



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON ESTIMATES

ON THE

PUBLIC AUDIT BILL, N.A.B NO. 24 OF 2016

FOR THE

**FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON 23RD
SEPTEMBER, 2015**

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REPORT OF THE COMMITTEE ON ESTIMATES ON THE PUBLIC AUDIT BILL, N.A.B NO. 24 OF 2016, FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY, APPOINTED ON 23RD SEPTEMBER, 2015

Consisting of:

Mr H H Hamududu, MP (Chairperson); Mr E M Sing'ombe, MP; Mrs I M Mphande, MP; Mr R L Mpundu, MP; Mr B M Ntundu, MP; Mr R P Mtolo, MP; Mr P Phiri, MP; and Dr G L Scott, MP.

The composition of the Committee changed following the appointment to the Committee of Mr G K Mwamba, MP. The composition further changed following the appointment to a ministerial position of Mr R L Mpundu, MP who was subsequently replaced Mr J Shuma, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

Your Committee has the honour to present its Report on the *Public Audit Bill, N.A.B. No. 24 of 2016*, for the Fifth Session of the Eleventh National Assembly referred to it by the House on Friday, 6th May, 2016.

Functions of the Committee

2.0 In addition to any other duties conferred upon it by the Honourable Mr Speaker, or any other order of the House, your Committee is mandated to consider any Bills that may be referred to it by the House.

Meetings of the Committee

3.0 Your Committee held four meetings to consider the *Public Audit Bill, N.A.B. No. 24 of 2016*.

Procedure adopted by the Committee

4.0 In order to acquaint itself with the ramifications of the Bill, your Committee sought both written and oral submissions from stakeholders. The stakeholders who appeared before your Committee are listed at Appendix II.

Back ground to the Public Audit Bill, N.A.B. No. 24 of 2016

5.0 Your Committee was informed that the current *Public Audit Act No. 8 of 1980*, does not take care of the recent developments in auditing. Some of the recent developments include the new types of audits of performance and environment, Information Technology as well as forensic investigations. Further, with the enactment of the Constitution of Zambia (Amendment) Act No. 2 of 2016, it has become necessary that *Public Audit Act* should be revised. The Bill is also meant to ensure that the State Audit Office operated in line international best practices since the Office of the Auditor General in Zambia is a member of the International Organisation for Supreme Audit Institutions.

Object of the Bill

6.0 The *Public Audit Bill, N.A.B. No. 24 of 2016*, seeks to enhance the independence and autonomy of the *National Audit Office* and strengthen its functions; provide a framework for promoting efficiency, accountability, effectiveness and transparency of public administration through effective oversight and audit of public funds and performance; domesticate the principles of United Nations Resolution A/66/209 on promoting efficiency, accountability, effectiveness and transparency of supreme audit institutions;

provide for guiding principles of public finance and performance audit; and provide for matters connected with, or incidental to, the foregoing.

Salient Provisions of the Public Audit Bill, N.A.B No. 24 of 2016

7.0 The salient provisions of the *Public Audit Bill, N.A.B No. 24 of 2016* are set out below.

Clause 2 – Interpretation

This clause defines the key terms that are used in the Bill. The clause intends to make it easy for persons to understand the Act.

Clause 3-Implementation of Act

This clause empowers the Auditor-General to administer and implement the Act.

Clause 4 – Establishment of National Audit Office

This clause establishes the National Audit Office and gives it the same immunities and privileges enjoyed by the State under the State Proceedings Act.

Clause 5-Functions of National Audit Office

This clause sets out the functions of the *National Audit Office* established under clause 4.

Clause 6-Auditor - General, Deputy Auditor General, auditors and other staff of the National Audit Office

This clause provides for the officers of the *National Audit Office*. According to the clause, the National Audit Office is headed by the Auditor General who is deputed by the Deputy Auditor General. The clause further sets out the qualifications for appointment as Auditor General.

Clause 7-Controlling officer

This clause establishes the office of controlling officer.

Clause 8-Seal of National Audit Office

This clause provides for the seal of the National Audit Office.

Clause 9-Experts and assessors

This clause empowers the National Audit Office to appoint experts and assessors to assist the Office in performing its functions under the Act.

Clause 10-Appointment of external auditors

This clause empowers the Auditor General to subcontract external auditors to help in auditing.

Clause 11-Emoluments

This clause empowers the Emoluments Commission to deal with the emoluments of the officers of the *National Audit Office* except those of the Auditor General.

Clause 12-Oath

This clause requires the Deputy Auditor General and other officers of the National Audit Office to take an oath on appointment.

Clause 13-Immunity

This clause gives immunity to the Auditor General, Deputy Auditor General and other officers of the National Audit Office from legal proceedings in respect of acts, done in good faith, in the course of employment.

Clause 14-Scope of audit

This clause provides for the scope of audit to be undertaken by the Auditor General. The clause empowers the Auditor-General to audit State organs, State institutions and private institutions.

Clause 15-Examination of accounts

This clause empowers the Auditor General to examine the accounts of State organs, State institutions and private institutions.

Clause 16-Specific audit

This clause requires the Auditor General to conduct an audit into the accounts of a particular State organ, State institution or private institution, if the President so requests.

Clause 17-Special audits and reviews

This clause empowers the Auditor General to carry out a special audit into the accounts of a particular State organ, State institution or private institution, if the Auditor General considers that it is in public interest to do so.

Clause 18-Performance audit

This clause requires the Auditor General to conduct a performance audit on how money has been spent by a particular State organ, State institution or private institution created by the Constitution.

Clause 19-Forensic audit

This clause empowers the Auditor General to investigate fraud and other financial irregularities in a State organ, State institution or private institution.

Clause 20-Environmental audit

This clause empowers the Auditor General to conduct an audit on the equipment and environment management of a State organ, State institution or private institution.

Clause 21-Procurement audit

This clause empowers the Auditor General to examine the public procurement and asset disposal policies of a State organ, State institution or private institution.

Clause 22-Contract audit

This clause requires a State organ or State institution which is a party to a contract involving the expending of money by the State organ or State institution, to ensure that there is a clause in the contract empowering the Auditor General to examine documents relating to the contract.

Clause 23-Audit of Accounts by the Auditor General or as requested by National Assembly

This clause requires the Auditor General to conduct an audit into the accounts of a particular State organ, State institution or private institution, if the National Assembly requests.

Clause 24-Access to records, books and accounts

This clause empowers the *National Audit Office* to access records, books and accounts of a State organ, State institution or private institution.

Clause 25-Provision of reports, documents and other information

This clause requires an auditor, who is appointed by a State organ or State institution, to provide the Auditor General with the reports, documents and other information relating to the accounts of the State organ or State institution.

Clause 26-Surcharge and disallowance by Auditor-General

This clause empowers the Auditor General to order the head of a State organ, State institution or private institution to pay a penalty if money is mismanaged. The clause further empowers the Auditor General to disallow the expenditure incurred in contravention of the law.

Clause 27 - Certification of Government accounts

This clause requires the Auditor General to certify Government accounts after an audit has been done. The clause sets out what should be in the certification report.

Clause 28-Adherence to international practice and standards of auditing

This clause requires the Auditor General to adhere to international practices and standards when auditing.

Clause 29-Special and interim publication of reports

This clause empowers the Auditor General to prepare and publish special and interim audit reports where the Auditor General is of the opinion that delay in reporting irregularities through an annual report may result in financial loss for the government.

Clause 30-Submission of audit report

This clause requires the Auditor General to submit an audit report, whether annual, Special or interim, to the President and the National Assembly. The clause further requires the Auditor General to draw the attention of the President and the National Assembly to the financial irregularities in the State organs, State institutions and private institutions audited.

Clause 31-Publication and distribution of reports

This clause requires the Auditor General to publish and distribute the audit report.

Clause 32-Funds of National Audit Office

This clause provides for the sources of funds of the National Audit Office. It empowers the Office to accept grants and donations, and contract loans, subject to the approval of the Minister. It also empowers the Office to invest funds.

Clause 33-Financial Year

This clause provides for the financial year of the *National Audit Office*.

Clause 34-Accounts and audits

This clause requires the *National Audit Office* to keep books of accounts. It also mandates the *State Audit Commission* to appoint an independent auditor to audit the books of Accounts of the *National Audit Office* annually.

Clause 35-Annual Reports

This clause requires the *National Audit Office* to submit a Report on its activities to the National Assembly, within ninety days after the end of the financial year.

Concerns raised by Stakeholders

8.0 The stakeholders who were invited by your Committee raised a number of issues as set out below.

a. Amendment of the objects of the Bill

The stakeholders were concerned that the objects of the Bill do not provide for the Repeal and replacement of the *Public Audit Act No. 8 of 1980*. Furthermore, the Bill seeks to enhance the independence of the National Audit Office. They were of the view that since this Bill is repealing the *Public Audit Act No. 8 of 1980*, the *National Audit Office* is, therefore, being established under the Bill. They were, therefore, of the view that the objects of the Bill should be further amended to include “establish the *National Audit Office*.”

b. Interpretation

The stakeholders were concerned that the interpretation of the words *Surcharge* and *disallowance* are not provided for. Further, the Statement of financial position should be defined separately from the statement of comprehensive income.

c. Clause 6 (2) (d) Qualification for appointment as Auditor-General

Clause 6 sub-clause 2 (d) which provides for the minimum age of forty-five for appointment as Auditor General is not necessary as the other appointment criteria under clause 6 sub-clause 2 (a), (b) and (c) address the key competences that the person appointed to the position of Auditor General ought to possess.

a. Appointment of a Controlling Officers

Some stakeholders were concerned about the provision requiring the National Audit Office to have a controlling officer who shall be appointed by the Secretary to the Treasury in accordance with the *Public Finance Act, 2004*. They argued that in its current form, the provision would undermine the financial autonomy of the *National Audit Office* because the Secretary to the Treasury was one of the offices audited by the Auditor General. This is also in violation of the International Organisation of Supreme Audit Institutions (INTOSAI) principles that the country is party to because it allows the executive to control and direct the access to financial resources by the National Audit Office.

b. Clause 16 (1) Specific Audit

A concern was raised on clause 16 sub-clause 1 which empowers the President to request the Auditor General to conduct specific audits on public and quasi government organisations. They contended that considering the vast powers wielded by the President, the provision will exert undue influence on the Auditor General. The provision is also not in line with the International Organisation of Supreme Audit Institutions (INTOSAI) Principles which requires Supreme Audit Institutions to exercise the freedom to decide the content and timing of audit reports and to publish and disseminate them.

c. Clause 29-Special and Interim publication of reports

Some stakeholders were concerned with the fact that Special and Interim report would be submitted to the President at the exclusion of Parliament. They were of the view that the reports ought to be submitted simultaneously to President and the Parliament in order to enhance the independence, transparency and accountability.

d. Clause 32 sub-clause 4-Investments

Some stakeholders were concerned about clause 32 sub-clause 4 which allows the *National Audit Office*, with the approval of the Minister, to invest any excess funds for which there is no immediate need. They argued that the provision is not in line with Section 15 sub-section 3 of the *Public Finance Act, 2004* requiring controlling officers for all agencies utilising public resources to seek approval of the Secretary to the Treasury before investing any public funds as follows: ‘A controlling officer shall not invest public funds without the written approval of the Secretary to the Treasury and details of investments made from public funds shall be copied to the Auditor General.’

e. Clause 38 sub-clause 1- General Offenses

Some stakeholders were concerned that clause 38 sub-clause 1 includes delaying the office of the Auditor General as an offence arguing that the offence was too harsh because there were several unintentional factors that might lead to the delay which were beyond the audit.

Committee’s Observations and Recommendations

9.0 After carefully studying the Bill and taking into account various concerns from witness, your Committee observes and recommends as set out hereunder.

i. Clause 6 (2) (d) Qualification for appointment as Auditor-General

Your Committee observes that clause 6 sub-clause 2 (d) provides for the minimum age of forty-five for appointment as Auditor General. Your Committee notes that the other appointment criteria under clause 6 sub-clause 2 (a), (b) and (c) address the key competences that the person appointed to the position of Auditor General ought to possess making unnecessary to include the age limit in law.

In this regard, your Committee recommends that the Bill should be amended by deletion of the age limit requirement for one to be appointed Auditor General.

ii. Amendment of the objects of the Bill

Your Committee observes that the objects of the Bill do not provide for the Repeal and replacement of the *Public Audit Act No. 8 of 1980*.

In this regard, your Committee recommends that the objects of the Bill should be amended to include the repeal and replacement of the *Public Audit Act No. 8 of 1980*.

iii. Establishment of the National Audit Office

Your Committee observes that the Bill seeks to enhance the independence of the National Audit Office. However, it is of the view that since this Bill is repealing the *Public Audit Act No. 8 of 1980*, the *National Audit Office* is, therefore, being established under the Bill.

In the light of this, your Committee recommends that the objects of the Bill should be further amended to include “establish the *National Audit Office*.”

iv. Appointment of a Controlling Officers

Your Committee observes that the Bill provides for controlling officer of the National Audit Office to be appointed by the Secretary to the Treasury in accordance with Section 7 sub-section 1 of the *Public Finance Act, 2004*, which states as follows: ‘*The Secretary to the Treasury designates in respect of each head of revenue or expenditure provided for in any financial year, an officer who shall be a controlling Officer.*’

However, it is of the view that the provision will undermine the financial autonomy of the *National Audit Office*. The Secretary to the Treasury is one of the officers who are audited by the Auditor General’s office. Therefore, giving it power to appoint controlling officers for the Auditor General’s office will be in violation of international practices such as International Organisation for Supreme Audit Institutions to which the Country is party which discourages executive to control and direct the access to financial resources by the National Audit Office.

In the light of the above, your Committee recommends that the Deputy Auditor General in charge of administration should be the controlling officer of the National Audit Office.

v. Clause 16 (1) Specific Audit

Your Committee observes that clause 16 sub-clause (1) empowers the President to request the Auditor-General to conduct specific audits on public and quasi government organisations. It is of the view that the vast powers wielded by the President were high and as such the provision will exert undue influence on the Auditor General.

Your Committee, therefore, recommends that clause 16 (1) should be amended to read “*the Auditor-General shall accommodate specific requests for investigations or audits from Parliament or a Committee of Parliament or Executive.*”

vi. Clause 29-Special and Interim publication of reports

Your Committee observes that clause 29 (2) in its present form is not consistent with Article 212 of the Constitution and clause 30 in the same Bill which require audit reports to be submitted to the President and the National Assembly simultaneously.

In this regard, your Committee recommends that that the special and interim reports should be submitted simultaneously to President and the Parliament.

vii. Clause 32 sub-clause 4 – Investments

Your Committee observes that clause 32 sub-clause 4 allows the National Audit Office, with the approval of the Minister, to invest any excess funds for which there is no immediate need. Your Committee is aware that this has been provided for in various other pieces of legislation that have been brought to Parliament such as the State Audit Commission. Your Committee strongly oppose this provision because it will turn public institutions into investment agencies at the expense of their core mandate of undertaken audits.

In the light of the above, your Committee recommends that the excess funds should be retired back to the Treasury and that if there is need for investment, this should be undertaken in line with Section 15 subsection 3 of the *Public Finance Act, 2004*, which states as follows: ‘*A controlling officer shall not invest public funds without the written approval of the Secretary to the Treasury and details of investments made from public funds shall be copied to the Auditor General*’.

Conclusion

10.0 Your Committee pays tribute to all the stakeholders who appeared before it and tendered both oral and written submissions; and to thank you, Mr Speaker, for according it the opportunity to scrutinise the Bill. Your Committee also appreciates the services rendered by the office of the Clerk of the National Assembly, and the permanent witness from the Ministry of Justice.

We have, Sir, the honour to be your Committee on Estimates mandated to consider the *Public Audit Bill, N.A.B. No. 24 of 2016*, for the Fifth Session of the Eleventh National Assembly.

Mr H H Hamududu, MP
Chairperson

Dr G L Scott, MP
Member

Mr R P Mtolo, MP
Member

Mr E M Sing’ombe, MP
Member

Mr J Shuma, MP
Member

Mr G K Mwamba, MP
Member

Mr P Phiri, MP
Member

Mr B M Ntundu, MP
Member

Mrs I Mphande, MP
Member

May, 2016
LUSAKA

APPENDIX I

LIST OF OFFICIALS

National Assembly

Mr S C Kawimbe, Principal Clerk of Committees
Ms M K Sampa, Deputy Principal Clerk of Committees
Mr M F Kateshi, Revenue and Expenditure Analyst
Mr S Mtambo, Budget Analyst (Macroeconomics)
Mr F Chikambwe, Assistant Committee Clerk
Mrs B C Chanda, Assistant Committee Clerk
Ms S Kayawa, Stenographer
Mr M Chikome, Committee Assistant
Mr C Nkandu, House Messenger

APPENDIX II

WITNESSES

Ministry of Justice - Permanent Witness

Mr K Mweemba, Senior Parliamentary Counsel

Policy Monitoring and Research Centre (PMRC)

Ms A Mumba, Head of Research

Mrs C Changu, Researcher

Mr M Bwalya, Researcher

Mr J Kapila, Head of Communications

Mr S Mwila, Communications specialist

Office of the Auditor General

Mr D Mendamenda, Deputy Auditor General

Mrs P Phiri, Deputy Auditor General

Mr L Mwansa, Director-Planning and Information

Mr B Mpofu, Principal Auditor

Mr B Muyoba, Senior Auditor

Transparency International-Zambia

Mr G Lungu, Director

Zambia Institute of Chartered Accountants (ZICA)

Mr W Beene, President

Mr T Thewo, Vice President

Mr H M Kabeta, Chief Executive Office

Mr C Chiteba, Director

Mr Bruce Mwewa, Technical Manager