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02/06/23

Hon. Speaker
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Clerk of the senate/secretary, PSC
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REPUBLIC OF KENYA

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THE SENATE

STANDING COMMITTEE ON FINANCE AND BUDGET

REPORT ON THE PROMPT PAYMENT BILL 2022

(SENATE BILL NO. 8 OF 2022)

Paper laid
01/06/2023
by
Senate Majority
Whip.

Clerk's Chambers,
Parliament Buildings,
NAIROBI

MAY 2023

Mr. J. Edgar Hoover
Director
Federal Bureau of Investigation
Washington, D. C.

APPROVED

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LIST OF ABBREVIATIONS/ACRONYMS

APRECOM	-	Association of Public Relations and Communication Management
CoG	-	Council of Governors
CRA	-	Commission on Revenue Allocation
ICPAK	-	Institute of Certified Public Accountants of Kenya
KEPSA	-	Kenya Private Sector Alliance
MSME	-	Micro, Small and Medium Enterprises
NGEC	-	National Gender Equality Commission,
PFM	-	Public Finance Management
PPADA	-	Public Procurement and Asset Disposal Act
TISA	-	The Institute of Social Accountability.

PREFACE

ESTABLISHMENT AND MANDATE OF THE COMMITTEE

Article 124 (1) of the Constitution of Kenya provides that each House of Parliament may establish committees and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.

Parliamentary committees consider policy issues, scrutinize the workings and expenditures of the National and County Governments, and examine proposals for legislation. The end result of any process in Committees is a report, which is tabled in the House for consideration.

The Senate Standing Committee on Finance and Budget is established under Section 8(1) of the Public Finance Management (PFM) Act, 2012 and standing order 228 of the Senate Standing Orders and is mandated to-

- a) investigate, inquire into, and report on all matters relating to coordination, control, and monitoring of the county budgets and examine -
 - (i) the Budget Policy Statement presented to the Senate;
 - (ii) the report on the budget allocated to constitutional Commissions and independent offices;
 - (iii) the Division of Revenue Bill, the County Allocation of Revenue Bill, the County Governments Additional Allocations Bill, and the cash disbursement schedules for county governments;
 - (iv) all matters related to resolutions and Bills for appropriations, the share of national revenue amongst the counties, matters concerning the national budget, including public finance and monetary policies and public debt, planning, and development policy; and

- b) Pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budgets of county governments.

MEMBERSHIP OF THE COMMITTEE

Following the constitution of the Standing Committees of the Senate of the Thirteenth (13th) Parliament on Thursday, 13th October, 2022, the Senate Standing Committee on Finance and Budget as currently constituted comprises the following Members-

- | | | |
|---|---|-------------------------|
| 1) Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | Chairperson |
| 2) Sen. Maureen Tabitha Mutinda, MP | - | Vice-Chairperson |
| 3) Sen. (Dr.) Boni Khalwale, CBS, MP | - | Member |
| 4) Sen. Joyce Chepkoech Korir, MP | - | Member |
| 5) Sen. Tabitha Karanja Keroche, MP | - | Member |
| 6) Sen. Mohamed Faki Mwinyihaji, MP | - | Member |
| 7) Sen. Richard Momoima Onyonka, MP | - | Member |
| 8) Sen. Shakila Abdalla Mohamed, MP | - | Member |
| 9) Sen. Eddy Gicheru Oketch, MP | - | Member |

CHAIRPERSON'S FOREWORD

The Prompt Payment Bill, 2022 (Senate Bill No. 8 of 2022) was published vide a Kenya Gazette Supplement No. 195 dated 29th November, 2022. The Bill was read for a First Time in the Senate on Thursday, 16th February, 2023. Thereafter, pursuant to the provisions of Article 118 of the Constitution and standing order 145 of the Senate Standing Orders, the Bill was committed to the Standing Committee on Finance and Budget for consideration.

The Bill seeks to provide for a legal framework for prompt payment for supply of goods, works and services procured by government entities at both levels of Government.

During the consideration of the Bill, the committee held meetings with the following key stakeholders to submit views on the Bill-

- a) Council of Governors (CoG),
- b) Commission on Revenue Allocation (CRA),
- c) Controller of Budget (CoB),
- d) Kenya Private Sector Alliance (KEPSA), and
- e) Institute of Certified Public Accountants of Kenya (ICPAK).

In addition, the following stakeholders submitted their views on the Bill-

- a) National Treasury and Economic Planning,
- b) National Gender Equality Commission,
- c) The Association of Public Relations and Communication Management Firms (APRECOM), and
- d) The Institute of Social Accountability (TISA).

Committee Observations

During the consideration of the Bill, the Committee made the following observations.
That-

- a) While the Bill would be an effective legal tool to promote business and cure late payments, the public procuring entities entirely depends on the availability of funds from the exchequer. Further, the exchequer releases are dependent on revenue collection performance which at times fails to follow the planned projections;
- b) The proposed interest rates to be charged to procurement entities as a result of late payments will be an additional cost and burdens to the existing menace of pending bills;
- c) The proposed penalties under offences to accounting officers of procurement entities are exorbitant, noting that these officers have little control on availability of funds to meet the financial obligation when they fall due; and
- d) The provisions in the Bill have adequately been addressed for under the Public Procurement and Asset Disposal (PPAD) Act, 2015 and its attendant Regulations that were approved by Parliament in 2020.

Committee recommendation

Having considered the submissions from stakeholders and analysed the Bill, the Committee recommends that the Senate rejects the Prompt Payment Bill 2022 (Senate Bills No. 8 of 2022).

Acknowledgement

I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Prompt Payment Bill, 2022 successful.

I also wish to thank the offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this important assignment.

Lastly, I wish to thank the stakeholders who submitted written memoranda and who appeared before the Committee to present their comments on the Bill.

It is now my pleasant duty, pursuant to standing order 148 (1) of the Senate Standing Orders to present the Report of the Standing Committee on Finance and Budget on the Prompt Payment Bill, (Senate Bills No.8 of 2022).



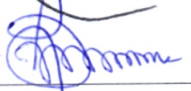


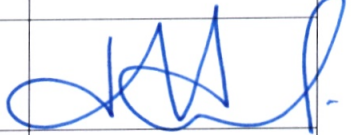
Signature.......... Date.....31/05/2023.....

**SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP,
CHAIRPERSON,
STANDING COMMITTEE ON FINANCE AND BUDGET**

ADOPTION OF THE REPORT

ON THE PROMPT PAYMENT BILL, 2022 (SENATE BILLS NO. 8 OF 2022)

We, the undersigned Members of the Senate Standing Committee on Finance and Budget, do hereby append our signatures to adopt this Report-

Name	Designation	Signature
Sen. (Capt.) Ali Ibrahim Roba, EGH, MP	Chairperson	
Sen. Maureen Tabitha Mutinda, MP	Vice-Chairperson	
Sen. (Dr.) Boni Khalwale, CBS, MP	Member	
Sen. Joyce Chepkoech Korir, MP	Member	
Sen. Tabitha Karanja Keroche, MP	Member	
Sen. Mohamed Faki Mwinyihaji, MP	Member	
Sen. Richard Momoima Onyonka, MP	Member	Virtual Attendance
Sen. Shakila Abdalla Mohamed, MP	Member	Attended virtually
Sen. Eddy Gicheru Oketch, MP	Member	Attended virtually.

CHAPTER ONE

INTRODUCTION

1.1 Background

1. The Prompt Payment Bill 2022 (Senate Bills No. 8 of 2022) was published vide a Kenya Gazette Supplement No. 195 dated 29th November, 2022. The Bill seeks to put in place a legal framework to facilitate prompt payment for supply of goods, works and services procured by government entities both at the national and county level.

1.2 Contents of the Prompt Payment Bill 2022 (Senate Bill No. 8 of 2022)

2. The Bill proposes to require a procuring entity in the national or county governments to pay a supplier by the prescribed payment date failure to which, a procuring entity shall be liable to pay an interest calculated on the basis of the Central Bank base rates;
3. The Bill provides guidance in determining debts that shall be given priority where a procuring entity shall have regard to the dates upon which payment fell due and shall pay debts on the basis of first-in, first-out;
4. The Bill states that a procuring entity who fails to pay a supplier by the due date shall, unless otherwise agreed, pay the full contract price and an interest to the supplier in accordance with the amount due under the contract for the supply of goods, works, or services;
5. The Bill further provides for offences of accounting officers of procuring entities. An accounting officer who, without reasonable cause or negligently fails to pay the amount due commits an offence and shall be liable to pay a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both fine and imprisonment;
6. Additionally, the Bill provides for the requirement by the procuring entity and the supplier to deal with each other fairly and lawfully and the power to make regulations by the Cabinet Secretary;

7. On the delegation of legislative powers, the Bill obligates the Cabinet Secretary to make regulations for the better carrying into effect any provisions of this proposed law upon enactment;
8. Cognizant of the fact that delayed payments for public contracts is usually compounded by disputes on the terms of the contract, the Bill proposes that where a procuring entity disputes an invoice, the procuring entity shall, within fourteen days, return the invoice to the supplier and identify in writing any defects in the invoice and require the supplier to correct the defects;
9. The Bill further provides that where a procuring entity returns an invoice, the procuring entity shall pay the supplier at least fifty percent of the amount due or as the procuring entity and the supplier may agree. In this respect, a supplier who receives an invoice from a procuring entity shall, within fourteen days, deliver a corrected invoice to the procuring entity. Interest shall accrue upon the expiration of fourteen days after the receipt by the procuring entity of a corrected invoice or after the prescribed payment date, whichever is the later;
10. As a means of ensuring implementation of the provisions of the law, the Bill provides that where a supplier has delivered an invoice to the procuring entity and the accounting officer or the responsible officer of the procuring entity negligently, maliciously or without reasonable cause fails to return the invoice as provided for rectification or pay the amount due commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

CHAPTER TWO

OVERVIEW OF PUBLIC PARTICIPATION ON THE BILL

2.1 Submissions by Stakeholders

11. The Committee held meetings with key stakeholders to deliberate on the Bill on Wednesday, 29th March, 2023 and Thursday, 30th March, 2023. They include-
 - a) The Commission on Revenue Allocation (CRA);
 - b) The Council of Governors;
 - c) The National Treasury and Economic Planning;
 - d) The Office of the Controller of Budget; and
 - e) The Institute of Certified Public Accountants
12. The Committee also received written submissions from the following institutions-
 - a) National Treasury and Economic Planning;
 - b) National Gender Equality Commission;
 - c) The Association of Public Relations and Communication Management Firms (APRECOM); and
 - d) The Institute of Social Accountability (TISA).
13. The Committee received submissions from a total of nine (9) stakeholders as summarized in this Chapter.

2.2 The Commission on Revenue Allocation

14. The Commission on Revenue Allocation noted the provisions in the Prompt Payment Bill are addressed in the Public Procurement and Asset Disposal Act, 2015 (PPADA) and Public Procurement and Asset Disposal Regulations (PPADR), 2020. However, the Commission proposed the following amendments to the Bill-

- a) Amendment of Clause 2 on interpretation to provide that where there is no written contract or the contract does not provide for a date of payment to read sixty (60) days. This is to align to regulation 150 (1) of PPADR, 2020.
- b) Amendment of Clause 3 by deleting the words “private entities’ from the scope of the Bill. This is because private agreements are covered under the law of contract hence it is not necessary to cover them under the Bill since enforceability will be a challenge. This will align the Bill with existing laws and to enhance enforceability of the law.
- c) The Commission also recommended-
- d) Re-drafting of Clause 4 on prompt payment of accounts to make it clear.
- e) Amendment of Clause 5 on Priority payment by inserting IFMIS or any other e-procurement platform in place to aid in prioritization of due payments on a “first come first serve basis.”
- f) Sub-Clause 9 (1) on declaration of pending payments- the Commission on Revenue Allocation recommends deletion of ‘small or macro enterprises’ and substitute therefore with ‘supplier’ to make the provision open-ended so as to cover all types of suppliers.
- g) Clause 10 on offences-the Commission recommends harmonization of the fine as proposed in the memorandum with the Bill content for consistency.

2.3 The Council of County Governors

15. The Council of Governors on behalf of the 47 County Governments submitted the proposals on Prompt Payment Bill, 2022 as highlighted below-

- a) The Council appreciates that the principal object of this Bill is to put in place a legal framework to facilitate prompt payment for supply of goods, works, and services procured by government entities both at the national and county level. However, they observe that the Bill has not addressed issues that may deter prompt payment such as delayed disbursement of funds to County Governments, contractual disagreements, revenue

shortfalls by counties, and non-completion of work by contractors or suppliers.

b) Clause 2 on interpretation be amended as follows -

- "amount due" to mean the principal sum owing based on a commercial transaction, including the applicable taxes, duties, levies or charges specified in the invoice as provided for in the contract and relating to the said transaction. This is to ensure that what is invoiced must be captioned in the contract or attendant memorandum applicable.
- "invoice" to mean a written document including an electronic document, provided by a supplier requesting for payment, having met the contractual obligation for the supply of goods, works or services. Invoicing must be based on meeting the contractual obligation
- "prescribed payment" to read the date on which payment is due under the terms of any written contract upon completion of the supply of goods, works or services. The contractual obligation must be met before invoicing.
- "prescribed payment" be amended to read prescribed payment date means in relation to a commercial contract where there is no written contract or the written contract does not provide for the date of payment ninety days after receipt by the purchaser of an invoice for the amount due where the invoice is received after the completion an acceptance of works or completed and accepted delivery of the goods or provisions of service.

c) Clause 4(1) on Prompt Payment of Accounts be amended to read that "A procuring entity shall pay to a supplier eligible bills, this being payment for the delivery of goods, works or services on the due date."

d) Clause 4(2) be amended to read that a procuring entity who fails to pay a supplier by the due date without justifiable reasons shall unless otherwise agreed pay an interest.

- e) Clause 4(5) be amended to give entities a leeway to negotiate and agree with suppliers who have a claim for interest.
- f) Clause 10 on offences be amended to provide a fine not exceeding two million and imprisonment not exceeding three years or both. The penalty for the offence is too punitive for the accounting officer and does not take into consideration administrative challenges.
- g) Parliament amends section 17 (6) of the Public Finance Management Act, 2012 to create an offence for untimely disbursements of revenue to County Governments.

2.4 The Office of the Controller of Budget

16. The Office of the Controller of Budget submitted the comments below on Prompt Payment Bill, 2022 -

- a) Purpose and objects-The Bill did not expressly provide for its purpose and objects.
- b) Scope of the Bill-The Bill should be expanded to provide for a legal framework for prompt payment and remittances of employee deductions to other institutions and on payment of dues from one government entity to another.
- c) Existing Pending Bills-The Bill does not address the issue of pending bills.
- d) Accelerated Payment- The Bill should consider offering discounts on early payments. Vendors should be encouraged to offer discounts if paid within a specified shorter time.
- e) Payment Priorities to Small and Medium Enterprises- The Bill should consider vendor segmentation. This will provide for payments to Small and Medium Enterprises to be made within (30) thirty days while large contractors to be made within ninety days (90).

- f) Funding of Interest payments-The Bill should provide for funding provisions of interest and penalties payment. For instance, late interest payment should be paid from funds available for the program.
- g) Computation of Interest-The Bill should specify whether the interest provided under Clause 7(2) is calculated on simple or compounded rates.
- h) Reporting on interest payment- At the end of every Financial Year, all Accounting Officers of procurement entities submit reports on interest charged to the National Treasury and the Office of the controller of budget.
- i) Exceptions to prompt payments-The Bill should consider exceptions to prompt payments. These may include related to military contingency operations, and emergencies.

2.5 The National Treasury and Economic Planning

17. The National Treasury submitted that they reviewed the Bill and noted that the concerns raised in the Bill have been adequately addressed in the Public Procurement and Asset Disposal Act, 2015 (PPADA) and Public Procurement and Asset Disposal Regulations, 2020. The following sections addresses the concerns of the Bill-

- a) Section 4 on prompt payment of accounts- The National Treasury noted that timelines within which payments have to be made to contractors is set at sixty (60) days and the period starts from the day of the receipt of the invoice. Further, goods must be properly certified before payment. This is addressed by Regulation 150 of the Public Procurement and Assets Disposal Regulation, 2020.
- b) Section 5 on priority of payments- This is provided for in Regulation 139(1) and (6) of the Public Procurement and Assets Disposal Regulation, 2020.
- c) Section 7 on Interest Rates-Section 140 of Public Procurement and Assets Disposal Act,2015 provides the same.

- d) Section 9 on offences- Section 176(1)(c) of Public Procurement and Assets Disposal Act, 2015 provides for penalty for delay in payment beyond contractual period.
- e) Section 6 on return on invoice-The National Treasury recommends that this be addressed under the contractual agreement between the supplier and the Procurement entity under dispute mechanism clause.
- f) Section 8 on fair dealing the- Contract should provide on the contract obligations of each party.

18. In conclusion, the National Treasury is of the opinion that the concerns raised by the Prompt Payment Bill have been fully addressed by Public Procurement and Asset Disposal Act, 2015 (PPADA) and Public Procurement and Asset Disposal Regulations, 2020.

2.6 The Institute of Certified Public Accountants of Kenya (ICPAK)

19. ICPAK submitted that-

- a) The institute is dedicated to enhancing its contribution and that of its members to the national economic growth agenda. It is in line with this that it supports and appreciates Parliament for the Bill that it deems is long overdue.
- a) Clause 4 (3) on prompt payment accounts be amended to provide clarity on the computation of interest due. This will enable a procurement entity to determine with certainty the amount of interest to be paid alongside payment due.
- b) Clause 4(5) be amended to allow a supplier the right to accept payment without interest in good faith. This will promote business and support in cases where failure to pay is occasioned by factors beyond the control of the procuring entity, for instance, COVID-19
- c) Clause 5(2) on priority payments be amended to provide clarity on the extent to which a procuring entity can clear old payments on receipt of

resources. This will delineate old, outstanding and current priority payments.

- d) Clause 7 (2), the Institute suggests that the calculation of interest rate on the basis of CBK should be clearly specified. This will guide in calculation of interest on overdue amounts for goods, works or services.
- e) Clause 9 on the declaration of pending pay should be amended to ensure that the supplier declares pending payments to private entities.
- f) Clause 10 on offences be amended for consistency with provisions of section 177 of the Public Procurement and Assets Disposal Act 2015. There is need to further the definition of the word ‘negligently’, ‘maliciously’ or ‘without reasonable means’ for clarity and ease of implementation.

2.7 The Association of Public Relations and Communication Management Firms (APRECOM)

20. The APRECOM submitted the following recommendations on the Bill-

- a) Clause 2 should be amended to provide that where there is no contract, the due date should be within 45 days after invoicing date where the amount due is less than Ksh 10 million and within 60 days after invoicing date where the amount due is more than Ksh 10 million.
- b) Clause 3 should be clarified in regard to the extent of the application. Ideally the clause should also cover private procuring entities not just public entities.
- c) A procuring entity shall ring-fence sufficient funds for the payment of goods and services procured from micro and small enterprises. The procuring entity should ring-fence funds for the payment of goods and services. Such funds should be held separately from other funds and should be used exclusively for the payment of goods and services procured from micro and small enterprises. The objective of the proposed Clause is to ensure that the procuring entity allocates funds explicitly for the payment of

micro and small enterprises, and restricts the use of these funds solely for this purpose. This will safeguard the sustainability of micro and small enterprises. As a result, this proposal will be encouraged. Appropriate budget management practices, transparency, accountability and ensure responsible expenditure.

- d) Introduce a clause which provides for mandatory reporting requirements for government procuring entities. Since government procuring entities use public funds, they should be required to disclose their payment practices to suppliers and the public. This will promote transparency and accountability, and discourage governments from engaging in unfair payment practices.
- e) Introduce a clause creating an enforcement mechanism to ensure compliance provisions. The bill should establish an independent body or agency whose responsibility it will be to monitor compliance with the bill's provisions and enforce penalties for non-compliance. This body should be empowered to investigate complaints, conduct audits and inspections, and issue fines or take legal action against non-compliant businesses. While the bill provides for penalties and interest for late payments, it does not specify how these will be enforced. As a result, some businesses may choose to ignore the Bill's provisions and delay payments to suppliers without fear of any consequences.
- f) Introduce a clause creating a dispute resolution mechanism. The bill should be improved by creating a dispute resolution mechanism that is accessible, affordable, and efficient. For example, a specialized court or tribunal can handle disputes involving micro and small enterprises. It can also provide for alternative dispute resolution mechanisms such as mediation and arbitration. Micro and small enterprises often face challenges in enforcing their legal rights due to high legal costs and complexity of the legal system.

2.8 The Institute of Social Accountability (TISA)

21. TISA submitted the following views on the Bill-

- a) Add to the long title the words government agencies after the work services - this to communicate the purpose of the Prompt Payment Bill.
- b) Amend definition to read - An accounting officer has the definition in section 2 of the PFM Act. Further expand to include the accounting officer for independent commissions.
- c) Insert definition of the term 'pending bills' this law was developed to improve the payment of bills, and Pending Bills are one of the key issues resulting from delays in payment owed to suppliers.
- d) Clause 9 -Include all pending payments owed to suppliers engaged- the declaration is limited to small or micro-enterprises. A culture of prompt payment should be encouraged across all businesses to facilitate efficiency.

2.9 The National Gender Equality Commission (NGEC)

22. The NGEC made the following recommendations on the Bill-

- a) Amend Clause 3 by deleting the balance of the sentence from the word "the national Government" and substituting it with the following words "...all public entities making a procurement to which the Public Procurement and Asset Disposal Act applies. The Clause as provided includes private entities and also limits the public entities to only National and County Government while the Public Procurement Act lists all of the public entities.
- b) Amend clause 4 by deleting the balance of the sentence from the word "the national Government" and substituting it with the following words "...all public entities making a procurement to which the Public Procurement and Asset Disposal Act applies. The clause as provided includes private entities and also limits the public entities to only National and County Government while the Public Procurement Act lists all of the public entities.

c) Amend Sub clause 4(3) by substituting the words “procuring entity” with the following “The Accounting officer responsible for failure to pay or National Treasury” When read together with the Public Procurement and Disposals Act particularly on the responsibilities of an Accounting officer, the following is observed-

- The proposals in the Bill are beneficial to the suppliers and especially Persons with Disability, women and youth who will be assured of prompt pay once they supply the goods.
- However, public entities depend on allocation of funds from the Treasury which sometimes may take longer than anticipated even after compliance with the law.
- Public Entities do not normally have provision for interest or fines in their budgetary allocations and so any interest imposed will still be from the exchequer. Public entities may not always generate their own revenue and rely on Treasury.
- In summary the intention of the Bill is noble but the crucial party who will determine its success is timely release of the funds as per the procurement plan submitted by the National Treasury.

d) Clause 7- In the event that Treasury does not release the funds as per the plan then it should pay the interest which will still be drawn from taxes by the intended beneficiaries. If the failure to pay is due to the negligence of the Accounting Officer, then the officer should be liable personally for the interest payable and not the entity. There is a need for further consultation and agreement with the National Treasury and commitment to release the funds as planned. Liability should attach only to the Accounting Officer or Treasury depending on who is liable and not the Entity which does not have an allocation of “interest’ and will also protect the entities from multiple cases by suppliers.

e) Clause 8 should be deleted- The penalty imposed on the Accounting Officer in clause 8 for failure to pay without a reasonable cause of one million or to a term of five years is excessive and disproportionate. The Accounting officer is a Public officer and there are codes that regulate the conduct of public servants. The negligence in failure to pay is a gross misconduct and so should be considered as such and not as an offence. The clause should therefore be deleted because section 44(j) of the Public Procurement Act has imposed on the officer the duty of compliance and such an officer should be dealt with within the provisions of Employment and labour laws.

CHAPTER THREE
SUMMARY OF STAKEHOLDERS SUBMISSIONS AND THEMATIC
AREAS

23. Upon consideration of stakeholders' submissions and analysing the Bill, the Committee notes as follows-

a) Clause 2

Prescribed payment date- the Bill provides that in matters where this date of payment is not provided, the date shall be within ninety days. However, the Committee notes that Regulation 150(1) of the Public Procurement and Asset Disposal Regulations, 2020 provides that upon certification, the procuring entity shall make payments within sixty days from the date of receipt of the invoice.

b) Clause 3

Application of proposed law to procuring private entities- The Committee notes that for private institutions, whenever they engage in procurement of goods and services, the parties have contractual agreement terms which provide for a period within which the payments are to be made.

c) Clause 4

Waiving of interest rates- The Committee notes this provision is rigid and does not provide for negotiation or alternative resolutions.

d) Clause 5

Payment of debts on the basis of first in- first out- the Committee notes that Regulation 150(7) of the Public Procurement and Asset Disposal Regulations, 2020,

provides that on receipt of an invoice or a fee note, a procuring entity shall make payment on a first come - first paid basis.

e) Clause 6

Disputed invoices- The Committee noted that the process of processing such a matter should be provided under the regulations or contract agreements.

f) Clause 7

Interest Rate - The Committee notes that section 140 of the Public Procurement and Asset Disposal Act, 2015 provides for interest on overdue amounts and liquidated damages. The Act places obligation on both the procuring entity and the supplier (contractor). In addition, the interest rate provided is the commercial lending rate as determined by the Central Bank of Kenya.

g) Clause 9

Declaration of pending Bills- In cases where this provision is applicable, all the pending payments regardless of who is owed should be declared.

h) Clause 10

Offences- the Committee notes that section 176(1)(c) of the PPAD Act, 2015 prohibits delay of payment without justifiable cause. Further, section 176(2) provides for applicable penalties in cases of contravention of section.

i) Clause 11

The Cabinet Secretary to develop Regulations- the Committee notes that the PPAD Act section 180 allows the Cabinet Secretary to develop regulations which would assist in smooth operations on matters procurement and asset disposal.

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

4.1 Observations

24. The Committee, having considered and analysed the Bill made the following observations-

- a) That the provisions of the Public Procurement and Asset Disposal Act and the Regulations thereunder adequately provide for the prompt payment by procuring entities for goods and services delivered. In particular regulation 139(2) of the Public Procurement and Asset Disposal Regulations provides that “*a procuring entity shall make prompt and timely payments to a contractor that meets its contractual obligations*”. Further, regulation 139(4) and (5) provide that “*unless the contract provides otherwise, a procuring entity shall pay interest on the overdue amounts and the interest to be paid shall be in accordance with the prevailing commercial bank rates*”.
- b) Additionally, regulation 150 provides for prompt payment in the following terms-

150. Prompt payment for performed contracts

(1) Subject to the availability of funds and after proper certification of the goods, services or works have been done, a procuring entity shall make prompt payments for all performed contracts including enterprises owned by youth, women or persons with disabilities and shall make payment within sixty days from the date of receipt of the invoice.

(2) Where delay of payments for goods, works and services performed are likely to happen, a procuring entity may facilitate invoice discounting arrangements with a financial institution for the purpose of advancing credit to the affected enterprises stated in paragraph (1).

(3) For the purpose of implementing the provisions of paragraph (1), a procuring entity shall implement the requirement through its budgets, procurement plans, tender notices and contract awards.

(4) A procuring entity shall submit a quarterly payment performance statistic to the National Treasury and the Authority demonstrating compliance with the obligation to pay invoices within sixty days for publication.

- c) That, while the Bill would be an effective legal tool to promote business and cure late payments, the public procuring entities entirely depends on the availability of funds from the exchequer. Further, the exchequer releases are dependent on revenue collection performance which at times fails to follow the planned projections.
- d) That the proposed interest rates to be charged to procurement entities as a result of late payments will be an additional cost and burdens to the existing pending bills; and
- e) That the proposed penalties under offences to accounting officers of procurement entities are exorbitant, noting that accounting officers have little control on availability of funds to meet the financial obligations as and when they fall due.

4.2 Recommendations

Having considered the submissions from stakeholders and analysed the Bill, the Committee recommends that the Senate rejects the Prompt Payment Bill 2022 (Senate Bills No. 8 of 2022) on account of similar provisions adequately provided under the Public Procurement and Asset Disposal Act and the attendant Regulations for the prompt payment by procuring entities for goods and services delivered.



MINUTES OF THE FIFTY-FOURTH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON WEDNESDAY, 31ST MAY, 2023 VIA ZOOM ONLINE PLATFORM FROM 8:30 A.M.

PRESENT

- | | |
|--|------------------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP- | Chairperson |
| 2. Sen. Maureen Tabitha Mutinda, MP | - Vice-Chairperson |
| 3. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 4. Sen. Mohamed Faki Mwinyihaji, MP | - Member (Chairing) |
| 5. Sen. Shakila Abdalla Mohamed, MP | - Member |
| 6. Sen. Richard Momoima Onyonka, MP | - Member |
| 7. Sen. Joyce Chepkoech Korir, MP | - Member |
| 8. Sen. Eddy Gicheru Oketch, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------------|----------|
| a) Sen. Tabitha Karanja Keroche, MP | - Member |
|-------------------------------------|----------|

SECRETARIAT

- | | |
|----------------------------|---------------------------|
| 1. Mr. Christopher Gitonga | - Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | - Clerk Assistant |
| 3. Ms. Lucy Radoli | - Legal Counsel |
| 4. Ms. Joan Mahinda | - Researcher |
| 5. Mr. Sekento Tonkei | - Researcher |
| 6. Mr. Barasa Nandemu | - Media Relations Officer |
| 7. Mr. Elijah Ichwara | - Audio Officer |
| 8. Mr. Jeff Mburu | - Attachee |

MIN/SEN/SCF&B/292/2023

PRELIMINARIES

The Chair called the meeting to order at 8:48 a.m. This was followed by a word of prayer and introductions.

MIN/SEN/SCF&B/293/2023

ADOPTION OF THE AGENDA

The agenda was adopted after it was proposed by Sen. Shakila Abdalla Mohamed, MP, and seconded by Sen. Eddy Gicheru Oketch, MP, as listed below-

1. Prayer;

2. Introduction;
3. Adoption of the agenda;
4. Confirmation of the 39th, 40th, 41st, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, and 51st sittings;
5. Matters arising from minutes of the previous meetings;
6. Consideration and adoption of the Report on the Prompt Payment Bill, 2022 (*Committee Paper No.36 (A)*)
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

MIN/SEN/SCF&B/294/2023 CONFIRMATION OF MINUTES

- a) The Minutes of the Thirty-Ninth sitting held on Tuesday, 9th May, 2023 at 10.00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. (Dr.) Boni Khalwale, CBS, MP, and seconded by Sen. Maureen Tabitha Mutinda, MP.
- b) The Minutes of the Fortieth sitting held on Tuesday, 9th May, 2023 at 1.30 p.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Maureen Tabitha Mutinda, MP, and seconded by Sen. (Dr.) Boni Khalwale, CBS, MP.
- c) The Minutes of the Forty-First sitting held on Tuesday, 9th May, 2023 at 3.40 p.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Maureen Tabitha Mutinda, MP, and seconded by Sen. (Dr.) Boni Khalwale, CBS, MP.
- d) The Minutes of the Forty-Third sitting held on Wednesday 17th May, 2023 at 9.00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Shakila Abdalla Mohamed, MP, and seconded by Sen. Eddy Gicheru Oketch, MP.
- e) The Minutes of the Forty-Fourth sitting held on Wednesday, 17th May, 2023 at 11.00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Eddy Gicheru Oketch, MP, and seconded by Sen. Shakila Abdalla Mohamed, MP.
- f) The Minutes of the Forty-Fifth sitting held on Thursday, 18th May, 2023 at 9.00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Shakila Abdalla Mohamed, MP, and seconded by Sen. Richard Momoima Onyonka, MP.
- g) The Minutes of the Forty-Sixth sitting held on Thursday, 18th May, 2023 at 11.40 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Eddy Gicheru Oketch, MP, and seconded by Sen. Richard Momoima Onyonka, MP.
- h) The Minutes of the Forty-Seventh sitting held on Thursday, 18th May, 2023 at 1.00 p.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Shakila Abdalla Mohamed, MP, and seconded by Sen. Richard Momoima Onyonka, MP.

- i) The Minutes of the Forty-Eighth sitting held on Friday, 19th May, 2023 at 9.00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Eddy Gicheru Oketch, MP, and seconded by Sen. (Dr.) Boni Khalwale, CBS, MP.
- j) The Minutes of the Forty-Ninth sitting held on Friday, 19th May, 2023 at 11.30 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Richard Momoima Onyonka, MP, and seconded by Sen. Eddy Gicheru Oketch, MP.
- k) The Minutes of the Fifty-First sitting held on Thursday, 25th May, 2023 at 10.00 a.m. were confirmed as a true record of the proceedings of the committee having been proposed by Sen. Eddy Gicheru Oketch, MP, and seconded by Sen. Shakila Abdalla Mohamed, MP.

MIN/SEN/SCF&B/295/2023 CONSIDERATION OF THE REPORT ON PROMPT PAYMENT BILL, 2022 (COMMITTEE PAPER NO. 36(A))

The Committee considered a report on the Prompt Payment Bill, 2023. The report highlighted overview of the Bill, summary of stakeholders’ submissions and thematic areas, Committee observations and recommendations.

The Committee further considered a response to Committee observations on the Bill, submitted by the Sponsor of the Bill, Sen. Mariam Sheikh Omar, MP. The Committee noted that the response did not address the concerns raised.

MIN/SEN/SCF&B/296/2023 ADOPTION OF THE REPORT ON PROMPT PAYMENT BILL, 2022

Having considered the response from the sponsor of the Bill, the Committee unanimously adopted the report on Prompt Payment Bill, 2022 having been proposed by Sen. Maureen Tabitha Mutinda, MP, and seconded by Sen. Joyce Chepkoech Korir, MP with the recommendation that the Senate should reject the Prompt Payment Bill 2022 (Senate Bills No. 8 of 2022) on the account that its provisions are adequately provided under the Public Procurement and Asset Disposal Act and the attendant Regulations.

MIN/SEN/SCF&B/297/2023 ADJOURNMENT

There being no other business the meeting adjourned at 9:42 a.m. Next meeting to be held on Tuesday, 6th June, 2023 at 9:00 a.m.

SIGNATURE.....DATE.....

**SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP
(CHAIRPERSON)**



**MINUTES OF THE THIRTY-SEVENTH MEETING OF THE SENATE
STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON
THURSDAY, 27TH APRIL, 2023 AT THE GROUND FLOOR BOARDROOM,
COUNTY HALL, PARLIAMENT BUILDINGS FROM 9.00 A.M.**

PRESENT

- | | |
|--|-------------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP- | Chairperson |
| 2. Sen. Maureen Tabitha Mutinda, MP | Vice-Chairperson |
| 3. Sen. Mohamed Faki Mwinyihaji, MP | Member |
| 4. Sen. Richard Momoima Onyonka, MP | Member |
| 5. Sen. Shakila Abdalla Mohamed, MP | Member |
| 6. Sen. Tabitha Karanja Keroche, MP | Member |
| 7. Sen. Eddy Gicheru Oketch, MP | Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|--------|
| 1. Sen. (Dr.) Boni Khalwale, CBS, MP | Member |
| 2. Sen. Joyce Chepkoech Korir, MP | Member |

SECRETARIAT

- | | |
|----------------------------|-------------------------|
| 1. Mr. Christopher Gitonga | Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | Clerk Assistant |
| 3. Ms. Lucy Radoli | Legal Counsel |
| 4. Mr. Kiminza Kioko | Fiscal Analyst |
| 5. Mr. Fredrick Ouma | Sergeant-at-Arms |
| 6. Mr. Elijah Ichwara | Audio Officer |
| 7. Ms. Joan Mahinda | Researcher |
| 8. Mr. Nandemu Barasa | Media Relations Officer |

IN ATTENDANCE

- | | |
|-----------------------------|-------------------------------|
| Sen. Mariam Sheikh Omar, MP | Sponsor – Prompt Payment Bill |
|-----------------------------|-------------------------------|

MIN/SEN/SCF&B/200/2023 **PRELIMINARIES**

The Chairperson called the meeting to order at 9:18 a.m. This was followed by a word of prayer.

MIN/SEN/SCF&B/201/2023 **ADOPTION OF THE AGENDA**

The agenda was adopted after it was proposed by Sen. Mohamed Faki Mwinyihaji, MP and seconded by Sen. Eddy Gicheru Oketch, MP, as listed below-

1. Prayer;
2. Introduction;
3. Adoption of the Agenda;
4. Confirmation of Minutes of the 34th, 35th and 36th sittings;
5. Matters arising from minutes of the previous meeting;
6. Meeting with Sen. Mariam Sheikh Omar, MP to deliberate on the Prompt Payment Bill, 2022 (*Committee Paper No. 19A*);
7. Consideration of the way forward concerning the legislative proposal on Public Procurement and Asset Disposal Act Amendment (*Committee Paper No. 34A*);
8. Consideration and adoption of the Report on the Prompt Payment Bill, 2022 (*Committee Paper No.36*);
9. Any Other Business; and
10. Date of the Next Meeting and Adjournment.

MIN/SEN/SCF&B/202/2023 **CONFIRMATION OF MINUTES**

- a) The Minutes of the Thirty-Fifth Sitting held on Monday, 24th April, 2023 at 11.00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Mohamed Faki Mwinyihaji, MP, and seconded by Sen. Maureen Tabitha Mutinda, MP.
- b) Confirmation of the minutes of the 34th and 36th were deferred.

MIN/SEN/SCF&B/203/2023 **MEETING WITH SEN. MARIAM SHEIKH OMAR, MP TO DELIBERATE ON THE PROMPT PAYMENT BILL, 2022 (COMMITTEE PAPER NO. 19A)**

The Chairperson welcomed Sen. Mariam Sheikh Omar, MP, the sponsor of the Prompt Payment Bill, 2022, to Committee's meeting. Thereafter, he briefed the Senator that during public participation, the Committee held consultative meetings with several stakeholders and received submissions on Prompt Payment Bill, 2022.

The Senator was informed that, upon consideration of the stakeholders' submissions the Committee noted the following issues-

- a) that most of the provisions in the Bill have adequately been addressed under the PPAD Act, 2015 and its Regulations approved by Parliament in 2020 as outlined hereunder-
 - i. Clause 2 on prescribed payment date- Bill provides that in matters where this date of payment is not provided, the date shall be within ninety days. Public Procurement and Asset Disposal Regulations (PPADR), 2020 Regulation 150(1) provides that procuring entity shall make payments within sixty days from the date of receipt of the invoice.

- ii. Clause 5 on Payment of debts on the basis of first in- first out- PPAD Regulation 150(7) provides that procuring entity shall make payment on a first come - first paid basis.
 - iii. Clause 7 on interest Rate - section 140 of the PPADA, 2015 provides for interest on overdue amounts and liquidated damages.
 - iv. Clause 10 on offences- PPAD Act, 2015 section 176(2) provides for applicable penalties in cases of contravention of the law.
 - v. Clause 11 on the Cabinet Secretary to develop Regulations- PPADA, 2015 section 180 allows the Cabinet Secretary to develop regulations.
 - vi. Clause 4 on waiver of interest rates- This provision is rigid and does not provide for negotiation or alternative resolutions.
- b) In addition to the above-mentioned concerns, the Committee made the following observations-
- i. That, while the Bill seeks to promote business and cure late payments, the public procuring entities entirely depends on the availability of funds from the exchequer. Further, the exchequer releases are dependent on revenue collection performance which at times fails to follow the planned projections.
 - ii. That the proposed interest rates to be charged to procurement entities as a result of late payments will be an additional cost and burdens to the existing menace of pending bills.
 - iii. That the proposed penalties under offences to accounting officers of procurement entities is exorbitant noting that these officers have little control on availability of funds to meet the financial obligation when they fall due.

Presentation by Sen. Mariam Sheikh Omar, MP

Upon invitation, Sen. Mariam Sheikh Omar, MP, implored Members of the Committee to consider suggesting amendments to the Bill rather than recommending withdrawal or rejection of the Bill.

Committee Resolution

After deliberations, the Committee resolved that, within seven (7) days, Sen. Mariam Sheikh Omar, MP, should provide a response to the Committee on issues raised concerning the Bill. Thereafter, the Committee will make a resolution on the way forward.

MIN/SEN/SCF&B/204/2023

**CONSIDERATION OF THE WAY FORWARD
CONCERNING THE LEGISLATIVE
PROPOSAL ON PUBLIC PROCUREMENT
AND ASSET DISPOSAL ACT AMENDMENT
(COMMITTEE PAPER NO. 34A)**

The Committee considered Paper No.34 A. The Committee was required to make a determination on the legislative proposal for transmission to the Speaker. The Committee noted the contents of the Paper.

After deliberation, the Committee resolved that the Legislative Proposal on the Public Procurement and Asset Disposal Act Amendment should not be published in the proposed form since it would amount to segregation and discrimination of the Persons with Disabilities (PWDs). Further, no satisfactory empirical data was provided by Sen. George Mbugua, MP, to inform the proposal.

MIN/SEN/SCF&B/205/2023 **CONSIDERATION AND ADOPTION OF THE REPORT ON THE PROMPT PAYMENT BILL, 2022 (COMMITTEE PAPER NO.36)**

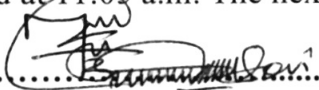
This agenda item was deferred to allow the Sponsor of the Bill to respond to the issues raised on the Bill by the Committee.

MIN/SEN/SCF&B/206/2023 **ANY OTHER BUSINESS**

- a) The Committee unanimously resolved to consider the responses received on statements sought by Senators and committed to the Committee in its subsequent meeting.
- b) Further, next meeting to include an agenda item on the consideration of the operations of the asset-based financial lending companies.
- c) The Committee was informed that some Members had requested for a breakfast meeting with the Committee to be apprised on the Equalization Fund Appropriation Bill, 2023. After deliberations, the Committee unanimously agreed that since the Bill was already at Second Reading stage, the Member of the Committee who will reply at this stage shall elaborate and expound on key issues raised by the Senators.
- d) The Committee noted with concern that the National Treasury had failed to respond to the Committee's request on submission of a framework indicating the timelines for settlement of arrears allocated to the Equalization Fund in the previous financial years despite raising the matter twice. The Committee resolved to send a reminder letter to National Treasury requesting for submission of the above framework within seven (7) days. Failure to which, the Cabinet Secretary will be summoned by the Committee.

MIN/SEN/SCF&B/207/2023 **ADJOURNMENT AND DATE OF NEXT MEETING**

The meeting adjourned at 11:05 a.m. The next meeting shall be by notice.

SIGNATURE..........DATE.....4/5/2023.....

SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP.

(CHAIRPERSON)



MINUTES OF THE THIRTY-SIXTH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON MONDAY, 24TH APRIL 2023 AT FOUR POINTS BY SHERATON AIRPORT IN MOUNT KENYA II CONFERENCE HALL FROM 2.00 P.M.

PRESENT

1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP-	Chairperson
2. Sen. (Dr.) Boni Khalwale, CBS, MP	- Member
3. Sen. Mohamed Faki Mwinyihaji, MP	- Member
4. Sen. Richard Momoima Onyonka, MP	- Member
5. Sen. Eddy Gicheru Oketch, MP	- Member

ABSENT WITH APOLOGY

1. Sen. Maureen Tabitha Mutinda, MP	- Vice-Chairperson
2. Sen. Shakila Abdalla Mohamed, MP	- Member
3. Sen. Joyce Chepkoech Korir, MP	- Member
4. Sen. Tabitha Karanja Keroche, MP	- Member

SECRETARIAT

1. Mr. Christopher Gitonga	- Clerk Assistant
2. Ms. Beverlyne Chivadika	- Clerk Assistant
3. Ms. Lucy Radoli	- Legal Counsel
4. Ms. Millicent Makina	- Fiscal Analyst
5. Mr. Fredrick Ouma	- Sergeant-at-Arms
6. Ms. Shirley Milimu	- Audio Officer
7. Mr. Sekento Tonkei	- Researcher
8. Ms. Joan Mahinda	- Researcher
9. Mr. Nandemu Barasa	- Media Relations Officer

MIN/SEN/SCF&B/194/2023 **PRELIMINARIES**

The Chairperson called the meeting to order at 2:07 p.m. This was followed by a word of prayer.

MIN/SEN/SCF&B/195/2023 **ADOPTION OF THE AGENDA**

The agenda for the afternoon retreat session was adopted after it was proposed by Sen. (Dr.) Boni Khalwale, CBS, MP, and seconded by Sen. Richard Momoima Onyonka, MP, as listed below-

- a) Consideration of requests by County Assemblies of Kakamega, Laikipia, Garissa, and Turkana on adjustment of their recurrent expenditure budget ceilings for the FY 2023/24.
- b) Consideration of stakeholders' submissions on the Prompt Payment Bill, 2022 (Senate Bills No.8 of 2022).
- c) Consideration of response to a statement concerning fraudulent activities in various Kenyan banks.

MIN/SEN/SCF&B/196/2023

CONSIDERATION OF REQUESTS BY COUNTY ASSEMBLIES OF KAKAMEGA, LAIKIPIA, GARISSA AND TURKANA ON ADJUSTMENT OF RECURRENT EXPENDITURE CEILING FOR FY 2023/24

The Committee considered the submissions and requests by the County Assemblies of Kakamega, Laikipia, Garissa, and Turkana on adjustment of recurrent expenditure budget

ceilings for the FY 2023/24.

After deliberation, the Committee resolved that the recurrent expenditure budget ceilings of these county assemblies be adjusted as follows-

- a) Kakamega County Assembly-an additional Kshs.65 million to be spent on acquisition of Hansard Equipment (at Kshs.50 million) and establishment of e-Parliament (at Kshs.15 million).
- b) Laikipia County Assembly-Additional Kshs.40, 131,941.20 for the FY 2023/24. Additional Kshs.10, 131,941.20 will be provided in the subsequent financial years. This ought to be used on payment of security personnel and purchase of office equipment for newly constructed ward offices.
- c) Garissa County Assembly-Additional amount of Kshs.30 million to enable the Assembly to acquire equipment for the newly constructed county assembly building. Further, an additional Kshs.18 million to cater for nominated members' mileage. CRA had categorized nominated members at the minimum monthly claimable reimbursement.
- d) Turkana County Assembly-Additional Kshs.121 million to be used on public participation and mileage allowance and personnel emolument. The Assembly had submitted to CRA Mileage data which was one-way.

MIN/SEN/SCF&B/197/2023

CONSIDERATION OF STAKEHOLDERS' SUBMISSION ON PROMPT PAYMENT BILL, 2022

The Committee considered submissions on the bill from various stakeholders as listed below-

- a) The National Treasury and Economic Planning.
- b) The Institute of Social Accountability (TISA).

- c) Council of Governors (COG).
- d) National, Gender and Equality Commission (NGEC).
- e) Commission on Revenue Allocation (CRA).
- f) The Association of Public Relations and Communication Management (APRECOM).
- g) Institute of Certified Public Accountants of Kenya (ICPAK)
- h) Controller of Budget (COB).

The Committee noted that-

- a) the Bill in its present form fails to recognize the primary contributor to pending bills which was delayed disbursement of funds as a result of low revenue collection performance.
- b) Most of the provisions in the Bill are already provided under the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Asset Disposal Regulations, 2020.
- c) In addition, the provision on penalties on accounting officers, and accrual of interest on late payments is too stringent or punitive to the accounting officers who entirely have no much control on disbursement of funds.

After deliberation, the Committee resolved to consider and adopt the report on the Prompt Payment Bill, 2022 (Senate Bills No.8 of 2022) in its subsequent meeting. Further, to recommend that the Senate should reject the Bill.

MIN/SEN/SCF&B/198/2023 **CONSIDERATION OF RESPONSE FROM
CBK ON STATEMENT ON FRAUDULENT
ACTIVITIES IN VARIOUS KENYAN BANKS**

This agenda item was deferred to the next meeting. Sen. Mutinda Tabitha, MP, who sought the statement from the House, had requested that the response be considered in the subsequent meeting. The Committee acceded to the request and deferred consideration of the response.

MIN/SEN/SCF&B/199/2023 **ADJOURNMENT AND DATE OF NEXT
MEETING**

There being no other business the meeting was adjourned at 4:10 p.m. The next meeting shall be held on Thursday, 27th April, 2023 at 9.00 a.m.

SIGNATURE..........DATE 4/5/2023.....

**SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP
(CHAIRPERSON)**



**MINUTES OF THE TWENTY-SIXTH MEETING OF THE SENATE
STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON
THURSDAY, 30TH MARCH, 2023 AT THE GROUND FLOOR BOARDROOM,
COUNTY HALL, PARLIAMENT BUILDINGS FROM 9.00 A.M.**

PRESENT

- | | | |
|-------------------------------------|---|-------------------------|
| 1. Sen. Maureen Tabitha Mutinda, MP | - | Vice-Chairperson |
| 2. Sen. Shakila Abdalla Mohamed, MP | - | Member |
| 3. Sen. Richard Momoima Onyonka, MP | - | Member |
| 4. Sen. Eddy Gicheru Oketch, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|--|---|-------------|
| 5. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP- | | Chairperson |
| 6. Sen. Tabitha Karanja Keroche, MP | - | Member |
| 7. Sen. (Dr.) Boni Khalwale, CBS, MP | - | Member |
| 8. Sen. Joyce Chepkoech Korir, MP | - | Member |
| 9. Sen. Mohamed Faki Mwinyihaji, MP | - | Member |

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | - | Clerk Assistant |
| 3. Ms. Lucy Radoli | - | Legal Counsel |
| 4. Mr. Kioko Kiminza | - | Fiscal Analyst |
| 5. Mr. Sekento Tonkei | - | Researcher |
| 6. Mr. Barasa Nandemu | - | Media Relations Officer |
| 7. Mr. Johnstone Simiyu | - | Audio Officer |

IN ATTENDANCE

A. THE OFFICE OF CONTROLLER OF BUDGET

- | | | |
|-------------------------|---|-----------------------------|
| 1. Dr. Margret Nyakango | - | Controller of Budget |
| 2. Mr. Stephen Masha | - | Deputy Controller of Budget |
| 3. Ms. Rhoda Rutto | - | Director Legal Services |

C. THE COUNCIL OF GOVERNORS

- | | | |
|--------------------------------|---|---------------------------|
| 1. Hon. FCPA Fernandes Barassa | - | Governor, Kakamega County |
|--------------------------------|---|---------------------------|

- | | | |
|------------------------|---|------------------------|
| 2. Hon. Simba Arati | - | Governor, Kisii County |
| 3. Mr. Eugene Lawi | - | Legal Officer |
| 4. Mr. Stephen Momanyi | - | Programme Officer |

MIN/SEN/SCF&B/136/2023 **PRELIMINARIES**

The Chairperson called the meeting to order at 9: 30 a.m. This was followed by a word of prayer and introductions.

MIN/SEN/SCF&B/137/2023 **ADOPTION OF THE AGENDA**

The agenda was adopted after it was proposed by Sen. Shakila Abdalla Mohamed, MP, and seconded by Sen. Eddy Gicheru Oketch, MP, as listed below-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the 17th, 19th, 20th, 22nd and 24th sittings;
4. Matters arising from the Minutes of the previous sittings;
5. Meeting with the-
 - a) Controller of Budget; and
 - b) Council of Governors
 to deliberate on the Prompt Payment Bill, 2022 (Senate Bills No.8 of 2022)
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN/SEN/SCF&B/138/2023 **CONFIRMATION OF MINUTES**

Confirmation of minutes of the 17th, 19th, 20th, 22nd and 24th sittings was deferred.

MIN/SEN/SCF&B/139/2023 **MEETING WITH STAKEHOLDERS TO CONSIDER THE PROMPT PAYMENT BILL, 2022**

a) Meeting with the Office of the Controller of Budget

Upon invitation, the Controller of Budget (CoB) submitted the following proposals and recommendations on the Bill-

- a) Purpose and objects-The Bill should expressly provide for its purpose and objects to ensure that the scope and intention of the Bill is clear.
- b) Scope of the Bill- The Bill should be expanded to provide for a legal framework for prompt payment and remittances of employee deductions to other institutions and on payments of dues from one government entity to another e.g land rates.
- c) Existing pending bills-The Bill should address the issue of existing pending bills and provide for their payment and a timeline for doing so.
- d) Accelerated payment- The Bill should include a provision on discounts by vendors for payments within specified shorter time.

Pending Bills

The CoB further informed the Committee that pending bills are caused by the following-

- i. Underperformance of Own Source Revenue leading to budget deficits and unfunded commitments.
- ii. Failure by spending entities to align their procurement plans to cash flow plans and approved budgets.
- iii. Delays in approval of Supplementary Budgets and failure to adopt prior year pending bills in the revised budget.
- iv. Delays by the National Treasury in disbursing funds to spending entities on a timely basis.
- v. Diversion of funds meant to pay pending bills to other activities or suppliers.
- vi. IFMIS-related challenges, such as the allowing of de-commitment of a valid IFMIS commitment to create room for more expenditure or voiding valid invoices and even substituting payees. The system is also frequently closed to prevent procurements.
- vii. Political interference and refusal by successive governments to honour existing obligations.

The CoB further provided the following recommendations to the above causes and challenges-

- i. Counties with pending bills should all finalise the verification process and submit a comprehensive list of pending bills for monitoring by the OCOB.
- ii. All eligible/verified pending bills should be budgeted as a first charge in the budget in line with Regulation 55 (2) (b) of the Public Finance Management (County Governments) Regulations, 2015.
- iii. Spending entities should prepare payment plans for the verified pending bills, and enforcement mechanisms should be followed to ensure adherence.
- iv. Incoming administrations should employ the First In First Out (FIFO) criterion to settle pending bills.
- v. The National Treasury should disburse funds to spending entities as contained in approved disbursement schedules and cash flow plans.
- vi. Independent verification of the current status of pending bills is to be done by the Office of the Auditor General or any other established PFM institution.

b) Meeting with the Council of Governors

Upon invitation, the Chairperson of the Technical Committee on Finance and Economic Affairs submitted the following views and proposals with regards to the Bill-

- a) Clause 2 be amended as follows-
 - i. Definition of the word “amount due” be amended by deleting the word “or” after the word invoice and replacing therefore with the word ‘as’ for clarity.
 - ii. Definition of the word “invoice” be amended by inserting the words “having met the contractual obligation” immediately after the word payment since invoicing must be based on meeting the contractual obligation.
 - iii. Definition of the word “prescribed payment date” (a) be amended by inserting the words “upon completion” immediately after the word “contract”. This is because the contractual obligation must be met before invoicing.
 - iv. Definition of the word “prescribed payment date” (b)(i) be amended to provide that the amount owed must be based on the completion and acceptance of works or completed and accepted delivery of the goods or provision services.
- b) Clause 3-There is need to amend by deleting the word “private entities” since the Bill defines procuring entity as a public entity involved in a procurement. Private entities have private agreements.
- c) Clause 4(1) on Prompt payment of accounts be amended by inserting the words “eligible bills, this being” immediately after the word “supplier”. Delayed payment of suppliers is sometimes due to different factors such as non-completion of works.
- d) Clause 4(2) be amended by inserting the words “without Justifiable reasons” immediately after the words “due date”. This is because, some payments are delayed due to justifiable reasons like delayed disbursement or contractual disagreements.
- e) Clause 4(5) be amended to provide for waiver of interest rate, by allowing entities to negotiate and agree with suppliers who have a claim for interest.
- f) Clause 10 on offences- The penalty for the offence is too punitive for the accounting officer. There is need to review the period of conviction and fine. For instance, fine not exceeding two million and for imprisonment not exceeding 3 years or both.

The Committee made the following observations-

- a) The National Treasury should ensure that funds are disbursed to counties without undue delay as stipulated in Article 219 of the Constitution and as per the disbursement schedule approved by the Senate.
- b) National Treasury prioritizes national government programmes when constrained with resources thus delaying disbursement of funds to counties and accumulation of pending bills at county level.

- c) Prescribing prompt payment may not be a solution to the perennial problem of pending bills.
- d) There is need for the Committee to schedule a meeting with the CoB to consider the disbursement of public funds to counties and county governments budget implementation reports for the past fiscal years.
- e) The Controller of Budget should expedite the process of approval of release of funds from the County Revenue Fund to spending or special purpose accounts.

After deliberation, the Committee thanked the CoB and the representatives from the Council of Governors for honouring Committee's invitation to deliberate on the Prompt Payment Bill.

MIN/SEN/SCF&B/140/2023 ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business the meeting was adjourned at 11:57 a.m. Next meeting to be held on Tuesday, 4th April, 2023 at 10:00 a.m.

SIGNATURE..........DATE.....5/4/2023.....

SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP.

(CHAIRPERSON)





**MINUTES OF THE TWENTY-THIRD MEETING OF THE SENATE
STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON
WEDNESDAY, 15TH MARCH, 2023 AT THE GROUND FLOOR BOARDROOM,
COUNTY HALL, PARLIAMENT BUILDINGS FROM 10.00 A.M.**

PRESENT

- | | | |
|--------------------------------------|---|----------------------------|
| 1. Sen. Maureen Tabitha Mutinda, MP | - | Vice-Chairperson |
| 2. Sen. (Dr.) Boni Khalwale, CBS, MP | - | Member (Chairing) |
| 3. Sen. Mohamed Faki Mwinyihaji, MP | - | Member |
| 4. Sen. Shakila Abdalla Mohamed, MP | - | Member |
| 5. Sen. Richard Momoima Onyonka, MP | - | Member |
| 6. Sen. Eddy Gicheru Oketch, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|--|---|--------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP- | | Chairperson |
| 2. Sen. Tabitha Karanja Keroche, MP | - | Member |
| 3. Sen. Joyce Chepkoech Korir, MP | - | Member |

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | - | Clerk Assistant |
| 3. Ms. Joan Mahinda | - | Researcher |
| 4. Ms. Lucy Radoli | - | Legal Counsel |
| 5. Mr. Barasa Nandemu | - | Media Relations Officer |
| 6. Mr. John Lekampule | - | Serjeant-at-Arms |
| 7. Mr. Daniel Kirwa | - | Serjeant-at-Arms |
| 8. Mr. Elijah Ichwara | - | Audio Officer |

IN ATTENDANCE

- | | | |
|--------------------------------|---|-------------------------|
| 1. Sen. Mariam Sheikh Omar, MP | | |
| 2. Ms. Sarah Nalienya | - | Researcher to Sen. Omar |

MIN/SEN/SCF&B/117/2023 PRELIMINARIES

The Chairperson called the meeting to order at 10: 30 a.m. This was followed by a word of prayer.

MIN/SEN/SCF&B/118/2023 ADOPTION OF THE AGENDA

The agenda was adopted after it was proposed by Sen. Mohamed Faki Mwinyihaji, MP, and seconded by Sen. Richard Momoima Onyonka, MP, as listed below-

1. Prayer;
2. Introductions;
3. Adoption of the Agenda;
4. Confirmation of Minutes of the 17th, 18th, 19th, 20th, 21st and 22nd sitting;
5. Matters arising from the Minutes of the previous sittings;
6. Meeting with Sen. Mariam Omar Sheikh, MP, to deliberate on the Prompt Payment Bill, 2022 (Senate Bills No.8 of 2022) (*Committee Paper No.19*);
7. Consideration of the Report on the induction of the Committee that was held between 7th to 10th February, 2023 in Mombasa County Committee (*Committee Paper No.20*);
8. Any Other Business; and
9. Date of the Next Meeting and Adjournment

MIN/SEN/SCF&B/119/2023 CONFIRMATION OF MINUTES

Confirmation of minutes of the 17th, 18th, 19th, 20th, 21st and 22nd sitting was deferred.

MIN/SEN/SCF&B/120/2023 MEETING WITH SEN. MARIAM SHEIKH OMAR, MP, TO DELIBERATE ON THE PROMPT PAYMENT BILL, 2022 (SENATE BILLS NO.8 OF 2022) (COMMITTEE PAPER NO. 19)

The Committee considered Committee Paper No. 19 on meeting with the sponsor of the Prompt Payment Bill, 2022, Sen. Mariam Sheikh Omar, MP, to deliberate on the issues that arose from the consultative meetings with stakeholders like the Commission on Revenue Allocation and the Institute of Certified Public Accountants of Kenya (ICPAK).

The Committee noted that-

- a) The provisions in the Bill on the charge of interest rate and conviction or fining of the accounting officers may not help resolve the issue of pending bills in the public sector.
- b) There are other underlying causes of pending bills apart from delayed exchequer releases.
- c) There is a need for harmonization of other already existing laws that provide for prompt payment such as the Public Procurement and Disposal Act (PPADA), the Public Finance and Management Act, 2012 (PFMA), and regulation 150 of the Public Procurement and Asset Disposal Regulations, 2020 (PPADR).

After deliberations, the Committee resolved to invite key stakeholders, that is, the Controller of Budget, the Council of Governors, and the National Treasury to submit views on the Prompt Payment Bill, 2022. Thereafter, re-invite Sen. Mariam Omar Sheikh,

MP, to Committee's subsequent meeting to deliberate on the Bill from a point of information.

MIN/SEN/SCF&B/121/2023

**CONSIDERATION OF THE REPORT ON THE
INDUCTION OF THE COMMITTEE THAT
WAS HELD FROM 7TH TO 10TH FEBRUARY,
2023 (COMMITTEE PAPER NO. 20)**

The Committee considered the report on the induction of the Committee that was held from 7th to 10th February, 2023 in Mombasa County. The report comprised of-

- a) Objectives and the expected outcome of the induction.
- b) Summary of presentation from the stakeholders –
 - i. The National Treasury;
 - ii. Parliamentary Budget Office;
 - iii. Controller of Budget;
 - iv. Commission on Revenue Allocation; and
 - v. The Institute of Certified Public Accountants Kenya (ICPAK)
- c) Presentation on consideration of County Governments Additional Allocation Cash Disbursement Schedule.
- d) Committee observations, resolutions and the way forward.
- e) The Committee's Second Session work plan (2023).

The Committee adopted the report on induction of the Committee having been proposed by Sen. Shakila Abdalla Mohamed, MP, and seconded by Sen. Maureen Tabitha Mutinda, MP.

MIN/SEN/SCF&B/122/2023

ANY OTHER BUSINESS

The Committee resolved to reschedule the meeting that had been scheduled for Thursday, 16th March, 2023 from 10:00 a.m. to 9.00 a.m. to allow the Members to attend other committee meetings scheduled at the same time.

MIN/SEN/SCF&B/123/2023

ADJOURNMENT

The meeting adjourned at 11:34 a.m. Next meeting to be held on Thursday, 16th March, 2023 at 9:00 a.m.

SIGNATURE..........DATE 16/03/2023.....

SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP.

(CHAIRPERSON)



**MINUTES OF THE TWENTY-SECOND MEETING OF THE SENATE
STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON
THURSDAY, 9TH MARCH, 2023 AT THE GROUND FLOOR BOARDROOM,
COUNTY HALL, PARLIAMENT BUILDINGS FROM 11.00 A.M.**

PRESENT

- | | |
|--|--------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP- | Chairperson |
| 2. Sen. Mohamed Faki Mwinyihaji, MP - | Member |
| 3. Sen. Shakila Abdalla Mohamed, MP - | Member |

ABSENT WITH APOLOGY

- | | |
|--|-------------------------|
| 4. Sen. Maureen Tabitha Mutinda, MP - | Vice-Chairperson |
| 5. Sen. (Dr.) Boni Khalwale, CBS, MP - | Member |
| 6. Sen. Tabitha Karanja Keroche, MP - | Member |
| 7. Sen. Joyce Chepkoech Korir, MP - | Member |
| 8. Sen. Richard Momoima Onyonka, MP - | Member |
| 9. Sen. Eddy Gicheru Oketch, MP - | Member |

SECRETARIAT

- | | |
|------------------------------|-------------------------|
| 1. Mr. Christopher Gitonga - | Clerk Assistant |
| 2. Ms. Beverlyne Chivadika - | Clerk Assistant |
| 3. Mr. Sekento Tonkei - | Researcher |
| 4. Ms. Lucy Radoli - | Legal Counsel |
| 5. Mr. Barasa Nandemu - | Media Relations Officer |
| 6. Ms. Felistus Mutune - | Media Relations Officer |
| 7. Mr. Fredrick Ouma - | Serjeant-at-Arms |
| 8. Ms. Shirley Milimu - | Audio Officer |

IN ATTENDANCE

A. The Commission on Revenue Allocation

- | | |
|---------------------------|------------------|
| 1. Mr. Koitamet Olekina - | Vice-Chairperson |
| 2. Dr. Isabel Waiyaki - | Commissioner |
| 3. Mr. Jonas Kuko - | Commissioner |
| 4. Ms. Hadija Juma - | Commissioner |
| 5. Hon. Fatuma Gedi - | Commissioner |

- | | | |
|------------------------|---|-------------------------|
| 6. CPA. James Katule | - | CEO |
| 7. Ms. Sheila Yicke | - | Director, Legal Affairs |
| 8. Ms. Jecinter Hezron | - | Stakeholder Engagements |

MIN/SEN/SCF&B/111/2023 **PRELIMINARIES**

The Chairperson called the meeting to order at 11: 08 a.m. This was followed by a word of prayer.

MIN/SEN/SCF&B/112/2023 **ADOPTION OF THE AGENDA**

The agenda was adopted after it was proposed by Sen. Mohamed Faki Mwinyihaji, MP, and seconded by Sen. Shakila Abdalla Mohamed, MP, as listed below-

1. Prayer;
2. Introductions;
3. Adoption of the Agenda;
4. Confirmation of Minutes of the 17th, 18th, 19th, and 20th sitting;
5. Matters arising from the Minutes of the previous sittings;
6. Meeting with CRA to consider the Prompt Payment Bill, 2022 (Senate Bills No.8 of 2022) (*Committee Paper No.18*).
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment

MIN/SEN/SCF&B/113/2023 **CONFIRMATION OF MINUTES**

Confirmation of minutes the 17th, 18th, 19th, and 20th sitting was deferred.

MIN/SEN/SCF&B/114/2023 **MEETING WITH COMMISSION ON REVENUE ALLOCATION TO DELIBERATE ON THE PROMPT PAYMENT BILL, 2022 (SENATE BILLS NO.8 OF 2022)**

Upon invitation, the representative from the Commission made the following proposals on the Prompt Payment Bill, 2022-

- a) Proposed an amendment to change the duration for payment from ninety (90) days to sixty (60) days to align it with Regulation 150 (1) of the Public Procurement and Asset Disposal Regulations (PPADR), 2020.
- b) Clause 3 be amended by deleting “*private entities*” to align with existing laws and to enhance the enforceability of the law. Private entities are included within the scope of the Bill which is subject of contract law.
- c) Clause 4: Sub-clause 4 (c) should be reviewed since ‘*the full supplier*’ is vague as it is unclear who such a full supplier is.
 - Subclause 4(5) needs to be redrafted since it is not clear.

- d) Clause 5 be mended by inserting that IFMIS or any other e-procurement platform in place to aid in prioritization of bills that are due for payment on a “first come first serve” basis.
- e) Sub-clause 9 (1) be amended by substituting the words ‘small or micro enterprise’ with ‘supplier’ since Bill covers all types of suppliers not just small or micro enterprises
- f) Clause 10 on offences- the fine proposed is different from the fine indicated under objects and memorandum of the Bill. There is need for consistency.

The Committee noted that-

- a) MDAs, County Governments, and other spending units prepare annual procurement plans within the approved budget and in accordance with the law. However, delayed exchequer releases derail implementation of such plans.
- b) The Bill is punitive to the procuring entities, especially the accounting officer since payment for goods and services procured is dependent on exchequer releases.
- c) There are provisions in other laws which address the issue of prompt payment at both levels of government, but they are often breached whenever payment of bills is delayed. These laws include the Public Procurement and Disposal Act (PPADA), the Public Finance and Management Act, 2012 (PFMA), the National Treasury Circular No. 10/2020 dated 16th June 2020 on prioritization of pending bills and regulation 150 of the Public Procurement and Asset Disposal Regulations, 2020 (PPADR).
- d) The problem of pending bills is not due to the lack of legislative instruments but rather the lack of enforceability of the above aforementioned laws.
- e) The issue of multi-year projects which is a major contributor to pending bills need to be reconsidered to provide better ways to deal with related transactions.

MIN/SEN/SCF&B/115/2023

ANY OTHER BUSINESS

- a) Following the statement sought by Sen. Tabitha Mutinda, MP regarding claims of fraudulent activities involving various banks, there was consultation with the Chairperson of the National Assembly Departmental Committee on Finance and national Planning and there was a proposal to conduct a joint investigation on the matter. The request for joint sitting was forwarded to the Speaker for approval. If approved, the two Committees shall meet and agree on the terms of reference.
- b) There was a proposal to reschedule the participation in the role of Parliament in public sector management seminar to 3rd – 7th April, 2023 in United Arab Emirates.

MIN/SEN/SCF&B/116/2023

ADJOURNMENT

There being no other business, the meeting adjourned at 12:05 p.m. Next meeting to be held on Wednesday, 15th March, 2023 at 10:00 a.m.

SIGNATURE..........DATE.....12/4/2023.....

SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP.

(CHAIRPERSON)



MINUTES OF THE TWENTY-FIRST MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON THURSDAY, 9TH MARCH, 2023 AT THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS FROM 9.00 A.M.

PRESENT

- | | |
|--|--------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP- | Chairperson |
| 2. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 3. Sen. Richard Momoima Onyonka, MP | - Member |
| 4. Sen. Mohamed Faki Mwinyihaji, MP | - Member |
| 5. Sen. Shakila Abdalla Mohamed, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------------|--------------------|
| 6. Sen. Maureen Tabitha Mutinda, MP | - Vice-Chairperson |
| 7. Sen. Tabitha Karanja Keroche, MP | - Member |
| 8. Sen. Joyce Chepkoech Korir, MP | - Member |
| 9. Sen. Eddy Gicheru Oketch, MP | - Member |

SECRETARIAT

- | | |
|----------------------------|---------------------------|
| 1. Mr. Christopher Gitonga | - Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | - Clerk Assistant |
| 3. Mr. Sekento Tonkei | - Researcher |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Mr. Barasa Nandemu | - Media Relations Officer |
| 6. Ms. Felistus Mutune | - Media Relations Officer |
| 7. Mr. Fredrick Ouma | - Serjeant-at-Arms |
| 8. Ms. Shirley Milimu | - Audio Officer |

IN ATTENDANCE

A. The Institute of Certified Public Accountants of Kenya

- | | |
|-----------------------|---|
| 1. FCPA. Andrew Tanui | - Convener, Legislative Affairs Committee |
| 2. CPA. Ken Nyamolo | - Member, Legislative Affairs Committee |
| 3. CPA. John Omanwa | - Member, Legislative Affairs Committee |
| 4. Mr. Elias Wakhisi | - Senior Manager, Public Policy |

B. The Kenya Private Sector Alliance

1. Ms. Lorna Chepngetich - Advocate

MIN/SEN/SCF&B/105/2023 PRELIMINARIES

The Chairperson called the meeting to order at 9.30 a.m. This was followed by a word of prayer.

MIN/SEN/SCF&B/106/2023 ADOPTION OF THE AGENDA

The agenda was adopted after it was proposed by Sen. Mohamed Faki Mwinyihaji, MP, and seconded by Sen. Richard Momoima Onyonka, MP, as listed below-

1. Prayer;
2. Introductions;
3. Adoption of the Agenda;
4. Confirmation of Minutes of the 17th, 18th, 19th, and 20th sitting;
5. Matters arising from the Minutes of the previous sittings;
6. Meeting with stakeholders to consider the Prompt Payment Bill, 2022 (Senate Bills No.8 of 2022) (*Committee Paper No.18*)-
 - a) ICPAK;
 - b) KEPSA; and
 - c) National Treasury.
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment

MIN/SEN/SCF&B/107/2023 CONFIRMATION OF MINUTES

Confirmation of minutes the 17th, 18th, 19th, and 20th sitting was deferred.

MIN/SEN/SCF&B/108/2023 MEETING WITH STAKEHOLDERS TO DELIBERATE ON THE PROMPT PAYMENT BILL, 2022 (SENATE BILLS NO.8 OF 2022)

1. Meeting with ICPAK

Upon invitation, the representatives from the Institute of Certified Accountants of Kenya (ICPAK) presented their proposals, recommendations, and justifications on the Prompt Payment Bill, 2022 to Committee as summarized below-

- a) Prompt Payment Bill is a good move for the government to solve the problem of pending bills.
- b) That while preparing their submission, they made reference to the following laws in other jurisdictions-
 - i. The US Federal Prompt Payment Act (PPA)
 - ii. The Canadian Prompt Payment and Construction Law Reforms

- iii. The Irish Prompt Payment of Accounts Act, 1997
- c) Clause 4(3): There is need for clarity on the computation of interest due since payment in public sector takes a while and is affected by delayed exchequer releases and delayed disbursements to spending units.
 - d) Clause 4(5): The provision is rigid and does not allow for negotiation and alternative resolution of the matter. There is need to amend the subclause by introducing a new subclause in order to allow the supplier, the right to accept payment without interest.
 - e) Clause 5(2): There is need to be clear on the extent to which the procuring entity can clear old debts. A new sub-clause 5(3) be introduced to provide that procuring entities shall pay debts on the basis of first-in, first-out". This requires configuration of the IFMIS.
 - f) Clause 7(2): Interest rate calculation on the basis of the Central Bank rate should be clearly specified. There is need for a specific formula or rate.
 - g) Clause 9 (1): Be amended to allow the supplier to also declare all pending payments to private entities.
 - h) Clause 10: Be amended to be consistent with Section 177 of the Public Procurement and Asset Disposal Act 2015. Further, there is need to define what "negligently", "maliciously" or "without reasonable" means.
 - i) There are a number of fundamental issues that need to be addressed among them-
 - Underlying causes of delay especially in the public sector. In many cases, delays have been caused by delayed exchequer releases and disbursement to the spending units.
 - Basis of Accounting: Bill does not consider IPSAS accrual accounting but addresses IPSAS cash accounting yet the government is moving to IPSAS accrual.
 - Exchequer releases and fiscal responsibility: National Treasury should strive to release funds to the MDAs, County Governments, and other spending units based on their work plans and cash flow projections as presented at the beginning of the financial year
 - Legislative oversight: Parliament and County Assemblies through respective oversight committees should develop mechanisms for expediting the adoption and approval of OAG reports to facilitate the implementation of findings therein.
 - County Governments: pending bills should be included in Counties' medium-term fiscal frameworks and subjected to review through the proposed intergovernmental mechanism.

2. Meeting with KEPSA

The representative from KEPSA informed the Committee that they fully support the Bill since it seeks to protect private-sector businesses. However, the representative appeared before the Committee without any written submission or proposals on the Bill

The Chairperson appreciated and informed the representative that next time KEPSA should take Committee's communication seriously and honour such invitation.

After deliberations on the Bill, the Committee made the following observations-

- a) The provision requiring the procuring entity to pay interest to the supplier after the due date may lead to increased litigations. Additionally, there is need to provide a standard interest rate.
- b) Lack of prudent fiscal discipline on the spending of public funds at both levels of government results in increased pending bills. Both the national and county governments should ensure compliance with the approved budgets and ceilings during budget implementation.
- c) There is need for enforcement of the existing laws such as the PFM Act, 2012, and the Public Procurement and Asset Disposal Act, 2015, and enhanced oversight to ensure that National Treasury strictly adheres to the County Governments' cash disbursement schedules approved by the Senate.


MIN/SEN/SCF&B/109/2023 **ANY OTHER BUSINESS**

The Committee considered a letter from the National Treasury Ref: MOF/TE 200/01 'E' (73), dated 8th March, 2023, in response to the Committee's letter Ref. No. SEN/DSEC/F&B/CORR/2023/25, dated 3rd March, 2023, requesting for rescheduling of the meeting with the Committee to submit views on Prompt Payment Bill, 2022, from Thursday, 9th March, 2023 to Wednesday, 5th April, 2023.

The Committee noted that Standing Order 148 (1) of the Senate Standing Orders provides that a Committee to which a Bill is committed is required to table a report in the Senate within 30 calendar days upon First Reading. The Committee, therefore, resolved to request the National Treasury to submit any representations by way of written memoranda that they may have on the Bill on or before Wednesday, 15th March, 2023.

MIN/SEN/SCF&B/110/2023 **ADJOURNMENT**

The meeting adjourned at 10:45 a.m. The next meeting is to be held on Thursday, 9th March, 2023 at 11:00 a.m.

SIGNATURE..........DATE.....16/03/2023.....

SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP.

(CHAIRPERSON)



MINUTES OF THE TWENTIETH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON WEDNESDAY, 8TH MARCH, 2023 AT THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS FROM 10.00 A.M.

PRESENT

- | | |
|---|--------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGII, MP- | Chairperson |
| 2. Sen. Tabitha Karanja Keroche, MP | Member |
| 3. Sen. Mohamed Faki Mwinyihaji, MP | Member |
| 4. Sen. Shakila Abdalla Mohamed, MP | Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|-------------------------|
| 1. Sen. Maureen Tabitha Mutinda, MP | Vice-Chairperson |
| 2. Sen. (Dr.) Boni Khalwale, CBS, MP | Member |
| 3. Sen. Joyce Chepkoech Korir, MP | Member |
| 4. Sen. Richard Momoima Onyonka, MP | Member |
| 5. Sen. Eddy Gicheru Oketch, MP | Member |

SECRETARIAT

- | | |
|----------------------------|-------------------------|
| 1. Mr. Christopher Gitonga | Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | Clerk Assistant |
| 3. Ms. Lucy Makara | Deputy Director, PBO |
| 4. Ms. Lucy Radoli | Legal Counsel |
| 5. Mr. Sekento Tonkei | Researcher |
| 6. Mr. Fredrick Ouma | Serjeant-at-Arms |
| 7. Ms. Elijah Ichwara | Audio Officer |
| 8. Ms. Felistus Mutune | Media Relations Officer |

IN ATTENDANCE

- | | |
|----------------------|---|
| 1. James Ngao Mutuku | – Clerk Assistant, County Assembly of Makueni |
|----------------------|---|

MIN/SEN/SCF&B/99/2023

PRELIMINARIES

The Chairperson called the meeting to order at 10.27 a.m. This was followed by a word of prayer.

MIN/SEN/SCF&B/100/2023 **ADOPTION OF THE AGENDA**

The agenda was adopted after it was proposed by Sen. Mohamed Faki Mwinyihaji, MP, and seconded by Sen. Shakila Abdalla Mohamed, MP as listed below-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the 11th, 17th, 18th, and 19th sitting;
4. Matters arising from the Minutes of the previous sittings;
5. Consideration of responses to statements on (*Committee Paper No.16*)-
 - a. alleged Kshs.1.31billion fine imposed by the Chinese Bank on the Government of Kenya (GoK) for defaulting on the Standard Gauge Railway (SGR) Predatory by Sen. Osotsi Godfrey Atieno, MP;
 - b. austerity measures imposed by the International Monetary Fund (IMF) on developing countries including Kenya by Sen. Hamida Kibwana, MP; and
 - c. predatory asset-based lending by micro-finance lending companies in Kenya by Sen. Eddy Oketch Gicheru, MP.
6. Consideration of Prompt Payment Bill, 2022 (Senate Bills No.8 of 2022) (*Committee Paper No.17*);
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

MIN/SEN/SCF&B/101/2023 **CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

The Minutes of the Eleventh sitting held on Thursday, 9th February, 2023 at 11.50 a.m. were confirmed as a true record of the proceedings of the committee having been proposed by Sen. Mohamed Faki Mwinyihaji, MP, and seconded by Sen. Shakila Abdalla Mohamed, MP.

MIN/SEN/SCF&B/102/2023 **CONSIDERATION OF THE RESPONSES TO STATEMENTS**

The Committee considered *Committee Paper No. 16* regarding the responses to the following statements-

- a) alleged Kshs.1.31billion fine imposed by the Chinese Bank on the Government of Kenya (GoK) for defaulting on the Standard Gauge Railway (SGR) Predatory by Sen. Osotsi Godfrey Atieno, MP.
- b) austerity measures imposed by the International Monetary Fund (IMF) on developing countries including Kenya by Sen. Hamida Kibwana, MP; and
- c) predatory asset-based lending by micro-finance lending companies in Kenya by Sen. Eddy Oketch Gicheru, MP.

The Committee considered and noted the contents of the responses and resolved to report to the Senate on the status of the aforementioned statements through the Committee's quarterly report.

MIN/SEN/SCF&B/103/2023

CONSIDERATION OF THE PROMPT
PAYMENT BILL, 2022 (SENATE BILLS NO.8
OF 2022)

The Committee considered *Committee Paper No. 17* on the Prompt Payment Bill, 2022.

The Committee noted that-

- a) the Prompt Payment Bill, 2022 (Senate Bills No.8 of 2022), was read for a First Time in the Senate on Thursday, 16th February, 2023, and thereafter, stood committed to the Committee to facilitate public participation;
- b) the principal object of this Bill is to put in place a legal framework to facilitate prompt payment for the supply of goods, works, and services procured by government entities both at the national and county level;
- c) the Bill seeks to solve the problem of late payments to the suppliers of goods and services and at a macro level to act as an impetus for growth of business and economic development.

Upon consideration of the Bill, the Committee made the following observations-

- a) There is no provision on the rights of the procuring entities.
- b) The timelines provided for the rectification of invoices is too short to achieve.
- c) The grace period for meeting the financial obligation may not be tenable because-
 - i. Ordinarily, the period varies depending on the contract terms.
 - ii. Payment of such obligations by public entities is dependent on exchequer releases
- d) The provision of charging the interest may be misused by scrupulous suppliers to exploit public entities.

After deliberations, the Committee resolved to invite the sponsor of the Bill, Sen, Mariam Sheikh Omar, MP, to deliberate on the proposed law.

MIN/SEN/SCF&B/98/2023

ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business, the meeting adjourned at 11:20 a.m. The Next meeting is to be held on Thursday, 9th March, 2023 at 9.00 a.m.

SIGNATURE..........DATE.....12/4/2023.....

SEN. MAUREEN TABITHA MUTINDA, MP

(VICE-CHAIRPERSON)

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At a sitting of the Senate held on Thursday, 16th February, 2023 the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, the Standing Committees now invite interested members of the public to submit any representations that they may have on the Bills.

The representations may be made by way of submission of written memoranda on email to the Clerk of the Senate on the address: clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received **on or before Tuesday, 14th March, 2023.**

Next >

Bill	Committee Referred To	Email
a) The Prompt Payment Bill, 2022 (Senate Bills No. 8 of 2022)	Standing Committee on Finance and Budget	financebudgetcomm.senate@parliament.go.ke
b) The County Licensing (Uniform Procedure) Bill, 2022 (Senate Bills No. 9 of 2022)	Standing Committee on Trade, Industrialization and Tourism	tradeindtourism.senate@parliament.go.ke
c) The Employment (Amendment) Bill, 2022 (Senate Bills No. 11 of 2022)	Standing Committee on Labour and Social Welfare	laboursocialwelfarecomm.senate@parliament.go.ke

The Bills may be accessed on the Parliament Website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

**J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

OFFICE OF THE CONTROLLER OF BUDGET



Tel: 020 2211068, 0738466721, 0709910000
Email: cob@cob.go.ke/Info@cob.go.ke
Website: www.cob.go.ke

Ref: OCOB/SEN/002/VOL.4(7)



Bima House, 12th Floor
Harambee Avenue
P.O. Box 33616-00100
Nairobi Kenya

27th March, 2023

Mr. Jeremiah Nyegenye, CBS

Clerk of the Senate Parliamentary Service Commission

P.O. Box 41842-00100

NAIROBI.

Dear *Jeremiah,*

**RE: OFFICE OF THE CONTROLLER OF BUDGET COMMENTS ON THE
PROMPT PAYMENT BILL, 2022 (SENATE BILLS NO. 8 OF 2022)**

We refer to your letter Ref. SEN/DSEC/F&B/CORR/2023/47 dated 17th March, 2023 requesting our comments on the Prompt Payment Bill, 2022 (Senate Bills No. 8 of 2022).

We have now reviewed the proposed Prompt Payment Bill, 2022 (Senate Bills No. 8 of 2022). The office supports the enactment of the Prompt Payment Bill and notes that enacting the Bill will go a long way in addressing the issue of Pending Bills which has adversely affected our economy.

Attached herein please find our comments as requested. We thank you for your continued support.

Yours *sincerely,*

CPA Stephen Masha, EBS

FOR: CONTROLLER OF BUDGET

Encl. (1)

OFFICE OF THE CONTROLLER OF BUDGET



Tel: 020 2211068, 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

Date: 27/03/2023

COMMENTS ON THE PROMPT PAYMENT BILL, 2022 (SENATE BILLS NO.8 OF 2022)

Sno.	Issue	Recommendations
1.	Purpose and Objects	❖ The Bill should expressly provide for its purpose and objects. This will ensure that the scope and intention of the Bill is clear.
2.	Scope of the Bill	❖ The bill should be expanded to provide for a legal framework for prompt payment and remittances of employee deductions to other institutions and on payments of dues from one government entity to another e.g land rates.
3.	Existing Pending Bills	❖ The bill should address the issue of existing pending bills and provide for their payment and a timeline for doing so.
4.	Accelerated Payment	❖ The bill should consider offering discounts on early payment. Vendors should be encouraged to offer discounts if paid within a specified shorter time.
5.	Payment priorities to Small and Medium Enterprises	❖ Consider vendor segmentation where payments to Small and Medium Enterprises are made within a thirty (30) day payment period and ninety (90) days for large contractors.
6.	Funding of Interest payments	❖ The bill should provide for funding provisions of interest and penalties payment e.g. late interest payment should be paid from funds available for the program.
7.	Computation of Interest	❖ The bill should specify whether the interest provided under Clause 7(2) is calculated on simple or compounded rates.

Sno.	Issue	Recommendations
8.	Reporting on interest payment	❖ At the end of each Financial Year, all Accounting Officers of procuring entities should submit reports on the total amount of interest paid Controller of Budget and National Treasury.
9.	Exceptions to Prompt Payments	❖ The bill should consider exceptions to Prompt Payments. These may include; payments related to emergencies, or military contingency operations.



COUNCIL OF GOVERNORS

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Our Ref: COG/8/5A/ Vol.9 (66)

8th March 2023

Jeremiah M. Nyegenye, CBS
Clerk of the Senate
Parliament of Kenya
NAIROBI

Dear Mr. Nyegenye

SUBMISSION OF VIEWS ON THE PROMPT PAYMENT BILL, 2022 (SENATE BILLS NO.8 OF 2022)

We refer to the above subject and your letter Ref. SEN/DSEC/F&B/CORR/2023/24 dated 2nd March 2023.

Based on the principle of consultation and cooperation as envisaged in the Constitution, the Council has reviewed the Prompt Payment Bill, 2022 and would like to forward our written memorandum attached herewith for your consideration.

We appreciate your continued support.

Yours sincerely

Mary Mwiti
Chief Executive Officer

Encls:



COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE PROMPT PAYMENT BILL, 2022

TO

THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET

FROM

THE COUNCIL OF GOVERNORS



COUNCIL OF GOVERNORS

THE COUNCIL OF GOVERNORS,

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Article 6 (2)

In further recognition of the need to ensure that all legislation is cognizant of devolved governments; and

Aware of the need for coordinated action between the National and County Governments to ensure that legislation properly responds to the key issues, and further reflects the spirit and purpose of devolution.

Having reviewed the Prompt Payment Bill, 2022, the Council of Governors on behalf of the 47 County Governments submits the proposals highlighted herein below for consideration:

A. GENERAL COMMENTS

The Council of Governors appreciates that the principal object of this Bill is to put in place a legal framework to facilitate prompt payment for supply of goods, works and services procured by government entities both at the national and county level. While this is a progressive legislation to provide for timely processing of payment, we observe that the Bill has not addressed issues that may deter prompt payment. They include but not limited to:

- Delayed disbursement of funds to the County Governments
- Contractual disagreements
- Revenue shortfalls by the Counties
- Non-completion of work by contractors/suppliers
- Other unforeseen factors

Therefore, before the enactment of the legislation there is a dire need to first ensure enforcement of Article 219 of the Constitution of Kenya, 2010 as read together with Section 17 (6) of the Public Finance Management Act, 2012 on timely



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disbursement of funds to Counties before legislating on prompt payment. The Counties have grappled with the perennial issue of delays in disbursements from the National Treasury leading to the accumulation of bills in the Counties.

- ✓ The Council also notes with concern that the Bill has introduced payment of interest for failure to pay within the stipulated timelines without taking into consideration the issues that may deter prompt payment. Accruing interest under such circumstances will lead to further accumulation of bills, hence counterproductive.

B. SPECIFIC CONCERNS

Following our review of the Prompt Payment Bill, the Council proposes the following specific amendments to the Bill;

Clause/Section	Provision	CoG's proposal	Rationale/Justification
Clause 2 Interpretation	“amount due” means the principal sum owing based on a commercial transaction, including the applicable taxes, duties, levies or charges specified in the invoice, or provided for in the contract and relating to the said transaction;	Amend to read: “amount due” means the principal sum owing based on a commercial transaction, including the applicable taxes, duties, levies or charges specified in the invoice as provided for in the contract and relating to the said transaction;	What is invoiced must be captioned in the contract or attendant memorandum if applicable.



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<p>“invoice” means a written document, including an electronic document, provided by a supplier requesting for payment for the supply of goods, works or services to or on the directions of a purchaser;</p>	<p>Amend to read as follows:</p> <p>“invoice” means a written document, including an electronic document, provided by a supplier requesting for payment, having met the contractual obligation for the supply of goods, works or services</p>	<p>Invoicing must be based on meeting the Contractual obligation</p>
<p>“prescribed payment date” means in relation to a commercial contract – (a) the date on which payment is due under the terms of any written contract for the supply of goods, works or services, or</p>	<p>Amend to read as follows: (a) the date on which payment is due under the terms of any written contract upon completion of supply of goods, works or services, or</p>	<p>The contractual obligation must be met before invoicing</p>
<p>“prescribed payment date” means in relation to a commercial contract – (b) where there is no written contract or the written contract does not</p>	<p>Amend to read as follows: “prescribed payment date” means in relation to a commercial contract – (b) where there is no written</p>	<p>Amount owned must be based on completed and accepted fulfilment of the contractual obligation</p>



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<p>Clause 4 Prompt payment of Accounts</p>	<p>provide for the date of payment, ninety days after – (i) receipt by the purchaser of an invoice for the amount due, where the invoice is received after the completion of works or completed delivery of the goods or provision services;</p>	<p>contract or the written contract does not provide for the date of payment, ninety days after – (i) receipt by the purchaser of an invoice for the amount due, where the invoice is received after the completion and acceptance of works or completed and accepted delivery of the goods or provision services;</p>	
	<p>4. (1) A procuring entity shall pay to a supplier payment for the delivery of goods, works or services on the due date.</p>	<p>4. (1) A procuring entity shall pay to a supplier, eligible bills, this being payment for the delivery of goods, works or services on the due date.</p>	<p>Delayed payment of suppliers is sometimes due to different factors such as non-completion of work or the supplier not meeting other contractual obligations</p>
	<p>4. (2) A procuring entity who fails to pay a supplier by the due date shall, unless otherwise agreed to and subject to sections 5 and 6, pay the full contract price and an interest to the</p>	<p>Amend to read as follows: 4. (2) A procuring entity who fails to pay a supplier by the due date without Justifiable reasons shall, unless otherwise agreed to and subject to sections 5 and 6, pay the</p>	<p>Some payments are delayed due to justifiable reasons like delayed disbursement or contractual disagreements</p>



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	supplier in accordance with this section on the amount due under the contract for the supply of goods, works, or services.	full contract price and an interest to the supplier in accordance with this section on the amount due under the contract for the supply of goods, works, or services.	
	4. (5) An interest shall not be waived by the supplier, and shall be included with the amount due for the supply of goods, works or services without demand for its payment being made by the supplier.	Amend to read; 4. (5) An interest may be waived by the supplier by agreement of the parties, and if so shall not be included with the amount due for the supply of goods, works or services without demand for its payment being made by the supplier.	To give entities a leeway to negotiate and agree with suppliers who have a claim for interest
Clause 10 Offences	10. Where a supplier has delivered an invoice to the procuring entity and the accounting officer of the procuring entity negligently, maliciously or without reasonable cause fails to – (a) return the invoice as provided for under section 6 of this Act; or (b) pay the amount due by	Amend to read as follows: 10. Where a supplier has delivered an invoice to the procuring entity and the accounting officer of the procuring entity negligently, maliciously or without reasonable cause fails to – (a) return the invoice as provided for under section 6 of this Act; or (b) pay the amount due by the due date; or	We find that the penalty for the offence is too punitive for the accounting officer and the same does not take into consideration the administrative challenges that may be encountered in the process of making payments



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	<p>the due date; or (c) pay the interest due, commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.</p>	<p>(c) pay the interest due, commits an offence and is liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years or to both.</p>	
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COMMENTARY ON THE PROMPT PAYMENT BILL, 2022

A. Constitutional Basis of our memorandum

This memorandum is premised on the objects of Chapter 12 on Public Finance as articulated under Article 201(a),(b),and (c), 205(1) and (2), and (2), 219 and 249 (1) (a) of the Constitution.

1. Of special reference, is Article 205(1), which spells out the requirement to make recommendations to Parliament “(1) When a Bill that includes provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published, the Commission on Revenue Allocation shall consider those provisions and may make recommendations to the National Assembly and the Senate

AND

2. Article 205(2), which states that these recommendations shall be tabled in Parliament, and each house shall consider the recommendations before voting on the Bill.

B. Introduction

Currently, the Kenyan legal framework more specifically the Public Procurement and Disposal Act (PPADA) and the Public Finance and Management Act (PFMA) address the issue of prompt payment for delivery of works, goods and services at both levels of government. Section 44 of the PPADA provides for the responsibilities of accounting officers in procurement including ensuring a procuring entity complies with the Act, that procurement plans are prepared are within budget and in accordance with fiscal objectives. Such procurement plans are subsequently submitted to the National Treasury.

Further, section 53 of the PPADA provides for procurement and asset disposal planning, with Section 53 (2) requiring that an accounting officer shall prepare an annual procurement plan that is realistic and which is within the approved budget, prior to the commencement of each year.

National Treasury Circular No. 10/2020 dated 16th June 2020 on prioritization of pending bills listed various provisions of the law that apply to accounting officers in financial management. These laws are continuously breached whenever payment of bills is delayed which indicates that the problem is not due to the lack of legislative instruments but rather the lack of enforceability. Specifically, Section 74 of the PFMA which provides for disciplinary measures against public and accounting officers which states “*For the purposes of this section, a public officer or accounting officer engages in improper conduct in relation to a national government entity if the officer— (...) (d) fails, without reasonable excuse, to pay eligible and approved bills promptly in circumstances where funds are provided for.*”

To enable implementation of the above provisions of the PPADA, regulation 150 of the Public Procurement and Asset Disposal Regulations, 2020 (PPADR) contains more detailed provisions on prompt payment for performed contracts. Regulation 150 (1) of the PPAADR provides as follows:

Subject to the availability of funds and after proper certification of the goods, services or works have been done, a procuring entity shall make prompt payments for all performed contracts including enterprises owned by youth, women or persons with disabilities and shall make payment within sixty days from the date of receipt of the invoice.

From the foregoing provisions, it is safe to conclude that the current legal framework has substantive legal provisions to facilitate prompt payment of pending bills.

C. Clause by Clause Analysis

Serial No.	Clause and Page	Recommendation	Justification
1.	Clause 2 Interpretation	<i>Under (b) where there is no written contract or the written contract does not provide for the date of payment, ninety days after –</i> 90 days period is not prompt. Recommendation: Amend duration to read sixty (60) days.	To align with Regulation 150 (1) of the PPADR

<p>2.</p>	<p>Clause 3 Application</p>	<p><i>The clause reads in part.....This Act shall apply to payment due for goods, works, and services procured by private entities, the national government, county governments and any other entity specified as a public entity under sec.....</i> Private entities are included within the scope of the Bill which is subject of private law</p> <p>Recommendation: Amend the clause by deleting “private entities” from the scope of the Bill. If the intention was to cover private procuring entities, it would have been useful for the Bill to add the definition of “private procuring entities”. More importantly, such private agreements are covered under law of contract hence it is not necessary to cover them here as enforcement will be a challenge.</p>	<p>To align with existing laws and to enhance enforceability of the law</p>
<p>3.</p>	<p>Clause 4 Prompt payment of accounts</p>	<p>Paragraph 4(c) refers to the phrase ‘<i>the full supplier</i>’ which is vague as it is unclear who such a full supplier is.</p> <p>Recommendation: review content</p>	<p>For clarity</p>

4.		<p>Sub clause 4(5) provides that an interest shall not be waived by the supplier, and shall be included with the amount due for the supply of goods, works or services without demand for its payment being made by the supplier. This provision is unclear.</p> <p>Recommendation: Redraft</p>	For clarity
5.	<p>Clause 5 Priority payments</p>	<p>Clause 5(b) should specify payment through automated systems such as IFMIS and e-procurement</p> <p>Recommendation: Amend by inserting that IFMIS or any other e-procurement platform in place to aid in prioritization of bills that are due for payment on a “first come first serve” basis.</p>	To provide clarity

<p>6.</p>	<p>Clause 9</p> <p>Declaration of pending payments.</p>	<p>Sub clause (1) reads- <i>A person who wishes to enter into a contract for the supply of goods, works or services with a national or county government entity shall make a declaration to the accounting officer of the entity on any pending payments owed to a small or micro enterprise</i></p> <p>Recommendation: Substitute 'small or micro enterprise' with 'supplier'</p>	<p>The application of the Bill covers all types of suppliers not just small or micro enterprises hence the need to make the provision open ended.</p>
	<p>Clause 10</p> <p>Offences</p>	<p>Part of the penalty provided for under this clause on conviction, is a fine not exceeding five million shillings. The memorandum of objects and reasons however cites a fine of one million shillings.</p> <p>Recommendation: harmonize the fine as proposed in the memorandum with the Bill content.</p>	<p>For consistency</p>



SUBMISSION ON THE PROMPT PAYMENT BILL 2022

The information contained in this publication has been prepared by the Institute of Certified Public Accountants of Kenya.

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1.0 BACKGROUND

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under the Accountants Act of 1978, and as repealed under the Accountants Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession and Pan Africa Federation of Accountants (PAFA), the continental body of Accountants.

The Institute is dedicated to enhancing its contribution and that of its members to the national economic growth and development agenda. ICPAK takes this opportunity to appreciate Parliament for the Bill. It's been long overdue. This will go a long way in dealing with the problem of pending bills in Kenya.

A report by the Controller of Budget (CoB) indicates that by 21st December 2022, Counties had settled Ksh. 22.9 billion (47.6% of the eligible pending bills) leaving an outstanding balance of Kshs. 25.1 billion. During this period, the National Government released to the Counties significant resources to enable them to clear their pending bills. The total outstanding MDAs' pending bills as of 30th September 2022, amounted to Kshs.82.35 billion, comprising Kshs.61.15 billion (74.3%) for recurrent expenditure and Kshs.21.2 billion (25.7 %) for development expenditure.

Continued delays in payment of pending bills to entities that provide goods and services to both National and County Governments have affected liquidity and operations of these entities. In a number of cases, this has led to closure of businesses, affecting many livelihoods. Though some progress was noted in settlement of these bills by the National and County Governments, there are still challenges where a number of suppliers are owed large amounts of money.

The effect of pending bills to the economy cannot be overemphasized. The growing stock of expenditure arrears, especially pending bills due to suppliers and contractors, is potentially a factor behind struggling small and medium-sized enterprises many of which borrow to finance their operations. This affects their liquidity and private sector investment derailing their contribution to the economy. Indeed, according to the Kenya National Bureau of Statistics (KNBS), the value of the MSME's output was estimated at KSh 3,371.7 billion against a national output of KSh 9,971.4 representing a contribution of 33.8 per cent in 2015. In terms of gross value added, the MSME are estimated to have contributed KSh 1,780.0 billion compared to KSh 5,668.2 billion for the whole economy.

2.0 EFFECTS OF PENDING BILLS TO THE ECONOMY

Pending bills have a ripple effect on the economy and cause the following shortfalls:

1. *Effect on Investment:* When bills remain pending for too long, investor confidence is eroded and as such county governments may lose reliable suppliers and contractors.
2. *Private Sector Credit:* Credit to SME's is stifled since banks cut lending to government suppliers due to high defaults attributed to late payments by national and county governments. This is a blow to young enterprises that depend on public tenders for business. This in turn affects the private sector and job creation as they lead to job cuts, hurting social economic wellbeing of thousands of people in such businesses.
3. *Financial services sector and non-performing loans:* Moreover, non-payment of suppliers and contractors adversely affects other sectors of the economy like the financial sector by increasing non-performing loans.
4. *Affects budget execution:* Accumulated expenditure arrears including pending bills due to contractors and suppliers of goods and services as well as utility payment backlogs have the potential of undermining budget execution in subsequent financial years.
5. *Cashflow problems:* Businesses face huge cashflow problems and are unable to pay their workers, suppliers, pay rent, and other expenses. This means that the economy continues to suffer a cashflow crunch which in turn affects economic growth.
6. *Service delivery challenges:* Pending bills cripple the government's ability to deliver meaningful change for its citizens because debts threaten the provision of essentials services in future.

The Prompt Payment Bill is good move for the government to solve the problem with pending bills. The main objective of the Bill is to put in place a legal framework to facilitate prompt payment for supply of goods, works and services procured by government entities both at the national and county level.

3.0 COMPARISON WITH OTHER JURISDICTIONS

Enactment of a Prompt Payment Legislation is not a new phenomenon, other jurisdictions have done the same with varied results. In preparing this submission, reference was made to the United States of America, Canada and Ireland as follows:

a) The US Prompt Payment Act

The US Federal Prompt Payment Act (PPA) protects all tiers of contractors, subcontractors, and suppliers from late payments on federally-funded construction projects by providing a timeline of when payments will be released to the prime contractor,

subcontractors, and suppliers, respectively. The rate of interest charged for late payments is established by the Secretary of the Treasury and published in the Federal Register under section 7109(a)(1) and (b) of title 41, which is in effect at the time the agency or contractor accrues the obligation to pay the penalty. The US FPPA mostly focuses on the construction industry.

b) Canadian Prompt Payment and Construction Law Reforms

Prompt payment and mandatory adjudication legislation is being enacted across Canada in an effort to alleviate perceived payment delays down the construction pyramid. The prompt payment regime introduced swift payment deadlines. The owner must either pay within 28 calendar days or dispute within 14 calendar days, describing the reasons for non-payment. In turn, the contractor must either pay its subcontractors within seven calendar days of receipt of payment or send notices of dispute within seven calendar days. This again is focused on the construction sector. The main strength of this legislation is provision of clear and strict payment timelines.

c) The Irish Prompt Payment of Accounts Act, 1997

The Bill was enacted in 1997 to provide for the prompt payment of business accounts by certain public sector and other purchasers of goods and services. The Act provides that if the date or period for payment is not fixed in the contract, the creditor is entitled to interest for late payment upon the expiry of any of the following time-limits:

- 30 calendar days following the date of receipt of goods or services, or date of receipt of the invoice or an equivalent request for payment, whichever is the later
- The standard deadline for public authorities to business payments is 30 days. Payment can be extended up to 60 days only if it is “expressly agreed” and justified in light of the nature or feature of the contract.
- In the event of late payment, interest rate is 8.00% per annum.

4.0 SUMMARY OF ICPAK PROPOSALS

The Institute is dedicated to enhancing its contribution and that of its members to the national economic growth and development agenda. The Institute has reviewed Bill and developed a detailed submission on areas that require improvement as highlighted in the table below.

Table 1: Summary of Submissions on the Prompt Payment Bill 2022

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
1.	Clause 4 (3) Prompt Payment of accounts	The payment process in the public sector takes a while. There is need for clarity on the computation of interest due.	Amend to read, <i>"A procuring entity shall pay an interest under this Act for the period beginning on the day after the prescribed payment date and ending on the last day of the month prior to the date on which payment of the amount due is made in full"</i>	This will enable the procuring entity to determine with certainty the amount of interest due and process it alongside the payment due. Full payment to avoid mischief of partial payments to frustrate the spirit of the bill
2.	Clause 4 (5) Prompt Payment of accounts	The Bill provides that, <i>(5) An interest shall not be waived by the supplier and shall be included with the amount due for the supply of goods, works or services without demand for its payment being made by the supplier.</i> The provision is rigid and does not allow for negotiation and alternative resolution of the matter.	Amend to allow the supplier the right to accept payment without interest in good faith, to read as follows: <i>5) (a) An interest may only be waived by the supplier upon consideration and satisfaction that the procuring entity shall pay in full through a written commitment.</i> <i>(b) Where the procuring entity fails to honor the commitment as prescribed in 4(5)(a) above with seven (7) days, the supplier shall not waive interest and it shall be included with the amount due for the supply of goods, works or services without demand for its payment being made by the supplier.—Shall not be waived by the</i>	To promote business, good will and support in cases where failure to pay on time is occasioned by factors beyond the control of the procuring entity, for instance, COVID-19 disrupted supply chain and prompt payment.

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
			<i>supplier and shall be included with the amount due for the supply of goods, works or services without demand for its payment being made by the supplier.</i>	
3.	Clause 5(2) Priority Payments	<p>The Bill provides that:</p> <p><i>5. (1) Notwithstanding the provisions of section 4, a procuring entity shall give priority to the payment of any outstanding debts for the supply of goods and services to the procuring entity</i></p> <p><i>(2) In determining which debts shall be given priority under subsection (1), a procuring entity shall have regard to the dates upon which payment fell due and shall pay debts on the basis of first-in, first-out.</i></p> <p>We need to be clear in terms the extent to which the procuring entity can clear old debts. This can be misinterpreted to mean that once an entity has received resources to settle payment, then they're required to settle the oldest debt in succession to</p>	<p>Amend to read,</p> <p>(2) In determining which debts shall be given priority under subsection (1), a procuring entity shall set aside a proportion of available resources to cover priority areas for current sustainability of an institution, and fulfilment of their obligations in settlement of old and outstanding debts.</p> <p>(3) In settling outstanding debts, procuring entities shall have regard to the dates upon which payment fell due and shall pay debts on the basis of first-in, first-out.</p>	<p>To provide clarity on delineation of old, outstanding debts and current priority payments.</p>

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
		current one. This can ground entities to a halt in cases where they will be unable to pay for any current products or services that are of importance to keep the entity running.		
4.	Clauses 7 (2): Interest	The Bill provides for payment of interest calculated on the base rate set and published by the Central Bank of Kenya. This will be subject to varied interpretation and computation of appropriate interest. There is need for a standard formula.	<p>The recommended interest calculation on the basis of the Central bank should be clearly specified. There is need for a specific formula or rate. Consider benchmarking with other jurisdictions. For instance, the Irish Prompt Payment Legislation provides clarity as follows:</p> <ul style="list-style-type: none"> ▪ <i>The standard deadline for public authorities to business payments is 30 days. Payment can be extended up to 60 days only if it is “expressly agreed” and justified in light of the nature or feature of the contract.</i> ▪ <i>In the event of late payment, interest rate is 8.00% per annum.</i> 	This will guide in calculation of interest on the overdue amount to be paid for goods, works or services.
5.	Clause 9: Declaration of Pending Payments	The supplier should also declare pending payment to private entities	<p>Amend to read:</p> <p>“A person who wishes to enter into a contract for the supply of goods, works or services with a national or county government or private entity shall make a declaration to the accounting officer of the entity on any pending payments owed to a small or micro enterprise”.</p>	The law applies to national government entities, county government entities and private entities.

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
6.	Clause 10: Offences	The Bill provides that where the accounting officer commits an offence under the Act, he/she shall be liable to pay a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both. This is not consistent with penalties and sanctions given in other related legislations	Amend to read, <i>...shall be liable to</i> <i>(a) if the person is a natural person, to a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years or to both.</i> <i>(b) if the person is a body corporate, to a fine not exceeding ten million shillings.</i>	For consistency with similar statutes like the Public Procurement and Asset Disposal Act 2015 Section 177.
		The proviso that the accounting officer or the responsible officer of the procuring entity negligently, maliciously or without reasonable cause is subjective and could be prone to miss-interpretation and abuse.	Define in the context of this bill what “negligently”, “maliciously” or “without reasonable” means.	For clarity and ease in implementation

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Whilst the Bill is a welcome relief to suppliers and many MSMEs, there are a number of fundamental issues that need to be addressed among them:

- (i) **Underlying Causes of Delay:** There is need to administratively address factors leading to delayed payments especially in the public sector. In many cases, delays have been caused by delayed exchequer releases and disbursement to the spending units. In case of learning Institutions without capitation and who depend on prompt payment of fees by students and other sources of income, this bill could be punitive.

(ii) **Basis of Accounting:** The Bill does not consider IPSAS accrual but addresses IPSAS cash, yet the government is now moving to IPSAS accrual. Globally, under cash accounting, transactions are recognized only when the associated cash is received or paid, and economic events are not reported if there is no immediate exchange of cash. Accrual accounting therefore accrual-based fiscal reports provide a more comprehensive view of the government's financial performance and the cost of government activities.

(iii) **Fair application of the law:** There is need to make additional provisions to cure both demand and supply sides. Timely payment of goods and services is a mutual aspect between the procuring entity and the supplier of goods. The procuring entity must be satisfied by the quality of goods and services supplied before payment. The Bill should make it punitive to a supplier who does not perform as expected yet has invoiced. In addition, payments are reviewed by accountants to ensure compliance to relevant Acts, circulars and regulations. Some payments may not meet the standards required on various aspects including but not limited to:

- Incorrect amount in the invoice
- variation from the contractual terms
- Nature of goods and services
- Other goods and services are delivered in far flanked areas and others require inspection and acceptance before a payment is made e.g. constructions
- staff capacity especially in accounts and other relevant sections among others

(iv) Public procurement

- a) Accountability institutions should act and punish government entities that deliberately delay payments to suppliers and contractors in compliance with the Public Procurement and Asset Disposal Act, 2015.
- b) MDAs and County Governments should enhance synchronization of the strategic plans with their procurement plans, the budget, and cash flow projections.

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- a) National Treasury should strive to release funds to the MDAs, County Governments and other spending units based on their work plans and cash flow projections as presented at the beginning of the financial year.
- b) There is need to start tying additional allocation to entities to the real fiscal responsibility issues such as absorption capacity, structural balance between recurrent and capital expenditure and compliance to PFM systems as measured by the report from both internal audit and the Auditor General.

(vi) Legislative Oversight: Parliament and County Assemblies through respective PACs should develop mechanisms of expediting adoption and approval of OAG reports to facilitate implementation of findings therein.

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- a) County governments must carry out a review of the completeness of the pending bills owed by the county. Thereafter, they should conduct a review to ascertain the authenticity of pending bills that categorizes all pending bills into regular pending bills or irregular pending bills, based on several factors, including whether or not the procurement that generated a pending bill adhered to existing laws on public procurement, and whether goods or services in question were delivered.
- b) Further, it is necessary to put in place intergovernmental mechanisms (e.g., through IBEC) to ensure that Counties prioritize budgeting for pending bills once the bills are verified. Ideally, pending bills should be included in Counties' medium term fiscal frameworks and subjected to review through the proposed intergovernmental mechanism.
- c) Ideally, pending bills should be included in Counties' medium term fiscal frameworks and subjected to review through the proposed intergovernmental mechanism.

(viii) Role of Professional Bodies and other stakeholders: There's need for a collaborative framework between the private sector, professional bodies, and the government in verifying and settling all the pending bills for the good of the economy.



SUBMISSION ON THE PROMPT PAYMENT BILL 2022

The information contained in this publication has been prepared by the Institute of Certified Public Accountants of Kenya.

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1.0 BACKGROUND

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under the Accountants Act of 1978, and as repealed under the Accountants Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession and Pan Africa Federation of Accountants (PAFA), the continental body of Accountants.

The Institute is dedicated to enhancing its contribution and that of its members to the national economic growth and development agenda. ICPAK takes this opportunity to appreciate Parliament for the Bill. It's been long overdue. This will go a long way in dealing with the problem of pending bills in Kenya.

A report by the Controller of Budget (CoB) indicates that by 21st December 2022, Counties had settled Ksh. 22.9 billion (47.6% of the eligible pending bills) leaving an outstanding balance of Kshs. 25.1 billion. During this period, the National Government released to the Counties significant resources to enable them to clear their pending bills. The total outstanding MDAs' pending bills as of 30th September 2022, amounted to Kshs.82.35 billion, comprising Kshs.61.15 billion (74.3%) for recurrent expenditure and Kshs.21.2 billion (25.7 %) for development expenditure.

Continued delays in payment of pending bills to entities that provide goods and services to both National and County Governments have affected liquidity and operations of these entities. In a number of cases, this has led to closure of businesses, affecting many livelihoods. Though some progress was noted in settlement of these bills by the National and County Governments, there are still challenges where a number of suppliers are owed large amounts of money.

The effect of pending bills to the economy cannot be overemphasized. The growing stock of expenditure arrears, especially pending bills due to suppliers and contractors, is potentially a factor behind struggling small and medium-sized enterprises many of which borrow to finance their operations. This affects their liquidity and private sector investment derailing their contribution to the economy. Indeed, according to the Kenya National Bureau of Statistics (KNBS), the value of the MSME's output was estimated at KSh 3,371.7 billion against a national output of KSh 9,971.4 representing a contribution of 33.8 per cent in 2015. In terms of gross value added, the MSME are estimated to have contributed KSh 1,780.0 billion compared to KSh 5,668.2 billion for the whole economy.

2.0 EFFECTS OF PENDING BILLS TO THE ECONOMY

Pending bills have a ripple effect on the economy and cause the following shortfalls:

1. *Effect on Investment:* When bills remain pending for too long, investor confidence is eroded and as such county governments may lose reliable suppliers and contractors.
2. *Private Sector Credit:* Credit to SME's is stifled since banks cut lending to government suppliers due to high defaults attributed to late payments by national and county governments. This is a blow to young enterprises that depend on public tenders for business. This in turn affects the private sector and job creation as they lead to job cuts, hurting social economic wellbeing of thousands of people in such businesses.
3. *Financial services sector and non-performing loans:* Moreover, non-payment of suppliers and contractors adversely affects other sectors of the economy like the financial sector by increasing non-performing loans.
4. *Affects budget execution:* Accumulated expenditure arrears including pending bills due to contractors and suppliers of goods and services as well as utility payment backlogs have the potential of undermining budget execution in subsequent financial years.
5. *Cashflow problems:* Businesses face huge cashflow problems and are unable to pay their workers, suppliers, pay rent, and other expenses. This means that the economy continues to suffer a cashflow crunch which in turn affects economic growth.
6. *Service delivery challenges:* Pending bills cripple the government's ability to deliver meaningful change for its citizens because debts threaten the provision of essentials services in future.

The Prompt Payment Bill is good move for the government to solve the problem with pending bills. The main objective of the Bill is to put in place a legal framework to facilitate prompt payment for supply of goods, works and services procured by government entities both at the national and county level.

3.0 COMPARISON WITH OTHER JURISDICTIONS

Enactment of a Prompt Payment Legislation is not a new phenomenon, other jurisdictions have done the same with varied results. In preparing this submission, reference was made to the United States of America, Canada and Ireland as follows:

a) The US Prompt Payment Act

The US Federal Prompt Payment Act (PPA) protects all tiers of contractors, subcontractors, and suppliers from late payments on federally-funded construction projects by providing a timeline of when payments will be released to the prime contractor,

subcontractors, and suppliers, respectively. The rate of interest charged for late payments is established by the Secretary of the Treasury and published in the Federal Register under section 7109(a)(1) and (b) of title 41, which is in effect at the time the agency or contractor accrues the obligation to pay the penalty. The US FPPA mostly focuses on the construction industry.

b) Canadian Prompt Payment and Construction Law Reforms

Prompt payment and mandatory adjudication legislation is being enacted across Canada in an effort to alleviate perceived payment delays down the construction pyramid. The prompt payment regime introduced swift payment deadlines. The owner must either pay within 28 calendar days or dispute within 14 calendar days, describing the reasons for non-payment. In turn, the contractor must either pay its subcontractors within seven calendar days of receipt of payment or send notices of dispute within seven calendar days. This again is focused on the construction sector. The main strength of this legislation is provision of clear and strict payment timelines.

c) The Irish Prompt Payment of Accounts Act, 1997

The Bill was enacted in 1997 to provide for the prompt payment of business accounts by certain public sector and other purchasers of goods and services. The Act provides that if the date or period for payment is not fixed in the contract, the creditor is entitled to interest for late payment upon the expiry of any of the following time-limits:

- 30 calendar days following the date of receipt of goods or services, or date of receipt of the invoice or an equivalent request for payment, whichever is the later
- The standard deadline for public authorities to business payments is 30 days. Payment can be extended up to 60 days only if it is “expressly agreed” and justified in light of the nature or feature of the contract.
- In the event of late payment, interest rate is 8.00% per annum.

4.0 SUMMARY OF ICPAK PROPOSALS

The Institute is dedicated to enhancing its contribution and that of its members to the national economic growth and development agenda. The Institute has reviewed Bill and developed a detailed submission on areas that require improvement as highlighted in the table below.

Table 1: Summary of Submissions on the Prompt Payment Bill 2022

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
1.	Clause 4 (3) Prompt Payment of accounts	The payment process in the public sector takes a while. There is need for clarity on the computation of interest due.	Amend to read, <i>"A procuring entity shall pay an interest under this Act for the period beginning on the day after the prescribed payment date and ending on the last day of the month prior to the date on which payment of the amount due is made in full"</i>	This will enable the procuring entity to determine with certainty the amount of interest due and process it alongside the payment due. Full payment to avoid mischief of partial payments to frustrate the spirit of the bill
2.	Clause 4 (5) Prompt Payment of accounts	The Bill provides that, <i>(5) An interest shall not be waived by the supplier and shall be included with the amount due for the supply of goods, works or services without demand for its payment being made by the supplier.</i> The provision is rigid and does not allow for negotiation and alternative resolution of the matter.	Amend to allow the supplier the right to accept payment without interest in good faith, to read as follows: <i>5) (a) An interest may only be waived by the supplier upon consideration and satisfaction that the procuring entity shall pay in full through a written commitment.</i> <i>(b) Where the procuring entity fails to honor the commitment as prescribed in 4(5)(a) above with seven (7) days, the supplier shall not waive interest and it shall be included with the amount due for the supply of goods, works or services without demand for its payment being made by the supplier.—Shall not be waived by the</i>	To promote business, good will and support in cases where failure to pay on time is occasioned by factors beyond the control of the procuring entity, for instance, COVID-19 disrupted supply chain and prompt payment.

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
			<i>supplier and shall be included with the amount due for the supply of goods, works or services without demand for its payment being made by the supplier.</i>	
3.	Clause 5(2) Priority Payments	<p>The Bill provides that:</p> <p><i>5. (1) Notwithstanding the provisions of section 4, a procuring entity shall give priority to the payment of any outstanding debts for the supply of goods and services to the procuring entity</i></p> <p><i>(2) In determining which debts shall be given priority under subsection (1), a procuring entity shall have regard to the dates upon which payment fell due and shall pay debts on the basis of first-in, first-out.</i></p> <p>We need to be clear in terms the extent to which the procuring entity can clear old debts. This can be misinterpreted to mean that once an entity has received resources to settle payment, then they're required to settle the oldest debt in succession to</p>	<p>Amend to read,</p> <p>(2) In determining which debts shall be given priority under subsection (1), a procuring entity shall set aside a proportion of available resources to cover priority areas for current sustainability of an institution, and fulfilment of their obligations in settlement of old and outstanding debts.</p> <p>(3) In settling outstanding debts, procuring entities shall have regard to the dates upon which payment fell due and shall pay debts on the basis of first-in, first-out.</p>	<p>To provide clarity on delineation of old, outstanding debts and current priority payments.</p>

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
		current one. This can ground entities to a halt in cases where they will be unable to pay for any current products or services that are of importance to keep the entity running.		
4.	Clauses 7 (2): Interest	The Bill provides for payment of interest calculated on the base rate set and published by the Central Bank of Kenya. This will be subject to varied interpretation and computation of appropriate interest. There is need for a standard formula.	<p>The recommended interest calculation on the basis of the Central bank should be clearly specified. There is need for a specific formula or rate. Consider benchmarking with other jurisdictions. For instance, the Irish Prompt Payment Legislation provides clarity as follows:</p> <ul style="list-style-type: none"> ▪ <i>The standard deadline for public authorities to business payments is 30 days. Payment can be extended up to 60 days only if it is “expressly agreed” and justified in light of the nature or feature of the contract.</i> ▪ <i>In the event of late payment, interest rate is 8.00% per annum.</i> 	This will guide in calculation of interest on the overdue amount to be paid for goods, works or services.
5.	Clause 9: Declaration of Pending Payments	The supplier should also declare pending payment to private entities	<p>Amend to read:</p> <p>“A person who wishes to enter into a contract for the supply of goods, works or services with a national or county government or private entity shall make a declaration to the accounting officer of the entity on any pending payments owed to a small or micro enterprise”.</p>	The law applies to national government entities, county government entities and private entities.

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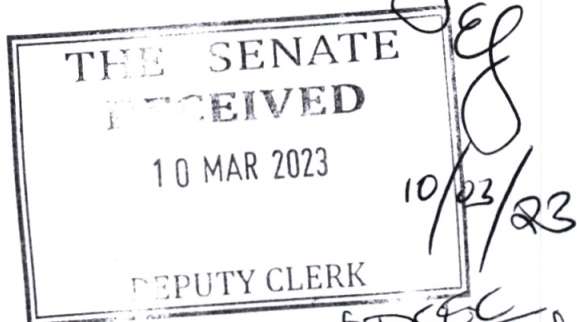
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Ref: No: NGEC/CS/NAS/005/VOL. III (81)

① DSEC
 DLS
 kindly deal.
 8th March 2023

Jeremiah.M. Nyegenye, CBS
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 Cc. financebudgetcomm.senate@parliament.go.ke



② DDSEC
 kindly deal
 13/3/2023

Dear Mr. Nyegenye,

SUBMISSION OF MEMORANDA ON THE PROMPT PAYMENT BILL (SENATE BILLS NO. 8 OF 2022)

Reference is made to your call for the submission of memoranda on the Prompt Payment Bill (Senate Bills No. 8 of 2022).

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting and ensuring gender equality, principles of equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

③ Mr. Githon
 You are training
 13/03/23

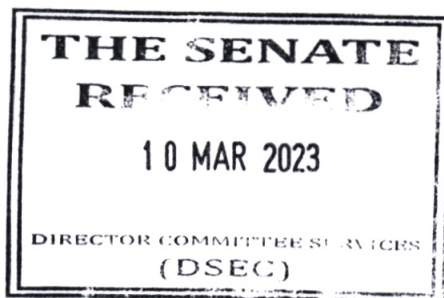
Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, 'monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions';

In line with our mandate, the Commission submits the attached Memorandum with observations on the proposed bill.

Yours sincerely,

Betty Sungura, MBS
COMMISSION SECRETARY/ CEO

Encl.



NATIONAL GENDER AND EQUALITY COMMISSION



MEMORANDUM ON THE PROMPT PAYMENT BILL (SENATE BILLS NO. 8 OF 2022)

S/NO	PROVISIONS	PROPOSED AMENDMENTS	REMARKS/PROPOSAL
1.	<p>Application of the Act. Clause 3.</p> <p>This Act shall apply to payment due for all goods, works, and services procured by the national government, county governments and private entities.</p>	<p>Proposal</p> <p>Amend by deleting the balance of the sentence from the word “the national Government” and substituting it with the following words “...all public entities making a procurement to which the Public Procurement and Asset Disposal Act applies.”</p>	<p>The clause as provided includes private entities and also limits the public entities to only National and County Government while the Public Procurement Act lists all of the public entities.</p>
2.	<p>MEMORANDUM OF OBJECTS AND REASONS PROVIDES AS FOLLOWS-;</p> <p>Clauses 4 to 6 of the Bill provide for processing of payment. The Bill requires that a procuring entity shall pay for the goods, works or services provided by the prescribed payment date.</p> <p>Failure to pay amount due within the stipulated time, a procuring entity shall be liable to pay an interest calculated on the basis of the Central Bank base rates.</p>	<p>PUBLIC PROCUREMENT AND DISPOSALS ACT</p> <p>Proposal</p> <p>Amend Sub clause 4(3) by substituting the words “procuring entity” with the following “The Accounting officer responsible for failure to pay or National Treasury”</p>	<p>When read together with the Public Procurement and Disposals Act particularly on the responsibilities of an Accounting officer, the following is observed;</p> <p>i. The proposals in the Bill are beneficial to the suppliers and especially Persons with Disability, women and youth who will be assured of prompt pay once they supply the goods.</p> <p>ii. However, public entities depend on allocation of funds from the Treasury which sometimes may take</p>

	<p>Clause 4 - Prompt payment of accounts.</p> <p>4. (1) A procuring entity shall pay a supplier by the prescribed payment date.</p> <p>(2) A procuring entity who fails to pay a supplier by the prescribed payment date shall, unless otherwise agreed to and subject to sections 5 and 6, pay an interest to the supplier in accordance with this section on the amount due under the contract for the supply of goods, works, or services.</p> <p>(3) A procuring entity shall pay an interest under this Act for the period</p>		<p>longer than anticipated even after compliance with Section 44 (<i>see additional notes</i>¹).</p> <p>iii. Public Entities do not normally have provision for interest or fines in their budgetary allocations and so any interest imposed will still be from the exchequer. Public entities may not always generate their own revenue and rely on Treasury.</p> <p>iv. In summary the intention of the Bill is noble but the crucial party who will determine its success is timely release of the funds as per the procurement plan submitted by the National Treasury.</p>
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¹ **PART V – – INTERNAL ORGANISATION OF PROCURING ENTITIES** (Additional notes)

44. Responsibilities of the accounting officer

- a) An accounting officer of a public entity shall be primarily responsible for ensuring that the public entity complies with the Act.
- b) In the performance of the responsibility under subsection (1), an accounting officer shall—
- (a) Ensure that procurements of goods, works and services of the public entity are within approved budget of that entity;
 - (b) Constitute all procurement and asset disposal committees within a procuring entity in accordance with the Act;
 - (c) Ensure procurement plans are prepared in conformity with the medium term fiscal framework and fiscal policy objectives and, subject to subsection (3), submit them to the National Treasury;
 - (d) Ensure proper documentation of procurement proceedings and safe custody of all procurement records in accordance with the Act
 - (e) Ensure compliance with sections 68, 147, 148 and 149 of the Public Finance Management Act, 2012 (No. 18 of 2012);
 - (f) Approve and sign all contracts of the procuring entity;
 - (g) Ensure the procurement and asset disposal process of the public entity shall comply with this Act;
 - (h) Ensure that the procurement processes are handled by different professional offices in respect of procurements, initiation, processing and receipt of goods, works and services;
 - (i) Submit to the Authority the part in its procurement plan demonstrating application of preference and reservations schemes in relation to the procurement budget within sixty days after commencement of the financial year; and
 - (j) Ensure compliance with any other responsibilities assigned by this Act or any other Act of Parliament or as may be prescribed in Regulations

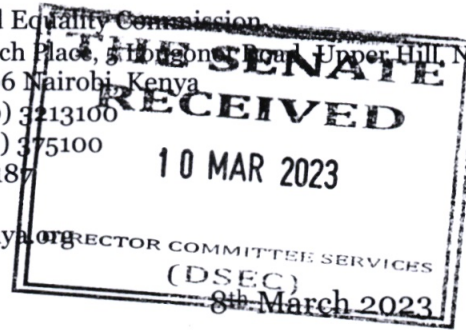
	<p>beginning on the day after the prescribed payment date and ending on the date on which the payment of the amount due is made.</p> <p>Clause 7 - Interest.</p> <p>7. (1) Where a supplier has fulfilled all contractual and legal obligations relating to the supply of goods, services or works and a procuring entity fails to pay for the goods, works, or services by the prescribed payment date the procuring entity shall pay to the supplier interest on the amount due under the relevant contract.</p> <p>(2) The maximum interest rate chargeable under subsection (1) shall be based on the base rate set and published by the Central Bank of Kenya.</p>		<p>v. In the event that Treasury does not release the funds as per the plan then it should pay the interest which will still be drawn from taxes by the intended beneficiaries.</p> <p>vi. If the failure to pay is due to the negligence of the Accounting Officer, then the officer should be liable personally for the interest payable and not the entity.</p> <p>vii. There is a need for further consultation and agreement with the National Treasury and commitment to release the funds as planned.</p> <p>Rationale</p> <p>Liability should attach only to the Accounting Officer or Treasury depending on who is liable and not the Entity which does not have an allocation of "interest " and will also protect the entities from multiple cases by suppliers.</p>
3.	<p>Clause 8 of the Bill provide for offences. An accounting officer who, without reasonable cause or negligently fails to pay the amount due commits an offence and shall be liable to pay a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both fine and imprisonment</p>	<p>We propose that this clause should be deleted</p>	<p>The penalty imposed on the Accounting Officer in clause 8 for failure to pay without a reasonable cause of one million or to a term of five years is excessive and disproportionate.</p> <p>The Accounting officer is a Public officer and there are codes that regulate the conduct of public servants. The negligence in failure to pay is a gross misconduct and</p>

			<p>so should be considered as such and not as an offence.</p> <p>The clause should therefore be deleted because section 44(j) of the Public procurement Act has imposed on the officer the duty of compliance and such an Officer should be dealt within the provisions of Employment and labor laws.</p>
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NGEC
National Gender and
Equality Commission

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(SENATE BILLS NO. 8 OF 2022)**

Reference is made to your call for the submission of memoranda on the Prompt Payment Bill (Senate Bills No. 8 of 2022).

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting and ensuring gender equality, principles of equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, '*monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions*';

In line with our mandate, the Commission submits the attached Memorandum with observations on the proposed bill.

Yours *sincerely,*

Betty Sungura, **MBS**
COMMISSION SECRETARY/ CEO

Encl.

"Gender Equality and Non-Discrimination"

MEMORANDUM ON THE PROMPT PAYMENT BILL (SENATE BILLS NO. 8 OF 2022)

S/NO	PROVISIONS	PROPOSED AMENDMENTS	REMARKS/PROPOSAL
1.	<p>Application of the Act. Clause 3.</p> <p>This Act shall apply to payment due for all goods, works, and services procured by the national government, county governments and private entities.</p>	<p>Proposal</p> <p>Amend by deleting the balance of the sentence from the word “the national Government” and substituting it with the following words “...all public entities making a procurement to which the Public Procurement and Asset Disposal Act applies.”</p>	<p>The clause as provided includes private entities and also limits the public entities to only National and County Government while the Public Procurement Act lists all of the public entities.</p>
2.	<p>MEMORANDUM OF OBJECTS AND REASONS PROVIDES AS FOLLOWS-;</p> <p>Clauses 4 to 6 of the Bill provide for processing of payment. The Bill requires that a procuring entity shall pay for the goods, works or services provided by the prescribed payment date.</p> <p>Failure to pay amount due within the stipulated time, a procuring entity shall be liable to pay an interest calculated on the basis of the Central Bank base rates.</p>	<p>PUBLIC PROCUREMENT AND DISPOSALS ACT</p> <p>Proposal</p> <p>Amend Sub clause 4(3) by substituting the words “procuring entity” with the following “The Accounting officer responsible for failure to pay or National Treasury”</p>	<p>When read together with the Public Procurement and Disposals Act particularly on the responsibilities of an Accounting officer, the following is observed;</p> <ul style="list-style-type: none"> i. The proposals in the Bill are beneficial to the suppliers and especially Persons with Disability, women and youth who will be assured of prompt pay once they supply the goods. ii. However, public entities depend on allocation of funds from the Treasury which sometimes may take

<p>Clause 4 - Prompt payment of accounts.</p> <p>4. (1) A procuring entity shall pay a supplier by the prescribed payment date.</p> <p>(2) A procuring entity who fails to pay a supplier by the prescribed payment date shall, unless otherwise agreed to and subject to sections 5 and 6, pay an interest to the supplier in accordance with this section on the amount due under the contract for the supply of goods, works, or services.</p> <p>(3) A procuring entity shall pay an interest under this Act for the period</p>		<p>longer than anticipated even after compliance with Section 44 (<i>see additional notes¹</i>).</p> <p>iii. Public Entities do not normally have provision for interest or fines in their budgetary allocations and so any interest imposed will still be from the exchequer. Public entities may not always generate their own revenue and rely on Treasury.</p> <p>iv. In summary the intention of the Bill is noble but the crucial party who will determine its success is timely release of the funds as per the procurement plan submitted by the National Treasury.</p>
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¹ PART V – – INTERNAL ORGANISATION OF PROCURING ENTITIES (Additional notes)

44. Responsibilities of the accounting officer

- a) An accounting officer of a public entity shall be primarily responsible for ensuring that the public entity complies with the Act.
- b) In the performance of the responsibility under subsection (1), an accounting officer shall—
 - (a) Ensure that procurements of goods, works and services of the public entity are within approved budget of that entity;
 - (b) Constitute all procurement and asset disposal committees within a procuring entity in accordance with the Act;
 - (c) Ensure procurement plans are prepared in conformity with the medium term fiscal framework and fiscal policy objectives and, subject to subsection (3), submit them to the National Treasury;
 - (d) Ensure proper documentation of procurement proceedings and safe custody of all procurement records in accordance with the Act
 - (e) Ensure compliance with sections 68, 147, 148 and 149 of the Public Finance Management Act, 2012 (No. 18 of 2012);
 - (f) Approve and sign all contracts of the procuring entity;
 - (g) Ensure the procurement and asset disposal process of the public entity shall comply with this Act;
 - (h) Ensure that the procurement processes are handled by different professional offices in respect of procurements, initiation, processing and receipt of goods, works and services;
 - (i) Submit to the Authority the part in its procurement plan demonstrating application of preference and reservations schemes in relation to the procurement budget within sixty days after commencement of the financial year; and
 - (j) Ensure compliance with any other responsibilities assigned by this Act or any other Act of Parliament or as may be prescribed in Regulations

	beginning on the day after the prescribed payment date and ending on the date on which the payment of the amount due is made.		v. In the event that Treasury does not release the funds as per the plan then it should pay the interest which will still be drawn from taxes by the intended beneficiaries.
	<p>Clause 7 - Interest.</p> <p>7. (1) Where a supplier has fulfilled all contractual and legal obligations relating to the supply of goods, services or works and a procuring entity fails to pay for the goods, works, or services by the prescribed payment date the procuring entity shall pay to the supplier interest on the amount due under the relevant contract.</p> <p>(2) The maximum interest rate chargeable under subsection (1) shall be based on the base rate set and published by the Central Bank of Kenya.</p>		<p>vi. If the failure to pay is due to the negligence of the Accounting Officer, then the officer should be liable personally for the interest payable and not the entity.</p> <p>vii. There is a need for further consultation and agreement with the National Treasury and commitment to release the funds as planned.</p> <p>Rationale</p> <p>Liability should attach only to the Accounting Officer or Treasury depending on who is liable and not the Entity which does not have an allocation of “interest “ and will also protect the entities from multiple cases by suppliers.</p>
3.	Clause 8 of the Bill provide for offences. An accounting officer who, without reasonable cause or negligently fails to pay the amount due commits an offence and shall be liable to pay a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both fine and imprisonment	We propose that this clause should be deleted	<p>The penalty imposed on the Accounting Officer in clause 8 for failure to pay without a reasonable cause of one million or to a term of five years is excessive and disproportionate.</p> <p>The Accounting officer is a Public officer and there are codes that regulate the conduct of public servants. The negligence in failure to pay is a gross misconduct and</p>

			<p>so should be considered as such and not as an offence.</p> <p>The clause should therefore be deleted because section 44(j) of the Public procurement Act has imposed on the officer the duty of compliance and such an Officer should be dealt within the provisions of Employment and labor laws.</p>
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THE SENATE
RECEIVED

10 MAR 2023

DIRECTOR COMMITTEE SERVICES
(DSEC)



REPUBLIC OF KENYA

THE NATIONAL TREASURY & ECONOMIC PLANNING

Telegraphic Address: 22921
FINANCE - NAIROBI
Fax No. 315779
Telephone: 2252299

THE NATIONAL TREASURY
P.O. Box 30007 - 00100
NAIROBI
KENYA

When replying please quote

Ref: MOF/TE 200/01 'E' (73)

Date: 8th March, 2023

Mr. J.M Nyegenye, CBS,
Clerk of the Senate/ Secretary,
Parliamentary Service Commission,
Nairobi.

① DSEC

Kindly deal.

Dear

Buo. Nyegenye,

REF: INVITATION FOR A MEETING TO SUBMIT VIEWS ON THE PROMPT PAYMENT BILL, 2022 (SENATE BILLS NO. 8 OF 2022)

EP 10/3/23

We refer to your letter No. SEN/DSEC/F&B/CORR/2023/25 dated 3rd March, 2023 inviting the Cabinet Secretary, National Treasury & Economic Planning to a meeting with the Senate Standing Committee on Finance & Budget to submit any representations on the Prompt Payment Bill, 2022 (Senate Bills No.8 of 2022). The meeting is scheduled for **Thursday, 9th March, 2023 at 11.00 a.m** at the Ground Floor Boardroom, County Hall Parliament Buildings (please refer to **folio 70**).

② DSEC
Kindly deal

The National Treasury is scheduled to appear before the National Assembly Departmental Committee on Finance & National Planning on the same date to deliberate on matters of policies, programmes and expenditure ceilings for the National Treasury in the 2023 Budget Policy Statement.

The purpose of this letter is to let you know of this situation and seek your indulgence to request the committee for a change of date from Thursday 9th March, 2023 to **Wednesday, 5th April, 2023 at 10.00a.m.**

13/3/2023

The National Treasury & Economic Planning sincerely regrets the inconveniences caused.

Yours

*Sincerely,
[Signature]*

③ Mr. Gitonyi
Please see
[Signature]
13/03/23

PROF. NJUGUNA NDUNG'U, PhD, CBS,
CABINET SECRETARY/ NATIONAL TREASURY & ECONOMIC PLANNING

THE SENATE
RECEIVED

10 MAR 2023

DIRECTOR COMMITTEE SERVICES
(DSEC)

THE SENATE RECEIVED
20 MAR 2023
DIRECTOR COMMITTEE SERVICES (DGAC)



THE SENATE RECEIVED
20 MAR 2023
DIRECTOR COMMITTEE SERVICES (DSEC)

① DLS
DSEC
Kindly deal
20/03/23

**REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING**

Telegraphic Address: 22921
Finance - Nairobi
Telephone: 2252299
When Replying Please Quote

The National Treasury
P. O. Box 30007
NAIROBI

Ref: NT/PPD1/3/24 Vol.IX(14)

14th March, 2023

J. M. Nyegenye, CBS
Clerk of the Senate
Parliament Building
Nairobi



② D/DSEC
Kindly deal
20/03/23

Dear *Mr Nyegenye*

INVITATION FOR A MEETING TO SUBMIT VIEWS ON THE PROMPT PAYMENT BILL, 2022 (SENATE BILLS NO.8 OF 2022)

We refer to your letter Ref. SEN/DSEC/F&B/CORR/2023/25 of 3rd Mach, 2023 on the above subject.

We have reviewed the bill and noted that the concerns raised in the bill have been adequately addressed in the Public Procurement and Asset Disposal Act, 2015 (PPADA) and Public Procurement and Asset Disposal Regulations, 2020 (the Regulations). The following sections addresses the concerns of the bill.

Section of the bill	Our Comments	Relevant provisions Regulation/Section
Section 4 on prompt payment of accounts	<ol style="list-style-type: none"> Timelines have been provided within which payments have to be made to contractors (60 days) goods must be properly certified before payment requirement for availability of funds shall be condition before payment is made the 60-day period time should start from date the receipt of invoice. has provided for invoice discounting a procuring entity shall implement the requirement through its budgets, procurement plans, tender 	<p>Regulation 150 provides:</p> <p><i>Subject to the availability of funds and after proper certification of the goods, services or works have been done, a procuring entity shall make prompt payments for all performed contracts including enterprises owned by youth, women or persons with disabilities and shall make payment within sixty days from the date of receipt of the invoice</i></p> <p><i>(2) Where delay of payments for goods, works and services performed are likely to happen, a procuring entity may facilitate invoice</i></p>

③ Mr. [unclear]
20/03/23

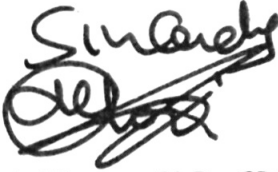
	<p>notices and contract awards</p> <p>7. entities to provide quarterly payments reports be submitted to PPRA and National Treasury to show payment within 60 days for publication. This is to ensure that PEs comply with prompt payment requirements.</p>	<p><i>discounting arrangements with a financial institution for the purpose of advancing credit to the affected enterprises stated in paragraph (1).</i></p> <p><i>(3) For the purpose of implementing the provisions of paragraph (1), a procuring entity shall implement the requirement through its budgets, procurement plans, tender notices and contract awards.</i></p> <p><i>(4) A procuring entity shall submit a quarterly payment performance statistics to the National Treasury and the Authority demonstrating compliance with the obligation to pay invoices within sixty days for publication</i></p>
<p>Priority of Payments under section 5 of the bill</p>	<p>1. On receipt of an invoice or a fee note, a procuring entity shall make payment on first come first paid basis</p> <p>2. A procuring entity shall plan its procurement and cash or fund flows to ensure that contractors are paid promptly as per the terms of contract</p>	<p>Regulation 139 provides:</p> <p><i>(1) A contractor shall satisfactorily perform its contractual obligations prior to any payment by a procuring entity.</i></p> <p><i>(2) A procuring entity shall make prompt and timely payments to a contractor that meets its contractual obligations.</i></p> <p><i>(3) Payments shall only be made after an invoice or fee note is accurately raised and submitted in accordance with the provisions of the contract.</i></p> <p><i>(4) Unless the contract provides otherwise, a procuring entity shall pay interest on the overdue amounts.</i></p> <p><i>(5) The interest to be paid under paragraph (4), shall be in accordance with the prevailing commercial bank rates.</i></p> <p><i>(6) A procuring entity shall plan its procurement and cash or fund flows to ensure that contractors are paid promptly as per the terms of contract.</i></p> <p><i>(7) On receipt of an invoice or a fee note, a procuring entity shall make payment on first come first paid basis.</i></p>
<p>section 7 of the bill</p>	<p>1. The law addresses the</p>	<p>Section 140 provides:</p>

Interest rates	<p>concerns of the bill that any procuring entity shall pay interest on overdue amounts</p> <p>2. The interest and liquidated damages shall be paid in accordance with mean commercial lending rates as determined by CBK</p>	<p><i>The following shall apply with respect to delayed performance and overdue amounts owed by a procuring entity and a contractor under a contract for a procurement—</i></p> <p><i>(a) unless the contract provides otherwise, the procuring entity shall pay interest on the overdue amounts;</i></p> <p><i>(b) the contractor shall be liable to liquidated damages for delayed performance;</i></p> <p><i>(c) the interest and liquidated damages to be paid under paragraph (a) and (b) shall be in accordance with prevailing mean commercial lending rate as determined by Central Bank of Kenya; and</i></p> <p><i>(d) the methods of computing interest liquidated and ascertained damages shall be as prescribed in the regulations</i></p>
Section 9 of the bill on offences and Sanctions for delay in payment beyond contractual period	This has been addressed under sanctions and offences and a penalty provided .	<p>Section 176(1)(c) provides:</p> <p><i>(1) A person shall not—</i></p> <p><i>(c) delay without justifiable cause the opening or evaluation of tenders, the awarding of contract beyond the prescribed period or payment of contractors beyond contractual period and contractual performance obligations;</i></p> <p><i>(2) A person who contravenes the provisions of subsection (1) of this section, commits an offence and shall be liable upon conviction— (a) if the person is a natural person, to a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years, or to both; (b) if the person is a body corporate, to a fine not exceeding ten million shillings.</i></p>
Section 6 on return on invoice	This should be addressed under the contract agreement between the supplier and the PE under dispute mechanism clause.	This should be provided in the contract agreement between the parties
Section 8 on fair dealing	Contract will provide on the contract obligations of each party.	Conditions on how the two parties shall treat each other shall be specified in the Contract Agreement

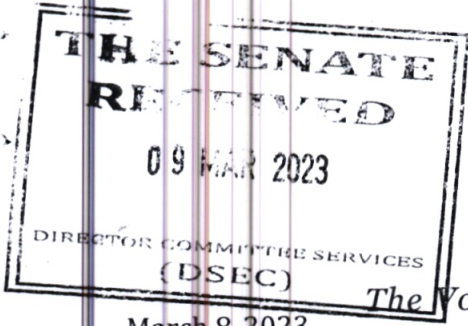
		on their obligations.
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Arising from the above submissions, we are of the opinion that the concerns raised in the bill have been addressed fully under the provisions of the Public Procurement and Asset Disposal Act 2015 and its attendant Regulations 2020.

Yours



Dr. Chris Kiptoo, PhD, CBS
PRINCIPAL SECRETARY/NATIONAL TREASURY

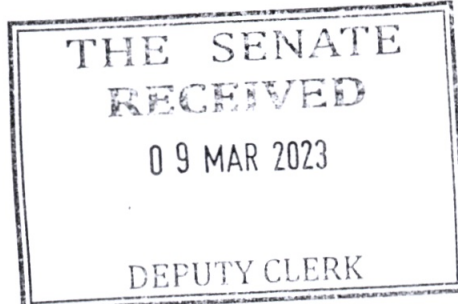


The Voice of Private Sector in Kenya

March 8, 2023

Ref: 027/3-PPD/2023

Mr. Jeremiah M. Nyegenye, CBS
The Clerk of the Senate
Parliament Buildings
P.O. Box 41842-00100
NAIROBI



RE: **KEPSA POSITION ON THE PROMPT PAYMENT BILL, 2022**

Receive warm greetings from the Kenya Private Sector Alliance.

We continue to appreciate your support and the cordial relationship between the Senate and KEPSA throughout the years.

We refer to the call for submission of memoranda on the **Prompt Payment Bill (Senate Bills No. 8 of 2022)**, and wish to register our submissions vide this letter.

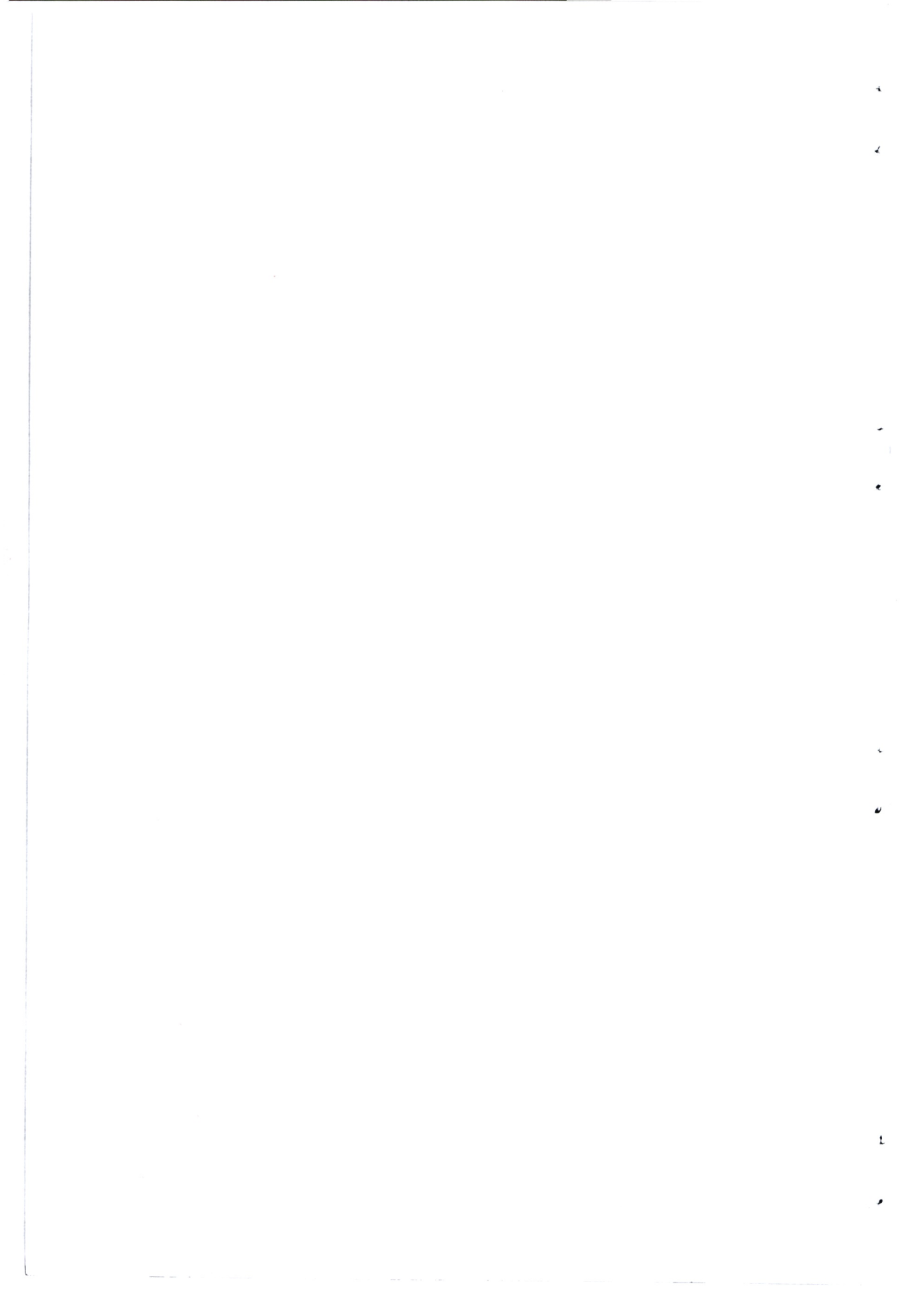
As private sector, we support the Bill in its entirety as it seeks to provide for prompt payment for the supply of goods, works or services procured by the national government, county governments and private entities. This will do away with the issue of pending bills in government and increase liquidity for businesses as they will be paid within a stipulated amount of time or have late payments attracting interest.

We remain hopeful that the Bill will be passed into law as soon as possible to enable businesses and the public at large start enjoying the benefits of the proposed law.

Yours Sincerely,

Carole Kariuki, EBS, MBS, HSC
Chief Executive Officer

① DSEC
DHS
② DDSEC
Kindly deal
09/03/2023
③ Mr. Gitonga
You are clearing
13/03/23
Kindly deal.
09/03/23





SUBMISSIONS BY THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA) ON THE PROMPT PAYMENTS BILL 2022

14TH MARCH 2023

INTRODUCTION

The Institute for Social Accountability (TISA) under the Okoa Uchumi coalition is pleased to present the submission of memoranda with the views on the Prompt Payment Bill, 2022 (Senate Bills No.8 of 2022).

The Institute for Social Accountability (TISA) is a civil society initiative committed towards helping Kenyans find their voice and agency to claim their rights to services; make the Kenyan government accountable for its duties and promises; and ultimately, make the constitution a lived experience.

The Okoa Uchumi Campaign is a civil society platform committed towards working with stakeholders to redress Kenya's public debt crisis. The coalition seeks to push for political accountability, and bolster constitutional safeguards in public debt management, for debt sustainability through a balanced and equitable budget.

The analysis covers key sections with specific recommendations that the Standing Committee on Finance and Budget could consider as they deliberate on the Prompt Payment Bill. The following are submissions by The Institute for Social Accountability (TISA).

The submission is based on the need to put in place strict measures to address pending bills which one of the bottlenecks confronting the Kenyan economy. Pending bills and delayed payments are now a critical problem in all government tenders. TISA notes the adverse effects of pending bills on the debt situation of the country's provision of essential services by the national and county governments, as well as the negative impact on the economy and citizens at large. Prompt payments will empower the traders doing business with the government and encourage the uptake of Access to Government Procurement Opportunities (AGPO) thus empowering the vulnerable and marginalized members of society.

TISA welcomes the move to have a clear guideline on the order in which the payments that have fallen due should be paid. The 'Pay on a First Come First Served Basis' ensures fairness and transparency. It addresses the challenges of the supplier having to know someone to have their payments made by the procuring entity. There exists a culture of impunity where payments for contracts which are of special interest to stakeholders of procuring entities are fast-tracked while 'other' suppliers have to "push" for payment. Some of these bills are delayed for years and in some cases, end up being written off as bad debts by the contractors.

The payment of interest after the due date and ending on the date is commendable as it encourages adherence to the set guidelines Public Procurement and Asset Disposal regulations on the need to pay for the supply of goods and services by the due date. It is also a reprieve for the suppliers since, in most cases, the investment capital is acquired through the procurement of loans.

While we commend the steps taken to enact a law for prompt payments by government entities and, in so doing, create a mechanism for dealing with the accumulated accrued pending bills. We note that Articles 226 and 227 of the constitution offer exceptionally good guidance and foundation for ensuring prompt payment for goods and services while protecting the government from improper and fraudulent services.

The Public finance management act of 2012, particularly section 74, has strong sanctions against accounting officers who fail to honor due and approved payments. The public procurement and disposal act of 2015 also offers guidance that all procurement officers shall only commence procurement where the same is provided for in the budget estimates under section 53 of the said act. However, this has now become part of the triggers for pending bills because the budget estimates often need to be reflected in the actual money received by government entities.

Government entities continue to be affected by delayed disbursement of funds, multiple budget revisions through supplementary budgets that alter the original budget estimates and overall political interference with approved budget estimates. Parliament should consider reviewing section 53 of the PPDA as a way of redressing this problem and guiding that procurement be done against approved budget estimates and received funds by government entities. The auditor general has also noted that while redressing the issue of the pending bill, we need to equally strengthen the government's protection for suppliers and contractors who do not deliver goods and services as per the terms of the contract. This has been a cause of pending bills and can be strengthened by parliament providing oversight to the office of the auditor general, the public procurement.

TISA is also concerned that some payments that have yet to be promptly paid include statutory deductions for NHIF, NSSF, PAYE (Pay As You Earn) and other pension payments made at source. This is because it has resulted in many government employees and contractors finding themselves non-compliant on statutory payments that were deducted by their employer but are yet to be remitted. This intra-agency affair could be addressed in the law or through amendments to the PFM (Public Finance Management) act of 2012.

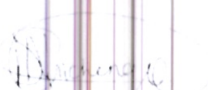
TISA, in conclusion, recommends that the Senate relooks the bill and considers amendments to the PFM act and PPD act and attendant regulations so that the prompt payment is anchored in the laws where contracting and all compliances are anchored in line with articles 226 and 227 of the Constitution.

Detailed Analysis and Recommendations:

Section	Proposed Amendment	Issue/justification
Long Title	Add to the long title the words government agencies after the work services;	To communicate the purpose of the prompt payment bill.
2- Definition of the accounting officer	Amend definition to read - An accounting officer has the definition in section 2 of the PFM Act. Expand to include the accounting officer for independent commissions.	Use the definition in the PFM Act because it is the anchor law for PFM under chapter 11 of the Constitution. Changes in the PFM Act would affect this Act.

2 - Definitions	Insert definition for pending bills.	This law was developed to improve the payment of bills, and Pending Bills are one of the key issues resulting from delays in payment owed to suppliers.
2 - Definition of prescribed payment date	Remove 'no written contract.' in (b) where there is no written contract, or the written contract does not provide for the date of payment ninety days after	A contract between the procurement entity and supplier is a compliance requirement. Engaging a procurement entity with a supplier without a contract also hinders transparency and accountability in the procurement process. According to section 135 (4) of the Public Procurement and Asset Disposal Act, a contract is formed between the person submitting the successful tender and the accounting officer of a procuring entity once the parties sign the written contract.
9. Declaration of pending payments	Include all pending payments owed to suppliers engaged	The declaration is limited to small or micro-enterprises. A culture of prompt payment should be encouraged across all businesses to facilitate efficiency.
10. Offences	Provide a more comprehensive list of offences of the accounting officer to include the failure of an accounting officer in procurement to ensure that the procuring entity complies with the Act, procurement plans are prepared within the approved budget and are aligned with the intended purpose.	This will ensure that all the misconduct of accounting officers that could cause delays in the payment process is covered under this section.

SUBMITTED BY



Diana Gichengo
National Coordinator
The Institute for Social Accountability
Email: diana.gichengo@tisa.or.ke or info@tisa.or.ke

CC
Standing Committee on Finance and Budget



THE SECRETARIAT
ASSOCIATION OF PUBLIC RELATIONS
AND COMMUNICATION MANAGEMENT FIRMS
(APRECOM)

Email: aprecomkenya@gmail.com

Tel: 0723633117 / 0725398257

14th March, 2023

J.M. NYEGENYE, CBS,
CLERK OF THE SENATE
PARLIAMENT BUILDINGS, NAIROBI
Email: clerk.senate@parliament.go.ke

Copied to:
STANDING COMMITTEE ON FINANCE AND BUDGET
PARLIAMENT BUILDINGS, NAIROBI
Email: financebudgetcomm.senate@parliament.go.ke

Dear Sir,

RE: THE PROMPT PAYMENT BILL 2022 (SENATE BILLS NO. 8 OF 2022) – WRITTEN SUBMISSION

The Association of PR and Communication Management firms (APReCOM) wishes to formally submit the below memorandum outlining our proposed revisions to the Prompt Payment Bill 2022.

The Association of PR and Communication Management firms believes that the proposed legislation will positively affect private sector development and the economy of Kenya. The bill provides an excellent platform to advance relations between procuring entities in the private and public sectors.

In our view, the positive effects include:

1. **Improved cash flow:** By requiring public and private entities to pay their bills on time, the cash flow of suppliers and service providers is improved. This will help reduce the risk of insolvency and bankruptcy, which have negative effects on the economy.

Suite 401, 3rd Floor | Apple Wood Park, Wood Street, off Wood Avenue P.O. Box 21962 – 00505 Nairobi,
Kenya | Association Reg. No. 38994

2. **Increased investment:** With reduced risk of non-payment, the Prompt Payment Bill may encourage more private sector investment, particularly from small and medium-sized enterprises, who may have previously been discouraged by risk of late or non-payment.
3. **Improve supply chain efficiency:** Timely payment of bills will enable suppliers and service providers to plan and manage resources more effectively, thereby reducing wastage and lowering the cost of doing business.
4. **Increased employment opportunities:** By improving cash flow and reducing the risk of insolvency, the bill may help to create and sustain jobs in the private sector, particularly among SMEs which are a major employer in the country.

Furthermore, we would like to propose the following changes to the bill for your consideration.

No.	Specific Clause	Proposed change	Reasoning
1.	Clause 2 (b) "Where there is no written contract or the written contract does not provide for the date of payment, ninety days after..."	Where there is no contract, the due date should be within 45 days after invoicing date where the amount due is less than Ksh 10 million and within 60 days after invoicing date where the amount due is more than Ksh 10 million.	<p>The ninety (90) days payment period does not cure the issue of prompt payments and in fact adds further complacency.</p> <p>It also contradicts Regulation 150 (1) of the Public Procurement and Asset Disposal Regulations, 2020 (PPADR) which requires a procuring entity to make prompt payments for all performed contracts within sixty (60) days from the date of receipt of the invoice.</p> <p>Moreover, micro and small enterprises, which are critical drivers of economic growth and job creation in Kenya, often have limited cash reserves and rely on prompt payments to maintain their operations. Delayed payments can lead to cash flow problems, which in turn can impact the ability of micro and small enterprises to pay their own suppliers and employees, and may even result in the winding up of businesses.</p> <p>Furthermore, delayed payments can damage business relationships between the supplier and its own creditors leading to reduced trust and confidence in the supplier's ability to</p>

No.	Specific Clause	Proposed change	Reasoning
			<p>pay on time. This may impede access to reliable suppliers.</p> <p>When this happens on a large scale, there can be a negative knock-on effect on the economy, as businesses struggle to secure the resources needed to operate efficiently and compete effectively. This can lead to reduced investment, lower productivity, and slower economic growth, all of which can have far-reaching consequences for individuals, families, and communities.</p>
2.	<p>Clause 3</p> <p>This Act shall apply to payment due for goods, works, and services procured by private entities, the national government, county governments and any other entity specified as a public entity under section 2 of the Public Procurement and Asset Disposal Act.</p>	<p>The clause should be clarified in regard to the extent of the application. Ideally the clause should also cover private procuring entities not just public entities.</p>	<p>This section is misleading as it covers instances of delayed payments by private entities. The Bill does not define what 'private entities' are as it only defines "procuring entity" under clause 2 to mean a public entity making a procurement to which the Public Procurement and Asset Disposal Act applies which does not include private entities.</p>
3.	<p>Introduce a new clause on protecting (ring-fencing) of funds for the payment of goods and services procured from micro and small enterprises.</p>	<p>The procuring entity should ring-fence funds for the payment of goods and services. Such funds should be held separately from other funds and should be used exclusively for the payment of goods and services procured from micro and small enterprises.</p>	<p>The objective of the proposed clause is to ensure that the procuring entity allocates funds explicitly for the payment of micro and small enterprises, and restricts the use of these funds solely for this purpose. This will safeguard the sustainability of micro and small enterprises. As a result, this proposal will encourage</p>

No.	Specific Clause	Proposed change	Reasoning
	A procuring entity shall ring-fence sufficient funds for the payment of goods and services procured from micro and small enterprises.	Further, the procuring entity should ensure that the ring-fenced funds are sufficient to meet its prompt payment obligations to micro and small enterprises, considering the expected volume of transactions.	appropriate budget management practices, transparency, accountability and ensure responsible expenditure.
4.	Introduce a clause which provides for mandatory reporting requirements for government procuring entities.	Since government procuring entities use public funds, they should be required to disclose their payment practices to suppliers and the public.	This will promote transparency and accountability, and discourage government from engaging in unfair payment practices.
5.	Introduce a clause creating an enforcement mechanism to ensure compliance provisions	The bill should establish an independent body or agency whose responsibility it will be to monitor compliance with the bill's provisions and enforce penalties for non-compliance. This body should be empowered to investigate complaints, conduct audits and inspections, and issue fines or take legal action against non-compliant businesses.	While the bill provides for penalties and interest for late payments, it does not specify how these will be enforced. As a result, some businesses may choose to ignore the bill's provisions and delay payments to suppliers without fear of any consequences.
6.	Introduce a clause creating a dispute resolution mechanism.	The bill should be improved by creating a dispute resolution mechanism that is accessible, affordable, and efficient. For example, a specialized court or tribunal can handle disputes involving micro and small enterprises. It can also provide for alternative dispute resolution mechanisms such as mediation and arbitration.	Micro and small enterprises often face challenges in enforcing their legal rights due to high legal costs and complexity of the legal system.

In conclusion, we strongly urge the members of the Standing Committee on Finance and Budget to carefully consider the potential impacts of the Prompt Payment Bill 2022, and to support the bill accordingly.

Thank you for taking the time to consider our submission.

Sincerely,



Mr. Oga Omanga

Secretary – APRECOM