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RT. HON. SEN
AMASON J. KINGI

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | THIRD SESSION

THE SENATE

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON THE COUNTY ASSEMBLIES PENSIONS SCHEME BILL, 2024 (SENATE BILLS NO.14 OF 2024)

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CLERK AT THE TABLE Charop

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

SEPTEMBER, 2024

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LIST OF ABBREVIATIONS/ACRONYMS

CAF	-	County Assemblies Forum
CPF FS LTD	-	County Pension Fund Financial Services Limited
KRA	-	Kenya Revenue Authority
LAPFUND	-	Local Authorities Provident Fund
LAPTRUST	-	Local Authorities Pension Trust
LGPS	-	Local Government Pension Scheme
MCA	-	Member of County Assembly
RBA	-	Retirement Benefits Authority
SOCCAT (K)	-	Societies of Clerks at the Table in Kenya
SRC	-	Salaries and Remuneration Commission

PRELIMINARIES

Establishment and Mandate of the Committee

The Senate Standing Committee on Labour & Social Welfare is established pursuant to standing order 228 of the Senate Standing Orders. The Committee is mandated to consider all matters related to - Manpower and human resources planning, pension, gender, culture, and social welfare; youth, National Youth Service, children's welfare; national heritage, betting, lotteries, sports, public entertainment, public amenities, and recreation.

The Committee oversights four ministries as follows –

a) The Ministry of Labour and Social Protection;
   i. State Department for Labour and Skills Development; and
   ii. State Department for Social Protection and Senior Citizens Affairs.

b) The Ministry of Public Service, Performance and Delivery Management;
   i. State Department for Public Service; and
   ii. State Performance and Delivery Management.

c) The Ministry of Youth Affairs, Creative Economy and Sports;
   i. State Department for Youth Affairs and Creative Economy; and
   ii. State Department for Sports

d) The Ministry of Gender, Culture, the Arts and Heritage;
   i. State Department for Gender and Affirmative Action; and
   ii. State Department for Culture, the Arts and Heritage.

The Committee also oversights the Pensions Department in the National Treasury & Economic Planning which includes the following institutions –

i. The Retirement Benefits Authority;
ii. The Local Authorities Provident Fund;
iii. Public Service Superannuation Scheme; and
iv. The Civil Servants Accident Claim Fund.

The Committee also oversights the following Commissions and State Corporations –

i. The Public Service Commission;
ii. The Salaries and Remuneration Commission;

iii. National Gender & Equality Commission;
iv. The Commissioner of Sports & Sports Registrar; and
v. Permanent Presidential Music Commission.

Membership of the Committee

The Committee membership is as follows –

(1)	Sen. Julius Murgor Recha, MP	- Chairperson
(2)	Sen. George Mungai Mbugua, MP	- Vice Chairperson
(3)	Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP	- Member
(4)	Sen. Mohamed Faki Mwinyihaji, MP	- Member
(5)	Sen. Erick Okong'o Mogeni, SC, MP	- Member
(6)	Sen. Alexander Munyi Mundigi, MP	- Member
(7)	Sen. Crystal Kegehi Asige, MP	- Member
(8)	Sen. Miraj Abdullahi Abdulrahman, MP	- Member
(9)	Sen. Gloria Orwoba, MP	– Member

CHAIRPERSON'S FOREWORD

The County Assemblies Pensions Scheme Bill, 2021 (Senate Bills No.14 of 2024) is an ordinary Bill that was published in the Kenya Gazette Supplement No. 56 on 7th of March, 2024. The Bill was read a first time on 8th May, 2024 and thereafter stood committed to the Standing Committee on Labour and Social Welfare for consideration.

The Bill proposes to provide a legal framework for a contributory pension scheme for members and staff of county assemblies; establish a county assemblies' pensions Fund for the payment or granting of pensions or retirement benefits to members of county assemblies and members of staff of county assemblies; and establishment of the scheme's Board of Trustees and the scheme's management and administration.

Hon. Speaker,

Pursuant to Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee published an advertisement in the Daily Nation and Standard Newspapers inviting members of the public to submit written memoranda to the Committee on the Bill. The advertisement was also posted on the Parliament website and social media platforms. Following the call for submissions, the Committee received written memoranda from several stakeholders.

The Committee proceeded to consider the Bill extensively, scheduled and held meetings with various targeted stakeholders including the Kenya Revenue Authority (KRA), The Ministry of National Treasury and Economic Planning, Local Authorities Provident Fund (LAPFUND), the County Assemblies Forum, CPF Financial Services, Salaries and Remuneration Commission and The Retirement Benefits Authority.

The Committee received and considered amendments to the Bill from the above-mentioned stakeholders and held a total of six (6) meetings to consider the Bill. The Minutes of the Committee in considering the Bill are attached to this Report.

The Committee recommends that the Senate passes the County Assemblies Pensions Scheme Bill, 2024 (Senate Bills No.14 of 2024) with Committee Stage Amendments as attached in this Report.

Hon. Speaker,

I wish to take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Bill

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

Hon. Speaker,

It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to present the Report of the Standing Committee on Labour and Social Welfare on the County Assemblies Pensions Scheme Bill, 2024 (Senate Bills No.14 of 2024).

Signed ..... Date..Monday, 16th September, 2024

SEN. JULIUS MURGOR RECHA, MP,

for:

CHAIRPERSON, STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

CHAPTER ONE: INTRODUCTION

1.0 Overview of the County Assemblies Pensions Scheme Bill, 2024 (Senate Bills No. 14 of 2024)

1. The County Assemblies Pensions Scheme Bill, 2024 (Senate Bills No.14 of 2024) is an Act of Parliament to provide a legal framework for a contributory pension scheme for members and staff of county assemblies; establish a county assemblies' pensions fund for the payment or granting of pensions or retirement benefits to members of county assemblies and members of staff of county assemblies; the establishment of the scheme's Board of Trustees and the scheme's management and administration.

2. The County Assemblies Pensions Scheme Bill, 2024 (Senate Bill No.14 of 2024) was published in the Kenya Gazette Supplement No.56 of 7th March, 2024. The Bill went through the first reading on 8th May, 2024 and was subsequently committed to the Standing Committee on Labour and Social Welfare. A copy of the Bill is attached as ***Appendix 3*** to this Report.

3. The Bill provides for the following key areas[1] –

    i. *Part II (clauses 4-20)* provides for the establishment of the scheme. It establishes the County Assemblies Pensions Scheme and its Board of Trustees. It provides the procedure for appointment of the Trustees and the necessary qualifications. It also provides the Trustees' functions and powers and sets their tenure to three years, renewable once based on performance;

    ii. *Part III (clauses 21-36)* contains provisions on the administration of the scheme and provides for the appointment of the fund Manager and the Custodian. It also sets out their functions. The functions of the Administrator are also set out. Further, the part provides for the vesting of benefits, and withdrawal from the retirement savings account and retirement from the service among others. Finally, it sets out the prohibited payments from the scheme;

    iii. *Part IV (clauses 37-44)* provides for the establishment and management of the County Assemblies Pensions Scheme Fund;

[1] The County Assemblies Pensions Scheme Bill, 2024.

iv. *Part V (clauses 45-53)* sets out the general provisions including the duty of care of the Board, protection of the Trustees and employees of the scheme from personal liability, offences, and proceedings for recovery of deductions from employers and a general penalty clause. It also contains a provision on the making of regulations and gives this power to the Board, in consultation with the Cabinet Secretary; and

v. *Part VI (Clauses 54-57)* provides for the saving and transitional provisions. Under the Bill, members and staff of county assemblies who are members of the Local Authorities Provident Fund and the LAPTRUST (Umbrella) Retirement Fund shall be transitioned into the Scheme within six months upon the commencement of this Act.

4. The Bill will transition all members and staff of county assemblies into one universal scheme for all the forty-seven county assemblies.

1.1 Legislative Framework: Situation and a comparative analysis of pensions schemes at the County Governments

1.1.1 Situational Analysis

5. Article 43(3) (e) of the Constitution confers on every person, the right to social security. The devolution of government functions and the creation of county governments under the 2010 Constitution of Kenya necessitated the development of pension schemes tailored to the needs of county employees.

6. Under Article 186 (2) of the Constitution, a function or power that is conferred on more than one level of government is a function or power within the concurrent jurisdiction of each of those levels of government. Therefore, the devolved governance structure gives county governments a degree of autonomy. Separate pension Acts respect this autonomy, allowing counties to manage their pension schemes independently while adhering to a regulated framework.

7. Currently, Members of County Assemblies (MCAs) and staff of county governments have access to several pension schemes designed to secure their retirement. The main schemes available currently are; Local Authorities Pension Trust (LAPTRUST) and Local Authorities Provident Fund (LAPFUND), both established under the Local Authorities Provident Fund Act, Cap 272 of the Laws of Kenya. There is the County Pension Fund (CPF) established under the County Governments Act, 2012, specifically

under Section 132 and Public Service Superannuation Scheme (PSSS) established under the Public Service Superannuation Act, 2012.

8. There has been attempts to come up with specific county pension laws. Presently, the county governments have no uniform retirement scheme for employees and MCAs. Bills were introduced to ensure a smooth transition and provide comprehensive retirement benefits for county government employees.

9. For instance, The County Pension Scheme Bill, 2016, Kenya Gazette Supplement No. 190 (Senate Bills No.20), sought to address the retirement needs of county government employees by providing a unified framework for their pension benefits.

10. By creating a unified pension scheme, the Bill aimed to provide a fair, sustainable, and efficient retirement benefits system that would enhance the financial security of county government employees. The establishment of a single pension scheme was intended to streamline administration, ensure equity, and promote the long-term sustainability of pension benefits for all county employees.

11. The County Pension Scheme Amendment Bill, 2021, was later then introduced to make amendments to the existing County Pension Scheme to address various challenges and improve the administration and benefits of the scheme for county government employees. The amendments in the Bill sought to address existing issues and ensure that the pension scheme could adequately meet the needs of its members, providing financial security and stability in retirement.

12. The amendments include –
    i. Revision of the benefit structure to improve retirement benefits, including pensions, lump-sum payments, and other entitlements;
    ii. Clearer provisions for death and disability benefits to support employees and their families in adverse circumstances;
    iii. Provisions to ensure timely remittance of contributions by county governments to avoid delays and ensure the scheme's liquidity;
    iv. Modifications to the contribution rates from both employees and employers to ensure the financial health of the scheme;
    v. Reconstitution of the Board of Trustees to ensure a balanced representation from county governments, employees, and relevant stakeholders; and
    vi. Clear criteria for the qualifications, appointments, and tenure of the trustees to ensure competent and accountable management.

13. There was also The County Governments Retirement Scheme Bill, 2018 (National Assembly Bill No.10 of 2018) which was passed by the National Assembly with amendments on 17th October, 2018.

14. According to the objectives and memoranda, the Bill sought to establish the County Government's Retirement Scheme as a mandatory scheme for all county government employees; provide for the establishment of the scheme's Board of Trustees and provide for the scheme's management and administration.

15. However, the Employment and Labour Relations Court declared the County Governments Retirement Scheme Act, 2019 unconstitutional due to lack of public participation and conflicts with various Articles of the Constitution and existing statutes.

CHAPTER TWO: OVERVIEW OF PUBLIC PARTICIPATION ON THE BILL

2.0 Committee Undertakings

16. The Committee held a total of six (6) meetings on the Bill, where it met with various stakeholders and considered the submissions. The Minutes of the Bill are annexed to this Report as ***Appendix 1***.

17. The Committee published an advertisement in the Nation and Standard newspapers of 16th May 2024, inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is annexed to this Report as ***Appendix 4.***

18. Subsequently, during consideration of the Bill, the Committee resolved to invite additional submissions from the key stakeholders, including –

    a) County Assemblies Forum (CAF);
    b) Retirement Benefits Authority (RBA);
    c) Salaries and Remunerations Commission (SRC);
    d) Kenya Revenue Authority (KRA);
    e) The Local Authority Provident Fund (LAPFUND);
    f) CPF Financial Services Limited; and
    g) The National Treasury and Economic Planning.

19. In response to the said invitations, the Committee received submissions from the stakeholders. Copies of the written submissions are attached to this Report as ***Appendix 5***.

20. The Committee considered the submissions and came up with the Committee Stage Amendments which are attached to this Report as ***Appendix 2.***

21. Additionally, a matrix analysing the stakeholder submissions clause-by-clause is annexed as ***Appendix 6***. The Committee proceeded to consider the Bill extensively, together with the stakeholder submissions received thereon.

2.1 Overview of Stakeholder Submissions on the Bill

22. **The National Treasury and Economic Planning** through the Cabinet Secretary made the following submissions –

a) That there exists the County Government Retirement Scheme Act, 2019 which aimed to provide pension benefits for all employees of the counties. The implementation was however halted by the courts in a judgement delivered on 20th December 2022 by the Employment and Labour Relations Court which declared the Act unconstitutional due to lack of public participation;
b) The Cabinet Secretary noted that the current Bill only covers the County Assemblies and there was need to have a unified pension scheme that covers all the county employees. He further noted that the consolidated pension scheme will lead to reduced administrative costs and financial security for retirees.
c) There is need to align county pension arrangements with the national retirement benefits policy and this will be best achieved under a unified pension scheme for all the county employees; and
d) The Treasury recommended that the Bill be re-oriented to cover all county government employees under a unified pension arrangement.

23. **The Salaries and Remuneration Commission (SRC)** in its submissions –

a) Supported the Bill and stated that the Bill is in line with the SRC guidelines; and
b) It however proposed the deletion of Clause 24(4) of the Bill which provides that the employer shall take out and maintain a life insurance policy that has disability benefits in favour of every member of the Scheme. The Commission holds the view that such a benefit shall be a stand-alone benefit and not form part of the Retirement Benefits Bill.

24. **The Local Authority Provident Fund (LAPFUND)** in its submission-

a) Noted that the proposed Bill duplicates the provisions in the County Governments Retirement Scheme Act, 2019 as the Act was meant to provide a single consolidated scheme and aimed to facilitate the transition from existing county pension schemes namely, the Local Authority Provident Fund (LAPFUND) and the Local Authorities Pension Fund Trust (County Pension Fund). The commencement has been delayed by court decisions, but the matter was currently before the court of appeal; and

b) Raised queries on the necessity of the Bill noting that the Bill undermines the effort to create a unified pension scheme and creates a further fragmentation within the retirement benefits industry.

c) The Authority urged the Committee to reconsider the necessity of the Bill and instead focus on strengthening and harmonizing the existing retirement benefits frameworks.

25. **CPF Financial Services Limited** in its submissions –

a) Stated that members of county assemblies currently subscribe to County State Officers (Umbrella) Pension Fund exclusive established for members of County Assemblies, CPF Individual Pension Fund which is voluntary and LAPFUND;

b) Recommended that the Long Title of the Act should be amended so as to exclusively cover only members of the County Assemblies for reasons that other staff in the County Assemblies are already covered in the existing retirement benefits arrangements;

c) Further stated that having the Cabinet Secretary responsible for Treasury as the appointing authority under the Bill is illegal and unconstitutional on grounds of the distinct nature of the two the levels of government. They proposed that a Board of Trustees be established as a body corporate so that it can maintain its independence;

d) On the administration of the Scheme as proposed by the Bill, CPF proposed that Sections 18, 19 and 23(2) be amended to allow the trustees to appoint an Administrator as provided for under the Retirement Benefits Act;

e) Stated that contribution rates provided for under clause 24 of the Bill were inconsistent with the Retirement Benefits Act and proposed that the contribution rate be 31% for the employer and 12% by the employee and that this contribution viewed against other state officers will bring equity and eliminate any perceived discrimination; and

f) On Clause 53(2) of the Bill which provides for transition, CPF proposed that this clause be deleted as members of the County Assemblies are not members of County Pension Fund (LAPTRUST).

26. **Kenya Revenue Authority (KRA)** in its submissions –

a) Proposed amendments to clause 2 on the definition of the term "income drawdown" to be as defined under the Retirement Benefits (Income Drawdown Funds) Regulations 2023, Legal Notice No. 187;

b) Proposed that in Clause 6 the term "SOCCAT (K)" should be written in full which is "Society of Clerks at the Table in the Kenyan County Legislatures; and

c) Further proposed to amend the typographical error made in Clause 24 which states describes 7.5% in words as Seven Nought Five Percent instead of Seven Point Five Percent.

27. **The County Assemblies Forum (CAF)** in its submissions –

a) Supported the Bill by stating that the Bill is a significant legislative measure aimed at enhancing the welfare of county assembly members, promoting financial security in retirement, and ensuring the sustainability and efficiency of the pension scheme through structured governance and management;

b) Proposed certain amendments to the Bill and among the main proposed amendments is the inclusion of the CAF into the Bill as an integral institution. CAF noted that the Bill seeks to transfer the functions/roles given to the Cabinet Secretary of National Treasury under the Bill to the Chairperson CAF for reasons that it is unconstitutional for the national government to play a pervasive role in the running of pension schemes for county government employees and officers; and

c) Proposed that the pension scheme should provide a medical insurance cover similar to that provided to other retired state officers in National Government and that a retired Member of a County Assembly and spouse shall during his or her lifetime be entitled to full medical cover.

28. **Retirement Benefit Authority (RBA)** in its submissions –

a) Proposed amendments to several clauses in the Bill including Clause 2 on interpretation of terms where RBA proposed that the word "Dependant" be changed to "Beneficiary" so as to give members/trustees provisions to nominate other beneficiaries without restriction;

b) It also proposed amendment to the terms "existing scheme" to state County Pension Fund rather than the old name of Local Authorities Pension Trust (Umbrella) Retirement Fund and "income drawdown" to be amended to reflect the definition given in the Retirement Benefits (Income Drawdown Funds) Regulations 2023;

c) It further proposed to change the definition of the term "normal retirement age" so as to state the age of 60 years and it also proposes to change the definition of the term "spouse" to mean a male or female person to whom a member was married to under any law at the time of their death;

d) Recommends that clause 4(2) of the Bill that states that the Scheme is a body corporate be amended to make the Board of Trustees the body corporate on the ground that schemes are not the judicial person that registered;

e) Further recommended amendment to Clause 4(3) which states that the Scheme shall provide social security benefits by deleting that clause on the ground that the scheme cannot provide social security benefits but only accrued retirement savings. RBA additionally recommended a new clause to substitute Clause 4(3) that provides for the objects of the scheme;

f) Proposed to amend Clause 9(2) (3) of the Bill on the re-appointment of trustees and proposed that the clauses should be amended to state that the Cabinet Secretary shall ensure that one-third of the Trustees are appointed in a staggered manner;

g) The Authority also proposed the deletion of clause11(e) which provides that a person ceases to be a Trustee if the person ceases to be a member of the County Assembly, 13(g) which states that the board shall negotiate competitive annuity rates on behalf of members and the word "administrator" in clause 14(3)(b);

h) On the administration of the scheme, it proposed that clause 23(2) that provides that the administrator shall be an employee of the board be amended to allow the board options to appoint an internal or external administrator; and

i) Proposed further amendments to the Bill to provide for proper implementation by making recommendations such as the introduction of an exemption from compliance with provisions of the Bill and a dispute resolution clause.

29. In Conclusion, whilst majority of the stakeholders supported the Bill, some stakeholders questioned the necessity of the Bill mainly on the grounds that there exists a retirement benefits arrangement and that there is need to have a unified pension scheme for all county employees rather than focusing on County Assemblies only.

30. It is noted that there exists the County Government Retirement Scheme Act, 2019 which aims to provide pension benefits for all employees of the counties although the

Act was declared unconstitutional by the High court, and the matter is still pending before the court of Appeal. It is further noted that should the Court of Appeal nullify the decision of the High Court, there will then be a challenge of the existence of two laws on county employees' pension; and

31. Further, although the Preamble of the Bill states that it is meant to provide for a contributory pension scheme for members and staff of County Assemblies, most of the stakeholder's submissions can be interpreted to mean that the Bill only covers MCAs and not staff of the County Assemblies. There is therefore need for clarification on whether the Bill covers staff of County Assemblies.

CHAPTER THREE: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.0 Committee Observations on the Bill

32. Having considered the County Assemblies Pensions Scheme Bill, 2024 (Senate Bills No.14 of 2024) and the submissions received thereon, the Committee made the following observations –

a) that their exists the County Government Retirement Scheme Act, 2019 which provides pension benefits for all employees of the counties. Although the Act has been declared unconstitutional by the High court, the matter is still pending before the Court of Appeal and there is concern as to what would happen should the Court of Appeal nullify the decision of the High Court and rules that the Act is constitutional;

b) that although the Preamble of the Bill states that it is meant to provide for a contributory pension scheme for members and staff of County Assemblies, most of the stakeholders noted the need for a unified pension arrangement for all county government workers including MCAs and the need for efficient, fair and transparent administration of pensions in the counties;

c) that the County Assemblies Forum submitted the need to replace "Cabinet Secretary" in the Bill with "Chairperson of County Assemblies Forum". However, CAF is not legally recognized;

d) that consolidation of pension schemes might lead to reduced administrative costs and greater financial security for retirees; and

e) That the county governments have no uniform retirement scheme for employees and MCAs, and there exists several schemes such as LAPFUND, LapTrust, and CPF.

3.1 Committee Recommendations

33. Arising from the above observations, the Committee recommends that the Senate passes the County Assemblies Pensions Scheme Bill, 2024 (Senate Bills No.14 of 2024) with the following amendments –

i. Amend Clause 4 of the Bill by deleting subclause (2) and the words "social security benefits including" appearing at the end of the introductory clause of subclause (3);

ii. Amend Clause 5 of the Bill by deleting the words "and members of staff of county assemblies" appearing at the end of subclause (1); and deleting the

word "and staff" appearing immediately after the word "assemblies" in subclause (2).

iii. Amend Clause 6 of the Bill by inserting the following new subclause immediately after subclause (1) to read –

(1A) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) entering into contracts; and

(d) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

iv. Amend Clause 6, subclause (2) by deleting the word "two" appearing at the beginning of paragraph (c) and substituting therefor the word "three"; and deleting the word "two" appearing at the beginning of subparagraph (d) (i) and substituting therefor the word "three"; and deleting paragraph (e).

v. Amend Clause 9 of the Bill by deleting subclause (2); and in subclause (3) by deleting the words "The Board" appearing at the beginning of the subclause and substituting therefor the words "The Cabinet Secretary".

vi. Amend Clause 11 of the Bill by inserting the following new paragraph immediately after paragraph (g)— (ga) term expires;

vii. Amend Clause 13 of the Bill by deleting paragraph (g)

viii. Amend Clause 23 of the Bill be amended by deleting subclause (2).

ix. Amend Clause 24 of the Bill by deleting subclause (4) and also by deleting subclause (6) and substituting it with -

(6) Any contribution not paid to the scheme by a sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest which shall not be less than the interest declared during the period the contribution remains unremitted.

x. Amend Clause 26 of the Bill by deleting the words "or a staff of a county assembly" appearing at the of subclause (1)

xi. Amend Clause 26 subclause (3)

(i) by deleting paragraph (a),

(ii) by deleting paragraph (b) and substituting the following new paragraph—

(b) where a member ceases being a member of a county assembly before attaining early retirement age, that member may opt for payment of—

(iii) in paragraph (b) by deleting sub paragraph (i) and substituting therefor the following new sub paragraph—

not more than fifty percent of his total accrued benefits and the investments income that has accrued in respect of those contributions provided that a member may withdraw any additional voluntary contributions made into the scheme and accrued interest in full;

(iv) in paragraph (c) by deleting the words "before attaining the early retirement age" appearing at the end of the paragraph.

xii. Amend Clause 29 by deleting the words "Despite the provisions of any other written law" appearing at the introductory part of subclause (2) and substituting therefor the words "Subject to the Retirement Benefits Act".

xiii. Amend Clause 49 of the Bill by deleting subclause (4) and substituting therefor the following new subclause—

(4) Without prejudice to any proceedings instituted under the provisions of this section, a sponsor who makes a deduction from a member's emoluments for remittance to the Scheme and fails to remit the contribution to the Scheme within fifteen days commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or in the case of a natural person to imprisonment for a term not exceeding two years or to both.

xiv. Delete Clause 52

xv. Delete Clause 53 and substitute with a new clause on the transition members of county assemblies to the scheme

53. (1) The members of county assemblies who are members of the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund shall be transitioned into the Scheme within one year upon the commencement of this Act.

(2) The funds, assets and other property, movable and immovable which immediately before the commencement date were held by or on behalf of the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund for the members of county assemblies shall vest in the Scheme.

(3) All the records of members of county assemblies held by the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund shall be transferred to the Scheme administrator.

(4) All rights, liabilities and duties whether arising under any written law or otherwise, which immediately before the commencement date were accruing, imposed or enforceable by or against the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund with regard to members of county assemblies shall vest in, be imposed on, or be enforceable against the Scheme.

xvi. Insert the following new clauses -

immediately after clause 46— on Exemption from compliance with provisions of this Act

46A. The Cabinet Secretary may, by order in the *Gazette*—

(a) exempt any person or class of persons from compliance with any specified provisions of this Act; or

(b) extend the time for compliance by any person or class of persons with any specified provisions of this Act

provided that nothing in this section shall apply in respect of payment of retirement benefits.

46B on Provisions of the Retirement Benefits Act, 46B. The provisions of the Retirement Benefits Act (Cap. 197) and regulations thereunder shall apply to the Fund.

xvii. Amend clause 2 of the Bill by -

(a) inserting the definition of the term "beneficiary" immediately after the definition of the term "Authority"—

"beneficiary" means a dependant, a person nominated by the member in writing or any other person other than a member entitled to receive a benefit;

(b) deleting the definition of the term—

(i) "existing schemes" and inserting therefor the following new definition—

"existing scheme" means the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund;

(ii) "income drawdown" and inserting therefor the following new definition—

"income drawdown" means an arrangement that allows a member of a retirement benefits scheme to access his or her accumulated retirement benefits as a regular income through reinvesting his or her benefits from an income drawdown fund registered by the Retirement Benefits Authority;

(iii) "member" and inserting therefor the following new definition—
"member" means an eligible member of a county assembly who has become a member of the Scheme and includes a person entitled to or receiving a benefit under the Scheme;

(iv) "normal retirement age" and inserting therefor the following new definition—
"normal retirement age" means the age of sixty years or such other age set out in written law or applicable policy;

(v) "spouse" and inserting therefor the following new definition—
"spouse" means a husband or a wife;

xviii. Amend the long title

THAT the Bill be amended by deleting the long title and substituting therefor the following new long title—

AN ACT of Parliament to: provide for a contributory pension scheme for members of county assemblies; establish a county assemblies pensions fund for the payment or granting of pensions or retirement benefits to members of county assemblies; and other related matters.

34. These recommendations form the Committee Stage Amendments of County Assemblies Pensions Scheme Bill (Senate Bills No.14 of 2024) which are attached as Appendix 2 to this report.

LIST OF APPENDICES

Appendix 1: Minutes of the Committee sittings;

Appendix 2: Committee Stage Amendments to the County Assemblies Pensions Scheme Bill, 2024 (Senate Bills No.14 0f 2024);

Appendix 3: County Assemblies Pensions Scheme Bill, 2024 (Senate Bills No.14 0f 2024);

Appendix 4: Advertisement as published in the Daily Nation and Standard Newspapers;

Appendix 5: Public Participation Submissions –

1. County Pensions Fund Financial Services Limited (CPF FS Ltd);
2. County Assemblies Forum (CAF);
3. Kenya Revenue Authority (KRA);
4. The National Gender and Equality Commission;
5. LAPFUND;
6. Retirement Benefits Authority (RBA); and
7. The National Treasury and Economic Planning.

Appendix 6: Public Participation Matrix

APPENDIX 1

PARLIAMENT
OF KENYA
LIBRARY

MINUTES OF THE FIFTY FIFTH (55TH) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD VIRTUALLY ON MONDAY, 16TH SEPTEMBER, 2024 AT 2.00 P.M.

MEMBERS PRESENT

1. Sen. Julius Murgor Recha, CBS, MP - **Chairperson**
2. Sen. George Mungai Mbugua, MP - **Vice-Chairperson**
3. Sen. Miraj Abdulahi Abdulrahman, MP - Member
4. Sen. Alexander Munyi Mundigi, MP - Member
5. Sen. Crystal Asige, MP - Member

APOLOGIES

1. Sen. Mohamed Mwinyihaji Faki, CBS, MP - Member
2. Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP - Member
3. Sen. Erick Okong'o Mogeni, SC, MP - Member
4. Sen. Gloria Orwoba, MP - Member

SECRETARIAT

1. Ms. Mwanate Shaban - Senior Clerk Assistant
2. Mr. Reinhardt Choge - Clerk Assistant III
3. Mr. Jeremy Chabari - Legal Counsel
4. Ms. Nigma Adow - Research Officer III
5. Ms. Joy Kyalo - Fiscal Analyst
6. Mr. Francis Mutulu - Media Relations Officer
7. Mr. Joseph Otieno - Audio Officer
8. Ms. Daphne Wambugu - Intern

MIN/SEN/SCLSW/335/2024: PRAYERS

The Chairperson called the meeting to order at 2.12 pm followed by a word of prayer.

MIN/SEN/SCLSW/336/2024: ADOPTION OF AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Crystal Asige, MP and seconded by Sen. Alexander Mundigi, MP as follows –

1. Prayers;
2. Adoption of the Agenda;
3. **Confirmation of Minutes 51st, 52nd & 53rd;**
4. **Matters Arising;**
5. **Consideration and Adoption of the Report on the County Assemblies Pension Bill, 2024 (Committee Paper 74 – Appendix A);**
6. Any Other Business; and
7. Adjournment/Date of the Next Meeting.

MIN/SEN/SCLSW/337/2024 CONFIRMATION OF MINUTES 51ST, 52ND & 53RD;

1. The Minutes of the 51st sitting held on Tuesday 3rd September, 2024 were confirmed to be a true reflection of the proceedings having been proposed by Sen. Miraj Abdulrahman, MP and seconded by Sen. Alexander Mundigi, MP.
2. The Minutes of the 52nd sitting held on Thursday 5th September, 2024 at 11.00 am, were confirmed to be a true reflection of the proceedings having been proposed by Sen. Miraj Abdulrahman, MP and seconded by Sen. Alexander Mundigi, MP.
3. The Minutes of the 53rd sitting held on Thursday 5th September, 2024 at 2.00 pm were confirmed to be a true reflection of the proceedings having been proposed by Sen. Alexander Mundigi, MP and seconded by Sen. Crystal Asige, MP.

MIN/SEN/SCLSW/338/2024 MATTERS ARISING;

The following matter arose from the minutes -

UNDER MIN/SEN/SCLSW/328/2024 ANY OTHER BUSINESS

The Committee was briefed on the progress of the Report Writing Retreat on the Bills before the Committee, where they informed that Committees had not received their budgetary allocations and could therefore not process the retreat.

MIN/SEN/SCLSW/339/2024 **CONSIDERATION AND ADOPTION OF THE REPORT ON THE COUNTY ASSEMBLIES PENSION BILL, 2024 (COMMITTEE PAPER 74 – APPENDIX A);**

The Committee considered the report of the County Assemblies Pension Bill, 2024 and adopted it after being proposed by Sen. George Mbugua, MP and seconded by Sen. Alexander Mundigi, MP.

MIN/SEN/SCLSW/340/2024 **ANY OTHER BUSINESS**

There was no other business.

MIN/SEN/SCLSW/341/2024 **ADJOURNMENT AND DATE OF THE NEXT MEETING**

The meeting was adjourned at 2.33 p.m.

SIGNED.....DATE.....

CHAIRPERSON: SEN. JULIUS MURGOR RECHA, MP
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

MINUTES OF THE FORTY-EIGHTH (48TH) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COUNTY HALL MINI CHAMBER, COUNTY HALL ON MONDAY, 26TH AUGUST, 2024 AT 10.00 A.M.

MEMBERS PRESENT

1.	Sen. Julius Murgor Recha, CBS, MP	- **Chairperson**
2.	Sen. George Mungai Mbugua, MP	- **Vice-Chairperson (Virtual)**
3.	Sen. Mohamed Mwinyihaji Faki, CBS, MP	- Member (Virtual)
4.	Sen. Alexander Munyi Mundigi, MP	- Member(Virtual)
5.	Sen. Miraj Abdulahi Abdulrahman, MP	- Member (Virtual)
6.	Sen. Gloria Orwoba, MP	- Member (Virtual)

APOLOGIES

1.	Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP	- Member
2.	Sen. Erick Okong'o Mogeni, SC, MP	- Member
3.	Sen. Crystal Asige, MP	- Member

SECRETARIAT

1.	Ms. Mwanate Shaban	- Senior Clerk Assistant
2.	Mr. Reinhardt Choge	- Clerk Assistant III
3.	Mr. Jeremy Chabari	- Legal Counsel
4.	Ms. Nigma Adow	- Research Officer III
5.	Ms. Ndindi Kibathi	- Research Officer III
6.	Mr. Francis Mutulu	- Media Relations Officer
7.	Ms. Joy Kyallo	- Parliamentary Budget Officer
8.	Ms. Swaluha Yusuf	- Public Relations Officer
9.	Mr. John Pere	- Sergeant at Arms
10.	Mr. Joseph Otieno	- Audio Officer

MIN/SEN/SCLSW/294/2024: PRAYERS

The Chairperson called the meeting to order at 10.26 am followed by a word of prayer. He noted the absence of members of the Public and targeted stakeholders on the Public Fundraising Appeals Bill, 2024, and directed that the Committee confirms pending minutes and considers the amendments on the County Assemblies Pensions Scheme Bill, 2024.

MIN/SEN/SCLSW/295/2024: ADOPTION OF AGENDA

The Agenda of the meeting was adopted with amendments which included the items (4, 5 & 6) as directed by the Chairperson after been proposed by Sen. Crystal Asige, MP and seconded by Sen. George Mbugua, MP as follows-

1. Prayers;
2. Adoption of the Agenda;
3. **Public Hearing on the Public Fundraising Appeals Bill, 2024 (Senate Bills No. 36 of 2024);**
4. **Confirmation of Minutes of the 32nd, 41st, 43rd and 44th Sittings of the Committee;**
5. **Matters arising;**
6. **Consideration and adoption of the amendments on the County Assemblies Pension Bill, 2024 (Senate Bills No. 14 of 2024);**
7. Any Other Business; and
8. Adjournment.

MIN/SEN/SCLSW/296/2024 PUBLIC HEARING ON THE PUBLIC FUNDRAISING APPEALS BILL, 2024 (SENATE BILLS NO. 36 OF 2024)

1. There being no Members of the Public, the Committee was briefed as follows –
   a) That the secretariat had received a few written submissions from the Members of the Public;
   b) That the Ministry of Public Service had called and stated that they will send a written submission; and
   c) That the Public Service Commission had sent a letter requesting for a reschedule to enable them present before the Committee.
2. The Committee resolved to hold a Sitting with the Public Service Commission at a later date.

MIN/SEN/SCLSW/297/2024 CONFIRMATION OF MINUTES OF THE 32ND, 41ST, 43RD AND 44TH SITTINGS OF THE COMMITTEE

1. The Minutes of the Thirty–Second sitting held on Friday, 21st June, 2024 were confirmed as a true reflection of the proceedings having been proposed by Sen. Alexander Mundigi, MP and seconded by Sen. Mohamed Mwinyihaji Faki, CBS, MP.
2. The Minutes of the Forty–First sitting held on Wednesday, 24th July, 2024 were not confirmed.
3. The Minutes of the Forty–Third sitting held on Thursday, 1st August, 2024 were confirmed as a true reflection of the proceedings having been proposed by Sen. Mohamed Mwinyihaji Faki, CBS, MP and seconded by Sen. Alexander Mundigi, MP.

4. The Minutes of the Forty–Fourth sitting held on Tuesday, 6th August, 2024 were confirmed as a true reflection of the proceedings having been proposed by Sen. Mohamed Mwinyihaji Faki, CBS, MP and seconded by Sen. Alexander Mundigi, MP.

MIN/SEN/SCLSW/298/2024 MATTERS ARISING

There were no matters arising.

MIN/SEN/SCLSW/299/2024 CONSIDERATION AND ADOPTION OF THE AMENDMENTS ON THE COUNTY ASSEMBLIES PENSION BILL, 2024 (SENATE BILLS NO. 14 OF 2024)

The Committee considered the revised Committee Amendments on the County Assemblies Pension Bill, 2024 (Senate Bills No.14 of 2024) and adopted them after being proposed by Sen. Alexander Mundigi, MP and seconded by Sen. Gloria Orwoba, MP as follows –

a) Amend Clause 4 of the Bill by deleting subclause (2) and the words "social security benefits including" appearing at the end of the introductory clause of subclause (3);
b) Amend Clause 5 of the Bill by deleting the words "and members of staff of county assemblies" appearing at the end of subclause (1); and deleting the word "and staff" appearing immediately after the word "assemblies" in subclause (2);
c) Amend Clause 6 of the Bill by inserting the following new subclause immediately after subclause (1) to read –

(1A) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;
(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
(c) entering into contracts; and
(d) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

d) Amend Clause 6, subclause (2) by deleting the word "two" appearing at the beginning of paragraph (c) and substituting therefor the word "three"; and deleting the word "two" appearing at the beginning of subparagraph (d) (i) and substituting therefor the word "three"; and deleting paragraph (e);
e) Amend Clause 9 of the Bill by deleting subclause (2); and in subclause (3) by deleting the words "The Board" appearing at the beginning of the subclause and substituting therefore the words "The Cabinet Secretary";
f) Amend Clause 11 of the Bill by inserting the following new paragraph immediately after paragraph (g)— (ga) term expires;
g) Amend Clause 13 of the Bill by deleting paragraph (g);
h) Amend Clause 23 of the Bill be amended by deleting subclause (2);
i) Amend Clause 24 of the Bill by deleting subclause (4) and also by deleting subclause (6) and substituting it with -

(6) Any contribution not paid to the scheme by a sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest which shall not be less than the interest declared during the period the contribution remains unremitted.

j) Amend Clause 26 of the Bill by deleting the words "or a staff of a county assembly" appearing at the of subclause (1);

k) Amend Clause 26 subclause (3)

(i) by deleting paragraph (a),

(ii) by deleting paragraph (b) and substituting the following new paragraph—

(b) where a member ceases being a member of a county assembly before attaining early retirement age, that member may opt for payment of—

(iii) in paragraph (b) by deleting sub paragraph (i) and substituting therefor the following new sub paragraph—

not more than fifty percent of his total accrued benefits and the investments income that has accrued in respect of those contributions provided that a member may withdraw any additional voluntary contributions made into the scheme and accrued interest in full;

(iv) in paragraph (c) by deleting the words "before attaining the early retirement age" appearing at the end of the paragraph.

l) Amend Clause 29 by deleting the words "Despite the provisions of any other written law" appearing at the introductory part of subclause (2) and substituting therefor the words "Subject to the Retirement Benefits Act";

m) Amend Clause 49 of the Bill by deleting subclause (4) and substituting therefor the following new subclause—

(4) Without prejudice to any proceedings instituted under the provisions of this section, a sponsor who makes a deduction from a member's emoluments for remittance to the Scheme and fails to remit the contribution to the Scheme within fifteen days commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or in the case of a natural person to imprisonment for a term not exceeding two years or to both.

n) Delete Clause 52

o) Delete Clause 53 and substitute with a new clause on the transition members of county assemblies to the scheme

53 (1) The members of county assemblies who are members of the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund shall be transitioned into the Scheme within one year upon the commencement of this Act.

(2) The funds, assets and other property, movable and immovable which immediately before the commencement date were held by or on behalf of the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund for the members of county assemblies shall vest in the Scheme.

(3) All the records of members of county assemblies held by the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund shall be transferred to the Scheme administrator.

(4) All rights, liabilities and duties whether arising under any written law or otherwise, which immediately before the commencement date were accruing, imposed or enforceable by or against the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund with regard to members of county assemblies shall vest in, be imposed on, or be enforceable against the Scheme.

p) Insert the following new clauses -

immediately after clause 46— on Exemption from compliance with provisions of this Act

46A. The Cabinet Secretary may, by order in the *Gazette*—

(a) exempt any person or class of persons from compliance with any specified provisions of this Act; or

(b) extend the time for compliance by any person or class of persons with any specified provisions of this Act

provided that nothing in this section shall apply in respect of payment of retirement benefits.

46B on Provisions of the Retirement Benefits Act, 46B. The provisions of the Retirement Benefits Act (Cap. 197) and regulations thereunder shall apply to the Fund.

q) Amend clause 2 of the Bill by -

(a) inserting the definition of the term "beneficiary" immediately after the definition of the term "Authority"—

"beneficiary" means a dependant, a person nominated by the member in writing or any other person other than a member entitled to receive a benefit;

(b) deleting the definition of the term—

(i) "existing schemes" and inserting therefor the following new definition—

"existing scheme" means the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund;

(ii) "income drawdown" and inserting therefor the following new definition—

"income drawdown" means an arrangement that allows a member of a retirement benefits scheme to access his or her accumulated retirement benefits as a regular income through reinvesting his or her benefits from an income drawdown fund registered by the Retirement Benefits Authority;

(iii) "member" and inserting therefor the following new definition—

"member" means an eligible member of a county assembly who has become a member of the Scheme and includes a person entitled to or receiving a benefit under the Scheme;

(iv) "normal retirement age" and inserting therefor the following new definition—
"normal retirement age" means the age of sixty years or such other age set out in written law or applicable policy;

(v) "spouse" and inserting therefor the following new definition—
"spouse" means a husband or a wife;

r) Amend the long title

THAT the Bill be amended by deleting the long title and substituting therefor the following new long title—

AN ACT of Parliament to: provide for a contributory pension scheme for members of county assemblies; establish a county assemblies pensions fund for the payment or granting of pensions or retirement benefits to members of county assemblies; and other related matters.

MIN/SEN/SCLSW/300/2024 ANY OTHER BUSINESS

There was no other business.

MIN/SEN/SCLSW/301/2024 ADJOURNMENT AND DATE OF THE NEXT MEETING

The meeting was adjourned at 10.49 a.m.

SIGNED.....**DATE** Tuesday, 3rd September, 2024

CHAIRPERSON: SEN. JULIUS MURGOR RECHA, MP
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

MINUTES OF THE FORTY-FIFTH (45TH) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY, 8TH AUGUST, 2024 ON THE ZOOM ONLINE PLATFORM AT 11.00 A.M.

MEMBERS PRESENT

1. Sen. George Mungai Mbugua, MP - **Vice-Chairperson**
2. Sen. Erick Okong'o Mogeni, SC, MP - Member
3. Sen. Mohamed Mwinyihaji Faki, CBS, MP - Member
4. Sen. Alexander Munyi Mundigi, MP - Member
5. Sen. Crystal Asige, MP - Member
6. Sen. Miraj Abdulahi Abdulrahman, MP - Member

APOLOGIES

1. Sen. Julius Murgor Recha, CBS, MP - **Chairperson**
2. Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP - Member
3. Sen. Gloria Orwoba, MP - Member

SECRETARIAT

1. Ms. Mwanate Shaban - Senior Clerk Assistant
2. Mr. Reinhardt Choge - Clerk Assistant III
3. Mr. Jeremy Chabari - Legal Counsel
4. Ms. Nigma Adow - Research Officer III
5. Ms. Ndindi Kibathi - Research Officer III
6. Mr. Francis Mutulu - Media Relations Officer
7. Ms. Joy Kyallo - Parliamentary Budget Officer
8. Ms. Swaluha Yusuf - Public Relations Officer
9. Mr. John Pere - Sergeant at Arms
10. Mr. Joseph Otieno - Audio Officer

MIN/SEN/SCLSW/274/2024: PRAYERS

The Chairperson called the meeting to order at 11.16 a.m followed by a word of prayer and introductions.

MIN/SEN/SCLSW/275/2024: ADOPTION OF AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Alexander Mundigi, MP and seconded by Sen. Crystal Asige, MP as follows-

1. Prayers;
2. Adoption of the Agenda;
3. **Confirmation of Minutes of the 32nd, 41st, 42nd, 43rd and 44th Sittings of the Committee;**
4. **Matters Arising;**
5. **Consideration of the Proposed Work Schedule for the First and Second Quarter for FY 2024/ 2025 (Committee Paper 68);**
6. **Consideration of Committee Amendments to the County Assemblies Pensions Bill, 2024 (Committee Paper 69);**
7. Any Other Business; and
8. Adjournment.

MIN/SEN/SCLSW/276/2024 CONFIRMATION OF MINUTES OF THE 32ND, 41ST, 42ND, 43RD AND 44TH SITTINGS OF THE COMMITTEE

1. The Minutes of the 32nd Sitting held on Friday, 21st June, 2024 at 10.00 am were deferred to a later date;
2. The Minutes of the Forty-First Sitting held virtually on Wednesday, 24th July, 2024 at 1.00 pm were deferred to a later date;
3. The Minutes of the Forty – Third sitting held on Thursday, 1st August, 2024, at 11.00 am were confirmed as a true reflection of the proceedings having been proposed by Sen. Alexander Mundigi, MP and seconded by Sen. Crystal Asige, MP; and
4. The Minutes of the Forty-Forth Sitting held on Tuesday, 6th August, 2024 at 11.00 am were deferred to a later date.

MIN/SEN/SCLSW/277/2024 MATTERS ARISING FROM THE MINUTES

EX-MIN/SEN/SCLSW/266/2024 – MEETING WITH THE PETITIONERS ON THE PETITION REGARDING PAYMENT OF OUTSTANDING TERMINAL BENEFITS AND MAZIWA SACCO DUES

The Committee deliberated on the matter and noted that the Sitting with various stakeholders on the matter was scheduled for Thursday, 29th August, 2024 at 10.00 a.m.

MIN/SEN/SCLSW/278/2024 CONSIDERATION OF THE PROPOSED WORK SCHEDULE FOR THE FIRST AND SECOND QUARTER FOR FY 2024/ 2025 (COMMITTEE PAPER 68)

1. The Committee considered the proposed work plan and unanimously adopted it with amendments, with meetings on the pending legislative business be scheduled in the last week of the August, 2024 Recess.

2. Members were informed of the meeting scheduled for Tuesday, 13th August, 2024 on the Statement raised by Sen. Crystal Asige regarding KUSNET and the members were requested to avail themselves physically and on the Zoom Platform so as to clear with the matter as all stakeholders would be present.

MIN/SEN/SCLSW/279/2024 **CONSIDERATION OF COMMITTEE AMENDMENTS TO THE COUNTY ASSEMBLIES PENSIONS BILL, 2024 (COMMITTEE PAPER NO. 69)**

The Committee considered the following Amendments and made some revisions -

CLAUSE 4

THAT clause 4 of the Bill be amended by deleting–

(a) subclause (2); and

(b) the words "social security benefits including" appearing at the end of the introductory clause of subclause (3).

CLAUSE 5

THAT clause 5 of the Bill be amended by deleting—

(a) the words "and members of staff of county assemblies" appearing at the end of subclause (1); and

(b) deleting the words "and staff" appearing immediately after the word "assemblies" in subclause (2).

CLAUSE 6

THAT clause 6 of the Bill be amended—

(a) by inserting the following new subclause immediately after subclause (1)—

(1A) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;
(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
(c) entering into contracts; and
(d) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

(b) in clause (2) by—

(i) deleting the word "two" appearing at the beginning of paragraph (c) and substituting therefor the word "three";
(ii) deleting the word "two" appearing at the beginning of subparagraph (d) (i) and substituting therefor the word "three"; and
(iii)deleting paragraph (e).

CLAUSE 9

THAT clause 9 of the Bill be amended—

(a) by deleting subclause (2); and

(b) in subclause (3) by deleting the words "The Board" appearing at the beginning of the subclause and substituting therefor the words "The Cabinet Secretary".

CLAUSE 11

THAT clause 11 of the Bill be amended by inserting the following new paragraph immediately after paragraph (g)—

(ga) term expires;

CLAUSE 13

THAT clause 13 of the Bill be amended by deleting paragraph (g).

CLAUSE 23

THAT clause 23 of the Bill be amended by deleting subclause (2).

CLAUSE 24

THAT clause 24 of the Bill be amended by deleting—

(a) subclause (4);

(b) subclause (6) and substituting therefor the following new subclause—

(6) Any contribution not paid to the scheme by a sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest which shall not be less than the interest declared during the period the contribution remains unremitted.

CLAUSE 26

THAT clause 26 of the Bill be amended—

(a) by deleting the words "or a staff of a county assembly" appearing at the end of subclause (1);

(b) in subclause (3)—

(i) by deleting paragraph (a);

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph—
(b) where a member ceases being a member of a county assembly before attaining early retirement age, that member may opt for payment of—

(iii)in paragraph (b) by deleting sub paragraph (i) and substituting therefor the following new sub paragraph—

(i) not more than fifty percent of his total accrued benefits and the investments income that has accrued in respect of those contributions

provided that a member may withdraw any additional voluntary contributions made into the scheme and accrued interest in full;

(iv) in paragraph (c) by deleting the words "before attaining the early retirement age" appearing at the end of the paragraph.

CLAUSE 29

THAT clause 29 of the Bill be amended by deleting the words "Despite the provisions of any other written law" appearing at the introductory part of subclause (2) and substituting therefor the words "Subject to the Retirement Benefits Act".

CLAUSE 49

THAT clause 49 of the Bill be amended by deleting subclause (4) and substituting therefor the following new subclause—

(4) Without prejudice to any proceedings instituted under the provisions of this section, a sponsor who makes a deduction from a member's emoluments for remittance to the Scheme and fails to remit the contribution to the Scheme within fifteen days commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or in the case of a natural person to imprisonment for a term not exceeding two years or to both.

CLAUSE 52

THAT the Bill be amended by deleting clause 52.

CLAUSE 53

THAT the Bill be amended by deleting clause 53 and substituting therefor the following new clause—

Transition of members of county assemblies to the Scheme

53. (1) The members of county assemblies who are members of the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund shall be transitioned into the Scheme within one year upon the commencement of this Act.

(2) The funds, assets and other property, movable and immovable which immediately before the commencement date were held by or on behalf of the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund for the members of county assemblies shall vest in the Scheme.

(3) All the records of members of county assemblies held by the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local

Authorities Pension Trust (Umbrella) Retirement Fund shall be transferred to the Scheme administrator.

(4) All rights, liabilities and duties whether arising under any written law or otherwise, which immediately before the commencement date were accruing, imposed or enforceable by or against the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund with regard to members of county assemblies shall vest in, be imposed on, or be enforceable against the Scheme.

NEW CLAUSES

NEW CLAUSES

THAT the Bill be amended by inserting the following new clauses immediately after clause 46—

Exemption from compliance with provisions of this Act

46A. The Cabinet Secretary may, by order in the *Gazette*—

(a) exempt any person or class of persons from compliance with any specified provisions of this Act; or

(b) extend the time for compliance by any person or class of persons with any specified provisions of this Act

provided that nothing in this section shall apply in respect of payment of retirement benefits.

Provisions of the Retirement Benefits Act

46B. The provisions of the Retirement Benefits Act (Cap. 197) and regulations thereunder shall apply to the Fund.

CLAUSE 2

THAT clause 2 of the Bill be amended by—

(a) inserting the definition of the term "beneficiary" immediately after the definition of the term "Authority"—

"beneficiary" means a dependant, a person nominated by the member in writing or any other person other than a member entitled to receive a benefit;

(b) deleting the definition of the term—

(i) "existing schemes" and inserting therefor the following new definition—

"existing scheme" means the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund;

(ii) "income drawdown" and inserting therefor the following new definition—

"income drawdown" means an arrangement that allows a member of a retirement benefits scheme to access his or her accumulated retirement benefits as a regular income through reinvesting his or her benefits from an income drawdown fund registered by the Retirement Benefits Authority;

(iii)"member" and inserting therefor the following new definition—
"member" means an eligible member of a county assembly who has become a member of the Scheme and includes a person entitled to or receiving a benefit under the Scheme;

(iv)"normal retirement age" and inserting therefor the following new definition—

"normal retirement age" means the age of sixty years or such other age set out in written law or applicable policy;

(v) "spouse" and inserting therefor the following new definition—
"spouse" means a husband or a wife;

LONG TITLE

THAT the Bill be amended by deleting the long title and substituting therefor the following new long title—

AN ACT of Parliament to: provide for a contributory pension scheme for members of county assemblies; establish a county assemblies pensions fund for the payment or granting of pensions or retirement benefits to members of county assemblies; and other related matters.

MIN/SEN/SCLSW/280/2024 ANY OTHER BUSINESS

1. The Committee resolved to write a final reminder to the National Fund for the Disabled of Kenya to submit the documents requested from them on the meeting held on Thursday, 16th May, 2024; and
2. The Committee deliberated on labour issues in Nyamira county, noting that personnel emoluments were currently at 63% of the County budget. The Committee noted that a meeting with the County Government had been scheduled for Wednesday, 28th August, 2024 at 10.00 a.m.

MIN/SEN/SCLSW/281/2024 ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business the meeting was adjourned at 12.21 p.m.

SIGNED.....**DATE** Tuesday, 3rd September, 2024

CHAIRPERSON: SEN. JULIUS MURGOR RECHA, MP
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

MINUTES OF THE FORTIETH (40TH) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE VIRTUALLY HELD ON TUESDAY, 23RD JULY, 2024 AT 11.00 AM

MEMBERS PRESENT

1.	Sen. George Mungai Mbugua, MP	- **Vice-Chairperson**
2.	Sen. Mohamed Mwinyihaji Faki, CBS, MP	- Member
3.	Sen. Alexander Munyi Mundigi, MP	- Member
4.	Sen. Crystal Asige, MP	- Member
5.	Sen. Gloria Orwoba, MP	- Member
6.	Sen. Miraj Abdulahi Abdulrahman, MP	- Member

APOLOGIES

1.	Sen. Julius Murgor Recha, CBS, MP	- **Chairperson**
2.	Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP	- Member
3.	Sen. Erick Okong'o Mogeni, SC, MP	- Member

SECRETARIAT

1.	Ms. Mwanate Shaban	- Senior Clerk Assistant
2.	Mr. Reinhardt Choge	- Clerk Assistant III
3.	Mr. Jeremy Chabari	- Legal Counsel
4.	Ms. Nigma Adow	- Research Officer III
5.	Ms. Juliet Masinde	- Media Relations Officer III
6.	Ms. Joy Kyallo	- Fiscal Analyst
7.	Mr. Joseph Otieno	- Audio Officer

MIN/SEN/SCLSW/241/2024: PRAYERS

The Chairperson called the meeting to order at 11.14 am followed with a word of prayer.

MIN/SEN/SCLSW/242/2024: ADOPTION OF AGENDA

The Agenda of the Meeting was adopted having been proposed by Sen. Miraj Abdullahi, MP and seconded by Sen. Alexander Mundigi, MP as follows-

1. Prayers;
2. Adoption of the Agenda;
3. **Confirmation of Minutes of the 33rd, 34th, 35th, 36th, 37th, 38th and 39th Sittings of the Committee;**
4. **Matters Arising;**
5. **Consideration of Correspondence before the Committee;**
6. **Consideration of the public hearing submissions on the County Assemblies Pension Bill, 2024 (Senate Bills No. 14 of 2024);**
7. Any Other Business; and
8. Adjournment/Date of the Next Meeting.

MIN/SEN/SCLSW/243/2024 **CONFIRMATION OF MINUTES OF THE 33RD, 34TH, 35TH, 36TH, 37TH, 38TH AND 39TH SITTINGS OF THE COMMITTEE;**

This agenda item was postponed to the next Sitting of the Committee.

MIN/SEN/SCLSW/244/2024 **CONSIDERATION OF MATTERS ARISING**

This agenda item was postponed to the next Sitting of the Committee.

MIN/SEN/SCLSW/245/2024 **CONSIDERATION OF CORRESPONDENCE BEFORE THE COMMITTEE**

This agenda item was postponed to the next Sitting of the Committee.

MIN/SEN/SCLSW/246/2024 **CONSIDERATION OF THE PUBLIC HEARING SUBMISSIONS ON THE COUNTY ASSEMBLIES PENSION BILL, 2024 (SENATE BILLS NO. 14 OF 2024);**

THE COUNTY ASSEMBLIES PENSIONS SCHEME BILL
(SENATE BILLS NO. 14 OF 2024)

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
Long title	CPF Financial Services. (CPF)	Amend to exclusively provide for members of county assemblies.	Staff of county assemblies are already covered in existing retirement benefits arrangements like Laptrust, CPF and LAPFUND.	Allow in line with the pension schemes for MPs, President, Deputy President, Chief Justice and Speaker
Appointing Authority	CPF	Review the powers of CS, Treasury under clauses 6, 10, 11 and 12.	*Okoiti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR)* held that it is unconstitutional for the national government to play a pervasive role in the running of pension schemes for county government employees and officers	The CS to continue until CAF is legally recognised.
2	County Assemblies Forum (CAF)	Include the definition of County Assemblies Forum	CAF is the institution representing the 47 County Assemblies and all the Members of County Assemblies.	Allow and align with definitions in other Bills.
		Include the definition of Principal Secretary to read	This is to take care of the devolved government.	Not approved. CS is needed for purposes of gazettement.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		" The Principal Secretary means Principal Secretary under the State Department of Devolution"		
		Amend the definition of "early retirement age: to read: "early retirement age" means such age as may be prescribed but which shall not be less than forty five years;"	The retirement age should be the same as the Members of Parliament as provided in the Parliamentary Pensions Act.	Approved. Align with other pension scheme laws
		Amend the Clause by deleting the definition of the Cabinet Secretary of National Treasury and replace it the following definition— "The Forum Chairperson means the Chairman of the County Assemblies Forum"	*Okoiti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR)* held that it is unconstitutional for the national government to play a pervasive role in the running of pension schemes for county government employees and officers	Not approved. There is no law that recognises CAF at the moment.
		Amend the Clause by deleting the definition and replacing it with the follows: "pensionable emoluments" includes salary, responsibility allowance, constituency allowance, nominated member's allowance, ex officio member's allowance, house allowance, accommodation allowance and sitting allowance;	Given that MCAs' base salaries are relatively low, incorporating these allowances into pensionable emoluments will address salary insufficiencies and provide them with greater financial security and stability, particularly after retirement. This amendment ensures that their total compensation is accurately	Not approved. This deviates from other pension laws and SRC guidelines on state officers.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			reflected in their pension calculations, acknowledging the full extent of their earnings and the true cost of their public service.	
	Kenya Revenue Authority (KRA).	Refer to the term "income drawdown" as defined under the Retirement Benefits (Income Drawdown Funds) Regulations, 2023	The Regulations govern the management and operation of income drawdown funds within retirement benefits schemes.	Approved. Align with existing laws.
		Include the definition of SOCCAT (K) used in clause 6.	The full form of the term should be used- Society of Clerks at the Table (Kenya).	Not approved as Bill is to deal with MCAs only.
	LAPFUND	Include housing allowance in the definition of pensionable emoluments and provide a separate definition of pensionable emoluments for the MCAs.	This is to align the Bill with Article 41 of the Constitution and section 10 of the Employment Act and SRC guidelines	Not approved. This is in conflict with SRC guidelines and other pension laws.
		Include names of all existing schemes.	This is to ensure that all existing schemes are listed.	Approved.
	Retirements Benefits Authority (RBA).	Include the definition of the term "beneficiary" to read— "beneficiary" means a dependant, a person nominated by the member in writing or any other person other than a member entitled to receive a benefit under the Scheme.	This will allow nomination of beneficiaries by the principal member during his lifetime.	Align with other pension laws.
		Include all existing schemes in the definition of existing scheme.		Approved.
		Amend the definition of the term "income drawdown" to read—	The definition should mirror the definition under the Retirement Benefits (Income Drawdown Funds) Regulations, 2023.	Approved.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		"income drawdown" means an arrangement that allows a member of a retirement benefits scheme to access his or her accumulated retirement benefits as a regular income through reinvesting his or her benefits from an income drawdown fund registered by the Retirement Benefits Authority;		
		Amend the definition of "normal retirement age" to read— "normal retirement age" means the age of sixty years or such other age set out in written law or applicable policy;		Align with other laws on retirement.
		Amend the definition of "spouse" to read— "spouse" means a male or a female person to whom a member was married under any law at the time of their death;	Align the Bill with the Marriage Act.	Approved.
4	RBA	Make the Board of Trustees the body corporate by deleting section 4 (2) and transposing the contents thereof to a new sections 6 (1A) under the Board of Trustees.	Under common law, schemes are not juridical persons, incorporated trustees are. Refer to NSSF Act, LAPFUND Act, Public Service Superannuation Scheme Act.	Approve and align with other pensions laws.
		Deleting the words "providing social security benefits" appearing in	This to protect and maintain the independence at the Board, its fiduciary	Approved.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			responsibilities and Retirement Benefits Act and the common law of trusts.	
	CPF	Make the Board of Trustees the body corporate as opposed to the scheme itself. The Board shall then be registered under the Trustees (Perpetual Succession) Act, Cap 164.		Approved.
		Review 4 (2).	Social security is a role of government under Article 43 of the Constitution.	Approved.
5	LAPFUND	Allow voluntary scheme membership and transition subject to existing schemes' members consent.	This is to uphold Article 41 of the Constitution and section 33 of the Retirement Benefits Act.	Not approved. Scheme is for all MCAs.
6	CAF	Amend the by deleting subclause 6 (2) (b) and amend sub-clause 6 (2) (d) to state as follows— (a) six persons nominated by the County Assemblies Forum the forum representing all the county assemblies in of whom at least two shall not be of the same gender as follows— (i) three representatives of members of county assemblies contemplated in Article 177(a) of the Constitution;	The clause should be specific that County Assemblies may enact county specific legislation.	Approved. Remove SOCCAT membership.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		(ii) a representative of members of county assemblies contemplated in Article 177(b) of the Constitution; and (iii)a representative of members of county assemblies contemplated in Article 177(c) of the Constitution;		
	RBA	Align the total number of trustees to be in line with Regulation 21 of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations.	This will align the Bill with the Retirement Benefits Act.	Approved.
				a
9	RBA	Delete subclause (2).	Appointment is based on nomination.	Approved.
		Amend subclause (3) to read— (3) The Cabinet Secretary shall ensure that one third of the trustees are appointed in a staggered manner.	The Board has no practical way of ensuring staggered appointments.	Approved. Align with other pension laws
11	RBA	Introduce a new subclause— (h) upon expiry of the term.	There is no provision for effluxion of time.	Approved.
		Delete paragraph (e).	A member can cease to be a member of a county assembly but still continue to be a trustee.	Relook the provision on Board membership.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
13	RBA	Delete paragraph (g).	The members should negotiate for themselves the annuity rates.	Allow
18, 19, 23	CPF	Amend clauses 18,19 and 23 to allow Trustees appoint an Administrator to the Scheme.	This in line with section 25B of the Retirement Benefits Act.	Approved
23	LAPFUND	Clearly specify that the scheme will be administered internally with the Chief Executive Officer as the administrator of the Scheme.	This will ensure transparency, cost efficiency and proper administration of the scheme providing clear operational guidelines.	Not. Approved
	RBA	Delete subclause (2) to give the Board power to appoint an internal or external administrator. Consider— (a) removing the structure of the administration of the scheme; (b) retain the provision for CEO as the accounting officer but give trustees power to either appoint a external or internal administration; or (c) set out the structure for internal administration.	The provision leaves no room for contracting an external administrator. In nascent stages, schemes may benefit from external administration as they ramp up internal capacity.	Approved

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
24	CAF	Amend sub clause (1) and (2) to with the following subheading— Contributions for Member of County Assemblies (1) Every Member of County Assemblies shall, so long as he or she remains in the employment of a sponsor, contribute not less than twelve per cent (12%) of his or her pensionable emoluments to the Scheme. (2) Every sponsor shall contribute to the Scheme not less than thirty-one per cent (31%) of the pensionable emoluments of a member of the Scheme plus the amounts necessary to cover the premiums for insured benefits." Further add as clause 24 A (1) and (2) with the following sub heading— Contributions for Members of staff of the County Assemblies (1) Members of staff of the county assemblies shall, so long as the member is a staff of a county assembly, contribute not less than	The current contribution rates—7.5% from members and 15% from sponsors—are insufficient to efficiently finance the MCAs' pensions and fall short when compared to the current gratuity system. By increasing the members' contribution rate to not less than twelve percent (12%) and the sponsors' contribution rate to not less than thirty-one percent (31%), the amendment seeks to provide MCAs with a more substantial and sustainable pension. This change will help bridge the gap between the limited service period and the need for long-term financial security, ensuring that MCAs are better supported after their term in office. The proposed amendment to subclauses (1) and (2) ensures a fair and sustainable pension system for county assembly staff, who are permanent and pensionable employees. The contribution rates of 7.5% from the staff and 15% from the sponsors are sufficient given their long-term employment, allowing adequate accumulation of pension funds. This balanced approach ensures comprehensive coverage and financial	Aliogn with SRC guidelines

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		seven nought five percent (7.5%) of that member's pensionable emoluments to the Scheme. (2) Every sponsor shall contribute to the Scheme not less than fifteen per cent of the pensionable emoluments of a member of the Scheme plus the amounts necessary to cover the premiums for insured benefit.	security upon retirement while maintaining the sustainability of the pension fund.	
	LAPFUND	Remove the restriction of having to involve the Scheme Board and Sponsors to allow a member make additional voluntary contributions.	Remove restrictions on voluntary contributions. Allow members to make voluntary additional contributions without undue conditions or restrictions in line with Retirement Benefits Act.	Align with pension schems
	SRC	Delete subclause (4). Group life insurance cover should be a standalone benefit for the public service.	Group life insurance cover should be a standalone benefit for the public service.	Approved and align with other pension laws for state officers.
	RBA	Amend subclause (6) to read— (6) Any contribution not paid to the scheme by a sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest which shall not be less than the interest declared during the period the contribution remains unremitted.	The Retirement Benefits Act does not define specific interest rates chargeable. It is defined in the trust deed and rules of a scheme. The Board's discretion for enforcement can be abused.	Approved.
	CPF	The contribution rate should be 12% and 31% for members and sponsors respectively.	This is to align with the constitutional requirements of fair labour practices	Align with SRC guidelines.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			under the Constitution and labour laws and to comply with the court's decision in *Okoiti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR).*	
26	LAPFUND	Include provisions allowing MCAs to access benefits upon lapse of service after serving for two consecutive terms.	This will comply with Article 46 (1) of the Constitution given the status of MCAs.	Align with Parliamentary Pensions Act
	RBA	Delete 26 (3) (a).	The current statutory requirement for retention of accrued retirement benfits is 50%.	Approved.
		Amend 26 (3) (b) (i) to read— (b) (i) where a member ceases being a member or a staff of a county assembly before attaining early retirement age, that member may opt for payment of not more than fifty percent of his total accrued benefits and the investments income that has accrued in respect of those contributions	Regulations require immediate vesting of benefits on the member and the member should be encouraged to preserve accrued benefits.	Approved.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		Provided that a member may withdraw any additional voluntary contributions made into the scheme and accrued interest in full;		
		Amend 26 (3) by deleting the words "before attaining the early retirement age".	A member who falls ill or emigrates from Kenya should be allowed to access accrued benefits regardless of age.	Approved
29	RBA	Amend 29 (2) introductory clause to read— (2) Subject to the Retirement Benefits Act,	The terms of the mortgage guarantee facility are not clear.	Approved
44	RBA	Amend 44 (1) to make the review by an actuary optional.	The role of an actuary in a defined scheme is limited and the Board should have the flexibility to choose whether the input of an actuary is necessary.	Not approved. Actuarial review should be mandatory for better management of the scheme.
49	RBA	Amend 49 (4) to read— (4) Without prejudice to any proceedings instituted under the provisions of this section, a sponsor who makes a deduction from a member's emoluments for remittance to the Scheme and fails to remit the contribution to the Scheme within fifteen days commits an offence and shall on conviction be liable to a fine	This is to make the offence clear.	Approved.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		not exceeding five million shillings or in the case of a natural person to imprisonment for a term not exceeding two years or to both.		
52	CAF	Amend the Clause to provide the following— "The sponsors and members of the Scheme shall be exempt from making contributions to the Social Security Fund"	In light of the Supreme Court decision in Supreme Court Petition (Application) No. E002 and E004 of 2023, involving the Kenya Tea Growers Association, Agricultural Employers Association, and County Pensioners Association, it has been determined that the NSSF Act is operatively unconstitutional, null, and void. This ruling necessitates a reevaluation of related policies and actions, including the provisions for Members of County Assemblies (MCAs).	Align with the Court's decision.
	CPF	No contributions may be made to or received by NSSF on account of NSSF Act, 2013	In light of the Supreme Court decision delivered on 21st February, 2024 in *Supreme Court Petition (Application) No. E002 and E004 of 2023, involving the Kenya Tea Growers Association, Agricultural Employers Association, and County Pensioners Association*, it has been determined that the NSSF Act is unconstitutional, null, and void.	Align with the Court's decision.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
53	LAPFUND	Require prior consent from existing scheme members before transferring funds to ensure compliance with Retirement Benefits Act.	This is in compliance with section 33 of the Retirement Benefits Act.	Relook the transition provisions.
	CPF	Delete subclause (2).	MCAs are not members of County Pension Fund (previously, Laptrust (Umbrella) Pension Fund).	Relook transition provisions.
		NEW CLAUSES		
	CAF	Introduce a new clause on medical insurance to read— " A retired Member of County Assembly and spouse shall during his or her lifetime be entitled to Full medical cover."	The pension scheme should provide a medical insurance cover similar to that provided to other retired state officers in National Government.	Approve and align with National policy
	RBA	Insert new Clause 55 on exemptions as follows— 55. Exemption from compliance with provisions of this Act. The Cabinet Secretary may, by order in the Gazette— (a) exempt any person or class of persons from compliance with	The Cabinet Secretary should have the power of exemption for operational flexibility in unforeseen circumstances.	Approved.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		any specified provisions of this Act; or (b) extend the time for compliance by any person or class of persons with any specified provisions of this Act provided that nothing in this section shall apply in respect of payment of retirement benefits.		
		Include a provision for dispute resolution and appeals.		Approved.

OTHER SUBMISSIONS

1. The County Assemblies Forum submitted on the need to replace "Cabinet Secretary" in the Bill with "Chairperson of County Assemblies Forum" in line with the decision in *Okoiti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR).*

2. The Ministry of National Treasury and Economic Planning made the following recommendations—
   (a) the Bill should be expanded to encompass all county workers whether in the executive or county assemblies to ensure a unified pension system that addresses the specific needs of all county employees;
   (b) a single, cohesive pension scheme will improve resource allocation, enhance investment strategies and promote financial sustainability. Consolidation of pension schemes will lead to reduced administrative costs and greater financial security for retirees;
   (c) the Bill should be expanded to cover all county governments employees in line with the National Retirement Benefits Policy objectives of good governance and financial stability of all stakeholders in the pensions sector; and
   (d) the Bill should be reoriented to cover all county government workers including MCAs under a unified pension arrangement to avoid duplication, improve resource allocation and align with national policy objectives.
3. Most of the stakeholders noted the need for a unified pension arrangement for all county government workers including MCAs and the need for efficient, fair and transparent administration of the pensions in the counties.
4. The stakeholders also noted that the Employment and Labour Relations Court declared the County Governments Retirement Scheme Act, 2019 unconstitutional due to lack of public participation and conflicts with various Articles of the Constitution and existing statutes.

LIST OF STAKE HOLDERS

1. The Ministry of National Treasury and Economic Planning
2. LAPFUND
3. The County Assemblies Forum
4. CPF Financial Services
5. Salaries and Remuneration Commission
6. The Kenya Revenue Authority
7. The Retirement Benefits Authority.

MIN/SEN/SCLSW/247/2024 **ANY OTHER BUSINESS**

There was no other business.

MIN/SEN/SCLSW/248/2024 **ADJOURNMENT AND DATE OF THE NEXT MEETING**

The meeting was adjourned at 12.41 pm.

SIGNED.....**DATE** Tuesday, 30th July, 2024

CHAIRPERSON: SEN. JULIUS MURGOR RECHA, MP

for: **STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**

MINUTES OF THE THIRTY – SEVENTH (37TH) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM 7, BUNGE TOWER ON THURSDAY, 11TH JULY, 2024 AT 11.00 AM

MEMBERS PRESENT

1.	Sen. Julius Murgor Recha, CBS, MP	- **Chairperson**
2.	Sen. George Mungai Mbugua, MP	- **Vice-Chairperson**
3.	Sen. Alexander Munyi Mundigi, MP	- Member
4.	Sen. Crystal Asige, MP	- Member
5.	Sen. Gloria Orwoba, MP	- Member

APOLOGIES

1.	Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP	- Member
2.	Sen. Erick Okong'o Mogeni, SC, MP	- Member
3.	Sen. Mohamed Mwinyihaji Faki, CBS, MP	- Member
4.	Sen. Miraj Abdulahi Abdulrahman, MP	- Member

SECRETARIAT

1.	Ms. Mwanate Shaban	- Senior Clerk Assistant
2.	Mr. Reinhardt Choge	- Clerk Assistant III
3.	Mr. Jeremy Chabari	- Legal Counsel
4.	Ms. Ndindi Kibathi	- Research Officer III
5.	Ms. Juliet Masinde	- Media Relations Officer III
6.	Mr. John Pere	- Sergeant at Arms
7.	Mr. Joseph Otieno	- Audio Officer

IN-ATTENDANCE

1.	Prof. Njuguna S. Ndung'u, PhD, CBS	- Cabinet Secretary, National Treasury and Economic Planning (NT)
2.	Mr. Micheal Kagika, EBS	- Secretary Pensions, NT
3.	Ms. Vivian Chebii	- Deputy Director, Pensions - NT
4.	Mr. Charles Machira	- Chief Executive Officer, Retirement Benefits Authority (RBA)

5. Mr. Simon Kiplangat	- Director, RBA
6. Mr. Jackson Nguthu	- Director Supervision, RBA
7. Mr. Maurice Oray	- Deputy Commissioner, Kenya Revenue Authority (KRA)
8. Ms. Josephine Mugure	- Chief Manager, KRA
9. Mr. Hosea Kili, OGW	- Group Managing Director, CPF FS LTD
10. Ms. Irene Mbonge	- CPF
11. Mr. Isaac Koech	- CPF
12. Ms. Brenda Maina	- CPF
13. Ms. Jane Chelangat	- CPF
14. Mr. Austin Munene	- County Assemblies Forum
15. Mr. Chege Mwaura	- County Assemblies Forum
16. Mr. Mwangi Kagwe	- County Assemblies Forum
17. Mr. Johnson Osoi	- LAPFUND
18. Mr. Limbe John	- LAPFUND
19. Ms. Judy Karegi	- LAPFUND

MIN/SEN/SCLSW/224/2024: PRAYERS

The Chairperson called the meeting to order at 11.15 am followed with a word of prayer. This was followed with introductions from all present.

MIN/SEN/SCLSW/225/2024: ADOPTION OF AGENDA

The Agenda was adopted after being proposed by Sen. Crystal Asige, MP and seconded by Sen. George Mbugua, MP as follows-

1. Prayers;
2. Adoption of the Agenda;
3. **Stakeholder engagement on the County Assemblies Pensions Bill, 2024, (Senate Bills No. 14 of 2024).;**
4. Any Other Business; and
5. Adjournment.

MIN/SEN/SCLSW/226/2024 STAKEHOLDER ENGAGEMENT ON THE COUNTY ASSEMBLIES PENSIONS BILL, 2024, (SENATE BILLS NO. 14 OF 2024).

The Chairperson invited the Stakeholders to introduce themselves and laid out the order they would make their submissions.

a) Retirement Benefits Authority

The RBA made proposed amendments on the Interpretation, Establishment of the Scheme, Administration of the Scheme and the Benefits, adding that these amendments would widen the dependents and allow nomination of beneficiaries.

b) CPF Financial Services Ltd

1. The CPF proposed that the Bill caters for Members of County Assemblies only as the County Government Workers were already in the two established schemes, the CPF and LapFund.
2. They added that the two categories had different contracts as the MCAs served for a period of five years which was renewable while the workers in the counties were permanent.

c) Kenya Revenue Authority

The KRA proposed an amendment to align Clause 2 on the definitions to the RBA Act.

d) LAPFUND

1. LapFund proposed the total rejection of the Bill and cautioned on the duplication and conflicts with existing legislations like the County Government Retirement Schemes Act;
2. They added that the Bill excludes Housing allowance and alters the terms of employment of the employees without their consent, citing the compulsory transition of members in Clause 5;
3. The Bill also restricts individual savings on voluntary contributions; and
4. The CGRS is currently in the court of appeal. And appealed the Senate to arbitrate on the matter.

e) County Assemblies Forum

The County Assemblies Forum supported the bill, stating that the Bill eliminates the current inconsistent and fragmented arrangements. They further submitted a matrix of proposed amendments which included the summation of allowances in the calculation of their pension.

f) The National Treasury and Economic Planning

1. The Cabinet Secretary, National Treasury presented more on the policy stating that it is the wish of the treasury to have all the arms of the county governments in one

bill, under one administrator so as to take advantage of the economy of scale and align the bill to the National policy; and

2. He cautioned against segmentation of the schemes.

g) **Committee Resolutions**

The Chairperson thanked all the participants and informed them that their submissions will be considered when the Committee sits to write its report.

MIN/SEN/SCLSW/227/2024 ANY OTHER BUSINESS

There was no other business.

MIN/SEN/SCLSW/228/2024 ADJOURNMENT AND DATE OF THE NEXT MEETING

The meeting was adjourned at 2.01 pm.

SIGNED.....**DATE** Tuesday, 30th July, 2024.

CHAIRPERSON: SEN. JULIUS MURGOR RECHA, MP

for: **STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**

MINUTES OF THE TWENTY THIRD (23RD) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM 1, BUNGE TOWER ON TUESDAY, 21ST MAY, 2024 AT 11.00 AM

MEMBERS PRESENT

1. Sen. Julius Murgor Recha, CBS, MP	- **Chairperson**
2. Sen. George Mungai Mbugua, MP	- **Vice-Chairperson**
3. Sen. Mohamed Mwinyihaji Faki, CBS, MP	- Member
4. Sen. Alexander Munyi Mundigi, MP	- Member
5. Sen. Gloria Orwoba, MP	- Member (Virtually)

APOLOGIES

1. Sen. Erick Okong'o Mogeni, SC, MP	- Member
2. Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP	- Member
3. Sen. Miraj Abdulahi Abdulrahman, MP	- Member
4. Sen. Crystal Asige, MP	- Member

SECRETARIAT

1. Ms. Mwanate Shaban	- Senior Clerk Assistant
2. Mr. Jeremy Chabari	- Legal Counsel
3. Ms. Nigma Duale	- Research Officer III
4. Ms. Ndindi Kibathi	- Research Officer III
5. Ms. Swaluha Yusuf	- Protocol Officer
6. Mr. John Pere	- Sergeant at Arms
7. Mr. Joseph Otieno	- Audio Officer

MIN/SEN/SCLSW/133/2024: PRAYERS

The Chairperson called the meeting to order at 11.17 am followed with a word of prayer.

MIN/SEN/SCLSW/134/2024: ADOPTION OF AGENDA

The Agenda was adopted after being proposed by Sen. Mohammed Faki, CBS, MP and seconded by Sen. Alexander Mundigi, MP as follows-

1. Prayers;
2. Adoption of the Agenda;
3. **Confirmation of Minutes of the 20th, 21st and 22nd Meetings;**
4. **Matters Arising from Minutes of previous meetings;**

5. **Consideration of the legislative proposal on the County Library Services Bill, 2024 (Committee Paper No. 58);**
6. **Briefing on the County Assemblies Pensions Bill, 2024 (Senate Bills No. 14 of 2024) (Committee Paper No 59);**
7. Any Other Business; and
8. Adjournment/Date of the Next Meeting.

MIN/SEN/SCLSW/135/2024 CONFIRMATION OF MINUTES OF THE 20TH, 21ST, AND 22ND MEETINGS

1. The Minutes of the twentieth sitting held on Thursday, 9th May, 2024 at 11.00 am were confirmed as a true reflection of the proceedings having been proposed by Sen. George Mungai Mbugua, MP and seconded by Sen. Mohamed Faki, CBS, MP;
2. The Minutes of the twenty-first sitting held on Tuesday, 14th May, 2024 were confirmed as a true reflection of the proceedings having been proposed by Sen. George Mbugua, MP and seconded by Sen. Alexander Mundigi, MP; and
3. The Minutes of the twenty-second sitting held on Thursday, 16th May, 2024, at 10.00 am, were confirmed as a true reflection of the proceedings having been proposed by Sen. Gloria Orwoba, MP and seconded by Sen. Alexander Mundigi, MP.

MIN/SEN/SCLSW/136/2024 MATTERS ARISING FROM PREVIOUS MINUTES

1. ***EX-MIN/SEN/SCLSW/125/2024 – MEETING WITH THE TEACHERS SERVICE COMMISSION, KENYA UNION OF SPECIAL NEEDS EDUCTION TEACHERS AND AFFECTED TEACHERS***

The Committee that the National Prayer Breakfast day, Thursday, 30th May, 2024, falls on the meeting day with TSC, KUSNET and affected teachers, and resolved to reschedule the meeting to Wednesday, 29th May, 2024 from 1.00 to 2.00 pm.

2. ***EX-MIN/SEN/SCLSW/130/2024 – MEETING WITH THE MANAGEMENT OF THE NATIONAL FUND FOR THE DISABLED OF KENYA (NFDK)***

The Committee also revolved to write to the Management of the NFDK and request for documentation on the previous ownership of buildings owned by the fund, and procurement details of the fund.

MIN/SEN/SCLSW/137/2024 CONSIDERATION OF THE LEGISLATIVE PROPOSAL ON THE COUNTY LIBRARY SERVICES BILL, 2024 (COMMITTEE PAPER NO. 58);

The Committee considered the County Library Services Bill, 2024 and approved its publication having been proposed by Sen. Mohammed Faki, CBS, MP and seconded by sen. Alexander Mundigi, MP.

MIN/SEN/SCLSW/138/2024 BRIEFING ON THE COUNTY ASSEMBLIES PENSIONS BILL, 2024 (SENATE BILLS NO. 14 OF 2024) (COMMITTEE PAPER NO 59);

The Committee was briefed on the County Assemblies Pensions Bill, 2024 (Senate Bills No. 14 of 2024) and resolved to meet stakeholders during its enquiry visit over the recess period.

MIN/SEN/SCLSW/139/2024 ANY OTHER BUSINESS

The Committee resolved to send reminder letters on statements before the Committee, hold the stakeholder engagement with the CS Sports on 23rd – 26th May, 2024 in Machakos County and conduct the EPZ enquiry from 10th to 15th June, 2024.

MIN/SEN/SCLSW/140/2024 ADJOURNMENT AND DATE OF THE NEXT MEETING

The meeting was adjourned at 12.13 pm, with the next meeting being on notice.

SIGNED.....**DATE** Thursday, 4th July, 2024

CHAIRPERSON: SEN. JULIUS MURGOR RECHA, MP
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

APPENDIX 2

PARLIAMENT
OF KENYA
LIBRARY

26th August, 2024
The Clerk of the Senate
Parliament Buildings
NAIROBI

RE: COMMITTEE STAGE AMENDMENTS TO THE COUNTY ASSEMBLIES PENSIONS SCHEME BILL,2024 (SENATE BILLS NO. 14 OF 2024)

NOTICE is given that Sen. Recha Julius Murgor, the Chairperson to the Standing Committee on Labour and Social Welfare, intends to move the following amendments to the County Assemblies Pensions Scheme Bill, 2024, Senate Bills No. 14 of 2024, at the Committee Stage—

CLAUSE 4

THAT clause 4 of the Bill be amended by deleting–

(a) subclause (2); and

(b) the words "social security benefits including" appearing at the end of the introductory clause of subclause (3).

CLAUSE 5

THAT clause 5 of the Bill be amended by deleting—

(a) the words "and members of staff of county assemblies" appearing at the end of subclause (1); and

(b) deleting the words "and staff" appearing immediately after the word "assemblies" in subclause (2).

CLAUSE 6

THAT clause 6 of the Bill be amended—

(a) by inserting the following new subclause immediately after subclause (1)—

(1A) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;
(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
(c) entering into contracts; and

(d) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

(b) in clause (2) by—

(i) deleting the word "two" appearing at the beginning of paragraph (c) and substituting therefor the word "three";

(ii) deleting the word "two" appearing at the beginning of subparagraph (d) (i) and substituting therefor the word "three"; and

(iii)deleting paragraph (e).

CLAUSE 9

THAT clause 9 of the Bill be amended—

(a) by deleting subclause (2); and

(b) in subclause (3) by deleting the words "The Board" appearing at the beginning of the subclause and substituting therefor the words "The Cabinet Secretary".

CLAUSE 11

THAT clause 11 of the Bill be amended by inserting the following new paragraph immediately after paragraph (g)—

(ga) term expires;

CLAUSE 13

THAT clause 13 of the Bill be amended by deleting paragraph (g).

CLAUSE 23

THAT clause 23 of the Bill be amended by deleting subclause (2).

CLAUSE 24

THAT clause 24 of the Bill be amended by deleting—

(a) subclause (4);

(b) subclause (6) and substituting therefor the following new subclause—

(6) Any contribution not paid to the scheme by a sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest

which shall not be less than the interest declared during the period the contribution remains unremitted.

CLAUSE 26

THAT clause 26 of the Bill be amended—

(a) by deleting the words "or a staff of a county assembly" appearing at the end of subclause (1);

(b) in subclause (3)—

(i) by deleting paragraph (a);

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph—
(b) where a member ceases being a member of a county assembly before attaining early retirement age, that member may opt for payment of—

(iii) in paragraph (b) by deleting sub paragraph (i) and substituting therefor the following new sub paragraph—

(i) not more than fifty percent of his total accrued benefits and the investments income that has accrued in respect of those contributions

provided that a member may withdraw any additional voluntary contributions made into the scheme and accrued interest in full;

(iv) in paragraph (c) by deleting the words "before attaining the early retirement age" appearing at the end of the paragraph.

CLAUSE 29

THAT clause 29 of the Bill be amended by deleting the words "Despite the provisions of any other written law" appearing at the introductory part of subclause (2) and substituting therefor the words "Subject to the Retirement Benefits Act".

CLAUSE 49

THAT clause 49 of the Bill be amended by deleting subclause (4) and substituting therefor the following new subclause—

(4) Without prejudice to any proceedings instituted under the provisions of this section, a sponsor who makes a deduction from a member's emoluments for remittance to the Scheme and fails to remit the contribution to the Scheme within fifteen days commits an offence and shall on conviction be liable to a fine not

exceeding five million shillings or in the case of a natural person to imprisonment for a term not exceeding two years or to both.

CLAUSE 52

THAT the Bill be amended by deleting clause 52.

CLAUSE 53

THAT the Bill be amended by deleting clause 53 and substituting therefor the following new clause—

Transition of members of county assemblies to the Scheme

53. (1) The members of county assemblies who are members of the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund shall be transitioned into the Scheme within one year upon the commencement of this Act.

(2) The funds, assets and other property, movable and immovable which immediately before the commencement date were held by or on behalf of the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund for the members of county assemblies shall vest in the Scheme.

(3) All the records of members of county assemblies held by the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund shall be transferred to the Scheme administrator.

(4) All rights, liabilities and duties whether arising under any written law or otherwise, which immediately before the commencement date were accruing, imposed or enforceable by or against the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund with regard to members of county assemblies shall vest in, be imposed on, or be enforceable against the Scheme.

NEW CLAUSES

NEW CLAUSES

THAT the Bill be amended by inserting the following new clauses immediately after clause 46—

Exemption from compliance with

46A. The Cabinet Secretary may, by order in the *Gazette*—

provisions of this Act

(a) exempt any person or class of persons from compliance with any specified provisions of this Act; or

(b) extend the time for compliance by any person or class of persons with any specified provisions of this Act

provided that nothing in this section shall apply in respect of payment of retirement benefits.

Provisions of the Retirement Benefits Act

46B. The provisions of the Retirement Benefits Act (Cap. 197) and regulations thereunder shall apply to the Fund.

CLAUSE 2

THAT clause 2 of the Bill be amended by—

(a) inserting the definition of the term "beneficiary" immediately after the definition of the term "Authority"—

"beneficiary" means a dependant, a person nominated by the member in writing or any other person other than a member entitled to receive a benefit;

(b) deleting the definition of the term—

(i) "existing schemes" and inserting therefor the following new definition—

"existing scheme" means the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund;

(ii) "income drawdown" and inserting therefor the following new definition—
"income drawdown" means an arrangement that allows a member of a retirement benefits scheme to access his or her accumulated retirement benefits as a regular income through reinvesting his or her benefits from an income drawdown fund registered by the Retirement Benefits Authority;

(iii)"member" and inserting therefor the following new definition—
"member" means an eligible member of a county assembly who has become a member of the Scheme and includes a person entitled to or receiving a benefit under the Scheme;

(iv)"normal retirement age" and inserting therefor the following new definition—

"normal retirement age" means the age of sixty years or such other age set out in written law or applicable policy;

(v) "spouse" and inserting therefor the following new definition—

"spouse" means a husband or a wife;

LONG TITLE

THAT the Bill be amended by deleting the long title and substituting therefor the following new long title—

AN ACT of Parliament to: provide for a contributory pension scheme for members of county assemblies; establish a county assemblies pensions fund for the payment or granting of pensions or retirement benefits to members of county assemblies; and other related matters.

Dated 26th August, 2024.

.....

Sen. Recha Julius Murgor,
Chairperson,
Committee on Labour and Social Welfare.

APPENDIX 3

PARLIAMENT OF KENYA LIBRARY

SPECIAL ISSUE

Kenya Gazette Supplement No. 56 (Senate Bills No. 14)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2024

NAIROBI, 7th February, 2024

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PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

THE COUNTY ASSEMBLIES PENSIONS SCHEME BILL, 2024

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SCHEDULE—THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

THE COUNTY ASSEMBLIES PENSION SCHEME BILL, 2024

AN ACT of Parliament to: provide for a contributory pension scheme for members and staff of county assemblies; establish a county assemblies Pensions Fund for the payment or granting of pensions or retirement benefits to Members of county assemblies and members of staff of county assemblies; and other related matters.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the County Assemblies Pension Scheme Act, 2024.

Interpretation.

No. 3 of 1997.

2. In this Act, —

"actuary" has the meaning assigned thereto in the Retirement Benefits Act, Cap. 197;

"administrator" means the person appointed as such under section 23;

"annuity" means a pension purchased under a contract with a registered insurer;

"approved issuer" means an approved issuer appointed by the Trustee to provide the services of approved issuer in accordance with the Retirement Benefits Act, Cap.197;

"Authority" means the Retirement Benefits Authority established under the Retirement Benefits Act, Cap. 197;

"Board" means the Board of Trustees established under section 6;

"Cabinet Secretary" means the Cabinet Secretary responsible for the National Treasury;

"child" means any child of a deceased member including a natural child, an adopted child or a step-child who has not attained eighteen years of age or, if the child is receiving full time education, not more than twenty-five years of age and was at the time of the death of the deceased wholly or mainly dependent on the deceased, and includes an unborn child who, if already born, would have been a child of the deceased;

"commencement date" means the date of coming into force of this Act;

"contribution" means the amount payable by a member or sponsor into the Scheme under this Act;

"county assembly" means a county assembly established under Article 176 of the Constitution;

"county assembly service board" means a county assembly service board established under section 12 of the County Governments Act (Cap. 265);

"custodian" means a person appointed as such under section 22 of the Act;

"dependant" in relation to a deceased member, means a relative of the deceased who survives the deceased and who, on the date of the deceased's death, was—

(a) a spouse to the deceased;

(b) a child of the deceased; or

(c) a parent of the deceased who was dependent on the deceased for the provision of the ordinary necessities of life;

"early retirement age" means such age as may be prescribed but which shall not be less than fifty years;

"existing scheme" means the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust(Umbrella)Retirement Fund;

"Fund" means the County Assemblies Pensions Scheme Fund established under section 37;

"fund manager" means a person appointed as such under section 21;

"income drawdown" means the facility to continue to keep retirement savings invested in the scheme and take an income during a specified period rather than buy an annuity;

"insured benefit" means the death in service lump sum benefit and the disability lump sum benefit to be provided in terms of section 24;

"investment return" means a portion of the return of the investment declared by the Board and appropriated to the account of a member;

"member" means an eligible member or staff of a county assembly who has become a member of the Scheme and includes a person entitled to or receiving a benefit under the Scheme;

"member account" means an account maintained by the Scheme for an individual member;

"member of a county assembly" means a member of a county assembly established under Article 176 of the Constitution;

"normal retirement age" means the age as set by the Public Service Commission or any other Act of Parliament for retirement of public officers;

"pensionable emoluments" means basic salary excluding housing, transport and any other allowances or fluctuating emoluments;

"Scheme" means the County Assemblies Pension Scheme established under section 4;

"sponsor" means a county assembly service board that makes contributions on behalf of a member;

"spouse" means a male or female person to whom a member is married or was married under any other law, whether monogamous or not immediately before their death; and

"Trustee" means a member of the Board.

Objects and purpose of the Act.

3. (1) The object and purpose of the Act is to—

(a) provide for the establishment of the Scheme;

(b) provide for the payment of retirement benefits to members of the Scheme when they become due;

(c) provide for the social security of members of the Scheme by ensuring that the members save in order to cater for their livelihood during their retirement;

(d) establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme;

(e) establish transitional provisions for existing schemes; and

(f) protect the benefits of the members of the Scheme.

PART II—ESTABLISHMENT OF THE COUNTY ASSEMBLIES PENSIONS SCHEME

Establishment of the County Assemblies Pension Scheme.

4. (1) There is established the County Assemblies Pension Scheme.

(2) The Scheme is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(c) entering into contracts;

(d) borrowing and investing money; and

(e) doing or performing all such other things or acts as may be necessary in furtherance of its purpose and functions.

(3) The Scheme shall be a defined contribution scheme providing social security benefits including—

(a) periodic payments through the purchase of annuities;

(b) a lump sum as a commutation of pension or trivial pension in accordance with the Retirement Benefits Authority Regulations;

(c) income drawdown;

(d) gratuity; and

(e) any other benefit approved by the Board under this Act.

Membership of the Scheme.

5. (1) Membership of the Scheme shall consist of all members of county assemblies and members of staff of county assemblies.

(2) All members of the third county assemblies and staff shall, on the date of commencement of this Act, be deemed to have joined the Scheme.

Board of Trustees of the Scheme.

6 (1) The management of the Scheme shall vest in a Board of Trustees of the Scheme.

(2) The Board shall consist of—

(a) the chairperson elected by the Trustees from among the members under paragraphs (c) and (d);

(b) a county executive committee member responsible for matters relating to Finance nominated by the County Council of Governors;

(c) two people nominated by County Assembly Service Boards;

(d) five persons nominated by the forum representing all the county assemblies in the country of whom at least two shall not be of the same gender as follows—

(i) two representatives of members of county assemblies contemplated in Article 177(a) of the Constitution;

(ii) a representative of members of county assemblies contemplated in Article 177(b) of the Constitution; and

(iii) a representative of members of county assemblies contemplated in Article 177(c) of the Constitution;

(e) two representatives of the staff of the county assemblies nominated by the SOCCAT (K); and

(f) the Chief Executive Officer who shall be an ex officio member and the secretary to the Board with no voting rights.

(3) The vice-chairperson of the Board shall be elected by the Trustees from among their number.

(4) The chairperson and vice- chairperson shall be of the opposite gender.

(5) The Cabinet Secretary shall ensure that not more than two thirds of the members of the Board are of the same gender.

(6) The Cabinet Secretary shall appoint the persons nominated under subsection (2) by notice in the *gazette*.

(7) The procedure for nomination and appointment of Trustees under subsection (2) shall be as prescribed in the regulations.

Qualifications for appointment of Trustees.

7. A person is qualified for appointment as a Trustee if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least five years experience in—

(i) finance;

(ii) law;

(iii) economics;

(iv) actuarial science; or

(v) any other profession or work experience directly relevant to the functions of the Board; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

Disqualification from appointment as a Trustee.

8. A person shall not be appointed as a Trustee if that person—

(a) has been convicted of a criminal offence, and sentenced to imprisonment for a term of six months or more;

(b) is an adjudged bankrupt or enters into a composition or arrangement with creditors; or

(c) is disqualified under the provisions of any other written law from appointment as such.

Tenure of office.

9. (1) A Trustee shall hold office for a term of three years and may be eligible for re-appointment for a further and final term of three years.

(2) Where a Trustee opts to apply for re-appointment under subsection (1), the re-appointment may be considered based on the performance of the applicant.

(3) The Board shall put in place arrangements to ensure that one-third of the Trustees are appointed in a staggered manner.

Removal from office.

10. (1) A Trustee may be removed from office by the Cabinet Secretary, in consultation with the nominating body, for—

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct or misbehaviour;

(c) incompetence or negligence of duty;

(d) bankruptcy;

(e) absence from two consecutive meetings of the Board without a reasonable explanation; and

(f) failure to meet the requirements of leadership and integrity set out in chapter six of the Constitution.

(2) Before a Trustee is removed from office under subsection (1), the Trustee shall be given an opportunity to be heard against the intended removal.

(3) Notwithstanding subsection (1), the Authority may remove a Trustee on grounds specified in the Retirement Benefits Act, Cap. 197.

Vacation of office.

11. A person ceases to be a Trustee if the person—

(a) resigns in writing to the Cabinet Secretary;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;

(c) is declared bankrupt or enters into composition with his or her creditors;

(d) is unable to perform the functions of their office by reason of mental or physical infirmity;

(e) ceases to be a member of a county assembly;

(f) is removed in accordance with section 10; or

(g) dies.

Filling of vacancy.

12. Where a vacancy occurs in the membership of the Board under section 10 or 11, the Cabinet Secretary shall appoint a new Trustee in accordance with the provisions of this Act.

Functions of the Board.

13. The Board shall—

(a) formulate policies relating to the Scheme in accordance with the provisions of the Retirement Benefits Act, Cap.197;

(b) collect contributions and income payable to the Fund under this Act;

(c) pay out the various benefits to persons entitled to the benefits as provided under the Act;

(d) protect the Fund's assets and ensure long term viability of the Scheme;

(e) ensure efficient management of the Scheme;

(f) ensure prudent investment of the monies forming part of the Fund;

(g) negotiate competitive annuity rates on behalf of members;

(h) ensure that the Scheme observes high standards of corporate and business ethics;

(i) advise the Cabinet Secretary on any matter relating to the objects and functions of the Board under this Act; and

(j) perform any other functions assigned to it under this Act.

Powers of the Board.

14. (1) In the exercise of its functions, the Board shall be accountable to the sponsors and the members of the Scheme.

(2) The Board shall have all powers necessary for the proper performance of the functions of the Scheme under this Act.

(3) Without prejudice to the generality of subsection (2), the Board shall have power to—

(a) supervise the assets of the Scheme in such manner as best promotes the purpose for which the Scheme is established;

(b) appoint a custodian, fund manager and administrator to carry out their functions as specified in the Retirement Benefits Act, Cap. 197;

(c) determine the provisions to be made for administrative expenses as provided for under

section 38 and for reserves of the Fund as provided for under section 39;

(d) ensure protection, where necessary, of the assets of the Scheme;

(e) associate with any other institution so as to further the purpose for which the Scheme is established;

(f) receive grants, gifts, donations or endowments and make legitimate disbursements from them;

(g) enforce remittance of outstanding Contributions by a sponsor;

(h) invest any monies of the Scheme not immediately required for its purposes;

(i) delegate any of its powers; and

(j) undertake any activity necessary for the fulfilment of any of the functions of the Scheme.

(4) The Board may, subject to such conditions as it may consider necessary, by directions in writing, delegate any of its powers to any one or more of the Trustees or to the chief executive officer or employees of the Scheme.

Committees of the Board.

15. (1) The Board may establish committees consisting of the Trustees for the better carrying out of its functions.

(2) The Board may co-opt persons to committees established under subsection (1) for a particular reason and such persons shall hold office for such period as the Board may determine.

(3) The persons co-opted into a committee under subsection (2) shall not be more than three.

(4) Subject to any specific or general direction of the Board, a committee established under subsection (1) may regulate its own procedure.

Remuneration of Trustees.

16. The Trustees shall be paid such remuneration as the Authority may determine in accordance with the Retirement Benefits Act.

Meetings of the Board.

17. (1) The business and affairs of the Board shall be conducted in accordance with the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedures subject to compliance with the Retirement Benefits Act and the regulations thereunder.

(3) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any of its decisions.

Chief executive officer of the Scheme.

18. (1) There shall be a chief executive officer of the Scheme who shall be appointed by the Board through a competitive recruitment process on such terms and conditions as may be specified in the instrument of appointment.

(2) The chief executive officer shall be an *ex-officio* member of the Board.

(3) A person is qualified for appointment as the chief executive officer if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least ten years of experience of which five years should be at senior management level in a profession relevant to the functions of the Scheme as may be defined in the Regulations; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(4) The Chief Executive Officer shall be the accounting officer of the Scheme and secretary to the Board and, subject to the direction of the Board, shall be responsible for the—

(a) implementation of the decisions of the Board;

(b) day to day management of the affairs of the Scheme;

(c) management and discipline of the employees of the Scheme; and

(d) any other function that may be assigned by the Board.

(5) The Chief Executive Officer shall hold office for a term of three years and may be eligible for re-appointment for a further final term of three years.

(6) The Chief Executive Officer may be removed from office by the Board such grounds as may be set out in the instrument of appointment.

(7) Before the Chief Executive Officer is removed from office under subsection (5), the Chief Executive Officer shall be given—

(a) sufficient notice of the allegations made against him or her; and

(b) an opportunity to be heard either in person or by a legal representative.

Employees of the Scheme.

19. (1) The Board may engage such other employees as it may consider necessary for the performance of its functions under this Act.

(2) The terms and conditions of service of employees of the Scheme shall be determined by the Board.

Common seal of the Scheme.

20. (1) The common seal of the Scheme shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The common seal of the Scheme when affixed to a document and authenticated shall be officially noticed, and unless the contrary is proved, an order or authorization of the Board under this section shall be presumed to have been given.

PART III—ADMINISTRATION OF THE SCHEME

Fund manager.

21. The Board shall appoint a fund manager of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act—

(a) implement the investment policy of the Scheme as approved by the Board;

(b) manage the Scheme funds and assets in accordance with the provisions of the Retirement Benefits Act;

(c) maintain books of accounts on all investment transactions relating to the Scheme;

(d) submit reports on a quarterly basis on investment strategy, market returns and other performance indicators to the Board; and

(e) perform any other function that may be assigned in the instrument of appointment and other written law.

Custodian of the Scheme.

22. (1) The Board shall appoint a custodian of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act –

(a) receive the contributions remitted by the sponsors and members under this Act on behalf of the Board;

(b) not later than the next business day following receipt of the contributions from a sponsor, notify the fund manager and the administrator of such receipt;

(c) receive and keep in safe custody the title documents, securities and monies of the Scheme in trust for the members and beneficiaries;

(d) collect dividends for the Scheme;

(e) report to the Board on any matter relating to the assets being held by the custodian on its behalf at such intervals as may from time to time be determined by the Board;

(f) undertake statistical analysis on the investments and returns on investments with respect to funds in its custody and provide data and information to the administrator and the Board;

(g) submit to the Board a report on a quarterly basis, of the reconciliations with respect to the funds held by the Custodian;

(h) execute, on behalf of the Board, the relevant proxy for the purpose of voting in relation to the investments; and

(i) perform any other function that may be assigned in the instrument of appointment or any other written law.

(2) The custodian shall maintain all funds and assets in its custody to the order of the Board and shall not utilise any pension fund or assets in its custody to meet its own financial obligation.

Administrator.

23. (1) The Scheme shall be administered by an administrator appointed by the Board.

(2) The administrator shall be an employee of the Board.

(3) The functions of the administrator shall be to—

(a) open and maintain an account for each member;

(b) upon receiving details of the contributions remitted under this Act, cause the amount of the contributions to be credited in the account of the member in respect of whom the sponsor has made the payment;

(c) inform the Board if a member's contribution details differ from the expected;

(d) provide customer support services to members, including access at least on a quarterly basis to members' account balances and statements;

(e) keep and maintain proper books of accounts of the Scheme;

(f) cause to be paid retirement benefits to a member who has retired;

(g) be responsible for all calculations relating to retirement benefits; and

(h) carry out any other functions as may be directed by the Board from time to time.

(4) The administrator shall ensure that all income earned from the investment of the Fund is distributed to the credit of the members' retirement savings accounts save for clearly defined and reasonable fees, charges, costs and expenses of transactions as may be approved by the Board.

Contributions.

24. (1) A member shall, so long as the member is a member of a county assembly, contribute not less than seven nought five percent (7.5%) of that member's pensionable emoluments to the Scheme.

(2) Every sponsor shall contribute to the Scheme not less than fifteen per cent of the pensionable emoluments of a member of the Scheme plus the amounts necessary to cover the premiums for insured benefit.

(3) Subject to such guidelines as the Board may issue, in consultation with the members and sponsors of the Scheme, a member of the Scheme may make additional contributions to the Scheme.

(4) In addition to the contributions specified in subsections (1) and (2), the sponsor shall take out and maintain a life insurance policy that has disability benefits in favour of every member of the Scheme, for a minimum of three times of the member's annual pensionable emoluments.

(5) Upon commencement of this Act, contributions required to be made under subsections (1) and (3) shall be deducted by a sponsor from the salary of the member in each month on which the salary is paid and shall be paid into the Scheme together with the sponsor's contribution before the tenth day of every calendar month or before any other day which may be notified in writing and approved by the Authority.

(6) Any contributions not paid to the Scheme by a sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest during the period they remain unpaid at a rate specified by the Board from time to time provided that such rate shall not be less than the rate specified in the Retirement Benefits Act and Regulations.

(7) All unpaid contributions and interest thereon shall constitute a civil debt of the respective sponsor and shall be recoverable summarily by the Board as provided for by law.

(8) The Board shall report to the Authority at such intervals as specified by the Authority, all remittances of contributions outstanding and not received after the deadlines specified herein.

Vesting of benefits.

25. All the benefits derived from contributions by a member and a sponsor shall vest immediately in the member.

Withdrawal of membership or benefits.

26. (1) A member shall not withdraw membership or retirement benefit from the Scheme while the member is a member of a county assembly or a staff of a county assembly.

(2) A member may withdraw benefits from their account before normal retirement age in the following circumstances –

(a) resignation;

(b) dismissal;

(c) removal from office;

(d) ill health;

(e) emigration.

(3) Despite subsection (1)—

(a) where a member ceases being a member or a staff of a county assembly before one year of membership, the member may opt for payment of his own and the whole of the sponsor's contributions, together with allocated investment income;

(b) where a member ceases being a member or a staff of a county assembly after one year of membership but before attaining the specified early retirement age, the member may opt for payment of—

(i) his or her own contribution and the sponsor's contribution as may be prescribed by the Retirement Benefits Authority and the investment income that has accrued in respect of those contributions; and

(ii) the balance shall be retained in the Scheme and continue to accrue interest until the member attains early retirement age, or transferred to another registered Scheme of the members choice;

(c) a member may opt for payment to him or her of the total amount of vested accrued benefits before attaining the early retirement age—

(i) on grounds of ill health or subsequently during deferment, if the member becomes incapacitated due to ill health, to the extent that it would occasion his or her retirement, if he or she was in employment; or

(ii) if the member has emigrated from Kenya to another country without the intention of returning to reside in Kenya and the Board has approved the payment of the retirement benefits and submitted, fourteen days prior to payment of the benefits, the approval to the Authority.

Retirement from service.

27. (1) Despite any other provisions in this Act, a member who retires is entitled to make withdrawals—

(a) on attaining the normal retirement age, or where their exact date of birth is not known, on the first day of July in the year in which the Board deems that they have reached normal retirement age;

(b) on the advice of a qualified medical practitioner appointed by the Board certifying that the member is no longer mentally or physically capable of carrying out the functions of their office.

(2) The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in any of the following documents—

(a) birth certificate;

(b) national identification card; or

(c) a valid passport.

Early retirement.

28. (1) Notwithstanding the provisions of section 27, any member who retires on attaining the early retirement age is entitled to make withdrawals in accordance with section 29.

(2) The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in any of the following documents—

(a) birth certificate;

(b) national identification card; or

(c) a valid passport.

Payment of retirement benefits.

29. (1) Where a member retires as provided in this Act, the member may request the Board in writing to pay to him or her—

(a) a lump sum from the balance in his or her retirement savings account that shall not exceed the equivalent of one-third of that balance:

Provided that a Member may withdraw any additional voluntary contributions made into the Scheme and accrued interest in full;

(b) monthly or quarterly income drawdown in accordance with a formula prescribed by the Board on the advice of an actuary;

(c) monthly or quarterly annuity for life purchased from an approved issuer of their choice:

Provided that the annuity shall include a provision for benefits payable to dependants upon a member's death.

(2) Despite the provisions of any other written law, a benefit granted under this Act shall not be—

(a) assignable or transferable except in accordance with the terms of a mortgage guarantee facility approved by the Board; and

(b) liable to be attached in settlement of any claim.

(3) The payment of a retirement benefits shall commence from the end of the month immediately following the month of the retirement of the member.

(4) Every payment of benefits from the Scheme may be subject to deduction of the amount outstanding due by the member under any mortgage guarantee facility approved by the Board.

Particulars of member and dependants of the member.

30. (1) Every member shall provide his or her particulars and those of his or her dependants to the administrator in the prescribed manner.

(2) A member may update the particulars provided under subsection (1) at any time and, in any event, at least three years before retirement.

Dispute on nomination.

31. (1) If a dispute relating to a nomination under this Part arises, the Board has power to consider evidence presented and determine the rightful dependant.

(2) Nothing in this Part may be construed as limiting or otherwise affecting the inherent power of the Board, either on its own motion or on the application of a party, to make such decisions as may be necessary.

Benefits to be paid upon the death of a member.

32. If upon the death of a member, benefits are paid to a person validly nominated under this Part, no other person shall have any other claim to the benefits against the Fund.

Death of a member in service.

33. (1) Upon the death of a member, the benefits accrued to the member shall be paid to the person whose particulars the Member had provided or at the Board's discretion as otherwise provided in the Retirement Benefits Act and Regulations thereunder.

(2) In the absence of a nomination, the Board shall apply the benefits referred to in subsection (1) to such of dependants of the deceased and in such amounts as the Board shall determine.

(3) Where a dispute arises under this section, the Board shall consider any evidence presented before it and determine the rightful beneficiary.

Presumption of death of member.

34. (1) Where a member is missing and it is proved that the member has not been heard of for such period as prescribed by the law relating to presumption of death by those who might be expected to have heard of the member if that member was alive, there shall be a rebuttable presumption that the member is dead as provided under the law.

(2) Where a person is presumed dead under this section, the provisions of section 33 apply.

Death of member in retirement.

35. (1) If a member who was receiving a retirement benefit under an income drawdown dies, a benefit that is equivalent to the unutilized balance of the account of the member shall be paid to the nominated beneficiaries of the member.

(2) The payment under subsection (1) shall be made to the beneficiaries either as a lump sum or as an annuity commencing from the day following the death of the member.

Prohibited payments from the Scheme.

36. The retirement benefits under this Act shall not be paid by the Scheme to—

(a) a member, while the member is still a member of a county assembly except where a member works on a contractual basis for the Sponsor after their resignation or early retirement; or

(b) any person as a loan, advance or other similar benefit or payment except as provided under this Act.

PART IV—FINANCIAL PROVISIONS

County Assemblies Pensions Scheme Fund.

37. There is established the County Assemblies Pensions Scheme Fund which shall be administered by the Board in accordance with this Act and other relevant written laws.

Sources of funds.

38. (1) The Fund shall consist of—

(a) monies as may vest in or accrue to the Scheme in the performance of its functions under this Act or under any other written law;

(b) contributions from sponsors and members;

(c) grants, gifts, donations or other endowments given to the Scheme;

(d) income from investments made by the Scheme that are approved by the Board;

(e) fees and charges authorized by the Board;

(f) monies earned by the Scheme from any other source; and

(g) monies from any other source provided or donated or lent to the Scheme.

(2) There shall be paid out of the Fund—

(a) all benefits provided for under this Act;

(b) the expenses incurred in the management and administration of the Scheme subject to the limits provided under this section.

(3) For the avoidance of doubt, nothing in this Act is intended to or may be construed as providing for or dealing with—

(a) taxes;

(b) the imposition of charges on a public fund or the variation or repeal of any of those charges;

(c) the appropriation, receipt, custody, investment or issue of public money;

(d) the raising or guaranteeing of any loan or its repayment except as provided in any written law; or

(e) matters incidental to any of those matters.

(4) The Board shall establish an account into which may be paid—

(a) the monies transferred from the Fund for the trust expenses incurred by the Board in the exercise of its powers or the performance of its functions under this Act;

(b) the annual administrative expenses deducted from the value of the Fund at the rate approved from time to time by the Board but subject to a maximum of one and half percent of the Fund value or any such rate as the Board in consultation with the Authority may prescribe;

(c) monies that may vest in the Board in the course of the exercise of the powers of the Board;

(d) income from the investment of the monies held in the account established under this section; and

(e) all monies from any other source provided for or donated or lent to the Board.

(5) Any unspent monies budgeted for annual administrative expenses shall lapse back into the Fund at the end of the financial year.

(6) The Board may invest any surplus monies held in the account established under this Act in asset classes approved under the Retirement Benefits Act.

Reserve account.

39. (1) The Board may maintain a reserve account of the Scheme into which the following shall be deposited—

(a) any special contribution paid into the Scheme by a sponsor or the Government for the purpose of improving the benefits of the members; and

(b) any income of the Scheme that the Board determines should be set aside to stabilize the returns to members subject to a maximum of ten per cent of such income with consideration to the Income Tax Act or regulations made thereunder. Cap. 470

(2) Money shall not be drawn out of the reserve account except as directed by the Board for the purposes provided for under subsection (1).

(3) Any monies determined to be income of the reserve account shall be treated as income forming part of the general income of the Scheme.

Annual estimates.

40. (1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Scheme for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Scheme for the financial year concerned and, in particular, shall provide for the—

(a) payment of the salaries, allowances, and other charges in respect of the employee of the Scheme;

(b) payment of benefits and other charges which are payable out of the funds of the Scheme;

(c) funding of the registration, monitoring and evaluation activities of the Scheme;

(d) maintenance of the buildings and grounds of the Scheme;

(e) funding of training, research and development of activities of the Scheme;

(f) reserve funds to meet future or contingent liabilities in relation to retirement benefits, insurance or replacement of buildings or equipment; and

(g) such other matters as the Board may consider necessary.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate.

(4) Expenditure of the Scheme shall not be incurred except in accordance with the annual estimates approved by the Board.

Accounts and audit.

41. (1) The Board shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities.

(2) Within a period of three months after the end of each financial year, the Board shall submit to an auditor who is recognized and approved by the Authority the accounts of the Scheme in respect of that year together with—

(a) balance sheet showing in detail the assets and liabilities of the Scheme as at the end of the financial year.

(b) a statement of the income and expenditure of the Scheme during that year; and

(c) such other statements as may be required by the Authority.

(3) The annual accounts of the Scheme shall be prepared, audited and reported upon in accordance with the Retirement Benefit Act and other relevant laws.

Financial year.

42. The financial year of the Scheme shall be the period of twelve months ending on the thirtieth June in each year.

Annual distribution of profits.

43. The annual investment income earned by the Scheme shall after deduction of all expenses and costs properly paid out of the Scheme and any appropriation to a reserve account approved by the Board be credited to members' accounts on a pro-rata basis.

Actuarial review of the Scheme.

44. (1) The scheme shall be reviewed by an actuary appointed by the Board as provided for in the Retirement Benefits Act.

(2) The actuary appointed under subsection (1) shall—

(a) prepare a report on the state of the Scheme; and

(b) recommend any necessary action to be taken.

(3) The actuary shall submit the report prepared under subsection (2) to the Board within the stipulated time in the instrument of appointment.

(4) The Board shall, within six months of the receipt of such report, consider any recommendations made by the Actuary and in so doing, may take any action recommended by the actuary.

PART V—MISCELLANEOUS PROVISIONS

Conflict with other written law.

45. Where there is a conflict between the provisions of this Act and the provisions of the Retirement Benefits Act, the provisions of the Retirement Benefits Act shall prevail.

Duty of care.

46. (1) The Board shall—

(a) ensure that the Scheme is at all times managed in accordance with the provisions of this Act, the Retirement Benefits Act and any other applicable law; and

(b) take reasonable care to ensure that the management of the Scheme or safe keeping of the assets of the Scheme is carried out in the best interests of the members of the Scheme.

(2) The administrator, fund manager, actuary and custodian shall—

(a) report to the Board and the Authority, as soon as reasonably practicable, any unusual occurrence with respect to the Scheme which in their view could adversely affect the rights of the owner of a member's account under the Scheme; and

(b) report to the Board and the Authority, as soon as is reasonably practicable, if a sponsor has not remitted the required contribution and such remittance remains due for more than ten days.

Protection from personal liability.

47. No action or omission by any member of the Board, or employee of the Scheme shall, if the act was done in good faith for the purpose of carrying out the provisions of this Act or any other law, subject the person to any liability, action, claim or demand.

Offences.

48. (1) A person who—

(a) wilfully fails to remit contributions to the Scheme as required;

(b) knowingly gives false information to the Scheme; or

(c) being a Trustee or employee of the Scheme, wilfully misappropriates the assets of the Scheme,

commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

(2) Where an offence under this section is committed by a body corporate, every person who at the time of the commission of the offence was—

(a) a director, general manager, secretary of the company or other similar officer of the body corporate; or

(b) purporting to act in any such capacity as provided in paragraph (a),

commits that offence.

(3) A person who is convicted of an offence under subsection (1) (c) shall, in addition to any fine that may be imposed, refund to the scheme three times the value of any loss that may be incurred by the scheme by reason of the commission of the offence.

Proceedings for recovery of deductions from sponsors.

49. (1) Notwithstanding the provision of section 26, where a sponsor, having made deduction from a member's emoluments for remittance to the Scheme, fails to remit the contribution within fifteen days of the deduction, the Scheme shall, after giving such sponsor not less than seven days' notice, institute proceedings for the recovery of the deduction.

(2) A notice under subsection (1) shall be in writing and copied to the Authority, and shall—

(a) require the sponsor to pay the sum deducted to the Scheme within seven days of the notice; and

(b) inform the sponsor that if he fails to pay such sum before the expiration of the notice, proceedings for summary recovery of the sum shall be filed in court without further reference to him.

(3) Any sum which is the subject of proceedings of summary recovery under this section shall attract a compound interest at the rate of three per cent per month.

(4) Without prejudice to any proceedings instituted under the provisions of this section, a person who refuses or fails to comply with a notice given to him or her under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five million shillings, or in the case of a natural person, to imprisonment for a term not exceeding two years, or to both.

(5) Where an offence under subsection (4) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in that subsection be liable to a further fine of one thousand shillings for every day or part thereof during which the offence continues.

General penalty.

50. A person who—

(a) contravenes any provision of this Act which is expressly stated to be an offence but for which no other penalty is prescribed; or

(b) fails to comply with any direction given by the Authority,

commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Regulations.

51. The Cabinet Secretary may, in consultation with the Board, make regulations generally for the better carrying into effect the provisions of this Act.

PART VI—SAVINGS AND TRANSITION

Extent of exemption from other statutory schemes.

52. The sponsors and members of the Scheme may be exempt from making Tier 11 contributions to the National Social Security Fund.

Transition of members of county assemblies to the Scheme

53. (1) The members and staff of county assemblies who are members of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall be transitioned into the Scheme within six months upon the commencement of this Act.

(2) The funds, assets and other property, movable and immovable which immediately before the commencement date were held by or on behalf of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund for the members and staff of county assemblies shall vest in the Scheme.

(3) All the records of members and staff of county assemblies held by the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall be transferred to the Scheme administrator.

(4) All rights, liabilities and duties whether arising under any written law or otherwise, which immediately before the commencement date were accruing, imposed or enforceable by or against the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund with regard to members and staff of county assemblies shall vest in, be imposed on, or be enforceable against the Scheme.

Government guarantee.

54. County governments shall, during the short and medium term, guarantee the solvency of the Scheme for any payment that may be required under it.

SCHEDULE (s.17)

THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Meetings.

1. (1) The Board shall hold at least four meetings in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Meetings shall be convened by the Secretary of the Board in consultation with the Chairperson and shall be held at such times and such places as the Chairperson shall determine.

(3) The chairperson shall preside over all meetings and in the absence of the chairperson, the vice-chairperson, or in the absence of the vice-chairperson, a Trustee elected by the Board at the meeting for that purpose, shall preside over the meeting.

(4) The chairperson may at any time convene a special meeting of the Board, and shall do so within seven days of the receipt by the chairperson of a written request signed by at least five other Trustees.

(5) Unless six Trustees otherwise agree, at least seven days' notice of a meeting shall be given to every trustee.

Quorum.

2. (1). The quorum of a meeting of the Board shall be five Trustees present and voting and shall include at least two Trustees appointed under section 6 (2) (b), (c), (d) or (e) and at least three Trustees appointed under section 6 (2) (f).

(2) For special meetings, the quorum shall be six Trustees present and voting and shall include at least three Trustees appointed under section 6 (2) (b) or (c) and at least four Trustees appointed under section 6 (2) (d).

Voting.

3. A decision of the Board shall be by a majority of the Trustees present and voting and, in the case of a tie of votes, the person presiding at the meeting shall have a second or casting vote.

Minutes.

4. Minutes of all meetings shall be kept and entered in records kept for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to establish the County Assemblies Pensions Scheme for all members of county assemblies; provide for the establishment of the scheme's Board of Trustees and provide for the scheme's management and administration. The Bill proposes to have the scheme offer lump sum payments as provident, periodic payments as pensions and income draw-downs. The proposed scheme will transition all members of county assemblies into one universal scheme for all the forty seven county governments besides being open to other public officers and any other person approved by the Board.

Part I (clauses 1-5) contains preliminary matters.

This part contains the short title, interpretation of terms, the application clause which includes all members of county assemblies as well as any public institution, organization or state officer who may wish to join and the scope of the Bill which is to extend the range of those who may access the scheme's services.

Part II (clauses 6-21) provides for the establishment of the scheme. It establishes the County Retirement scheme fund and its Board of Trustees. It provides the procedure for appointment of the Trustees and the necessary qualifications. It also provides the Trustees' functions and powers and sets their tenure to three years renewable once based on performance.

Part III (clauses 22-37) contains provisions on the administration of the scheme and provides for the appointment of the fund Manager and the Custodian. It also sets out their functions. The functions of the Administrator, who is the Chief Executive Officer, are also set out. Further, the part provides for membership of the scheme without a sponsor, the vesting of benefits, and withdrawal from the retirement savings account and retirement from the service among others. Finally, it sets out the prohibited payments from the scheme.

Part IV (clauses 38-44) provides for the establishment and management of the County Assemblies Pensions Scheme Fund. It contains the financial provision. It also provides how surplus funds may be invested as well and sets out a requirement for the Board to have a reserve account.

Part V (clauses 45-53) sets out the general provisions including the duty of care of the Board, protection of the Trustees and employees of the scheme from personal liability, offences, and proceedings for recovery of deductions from employers and a general penalty clause. It also contains a provision on the making of regulations and gives this power to the Board, in consultation with the Cabinet Secretary. Finally, this part contains a

provision exempting members of the scheme from contributing to other statutory schemes and concludes with the savings and transitional provisions.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate any legislative powers nor does it limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill concerns county governments in terms of Articles 110(1) (a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 7th March, 2024.

AARON CHERUIYOT,
Senate Majority Leader.

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D/Nation
16/05/2024

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | THIRD SESSION
THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Wednesday, 8th May, 2024, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

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

The memoranda may be submitted to the Clerk of the Senate, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Thursday 30th May, 2024 at 5.00 p.m.**

	Bill	Committee Referred To	Email Address
a)	The Intergovernmental Relations (Amendment) Bill, 2024 (Senate Bills No. 12 of 2024)	Standing Committee on Devolution and Intergovernmental Relations	Senate.devolution@parliament.go.ke
b)	The County Assemblies Pensions Scheme Bill, 2024 (Senate Bills No. 14 of 2024)	Standing Committee on Labour and Social Welfare	laboursocialwelfarecomm.senate@parliament.go.ke

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

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

CamScanner

APPENDIX 4

APPENDIX 5

PARLIAMENT
OF KENYA
LIBRARY

LAPFUND
Secured Retirement

LAPF/BILL /VOL.1/ 3 JULY 8, 2024

Clerk of the Senate
Parliament Building
P.O. BOX 41842-00100
NAIROBI.

Dear Sir,

RE: SUBMISSIONS TO THE COUNTY ASSEMBLIES' PENSIONS BILL, 2024.(SENATE BILLS NO.14 OF 2024).

The Local Authorities Provident Fund (LAPFUND) is a state corporation established under the Local Authorities Provident Fund Act, Cap 272, Laws of Kenya. The Fund is mandated, pursuant to the Act read together with Part 7(1) of the Sixth Schedule to the Constitution of Kenya 2010, to receive, invest and manage retirement benefits for members from the forty-seven (47) counties, including County employees, members of the County Assemblies and County Executives and affiliated companies.

LAPFUND is a major stakeholder in the matter of the proposed Bill and objects to the legislative processing of the same for the following reasons:

1. Duplication and Conflict with Existing Legislation

The clauses in the proposed Bill duplicate those found in the County Governments Retirement Scheme Act, 2019. This Act was primarily designed to oversee pension management for County employees, County Assemblies, County Executives and affiliated companies. It aimed to facilitate the transition and consolidation of assets and liabilities from existing county pension schemes, namely the Local Authorities Provident Fund (LAPFUND) and the Local Authorities Pension Fund Trust (County Pension Fund), into a single, consolidated scheme. Additionally, it called for the repeal of the legal frameworks that established these two existing pension schemes.

The goal of this Act was to reduce expenditure, enhance service delivery and improve the quality and efficiency of services rendered to members. However, the commencement of the Act has been delayed due to an ongoing legal dispute currently before the Court of Appeal.

Introducing the proposed Bill at this juncture is counter-productive to the purpose and provisions of the County Governments Retirement Scheme Act, 2019 which will be interpreted to undermine the efforts to create a unified pension scheme and instead

promote the creation of overlapping structures, which will likely result in increased service delivery inefficiencies and administration costs.

Additionally, the Bill conflicts with the current directions towards implementing austerity measures aimed at reducing government expenditure while maintaining high-quality services.

2. **Risk of Further Fragmentation**

The proposed Bill risks creating further fragmentation within the retirement benefits industry by establishing a scheme that serves a specific membership group. This approach conflicts with the objectives of the National Retirement Benefits Policy, which emphasizes the need for a unified and coordinated legal and regulatory framework that ensures streamlined governance and maximizes the efficiency and impact of retirement benefits schemes.

Moreover, the proposed Bill duplicates roles and mandates already done and undertaken by operating existing retirement benefit schemes such as LAPFUND.

3. **Conclusion and Recommendation**

It is our view that the Bill should focus on enhancing and improving the existing retirement benefits frameworks instead of creating new, overlapping structures. This will foster better resource utilization and more effective service delivery to members within the scheme. It is against this backdrop that LAPFUND finds this Bill unnecessary as it fails to address any existing gaps and contravenes constitutional and legal provisions.

We urge this committee to reconsider the necessity of this Bill and instead focus on strengthening and harmonizing the existing retirement benefits frameworks within the county government, such as advancing engagement talks with the concerned stakeholders in a move to resolve and the legal dispute deterring for the implementation of the County Governments Retirement Scheme Act, 2019. This approach will ensure inclusivity, efficiency and benefits for all stakeholders.

Additionally, our specific objections to the provisions of the proposed Bill are detailed in the attached document for your review and consideration.

Yours faithfully,

JOHNSON P. OSOI, MBS, MCIArb
CHAIRPERSON

NO	PROVISION OF THE BILL	IMPLICATION	REASONS FOR OBJECTION	PROPOSAL
1.	Clause 2: Definition of Pensionable Emoluments	Excludes housing allowance, thereby reducing pension amounts and altering the terms of employment of employees without their consent.	Reduces employees' pension entitlements and alters their employment terms without consent, violating constitutional rights and labor laws.	Include housing allowance in the definition of pensionable emoluments for staff and create a separate definition for elected/nominated county officials, aligning with Article 41 of the Constitution and protecting rights under the Employment Act.
2.	Clauses 5 and 53(1): Compulsory and transition of membership	Imposes compulsory transition of scheme membership without consultation and consent from current members in listed existing schemes.	Compels membership changes without consent, disregarding individual rights and existing contractual agreements.	Allow voluntary scheme membership and transition with the consent of existing scheme members, in line with Article 41 of the Constitution and Section 33 of the Retirement Benefits Act.
3.	Clause 23: Administration of the Scheme	Despite the Bill indicating that the administration will be handled internally it does not specify who shall bear administrative authority over the scheme.	Lack of clarity raises concerns about transparency, efficiency and potential external influences on scheme administration.	Clearly specify internal administration will be done by the Chief Executive Officer as the scheme administrator to ensure transparency, cost efficiency, and proper operational guidelines.
4.	Clause 24(3): Voluntary contributions	Indicates members can make additional voluntary contributions conditional on specific rules set by the Board, developed	Imposes restrictive conditions on voluntary contributions, limiting member autonomy.	Remove restrictions on voluntary contributions, allowing members to make additional contributions without undue conditions, aligning with the Retirement Benefits Act.

		with input from both members and sponsors of the scheme.		
5.	Clause 26: Withdrawal Provisions	Prohibits withdrawal except under specific conditions, ignoring the status of elected and nominated members of county assemblies.	Limits withdrawal rights, particularly for elected and nominated officials.	Include provisions allowing elected/nominated officials to access benefits upon lapse of term of service and dissolution of government to which a member was elected in; after having serviced two consecutive terms of service.
6.	Clause 53(2): Transition of Funds	Mandates automatic vesting of funds from existing schemes without existing scheme members' consultation and consent.	Transfers funds without member consent, disregarding their control over contributions and potential legal implications.	Require prior consent from existing scheme members before transferring funds to ensure compliance with the Retirement Benefits Act and respect for members' rights.

LAPTRUST
Secured Retirement

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(1)

MINISTRY OF LOCAL GOVERNMENT

OFFICE OF THE PERMANENT SECRETARY

Telegrams: "AUTHORITY"
Telephone: Nairobi 217475
Fax: 217869
E-mail: molg@nbnet.co.ke

When replying please quote

C/2310.IV/(11)

Ref. No. ..... and date

JOGOO HOUSE "A"
TAIFA ROAD
P.O. Box 30004-00100
NAIROBI

12th July 2006

....., 20.....

LOCAL AUTHORITIES PROVIDENT FUND
RECEIVED
14 AUG 2006
REG. No. .....
NAIROBI

The Ag. Chief Administrative Officer
Local Authorities Provident Fund
NAIROBI

PROPOSED MERGER OF LAPTRUST AND LAPROFUND

In a bid to improve service delivery, eliminate duplication, increase economies of scale and rationalize and harmonize retirement benefits provision for workers of Local Authorities in Kenya, the Government has directed that the local Authorities Pension Trust (LAPTrust) and the Local Authorities Provident Fund (LAPROFUND) be merged into one single retirement benefits scheme.

In order to do this a number of technical issues, including among others the determination of accrued member balances or benefits, the legal framework, compliance with RBA and KRA legislation, investments, information technology and communication with existing members will need to be addressed. Further, the proposed merger will have to be undertaken in a manner that does not diminish or jeopardize the accrued past service benefits of the current members of both schemes. Given the complexity of issues around such mergers experienced professional consultants will need to be engaged to guide and assist in the merger process. The costs of hiring the professional consultants will be met by both LAPTrust and LAPROFUND.

In order to facilitate the proposed merger, it is intended to form an Implementation Committee drawn from the Boards of LAPTrust and LAPF. The Implementation Committee will determine the terms of reference of the proposed merger and the time frame for

Joyce
Pse open a merger file for all future correspondences

implementation. The Implementation Committee will make its recommendations and report the same to the Minister for Local Government for further action.

The purpose of this letter is to inform you of the Government directive and to appoint you and the Board Chairman as members of the Implementation Committee to oversee the proposed merger. The date of the first meeting of the Committee will be communicated to you in due course.

S. S. Boit, CBS
PERMANENT SECRETARY

10401

CEO'S [illegible] ADMIN
DATE 17/6/14
RECEIVED

Transition Authority
Devolution for better services





TRANSITION AUTHORITY
Office of the Chairman

Mobile: +254-0710287080
Office: 020 – 2224291/3/4
E-mail: infotransauthority@gmail.com
Website: transauthority.go.ke
When replying please quote

Extelcom House 8th Floor
P.O BOX 10736-00100
NAIROBI

Ref. TA/HRM/16

Date: 17th June 2014

H.E Hon William Ruto, EGH
Deputy President
Office of the Deputy President
NAIROBI

H.E. Hon. Isaac Ruto, EGH
Chairman
Council of Governors
NAIROBI

Joseph Kinyua, CBS
Head of Public Service/Chief of Staff
State House
NAIROBI

Ms. Anne Waiguru, OGW
Cabinet Secretary
Ministry of Devolution and Planning
NAIROBI

Mr. Henry K. Rotich
Cabinet Secretary
The National Treasury
NAIROBI

Mr. Jeremiah Nyegenge, CBS
Clerk to the Senate
NAIROBI.

Prof. Margret Kobia, CBS,
Chairperson
Public Service Commission
NAIROBI

This is the exhibit Marked "DK-15" referred to in the annexed affidavit of DAVID KOROSS sworn before me this 21ST FEB day of 2020 at NAIROBI

Commissioner for Oaths

167C.

Charles Nyachae
The Chairman
Commission on Implementation
of the Constitution
NAIROBI.

Micah Cherem
The Chairman
Commission on Revenue Allocation
NAIROBI

Dr. Edward Odundo,MBS
Chief Executive Officer
Retirment Benefits Authority
NAIROBI

Mr. Hosea Kiili, OGW
Chief Executive Officer
LAPTRUST
NAIROBI.

David Koros
Chief Executive Officer
LAPFUND
NAIROBI.

Dear Mr. Koros,

RE: TRANSITION AUTHORITY OPINION ON ESTABLISHMENT OF COUNTY PENSION SCHEME

1.0 Introduction

During the Consultative Meeting on County Pension Scheme held on 12th June, 2014 at the Deputy President's Office it was reported that the Council of Governors has adopted the LAPTRUST Umbrella Pension Scheme as the County Pension scheme. This decision was a departure from the recommendation of the Technical Committee that was established by stakeholders on 6th December, 2013 to advise the County Governments on the best pension arrangement.

Notably, the Technical Committee made elaborate recommendations on the modalities of establishing a County pension scheme that would meet the requirements of all staff employed by county governments. The recommendations included the views of County Public Service Boards and County Assembly Service Boards that were represented on the Technical Committee. These are the bodies mandated under law to determine employment terms for County staff.

2.0 Technical Committee Recommendations

These recommendations include among other things:

- Establishment of one uniform umbrella pension scheme under an Act of Parliament by the Senate (as per Article 96 of the CoK 2010) to safeguard the scheme against any arbitrary changes to any aspects of the scheme and to give it a national outlook and protect public interest.

- The new Umbrella Scheme to be established under the management of a new Board of Trustees established pursuant to the Act establishing the scheme.

- The new scheme to consider the interests of all stakeholders including the interests of the National government staff who are currently under the civil service superannuation scheme.

- Close LAPFUND and LAPTRUST schemes to all employees of the County Governments and ensure preservation of all the accrued rights of members under these schemes.

- Merger of administrative services of the two schemes LAPFUND and LAPTRUST. The merged organizations to provide administration services to the two closed funds currently managed by LAPTRUST and LAPFUND as well as the new Umbrella Scheme

- The legislation to determine the manner of dealing with former employees of LAPFUND and LAPTRUST.

- The Funds managed by LAPFUND and LAPTRUST will not be merged until all the liabilities owed are settled by the two levels of government.

- Establishment of the Scheme will follow the standards set up under the Retirement Benefits Authority(RBA) Act and Treasury Circular No. 18/2010

3.0 Consumer Rights and protection

We therefore wish to bring to the attention of all interested parties that consumer protection including standards for social security and professional pension plans is a national government function hence the Cabinet Secretary National Treasury is mandated to provide policy direction on all social security issues. The Authority further observes that provision of pension benefits is a critical transition issue which cannot be handled administratively, hence the need to anchor it under an Act of Parliament.

NB

4.0 Transitional Provisions

The Transition Authority further observes that there is adequate legal transitional provisions for dealing with pension issues during the transition period. County Government Act,2012 Section 132 provides that the former Local Authority staff will continue participating in their various Pension schemes while the new county staff will subscribe to existing Pension Schemes of Local Authorities.(This refers to LAPFUND and LAPTRUST).

On the other hand, Section 73 provides that the National Government will put in place mechanisms of protecting and safeguarding pension rights of seconded staff. These provisions were intended to allow the Transition Authority and other relevant bodies charged with the responsibility of facilitating the transition process ample time

to establish suitable mechanisms of transfer of staff benefits and pensions to the County Governments.

In particular, we point out that the provisions of Section 132 are subject to the Transition clauses in the Act, hence were a temporary arrangement awaiting the setting up of pension arrangements for ALL county staff. This section of the Act has been erroneously used to justify the decision by the Council of Governors.

Further, the proposed merger of administrative services offered by LAPTRUST and LAPFUND has been misconstrued to mean that the Funds managed by the two service providers would be wound up with possible losses of pension benefits accrued by members of both schemes. From the foregoing, it is notable that the Funds are to be left intact and any winding up would only be considered once the liabilities are paid up by both the national and county governments.

5.0 Transition Authority mandate

It is our view that the Transition Authority has consistently provided guidance on this matter by facilitating and engaging all relevant stakeholders culminating in the production of a Technical Committee Report on the establishment of a County Pension Scheme. The Authority has gone further to propose Terms of Reference for the Implementation Committee and an Institutional Framework as requested during the Stakeholders consultative forum held on 29th April, 2014.(copies attached).

6.0 Recommendations

It is our considered opinion that the establishment of a County pension scheme is an issue of national importance which needs to be anchored in an Act of Parliament and which should take into consideration the interest of all the affected staff including over 70,000 Seconded Staff from the National Government, 32,000 defunct Local Authorities staff and newly recruited County Staff.

The Authority further advises that the provision of pension for County staff is both a transitional as well as a technical issue and not just about the merger of LAPFUND and LAPTRUST. It is therefore proposed that the Taskforce on Parastatal Reforms should work jointly with the Technical Implementation Committee proposed in the Technical Committee report.

Finally, the Transition Authority is mandated under Transition to Devolved Government Act, 2012 Section 3 (d),(e) to coordinate and facilitate transfer of human resources, pension and other staff benefits, and any other connected matters. Establishment of a County Pension Scheme is therefore, a critical transition milestone which is intended to assist the Authority finalize transfer of seconded staff from National to County Governments as well as inter-County transfers.

In view of the foregoing, therefore, Transition Authority wishes to advise all concerned parties to set aside their narrow interests and work together in protecting the pension rights of the County Public Service employees and to ensure smooth staff transition.

Thank you for your continued support to the Transition process.

Yours sincerely,

KINUTHIA WAMWANGI, EBS
CHAIRMAN

Copy to: **All County Governors**

All Chairpersons
County Public Service Boards

All Chairpersons
County Assembly Service Boards

All County Transition Coordinators

The Pension Secretary
The National Treasury
NAIROBI.

(29)

REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Telephone: 2252299
FAX NO. 310833
When Replying Please Quote

THE NATIONAL TREASURY
Finance – Nairobi
P O BOX 20191- 00200
NAIROBI

Ref: EPN/171/07 VOL.'F'/(24)

Date: 11th May, 2021

Mr. David Koross
Chief Executive Officer
The Local Authorities Provident Fund
JKUAT/ICEA Building, 9th Floor
NAIROBI

LAPFUND CEO'S OFFICE
Date: 19/5/2021
RECEIVED

Dear David,

IMPLEMENTATION OF COUNTY GOVERNMENT RETIREMENT SCHEME ACT, NO.21 OF 2019

The County Government Retirement Scheme Act, No.21 of 2019 (the CGRS Act) was assented to by H.E the President on 18th September, 2019 and was to come into effect on 7th October, 2019. The Act provides for the management and administration of the County Governments' Retirement Scheme.

The implementation was however stalled through Court action in the following three causes, which were later consolidated into Petition No.230 of 2019:

(a) Petition No.213 of 2019 - Okiya Omtatah Okoiti v. County Government Retirement Scheme & 152 others; filed on 8th November, 2019
(b) Petition No.222 of 2019 - Kenya County Government Workers Union & 7 others v. The Board of Trustees of Local Authorities Provident Fund & 54 others; filed on 15th November, 2019
(c) Petition No.230 of 2019 - The Local Âuthorities Pensions Trust Board of Trustees & Another v. The Attorney General & 3 others filed on 5th December, 2019.

10 | 50

Report of the Technical Committee on Establishment of County Public Service Staff Pension Scheme

This is the exhibit Marked "DK-14" referred to
the annexed affidavit of DAVID KOROSS sworn
declared
before me this 21st FEB day of 20 20 at NAIROBI

Commissioner for Oaths

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ACRONYMS AND ABBREVIATIONS

CASB	- County Assembly Service Board
CG	- County Government
CGA	- County Governments Act, 2012
CIC	- Commission for the Implementation of the Constitituion
CoG	- Council of Governors
CPSB	- County Public Service Board
DPSM	- Directorate of Public Service Management
LAPFUND	- Local Authorities Provident Fund
LAPTRUST	- Local Authorities Pensions Trust
MCAs	- Members of County Assembly
PE	- Personnal Emoluments
PSC	- Public Service Commission
RBA	- Retirement Benefits Authority
SRC	- Salaries and Remuneration Commission
TA	- Transition Authority

ACKNOWLEDGEMENT

The Committee wishes to thank the Council of Governors through the Chair of its Labour and Social Welfare Committee for appointing the Technical Committee members and assigning them the responsibility of developing a frame work for establishing a county pension scheme. Special thanks also go to the Transition Authority for facilitating the Technical Committee operations. The committee also appreciates the input of all the stakeholders who provided valuable information which formed the basis for the preparation of this report.

EXECUTIVE SUMMARY

The Council Of Governors appointed the Technical Committee during a Consultative meeting held on 6th December 2013 and gave it the mandate to determine the best option in establishing a pension scheme for county governments.

After holding a consultative meeting with stakeholders, receiving presentations from the management of existing pension schemes relevant to the study and further research on a suitable framework of a county pension scheme, the Technical Committee recommended that an Umbrella Pension Scheme be established for the staff of the Counties. The Technical Committee also recommended that the two existing schemes LAPTRUST and LAPFUND be closed to new members with effect from the date the new Umbrella Scheme is established.

The new Umbrella Scheme will be anchored in an act of parliament preferably enacted by the Senate to give it a national outlook and to protect public interest. It is further proposed that the administration services of LAPFUND and LAPTRUST be merged to offer administration services to the new Umbrella Scheme and to the two closed funds.

After the adoption of the report by the Council of Governors, its neccesary that an implementation Committee is set up to oversee the implementation of the recommendations in this Report.

CHAPTER ONE INTRODUCTION

1.0 Background

One of the provisions of the Constitution of Kenya (CoK) 2010 was the creation, in chapter 11, of the devolved system of governance with one national government and 47 county governments that operate on the principle of interdependence and consultation. The CoK, in the Fourth Schedule has clearly delineated the functions to be performed by each level of Government.

In line with the constitutional principle of ensuring that the resources required to facilitate the delivery of services are availed to the counties, the line ministries in the National Government are on the threshold of administratively transferring a key resource, the human resources, to the service and employment of County Governments. Key among the considerations for ensuring a smooth transfer of the staff, and hence achieve seamless transition and uninterrupted service delivery, is safeguarding the benefits of the workers in terms of remuneration, allowances, pensions, career progression and other aspects of staff welfare as per the requirements of the law. The Transition to Devolved Government Act, 2012 was enacted to provide for policy and operational mechanisms during the transition period for audit, verification and transfer to the national and county government of:

i. Assets and liabilities
ii. Human resource
iii. Government and local authorities
iv. Pensions and other staff benefits of employees of any other connected matters.

Another provision of the new dispensation is the devolution of the management of human resources from the national level to the counties with the exception of policy, setting of standards and quality control.

1.1 Formation of the Technical Committee on the Establishment of County Pension Scheme

In line with its purpose and mandate, the Transition Authority has held various consultative meetings with stakeholders involved in human resources management on modalities of establishing a pension scheme for the staff of county governments. On 6th December 2013 at the Intercontinental Hotel Nairobi, the Council of Governors, through the Chair of its Labour and Social Welfare Committee, and the Senate Committee on Devolution and Transition Authority set up a Technical Committee to advise and recommend a suitable pension arrangement for county governments.

1.1.1 Terms of Reference of the Technical Committee

i. To consider the constitutional and statutory framework for pensions under devolved government;

ii. To consult with the existing pension arrangements to understand any actuarial deficit, outstanding contributions and registration of new members in the counties;

iii. To consider the pros and cons of the various pension arrangement options for devolved system of government and recommend the preferred option

iv. Recommend an implementation strategy for the preferred option

1.1.2 Membership

The membership was comprised of representation from the following organizations; Retirement Benefits Authority, National Treasury (Pensions Department), Salaries and Remuneration Commission, Transition Authority, Council of Governors, Ministry of Devolution and Planning (Directorate of Public Service Management), Commission for the Implementation of the Constitution, the Kenya Law Reform Commission, Public Service Commission, Speakers Forum and County Public Service Boards Forum. The Technical Committee was chaired by the Retirement Benefits Authority.

1.1.3 Methodology

The Committee commenced its engagements by reviewing the existing Pension framework, holding consultative meetings, carrying out research on selected thematic areas and receiving presentations from existing pension schemes for the defunct local authority staff who are now seconded to the service of the county governments, the public service pension arrangement, NSSF and other related schemes for better understanding of the prevailing situation and way forward.

1.2 The Legal Framework for County Pension Schemes

The prevailing legal regime has made elaborate provisions that provide useful guidelines in establishment and management of county pension arrangements.

1.2.1 The Constitution of Kenya 2010

a. As noted above, the Fourth Schedule to the Constitution outlines which functions

legislate on matters pertaining to "Consumer protection, including standards for social security and professional pension plans".

b. The standards have been set through the Retirement Benefits Authority (RBA) Act 1997 that established the Retirement Benefits Authority which regulates, supervises and oversees the development of the retirement benefits schemes in the country.

c. In addition, the National Treasury guides the public service on funding for retirement benefit schemes with the latest guidance issued in form of the Treasury Circular No. 18 of 2010, issued under the Government Financial Management Act No. 5 of 2004, has among its requirements the setting up of defined contribution schemes to replace existing defined benefits schemes, capping the rates of contributions and limiting the pensionable emoluments to basic pay excluding all allowances.

1.2.2 County Powers to Make Laws:

The management of pensions in the counties is vested in county governments as one of the benefits offered to its employees. Under Article 185, The Constitution of Kenya 2010 provides that " county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule"

1.2.3 Other Legal Provisions

a) Other provisions regarding pension management are spread out through two devolution laws: the County Governments Act (CGA) 2012 and the Urban Areas and Cities Act, (UACA) 2012. Of significance; S. 59(1) (j) of the CGA inter alia provides that "The functions of the County Public Service Board shall be, on behalf of the county government, to make recommendations to the Salaries and Remuneration Commission, on behalf of the county government, on the remuneration, pensions and gratuities for county public service employees. Section 49 of the the Urban Areas and Cities Act, 2012 provides that all officers of a board shall subscribe to the existing pension scheme approved by RBA.

b) Further, under sections 73 and 138 the CGA has reiterated the mandate of the national government to take both administrative and legislative measures to protect its employees seconded to the counties from loss or disadvantage with respect to pension benefits, gratuity or other terminal benefits.

c) Another legislation, the NSSF Act 2013 now compels all employers including county governments to contribute to the NSSF in accordance with the provisions indicated in the Act. Key among these provisions is a full opt-out at Tier II level of contributions for employers who have or are contributing to existing pension schemes approved and registered by the RBA.

1.3 *Current Pension Framework*

All occupational retirement benefits schemes are regulated by the Retirement Benefit Authority (RBA) which also oversees their establishment and supervision. The RBA also implements all government policies related to the industry.

The specific schemes reviewed by the Technical Committee, in determining the best framework for a county pension scheme, are as follows:

a. Public Service Pension Schemes

There are several schemes managed by the Pensions Department at the National Treasury to cater for public officers employed by the Government. The pension schemes cover the Presidency, Civil Service, Teaching Service, Disciplined Forces, Armed Forces, Judiciary, Parliamentary service and employees in the wider Public Service who previously served under the Government, including those seconded to counties. Employees in the National Government are entitled to a pension under the Pensions Act (Cap 189) and under the yet-to-be commenced Public Service Superannuation Scheme Act (Act No. 8 of 2012). Generally they must have been confirmed in appointment and have 10 years qualifying service for pension to be paid. In addition they must attain a minimum of 50 years of age for retirement.

b. National Social Security Fund (NSSF)

This is a 1st Tier Pillar Scheme which is mandatory to all employed private and public employees. Under the provisions of the NSSF Act 2013, all employees including those in the national and county government service are required to subscribe to the Fund at a rate of 12% of the employee's pensionable earnings shared equally between the employer and the employee.

c. Local Authority Provident Fund (LAPFUND).

LAPFUND manages a defined contribution (DC) scheme that offers retirement benefits for certain employees of the former Local Authorities and water companies in the country. Originally, LAPFUND was established to cater for the lower cadre of staff of the then local authorities.

d. Local Authority Pension Trust (LAPTRUST).

LAPTRUST is an existing pension scheme currently serving the employees of the defunct local authorities and associated organizations such as water companies. However, unlike LAPFUND, initially, the establishment of LAPTRUST was created for the

actuarially determined formula and pension factor. Following the requirement under Treasury Circular No. 18 of 2010 that all DB schemes be closed, the LAPTRUST has established a separate DC scheme and closed the DB scheme to new members.

CHAPTER TWO: OBSERVATIONS

The Technical Committee, in its work and consultations, came up with the following key observations that guided decision making on county pension schemes: -

2.1 *Staff Working at Counties*

Staff categories working in counties are as follows:

2.1.1 Personal Staff of the Governor and Deputy Governor

These include advisors, chief of staff, personal assistants, domestic and other support staff. All these are appointed on contract terms of service for the duration the Governor is in office and will draw a service gratuity on expiry of their term. It is noted that a number of county governments have opted to invest the gratuities with LAPTRUST and LAPFUND

2.1.2 County Executive Committee Members and County Secretary

This category comprises persons sourced from the private and public sector. These are state officers and all have been appointed on contract terms for the duration of the Governor's term in office. Those sourced from the civil service and were below the age of 50 years are on unpaid leave as approved by the PSC and should they opt to return to the national government on expiry of their contract, their benefits for service prior to joining county government will be preserved under the Pensions Act. It is noted that a number of county governments have opted to invest the gratuities with LAPTRUST and LAPFUND.

2.1.3 County Public Service Board (CPSB) Members and Secretary

The CPSB members and secretary are appointed on single, non-renewable six year contracts with a service gratuity at the end of the contract.

2.1.4 Members of County Assembly Service Board

Members of County Assembly (MCAs) are on a five year term contracts and will get a service gratuity at the end of the contract.

2.1.5 Staff of the National Government

These are staff of the national government seconded to the counties to perform devolved functions and they are deemed to be on secondment to county governments until formally absorbed into the service of the counties through County Public Service Boards. It is noted that unpaid leave is not pensionable under the Pensions Act Cap. 189.

These staff retain their pensionable status under the Pensions Act, CAP 189. Those absorbed by the county governments will be required to transfer their service to the county government and adopt the county pension scheme when such scheme is in place. It is noted that such transfer has to await the se up of the scheme.

Those officers also have the option of retirement under the 50 year rule (If they have attained such age), take their pension under CAP 189 and be appointed afresh into county public service and join the county pension scheme.

Further, the Technical Committee noted that some National Government employees are opting to take up employment in the counties following advertisement of posts. These officers are considered to be on unpaid leave from the date of such appointment up to when the county pension scheme is established. The rationale behind the leave is for them to be able to preserve their pension rights under the National Government, since there is no relevant pension scheme to which they can transfer their service. It is noted that such period of unpaid leave is not pensionable under the Pensions Act Cap. 189.

2.1.6 Staff Recruited Directly by the CPSBs and CASBs

These are appointed on contract terms until the County Superannuation scheme is in place. Their terms will then be translated to pensionable status.

2.1.7 Former Local Authorities Employees

Most of them are covered under the LAPFUND and LAPTRUST contributory pension scheme as is required under the Urban Areas and Cities Act, (UACA) 2012. Their benefits have been preserved in the two schemes during the transition period and they will be expected to join the new scheme when it will be established and may subsequently transfer their benefits when the existing liabilities under LAPTRUST and LAPFUND are settled. Any employee appointed on contract terms by former local authority administration should join the new pension scheme subject to satisfying all membership requirements.

2.1.8 Contracts of Unspecified Duration

It was further observed that there are a number of former local authorities' staff who were employed on contracts without a termination date. As such they have been on unending contracts. Their terms of employment would therefore require review by the CPSBs and determination be made as to whether they will join the proposed umbrella scheme of the county.

2.2 *Civil Service Pension Scheme Under the Pensions Act Cap 189*

a. This scheme covers the National Government officers who are deemed to be on secondment to the counties. A policy decision has been made that the county governments do not have to contribute 31% for the officers, as normally required under the Act.
b. Once the county pension scheme is set up, these officers will transfer their service to the new county scheme but will remain beneficiaries under Cap. 189 for the period under the National Government up to the date of transfer.

c. It is also noted that staff who qualify to join the new scheme to be established under the Public Service Superannuation Scheme (PSSS) Act 2012 (Act No.8 of 2012) will temporarily join that scheme, should the new county scheme not be in place at the date of commencement of PSSS.

Below are the highlights of the scheme: -

Table 1: Highlights of the Civil Service Pension Scheme under CAP 189

	Attribute	Details
1	Establishment of the Scheme	By an Act of parliament (Pensions Act, Cap 189)
2.	Governance Structure	Administered by the Pensions Department under the National Treasury
3	Benefits Design	▪ Defined Benefits (DB)
4	Benefits Computation Factor	▪ 1/480 – number of months worked divided by 480 and multiplied by the annual basic salary to determine the pension.
5	Commutation	▪ Retiree allowed to take one quarter of pension as a lumpsum
6	Coverage	▪ Civil Servants ▪ Teachers ▪ Disciplined Forces (all uniformed officers except the military) ▪ Officers who previously served in government (transferred to parastatals and other public service)
7	Benefits Structure	▪ Retirement benefits—Commuted lump sum and monthly pension ▪ Retirement under 50-year Rule ▪ Death Benefits (Death Gratuity) ▪ Dependants' Pension (under Cap. 189 & WCPS under Cap. 195) ▪ Marriage Gratuity ▪ Compassionate Gratuity ▪ Injury Pension ▪ Killed on Duty Pension ▪ Retirement on Medical Grounds ▪ Retirement in Public Interest
8	Current Pensioners as at January 2014	▪ 220,000 pensioners and dependants
9	Annual Pension Expenditure Projection	▪ KSHS.38.1billion for 2013/2014

	Attribute	Details
10	Liability as at 31st December 2012	▪ KSHS. 500 billion in 2008
11	Proposals	▪ Scheme to cover new employees and those under 45 years of age w.e.f. 30 June 2014. These staff will move to the new contributory PSSS.
12	Current staff administering the scheme	▪ 140 officers

Table 2: Highlights of the Public Service Superannuation Scheme (PSSS)

	Attribute	Details
1	Establishment of the Scheme	By an Act of parliament (The PSSS Pensions Act No. 8 of 2012)
2.	Governance Structure	To be administered by a Board of Trustees
3	Benefits Design	▪ Defined Contribution (DC)
4	Benefits Computation Factor	▪ Based on accumulated funds for each member.
5	Commutation	▪ Retiree allowed to take one quarter of pension as a lumpsum
6	Coverage	▪ Civil Servants ▪ Teachers ▪ Disciplined Forces (all uniformed officers except the military)
7	Benefits Structure	▪ Retirement benefits—Commuted lump sum and monthly pension ▪ Retirement under 50-year Rule ▪ Death Benefits (Death Gratuity) ▪ Dependants' Pension ▪ Retirement on Medical Grounds ▪ Retirement in Public Interest
8	Current Pensioners as at January 2014	▪ Nil, scheme not commenced
9	Contribution Rate	▪ 7.5% for employee and 15% for employer based on basic salary
10	Annual Pension Expenditure Projection	▪ KShs.14billion for 2014/2015 being 15% Government contributions
11	Proposals	▪ Scheme to be closed for new employees and those under 45 years of age w.e.f. 30

	Attribute	Details
12	Current Staff Establishment	▪ Nil, to be established

2.3 *The National Social Security Fund (NSSF) Act 2013*

a. With the introduction of the NSSF Act 2013, it has been observed that all employers and employees are required to contribute a total of 12% of the pensionable earnings, with employees and employers contributing 6% each.

b. The Committee engaged the NSSF Management to determine the application of the new Act to counties. The first indications are that county governments will require to contribute to the scheme at the rates mentioned in (a) above. However, policy discussions on this matter are ongoing.

c. The Act provides for two tiers of contributions, Tier I which is mandatory for all and Tier II which allows opt out after RBA clearance. The new county pension scheme, once established will be submitted to the RBA to seek the opting out from Tier II. The request for opt out to the RBA will be done by giving the RBA 60 days notice after which the RBA shall respond within 30 days. Details of the two tiers have been gazetted by the NSSF management and are appended.

d. The commencement of the NSSF Act has been deferred to 31st May, 2014

2.4 *LOCAL AUTHORITY PENSION TRUST (LAPTRUST)*

2.4.1 Establishment

a) LAPTRUST was set up as a perpetual trust under regulation 8 of the Kenya Local Government (Pension) Regulations 1963 under legal notice no 200 of 1963.

b) LAPTRUST catered for the senior cadre of employees and it was set up as a Defined Benefits Scheme.

c) During the consultative meetings, the management of LAPTRUST indicated to the committee that they were a private Trust. However the Technical committee was informed that the RBA had earlier sought an opinion from the Office of the Attorney General and was advised that LAPTRUST is a state agency established through Legal Notice No. 200 of 1963. The Funds it manages are largely made up of pension contributions from former local authorities' employees. This will be important in determining the way forward for LAPTRUST.

4.2 Governance

a. It is not clear how the current trade unions and county employer association i.e. KCGWU and ACGOK respectively transited from representing former local Authorities employees to representing county employees and employer associations. This is taking into account the fact that majority of staff seconded to county governments are civil servants who are under the Union of Kenya Civil Servants which is not party to this purported change. The Technical Committee therefore proposes that the CPSBs and CASBs ask KCGWU and ACGOK to formally enter into recognition agreements with each county or collectively.

b. The same former Local Authority Unions have representations in the boards of Trustees of LAPTRUST.

4.3 Financial Details

) Asset Allocation

able1: LAPTRUST Asset Allocation

Asset	Asset value as at 30-Sep-2013	Allocation as % of Fund Value
	LAPTRUST	
Cash	459,575,000	2.1%
Properties	6,564,555,000	29.9%
Quoted Equities	3,208,947,000	14.6%
Unquoted Equities	1,305,034,000	5.9%
Treasury Bonds	6,749,395,000	30.7%
Treasury Bills	126,365,000	0.6%
Fixed & Call Deposits	294,621,000	1.3%
Offshore Investment	47,413,000	0.2%
Corporate Debt	1,195,536,000	5.4%
Sub Total	**19,951,441,000**	**90.9%**
Other Assets (Net Receivables)	1,999,267,000	9.1%
Gross	**21,950,708,000**	**100.0%**

2.5.2 Governance

a. The LAPFUND's management of the scheme has continued to operate in contravention of the provisions of the enabling legislation. For example the pensionable emoluments provided for in the act are based on the basic salary while what is being applied is the basic salary and the house allowance. Further, the rates of contribution have been amended without amendment to the law.

b. It is not clear how the current unions and county employee association i.e. KCGWU and ACGOK transited from representing former local Authorities employees to representing county employees. This is taking into account the fact that majority of staff transferred to county governments are civil servants who are under the Union of Kenya Civil Servants which is not party to this purported change.

c. The same former Local Authority Unions have representations in the boards of Trustees of LAPFUND.

d. There should be an amendment in the law that changes the representation in the board of Trustees of LAPFUND from Permanent Secretary Local Government to Principal Secretary National Treasury, where LAPFUND has been placed in the organization of National Government.

e. The LAPFUND operations which are in contravention of the Act are introduced by way of board resolutions without any initiative to introduce substantive amendments to the legislation and will need to be regularised.

2.5.3 Financial Details

a) **Table3: LAPFUND Asset Allocation**

Asset	Asset value as at 30-Sep-2013	Allocation as % of Fund Value
Cash	0	0.0%
Properties	4,273,604,763	26.8%
Quoted Equities	2,190,521,848	13.8%
Unquoted Equities	11,720,000	0.1%
Treasury Bonds	4,191,540,784	26.3%
Treasury Bills	226,272,238	1.4%
Fixed & Call Deposits	1,706,871,085	10.7%
Offshore Investment	0	0.0%
Corporate Debt	630,399,885	4.0%
Sub Total	**13,230,930,603**	83.1%
Other Assets (Net Receivables)	2,696,935,816	16.9%
Gross	**15,927,866,419**	100.0%

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Table4: LAPFUND Past Returns on Investment

Details	Lapfund (Ksh Million) as at 30th June	
	2012	2011
Investment Income	1,551,367	882,008
Investments Costs	(34,207)	(29,372)
Net Investment Income	**1,517,160**	**852,636**
Admin Expenses	(425,744)	(643,108)
Net Return	**1,091,416**	**209,528**
Income Generating Funds		
Fund Balance at Start	9,999,470	8,339,182
Net Surplus from Dealings with members	1,612,009	1,450,750
Less: Provisions for Doubtful Contributions	-	-
Fund Value at end of period	11,611,479	9,789,932
Average Income Generating Funds	10,805,475	9,064,557
Average Return	**10.10%**	**2.31%**

2.5.4 Liabilities

LAPFUND is owed pension contribution arrears of **Ksh 3.5billion** as at 30th June 2012 which is inclusive of interest penalty. Being a defined contribution; it has no actuarial liabilities.

2.5.5 Overview of the Current Schemes Formerly Under Local Government

Majority of the staff of the defunct local authorities subscribed to either LAPTRUST or LAPFUND and the comparison of the two schemes structures is as shown below:

	Attribute	LAPFUND	LAPTRUST
1	Ownership, Status & Establishment	A state corporation operating under an Act of Parliament Cap 272 Laws of Kenya	Public entity established under Legal Notice No.200 of 1963
2.	Governance Structure	Managed by a Board of Trustees	▪ Managed by a Board of Trustees ▪ LAPTRUST Umbrella Retirement Fund is managed by the National Bank of Kenya as Corporate Trustee.
3	Benefit Design	▪ A defined contribution scheme (provident fund)	▪ Defined Benefits Scheme (DB)

	Attribute	LAPFUND	LAPTRUST
			▪ Defined Contribution (DC))
4	Benefits	▪ Death Benefits ▪ Funeral Grant ▪ Emigration Benefits ▪ Invalidity Benefits	▪ Normal retirement pension ▪ Early retirement pension ▪ Survivors pension ▪ Ill-Health Pension ▪ Withdrawals benefits
5	▪ Membership as 31st December 2013	▪ Current=23,000 Deferred = 165	▪ DB Scheme (All membership as at 31st Dec 2013) ✓ Active 21,574 ✓ Pensioners 6,546 ✓ Deferred 214 ▪ DC Scheme 788 ▪ Individual Pension Plan 202
6	Contribution Rate	▪ 12% for employee and 15% for employer based on basic salary plus house allowance	▪ 12% for employee and 15% for employer based on basic salary plus house allowance
7	Status of Contributions	▪ KShs.3.5 Billions in unremitted contributions inclusive of interest charge (as at 30th June 2012)	▪ KShs.4.1 Billions in unremitted contributions of which KShs.1.9bn is the principal and KShs.2.2 Billion being the accrued interest charge (as at 31st Dec 2012)
8	Annual Cost of Administration	▪ KShs. 205 Million for 2012/13	▪ January to September 2013 = KShs.355 Million
9	Value of Funds December 2013	KShs.15_Billion (as at 30th June 2012)	KShs. 21.9 Billion for the DB KShs. 16.9 Million for the DC (as at 31st December 2012)
10	Actuarial Deficit 31st December 2012	Nil	Funding Level is 90.6% KShs. 1.9 Billion Deficit
11	Proposals	▪ LAPFUND has initiated drafting of a Bill to establish a county retirement scheme.	▪ Merge the Administration of LAPFUND and LAPTRUST to eliminate wasteful competition yet be distinct ▪ Close existing schemes and set up umbrella scheme
12	Current Staff administering the scheme	▪ 52	▪ 82

2.6 *Budgetary Implication*

In the financial year 2013/2014 counties have only partially budgeted for pension expenses since only former local authority's employees' contributions and gratuities for State Officers are budgeted. Going forward counties are expected to make budgetary provisions for all employees in Counties.

Based on the budgeted personnel emoluments for the counties for the FY 2013/14 of KSH 74.7 billion, **assuming that 60% of the PE accounts for basic salaries and assuming a 15% rate of contribution on basic salary, the annual pension cost to all 47 counties is KSH. 6.7billion for the employer portion.** This is the cost that is required to be budgeted for in financial year 2014/2015, with any adjustment to PE for all staff of the county government.

2.7 *Available Legal Instruments*

The Technical Committee reviewed three legal documents which can be used to establish the proposed Umbrella County Pension Scheme. Details are below: -

2.7.1 An Act of Parliament

This is a substantive law which is passed by the legislative assembly and incorporates public opinion as represented by the members of parliament. It must be passed by parliament and accented to by the President.

Advantages

- Strong safeguard against arbitrary changes
- Provides a national outlook through public participation in the process; this is a Constitutional requirement
- It allows laws relating to technical matters to be prepared by those with relevant knowledge
- Guarantees the rights of members in the scheme
- Enables confidence by stakeholders
- Enables enforcement of rights and obligations

Disadvantages

Set up process will take long
Inflexible and may take long to ammend

2.7.2 Regulations/Legislation

Regulations are guidelines or processes anchored on an Act of Parliament to operationalize the substantive law. They are dependent on the basis of an Act of Parliament and they

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must work within the provisions of the substantive law. Regulations cannot exist on their own.

Advantages

- Set up process relatively easy and fast and ideal for an emergency situation that requires short time to set up
- Improved safeguard to manipulation compared to Trust Deed and Rules
- Offers some limited public participation
- It allows laws relating to technical matters to be prepared by those with relevant knowledge
- It is flexible enough to deal speedily with changing circumstances

Disadvantages

- Less preferred instrument in setting up pension schemes in Kenya.
- Limits enforcement because of the time taken to amend the law
- It can be criticized on the grounds that it is subject to less parliamentary scrutiny than an Act of Parliament

2.7.3 Deed of Trust

This is a legal agreement or arrangement in the form of a document which conveys power to a trustee (person or institution) to control money (Trust Fund) or property for the benefit of another person or organization (beneficiary).

Advantages

- Easy to set up
- Flexibility in amending the laws hence possibility of manipulation without the knowledge of the beneficiaries

Disadvantages

- Limits public participation which is a requirement of the Constitution of Kenya especially where public funds are involved
- Risks abuse/manipulation by sponsor and Trustees
- Not consistent with current Government practice in setting up similar Public Service schemes

2.8 *General Observations*

From the foregoing observations, the Technical Committee noted the following: -

1. The counties have different categories of employees that will require to be covered under the pension scheme to be set up.

2. The counties have staff covered under each of the four main categories of schemes that were reviewed by the Committee. The proposed scheme should therefore ensure that the pension rights of these staff are protected.

3. The main schemes that could be considered by the county governments are LAPTRUST and LAPFUND. However, there are challenges regarding the funds and liabilities under the schemes that will need to be addressed. Further, some legal advice would be required regarding the status of both schemes.

4. There are no recognition agreements between the unions representing employees and the county governments.

5. The NSSF Act 2013 provides that county governments shall subscribe to the Act by contributing 6% of employee salaries to the NSSF which will be allocated to Tier I and Tier II of the scheme. Employees will also contribute 6% resulting in a total contribution of 12%. The proposed scheme should ensure compliance with the NSSF Act and have features to enable it opt out of Tier II contributions in line with the requirements of the Act

6. Going forward, county governments may wish to consider both LAPTRUST and LAPFUND as closed schemes for the staff they inherited from local authorities while determining the best scheme for all staff of the counties. It is important that all staff are treated equally under the new scheme.

CHAPTER THREE: AVAILABLE OPTIONS FOR PENSION ARRANGEMENTS

As a result of the foregoing observations, the Technical Committee considered the options that are available to county governments regarding pension arrangements for their staff. These are set out below, with the advantages and disadvantages of each listed: -

3.1 *Each County to establish its Own Pension Scheme.*

- This option is viable and is legally supported under the provisions of the County Government Act 2012.
- The County Public Service Board shall determine the funding requirement and benefits structure for its staff taking into consideration approval from Salary and Remuneration Commission;
- The scheme will be established in accordance with the provision of the Retirement Benefit Acts and prevailing National Treasury guidelines; and
- County employees will be required to participate in the scheme as part of their terms of employment.

3.1.1 Advantages of Establishing Own Pension Scheme

- Easy to establish and implement
- Creates sense of ownership in each county
- Easy to monitor compliance particularly in remittance of contribution.

3.1.2 Disadvantages of Establishment Own Pension Scheme

- No economies of scale owing to the limited membership and investment options
- Limits portability of benefits from one county to another where portability refers to the ability of an employee to easily access their benefits and to transfer them.
- May result in lack of uniform norms and standards in the management of pensions in counties

3. 2 *New County Government Umbrella Pension Scheme*

- The Counties through the Council of Governors may resolve to establish one uniform umbrella pension scheme- preferably under a written law approved by the Senate (as per Article 96 of the CoK 2010).
- The various County Public Service Boards will be employers under the umbrella scheme;

- The scheme will be established in compliance with the provisions of the Retirement Benefits Act and prevailing National Treasury guidelines; and,
- Counties will need to have a robust IT system to keep a record of employees of each county and their contributions/benefits.

3.2.1 Advantages of Setting up a County Government Umbrella Scheme

- Enjoy economies of scale i.e. reduce cost of administration
- Will create a huge fund which will bring better investment opportunities and returns
- Enhances the adoption of common norms and standards
- Easy to supervise by the regulator
- Ease of mobility of staff and portability of benefits

3.2.2 Disadvantages of Setting up a County Government Umbrella Scheme

- Costly infrastructure including need for robust IT system
- Lengthy and costly set up process including buy-in by stakeholders

3.3 *Maintaining the Status Quo: LAPTRUST and LAPFUND*

- Each County Public Service Board will resolve to participate in the current LAPTRUST or LAPFUND schemes as contemplated in the County Governments Act 2012 sec 132 during the transition; an. County Employees will elect the scheme to participate in either LAPTRUST OR LAPFUND; and,

- Counties will need to have robust IT systems to keep a record of employees, the scheme they belong to and ensure right contributions are remitted to the right scheme.

3.3.1 Advantages

- Continuity of services
- Existing infrastructure
- Retention of institutional memory

3.3.2 Disadvantages

- The current schemes are indebted with pension liabilities and pension contribution arrears
- Duplication of efforts by the two pension schemes
- Negative competition leading to high cost of administration
- Will not adequately cater for all employees of the counties

CHAPTER FOUR: RECOMMENDATIONS AND IMPLEMENTATION

4.1 Recommended Option

The Technical Committee recommends setting up of a new umbrella scheme for the counties which will be a pension scheme rather than a provident fund. This shall be implemented in the following manner:

1. The Umbrella Scheme should be established under an Act of Parliament to safeguard the scheme against any arbitrary changes to any aspects of the scheme. This will give it a national outlook and will protect public interest

2. The new Umbrella Scheme will be under the management of a new Board of Trustees established pursuant to the Act establishing the scheme.

3. Close LAPFUND and LAPTRUST schemes to all employees of the county governments and ensure preservation of all the accrued rights of members under these schemes.

4. Merge the administrative services of the two schemes LAPFUND and LAPTRUST. The merged organizations will provide administration services to the two closed funds currently managed by LAPTRUST and LAPFUND as well as the new Umbrella Scheme

5. The legislation will determine the manner of dealing with former employees of LAPFUND and LAPTRUST.

6. The Funds managed by LAPFUND and LAPTRUST will not be merged until all the liabilities owed are settled by the two levels of government.

7. Establishment of the Scheme will follow the standards set up by RBA and Treasury Circular No. 18/2010

8. Upon adoption of these recommendations, the Council of Governors will appoint an interagency Technical Committee Technical Committee with the mandate to hire establishing the umbrella scheme and to oversee its

9. Transition Authority, in consultation with relevant Ministries (National Treasury, PSC, Ministry of devolution (DPSM) and the CoG issue guidelines on how the staff will transit to the new scheme.

Going forward, county governments may wish to consider both LAPTRUST and LAPFUND as closed schemes for the staff they inherited from local authorities while determining the best scheme for all staff of the counties.

4.2 *Steps Required for Setting up a Pension Scheme*

- Resolution by CPSBs to set up the new umbrella county staff pension scheme
- Drafting of the law establishing the scheme to be enacted by Parliament (Senate)
- Drafting of the regulations for the new umbrella scheme
- Clearance by Pensions Secretary /National Treasury
- Registration with the Retirement Benefits Authority
- Registration with the Kenya Revenue Authority - Income Tax Department
- Declaration of service under the CG to be "Public Service" for purposes of pensions by the Office of the President and Pensions Secretary/National Treasury.

4.3 *The Proposed Key Features of the Scheme*

4.3.1 Establishment and Management of the Scheme

- The name of the scheme
- The Board of Trustees of the scheme (Both employer and employee should be represented)
- Procedure for appointment of trustees
- Qualifications for appointment of trustees
- Powers and functions of the trustees
- The term of office of the Board of Trustees (Propose 3 years renewable once)
- Remuneration of the Board of Trustees
- Meetings of the board
- Removal and vacation of the Board
- Appointment of Managing Trustee
- Employees of the scheme
- Common Seal

4.3.2 Administration of the Scheme

- Appointment and functions of service providers
- Contributions (proposed 7.5% and 15% basic salary of employees and employer respectively)

4.3.3 Financial Provisions

- Scheme Fund
- Administration Expenses
- Investments of surpluses
- Annual Estimates
- Accounts and Audit
- Financial year

4.3.4 Transitional Provisions

- Closure of LAPFUND and LAPTRUST
- Merger of administration services for LAPTRUST and LAPFUND
- Actuarial valuations
- Exemption from NSSF

4.3.5 General Provisions

These will include any penalties for late remittance of contributions, transition of staff and administrative structures in LAPTRUST and LAPFUND and any other that the legal drafters will require to put in.

CHAPTER FIVE: CONCLUSION.

The Technical Committee takes cognizance of the multiplicity of actors in the management of pensions, particularly in the Public Service. In this respect, it recommends the development of an all-inclusive law that will cater for the interest of the various players. Towards this end, the Committee urges all players to engage in continuous dialogue and consultation throughout the process of developing the proposed legislation.

Further, the Technical Committee urges all relevant stakeholders to engage the members of the current schemes, LAPTRUST and LAPFUND that will be affected by the impending piece of legislation. To allay any fears that the members of the schemes may have and to ensure that the members are fully informed, we urge the relevant Ministries to communicate to the members of the schemes the steps they intend to take towards realigning the scheme to the new constitutional order. In addition the relevant trade unions being stakeholders need to be engaged further.

Notably, adequate communication and sensitization will be necessary for all county staff including those seconded by the National Government.

Finally, it is important that once the Council of Governors makes a decision on this matter, the National Government is consulted on the required budgetary provisions arising from the required contributions by county governments.

APPENDICES

1. Minutes of the consultative meeting held on 6th December 2013
2. List of Technical Committee Members
3. Key RBA requirements on Institutional Framework
4. Treasury Circular No. 18 of 2010
5. NSSF Contribution schedule

Signed:

_____ _____

Secretariat – Transition Authority **Chairman – Technical Committee**

SPECIAL ISSUE

Kenya Gazette Supplement No. 174 (Acts No. 21)

LOCAL AUTHORITIES PROVIDENT FUND
REG. No.:
NAIROBI

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ACTS, 2019

NAIROBI, 23rd September, 2019

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THE COUNTY GOVERNMENTS RETIREMENT SCHEME ACT, 2019

No. 21 of 2019

Date of Assent: 18th September, 2019

Date of Commencement: 7th October, 2019

ARRANGEMENT OF SECTIONS

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2—Interpretation.

3—Objects and purpose of the Act.

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4— Establishment of the County Governments Retirement Scheme.

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57—New employees.

58— Date of transition.

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SCHEDULE—THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

THE COUNTY GOVERNMENTS RETIREMENT SCHEME ACT, 2019

AN ACT of Parliament to establish the County Governments Retirement Scheme for employees in the service of county governments, to provide for retirement benefits of those employees and for connected purposes

ENACTED by the Parliament of Kenya, as follows–

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the County Governments Retirement Scheme Act, 2019.

Interpretation.

2. In this Act, unless the context otherwise requires—

"actuary" has the meaning assigned thereto in the Retirement Benefits Act, 1997; No. 3 of 1997

"administrator" means the person appointed as such under section 23;

"annuity" means a pension purchased under a contract with a registered insurer;

"approved issuer" means an approved issuer appointed by the Trustee to provide the services of approved issuer in accordance with the Retirement Benefits Act, 1997;

"associated organization" means any person, firm, company or organization of employees or association of employers created by, owned by or associated with county governments, urban areas and cities or any other institution, established under the County Governments Act, 2012, the Urban Areas and Cities Act, 2011, or their staff or any other person or body providing services to county governments or to their employees and includes those organizations whether associated with county governments or not that choose to participate in the Scheme by signing a deed of adherence; No. 17 of 2012 No. 13 of 2011

"Authority" means the Retirement Benefits Authority established under the Retirement Benefits Act, 1997;

"Board" means the Board of Trustees established under section 6;

"Cabinet Secretary" means the Cabinet Secretary responsible for the National Treasury;

"child" means any child of a deceased member including a natural child, an adopted child or a step-child who has not attained eighteen years of age or, if the child is receiving full time education, not more than twenty-five years of age and was at the time of the death of the deceased wholly or mainly dependent on the deceased, and includes an unborn child who, if already born, would have been a child of the deceased;

"commencement date" means the date of coming into force of this Act;

"contribution" means the amount payable by a member or sponsor into the Scheme under this Act;

"county public service" means the collectivity of individuals performing a function within a county government;

"custodian" means a person appointed as such under section 22 of the Act;

"deed of adherence" means the legal instrument to be executed by the employer who joins the Scheme after the commencement date of the Scheme and which shall bind that employer to the Scheme's rules;

"dependant" in relation to a deceased member, means a relative of the deceased who survives the deceased and who, on the date of the deceased's death, was—

(a) a spouse to the deceased;

(b) a child of the deceased; or

(c) a parent of the deceased who was dependent on the deceased for the provision of the ordinary necessities of life;

"early retirement age" means such age as may be prescribed but which shall not be less than fifty years;

"eligible employee" means an employee of the county public service or an employee of an associated organization or body, as may be approved by the Board and which has signed a deed of adherence in accordance with this Act;

"employer" means a county government or any of its entities, a state organ or associated organization, as may be approved by the Board and which has signed a deed of adherence in accordance with this Act;

"existing scheme" means the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund;

"Fund" means the County Governments Retirement Scheme Fund established under section 37;

"fund manager" means a person appointed as such under section 21;

"income drawdown" means the facility to continue to keep retirement savings invested in the scheme and take an income during a specified period rather than buy an annuity;

"insured benefit" means the death in service lump sum benefit and the disability lump sum benefit to be provided in terms of section 24;

"investment return" means a portion of the return of the investment declared by the Board and appropriated to the account of a member;

"member" means an eligible employee who has become a member of the Scheme and includes a person entitled to or receiving a benefit under the Scheme;

"member account" means an account maintained by the Scheme for an individual member;

"membership" means the fact of having been admitted as a member of the Scheme and a member's period of membership shall for the purposes of determining the member's entitlement to access his benefits upon resignation or termination of service be deemed to include his period of membership of other registered retirement benefits schemes in respect of which benefits have been transferred into the Scheme;

"normal retirement age" means the age as set by the Public Service Commission or any other Act of Parliament for retirement of public officers;

"pensionable emoluments" means basic salary excluding housing, transport and any other allowances or fluctuating emoluments;

"public officer" has the meaning assigned thereto in Article 260 of the Constitution;

SCHEDULE (s.17)

THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Meetings.

1. (1) The Board shall hold at least four meetings in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Meetings shall be convened by the Secretary of the Board in consultation with the Chairperson and shall be held at such times and such places as the Chairperson shall determine.

(3) The chairperson shall preside over all meetings and in the absence of the chairperson, the vice-chairperson, or in the absence of the vice-chairperson, a Trustee elected by the Board at the meeting for that purpose, shall preside over the meeting.

(4) The chairperson may at any time convene a special meeting of the Board, and shall do so within seven days of the receipt by the chairperson of a written request signed by at least five other Trustees.

(5) Unless six Trustees otherwise agree, at least seven days' notice of a meeting shall be given to every trustee.

Quorum.

2. (1). The quorum of a meeting of the Board shall be five Trustees present and voting and shall include at least two Trustees appointed under section 6 (2) (b), (c), (d) or (e) and at least three Trustees appointed under section 6 (2) (f).

(2) For special meetings, the quorum shall be six Trustees present and voting and shall include at least three Trustees appointed under section 6 (2) (b), (c), (d) or (e) and at least four Trustees appointed under section 6 (2) (f).

Voting.

3. A decision of the Board shall be by a majority of the Trustees present and voting and, in the case of a tie of votes, the person presiding at the meeting shall have a second or casting vote.

Minutes.

4. Minutes of all meetings shall be kept and entered in records kept for that purpose.

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"Public Service" has the meaning assigned thereto in Article 260 of the Constitution;

"Scheme" means the County Governments Retirement Scheme established under section 4;

"sponsor" means an employer or any other body who makes contributions on behalf of a member;

"spouse" means a male or female person to whom a member is married or was married under any other law, whether monogamous or not immediately before their death; and

"Trustee" means a member of the Board.

Objects and purpose of the Act.

3. (1) The object and purpose of the Act is to—

(a) provide for the establishment of the Scheme;

(b) provide for the payment of retirement benefits to members of the Scheme when they become due;

(c) provide for the social security of members of the Scheme by ensuring that the members save in order to cater for their livelihood during their retirement;

(d) establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme;

(e) establish transitional provisions for existing schemes; and

(f) protect the benefits of the members of the Scheme.

PART II—ESTABLISHMENT OF THE COUNTY GOVERNMENTS RETIREMENT SCHEME

Establishment of the County Governments Retirement Scheme.

4. (1) There is established the County Governments Retirement Scheme.

(2) The Scheme is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(c) entering into contracts;

(d) borrowing and investing money; and

(e) doing or performing all such other things or acts as may be necessary in furtherance of its purpose and functions.

(3) The Scheme shall be a defined contribution scheme providing social security benefits including—

(a) periodic payments through the purchase of annuities;

(b) a lump sum as a commutation of pension or trivial pension in accordance with the RBA Regulations;

(c) income drawdown;

(d) gratuity; and

(e) any other benefit approved by the Board under this Act.

Membership of the Scheme.

5. A county public officer or any other person approved by the Board may become a member of the Scheme under the auspices of a sponsor.

Board of Trustees of the Scheme.

6 (1) The management of the Scheme shall vest in a Board of Trustees of the Scheme.

(2) The Board shall consist of—

(a) the chairperson elected by the Trustees from among the members under paragraph (c), (d), (e) and (f);

(b) the Principal Secretary responsible for matters relating to finance or a representative;

(c) a person nominated by Council of County Governors;

(d) a person nominated by County Public Service Boards;

(e) a person nominated by County Assembly Service Boards;

(f) five persons nominated by most representative trade unions representing employees of county governments of whom at least two shall not be of the same gender as follows—

(i) four persons from trade unions representing the employees within the county executive; and

(ii) a person from trade unions representing the employees within the county assemblies' service; and

(g) the Chief Executive Officer who shall be an ex officio member and the secretary to the Board with no voting rights.

(3) The vice-chairperson of the Board shall be elected by the Trustees from among their number.

(4) The chairperson and vice- chairperson shall be of the opposite gender.

(5) The Cabinet Secretary shall ensure that not more than two thirds of the members of the Board are of the same gender.

(6) The Cabinet Secretary shall appoint the persons nominated under subsection (2) by notice in the *gazette*.

(7) The procedure for nomination and appointment of Trustees under subsection (2) shall be as prescribed in the regulations.

Qualifications for appointment of Trustees.

7. A person is qualified for appointment as a Trustee if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least five years experience in—

(i) finance;

(ii) law;

(iii) economics;

(iv) actuarial science; or

(v) any other profession or work experience directly relevant to the functions of the Board; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

Disqualificat.-- from appointment as a Trustee.

8. A person shall not be appointed as a Trustee if that person—

(a) has been convicted of a criminal offence, and sentenced to imprisonment for a term of six months or more;

(b) is an adjudged bankrupt or enters into a composition or arrangement with creditors; or

(c) is disqualified under the provisions of any other written law from appointment as such.

Tenure of office.

9. (1) A Trustee shall hold office for a term of three years and may be eligible for re-appointment for a further and final term of three years.

(2) Where a Trustee opts to apply for re-appointment under subsection (1), the re-appointment may be considered based on the performance of the applicant.

(3) The Board shall put in place arrangements to ensure that one-third of the Trustees are appointed in a staggered manner.

Removal from office.

10. (1) A Trustee may be removed from office by the Cabinet Secretary for—

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct or misbehaviour;

(c) incompetence or negligence of duty;

(d) bankruptcy;

(e) absence from two consecutive meetings of the Board without a reasonable explanation: and

(f) failure to meet the requirements of leadership and integrity set out in chapter six of the Constitution.

(2) Before a Trustee is removed from office under subsection (1), the Trustee shall be given an opportunity to be heard against the intended removal.

(3) Notwithstanding subsection (1), the Authority may remove a Trustee on grounds specified in the Retirement Benefits Act, 1997.

Vacation of office.

11. A person ceases to be a Trustee if the person—

(a) resigns in writing to the Cabinet Secretary;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;

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(c) is declared bankrupt or enters into composition with his or her creditors;

(d) is unable to perform the functions of their office by reason of mental or physical infirmity;

(e) is removed in accordance with section 10; or

(f) dies.

Filling of vacancy.

12. Where a vacancy occurs in the membership of the Board under section 10 or 11, the Cabinet Secretary shall appoint a new Trustee in accordance with the provisions of this Act.

Functions of the Board.

13. The Board shall—

(a) formulate policies relating to the Scheme in accordance with the provisions of the Retirement Benefits Act, 1997;

(b) collect contributions and income payable to the Fund under this Act;

(c) pay out the various benefits to persons entitled to the benefits as provided under the Act;

(d) protect the Fund's assets and ensure long term viability of the Scheme;

(e) ensure efficient management of the Scheme;

(f) ensure prudent investment of the monies forming part of the Fund;

(g) negotiate competitive annuity rates on behalf of members;

(h) ensure that the Scheme observes high standards of corporate and business ethics;

(i) advise the Cabinet Secretary on any matter relating to the objects and functions of the Board under this Act; and

(j) perform any other functions assigned to it under this Act.

Powers of the Board.

14. (1) In the exercise of its functions, the Board shall be accountable to the sponsors and the members of the Scheme.

(2) The Board shall have all powers necessary for the proper performance of the functions of the Scheme under this Act.

(3) Without prejudice to the generality of subsection (2), the Board shall have power to—

(a) supervise the assets of the Scheme in such manner as best promotes the purpose for which the Scheme is established;

(b) appoint a custodian, fund manager and administrator to carry out their functions as specified in the Retirement Benefits Act, 1997;

(c) determine the provisions to be made for administrative expenses as provided for under section 38 and for reserves of the Fund as provided for under section 39;

(d) ensure protection, where necessary, of the assets of the Scheme;

(e) associate with any other institution so as to further the purpose for which the Scheme is established;

(f) receive grants, gifts, donations or endowments and make legitimate disbursements from them:

(g) enforce remittance of outstanding Contributions by a sponsor;

(h) invest any monies of the Scheme not immediately required for its purposes;

(i) delegate any of its powers; and

(j) undertake any activity necessary for the fulfilment of any of the functions of the Scheme.

(4) The Board may, subject to such conditions as it may consider necessary, by directions in writing, delegate any of its powers to any one or more of the Trustees or to the chief executive officer or employees of the Scheme.

Committees of the Board.

15. (1) The Board may establish committees consisting of the Trustees for the better carrying out of its functions.

(2) The Board may co-opt persons to committees established under subsection (1) for a particular reason and such persons shall hold office for such period as the Board may determine.

(3) The persons co-opted into a committee under subsection (2) shall not be more than three.

(4) Subject to any specific or general direction of the Board, a committee established under subsection (1) may regulate its own procedure.

Remuneration of Trustees.

16. The Trustees shall be paid such remuneration as the Authority may determine in accordance with the Retirement Benefits Act.

Meetings of the Board.

17. (1) The business and affairs of the Board shall be conducted in accordance with the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedures subject to compliance with the Retirement Benefits Act and the regulations thereunder.

(3) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any of its decisions.

Chief executive officer of the Scheme.

18. (1) There shall be a chief executive officer of the scheme who shall be appointed by the Board through a competitive recruitment process on such terms and conditions as may be specified in the instrument of appointment.

(2) The chief executive officer shall be an *ex-officio* member of the Board.

(3) A person is qualified for appointment as the chief executive officer if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least ten years of experience of which five years should be at senior management level in a profession relevant to the functions of the Scheme as may be defined in the Regulations; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(4) The Chief Executive Officer shall be the accounting officer of the Scheme and secretary to the Board and, subject to the direction of the Board, shall be responsible for the—

(a) implementation of the decisions of the Board;

(b) day to day management of the affairs of the Scheme;

(c) management and discipline of the employees of the Scheme; and

(d) any other function that may be assigned by the Board.

(5) The Chief Executive Officer shall hold office for a term of three years and may be eligible for re-appointment for a further final term of three years.

(6) The Chief Executive Officer may be removed from office by the Board such grounds as may be set out in the instrument of appointment.

(7) Before the Chief Executive Officer is removed from office under subsection (5), the Chief Executive Officer shall be given—

(a) sufficient notice of the allegations made against him or her; and

(b) an opportunity to be heard either in person or by a legal representative

Employees of the Scheme.

19. (1) The Board may engage such other employees as it may consider necessary for the performance of its functions under this Act.

(2) The terms and conditions of service of employees of the Scheme shall be determined by the Board.

Common seal of the Scheme.

20. (1) The common seal of the Scheme shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The common seal of the Scheme when affixed to a document and authenticated shall be officially noticed, and unless the contrary is proved, an order or authorization of the Board under this section shall be presumed to have been given.

PART III—ADMINISTRATION OF THE SCHEME

Fund manager.

21. The Board shall appoint a fund manager of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act—

(a) implement the investment policy of the Scheme as approved by the Board;

(b) manage the Scheme funds and assets in accordance with the provisions of the Retirement Benefits Act;

(c) maintain books of accounts on all investment transactions relating to the Scheme;

(d) submit reports on a quarterly basis on investment strategy, market returns and other performance indicators to the Board; and

(e) perform any other function that may be assigned in the instrument of appointment and other written law.

Custodian of the Scheme.

22. (1) The Board shall appoint a custodian of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act –

(a) receive the contributions remitted by the sponsors and members under this Act on behalf of the Board;

(b) not later than the next business day following receipt of the contributions from a sponsor, notify the fund manager and the administrator of such receipt;

(c) receive and keep in safe custody the title documents, securities and monies of the Scheme in trust for the members and beneficiaries;

(d) collect dividends for the Scheme;

(e) report to the Board on any matter relating to the assets being held by the custodian on its behalf at such intervals as may from time to time be determined by the Board;

(f) undertake statistical analysis on the investments and returns on investments with respect to funds in its custody and provide data and information to the administrator and the Board;

(g) submit to the Board a report on a quarterly basis, of the reconciliations with respect to the funds held by the Custodian;

(h) execute, on behalf of the Board, the relevant proxy for the purpose of voting in relation to the investments; and

(i) perform any other function that may be assigned in the instrument of appointment or any other written law.

(2) The custodian shall maintain all funds and assets in its custody to the order of the Board and shall not utilise any pension fund or assets in its custody to meet its own financial obligation.

Administrator.

23. (1) The Scheme shall be administered by an administrator appointed by the Board.

(2) The administrator shall be an employee of the Board.

(3) The functions of the administrator shall be to—

(a) open and maintain an account for each member;

(b) upon receiving details of the contributions remitted under this Act, cause the amount of the contributions to be credited in the account of the member in respect of whom the sponsor has made the payment;

(c) inform the Board if a member's contribution details differ from the expected;

(d) provide customer support services to members, including access at least on a quarterly basis to members' account balances and statements;

(e) keep and maintain proper books of accounts of the Scheme;

(f) cause to be paid retirement benefits to a member who has retired;

(g) be responsible for all calculations relating to retirement benefits; and

(h) carry out any other functions as may be directed by the Board from time to time.

(4) The administrator shall ensure that all income earned from the investment of the Fund is distributed to the credit of the members' retirement savings accounts save for clearly defined and reasonable fees, charges, costs and expenses of transactions as may be approved by the Board.

Contributions.

24. (1) A member shall, so long as the member remains in the employment of a sponsor, contribute not less than twelve percent of that member's pensionable emoluments to the Scheme.

(2) Every sponsor shall contribute to the Scheme not less than fifteen per cent of the pensionable emoluments of every employee who is a member of the Scheme plus the amounts necessary to cover the premiums for insured benefit.

(3) Subject to such guidelines as the Board may issue, in consultation with the members and sponsors of the Scheme, a member of the Scheme may make additional contributions to the Scheme.

(4) In addition to the contributions specified in subsections (1) and (2), the sponsor shall take out and maintain a life insurance policy that has disability benefits in favour of every member of the Scheme, for a minimum of three times of the member's annual pensionable emoluments.

(5) Upon commencement of this Act, contributions required to be made under subsections (1) and (3) shall be deducted by a sponsor from the salary of the contributor in each month on which the salary is paid and shall be paid into the Scheme together with the sponsor's contribution before the 10th day of every calendar month or before any other day which may be notified in writing and approved by the Authority.

(6) Any contributions not paid to the Scheme by a sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest during the period they remain unpaid at a rate specified by the Board from time to time provided that such rate shall not be less than the rate specified in the Retirement Benefits Act and Regulations.

(7) All unpaid contributions and interest thereon shall constitute a civil debt of the respective sponsor and shall be recoverable summarily by the Board as provided for by law.

(8) The Board shall report to the Authority at such intervals as specified by the Authority, all remittances of contributions outstanding and not received after the deadlines specified herein.

Vesting of benefits.

25. All the benefits derived from contributions by a member and a sponsor shall vest immediately in the member.

Withdrawal of membership or benefits.

26. (1) A member shall not withdraw membership or retirement benefit from the Scheme while the member is in the employment of a Sponsor.

(2) A member may withdraw benefits from their account before normal retirement age in the following circumstances –

(a) resignation;

(b) dismissal;

(c) ill health;

(d) emigration.

(3) Despite subsection (1)—

(a) where a member leaves employment before one year of membership, the member may opt for payment of his own and the whole of the sponsor's contributions, together with allocated investment income:

(b) where a member leaves employment after one year of membership but before attaining the specified early retirement age, the member may opt for payment of—

(i) his or her own contribution and the sponsor's contribution as may be prescribed by the Retirement Benefits Authority and the investment income that has accrued in respect of those contributions; and

(ii) the balance shall be retained in the Scheme and continue to accrue interest until the member attains early retirement age, or transferred to another registered Scheme of the members choice;

(c) a member may opt for payment to him or her of the total amount of vested accrued benefits before attaining the early retirement age—

(i) on grounds of ill health or subsequently during deferment, if the member becomes incapacitated due to ill health, to the extent that it would occasion his or her retirement, if he or she was in employment; or

(ii) if the member has emigrated from Kenya to another country without the intention of returning to reside in Kenya and the Board has approved the payment of the retirement benefits and submitted, fourteen days prior to payment of the benefits, the approval to the Authority.

Retirement from service.

27. (1) Despite any other provisions in this Act, a member who retires is entitled to make withdrawals—

(a) on attaining the normal retirement age, or where their exact date of birth is not known, on the 1st July in the year in which the Board deems that they have reached normal retirement age;

(b) on the advice of a qualified medical practitioner appointed by the Board certifying that the member is no longer mentally or physically capable of carrying out the functions of their office.

(2) The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in any of the following documents—

(a) birth certificate;

(b) national identification card; or

(c) a valid passport.

Early retirement.

28. (1) Notwithstanding the provisions of section 27, any member who retires on attaining the early retirement age is entitled to make withdrawals in accordance with section 29.

(2) The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in any of the following documents—

(a) birth certificate;

(b) national identification card; or

(c) a valid passport.

Payment of retirement benefits.

29. (1) Where a member retires as provided in this Act, the member may request the Board in writing to pay to him or her—

(a) a lump sum from the balance in his or her retirement savings account that shall not exceed the equivalent of one-third of that balance:

Provided that a Member may withdraw any additional voluntary contributions made into the Scheme and accrued interest in full;

(b) monthly or quarterly income drawdown in accordance with a formula prescribed by the Board on the advice of an actuary;

(c) monthly or quarterly annuity for life purchased from an approved issuer of their choice:

Provided that the annuity shall include a provision for benefits payable to dependants upon a member's death.

(2) Despite the provisions of any other written law, a benefit granted under this Act shall not be—

(a) assignable or transferable except in accordance with the terms of a mortgage guarantee facility approved by the Board; and

(b) liable to be attached in settlement of any claim.

(3) The payment of a retirement benefits shall commence from the end of the month immediately following the month of the retirement of the member.

(4) Every payment of benefits from the Scheme may be subject to deduction of the amount outstanding due by the member under any mortgage guarantee facility approved by the Board.

Particulars of member and dependants of the member.

30. (1) Every member shall provide his or her particulars and those of his or her dependants to the administrator in the prescribed manner.

(2) A member may update the particulars provided under subsection (1) at any time and, in any event, at least three years before retirement.

Dispute on nomination.

31. (1) If a dispute relating to a nomination under this Part arises, the Board has power to consider evidence presented and determine the rightful dependant.

(2) Nothing in this Part may be construed as limiting or otherwise affecting the inherent power of the Board, either on its own motion or on the application of a party, to make such decisions as may be necessary.

Benefits to be paid upon the death of a member.

32. If upon the death of a member, benefits are paid to a person validly nominated under this Part, no other person shall have any other claim to the benefits against the Fund.

Death of a member in service.

33. (1) Upon the death of a member, the benefits accrued to the member shall be paid to the person whose particulars the Member had provided or at the Board's discretion as otherwise provided in the Retirement Benefits Act and Regulations thereunder.

(2) In the absence of a nomination, the Board shall apply the benefits referred to in subsection (1) to such of dependants of the deceased and in such amounts as the Board shall determine.

(3) Where a dispute arises under this section, the Board shall consider any evidence presented before it and determine the rightful beneficiary.

Presumption of death of member

34. (1) Where a member is missing and it is proved that the member has not been heard of for such period as prescribed by the law relating to presumption of death by those who might be expected to have heard of the member if that member was alive, there shall be a rebuttable presumption that the member is dead as provided under the law.

(2) Where a person is presumed dead under this section, the provisions of section 33 apply.

Death of member in retirement.

35. (1) If a member who was receiving a retirement benefit under an income drawdown dies, a benefit that is equivalent to the unutilized balance of the account of the member shall be paid to the nominated beneficiaries of the member.

(2) The payment under subsection (1) shall be made to the beneficiaries either as a lump sum or as an annuity commencing from the day following the death of the member.

Prohibited payments from the Scheme.

36. The retirement benefits under this Act shall not be paid by the Scheme to—

(a) a member, while the member is still in the employment of a Sponsor except where a member works on a contractual basis for the Sponsor after their resignation or early retirement ; or

(b) any person as a loan, advance or other similar benefit or payment except as provided under this Act.

PART IV—FINANCIAL PROVISIONS

County Governments Retirement Scheme Fund.

37. There is established a Fund to be known as the County Governments Retirement Scheme Fund which shall be administered by the Board in accordance with this Act and other relevant written laws.

Sources of funds.

38. (1) The Fund shall consist of—

(a) monies as may vest in or accrue to the Scheme in the performance of its functions under this Act or under any other written law;

(b) contributions from sponsors and members;

(c) grants, gifts, donations or other endowments given to the Scheme;

(d) income from investments made by the Scheme that are approved by the Board;

(e) fees and charges authorized by the Board;

(f) monies earned by the Scheme from any other source; and

(g) monies from any other source provided or donated or lent to the Scheme.

(2) There shall be paid out of the Fund—

(a) all benefits provided for under this Act;

(b) the expenses incurred in the management and administration of the Scheme subject to the limits provided under this section.

(3) For the avoidance of doubt, nothing in this Act is intended to or may be construed as providing for or dealing with—

(a) taxes;

(b) the imposition of charges on a public fund or the variation or repeal of any of those charges;

(c) the appropriation, receipt, custody, investment or issue of public money;

(d) the raising or guaranteeing of any loan or its repayment except as provided in any written law; or

(e) matters incidental to any of those matters.

(4) The Board shall establish an account into which may be paid—

(a) the monies transferred from the Fund for the trust expenses incurred by the Board in the exercise of its powers or the performance of its functions under this Act;

(b) the annual administrative expenses deducted from the value of the Fund at the rate approved from time to time by the Board but subject to a maximum of one and half percent of the Fund value or any such rate as the Board in consultation with the Authority may prescribe;

(c) monies that may vest in the Board in the course of the exercise of the powers of the Board;

(d) income from the investment of the monies held in the account established under this section; and

(e) all monies from any other source provided for or donated or lent to the Board.

(5) Any unspent monies budgeted for annual administrative expenses shall lapse back into the Fund at the end of the financial year.

(6) The Board may invest any surplus monies held in the account established under this Act in asset classes approved under the Retirement Benefits Act.

Reserve account.

39. (1) The Board may maintain a reserve account of the Scheme into which the following shall be deposited—

(a) any special contribution paid into the Scheme by a sponsor or the Government for the purpose of improving the benefits of the members; and

(b) any income of the Scheme that the Board determines should be set aside to stabilize the returns to members subject to a maximum of ten per cent of such income with consideration to the Income Tax Act or regulations made thereunder. Cap. 470

(2) Money shall not be drawn out of the reserve account except as directed by the Board for the purposes provided for under subsection (1).

(3) Any monies determined to be income of the reserve account shall be treated as income forming part of the general income of the Scheme.

Annual estimates.

40. (1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Scheme for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Scheme for the financial year concerned and, in particular, shall provide for the—

(a) payment of the salaries, allowances, and other charges in respect of the employee of the Scheme;

(b) payment of benefits and other charges which are payable out of the funds of the Scheme;

(c) funding of the registration, monitoring and evaluation activities of the Scheme;

(d) maintenance of the buildings and grounds of the Scheme;

(e) funding of training, research and development of activities of the Scheme;

(f) reserve funds to meet future or contingent liabilities in relation to retirement benefits, insurance or replacement of buildings or equipment; and

(g) such other matters as the Board may consider necessary.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate.

(4) Expenditure of the Scheme shall not be incurred except in accordance with the annual estimates approved by the Board.

Accounts and audit.

41. (1) The Board shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities.

(2) Within a period of three months after the end of each financial year, the Board shall submit to an auditor who is recognized and approved by the Authority the accounts of the Scheme in respect of that year together with—

(a) balance sheet showing in detail the assets and liabilities of the Scheme as at the end of the financial year.

(b) a statement of the income and expenditure of the Scheme during that year; and

(c) such other statements as may be required by the Authority.

(3) The annual accounts of the Scheme shall be prepared, audited and reported upon in accordance with the Retirement Benefit Act and other relevant laws.

Financial year.

42. The financial year of the Scheme shall be the period of twelve months ending on the thirtieth June in each year.

Annual distribution of profits.

43. The annual investment income earned by the Scheme shall after deduction of all expenses and costs properly paid out of the Scheme and any appropriation to a reserve account approved by the Board be credited to members' accounts on a pro-rata basis.

Actuarial review of the Scheme.

44. (1) The scheme shall be reviewed by an actuary appointed by the Board as provided for in the Retirement Benefits Act.

(2) The actuary appointed under subsection (1) shall—

(a) prepare a report on the state of the Scheme; and

(b) recommend any necessary action to be taken.

(3) The actuary shall submit the report prepared under subsection (2) to the Board within the stipulated time in the instrument of appointment.

(4) The Board shall, within six months of the receipt of such report, consider any recommendations made by the Actuary and in so doing, may take any action recommended by the actuary.

PART V—MISCELLANEOUS PROVISIONS

Conflict with other written law.

45. Where there is a conflict between the provisions of this Act and the provisions of the Retirement Benefits

Act, the provisions of the Retirement Benefits Act shall prevail.

Duty of care.

46. (1) The Board shall—

(a) ensure that the Scheme is at all times managed in accordance with the provisions of this Act, the Retirement Benefits Act and any other applicable law; and

(b) take reasonable care to ensure that the management of the Scheme or safe keeping of the assets of the Scheme is carried out in the best interests of the members of the Scheme.

(2) The administrator, fund manager, actuary and custodian shall—

(a) report to the Board and the Authority, as soon as reasonably practicable, any unusual occurrence with respect to the Scheme which in their view could adversely affect the rights of the owner of a member's account under the Scheme; and

(b) report to the Board and the Authority, as soon as is reasonably practicable, if a sponsor has not remitted the required contribution and such remittance remains due for more than ten days.

47. No action or omission by any member of the Board, or employee of the Scheme shall, if the act was done in good faith for the purpose of carrying out the provisions of this Act or any other law, subject the person to any liability, action, claim or demand.

Offences.

48. (1) A person who—

(a) wilfully fails to remit contributions to the Scheme as required;

(b) knowingly gives false information to the Scheme; or

(c) being a Trustee or employee of the Scheme, wilfully misappropriates the assets of the Scheme,

commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

(2) Where an offence under this section is committed by a body corporate, every person who at the time of the commission of the offence was—

(a) a director, general manager, secretary of the company or other similar officer of the body corporate; or

(b) purporting to act in any such capacity as provided in paragraph (a),

commits that offence.

(3) A person who is convicted of an offence under subsection (1) (c) shall, in addition to any fine that may be imposed, refund to the scheme three times the value of any loss that may be incurred by the scheme by reason of the commission of the offence.

Proceedings for recovery of deductions from sponsors.

49. (1) Notwithstanding the provision of section 26, where a sponsor, having made deduction from a member's emoluments for remittance to the Scheme, fails to remit the contribution within fifteen days of the deduction, the Scheme shall, after giving such sponsor not less than seven days' notice, institute proceedings for the recovery of the deduction.

(2) A notice under subsection (1) shall be in writing and copied to the Authority, and shall—

(a) require the sponsor to pay the sum deducted to the Scheme within seven days of the notice; and

(b) inform the sponsor that if he fails to pay such sum before the expiration of the notice, proceedings for summary recovery of the sum shall be filed in court without further reference to him.

(3) Any sum which is the subject of proceedings of summary recovery under this section shall attract a compound interest at the rate of three per cent per month.

(4) Without prejudice to any proceedings instituted under the provisions of this section, a person who refuses or fails to comply with a notice given to him or her under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five million shillings, or in the case of a natural person, to imprisonment for a term not exceeding two years, or to both.

(5) Where an offence under subsection (4) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in that subsection be liable to a further fine of one thousand shillings for every day or part thereof during which the offence continues.

General penalty.

50. A person who—

(a) contravenes any provision of this Act which is expressly stated to be an offence but for which no other penalty is prescribed; or

(b) fails to comply with any direction given by the Authority,

commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Regulations.

51. The Cabinet Secretary may, in consultation with the Board, make regulations generally for the better carrying into effect the provisions of this Act.

Repeal and revocation. Cap. 272.

52. (1) The Local Authorities Provident Fund Act is repealed.

L.N. 50 of 2007.

(2) The Local Authorities Pensions Trust Rules, 2007 are revoked.

(3) The Laptrust (Umbrella) Retirement Fund Trust Deed and Rules registered under the Retirement Benefits Act are revoked.

PART VI—SAVINGS AND TRANSITION

Extent of exemption from other statutory schemes.

53. The sponsors and members of the Scheme may be exempt from making Tier 11 contributions to the National Social Security Fund.

National government employees transferred to county governments.

54. (1) Eligible employees to whom this Act applies and who, prior to the commencement date, were members of a contributory pension scheme may, subject to the Regulations made by the Cabinet Secretary, transfer any such contributions to the Fund.

(2) Eligible employees to whom this Act applies and who join a sponsor on or after the commencement date and were members of a contributory pension scheme may, subject to the Regulations made by the Cabinet Secretary, transfer any such contributions to the Fund.

(3) A person who, at the commencement date, is an employee of the national government and whose remaining period of service is five years or less, is not eligible to join the Scheme and shall have his or her pension paid out under the provisions of the Pensions Act and the Widows and Children Pensions Act or any other relevant legislation. Cap. 189 Cap. 195

(4) A person who was an employee of a local authority and was a member of the Local Authorities Pensions Trust and whose remaining period of service is five years or less, is not eligible to join the Scheme and shall have his or her pension paid in accordance with the provisions of the Local Authorities Pensions Trust Rules, 2007 or any other relevant legislation. L.N. 50 of 2007

(5) Eligible employees to whom this Act applies and who, prior to the commencement date, were employees of the national government shall have their Pension paid out under the Pensions Act and the Widows and Children Pensions Act, for the period they served in the national government. Cap 189 Cap. 195

(6) Eligible employees to whom this Act applies and who prior to its commencement date were employee of the local authorities and who are eligible for benefits under a defined benefits scheme shall have their prior pension benefits paid out of the closed funds, as the case may be, for the period they served the local authorities.

55. (1) The members of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall be transitioned into the Scheme. Transition of closed funds to the Scheme.

(2) The funds, assets and other property, movable and immovable which immediately before the commencement date were held by or on behalf of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall vest in the Scheme.

(3) All the records of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall be transferred to the Scheme administrator.

(4) All rights, liabilities and duties whether arising under any written law or otherwise, which immediately before the commencement date were accruing, imposed or enforceable by or against the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall

vest in, be imposed on, or be enforceable against the Scheme.

(5) Any suit or legal proceedings by or against the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall continue as if they were instituted by the Scheme or against and no such suit, action or legal proceedings shall abate or be terminated by the virtue of the transition of the schemes.

(6) Subject to section 40, the annual estimates approved for the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund for the financial year in which this Act comes into operation shall be considered to be the annual estimates of the Scheme for the remainder of that financial year but those estimates may be varied by the Cabinet Secretary.

(7) The Auditor General shall cause an actuarial audit and valuation to be carried out with respect to the closed schemes within six months upon the commencement of this Act to ascertain the following for the purpose of transitional management—

(a) assets acquired by the schemes;

(b) liabilities accrued by the schemes; and

(c) employees of the schemes.

(8) The Auditor General shall submit a report on the findings of the audit and valuation to the Board, the Senate and the National Assembly within three months of carrying out of the audit under subsection (7).

Local Authorities Provident Fund and the Local Authorities Pensions Trust Fund.

56. (1) An eligible employee of a sponsor who, immediately before the commencement date was a member of the Local Authorities Provident Fund or the Local Authorities Pensions Trust Fund shall, upon the commencement of this Act, be deemed to be a member of the Scheme.

(2) The Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund shall, on the commencement date remain closed Funds to new entrants

and shall ensure the preservation of all accrued rights of members.

(3) Subject to subsection (2), the closed funds shall continue paying any pensions and benefits as and when they fall due for a maximum period of five years from the commencement date.

(4) The provisions of section 55 shall apply to any pension and benefits which shall not have been paid out of the closed Funds at the end of the fifth year from the date of commencement date.

(5) The staff of the existing schemes engaged in the administration of the existing schemes shall, upon the commencement of this Act, and subject to any suitability test conducted by the Board of Trustees, provide administration services to the Scheme and the existing schemes.

(6) The Retirement Benefits Authority shall, within five years from the commencement of this Act, ensure the implementation of this section.

New employees.

57. (1) Subject to section 54 any eligible employee who joined the service of a sponsor on permanent and pensionable terms after the first general elections under the Constitution shall be deemed to be a member of the Scheme with effect from the date of employment.

(2) Eligible employees of a Sponsor who are employed on contractual terms may opt, upon agreement with the Sponsor, to join the Scheme in lieu of gratuity for the duration of their contract term provided that the extent of contribution in such case shall be in line with section 24 of this Act.

Date of transition.

58. The provisions of sections 52 and 55 shall come into effect at the end of five years from the commencement date.

Amendment of section 132 of No. 17 of 2012

59. The County Governments Act is amended by deleting section 132.

27

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243694
E-mail: csenate@parliament.go.ke



The Senate
Clerk's Chambers
Parliament Buildings
P. O. Box 41842 –00100
NAIROBI, Kenya

PARLIAMENT
OFFICE OF THE CLERK OF THE SENATE

SEN/SCLSW/ 2021/5

3rd March, 2021

Mr. Hosea Kili, OGW,
Group Managing Director/CEO,
CPF Financial Services,
P. O. Box 28938 - 00200,
NAIROBI.

Mr. David Koross,
Chief Executive Officer/ Board Secretary,
Local Authorities Provident Fund Board,
P. O. Box 79592 – 00200,
NAIROBI.

Dear Sirs,

RE: STATUS OF IMPLEMENTATION OF THE COUNTY GOVERNMENTS RETIREMENT SCHEME ACT, 2019

The Senate Standing Committee on Labour and Social Welfare is established under standing order 218 of the Senate Standing Orders. The Committee is mandated to consider all matters related to -

manpower and human resources planning, pension, gender, culture and social welfare, youth, National Youth Service, children's welfare; national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation.

The County Governments Retirement Scheme Act, 2019 was passed by Parliament in June, 2019 and assented to by His Excellency, the President, in July, 2019. The Act sought to establish the County Government's Retirement Scheme as a mandatory scheme for all county government employees, provide for the establishment of the Scheme's Board of Trustees and provide for the Scheme's management and administration.

At its meeting held on Saturday, 13th February, 2021, the Committee considered various Statements referred to the Committee on matters pension and resolved to invite stakeholders to submit a report on the above matter.
Consequently, the Committee -

1. Requests your office to provide a comprehensive report on the status of implementation of the County Governments Retirement Scheme Act, 2019, **by email**, on the address csenate@parliament.go.ke, and copied to Senatecommittee.labour@parliament.go.ke on the issues raised above on or before **Tuesday, 9th March, 2021;**
2. Invites you to appear before the Committee on **Wednesday, 10th March, 2021 at 9.00 am** for a meeting. The meeting will be held on the Zoom online meeting platform and a secure link will be shared with your office ahead of the meeting. You may be accompanied to the meeting by any person you deem necessary to assist you in responding to the information sought by the Committee.

Ms. Mwanate Shaban, Clerk Assistant (Cell Number- 0726953257; Email: mwanateshaban@gmail.com), is the Clerk to the Committee and is responsible for all arrangements relating to this matter.

Yours faithfully,

For: EG

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

Copy To: **Sen. (Dr.) Abdullahi Ali, CBS, MP,**
Parliament Buildings,
NAIROBI.

Sen. Petronilla Were, MP,
Parliament Buildings,
NAIROBI.

(29)

REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Telephone: 2252299
FAX NO. 310833
When Replying Please Quote

THE NATIONAL TREASURY
Finance – Nairobi
P O BOX 20191- 00200
NAIROBI

Ref: EPN/171/07 VOL.'F'/(24) **Date: 11th May, 2021**

Mr. David Koross
Chief Executive Officer
The Local Authorities Provident Fund
JKUAT/ICEA Building, 9th Floor
NAIROBI

LAPFUND CEO'S OFFICE
Date: 19/5/2021
RECEIVED

Dear David,

IMPLEMENTATION OF COUNTY GOVERNMENT RETIREMENT SCHEME ACT, NO.21 OF 2019

The County Government Retirement Scheme Act, No.21 of 2019 (the CGRS Act) was assented to by H.E the President on 18th September, 2019 and was to come into effect on 7th October, 2019. The Act provides for the management and administration of the County Governments' Retirement Scheme.

The implementation was however stalled through Court action in the following three causes, which were later consolidated into Petition No.230 of 2019:

(a) Petition No.213 of 2019 - Okiya Omtatah Okoiti v. County Government Retirement Scheme & 152 others; filed on 8th November, 2019
(b) Petition No.222 of 2019 - Kenya County Government Workers Union & 7 others v. The Board of Trustees of Local Authorities Provident Fund & 54 others; filed on 15th November, 2019
(c) Petition No.230 of 2019 - The Local Authorities Pensions Trust Board of Trustees & Another v. The Attorney General & 3 others filed on 5th December, 2019.

I am pleased to note that following consultations amongst stakeholders that were spearheaded by the National Treasury, relevant parties in the aforementioned court proceedings have resolved to settle the contentious issues amicably out of Court.

In view of the foregoing, it is deemed expedient to constitute a working team to smoothen the implementation of the CGRS, Act.

I will appreciate if you could favour us with the nominee to represent your organization. Details to the nominee may be sent to the office of **the Director General, Public Investment and Portfolio Management, The National Treasury so as to reach him before Friday 28th May, 2021.**

Yours Sincerely.

Hon. (Amb.) Ukur Yatani, EGH
CABINET SECRETARY, NATIONAL TREASURY & PLANNING

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243694
E-mail: csenate@parliament.go.ke

The Senate
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Parliament Buildings
P. O. Box 41842 –00100
NAIROBI, Kenya

PARLIAMENT
OFFICE OF THE CLERK OF THE SENATE

REF: SEN/SCLSW/ 2022/24 **10th February, 2022**

Hon. (Amb.) Ukur K. Yatani, EGH,
Cabinet Secretary,
The National Treasury and Planning,
P. O. Box 30007,
NAIROBI.

LAPFUND CEO'S OFFICE
Date: 16/2/2022
RECEIVED

Hon. Justice (Rtd.) Paul Kariuki Kihara, EGH,
The Attorney General,
P. O. Box 40112 - 00100
NAIROBI.

Mr. Kennedy Ogeto, CBS,
The Solicitor General,
P. O. Box 40112 - 00100
NAIROBI.

Mr. Hosea Kili, OGW,
Group Managing Director/ CEO,
CPF Financial Services,
P. O. Box 28938 - 00200,
NAIROBI.

Mr. David Koross,
Chief Executive Officer/ Board Secretary,
Local Authorities Provident Fund Board,
P. O. Box 79592 – 00200,
NAIROBI.

Dear Sirs,

RE: RESOLUTION OF THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE COUNTY GOVERNMENTS RETIREMENT SCHEME ACT, 2019 (CGRS ACT)

We refer to the Senate Standing Committee on Labour and Social Welfare's Stakeholders Meeting on the Status of Implementation of the County Governments Retirement Scheme Act, 2019 (CGRS Act), held on Wednesday, 9th February, 2022 at which you were present.

During the meeting, it was noted that some stakeholders had filed the following court cases challenging the constitutionality and legality of the CGRS Act—

1. ***ELRC Constitutional Petition No. 213 of 2019: Okiya Omtatah Okoiti versus The County Government Retirement Scheme & 152 Others;***
2. ***ELRC Petition No. 222 of 2019: Kenya County Government Workers Union versus The Trustees of Lapfund & 60 Others; and***
3. ***ELRC (Nairobi Constitutional Petition) No. 230 of 2019: Laptrust versus AG & 3 Others.***

The Committee further concurred with the following unanimous position taken by the stakeholders during the said Committee meeting—

a) That the Parties are open, ready, willing and able to pursue an out-of-court settlement of the above court cases.

b) That the cases should be subjected to a court-annexed mediation, preferably before a mediator who has sufficient technical knowledge and expertise on matters relating to pensions and who has not taken a partisan position on the matters in dispute or played a role in the enactment of the CGRS Act.

The Committee therefore resolved -

a) That the Parties should resolve their disputes amicably through a court-annexed mediation.

b) That the Committee shall adopt the mediated settlement agreement and present the same to Parliament, together with such amendments to the Act as may be necessary to give effect to the mediated settlement agreement.

The purpose of this letter is to request your office to initiate the court-annexed mediation process as agreed by the stakeholders within **two weeks from today, 10th February, 2022** and provide a comprehensive report to the Committee, **by email**, on the address **csenate@parliament.go.ke**, and copied to **senatelabourcommittee@gmail.com** **by Friday, 15th April, 2022.**

Ms. Mwanate Shaban, Clerk Assistant (Cell Number- 0726953257; Email: mwanateshaban@gmail.com), is the Clerk to the Committee and is responsible for all arrangements relating to this matter.

Yours Sincerely,

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

Mr. Nzomo Mutuku, MBS,
Chief Executive Officer,
Retirement Benefits Authority,
P. O. Box 57733 – 00200,
NAIROBI.

Ms. Wanjiku Wakogi,
Secretary,
State Corporations Advisory Committee,
P. O. Box 42145 – 00100,
NAIROBI.

CPF Financial Services
7th Floor,CPF House, Haile Selassie Avenue.
P.O Box 28938 - 00200 Nairobi,Kenya
Tel: +254 111 114 000 | +254 720 433 354
Email: info@cpf.or.ke

SECRETARY
02 JUL 2024
PSC

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03 JUL 2024
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Our Ref: CPF1/1/2

Your Ref: SEN/DSEC/SCLSW/2024/67

31st June 2024

J.M Nyegenye, CBS
Clerk of the Senate
Clerk's Chambers
Parliament Buildings
NAIROBI.

THE SENATE
RECEIVED
03 JUL 2024
DIRECTOR COMMITTEE SERVICES
(DSEC)

(1) DSEC
Kindly deal
03/07/2024

(2) DDSEC (VK)
Kindly deal
03/07/2024

Dear Sir/

RE: MEMORANDUM OF THE SENATE ON THE COUNTY ASSEMBLIES' PENSIONS BILL, 2024.

Ms. Mwanate
Kindly deal
Kobati
03/07/2024

We refer to the above matter and your letter dated **24th June, 2024**.

CPF Financial Services Limited is a leading administrator of retirement benefits schemes in Kenya. It is the current administrator of Laptrust DB Scheme, County Pension Fund, Public Service Superannuation Scheme, CPF Individual Pension Scheme, County State Officers (Umbrella) Pension Fund, Waspa (Umbrella) Pension Fund among other retirement benefits schemes in both the public and private sectors.

We, based on our experiences and expertise in the pension sector, wish to note the following in respect of the captioned Bill:

1. Members of County Assemblies currently subscribe to the following schemes:
   (a) County State Officers (Umbrella) Pension Fund, a pension scheme established purposefully for members of the County Assemblies.
   (b) CPF Individual Pension Fund, an individual pension plan established for private individuals who would wish to secure their future by making voluntary individual pension contributions. This Scheme caters for Members of County Assemblies and enables them to convert their pension to gratuity in line with the Income Tax Act, Cap 470.

Directors: Maurice Nduranu - (Chairman) | Dr. Hosea Kili, OGW - (CEO) | Dr. Benedict Mkalama | Margaret Osure | Victor Odendo | Isabel Juma | Joseph Rono
NAIROBI | MOMBASA | KISUMU | ELDORET | NYERI | GARISSA | MERU | BUNGOMA | NAKURU
www.cpf.or.ke

(c) Lapfund, a provident fund established under the Local Authorities Provident Fund Act, Cap 272. The Scheme provides benefits in terms of lumpsum payments to members of the defunct local authorities.

2. CPF is the Administrator of the two of the Schemes mentioned in para. 1 above, namely County State Officers (Umbrella) Pension Fund and CPF Individual Pension Scheme.

3. Members of County Assemblies are by law entitled to Gratuity at the rate of 31% of the employee's basic salary. Under CPF Individual Pension Scheme and County State Officers (Umbrella) Pension Scheme, gratuity of a member is remitted to the Scheme and converted to pension pursuant to section 5 (4) (g) of the Income Tax Act, Cap 470 Laws of Kenya. Under the said Scheme, Members can benefit from investment income, tax incentives, among other benefits when they join the mentioned pension schemes.

4. County State Officers (Umbrella) Pension Fund is a pension scheme established exclusively for Members of County Assemblies and is specially designed to cater for the interests peculiar to Members of County Assemblies.

5. We note that based on comparable standards and equity, we advise that Members of County Assemblies should enjoy benefits which are proportionate and their pension scheme ought to have an equivalent or comparable design and structure to that of the Parliamentary Pensions Act, Cap 196.

6. It is advisable that a pension scheme for Members of County Assemblies should provide, among other things, for benefits structures for a member who serves 1 term and those who go for more than two terms and how they shall access their benefits. Further, we reconsideration of the following:
   (a) The benefits structure befitting members of county assemblies;
   (b) The contribution structure to fund the said benefits;
   (c) Retirement age; and
   (d) Issues of break in service, etc.

We attach herewith a Memorandum with specific recommendations and justifications for consideration by the Senate.

Yours

DR. HOSEA K. KILI, OGW
GROUP MANAGING DIRECTOR / CEO.

PROPOSED AMENDMENTS TO THE COUNTY ASSEMBLIES' PENSIONS BILL, 2024 (SENATE BILLS NO. 14 OF 2024)		
Clause	**Current status**	**Comments**
Long title	An Act of Parliament to: provide for a contributory pension scheme for members and staff of county assemblies; establish a county assemblies pensions fund for payment or granting of pensions or retirement benefits to Members of county assemblies; and other related matters.	Amend to provide exclusively for Members of County Assemblies. Employees in County Assemblies are already covered in the existing retirement benefits arrangements, that is Laptrust, CPF and Lapfund.
Appointing Authority	The appointing authority is Cabinet Secretary responsible for the National Treasury who is empowered to do the following under the proposed law. (a) Clause 6 (5) – Ensuring that not more than 2/3 of trustees are from the same gender.	The Court in ***Okoiti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR)*** vide a judgement dated ***20th December 2022*** declared that it is unconstitutional for the national government to play a pervasive role in the running of pension schemes for county government employees and officers. The learned judge stated thus, in part – ***209. To my understanding, pensions are employment benefits to be managed by employers under private contracts. The national government is therefore only under the obligation to make provision for pensions for its employees within the context of private employment contracts.***

	(b) Clause 6 (6)- Appointing trustees of the Scheme. (c) Clause 10 – removal of trustees. (d) Clause 11 – receiving resignations. (e) Clause 12 – filling of casual vacancy in the Board.	*210. For these reasons I agree with the Petitioners that the decision of the government to get involved in the management of pensions for county government employees is a violation of not only the Fourth Schedule to the Constitution but also Article 6 of the Constitution which provides that the government at the national and county levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation.* *211. By regulating pension for county government employees the National Government enters into the realm of regulating terms and conditions of service of employees of county governments. This is incompatible with the provisions of Article 6 of the Constitution and the overarching principle of devolution as espoused in the Constitution.*
Establishment	Clause 4 (2) provides for establishment of the Scheme as a body corporate with perpetual succession and a common seal.	We propose that the Board of Trustees be established as a body corporate as opposed to the Scheme itself. The Board shall then be registered under the Trustees (Perpetual Succession) Act, Cap 164. The rationale for this proposal is to protect and maintain the independence of the board, its fiduciary responsibilities and comply with the requirements of the Retirement Benefits Act and the common law of trusts.
Role of the Scheme in providing Social Security	Clause 4(3) of the Bill provides that the Scheme shall be a defined contribution scheme providing social security benefits.	Social security in my view would be reckoned with reference to Articles 43 of the Constitution. Article 43(1)(e) specially refers to the role of the government to be the provider of appropriate social security to persons who are unable to support themselves and their dependents. The envisaged Scheme is a

		funded Scheme, funded by its members (the Members of County Assemblies) and the respective county governments.
Administration of the Scheme	Clause 18 – provides for internal administration of the Scheme through a CEO. Clause 19 – provides for the staff of the Scheme (Secretariat). Clause 23 – provides that the Scheme shall be administered by an administrator appointed by the Board. Clause 23 (2) – provides that the administrator shall be an employee of the Board.	We propose that clause 18, 19 and 23(2) be amended to allow the Trustees appoint an Administrator for the Scheme as required by law. *The Retirement Benefits Act defines an administrator as follows:* *"administrator" means the person appointed under a written instrument by the trustees of a scheme to manage the administrative affairs of the scheme;* *25B. Requirements for registration of administrators* *No applicant for registration as a scheme administrator shall be registered unless such applicant—* *(a) is a limited liability company incorporated under the Companies Act (Cap. 486), whose liability is limited by shares and whose main objective is to render administrative services to schemes;* *(b) has such minimum paid up share capital as may, from time to time, be prescribed;* *(c) is capable of meeting the obligations to members and sponsors specified in the scheme rules;* *(d) has the professional and technical capacity and adequate operational systems to perform it's functions;* *(e) has never been an administrator of any scheme fund which has been either deregistered, wound up or placed under an interim administrator due to any fault, either fully or partially, of the administrator;* *(ee) has in its Board of Directors and top management such number of persons as may be prescribed who are academically and professionally qualified in matters relating to administration of schemes, insurance, law, accounting, actuarial science, economics, banking, finance or investment of scheme funds;*

Agree that employee should not only be from employer of the Board - restrictive, accept allow for external administrators

		(eb) has at least thirty three percent of its paid up share capital owned by Kenyan citizens unless the applicant is a bank or an insurance company; *(f) meets such additional requirements as may, from time to time, be prescribed*
Contribution rates	Clause 24 provides for contribution rates of members of the Scheme and states as follows. *A Member of County Assembly shall contribute not less that seven nought five percent (7.5%) of the Member's pensionable emoluments.* *(2) A sponsor shall contribute not less than fifteen percent (15%) of the pension emoluments.* *Pensionable emoluments is defined under clause 2 to mean basic salary excluding housing, transport and any other allowances or fluctuating emoluments.*	Similar provision in the CGRS Act, 2019, which reduces contribution rates thus disadvantaging Members has been ***declared unconstitutional, null and void*** by Court in *Okoiti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR)* for being contrary to the requirements of fair labour practice and a violation of Article 41 of the constitution. The same is inconsistent with the Retirement Benefits Act requirement that benefits to a member should be reduced to the detriment of a member. Also inconsistent with Section 138 (a) and (c) of the County Government Act, 2012 which state as follows: *(a) the officer's terms of service including remuneration, allowances and pension or other benefits shall not be altered to the officer's disadvantage; and* *(b).....* *(c) the officer's terms and conditions of service may be altered to office's advantage.* We propose a contribution rate of 31% and 12% Employer and Employee contributions respectively.

		These contributions shall be converted into pension in terms of section 5 (4) (g) of the Income Tax Act, Cap 470 and applied to the following proposed sub-funds: *(i) 20%: Pension Fund* *(ii) 6%: Post – Retirement Medical Fund* *(iii) 5% Group Life Fund; and* *(iv) 5%: Security and Car Maintenance Fund;* Viewed against other state officers of comparable positions, this proposal shall bring equity and eliminate any perceived of discrimination.
NSSF Mandatory Contributions	Clause 52 provides that the sponsors and members may be exempt from making Tier II contributions to NSSF.	In view of the judgment delivered by the Supreme Court on *February 21, 2024*, in *Supreme Court Petition (Application) No. E002 And E004 of 2023: Kenya Tea Growers Association; Agricultural Employers Association & County Pensioners Association:-* (a) The NSSF Act 2013 remains unconstitutional, null, and void. (b) No contributions may be made to, and /or received by NSSF on account of the NSSF Act, 2013.
Transition	Clause 53(2) provides for transfer of funds, assets and other property from Lapfund and Laptrust (Umbrella) to the Scheme.	We propose that the clauses be deleted for the following reasons: Members of County Assemblies are not members of the County Pension Fund (previously, Laptrust (Umbrella) Pension Fund).

COUNTY ASSEMBLIES FORUM (CAF)

Flamingo Towers, 5th Floor Wing B, Mara Road, Upper Hill P.o Box 73552- 00200 Nairobi Kenya Tel: 0701 046 933
Email:communication@countyassembliesforum.org www.countyassembliesforum.org

THE SENATE
RECEIVED
05 JUL 2024
DIRECTOR COMMITTEE SERVICES
(DSEC)

OFFICE OF THE CLERK-SENATE
SECRETARY
05 JUL 2024
PSC
P.O. Box 41842 - 00100, NAIROBI

CAF MEMORANDUM ON THE COUNTY ASSEMBLIES PENSION BILL(SENATE NO. 14 OF 2024)

DG/KW DSEC
Kindly deal.
05/07/2024

TO: **Mr. Jeremiah Nyegenye, CBS**
Clerk of the Senate, Parliament of Kenya.

FROM: **County Assemblies Forum**

DATE: **02nd JULY 2024.**

SUBJECT: **CAF Memorandum on the County Assemblies Pensions Bill, 2024**

THE SENATE
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Ms. Mwanate
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1.0 INTRODUCTION

1. The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya. The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relationsand enhance good practice in legislative development. Our Mission is to provide effective leadership and coordination of the 47 County Assemblies and through policy and legislative action, promote a conducive working environment for all itsmembers, and in that way deliver quality services to the people.

2. As one of the pillars of the devolved government system, CAF is committed to engage in processes that lead to the provision of the social welfare of Members of County Assemblies

2.0. BACKGROUND

2.1. The County Assemblies Pensions Scheme Bill, 2024, seeks to address the long-standing need for a structured and comprehensive pension scheme for members of county assemblies across the forty-seven counties in the nation. Historically, members of county assemblies have faced challenges in securing financial stability post-retirement due to the absence of a unified pension scheme. This has not only impacted their welfare but also posed challenges in maintaining the attractiveness of public service at the county level.

2.2. The current pension arrangements for county assembly members are fragmented and inconsistent, often leading to disparities in benefits and lack of uniformity in the management of pension funds. Recognizing the critical role that members of county assemblies play in local governance, it has become imperative to establish a robust pension system that ensures financial security for these public servants upon their retirement.

2.3. The Bill proposes the establishment of the County Assemblies Pensions Scheme, which will be inclusive of all members of county assemblies and open to other public officers and individuals approved by the Board of Trustees. This scheme aims to provide a range of benefits including lump sum payments, periodic pension payments, and income draw-downs, thereby offering a comprehensive solution to retirement funding.

2.4. The Bill also sets forth the administrative framework of the scheme, including the appointment and roles of the Fund Manager, Custodian, and Administrator (Chief

Executive Officer), and delineates the processes for membership, vesting of benefits, and withdrawal provisions. It further includes financial provisions for the management of the County Assemblies Pensions Scheme Fund, investment strategies for surplus funds, and requirements for a reserve account to ensure sustainability.

2.5. General provisions within the Bill safeguard the rights and duties of the Board and its employees, outline penalties for non-compliance, and provide for the recovery of deductions from employers. Moreover, the Bill empowers the Board to make necessary regulations in consultation with the Cabinet Secretary and exempts scheme members from contributing to other statutory schemes.

2.6. Overall, the County Assemblies Pensions Scheme Bill, 2024, is a significant legislative measure aimed at enhancing the welfare of county assembly members, promoting financial security in retirement, and ensuring the sustainability and efficiency of the pension scheme through structured governance and management.

4.0 SUMMARY MATRIX OF THE PROPOSED AMENDMENTS.

	CLAUSE	AMENDMENT	JUSTIFICATION
1.	**Clause 2-Interpretation**	Amend the Clause by adding the following clause:- *" The Forum means County Assemblies Forum"*	CAF is the institution representing the 47 County Assemblies and all the Members of County Assemblies.
2.	**Clause 2-Interpretation**	Amend the Clause by adding the following clause:- *" The Prnicipal Secretary means Principal Secretraty under the State Department of Devolution"*	Noting the amendment under Clause 6(6) kindly recognize the Principal Secretary of the State Department of Devolution.
3.	Clause 2 *"early retirement age" means such age as may be prescribed but which shall not be less than fifty years;"*	Amend the Clause by adding the following clause:- *""early retirement age" means such age as may be prescribed but which shall not be less than forty five years;"*	The Forum proposes the reitiremnt age to be the same as the Members of Parliament as provided in the Parliamentary Pensions Act.
4.	Clause 2	Amend the Clause by deleting the definition of	The Forum wishes the committee to take note of the caselaw of

	"Cabinet Secretary" means the Cabinet Secretary responsible for the National Treasury;"	the Cabinet Secretary of National Treasury and replace it the following definition:- *"The Forum Chairperson means the Chairman of the County Assemblies Forum"*	***Okoiti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR)*** *where it was* **held** that it is unconstitutional for the national government to play a pervasive role in the running of pension schemes for county government employees and officers.

2.	Clause 2 *"pensionable emoluments" means basic salary excluding housing, transport and any other allowances or fluctuating emoluments;"*	Amend the Clause by deleting the definition and replacing it with the follows: *""pensionable emoluments" includes salary, responsibility allowance, constituency allowance, nominated member's allowance, ex officio member's allowance, house allowance, accommodation allowance and sitting allowance;."*	Given that MCAs' base salaries are relatively low, incorporating these allowances into pensionable emoluments will address salary insufficiencies and provide them with greater financial security and stability, particularly after retirement. This amendment ensures that their total compensation is accurately reflected in their pension calculations, acknowledging the full extent of their earnings and the true cost of their public service.

3..	Clause 6(2) & (5)& (6) **Board of Trustees of the Scheme** *"The Board shall consist of– (a) the chairperson elected by the Trustees from among the members under paragraphs (c) and (d);* *(b) a county executive committee member responsible for matters relating to Finance nominated by the County Council of Governors;* *(c) two people nominated by County Assembly Service Boards;* *(d) five persons nominated by the forum representing all the county assemblies in the country of whom at least two shall not be of the same gender as follows –* *(i) two representatives of members of county assemblies contemplated in Article 177(a) of the Constitution;* *(ii) a representative of members of county*	a. Kindly define SOCCAT(K) in the interpretation section. *b.* Amend the Clause by deleting sub-clause 6 (2) (b) and amend sub-clause 6 (2) (d) to state as follows:- *"six persons nominated by the County Assemblies Forum the forum representing all the county assemblies in of whom at least two shall not be of the same gender as follows –* *c. (i) three representatives of members of county assemblies contemplated in Article 177(a) of the Constitution;* *d. (ii) a representative of members of county assemblies contemplated in Article 177(b) of the Constitution; and* *e. (iii) a representative of members of county assemblies contemplated in Article 177(c) of the Constitution;* *……"*	a) Defining "SOCCAT(K) provides more the legislative authority b) Further, Senate should delete the position of CEC Finance since there is no justifiable role to be played in governace of County Assemblies Pension Scheme. c) Kindly recognize County Assemblies Forum as the Forum representing the Members of County Assemblies

	assemblies contemplated in Article 177(b) of the Constitution; and *(iii) a representative of members of county assemblies contemplated in Article 177(c) of the Constitution;* *(e) two representatives of the staff of the county assemblies nominated by the SOCCAT (K); and* *(f) the Chief Executive Officer who shall be an ex officio member and the secretary to the Board with no voting rights……."*		
4.	Clause 6 (5) *(5) The Cabinet Secretary shall ensure that not more than two thirds of the members of the Board are of the same gender.*	Amend the clause by deleting the "Cabinet Secretary" as it appears in subclause 5 and therefore replace with *"Chairperson of County Assemblies Forum"*	See decision in Okoiti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR)

5.	Clause 6 (6) *(6) The Cabinet Secretary shall appoint the persons nominated under subsection (2) by notice in the gazette."*	Amend the clause by deleting *the "Cabinet Secretary"* as it appears in subclause 6 and therefore replace with *"Principal Secretary"*	See point 4
6.	Clause 10, *(1) A Trustee may be removed from office by the Cabinet Secretary, in consultation with the nominating body, for– (a) inability to perform the functions of the office arising out of physical or mental incapacity; (b) gross misconduct or misbehaviour; (c) incompetence or negligence of duty; (d) bankruptcy; (e) absence from two consecutive meetings of the Board without a reasonable explanation; and (f) failure to meet the requirements of leadership and integrity set out in chapter six of the Constitution. (2) Before a Trustee is removed from office under subsection (1), the Trustee shall be*	Amend the clause by deleting the *"Cabinet Secretary"* as it appears in clause 10 and therefore replace with *"Chairperson of County Assemblies Forum*	See point 4

	given an opportunity to be heard against the intended removal. (3) Notwithstanding subsection (1), the Authority may remove a Trustee on grounds specified in the Retirement Benefits Act, Cap. 197.		
15.	**Clause 11** *11. A person ceases to be a Trustee if the person – (a) resigns in writing to the Cabinet Secretary; (b) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more; (c) is declared bankrupt or enters into composition with his or her creditors; (d) is unable to perform the functions of their office by reason of mental or physical infirmity; (e) ceases to be a member of a county assembly; (f) is removed in accordance with section 10; or (g) dies.*	Amend the clause by deleting the *"Cabinet Secretary"* as it appears in clause 11 and therefore replace with *"Chairperson of County Assemblies Forum"*	See point 4

7.	Clause 12 *Where a vacancy occurs in the membership of the Board under section 10 or 11, the Cabinet Secretary shall appoint a new Trustee in accordance with the provisions of this Act.*	Amend the clause by deleting the *"Cabinet Secretary"* as it appears in clause 12 and therefore replace with *"Chairperson of County Assemblies Forum"*	See point 4
8.	Clause 13(i) . ……..The Board shall— a *Advise the Cabinet Secretary on any matter relating to the objects and functions of the Board under this Act; and* ……	Amend the clause by deleting the "Cabinet Secretary" as it appears in clause 13(i) and therefore replace with *"Chairperson of County Assemblies Forum*	See point 4
9.	**Clause 24 (1) and (2)** **Contributions** *"(1) A member shall, so long as the member is a member of a county assembly,*	Amend sub clause(1) and (2) to with the following subheading:- ***"Contributions for Member of County Assemblies***	The proposed amendment to sub-clauses (1) and (2) is essential to ensure that Members of County Assemblies (MCAs) receive adequate

	contribute not less than seven nought five percent (7.5%) of that member's pensionable emoluments to the Scheme. (2) Every sponsor shall contribute to the Scheme not less than fifteen per cent of the pensionable emoluments of a member of the Scheme plus the amounts necessary to cover the premiums for insured benefit."	*(1) Every Member of County Assemblies shall, so long as he or she remains in the employment of a sponsor, contribute not less than twelve per cent (12%) of his or her pensionable emoluments to the Scheme."* *(2) Every sponsor shall contribute to the Scheme not less than thirty one per cent (31%) of the pensionable emoluments of a member of the Scheme plus the amounts necessary to cover the premiums for insured benefits."* Further add as clause 24 A (1) and (2) with the following sub heading:- ***"Contributions for Members of staff of the County Assemblies*** *(1) Members of staff of the county assemblies shall, so long as the member is a staff of a county assembly, contribute not less than seven nought five percent (7.5%) of that member's pensionable emoluments to the Scheme.* *(2) Every sponsor shall contribute to the Scheme not less than fifteen per cent of the pensionable emoluments of a member of the*	pension benefits given their limited term of service, which is typically only five years. The current contribution rates—7.5% from members and 15% from sponsors—are insufficient to efficiently finance the MCAs' pensions and fall short when compared to the current gratuity system. By increasing the members' contribution rate to not less than twelve percent (12%) and the sponsors' contribution rate to not less than thirty-one percent (31%), the amendment seeks to provide MCAs with a more substantial and sustainable pension. This change will help bridge the gap between the limited service period and the need for long-term financial security, ensuring that MCAs are better supported after their term in office. The proposed rates will also ensure

		Scheme plus the amounts necessary to cover the premiums for insured benefit."	that the pension scheme remains competitive and more attractive than the current gratuity system, thereby encouraging better financial planning and stability for MCAs post-service. The proposed amendment to sub-clauses (1) and (2) ensures a fair and sustainable pension system for county assembly staff, who are permanent and pensionable employees. The contribution rates of 7.5% from the staff and 15% from the sponsors are sufficient given their long-term employment, allowing adequate accumulation of pension funds. This balanced approach ensures comprehensive coverage and financial security upon retirement while maintaining the sustainability of the pension fund.

10.	**Clause 52** **Extent of exemption from other statutory schemes.** *"The sponsors and members of the Scheme may be exempt from making Tier 11 contributions to the National Social Security Fund."*	Amend the Clause to provide the following:- *"The sponsors and members of the Scheme shall be exempt from making contributions to the Social Security Fund"*	In light of the Supreme Court decision in Supreme Court Petition (Application) No. E002 and E004 of 2023, involving the Kenya Tea Growers Association, Agricultural Employers Association, and County Pensioners Association, it has been determined that the NSSF Act is operatively unconstitutional, null, and void. This ruling necessitates a reevaluation of related policies and actions, including the provisions for Members of County Assemblies (MCAs).
ADDITIONAL AMENDMENTS TO BE INCLUDED IN THE BILL			
	Introduce a new clause to provide the following:- **a) Medical Insurance**	The clause should read:- *" a retired Member of County Assembly and spouse shall during his or her lifetime be entitled to Full medical cover."*	The pension scheme should provide a medical insurance cover similar to that provided to other retired state officers in National Government.

Thank you.
Yours sincerely,



HON. PHILEMON K. SABULEI,

CHAIRPERSON CAF

REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

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REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

COMMENTS BY NJUGUNA NDUNG'U, EGH, THE CABINET SECRETARY, NATIONAL TREASURY AND ECONOMIC PLANNING TO THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE ON COUNTY ASSEMBLIES PENSIONS BILL, 2024 (SENATE BILLS NO.14 OF 2024)

Honourable Chairperson and Honourable Senators,

Good morning,

Thank you for the opportunity to appear before this Honorable Committee to submit views of the National Treasury and Economic Planning on the above Bill.

I wish to respond as follows;

1. PENSION ARRANGEMENT IN THE COUNTIES

Hon. Chairperson, Currently, employees of County Governments subscribe to one of three schemes operating in the counties: the County Pension Fund, the LAPTRUST, or the LAPFUND.

Hon. Chairperson, In the period leading to the Year 2019, following a consultative process, the idea of a unified pension scheme for all county government workers was mooted. This led to the County Governments Retirement Scheme (CGRS) Act, Cap 189B of the Laws of Kenya, which was assented to by the President on 18th September 2019, with commencement earmarked for 7th October 2019. The Act established a Defined Contribution Scheme with contribution rates of 7.5% and 15% of basic salary by the employee and employer, respectively, and aimed to provide pension benefits for employees of the counties. However, its implementation was derailed by multiple court cases, culminating in a judgment delivered on 20th December 2022 by the Employment and Labour Relations Court sitting in Nairobi. The court declared the CGRS unconstitutional due to lack of public participation and conflicts with various Articles of the Constitution and existing statutes.

2. COMMENTS AND RECOMMENDATIONS

Hon. Chairperson;

1. **Intention of the Impugned CGRS**
   The County Governments Retirement Scheme (CGRS) Act, 2019, aimed to provide a comprehensive pension framework for county employees. This initial intention remains valid and crucial for ensuring financial security upon retirement for county employees.

2. **Inclusion of Employees of the County Executive**
   In addition to MCAs being covered under the proposed law, it is recommended that the Bill be expanded to encompass all county workers, whether in the Executive or Assembly arm of the County. This will ensure a unified pension system that addresses the specific needs of all county employees.

3. **Resource Allocation and Efficiency**
   A single, cohesive pension scheme will improve resource allocation, enhance investment strategies, and promote financial sustainability. Consolidation of pension schemes will lead to reduced administrative costs and greater financial security for retirees.

4. **Alignment with National Policy**
   The National Retirement Benefits Policy emphasizes the importance of a fair, transparent, and efficient pensions sector. Aligning the county pensions arrangement with the National Retirement Benefits Policy objectives will ensure better governance and financial stability for all stakeholders. This is best achieved under a unified approach, thus the proposal to expand the coverage of the Bill to all County Government employees.

3. CONCLUSION

Hon. Chairperson, the National Treasury recommends that the County Assemblies Pensions Bill, 2024, be reoriented to incorporate the original intention of covering all county government workers under a unified pension arrangement, particularly to include MCAs who are not currently covered. This approach will avoid duplication, improve resource allocation, and align with national policy objectives.

NJUGUNA NDUNG'U, EGH
CABINET SECRETARY

SPECIAL ISSUE

Kenya Gazette Supplement No. 56 (Senate Bills No. 14)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2024

NAIROBI, 7th February, 2024

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THE COUNTY ASSEMBLIES PENSIONS SCHEME BILL, 2024

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THE COUNTY ASSEMBLIES PENSION SCHEME BILL, 2024

AN ACT of Parliament to: provide for a contributory pension scheme for members and staff of county assemblies; establish a county assemblies Pensions Fund for the payment or granting of pensions or retirement benefits to Members of county assemblies and members of staff of county assemblies; and other related matters.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the County Assemblies Pension Scheme Act, 2024.

Interpretation.

No. 3 of 1997.

2. In this Act, —

"actuary" has the meaning assigned thereto in the Retirement Benefits Act, Cap. 197;

"administrator" means the person appointed as such under section 23;

"annuity" means a pension purchased under a contract with a registered insurer;

"approved issuer" means an approved issuer appointed by the Trustee to provide the services of approved issuer in accordance with the Retirement Benefits Act, Cap.197;

"Authority" means the Retirement Benefits Authority established under the Retirement Benefits Act, Cap. 197;

"Board" means the Board of Trustees established under section 6;

"Cabinet Secretary" means the Cabinet Secretary responsible for the National Treasury;

"child" means any child of a deceased member including a natural child, an adopted child or a step-child who has not attained eighteen years of age or, if the child is receiving full time education, not more than twenty-five years of age and was at the time of the death of the deceased wholly or mainly dependent on the deceased, and includes an unborn child who, if already born, would have been a child of the deceased;

"commencement date" means the date of coming into force of this Act;

"contribution" means the amount payable by a member or sponsor into the Scheme under this Act;

"county assembly" means a county assembly established under Article 176 of the Constitution;

"county assembly service board" means a county assembly service board established under section 12 of the County Governments Act (Cap. 265);

"custodian" means a person appointed as such under section 22 of the Act;

"dependant" in relation to a deceased member, means a relative of the deceased who survives the deceased and who, on the date of the deceased's death, was—

(a) a spouse to the deceased;

(b) a child of the deceased; or

(c) a parent of the deceased who was dependent on the deceased for the provision of the ordinary necessities of life;

"early retirement age" means such age as may be prescribed but which shall not be less than fifty years;

"existing scheme" means the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust(Umbrella)Retirement Fund;

"Fund" means the County Assemblies Pensions Scheme Fund established under section 37;

"fund manager" means a person appointed as such under section 21;

"income drawdown" means the facility to continue to keep retirement savings invested in the scheme and take an income during a specified period rather than buy an annuity;

"insured benefit" means the death in service lump sum benefit and the disability lump sum benefit to be provided in terms of section 24;

"investment return" means a portion of the return of the investment declared by the Board and appropriated to the account of a member;

"member" means an eligible member or staff of a county assembly who has become a member of the Scheme and includes a person entitled to or receiving a benefit under the Scheme;

"member account" means an account maintained by the Scheme for an individual member;

"member of a county assembly" means a member of a county assembly established under Article 176 of the Constitution;

"normal retirement age" means the age as set by the Public Service Commission or any other Act of Parliament for retirement of public officers;

"pensionable emoluments" means basic salary excluding housing, transport and any other allowances or fluctuating emoluments;

"Scheme" means the County Assemblies Pension Scheme established under section 4;

"sponsor" means a county assembly service board that makes contributions on behalf of a member;

"spouse" means a male or female person to whom a member is married or was married under any other law, whether monogamous or not immediately before their death; and

"Trustee" means a member of the Board.

Objects and purpose of the Act.

3. (1) The object and purpose of the Act is to—

(a) provide for the establishment of the Scheme;

(b) provide for the payment of retirement benefits to members of the Scheme when they become due;

(c) provide for the social security of members of the Scheme by ensuring that the members save in order to cater for their livelihood during their retirement;

(d) establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme;

(e) establish transitional provisions for existing schemes; and

(f) protect the benefits of the members of the Scheme.

PART II—ESTABLISHMENT OF THE COUNTY ASSEMBLIES PENSIONS SCHEME

Establishment of the County Assemblies Pension Scheme.

4. (1) There is established the County Assemblies Pension Scheme.

(2) The Scheme is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(c) entering into contracts;

(d) borrowing and investing money; and

(e) doing or performing all such other things or acts as may be necessary in furtherance of its purpose and functions.

(3) The Scheme shall be a defined contribution scheme providing social security benefits including—

(a) periodic payments through the purchase of annuities;

(b) a lump sum as a commutation of pension or trivial pension in accordance with the Retirement Benefits Authority Regulations;

(c) income drawdown;

(d) gratuity; and

(e) any other benefit approved by the Board under this Act.

Membership of the Scheme.

5. (1) Membership of the Scheme shall consist of all members of county assemblies and members of staff of county assemblies.

(2) All members of the third county assemblies and staff shall, on the date of commencement of this Act, be deemed to have joined the Scheme.

Board of Trustees of the Scheme.

6 (1) The management of the Scheme shall vest in a Board of Trustees of the Scheme.

(2) The Board shall consist of—

(a) the chairperson elected by the Trustees from among the members under paragraphs (c) and (d);

(b) a county executive committee member responsible for matters relating to Finance nominated by the County Council of Governors;

(c) two people nominated by County Assembly Service Boards;

(d) five persons nominated by the forum representing all the county assemblies in the country of whom at least two shall not be of the same gender as follows—

(i) two representatives of members of county assemblies contemplated in Article 177(a) of the Constitution;

(ii) a representative of members of county assemblies contemplated in Article 177(b) of the Constitution; and

(iii) a representative of members of county assemblies contemplated in Article 177(c) of the Constitution;

(e) two representatives of the staff of the county assemblies nominated by the SOCCAT (K); and

(f) the Chief Executive Officer who shall be an ex officio member and the secretary to the Board with no voting rights.

(3) The vice-chairperson of the Board shall be elected by the Trustees from among their number.

(4) The chairperson and vice- chairperson shall be of the opposite gender.

(5) The Cabinet Secretary shall ensure that not more than two thirds of the members of the Board are of the same gender.

(6) The Cabinet Secretary shall appoint the persons nominated under subsection (2) by notice in the *gazette*.

(7) The procedure for nomination and appointment of Trustees under subsection (2) shall be as prescribed in the regulations.

Qualifications for appointment of Trustees.

7. A person is qualified for appointment as a Trustee if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least five years experience in—

(i) finance;

(ii) law;

(iii) economics;

(iv) actuarial science; or

(v) any other profession or work experience directly relevant to the functions of the Board; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

Disqualification from appointment as a Trustee.

8. A person shall not be appointed as a Trustee if that person—

(a) has been convicted of a criminal offence, and sentenced to imprisonment for a term of six months or more;

(b) is an adjudged bankrupt or enters into a composition or arrangement with creditors; or

(c) is disqualified under the provisions of any other written law from appointment as such.

Tenure of office.

9. (1) A Trustee shall hold office for a term of three years and may be eligible for re-appointment for a further and final term of three years.

(2) Where a Trustee opts to apply for re-appointment under subsection (1), the re-appointment may be considered based on the performance of the applicant.

(3) The Board shall put in place arrangements to ensure that one-third of the Trustees are appointed in a staggered manner.

Removal from office.

10. (1) A Trustee may be removed from office by the Cabinet Secretary, in consultation with the nominating body, for—

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct or misbehaviour;

(c) incompetence or negligence of duty;

(d) bankruptcy;

(e) absence from two consecutive meetings of the Board without a reasonable explanation; and

(f) failure to meet the requirements of leadership and integrity set out in chapter six of the Constitution.

(2) Before a Trustee is removed from office under subsection (1), the Trustee shall be given an opportunity to be heard against the intended removal.

(3) Notwithstanding subsection (1), the Authority may remove a Trustee on grounds specified in the Retirement Benefits Act, Cap. 197.

Vacation of office.

11. A person ceases to be a Trustee if the person—

(a) resigns in writing to the Cabinet Secretary;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;

(c) is declared bankrupt or enters into composition with his or her creditors;

(d) is unable to perform the functions of their office by reason of mental or physical infirmity;

(e) ceases to be a member of a county assembly;

(f) is removed in accordance with section 10; or

(g) dies.

Filling of vacancy.

12. Where a vacancy occurs in the membership of the Board under section 10 or 11, the Cabinet Secretary shall appoint a new Trustee in accordance with the provisions of this Act.

Functions of the Board.

13. The Board shall—

(a) formulate policies relating to the Scheme in accordance with the provisions of the Retirement Benefits Act, Cap.197;

(b) collect contributions and income payable to the Fund under this Act;

(c) pay out the various benefits to persons entitled to the benefits as provided under the Act;

(d) protect the Fund's assets and ensure long term viability of the Scheme;

(e) ensure efficient management of the Scheme;

(f) ensure prudent investment of the monies forming part of the Fund;

(g) negotiate competitive annuity rates on behalf of members;

(h) ensure that the Scheme observes high standards of corporate and business ethics;

(i) advise the Cabinet Secretary on any matter relating to the objects and functions of the Board under this Act; and

(j) perform any other functions assigned to it under this Act.

Powers of the Board.

14. (1) In the exercise of its functions, the Board shall be accountable to the sponsors and the members of the Scheme.

(2) The Board shall have all powers necessary for the proper performance of the functions of the Scheme under this Act.

(3) Without prejudice to the generality of subsection (2), the Board shall have power to—

(a) supervise the assets of the Scheme in such manner as best promotes the purpose for which the Scheme is established;

(b) appoint a custodian, fund manager and administrator to carry out their functions as specified in the Retirement Benefits Act, Cap. 197;

(c) determine the provisions to be made for administrative expenses as provided for under

section 38 and for reserves of the Fund as provided for under section 39;

(d) ensure protection, where necessary, of the assets of the Scheme;

(e) associate with any other institution so as to further the purpose for which the Scheme is established;

(f) receive grants, gifts, donations or endowments and make legitimate disbursements from them;

(g) enforce remittance of outstanding Contributions by a sponsor;

(h) invest any monies of the Scheme not immediately required for its purposes;

(i) delegate any of its powers; and

(j) undertake any activity necessary for the fulfilment of any of the functions of the Scheme.

(4) The Board may, subject to such conditions as it may consider necessary, by directions in writing, delegate any of its powers to any one or more of the Trustees or to the chief executive officer or employees of the Scheme.

Committees of the Board.

15. (1) The Board may establish committees consisting of the Trustees for the better carrying out of its functions.

(2) The Board may co-opt persons to committees established under subsection (1) for a particular reason and such persons shall hold office for such period as the Board may determine.

(3) The persons co-opted into a committee under subsection (2) shall not be more than three.

(4) Subject to any specific or general direction of the Board, a committee established under subsection (1) may regulate its own procedure.

Remuneration of Trustees.

16. The Trustees shall be paid such remuneration as the Authority may determine in accordance with the Retirement Benefits Act.

Meetings of the Board.

17. (1) The business and affairs of the Board shall be conducted in accordance with the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedures subject to compliance with the Retirement Benefits Act and the regulations thereunder.

(3) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any of its decisions.

Chief executive officer of the Scheme.

18. (1) There shall be a chief executive officer of the Scheme who shall be appointed by the Board through a competitive recruitment process on such terms and conditions as may be specified in the instrument of appointment.

(2) The chief executive officer shall be an *ex-officio* member of the Board.

(3) A person is qualified for appointment as the chief executive officer if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least ten years of experience of which five years should be at senior management level in a profession relevant to the functions of the Scheme as may be defined in the Regulations; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(4) The Chief Executive Officer shall be the accounting officer of the Scheme and secretary to the Board and, subject to the direction of the Board, shall be responsible for the—

(a) implementation of the decisions of the Board;

(b) day to day management of the affairs of the Scheme;

(c) management and discipline of the employees of the Scheme; and

(d) any other function that may be assigned by the Board.

(5) The Chief Executive Officer shall hold office for a term of three years and may be eligible for re-appointment for a further final term of three years.

(6) The Chief Executive Officer may be removed from office by the Board such grounds as may be set out in the instrument of appointment.

(7) Before the Chief Executive Officer is removed from office under subsection (5), the Chief Executive Officer shall be given—

(a) sufficient notice of the allegations made against him or her; and

(b) an opportunity to be heard either in person or by a legal representative.

Employees of the Scheme.

19. (1) The Board may engage such other employees as it may consider necessary for the performance of its functions under this Act.

(2) The terms and conditions of service of employees of the Scheme shall be determined by the Board.

Common seal of the Scheme.

20. (1) The common seal of the Scheme shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The common seal of the Scheme when affixed to a document and authenticated shall be officially noticed, and unless the contrary is proved, an order or authorization of the Board under this section shall be presumed to have been given.

PART III—ADMINISTRATION OF THE SCHEME

Fund manager.

21. The Board shall appoint a fund manager of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act—

(a) implement the investment policy of the Scheme as approved by the Board;

(b) manage the Scheme funds and assets in accordance with the provisions of the Retirement Benefits Act;

(c) maintain books of accounts on all investment transactions relating to the Scheme;

(d) submit reports on a quarterly basis on investment strategy, market returns and other performance indicators to the Board; and

(e) perform any other function that may be assigned in the instrument of appointment and other written law.

Custodian of the Scheme.

22. (1) The Board shall appoint a custodian of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act –

(a) receive the contributions remitted by the sponsors and members under this Act on behalf of the Board;

(b) not later than the next business day following receipt of the contributions from a sponsor, notify the fund manager and the administrator of such receipt;

(c) receive and keep in safe custody the title documents, securities and monies of the Scheme in trust for the members and beneficiaries;

(d) collect dividends for the Scheme;

(e) report to the Board on any matter relating to the assets being held by the custodian on its behalf at such intervals as may from time to time be determined by the Board;

(f) undertake statistical analysis on the investments and returns on investments with respect to funds in its custody and provide data and information to the administrator and the Board;

(g) submit to the Board a report on a quarterly basis, of the reconciliations with respect to the funds held by the Custodian;

(h) execute, on behalf of the Board, the relevant proxy for the purpose of voting in relation to the investments; and

(i) perform any other function that may be assigned in the instrument of appointment or any other written law.

(2) The custodian shall maintain all funds and assets in its custody to the order of the Board and shall not utilise any pension fund or assets in its custody to meet its own financial obligation.

Administrator.

23. (1) The Scheme shall be administered by an administrator appointed by the Board.

(2) The administrator shall be an employee of the Board.

(3) The functions of the administrator shall be to—

(a) open and maintain an account for each member;

(b) upon receiving details of the contributions remitted under this Act, cause the amount of the contributions to be credited in the account of the member in respect of whom the sponsor has made the payment;

(c) inform the Board if a member's contribution details differ from the expected;

(d) provide customer support services to members, including access at least on a quarterly basis to members' account balances and statements;

(e) keep and maintain proper books of accounts of the Scheme;

(f) cause to be paid retirement benefits to a member who has retired;

(g) be responsible for all calculations relating to retirement benefits; and

(h) carry out any other functions as may be directed by the Board from time to time.

(4) The administrator shall ensure that all income earned from the investment of the Fund is distributed to the credit of the members' retirement savings accounts save for clearly defined and reasonable fees, charges, costs and expenses of transactions as may be approved by the Board.

Contributions.

24. (1) A member shall, so long as the member is a member of a county assembly, contribute not less than seven nought five percent (7.5%) of that member's pensionable emoluments to the Scheme.

(2) Every sponsor shall contribute to the Scheme not less than fifteen per cent of the pensionable emoluments of a member of the Scheme plus the amounts necessary to cover the premiums for insured benefit.

(3) Subject to such guidelines as the Board may issue, in consultation with the members and sponsors of the Scheme, a member of the Scheme may make additional contributions to the Scheme.

(4) In addition to the contributions specified in subsections (1) and (2), the sponsor shall take out and maintain a life insurance policy that has disability benefits in favour of every member of the Scheme, for a minimum of three times of the member's annual pensionable emoluments.

(5) Upon commencement of this Act, contributions required to be made under subsections (1) and (3) shall be deducted by a sponsor from the salary of the member in each month on which the salary is paid and shall be paid into the Scheme together with the sponsor's contribution before the tenth day of every calendar month or before any other day which may be notified in writing and approved by the Authority.

(6) Any contributions not paid to the Scheme by a sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest during the period they remain unpaid at a rate specified by the Board from time to time provided that such rate shall not be less than the rate specified in the Retirement Benefits Act and Regulations.

(7) All unpaid contributions and interest thereon shall constitute a civil debt of the respective sponsor and shall be recoverable summarily by the Board as provided for by law.

(8) The Board shall report to the Authority at such intervals as specified by the Authority, all remittances of contributions outstanding and not received after the deadlines specified herein.

Vesting of benefits.

25. All the benefits derived from contributions by a member and a sponsor shall vest immediately in the member.

Withdrawal of membership or benefits.

26. (1) A member shall not withdraw membership or retirement benefit from the Scheme while the member is a member of a county assembly or a staff of a county assembly.

(2) A member may withdraw benefits from their account before normal retirement age in the following circumstances –

(a) resignation;

(b) dismissal;

(c) removal from office;

(d) ill health;

(e) emigration.

(3) Despite subsection (1)—

(a) where a member ceases being a member or a staff of a county assembly before one year of membership, the member may opt for payment of his own and the whole of the sponsor's contributions, together with allocated investment income;

(b) where a member ceases being a member or a staff of a county assembly after one year of membership but before attaining the specified early retirement age, the member may opt for payment of—

(i) his or her own contribution and the sponsor's contribution as may be prescribed by the Retirement Benefits Authority and the investment income that has accrued in respect of those contributions; and

(ii) the balance shall be retained in the Scheme and continue to accrue interest until the member attains early retirement age, or transferred to another registered Scheme of the members choice;

(c) a member may opt for payment to him or her of the total amount of vested accrued benefits before attaining the early retirement age—

(i) on grounds of ill health or subsequently during deferment, if the member becomes incapacitated due to ill health, to the extent that it would occasion his or her retirement, if he or she was in employment; or

(ii) if the member has emigrated from Kenya to another country without the intention of returning to reside in Kenya and the Board has approved the payment of the retirement benefits and submitted, fourteen days prior to payment of the benefits, the approval to the Authority.

Retirement from service.

27. (1) Despite any other provisions in this Act, a member who retires is entitled to make withdrawals—

(a) on attaining the normal retirement age, or where their exact date of birth is not known, on the first day of July in the year in which the Board deems that they have reached normal retirement age;

(b) on the advice of a qualified medical practitioner appointed by the Board certifying that the member is no longer mentally or physically capable of carrying out the functions of their office.

(2) The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in any of the following documents—

(a) birth certificate;

(b) national identification card; or

(c) a valid passport.

Early retirement.

28. (1) Notwithstanding the provisions of section 27, any member who retires on attaining the early retirement age is entitled to make withdrawals in accordance with section 29.

(2) The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in any of the following documents—

(a) birth certificate;

(b) national identification card; or

(c) a valid passport.

Payment of retirement benefits.

29. (1) Where a member retires as provided in this Act, the member may request the Board in writing to pay to him or her—

(a) a lump sum from the balance in his or her retirement savings account that shall not exceed the equivalent of one-third of that balance:

Provided that a Member may withdraw any additional voluntary contributions made into the Scheme and accrued interest in full;

(b) monthly or quarterly income drawdown in accordance with a formula prescribed by the Board on the advice of an actuary;

(c) monthly or quarterly annuity for life purchased from an approved issuer of their choice:

Provided that the annuity shall include a provision for benefits payable to dependants upon a member's death.

(2) Despite the provisions of any other written law, a benefit granted under this Act shall not be—

(a) assignable or transferable except in accordance with the terms of a mortgage guarantee facility approved by the Board; and

(b) liable to be attached in settlement of any claim.

(3) The payment of a retirement benefits shall commence from the end of the month immediately following the month of the retirement of the member.

(4) Every payment of benefits from the Scheme may be subject to deduction of the amount outstanding due by the member under any mortgage guarantee facility approved by the Board.

Particulars of member and dependants of the member.

30. (1) Every member shall provide his or her particulars and those of his or her dependants to the administrator in the prescribed manner.

(2) A member may update the particulars provided under subsection (1) at any time and, in any event, at least three years before retirement.

Dispute on nomination.

31. (1) If a dispute relating to a nomination under this Part arises, the Board has power to consider evidence presented and determine the rightful dependant.

(2) Nothing in this Part may be construed as limiting or otherwise affecting the inherent power of the Board, either on its own motion or on the application of a party, to make such decisions as may be necessary.

Benefits to be paid upon the death of a member.

32. If upon the death of a member, benefits are paid to a person validly nominated under this Part, no other person shall have any other claim to the benefits against the Fund.

Death of a member in service.

33. (1) Upon the death of a member, the benefits accrued to the member shall be paid to the person whose particulars the Member had provided or at the Board's discretion as otherwise provided in the Retirement Benefits Act and Regulations thereunder.

(2) In the absence of a nomination, the Board shall apply the benefits referred to in subsection (1) to such of dependants of the deceased and in such amounts as the Board shall determine.

(3) Where a dispute arises under this section, the Board shall consider any evidence presented before it and determine the rightful beneficiary.

Presumption of death of member.

34. (1) Where a member is missing and it is proved that the member has not been heard of for such period as prescribed by the law relating to presumption of death by those who might be expected to have heard of the member if that member was alive, there shall be a rebuttable presumption that the member is dead as provided under the law.

(2) Where a person is presumed dead under this section, the provisions of section 33 apply.

Death of member in retirement.

35. (1) If a member who was receiving a retirement benefit under an income drawdown dies, a benefit that is equivalent to the unutilized balance of the account of the member shall be paid to the nominated beneficiaries of the member.

(2) The payment under subsection (1) shall be made to the beneficiaries either as a lump sum or as an annuity commencing from the day following the death of the member.

Prohibited payments from the Scheme.

36. The retirement benefits under this Act shall not be paid by the Scheme to—

(a) a member, while the member is still a member of a county assembly except where a member works on a contractual basis for the Sponsor after their resignation or early retirement; or

(b) any person as a loan, advance or other similar benefit or payment except as provided under this Act.

PART IV—FINANCIAL PROVISIONS

County Assemblies Pensions Scheme Fund.

37. There is established the County Assemblies Pensions Scheme Fund which shall be administered by the Board in accordance with this Act and other relevant written laws.

Sources of funds.

38. (1) The Fund shall consist of—

(a) monies as may vest in or accrue to the Scheme in the performance of its functions under this Act or under any other written law;

(b) contributions from sponsors and members;

(c) grants, gifts, donations or other endowments given to the Scheme;

(d) income from investments made by the Scheme that are approved by the Board;

(e) fees and charges authorized by the Board;

(f) monies earned by the Scheme from any other source; and

(g) monies from any other source provided or donated or lent to the Scheme.

(2) There shall be paid out of the Fund—

(a) all benefits provided for under this Act;

(b) the expenses incurred in the management and administration of the Scheme subject to the limits provided under this section.

(3) For the avoidance of doubt, nothing in this Act is intended to or may be construed as providing for or dealing with—

(a) taxes;

(b) the imposition of charges on a public fund or the variation or repeal of any of those charges;

(c) the appropriation, receipt, custody, investment or issue of public money;

(d) the raising or guaranteeing of any loan or its repayment except as provided in any written law; or

(e) matters incidental to any of those matters.

(4) The Board shall establish an account into which may be paid—

(a) the monies transferred from the Fund for the trust expenses incurred by the Board in the exercise of its powers or the performance of its functions under this Act;

(b) the annual administrative expenses deducted from the value of the Fund at the rate approved from time to time by the Board but subject to a maximum of one and half percent of the Fund value or any such rate as the Board in consultation with the Authority may prescribe;

(c) monies that may vest in the Board in the course of the exercise of the powers of the Board;

(d) income from the investment of the monies held in the account established under this section; and

(e) all monies from any other source provided for or donated or lent to the Board.

(5) Any unspent monies budgeted for annual administrative expenses shall lapse back into the Fund at the end of the financial year.

(6) The Board may invest any surplus monies held in the account established under this Act in asset classes approved under the Retirement Benefits Act.

Reserve account.

39. (1) The Board may maintain a reserve account of the Scheme into which the following shall be deposited—

(a) any special contribution paid into the Scheme by a sponsor or the Government for the purpose of improving the benefits of the members; and

(b) any income of the Scheme that the Board determines should be set aside to stabilize the returns to members subject to a maximum of ten per cent of such income with consideration to the Income Tax Act or regulations made thereunder. Cap. 470

(2) Money shall not be drawn out of the reserve account except as directed by the Board for the purposes provided for under subsection (1).

(3) Any monies determined to be income of the reserve account shall be treated as income forming part of the general income of the Scheme.

Annual estimates.

40. (1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Scheme for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Scheme for the financial year concerned and, in particular, shall provide for the—

(a) payment of the salaries, allowances, and other charges in respect of the employee of the Scheme;

(b) payment of benefits and other charges which are payable out of the funds of the Scheme;

(c) funding of the registration, monitoring and evaluation activities of the Scheme;

(d) maintenance of the buildings and grounds of the Scheme;

(e) funding of training, research and development of activities of the Scheme;

(f) reserve funds to meet future or contingent liabilities in relation to retirement benefits, insurance or replacement of buildings or equipment; and

(g) such other matters as the Board may consider necessary.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate.

(4) Expenditure of the Scheme shall not be incurred except in accordance with the annual estimates approved by the Board.

Accounts and audit.

41. (1) The Board shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities.

(2) Within a period of three months after the end of each financial year, the Board shall submit to an auditor who is recognized and approved by the Authority the accounts of the Scheme in respect of that year together with—

(a) balance sheet showing in detail the assets and liabilities of the Scheme as at the end of the financial year.

(b) a statement of the income and expenditure of the Scheme during that year; and

(c) such other statements as may be required by the Authority.

(3) The annual accounts of the Scheme shall be prepared, audited and reported upon in accordance with the Retirement Benefit Act and other relevant laws.

Financial year.

42. The financial year of the Scheme shall be the period of twelve months ending on the thirtieth June in each year.

Annual distribution of profits.

43. The annual investment income earned by the Scheme shall after deduction of all expenses and costs properly paid out of the Scheme and any appropriation to a reserve account approved by the Board be credited to members' accounts on a pro-rata basis.

Actuarial review of the Scheme.

44. (1) The scheme shall be reviewed by an actuary appointed by the Board as provided for in the Retirement Benefits Act.

(2) The actuary appointed under subsection (1) shall—

(a) prepare a report on the state of the Scheme; and

(b) recommend any necessary action to be taken.

(3) The actuary shall submit the report prepared under subsection (2) to the Board within the stipulated time in the instrument of appointment.

(4) The Board shall, within six months of the receipt of such report, consider any recommendations made by the Actuary and in so doing, may take any action recommended by the actuary.

PART V—MISCELLANEOUS PROVISIONS

Conflict with other written law.

45. Where there is a conflict between the provisions of this Act and the provisions of the Retirement Benefits Act, the provisions of the Retirement Benefits Act shall prevail.

Duty of care.

46. (1) The Board shall—

(a) ensure that the Scheme is at all times managed in accordance with the provisions of this Act, the Retirement Benefits Act and any other applicable law; and

(b) take reasonable care to ensure that the management of the Scheme or safe keeping of the assets of the Scheme is carried out in the best interests of the members of the Scheme.

(2) The administrator, fund manager, actuary and custodian shall—

(a) report to the Board and the Authority, as soon as reasonably practicable, any unusual occurrence with respect to the Scheme which in their view could adversely affect the rights of the owner of a member's account under the Scheme; and

(b) report to the Board and the Authority, as soon as is reasonably practicable, if a sponsor has not remitted the required contribution and such remittance remains due for more than ten days.

Protection from personal liability.

47. No action or omission by any member of the Board, or employee of the Scheme shall, if the act was done in good faith for the purpose of carrying out the provisions of this Act or any other law, subject the person to any liability, action, claim or demand.

Offences.

48. (1) A person who—

(a) wilfully fails to remit contributions to the Scheme as required;

(b) knowingly gives false information to the Scheme; or

(c) being a Trustee or employee of the Scheme, wilfully misappropriates the assets of the Scheme,

commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

(2) Where an offence under this section is committed by a body corporate, every person who at the time of the commission of the offence was—

(a) a director, general manager, secretary of the company or other similar officer of the body corporate; or

(b) purporting to act in any such capacity as provided in paragraph (a),

commits that offence.

(3) A person who is convicted of an offence under subsection (1) (c) shall, in addition to any fine that may be imposed, refund to the scheme three times the value of any loss that may be incurred by the scheme by reason of the commission of the offence.

Proceedings for recovery of deductions from sponsors.

49. (1) Notwithstanding the provision of section 26, where a sponsor, having made deduction from a member's emoluments for remittance to the Scheme, fails to remit the contribution within fifteen days of the deduction, the Scheme shall, after giving such sponsor not less than seven days' notice, institute proceedings for the recovery of the deduction.

(2) A notice under subsection (1) shall be in writing and copied to the Authority, and shall—

(a) require the sponsor to pay the sum deducted to the Scheme within seven days of the notice; and

(b) inform the sponsor that if he fails to pay such sum before the expiration of the notice, proceedings for summary recovery of the sum shall be filed in court without further reference to him.

(3) Any sum which is the subject of proceedings of summary recovery under this section shall attract a compound interest at the rate of three per cent per month.

(4) Without prejudice to any proceedings instituted under the provisions of this section, a person who refuses or fails to comply with a notice given to him or her under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five million shillings, or in the case of a natural person, to imprisonment for a term not exceeding two years, or to both.

(5) Where an offence under subsection (4) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in that subsection be liable to a further fine of one thousand shillings for every day or part thereof during which the offence continues.

General penalty.

50. A person who—

(a) contravenes any provision of this Act which is expressly stated to be an offence but for which no other penalty is prescribed; or

(b) fails to comply with any direction given by the Authority,

commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Regulations.

51. The Cabinet Secretary may, in consultation with the Board, make regulations generally for the better carrying into effect the provisions of this Act.

PART VI—SAVINGS AND TRANSITION

Extent of exemption from other statutory schemes.

52. The sponsors and members of the Scheme may be exempt from making Tier 11 contributions to the National Social Security Fund.

Transition of members of county assemblies to the Scheme

53. (1) The members and staff of county assemblies who are members of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall be transitioned into the Scheme within six months upon the commencement of this Act.

(2) The funds, assets and other property, movable and immovable which immediately before the commencement date were held by or on behalf of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund for the members and staff of county assemblies shall vest in the Scheme.

(3) All the records of members and staff of county assemblies held by the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall be transferred to the Scheme administrator.

(4) All rights, liabilities and duties whether arising under any written law or otherwise, which immediately before the commencement date were accruing, imposed or enforceable by or against the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund with regard to members and staff of county assemblies shall vest in, be imposed on, or be enforceable against the Scheme.

Government guarantee.

54. County governments shall, during the short and medium term, guarantee the solvency of the Scheme for any payment that may be required under it.

SCHEDULE (s.17)

THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Meetings.

1. (1) The Board shall hold at least four meetings in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Meetings shall be convened by the Secretary of the Board in consultation with the Chairperson and shall be held at such times and such places as the Chairperson shall determine.

(3) The chairperson shall preside over all meetings and in the absence of the chairperson, the vice-chairperson, or in the absence of the vice-chairperson, a Trustee elected by the Board at the meeting for that purpose, shall preside over the meeting.

(4) The chairperson may at any time convene a special meeting of the Board, and shall do so within seven days of the receipt by the chairperson of a written request signed by at least five other Trustees.

(5) Unless six Trustees otherwise agree, at least seven days' notice of a meeting shall be given to every trustee.

Quorum.

2. (1). The quorum of a meeting of the Board shall be five Trustees present and voting and shall include at least two Trustees appointed under section 6 (2) (b), (c), (d) or (e) and at least three Trustees appointed under section 6 (2) (f).

(2) For special meetings, the quorum shall be six Trustees present and voting and shall include at least three Trustees appointed under section 6 (2) (b) or (c) and at least four Trustees appointed under section 6 (2) (d).

Voting.

3. A decision of the Board shall be by a majority of the Trustees present and voting and, in the case of a tie of votes, the person presiding at the meeting shall have a second or casting vote.

Minutes.

4. Minutes of all meetings shall be kept and entered in records kept for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to establish the County Assemblies Pensions Scheme for all members of county assemblies; provide for the establishment of the scheme's Board of Trustees and provide for the scheme's management and administration. The Bill proposes to have the scheme offer lump sum payments as provident, periodic payments as pensions and income draw-downs. The proposed scheme will transition all members of county assemblies into one universal scheme for all the forty seven county governments besides being open to other public officers and any other person approved by the Board.

Part I (clauses 1-5) contains preliminary matters.

This part contains the short title, interpretation of terms, the application clause which includes all members of county assemblies as well as any public institution, organization or state officer who may wish to join and the scope of the Bill which is to extend the range of those who may access the scheme's services.

Part II (clauses 6-21) provides for the establishment of the scheme. It establishes the County Retirement scheme fund and its Board of Trustees. It provides the procedure for appointment of the Trustees and the necessary qualifications. It also provides the Trustees' functions and powers and sets their tenure to three years renewable once based on performance.

Part III (clauses 22-37) contains provisions on the administration of the scheme and provides for the appointment of the fund Manager and the Custodian. It also sets out their functions. The functions of the Administrator, who is the Chief Executive Officer, are also set out. Further, the part provides for membership of the scheme without a sponsor, the vesting of benefits, and withdrawal from the retirement savings account and retirement from the service among others. Finally, it sets out the prohibited payments from the scheme.

Part IV (clauses 38-44) provides for the establishment and management of the County Assemblies Pensions Scheme Fund. It contains the financial provision. It also provides how surplus funds may be invested as well and sets out a requirement for the Board to have a reserve account.

Part V (clauses 45-53) sets out the general provisions including the duty of care of the Board, protection of the Trustees and employees of the scheme from personal liability, offences, and proceedings for recovery of deductions from employers and a general penalty clause. It also contains a provision on the making of regulations and gives this power to the Board, in consultation with the Cabinet Secretary. Finally, this part contains a

provision exempting members of the scheme from contributing to other statutory schemes and concludes with the savings and transitional provisions.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate any legislative powers nor does it limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill concerns county governments in terms of Articles 110(1) (a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 7th March, 2024.

AARON CHERUIYOT,
Senate Majority Leader.



THE REPUBLIC OF KENYA

LAWS OF KENYA

THE COUNTY GOVERNMENTS RETIREMENT SCHEME ACT

CHAPTER 189B

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CHAPTER 189B

COUNTY GOVERNMENTS RETIREMENT SCHEME ACT

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CHAPTER 189B

COUNTY GOVERNMENTS RETIREMENT SCHEME ACT

[*Date of assent: 18th September, 2019.*]

[*Date of commencement: 7th October, 2019.*]

An Act of Parliament to establish the County Governments Retirement Scheme for employees in the service of county governments, to provide for retirement benefits of those employees and for connected purposes

[Act No. 21 of 2019.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the County Governments Retirement Scheme Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"actuary" has the meaning assigned thereto in the Retirement Benefits Act (Cap. 197).

"administrator" means the person appointed as such under section 23;

"annuity" means a pension purchased under a contract with a registered insurer;

"approved issuer" means an approved issuer appointed by the Trustee to provide the services of approved issuer in accordance with the Retirement Benefits Act (Cap. 197);

"associated organization" means any person, firm, company or organization of employees or association of employers created by, owned by or associated with county governments, urban areas and cities or any other institution, established under the County Governments Act (Cap. 265), the Urban Areas and Cities Act (Cap. 275), or their staff or any other person or body providing services to county governments or to their employees and includes those organizations whether associated with county governments or not that choose to participate in the Scheme by signing a deed of adherence;

"Authority" means the Retirement Benefits Authority established under the Retirement Benefits Act (Cap. 197);

"Board" means the Board of Trustees established under section 6;

"Cabinet Secretary" means the Cabinet Secretary responsible for the National Treasury;

"child" means any child of a deceased member including a natural child, an adopted child or a step-child who has not attained eighteen years of age or, if the child is receiving full time education, not more than twenty-five years of age and was at the time of the death of the deceased wholly or mainly dependent on the deceased, and includes an unborn child who, if already born, would have been a child of the deceased;

"commencement date" means the date of coming into force of this Act;

"contribution" means the amount payable by a member or sponsor into the Scheme under this Act;

"county public service" means the collectivity of individuals performing a function within a county government;

"custodian" means a person appointed as such under section 22 of the Act;

"deed of adherence" means the legal instrument to be executed by the employer who joins the Scheme after the commencement date of the Scheme and which shall bind that employer to the Scheme's rules;

"dependant" in relation to a deceased member, means a relative of the deceased who survives the deceased and who, on the date of the deceased's death, was—

(a) a spouse to the deceased;

(b) a child of the deceased; or

(c) a parent of the deceased who was dependent on the deceased for the provision of the ordinary necessities of life;

"early retirement age" means such age as may be prescribed but which shall not be less than fifty years;

"eligible employee" means an employee of the county public service or an employee of an associated organization or body, as may be approved by the Board and which has signed a deed of adherence in accordance with this Act;

"employer" means a county government or any of its entities, a state organ or associated organization, as may be approved by the Board and which has signed a deed of adherence in accordance with this Act;

"existing scheme" means the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund;

"Fund" means the County Governments Retirement Scheme Fund established under section 37;

"fund manager" means a person appointed as such under section 21;

"income drawdown" means the facility to continue to keep retirement savings invested in the scheme and take an income during a specified period rather than buy an annuity;

"insured benefit" means the death in service lump sum benefit and the disability lump sum benefit to be provided in terms of section 24;

"investment return" means a portion of the return of the investment declared by the Board and appropriated to the account of a member;

"member" means an eligible employee who has become a member of the Scheme and includes a person entitled to or receiving a benefit under the Scheme;

"member account" means an account maintained by the Scheme for an individual member;

"membership" means the fact of having been admitted as a member of the Scheme and a member's period of membership shall for the purposes of determining the member's entitlement to access his benefits upon resignation or

termination of service be deemed to include his period of membership of other registered retirement benefits schemes in respect of which benefits have been transferred into the Scheme;

"normal retirement age" means the age as set by the Public Service Commission or any other Act of Parliament for retirement of public officers;

"pensionable emoluments" means basic salary excluding housing, transport and any other allowances or fluctuating emoluments;

"public officer" has the meaning assigned thereto in Article 260 of the Constitution;

"Public Service" has the meaning assigned thereto in Article 260 of the Constitution;

"Scheme" means the County Governments Retirement Scheme established under section 4;

"sponsor" means an employer or any other body who makes contributions on behalf of a member;

"spouse" means a male or female person to whom a member is married or was married under any other law, whether monogamous or not immediately before their death; and

"Trustee" means a member of the Board.

3. Objects and purpose of the Act.

(1) The object and purpose of the Act is to—

(a) provide for the establishment of the Scheme;

(b) provide for the payment of retirement benefits to members of the Scheme when they become due;

(c) provide for the social security of members of the Scheme by ensuring that the members save in order to cater for their livelihood during their retirement;

(d) establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme;

(e) establish transitional provisions for existing schemes; and

(f) protect the benefits of the members of the Scheme.

PART II – ESTABLISHMENT OF THE COUNTY GOVERNMENTS RETIREMENT SCHEME

4. Establishment of the County Governments Retirement Scheme

(1) There is established the County Governments Retirement Scheme.

(2) The Scheme is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(c) entering into contracts;

(d) borrowing and investing money; and

(e) doing or performing all such other things or acts as may be necessary in furtherance of its purpose and functions.

(3) The Scheme shall be a defined contribution scheme providing social security benefits including—

(a) periodic payments through the purchase of annuities;

(b) a lump sum as a commutation of pension or trivial pension in accordance with the RBA Regulations;

(c) income drawdown;

(d) gratuity; and

(e) any other benefit approved by the Board under this Act.

5. Membership of the Scheme

A county public officer or any other person approved by the Board may become a member of the Scheme under the auspices of a sponsor.

6. Board of Trustees of the Scheme

(1) The management of the Scheme shall vest in a Board of Trustees of the Scheme.

(2) The Board shall consist of—

(a) the Chairperson elected by the Trustees from among the members under paragraph (c), (d), (e) and (f);

(b) the Principal Secretary responsible for matters relating to finance or a representative;

(c) a person nominated by Council of County Governors;

(d) a person nominated by County Public Service Boards;

(e) a person nominated by County Assembly Service Boards;

(f) five persons nominated by most representative trade unions representing employees of county governments of whom at least two shall not be of the same gender as follows—

(i) four persons from trade unions representing the employees within the county executive; and

(ii) a person from trade unions representing the employees within the county assemblies' service; and

(g) the Chief Executive Officer who shall be an *ex officio* member and the secretary to the Board with no voting rights.

(3) The vice-Chairperson of the Board shall be elected by the Trustees from among their number.

(4) The Chairperson and vice-Chairperson shall be of the opposite gender.

(5) The Cabinet Secretary shall ensure that not more than two thirds of the members of the Board are of the same gender.

(6) The Cabinet Secretary shall appoint the persons nominated under subsection (2) by notice in the gazette.

(7) -The procedure for nomination and appointment of Trustees under subsection (2) shall be as prescribed in the regulations.

7. Qualifications for appointment of Trustees

A person is qualified for appointment as a Trustee if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least five years experience in—

(i) finance;

(ii) law;

(iii) economics;

(iv) actuarial science; or

(v) any other profession or work experience directly relevant to the functions of the Board; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

8. Disqualification from appointment as a Trustee.

A person shall not be appointed as a Trustee if that person—

(a) has been convicted of a criminal offence, and sentenced to imprisonment for a term of six months or more;

(b) is an adjudged bankrupt or enters into a composition or arrangement with creditors; or

(c) is disqualified under the provisions of any other written law from appointment as such.

9. Tenure of office

(1) A Trustee shall hold office for a term of three years and may be eligible for re-appointment for a further and final term of three years.

(2) Where a Trustee opts to apply for re-appointment under subsection (1), the re-appointment may be considered based on the performance of the applicant.

(3) The Board shall put in place arrangements to ensure that one-third of the Trustees are appointed in a staggered manner.

10. Removal from office

(1) A Trustee may be removed from office by the Cabinet Secretary for—

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct or misbehaviour;

(c) incompetence or negligence of duty;

(d) bankruptcy;

(e) absence from two consecutive meetings of the Board without a reasonable explanation; and

(f) failure to meet the requirements of leadership and integrity set out in chapter six of the Constitution.

(2) Before a Trustee is removed from office under subsection (1), the Trustee shall be given an opportunity to be heard against the intended removal.

(3) Notwithstanding subsection (1), the Authority may remove a Trustee on grounds specified in the Retirement Benefits Act, 1997.

11. Vacation of office

A person ceases to be a Trustee if the person—

(a) resigns in writing to the Cabinet Secretary;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;

(c) is declared bankrupt or enters into composition with his or her creditors;

(d) is unable to perform the functions of their office by reason of mental or physical infirmity;

(e) is removed in accordance with section 10; or

(f) dies.

12. Filling of vacancy

Where a vacancy occurs in the membership of the Board under section 10 or 11, the Cabinet Secretary shall appoint a new Trustee in accordance with the provisions of this Act.

13. Functions of the Board

The Board shall—

(a) formulate policies relating to the Scheme in accordance with the provisions of the Retirement Benefits Act (Cap. 197);

(b) collect contributions and income payable to the Fund under this Act;

(c) pay out the various benefits to persons entitled to the benefits as provided under the Act;

(d) protect the Fund's assets and ensure long term viability of the Scheme;

(e) ensure efficient management of the Scheme;

(f) ensure prudent investment of the monies forming part of the Fund;

(g) negotiate competitive annuity rates on behalf of members;

(h) ensure that the Scheme observes high standards of corporate and business ethics;

(i) advise the Cabinet Secretary on any matter relating to the objects and functions of the Board under this Act; and

(j) perform any other functions assigned to it under this Act.

14. Powers of the Board

(1) In the exercise of its functions, the Board shall be accountable to the sponsors and the members of the Scheme.

(2) The Board shall have all powers necessary for the proper performance of the functions of the Scheme under this Act.

(3) Without prejudice to the generality of subsection (2), the Board shall have power to—

(a) supervise the assets of the Scheme in such manner as best promotes the purpose for which the Scheme is established;

(b) appoint a custodian, fund manager and administrator to carry out their functions as specified in the Retirement Benefits Act (Cap. 197);

(c) determine the provisions to be made for administrative expenses as provided for under section 38 and for reserves of the Fund as provided for under section 39;

(d) ensure protection, where necessary, of the assets of the Scheme;

(e) associate with any other institution so as to further the purpose for which the Scheme is established;

(f) receive grants, gifts, donations or endowments and make legitimate disbursements from them;

(g) enforce remittance of outstanding Contributions by a sponsor;

(h) invest any monies of the Scheme not immediately required for its purposes;

(i) delegate any of its powers; and

(j) undertake any activity necessary for the fulfilment of any of the functions of the Scheme.

(4) The Board may, subject to such conditions as it may consider necessary, by directions in writing, delegate any of its powers to any one or more of the Trustees or to the chief executive officer or employees of the Scheme.

15. Committees of the Board

(1) The Board may establish committees consisting of the Trustees for the better carrying out of its functions.

(2) The Board may co-opt persons to committees established under subsection (1) for a particular reason and such persons shall hold office for such period as the Board may determine.

(3) The persons co-opted into a committee under subsection (2) shall not be more than three.

(4) Subject to any specific or general direction of the Board, a committee established under subsection (1) may regulate its own procedure.

16. Remuneration of Trustees

The Trustees shall be paid such remuneration as the Authority may determine in accordance with the Retirement Benefits Act (Cap. 197).

17. Meetings of the Board

(1) The business and affairs of the Board shall be conducted in accordance with the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedures subject to compliance with the Retirement Benefits Act (Cap. 197) and the regulations thereunder.

(3) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any of its decisions.

18. Chief executive officer of the Scheme

(1) There shall be a chief executive officer of the scheme who shall be appointed by the Board through a competitive recruitment process on such terms and conditions as may be specified in the instrument of appointment.

(2) The chief executive officer shall be an *ex-officio* member of the Board.

(3) A person is qualified for appointment as the chief executive officer if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least ten years of experience of which five years should be at senior management level in a profession relevant to the functions of the Scheme as may be defined in the Regulations; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(4) The Chief Executive Officer shall be the accounting officer of the Scheme and secretary to the Board and, subject to the direction of the Board, shall be responsible for the—

(a) implementation of the decisions of the Board;

(b) day to day management of the affairs of the Scheme;

(c) management and discipline of the employees of the Scheme; and

(d) any other function that may be assigned by the Board.

(5) The Chief Executive Officer shall hold office for a term of three years and may be eligible for re-appointment for a further final term of three years.

(6) The Chief Executive Officer may be removed from office by the Board such grounds as may be set out in the instrument of appointment.

(7) Before the Chief Executive Officer is removed from office under subsection (5), the Chief Executive Officer shall be given—

(a) sufficient notice of the allegations made against him or her; and

(b) an opportunity to be heard either in person or by a legal representative.

19. Employees of the Scheme

(1) The Board may engage such other employees as it may consider necessary for the performance of its functions under this Act.

(2) The terms and conditions of service of employees of the Scheme shall be determined by the Board.

20. Common seal of the Scheme

(1) The common seal of the Scheme shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The common seal of the Scheme when affixed to a document and authenticated shall be officially noticed, and unless the contrary is proved, an order or authorization of the Board under this section shall be presumed to have been given.

PART III – ADMINISTRATION OF THE SCHEME

21. Fund manager

The Board shall appoint a fund manager of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act—

(a) implement the investment policy of the Scheme as approved by the Board;

(b) manage the Scheme funds and assets in accordance with the provisions of the Retirement Benefits Act (Cap. 197);

(c) maintain books of accounts on all investment transactions relating to the Scheme;

(d) submit reports on a quarterly basis on investment strategy, market returns and other performance indicators to the Board; and

(e) perform any other function that may be assigned in the instrument of appointment and other written law.

22. Custodian of the Scheme

(1) The Board shall appoint a custodian of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act (Cap. 197)—

(a) receive the contributions remitted by the sponsors and members under this Act on behalf of the Board;

(b) not later than the next business day following receipt of the contributions from a sponsor, notify the fund manager and the administrator of such receipt;

(c) receive and keep in safe custody the title documents, securities and monies of the Scheme in trust for the members and beneficiaries;

(d) collect dividends for the Scheme;

(e) report to the Board on any matter relating to the assets being held by the custodian on its behalf at such intervals as may from time to time be determined by the Board;

(f) undertake statistical analysis on the investments and returns on investments with respect to funds in its custody and provide data and information to the administrator and the Board;

(g) submit to the Board a report on a quarterly basis, of the reconciliations with respect to the funds held by the Custodian;

(h) execute, on behalf of the Board, the relevant proxy for the purpose of voting in relation to the investments; and

(i) perform any other function that may be assigned in the instrument of appointment or any other written law.

(2) The custodian shall maintain all funds and assets in its custody to the order of the Board and shall not utilise any pension fund or assets in its custody to meet its own financial obligation.

23. Administrator

(1) The Scheme shall be administered by an administrator appointed by the Board.

(2) The administrator shall be an employee of the Board.

(3) The functions of the administrator shall be to—

(a) open and maintain an account for each member;

(b) upon receiving details of the contributions remitted under this Act, cause the amount of the contributions to be credited in the account of the member in respect of whom the sponsor has made the payment;

(c) inform the Board if a member's contribution details differ from the expected;

(d) provide customer support services to members, including access at least on a quarterly basis to members' account balances and statements;

(e) keep and maintain proper books of accounts of the Scheme;

(f) cause to be paid retirement benefits to a member who has retired;

(g) be responsible for all calculations relating to retirement benefits; and

(h) carry out any other functions as may be directed by the Board from time to time.

(4) The administrator shall ensure that all income earned from the investment of the Fund is distributed to the credit of the members' retirement savings accounts save for clearly defined and reasonable fees, charges, costs and expenses of transactions as may be approved by the Board.

24. Contributions

(1) A member shall, so long as the member remains in the employment of a sponsor, contribute not less than twelve percent of that member's pensionable emoluments to the Scheme.

(2) Every sponsor shall contribute to the Scheme not less than fifteen per cent of the pensionable emoluments of every employee who is a member of the Scheme plus the amounts necessary to cover the premiums for insured benefit.

(3) Subject to such guidelines as the Board may issue, in consultation with the members and sponsors of the Scheme, a member of the Scheme may make additional contributions to the Scheme.

(4) In addition to the contributions specified in subsections (1) and (2), the sponsor shall take out and maintain a life insurance policy that has disability benefits in favour of every member of the Scheme, for a minimum of three times of the member's annual pensionable emoluments.

(5) Upon commencement of this Act, contributions required to be made under subsections (1) and (3) shall be deducted by a sponsor from the salary of the contributor in each month on which the salary is paid and shall be paid into the Scheme together with the sponsor's contribution before the 10th day of every calendar month or before any other day which may be notified in writing and approved by the Authority.

(6) Any contributions not paid to the Scheme by a sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest during the period they remain unpaid at a rate specified by the Board from time to time provided that such rate shall not be less than the rate specified in the Retirement Benefits Act and Regulations.

(7) All unpaid contributions and interest thereon shall constitute a civil debt of the respective sponsor and shall be recoverable summarily by the Board as provided for by law.

(8) The Board shall report to the Authority at such intervals as specified by the Authority, all remittances of contributions outstanding and not received after the deadlines specified herein.

25. Vesting of benefits

All the benefits derived from contributions by a member and a sponsor shall vest immediately in the member.

26. Withdrawal of membership or benefits

(1) A member shall not withdraw membership or retirement benefit from the Scheme while the member is in the employment of a Sponsor.

(2) A member may withdraw benefits from their account before normal retirement age in the following circumstances—

(a) resignation;

(b) dismissal;

(c) ill health;

(d) emigration.

(3) Despite subsection (1)—

(a) where a member leaves employment before one year of membership, the member may opt for payment of his own and the whole of the sponsor's contributions, together with allocated investment income;

(b) where a member leaves employment after one year of membership but before attaining the specified early retirement age, the member may opt for payment of—

(i) his or her own contribution and the sponsor's contribution as may be prescribed by the Retirement Benefits Authority and the investment income that has accrued in respect of those contributions; and

(ii) the balance shall be retained in the Scheme and continue to accrue interest until the member attains early retirement age, or transferred to another registered Scheme of the members choice;

(c) a member may opt for payment to him or her of the total amount of vested accrued benefits before attaining the early retirement age—

(i) on grounds of ill health or subsequently during deferment, if the member becomes incapacitated due to ill health, to the extent that it would occasion his or her retirement, if he or she was in employment; or

(ii) if the member has emigrated from Kenya to another country without the intention of returning to reside in Kenya and the Board has approved the payment of the retirement benefits and submitted, fourteen days prior to payment of the benefits, the approval to the Authority.

27. Retirement from service

(1) Despite any other provisions in this Act, a member who retires is entitled to make withdrawals—

(a) on attaining the normal retirement age, or where their exact date of birth is not known, on the 1st July in the year in which the Board deems that they have reached normal retirement age;

(b) on the advice of a qualified medical practitioner appointed by the Board certifying that the member is no longer mentally or physically capable of carrying out the functions of their office.

(2) The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in any of the following documents—

(a) birth certificate;

(b) national identification card; or

(c) a valid passport.

28. Early retirement

(1) Notwithstanding the provisions of section 27, any member who retires on attaining the early retirement age is entitled to make withdrawals in accordance with section 29.

(2) The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in any of the following documents—

(a) birth certificate;

(b) national identification card; or

(c) a valid passport.

29. Payment of retirement benefits.

(1) Where a member retires as provided in this Act, the member may request the Board in writing to pay to him or her—

(a) a lump sum from the balance in his or her retirement savings account that shall not exceed the equivalent of one-third of that balance:

Provided that a Member may withdraw any additional voluntary contributions made into the Scheme and accrued interest in full;

(b) monthly or quarterly income drawdown in accordance with a formula prescribed by the Board on the advice of an actuary;

(c) monthly or quarterly annuity for life purchased from an approved issuer of their choice:

Provided that the annuity shall include a provision for benefits payable to dependants upon a member's death.

(2) Despite the provisions of any other written law, a benefit granted under this Act shall not be—

(a) assignable or transferable except in accordance with the terms of a mortgage guarantee facility approved by the Board; and

(b) liable to be attached in settlement of any claim.

(3) The payment of a retirement benefits shall commence from the end of the month immediately following the month of the retirement of the member.

(4) Every payment of benefits from the Scheme may be subject to deduction of the amount outstanding due by the member under any mortgage guarantee facility approved by the Board.

30. Particulars of member and dependants of the member

(1) Every member shall provide his or her particulars and those of his or her dependants to the administrator in the prescribed manner.

(2) A member may update the particulars provided under subsection (1) at any time and, in any event, at least three years before retirement.

31. Dispute on nomination

(1) If a dispute relating to a nomination under this Part arises, the Board has power to consider evidence presented and determine the rightful dependant.

(2) Nothing in this Part may be construed as limiting or otherwise affecting the inherent power of the Board, either on its own motion or on the application of a party, to make such decisions as may be necessary.

32. Benefits to be paid upon the death of a member

If upon the death of a member, benefits are paid to a person validly nominated under this Part, no other person shall have any other claim to the benefits against the Fund.

33. Death of a member in service

(1) Upon the death of a member, the benefits accrued to the member shall be paid to the person whose particulars the Member had provided or at the Board's discretion as otherwise provided in the Retirement Benefits Act and Regulations thereunder.

(2) In the absence of a nomination, the Board shall apply the benefits referred to in subsection (1) to such of dependants of the deceased and in such amounts as the Board shall determine.

(3) Where a dispute arises under this section, the Board shall consider any evidence presented before it and determine the rightful beneficiary.

34. Presumption of death of member

(1) Where a member is missing and it is proved that the member has not been heard of for such period as prescribed by the law relating to presumption of death by those who might be expected to have heard of the member if that member was alive, there shall be a rebuttable presumption that the member is dead as provided under the law.

(2) Where a person is presumed dead under this section, the provisions of section 33 apply.

35. Death of member in retirement

(1) If a member who was receiving a retirement benefit under an income drawdown dies, a benefit that is equivalent to the unutilized balance of the account of the member shall be paid to the nominated beneficiaries of the member.

(2) The payment under subsection (1) shall be made to the beneficiaries either as a lump sum or as an annuity commencing from the day following the death of the member.

36. Prohibited payments from the Scheme

The retirement benefits under this Act shall not be paid by the Scheme to—

(a) a member, while the member is still in the employment of a Sponsor except where a member works on a contractual basis for the Sponsor after their resignation or early retirement ; or

(b) any person as a loan, advance or other similar benefit or payment except as provided under this Act.

PART IV – FINANCIAL PROVISIONS

37. County Governments Retirement Scheme Fund

There is established a Fund to be known as the County Governments Retirement Scheme Fund which shall be administered by the Board in accordance with this Act and other relevant written laws.

38. Sources of funds

(1) The Fund shall consist of—

(a) monies as may vest in or accrue to the Scheme in the performance of its functions under this Act or under any other written law;

(b) contributions from sponsors and members;

(c) grants, gifts, donations or other endowments given to the Scheme;

(d) income from investments made by the Scheme that are approved by the Board;

(e) fees and charges authorized by the Board;

(f) monies earned by the Scheme from any other source; and

(g) monies from any other source provided or donated or lent to the Scheme.

(2) There shall be paid out of the Fund—

(a) all benefits provided for under this Act;

(b) the expenses incurred in the management and administration of the Scheme subject to the limits provided under this section.

(3) For the avoidance of doubt, nothing in this Act is intended to or may be construed as providing for or dealing with—

(a) taxes;

(b) the imposition of charges on a public fund or the variation or repeal of any of those charges;

(c) the appropriation, receipt, custody, investment or issue of public money;

(d) the raising or guaranteeing of any loan or its repayment except as provided in any written law; or

(e) matters incidental to any of those matters.

(4) The Board shall establish an account into which may be paid—

(a) the monies transferred from the Fund for the trust expenses incurred by the Board in the exercise of its powers or the performance of its functions under this Act;

(b) the annual administrative expenses deducted from the value of the Fund at the rate approved from time to time by the Board but subject to a maximum of one and half percent of the Fund value or any such rate as the Board in consultation with the Authority may prescribe;

(c) monies that may vest in the Board in the course of the exercise of the powers of the Board;

(d) income from the investment of the monies held in the account established under this section; and

(e) all monies from any other source provided for or donated or lent to the Board.

(5) Any unspent monies budgeted for annual administrative expenses shall lapse back into the Fund at the end of the financial year.

(6) The Board may invest any surplus monies held in the account established under this Act in asset classes approved under the Retirement Benefits Act.

39. Reserve account

(1) The Board may maintain a reserve account of the Scheme into which the following shall be deposited—

(a) any special contribution paid into the Scheme by a sponsor or the Government for the purpose of improving the benefits of the members; and

(b) any income of the Scheme that the Board determines should be set aside to stabilize the returns to members subject to a maximum of ten per cent of such income with consideration to the Income Tax Act, (Cap. 470) or regulations made thereunder.

(2) Money shall not be drawn out of the reserve account except as directed by the Board for the purposes provided for under subsection (1).

(3) Any monies determined to be income of the reserve account shall be treated as income forming part of the general income of the Scheme.

40. Annual estimates

(1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Scheme for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Scheme for the financial year concerned and, in particular, shall provide for the—

(a) payment of the salaries, allowances, and other charges in respect of the employee of the Scheme;

(b) payment of benefits and other charges which are payable out of the funds of the Scheme;

(c) funding of the registration, monitoring and evaluation activities of the Scheme;

(d) maintenance of the buildings and grounds of the Scheme;

(e) funding of training, research and development of activities of the Scheme;

(f) reserve funds to meet future or contingent liabilities in relation to retirement benefits, insurance or replacement of buildings or equipment; and

(g) such other matters as the Board may consider necessary.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate.

(4) Expenditure of the Scheme shall not be incurred except in accordance with the annual estimates approved by the Board.

41. Accounts and audit.

(1) The Board shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities.

(2) Within a period of three months after the end of each financial year, the Board shall submit to an auditor who is recognized and approved by the Authority the accounts of the Scheme in respect of that year together with—

(a) balance sheet showing in detail the assets and liabilities of the Scheme as at the end of the financial year.

(b) a statement of the income and expenditure of the Scheme during that year; and

(c) such other statements as may be required by the Authority.

(3) The annual accounts of the Scheme shall be prepared, audited and reported upon in accordance with the Retirement Benefit Act and other relevant laws.

42. Financial year

The financial year of the Scheme shall be the period of twelve months ending on the thirtieth June in each year.

43. Annual distribution of profits.

The annual investment income earned by the Scheme shall after deduction of all expenses and costs properly paid out of the Scheme and any appropriation to a reserve account approved by the Board be credited to members' accounts on a pro-rata basis.

44. Actuarial review of the Scheme.

(1) The scheme shall be reviewed by an actuary appointed by the Board as provided for in the Retirement Benefits Act.

(2) The actuary appointed under subsection (1) shall—

(a) prepare a report on the state of the Scheme; and

(b) recommend any necessary action to be taken.

(3) The actuary shall submit the report prepared under subsection (2) to the Board within the stipulated time in the instrument of appointment.

(4) The Board shall, within six months of the receipt of such report, consider any recommendations made by the Actuary and in so doing, may take any action recommended by the actuary.

PART V – MISCELLANEOUS PROVISIONS

45. Conflict with other written law

Where there is a conflict between the provisions of this Act and the provisions of the Retirement Benefits Act, the provisions of the Retirement Benefits Act shall prevail.

46. Duty of care

(1) The Board shall—

(a) ensure that the Scheme is at all times managed in accordance with the provisions of this Act, the Retirement Benefits Act and any other applicable law; and

(b) take reasonable care to ensure that the management of the Scheme or safe keeping of the assets of the Scheme is carried out in the best interests of the members of the Scheme.

(2) The administrator, fund manager, actuary and custodian shall—

(a) report to the Board and the Authority, as soon as reasonably practicable, any unusual occurrence with respect to the Scheme which in their view could adversely affect the rights of the owner of a member's account under the Scheme; and

(b) report to the Board and the Authority, as soon as is reasonably practicable, if a sponsor has not remitted the required contribution and such remittance remains due for more than ten days.

47. Protection from personal liability

No action or omission by any member of the Board, or employee of the Scheme shall, if the act was done in good faith for the purpose of carrying out the provisions of this Act or any other law, subject the person to any liability, action, claim or demand.

48. Offences

(1) A person who—

(a) wilfully fails to remit contributions to the Scheme as required;

(b) knowingly gives false information to the Scheme; or

(c) being a Trustee or employee of the Scheme, wilfully misappropriates the assets of the Scheme,

commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

(2) Where an offence under this section is committed by a body corporate, every person, who at the time of the commission of the offence was—

(a) a director, general manager, secretary of the company or other similar officer of the body corporate; or

(b) purporting to act in any such capacity as provided in paragraph (a),

commits that offence.

(3) A person who is convicted of an offence under subsection (1)(c) shall, in addition to any fine that may be imposed, refund to the scheme three times the value of any loss that may be incurred by the scheme by reason of the commission of the offence.

49. Proceedings for recovery of deductions from sponsors

(1) Notwithstanding the provision of section 26, where a sponsor, having made deduction from a member's emoluments for remittance to the Scheme, fails to remit the contribution within fifteen days of the deduction, the Scheme shall, after giving such sponsor not less than seven days' notice, institute proceedings for the recovery of the deduction.

(2) A notice under subsection (1) shall be in writing and copied to the Authority, and shall—

(a) require the sponsor to pay the sum deducted to the Scheme within seven days of the notice; and

(b) inform the sponsor that if he fails to pay such sum before the expiration of the notice, proceedings for summary recovery of the sum shall be filed in court without further reference to him.

(3) Any sum which is the subject of proceedings of summary recovery under this section shall attract a compound interest at the rate of three per cent per month.

(4) Without prejudice to any proceedings instituted under the provisions of this section, a person who refuses or fails to comply with a notice given to him or her under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five million shillings, or in the case of a natural person, to imprisonment for a term not exceeding two years, or to both.

(5) Where an offence under subsection (4) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in that subsection be liable to

a further fine of one thousand shillings for every day or part thereof during which the offence continues.

50. General penalty

A person who—

(a) contravenes any provision of this Act which is expressly stated to be an offence but for which no other penalty is prescribed; or

(b) fails to comply with any direction given by the Authority,

commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

51. Regulations

The Cabinet Secretary may, in consultation with the Board, make regulations generally for the better carrying into effect the provisions of this Act.

52. Repeal and revocation

(1) The Local Authorities Provident Fund Act (Cap. 272).

(2) The Local Authorities Pensions Trust Rules, (L.N. 50 of 2007) are revoked.

(3) The Laptrust (Umbrella) Retirement Fund Trust Deed and Rules registered under the Retirement Benefits Act are revoked.

PART VI – SAVINGS AND TRANSITION

53. Extent of exemption from other statutory schemes

The sponsors and members of the Scheme may be exempt from making Tier I 1 contributions to the National Social Security Fund.

54. National government employees transferred to county governments

(1) Eligible employees to whom this Act applies and who, prior to the commencement date, were members of a contributory pension scheme may, subject to the Regulations made by the Cabinet Secretary, transfer any such contributions to the Fund.

(2) Eligible employees to whom this Act applies and who join a sponsor on or after the commencement date and were members of a contributory pension scheme may, subject to the Regulations made by the Cabinet Secretary, transfer any such contributions to the Fund.

(3) A person who, at the commencement date, is an employee of the national government and whose remaining period of service is five years or less, is not eligible to join the Scheme and shall have his or her pension paid out under the provisions of the Pensions Act (Cap. 189) and the Widows and Children Pensions Act, or any other relevant legislation.

(4) A person who was an employee of a local authority and was a member of the Local Authorities Pensions Trust and whose remaining period of service is five years or less, is not eligible to join the Scheme and shall have his or her pension paid in accordance with the provisions of the Local Authorities Pensions Trust Rules, (L.N. 50 of 2007) or any other relevant legislation.

(5) Eligible employees to whom this Act applies and who, prior to the commencement date, were employees of the national government shall have their

Pension paid out under the Pensions Act (Cap. 189) and the Widows and Children Pensions Act (Cap. 189) for the period they served in the national government.

(6) Eligible employees to whom this Act applies and who prior to its commencement date were employee of the local authorities and who are eligible for benefits under a defined benefits scheme shall have their prior pension benefits paid out of the closed funds, as the case may be, for the period they served the local authorities.

55. Transition of closed funds to the Scheme

(1) The members of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall be transitioned into the Scheme.

(2) The funds, assets and other property, movable and immovable which immediately before the commencement date were held by or on behalf of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall vest in the Scheme.

(3) All the records of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall be transferred to the Scheme administrator.

(4) All rights, liabilities and duties whether arising under any written law or otherwise, which immediately before the commencement date were accruing, imposed or enforceable by or against the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall vest in, be imposed on, or be enforceable against the Scheme.

(5) Any suit or legal proceedings by or against the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall continue as if they were instituted by the Scheme or against and no such suit, action or legal proceedings shall abate or be terminated by the virtue of the transition of the schemes.

(6) Subject to section 40, the annual estimates approved for the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund for the financial year in which this Act comes into operation shall be considered to be the annual estimates of the Scheme for the remainder of that financial year but those estimates may be varied by the Cabinet Secretary.

(7) The Auditor-General shall cause an actuarial audit and valuation to be carried out with respect to the closed schemes within six months upon the commencement of this Act to ascertain the following for the purpose of transitional management—

(a) assets acquired by the schemes;

(b) liabilities accrued by the schemes; and

(c) employees of the schemes.

(8) The Auditor General shall submit a report on the findings of the audit and valuation to the Board, the Senate and the National Assembly within three months of carrying out of the audit under subsection (7).

56. Local Authorities Provident Fund and the Local Authorities Pensions Trust Fund

(1) An eligible employee of a sponsor who, immediately before the commencement date was a member of the Local Authorities Provident Fund or the Local Authorities Pensions Trust Fund shall, upon the commencement of this Act, be deemed to be a member of the Scheme.

(2) The Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund shall, on the commencement date remain closed Funds to new entrants and shall ensure the preservation of all accrued rights of members.

(3) Subject to subsection (2), the closed funds shall continue paying any pensions and benefits as and when they fall due for a maximum period of five years from the commencement date.

(4) The provisions of section 55 shall apply to any pension and benefits which shall not have been paid out of the closed Funds at the end of the fifth year from the date of commencement date.

(5) The staff of the existing schemes engaged in the administration of the existing schemes shall, upon the commencement of this Act, and subject to any suitability test conducted by the Board of Trustees, provide administration services to the Scheme and the existing schemes.

(6) The Retirement Benefits Authority shall, within five years from the commencement of this Act, ensure the implementation of this section.

57. New employees

(1) Subject to section 54 any eligible employee who joined the service of a sponsor on permanent and pensionable terms after the first general elections under the Constitution shall be deemed to be a member of the Scheme with effect from the date of employment.

(2) Eligible employees of a Sponsor who are employed on contractual terms may opt, upon agreement with the Sponsor, to join the Scheme in lieu of gratuity for the duration of their contract term provided that the extent of contribution in such case shall be in line with section 24 of this Act.

58. Date of transition

The provisions of sections 52 and 55 shall come into effect at the end of five years from the commencement date.

59. Amendment of section 132 of No. 17 of 2012

The County Governments Act is amended by deleting section 132.

SCHEDULE

[s. 17]

THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Meetings

(1) The Board shall hold at least four meetings in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Meetings shall be convened by the Secretary of the Board in consultation with the Chairperson and shall be held at such times and such places as the Chairperson shall determine.

(3) The Chairperson shall preside over all meetings and in the absence of the Chairperson, the vice-Chairperson, or in the absence of the vice-Chairperson, a

Trustee elected by the Board at the meeting for that purpose, shall preside over the meeting.

(4) The Chairperson may at any time convene a special meeting of the Board, and shall do so within seven days of the receipt by the Chairperson of a written request signed by at least five other Trustees.

(5) Unless six Trustees otherwise agree, at least seven days' notice of a meeting shall be given to every trustee.

2. Quorum

(1) The quorum of a meeting of the Board shall be five Trustees present and voting and shall include at least two Trustees appointed under section 6(2)(b), (c), (d) or (e) and at least three Trustees appointed under section 6(2)(f).

(2) For special meetings, the quorum shall be six Trustees present and voting and shall include at least three Trustees appointed under section 6(2)(b), (c), (d) or (e) and at least four Trustees appointed under section 6(2)(f).

3. Voting

A decision of the Board shall be by a majority of the Trustees present and voting and, in the case of a tie of votes, the person presiding at the meeting shall have a second or casting vote.

4. Minutes

Minutes of all meetings shall be kept and entered in records kept for that purpose.

KENYA LAW
Where Legal Information is Public Knowledge

Okoiti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR) (20 December 2022) (Judgment)

Neutral citation: [2022] KEELRC 13584 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION 213, 222 & 230 OF 2019 & 36 OF 2022 (CONSOLIDATED)

MA ONYANGO, J

DECEMBER 20, 2022

BETWEEN

OKIYA OMTATAH OKOITI ..... PETITIONER

AND

COUNTY GOVERNMENTS RETIREMENT SCHEME & 152 OTHERS ..... RESPONDENT

AS CONSOLIDATED WITH

PETITION 222 OF 2019

BETWEEN

KENYA COUNTY GOVERNMENT WORKERS UNION ..... 1ST PETITIONER

MATILDA JEBET KEMETTO ..... 2ND PETITIONER

BENSON OLIANGA ORIARO ..... 3RD PETITIONER

BERNARD ATSIULA INYANGALA ..... 4TH PETITIONER

BONIFACE WAWERU GITUKE ..... 5TH PETITIONER

EMILY W MWANGI ..... 6TH PETITIONER

FRED BULUKU ..... 7TH PETITIONER

CHARLES MAKINI ..... 8TH PETITIONER

AND

BOARD OF TRUSTEES OF LOCAL AUTHORITIES PROVIDENT FUND & 5 OTHERS ..... PETITIONER

AND

COUNTY PENSION FUND FINANCIAL SERVICES LIMITED .... INTERESTED PARTY

BOARD OF TRUSTEES, LOCAL AUTHORITIES PENSION TRUST ..... INTERESTED PARTY

LAPRUST RETIREMENT SERVICES LIMITED ..... INTERESTED PARTY

COUNCIL OF GOVERNORS ..... INTERESTED PARTY

WATER SERVICES PROVIDERS ASSOCIATION ..... INTERESTED PARTY

AS CONSOLIDATED WITH

PETITION 230 OF 2019

BETWEEN

LOCAL AUTHORITIES PENSIONS TRUST BOARD OF TRUSTEES ..... 1ST PETITIONER

COUNTY PENSION FUND BOARD OF TRUSTEES ..... 2ND PETITIONER

AND

ATTORNEY GENERAL ..... 1ST RESPONDENT

CABINET SECRETARY, NATIONAL TREASURY ..... 2ND RESPONDENT

RETIREMENT BENEFITS AUTHORITY ..... 3RD RESPONDENT

LOCAL AUTHORITIES PROVIDENT FUND BOARD OF TRUSTEES ..... 4TH RESPONDENT

AND

KENYA COUNTY GOVERNMENT WORKERS UNION . INTERESTED PARTY

COUNTY PENSIONERS ASSOCIATION ..... INTERESTED PARTY

AS CONSOLIDATED WITH

PETITION 36 OF 2022

BETWEEN

CHRISTINE SONGO ..... PETITIONER

AND

COUNTY EXECUTIVE COMMITTEE MEMBER FINANCE, COUNTY GOVERNMENT OF KAKAMEGA ..... 1ST RESPONDENT

COUNTY GOVERNMENT OF KAKAMEGA 2ND RESPONDENT LOCAL AUTHORITIES PENSION TRUST (LAP TRUST) ..... 2ND RESPONDENT

AND

LOCAL AUTHORITIES PROVIDENT FUND (LAP FUND) .... INTERESTED PARTY

COUNTY GOVERNMENT RETIREMENTS SCHEME ..... INTERESTED PARTY

JUDGMENT

1. The *County Governments Retirement Scheme Act* came into force on 7th October 2019 (the commencement date) following assent to the Act by His Excellency the President of the Republic of Kenya on 18th September 2019.

2. The *Act* provides in the preamble thereto that it is an *Act* of Parliament to establish the County Governments Retirement Scheme for employees in the service of County Governments, to provide for retirement benefits of those employees and for connected purposes.

3. Part II of the *Act* establishes the scheme as a body corporate with perpetual succession and a common seal. The scheme is defined in section 4(3) as a defined contribution scheme providing social security benefits including:

   (a) periodic payments through the purchase of annuities;

   (b) a lump sum as a commutation of pension or trivial pension in accordance with the RBA Regulations;

   (c) income drawdown;

   (d) gratuity; and

   (e) any other benefit approved by the Board under this Act.

4. Section 5 provides that a county public officer or any other person approved by the Board may become a member of the scheme under the auspices of a sponsor.

5. Section 6 sets out the membership of the Board of Trustees under whose management the scheme will be run as follows –

   (2) The Board shall consist of —

      (a) the chairperson elected by the Trustees from amongst the members under paragraph (d), (e), (f) and (g);

      (b) the Principal Secretary responsible for matters relating to finance or his representative;

      (c) a person nominated by Council of County Governors;

      (d) a person nominated by County Public Service Boards;

      (e) a person nominated by County Assembly Service Boards;

      (f) five persons nominated by most representative trade unions employees of county governments of who at least two shall not be of the same gender as follows:

         (i) four persons from trade unions representing the employees within the county executive; and

(ii) a person from trade unions representing the employees within the county assemblies' service; and

(g) the Chief Executive Officer who shall be an ex officio member and the secretary to the Board with no voting rights.

(3) The vice-chairperson of the Board shall be elected by the Trustees from among their number.

6. Section 7 of the *Act* provides qualifications for appointment as Trustee of the Scheme as follows –

(7) A person is qualified for appointment as a Trustee if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least five years' experience in—

(i) finance;

(ii) law;

(iii) economics;

(iv) actuarial science; or

(v) any other profession or work experience directly relevant to the functions of the Board; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

7. Section 18 provides for appointment of the Chief Executive Officer of the Scheme by the Board for a term of three years renewable once. The qualifications for appointment as Chief Executive Officer are set out at section 18(3) as follows –

(3) A person is qualified for appointment as the chief executive officer if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least ten years of experience of which five years should be at senior management level in a profession relevant to the functions of the Scheme as may be defined in the Regulations; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

8. Sections 21, 22 and 23 provides for appointment of fund manager, custodian of the scheme and administrator respectively by the Board.

9. Section 24 of the *Act* provides for contributions by both the employee (12%) and employer (15%) of pensionable emoluments which are defined in Section 2 to mean basic salary excluding housing, transport and any other allowances or fluctuating emoluments.

10. Section 45 provides that –

> Where there is a conflict between the provisions of this Act and the provisions of the Retirement Benefits Act, the provisions of the Retirement Benefits Act shall prevail.

11. Section 52 repeals the *Local Authorities Provident Fund Act* and revokes the *Local Authorities Pensions Trust Rules*, 2007 and the *Laptrust (Umbrella) Retirement Fund Trust Deed and Rules* registered under the *Retirement Benefits Act*.

12. In the transitional provisions, sponsors and members are exempted from making Tier II contributions from other schemes. Further, that persons with pensionable service of less than five years are ineligible to join the Fund under the Act. Provision is also made for compulsory transfer of members of Local Authorities Provident Fund and Local Authorities Pensions Trust Fund to join the scheme upon commencement of the Act; and for the Local Authorities Provident Fund, Local Authorities Pensions Trust, Local Authorities Pension Trust (Defined Benefits) Scheme and Local Authorities Pension Trust (Umbrella) Retirement Fund to be closed to new entrants on the commencement date.

13. The transitional provisions further provide that the closed funds shall continue paying any pension and benefits out of the closed funds up to the end of five years from date of commencement.

14. Section 132 of the *County Government Act* is repealed by section 59 of the *Act*.

15. Following the commencement date of the Act, several petitions were filed challenging the constitutionality and legality of the Act and/or sections thereof.

16. Petition No. 213 of 2019 is filed by Okiya Omtatah Okoiti, who describes himself in the petition as a public spirited individual, human rights defender and Executive Director of Kenyans for Justice and Development (KEJUDE) Trust, a legal entity founded in Kenya to uphold the rule of law and constitutionalism, to defend human rights, promote democratic governance and agitate for sustainable economic development and propriety in the general population.

17. The Petitioner names the County Governments Retirement Scheme, local Authorities Provident Fund Trustees, Laptrust/County Pension Trustees as the 1st to 4th Respondents respectively.

18. The 5th to 51st Respondents are the County Governments of the 47 counties of Kenya. The 52nd Respondent is the Council of Governors while the 53rd to 150th Respondents are the water and sewerage companies based in counties who remit worker dues to the various pension schemes named as the 2nd to 4th Respondents.

19. The Cabinet Secretary, National Treasury is the 151st Respondent and the Retirement Benefits Authority (RBA) the 152nd Respondent. The Attorney General is named as the 153rd Respondent.

20. The petition is anchored on articles 1(c), 3(1), 4(2), 10, 20(3) and (4), 22, 48, 50(1), 159, 162, 165(5), 258 and 259 of the *Constitution*.

21. The Petitioner seeks the following reliefs –

    (i) An order permanently prohibiting the respondents and anybody howsoever handling workers' pension funds from transferring their workers (employees), members, and benefits from existing schemes (Laptrust, Lapfund, and CPS) to the County Governments Retirement Scheme (CGRS) during the five year transition period and until the scheme is fully operationalized.

(ii) An order compelling the Retirement Benefits Authority to fast track the operationalization of the County Governments Retirement Scheme (CGRS) pursuant to section 56(6) of the *CGRS Act* in strict compliance with the *Retirement Benefits Act*.

(iii) An order compelling the Retirement Benefits Authority and the trustees of the schemes in issue herein to cause an independent actuarial audit of the schemes to protect the workers savings before the merger is completed.

(iv) An order compelling the Retirement Benefits Authority and the trustees of the schemes in issue herein to ensure that investments of all the schemes find the institutions established under the schemes are protected and transited to the CGRS.

(v) An order quashing the section 52(2) of the *CGRS Act* and therefore preventing mixing up of defined benefit schemes and defined contribution schemes contrary to the *Retirement Benefits Act*.

(vi) An order compelling Retirement Benefits Authority and the trustees of schemes in issue herein to ensure that no employees of the Lapfund Scheme and of the administrator of Laptrust Scheme lose their jobs, and should be transmitted to the new scheme as stated in the *Act*.

(vii) Order compelling the respondents to bear the costs of this suit.

(viii) Any other relief the court may deem just to grant.

22. The second Petition is No. 222 of 2019 filed by Kenya County Government Workers Union, a trade union registered under the *Labour Relations Act* with membership in all 47 counties in Kenya who are also members of the existing pension schemes for employees of county government.

23. The Petitioner has named the Board of Trustees of the Local Authorities Provident Fund as 1st Respondent, its CEO David Koros as the 2nd Respondent, the Attorney General as the 3rd Respondent, Cabinet Secretary for National Treasury and as 4th Respondent and Cabinet Secretary, Ministry of Devolution as 5th Respondents, Cabinet Secretary, Ministry of State for Public Service, Youth and Gender as 6th Respondent, Cabinet Secretary, Ministry of Labour as 7th Respondent and Retirement Benefits Authority as 8th Respondent. The 47 county government are named as the 9th to 55th Respondents.

24. The Petitioner has enjoined the following as Interested Parties:

(1) County Pension Fund Financial Services Limited

(1) The Board of Trustees, Local Authorities Pension Trust

(3) Laprust Retirement Services Limited

(4) The Council of Governors

(5) Water Services Providers Association.

25. The Petitioner objects to the impugned *Act* for subjectively seeking to transfer its members from a superior scheme to an inferior scheme without their consent.

26. The Petitioner further accuses the 2nd Respondent of changing the names of the 1st Respondent and purporting that the 1st Respondent is the scheme created in the impugned *Act*.

27. The Petitioners accuse the 8th Respondent of complicity for failing to give guidance in the face of illegalities in the impugned Act and violations committed by the 2nd Respondent.

28. The Petitioner lists the illegalities to include varying terms and conditions of service of members of the 1st Petitioner to their detriment, creating a state corporation as opposed to an irrevocable trust, failing to transition the assets and liabilities of the 2nd Interested Party's Defined Benefits Scheme contrary to the provisions of the *Retirement Benefits Act*, providing for members of 2nd Interested Party to be paid under rules that were already revoked and failing to provide for role of trustees.

29. The Petitioner prays for the following reliefs:

(a) A declaration be issued to the effect that the petitioners are entitled to protection under the provisions of the *Constitution* 2010.

(b) A declaration that the actions, omissions and or conduct of the respondents complained of constituted and or amount to infringement of the petitioner's rights to equal treatment before the law and freedom from discrimination in line with the provisions of article 20(1) and 27(1) of the *Constitution*.

(c) A declaration that the definition of pensionable emoluments under section 2 of the impugned Act violates the right of the Petitioner's members to fair labour practices and social security thus contravening the *Constitution* and the *County Government Act*.

(d) A declaration that sections 4 (3), 6, 7 and 56 of the impugned *Act* are discriminatory and therefore in contravention of the Constitution and are therefore null and void.

(e) A declaration that sections 6, 10 and 52 of the impugned Act undermine the authority of the *Retirement Benefits Act* and are therefore void.

(f) A declaration that the impugned *Act* is unconstitutional for lack of public participation as guaranteed by the *Constitution*.

(g) A declaration that the nature of the County Government Retirement Scheme as a state corporation as created under the impugned *Act* contravenes the *Retirement Benefits Act*.

(h) Any other reliefs that this Honourable Court will deem fit and just to give in the circumstances of this case.

(i) Costs of this Petition be granted to the Petitioner.

30. The third Petition No. 230 of 2019 is filed by Local Authorities Pensions Trust Board of Trustees (1st Petitioner) and the County Pensions Fund Board of Trustees (2nd Petitioner). The Petitioners named the Attorney General, the Cabinet Secretary, National Treasury, the Retirements Benefits Authority and the Local Authorities Provident Fund, Board of Trustees as 1st, 2nd, 3rd and 4th Respondents respectively.

31. The 1st Petitioner is described in the petition as a statutory body established under rule 14 of the *Local Authorities Pensions Trust Rules*, 2007 (L. N. 50 of 2007). The general mandate of the 1st Petitioner is to manage the Local Authorities Pensions Trust (hereinafter, "the DB Scheme") (c.f. rule 14 of L. N. 50 of 2007)). The specific statutory mandate of the 1st Petitioner is to:

(a) formulate policies relating to the DB Scheme;

(b) administer and invest the funds of the DB Scheme;

(c) pay various benefits to members of the DB Scheme;

(d) protect the property and assets of the DB Scheme; and

(e) perform such other duties as may be necessary for the due and faithful performance of trust obligations imposed by L. N. 50 of 2007 and any other law (c.f' Rule 16 of Legal Notice 50 of 2007).

32. The DB Scheme is a defined benefits pension scheme for the staff and officers of the defunct local authorities, most of whom are now employed by County Governments. The DB Scheme:

(a) is the successor to the Kenya Local Government Officers' Superannuation Fund, which was the successor to an earlier pension scheme established in 1928 (c.f, Legal Notices No. 200 and 313 of 1963);

(b) currently serves 9,200 pensioners spread across the world; and

(c) has 19,680 active members spread across various County Governments.

33. The 2nd Petitioner is described as the body responsible for the management of the County Pension Fund (hereinafter, "the DC Scheme"). The mandate of the 2nd Petitioner is analogous to that of the 1st Petitioner.

34. The DC Scheme which was previously known as the Laptrust (Umbrella) Retirement Fund:

(a) is a defined contribution pension scheme for the members, officers and staff of County Governments; and

(b) has 46,200 members as at the date of presentment of this Petition.

35. It is the 1st Petitioner's position that it promoted, established and registered the DC Scheme on 27th May 2011 pursuant to Policy Guidelines and Circulars issued by the 2nd Respondent as part of preparations for transition to the devolved system of government. Consequently, the DC Scheme is and has at all material times been the "existing pension scheme" for the members, officers and staff of county governments referred to in:

(a) Section 132 of the *County Governments Act*, 2012; and

(b) Section 49 of the *Urban Areas and Cities Act*, 2011.

36. The Petitioners state that they have filed the petition herein pursuant to their legal and fiduciary obligations to 75,760 members of the DB Scheme and the DC Scheme. Specifically, the Petitioners have filed this Petition for and on behalf:

(a) 42,600 members of the DC Scheme, currently serving in various County Governments;

(b) 19,680 active members of the DB Scheme, currently serving in various County Governments;

(c) 9,200 pensioners of the DB Scheme, currently living in various countries across the world; and

(d) 680 deferred members of the DB Scheme.

37. The Petitioner avers that the impugned *Act* is unconstitutional because it:

(a) Violates the functional and institutional integrity of County Governments, contrary provisions of (*inter alia*) articles 6(2), 40, 41, 43(1)(e), 189(1)(a) and 235(1), to the extent that it (*inter alia*) —

(i) purports to establish a pension scheme for County Governments when the constitutional mandate of the National Government is limited to prescribing standards for consumer protection, including standards for social security and professional pension plans;

(ii) gives overbearing powers to the 2nd Respondent, who is a State Officer within the National Government, over a pension scheme for the members, officers and staff of County Governments;

(iii) purports to establish a pension scheme for County Governments that mirrors a state corporation under the direct control of the National Government through the 2nd Respondent;

(b) violates article 10 of the *Constitution* to the extent that it was enacted without genuine public participation and, specifically, in contemptuous disregard of the comments and concerns raised by:

(i) the DB Scheme;

(ii) the DC Scheme;

(iii) the Council of Governors; and

(iv) other key stakeholders;

(c) violates article 27 of the *Constitution*, to the extent that:

(i) it excludes certain officers of County Governments (e.g. Governors, Deputy Governors, County Executive Committee Members and Members of County Assemblies) from joining the pension scheme it purports to establish;

(ii) its transitional provisions secure the employment of the 4th Respondent's administrative staff without according similar treatment to the employees of the administrator of the Petitioners;

(iii) Locks out the current corporate administrator of the DB Scheme and the DC Scheme from administering not only the DB and DC Schemes but also the proposed new Scheme;

(d) Violates article 40 of the *Constitution* to the extent it is premised on the untenable assumption that pension savings of members of the DB Scheme and DC Scheme are public funds and thus subject to state control through the 2nd Respondent;

(e) Violates article 41 of the *Constitution* to the extent that it purports to unjustifiably:

(i) force members of the DB Scheme and the DC Scheme to abandon those schemes and join a scheme that offers inferior benefits;

(ii) Repeal statutory protections accorded to some members of the DB Scheme, and the DC Scheme, through sections 132 and 138 of the *County Governments Act*, against adverse alteration of pension rights and benefits;

(f) Violates article 36 of the *Constitution* to the extent that it purports to compel the members, officers and staff of County Governments to join a pension scheme other than that they have freely and voluntarily chosen;

(g) Violates article 43 of the *Constitution* to the extent that it purports to enable the state to shirk its responsibility for the social security of the members, officers and staff of County Governments to the extent that it requires members of the scheme it purports to establish to provide for their own social security by ensuring that they save in order to cater for their livelihood during their retirement. This aspect of the Impugned Act is also discriminatory, contrary to the provisions of article 27 of the *Constitution*; and

(h) Violates Clause 6 of the Sixth Schedule to the Constitution to the extent that its transitional provisions create a leeway for the National Government to evade or shirk its responsibility for the actuarial deficits and liabilities of the DB Scheme.

38. The Petitioners also contend that the Impugned *Act* is radically in conflict with Government Policy and overarching laws and regulations that govern all retirement benefits schemes in Kenya. Specifically, the Petitioners contend that the Impugned Act is radically in conflict with (*inter alia*):

(a) The *Retirement Benefits Act* and Regulations made thereunder;

(b) Sections 132 and 138 of the *County Governments Act*, 2012;

(c) Section 49 of the *Urban Areas and Cities Act*, 2011;

(d) General principles and the common law of trusts;

(e) policy guidelines issued by and on behalf of the 2nd and 3rd Respondents; and

(f) countless letters issued to the Petitioners by and on behalf of the 2nd and 3rd Respondents.

39. It is the position of the Petitioners that the impugned *Act* violates and/or are inconsistent with articles 2(4), 6(2), 10(2)(a), 27, 36, 40, 41, 43(1)(e), 118(1)(b) and 235(1) of the *Constitution* as read with clause 14 of the Fourth Schedule and clauses 6 and 15 of the Sixth Schedule thereof.

40. The Petitioners aver that they will or are likely to suffer injury as follows –

(a) the comingling of defined benefit obligations and defined contribution obligations, contrary to structural differences in the two types of schemes and the prevailing regulatory norms;

(b) unjustifiable adverse alteration of the terms and conditions of employment for members of the Petitioners and all county government employees and, specifically —

(i) forced bulk transfer of members from superior to inferior retirement benefits schemes; and

(ii) abrogation of members' right to consent or decline the adverse alteration of their terms and conditions of employment;

(c) the illegal and or irregular merger of the DB Scheme into another scheme without proper and adequate provision for its auctorial deficits and liabilities, which are a responsibility of the National Government. This will jeopardize the pensions and other retirement benefits of hundreds of thousands of members of the 1st Petitioner;

(d) unjustifiable frustration of contracts between the two Schemes (i.e. the DB Scheme and the DC Scheme) and —

(i) various sponsors within County Governments;

(ii) water companies and various other entities associated with County Governments; and

(iii) administrators, hand managers, custodians and various other service providers;

(e) unnecessary and unjustifiable wastage of funds, in excess of Kshs.1.5 million, invested by the DB Scheme in promoting, establishing, recruiting and transferring members to the DC Scheme;

(f) unjustifiable wastage of funds invested by the DB Scheme in establishing the current corporate administrator;

(g) unnecessary and unjustifiable losses of employment for the staff of the current corporate administrator of the Petitioners;

(h) establish a pension scheme in the nature of a state corporation, contrary to the global best practice and the prevailing overarching regulatory framework for retirement benefits schemes as set out in the *Retirement Benefits Act* and Regulations made thereunder;

(i) place the private pension savings of the members of the DB Scheme and the DC Scheme under the direct control and management of the National Government, thereby infringing the Petitioners' members' rights relating to expropriation and protection of private property; and

(j) subject the management of the private pension savings of the members of the DB Scheme and the DC Scheme to the vagaries of politics, contrary to the provisions of the *Retirement Benefits Act*, the prevailing Government Policy and the prevailing global best practices on the management of pension scheme funds.

41. The Petitioners seek the following reliefs:

(a) a declaration to the effect that the *County Governments' Retirement Scheme Act*, 2019 is incompatible with the devolved system of government set out in the Constitution and accordingly, null and void.

(b) Alternatively, and without prejudice to prayer (a) above, a declaration to the effect that sections 2, 3(c), 6, 18, 23, 24, 52, 53, 55 and 56 of the *County Governments Retirement Scheme Act*, 2019 are inconsistent with the provisions of:

(i) Articles 2(4), 6(2), 10(2)(a), 27, 36, 40, 41, 43(1)(e), 118(1)(b), 174(c), (h), 186(1), 189 and 235(1) of the *Constitution*;

(ii) Clause 14 of the Fourth Schedule to the *Constitution*; and

(iii) Clause 6 and 15 of the Sixth Schedule to the *Constitution*, and thus null and void.

(c) a declaration to the effect that the County Pension Fund is and has at all material times been the "existing pension scheme" for the members, officers and staff of County Governments referred to in:

(i) the version of section 132 of the *County Governments Act*, 2012 that prevailed immediately before the enactment of the *County Governments Retirement Scheme Act*, 2019; and

(ii) section 49 of the *Urban Areas and Cities Act*, 2011.

(d) a declaration to the effect that the County Governments Retirement Scheme Act, 2019 cannot close or affect the County Pension Fund in any way in view of the supercession of the *Retirement Benefits Act* over all other laws relating to retirement benefits schemes;

(e) an order directing 1st Respondent to pursue such amendments as may be necessary to bring the *County Governments Retirement Scheme Act*, 2019 into conformity with:

(i) the provisions of articles 2(4), 6(2), 10(2)(a), 27, 36, 40, 41, 43(1)(e), 118(1)(b), 174(c), (h), 186(1), 189 and 235(1) of the *Constitution*;

(ii) the provisions of Clause 14 of the Fourth Schedule to the Constitution;

(iii) the provisions of Clause 6 and 15 of the Sixth Schedule to the *Constitution*;

(iv) the version of section 132 of the *County Governments Act*, 2012 that prevailed immediately before the enactment of the County Governments Retirement Scheme Act, 2019;

(v) section 138 of the *County Governments Act*, 2012;

(vi) section 49 of the *Urban Areas and Cities Act*, 2011; and

(vii) the relevant provisions of the *Retirement Benefits Act* and Regulations made thereunder.

(f) the costs of and incidental to this Petition;

(g) interest on (f) above at court rates with effect from the date of filing this Petition until the date of full and final settlement; and/or

(h) such other, further, additional, incidental and/or alternative reliefs as the Honourable Court may deem just, appropriate and expedient.

42. The fourth Petition No. 36 of 2022 was originally filed in ELRC Kisumu as Petition No. 6 of 2020 by Christine Songo against County Executive Committee Member Finance, County Government of Kakamega – 1st Respondent, County Government of Kakamega – 2nd Respondent, Local Authorities Pension Trust (Lap Trust) – 3rd Respondent and the Local Authorities Provident Fund (Lap Fund) – 1st Interested Party and the County Government Retirements Scheme – 2nd Interested Party

43. The Petitioner who is an employee of the County Government of Kakamega states that she is the Area Branch Secretary of the Kenya County Government Workers Union and brings the petition on her own behalf and on behalf of her co-workers who are employees of the 2nd Respondent.

44. The Petitioner avers that the co-workers and herself signed voluntary contracts and were voluntary members of the 2nd Interested Party to which they had been contributing their pension savings which are deducted from their salaries by the 2nd Respondent. That the 2nd Respondent also contributes a certain percentage which together are remitted to the 1st Interested Party.

45. That the 1st and 2nd Respondents without the consent of the Petitioner or her co-workers with the knowledge that the petitioner and her co-workers were members of the 1st Respondent unilaterally started deducting and remitting their pension contributions to the 3rd Respondent.

46. That there has been no formal communication and no provision for the pension contributions that have for many years been contributed and remitted to the 1st Interested Party and NSSF to be transferred to the 3rd Respondent. Neither is there any formal contract between the petitioner and her co-workers with the 3rd Respondent.

47. There is no provision for the petitioner and her co-workers pension contributions that had been made to the 1st Interested Party for many years before such transfer to the 3rd Respondent.

48. It is the Petitioner's contention that the actions of the Respondents would deprive the Petitioner and the co-workers their right to join a pension scheme or fund of their choice contrary to article 41 of the *Constitution*. Further that they have been subjected to administrative action that is inefficient, unlawful, unreasonable and procedurally unfair contrary to article 47 of the *Constitution*.

49. The Petitioner further avers that the Respondents have violated her right to fair hearing under article 50(1), equal benefit and protection of the law contrary to article 27(1) and deprivation of the right to economic rights by removal of certain pension savings to NSSF without any legal reason contrary to article 43(1)(e) of the *Constitution*.

50. The Petitioner contends that her co-workers and herself are bound to suffer loss and damages amounting to over Kshs.29,573,520/= for November 2019 contributions and Kshs.29,a037,773/= for December 2019 contributions totalling Kshs.57,611,293/=.

51. The Petitioner prays for the following reliefs –

(a) A Declaration that the Respondents actions are contrary to the provisions of the *Constitution* article 27, 41,43(1) (d) and (e), 47, 50 and 232 and infringes on the rights of the petitioner and co-workers by unilateral remittance to the 3rd Respondent without their consent.

(b) A mandatory order directed at the 1st and 2nd Respondents to stop remittance of the Petitioners and her co-workers pension contribution to the 3rd Respondent without their consent and to remit the same to the 1st Interested Party pending transition to the 2nd Interested Party.

(c) A mandatory order directed at the 3rd Respondent to transfer all petitioners and her co-workers pension contributions remitted to it by the 1st and 2nd Respondents to the 1st Interested Party with whom they have a contract.

(d) An order directed at the Respondents to comply with section 52, Part VI sections 54, 55, 56 and 57 of The *County Governments Retirements Scheme Act*, No. 21 of 2019.

(e) The costs of the petition be borne by the Respondents.

52. Several of the Respondents and Interested Parties filed responses to the petitions.

The Attorney General's Response

53. The Attorney General who is a common party in Petition 213 of 2019, 222 of 2019 and 230 of 2019 filed replying affidavits of Dr. Julius Muia, the Principal Secretary of the National Treasury dated 12th March 2020 in respect of Petition 230 of 2019 and another replying affidavit dated 15th May 2020 in respect of Petition 213 of 2019. It also filed a notice of preliminary objection in Petition 222 of 2019 dated 15th July 2022.

54. In the notice of preliminary objection, the Attorney General contends that Okiya Omtatah the Petitioner lacks *locus standi* citing Civil Appeal No. 119 of 2017 consolidated with 139 of Civil Appeal of 132 of 2017 *Public Service Commission & 4 others v Cheruiyot & 32 others*.

55. It is further the Attorney General's position that the Petitions (213, 222 and 230 of 2019) are misconceived since they do not disclose any cause of action or dispute against the Respondents within the meaning of section 12(1) of the *Employment and Labour Relations Court (ELRC) Act*, that the Petitioners are forum shopping and that the Petitions are grossly incompetent, incurably defective, frivolous, vexatious and an abuse of the Court process.

56. In the replying affidavits, Dr. Julius Muia deposes that as early as 2006, there were proposals to merge LAPTRUST and LAPFUND under one Act of Parliament following consultations among stakeholders. Upon promulgation of the 2010 Constitution which established the devolved system of Government comprising the National Government and 47 County Governments the function of overseeing matters pertaining to consumer protection, standards for social security and professional pension plans was assigned to the National Government with standards to be regulated, supervised and overseen by the Retirement Benefits Authority.

57. The affiant deposes that during the process an interagency Technical Committee (TC) comprising representatives of the Council of Governors and National Government was establish by the Council of Governors (CoG) chaired by RBA with representation from RBA, National Treasury (Pensions Department), SRC, TA (Transition Authority) CoG, Ministry of Devolution and Planning (Directorate of Public Service Management) Commission on Implementation of the Constitution, Kenya Law Reform, Public Service Commission, County Public Service Boards, LAPTRUST and LAPFUND. The TC recommended an umbrella pension scheme for all staff of the county governments.

58. Following adoption of the recommendations of the TC an implementation committee was set up to oversee the implementation. That the TA however noted that instead of setting up a new pension scheme as recommended the CoG adopted LAPTRUST as Umbrella Pension Scheme as the County Pension Scheme contrary to the recommendations of the T.C.

59. A private member bill (County Retirement Scheme Bill 2014) was introduced in the senate which the Senate Standing Committee on Labour and Social Welfare resolved to be taken over by the National Treasury who prepared a draft County Governments Superannuation Scheme Bill, 2015 following which stakeholders were consulted. The bill was presented to Cabinet by Treasury and thereafter tabled before the National Assembly.

60. The affiant contends that LAPFUND and LAPTRUST were among stakeholders who submitted their views. That the bill was approved and passed by a simple majority of the Senate and sent to the National Assembly for concurrence.

61. On the allegations raised by the Petitioners, the affiant states that there are no conflicts between the impugned *Act* with any of the provisions of the Constitution cited by the Petitioner.

62. The affiant states that in the impugned *Act* the role of the 2nd Respondent is limited to the appointment by gazette notice of persons nominated by various stakeholders under the Act. That it is therefore not true that the Act gives overbearing powers to 2nd Respondent. That the management of the fund is vested in the Board of Trustees which is answerable to the sponsors and members as set out in sections 13 and 14 of the *Act*.

63. The affiant depones that state officers who work in county governments are catered for under Sections 4(3) and 57(2) of the Act which also preserves the jobs of existing staff of the existing schemes under the transitional provisions. Further, that the Act provides for the scheme funds to be managed and protected under the Public Finance Management Act. That the serving provisions protect the interests of members and there is no demonstration that the scheme is inferior to the existing schemes.

64. It is further the affiant's position that there is no conflict between section 132 and 138 of the *County Governments Act* and section 49 of the *Urban Areas and Cities Act.*

65. It is further the position of the affiant that there is no conflict between the impugned *Act* and the *Retirement Benefits Act*. Further, that the Impugned *Act* takes precedence over the Occupational Retirement Benefits Scheme Regulations under the *RBA* as provided in the *Judicature Act*.

66. The affiant concludes that there was genuine public participation involving all stakeholders and that the orders sought by the Petitioners if granted will occasion hardship to the Respondents. That the orders sought are not based on public interest but on private interest of the Petitioners. That the Petitioners have not demonstrated any reasonable or justifiable cause to warrant the grant of the orders sought.

Response by Local Authorities Provident Fund (LAPFUND)

67. The LAPFUND responded to the petitions through the replying affidavit of David Koros, its Chief Executive Officer sworn on 21st February 2020.

68. Mr. Koros deposes that LAPFUND is a Statutory Body established under section 4 of the *Local Authorities Provident Fund Act*, cap 272, Laws of Kenya enacted in 1960. LAPFUND is under the ministerial responsibility of the National Treasury purely for accountability purposes but does not receive or channel any funds to the public coffers since all the funds held therein are vested in individual members.

69. That currently, the scheme has 52,000 members drawn from the county governments and the fund value stands at 36 billion.

70. That at inception, the scheme was intended to manage retirement benefits for the lower cadre of the local authorities' staff who were mainly African natives. The scheme was in addition to the then Local Authorities Superannuation Fund (which later changed the name to Local Authorities Pension Trust) earlier established to manage retirement benefits for the senior cadre of the local authorities who were then Whites and Indians during the colonial era.

71. That LAPFUND and LAPTRUST co-existed for fifty one (51) years carrying out a similar mandate of providing retirement benefits to employees of local authorities save that:

    (a) LAPFUND was and still is a defined contribution scheme in which the benefit is based on the amount contributed by the employee, the employer and the return on investment of that amount whereas LAPTRUST was and still is a defined benefits scheme (in which benefit is computed using a formula that is based on years of service, salary at exit and a pension formula - regardless of the amount contributed by the employee and the employer);

    (b) LAPFUND was and still is a provident fund that pays the benefit as a one-off lump sum while LAPTRUST was and still is a pension fund paying part of the benefit in lump sum and part as monthly drawdown during the lifetime of a pensioner;

    (c) LAPFUND is established under an Act of Parliament while LAPTRUST is established under the *Local Government (Local Authorities Pension Trust) Rules*, 2007 (the LAPTRUST Rules, 2007).

72. That the co-existence subsisted until year 2011 when the 1st Petitioner established the Local Authorities Pension Trust (Umbrella) Retirement Fund (a defined contribution scheme) pursuant to the National Treasury Circular Number 18 of 2010 which required all public defined benefits schemes to convert to defined contribution schemes since the government found them to be unsustainable due to deficits in funding levels occasioned by the disconnect between contributions made vis-a-vis the benefits paid and poor investment decisions.



73. That over the years, members have been transferring from one scheme to the other at whim catalysed by vigorous marketing and cut-throat competition perpetuated by LAPTRUST which has always regarded itself as a superior scheme. Even after the management of the two schemes agreed not to transfer members to allow a smooth merger process, the then General Manager of LAPTRUST who is now the Group Managing Director of LAPTRUST and associated companies vehemently opposed the decision and insisted that members should be allowed to move at will. That he instigated members by releasing correspondence to them to push for transfer from LAPFUND to LAPTRUST.

74. The affiant narrates the background of efforts that have been made towards the merger of LAPFUND and LAPTRUST going back to 2006, much in tendem with the process as narrated in the replying affidavit of Dr. Julius Muia already set out above.

75. The affiant adds that one of the issues that was to be addressed was transfer of members between the two schemes which had caused confusion and losses to members.

76. The affiant depones that upon promulgation of the Constitution in 2010, Parliament commenced the legislative process with the aim of inter alia aligning affected institutions to the devolved system of Government including enactment of the County Governments Act, 2012.

77. That Section 132 of the *County Governments Act* provides as follows;

> "Subject to the transitional provisions herein, all members and officers of staff of a county government shall subscribe to an existing pension scheme for officers and staff of local government."

78. That unknown to LAPFUND, LAPTRUST was secretively pushing an agenda behind the scenes to be the only scheme managing the retirement benefits for county employees by closing LAPFUND and taking over its operations.

79. That on 28th November 2012 in a joint meeting between the two schemes and representatives of the Ministry of Local Government, amendments to the *County Governments Act* No. 17 of 2012 and the *Urban Areas & Cities Act* were agreed upon which were meant to preserve the two schemes during transition to county governments awaiting the conclusion of the merger process and establishment of a new scheme into which the two would merge. According to LAPFUND, the agreed amendments included;

    (a) Deletion of Section 132 and substitution with the following *inter alia*;

        (i) Section 132(1) there shall be established a pension scheme for members, officers and staff of the county governments which shall be a defined benefits scheme.

        (ii) Section 132(2) All members, officers and staff of county governments who immediately before commencement of this *Act* were members of the local authorities provident fund shall upon commencement of this *Act* continue to subscribe to the defined contribution provident fund

    (b) Deletion of section 49 and substitution with the following;

> "All members, staff and officers of institutions set up under this Act shall subscribe only to the schemes established under section 132 (1) (2) and (4) of the *County Governments Act* 2012."

80. The affiant alleges that in a bid to steal a match against LAPFUND, the Managing Director of LAPTRUST represented to the Permanent Secretary, Ministry of Local Government amended proposals intended to ouster LAPFUND as follows:

(a) The existing pension scheme currently for officers and staff of local authorities is hereby re-established and subject to the transitional provisions herein, all members, officers and staff of a county government shall subscribe to the re-established scheme.

(b) All members, officers and staff of focal authorities who immediately before the commencement of this Act were members of the defined contribution or the provident fund shall transfer their membership and accrued benefits to the re-established scheme.

81. The affiant avers that after the amendments to the two Acts, LAPTUST started using the Section to the disadvantage of LAPFUND to the extent that the CoG issued Circular No. 1 of 2014 directing all counties to stop making contributions to LAPFUND.

82. The affiant states that the impugned *Act* does not conflict with any provisions of the Constitution, that the setting up of a scheme would not require expenditure of Kshs.1.5 billion as alleged as all that is required is drafting and registration of relevant trust deed and rules.

83. It is further the averment of the affiant that the government does not have control over the corporate entity established under the impugned *Act* as it provides for the Board of Trustees to appoint all persons and entities and to make all decisions in respect of recruitment of staff, managers, custodians and administrators of the scheme on behalf of the scheme.

84. Further, that funds of the scheme are vested in individual members. That the scheme does not force members to contribute to NSSF, does not designate retirement saving of county governments, violate the functional and institutional integrity of county governments or designate the retirement savings of county government, employees as public funds.

85. It is further the averment of the affiant that the impugned *Act* does not conflict with the provisions of the *Retirement Benefits Act* as it provides at section 45 that in case of a conflict between the Act and any provisions of the RBA the latter would prevail over subsidiary legislation. That should there be conflict between the *Act* and the *Occupational Retirement Benefits Regulations*, the impugned *Act* would prevail on the basis of hierarchy of statute.

86. The affiant depones that the provisions of the Act will only take effect after five years and there is plenty of time to put in place any procedures required under the *Retirement Benefits Act*.

87. It is further the affiant's averment that the impugned *Act* does not conflict with provisions of section 132 of the *County Governments Act* and section 49 of the *Urban Areas and Cities Act*. Further that the impugned *Act* cannot conflict with the Government Policy since statute is superior to policy.

88. It is the affiant's averment that no injury has been caused or is likely to be caused to the Petitioners as the impugned Act shall not lead to intermingling of defined benefits obligations and defined contributions obligations, or alter the terms and conditions of employment of the Petitioners. That if there will be any alteration of terms then the same is justifiable as such future benefits are capable of alternation.

89. The affiant contends that alleged actuarial deficits stem from the 1st Petitioner's poor management and investment decisions, and that in any event such actuarial deficits are unsubstantiated and unproved.

90. The affiant concludes that the allegations in the petition are unfounded, in bad faith and an abuse of Court process. That the same allegations were made and lost before the National Assembly and the Senate during stakeholder participation.

Response by RBA

91. The Retirement Benefits Authority filed replying affidavits of Charles Machira, its Chief Manager, Supervision, in response to Petition No. 213, 222 and 230 of 2019 respectively, all sworn on 16th July 2020.

92. The thrust of the averments in the three replying affidavits is that the objects of the Retirement Benefits Authority are set out in Section 5 of the Retirement Benefits Act. That the *County Governments Retirement Scheme Act*, 2019 conferred upon the Retirement Benefits Authority the obligation of transitioning the County Governments Retirement Benefits scheme under section 55 of the impugned *Act*. Further, that the RBA has not failed to carry out its obligations under the *Retirement Benefits Act* as alleged by the Petitioners.

93. It is the position of RBA, that by an advertisement in the Daily Nation and Standard Newspapers on 23rd October 2020, the Chief Executive Officer of the Board of the Local Authorities Provident Fund gave the impression to the public that LAPFUND is the County Government Retirement Scheme referred to under section 56 of the impugned *Act*.

94. Upon realisation of the same, the RBA's Chief Executive Officer wrote to caution the CEO of LAPFUND to stop giving such false impression as was created by the advertisements.

95. Mr. Machira denies that the provisions of the impugned *Act* offend any provisions of the *Constitution* or the *Retirement Benefits Act* or that it introduces inferior terms of employment for employees of county governments as alleged by the Petitioners.

96. It prays that the petitions be dismissed.

Response by County Pensioners Association

97. The County Pensioners Association filed a replying affidavit of EZRA O. NGOGE, its Chairman which supports the position of the Kenya County Government Workers Union.

98. He avers that the following sections of the impugned *Act* are inconsistent with articles 2(4), 6(2), 10(2)(a), 27, 36, 40, 41, 43(1)(a), 118(1)(b), 174(c), (h), 186(1), 189 and 235(1) of the *Constitution* of Kenya 2010, as read with clause 14 of the Fourth Schedule and clause 6 and 15 of the Sixth Schedule thereof as follows;

    (a) Section 3(c) of the Impugned *Act*, is inconsistent with the Constitution to the extent that it purports to relieve the National Government of the constitutional responsibility for providing social security to all citizens including members, officers and staff of County Governments.

    (b) Section 6 undermines the functionality and institutional integrity of County Governments.

    (c) Section 18 and 23 of the Impugned *Act* to the extent that it purports to lock out the current corporate administrator of the DB Scheme and the DC Scheme from administering the proposed scheme.

    (d) Section 56(5) of the impugned *Act* by discriminating against the staff of the administrator of the DB and DC Schemes.

(e) Section 2 as read together with section 24 which excludes house allowance in the definition of pension emoluments

(f) Section 55 and 56 of the Impugned *Act* which fails to provide for the settlement of debts and actuarial deficits of the Laptrust DB scheme which must be settled by the National Government. The same also purports to compel the members, officers and staff of County Governments to join a pension scheme other than that which they have freely and voluntarily chosen, contrary to the provisions of article 36 of the *Constitution*.

99. He depones that the impugned *Act* is unconstitutional to the extent that:

(a) It was enacted after a mock public participation;

(b) It purports to relieve the state of its constitutional responsibility;

(c) It discriminates against the members of the DC and DB Schemes;

(d) It discriminates against the employees of county governments;

(e) It infringes on the constitutional rights of the County Government Employees to fair labour practices and;

(f) Infringes on the constitutional rights of County Government Employees to protection of private property.

100. It is further his averment that the impugned *Act* is in conflict with the *Retirement Benefits Act* and section 132 of the *County Governments Act* because it will:

(a) Lead to joining of the Defined Benefits Obligations and the Defined Contribution Obligations despite the structural differences in the two types of schemes and the prevailing regulatory norms,

(b) Adversely and unjustifiably alter the terms and conditions of employment of the employees of the County Governments,

(c) Lead to the illegal and irregular merger of the DB Scheme into another scheme without proper and adequate provision for its actuarial deficits and liabilities,

(d) Unjustifiably forestall the contracts between the two schemes and its various sponsors within the County Governments,

(e) Lead to unnecessary and unjustifiable wastage of funds invested by the DB Scheme,

(f) Lead to the unnecessary and unjustifiable loss of employment and,

(g) Place the private pension savings of the members of the DB Scheme under the direct control and management of the national government.

Response by Nakuru Water and Sanitation Services Company Limited

101. Nakuru Water and Sanitation Services Company Limited filed an affidavit of James Gachathi Ng'ang'a, its Managing Director sworn on 5th February 2020 in which he deposes that its employees are members of both LAPFUND and LAPTRUST. That section 6 of the impugned *Act* discriminates against water companies as it does not allow the water companies, their sponsors and their members who form part of the existing schemes any representation in the Board of Trustees of the scheme established by the impugned *Act*.

102. That the impugned *Act* threatens the right to social security of its members, some of whom are employees of the water companies, by reducing the amount of emoluments to be contributed by both the employer and the employee thereby reducing the pension earnings of members contrary to section 138(1) of the *County Governments Act*.

103. That the impugned *Act* limits the period under which its members are to be paid their monthly pension emoluments to a maximum period of 5 years.

104. That the impugned *Act* has removed the insurance benefit currently catered for by the existing schemes and enjoyed by its members thereof, and transferred the responsibility to provide the insurance benefit from the scheme to the sponsors. That this is unprocedural and unconstitutional as it was done without consulting the sponsors.

105. It is the positon of the Nakuru Water Company that the impugned *Act* is unconstitutional to the extent that proper public participation was not carried out to the detriment of water companies. That Sponsors of the scheme who are adversely affected by the impugned *Act* will suffer irreparable loss which cannot be compensated.

106. In response to Petition No. 036 of 2022 the County Executive Committee Member, Finance and the County Government of Kakamega filed the replying affidavit of Lawrence Omuhaka, the Chief Officer In Charge of Public Service and Administration and Secretary to the Advisory Committee, County Government of Kakamega. He contends that LAPFUND is not a pension scheme or an existing scheme envisaged under section 132 of *County Government Act* and section 49 of *Urban Areas and Cities Act* and further that the County Government of Kakamega has never been subject to the provisions of the *Local Authorities Provident Fund Act* or signed a memorandum of understanding with LAPFUND.

107. He depones that during the 16th Executive Committee meeting held on 17th September 2019 the members of the Public Service and Administration presented a memorandum on execution of Deed of Adherence for the sponsorship of employees in the County Pension Fund. The Memorandum requested the cabinet to approve as follows:

(i) The Execution of Deed of Adherence under the County Pension Fund to enable update with the fund.

(ii) That all new employees who joined the service of the County after the first general election under the Constitution of Kenya 2010 be enrolled as a term and condition of employment to County Pension Fund.

(iii) That with effect from August contributions will be channelled to County Pension Fund (CPF) after completion of all the paper work.

(iv) That the County Government of Kakamega jointly with other County Governments within the Republic of Kenya shall own the County Pension Fund and shall participate in all its activities as required of a sponsor under the Retirements Benefits Authority.

(v) That the transfer of employees to CPF will not result into loss of benefits for the members.

108. That in compliance with section 132 of the *County Government Act* and the *Constitution* 2010 and in relation to the 16th Executive Committee held on 17th September 2019, the Cabinet approved the Deed of Adherence whereupon all employees who joined the service of the County on permanent and Pensionable terms were to be enrolled in the County Pension Fund as a mandatory requirement.

109. That the decision to transfer the benefits of permanent and pensionable employees to County Pension Fund (CPF) was informed by the benefits offered from the defined contributions plan operated by CPF which are superior to the provident fund scheme that is offered by LAPFUND.

110. That legally the employer has a right to move the service provider's pension scheme for its staff provided it provides better services and no consent of the employee is required as stipulated in the *County Government Act*.

111. That the staff and officers who are employed by the County Government have a constitutional right to social security which includes the right to pension hence the reason why the Petitioner's benefits/ monies were transferred from LAPFUND which is a provident fund to LAP TRUST which is a pension scheme also known as CPF.

112. That an employer is required under the law to determine the retirement benefit scheme for its employees. Specifically section 33 of the *Retirement Benefits Act* provides as follows:

Notwithstanding the provisions of any written law for the time being in force, an employer may with the approval of his employees pay any statutory contributions in respect of such employees into any scheme fund prescribed for that purpose.

113. That the employees approval was obtained whereupon the County Government of Kakamega together with the County Pension Fund carried out sensitization exercise of all staff through public participation from 9th – 14th October 2019 before the employees benefits were transferred to the County Pension Fund.

114. That the said sensitization exercise was aimed at achieving the following:

(a) Sensitizing the staff about the essence of being enrolled in a Pension Scheme.

(b) Sensitizing the staff about the security of their benefits (monies)

(c) Sensitizing the staff about the consequences of the shift from a provident fund to a pension scheme.

115. That the scheme prescribed under section 33 of the *Retirement Benefits Act* and section 132 of the *County Government Act* currently is the County Pension Fund (CPF) formerly known as the LAPTRUST (Umbrella Retirement Fund).

116. That the County Pension Fund is an Umbrella Pension Scheme registered by the Retirement Benefits Authority (RBA) in April 2011 under its previous name LAPTRUST (Umbrella) Retirement Fund, for local government employees in Kenya.

117. That the contributory scheme for CPF is in the ratio of 12% of basic salary plus house allowance for employees and 15% of basic salary plus house allowance for employers while in LAPFUND the contribution ratio was 7.5% of basic salary for employees and 15% of basic salary contributed by the Employer.

118. That the increase in what the employee is to contribute towards the County Pension Fund is in accordance with the recommendation of the 19th Executive Committee meeting held on 7th November, 2019 as approved by the Cabinet.

119. That the Petitioner has not raised any complaints with the County Human Resource Advisory Committee, the Kakamega County Public Service Board or the Public Service Commission and has

therefore failed to exhaust the alternative mechanisms of resolving the dispute as provided under the County Government Act hence the suit is prematurely before this Court.

120. The affiant further depones that no constitutional right of the Petitioner has been violated nor has there been any breach of the *County Government Retirement Scheme Act* as the Act is not operational. That the suit is bad in law, does not disclose any cause of action against the County Government of Kakamega and is therefore an abuse of Court process.

Analysis and Determination

121. In view of the number of Petitions that have been consolidated into this suit and the very large number of parties involved who are in excess of 165, further in view of the fact that some of the parties appear in two or more capacities with some appearing in one as Petitioner, in another as Respondent and in yet another as Interested Party, further in a bid to create order in the manner in which the hearing was conducted, the parties agreed to group themselves into two broad categories, the first being those contesting the validity of the impugned *Act* and the second constituting those supporting the same.

122. All the parties contesting the validity of the impugned *Act* in their pleadings including all Petitioners and the Interested Parties supporting them, will loosely be referred to as Petitioners. The group comprising of the Respondents and Interested Parties supporting the validity of impugned Act will be referred to as Respondents.

123. During the hearing, the Petitioners were led by Senior Counsel Githu Muigai assisted by Dr. Muthomi Thiankolu while the Respondents were led by Senior Counsel Ngatia.

124. It is common ground that until November 2010, employees of Local Government Authorities were covered under two retirement benefits schemes LAPTRUST a pension scheme and LAPFUND, a provident fund scheme. It is further common ground that LAPTRUST was established in 1929 as a Defined Benefits (DB) Scheme under an irrevocable trust. For this reason the amount of contribution by the employee and/or employer (the Sponsor) was not relevant to the amount of pension that was payable, which was based on the average of the last three years' salary and calculated based on a formula set out in the Trust Deed and Rules of the Scheme.

125. LAPFUND on the other hand was established in 1960 as a provident fund scheme. It was a defined contribution scheme with benefits pegged on the contributions made by the employer (the Sponsor), the employee and interest accrued thereon. The whole amount was withdrawn upon retirement or leaving service in circumstances that allowed the member employee to withdraw benefits.

126. In November 2020, the Government made a policy shift through Treasury Circular No. 18 of 2010 issued on 24th November 2010. The circular is titled "Public Service Retirement Benefits Schemes Approval By The Treasury Prior To Registration By The Retirement Benefits Authority (RBA)". In the circular the Permanent Secretary, Treasury outlined the several policy shifts that had been adopted by the Government. Among them was the maintenance of scheme funding at the statutory level of 100%, conversion of Defined Benefits retirement schemes into defined contribution schemes not later than 1st July 2011 guided by the *Retirement Benefits Act* and Regulations and guidelines issued by RBA.

127. As a direct consequence of the circular, LAPTRUST commenced the process of conversion from a DB to DC scheme which it successfully did and the scheme was approved and registered by RBA on 27th May 2011 (date of the certificate of Registration of LAPTRUST (Umbrella) Retirement Fund.

128. Section 132 of the *County Government Act* and section 49 of the *Urban Areas and Cities Act* provide as follows –

> Section 132 of the *County Government Act*
>
> 132. Pension schemes
>
> Subject to the transitional provisions herein, all members, officers and staff of a county government shall subscribe to an existing pension scheme for officers and staff of local government.
>
> Section 49 of the *Urban Areas and Cities Act*
>
> 49. Pension Schemes
>
> All officers of a board shall, on the commencement of this Act, subscribe to an existing pension scheme approved by the Retirement Benefits Authority.

129. It is worth noting that under the LAPTRUST Umbrella Scheme "employer" is defined to include bodies other than the county governments as follows:

> "A sponsoring local authority, reciprocating body, associated organization or any other company or organization which by a deed of adherence agrees to participate in the Fund by, inter alia, making contributions thereto on behalf of employees or a substitute of the Employer who assumes this position upon execution of a deed of substitution and has been admitted to the Fund as a participating Employer and who is specified in the Special Rules."

130. In view of the fact that both the *County Government Act* and the *Urban Areas and Cities Act* did not specify which of the two existing retirement benefits schemes between LAPFUND and LAPTRUST was the scheme referred to in the two statutes, there has been a tussle between the two schemes over which one of them should cover the employees of county governments.

131. It would appear that part of the reason for enactment of the impugned *Act* was an attempt to resolve this issue. Further, that this issue was the reason for failure of successive attempts to enact a statute to merge the two schemes and one of the major reasons for dissatisfaction with the impugned *Act* that led to the petitions that are the subject of this judgment. The petitions were disposed of by way of written submissions which were highlighted by the parties in open Court.

132. Having considered the very large volume of pleadings and submissions filed by the parties herein together with the supporting documents and authorities and having heard the parties, the issues arising for determination are in my view the following:

(i) Whether this Court has jurisdiction to hear and determine the petitions;

(ii) Whether the Petitioners have locus standi to institute the petitions;

(iii) Whether the petitions are defective for joinder, misjoinder and nonjoinder of parties;

(iv) Whether the impugned *Act* is unconstitutional for violating the national values and principles of public participation;

(v) Whether sections 4(1), 6(2)(a), 6(6), 10(1), 12, 51, 52(2), 52(3) and 55 of the impugned *Act* are unconstitutional for violating the functional and institutional integrity of county governments;

Whether sections 2, 4(3), 38(3)(b), (c), 52 and 55 of the impugned *Act* are unconstitutional for violating article 41 of the *Constitution* on the right to fair labour practices;

(vi) Whether sections 3(1)(c), 4(3), 6, 7, 18, 23, 52, 53 and 56(5) of the *County Government Retirement Scheme Act* are discriminatory, inconsistent with or violate the Constitution and/or undermine the authority of the Retirement Benefits Act and are therefore void;

(vii) Whether the County Pension Fund [previously known as the Laptrust (Umbrella) Retirement Fund] is the "existing pension scheme" for the members, officers and staff of the forty-seven county governments referred to in Sections 132 and 49 of the *County Governments Act*, 2012 and the *Urban Areas and Cities Act*, 2011;

(viii) Whether the implementation of the impugned *Act* will injure and/or harm the members, officers and staff of the forty-seven county governments as alleged in the petitions;

(ix) Whether the *County Government Retirement Scheme Act* has provided sufficient mechanisms and/or provisions to ensure the smooth transition of the closed schemes;

(x) Whether the Petitioners are entitled to the reliefs sought.

Jurisdiction of the Employment and Labour Relations Court

133. The Attorney General filed a notice of preliminary objection in which it objects to the jurisdiction of this Court to hear and determine the consolidated petition within the meaning of Chapter 10 of the *Constitution* and section 12 of the *Employment and Labour Relations Act*. It is the position of the Attorney General that article 165 of the *Constitution* which establishes the High Court provides at article 165(3) and 165(5) that the Court has exclusive jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated infringed or threatened and to hear any question respecting the interpretation of the *Constitution* including:

(i) the question whether any law is inconsistent with or in contravention of this *Constitution*;

(ii) the question whether anything said to be done under the authority of this *Constitution* or of any law is inconsistent with, or in contravention of, this *Constitution*;

(iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and

(iv) a question relating to conflict of laws under article 191; and

(e) any other jurisdiction, original or appellate, conferred on it by legislation.

134. That Section 12(1) of the *Employment and Labour Relations Court Act* provides that:

12. Jurisdiction of the Court

(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with article 162(2) of the *Constitution* and the

provisions of this *Act* or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—

(a) disputes relating to or arising out of employment between an employer and an employee;

(b) disputes between an employer and a trade union;

(c) disputes between an employers' organisation and a trade union's organisation;

(d) disputes between trade unions;

(e) disputes between employer organisations;

(e) disputes between an employers' organisation and a trade union;

(f) disputes between a trade union and a member thereof;

(g) disputes between an employer's organisation or a federation and a member thereof;

(e) disputes concerning the registration and election of trade union officials; and

(f) disputes relating to the registration and enforcement of collective agreements.

135. It is submitted that pursuant to the provisions only the High Court has jurisdiction to hear and determine questions whether any law is inconsistent with or in contravention with the Constitution as well as any matter relating to constitutional powers of state organs in respect of county governments and any matter relating to the constitutional relationship between levels of government. Further, that only the High Court has jurisdiction to hear and determine a question relating to conflict of laws under article 191 of the *Constitution*.

136. It is submitted that the parties to the petition do not fall within any of the categories stated in section 12 of the impugned *Act*. The Attorney General cities and relies on the decision in the case of *Staff Pension Fund & Kenya Commercial Bank Staff Retirement (DC) Scheme 2006 & another v Ann Wangui Ngugi & 524 others* [2018] eKLR where the Court stated that the jurisdiction of the High Court is unlimited while the Employment and Labour Relations Court has limited jurisdiction.

137. The Attorney General further cited and relied on the decision in *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* (2012) eKLR where the Court held that:

> "A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise Jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself Jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of Law has Jurisdiction to entertain a matter before it, is not one of mere procedural technicality: it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings."

138. The Attorney General further relied on the decision in *Kenya Ports Authority v Industrial Court of Kenya & 2 others*, Civil Appeal No, 236 of 2012 where the Court of Appeal held that pension disputes are not trade disputes and the Labour Court has no jurisdiction to hear the same.

139. The Attorney General submitted that this Court has had occasion to examine incidences where it would have jurisdiction to determine a matter that involves a constitutional question in *Kenya Council*

of Employment and Migration Agencies & another v Samuel Mwongera Arachi & 2 others (2015) eKLR where the Court held:

> "Whereas and from the foregoing provisions of the law, the Court has jurisdiction to adjudicate constitutional questions, these questions must arise within the broad relationship parameters set out under section 12 of the *Act* and further they can only be agitated by persons identified under section 12(2) of the *Act* acting in person or through authorized representative as stated earlier."

140. For the Petitioners, it is submitted that the key question should be whether a dispute regarding pension arrangements is a dispute relating to employment and labour relations within the meaning of article 162(2)(a) of the *Constitution* and section 12(1) of the *Employment and Labour Relations Court Act*. The Petitioners pose the questions:Can the right to pension exist in isolation or detachment from employment? Can a person become entitled to a pension without being employed?

141. It is submitted that this Court has already answered these questions in the negative in *Anne Wangui Ngugi & 524 Others* (Civil Appeal No. 10 of 2014, by holding that retirement benefits "find their rooting" in the relationship between an employer and an employee. Therefore, the jurisdictional question is frivolous and akin to the vexed question of which came first between the egg and the chicken. It is submitted that the Court of Appeal has affirmed the jurisdiction of this Court in cases such as the instant one.

142. It is further submitted that the authorities referred to by the Attorney General are irrelevant and of no precedent value to the extent that the facts of the relevant cases are vastly different from the facts of the instant case. That as Mativo J. (as he then was) warned in *Advanced Gaming Limited v Betting Control and Licensing Board & 2 others; Safaricom Limited (Interested Party)* [2019] eKLR (High Court Constitutional Petition No. 271 of 2019, at paragraphs 125-126:

> "A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it.... every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found....The ratio of any decision must be understood in the background of the facts of the particular case. A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

143. It is further submitted that the Supreme Court has had occasion to set out guidelines for interpretation of such matters, of relevance being the observation that the Constitution should be interpreted in a holistic manner, within its context and in its spirit. That *In the Matter of the Kenya National Human Rights Commission*, Sup. Ct Advisory Opinion Reference No. 1 of 2012; [2014] eKLR, the Court at paragraph 26 remarked:

> "...But what is meant by a holistic interpretation of the Constitution? It must mean interpreting the *Constitution* in context. It is the contextual analysis of a constitutional provision, reading it alongside and against other provisions, so as to maintain a rational explication of what the *Constitution* must be taken to mean in light of its history, of the issues in dispute, and of the prevailing circumstances. Such scheme of interpretation does

not mean an unbridled extrapolation of discrete constitutional provisions into each other, so as to arrive at a desired result."

144. It is further the submission of the Petitioners that in the case of *Speaker of the Senate & Another v Attorney General & 4 Others*, Sup. Ct, Advisory Opinion No, 2 of 2013; [2013] eKLR, [paragraph 156], the Supreme Court further explicated the relevant principle as follows:

> "The Supreme Court of Kenya, in the exercise of the powers vested in it by the Constitution, has a solemn duty and a clear obligation to provide firm and recognizable reference-points that the lower Courts and other institutions can rely on, when they are called upon to interpret the Constitution. Each matter that comes before the Court must be seized upon as an opportunity to provide high-yielding interpretative guidance on the Constitution; and this must be done in a manner that advances its purposes, gives effect to its intents, and illuminates its contents. The Court must also remain conscious of the fact that constitution-making requires compromise, which can occasionally lead to contradictions; and that the political and social demands of compromise that mark constitutional moments, fertilize vagueness in phraseology and draftsmanship. It is to the Courts that the country turns, in order to resolve these contradictions; clarify draftsmanship gaps; and settle constitutional disputes. In other words, constitution making does not end with its promulgation; it continues with its interpretation. It is the duty of the Court to illuminate legal penumbras that Constitutions borne out of long drawn compromises, such as ours, tend to create. The Constitutional text and letter may not properly [capture] express the minds of the framers, and the minds and hands of the framers may also fail to properly mind the aspirations of the people. It is in this context that the spirit of the Constitution has to be invoked by the Court as the searchlight for the illumination and elimination of these legal penumbras."

145. It is submitted that the Employment and Labour Relations Court was established by the *Employment and Labour Relations Court Act* pursuant to article 162(2)(a) which grants this Court the status of the High Court, and confers upon this Court the jurisdiction in matters concerning employment and labour relations. Pursuant to article 162(3) of the *Constitution*, Parliament enacted the *Employment and Labour Relations Court Act*. Section 12(1) of the *Employment and Labour Relations Court Act* further provides for the jurisdiction of the Employment and Labour Relations Court (ELRC) in the following terms:

> (1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with article 162(2) of the *Constitution* and the provisions of this *Act* or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—
>
> (a) disputes relating to or arising out of employment between an employer and an employee;

146. It is submitted that the clear wording of the debarment of the High Court by the *Constitution* is that it "shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts under article 162(2)." On the other hand the ouster of its jurisdiction under section 12(1) of the *Employment and Labour Relations Court Act* is that the Labour Relations and Employment Court "shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with article 162(2) of the *Constitution* and the provisions of this *Act* or any other written law which extends jurisdiction to the Court relating to employment and labour relations including disputes relating to or arising out of employment between an employer and an employee;"



147. Section 12(1) of the *Employment and Labour Relations Court Act* provides for the Court to hear first, "all disputes referred to the Court in accordance with article 162(2) of the *Constitution"* and secondly disputes referred to it in accordance with the provisions of the *Employment and Labour Relations Court Act*. Thirdly it has jurisdiction to hear and determine matters referred to the Court under any other written law which extends jurisdiction the Court. In all the three circumstances, the matters ought to relate to employment and labour relations.

148. It is my view that the enumeration under subsections 1(a) to (j) are not exclusive or conclusive. The word before the enumeration is "including" which under *Black's Law Dictionary* is defined as –

> "include, To contain as a part of something. The participle including typically indicates a partial list"

149. It is clear from the foregoing that the *Constitution* and the *Employment and Labour Relations Court Act* both define the jurisdiction of this Court to deal with employment and labour relations matters. There is no requirement that there must be an employee-employer relationship between the parties to the suit for the Court's jurisdiction to be invoked. Indeed the *Constitution* is clear under article 165(5) that the High Court shall not have jurisdiction in matters falling within the jurisdiction of the Courts contemplated under article 162(2).

150. Pension and terminal benefits are terms and conditions of employment. The *Employment Act* at section 10(3) provides for terms and conditions of employment that must be contained in a written contract of employment as follows:

> (3) The statement required under this section shall also contain particulars, as at a specified date not more than seven days before the statement, or the instalment containing them, is given of—
>
> (a) any terms and conditions relating to any of the following—
>
> (i) entitlement to annual leave, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated);
>
> (ii) incapacity to work due to sickness or injury, including any provision for sick pay; and
>
> (iii) pensions and pension schemes;

151. The impugned *Act* provides for changes in the definition of pensionable benefits for county government employees to exclude house allowance. To the extent that the said employees are members and have been contributing to the pension schemes in place before the enactment of the impugned *Act*, the *Act* constitutes an amendment in the terms and conditions of employment of affected employees, which is a matter within the jurisdiction of this Court.

152. In the case of *Public Service Commission & 4 others v Cheruiyot & 20 others* (Civil Appeal 119 & 139 of 2017 (Consolidated)) [2022] KECA 15 (KLR) (8 February 2022) (Judgment) the Court observed as follows at paragraph 44

> "Our interpretation of the provisions of section 12 of the *Employment and Labour Relations Court Act* is that the Employment and Labour Relations Court has jurisdiction to entertain any dispute or any contemplated dispute under section 12(1) but the dispute between the parties must be related to their employment and/or touching on labour relations. This is

therefore to mean that the jurisdiction of the Employment and Labour Relations Court is not limited to the determination of disputes arising out of a contract of employment between an employee and an employer, the court can also determine any constitutional violations of the rights of any party arising from an employee-employer relationship. However, for the court to entertain a petition premised on the breach of a party's fundamental rights under the Constitution, the alleged constitutional breach must be ancillary and incidental to the matters contemplated under section 12 of the *Act*. Our view is fortified by the preamble to the *Employment and Labour Relations Court Act*, 2011 which provides that it is:

> "An Act of Parliament to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes."
>
> [Emphasis added]

153. The same sentiments were expressed in the case of *Mackenzie Moulding Mogere & Another v Trustees of Telposta Pension Scheme & 4 Others* [2017] eKLR the Court, while addressing a similar objection stated:

> 24. We have considered the issue of jurisdiction and, ultimately, we agree with the respondents that the High Court made no error in transferring the constitutional petition to the ELRC and the ELRC made no error in law in hearing and determining it. It is not a novel issue and we are content to follow the decision of this Court in the case of *Nellie Wanjala Opembe v Fibi Usita Aura & Another* [2016] eKLR where similar objections were raised.
>
> This Court stated:-
>
> > "In The matter of the Interim Independent Electoral Commission, Constitutional Application No. 2 of 2011 (unreported) The Supreme Court succinctly addressed the question of jurisdiction thus,
> >
> > > "29. Assumption of jurisdiction by courts in Kenya is a subject regulated by the Constitution; by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited* (1989) KLR 1, which bears the following passage (Nyarangi, JA at page 14):-
> > >
> > > > "I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step."
> > >
> > > 30. The Lilian 'S' case establishes that jurisdiction flows from the law, and the recipient – Court is to apply the same, with any limitations embodied therein. Such a court may

not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the *Constitution*."

This Court has pronounced itself in similar instances, on the question of whether the Employment and Labour Court has jurisdiction to consider constitutional issues. In the case of *County Assembly of Kisumu & 2 Others v Kisumu County Assembly Service Board & 6 Others* [2015] eKLR it was posited that the Constitution does not establish a stand-alone constitutional court with exclusive jurisdiction to adjudicate upon constitutional issues. Similarly, in the case of *Prof. Daniel N. Mugendi v Kenyatta University & Others* [2013] eKLR, which was concerned with the question of whether or not the Industrial Court had jurisdiction to determine issues concerned with the of violation of constitutional rights, this Court cited with approval the decision of Majanja, J. in *United States International University (USIU) v The Attorney General & Others* [2013] eKLR where the learned judge in adopting the position of the *Gcaba v Minister of Safety and Security & Others* CCT 64/08(2009) ZACC 26 observed thus;

> "Since the court is of the same status of the High Court, it must have jurisdiction to enforce labour rights in article 41 and the jurisdiction to interpret the *Constitution* and fundamental rights and freedoms is incidental to the exercise of jurisdiction over matters within its exclusive domain. In any matter falling within the provisions of section 12 of the Industrial Court Act, then the Industrial Court has jurisdiction to enforce, not only article 41 rights but also all fundamental rights ancillary and incidental to the employment and labour relations including interpretation of the *Constitution* within the matter before it."

In furtherance of this position, with which we are in agreement, the same court in the case of *Prof. Daniel N. Mugendi v Kenyatta University & 3 Others* (*supra*) observed thus;

> "In the same token we venture to put forth the position that as we have concluded that the Industrial Court can determine industrial and labour relations matters alongside claims of fundamental rights ancillary and incident to those matters, the same should go for the Environment & Land Court, when dealing with disputes involving environment and land with any claims of breaches of fundamental rights associated with the two subjects."

25. To that learning, we may add another decision of this Court in *Judicial Service Commission v Gladys Boss Shollei & Another* [2014] eKLR where it was held:-

> "[40] Article 23(1) & article 165(3)(b) of the Constitution grants the High Court powers to hear and determine questions involving redress of violations or infringement or threatened violations of fundamental rights and freedoms in the Bill of Rights. However, article 23 (2)

provides for legislation giving original jurisdiction to subordinate courts to hear and determine disputes for enforcement of fundamental rights and freedom. In addition, article 23 (3) does not limit jurisdiction in the granting of relief in proceedings for enforcement of fundamental rights to the High Court only, but empowers "a court" to grant appropriate relief including orders of Judicial Review in the enforcement of rights and fundamental freedoms under the Bill of Rights. Also of note is article 20 (3) that places an obligation on "any court" in applying a provision of the Bill of Rights to develop the law and to adopt the interpretation that most favours the enforcement of a right or fundamental freedom. These provisions confirm that the Constitution does not give exclusive jurisdiction in the enforcement of the Bill of Rights to the High Court, but anticipates the enforcement of the Bill of Rights by other Courts."

26. It is beyond argument in this case that the issues that arose for determination in the Trust Deed related to the employment of the two appellants and are so interwoven that we cannot talk about one without reference to the other. Simply put, they concern employment and labour relations which is the remit of the ELRC under article 162 (2) (a) of the *Constitution* and section 12 of the *ELRC Act*, enacted pursuant to article 162 (3). Furthermore, the dispute took a constitutional trajectory as there was alleged non-compliance with the right to fair administrative action and the legality of provisions for resolution of disputes in the *RBA Act*. That alone would entitle the court to consider and determine the dispute.

154. From the foregoing I find that the consolidated petition herein relates to terms and conditions of employment and this Court has jurisdiction to hear and determine the same. I thus find no merit in the preliminary objection raised by the Hon. Attorney General.

Whether the Petitioners have locus standi to file and prosecute this matter against the Respondents

155. It is the submission of the Respondents that the Petitioners in Petition No. 213 of 2019 and Petition 230 of 2019 lack locus standi to file and prosecute the petitions on the basis that the Petitioners do not fall within the provisions of section 12(2) of the *Employment Labour Relations Court Act* which provides:

> 2. An application, claim or complaint may be lodged with the Court by or against an employee, an employer, a trade union, an employer's organisation, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any office established under any written law for such purpose.

156. The Respondents rely on the decision in *Public Service Commission & 4 others v Cheruiyot & 20 others* (Civil Appeal 119 & 139 of 2017 (Consolidated)) [2022] KECA 15 (KLR) (8 February 2022) (Judgment) where the Court observed that there was no employee-employer relationship between the litigants and the Court that had jurisdiction in the matter was the High Court.

157. In the case of *John Wekesa Khaoya v Attorney General* [2013] eKLR the High Court observed that the principle of locus standi has been greatly enlarged by articles 22 and 258 of the *Constitution*.

158. Article 22(1) and (2) provides –

> 22. Enforcement of Bill of Rights

(1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

(a) a person acting on behalf of another person who cannot act in their own name;

(b) a person acting as a member of, or in the interest of, a group or class of persons;

(c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members.

159. Article 258 provides:

258. Enforcement of this Constitution

(1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

(a) a person acting on behalf of another person who cannot act in their own name;

(b) a person acting as a member of, or in the interest of, a group or class of persons;

(c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members.

160. Both articles 22 and 258 make it the duty of every person to protect the constitution and give every person the right to institute Court proceedings claiming that a right or fundamental freedom in the Bill of Rights or any provision of the *Constitution* had been contravened or was threatened with contravention.

161. In Petition 213 of 2019, the Petitioner describes himself as a public spirited individual and human rights defender. He states that he filed the petition in his capacity as the Executive Director of Kenyans for Justice and Development Trust, a legal entity founded in Kenya to uphold the rule of law and constitutionalism. In Petition 230 of 2019 the Petitioners are legal entities who are affected by the provisions of the impugned *Act*.

162. I find that both the Petitioners in Petition 213 of 2019 and Petition 230 of 2019 have *locus standi* under the expanded democratic space as envisioned in articles 22 and 258 of the *Constitution* of Kenya, 2010 to institute the petitions in the manner they did.

Whether the petitions are defective for joinder, non-joinder or misjoinder of parties

163. It has been submitted for the Respondents that the petitions are defective for non-joinder of the senate and National Assembly.

164. As submitted by the Petitioners, order 1 rule 9 of the *Civil Procedure Rules* provides that no suit shall be defeated by reason of misjoinder or non-joinder of parties.

165. Further, the Attorney General has been joined to all the petitions. The Attorney General being the principal legal advisor to the government in my view sufficiently represents the interests of both the senate and national assembly. To this extents, I find no merit in the objection.

Whether there was public participation in the enactment process of the County Government Retirement Scheme Act

166. It is the averment of the Petitioners that there was no public participation before the enactment of the impugned *Act*. That the senate gave stakeholders two days which fell on a weekend between 29th November and 3rd December 2018 to study and make representations on the contents of the bill. That they were not given sufficient time for any meaningful engagement.

167. It is further the Petitioner's averment that they petitioned the senate over the conduct of the senate proceedings but received no response. Further that a single member of the senate presided over the purported public participation exercise in breach of the Senate Standing Order No. 192.

168. It is further submitted that both the Senate and National Assembly ignored views of not only the Petitioners but also the other key stakeholders in a bid to rush the process. That the request of the Intergovernmental Steering Committee of the summit to withhold consideration of the bill to facilitate proper public participation was also ignored.

169. It is further the averment of the Petitioners that the National Government failed to publish the *Act* in the Gazette and only did so long after the presidential assent and commencement of the *Act* which they aver to have been deliberate to avoid challenges to the *Act*.

170. It is further submitted that several stakeholders were not given an opportunity to present their views during public participation. These included County Public Service Boards and County Assembly Service Boards, County Pensioners Association and the Kenya County Government Workers Union.

171. It is further submitted that both LAPTRUST and LAPFUND draw membership from water companies which were never given an opportunity to present their views during the public participation exercise.

172. For the Respondents it is submitted that public participation over the impugned Act had been ongoing since 2006 when the idea of merging LAPFUND and LAPTRUST was first mooted. That the Petitioners participated in the National Assembly and in the Senate and the process was democratic. That the exercise was repeated on 9th April 2019. Thereafter several versions of the *Act* had been drafted and subjected to stakeholder participation.

173. The letters to the stakeholders is addressed to the following;

(i) Cabinet Secretary – Ministry of Labour and Social Protection;

(ii) Cabinet Secretary – Ministry of Public Service, Youth and Gender Affairs;

(iii) Cabinet Secretary – The National Treasury;

(iv) Cabinet Secretary – Ministry of Labour and Social Protection;

(v) Cabinet Secretary – Ministry of Devolution and ASAL Areas;

(vi) The Chairperson, Human Resources, Labour and Social Welfare Committee, Council of Governors;

(vii) The Acting Chief Executive Officer, Retirement Benefits Authority;

(viii) Chief Executive Officer, Salaries and Remuneration Commission;

(ix) The General Secretary, Kenya Union of Nurses;

(x) The Group Managing Director/CEO, CPF Financial Services;

xi. The Managing Trustees, National Social Security Fund;

xii. The General Secretary, Kenya County Government Workers Union;

xiii. Chairman, Lapfund Board of Trustees;

xiv. Chairperson, County Assembly Forum;

xv. Chief Executive Officer and Secretary to the Board, the Local Authorities Provident Fund Board.

xvi. The Chief Executive Officer, State Corporations Advisory Committee

174. The letter dated 29th November 2018 reproduced below:

"Dear Sir,

Invitation To A Meeting To Deliberate On The County Government Retirement Scheme Bill, 2018 (national Assembly Bill No. 10 Of 2018)

The Senate Standing Committee on I -about and Social Welfare is established under standing order 212(3) of the Standing Orders of the Senate and is mandated to inter alia –

Consider all matters relating to manpower and human resources planning, gender, culture and social welfare, youth, National Youth Service, children's welfare; national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation.

The County Governments Retirement Scheme Bill. (National Assembly Bills No. 10 of two was read a First Time in the Senate on Tuesday 13th November 2018 and was thereafter committed to the Senate Standing Committee on Labour and Social Welfare for consideration.

The Committee, at its 41st Sitting held on Thursday. 29th November 2018 considered the memoranda on the Bill and resolved to invite stakeholders, to a meeting to discuss views of respective organizations on the Bill.

The purpose of this letter is to invite you to a meeting with the Committee on Monday, 3rd December, 2018 in the Senate Chambers, Main Parliament Building at 10.00 am. The Bill may be found on the Parliament website of http:/www.parliament.go.ke/senate.

Ms. Mwanate Shaban, Clerk Assistant (Cell Number – 0726953257, email mwanateshaban@gmail.com) is responsible for all arrangements relating to this matter.

Yours truly,

Signed

J. M. Nyegenye, Cbs

Clerk Of The Senate/secretary,

Parliamentary Service Commission"

175. It is clear from the letter that the retirees who were in receipt of pensions were not invited. It is further clear that none of the water services companies were invited to the stakeholders' meeting. The members of the Scheme who were still in employment and were to be affected by the *Act* were also not invited. Other beneficiaries of the Scheme such as widows, widowers and dependents of deceased pensioners or employees who were in receipt of pensions were not invited.

176. It has not been denied that the committee which eventually presided over the meeting on 3rd December 2018 consisted of the Chairperson alone and therefore was not properly constituted under the Standing Orders of the Senate.

177. Article 118(1)(b) requires Parliament to conduct its business in an open manner in public and to facilitate public participation and involvement in the legislative and other business of Parliament and its committees.

178. In *Moses Munyendo & 908 others v Attorney General & another* [2013] eKLR it was held that the National Assembly and public institutions have a broad measure of discretion in how they achieve the object of public participation which may vary from case to case provided reasonable level of participation has been afforded to the public. Quoting Sachs J. in *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others* 2006 (2) SA 311 (CC) with approval where the Judge held:

> "The forms of facilitating an appropriate degree of participation in the law making process are indeed capable of infinite variation. What matters is that at the end of the day, a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say; and that what amounts to a reasonable opportunity will depend on the circumstances of each case."
>
> [Emphasis added]

179. The importance of public participation is underscored by the fact that none less than seventeen (17) articles of the *Constitution* of Kenya provide for the same. Those that are most relevant to this suit include article 1 of the *Constitution* which emphasises the sovereignty of the people which may be exercised directly or through democratically elected representatives, article 10 which provides for national values and principles of governance to include participation of the people, article 35 on access to information, article 118 which instructs Parliament to facilitate public participation and involvement of the people in the legislative and other business of Parliament and its committees, article 119 on the right to petition Parliament, article 124 on proceedings in Parliament and its committees, article 201 which provides for public participation in financial matters, article 221 on public participation in the revenue and expenditure estimates for the budget and article 232 where public participation is one of the values and principles of public service.

180. Indeed Parliament, in recognition of the importance of public participation has published Factsheet No. 14 Titled Public Participation In The Legislative Process where under the general themes in public participation it is provided:

> "When a Bill has been introduced in the House and upon referral to the relevant committee, the committee places adverts in the Media requesting for public views. The Committee takes into consideration the views of the public while considering the Bill and preparing its report."

181. In organising public participation the National Assembly Factsheet No. 14 provides for five (5) steps as follows:

1. Creating awareness

   Placing adverts in mainstream media, both print and electronic. This helps in generating awareness and increases citizen interest to participate and give views.

2. Involvement

   Identify the key stakeholders or interested groups including those directly affected and those that can offer solutions.

3. Contacting the public

   Communicate to the stakeholders through writing and inviting them for meetings and requesting submission of documents or memoranda.

4. Meetings

   Hold meetings to get views including field visits.

5. Feedback mechanism

   Through drafting and tabling of the resultant report."

182. The Factsheet provides that stakeholders should be provided with the necessary information to enhance credibility and witnesses invited in time and allowed sufficient time to prepare their oral or written submissions.

183. In *Kaps Parking Limited & another v County Government of Nairobi & another* [2021] eKLR, the Court considered several decisions on public participation and reached the following conclusions which I have deliberately reproduced at length because of the relevance to the instant consolidated petition:

> 137. The manner in which public participation is carried out depends on the matter at hand. There is no straight-jacket application of the principle of citizen participation. However, any mode of undertaking public participation which may be adopted by a public entity must factor, in the minimum, the following basic four parameters. First, the public be accorded reasonable access to the information which they are called upon to give their views on. In other words, the mode of conveying the information to the public reigns. Second, the people be sensitized or be made to understand what they are called upon to consider and give their views on. In this case, the language used in conveying the information to the public becomes of paramount importance. For instance, if those affected by the intended decisions or the legislation are mostly illiterate, then such realities must be factored in deciding the mode and manner of conveying the information. Third, once the public is granted reasonable access to the information and is made to understand it, the public must then be accorded reasonable time to interrogate the information and to come up with its views. Fourth, there must be a defined manner in which the public or stakeholders will tender their responses on the matter.
>
> 138. The effect of the above constitutional and statutory parameters is to ensure that public participation is realistic and not illusory. Public participation should not be a mere formality, but must accord reasonable opportunity for people to have their say in what affects them. In that way, the dictates of the Constitution and the law will be achieved.

184. In Mombasa Consolidated Constitutional Petition No. 159 of 2018 and 2018 of 2019 *William Odhiambo Ramogi & others v Attorney General & others* (unreported) in *Kaps Parking Limited & another v County Government of Nairobi & another* (*supra*) the Court observed:

> 115. The starting point is the *Constitution*. Article 2 inter alia declares the Constitution as the supreme law of the land which binds all persons and all State organs at both levels of government. It also provides that the validity or legality of the Constitution is not subject to any kind of challenge and that any law that is inconsistent with it is void to the extent of that inconsistency. Further, any act or omission in contravention of the Constitution is invalid. Article 3 places an obligation upon every person to respect, uphold and defend the *Constitution*.
>
> 116. Article 10 provides for the national values and principles of governance which bind all State organs, State officers, public officers and all persons whenever any of them applies or interprets the *Constitution*, enacts, applies or interprets any law or makes or implements any public policy decisions.
>
> 117. The Constitution also provided for alignment of the laws then in force at its promulgation. Section 7(1) of the Sixth Schedule states as follows: -
>
> > "Any law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution...."
> >
> > .....
>
> 119. Courts have also dealt with the concepts of public participation and stakeholders' consultation or engagement. The High Court in Robert N. Gakuru & Others v Governor Kiambu County & 3 Others [2014] eKLR while referring to the South African decision in *Doctors for Life International v Speaker of the National Assembly & Others* (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (cc); 2006(6) SA 416 (CC) adopted the following definition of public participation: -
>
> > "According to their plain and ordinary meaning, the words public involvement or public participation refers to the process by which the public participates in something. Facilitation of public involvement in the legislative process, therefore, means taking steps to ensure that the public participate in the legislative process."
>
> 120. Public participation therefore refers to the processes of engaging the public or a representative sector while developing laws and formulating policies that affect them. The processes may take different forms. At times it may include consultations. The *Black's Law Dictionary* 10th Edition defines "consultation" as follows: -
>
> > "The act of asking the advice or opinion of someone. A meeting in which parties consult or confer."
>
> 121. Consultation is, hence, a more robust and pointed approach towards involving a target group. It is often referred to as stakeholders' engagement. Speaking on consultation the Court of Appeal in *Legal Advice Centre & 2 others v County Government of Mombasa & 4 others* [2018] eKLR quoted with approval Ngcobo J in Matatiele Municipality and Others v President of the

Republic of South Africa and Others (2) (CCT73/05A) [2006] ZACC 12; 2007 (1) BCLR 47 (CC) as follows: -

> "……The more discrete and identifiable the potentially affected section of the population, and the more intense the possible effect on their interests, the more reasonable it would be to expect the legislature to be astute to ensure that the potentially affected section of the population is given a reasonable opportunity to have a say...."

122. In a Three-Judge bench the High Court in consolidated Constitutional Petition Nos. 305 of 2012, 34 of 2013 and 12 of 2014 (Formerly Nairobi Constitutional Petition 43 of 2014) *Mui Coal Basin Local Community & 15 Others v Permanent Secretary Ministry of Energy & 17 Others* [2015] eKLR the Court addressed the concept of consultation in the following manner: -

> "…. A public participation programme must show intentional inclusivity and diversity. Any clear and intentional attempts to keep out bona fide stakeholders would render the public participation programme ineffective and illegal by definition. In determining inclusivity in the design of a public participation regime, the government agency or Public Official must take into account the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action and their views must be more deliberately sought and taken into account."

123. Consultation or stakeholders' engagement tends to give more latitude to key sector stakeholders in a given field to take part in the process towards making laws or formulation of administrative decisions which to a large extent impact on them. That is because such key stakeholders are mostly affected by the law, policy or decision in a profound way. Therefore, in appropriate instances a Government agency or a public officer undertaking public participation may have to consider incorporating the aspect of consultation or stakeholders' engagement.

124. The importance of public participation cannot be gainsaid. The Court of Appeal in *Legal Advice Centre & 2 others v County Government of Mombasa & 4 others* (*supra*) while dealing with the aspect of public participation in law making process stated as followed: -

> "The purpose of permitting public participation in the law-making process is to afford the public the opportunity to influence the decision of the law-makers. This requires the law-makers to consider the representations made and thereafter make an informed decision. Law-makers must provide opportunities for the public to be involved in meaningful ways, to listen to their concerns, values, and preferences, and to consider these in shaping their decisions and policies. Were it to be otherwise, the duty to facilitate public participation would have no meaning.

125. In *Matatiele Municipality v President of the Republic of South Africa* (2) (CCT73/05A), the South African Constitutional Court stated as follows:

> "A commitment to a right to...public participation in governmental decision-making is derived not only from the belief that we improve the accuracy of decisions when we allow people to present their side of the story, but also from our sense that participation is necessary to preserve human dignity and self respect..."

126. The South African Constitutional Court in *Poverty Alleviation Network & Others v President of the Republic of South Africa & 19 others*, CCT 86/08 [2010] ZACC 5 discussed the importance of public participation as follows:

> "....engagement with the public is essential. Public participation informs the public of what is to be expected. It allows for the community to express concerns, fears and even to make demands. In any democratic state, participation is integral to its legitimacy. When a decision is made without consulting the public the result can never be an informed decision."

127. Facilitation of public participation is key in ensuring legitimacy of the law, decision or policy reached. On the threshold of public participation, the Court of Appeal in *Legal Advice Centre & 2 others v County Government of Mombasa & 4 others* (*supra*) referred to *Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 others* [2017] eKLR stated as follows:

> "The mechanism used to facilitate public participation namely, through meetings, press conferences, briefing of members of public, structures questionnaires as well as a department dedicated to receiving concerns on the project, was adequate in the circumstances. We find so taking into account that the 1st respondent has the discretion to choose the medium it deems fit as long as it ensures the widest reach to the members of public and/or interested party.

128. In *Mui Coal Basin Local Community & 15 Others v Permanent Secretary Ministry of Energy & 17 Others* (*supra*) the Court enumerated the following practical principles in ascertaining whether a reasonable threshold was reached in facilitating public participation:

(a) First, it is incumbent upon the government agency or public official involved to fashion a programme of public participation that accords with the nature of the subject matter. It is the government agency or Public Official who is to craft the modalities of public participation but in so doing the government agency or Public Official must take into account both the quantity and quality of the governed to participate in their own governance. Yet the government agency enjoys some considerable measure of discretion in fashioning those modalities.

(b) Second, public participation calls for innovation and malleability depending on the nature of the subject matter, culture, logistical constraints, and so forth. In other words, no single regime or programme of public participation can be prescribed and the Courts will not use any litmus test to determine if

public participation has been achieved or not. The only test the Courts use is one of effectiveness. A variety of mechanisms may be used to achieve public participation.

(c) Third, whatever programme of public participation is fashioned, it must include access to and dissemination of relevant information. See *Republic v The Attorney General & Another ex parte Hon. Francis Chachu Ganya* (JR Misc. App. No. 374 of 2012. In relevant portion, the Court stated:

> "Participation of the people necessarily requires that the information be availed to the members of the public whenever public policy decisions are intended and the public be afforded a forum in which they can adequately ventilate them."

(d) Fourth, public participation does not dictate that everyone must give their views on the issue at hand. To have such a standard would be to give a virtual veto power to each individual in the community to determine community collective affairs. A public participation programme, must, however, show intentional inclusivity and diversity. Any clear and intentional attempts to keep out bona fide stakeholders would render the public participation programme ineffective and illegal by definition. In determining inclusivity in the design of a public participation regime, the government agency or Public Official must take into account the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action and their views must be more deliberately sought and taken into account.

(e) Fifth, the right of public participation does not guarantee that each individual's views will be taken as controlling; the right is one to represent one's views – not a duty of the agency to accept the view given as dispositive. However, there is a duty for the government agency or Public Official involved to take into consideration, in good faith, all the views received as part of public participation programme. The government agency or Public Official cannot merely be going through the motions or engaging in democratic theatre so as to tick the Constitutional box.

(f) Sixthly, the right of public participation is not meant to usurp the technical or democratic role of the office holders but to cross-fertilize and enrich their views with the views of those who will be most affected by the decision or policy at hand.

185. Based on the above, public participation by the Senate would require that the public is notified through the media while the major stakeholders are in addition, invited by letter to submit their views. It is further a requirement that the stakeholders and the public in general, are given sufficient time to prepare their memorandum and to attend any meeting called to receive their views.

186. In the instant case there was no publication in the media inviting the public to participate in the legislative process. Further, there is no evidence that water company employees who were members of the affected schemes were invited together with the other identified stakeholders. Neither were retirees invited to submit their views. The associated organisations whose employees were members of the schemes were also not invited to give their views at the meetings called by the Senate for public

participation. Other beneficiaries of the scheme such as widows, widower and dependants of deceased employees and pensioners whom the impugned *Act* would directly affect were no given an opportunity to give their views.

187. The list of sponsors who ought to have been invited to give their views is contained in the First, Second and Third Schedules to the Kenya (Local Government) (Pensions) Regulations 1963 and the *Local Authorities Pensions Trust Rules*, 2007.

188. Further, although public participation does not envisage that every view is taken into account, it must be shown that consideration was given to the views expressed and where appropriate, that the views were accommodated in the enactment of the legislation.

189. In the instant case, there were protests by the County Government Workers Union, CPF Financial Services, the Pensioners Association and water companies. This begs the question, if so many of the stakeholders' views were not taken, what was the purpose of the public participation?

190. The Retirement Benefits Authority, in its memorandum forwarded by letter dated 5th December 2018 after the alleged public participation made recommendations that:

> " Prayer
>
> The Authority is of the view that, since the Bill did not undergo any consultative process with the relevant stakeholders, including the Regulator, before it was tabled in Parliament, we beseech the Chairperson of the Committee to seek an extension from the National Assembly to allow for thorough stakeholder analysis of the Bill and further consultations before tabling of the committee's report in Parliament. We believe the consultations from a very critical part, in ensuring that the Act what will come into effect is one that has the good will of all the stakeholders."

191. Further, by letter dated 5th July 2018 the Cabinet Secretary for Public Service recommended with withdrawal of the bill to facilitate further public participation and stakeholder consultations.

192. As was stated in *Glenister v President of the Republic of South Africa and Others* (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC) ; 2011 (7) BCLR 651 (CC), quoted with approval in *Robert N. Gakuru & Others v Governor Kiambu County & 3 others* [2014] eKLR where it was held *inter alia* that:

> " For the opportunity afforded to the public to participate in a legislative process to comply with section 118(1), the invitation must give those wishing to participate sufficient time to prepare. Members of the public cannot participate meaningfully if they are given inadequate time to study the Bill, consider their stance and formulate representations to be made. Two principles may be deduced from the above statement. The first is that the interested parties must be given adequate time to prepare for a hearing. The second relates to the time or stage when the hearing is permitted, which must be before the final decision is taken. These principles ensure that meaningful participation is allowed. It must be an opportunity capable of influencing the decision to be taken. The question whether the notice given in a particular case complies with these principles will depend on the facts of that case."

193. From the foregoing, I find that the public participation in respect of the impugned *Act* did not meet the requirements of the Constitution. First, the Committee before which the public participation meeting was held was improperly constituted as it did not have a quorum as set out under the Standing Orders of the Senate. Secondly, there was no advertisement in the media notifying members of the public of the bill, as envisaged under the parliamentary guidelines for public participation.

194. Thirdly, there was no sufficient time, the stakeholders having been given only one full working day to prepare for the meeting. Fourth, critical stakeholders were not invited to give their views on the Act. These were the retirees, water service organisations and employees who were members of the scheme. Indeed none of the employees who were members of the affected schemes were never notified to enable them present their views either directly to the Senate or Parliament, or through their representatives.

195. For these reasons the impugned *Act* is unconstitutional for lack of public participation.

Whether the impugned Act is unconstitutional

196. It is the position of the Petitioners that section 4(1) and (3), 6(2)(a), 6(6), 10(1), 12, 51, 52(2), 53(3) and 55 of the impugned *Act* are unconstitutional for violating the functional and institutional integrity of county governments.

197. Further, that sections 2, 4(3), 38(3)(b) and (c), 52 and 55 of the impugned *Act* are unconstitutional for violating article 41 of the Constitution on the right to fair labour practice.

198. It is further the averment of the Petitioners that sections 18, 23, 53, 55 and 56(5) of the impugned *Act* are discriminatory and thus violates article 27 of the *Constitution*.

199. The Petitioners submit that the impugned *Act* violates the functional and institutional integrity of county governments to the extent (*inter alia*) that:

(a) Section 4 (1) purports to set up a pension scheme for county governments —

(i) when the constitutional mandate of the National Government in relation to pension schemes for county governments is limited to policy formulation and setting standards (see inter alia Clause 14 of the Fourth Schedule to the Constitution);

(ii) yet the National Government is not an employer of county government employees;

(iii) despite county governments' collective and overwhelming preference for a different pension scheme (i.e. the DC Scheme);

(b) Section 6(2)(a) empowers the Principal Secretary for Finance to sit in the Board of Trustees for a pension scheme for the members, officers and staff of the forty-seven county governments;

(c) Section 6(6) to the extent that it empowers the Cabinet Secretary for the National Treasury to appoint trustees to a pension scheme for the members, officers and staff of the forty-seven county governments;

(d) Section 10 empowers the Cabinet Secretary for the National Treasury to remove from office trustees of a pension scheme for the members, officers and staff of the forty-seven county governments;

(e) Section 12 empowers the Cabinet Secretary for the National Treasury to fill vacancies in the board of trustees of a pension scheme for the members, officers and staff of the forty-seven county governments;

(f) section 51 empowers the Cabinet Secretary for the National Treasury to make regulations for the management of a pension scheme for the members, officers and staff of the forty-seven county governments;

(g) Sections 52(2) and 55 provide for the revocation of the DB Scheme without payment of liabilities that the National Government owes to the scheme; and

(h) Section 52(3) to the extent that it purports to revoke the trust deed and rules of a pension scheme that enjoys the collective and overwhelming preference of county governments (i.e. the DC Scheme).

200. The Petitioners submit that there is no constitutional, legal, policy or rational basis, post-2010, for the National Government to domineeringly:

(a) establish a pension scheme for the members, officers and staff of the forty seven county governments;

(b) control the management of the scheme through the power of appointment and removal of trustees;

(c) make regulations for the management of the scheme; and

(d) do all the other things the impugned *Act* purports to enable the National Government to do.

201. For the Respondents it is submitted that article 6(2) provides for the relationship between county governments and national governments to be based on independence, inter-dependence and mutual consultation and cooperation. That county governments have limited powers to make laws that bind the county only while they cannot make laws that bind all counties like the impugned *Act* which is the preserve of parliament.

202. That the *Intergovernmental Relations Act* is based on the principle of consultation and cooperation between national and county governments and the establishment of structures and mechanisms for *Intergovernmental Relations Act* is based on the principle of consultation and cooperation between national and county governments and the establishment of structures and mechanisms for intergovernmental relations.

203. That under the Fourth Schedule to the *Constitution* it is the role of the national government to set standards in respect of social security and professional pension schemes. That the averment by the Petitioners that the impugned *Act* gives overbearing powers on the 2nd Respondent and mirrors a state corporation has neither been substantiated not proved.

204. The threshold for constitutionality of statutes has been the subject of various decisions of the Courts. In the case of *Katiba Institute & another v Attorney General & another* [2017] eKLR the Court cited with approval the case of *Plum & another v Attorney General* [2002] 2 E. A where the Constitutional Court of Uganda stated:

> "To determine the constitutionality of a section of a statute or Act of Parliament, the court has to consider the purpose and effect of the impugned statute or section thereof. If its purpose does not infringe a right guaranteed by the constitution, the court has to go further and examine the effect of the implementation. If either its purpose or the effect of its implementation infringes a right guaranteed by the constitution, the impugned statute or section thereof shall be declared unconstitutional..."

205. There is no doubt that the impugned *Act* establishes the pension scheme as a state corporation under the supervision of the Cabinet Secretary responsible for National Treasury.

206. Under the Fourth Schedule to the *Constitution* of Kenya, the responsibility of consumer protection including standards for social security and professional pension plans is assigned to the National Government.



207. My understanding of this is that the Government would have oversight in terms of policy and regulation of social security and professional pension plans.

208. Social security in my view would be reckoned with reference to articles 43 of the *Constitution*. Article 43(1)(e) specifically makes reference to the role of the government to be the provision of appropriate social security to persons who are unable to support themselves and their dependants. I thus do not agree with the Respondents that either the Fourth Schedule to the *Constitution* or article 43 requires the national government to be involved in the administration of pension schemes for county governments in the manner envisaged in the impugned *Act*.

209. To my understanding, pensions are employment benefits to be managed by employers under private contracts. The national government is therefore only under the obligation to make provision for pensions for its employees within the context of private employment contracts.

210. For these reasons I agree with the Petitioners that the decision of the government to get involved in the management of pensions for county government employees is a violation of not only the Fourth Schedule to the *Constitution* but also article 6 of the *Constitution* which provides that the government at the national and county levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation.

211. By regulating pension for county government employees the National Government enters into the realm of regulating terms and conditions of service of employees of county governments. This is incompatible with the provisions of article 6 of the *Constitution* and the overarching principle of devolution as espoused in the *Constitution*. To this extent the impugned *Act* is unconstitutional

Whether the impugned Act conflicts with the provisions of Article 41 of the Constitution

212. It is the submission of the Petitioner that the impugned *Act* adversely alters the existing terms of employment for members, officers and staff of county governments by exclusion of housing allowance in the computation of pensionable emoluments in violation of articles 41 of the *Constitution* which provides for fair labour practices. That Section 4 of the impugned *Act* provides for inferior terms compared to those under rule 78 of *Legal Notice No. 50 of 2007* and rules 7, 8, 9, 12 -15 of the special rules of the DC Scheme.

213. It is further the Petitioners' averment that the liabilities and actuarial deficits of the DB Scheme which are largely attributable to non-remittance of contributions by the defunct local authorities, and which are a liability of the national government by virtue of clause 6 of the 6th Schedule to the *Constitution*, have been excluded by section 38(3)(b)and (c). That the consequence of this omission is that 19,680 members, 7,351 pensioners and 1,800 beneficiaries of the DB Scheme shall never be paid their pension if the impugned *Act* is implemented.

214. It is submitted that section 10(3)(iii) of the *Employment Act* recognises pensions and pension schemes as part of the terms and conditions of employment to be specified in an employment contract. That section 26 of the *Act* provides that the terms set out in the contract of service, agreed in a collective agreement or contract or enacted by any written law or decreed in a judgement, award or order of the Employment and Labour Relations Court, where more favourable, shall apply.

215. It is further submitted that section 10(5) of the *Employment Act* provides that any changes in terms of employment must be in consultation with the employee and must be notified to the employee in writing.

216. Further, that section 57 of the *Labour Relations Act* recognises terms and conditions of service agreed upon through a collective agreement.

217. It is therefore the submission of the Petitioners that such terms and conditions of employment including pension cannot be altered to the disadvantage of an employee without consultation of the employee.

218. For the Respondents it is submitted that the impugned Act conforms with the Constitution. Specifically it is submitted that under section 8(3) and (4) of the *Salaries and Remuneration Commission (Remuneration and Benefits of the Other Public Officers) Regulations*, pensionable salaries are defined as basic salary. That allowances payable to state and other public officers are to be excluded from computation of both pension and gratuity. It is further submitted that an employer can change the pension arrangement for members of their staff without consultation of the employee.

219. It is further submitted that under the *Retirement Benefits Act* membership of retirement schemes are determined by the employer. That the scheme cannot be freely and voluntarily chosen by an employee. That once an employee joins employment membership of the scheme is automatic.

220. Fair labour practice as provided in article 41 of the *Constitution* has reference to fair remuneration, reasonable working conditions and right to join and participate in activities and programs of trade unions as set out in article 41(2) of the *Constitution*. What constitutes fair labour practice is therefore contextualised within the facts of specific circumstances.

221. As was stated by the Court in *George Onyango Akuti v G4S Security Services Kenya Limited* (2013) eKLR, and again in *Elizabeth Washeke & 62 others v Aritel Limited & another* (2013) eKLR, fair (unfair) labour practice is a flexible term not capable of precise definition and it is left to the Courts to define and determine what conduct or practice would amount to fair or unfair labour practice.

222. The definition of pensionable emoluments in the impugned *Act* excludes housing, transport and any other allowances from pensionable emoluments. The direct consequence of this is that the amount of pension that an employee would be entitled to would be less under the new scheme established in the impugned *Act*. This in itself would amount to unfair labour practice and a violation of both article 41 of the *Constitution* and section 26 of the *Employment Act*.

223. In addition it would amount to the amendment of the terms of employment to the detriment of employees and violate the employee's rights under article 43(1)(e) as it would reduce the social security that the employee would otherwise have been entitled to under the existing schemes. It would further violate section 13 of the *Employment Act* which provides that the employee must be consulted before any changes especially if negative, can be made to his terms of employment. It would further amount to a violation of the collective bargaining agreement between the county governments and associated institutions and the County Government Workers Union.

224. The same action would violate the provisions of section 132 of the *County Government Act* which provides that members, officers and staff of county governments, shall subscribe to an existing pension scheme for members, officers and staff of local governments. The *County Governments Act* did not envision the setting up of a new Scheme for members, officers and staff of county Governments.

225. The government approved the pegging of pensionable pay to basic salary and house allowance as an exception to the policy of the government on pension schemes in the letter dated 21st July 2011 from the Permanent Secretary/Treasury. The letter is reproduced below:

"Prof. Karega Mutahi, CBS

Permanent Secretary

Office of the Deputy Prime Minister &

Ministry of Local Government

Jogoo house, Taifa Road

NAIROBI

Dear

RE: Implementation Of Treasury Circular No. 18/2010 Laptrust Umbrella Retirement Benefits Scheme

Request For Partial Waiver Of Certain Aspects Of The CirculaR

Reference is made to your letter ref: MLG 1308 dated 13th July 2011 and the subsequent consultative meeting held at the KICC on 18th July 2011. I acknowledge the special challenges faced by Trustees of the captioned Scheme in implementing Treasury Circular No. 18/2010. However, it is important that the purpose issuing the Circular is achieved.

As you may be aware, the Treasury established the Retirement Benefits Authority (RBA) to regulate the management of retirement benefits schemes owing to the challenges then faced in funding such schemes and ensuring that benefits were paid to members as they retired. Public sector schemes have particularly faced a funding challenge owing to non-payment of the required contributions and lack of prudent investment guidelines for the scheme funds. Further a number of such schemes had skewed funding rules that placed an onerous burden of funding benefits on already cash strapped public service institutions. The rules resulted in minimal contribution by employees to the cost of funding the schemes and in some cases the schemes were non-contributory.

It is for this reason that the RBA released letter ref. RBA/COM/GN/212 dated 10th March 2010 to all public service scheme trustees, requiring them to have their schemes cleared by the Treasury before registration. Since then, a number of schemes have complied and been cleared or guided on the necessary amendments to their documents.

The Treasury Circular No. 18/2010 was intended to reinforce me requirements and ensure harmonisation of public service retirement benefits schemes. You will agree with me that this is particularly critical for the captioned Scheme which is expected to act as an umbrella scheme for the county governments when they establish their retirement benefits schemes. The provisions of the Circular will ensure that such schemes remain sustainable into the future. Please note that the circular does not take away or vary benefits already accrued by the scheme members before the implementation date.

In view of the foregoing. I will only approve the following amendment to the provisions of the Circular.

Clause 3(a) of the Circular is hereby amended to allow Members of the Laptrust Scheme to use basic salary plus house allowance as the pensionable emoluments

under the Scheme, provided that Members' contributions shall not at any time be reduced below the current 12% of PE.

All other provisions of the Treasury Circular No. 18/2010 and the general amendments communicated to all schemes will apply to the captioned Scheme.

You may therefore proceed to communicate the foregoing to the Scheme management and Members.

Yours

Joseph Kinyua, Cbs

Permanent Secretary/treasury"

[Emphasis added]

226. This policy direction which was specific to county government pension schemes has not been amended by the government. The impugned *Act* is therefore in conflict with and a derogation from the policy of the government which authorised the inclusion of house allowance as an exception in the definition of pensionable emoluments for county government employees and which therefore crated a legitimate expectation upon which such pension schemes were established. It is therefore my finding that the definition of pensionable emoluments in the impugned *Act* would amount to unfair labour practice and a violation of article 41 of the *Constitution*.

Whether the impugned Act conflicts with the Retirement Benefits Act

227. The impugned *Act* does not make any provisions for the payment of unremitted funds. In fact, section 38(3) specifically provides:

> (3) For the avoidance of doubt, nothing in this *Act* is intended to or may be construed as providing for or dealing with —
>
> (a) taxes;
>
> (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
>
> (c) the appropriation, receipt, custody, investment or issue of public money;
>
> (e) the raising or guaranteeing of any loan or its repayment except as provided in any written law; or
>
> (a) matters incidental to any of those matters.

228. These provisions are in direct conflict with the *Retirement Benefits Act* which provide that contributions by the employee vest immediately while contributions by the employer vest upon the employee completing one year in service. The impact of this is that all money in the scheme for all employees who have completed at least one year in service are vested in the employee. The employer or any other body cannot deal in such funds without the consent of the employee.

229. Indeed Section 33 of the *Retirement Benefits Act* provides that:

> 33.
> Statutory
> contributions

(1) Notwithstanding the provisions of any written law for the time being in force, an employer may, with the approval of his employees, pay any statutory contributions in respect of such employees into any scheme fund prescribed for that purpose:

> Provided that where such payment involves a transfer of funds from another scheme fund, the employer shall, at least sixty days before commencing such payment, give written notice thereof to the Authority and to the trustees of the scheme fund from which such funds shall be transferred.

(2) In this section, the expression "statutory contributions" means contributions required under the provisions of a written law to be paid into a retirement benefits scheme.

230. Such funds can therefore only be transferred with the consent of the employee. To this extent sections 5 of the impugned *Act* is in conflict with section 33 of the *Retirement Benefits Act*.

Whether the County Pension Fund (Previously known as LAPTRUST (UMBRELLA) Retirement Fund is the existing pension scheme for members, officers and staff of the County Governments

231. Section 132 of the *County Governments Act* and Section 49 of the *Urban Areas and Cities Act* provide as follows:

> 132. Pension schemes
>
> Subject to the transitional provisions herein, all members, officers and staff of a county government shall subscribe to an existing pension scheme for officers and staff of local government.
>
> 49. All officers of a board shall, on the commencement of this Act, subscribe to an existing pension Pensionscheme approved by the Retirement Benefits Authority.
>
> Schemes

232. It is contended by the Petitioner that the existing Pension scheme referred to in the two statutes refers to the County Pension Fund (previously LAPTRUST (Umbrella) Retirement Fund. The Petitioners contend that this position is supported by countless policy directives and assurances by the Cabinet Secretary, National Treasury and the RBA to the Local Authorities Pension Trust Board of Trustees. The Petitioners refer to a letter dated 23rd December, 2010 at Exhibit GK – 4 (Page 166) of the replying affidavit of George Kwetho for the 3rd Respondent in Petition No. 213, letter dated 7th March, 2010 (Exhibit GK – 6 (page 172 of Petition No. 213), Circular No. 18 of 2010, Letter dated 23rd September, 2013 (Exhibit GK – 12 at page 626, letter dated 13th November, 2013 page 629, letter dated 20th November, 2013 (Exhibit GK 14 at Page 632) and the Legal Opinion from the Attorney General (Exhibit GK -18) at page 651 of the same affidavit

233. It is further the Petitioner's contention that the Attorney General and Cabinet Secretary, National Treasury did not deny or disown the contents of the letters and legal opinion.

234. LAPFUND disagrees. It states that section 132 of the *County Governments Act* was engineered by LAPTRUST in a bid to push it out of business.

235. The RBA through the Affidavit of Charles Machira sworn on 16th July, 2020 contends at paragraph 19 that neither the *County Governments Act* nor the *Urban Areas and cities Act* make any provisions as to which specific retirement benefits scheme county employees should belong.

236. The terms "Pension Fund" and "Provident Fund" are defined in the Trustees (Perpetual Succession) Act as follows:-

> "pension fund" means a fund established under trusts subject to the law of Kenya, in connection with an undertaking or combination of undertakings carried on wholly or partly in Kenya, being a fund which the main purpose is—
>
> (a) the provision of superannuation allowances on retirement to persons employed in the undertaking or combination of undertakings in connection with which the fund is established; or
>
> (b) the provision of pensions during widowhood to the widows of persons who are or who have been so employed and of periodical allowances to or in respect of children of those persons; or
>
> (c) the assurance of capital sums on the death of persons who have been so employed,
>
> **whether or not the fund has been approved and registered pursuant to and for the purposes of the Income Tax Act (Cap. 470);"provident fund" means a fund whether or not approved and registered pursuant to and for the purposes of the *Income Tax Act* (cap. 470), which is established under an irrevocable trust and which is established by or on behalf of an employer with the principle object of providing for the payment of lump sums to his employees in respect of their service with him upon their leaving that service after a specified period thereof, or to any of the dependants, or to the estate, of any of those employees on their death while in that service;**

237. There is no dispute that LAPTRUST is a pension scheme while LAPFUND is a provident Fund. It is further not in dispute that before the enactment of the County Governments Act and the Urban and Cities Act the employees of County Governments were members of both schemes. A provident Fund by definition is a defined contribution scheme as the benefits payable to the members is an aggregate of the employee's contribution, the employer's contribution and the interest earned from investment of both. Based on the foregoing, the policy changes contained in the Treasury Circular No. 18 of 2010 could only have been directed at LAPTRUST as LAPFUND was already compliant.

238. I do not think it was the intention of parliament to lock out any of the two schemes when enacting the two statutes. If this was the intention, nothing prevented Parliament from expressly stating so. Indeed the letter dated 13th November 2013 states in part:

> "consequently, this letter serves to confirm that the Ministry of Devolution & Planning is amenable to the said amendments as approved by the National Treasury and request that your good office considers the same fit for registration as the D.C Scheme has been endorsed as one of the Retirement Benefits Schemes to offer pension and other related benefits for officers, staff and members of County Governments"
>
> [Emphasis added]

239. The letter dated 20th November, 2013 also makes the same reference at the penultimate paragraph at page 633 of the replying affidavit referred to above where it states:

> "This letter therefore seeks to confirm that LAPTRUST (umbrella) Retirement Fund has been endorsed as one of the schemes to offer pension and other related benefits to the members, officers and staff of County Governments."
>
> [Emphasis added]

240. For these reasons it is my view that the reference to existing pension scheme in section 132 of the *County Governments Act* and section 49 of the *Urban and Cities Act* must of necessity refer to both LAPFUND and LAPTRUST.

241. It is therefore in my view, the County Governments in their capacity as employers to define the categories of staff to be eligible for membership of either of the schemes as was the intention at the inception of the two schemes.

242. With respect to Petition No. 36 of 2022, the Petitioner is an employee of the County Government of Kakamega. It is not clear whether the Petitioner filed the petition in her capacity as an employee or in her capacity as the Area Branch Secretary of the Kenya County Government Workers Union.

243. If she filed the petition in her capacity as Area Branch Secretary, then the petition would be incompetent as the *Labour Relations Act* provides for the manner of instituting trade disputes by trade unions at section 62(1) thereof as follows:

> (1) A trade dispute may be reported to the Minister in the prescribed form and manner—
>
> (a) by or on behalf of a trade union, employer or employers' organisation that is a party to the dispute; and
>
> (b) by the authorised representative of an employer, employers' organisation or trade union on whose behalf the trade dispute is reported.

244. Section 73(3) of the *Labour Relations Act* provides for the procedure of referring duties to this Court as follows:

> (3) A trade dispute may only be referred to the Industrial Court by the authorised representative of an employer, group of employers, employers' organisation or trade union.

245. Authorised representative is defined at section 2 of the *Labour Relations Act* to mean:

> "authorised representative" means—
>
> (a) the general secretary of a trade union;
>
> (b) an employer or the chief executive officer of an employer;
>
> (c) the secretary of a group of employers;
>
> (d) the chief executive or association secretary of an employers' organisation; or
>
> (e) any person appointed in writing by an authorised representative to perform the functions of the authorised representative;

246. The Petitioner, not being an authorised representative would have no capacity file a representative dispute or petition on behalf of the union or union members.

247. If the petition is filed in the Petitioner's capacity as an employee of the County Government of Kakamega, the procedure for resolution of dispute is as provided in section 77 of the *County Government Act* as follows:

> 77. Appeals to the Public Service Commission
>
> (1) Any person dissatisfied or affected by a decision made by the County Public Service Board or a person in exercise or purported exercise of disciplinary control against any county public officer may appeal to the Public Service Commission (in this Part referred to as the "Commission") against the decision.
>
> (2) The Commission shall entertain appeals on any decision relating to employment of a person in a county government including a decision in respect of—
>
> (a) recruitment, selection, appointment and qualifications attached to any office;
>
> (b) remuneration and terms and conditions of service;
>
> (c) disciplinary control;
>
> (d) national values and principles of governance, under Article 10, and values and principles of public service under Article 232 of the Constitution;
>
> (e) retirement and other removal from service;
>
> (f) pension benefits, gratuity and any other terminal benefits; or
>
> (g) any other decision the Commission considers to fall within its constitutional competence to hear and determine on appeal in that regard.
>
> (3) An appeal under subsection (1) shall be in writing and made within ninety days after the date of the decision, but the Commission may entertain an appeal later if, in the opinion of the Commission, the circumstances warrant it.
>
> (4) The Commission shall not entertain an appeal more than once in respect to the same decision.
>
> (5) Any person dissatisfied or affected by a decision made by the Commission on appeal in a decision made in a disciplinary case may apply for review and the Commission may admit the application if—
>
> (a) the Commission is satisfied that there appear in the application new and material facts which might have affected its earlier decision, and if adequate reasons for the non-disclosure of such facts at an earlier date are given; or
>
> (b) there is an error apparent on record of either decision.
>
> (6) An application for review under subsection (5) shall be in writing and made within the time prescribed by the Commission in regulations governing disciplinary proceedings, but the commission may entertain an application for review later if, in the opinion of the Commission, the circumstances warrant it.

248. The prayers sought in the petition concern pension deduction remittances which fall under the above Section.

249. For the foregoing reasons, I find that the petition is incompetently filed by the Petitioner before this Court, is incurably defective and premature, having not exhausted the procedure provided for under the *County Government Act*. The same is accordingly dismissed.

Conclusion

250. From the conclusions I have reached above, it is my finding that the *County Governments Retirement Scheme Act*, 2019 is unconstitutional for lack of public participation and for being in conflict with article 1, 2(1) and (4), 3(1), 6, 10, 35, 40(2)(a), 4(1), 43(1)(e), 118, 191(3)(b) and 258 of the *Constitution* of Keny(a)

251. The impugned *Act* is further in conflict with the *County Government Act* and the *Urban and Cities Act*, the *Retirement Benefits Act* and the *Employment Act*.

252. Article 2 of the *Constitution* provides that the Constitution is the supreme law of the Republic and therefore any statute in conflict with the Constitution is invalid. I therefore declare the *County Governments Retirement Scheme Act* as unconstitutional and therefore null and void.

253. In view of the fact that the consolidated petition is a public interest petition, every party shall bear its costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 20TH DAY OF DECEMBER 2022

MAUREEN ONYANGO

JUDGE

RBA

THE COUNTY ASSEMBLIES PENSIONS SCHEME BILL, 2024

	PROVISION	OBSERVATION	RECOMMENDATION
	1 – Interpretation		
1.a	2 - "*dependant*" in relation to a deceased member, means a relative of the deceased who survives the deceased and who, on the date of the deceased's death, was— (a) a spouse to the deceased; (b) a child of the deceased; or (c) a parent of the deceased who was dependent on the deceased for the provision of the ordinary necessities of life.	The definition is limited to a few consanguine persons and thereby unreasonably restricts the trustees' power to make provisions for excluded persons. Further, it makes no provision for the nomination of beneficiaries by the principal member during his lifetime.	Amend the definition as follows: "beneficiary" to mean a dependant, a person nominated by the member in writing, or any other person other than a member entitled to receive a benefit under the Scheme.
b.	2 - "*existing scheme*" means …Local Authorities Pension Trust (Umbrella) Retirement Fund.	The Local Authorities Pension Trust (Umbrella) Retirement Fund has since changed its name to County Pension Fund	Amend the Act by replacing Local Authorities Pension Trust (Umbrella) Retirement Fund with County Pension Fund in Sections 2 and 53.

c.	2 - "*income drawdown*" means the facility to continue to keep retirement savings invested in the scheme and take an income during a specified period rather than buy an annuity	Income drawdown fund are regulated under the Retirement Benefits (Income Drawdown Funds) Regulations, 2023 and the definition should mirror the definition appearing in those regulations	Amend the definition of an Income Drawdown Fund as follows "income drawdown" means an arrangement that allows a member of a retirement benefits scheme to access his or her accumulated retirement benefits as a regular income through reinvesting his or her benefits from an income drawdown fund registered by the Retirement Benefits Authority;
d.	2 - "*normal retirement age*" means the age as set by the Public Service Commission or any **other** Act of Parliament for the retirement of public officers;	Drafting implies that "*the Public Service Commission*" is or has an act of parliament that has set an age for the retirement of public officers.	Amend the definition as follows: "*Normal retirement age*" means the age of 60 years or such other age set out in written law or applicable policy.
e.	2 - "*spouse*" means a male or female person to whom a	The word spouse is used only once, post-mortem. The	Amend the definition as follows:

	member is married or was married under any other law, whether monogamous or not immediately before their death;	definition therefore contains superfluous provisions. The words "whether monogamous or not" are also surplusage since the definition refers to other laws. The Marriage Act, 2014 is currently the only statute that sets out provision for marriage in Kenya. The Act defines "spouse" simply as a husband or a wife; and "marriage" as the voluntary union of a man and a woman whether in a monogamous or polygamous union and registered in accordance with the Act. Since the Act does not recognise an unregistered marriage, and there are many unions which though unregistered, are ultimately presumed by courts to be marriages under common law, the words "married under any law" should be retained.	"*spouse*" means a male or female person to whom a member was married under any law at the time of their death;

	2 – Establishment of the scheme		
2.a	4 (2) The scheme is a body corporate with perpetual succession and a common seal	In common law, schemes are not juridical persons – incorporated trustees are. **Cf. –** National Social Security Fund Act, 45 of 2013 *5. Establishment of the Board of Trustees (1) There is established a body to be known as the National Social Security Fund Board of Trustees which shall, inter alia, be vested with the responsibility of directing and managing the Fund. (2) The Board shall, by that name be a body corporate with perpetual succession and a common seal,* **Cf. –** Local Authorities Provident Fund Act, Cap 272 *5. Establishment of the Board (1) There is hereby established a board to be known as the Local Authorities Provident Fund Board…(8) The Board shall be a body corporate having perpetual succession and a common seal, and may in its corporate name sue and be sued, and may, for and in*	Make the Board of Trustees the body corporate by deleting Section 4(2) and transposing the contents thereof to a new Section 6 (1A) under the Board of Trustees of the Scheme.

		connection with the purposes of this Act, purchase, hold, manage and dispose of land and other property and enter into such contracts as it may consider to be necessary or expedient **Cf. –** Public Service Superannuation Scheme Act, Cap 189A *10. Establishment of a Board of Trustees (1) There is established a board of trustees of the Fund to be known as the Public Service Superannuation Fund Board of Trustees… (2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of – (a) suing and being sued; and (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; (c) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.*	

b.	4 (3) The Scheme shall be a defined contribution scheme **providing social security benefits …**	The bolded words create the impression that the scheme provides benefits other than accrued retirement savings. In Nai ELRC Petition 213, 222 & 230 of 2019 & 36 of 2022 – National Social Security Fund Justice Maureen Onyango held that "*The right to social security was of central importance in guaranteeing human dignity for all persons when they were faced with circumstances that deprived them of their capacity to fully realize their constitutional and covenant rights under the International Covenant on Economic, Social and Cultural Rights. The duty was on the State to avail resources, allocate resources and remove barriers which could interfere with such allocation of resources since that was not permissible on the basis that the State would have reached a different conclusion outlined under article 43(5)(c) of the Constitution. The resources to be availed and allocated should emanate from the State*	Amend the definition as follows: (3) The Scheme shall be a defined contribution scheme (3A) The object and purpose of the Scheme shall be to – (a) pay retirement benefits to members of the Scheme and relief to their dependents upon death of the member; (b) ensure that every member of the Scheme receives his retirement benefits as and when they become due; (c) Improve the social security of members of the Scheme by ensuring that the members save in order

		pursuant to article 45 of the Constitution. For the fund to remove such duty from the State to the registered members was an overreach on its statutory mandate" The detailed decumulation methods should be left to regulations and guidelines. **Cf. –** Public Service Superannuation Scheme Act, Cap 189A	to cater for their livelihood during their retirement… (d) establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme.
c.	6 (2) (e) - (e) two representatives of the staff of the county assemblies nominated by the SOCCAT (K)	The current number of trustees is 10 however the total number of trustees should be in line with Regulation 21 of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations. The acronym SOCCAT (K) is not defined. Further, there is no provision for succession should the body cease to exist. **Cf. –** Local Authorities Provident Fund Act, Cap 272	Amend the provision to state *5C - (c) one member appointed by* "Society of Clerks at the Table in Kenyan Legislatures" *or such other body as may for the time being have succeeded to the functions of that association;*

		5C - (c) two members appointed by the Association of Local Government Authorities of Kenya (or such other body as may for the time being have succeeded to the functions of that Association);	
d.	9 (2) Where a Trustee opts to apply for re-appointment under subsection (1), the re-appointment may be considered based on the performance of the applicant. (3) The Board shall put in place arrangements to ensure that one-third of the Trustees are appointed in a staggered manner.	Appointment of trustees in 6 (1) is based on nomination by defined bodies and as such trustees do not *"apply for re-appointment"* and the Board has no practical way of ensuring *"that one-third of the Trustees are appointed in a staggered manner."*	Delete subsection 9(2). Amend subsection 9(3) to mirror Subsection 6(5) as follows:- *The Cabinet Secretary shall ensure that one-third of the Trustees are appointed in a staggered manner.*
e.	11. A person ceases to be a Trustee if the person—	There is no provision for effluxion of term.	Amend section 11 by introducing the following new subsection 1 - "a trustee shall cease to hold office upon the expiration of the term.

			Amending the chapeau as follows:- 2. Notwithstanding the foregoing, a person shall cease to be a trustee if the person—
f.	11. A person ceases to be a Trustee if the person— (e) cease to be a member of a county assembly	A member can cease to be a member of the county assembly but still retain his benefits in the scheme	Delete paragraph11 (e)
g.	13 (g) negotiate competitive annuity rates on behalf of members;	The members should negotiate for themselves the annuity rates	Delete paragraph 13 (g)
h.	14 (3)(b) appoint a custodian, fund manager and administrator to carry out their functions as specified in the Retirement Benefits Act, Cap. 197;	If the scheme chooses internal administration, then there is no need for it to appoint an external administrator	Delete the word "Administrator" in paragraph 14 (3) (b)
	3. Administration of the scheme		

3.a	21. The Board **shall** appoint a fund manager of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act	Where the fund invests wholly in a guaranteed fund or government securities, the Manager may be otiose.	Amend as follows: - 21. The Board ***may*** appoint a fund manager of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act
b.	23 (2) The administrator shall be an employee of the Board.	This provision leaves no room for contracting an external administrator. In nascent stages, schemes may benefit from external administration as they ramp up internal capacity.	Amend by deleting subsection 2 to give the Board to appoint an internal or external administrator under subsection 1, as the circumstances may require. Consider either of the following approaches:- 1. Remove all provisions setting out the structure of the administration of the scheme (including the requirement for and give trustees unfettered discretion to choose

			either external or internal administration. 2. Retain the provision for CEO as the accounting officer, but leave the trustees to choose either external or internal administration. 3. Set out the structure for internal administration in the law. **Cf. –** NSSF Act 2013
	4. Benefits		
4.a	24(6) Any contribution not paid to the scheme by a sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest during the period they remain unpaid at a rate specified by the Board from time to time provided that such rate shall	The Retirement Benefits Act does not define the specific interest chargeable. The same is usually defined in the trust deed and rules of a scheme. The board's discretion for enforcement can be abused	Amend paragraph 24(6) to include a specific interest rate. *24(6) Any contribution not paid to the scheme by a sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest which shall*

	not be less than the rate specified in the Retirement Benefits Act and Regulations.		*not be less than the interest declared during the period the contribution remains unremitted*
b.	26 (3) (a) where a member ceases being a member or a staff of a county assembly before one year of membership, the member may opt for payment of his own and the whole of the sponsor's contributions, together with allocated investment (b) where a member ceases being a member or a staff of a county assembly after one year of membership but before attaining the specified early retirement age, the member may opt for payment of – (i) his or her own contribution and the sponsor's contribution as may be prescribed by the Retirement Benefits Authority and the investment income that	The current statutory requirement for retention of accrued retirement benefits is 50%. The provision for a person who ceases being a member or a staff of a county assembly before one year of membership to opt for payment of the whole of the sponsor's contributions is not correct because the Retirement Benefits Regulations require the immediate vesting of benefits on the member, and the member should be encouraged to preserve the accrued benefits. A member who falls ill or emigrates from Kenya should be allowed to access accrued benefits regardless of age and the reference to early retirement age is incorrect.	Delete 26 (3) (a) and amend 26 (3) (b) as follows:- 26 (3) (b) (i)where a member cease being a member or a staff of a county assembly before attaining the early retirement age, that member may opt for payment of not more than fifty per cent of his total accrued benefits and the investments income that has accrued in respect of those contributions. Provided that a member may withdraw any additional voluntary contributions made into the Scheme and accrued interest in full;

	has accrued in respect of those contributions; and (ii) the balance shall be retained in the Scheme and continue to accrue interest until the member attains early retirement age, or transferred to another registered Scheme of the members choice; (c) a member may opt for payment to him or her of the total amount of vested accrued benefits **before attaining the early retirement age—**		Amend 26 (3) (c) as follows a member may at any time opt for payment to him or her of the total amount of vested accrued benefits Delete the phrase *"before one year of membership"* wherever it appears.
c.	29 (2) Despite the provisions of any other written law, a benefit granted under this Act shall not be— (a) assignable or transferable except in accordance with the terms of a mortgage guarantee facility approved by the Board; and	The terms of the mortgage guarantee facility are not clear	Amend 29 (2) as follows; Subject to the Retirement Benefits Act and regulations, a benefit granted under this Act shall not be— (a) assignable or transferable except in accordance with the terms of a mortgage guarantee facility approved by the Board;

d.	44. (1) The scheme shall be reviewed by an actuary appointed by the Board as provided for in the Retirement Benefits Act.	The role of an actuary in a defined contribution scheme is limited, and the Board should have the flexibility to choose whether the input of an actuary is necessary.	Amend the provision by replacing the word "shall" with "may."
e.	49 (4) Without prejudice to any proceedings instituted under the provisions of this section, a person who refuses or fails to comply with a notice given to him or her under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five million shillings, or in the case of a natural person, to imprisonment for a term not exceeding two years, or to both.	Amendment is necessary to make the offence clear	Amend as follows:- Without prejudice to any proceedings instituted under the provisions of this section, a sponsor who makes deduction from a member's emoluments for remittance to the Scheme, and fails to remit the contribution to the scheme within fifteen days of the deduction commits an offence and shall be liable on conviction to a fine not exceeding five million shillings, or in the case of a natural person, to imprisonment for a term not exceeding two years, or to both.

	Exemption	The Cabinet Secretary should have the power of exemption for operational flexibility in unforeseen circumstances.	Introduce a new Section 55 55. Exemption from compliance with provisions of this Act The Cabinet Secretary may, by order published in the Gazette— (a) exempt any person or class of person from compliance with any specified provisions of this Act; or (b) extend the time for compliance by any person or class of persons with any specified provisions of this Act Provided that nothing in this section shall apply in respect of payment of retirement benefits.
	Dispute resolution	There is no provision for dispute resolution or appeals under the act in case a member is dissatisfied with a decision of the board.	Include a provision for dispute resolution and appeals



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

KENYA REVENUE AUTHORITY'S SUBMISSION TO THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE COUNTY ASSEMBLIES PENSIONS BILL, 2024 (SENATE BILLS NO. 14 OF 2024)

JULY 2024

KENYA REVENUE AUTHORITY
Confirmed
P. O. Box 48240 - 00100, NAIROBI
Date: 03.07.2024
Sign:

1.0 INTRODUCTION

The Senate Standing Committee Labour and Social Welfare vide letter Ref: SEN/DSEC/SCLSW/2024/65 dated 24th June 2024 has requested Kenya Revenue Authority (KRA) to submit views on the County Assemblies Pensions Bill, 2024 (Senate Bills No.14 of 2024).

I therefore wish to submit as follows:

KENYA REVENUE AUTHORITY
Confirmed
P.O. Box 48249 - 00100, NAIROBI
Date: 03. 07. 2024
Sign:

2.0 COMMENTS ON THE COUNTY ASSEMBLIES PENSIONS BILL, 2024 (SENATE BILLS NO. 14 OF 2024)

No.	Clause	Current provision/Issue	Proposed Amendment	Justification	Comments
1.	Clause 2	"income drawdown" means the facility to continue to keep retirement savings invested in the scheme and take an income during a specified period rather than buy an annuity;	Refer to the term "income drawdown" as defined under the Retirement Benefits (Income Drawdown Funds) Regulations, 2023, Legal Notice 187.	The Regulations govern the management and operation of income drawdown funds within retirement benefits schemes.	These regulations are designed to provide a framework for how individuals can withdraw and manage their pension funds over time, offering flexibility and ensuring responsible management to safeguard retirees' financial security.
2.	Clause 6	6 (1) The management of the Scheme shall vest in a Board of Trustees of the Scheme. ..... (e) two representatives of the staff of the county assemblies nominated by the SOCCAT (K);	6 (1) The management of the Scheme shall vest in a Board of Trustees of the Scheme. ..... (e) two representatives of the staff of the county assemblies nominated by the Society of Clerks at the Table in Kenyan County Legislatures (SOCCAT) (K);	Definition of the Abbreviated Term "SOCCAT(K)"	The term "SOCCAT(K)" has been used in the clause. To clarify, the abbreviated term should be written in full. Therefore, "SOCCAT(K)" should be replaced with its full form, which is "Society of Clerks at the Table in Kenyan County Legislatures."
3.	Clause 24	(1) A member shall, so long as the member is a member of a county assembly, contribute not less than seven nought five percent (7.5%) of that member's pensionable emoluments to the Scheme	(1) A member shall, so long as the member is a member of a county assembly, contribute not less than seven point five percent (7.5%) of that member's pensionable emoluments to the Scheme	Seven nought five percent means 7.05%. In this context, "nought" refers to the zero, making the number 7.05. There is need for correction of typographical error.	"Seven point five percent" (7.5%) and "seven nought five percent" (7.05%) represent different values. Therefore, this correction is intended to address the typographical error noted and align the wording with the percentage in the bracket.

KENYA REVENUE AUTHORITY
Confirmed
P. O. Box 48240 - 00100, NAIROBI
Date: 03. 07. 2024
Sign:

No.	Clause	Current provision/Issue	Proposed Amendment	Justification	Comments
4.	Clause 39	39. (1) The Board may maintain a reserve account of the Scheme into which the following shall be deposited— ..... (b) Any income of the Scheme that the Board determines should be set aside to stabilize the returns to members subject to a maximum of ten per cent of such income with consideration to the Income Tax Act or regulations made thereunder.	39. (1) The Board may maintain a reserve account of the Scheme into which the following shall be deposited— ..... No proposed amendment		For the amount of income of the Fund transferred to reserve to be exempt from tax, there is need for the exemption to be specifically provided for in the Income Tax Act.

3.0 CONCLUSION

KRA is committed to complying with all the laws in place as it executes its mandate of tax administration and trade facilitation. Further, the Authority is available to provide the committee with any additional information sought from us.

KENYA REVENUE AUTHORITY
Confirmed
P. O. Box 48240 - 00100, NAIROBI
Date: 03. 07. 2024
Sign:

Salaries & Remuneration Commission

Rewarding productivity

Ref. No: SRC/TS/8/Vol. 1 (121) **30th May, 2024**

Mr. Jeremiah M. Nyegenye, CBS
Clerk of the Senate
NAIROBI

Dear Mr. Nyegenye,

MEMORANDUM ON THE COUNTY ASSEMBLIES PENSIONS SCHEME BILL, 2024

Reference is made to the captioned Bill and the advertisement in the daily newspapers of 16th May 2024 inviting views thereon.

The Salaries and Remuneration Commission (SRC) has reviewed the Bill and notes that the Memorandum and Objects of the Bill is to establish the County Assemblies Pensions Scheme for all members of County Assemblies; provide for establishment of the scheme's Board of Trustees and provide for the scheme's management and administration. The Bill proposes to have the scheme offer lump sum payments as provident, periodic payments as pensions and income drawdowns. The proposed scheme will transition all members of the county assemblies into one universal scheme for all the forty-seven county governments besides being open to other public officers and any other person approved by the Board.

SRC has examined Bill and notes that the provisions of the Bill are in line with the guidelines SRC issued to the County Assemblies Forum vide its letter Ref. No: SRC/TS/CAF/61/49(86) dated 20th February, 2020 **(copy attached)** on establishing a contributory scheme for County Assemblies, except **clause 24 (4)** that provides that—

> **'the sponsor shall take out and maintain a life insurance policy that has disability benefits in favour of every member of the Scheme, for a minimum of three times of the member's annual pensionable emoluments'.**

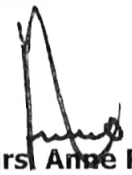
The Commission has set and advised on Group Life Cover as a standaione benefit for the public service. The benefit should, therefore, not be in the retirement benefits Bill. Consequently, the Commission's view is that the clause be deleted from the Bili.

The purpose of this letter is to communicate the views of SRC on the Bill for your consideration.

'illiamson House, 6th Floor, 4th Ngong Avenue. P.O. Box 43126, GPO-00100, Nairobi, Kenya. Tel: +254 (20) 2710065/71/73/81 / +254-736712864
nail: info@src.go.ke Website: https://www.src.go.ke/ @srckenya @SRCKE Salaries and Remuneration Commission

The Commission appreciates your continued cooperation and support as we discharge our respective mandates.

Yours



Mrs. Anne R. Gitau, EBS
COMMISSION SECRETARY/CEO

Salaries & Remuneration Commission
Rewarding productivity

86

Ref No: SRC/TS/CAF/3/61/49 (86) **20th February, 2020**

Hon. James Ndegwa Wahome, MBS
Chairperson
County Assemblies Forum
P.O. Box 73552 - 00200
NAIROBI

Dear

GUIDELINES ON PENSION BENEFITS FOR STATE OFFICERS IN THE COUNTY GOVERNMENTS

Reference is made to your letter Ref. No: CAF/12/1/2019 (36) dated 6th January, 2020 and the consultative meeting on establishing a County Assemblies Pension Scheme for Speakers and Members of County Assemblies, held on 20th February, 2020, between the County Assemblies Forum and Salaries and Remuneration Commission (SRC) at the SRC Boardroom.

The Commission guides that in setting up a Pension Scheme for State Officers in the County Assemblies, the County Assemblies Forum adheres to the following guidelines:

1. There shall be two (2) types of retirement benefits for State Officers in the County Governments, **Pension** and **Gratuity.** An employee may **opt** for either of the Benefits.

2. Where an employee opts for gratuity, the applicable conditions and rates for gratuity shall apply, as set by SRC.

3. Where an employer establishes a pension scheme for its State Officers, the following guidelines shall apply:

   (a) **Scheme Design:** The Scheme design shall be **Defined Contribution Scheme.**

   (b) **Pensionable Emoluments (PE):** Pensionable emoluments i.e. salary used to calculate pension emoluments, shall be expressly defined as **sixty (60) percent of the monthly gross remuneration package,** as set by SRC for State Officers.

   (c) **Contribution Rate:**

      (i) The employer's contribution rate shall be at least **15%** of the Member's monthly pensionable emoluments and shall not exceed **20%** of the pensionable emoluments, subject to affordability and fiscal sustainability; and

(ii) The Member's contribution rate shall be at least **7.5% of the monthly pensionable emoluments;**

(iii) A member may make additional voluntary contributions to the scheme without commensurate monthly contributions by the employer.

(d) **Benefits:** Benefits shall be administered in accordance with the Trust Deed and Rules of the Pension Scheme as guided by the Retirement Benefits Authority Regulations, provided that such benefits shall be fully funded from the pension scheme account.

(e) **Eligible Members:** The County State Officers pension scheme shall cover all State Officers in the County Governments.

(f) **Transition:** Members may opt to transfer gratuity accrued as at the date of joining the Scheme, into the Pension Scheme, provided that no additional cost shall be incurred by the employer on such transfer.

(g) **Compliance to Existing Laws/Regulations:** The Pension Scheme shall be established in compliance with the Retirement Benefits Act and Regulations, Kenya Revenue Authority Income Tax laws and other relevant laws and regulations governing Pension Schemes in Kenya.

4. No State Officer shall benefit from both pension and gratuity benefits from the same public service employer for a similar period.

5. The effective date of the Pension Scheme shall be the date of establishing the Scheme.

6. The effective date of the employee membership to the Pension Scheme shall be the date of joining the Pension Scheme.

7. An employer seeking to establish a Pension Scheme for its State Officers, shall submit a copy of the draft Bill to the Commission, for concurrence.

The purpose of this letter therefore, is to forward the Guidelines for your necessary action.

Yours

Mrs. Anne R. Gitau, MBS
COMMISSION SECRETARY/CEO

APPENDIX 6

THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE.

THE COUNTY ASSEMBLIES PENSIONS SCHEME BILL
(SENATE BILLS NO. 14 OF 2024)

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
Long title	CPF Financial Services. (CPF)	Amend to exclusively provide for members of county assemblies.	Staff of county assemblies are already covered in existing retirement benefits arrangements like Laptrust, CPF and LAPFUND.	
Appointing Authority	CPF	Review the powers of CS, Treasury under clauses 6, 10, 11 and 12.	*Okoiti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR)* held that it is unconstitutional for the national government to play a pervasive role in the running of pension schemes for county government employees and officers	

2	County Assemblies Forum (CAF)	Include the definition of County Assemblies Forum	CAF is the institution representing the 47 County Assemblies and all the Members of County Assemblies.	
		Include the definition of Principal Secretary to read " The Principal Secretary means Principal Secretary under the State Department of Devolution"	This is to take care of the devolved government.	
		Amend the definition of "early retirement age: to read: "early retirement age" means such age as may be prescribed but which shall not be less than forty five years;"	The retirement age should be the same as the Members of Parliament as provided in the Parliamentary Pensions Act.	
		Amend the Clause by deleting the definition of the Cabinet Secretary of National Treasury and replace it the following definition— "The Forum Chairperson means the Chairman of the County Assemblies Forum"	*Okoiti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR)* held that it is unconstitutional for the national government to	

			play a pervasive role in the running of pension schemes for county government employees and officers	
		Amend the Clause by deleting the definition and replacing it with the follows: "pensionable emoluments" includes salary, responsibility allowance, constituency allowance, nominated member's allowance, ex officio member's allowance, house allowance, accommodation allowance and sitting allowance;	Given that MCAs' base salaries are relatively low, incorporating these allowances into pensionable emoluments will address salary insufficiencies and provide them with greater financial security and stability, particularly after retirement. This amendment ensures that their total compensation is accurately reflected in their pension calculations, acknowledging the full extent of their earnings and the true cost of their public service.	
	Kenya Revenue Authority (KRA).	Refer to the term "income drawdown"as defined under the Retirement Benefits (Income Drawdown Funds) Regulations, 2023	The Regulations govern the management and operation of income drawdown funds within retirement benefits schemes.	
		Include the definition of SOCCAT (K) used in clause 6.	The full form of the term should be used- Society of Clerks	

			at the Table (Kenya).	
	LAPFUND	Include housing allowance in the definition of pensionable emoluments and provide a separate definition of pensionable emoluments for the MCAs.	This is to align the Bill with Article 41 of the Constitution and section 10 of the Employment Act and SRC guidelines	
		Include names of all existing schemes.	This is to ensure that all existing schemes are listed.	
	Retirements Benefits Authority (RBA).	Include the definition of the term "beneficiary" to read— "beneficiary" means a dependant, a person nominated by the member in writing or any other person other than a member entitled to receive a benefit under the Scheme.	This will allow nomination of beneficiaries by the principal member during his lifetime.	
		Include all existing schemes in the definition of existing scheme.		
		Amend the definition of the term "income drawdown" to read— "income drawdown" means an arrangement that allows a member of a retirement benefits scheme to access his or her accumulated retirement benefits as a regular income through reinvesting his or her benefits from an income drawdown fund registered by the Retirement Benefits	The definition should mirror the definition under the Retirement Benefits (Income Drawdown Funds) Regulations, 2023.	

		Authority;		
		Amend the definition of "normal retirement age" to read— "normal retirement age" means the age of sixty years or such other age set out in written law or applicable policy;		
		Amend the definition of "spouse" to read— "spouse" means a male or a female person to whom a member was married under any law at the time of their death;	Align the Bill with the Marriage Act.	
4	RBA	Make the Board of Trustees the body corporate by deleting section 4 (2) and transposing the contents thereof to a new sections 6 (1A) under the Board of Trustees.	Under common law, schemes are not juridical persons, incorporated trustees are. Refer to NSSF Act, LAPFUND Act, Public Service Superannuation Scheme Act.	
		Deleting the words "providing social security benefits" appearing in	This to protect and maintain the independence at the Board, its fiduciary responsibilities and Retirement Benefits Act and the common law of trusts.	

	CPF	Make the Board of Trustees the body corporate as opposed to the scheme itself. The Board shall then be registered under the Trustees (Perpetual Succession) Act, Cap 164.		
		Review 4 (2).	Social security is a role of government under Article 43 of the Constitution.	
5	LAPFUND	Allow voluntary scheme membership and transition subject to existing schemes' members consent.	This is to uphold Article 41 of the Constitution and section 33 of the Retirement Benefits Act.	
6	CAF	Amend the by deleting subclause 6 (2) (b) and amend sub-clause 6 (2) (d) to state as follows— (a) six persons nominated by the County Assemblies Forum the forum representing all the county assemblies in of whom at least two shall not be of the same gender as follows— (i) three representatives of members of county assemblies contemplated in Article 177(a) of the Constitution; (ii) a representative of members of county assemblies	The clause should be specific that County Assemblies may enact county specific legislation.	

		contemplated in Article 177(b) of the Constitution; and (iii)a representative of members of county assemblies contemplated in Article 177(c) of the Constitution;		
	KRA	Amend clause 24 (1) to read "seven point five percent " (7.5%) instead of "seven nought five percent".	Seven nought five percent means 7.05%. nought refers to zero. This is to correct a typographical error.	
	SRC	Delete subclause (4).	Group life insurance cover should be a standalone benefit for the public service.	
	RBA	Align the total number of trustees to be in line with Regulation 21 of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations.	This will align the Bill with the Retirement Benefits Act.	
9	RBA	Delete subclause (2).	Appointment is based on nomination.	
		Amend subclause (3) to read— (3) The Cabinet Secretary shall ensure that one third of the trustees are appointed in a staggered manner.	The Board has no practical way of ensuring staggered appointments.	

11	RBA	Introduce a new subclause— (h) upon expiry of the term.	There is no provision for effluxion of time.	
		Delete paragraph (e).	A member can cease to be a member of a county assembly but still continue to be a trustee.	
13	RBA	Delete paragraph (g).	The members should negotiate for themselves the annuity rates.	
18, 19, 23	CPF	Amend clauses 18,19 and 23 to allow Trustees appoint an Administrator to the Scheme.	This in line with section 25B of the Retirement Benefits Act.	
23	LAPFUND	Clearly specify that the scheme will be administered internally with the Chief Executive Officer as the administrator of the Scheme.	This will ensure transparency, cost efficiency and proper administration of the scheme providing clear operational guidelines.	
	RBA	Delete subclause (2) to give the Board power to appoint an internal or external administrator. Consider— (a) removing the structure of the administration of the scheme; (b) retain the provision for CEO as the accounting officer but	The provision leaves no room for contracting an external administrator. In nascent stages, schemes may benefit from external administration as they ramp up internal capacity.	

		give trustees power to either appoint a external or internal administration; or (c) set out the structure for internal administration.		
24	CAF	Amend sub clause (1) and (2) to with the following subheading— Contributions for Member of County Assemblies (1) Every Member of County Assemblies shall, so long as he or she remains in the employment of a sponsor, contribute not less than twelve per cent (12%) of his or her pensionable emoluments to the Scheme. (2) Every sponsor shall contribute to the Scheme not less than thirty one per cent (31%) of the pensionable emoluments of a member of the Scheme plus the amounts necessary to cover the premiums for insured benefits." Further add as clause 24 A (1) and (2) with the following sub heading— Contributions for Members of staff of the County Assemblies	The current contribution rates—7.5% from members and 15% from sponsors— are insufficient to efficiently finance the MCAs' pensions and fall short when compared to the current gratuity system. By increasing the members' contribution rate to not less than twelve percent (12%) and the sponsors' contribution rate to not less than thirty-one percent (31%), the amendment seeks to provide MCAs with a more substantial and sustainable pension. This change will help bridge the gap between the limited service period and the need for long-term financial security, ensuring that MCAs are better supported after their term in office.	

		(1) Members of staff of the county assemblies shall, so long as the member is a staff of a county assembly, contribute not less than seven nought five percent (7.5%) of that member's pensionable emoluments to the Scheme. (2) Every sponsor shall contribute to the Scheme not less than fifteen per cent of the pensionable emoluments of a member of the Scheme plus the amounts necessary to cover the premiums for insured benefit.	The proposed amendment to subclauses (1) and (2) ensures a fair and sustainable pension system for county assembly staff, who are permanent and pensionable employees. The contribution rates of 7.5% from the staff and 15% from the sponsors are sufficient given their long-term employment, allowing adequate accumulation of pension funds. This balanced approach ensures comprehensive coverage and financial security upon retirement while maintaining the sustainability of the pension fund.	
	LAPFUND	Remove the restriction of having to involve the Scheme Board and Sponsors to allow a member make additional voluntary contributions.	Remove restrictions on voluntary contributions. Allow members to make voluntary additional contributions without undue conditions or restrictions in line with Retirement Benefits Act.	
	RBA	Amend subclause (6) to read— (6) Any contribution not paid to the scheme by a sponsor	The Retirement Benefits Act does not define specific interest rates	

		within ten days after the last day of the calendar month to which the contributions relate shall attract interest which shall not be less than the interest declared during the period the contribution remains unremitted.	chargeable. It is defined in the trust deed and rules of a scheme. The Board's discretion for enforcement can be abused.	
	CPF	The contribution rate should be 12% and 31% for members and sponsors respectively.	This is to align with the constitutional requirements of fair labour practices under the Constitution and labour laws and to comply with the court's decision in *Okoiti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR).*	
26	LAPFUND	Include provisions allowing MCAs to access benefits upon lapse of service after serving for two consecutive terms.	This will comply with Article 46 (1) of the Constitution given the status of MCAs.	
	RBA	Delete 26 (3) (a).	The current statutory requirement for retention	

			of accrued retirement benfits is 50%.	
		Amend 26 (3) (b) (i) to read— (b) (i) where a member ceases being a member or a staff of a county assembly before attaining early retirement age, that member may opt for payment of not more than fifty percent of his total accrued benefits and the investments income that has accrued in respect of those contributions Provided that a member may withdraw any additional voluntary contributions made into the scheme and accrued interest in full;	Regulations require immediate vesting of benefits on the member and the member should be encouraged to preserve accrued benefits.	
		Amend 26 (3) by deleting the words "before attaining the early retirement age".	A member who falls ill or emigrates from Kenya should be allowed to access accrued benefits regardless of age.	
29	RBA	Amend 29 (2) introductory clause to read— (2) Subject to the Retirement Benefits Act,	The terms of the mortgage guarantee facility are not clear.	
44	RBA	Amend 44 (1) to make the review by an actuary optional.	The role of an actuary in a defined scheme is limited and the Board should have the flexibility to choose	

			whether the input of an actuary is necessary.	
49	RBA	Amend 49 (4) to read— (4) Without prejudice to any proceedings instituted under the provisions of this section, a sponsor who makes a deduction from a member's emoluments for remittance to the Scheme and fails to remit the contribution to the Scheme within fifteen days commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or in the case of a natural person to imprisonment for a term not exceeding two years or to both.	This is to make the offence clear.	
52	CAF	Amend the Clause to provide the following— "The sponsors and members of the Scheme shall be exempt from making contributions to the Social Security Fund"	In light of the Supreme Court decision in Supreme Court Petition (Application) No. E002 and E004 of 2023, involving the Kenya Tea Growers Association, Agricultural Employers Association, and County Pensioners Association, it has been determined that the NSSF Act is	

			operatively unconstitutional, null, and void. This ruling necessitates a reevaluation of related policies and actions, including the provisions for Members of County Assemblies (MCAs).	
	CPF	No contributions may be made to or received by NSSF on account of NSSF Act, 2013	In light of the Supreme Court decision delivered on 21st February, 2024 in *Supreme Court Petition (Application) No. E002 and E004 of 2023, involving the Kenya Tea Growers Association, Agricultural Employers Association, and County Pensioners Association*, it has been determined that the NSSF Act is unconstitutional, null, and void.	
53	LAPFUND	Require prior consent from existing scheme members before transferring funds to ensure compliance with Retirement Benefits Act.	This is in compliance with section 33 of the Retirement Benefits Act.	
	CPF	Delete subclause (2).	MCAs are not members of County Pension Fund (previously, Laptrust (Umbrella) Pension Fund).	

NEW CLAUSES				
	CAF	Introduce a new clause on medical insurance to read— " A retired Member of County Assembly and spouse shall during his or her lifetime be entitled to Full medical cover."	The pension scheme should provide a medical insurance cover similar to that provided to other retired state officers in National Government.	
	RBA	Insert new Clause 55 on exemptions as follows— 55. Exemption from compliance with provisions of this Act. The Cabinet Secretary may, by order in the Gazette— (a) exempt any person or class of persons from compliance with any specified provisions of this Act; or (b) extend the time for compliance by any person or class of persons with any specified provisions of this Act provided that nothing	The Cabinet Secretary should have the power of exemption for operational flexibility in unforeseen circumstances.	

		in this section shall apply in respect of payment of retirement benefits.		
		Include a provision for dispute resolution and appeals.		

OTHER SUBMISSIONS

1. The County Assemblies Forum submitted on the need to replace "Cabinet Secretary" in the Bill with "Chairperson of County Assemblies Forum" in line with the decision in *Okoiti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR).*

2. The Ministry of National Treasury and Economic Planning made the following recommendations—
   (a) the Bill should be expanded to encompass all county workers whether in the executive or county assemblies to ensure a unified pension system that addresses the specific needs of all county employees;
   (b) a single, cohesive pension scheme will improve resource allocation, enhance investment strategies and promote financial sustainability. Consolidation of pension schemes will lead to reduced administrative costs and greater financial security for retirees;

(c) the Bill should be expanded to cover all county governments employees in line with the National Retirement Benefits Policy objectives of good governance and financial stability of all stakeholders in the pensions sector; and

(d) the Bill should be reoriented to cover all county government workers including MCAs under a unified pension arrangement to avoid duplication, improve resource allocation and align with national policy objectives.

3. Most of the stakeholders noted the need for a unified pension arrangement for all county government workers including MCAs and the need for efficient, fair and transparent administration of the pensions in the counties.
4. The stakeholders also noted that the Employment and Labour Relations Court declared the County Governments Retirement Scheme Act, 2019 unconstitutional due to lack of public participation and conflicts with various Articles of the Constitution and existing statutes.

LIST OF STAKE HOLDERS

1. The Ministry of National Treasury and Economic Planning
2. LAPFUND
3. The County Assemblies Forum
4. CPF Financial Services
5. Salaries and Remuneration Commission
6. The Kenya Revenue Authority
7. The Retirement Benefits Authority.