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**THE SENATE**

**TWELFTH PARLIAMENT**

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# REPORT OF THE STANDING COMMITTEE ON FINANCE AND BUDGET

**ON**

# THE STOPPAGE OF TRANSFER OF FUNDS TO COUNTY GOVERNMENTS

**CLERK CHAMBERS**
**THE SENATE**
**PARLIAMENT OF KENYA**
**NAIROBI**

**DECEMBER, 2019**

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# PREFACE

## Mandate and Functions of the Committee

Article 124 of the Constitution of Kenya, provides for the establishment of committees by either House of Parliament. Committees are central to the workings, roles and functions of Parliament as set out in Article 94 and more specifically in Article 96 of the Constitution as regards the Senate.

Parliamentary committees consider policy issues, scrutinize the workings and expenditure of the national and county governments and examine proposals for legislation. The roles of committees are twofold, investigative process and deliberative process. The end results of these processes are reports to the House in plenary on inquiry of certain issues under the mandate of a particular committee.

The Standing Committee on Finance and Budget is established pursuant to standing order 212(3) of the Senate Standing Order and is mandated –

a) *To investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to examine –*
    i) *the Budget Policy Statement presented to the Senate;*
    ii) *report on the Budget allocated to Constitutional Commissions and independent offices;*
    iii) *the Division of Revenue Bill, County Allocation of Revenue Bill, and cash disbursement schedule for county governments.*

b) *To consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance and monetary policies and public debt, planning and development policy and*

c) *To 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**

The Committee was constituted by the House on Thursday 14th December, 2017, during the First Session of the Twelfth (12th) Parliament. The Committee as currently constituted, comprises the following Members-

| | | |
|---|---|---|
| 1. | Sen. (Eng) Mohamed M. Mahamud, CBS,MP | - Chairperson |
| 2. | Sen. (Dr.) Isaac Mwaura, CBS, MP | - Vice Chairperson |
| 3. | Sen. Wetang'ula Moses Masika, EGH, MP | - Member |
| 4. | Sen. Aaron Cheruiyot, MP | - Member |
| 5. | Sen. Mutula Kilonzo Junior, MP | - Member |
| 6. | Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP | - Member |
| 7. | Sen. (Dr.) Rose Nyamunga, MP | - Member |
| 8. | Sen. Boniface Mutinda Kabaka, MP | - Member |
| 9. | Sen. CPA Farhiya Haji, MP | - Member |

# BACKGROUND AND EXECUTIVE SUMMARY

1. By a letter dated 25th November, 2019, the National Treasury and Planning forwarded, pursuant to section 97(2) of the Public Finance Management Act, National Treasury Circular No. 20/2019 Ref: IGFR/Pending Bills/01/A(24) dated 19th November, 2019, to Parliament.

2. The Circular No. 20/2019 Ref: IGFR/Pending Bills/01/A(24) from the Ag. Cabinet Secretary for the National Treasury and Planning informed the Governors of the County Governments about the Cabinet Secretary's decision to invoke section 97 of the Public Finance Management Act, 2012, to stop the transfer of the equitable share of revenue for the financial year 2019/2020 with effect from 1st December, 2019.

3. The determination to stop the transfer of funds to the county governments was informed by the fact that the governments had made no effort to clear eligible pending bills between 1st July, 2019 and end of October, 2019

4. The County Governments affected were fifteen (15) namely-
   a) Narok,
   b) Machakos,
   c) Nairobi City,
   d) Vihiga,
   e) Isiolo,
   f) Tana River,
   g) Migori,
   h) Tharaka Nithi,
   i) Bomet,
   j) Kirinyaga,
   k) Nandi,
   l) Mombasa,
   m) Kiambu,
   n) Garissa, and
   o) Baringo.

10. Upon receiving the communication, the Committee invited the Ag. Cabinet Secretary to deliberate on the matter. The meeting was held on Tuesday, 26th November, 2019.
11. Further, noting the provisions of PFMA section 97(3),

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

    the Committee requested for the report of the investigation and invited the Controller of Budget for a meeting. The meeting was held on Tuesday, 3rd December, 2019.

12. The fifteen (15) county governors of the affected counties were invited to a meeting which was held on Wednesday, 4th December, 2019 to make submissions on the matter
13. The Committee made the following observations-

a) That pursuant to Article 225(1) of the Constitution and section 96(1) of the Public Finance Management Act, 2012, the Cabinet Secretary was within his powers to stop the transfer of funds to county governments where the Cabinet Secretary finds a county government entity to be in serious or persistent material breach of its obligations or financial commitments;

b) That the power to stop the transfer of funds to a county government was tempered by several provisions in the Constitution and the PFM Act.

c) Some Counties experienced a huge discrepancy between the pending bills that were received at the handing over, the report of the County Pending Bills Verification Committee and the Audit verifications by the Office of the Auditor General.

d) That unrealistic own source revenue projections were a major cause of ineffective county budget implementation. This resulted to counties incurring expenses without corresponding revenues to settle expenditure obligations.

e) From the Submission received by the Committee, it was observed that most of the Counties had made significant effort to clear the pending bills as at 30th November, 2019.

14. The Committee made the following recommendation, That, -

a) The County Governments having made substantial progress towards settling the Pending Bills, the Committee recommends that the House does not approve the decision of the Cabinet Secretary, National Treasury to stop the transfer of funds to the listed fifteen (15) County Governments.

b) The Controller of Budget and the National Treasury should submit to the Senate a report detailing the status of payment of pending bills and reconciled amounts of pending bills of all the Counties within by 5th March, 2019.

c) The National Treasury to review the IFMIS system to provide for ageing of creditors.

d) The Public Finance Management Act, 2012 be amended to provide for payment on a First-In- First- Out (FIFO) basis. This will ensure compliance with various accounting standards which treat debt repayment as a first charge on revenue.

e) The National Treasury and County Governments to enhance technical capacity in budgeting and accounting in the County Treasury to ensure adherence with the principles of public finance and Standard Charts of Accounts.

f) The Public Finance Management Act, 2012 be amended to ensure payments are made on time by introducing a prompt pay system where if a valid invoice is not paid within certain time, it automatically attracts interest.

**ACKNOWLEDGEMENTS**

The Committee acknowledges and appreciates the cooperation shown by all stakeholders who attended the meetings

In addition, the Committee thanks the Offices of the Speaker and Clerk of the Senate for the support extended to the Committee in execution of its mandate. Appreciations to all Members of the Committee for their patience, sacrifice and commitment to public service, which enabled the Committee complete the assigned task within the stipulated time.

This report is hereby submitted to the Senate for its consideration and adoption pursuant to standing order 213 of the Senate Standing Orders.

It is now my pleasant duty and privilege, on behalf of the Standing Committee on Finance and Budget, to present to the Senate, the Report of the Committee on the stoppage of transfer of funds to County Governments.

**SIGNED:** .....

**SEN. (ENG) MOHAMED M. MAHAMUD, CBS, M.P.**

**(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)**

**DATE:** 5/12/19

## ADOPTION OF REPORT

Pursuant to standing order 213 (2) of the Senate Standing Orders the Finance and Budget Committee considered the report on the stoppage of funds to County Governments and adopted it as follows-

Sen. (Eng.) Mohamed M. Mahamud, CBS, MP - Chairperson _____

Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson _____

Sen. Wetang'ula Moses Masika, EGH, MP - Member _____

Sen. Mutula Kilonzo Junior, MP - Member _____

Sen. Aaron Cheruiyot, MP - Member _____

Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP - Member _____

Sen. (Dr) Rose Nyamunga, MP - Member _____

Sen. CPA Farhiya Haji, MP - Member _____

Sen. Boniface Mutinda Kabaka, MP - Member _____

## CHAPTER ONE

## INTRODUCTION

1. The Ag. Cabinet Secretary, National Treasury and Planning submitted a letter to the Senate dated 25th November, 2019, forwarding National Treasury Circular *No. 20/2019 Ref: IGFR/Pending Bills/01/A(24)* dated 19th November, 2019, pursuant to section 97(2) of the Public Finance Management Act (PFMA), 2012.
2. The letter also requested for approval as envisioned by Article 225(5)(b) of the Constitution.
3. The Circular *No. 20/2019 Ref: IGFR/Pending Bills/01/A(24) by* the Ag. Cabinet Secretary for the National Treasury and Planning informed the Governors of the County Governments of Narok, Machakos, Nairobi, Vihiga, Isiolo, Tana River, Migori, Tharaka Nithi, Bomet, Kirinyaga, Nandi, Mombasa, Kiambu, Garissa and Baringo of the Cabinet Secretary's decision to invoke section 97 of the Public Finance Management Act, 2012, to stop the transfer of the equitable share of revenue for the financial year 2019/2020 with effect from 1st December, 2019,
4. The direction was based on the fact that no effort had been made by these county governments to clear eligible pending bills between 1st July, 2019 and end of October, 2019.
5. Article 219 of the Constitution provides that a county's share of revenue raised by the national government shall be transferred to the county without undue delay and without deduction, except when the transfer has been stopped under Article 225".
6. Article 225 of the Constitution provides for the stoppage of funds to county governments as follows-
    a. Parliament through a legislation may authorize the Cabinet Secretary responsible for finance to stop the transfer of funds to a State organ or any other public entity—
        (a) only for a serious material breach or persistent material breaches of the measures established under that legislation; and
        (b) subject to the requirements of clauses (4) to (7).

b. A decision to stop the transfer of funds may not stop the transfer of more than fifty per cent of funds due to a county government.

c. A decision to stop the transfer of funds-

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

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

7. Public Finance Management Act,2012 provides for the framework for the stoppage of transfer of funds to the County governments.

8. Section 93(3) of the PFMA provides that assessment of the need for intervention in accordance with Article 225 of the Constitution shall apply in the case of a county government or county government entity, if it—

(a) does not operate a financial management system that complies with the requirements prescribed in this Act and the financial problem has met conditions for intervention in terms of Article 190(3) of the Constitution; or

(b) is unable to meet its financial commitments as set out in the Constitution or this Act,

9. Section 96 of the PFMA provides for stoppage of funds process in county government while section 97 provides the procedure for stoppage of funds.

## CHAPTER TWO

## SUBMISSIONS FROM NATIONAL TREASURY AND PLANNING

The Ag. Cabinet Secretary to briefed the Committee as follows-

1. The National Treasury issued a circular No. 18/2019 Ref: IGFR/Pending Bills/01/A (18) dated 22nd October 2019 to all 47 County Governments giving a way forward in settlement of County Government Pending Bills.
2. Controller of Budget (COB) report on the special audit by Office of the Auditor General (OAG) indicated that out of a total Kshs. 88.98 billion pending bills presented for audit to the AG, bills amounting to Kshs. 51.2 billion were reported as payable while Kshs. 37.7 billion lacked sufficient documentations to support services rendered or work done and therefore not recommended for payment.
3. During the meeting of Intergovernmental Budget and Economic Council (IBEC) on 18th June 2019, it was resolved that The National Treasury would release at least Kshs. 65 billion to the Counties on or before 30th June 2019 to enable settlement of the eligible pending bills in the first instance and the balance if any for running their functions. National Treasury henceforth released Kshs. 65 billion to all the Counties as agreed. Our analysis shows that the following twelve (12). They are:
    1. Elgeyo Marakwet
    2. Homabay
    3. Kajiado
    4. Kericho
    5. Kilifi
    6. Kwale
    7. Laikipia
    8. Makueni
    9. Nyamira
    10. Nyandarua
    11. Nyeri
    12. Uasin Gishu

In addition, the following twenty (20) Counties have demonstrated efforts to clear their pending bills by paying between 51 percent and 99 percent;

1. Taita Taveta (51)
2. Turkana (52)
3. Kisumu (56)
4. Meru (61)
5. Samburu (61)
6. Nakuru (64)
7. Murang'a (69)
8. Mandera (69)
9. Kisii (69)
10. Busia (71)

11. Marsabit (73)
12. Bungoma (77)
13. Siaya (79)
14. Transzoia (80)
15. Kittli (89)
16. West Pokot (90)
17. Embu (93)
18. Kakamega (95)
19. wajir (96)
20. Lamu (98)

4. However, the following 15 County Governments have not complied with the IBEC resolution and have not made any effort to clear their pending Bills between 1st of July and end of October 2019;

1. Narok (9)
2. Machakos (16)
3. Nairobi City (17)
4. Vihiga (18)
5. Isiolo (20)
6. Mombasa (36)
7. Garissa (43)
8. Kiambu (41)
9. Tana River (22)
10. Migori (24)
11. Tharaka-Nithi (27)
12. Bonnet (30)
13. Kirinyaga (31)
14. Nandi (34)
15. Baringo (44)

5. During the same meeting, it was agreed that each County Government should establish an ineligible Pending Bills Resolution Committee to develop a framework for resolving ineligible pending bills contained in the special report of the OAG. As at 28th October 2019, COB reported that out of the 47 Counties, twenty-eight (28) had established the Committees.

6. National Treasury Decision was based on Article 225 of the Constitution, which mandates the National Treasury to intervene at the County level for purposes of expenditure control in cases where Counties are involved in serious or persistent material breach of the law relating to public finances. Such serious or persistent material breach have been elaborated in the PFMA Section 94(1) (A)

7. In line with that, The National Treasury;

   i) Invoked the powers under section 97 of the PFMA to immediately stop the transfer of the FY 2019/20 equitable share of revenue with effect from 1st December 2019 due to the 15 county governments that have not made any effort between 1st July and the end of October 2019 to clear the stock of their eligible pending bills in accordance

with the law. These counties have persistently refused to pay the eligible pending bills which as you know should fòrm a first charge.

ii) To stop the transfers of Conditional Grants to these 15 Counties for this Financial Year 2019/2020.

iii) to continue monitoring the stock of debt of pending bills which is estimated at Ksh 28 billion and take appropriate measures to ensure prompt payment.

iv) To monitor the process of establishment of ineligible pending bills committees by the county government as directed by the IBEC as well as the verification of the ineligible pending bills and status report of the ineligible bills submitted.

8. Section 97(2) of the PFMA 2012, states that not later than seven days after the date of the decision to stop the transfer of funds, the Cabinet Secretary shall seek approval from Parliament. The National Treasury had written a letter dated 25 th November 2019 forwarding the Circular to Parliament seeking their approval.

9. Additionally, in respect to Section 97(I)(a), National Treasury had written a letter to the Controller of Budget (COB) informing of National Treasury's decision to invoke the stoppage of transfer of equitable share of revenue for FY 2019/20 to the 15 County Governments with effect from 1 st December,2019.

10. Members of the Committee informed that the Cabinet Secretary that they supported the move. They however cautioned that services that were crucial such as Health Services should not be interrupted. Additionally, members indicated that the process should be done openly void of corruption and favoritism as has been the past. It was said that pending bills that should be paid as bills that were received first, meaning First in and first out.

11. Members also raised concern at some of the data presented by the Cabinet Secretary. This is because some counties requested funds from the Controller of Budget, however once the funds were released to pay service providers, counties used that money to do something else.

12. The Committee was informed that critical services would not be affected by the stoppage of funds. Additionally, the stoppage of transfer of funds would only affect the 50% of the equitable share which is apportioned for development.

## CHAPTER THREE

## SUBMISSIONS FROM THE OFFICE OF CONTROLLER OF BUDGET

The Office of Controller of Budget submitted a report which showed as follows-

### i. Baringo County

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

i. The County submitted-

ii. the list of the pending bills for the suppliers in FY 2017/18, and

iii. the status of payment for each bill.

From the list availed, eligible bills paid after 30th June 2018 was Kshs. 31,630,374.06. The county reported that all eligible pending bills as verified by OAG had been settled as at 30th November, 2019

### ii. Bomet County

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

The County submitted-

i. the Pending Bills Ad hoc Committee Report, and

ii. a letter referenced CGB/GVN/NT/49/1/1 dated 25th November 2019 to the Cabinet Secretary National Treasury and Planning

From the documents availed, eligible bills paid after 30th June 2018 was Kshs. 792,312,268. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs. 397,855,609 as at 30th November, 2019. However, the County reported a figure of Kshs. 143,238,937-35 as eligible bills. The payment represents a 66.6% of the eligible pending bills.

### iii. Garissa County

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

The County submitted-

i. Bank statements for the period June 2018 to 30th November, 2019,
ii. Internet Banking Reports as at 30th November,
iii. Approved Budget for FY 2019/2020;
iv. pending bills repayment plan; and
v. pending bills payment status.

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

**iv. Isiolo County**

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

The County submitted-

i. pending bills status letter, and
ii. repayment plan for the eligible bills,
iii. list of paid pending bills as at 29th November, 2019,
iv. list of ineligible pending bills,
v. letter to the Controller of Budget on payment of pending bills dated 19th June, 2019.

From the documents availed, eligible bills paid after 30th June 2018 was Kshs.257, 296,160. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs. 1,001,076,543. The payment represents a 20.4% of the eligible pending bills.

**v. Kiambu County**

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

The County submitted-

i. Status Report on payment of pending bills;

ii. letter on pending bills Ref: KCG/FEP/2/09/VOL V/30 dated 27th November, 2019 addressed to the CS,

iii. NT and copied to OCOB; and

iv. commitment letter on settlement of pending bills Ref: KCG/ADM/6/42/VOL.II /44 dated 29th November, 2019 addressed to the CS, NT and copied to OCOB.

From the document availed, eligible bills paid after 30th June 2018 were Kshs. 798,757,152. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs. 1,032,860,872. The payment represents a 34.5% of the eligible pending bills

**vi. Kirinyaga County**

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

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

**vii. Machakos County**

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

The County submitted-

i. letter on status of Machakos county pending bills, and

ii. appeal against stoppage of releases dated 20th November 2019 Ref MCG/CECM-FIN/CS-NT/19;

iii. letter on status of Machakos county pending bills and appeal against stoppage of releases dated 29th November 2019 Ref MCG/CECM-FIN/OCOB/11-19; and

iv. copies of bank statements in Excel sheet from January 2019 to 30th November, 2019.

From the documents availed, eligible bills paid after 30th June 2018 were Kshs. 236,916,704. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs. 705,446,903. The repayment represents a 25.14% of the eligible pending bills.

**viii. Migori County**

The Special Report on Pending Bills as at 30th June 2018 indicated that the total pending bills were Kshs. 1275275208 comprising of Kshs. 1,007,373,410 and Kshs267876798 as eligible and ineligible bills respectively.

The County submitted-

i. a schedule of payments towards pending bills as at 30th November, 2019.

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

**ix. Mombasa County**

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

The County submitted-

i. a letter Ref: CECM/F&EP/ADM/20/11/19/ (1) dated 20th November, 2019,

ii. copies of bank statements (for payments to suppliers and/ contractors only),

iii. *Itax* general ledger report for the period covering November 2015 to November 2019 and, RTGS transaction details report and Bank deposit slips (for PAYE taxes).

From the documents availed, eligible pending bills paid after 30th June 2018 were Kshs.1.58 billion. The outstanding pending bills as verified by OAG as at 30th November, 2019 was Kshs. 1.97 billion. The repayment represents a 44-5% of the eligible pending bills.

**x. Nairobi City County**

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

The County submitted-

i. Auditor General Report on pending bills;

ii. bank statements;

iii. County approved budget for the financial year 2019/2020; and

iv. IFMIS payment records dated 1st January 2019- 30th November 2019.

From the documents availed, eligible bills paid after 30th June 2018 was Kshs. 3,631,491,266. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs. 8,152,337,806. The payment represents a 17% of the eligible pending bills.

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

**xi. Nandi County**

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

The County submitted-

i. copies of bank statements to the OCOB; and

ii. a letter dated 19th November, 2019 from the county government showing the summary of pending bills.

From the documents availed, eligible bills paid after 30th June 2018 was Kshs. 625,819,018. The payment represents 66.7% of the eligible pending bills. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs. 316,488,823.

**xii. Narok County**

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

The County submitted-

i. a schedule of status of pending bills as at November 2019 which indicates the amount paid to date as Kshs. 1,043,871,048; and

ii. a list of suppliers paid.

From the documents availed, eligible bills paid after 30th June 2018 was Kshs. 180,625,471. The outstanding pending bills as at 30th November, 2019 were Kshs. 936,865,022. The payment represents a 52.7% of the eligible pending bills.

**xiii. Tana River County**

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

The County submitted-

i. list of eligible Pending Bills as at 30th June 2018;

ii. List of ineligible Pending Bills as at 30th June 2018;

iii. List of eligible Pending Bills paid as at 30th June 2018;

iv. Central bank of Kenya statement of Account 1000170708 Tana River County Development for the period 1st January 20192019 to 30th June 2019; and

v. Central bank of Kenya statement of Account 1000170708 Tana River County Development for the period 1st July 2019 to 2nd December 2019.

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

**xiv. Tharaka Nithi County**

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

The County submitted-

i. Approved County Budget,

ii. the Supplementary Budget and Appropriation Bill, 2019, and

iii. the list of pending bills paid as at 20th November, 2019.

From the documents availed, eligible bills paid after 30th June 2018 were Kshs. 486,007,948. The payment represents a 44.1 % of the eligible pending bills. The outstanding pending bills as at 30th November, 2019 were Kshs. 215,863,971. The County Government has included the outstanding eligible pending bills amounting to Kshs 221,982,953 million in the supplementary budget of FY 2019/2020 which is currently before the County Assembly

**xv. Vihiga County**

The Report indicated that the total pending bills were Kshs. 2,037,052,291 comprising of Kshs. 1,151,148,522 and Kshs. 885,903,769 as eligible and ineligible bills respectively.

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

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

The Office of the Controller of Budget recommended that-

a) The 14 County Governments affected should develop a recovery plan in line with Section 99 of the Public Finance Management Act, 2012.

b) Review of the IFMIS system to provide for ageing of creditors.

c) Amendment of the Public Finance Management Act, 2012 to provide for payment on a First-In- First- Out (FIFO) basis. This will ensure compliance with various accounting standards which treat debt repayment as a first charge on revenue.

d) Enhancement of technical capacity in budgeting and accounting in the County Treasury to ensure adherence with the principles of public finance and Standard Charts of Accounts.

e) Review of the law to ensure payments are made on time by introducing a prompt pay system where if a valid invoice is not paid within certain time, it automatically attracts interest.

## CHAPTER FOUR

## SUBMISSIONS FROM THE COUNTY GOVERNORS

### 1. Bomet County

On the status of Bomet County Government pending bills, the Governor of Bomet, Hon. Dr. Hillary Barchok, submitted as follows-

a) The office of the Auditor General carried out an audit of pending bills as at 30th June, 2018 and gave a report dated 28th May, 2019. In the report, OAG placed a figure of **Kshs.1, 190,167,887** as eligible pending bills and **Kshs. 63,383,304** as ineligible. The report went ahead to indicate that as at 15th February, 2019 we had paid **Kshs. 505, 625, 519** leaving **Kshs. 684, 542, 358** as outstanding.

b) The governor raised limitations to the OAG report noting the following-

   i. That, the report came before the end of the Financial year therefore it failed to recognize the payments of pending bills and other payments made by the end of the close of the Financial Year and,

   ii. That, the audit team did not visit projects to do verification but rather carried out a desktop verification.

c) On 19th June, 2019, the Council of Governors via a letter referenced COB/COG/002 /Vol.3(55), directed all counties to deal with pending bills. They were advised to form a pending bills committee. The CECM Finance on 11th, 2019 formed the committee and the names were gazette on 19th July, 2019 as per the attached gazette notice.

d) The pending bills committee concluded the report. There was a very significant drop to Kshs. 143,238,937.35 from the earlier figure reported by the OAG. The period between 1st July, 2019 and 31st October,2019 have been a dry period. A part from payment of salaries there was nothing much which happened. This is because we were implementing a vote on account budget occasioned by the impasse between Senate and National Assembly on revenue Allocation.

e) The Governor assured the Committee of his government commitment to pay pending bills and indicated that efforts of the county towards the same as follows-

i. Pending bills committee was established and the report has been received (copy attached).

ii. Over One Hundred Million Kenya Shillings towards payment of pending bills were set aside (see Budget FY 2019/2020).

iii. The county is in the middle of processing payments of over Fifty million Kenya shillings starting last week when the budget was uploaded.

**Schedule of Status on Bomet Pending Bills**

| | | |
|---|---|---|
| Pending Bills as per the OAG Report | 1,190,167,877.00 | |
| Pending Bills Disputed | 133,613,475.00 | |
| | 1,056,554,402.00 | |
| Pending Bills Paid as at 30th June, 2019 | 851,99,460.00 | 81% |
| Pending Bills processed awaiting the approval of the COB | 110,000,000 | |

f) In view of the above commitments and undertakings, he requested the Senate to assist Bomet County Government to be de-listed from the list of County Governments set out in the Treasury Circular No.20/2019, dated 19th November, 2019.

**2. Isiolo County**

H.E Dr. Muhammed Kuti, the Governor County Government of Isiolo appeared before the Committee and gave his presentation on the matter of the pending bills for Isiolo County. He informed the Committee that:

a) The County inherited approximately Kshs. 914,064,969 as pending bills.

b) The County Government of Isiolo has paid Kshs. 257,296,159.95 as pending bills.

c) Eligible pending bills amount to Kshs. 596,814,522.81. The County will stagger the amount over the next two financial years that is 2019/20 and 2020/21.

d) The County plans to pay Kshs. 350,000,000 and Kshs. 246,814,522.84 in the FYs 2019/20 and 2020/21 respectively to clear the eligible pending bills of Kshs. 596,814,522.84.

e) The County has budgeted Kshs. 150,000,000 in the first supplementary for FY 2019/20. A figure of Kshs. 200,000,000 will be budgeted for the next financial year 2020/21.

f) The County will further investigate the ineligible pending bills totaling to Kshs. 610,134,606.76 through the County Pending Bills Committee and share the findings with the Office of the Controller of Budget, the Office of the Auditor General and the National Treasury.

Governor Dr. Kuti further informed the Committee that:

a) Under the circumstances, the County Government of Isiolo will strictly follow these timelines to ensure that the issue of pending Bills is resolved and does not recur.

b) In summary, the pending bills at 29th November, 2019 are as follows:

- Eligible - Kshs. 596,814,522.84
- Ineligible - Kshs. 610,079,446.76
- Amount from defunct local authority - Kshs. 108,047,308
- Total - Kshs. 1,314,941,277.60

c) It was prudent to note the total amount of pending bills at the end of every term of a governor before handing over.

**3. Kirinyaga County,**

H.E Anne Waiguru, the Governor County Government of Kirinyaga appeared before the Committee and gave her presentation on the matter of the pending bills for Kirinyaga County. She informed the Committee that:

a) On assumption of Office August 2017, the County had pending bills amounting to Kshs. 296.1 Million. The internal review report of the County indicates that about 50 percent belong to a single individual. The person later died in a mysterious circumstances and the matter is with the Directorate of Criminal Investigations.

b) The governor later on requested the Office of the Auditor General to undertake a Special Audit to authenticate the pending bill that amounted to Kshs. 296.1 Million as per what was the figure in August, 2017. At the time the County didn't have the budget for such an audit. However, the Office of the Auditor General agreed to undertake the special audit at their own cost in May, 2018 which commenced in July the same period.

c) The Draft Special Audit Report was tabled by the Office of the Auditor General to County Government of Kirinyaga in January, 2019 and indicated that pending bills verified amounted to Kshs. 461 Million. The County Government expressed dissatisfaction on the reported figures and requested further verification.

d) In June, 2019, the Office of the Auditor General further released a second draft of the Special Audit Report on the pending bills that indicated the pending bills for Kirinyaga County as at 30th June 2018 as Kshs. 531 Million and later on Kshs. 741Million.

e) After the trend in the discrepancies from August, 2017 to June 2019, in July, 2019, the Office of the Controller of Budget sought clarification the pending bills of Kirinyaga County in a letter that was copied to the Special Secretary, Intergovernmental Budget and Economic Council highlighting the discrepancies in the special audit reports vis a vis records held by the Counties.

The Governor further informed the Committee that:

i. It has not been clear on the true [position of the pending bills.

ii. The County has very minimal pending bills for the periods 2017/18-2018/19 FYs as most has been [paid off in the subsequent budgets.

iii. The County has already factored in Kshs. 100 Million in the supplementary budget one of 2019/2020 FY to pay eligible pending bills upon verification.

iv. In summary:

- Eligible pending bills reported 1st Audit - Kshs. 461, 738,753

- Eligible pending bills reported 2nd audit - Kshs. 741,080,963
- Contested Bills (Variance) - Kshs. 279,342,210
- Payment as per the CoB Report - Kshs. 227,245,701
- Outstanding eligible bills as per the initial report - Kshs. 461,738,753
- Less payments as afore-mentioned - Kshs.227, 245,701
- Total Outstanding - Kshs. 234,493,052

The Governor concluded by stating that the amount of the total outstanding pending bills as per her presentation included an amount of Kshs. 179,640,927 belonging to a single individual whose case is under investigations by the DCI as earlier mentioned.

**4. Machakos County,**

On the status of Machakos County Government of Machakos pending bills, the Governor of Machakos Hon. Alfred Mutua, EGH submitted as follows-

a) In compliance with the directive to settle pending bills, the following measures have been initiated and implemented by the County-

b) On payment of pending bills- the Audit Report came at the end of May, 2019 and the last two tranches of funds were released on 5th July, 2019, which was a few days to the closure of the Financial Year 2018/2019. This did not give enough window to pay pending bills. The county has been able to pay a total of Kshs. 245 Million and a further amount of Kshs. 230 Million has been processed to IB and Form A is at the office of the Controller of Budget. Once approval is granted, this will bring the total amount paid to date to Kshs. 475 Million. This is a significant reduction from the original balance of Kshs. 942 Million out of which Kshs. 241 Million is going through the verification by the pending bills verification team leaving an eligible pending bill amount of Kshs. 225 Million.

c) Schedule of a summary of the current status (Amount in Kshs)

| | |
|---|---|
| Balance Per OAG (Kshs) | 942,362,607.30 |
| **Less.** | |
| Paid per OCOB verification | 245,062,965.00 |
| Funds Requested at OCOB | 229,959,991.00 |
| Pending further Verification | 241,652,617.55 |

Balance being processed via IFMIS 225,687,033.75

d) On Compliance with the National Treasury and Office of the Controller of Budget Circulars- Machakos County has established the Pending Bills Committee in compliance with the directive contained in the Controller of Budget letter COB/COG/002/VO.3955 dated 19th June, 2019 and Controller of Budget circulars No. 23/2018 and No.2/2019. Ref: Gazette Notice No. 8994 dated 20th September, 2019.

e) Further to ensure full compliance with the directive, the CECM – Finance and Economic Planning also issued a circular dated 2nd July, 2019, bringing the contents of the National Treasury and Office of the Controller of Budget circulars to the attention of all the Accounting Officers.

f) On the Payment plan for the balance of the eligible and ineligible pending bills- In view of the fact that there are limited resources and services to the people must be delivered so as to avoid occasioning crisis, the county proposed to pay the remaining eligible pending bills balance of Kshs. 225 million within the next three months although the Circular from the Office of the Controller of Budget had given counties to clear the eligible pending bills by June, 2020.

g) The County further proposes to phase the payment of the balance of ineligible bills pending verification, once cleared by the pending bills Committee by 30th June, 2021.

h) In view of the submissions and the actions taken to manage the pending bills, the Governor requested the Senate to intervene and ensure Machakos is removed from the list of Counties which have not complied with the directive to pay pending bills as it had demonstrated substantial compliance.

i) The Governor further requested that the equitable share and conditional grants releases to the county continue uninterrupted.

**5. Nairobi City County**

H.E Mike Mbuvi, the Governor County Government of Nairobi City appeared before the Committee and gave his presentation on the matter of the pending bills for Nairobi City County.

He informed the Committee that:

a) The Receivables to Nairobi County Government from Land Rate Defaulters by 30th November, 2019 were totaling to Kshs. 706,748,728,881.27 out of which National Government owes Kshs. 236,920,630,330 in lieu of land rates.

b) The debts/ payables for goods and services by Nairobi City County Government totaling to Kshs. 23,139,794,063.

c) Payable Pending Bills by Nairobi City County Government as audited by the Office of the Auditor General totaled to Kshs. 11,783,829,072.

d) The Nairobi City County Government payments to pending Bills as contained in the Controller of Budget Report and KRA totaling to Kshs. 3.9 Billion are as follows:

- Payments to suppliers - Kshs. 2,102,087,898
- Payments to KRA - Kshs. 2.0Billion

e) The National Government needs to pay the Nairobi City County totaling to Kshs. 236,920,630,330.

f) The County urgently requests the Senate to intervene for the payments to be made by the National Government.

g) There was an agreement with the National Government that is the National Treasury indicating that they will pay Kshs. 8.1 Billion in a proposed financing agreement for the debt arrears.

Governor Sonko further informed the Committee that:

a) Nairobi City County Government should not be classified as not paying pending bills because the Nairobi City County Government has paid over Kshs. 4 Billion. This includes suppliers up to November 2019 at Kshs. 2,102,087,898 and KRA Kshs. 2 Billion.

b) Nairobi City County Government has budgeted Kshs. 3.2 Billion thus towards payment of pending bills during FY 2019/20. The County paid Kshs. 2.1 Billion totaling to Kshs. 5.3 Billion.

c) There should be immediate release of Kshs. 8 Billion by the National Treasury to pay the balance of pending bills estimated at Kshs. 9 Billion.

d) The County will make arrangements to clear Kshs. 225 Billion and ensure that some money is left for improvement of service delivery.

**6. Nandi County**

H.E Governor Sang, the Governor County Government of Nandi appeared before the Committee and gave his presentation on the matter of the pending bills for Nandi County.

He informed the Committee that:

a) Nandi County was enumerated as one of the 15 Counties that had not met the 50% threshold on the settlement of pending bills. Specifically, the report indicated that out of the eligible pending bills of Kshs. 942,307,841, Nandi County had paid Kshs. 320,114,388 representing 34% of the total payable amount. On the basis of this Nandi County was listed among the 15 counties whose funds were to be stopped for noncompliance.

b) However, on a reconciliation of records with the Controller of Budget and the National Treasury, reflected a true position of Kshs. 625,819,018 being the actual amount paid representing 66% payment of the outstanding amount. This in effect classifies as among the counties that have made attempts to clear pending bills.

c) The Kshs.942,307,841 comprises both historical bills (FY2013- 2016), of Kshs. 420 Million and the balance being the bills for FY 2017/2018.

d) The above notwithstanding the county recognized that more efforts needs to be put towards clearing pending bills. The County has undertaken the following efforts to clear the pending bills-

   i. The county has factored in its recently supplementary budget of Kshs. 252,000 for the payment of the historical pending bills. This will be paid by the end of this financial year, the balance of 160 Million will be factored in the budget for the FY 2020/2021 and shall take the first charge (First in, First out) as per the National Treasury advisory. The 2017/2018 bills were already factored in the budget as work in progress.

ii. The County has constituted the ineligible pending bills Committee which has already began the process of resolving the issues around the ineligible bills (Gazette notice attached)

iii. The Governor informed the Committee that the County Budgeting is realistic on its own source revenue. This shall ensure that the county is able to make commitments based on realistic revenue estimates.

a. The county submitted a copy of supplementary estimates budget indicating budgetary provision settlement of pending bills.

b. In view of the above commitments and undertakings, the Governor appealed to the Senate to intervene to expunge Nandi County Government from the list of County Governments set out in the Treasury Circular No.20/2019, dated 19th November, 2019 as it had complied with the requirements set out and efforts have been made to clear the pending bills.

**7. Narok County**

On the status of Narok County Government of Narok pending bills, the Governor of Narok Hon. Samuel K. Tunai, EGH submitted as follows-

a) The Governor submitted that he had written to the Ag. Cabinet Secretary National Treasury and Planning on 22nd November, 2019 and held a meeting with him on 26th November, 2019. He informed the Committee of his undertaking to utilize the funds released to Narok county for November, 2019 for payment of salaries and apply the balance of which shall not be less than Kshs. 500,000,000/- towards the pending bills, which as at 20th November, 2019 stood at Kshs. 936,865,023.

b) The county further undertook to offset the balance of the pending bills by committing Kshs. 200,000,000/- in the month of December, 2019 and January, 2020. He assured the Committee that come February, 2020, Narok county shall be free of pending bills.

c) In view of the above commitments and undertakings, the Governor appealed to the Senate to intervene and assist Narok County Government to be de-list from

the list of County Governments set out in the Treasury Circular No.20/2019, dated 19th November, 2019.

**8. Narok County**

On the status of Narok County Government of Narok pending bills, the Governor of Narok Hon. Samuel K. Tunai, EGH submitted as follows-

a) The Governor submitted that he had written to the Ag. Cabinet Secretary National Treasury and Planning on 22nd November, 2019 and held a meeting with him on 26th November, 2019. He informed the Committee of his undertaking to utilize the funds released to Narok county for November, 2019 for payment of salaries and apply the balance of which shall not be less than Kshs. 500,000,000/- towards the pending bills, which as at 20th November, 2019 stood at Kshs. 936,865,023.

b) The county further undertook to offset the balance of the pending bills by committing Kshs. 200,000,000/- in the month of December, 2019 and January, 2020. He assured the Committee that come February, 2020, Narok county shall be free of pending bills.

c) In view of the above commitments and undertakings, the Governor appealed to the Senate to intervene and assist Narok County Government to be de-list from the list of County Governments set out in the Treasury Circular No.20/2019, dated 19th November, 2019.

**9. Tana River County**

The representative of the Governor, CEC member for Finance and Planning informed the Committee that-

a) On the status of County Government of Tana River pending bills, the county government submitted its plans to settle the eligible pending bills amounting to Kshs. 507,082,631 from the special report of the OAG.

b) The county government as of 29th November, 2019 has progressively cleared Ksh. 235, 276, 887.55 as per the report submitted to office of the controller of Budget dated 29th November, 2019 referenced TRCG/FIN/3/3/31.

c) The county government committed to pay Ksh. 171,805, 744 by 31st December, 2019 as evidenced in the certified copy of the County Government FY 2019/2020 budget.

d) The outstanding amount of Ksh. 100,000,000 will be cleared in the first supplementary budget which will be submitted to the County Assembly by 31st January, 2020.

e) In view of the above commitments the County Government appealed to the Senate to remove Tana River County from the list of County Governments set out in the Treasury Circular No.20/2019, dated 19th November, 2019 as having failed to demonstrate substantial effort to pay pending bills.

**10. Tharaka Nithi County**

The Governor informed the Committee that-

b) The report presented by Controller of Budget showed the correct amounts of pending bills in the County.

c) The County had established Pending Bills Committee.

d) The outstanding bill was Kshs. 215,863,971.

e) The outstanding bill had been factored in the county Supplementary Appropriation Act, 2019.

f) The county is committed to settle the bill within the next 3 months

**11. Vihiga County**

H.E Patrick Saisi, the Deputy Governor County Government of Vihiga appeared before the Committee and gave his presentation on the matter of the pending bills for Vihiga County.

He informed the Committee that:

a) The County Assembly of Vihiga in June 2017 commissioned a special audit of all pending bill by the Office of the Auditor General.

b) The total pending Bill for Vihiga County Government at the time was Kshs. 2,481,399,292.40

c) In its preliminary report, the Auditor General observed that the figures from the departments were prima facie faulty as the departments quoted the contract sums as opposed to the value of the work done and payable amounts pending.

d) Thereafter, the figure was revised Kshs. 1,602,515.84. The figure of Kshs. 1,602, 5151,507 was purely based on the certificates of works in the files. It does not necessarily represent the pending bills as per the works done.

e) A scrutiny of the alleged pending bills by the Auditor General left the alleged pending bills Kshs. 826,259,130.04 for consideration by the County Executive.

f) The Office of the Auditor General prepared its preliminary report and asked departments to respond to several issues raised regarding the pending bills amounting to Kshs. 826,259,130.04 for consideration by the County Executive. The Auditor General further made recommendations and conditions for payment on each of the alleged pending bills.

g) It is from this backdrop that H.E. Dr. Wilber K. Ottichilo constituted an Ad Hoc Committee to look into and review the alleged pending bills with a view of coming up with a clear way forward on each and every claim and pending bills for communication to the contractors.

h) At the preliminary stage, Pending Bills worth Kshs. 190,216,347 had been approved for payment. These Bills which had the legal documentations and projects verifiable based on the documentations available at that stage.

i) Later on, the Office of the Auditor General came in carry out an independent audit wherein it identified Legible and Ineligible Pending Bills and the Ad Hoc Committee of the County disbanded.

The Deputy Governor further informed the Committee that:

a) Some of the Pending Bills cleared as legible for payment by the Auditor General do not in the opinion of the county meet the legal threshold for procurement and

payment. In one instance a contractor has actually disowned a pending bill approved as eligible by the Auditor General.

b) The Auditor General recommended the formation of a Committee to check the ineligible pending bills and went ahead and provided for its membership. There is no provision for a legal person on the Committee.

c) In the last financial year 2018/19 Kshs. 100 million was set aside for Pending Bills and Kshs. 57 Million was paid. The Kshs. 43 Million was not paid due to KRA compliance issues on the part of the contractors. The money was re-budgeted and is part of the Kshs. 450 Million.

d) The County has prepared and the Country Assembly approved a Supplementary Budget with Kshs. 450Million for Pending Bills.

**12. Mombasa County**

The Governor for Mombasa submitted as follows on the status of eligible Pending Bill in Mombasa County.

a) The county position on the special audit for the County Government of Mombasa as 01 April 2013 to 30 June 2018. Out of the Eligible Pending bills of 3,545,800,427 captured, The County Government of Mombasa has paid / cleared Ksh 1,577,364,259 as follows:

   i. 1,310,292,709.00 being PAYE

   ii. Ksh 105,377, 863 being Withholding and VAT arrears

   iii. Ksh 676,000 and 2,307,350 being NSSF and NHIF payments respectively

   iv. 84,679,516 and Ksh 38, 554,328 being Laptrust and Lapfund respectively as per OAG report

   v. 35,476,493 being supplier payments. Ksh 23,353,517 & 12,122,976 being Recurrent and Development respectively.

b) The County unpaid pending bills are:
   i. Ksh 167,144,941 for supplier or recurrent and development

   ii. Ksh 895, 932, 485 and 936,965,051 for Laptrust and Lapfund respectively.

c) Below is the schedule summary of payment as per our records in comparison with Auditor General special report.

**(1.) PAY AS YOU EARN (PAYE)**

**ESTIMATED (PAYE) BY KRESTON KM & CO (Auditor General)**

| YEAR | ESTIMATE | PAID | BALANCE |
|---|---|---|---|
| 2013/2014 | 550,451,407.00 | - | 550,451,407.00 |
| 2014/2015 | 716,372,590.00 | 151,017,930.00 | 565,354,660.00 |
| 2015/2016 | 673,301,031.00 | 504,599,058.00 | 168,701,973.00 |
| 2016/2017 | 734,859,936.00 | 770,993,265.00 | - 36,133,329.00 |
| 2017/2018 | 844,204,346.00 | 782,286,348.00 | 61,917,998.00 |
| | 3,519,189,310.00 | 2,208,896,601.00 | 1,310,292,709.00 |

d) The governor advised that the eligible pending bills of Ksh 3,545,800,427 captured by the Office of the Auditor General included a figure of Ksh 1,310,292,709 as PAYE arrears. However, the figure was captured erroneously as not having been paid. The county is not in arrears on PAYE as payments are up-to-date as October 2019 as per KRA. Analysis of payment shown below:

| CURRENT STATUS OF COUNTY GOVERNMENT OF MOMBASA PAYE | | | |
|---|---|---|---|
| **YEAR** | **PAYROLL** | **PAID** | **BALANCE** |
| 2013/2014 | 550,451,407.00 | 585,156,116.25 | ( 34,704,709.25 ) |
| 2014/2015 | 716,372,590.00 | 538,211,875.65 | 178,160,714.35 |
| 2015/2016 | 673,301,031.00 | 657,428,988.67 | 15,872,042.33 |
| 2016/2017 | 734,859,936.00 | 770,993,265.00 | ( 36,133,329.00) |
| 2017/2018 | 844,204,346.00 | 993,145,763.45 | ( 148,941,417.45) |
| | 3,519,189,310.00 | 3,544,936,009.02 | ( 25,746,699.02 ) |

**(2.) ANALYSIS OF WITHHOLDING TAXES ASSESSED BY KRA**

| Tax Head | Amount report in pending bill | Amount assessed and agreed with KRA (Kshs) | Amount considered ineligible |
|---|---|---|---|
| Withholding VAT @6% | 180,853,948.00 | 84,611,319.00 | 96,242,629.00 |

| | | | |
|---|---|---|---|
| Withholding VAT @3% & 5% | 165,055,948.00 | 24,636,729.00 | 140,419,219.00 |
| **TOTAL** | **345,909,896.00** | **109,248,048.00** | **236,661,848.00** |

e) Included in the Office of the Auditor General's report was a figure of Ksh 109,248,048 being 3% and 5% withholding and 6% VAT. However we have attached an analysis of our payments to KRA showing payments for your perusal and confirmation. The County has balance of **Kshs. 3,870,185.00 from the Pending bill as at 30th June 2018.**

| DATE | ITAX REFERENCE NUMBER | AMOUNT KSHS |
|---|---|---|
| 9/5/2019 | 2020190001093540 | 11,368,808.00 |
| 9/5/2019 | 2020190001094074 | 3,833,997.00 |
| 11/4/2019 | 2020190000834049 | 12,133,049.00 |
| 11/4/2019 | 2020190000834659 | 2,984,887.00 |
| 9/3/2019 | 2020190000546072 | 15,057,883.00 |
| 4/2/2019 | 2020190000255235 | 24,923,240.00 |
| 4/2/2019 | 2020190000255939 | 5,143,515.00 |
| 19/12/2018 | 2020180002554141 | 14,895,616.00 |
| 19/12/2018 | 2020180002555185 | 599,965.00 |
| 19/11/2018 | 2020180002322196 | 13,030,423.00 |
| 19/11/2018 | 2020180002322569 | 1,406,480.00 |
| | **TOTAL** | **105,377,863.00** |

**(3) ELIGIBLE SUPPLIERS PAYMENTS AS PER AUDITOR GENARAL SPECIAL REPORT**

| YEAR | ELIGIBLE PAYMENTS | PAID | PENDING | MONTHLY PROPOSAL TO PAY |
|---|---|---|---|---|
| Eligible | 167,144,941 | 35,476,493 | 131,668,448 | 14,000,000 |

f) Included in our eligible pending bills was a figure of Ksh 167,144,941 to suppliers with Ksh 133,896,979 being development and Ksh 33,247,963 being recurrent pending bills. The County proposes to pay the pending bills in installments starting from this November 2019 at a rate of Ks 14Million every month for the next 12 months. The County has paid Ksh 23, 353, 517 for recurrent and Ksh 12, 122,976 for Development in supplier payments. However, this would depend on the on the timely disbursement of funds by the National Treasury.

**(4) LAPTRUST AND LAPFUND**

g) The Office of the Auditor General report contained outstanding eligible bills of Ksh 895,932,485 and 936,965,051 for Laptrust and Lapfund respectively. The county currently has a payment plan with LAPTRUST remitting Ksh 25 million every month towards settlement of the post devolution principal contribution debt (Attached Letter).

**(5) THE PENDING BILLS RESOLUTION COMMITTEE AND THE INELIGIBLE BILLS OF 1,801,985,966.**

h) The County Government of Mombasa has established a pending Resolution Committee who are currently gathering information and documents that would unlock and resolve the ineligible bills contained in the office of the Auditor General report. Their report would be shared to National Treasury as soon as available.

**13. Migori County**

The Governor for Migori County submitted that the County has complied and paid 505million out of the pending bills by end of November, 2019. The county has also requested 130 Million waiting approval of the Controller of Budget to be paid before the end of December, 2019. The county has also submitted a repayment plan for the balance of the amounts to be paid within three (3) Months and have made a commitment with the office of the Controller of Budget and the National Treasury.

## CHAPTER FIVE

## COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

### Observations

The Committee made the following observations on the Bill-

1. That the Cabinet Secretary may, pursuant to Article 225(1) of the Constitution and section 96(1) of the Public Finance Management Act, 2012, stop the transfer of funds to county governments where the Cabinet Secretary finds a county government entity to be in serious or persistent material breach of its obligations or financial commitments;

2. That the power to stop the transfer of funds to a county government is limited within the following safeguards under the Constitution and the Act-
   (a) within seven days of the decision to stop the transfer of funds, the Cabinet Secretary is required to seek the approval of Parliament. The decision to stop the transfer of funds is contained in a National Treasury Circular dated 19th November, 2019. The Cabinet Secretary is therefore required under the law to seek the approval of Parliament on or before 26th November, 2019;

   (b) the Cabinet Secretary is also required to inform the Controller of Budget the date from when the stoppage of transfer of funds takes effect and the nature of serious material breaches or persistent material breaches committed by the State organ or public entity;

   (c) the Controller of Budget is then required to investigate the matter and submit a report to Parliament in accordance with Article 225(7) of the Constitution within fourteen days of the decision to stop the transfer. As the decision to stop the transfer was made on 19th November, 2019, the Controller of Budget is required to transmit the report to Parliament on or before 3rd December, 2019;

3. Some Counties experienced a huge discrepancy between the pending bills that were received at the handing over, the report of the County Pending Bills Verification Committee and the Audit verifications by the Office of the Auditor General.
4. There were unrealistic own source revenue projections which was a major cause of ineffective county budgets and it led counties to incur expenses without corresponding revenues hence pending Bills.
5. Delayed exchequer releases was also a major challenge it led to delayed payments for services rendered and hence pending bills.
6. That Cess that was previously paid by companies to the county governments have been put to hold due to court orders and this had affected some county own source revenue.
7. From the information supplied to the Committee further observed that-

a) Baringo County

Had cleared all eligible pending bills as at 30th November, 2019

b) Bomet County

Had paid 66.6% of the eligible pending bills. The County was committed to clear the balance of the verified pending bills within the next 3 months.

c) Garissa County

Had paid 58.7% of the eligible pending bills

d) Isiolo County

Had paid 20.4% of the eligible pending bills. County was committed to pay Kshs 350 million in the Financial year 2019/20 and the balance of the verified in FY 2020/21.

e) Kiambu County

Had paid 34.5% of the eligible pending bills.

f) Kirinyaga County

The County raised issues with discrepancies on pending bills and was awaiting further guidance from COB and OAG.
Had paid 31% of the eligible pending bills. The County was Committed to pay Kshs 100 million through Supplementary budget.

g) Machakos County

Had paid 25.14% of the eligible pending bills. The County was committed to clear the bills by June 2020. A supplementary budget was to be done in January, 2020.

h) Migori County

Had paid 48.1% of the eligible pending bills.

i) Mombasa County

Had paid 44.5% of the eligible pending bills.

j) Nairobi City County

Had paid 17% of the eligible pending bills. The County had revised its budget to pay Kshs 3.2 Billion of the pending bills.

k) Nandi County

Had paid 66.7% of the eligible pending bills. The County had revised its budget in order to pay Kshs.250 million. The balance would be paid in FY 2020/21.

l) Narok County

Had paid 52.7% of the eligible pending bills. The County was committed to clear the verified pending bills by June 2020. Through audit would be required on the ineligible pending bills.

m) Tana River County

Had paid 39.2% of the eligible pending bills. The County was committed to clear the pending bills through supplementary budget.

n) Tharaka Nithi County

Had paid 44.1% of the eligible pending bills. The County was committed to clear the pending bills in 3 three installments. Supplementary budget prepared to clear Kshs 221 million.

o) Vihiga County,

Had paid 17% of the eligible pending bills. The County had prepared Supplementary Budget with view of paying Kshs 450 million.

**Recommendations**

The Committee made the following recommendation, That, -

a) the County Governments having made substantial progress towards settling the Pending Bills, the Committee recommends that the House does not approve the decision of the Cabinet Secretary, National Treasury to stop the transfer of funds to the listed fifteen (15) County Governments.

b) the Controller of Budget and the National Treasury should submit to the Senate a report detailing the status of payment of pending bills and reconciled amounts of pending bills of all the Counties within by 5th March, 2019.

c) the National Treasury to review the IFMIS system to provide for ageing of creditors.

d) the Public Finance Management Act, 2012 be amended to provide for payment on a First-In- First- Out (FIFO) basis. This will ensure compliance with various accounting standards which treat debt repayment as a first charge on revenue.

e) the National Treasury and County Governments to enhance technical capacity in budgeting and accounting in the County Treasury to ensure adherence with the principles of public finance and Standard Charts of Accounts.

f) the Public Finance Management Act, 2012 be amended to ensure payments are made on time by introducing a prompt pay system where if a valid invoice is not paid within certain time, it automatically attracts interest.

**Annex**

1. Minutes of the Committee
2. Letter from the National Treasury
3. Report from the office of Controller of Budget
4. Submission from the County Governments

**MINUTES OF THE 120TH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON TUESDAY, 26th NOVEMBER, 2019 AT COUNTY HALL, GROUND FLOOR BOARDROOM, PARLIAMENT BUILDINGS AT 11:00 AM.**

**PRESENT**

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. Moses Wetangula, EGH, MP - Member
3. Sen. Aaron Cheruiyot, MP - Member
4. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member
5. Sen. CPA Farhiya Haji, MP - Member

**ABSENT WITH APOLOGY**

1. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
2. Sen. Mutula Kilonzo Junior, MP - Member
3. Sen. (Dr) Rose Nyamunga, MP - Member
4. Sen. Boniface Mutinda Kabaka, MP - Member

**SECRETARIAT**

1. Mr. Crispus Njogu - Clerk Assistant
2. Ms. Lucy Radoli - Legal Counsel
3. Mr. Joash Kosiba - Parliamentary Budget Office
4. Mr. Stephen Nyakuti - Audio Officer

**IN ATTENDANCE – OFFICE OF CONTROLLER OF BUDGET**

1. Hon. (amb) Ukur Yattani - Ag. CS National Treasury and Planning
2. Hon. Nelson Gramchie -CAS National Treasury and Planning
3. Mr. Albert Mwenda - Director General National Treasury and Planning
4. Mr. Bernard Ndungu - Director General National Treasury and Planning
5. Ms. Isabella Kogei - Parliamentary Liasion Officer

**MIN. NO. 585/11/2019: PRELIMINARIES**

The Chairperson called the meeting to order at 11.22 am and followed a word of prayer.

**MIN.NO. 586/11/2019: ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after it was proposed by Sen. Aaron Cheruiyot, MP and seconded by Sen. (Dr) Ali Abdullahi Ibrahim, MP

**MIN.NO. 587/11/2019: MEETING WITH CABINET SECRETARY NATIONAL TREASURY AND PLANNING TO DELIBERATE ON THE STOPPAGE OF TRANSFER OF FUNDSTO COUNTY GOVERNMENTS WITH PENDING BILLS.**

The Chairperson welcomed the Cabinet Secretary and his team.

After introduction, the Chairperson welcomed the Cabinet Secretary to brief the Committee.

The Committee was informed as follows-

1. The National Treasury issued a circular No. 18/2019 Ref: IGFR/Pending Bills/01/A (18) dated 22nd October 2019 to all 47 County Governments giving a way forward in settlement of County Government Pending Bills.
2. Controller of Budget (COB) report on the special audit by Office of the Auditor General (OAG) indicated that out of a total Kshs. 88.98 billion pending bills presented for audit to the AG, bills amounting to Kshs. 51.2 billion were reported as payable while Kshs. 37.7 billion lacked sufficient documentations to support services rendered or work done and therefore not recommended for payment.
3. During the meeting of Intergovernmental Budget and Economic Council (IBEC) on 18th June 2019, it was resolved that The National Treasury would release at least Kshs. 65 billion to the Counties on or before 30th June 2019 to enable settlement of the eligible pending bills in the first instance and the balance if any for running their functions. National Treasury henceforth released Kshs. 65 billion to all the Counties as agreed. Our analysis shows that the following twelve (12). They are:

    1. Elgeyo Marakwet
    2. Homabay
    3. Kajiado
    4. Kericho
    5. Kilifi
    6. Kwale
    7. Laikipia
    8. Makueni
    9. Nyamira
    10. Nyandarua
    11. Nyeri
    12. Uasin Gishu

4. In addition, the following twenty (20) Counties have demonstrated efforts to clear their pending bills by paying between 51 percent and 99 percent;

    1. Taita Taveta (51)
    2. Turkana (52)
    3. Kisumu (56)
    4. Meru (61)
    5. Samburu (61)
    6. Nakuru (64)
    7. Murang'a (69)
    8. Mandera (69)
    9. Kisii (69)
    10. Busia (71)
    11. Marsabit (73)
    12. Bungoma (77)
    13. Siaya (79)
    14. Transzoia (80)
    15. Kittli (89)
    16. West Pokot (90)
    17. Embu (93)
    18. Kakamega (95)
    19. wajir (96)
    20. Lamu (98)

5. However, the following 15 County Governments have not complied with the IBEC resolution and have not made any effort to clear their pending Bills between 1st of July and end of October 2019;

1. Narok (9)
2. Machakos (16)
3. Nairobi City (17)
4. Vihiga (18)
5. Isiolo (20)
6. Mombasa (36)
7. Garissa (43)
8. Kiambu (41)
9. Tana River (22)
10. Migori (24)
11. Tharaka-Nithi (27)
12. Bonnet (30)
13. Kirinyaga (31)
14. Nandi (34)
15. Baringo (44)

6. During the same meeting, it was agreed that each County Government should establish an ineligible Pending Bills Resolution Committee to develop a framework for resolving ineligible pending bills contained in the special report of the OAG. As at 28th October 2019, COB reported that out of the 47 Counties, twenty-eight (28) had established the Committees.

7. National Treasury Decision was based on Article 225 of the Constitution, which mandates the National Treasury to intervene at the County level for purposes of expenditure control in cases where Counties are involved in serious or persistent material breach of the law relating to public finances. Such serious or persistent material breach have been elaborated in the PFMA Section 94(1) (A)

8. In line with that, The National Treasury;

   i) Invoked the powers under section 97 of the PFMA to immediately stop the transfer of the FY 2019/20 equitable share of revenue with effect from 1st December 2019 due to the 15 county governments that have not made any effort between 1st July and the end of October 2019 to clear the stock of their eligible pending bills in accordance with the law. These counties have persistently refused to pay the eligible pending bills which as you know should form a first charge.
   ii) To stop the transfers of Conditional Grants to these 15 Counties for this Financial Year 2019/2020.
   iii) to continue monitoring the stock of debt of pending bills which is estimated at Ksh 28 billion and take appropriate measures to ensure prompt payment.
   iv) To monitor the process of establishment of ineligible pending bills committees by the county government as directed by the IBEC as well as the verification of the ineligible pending bills and status report of the ineligible bills submitted.

9. Section 97(2) of the PFMA 2012, states that not later than seven days after the date of the decision to stop the transfer of funds, the Cabinet Secretary shall seek approval from Parliament. The National Treasury had written a letter dated 25 th November 2019 forwarding the Circular to Parliament seeking their approval.

10. Additionally, in respect to Section 97(I)(a), National Treasury had written a letter to the Controller of Budget (COB) informing of National Treasury's decision to invoke the stoppage of transfer of equitable share of revenue for FY 2019/20 to the 15 County Governments with effect from 1 st December,2019.

11. Members of the Committee informed that the Cabinet Secretary that they supported the move. They however cautioned that services that were crucial such as Health Services should not be interrupted. Additionally members indicated that the process should be done openly void of corruption and favoritism as has been the past. It was said that pending bills that should be paid as bills that were received first, meaning First in and first out.

12. Members also raised concern at some of the data presented by the Cabinet Secretary. This is because some counties requested funds from the Controller of Budget, however once the funds were released to pay service providers, counties used that money to do something else.

13. The Committee was informed that critical services would not be affected by the stoppage of funds. Additionally, the stoppage of transfer would apply to 50% of equitable share which is meant for development purposes.

**MIN.NO. 588/11/2019: ANY OTHER BUSINESS AND ADJOURNMENT**

There been no other business the Chairperson adjourned the meeting at 12:53 pm. Next meeting Tuesday, 3th December, 2019 at 11 am.

**SIGNATURE**.....
**(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)**

**DATE**.....5/12/19.....

**MINUTES OF THE 121ST MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON TUESDAY, 3RD DECEMBER, 2019 AT COUNTY HALL, GROUND FLOOR BOARDROOM, PARLIAMENT BUILDINGS AT 11:00 AM.**

**PRESENT**

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. Mutula Kilonzo Junior, MP - Member
3. Sen. Moses Wetangula, EGH, MP - Member
4. Sen. (Dr) Rose Nyamunga, MP - Member
5. Sen. Aaron Cheruiyot, MP - Member
6. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member
7. Sen. Boniface Mutinda Kabaka, MP - Member

**ABSENT WITH APOLOGY**

1. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
2. Sen. CPA Farhiya Haji, MP - Member

**SECRETARIAT**

1. Mr. Christopher Gitonga - Clerk Assistant
2. Ms. Lucy Radoli - Legal Counsel
3. Mr. Stephen Nyakuti - Audio Officer
4. Ms. Anne Murage - Pupil
5. Ms. Emily Kadzo - Pupil

**IN ATTENDANCE – OFFICE OF CONTROLLER OF BUDGET**

1. Mr. Stephen Masha – Deputy Controller of Budget
2. Ms. Rhoda Rutto - Director legal Affairs
3. Mr. W. Tuti - Manager Legal Affairs
4. Mr. Mark Kipkoech

**MIN. NO. 590/12/2019: PRELIMINARIES**

The Chairperson called the meeting to order at 11.18 am and followed a word of prayer.

**MIN.NO. 591/12/2019: ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after it was proposed by Sen. Mutula Kilonzo Junior, MP and seconded by Sen. (Dr) Ali Abdullahi Ibrahim, MP

**MIN.NO. 592/12/2019: MEETING WITH CONTROLLER OF BUDGET TO DELIBERATE ON THE STOPPAGE OF TRANSFER OF FUNDS TO COUNTY GOVERNMENTS WITH PENDING BILLS.**

The Chairperson welcomed the representatives from the Office of Controller of Budget. He also noted that section 97(3) of the PFM Act provides that within 14 days after the decision to stop the transfer of funds is made; the Controller of Budget shall investigate the matter and submit a report to Parliament.

After introduction, the Chairperson welcomed the representatives to brief the Committee on their report.

The Committee was informed as follows-

1. The Ag. Cabinet Secretary, National Treasury vide a letter dated 25th November, 2019 informed the Controller of Budget on the decision to stop the transfer of funds to fifteen (15) county governments as required by PFMA section 97(1).
2. The communication led the office of the Controller of Budget to undertake investigations and report on the findings.
3. The Counties affected are analysed as follows

**a) Baringo County**

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

i. The County submitted-
ii. the list of the pending bills for the suppliers in FY 2017/18, and
iii. the status of payment for each bill.

From the list availed, eligible bills paid after 30th June 2018 was Kshs. 31,630,374.06. The county reported that all eligible pending bills as verified by OAG had been settled as at 30th November, 2019

**b) Bomet County**

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

The County submitted-

i. the Pending Bills Ad hoc Committee Report, and
ii. a letter referenced CGB/GVN/NT/49/1/1 dated 25th November 2019 to the Cabinet Secretary National Treasury and Planning

From the documents availed, eligible bills paid after 30th June 2018 was Kshs. 792,312,268. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs. 397,855,609 as at 30th November, 2019. However, the

County reported a figure of Kshs. 143,238,937-35 as eligible bills. The payment represents a 66.6% of the eligible pending bills.

**c) Garissa County**

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

The County submitted-

i. Bank statements for the period June 2018 to 30th November, 2019,
ii. Internet Banking Reports as at 30th November,
iii. Approved Budget for FY 2019/2020;
iv. pending bills repayment plan; and
v. pending bills payment status.

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

**d) Isiolo County**

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

The County submitted-

i. pending bills status letter, and
ii. repayment plan for the eligible bills,
iii. list of paid pending bills as at 29th November, 2019,
iv. list of ineligible pending bills,
v. letter to the Controller of Budget on payment of pending bills dated 19th June, 2019.

From the documents availed, eligible bills paid after 30th June 2018 was Kshs.257, 296,160. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs. 1,001,076,543. The payment represents a 20.4% of the eligible pending bills.

**e) Kiambu County**

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

The County submitted-

i. Status Report on payment of pending bills;
ii. letter on pending bills Ref: KCG/FEP/2/09/VOL V/30 dated 27th November, 2019 addressed to the CS,
iii. NT and copied to OCOB; and
iv. commitment letter on settlement of pending bills Ref: KCG/ADM/6/42/VOL.II /44 dated 29th November, 2019 addressed to the CS, NT and copied to OCOB.

From the document availed, eligible bills paid after 30th June 2018 were Kshs. 798,757,152. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs. 1,032,860,872. The payment represents a 34.5% of the eligible pending bills

**f) Kirinyaga County**

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

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

**g) Machakos County**

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

The County submitted-

i. letter on status of Machakos county pending bills, and
ii. appeal against stoppage of releases dated 20th November 2019 Ref MCG/CECM-FIN/CS-NT/19;
iii. letter on status of Machakos county pending bills and appeal against stoppage of releases dated 29th November 2019 Ref MCG/CECM-FIN/OCOB/11-19; and
iv. copies of bank statements in Excel sheet from January 2019 to 30th November, 2019.

From the documents availed, eligible bills paid after 30th June 2018 were Kshs. 236,916,704. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs. 705,446,903. The repayment represents a 25.14% of the eligible pending bills.

**h) Migori County**

The Special Report on Pending Bills as at 30th June 2018 indicated that the total pending bills were Kshs. 1275275208 comprising of Kshs. 1,007,373,410 and Kshs267876798 as eligible and ineligible bills respectively.

The County submitted-

i. a schedule of payments towards pending bills as at 30th November, 2019.

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

**i) Mombasa County**

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

The County submitted

i. a letter ref:CECM/F&EP/ADM/20/11/19/ (1) dated 20th November, 2019,
ii. copies of bank statements (for payments to suppliers and/ contractors only),
iii. itax general ledger report for the period covering November 2015 to November 2019 and, RTGS transaction details report and Bank deposit slips (for PAYE taxes).

From the documents availed, eligible pending bills paid after 30th June 2018 were Kshs.1.58 billion. The outstanding pending bills as verified by OAG as at 30th November, 2019 was Kshs. 1.97 billion. The repayment represents a 44-5% of the eligible pending bills.

**j) Nairobi City County**

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

The County submitted-

i. Auditor General Report on pending bills;
ii. bank statements;
iii. County approved budget for the financial year 2019/2020; and
iv. IFMIS payment records dated 1st January 2019- 30th November 2019.

From the documents availed, eligible bills paid after 30th June 2018 was Kshs. 3,631,491,266. The outstanding eligible pending bills verified by OAG as at 30th

November, 2019 were Kshs. 8,152,337,806. The payment represents a 17% of the eligible pending bills.

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

**k) Nandi County**

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

The County submitted-

i. copies of bank statements to the OCOB; and
ii. a letter dated 19th November, 2019 from the county government showing the summary of pending bills.

From the documents availed, eligible bills paid after 30th June 2018 was Kshs. 625,819,018. The payment represents 66.7% of the eligible pending bills. The outstanding eligible pending bills verified by OAG as at 30th November, 2019 were Kshs. 316,488,823.

**l) Narok County**

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

The County submitted-

i. a schedule of status of pending bills as at November 2019 which indicates the amount paid to date as Kshs. 1,043,871,048; and
ii. a list of suppliers paid.

From the documents availed, eligible bills paid after 30th June 2018 was Kshs. 180,625,471. The outstanding pending bills as at 30th November, 2019 were Kshs. 936,865,022. The payment represents a 52.7% of the eligible pending bills.

**m) Tana River County**

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

The County submitted-

i. list of eligible Pending Bills as at 30th June 2018;
ii. List of ineligible Pending Bills as at 30th June 2018;
iii. List of eligible Pending Bills paid as at 30th June 2018;

iv. Central bank of Kenya statement of Account 1000170708 Tana River County Development for the period 1st January 20192019 to 30th June 2019; and

v. Central bank of Kenya statement of Account 1000170708 Tana River County Development for the period 1st July 2019 to 2nd December 2019.

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

**n) Tharaka Nithi County**

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

The County submitted-

i. Approved County Budget,
ii. the Supplementary Budget and Appropriation Bill, 2019, and
iii. the list of pending bills paid as at 20th November, 2019.

From the documents availed, eligible bills paid after 30th June 2018 were Kshs. 486,007,948. The payment represents a 44.1 % of the eligible pending bills. The outstanding pending bills as at 30th November, 2019 were Kshs. 215,863,971.

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

**o) Vihiga County**

The Report indicated that the total pending bills were Kshs. 2,037,052,291 comprising of Kshs. 1,151,148,522 and Kshs. 885,903,769 as eligible and ineligible bills respectively.

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

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

4. The pending bills arise from

a) Failure by the county governments to effectively align their procurement plans to the cash flow plans and approved plans
b) Delayed tendering and procurement processes affect completion rates and processing of payments
c) Failure of the National Treasury to release funds on timely basis to the county governments in accordance with the approved disbursement schedule.
d) Underperformance of own source revenue collection leading to budget deficits and unfunded commitments
e) Operational delays caused by IFMIS downtimes thus affecting clearance of payments in the system
f) Project cost variation leading to higher cost than the budget allocations
g) Failure by accounting officers to adhere to set budget resulting to commitments higher than the budgetary allocation.

5. During the exchequer requisition process, the county treasury requests for grant of funds from the COB. The requisition indicates specific votes to be funded and amounts to be withdrawn from exchequer account.

6. After verification of documents, if satisfied, the COB approves the withdrawal and CBK transfers the funds from County Revenue Fund to county operations accounts. This account is managed by the respective accounting officers. These accounting officers have a voiding rights, thus they may stop payments for which authorization was sought. However, the funds are never transferred back to the CRF. A system had been to automate the process and ensure in case, voiding rights are exercised, the funds revert back to CRF.

7. The representatives recommended that-

a) Review the law to ensure creditors are paid within a specified time. Failure to which the credit should attract an interest.
b) A recovery plan should be developed in line with Section 99 of the Public Finance Management Act, 2012.
c) The 14 County Governments affected should develop a recovery plan in line with Section 99 of the Public Finance Management Act, 2012.
d) Review of the IFMIS system to provide for ageing of creditors.
e) Amendment of the Public Finance Management Act, 2012 to provide for payment on a First-In- First- Out (FIFO) basis. This will ensure compliance with various accounting standards which treat debt repayment as a first charge on revenue.
f) Enhancement of technical capacity in budgeting and accounting in the County Treasury to ensure adherence with the principles of public finance and Standard Charts of Accounts.
g) Review of the law to ensure payments are made on time by introducing a prompt pay system where if a valid invoice is not paid within certain time, it automatically attracts interest.

**MIN.NO. 593/12/2019: CONSIDERATION OF PROPOSED TIMELINES**

The Committee considered and approved the proposed timelines for the process of approval of stoppage of transfer of funds to 15 counties. The report would be tabled on Thursday, 5th December, 2019.

**MIN.NO. 594/12/2019: ANY OTHER BUSINESS AND ADJOURNMENT**

There been no other business the Chairperson adjourned the meeting at 12:53 pm. Next meeting Wednesday, 4th December, 2019 at 11 am.

**SIGNATURE**.....

**(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)**

**DATE**.....5/12/19.....

**MINUTES OF THE 122ND MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON WEDNESDAY, 4TH DECEMBER, 2019 IN SHIMBA HILLS HALL, FIRST FLOOR, KICC BUILDING AT 11:00 AM.**

**PRESENT**

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. Moses Wetangula, EGH, MP - Member
3. Sen. (Dr) Rose Nyamunga, MP - Member
4. Sen. Aaron Cheruiyot, MP - Member
5. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member
6. Sen. Boniface Mutinda Kabaka, MP - Member

**ABSENT WITH APOLOGY**

1. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
2. Sen. Mutula Kilonzo Junior, MP - Member
3. Sen. CPA Farhiya Haji, MP - Member

**SECRETARIAT**

1. Ms. Emmy Chepkwony - Principal Clerk Assistant
2. Mr. Christopher Gitonga - Clerk Assistant
3. Ms. Lucy Radoli - Legal Counsel
4. Mr. Stephen Nyakuti - Audio Officer
5. Ms. Anne Murage - Pupil

**IN ATTENDANCE**

See attached list

**MIN. NO. 595/12/2019: PRELIMINARIES**

The Chairperson called the meeting to order at 11.11 am and followed a word of prayer.

**MIN.NO. 596/12/2019: ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after it was proposed by Sen. Boniface Mutinda Kabaka, MP and seconded by Sen. Moses Wetangula, EGH, MP

**MIN.NO. 597/12/2019: MEETING WITH COUNTY GOVERNORS TO DELIBERATE ON THE STOPPAGE OF TRANSFER OF FUNDS TO COUNTY GOVERNMENTS WITH PENDING BILLS.**

After introductions, the Chairperson made remarks on the purpose of the meeting. He noted that only the 15 county governors affected by the decision on stoppage of transfer of funds to county governments who had been invited.

The County Governments made presentation as follows-

1. **Bomet County**

On the status of Bomet County Government pending bills, the Governor of Bomet Hon. Dr. Hillary Barchok, submitted as follows-

a) The office of the Auditor General carried out an audit of pending bills as at 30th June, 2018 and gave a report dated 28th May, 2019. In the report, OAG placed a figure of **Kshs.1, 190,167,887** as eligible pending bills and **Kshs. 63,383,304** as ineligible. The report went ahead to indicate that as at 15th February, 2019 we had paid **Kshs. 505, 625, 519** leaving **Kshs. 684, 542, 358** as outstanding.

b) The governor raised limitations to the OAG report noting the following-
   i. That, the report came before the end of the Financial year therefore it failed to recognize the payments of pending bills and other payments made by the end of the close of the Financial Year and,
   ii. That, the audit team did not visit projects to do verification but rather carried out a desktop verification.

c) On 19th June, 2019, the Council of Governors via a letter referenced COB/COG/002 /Vol.3(55), directed all counties to deal with pending bills. They were advised to form a pending bills committee. The CECM Finance on 11th, 2019 formed the committee and the names were gazette on 19th July, 2019 as per the attached gazette notice.

d) The pending bills committee concluded the report. There was a very significant drop to Kshs. 143,238,937.35 from the earlier figure reported by the OAG. The period between 1st July, 2019 and 31st October,2019 have been a dry period. A part from payment of salaries there was nothing much which happened. This is because we were implementing a vote on account budget occasioned by the impasse between Senate and National Assembly on revenue Allocation.

e) The Governor assured the Committee of his government commitment to pay pending bills and indicated that efforts of the county towards the same as follows-
   i. Pending bills committee was established and the report has been received (copy attached).

ii. Over One Hundred Million Kenya Shillings towards payment of pending bills were set aside (see Budget FY 2019/2020).

iii. The county is in the middle of processing payments of over Fifty million Kenya shillings starting last week when the budget was uploaded.

f) In view of the above commitments and undertakings, he requested the Senate to assist Bomet County Government to be de-listed from the list of County Governments set out in the Treasury Circular No.20/2019, dated 19th November, 2019.

**2. Garissa County**

The Governor for Isiolo conveyed the apologies of the Governor for Garissa County.

**3. Isiolo County**

H.E Dr. Muhammed Kuti, the Governor County Government of Isiolo appeared before the Committee and gave his presentation on the matter of the pending bills for Isiolo County.

He informed the Committee that:

a) The County inherited approximately Kshs. 914,064,969 as pending bills.

b) The County Government of Isiolo has paid Kshs. 257,296,159.95 as pending bills.

c) Eligible pending bills amount to Kshs. 596,814,522.81. The County will stagger the amount over the next two financial years that is 2019/20 and 2020/21.

d) The County plans to pay Kshs. 350,000,000 and Kshs. 246,814,522.84 in the FYs 2019/20 and 2020/21 respectively to clear the eligible pending bills of Kshs. 596,814,522.84.

e) The County has budgeted Kshs. 150,000,000 in the first supplementary for FY 2019/20. A figure of Kshs. 200,000,000 will be budgeted for the next financial year 2020/21.

f) The County will further investigate the ineligible pending bills totaling to Kshs. 610,134,606.76 through the County Pending Bills Committee and share the findings

with the Office of the Controller of Budget, the Office of the Auditor General and the National Treasury.

Governor Dr. Kuti further informed the Committee that:

a) Under the circumstances, the County Government of Isiolo will strictly follow these timelines to ensure that the issue of pending Bills is resolved and does not recur.

b) In summary, the pending bills at 29th November, 2019 are as follows:

- Eligible - Kshs. 596,814,522.84
- Ineligible - Kshs. 610,079,446.76
- Amount from defunct local authority - Kshs. 108,047,308
- Total - Kshs. 1,314,941,277.60

c) It was prudent to note the total amount of pending bills at the end of every term of a governor before handing over.

**4. Kirinyaga County**

H.E Anne Waiguru, the Governor County Government of Kirinyaga appeared before the Committee and gave her presentation on the matter of the pending bills for Kirinyaga County.

She informed the Committee that:

a) On assumption of Office August 2017, the County had pending bills amounting to Kshs. 296.1 Million. The internal review report of the County indicates that about 50 percent belong to a single individual. The person later died in a mysterious circumstances and the matter is with the Directorate of Criminal Investigations.

b) The governor later on requested the Office of the Auditor General to undertake a Special Audit to authenticate the pending bill that amounted to Kshs. 296.1 Million as per what was the figure in August, 2017. At the time the County didn't have the budget for such an audit. However, the Office of the Auditor General agreed to undertake the special audit at their own cost in May, 2018 which commenced in July the same period.

c) The Draft Special Audit Report was tabled by the Office of the Auditor General to County Government of Kirinyaga in January, 2019 and indicated that pending bills verified amounted to Kshs. 461 Million. The County Government expressed dissatisfaction on the reported figures and requested further verification.

d) In June, 2019, the Office of the Auditor General further released a second draft of the Special Audit Report on the pending bills that indicated the pending bills for Kirinyaga County as at 30th June 2018 as Kshs. 531 Million and later on Kshs. 741Million.

e) After the trend in the discrepancies from August, 2017 to June 2019, in July, 2019, the Office of the Controller of Budget sought clarification the pending bills of Kirinyaga County in a letter that was copied to the Special Secretary, Intergovernmental Budget and Economic Council highlighting the discrepancies in the special audit reports vis a vis records held by the Counties.

The Governor further informed the Committee that:

i. It has not been clear on the true [position of the pending bills.

ii. The County has very minimal pending bills for the periods 2017/18-2018/19 FYs as most has been [paid off in the subsequent budgets.

iii. The County has already factored in Kshs. 100 Million in the supplementary budget one of 2019/2020 FY to pay eligible pending bills upon verification.

iv. In summary:

- Eligible pending bills reported 1st Audit - Kshs. 461, 738,753
- Eligible pending bills reported 2nd audit - Kshs.741,080,963
- Contested Bills (Variance) - Kshs. 279,342,210
- Payment as per the CoB Report - Kshs. 227,245,701
- Outstanding eligible bills as per the initial report -Kshs. 461,738,753
- Less payments as afore-mentioned - Kshs.227, 245,701
- Total Outstanding - Kshs. 234,493,052

The Governor concluded by stating that the amount of the total outstanding pending bills as per her presentation included an amount of Kshs. 179,640,927 belonging to a single individual whose case is under investigations by the DCI as earlier mentioned.

**5. Machakos County**

On the status of Machakos County Government of Machakos pending bills, the Governor of Machakos Hon. Alfred Mutua, EGH submitted as follows-

a) In compliance with the directive to settle pending bills, the following measures have been initiated and implemented by the County-

b) On payment of pending bills- The Audit Report came at the end of May, 2019 and the last two tranches of funds were released on 5th July, 2019, which was a few days to the closure of the Financial Year 2018/2019. This did not give enough window to pay pending bills. The county has been able to pay a total of Kshs. 245 Million and a further amount of Kshs. 230 Million has been processed to IB and Form A is at the office of the Controller of Budget. Once approval is granted this will bring the total amount paid to date to Kshs. 475 Million. This is a significant reduction from the original balance of Kshs. 942 Million out of which Kshs. 241 Million is going through the verification by the pending bills verification team leaving an eligible pending bill amount of Kshs. 225 Million.

c) Schedule of a summary of the current status (Amount in Kshs)

| | |
|---|---|
| Balance Per OAG (Kshs) | 942,362,607.30 |
| **Less.** | |
| Paid per OCOB verification | 245,062,965.00 |
| Funds Requested at OCOB | 229,959,991.00 |
| Pending further Verification | 241,652,617.55 |
| Balance being processed via IFMIS | 225,687,033.75 |

d) On Compliance with the National Treasury and Office of the Controller of Budget Circulars- Machakos County has established the Pending Bills Committee in compliance with the directive contained in the Controller of Budget letter COB/COG/002/VO.3955 dated 19th June, 2019 and Controller of Budget circulars No. 23/2018 and No.2/2019. Ref: Gazette Notice No. 8994 dated 20th September, 2019.

e) Further to ensure full compliance with the directive, the CECM – Finance and Economic Planning also issued a circular dated 2nd July, 2019, bringing the contents of the National Treasury and Office of the Controller of Budget circulars to the attention of all the Accounting Officers.

f) On the Payment plan for the balance of the eligible and ineligible pending bills- In view of the fact that there are limited resources and services to the people must be delivered so as to avoid occasioning crisis, the county proposed to pay the remaining eligible pending bills balance of Kshs. 225 million within the next three months although the Circular from the Office of the Controller of Budget had given counties to clear the eligible pending bills by June, 2020.

g) The County further proposes to phase the payment of the balance of ineligible bills pending verification, once cleared by the pending bills Committee by 30th June, 2021.

h) In view of the submissions and the actions taken to manage the pending bills, the Governor requested the Senate to intervene and ensure Machakos is removed from the list of Counties which have not complied with the directive to pay pending bills as it had demonstrated substantial compliance.

i) The Governor further requested that the equitable share and conditional grants releases to the county continue uninterrupted.

**6. Nairobi City County**

H.E Mike Mbuvi, the Governor County Government of Nairobi City appeared before the Committee and gave his presentation on the matter of the pending bills for Nairobi City County.

He informed the Committee that:

a) The Receivables to Nairobi County Government from Land Rate Defaulters by 30th November, 2019 were totaling to Kshs. 706,748,728,881.27 out of which National Government owes Kshs. 236,920,630,330 in lieu of land rates.

b) The debts/ payables for goods and services by Nairobi City County Government totaling to Kshs. 23,139,794,063.

c) Payable Pending Bills by Nairobi City County Government as audited by the Office of the Auditor General totaled to Kshs. 11,783,829,072.

d) The Nairobi City County Government payments to pending Bills as contained in the Controller of Budget Report and KRA totaling to Kshs. 3.9 Billion are as follows:

- Payments to suppliers - Kshs. 2,102,087,898
- Payments to KRA - Kshs. 2.0Billion

e) The National Government needs to pay the NAIROBI City County totaling to Kshs. 236,920,630,330.

f) The County urgently requests the Senate to intervene for the payments to be made by the National Government.

g) There was an agreement with the National Government that is the National Treasury indicating that they will pay Kshs. 8.1 Billion in a proposed financing agreement for the debt arrears.

Governor Sonko further informed the Committee that:

a) Nairobi City County Government should not be classified as not paying pending bills because the Nairobi City County Government has paid over Kshs. 4 Billion. This includes suppliers up to November 2019 at Kshs. 2,102,087,898 and KRA Kshs. 2 Billion.

b) Nairobi City County Government has budgeted Kshs. 3.2 Billion thus towards payment of pending bills during FY 2019/20. The County paid Kshs. 2.1 Billion totaling to Kshs. 5.3 Billion.

c) There should be immediate release of Kshs. 8 Billion by the National Treasury to pay the balance of pending bills estimated at Kshs. 9 Billion.

d) The County will make arrangements to clear Kshs. 225 Billion and ensure that some money is left for improvement of service delivery.

**7. Nandi County**

The Governor, Hon. Stephen Sang informed the Committee that-

a) The 15 counties that were flagged had repayment rate of pending bills less than 50%. The County government had had by 30th November paid about 66% of the pending bills.

b) The county had paid 625million and there was a supplementary budget which had proposed to pay Kshs. 252 million.

c) The balance of the pending bills would be cleared in the next financial year 2020/21.

d) Requested the County to be expunged from the list of non-compliant counties.

**8. Narok County**

On the status of Narok County Government of Narok pending bills, the Governor of Narok Hon. Samuel K. Tunai, EGH submitted as follows-

a. The Governor submitted that he had written to the Ag. Cabinet Secretary National Treasury and Planning on 22nd November, 2019 and held a meeting with him on 26th November, 2019. He informed the Committee of his undertaking to utilize the funds released to Narok county for November, 2019 for payment of salaries and apply the balance of which shall not be less than Kshs. 500,000,000/- towards the pending bills, which as at 20th November, 2019 stood at Kshs. 936,865,023.

b. The county further undertook to offset the balance of the pending bills by committing Kshs. 200,000,000/- in the month of December, 2019 and January, 2020. He assured the Committee that come February, 2020, Narok county shall be free of pending bills.

c. In view of the above commitments and undertakings, the Governor appealed to the Senate to intervene and assist Narok County Government to be de-list from the list of County Governments set out in the Treasury Circular No.20/2019, dated 19th November, 2019.

**9. Tana River County**

The representative of the Governor, CEC member for Finance and Planning informed the Committee that-

a. On the status of County Government of Tana River pending bills, the county government submitted its plans to settle the eligible pending bills amounting to Kshs. 507,082,631 from the special report of the OAG.
b. The county government as of 29th November, 2019 has progressively cleared Ksh. 235, 276, 887.55 as per the report submitted to office of the controller of Budget dated 29th November, 2019 referenced TRCG/FIN/3/3/31.
c. The county government committed to pay Ksh. 171,805, 744 by 31st December, 2019 as evidenced in the certified copy of the County Government FY 2019/2020 budget.
d. The outstanding amount of Ksh. 100,000,000 will be cleared in the first supplementary budget which will be submitted to the County Assembly by 31st January, 2020.
e. In view of the above commitments the County Government appealed to the Senate to remove Tana River County from the list of County Governments set out in the Treasury Circular No.20/2019, dated 19th November, 2019 as having failed to demonstrate substantial effort to pay pending bills.

**10. Tharaka Nithi County**

The Governor informed the Committee that-

i. The report presented by Controller of Budget showed the correct amounts of pending bills in the County.
ii. The County had established Pending Bills Committee.
iii. The outstanding bill was Kshs. 215,863,971.
iv. The outstanding bill had been factored in the county Supplementary Appropriation Act, 2019.
v. The county is committed to settle the bill within the next 3 months

**11. Vihiga County**

H.E Patrick Saisi, the Deputy Governor County Government of Vihiga appeared before the Committee and gave his presentation on the matter of the pending bills for Vihiga County.

He informed the Committee that:

a) The County Assembly of Vihiga in June 2017 commissioned a special audit of all pending bill by the Office of the Auditor General.

b) The total pending Bill for Vihiga County Government at the time was Kshs. 2,481,399,292.40

c) In its preliminary report, the Auditor General observed that the figures from the departments were prima facie faulty as the departments quoted the contract sums as opposed to the value of the work done and payable amounts pending.

d) Thereafter, the figure was revised Kshs. 1,602,515.84. The figure of Kshs. 1,602, 5151,507 was purely based on the certificates of works in the files. It does not necessarily represent the pending bills as per the works done.

e) A scrutiny of the alleged pending bills by the Auditor General left the alleged pending bills Kshs. 826,259,130.04 for consideration by the County Executive.

f) The Office of the Auditor General prepared its preliminary report and asked departments to respond to several issues raised regarding the pending bills amounting to Kshs. 826,259,130.04 for consideration by the County Executive. The Auditor General further made recommendations and conditions for payment on each of the alleged pending bills.

g) It is from this backdrop that H.E. Dr. Wilber K. Ottichilo constituted an Ad Hoc Committee to look into and review the alleged pending bills with a view of coming up with a clear way forward on each and every claim and pending bills for communication to the contractors.

h) At the preliminary stage, Pending Bills worth Kshs. 190,216,347 had been approved for payment. These Bills which had the legal documentations and projects verifiable based on the documentations available at that stage.

i) Later on, the Office of the Auditor General came in carry out an independent audit wherein it identified Legible and Ineligible Pending Bills and the Ad Hoc Committee of the County disbanded.

The Deputy Governor further informed the Committee that:

a) Some of the Pending Bills cleared as legible for payment by the Auditor General do not in the opinion of the county meet the legal threshold for procurement and payment. In one instance a contractor has actually disowned a pending bill approved as eligible by the Auditor General.

b) The Auditor General recommended the formation of a Committee to check the ineligible pending bills and went ahead and provided for its membership. There is no provision for a legal person on the Committee.

c) In the last financial year 2018/19 Kshs. 100 million was set aside for Pending Bills and Kshs. 57 Million was paid. The Kshs. 43 Million was not paid due to KRA compliance issues on the part of the contractors. The money was re-budgeted and is part of the Kshs. 450 Million.

d) The County has prepared and the Country Assembly approved a Supplementary Budget with Kshs. 450Million for Pending Bills.

**MIN.NO. 598/12/2019: ANY OTHER BUSINESS AND ADJOURNMENT**

There been no other business the Chairperson adjourned the meeting at 2:13 pm. Next meeting Thursday, 5th December, 2019.

**SIGNATURE**.....

**(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)**

**DATE**.....5/12/19.....

**List of In Attendance**

| | | |
|---|---|---|
| 1) | Governor Mike Sonko | -Nairobi County |
| 2) | Governor Anne Waiguru | - Kirinyaga County |
| 3) | Governor Alfred Mutua | -Machakos County |
| 4) | Governor Samuel Ole Tunai | - Narok County |
| 5) | Governor Muthomi Njuki | -Tharaka Nithi County |
| 6) | Governor Hillary Barchok | -Bomet County |
| 7) | Governor Stephen Sang | -Nandi County |
| 8) | Governor Kuti Abdi | - Isiolo County |
| 9) | Hon Patrick Lumumba | -Deputy Governor Vihiga County |
| 10) | Ms. Lydiah Kwamboka | - County Attorney Nairobi |
| 11) | Mr. Alfred Ideche | - CECM Vihiga |
| 12) | Mr. Geoffrey Sore | -Legal Advisor Vihiga |
| 13) | Mr. Peter Mugo | -CoS Narok County |
| 14) | Mr. Alphonce Mutindi | -Governors Advisor Nairobi |
| 15) | Mr. Muriuki Mugo | -Governor Press Kirinyaga |
| 16) | Mr. Paul Musyimi | - Nairobi County |
| 17) | Mr. Joe Kanunda | -Nairobi County |
| 18) | Mr. William Kiputich | -Bomet Chief of Staff |
| 19) | Ms. Milcah Rono | - Chief Officer Finance Bomet County |
| 20) | Mr. Andrew Sigei | -CECM Bomet County |
| 21) | Ms. Prisca Muigei | - Head Budget Nandi county |
| 22) | Mr. Samuel Ngila | -Accountant |
| 23) | Mr. Michael Musyoki | -Assistant Director Machakos County |
| 24) | Mr. James Kathili | -CO Legal Machakos County |
| 25) | Mr. James Maina | - COG Finance |
| 26) | Ms. Veska Kangogo | -CECM |
| 27) | Mr. Zephania Kioko | -CDF/DAS |
| 28) | Mr. Maina Miani | -CECM Kirinyaga |
| 29) | Mr. Job Gakuya | -Senior Accountant |
| 30) | Mr. Walter Chanua | -Assistant Director Finance Nairobi County |
| 31) | Mr. Peter Ngechu | -CCO Finance |
| 32) | Mr. Abdinasil Ali | -CFO |
| 33) | DR. Sarite salad | - Head of Procurement |
| 34) | Ms. Grace Munguti | -CS |
| 35) | Ms. Jennitah Musula | - CO Machakos |
| 36) | Ms. Catherine Ngwachu | -CO Machakos |
| 37) | Mr. Alfred Langat | -CEC Nandi |
| 38) | Mr. Meshack Malakwen | - CO Finance Nandi County |
| 39) | Mr. Eric Murimi | - Legal Advisor- Tharaka Nithi County |
| 40) | Ms. Lucy Mbiuki | -Liaison Officer Tharaka Nithi County |

**MINUTES OF THE 123RD MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON THURSDAY, 5TH DECEMBER, 2019 IN COUNTY HALL, GROUND FLOOR BOARDROOM, PARLIAMENT BUILDINGS AT 10:00 AM.**

**PRESENT**

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
3. Sen. Moses Wetangula, EGH, MP - Member
4. Sen. (Dr) Rose Nyamunga, MP - Member
5. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member
6. Sen. Boniface Mutinda Kabaka, MP - Member
7. Sen. CPA Farhiya Haji, MP - Member

**ABSENT WITH APOLOGY**

1. Sen. Mutula Kilonzo Junior, MP - Member
2. Sen. Aaron Cheruiyot, MP - Member

**SECRETARIAT**

1. Ms. Emmy Chepkwony - Principal Clerk Assistant
2. Mr. Christopher Gitonga - Clerk Assistant
3. Ms. Lucy Radoli - Legal Counsel
4. Mr. Stephen Nyakuti - Audio Officer

**MIN. NO. 599/12/2019: PRELIMINARIES**

The Chairperson called the meeting to order at 11.11 am and followed a word of prayer.

**MIN.NO. 600/12/2019: ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after it was proposed by Sen. Moses Wetangula, EGH, MP and seconded by Sen. (Dr) Rose Nyamunga, MP

**MIN.NO. 601/12/2019: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

a) The minutes of the 120th meeting held on Tuesday, 26th November, 2019 at 11:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Moses Wetangula, EGH, MP and seconded by Sen. (Dr) Ali Abdullahi Ibrahim, MP.

b) The minutes of the 121st meeting held on Tuesday, 3rd December, 2019 at 11:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Moses Wetangula, EGH, MP and seconded by Sen. (Dr) Rose Nyamunga, MP.

c) The minutes of the 122nd meeting held on Wednesday, 4th December, 2019 at 11:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Moses Wetangula, EGH, MP and seconded by Sen. (Dr) Rose Nyamunga, MP.

**MIN.NO. 602/12/2019: CONSIDERATION AND ADOPTION OF THE REPORT ON THE STOPPAGE OF TRANSFER OF FUNDS TO COUNTY GOVERNMENTS.**

The Committee considered the report on the stoppage of transfer of funds to county governments and made the following recommendations-

a) the County Governments having made substantial progress towards settling the Pending Bills, the Committee recommends that the House does not approve the decision of the Cabinet Secretary, National Treasury to stop the transfer of funds to the listed fifteen (15) County Governments.

b) the Controller of Budget and the National Treasury should submit to the Senate a report detailing the status of payment of pending bills and reconciled amounts of pending bills of all the Counties within by 5th March, 2019.

c) the National Treasury to review the IFMIS system to provide for ageing of creditors.

d) the Public Finance Management Act, 2012 be amended to provide for payment on a First-In- First- Out (FIFO) basis. This will ensure compliance with various accounting standards which treat debt repayment as a first charge on revenue.

e) the National Treasury and County Governments to enhance technical capacity in budgeting and accounting in the County Treasury to ensure adherence with the principles of public finance and Standard Charts of Accounts.

f) the Public Finance Management Act, 2012 be amended to ensure payments are made on time by introducing a prompt pay system where if a valid invoice is not paid within certain time, it automatically attracts interest.

The Committee unanimously adopted its Report on the stoppage of transfer of funds to county governments having been proposed by Sen. Moses Wetangula, EGH, MP and seconded by Sen. (Dr) Rose Nyamunga, MP.

**MIN.NO. 603/12/2019: ANY OTHER BUSINESS**

The Committee noted that though the House was set to go on recess on 5th December, 2019, there was a pending meeting with stakeholders to deliberate on the Formulae for sharing revenue among county governments. The Committee resolved that the meeting be held on Wednesday, 11th December, 2019.

**MIN.NO. 604/12/2019: ANY OTHER BUSINESS AND ADJOURNMENT**

There been no other business the Chairperson adjourned the meeting at 11:13 am. Next meeting Wednesday, 11th December, 2019.

**SIGNATURE**.....

**(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)**

**DATE**.....5/12/19.....

# SUBMISSIONS FROM THE NATIONAL TREASURY AND PLANNING

DEPUTY CLERK

REPUBLIC OF KENYA

THE NATIONAL TREASURY AND 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: IGFR/PENDING BILLS/01/A(26)

25th November 2019

URGENT

Dkom
For the Committee.
26/11/19

**Mr. Jeremiah M. Nyegenye, CBS**
Clerk of the Senate
Clerk's Chambers, The Senate
Parliament Buildings
P. O. Box 41842
**NAIROBI**

**Mr. Michael Sialai, EBS**
Clerk of the National Assembly
Parliament Buildings
**NAIROBI**

Dear Nyegenye

**RE: STOPPAGE OF TRANSFERS TO COUNTY GOVERNMENTS' DUE TO FAILURE TO PAY PENDING BILLS**

This is in reference to the National Treasury Circular No. 20/2019 dated 19th November 2019 on the above subject (copy attached).

As per requirements of section 97(2) of the PFMA 2012 we are forwarding this Circular for your noting and requesting for your approval as envisaged in the law.

Yours Sincerely.

**HON. (AMB.) UKUR K. YATANI**
**Ag. CABINET SECRETARY/THE NATIONAL TREASURY AND PLANNING**

# REPUBLIC OF KENYA
# THE NATIONAL TREASURY AND PLANNING

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NO. 310833
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NAIROBI

**REF No: IGFR/Pending Bills/01/A (24)** 19th November 2019

## TREASURY CIRCULAR NO. 20/2019

**TO:**

Governor, County Government of Narok

Governor, County Government of Machakos

Governor, County Government of Nairobi City

Governor, County Government of Vihiga

Governor, County Government of Isiolo

Governor, County Government of Tana River

Governor, County Government of Migori

Governor, County Government of Tharaka-Nithi

Governor, County Government of Bomet

Governor, County Government of Kirinyaga

Governor, County Government of Nandi

Governor, County Government of Mombasa

Governor, County Government of Kiambu

Governor, County Government of Garissa

Governor, County Government of Baringo

**STOPPAGE OF TRANSFERS TO COUNTY GOVERNMENTS' DUE TO FAILURE TO PAY PENDING BILLS**

Reference is made to the National Treasury Circular No. 18/2019 **Ref: IGFR/Pending Bills/01/A (18)** dated **22nd October 2019** to all 47 County Governments providing guidance on the settlement of County Governments' Pending Bills.

As you may recall, at a meeting of the Intergovernmental Budget and Economic Council (IBEC), held on 18th June 2019, it was resolved that all County Governments would pay eligible pending bills on a priority basis as a first charge on their County Revenue Funds by end of FY 2019/20. It was further resolved that the National Treasury would release at least **Kshs. 65 billion** to the Counties on or before 30th June 2019 to enable settlement of the eligible pending bills in the first instance and the balance, if any, for running their functions. As per the Disbursement schedule for this year, the National Treasury is on schedule and has so far released **Kshs 80.391 billion** as at 18th November, 2019 to all the 47 Counties.

Your County Government, however, has not complied with the resolution of IBEC and the Treasury Circular on the settlement of County Governments' pending bills since your County Government **has not made significant effort to clear your pending bills**. Reports from the Controller of Budget indicate that you have not made any payment of pending bills between 1st July and 31st October 2019.

As indicated in our earlier Circular, the National Treasury is mandated to intervene at the County level for purposes of expenditure control in cases where County Government are involved in serious or persistent material breach of the law relating to public finances. Such serious material breach has been elaborated in Section 94 of the PFMA. Please note that failure to make payments when they are due is a material breach of PFMA.

In light of the above, I hereby invoke Section 97 of the PFMA to stop transfer of equitable share of revenue for the financial year 2019/20 to your County Government with effect from 1st December, 2019 because you have not made any effort to clear the stock of eligible pending bills between 1st July and end of October 2019. As noted in our Circular, the persistent failure by your government to pay the eligible pending bills has continued to affect the growth of the economy and has adverse effect on businesses, including small and micro enterprises (SMEs) as well as businesses owned by vulnerable segment of the population including women, youth and persons with disability.

In addition, no Conditional Grants will be released to your County Government for this financial year 2019/2020 until and unless amicable settlement of this matter is arrived at.

Moreover, it has been noted that some of the County Governments have not established **Ineligible Pending Bills Resolution Committees** in accordance with the decision of IBEC. County Governments that have not established are urged to urgently establish the committees and submit a status report to the Cabinet Secretary, the National Treasury and Planning with a copy to the Controller of Budget and the Office of the Auditor General.

**HON. (AMB). UKUR YATANI**
**Ag. CABINET SECRETARY/NATIONAL TREASURY AND PLANNING**

Copy to:

1. **Dr. Joseph Kinyua, EGH**
   Head of the Public Service
   PO Box 40530-00100
   **NAIROBI**

2. **Justice (RTD.) Paul Kihara Kariuki, C.B.S.**
   Attorney General
   PO Box 40112
   **NAIROBI**

3. **H. E Gov. Wycliffe A. Oparanya, EGH, CGJ**
   Chairman

Council of Governors
**NAIROBI**

4. **Hon. Eugene Wamalwa, EGH**
   Cabinet Secretary
   Ministry of Devolution and ASAL
   **NAIROBI**

5. **Dr. Patrick Omutia, CBS**
   Special Secretary
   Intergovernmental Budget and Economic Council(IBEC)
   **NAIROBI**

6. **CPA Stephen Masha**
   Ag. Controller of Budget
   Bima House
   **NAIROBI**

7. **Mr. Alex Nthiga Rugera**
   Deputy Auditor General in charge of County Pending Bills Audit
   Office of the Auditor General
   **NAIROBI**

8. **Dr. Jane W. Kiringai**
   Chairperson
   Commission on Revenue Allocation
   **NAIROBI**

9. **County Executive Committee Members for Finance**
   (Governments of Narok, Machakos, Nairobi City, Vihiga, Isiolo, Tana River, Migori, Tharaka-Nithi, Bomet, Kirinyaga, Nandi, Mombasa, Kiambu, Garissa and Baringo)

(17)

REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Finance – Nairobi
NO. 310833
Telephone: 2252299

TREASURY BUILDING
P O BOX 30007 -00100 FAX
NAIROBI

When Replying Please Quote

**REF No: IGFR/Pending Bills/01/A (18)** **22nd OCTOBER 2019**

# TREASURY CIRCULAR NO. 18/2019

**TO: ALL GOVERNORS**

**ALL COUNTY EXECUTIVE COMMITTEE MEMBERS IN CHARGE OF FINANCE**

## SETTLEMENT OF COUNTY GOVERNMENTS' PENDING BILLS

### Introduction

1. Reports by the Office of the Auditor General (OAG) and that of the Controller of Budget(OCOB) have indicated that Counties have accumulated pending bills since the advent of devolution in 2013. As at June 2018 these bills were reported at **Kshs. 108.4 billion.**
2. The report on the special audit by OAG indicated that out of a total **Kshs. 88.98 billion** pending bills presented for audit to the OAG, bills amounting to **Kshs. 51.28 billion** were reported as payable while **Kshs. 37.70 billion** lacked sufficient documentation to support services rendered or work done and therefore not recommended for payment.

3. The National Treasury is in receipt of requests from various institutions for Treasury's intervention on settlement of pending bills. Among the requests received include the following: -

   i. Service providers
      a. Kenya Power and Lighting Company (KPLC)
      b. National Social Security Fund(NSSF)
   ii. Kenya Revenue Authority
   iii. Kenya Medical Supplies Authority (KEMSA)
   iv. Ministry of Health for payment of Medical Equipment

4. There are also requests from organized associations of County contractors and suppliers for intervention on payments owed to contractors and suppliers by Counties

**Role of The National Treasury in the control of County Governments' Pending Bills**

5. The National Treasury has issued regular guidelines to County Governments on management of public finances including management of pending bills and commitment control, pursuant to Section 12(1)(e) and 46 of the PFMA.

**Factors leading to Accumulation of Pending Bills**

6. Reports of OAG and those of OCOB have highlighted notable capacity weaknesses as well as lapses in the management of county finances that may explain the accumulation of pending bills by County Governments. These include: -

   - Preparation of budgets which reflect unrealistic own source revenue targets;
   - Unrealistic costing of the development projects which lead to under estimation and ultimately budget overruns;
   - Failure to adhere to procurement regulations; and
   - Failure to adhere to the approved budget e.g. projects which were never budgeted and approved are introduced midstream and executed due to political expediency.

7. To address these challenges, The National Treasury, in accordance with Section 12(1)(j) of the PFMA has organized numerous training sessions for county officials since the roll out of devolution. The National Treasury has also secured funding from the World Bank under the Kenya Devolution Support Program which is intended to build capacity of County Governments to better manage their finances.

8. Going forward and to further assist Counties in ensuring improved management of County finances, the National Treasury undertakes to: -

- have continuous capacity building for Counties on issues of public finance. This will enable counties to prepare balanced budgets and set realistic revenue targets to avoid hidden budget deficits, align their procurement plans to cash flow projections and approved budgets.
- assist Counties to improve revenue collection by providing support on implementation of Integrated County Revenue Management System and also implementation of National Policy to Support enhancement of County Governments' Own Source Revenue.
- continuously improve IFMIS and build capacity of Counties in the use of IFMIS to ensure that all county financial transactions, including procurement are done in IFMIS.

**Settlement of Pending Bills**

9. During a meeting of Intergovernmental Budget and Economic Council(IBEC) held on 18th June 2019, and in line with Presidential directive during 56th Madaraka Day Celebrations, the Council resolved that all unpaid eligible bills as per the OAG special report should be paid before the end of financial year 2018/19 and that each County should establish **an ineligible Pending Bills Resolution Committee** to among others, develop a framework for resolving ineligible pending bills contained in the special report of the OAG.

10. Reports reaching us from the OAG indicate that either the committees were not formed in some Counties or suppliers were not informed of their existence.

11. While releasing the disbursements for June 2019, the National Treasury did request Counties to prioritize payment of eligible pending bills as per the report of the OAG. The OCOB has reported that, as at 30th June 2019, Counties have since paid a total of **Kshs. 23.26 billion** of the eligible pending bills, leaving a balance of **Kshs.28.04 billion** of the eligible pending bills.

**Way forward in Settlement of County Governments' Pending Bills**

12. Given the negative effect pending bills have on the growth of the economy, there is need for urgent action to ensure there is no further accumulation of pending bills and those verified and reported as legitimate are settled without further delay. The National Treasury therefore wishes to inform all Governors and County Executive Committee Members in Charge of Finance (CECMs-F) of the following requirements: -

(i) Public Service Accounting Standards Board (PSASB) shall amend the financial reporting template to provide for reporting on pending bills which shall be subject to audit by the Office of the Auditor General. All Counties shall be required to regularly report on pending bills in accordance with the template prepared by the PSASB.

(ii) The OCOB shall provide regular updates on the progress made on settlement of eligible pending bills and agreed way forward by Counties on ineligible pending bills as shall be reported by OAG.

(iii) All Counties shall be required to provide a repayment plan to settle all eligible unpaid bills in accordance with the Presidential directive and also ensure the necessary committees are formed as per IBEC resolution. The repayment plan should include criteria to settle pending bills on a '**First-in, First out**' basis.

(iv) The National Treasury shall analyze the proposed repayment plan and upon satisfaction that the plan is realistic shall forward the agreed plan to the Office of the Controller of Budget for monitoring and reporting on progress. Office of COB shall confirm adherence to the repayment plan before authorizing further release of funds to the respective County Government.

(v) County Governments are advised to require the County Internal Audit departments to verify stock of pending bills and report to the CECM-F on progress made towards payment of the bills in line with the repayment plan stated above.

(vi) Kenya Revenue Authority has been mandated to apply agency notice to attach the County Government's operational accounts of those Counties which fail to pay statutory deductions as and when they fall due.

(vii) Release of conditional grants to Counties shall be upon payment of all eligible pending bills as shall be reported by the Office of the Auditor General.

(viii) Once confirmed that the bills are authentic and payable, County Governments shall promptly pay the bills and any failure to pay shall attract intervention in terms of article 225 of the Constitution.

(ix) County Governments are encouraged to settle pending bills on time as specified in contract agreements to avoid further accumulation of arrears.

**Invoking Article 225 of the Constitution**

13. Pursuant to Article 225 of the Constitution, the National Treasury is mandated to intervene at the County level for purposes of expenditure control in cases where County Government are involved in serious or persistent material breach of the law relating to public finances. Such serious or persistent material breach have been elaborated in the PFMA section 94 which states as follows:

"(1) The following factors, singly or in combination, may further indicate that a State Organ or Public Entity is in serious material breach or persistent material breach of the measures established under this Act—

a) the State organ or public entity-

(i) has failed to make any payments as and when due;

(ii) has defaulted on financial obligations for financial reasons;

b) the State organ or public entity has failed to make any other payment as and when due, which individually or in the aggregate is more than an amount as may be prescribed or, if none is prescribed, more than two percent of the State organ's or public entity's budgeted operating expenditure;

(c) the Controller of Budget has raised material issues in their quarterly report;
(d) the Auditor-General has withheld an opinion or issued a disclaimer due to inadequacies in the financial statements or records of the State organ or public entity or has issued an opinion which identifies a serious financial problem in the State organ or public entity; or (e) recurring or continuous failure by a State organ or public entity to meet its financial commitments which substantially impairs the State organ's or public entity's ability to procure goods, services or credit on usual commercial terms".

14. The National Treasury intervention as contemplated under Article 225 of the Constitution is intended to be the last resort after all the other measures provided for under the PFMA have failed.

15. In this regard, in case of non-compliance on the agreed financial plan and as a last resort, the Cabinet Secretary shall exercise his powers in line with article 225 of the constitution and stop transfer of funds to that County Government. In order to ensure there is no disruption in service delivery, the stoppage of transfer of funds shall be on all non-essential services and within the limits and provisions of the Constitution and PFMA.

16. Each County Government which is subject to stoppage of transfer of funds shall prepare a financial recovery plan indicating measures to ensure compliance.

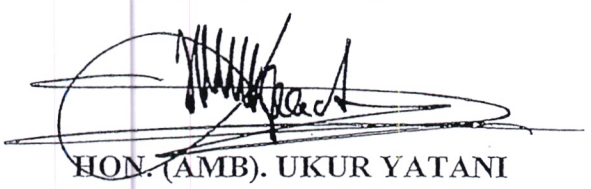
17. The Controller of Budget will ensure authorization for withdrawals of funds only for those expenditures included in the agreed financial recovery plan and for expenditures on salaries and deductions and other essential services.

18. National Treasury will monitor and ensure compliance on implementation of the financial recovery plan after which the withheld funds shall be released in line with the provisions of the Constitution and PFMA.

**Conclusion**

19. The stock of pending bills has been increasing at such an alarming rate and if not well addressed may affect the growth of the Economy as a whole. As the office charged with

responsibility of management of County finances you are required to ensure payments are made as and when they fall due and that all legitimate pending claims are cleared within a reasonable timeframe.



**HON. (AMB). UKUR YATANI**

**Ag. CABINET SECRETARY/NATIONAL TREASURY AND PLANNING**

Copy to:

1. **H. E Gov. Wycliffe A. Oparanya, EGH, CGJ**
   Chairman
   Council of Governors
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   Cabinet Secretary
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5. **Mr. Alex Nthiga Rugera**
   Deputy Auditor General in charge of County Pending Bills Audit
   Office of the Auditor General
   **NAIROBI**

6. **Mrs. Jacqueline Mogeni, MBS**
   Chief Executive Officer
   Council of Governors
   **NAIROBI**

SUMMARY OF PENDING BILLS AFTER THE AUDIT BY THE OAG AND STATUS ON PAYMENTS BY COUNTY GOVERNMENTS AS AT 18TH NOVEMBER 2019

| | County | List Presented to OCOB by counties as at 30th June,2018 (Kshs) | List presented to OAG by County for special Audit (Kshs) | Eligible Pending Bills as per OAG Special Audit (kshs.) | Ineligible Pending Bills as per the OAG Special Report (Kshs) | Eligible Pending Bills paid (Kshs.) as at 18th November, 2019 | Ineligible pending Bills paid (Kshs.) as 18th November 2019 | Total Pending Bills paid (Kshs.) as at 18th November, 2019 | Oustanding Eligible pending Bills (Kshs.) | Overall Oustanding Bills (Kshs.) as at 18th November 2019 | Percentage of Eligible pending bills paid |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | A | B | C | D | E | F | G=E+F | H=C-E | I=B-G | (G/C)*100 |
| 1 | Narok | 1,725,444,405 | 2,056,439,795 | 1,980,736,070 | 75,703,725 | 180,625,471 | 0 | 180,625,471 | 1,800,110,599 | 1,875,814,324 | 9 |
| 2 | Machakos | 975,461,203 | 1,286,526,181 | 942,363,607 | 344,162,574 | 148,725,095 | 0 | 148,725,095 | 793,638,512 | 1,137,801,086 | 16 |
| 3 | Nairobi City | 64,802,987,771 | 23,139,794,063 | 11,783,829,072 | 11,355,964,991 | 1,956,437,222 | 146,440,676 | 2,102,877,898 | 9,827,391,850 | 21,036,916,165 | 17 |
| 4 | Vihiga | 1,184,810,000 | 2,037,052,291 | 1,151,148,522 | 885,903,769 | 201,908,412 | 0 | 201,908,412 | 949,240,110 | 1,835,143,879 | 18 |
| 5 | Isiolo | 101,330,098 | 1,334,674,795 | 1,258,372,703 | 76,302,092 | 246,700,442 | 0 | 246,700,442 | 1,011,672,261 | 1,087,974,353 | 20 |
| 6 | Tana River | 946,029,550 | 1,202,679,386 | 507,082,631 | 695,596,755 | 112,133,078 | 0 | 112,133,078 | 394,949,553 | 1,090,546,308 | 22 |
| 7 | Migori | 290,942,340 | 1,275,250,208 | 1,007,373,410 | 267,876,798 | 246,640,171 | 59,084,196 | 305,724,367 | 760,733,239 | 969,525,841 | 24 |
| 8 | Tharaka-Nithi | 260,776,492 | 1,112,652,892 | 701,871,919 | 410,780,973 | 190,837,092 | 0 | 190,837,092 | 511,034,827 | 921,815,800 | 27 |
| 9 | Bomet | 1,155,473,480 | 1,253,551,181 | 1,190,167,877 | 63,383,304 | 360,306,336 | 0 | 360,306,336 | 829,861,541 | 893,244,845 | 30 |
| 10 | Kirinyaga | 250,092,562 | 1,328,459,563 | 741,080,963 | 587,378,600 | 227,245,701 | 42,359,883 | 269,605,584 | 513,835,262 | 1,058,853,979 | 31 |
| 11 | Nandi | 1,394,228,985 | 1,447,847,605 | 942,307,841 | 505,539,764 | 320,114,388 | 0 | 320,114,388 | 622,193,453 | 1,127,733,217 | 34 |
| 12 | Mombasa | 3,705,503,765 | 5,347,786,393 | 3,545,800,427 | 1,801,985,966 | 1,269,538,752 | 0 | 1,269,538,752 | 2,276,261,675 | 4,078,247,641 | 36 |
| 13 | Kiambu | 785,758,702 | 2,312,759,531 | 1,831,618,030 | 481,141,501 | 751,932,969 | 0 | 751,932,969 | 1,079,685,061 | 1,560,826,562 | 41 |
| 14 | Garissa | 980,059,238 | 2,553,348,202 | 2,307,530,407 | 245,817,795 | 982,180,233 | 0 | 982,180,233 | 1,325,350,174 | 1,571,167,969 | 43 |
| 15 | Baringo | 63,600,000 | 45,765,998 | 24,046,826 | 21,719,172 | 10,598,744 | 0 | 10,598,744 | 13,448,082 | 35,167,254 | 44 |
| 16 | Taita Taveta | 239,653,602 | 451,282,264 | 390,269,112 | 61,013,152 | 199,412,375 | 0 | 199,412,375 | 190,856,737 | 251,869,889 | 51 |
| 17 | Turkana | 633,660,494 | 5,660,295,757 | 1,816,400,453 | 3,843,895,304 | 977,320,620 | 0 | 977,320,620 | 839,079,833 | 4,682,975,137 | 54 |
| 18 | Kisumu | 2,047,603,022 | 2,475,722,125 | 1,792,200,077 | 683,522,048 | 1,009,944,318 | 0 | 1,009,944,318 | 782,255,759 | 1,465,777,807 | 56 |
| 19 | Meru | 2,000,925,093 | 2,265,112,691 | 1,845,545,178 | 419,567,513 | 1,121,694,626 | 0 | 1,121,694,626 | 723,850,552 | 1,143,418,065 | 61 |
| 20 | Samburu | 792,663,564 | 846,492,795 | 762,579,174 | 83,913,621 | 467,571,530 | 0 | 467,571,530 | 295,007,644 | 378,921,265 | 61 |
| 21 | Nakuru | 2,379,815,709 | 2,504,561,905 | 420,164,604 | 2,084,397,301 | 286,772,974 | 0 | 286,772,974 | 133,391,630 | 2,217,788,931 | 68 |
| 22 | Muranga | 469,485,623 | 2,038,047,918 | 1,531,778,008 | 506,269,910 | 1,053,114,117 | 0 | 1,053,114,117 | 478,663,891 | 984,933,801 | 69 |
| 23 | Kisii | 865,075,580 | 1,414,104,629 | 1,200,573,919 | 213,530,710 | 827,685,030 | 0 | 827,685,030 | 372,888,889 | 586,419,599 | 69 |
| 24 | Mandera | 107,580,050 | 552,137,062 | 349,433,313 | 202,703,749 | 242,832,171 | 0 | 242,832,171 | 106,601,142 | 309,304,891 | 69 |
| 25 | Busia | 993,600,000 | 1,013,493,163 | 972,895,883 | 40,597,280 | 692,115,339 | 0 | 692,115,339 | 280,780,544 | 321,377,824 | 71 |
| 26 | Marsabit | 799,153,814 | 776,441,111 | 728,259,831 | 48,151,280 | 531,000,000 | 0 | 531,000,000 | 197,259,831 | 245,441,111 | 73 |
| 27 | Bungoma | 326,391,974 | 601,481,507 | 376,038,793 | 225,442,714 | 288,473,766 | 0 | 288,473,766 | 87,565,027 | 313,007,741 | 77 |
| 28 | Siaya | 614,507,285 | 709,770,238 | 637,310,697 | 72,459,541 | 505,063,673 | 0 | 505,063,673 | 132,247,024 | 204,706,565 | 79 |
| 29 | Trans Nzoia | 781,572,410 | 1,079,983,912 | 666,047,614 | 413,936,298 | 532,838,091 | 0 | 532,838,091 | 133,209,523 | 547,145,821 | 80 |
| 30 | Kitui | 1,167,092,734 | 1,443,011,641 | 572,033,419 | 870,978,222 | 506,681,656 | 0 | 506,681,656 | 65,351,763 | 936,329,985 | 89 |
| 31 | West Pokot | 113,054,409 | 1,725,540,240 | 483,053,261 | 1,242,486,979 | 434,747,935 | 0 | 434,747,935 | 48,305,326 | 1,290,792,305 | 90 |
| 32 | Embu | 1,278,735,548 | 1,362,958,792 | 435,114,432 | 927,844,360 | 405,867,861 | 0 | 405,867,861 | 29,246,571 | 957,090,931 | 93 |
| 33 | Kakamega | 634,742,603 | 593,950,376 | 583,093,452 | 10,856,924 | 553,885,406 | 0 | 553,885,406 | 29,208,046 | 40,064,970 | 95 |
| 34 | Wajir | 2,619,575,061 | 2,357,171,365 | 2,039,742,167 | 317,429,198 | 1,948,742,167 | 0 | 1,948,742,167 | 91,000,000 | 408,429,198 | 96 |
| 35 | Lamu | 179,490,878 | 143,663,524 | 85,050,899 | 58,612,625 | 83,429,559 | 31,528,323 | 114,957,882 | 1,621,340 | 28,705,642 | 98 |
| 36 | Elgeyo/Marakwet | 136,750,039 | 908,679,275 | 225,216,395 | 683,462,880 | 225,216,395 | 428,978,838 | 654,195,233 | 0 | 254,484,042 | 100 |
| 37 | Homabay | 746,480,000 | 1,663,245,610 | 40,447,020 | 1,622,798,590 | 40,447,020 | 241,871,783 | 282,318,803 | 0 | 1,380,926,807 | 100 |
| 38 | Kajiado | 769,805,900 | 366,353,650 | 88,191,609 | 278,162,041 | 88,191,609 | 0 | 88,191,609 | 0 | 278,162,041 | 100 |
| 39 | Kericho | 1,255,284,413 | 1,094,470,975 | 490,184,743 | 604,286,232 | 490,184,743 | 141,827,944 | 632,012,687 | 0 | 462,458,288 | 100 |

not true

| | County | List Presented to OCOB by counties as at 30th June,2018 (Kshs) | List presented to OAG by County for special Audit (Kshs) | Eligible Pending Bills as per OAG Special Audit (kshs.) | Ineligible Pending Bills as per the OAG Special Report (Kshs) | Eligible Pending Bills paid (Kshs.) as at 18th November, 2019 | Ineligible pending Bills paid (Kshs.) as 18th November 2019 | Total Pending Bills paid (Kshs.) as at 18th November, 2019 | Oustanding Eligible pending Bills (Kshs.) | Overall Oustanding Bills (Kshs.) as at 18th November 2019 | Percentage of Eligible pending bills paid |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | A | B | C | D | E | F | G=E+F | H=C-E | I=B-G | (G/C)*100 |
| 40 | Kilifi | 1,224,706,197 | 1,377,012,031 | 1,116,043,558 | 260,968,473 | 1,116,043,558 | 16,360,234 | 1,132,403,792 | 0 | 244,608,239 | 100 |
| 41 | Kwale | 1,830,121,075 | 2,501,631,906 | 809,734,393 | 1,691,897,513 | 809,734,393 | 0 | 809,734,393 | 0 | 1,691,897,513 | 100 |
| 42 | Laikipia | 760,611,928 | 989,444,917 | 77,539,708 | 911,905,205 | 77,539,708 | 0 | 77,539,708 | 0 | 911,905,209 | 100 |
| 43 | Makueni | 33,571,164 | 34,902,732 | 33,018,202 | 1,884,530 | 33,018,202 | 0 | 33,018,202 | 0 | 1,884,530 | 100 |
| 44 | Nyamira | 1,349,587,238 | 435,328,993 | 275,698,127 | 159,630,866 | 275,698,127 | 36,301,873 | 312,000,000 | 0 | 123,328,993 | 100 |
| 45 | Nyandarua | 906,921,152 | 1,138,159,128 | 297,078,779 | 841,080,349 | 297,078,779 | 317,016,227 | 614,095,006 | 0 | 524,064,122 | 100 |
| 46 | Nyeri | 1,411,372,489 | 360,535,590 | 152,196,769 | 208,338,821 | 152,196,769 | 33,604,863 | 185,801,632 | 0 | 174,733,958 | 100 |
| 47 | Uasin Gishu | 319,347,197 | 366,384,594 | 76,566,231 | 289,818,363 | 76,566,231 | 178,670,611 | 255,236,842 | 0 | 111,147,752 | 100 |
| | **Total** | **108,411,436,836** | **88,985,960,500** | **51,284,830,125** | **37,701,100,371** | **23,557,032,854** | **1,674,045,451** | **25,231,078,305** | **27,727,797,271** | **63,754,882,195** | |

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# REPORT FROM THE OFFICE OF CONTROLLER OF BUDGET

# 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

## SPECIAL REPORT
## ON
## STOPPAGE OF FUNDS TO COUNTY GOVERNMENTS

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

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

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## ACRONYMS

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

## EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

# 1. INTRODUCTION

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

## 1.1 Mandate of OCOB

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

1) **Oversight Role:** the Office oversees the implementation of the budgets of both national and county governments (Article 228 (4). This role involves monitoring the use of public funds in-year and reporting to the Parliament on the utilization of funds. This promotes accountability in the use of public financial resources.

2) **Controlling Role:** The Office authorizes the withdrawals from public funds including the Consolidated Fund (Article 206), County Revenue Fund (Article 207) and (Equalization Fund Article 204). . Before authorizing any withdrawal the Controller of Budget must be satisfied that the withdrawal is permitted by law as stipulated under Article 228 (5) of the Constitution.

3) **Reporting Role:** The Office prepares statutory reports (quarterly, annual and special reports) to the Executive and Legislature on Budget implementation of National and County governments (Article 228 (6). Through these reports, the OCOB ensure continuous monitoring of usage of public funds.

4) **Advisory Role:** The Office provides advice to Parliament on financial matters and where a Cabinet Secretary has stopped transfer of funds to a State organ or public entity. Under Article 225 (7) of the Constitution the suspension of funds cannot be lifted or sustained before the Controller of Budget presents a report to Parliament Article 225 (7).

5) **Investigation Role:** The Office conducts investigations on its own initiative or following a complaint made by a member of the public on budget implementation matters, Article 252 (1) (a) of the Constitution.

6) **Dispute Resolution Role:** The Office undertakes alternative dispute resolution namely; reconciliation, mediation and negotiation to resolve .conflicts and issues relating to budget implementation between the national and the county government, or between county governments.

7) **Public Sensitization Role:** The Office disseminates information to the public on budget implementation at both levels of Government (Section 39(8) of the Public Finance Management Act, 2012). This is in line with the provision of Article 35 of the Constitution which provides for the right of access to information held by the state. Further, this ensures that the public is well informed on budget implementation so as to actively and effectively participate in the budget process.

8) **Enforcement of Budget Ceilings:** Section 5(d) of the Controller of Budget Act, 2016 mandates the Controller of Budget to enforce budgetary ceilings set by Parliament.

### 1.2 Background information on pending bills in County Government

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

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

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

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

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

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

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

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

(i) That, all counties should verify the existing pending bills through internal committees and verified bills be provided by April, 2018 to allow Counties settle the pending bills before end of the financial year.

(ii) Where there is insufficient budget provision, Counties should pass appropriate supplementary budgets to re-vote the bills in the FY 2018/19 Budgets.

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

The OAG Special Report is summarised in the table below.

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

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

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

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

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

2) The OCOB issued Circular No. 23/2018 dated 25th October, 2018 requesting Counties to submit a schedule of pending bills as of 30th June 2018. On 30th December, 2018 the schedule of pending bills were forwarded to the Office of the Auditor General (OAG) for verification.

3) The Auditor General issued a Special Audit Report in May, 2019. The OAG special reports shows that out of the total list of pending bills provided for verification of Kshs.88,985,930,500, a total of Kshs.51,284,830,125 (58 per cent) was eligible for payment while pending bills worth Kshs.37,701,100,375 (42 per cent) was found to be ineligible.

4) On 1st June, 2019, a Presidential directive was issued. It required County governments to settle all their verified Pending Bills by 30th June, 2019.

5) During the 12th Ordinary Session of the Intergovernmental Budget and Economic Council (IBEC) meeting held on 18th June 2019, the OCOB was tasked to track and report on the status of payment of pending bills by County Governments.

6) The Controller of Budget issued Circular No.2/2019 on 4th June, 2019 advising County Governments to settle all genuine pending bills before 30th June 2019. Further, Counties were advised that in the event they are unable to settle all genuine pending bills, they should develop and share with the OCOB, a plan on how the pending bills were to be paid in FY 2019/20.

7) During the IBEC meeting held on the 11th November, 2019 OCOB reported an outstanding eligible pending bills of Kshs.28,020,735,418 which represented 55 per cent of the total eligible pending bills of Kshs.51,284,830,125.

8) The National Treasury issued Circular Ref No.IGFR/Pending Bills/01/A (18) dated 22nd October, 2019 which provided guidelines on settlement of pending bills to County Governments. It also made reference to the mandate of the National Treasury under Article 225 of the Constitution and Section 94 of the PFMA.

9) The National Treasury issued Circular Ref No.IGFR/Pending Bills/01/A (24) dated the 19th November, 2019 where the Ag.Cabinet Secretary, National Treasury invoked Section 97 of the PFMA on stoppage of funds with effect from 1st December, 2019. The circular stated that the identified County Governments were in material breach of Section 94 of the PFMA in that they had not made any significant effort to clear pending bills between 1st July and October, 2019. The 15 Counties are Baringo, Bomet, Garissa,Isiolo,Kiambu,Kirinyaga, Machakos,Migori, Mombasa, Nairobi City,Nandi, Narok,Tana River, Tharaka Nithi, and Vihiga

10) On 22nd November, 2019 the OCOB wrote to the affected 15 County Governments informing them of its mandate, under Article 225 (7) (a) of the Constitution and Section 97 (3) of the PFMA, to investigate and to report to Parliament within 14 days of the decision to stop transfer of funds by the Cabinet Secretary in charge of National Treasury.

11) On 25th November, 2019, the Ag. Cabinet Secretary, National Treasury vide a letter Ref. No. IGFR/Pending Bills/01/A (29) informed the Ag. Controller of Budget of the decision to involve Section 97 of the PFMA to stop the transfer of equitable share of revenue for FY 2019/20 to the fifteen (15) county governments with effect from 1st December, 2019.

## 2. LEGAL FRAMEWORK FOR STOPPAGE OF FUNDS

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

Article 225 of the Constitution provides:

> **225. (1) An Act of Parliament shall provide for the establishment, functions and responsibilities of the national Treasury.**
>
> **(2) Parliament shall enact legislation to ensure both expenditure control and transparency in all governments and establish mechanisms to ensure their implementation.**
>
> **(3) Legislation under clause (2) may authorise the Cabinet Secretary responsible for finance to stop the transfer of funds to a State organ or any other public entity—**
> **(a) only for a serious material breach or persistent material breaches of the measures established under that legislation; and**
> **(b) subject to the requirements of clauses (4) to (7).**
>
> **(4) A decision to stop the transfer of funds under clause (3) may not stop the transfer of more than fifty per cent of funds due to a county government.**
>
> **(5) A decision to stop the transfer of funds as contemplated in clause (3)—**
> **(a) shall not stop the transfer of funds for more than sixty days; and**
> **(b) may be enforced immediately, but will lapse retrospectively unless, within thirty days after the date of the decision, Parliament approves it by resolution passed by both Houses.**
>
> **(6) Parliament may renew a decision to stop the transfer of funds but for no more than sixty days at a time.**

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

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

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

Section 97 of the PFMA provides

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

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

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

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

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

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

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

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

## 2.1 Analysis of the legal framework

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

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

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

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

Section 94 provides:

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

***a. the State organ or public entity-***

***i. has failed to make any payments as and when due;***

***ii. has defaulted on financial obligations for financial reasons;***

***iii. had an operating deficit in excess of a percentage of revenue in the most recent financial year for which financial information is available as prescribed in regulations; or***

***iv. is more than sixty days late in submitting its annual financial statements to the Auditor-General in accordance with this Act or any other legislation;***

***b. the State organ or public entity has failed to make any other payment as and when due, which individually or in the aggregate is more than an amount as may be prescribed or, if none is prescribed, more than two percent of the State organ's or public entity's budgeted operating expenditure;***

***c. the Controller of Budget has raised material issues in their quarterly report;***

***d. the Auditor-General has withheld an opinion or issued a disclaimer due to inadequacies in the financial statements or records of the State organ or public entity or has issued an opinion which identifies a serious financial problem in the State organ or public entity; or***

***e. recurring or continuous failure by a State organ or public entity to meet its financial commitments which substantially impairs the State organ's or public entity's ability to procure goods, services or credit on usual commercial terms.***

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

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

## 3. BASIS FOR UNDERTAKING THE INVESTIGATION

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

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

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

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

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

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

### 3.1 Scope of The Investigation

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

### 3.2 Objectives of the Investigation

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

The investigation sought to determine;

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

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

## 4. INVESTIGATION PROCEDURE

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

### 4.1 Investigation process

The investigation process included the following:

### 4.2 Investigation plan

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

The investigation also entailed carrying out interviews.

**a. Interviews**

Interviews were held with County Government Officers who included;

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

**b. Documents reviewed and referred to/Criteria.**

The following laws and documents were considered and reviewed;

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

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

### 4.3 Methodology

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

# 5. SITUATIONAL ANALYSIS

## 5.1 Introduction

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

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

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

## 5.2 The Budget Cycle/Process

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

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

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

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

### 5.3 Budget Circular

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

### 5.4 Annual Development Plan

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

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

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

## 5.5 County Budget Review and Outlook Paper (CBROP)

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

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

## 5.6 County Fiscal Strategy Paper (CFSP)

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

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

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

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

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

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

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

### 5.7 Debt Management Strategy paper (DMSP)

On or before the 28th February in each year, the County Treasury shall submit to the County Assembly a statement setting out the debt management strategy of the

county government over the medium term with regard to its actual liability and potential liability in respect of loans and its plans for dealing with those liabilities. (Section 123 PFMA, 2012)

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

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

### 5.8 Cash Flow Projection (Section 127 PFMA, 2012)

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

### 5.9 Budget Estimates (Sec. 129 PFMA, 2012)

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

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

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

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

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

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

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

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

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

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

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

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

## 5.10 Appropriations Act

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

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

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

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

## 5.11 The Procurement Process

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

## 5.12 The Exchequer Requisition Process

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

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

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

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

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

a. checks that the withdrawal from the County Revenue Fund is authorized under the Constitution and an Act of Parliament or an Act of the County Assembly;

b. verifies that the requested votes against which the requisition has been submitted have sufficient fund;

c. checks the revenue availability in the Exchequer Account and

d. either approves the withdrawal requisition or returns the requisition to the County Treasury for any clarification.

## 5.13 Pending Bills

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

## 5.14 Causes of Pending Bills

Pending bills accrue as results of numerous causes which include:

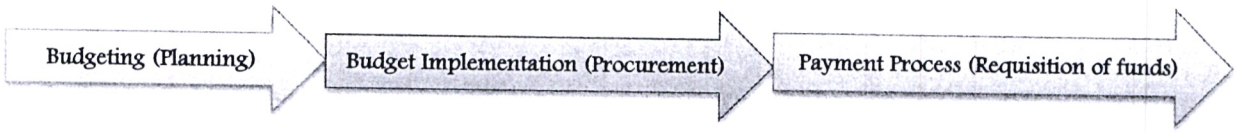
a. Failure by the County Governments to effectively align their procurement plans to the cash flow plans and approved budgets.
b. Delayed tendering and procurement processes have had adverse effects on projects completion rates and processing of payments.
c. Delay by the National Treasury to disburse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

## 5.15 Effects of Pending Bills

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

## 5.16 Pending Bills in the Public Finance Management Framework

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




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

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

## 6. FINDINGS AND ANALYSIS

### 6.1 Synopsis of the Pending Bills for the Fifteen County Governments

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

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

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

## 6.2 Findings and Analysis for the specific County Governments

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

### 6.2.1 County Government of Baringo

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

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

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

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

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

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

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

### 6.2.2 County Government of Bomet

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

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

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

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

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

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

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

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

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

### 6.2.3 County Government of Garissa

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

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

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

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

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

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

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

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

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

### 6.2.4 County Government of Isiolo

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

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

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

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

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

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 101,330,098 | 1,334,674,795 | 1,258,372,703 | 77,902,092 | 257,296,160 | 0 | 257,296,160 | 1,001,076,543 |

It should be noted that the County disputed the OAG Special report on pending bills and reported that the pending bills stood at Kshs.1, 206,893,970. This comprised of Kshs.596, 814,523 and Kshs.610, 079,447 as eligible pending bills and ineligible pending bills respectively.

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

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

### 6.2.5 County Government of Kiambu

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

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

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

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

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

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

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

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

### 6.2.6 County Government of Kirinyaga

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

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

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

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

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

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

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

### 6.2.7 County Government of Machakos

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

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

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

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

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

| List Presented to OCOB By Counties as at 30th June, 2018 (Kshs) | List Presented to OAG By Counties for Special Audit (Kshs) | Eligible Pending Bills as per the OAG Special Audit (Kshs) | Ineligible Pending Bills as per the OAG Special Report (Kshs) | Eligible Pending Bills Paid As at 30th November, 2019 | Ineligible Pending Bills Paid As at 30th November, 2019 | Total Pending Bills Paid As at 30th November, 2019 | Outstanding Eligible Pending Bills (Kshs.) |
|---|---|---|---|---|---|---|---|
| A | B | C | D | E | F | G=E+F | H=C-E |
| 975,461.203 | 1,286,526,181 | 942,363,607 | 344,162,574 | 236,916,704 | - | 236,916,704 | 705,446,903 |

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

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

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

### 6.2.8 County Government of Migori

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

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

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

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

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

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

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

### 6.2.9 County Government of Mombasa

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

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

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

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

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

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

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

### 6.2.10 County Government of Nairobi City

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

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

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

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

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

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

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

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

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

### 6.2.11 County Government of Nandi

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

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

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

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

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

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

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

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

### 6.2.12 County Government of Narok

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

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

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

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

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

The County Government of Narok has not included the outstanding eligible pending bills in the FY 2019/2020 budget. The county has however committed to settle the eligible pending bills vide a letter dated 26th November, 2019 addressed to the National Treasury.

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

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

### 6.2.13 County Government of Tana River

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

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

The County submitted the following documents to the OCOB: List of eligible Pending Bills as at 30th June 2018; List of ineligible Pending Bills as at 30th June 2018; List of eligible Pending Bills paid as at 30th June 2018; Central bank of Kenya statement of Account 1000170708 Tana River County Development for the period 1st January 20192019 to 30th June 2019; and Central bank of Kenya statement of Account 1000170708 Tana River County Development for the period 1st July 2019 to 2nd December 2019.

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

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

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

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

### 6.2.14 County Government of Tharaka Nithi

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

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

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

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

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

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

### 6.2.15 County Government of Vihiga

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

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

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

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

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

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

# 7 RECOMMENDATIONS AND CONCLUSION

## 7.1 RECOMMENDATIONS

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

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

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

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

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

The Office further recommends:

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

## 7.2 CONCLUSION

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

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

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

# SUBMISSION FROM LISTED COUNTY GOVERNMENTS

# NAROK COUNTY

CABINET SECRETARY
NATIONAL TREASURY
26 NOV 2 19
RECEIVED
P.O Box 30007-0

# NAROK COUNTY GOVERNMENT
## OFFICE OF THE GOVERNOR

County Headquarters
Mau Narok Road, Narok Town
PO Box 528 - 20500
Narok, Kenya

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info@narok.go.ke
Website: www.narok.go.ke

*When Replying Quote*

REF NO: CGN/GVN/PB-T/VOL 1(2)

26th November, 2019

**HON. (AMB.) UKUR YATANI**
Ag. Cabinet Secretary
National Treasury and Planning
P.O. Box 67839-00200
**NAIROBI**

Dear Hon (Amb) Yatani

RE: **STATUS OF THE COUNTY GOVERNMENT OF NAROK PENDING BILLS**

I write further to my letter dated 22nd November, 2019.

Firstly, allow me to thank you most sincerely for the opportunity to meet with you this morning, 26th November 2019. The initiative taken by the National Treasury to assist County Governments resolve pending bills is noble and your personal involvement is commendable. I appreciate your constructive suggestions and encouragement to us as a County in tackling the issue of pending bills.

As agreed, we undertake to utilize the funds released to us for November, 2019 for payment of salaries and apply the balance of which shall not be less than Kshs. 500,000,000/- towards the pending bills, which as at 20th November, 2019 stood as Kshs. 936, 865,023. We undertake further to offset the balance of the pending bills by committing Kshs. 200,000,000/- in the month of December 2019 and

January 2020. I assure you that come February, 2020 our County shall be free of pending bills.

In view of the above commitments and undertakings, I write to request that you de-list Narok County from the list of County Governments set out in your Treasury Circular No. 20/2019, dated 19th November, 2019.

Once again, I extend our sincere gratitude for your support.

Yours Sincerely

HON. SAMUEL K. TUNAI, EGH
GOVERNOR, NAROK COUNTY

Cc
Ag. Controller of Budget
Bima House
NAIROBI

# NAROK COUNTY GOVERNMENT

## OFFICE OF THE GOVERNOR

County Headquarters
Mau-Narok Road, Narok Town
P.O. Box 898 - 20500
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*When Replying Quote*

**REF NO: CGN/GVN/PB-T/VOL 1(1)** 22nd November, 2019

**HON. (AMB.) UKUR YATANI**
Ag. Cabinet Secretary
National Treasury and Planning
P.O. Box 67839-00200
NAIROBI

Dear Hon Yatani,

**RE: STATUS OF THE COUNTY GOVERNMENT OF NAROK PENDING BILLS**

We acknowledge with thanks receipt of **Treasury Circular No. 20/2019 Ref No IGFR/Pending Bills/01/A(24) dated 19th November, 2019** on the status of the pending bills by Ministries, Departments & Agencies (MDAs) and County Governments.

The County Government of Narok is fully committed to settling eligible pending bills. However, in the discharge of its duty, to ensure accountable and prudent application of funds, the County Government is obligated to subject all the pending bills to a process of verification. The pending bills arise from award of tenders in the FY 2014/1015 and 2015/2016. Performance of the said supply contracts was affected by delays in completion and in some cases, substandard works. The County Government felt that settling the amounts claimed by the various suppliers and contractors would lead to improper utilization of public funds. For these reasons, in 2018 the County

Government commissioned an audit aimed at verifying all the pending bills. The total pending bills as at 30th June 2018 was **Ksh 2,056,439,795**.

Noting that the issue of pending bills cut across County Governments, the Intergovernmental Budget and Economic Council (IBEC) requested the Auditor General to carry out an audit of pending bills for all County Governments and the National Government Agencies. Narok County Government submitted its list of pending bills to the Auditor General. Upon review, the Auditor General found the sum **Ksh 1,980,736,070** to be eligible for payment, while bills amounting to **Ksh75,703,725** were considered ineligible due to inadequate supporting documentation.

After publication of the report of the Auditor General on Pending Bills and in line with the subsequent directive issued by the National Treasury, we constituted the Narok County Pending Bills Committee and members published in the Kenya Gazette.

The Pending Bills Committee has been working to scrutinize the list of all pending bills and continues to advise the Finance Department on the status of eligible and ineligible Pending Bills.

A major challenge encountered while undertaking this process is the numerous Court cases that were initiated by suppliers and contractors regarding their payments status. These have impeded any attempts by the Pending Bills Committee to summon the said suppliers and contractors to assist in the process of verification.

Nevertheless, the County government of Narok has made significant progress in the payment of pending bills. As at 20th November 2019, we had made a total payment of **Ksh 1,043,871,048.**

The outstanding balance of pending bills as at 20th November 2019 was **Ksh 936,865,023.** However, I must add that these outstanding bills are still subject to scrutiny and verification by the Pending Bills Committee, while those lodged in Court are subject to evidentiary

proof. A detailed list of the pending bills, payment status and balances as at 20th November 2019 is attached hereto for your reference.

We propose, subject to verification to commit the sum of Ksh 200,000,000 per month for the payment of pending bills and we expect to fully settle the same by 30th April 2020.

Yours Sincerely

HON. SAMUEL K. TUNAI, EGH
GOVERNOR, NAROK COUNTY

Cc

1. CPA Stephen Masha
   Ag. Controller of Budget
   Bima House
   NAIROBI

*Appendices*

1. *List of Eligible Pending Bills and payment progress as of 20th November 2019*
2. *List of Ineligible Pending Bills 30th June 2018 Ksh75,703,725*
3. *Copy of the Kenya Gazette on appointment of Pending Bills Committee Members*

# Nairobi City County

# NAIROBI CITY COUNTY

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Website: www.nairobi.go.ke

City Hall,
P. O. Box 30075-00100,
Nairobi, Kenya.

OFFICE OF THE GOVERNOR
COUNTY SECRETARY AND HEAD OF COUNTY PUBLIC SERVICE

NCC/CS/LOM/995

4th December, 2019

J. M Nyegenye, CBS
Clerk of the Senate/Secretary,
Parliamentary Service Commission
P. O Box 41842-00100
Nairobi

Dear Sir,

RE: STOPPAGE OF TRANSFERS TO COUNTY GOVERNMENTS DUE TO FAILURE TOPAY PENDING BILLS

Reference is made to letter Ref. SEN/DCS/SCF&B/2019/110 dated 28th November 2019 on the above subject.

Nairobi City County Government is pleased to be given an opportunity to explain on the allegations as set out in the Cabinet Secretary National Treasury and Treasury circular no. 20/2019.

We wish to respond as follows:

1. Receivables to Nairobi City County Government from Land Rate Defaulters by 30.11.2019

   A list is attached totaling to **706,748,728,881.27** out of which National Government owes kshs. **236,920,630,330** in lieu of land rates.

2. Debts / Payables for Goods and Services by Nairobi City County Government

Kshs. 23, 139,794,063 Billion

3. Payable Pending Bills by Nairobi City County Government
As audited by the Office of the Auditor General to Kshs. 11,783,829,072 Billion

4. Nairobi City County Government

Payments to pending bills upto (as contained in the Controller of budget report) and KRA

i. Payments to Suppliers – kshs. 2,102,87,898
ii. Payments to KRA Kshs. 2.0 Billion

**Kshs. 3.9 Billion**

5. National Government

The County Government hereby requests the National Government to pay all monies owed to Nairobi City County Government totaling to Kshs. **236,920,630,330**

The Nairobi City County Government urgently requests Senate to intervene.

6. Payables to Nairobi City County Government by National Government

Government Owes **kshs. 236,920,630,330**

NB: Lumumba Committee put the debts as at 9,827,397,850 and not Kshs. 11,783,829,072 Billion.

7. Debt Recovery Strategy

Report attached from the National Treasury indicating that they agreed to pay kshs. 8.1 Billion in a proposed part financing of Nairobi City County Government Debts/Expenditure arrears:

| | |
|---|---|
| KRA | kshs. 4,470,954,288 |
| NSSF | kshs. 470,808,346 |
| Utilities | kshs. 565,018,569 |
| Overdrafts | kshs. 891,961,441 |
| Contractors/Suppliers/Merchants | kshs. 1,771,506,830 |

**Total kshs. 8,170,249,474**

8. Way forward/Recommendations

Nairobi City County Government should not be classified as not paid pending bills because the Nairobi City County Government has paid over 4 Billion.

Suppliers upto November 2019 kshs. 2,102,87,898
KRA Kshs. 2 Billion

9. Nairobi City County Government has budgeted kshs. 3.2 Billion thus towards payment of pending bills during FY 19/20. (paid Kshs. 2.1 Billion totatling to Kshs. 5.3 Billion)

However, it should be noted that Nairobi City County Government paid Kshs. 2 Billion to the Kenya Revenue Authority not captured in the Controller of Budget report. Acknowledgement letter by Kenya Revenue Authority hereby attached.

10. Immediate release of 8 Billion by the National Treasury to pay the balance of pending bills estimated at kshs. 9 Billion as per the discussions previously held. We have communicated and held discussions on the same with the National Treasury.

11. Payment of Taxes

For the last two financial years Nairobi City County Government has consistently paid all gross statutory deductions.

It is our prayer that Nairobi City County Government should not be classified as having defaulted in the payment of Pending Bills to its suppliers and request that kshs. 225 Billion be paid so that all debts are cleared and some money left for improvement of service delivery.

We have attached all relevant documents.

Please accept our highest consideration and cooperation in this matter.

Yours Sincerely,

LEBOO OLE MORINTAT, OGW
AG. COUNTY SECRETARY AND HEAD OF COUNTY PUBLIC SERVICE

Cc

H.E Governor
Nairobi City County

Yakur Yattani, CBS
Ag. Cabinet Secretary
National Treasury

Accountant General
National Treasury

CEC-Finance
Nairobi City County

## Statement on Stoppage of Transfers to Nairobi City County Government by Cabinet Secretary, National Treasury/Planning

1. On August 8th 2017, Nairobians went to elections and elected a new administration. One of the very first hurdles the new administration faced was a huge debt they could not service and dwindling revenues. The Administration decided to approach the National Treasury to assist it in designing a Financial Recovery Plan that could allow it focus on the much needed service delivery to the people of Nairobi.

2. On 24th April, 2018, the Principal Secretary to the National Treasury wrote to Nairobi County proposing a Financial Recovery Plan. The plan primarily focused on consolidating the debtors list. The following list was agreed on:

### NAIROBI CITY COUNTY GOVERNMENT DEBTS AS AT 30/09/2017

| | | As at 27/02/2013 | Increase by 30/09/17 | Balance 30/09/2017 |
|---|---|---|---|---|
| A | **STATUTORY OBLIGATIONS** | **7,665,319,532.00** | **20,030,365,075.00** | **27,695,687,607.00** |
| | a) PAYE | 640,682,682.00 | 3,603,981,260.00 | 4,244,663,942.00 |
| | b) KRA WHT on VAT | | 226,290,346.00 | 226,290,396.00 |
| | c) NSSF | 668,804,722.00 | (197,996,376.00) | 470,808,346.00 |
| | d) NHIF | 3,568,960.00 | (3,568,960.00) | |
| | e) LAPTRUST | 3,673,709,213.00 | 8,456,589,325.00 | 12,130,298,538.00 |
| | -Principal | 1,422,330,345.00 | 617,403,007.00 | 2,039,738,352.00 |
| | -Interest/Penalties | 1,259,792,570.00 | 7,324,100,512.00 | 8,583,893,082.00 |
| | | | | |
| B | **UTILITIES** | **686,343,726.00** | **(121,138,574.00)** | **565,205,152.00** |

| | | | | |
|---|---|---|---|---|
| | a) KPLC | 686,343,726.00 | (215,348,797.00) | 470,994,929.00 |
| | b) Water | | 94,210,223.00 | 94,210,223.00 |
| | | | | |
| C | **ACCOUNTS PAYABLE** | **2,847,211,879.00** | **3,796,000,590.00** | **6,643,212,469.00** |
| | a) Construction & Refurbishment of Roads | 1,569,227,793.00 | 2,592,471,495.00 | 4,161,699,288.00 |
| | b) Legal | 1,190,576,214.00 | 1,148,687,899.00 | 2,339,264,113.00 |
| | c) Employee Benefits/Deceased | 87,407,872.00 | 54,841,196.00 | 142,249,068.00 |
| | | | | |
| D | **LOANS** | **80,041,633,771.00** | **27,243,012,590.00** | **107,284,646,361.00** |
| | a) KCB Long-Term Loan | 3,665,966,840.00 | 415,303,548.00 | 4,081,270,388.00 |
| | b) Other Bank Loans/OD | 2,181,481,144.00 | (1,289,519,703.00 ) | 891,961,441.00 |
| | c) Govt guaranteed Loans | 40,964,940,968.00 | 12,260,452,058.00 | 53,225,393,026.00 |
| | -Principal | 4,170,280,066.00 | | 4,170,280,066.00 |
| | - Interest | 36,794,660,902.00 | 12,260,452,058.00 | 49,055,112,960.00 |
| | d) LGLA | 8,162,872,992.00 | | 8,162,872,992.00 |
| | - Principal | 4,041,026,234.00 | | 4,041,026,234.00 |
| | - Interest | 4,121,846,758.00 | | 4,121,846,758.00 |
| | | **91,240,508,908.00** | **50948242681** | **142,188,751,589.00** |

3. After further deliberations, the following recommendations were made:

   (a) That on PAYE and NSSF, NCCG would immediately start paying the full amount with the next salary payments.

   (b) That Withholding Tax on VAT would also be paid at the time of paying suppliers henceforth.

(c) On the balance of PAYE, Withholding Tax inclusive of penalties amounting to about 4.9Billion shillings, it was recommended that this amount and others be offset against Contribution in Lieu of Rates (CILOR) and Parking Fees held in arrears by National Government entities amounting to about 8.2Billion shillings.

**Proposed Plan for Part-Financing of NCCG Debts/Expenditures**

| | |
|---|---|
| **CILOR AMOUNT** | **8,170,249,474.00** |
| KRA (PAYE, WHT) | 4,470,954,288.00 |
| NSSF | 470,808,288.00 |
| Utilities | 565,018,569.00 |
| Overdraft | 891,961,441.00 |
| Contractors/Suppliers/Merchants | 1,771,506,830.00 |

**On Payments due to Suppliers, the Principal Secretary recommended the following:**

- Establish a Pending Bills Committee to verify authenticity of the Bills from contractors and suppliers of good and services.
- Once verified, revenue to NCCG (from Own Sources/Equitable Share) and CILOR should be used to settle them.
- The balance of about 4.9B should be included in the NCCG Medium-Term Fiscal Plan showing clearly how to pay.
- As a last resort, the NCCG should enter a debt swap with creditors.

**Pensions**

- Henceforth, NCCG should provide for Pension funds in their budgets.
- On Legacy Debts, a Committee should be formed between NCCG, National Treasury, Retirements Benefits Authority, Ministry of Devolution and Inter-Governmental Relations Technical Committee to come up with solutions.

**WHAT HAS HAPPENED.**

1. His Excellency The Governor appointed a Pending Bills Verification Committee Chaired by Prof PLO Lumumba. All those people and companies that were claiming money from Nairobi County were asked to submit their claims to the Committee for Verification.

2. At the same time, the County Government submitted a list of Pending Bills to the Controller of Budget. A total of 4709 Pending Bills amounting to KES 43,546,916,398 which included a list of all Statutory Creditors.

3. The Office of the Auditor General also asked for a list of Pending Bills to audit. The County submitted a list of 1512 Pending Bills amounting to KES 23,139,794,066 for a special audit by the OAG. Out of this amount, the OAG Special Audit recommended payment of a total of KES 11,783,829,072 as Eligible Pending Bills and rejected claims worth KES 11,355,964,991 pending further scrutiny. This list is classified as follows:

| **Folio** | **Details** | **Actual List of Pending Bills Presented as at 30/06/2018** | **%** | **Elligible Bills as at 30/06/2018** | **%** | **Ineligible Pending Bills as at 30/06/2018** |
|---|---|---|---|---|---|---|
| **A** | Procurement of Goods | 4,000,592,162 | 87% | 3,491,068,580 | 13% | 509,523,581 |
| **B** | Procurement of Services | 1,206,583,848 | 82% | 986,073,810 | 18% | 220,510,038 |
| **C** | Construction Contracts | 1,954,234,579 | 62% | 1,213,453,351 | 38% | 740,781,229 |
| **D** | Legal | 15,461,647,693 | 36% | 5,576,497,550 | 64% | 9,885,150,143 |
| **E** | Hospital Creditors | 10,869,808 | | | | |
| **F** | NSSF | 424,878,803 | 100% | 424,878,803 | | |
| G | NITA | 80,987,170 | 100% | 80,987,170 | | |
| **TOTAL** | | **23,139,794,063** | | **11,783,829,072** | | **11,355,964,991** |

According to the Controller of Budget Report, The Nairobi City County Government had by 18th November, 2019 paid a total of **KES 2,102,877,898 in Pending Bills**. This is singularly the biggest amount paid in Pending Bills by any of the 47 Counties by far.

The figure of **KES 2,102,877,898** paid in Pending Bills did NOT include payments of any statutory Pending Bills.

However, the County has also paid the Kenya Revenue Authority a total of **KES 2 Billion** as part payment for tax arrears accumulated in the period 2013-2017 (KES 1Billion on 8th October; KES 1Billion on 4th September).The County has no outstanding arrears for the Period 2017 to-date as we have always paid our PAYE and Withholding Tax when principal payments are made. All PAYE and Withholding Tax on VAT is ALWAYS deducted at source and paid to KRA when salaries and suppliers are paid respectively.

There is no doubt that we have made **significant effort** to clear our Pending Bills given our financial position. The assertion by the Cabinet Secretary for the National Treasury is therefore without merit whatsoever. If anything, Nairobi County Government has demonstrated extreme goodwill even in settling long-standing debts owed to the Kenya Revenue Authority.

Furthermore, we have developed a repayment plan for settling additional Pending Bills of over KES 3.5 Billion if we are to be funded by the National Treasury.

**Current Budget and Plans for Paying Pending Bills.**

In our Budget for 2019/2020, we allocated a total of **KES 3,191,394,825** (2,601,000,000 Recurrent; 590,394,825 Development) for paying **Pending Bills.** However, when KRA came calling, **we entered agreement to pay KES 3 Billion within 3 months** so that we could settle this matter once and for all despite the Financial Recovery Plan we entered into with the National Treasury that promised to take care of this. The agreement included discussions on waivers after we have finished payment of the principal amounts.

**OUR CURRENT FINANCIAL POSITION**

So far this Financial Year, the County has received a total of **KES 4,043,667,300** from the Exchequer as remittance from Equitable Share for the months covering July to October.

As per the approved Schedule, we ought to have received **KES 1,591,995,000** in the month of November. We have NOT received this money.

In fact, this month, we have struggled to raise revenue to cover salaries, which amounts to a monthly expenditure of **KES 1,041,000,000.**

**Some of the Debts Owed to Nairobi by National Government**

| | ARREARS (P) | PENALTIES (INTERESTS) | CURRENT BALANCE |
|---|---|---|---|
| RATES | 3,981,950,483 | 231,382,772,017 | 235,364,722,500 |
| PARKING (RESERVED BAYS) | 682,645,000 | 0 | 682,645,000 |
| KENYA POWER (Wayleaves) | 873,262,830 | 0 | 873,262,830 |
| **TOTAL** | **5,537,858,313** | **231,382,772,017** | **236,920,630,330** |

**NAIROBI CITY COUNTY**

**GOVERNMENT OUSTANDING DEBTS**

| | ARREARS (P) | PENALTIES (INTEREST) | CURRENT BALANCE |
|---|---|---|---|
| **RATES** | | | |
| GOVERNMENT PRESS | 23,422,000 | 197,130,814 | 220,552,814 |
| MINISTRY OF TRANSPORT | 17,668,415 | 1,518,869,254 | 1,536,537,669 |
| JUDICIAL SERVICE COMMISSION | 64,955,933 | 730,405,894 | 795,361,827 |
| TREASURY | 12,315,940 | 1,190,420,331 | 1,202,736,271 |
| PUBLIC SERVICE COMMISSION | 3,230,000 | 3,202,843,685 | 3,206,073,685 |
| MINISTRY OF HEALTH | 18,754,200 | 202,158,067 | 220,912,267 |
| MINISTRY OF ENV., WATER & NAT. RES | 4,048,731 | 10,091,009 | 14,139,740 |
| OFFICE OF THE PRESIDENT | 216,826,999 | 5,317,564,183 | 5,534,391,182 |
| MINISTRY OF DEFENCE | 336,798,275 | 5,182,019,912 | 5,518,818,187 |
| PARLIAMNET SERVICE COMMISSION | 56,306,492 | 376,354,202 | 432,660,694 |
| COMMISSIONER FOR PRISON | 9,246,835 | 25,459,945 | 34,706,780 |
| KENYA POLICE | 70,415,074 | 1,836,201,539 | 1,906,616,613 |
| MINISTRY OF DEVOLUTION | 7,000,825 | 19,275,843 | 26,276,668 |
| KENYA AIRPORT AUTHORITY | 51,090,490 | 40,306,166,738 | 40,357,257,228 |
| **SUB TOTAL** | **892,080,209** | **60,114,961,416** | **61,007,041,625** |
| **PARKING (RESERVED BAYS)** | | | |
| KENYA REVENUE AUTHORITY | 68,670,000 | 0 | 68,670,000 |
| TREASURY | 11,900,000 | 0 | 11,900,000 |
| CENTRAL BANK OF KENYA | 77,280,000 | 0 | 77,280,000 |
| OFFICE OF THE DEPUTY PRESIDENT | 198,040,000 | 0 | 198,040,000 |
| KENYA BUREAU OF STATISTICS | 14,280,000 | 0 | 14,280,000 |
| KENYA POLICE | 91,240,000 | 0 | 91,240,000 |
| NSIS | 28,560,000 | 0 | 28,560,000 |
| HIGH COURT-MILIMANI | 105,120,000 | 0 | 105,120,000 |
| MINISTRY OF HOUSING | 5,760,000 | 0 | 5,760,000 |
| NATIONAL ASSEMBLY | 73,160,000 | 0 | 73,160,000 |
| MINISTRY OF SPORTS & CULTURE | 8,635,000 | 0 | 8,635,000 |
| **SUB TOTAL** | **682,645,000** | **0** | **682,645,000** |
| **GRAND TOTAL** | **1,574,725,209** | **60,114,961,416** | **61,689,686,625** |
| | | | |
| **NOTES** | | | |
| **GOK 1,401 PROPERTIES WITH LAND RATES ARREARS** | **3,981,950,483** | **231,659,225,823** | **235,641,176,306** |
| **PARKING** | **682,645,000** | **0** | **682,645,000** |
| **TOTAL DEBTS** | **4,664,595,483** | **231,659,225,823** | **236,323,821,306** |

County Secretary and
Head of County Public Service
Nairobi City County
P. O. Box 30075 - 00100
NAIROBI

REPUBLIC OF KENYA

Telephone: +254-(20) 3214000
E-mail: info@oagkenya.go.ke
Website: www.oagkenya.go.ke

OFFICE OF THE AUDITOR-GENERAL
*Enhancing Accountability*

**HEADQUARTERS**
Anniversary Towers
Monrovia Street
P.O. Box 30084-00100
NAIROBI

# SPECIAL REPORT OF THE AUDITOR GENERAL ON PENDING BILLS OF THE COUNTY GOVERNMENT OF NAIROBI AS AT 30 JUNE 2018

## Special Audit Report on Pending Bills.

The accompanying special report of pending bills as at 30 June 2018 of the **County Government of Nairobi**, which comprise of full list of pending bill, list of eligible pending bills, list of ineligible pending bills and a schedule of payments of eligible bills paid by 15 February 2019 has been prepared, on my behalf, by **Mbaya & Associtates Certified Public Accountants (K)**, auditors appointed under Section 23 of the Public Audit Act, 2015 and in accordance with the provisions of Article 229 of the Constitution of Kenya. The auditors have duly reported to me the results of their special audit and on the basis of their report, I am satisfied that all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the special audit were obtained.

The summary of the results of the special audit is as follows:

**Schedule 1: Comparison of Controller of Budget (COB) list of pending bills Vs the actual list presented for audit as at 30 June 2018 (Apdx 1)**

| Details | COB List Kshs | Actual List presented Kshs | Difference Kshs |
|---|---|---|---|
| Pending bills at 30 June 2018 | 64,802,990,000 | 23,139,794,066 | 41,663,195,934 |

**Schedule 2: Summary of Findings of Actual List Presented for Special Audit as at 30 June 2018 (Apdx 2)**

| Details | Actual List Kshs | Eligible Bills Kshs | Ineligible Bills Kshs |
|---|---|---|---|
| Pending bills at 30 June 2018 | 23,139,794,066 | 11,783,829,072 | 11,355,964,991 |

**Schedule 3: Current Status of the Eligible Bills as at 15 February 2019 (Apdx 3)**

| Details | Eligible Bills as at 30/06/2018 Kshs | Eligible Bills paid by 15/02/2019 Kshs | Outstanding Eligible Bills as at 15/02/2019 Kshs |
|---|---|---|---|
| Pending bills | 11,783,829,072 | 954,064,754 | 10,829,764,318 |

**Schedule 4: Summary of the ineligible pending bills as at 30 June 2018 (Apdx 4)**

| Reason for ineligibility | Ineligible Bills as at 30/06/2018 |
|---|---|
| | Kshs |
| Lack of documentation, overstatement, work not commenced, stalled projects, cancellation and work/services not done or delivered (As detailed in main report). | 11,355,964,991 |

**Responsibilities of Management and Those Charged with Governance**

Management is responsible for the preparation and fair presentation of list and schedules pertaining to pending bills in accordance with International Public Sector Accounting Standards (Cash Basis) and for maintaining effective internal control as management determines is necessary to enable the preparation of pending bills statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal control, risk management and governance.

Management is also responsible for the submission of accurate statements of pending bills as at 30 June 2018 to the Auditor-General in accordance with the Terms of Reference set out for purposes of auditing the county government pending bills.

In addition to the responsibility for the preparation and presentation of the pending bills statements described above, management is also responsible for ensuring that procurement laws, the activities, pending bills transactions and information reflected in the lists and schedules are in compliance with the authorities which govern them, and that public resources are applied in an effective way.

Those charged with governance are responsible for overseeing the County Executive of Nairobi pending bills reporting process, reviewing the effectiveness of how the entity monitors compliance with relevant legislative and regulatory requirements, ensuring that effective processes and systems are in place to address key roles and responsibilities in relation to governance and risk management, and ensuring the adequacy and effectiveness of the control environment in relation procurement processes and payment for procured services and goods.

## 2. EXECUTIVE SUMMARY

a. Comparison of pending bills lists produced by the Controller of Budget against that of the County Government of Nairobi. Ref: Appendix 1

| Controller of Budget List | | List presented by the County of Nairobi | | Variances | |
|---|---|---|---|---|---|
| No. of Bills | Value (Kshs) | No. of Bills | Value (Kshs) | No. of Bills | Value (Kshs) |
| 4,709 | 43,546,916,398 | 1,512 | 23,139,794,066 | 3,197 | 20,407,122,332 |

b. Bills eligible for payment: Appendix 2

| Pending bills presented for verification (Kshs) | Bills eligible for payment (Kshs) | Bills ineligible for payment (Kshs) |
|---|---|---|
| 23,139,794,063 | 11,783,829,072 | 11,355,964,991 |

c. Eligible for payment and already paid as at 28th February 2019: Appendix 3

| Eligible Bills as at 30 June 2018 | Eligible Bills Paid between 30 June 2018 and 28 February 2019 | Outstanding Eligible Bills as at 28 February 2019 |
|---|---|---|
| (Kshs) | (Kshs) | (Kshs) |
| 11,783,829,072 | 954,064,754 | 10,829,764,318 |

d. Ineligible pending bills as at 30 June 2018: Appendix 4

| | |
|---|---|
| Ineligible Bills as at 30 June 2018 | Kshs 11,355,964,991 |

e. Ineligible bills but already paid as at 28th February 2019: Appendix 5

| Ineligible Bills as at 30 June 2018 | Ineligible Bills Paid between 30 June 2018 and 28 February 2019 | Outstanding Ineligible Bills as at 28 February 2019 |
|---|---|---|
| (Kshs) | (Kshs) | (Kshs) |
| 11,357,450,644 | 146,440,676 | 11,211,009,968 |

## 6. APPENDICES

Appendix 1

Comparison of pending bills lists produced by the Controller of Budget against that of the County Government of Nairobi.

| Folio | Details | Controller of Budget List | | Actual list Presented by the County Government of Nairobi | | Variances | |
|---|---|---|---|---|---|---|---|
| | | No. of Bills | Value (Kshs) | No. of Bills | Value (Kshs) | No. of Bills | Value (Kshs) |
| A | Procurement of Goods | 334 | 2,547,453,041 | 573 | 4,000,592,162 | (239) | (1,453,139,121) |
| B | Procurement of Services | 276 | 1,570,589,713 | 153 | 1,206,583,848 | 123 | 364,005,865 |
| C | Construction Contracts | 147 | 855,939,343 | 259 | 1,954,234,579 | (112) | (1,098,295,236) |
| D | Legal | 234 | 5,442,127,208 | 438 | 15,461,647,693 | (204) | (10,019,520,484) |
| E | Hospital Creditors | 899 | 225,050,118 | 40 | 10,869,808 | 859 | 214,180,310 |
| F | NSSF | 48 | 424,878,806 | 48 | 424,878,806 | - | - |
| G | NITA | - | - | 1 | 80,987,170 | (1) | (80,987,170) |

| Folio | Details | Controller of Budget List | | Actual list Presented by the County Government of Nairobi | | Variances | |
|---|---|---|---|---|---|---|---|
| | | No. of Bills | Value (Kshs) | No. of Bills | Value (Kshs) | No. of Bills | Value (Kshs) |
| H | PAYE | 120 | 4,039,759,099 | - | - | 120 | 4,039,759,099 |
| I | VAT - Withheld | 737 | 281,912,522 | - | - | 737 | 281,912,522 |
| J | LAP TRUST | 85 | 13,593,969,799 | - | - | 85 | 13,593,969,799 |
| K | LAP FUND | 74 | 13,789,869,571 | - | - | 74 | 13,789,869,571 |
| L | KPLC | 114 | 640,719,627 | - | - | 114 | 640,719,627 |
| M | Unpaid Retirees | 1,641 | 134,647,551 | - | - | 1,641 | 134,647,551 |
| **Total** | | **4,709** | **43,546,916,398** | **1,512** | **23,139,794,066** | **3,197** | **20,407,122,332** |

Appendix 2

Bills eligible for payment

| Folio | Details | Actual list of pending bills presented as at 30 June 2018 (Kshs) | %age | Eligible Bills as at 30 June 2018 (Kshs) | %age | Ineligible Bills as at 30 June 2018 (Kshs) |
|---|---|---|---|---|---|---|
| A | Procurement of Goods | 4,000,592,162 | 87% | 3,491,068,580 | 13% | 509,523,581 |
| B | Procurement of Services | 1,206,583,848 | 82% | 986,073,810 | 18% | 220,510,038 |
| C | Construction Contracts | 1,954,234,579 | 62% | 1,213,453,351 | 38% | 740,781,229 |
| D | Legal | 15,461,647,693 | 36% | 5,576,497,550 | 64% | 9,885,150,143 |
| E | Hospital Creditors | 10,869,808 | 100% | 10,869,808 | - | - |
| F | NSSF | 424,878,803 | 100% | 424,878,803 | - | - |
| G | NITA | 80,987,170 | 100% | 80,987,170 | - | - |
| **Total** | | **23,139,794,063** | | **11,783,829,072** | | **11,355,964,991** |

Appendix 3

Eligible for payment as at 30th June 2018

From our review of the subsequent payments of the pending bills, we noted that the following bills were paid as at the year ended 30 June 2018. The documents presented to us to review and confirm that payments had been made were creditors' ledger statements and sector bank statements. However, the bills on the file were not stamped "paid" which is the practise for paid bills. We recommend that reconciliations/ tests are made on subsequent periods after our reporting date before payments are made for eligible bills

The status of eligible bills is highlighted below:

**Schedule 3: Current status of the Eligible bills as at 28th February, 2019**

| **Folio** | **Details** | **Eligible Bills as at 30 June 2018 (Kshs)** | **Eligible Bills Paid between 30 June 2018 and 28th February 2019 (Kshs)** | **Outstanding Eligible Bills as at 28th February, 2019 (Kshs)** |
|---|---|---|---|---|
| A | Procurement of Goods | 3,491,068,580 | 516,306,342 | 2,974,762,238 |
| B | Procurement of Services | 986,073,810 | 145,200,084 | 840,873,726 |
| C | Construction Contracts | 1,213,453,351 | 243,490,703 | 969,962,648 |
| D | Legal | 5,576,497,550 | 49,067,625 | 5,527,429,925 |
| E | Hospital Creditors | 10,869,808 | - | 10,869,808 |
| F | NSSF | 424,878,803 | - | 424,878,803 |
| G | NITA | 80,987,170 | - | 80,987,170 |
| **Total** | | **11,783,829,072** | **954,064,754** | **10,829,764,318** |

Appendix 4

Ineligible pending bills as at 30 June 2018

From our review of the pending bills we noted that there were various ineligible bills. The major reasons for ineligibility are as highlighted below

**Schedule 4: Summary of the Ineligible Pending bills as at 30 June 2018**

| Folio | Details | Ineligible Bills as at 30 June 2018 | Reasons for Ineligibility |
|---|---|---|---|
| A | Procurement of Goods | 509,523,581 | The selection and evaluation process not documentation<br>No evidence of delivery and goods received<br>Misstated claimable amounts<br>Not adequately supported |
| B | Procurement of Services | 220,510,038 | Selection and evaluation process not documented<br>Not adequately supported |
| C | Construction Contracts | 740,781,229 | No certification of work done.<br>Not adequately supported |
| D | Legal | 9,885,150,143 | Matter still pending<br>Not adequately supported |
| **Total** | | **11,355,964,991** | |

Appendix 5

In eligible bills as at 30th June 2018

From our review of the subsequent payments of the pending bills, we noted that the following bills were paid as at the year ended 30 June 2018. The documents presented to us to review and confirm that payments had been made were creditors' ledger statements and sector bank statements. However, the bills on the file were not stamped "paid" which is the practise for paid bills. We recommend that reconciliations/ tests are made on subsequent periods after our reporting date before payments are made for eligible bills

The status of ineligible bills is highlighted below:

**Schedule 5: Current status of the Ineligible bills as at 28th February, 2019**

| **Folio** | **Details** | **Ineligible Bills as at 30 June 2018 (Kshs)** | **Ineligible Bills paid between 30 June 2018 and 28th February 2019 (Kshs)** | **Outstanding Ineligible Bills as at 28th February, 2019 (Kshs)** |
|---|---|---|---|---|
| A | Procurement of Goods | 509,523,581 | 4,268,423 | 505,255,159 |
| B | Procurement of Services | 221,995,691 | 63,237,469 | 158,758,222 |
| C | Construction Contracts | 740,781,229 | 68,934,784 | 671,846,445 |
| D | Legal | 9,885,150,143 | 10,000,000 | 9,875,150,143 |
| **Total** | | **11,357,450,644** | **146,440,676** | **11,211,009,968** |

## OAG REPORT

## FOLIO A : PROCUREMENT OF GOODS

## TOTAL BILLS

| PARTICULARS | AMOUNT | VERIFIED AMOUNT | AMOUNT PAID | BALANCE |
|---|---|---|---|---|
| Total Eligible bills | 3,491,068,580 | 3,363,295,832 | 516,306,342 | 2,846,989,489 |
| Total Ineligible Bills | 509,523,581 | 509,523,581 | 4,268,423 | 505,255,159 |
| | **4,000,592,162** | **3,872,819,414** | **520,574,765** | **3,352,244,647** |

| TOTAL DEBT PAID TO KRA | | |
|---|---|---|
| DATE | PARTICULARS | AMOUNT (KSH) |
| 8TH OCTOBER 2019 | PAYE | 1,000,000,000 |
| 4TH NOVEMBER 2019 | VAT | 700,000,000 |
| 4TH NOVEMBER 2019 | WITHHOLDING TAX | 300,000,000 |
| TOTAL DEBT PAID TO KRA | | 2,000,000,000 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 08 OCT 2019 | 08 OCT 2019 | FT19281ZG4KR | Account Transfer | 1,000,000,000.00 | 0.00 | -993,968,296.70 |
| | | | | AGENCY NOTICE DD 10092019 | | |
| | | | | REF:P000634514K | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 328 | 04 NOV 2019 | 04 NOV 2019 | FT19308DRCM7 | Account Transfer | 300,000,000.00 | 0.00 | -162,229,447.25 |
| | | | | AGENCY NOTICE DD 23102019 | | | |
| | | | | REF:P000634514K | | | |
| 329 | 04 NOV 2019 | 04 NOV 2019 | FT19308MX21F | Account Transfer | 700,000,000.00 | 0.00 | -862,229,447.25 |
| | | | | AGENCY NOTICE DD 23102019 | | | |
| | | | | REF:P000634514K | | | |

KENYA REVENUE AUTHORITY
ISO 9001:2015 CERTIFIED

**Public Sector Division**

10th October 2019

NAIROBI CITY COUNTY
RECEIVED
11 OCT 2019
County Secretary
P.O. Box 30075 - 00100, NAIROBI.

**P000634514K**

**The County Secretary,**
**The County Government of Nairobi,**
**P.O. Box 30075-0010,**
**NAIROBI.**

Dear Sir,

**RE: SETTLEMENT OF TAX ARREARS**

Following the signing of the agreement to settle the tax dispute between KRA and The County Government of Nairobi, we wish to acknowledge recovery of Kshs. One Billion being the first of three instalments as provided for in the agreement. This was recovered on 8th October, 2019 and is what should have been remitted in September 2019.

You are also reminded to adhere to the agreed payment plan and ensure that the second instalment expected in October 2019 is remitted without fail. Default of any payment will resort to KRA instituting enforcement and recovery procedures of the entire outstanding balance.

At the same time, you are also reminded of your commitment in the agreement to facilitate the on-going tax reconciliation exercise to establish the correct compliance status as well the outstanding tax liability. Some critical documents and records have not yet been provided and we hope the same can be availed by latest Friday, 11th October 2019 to facilitate conclusion of the exercise.

Yours faithfully,

**George Muia**
**Deputy Commissioner**
**Public Sector Division – DTD.**

**C.c.**

**The Commissioner**
**Investigations and Enforcement Department**
**Kenya Revenue Authority**

# REPUBLIC OF KENYA
# THE NATIONAL TREASURY & PLANNING

Telegraphic Address: 2252
Finance – Nairobi
FAX NO. 310833
Telephone: 2252299
When Replying Please Quote Ref.

THE NATIONAL TREASURY
P O BOX 30007 - 00100
NAIROBI

**REF No:** IGFR/NAIROBI/02/47 (20)

**DATE:** 24th April 2018

County Executive Committee Member for Finance
Nairobi City County Government
City Hall
P. O. Box 30075-00100
**NAIROBI**

**RE: NAIROBI CITY COUNTY FINANCIAL RECOVERY PLAN**

As you may be aware, the National Treasury initiated discussions with the Nairobi City County Government (NCCG) on a plan to assist in resolving financial challenges facing Nairobi City County Government (NCCG) and ultimately get the NCCG onto a financial recovery path.

Arising from the initial consultations with representatives of your government in 2017, we have come up with a financial recovery plan for Nairobi.

I have attached a copy of the proposed financial recovery plan for the NCCG for your review and comments. Please do let us have your comments as soon as possible so that we can schedule a meeting to concretize the proposals set out in the proposed financial recovery plan.

**DR. KAMAU THUGE, CBS**
**PRINCIPAL SECRETARY/NATIONAL TREASURY**

Cc. **Hon. Mike Mbuvi Sonko**
Governor, Nairobi City County Government
P. O. Box 30075-00100
**NAIROBI**

**Leboo Ole Morintat**
Ag. County Secretary
Nairobi City County Government
P. O. Box 30075-00100
**NAIROBI**

ISO 9001:2008
Certified.

## NAIROBI CITY COUNTY GOVERNMENT DEBT, EXPENDITURE ARREARS AND CONTINGENT LIABILITIES: STATUS AND PROPOSED MANAGEMENT STRATEGIES

### 1.0 Background

- NCCG total loans, expenditure arrears and contingent liabilities are estimated at Ksh. 142 billion as at 30th September 2017. These are primarily made of up of (See Table 1 Below):
  - I. Statutory deductions – Ksh. 27.7 billion (19%);
  - II. Dues relating to Utilities (KPLC and Water) – Ksh. 565 million (0.4%);
  - III. Accounts Payable (Expenditure arrears due to suppliers of goods and services as well as staff) – Ksh. 6.6 billion (5%); and
  - IV. Loans and bank overdrafts – Ksh 107.3 billion (75%)

TABLE 1: NCCG DEBTS/EXPENDITURE ARREARS AS AT 30TH SEP 2017

| | Balance as at 27/02/2013 Ksh. | Increase/(Decrease): 27/02/2013 to 30/09/2017 Ksh. | Balance as at 30/09/2017 Ksh. | % of Total |
|---|---|---|---|---|
| **1.0 STATUTORY OBLIGATIONS** | **7,665,319,532** | **20,030,368,075** | **27,695,687,607** | **19%** |
| 1.1 KRA PAYE, including Penalties | 640,682,682 | 3,603,981,260 | 4,244,663,942 | 3% |
| 1.2 KRA W/H VAT | | 226,290,346 | 226,290,346 | 0% |
| 1.3 NSSF Conributions | 668,804,722 | (197,996,376) | 470,808,346 | 0% |
| 1.4 NHIF | 3,568,960 | (3,568,960) | - | 0% |
| 1.5 LAPTRUST Total Balance; *Of which*: | 3,673,709,213 | 8,456,589,325 | 12,130,298,538 | 9% |
| *LAPTRUST Principal* | *934,636,977* | *5,143,383,226* | *6,078,020,202* | *4%* |
| *LAPTRUST Penalty & Interest* | *114,699,664* | *3,313,206,100* | *3,427,905,763* | *2%* |
| *LAPTRUST Actuarial Deficit* | *2,624,372,573* | | *2,624,372,573* | *2%* |
| 1.6 LAPFUND Total Balance; *of which:* | 2,682,122,915 | 7,941,503,519 | 10,623,626,434 | 7% |
| *LAPFUND Principal* | *1,422,330,345* | *617,403,007* | *2,039,733,352* | *1%* |
| *LAPFUND Penalty & Interest* | *1,259,792,570* | *7,324,100,512* | *8,583,893,082* | *6%* |
| **2.0 UTILITIES** | **686,343,726** | **(121,138,574)** | **565,205,152** | **0%** |
| 2.1 KPLC | 686,343,726 | (215,348,797) | 470,994,930 | 0% |
| 2.2 Water | | 94,210,223 | 94,210,223 | 0% |
| **3.0 ACCOUNTS PAYABLE** | **2,847,211,879** | **3,796,000,590** | **6,643,212,468** | **5%** |
| 3.1 Construction & Refurbishment of Roads | 1,569,227,793 | 2,592,471,495 | 4,161,699,288 | 3% |
| 3.2 Legal Services | 1,190,576,214 | 1,148,687,899 | 2,339,264,112 | 2% |
| 3.3 Employee benefits - Retirees/Deceased | 87,407,872 | 54,841,196 | 142,249,068 | 0% |
| **4.0 LOANS** | **80,041,633,771** | **27,243,012,590** | **107,284,646,361** | **75%** |
| 4.1 KCB Long-term Loan | 3,665,966,840 | 415,303,548 | 4,081,270,388 | 3% |
| 4.2 Other Bank Loans/ Overdraft | 2,181,481,144 | (1,289,519,703) | 891,961,441 | 1% |
| 4.3 Government Guaranteed Loans; *Of which:* | 40,964,940,968 | 12,260,452,058 | 53,225,393,026 | 37% |
| *Principal* | *4,170,280,066* | | *4,170,280,066* | *3%* |
| *Interest* | *36,794,660,902* | *12,260,452,058* | *49,055,112,960* | *34%* |
| 4.4 On-Lent Foreign Loans; *Of which*: | 25,066,371,827 | 15,856,776,687 | 40,923,148,514 | 29% |
| *Principal* | *6,379,270,212* | | *6,379,270,212* | *4%* |
| *Interest* | *18,687,101,615* | *15,856,776,687* | *34,543,878,302* | *24%* |
| 4.5 LGLA Loans; *Of which:* | 8,162,872,992 | - | 8,162,872,992 | 6% |
| *Principal* | *4,041,026,234* | | *4,041,026,234* | *3%* |
| *Interest* | *4,121,846,758* | | *4,121,846,758* | *3%* |
| 5.0 GRAND TOTAL | 91,240,508,908 | 50,948,242,681 | 142,188,751,589 | 100% |

### 2.0 Recommendations on how to deal with the current debt/arrears

#### 2.1 Taxes and NSSF Contributions

- Going forward, the NCCG must pay the PAYE, and NSSF contributions at the time the net salary is paid.

- The NCCG should henceforth pay withholding tax on VAT at the time of paying suppliers/contractors.
- with regards to NSSF arrears as well as arrears in PAYE and W/H on VAT, including penalties and interest due to KRA estimated at Ksh. 4.9 billion, it is recommended that these be offset against the CILOR and parking fees due to NCCG from the National Government. It is estimated the outstanding CILOR and parking fees due to NCCG to date is approximately Ksh. 8.2 billion.
- Table 3 below presents a proposal of possible debts/expenditure arrears that NCCG could prioritise for offsetting against the expected CILOR and parking fees receipts from the National Government.

**TABLE 2: PROPOSED PLAN FOR PART FINANCING OF NCCG DEBTS/EXPENDITURE ARREARS**

| | |
|---|---|
| CILOR AMOUNT | 8,170,249,474 |
| 1 KRA PAYE, WHT ON VAT | 4,470,954,288 |
| 2 NSSF Contributions | 470,808,346 |
| 3 Utilities | 565,018,569 |
| 4 Overdraft | 891,961,441 |
| 5 Contractors/Suppliers/Merchants | 1,771,506,830 |
| SURPLUS/DEFICIT | 8,170,249,474 |

### 2.2 Outstanding Utilities Payments

- Outstanding utilities payments estimated at Ksh. 565 million should be offset against the NCCG own source revenue or receipts from National Government in respect of outstanding CILOR and parking fees.

### 2.3 Payments due to Contractors and Suppliers

- The NCCG should consider establishing a Pending Bills committee to verify the authenticity of the Bills from contractors and suppliers of goods and services.
- Once the bills are authenticated, part of the revenue due to the NCCG from the CILOR and parking fees should be applied to offset the outstanding bills.
- The balance (Ksh. 4.9 billion) should be included in the NCCG's medium-term fiscal plan clearly indicating how the arrears will be paid off.
- As a last resort, the NCCG should also consider entering into debt/asset swaps with creditors to offset some of these pending bills in the event that some creditors seek court redress which could lead to escalation of the arrears.

### 2.4 LAPTRUST and LAPFUND arrears

- First, we recommend that going forward the NCCG should ensure that current pension obligations are fully funded. In this regard, the NCCG must include in its annual fiscal framework/budget an allocation to cover the pension obligations even as mechanisms for dealing with the legacy debt are developed.
- Second, with regard to the legacy debt relating to the period preceding the roll out of the devolved system of government as well as pension arrears accumulated post-devolution, it is recommended that a committee be established to review the arrears and advise on how the arrears should be dealt with. The committee should comprise of, among others, the NCCG, the

National Treasury, Retirement Benefits Authority (RBA), the Ministry of Devolution and Planning and the IGRTC.

- Third, it is proposed that even as the review/confirmation of pension arrears continues, that the NCCG sets aside funds each financial year to defray the arrears. It is also proposed that the NCCG negotiates with the pension schemes for reduction or waivers on interest rate on the arrears.
- Fourth, the NCCG should also consider as a last resort property swap in respect of the pension arrears.
- In addition, Parliament should be requested to re-introduce, for consideration and approval, the County Governments Retirement Benefit Scheme Bill that had not been approved by the end of the term of the last Parliament. The Bill provides for a framework for dealing with LAPFUND and LAPTRUST schemes

### 2.5 Loans

- With regard to the **overdraft of Ksh. 891 million**, it is recommended that when settling debts/arrears, the NCCG should give priority to this debt. This is because the overdraft may have been acquired irregularly and therefore there is an urgent need to pay off the overdraft to ensure the NCCG complies with the law. It is therefore recommended that the NCCG offsets the debt against the equitable share of revenue and own source revenue as soon as is possible, preferably not later than December 2017.
- **KCB long-term loan:** The NCCG should enter into negotiation with the KCB with a view to securing more favourable terms e.g. extension of the duration of the loan or lower interest rates. It is further recommended that the NCCG sets aside adequate funds in its annual budget to service the loan.
- **National Government Guaranteed loans:** First, it is recommended that the NCCG and the National Treasury jointly review the loan balances to establish the correct balances.
- Second, it is recommended that the National Treasury writes off part of the arrears relating accrued interest. This would require authorisation by Cabinet (see Section 69 of the PFMA).
- Third, the NCCG should set aside funds in its annual budget to repay the outstanding principal loan.

### 2.6 Improve Own Source Revenue (OSR) forecasting

- The NCCG must put in place a mechanism to ensure credible revenue forecast in order to avoid the risk of ending up with huge fiscal deficits when revenue estimates are not realised. It is recommended that through Regulations, year on year projected revenue growth be capped at not more than 10 percent unless the NCCG can demonstrate the capacity to raise higher levels of revenue.
- In this regard, we recommend that the NCCG revises downwards own source revenue (OSR) projection in the budget for FY 2017/18. (See Table 4 attached as Annex for proposed Cash Flow Plan for FY 2017/18 to 2018/19). The Controller of Budget should also be empowered to reject requests for funds withdrawal against budgets approved with unrealistic revenue projections (i.e. year on year growth above 10 percent).
- It is, however, recommended that the revenue growth caps be waived in the financial year 2019/20 when the proposed policy to support the enhancement of county own source revenue

is expected to be substantially implemented. It is expected that in FY 2019/20 and 2020/21, the revenue will grow by 20% and 10% respectively.

- The NCCG, therefore, should come up with revenue enhancement measures and additional revenue realised should be earmarked for debt/arrears repayment.

### 2.7 Exclude the NCCG from the legal requirement of minimum development spending of 30 percent of the annual budget

- It is proposed that authority be sought from Parliament to waive the requirement set under Section 107(2)(b) of the Public Finance Management Act of 2012 that *'over the medium term a minimum of thirty percent of the county government's budget shall be allocated to the development expenditure'*. This legal requirement if not waived will continue limiting the fiscal capacity of the NCCG to pay off the outstanding debts/arrears. This waiver shall be for a restricted duration to enable the county regain a balanced fiscal position.

### 2.8 Enforce strict expenditure controls

- The NCCG shall identify possible savings from other budget lines.
- In addition, there is need for the County Government to establish commitment control mechanisms to ensure that expenditures are only initiated when there is a budget and cash is available. The National Government through the National Treasury may provide support if requested by the NCCG.
- Further, it is recommended that the Medium Term cash flow plan set out in Table 4 attached as Annex be adopted by the NCCG (Executive Committee and County Assembly) and enforced as the NCCG financial recovery plan for the period 2017/18 to 2021/22 to be monitored by the National Treasury.

### 2.9 Reducing the wage bill

- The annual wage bill for the NCCG, since the establishment of the county governments has been above 50 percent of the total NCCG revenue. This is way above the limit set in the PFMA of 35 percent.
- As shown in table 5 below, over 45 percent of the NCCG employees are 50 years of age and above. Given that a significant proportion of the county employees are old, this presents an opportunity for reducing the county wage bill.
- To reduce the wage bill, it is recommended that 2,978 staff due for retirement between FY 2017/18 and 2021/22 be retired without replacement. This will generate cumulative savings estimated at Ksh. 7.4 billion between FY 2017/18 and 2021/22 (and annual saving of Ksh. 2.65 billion by 2021/22).
- It is further proposed that an additional 2,055 staff be retired under a voluntary early retirement scheme at a cost estimate at Ksh. 2.5 billion. This will generate an additional annual saving estimated at Ksh. 1.7 billion (and cumulative savings of Ksh. 5.1 billion between FY 2019/20 and 2021/22).
- This option would require further consultations with the trade unions and pension schemes, in light of the huge unfunded pension obligation.

Table 5: Payroll cost analysis 2017/2018

| CATEGORY | Date of Birth | No | Personell Cost | Cum. Percentage |
|---|---|---|---|---|
| More than 55 years | 1950 -1962 | 3024 | 3,275,347,519 | 23% |
| 50 - 54 Years | 1963 - 1968 | 2778 | 2,995,705,675 | 45% |
| 40 - 50 Years | 1968 - 1977 | 5211 | 5,440,887,106 | 84% |
| Less than 40 Years | 1978 - 1994 | 1780 | 2,304,176,887 | 100% |
| | | | 14,016,117,187 | |

Table 4: NCCG's Proposed Medium-Term Financial Recovery Plan: FY 2017/18 to 2021/22

| | Item (Values in Kshs Millions) | Actual | | Budget | Proposed | Projected | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | 2015/16 | 2016/17 | 2017/18 | 2017/18 | 2018/19 | 2019/20 | 2020/21 | 2021/22 |
| 1.0 | TOTAL REVENUE | 25,179 | 25,782 | 35,503 | 29,063 | 30,637 | 32,441 | 34,502 | 36,084 |
| 1.1 | External Revenue | 13,469 | 14,852 | 15,737 | 16,153 | 16,952 | 17,798 | 18,688 | 18,688 |
| 1.1.1 | *Equitable share* | *12,997* | *14,024* | *14,967* | *15,402* | *16,172* | *16,980* | *17,830* | *17,830* |
| 1.1.2 | *Conditional allocations* | *472* | *828* | *770* | *751* | *780* | *818* | *858* | *858* |
| 1.2 | Internal revenue *(Before OSR policy)* [1] | 11,710 | 10,930 | 19,766 | 12,910 | 13,685 | 14,643 | 15,814 | 17,396 |
| 2.0 | TOTAL EXPENDITURE [2] | 23,956 | 24,021 | 34,878 | 32,943 | 33,716 | 34,993 | 36,372 | 37,627 |
| 2.1 | Recurrent | 21,529 | 22,259 | 23,411 | 24,224 | 24,525 | 25,261 | 26,021 | 26,802 |
| 2.1.1 | *Transfer to County Assembly* | 1,517 | 1,446 | 1,614 | 1,614 | 1,662 | 1,712 | 1,764 | 1,817 |
| 2.1.2 | *Salaries* | 12,471 | 12,729 | 15,361 | 15,361 | 15,822 | 16,296 | 16,785 | 17,289 |
| 2.1.3 | *Medical insurance* | 1,517 | 1,446 | 850 | 1,304 | 800 | 824 | 849 | 874 |
| 2.1.4 | *General insurance* | 779 | 877 | 260 | 260 | 268 | 276 | 284 | 293 |
| 2.1.5 | *Solid waste management* | 762 | 1,040 | 752 | 1,111 | 1,144 | 1,179 | 1,214 | 1,250 |
| 2.1.6 | *Drugs and non-pharms* | 311 | 322 | 480 | 480 | 494 | 509 | 525 | 541 |
| 2.1.7 | *Domestic travel* | 232 | 237 | 485 | 485 | 500 | 515 | 530 | 546 |
| 2.1.8 | *Hospitality and supplies* | 129 | 207 | 341 | 341 | 351 | 362 | 373 | 384 |
| 2.1.9 | *Office and general supplies* | 218 | 152 | 333 | 333 | 343 | 353 | 364 | 375 |
| 2.1.10 | *Printing, advertising & info supplies* | 19 | 44 | 312 | 312 | 321 | 331 | 341 | 351 |
| 2.1.11 | *Specialized materials & supplies* | 385 | 338 | 301 | 301 | 310 | 319 | 329 | 339 |
| 2.1.12 | *Training expenses* | 192 | 163 | 300 | 300 | 309 | 318 | 328 | 338 |
| 2.1.13 | *Electricity* | 251 | 275 | 285 | 285 | 412 | 424 | 437 | 450 |
| 2.1.14 | *Bursaries* | 209 | 297 | 183 | 183 | 188 | 194 | 200 | 206 |
| 2.1.15 | *Other recurrent spending* | 2,537 | 2,686 | 1,554 | 1,554 | 1,601 | 1,649 | 1,698 | 1,749 |
| 2.2 | Development | 2,427 | 1,762 | 11,467 | 8,719 | 9,191 | 9,732 | 10,351 | 10,825 |
| 3.0 | **FINANCING GAP** *(Before debt resolution)* | 1,223 | 1,761 | 625 | (3,880) | (3,079) | (2,552) | (1,869) | (1,543) |
| 4.0 | **PROPOSED DEBT RESOLUTION,** *of which:* | 2,886 | 2,106 | 1,028 | 11,326 | 4,899 | 9,132 | 12,522 | 13,964 |
| 4.1 | Statutory obligations | 2,886 | 2,106 | 379 | 7,369 | 3,149 | 4,032 | 4,686 | 5,836 |
| 4.1.1 | *KRA PAYE (incl. penalties)* | | | 200 | 4,245 | | | | |
| 4.1.2 | *KRA withholding VAT* | | | | 226 | | | | |
| 4.1.4 | *NSSF contributions* | | | 79 | 471 | | | | |
| 4.1.4 | *LAPTRUST (incl. penalties & interest)* | | | 100 | 857 | 1,329 | 2,002 | 2,346 | 2,972 |
| 4.1.5 | *LAPFUND (incl. penalties & interest)* [3] | 2,886 | 2,106 | | 1,570 | 1,820 | 2,030 | 2,340 | 2,864 |
| 4.2 | Utilities | | | | 565 | | | | |
| 4.2.1 | *KPLC* | | | | 471 | | | | |
| 4.2.3 | *Water* | | | | 94 | | | | |
| 4.3 | Accounts payable [4] | | | 450 | 1,200 | 800 | 1,400 | 900 | 2,343 |
| 4.4 | Loans & overdrafts | | | 200 | 2,192 | 950 | 3,700 | 6,936 | 5,786 |
| 4.4.2 | *NCH loan* [5] | | | | 1,100 | 500 | 2,850 | 3,736 | 4,305 |
| 4.4.3 | *GoK loans, on-lent foreign loans & LGLA loans* [6] | | | | (15,206) | (7,979) | (11,684) | (14,391) | (15,507) |
| 5.0 | **FISCAL GAP** *(After debt resolution)* | | | | - | - | - | - | - |
| 6.0 | **FINANCING & SPENDING MEASURES TO CLOSE FISCAL GAP** | | | | 8,170 | | 1,779 | 2,250 | 1,933 |
| 6.1 | Growth in internal revenue (OSR Policy Effect) [7] | | | | | | 3,091 | 5,446 | 6,182 |
| 6.2 | CILOR + parking fees arrears | | | | 1,463 | 2,699 | 1,549 | 1,079 | 628 |
| 6.3 | Proceeds from asset disposal [8] | | | | | | 1,711 | 1,711 | 1,711 |
| 6.4 | Savings from normal retirement [9] | | | | | | (2,517) | | |
| 6.5 | Savings from voluntary retirement [10] | | | | 5,572 | 5,280 | 6,071 | 3,905 | 5,053 |
| 6.6 | Cost of voluntary retirement | | | | | | | | |
| 6.7 | Development spending cutbacks [11] | | | | - | - | - | - | - |
| 7.0 | **SURPLUS/(DEFICIT)** *(After restructuring)* | | | | | | | | |

Before Debt Restructuring

After Debt Restructuring

| Amount owed | Bal. after restructuring |
|---|---|
| 4,245 | - |
| 226 | - |
| 471 | - |
| 9,506 | - |
| 10,624 | - |
| 471 | - |
| 94 | - |
| 6,648 | - |
| [illegible] | - |
| [illegible] | - |
| 51,843 | - |

*Notes:*

1. This assumes a 'normal' OSR growth over five FYs, respectively, as follows: 5%, 6%, 7%, 8% & 10%
2. Recurrent expenditure grows by 3% annually, while development expenditure is 30% of total revenue
3. Negotiations with LAPFUND to revise downwards interest on unremitted pension deductions from current 3% to 1%, as is charged by LAPTRUST
4. An audit will be undertaken to verify amounts owed to contractors and service providers, who will be prioritized in new procurement in FY 2017/18 and subsequent FYs, during which NCCG clears accounts payable
5. NCCG to initiate negotiations with KCB on restructuring of existing loan, with negotiations centering on new repayment tenures and forward interest
6. It is assumed that negotiations will succeed on penalty/interest write off related to: i) GoK-guaranteed loans (Kshs. 49.1 bn); ii) On-lent foreign loans (Kshs. 34.5 bn); iii) LGLA loans (Kshs. 4.1 bn)
7. Internal revenue grows by 20% in FY 2019/20 and 10% in FY 2020/21 due to: i) implmentation of OSR policy; and, ii) other NCCG initiatives e.g. issuance of land titles
8. NCCG identifies assets (e.g. housing estates) for disposal with proceeds from disposal being realized beginning FY 2019/20
9. 2,978 staff due to retire within 5 years at no cost (except normal terminal dues) are not replaced, leading to a Kshs. 7.4 bn drop in salary costs over this period
10. 2,055 staff accept early voluntary retirement leading to a net drop in salary costs of Kshs. 2.6 bn
11. It is assumed that Parliament waives legal requirement of 30% development spending for NCCG

# Nandi County

# COUNTY GOVERNMENT OF NANDI

TELEPHONE 0535252355
Email: info@nandi.go.ke
Website: www.nandi.go.ke

P.O. BOX 802-30300
KAPSABET

## OFFICE OF THE GOVERNOR

**Ref:IGFR/Pending Bill/01/A(18)** **4th Dec, 2019**

**TO THE CLERK,**

**THE SENATE**

Dear Sir,

**RE: SETTLEMENT OF PENDING BILLS.**

Reference is made to a letter Ref No. IGFR/Pending Bills/01/A(18) from The National Treasury dated **22nd October, 2019** whose overriding theme was the dire state of outstanding bills and the need for counties to make appropriate plans to settle the pending bills in full. Further correspondences and advisories required the County Governments to set up Ineligible Pending Bills Committees with mandates stipulated under the Terms of References provided to us.

On the initial report provided to The National Treasury by the Controller of Budget, Nandi County was enumerated as among the counties that had not met the 50% threshold on the settlement of pending bills. Specifically, the report indicated that out of the eligible pending bills of **KSh.942,307,841**, Nandi County had paid Ksh.**320,114,388**, representing **34%** of the total payable amount. On the basis of this, Nandi was listed among the 15 counties whose funds were to be stopped for non-compliance. However, a reconciliation of our records with the Controller of Budget and National Treasury reflected a true position of **Ksh.625,819,018** being the actual amount paid, representing **66%** payment of the outstanding amount. This in effect classifies Nandi as among the counties that have made attempts to clear the pending bills.

The **Ksh.942,307,841** comprises both historical bills **(years 2013-2016)** of **Ksh. 420** Million and the balance being the bills for Financial year **2017/2018**

The above notwithstanding, we recognize that more effort needs to be put towards clearing all pending bills. We have therefore taken the following actions to address the matter:

(i) We have factored in our recently approved supplementary budget, **Ksh. 252 Million** for the payment of the historical pending bills. This will be paid by the end of this financial year. The balance of **Ksh.160 Million** will be factored in the budget for 2020/2021 and shall take the first charge (First In First Out) as per National Treasury advisory. The **17/18** bills were already factored in the budget as Work In Progress.

(ii) We have constituted the Ineligible Pending Bills Committee which has already began the process of resolving the issues around the ineligible pending bills. Attached hereto is the gazette notice to that effect.

(iii) Our budgeting is realistic on the aspect of Own Source Revenue. This shall ensure that future commitments are made on the basis of realistic revenue estimates.

A copy of our appropriation bill is annexed hereto, the same indicating the budgetary provisions for settlement of pending bills.

I look forward to favorable considerations from the senate even as we partner together to ensure devolution works.

**Yours faithfully**

FOR **Hon. STEPHEN K. SANG**

**GOVERNOR, COUNTY GOVERNMENT OF NANDI**

**CC: (1) CABINET SECRETARY, NATIONAL TREASURY**

**(2) CONTROLLER OF BUDGET**

IOTO-2019-12-05-08-11-33.jpg

Safaricom 4G 21:37 70%



| | | |
|---|---|---|
| | | Namalenge |
| | | Mukhweya |
| Mumias East | East Wanga | Khaunga |
| | | Bulechia |
| | | Shikulu |
| | | Eluche |
| | Malaha IsongoMalenya | Malaha |
| | | Isongo |
| | | Makunga |
| | | Maraba |
| | | Musango |
| | | Khaimba |
| | | Nyaporo |
| | | Epanja |
| | Ekero Lusheya Lubinu | Shibunga |
| | | Kamashia |
| | | Ebubole Nyongera |
| | | Ebwaluro |
| | | Ekero |
| | | Mwitoti |
| | | Indangalasia |
| | | Lusheya |

Dated the 26th November, 2019.

KASSIM ALI WERE,
*CECM, Trade, Industrialization and Tourism.*

MR/0447288

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GAZETTE NOTICE NO. 11342

THE PUBLIC FINANCE MANAGEMENT ACT

(*No.* 18 *of* 2012)

THE NANDI COUNTY PENDING BILLS COMMITTEE

APPOINTMENT

IN EXERCISE of the powers conferred by sections 104 and 105 of the Public Finance Management Act, 2012 and pursuant to the resolution of the Inter-governmental Budget and Economic Council (IBEC) meeting held on 18th June, 2019, providing a framework for the resolution of ineligible pending bills for County Governments, the County Executive Committee Member for Finance and Economic Planning, Nandi County, appoints

Joseph Ngetich – *Chairperson*

Amon Kimeli Muge,
Mathew Kipleting,
Samwel Kirwa,
Edwin Maiyo,

to be members of Nandi County Pending Bills Committee

Dated the 31st October, 2019

ALFRED K. LAGAT,
*CECM, Finance and Economic Planning.*

MR/0447407

THE NANDI COUNTY SUPPLEMENTARY APPROPRIATION BILL, 2019

I certify that this printed impression is a true copy of the Bill passed by the County Assembly on the 28th day of November, 2019.

CLERK NANDI COUNTY ASSEMBLY P. O. Box 673-30300, KAPSABET

*Clerk of the County Assembly.*

Presented for assent in accordance with the provisions of the County Government Act No. 17 of 2012 on the 29th day of November, 2019.

*Speaker of the County Assembly.*

# THE NANDI COUNTY SUPPLEMENTARY APPROPRIATION BILL, 2019

**A Bill for;**

**An Act of the County Assembly to authorize the issue of a sum of money out of the County Revenue Fund and its application towards the service of the year ending on the 30th June, 2020 and to appropriate that sum and a sum voted on account by the County Assembly for certain public services and purposes.**

ENACTED by the County Assembly of Nandi, as follows-

*Short title.*

1. This Act may be cited as the Nandi County Appropriation Bill, of 2019.

2. The County Treasury may issue out of the County Revenue Fund and apply towards the supply granted for the service of the year ending on the 30th June, 2020, the sum of Kenya Shillings ***Eight Billion, Five Hundred and Thirteen Million, Four Hundred and Fifty Eight Thousand, Four Hundred and Thirty Two Only.***

3. The sum granted by Section 2 shall be appropriated or the several services and purpose specified in the second column of the schedule in the amounts specified in the third column of the schedule.

4. 4. The sum granted out of the County Revenue Fund by Section (2) includes the sum of Kenya Shillings ***Eight Billion, Five Hundred and Thirteen Million, Four Hundred and Fifty Eight Thousand, Four Hundred and Thirty Two Only.*** Authorized by the County Assembly on the 26th June, 2019, in accordance with Article 224 of the Constitution.

# THE NANDI COUNTY SUPPLEMENTARY APPROPRIATION BILL, 2019

SCHEDULE

| (1) Vote No. | (2) Purpose | (3) Appropriation |
|---|---|---|
| | Recurrent Expenditure | |
| R 4411 | The amount required in the year ending 30th June, 2020 for salaries and expenses of the County Executive. The estimate also includes expenses related to Governors and Deputy Governors' staff..... | 425,402,580 |
| R 4413 | The amount required in the year ending 30th June, 2020 for salaries and expenses of the Administration, Public Service and e-Government ..... | 515,587,409 |
| R 4412 | The amount required in the year ending 30th June, 2020 for salaries and expenses of the Department of Finance and Economic Planning..... | 437,422,915 |
| R 4415 | The amount required in the year ending 30th June, 2020 for salaries and expenses of the Department of Agriculture and Co-operative Development..... | 280,118,698 |
| R 4418 | The amount required in the year ending 30th June, 2020 for salaries and expenses of the Department of Education, and Vocational Training and Development including Bursaries and scholarship fund ..... | 237,774,239 |
| R 4414 | The amount required in the year ending 30th June, 2020 for the salaries and expenses for the Department of Health and Sanitation ..... | 2,253,024,243 |
| R 4421 | The amount required in the year ending 30th June, 2020 for the salaries and expenses for the Department of Trade, Industrial Development and Investment..... | 41,078,075 |

# THE NANDI COUNTY SUPPLEMENTARY APPROPRIATION BILL, 2019

SCHEDULE

| (1) Vote No. | (2) Purpose | (3) Appropriation |
|---|---|---|
| | Recurrent Expenditure | |
| R 4420 | The amount required in the year ending 30th June, 2020 for salaries and expenses of the Department of Infrastructure Roads, Transport and Public Works..... | 89,132,976 |
| R 4417 | The amount required in the year ending 30th June, 2020 for salaries and expenses of the Department of Sports, Youth Affairs, and Arts..... | 50,829,851 |
| R 4416 | The amount required in the year ending 30th June, 2020 for the salaries and expenses for the Department of Tourism Culture & Social Welfare..... | 33,269,010 |
| R 4419 | The amount required in the year ending 30th June, 2020 for salaries and expenses of the Department of Lands, Environment and Natural Resources and Climate Change..... | 68,029,251 |
| R 4422 | The amount required in the year ending 30th June, 2020 For salaries and expenses of the Department of Public Service and Labour..... | 24,799,559 |
| R 4423 | The amount required in the year ending 30th June, 2020 for salaries and expenses for the County Assembly..... | 649,760,252 |
| | **SUB TOTAL**..... | **5,106,229,058** |

# THE NANDI COUNTY SUPPLEMENTARY APPROPRIATION BILL, 2019

SCHEDULE

| (1) Vote No. | (2) Purpose | (3) Appropriation |
|---|---|---|
| | Development Expenditure | |
| D 4411 | The amount required in the year ending 30th June, 2020 For the County Executive..... | 25,780,655 |
| D 4413 | The amount required in the year ending 30th June, 2020 for the Administration Public service and e-Government. | 377,821,759 |
| D 4412 | The amount required in the year ending 30th June, 2020 for the Department of Finance and Economic Planning.... | 45,639,914 |
| D 4415 | The amount required in the year ending 30th June, 2020 for the Department of Agriculture and Co-operative ..... development | 771,936,485 |
| D 4418 | The amount required in the year ending 30th June, 2020 for the Department of Education and Vocational Training..... | 311,609,214 |
| D 4414 | The amount required in the year ending 30th June, 2020 for the Department of Health and Sanitation..... | 566,363,515 |
| D 4421 | The amount required in the year ending 30th June, 2020 for the Department of Trade, Industrial Development and Investment..... | 94,600,000 |
| D 4420 | The amount required in the year ending 30th June, 2020 for the Department of Roads, Transport, Infrastructure and Public Works..... | 452,338,867 |
| D 4417 | The amount required in the year ending 30th June, 2020 for the Department of Sports, Youth Affairs and Arts..... | 76,737,355 |
| D 4416 | The amount required in the year ending 30th June, 2020 for the Department of Tourism, Culture & Social Welfare..... | 56,339,479 |

# THE NANDI COUNTY SUPPLEMENTARY APPROPRIATION BILL, 2019

SCHEDULE

| (1) Vote No. | (2) Purpose | (3) Appropriation |
|---|---|---|
| | Development Expenditure | |
| D 4419 | The amount required in the year ending 30th June, 2020 for the Department of Lands , Environment and Natural Resources and Climate Change..... | 427,812,131 |
| D 4423 | The amount required in for year ending 30Th June 2020 for the development of the County Assembly..... | 200,250,000 |
| | **SUB TOTAL.....** | **3,407,229,374** |
| | **GRAND TOTAL Ksh.....** | **8,513,458,432** |

# Tharaka Nithi County

**FINANCE, ECONOMIC PLANNING & TRADE**

Telephone: 0728710490
Email: countytreasury@tharakanithi.go.ke

P. O. BOX 10-60406
KATHWANA

**REF: TNC/FIN/TNT/11/19** **28th November 2019**

**The Cabinet Secretary**
**The National Treasury and Planning**

Attention:
**Mwenda**
Fiscal Affairs Department

**Dear Sir,**
**RE: THARAKA NITHI COUNTY GOVERNMENT PENDING BILLS**

Following various deliberations and subsequent confirmation by the Office of Controller of Budget of the status of pending bills for Tharaka Nithi County Government, I reiterate that the County Government had Kshs 701,871,919 as eligible pending bills as at 30th June 2018 and has paid out Kshs 486,007,948 leaving a balance of Kshs 215,863,971. This outstanding balance has been factored in the in County Government budget through supplementary appropriations approved by the County Assembly on 27th November 2019. The County Treasury commits to settle the same within three (3) months subject to availability of funds.

Therefore, the County Treasury pleads to have its name expunged from the list of non-compliant counties and exonerated from the consequences thereof. Further, we request your office to help fast-track November 2019 and subsequent exchequer disbursements to facilitate further payments of pending bills.

Yours sincerely,

**DOROTHY I.K NAIVASHA**
COUNTY EXECUTIVE MEMBER

(3 Subject to paragraph (2), a serving State Officer shall sign and commit to the specific and leadership integrity code seven (7) days after publication of the Code.

*Breach of regulations*

35. A person who contravenes any provisions of these Regulations whose penalty is not provided for in the Act or these Regulations, commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six (6) months, or both.

Z.S. GAD,

MR/6738562 *Secretary, Narok County Public Service Board.*

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GAZETTE NOTICE NO. 6999

THE COUNTY GOVERNMENT ACT

(*No.* 17 *of* 2012)

THE PUBLIC FINANCE MANAGEMENT REGULATIONS, 2015

THARAKA NITHI COUNTY PENDING BILLS COMMITTEE (EXECUTIVE)

APPOINTMENT

IN EXERCISE of the powers conferred by section 54 (1) (*c*) of the Public Finance Management Regulations, 2015 and the Controller of Budget *vide* the letter Ref: COB/COG/002/Vol. 1.3(55) dated 19th June, 2019 on establishment of county pending bills committees, the County Executive Member for Finance, Economic Planning and Trade appoints—

| | | |
|---|---|---|
| Chweya Kibagendi | – | Chairperson |
| Peter Gakunu | – | Member representing Internal Audit Department |
| Martin Mwenda Mbae | – | Member representing Procurement Department |
| Lawrence Michemi | – | Member representing Budget and Economic Planning Department |
| Lee Munene | – | Member representing Infrastructure Department |
| Lilian Kiruja | – | Member representing Legal Services |
| Elijah K. Nduati | – | Member representing Finance |

to be members of County Pending Bills Committee, for a period of ninety (90) days, with effect from the 15th July, 2019.

The main function of the County Pending Bills Committee shall be to —

*a)* evaluate and establish the status of county pending bills eligibility for payment; and

*b)* advice the County Treasury on a framework and/ or mitigation measures to be adopted in managing current and future pending bills.

Dated the 11th July, 2019.

DOROTHY I. K. NAIVASHA,

MR/6037222 *CECM for Finance, Economic Planning and Trade.*

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GAZETTE NOTICE NO. 7000

THE COUNTY GOVERNMENTS ACT

SUMMARY OF PENDING BILLS AFTER THE AUDIT BY THE OAG AND STATUS ON PAYMENTS BY COUNTY GOVERNMENTS AS AT 28TH NOVEMBER 2019

| | County | List Presented to OCOB by counties as at 30th June 2018 (Kshs) | List presented to OAG by County for special Audit (Kshs) | Eligible Pending Bills as per OAG Special Audit (kshs.) | Ineligible Pending Bills as per the OAG Special Report (Kshs) | Eligible Pending Bills paid (Kshs.) as at 28th November, 2019 | Ineligible pending Bills paid (Kshs.) as 28th November 2019 | Total Pending Bills paid (Kshs.) as at 28th November, 2019 | Outstanding Eligible pending Bills (Kshs.) | Overall Outstanding Bills (Kshs.) as at 28th November 2019 | Percentage of Eligible pending bills paid |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | A | B | C | D | E | F | G=E+F | H=C-E | I=B-G | (G/C)*100 |
| 1 | Narok | 1,725,444,408 | 2,056,439,795 | 1,980,736,070 | 75,703,725 | 1,180,625,471 | 0 | 180,625,471 | 1,800,110,599 | 1,875,814,324 | 9 |
| 2 | Vihiga | 1,184,810,000 | 2,037,052,291 | 1,151,148,522 | 885,903,769 | 247,737,297 | 0 | 247,737,297 | 903,411,225 | 1,789,314,994 | 22 |
| 3 | Isiolo | 101,330,098 | 1,334,674,795 | 1,258,372,703 | 76,302,093 | 236,700,442 | 0 | 236,700,442 | 1,021,672,261 | 1,097,974,353 | 19 |
| 4 | Tana River | 946,029,550 | 1,202,679,386 | 507,062,621 | 605,596,765 | 112,133,078 | 0 | 112,133,078 | 394,929,543 | 1,090,546,308 | 22 |
| 5 | Machakos* | 975,461,203 | 1,286,526,181 | 942,363,607 | 278,162,041 | 236,916,704 | 0 | 236,916,704 | 705,446,903 | 1,049,609,477 | 25 |
| 6 | Kirinyaga | 250,092,562 | 1,328,459,563 | 741,080,963 | 587,378,600 | 237,216,701 | 42,350,883 | 269,603,584 | 503,864,262 | 1,058,855,979 | 36 |
| 7 | Nairobi City | 64,802,987,771 | 23,139,794,063 | 11,783,829,072 | 11,355,964,991 | 3,141,491,266 | 146,140,676 | 3,377,031,942 | 8,642,337,806 | 19,761,862,121 | 29 |
| 8 | Garissa | 980,059,238 | 2,553,348,202 | 2,307,530,407 | 245,817,795 | 983,180,233 | 0 | 983,180,233 | 1,324,350,174 | 1,570,168,969 | 43 |
| 9 | Mombasa | 3,705,503,765 | 5,347,786,393 | 3,545,800,427 | 1,801,985,966 | 1,741,887,566 | 0 | 1,741,887,566 | 2,003,912,861 | 3,605,898,827 | 49 |
| 10 | Kiambu | 785,758,702 | 2,312,759,531 | 1,831,618,030 | 481,141,501 | 798,757,152 | 0 | 798,757,152 | 1,032,860,878 | 1,513,002,379 | 44 |
| 11 | Taita Taveta | 239,653,602 | 451,282,264 | 390,269,112 | 61,013,152 | 199,412,375 | 0 | 199,412,375 | 190,856,737 | 251,869,889 | 51 |
| 12 | Migori | 290,942,340 | 1,275,250,208 | 1,007,373,410 | 267,876,798 | 537,132,972 | 63,998,196 | 601,131,168 | 470,240,438 | 674,119,040 | 53 |
| 13 | Turkana | 633,660,494 | 5,660,295,757 | 1,816,400,453 | 3,843,895,304 | 977,320,620 | 0 | 977,320,620 | 839,079,833 | 4,682,975,137 | 54 |
| 14 | Kisumu | 2,047,603,022 | 2,475,722,125 | 1,792,200,077 | 683,522,048 | 1,009,944,318 | 0 | 1,009,944,318 | 782,255,759 | 1,465,777,807 | 56 |
| 15 | Bomet | 1,155,473,480 | 1,253,551,181 | 1,190,167,877 | 63,383,304 | 686,016,430 | 0 | 686,016,430 | 504,151,447 | 567,534,751 | 58 |
| 16 | Meru | 2,000,925,093 | 2,265,112,691 | 1,845,545,178 | 419,567,513 | 1,121,694,626 | 0 | 1,121,694,626 | 723,850,552 | 1,143,418,065 | 61 |
| 17 | Samburu | 792,663,564 | 846,492,795 | 762,579,174 | 83,913,621 | 467,571,530 | 0 | 467,571,530 | 295,007,644 | 378,921,265 | 61 |
| 18 | Nandi | 1,394,228,985 | 1,447,847,605 | 942,307,841 | 505,539,764 | 625,819,018 | 0 | 625,819,018 | 316,488,823 | 822,028,587 | 66 |
| 19 | Nakuru | 2,379,815,709 | 2,504,561,905 | 420,164,604 | 2,084,397,301 | 286,772,974 | 0 | 286,772,974 | 133,391,630 | 2,217,788,931 | 68 |
| 20 | Muranga | 469,485,623 | 2,038,047,918 | 1,531,778,008 | 506,269,910 | 1,053,114,117 | 0 | 1,053,114,117 | 478,663,891 | 984,933,801 | 69 |
| 21 | Kisii | 865,075,580 | 1,414,104,629 | 1,200,573,919 | 213,530,710 | 827,685,030 | 0 | 827,685,030 | 372,888,889 | 586,419,599 | 69 |
| 22 | Tharaka-Nithi | 260,776,492 | 1,112,652,892 | 701,871,919 | 410,780,973 | 486,007,948 | 0 | 486,007,948 | 215,863,971 | 626,644,944 | 69 |
| 23 | Mandera | 107,380,050 | 552,137,062 | 349,433,313 | 202,703,749 | 242,832,171 | 0 | 242,832,171 | 106,601,142 | 309,304,891 | 69 |
| 24 | Busia | 993,600,000 | 1,013,493,163 | 972,895,883 | 40,597,280 | 692,115,339 | 0 | 692,115,339 | 280,780,544 | 321,377,824 | 71 |
| 25 | Marsabit | 799,153,814 | 776,441,111 | 728,259,831 | 48,151,280 | 531,000,000 | 0 | 531,000,000 | 197,259,831 | 245,441,111 | 73 |
| 26 | Bungoma | 326,391,974 | 601,481,507 | 376,038,793 | 225,442,714 | 288,473,766 | 0 | 288,473,766 | 87,565,027 | 313,007,741 | 77 |
| 27 | Siaya | 614,507,285 | 709,770,238 | 637,310,697 | 72,459,541 | 505,063,673 | 0 | 505,063,673 | 132,247,024 | 204,706,565 | 79 |
| 28 | Trans Nzoia | 781,572,410 | 1,079,983,912 | 666,047,614 | 413,936,298 | 532,838,091 | 0 | 532,838,091 | 133,209,523 | 547,145,821 | 80 |
| 29 | Kitui | 1,167,092,734 | 1,443,011,641 | 572,033,419 | 870,978,222 | 506,681,656 | 0 | 506,681,656 | 65,351,763 | 936,329,985 | 89 |
| 30 | West Pokot | 113,054,409 | 1,725,540,240 | 483,053,261 | 1,242,486,979 | 434,747,935 | 0 | 434,747,935 | 48,305,326 | 1,290,792,305 | 90 |
| 31 | Embu | 1,278,735,548 | 1,362,958,792 | 435,114,432 | 927,844,360 | 405,867,861 | 0 | 405,867,861 | 29,246,571 | 957,090,931 | 93 |
| 32 | Kakamega | 634,742,603 | 593,950,376 | 583,093,452 | 10,856,924 | 553,885,406 | 0 | 553,885,406 | 29,208,046 | 40,064,970 | 95 |
| 33 | Wajir | 2,619,575,061 | 2,357,171,365 | 2,039,742,167 | 317,429,198 | 1,948,742,167 | 0 | 1,948,742,167 | 91,000,000 | 408,429,198 | 96 |
| 34 | Lamu | 179,490,878 | 143,663,524 | 85,050,899 | 58,612,625 | 83,429,559 | 31,528,323 | 114,957,882 | 1,621,340 | 28,705,642 | 98 |
| 35 | Baringo | 63,600,000 | 45,765,998 | 24,046,826 | 21,719,172 | 24,046,826 | 0 | 24,046,826 | 0 | 21,719,172 | 100 |
| 36 | Homabay | 746,480,000 | 1,663,245,610 | 40,447,020 | 1,622,798,590 | 40,447,020 | 241,871,783 | 282,318,803 | 0 | 1,380,926,807 | 100 |
| 37 | Kajiado | 769,805,900 | 366,353,650 | 88,191,609 | 278,162,041 | 88,191,609 | 0 | 88,191,609 | 0 | 278,162,041 | 100 |
| 38 | Kericho | 1,255,284,413 | 1,094,470,975 | 490,184,743 | 604,286,232 | 490,184,743 | 141,827,944 | 632,012,687 | 0 | 462,458,288 | 100 |
| 39 | Kilifi | 1,224,706,197 | 1,377,012,031 | 1,116,043,558 | 260,968,473 | 1,116,043,558 | 16,360,234 | 1,132,403,792 | 0 | 244,608,239 | 100 |
| 40 | Kwale | 1,830,121,075 | 2,501,631,906 | 809,734,393 | 1,691,897,513 | 809,734,393 | 0 | 809,734,393 | 0 | 1,691,897,513 | 100 |

114m disp

| | County | List Presented to OCOB by counties as at 30th June,2018 (Kshs) | List presented to OAG by County for special Audit (Kshs) | Eligible Pending Bills as per OAG Special Audit (kshs:) | Ineligible Pending Bills as per the OAG Special Report (Kshs) | Eligible Pending Bills paid (Kshs.) as at 28th November, 2019 | Ineligible pending Bills paid (Kshs.) as 28th November 2019 | Total Pending Bills paid (Kshs.) as at 28th November, 2019 | Oustanding Eligible pending Bills (Kshs.) | Overall Oustanding Bills (Kshs.) as at 28th November 2019 | Percentage of Eligible pending bills paid |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | A | B | C | D | E | F | G=E+F | H=C-E | I=B-G | (G/C)*100 |
| 41 | Laikipia | 760,611,928 | 989,444,917 | 77,539,708 | 911,905,205 | 77,539,708 | 0 | 77,539,708 | 0 | 911,905,209 | 100 |
| 42 | Makueni | 33,571,164 | 34,902,732 | 33,018,202 | 1,884,530 | 33,018,202 | 0 | 33,018,202 | 0 | 1,884,530 | 100 |
| 43 | Nyamira | 1,349,587,238 | 435,328,993 | 275,698,127 | 159,630,866 | 275,698,127 | 36,301,873 | 312,000,000 | 0 | 123,328,993 | 100 |
| 44 | Nyandarua | 906,921,152 | 1,138,159,128 | 297,078,779 | 841,080,349 | 297,078,779 | 317,016,227 | 614,095,006 | 0 | 524,064,122 | 100 |
| 45 | Nyeri | 1,411,372,489 | 360,535,590 | 152,196,769 | 208,338,821 | 152,196,769 | 33,604,863 | 185,801,632 | 0 | 174,733,958 | 100 |
| 46 | Uasin Gishu | 319,347,197 | 366,384,594 | 76,566,231 | 289,818,363 | 76,566,231 | 178,670,611 | 255,236,842 | 0 | 111,147,752 | 100 |
| 47 | Elgeyo/Marakwet | 136,750,039 | 908,679,275 | 225,216,395 | 683,462,880 | [illegible] | 428,978,838 | 819,308,908 | -165,113,675 | 89,370,367 | 173 |
| | **Total** | **108,411,436,836** | **88,985,960,500** | **51,284,830,125** | **37,635,099,838** | **27,050,940,527** | **1,678,959,451** | **28,729,899,978** | **24,233,889,598** | **60,256,060,522** | |

# THARAKA NITHI COUNTY

## PENDING BILLS CONSIDERED IN THE SUPPLEMENTARY BUDGET I FY 2019-20

Supplementary Budget as approved on 27th November 2019

| Row Labels | Sum of PENDING BILLS |
|---|---|
| LIVESTOCK, VETERINARY AND FISHERIES DEVELOPMENT | 16,300,000 |
| Countywide | 16,300,000 |
| 3110299 Construction of Buildings - Domestic Payables | 10,095,325 |
| Promotion of Livestock Production | 2,882,510 |
| Purchase of Vaccines and sera for Livestock Vaccination | 3,322,165 |
| AGRICULTURE AND COOPERATIVE DEVELOPMENT | 10,000,000 |
| Upper Zone | 10,000,000 |
| Improvement of tea buying Centres | 10,000,000 |
| ENERGY, INFORMATION, COMMUNICATION AND TECHNOLOGY | 20,516,441 |
| Countywide | 20,516,441 |
| Bus Parks Automation System Phase 2(Ongoing project) | 7,824,207 |
| Hospital Management Information System (Ongoing project) | 10,746,914 |
| Purchase of software (Queing Management System) | 1,945,320 |
| FINANCE AND ECONOMIC PLANNING | 36,945,209 |
| Countywide | 36,945,209 |
| 7320201 Contractors Retention Money | 36,945,209 |
| LANDS, PHYSICAL PLANNING, URBAN DEVELOPMENT, HOUSING AND ENVIRONMENT | 28,130,000 |
| Chogoria | 11,600,000 |
| Construction of Chogoria Stalls | 11,600,000 |
| Karingani | 14,000,000 |
| Chuka Landscaping/ Monument | 3,000,000 |
| Chuka Public Garage | 10,000,000 |
| Chuka Waste Management Site | 1,000,000 |
| Mwimbi | 2,530,000 |
| Kaare Market | 530,000 |
| Magutuni Market | 2,000,000 |
| MEDICAL SERVICES | 24,831,769 |
| Karingani | 3,495,670 |
| Construction of Laboratory at Chuka Hospital (Pending Bill) | 2,295,670 |
| Painting Works at Chuka (Pending bill) | 1,200,000 |
| Marimanti | 14,862,553 |
| Powerhouse (Chuka and Marimanti) Pending Bill | 5,000,000 |
| Purchase of Medical Equipment (Pending bill) | 9,862,553 |
| Muthambi | 4,473,546 |
| Renovation and Completion Works for Female and Paediatric Wards at Muthambi Health Centre | 4,473,546 |
| (blank) | 2,000,000 |
| Karuruku Dispensary - Pending Bill | 2,000,000 |
| ROADS, INFRASTRUCTURE, PUBLIC WORKS AND INDUSTRY | 85,259,534 |
| Countywide | 85,259,534 |
| 3110499 Construction of Roads - Domestic Payables | 50,000,000 |
| RMLF (Maintenance of Key County Trunk Roads) - Annex 1 | 35,259,534 |
| Grand Total | 221,982,953 |

PREPARED BY: DATE: 27/11/2019

DIRECTOR BUDGET

CONFIRMED BY: DATE: 27/11/2019

CO FINANCE

# Isiolo County

REPUBLIC OF KENYA

FINANCE AND ECONOMIC PLANNING

Isiolo County
P.O box 36 -60300
**ISIOLO.**

30th November, 2019

When replying please quote
REF; ISL/FIN/VOL.1/70

1) Letter sent to COB

**The County Coordinator (OCOB),**
**Isiolo County,**
**P.O. Box 35616 – 00100,**
**ISIOLO.**

**REF: Isiolo County Pending Bills as 30th November 2019.**

Following the resolution on Thursday, the 28th of November 19 made at the National Treasury between the Governors of 15 counties and the Cabinet Secretary for Treasury and Planning on the pending bills issue, we are hereby attaching an advance reconciled pending bills status for the County. Remember we are referring to the OAG pending bills report and that of our Pending Bills Verification Task Force.

The County Government of Isiolo (CGI) therefore affirms that it:

1. Has to date paid **Kshs. 257,296,159.95** on pending bills; – Paid
2. Will stagger the eligible pending payments amounting to **Kshs. 596,814,522.84** over the next two (2) financial years, as follows:

Eligible Pending Bills as per Task Force

| No. | Time Frame | Amount (Kshs) |
|---|---|---|
| 1 | FY 2019/20 | 350,000.000.00 |
| 2 | FY 2020/21 | 246,814,522.84 |
| | **Total** | **596,814,522.84** |

3 Has already budgeted **Kshs. 150,000,000.00** in the first supplementary financial year of 2019/20. The CGI will budget in the next supplementary another **Kshs. 200,000,000.00;**

4 Will investigate further through the established County Pending Bills Committee the ineligible pending bills totaling **Kshs. 610,134, 606.76** and share with the Office of the Controller of Budgets (OCOB, Office of the Auditor General (OAG) and the National Treasury (NT)

Under these circumstances, the County Government of Isiolo will strictly follow these timelines to ensure that this issue is resolved and does not recur. Attached, please find reconciled pending bill status as at 30th November 2019

**Regards,**

CEC Finance
Isiolo County Government
P. O. Box 36
ISIOLO

**Mahamoud, A. Haji**
**CECM-Finance and Economic Planning**

The Director of Planning and Budget
National Treasury
P.O. Box 30007 – 00100
**NAIROBI.**

The Controller of Budget
P.O. Box 35616 – 00100
Bima House, Harambee Avenue,
**NAIROBI**

The Auditor General
P.0. Box 30084 – 00100
Anniversary Towers, Monrovia Street
**NAIROBI**

# COUNTY GOVERNMENT OF ISIOLO

| PENDING BILLS SUMMARY AS AT 29TH NOVEMBER 2019 | |
|---|---|
| | |
| Eligible | 596,814,522.84 |
| | |
| Inelligible | 610,079,446.76 |
| | |
| Amount from the Defunct local authority | 108,047,308.00 |
| | |
| **Totals** | **1,314,941,277.60** |
| | |

# Vihiga County

REPUBLIC OF KENYA

# COUNTY GOVERNMENT OF VIHIGA

P.O BOX 344-50300
MARAGOLI

When replying please quote:
Our Ref: LA/GEN63/2019
Date: 3rd December, 2019

IN THE MATTER OF THE CONSTITUTION OF KENYA

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT

IN THE MATTER OF THE PUBLIC FINANCE MANAGEMENT ACT

IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT

IN THE MATTER PENDING BILLS AND CLAIMS AGAINST THE COUNTY GOVERNMENT OF VIHIGA

## MEMORANDUM

### TO THE SENATE

### ON PENDING BILLS AND CLAIMS

### AGAINST THE COUNTY GOVERNMENT OF VIHIGA

1. The County Assembly of Vihiga in June 2017 commissioned a special audit of all pending bill by the office of the Auditor General.

2. Departments were asked to submit all the pending bills in their respective departments and the list presented showed that the pending bills ran into the whooping sum of **Kshs. 2,481,399,292.40**.

3. In its preliminary report the Auditor General observed that the figures from the departments were prima facie faulty as the departments quoted the contract sums as opposed to the value of the work done and payable amounts pending.

4. This figure was thus revised to **Kshs. 1,602,515,507.84**. The figure of 1,602,515,507 was purely based on the certificates of works in the files. It does not necessarily represent the pending bills as per the works done.

5. A scrutiny of the alleged pending bills by the Auditor General left the alleged pending bills **Kshs. 826,259,130.04** for consideration by the County Executive.

6. The office of the Auditor General prepared its preliminary report and asked departments to respond to several issues raised regarding the pending bills amounting to **Kshs. 826,259,130.04**. The Auditor General further made recommendations and conditions for payment on each of the alleged pending bills.

7. It is from this backdrop that H.E. Dr. Wilber K. Ottichilo constituted an *Ad Hoc* committee to look into and review the alleged pending bills with a view of coming up with a clear way forward on each and every claim and pending bills for communication to the contractors.

8. Thus the three main documents of reference by the committee were the preliminary report by the Auditor General, the responses of the departments to the queries raised, the respective files of the specific pending bills, Bank account Statements and the IFMIS statement for the relevant period of time.

9. The Ad Hoc Committee prepared a Preliminary report which was guided by the general principles including:-

   i. Procurement must be **within the budget and the annual procurement plan.** (Section 26(3)a of the PPADA).

   ii. Goods and services to government can only be provided by a contractor (Corporate body or business enterprise) after being instructed by an **authorized officer** (Chief Officer) of the said government.

   iii. The Public Procurement and Asset Disposal Act and the regulations thereto provides for **MANDATORY** procedures in procurement. Where there is no requisite legal documentation, no payment.

   iv. Where the legal documentation is available and the procurement process appears legit the department to confirm delivery of the goods and or services and pay.

   The Preliminary Report of the Ad Hoc Committee is available for tabling.

10. This threshold has been affirmed in the case of ***Green Highland Services Ltd & 10 others v County Government of Nyeri [2019] eKLR*** in which the Court summarised the issue as hereunder;

    *"In the face of all these shortcomings in the evidence the plaintiffs submit that:*

*"This was a period when counties were beginning to operationalize their mandate pursuant to their establishment under Article 176 of the Constitution. It was a time of great uncertainty regarding applicable statutory and procedural laws and rules with many teething problems experienced. Accordingly, the issue of pre-contract and contractual documents applicable in emergency cases was not well defined. It is no surprise that the defendant's officials resorted to asking the plaintiffs to undertake works, after which the issue of preparation of the most appropriate documentation would follow.....that the plaintiffs undertook the assigned works on various roads to full completion and to the satisfaction of the defendant thus entitling them to payment".*

*With due respect to counsel and the plaintiffs I find this submission to be fantastic. Despite the fact that the County governments had just come into place the mode in which government does legitimate business is known, and established. It can never be the same as one going to the market and making an order for goods and services. At no time after the coming into being of the County Governments was any law suspended. County Governments are public entities- there was no uncertainty about anything- the Public Procurement Law in situ. It clearly set out the procedure to be followed and it was in the interests of the plaintiffs, as upright businesses to carry out due diligence to ensure that the proper procedures were followed as they were the ones spending their money to do the work- hence the need to secure the same.".*

11. At the preliminary stage, Pending Bills worth **Kshs. 190,216,347** had been approved for payment as per the Executive Summary. These are Bills which had all the legal documentations and projects verifiable based on the documentations available at that stage.

12. The Committee, in its preliminary stage recommended that:
    1. The Report be made available to the Contractors and the public which was done.
    2. Any alleged bills which may not have been captured in this discourse be submitted for consideration.
    3. Any contractors aggrieved by the recommendations to do a memorandum to the County Secretary within 14 days of publication clearly laying down the grounds for the grievances and enclosing any evidence supporting their claims.
    4. Similarly members of the public who feel that certain contractors who should write to the County Secretary within 14 days clearly setting out their reasons and enclosing any evidence.

13. The issues in Number 12 above would form the subject of the final stage.

14. Before the final report could be finished, the Office of the Auditor General came in to carry out an independent audit wherein it identified Legible and ineligible Pending Bills. The report for Vihiga County is available for tabling.

15. The process was thus subjected to the Auditor General and the Ad Hoc Committee of the County disbanded.

16. It is important to note that some of the Pending Bills cleared as legible for payment by the Auditor General do not in the opinion of the County meet the legal threshold for procurement and payment. In one instance a contractor has actually disowned a pending bill approved as eligible by the Auditor General.

17. The Auditor General recommended the formation of a Committee to check the ineligible pending bills and went ahead and provided for its membership. Interestingly there is no provision for a legal person on the Committee. See the letter dated 19th June, 2018 from the Controller of Budget which is **Attachment 5**.

18. The County has constituted this Committee and as we speak they are down to work. Gazette Notice Number 10900 of 2019 is available for tabling.

19. In the last financial year 100 million was set aside for Pending Bills and 57 million was paid. The 43 million was not paid due to KRA compliance issues on the part of the contractors. The money was re-budgeted and is part of the 450 million.

20. The County has prepared and the County Assembly approved a Supplementary Budget with **450 million** for Pending Bills. A copy of the Supplementary Budget is available for tabling.

21. As soon as the money is released the County wmake payment of the pending bills a priority.

SIGNED

**DR. PATRICK SAISI**
**DEPUTY GOVERNOR, VIHIGA COUNTY**

# Kirinyaga County

# SYNOPSIS OF PENDING BILLS FOR COUNTY GOVERNMENT OF KIRINYAGA

| PERIOD/TIME | EVENT | PARTY INVOLVED | REMARKS |
|---|---|---|---|
| AUGUST 2017 | On assumption of office,H.E the Governor is presented with Kshs. 296.1M worth of pending bills | Finance and Economic Planning Department | Internal review report indicates about 50% belong to a single individual.The person later dies in mysterious circumstances.(matter with DCI) |
| AUGUST 2017 | H.E the Governor requests the Auditor General to assist in special audit to authenticate the figures | Auditor General | The County didn't have budget for such audit.The Auditor General agrees to undertake at his own cost |
| MAY 2018 | The Auditor General committs to undertake the special audit | Auditor General | |
| JULY 2018 | Special Audit team starts pending bills audit | Special Audit team/Auditor General | |
| JANUARY 2019 | The special audit tables a draft report | Special Audit team/Auditor General | The draft report indicated that the pending bills verified amounted to Kshs.461M |
| JANUARY 2019 | The County expresses dissatisfaction on the reported | County Government of Kirinyaga | |

**H.E The Governor**
Mombasa County Government

**The Auditor General**
Office of the Auditor General
P.O Box 30084-00100
Nairobi

**Kreston KM Audit Firm**
Woodvale Groove, Westlands
P.O BOX 66837 – 00800
Nairobi

**(3) ELIGIBLE SUPPLIERS PAYMENTS AS PER AUDITOR GENERAL SPECIAL REPORT**

| YEAR | ELIGABLE PAYMENTS | MONTHLY PROPOSAL TO PAY |
|---|---|---|
| Eligible | 167,144,941 | 14,000,000 |

Included in our eligible pending bills was a figure of Ksh 167,144,941 to suppliers for development and recurrent expenditure. The county proposes to pay the pending bills in installments starting from this November 2019 at a rate of Ks 14Million every month for the Next 12 months. However, this would depend on the timely disbursement of funds by the National Treasury.

**(4) LAPTRUST AND LAPFUND**

The Office of the Auditor General report contained outstanding eligible bills of Ksh 895,932,485 and 936,965,051 for Laptrust and Lapfund respectively.
The county currently has a payment plan with LAPTRUST remitting Ksh 25 million every month towards settlement of the post devolution principal contribution debt (Attached Letter).

**(5) THE PENDING BILLS RESOLUTION COMMITTEE AND THE INELIGIBLE BILLS OF 1,801,985,966.**

The County Government of Mombasa has established a pending Resolution Committee who are currently gathering information and documents that would unlock and resolve the ineligible bills contained in the office of the Auditor General report. Their report would be shared to National Treasury as soon as available.

Yours Sincerely,

Maryam A. Mbaruk,
**County Executive Committee Member**
**FINANCE AND ECONOMIC PLANNING**

**Copy to: The Cabinet Secretary**
National Treasury & Planning
P.O.Box 30007 – 00100
Nairobi

THE NATIONAL TREASURY
RECEIVED
22 NOV 2019
MAIN REGISTRY
P.O. Box 30007-00100 NAIROBI

| | | | |
|---|---|---|---|
| Withholding VAT @6% | 180,853,948.00 | 84,611,319.00 | 96,242,629.00 |
| Withholding VAT @3% & 5% | 165,055,948.00 | 24,636,729.00 | 140,419,219.00 |
| **TOTAL** | **345,909,896.00** | **109,248,048.00** | **236,661,848.00** |

Included in the Office of the Auditor General's report was a figure of Ksh 109,248,048 being 3% and 5% withholding and 6% VAT. However we have attached an analysis of our payments to KRA showing payments for your perusal and confirmation. The County has balance of **Kshs. 3,870,185.00 from the Pending bill as at 30th June 2018.**

| DATE | ITAX REFERENCE NUMBER | AMOUNT KSHS |
|---|---|---|
| 9/5/2019 | 2020190001093540 | 11,368,808.00 |
| 9/5/2019 | 2020190001094074 | 3,833,997.00 |
| 11/4/2019 | 2020190000834049 | 12,133,049.00 |
| 11/4/2019 | 2020190000834659 | 2,984,887.00 |
| 9/3/2019 | 2020190000546072 | 15,057,883.00 |
| 4/2/2019 | 2020190000255235 | 24,923,240.00 |
| 4/2/2019 | 2020190000255939 | 5,143,515.00 |
| 19/12/2018 | 2020180002554141 | 14,895,616.00 |
| 19/12/2018 | 2020180002555185 | 599,965.00 |
| 19/11/2018 | 2020180002322196 | 13,030,423.00 |
| 19/11/2018 | 2020180002322569 | 1,406,480.00 |
| | TOTAL | 105,377,863.00 |

## (1.) PAY AS YOU EARN (PAYE)

**ESTIMATED (PAYE) BY KRESTON KM & CO (Auditor General)**

| YEAR | ESTIMATE | PAID | BALANCE |
|---|---|---|---|
| 2013/2014 | 550,451,407.00 | - | 550,451,407.00 |
| 2014/2015 | 716,372,590.00 | 151,017,930.00 | 565,354,660.00 |
| 2015/2016 | 673,301,031.00 | 504,599,058.00 | 168,701,973.00 |
| 2016/2017 | 734,859,936.00 | 770,993,265.00 | - 36,133,329.00 |
| 2017/2018 | 844,204,346.00 | 782,286,348.00 | 61,917,998.00 |
| | 3,519,189,310.00 | 2,208,896,601.00 | 1,310,292,709.00 |

We wish to advise that the eligible pending bills of Ksh 3,545,800,427 captured by the Office of the Auditor General included a figure of Ksh 1,310,292,709 as PAYE arrears. However, the figure was captured erroneously as not having been paid. The county is not in arrears on PAYE as payments are up-to-date as October 2019 as per KRA. Analysis of payment shown below:

**CURRENT STATUS OF COUNTY GOVERNMENT OF MOMBASA PAYE**

| YEAR | PAYROLL | PAID | BALANCE |
|---|---|---|---|
| 2013/2014 | 550,451,407.00 | 585,156,116.25 | ( 34,704,709.25 ) |
| 2014/2015 | 716,372,590.00 | 538,211,875.65 | 178,160,714.35 |
| 2015/2016 | 673,301,031.00 | 657,428,988.67 | 15,872,042.33 |
| 2016/2017 | 734,859,936.00 | 770,993,265.00 | ( 36,133,329.00) |
| 2017/2018 | 844,204,346.00 | 993,145,763.45 | ( 148,941,417.45) |
| | 3,519,189,310.00 | 3,544,936,009.02 | ( 25,746,699.02 ) |

## (2.) ANALYSIS OF WITHHOLDING TAXES ASSESSED BY KRA

| Tax Head | Amount report in pending bill | Amount assessed and agreed with KRA (Kshs) | Amount considered ineligible |
|---|---|---|---|

OFFICE OF THE AUDITOR GEN
P. O. Box 30084 - 00100, NAIROBI
REGISTRY
22 NOV 2019
RECEIVED

COUNTY GOVERNOR'S OFFICE
21 NOV 2019
RECEIVED

# COUNTY GOVERNMENT OF MOMBASA

## DEPARTMENT OF FINANCE AND ECONOMIC PLANNING

OFFICE OF THE CONTROLLER OF BUDGET
REGISTRY
20 NOV 2019
COPY
TIME:
P. O. Box 35616 - 00100, NAIROBI

REF: CECM/F&EP/ADM/20/11/19/ (1) 20TH NOVEMBER, 2019

The Controller of Budget
Office of the Controller of Budget,
P.O Box 35616 – 00100
**NAIROBI**

**RE:STATUS OF PENDING BILL OF COUNTY GOVERNMENT OF MOMBASA IN RELATION TO THE SPECIAL AUDITOR GENERAL REPORT AS AT 19TH NOVEMBER 2019.**

We convey our concerns on the press release dated 18th November 2019 on the failure to pay pending bills.

We are alarmed that even after our letter to referenced CECM/F&EP/ADM/09/08/19/ (1) dated 9th August 2019, we have been placed as the 15 counties not to have made any effort to clear our pending bills. We wish to clarify as follows on the status of eligible Pending Bill in the Office of the Auditor General report:-

Our position on the special audit for the County Government of Mombasa as 01 April 2013 to 30 June 2018. Out of the Eligible Pending bills of 3,545,800,427 captured, The County Government of Mombasa has paid/cleared Ksh 1,541,887,766 as follow:

- 1,310,292,709.00 being PAYE
- Ksh 105,377,863 being Withholding and VAT arrears
- Ksh 676,000 and 2,307,350 being NSSF and NHIF payments respectively
- 84,679,516 and Ksh 38,554,328 being Laptrust and Laprofund respectively as per OAG report

The County unpaid pending bills are

- Ksh 167,144,941 for supplier of recurrent and development
- Ksh 895,932,485 and 936,965,051 for Laptrust and Laprofund respectively

Below is the schedule summary of payment as per our records in comparison with auditor general special report.

KRESTON KM & CO.
Certified Public Accountants (K)
22 NOV 2019
RECEIVED

THE NATIONAL TREASURY
RECEIVED
22 NOV 2019
MAIN REGISTRY
P.O. Box 30007-00100 NAIROBI

# Mombasa County

# VOTE D3163 TANA RIVER - FINANCE AND PLANNING

## Development Expenditure VOTE BOOK STATUS REPORT - FOR THE PERIOD FROM JUL-19 TO JUN-20

| Head | Sub Head | ITEM-SOURCE-PROGRAMME-GEOGRAPHICAL | TITLE AND DETAILS | Printed Estimate | Reallocation/ Transfer | Supplementary Estimates | Approved Estimates (Net) | Cumulative Expenditure | Outstanding Commitments | Total Payment Commitments | Balance |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Kes | Kes | Kes | Kes | Kes | Kes | Kes | Kes |
| 1001 | | | | | | | | | | | |
| | 01 | | **Automation of Own Source Revenue** | | | | | | | | |
| | | 3111112-00001001-0707063160-31600001 | Purchase of Software | 25,000,000 | 0 | 0 | 25,000,000 | 0 | 0 | 0 | 25,000,000 |
| | | | **GROSS EXPENDITURE** | **25,000,000** | **0** | **0** | **25,000,000** | **0** | **0** | **0** | **25,000,000** |
| | | | **Net Expenditure Sub Head 100101 .. .. .. ..** | **25,000,000** | **0** | **0** | **25,000,000** | **0** | **0** | **0** | **25,000,000** |
| | | | **Net Expenditure Head 100100 .. .. .. ..** | **25,000,000** | **0** | **0** | **25,000,000** | **0** | **0** | **0** | **25,000,000** |
| 1002 | | | | | | | | | | | |
| | 01 | | **Office Refurbishment for Economic Planning and Budgeting** | | | | | | | | |
| | | 3110302-00001001-0707073160-31600001 | Refurbishment of Non-Residential Buildings | 5,000,000 | 0 | 0 | 5,000,000 | 0 | 1,636,760 | 1,636,760 | 3,363,240 |
| | | | **GROSS EXPENDITURE** | **5,000,000** | **0** | **0** | **5,000,000** | **0** | **1,636,760** | **1,636,760** | **3,363,240** |
| | | | **Net Expenditure Sub Head 100201 .. .. .. ..** | **5,000,000** | **0** | **0** | **5,000,000** | **0** | **1,636,760** | **1,636,760** | **3,363,240** |
| | | | **Net Expenditure Head 100200 .. .. .. ..** | **5,000,000** | **0** | **0** | **5,000,000** | **0** | **1,636,760** | **1,636,760** | **3,363,240** |
| 1003 | | | | | | | | | | | |
| | 01 | | **Pending Bills** | | | | | | | | |
| | | 2420499-00001001-0707083160-31600001 | Other Creditors - Other (Budge | 775,774,496 | 0 | 0 | 775,774,496 | 359,800,473 | 27,248,951 | 387,049,424 | 388,725,072 |
| | | | **GROSS EXPENDITURE** | **775,774,496** | **0** | **0** | **775,774,496** | **359,800,473** | **27,248,951** | **387,049,424** | **388,725,072** |
| | | | **Net Expenditure Sub Head 100301 .. .. .. ..** | **775,774,496** | **0** | **0** | **775,774,496** | **359,800,473** | **27,248,951** | **387,049,424** | **388,725,072** |
| | | | **Net Expenditure Head 100300 .. .. .. ..** | **775,774,496** | **0** | **0** | **775,774,496** | **359,800,473** | **27,248,951** | **387,049,424** | **388,725,072** |
| | | | **Total Net Expenditure vote D3163** | **805,774,496** | **0** | **0** | **805,774,496** | **359,800,473** | **28,885,711** | **388,686,184** | **417,088,312** |

OFFICE OF THE CONTROLLER
OF BUDGET
REGISTRY
3 DEC 2019
TIME 11:31am
P. O. BOX ... NAIROBI

REPUBLIC OF KENYA

THE COUNTY GOVERNMENT OF TANA RIVER
DEPARTMENT OF FINANCE AND ECONOMIC PLANNING

Email address: tanarivercg@gmail.com
Telephone: 0466260000
When replying please quote:
REF: TRCG/FIN/3/3/1.19

P O Box 29-70101
HOLA

Date: 29th Nov, 2019

To: Office of the Controller of Budget

P.O BOX 35616-00100

NAIROBI

**RE: COMMITMENT TO CLEAR ELIGIBLE PENDING BILLS**

Reference is made to our letter dated 3rd October 2019 referenced TRCG/FIN/13/170 and the resolution of the consultative meeting to discuss the status of pending bills, convened by the Ag. Cabinet Secretary on 28th November 2019.

The County Government of Tana River wishes to submit a payment plan to clear the eligible pending bills amounting **to Ksh.507,082,631** from the special report of the OAG. The County Government as of 29th November 2019 has progressively cleared **Ksh.235,276,887.55** as per the report submitted to you dated 29th November 2019 referenced TRCG/FIN/3/3/31.

The County Government therefore commits to pay **Ksh.171,805,744 by 31st December 2019** as evidenced in the certified copy of County Government FY 2019/2020 budget. The outstanding amount of **Ksh.100,000,000** will cleared in the **first supplementary budget** which will be submitted to be the County Assembly by 31st January 2020.

Thank you

MATHEW BABWOYA BUYA
**CECM-FINANCE & ECONOMIC PLANNING**

**Attached: An extract of the Approved of FY 2019/2020 Tana River County Budget**

Copy to:

Ag.Cabinet Secretary
The National Treasury

THE NATIONAL TREASURY
RECEIVED
03 ...
P.O. BOX ... NAIROBI

# Tana River County

right picture. Secondly, the auditing team did not visit projects to do verification.

On 19th June 2019, the council of Governors via a letter referenced COB/COG/002/Vol. 3(55), (copy attached) gave us direction on how to deal with pending bills. We were advised to form a pending bills committee. The CECM Finance on 11th July 2019 (letter attached) formed the committee and the names were gazetted. on 19th July, 2019

The pending bills committee concluded the report and it is here attached. There was a very significant drop to **Kshs. 143,238,937.35** from the earlier figure reported by OAG.

The period between 1st July 2019 and 31st October 2019 have been a dry period. A part from payment of salaries there was nothing much which happened. This is because we were implementing a vote on account budget occasioned by the impasse between Senate and National Assembly on revenue Allocation.

In conclusion, my government is committed to payment of all eligible pending bills and we have done the following towards the same; -

1) Pending bills committee was established (copy Attached)
2) Over **One Hundred Million Kenya Shillings** towards payment of pending bills were set aside (see budget FY 2019/2020).
3) We are in the middle of processing payments of over **Fifty Million Kenya Shilling** starting last week when the budget was uploaded.

It is therefore not true when it is said that Bomet County Government is not committed to paying all eligible pending bill.

Thank you.

H.E. Dr. Hillary Barchok
The Governor
Bomet County

Cc: -Office of The Auditor General
-Controller of Budget
-Council of Governors
-Bomet County Assembly

| | | | |
|---|---|---|---|
| | figures | | |
| JUNE 2019 | Special report on the pending bills of the auditor general is released | Auditor General | The report indicated that the pending bills for Kirinyaga County as at 30th June 2018 amounted to Kshs.531M |
| JULY 2019 | The Controller of Budget (COB) writes on pending bills for Kirinyaga and Isiolo Counties | Controller of Budget | The letter is sent to the Auditor General and copied to Special Secretary ,IBEC highlighting discrepancies in audit report vis a vis records held by the Counties |

**NOTES:**

1. From the above, it has not been clear on the true position of the pending bills.
2. The county has very minimal pending bills for the period 2017/18-2018/19 as most has been paid off in the subsequent budgets.
3. The county has already factored in Ksh.100M in supplementary I of 2019/2020 to pay eligible pending bills upon verification.
4. Audit outcome:

| | |
|---|---|
| (i)Eligible pending bills reported 1st audit | Kshs.461,738,753 |
| (ii)Eligible pending bills reported 2nd audit | Kshs.741,080,963 |
| (iii)Contested bills**(Difference)** (ii-i) | **Kshs.279,342,210** |
| (iv)Payment as per COB report | Kshs.227,245,701 |
| Outstanding eligible bills as per initial report in (i) above | Kshs.461,738,753 |
| Less payments as above | (Kshs.227,245,701) |
| **TOTAL OUTSTANDING** | **KSHS.234,493,052****** |

****An amount included above is Kshs.179,640,927 belonging to a single individual whose case is under investigations by the DCI.

# Machakos County

## STATUS OF MACHAKOS COUNTY PENDING BILLS AND APPEAL AGAINST STOPPAGE OF NATIONAL GOVERNMENT TRANSFERS

**Background of Pending Bills**

According to the report of the Auditor General on Pending Bills dated 28th May, 2019, Machakos County had eligible pending bills totaling to **Kshs.942Million** as at 30th June, 2018.

In Financial Year 2013/2014 the First Year of Devolution, we had a Budgetary Appropriation of **Kshs 8Billion,** this budget did not take into account the salaries of the devolved functions as it was envisaged that these staff will be devolved together with their salaries from National Government. This was never to be and Counties were even required by The National Treasury to refund the salaries that the National Government had paid them on their behalf.

A total of **Kshs.744Million** was required to fund the devolved functions salaries, an amount that was not previously budgeted for. Furthermore the communication requiring counties to cater for the devolved functions staff was coming at the tail end of the Financial Year when most of the budgets had been committed.

Since salaries are mandatory expenditures, the County had no option than to fund these leaving the commitments unfunded hence creating pending bills. The Devolution mantra that resources should follow functions does not seem to have been applied in the devolved function staff. The staff were devolved but their budgets were not devolved to the Counties straining the already meagre resources in the sub national governments. The highest salaries being those of health staff.

The County has continued to pay pending bills even before the directive to pay pending bills was issued. A pending bills verification team was put in place to verify the outstanding pending bills to ensure eligibility. This has been an on-going process.

In compliance with the directive to settle pending bills, the following measures have been initiated and or implemented:

**Payment of Pending Bills**

The Audit Report came out at the end of May, 2019 and the last two tranches of funds were released on 5th July, 2019, which was a few days to the closure of the Financial Year 2018/2019. This did not give enough window to pay pending bills. We have been able to pay a total of **Kshs. 245Million** and a further amount of **Kshs. 230Million** has been processed to IB and **Form A** is at the Office of the Controller of Budget. Once approval is granted this will bring the total amount paid to date will **Kshs. 475Million** (Copy of Form A is attached).This is a significant reduction from the original balance of

Appendix 1

**Kshs. 942Million** out of which **Kshs. 241Million** is going through the verification by the pending bills verification team leaving an eligible pending bill amount of **Kshs. 225Million**

Since the start of the Financial Year 2019/2020, the County has largely been paying salaries and operational and maintenance (O&M) expenses owing to budget negotiations with the County Assembly. These negotiations have partly been focusing on appropriating the close to **Kshs.1.8 billion** which crossed over from the 2018/2019 Financial Year. An amount of **Kshs. 230Million** out of these monies was earmarked to settle pending bills and could not be spent without County Assembly approval through a Supplementary Appropriation. Now that the Supplementary Appropriation has been approved, we have embarked on processing the eligible pending bills to clear.

**Below is a summary of the current status (Amount in Kshs)** Schedule 1

| | |
|---|---|
| Balance Per OAG (Kshs) | 942,362,607.30 |
| ***Less:*** | |
| **Paid per OCOB verification** | **245,062,965.00** |
| **Funds Request at OCOB** | **229,959,991.00** |
| **Pending further Verification** | **241,652,617.55** |
| **Balance being processed via IFMIS** | **225,687,033.75** |

**Compliance with National Treasury and Office of the Controller of Budget Circulars**

Machakos County has established the Pending Bills Committee in compliance with the directive contained in the Controller of Budget letter COB/COG/002/VO.3955 dated 19th June, 2019 and Controller of Budget circulars No. 23/2018 and No.2/2019. ***Ref: Gazette Notice No.8994 dated 20th September, 2019.*** - Appendix 2

Further, to ensure full compliance with the directive, the CECM – Finance and Economic Planning also issued a circular dated 2nd July, 2019, bringing the contents of the National Treasury and Office of the Controller of Budget circulars to the attention of all the Accounting Officers.

**Payment Plan for the balance of the eligible and ineligible pending bills**

In view of the fact that there are limited resources and services to the people must be delivered so as to avoid occasioning crisis, we propose to pay the remaining eligible pending bills balance of **Kshs. 225Million within the next three months although the Circular from the Office of the Controller of Budget had given Counties to clear the eligible pending bills by June 2020**. We further propose to phase the

payment of the balance of ineligible bills pending verification, once cleared by the pending bills committee by 30th June 2021.

**Our humble prayer**

In view of the above, we pray that we **be removed from the list of Counties which have not complied with the directive to pay pending bills and be classified, as demonstrated, as having substantially complied**. We similarly pray that equitable share and conditional grants releases to the County continue uninterrupted.

**Conclusion**

In conclusion, I wish to state the commitment of the County Government of Machakos to meet her fiscal responsibilities in a timely manner. In doing so, we pledge to cooperate with the National Treasury and all other stakeholders including service providers. We commit to play our part in ensuring economic growth in the County and the Country at large.

Submission by:

H.E Dr, Alfred N. Mutua, EGH
**Governor,**
**Machakos County**

Appendix 1

Republic of Kenya

# COUNTY GOVERNMENT OF MACHAKOS

## THE COUNTY TREASURY

Telephone: +254-44-20246
Fax: +254-44-20655

Machakos Highway
P.O Box 1996-90100
Machakos, Kenya

OFFICE OF THE CONTROLLER OF BUDGET
REGISTRY
29 NOV 2019
COPY
TIME: 5.00PM
P.O. Box 35616 - 00100, NAIROBI

**FORM A**

**When Replying Please Quote:**
REF: CMC/FIN/VOL. 7(31)

The Controller of Budget
Office of the Controller of Budget
P.O Box 35616-00100
NAIROBI

**29th November 2019**

**THE COUNTY TREASURY REQUISITION FOR THE GRANT OF CREDIT ON THE EXCHEQUER ACCOUNT**

---

In accordance with The Public Finance Management Act 2012 and The Machakos County Appropriation Act 2019, the County Treasury requests you to grant credit on the Exchequer Account the sum of Kshs. **229,959,991.00 (Say Kenya Shillings Two Hundred Twenty Nine Million, Nine Hudred Fifty Nine Thousand, Nine Hundred and Ninety One Only)** to Machakos County Recurrent Account to meet the cost of services for the year ending 30th June 2020.

**Zainabu Kiptoo**
**Authorized Signatory**

Authority of Kenya, CA Centre, Waiyaki Way, P.O. Box 14448–00800, Nairobi, indicating the license category on the cover enclosing it.

The said representation and/or objection must be filed on or before expiry of thirty (30) days from the date of this notice and a copy of the same be forwarded to the applicants.

Dated the 9th September, 2019.

MERCY WANJAU,
*Ag. Director-General.*

PTG 562/19-20

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GAZETTE NOTICE NO. 8992

THE KENYA INFORMATION AND COMMUNICATIONS ACT

(*Cap.* 411A)

APPLICATION FOR LICENCES

NOTICE is given that the following applicants have, pursuant to the provisions of the Kenya Information and Communications Act (Cap. 411A), made applications to the Communications Authority of Kenya for grant of the licenses as below:

| *Name* | *Licence Category* |
|---|---|
| Plutomall Limited, P. O. Box 522–30200, Kitale | National Postal/Courier Operator |
| Zeplin Investments Limited, P. O. Box 1052–80200, Malindi | National Facilities Provider Tier Three (NFP-T3) |
| Deluca Group Limited, P. O. Box 224–00200, Nairobi | International Postal/Courier Operator |
| Four M Africa Limited, P. O. Box 13367–00400, Nairobi | National Postal/Courier Operator |

The licences, if granted, will enable the applicants to operate and provide the services as indicated above. The grant of these licenses may affect public and local authorities, companies, persons or bodies of persons within the country.

The Authority wishes to notify the general public that any legal or natural person, or group of individuals, who are desirous of making any representation and/or any objection to the said applications, to do so *vide* a letter addressed to: The Director-General, Communications Authority of Kenya, CA Centre, Waiyaki Way, P.O. Box 14448–00800, Nairobi, indicating the license category on the cover enclosing it.

The said representation and/or objection must be filed on or before expiry of thirty (30) days from the date of this notice and a copy of the same be forwarded to the applicants.

Dated the 11th September, 2019.

MERCY WANJAU,
*Ag. Director-General.*

PTG 570/19-20

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GAZETTE NOTICE NO. 8993

THE LEGAL EDUCATION ACT

(*No.* 27 *of* 2012)

PASSING OF EXAMINATIONS AND PUPILAGE

PURSUANT to section 8 (1) (*f*) of the Legal Education Act, 2012, it is notified for general information that the following thirty four (34) persons:

| *Reg. No.* | *Name* | *ID/PP No.* | *Nationality* |
|---|---|---|---|
| CLE2009318 | Migiro Chadwick Kerama Mathius | 22579137 | Kenyan |
| CLE20140971 | Njuguna Andrew Gathu | 28639559 | Kenyan |
| CLE20150634 | Kirui Joash Mitei | 27751455 | Kenyan |
| CLE20150650 | Kithaka Evelyn Wawira | 27322592 | Kenyan |
| CLE20150702 | Lalah Pascal Arnold Wasonga | 28712743 | Kenyan |
| CLE20150763 | Madsen Sylvia Wanjiru | 29854749 | Kenyan |
| CLE20150875 | Mbarire Joseph Mahugu | 28483687 | Kenyan |
| CLE20151000 | Muhati Mary Mbote | 25156007 | Kenyan |
| CLE20151462 | Odeke Benard Collin | B0825659 | Ugandan |
| CLE20151528 | Okech Julie Lisa | 28036407 | Kenyan |
| CLE20160163 | Nyamwaya Innocent Mogaka | 30437867 | Kenyan |
| CLE20160257 | Mbaka George Kimathi | 27668536 | Kenyan |
| CLE20160659 | Gichohi Peris Njeri | 26008200 | Kenyan |
| CLE20160944 | Owuor Robert Matende | 28453503 | Kenyan |
| CLE20160971 | Kiema Rachel Mwikali | 29394973 | Kenyan |
| CLE20161282 | Bodo Titus | 27895675 | Kenyan |
| CLE20161333 | Kaaria Dennis Howard Muthuyia | 29117369 | Kenyan |
| CLE20161688 | Gathura Oscar Kimani | 29663883 | Kenyan |
| CLE20162002 | Gatitu Geoffrey Mwangi | 29326127 | Kenyan |
| CLE20162028 | Kipkorir Abigael Chelagat | 29369845 | Kenyan |
| CLE20162247 | Amolo Enock Charles | 22901266 | Kenyan |
| CLE20170164 | Maina Kenneth Macharia | 29587612 | Kenyan |
| CLE20170314 | Ogunah Irene Awuor | 28750512 | Kenyan |
| CLE20170346 | Mwangi Alice Wanjiru | 30163101 | Kenyan |
| CLE20170456 | Shem Abby Mogoi | 29696260 | Kenyan |
| CLE20170476 | Nthumbi Lorna Magiri | 30207986 | Kenyan |
| CLE20171071 | Maina Speicy P. Bitutu | 32146698 | Kenyan |
| CLE20171243 | Nduhiu Polet Muthoni | 31997000 | Kenyan |
| CLE20171467 | Tororei Jeruto Patricia | 24692557 | Kenyan |
| CLE20171594 | Rimber Kimberly Wangeci | 32441411 | Kenyan |
| CLE20171801 | Ndiritu Dennis Chege | 30235351 | Kenyan |
| CLE20171894 | Wekesa Lindah Naliaka | 28537044 | Kenyan |
| CLE20172111 | Ouma Hemstone Owino | 32426015 | Kenyan |
| CLE20172354 | Lema Esther Aminiel | AB766934 | Tanzanian |

have complied with the provisions of section 13 of the Advocates Act, (Cap. 16) of the Laws of Kenya as to passing of examinations and pupilage subject to such exemptions as may have been granted under subsection (2) of the section.

Dated the 2nd September, 2019.

J. K. GAKERI,
*Secretary/Chief Executive Officer*
*Council of Legal Education.*

PTG 00440/19-20

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GAZETTE NOTICE NO. 8994

Appendix 2

THE COUNTY GOVERNMENTS ACT

(*No.* 17 of 2012)

COUNTY GOVERNMENT OF MACHAKOS

ESTABLISHMENT OF PENDING BILLS COMMITTEE

PURSUANT to the directive by the Controller of Budget in a letter dated the 19th June, 2019, Ref. COB/COG/002/VO.3955), I, Francis Maliti, Deputy Governor and County Executive Committee Member, Finance and Economic Planning, appoint—

| *Name* | *Category of Membership* |
|---|---|
| Scholarsticah Mueni Mboi | Independent Person (Chairperson) |
| Benjamin Musau Nyika | County Government Official from the Internal Audit Department |
| Samuel Kavoi Ngila | County Government Official from the Finance Department |
| Patricia Syombua Kioko | County Government Official from the Procurement Department |
| Thumbi Kuria | County Government Official from the department responsible for Infrastructure |

to be members of Machakos County Pending Bills Committee. The appointment take effect immediately.

Dated the 18th September, 2019.

FRANCIS MALITI,
*Deputy Governor/*
*CECM, Finance and Economic Planning.*

MR/6656262

Schedule 2

**COUNTY GOVERNMENT OF MACHAKOS**

**SUMMARY OF PENDING BILLS - DEVELOPMENT**
**AS AT 30TH NOVEMBER 2019**

| | DEPARTMENT | Balance per OAG (Kshs) | Paid | Processed for Payment at IB | Pending further Verification | Processing in IFMIS |
|---|---|---|---|---|---|---|
| 1 | Health and Emergency Services | 28,391,195.00 | 25,939,152.80 | | 2,452,042.20 | - |
| 2 | Energy, Lands Housing and Urban Planning | 12,403,974.00 | - | | 12,403,974.00 | - |
| 3 | Tourism, Youth, Sports and Culture | 48,588,362.70 | 25,592,690.70 | | 22,995,672.00 | - |
| 4 | Public Service, Quality Management and ICT | 30,423,694.00 | 9,142,484.00 | | 21,281,210.00 | - |
| 5 | Trade, Industrialization and Innovation | 11,606,321.60 | 7,603,584.65 | | 4,002,736.95 | - |
| 6 | Roads, Transport and Public Works | 259,684,484.00 | 64,974,476.20 | | 70,540,639.00 | 124,169,368.80 |
| 7 | Agriculture, food security and Cooperative Development | 49,291,000.00 | 12,520,000.00 | | 36,171,000.00 | 600,000.00 |
| 8 | County administration and Decentralized Units | 1,133,000.00 | - | | 1,133,000.00 | - |
| 9 | Water, Irrigation, Enviroment and Natural Resources | 216,326,176.00 | 87,657,211.05 | | 30,231,031.00 | 98,437,933.95 |
| | **TOTAL (A)** | **657,848,207.30** | **233,429,599.40** | **-** | **201,211,305.15** | **223,207,302.75** |

**SUMMARY OF PENDING BILLS - RECURRENT**
**AS AT 30TH NOVEMBER 2019**

| | DEPARTMENT | Balance Per OAG (Kshs) | Paid | Funds Request at OCOB | Pending further Verification | Processing in IFMIS |
|---|---|---|---|---|---|---|
| 1 | Health and Emergency Services | 34,427,686.00 | 7,645,470.00 | | 26,782,216.00 | - |
| 2 | Energy, Lands Housing and Urban Planning | - | - | | | - |
| 3 | Tourism, Youth, Sports and Culture | 8,622,039.00 | 1,099,655.60 | | 7,522,383.40 | - |
| 4 | Public Service, Quality Management and ICT | 229,959,991.00 | - | 229,959,991.00 | | - |
| 5 | Trade, Industrialization and Innovation | 1,519,896.00 | - | | | 1,519,896.00 |
| 6 | Roads, Transport and Public Works | 900,000.00 | 900,000.00 | | | - |
| 7 | Agriculture, food security and Cooperative Development | 4,025,513.00 | - | | 4,025,513.00 | - |
| 8 | County administration and Decentralized Units | 2,948,075.00 | 1,988,240.00 | | | 959,835.00 |
| 9 | Water, Irrigation, Enviroment and Natural Resources | 2,111,200.00 | - | | 2,111,200.00 | - |
| | **TOTAL (B)** | **284,514,400.00** | **11,633,365.60** | **229,959,991.00** | **40,441,312.40** | **2,479,731.00** |
| | **GRAND TOTAL (A+B)** | **942,362,607.30** | **245,062,965.00** | **229,959,991.00** | **241,652,617.55** | **225,687,033.75** |

| | |
|---|---|
| **Balance Per OAG (Kshs)** | 942,362,607.30 |
| ***Less:*** | |
| **Paid per OCOB verification** | 245,062,965.00 |
| **Funds Request at OCOB** | 229,959,991.00 |
| **Pending further Verification** | 241,652,617.55 |
| **Balance being processed via IFMIS** | **225,687,033.75** |

# Bomet County

# REPUBLIC OF KENYA

## COUNTY GOVERNMENT OF BOMET
## OFFICE OF THE GOVERNOR

BOMET,KENYA

CGB/GVN/NT/49/1/1

November 25, 2019

The Cabinet Secretary,
National treasury & Planning,
P.O Box 3007-00100,
**NAIROBI**

Dear Sir,

**RE: STOPPAGE OF FUNDS TRANSFER DUE TO PENDING BILLS.**

We are in receipt of a circular Ref No. IGFR/ pending bills/01/A (24) dated 19th November 2019 stopping transfer of funds to us in relation to pending bills.

In your letter you have talked about persistent failure on our part to pay eligible pending bills from 1st July 2019 to the end of October 2019 Further, the letter went on to say that we have not made any effort towards the same including failure to establish pending bills committee.

The purpose of this letter therefore is to respond to the issues raised in the circular and put the record straight.

First, the office of the auditor General carried out an audit on pending bills as at 30th June 2018 and gave a report dated 28th May 2019. In the report, OAG placed a figure of **Kshs. 1,190,167,877** as eligible pending bills and **Kshs. 63,383,304** as ineligible. The report went ahead to indicate that as at 15th February 2019 we had paid **Kshs. 505,625,519** leaving **Kshs. 684,542,358** as outstanding.

There are however limitations which this report had. First, they came before the end of the Financial Year, so even when they left, we still went on with payments of pending bills and other payments. So the figure reported does not show the