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Pending bills in counties in Kenya: persistent gaps in policy implementation

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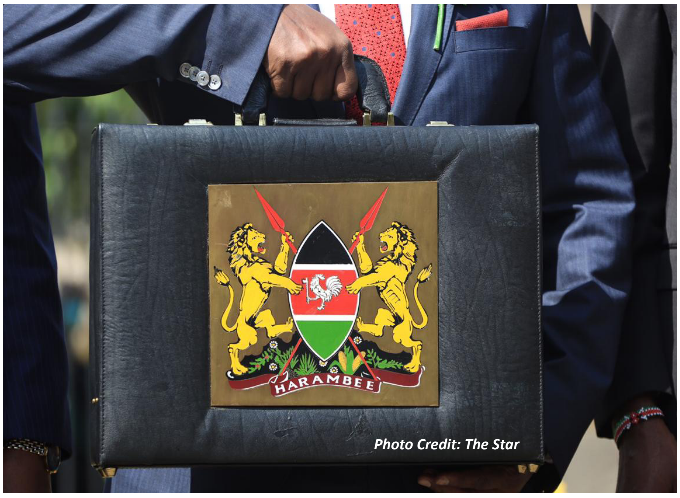

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Pending bills in counties in Kenya increased by 59.38% to KES 153.02 billion in the 2021/22 financial year (FY) from KES 96 billion in 2020/21. According to the Controller of Budget (CoB), as of December 31, 2022, counties reported a rise in pending bills to KES 157.87 billion. The pending bills menace portrays county governments as imprudent in managing public funds, despite the existence of legal frameworks governing public finance management. These laws include the Public Finance Management Act, 2012 (PFMA), Public Finance Management Regulations (county governments) 2015, and Public Procurement and Disposable Act, 2015 (PPDA). Persistent gaps hindering effective implementation of existing public finance management policies that will eliminate pending bills include lack of proactive enforcement mechanisms, incongruence between adherence to the procurement cycle and timely disbursements of funds, and unrealistic county revenue targets.

The lack of proactive enforcement mechanisms makes county governments indifferent to settling pending bills as first charge in subsequent budgets as is in the regulation. Section 36 of the PFMA requires public bodies to maintain accurate records of all debts and to prepare regular reports on the status of pending bills, including the reasons for their delay. However, absence of real-time tracking of outflows from counties' accounts has created a loophole for non-compliance. The Controller of Budget has accused county governments of manipulating approved requisitions by making fictitious or discriminatory payments.

Section 53 (8) of the PPDA also directs accounting officers not to commence any procurement proceedings until they are satisfied that sufficient funds to meet the obligations of the resulting contract are in its approved budget estimates. However, during political seasons, most outgoing county officials launch unbudgeted projects in a rush to hunt for votes or settle political debts, thereby increasing pending bills. As such, incoming governors, who inherit these bills, are unwilling to clear them since they are wary of the previous regimes'


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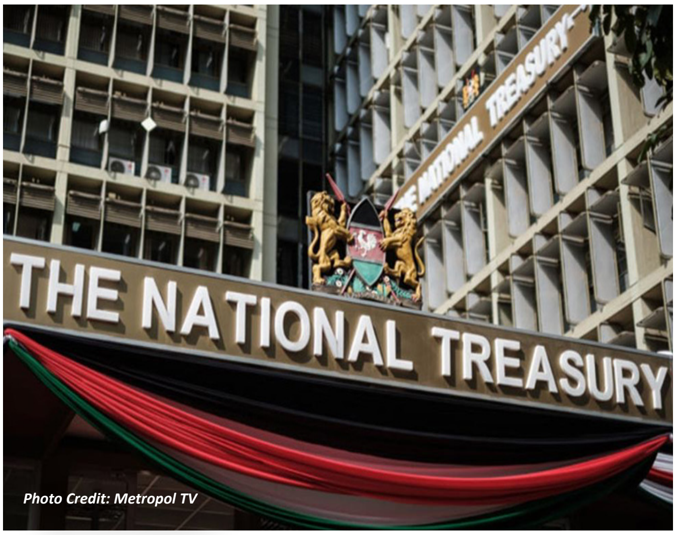
tendering processes and lack of relevant documentation. Additionally, they do not want to risk inadequate funds to execute their own projects. This makes it difficult to track the progress of pending bills and hold public entities accountable for their payment.

Secondly, there is a persistent incongruence between adherence to the procurement cycle and timely disbursements of funds from national government. This is due to lack of a clear policy on the deadline for disbursement of funds to counties that is in tandem with the procurement cycles so as to impede overflow of unpaid bills to



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the subsequent financial year. While government payment to contractors is pegged on various legal and regulatory frameworks, including the PFMA and PPDA, the tendency of the National Treasury to release money in the last month of the FY contributes to further pending bills. This is because the procurement process, from bidding a tender to paying awarded contracts, usually exceeds the 30 days cycle.

Another concern is the unrealistic own source revenue (OSR) targets set by county governments. In FY 2021/22, 59.4% of the yearly county revenue target was realized, compared to 64.2% in 2020/21. This drop is primarily attributed to unsustainable fiscal collection strategies, which often lead to uncertainty with regard to OSR collection and projections. Only four counties of Turkana, Migori, Lamu, and Vihiga achieved their annual targets, implying unrealistic revenue forecasts by most counties. This is driven by the pressure to meet the required accounting ratios to qualify for better allocation of equitable shares from the national government. Consequently, this has led to a fragile fiscal environment, which impedes counties from adequately financing their projected budgetary responsibilities. Prolonged failure by counties to meet their OSR targets has led to postponements in processing and paying bills, worsening the pending bills crisis.

In conclusion, the extent to which county governments manage pending bills severely affects their ability to timely deliver on the pledges and priorities in specific county budgets. Policymakers should address the existing and potential gaps for socioeconomic prosperity in counties. Therefore, the senate should approve the Controller of Budget Regulations, 2021, to allow for real-time monitoring of outflows from the counties' accounts. The National Assembly should also develop a comprehensive legislative framework to provide clear timelines for the disbursement of funds to counties in line with procurement cycle to ensure all bills are paid within the financial year. Further, the Council of Governors should collaborate with development partners and research organizations to enhance sensitization and the use of innovative tools for effective revenue collection strategies and more accurate revenue forecasting in counties.

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