



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 05 DEC 2019

DAY.

THURSDAY

THE NATIONAL ASSEMBLY

TABLED
BY:

Hon Kimani Ichungu
Chairperson

CLERK-AT
THE-TABLE:

Lemna Mose.

PARLIAMENT
OF KENYA
LIBRARY

TWELFTH PARLIAMENT

THIRD SESSION

BUDGET AND APPROPRIATIONS COMMITTEE REPORT

ON THE NATIONAL TREASURY REQUEST FOR APPROVAL TO STOP TRANSFER OF
FUNDS TO 15 COUNTY GOVERNMENTS

DECEMBER, 2019

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PREFFACE

Mr. Speaker, pursuant to the provisions of Article 225 of the Constitution, the Budget and Appropriations Committee held deliberations to consider the request by the National Treasury to secure the approval of the House to stop transfer of funds to 15 county governments due to failure to settle pending bills.

Mr. Speaker, the National Treasury request is based on Article 225 of the Constitution which empowers the National Treasury to stop transfer of funds to a State organ or any other public entity in the event there is a serious breach or persistent material breaches of a measure under enacted legislations.

Mr. Speaker, during the consideration of this matter, the Committee held deliberations with the Controller of Budget as required by the Constitution and the Public Finance Management Act, 2012. The Controller of Budget submitted a report on the matter as required by the Constitution which is **annexed in this report**. However, **Mr. Speaker**, because of time constraints, the Committee was not able to hold deliberations with the Leadership of the affected county governments.

Mr. Speaker, this is the report of the Budget and Appropriations Committee on its consideration of the National Treasury request. The report contains the discussions, observations and recommendations of the Committee as regards to the request.

MANDATE OF THE COMMITTEE

Mr. Speaker, Article 221 (4 and 5) of the Constitution and the Public Finance Management Act, 2012 provide for the establishment of a Committee of the National Assembly whose main role is to take the lead in budgetary oversight by the National Assembly. In this regard, Standing Order 207 establishes the Budget and Appropriations Committee with specific mandates among which is to:

1. Investigate, inquire into and report on all matters relating to coordination, control and monitoring of the national budget,
2. Discuss and review the estimates and make recommendations to the House,
3. Examine Budget Policy Statement, Medium Term Debt Strategy Paper and Division of Revenue Bill (DORB) presented to the House,
4. Examine Bills related to the national budget, including Appropriations Bill, and
5. Evaluate tax estimates, economic and budgetary policies and programs with direct budget outlays.

Mr. Speaker, the Budget and Appropriations Committee as currently constituted comprises of the following Honourable Members of Parliament:

Member	Constituency	Party
1. Hon. Kimani Ichung'wah, CBS, M.P- Chairperson	Kikuyu	Jubilee
2. Hon. CPA Moses Lessonet, M.P- Vice Chairperson	Eldama Ravine	Jubilee
3. Hon. CPA John Mbadi, EGH, CBS, M.P.	Suba South	ODM
4. Hon. Richard Onyonka, M.P.	Kitutu Chache South	Ford Kenya
5. Hon. Samwel Moroto, M.P.	Kapenguria	Jubilee
6. Hon. Millie Odhiambo, M.P.	Suba North	ODM
7. Hon. Twalib Bady, M.P.	Jomvu	ODM
8. Hon. (Dr.) Gideon Ochanda, M.P.	Bondo	ODM
9. Hon. James Mwangi Gakuya, M.P.	Embakasi North	Jubilee
10. Hon. (Dr.) Makali Mulu Benson, M.P.	Kitui Central	Wiper
11. Hon. Moses Kiarie Kuria, M.P.	Gatundu South	Jubilee
12. Hon. Benard Masaka Shinali, M.P.	Ikolomani	Jubilee
13. Hon. John Muchiri Nyaga, M.P.	Manyatta	Jubilee
14. Hon. Jude Njomo, M.P.	Kiambu Town	Jubilee
15. Hon. (Dr.) Korei Ole Lemein, M.P.	Narok South	Jubilee
16. Hon. Sarah Paulata Korere, M.P.	Laikipia North	Jubilee
17. Hon. Naisula Lesuuda, OGW, M.P.	Samburu West	KANU
18. Hon. Sakwa Bunyasi, M.P.	Nambale	ANC
19. Hon. Danson Mwashako, M.P.	Wundanyi	Wiper
20. Hon. Fatuma Gedi Ali, M.P.	Wajir County	PDR
21. Hon. Florence Chepng'etich Koskey Bore, M.P.	Kericho County	Jubilee
22. Hon. James Gichuki Mugambi, M.P.	Othaya	Jubilee
23. Hon. (Dr.) John K. Mutunga, M.P.	Tigania West	Jubilee
24. Hon. (Eng.) Mark Nyamita, M.P.	Urii	ODM
25. Hon. Paul Abuor, M.P.	Rongo	ODM
26. Hon. Qalicha Gufu Wario, M.P.	Moyale	Jubilee

Parliamentary Budget Office/ Committee Secretariat

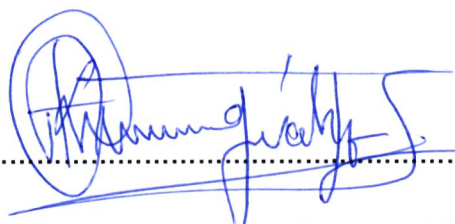
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|----------------------------|----------------------|
| 1) Mrs. Phyllis Makau, OGW | Director, PBO |
| 2) Fredrick Muthengi | Chief Fiscal Analyst |
| 3) Ms. Amran Yunis | Fiscal Analyst |
| 4) Mr. Eric Kanyi | Fiscal Analyst |
| 5) Mr. Abdinassir Moge | Fiscal Analyst |

Acknowledgements

Mr. Speaker, the committee is grateful to your Office, the Office of the Clerk of the National Assembly and the Parliamentary Budget Office for the support received as it discharged its mandate of reviewing the National Treasury request. I wish to also express my appreciation to the Honourable Members of the Committee who made insightful contributions towards the preparation of this report.

Mr. Speaker, on behalf of the Committee and pursuant to the Standing Orders 199(6) of the National Assembly, it is therefore my pleasant duty and privilege, to lay this report on review of the request by the National Treasury to stop transfer of funds to county governments on account of non-settlement of pending bills.

Signed:

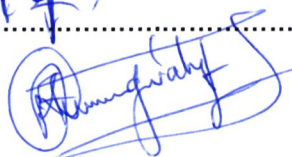


HON. KIMANI ICHUNG'WAH, CBS, M.P.

CHAIRPERSON, BUDGET & APPROPRIATIONS COMMITTEE

Date:

05/2/19



INTRODUCTION

Mr. Speaker, the National Treasury vide the Circular No.20/2019 of 19th November 2019 informed fifteen (15) county governments that it would stop the transfer of 2019/20 equitable share of revenue due to the failure to settle pending bills.

Consequently, on 25th November 2019, the National Treasury, through a letter reference no. IGFR/PENDING BILLS/01/A (26) requested Parliament for approval to stop the transfers to the fifteen counties as per the requirements of section 97(2) of the PFMA 2012. This halt in the transfers of the 2019/20 equitable share to the affected county governments is supposed to be effected as from 1st December 2019.

Mr. Speaker, the National Treasury in both the letter and the circular indicated that this measure has been necessitated by the failure of the listed fifteen county governments to settle pending bills despite numerous efforts and reminders including receipt exchequer issues for the payments to be settled.

Mr. Speaker, the request by the National Treasury was referred to the Budget and Appropriations Committee for consideration in light of the provisions of Article 225 of the Constitution and to subsequently report to the House.

Mr. Speaker, the fifteen (15) county governments affected are Narok, Machakos, Nairobi, Vihiga, Isiolo, Tana River, Migori, Tharaka Nithi, Bomet, Kirinyaga, Nandi, Mombasa, Kiambu, Garissa and Baringo.

THE LEGAL UNDERPINNING ON TREASURY REQUEST

Mr. Speaker, Article 225 (3) of the Constitution empowers the Cabinet Secretary for the National Treasury to stop the transfer of funds to a state organ or any other public entity for a serious breach or persistent material breaches of measure under enacted legislations.

Mr. Speaker, the same Article 225 provides that such a decision to stop the transfer of funds may be enforced immediately, but will lapse retrospectively unless, within 30 days after the date of the decision, Parliament approves it by resolution passed by both Houses.

The 225(7) provides that Parliament may not approve or renew a decision to stop the transfer of funds unless-

- a) The controller of budget has presented a report on the matter to Parliament and
- b) The public entity has been given an opportunity to answer the allegations against it, and to state its case before the relevant parliamentary committee.

Mr. Speaker, section 97 of the PFM Act operationalizes the Article 225(3), by providing for the following:

- i. That the Cabinet Secretary to inform the Controller of Budget (COB) in respect to the date from when the stoppage of transfer takes effect and the nature of seriousness of breaches
- ii. The Cabinet Secretary to seek approval of Parliament within 7 days
- iii. Within 14 days after the decision to stop funds, the COB to investigate the matter and report to Parliament
- iv. Within 30 days of the decision to stop the transfer of funds, Parliament to approve or renew the decision and the Cabinet Secretary shall abide by the decision of Parliament.

SUBMISSIONS BY THE CONTROLLER OF BUDGET

Mr. Speaker, the Controller of Budget appeared before the Committee Thursday 5th December 2019. It was the submission of the Office of the Controller of Budget that, in preparing the reports, the Office observed a trend where pending bills owed by County Governments was on an upward trajectory increasing in each financial year. In this regard, the office noted that that pending bills owed by counties increased from Kshs.37.36 billion in the FY 2015/16 to Kshs.108.41 billion in the FY 2017/18.

Mr. Speaker, the Office of the Controller of Budgets highlighted the following as the main causes of pending Bills in Counties;

- i. Failure by the County Governments to effectively align their procurement plans to the cash flow plans and approved budgets.
- ii. Delayed tendering and procurement processes have had adverse effects on projects completion rates and processing of payments.
- iii. Delay by the National Treasury to disburse funds on a timely basis to the County Governments in accordance with the Approved Disbursement Schedule.
- iv. Under-performance of own source revenue collection leading to budget deficits and unfunded commitments.
- v. Non-tax compliance by vendors resulting to delayed tax remittance, hence barring subsequent payments to vendors.
- vi. Delay in approval of supplementary budget estimates which are supposed to adopt prior year pending bills in the current budget.
- vii. Operational delays caused by IFMIS downtimes thus affecting clearance of payments in the system.
- viii. Project cost variation leading to higher cost than the budget allocations.
- ix. Failure by Accounting Officers to adhere to set budget resulting to commitments over and above budgetary allocation.

In addition, **Mr. Speaker**, the Controller of Budget submitted that pending bills due to Contractors and suppliers to various counties adverse impacts as summarized as follows;

- i. Pending bills have adverse effects on businesses especially the Small and Medium Enterprises (SMEs) which depend on borrowed funds to finance their operations.
- ii. b. Erosion of investor confidence where business community lose confidence in doing business with government as pending bills increase debt burdens through interest and penalties.
- iii. c. Costly litigation where parties are forced to go through rigorous court processes in order to secure their payments.

Mr. Speaker, the Controller further submitted an analysis of County by County of the 15 Counties affected. The office informed the Committee that Counties have made progress in addressing the problem with **Baringo** County clearing its pending bills after issuance of the Circular.

Mr. Speaker, the office recommend that the remaining 14 Counties embark on the development of comprehensive and realistic pending bills repayment plan in line with the Recovery Plan contemplated under Section 99 of the PFMA. The Repayment Plan should be discussed and agreed on between the National Treasury, and the relevant county officials to ensure that all pending bills are paid as per the agreed on plan.

Mr. Speaker, in conclusion the Office observed that the 15 counties are in serious material breach in terms of Section 93(3) (b) of the PFMA and it was the considered opinion of the Office that the decision by the Cabinet Secretary should be upheld to allow the development of a Recovery Plan as contemplated under Section 99 of the PFMA. The office noted that the Recovery Plan is anchored in law and as per Section 99(4) of the PFMA is intended to;

- i. Identify the financial problems;
- ii. Be designed to place the county government in a sound and sustainable financial condition as quickly as possible;
- iii. State the principal objectives of the plan and ways and means for achieving those objectives;
- iv. Provide budget parameters which bind the county government for a specified period or until stated conditions have been met;

- v. Identify specific revenue raising measures that are necessary for financial recovery, including the rates at which tariffs should be set to achieve financial recovery;
- vi. Set out a specific strategy for addressing the entity's problems, including a strategy for reducing wasteful expenditure and increasing the collection of revenue, as may be necessary; Identify the human resources and the source of those resources;
- vii. Describe the anticipated time frame for the recovery, and the milestones to be achieved; and
- viii. Identify what actions are necessary for the implementation of the plan, distinguishing between actions to be taken by the entity and actions to be taken by other parties.

Mr. Speaker, the Controller further, recommended that the following general recommendations to forestall recurrence of pending bills;

- i. Review of the IFMIS system to provide for ageing of creditors.
- ii. Amendment of the Public Finance Management Act, 2012 to provide for payment on a First-In- First- Out (FIFO) basis. This will ensure compliance with various accounting standards which treat debt repayment as a first charge on revenue.
- iii. Enhancement of technical capacity in budgeting and accounting in the County Treasury to ensure adherence with the principles of public finance and Standard Charts of Accounts.
- iv. Review of the law to ensure payments are made on time by introducing a prompt pay system where if a valid invoice is not paid within certain time, it automatically attracts interest.
- v. That there is need for all players undertaking functions under the PFMA Act to adhere to the laid down principles public finance management and take up initiatives that address emerging challenges. This should include formulating policies to ensure the adoption of best practice in budgeting and budget implementation for both national and county governments; and to further have realistic revenue targets to reduce budget deficits.

Mr. Speaker, a detailed report from the Controller of Budget (COB) as envisaged under Article 225 (7) is annexed in this report.

COMMITTEE OBSERVATIONS

Mr. Speaker, after deliberations on the matter, the following pertinent issues were observed by the committee:

- I. That the National Treasury has acted within the Constitutional and Public finance management act, 2012 provisions in seeking to stop the 2019/20 equitable share transfers to the fifteen county governments;
- II. That the criteria used by the National Treasury to arrive at the 15 County governments was subjective since the aspects of the quantum of the pending bills which is critical was not taken into account. This left out some counties which have huge pending bills hence the principle of equity was not observed by the National Treasury;
- III. That the 15 county governments which are to be affected have made efforts towards settlement of the eligible funds including factoring them in their supplementary budgets hence the need to allow them have resources to continue settling the remaining eligible pending bills;
- IV. That one of the causes of failure to settle eligible pending bills is failure by the National Treasury to release funds to the county governments in time;
- V. That a number of county governments depend heavily on transfers from the National government to settle their operations such as personnel emoluments and the stoppage of resources flow without taking in to account this non-discretionary operation costs can be detrimental;
- VI. That despite the fact that there are a number of National government entities with accumulated pending bills resources flow to this entities have not be halted hence the need for equity in the enforcement of the Constitution and public finance management practices;
- VII. That the pending bills highlighted by the report form the Controller of Budget does not include the pending bills which were carried over from the defunct local authorities after the inception of devolution;

VIII. That there is need to ensure that the pending bills which were carried over from the defunct local authorities are investigated and measures put in place to settle the bills which are eligible;

COMMITTEE RECOMMENDATIONS

Mr. Speaker, in view of the above, the Committee recommends the following:

- i. The House rejects the National Treasury request to stop transfer of 2019/20 equitable share revenue to the 15 county governments and all county governments be given 60 days to settle the eligible pending bills;
- ii. The National Treasury spearhead enhancement of technical capacity in budgeting and public finance management in the County Treasuries to ensure full adherence with the principles of public finance;
- iii. The two levels of government be realistic in the budgeting by putting in place measures to have realistic forecasts for critical budget parameters such as revenues to ensure that budgets which are prepared are fully financed;
- iv. The National Treasury to relook at the functionality of the Integrated Financial Information System (IFMIS) system to ensure that it is more robust and responsive as well as ensure that this system has additional critical functionalities such as procurement and payments;
- v. The Ethics and Anticorruption Commission in collaboration with the Office of the Auditor General institute measures to investigate the ineligible pending bills to mitigate the danger of loss of public funds;

MINUTES OF THE 140TH SITTING OF THE BUDGET AND APPROPRIATIONS COMMITTEE HELD THURSDAY, 5TH DECEMBER, 2019, AT THE SMALL DINING, NEW WING, MAIN PARLIAMENT BUILDINGS AS FROM 11:00 A.M.

PRESENT:

- 1) **Hon. Kimani Ichung'wah, CBS, M.P. – Chairperson**
- 2) Hon. (CPA) John Mbadi, EGH, CBS, M.P.
- 3) Hon. Richard Onyonka, MP
- 4) Hon. Samwel Moroto, M.P.
- 5) Hon. Twalib Bady, MP
- 6) Hon. Gideon Ochanda, MP
- 7) Hon. James Mwangi Gakuya, M.P.
- 8) Hon. (Dr.) Makali Mulu, M.P.
- 9) Hon. Moses Kiarie Kuria, M.P
- 10) Hon. Benard Masaka Shinali, M.P.
- 11) Hon. John Muchiri Nyaga, M.P
- 12) Hon. Jude Njomo, MP
- 13) Hon. Dr. Korei Ole Lemein, MP
- 14) Hon. Sarah Korere, M.P.
- 15) Hon. Sakwa Bunyasi, MP
- 16) Hon. Danson Mwashako, MP
- 17) Hon. Fatuma Gedi,MP
- 18) Hon. Florence C. K. Bore, M.P.
- 19) Hon. James Gichuki Mugambi, M.P.
- 20) Hon. (Dr.) John K. Mutunga, M.P.
- 21) Hon. Paul Abuor, MP
- 22) Hon. Wangari Mwanki,MP

ABSENT WITH APOLOGY:

- 1) **Hon. (CPA) Moses Lessonet, M.P. – Vice Chairperson**
- 2) Hon. Millie Odhiambo, M.P.
- 3) Hon. Naisula Lesuuda, MP
- 4) Hon. Eng Mark Myamita, MP
- 5) Hon. Qalicha Gufu Wario, M.P.

IN ATTENDANCE

OFFICE OF THE CONTROLLER OF BUDGET

- | | |
|------------------------------------|----------------------|
| 1. Ms. Margaret. N. Nyakongo , CBS | Controller of Budget |
| 2. Mr. Stephen Masha | |
| 3. Ms. Rhoda Rutto | |

PARLIAMENTARY BUDGET OFFICE

- | | |
|------------------------|----------------------|
| 1) Fredrick Muthengi | Chief Fiscal Analyst |
| 2) Ms. Amran Yunis | Fiscal Analyst |
| 3) Mr. Eric Kanyi | Fiscal Analyst |
| 4) Mr. Abdinassir Moge | Fiscal Analyst |

AGENDA

1. Preliminaries
2. Confirmation of Previous Minutes
3. Meeting with COB on the stoppage of transfers to 15 County Governments;
4. Consideration of the pending business before the Committee:
5. Any other Business (A.O.B).

MIN BAC/140/2019/1: PRELIMINARY

The Chairperson welcomed the committee members to the meeting and called the meeting to order at 11.40 a.m. Thereafter, Hon. Sarah Korere led the Committee with a word of prayer.

MIN BAC/140/2019/2: MEETING WITH COB ON THE STOPPAGE OF TRANSFERS TO 15 COUNTY GOVERNMENTS

The Controller of Budget submitted to the Committee a report in line with Article 225(7) of the Constitution and Section 97(3) of the Public Finance Management Act (2012) which requires the Controller of Budget to investigate and submit to Parliament a report after the Cabinet Secretary, National Treasury decision to stop the transfer of funds to a state organ or public entity.

The COB stated that the office observed a trend where pending bills owed by County Governments was on an upward trajectory increasing in each financial year. It was noted that pending bills increased from Kshs.37.36 billion in the FY 2015/16 to Kshs.108.41 billion in the FY 2017/18

The COB stated that the issue of pending bills was deliberated on extensively during the 10th Ordinary Session of the Intergovernmental Budget and Economic Council (IBEC) meeting held on 6th February 2018. The COB informed the committee that the IBEC meeting resolved that all counties should verify the existing pending bills through internal committees and verified bills be provided by April, 2018 to allow Counties settle the pending bills before end of the financial year, and in cases where there is insufficient budget provision, Counties should pass appropriate supplementary budgets to re-vote the bills in the FY 2018/19 Budgets.

The Committee was further informed that the Auditor General upon the resolution of IBEC undertook a special audit on pending bills. The Auditor General Report on the Special Audit on pending bills as at 30th June, 2018 noted an increase in eligible and ineligible pending bills.

The Committee was further informed that the list presented to the OAG for verification amounted to Kshs.88.99 billion, out of which Kshs.51.28 billion (57.6 per cent) was noted to be eligible while pending bills worth Kshs.37.70 billion (42.4 per cent) was found to be ineligible. The Committee was informed that COB kept tracking the pending bills in which they would submit reports to the National Treasury on a monthly basis.

The COB also highlighted the causes of the pending bills such as failure by the County Governments to align their procurement plans to the cash flow plans and approved budgets, Delay by the National Treasury to disburse funds on a timely basis to the County Governments in accordance with the Approved Disbursement Schedule, Under-performance of own source revenue collection leading to budget deficits and unfunded commitments, Operational delays caused by IFMIS downtimes thus affecting clearance of payments in the system among others

The COB informed the committee that When the National Treasury invoked the stoppage of funds, the law mandated COB to investigate the matter and presented to the Committee in the form of a report that the, 15 County Governments have reported settling a total of Kshs.11.87 billion which represented 40 per cent of the eligible

pending bills as of 30th November, 2019. Therefore, the outstanding pending bills amount to Kshs.18.05 billion.

The COB also informed the Committee that progress has been made in paying of the pending bills by the counties since the stoppage of funds by the National Treasury and this is broken down in the report submitted to the Committee

The COB further concluded that non-payment of eligible Pending Bills constitute a serious material breach in terms of Section 93(3) (b) of the PFMA and therefore the decision by the Cabinet Secretary should be upheld to allow the Counties other than Baringo County (which has cleared its pending Bills) develop a Recovery Plan as contemplated under Section 99 of the PFMA. The COB gave further recommendations in the report submitted to the Committee.

After presentation by the COB, Members of the Budget and Appropriations Committee raised the following concerns and comments.

- i) That there are a number of counties who are cumulating pending bills yet they are not among the list of counties in which funds have been stopped, it was therefore evident that the criteria used to pick the 15 counties lacks objectivity and fairness and it does not achieve the desired effect
- ii) That if there is a directive of stopping County funds due to pending bills, the National Treasury should provide a list of Ministries, Departments and Agencies that have cumulated pending bills
- iii) That the IFMIS system is so weak that it cannot provide basic information needed for financial management
- iv) There are structural and fundamental issues that need to be addressed, in terms of building capacity at county level as well as providing supportive infrastructure before deciding on the stoppage of funds
- v) That the stoppage of funds may not achieve the desired result but rather affect the economy more now that the County Governments will not be receiving the equitable share.

After deliberations the Chair thanked the Controller of Budget. Thereafter, the committee called upon Parliamentary Budget Office.

**MIN BAC/140/2019/3: CONSIDERATION OF THE PENDING BUSINESS
BEFORE THE COMMITTEE: ADOPTION OF THE DRAFT REPORT**

Members were taken through the draft report by Parliamentary Budget Office. After deliberations, the Committee adopted the report with the following recommendations:

COMMITTEE OBSERVATIONS

1. That the National Treasury has acted within the Constitutional and Public finance management act, 2012 provisions in seeking to stop the 2019/20 equitable share transfers to the fifteen county governments;
2. That the criteria used by the National Treasury to arrive at the 15 County governments was subjective since the aspects of the quantum of the pending bills which is critical was not taken into account. This left out some counties which have huge pending bills hence the principle of equity was not observed by the National Treasury;
3. That the 15 county governments which are to be affected have made efforts towards settlement of the eligible funds including factoring them in their supplementary budgets hence the need to allow them have resources to continue settling the remaining eligible pending bills;
4. That one of the causes of failure to settle eligible pending bills is failure by the National Treasury to release funds to the county governments in time;
5. That a number of county governments depend heavily on transfers from the National government to settle their operations such as personnel emoluments and the stoppage of resources flow without taking in to account this non-discretionary operation costs can be detrimental;
6. That the pending bills highlighted by the report form the Controller of Budget does not include the pending bills which were carried over from the defunct local authorities after the inception of devolution;

7. That there is need to ensure that the pending bills which were carried over from the defunct local authorities are investigated and measures put in place to settle the bills which are eligible;

COMMITTEE RECOMMENDATIONS

1. The House rejects the National Treasury request to stop transfer of 2019/20 equitable share revenue to the 15 county governments and all the county governments be given 60 days to settle the eligible pending bills;
2. The National Treasury spearhead enhancement of technical capacity in budgeting and public finance management in the County Treasuries to ensure full adherence with the principles of public finance;
3. The two levels of government be more realistic in the budgeting by putting in place measures to have realistic figures for critical budget parameters such as revenues to ensure that budgets which are prepared are fully financed;
4. The National Treasury to relook at the functionality of the Integrated Financial Information System (IFMIS) system to ensure that it is more robust and responsive as well as ensure that this systems has additional critical functionalities such as procurement and payments;
5. The Ethics and Anticorruption Commission in collaboration with the Office of the Auditor institute measures to investigate the ineligible pending bills to mitigate the danger of loss of public funds;

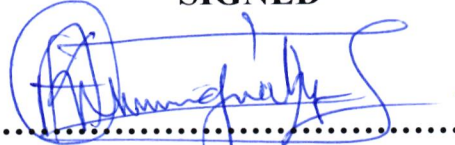
MIN BAC/140/2019/4: CONFIRMATION AND ADOPTION OF THE PREVIOUS MINUTES

The Minutes of the 139th Sitting of the Committee were confirmed and adopted as the true records of the Committee's deliberations in that sitting. The adoption of the minutes was proposed by Hon. Gideon Ochanda, and seconded by Hon. Dr. Makali Mulu.

MIN BAC/139/2019/5: ANY OTHER BUSINESS & ADJOURNMENT

There being no other matters to consider, the meeting was adjourned at 1.30P.M. The next meeting will be communicated in due course.

SIGNED







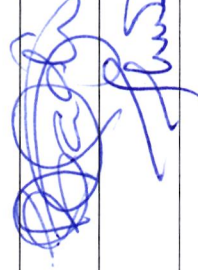

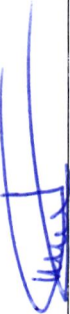



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HON. KIMANI ICHUNG'WAH, CBS, M.P.
CHAIRPERSON, BUDGET AND APPROPRIATIONS COMMITTEE

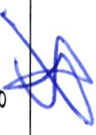






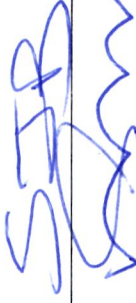




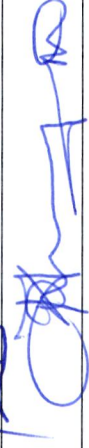
05/12/19



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DATE

Members attendance list

Budget and Appropriations Committee: Date: 5/12/2019 Time: 10:00am Sitting:

Name	Signature
1. Hon. Kimani Ichung'wah, CBS, M.P- Chairperson	
2. Hon. (CPA) Moses Lessonet, M.P- Vice Chairperson	
3. Hon. (CPA) John Mbadi, EGH, CBS, M.P.	
4. Hon. Richard Onyonka, M.P.	
5. Hon. Samwel Moroto, M.P.	
6. Hon. Millie Odhiambo, M.P.	
7. Hon. Twalib Bady, M.P.	
8. Hon. (Dr.) Gideon Ochanda, M.P.	
9. Hon. James Mwangi Gakuya, M.P.	
10. Hon. (Dr.) Makali Mulu, M.P.	

Name	Signature
11. Hon. Moses Kiarie Kuria, M.P.	
12. Hon. Benard Masaka Shinali, M.P.	
13. Hon. John Muchiri Nyaga, M.P.	
14. Hon. Jude Njomo, M.P.	
15. Hon. (Dr.) Korei Ole Lemein, M.P.	
16. Hon. Sarah Paulata Korere, M.P.	
17. Hon. Naisula Lesuuda, M.P.	
18. Hon. Sakwa Bunyasi, M.P.	
19. Hon. Danson Mwashako, M.P.	
20. Hon. Fatuma Gedi Ali, M.P.	
21. Hon. Florence C.K. Bore, M.P.	
22. Hon. James Gichuki Mugambi, M.P.	
23. Hon. (Dr.) John K. Mutunga, M.P.	

Name	Signature
24. Hon. (Eng.) Mark Nyamita, M.P.	
25. Hon. Paul Abuor, M.P.	
26. Hon. Qalicha Gufu Wario, M.P.	
27. Hon. Wangari Mwaniki, M.P.	

Signed..... Date.....



Committee Clerk

Signed..... Date.....

Director of Committee Services

BAC Invited Guest - attendance list

Budget and Appropriations Committee: Date: 5/12/2019 Time: Sitting:

Name	Name of the Organization	Telephone Number	Signature
1. Rhoda Rutto	OCOB	0721375674	
2. Stephen Wasika	OCOB	0722747929	
3. Dr. Margaret N. Njoroge	Controller of Budget		
4.			
5.			
6.			
7.			
8.			
9.			
10			

MINUTES OF THE 139TH SITTING OF THE BUDGET AND APPROPRIATIONS COMMITTEE HELD TUESDAY, 3RD DECEMBER, 2019, AT THE SMALL DINING, NEW WING, MAIN PARLIAMENT BUILDINGS AS FROM 10:30 A.M.

PRESENT:

- 1) **Hon. Kimani Ichung'wah, CBS, M.P. – Chairperson**
- 2) Hon. (CPA) John Mbadi, EGH, CBS, M.P.
- 3) Hon. Samwel Moroto, M.P.
- 4) Hon. Gideon Ochanda, MP
- 5) Hon. (Dr.) Makali Mulu, M.P.
- 6) Hon. Benard Masaka Shinali, M.P.
- 7) Hon. John Muchiri Nyaga, M.P
- 8) Hon. Jude Njomo, MP
- 9) Hon. Fatuma Gedi,MP
- 10) Hon. Florence C. K. Bore, M.P.
- 11) Hon. Qalicha Gufu Wario, M.P.

ABSENT WITH APOLOGY:

- 1) **Hon. (CPA) Moses Lessonet, M.P. – Vice Chairperson**
- 2) Hon. Millie Odhiambo, M.P.
- 3) Hon. Dr. Korei Ole Lemein, MP
- 4) Hon. Richard Onyonka, MP
- 5) Hon. Twalib Bady, MP
- 6) Hon. James Mwangi Gakuya, M.P.
- 7) Hon. Moses Kiarie Kuria, M.P
- 8) Hon. Sakwa Bunyasi, MP
- 9) Hon. Danson Mwashako, MP
- 10) Hon. Sarah Korere, M.P.
- 11) Hon. Naisula Lesuuda, MP
- 12) Hon. James Gichuki Mugambi, M.P.
- 13) Hon. (Dr.) John K. Mutunga, M.P.
- 14) Hon. Eng Mark Myamita, MP
- 15) Hon. Paul Abuor, MP
- 16) Hon. Wangari Mwanki,MP

IN ATTENDANCE

PARLIAMENTARY BUDGET OFFICE

- | | |
|----------------------------|----------------------|
| 1) Mrs. Phyllis Makau, OGW | Director, PBO |
| 2) Fredrick Muthengi | Chief Fiscal Analyst |
| 3) Ms. Amran Yunis | Fiscal Analyst |
| 4) Mr. Eric Kanyi | Fiscal Analyst |
| 5) Mr. Abdinassir Moge | Fiscal Analyst |

AGENDA

1. Preliminaries & Confirmation of Agenda
2. Confirmation of Previous Minutes
3. Discussion and Consideration of the following:
 - i. The draft Supplementary Appropriation (No. 2) Bill, 2019
 - ii. The draft BAC report on request for approval of stoppage of transfer of funds to county governments
4. Any other Business (A.O.B).

MIN BAC/139/2019/1: PRELIMINARY

The Chairperson welcomed the committee members to the meeting and called the meeting to order at 11.30 a.m. Thereafter, Hon. Gideon Ochanda led the Committee with a word of prayer.

MIN BAC/139/2019/2: CONFIRMATION AND ADOPTION OF THE PREVIOUS MINUTES

The Minutes of the 138th Sitting of the Committee were confirmed and adopted as the true records of the Committee's deliberations in that sitting. The adoption of the minutes was proposed by Hon. Qalicha Gufu, and seconded by Hon. Jude Njomo.

MIN BAC/139/2019/3: THE DRAFT SUPPLEMENTARY APPROPRIATION (NO. 2) BILL, 2019

The Committee was briefed by the Parliamentary Budget Office regarding the draft supplementary appropriations bill as published. The following were the key highlights

1. The Supplementary Appropriation (No.2) Bill, 2019 seek to authorize the issuance of seventy three billion, one hundred and seventy three million, seventy four thousand, one hundred and thirteen shillings (Kshs. 73,173,074,113) out of the Consolidated Fund and their application towards the supply granted for the service of the year ending on the 30th June, 2020. This is additional adjustments to the initial authority granted in accordance with the Appropriation Act, 2019.
2. The Supplementary Appropriation (No. 2) Bill, 2019 proposes a net increase of Ksh. 73.17 billion, out of which development expenditure has a net increment of Ksh. 62.68 billion and recurrent expenditure has an increment of Kshs. 10.49 billion. The total increases for the Appropriation-In-Aid (A-I-A) is Kshs. 22.94 billion out of which development A-I-A is Kshs. 22.36 billion while recurrent A-I-A increment is Kshs. 577.66 million.
3. The Supplementary Appropriation Bill proposes reductions amounting to Kshs 18.85 billion. The recurrent expenditure has a net decrease of Kshs 11.39 billion while development spending is reduced by Ksh. 7.45 billion. The overall impact of these supplementary results to a net supply of Kshs 54.32 billion and change of appropriations in aid of Kshs 23.82 billion.
4. The recent changes in Parliamentary Service Commission necessitated the creation of a third vote namely Vote 2043, therefore to cover the expenses for the new vote, the Supplementary Appropriation Bill has reflected these changes and

as a result, the Parliamentary Service Commission (Vote 2041) has been adjusted downwards and the funds transferred and reflected in Vote 2043 recurrent and development expenditure.

5. The splitting of the vote resulted to transfer of only unspent balances to the new vote as per the Public Finance Management Regulations. The proposed shift will therefore not affect the overall FY 2019/20 Supplementary budget.
6. A memorandum has been received from the National Treasury seeking to amend amounts erroneously captured in the bill touching on the following votes: State Department for Transport (Vote 1092); Ministry of Energy (Vote 1152) and State Department for Public Works (Vote 1095)
7. The proposed amendments will not alter the overall budget contained in the FY 2019/20 Supplementary Appropriations Bill of Kshs. 54.32 billion. However, the net increase of Kshs. 73.17 billion will be increased further to Kshs. 73.45 billion whereas the net reductions of Kshs. 18.85 billion will increase to Kshs. 19.13 billion

After presentation, the Committee noted the proposed amendments would not result to alteration of the overall budget since it is correcting the resources which were placed in the wrong votes/programmes. The Committee accepted the proposed amendments as proposed.

MIN BAC/139/2019/4: REQUEST BY NATIONAL TREASURY FOR APPROVAL OF STOPPAGE OF TRANSFERS TO COUNTY GOVERNMENTS

The Committee observed that given that a report on this matter from the Controller of Budget report envisioned under article 225(7) (a) has not been obtained, the Committee was not in a position to make appropriate and well informed decision on the request by the National Treasury. The Committee resolved that given the gravity of this issue, the

Chairperson, through a statement to the House to seek more time to consider the matter comprehensively.

MIN BAC/139/2019/5: ANY OTHER BUSINESS & ADJOURNMENT

There being no other matters to consider, the meeting was adjourned at 1.30P.M. The next meeting will be communicated in due course.

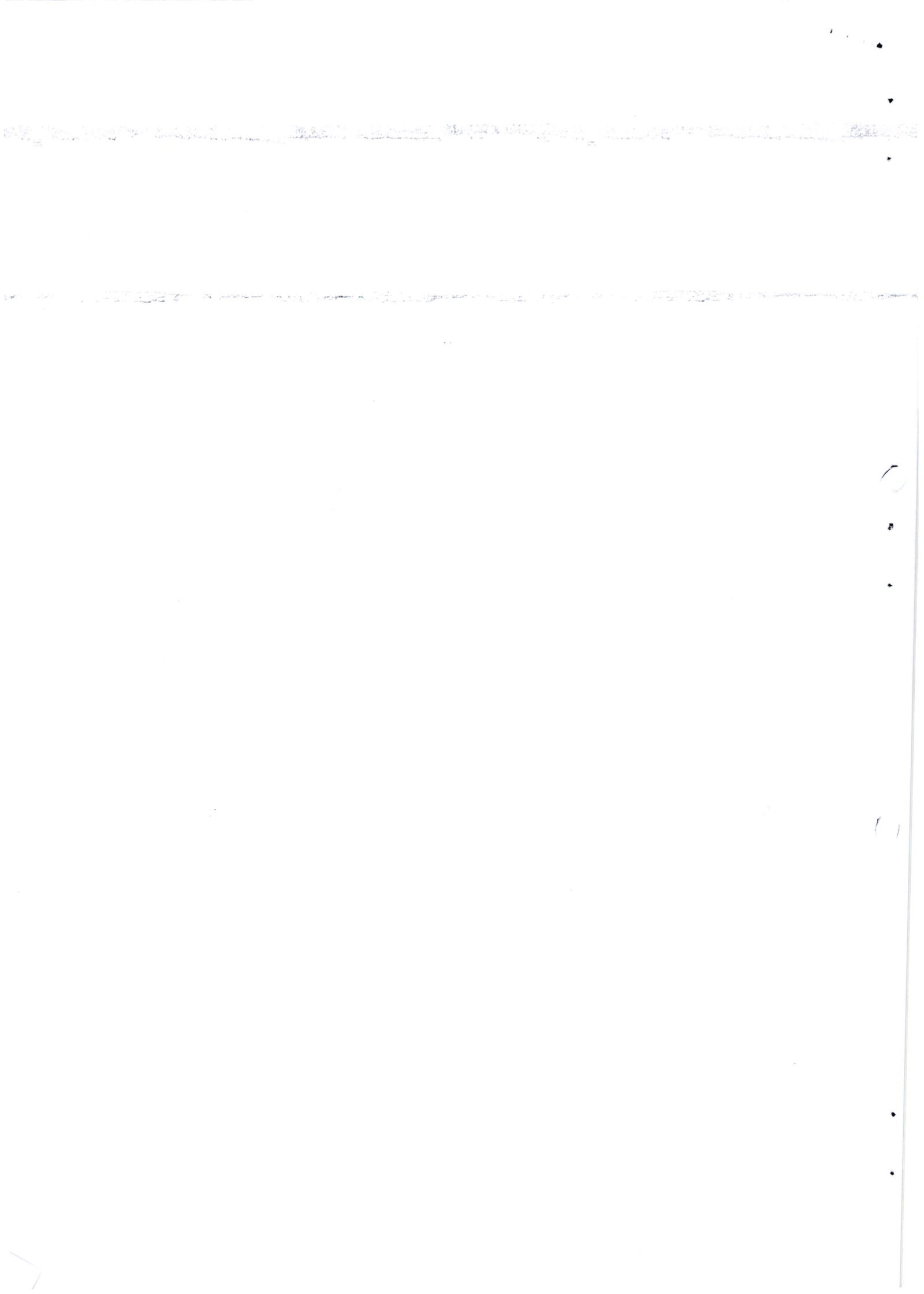
SIGNED



.....
HON. KIMANI ICHUNG'WAH, CBS, M.P.
CHAIRPERSON, BUDGET AND APPROPRIATIONS COMMITTEE

05/12/19

.....
DATE



- i. in the Water and Sewerage Infrastructure Development Program, the reduction instituted under allocation to the Nairobi express way (water and sewerage relocation works) was revised from Kshs. (1) billion to Kshs. (700) million, a reinstatement to meet already ongoing works and commitments for the project and to match the reductions under the state Department for Infrastructure.
 - ii. in the Water storage & Flood Control program, the reduction for the peace dams was revised from Kshs. (1.07) billion to KShs. (320) million
6. Under the State Department for Public Works, in the Government Buildings Program, the initial reduction of Kshs. (1.645) billion was revised to Kshs. (645) million on account of a reversal of Kshs. 1 billion to support activities under the Big Four - UHC and Manufacturing
7. Under the State Department for Energy;
 - i. The Power Transmission and Distribution program was revised from Kshs. (3.94) billion to Kshs. (1) billion. This was meant for the Electrification of Economic Zones- Naivasha Industrial Park (Dev.).
 - ii. Under the Alternative Energy Technologies to Kenya off-grid solar access project (KOSAP), Kshs. (1.5) billion was reinstated.
8. Under the State Department for Transport in the Marine Transport program,
 - i. the reduction to the for Naivasha Special Economic Zone (Textile Park) was revised by (1.9) billion from an initial cut of Kshs. (3.45) billion
 - ii. Dongo Kundu Special Economic Zone was revised by Kshs. (897.5) million from Kshs. (1.795) billion.
9. Under parliamentary service commission, the development budget be adjusted by an addition of Kshs. 500 million
10. Under the Ministry of Health, the reinstatement of the Universal health coverage as follows:
 - i. Kshs. 1,526,840,328 towards support counties within the conditional grant framework for purchase of maternity, basic equipment, laboratories and essentials for roll out of UHC for at primary health care level,

MIN BAC/138/2019/02: CONFIRMATION AND ADOPTION OF THE PREVIOUS MINUTES

No minutes were confirmed.

MIN BAC/138/2019/03: DISCUSSION AND CONSIDERATION OF THE PROPOSED NATIONAL TREASURY AMENDMENTS ON SUPPLEMENTARY ESTIMATES NO.1 FOR FY 2019/20

The Chairperson welcomed the Parliamentary Budget Office to brief them on the proposed amendments by the National Treasury on the Committee report. The presentation highlighted the following:

1. Increment of Kshs. 300 million to the Presidency Vote for operations and maintenance under the Deputy President Services Program.
2. Under the National Treasury, the Kshs. 2 billion additional allocation to the Kenya Revenue Authority for recruiting additional 1000 officers was reversed on account of an already allocation of Kshs. 4 billion allocation in the FY 2019/20 Supplementary I Estimates
3. Under the State Department for Infrastructure, under the Road Transport Program, the reduction to the James Gichuru - JKIA Expressway project of Kshs. (2.3) billion was revised to Kshs. (1.55) billion.
4. Under the State Department for ICT & Innovation, the E-Government Services program,
 - i. The reduction to the Connectivity to Health Centres project of Kshs. 694.57 million was revised to Kshs. (279.04) million
 - ii. The reduction to the Connectivity to Konza Data Center and Smart City Project was revised from Kshs. (886.5) million to Kshs. (470.96) million respectively from
 - iii. Reinstatement of the Kshs. 170 million initial the reduction to the ICT shared services, recurrent expenditure
5. Under the Ministry of Water & Sanitation;

8) Hon. Fatuma Gedi Ali, M.P

IN ATTENDANCE

PARLIAMENTARY BUDGET OFFICE

- | | |
|----------------------------|-----------------------|
| 1) Mrs. Phyllis Makau, OGW | Director, PBO |
| 2) Mr. James Chacha | Fiscal Analyst II |
| 3) Ms. Julie Mwithiga | Fiscal Analyst II |
| 4) Mr. Eric Kanyi | Fiscal Analyst III |
| 5) Mr. Thomas Ogwel | Fiscal Analyst III |
| 6) Mr. Jonathan Lemurt | Fiscal Analyst III |
| 7) Mr. Tom Cyrille | Fiscal Analyst Intern |

COMMITTEE SECRETARIAT

- | | |
|------------------------|-------------------|
| 1) Mr. Danson Kachumbo | Fiscal Analyst II |
| 2) Mr. Elijah Ichwara | Audio Officer |
| 3) Mr. Benard Omondi | Sergeant at Arms |
| 4) Mr. Joram Barasa | Office Assistant |

AGENDA

1. Preliminaries & Confirmation of Agenda
2. Confirmation of Previous Minutes
3. *Discussion and Consideration of the proposed National Treasury amendments on Supplementary Estimates No.1 for FY 2019/20*
4. *Request for Approval of Stoppage of Transfers to County Governments*
5. Any Other Business (A.O.B)

MIN BAC /138/2019/01: PRELIMINARY

The Chairperson welcomed the committee members to the meeting and called the meeting to order at 11.30 a.m. Thereafter, Hon. Sakwa Bunyasi M.P. led the Committee with a word of prayer.

MINUTES OF THE 138th SITTING OF THE BUDGET AND APPROPRIATIONS COMMITTEE HELD THURSDAY, 28TH NOVEMBER 2019, AT SMALL DINING, NEW WING, MAIN PARLIAMENT BUILDINGS AT 11.00A.M.

PRESENT:

- 1) **Hon. Kimani Ichung'wah, CBS, M.P. – Chairperson**
- 2) Hon. Richard Onyonka, M.P.
- 3) Hon. Samwel Moroto, M.P.
- 4) Hon. Bady Twalib Bady, M.P.
- 5) Hon. Jude Njomo, M.P.
- 6) Hon. (Dr.) Makali Mulu, M.P.
- 7) Hon. (Dr.) Gideon Ochanda, M.P.
- 8) Hon. Benard Masaka Shinali, M.P.
- 9) Hon. (Dr.) Korei Ole Lemein, M.P.
- 10) Hon. Naisula Lesuuda, OGW, M.P.
- 11) Hon. John Muchiri Nyaga, M.P.
- 12) Hon. Sakwa Bunyasi, M.P.
- 13) Hon. (Dr.) John K. Mutunga, M.P.
- 14) Hon. Florence C. K. Bore, M.P.
- 15) Hon. Paul Abuor, M.P.
- 16) Hon. Danson Mwashako, M.P.
- 17) Hon. Qalicha Gufu Wario, M.P.
- 18) Hon. (Eng.) Mark Nyamita, M.P.
- 19) Hon. Wangari Mwaniki, M.P.

ABSENT WITH APOLOGY:

- 1) **Hon. (CPA) Moses Lessonet, M.P. – Vice Chairperson**
- 2) Hon. (CPA) John Mbadi, EGH, CBS, M.P.
- 3) Hon. Millie Odhiambo, M.P.
- 4) Hon. James Mwangi Gakuya, M.P.
- 5) Hon. Moses Kiarie Kuria, M.P.
- 6) Hon. Sarah Korere, M.P.
- 7) Hon. James Gichuki Mugambi, M.P.

- ii. Kshs. 10,544,456,947 towards ensuring availability of commodities for county primary health care facilities within the conditional grant framework under roll out of UHC,
- iii. Kshs. 101,830,000 to ensure availability of funds for emergencies preparedness and response as strategic service under roll out of UHC,
- iv. Insurance fund through the NHIF reforms to reach more groups that are Vulnerable. This entails expanding health insurance to the elderly, the Person Living with Disability and the Orphans and Vulnerable Children who are presently not covered, Kshs. 3,760,178,487
- v. Kshs. 56 million to cater for operations of 34 ports of entry and for the purchase of fumigants, pesticides rodenticides, and insecticides, ,
- vi. Kshs. 36,000,000 for the establishment of Health ICT to support information flow to District Health Information System (DHIS 2) and telemedicine.

After presentation, The Committee noted with concern that the proposed amendments would result in a huge financing gap. It was further noted that some of the amendments proposed were not a priority and would have waited for the next financial year to be implemented.

However, after lengthy deliberation, the Committee accepted the proposed amendments as proposed. The Committee observed that the implementation of the proposed projects would fast track the Big Four Agenda which is vital for economic growth.

The committee further amended its report by adding the following policy recommendation:

THAT, prior to the disbursement of Kshs. 10,544,456,947 for county primary health care facilities (within the conditional grant framework under the roll out of the Universal Health Coverage) the National Treasury submits a report on the expected disbursement of these resources per county to the National Assembly.

MIN BAC/138/2019/03: REQUEST BY NATIONAL TREASURY FOR APPROVAL OF STOPPAGE OF TRANSFERS TO COUNTY GOVERNMENTS

The Chairperson welcomed the Parliamentary Budget Office to brief them on the request by the National Treasury for approval of stoppage of transfers to county governments. The brief highlighted the following:

1. Introduction

The Circular No.20/2019 of 19th November 2019 and the Request for Approval of stoppage of Transfers to County Government from the National Treasury having been laid on the Table of the House, the Speaker has referred the matter to the Budget and Appropriation Committee for consideration in light of the provisions of Article 225 of the Constitution and to subsequently report to the House.

2. Background information

There have been measures instituted in the recent past to fast track the settlement of pending Bills. In relation to the county governments, such measures include:

On the 18th June 2019, The Intergovernmental Budget and Economic Council (IBEC) held a meeting that culminated into the following resolutions:

That county governments would pay eligible pending bills on a priority basis as a first charge on their County Revenue Funds by end of FY 2019/2020.

That the National Treasury would release at least Ksh. 65 Billion to the Counties on or before 30th June 2019 to enable settlement of the eligible pending bills in the first instance and the balance if any, for running their functions. That the County Governments to establish Pending Bills Resolution Committees. It has emerged that between 1st July to end of October 2019, some counties have not made any effort to clear the stock of eligible pending Bills.

Arising from the aforementioned, the National Treasury is seeking approval to stop the transfer of equitable share of revenue for this FY 2019/20 to the 15 listed county governments with effect from 1st December 2019. The county governments include: Narok, Machakos, Nairobi, Vihiga, Isiolo, Tana River, Migori, Tharaka Nithi, Bomet, Kirinyaga, Nandi, Mombasa, Kiambu, Garissa and Baringo.

3. Legal Basis

i. Provisions of the Constitution

Article 225: (3) empowers the CS for the National Treasury to accordingly stop the transfer of funds to a state organ or any other public entity for a serious breach or persistent material breaches of measure under enacted legislations.

The Article 225 provides that such a decision to stop the transfer of funds may be enforced immediately, but will lapse retrospectively unless, within 30 days after the date of the decision, Parliament approves it by resolution passed by both Houses.

The 225(7) provides that Parliament may not approve or renew a decision to stop the transfer of funds unless-

- a) The controller of budget has presented a report on the matter to Parliament and
- b) The public entity has been given an opportunity to answer the allegations against it, and to state its case before the relevant parliamentary committee.

ii. Provisions of the Public Finance Management Act 2012

The Section 97 of the PFM Act operationalizes the Article 225(3), by providing;

That the CS shall accordingly inform the CoB in respect to the date from when the stoppage of transfer takes effect and the nature of seriousness of breaches,

The CS to seek approval OF Parliament within 7 days,

Within 14 days after the decision to stop funds, the COB to investigate the matter and report to Parliament, and

Within 30 days of the decision to stop the transfer of funds, Parliament to approve or renew the decision and the CS shall abide by the decision of Parliament.

Economic and Financial implications of pending bills

Pending Bills trigger adverse multiplier effects in the economy. This include:

- i. Impairs the cash flow of businesses (suppliers to the county governments). The resultant cash flow difficulties result into SMEs going under
- ii. Loss of employment opportunities in collapsing businesses.
- iii. Negative credit rating (blacklisting) of the yet to be paid suppliers to the county government.
- iv. Auction of properties of the yet to be paid Suppliers to the county governments. This worsens the economic wellbeing of the affected suppliers.

COMMITTEE OBSERVATIONS

After presentation, members made the following concerns and comments,

1. The stoppage of funds would greatly affect essential services at the counties affected. Thus, could impair cash flow resulting in increase in pending bills;
2. Some counties have new governors therefore the new governors have inherited pending bills. This would therefore require more time to verify the pending bills before approval of such payments;
3. It would be unjust to stop funds to the 15 counties due to pending bills and yet there are several Ministries, Departments and Agencies (MDAs) within the National government that have accrued huge pending bills and yet similar measures have not been effected;
4. Some of the pending bills may be as a result of National Treasury not releasing exchequer on time. The Committee observed that in the 1st Quarter for FY2019/20, the National Treasury never disbursed development exchequer;
5. There is need for counties to be given more time to verify pending bills and National Treasury can pay the pending bills before remitting county allocations to respective counties.

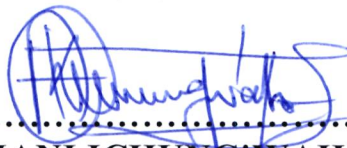
Committee Recommendations

After deliberations on the matter, the Committee rejected the request from the National Treasury.

MIN BAC/138/2019/4: ANY OTHER BUSINESS & ADJOURNMENT

There being no other matters to consider, the meeting was adjourned at 12.30P.M. The next meeting will be communicated in due course.

SIGNED



.....
HON. KIMANI ICHUNG'WAH, CBS, M.P.
CHAIRPERSON, BUDGET AND APPROPRIATIONS COMMITTEE

03/12/2019.

.....
DATE

OFFICE OF THE CONTROLLER OF BUDGET



Tel: 020 221 1068, 0738466721, 0709910000
Email: cob@cob.go.ke/info@cob.go.ke
Website: www.cob.go.ke



Bima House, 12th Floor
Harambee Avenue
P.O Box 35616-00100
Nairobi Kenya

SPECIAL REPORT ON STOPPAGE OF FUNDS TO COUNTY GOVERNMENTS

NO.	COUNTY GOVERNMENT	NO.	COUNTY GOVERNMENT
1.	Baringo	9.	Mombasa
2.	Bomet	10.	Nairobi
3.	Garissa	11.	Nandi
4.	Isiolo	12.	Narok
5.	Kiambu	13.	Tana River
6.	Kirinyaga	14.	Tharaka -Nithi
7.	Machakos	15.	Vihiga
8.	Migori		

FY 2019/20
PRESENTED TO PARLIAMENT ON 3RD DECEMBER, 2019

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ACRONYMS

ADP	-	Annual Development Plan
B&A	-	Budget and Appropriation
BIRRs	-	Budget Implementation Review Report
BE	-	Budget Estimates
CA	-	County Assembly
CARA	-	County Allocation of Revenue Act
CBROP	-	County Budget Review and Outlook Paper
CE	-	County Executive
CEC/F	-	County Executive Committee Member, Finance
CFSP	-	County Fiscal Strategy Paper
CGA	-	County Governments Act, 2012
CIDP	-	County Integrated Development Plan
COB	-	Controller of Budget
CRA	-	Commission on Revenue Allocation
DG	-	Deputy Governor
DMSP	-	Debt Management Strategy Paper
FIFO	-	First-In-First-out
FY	-	Financial Year
IB	-	Internet Banking
ICT	-	Information Communication Technology
OAG	-	Office of the Auditor General
OCOB	-	Office of the Controller of Budget
PFMA	-	Public Finance Management Act, 2012
PPADA	-	Public Procurement and Asset Disposal Act

EXECUTIVE SUMMARY

This is a Special Report prepared pursuant to Article 225(7) of the Constitution and Section 97(3) of the Public Finance Management Act (2012). The section requires the Controller of Budget to investigate and submit to Parliament a report after the Cabinet Secretary, National Treasury decision to stop the transfer of funds to a state organ or public entity.

Chapter one contains the background of the issue under consideration. It analyses the mandate of the OCOB as espoused in the Constitution and the attendant laws. It also gives the background and the basis upon which of the Ag. Cabinet Secretary, National Treasury and Planning, Hon. Ukur Yatani, issued Circular No.20/2019 dated the 19th November, 2019 on stoppage of transfer of funds to county governments due to failure to pay pending bills. The circular is addressed to the following 15 counties: Narok, Machakos, Nairobi city, Vihiga Isiolo, Tana River, Migori, Tharaka Nithi, Bomet, Kirinyaga, Nandi, Mombasa, Kiambu, Garisa and Baringo.

In addition, the chapter gives the status update of the pending bills as reported by the OCOB from the FY 2015/16, 2016/17 and 2017/18. The report indicates an upward trajectory with the pending bills increasing each financial year. Also discussed is the Office of the Auditor General special report on status of the pending bills as at 30th June, 2018.

Chapter two lays down the legal framework supporting the stoppage of funds. It gives an overview of what 'material breach' entails.

Chapter three is on the basis for undertaking the investigations. It sets out the objective of the investigation namely; whether by failing to settle the pending bills the concerned counties were in serious material breach or persistent material breach; whether the County Government has made any significant effort to clear the pending bills; whether sufficient measures have been put in place to mitigate the issue of pending bills. It also lays out the investigation plan, the documents reviewed and referred to as well as the methodology adopted.

Chapter four describes the detailed steps in budgeting, procurement and requisition of funds in relation to pending bills. It defines what a pending bill is and identifies some of the causes and effects of pending bills.

Chapter five captures the investigation findings and observations. Some of the key observations made are that the County Governments are yet to settle eligible pending bills.

Chapter six contains appropriate recommendations to Parliament on the findings of the investigation and recommendations of the OCOB. The recommendations were made after consideration and review of the documents submissions received from the Counties during the inquiry. Among the key recommendations made are the preparation of a Recovery Plan in line with Section 99 of the PFMA; review of the IFMIS system to provide for ageing of creditors; legislative amendments to the Public Finance Management Act, 2012 to provide for payment on first-In- First- Out (FIFO) basis.

1. INTRODUCTION

The Office of the Controller of Budget (OCOB) is an independent office established under Article 228 of the Constitution of Kenya (COK), 2010 and operationalized by the Controller of Budget Act, 2016.

1.1 Mandate of OCOB

The mandate of the OCOB is derived from the Constitution and includes overseeing and reporting on the implementation of budgets of both the National and County Governments and report on implementation of the budgets every four months. This mandate has been further amplified by the Controller of Budget Act and Public Finance Management Act (2012) as follows

- 1) **Oversight Role:** the Office oversees the implementation of the budgets of both national and county governments (Article 228 (4). This role involves monitoring the use of public funds in-year and reporting to the Parliament on the utilization of funds. This promotes accountability in the use of public financial resources.
- 2) **Controlling Role:** The Office authorizes the withdrawals from public funds including the Consolidated Fund (Article 206), County Revenue Fund (Article 207) and (Equalization Fund Article 204). . Before authorizing any withdrawal the Controller of Budget must be satisfied that the withdrawal is permitted by law as stipulated under Article 228 (5) of the Constitution.
- 3) **Reporting Role:** The Office prepares statutory reports (quarterly, annual and special reports) to the Executive and Legislature on Budget implementation of National and County governments (Article 228 (6). Through these reports, the OCOB ensure continuous monitoring of usage of public funds.
- 4) **Advisory Role:** The Office provides advice to Parliament on financial matters and where a Cabinet Secretary has stopped transfer of funds to a State organ or public entity. Under Article 225 (7) of the Constitution the suspension of funds cannot be lifted or sustained before the Controller of Budget presents a report to Parliament Article 225 (7).

- 5) **Investigation Role:** The Office conducts investigations on its own initiative or following a complaint made by a member of the public on budget implementation matters, Article 252 (1) (a) of the Constitution.
- 6) **Dispute Resolution Role:** The Office undertakes alternative dispute resolution namely; reconciliation, mediation and negotiation to resolve conflicts and issues relating to budget implementation between the national and the county government, or between county governments.
- 7) **Public Sensitization Role:** The Office disseminates information to the public on budget implementation at both levels of Government (Section 39(8) of the Public Finance Management Act, 2012). This is in line with the provision of Article 35 of the Constitution which provides for the right of access to information held by the state. Further, this ensures that the public is well informed on budget implementation so as to actively and effectively participate in the budget process.
- 8) **Enforcement of Budget Ceilings:** Section 5(d) of the Controller of Budget Act, 2016 mandates the Controller of Budget to enforce budgetary ceilings set by Parliament.

1.2 Background information on pending bills in County Government

In line with Article 228 (6) of the Constitution and Section 9 of the Controller of Budget, 2016, the Office of the Controller of Budget prepares Quarterly County Budget Implementation Review Report (BIRRs). These Reports present the progress made by the County Governments in implementing their budgets by providing information on approved budgets, own source revenue generated by the counties, disbursements of equitable share of revenue from the National Treasury, and conditional grants received from the National Government and Development Partners.

The BIRR also contains information on actual expenditure and other financial and non-financial performance entails including a schedule of pending bills accrued. This information is derived from the quarterly financial statements prepared by Accounting Officers and Administrators of the County Funds and submitted to the OCOB in line with Section 166 and 168 of the Public Finance Management Act, 2012.

Being true to its mandate, the OCOB has keenly and regularly prepared these Reports as is required by law. In preparing the reports the Office observed a trend where pending bills owed by County Governments was on an upward trajectory increasing in each financial year. It was noted that pending bills increased from Kshs.37.36 billion in the FY 2015/16 to Kshs.108.41 billion in the FY 2017/18.

The table below provides pending bills for the FY 2015/16 to the FY 2017/18.

County	Pending Bills as at end of FY 2015/16	Pending Bills as at end of FY 2016/17	Pending Bills as at end of FY 2017/18
	Kshs.	Kshs.	Kshs.
Baringo	132,030,357	91,480,000	63,600,000
Bomet	161,338,108	269,086,968	1,155,473,480
Bungoma	46,658,266	888,736,791	326,391,974
Busia	388,832,203	826,085,702	993,600,000
Elgeyo Marakwet	814,347,181	785,051,433	136,750,039
Embu	798,244,156	860,461,725	1,278,735,548
Garissa	310,500,000	446,828,547	980,059,238
Homa Bay	1,710,712,986	532,180,000	746,480,000
Isiolo	306,163,563	219,450,510	101,330,098
Kajiado	1,129,681,947	394,050,117	769,805,900
Kakamega	451,977,404	556,947,409	634,742,603
Kericho	559,711,024	396,766,689	1,255,284,413
Kiambu	388,364,248	920,261,674	785,758,702
Kilifi	1,546,368,883	819,833,882	1,224,706,197
Kirinyaga	98,280,681	219,514,825	250,092,562
Kisii	836,879,304	909,776,514	865,075,580
Kisumu	3,256,525,014	1,792,846,189	2,047,603,022
Kitui	-	-	1,167,092,734
Kwale	1,447,541,011	989,891,774	1,830,121,075
Laikipia	1,126,814,676	854,574,852	760,611,928
Lamu	188,392,782	1,634,013	179,490,878
Machakos	-	-	975,461,203
Makueni	135,251,053	183,485,391	33,571,164
Mandera	140,000,000	-	107,580,050
Marsabit	861,901,732	799,153,814	799,153,814
Meru	1,327,021,139	832,085,866	2,000,925,093
Migori	947,936,402	865,453,766	290,942,340
Mombasa	875,435,926	3,945,943,556	3,705,503,765
Murang'a	962,678,548	1,347,651,162	469,485,623
Nairobi	5,040,087,300	-	64,802,987,771
Nakuru	3,675,089,789	2,795,802,503	2,379,815,709
Nandi	719,862,865	813,509,516	1,394,228,985
Narok	502,266,127	1,653,245,753	1,725,444,405

County	Pending Bills as at end of FY 2015/16	Pending Bills as at end of FY 2016/17	Pending Bills as at end of FY 2017/18
	Kshs.	Kshs.	Kshs.
Nyamira	122,396,487	327,666,458	1,349,587,238
Nyandarua	622,316,017	731,070,640	906,921,152
Nyeri	108,119,739	712,915,001	1,411,372,489
Samburu	956,708,762	704,830,000	792,663,564
Siaya	336,951,687	277,596,934	614,507,285
Taita Taveta	709,291,224	281,381,300	239,653,602
Tana River	684,772,042	946,029,550	946,029,550
Tharaka Nithi	750,284,845	275,142,604	260,776,492
Trans Nzoia	615,747,314	702,130,851	781,572,410
Turkana	-	2,900,000,000	633,660,494
Uasin Gishu	125,756,570	263,927,146	319,347,197
Vihiga	1,176,407,364	1,184,810,000	1,184,810,000
Wajir	-	409,371,634	2,619,575,061
West Pokot	267,653,851	113,054,409	113,054,409
Total	37,363,300,577	35,841,717,468	108,411,436,836

As shown in the table above, in FY 2015/16 four County Governments, namely; Kitui, Machakos, Turkana, and Wajir did not provide the OCOB with information on pending bills while in FY 2016/17, Kitui, Machakos, Mandera and Nairobi City Counties did not submit the report on pending bills. Further, in FY 2017/18, the reported pending bills for Nairobi City accounted for 59 per cent of the total pending bills. Our review indicated that the disclosed amount included long term loans, which were erroneously classified as pending bills.

The issue of escalating Pending Bills raised great concern in government. This led to the issue of pending bills being a topic of extensive deliberations during the 10th Ordinary Session of the Intergovernmental Budget and Economic Council (IBEC) meeting held on 6th February 2018. The meeting resolved that;

- (i) That, all counties should verify the existing pending bills through internal committees and verified bills be provided by April, 2018 to allow Counties settle the pending bills before end of the financial year.
- (ii) Where there is insufficient budget provision, Counties should pass appropriate supplementary budgets to re-vote the bills in the FY 2018/19 Budgets.

Consequently, the Auditor General another Independent Office upon the resolution of IBEC undertook a special audit on pending bills. The Auditor General Report on the Special Audit on pending bills as at 30th June, 2018 noted an increase in eligible and ineligible pending bills.

The OAG Special Report is summarised in the table below.

County	Amount of Pending Bills Presented to OAG for verification (Kshs.)		
	Eligible	Ineligible	Total Pending Bills Presented to the OAG
Baringo	24,046,826	21,719,172	45,765,998
Bomet	1,190,167,877	63,383,304	1,253,551,181
Bungoma	376,038,793	225,442,714	601,481,507
Busia	972,895,883	40,597,280	1,013,493,163
Elgeyo/Marakwet	225,216,395	683,462,880	908,679,275
Embu	435,114,432	927,844,360	1,362,958,792
Garissa	2,307,530,407	245,817,795	2,553,348,202
Homa Bay	40,447,020	1,622,798,590	1,663,245,610
Isiolo	1,258,372,703	76,302,092	1,334,674,795
Kajiado	88,191,609	278,162,041	366,353,650
Kakamega	583,093,452	10,856,924	593,950,376
Kericho	490,184,743	604,286,232	1,094,470,975
Kiambu	1,831,618,030	481,141,501	2,312,759,531
Kilifi	1,116,043,558	260,968,473	1,377,012,031
Kirinyaga	741,080,963	587,378,600	1,328,459,563
Kisii	1,200,573,919	213,530,710	1,414,104,629
Kisumu	1,792,200,077	683,522,048	2,475,722,125
Kitui	572,033,419	870,978,222	1,443,011,641
Kwale	809,734,393	1,691,897,513	2,501,631,906
Laikipia	77,539,708	911,905,209	989,444,917
Lamu	85,050,899	58,612,625	143,663,524
Machakos	942,363,607	344,162,574	1,286,526,181
Makueni	33,018,202	1,884,530	34,902,732
Mandera	349,433,313	202,703,749	552,137,062
Marsabit	728,259,831	48,151,280	776,411,111
Meru	1,845,545,178	419,567,513	2,265,112,691
Migori	1,007,373,410	267,876,798	1,275,250,208

County	Amount of Pending Bills Presented to OAG for verification (Kshs.)		
	Eligible	Ineligible	Total Pending Bills Presented to the OAG
Mombasa	3,545,800,427	1,801,985,966	5,347,786,393
Murang'a	1,531,778,008	506,269,910	2,038,047,918
Nairobi City	11,783,829,072	11,355,964,991	23,139,794,063
Nakuru	420,164,604	2,084,397,301	2,504,561,905
Nandi	942,307,841	505,539,764	1,447,847,605
Narok	1,980,736,070	75,703,725	2,056,439,795
Nyamira	275,698,127	159,630,866	435,328,993
Nyandarua	297,078,779	841,080,349	1,138,159,128
Nyeri	152,196,769	208,338,821	360,535,590
Samburu	762,579,174	83,913,621	846,492,795
Siaya	637,310,697	72,459,541	709,770,238
Taita/Taveta	390,269,112	61,013,152	451,282,264
Tana River	507,082,631	695,596,755	1,202,679,386
Tharaka -Nithi	701,871,919	410,780,973	1,112,652,892
Trans Nzoia	666,047,614	413,936,298	1,079,983,912
Turkana	1,816,400,453	3,843,895,304	5,660,295,757
Uasin Gishu	76,566,231	289,818,363	366,384,594
Vihiga	1,151,148,522	885,903,769	2,037,052,291
Wajir	2,039,742,167	317,429,198	2,357,171,365
West Pokot	483,053,261	1,242,486,979	1,725,540,240
Total	51,284,830,125	37,701,100,375	88,985,930,500

The list presented to the OAG for verification amounted to Kshs.88.99 billion, out of which Kshs.51.28 billion (57.6 per cent) was noted to be eligible while pending bills worth Kshs.37.70 billion (42.4 per cent) was found to be ineligible.

Cognisant of the challenge of Pending Bills, several interventions have been initiated. These interventions include;

- 1) OCOB issued Circular No. COB/CIR/002/ Vol 1 dated 16th February, 2018 requiring counties to settle pending bills by the end of FY 2017/18 and where there was no sufficient budgetary provision the pending bills were to be budgeted in the subsequent financial year's budget (FY 2018/19).

- 2) The OCOB issued Circular No. 23/2018 dated 25th October, 2018 requesting Counties to submit a schedule of pending bills as of 30th June 2018. On 30th December, 2018 the schedule of pending bills were forwarded to the Office of the Auditor General (OAG) for verification.
- 3) The Auditor General issued a Special Audit Report in May, 2019. The OAG special reports shows that out of the total list of pending bills provided for verification of Kshs.88,985,930,500, a total of Kshs.51,284,830,125 (58 per cent) was eligible for payment while pending bills worth Kshs.37,701,100,375 (42 per cent) was found to be ineligible.
- 4) On 1st June, 2019, a Presidential directive was issued. It required County governments to settle all their verified Pending Bills by 30th June, 2019.
- 5) During the 12th Ordinary Session of the Intergovernmental Budget and Economic Council (IBEC) meeting held on 18th June 2019, the OCOB was tasked to track and report on the status of payment of pending bills by County Governments.
- 6) The Controller of Budget issued Circular No.2/2019 on 4th June, 2019 advising County Governments to settle all genuine pending bills before 30th June 2019. Further, Counties were advised that in the event they are unable to settle all genuine pending bills, they should develop and share with the OCOB, a plan on how the pending bills were to be paid in FY 2019/20.
- 7) During the IBEC meeting held on the 11th November, 2019 OCOB reported an outstanding eligible pending bills of Kshs.28,020,735,418 which represented 55 per cent of the total eligible pending bills of Kshs.51,284,830,125.
- 8) The National Treasury issued Circular Ref No.IGFR/Pending Bills/01/A (18) dated 22nd October, 2019 which provided guidelines on settlement of pending bills to County Governments. It also made reference to the mandate of the National Treasury under Article 225 of the Constitution and Section 94 of the PFMA.

- 9) The National Treasury issued Circular Ref No.IGFR/Pending Bills/01/A (24) dated the 19th November, 2019 where the Ag.Cabinet Secretary, National Treasury invoked Section 97 of the PFMA on stoppage of funds with effect from 1st December, 2019. The circular stated that the identified County Governments were in material breach of Section 94 of the PFMA in that they had not made any significant effort to clear pending bills between 1st July and October, 2019. The 15 Counties are Baringo, Bomet, Garissa, Isiolo, Kiambu, Kirinyaga, Machakos, Migori, Mombasa, Nairobi City, Nandi, Narok, Tana River, Tharaka Nithi, and Vihiga
- 10) On 22nd November, 2019 the OCOB wrote to the affected 15 County Governments informing them of its mandate, under Article 225 (7) (a) of the Constitution and Section 97 (3) of the PFMA, to investigate and to report to Parliament within 14 days of the decision to stop transfer of funds by the Cabinet Secretary in charge of National Treasury.
- 11) On 25th November, 2019, the Ag. Cabinet Secretary, National Treasury vide a letter Ref. No. IGFR/Pending Bills/01/A (29) informed the Ag. Controller of Budget of the decision to involve Section 97 of the PFMA to stop the transfer of equitable share of revenue for FY 2019/20 to the fifteen (15) county governments with effect from 1st December, 2019.

2. LEGAL FRAMEWORK FOR STOPPAGE OF FUNDS

This chapter provides the legal framework underpinning stoppage of transfer of funds and the basis for the stoppage.

Article 225 of the Constitution provides:

225. (1) An Act of Parliament shall provide for the establishment, functions and responsibilities of the national Treasury.

(2) Parliament shall enact legislation to ensure both expenditure control and transparency in all governments and establish mechanisms to ensure their implementation.

(3) Legislation under clause (2) may authorise the Cabinet Secretary responsible for finance to stop the transfer of funds to a State organ or any other public entity—

(a) only for a serious material breach or persistent material breaches of the measures established under that legislation; and
(b) subject to the requirements of clauses (4) to (7).

(4) A decision to stop the transfer of funds under clause (3) may not stop the transfer of more than fifty per cent of funds due to a county government.

(5) A decision to stop the transfer of funds as contemplated in clause (3)—

(a) shall not stop the transfer of funds for more than sixty days; and

(b) may be enforced immediately, but will lapse retrospectively unless, within thirty days after the date of the decision, Parliament approves it by resolution passed by both Houses.

(6) Parliament may renew a decision to stop the transfer of funds but for no more than sixty days at a time.

(7) Parliament may not approve or renew a decision to stop the transfer of funds unless—

(a) the Controller of Budget has presented a report on the matter to Parliament; and

(b) the public entity has been given an opportunity to answer the allegations against it, and to state its case, before the relevant parliamentary committee.

Section 97 of the PFMA provides

97. (1) Where the Cabinet Secretary makes a decision to stop the transfer of funds to a State organ or public entity in accordance with Article 225(3) of the Constitution and provisions of this Act, the Cabinet Secretary shall stop the payment and inform the Controller of Budget in respect of—

(a) the date from when the stoppage of transfer of funds takes effect; and

(b) the nature of serious material breaches, or persistent material breaches, committed by the State organ or public entity.(emphasis added)

(2) Not later than seven days after the date of the decision to stop the transfer of funds, the Cabinet Secretary shall seek approval from Parliament.

(3) Within fourteen days after the decision to stop the transfer of funds under subsection (1), the Controller of Budget shall investigate the matter and submit a report to Parliament in accordance with Article 225 (7) of the Constitution.

(4) Parliament shall, within thirty days of the decision by the Cabinet Secretary to stop the transfer of funds, approve or renew the decision of the Cabinet Secretary to stop the transfer of funds and the Cabinet Secretary shall abide by the decision of Parliament.

(5) The Cabinet Secretary may not stop the transfer of more than fifty percent of funds due to a county government.

(6) Any person may exercise his or her right to petition Parliament in terms of Article 119 of the Constitution in respect of the action taken to stop the transfer of funds.

2.1 Analysis of the legal framework

Article 225(3) of the Constitution provides for stoppage of funds to a government entity on grounds of serious or persistent material breaches of measures established under legislation. Thus the Public Finance Management Act, 2012 (PFMA) was established to and made provision to guide in determining instances of alleged serious or persistent material breaches.

The question to be answered is what constitutes a serious material breach. In accounting parlance, the **materiality concept** refers to a situation where the financial information of an entity is considered to be material from the point of view of the preparation of the financial statements if it has the potential to alter the view or opinion of a reasonable person.

The concept of materiality is subjective, relative to size and importance. Financial information might be of material importance to one entity but stand immaterial to another.

Section 93(1) as read together with Sec. 93(3) of the PFMA provides that a serious material breach is where a county government entity is unable to meet its financial obligations. Sec. 94(1) further enumerates on what constitutes a serious material breach or persistent material breach.

Section 94 provides:

94. (1) The following factors, singly or in combination, may further indicate that a State organ or public entity is in serious material breach or persistent material breach of the measures established under this Act—

- a. the State organ or public entity-**
 - i. has failed to make any payments as and when due;**
 - ii. has defaulted on financial obligations for financial reasons;**
 - iii. had an operating deficit in excess of a percentage of revenue in the most recent financial year for which financial information is available as prescribed in regulations; or**
 - iv. is more than sixty days late in submitting its annual financial statements to the Auditor-General in accordance with this Act or any other legislation;**
- b. the State organ or public entity has failed to make any other payment as and when due, which individually or in the aggregate is more than an amount as may be prescribed or, if none is prescribed, more than two percent of the State organ's or public entity's budgeted operating expenditure;**
- c. the Controller of Budget has raised material issues in their quarterly report;**
- d. the Auditor-General has withheld an opinion or issued a disclaimer due to inadequacies in the financial statements or records of the State organ or public entity or has issued an opinion which identifies a serious financial problem in the State organ or public entity; or**
- e. recurring or continuous failure by a State organ or public entity to meet its financial commitments which substantially impairs the State organ's or public entity's ability to procure goods, services or credit on usual commercial terms.**

Materiality therefore connotes the concept of significance. In public finance, material breach is not mere divergence with the laid down principles or practice but a breach of such significance or severely impact so as destroy the fabric of the public finance management framework. Consequently, the breach envisioned under Art. 225 should be breach that is of a high magnitude.

Therefore, any of the scenarios contemplated under Section 94 of the PFMA constitutes a serious material breach and are sufficient grounds for the stoppage of funds by the Cabinet Secretary responsible for Finance under Article 225(3) of the Constitution and Section 97(1) of the PFMA.

3. BASIS FOR UNDERTAKING THE INVESTIGATION

The Cabinet Secretary responsible for the National Treasury in exercising his powers as set out under Article 225 of the Constitution as read together with Section 93, 96 and 97 of the PFMA issued a Circular Ref No. IGFR/Pending Bills/01/A (24) dated 19th November, 2019 on stoppage of transfers to county government' due to failure to pay pending bills. .

The Circular was addressed to fifteen (15) County Governments namely;

1. County Government of Baringo
2. County Government of Bomet
3. County Government of Garissa
4. County Government of Isiolo
5. County Government of Kiambu
6. County Government of Kirinyaga
7. County Government of Machakos
8. County Government of Migori
9. County Government of Mombasa
10. County Government of Nairobi
11. County Government of Nandi
12. County Government of Narok
13. County Government of Tana River
14. County Government of Tharaka -Nithi
15. County Government of Vihiga

The Circular conveyed the Cabinet Secretary's decision to invoke Section 97 of the PFMA to stop the transfer of the equitable share of revenue for the FY 2019/20 with effect from 1st December, 2019.

The Circular is premised on the grounds that; the specific counties have not made any effort to clear the stock of eligible bills between 1st July 2019 and end of October 2019 and that there has been persistent failure by the County to pay the eligible pending bills. In addition, the Circular conveyed the decision to stop the release of Conditional Grants for FY 2019/20 until the issue of pending bills is resolved. Upon the issuance of the above circular and in line with the provision of Section 97(1) of the PFMA, **the Ag. Cabinet Secretary vide a letter dated 25th November, 2019 informed the Controller of Budget of his decision to stop the transfer of funds to the fifteen (15) County Governments.**

Consequently, as a result of the above acts, the provision of Article 225(7) (a) of the Constitution, as read together with Section 97(3) of the Public Finance and Management Act crystalized. This required the Office of the Controller of Budget to undertake investigations and report on the findings of the material breach.

3.1 Scope of The Investigation

The investigation focused on the County Governments pending bills as at 30th June 2018. These were the pending bills verified and reported by the Office of the Auditor General in the County specific Special Report of the Auditor General issued fourth (4th) Quarter of FY 2018/19.

3.2 Objectives of the Investigation

The investigation intended to provide an independent report/opinion on findings of the serious material breach or persistent material breaches in such a manner as to allow Parliament to make a decision within thirty days on whether or not to approve the decision by the Cabinet Secretary to stop the transfer of funds.

The investigation sought to determine;

1. Whether by failing to settle the pending bills the concerned counties were in serious material breach or persistent material breach;

2. Whether the County government has made any significant effort to clear the pending bills;
3. Whether sufficient measures have been put in place to mitigate the issue of Pending Bills; and
4. Make appropriate recommendations to Parliament on the findings of the investigation.

4. INVESTIGATION PROCEDURE

On the 25th November, 2019 the Office of the Controller of Budget constituted special teams to investigate on the counties failure to pay pending bills. The teams were guided by the objectives as set out herein above. The investigating team constituted of the County Budget Coordinator and Officers from Head Office.

4.1 Investigation process

The investigation process included the following:

4.2 Investigation plan

The investigation team conducted a desk review and examined the legal and policy documents that guided the Counties in the budget process and pending bills settlement. These documents included Approved Budgets, Supplementary budgets, pending bills repayment plans, Special Report on Pending Bills from OAG submitted in the fourth (4th) Quarter of FY 2018/19.

The investigation also entailed carrying out interviews.

a. Interviews

Interviews were held with County Government Officers who included;

- i. The Governors,
- ii. County Chief Financial Officers,
- iii. County Executive Committee Member, Finance and
- iv. Other relevant Officers

b. Documents reviewed and referred to/Criteria.

The following laws and documents were considered and reviewed;

- i. The Constitution of Kenya, 2010
- ii. The Public Finance Management Act, 2012
- iii. The County Governments Act 2012
- iv. County Appropriation Act, 2018/19 and 2019/20
- v. Approved Budget for the financial year 2019/20
- vi. OAG Special report on pending bills as at 30th June, 2018
- vii. Supplementary budgets
- viii. County specific pending bills verification reports

- ix. Pending bills repayment plans
- x. Intergovernmental Budget and Economic Council (IBEC) resolution on pending bills dated 18th June , 2019
- xi. IFMIS records/ledger January, 2019 to 30th November, 2019
- xii. CBK Bank Statements June 2019 to 30th November, 2019
- xiii. Disbursement schedules as contained in CARA
- xiv. Other Correspondences

4.3 Methodology

- i. Review of the OCOB Annual Budget Implementation Report for FY 2017/2018
- ii. Review of the OAG Special Reports on pending bills
- iii. Establish the IFMIS pending bills payments
- iv. Ascertain payment of the pending bills from the bank statements
- v. Ascertain budgeted amount for pending bills in the FY 2019/2020
- vi. Establish whether there is a pending bill repayment plan in place

5. SITUATIONAL ANALYSIS

5.1 Introduction

The basis for the stoppage is pending bills revolves around budgeting and expenditure. Therefore there is need to examine our budgeting process so as to be able to identify the nexus between the various identified causes of pending bill vis a vis the budgeting process. Therefore this chapter will look at the various steps in budgeting and budget implementation and thereafter discuss some of the leading causes and effects of pending bills.

The budget process for both the national government and county governments is governed by the Constitution, Public Finance Management Act and County Government Act.

Since the stoppage of funds affects only county governments, we shall look at the budget process and the exchequer requisition process of county governments.

5.2 The Budget Cycle/Process

Section 125(1) of the Public Finance Management Act, 2012 provides that the budget process for county governments in any financial year shall consist of the following stages:

- a. integrated development planning process which shall include both long term and medium term planning;
- b. planning and establishing financial and economic priorities for the county over the medium term;
- c. making an overall estimation of the county government's revenues and expenditures;
- d. adoption of County Fiscal Strategy Paper;
- e. preparing budget estimates for the county government and submitting estimates to the County Assembly;
- f. approving of the estimates by the County Assembly;
- g. enacting an appropriation law and any other laws required to implement the county government's budget;
- h. implementing the county government's budget; and

- i. accounting for, and evaluating, the county government's budgeted revenues and expenditures;

Article 201(a) of the Constitution of Kenya, 2010 and Section 125(2) of the PFMA, 2012, 2012 provide that the County Executive Committee member for finance shall ensure that there is public participation in the budget process.

5.3 Budget Circular

On 30th August of each year, the County Executive Committee member for finance issues a budget circular to all county entities (Section 128 of the PFMA, 2012). The circular should contain key dates in the budget cycle; limits of each sector as recommended and key policy areas and issues to be taken into consideration when preparing the budgets.

5.4 Annual Development Plan

On 1st September of each year, the County Executive Member for Planning submits an Annual Development Plan to County Assembly for approval, with a copy to the CRA and National Treasury (Section 126(3) of the PFMA, 2012).

The ADP contains strategic priorities for the medium term that reflect the county government's priorities and plans; a description of how the county government is responding to changes in the financial and economic environment; programmes to be delivered with details for each programme. This details include the strategic priorities to which the programme will contribute; the services or goods to be provided; measurable indicators of performance where feasible; and the budget allocated to the programme.

The ADP also contains details on payments to be made on behalf of the county government; a description of significant capital developments; a detailed description of proposals with respect to the development of physical, intellectual, human and other resources of the county, including measurable indicators where those are feasible; a summary budget in the format required by regulations; and such other matters as may be required by the Constitution of Kenya, 2010 or the PFMA, 2012.

5.5 County Budget Review and Outlook Paper (CBROP)

On 30th September, County Executive Member for Finance prepares and submits the County Budget Review and Outlook Paper to the County Executive Committee (Sec. 118 PFMA, 2012). The CBROP specifies the details of the actual fiscal performance in the previous year compared to the budget appropriation for that year; the updated economic and financial forecasts with sufficient information to show changes from the forecasts in the most recent County Fiscal Strategy Paper; information on any changes in the forecasts compared with the County Fiscal Strategy Paper; or how actual financial performance for the previous financial year may have affected compliance with the fiscal responsibility principles, or the financial objectives in the County Fiscal Strategy Paper for that financial year; and reasons for any deviation from the financial objectives in the County Fiscal Strategy Paper together with proposals to address the deviation and the time estimated for doing so.

Upon submission by the CEC/F the County Executive Committee shall consider the CBROP with a view to approving it, with or without amendments, within fourteen days after its submission. Not later than seven days after the County Budget Review and Outlook Paper is approved by the County Executive Committee, the County Treasury shall arrange for the Paper to be laid before the County Assembly; and as soon as practicable after having done so, publish and publicise the Paper. (Sec. 118(3) & (4) PFMA, 2012)

5.6 County Fiscal Strategy Paper (CFSP)

The County Treasury shall prepare and submit to the County Executive Committee the County Fiscal Strategy Paper for approval and the County Treasury shall submit the approved Fiscal Strategy Paper to the County Assembly, by the 28th February of each year. In preparing the CFSP, the County Treasury shall ensure that the CFSP is aligned with the national objectives in the Budget Policy Statement. (Sec. 117 PFMA, 2012)

In preparing the County Fiscal Strategy Paper, the County Treasury shall specify the broad strategic priorities and policy goals that will guide the county government in preparing its budget for the coming financial year and over the medium term. The County Treasury shall include in its CFSP the financial outlook with respect to county government revenues, expenditures and borrowing for the coming financial year and over the medium

term. Further, in preparing the County Fiscal Strategy Paper, the County Treasury shall seek and take into account the views of the Commission on Revenue Allocation; the public; any interested persons or groups; and any other forum that is established by legislation.

Not later than fourteen days after submitting the CFSP to the County Assembly, the County Assembly shall consider and may adopt it with or without amendments. The County Treasury must consider any recommendations made by the County Assembly when finalising the budget proposal for the financial year concerned.

The County Treasury shall publish and publicise the County Fiscal Strategy Paper within seven days after it has been submitted to the County Assembly.

Further, Section 108(1) PFMA, 2012 provides that “A county government may, with the approval of its County Assembly, deviate from the financial objectives in the relevant County Fiscal Strategy Paper, but only on a temporary basis and only if the deviation is required because of a major natural disaster or some other significant unforeseen event.”

It is thus clear that the CEC/F is bound by the provisions of the approved CFSP in preparation of the budget estimates. The CEC/F may deviate from the CFSP only with approval of the County Assembly.

5.7 Debt Management Strategy paper (DMSP)

On or before the 28th February in each year, the County Treasury shall submit to the County Assembly a statement setting out the debt management strategy of the county government over the medium term with regard to its actual liability and potential liability in respect of loans and its plans for dealing with those liabilities. (Section 123 PFMA, 2012)

The County Treasury shall include the following information in the statement: the total stock of debt as at the date of the statement; the sources of loans made to the county government; the principal risks associated with those loans; the assumptions underlying the debt management strategy; and an analysis of the sustainability of the amount of debt, both actual and potential.

As soon as is practicable after the statement has been submitted to the County Assembly under this section, the County Executive Committee member for finance shall publish and publicise the statement and submit a copy to the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council.

5.8 Cash Flow Projection (Section 127 PFMA, 2012)

Not later than the 15th June of each financial year, every county government shall prepare an annual cash flow projection for the county for the next financial year, and submit the cash flow projection to the Controller of Budget with copies to the Intergovernmental Budget and Economic Council and the National Treasury.

5.9 Budget Estimates (Sec. 129 PFMA, 2012)

A County Executive Committee member for finance shall submit to the County Executive Committee for its approval: the budget estimates and other documents supporting the budget of the county government, excluding the County Assembly; and the draft Bills at county level required to implement the county government budget, in sufficient time to meet the deadlines prescribed by this section.

Following approval by the County Executive Committee, the County Executive Committee member for finance shall by the 30th April submit to the County Assembly the budget estimates, supporting documents, and any other Bills required implementing the budget, except the Finance Bill. The CEC/F shall ensure that the estimates submitted are in accordance with the resolutions adopted by County Assembly on the County Fiscal Strategy Paper.

Each County Assembly clerk shall prepare and submit to the County Assembly the budget estimates for the County Assembly and a copy shall be submitted to the County Executive Committee member for finance. (Sec. 129(3) PFMA, 2012) The County Executive Committee member for finance shall prepare and present his comments on the budget estimates presented by the County Assembly clerk.

The CEC/F shall within reasonable time after submission publish and publicise the budget estimates.

Upon approval of the budget estimates by the County Assembly, the County Executive Committee member for finance shall prepare and submit a County Appropriation Bill to the County Assembly of the approved estimates.

The County Assembly shall consider the county government budget estimates with a view to approving them, with or without amendments, in time for the relevant appropriation law and any other laws required to implement the budget to be passed by the 30th June in each year. (Sec. 131 PFMA, 2012)

Before the County Assembly considers the budget estimates the relevant committee of the County Assembly shall discuss and review the estimates and make recommendations to the County Assembly, and in finalising the recommendations to County Assembly, the committee shall take into account the views of the County Executive Committee member for finance and the public on the proposed recommendations.

An amendment to the budget estimates may be made by the County Assembly only if it is in accordance with the resolutions adopted regarding the County Fiscal Strategy Paper and if;

- a. any increase in expenditure in a proposed appropriation, is balanced by a reduction in expenditure in another proposed appropriation; and
- b. any proposed reduction in expenditure is used to reduce the deficit.

Where a Bill originating from a member of a County Assembly proposes amendments after the passing of budget estimates and the Appropriations Bill by the County Assembly, the County Assembly may proceed in accordance with the resolutions adopted regarding the County Fiscal Strategy Paper and ensure:

- a. an increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriation; or
- b. a proposed reduction in expenditure is used to reduce the deficit.

Within twenty-one days after the County Assembly has approved the budget estimates, the County Treasury shall consolidate the estimates and publish and publicise them.

5.10 Appropriations Act

The law requires that a County Assembly shall pass their Appropriations Bill and the same is assented to by the Governor by 30th June of each year. (Sec. 131 PFMA, 2012)

Upon approval of the budget estimates by the County Assembly, the County Executive Committee member for finance shall prepare and submit a County Appropriation Bill to the County Assembly of the approved estimates. (Sec. 129(7) PFMA, 2012)

In preparing the annual Appropriation Bill to put before the County Assembly, the County Executive Committee member for finance shall ensure that the expenditure appropriations in the Bill are in a form that is accurate, precise, informative and pertinent to budget issues; and which clearly identifies the appropriations by Vote and programme. (Sec. 130(2) PFMA, 2012)

It is clear from the above quoted provisions of the law that the procedure to be followed is; the County Assembly passes the budget estimates with or without amendments; the CEC/F then prepares an Appropriations Bill based on the approved estimates; where after the County Assembly is required to pass the Appropriations Bill submitted and the Governor should assent to it before 30th June of each year.

5.11 The Procurement Process

The procurement process is governed by the Public Procurement and Asset Disposal Act (2015) (PPADA) and its attendant regulations. It places the responsibility to procure goods and services to the county government and provides for the general procurement processes and principles/rules. It covers for all procurement of goods, works, and services undertaken by use of public funds. It provides for a strong legal framework to guide procurement process. This begins with the identification of the requirement, procurement planning, determination of source, evaluation and selection of vendor; contract award, contract implementation and payment for goods and services. It also provides for a detailed complaint handling structure and requires that bills incurred are paid within the contract period.

5.12 The Exchequer Requisition Process

The County Revenue Fund is established under Article 207 of the Constitution of Kenya, 2010. Section 109 of the PFMA provides that the CRF receives all monies on behalf of the County Government. These monies are banked in the County Exchequer Account at the Central Bank of Kenya (CBK) as provided for under Section 109(4) (a) of the PFMA.

The PFMA underscores the role of OCOB in approving all the withdrawals of public funds. Section 109(6) of the PFMA states that the County Treasury shall obtain the written approval of the Controller of Budget before withdrawing monies from the CRF.

The mandate of OCOB to approve withdrawal of funds is anchored in Article 228(4) and 207(3) of the Constitution. Article 207(3) of the Constitution as read together with Section 109(6) of the PFMA provides the basis upon which the OCOB can authorize withdrawal of funds. Consequently, withdrawal of funds can only be on the basis of an Appropriation Act, a Vote on Account, a Supplementary Appropriation Act or by an Act of Parliament.

The withdrawal process starts at the County Treasury when it receives withdrawal requests from the County Departments. The withdrawal requests are first assessed by the National Treasury and once permitted; the County Treasury consolidates the County departments' requests and makes a requisition for Grant of funds to the Controller of Budget. This requisition show specific votes to be funded and amounts to be withdrawn from Exchequer Account to fund each department.

On receipt of the requisition, the Controller of Budget does the following:

- a. checks that the withdrawal from the County Revenue Fund is authorized under the Constitution and an Act of Parliament or an Act of the County Assembly;
- b. verifies that the requested votes against which the requisition has been submitted have sufficient fund;
- c. checks the revenue availability in the Exchequer Account and
- d. either approves the withdrawal requisition or returns the requisition to the County Treasury for any clarification.

5.13 Pending Bills

A pending bill is an unsettled financial obligation that accrues at the end of a financial year after an entity fails to remit statutory and other deductions due or fails to settle invoiced amounts for goods and services properly procured, delivered or rendered during the financial year.

5.14 Causes of Pending Bills

Pending bills accrue as results of numerous causes which include:

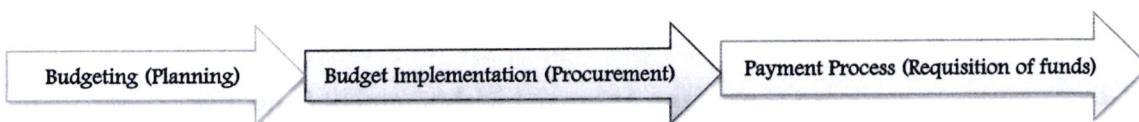
- a. Failure by the County Governments to effectively align their procurement plans to the cash flow plans and approved budgets.
- b. Delayed tendering and procurement processes have had adverse effects on projects completion rates and processing of payments.
- c. Delay by the National Treasury to disburse funds on a timely basis to the County Governments in accordance with the Approved Disbursement Schedule.
- d. Under-performance of own source revenue collection leading to budget deficits and unfunded commitments.
- e. Non-tax compliance by vendors resulting to delayed tax remittance, hence barring subsequent payments to vendors.
- f. Delay in approval of supplementary budget estimates which are supposed to adopt prior year pending bills in the current budget.
- g. Operational delays caused by IFMIS downtimes thus affecting clearance of payments in the system.
- h. Project cost variation leading to higher cost than the budget allocations.
- i. Failure by Accounting Officers to adhere to set budget resulting to commitments over and above budgetary allocation.

5.15 Effects of Pending Bills

- a. Pending bills have adverse effects on businesses especially the Small and Medium Enterprises (SMEs) which depend on borrowed funds to finance their operations.
- b. Erosion of investor confidence where business community lose confidence in doing business with government as pending bills increase debt burdens through interest and penalties.
- c. Costly litigation where parties are forced to go through rigorous court processes in order to secure their payments.

5.16 Pending Bills in the Public Finance Management Framework

The process flow for expenditure under the public finance management framework in Kenya is as follows:



Section 104 of the County Governments Act, 2012 requires that all expenditure must be appropriated. Budgeting planning ensures that for an activity to be undertaken ought to have been factored in the budget. Project implementation involves the actual implementation of the budget. This will entail procuring for the various goods or services so as to actualise the planned activities. The last stage is the payment process. This involves the requisition of funds to settle the incurred bills. The law advocates for prudent use of financial resources, thus the need to ensure that payments are made within the contract period. These processes overlap and feed into each other thus as earlier indicated, pending bills will arise where there is a failure in the proper synchronization of and integration of one process to the other. For example failure to link procurement plans to the budget or delays in disbursements will definitely affect payments.

It is therefore paramount that County Governments should endeavour to adhere to the laid down processes and stipulated timelines in the public finance management framework. This will greatly reduce incidences of Pending Bills.

6. FINDINGS AND ANALYSIS

6.1 Synopsis of the Pending Bills for the Fifteen County Governments

At the close of FY 2017/18, the 15 Counties presented to the OCOB a list of pending bills amounting to Kshs.78.62 billion. In the course of FY 2018/19, County Governments conducted an internal verification exercise of the pending bills and presented a revised list to the Office of the Auditor General for Audit (OAG) a revised list amounting to Kshs.47.73 billion. The OAG was to undertake auditing and verification of the pending bills. Upon undertaking the audit on the presented pending list, OAG reported that bills amounting to Kshs.29.92 billion (62.7 per cent) were eligible while Kshs.17.82 billion (37.3 per cent) were ineligible for payment. The ineligible pending bills did not have adequate supporting documents to support their payment. The 15 County Governments have reported settling a total of Kshs.11.87 billion which represented 40 per cent of the eligible pending bills as of 30th November, 2019. Therefore, the outstanding pending bills amount to Kshs.18.05 billion. The table below shows the synopsis of the pending bills for the 15 counties.

Summary of the status of pending bills as at 30th November, 2019

County	List Presented to OCOB By Counties as at 30 th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
	A	B	C	D	E	F	G=E+F	H=C-E
Baringo	63,600,000	45,765,998	24,046,826	21,719,172	24,046,826	7,583,548	31,630,374	-
Bomet	1,155,473,480	1,253,551,181	1,190,167,877	63,383,304	792,312,268		792,312,268	397,855,609
Garissa	980,059,238	2,553,348,202	2,307,530,407	245,817,795	1,354,476,068	67,704,165	1,422,180,233	953,054,339
Isiolo	101,330,098	1,334,674,795	1,258,372,703	77,902,092	257,296,160	-	257,296,160	1,001,076,543
Kiambu	785,758,702	2,312,759,531	1,831,618,030	481,141,501	798,757,152	-	798,757,152	1,032,860,878
Kirinyaga	250,092,562	1,328,459,563	741,080,963	587,378,600	227,245,701	-	227,245,701	513,835,262
Machakos	975,461,203	1,286,526,181	942,363,607	344,162,574	236,916,704	-	236,916,704	705,446,903
Migori	290,942,340	1,275,250,208	1,007,373,410	267,876,798	484,154,811	106,672,043	590,826,854	523,218,599
Mombasa	3,705,503,765	5,347,786,393	3,545,800,427	1,801,985,966	1,515,114,199	-	1,515,114,199	2,030,686,228
Nairobi City	64,802,987,771	23,139,794,063	11,783,829,072	11,355,964,991	3,631,491,266	-	3,631,491,266	8,152,337,806
Nandi	1,394,228,985	1,447,847,605	942,307,841	505,539,764	625,819,018	-	625,819,018	316,488,823
Narok	1,725,444,405	2,056,439,795	1,980,736,070	75,703,725	1,043,871,048	-	1,043,871,048	936,865,022
Tana River	946,029,550	1,202,679,386	507,082,631	695,596,755	198,972,194	-	198,972,194	308,110,437
Tharaka - Nithi	260,776,492	1,112,652,892	701,871,919	410,780,973	486,007,948	-	486,007,948	215,863,971
Vihiga	1,184,810,000	2,037,052,291	1,151,148,522	885,903,769	191,915,284	-	191,915,284	959,233,238
Total	78,622,498,591	47,734,588,084	29,915,330,305	17,820,857,779	11,868,396,647	181,959,756	12,050,356,403	18,046,933,658

6.2 Findings and Analysis for the specific County Governments

In this section, we look at the status of the Pending Bills for each County Government.

6.2.1 County Government of Baringo

The Office of the Auditor General conducted a special audit of pending bills for County Government of Baringo and issued a Special Audit Report on 28th May, 2019.

The Special Report on Pending Bills as at 30th June 2018 indicated that the total pending bills were Kshs.45,765,998 comprising of Kshs.24,046,826 and Kshs.21,719,172 as eligible and ineligible bills respectively.

The County submitted the list of the pending bills for the suppliers in FY 2017/18 and the status of payment for each bill. From the list availed, eligible bills paid after 30th June 2018 was Kshs.31, 630,374.06. The county reported that all eligible pending bills as verified by OAG had been settled as at 30th November, 2019.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30 th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E
63,600,000	45,765,998	24,046,826	21,719,172	24,046,826	7,583,548.06**	31,630,374.06**	0.00

****Note:** The eligible pending bills as per OAG report was Kshs 24.0 million but the list from the County shows that a total of 31.6 million was paid for the FY2017/18. The extra amount has been treated as ineligible pending bills paid.

From the list of payment provided by the County Government to OCOB, all the pending bills have been settled. However, the payments have not been verified because the bank statements supporting payments were not availed.

6.2.2 County Government of Bomet

The Office of the Auditor General conducted a special audit of pending bills of County Government of Bomet and issued a Special Audit Report on 28th May, 2019.

The Special Report on Pending Bills as at 30th June 2018 indicated that the total pending bills was at Kshs.1, 253,551,181. This comprised of Kshs.1,190,167,877 and Kshs.63,383,304 as eligible and ineligible bills respectively.

The County has submitted the Pending Bills Ad hoc Committee Report and a letter referenced CGB/GVN/NT/49/1/1 dated 25th November 2019 to the Cabinet Secretary National Treasury and Planning. From the documents availed, eligible bills paid after 30th June 2018 was Kshs. 792,312,268. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs.397,855,609 as at 30th November, 2019. However, the County reported a figure of Kshs. 143,238,937.35 as eligible bills. The payment represents a 66.6% of the eligible pending bills.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E
1,155,473,480	1,253,551,181	1,190,167,877	63,383,304	792,312,268	-	792,312,268	397,855,609

The Office has not verified the payment of pending bills provided and there are no bank statements to support the same.

In the letter reference number CGB/GVN/NT/49/1/1 dated 25th November 2019 to the Cabinet Secretary National Treasury and Planning, the County states that they had budgeted to settlement the pending bill of up to Kshs.100,000,000 in FY 2019/2020. However, a review of the approved budget for the FY2019/20 does not show such provision in the budget.

Flowing from the above the Controller of Budget recommends the development of comprehensive and realistic pending bills repayment plan in line with the Recovery Plan

contemplated under Section 99 of the PFMA. The Repayment Plan should be discussed and agreed on between the National Treasury, and the relevant county officials to ensure that all pending bills are paid as per the agreed on plan.

6.2.3 County Government of Garissa

The Office of the Auditor General conducted a special audit of pending bills of the County Government of Garissa. The audit commenced on the 17th December, 2018 and was finalised on 15th February, 2019. The Special Audit Report was submitted to the Governor on 28th May, 2019.

The Special Report on Pending Bills as at 30th June, 2018 indicated that the total pending bills were Kshs.2,553,348,202 comprising of Kshs.2,307,530,407 and Kshs.245,817,795 as eligible and ineligible bills respectively.

The County submitted the following documents to the OCOB, bank statements for the period June 2018 to 30th November, 2019; Internet Banking Reports as at 30th November; Approved Budget for FY 2019/2020; pending bills repayment plan; and pending bills payment status

From the documents availed, eligible bills paid after 30th June 2018 was Kshs.1,354,476,068. The outstanding eligible pending bills balance as at 30th November, 2019 were Kshs. 953,054,339 The payment represents 58.7% of the eligible pending bills.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30th November, 2019	Ineligible Pending Bills Paid As at 30th November, 2019	Total Pending Bills Paid As at 30th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E
980,059,238	2,553,348,202	2,307,530,407	245,817,795	1,354,476,068	67,704,165	1,422,180,233	953,054,339

County Government of Garissa has included the outstanding eligible pending bills amounting to Kshs.300 million in the approved budget of FY 2019/2020.

In the repayment plan submitted to the Controller of the Budget, the County has committed to prepare a Supplementary Budget 1 for FY2019/20 once the report of pending bill verification committee is presented to County Executive by 2nd January 2019.

Flowing from the above the Controller of Budget recommends the development of comprehensive and realistic pending bills repayment plan in line with the Recovery Plan contemplated under Section 99 of the PFMA. The Repayment Plan should be discussed and agreed on between the National Treasury, and the relevant county officials to ensure that all pending bills are paid as per the agreed on plan.

6.2.4 County Government of Isiolo

The Office of the Auditor General conducted a special audit of pending bills for County Government of Isiolo. The audit exercise commenced on the 17th December, 2018 and the Report on Pending Bills was submitted on 28th May, 2019.

The Special Report on Pending Bills as at 30th June 2018 indicated that the total pending bills were Kshs.1,336,274,795 comprising of Kshs.1,258,372,703 and Kshs.77,902,092 as eligible and ineligible bills respectively.

The County submitted the following documents to the OCOB: pending bills status letter and repayment plan for the eligible bills, list of paid pending bills as at 29th November, 2019, list of ineligible pending bills, letter to the Controller of Budget on payment of pending bills dated 19th June, 2019. From the documents availed, eligible bills paid after 30th June 2018 was Kshs.257, 296,160. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs. 1,001,076,543. The payment represents a 20.4% of the eligible pending bills.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30 th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E

101,330,098	1,334,674,795	1,258,372,703	77,902,092	257,296,160	0	257,296,160	1,001,076,543
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It should be noted that the County disputed the OAG Special report on pending bills and reported that the pending bills stood at Kshs.1, 206,893,970. This comprised of Kshs.596, 814,523 and Kshs.610, 079,447 as eligible pending bills and ineligible pending bills respectively.

The County Government of Isiolo has included the outstanding eligible pending bills amounting to Kshs.150 million in the supplementary budget I of FY 2019/2020. In a letter submitted to the Controller of the Budget, the county has committed to budget for Kshs.200 million on Supplementary Budget II for FY2019/20 and the balance of Kshs.246, 824,523 in the FY 2020/21.

Flowing from the above the Controller of Budget recommends the development of comprehensive and realistic pending bills repayment plan in line with the Recovery Plan contemplated under Section 99 of the PFMA, 2012. The Repayment Plan should be discussed and agreed on between the National Treasury, and the relevant county officials to ensure that all pending bills are paid as per the agreed on plan.

6.2.5 County Government of Kiambu

The OAG conducted a special audit of pending bills of County Government of Kiambu. The audit commenced on the 8th January, 2019 and the Special Audit Report was submitted on 28th May, 2019.

The Special Report on Pending Bills as at 30th June 2018 indicated that the total pending bills was at Kshs.2,312,759,531 comprising of Kshs.1,831,618,030 and Kshs.481,141,501 as eligible and ineligible bills respectively.

The County submitted the following documents to the OCOB: Status Report on payment of pending bills; letter on pending bills Ref: KCG/FEP/2/09/VOL V/30 dated 27th November, 2019 addressed to the CS, NT and copied to OCOB; and commitment letter on settlement of pending bills Ref: KCG/ADM/6/42/VOL.II /44 dated 29th November, 2019 addressed to the CS, NT and copied to OCOB. From the document availed, eligible bills paid after 30th June 2018 were Kshs.798, 757,152. The outstanding eligible pending bills

verified by OAG as at 30th November, 2019 were Kshs.1,032,860,872. The payment represents a 34.5% of the eligible pending bills.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E
2,645,936,077	2,312,759,531	1,831,618,030	481,141,501	798,757,152	-	798,757,152	1,032,860,872

The pending bills were factored in the approved FY 2019/20 budget estimates under various expenditure items under which the respective pending bill falls as per the Standard Chart of Accounts.

Flowing from the above, the Controller of Budget recommends the development of a comprehensive and realistic pending bill repayment plan in line with the Recovery Plan contemplated under Section 99 of the PFMA. The Repayment Plan should be discussed and agreed on between the National Treasury, and the relevant county officials to ensure that all pending bills are paid as per the agreed on plan.

6.2.6 County Government of Kirinyaga

The Office of the Auditor General conducted a special audit of pending bills of County Government of Kirinyaga. The Special Audit Report was submitted on 10th June, 2019.

The Special Report on Pending Bills as at 30th June 2018 indicated that the total pending bills were Kshs.1,328,459,563 comprising of Kshs.741,080,963 and Kshs.587,378,600 as eligible and ineligible bills respectively.

The County did not submit any documents on payments of outstanding eligible bills. The eligible bills paid after 30th June 2018 was Kshs.227,245,701. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs.513,835,262. The payment represents a 31% of the eligible pending bills.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E
281,903,843	1,328,459,563	741,080,963	587,378,600	227,245,701	-	227,245,701	513,835,262

Kirinyaga County Government has made a commitment to include Kshs.100 million in the supplementary budget of FY 2019/2020 to defray part of the outstanding eligible pending bills.

Flowing from the above, the Controller of Budget recommends the development of comprehensive and realistic pending bills repayment plan in line with the Recovery Plan contemplated under Section 99 of the PFMA. The Repayment Plan should be discussed and agreed upon between the National Treasury, the Controller of Budget and the relevant county government to ensure that all eligible pending bills are settled as per the repayment plan.

6.2.7 County Government of Machakos

The Office of the Auditor General conducted an audit of pending bills of County Government of Machakos. The audit commenced on the 14th December, 2018 and the Special Audit Report was submitted on 17th May, 2019.

The Special Report on Pending Bills as at 30th June 2018 indicated that the total pending bills were Kshs.1,286,526,181 comprising of Kshs.942,363,607 and Kshs.344,162,574 as eligible and ineligible bills respectively.

The County submitted the following documents to the OCOB: letter on status of Machakos county pending bills and appeal against stoppage of releases dated 20th November 2019 Ref MCG/CECM-FIN/CS-NT/19; letter on status of Machakos county pending bills and appeal against stoppage of releases dated 29th November 2019 Ref MCG/CECM-FIN/OCOB/11-19; and copies of bank statements in Excel sheet from January 2019 to 30th

November, 2019. From the documents availed, eligible bills paid after 30th June 2018 were Kshs. 236,916,704. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs. 705,446,903. The repayment represents a 25.14% of the eligible pending bills. The County Government of Machakos has disputed the findings contained in the Special Audit Report.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E
975,461,203	1,286,526,181	942,363,607	344,162,574	236,916,704	-	236,916,704	705,446,903

The County Government of Machakos reported that they included the pending bills in the FY 2019/20 supplementary budget estimates. However, the Supplementary Budget estimates, was not availed.

The county has committed to settle the eligible pending bills vide a letter dated 20th November, 2019 addressed to the National Treasury.

Flowing from the above the Controller of Budget recommends the development of comprehensive and realistic pending bills repayment plan in line with the Recovery Plan contemplated under Section 99 of the PFMA. The Repayment Plan should be to be discussed and agreed on between the National Treasury, and the relevant county officials to ensure that all pending bills are paid as per the agreed on plan.

6.2.8 County Government of Migori

The Office of the Auditor General conducted an audit of pending bills of Migori County Government. The Special Audit Report was submitted on 13th June, 2019.

The Special Report on Pending Bills as at 30th June 2018 indicated that the total pending bills were Kshs.1,275,275,208 comprising of Kshs.1,007,373,410 and Kshs.267,876,798 as eligible and ineligible bills respectively.

The County submitted a schedule of payments towards pending bills as at 30th November, 2019. From the submitted schedules, the eligible pending bills paid after 30th November, 2019 were Kshs.484,154,811 while payments for ineligible pending bills were Kshs.106,672,043.10 The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs.523,218,599. The payment represents a 48.1 % of the eligible pending bills.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30 th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November , 2019 (Kshs.)	Ineligible Pending Bills Paid As at 30 th November, 2019 (Kshs.)	Total Pending Bills Paid As at 30 th November, 2019 (Kshs.)	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E
290,942,340	1,275,250,208	1,007,373,410	267,876,798	484,154,811	106,672,043.10	590,826,854.10	523,218,599

The County Government of Migori did not include the eligible pending bills in the FY 2019/20 Approved Budget Estimates. The County has reported that the pending bills have been factored in the FY 2019/20 Supplementary Budget which is before the County Assembly.

Flowing from the above the Controller of Budget recommends the development of a comprehensive and realistic pending bill repayment plan in line with the Recovery Plan contemplated under Section 99 of the PFMA. The Repayment Plan should be discussed and agreed on between the National Treasury, and the relevant county officials to ensure that all pending bills are paid as per the agreed on plan.

6.2.9 County Government of Mombasa

The Office of the Auditor General conducted an audit of pending bills of Mombasa County Government. The audit commenced on the 18th January, 2019 and the Special Audit Report was submitted on 28th May 2019.

The Special Report on Pending Bills as at 30th June 2018 indicated that the total pending bills were Kshs.5,347,786,393 comprising of Kshs.3,545,800,427 and Kshs.1,801,985,966 as eligible and ineligible bills respectively.

The County submitted the following documents to the OCOB- a letter ref:CECM/F&EP/ADM/20/11/19/ (1) dated 20th November, 2019, copies of bank statements (for payments to suppliers and/ contractors only), itax general ledger report for the period covering November 2015 to November 2019 and, RTGS transaction details report and Bank deposit slips (for PAYE taxes). From the documents availed, eligible pending bills paid after 30th June 2018 were Kshs.1.58 billion. The outstanding pending bills as verified by OAG as at 30th November, 2019 was Kshs.1.97 billion. The repayment represents a 44.5% of the eligible pending bills.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E
3,705,503,765	5,347,786,393	3,545,800,427	1,801,985,966	1,575,114,199	-	1,575,114,199	1,970,686,227

Mombasa County Government has included the outstanding pending bills amounting to Kshs.331,483,521 in the Approved budget estimates for FY 2019/2020.

Flowing from the above the Controller of Budget recommends the development of comprehensive and realistic pending bills repayment plan in line with the Recovery Plan contemplated under Section 99 of the PFMA. The Repayment Plan should be to be discussed and agreed on between the National Treasury, and the relevant county officials to ensure that all pending bills are paid as per the agreed on plan.

6.2.10 County Government of Nairobi City

The Office of the Auditor General conducted a special audit of pending bills of County Government of Nairobi City. The audit exercise commenced on the 18th January, 2019 and the Special Audit Report was submitted on 28th May, 2019.

The Special Report on pending bills as at 30th June 2018 indicated that the total pending bills were Kshs.23,139,794,063 comprising of Kshs.11,783,829,072 and Kshs.11,355,964,991 as eligible and ineligible bills respectively.

The County submitted the following documents to the OCOB: Auditor General Report on pending bills; bank statements; County approved budget for the financial year 2019/2020 and; IFMIS payment records dated 1st January 2019-30th November 2019. From the documents availed, eligible bills paid after 30th June 2018 was Kshs.3,631,491,266. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs.8,152,337,806. The payment represents a 17% of the eligible pending bills.

The pending bills of Kshs.3, 631,491,266 include Kshs.2 Billion paid to Kenya Revenue Authority which was not originally reported by the Auditor General as an eligible pending bill.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E
64,802,987,771	23,139,794,063	11,783,829,072	11,355,964,991	3,631,491,266	-	3,631,491,266	8,152,337,806

The County government's budget of Financial Year 2019/20 contains an amount of Kshs.3.2billion (2.6 billion Recurrent and 583million Development) for an item termed as "Other creditors", which the County reported that it was meant for the pending bills.

Flowing from the above the Controller of Budget recommends the development of comprehensive and realistic pending bills repayment plan in line with the Recovery Plan contemplated under Section 99 of the PFMA. The Repayment Plan should be to be

discussed and agreed on between the National Treasury, and the relevant county officials to ensure that all pending bills are paid as per the agreed on plan.

6.2.11 County Government of Nandi

The Office of the Auditor General conducted an audit of pending bills of Nandi County Government. The audit commenced on the 18th January, 2019 and the Special Audit Report was submitted on 28th May, 2019.

The Special Report on Pending Bills as at 30th June 2018 indicated that the total pending bills were Kshs.1,447,847,605 comprising of Kshs.942,307,841 and Kshs. 505,539,764 as eligible and ineligible bills respectively.

The County submitted copies of bank statements to the OCOB and a letter dated 19th November, 2019 from the county government showing the summary of pending bills. From the documents availed, eligible bills paid after 30th June 2018 was Kshs.625,819,018. The payment represents 66.7% of the eligible pending bills. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs.316,488,823.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E
1,394,228,985	1,447,847,605	942,307,841	505,539,764	625,819,018	-	625,819,018	316,488,823

The County Government of Nandi reported that the outstanding eligible pending bills amounting to Kshs.148 million have been factored in the FY 2019/2020 supplementary budget which is currently before the County Assembly.

Flowing from the above, the Controller of Budget recommends the development of a comprehensive and realistic pending bill repayment plan in line with the Recovery Plan

contemplated under Section 99 of the PFMA. The Repayment Plan should be discussed and agreed on between the National Treasury and the relevant county officials to ensure that all pending bills are paid as per the agreed on plan.

6.2.12 County Government of Narok

The Office of the Auditor General conducted a special audit of pending bills of the County Government of Narok. The audit commenced on the 18th January, 2019 and the Special Audit Report was submitted on 31st May, 2019.

The Special Report on Pending Bills as at 30th June 2018 indicated that the total pending bills were Kshs.2,056,439,795 comprising of Kshs.1,980,736,070 and Kshs.75,703,725 as eligible and ineligible bills respectively.

The County submitted the following documents to the OCOB: a schedule of status of pending bills as at November 2019 which indicates the amount paid to date as Kshs.1,043,871,048; and a list of suppliers paid. From the documents availed, eligible bills paid after 30th June 2018 was Kshs.180,625,471. The outstanding pending bills as at 30th November, 2019 were Kshs.936,865,022. The payment represents a 52.7% of the eligible pending bills.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E
1,725,444,405	2,056,439,795	1,980,736,070	75,703,725	1,043,871,048	-	1,043,871,048	936,865,022

The County Government of Narok has not included the outstanding eligible pending bills in the FY 2019/2020 budget. The county has however committed to settle the eligible pending bills vide a letter dated 26th November, 2019 addressed to the National Treasury. Flowing from the above the Controller of Budget recommends the development of a comprehensive and realistic pending bill repayment plan in line with the Recovery Plan

contemplated under Section 99 of the PFMA. The Repayment Plan should be to be discussed and agreed on between the National Treasury and the relevant county officials to ensure that all pending bills are paid as per the agreed on plan.

6.2.13 County Government of Tana River

The Office of the Auditor General conducted a special audit of pending bills of the County Government of Tana River. The Special Audit Report was submitted on 24th May, 2019.

The Report as at 30th June, 2018 indicated that the total pending bills were Kshs.1,202,679,386 comprising of Kshs.507,082,631 and Kshs.695,596,755 as eligible and ineligible bills respectively.

The County submitted the following documents to the OCOB: List of eligible Pending Bills as at 30th June 2018; List of ineligible Pending Bills as at 30th June 2018; List of eligible Pending Bills paid as at 30th June 2018; Central bank of Kenya statement of Account 1000170708 Tana River County Development for the period 1st January 2019 to 30th June 2019; and Central bank of Kenya statement of Account 1000170708 Tana River County Development for the period 1st July 2019 to 2nd December 2019.

From the documents availed, eligible bills paid after 30th June, 2018 was Kshs.198,972,194.15. The outstanding pending bills as at 30th November, 2019 were Kshs.308,110,436.85. The payment represents a 39.2% of the eligible pending bills.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B(C+D)	C	D	E	F(C-E)	G(E+F)	H(C-E)
946,029,550	1,202,679,386	507,082,631	695,596,755	198,972,194.15	-	198,972,194.15	308,110,436.85

Flowing from the above the Controller of Budget recommends the development of comprehensive and realistic pending bills repayment plan in line with the Recovery Plan contemplated under Section 99 of the PFMA. The Repayment Plan should be to be discussed and agreed on between the National Treasury and Tana River County to ensure that all pending bills are paid as per the agreed on plan.

6.2.14 County Government of Tharaka Nithi

The Office of the Auditor General conducted a special audit of pending bills County Government of Tharaka Nithi. The special audit report indicated that the total pending bills were Kshs. 1,112,652,892 comprising of Kshs. 701,871,919 and Kshs. 410,780,973 as eligible and ineligible bills respectively.

The County submitted the following documents to the OCOB: Approved County Budget, the Supplementary Budget and Appropriation Bill, 2019 and the list of pending bills paid as at 20th November, 2019. From the documents availed, eligible bills paid after 30th June 2018 were Kshs. 486,007,948. The payment represents a 44.1 % of the eligible pending bills. The outstanding pending bills as at 30th November, 2019 were Kshs. 215,863,971.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E
260,776,492	1,112,652,892	701,871,919	410,780,973	486,007,948	-	486,007,948	215,863,971

The County Government has included the outstanding eligible pending bills amounting to Kshs 221,982,953 million in the supplementary budget of FY 2019/2020 which is currently before the County Assembly.

Flowing from the above the Controller of Budget recommends the development of comprehensive and realistic pending bills repayment plan in line with the Recovery Plan contemplated under Section 99 of the PFMA. The Repayment Plan should be to be discussed and agreed on between the National Treasury and the relevant county officials to ensure that all pending bills are paid as per the agreed on plan.

6.2.15 County Government of Vihiga

The Office of the Auditor General conducted a special audit of pending bill of County Government of Vihiga. The audit commenced on 18th January 2019 and the special audit report submitted on 13th June, 2019. The Report indicated that the total pending bills were Kshs. 2,037,052,291 comprising of Kshs. 1,151,148,522 and Kshs. 885,903,769 as eligible and ineligible bills respectively.

A report submitted to the Office of the Controller of Budget indicates that eligible bills paid after 30th June 2018 amounted to Kshs. 191,915,284.18 representing 17% of the total eligible pending bills. The outstanding pending bills as at 30th November, 2019 are Kshs. 959,233,238. The relevant documents to support the exercise were not provided.

The table provides the status of payment of the eligible pending bills as at 30th November 2019

List Presented to OCOB By Counties as at 30th June, 2018 (Kshs)	List Presented to OAG By Counties for Special Audit (Kshs)	Eligible Pending Bills as per the OAG Special Audit (Kshs)	Ineligible Pending Bills as per the OAG Special Report (Kshs)	Eligible Pending Bills Paid As at 30 th November, 2019	Ineligible Pending Bills Paid As at 30 th November, 2019	Total Pending Bills Paid As at 30 th November, 2019	Outstanding Eligible Pending Bills (Kshs.)
A	B	C	D	E	F	G=E+F	H=C-E
1,184,810,000	2,037,052,291	1,151,148,522	885,903,769	191,915,284	-	191,915,284	959,233,238

A review of the Vihiga County FY 2019/20 Approved Supplementary Budget I reveals that the County has allocated Kshs. 100,000,000 towards payment of eligible pending bills. The County has made a proposal to factor an additional Kshs.350, 000,000 in the Supplementary Budget II.

Flowing from the above the Controller of Budget recommends the development of a comprehensive and realistic pending bill repayment plan in line with the Recovery Plan contemplated under Section 99 of the PFMA. The Repayment Plan should be to be discussed and agreed on between the National Treasury, and the relevant county officials to ensure that all pending bills are paid as per the agreed on plan.

7 RECOMMENDATIONS AND CONCLUSION

7.1 RECOMMENDATIONS

As earlier indicated, non-payment of eligible Pending Bills constitute a serious material breach in terms of Section 93(3) (b) of the PFMA. Consequently, it is our considered opinion that any of the fifteen (15) Counties that have any pending bills are in breach of Section 93(3) (b) and therefore the decision by the Cabinet Secretary should be upheld to allow the development of a Recovery Plan as contemplated under Section 99 of the PFMA. The Recovery Plan is anchored in law and as per Section 99(4) of the PFMA is intended to;

- a) identify the financial problems;
- b) be designed to place the county government in a sound and sustainable financial condition as quickly as possible;
- c) state the principal objectives of the plan and ways and means for achieving those objectives;
- d) provide budget parameters which bind the county government for a specified period or until stated conditions have been met;
- e) identify specific revenue raising measures that are necessary for financial recovery, including the rates at which tariffs should be set to achieve financial recovery;
- f) set out a specific strategy for addressing the entity's problems, including a strategy for reducing wasteful expenditure and increasing the collection of revenue, as may be necessary;
- g) identify the human resources and the source of those resources;
- h) describe the anticipated time frame for the recovery, and the milestones to be achieved; and
- i) identify what actions are necessary for the implementation of the plan, distinguishing between actions to be taken by the entity and actions to be taken by other parties.

Below are our recommendations on the fifteen (15) county governments

No.	County	Eligible Pending Bills as per OAG Special Audit Report (Kshs.)	Eligible Pending Bills Paid (Kshs.)	Outstanding Eligible Pending Bills (Kshs.)	Recommendation
1.	Baringo	24,046,826	24,046,826	-	The County Government reported payment of all eligible pending bills
2.	Bomet	1,190,167,877	792,312,268	397,855,609	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.
3.	Garissa	2,307,530,407	1,354,476,068	953,054,339	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.
4.	Isiolo	1,258,372,703	257,296,160	1,001,076,543	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.
5.	Kiambu	1,831,618,030	798,757,152	1,032,860,878	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.
6.	Kirinyaga	741,080,963	227,245,701	513,835,262	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.
7.	Machakos	942,363,607	236,916,704	705,446,903	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.
8.	Migori	1,007,373,410	484,154,811	523,218,599	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.
9.	Mombasa	3,545,800,427	1,515,114,199	2,030,686,228	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.
10.	Nairobi	11,783,829,072	3,631,491,266	8,152,337,806	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.

No.	County	Eligible Pending Bills as per OAG Special Audit Report (Kshs.)	Eligible Pending Bills Paid (Kshs.)	Outstanding Eligible Pending Bills (Kshs.)	Recommendation
11.	Nandi	942,307,841	625,819,018	316,488,823	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.
12.	Narok	1,980,736,070	1,043,871,048	936,865,022	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.
13.	Tana River	507,082,631	198,972,194	308,110,437	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.
14.	Tharaka - Nithi	701,871,919	486,007,948	215,863,971	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.
15.	Vihiga	1,151,148,522	191,915,284	959,233,238	A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.

The Office further recommends:

1. Review of the IFMIS system to provide for ageing of creditors.
2. Amendment of the Public Finance Management Act, 2012 to provide for payment on a First-In- First- Out (FIFO) basis. This will ensure compliance with various accounting standards which treat debt repayment as a first charge on revenue.
3. Enhancement of technical capacity in budgeting and accounting in the County Treasury to ensure adherence with the principles of public finance and Standard Charts of Accounts.
4. Review of the law to ensure payments are made on time by introducing a prompt pay system where if a valid invoice is not paid within certain time, it automatically attracts interest.

7.2 CONCLUSION

We note that since the advent of devolution, this is the first time the Cabinet Secretary; National Treasury invoked his powers under Article 225 of the Constitution as read together with section 97 of the PFMA.

From our investigation the issue of pending bills continues to pose a challenge in the operations and functions of County Governments'. This has overtime led to Counties accumulating huge pending bills. The pending bills bedevil both National and County governments and the adverse effects of pending bills on the economy cannot be gainsaid.

As explained in the Report the decision to stop the transfer of funds was triggered by the effects of the pending bills to the economy and society at large. Thus there is need for all players undertaking functions under the PFMA Act to adhere to the laid down principles public finance management and take up initiatives that address emerging challenges. This should include formulating policies to ensure the adoption of best practice in budgeting and budget implementation for both national and county governments; and to further have realistic revenue targets to reduce budget deficits.