he can consult the Attorney-General is good, but it is not good enough. I feel that we should strength the legal capacity of the Auditor-General's Office, so that they can deal with legal issues.

The other provision which I feel is not quite right is in terms of protection of security. This is information which is generally regarded to be of security nature. As a Member of PAC, we have had a lot of experience where a lot of things are kept in secrecy. A lot of information is kept in secrecy. For instance, if you give the Cabinet the authority to decide which items fall under the security item, the Cabinet might have some members of the Cabinet who are themselves involved in some corruption and they will defend themselves there and make sure that those areas are particularly covered.

I can give you an example. When we were investigating the purchase of the presidential jet, we were told that it was a security item. When we investigated it further, we found out that, first of all, it was single-sourced and secondly, it was being sourced

from a company which was known to be going under. The people who were sourcing it were technically not qualified and they are the ones who went there to negotiate. The technical people were left behind. Therefore, the contract did not even have a provision for maintenance of the aircraft itself. Determining which items fall under security should be discussed with us in Parliament, so that we can also know that those ones are truly of security nature, which need not to be reviewed. It should not be left to the Cabinet or to a sub-Cabinet committee to discuss issues of security. It is those kinds of provisions which gave way to Anglo-Leasing type of projects.

The contracts were drawn in secrecy and they were not known to people. They were only revealed much later when the deal had been done and the Republic of Kenya had lost money.

Hon. Speaker, this one called “Chicken Gate” is more or less one that could be classified as “security”, so that people can get away with such a deal. We will only get to learn about them from foreign courts when, indeed, those things ought to have been discovered and prosecuted by us Kenyans.

**Hon. Lati:** Thank you, hon. Speaker. I rise to support this Bill because I think it is a very progressive one for our country. Clause 5 of Bill sets the qualifications for the Auditor-General. I find that to be very good especially in terms of academic requirements. A person with a background in finance and accounting is the kind of person you want in this area. What is striking to me is the need that the person should be a Kenyan. I find this out of place. If you want somebody who will look at how resources were used and knowing the endemic corruption that we have in this country, it is not necessary that, that guy should not be a Kenyan. In fact, in my opinion, this is one area we should look at the possibility of out-sourcing. That way, we will get a person who is independent in terms of birth, citizenry and even thinking. Maybe, the person will bring something different from what we have all along been accused of - that we are a corrupt society – *watu wa chai na kitu kidogo*. We should open up to all people who are qualified to be Auditor-Generals. They must not only be Kenyans.

Clause 7 states the powers of the Auditor-General. One of the important powers is this: That the Auditor-General has now been given powers to confirm precautions taken to safeguard collection of revenue. In my opinion, this is a very important function and power allocated to the Auditor-General. Our Constitution has provision for many funds, for example, the Consolidated Fund, the County Revenue Fund, the Equalisation Fund and many others. Of interest here is the County Revenue Fund which is a constitutional fund.

A few days ago, the World Bank and the Commission on Revenue Allocation (CRA) listed counties with regard to finances. One of the things that were really amazing was that some counties were collecting less revenue than the revenue collected by the former county councils. I did not expect that to happen in my lifetime. That is because the county councils were under-staffed and the staff they had were not qualified. The counties now have qualified staff and strong revenue channels. They have the money to do many things. To see our counties collect less money is unbelievable. I do not think this is true! I think what is happening is that some counties are not taking some of their revenues to where the Constitution requires them to do. The Constitution states very clearly that all monies collected by counties must, first of all, be remitted to the County

Revenue Fund and only under the Controller of Budget should the money be released to counties for use. I think this law is good now that it places this power with the Auditor-General to try and help us collect enough revenue in the counties. The money will assist in development work and reduce the kind of expenditure that we have outside development in our counties.

Hon. Speaker, Clause 10 is important because it talks about the independence of this very important person in our country. It states that, that person shall not be subject to direction or control of any authority or person. This is very important for an Auditor-General. We want an Auditor-General who is impartial and has all the independence required, so that he can carry out the forensic audit without fear or favour. That way, we will tell the position of our country in terms of prudent use of our resources. It is important that, that person stays extremely independent for our resources to be managed effectively.

Clause 20 completely contradicts the independence that we purport to give that important person. At some point, I thought that the Office of the Auditor-General should have been some sort of constitutional commission. The Auditor-General, like any other independent institution, say, Parliament, Judiciary and others, has a budget to run his work throughout the year. The least you would expect that person to do is to be answerable in terms of finances to another office and, particularly, the Executive and, more importantly, the Treasury where most of the monies are stored. So, for the budget of the Auditor-General to be subjected to review by the Cabinet Secretary for Treasury, I think that takes away the entire independence that you have given to that person. How independent can you be if you are dependant in terms of budgeting and financing to the Cabinet Secretary for Treasury? He is the same person you want to audit now that most of Kenyans' money ends up in the Treasury! How independent can he be? Unless we correct that anomaly here, there will be problems.

We need to make sure that the Auditor-General is not subjected to the whims of the Cabinet Secretary for Treasury in terms of budgeting. We are putting that person in a very dependant position. We have to take away the Cabinet Secretary so that he is not the final one to submit to Parliament in terms of the Auditor-General's budget. We need to have an amendment that says something to the effect that the Auditor-General, like all independent commissions, say, the Parliamentary Service Commission, submits its proposed budget to the Budget and Appropriations Committee of Parliament. Within that Committee, then we can see what we can reduce and what we can increase. We need to remove the Auditor-General from the control of the Cabinet Secretary. This is what is happening in other countries. In fact, in all the countries that I have looked at, the budget committees have exclusive control. Even in the USA, that is the case. They have exclusive control of revenue raising and budget appropriation. That is what we need here. We need the Auditor-General and all other independent commissions to be answerable only to the people who are elected by the people of Kenya. That way, we will have better results in terms of forensic audit. Kenyans will be in a position to follow up and see how prudently or corrupt the money is being used. So, subjecting the Auditor-General to the Cabinet Secretary makes this whole affair look like an exercise in futility. I will propose amendments at the right stage. I hope this is something that the rest of us can see clearly.

We need an Auditor-General who is independent and impartial. He should help this country reduce the *kitu kidogo* attitude and make our country move forward.

With those few remarks, I beg to support.

**Hon. Speaker:** Temporary Member!

**Hon. Ng'ongo:** Thank you, hon. Speaker. First of all, let me apologize. I lost my card during the long recess. I also would like to wish you and my colleagues a happy New Year although it is now old. This is the first time I am finding myself in this Parliament this session.

First of all, I agree with you that the Constitution spells out under the Fifth Schedule what laws need to be passed at what time to actualise the 2010 Constitution. Article 226 of the Constitution on public audit and accounts is one of those Articles that are required by law to be passed within four years. Therefore, it is up to this august House to pass this law.

Having said that, I have looked at this Bill and it is very progressive in many aspects. This is because the previous Acts had omitted, or were not robust in terms of addressing issues of accountability and public audits. Taxpayers pay money to finance Government and public activities but that money must be accounted for. Who stands in for the people of Kenya in terms of ascertaining and examining the books of accounts to be sure that the money is well spent? It is the Office of the Auditor General. That is why it is one of the offices that are clearly protected by the Constitution. It is given security of tenure for eight years, to be precise, which are not renewable. This is to make sure that the office is shielded from any political power play.

We, therefore, needed a robust law to actualise this. However, I have issues. I just want to raise concerns with the issues where I think a lot needs to be done rather than talking about the positive sides of it. I will mention a few but I want to dwell on those areas that I think should have been done differently.

First of all, I want to address myself to Clause 8, which will become Section 8 if this Bill is passed in its current form. Clause 8 speaks to some of the powers of the Office of the Auditor-General. I have no issues with many of these powers from (a) all the way to (i);

(j) says:-

“In addition to what is provided for under any other relevant law, and in consultation with the Public Service Commission and the National Treasury, develop and maintain a code of conduct and ethics for the office, specific to auditing, guided by the International Code of Practice, and Code of Ethics issued by the International Organisation of Supreme Audit Institutions.”

I have issues with involving the Public Service Commission (PSC) in determining the code of conduct and ethics for the office. This is because if we want to provide help to the Auditor-General then we can do it through an equally competent professional body. This law provides for an Audit Advisory Board. That is the body that you can involve in helping to advise the Auditor-General's Office on the code of conduct and ethics for the office and specific to auditing guided by the international code of practice. If you start involving the PSC and any other office that is supposed to be audited by the Auditor-

General, then you compromise the possible recommendations that will come, or the possible regulations that would come out of this office.

I also wanted to speak on Clause 20 of this Bill with concerns budgets. We all know that for any auditor to be independent, function independently and do his work without any interference or intimidation, their budget needs to be cushioned. We need to ring-fence the Auditor-General's budget and only subject it to the people's representatives, and that is Parliament. As it is today, it is Parliament that determines how much should be given to the Auditor-General. This law is taking that gain away from the Office of the Auditor-General by recommending that the budget estimates of revenue and expenditure referred to in Clause 20 (2)--- It reads:

“The budget estimates of revenue referred to under sub-section (1) shall be submitted to the Cabinet Secretary (CS) responsible for finance not later than 30<sup>th</sup> March each year for review and submission to the National Assembly in accordance with Article 221 of the Constitution, and National Assembly shall, pursuant to Article 249 (3) of the Constitution, allocate adequate funds to the office of the Auditor-General.”

When you submit this, it means it can never come to Parliament without going through the Cabinet Secretary responsible for Finance. However, that is one of the Ministries that the Auditor-General needs to audit. Therefore if you subordinate the budget of the Auditor-General to the Cabinet Secretary, then the Auditor-General's independence is compromised. You see, even Parliament's budget is cushioned. Parliamentary Service Commission submits its budget directly to Parliament.

We equally need to cushion the Auditor-General's budget. This is because it is an important institution. If we had a way then even Parliament should not have had a say in the budget of the Auditor-General because even Parliament is audited. However, Parliament comes in only because the Constitution and the law recognises that these are people's representatives. It is expected by extension to work for the best interests of the people of Kenya. Therefore, I think we need to amend this particular provision to subject the budget of our Auditor-General only to Parliament.

Clause 31 on the certification of audit processes, I see that Clause 31(1)(c) reads:-

“at the conclusion of 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.”

This is now when the Auditor-General is conducting audit of any institution or any public organ, be it a parastatal or a Government department. It reads:-

“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 recommendation to the Accounting Officer---”



I have an issue with “a draft management letter.” A management letter is a letter on internal weakness which the auditor does to the accounting officer recommending what changes need to be done. I do not understand why we should legislate for a draft. We need to say: “The Auditor-General shall submit a management letter to the accounting officer.” Whatever the accounting officer does with that letter then becomes an issue for them. However, having a draft then a final management letter to me is giving the Auditor-General too much paper work and unnecessary processes. You know the Government is so huge. We even have devolved systems of Government and these are the 47 counties. If you give the Auditor-General too much as a requirement in law to be able to fulfill his mandate--- This is because once it is put in law then the Auditor-General will be required not only to give the management letter, the final one, and also a draft. Therefore, we will be over-legislating on what is required or expected from the Auditor-General. The same goes for Sub-Clause 5 about the management letter.

Looking at Clause 35 on various types of audit, it talks about performance audits, which are to examine the economy, efficiency and effectiveness of the usage of public money, in this country as compared to other countries in the world, most developed countries have adopted what we call “performance audit”. Our country has been lagging behind in performance audit. I, therefore, expect to see a clear, exhaustive and comprehensive paragraph on performance audit. This is because we do too much of historical audit. We need the Auditor-General to start focusing more on performance audit, so that we can understand and appreciate the value for money. That is what we call “value for money audit”. It is not just important to show that Kshs50 million provided for a specific activity has been spent and there is the paperwork and everything. It is important to demonstrate that, that Kshs50 million has produced value for money. That whatever it was meant to achieve, it has actually achieved. That is where we should go to as a country.

I wanted to quickly correct the notion that the audit----

**Hon. Speaker:** Let us have hon. Nelson Gaichuhie.

**Hon. Gaichuhie:** Thank you, hon. Speaker for giving me a chance to stand and support this Bill. I would say this is a timely Bill. I think the intent of this Bill is to align the Office of the Auditor-General with the new Constitution. Actually, it seeks to repeal the Kenya National Audit Office (KENAO). I want to say that this Bill is very timely because an Auditor-General is somebody who is supposed to be very independent, and is somebody who is supposed to be taking good care of public finances.

I want to say that currently we are doing programme-based budgeting, and we can do performance auditing by basing our audit on the programmes that have been budgeted for; that will be the best kind of audit that we should be focusing on.

This Bill also creates an Office of the Senior Deputy Auditor-General, who will be in charge of administrative work in the office. Currently, the auditor is the overall and is doing everything. The creation of this kind of office will assist the auditor to perform his duties in a prudent way. We are also seeking to enable the Auditor-General to recruit more competent staff to audit the 47 counties and the national Government. Since we now have many governments, we need to have competent auditors doing everything.

When it comes to security audit I beg to differ; they say that anybody auditing a security agent should be of the rank of a Deputy Director. I think an Auditor-General

should have a team to enable him audit. If you say a Deputy Director will be the only person who can audit a security agent, I do not think that this office has enough Deputy Directors. They should even vet the team that the Deputy Director should head.

Hon. Temporary Deputy Speaker, when you look at Clause 42(d), it particularly exempts the audit of some individuals. This, I think, is not in line with--- It will be unfair if the information would unfairly prejudice commercial interests of anybody. That will be giving a leeway to persons.

Clause 45 on considering reports in three months is very good. Once these reports are brought to Parliament, they should be debated and considered within a period of three months. We should not stay with them.

Clause 47 gives the auditor six months after a financial year to complete audit. You realize that until recently that was where we were trying to catch up. If we have only six months for the auditor to complete his financial year audit for the year that has elapsed; it will be better than getting reports that are outdated.

This Bill also gives the Auditor-General leeway to give special reports to this House in the course of a financial year. He does not have to wait until we are at the end of a financial year before he gives reports. If we get these special reports in between the financial year, I believe we will have value for money, because we can intervene where there is a problem. I think that is a very good thing.

Clause 59 of the same Bill again provides for a confidential reporting of an unlawful act. It provides that people can give confidential reports to the Auditor-General; using the Witness Protection Act, such people can be protected. So, I think we will be having very good and well informed reports and people will be very free to give their reports to the Auditor-General, so that he can give timely reports instead of waiting for the end of a financial year which may take long.

On the security audit, I think we are saying that we should not allow security agents to be audited because of security matters; this will bring back the Anglo Leasing type of projects, which we have realised escape the attention of many people. They were termed as our security matters and when Anglo Leasing came out, it was realised that it was a scam; people were just trying to take a lot of money from the public. I think my committee has taken the initiative of calling stakeholders next week. I want to say that we shall be bringing to the Committee more amendments from stakeholders.

Let me use this opportunity to ask any hon. Member who has any concern to come and see the Departmental Committee on Finance, Trade and Planning. We will be meeting on Tuesday and Thursday so that we have all the amendments brought to the Committee harmonized and agreed. This is so that when we come to the Third Reading, we can have a Bill that will be passed without any acrimony.

Otherwise, I want to say that this is a timely Bill. We welcome it and believe that it will be passed in an amended form and will take into consideration all the views of hon. Members and stakeholders. It is high time we gave the Auditor-General powers to fight corruption, because he will be independent. I believe he will be an independent officer.

We also want to say that we think the Auditor-General is creating a fund, which is okay, to enable him function. We also want to believe that the Auditor-General should be given permission to bring his budget straight to the Parliamentary Budget and Appropriations Committee, so that he can have the independence from the National

Treasury. If he will audit the National Treasury, I do not think they will allow him the leeway to have a good budget for him to perform his duties. I think we should amend the Bill and have the Auditor-General bringing his budget straight to Parliament; we can even provide for a percentage of the national revenue to go to his budget, so that he can have independence.

With those few remarks, I want to thank you, hon. Speaker, for giving me this opportunity to contribute.

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Speaker, thank you. I want to take this opportunity to make some general remarks about the Auditor-General. I think people have been more specific on the functions of the Auditor-General. As I contribute on this, questions are being raised. One is that the Auditor-General---

In my view, most of those who have held offices in the past have not been independent. They are supposed to be independent and give a fair view of what is happening in the Government. Clause 31 says that before the conclusion of examination by the Auditor-General of financial statements of each State organ, an exit meeting shall be held at which the Auditor-General shall submit the draft management letter which will include findings and recommendations. I agree that, that is the best way forward, because after you have finished the audit, as a follow up--- Normally, there is a letter stating exactly what is supposed to be done, so that before the subsequent audit, auditors can go back and see whether those recommendations were adhered to.

I tend to disagree with one of the hon. Members who said that this is not right. I think that, that is the right thing to do because then he will be able to lay the foundation for future auditing.

Further, in Clause 27, there is a function of the Audit Advisory Board. It is important that we have this Board because its function, to the best of my knowledge, will be to advise the Auditor-General on what should be done. Particularly, if you let the Auditor-General do everything else, it may not be in our best interests. We should approve this Board contrary to the view of the Chairman of the Public Investments Committee (PIC), who said that it is not necessary. I find it very necessary because it will assist in recruitment of managers, instead of leaving this task to the Auditor-General alone. Given that the Auditor-General has his other functions, this body will assist him; after all he cannot audit himself. This will be an outside advisory board that will give advice on what development, or structures, will be needed in an organization.

Thirdly, and very importantly, is the fact that auditors, and you have seen that they are complaining--- One person mentioned that when they were asked to go and do audit in Narok, they said that they were not financially able to carry out the audit. Their budget is so constrained that the best thing is to have somebody advising on the kind of budget they will need. They will be advised accordingly. So, this Board, to me, is a very good body to be set up, so that we will be able to assist and advise the Auditor-General.

The other thing that I want to talk about is the administrative powers. The biggest problem that we have in this country is scandals. You can see now we have the "Chicken Gate" Scandal. We normally do not look at the integrity and values of some of the people whom we actually hire. The Auditor-General's Office should have people with integrity. They should be people who cannot be compromised. They should be people with core values. I am afraid that what we are having are people--- The people who are hired must

be people with integrity. Look at what happened at the IEBC, we are now being told that money changed hands. We can now see what happens to some of the staff working there. The most important thing is the fact that we should have people who have integrity working in this particular organ of the Government, so that we get the right information.

Today, we are having auditors being compromised. They cannot do auditing. There are kickbacks. What we are looking for are people who will work in the Auditor-General's Office with integrity. I am talking about people who have got core values. This is why Kenyans are actually suffering. We do not have people of integrity working there.

Clause 8 of this Bill is about administration. Apart from looking for people who are qualified and competent, let us also look for people who have got values needed to work there. The code of conduct and ethics is very important and should be stressed when hiring is taking place.

Last, but not least, auditing of the Government organs, particularly security organs and other sensitive organs, should be done in such a way that the Office of the Auditor-General's independence is not eroded. We should be able to provide information even in cases where we feel that there is a lot of sensitivity; an example is security in State House and elsewhere. They should be able to do that without fear or favour.

I am opposed to a suggestion that the Auditor-General should be somebody from outside the country. We should have people from our own country whom we trust, working in that office. People who mismanage resources need to be prosecuted. Every day our media informs us of people who have been found mismanaging our resources. Where are these people being prosecuted? The Auditor-General should have the authority to actually prosecute instead of passing the buck to somebody else. You find that people who have been named and found to have misappropriated public resources are left to go scot free. Therefore, we need the Auditor-General to have the powers to be able to prosecute some of the culprits. I have not seen in the last two or three years anybody who has been prosecuted because he has mismanaged or misused public resources.

With those few remarks, I support this Bill. However, at the Committee Stage, we will be able to come up with amendments so that we improve this Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Luanda.

**Hon. Omulele:** Thank you, hon. Speaker, for granting me this opportunity to speak to this very important proposal of law.

First of all, I want to candidly come out and say that I support this Bill. I believe that this is a very well laid out Bill. Also, this Bill is a constitutionally required Bill, and it is supposed to be passed within a certain period of time as provided in the timelines set in our Constitution.

Having said that and taking cognisance of the fact that Article 229 of our Constitution speaks to the contents of this Bill, and what it should contain, and having had the benefit of hearing the valuable submissions of those who have spoken before me, I wish to go straight to the provisions that are proposed in Clauses 33 to 40 of this Bill. These proposals are very progressive, particularly the provisions that we shall now have the Auditor-General having the capacity to conduct environmental audit. This has not been so previously and we know that we have a situation in this country where we are destroying our environment at an alarming rate. We have a situation where public funds

are applied in ways that are inimical to the environment that we live in. So, it is very important that we now have an auditor who will have the capacity to conduct environment audit.

I have had the benefit of hearing some of the speakers before me questioning the Auditor-General's capacity to be able to conduct this kind of audit. I would like to sway them away from that kind of thought by asking them to look at the provisions that have been set out in this Bill; the Auditor-General is allowed, expressly, to carry out his role and receive professional advice from people who have capacity in this area. So, it is not the Auditor-General himself who will be required to carry out environmental assessment. He has the capacity and this Bill actually allows him to employ professionals with capabilities to carry out that kind of assessment.

In the proposed Clause 33 the Auditor-General is allowed to carry out pre-emptive, proactive and preventive deterrent audit on flawed and corrupt practices. This is very progressive because we have had a situation where the Auditor-General has been more of a mortician, as my friends have previously said. We are saying that we are giving the Auditor-General capacity, so that where he suspects that something wrong or corrupt is being done he can take pre-emptive action and carry out an audit for the benefit of our nation. I think this is a very good Bill.

I have also had the benefit of hearing my colleagues sound out the provisions of the proposed Clause 40 of this Bill. This is in respect of the audit of national security organs.

With due respect to the submissions of my senior colleagues, who spoke before me, and with a lot of respect for their submissions, I believe that any nation, or country, in this world must have matters that cannot just be put out there; matters of national security clearly defined and set out, should not then be publicised in any way.

Having said that, this proposed Bill protects the public by providing that where these matters are not published openly, then the National Assembly and the President may require the Auditor-General to disclose these special matters to a joint committee of Parliament and the President. This is set out in Clause 40(3). There is no risk that matters will be swept under the carpet, as it were because we, as the National Assembly, shall summon the Auditor-General to come and disclose these matters to us in camera as this Bill has provided. I believe that this Bill shall protect our people and Parliament shall be privy to all the information that the Auditor-General may have in his possession.

I am pleased with the provisions of the proposed Clauses 9 and 10, which clearly speak to the independence that is required of this Office of the Auditor-General. These clauses clearly provide that the Auditor-General can conduct investigations on his or her own initiative, and shall obtain all the professional assistance, consultancy or advice from persons or organizations, whether within or outside the Public Service.

Having said all these things, and having the benefit of having heard what my colleagues have spoken to, I believe we should move with speed and pass this Bill into law.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Kesses, you are requesting to debate this Bill, yet my records show that you debated this Bill on 11<sup>th</sup> of this month at about 17:04 and you took five minutes. What do you have to say? Will you respond?

**Hon. J.K. Bett:** Hon. Temporary Deputy Speaker, I just wanted to contribute on something I had not touched on.

**The Temporary Deputy Speaker** (Hon. Kajwang’): As you are aware, the Standing Orders do not allow you to debate twice on a Bill. My records show that you debated on 11<sup>th</sup> February at exactly 17:04 to 17:09. What do you want to say?

**Hon. J. K. Bett:** Hon. Temporary Deputy Speaker, I just wanted to contribute on something we had not discussed for only three minutes.

**The Temporary Deputy Speaker** (Hon. Kajwang’): You will make my work easy by just resuming your seat, and waiting to debate on another day; if my records are correct---

**Hon. J. K. Bett:** I think there is an error in the records.

**The Temporary Deputy Speaker** (Hon. Kajwang’): No, there cannot be an error. My records are backed by the HANSARD.

**Hon. J.K. Bett:** There could be an error.

**The Temporary Deputy Speaker** (Hon. Kajwang’): I am afraid I may not be able to interact with you. Should there be an error, please, check with the HANSARD, because you know that my records are complete.

Can we have the Member for Njoro?

**Hon. J. K. Ng’ang’a:** Thank you, hon. Temporary Deputy Speaker. I support this Bill. It is timely.

This Bill is intended to protect the Government. It is also intended to protect the taxes which are paid by the ordinary *mwananchi* to the Government. We should employ honest individuals in this office. This office should be very independent from the Treasury. It has auditors and should be the watchdog for the nation. Since Treasury collects all the funds from *wananchi*, the auditors should be independent in their work.

We have had so many audit reports from the Auditor-General. He has condemned and castigated various Government institutions, but no action has ever been taken. I propose that the Auditor-General be given power to make sure that action is taken against those who have been mentioned adversely in whichever arm of Government they are, otherwise, it will be business as usual. As we have seen, many reports have come out, but no action has ever been taken.

This office should be given a free hand, so that even people in other arms like security personnel are investigated and recommendations forwarded; they should also account for money which has been allocated to them. Otherwise, many Kenyans pay taxes but this revenue is not utilised properly. So many scandals have been unearthed by the Auditor-General, but to date, no action has ever been taken. We are taken round in circles until people forget what the issue was. The office should be given a free hand to make sure that individuals who harvest where they have never sown anything are apprehended. It should not be business as usual. Many Kenyans are fed up with commissions of inquiry and investigations. Once commissions are constituted, that is the end of a matter. Very few commissions have produced reports and action been taken against culprits. The Office of the Auditor-General should follow the many individuals who have stolen from Government coffers to the letter. They should make sure that these individuals are apprehended and serious action taken against them.

It will be meaningless and a waste of time for us to come here, debate and pass the Bill if the Kenya National Audit Office is not sufficiently empowered to implement the law and ensure that action is taken against corrupt individuals.

In summary, I am requesting that through this Bill we make sure that the Office of the Auditor-General is given full powers to even arrest corrupt individuals without having to forward a case to the Ethics and Anti-Corruption Commission for further investigations. They should go deeper and make sure that such individuals are dealt with because Kenyans are almost giving up on commissions of inquiry.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Next is the Member for Tinderet.

**Hon. Melly:** Thank you, hon. Temporary Deputy Speaker. I rise to support the Bill.

I would like to start by pointing out the fact that this Bill is aligning the Office of the Auditor-General to the aspirations and the spirit of our Constitution, more so with what Kenyans want. This Bill provides, in Clause 15, that the position of Senior Deputy Auditor-General be created so that the holder acts and runs the Office of the Auditor-General in the absence of the Auditor-General. Previous Bills did not envisage that a vacancy can occur in the Office of the Auditor-General. This particular clause is very important for transitional purposes as well as for institutional memory.

I would also like to point out that the functions of the Senior Deputy Auditor-General, especially in the administration of the Office of the Auditor-General, are very important especially in terms of assigning duties to junior officers. Secondly, the Senior Deputy Auditor-General will be the Accounting Officer of the Office of the Auditor-General. As we speak, the Auditor-General is the Accounting Officer as well as the administrator of the office.

In Clause 21, the Bill provides that the Auditor-General, in performing his functions and subject to the law relating to data protection, may require that any individual employed by the public produces any official document that the Office of the Auditor-General requires.

This Bill also relates to the counties. I want to point out a very important issue on the money that we send to the counties. Devolution is meant to promote development and improvement of the lives of the citizens through efficient application of resources but the manner in which some of the funds are used by devolved units leaves a lot to be desired. This particular Bill seeks to address such problems by, especially, enhancing the County Audit Offices. This will ensure that citizens get value for money, and that efficiency is promoted at the county level. I know that the county governments, as we know them, are at the formative stage. This Bill will enhance performance and efficiency within the county governments.

Under Clause 25, the Bill provides for the establishment of an Audit Advisory Board to be made up of members nominated by various institutions. The proposed board is vital as it will be advising the Auditor-General. The board will also ensure that managers appointed to serve in the Office of the Auditor General are well recruited. The body will further ensure that there is a review and advice on organizational and

developmental issues in the Office of the Auditor-General. As we speak, most of this work is left to individual managers.

The Audit Advisory Board will also assist in the review of audit reports, especially those reports which are supposed to come to Parliament for use by particular parliamentary committees like the Public Accounts Committee (PAC) and Public Investments Committee (PIC). The Board will also give any other advice that may be sought by the Auditor-General from time to time. The membership of the Board will include individuals from the Law Society of Kenya (LSK), public universities, the Association of Internal Auditors, Non-Governmental Organization Council, and the Institute of Certified Public Accountants of Kenya.

This proposed board will be well balanced, especially given the kind of individuals who will sit on it. The Board will also provide counsel on technical issues and any other related advice to the Auditor-General. This particular aspect is very important. As it is today, the Office of the Auditor-General is very busy. It needs professional advice from different offices. This particular Clause will assist in that aspect.

Under Clause 45, the Bill provides for consideration of a report on the accounts of the Office of the Auditor-General. In particular, Clause 41 deals with the sources of funding for the Office of the Auditor-General. This is very important. I want to point out clearly that the sources of funding of this particular Office are vital because, apart from appropriations from Parliament, other particular sources have clearly been spelt out.

With those remarks, I beg to support this very important Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Member for Kangundo, are you sitting on Console 221? Can you speak to the microphone that is next to you? Can you answer a few questions before you speak to the Bill? I can see that you are holding the card of another Member of this House. How have you accessed the card?

**Hon. Maweu:** Hon. Temporary Deputy Speaker, I do not know. My good guess is that the card that I have right now is mine. If it is somebody else’s, I have no idea.

**The Temporary Deputy Speaker** (Hon. Kajwang’): The information I have is that you are using the card of the Member for Embakasi East.

**Hon. Maweu:** Oh my God!

**The Temporary Deputy Speaker** (Hon. Kajwang’): You have complained twice to the Speaker that you have not been able to address the Assembly because you have been holding a wrong card.

**Hon. Maweu:** I did not know that, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang’): I am finding it difficult to understand how, for almost a year, you have not been having your card.

**Hon. Maweu:** Hon. Temporary Deputy Speaker, I have been having this card for some time. I have no way of verifying whether it is my own card or it is somebody else’s card.

**The Temporary Deputy Speaker** (Hon. Kajwang’): All right. It is your responsibility under the rules to verify that information.

**Hon. Maweu:** Yes, I will do that.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Just a minute; the Speaker will not want to engage with you on issues which are fairly administrative. I will give you the benefit of the doubt but you will have to explain to the Speaker, in my view, how you



were able to access the card of the hon. Member for Embakasi East, so that the IT people are able to correct that information, if there is any correction to be done. But I will give you the benefit of the doubt. Can you proceed?

**Hon. Maweu:** Yes, I will do that, hon. Temporary Deputy Speaker.

Thank you for giving me this opportunity to contribute to this Bill. I have read the Bill. I have gone through all the chapters; the establishment of the Office of the Auditor-General; reporting of the Auditor-General, establishment of the advisory board, the accounts office and all other chapters in this Bill. I have found it necessary to join other hon. Members to look at some chapters which need some correction. The Office of the Auditor-General needs to be devolved to counties and constituencies. Before that is done, the Auditor-General needs to be given enough money so that he can do that.

I would also want to point out the chapter which requires the Auditor-General to submit his budget through the National Treasury. I would ask if it is possible that the Auditor-General submits his budget directly to Parliament. This will enable Parliament to sit down and give the Auditor-General the kind of money he wants.

I have looked at the issue of ethics and it is true that if the staff of the Auditor-General do not have ethics, the punishment they will get is severe. But there is one thing I would want to point out, it is equally important, as for any other staff, for the Auditor-General to be given enough money so that these staff can be recruited and trained and so that they adhere to appropriate ethics.

Their service terms should be improved. It is because of poor services that some of them are tempted to be corrupt. I have witnessed a few occasions when most staff of the Auditor-General have colluded with their clients and the job they were supposed to do has not been done. What I may ask is that the service terms for the staff of Auditor-General be improved.

Something else I would also want to add is that the independence of Auditor-General should not be questioned. We have seen in most cases some people interfering with the Office of the Auditor-General. We would ask and urge the Government and this Parliament that the Auditor-General should be given the independence he requires.

With those few remarks, I want to support this Bill which has been long overdue. Thanks a lot.

**The Temporary Deputy Speaker** (Hon. Kajwang’): You are not off the hook. You will still have to give information that is satisfactory to the Speaker on how you have been able to access another Member’s card.

**Hon. Maweu:** Hon. Temporary Deputy Speaker, I have said I did not know. I will talk to the hon. Speaker. I have no problem with that. I have nothing to do with the---

**The Temporary Deputy Speaker** (Hon. Kajwang’): The reason why I say so is because it is out of order to give false information. So I need to find out whether that information---

**Hon. Maweu:** I did not give any false information to anybody. I did not know that the card I had was not mine. As I have said, I will return the card---

**The Temporary Deputy Speaker** (Hon. Kajwang’): All right, hon. Member for Jomvu.

**Hon. Bady:** Ahsante sana mhe. Naibu Spika wa Muda kwa kunipatia fursa hii ili kuchangia Mswada huu. Kwanza ninataka kuunga mkono Mswada huu kwa ajili naamini

kuwa ni muhimu kuwa na mkaguzi wa hesabu, kwani itawezesha Serikali kutumia fedha kwa njia ya sawa sawa, na njia ambayo itakuwa ya kujulikana. Inatakikana pia kuona kuwa mkaguzi wa hesabu hataegemea upande wowote katika kufanya kazi yake. Inatakikana kazi yake kubwa kuona kuwa anakagua hesabu za fedha, ama rasilimali za pesa za wananchi na kuona kuwa hesabu hizo ni sawa sawa.

Katika kipengele cha 25 cha Mswada huu, ningependa kuunga mkono kwani nimeona kimependekeza kuundwa kwa bodi ya ushauri, ambayo itakuwa ikimshauri mkaguzi wa hesabu katika kufanya maamuzi. Vilevile, naona kuwa katika Mswada huu, kazi ya bodi hii imeweza kuonyeshwa katika kipengele cha 27, na kazi yake kubwa itakuwa kutoa ushauri kwa mkaguzi wa hesabu ili kuona kazi hii itafanyika sawasawa.

Ni lazima pia ofisi ya mkaguzi wa hesabu ipewe uwezo wa kuchukua hatua kwa wafujaji wa rasilimali kwa sababu tumeona kuwa ofisi hii ya mkaguzi wa hesabu hutoa hesabu zake na ikasema watu kadhaa, ama kitengo fulani, wamefuja mali ama rasilimali. Haya yamekuwa ni maoni tu yametolewa na hakuna hatua yoyote imechukuliwa. Kwa hivyo, ningependa kuona kuwa ofisi hii imepewa nguvu pamoja na bodi yake wakati wowote ambao itaona kuna ufujaji was pesa, ama hesabu hazikuenda sawa sawa ichukulie hatua watu ambao watakuwa wamefanya mambo yasiyo ya sawa.

Mwisho kabisa nataka kuunga mkono Mswada huu kwa sababu umekuja kwa wakati mwafaka. Tumeona mambo mengi kama ya Anglo Leasing, Goldenberg na mengine ambayo yalitokea, lakini kwa vile hakukuwa na kitengo ambacho kilikuwa kimethabitiwa vizuri, tunaona ni mazungumzo yamezungumzwa halafu baadaye rasilimali ya wananchi ikapotea katika mikono ya watu wengine. Kwa hivyo, bodi ikiwako pamoja na ofisi hii nina hakika zitaweza kuchukua hatua ambayo itaweza kulinda rasilimali zetu sisi kama wananchi wa Kenya.

Kwa hivyo ninaunga mkono Mswada huu na kusema kuwa ni muhimu tuweze kuupitisha. Ahsante.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Member for Kitui West, the Floor is yours

**Hon. Nyenze:** Thank you, hon. Temporary Deputy Speaker for giving me this opportunity.

**The Temporary Deputy Speaker** (Hon. Kajwang’): You will never forget that you are the hon. Member for Kitui West.

**Hon. Nyenze:** I am the hon. Member for Kitui West. I am at the top, and could be I have enjoyed the trappings of power.

I want to support this Bill on condition that the recommendations of the Auditor-General are incorporated into it. It is a good Bill that has come at the time when we have devolved power and resources to the counties.

I want to say that, the current Auditor-General has been doing a good job. I note that in last year’s PAC Report, this House was urged to increase the budget of that office, so that it can have enough staff and resources to carry out its duty of auditing the Government very well. I support that because it is a very good thing to do.

In the past, very many scandals have been unearthed in this country by the Auditor-General. As my colleagues have said before, a lot has happened but very little has been done in the area of prosecution. The Auditor-General has unearthed Anglo Leasing, Goldenberg scandals and many other heinous crimes where this country has lost

billions of shillings. However, because he does not have prosecutorial power, the cases have faded away with time, Kenyans forgot and moved on. The damage done to the economy by these big time corruption scandals is so enormous that it will take this country many years to recover.

An audit is not an end in itself, but is a way of regulating and checking the Government, so that resources are spent well. An audit is very good in preventing scandals from taking place. It is very important, so long as it is done efficiently and effectively for the economy to grow.

Governments are formed out of the will of the people. When Governments are formed, they translate that will of the people into creation of wealth and improvement of the people's welfare. The Government of the day collects taxes and puts people's wish list on the development agenda that the people have. That is why the Office of the Auditor-General is very important. This Bill, therefore, has come at the right time when we have devolved power and resources to the counties. We do not want to export the same old and grand corruption to the counties; I am afraid that this has been taking place because of inadequate funding of the Auditor-General's Office. For the Auditor-General to establish branches in all the 47 counties, we need to re-look at his budget.

I also want to say that the establishment of an advisory board is a very good thing for the Auditor-General. This is because the bodies that are involved, that is the Law Society of Kenya, Non-Governmental Organizations and ICPAK, among others, are professional bodies that will give advisory services to the Auditor-General, so long as the selection of those who sit on that board is done according to the proposals in this Bill.

I also want to say that in this country we can solve so many problems through proper auditing. Currently we have had issues with Narok. We have seen very big demonstrations in Narok. If their accounts were audited properly and made available, that could be averted. Even in other areas where we have seen the Governors craving and advocating for *Pesa Mashinani* or CORD fighting for *Okoa Kenya*, if there were proper, timely and efficient audits most of these things could not have happened.

The push for *Pesa Mashinani* or *Okoa Kenya* would not be necessary because the Public Accounts Committee (PAC) would have given the latest audited accounts for 2013/2014. Now, there should not be a conflict over the allocation to the counties. Automatically, the national Government should allocate more money to the counties because PAC, which is led by the Opposition, has given the latest accounts and we would go by that.

Hon. Temporary Deputy Speaker, if this office is to benefit this country by checking excesses, the proper usage of money and preventing corruption from taking place, we have to support it by giving it more money.

The area I feel uncomfortable with in this Bill is on the appointment of the Senior Deputy Auditor-General and making him the accounting officer. If you look at the organisations that have done very well like the Office of the Director of Public Prosecutions (DPP), led by Mr. Keriako Tobiko, it has done very well because he is the accounting officer. He is the one who runs it and he runs it effectively. If the Auditor-General has no control of the resources and he is not the accounting officer, I am sure he will be undermined and his power will not be enough to carry out his mandate. So, I want Clause 16 to be relooked at, so that the appointment of the Senior Deputy Auditor-

General is done, but he is not in charge. He should not be the Chief Executive Officer (CEO), or the accounting officer, so that there is efficiency and the Auditor-General has power, so that he can check big corruption cases.

Clause 17 on the recruitment of staff of the Auditor-General stresses the importance of ethnic and regional balance. We have seen in this country, and in this administration, that appointments have been concentrated in few areas, friends and supporters. This Office of the Auditor-General is so important that we cannot appoint people either from certain ethnic groups or regional blocs, because they are politically sitting on the correct side of history. It is so crucial that the appointments, according to the Constitution of Kenya 2010, have to show ethnic and regional balance. They have to show the face of Kenya. That will attract a lot of trust to this Office of the Auditor-General.

Clause 40 seeks to shield some security organs. We have known that Anglo Leasing was one of the many security contract scandals that took place. If you shield some of these security organs from the Auditor-General, most corruption will take place there. That clause should be relooked at, so that the Auditor-General can audit every organ of the Government.

Part VI of the Bill, which deals with reporting, is well drafted. It gives Parliament the authority to consider those reports and take appropriate action. This is very good. Similarly, Clause 53 allows Parliament to withhold funds to any State organ that seriously breaches the provisions of this Bill. This is very important. Parliament has been given the mandate to withhold resources until that clause is adhered to. This is very important because State organs will know they will run out of cash if they do not adhere to that.

I have been away when so much took place. I am saying this with a sad heart; that I lost my uncle on Saturday. So, we are in a funeral mood and we will bury him on Saturday. Equally, I want to say *pole* to the families of the people who died when I was not around like hon. Muchai. I want to send to this family my condolences and those of the people of Kitui West. I wish them God's peace. I appeal to the Government to speed up investigations so that those who are behind that are prosecuted. I urge the Members of the National Assembly and all the leaders not to apportion blame, or try to assign themselves the role of investigating. Let the investigation agencies do their work without the undue pressure of trying to blame this or that. Legislators are not investigators. Let us give those organs time, so that they can do their work. We need to support them.

I also want to send my condolences to the family and friends of the late Monica Amollo, the ODM Chairperson of Homa Bay County, who died in a road accident. May her soul rest in peace. Lastly, I want to send my condolences to Celestine Awidi, a nominated CORD Member of the County Assembly in Homa Bay County, who passed away in Aga Khan. May God give those families solace and peace during this very difficult time.

Hon. Temporary Deputy Speaker, on a different one, allow me to congratulate Senator elect, Moses Otieno Kajwang', for the landslide win in Homa Bay where he garnered over 79 per cent of the total votes cast. This win is evidence that Kenyans have confidence in CORD and that we remain a favourite party of all Kenyans. The Homa Bay win confounded sceptics and the prophets of doom by giving an equivocal endorsement

of CORD and its policies. I want to end there and wish that the people of Kajiado Central would elect Elijah Memusi because he is equally a good servant of the people of this country.

I want to end by saying that the Auditor-General is a very important person in this country. Without audits, any government or any people that you put in power where resources are available will misuse the resources for personal entitlement. Once again, I urge the legislators because they are the ones who appropriate the Budget, to put more money in the Office of the Auditor-General as the Public Accounts Committee (PAC) Report showed and this Bill suggests, so that corruption will be a thing of the past.

With those few remarks, I support this Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Members, we have debated this Bill for more than one day. Therefore, we need to bring debate to a close. I will allow the hon. Member for Naivasha to debate it for the next five minutes. I have only five minutes for you. You will be the last speaker on this Bill before the Mover is called upon to reply.

**Hon. Kihagi:** Thank you, hon. Temporary Deputy Speaker, for giving me this chance. I want to support the Bill.

Audit, as a post mortem exercise, should actually tell us what happened or what did not happen. In this case, we are talking about public funds and what happened to public funds that are hard earned by Kenyans. These are funds raised by the Government through taxation or from loans acquired by the Government on behalf of Kenyans. Such loans are to be paid by the current or future generations of Kenyans. Therefore, the fact that expenditure of such funds ought to be thoroughly audited need not be overemphasised.

Hon. Temporary Deputy Speaker, we are talking of a Budget of more than Kshs.1 trillion. Therefore, we should empower the Office of the Auditor-General, even in a more rigorous manner. We have heard the Auditor-General say that his Office is not properly empowered. It is not properly financed to be able to undertake audit of the devolved governments. We have heard people say that we should give more funds to the devolved units. If we do not give the Office of the Auditor-General more powers, and look at how it is structured and the quality of its employees, we will endanger the funds that we labour for. At the end of it all, we may have a balanced inflow and an outflow, and a zero-end game.

Therefore, we should pass this Bill with amendments, as suggested by some of the hon. Members who have spoken on it. We should know that we are doing it for posterity; let us ensure that public funds are put into good use. The passage of this Bill should serve as a warning to those who may want to engage in corrupt deals and misappropriate public funds. We are going to have better audit of public funds in this country.

Hon. Temporary Deputy Speaker, as I conclude, allow me to give my belated condolences to the family, friends and colleagues of the late hon. Muchai and join my friends and colleagues in saying that the Government should speed up investigations. Allow me to also lament the laxity in provision of security, especially for Members of Parliament. I have been an MP for two years now. I have been having my bodyguard but I have never heard him say that he was going for any training or sensitization on how he

should handle my security. I believe that the leadership of the House will check on the matter of security as we move on.

With those remarks, I beg to support the Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang’): The Chair is sympathetic to those remarks, even though it is a diversion from the issues at hand. I will now call upon the Mover to reply.

Majority Whip, do you have instructions to reply on behalf of the Leader of Majority Party? Hon. Washiali, do you have instructions to reply? Can he have the Microphone?

**Hon. Washiali:** Thank you, hon. Temporary Deputy Speaker. On behalf of my boss, who is the Leader of Majority Party, I would like to reply. Before I do that, I want to donate one minute to hon. Letimalo and another minute to hon. Wandayi, if you allow me.

**The Temporary Deputy Speaker** (Hon. Kajwang’): That will be okay; but keep to the one minute each. Who is the first one? Which is your order of preference?

**Hon. Washiali:** Hon. Temporary Deputy Speaker, I have been approached and you are not usually approached on the Floor---

**The Temporary Deputy Speaker** (Hon. Kajwang’): What is the order of your preference?

**Hon. Washiali:** I preferred hon. Letimalo to get one minute and hon. Wandayi to get another minute. Hon. (Ms.) Chebet can also have one minute. We are left with about seven minutes and I am sure we can have the three hon. Members.

**The Temporary Deputy Speaker** (Hon. Kajwang’): All right, let us have hon. Letimalo.

**Hon. Letimalo:** Thank you, hon. Temporary Deputy Speaker. I want to thank hon. Washiali for donating one minute to me. I want to say one thing; under Clause 9, which talks about general powers of the Auditor-General and specifically talks about accounts and recruitment of staff, I think there is need to emphasise that this office needs to be given power to recruit adequate staff so as to carry out their functions effectively and efficiently. We can see that they are dealing with public funds that go to so many sectors; we are considering the county governments, 47 of them; we are considering constituencies that are over 290, and schools which are also benefiting a lot from infrastructure development. These funds need to be audited, so that we know how they are utilized.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you very much, Member for Ugunja, hon. Wandayi.

**Hon. Wandayi:** Thank you, hon. Temporary Deputy Speaker. I want to reiterate the fact that the Office of the Auditor-General is one of those constitutional offices that are independent as provided for in the Constitution. It is important that we allow this office to exercise the independence that the Constitution intends it does. I must also point out that the current holder of this office happens to have brought into this very important office a lot of reforms and corporate discipline.

Hon. Temporary Deputy Speaker, this country has lacked development because of the amount of money that continues to be siphoned every year through loopholes that have been created deliberately by people who are hell bent on looting public funds. This

office has to be strengthened and the only way to strengthen it is by first giving it enough finances through budgetary allocation by this House, and secondly by not to limiting its mandate in any way. This office must be allowed to audit the security sector in totality, from the police service to the intelligence service and the Kenya Defence Forces (KDF). These are the conduits through which the public has lost huge sums of money. This office will only add value to the governance of this country if this House takes it upon itself to do whatever it can to ensure that it is properly financed, it is properly budgeted for and the holder is given adequate security of tenure not only in writing but by deeds.

I want to conclude by saying that this Bill is important. We shall pass it but only on condition that the offending clauses are amended appropriately at the Committee Stage of this Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Very well, but hon. Wandayi, you cannot give conditions to the National Assembly. I think the best you must do is to prefer amendments and then debate them at the Committee Stage, without giving conditions. I think that is how things are supposed to be.

**Hon. Wandayi:** Hon. Temporary Deputy Speaker, I was assuming that hon. Members will exercise due diligence and apply common sense.

**The Temporary Deputy Speaker** (Hon. Kajwang’): No, it is your personal responsibility as an hon. Member to prefer amendments for debate by the National Assembly, is that not so?

**Hon. Wandayi:** I will do so, hon. Temporary Deputy Speaker; I am properly guided.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Member for Elgeyo Marakwet, you have one minute.

**Hon. (Ms.) Chebet:** Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this very important Bill. I know that the Office of the Auditor General has been in existence but it needs to be strengthened. We have lost a bit of confidence in it before, but I know that if we give it the strength that is required now, it is going to serve the public as much as we want. We will have additional staff to strengthen the Office of the Auditor General now that we are in the era of devolution. This means that we need adequate staff to cover the counties, schools, hospitals and all the public entities that have been established in Kenya.

We need people who meet the requirements of Chapter Six of our Constitution. It is not enough to provide adequate staff but we need skilled people, who can handle complicated issues so as to prevent cases of corruption. We need people with integrity to serve in the office of the Auditor General, so that we avoid cases of grand corruption like Anglo Leasing during which staff of the Auditor General were compromised. Due to a limited number of members of staff serving in this office, it could not address matters as adequately as possible.

With those few remarks, I support the Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. Kajwang’): All right. Hon. Member for Mumias, did you say that the Member for Kiambu has one minute?

**Hon. Washiali:** Thank you, hon. Temporary Deputy Speaker. I think we still have four minutes and I hope she will just limit her contribution to one minute, so that I have three minutes to sum up whatever will have been discussed.

**Hon. (Ms.) Gathecha:** Thank you, hon. Temporary Deputy Speaker and the Mover for the one minute. I just want to inform the country and this House of our commitment and re-energising of ourselves in the fight against corruption. The Public Audit Bill allows us to do that, and we have to invest a lot more resources in the Office of the Auditor General to make sure that the law is implemented.

It is very worrying that corruption has come back to this country in an unprecedented way. The rumour that there is corruption puts us in the fear that where there is smoke, there is fire. This Bill confirms the commitment to the country that the National Assembly is, indeed, committed and I support the Public Audit Bill.

Thank you.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you. Yes, Member for Mumias.

**Hon. Washiali:** Thank you, hon. Temporary Deputy Speaker Sir. On behalf of the Leader of Majority Party, who is hon. Duale, I wish to reply by thanking all Members who have contributed to this Bill positively. This Bill will go a long way in improving our audit function in the Government.

Hon. Temporary Deputy Speaker, in view of the investment by the Government in companies in which it has controlling shares, I think we need to extend these services to those companies, especially to a company like Mumias Sugar, which has been in the media of late. The stories that we are hearing today coming from Mumias Sugar Company, where the Government has invested 20 per cent, are that the company is coming down to the ground. This is because there was an element of mismanagement and poor auditing. It is important that the Government develops interest in wherever it has invested public funds, so that we can take care of funds that the Government has put in, in form of investment.

I know that this Bill will go a long way in supporting the Government and this House in whatever we would have wished to see the Government do in terms of protecting investment of the Government.

I beg to reply.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Kajwang’): Debate having been concluded on the Public Audit Bill, National Assembly Bill No. 38 of 2014, I hereby, therefore, order that the business appearing as No. 8 appear on the Order Paper of tomorrow in the afternoon for the purposes of voting.

Hon. Members, time being 6.30 p.m. the House stands adjourned until tomorrow Wednesday, 18<sup>th</sup> February, 2015 at 9.30 a.m.

The House rose at 6.30 p.m.