

# **INTERNAL MEMO**

## **SENATE STANDING COMMITTEE ON FINANCE AND BUDGET**

**To: Speaker of the Senate**

**Thro': Clerk of the Senate**

**Thro': Deputy Clerk (EG)**

**From: Director, Committee Services**

**Date: 5<sup>th</sup> December, 2019**

*Hon. Speaker*

*Recommended for your approval for tabling.*

*05/12/19*

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**RE: REPORT ON THE STOPPAGE OF TRANSFER OF FUNDS TO COUNTY GOVERNMENTS**

The above matter refers.

The Standing Committee on Finance and Budget has considered and adopted its Report on the stoppage of transfer of funds to county governments.

The purpose of this memo is to forward for your information, the Report and seek your approval for tabling of the said report to the Senate.

*Njenga Njuguna*

**Njenga Njuguna**

*Approved*  
*[Signature]*  
*5/12/2019*

REPUBLIC OF KENYA



PARLIAMENT

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

PAPERS LAID	
DATE	5/12/2019
TABLED BY	Chairperson
COMMITTEE	Finance & Budget
CLERK AT THE TABLE	CM ✓

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 14<sup>th</sup> December, 2017, during the First Session of the Twelfth (12<sup>th</sup>) 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 25<sup>th</sup> 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 19<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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, 26<sup>th</sup> 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, 3<sup>rd</sup> December, 2019.
12. The fifteen (15) county governors of the affected counties were invited to a meeting which was held on Wednesday, 4<sup>th</sup> 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 30<sup>th</sup> 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 5<sup>th</sup> 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.

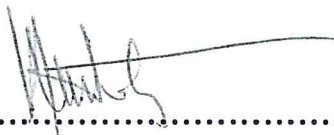
**ACKNOWLEDGEMENTS**

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.

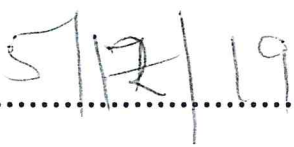
This report is hereby submitted to the Senate for its consideration and adoption pursuant to standing order 213 of the Senate Standing Orders.

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: ..... 

## 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 

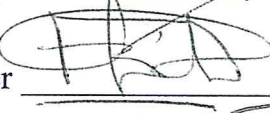
Sen. Wetang'ula Moses Masika, EGH, MP - Member 

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 25<sup>th</sup> November, 2019, forwarding National Treasury Circular *No. 20/2019 Ref: IGFR/Pending Bills/01/A(24)* dated 19<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 22<sup>nd</sup> 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 18<sup>th</sup> June 2019, it was resolved that The National Treasury would release at least Kshs. 65 billion to the Counties on or before 30<sup>th</sup> 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)  | 16. West Pokot (90) |
| 12. Bungoma (77)   | 17. Embu (93)       |
| 13. Siaya (79)     | 18. Kakamega (95)   |
| 14. Transzoia (80) | 19. wajir (96)      |
| 15. Kittli (89)    | 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 1<sup>st</sup> of July and end of October 2019;

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

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 28<sup>th</sup> 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 1<sup>st</sup> December 2019 due to the 15 county governments that have not made any effort between 1<sup>st</sup> 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.
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<sup>th</sup> 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<sup>st</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> November, 2019

#### **ii. Bomet County**

The Special Report on Pending Bills as at 30<sup>th</sup> 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 25<sup>th</sup> November 2019 to the Cabinet Secretary National Treasury and Planning

From the documents availed, eligible bills paid after 30<sup>th</sup> June 2018 was Kshs. 792,312,268. The outstanding eligible pending bills verified by OAG as at 30<sup>th</sup> November, 2019 were Kshs. 397,855,609 as at 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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 29<sup>th</sup> 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 30<sup>th</sup> June 2018 was Kshs.257, 296,160. The outstanding eligible pending bills verified by OAG as at 30<sup>th</sup> 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 30<sup>th</sup> 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 27<sup>th</sup> 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 29<sup>th</sup> November, 2019 addressed to the CS, NT and copied to OCOB.

From the document availed, eligible bills paid after 30<sup>th</sup> June 2018 were Kshs. 798,757,152. The outstanding eligible pending bills verified by OAG as at 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> June 2018 was Kshs. 227,245,701. The outstanding eligible pending bills verified by OAG as at 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> November, 2019.

From the documents availed, eligible bills paid after 30<sup>th</sup> June 2018 were Kshs. 236,916,704. The outstanding eligible pending bills verified by OAG as at 30<sup>th</sup> 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 30<sup>th</sup> June 2018 indicated that the total pending bills were Kshs. 1275275208 comprising of Kshs. 1,007,373,410 and Kshs. 267,876,798 as eligible and ineligible bills respectively.

The County submitted-

- i. a schedule of payments towards pending bills as at 30<sup>th</sup> November, 2019.

From the submitted schedules, the eligible pending bills paid after 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> June 2018 were Kshs.1.58 billion. The outstanding pending bills as verified by OAG as at 30<sup>th</sup> 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 30<sup>th</sup> 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 1<sup>st</sup> January 2019- 30<sup>th</sup> November 2019.

From the documents availed, eligible bills paid after 30<sup>th</sup> June 2018 was Kshs. 3,631,491,266. The outstanding eligible pending bills verified by OAG as at 30<sup>th</sup> 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 30<sup>th</sup> 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 19<sup>th</sup> November, 2019 from the county government showing the summary of pending bills.

From the documents availed, eligible bills paid after 30<sup>th</sup> 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 30<sup>th</sup> November, 2019 were Kshs. 316,488,823.

#### **xii. Narok County**

The Special Report on Pending Bills as at 30<sup>th</sup> 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 30<sup>th</sup> June 2018 was Kshs. 180,625,471. The outstanding pending bills as at 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> June 2018;
- ii. List of ineligible Pending Bills as at 30<sup>th</sup> June 2018;

- iii. List of eligible Pending Bills paid as at 30<sup>th</sup> June 2018;
- iv. Central bank of Kenya statement of Account 1000170708 Tana River County Development for the period 1st January 2019 to 30<sup>th</sup> 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 30<sup>th</sup> June, 2018 was Kshs. 198,972,194.15. The outstanding pending bills as at 30<sup>th</sup> 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 20<sup>th</sup> November, 2019.

From the documents availed, eligible bills paid after 30<sup>th</sup> June 2018 were Kshs. 486,007,948. The payment represents a 44.1 % of the eligible pending bills. The outstanding pending bills as at 30<sup>th</sup> 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 30<sup>th</sup> June, 2018 and gave a report dated 28<sup>th</sup> 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 15<sup>th</sup> 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 19<sup>th</sup> 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 11<sup>th</sup>, 2019 formed the committee and the names were gazette on 19<sup>th</sup> 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 1<sup>st</sup> July, 2019 and 31<sup>st</sup> 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	<u>133,613,475.00</u>
	1,056,554,402.00
Pending Bills Paid as at 30 <sup>th</sup> 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 19<sup>th</sup> 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 29<sup>th</sup> 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 30<sup>th</sup> June 2018 as Kshs. 531 Million and later on Kshs. 741 Million.
- 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 1<sup>st</sup> Audit - Kshs. 461, 738,753

• Eligible pending bills reported 2 <sup>nd</sup> 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 5<sup>th</sup> 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
<b>Less.</b>	
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 19<sup>th</sup> June, 2019 and Controller of Budget circulars No. 23/2018 and No.2/2019. Ref: Gazette Notice No. 8994 dated 20<sup>th</sup> September, 2019.
- e) Further to ensure full compliance with the directive, the CECM – Finance and Economic Planning also issued a circular dated 2<sup>nd</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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 19<sup>th</sup> 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 22<sup>nd</sup> November, 2019 and held a meeting with him on 26<sup>th</sup> 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 20<sup>th</sup> 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 19<sup>th</sup> 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 22<sup>nd</sup> November, 2019 and held a meeting with him on 26<sup>th</sup> 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 20<sup>th</sup> 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 19<sup>th</sup> 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 29<sup>th</sup> November, 2019 has progressively cleared Ksh. 235, 276, 887.55 as per the report submitted to office of the controller of Budget dated 29<sup>th</sup> November, 2019 referenced TRCG/FIN/3/3/31.
- c) The county government committed to pay Ksh. 171,805, 744 by 31<sup>st</sup> 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 31<sup>st</sup> 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 19<sup>th</sup> 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. 1,602,515,507 was purely based on the certificates of works in the files. It does not necessarily represent the pending bills as per the works done.
- 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:

<b>CURRENT STATUS OF COUNTY GOVERNMENT OF MOMBASA PAYE</b>			
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
<b>TOTAL</b>	<b>345,909,896.00</b>	<b>109,248,048.00</b>	<b>236,661,848.00</b>

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 30<sup>th</sup> 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
	<b>TOTAL</b>	<b>105,377,863.00</b>

**(3) ELIGIBLE SUPPLIERS PAYMENTS AS PER AUDITOR GENERAL 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 19<sup>th</sup> November, 2019. The Cabinet Secretary is therefore required under the law to seek the approval of Parliament on or before 26<sup>th</sup> 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 19<sup>th</sup> November, 2019, the Controller of Budget is required to transmit the report to Parliament on or before 3<sup>rd</sup> 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 30<sup>th</sup> 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 5<sup>th</sup> 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



