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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON:

THE CONSIDERATION OF THE JUDGES' RETIREMENT
BENEFITS BILL, 2025
(NATIONAL ASSEMBLY BILL NO. 27 OF 2025)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	06 NOV 2025
	DAY: <i>Thursday</i>
TABLED BY:	<i>Hon. George Munira MP Chairperson</i>
CLERK-AT THE-TABLE:	<i>A. Shituko</i>

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER 2025

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LIST OF ABBREVIATIONS AND ACRONYMS

AG	-	Office of the Attorney General and Department of Justice
CBS	-	Chief of the Order of the Burning Spear
EBS	-	Elder of the Order of the Burning Spear
EGH	-	Elder of the Order of the Golden Heart
FORD	-	Forum for the Restoration of Democracy
ICPAK	-	Institute of Certified Public Accountants of Kenya
JSC	-	Judicial Service Commission
KJWA	-	Kenya Judges Welfare Association
KLRC	-	Kenya Law Reform Commission
KNCHR	-	Kenya National Commission on Human Rights
KUPPET	-	Kenya Union of Post Primary Education Teachers
LLM	-	Master of Laws Degree
LSK	-	Law Society of Kenya
MCCP	-	Maendeleo Chap Chap Party
MP	-	Member of Parliament
ODM	-	Orange Democratic Movement
OGW	-	Order of the Grand Warrior
PSC	-	Public Service Commission
SRC	-	Salaries and Remuneration Commission
UDA	-	United Democratic Alliance
UDM	-	United Democratic Movement
WDM	-	Wiper Democratic Movement

LIST OF ANNEXURES

- Annexure 1: Adoption Schedule
- Annexure 2: Minutes
- Annexure 3: Judges' Retirement Benefits Bill, 2025
- Annexure 4: Advertisement inviting the public to submit memoranda on the Bill
- Annexure 5: Letter from the Clerk of the National Assembly inviting stakeholders to attend the public participation forum
- Annexure 6: Memoranda by Stakeholders

CHAIRPERSON'S FOREWORD

This Report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Judges' Retirement Benefits Bill (*National Assembly Bill No. 27 of 2025*) which was published on 11th June 2025. The Bill was read a First Time in the House on 26th June 2025 and committed to the Committee to facilitate public participation.

The Bill seeks to provide for the pension and other retirement benefits to judges of superior courts and in turn realize the principles of the independence of the Judiciary in exercising judicial authority.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on 27th June 2025 inviting the public to submit memoranda by way of written statements on the Bill. In addition, the Committee vide letter referenced *NA/DDC/JLAC/2025/074* dated 30th July 2025 invited key stakeholders to submit views on the Bill and attend a public participation forum on 7th August 2025. The memoranda were to be received on or before 11th July 2024 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received views from twenty (20) stakeholders. Out of these, eighteen (18) were written memoranda while two (2) were oral submissions.

The Kenya Judges Welfare Association (KJWA), Judicial Service Commission (JSC), the Judges' Retirement Benefits Bill Taskforce, Office of the Attorney General and Department of Justice (AG), Law Society of Kenya (LSK), Kenya Law Reform Commission (KLRC), Kenya National Commission on Human Rights (KNCHR), The National Treasury, Office of the Controller of Budget, Public Service Commission (PSC), Salaries and Remuneration Commission (SRC), Kenya Union of Post Primary Education Teachers (KUPPET), Institute of Certified Public Accountants of Kenya (ICPAK), Kituo cha Sheria, Uraia Trust, SeeTahTee Studio, Francis Sitati, Naomi Sitati, Wendy Faith Muganda LLM and John Angolo gave their views on the Bill which the Committee considered in the preparation of this Report.

While considering the Bill, the Committee observed that the pension arrangement for judges is currently prescribed by the Pension Act (Cap. 189) which came into operation on 1st January 1946. In 2010, the government undertook pension reforms in the public sector shifting the pension schemes in the public sector from defined benefit to defined contribution schemes. The pension reforms were introduced through the Public Service Superannuation Scheme Act (Cap. 189A) which established the contributory public service superannuation scheme for providing retirement benefits to persons in the public service excluding the judicial service. Additionally, the pension for the Chief Justice and the Deputy Chief Justice are regulated by the Retirement Benefits (Deputy President and Designated State Officers) Act (Cap. 197B). The implication of these reforms is that judges are the only State officers and public officers whose pension is still governed by the Pensions Act which is not responsive to the contemporary realities and does not take into account the unique attributes of the role of judges. Therefore, the Bill seeks to provide judges with a pension that is honourable and assures judges have a dignified life after retirement taking into account their unique contributions to the country.

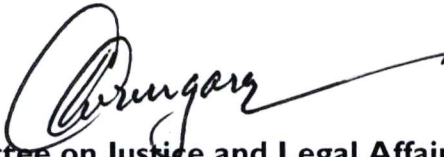
The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank the KJWA, JSC, the Judges' Retirement Benefits Bill Taskforce, AG, LSK, KLRC, KNCHR, The National Treasury, Office of the Controller of Budget, PSC, SRC, KUPPET, ICPAK, Kituo cha Sheria, Uraia Trust, SeeTahTee Studio, Francis

Sitati, Naomi Sitati, Wendy Faith Muganda LLM and John Angolo for submitting memoranda on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its Consideration of the Judges' Retirement Benefits Bill (*National Assembly Bill No. 27 of 2025*).

It is my pleasure to report that the Committee has considered the Judges' Retirement Benefits Bill (*National Assembly Bill No. 27 of 2025*) and has the honour to back to the National Assembly with the recommendation that the House considers and passes the Bill at Second Reading, Committee Stage and Third Reading **with appropriate amendments to incorporate the views of the public and stakeholders, the Committee and Members.**

Hon. Murugara George Gitonga, MP
Chairperson, Departmental Committee on Justice and Legal Affairs



CHAPTER ONE

I PREFACE

I.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. **To study and review all legislation referred to it;**
 - v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

I.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider:
 - a) The Judiciary;
 - b) Tribunals;
 - c) Access to Justice;
 - d) Public prosecutions;
 - e) Ethics, Integrity and Anti-corruption;
 - f) Correctional services;
 - g) Community service orders and witness protection;
 - h) Constitutional Affairs;
 - i) Sovereign immunity;
 - j) Elections including referenda;
 - k) Human rights;
 - l) Political parties; and
 - m) The State Law Office including insolvency, law reform, public trusteeship, marriages and legal education.
3. In executing its mandate, the Committee oversees the following Ministries, Departments and Agencies:
 - a) The Judiciary;

- b) Judicial Service Commission;
- c) State Department for Correctional Services;
- d) State Law Office and Department of Justice;
- e) State Department for Justice, Human Rights and Constitutional Affairs;
- f) Office of the Director of Public Prosecutions;
- g) Ethics and Anti-Corruption Commission;
- h) Independent Electoral and Boundaries Commission;
- i) Commission on Administrative Justice;
- j) Office of the Registrar of Political Parties;
- k) Witness Protection Agency;
- l) Kenya National Commission on Human Rights;
- m) Kenya Law Reform Commission; and
- n) Council of Legal Education.

1.3 Committee Membership

4. The Committee was reconstituted by the House on 5th March 2025 and comprises the following Members:

Chairperson

Hon. Murugara George Gitonga, CBS, MP
Tharaka Constituency
UDA Party

Vice-Chairperson

Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Hon. Gladys Boss, MGH, MP
Uasin Gishu Constituency
UDA Party

Hon. Maalim Farah, EGH, MP
Dadaab Constituency
WDM-Kenya

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Francis Kajwang' Tom Joseph, CBS, MP
Ruaraka Constituency
ODM Party

Hon. Wetang'ula Timothy Wanyoyi, CBS, MP
Westlands Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, EBS, MP
Rarieda Constituency
ODM Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Muchangi Karemba, CBS MP
Runyenjes Constituency
UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Mogaka Stephen M., MP
West Mugirango Constituency
Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa County (CWR)
Jubilee Party

Hon. CPA Suleka Hulbale Harun, MP
Nominated Member
UDM Party

I.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I / Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Mr. Abdikafar Abdi
Clerk Assistant III

Ms. Jael Ayiego
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel II

Mr. Omar Abdirahim
Fiscal Analyst I

Ms. Vivienne Ogega
Research Officer III

Mr. John Nduaci
Serjeant-At-Arms

Mr. Meldrick K. Sakani
Audio Assistant

Ms. Mary Kamande
Public Communications Officer III

Mr. Calvin Karung'o
Media Relations Officer III

Mr. Silas Opanga
Hansard Reporter III

CHAPTER TWO

2 OVERVIEW OF THE JUDGES' RETIREMENT BENEFITS BILL (NATIONAL ASSEMBLY BILL NO. 27 OF 2025)

2.1 Background

6. The Bill, sponsored by the Hon. Kimani Ichung'wah, EGH, MP, was published on 11th June 2025 and read a First Time in the House on 26th June 2025 (*Annexure 3*). It was thereafter committed to the Committee in line with Standing Order 127(I) of the National Assembly Standing Orders.

2.2 Summary of Legal Provisions

7. The Bill seeks to provide for the pension and other retirement benefits to judges of superior courts. The Bill seeks to realize the principles of the independence of the Judiciary in exercising judicial authority.

8. In particular:

- (a) **Clause 3 and 4** provides that the provisions, once enacted, shall apply to:
 - (i) a judge who is in office at the commencement of the Act to the extent provided in Part II;
 - (ii) a judge who is appointed to office after the commencement of the Act to the extent provided under Part III; and
 - (iii) a judge who retired from office in accordance with Article 167 of the Constitution at any time after 27th August 2020 but before the but before commencement of the Act to the extent specified in Part IV.
- (b) **Clause 5** provides for the right to pension or gratuity to a judge. Pension shall vest in a judge who has completed ten years of pensionable service while service gratuity shall be paid to a judge who has served for a period of less than ten years.
- (c) **Clause 6 and 7** provides that the qualifying service for pension shall be ten years and that prior public service by a judge shall form part of the qualifying service where there is no break in service after appointment to public office.
- (d) **Clause 8** provides that, within twelve months after the commencement of the Act, a judge may elect to transfer all accrued pension under the judicial service pension or any other contributory pension scheme in the public service or retain the pension under the scheme in which the pension accrued.
- (e) **Clause 9** provides that the pension, gratuity and benefits shall be a charge on the Consolidated Fund. Article 206(2)(c) states that money may be withdrawn from the Consolidated Fund as a charge against the Fund authorised by the Constitution or an Act of Parliament.
- (f) **Clause 10** provides for the computation of the judge's pension. A judge shall be entitled to an annual pension equal to one-four-hundred-and-eightieth of the judge's pensionable emoluments (basic salary and house allowance) for each completed month of service.

- (g) **Clause 11** allows a judge entitled to pension to commute the payment of the pension and that once this option is exercised, it shall be in writing and irrevocable. A judge may commute up to one-quarter of their annual pension at an equivalent of twenty times and the balance of three-quarters shall be paid as a monthly pension.
- (h) **Clause 12** provides that pension accrue daily but shall be payable monthly in arrears from the Consolidated Fund.
- (i) **Clause 13** provides that a pension increase equivalent to the increase in the Consumer Price Index shall be paid annually. However, the percentage increase shall not exceed 5% or be less than 1%. The provisions of the Pensions (Increase) Act shall not apply.
- (j) **Clause 14** sets the maximum pension payable at an amount not exceeding the amount of pensionable emolument earned by a sitting judge in the same position as that which the retired judge occupied on retirement.
- (k) **Clause 15** provides for payment of death gratuity to the surviving spouse of a judge who dies before attaining the qualifying service. The gratuity is calculated at one month's pensionable emolument for each year of service. If the judge is survived by more than one spouse, the gratuity shall be shared equally among the surviving spouses.
- (l) **Clause 16** provides for the computation of service gratuity as one-four-hundred-and-eightieth of their pensionable emoluments for each completed month of service multiplied by five.
- (m) **Clause 17** provides for the retirement benefits due to a judge who is removed from office because of inability to perform the functions of the office due to physical or mental incapacity. The pension payable shall not be less than fifty percent of the pension the judge would have been entitled to had the judge retired on attaining the retirement age.
- (n) **Clause 18** provides for the pension payable to a spouse of a judge, who is entitled to pension, dies before attaining the retirement age and pension payable to a spouse of a retired judge. The pension shall be paid for 5 years after the death of the judge or retired judge.
- (o) **Clause 19** provides for the equal sharing of the pension among the surviving spouses where the deceased judge or deceased retired judge is survived by more than one spouse.
- (p) **Clause 20** makes provision on payment of additional pension to a surviving spouse in respect to any eligible child or children of a deceased judge or a deceased retired judge. The rate of the additional pension payable will depend on the number of eligible children. However, pension in respect to an eligible child/children shall not be payable if the deceased retired judge entered into the marital relationship after retirement.
- (q) **Clause 21** provides for the payment of pension to eligible child/children upon death of the surviving spouse of a deceased judge or a deceased retired judge.

- (r) **Clause 22** provides for right of pension to a judge who is retired upon re-organisation of the office after serving as a judge for at least ten years but has not attained the mandatory retirement age.
- (s) **Clause 23** provides for non-pension benefits that accrue to a judge upon retirement including monthly transport allowance which shall be payable as a lump sum, a medical cover, diplomatic passports and access to all airport government lounges.
- (t) **Clause 24** provides for the definition of “judge” and “member” to mean a person appointed as a judge after the commencement of the Act.
- (u) **Clause 25** establishes the Judges’ Retirement Benefits Fund which shall be managed by a Board of Trustees. All contributions shall be paid into the Fund while the pension benefits shall be paid out of the Fund.
- (v) **Clause 26** provides that the government shall deduct a sum calculated at the rate of 7.5% of the judge’s monthly pensionable emoluments and pay the sum into the Fund as the member’s monthly contribution. The government shall also pay into the Fund a sum calculated at the rate of 15% of the member’s monthly pensionable emoluments as government’s monthly contribution.
- (w) **Clause 27** provides for a life insurance policy for each member whose cost shall be met by the government.
- (x) **Clause 28** allows a member to make additional voluntary contributions to his or her retirement savings account.
- (y) **Clauses 29-41** of the Bill makes provisions on the establishment of the Board of Trustees, composition of the Board of Trustee, qualifications for appointment as a trustee. Tenure of office of the trustees and the functions of the Board of Trustees.
- (z) **Clause 42** provides that an administrator shall establish and maintain a retirement savings account for each member and that the administrator shall issue the member an annual statement of the member’s retirement savings account.
- (aa) **Clause 43** states that the benefits derived from a member’s contributions together with accrued interest shall immediately vest in the member while the benefits derived from the government’s contribution shall vest in the member after one year.
- (bb) **Clause 44** provides that a member shall not be entitled to withdraw the balance in their retirement savings account except upon retirement from service. However, upon leaving employment, a member may withdraw his or her contributions and any additional voluntary contributions.
- (cc) **Clause 45** provides that a member shall be entitled to make withdrawals when they retire from service upon attaining the mandatory retirement age, when they opt to retire early or on medical grounds.
- (dd) **Clause 46** provides for the payment of retirement benefits. A member may withdraw a lump sum capped at one-third of the balance in the member’s retirement savings

account. The retirement benefits may also be paid as income drawdown on monthly or quarterly withdrawals or monthly or quarterly annuity for life purchased from a life insurance company.

- (ee) **Clause 47** provides for the requirement of a member to furnish the Board with particulars of the member and particulars of the dependants of the member which shall be used for purposes of processing and paying benefits.
- (ff) **Clauses 48 and 49** provide that upon the death of a member, the benefits shall be paid to the persons nominated by the member and that the Board shall have discretion on choosing the most suitable mode of payment of the dependant's benefits.
- (gg) **Clause 50** provides for payment of benefits of a member who dies in service. The benefits shall be paid to either the dependants or the administrator of the estate of the member.
- (hh) **Clause 51** provides for the terms of payment of benefits of a member who dies in retirement. Where the member had opted for an income drawdown, the member's dependant shall receive a pension that is equivalent to the unutilised balance and where the member had opted for annuity payment, the payment to the dependants shall be subject to the annuity.
- (ii) **Clause 52** provides that the benefits payable on death of a member shall not form part of the estate of that member.
- (jj) **Clause 53** prohibits payment out of the Fund to the government without prior written consent of the Retirement Benefits Authority or to a member while still in service or to any person as a loan or advance except as provided under the Act or the Retirement Benefits Act.
- (kk) **Clause 55** provides for additional benefits including a medical cover, a diplomatic passport and access to government lounges in all airports within Kenya.
- (ll) **Clauses 56 – 65** provide for the appointment and functions of the administrator of the Fund, appointment and functions of the manager of the Fund, appointment and functions of the custodian of the Fund, duty of care placed on the administrator, manager and custodian of the Fund and financial provisions including source of funds for the Fund, expenses of administering the Fund, accounts and audit, annual estimates and annual general meeting.
- (mm) **Clause 66** provides for additional benefits including a medical cover, a diplomatic passport and access to government lounges in all airports within Kenya
- (nn) **Clauses 67 – 72** provide for miscellaneous provisions including functions of the Cabinet Secretary, exemption from National Social Security Fund Act, appeal provisions. Clause 71 provides for the power to make regulations and Clause 72 provides for savings and transition provisions,

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

9. Article 118 (1)(b) of the Constitution provides that:
“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”
10. The National Assembly Standing Order 127 (3) and (3A) stipulates that:
“(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism including-
 - (a) inviting submission of memoranda;*
 - (b) holding public hearings;*
 - (c) consulting relevant stakeholders in a sector; and*
 - (d) consulting experts on technical subjects.**(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”*

3.2 Memoranda Received on the Bill

11. Pursuant to the aforementioned provisions of the law, the Committee placed an advertisement in the print media on 27th June 2025 (*Annexure 4*) inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide letter referenced *NA/DDC/JLAC/2025/074* dated 30th July 2025 (*Annexure 5*) invited key stakeholders to submit views on the Bill and attend a public participation forum on 7th August 2025.
12. To this end, the Committee received oral and written submissions from twenty (20) stakeholders. Out of these, two (2) were oral submissions from the National Treasury and the Institute of Certified Public Accountant of Kenya (ICPAK) while eighteen (18) were written memoranda from the Kenya Judges Welfare Association (KJWA), Judicial Service Commission (JSC), the Judges’ Retirement Benefits Bill Taskforce, Office of the Attorney General and Department of Justice (AG), Law Society of Kenya (LSK), Kenya Law Reform Commission (KLRC), Kenya National Commission on Human Rights (KNCHR), Office of the Controller of Budget, Public Service Commission (PSC), Salaries and Remuneration Commission (SRC), Kenya Union of Post Primary Education Teachers (KUPPET), Kituo cha Sheria, Uraia Trust, SeeTahTee Studio, Francis Sitati, Naomi Sitati, Wendy Faith Muganda LLM and John Angolo. The memoranda are annexed to this Report as *Annexure 6*.
13. The KJWA, JSC, the Judges’ Retirement Benefits Bill Taskforce, AG, the Office of the Controller of Budget, The National Treasury, SRC, PSC, KUPPET, LSK, ICPAK, Kituo cha Sheria and Uraia Trust attended the public participation forum on 7th August 2025 and gave their views on the Bill.
14. Furthermore, the Committee held further engagements with the Office of the Controller of Budget and the SRC on the Bill on 23rd October and 4th November 2025, respectively.

15. The **KJWA, JSC, Judges' Retirement Benefits Bill Taskforce, AG, The National Treasury, ICPAK, KUPPET, SeeTahTee Studio, Francis Sitati, Naomi Sitati and Wendy Faith Muganda LLM** were in support of the Bill in its entirety. The **LSK, KLRC, KNCHR, PSC, Kituo cha Sheria, Uraia Trust and John Angolo** supported the Bill with additional recommendations while the **Office of the Controller of Budget and SRC** expressed reservations on the Bill.

16. They submitted as follows:

3.2.1 Submissions in support of the Bill

17. The **KJWA, JSC** and the **Judges' Retirement Benefits Bill Taskforce** submitted memoranda in support of the Bill on the following grounds, that the Bill:

- (a) is responsive to the contemporary realities not envisioned in the colonial Pensions Act;
- (b) shall strengthen judicial independence by guaranteeing security in retirement;
- (c) adopts a balanced transition to modern pension arrangements ensuring continuity for current judges whilst aligning new arrangements with the broader public sector reforms and fiscal prudence;
- (d) provides for a realignment of pensionable emoluments allowing for a smoother income transition upon retirement and better reflects the financial realities of judicial life;
- (e) provides for essential post-retirement benefits for judges in accordance with the Constitution of Kenya, 2010;
- (f) recognizes the unique nature of judicial service including professional isolation and ethical obligations which subjects judges to extensive restrictions on conduct, lifestyle and speech;
- (g) provides for judges' pension benefits similar to comparable jurisdictions and in line with international best practice; and
- (h) aligns with the pension reforms initiated through Treasury Circular No. 18 of 2010 proposing a shift of pension schemes in the public sector from defined benefit to defined contribution.

18. Noting that the Bill does not raise any constitutional or legal issues and their involvement with the Judiciary and the National Treasury in the development of the Bill, the **AG** vide letter referenced *AG/LDD/635/1/10* dated 7th August 2025 was in full support of the Bill.

19. **KUPPET** also supported the Bill in its entirety for the following reasons, that the Bill:

- (a) safeguards the dignity and wellbeing of retired judges;
- (b) adopts the inflation-based pension model to preserve purchasing power;
- (c) supports the inclusion of post-retirement medical and psychosocial support systems; and
- (d) uses a framework that could inform broader pension reforms for other vulnerable categories of workers.

20. The **National Treasury** also expressed its support of the Bill in its entirety.

21. While supporting the Bill, **SeeTahTee Studio, Francis Sitati, Naomi Sitati and Wendy Faith Muganda LLM** noted that the Bill would ensure equal treatment of all judges.

3.2.2 Submissions on Proposed Amendments

Clause 2

22. **KLRC** proposed amending the definition of ‘eligible child’ to harmonize the age limit for children at twenty-four (24) years to ensure consistency across pension schemes and reduce administrative complexity.
23. **Kituo cha Sheria** proposed refining the definition of ‘eligible child’ to better reflect criteria for disability-related incapacity in line with Article 54 of the Constitution.
24. **PSC** proposed amending the definition of ‘eligible child’ to delete the words ‘and is not, for the time being, maintained out of money provided by the government in a hospital or a similar institution’. This is because the definition, as drafted, may amount to discrimination in view of the Social Health Insurance Fund where all persons in a hospital would be maintained out of money provided by the Government.
25. The **Office of the Controller of Budget** proposed restricting the definition of ‘pensionable emoluments’ to basic salary for equity and harmony across the public service and to ensure fiscal sustainability in accordance with Article 230 of the Constitution and SRC’s advisories excluding house allowances from pensionable emoluments.
26. In its memoranda dated 25th July, 22nd September and 3rd November 2025, **SRC** proposed restricting the definition of ‘pensionable emoluments’ to basic salary as set by the Commission for equity, harmony and fairness across the public service.

Committee Observation

27. The Committee observed that the Public Service Superannuation Scheme Act, which provides for retirement benefits to persons in the public service, defines “child” to include a child who has attained the age of eighteen years but is under the age of twenty-five years and is undertaking full-time education.
28. In the definition of “pensionable emoluments”, the Committee observed that the retirement benefits for judges are currently calculated on the basis of basic salary, excluding allowances. Therefore, the retirement benefits of judges should align with the principles of equity and fairness and should not undermine the income replacement ratio on retirement. Additionally, the Committee noted that including house allowance as part of the pensionable emoluments is in line with the National Retirement Benefits Policy which recognizes the importance of guaranteeing housing to retirees.

Clause 3

29. **KLRC** proposed deletion of sub-clause (3) to align with the court’s decision in **Transparency International v Auditor General (2018)** which declared such supremacy clauses as vague and serving no purpose.

Committee Observation

30. The Committee observed that the conflict of law clause is necessary to avoid uncertainties about which law is applicable.

Clause 6

31. **PSC** proposed reducing qualifying service from ten to five years to align with the proposals being made to reduce the qualifying service under the Pensions Act, Cap 189.

Committee Observation

32. The Committee observed that currently, the Pension Act provides that the qualifying service for pension as ten years. Reduction of the period as proposed would significantly impact on available resources to meet pension payments.

Clauses 8 and 9

33. **Kituo cha Sheria** noted that while the Bill refers to the Consolidated Fund, it does not sufficiently clarify the operational relationship with the Judiciary Fund. Thus, proposed amending the Bill to explicitly provide that, once approved by the National Assembly, the funds charged on the Consolidated Fund shall be paid directly into the Judiciary Fund for administration to promote financial autonomy for the Judiciary and uphold the principles of separation of powers and fiscal independence.

Committee Observation

34. The Committee observed that Article 173 of the Constitution establishes the Judiciary Fund to be used for the administrative expenses of the Judiciary and such other purposes as may be necessary for the discharge of functions of the Judiciary. The Committee noted that Article 173(4) provides that upon approval by the National Assembly, the expenditure of the Judiciary shall be a charge on the Consolidated Fund and the funds shall be paid directly to the Judiciary Fund. Article 173 of the Constitution therefore already clarifies the relationship between the Consolidated Fund and the Judiciary Fund.

Clause 10

35. **KLRC** proposed rewording sub-clause (1) to provide that the pension calculation formula should be prescribed in regulations for flexible adjustments based on changing economic realities.
36. **PSC** proposed amending sub-clause (1) to reduce the qualifying service from ten to five years in line with its proposed amendment to clause 6.
37. **Kituo cha Sheria** noted that sub-clause (3) restricts pension access for judges who leave office before attaining sixty-five (65) years contrary to Article 167(1) of the Constitution which provides for voluntary retirement at sixty-five (65) years and mandatory retirement at seventy (70) years. Thus, Kituo cha Sheria proposed harmonization of the clauses on qualifying service and benefit accrual with these constitutional thresholds.

Committee Observation

38. The Committee observed that providing the formula for computing pension to be prescribed in regulations runs the risk of the responsible authority failing or delaying in making the necessary regulations. The Committee further observed that sub-clause (3) restricts access to benefits by a judge who leaves office before attaining the age of sixty-five years. It does not conflict with the provisions of Article 167(1) on retirement upon attaining the age of sixty-five years.

Clause 13

39. **KLRC** proposed amending the clause to provide for pension increases to be governed under one regime, Pensions (Increase) Act Cap. 190, to avoid inconsistencies and administrative complexities across multiple mechanisms for pensions increases in the public service.
40. **Uraia Trust** proposed removing the pension increase cap in sub-clause (3) and replacing with a suitable percentage increase taking into account long-term inflation needs.

Committee Observation

41. The Committee observed that the Pension (Increase) Act (Cap. 190) stipulates that pensions are to be increased at the rate of 3% every two years. However, this rate does not correspond with the fluctuating economic situation marked by varying inflation rates.

Clause 14

42. **PSC** proposed deleting sub-clause (2) as it would unfairly and unlawfully deny a person pension benefits that have lawfully accrued in a contributory pension scheme in the public service for the previous period of service of the person and amount to discrimination against a person who previously served in the public service before appointment as a judge.

Committee Observation

43. The Committee observed that the provisions of Clause 14(2) are designed to allow consistency and fairness in pension administration for judges who have earned pensions relating to prior public service.

Clause 19

44. **Kituo cha Sheria** proposed revising the fifty percent cap to allow for judicial discretion or special consideration in cases of hardship or multiple dependants in line with Article 43 of the Constitution and the best interests of dependants.

Committee Observation

45. The Committee observed that capping the rate of pension payable to a spouse or spouses at fifty percent ensure fiscal sustainability. Also, a capped pension rate is meant to provide continuing financial support and avoid double benefit.

Clause 22

46. **KRLC** submitted that reference to 'reorganization of office' in the clause is inconsistent with Article 167 of the Constitution provisions on the tenure of judges.

Committee Observation

47. The Committee observed that the Clause seeks to secure the retirement benefits of a judge who is forced to retire due to re-organisation of office and the judge has not attained the mandatory retirement age.

Clauses 23

48. **KLRC** noted that replication of non-pension benefits in separate clauses is redundant and, therefore, proposed consolidation of clauses 23, 55 and 66 in Part V on Miscellaneous Provisions titled Additional Non-Pension Benefits for good drafting.
49. In its memoranda dated 22nd September and 3rd November 2025, **SRC** proposed amending sub-clause (1)(a) and (b) to provide that transport allowance and medical cover shall be as set

by the SRC pursuant to Article 230(4) and (5) of the Constitution which mandates the SRC to set and review the remuneration and benefits of judges and State officers. In the Commission's view, legislating on matters of remuneration and benefits may limit the SRC in exercising its mandate.

Committee Observation

50. The Committee observed that the Bill provides for retirement benefits to three categories of judges, i.e., those in office before the commencement of the Act, judges appointed in office after the commencement of the Act and judges who retired in accordance Article 167 after the promulgation of the Constitution. The benefits of these categories of judges are provided in distinct parts and therefore, the non-pension benefits are provided for in these parts,
51. The Committee further observed that the National Assembly is mandated to legislate on any matter having the force of law in Kenya, including pension. In exercise of this power, Parliament has enacted the Pensions Act, the Public Service Superannuation Scheme Act, the Parliamentary Pensions Act and the Retirement Benefits (Deputy President and Designated State Officers) Act. Indeed, the Committee noted that the County Assemblies Pensions Bill (Senate Bill No. 14 of 2024) is currently under consideration by the National Assembly and SRC has submitted a Memorandum in support of the contributory pension proposed for Members of County Assemblies.

Clause 25

52. The **Office of the Controller of Budget** noted the need for a detailed governance **framework** including investment rules, fiduciary duties and reporting standards in compliance with Regulations 39, 79, 80, 81, 82 and 83 of Public Finance Management Regulations to enhance transparency and oversight.
53. Additionally, the Office of the Controller of Budget proposed insertion of a sub-clause to **provide** for the Fund's disbursements to be subjected to approval by the Controller of Budget in accordance with Article 228 of the Constitution to ensure oversight over public fund withdrawals and prevent unauthorised disbursements.
54. **PSC** proposed that Judges' Retirement Benefits Fund should be the body corporate not the **Board** of Trustees.

Committee Observation

55. The Committee observed that the Judges' Retirement Benefits Fund falls with the ambit of "public money" as defined by the Public Finance Management Act. Therefore, the provisions of the Act and the regulations automatically apply to the administration and management of the Judges' Retirement Benefits Fund.
56. The Committee also observed that the COB is constitutionally mandated to authorize withdrawal from the Consolidated Fund. However, withdrawal from the Judges' Retirement Benefits Fund does not require authorization from the COB.
57. On the Fund being a body corporate and not a Board of Trustees, the Committee observed that the Fund is a retirement benefit scheme whose management requires trust and confidence where the manager of the Fund is required to act in the best interest of the members. Therefore, making the Board of Trustees a body corporate would ensure the responsibilities are carried out effectively.

Clause 26

58. **PSC** submitted that the static deductions of 7.5% and 15% in sub-clause (1) would make it impossible to revise without amending the Act and as such disadvantageous to the Fund members.
59. **LSK** noted that the proposal lacks clarity on the specific penalty and thus raises enforceability concerns and thus proposed amending sub-clause 4 to provide for a specific penalty.
60. **KLRC** proposed the deletion of sub-clause (4) noting that the provision risks legal ambiguity, is unenforceable and undermines legislative clarity.

Committee Observation

61. The Committee observed that the penalty for non-payment of the contribution should be clear as is provided in the Public Service Superannuation Scheme Act. The Act provides that failure by the government to make the monthly contribution attracts a penalty at the rate of the return of the Fund for the previous financial year shall apply on the unpaid amount.

Clause 27

62. **KLRC** proposed deleting the clause as life insurance is an employment-related matter, not a retirement benefit and would be better addressed under the judges' current employment terms.
63. In its memorandum dated 25th July 2025, **SRC** proposed the deletion of the clause as the Commission has set Group Life Insurance for judges as a separate benefit where dependants get the accrued benefits of a deceased judge within the provisions of the Retirement Benefits Act and the scheme rules.

Committee Observation

64. The Committee observed that the life insurance policy only applies to judges appointed after the commencement of the Act.

Clause 29

65. **PSC** proposed deleting sub-clause (2) because the Board of Trustees cannot be a separate entity from the Fund.
66. **LSK** proposed amending sub-clause (3) to provide for representation from LSK as a critical stakeholder in the justice sector reforms.
67. **PSC** also proposed amending sub-clause (3) to replace the Cabinet Secretary with the Chief Justice to appoint the members of the fund to maintain independence of the Judiciary. Additionally, **PSC** noted that being an occupational scheme exclusive to judges, the membership of the Board of Trustees should be internal to the Judiciary.
68. **Uraia Trust** also proposed amending sub-clause (3) to provide for appointment of trustees independently through the JSC or by vote among the judges to reduce executive control over judicial retirement funds and safeguard judicial independence.
69. **LSK** also proposed amending sub-clause (4) to accurately reflect the intended subsection, ensure internal consistency within the Bill and uphold legislative drafting standards.

70. **KLRC** noted the need for clarity on membership of the Board to Trustees by vested members only, hence, its proposal to amend sub-clause 3(b), (c) and (d) to specify that the judges be members of the Judges' Retirement Benefits Fund Scheme.
71. In addition, **KLRC** proposed rewording sub-clause (4) to correct a typographical error.
72. Noting that the proposed pensions scheme is contributory, **PSC** proposed amending the clause to allow members of the scheme to elect the Board of Trustees except the retired judge provided under sub-clause 3(e) who should be nominated by the Chief Justice.

Committee Observation

73. The Committee observed that a majority of members of the Board of Trustees are members of the Judiciary thus safeguarding judicial independence.

Clause 30

74. **KLRC** noted that a blanket disqualification for any six-month sentence is overly restrictive and may unfairly exclude rehabilitated individuals. Thus, **KLRC** proposed amending paragraph (a) to link the disqualification to relevant crimes involving fraud, corruption or dishonesty to ensure proportionality and align with the fairness principles and international norms on rehabilitation as provided in Article 10 of the International Covenant on Civil and Political Rights.
75. **KLRC** noted that subordinating a statute to administrative guidelines risks legal uncertainty and undermines statutory authority, hence, its proposal to amend paragraph (e) to replace 'directions, guidelines or different notes issues by the Retirement Benefits Authority' with 'provisions of the Retirement Benefits Act'.
76. **PSC** proposed amending section 30 to correct a numbering error to replace section '30' with '29'.

Committee Observation

77. The Committee observed that the relationship between the Board of Trustees and the members is a fiduciary relationship where trust and confidence is a key factor. Therefore, a person with a criminal conviction has demonstrated unreliability which undermines this fiduciary duty.

Clause 31

78. **PSC** proposed replacing the trustees' term from three to five years to align with section 3 of the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2025.

Committee Observation

79. The Committee observed that the term of office of three years aligns with the term of office for other members of Board of Trustees including the Board of Trustees of the Public Service Superannuation Scheme.

Clauses 31(3), 32, 33(g), 37, 71(1) and 71(3)(a), (b)

80. **PSC** noted that the Bill relates to an internal occupational contributory scheme of the judicial arm of Government and thus proposed replacing 'Cabinet Secretary' with 'Chief Justice' to maintain independence of the Judiciary.

Committee Observation

81. The Committee observed that the Bill provides that the judge of the Supreme Court, the judge of the Court of Appeal and the two judges of the High Court are nominated by the Chief Justice.

Clause 32

82. **LSK proposed** setting a specific timeline for filling of the vacancy to ensure certainty and mitigate the risk of prolonged institutional gaps.

Committee Observation

83. The Committee observed that prescribing a timeline may hinder the operations of the Board in the event the timeline is not met.

Clause 36

84. **KLRC** proposed deleting sub-clause (3) because the provision risks arbitrary removal and lacks clarity on enforcement, in particular, disqualifying a trustee for failing to disclose a conflict of interest is disproportionate since other remedies including recusal and penalties suffice.

Committee Observation

85. The Committee observed that it is necessary to disqualify a trustee for failing to disclose a conflict of interest. A trustee owes a fiduciary duty to the Board and the Fund and should act solely in the interest of the Fund and not for his or her personal gain.

Clause 37

86. **LSK** proposed that determination of the trustees' allowances be based on the advice of the SRC as mandated under Article 230(4) of the Constitution to set and regularly review the remuneration and benefits of all State officers and advise the national and county governments on the remuneration and benefits of all other public officers.

87. **KNCHR** proposed amending the clause to align with Article 230(4) of the Constitution as read with section 11 of the SRC Act, Cap. 412D which empowers the SRC to advise the national and county governments on the remuneration and benefits of all other public officers.

88. In its memorandum dated 25th July 2025, **SRC** proposed aligning the clause to the Retirement Benefits (Good Governance Practices) Guidelines issued by the Retirement Benefits Authority on Trustees Remuneration.

Committee Observation

89. The Committee observed that the members of the Board of Trustees manage funds contributed by judges and the government. Therefore, the trustees are regarded as public officers whose remuneration and benefits are based on the advice of SRC pursuant to Article 230(4)(b) of the Constitution.

Clause 38

90. **PSC** proposed replacing 'Government' with 'Chief Justice' for specificity on which arm of the Government it is referring to.

Committee Observation

91. The Committee observed that it is the government and the members who make contributions to the Fund. Therefore, the Board should be accountable to the government and the member.

Clause 40

92. **PSC** proposed amending the clause to replace 'Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine' with 'Board with approval of the members, determine'. This is because the Fund is a contributory Scheme and its members should have the right and freedom to determine how it is managed. Furthermore, the Fund will not be a State corporation whose terms should be determined on recommendation by SRC.

Committee Observation

93. The Committee observed that the staff of the Board are appointed by the Board of Trustees and therefore their terms and conditions of service should be determined by the Board of Trustees.

Clause 41

94. **LSK** proposed the including a subsection to provide that "*The affixing of the common seal shall be authenticated by the signature of the chairperson of the Board or any other person authorized by the Board to act in that behalf.*"

Committee Observation

95. The Committee observed that subclause (1) requires the seal to only be used in matters expressly approved by the Board.

Clause 42

96. **Kituo cha Sheria** proposed amending the proposal to require semi-annual or quarterly statements to enable judges to track contributions and accrued interest more effectively in accordance with constitutional values of transparency and access to information.

Committee Observation

97. The Committee observed that pursuant to the provisions of Clause 56(1)(d), the administrator of the Fund is required to provide support service to members including access to members' account and statements on demand. Therefore, this provision enables judges track their contributions and accrued interest effectively.

Clause 43

98. **PSC** proposed deleting sub-clause (2); and deleting the words, 'subject to subsection (1)' in sub-clause (3). It was their view that the provisions would be discriminatory against judges as pension is a right accruing on a monthly basis if a person is employed on permanent and pensionable terms.

Committee Observation

99. The Committee observed that the provision on vesting of the government's contribution after a period of one year allows fiscal sustainability.

Clause 45

100. **PSC** proposed including a new sub-clause (1)(d) to provide for the entitlement to pension of a member who is removed from office in accordance with the Constitution as pension is a right and cannot be withheld or denied by reason of removal from office.

Committee Observation

101. The Committee observed that provision clearly outlines the manner in which a person who is entitled to pension can access their pension.

Clause 46

102. The **Office of the Controller of Budget** proposed that all withdrawals from the Judges' Retirement Benefits Fund be made subject to approval by the Controller of Budget in accordance with Article 228(4) of the Constitution and prevent fiscal abuse or bypassing of lawful expenditure controls.

Committee Observation

103. The Committee observed that the COB is constitutionally mandated to authorize withdrawal from the Consolidated Fund and other specific funds. However, withdrawal from the Judges' Retirement Benefits Fund does not require authorization from the COB.

Clause 52

104. **Kituo cha Sheria** proposed maintaining the exclusion of benefits from the estate to facilitate prompt disbursement but expressly reference the mechanism for nominating beneficiaries, ensuring transparency and alignment with the deceased's wishes.

Committee Observation

105. The Committee observed that the mechanism for nominating beneficiaries is provided for under Clause 48 of the Bill.

Clause 55

106. In its memorandum dated 25th July, **SRC** proposed the deletion of paragraph (a) on the provision of a medical cover on retirement awaiting the SRC's policy on contributions to post-retirement medical schemes for State Officers.

107. In addition, and vide its memoranda dated 22nd September and 3rd November, **SRC** proposed amending paragraph (a) to provide that medical cover shall be as set by the SRC pursuant to Article 230(4) and (5) of the Constitution which mandates the SRC to set and review the remuneration and benefits of judges and State officers. In the Commission's view, legislating on matters of remuneration and benefits may limit the SRC in exercising its mandate.

Committee Observation

108. The Committee observed that the National Assembly is mandated to legislate on any matter having the force of law in Kenya, including pension. In exercise of this power, Parliament has enacted the Pensions Act, the Public Service Superannuation Scheme Act, the Parliamentary Pensions Act and the Retirement Benefits (Deputy President and Designated State Officers) Act. Indeed, the Committee noted that the County Assemblies Pensions Bill (Senate Bill No. 14 of 2024) is currently under consideration by the National Assembly and SRC has submitted a

Memorandum in support of the contributory pension proposed for Members of County Assemblies.

Clause 56

109. **PSC** proposed inclusion of a new sub-clause (3) to give clarity on the terms of the Fund Administrator.

Committee Observation

110. The Committee observed that Clause 61 of the Bill provides for the expenses of administering the fund including the management fees.

Clause 57

111. The **Office of the Controller of Budget** proposed providing quarterly reports of all transactions relating to the Funds to the Auditor-General in accordance with the Retirement Benefits Act.

112. **PSC** proposed including a new sub-clause (2) to give clarity on the terms of the Fund Manager.

Committee Observation

113. The Committee observed that the Clause 57(b) relates to the provision of quarterly reports of all transactions of the Fund to the Board. Additionally, Clause 62 provides for the preparation of books of account and auditing of the books of account to be conducted by a certified auditor.

114. The Committee observed that Clause 61 of the Bill provides for the expenses of administering the fund including the management fees.

Clause 58

115. **PSC** proposed including a new sub-clause (3) to provide clarity on the terms of the Fund Custodian.

Committee Observation

116. The Committee observed that Clause 61 of the Bill provides for the payment of expenses of administering the fund including the custodial fees.

Clause 61

117. **KLRC** noted that five years of government-funded administration is excessive, as the Fund should be self-sustaining like other pension schemes and, therefore, proposed amending reducing the period to 'one year'.

118. The **Office of the Controller of Budget** proposed providing for administration of the Fund by an independent Board of Trustees instead of sole administration by the Cabinet Secretary or The National Treasury in line with Part IV of the Retirement Benefits Act.

119. **PSC** proposed amendment of sub-clause (3) for better clarity.

120. In its memorandum dated 25th July 2025, **SRC** proposed that sub-clause (1) be aligned to the provisions of the National Treasury Circular dated 10th July 2024 that guided that all retirement benefits scheme expenses be met out of the Scheme Fund and the employer only meets the costs of setting up the scheme.

Committee Observation

121. The Committee observed that government support in meeting the administration costs of the Fund ensures that the Fund operates efficiently until the Fund becomes self-sustaining.

Clause 62

122. **PSC** proposed deleting the words 'in accordance with the provisions of the Public Audit Act' to align it with other contributory schemes in the public service.

Committee Observation

123. The Committee observed that the Public Audit Act (Cap. 412B) gives effect to the provisions of Article 229 of the Constitution which establishes the Office of Auditor-General that is responsible for auditing public funds.

Clause 66

124. The **Office of the Controller of Budget** proposed excluding retroactive extension of benefits to judges who retired before the Bill's enactment unless appropriated to prevent unbudgeted liabilities.
125. In its memorandum dated 25th July 2025, **SRC** noted that Part IV excludes judges who retired before 27th August 2010 which may be reviewed as discriminatory. In addition, SRC proposed the deletion of the clause on provision of a medical cover awaiting the Commission's policy on contributions to post-retirement medical schemes for State officers.
126. Further, in its memorandum dated 22nd September and 3rd November 2025, **SRC** proposed amending paragraph (a) to provide that medical cover shall be as set by the SRC pursuant to Article 230(4) and (5) of the Constitution which mandates the SRC to set and review the remuneration and benefits of judges and State officers. In the Commission's view, legislating on matters of remuneration and benefits may limit the SRC in exercising its mandate.

Committee Observation

127. The Committee observed that the Bill is guided by Article 160(4) of the Constitution which requires any pensions reforms that affect Judges should not vary the remuneration and benefits payable to a judge to their disadvantage. Article 160(4) requires judges who are in a Defined Benefits Scheme to remain in such a Scheme or for the components of the Scheme to be enhanced.
128. The Committee further observed that the National Assembly is mandated to legislate on any matter having the force of law in Kenya, including pension. In exercise of this power, Parliament has enacted the Pensions Act, the Public Service Superannuation Scheme Act, the Parliamentary Pensions Act and the Retirement Benefits (Deputy President and Designated State Officers) Act. Indeed, the Committee noted that the County Assemblies Pensions Bill (Senate Bill No. 14 of 2024) is currently under consideration by the National Assembly and SRC has submitted a Memorandum in support of the contributory pension proposed for Members of County Assemblies.

Clause 67

129. **KLRC** proposed deleting sub-clause (2) because establishing a liaison office is an administrative arrangement between public sector agencies that does not require legislative coordination.

130. **KNCHR** proposed deleting the clause in its entirety because the functions had already been provided for under clause 33(f) where the Board of Trustees is mandated to ensure payment of pensions and other benefits to the members of the Fund and their dependents.
131. **Uraia Trust** proposed establishing an independent secretariat within the Judiciary for managing judges' retirement benefits to preserve independence from the Executive and ensure an efficient Judiciary-led benefits administration.
132. In its memorandum dated 25th July 2025, **SRC** proposed amending sub-clause (1) to indicate the right person responsible for the management and administration of the retirement benefits under the Bill.

Committee Observation

133. The Committee observed that the functions of the Cabinet Secretary are aligned with the roles of the Board of Trustee which includes paying pension and other benefits to the members of the Fund as provided for under Clause 33(f).

General Submissions

134. **LSK** proposed expanding of the scope of coverage and a separate legislation to cover judicial officers in subordinate courts to promote equality and avoid institutional disparities.
135. **Kituo cha Sheria** proposed inserting a provision to provide that the remuneration and benefits provided under the Act shall not be varied to the disadvantage of any judge or retired judge during their lifetime to reinforce safeguards for judicial independence and financial security.
136. **Kituo cha Sheria** also proposed a comprehensive review of the operative terms used in the Bill to ensure constitutional congruity and reduce interpretive uncertainty and litigation risk.
137. Further, **Kituo cha Sheria** proposed introducing an internal mechanism within the Board to handle disputes before appeal to the Tribunal, advancing fair administrative action.
138. **Kituo cha Sheria** also proposed the use of inclusive and gender-neutral terminology throughout the Bill.
139. **John Angolo** proposed application of the principle of proportionality to be applied to the members of the apex Court to address concerns of inequity between the Chief Justice and Deputy Chief Justice with the other Justices of the Supreme Court.
140. In its memorandum dated 25th July 2025, **SRC** submitted that Part II of the Bill ought to be aligned to the existing government policy on retirement benefits as relates to the scheme design (defined contribution), contribution rate and entitled benefits. In the alternative, SRC proposed that judges' retirement benefits remain under the existing regime in the Pensions Act, Cap. 189 and the Widows' and Children's Pension Act, Cap. 195. Further that pension increase to continue as per the provisions of the Pensions (Increase) Act, Cap. 190 until the relevant legislations are amended.

Committee Observation

141. The Committee observed that the object of the Bill is to specifically provide for and enhance retirement benefits for judges. The retirement benefits for other judicial officers are governed by the Public Service Superannuation Scheme Act.
142. The Committee observed that Part II of the Bill provides for the retirement benefits of judges who are in office before the commencement of the Act. The retirement benefits of this category of judges must comply with the provisions of Article 160(4) which provides that the remuneration and benefits of a judge shall not be varied to the disadvantage of that judge.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

143. Upon reviewing the Bill and the submissions received, the Committee made the following observations:
- (1) The Bill is guided by Article 160(4) of the Constitution which requires any pensions reforms that affect Judges should not vary the remuneration and benefits payable to a judge to their disadvantage. Article 160(4) requires judges who are in a Defined Benefits Scheme to remain in such a Scheme or for the components of the Scheme to be enhanced.
 - (2) The retirement benefits for judges are currently prescribed under the Pension Act (Cap. 189) which came into operation on 1st January 1946. The Act provides for a defined benefit pension plan where the government undertakes to pay a specific pre-determined benefit to a judge upon retirement.
 - (3) In 2010, the government undertook pension reforms in the public sector shifting the pension schemes in the public sector from defined benefit to defined contribution schemes. The pension reforms were introduced through the Public Service Superannuation Scheme Act (Cap. 189A) which established the contributory public service superannuation scheme for providing retirement benefits to persons in the public service excluding the judicial service.
 - (4) The enactment of a separate legislation to provide for the retirement benefits of Judges has been under consideration for more than twenty (20) years. During this period, specific legislation has been passed and updated to provide for the retirement benefits of civil servants, Members of Parliament and designated State Officers. Judges have been long ignored and are the only State Officers left to rely on the outdated provisions of the Pensions Act which is not responsive to the contemporary realities.
 - (5) The Bill largely seeks to—
 - (a) grant Judges a fair and decent pension that assures them of a dignified life in retirement in appreciation of their unique contributions in public service;
 - (b) ensure that the position of Judge retains esteem and continues to be attractive to deserving members of the legal profession; and
 - (c) maintain judicial independence by ensuring the financial security for judges upon retirement.
 - (6) The Bill provides for retirement benefits to three categories of judges, i.e., those in office before the commencement of the Act, judges appointed in office after the commencement of the Act and judges who retired in accordance Article 167 after the promulgation of the Constitution.
 - (7) The Bill was developed in consultation with the National Treasury and Approved by Cabinet. Its actuarial costings as at June 2024 indicate that—
 - (a) In terms of accrued benefits under the Pensions Act Cap. 189, the accrued past service liability was Kshs. 4.27billion as at 30 June 2024, for all prior service up to that date. In comparison, the accrued past service liability under the proposed Defined Benefit Section of the Bill is Kshs 5.67 billion as at 30 June 2024, for all prior service up to that date. The proposed Defined Benefit Section of the Bill, which has improvements to the pension benefits under the Pensions Act adds Kshs 1.39 billion to the past service pension liability.
 - (b) In terms of the projected Cash Outflow of Additional Benefits over those Payable under the Pensions Act, the projections show that over the next five years, the additional benefits in the proposed Defined Benefit portion of the Bill would be approximately

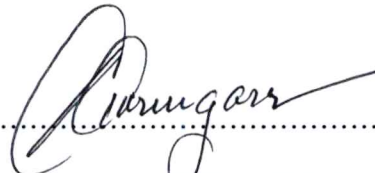
Kshs. 395 million paid to 68 newly retired Judges and 19 already retired Judges over and above the benefits payable under the Pensions Act.

- (8) The proposal to have new judges appointed to office after the commencement of the Bill in a Defined Contribution Scheme is in keeping with the policy shift communicated through Treasury Circular No. 18 of 2010 which required all future retirement benefits accrual to be under a Defined Contribution (DC) scheme.
- (9) The Supreme Court comprises seven judges. Whereas the retirement benefits for the Chief Justice and Deputy Chief Justice are set under the Retirement Benefits (Deputy President and Designated State Officers) Act) the benefits of the other five judges are governed by the Pensions Act. This is despite the additional administrative duties the five judges perform alongside their judicial work, including oversight of security; Judiciary buildings and infrastructure; welfare of judges and staff; development of rules and regulations of the Court; training; and bar bench relations. The constitutional stature and workload of the five other Supreme Court Judges should be taken into account in the provisions of the Bill to entitle them to benefits them slightly higher than those of judges in other superior courts and below those of the Chief Justice and Deputy Chief Justice, for purposes of equity and proportionality.
- (10) The benefits provided for in the Bill do not extend to judges who retired before the promulgation of the Constitution in 2010. Noting that the judges in question are only six (6) in number, the Bill should be revised to accord the judges appropriate benefits.
- (11) Article 94(5) of the Constitution mandates Parliament to legislate on any matter having the force of law in Kenya, including pension. In exercise of this power, Parliament has enacted the Pensions Act, the Public Service Superannuation Scheme Act, the Parliamentary Pensions Act and the Retirement Benefits (Deputy President and Designated State Officers) Act.
- (12) SRC is, in principle, not opposed to the enhancement of the pensionable emoluments of judges, and the inclusion of a transport allowance and a medical cover as part of the benefits of a retired judge. The concern expressed by SRC is that only they can set what the three items constitute. Since the establishment of SRC, the Commission has not taken any step to prescribe the pensionable emoluments of judges, the inclusion of a transport allowance and a medical cover as part of the benefits of retired judges. Even after publication of the Bill and as at the time of writing this Report, SRC is yet to take any formal step to address the issue of judges' retirement benefits and seems content with the provisions currently contained in the Pensions Act.
- (13) The National Assembly is currently seized of the County Assemblies Pensions Bill (Senate Bill No. 14 of 2024). The Bill seeks to establish a pension scheme for Members of County Assemblies, which, if enacted shall result in additional funding for county assemblies to cover the 15% contribution by County Assemblies Service Boards from public funds as sponsors of the scheme. As advised by the Parliamentary Budget Office, passage of the Bill will occasion additional expenditures above the current recurrent budget ceilings for the county assemblies and require additional resources during the consideration and passage of the Division of Revenue Bill and the County Allocation of Revenue Bill. During the first year of the scheme alone, the 47 County Assembly Service Boards shall have to contribute approximately Kshs. 380 million to the scheme from public funds. The SRC has submitted a Memorandum in support of the proposed pension, which is inconsistent with the submissions the Commission has made on Judges' pension.

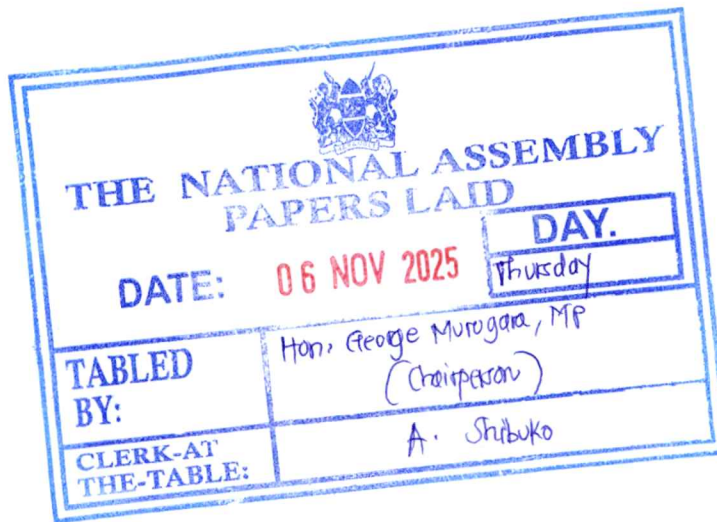
CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

144. The Committee, having considered the Judges' Retirement Benefits Bill (*National Assembly Bill No. 27 of 2025*) and the submissions from members of the public and stakeholders, recommends that the House considers and passes the Bill at Second Reading, Committee Stage and Third Reading **with appropriate amendments to incorporate the views of the public and stakeholders, the Committee and Members.**

SIGNED..........DATE.....*6.11.2025*.....

HON. GEORGE GITONGA MURUGARA, CBS, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS



Annexure **1** :

Adoption Schedule



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ADOPTION OF THE COMMITTEE REPORT ON ITS CONSIDERATION OF THE JUDGES' RETIREMENT BENEFITS BILL, 2025 (NATIONAL ASSEMBLY BILL NO. 27 OF 2025)

We, the Members of the Departmental Committee on Justice and Legal Affairs have, pursuant to Standing Order 199, adopted this Report of the Committee on its Consideration of the Judges' Retirement Benefits Bill, 2025 (National Assembly Bill No. 27 of 2025) sponsored by the Leader of the Majority Party, and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson

Murugara

2. Hon. Mutuse Eckomas Mwangi, OGW, MP - Vice Chair

Mutuse

3. Hon. Gladys Boss, MGH, MP

BOSS

4. Hon. Farah Maalim, EGH, MP

Farah

5. Hon. Silvanus Osoro Onyiego, CBS, MP

.....

6. Hon. Tom Joseph Francis Kajwang', CBS, MP

.....

7. Hon. Muchangi Karemba, CBS, MP

Virtual

8. Hon. Timothy Wanyonyi Wetangula, CBS, MP

.....

9. Hon. (Dr.) Otiende Amollo, SC, EBS, MP

Otiende

10. Hon. Michael Mwangi Muchira, MP

Virtual

11. Hon. Aden Daud, EBS, MP

Aden Daud

12. Hon. John Okwisia Makali, MP

John Okwisia

13. Hon. Stephen M. Mogaka, MP

.....

14. Hon. Amina Udgoon Siyad, MP

Amina

15. Hon. CPA Suleka Hulbale Harun, MP

Suleka

Annexure **2** :

Minutes



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION-2025
DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 89TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS HELD IN COMMITTEE ROOM 25 ON
THURSDAY 6TH NOVEMBER 2025 AT 11:30 AM**

PRESENT

1. Hon. Murugara George Gitonga, MP - *Chairperson*
2. Hon. Mutuse Eckomas Mwangi, OGW, MP - *Vice Chairperson*
3. Hon. Gladys Boss, MGH, MP
4. Hon. Maalim Farah, EGH, MP
5. Hon. Muchangi Karemba, CBS, MP - *virtually*
6. Hon. (Dr.) Otiende Amollo, SC, EBS, MP
7. Hon. Muchira Michael Mwangi, MP - *virtually*
8. Hon. Aden Daud, EBS, MP
9. Hon. Makali John Okwisia, MP
10. Hon. Siyad Amina Udgoon, MP
11. Hon. CPA. Suleka Hulbale Harun, MP

ABSENT WITH APOLOGIES

1. Hon. Onyengo Silvanus Osoro, CBS, MP
2. Hon. Francis Kajwang' Tom Joseph, CBS, MP
3. Hon. Timothy Wanyonyi Wetangula, MP
4. Hon. Mogaka Stephen M. MP

SECRETARIAT

- | | | |
|------------------------|---|----------------------|
| 1. Mr. Ahmed Salim | - | Clerk Assistant I |
| 2. Mr. Abdikafar Abdi | - | Clerk Assistant III |
| 3. Mr. Walala Ronald | - | Senior Legal Counsel |
| 4. Mr. Abdirahim Omar | - | Fiscal Analyst I |
| 5. Ms. Vivienne Ogega | - | Research Officer III |
| 6. Mr. Meldrick Sakani | - | Audio Officer |
| 7. Mr. John Nduaci | - | Serjeant-at-Arms |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Matters arising
5. Consideration and adoption of the Report on Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025);

6. Consideration and adoption of the Report on the Kenya Judiciary Academy Bill (National Assembly Bill No. 42 of 2025).
7. Any Other Business
8. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/409/2025: PRELIMINARIES

The meeting was called to order at forty-five minutes past eleven o'clock followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves.

MIN. NO. DDC/JLAC/410/2025: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The agenda was deferred.

MIN. NO. DDC/JLAC/411/2025: CONSIDERATION OF THE REPORT ON THE JUDGES' RETIREMENT BENEFITS BILL, 2025

Upon reviewing the Bill and the submissions received, the Committee made the following observations:

- (1) The Bill is guided by Article 160(4) of the Constitution which requires any pensions reforms that affect Judges should not vary the remuneration and benefits payable to a judge to their disadvantage. Article 160(4) requires judges who are in a Defined Benefits Scheme to remain in such a Scheme or for the components of the Scheme to be enhanced.
- (2) The retirement benefits for judges are currently prescribed under the Pension Act (Cap. 189) which came into operation on 1st January 1946. The Act provides for a defined benefit pension plan where the government undertakes to pay a specific pre-determined benefit to a judge upon retirement.
- (3) In 2010, the government undertook pension reforms in the public sector shifting the pension schemes in the public sector from defined benefit to defined contribution schemes. The pension reforms were introduced through the Public Service Superannuation Scheme Act (Cap. 189A) which established the contributory public service superannuation scheme for providing retirement benefits to persons in the public service excluding the judicial service.
- (4) The enactment of a separate legislation to provide for the retirement benefits of Judges has been under consideration for more than twenty (20) years. During this period, specific legislation has been passed and updated to provide for the retirement benefits of civil servants, Members of Parliament and designated State Officers. Judges have been long ignored and are the only State Officers left to rely on the outdated provisions of the Pensions Act which is not responsive to the contemporary realities.
- (5) The Bill largely seeks to—
 - (a) grant Judges a fair and decent pension that assures them of a dignified life in retirement in appreciation of their unique contributions in public service;
 - (b) ensure that the position of Judge retains esteem and continues to be attractive to deserving members of the legal profession; and
 - (c) maintain judicial independence by ensuring the financial security for judges upon retirement.
- (6) The Bill provides for retirement benefits to three categories of judges, i.e., those in office before the commencement of the Act, judges appointed in office after the

- commencement of the Act and judges who retired in accordance Article 167 after the promulgation of the Constitution.
- (7) The Bill was developed in consultation with the National Treasury and Approved by Cabinet. Its actuarial costings as at June 2024 indicate that—
- (a) In terms of accrued benefits under the Pensions Act Cap. 189, the accrued past service liability was Kshs. 4.27billion as at 30 June 2024, for all prior service up to that date. In comparison, the accrued past service liability under the proposed Defined Benefit Section of the Bill is Kshs 5.67 billion as at 30 June 2024, for all prior service up to that date. The proposed Defined Benefit Section of the Bill, which has improvements to the pension benefits under the Pensions Act adds Kshs 1.39 billion to the past service pension liability.
 - (b) In terms of the projected Cash Outflow of Additional Benefits over those Payable under the Pensions Act, the projections show that over the next five years, the additional benefits in the proposed Defined Benefit portion of the Bill would be approximately Kshs. 395 million paid to 68 newly retired Judges and 19 already retired Judges over and above the benefits payable under the Pensions Act.
- (8) The proposal to have new judges appointed to office after the commencement of the Bill in a Defined Contribution Scheme is in keeping with the policy shift communicated through Treasury Circular No. 18 of 2010 which required all future retirement benefits accrual to be under a Defined Contribution (DC) scheme.
- (9) The Supreme Court comprises seven judges. Whereas the retirement benefits for the Chief Justice and Deputy Chief Justice are set under the Retirement Benefits (Deputy President and Designated State Officers) Act) the benefits of the other five judges are governed by the Pensions Act. This is despite the additional administrative duties the five judges perform alongside their judicial work, including oversight of security; Judiciary buildings and infrastructure; welfare of judges and staff; development of rules and regulations of the Court; training; and bar bench relations. The constitutional stature and workload of the five other Supreme Court Judges should be taken into account in the provisions of the Bill to entitle them to benefits them slightly higher than those of judges in other superior courts and below those of the Chief Justice and Deputy Chief Justice, for purposes of equity and proportionality.
- (10) The benefits provided for in the Bill do not extend to judges who retired before the promulgation of the Constitution in 2010. Noting that the judges in question are only six (6) in number, the Bill should be revised to accord the judges appropriate benefits.
- (11) Article 94(5) of the Constitution mandates Parliament to legislate on any matter having the force of law in Kenya, including pension. In exercise of this power, Parliament has enacted the Pensions Act, the Public Service Superannuation Scheme Act, the Parliamentary Pensions Act and the Retirement Benefits (Deputy President and Designated State Officers) Act.
- (12) SRC is, in principle, not opposed to the enhancement of the pensionable emoluments of judges, and the inclusion of a transport allowance and a medical cover as part of the benefits of a retired judge. The concern expressed by SRC is that only they can set what the three items constitute. Since the establishment of SRC, the Commission has not taken any step to prescribe the pensionable emoluments of judges, the inclusion of a transport allowance and a medical cover as part of the benefits of retired judges. Even after publication of the Bill and as at the time of writing this Report, SRC is yet to take any formal step to address the issue of judges' retirement benefits and seems content with the provisions currently contained in the Pensions Act.
- (13) The National Assembly is currently seized of the County Assemblies Pensions Bill (Senate Bill No. 14 of 2024). The Bill seeks to establish a pension scheme for Members of

County Assemblies, which, if enacted shall result in additional funding for county assemblies to cover the 15% contribution by County Assemblies Service Boards from public funds as sponsors of the scheme. As advised by the Parliamentary Budget Office, passage of the Bill will occasion additional expenditures above the current recurrent budget ceilings for the county assemblies and require additional resources during the consideration and passage of the Division of Revenue Bill and the County Allocation of Revenue Bill. During the first year of the scheme alone, the 47 County Assembly Service Boards shall have to contribute approximately Kshs. 380 million to the scheme from public funds. The SRC has submitted a Memorandum in support of the proposed pension, which is inconsistent with the submissions made Judges' pension.

Committee Recommendations

The Committee, having considered the Judges' Retirement Benefits Bill (*National Assembly Bill No. 27 of 2025*) and the submissions from members of the public and stakeholders, resolved to recommend that the House considers and passes the Bill at Second Reading, Committee Stage and Third Reading with appropriate amendments to incorporate the views of the public and stakeholders, the Committee and Members.

Adoption of the Report

The Committee report was adopted having being proposed by Hon. Aden Daud, MP and seconded by Hon. John Makali, MP.

MIN. NO. DDC/JLAC/412/2025:

CONSIDERATION OF THE REPORT ON THE KENYA JUDICIARY ACADEMY BILL, 2025

The Committee resolved to consider and adopt the report on the Kenya Judiciary Academy (National Assembly Bill No. 42 of 2025) sponsored by Hon. George Murugara, MP on Tuesday, 11th November 2025.

MIN. NO. DDC/JLAC/413/2025:

ADJOURNMENT

There being no other business, the meeting was adjourned at twenty minutes past twelve o'clock. The next meeting will be held on notice.

SIGNED:  DATE: 6. 11. 2025'
(CHAIRPERSON HON. MURUGARA GEORGE GITONGA, CBS, MP)

Annexure **3** :

Judges' Retirement Benefits Bill, 2025

SPECIAL ISSUE

Kenya Gazette Supplement No. 97 (National Assembly Bills No. 27)



REPUBLIC OF KENYA

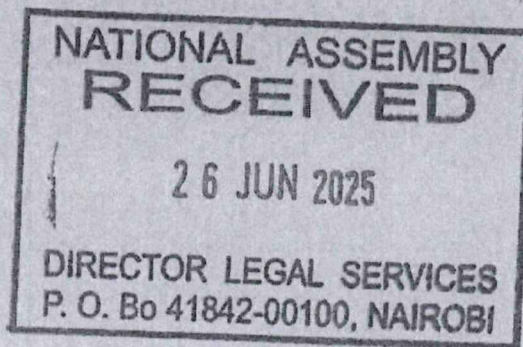
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2025

NAIROBI, 11th June, 2025

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NATIONAL ASSEMBLY
RECEIVED
DIRECTOR LEGAL SERVICES
P. O. BOX 1042-0011 HARARE

**THE JUDGES' RETIREMENT BENEFITS BILL,
2025**

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY PROVISIONS

- 1—Short title.
- 2—Interpretation.
- 3—Application.

**PART II—PENSION AND OTHER BENEFITS
FOR JUDGES IN OFFICE AT COMMENCEMENT
OF THIS ACT**

- 4—Application of the Part.
- 5—Right to pension.
- 6—Qualifying service for a pension.
- 7—Prior public service.
- 8—Election by an entitled person.
- 9—Benefits to be charged on the Consolidated Fund.
- 10—Judges' pension.
- 11—Commutation of pension.
- 12—Pensions payable monthly.
- 13—Pension increase.
- 14—Maximum pension.
- 15—Death gratuity.
- 16—Retirement before attaining the qualifying service.
- 17—Retirement due to mental or physical incapacity.
- 18—Pension to a spouse on death of a judge or a retired judge.
- 19—Allocation of pension to more than one spouse.
- 20—Pension in respect of children on death of a judge or a retired judge.
- 21—Pension in respect of children on death of a spouse or when spouse pension is not payable.
- 22—Re-organisation of office.
- 23—Non-pension benefits.

**PART III—PENSION AND OTHER BENEFITS FOR
JUDGES APPOINTED AFTER COMMENCEMENT
OF THIS ACT**

- 24—Application of the Part.
- 25—Establishment of the Judges' Retirement Benefits Fund.
- 26—Mandatory contribution to the Fund
- 27—Life insurance for members.
- 28—Additional voluntary contributions by a member.
- 29—Establishment of Board of Trustees.
- 30—Qualification for appointment as a trustee.
- 31—Tenure of trustees.
- 32—Filling of vacancies.
- 33—Functions of the Board.
- 34—Meetings of the Board
- 35—Committees of the Board.
- 36—Disclosure of interest.
- 37—Remuneration of trustees.
- 38—Powers of the Board.
- 39—Delegation of powers.
- 40—Staff of the Board.
- 41—The common seal.
- 42—Retirement savings accounts.
- 43—Vesting of benefits.
- 44—Withdrawal from the retirement savings account.
- 45—Entitlement to make withdrawals.
- 46—Payment of retirement benefits.
- 47—Particulars and dependants of a member.
- 48—Benefits to be paid to nominated persons.
- 49—Mode of payment of dependants' pensions.

- 50—Payment of benefits of a member who dies in service.
- 51—Payment of benefits of a member who dies in retirement.
- 52—Benefits not form part of estate of member.
- 53—Prohibited payments.
- 54—Payment of benefits of a member who is appointed as Chief Justice or Deputy Chief Justice.
- 55—Additional benefits.
- 56—Appointment and functions of the administrator.
- 57—Appointment and functions of the manager.
- 58—Appointment and functions of the custodian.
- 59—Duty of care.
- 60—Proceeds of the Fund and investments.
- 61—Expenses of administering the Fund.
- 62—Accounts and audit.
- 63—Annual estimates.
- 64—Annual general meeting.

**PART IV—BENEFITS FOR JUDGES WHO
RETIRED BEFORE COMMENCEMENT OF THIS
ACT**

- 65—Application of the Part.
- 66—Benefits for judges who retired before commencement.

PART V—MISCELLANEOUS PROVISIONS

- 67—Functions of the Cabinet Secretary.
- 68—Benefits not to be assigned or attached.
- 69—Exemption.
- 70—Appeals.

**PART VI—PROVISIONS ON DELEGATED
LEGISLATION**

- 71—Regulations.

**PART VII—SAVINGS AND TRANSITION
PROVISIONS**

- 72—Saving and transition.

**THE JUDGES' RETIREMENT BENEFITS BILL,
2025**

A Bill for

AN ACT of Parliament to provide for the pension and other retirement benefits to judges of superior courts and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY PROVISIONS

1. This Act may be cited as the Judges' Retirement Benefits Act, 2025.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“accrued interest” means the income or capital appreciation or depreciation, less any applicable tax and costs of administration credited to a member's retirement savings account;

“administrator” means a body corporate or a person registered under the Retirement Benefits Act, and appointed by the Board under section 56;

Cap. 197.

“annual general meeting” means an annual general meeting convened in accordance with section 64;

“benefit” means a pension, additional benefit under Part II, Part III and Part IV or any other payment made to the dependent of a deceased judge;

“Board” means the Board of Trustees of the Fund established under section 29;

“Cabinet Secretary” means the Cabinet Secretary in the Ministry for the time being responsible for matters relating to finance;

“eligible child” includes a biological child, a stepchild or an adopted child who—

- (a) has not attained the age of eighteen years;
- (b) has attained the age of eighteen years but is under the age of twenty-five years and is undertaking full-time education; or
- (c) was, at the time of death of the judge or retired judge, wholly or mainly dependent on the

deceased judge or retired judge and was, at that time and has at all times since, been either—

- (i) a person falling under paragraph (a) or (b); or
- (ii) is incapable and likely to remain permanently incapable, by reason of bodily or mental infirmity, of earning a living and is not, for the time being, maintained out of money provided by the government in a hospital or a similar institution;

“contribution” means the amount payable by a member or by the Government into the Fund;

“custodian” means a person registered under the Retirement Benefits Act, as such and appointed by the Board under section 58;

“dependant”, in relation to a deceased member, means any relative who survives the deceased member and who, on the date of the deceased’s death, was—

- (a) a spouse of the deceased;
- (b) a child of the deceased; or
- (c) a parent of the deceased who was wholly or substantially dependent on the deceased.

“financial year” means the period of twelve months ending on the 30th June in each year;

“Fund” means the Judges’ Retirement Benefits Fund established under section 25;

“Government” means the National Government;

“judge” means a person appointed as such under the Constitution;

“life insurance company” means any company registered by the Insurance Regulatory Authority under the Insurance Act to carry out the business of providing life insurance;

Cap. 487.

“manager” means a person registered as such under the Retirement Benefits Act, and appointed by the Board under section 57;

“parent” means a father or mother, and includes a step parent and a parent by adoption in any manner recognized under the laws of Kenya;

“pensionable emoluments” means the basic salary and house allowance payable to a judge;

“pensionable service” means service in a public office;

“prior public service” means prior service in a public office;

“public office” means an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of the money provided by Parliament;

“retired judge” means a person who has been a judge and is or has been in receipt of a pension under this Act and a judge who retired in terms of Article 167 of the Constitution on or after the 27th August, 2010;

“retirement age” means the retirement age of a judge under the Constitution;

“retirement savings account” means an account set up and maintained by the administrator under section 45;

“spouse” means a husband or a wife of a judge married under a system of law recognised in Kenya; and

“trustee” means a member of the Board of Trustees established under section 29.

3. (1) The provisions of this Act shall apply to—

Application.

(a) a judge who was in office at the commencement of this Act to the extent specified in Part II;

(b) a judge who was appointed after the commencement of this Act to the extent specified in Part III; and

(c) a judge who retired in accordance with Article 167 of the Constitution at any time after the 27th August, 2010, but before the commencement of this Act to the extent specified in Part IV.

(2) Except to the extent specified in section 54, this Act shall not apply to the Chief Justice and Deputy Chief Justice from the date of assuming office as Chief Justice or Deputy Chief Justice.

(3) The provisions of this Act shall prevail in the event of a conflict with other legislation relating to pension to the extent that it does not disadvantage a judge entitled under this Act.

PART II—PENSION AND OTHER BENEFITS FOR JUDGES IN OFFICE AT THE COMMENCEMENT OF THIS ACT

4. (1) In this part, “judge” means a person who was in office at the commencement of this Act.

Application of this part.

(2) This part shall apply to judges who were in office at the commencement of this Act.

Payment of Entitlements

5. (1) A judge has a right to pension or gratuity, as the case may be.

Right to pension.

(2) If a judge has completed ten years of pensionable service, the pension earned shall vest in the judge and shall be payable in such manner and at such times as provided in this Part.

(3) A judge who serves for a period of less than ten years shall be entitled to service gratuity in accordance with section 16.

6. The qualifying service for pension, in relation to a person who has served as judge, shall be ten years.

Qualifying service for a pension.

7. (1) If a judge has previously served as a public officer, the period of that service shall form part of the qualifying service for pension.

Prior public service.

(2) Subsection (1) shall only apply where there is no break in service after appointment to a public office.

(3) A break in service caused by temporary suspension of employment not arising from misconduct or resignation shall be disregarded for purposes of this section.

(4) If a person to whom subsection (1) applies has at any time been paid gratuity or pension, the period of which the gratuity or pension was paid shall not be included in computation of pension under this Part.

(5) Subject to section 7(1), the qualifying service for a person to whom this Part applies and who at any time

before the commencement of this Act was a public appointed a judge, shall be included in the computation of pensionable service.

8. (1) A judge may, within twelve months after commencement of this Act—

Election by an entitled person.

(a) apply to transfer to the Consolidated Fund all the accrued pension benefits under the judicial service pension scheme or any other contributory pension scheme in the public service for the period of service to be considered pensionable service under this Part; or

(b) retain the pension benefits under the scheme in which the pension benefits were accrued.

9. Pension, benefits and gratuity, which are payable under this Part shall be a charge on the Consolidated Fund.

Pension, benefits and gratuity to be a charge on the Consolidated Fund.

10. (1) A judge who elects to retire after attaining the age of sixty-five years or has attained the retirement age prescribed maximum retirement age shall, after serving as a judge for at least ten years, be entitled to an annual pension equal to one-four-hundred-and-eightieth of the judge's pensionable emoluments for each completed month of service.

Judges' pension.

(2) The pension of a judge payable under this Part shall be computed on the basis of the pensionable emoluments of that judge on the date the judge ceased to hold office as a judge.

(3) If a judge leaves office before attaining the age of sixty-five years, the judge shall only access his or her pension after attaining the age of sixty-five years.

11. (1) A retired judge entitled to a pension under this Part may commute up to one-quarter of their annual pension at an equivalent of twenty times the amount so commuted and the balance of three-quarters shall be paid as a monthly pension in accordance with this Part.

Commutation of pension.

(2) The commutation of pension shall be exercised by a retired judge in writing and that option once exercised shall be final and irrevocable.

12. Pension payable under this Part accrue daily but shall be payable monthly in arrears from the Consolidated Fund.

Pensions payable monthly.

13. (1) Subject to the provisions of this Act, pension increase shall be paid on the 1st July of every year on every specified pension.

Pension increase.

(2) The pension increase shall be equivalent to the increase in the Consumer Price Index as reported by the Kenya National Bureau of Statistics for that financial year.

(3) The percentage increase in the pension specified under subsection (1) shall—

- (a) not exceed five per cent or be less than one per cent; and
- (b) not be paid in respect of any specified pension which became payable after the date of the increase where the amount of the pension is calculated by reference to a pensionable emolument received on or after such date.

(4) The Pensions (Increase) Act shall not apply to a pension payable under this Part.

Cap. 190.

14. (1) Pension payable under this Part, including any pension increase thereof, shall not exceed the amount of the pensionable emoluments earned by a sitting judge in the same position as that which the retired judge occupied on retirement.

Maximum pension.

(2) A judge who has been granted pension in respect of prior public service shall not draw an amount of pension that, when added to the amount of any pension in respect of other public service, exceeds the highest pensionable emolument earned by the judge at any time while in public service.

15. (1) Where a judge dies before attaining the qualifying service, the surviving spouse shall be paid a gratuity calculated as one month's pensionable emolument for each year of service.

Death gratuity.

(2) Where a judge dies before attaining the qualifying service and is survived by more than one spouse, the gratuity payable under subsection (1) shall be shared equally among the surviving spouses.

16. Subject to the provisions of this Act, a judge who retires after attaining retirement age but who had served for less than ten years, shall be entitled to service gratuity equal to one-four-hundred-and-eightieth of their pensionable emoluments for each completed month of service multiplied by five.

Retirement before attaining the qualifying service.

17. Sections 11 and 13 shall apply, with the necessary modifications, to a judge who is removed from office because of inability to perform the functions of office due to mental or physical incapacity.

Retirement due to mental or physical incapacity.

(2) The pension payable to a judge who is removed from office because of inability to perform the functions of office due to mental or physical incapacity shall not be less than fifty per cent of the pension the judge would have been entitled to, had the judge retired on attaining retirement age or being eligible to retire early in accordance with this part.

(3) The pension payable to a judge, who is removed from office because of inability to perform the functions of office due to mental or physical incapacity, shall be computed on the basis of the pensionable emoluments of that judge on the date they were removed from office and shall be payable upon the removal of the judge from office.

18. (1) Where a judge who is entitled to a pension under this Part dies before attaining retirement age and is survived by a spouse, a monthly pension shall be paid to the surviving spouse at a rate equal to fifty per cent of the rate of the pension that the deceased judge was entitled to as provided for in section 10.

Pension to a spouse on death of a judge or a retired judge.

(2) Where a retired judge dies and is survived by a spouse, the pension shall be paid to the spouse at a rate equal to fifty per cent of the monthly pension that was payable to the retired judge as provided for in section 10:

Provided that the pension payable to a spouse under this subsection shall not be paid if the deceased retired judge entered into the marital relationship after retirement.

(3) The pensions payable under subsections (1) and (2) shall continue for five years after the death of the judge or retired judge.

19. (1) If a judge entitled to pension under this Part or a retired judge dies and is survived by more than one spouse, the judge's pension shall be shared equally among the surviving spouses.

Allocation of pension to more than one spouse.

(2) The total amount of the pension payable to the surviving spouses under subsection (1) shall not exceed fifty per cent of the pension that the deceased judge or retired judge would have received.

20. (1) Where a judge entitled to a pension under this Part dies before retirement and is survived by a spouse and a child or children, there shall, in addition to any pension that is payable to the spouse under section 18, be paid to the spouse, in respect of any eligible child or children of the judge, a pension at a rate equal to the applicable percentage of the rate of the judge's pension.

Pension in respect of children on death of a judge or a retired judge.

(2) The Cabinet Secretary may determine the manner in which the pension is payable in respect of a child, if it is in the best interests of the child for the pension to be paid other than to the surviving spouse.

(3) Subject to this section, where a retired judge dies and is survived by a spouse and a child or children, there shall, in addition to any pension that is payable to the surviving spouse under section 18, be paid to the spouse, in respect of any eligible child or children of the retired judge, pension at a rate equal to the applicable percentage of the rate of the pension that would have been payable to the retired judge.

(4) For the purposes of subsections (1) and (3), the applicable percentage shall be—

- (a) twelve point five per cent where there is one eligible child;
- (b) twenty-five per cent where there are two eligible children;
- (c) thirty-seven point five per cent where there are three eligible children; or
- (d) fifty per cent where there are four or more eligible children.

(5) Pension shall not be payable under this section in respect of a child of a marital relationship if the deceased retired judge entered into the relationship after retirement.

21. (1) Subject to this section, where the surviving spouse of a deceased judge or retired judge, who became entitled to a pension under this Part upon the death of the judge or retired judge, dies, there shall be paid, in respect of any eligible child or children of the judge or retired judge—

Pension in respect of children on death of a spouse or when spouse pension is not payable.

- (a) in the case of the spouse of a judge other than a retired judge, a pension at a rate equal to the applicable percentage of the relevant pension in relation to the Judge; or
- (b) in the case of the spouse of a retired judge, a pension at a rate equal to the applicable percentage of the pension that would have been payable to the retired judge if the retired judge had not died.

(2) For the purposes of subsection (1), the applicable percentage shall be—

- (a) twenty-five per cent where there is one eligible child;
- (b) fifty per cent where there are two eligible children;
- (c) seventy-five per cent where there are three eligible children; or
- (d) one hundred per cent where there are four or more eligible children.

(3) Pension shall not be payable under this section in respect of a child of a marital relationship if the deceased retired judge entered into the relationship after retirement.

(4) In this section, “relevant pension” means the pension that would have been payable to the judge had the judge retired on the date of the judge’s death.

22. (1) A judge who is retired upon the re-organisation of the office after serving as a judge for at least ten years but has not attained the mandatory retirement age shall be entitled to an annual pension equal to one-fourth-hundred-and-eightieth of their pensionable emoluments for each completed month of service.

Re-organisation of office.

(2) In this section, “re-organisation of office” means that the office has been restructured for the purpose of facilitating improvement in the Judiciary by which greater efficiency or economy may be effected.

23. (1) A judge who qualifies for pension under this Part shall, upon retirement be entitled to—

Non-pension benefits.

- (a) a monthly transport allowance equivalent to one seventh of the basic salary of the judge at retirement for a period of one hundred and twenty months, which shall be payable once as a lump sum upon retirement;
- (b) a medical cover, during the life of the retired judge, for the retired judge and the spouse on the same terms as that enjoyed by serving judges;
- (c) diplomatic passports, during the life of the retired judge, for the retired judge and the spouse; and
- (d) access to the government lounge at all airports within Kenya, during the life of the retired judge, for the retired judge and the spouse.

PART III—PENSION AND OTHER BENEFITS FOR JUDGES APPOINTED AFTER COMMENCEMENT OF THIS ACT

24. (1) In this Part, “judge” and “member” mean a person who was appointed as a judge after the commencement of this Act.

Application of the Part.

(2) This Part shall apply to a judge who was appointed into office after the commencement of this Act.

Judges Retirement Benefits Fund

25. (1) There shall be established a fund to be known as the Judges' Retirement Benefits Fund which shall vest in, be managed and operated by a Board of Trustees.

Establishment of the Judges' Retirement Benefits Fund.

(2) There shall be paid—

- (a) into the Fund, all the contributions and any other payments required by this Part to be paid into the Fund; and
- (b) out of the Fund, the pension benefits and any other payments required by this Part to be paid out of the Fund.

26. (1) The Government shall, in respect of every member—

Mandatory contribution to the Fund

- (a) deduct from that member's monthly pensionable emoluments and pay into the Fund a sum calculated at the rate of seven point five per cent of the member's monthly pensionable emoluments as the member's monthly contribution; and
- (b) pay into the Fund a sum calculated at the rate of fifteen per cent of the member's monthly pensionable emoluments as the Government's monthly contribution.

(2) The Government's contribution under subsection (1)(b) shall be a direct charge on the Consolidated Fund.

(3) The National Treasury shall, within ten working days after the end of the month in which the contributions are due, remit an amount comprising the member's and the Government's contribution in respect of the member to the custodian.

(4) Where the Government fails to make a payment required to be made under this section, the Government shall be liable to any penalty that may be determined in accordance with the applicable law. .

27. The Government shall meet the cost of a life insurance policy for each member comprising death benefits for the member.

Life insurance for members.

28. Subject to such guidelines as the Board may issue, a member may make additional voluntary contributions to the his or her retirement savings account.

Additional voluntary contributions by a member.

Board of Trustees

29. (1) There is established a board to be known as the Judges' Retirement Benefits Fund Board of Trustees which shall be responsible for operating and managing the Fund.

Establishment of 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;
- (b) purchasing, holding, managing and disposing of movable and immovable property; and
- (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.

(3) The members of the Board shall be appointed by the Cabinet Secretary and shall comprise—

(a) a chairperson who—

- (i) has at least twenty years' experience in a senior management position;
- (ii) is not in the service of any Government's or worker's representative organization; and
- (iii) is not affiliated to any of the institutions represented on the Board;

(b) one judge of the Supreme Court;

(c) one judge of the Court of Appeal;

(d) two judges, one male and one female, nominated from among the judges of the High Court and of the courts with the status of the High Court;

(e) a retired Judge who is a member of the Fund;

(f) a member of the Judicial Service Commission nominated by the Commission;

(g) the Principal Secretary to the National Treasury or a representative of the Principal Secretary nominated in writing; and

(h) the Chief Registrar of the Judiciary.

(4) The members appointed under subsection (3)(b), (c), (d) and I shall be nominated by the Chief Justice.

(5) An appointment under sub-section (3)(a), (b), (c), (d), (e) or (f) shall be by name and by notice in the Gazette.

(6) The Board shall competitively recruit and appoint a Secretary.

(7) The Board may co-opt any person to assist it for such purposes and for such periods as the Board may determine, but a person so co-opted may not vote on any matter before the Board.

(8) A member of the Board appointed under this section shall have, in relation to the Fund, the duties and

obligations of a trustee, and shall be accountable in accordance with the provisions of the Trustee Act and any other written law.

Cap. 167.

30. A person shall not be appointed as a trustee under section 30 if that person—

Qualification for appointment as a trustee.

- (a) has been sentenced to imprisonment for a period of six months or more;
- (b) is adjudged bankrupt;
- (c) was previously involved in the management or administration of a scheme which was deregistered for any failure on the part of the management or the administration thereof;
- (d) is disqualified under any other written law, or his or her holding office as such is deemed by the Retirement Benefits Authority as being, in any way, detrimental to the Fund; or
- (e) does not comply with the directions, guidelines or practice notes issued by the Retirement Benefits Authority.

31. (1) The trustees appointed under section 29(3)(a), (b), (c), (d), (e) and (f) shall hold office for a term of three years and may be eligible for re-appointment for only one further term of three years.

Tenure of trustees.

(2) Notwithstanding the provisions of subsection (1), a trustee may be removed from office by a resolution of the Board if the trustee—

- (a) has been absent from three consecutive meetings of the Board without justifiable cause;
- (b) has been adjudged bankrupt or has entered into a composition or scheme of arrangement with creditors;
- (c) has been convicted of a felony or of any offence involving dishonesty or corruption; or
- (d) has become incapable of carrying out the functions of office, either arising from an infirmity of body or mind.

(3) A trustee shall cease to be a member of the Board if the trustee resigns from office by a notice in writing to the Cabinet Secretary.

32. Whenever the office of a trustee appointed under sections 29(3)(a), (b), (c), (d), (e) or (f) becomes vacant, the Cabinet Secretary shall, on the recommendation of the nominating body, appoint a similarly qualified person to fill the vacancy for the remainder of the term.

Filling of vacancies.

33. The functions of the Board shall be to—

Functions of the Board.

- (a) collect contributions payable to the Fund under this Part;
- (b) develop a prudent investment policy of the Fund in accordance with the provisions of the Retirement Benefits Act;
- (c) invest any funds of the Fund not immediately required for its purposes in the manner allowed by this Act;
- (d) protect members' contributions and the assets of the Fund;
- (e) negotiate competitive annuity rates with insurance companies;
- (f) pay out pensions and other benefits to the members of the Fund and their dependants;
- (g) advise the Cabinet Secretary on any necessary adjustments in the Fund in order to realize its objects under paragraphs (a), (b), (c) and (d); and
- (h) perform any other functions that may be conferred on it by this Act or under any other written law.

Cap. 197.

34. (1) The Board shall meet at least four times in every financial year.

Meetings of the Board

(2) Not more than three months shall elapse between the date of one meeting of the Board and the date of the next meeting.

(3) The chairperson shall preside at every meeting of the Board but the members present shall elect one of their members to preside whenever the chairperson is absent or otherwise unable to preside and the person so elected shall have all the powers of the chairperson with respect to the conduct of that meeting and the business transacted thereat.

(4) The quorum for the conduct of the meetings of the Board shall be five trustees.

(5) The decisions of the Board shall be unanimous:

Provided that where a decision is not unanimous, it shall be made by a majority vote of the trustees present and voting and in case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(6) The Board may invite any person who is not a member of the Board to participate in the deliberations of the Board, but such person shall not be entitled to vote.

(7) Subject to this Act, the Board may regulate its own procedure.

35. (1) The Board may establish committees of trustees to deal with such matters as the Board may specify.

Committees of the Board.

(2) The Board may co-opt persons who are not trustees to committees established under subsection (1) for a particular purpose and such persons shall hold office for such periods as the Board may determine.

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

36. (1) If a trustee is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the trustee, the trustee's spouse or the trustee's immediate relative or associate is directly or indirectly interested in a private capacity, the trustee shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not take part in any consideration or discussion, or vote on any question touching on such matter unless the Board determines otherwise.

Disclosure of interest.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

(3) A trustee who fails to disclose an interest as required under this section shall be disqualified from holding office as a member of the Board.

37. The chairperson and trustees shall be paid such allowances or other remuneration as the Cabinet Secretary may determine.

Remuneration of trustees.

38. (1) In the exercise of its functions, the Board shall be accountable to the Government and to the members of the Fund.

Powers of the Board.

(2) The Board shall have all powers necessary for the proper performance of its functions under this Act and, in particular, the Board shall have the power to—

- (a) control, supervise and administer the assets of the Fund in such manner and for such purposes as shall best promote the purpose of the Fund;
- (b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Fund;
- (c) receive contributions from members and the Government;
- (d) appoint a custodian, investment manager and administrator to carry out the functions specified under this Act or any other relevant written law; and
- (e) do such other things as are necessary to give effect to the provisions of this Act.

39. The Board may, by resolution generally or in any particular case, delegate to an officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions of the Board.

Delegation of powers.

40. The Board may appoint such officers or members of staff as may be necessary for the proper discharge of the functions of the Board on such terms and conditions of service as the Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine.

Staff of the Board.

41. (1) The common seal of the Board shall be kept in the manner that the Board may direct and shall not be used except by the order of the Board.

The common seal.

(2) The common seal, when affixed to a document and having been duly authenticated, shall be judicially and officially noticed and, unless the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

Payment of benefits

42. (1) The administrator appointed under section 56 shall establish and maintain a retirement savings account for each member in the member's name.

Retirement savings accounts.

(2) A member shall not have access to the funds held in the member's retirement savings account or have any dealing with the custodian with respect to the retirement savings account except through the administrator.

(3) Upon receiving the contributions in respect of a member remitted under sections 26 and 28, the custodian shall notify the administrator who shall cause the contributions to be credited in the retirement savings account of the member.

(4) The administrator shall issue to each member a statement in respect of that member's retirement savings account once in every year.

43. (1) The benefits derived from the contributions made by a member together with the accrued interest thereon shall immediately vest in the member.

Vesting of
benefits.

(2) Notwithstanding the provisions of any other written law, the benefits derived from the Government's contribution to a member's retirement savings account shall vest in the member after a period of one year.

(3) Subject to subsection (1), if a member dies while in service, the Government's contribution to the member's retirement savings account shall immediately vest in the dependants of the member.

44. (1) A member shall not be entitled to withdraw the balance in the member's retirement savings account except as provided in section 45.

Withdrawal from
the retirement
savings account.

(2) Subject to subsection (1), a member may withdraw —

- (a) his or her contribution and investment return in full on leaving employment for any reason;
- (b) the Government's contribution upon attainment of the retirement age; and
- (c) the aggregate in full of any additional voluntary contributions made into the Fund under section 31 together with the accrued interest thereon leaving employment for any reason.

45. (1) Any member who retires from service—

Entitlement to
make

withdrawals.

- (a) on attaining the mandatory retirement age;
- (b) on opting for early retirement; or
- (c) on medical grounds,

shall be entitled to make withdrawals in accordance with section 46.

(2) The proof of age of a member who retires from service for the purposes of subsection (1) shall be the date of birth provided by the member on the date of appointment.

46. (1) A member who retires from service may, in writing, request the Board to withdraw a lump sum from the balance in the member's retirement savings account which shall not exceed the equivalent of one third of the balance.

Payment of retirement benefits.

(2) Despite subsection (1), a member who retires from service may withdraw all of the member's voluntary contributions plus the accrued interest from the balance of the member's retirement savings account.

(3) The retirement benefits may be paid to a member who retires from service—

- (a) as an income drawdown in the form of monthly or quarterly withdrawals calculated on the basis of the expected life span of the member and payable out of the Fund or external income drawdown provider; or
- (b) in a monthly or quarterly annuity for life purchased from a life insurance company of a member's choice.

(4) The payment of a pension to a member shall commence at the end of the month immediately following the month of the member's retirement from service.

(5) For the purposes of this section, "quarterly" means a period of three months.

47. (1) Every member shall furnish the Board, in the prescribed manner, with the particulars of the member and the dependants of the member.

Particulars and dependants of a member.

(2) A member may update the particulars furnished under subsection (1) at any time before retirement.

(3) The information furnished under this section shall be used for the purposes of processing and payment of benefits to a member or a member's dependants.

(4) For the purposes of this Part, the furnishing of the Board with the particulars of the dependants of the member shall be deemed as the nomination of those dependants.

48. (1) On the death of a member, the benefits shall be paid to a person whose particulars have been furnished by the member in accordance with this Part:

Benefits to be paid to nominated persons.

Provided that where no particulars are provided by the member under section 47, the Board shall have discretion to determine the member's dependants.

(2) The Board shall hear and determine any dispute regarding the nomination of dependants under this Part.

49. The Board shall have the discretion to elect the most suitable mode of payment of the dependants' benefits.

Mode of payment of dependants' pensions.

50. (1) If a member dies while in service, the balance in the member's retirement savings account shall be paid—

Payment of benefits of a member who dies in service.

(a) in favour of the dependants of that member; or

(b) in the absence of any dependants, to the executor or the administrator of the estate of that member.

(2) Notwithstanding subsection (1), the Board shall have the discretion to elect the most suitable mode of payment of the dependants' pensions.

51. (1) If a member who had opted for an income drawdown under section 46(3)(a) dies while in retirement, a pension that is equivalent to the unutilised balance of that member's retirement savings account shall be paid to the member's dependants under this Part.

Payment of benefits of a member who dies in retirement.

(2) The payment under subsection (1) shall commence on the day following the member's death.

(3) If a member who had opted for an annuity payment under section 46(3)(b) dies while in retirement, the payments to the dependants shall be subject to the terms of the annuity.

52. Despite the provisions of any other written law, a benefit payable upon the death of a member shall not form part of the assets of the estate of that member.

Benefits not to form part of estate of member.

53. Subject to section 46, no payment shall be made out of the Fund—

Prohibited payments.

(a) to the Government without the prior written consent of the Retirement Benefits Authority;

(b) to a member while still in service; or

(c) to any person as a loan, advance or other similar benefit or payment except as provided under this Act or the Retirement Benefits Act.

Cap. 197.

54. (1) A member and the Government shall cease to make contributions into the Fund when that member is appointed under Article 166 as the Chief Justice or the Deputy Chief Justice.

Payment of benefits of a member who is appointed as Chief Justice or Deputy Chief Justice.

(2) The Board shall pay to the member the balance remaining in the member's retirement savings account upon the member's appointment as the Chief Justice or Deputy Chief Justice.

(3) Despite subsections (1) and (2), a member who is appointed as the Chief Justice or Deputy Chief Justice may opt to retain the balance of his or her retirement savings account in the Fund in accordance with this Act or any other written law.

Additional benefits

55. In addition to a pension payable under this Part, a retired judge to whom this Part applies shall be entitled, during the life of the retired judge, to—

Additional benefits.

(a) a medical cover for the retired judge and the retired judge's spouse on the same terms as that enjoyed by serving judges;

(b) a diplomatic passport for the retired judge and the retired judge's spouse; and

(c) access to the Government VIP lounges at all airports within Kenya for the retired judge and the retired judge's spouse.

Appointment of independent service providers

56. (1) The Board shall appoint an administrator of the Fund who shall, in accordance with this Act and any other relevant written law, carry out the following functions—

Appointment and functions of the administrator.

- (a) open a retirement savings account for each member and assign a personal pension number to each member;
- (b) credit each member's retirement savings account with the contributions made to the account;
- (c) inform the Board if a member's actual contribution details differ from the expected contribution details;
- (d) provide customer support services to the members including access to members' account balances and statements on demand;
- (e) cause the payment of retirement benefits to members who have retired or, where a member has died, to the member's beneficiaries;
- (f) be responsible for all calculations relating to the retirement benefits of a member; and
- (g) carry out any other functions as may be directed by the Board.

(2) 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:

Provided that clearly defined and reasonable fees, charges, costs and expenses of transactions approved by the Board shall be paid out of the income earned from the investment of the Fund.

57. The Board shall appoint a manager of the Fund who shall, in accordance with this Act and any other relevant written law—

Appointment and functions of the manager.

- (a) invest and manage the funds and assets of the Fund in accordance with the provisions of this Act and any other relevant written law;
- (b) provide quarterly reports of all transactions relating to the Fund;

- (c) provide regular information on investment strategy, market returns and other performance indicators to the Board for the benefit of members;
- (d) undertake statistical analysis on the investments and returns on investments with respect to the funds under management and provide data and information to the administrator and the Board; and
- (e) carry out any other functions as may be directed by the Board.

58. (1) The Board shall appoint a custodian of the Fund who shall, in accordance with this Act and any other relevant written law —

Appointment and functions of the custodian.

- (a) receive the contributions remitted in respect of each member on behalf of the Board;
- (b) within one day of receiving the contributions, notify the Administrator of such receipt;
- (c) hold pension funds and assets in safe custody in trust for the members and their beneficiaries;
- (d) on behalf of the Board, settle transactions and undertake activities relating to the administration of the Fund including the collection of dividends and related activities;
- (e) report to the Board on any matter relating to the assets of the Fund being held by the custodian at such intervals as may be determined by the Board;
- (f) execute, in favour of the Board, the relevant proxy for the purpose of voting in relation to the investments of the Fund; and
- (g) carry out any other functions as may be directed by the Board.

(2) The custodian shall maintain all pension funds and assets in its custody in accordance with the directions of the Board and shall not utilize any pension fund or assets in its custody to meet the custodian's own financial obligations to any person.

59. The administrator, manager and custodian shall —

Duty of care.

- (a) ensure that the Fund and its assets are managed or held in accordance with the provisions of this Act, any regulations or guidelines made under this Act and any directions that may be issued by the Retirement Benefits Authority;
- (b) take reasonable care to ensure that the management of the Fund or safe keeping of the Fund's assets are carried out in the best interests of the members;
- (c) report to the Board, as soon as is reasonably practicable, any unusual occurrence with respect to the Fund or its assets which in the administrator's, manager's or custodian's view could adversely affect the rights of a member or the member's retirement savings account; and
- (d) report to the Board, as soon as is reasonably practicable, if the Government has failed to remit any contributions and where the Government's contribution remains due for more than ten days.

Financial provisions

60. (1) The Fund shall comprise of—

Proceeds of the Fund and investments.

- (a) monies received as contributions under this Part;
- (b) fees, charges, monies or assets that may accrue to or vest in the Fund under this Act or under any written law; and
- (c) all monies from any other lawful sources provided, donated or loaned to the Fund.

(2) The Board shall invest any funds which are not for the time being required to be applied for the purposes of the Fund in accordance with the provisions of the Retirement Benefits Act.

Cap. 197.

61. (1) The Government shall meet the cost of the administration of the Fund for a period of five years from the date of first contributions into the Fund.

Expenses of administering the Fund.

(2) Upon the lapse of the period specified in subsection (1), there shall be paid out of the Fund monies for the administration of the Fund which shall not exceed

such percentage of the value of the assets of the Fund as may be prescribed in Regulations made under this Act.

(3) In estimating expenses for the purposes of this section, the trustees may include—

- (a) an amount representing the accruing liability of the Fund in respect of any emoluments, pensions, staff medical insurance or other benefits to which any persons employed for the purposes of this Act may become entitled in respect of that employment;
- (b) an amount in respect of the purchase of office stationery, equipment and machines, motor vehicles and insurance;
- (c) an amount in respect of maintenance and repairs of any buildings, grounds and facilities, and the rental value of any premises used for the purposes of this Act; and
- (d) an amount in respect of management fees including the custodial, actuarial and audit activities of the Board.

62. (1) The Board shall cause to be kept proper books of account and records in relation to the Fund, its undertakings, investment activities and properties.

Accounts and
audit.

(2) The Board shall, within a period of three months after the end of each financial year, prepare, sign and transmit to the Retirement Benefits Authority—

- (a) a balance sheet showing in detail the assets and liabilities of the Fund;
- (b) a statement of income and expenditure of the Fund; and
- (c) such other statements of account as required by law.

(3) The Board shall cause an audit of the books of account of the Fund to be conducted by a certified auditor in accordance with the provisions of the Public Audit Act not more than three months after the end of the financial year.

Cap. 412B.

63. During the period specified under section 61(1), the Board shall, at least three months before the end of each financial year, cause to be prepared and submit to the Cabinet Secretary for approval, estimates of the Fund's revenue and expenditure for the following financial year.

Annual estimates.

64. (1) The Board shall convene an annual general meeting of the members of the Fund within six months of the end of the financial year.

Annual general meeting.

(2) The Annual general meeting shall be conducted in accordance with the provisions of the Retirement Benefits Act.

Cap. 197.

PART IV—BENEFITS FOR JUDGES WHO RETIRED BEFORE COMMENCEMENT OF THIS ACT

65. (1) In this Part, "judge" means a judge who retired in accordance with Article 167 of the Constitution at any time after the 27th August, 2010, but before the commencement of this Act.

Application of the Part

(2) This Part shall apply to judges who retired in accordance with Article 167 of the Constitution at any time after the 27th August, 2010, but before the commencement of this Act.

66. A judge to whom this Part applies shall be entitled, during the life of the retired judge, to—

Benefits for judges who retired before commencement.

- (a) a medical cover for the retired judge and spouse on the same terms as that enjoyed by serving judges;
- (b) diplomatic passports for the retired judge and spouse; and
- (c) access to the Government lounge at all airports within Kenya for the retired judge and spouse.

PART V—MISCELLANEOUS PROVISIONS

67. (1) The Cabinet Secretary shall be responsible for the payment of pensions, gratuities and provision of non-pension benefits to judges under this Act.

Functions of the Cabinet Secretary.

(2) The Cabinet Secretary shall establish a liaison office to facilitate the timely payment of pensions, gratuities and provision of non-pension benefits under this Act.

68. Pension or gratuity granted under this Act shall not be assignable or transferable and shall not be liable to be attached, levied upon or sequestered except for the purpose of satisfying a debt due to the government.

Benefits not to be assigned or attached.

69. A judge entitled to pension under this Act shall be exempt from the National Social Security Fund Act.

Exemption.
Cap. 258.

70. Any person who is dissatisfied with any decision regarding the payment of a retirement or other benefit under this Act may appeal against the decision to the Appeals Tribunal established in accordance with section 47(1) of the Retirement Benefits Act.

Appeals.

Cap. 197.

PART VI—PROVISIONS ON DELEGATED LEGISLATION

71. (1) The Cabinet Secretary may make Regulations generally for giving effect to this Act and for prescribing anything required or necessary to be prescribed by or under this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), regulations may provide for—

- (a) matters of procedure in relation to any application under this Act;
- (b) the procedure and considerations for pension claims due to physical or mental incapacity;
- (c) the porting of contributions from other retirement benefits schemes by a judge; and
- (d) the management and administration of the Fund during the period of five years after first contributions are made under this Act.

(3) For the purposes of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act; and
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section.

(4) The principles and standards applicable to the delegated power referred to under this Act are those those found in—

- (a) the Statutory Instruments Act; and Cap. 2.
- (b) the Interpretation and General Provisions Act. Cap. 2A.

PART VII—SAVINGS AND TRANSITION PROVISIONS

72. (1) Upon commencement of this Act, the pension benefits of a judge to whom Part II applies shall, upon retirement, be computed on the basis of the formula provided under section 10. Saving and transition.

(2) The pension benefits payable to a judge to whom Part IV applies shall continue to be paid under the Pension Act or where applicable, under the Widows' and Children Pensions Act. Cap. 189.
Cap. 195.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons of the Bill

The principal object of this Bill is to provide for the pension and other retirement benefits to judges of superior courts and for connected purposes.

The Bill has been in development since the late 1990s and marks a significant step towards realizing the principles of the Constitution in respect of the Judiciary, its independence and the remuneration and benefits of judges of superior courts.

The Bill is divided into five parts.

Part I of the Bill (Clauses 1 - 3) deals with preliminary matters.

Clause 1 of the Bill provides for the short title of the Act.

Clause 2 of the Bill provides for the definition of key terms that have been employed throughout the Bill.

Clause 3 of the Bill provides for the persons to whom the Act shall apply. The Act shall apply to judges who are in office on the date of the commencement of the Act, judges who will be appointed after commencement of the Act and judges who retired after the 27th August, 2010, but before the commencement of the Act in accordance with Article 167(1) of the Constitution. It also provides that where there is a conflict of laws, the provisions of this Act shall prevail.

Part II of the Bill (Clauses 4 -23) provides for the payment of pensions and other benefits in respect of judges who are in office on the date of commencement of the Act.

Clause 4 of the Bill provides that Part II of the Act applies to judges who are in office on the commencement date and defines the word "judge" as used in this Part as such.

Clause 5 of the Bill provides for the right of a judge to retirement benefits under the Act.

Clause 6 of the Bill provides that the qualifying service for a pension under the Act.

Clause 7 of the Bill provides that prior service as public officer shall form part of qualifying service for pension.

Clause 8 of the Bill provided that a judge, who is entitled to pension under the judicial service pension scheme or any other contributory pension scheme in the public service, may apply to transfer the accrued pension to the Consolidated Fund for the period of service to the

considered pensionable service or maintain the administration of the pension benefits under the scheme in which they were accrued.

Clause 9 of the Bill provides that pensions, benefits and gratuities shall be a charge on the Consolidated Fund.

Clause 10 of the Bill provides for the computation and payment of pension to a judge who elects to retire early after attaining the age of sixty-five years or has attained the prescribed maximum retirement age.

Clause 11 of the Bill provides for the commutation of the pension by a judge upon retirement.

Clause 12 of the Bill provides that pension shall accrue daily but payable monthly in arrears.

Clause 13 of the Bill provides for the date of pension increase and percentage increase of pension.

Clause 14 of the Bill provides for the maximum pension payable to a retired judge.

Clause 15 of the Bill provides that gratuity shall be paid to the spouse of a judge who dies before attaining qualifying service.

Clause 16 of the Bill provides that a judge who retires after attaining retirement age but who had served for less than ten years, shall be entitled to service gratuity.

Clause 17 of the Bill deals with retirement of a judge due to mental or physical incapacity.

Clause 18 of the Bill provides for pension to spouse on death of a judge or a retired judge.

Clause 19 of the Bill provides for allocation of pension to more than one spouses upon the death of a judge or a retired judge.

Clause 20 of the Bill provides for pension in respect of a child or children on death of a judge or retired judge.

Clause 21 of the Bill provides for payment of pension to a child or children where the judge or retired judge is deceased as well as the spouse.

Clause 22 of the Bill provides for computation of pension where a judge retires upon re-organisation of office.

Clause 23 of the Bill provides for the non-pension benefits.

Part III of the Bill (Clause 24 - 64) deals the payment of pensions and other benefits in respect of judges who are appointed after the commencement of the Act.

Clause 24 of the Bill provides that Part III of the Act applies to judges who are appointed after the commencement date and defines the word "judge" as used in this Part accordingly.

Clause 25 to 41 of the Bill provide for the establishment of the Judges' Retirement Benefits Fund; the payment of contributions into the Fund; the appointment of members of the Judges' Retirement Benefits Fund Board of Trustees; their functions and powers; the filling of vacancies in the Board; the delegations of the powers of the Board; the obligation of Trustees to declare conflicts of interest; the meetings of Trustees and the appointment of Committees of Trustees; the appointment of the staff of the Board; and the common seal of the Board.

Clauses 42 to 55 provide for the creation of retirement savings accounts for members; the vesting of benefits to members or their dependants; the withdrawals from the retirement savings accounts by member or their dependants; the nomination of dependants by members; the procedure for making withdrawals from the Fund by members; the payments of pensions to retired members and their dependants; the payment of benefits to dependants when a member dies while in service or after retirement; payments that cannot be paid out of the Fund; the payment of benefits in respect of judges who are appointed as the Chief Justice and the Deputy Chief Justice; and additional non-pension benefits in respect of judges appointed after commencement of the Act.

Clauses 56 to 59 of the Bill provide for the appointment of independent service providers, that is, the Administrator, the Manager and the Custodian and provides for their powers and functions, and their duty of care to the members in the performance of their functions.

Clauses 60 to 64 of the Bill provide for the financial matters in respect of the Judges Retirement Benefits Fund, including how to treat the proceeds of the Fund and the investments by the Fund, the expenses for administering the Fund, accounting and auditing of the Fund; the making and approval of the annual estimates of the Fund; and the annual general meeting of the Fund.

Part IV of the Bill (Clause 65 - 66) deals with the non-pension benefits in respect of judges who retired in accordance with Article 167 of the Constitution after 27th August 2010 but before the commencement of the Act.

Part V of the Bill (clauses 67-72) provides for miscellaneous matters.

Clause 67 of the Bill provides for that the Cabinet Secretary shall be responsible for the payment of pensions.

Clause 68 of the Bill provides that pensions granted under this Act are not assignable nor attachable except for the purposes of satisfying a debt due to the government.

Clause 69 of the Bill provides for the provides for the exemption from the National Social Security Fund Act.

Clause 70 of the Bill provides for the right to appeal against decisions regarding the payment of pension and other benefits under the Act.

Part VI of the Bill, consisting of clause 71 of the Bill provides that the Cabinet Secretary responsible for pensions may make Regulations.

Part VII of the Bill, consisting of clause 72 of the Bill provides for saving and transition for the payment of pension payable to a judge serving upon commencement of this Act and a judge who retired after the 27th August, 2010.

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

The Bill delegates legislative powers to the Cabinet Secretary to make regulations under section 71 for the better carrying into effect of the provisions of the Bill. The Bill does not limit any of the rights and fundamental freedoms contained in the Bill of Rights in the Constitution.

Statement on how the Bill concerns county governments

The Bill is not a Bill concerning county governments in terms of Article 110(1)(a) of the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution.

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 19th June, 2025

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

Annexure **4** :

**Advertisement inviting the public
to submit memoranda on the Bill**



THE NATIONAL ASSEMBLY

13TH PARLIAMENT - FOURTH SESSION – 2025

IN THE MATTER OF ARTICLE 118(1) (B) OF THE CONSTITUTION AND IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE JUDGES' RETIREMENT BENEFITS BILL (NATIONAL ASSEMBLY BILL NO. 27 OF 2025)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, and National Assembly Standing Order 127(3) requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the **Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025)** was read a First Time on 26th June 2025 and referred to the **Departmental Committee on Justice and Legal Affairs** for consideration and reporting to the House;

IT IS NOTIFIED that the **Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025)** is a Bill sponsored by **the Leader of the Majority Party** which seeks to provide for the pension and other retirement benefits of judges of the Supreme Court, the Court of Appeal, the High Court, the Employment and Labour Relations Court, and the Environment and Land Court to further actualize Article 160 of the Constitution on the independence of the Judiciary.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025) to the **Departmental Committee on Justice and Legal Affairs**.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to cna@parliament.go.ke to be received on or before **Friday, 11th July 2025 at 5.00 p.m.**

S. NJORGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
27th June 2025

"For the Welfare of Society and the Just Government of the People"



THE NATIONAL ASSEMBLY
13TH PARLIAMENT - FOURTH SESSION - 2025

IN THE MATTER OF ARTICLE 118(1) (B) OF THE CONSTITUTION AND IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE JUDGES' RETIREMENT BENEFITS BILL (NATIONAL ASSEMBLY BILL NO. 27 OF 2025)

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The Bill is available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills.

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S. NJORGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
27th June 2025

"For the Welfare of Society and the Just Government of the People"



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA ON THE DRAFT KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR) (COMPLAINTS AND ENFORCEMENT) REGULATIONS 2025

The Kenya National Commission on Human Rights (KNCHR) is an Independent National Human Rights Institution established under Article 59 of the Constitution of Kenya, 2010 and operationalized by the Kenya National Commission on Human Rights Act, 71 Laws of Kenya. The Commission's core mandate is the promotion and protection of Human Rights in Kenya.

As part of its reforms agenda, KNCHR has developed Draft Regulations which are essential for strengthening KNCHR's complaints-handling and enforcement mechanisms, ensuring victims of human rights violations have accessible, effective, and timely remedies.

In line with Article 10(2)(a) of the Constitution, stakeholders and members of the Public are hereby invited to attend public participation forums as per the schedule below. Additionally, memoranda, comments and input can also be submitted to the following email address knchrregulations2025@knchr.org. Both the feedback template and the Draft Regulations can be accessed via this [Link](#) and on the Commission's Website.

NO	COUNTY	VENUE	DATE	TIME
1	KISUMU	Mama Grace Onyango Cultural & Social Centre	8 July, 2025	10:00AM
2	NAKURU	Nakuru Old Town Hall	8 July, 2025	10:00AM
3	KAKAMEGA	Kakamega Youth Empowerment Centre	10 July, 2025	10:00AM
4	ELDORET	Uesin Gichu County Multipurpose Hall	10 July, 2025	10:00AM
5	NYERI	Nyeri Cultural Centre	15 July, 2025	10:00AM
6	MOMBASA, KWALE & KILIFI	Tononoka Social Hall	15-16 July, 2025	10:00AM
7	GARISSA	Garissa Government Guest House	17 July, 2025	10:00AM
8	MACHAKOS	Tea Tot Hall	22-23 July, 2025	10:00AM
9	NAIROBI	Olive Gardens Hotel	30 th July, 2025	10:00AM

The memoranda, comments and/or input should be submitted not later than Thursday 31st July, 2025.

Dated 25th June, 2025

Dr. Bernard Mogesa, PhD, CPM
COMMISSION SECRETARY/CEO



REPUBLIC OF KENYA
COUNTY GOVERNMENT OF NAKURU
NAKURU COUNTY PUBLIC SERVICE BOARD
P.O. Box 2870-20100
Email: cpsb@nakuru.go.ke



INVITATION FOR APPLICATIONS - ADVERT NO. 06/2025

Pursuant to the provisions of Article 235 of the Constitution of Kenya and Section 45(1) & 58 of the County Governments Act, Cap. 265 of the laws of Kenya, Nakuru County Public Service Board invites applications from qualified Kenyan citizens to fill the following vacant positions in the Nakuru County Public Service.

COUNTY CHIEF OFFICER - FOUR (4) POSITIONS - 1/0'S

The Chief Officer shall be responsible to the respective County Executive Committee Member for the administration of a county department in performing their duties.

Duties and Responsibilities

- Day-to-day administration and coordination of the respective county department;
- Authorized Officer of a County Department in respect to the Human Resource Management function;
- Ensuring timely, efficient communication and coordination of departmental affairs;
- Implementing County Executive Committee resolutions as guided by the Executive Committee Member (CECM);
- Ensuring effective service delivery through the implementation of laid-out policies and regulations;
- Development and implementation of the department's strategic plans and sector development plans;
- Implementing the county performance management system;
- Ensuring efficient and effective utilization of Financial, Human, and other Resources in the County Department and submitting regular statutory reports as required;
- Maintaining effective collaboration and partnerships with other organs of the county, other county departments, the private sector, and other stakeholders;
- Facilitating the achievement of the goals and objectives of the County Integrated Development Plan (CIDP);
- Interpreting and applying National and County laws and other related statutes in line with the County's goals and objectives;
- Promoting and ensuring compliance with National Values and Principles of Governance as outlined in Articles 10 and 232 of the Constitution of Kenya; and
- Formulation and implementation of effective programs to attain Vision 2030 and sector goals.

Requirements for Appointment

For appointment to this position, a person should:

- Be a citizen of Kenya;
- Hold a degree from a university recognized in Kenya;
- A Master's degree or higher academic qualifications from a university recognized in Kenya will be an added advantage;
- Have at least five (5) years of relevant professional experience in a leadership position in the public service or private sector;
- Demonstrate an understanding of the functions, goals, policies, and developmental objectives of County Governments;
- Demonstrable leadership and management capacity, including Knowledge of financial management and strategic people management;
- Meet the requirements of Chapter Six of the Constitution of Kenya on leadership and integrity.

Terms of Service

- A County Chief Officer will serve on contract.
- Remuneration will be as determined by the Salaries and Remuneration Commission (SRC).

HOW TO APPLY

Interested and qualified candidates are required to make applications by downloading and completing an **Employment Application Form** from the County Government of Nakuru website www.nakuru.go.ke/carselc.

A duly filled employment application form and certified copies of National ID, KCSE, Degree/Masters Certificates, Professional Registration certificates (where applicable) should be sent through the POST OFFICE or COURIER SERVICES in a sealed envelope on or before 10th July, 2025 at 5.00 p.m. [No hand delivered applications will be accepted. Also, applications sent through the email address will not be considered].

Clearly indicate the Advert number and position applied for on top of the envelope and address to:

The Secretary
Nakuru County Public Service Board
Public Works Building - Prisons Road
P.O. Box 2870-20100
NAKURU

The County Government of Nakuru is an equal opportunity employer. Youth, Women, and Persons Living with Disabilities, Marginalized and Minority communities are encouraged to apply.

Note:

- Only shortlisted candidates will be contacted.
- Shortlisted candidates are expected to get clearance from the following institutions:
 - Kenya Revenue Authority (KRA)
 - Higher Education Loans Board (HELB)
 - Ethics and Anti-Corruption Commission (EACC)
 - Directorate of Criminal Investigation-Certificate of good conduct (DCI)
 - A registered Credit Reference Bureau (CRB)

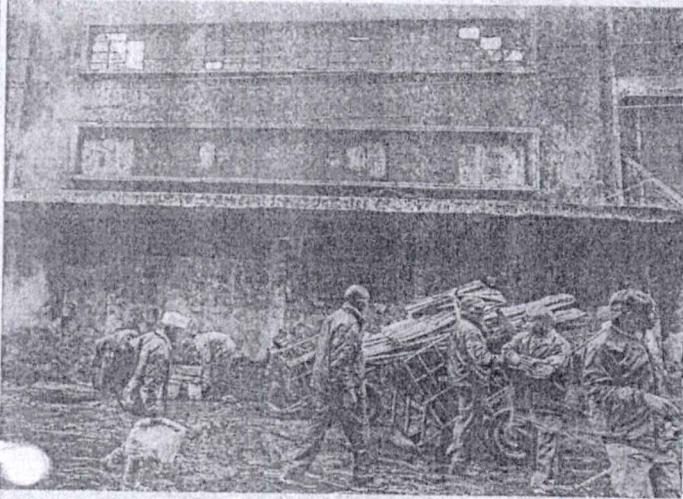
The Board and the County Government of Nakuru is committed to Zero Tolerance to Corruption. We caution applicants not to fall victim to fraudsters and impersonators who solicit money with a promise of influencing the outcome. The Board shall bear no responsibility for any personal loss arising from such unlawful dealings. Such cases should be reported to the Police and other relevant Law Enforcement Agencies.

Any communication from the County Public Service Board SHALL be through the above address and official cell phone number: 0796846192.

Canvassing in any form will lead to automatic disqualification.

Secretary /CEO
Nakuru County Public Service Board

after their premises were looted and others burnt during Wednesday's protests



Traders at a burnt building near the OTC area in Nairobi yesterday. The building was among those set ablaze during Wednesday's nationwide protests marking the first anniversary of the June 2024 Gen Z-led Finance Bill demonstrations. WILFRED NYANGARESII/NATION

Traders in the OTC area of Nairobi yesterday assess the damage after their shops were looted and some burnt down during Wednesday's protests. BONFACE BOGITA/NATION



Workers and traders outside the still smouldering Musa House in Nairobi yesterday. WILFRED NYANGARESII/NATION



Directorate of Criminal Investigations detectives at the OTC area in Nairobi yesterday. BONFACE BOGITA/NATION



THE NATIONAL ASSEMBLY
13TH PARLIAMENT - FOURTH SESSION - 2025

**IN THE MATTER OF ARTICLE 116(1) (B) OF THE CONSTITUTION AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE
JUDGES' RETIREMENT BENEFITS BILL (NATIONAL ASSEMBLY BILL
NO. 27 OF 2025)**

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, and National Assembly Standing Order 127(3) requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025) was made a First Time on 26th June 2025 and referred to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House;

IT IS NOTIFIED that the Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025) is a Bill sponsored by the Leader of the Majority Party which seeks to provide for the pension and other retirement benefits of judges of the Supreme Court, the Court of Appeal, the High Court, the Employment and Labour Relations Court, and the Environment and Land Court to further actualize Article 160 of the Constitution on the independence of the Judiciary.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025) to the Departmental Committee on Justice and Legal Affairs

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to cn@parliament.go.ke to be received on or before Friday, 11th July 2025 at 5.00 p.m.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
27th June 2025

"For the Welfare of Society and the Just Government of the People."

**ALTERNATIVE
DISPUTE RESOLUTION**

Tax Amnesty

Do you have any tax disputes? You can settle the disputes through KRA's Alternative Dispute Resolution (ADR) process and still benefit from Tax Amnesty. KRA's ADR is a way to settle tax disputes out of Courts, through mediation.

HOW TO SETTLE YOUR TAX DISPUTES THROUGH ADR

1. Send an email request now for your dispute to be discussed under ADR to adr@kra.go.ke
2. The mediation process commences and concludes with an ADR settlement agreement.
3. Pay the agreed principal tax due for the period ending 31st December, 2023 by 30th June 2025.
4. Enjoy 100% amnesty on penalties and interest.

Email us today or call 0709-016-192 or visit us at Ushuru Pension Towers - Block B, 7th Floor, Upperhill, Elgon Road

Tax Amnesty: It's now or never!

www.kra.go.ke

Disclaimer: KRA neither appoints nor is it not bound responsible for payments not received, omitted and withheld in the relevant tax assessment. Copyright Reserved. 2025. All rights reserved. Email: complaints@kra.go.ke or Short Messaging Services (SMS) 111 111 or 111 111 111. Contact Centre: +254 (0)20 4 999 999. 254 (0)111 000 910. Email: publicrelations@kra.go.ke or complaints@kra.go.ke or customer@kra.go.ke or tax@kra.go.ke



Annexure **5** :

**Letter from the Clerk
of the National Assembly
inviting stakeholders to attend
the public participation forum**



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote:

Ref: NA/DDC/JLAC/2025/074

30th July, 2025

Hon. Winfridah Boyani Mokaya, CBS
Chief Registrar of the Judiciary / Secretary
Judicial Service Commission
Supreme Court Building
Nairobi

Justice Patrick J. Otieno
President
The Kenya Judges Welfare Association
Supreme Court Building
Nairobi

Dr. Chris K. Kiptoo, CBS
Principal Secretary
The National Treasury
Ministry of National Treasury and Economic Planning
Harambee Avenue, Treasury Building
Nairobi

Hon. Shadrack J. Mose, CBS
Solicitor General
The State Law Office and Department of Justice
Sheria House, Harambee Avenue
Nairobi

CPA Margaret Njoka
Ag. Commission Secretary / CEO
The Salaries and Remuneration Commission (SRC)
Kilimani 4th Ngong Avenue Williamson House
Nairobi

FCPA Nancy Gathungu, CBS
The Auditor-General
3rd Floor, Anniversary Towers, University Way
Nairobi

FCPA Dr. Margaret N. Nyakang'o, CBS

The Controller of Budget
Office of the Controller of Budget
Bima House (Treasury Annex)
Nairobi

Mr. Charles Machira

Chief Executive Officer
Retirement Benefits Authority
Rahimtulla Tower, 13th Floor
Upper Hill Road, Opp. UK High Commission
Nairobi

Mr. Peter Musyimi

Ag. Commission Secretary / CEO
Kenya Law Reform Commission (KLRC)
Reinsurance Plaza, 3rd Floor, Taifa Road
Nairobi

Dr. Bernard Mogesa, PhD, CPM

Commission Secretary / CEO
Kenya National Commission on Human Rights (KNCHR)
CVs Plaza, Lenana Rd, 1st Floor
Nairobi

Ms. Florence W. Muturi

Chief Executive Officer
Law Society of Kenya (LSK)
Lavington, Opposite Valley Arcade, Gitanga Road
Nairobi

CPA Dr. Grace Kamau

Secretary to Council / CEO
Institute of Certified Public Accountants of Kenya (ICPAK)
CPA Center, Ruaraka, Thika Road
Nairobi

Ms. Nora Mbagathi

Executive Director
Katiba Institute
House No. 5 - The Crescent-Off Parklands Road
Nairobi

Ms. Oliver Waindi

Chairperson
Uraia Trust
Jacaranda Avenue, off Gitanga Road
Nairobi

Ms. Caroline Gaita

Executive Director
Mzalendo Trust
ACK Garden House, 2nd Floor, Wing A
1st Ngong Avenue
Nairobi

Dr. Wambua Kituku
Ag. Executive Director
Kituo cha Sheria
Ole Odume Rd, Off Argwings Kodhek Rd
Nairobi

Mr. Akello M. T. Misori
Secretary General
Kenya Union of Post Primary Education Teachers
2nd Floor, Next Gen Mall
Mombasa Road
Nairobi

Mr. Paul Famba, MBS
Commission Secretary / CEO
Public Service Commission
Commission House
Harambee Avenue
Nairobi

Dear

RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE JUDGES' RETIREMENT BENEFITS BILL (NATIONAL ASSEMBLY BILL NO. 27 OF 2025) SPONSORED BY THE LEADER OF THE MAJORITY PARTY

The Departmental Committee on Justice and Legal Affairs is established pursuant to Standing Order 216 of the National Assembly Standing Orders, and is mandated to *inter alia*, 'study and review all legislation referred to it.'

The Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025) sponsored by the Leader of the Majority Party is before the Committee for consideration and reporting to the House.

The Bill seeks to provide for the pension and other retirement benefits of judges of the Supreme Court, the Court of Appeal, the High Court, the Employment and Labour Relations Court, and the Environment and Land Court to further actualize Article 160 of the Constitution on the independence of the judiciary.

Article 118(1)(b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. Due to the great public interest in the Bill, the Committee has resolved to meet critical stakeholders to make submissions on the Bill.

In this regard, the Committee invites you for a meeting on **Thursday, 7th August 2025** at **10:00 a.m** at a venue, within Parliament Buildings, to be confirmed in due course. The agenda of the meeting is to receive your views on the Bill.

You are requested to prepare your written submissions in a matrix format that indicates the specific clause, proposed amendment and justification. Twenty (20) hard copies of the submissions to be availed to the meeting, soft copies of which may be sent to the Committee through the Office of the Clerk of the National Assembly via email: cna@parliament.go.ke by Wednesday, 6th August 2025.

Hard copies of the Bill are available at the National Assembly Table Office, Main Parliament Building while an electronic copy may be accessed on the Parliament website: www.parliament.go.ke/the-national-assembly/house-bills for reference.

Our Liaison Officers on this matter is **Mr. Ahmed Salim** who may be contacted on Tel. No. **0710204056** or email: ddc@parliament.go.ke.

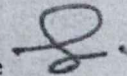
Yours

JEREMIAH M. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: -

Hon. CPA John Mbadi, EGH
Cabinet Secretary
Ministry of National Treasury & Economic Planning
Harambee Avenue, Treasury Building
Nairobi

Hon. Dorcas Agik Oduor, SC, OGW, EBS
The Attorney General
The State Law Office and the Department of Justice
Sheria House, Harambee Avenue
Nairobi



Annexure **6** :

Memoranda by Stakeholders

Submission





REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – THIRD SESSION

THE NATIONAL ASSEMBLY

SUBMISSION OF MEMORANDUM TO THE CLERK OF THE NATIONAL ASSEMBLY

– Attn: Standing Committee on Justice and Legal Affairs

BILL: The Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025)

INSTITUTION: Legal Advice Center (Kituo Cha Sheria) Kenya

DATE: 11th July 2025

1. Introduction

We commend the initiative to introduce *The Judges' Retirement Benefits Bill, 2025*, which aims to consolidate, clarify, and enhance the framework governing retirement benefits for judges. In reviewing the Bill for its constitutional compliance and sound legislative structure, we submit the following recommendations to ensure its alignment with the Constitution of Kenya, 2010, and international best practices on judicial independence and social protection.

2. Key Recommendations

A. Tenure and Retirement Age

Relevant Provision: Article 167(1), Constitution of Kenya

Issue: Clause 10(3) restricts pension access for judges who leave office before age 65.

Recommendation:

The Bill should explicitly anchor its provisions on Article 167(1), which permits voluntary retirement at 65 and mandatory retirement at 70. Clauses on qualifying service and benefit accrual must be harmonized with these constitutional thresholds to eliminate ambiguity and ensure judges are not penalized for exercising constitutionally sanctioned retirement options.

B. Protection from Diminution of Benefits

Relevant Provision: Article 160(4), Constitution of Kenya

Issue: Absence of an explicit non-diminution clause in the Bill.

Recommendation:

Insert a clear provision stating that the remuneration and retirement benefits provided under this

Act shall not be varied to the disadvantage of any judge or retired judge during their lifetime. This reiteration of Article 160(4) within the Act itself would reinforce safeguards for judicial independence and financial security.

C. Charge on the Consolidated Fund and Relationship with Judiciary Fund

Relevant Provisions: Articles 160(3), 173(1) & (4), and 206(2)(c), Constitution of Kenya

Issue: While the Bill refers to the Consolidated Fund, it does not sufficiently clarify the operational relationship with the Judiciary Fund.

Recommendation:

Amend the Bill to explicitly provide that, once approved by the National Assembly, the funds charged on the Consolidated Fund shall be paid directly into the Judiciary Fund for administration. This promotes financial autonomy for the judiciary and upholds the principles of separation of powers and fiscal independence.

D. General Constitutional Consistency and Clarity

Relevant Provision: Article 2(1) & (4), Constitution of Kenya

Issue: Some terms and clauses may lack full constitutional alignment.

Recommendation:

Conduct a comprehensive review of all operative terms (e.g., "judge," "benefits," "eligible child") and provisions to ensure constitutional congruity. Clear definitions and internal consistency reduce interpretive uncertainty and litigation risk.

3. Targeted Clause-Level Recommendations

Section 19: Allocation of Pension to Multiple Spouses

Issue: A 50% cap on pension allocation to multiple surviving spouses may inadequately provide for dependants.

Recommendation:

While equal distribution aligns with Article 45(3), consider revising the 50% cap to allow for judicial discretion or special consideration in cases of hardship or multiple dependants, in line with Article 43 (right to social security) and the best interest of dependants.

Section 42: Retirement Savings Account Transparency

Issue: Annual statements may be insufficient for financial monitoring.

Recommendation:

Amend Section 42(4) to require semi-annual or quarterly statements, enabling judges to track contributions and accrued interest more effectively. This would align with constitutional values of transparency and access to information.

Section 52: Benefits Not Forming Part of Deceased's Estate

Issue: Lack of clarity on nomination procedure.

Recommendation:

Maintain the exclusion of benefits from the estate to facilitate prompt disbursement but explicitly reference the mechanism for nominating beneficiaries (e.g., registered nomination forms with the administrator), ensuring transparency and alignment with the deceased's wishes.

4. Part III – New Pension Scheme for Judges Appointed after Commencement

Part III introduces a contributory scheme encompassing mandatory contributions, life insurance, a Board of Trustees, and provisions for fund administration.

Constitutional Strengths Noted:

- Promotes fiscal accountability and transparency (Articles 201 and 229)
- Safeguards social security (Article 43)
- Upholds judicial independence (Article 160)
- Supports family protection (Article 45)

Further Recommendations:

- **Dispute Resolution:** Introduce an internal mechanism within the Board to handle disputes before appeal to the Tribunal, advancing fair administrative action (Article 47).
- **Gender-neutral language:** Apply inclusive and gender-neutral terminology throughout the Bill.
- **Definition of “eligible child”:** Refine this definition to better reflect criteria for disability-related incapacity, in line with Article 54.

5. Conclusion

The proposed Bill presents an opportunity to modernize and entrench a constitutionally compliant, fair, and independent retirement framework for the judiciary. By incorporating the above recommendations, the legislation will not only safeguard judicial welfare but also strengthen public confidence in the integrity and independence of the Judiciary.

We remain available to provide further technical support on these amendments upon request.

Submission **2**

From: SeeTahTee Studios <seetahtee@gmail.com>

Sent: Friday, July 11, 2025 4:26 PM

To: Clerk of the National Assembly Kenya <cna@parliament.go.ke>

Subject: Public Participation: Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025)

Greetings to the Parliamentary Review Team,
I hope this message finds you well.

This is to confirm my general support for the Judges Retirement Bill.

However, I request that there be no discrimination for judges already in retirement, whether they left service under the Old Constitution, or under the 2010 Constitution. They should be treated equally.

Thank you for the opportunity to share feedback.

Best regards,


SEETAHTEE
STUDIOS

FLORENCE SITATI
LEAD CONSULTANT

Submission

3

Kind Regards

OFFICE OF THE CLERK
THE NATIONAL ASSEMBLY
P . O. Box 41842-00100
NAIROBI.

Tel: +254202848000 ext 3300 / +254790494055

Email: cna@parliament.go.ke

website: www.parliament.go.ke/the-national-assembly

X:@NAssemblyKE

Facebook: [Parliament of Kenya](https://www.facebook.com/ParliamentofKenya)



From: Francis Sitati <francis.sitati@gmail.com>

Sent: Friday, July 11, 2025 4:37 PM

To: Clerk of the National Assembly Kenya <cna@parliament.go.ke>

Subject: Feedback on the Judges Retirement Bill

Greetings!

I trust this message finds you well.

I wish to express my general support for the Judges Retirement Bill.

However, I respectfully urge that no distinction or discrimination be made against judges who are already in retirement, whether they exited service under the Old Constitution or under the 2010 Constitution.

All retired judges should be accorded equal treatment.

Thank you for the opportunity to provide feedback.

Regards,

F. Sitati

4

Submission

Kind Regards

**OFFICE OF THE CLERK
THE NATIONAL ASSEMBLY
P . O. Box 41842-00100
NAIROBI.**

Tel: +254202848000 ext 3300 / +254790494055

Email: cna@parliament.go.ke

website: www.parliament.go.ke/the-national-assembly

X:@NAssemblyKE

Facebook: Parliament of Kenya



From: Naomi Sitati <naomisitati@gmail.com>

Sent: Friday, July 11, 2025 4:48 PM

To: Clerk of the National Assembly Kenya <cna@parliament.go.ke>

Subject: Judges Retirement Benefits Bill

Good evening,

In general support of the judges retirement bill. However let there be no discrimination against judges already in retirement whether they left service under the old constitution.

Regards.

Naomi

Submission **5**

WENDY FAITH MUGANDA, LLM

TOP 80 IN – HOUSE COUNSEL – PRIVATE SECTOR CATEGORY

LinkedIn: <https://www.linkedin.com/in/wendy-muganda-ll-m-564ab8a6/>

🏠 Nairobi, Kenya | 📞 +254 721 947 638 | ✉️ wmuganda@lsknairobi.org | 11th July 2025

Mr. S. Njoroge, CBS
The Clerk of National Assembly
Parliament of Kenya
P. O. Box 41842 – 00100
NAIROBI

Dear Sir,

RE: SUBMISSION OF MEMORANDUM FOR THE JUDGES' RETIREMENT BILL (NATIONAL ASSEMBLY BILL NO. 27 OF 2025)

This memorandum provides a detailed review of The Judges' Retirement Benefits Bill, 2025 (the "Bill"), ahead of its second reading in the National Assembly vis a vis comparing it with the model in United States (US) and the United Kingdom (UK).

Comparative Analysis: United States and United Kingdom:

Aspect	Kenya (Draft Bill)	United States of America	United Kingdom
Pension Eligibility	≥10 years' service for full pension; gratuity for shorter service	Life tenure; eligible upon retirement at ≥65 years with ≥10 years' service (28 U.S.C. § 371)	Eligible at mandatory retirement age (70 years) with pension accrual from appointment; minimum service requirements vary by office
Pension Formula	$1/480 \times$ pensionable emoluments \times months served; Consumer Price Index (CPI)-linked annual increases	"Rule of 80": age + years of service ≥ 80 yields full salary pension; no post-retirement increases except by statute	Computation based on career average earnings; annual adjustments linked to public sector pension indexation (e.g. CPI)
Commutation	Up to 25 % commutation at 20 times value	Lump-sum option up to 100 % of annual pension (by	Commutation permitted (up to 25 percent) subject to

		combining annuity/pension); limited statutory commutation	actuarial reduction; governed by Civil Service Pension Scheme rules
Survivor Benefits	Spouse 50 % for five years; children's pensions	Survivor annuity 50 % of judge's salary; children's annuity to age 18 (longer if student)	Spouse's pension at 50 %; children's pensions per scheme rules; durations vary by child's age
Governance and Funding	Statutory Fund managed by Board of Trustees; member/Government contributions	Pensions paid from the Treasury's Judgment Fund; no separate trust; administered by Office of Personnel Management	Funded on a "pay-as-you-go" basis via Consolidated Fund; administered by Judicial Office and HM Treasury
Indexation	Annual CPI-linked increases (1-5 %)	No automatic indexation; periodic cost-of-living adjustments by statute	Pensions revalued annually in line with public sector indexation (usually CPI)
Administrative Oversight	Cabinet Secretary regulations; Retirement Benefits Authority guidelines	Oversight by Judicial Conference and Office of Personnel Management; Congressional appropriation review	Oversight by HM Treasury; Judicial Office issues guidance; Parliamentary scrutiny of scheme regulations

Observations from the Comparison:

1. **Financial Security & Indexation:** Like Kenya and the UK, federal judges in the U.S. enjoy salary-linked pensions but lack automatic inflation adjustments. Kenya's CPI linkage is therefore a robust model.
2. **Separate Trust vs. Consolidated Funding:** Kenya's dedicated Fund mirrors UK practice of a consolidated public scheme, whereas the U.S. uses direct Treasury payments. A Fund model may offer greater transparency and ring-fencing of assets.
3. **Commutation Options:** Kenya's commutation cap aligns with UK norms; the U.S. allows more flexibility but at the cost of potentially depleting long-term security.
4. **Governance Structures:** Kenya's Board of Trustees echoes best practice in pension governance, providing multi-stakeholder oversight absent in the U.S. model.
5. **Survivor Entitlements:** All three jurisdictions prioritise spouse and children; Kenya's finite spouse-pension term is more restrictive compared to the U.S. and UK's longer-duration survivor benefits.

Recommendations:

1. **Indexation:** Retain CPI-linkage but specify a minimum floor (e.g. 2%) to guard against deflationary years.
2. **Survivor Protections:** Consider extending spouse pension beyond five years or adopting a lifetime survivor annuity model akin to the U.S.
3. **Governance Best Practices:** Embed conflict-of-interest disclosures and risk management standards in regulations, drawing on UK Judicial Office guidelines.
4. **Regulatory Oversight:** Propose affirmative parliamentary procedure for regulations under Clause 71, as seen in the UK's draft affirmative SI model.
5. **Fiscal Reporting:** Require annual Fund performance reports to Parliament, mirroring UK Judicial Pension Scheme reporting.

Conclusion:

The Judges' Retirement Benefits Bill, 2025 provides a well-structured, constitutionally sound framework which, with the enhancements suggested above and lessons drawn from the United States and United Kingdom, will ensure sustainable, transparent and fair retirement benefits for Kenya's judiciary.

I remain at Your Office's disposal to clarify any aspect or to draft proposed amendments.

Yours Sincerely,



WENDY FAITH MUGANDA
ADVOCATE OF THE HIGH COURT OF KENYA

Submission **6**



THE JUDICIARY

KENYA JUDGES WELFARE ASSOCIATION

ODC
8
14/7/25

Our Ref: JUD/KJWA/25-1

Your Ref: TBA

Date: July 11, 2025

3. Ahmed Salim
Kindly bring to
attention of Committee
15/07/25

The Clerk
National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Abenayo Wasike
to place before
JLAC for consideration
15/7/25

D/S
D/O
For attention of
Justice
11/7/25

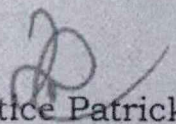
Dear Sir,

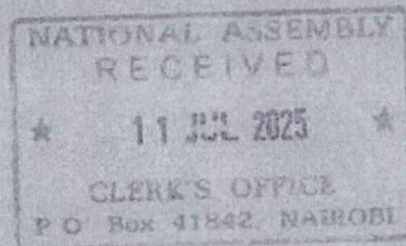
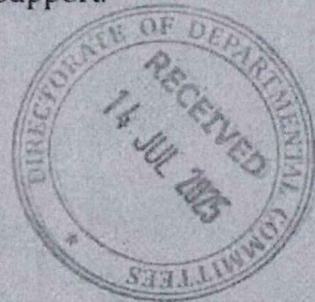
RE: **SUBMISSION OF MEMORANDUM ON THE JUDGES' RETIREMENT BENEFITS BILL, 2025**

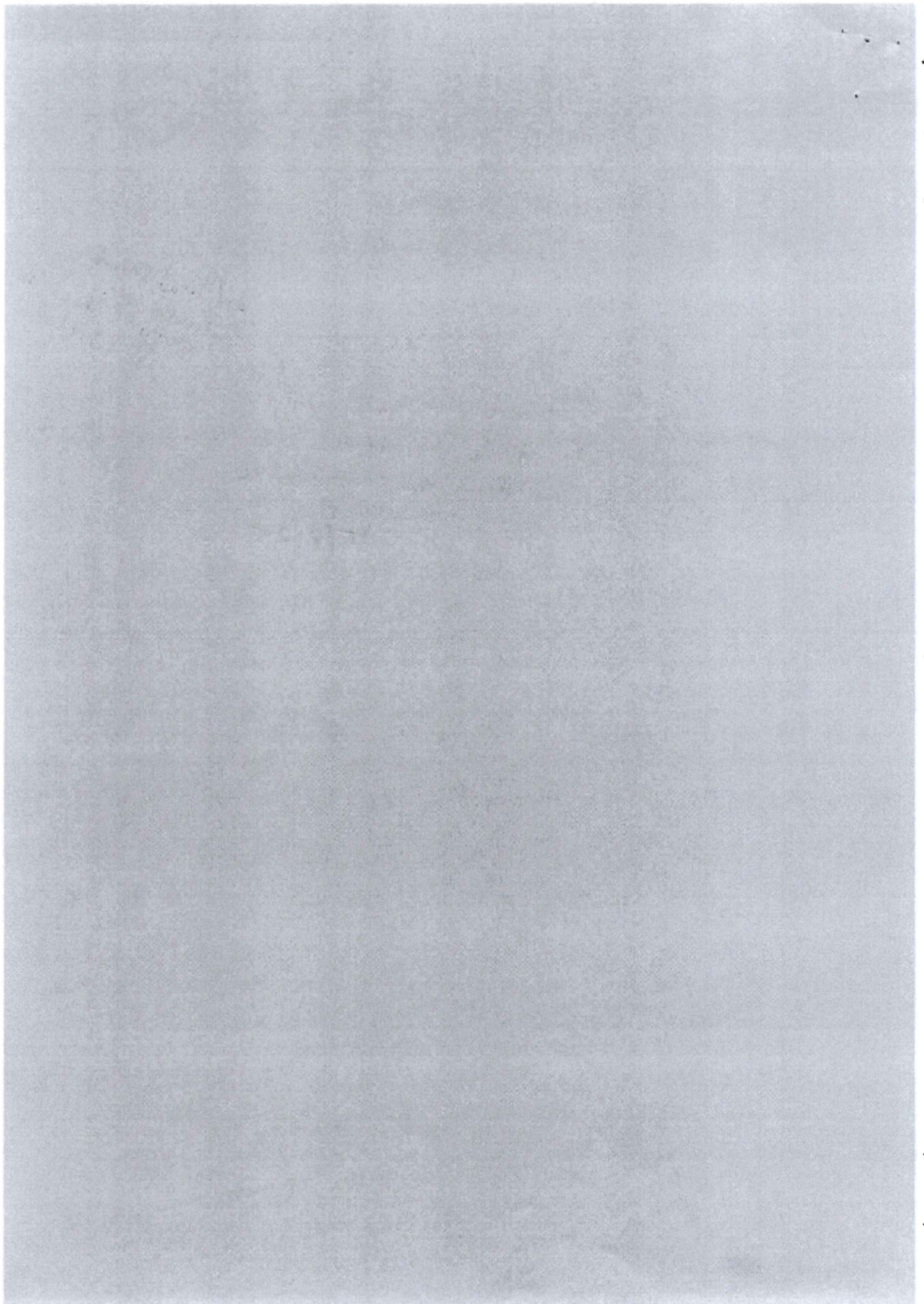
The Kenya Judges Welfare Association (KJWA) is an Association that brings together all Judges in Kenya; from the Supreme Court of Kenya, the Court of Appeal, the High Court, the Environment and Land Court, and the Employment and Labour Relations Court. The Association hereby submits the attached memorandum on the Judges' Retirement Benefits Bill, 2025.

We greatly appreciate the opportunity and your continued support.

Yours sincerely


Justice Patrick J. Otieno
PRESIDENT KENYA JUDGES WELFARE ASSOCIATION







THE JUDICIARY

KENYA JUDGES WELFARE ASSOCIATION

MEMORANDUM TO PARLIAMENT ON THE JUDGES RETIREMENT BILL 2025

Introduction

1. There is no doubt that the enactment of the Constitution of Kenya heralded a new dawn for the Judiciary of Kenya. The Constitution 2010 sought to position the Judiciary as an arm of government that would safeguard the aspirations of the people of Kenya for a just, equitable and fair society that upholds the Rule of Law. After the enactment of the Constitution, a reenergized Judiciary, drawing lessons from recommendations made by 13 previous taskforces and committees has sought to deliver to meet the expectations of the Kenyan people through three blue prints firstly, the Judiciary Transformation Framework which laid the foundation by focusing on institution building which resulted in enhanced terms and conditions of service for Judges, Judicial Officers and Staff. The era of JTF also witnessed the rapid expansion of courts and an increase in the number of Judges and Judicial Officers.
2. The Judiciary Transformation Framework gave way to Sustaining Judiciary Transformation; a service delivery agenda which had as its focus a shift towards enhancing service delivery through automation and enhancing individual and institutional accountability. In the current blueprint Social Transformation Through Access to Justice, the

Judiciary seeks to consolidate the gains of the two previous blueprints to deliver a people centered justice that is responsive to the needs of the people. The blueprint emphasizes the multi door approach through promoting Alternative Justice System, Mediation and strengthening the small claims courts.

3. There is no doubt the cumulative efforts are bearing fruit. Millions of Kenyans are able to access services at a court near them. Cases are filed and tracked within the comfort of litigants' homes or offices. Thousands of Kenyans continue to place their faith in Judges and Judicial Officers to resolve their disputes. In the financial year 2023/2024, a total of 516,121 cases were filed and 509,663 cases resolved.
4. While a lot of work has gone into strengthening systems and the institutions, at the end of the day justice is delivered by Judges, Magistrates, Deputy Registrars, Kadhis and Judicial staff, whose service makes the difference in the lives of the many who seek refuge in the Judiciary. It is for this reason, that successive taskforces and committees have recommended the improvement of terms and conditions as a critical factor in enhancing service delivery. The Judges Retirement Bill seeks to establish comprehensive and dignified retirement benefits for Judge.

The case for the Judges Retirement Bill

5. The Judicial Code of Conduct restricts Judges from engaging in other businesses. This is due to the fact that not only is the possibility of


conflict is real, but there is also the possibility of increased social interaction and its attendant risks. Judges thus rely on their salaries as the only source of income. Upon retirement, Judges do not have an ongoing business they can retire to.

6. The Judiciary competes with other employers for the top legal minds. A Favorable Retirement Judges Benefits will assist in attracting and retaining the competent professionals to the Judiciary. This will in turn ensure that that the people of Kenya benefit from services from the best in the market.
7. The work of a Judge entails sitting for long hours in court presiding over cases which involves:
 - (i) Hearing witnesses
 - (ii) Hearing legal arguments and submissions
 - (iii) Managing court participants and processesAfter the court retreats the hard work of Judgement writing begins. Many are forced to carry work home. The work involves sitting long hours which ultimately take a toll on their health. Guaranteed health cover will enable Judges to focus on serving Kenyans.
8. Adequate and secure benefits free Judges to deliver Justice without financial pressures that would otherwise hinder their performance. The Judges are able to retire with dignity after years of public service. This enhances public confidence in the Judiciary.
9. A country that secures competitive terms and conditions of service for its Judges, Judicial Officers and staff is a country that is equipping its Judiciary, to effectively determine disputes and uphold the rule of law.

This fosters a favorable climate for investment which improves the economy of the country.

Conclusion

As Kenya marks 15 years of implementation of the transformative Kenyan Constitution, the enactment of the Judges Retirement Bill will be a great milestone in strengthening the Judiciary to uphold justice, independence and integrity. As an association which is committed to upholding the Rule of Law, we support the enactment of the bill. In turn our members will continue to serve the public with dedication and commitment.


Justice Patrick J. Otieno

PRESIDENT KENYA JUDGES WELFARE ASSOCIATION

Submission

7

To:
The Clerk of the National Assembly
P.O.Box 41842
Nairobi
Kenya.

*Docs
DAS - AH: Mr. K. Wakata
For attention of J.J.C.
As proposed on original
Version to brief the
Committee. J.J.C.
14/7/25*

10/07/2025

Attention: Mr Samuel Njoroge

Dear Sir

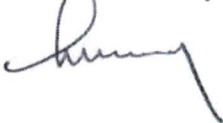
**RE: MEMORANDUM ON THE JUDGES RETIREMENT BENEFITS BILL -
(NATIONAL ASSEMBLY BILL NO. 27 of 2025)**

I refer to the invitation to the members of the public, through local media, to submit memoranda on the above-mentioned bill, which is under consideration by the Departmental Committee on Justice and Legal Affairs of the National Assembly of Kenya.

Please kindly find attached hereunder a memorandum on the bill, in which I propose the application of the principle of proportionality be applied to the members of the apex court. I have also included a proposed amendment, which if adopted, will cure the concerns of inequity that I have raised.

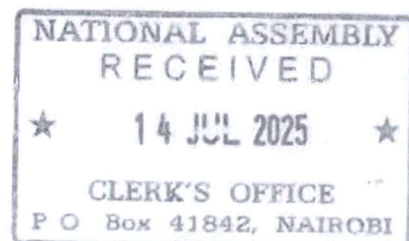
I look forward to positive consideration of the same and can avail myself at any time to make any further clarification, if any further enquiry is requested by the August house.

Yours faithfully



JOHN KWANYANGA A.G.W

*TEL 0722749362
NAIROBI*



MEMORANDUM ON THE RETIREMENT BENEFITS FOR JUDGES OF THE SUPREME COURT: THE CASE FOR PROPORTIONALITY FOR JUDGES OF THE SUPREME COURT.

A. Introduction:

Efforts to enact a law to provide for separate retirement benefits for judges in Kenya has been made since the late 1990s.

The Judges' Retirement Benefits Bill, 2025 therefore, marks a significant step towards the realization of the principles of judicial independence. The Bill seeks to establish a comprehensive and dignified retirement benefits framework for Judges of the superior courts in Kenya. The Bill classifies Judges into three distinct categories for the purpose of determining benefits:

- a. Judges in office at the commencement of the Act
- b. Judges appointed after the commencement of the Act
- c. Judges who retired before the commencement of the Act

B. The Supreme Court of Kenya

The Supreme Court of Kenya is established under Article 163 of the Constitution of Kenya. Being the apex court in the country the decisions of the Supreme Court are not only final but are also binding upon all other courts in the nation of Kenya.

The Supreme Court, consists of—

- (i) The Chief Justice, who is the President of the court;
- (ii) The Deputy Chief Justice, who is the Vice-President of the court; and
- (iii) Five other judges.

C. The Role of the Chief Justice and Deputy Chief Justice

- (i) Besides being the Head and the Deputy Head of the Judiciary, respectively the Chief Justice presides over the Supreme Court and in the absence of the Chief Justice, the Deputy Chief Justice would preside.

(ii) In the event that both the Chief Justice and the Deputy Chief Justice are absent or unable to preside, the most senior available judge of the remaining five (5) Supreme Court shall preside over the Court.

(iii) The President, and in his/her absence the vice-President of the Court also performs administrative duties for the proper conduct of the affairs of the Court. Such administrative duties include overseeing the proper management and administration of the Court such as allocation of cases, constitution of benches, and for giving general directions for the administration of the Court.

D. The Administrative Roles of the Other Five Judges of the Supreme Court

Each of the other 5 Judges of the Supreme Court, in addition to their judicial functions also perform certain administrative duties assigned to them by the Chief Justice in the form of dockets, specific to the Supreme Court or covering the Judiciary as a whole. The dockets include security, Judiciary Buildings and Infrastructure, welfare of Judges and staff, ICT and Media Relations & Communications, Rules and Regulations of the court, relationship of the court with the academia and the other arms of government, library and research, training, registry operations, supervision of law clerks, bar-bench relations and governance.

E. Judicial Responsibility of Supreme Court Judges

All the seven Judges of the Supreme Court hear and determine matters as provided for under Article 163 of the Constitution.

(i) Apart from hearing appeals from the Court of Appeal, the Supreme Court also exercises unique and exclusive jurisdiction: to hear and determine disputes relating to the elections to the office of President: to render Advisory Opinions: to hear and determine the validity of a state of emergency: and to hear and determine appeals against a tribunal's recommendation for the removal of a Judge. No other court in the land has such jurisdiction, with such far reaching national and general public ramifications.

(ii) The Supreme Court's role is therefore to act as the final arbiter on matters involving the interpretation and application of Constitution as well as matters of generally considered to involve public importance.

(iii) When the seven Judges engage in Judicial work, hearing and determining disputes under its aforementioned jurisdiction or when they draft and render decisions of the Court, they do so collegially as Judges of equal rank in status, with each Judge having a singular vote to reach a final outcome of the decision of the court.

(iv) On the other hand, Judges of the other Superior Courts below the Supreme Court are, in accordance with the Constitution bound by the decisions of the Supreme Court. Furthermore, the term and conditions of service of the Judges of the Supreme Court are distinct from those of the other Judges of the courts below the Supreme Court.

F. Equity and Proportionality

While it is acknowledged that the Chief Justice and the Deputy Chief Justice hold unique administrative roles within the Judiciary, their terms and conditions of service and those of the Supreme Court justices should generally reflect the fact that they serve in the same Court as explained earlier. While retirement benefits for the Chief Justice and the Deputy Chief Justice are today governed by the Retirement Benefits (Deputy President and Designated State Officers) Act, the rest of the Judges continue to draw their pensions benefits under the 1946 Pensions Act, with considerable disparities and limitations in terms of benefits.

Whereas the Judges Retirement Benefits Bill, 2025 has now narrowed this gap, the benefits of the five Judges of the Supreme Court ought to be slightly higher than the rest of the Judges of Superior Courts below the Supreme Court and slightly below those of the Chief Justice and the Deputy Chief Justice in order to achieve the principle of proportionality, considering the two are part of the seven on the Court.

G. Analysis of the Retirement benefits for the Chief Justice, Deputy Chief Justice vis-à-vis those proposed for the 5 Judges of the Supreme Court.

The following benefits on the left-hand column apply to the Chief Justice and Deputy Chief Justice under the Retirement Benefits (Deputy President and Designated State Officers) Act, while the benefits proposed for the rest of Judges in the Judges Retirement Benefits Bill, 2025 are on the right-hand column.

Retired Chief Justice & Deputy Chief Justice Retirement Benefits Bill, 2025	Retired Judge under the Judges Retirement Benefits Bill, 2025
--	--

A retired Chief Justice shall, during his or her lifetime, be entitled to—

- (a) A monthly pension equal to eighty per cent of the monthly salary of the entitled person's last monthly salary while in office;
- (b) A lump sum payment on retirement, calculated as a sum equal to one year's salary paid for each term served in office;

(c) One saloon vehicle of an engine capacity not exceeding 2000 cc which shall be replaceable once every four years;

(d) one four-wheel drive vehicle of an engine capacity not exceeding 3000 cc which shall be replaceable once every four years;

(e) A fuel allowance equal to fifteen per cent of current monthly salary of the office holder;

(f) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the entitled person, the entitled person's spouse and the entitled person's child who is below eighteen years or is under twenty-five years of age and is undergoing a course of full time education, and in the case of a female child is not married or is not cohabiting with any person;

Children's benefits

A children's pension shall be payable for the benefit of an eligible child where an entitled person dies and — (a) if there is only one child, pension at the rate of twenty-five percent of the pension entitlement of the entitled person; (b) if there are two or more children, a pension at the rate of fifty percent of the pension entitlement of the deceased entitled person to be divided equally for the benefit of each child.

If there are two or more children, a pension at the rate of fifty percent of the pension entitlement of the deceased entitled person to be divided equally for the benefit of each child.

Spousal benefits

Upon the death of an entitled person who is in receipt of, or who is entitled to a pension under this Act, the surviving spouse of the entitled person shall be entitled to fifty per cent of the pension which was payable to an entitled person.

Additional benefits upon retirement:

(a) Two drivers; (b) one personal assistant or one chief liaison officer; (c) one secretary or one assistant liaison

officer; (d) one house keeper; (e) one senior support staff; (f) one gardener; (g) one cleaner; (h) two armed security guards who shall be provided on request by the entitled person; (i) diplomatic passports for the entitled person and his spouse; (j) maintenance

expenses for the vehicles provided pursuant to this Act; (k) access to the V.I.P. lounge at all airports within Kenya; (l) office and office equipment.

Upon his death, an entitled person shall be accorded an official funeral. (a) The qualifying service for pension, in relation to a person who has served as judge, shall be ten years.

(b) A judge who serves for a period of less than ten years shall be entitled to service gratuity

(c) A retired judge who has served as

a judge for at least ten years, is entitled to an annual pension equal to one-four-hundred-and-eightieth of the judge's pensionable emoluments for each completed month of service.

(d) A retired judge entitled to a pension may commute up to one-quarter of their annual pension at an equivalent of twenty times the amount so commuted and the balance of three-quarters shall be paid as a monthly pension.

Pension in Respect of a Spouse

(e) Where a judge dies before attaining the qualifying service, the surviving spouse shall be paid a gratuity calculated as one month's pensionable emolument for each year of service.

(f) Where a judge dies before attaining the qualifying service and is survived by more than one spouse, the gratuity payable shall be shared equally among the surviving spouses.

Pension in Respect of Spouse and Children

(g) Where a judge who is entitled to a pension dies before attaining retirement age or a retired judge dies and is survived by a spouse, the pension shall be paid to the spouse at a rate equal to fifty per cent of the monthly pension that was payable to the retired judge.

(h) Where a judge entitled to a pension dies before retirement or dies after retirement and is survived by a spouse and a child or children, there shall, in addition to any pension that is payable to the spouse, be paid to the spouse, in respect of any eligible child or children of the judge, a pension at a rate equal to the applicable percentage of the rate of the judge's pension.

Pension for a Judge removed from office on account of mental or physical incapacity

(i) A judge removed from office on account of mental or physical incapacity is entitled to a pension not less than fifty per cent of the pension the judge would have been entitled to, had the judge retired on attaining retirement age.

Non-Pensionable Benefits

(j) A monthly transport allowance equivalent to one seventh of the basic salary of the judge at retirement for a period of one hundred and twenty months, which shall be payable once as a lump sum upon retirement;

(k) A medical cover, during the life of the retired judge, for the retired judge and the spouse on the same terms as that enjoyed by serving judges;

(l) Diplomatic passports, during the life of the retired judge, for the retired judge and the spouse; and

(m) Access to the government lounge at all airports within Kenya, during the life of the retired judge, for the retired judge and the spouse.

H. Proposal for Proportionality

While there is no doubt that both the Chief Justice and the Deputy Chief Justice perform onerous public administrative duties, in terms of their judicial functions they perform similar functions as the other five (5) Judges of the Supreme Court. We have outlined in the previous paragraphs that the five Judges are also assigned certain heavy administrative dockets over and above their judicial responsibilities.

For these and other reasons alluded to earlier, it humbly recommended that the five (5) Judges of the Supreme Court be considered for the following retirement benefits, in addition to those provided for in the Bill:

(a) Two drivers

(b) Fuel allowance

(c) Two-armed security guards to be provided on request

(d) Two house keepers

(e) One cook

It is emphasized that the recommendations are in respect of only five(5) Judges.

I. Proposed Amendments to the Bill

a. It is proposed that Clause 23 of the Bill be amended by inserting immediately after subsection (1) a new subsection (2) as follows:

(2) In addition to the above, Judges of the Supreme Court shall, upon retirement be entitled to the additional benefits set out in the First Schedule.

b. Introduce the First Schedule to the Bill to read as follows:

FIRST SCHEDULE [Cl. 23(2)]

ADDITIONAL RETIREMENT BENEFITS FOR A RETIRED

SUPREME COURT JUDGE

- (a) Two drivers;
- (b) Fuel Allowance
- (c) Two armed security guards who shall be provided on request
- (d) Two house keepers;
- (e) One cook

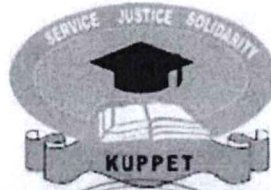
Submission



KENYA UNION OF POST PRIMARY EDUCATION TEACHERS

HEAD OFFICE:

Next Gen Mall,
2nd Floor,
Mombasa Road,
Nairobi-Kenya



P. O. Box 30412-00100,
Tel: +254-722355985
Email: info@kuppet-kenya.org
Website: www.kuppet-kenya.org

Our Ref: KUPPET/NA/01/2025

Date: 16th July, 2025

The Clerk of the National Assembly,
Parliament Buildings
P. O. Box 41842-00100
NAIROBI



WDDC
2
16/07/25

RE: SUBMISSION OF MEMORANDUM IN SUPPORT OF THE JUDGES' RETIREMENT BENEFITS BILL, 2025

The Kenya Union of Post Primary Education Teachers (KUPPET), hereby submits the attached memorandum in support of the Judges' Retirement Benefits Bill, 2025.

This submission is done in recognition of the unique place the Judges hold in the public service for the long hours they work, long careers and security threats they face from aggrieved parties.

KUPPET supports the proposed enhanced pension scheme. We believe that the passage and implementation of this Bill will serve as a benchmark for broader pension reforms across the public sector.

We trust this memorandum will be given due consideration by the relevant department and the House at large.

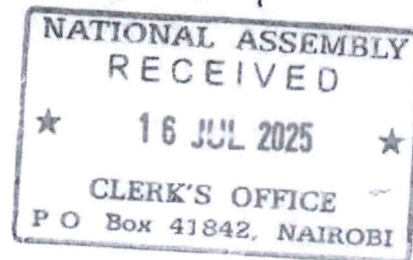
We would be pleased to provide any further information you may need, including through a public hearing at Parliament.

Regards.

AKELO M.T. MISORI
SECRETARY GENERAL



Abenayo Wasike, HOD
to place before JLAC for consideration
DM 17/07/25



/Encls.

National Chairman – Omboko Milema
National Vice Chairman – Jatus K. Korir
National Organizing Secretary – Paul J. Muingi

Secretary General – Akelo M. T. Misori
Deputy Secretary General – Moses Nthurima
National Secretary Gender – Catherine Wambilyanga

National Treasurer – Wicks Mwethi Njenga
National Secretary Secondary – Edward Obwoyo
National Secretary Tertiary – Sammy Chelang'a



KENYA UNION OF POST PRIMARY EDUCATION TEACHERS

**MEMORANDUM OF SUPPORT
ON THE JUDGES' RETIREMENT BENEFITS BILL, 2025
SUBMITTED TO THE CLERK OF THE NATIONAL ASSEMBLY**

1. INTRODUCTION

The Kenya Union of Post-Primary Education Teachers (KUPPET) represents teachers from the post-primary sector comprising secondary schools, teachers' training colleges and non-degree granting technical training institutions.

The KUPPET National Executive Board is pleased to provide this Memorandum to the Clerk of the National Assembly concerning the Judges' Retirement Benefits Bill, 2025 whose object is to provide for the pension and other retirement benefits to judges of superior courts and for connected purposes.

Judges hold a unique place in the public service for the long hours they work, their long careers and the security threats they face from aggrieved parties well into their retirement. Adequate social security can help them maintain their independence and impartiality during their careers, as they would not have to worry about financial pressures when making difficult decisions.

2. CONSTITUTIONAL AND INTERNATIONAL OBLIGATIONS ON SOCIAL SECURITY

Article 43(1)(e) of the Constitution of Kenya, 2010, guarantees every person the right to social security and binds the State to provide appropriate social security to persons unable to support themselves and their dependents.

Further, Article 21(2) compels the State to take legislative, policy, and other measures to progressively achieve the full realization of the rights in Article 43.

Internationally, Kenya is bound by the International Labour Organization (ILO) Convention No. 102 on Social Security (Minimum Standards), which requires State Parties to ensure the provision of adequate retirement, medical, survivors', and invalidity benefits.

Additionally, ILO Convention No. 128 (Invalidity, Old-Age and Survivors' Benefits Convention, 1967) and Recommendation No. 202 concerning National Floors of Social Protection further provide that old age income security must be adequate, sustainable, and accessible.

As such, the Judges' Retirement Benefits Bill aligns with these standards by seeking to establish a comprehensive, predictable, and dignified retirement framework for judges, who have committed their lives to public service under exceptional working conditions

3. JUDGES' UNIQUE CONDITIONS JUSTIFY A SPECIAL SCHEME

Judges hold a unique position among public servants. These include their **exclusion from social life** due to the demands of impartiality and integrity; **advanced retirement age** which diminishes their ability to generate additional income or re-enter the workforce; **occupational hazards and health strain**; and **security risks** linked to judgments they render in criminal, civil, or political matters that may leave parties aggrieved.

The public sector already provides special retirement benefits schemes for various cadres including the Public Service Superannuation Scheme for teachers, civil servants and uniformed officers, among others.

Judges discharge critical duties toward the protection of life and property, security of the state and national economic development. They deserve social protection like all other cadres of public servants.

The proposed Bill's provision for a pension scheme that includes monthly stipends, medical insurance, and enhanced protection is therefore not a privilege but a necessary social protection response that reflects the realities of judicial service.

4. INFLATION-LINKED PENSION SYSTEM

As KUPPET, we strongly urge Parliament to adopt and institutionalize an inflation-indexed pension mechanism for judges, as provided in Clause 13 of the Bill. This ensures that the real value of retirement benefits is preserved amidst rising costs of living, thereby guaranteeing the dignity and security of retired judicial officers.

Countries such as South Africa and the United Kingdom have adopted the “triple lock” pension model, where pensions increase annually by the highest of the Consumer Price Index (CPI), average earnings growth, or 2.5%. Similarly, Italy, France, Switzerland, Finland, and Australia link pension increases to inflation to protect retirees from economic shocks.

Kenya must adopt a similar principle not only for judges but as a benchmark for future public sector pension reforms. This approach is consistent with ILO Recommendation No. 202, which stresses adequacy and sustainability of social protection benefits.

5. CONCLUSION AND RECOMMENDATION

KUPPET urges the National Assembly to pass the Bill without delay to safeguard the dignity and wellbeing of retired judges; adopt the inflation-based pension model to preserve purchasing power; support the inclusion of post-retirement medical and psychosocial support systems; and use this framework to inform broader pension reforms for other vulnerable categories of workers.

By ensuring a superior pension scheme for judges, Parliament will be reinforcing Kenya’s constitutional promise of dignity, equality, and social justice for all.

Submitted by:

Akelo M.T. Misor,

SECRETARY GENERAL



Submission

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DDC
&
29/7/25

Mr. Ahmed Sabw

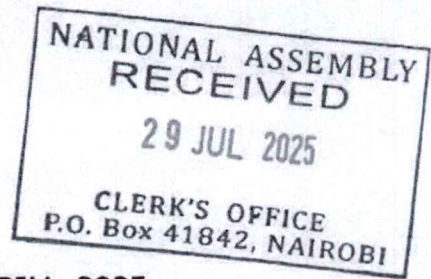
pls TMS
Aware
30/7/25
Salaries & Remuneration
Commission
Awarding productivity

Ref. No: SRC/TS/8 VOL.II(47)

25th July, 2025

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
National Assembly
Parliament Buildings
P.O Box 41842- 00100
NAIROBI

Abenayo Waake
to process.
30/7/25



Dear Mr. Njoroge,

MEMORANDUM ON THE JUDGES RETIREMENT BENEFITS BILL, 2025

Reference is made to the captioned Bill.

The Salaries and Remuneration Commission (SRC) has reviewed the Judges Retirement Benefits Bill, 2025 and notes that the principal object of the Bill is to provide for the pension and other retirement benefits to Judges of superior courts and for connected purposes.

SRC has examined the proposed Judges Retirement Benefits Bill, 2025 and wishes to submit its views as follows:

A. SRC's Constitutional mandate

1. SRC is an independent Commission established under Article 230 of the Constitution of Kenya with the mandate to: a) set and regularly review the remuneration and benefits of all State Officers; and b) to advise the national and county governments on the remuneration and benefits of all other public officers.
2. In the exercise of its powers and functions, SRC is required under Article 230 (5) of the Constitution and Section 12 of the SRC Act, to take the following principles into account:
 - i. the need to ensure that the total public compensation bill is fiscally sustainable;
 - ii. the need to ensure that the public services are able to attract and retain the skills required to execute their functions;

- iii. the need to recognise productivity and performance;
 - iv. transparency and fairness; and
 - v. equal pay to persons for work of equal value.
3. Pursuant to Article 260 of the Constitution, Judges of the superior courts are designated as State Officers. As such, SRC is the sole constitutional body duly mandated to set and regularly review their remuneration and benefits, including retirement benefits, under Article 230 (4) (a) of the Constitution.
 4. In addition to the above constitutional provisions, Article 172 (1) (b) (i) of the Constitution expressly limits the Judicial Service Commission's power to make recommendations on Judges remuneration.

B. Current retirement benefits for Judges of superior courts

5. The applicable retirement benefits payable to Judges, excluding the Chief Justice and the Deputy Chief Justice, are specifically governed by the provisions of the **Pensions Act (Cap. 189)**, the **Pensions (Increase) Act (Cap. 190)**, and the **Widows' and Children Pensions Act (Cap. 195)**. Collectively, these three statutes establish the legal framework for the computation, adjustment, and administration of pensions and related retirement benefits for Judges upon leaving office.
6. SRC observes that the retirement benefits for Judges, as currently provided under the said 3 Acts of Parliament, may only be reviewed by SRC in accordance with its mandate under Article 230 (4) (a) of the Constitution and Section 1a of the SRC Act. Such reviews must be conducted taking into full consideration the principles expressly set out under Article 230 (5) of the Constitution and Section 12 of the SRC Act, which include fiscal sustainability, transparency and fairness, and equal pay for work of equal value.
7. Consequently, given SRC's exclusive constitutional mandate, any legislative proposals seeking to review the current retirement benefits for Judges must comply with the framework established under Article 230(4)(a) of the Constitution. This includes being set or reviewed by SRC and subjected to the principles under Article 230 (5) of the Constitution and Section 12 of the SRC Act. Legislative proposals developed or advanced outside this constitutional framework are constitutionally impermissible. This requirement ensures that all modifications to judicial retirement benefits benefit from SRC's expert analysis, adhere to guiding remuneration principles, and align with the broader architecture of State Officers' remuneration.

The advancement of such legislative proposals without due compliance with Article 230(4)(a) constitutes a fundamental breach of the Constitution and undermines the institutional balance and oversight mechanisms envisioned therein.

C. Proposed retirement benefits for Judges of superior courts under the Judges Retirement Benefits Bill, 2025

i. Constitutional validity of the proposed Bill

8. SRC submits that it has neither initiated the review of nor set the retirement benefits proposed in the Judges Retirement Benefits Bill, 2025. Moreover, the proposals contained in the Bill have not been subjected to evaluation against the constitutional principles and factors that SRC is required to apply under Article 230(4)(a) and (5) of the Constitution and the SRC Act.
9. Consequently, the proposed review of retirement benefits for Judges of the superior courts, as contained in the Judges Retirement Benefits Bill, 2025 constitutes a direct usurpation of SRC's exclusive constitutional mandate to set and regularly review the remuneration and benefits of State Officers, including retirement benefits. This is in clear breach of Article 230(4)(a) of the Constitution, as affirmed by the High Court in **Kenya National Commission on Human Rights v Attorney General & another [2015] KEHC 7634 (KLR)**.

ii. Fiscal sustainability of the proposed retirement benefits

10. SRC submits that the proposed financial retirement benefits set out in the Judges Retirement Benefits Bill, 2025, specifically, the **post-retirement transport benefit** and **the post-retirement medical benefit**, have not been set by SRC in accordance with its constitutional mandate. Moreover, these benefits have not been assessed against the principle of fiscal sustainability as required under Article 230(5)(a) of the Constitution and Section 12 of the SRC Act.
11. The total cost estimates for both post-retirement transport and medical benefits in year 1 is **Kshs. 1,735,740,967**.
12. Furthermore, in line with the principle of equal pay for work of equal value, the extension of enhanced post-retirement transport and medical benefits to Judges, if implemented, may trigger legitimate clamour for similar benefits by other State officers. This would result in a significant ripple effect across the public sector, thereby exacerbating an already constrained fiscal space and undermining efforts toward sustainable public compensation management. Such uncoordinated enhancement of benefits for one category of State Officers without comprehensive analysis of its implications for the entire public sector compensation framework contravenes the

holistic approach that SRC's constitutional mandate is designed to ensure. The ripple effect would be **Kshs. 15,017,387,628**.

iii. **Comments on specific clauses of the Bill**

13. SRC submits its specific comments on the Bill as set out below:

Table: Judges Retirement Benefits Bill, 2025 Review Areas

S/No.	Clause	SRC Observations	SRC Views
1.	2 Interpretation "pensionable emoluments" means the basic salary and house allowance payable to a Judge.	(a) SRC vide letter Ref. No: SRC/TS/24/3 dated 13 th October, 2023 set and communicated on the Remuneration and Benefits for State Officers in the Judiciary. SRC guided that, 'for purposes of gratuity and pension, the pensionable emolument shall be based on the monthly basic salary. (b) In previous submissions on the Bill, SRC has guided JSC to amend the clause and provide that pensionable emoluments means the basic salary payable to a Judge as set by SRC. This will ensure harmony and fairness in the definition of Pensionable emoluments as has been set by SRC for various State Officers.	The Commission recommends that for purposes and equity and harmony in the definition of pensionable emoluments, the clause be amended to provide that: <i>"pensionable emoluments" means the basic salary payable to a Judge as set by SRC.</i>
2.	PART II - PENSION AND OTHER BENEFITS FOR JUDGES IN OFFICE AT THE COMMENCEMENT OF THIS ACT Clause 4 - 23	(a) Part II of the Bill provides defined benefits for Judges who will be in Office at the Commencement of the Act; (b) The Benefits will be fully funded by the Government as the Members are exempt from making contributions to fund the benefits; (a) The Benefits have been enhanced from what the Judges are currently entitled to under the Pensions Act Cap 189. For instance, the Judges will be entitled to additional benefits including a transport allowance and medical cover for self and spouse, further, the pension increase has been enhanced from the biannual increase of 3% as provided under the Pension Increase Act of 2005 to a maximum of 5% yearly; (b) The Commission had in its submission of March, 2024 guided JSC that the Bill be amended to provide for a Defined Contribution Scheme as per existing government policy and to align the pension increase to the provisions of the Pensions Increase Act of 2005; (c) The National Treasury in its Circular on registration and management of public service retirement benefits schemes No. 18 of 2010 which was updated and reissued on 10 th July, 2024 guided that all retirement benefits schemes seeking registration will be Defined Contribution (DC) Schemes. The objective is to ensure equity in sharing the cost of funding scheme benefits between the Government and employees, and align public service pension schemes with the best practices in the retirement benefits industry;	To align part II of the Bill to existing government policy on retirement benefits, the Commission views are that: 1. The Bill be amended to provide for establishment of a Defined Contribution Scheme in line with prevailing Government Policy as follows: (a) Scheme Design: The Scheme design shall be Defined Contribution Scheme . (b) Contribution Rate: (i) The employer's contribution rate shall be 20% of the Member's monthly pensionable emoluments and shall not exceed two (2) times the employee's contribution rate; (ii) The Member's contribution rate shall be at least 10% of the monthly pensionable emoluments; and (iii) A member may make additional voluntary contributions to the scheme. (c) Benefits: The Benefits provided under the Scheme shall be

S/No.	Clause	SRC Observations	SRC Views
		<p>(d) The Commission developed parameters to guide in setting and advising on requests on pension schemes for State Officers. The guidelines provide that all Pension Schemes to be established for State Officers shall be Defined Contribution and the Benefits provided under the Schemes shall be fully funded from the scheme account;</p> <p>(e) Previous versions of the draft Bill submitted to SRC on the Judges Retirement Benefits sought to establish a Defined Contributory Scheme for Judges. The 2021 draft Bill had provided for a DC Scheme with rates of contribution set at 10% of pensionable emoluments for the Judges and 20% of pensionable emoluments for the employer; and</p> <p>(f) SRC is mandated under Article 230(4)(a) of the Constitution to set and regularly review remuneration and benefits of State Officers including Judges. Any review in pension for Judges must therefore be submitted to the Commission for setting or review.</p>	<p>administered in accordance with this legislation and shall be fully funded from the scheme account.</p> <p>2. In the event that establishing a Defined Contribution Scheme in option 1 above is less favourable than what is currently obtaining for Judges. Judges to continue with their current pension arrangement as provided under the Pensions Act Cap 189 and the Widows' and Children Pensions Act. Further, the Pension Increase to continue as per the provisions of the Pensions Increase Act of 2005 until the legislations are amended.</p>
3.	<p>PART III - PENSION AND OTHER BENEFITS FOR JUDGES APPOINTED AFTER COMMENCEMENT OF THIS ACT</p> <p>Clause 24 - 64</p>	<p>(a) Part III of the Bill seeks to establish a Defined Contribution Scheme for Judges appointed after commencement of the Act with contributions set at 7.5% of pensionable emoluments for the Judges and 15% of pensionable emoluments for the employer;</p> <p>(b) The contributions are inline and within the parameters advised by the National Treasury and rates adopted by SRC for State Officers;</p> <p>(c) The Scheme Fund shall be administered and managed by a Board of Trustees;</p> <p>(d) Clause 27 provides that the Government shall meet the cost of a life insurance policy for each member comprising death benefits for the member. SRC vide the letter Ref. No: SRC/TS/24/3 dated 13th October, 2023 on Remuneration and Benefits for State Officers in the Judiciary, guided on a Group Life Insurance for Judges. The cover limits should apply in case of death of a Judge while in service and in addition the dependants should get the Members accrued benefits as per the provisions of the RBA act;</p> <p>(e) Clause 37 provides that the Chairperson and Trustees shall be paid such allowances or other remuneration as the Cabinet Secretary may determine. The Clause is not aligned to section 22 of the RBA Retirement Benefits (Good Governance Practices) Guidelines which guide on how Trustees should be remunerated as provided in the trustees' remuneration policy;</p> <p>(f) Clause 55 provides additional benefits payable on retirement and includes provision of a medical cover for the retired judge and the retired judge's spouse on the same terms as that enjoyed by serving judges. Provision of the benefit will create inequity in the benefits drawn by State Officers on retirement and further, some public officers are making contributions to fund the post-retirement medical cover; and</p>	<p>(a) Clause 27 to be deleted from the Bill as the Commission has set Group Life Insurance for Judges as a separate benefit. The Dependants to get the accrued benefits of the deceased Judge within the provisions of the RBA Act and the scheme rules;</p> <p>(b) Clause 37 to be aligned to the Retirement Benefits (Good Governance Practices) Guidelines that have been issued by RBA on Trustees Remuneration;</p> <p>(c) Clause 55 (a) on the provision of a medical cover on retirement be deleted from the Bill awaiting the SRC's policy on contributions to post-retirement medical schemes for State Officers; and; and</p> <p>(d) Clause 61 (1) be aligned to the provisions of the National Treasury Circular dated 10th July, 2024 that guided that that all retirement benefits schemes expenses shall be met out of the Scheme Fund and the employer shall only meet the costs of setting up the scheme.</p>

S/No.	Clause	SRC Observations	SRC Views
		(g) Clause 61 (1) provides that the Government shall meet the cost of the administration of the Fund for a period of five years from the date of first contributions into the Fund. The National Treasury vide its Circular of 10th July, 2024 guided that all scheme expenses shall be met out of the Scheme Fund and the employer shall only meet the costs of setting up the scheme.	
4.	PART IV - BENEFITS FOR JUDGES WHO RETIRED BEFORE COMMENCEMENT OF THIS ACT Clause 65 - 66	(a) Part IV of the Bill seeks to provide additional benefits to Judges who retired at any time after the 27th August, 2010, but before the commencement of this Act; (b) The retirement benefits for the retired Judges are currently provided under the Pensions Act Cap 189 and Widows' and Children Pensions Act; (c) The part excludes Judges who retired before 27th August, 2010 which may be viewed as discriminatory; (d) The additional benefits provided under Clause 66 include a medical cover for the retired judge and the retired judge's spouse on the same terms as that enjoyed by serving judges. Provision of the benefit will create inequity in the benefits drawn by State Officers on retirement and further, some public officers are making contributions to fund the post-retirement medical cover.	(a) Part IV excludes Judges who retired before 27th August, 2010 which may be viewed as discriminatory; and (b) Clause 66 on provision of a medical cover be deleted from the Bill awaiting the SRC's policy on contributions to post-retirement medical schemes for State Officers.
5.	PART V - MISCELLANEOUS PROVISIONS Clause 67 - 70	Clause 67 (1) provides that the Cabinet Secretary shall be responsible for the payment of pensions, gratuities and provision of, non- pension benefits to judges under this Act. The current benefits for Judges as provided under the Pensions Act and the Widows' and Children Pensions Act are within the purview of the Cabinet Secretary, National Treasury, however, retirement benefits provided under a defined contribution scheme overseen by a Board of Trustees as those in part III of the Bill should be placed under the responsibility of the Board of Trustees.	Clause 67 (1) should be amended to indicate the right person responsible for the management and administration of the retirement benefits under the Bill.

The purpose of this letter therefore, is to submit the SRC's views on the Judges Retirement Benefits Bill, 2025 for your consideration.

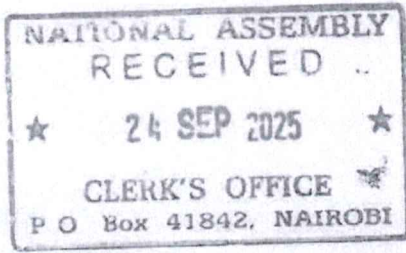
The Commission appreciates your continued cooperation and support as we discharge our respective mandates.

Yours


CPA Margaret Njoka
AG. COMMISSION SECRETARY/CEO

Submission

9 (a)



Salaries & Remuneration Commission
Rewarding productivity



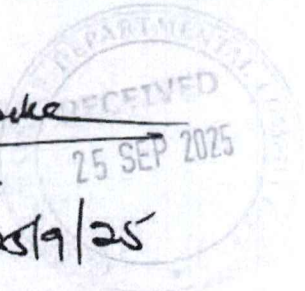
Ahmed Salim
pls TNA

22nd September, 2025 28/9/25

Ref. SRC/TS/8 VOL II (68)

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
National Assembly
Parliament Buildings
P.O Box 41842- 00100
NAIROBI

D/D e
Please deal.
25/09/25
Abenayo Wesike
As process
25/9/25



Dear Mr. Njoroge,

FURTHER MEMORANDUM ON THE JUDGES RETIREMENT BENEFITS BILL, 2025

Reference is made to the captioned Bill and Salaries and Remuneration Commission's (SRC) earlier memorandum forwarded vide letter Ref. No: SRC/TS/8 VOL.II(47) dated 25th July, 2025.

The Commission has reviewed the Judges Retirement Benefits Bill, 2025 and notes that the principal object of the Bill is to provide for the pension and other retirement benefits to Judges of superior courts and for connected purposes.

SRC has further examined the proposals in the Judges Retirement Benefits Bill, 2025 and wishes to submit its views as follows:

A. SRC's Constitutional mandate

1. SRC is an independent Commission established under Article 230 of the Constitution of Kenya with the mandate to: a) set and regularly review the remuneration and benefits of all State Officers; and b) to advise the national and county governments on the remuneration and benefits of all other public officers.
2. In the exercise of its powers and functions, SRC is required under Article 230 (5) of the Constitution and Section 12 of the SRC Act, to take the following principles into account:
 - i. the need to ensure that the total public compensation bill is fiscally

- sustainable;
 - ii. the need to ensure that the public services are able to attract and retain the skills required to execute their functions;
 - iii. the need to recognize productivity and performance;
 - iv. transparency and fairness; and
 - v. equal pay to persons for work of equal value.
3. Pursuant to Article 260 of the Constitution, Judges of the superior courts are designated as State Officers. As such, SRC is the sole constitutional body duly mandated to set and regularly review their remuneration and benefits, including retirement benefits, under Article 230 (4) (a) of the Constitution.
 4. In addition to the above constitutional provisions, Article 172 (1) (b) (i) of the Constitution expressly limits the Judicial Service Commission's power to make recommendations on judges remuneration.

B. Comments on specific clauses of the Bill

5. SRC hereby submits its specific comments on the Bill as set out below:

Table: Judges Retirement Benefits Bill, 2025 Provisions for Review

Provision in the Bill	SRC Observations	SRC Views
<p>PART I – PRELIMINARY PROVISIONS</p> <p>Clause 2 - Interpretation</p> <p>The bill provides that:</p> <p><i>"pensionable emoluments" means the basic salary and house allowance payable to a Judge.</i></p>	<p>(a) House allowance is a common allowance payable to all state and other public officers.</p> <p>(b) Including it in the definition of Pensionable Emoluments would have a ripple effect across the entire public service as other state and public officers would demand that this be applied to them for parity of treatment.</p> <p>(c) Further, this would result in higher contributions from public service employers which may be fiscally unsustainable.</p>	<p>SRC recommends that the clause be amended to provide that:</p> <p>"pensionable emoluments" means the basic salary payable to a Judge or as shall be set and reviewed by SRC from time to time.</p>

Provision in the Bill	SRC Observations	SRC Views
<p>PART II - PENSION AND OTHER BENEFITS FOR JUDGES IN OFFICE AT THE COMMENCEMENT OF THIS ACT</p> <p>Clause 23 (1)</p> <p>A Judge who qualifies for pension under this Part shall, upon retirement be entitled to:</p> <p>(a) A monthly transport allowance equivalent to one seventh of the basic salary of the Judge at retirement for a period of one hundred and twenty months, which shall be payable once as a lump sum upon retirement.</p> <p>(b) A medical cover, during the life of the retired Judge, for the retired Judge and the spouse on the same terms as that enjoyed by serving Judges.</p> <p>PART III - PENSION AND OTHER BENEFITS FOR JUDGES APPOINTED AFTER COMMENCEMENT OF THIS ACT</p> <p>Clause 55</p> <p>In addition to a pension payable under this Part, a retired Judge to whom this part applies shall be entitled, during the life of the retired Judge, to:</p> <p>(a) a medical cover for the retired Judge and the retired Judge's spouse on the same terms as that enjoyed by serving Judges.</p>	<p>Judges are State Officers whose remuneration and benefits are set and reviewed by SRC pursuant to Article 230 (4) and (5) of the Constitution. Consequently, legislating on matters of remuneration and benefits may limit the Commission in exercising its mandate.</p>	<p>(a) Clause 23(1)(a) be amended to provide that: Transport Allowance shall be as set by SRC.</p> <p>(b) Clause 23 (1) (b), Clause 55 (a) and Clause 66 (a) be amended to provide that:</p> <p>Medical Cover shall be as set by SRC.</p> <p>Medical Cover shall be as set by SRC.</p>

Provision in the Bill	SRC Observations	SRC Views
<p>PART IV-BENEFITS FOR JUDGES WHO RETIRED BEFORE COMMENCEMENT OF THIS ACT</p> <p>Clause 66 A Judge to whom this Part applies shall be entitled, during the life of the retired judge, to:</p> <p>(a) A medical cover for the retired judge and spouse on the same terms as that enjoyed by serving Judges.</p>		<p>Medical Cover shall be as set by SRC.</p>

The purpose of this letter therefore, is to submit the Commission's further views on the Judges Retirement Benefits Bill, 2025 for your consideration.

The Commission appreciates your continued cooperation and support as we discharge our respective mandates.

Yours


CPA, Margaret Njoka
AG. COMMISSION SECRETARY/CEO

Submission

9 (b)



Salaries & Remuneration
Commission

Rewarding productivity

Ref. No: SRC/TS/8 VOL II (82)

3rd November, 2025

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
National Assembly
Parliament Buildings
P.O Box 41842- 00100
NAIROBI

Dear *Mr. Njoroge,*

FURTHER MEMORANDUM ON THE JUDGES RETIREMENT BENEFITS BILL, 2025

Reference is made to the captioned Bill and Salaries and Remuneration Commission's (SRC) earlier memorandums forwarded vide letters Ref. No: SRC/TS/8 VOL.II(68) dated 22nd September, 2025 and Ref. No: SRC/TS/8 VOL.II(47) dated 25th July, 2025.

The Commission has reviewed the Judges Retirement Benefits Bill, 2025 and notes that the principal object of the Bill is to provide for the pension and other retirement benefits to Judges of superior courts and for connected purposes.

SRC has further examined the proposals in the Judges Retirement Benefits Bill, 2025 and wishes to submit its views as follows:

A. SRC's Constitutional mandate

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3. Pursuant to Article 260 of the Constitution, Judges of the superior courts are designated as State Officers. As such, SRC is the sole constitutional body duly mandated to set and regularly review their remuneration and benefits, including retirement benefits, under Article 230 (4) (a) of the Constitution.
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Provision in the Bill	SRC Observations	SRC Views
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Provision in the Bill	SRC Observations	SRC Views
<p>PART II - PENSION AND OTHER BENEFITS FOR JUDGES IN OFFICE AT THE COMMENCEMENT OF THIS ACT</p> <p>Clause 23 (1)</p> <p>A Judge who qualifies for pension under this Part shall, upon retirement be entitled to-</p> <p>(a) a monthly transport allowance equivalent to one seventh of the basic salary of the Judge at retirement for a period of one hundred and twenty months, which shall be payable once as a lump sum upon retirement.</p> <p>(b) A medical cover, during the life of the retired Judge, for the retired Judge and the spouse on the same terms as that enjoyed by serving Judges.</p> <p>PART III - PENSION AND OTHER BENEFITS FOR JUDGES APPOINTED AFTER COMMENCEMENT OF THIS ACT</p> <p>Clause 55</p> <p>In addition to a pension payable under this Part, a retired Judge to whom this part applies shall be entitled, during the life of the retired Judge, to-</p> <p>(a) a medical cover for the retired Judge and the retired Judge's spouse on the same terms as</p>	<p>Judges are State Officers whose remuneration and benefits are set and reviewed by SRC pursuant to Article 230 (4) and (5) of the Constitution. Consequently, legislating on matters of remuneration and benefits may limit the Commission in exercising its mandate.</p>	<p>(a) Clause 23(1)(a) be amended to provide that:</p> <p>Transport Allowance shall be as set by SRC.</p> <p>(b) Clause 23 (1) (b), Clause 55 (a) and Clause 66 (a) be amended to provide that:</p> <p>Medical Cover shall be as set by SRC.</p> <p>Medical Cover shall be as set by SRC.</p>



Provision in the Bill	SRC Observations	SRC Views
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The purpose of this letter, therefore, is to submit the SRC's further views on the Judges Retirement Benefits Bill, 2025 for your consideration.

The Commission appreciates your continued cooperation and support as we discharge our respective mandates.

Yours



CPA Margaret Njoka
AG. COMMISSION SECRETARY/CEO

Submission **10**

KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"
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Telephone: Nairobi, +254-20-2241186/2241201
Fax: +254-20-2225786
www.info@klrc.go.ke

When replying please quote

Ref. No. KLRC/8/64 VOL.V/(18)
and Date

The Clerk,
Clerk's Chambers
National Assembly,
Parliament Building,
P. O. Box 41842-00100,
NAIROBI


(Attn: Mr. Jeremiah Ndombi, MBS)

RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE JUDGES' RETIREMENT BENEFITS BILL (NATIONAL ASSEMBLY BILL NO. 27 OF 2025) SPONSORED BY THE LEADER OF THE MAJORITY PARTY


Please refer to the above subject and your Letter Ref: NA/DDC/JLAC//2025/074 dated 30th July, 2025.

Enclosed herewith, please find the Commission's Comments and Recommendations on the Judges' Retirement Benefits Bill for further action.


We thank you for your cooperation and support.


Peter Musyimi, HSC
Ag. SECRETARY/ CEO

Encl.

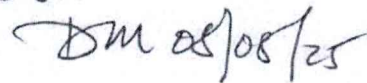
DD/DC
Please deal.

08/08/25

③ Ahmed Salem
Pls bring to attention
of Committee


11/08/25

② Abenayo Wasike, HOD

Place before JLAC.

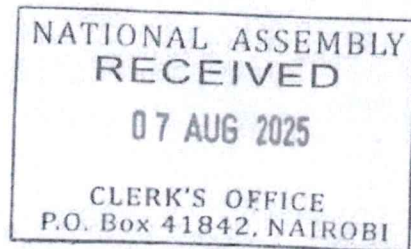

DM 08/08/25



KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
3RD FLOOR
TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA

6th August, 2025

.....20.....



Copy to:

Hon. CPA John Mbadi, EGH
Cabinet Secretary
Ministry of National Treasury & Economic Planning
Treasury Building, Harambee Avenue,
NAIROBI

Hon. Dorcas Agik Oduor, SC, OGW, EBS
The Attorney-General
Office of the Attorney-General &
Department of Justice
Sheria House, Harambee Avenue
NAIROBI



KLRC COMMENTS AND RECOMMENDATIONS ON THE JUDGES' RETIREMENT BENEFITS BILL, 2025

The Judges' Retirement Benefits Bill, 2025, provides for pension and other retirement benefits to judges of superior courts in Kenya. The Bill addresses benefits for judges in office at its commencement, those appointed thereafter, and those retired after August 27, 2010.

The Kenya Law Reform Commission (KLRC) has reviewed the Bill to ensure alignment with the Constitution, existing laws, international norms, and principles of clear legislative drafting and provides the following comments and recommendations.

S/No.	Clause	Proposed amendment	Justification
1.	2 (Definition of "eligible child")	In the definition of "eligible child", change the age limit for children undertaking full-time education from 25 to 24 years.	The Pensions Act (Cap 189) and the Designated State Officers' pension Act cap similar age at 21 and 24, respectively. There is need to harmonize the age limit at 24 to ensures consistency across pension schemes, reducing administrative complexity.
2.	3(3)	Delete the subclause.	The Court (See, eg <i>Transparency International V Auditor General (2018)</i>), has declared such supremacy clauses as vague and serving no purpose.
3.	10(1)	Remove the pension factor of 1/480 from Clause 10(1) and provide that the pension calculation formula be	The fixed 1/480 factor may become outdated due to changing actuarial conditions. Delegating the formula to regulations allows flexibility

		prescribed in regulations.	for adjustments based on economic realities.
4.	13	Delete Clause 13 and substitute with a provision stating that pension increases shall be governed by the Pensions (Increase) Act (Cap 190).	Multiple mechanisms for pension increases across public and state officers create inconsistency and administrative complexity. Adopting the Pensions (Increase) Act ensures uniformity, as used for Designated State Officers. Amendments in that Act can address any inadequacies in the existing Act.
5.	22	Delete clause 22 in its entirety	Clause 22's reference to "re-organization of office" is unclear and inapplicable to judges, who can only leave office under constitutional grounds (Article 167). This provision, borrowed from the Pensions Act for general public officers, is inapplicable with the Constitution's specific provisions for judicial tenure.
6.	23	Merge Clause 23 with Clauses 55 and 66 under a new consolidated clause in Part V (Miscellaneous Provisions) titled "Additional Non-Pension Benefits,".	Repeating non-pension benefits (transport allowance, medical cover, diplomatic passports, airport lounge access) in Clauses 23, 55, and 66 is redundant.
7.	26(4)	Delete	The provision imposing penalties on the government for delayed contributions is vague, lacking clarity on the "applicable law," enforcing authority, or implications of parliamentary delays in budget allocations. It serves no practical purpose, risks legal

			ambiguity, and is unenforceable, undermining legislative clarity.
8.	27	Delete	Providing life insurance is an employment-related matter, not a retirement benefit, and is better addressed under judges' current employment terms. Including it in the Bill is extraneous, as it is not incidental to pension benefits.
9.	29 (3) (b) (c) and (d)	Amend Clauses 29(3)(b), (c), and (d) to clarify that the Supreme Court judge, Court of Appeal judge, and High Court judges must be members of the Judges' Retirement Benefits Fund scheme to serve on the Board of Trustees.	Without membership in the scheme, like the judges appointed before the commencement of this Act, these judges lack a direct stake in its management, potentially undermining their relevance and accountability on the Board. This clarification ensures only vested members oversee the Fund.
10.	29(4)	Delete "and I"	The phrase "and I" is a typographical error
11.	30(a)	Amend Clause 30(a) to specify that disqualification applies only to persons sentenced to imprisonment for six months or more for a crime involving fraud, corruption, or dishonesty.	A blanket disqualification for any six-month sentence, regardless of the offense, is overly restrictive and may unfairly exclude rehabilitated individuals. Linking disqualification to relevant crimes ensures proportionality, aligning with fairness principles and international norms on rehabilitation (e.g., ICCPR Article 10).
12.	30 (e)	Replace "directions, guidelines or different notes issued by the Retirement Benefits	Subordinating a statute to administrative guidelines risks legal uncertainty and

		Authority” in Clause 30(e) with “provisions of the Retirement Benefits Act.”	undermines statutory authority.
13.	36 (3)	Delete	Disqualifying a trustee for failing to disclose a conflict of interest is disproportionate, as other remedies (e.g., recusal, penalties) suffice. This provision risks arbitrary removal and lacks clarity on enforcement.
14.	55	Merge Clause 55 with Clause 23 (and Clause 66) into a single clause under Part V, as described above.	Duplicating non-pension benefits in Clauses 55, 23, and 66 is redundant.
15.	61	Amend Clause 61 to replace “five years” with “one year” for the period the government meets the Fund’s administrative costs.	Five years of government-funded administration is excessive, as the Fund should be self-sustaining like other pension schemes. One year is sufficient for establishment.
16.	66	Delete Clause 66, as its provisions are merged with Clauses 23 and 55 under Part V.	Repeating non-pension benefits in Clause 66 is redundant, as they are covered in Clauses 23 and 55.
17.	67(2)	Delete	Establishing a liaison office is an administrative arrangement between public sector agencies that does not require legislative codification. Its inclusion is unnecessary and risks over-regulating minor operational matters.

Submission **11**



PUBLIC SERVICE COMMISSION

① ODC
8
7/8/25

PSC/LEG/019/25/158 VOL. 1(65)

6th August 2025

Samuel Njoroge, CBS
Clerk of the National Assembly
National Assembly
Parliament Buildings
Parliament Road
NAIROBI

② Abenayo Wasike, HED
To place before JLAC.
DM 07/08/25

Ahmed Sahn
PLS TWA.
AWASIKE
8/8/25

Dear Clerk,

RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE JUDGES RETIREMENT BENEFITS BILL (NATIONAL ASSEMBLY BILL NO. 27 OF 2025) SPONSORED BY THE LEADER OF THE MAJORITY PARTY

Reference is made to your letter dated 30th July, 2025.

Attached is the Commission's submissions on the Judges Retirement Benefits Bill, 2025.

Yours Sincerely,

PAUL FAMBA, (MBS)
SECRETARY/CEO
PUBLIC SERVICE COMMISSION



Attch.



REPUBLIC OF KENYA



PUBLIC SERVICE COMMISSION

**SCHEDULE OF PROPOSED AMENDMENTS TO
THE JUDGES RETIREMENT BENEFITS BILL
(NATIONAL ASSEMBLY BILL NO. 27 OF 2025)**

**SCHEDULE OF PROPOSED AMENDMENTS TO THE JUDGES RETIREMENT BENEFITS
BILL (NATIONAL ASSEMBLY BILL NO. 27 OF 2025)**

(SUBMISSIONS OF THE PUBLIC SERVICE COMMISSION)

S/NO.	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
1.	2	<p>Definition of "eligible child":</p> <p>Definition c(ii) should be amended to delete the words "and is not, for the time being, maintained out of money provided by the government in a hospital or a similar institution".</p>	<p>In view of the Social Health Insurance Fund, all persons in a hospital would be maintained out of money provided by government either fully or on some percentage.</p> <p>The definition as provided in the Bill will therefore amount to discrimination.</p>
2.	6	The qualifying service should be reduced from 10 years to 5 years.	This is to align with the proposals being made to reduce the qualifying service under the Pensions Act, Cap 189.
3.	10	Reduce the period of 10 years to 5 years.	To align with the proposed amendment in clause 6.
4.	14(2)	Delete	The clause would unfairly and unlawfully deny a person pension benefits that have lawfully accrued in a contributory pension scheme in the public service for the previous period of service of the person and amount to discrimination against a person who previously served in the public service before appointment as a judge. The same clause is not applying to a person who was a member of a contributory scheme in the private sector.
5.	25	<p>Introduce a new sub-clause (2) to read as follows:</p> <p>(2) The Fund shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of –</p> <p>(a) suing and being sued;</p> <p>(b) purchasing, holding, managing and disposing of movable and immovable property; and</p>	The Fund should be the body corporate not the Board of Trustees.

S/NO.	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
10.		(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.	
6.	26(1)(a)	The deduction should be " not less than 7.5% of the member's monthly pensionable emoluments"	A static 7.5% makes it impossible to revise the deductions upwards without amendment to the Act. It would be disadvantageous to the members.
7.	26(1)(b)	The government contribution should be " not less than 15% and not more than 20% of the member's monthly pensionable emoluments"	A static 15% makes it impossible for the government to revise the contributions upwards without amendment to the Act. It would be disadvantageous to the members.
8.	29(2)	Delete	The Board of Trustees cannot be a separate entity from the Fund. The Fund should be the body corporate not the Board.
9.	29(3)	Replace Cabinet Secretary with Chief Justice	The Fund is for Judges' Retirement. The head of the Judiciary should appoint the members of the Fund to maintain independence of the judiciary.
10.	29(3)(a)	The chairmanship should be left to the members of the Board of Trustees to elect from among its members as is the case with other occupational schemes. Alternatively, the Chairperson of the Board should be a Judge, who is a member of the Fund, appointed by the Chief Justice.	This is an occupational scheme that is exclusive to the judiciary therefore the chairmanship should be internal to the judiciary. This is unlike the Public Service Superannuation Scheme Fund which serves the public service, the teachers service and the national police service.
11.	29(3) (b), (c) and (d)	The persons appointed as Trustees under those clauses should be members of the Fund unless in cases where there are no members of the Fund in the stated courts.	The Fund is a members' contributory Scheme and should be managed by members of the Fund as is the case with all other contributory schemes.
12.	29(3)(g)	Delete	This is a contributory Scheme like any other contributory Scheme in the public service (Constitutional Commissions and State Corporations) where the National Treasury is not required to be a member.

S/NO.	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
			It should be internally managed by the judiciary.
13.	29(4)	Amend to read as follows: "The members appointed under subsection (3)(a), (b), (c) and (d) shall be elected by members of the Fund in the respective courts. Provided that where a court has no members in the Fund, the Chief Justice shall nominate a member to represent the court."	This is a contributory Scheme. The members of the Scheme should have a say on who manages the Scheme.
14.	New 29(5)	Add a new subsection (5) to read as follows: "The member appointed under subsection (3)(e) shall be nominated by the Chief Justice"	It will not be possible to have the retired judges electing their representative
15.	30	Amend "section 30" to read "section 29".	Correction of a numbering error.
16.	31(1)	Replace three years with five years.	To align with the Section 3 of the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2025.
17.	31(3)	Replace "Cabinet Secretary" with "Chief Justice".	This is an internal occupational contributory scheme for the judiciary. The Chief Justice should be responsible for the Scheme to maintain independence of the judiciary.
18.	32	Replace "Cabinet Secretary" with "Chief Justice".	This is an internal occupational contributory scheme of the judiciary. The Chief Justice should be responsible for the Scheme to maintain independence of the judiciary.
19.	33(g)	Replace "Cabinet Secretary" with "Chief Justice".	This is an internal occupational contributory scheme of the judiciary. The Chief Justice should be responsible for the Scheme to maintain independence of the judiciary.
20.	37	Replace "Cabinet Secretary" with "Chief Justice".	This is an internal occupational contributory scheme of the judiciary. The Chief Justice should be responsible

S/NO.	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
21.	38	Replace "government" with "Chief Justice".	Government has three arms; the Executive, the Judiciary and the Legislature. The clause should be specific on which arm of government it is referring to as the Executive and the Legislature already have exclusive schemes managed independently.
22.	40	Delete the words "Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine." And replace with the words "Board, with the approval of the members, determine".	The Fund will be a contributory Scheme of the members and the members should have the right and freedom to determine how it is managed. It will not be a State Corporation whose terms should be determined on recommendation by SRC.
23.	43(2)	Delete	The provision is discriminatory against judges. There are no similar provisions in any other public service contributory scheme. Pension is a right that accrues on a monthly basis if a person is employed on permanent and pensionable terms.
24.	43(3)	Delete the words "subject to subsection (1)".	The provision is discriminatory against judges. There are no similar provisions in any other public service contributory scheme. Pension is a right that accrues on a monthly basis if a person is employed on permanent and pensionable terms.
25.	45(1)	Add a new subsection 45(1)(d) to read: "on removal from office in accordance with the constitution."	This being a contributory scheme, a person removed from office is entitled to pension. Additionally, pension is a right that accrues on a monthly basis and cannot be withheld or denied by reason of removal from office.
26.	56	Add a new subsection (3) to read a follow: "The terms of appointment of the Administrator shall be determined by the Board and set out in a written instrument".	To give clarity on terms of the Administrator.

S/NÓ.	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
27.	57	<p>Provided for a subsection (1) then add a subsection (2) to read as follows:</p> <p>"The terms of appointment of a Fund Manager shall be determined by the Board and set out in a written instrument:</p> <p>Provided that the period of service of a Fund Manager shall not exceed three years but shall be renewable subject to satisfactory performance."</p>	To give clarity on terms of the Manager.
28.	58	<p>Add a new subsection (3) to read as follows:</p> <p>"The terms of appointment of a Custodian shall be determined by the Board and set out in a written instrument:</p> <p>Provided that the period of service of a Custodian shall not exceed three years but shall be renewable subject to satisfactory performance."</p>	To give clarity on terms of the Custodian.
29.	61(3)	<p>Delete and replace with:</p> <p>(3) Before the commencement of each the Board shall cause to be prepared es revenue and expenditure of the Fund fo year.</p> <p>(4) The annual estimates shall make pro all the estimated expenditure of the Sch financial year and in particular, the esti provide for—</p>	For better clarity.

S/NO.	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
30.		(a) the payment of the Board expenses, employees' salaries, allowances and other charges in respect of the staff of the Fund;	
31.		(b) the payment of pensions, gratuities and other charges in respect of the retirement benefits due to the staff of the Scheme;	
32.		(c) the proper maintenance of the buildings and grounds of the Scheme;	
33.		(d) the maintenance, repair and replacement of the equipment and other property of the Scheme;	
30.		(e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate; and	
31.		(f) any other administrative costs of the Scheme.	
30.	62(3)	Delete the words "in accordance with the provisions of the Public Audit Act".	To align with other contributory Schemes in the public service.
31.	71(1)	Replace "Cabinet Secretary" with "Chief Justice".	This is a contributory Scheme for the judicial arm of government. The Chief Justice as head of the Judiciary should be responsible for the Regulations.
32.	71(3)(a) and (b)	Replace "Cabinet Secretary" with "Chief Justice"	To align with the proposal in clause 71(1).
33.	New clause	Introduce a new clause after clause 70 to read: The State Corporations Act shall not apply to the Judges Retirement Benefits Fund established under Section 25.	To avoid conflict of laws and to align with other contributory Schemes in the public service.

GENERAL COMMENTS

- The Public Service Commission supports the Bill. The Bill is timely to review pension provisions applicable to judges and align with the Constitution.

2. The Commission notes that the Bill provides for different retirement provisions for serving judges and for persons who will be appointed as judges after Commencement of the Act. This will amount to discrimination against persons appointed as judges after the commencement of the Act. Persons working in the same organization on similar terms should enjoy similar retirement benefits. There is need for harmonization.



Mary W. Kimonye, (Mrs), CBS
Vice Chairperson
Public Service Commission

5th August 2025

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Submission **12**



NATIONAL ASSEMBLY
RECEIVED
08 AUG 2025
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

(1) D/DC
Please deal
08/08/25

Uraia
Kenya's National Civic Education Programme

YOUR REF: NA/DD/JLAC/2025/074

TO:
THE CLERK OF THE NATIONAL ASSEMBLY,
MR. SAMUEL NJOROGE
P.O. BOX 41842-00100, NAIROBI
MAIN PARLIAMENT BUILDINGS
EMAIL: cna@parliament.go.ke
ddc@parliament.go.ke

③ Ahmed Salim

Pls inform committee
11/08/25

7TH AUGUST 2025
RECEIVED
08 AUG 2025
RECEIVED
08 AUG 2025

MEMO FOR NATIONAL ASSEMBLY BILL NO.27 OF 2025 - THE JUDGES' RETIREMENT BENEFITS BILL

② Aberayo Wairike, Hon
Place before JLAC. DM 08/08/25

PRELUDE:-

Uraia is a Swahili word that means citizenship. Uraia Trust was initially established and continues to provide quality gender responsive civic education and enhance civic engagement on reform and reconciliation in Kenya on a sustainable basis with reliance primarily on local resources. The preamble of the Trust Deed anchors the spirit of Uraia: sourcing democracy from within and through effective engagement and civic engagement. These ideals reflect much of what civic education ought to deliver. The organization's focus is on developing a citizenry that will commit to protecting the values of democracy and demand good governance in society. Additionally, the trust continues to create awareness of the rights and responsibilities of the citizens as well as engaging with duty bearers to ensure proper implementation of the constitution and affiliated legislative provisions on human rights.

With the established backdrop the following submissions reflect the perspective of the Trust on the proposed **THE JUDGES' RETIREMENT BENEFITS BILL NO.27 OF, 2025** which is a Bill that seeks to provide a clear statutory framework for Pension and gratuity entitlements for judges of the superior courts in Kenya.

SUBMISSIONS:-

We are hopeful that our proposals on the Bill herein will be considered during the deliberations by the National Assembly.

S/No.	Clause	Specific Amendment Under the Bill	Proposed Recommendations by Uraia Trust on the Bill	Justification for Our Recommendations



Uraia

Kenya's National Civic Education Programme

	The general intent of the Bill	Clauses 1 to 12, 14 to 28, 30 to 66 and 68 to 72	We endorse the amendments as proposed by the Bill since they support the constitutional principles of judicial independence.	<p>Our proposal herein is pegged on the rationale that the judge's retirement benefits funds will ensure financial security which reduces vulnerability to external influence, ensuring judges can make decisions without fear of losing income or benefits or even worry about the future of their retirement benefits and that of their immediate beneficiaries.</p> <p>Having this act that specifically caters for the judicial officers will also eliminate reliance on political goodwill or executive benevolence as it relates to the retirement benefits of the judicial officers.</p> <p>Similarly, the proposed provisions Promotes fiduciary responsibility and transparency in the management of the fund.</p>
2.	Clause 13	Annual pension increases capped at 5%, based on CPI.	We propose the removal of the cap and recommend that it be raised to 10% or any other suitable percentage higher than the 5% in line with long-term inflation trends.	A rigid cap may result in erosion of pension value in high inflation scenarios.
3.	Clause 29	Establishment of the Board of Trustees	We recommend an amendment that ensures that all trustees are appointed independently through the Judicial	This will reduce executive control over judicial retirement funds and



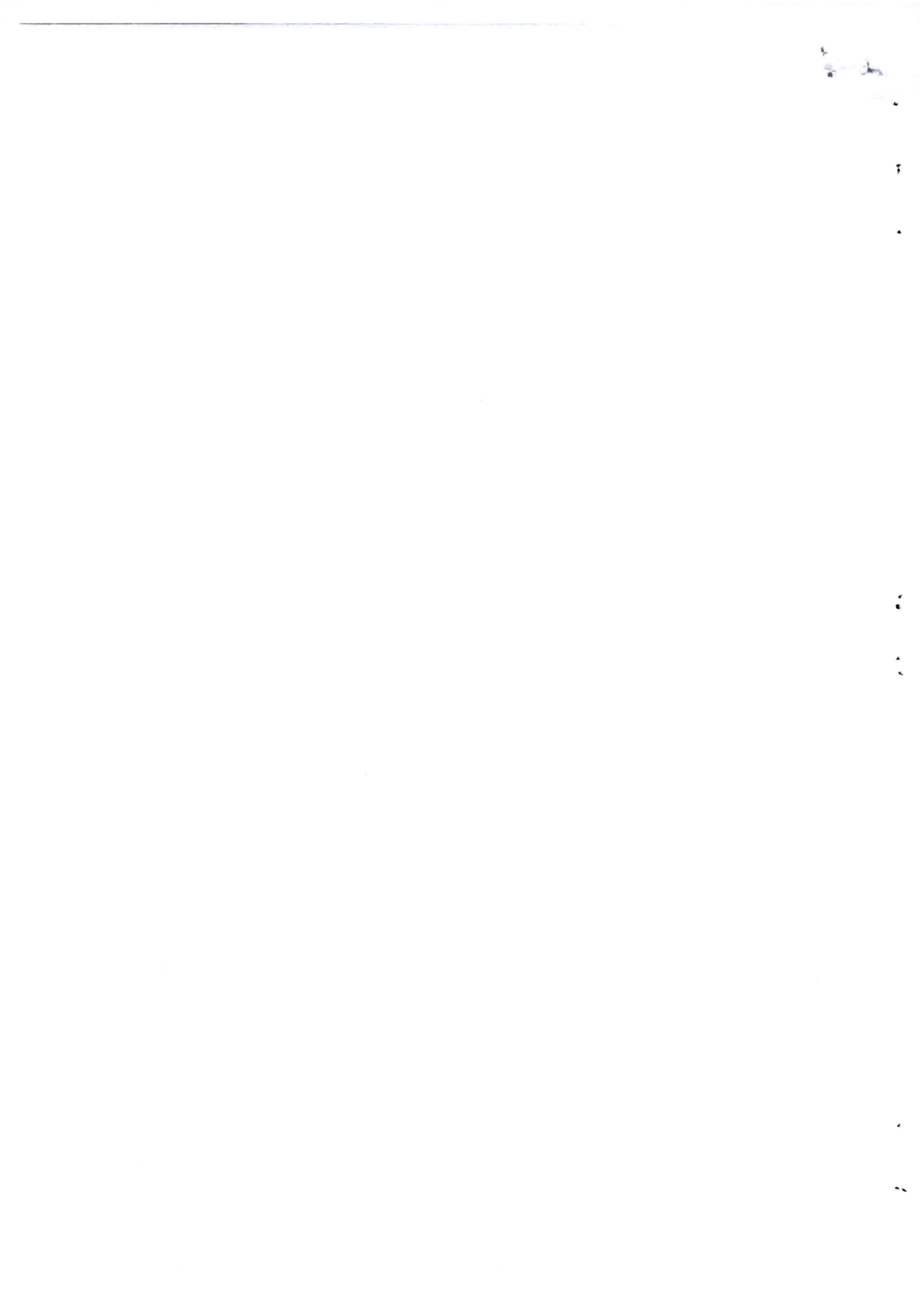
		with appointments made by the Cabinet Secretary.	Service Commission or by vote among judges.	safeguard judicial independence.
4.	Clause 67	Cabinet Secretary responsible for pensions and non-pension benefits and establishing liaison office.	We recommend the establishment of an independent secretariat within the judiciary for managing judges' retirement benefits.	To preserve independence from the Executive and ensure efficient, judiciary-led benefits administration.

Yours faithfully,

Uraia Trust

CC:

1. **Hon. CPA John Mbadi, EGH**
Cabinet Secretary
Ministry of National Treasury & Economic Planning
Harambe Avenue, Treasury Building
Nairobi.
2. **Hon. Dorcas Agik Oduor, SC OGW, EBS**
The Attorney General
The State Law Office and the Department of Justice
Sheria House, Harambee Avenue
Nairobi.
3. **Dr. Mshai Mwangola**
Chair Board of Trustees, Uraia Trust
4. **Mr. Oliver Waindi**
Executive Director, Uraia Trust



Submission **13**

WJ/DC
Please deal
08/08/25



REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE



Our Ref: AG/LDD/635/1/10
Your Ref: NA/DDC/JLAC/2025/074

7th August, 2025

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Clerk's Chambers, Parliament Buildings
P. O. Box 41842-00100
NAIROBI

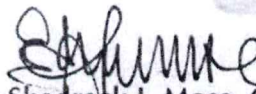
(2) Abenayo Wasike HoD
Pls inform JLAC
Dm 08/08/25
(3) Ahmed Salim
Pls inform committee
Dm 08/08/25

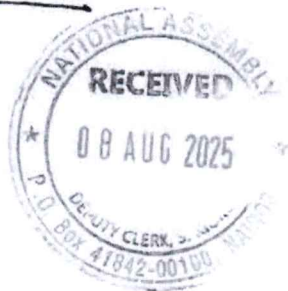
RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE JUDGES' RETIREMENT BENEFITS BILL, (NATIONAL ASSEMBLY BILL NO 27 OF 2025) SPONSORED BY THE LEADER OF THE MAJORITY PARTY

Reference is made to your letter under reference NA/DDC/JLAC/2025/074 dated 30th July 2025 requesting this Office to make submissions on the Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025).

The Office of the Attorney General together with the Judiciary and the National Treasury were involved in the development of the Judges' Retirement Benefits Bill, 2025. We confirm that the Bill it does not raise constitutional or legal issues.

We thank and assure you of our continued support.


Hon. Shadrack J. Mose, CBS
SOLICITOR GENERAL



SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.state.law.office@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified





REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE



OD/DC
Please deal
08/08/25

Our Ref: AG/LDD/635/1/10
Your Ref: NA/DDC/JLAC/2025/074

7th August, 2025

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Clerk's Chambers, Parliament Buildings
P. O. Box 41842-00100
NAIROBI

(c) Abenayo Warike, HoD
Place before JLAC.
DM 11/08/25

Ahmed Salim
Pls note &
bring to attention
of Committee
11/08/25

RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE JUDGES' RETIREMENT BENEFITS BILL, (NATIONAL ASSEMBLY BILL NO 27 OF 2025) SPONSORED BY THE LEADER OF THE MAJORITY PARTY

Reference is made to your letter under reference NA/DDC/JLAC/2025/074 dated 30th July 2025 requesting this Office to make submissions on the Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025).

Kindly and due to unforeseen urgent official State duty that require my attendance, I nominate the below listed State Counsel to attend to the National Assembly Committee hearing on 7th August, 2025 on my behalf;

1. Mr Wachira Nguyo - Deputy Chief State Counsel and
2. Mr Paul Wekesa - Principal Parliamentary Counsel

[Signature]
Hon. Shadrack L. Mose CBS
SOLICITOR GENERAL



SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified



Submission

14



THE JUDICIARY

OFFICE OF THE CHIEF REGISTRAR OF THE JUDICIARY

Our Ref: JUD/CRJ/23.0

Date: 6th August, 2025

Your Ref: NA/DDC/JLAC/2025/074

Mr Samuel Njoroge, CBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
NAIROBI

*@ D/DCS
For attention of JLAC
7/8/25*

Dear Sir,

THE JUDGES' RETIREMENT BENEFITS BILL, 2025 (NATIONAL ASSEMBLY BILL NO. 27 OF 2025)

We confirm receipt of your letter ref NA/DDC/JLAC/2025/074 dated 30th July 2025 inviting the Judiciary to submit comments on the above referenced Bill.

Forwarded herewith is a memorandum from the Taskforce on the Judges' Retirement Benefits Bill for onward transmission to the Departmental Committee on Justice & Legal Affairs.

We hope the Committee finds the memorandum useful in its consideration of the Bill and look forward to the meeting on 7th August 2025 to further deliberate on the Bill.

Yours sincerely

**HON. WINFRIDAH B. MOKAYA, CBS
CHIEF REGISTRAR OF THE JUDICIARY**

wbm/ko

NATIONAL ASSEMBLY
RECEIVED
07 AUG 2025
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

Copy To Chief Justice & President,
Supreme Court of Kenya

*Ahmed Salim
Pls bring to the
attention of the
Committee
7/8/25*

Hon Mr Justice William Ouko, SCJ
Chairperson – Judges Retirement Benefits
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*Abenayo Wainike HoD
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JUDGES' RETIREMENT BENEFITS BILL TASKFORCE

SUBMISSIONS BY THE JUDGES' RETIREMENT BENEFITS BILL TASKFORCE BEFORE THE NATIONAL ASSEMBLY'S JUSTICE AND LEGAL AFFAIRS COMMITTEE (JLAC) – 7TH AUGUST 2025

Honourable Chairperson and Members of the Committee,

1. We thank you for the opportunity to present the views of the Taskforce on the Development of the Judge' Retirement Benefits Bill (Taskforce) on the Judges' Retirement Benefits Bill, 2025. The Taskforce has submitted a **detailed Memorandum** which was forwarded to the Clerk of the National Assembly by the Chief Registrar of the Judiciary by letter dated 6th August 2025. We now take this opportunity to highlight the basis, rationale, sustainability and salient proposals in the Bill.
2. The drafting of the Bill was led by an **inter-ministerial Taskforce** which was gazetted by the Chief Justice, with members from the Judiciary, the National Treasury, Directorate of Pensions and the Office of the Hon. Attorney General.
3. The process of developing the Bill was extremely consultative. The Bill was developed after **wide-ranging consultations** involving:

- a. The Executive Office of the President
- b. The National Treasury,
- c. The Office of the Hon. Attorney General,
- d. The College of Judges, Magistrates and Kadhis
- e. The Kenya Retired Judges Association,
- f. The Kenya Judges and Magistrates Association
- g. The Salaries and Remuneration Commission,
- h. The Judicial Service Commission, and
- i. The Retirement Benefits Authority

The detailed memorandum documents the stakeholder consultations process with a summary of the views submitted by different stakeholders and how the Taskforce incorporated them into the Bill.

4. Aside from the input from stakeholders, the Bill is also the outcome of extensive review of:
 - a. past proposed reforms on judges' retirement benefits as documented in reports and bills going back to 1992,
 - b. professional actuarial analysis, and
 - c. the practice in other jurisdictions, with a focus on comparable Commonwealth jurisdictions.
5. The Bill represents a careful and deliberate effort to reconcile the constitutional imperative to secure the independence of the Judiciary, the dignity of retired Judges, with the broader goals of

fiscal prudence and sound public finance management. At its core, this Bill affirms that the office of a Judge is not only a calling, but a lifelong commitment governed by unique ethical and constitutional restrictions that distinguish judges from other State officers and public servants.

6. The Bill therefore seeks to establish a fair, and sustainable retirement benefits framework that acknowledges the solemn responsibilities borne by judges and the sacrifice entailed in their service to the Republic. In doing so, it aligns with Kenya's evolving pensions policy, which is gradually transitioning to contributory schemes for long-term viability, while respecting the constitutional protections afforded to judges during their tenure. The objective is not privilege, but parity with comparable benefits accorded to Judges in other comparable jurisdictions.
7. A comprehensive actuarial analysis of the Bill indicates that the incremental cost over five years is approximately Ksh 395 million – a modest figure relative to the national wage bill. The increase in pension liability is equivalent to about 7% of judges' payroll and remains fiscally manageable given the small number of judges.
8. Judges serve under unique constitutional and ethical constraints, justifying distinct terms as their role is *sui generis*. For example, Judges operate under strict ethical constraints

restricting their engagement in private business. Past Government Taskforces (e.g. the Kotut Committee) appreciated that judgeship is a *unique career* with unique restrictions, warranting distinct terms of service. Not every state officer can claim those exact conditions. Thus, extending judges' retirement benefits does not automatically entitle others to a copy-paste of the same.

9. In law, differentiation is allowed if it's based on reasonable, objective criteria – and here the criterion is the judicial office itself, which both our Constitution and comparative jurisprudence treat as special. The High Court recently in the case of ***Council of County Governors v Salaries and Remuneration Commission; Kenya Human Rights Commission & another (Interested Parties)*** (Petition E272 of 2022) [2024] KEHC 9248 (KLR) (Constitutional and Human Rights) (25 July 2024) (Judgment) underscored this point in rejecting county governors' claims for a pension scheme equivalent to those provided for under the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015. The court held that it was not discriminatory to accord different retirement benefits to different State offices, especially where some form of benefit (like a gratuity) already exists for the others. In that case, Governors were deemed not to suffer unlawful inequality just because they had a different retirement arrangement. Likewise,

other state officers have their own schemes (e.g. MPs under the Parliamentary Pensions Act), and those remain in force.

10. The proposed medical and transport benefits are not gratuitous, but essential for a dignified retirement. Judges retire at an advanced age (70) and often face significant health expenses. Notably, some Judges serve for 35-40 years distinguishing their long service from most public sector employees. These benefits are consistent with comparative Commonwealth practice of offering non-pension benefits to retired judges.
11. For example, in **Tanzania**, retired judges are entitled to one motor vehicle, lump-sum payments to cover a driver's remuneration and vehicle maintenance for four years, fuel for four years, and access to VIP lounges. In **Uganda**, retired judges are entitled to an annual medical allowance equal to that of a serving judge, a chauffeur-driven car or a one-off payment in lieu thereof, and state-provided security. These provisions reinforce the norm in Commonwealth jurisdictions of ensuring judicial retirees are accorded dignity and continued support post-service.
12. Our actuarial projections indicate that the cost of these benefits is modest and phased coming to under Ksh 400 million over five years. These are targeted, non-pension benefits that do not compound into long-term pension obligations. The National

Treasury did not object to these inclusions; it only advised format refinements, which were incorporated in the Bill.

13. The inclusion of housing allowance in pensionable pay seeks to address the sharp drop in income upon retirement, which undermines the adequacy of pensions. The housing allowance is a substantial part of judges' remuneration in service and is essential for maintaining their dignity in retirement. It is important to underscore that an ideal pension should enable a retiree to maintain a reasonable standard of living close to what they had while working (often called the income replacement ratio). In this context, housing allowance is a substantial part of a judge's compensation in service (and in many cases, judges use it to pay mortgages or rent).

14. It is also notable that this inclusion of housing allowance in computing pensionable emoluments is in line with comparative best practices in jurisdictions like Uganda, Nigeria, and Ghana. Many jurisdictions treat judges' pensions far more generously in terms of pensionable salary. For example, **Nigeria's Pension Rights of Judges Act** provides that a judge with at least 15 years on the bench gets a pension "equivalent to his last annual salary plus his consolidated allowances," *and even adds* the salaries of domestic staff on top. Closer home, **Uganda's Administration of Judiciary Act, 2020** pegs a retired judge's monthly pension at 80% of the sitting judge's current salary *and* gives either a

monthly housing allowance equal to that of a sitting judge, or a one-off sizeable housing payment. In **Ghana**, the Constitution itself guarantees a retiring Superior Court judge a pension equal to the salary of the current officeholder.

15. The actuarial valuation shows this inclusion will cost approximately KSh 576 million—a modest and fiscally sustainable adjustment. Notably, Members of Parliament already benefit from broader definitions of pensionable emoluments under the Parliamentary Pensions Act that includes allowances. The **Parliamentary Pensions Act (Cap 196)** defines pensionable emoluments for MPs to include not just basic salary but a raft of allowances – responsibility allowance, constituency allowance, nominated member’s allowance, house allowance, among others.
16. The Bill aligns with the public sector pensions reform trajectory and Treasury Circulars (No. 18 of 2010 and No. 9 of 2024) that guide new schemes to be Defined Contribution. It is in this context, that Part III establishes a contributory fund for judges appointed after commencement, with both judges and government contributing (7.5% and 15% respectively).
17. However, for serving judges, they cannot be transited to a DC scheme without violating the Constitution. Article 160(4) of the Constitution explicitly states that *“the remuneration and benefits payable to or in respect of a judge shall not be varied to the*

disadvantage of that judge” during their tenure. Furthermore, Section 32 of the Sixth Schedule reaffirms that the terms of service of judges in office at the effective date (2010) cannot be made less favorable than they were. A move from a guaranteed, non-contributory pension (DB under the Pensions Act) to a contributory scheme would undoubtedly be less favorable *for the judges currently in service*, because it would require them to pay part of their salary towards pension and subject them to market risks for their retirement benefits. In plain terms, a judge who joined on the promise of a certain pension formula cannot have the rules changed midway to his or her detriment – that would be unconstitutional.

18. Comparatively, the Supreme Court of Ghana in ***Judicial Service Staff Association of Ghana (JUSAG) vs. the Attorney General & 2 Others***, in a matter involving pensions reforms in Ghana that involved a shift from non-contributory to contributory pensions upon the enactment of the **National Pensions Act, 2008 (Act 766 Laws of Ghana)**, held that compulsorily moving Judges from a non-contributory to a contributory scheme violated the letter and spirit of the Constitution.
19. What the Bill does, therefore, is to craft a gradual transition model. This was also the approach favored by The National Treasury during our consultations. Under the Bill: all current judges remain in a Defined Benefit (DB) scheme (essentially

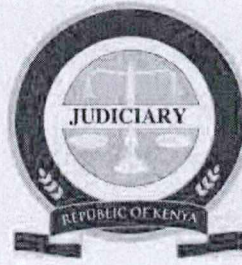
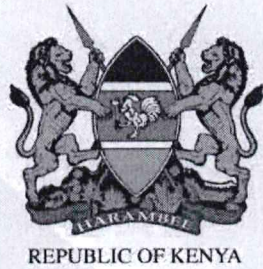
mirroring the Pensions Act benefits, with the modest improvements), and all Judges joining the Judiciary after the proposed Bill is passed as law join a DC scheme.

20. This way, the Bill respects the **non-diminution principle** for serving judges (no judge will be worse off than they expected) and respects the long-term national goal of shifting to a funded, contributory pension system for all. Over time, as current judges retire, the DB scheme will phase out, and the DC Fund will be the sole mechanism for judges' pensions. This approach is quite common in pension reforms – you ring-fence accrued rights and move forward with new rules for new entrants.
21. Part IV extends modest post-retirement benefits (e.g. medical cover, diplomatic passports, VIP lounge access) to judges who retired after the promulgation of the 2010 Constitution. These are benefits accessible to Judges serving after the 2010 Constitution and the proposal is to extend them to Judges who retired before 2010 for uniformity.
22. The 2010 cut-off aligns with the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015, which applies similar criteria. Nonetheless, the Taskforce is open to Parliament amending the Bill to include all retired judges. The additional cost is manageable, and extending these benefits to all retired judges would promote fairness to all categories of retired judges.

23. The Taskforce affirms that the Judges' Retirement Benefits Bill, 2025 has considered constitutional concerns, fiscally prudence, and aligns with comparative international standards. It ensures dignified retirement for Judges while respecting the principle of fiscal sustainability. We therefore urge this Committee to endorse and support the proposals in the Bill.



Hon Justice William Ouko, CBS, SCJ
Judge of the Supreme Court & Chairperson
Judges Retirement Benefits Bill Taskforce



**MEMORANDUM BY THE JUDGES' RETIREMENT BENEFITS BILL
TASKFORCE**

ON

THE JUDGES' RETIREMENT BENEFITS BILL, 2025

**SUBMITTED TO THE DEPARTMENTAL COMMITTEE ON
JUSTICE AND LEGAL AFFAIRS OF THE NATIONAL ASSEMBLY**

JULY 2025



**Social Transformation
through Access to Justice**

MEMORANDUM BY
THE JUDGES' RETIREMENT BENEFITS BILL
TASKFORCE
ON
THE JUDGES' RETIREMENT BENEFITS BILL, 2025
SUBMITTED TO THE
DEPARTMENTAL COMMITTEE ON
JUSTICE AND LEGAL AFFAIRS
OF THE NATIONAL ASSEMBLY
JULY 2025

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INTRODUCTION

Establishment of the Judges' Retirement Benefits Bill Taskforce

The Hon. Chief Justice Martha K. Koome, EGH, established the Judges' Retirement Benefits Bill Taskforce on 16th February 2023 through Gazette Notice No. 2111 of 2023. The term of the Taskforce was later extended via Gazette Notice No. 452 of 2024. It was constituted as an inter-ministerial Taskforce with the mandate to review previous bills and propose a comprehensive Judges' Retirement Benefits Bill for consideration by the government.

In fulfilling its mandate, the Taskforce reviewed past legislative proposals, conducted stakeholder consultations, undertook comparative analysis of judges' retirement benefits schemes in other jurisdictions, and commissioned an actuarial costing exercise. This process culminated in the development of a draft Bill, which was subsequently reviewed by the National Treasury and the Office of the Attorney General before being submitted to the Cabinet, ultimately resulting in the Judges' Retirement Benefits Bill, 2025.

Historical Background to the Development of the Judges' Retirement Benefits Bill, 2025

The pensions arrangement for Judges is currently prescribed in the Pensions Act (Cap. 189 Laws of Kenya) which is a statute that came into operation with effect from 1st January, 1946 during the colonial era. On enactment and for many years thereafter and until recent pensions reform, it is this statute that provided a legislative basis for the granting of pensions and gratuities to employees in public service on retirement.

The Judiciary was for a long time deemed to part of the civil service, as a Department under the Attorney General's Chambers. On 6th September, 1991 the then President H.E. Daniel Toroitich Arap Moi, appointed a committee to Inquire into Terms and Conditions of Service of the Judiciary, separately from the civil service chaired by Mr. Erick Kotut. In its Report, the Kotut Committee recommended the delinking of the Judiciary from the civil service especially to further financial independence of the Judiciary by separating judicial salaries from those of the civil service.

The Kotut Committee Report noted that the position of Judgeship was unique given the special procedure for removal from office, and the age of retirement that was different from that of the other civil servants. This made judgeship a lifetime career and the life of a judge had many restrictions therefore a unique career. On this basis, the Committee noted that these unique characteristics ought to be taken into account when determining the terms and conditions of service for Judges.

On 8th May, 1995, through Gazette Notice No. 3801 of 1995, the then President H.E. Daniel

Arap Moi, retrospectively gazetted the delinking of the Judiciary from the civil service with respect to the terms and conditions of service of its personnel with effect from 1st January 1993.

Following the delinking of the Judiciary from the mainstream civil service in 1993, there have been a number of initiatives to establish a separate pension scheme for the Judiciary and move them away from the Pensions Act that provided for pensions for other civil servants.

In 1993, on request from the Judicial Service Commission (JSC), Hon. Mr. Justice Akilano Akiwumi rendered a legal opinion that the effect of the delinking from the civil service meant that the JSC could go ahead and establish a separate judiciary pension scheme from the one the government operated for other civil servants.

Subsequently in 1996, a Taskforce chaired by Hon. Mr. Justice A. B. Shah was tasked by the JSC to make recommendations on establishing a superannuation scheme for the Judiciary. However, the Taskforce found that since the delinking was through a gazette notice and not legislation, the JSC could not establish an independent superannuation scheme for the Judges and other employees of the Judiciary. The Taskforce therefore recommended the amendment to the Service Commissions Act (Cap. 185) to donate power to the JSC to establish a judicial pension scheme.

The Report of the Ethics and Governance Sub-Committee of the Judiciary of January, 2006 (commonly referred to as: *the Onyango Otieno Report*) recommended that an appropriate retirement and benefits scheme be developed and implemented for the Judiciary. It also recommended that Judges and Magistrates should retire with the benefit of their full salary and retired Judges should in addition be entitled to transport, personal security and domestic servants.

In 2007, the Cabinet passed a resolution that directed that the Judiciary should establish a pension scheme separate from that of civil servants.

In the same year, the Service Commissions Act (Cap. 185) was amended and section 12A was introduced. It gave the JSC powers to establish a superannuation fund for the benefit of its officers. It provided thus:

“A Commission shall have power to establish a superannuation fund for the benefit of its officers in accordance with the provisions of the Retirement Benefits Act, 1997, and may for that purpose prescribe rules for the management and control of the fund’.

In the wake of these developments, Chief Justice Evans Gicheru appointed a Special Taskforce in 2008 to advise the JSC on the establishment of a new pension scheme

following the amendment of the Service Commissions Act. This Special Taskforce undertook a comparative study on the pensions' regime for the Judiciary in other jurisdictions and with the assistance of an actuary, made two recommendations:

- The setting up a contributory superannuation scheme for Magistrates and staff of the Judiciary.
- The enactment of an Act of Parliament to provide for the retirement benefits for Judges.

The comparative study undertaken by the Special Taskforce revealed that: one, the pension rights of retired judges in other jurisdiction was provided for in a stand-alone statute; two, the retired judges in other countries enjoyed better pension benefits compared with their Kenyan counterparts; and, three, retired judges in other jurisdictions enjoyed other non-pension benefits on retirement in addition to pension. The Special Taskforce came up with a draft Judges' Retirement Benefits Bill, 2010 that was however never enacted into law.

Subsequently, the Judiciary established the Judicial Service Staff Superannuation Scheme which is a contributory scheme for the Magistrates and Staff.

The Final Report of the Taskforce on Judicial Reforms of July, 2010 (commonly referred to as: *the Ouko Report*) amongst its wide-ranging recommendations on reforms to Judiciary recommended the enactment of the Judges (Retirement Benefits) Bill to underpin the pensions of Judges as is the case in other jurisdictions.

Subsequently, in 2012 Chief Justice Dr. Willy Mutunga set up the Judges' Retirement Benefits Inter-Ministerial Committee on Judges' Retirement Benefits. This Committee, like the Special Taskforce before it, also came up with a draft Bill that was also not enacted into law.

In another effort, Chief Justice David Maraga re-constituted the Inter-Ministerial Committee in February, 2016 which like the previous initiatives before it also came up with a draft Bill that was similarly never enacted into law.

As these efforts to enact a stand-alone statutory regime for the pension and retirement benefits was ongoing, the government undertook pensions reforms in the public sector initiated through Treasury Circular No. 18 of 2010. The major policy shift signalled in these reforms is the intention to shift the pensions schemes in the public sector from Defined Benefit (DB) to Defined Contribution (DC) schemes.

The pensions reforms were introduced through the Public Service Superannuation Scheme Act, No. 8 of 2012 (PSSS Act). The PSSS Act establishes the Contributory Public Service Superannuation Scheme for providing retirement benefits to persons in the public service. It is notable that in defining 'public service', the PSSS Act excludes judicial service, as it

defines the public service to mean employment of the government by the Public Service Commission, Teachers Service Commission as a teacher, or by the National Police Service Commission. Pursuant to these reforms, other civil servants moved from the Pensions Act and their pensions are now governed by the PSSS Act.

In another significant development for the pensions scheme for the Judiciary, the Chief Justice and Deputy Chief Justice were included amongst the designated state officers who are beneficiaries of the pension regime provided for in the Retirement Benefits (Deputy President and Designated State Officers Act) 2015.

The implications of these developments in pensions regime reforms in the country is that Judges are the only state or public officers whose pension is still regulated by the Pensions Act. Given that the Pensions Act is a statute which is colonial in origin, having been enacted in 1946, it is not responsive to the contemporary realities. Moreover, it does not take into account the unique attributes of the role of Judges as identified by the Kotut Committee.

It is in this context, that the Hon Chief Justice Martha K. Koome, EGH on 16th February, 2023 through Gazette Notice No. 2111 of 2023, appointed the Judges' Retirement Benefits Bill Taskforce to review previous drafts of the Bill and come up with a draft Judges' Retirement Benefits Bill for consideration by the government and the legislature. It is this Taskforce that spearheaded the efforts that led to the development of the Judges' Retirement Benefits Bill, 2025.

Rationale for Stand Alone Judges Retirement Benefits Statute

The concern that has underpinned the efforts geared towards the enactment of a stand-alone statute has been to provide to Judges a pension that is honourable that assures Judges of dignified life in retirement in appreciation of their unique contributions to the country.

This unique nature of judges' work and the need to mould a befitting pension benefit attuned to the nature of judges' work has received judicial *imprimatur* in comparative jurisprudence with the Supreme Court of India noting that the payment of dignified pensions to judges is a vital element of judicial independence. The Court observed thus¹:

“Pensionary payments to Judges constitute a vital element in the independence of the judiciary. As a consequence of long years of judicial office, Judges on demitting office do not necessarily have the options which are open to members from other services. The reason why the State assumes the obligation to pay pension to Judges is to ensure that the protection of the benefits which are available after retirement

¹ *Union of India, Ministry of Law and Justice -vs.- Justice (Rtd.) Raj Rahul Garg (Raj Rani Jain) and Others*, Civil Appeal No. 4272 of 2024, para. 25.

would ensure their ability to discharge their duties without “fear or favour” during the years of judgeship. The purpose of creating dignified conditions of existence for Judges both during their tenure as Judges and thereafter has, therefore, a vital element of public interest. Courts and the Judges are vital components of the rule of law. Independence of the judiciary is hence a vital doctrine which is recognized in the constitutional scheme. The payment of salaries and dignified pensions serves precisely that purpose.”

Kenya’s Judicial Code of Conduct and Ethics imposes demands relating to integrity, propriety of conduct, professionalism, amongst others, that bars Judges from engaging in other commercial ventures and involvement in social activities that would conflict their judicial role of independence and impartiality. Due to this sacrifice on the part of judges’, all jurisdictions surveyed in Chapter Three of this Report, have recognised the need for a stand-alone statute that addresses the unique conditions of service of judicial office.

Judges have the longest tenure of all state and public officers, given their retirement age at 70 years. Compared to other state officers such as Members of Parliament, Cabinet Secretaries, Principal Secretaries, Commissioners of Constitutional Commissions, and the Auditor General who have a fixed term of public service ranging from five (5) and eight (8) years. Given the average age of serving Judges today, the majority will serve for over 30 days.

In order to ensure that the position of Judge retains esteem and continues to be attractive to the most meritorious members of the legal profession then the pensions benefit for judges must be responsive to the unique nature of their work.

Moreover, to maintain judicial independence, the retirement arrangement should work towards ensuring financial security for judges on retirement to avoid the prospect of a life of penury in the post-retirement age. Judges should not be put in a difficult position where they are tempted either to compromise their integrity or undertake remunerated extra-judicial activities in order to secure their financial well-being in the post-retirement period.

SUBMISSIONS ON THE JUDGES’ RETIREMENT BENEFITS BILL, 2025

Introduction

It is notable that the Judges’ Retirement Benefits Bill, 2025 does not radically deviate from the principles and provisions of the Pensions Act. This ensures that the proposed pensions regime for retired Judges is cost-effective and sustainable, without eviscerating the pensions benefits currently enjoyed by judges, and at the same time that guarantees dignified standards of life for retired Judges in line with comparative practices in other jurisdictions.

The proposals that deviate from the Pensions Act, are guided by the constitutional imperative that pensions reforms that affect Judges should conform to the requirement in Article 160 (4) of the Constitution, which is to the effect that:

“Subject to Article 168(6), the remuneration and benefits payable to, or in respect of, a judge shall not be varied to the disadvantage of that judge, and the retirement benefits of a retired judge shall not be varied to the disadvantage of the retired judge during the lifetime of that retired judge”.

In addition, by the need to comply with Section 32 of the Sixth Schedule of the Constitution, which provides that:

“The law applicable to pensions in respect of holders of constitutional offices under the former Constitution shall be either the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to the person”

These twin constitutional protections prohibit any diminution in the pensions of serving or retired Judges. The practical implications of these constitutional constraints are that any proposed legislative or policy reforms to the pensions regime for serving and retired Judges can only have the current pensions regime as a minimum and cannot be varied in a manner that reduces the benefits that Judges are entitled to under the Pensions Act.

1. Transition from Defined Benefits (DB) Scheme to Defined Contribution (DC) Scheme

The Bill in Part II and Part III creates two categories of Judges. The judges in office at the commencement of the Act provided for in Part II of the Bill, and the Judges appointed to office after the commencement of the Act. This is to help facilitate the judges pension arrangements from a Defined Benefits scheme to a Defined Contribution scheme without

violating the Constitution.

The Bill proposes that in line with the Pensions Act, pension for serving judges' at the time of the commencement of the Act should continue to accrue on a Defined Benefits scheme. This means that pension benefits at retirement depend on a formula which takes account of pensionable service and salary at retirement. It follows that the scheme for serving judges will be non-contributory i.e. judges will not be required to contribute with the full cost of pension being met by the government.

The first basis for the retention of the Defined Benefits scheme for serving judges is the need to comply with the constitutional imperative in Article 160 (4) of the Constitution and Section 32 of the Sixth Schedule of the Constitution. Comparative jurisprudence shows that it would be unconstitutional to remove judges from a non-contributory pension scheme to a contributory scheme where the constitution stipulates that judges' retirement benefits should not be varied to their disadvantage.

The Supreme Court of Ghana in *Judicial Service Staff Association of Ghana (JUSAG) vs. the Attorney General & 2 Others*², in a matter involving pensions reforms in Ghana that involved a shift from non-contributory to contributory pensions upon the enactment of the National Pensions Act, 2008 (Act 766 Laws of Ghana), held that compulsorily moving Judges from a non-contributory to a contributory scheme violated the letter and spirit of the Constitution. Such a shift from non-contributory to a contributory scheme was held to be in violation of Articles 127 (4) and (5) of the 1992 Constitution of Ghana. The Court held thus:

“What should however be noted is that any attempt by any of the provisions in Act 766 specifically sections 213 (1) (a) and 220 to amend the pension benefits of members of the Judiciary in terms as defined in this judgment and as it were take them out of their non-contributory pension scheme guaranteed by the Constitution 1992, reference articles 71 (1) (b), 127 (4) and (5) is unconstitutional and to that extent is struck down as null and void and of no effect.”

The subject Article 127 (4) provides: “*The administrative expenses of the Judiciary, including all salaries, allowances, gratuities and pensions payable to or in respect of, persons serving in the Judiciary, shall be charged on the Consolidated Fund.*”

Article 127(5) provides: “*The salary, allowances, privileges and rights in respect of leave of absence, gratuity, pension and other conditions of service of a Justice of the Superior Court or any judicial officer or other person exercising judicial power, shall not be varied to his disadvantage.*”

It is notable that Article 127(5) of the Constitution of Ghana is in *pari materia* with Article

160(4) of Kenya's Constitution. Therefore, in view of this persuasive jurisprudence, it is arguable that shifting judges' pensions from a non-contributory to contributory structure would be unconstitutional.

The same considerations do not apply to judges appointed after the law comes into effect. Since future appointees will not have accrued any rights or legitimate expectations under the Pensions Act, they can receive their pension under a contributory scheme without violating constitutional provisions.

The proposal to have judges appointed to office after the commencement of the Act under a Defined Contribution scheme aligns with the policy shift outlined in Treasury Circular No. 18 of 2010, which mandates that future retirement benefit accrual be under a Defined Contribution (DC) scheme, the Bill proposes that judges appointed after the commencement of the law be enrolled in a contributory scheme.

Taking these reasons into account, the Judges' Retirement Benefits Bill Taskforce supports the proposal in the Bill to retain the defined benefits scheme and the formula for calculating pensions under the Pension Act for serving judges while future appointees after the commencement of the law will join a contributory pension scheme as outlined in Part II and Part III of the Bill.

2. House allowance made part of pensionable emoluments

Clause 2 of the Bill, defines 'pensionable emoluments' to mean the basic salary and house allowance payable to a judge.

Under the Pensions Act, the retirement benefits for Judges are currently calculated based solely on the basic salary, excluding allowances from their pensionable emoluments. This practice fails to reflect the full spectrum of Judges' compensation during active service thereby undermining their income replacement ratio on retirement. Particularly, the exclusion of Housing Allowance from the computation of pensionable emolument does not align with the principles of equity and fairness given the critical role that housing plays in ensuring a dignified retirement.

The National Retirement Benefits Policy (2024) recognises the importance of guaranteeing housing to retirees. It notes thus:

"The right to decent housing is a constitutional obligation in Kenya. Article 43(1)(b) of the Constitution of Kenya under the economic and social rights states that 'every person has the right to accessible and adequate housing and to reasonable standards of sanitation'. The Kenya Vision 2030 also articulates for adequate and decent housing for all Kenyans.... Similarly, the National Housing Policy for Kenya aims at achieving a state where all Kenyan households live in decent and affordable housing....

... The various Pensioner's surveys conducted by the Retirement Benefits Authority over the years have revealed that housing features amongst the top three expenditure items for retirees."

The National Retirement Benefits Policy signals that one of the policy strategies that the government will pursue going forward to address the problem of post-retirement housing problem is to "[r]eview the Retirement Benefits Act to expand the definition of retirement benefits scheme to include post-retirement housing".

This shows that the proposal in the Judges' Retirement Benefits Bill, 2025 to make House Allowance part of pensionable emolument is in line with the National Retirement Benefits Policy.

In addition, a comparative study of the definition of pensionable emolument shows that the trend is for pensionable emolument for judges to be equivalent to gross pay or to comprise of allowances. Hence, the proposal to include Housing Allowance as part of Pensionable Emolument aligns with the best practice in international standards. For example:

1. Section 2(1) of Nigeria's Pension Rights of Judges Act provides that retired Judges are to retire with their gross salaries. It stipulates as follows:

"A person other than the Chief Justice of Nigeria, who has held office as a judicial officer for a period of not less than fifteen years shall be entitled to pension for life at a rate equivalent to his last annual salary plus his consolidated allowances and the annual salaries of four of his domestic staff in addition to any other retirement benefits to which he may be entitled."

2. Article 155(1) of the Constitution of Ghana provides that:

"a Justice of the Superior Court of Judicature who has attained the age of sixty years or above, shall, on retiring, in addition to any gratuity payable to him, be paid a pension equal to the salary payable for the time being to a Justice of the Superior Court from which he retired".

3. Schedule 2, of Uganda's The Administration of the Judiciary Act, 2020 stipulates that, a retired Judge is entitled to:

"A monthly retirement benefit equivalent to eighty percent of the salary payable to a sitting [judge]...and [a] monthly housing allowance equivalent to the housing allowance payable to a sitting [judge] or a one-off payment of fifteen thousand currency points, payable in lieu of a house".

4. In Kenya, the Parliamentary Pensions Act, (Cap. 196 Laws of Kenya) at section 3 defines “pensionable emoluments” to include: “salary, responsibility allowance, constituency allowance, nominated member’s allowance, *ex officio* member’s allowance, house allowance, accommodation allowance and sitting allowance”.

Based on the foregoing comparable practice, the Judges’ Retirement Benefits Bill Taskforce supports the proposal in Clause 2 of the Bill that proposes that ‘pensionable emoluments’ for judges to be made up of the basic salary and house allowance payable to a judge.

3. **Pension increases in line with inflation (Consumer Price Index subject to a maximum of 5% p.a. – and a minimum 1% p.a.)**

Clause 13 of the Bill proposes that pension increase shall be equivalent to the increase in the Consumer Price Index as reported by the Kenya National Bureau of Statistics for that financial year. It further clarifies that the percentage increase in the pension shall not exceed five percent or be less than one percent.

The financial security of retired Judges has come under significant strain due to the inadequacies of the current pension increase scheme governed by the Pensions (Increase) Act, Cap. 190. Section 3 of the Pensions (Increase) Act stipulates that pensions are to increase at the rate of 3% every two years, a rate that does not correspond with the fluctuating economic landscape marked by varying inflation rates.

It is due to this that the Judges’ Retirement Benefits Bill, 2024 proposes to make pensions increase annual and to tie the pension increases for retired Judges to the Consumer Price Index (CPI) as announced by the Kenya National Bureau of Statistics (KNBS). This CPI-linked model will ensure that pension adjustments reflect real-time economic conditions and preserve the purchasing power of retired Judges.

The proposal introduces a more dynamic pension adjustment mechanism, where annual increases are subject to a minimum of 1% and a maximum of 5%, based on the CPI. The capping of the pensions increase to a maximum change of 5% ensures cost sustainability and enables budgetary planning.

In comparative practice, other jurisdictions strive to ensure that Judges’ pension increase at the same rate as that of serving judges. For example:

1. In Ghana, Article 155 (2) of the Constitution of Ghana provides that:

“the pension paid to a [retired judge] shall be subject to the same changes and increases as the salary of a serving Justice of the Superior Court of Judicature.”

Based on the foregoing reasons, the Judges' Retirement Benefits Bill Taskforce supports the proposal in Clause 13 of the Bill regarding pegging the pension increase to be in line with the consumer price index, subject to a maximum capping at 5 percent and a minimum of 1 percent per annum.

4. **Minimum pension on removal from office for physical or mental incapacity set at 50% of potential pension at age 70**

Clause 17 of the Bill provides for retirement due to mental or physical incapacity. It specifies that pension due to a judge removed from office for reasons of physical or mental incapacity shall not be less than fifty percent of the pension the judge would have been entitled to, had the judge retired on attaining retirement age.

The Constitution at Article 168(1)(a) envisages that a Judge can be removed from office on the ground of inability to perform the functions of office arising from mental or physical incapacity. It is notable that Judges who leave office under these circumstances leave office under no fault of their own but due to ill-health.

Providing a secure pension for judges who must leave office due to incapacitation is a critical aspect of a compassionate and functional judicial system.³ Such pensions serve a multipurpose role in maintaining the effectiveness and integrity of the Judiciary.

Firstly, a guaranteed pension offers a judge facing incapacitation a dignified exit option, allowing them to retire voluntarily when they are no longer capable of fulfilling their duties. This assurance helps in preserving the judge's honour while safeguarding the Judiciary's efficiency.

Secondly, for judges who may not recognize their own incapacitation or are reluctant to step down, a pension system provides a gentle incentive. The Judicial Service Commission can exert ethical pressure, leveraging the pension as a persuasive tool for the judge to consider resignation. This approach is far less confrontational and preserves the respect due to someone who has served the bench.

Lastly, in situations where resignation is not forthcoming, the availability of a pension softens the process of compulsory removal. It mitigates the hardship of such a transition, ensuring that the Judge is not left without means of support. This system not only eases the judge into retirement but also ensures that the administration of justice remains in capable hands, all the while conducting the process with the sensitivity and respect that a judge's service merits.

However, under the current legal framework, judges who are compelled to leave office

³ Burke Shartel, 'Pensions for Judges' 27(2) *Michigan Law Review* (1928) 134, 139.

prematurely due to physical or mental incapacity face a precarious future, often with insufficient financial support. The Supreme Court in *Hon. Lady Justice Mary Muthoni Gitumbi -vs.- The Tribunal Appointed to Investigate the Conduct of Hon. Lady Justice Mary Muthoni Gitumbi*, Judge ELC⁴ directed the legislature to review the Pensions Act to take into consideration the plight of Judges removed from office on account of incapacity. The Court noted thus:

“In this regard, it would be prudent for the Legislature to amend the Mental Health Act (Cap 248) guided by best practices and provide for inter alia a clear definition of mental capacity, the test for mental capacity, insight, pension for Judges and other state officers who may be removed from office due to mental incapacity, and so forth. In this regard, the Legislature would also need to align the provisions of the Pension Act (Cap 289) with any new amendments.”

The proposal seeks to guarantee a minimum pension set at 50% of the full pension a judge would receive had they served until the stipulated retirement age. This safety net acknowledges the judges’ contribution to the Judiciary and the society at large, while also addressing the vulnerability they face when their careers are unexpectedly cut short. Such a measure is not only a reflection of a compassionate and fair society but also a necessary provision to encourage Judges who are working under the burden of an incapacity to opt out of service. A judge facing potential incapacity should not have to choose between health and financial security.

As proposed in the Bill, the entitlement on removal for mental or physical incapacity will not apply to retired judges. The clause is intended for serving judges who are removed from office before reaching the early retirement age of 65 years. Therefore, should a retired judge develop physical or mental incapacity, they would not be entitled to benefit under this clause.

The comparative experience shows that the best practice is to provide for minimum protection for judges who leave service due to mental or physical incapacity. For example:

1. Section 3(1) of Nigeria’s Pension Rights of Judges Act provides that:

“A judicial officer, incapacitated in the course of his duty who is not otherwise qualified for pension under section 1 or subsection (1) of section 2 of this Act, shall be entitled to pension for life at a rate equivalent to his last annual salary in addition to any other benefits to which he may be entitled under ... this Act.”

2. Section 5 of Barbados’ the Judges Remuneration and Pensions Act (Cap. 115A, the Laws of Barbados) provides that:

4 Petition No. 10 (E013) of 2022.

“(1) A person who, in accordance with section 84 of the *Constitution*, is removed from a judicial office for inability, arising from infirmity of body or mind, to perform the functions of his office is deemed to have retired from that office under section 4 of this Act.

(2) A person who, in accordance with section 84 of the *Constitution*, is removed from a judicial office for any cause, other than inability, arising from infirmity of body or mind, to perform the functions of his office may be granted such pension and gratuity as the Governor-General may decide, not exceeding 1/2 of the pension and gratuity to which he would have been entitled had he retired from such office under section 4 of this Act.”

Based on the foregoing reasons, the Judges’ Retirement Benefits Bill Taskforce supports the proposal in Clause 17 of the Bill that provides that pension due to a judge removed from office for reasons of physical or mental incapacity shall not be less than fifty percent of the pension the judge would have been entitled to, had the judge retired on attaining retirement age.

5. Inclusion of additional non-pension benefits

Clauses 23 and 55 of the Bill provides for additional non-pension benefits. The Bill proposes to harmonize Kenya’s Judges retirement benefits with global standards, recognizing the unique pressures and demands placed on Judges during their service. In this regard, the Bill proposes at Clause 23 that:

Serving Judges who retire after working for a minimum of ten (10) years, after the coming into effect of the statute will be entitled to:

- Medical insurance for retired judge and spouse for the life of the retired Judge;
- Monthly transport allowance equivalent to one seventh of the basic salary of the judge at retirement for a period of one hundred and twenty months, which shall be payable once as a lump sum upon retirement;
- Access to government VIP lounges for Judge and spouse; and,
- Diplomatic passports for Judge and spouse.

Judges appointed into office after the commencement of the law will be entitled to the following non-pension benefits, as stipulated in Clause 55:

- Medical insurance cover for retired judge and spouse on the same terms as that enjoyed by serving judges;
- Access to government VIP lounges at all airports in Kenya for retired Judge and spouse; and
- Diplomatic passports for retired Judge and spouse.

The current legislative framework, under the Pensions Act, confines retirement benefits for Judges to pension alone. This is in stark contrast with international best practices where other countries offer a variety of non-pension benefits in addition to pension to retired Judges.

The Kotut Committee Report noted that the position of Judgeship is unique given the special procedure for removal from office, and the age of retirement that was different from that of the other civil servants. This made judgeship a lifetime career and the life of a judge had many restrictions therefore a unique career. On this basis, the Committee noted that these unique characteristics ought to be taken into account when determining the terms and conditions of service for Judges. It is this unique characteristic of judges' career that other comparable jurisdictions have recognised as the justification for provision of non-pension benefits to retired judges in their jurisdictions.

The additional benefits proposed in Clauses 23 and 55 of the Bill serve as a testament to the nation's appreciation of their years of diligent service. The proposed non-pension benefits are modest in comparison to what is offered to retired judges in other jurisdictions. For example:

1. Section 20(4) of Tanzania's the Public Service Retirement Benefits Act, 1999 provides for non-pension benefits to a retired judge to include:

“: a) a diplomatic passport for him and his spouse; b) one motor vehicle given once of a value not exceeding such amount as the president may from time to time determine; c) a total sum of money granted once as a lumpsum which shall be sufficient to remunerate one driver for a period of four years; d) a total sum of money sufficient to purchase fifty litres of fuel per week granted once as a lumpsum which shall cover a period of four years; e) a total sum of money being maintenance allowance for a motor vehicle to be granted once as a lump sum at a rate equal to forty percent of fuel allowance; f) use of VIP lounge.”

2. Schedule 4 of Uganda's the Administration of the Judiciary Act, 2020. enumerates the non-pension benefits due to a retired Judge to include:

“An annual medical allowance equivalent to medical allowance payable to sitting judge; a chauffeur driven car or a one-off payment of payment of seven thousand five hundred currency points, payable in lieu of a car; and security provided by the state.”

It is notable with respect to the proposal to provide medical insurance policy for the retired judge and spouse, that the National Retirement Benefits Policy advocates for the promotion of post-retirement medical benefits. The Policy notes as follows:

“According to the Bottom-Up Economic Transformation Agenda 2022 -2027, about 4 per cent of older people are over 65 years. This population continues to face inadequate income, insecurity, inadequate health services, lack of employment and a deteriorating environment. It is equally important to note that the traditional channels of age old support have broken down, hence aggravating this situation.

It is emerging that workers need a basket of products that are supportive of each other and require financial resources. For instance, they need ... insurance and medical cover ...when they can no longer work due to old age.”

Through the National Retirement Benefits Policy, the government has committed to pursue policy intervention to enhance the framework for post-retirement medical benefits in retirement benefits schemes.

Based on the foregoing reasons, the Judges’ Retirement Benefits Bill Taskforce supports the proposal in Clauses 23 and 55 of the Bill that propose additional non-pension benefits to retired judges.

6. Application and Entitlement of Judges who Retired under the 2010 Constitution, after 27th August 2010

Part IV of the Bill provides for benefits for judges who retired before commencement of the Act.

The Bill proposes that Judges who retired under the 2010 Constitution, after 27th August 2010, but before the coming into force of the Act will enjoy limited benefits, being:

- Medical insurance for retired judge and spouse.
- Access to government VIP lounges for retired judge and spouse.
- Diplomatic passports for retired judge and spouse.

In determining the cut off with respect to the enjoyment of the benefits under the Bill, the decision to limit the retired Judges entitled to the non-pension pension benefits to those who retired under the terms of the 2010 Constitution, after 27th August 2010, was informed by the cut off for retired Chief Justices and Deputy Chief Justice in the Retirement Benefits (Deputy President and Designated State Officers) Act. Section 3(b) of the Retirement Benefits (Deputy President and Designated State Officers) Act limits entitled under the statute to a Chief Justice or Deputy Chief Justice who retire after the 27th August 2010.

The Judges’ Retirement Benefits Bill Taskforce proposes that the National Assembly has the discretion, upon evaluating submissions by stakeholders, to propose amendments to Clause 65 of the Bill include all retired judges, even those who retired before 27th August

2010, to benefit from these non-retirement benefits.

7. Submissions on Technical/Drafting Errors in the Bill

First, Clause 10(1) of the Bill does not clearly communicate the intended meaning. The clause uses the phrase “maximum retirement age” instead of the intended ‘retirement age prescribed by Article 167(1) of the Constitution. The clause conflates the words “retirement age prescribed by Article 167(1)” with “maximum retirement age”.

The Judges’ Retirement Benefits Bill Taskforce proposes that Clause 10(1) be amended to read:

“A judge who elects to retire after attaining the age of sixty-five years or has attained the retirement age prescribed by Article 167(1) of the Constitution shall, after serving as a judge for at least ten years, be entitled to an annual pension equal to one-four-hundred-and-eightieth of the judge’s pensionable emoluments for each completed month of service.”

Second, Clause 17(2) of the Bill indicates that retirement is in accordance with the Act and not the Constitution. Article 167(1) of the Constitution indicates the retirement age and not how a judge retires.

The Judges’ Retirement Benefits Bill Taskforce proposes that Clause 10(1) be amended to read:

“The pension payable to a judge who is removed from office because of inability to perform the functions of office due to mental or physical incapacity shall not be less than fifty per cent of the pension the judge would have been entitled to had the judge retired on attaining retirement age or being eligible to retire early in accordance with Article 167(1) of the Constitution.”

Third, Clause 29(4) of the Bill incorrectly lists “and I” in cross-referencing while it should be “and e”.

The Judges’ Retirement Benefits Bill Taskforce proposes that Clause 29(4) should be amended to read:

“The members appointed under subsection 3(b), (c), (d) and (e) shall be nominated by the Chief Justice”.

Fourth, there is an error in cross-referencing in Clause 30. The intended Clause being cross-referenced is Clause 29.

The Judges' Retirement Benefits Bill Taskforce proposes that Clause 30 should be amended to read:

“A person shall not be appointed as a trustee under section 29 if that person—”

Fifth, there is a typographical error in Clause 71(2) of the Bill, in the use of the word “toe”.

The Judges' Retirement Benefits Bill Taskforce proposes that Clause 71(2) should be amended to replace:

“toe” with “to”.

COMPARATIVE STUDY ON JUDGES' RETIREMENT BENEFITS IN SELECT COUNTRIES IN THE COMMONWEALTH

Introduction

A comparative study of retirement benefits provided to judges in other jurisdictions offers an objective standard for evaluating whether the proposals in the Bill align with international best practice, provide adequate security and benefits to judges' post-retirement. It is in this context that this section of the memorandum, provides a comparison with other jurisdictions as to whether the proposals in the Judges' Retirement Benefits Bill, 2025 align with global standards.

1. NIGERIA

The principal legal framework regulating retirement benefits for Judges in Nigeria is the *Pensions Rights of Judges Act, Act. No. 62 of 1991*. The salient provisions of this statute include the following:

- Section 2(1) of the Statute stipulates that: A Judge who has held office for a period of not less than 15 years shall be entitled to pension for life at a rate equivalent to his last annual salary plus his consolidated allowances and the annual salary of four of his domestic staff.
- Section 2(2) of the Statute stipulates that: Other judges who have held office as a judicial officer for less than 15 years are entitled to pension for life at a rate pro rata the number of years they served as a judge in relation to the period of fifteen years or to the pension and other retirement benefits to which they are entitled under their terms and conditions of service, whichever is higher.
- Section 3 of the Statute stipulates that: A Judge incapacitated in the course of his duty who is not otherwise qualified for pension under the above provisions is entitled to pension for life at a rate equivalent to his last annual salary in addition to any other benefits to which he may be entitled under the Pensions Act.

Retirement Age: According to Article 291 of the Constitution of the Federal Republic of Nigeria, 1999 Judges of the Supreme Court and those of the Court of Appeal may elect to retire upon attaining the age of 65 years and cease to hold office on attaining the age of 70 years. Judges of the High Court may elect to retire upon attaining the age of 60 years and cease to hold office on attaining the age of 65 years.

Number of Judges: 989 Judges.

2. **BOTSWANA**

The statutory regime for Judges' retirement benefits in Botswana is found in *the Judges' Pensions Act, 2007*. The salient provisions of this statute include the following:

Section 4 of the statute provides for qualification for pension. It provides that a Judge is eligible for 'full pension' once he or she has served for a period of 15 years.

Section 5 of the statute provides for payment of reduced pension where a judge serves for a period of not less than 10 years but less than 15 years, and where a judge resigns before attaining retirement age after serving for more than 15 years. The reduced pension is proportionate to the period served for the former and proportionate to the age of the age in relation to the age of retirement with regards to the latter.

Section 6 of the statute provides that pension is not payable for a judge who retires within 5 years of appointment.

Section 7 of the statute provides that a Judge who retires is entitled to pension at a rate equal to 80% of the salary for the time being payable to a serving judge.

Section 8 of the statute provides that where a Judge is removed from office after serving for more than 15 years, for any other reason other than misbehaviour, the Judge can elect to be paid gratuity or pension.

Retirement Age: Articles 97 and 101 of the Constitution of Botswana, prescribes the retirement age of ages at 70 years.

Number of Judges: 32 Judges.

3. **SOUTH AFRICA**

The legislative framework for Judges retirement benefits in South Africa is provided by the Judges' Remuneration and Conditions of Employment Act, 2001. The statute's salient features include:

- Section 5 of the statute provides: This provision envisions that, after active service, a judge will continue to receive a salary for the rest of their life, even upon retirement.
- The salary to be paid upon retirement shall be 100% of the highest office held if the Judge served for more than 20 years; 80% of highest salary plus 2% of that salary for every year of active service for every year of service after attaining age of 65 years.
- Section 6 of the statute provides: That in addition to any salary paid upon discharge

from service, a discharged judge shall be paid a gratuity. The gratuity shall not exceed three times the judges' annual salary during period of active service.

Retirement Age: Section 4 of the statute prescribes a retirement age for judges at 70 years.

Number of Judges: 253 Judges.

4. TANZANIA

The principal legislative framework on Judges' retirement benefits is contained in *the Judges' (Remuneration and Terminal Benefits) Act, 2007* and *the Public Service Retirement Benefits Act, 1999*.

The following are the salient provisions of the Judges' (Remuneration and Terminal Benefits) Act:

- Section 9 of the statute provides that on retirement, personal effects of a retired judge shall be transported by the government to his place of domicile.
- Section 14 of the statute specifies that a Judge, removed from office under the terms of the Constitution, shall in addition to any terminal benefits earned under the Act, be entitled to such benefits as the President may, upon advice of the JSC, determine.

The following are the salient provisions of *the Public Service Retirement Benefits Act*:

- Section 20(3) of the statute provides that a Judge shall retire on a pension which shall be equal to 80% of the salary of the incumbent holder of the office in which he was serving and from which he retires.
- Section 20(4) of the statute provides for additional benefits to a retired judge to include: a) a diplomatic passport for him and his spouse; b) one motor vehicle given once of a value not exceeding such amount as the president may from time to time determine; c) a total sum of money granted once as a lumpsum which shall be sufficient to remunerate one driver for a period of four years; d) a total sum of money sufficient to purchase fifty litres of fuel per week granted once as a lumpsum which shall cover a period of four years; e) a total sum of money being maintenance allowance for a motor vehicle to be granted once as a lump sum at a rate equal to forty percent of fuel allowance; f) use of VIP lounge.
- Section 20(5) of the statute provides that the pension, gratuity, allowances and services granted are to be paid out of the Consolidated Fund and shall not be subject to income tax.

Retirement Age: Article 110 of the Constitution of the United Republic of Tanzania for Judges to be 60 years.

Number of Judges: 128 Judges.

5. UGANDA

The legal framework on judges' retirement benefits is provided in the Administration of the Judiciary Act, 2020. The salient provisions of this statute include:

- Sections 24 and 25 provide for the retirement benefits of Judges of the Supreme Court, Court of Appeal, and High Court.
- Section 27 provides that a judicial officer/judge is entitled to retirement benefits if s(h)e retires on medical grounds.
- Section 28 provides that a judge who is removed from office in accordance with the Constitution or absconds duty is not entitled to retirement benefits.
- Section 30 provides that retirement benefits to judges shall be a charge on the Consolidated Fund and shall be exempt from taxes.
- Schedule 4 of the statute enumerates the benefits due to Judges of the Supreme Court and Court of Appeal. These are: a) a monthly retirement benefit equivalent to 80% of the salary of a sitting judge of equivalent rank from which they retired. The benefit shall be paid to the retired judge for life.; b) A one-off lump sum equivalent to 2.4% of annual salary multiplied by 5 and the years of service; c) a monthly housing allowance equivalent to a housing allowance payable to a sitting judge of the same rank from which they retired; d) An annual medical allowance equivalent to medical allowance payable to sitting judge; e) a chauffeur driven car or a one-off payment of payment of seven thousand five hundred currency points, payable in lieu of a car; f) security provided by the state.
- Schedule 5 of the statute enumerates the benefits due to Judges of the High Court. These are: These are: a) a monthly retirement benefit equivalent to 80% of the salary of a sitting judge of the High Court. The benefit shall be paid to the retired judge for life.; b) A one-off lump sum equivalent to 2.4% of annual salary multiplied by 5 and the years of service; c) a monthly housing allowance equivalent to a housing allowance payable to a sitting Judge of the High Court; d) An annual medical allowance equivalent to medical allowance payable to a sitting High Court judge; e) a chauffeur driven car or a one-off payment of payment of seven thousand five hundred currency points, payable in lieu of a car; f) security provided by the state.

Retirement age: Article 144 of the Constitution of Uganda provides that the retirement age for a Judge of the High Court is 60 years, whilst the retirement age for judges of the Court of Appeal and Supreme Court is 70 years.

Number of Judges: 92

6. ZAMBIA

The principal statutory framework regulating the retirement benefits for Judges in Zambia is the Judges (Conditions of Service) Act, 1996. The salient provisions of the statute include the following:

- The statute defines 'pensionable emolument' to be: means salary and any special addition to salary granted without any condition that it shall not count for the purpose of calculating the pension.
- Section 4(2)(a) of the statute provides that: Upon retirement, a Judge shall be entitled to a gratuity comprising sixty months of the basic salary received while in service.
- Section 4(2)(b) of the statute provides that: Upon retirement, a Judge shall until his death, continue to receive 80% of the basic salary payable to a person holding the same or equivalent office as that held upon retirement.
- Section 5 provides for retirement on the ground of ill health (infirmity of mind of body), such a Judge shall get benefits equivalent to that of a normal retirement as stipulated in section 4(2) of the Act.
- Section 10 provides that a Judge shall contribute towards the cost of the pension scheme of 7.25% of his pensionable emoluments.

It is notable that the Judges (Conditions of Service) Act mandates a gratuity equal to 30% of the judge's pensionable emoluments for each completed period of three years of service. This is a unique feature, as many jurisdictions do not provide a gratuity in addition to a pension.

Retirement Age: Article 142 of the Constitution of Zambia, 2016 stipulates that a Judge shall retire on attaining the age of 70 years, but may elect to retire with full benefits upon attaining the age of 65 years.

Number of Judges: 94 Judges.

7. CANADA

The retirement benefits and pensions for judges in Canada are primarily governed by the Judges Act, 1985. The following are the salient provisions of the statute:

- Section 8 of the statute provides for the age of retirement for Judges to be 70 years.
- Section 41(2) provides that the Treasury Board shall establish, or enter into a contract to acquire, an insurance program for judges covering the following, on terms and conditions similar to those contained in the Public Service Management Insurance Plan and the public service management insurance directives that apply to executives: (a) basic life insurance; (b) supplementary life insurance; (c) post-retirement life insurance; (d) dependents' insurance; and (e) accidental death and dismemberment insurance.
- Section 41(2)(4) provides that participation in basic life insurance is compulsory for all judges.
- Section 41(3) provides that Judges shall be eligible to participate in the Public Service Health Care Plan and the Public Service Dental Care Plan established by the Treasury Board, on the same terms and conditions as apply to employees in the executive group.
- Section 42 provides that a judge shall be paid an annuity equal to two thirds of the salary annexed to the office held by the judge at the time of his or her resignation, removal or attaining the age of retirement, as the case may be, if the judge: (a) has continued in judicial office for at least 15 years, has a combined age and number of years in judicial office that is not less than 80 and resigns from office; (b) has attained the age of retirement and has held judicial office for at least 10 years; or (c) has continued in judicial office on the Supreme Court of Canada for at least 10 years and resigns from office.
- The Governor in Council shall grant to a judge an annuity equal to two thirds of the salary annexed to the office held by the judge at the time of his or her resignation, removal or attaining the age of retirement, as the case may be, if the judge (a) has continued in judicial office for at least 15 years and resigns his or her office, if in the opinion of the Governor in Council the resignation is conducive to the better administration of justice or is in the national interest; or (b) has become afflicted with a permanent infirmity disabling him or her from the due execution of the office of judge and resigns his or her office or by reason of that infirmity is removed from office.
- Prorated annuity: If a judge who has attained the age of retirement has held judicial

office for less than 10 years, an annuity shall be paid to that judge that bears the same ratio to the annuity described in subsection (1) as the number of years the judge has held judicial office, to the nearest one tenth of a year, bears to 10 years.

Retirement age: In line with section 8 of the Judges' Act, judges in Canada retire at the age of 70 years.

Number of Judges: 1195 Judges.

8. BARBADOS

The Judges Remuneration and Pensions Act, (Cap 115 Laws of Barbados) provides for the salaries, pensions and other conditions of service for judges. The following are the salient provisions of the statute:

- Section 4 of the Act provides that a retired judge a pension and gratuity upon retirement from office. It also stipulates the age for retirement from judicial office as 55 years.
- Section 5 of the Act provides that removal from office on account of physical or mental incapacity will be deemed to be retirement.
- Section 6 of the statute provides for the rate of pension to be $\frac{2}{3}$ of the salary if retires after attaining 55 years; but is entitled to 100% of the salary if retires after attaining the age of 65 years or retires on account of ill health after attaining the age of 55 years. Where a judge retires at any age after serving for 20 years, then their rate of pension shall be 100% of the salary.
- Section 7 of the Act provides for maximum pensions, stipulating that the amount of pension shall not exceed a judge's annual salary at the date of his retirement.

Retirement Age: Article 84 of the Constitution of Barbados provides that the retirement age for High Court judges shall be 65 years, while for Court of Appeal judges shall be 70 years.

Number of Judges: 12 Judges.

9. Ghana

The Constitution of Ghana at Article 155 provides for the entitlement of Judges on retirement. The provision stipulates that:

- On retirement, in addition to any gratuity payable to a judge, a judge is entitled to

paid pension equivalent to the salary payable for the time being to a judge of the Court from which he/she served.

- The pension payable to a retired Judge is subject to the same changes and increases as a serving Judge of the Court from which he/she served.

Retirement Age: Article 145 of the Constitution of Ghana prescribes the retirement age for Judges of the Supreme Court at 70 years, and for other Judges at 65 years.

Number of Judges: 278 Judges.

10. India

The pension and retirement benefits for Judges in India is provided for under the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 and the High Court Judges (Salaries and Conditions of Service) Act, 1954.

The salient provisions of the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 include the following:

- Section 13 provides that pension is payable to a judge who has attained the age of 65 years or whose retirement is medically certified to be necessitated by ill-health.
- Section 23C provides that every retired Judge is entitled for himself and his family, to medical treatment as may from time to time be prescribed.

The salient provisions of the High Court Judges (Salaries and Conditions of Service) Act, 1954 include the following:

- Section 14 provides that pension is payable to a judge who has attained the age of 65 years or whose retirement is medically certified to be necessitated by ill-health.
- Section 23 provides that every retired Judge is entitled for himself and his family, to medical treatment as may from time to time be prescribed.

Retirement Age: In terms of Article 124 of the Constitution of India, the retirement age for Judges in India is 65 years.

Number of Judges: 750 Judges.

TABLE COMPARING PENSION BENEFITS TO RETIRED JUDGES IN TEN SELECT COMMONWEALTH COUNTRIES

Country	Type of Pension	Basis of Pension Amount	Other Benefits	Existence of Stand- Alone Legislation	Eligibility for Pension	Age of Retirement	Treatment of Judges who are physically or mentally incapacitated in the course of work
Nigeria	DB	Equivalent to last salary including allowances.	4 domestic staff	Yes - Pensions Rights of Judges Act, 2004	<p>Judge should have held office for 15 years to be entitled to pension for life.</p> <p>A Judge who has held office for less than 15 years is entitled to pension for life at a pro rata the number of years they served as a Judge.</p>	<p>70 years for Supreme Court and Court of Appeal Judges, but may elect to retire upon reaching 65 years;</p> <p>65 Years for High Court Judges but may elect to retire upon reaching 60 years.</p>	Judges incapacitated in the course of duty entitled to pension for life.

Country	Type of Pension	Basis of Pension Amount	Other Benefits	Existence of Stand- Alone Legislation	Eligibility for Pension	Age of Retirement	Treatment of Judges who are physically or mentally incapacitated in the course of work
Uganda	DB	80% of salary of sitting judge of same rank.	a) a monthly retirement benefit equivalent to 80% of the salary of a sitting judge of equivalent rank from which they retired. The benefit shall be paid to the retired judge for life.; b) A one-off lump sum equivalent to 2.4% of annual salary multiplied by 5 and the years of service; c) a monthly housing allowance equivalent to a housing allowance payable to a sitting judge of the same rank from which they retired; d) An annual medical allowance equivalent to medical allowance payable to sitting judge; e) a chauffer driven car or a one-off payment of payment of seven thousand five hundred currency points, payable in lieu of a car; f) security provided by the state.	Yes, the Administration of the Judiciary Act, 2020.	All retired judges eligible	60 years for Judges of the High Court; 70 years for Judges of the Court of Appeal and Supreme Court	Entitled to retirement benefit if retired on medical grounds

Country	Type of Pension	Basis of Pension Amount	Other Benefits	Existence of Stand- Alone Legislation	Eligibility for Pension	Age of Retirement	Treatment of Judges who are physically or mentally incapacitated in the course of work
Tanzania	DB	80% of salary	a) a diplomatic passport for him and his spouse; b) one motor vehicle given once of a value not exceeding such amount as the president may from time to time determine; c) a total sum of money granted once as a lumpsum which shall be sufficient to remunerate one driver for a period of four years; d) a total sum of money sufficient to purchase fifty litres of fuel per week granted once as a lumpsum which shall cover a period of four years; e) a total sum of money being maintenance allowance for a motor vehicle to be granted once as a lump sum at a rate equal to forty percent of fuel allowance; f) use of VIP lounge.	Yes, the Judges' (Remuneration and Terminal Benefits) Act, 2007 and the Public Service Retirement Benefits Act, 1999.	No restriction on duration to be eligible for pension	60 years	Eligible for pension

Country	Type of Pension	Basis of Pension Amount	Other Benefits	Existence of Stand- Alone Legislation	Eligibility for Pension	Age of Retirement	Treatment of Judges who are physically or mentally incapacitated in the course of work
South Africa	DB	Uniquely provides for post-retirement salary other than pension. 100% of salary for Judges who have served for more than 20 years; 80% of salary for the rest of retired judges.	Receive gratuity in addition to salary. The gratuity shall not exceed three times annual salary.	Yes, the Judges' Remuneration and Conditions of Employment Act (Act No. 47 of 2001).	15 years of service	Retire on attaining 70 years	NA
Zambia	DB (Based on formula with additional contribution 7.25% of pensionable emoluments)	80% of Basic salary	NA	Yes, the Judges (Conditions of Service) Act, 1996.	Number of years of service not prescribed	Retire on attaining 70 years, but can elect to retire from 65 years.	Judges who leave service due to incapacity treated similar to retired judges
Botswana	DB	80% of salary	NA	Yes, the Judges' Pensions Act, 2007	Judge should have served for at least 15 years	70 years	Judges incapacitated entitled to pension
Ghana	DB	Pension equivalent to salary of serving judge.	NA	No, but constitution provides detailed provisions on judges' pension.	10 years of service.	Retire on attaining 70 years for Supreme Court judges, 60 years for judges of other courts.	Judge incapacitated entitled to pension.

Country	Type of Pension	Basis of Pension Amount	Other Benefits	Existence of Stand- Alone Legislation	Eligibility for Pension	Age of Retirement	Treatment of Judges who are physically or mentally incapacitated in the course of work
India	DB	Salary at retirement.	Medical services for retired judges and their family.	Yes, the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 and the High Court Judges (Salaries and Conditions of Service) Act, 1954.	No restriction on duration to be eligible.	Retire on attaining 65 years.	Judge incapacitated entitled to pension.
Canada	DB (Based on formula with additional contribution by judges)	A judge who retires is entitled to an annuity equal to two-thirds of their salary at the time of retirement.	Medical Scheme in the public service health care plan.	Yes, the Judges' Act, 1985	Not applicable	Retire at age 70 years.	NA
Barbados	DB	Equivalent to last salary if served up to 65 years; served for 20 years; or retires for illness after 55 years. Equivalent to 2/3 of last salary if retires after 55 years.	NA	Yes, the Judges Remuneration and Pensions Act, Cap 115 Laws of Barbados	If served up to 65 years or for 20 year, entitled to full pension; if served up to 55 years entitled to 2/3 of last salary	High Court -65 years Court of Appeal -70 years	Entitled to full pension if served up to 55 years.

Conclusion from the Comparative Study

The comparative study of the retirement benefits that are provided in the ten countries under survey being Botswana, Nigeria, South Africa, Tanzania, Uganda, Ghana, Zambia, India, Barbados and Canada shows that in each of the countries, benefits are provided by an Act of Parliament specific for Judges only.

The pension benefits to judges in each of the ten countries surveyed, benefits are on a defined benefits basis. It is notable that even for Zambia and Canada, the only outlier countries surveyed, the pension to Judges is provided on a Defined Benefits basis pegged on a formula, with Judges only required to make additional contribution beyond the entitlements accruing from the formula.

In all the countries surveyed, pensionable emolument includes other allowances beyond the basic pay. It is only in Kenya where pensionable emolument for judges is limited to basic pay.

There is a common theme in most of the countries surveyed, where the countries strive towards an Income Replacement Ratio of offering retired Judges at least 80% of their salary on retirement.

In all the countries surveyed, the retirement benefits for judges includes other non-pension benefits beyond the pension. The range of non-pension benefits varies widely and includes: security, driver, fuel allowance, house allowance, medical insurance, access to VIP lounges, domestic workers, state funerals e.t.c.

SUMMARY OF ACTUARIAL VALUATION AND COSTING OF THE JUDGES' RETIREMENT BENEFITS BILL, 2025

Introduction

This part of the Memorandum presents the abridged results of the actuarial valuation and costing undertaken by the Zamara Group on the Bill. The actuarial valuation and costing focused on the demographic events in a judge's life and the bearing that these have on the cost of Judges' pension and retirement benefits.

Accrued Benefits under the Pensions Act Cap 189

For a Judge who was already serving at the Commencement Date, the accrued benefits under the Pensions Act Cap 189 shall be payable under the proposed DB Section using the terms of the DB Section.

As at 30 June 2024, there were 201 Judges who were eligible to benefits under the Pensions Act Cap 189. This number excludes the Chief Justice and the Deputy Chief Justice whose benefits are provided under a separate Act of Parliament.

As at 30 June 2024, there were 201 Judges who were eligible to benefits under the Pensions Act Cap 189. This number excludes the Chief Justice and the Deputy Chief Justice whose benefits are provided under a separate Act of Parliament.

The table below summarises the results of our actuarial valuation:

	Total past service Liability (KShs M)	Implied contribution rate for future liability as a % of Basic Salaries
Accrued past service liability under the Pensions Act	4,271.0	24.2%
Impact of Housing Allowance	576.3	3.4%
Impact of Pension Increases of 5% per annum	881.5	3.6%
Impact of Ill-Health Provisions	6.6	0.0%
Accrued past liability under the Proposed Bill	5,665.4	31.2%

The actuarial calculations show that the accrued past service liability under the Pensions Act is K Shs 4.27billion as at 30 June 2024, for all prior service up to that date. Considering only the future benefit accrual from the valuation date, our calculations show that the annual ongoing cost of pension benefits for Judges under the Pensions Act is approximately

at 24.2% of basic salaries. That is, the notional contribution that the Government would need to pay to meet the cost of benefits accruing under the Pensions Act to Judges after 30 June 2024 is estimated at 24.2% of Judges' basic salaries.

The accrued past service liability under the proposed DB Section of the Bill is K Shs 5.67 billion as at 30 June 2024, for all prior service up to that date. The proposed DB Section (which has improvements to the pension benefits under the Pensions Act) adds K Shs 1.39 billion to the past service pension liability under the Pensions Act.

The implied ongoing cost to the Government (notional contribution rate) increases to approximately 31.2% of Judges' basic salaries to meet the cost of benefits accruing to Judges under the proposed DB Section of the Bill for service after 30 June 2024.

The increase in the past service liability is attributable to the improvements to the benefits under Pensions Act as follows; improvements in the definition of pensionable emoluments to include house allowance (K Shs 576.3 million), pensions increases in line with CPI capped at 5% per annum compared to 3% every two years under the Pensions (Increase) Act (K Shs 991.5 million) and the provision of a minimum pension of 50% on ill-health retirement (K Shs 6.6 million). The improved pension benefits cost an additional 7.0% of Judges' basic salaries as a notional contribution rate.

The estimated Government's ongoing notional contribution rate as a percentage of Judges' basic salaries required to provide the post-retirement non-pension benefits (of health insurance cover for Judge and spouse and transport allowance) proposed in the Bill amounts to 10.2% of Judges' annual basic salaries.

Projected Cash Outflow of Additional Benefits over those Payable under the Pensions Act

Based on the assumptions adopted, and the age profile of the current Judges including the 19 retired ones eligible for the additional proposed benefits, the projections of additional benefits in the proposed DB Section on top of those payable under the Pensions Act are as follows.

Kshs Millions	2025	2026	2027	2028	2029	Total
No. of judges retiring	2	2	1	8	9	68
Commuted lumpsum	6.8	9.5	5.9	38	42.8	103.0
Annual pension	1	2.5	3.5	9.3	16.1	32.4
Transport allowance	22.2	22.2	10.7	84.6	94.2	233.9
Medical premiums to current serving judges as they retire	0.3	0.7	1	2.8	5.2	10.0
Medical premiums for 19 already retired judges	2.9	3.1	3.2	3.3	3.5	16.0
Total	33.2	38	24.3	138	161.8	395.3

The projections show that over the next five years, the additional benefits in the proposed DB Section would be approximately K Shs 395 million paid to 68 newly retired Judges and 19 already retired Judges over and above the benefits payable under the Pensions Act.

Benefits under the DC Section

For the DC Fund established in Part III of the proposed Bill, the Government is required to contribute 15% of Judges' pensionable emoluments. In addition, the Government will meet the cost of the death in service insurance cover for which a lumpsum benefit of a multiple of salary is payable to the beneficiaries on the death of a Judge.

At the current level of house allowance for Judges which is at an average of 14% of basic salaries, the 15% of pensionable emoluments contributions by the Government to the Fund is approximately equal to 17.1% of Judges' basic salaries compared to 24.2% of Judges' basic salaries notional contribution that would be expected under the Pensions Act. Accordingly, the cost to the Government of pension benefits under the DC Section is expected to be lower than that under the Pensions Act.

The estimated cost of providing the proposed post-retirement health insurance cover for Judge and spouse is estimated at 4.7% of Judges' annual basic salaries.

From the actuarial projections, the total contributions of 22.5% of a Judges' annual pensionable emoluments are expected to provide an adequate or reasonable pension for a judge serving for at least 20 years.

The DC Section of the Bill is largely compliant with the Treasury Circular No. 18 of 2010 and Circular No. 9 of 2024 which set out broad guidelines for public sector pension schemes.

STAKEHOLDERS' ENGAGEMENTS DURING THE DEVELOPMENT OF THE JUDGES' RETIREMENT BENEFITS BILL, 2025

Introduction

In line with the constitutional imperative for public participation as articulated in Article 10(2)(a), the Judges' Retirement Benefits Bill Taskforce considered it important to get stakeholders' views and input in shaping and informing the proposals contained in the draft Judges' Retirement Benefits Bill, 2024. In this respect the Taskforce identified serving Judges, retired Judges, the Judicial Service Commission, the Salaries and Remuneration Commission, the Retirement Benefits Authority, and the Justice and Legal Affairs and Budget and Appropriations Committees of the National Assembly, as stakeholders whose views would be critical to inform the proposals in the Bill.

Taskforce Engagements with Stakeholders

The Taskforce invited Judges of all the superior courts to participate in stakeholder engagement forums and submit memorandum. It is notable that 87 out of 187 serving judges, representing 46.52% of targeted group, attended the stakeholder engagement forums.

The Taskforce held stakeholder engagement forums for the Judges of the Supreme Court in Nairobi on 5th March 2024 (morning), and Judges of the Court of Appeal in Nairobi on 5th March 2024 (afternoon).

Subsequently, the Taskforce held regional engagement forums with Judges of the High Court and Courts of Equal Status arounds the country. The regional engagement forum for Judges from Nairobi and its environs was held in Nairobi on 6th March 2024, Judges from Upper and Lower Eastern region was held in Machakos on 8th March 2024, Judges from Central and North Eastern region in Nanyuki was held in Nanyuki on 11th March 2024, Judges from Central and South Rift was held in Nakuru on 13th March 2024, Judges from the North Rift in Eldoret on 15th March 2024, Judges from Nyanza and Western was held in Kisumu on 20th March 2024, and Judges from the Coast region in Mombasa on 25th March 2024.

The Taskforce also met and engaged with retired Judges in Nairobi on 22nd March 2024 and received a memorandum from the Kenya Retired Judges Association.

The Taskforce subsequently held a stakeholders' engagement meeting with the Retirement Benefits Authority (RBA), Salaries and Remuneration Commission (SRC) in Mombasa on 27th March 2024.

The Taskforce held an engagement meeting with two Committees of the National Assembly being the Justice and Legal Affairs Committee (JLAC) and the Budgetary and Appropriations Committee in Mombasa on 5th April 2024. The Taskforce held a two days joint drafting retreat with the Directorate of Legal Services from the National Assembly in Machakos on 11th and 15th April 2024. This drafting process resulted in the draft Judges' Retirement Benefits Bill, 2024.

The Taskforce also held an engagement with the Judicial Service Commission (JSC) at the Commission's offices in Nairobi on 12th April 2024.

On 14th June 2024, the Hon. Chief Justice led the Taskforce in a bilateral meeting with the National Treasury team, which was led by the then Cabinet Secretary Prof. Njuguna Ndung'u, to discuss the draft Judges' Retirement Benefits Bill, 2024. As a result of the meeting, it was agreed that a Joint Technical Committee comprising representatives from the National Treasury and the Taskforce be established to address the contentious issues arising from the draft Bill. After several meetings, the Joint Technical Committee, in its meeting held on 6th February 2025, resolved the contentious issues concerning: defined benefit and defined contribution schemes, an alternative to the car grant, a post-retirement medical scheme, and access to airport VIP lounges and diplomatic passports.

Following the consensus reached by the Joint Technical Committee, the Taskforce convened in Mombasa from 3rd to 7th March 2025 to revise the Bill and incorporate the agreed-upon resolutions. This drafting process resulted in the Judges' Retirement Benefits Bill, 2025.

Consideration of Stakeholder Input Following Engagement Forums

After the stakeholder engagement forums, the Taskforce evaluated the submitted presentations and memoranda and incorporated numerous suggestions and views into the Bill's final formulation. The changes to the initial draft of the Bill, which was subject to the stakeholder engagements, include:

- The removal of a provision that previously disqualified Judges removed from office for reasons other than physical or mental incapacity. This change was influenced by jurisprudence from the Employment and Labour Relations Court, which has affirmed the position that pensions are a fundamental right of an employee, unaffected by the reasons for dis-engagement. This stance is supported by an advisory from the Public Service Commission, which states that pension rights vest at the moment an employee qualifies for a pension, regardless of the method or reasons for dis-engagement from employment.
- Introduction of a provision for deferred pension payments for Judges who leave office before reaching the early retirement age of 65.

- Redrafting of the commencement clause to enhance clarity as to when the law will take effect following its assent.
- Addition of a clause outlining the principles governing the pension system in the Bill, asserting that a pension is a right that vests after a Judge has served for at least 10 years.
- Clarification of the entitlements under the medical insurance cover for retired Judges.
- Modification of the clause on the use of the Consumer Price Index for pension increases, setting a minimum increase of 1% and a maximum increase of 5% in any given year.

Consideration of Views from the Engagement with the Salaries and Remuneration Commission and the National Treasury

During the engagement between the Taskforce and the Salaries and Remuneration Commission (SRC) held in Mombasa on 27th March 2024, the SRC expressed the view that Judges' retirement benefits should remain within the parameters of the Pensions Act. In addition, the SRC asked the Taskforce to consider the option of having a Defined Contribution scheme for judges' retirement benefits.

During the engagement between the Taskforce and the National Treasury, the National Treasury proposed that the Bill provide for the transition from a Defined Benefit (DB) to a Defined Contribution (DC) scheme by retaining serving judges under the DB scheme while placing judges appointed after the commencement of the law under a DC scheme. Additionally, the National Treasury proposed the removal of the car grant for judges, replacing it with a one-time transport allowance. Furthermore, the National Treasury indicated that it was not opposed to provisions for a post-retirement medical scheme, access to VIP lounges at Kenya's airports, and diplomatic passports for retired judges and their spouses.

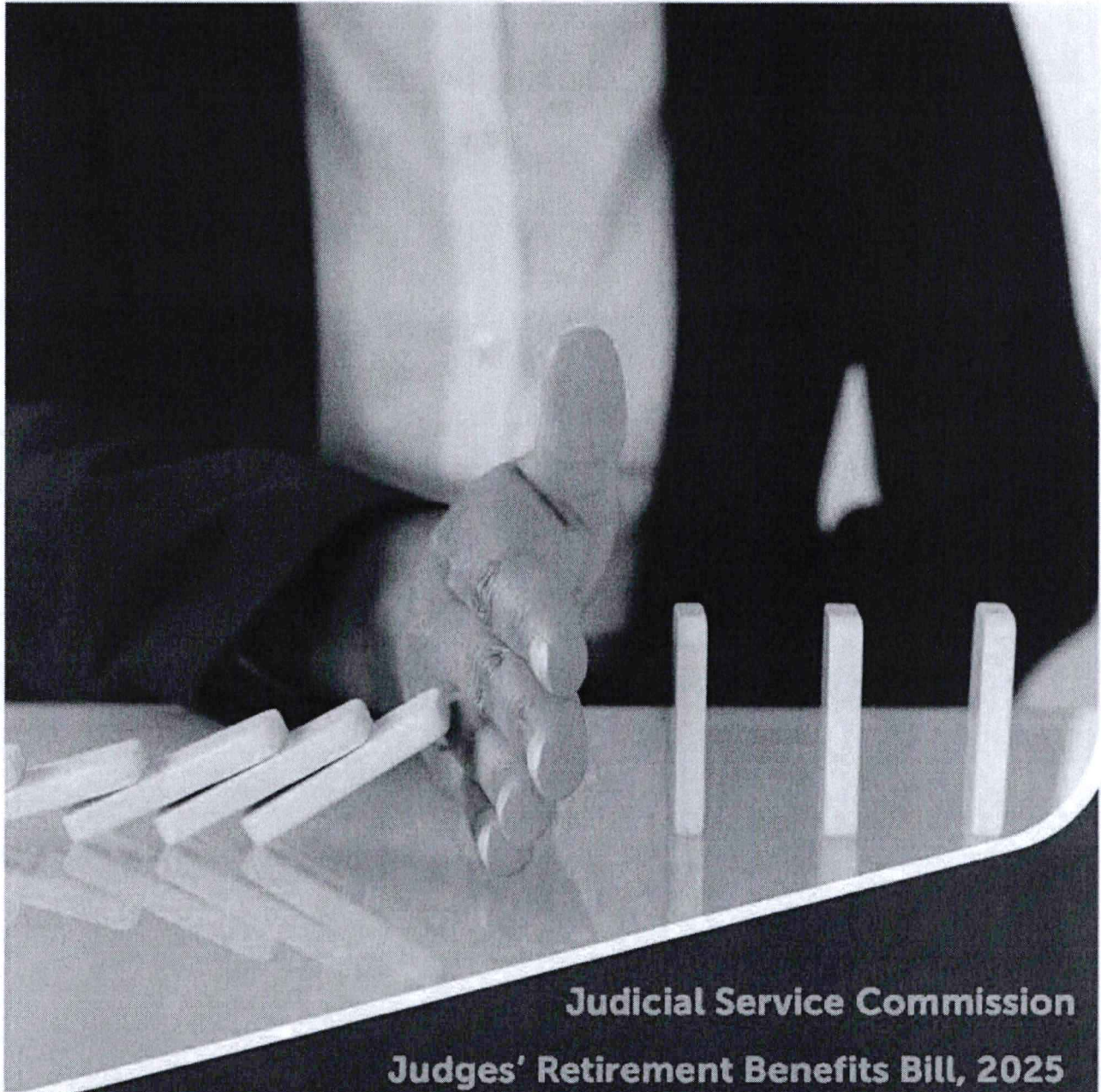
The Taskforce took into account the first suggestion by the SRC and modelled the Judges' Retirement Benefits Bill along the lines of the Pensions Act. In its essence, the proposed bill has the features of the Pensions Act with minimal modifications to reflect comparative practice in judges' retirement benefits in other countries.

The Taskforce also considered the proposals from both the SRC and the National Treasury regarding the transition from the current Defined Benefit (DB) scheme to a Defined Contribution (DC) scheme. In recommending a gradual transition—where serving judges remain under the DB scheme while judges appointed after the commencement of the law

join a DC scheme—the Taskforce ensured compliance with Article 160(4) of the Constitution and Section 32 of the Sixth Schedule, which prohibit changes to pension arrangements that would be to the disadvantage of judges.

**APPENDIX: THE ACTUARIAL REPORT (BY THE ZAMARA GROUP) ON THE
VALUATION OF THE JUDGES' RETIREMENT BENEFITS BILL, 2025**

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Judicial Service Commission
Judges' Retirement Benefits Bill, 2025
Actuarial Report on Scheme Design and Viability
March 2025

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Executive Summary

1. In accordance with instructions, we have carried out an actuarial study to advise on the design and viability of the proposed Judges' Retirement Benefits Scheme ("the Scheme"). The detailed proposals on how the Scheme will operate are contained in the draft Judges' Retirement Benefits Bill, 2025 ("the Bill") which is due to be tabled before Parliament.
2. We are pleased to present an Executive Summary of our key findings and recommendations.
3. We have presented our results and findings to the Judges' Retirement Benefits Taskforce ("the Taskforce") which was tasked with researching and drafting a Bill to provide appropriate retirement benefits for Judges. This report incorporates the comments and findings following the various discussions that we have had with the Taskforce.
4. We had prepared an actuarial report date May 2024 on the cost and design of retirement benefits for Judges under the Judges' Retirement Benefits Bill 2024. We understand that following discussion with the National Treasury and other stakeholders, an amendment to the structure of the proposed benefits for Judges has been necessitated hence the new Bill, 2025 and this updated actuarial report.

Relevant Background

5. Currently, the retirement benefits for Judges in Kenya are governed by the provisions of the Pensions Act Cap 189 ("the Pensions Act"), Widows' and Children's Pension Scheme ("WCPS") established under the Widows' and Children's Pensions Act Cap 195 and the Pension (Increase) Act Cap 190:
 - The WCPS is a contributory scheme by male members for the provision of pensions to widows and children of deceased members that have contributed to the WCPS. We have not valued the benefits under the WCPS.
 - The Pensions (Increase) Act provides for increases to pensions at the rate of 3% every two years effective 1 July 2005 for benefits under the Pensions Act and the WCPS.
6. Judges thus participate in the public service pension scheme and the current retirement benefits for Judges are thus identical to those of other civil servants and public service employees in Kenya. It is important to note that the public service scheme was restructured effective 1 January 2021 with a new arrangement, the Public Service Superannuation Scheme ("PSSA") set up for new employees joining the Government on or after 1 January 2021. Currently, it is only Judges who can be employed by the Government and start benefit accrual under the Pensions Cap 189. Hence, the establishment of separate Scheme for Judges is timely to align with Government policy.
7. As part of this actuarial study, we have carried out a comparative study of the retirement benefits provided to Judges in some selected countries. The study shows that retirement benefits for Judges in each of those countries are governed by an Act specifically for that purpose. The study also shows that given their status, Judges in those countries generally enjoyed slightly more favourable pension benefits than the mainstream civil servants in those countries and all other things being equal, the overall retirement benefits for Judges in some countries surveyed were higher than those currently applying in Kenya. Further, in the majority of the countries surveyed, Judges enjoy additional non-pension benefits on retirement. The comparative study therefore shows that there could be a case for improving the retirement benefits package for Judges which is what the Judges Retirement Benefits Bill, 2025 intends to achieve.

Key Features of the Judges' Retirement Benefits Bill, 2025

8. The Judges' Retirement Benefits Bill, 2025 proposes to establish a retirement benefits arrangement, the Judges' Retirement Benefits Scheme ("the Scheme"), to apply to Judges of the Republic of Kenya who will be in service on or after the Bill comes into force ("Commencement Date").
 - For Judges who will be already in service when the Bill comes into force, the proposed pension benefits mimic those currently payable under the Pensions Act but with a few improvements.
 - For Judges who commence judgeship after the Bill comes into force, the Bill proposes to provide them with pension benefits on a defined contribution basis (i.e. benefits based on accumulated contributions made by the Judge and the Government on the Judge's behalf)
 - The Bill proposes additional non pension benefits for all Judges upon their retirement with some benefits proposed to apply to current retired Judges who retired under Article 167 of the Constitution after 27 August 2010.
9. A summary of the benefits proposed in the Bill are as follows:

Defined Benefit (DB) Section – Set out in Part II of the Proposed Bill

- The DB Section will apply to Judges in service on the Commencement Date of the Scheme.
- The DB Section will operate on a defined benefit basis with pension benefits determined as 2.5% of pensionable emoluments for each year of pensionable service (the same accrual fraction of benefits under the Pensions Act).
- The DB Section will be non-contributory for Judges, with the Government meeting the full cost of providing the benefits on a Pay As You Go ("PAYG") basis. Thus, benefits for Judges will not be funded prior to retirement but will be met from the Consolidated Fund (similar to the current arrangement under the Pensions Act).
- Pensionable Emoluments are proposed as basic salary and house allowance.
- Retirement age for Judges will be as defined in the Constitution of Kenya.
- On retirement, a Judge may commute up to $\frac{1}{4}$ of their pension using a uniform commutation factor of 20 with the balance of the pension (i.e. $\frac{3}{4}$) payable for the life of the Judge.
- On death in-service, a spouse's pension equivalent to 50% of the deceased Judge's accrued pension and children's pension of 12.5% of the deceased Judge's accrued pension is payable to each eligible child up to a maximum of four children. The spouse's and children's pensions are payable for five years only after the death of the Judge.
- On death in-service where a Judge has not completed the qualifying period of 10 years of service, a gratuity equal to one months' pensionable emoluments for each year of completed service is payable to their eligible spouse.
- On death in retirement, 50% of the deceased Judge's pension is payable to an eligible spouse and 12.5% of the deceased Judge's pension is payable to each eligible child up to a maximum of four eligible children. The spouse's and children's pensions are payable for five years only after the death of the Judge.
- A Judge who retires due to ill-health will receive an immediate pension calculated as for normal retirement but the pension shall not be less than 50% of the pension that the Judge

would have been entitled to had they retired at the Normal Retirement Age but based on their pensionable emoluments at the date of ill-health retirement.

- A Judge may request for voluntary early retirement at or after age 65 years and would be paid an unreduced pension calculated using the same formula as for normal retirement.
- A Judge who leaves office through voluntary resignation or otherwise before attaining early retirement age is entitled to a deferred pension payable from attainment of age 65 years.
- Qualifying period for a pension under the proposed Bill is 10 years. A Judge who retires with less than 10 years of service would be paid a gratuity of five times his accrued annual pension (as calculated using the formula 2.5% of pensionable emoluments for each year of pensionable service).
- Pension increases will be in line with Consumer Price Index ("CPI"), subject to a maximum of 5% per annum and a minimum of 1% p.a.
- On retirement from service at age 65 and above or due to ill-health, a Judge who has served for at least 10 years as a Judge will be entitled to:
 - Transport allowance equivalent to one seventh of monthly basic salary of the Judge at retirement multiplied by one hundred and twenty payable once up on retirement.
 - Health insurance cover for self and spouse for the life of the Judge at the same level as applies for serving Judges.
 - Diplomatic passport for self and spouse during the life of the Judge.
 - Access to Government VIP lounge at all airports within Kenya for self and spouse during the life of the Judge.

Defined Contribution (DC) Section (or "the Fund") – Set out in Part III of the Proposed Bill

- The DC Section will apply to Judges who are appointed to judgeship after the Bill becomes law.
- The benefits payable under the DC Section will be on a defined contribution basis. This means that the quantum of benefits for a member of this Section will depend on the level of contributions made by the member and on the members behalf by the Government and will also depend on the level of interest that is credited to those contributions.
- The Fund to be managed by a Board of Trustees.
- The Fund to comply with some Requirements of the Retirement Benefits Act including appointment of an Administrator, Fund Manager, Custodian and Auditor.
- The Government to meet the administrative expenditure of running the Fund for the first five years of its operations and thereafter the Fund to meet its own expenses.
- Pensionable Emoluments are proposed as basic salary and house allowance.
- Each Judge to contribute 7.5% of their Pensionable Emoluments. A Judge may make Additional Voluntary Contributions (AVCs)
- The Government to contribute for each Judge at the rate of 15% of the Judge's Pensionable Emoluments.
- In addition, the Government shall meet the cost of life insurance cover for the Judge while in service.

- Retirement age for Judges will be as defined in the Constitution of Kenya.
- On retirement, a Judge may commute up to 1/3 of their accumulated funds and the balance of the accumulated funds may be taken in the form of either an income drawdown arrangement or an annuity purchased from an insurance company.
- In the event of death of a Judge while in-service the benefits entitlements are payable to an eligible spouse and or children. If death occurs while the Judge is in retirement, then the benefits payable to the spouse and or children will depend on whether the Judge chose an income drawdown arrangement, or an annuity and the form of the annuity chosen.
- The benefits derived from all contributions made by and on behalf of a Judge to vest immediately the contributions are made.
- A Judge who withdraws from service other than on retirement may opt to be paid all his accumulated contributions and AVCs with the Government's contributions on his behalf deferred in the Fund to be accessed only on attaining retirement age.
- On retirement from service at age 65 and above a Judge will be entitled to:
 - Health insurance cover for self and spouse for the life of the Judge, at the same level as applies for serving Judges.
 - Diplomatic passport for self and spouse for the life of the Judge.
 - Access to Government VIP lounge at all airports within Kenya for self and spouse.

Judges Already Retired at Commencement Date

- A Judge who has already retired on the Commencement Date of the Act and who held office after 27 August 2010 and retired under Article 167 of the Constitution is entitled to:
 - Health insurance benefits for self and spouse for the life of the Judge at the same level as applies for serving Judges.
 - Diplomatic passport for self and spouse during the life of the Judge.
 - Access to Government VIP lounge at all airports within Kenya for self and spouse during the life of the Judge.

Accrued Benefits under the Pensions Act Cap 189

10. For a Judge who was already serving at the Commencement Date, the accrued benefits under the Pensions Act Cap 189 shall be payable under the proposed DB Section using the terms of the DB Section.
11. A Judge with prior public service and accrued benefits in other public schemes can opt to receive all their benefits under the DB Section or the Fund (as applicable) including benefits in respect of that prior service or retain their benefits in respect of the prior service in those prior schemes.
12. We note that Judges appointed from magistrates have benefits under the Judicial Service Staff Superannuation (DB) Scheme and or the DC Scheme. We further note that Judges can also be appointed from the private sector or other public service.
13. If a Judge had prior public service, the period of that service shall count as part of the qualifying period of service, provided that there was no break in service before appointment as a Judge. Under the Bill, such a Judge with an already funded public service pension may opt to surrender those benefits to the Consolidated Fund and instead have their entire public service used as pensionable service for the purposes of calculating their pension under the proposed DB Section.

14. We would like to point out that there is likely to be additional costs currently of unknown amounts under the DB Section in respect of Judges who opt to have their prior public service counted as pensionable service under the proposed DB Section. This is because the benefits accrued (whether funded or unfunded) for the prior service are likely to be inferior to the benefits under the proposed DB Section. A superior benefit costs more to provide. Such costs would be material if there are many Judges in future choosing this option.
15. For the purposes of comparison of the proposed benefits and those applying under the Pensions Act, we have determined the past service accrued benefits for Judges under the Pensions Act and the DB Section assuming that all prior public service for the current Judges counts as pensionable service under the DB Section. We have also quantified the cost impact of the prior public service. Further, in determining the past service accrued benefits under the Pensions Act, we have also taken into account the Pension (Increase) Act and allowed for pension increases of approximately 1.5% per annum.

Benefits under WCPS as established by the Widows' and Children's Act Cap 195

16. The WCPS is a contributory scheme by male members (and optional for females) for the provision of pensions to widows and children of deceased members. The benefits under the WCPS remain payable for the beneficiaries of male Judges who contributed to the scheme. The proposed Bill is silent on the applicability of the provisions of the WCPS to Judges. We have not provided any costings in respect of contributions benefits payable under the WCPS.

Comparison with the Pension Act Cap 189

17. The benefits proposed in Part II (the DB Section) of the Bill are broadly similar to the benefits provided under the Pensions Act, except for a few improvements to the benefits provided under the Pensions Act which include;
 - An improvement in the definition of pensionable emoluments which is defined in the proposed Bill as basic salary plus house allowance whereas the Pensions Act defines pensionable emoluments as basic salary only.
 - An increase in the rate of pension increases which in the proposed Bill will be line with CPI capped at 5% per annum and a floor of 1% per annum compared to an increase of 3% every two years under the Pensions (Increase) Act Cap 190.
 - The provision in the proposed Bill of a minimum pension on ill-health retirement of not less than 50% of the pension the retired Judge would have been paid if they retired at the normal retirement age. The Pensions Act does not have any such provisions on ill-health retirement although it provides for enhanced pension if retirement is as a result of injuries sustained while on duty.
 - On leaving service before retirement, the accrued pension or gratuity is a deferred pension to be paid on attainment of age 65 years. Under the Pensions Act, no benefits would be paid on leaving service.
 - The additional non-pension benefits which include a transport allowance paid once upon retirement, health insurance cover for retired Judges and their spouses, diplomatic passport, and access to Government VIP lounges at airports.
18. The pension benefits proposed in Part III (the DC Section or the Fund) of the Bill are of a defined contribution nature and are therefore not a direct comparison to the benefits provided under the Pensions Act. We have shown in this report a comparison of the pension benefits that a Judge may obtain from the DC Section to those that would be payable under the DB Section under broad assumptions.

Judges' Data

19. As at 30 June 2024, there were 201 Judges who were eligible to benefits under the Pensions Act Cap 189. This number excludes the Chief Justice and the Deputy Chief Justice whose benefits are provided under a separate Act of Parliament.
20. The total annual pensionable emoluments (basic salary plus house allowance) for the 201 Judges were **K Shs 1.564bn** as at 30 June 2024. The average age and the average past pensionable service (including all prior service) were 60.1 years and 15.9 years respectively.

Results of the Actuarial Costings of Pension Benefits under the DB Section

21. The table below summarises the results of our actuarial valuation:

	Total Past Service Liability (K Shs m)	Implied Contribution Rate for Future Liability as a % of Basic Salaries*
Accrued Past Service Liability under the Pensions Act	4,271.0	24.2%
Impact of House Allowance	576.3	3.4%
Impact of Pension Increases of 5% per annum	881.5	3.6%
Impact of Ill-Health Provisions	6.6	0.0%
Accrued Past Service Liability under the Proposed Bill	5,665.4	31.2%

* We have throughout this report expressed the contribution rates as a percentage of basic salaries for ease of comparison with the benefits and notional contribution under the Pensions Act which pays pension benefits based on basic salaries.

22. Our calculations show that the accrued past service liability under the Pensions Act is **K Shs 4.27bn** as at 30 June 2024, for all prior service up to that date. Considering only the future benefit accrual from the valuation date, our calculations show that the annual ongoing cost of pension benefits for Judges under the Pensions Act is approximately at **24.2%** of basic salaries. That is, the notional contribution that the Government would need to pay to meet the cost of benefits accruing under the Pensions Act to Judges after 30 June 2024 is estimated at 24.2% of Judges' basic salaries. In addition, the Government meets the cost of providing the death in service insurance cover for which a lumpsum benefit of a multiple of salary is payable to the beneficiaries on the death of a Judge.
23. The accrued past service liability under the proposed DB Section of the Bill is **K Shs 5.67bn** as at 30 June 2024, for all prior service up to that date. The proposed DB Section (which has improvements to the pension benefits under the Pensions Act) adds **K Shs 1.39bn** to the past service pension liability under the Pensions Act.
24. The accrued past service liability would reduce by any funding in respect of prior service, in respect of Judges who choose to transfer their prior funded service to the DB Section. As mentioned above, there is likely to be additional unquantified costs under the DB Section in respect of Judges who opt to transfer their prior service to become pensionable service under the proposed DB Section. This is because the DB Section has superior benefits and hence more costly than those schemes under which the prior service was accrued. The additional costs can only be quantified at the time a Judge makes the choice or at retirement.
25. The implied ongoing cost to the Government (notional contribution rate) increases to approximately **31.2%** of Judges' basic salaries to meet the cost of benefits accruing to Judges under the proposed DB Section of the Bill for service after 30 June 2024.
26. The increase in the past service liability is attributable to the improvements to the benefits under Pensions Act as follows; improvements in the definition of pensionable emoluments to include house allowance (K Shs 576.3m), pensions increases in line with CPI capped at 5% per annum

compared to 3% every two years under the Pensions (Increase) Act (K Shs 991.5m) and the provision of a minimum pension of 50% on ill-health retirement (K Shs 6.6m). The improved pension benefits cost an additional **7.0%** of Judges' basic salaries as a notional contribution rate.

27. The estimated Government's ongoing notional contribution rate as a percentage of Judges' basic salaries required to provide the post-retirement non-pension benefits (of health insurance cover for Judge and spouse and transport allowance) proposed in the Bill amounts to **10.2%** of Judges' annual basic salaries.

Projected Cash Outflow of Additional Benefits over those Payable under the Pensions Act

28. Based on the assumptions adopted, and the age profile of the current Judges including the 19 retired ones eligible for the additional proposed benefits, we show below the projections of additional benefits in the proposed DB Section on top of those payable under the Pensions Act.

K Shs Millions	2025	2026	2027	2028	2029	Total
No. of Judges Retiring	2	2	1	8	9	68
Commuted Lumpsum	6.8	9.5	5.9	38	42.8	103.0
Annual pension	1	2.5	3.5	9.3	16.1	32.4
Transport allowance	22.2	22.2	10.7	84.6	94.2	233.9
Medical premiums to current serving Judges as they retire	0.3	0.7	1	2.8	5.2	10.0
Medical premiums for 19 already retired Judges	2.9	3.1	3.2	3.3	3.5	16.0
Total	33.2	38	24.3	138	161.8	395.3

29. The projections show that over the next five years, the additional benefits in the proposed DB Section would be approximately K Shs 395m paid to 68 newly retired Judges and 19 already retired Judges over and above the benefits payable under the Pensions Act.

Benefits under the DC Section

30. For the Fund established in Part III of the proposed Bill, the Government is required to contribute 15% of Judges' pensionable emoluments. In addition, the Government will meet the cost of the death in service insurance cover for which a lumpsum benefit of a multiple of salary is payable to the beneficiaries on the death of a Judge.
31. At the current level of house allowance for Judges which is at an average of 14% of basic salaries, the 15% of pensionable emoluments contributions by the Government to the Fund is approximately equal to **17.1%** of Judges' basic salaries compared to **24.2%** of Judges' basic salaries notional contribution that would be expected under the Pensions Act. **Accordingly, the cost to the Government of pension benefits under the DC Section is expected to be lower than that under the Pensions Act.**
32. The estimated cost of providing the proposed post-retirement health insurance cover for Judge and spouse is estimated at **4.7%** of Judges' annual basic salaries.
33. From our projections, the total contributions of **22.5%** of a Judges' annual pensionable emoluments are expected to provide an adequate or reasonable pension for a judge serving for at least 20 years.

General Observations and Recommendations

34. We have made a number of general observations and recommendations as follows:

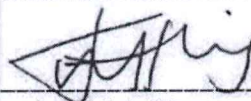
- The proposed proposed DB Section is to operate on an unfunded, PAYG, defined benefit basis similar to Judges' current benefits under the Pensions Act. The proposed DC Section will operate on a funded defined contribution basis. This arrangement is similar to the recent changes that were made to the benefits payable under the Pensions Act in respect other eligible Government employees. New employees of the Government effective 1 January 2021 join the Public Service Superannuation Scheme ("PSSS") which operates on a funded defined contribution basis. Employees aged below 45 on 1 January 2021 also joined the PSSS for benefits accrual effective that date. Employees aged 45 and above continued to accrue benefits under the Pensions Act. Therefore, the proposed Bill aligns to the recent Government policy of moving away from defined benefits PAYG pension arrangements to funded pension arrangements on a defined contribution basis.
- From our comparative study of the retirement benefits provided to Judges in other jurisdictions, we noted however that the benefits to Judges in all the sampled countries are provided on a defined benefits basis and in most cases the arrangements were non-contributory (i.e. the Judges were not required to contribute).
- We note that the DC Section is largely compliant with the Treasury Circular No. 18 of 2010 and Circular No. 9 of 2024 which set out broad guidelines for public sector pension schemes.
- The Bill does not expressly define the Final Pensionable Emoluments. It may imply that the Final Pensionable Emoluments are those that are paid in the last month of service multiplied by 12, or the total salary paid over the last 12 months of service. We would recommend that this be expressly defined for avoidance of doubt.
- The Bill is silent on whether the WCPS will continue to apply for Judges in either DB or the DC Sections. We recommend that this be made clear.
- The Bill is silent on whether the the benefits payable under the proposed Bill will comply with requirements of the Income Tax Act, Rules and Regulations. We recommend that this be clearly spelt out in the Bill.

Acknowledgements

35. We would like to thank the Chairman and the members of the Judges' Retirement Benefits Taskforce, the Office of the Chief Registrar of the Judiciary, the Judiciary's Director of Human Resources & Administration and the Department of Pensions for all the help they have given us in obtaining the necessary information required for the actuarial study.

We would be pleased to answer any questions and discuss the contents of this report.

For and on behalf of
Zamara Actuaries, Administrators & Consultants Limited



Jeremiah Njeru
Fellow of the Institute of Actuaries

March 2025

A-K367-123455

1. Introduction

- 1.1 In accordance with instructions, we have carried out an actuarial study on the design and viability of the proposed Judges' Retirement Benefits Scheme ("the Scheme") and are pleased to present our findings in this report. The proposed Scheme is the subject of the Judges' Retirement Benefits Bill, 2025 ("the Bill") to be tabled before Parliament in due course.
- 1.2 Currently, the retirement benefits for Judges in Kenya are governed by the provisions of the Pensions Act Cap 189 ("the Pensions Act"), Widows' and Children's Pensions Act Cap 195 and Pension (Increase) Act Cap 190. The WCPS is a contributory scheme by male members (and optional for female members) for the provision of pensions to widows and children of deceased members. In this report, we have not made any costings or valuations of benefits under the WCPS. The Pensions (Increase) Act provides for 3% increases to pensions every two years effective 1 July 2005 for benefits under the Pensions Act.
- 1.3 Currently, Judges participate in the public service pension scheme and their retirement benefits are thus identical to those of other civil servants and public service employees in Kenya.
- 1.4 A comparative study of the retirement benefits provided to Judges in some selected countries show that given their status, Judges in the countries enjoyed slightly more favourable retirement benefits than the mainstream civil servants in those countries and all other things being equal, the overall retirement benefits in the countries surveyed for Judges were higher than those currently applying in Kenya. Further, in some of the countries surveyed, Judges enjoy additional non-pensionable benefits on retirement. There could therefore be a case for improving the retirement benefits package for Judges.
- 1.5 The Bill proposes to establish a retirement benefits arrangement with two Sections; one, the Defined Benefit (DB) Section established in Part II of the proposed Bill, applying to Judges who will be in service when the Bill comes into force and the Defined Contribution (DC) Section, established in Part III applying to Judges who will be employed after the Bill becomes law.
- 1.6 The proposed DB Section will operate on defined benefit basis with benefits at retirement dependent on the Judge's final salary at retirement and pensionable service. It will be non-contributory (i.e., Judges will not make contributions) and will operate on a Pay As You Go ("PAYG") basis with no pre-funding of benefits. Benefits payable under the Scheme will be met from the Consolidated Fund.
- 1.7 On the other hand, the proposed DC Section will operate on a defined contribution basis with benefits at retirement dependent on the accumulated contributions paid by the Judge and those paid by the Government on behalf of the Judge and the interest earned when those contributions are invested.
- 1.8 The proposed Scheme does not apply to the Chief Justice and the Deputy Chief Justice, whose retirement benefits are provided under a separate Act of Parliament.
- 1.9 The Bill proposes to provide other non-pension benefits including some to the already retired Judges who retired after 27 August 2010 under the new Constitution dispensation. The Scheme will be sponsored by the Government as the employer of Judges.

Purposes of this Actuarial Study

- 1.10 The purposes of this actuarial study are to:
 - i) Review the proposed Bill and comment on the structure and level of benefits suggested in the Bill;
 - ii) Analyse the data in respect of the current serving Judges;

- iii) Determine the value of accrued benefits in respect of serving Judges for service completed under the Pensions Act;
- iv) Carry out an actuarial valuation of the benefits under the proposed Bill;
- v) Advise on the expected costs to the Government of the benefits proposed in the Bill;
- vi) Advise on appropriate rates of contributions to finance the benefits proposed in the Bill;
- vii) Comment on the viability and adequacy of the contribution rates proposed under the the DC Section of the proposed Scheme.
- viii) Carry out a comparative study of retirement benefits for Judges in select countries.

1.11 This report is addressed to the Taskforce. It is prepared in the knowledge that it may also be of relevance to the National Treasury and to Parliament where the Bill will be tabled for debate.

Previous Actuarial Studies

1.12 The last actuarial study in respect of the Judges' retirement benefits was carried out in 2014. The main purpose of that study was to advise on the actuarial costs of the then proposed Scheme that was the subject of the Judges' Retirement Benefits Bill, 2014. Our report on that actuarial study is dated February 2015. We also prepared a report in May 2024 in respect of the actuarial costings of benefits in the then proposed Judges Retirement Bill, 2024 which has given way to the current proposed Bill.

Reliances

1.13 In preparing this report, we have relied extensively on a substantial body of information and data supplied by the Registrar of the Judiciary and the Judiciary's Director of Human Resource & Administration. This includes information both published and unpublished, together with information received orally.

1.14 Full and independent verification of all the information provided has not been possible. We have, however, reviewed most of the items of the data submitted for reasonableness, consistency and completeness.

1.15 We have also carried out detailed actuarial and other checks that we deemed necessary in order to ascertain the accuracy and completeness of the individual data we were provided with for our actuarial calculations.

1.16 Our analysis and conclusions in this report are based on the data and information that we were provided with. We have, however, made such assumptions and adjustments to the data provided as we deemed appropriate.

Limitations

1.17 We have prepared this report in accordance with Terms of Reference agreed with the Taskforce. It should not be regarded as suitable for use by any other persons or for any other purpose.

1.18 This report may not be relied upon in whole or in part to/by any person other than the Taskforce or quoted in any other context without our prior written consent. This report may not be disclosed or provided to any other party unless they have a statutory right to it without our prior written consent. Any person, other than the Taskforce to whom this report is addressed, who receives a draft or copy of this report (or any part of it) or discusses it (or any part of it) or any related matter with us or any third party, does so on the basis that they acknowledge the source of this report and accept that they may not rely on it for any purpose whatsoever and that we owe a duty of care only to the Taskforce as the case may be. Any

portion of this report, if reproduced or transmitted, must include a reference to the full report and to this clause.

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- 1.21 We must stress that we are legal laymen and appropriate legal advice must be gotten before action is taken on any matters raised in this report.

2. Proposed Scheme Benefits and Contributions

Current Pension Benefits

- 2.1 As stated in 1.2 above, currently, Judges' retirement benefits are the same as those that apply for the civil servants under the Pensions Act Cap 189, Widows and Children Pensions Act Cap 195 which establishes the Widows' and Children's Pensions Scheme ("WCPS") and Pensions (Increase) Act Cap 190.
- 2.2 The WCPS is a contributory scheme by male members only for the provision of pensions to widows and children of deceased male members. We have not valued these benefits.
- 2.3 The Pensions (Increase) Act provides for 3% increases to pensions every two years effective 1 July 2005. In determining the past service accrued benefits under the Pensions Act, we have taken into account the provisions of this Act and allowed for pension increases of approximately 1.5% per annum.
- 2.4 We provide in this section a brief summary of the benefits proposed under the Bill and compare these with the current benefits under the Pensions Act. We have also made appropriate comments where necessary.

Type of Retirement Arrangement

- 2.5 The Scheme is being set up through an Act of Parliament. The proposed Scheme will be hybrid with both DB and DC Sections.
- 2.6 The proposed DB Section, set out I Part II of the Bill will operate on a defined benefit basis. That is, the benefits for a member will be dependent on a formula which takes account of pensionable service and pensionable emoluments at retirement. Hence, there is no fundamental difference between the structure of the DB Section and the benefits provided in the Pensions Act.
- 2.7 The Government policy on retirement has shifted away from benefit provision on a defined benefit basis to provision on a defined contribution basis. The new Public Service Superannuation Scheme ("PSSS") established by the Public Service Superannuation Scheme Bill 2011 provides benefits to civil servants on a defined contribution basis. The Bill was effective from January 2021, but we note that Judges are exempt from the PSSS. The DC Section, set out in Part III of the Bill, will apply to Judges appointed after the Bill becomes law. The DC Section is compliant with the current Government policy on pensions.

Eligibility

- 2.8 The proposed DB Section will apply to Judges serving on or before the Bill is enacted. The proposed CB Section will apply to Judges appointed after the Bill is enacted

Pensionable Service

- 2.9 Under the DB Section, for the purposes of computing pension benefits, pensionable service is taken to be the completed months of service as a Judge including prior public service, provided that there was no break in service on appointment as a Judge. For the DC Section, service commences on appointment as a Judge.

Qualifying Service

- 2.10 The qualifying service (i.e. the minimum service) proposed under the DB Section in order to qualify for benefits is 10 years. This is the same as in the Pensions Act. The Bill proposes that if a Judge retires after having completed less than the minimum service of 10 years, a lumpsum gratuity be paid of five times the annual pension that would have otherwise been payable. This benefit is also similar to that provided under the Pensions Act.
- 2.11 The provision for the completion of a minimum period of service in order to qualify for a pension is quite common in some of the countries we surveyed as part of the comparative study, typically 10 to 15 years. A minority of the countries, however, do not require Judges to have completed a minimum service period.
- 2.12 Under the DC Section, benefits are derived from contributions and they vest immediately.

Pensionable Emoluments

- 2.13 Pensionable emoluments under the Bill (for both DB and DC Sections) are defined as basic salary plus house allowance payable to a Judge. This new definition is an improvement on the pension benefits payable under the Pensions Act and is more in line with the pensionable salaries used to calculate pensions for Judges in some of the countries that we surveyed.
- 2.14 Under the Pensions Act, the definition of pensionable emoluments is basic salary **excluding all allowances**. The current level of house allowance for Judges based on the data that we were provided with and which we analyzed is approximately 14% of basic salaries on average.
- 2.15 We have also noted that this new definition is still less generous compared to the pensionable salaries used to calculate pensions for Judges in some of the countries for which we have carried out a comparative study. Some countries such as Uganda, Tanzania, Nigeria, Zambia and Barbados use consolidated or gross salaries, for the purposes of computing pension benefits for retiring Judges while other countries such as South Africa include certain allowances in the computation of benefits. Section 3 of this report sets out the key findings of our comparative study of the benefits provided to Judges in select countries.
- 2.16 The comparative study also included an analysis of the comparative level of salaries paid to Judges in other jurisdictions where the information was available. Judges in more developed countries than Kenya such as South Africa, Barbados and Canada earned relatively higher salaries in absolute terms as compared to Kenya, although the comparison does not include an adjustment for the relative cost of living in those countries.

Final Pensionable Emoluments

- 2.17 The definition of Final Pensionable Emoluments is relevant only for the DB Section. We note that the Bill does not expressly define the Final Pensionable Emoluments. It may imply that the Final Pensionable Emoluments are those that are paid in the last month of service multiplied by 12, or the total salary paid over the last 12 months of service. We would recommend that this be expressly defined for avoidance of doubt and disputes. In our calculations, we have taken the final pensionable emoluments to be the salary earned by a Judge in the last twelve months of service.

Benefits on Normal Retirement

- 2.18 Under the Pensions Act, the benefit on normal retirement is a pension payable for life which is calculated as 2.5% of Final Pensionable Emoluments for each year of pensionable service. The maximum pension is limited to 100% of Final Pensionable Salary. The Bill proposes the same benefit as under Pensions Act for the DB Section.
- 2.19 The accrual rate of 2.5% targets a pension of 100% of final salary after working for 40 years. Given the higher retirement ages for Judges, it is within reach for majority of Judges to retire

at the age of 70 with 40 or more years of service and hence take home a 100% of final salary. The accrual rate of 2.5% is therefore reasonable by most standards.

- 2.20 For the DC Section, the pension on retirement is based on the accumulated contributions including interest income on those contributions. The accumulated amount is taken gradually for the rest of a Judge's life in the form of an income drawdown or used to purchase an annuity from an insurance company chosen by the Judge. The form of the income drawdown or annuity chosen will also determine the quantum of the monthly annuity amount.

Commutation of Pension

- 2.21 Under both the proposed DB Section and the Pensions Act, one may opt to commute (convert) up to $\frac{1}{4}$ of their pension for a cash lump sum on retirement. For every K Shs 1 of annual pension commuted, K Shs 20 is paid in cash. The balance of the pension (i.e., $\frac{3}{4}$) must be paid as a monthly income for life.
- 2.22 We understand that the commutation factor of 20 under the Pensions Act is historical and has been retained under the Bill. However, this factor is in our opinion very generous. In many schemes across the world, commutation as an option is designed to provide a cash benefit that is actuarially of the same value as the pension given up.
- 2.23 An actuarially neutral commutation factor would be reflective of the future life expectancy at retirement, expected pension increases and the expected long-term interest rates. Based on the actuarial assumptions described later in this report, we would expect an actuarially neutral factor to be in the region of 9 to 12 at the age of 70.
- 2.24 Under the DC Section, a Judge may opt to take up to $\frac{1}{3}$ rd of the accumulated contributions plus interest as a lumpsum with the balance of $\frac{2}{3}$ rds applied to secure an income drawdown or an annuity from the insurance market.

Benefits on Early Retirement

- 2.25 The Bill proposes voluntary early retirement to be permissible from age 65 years for both DB and DC Sections. The benefits payable on early retirement are proposed to be calculated in the same way as for normal retirement including the commutation of pension. The Pensions Act has a similar provision on early retirement.
- 2.26 It is particularly worth noting that the Bill does not provide for the pension under the DB Section to be reduced for early payment. An early pension is expected to be paid for a longer period and hence is actuarially reduced if the desire is to maintain cost neutrality between providing pensions to those who retire at the normal retirement age and those who retire early. Under a define contribution plan, an early pension is inherently automatically reduced.

Benefits on Ill Health Retirement

- 2.27 Under the Pensions Act, a pension is calculated as for normal retirement in the case of a Judge retiring early due to ill health. Additional benefits are payable if the injuries leading to early retirement are sustained in the actual discharge of duty.
- 2.28 For the DB Section, the Bill proposes the same benefit as under Pensions Act but with the enhancement that a Judge who retires due to ill-health will receive a pension that is not less than 50% of the pension that the Judge would have been entitled to had they served until the normal retirement age, based on their pensionable emoluments at the date of ill-health retirement.
- 2.29 The provision of the minimum pension is an improvement that would enhance the benefit entitlement for Judges who may retire due to incapacity after working for less than 20 years. This clause has no effect for a Judge who has more than 20 years of service as they would already have accrued at least 50% of the full pension payable at the normal retirement age.

- 2.30 Under the DC Section, pension on ill-health retirement is determined same way as for normal retirement being what can be afforded out of the accumulated contributions.

Death Benefits

- 2.31 Under the Pensions Act, a lumpsum of two times the annual pensionable emoluments is payable to the beneficiaries of an employee who dies in service. A spouse and children pension are also payable but only for 5 years after the death of the Judge. Under the Widows and Children Act Cap 195 which establishes the WCPS, the dependants' pension may be payable for life to the spouses and up to age 25 years for children of male members who contributed. In this valuation, we have not valued the benefits under the WCPS. An insured lumpsum of multiple salary is also payable to beneficiaries on the death of a Judge. The multiple is determined by the Government for time to time and the insurance premiums are met by the Government.
- 2.32 The DB section of Bill proposes that where a deceased Judge had 10 or more years of service, a pension to the spouse equal to 50% of the pension that would have been payable to the Judge had they retired on the day of their death is payable for five years only. In addition, children's pensions of 12.5% of the pension that would have been payable to the Judge are payable for 5 years for a maximum of four eligible children. The children's benefits are doubled in case the deceased Judge left no eligible spouse.
- 2.33 Benefits payable to the beneficiaries of a Judge under the DC Section will be based on the accumulated contributions and interest that had accrued to the Judge on death.
- 2.34 For Judges in both DB and DC sections, we understand that insured lumpsum benefits of a multiple of salary would be payable to a deceased Judge's dependants, in addition to the pension benefits, although these benefits will be provided under a separate group life insurance cover at a level chosen by the Government from time to time.
- 2.35 Under the DB Section, on death in retirement, 50% of the pension the Judge was earning on death would continue to be paid to the Judge's spouse for a period of 5 years. In addition, a child's pension of 12.5% of the pension that was being paid to the Judge is payable for 5 years for a maximum of 4 eligible children. The children's benefits are doubled in case the deceased Judge left no eligible spouse.
- 2.36 Under the DC Section, the form and the level of benefits to the beneficiaries of judge who dies after retirement depend on the on balance in the income draw down or the annuity chosen by the Judge on retirement. There are various types of annuities and we recommend that Judges be taken through educational sessions prior to retirement so that they can chose the annuities suitable to their circumstances.

Benefits on Withdrawal

- 2.37 Under the Pensions Act, no benefits are payable in the case of voluntary resignation or dismissal.
- 2.38 However, in a judgment dated 06 April 2018 by the Employment and Labor relations Court ("ELRC") on the Case No. 1001 of 2014, the Court ruled that retirement benefits are inalienable irrespective of the mode of leaving service. The ELRC pronounced that denying a person their accrued pension is a violation of Articles 40(1) and 40(2) of the Constitution of Kenya 2010.
- 2.39 Based on that ruling, the Chairperson of the Public Service Commission in a memorandum dated 21 October 2022 addressed to "All Authorized Officers", concluded by ordering that "*You are directed to inform officers exiting service of their rights to terminal accrued benefits irrespective of the modality of exit.*"
- 2.40 We note that under the proposed DB Section, benefits are payable on withdrawal. A Judge who

leaves office through voluntary resignation or dismissal before attaining early retirement age would be entitled to the accrued pension but it is payable upon the Judge attaining the age of 65 years.

- 2.41 Under the DC Section, on withdrawal from service before retirement age, a Judge may opt to be paid their own accumulated contributions with interest. The contributions made by the Government on their behalf are retained until the judge attains age 65.

Increases to Pensions in Payment

- 2.42 A desirable feature of a retirement benefit arrangement would be for pensions once in payment to be indexed to a measure of cost of living since by doing so, a pensioner's standard of living in retirement would be maintained in terms of purchasing power.
- 2.43 The DB Section of the Bill proposes that the pension payable to a retired Judge age be increased in line with Consumer Price Index ("CPI") subject to a cap of 5% per annum and a floor of 1% per annum.
- 2.44 Currently, pensions payable under the Pensions Act are increased at a guaranteed rate of 3% every 2 years commencing 1 July 2005 in line with the Pensions Increases Act (Cap 190) i.e., a pension increase of approximately 1.5% per annum.
- 2.45 It is important to appreciate the proposed improvement in the pension increase provision. Allowing the pension increases to be indexed to CPI ensures that a pensioner's standard of living in retirement would be maintained in terms of purchasing power. However, providing pension increases is relatively expensive. Hence the proposed Bill caps the Government's cost by imposing a cap of 5% per annum to increases on pensions. We show in Appendix D to this report the impact on the accrued past service liability of the rate of pension increases.
- 2.46 Under the DC Section, members shall use their accumulated contributions to provide a drawdown income or purchase an annuity from an insurer of choice. The income drawdown facility or the annuity may be structured to provide various levels of increases. The Judge will be at liberty to choose the level of increases that they desire or can afford. We reiterate that Judges be given information in good time to enable them make the right decisions at retirement with regard to the form of annuities and income drawdown suitable for their circumstances at retirement. Judges may need to be advised to seek the services of a financial consultant before making decisions on their benefits.

Contributions

- 2.47 The proposed DB Section is non-contributory i.e. Judges will not make contributions. Given that the proposed Scheme will operate on a Pay As You Go ("PAYG") basis, the Government's contributions to meet the benefits payable to Judges and their beneficiaries will be notional and will be met from the Consolidated Fund.
- 2.48 This is similar to the Pensions Act where currently Judges are not required to make contributions to finance their benefits. Benefits under the Pensions Act are unfunded and are met on Pay As You Go ("PAYG") basis with benefits to retired employees and beneficiaries of those who die being met from the Government's Consolidated Fund.
- 2.49 The Government policy has shifted in favour of contributory funded schemes. The DC Section complies with this shift in policy. Judges will contribute to the Fund 7.5% of their pensionable emoluments and the Government will contribute 15% of Judges' pensionable emoluments.

Additional Non-Pension Benefits

- 2.50 The Bill proposes a retiring Judge under the DB Section who has completed 10 years qualifying service to enjoy the following additional benefits payable from the Consolidated Fund:
- A transport allowance equal to one-seventh of the Judges monthly basic salary at retirement multiplied by one hundred and twenty and payable once at retirement.
 - Health insurance benefits for self and spouse for the life of the Judge;
 - Diplomatic passport for self and spouse for the life of the Judge; and
 - Access to Government VIP lounge at all airports within Kenya for self and spouse for the life of the Judge.
- 2.51 The Bill proposes a retiring Judge under the DC Section irrespective of service completed at retirement to enjoy the following additional benefits payable from the Consolidated Fund:
- Health insurance benefits for self and spouse for the life of the Judge;
 - Diplomatic passport for self and spouse for the life of the Judge; and
 - Access to Government VIP lounge at all airports within Kenya for self and spouse for the life of the Judge.
- 2.52 The Bill further proposes the following additional benefits payable from the Consolidated Fund for retired Judges who held office after 27 August 2010 and retired under Article 167 of the Constitution:
- Health insurance benefits for self and spouse for the life of the Judge;
 - Diplomatic passport for self and spouse for the life of the Judge; and
 - Access to Government VIP lounge at all airports within Kenya for self and spouse for the life of the Judge.
- 2.53 The proposed non-pension benefits are similar to those enjoyed in some of the countries surveyed in our comparative study.
- 2.54 We have carried out calculations to estimate the cost to the Government of providing some of the benefits summarized above and set out the results of our calculations in Section 6 of this report.

Taxation of Benefits

- 2.55 The Bill has not explicitly provided for the tax treatment of the retirement benefits for Judges. Effective 27 December 2024, pension benefits for a retired Kenyans are now tax free. Benefits taken before retirement are tax free also if accessed after at least 20 years of membership in a pension plan. Taxation of retirement benefits is however subject to changes from time to time.

Compliance with the NSSF Act 2013

- 2.56 We note that Section 30 of the Bill exempts members of the Scheme from the NSSF Act 2013.

Summarized Comparison of the Proposed Scheme and the Pensions Act

- 2.57 The table below shows a summary comparison of the proposed Scheme and the Pensions Act as it applies to Judges.

Parameter	Proposed DC Section	Proposed DB Section	Pensions Act Cap 189
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Type of Scheme	Defined Contribution (DC)	Defined Benefit (DB)	Defined Benefit (DB)
	Set up through an Act of Parliament	Set up through an Act of Parliament	Set up through an Act of Parliament
Normal Retirement Age	70 years	70 years	70 years
Early Retirement Age	65 years	65 years	Not defined for judges
Pensionable Salary	Basic salary plus house allowance	Basic salary plus house allowance	Basic salary
Contributions by Members	7.5% (i.e. contributory)	0% (i.e. non-contributory)	0% (i.e., non-contributory)
Contributions by Government	15.0% plus setup costs for first five years	Government to meet entire cost on a PAYG basis (approximately 31.2% of Judges' basic salaries)	Government meets entire cost on a PAYG basis (approximately 24.2% of Judges' basic salaries)
Benefit on Retirement	A annuity or income drawdown that can be afforded by the accumulated contributions including interest	A pension calculated as 2.5% of Final Salary for each year of Pensionable Service	A pension calculated as 2.5% of Final Salary for each year of Pensionable Service
Commutation at Retirement	Up to 1/3 rd of accumulated contributions with interest may be taken as a cash lumpsum	¼ of pension may be commuted with K Shs 20 of cash payable for each shilling of pension commuted	¼ of pension may be commuted with K Shs 20 of cash payable for each shilling of pension commuted
Death in Service Benefit	Insured lumpsum plus Accumulated contributions with interest to be paid to beneficiaries	Insured lumpsum plus Accrued pension paid (at 50% to spouse and 12.5% per child up to four children) for a period of 5 years	Insured lumpsum plus Accrued pension paid (at 50% to spouse and 12.5% per child up to four children) for a period of 5 years
Vesting	Immediate	Vesting after 10 years of service	Vesting after 10 years of service
Withdrawal Benefits	Own contributions plus interest payable immediately but Government's contribution payable from age 65	Accrued pension but payable from age 65	No benefits on withdrawal
Ill-Health Retirement Benefits	A annuity or income drawdown that can be afforded by the accumulated contributions including interest	Pension calculated as for normal retirement but to be not less than 50% of the pension that the Judge would have been entitled to had they retired at the normal retirement age but based on their pensionable emoluments at the date of ill-health retirement	Pension calculated similar to normal retirement based on pensionable service and pensionable emoluments at the date of ill-health retirement. Pension further augmented if causative injuries sustained on duty.
Pension Increases	Judge to choose what is suitable for them	In line with Consumer Price Index subject to a maximum of 5% p.a	3% every 2 years in line with the Pensions (Increases) Act Cap 190

		and a minimum of 1%p.a.	
Administration Expenses	Met by Government for first five years, subsequently by the Fund	Met by Government	Met by Government
Additional Non-Pension Benefits (Judge & spouse)	<ul style="list-style-type: none"> • Post retirement health cover • Diplomatic passports • Access to GoK VIP lounges at airports 	<ul style="list-style-type: none"> • Lumpsum transport allowance • Post retirement health cover • Diplomatic passports • Access to GoK VIP lounges at airports 	None

3. Comparative Study of Retirement Benefits

- 3.1 The Taskforce provided us with a report of their desktop research on the retirement benefits payable to Judges in eight other countries and a summary is shown in Appendix E to this report. Our review of the features of the retirement benefits for Judges in those countries and the key inferences are set out below.
- 3.2 We must emphasize that the quantum of salary on which the pension is calculated is also relevant. Some salary information has been availed for some of the countries surveyed and we have incorporated this in our comparisons.
- 3.3 All the countries in the research are part of the Organization for Economic Co-operation and Development ("OECD") and include Barbados, Botswana, Canada, Nigeria, South Africa, Tanzania, Uganda and Zambia.
- 3.4 The information that was used in the research and which we have also adopted for the purposes of this report is listed below;

Kenya

The Pensions Act Cap 189
Widows and Children Pensions Act Cap 195 ("WCPS")
Pensions (Increase) Act Cap 190

Barbados

Judges Remuneration and Pensions 1969-39

Botswana

Judges' Pensions Act 2007

Canada

Judges Act 1985

Nigeria

Pensions Reform Act
Pension Rights of Judges Act and the Federal Judicial Officers (Administration of Pension) Act

South Africa

Judges Remuneration and Conditions of Employments Act No 47 of 2001

Tanzania

Judges (Remuneration and Terminal Benefits) Act 2007
Public Service Retirement Benefits Act 1999 and Regulations

Uganda

The Administration of the Judiciary Act 2020

Zambia

Judges (Conditions of Service) Act 1996

Treatment of Retirement Benefits for Judges vis-à-vis other Public Service Employees

Source and Nature of Benefits

- 3.5 We noted that in each of the countries, the benefits are provided by an Act of Parliament.
- 3.6 The benefits in all of the sampled countries are on a defined benefits basis which means the benefits have a direct relation to the salary at retirement.

- 3.7 In Tanzania, Uganda and Zambia, the retirement benefit is a defined percentage of salary irrespective of service completed. In Nigeria and Botswana, the retirement benefit is a defined percentage of salary irrespective of service completed provided a minimum of fifteen years of service has been completed.
- 3.8 In Kenya, South Africa, Barbados and Canada the benefit is dependent on the years of service completed with the benefit formula expressing the pension payable as a percentage of salary for each year of service.

Retirement Age

- 3.9 The retirement age for Judges in most of the countries surveyed including Kenya, Botswana, Zambia, South Africa and Canada is 70 years.
- 3.10 Tanzania has the lowest retirement age for Judges at 60 years.
- 3.11 In other countries like Uganda, Nigeria and Barbados, the retirement age for Judges is dependent on the hierarchy of the Court the Judge is serving in, with a retirement age of 70 years for Judges in the Supreme Court and/or Court of Appeal and a retirement age of 65 years for Judges of the High Court.

Pensionable Emoluments

- 3.12 The constituents of the salary on which pension is calculated was not explicitly defined and hence difficult to compare for all the countries.
- 3.13 In Kenya, under the Pensions Act, salary for pension purposes is defined as basic salary excluding all allowances. In countries like South Africa and Zambia, additional allowances such as housing and transport are included in the pensionable emoluments used to determine pension benefits. In countries such as Tanzania and Barbados, pension benefits are based on salary inclusive of all allowances. In Uganda and Nigeria consolidated salary is used for the purposes of determining pension benefits.
- 3.14 An analysis of the comparative level of salaries paid to Judges was carried out for the countries where the information was available. We detail in Appendix F the salaries that we used for the comparison.
- 3.15 Overall, Judges in countries more developed than Kenya such as South Africa, Barbados and Canada earned relatively higher salaries in absolute terms as compared to Kenya, although the comparison does not include an adjustment for the relative cost of living in those countries.
- 3.16 The salaries for Judges in Kenya are higher than those for Judges in Tanzania, Uganda and Botswana.
- 3.17 The significance of the absolute amount of salary is that whereas in one country a retired Judge may get a pension equal to 100% of their gross salary, it might still be lower in absolute terms compared to their contemporary in another country with a pension of 80% of basic salary.
- 3.18 That said however, a key concept in retirement is that of Net Replacement Ratio ("NRR"). This is the ratio of net after tax income after retirement compared to net after tax income before retirement. It measures the standard of living after retirement relative to that before retirement. The target NRR after a full career of over 35-40 years is thought to be above 67% i.e., to replace at least two-thirds of salary before retirement or pension should be at least two thirds of salary at retirement.

- 3.19 The standards of living of a Judge are dependent on their salary and the economy of their country. Pension benefits aims to maintain to some extent those standards after retirement. It could be argued that the level of absolute salaries should have lesser weight than the NRR when comparing the level of pension benefits across the various countries.

Minimum Qualifying Period for Entitlement to Pension

- 3.20 The legislation in Kenya, Barbados, Botswana, Canada, Nigeria and South Africa provides for the completion of a minimum number of years of service to qualify for a pension (typically ten to fifteen years). No minimum service period is required to qualify for a pension in Uganda, Tanzania or Zambia.

Retirement Pension as a Proportion of Final Salary

- 3.21 The formula in the Pensions Act in Kenya of a pension of 2.5% of final salary for each year worked translates to a pension of 100% of final salary after a period of 40 (or more) years of service. A Judge retiring with 20, 27, 30 or 32 years of service will get a pension equal to 50%, 67%, 75% and 80% of final salary respectively.
- 3.22 Botswana provides a pension equivalent to 80% of final pensionable salary provided 15 years of pensionable service has been completed.
- 3.23 Tanzania, Uganda and Zambia also provide a pension equal to 80% of salary, although in these countries, the benefit is payable irrespective of service completed.
- 3.24 Nigeria provides a pension of 100% of salary provided the Judge has held office for at least 15 years. South Africa also provides a pension equal to 100% of salary provided the Judge has more than 20 years of service and a pension of 80% of salary for Judges with service greater than 15 years.
- 3.25 Canada provides a pension equal to 67% of salary for Judges who have completed 10 years of service. Barbados also provides a pension of 67% of pensionable salary if a Judge retires after the age of 55 years and a pension of 100% of pensionable salary if a Judge retires after the age of 65 years or has completed 20 years of service.
- 3.26 In all the eight countries, a Judge would retire with a pension of at least 67% of their final salary after serving for 15 years. It is not clear from the legislation of the other countries surveyed but we take this to mean 15 years of service as a Judge. It is notable that in Tanzania, Uganda and Zambia no minimum service is required for award of pension to a Judge. However, in Kenya, a Judge would need to serve for relatively longer, at least 27 years to retire with a pension that is at least 67% of their final salary. It is important to note that the 27 years in the Kenya case is total service including service as a Judge and prior public service.

Lumpsum Payment/Gratuity Payment on Retirement

- 3.27 In Kenya, Judges may on retirement opt to convert up to 25% of their pension for a cash lump sum using relatively generous commutation (conversion) terms of K Shs 20 for each K Shs 1 of annual pension commuted (i.e. given up for cash). The factor of 20 is relatively generous and is quite valued by Kenyan Judges. In comparison, Judges in Barbados may on retirement opt to convert up to 25% of their pension for a cash lump sum using a commutation factor of 12.5. Hence, in Kenya, the lump sum benefit that Judges get at retirement is 5 times their annual pension before commutation while in Barbados the lump sum is 3.125 times their annual pension before commutation.
- 3.28 For comparison purposes, an actuarially neutral commutation factor at age 70 would be approximately 8 to 11 depending on life expectancy and interest rates in the economy. An actuarially neutral factor would give a lumpsum that is equivalent in value to the pension commuted. Hence the factor in Barbados is generous but that in Kenya more so.

- 3.29 In other jurisdictions such as Uganda, Botswana, Zambia and South Africa, a one-off lump sum is payable to Judges on top of the retirement pension. Hence, the Judges in these countries get 100% of their annual pension plus a lumpsum amount. The lump sum is often calculated as a multiple of salary. For instance, in Uganda, Judges get an additional lump sum benefit equal to 2.4% of a Judge's salary multiplied by 5 multiplied by the number of years of pensionable service, in Botswana 2 times a Judge's salary, in Zambia 5 times a Judge's salary and in South Africa 2 times a Judge's salary multiplied by the number of years of pensionable service divided by 15.

Contributions

- 3.30 Majority of the countries surveyed do not require their Judges to contribute to the cost of their retirement benefits. However, Judges in Zambia and Canada are required to contribute 7.25% and 6.0% of their salaries respectively towards their retirement benefits.

Resignation or Removal

- 3.31 In Kenya, no benefit is typically payable on resignation or removal from office. Similarly, in Uganda, if a Judge is removed from office, they do not qualify to receive retirement benefits.
- 3.32 In Tanzania, the Judge is paid terminal benefits on removal from office. In Botswana and South Africa, the legislation provides that a pension of 80% of salary is payable provided the Judge had served for more than 15 years at the time of their resignation. Similarly in Canada, an annual pension equal to 67% of salary is payable at the time of the Judge's removal from office or resignation.
- 3.33 In Zambia, if a Judge is removed from office, a refund of the Judges contributions plus interest is payable. In the case that the Judge resigns, a gratuity of a multiple of the basic salary is payable in addition to a return of the Judge's contributions with interest.

Death Benefits

- 3.34 In each of the countries surveyed, spouses and dependant's pensions are payable. The spouse's/dependant's pensions in Kenya (Pensions Act) and Uganda are only paid for a limited period after death (5 years in Kenya and 15 years in Uganda). In Kenya, a spouse's pension of 50% and a child's pension of 12.5% of the deceased Judge's pension is payable. In Kenya, however, additional widows and children's pensions may be payable under the WCPS.
- 3.35 In Botswana, South Africa and Barbados, a spouse's pension of 67% of the deceased Judge's accrued pension is payable on death in service and retirement. Zambia and Canada provide a spouse's pension of 50% of the benefits the deceased Judge would have been entitled to.
- 3.36 In Tanzania, a grant equal to the pension which would have been paid shall be paid into the estate of the Judge.
- 3.37 In some of the countries, a one off lumpsum benefit is also payable on the death of a Judge while in service. Kenya provides a lumpsum benefit determined as 2 times the Judge's annual pensionable salary. Other countries like Botswana, Zambia, Barbados and Canada, also provide a one-off gratuity payment determined as a multiple of the Judge's salary, that is payable in addition to the spouse's pension benefit.

Financing of Benefits

- 3.38 In each of the countries, except for Zambia and Canada, Judges are not required to contribute towards their benefits.
- 3.39 In each of the countries, the benefits are paid from the Consolidated Fund (i.e., tax revenues).

Additional Non-Pension Benefits

- 3.40 In Kenya, there are no notable additional benefits payable to Judges upon retirement from service.
- 3.41 A variety of additional non-pension benefits are given to Judges in all the other countries, and they include diplomatic passports for the retired Judges and spouses, a motor vehicle, fuel allowance, maintenance allowance (including housing, medical and phone allowance), support staff (including domestic helps, drivers, security) use of VIP lounges at airports, funeral expenses or state funerals, post-retirement life insurance, post-retirement medical plans etc.

Tax Treatment of Benefits

- 3.42 The pension benefits in Tanzania are exempt from tax. In South Africa, the gratuity is exempt from tax while in Barbados the allowances are exempt from tax. The pension benefits in Kenya, South Africa and Botswana are taxed.

Summary

- 3.43 Overall,
- In each of the countries, the benefits payable to Judges are provided by an Act of Parliament;
 - The benefits to Judges in each of the countries are provided on a defined benefit basis;
 - Countries such as Tanzania, Uganda, Zambia, Nigeria, Botswana and South Africa all offer a pension of at least 80% of salary on retirement;
 - Most countries provide for the completion of a minimum period of service (commonly 15 years) in order to qualify for benefits;
 - A few countries such as Tanzania, Uganda and Zambia offer a retirement benefit irrespective of service completed;
 - Only two countries, Zambia and Canada, require Judges to contribute; and
 - Judges in more developed countries than Kenya such as South Africa and Canada earned relatively higher salaries in absolute terms as compared to Kenya, although the comparison does not include an adjustment for the relative cost of living in those countries.
- 3.44 All other things being equal, our comparative study shows that the overall retirement benefits package for Judges in Kenya compares less favourably to the corresponding retirement benefits entitlements for Judges in the countries surveyed. In particular:
- In each of the countries with the exception of Kenya, Judges benefits are set out in an Act of parliament exclusive for Judges.
 - In each of the countries with the exception of Kenya, there is a recognition of Judges as special public officers and provision of special enhanced retirement benefits for Judges compared to other public service employees;
 - Allowances additional to basic salaries are not pensionable in Kenya, whereas for most of the countries surveyed, some or all additional allowances are pensionable; and
 - Judges in all the countries surveyed enjoy a variety of additional non-pension benefits in retirement.
- 3.45 Hence, the comparative research does suggest that it is not unreasonable for consideration to be given to enhancements to the retirement benefits entitlements for Judges in Kenya.

4. Membership Data in Respect of Judges

- 4.1 We were provided with data in respect of serving Judges as at 30 June 2024 for the purposes of our evaluation of the proposed Judges' Retirement Bill, 2025. We were also provided with data in respect of retired Judges as at 30 June 2024.
- 4.2 The data was provided by the Judiciary's Director of Human Resource & Administration. The data provided was in respect of dates of birth and dates of appointment, gender, designation, basic salary and other allowances.
- 4.3 We have performed actuarial and other checks that we deemed necessary in order to ascertain the quality of the individual Judges' membership data that we were provided with. We have, however, made such adjustments to the data as we deemed appropriate for the purposes of this actuarial study. Our recommendations and conclusions in this report are where applicable based on the data that we were provided with.
- 4.4 We enclose as Appendix B to this report a certificate signed by the Judiciary's Director of Human Resource & Administration confirming the accuracy and completeness of the data provided for the purposes of this actuarial valuation.

Data in respect of Serving Judges

- 4.5 The data provided was in respect of 5 Judges of the Supreme Court, 29 Appeal Judges, 98 Judges of the High Court, 23 Judges of Employment and Labour Relations Court and 32 Judges of Environment & Land Court. The table below shows a summary of the data provided and used for the actuarial valuation in respect of the Judges:

As at 30 June 2024	Supreme Court	Court of Appeal	Courts of Equal Status ¹	Total
Number	5	29	167	201
Total Gross Salaries K Shs m p.a.)	73	380	1,830	2,284
Total Basic Salaries K Shs m p.a.)	44	228	1,098	1,370
Pensionable Emoluments ² (K Shs m p.a.)				
Total	50	256	1,258	1,565
Average	10.0	8.8	7.5	7.8
Average Age ³	61.8	62.3	59.4	60.1
Average Pensionable Service (service from appointment as a Judge ³)	17.6	5.6	7.4	7.2
Average Pensionable Service including prior service ³	20.9	19.5	15.0	15.9

Notes

1. Includes Judges of the High Court, Judges of Employment & Labour Relations Court and Judges of Environment & Land Court.
2. Pensionable emoluments taken as basic salary plus house allowance.
3. Ages and service are weighted by pensionable emoluments.

- 4.6 With retirement age set at 70, the average future service for the Judges was approximately 10.0 years.

Data in Respect of Retired Judges

- 4.7 We were provided with data in respect of 49 Judges who exited service between 2010 and 2023. Out of the 49 Judges, 19 Judges are shown to have retired while the rest left service for other reasons.

Under the Bill, additional non-pension benefits would be provided for Judges who held office after 27 August 2010 and retired under Article 167 of the Constitution. The key benefit that has a cost element is the health insurance for Judge and spouse for the life of the Judge.

- 4.8 For the purposes of this valuation, we have assumed that only the 19 Judges who retired (but not left service for other reasons) are entitled to the benefits proposed in the Bill.

5. Actuarial Valuation Method and Basis

- 5.1 This section contains a summary of the actuarial method and basis which we have used to value the benefits under the Pensions Act, the proposed DB Section and DC Section and other non-pension benefits. The actuarial method and basis are discussed more fully in Appendix D to this report.

Valuation Assumptions used to Value Benefits under the Pensions Act

- 5.2 The principle features of the actuarial basis used to value the benefits under the Pensions Act are as follows:-

Valuation Method	Attained Age Method
Financial Assumptions	
Discount rate*	
- Pre-retirement	9% per annum
- Post-retirement	9% per annum
Salary inflation	7% per annum
Rate of pension increases	1.5% per annum – Pensions Act 5% per annum – DB Section
Demographic Assumptions	
Mortality pre-retirement	A1949/52 Ultimate
Mortality post-retirement	a (55) Males/Females Ultimate
Withdrawal from service	No allowance
Ill-health retirements	In accordance with the average experience of other similar Schemes
Spouse's age difference	Male spouse 3 years older than female spouse
Percentage married at retirement	100%
Normal retirement age	70 years

* The discount rate shown is assumed to be net of expenses.

Valuation Assumptions used to Value Benefits under the Proposed Scheme

- 5.3 The accrued benefits under the Pensions Act are to be payable under the Db Section of the Bills once it becomes law.
- 5.4 The principle features of the actuarial basis used to estimate the accumulated benefits and annuities at retirement under the DC Section proposed Bill are shown in the table below:-

Financial Assumptions	
Interest rate credited on contributions	9% per annum
Salary inflation	7% per annum
Rate of pension increases	1.5% per annum
Demographic Assumptions	
Mortality pre-retirement	Nil
Mortality post-retirement	a (55) Males/Females Ultimate
Withdrawal from service	Nil
Ill-health retirements	Nil
Spouse's age difference	Male spouse 3 years older than female spouse
Percentage married at retirement	100%
Annuity purchased at retirement	Life annuity with 50% reverting to spouse on death of Judge
Normal retirement age	70 years

- 5.5 The actuarial method and basis we have adopted for this valuation are in our opinion wholly consistent with the actuarial assumptions used for the valuation of other similar schemes in Kenya. It is important to appreciate that whilst individual elements of an actuarial basis may be subject to differences of opinion, it is the basis as a whole that is relevant rather than its constituent parts.
- 5.6 Actuarial assumptions represent one likely view of the future amongst an unlimited number of ways in which the future may unfold. There is no guarantee that the future will turn out as assumed. The assumptions represent our best estimate of what is likely to happen. Accordingly, we have shown the sensitivity of the results to some of the assumptions.

Assumptions used to Value Non-Pension Benefits

- 5.7 The Bill proposes for Judges in the DB Section to be provided with a lumpsum transport allowance upon retirement. In addition, it proposes that all Judges, including 19 already retired ones be provided with a health insurance cover for self and spouse, access to government lounges for self and spouse and diplomatic passport for self and spouse.
- 5.8 The benefits of diplomatic passports and access to Government VIP lounges at all airports in Kenya for Judges and their spouses are in our opinion valuable benefits but have an intangible cost to the Government. We have thus not included them in our valuation.
- 5.9 We describe next the assumptions and the approach that we have taken to estimate the cost to the Government of providing the other benefits.

Lumpsum Transport Allowance Upon Retirement

- 5.10 The Bill proposes that transport allowance be at the rate of one hundred and twenty multiplied by one seventh of a Judge's monthly basic salary at retirement. We have used the current average monthly salary of a Judge of K Shs 568,000 to estimate the cost of providing the benefit.
- 5.11 We have calculated the expected cost of providing the travel assurance assuming that some notional contributions as a percentage of a Judge's basic salary are set aside and invested each month at an interest rate 9% per annum such that the accumulated amount at the retirement of the Judge is equal to the required transport allowance lumpsum. We then estimate what that percentage of a Judge's basic salary to be set aside ought to be.
- 5.12 a health insurance benefits as contributions (expressed as a percentage of basic salaries) payable annually over the Judge's working life. The accumulated value, at the normal retirement age, of the contributions paid over the Judge's working life are calculated to be equal to the present value, at the normal retirement age, of the expected cost of providing the medical cover during retirement.

Health Insurance for Judge and Spouse

- 5.13 For the purpose of estimating the cost of health insurance benefits, we have assumed that health insurance would be available in the insurance market on an individual basis at the ages of 70 and above.
- 5.14 This is a key assumption as most insurers until recently used to shy away from providing health insurance to persons aged above 65 years on an individual basis, although group rates are offered by some providers.
- 5.15 Although our costings of the health insurance are based on cost per retired Judge, we have assumed that that the insurance cover for retired Judges would be taken together with that for serving Judges under one cover for the whole group to benefit from a lower overall cost. A group scheme negotiated to cover both serving and retired Judges may circumvent the potential refusal for cover on age grounds.
- 5.16 Based on broad research from the insurance market, the average cost of securing an annual

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medical cover of the level currently payable to a Judge was K Shs 450,000 – K Shs 750,000 in the year 2023 for a life aged 65 to 70 years. However, the information shared by the Taskforce shows that current retired Judges are being charged an insurance premium of K Shs 154,000 in 2024 to secure a medical cover for self and spouse by the insurer of the Judiciary staff medical scheme. This confirms the point raised in 5.15 above that lower rates can be obtained for the medical cover for retired Judges if taken together with that for serving Judges and other judicial officers.

- 5.17 For the purposes of our costings, we have assumed an insurance premium of K Shs 154,000 per annum in year 2023 will secure medical cover for retired Judge and Spouse at age 70. We have assumed that the same level of cover available prior to retirement will be extended when a Judge is retired.
- 5.18 We have assumed that on average, medical cover premiums for the same age will increase at the rate of 10% per annum and that the increment in medical premiums due to old age will be approximately 8% for each year older. On this assumption for example, in the year 2025, the annual medical premium for a life aged 65 to 70 years would be K Shs 181,700. This reflects the expected inflation of consultancy fees, procedures, costs of drugs and profit margins for the insurers of approximately K Shs 15,400 (10%) and an additional K Shs 12,300 (8%) on account of higher expected claims frequency due to ageing of the person covered by one more year.
- 5.19 Whereas medical costs inflation at the rate of 10% p.a. has been witnessed recently and continue to prevail over the short to medium term, it may not sustain in the long term unless the economy also grows at 10% p.a. or more in the long term. Hence assuming that inflation will be 10% p.a. throughout is more prudent and slightly overstates the estimated cost of providing the medical insurance benefit.
- 5.20 Similar to the transport cost, we have calculated the expected cost of providing health insurance benefits as contributions (expressed as a percentage of basic salaries) payable annually over the Judge's working life. The accumulated value, at the normal retirement age, of the contributions paid over the Judge's working life are calculated to be equal to the present value, at the normal retirement age, of the expected cost of providing the medical cover during retirement.
- 5.21 Assuming the medical benefit were to be funded, the contributions expressed as a percentage of basic salaries indicate the annual amounts that would need to be set aside from the valuation date, in a fund earning the assumed interest rate (9% per annum), for the remaining working life time of a Judge, in order to accumulate to an amount at retirement that is expected to meet the cost of health insurance premiums for the Judge and their spouse for the rest of the Judge's life.

6. Actuarial Valuation Results

Pension Benefits

6.1 For the purposes of advising on the cost implications of the pension benefits, we have determined the following quantities:

- The accrued (past service) liability in respect of the serving Judges based on the current Pensions Act benefit structure which are based on basic salaries;
- The accrued (past service) liability in respect of the serving Judges based on the proposed benefits under the DB Section of the Bill;
- The annual cost of future accrual of pension benefits based on the current Pensions Act in respect of the serving Judges; and
- The annual cost of future accrual of pension benefits based on the proposed benefits under the DB Section in respect of the serving Judges.

6.2 The annual cost of future accrual of benefits is the notional contribution as a percentage of annual basic salaries that should be paid annually from the valuation date for the future working lifetime of serving Judges in order to be enough to meet the cost of benefits that will accrue from the valuation date.

6.3 The table below shows the accrued past service liability as at 30 June 2024 under the Pensions Act.

	As at 30 June 2024
Accrued (past service) liability (K Shs m)	4,271.0
Annual cost of future accrual of benefits (standard contribution rate under financing method adopted)	24.2% (of basic salaries)

6.4 The accrued past service liability of **K Shs 4.27bn** represents the value as at 30 June 2024 of the benefits payable on retirement at age 70 or on earlier death or ill health retirement based on pensionable service (including prior public service) to 30 June 2024 and based on projected salaries to retirement date or earlier exit date. The accrued past service liability in respect of prior service only i.e., service before appointment as a Judge is **K Shs 1.87bn** while the accrued past service liability in respect of service as a Judge is **KShs 2.40bn**.

6.5 The accrued past service liability allows for the expected full indexation of salaries (i.e., allowing for accrued benefits under the proposed Bill to be based on the pensionable emoluments of the Judge at retirement, which we have assumed will be the pensionable emoluments at the valuation date increased at the rate of 7% p.a. to date of retirement).

6.6 The implied ongoing cost to the Government of providing the benefits in respect of future service under the Pensions Act is approximated at **24.2%** of Judges' basic salaries. It may be viewed as the notional contribution as a percentage of the Judges' annual basic salaries that would need to be set aside each year in order to accumulate to an amount at retirement date that is sufficient to be drawn as a pension by the retired Judge and or their beneficiaries in line with the rules under Pensions Act Cap 189.

6.7 The accrued past service liability would be reduced by any funding in respect of prior service, for Judges who choose to transfer their prior funded service to the new Scheme. There will be no impact for a Judge with unfunded prior service since the benefits for the prior service and service as a Judge are the same and both would be paid from the Consolidated Fund.

6.8 The table below shows the accrued past service liability as at 30 June 2024 under the DB Section of the proposed Bill. The corresponding figures for the accrued liability under the Pensions Act have been shown for comparison.

As at 30 June 2024	Pensions Act	Proposed Bill
Accrued (past service) liability (K Shs m)	4,271.0	5,666.4
Annual cost of future accrual of benefits (standard contribution rate under financing method adopted) *	24.1% (of basic salaries)	31.2% (of basic salaries)

*The 2025 Bill proposes pensionable salary to be basic salary plus house allowance and we have used that to calculate the accrued past service liability. However, for ease of comparison of the notional contributions required to finance the benefits under the Bill and the Pensions Act, we have expressed the notional contributions as a percentage of basic salaries.

6.9 The accrued past service liability of **K Shs 5.67bn** represents the value as at 30 June 2024 of the benefits payable under the DB Section on retirement at age 70 or on earlier death or ill health retirement based on pensionable service (including prior service) to 30 June 2024 and based on projected salaries to retirement date or earlier exit date.

6.10 The accrued past service liability allows for the expected full indexation of salaries (i.e., allowing for accrued benefits under the proposed Bill to be based on the pensionable emoluments of the Judge at retirement, which we have assumed will be the pensionable emoluments at the valuation date increased at the rate of 7% p.a. to date of retirement).

6.11 The estimated ongoing cost of accrual under the proposed Bill is approximately **31.2%** of Judges' basic salaries. This is the notional contribution as a percentage of Judges annual basic salaries that are required to be set aside annually in order to accumulate to an amount at retirement date that sufficient to be drawn as a pension by the retired Judge and or their beneficiaries on the terms under the DB Section.

6.12 The accrued past service liability of **K Shs 5.67bn** would be reduced by any funding in respect of prior funded service for Judges who choose to transfer their prior funded service to the new Scheme.

6.13 The accrued past service liability in respect of prior service before appointment as a Judge is **K Shs 2.49m** and the accrued past service liability in respect of service as a Judge is **K Shs 3.18bn**.

6.14 The enhancement of the current pension benefits as proposed in the Bill adds **K Shs 1.4bn** to the past service liability under the Pensions Act. Considering only the future benefit accrual from the valuation date, our calculations show that the improved pension benefits cost an additional **7.0%** of Judges' basic salaries when compared to the current benefits under the Pensions Act.

6.15 The increase in the past service liability and implied ongoing cost is attributable to the benefit improvements below;

- Addition of house allowance to the definition of pensionable emoluments;
- Pensions increases in line with Consumer Price Index ("CPI") capped at 5% per annum compared to 3% every two years under the Pensions Act; and
- Ill-health retirement benefits that are subject to a minimum of 50% of pension that would be payable at the normal retirement date.

6.16 We show in the table below the breakdown between the accrued past service liability that is attributable to each of the 3 items discussed above and the corresponding future service cost.

	Total Past Service Liability	Implied Contribution Rate for Future Liability as a % of Basic Salaries
Accrued Past Service Liability under the Pensions Act	4,271.0	24.1%
Impact of House Allowance	576.3	3.4%
Impact of Pension Increases of 5% per annum	811.5	3.6%
Impact of Ill-Health Provisions	6.6	0.0%
Accrued Past Service Liability under the Proposed Bill	5,665.4	31.2%

- 6.17 The average house allowance as a percent of a Judge's basic salary was 14% as at 30 June 2024. Thus, the proposed pension benefits based on basic salaries plus house allowance are more generous than the current benefits which are based on basic pay only. The inclusion of house allowance as a component of pensionable pay increases the cost of providing pension benefits under the current base of Pensions Act by 3.4% of Judges' basic salaries.
- 6.18 The impact of the improved pension indexation adds approximately 3.6% of Judges' basic salaries to the cost of pension benefits.
- 6.19 The increase in the cost attributable to the introduction of the minimum pension on ill-health retirement is insignificant. Essentially, the introduction of a minimum of 50% of the pension that the Judge would have been entitled to had they retired at the normal retirement age, implies that cost of this improvement declines with the age at which a Judge Joins service and the years the years they have served at the point of retiring on ill-health grounds. For example, for a Judge joining at the age of 540 years, this improvement would not apply for them after serving for 15 years and so too after serving for 10 years for a Judge appointed at age 50 years.

Total Cost of Providing Non-pension Benefits

- 6.20 Based on the assumptions adopted, the estimated costs under the proposed DC Section, as a percentage of Judges' basic salaries, of providing the non-pension benefits are shown in the table below:

	Implied Contribution Rate to Finance the Proposed Benefits Expressed as a % of Basic Salaries
Lumpsusm transport allowance	5.5%
Health insurance for Judge and spouse	4.7%
Total Cost of Non-pension Benefits	10.2%

- 6.21 Based on the assumptions made, our calculations show that the annual cost to the Government of providing the non-pension benefits proposed in the DB section of the Bill is approximately **10.2%** of Judges' basic salaries. That is, on average, were the benefits to be prefunded, the Government would need to contribute **10.2%** of a Judge's basic salaries each year over the entire working lifetime of a Judge in order to accumulate a fund at the retirement age that is expected to be enough to meet the promised benefits. This assumes that the fund will be invested to earn the assumed rate of interest of 9% per annum net of expenses.

- 6.22 The approximate cost of **4.7%** of basic salaries to provide the health insurance benefit during the life of a retired Judge and their spouse until demise of the Judge is calculated assuming a funding approach where monies are set aside gradually over a Judge's working life with the accumulated fund used to defray medical insurance premiums once the Judge retires. In practice, it would be administratively cheaper and potentially reduce the premiums payable to the insurance company if the retired Judge and spouse are integrated in the same cover for the serving Judges and other staff of Judiciary to benefit from the stable insurance claims experience of a large group.
- 6.23 The Judiciary can secure quotations from its current medical provider in order to get an estimate of the cost of providing medical benefits for the 19 current retired Judges. The cost of providing these benefits can be considered a one-off cost that is payable immediately as at the valuation date, and which can be met from the Consolidated Fund. We have estimated this one-off cost payable at the valuation date to be approximately **K Shs 94.0m**. This translates to an estimated cost of K Shs 3.8m per annum initially declining ultimately to zero as the number of current retired Judges decline. Similarly, for a better cost saving outcome, it would be advisable for the retired Judges to be integrated in one cover with the serving Judges and other staff of the Judiciary.
- 6.24 Similarly, the approximate cost of **5.5%** of Judges' basic salaries to provide retiring Judges with a lumpsum transport allowance is calculated assuming a funding approach where monies are set aside gradually over a Judge's working life with the accumulated fund given paid to the Judge on their retirement.
- 6.25 Hence, the Government would need to notionally contribute **10.2%** of Judges' basic salaries each year over the entire working lifetime of a Judge in order to accumulate a fund at the retirement age that is expected to be enough to meet the above non-pension benefits.
- 6.26 For Judges joining the DC Section, the non-pension benefit of a health insurance cover for the Judge and spouse is also estimated at 4.7% of the Judge's basic salary.

Projected Cash Outflow of Additional Benefits over those Payable under the Pensions Act

- 6.27 Based on the assumptions adopted, and the age profile of the current Judges including the 19 retired ones eligible for the additional proposed benefits, we show below the projections of additional benefits in the proposed DB Section on top of those payable under the Pensions Act.

K Shs Millions	2025	2026	2027	2028	2029	Total
No. of Judges Retiring	2	2	1	8	9	68
Commuted Lumpsum	6.8	9.5	5.9	38	42.8	103.0
Annual pension	1	2.5	3.5	9.3	16.1	32.4
Transport allowance	22.2	22.2	10.7	84.6	94.2	233.9
Medical premiums to current serving Judges as they retire	0.3	0.7	1	2.8	5.2	10.0
Medical premiums for 19 already retired Judges	2.9	3.1	3.2	3.3	3.5	16.0
Total	33.2	38	24.3	138	161.8	395.3

- 6.28 The projections show that over the next five years, the additional benefits in the proposed DB Section would be approximately K Shs 395m paid to 68 newly retired Judges and 19 already retired Judges over and above the benefits payable under the Pensions Act.

Sensitivity of Results to Actuarial Assumptions

- 6.29 The actual benefits payment to a Judge will depend on the Judge's salary experience, the years of service, the mode of exiting the Scheme, how long the Judge lives after retirement, whether they die before or after retirement and whether they will be married and whether they have eligible children to name but a few important factors. The actual experience of the DB Section will be the collective experience of all the Judges in that Section.
- 6.30 The same experience items in paragraph 6.7 above will affect the benefits afforded by a Judge in the DC Section in addition to being affected by the interest credited on their contributions over the years. The form of the annuity chosen at retirement and the pricing terms of the insurer will also affect the level of their monthly pensions.
- 6.31 Actuarial assumptions represent one likely outcome amidst a myriad of many possible outcomes. The results of an actuarial valuation are more sensitive to the financial assumptions made.
- 6.32 We have undertaken additional calculations to show the sensitivity of the results to variations in the assumptions and these are presented in Appendix D to this report.

7. Projected DC Pension Benefits and Comparison with Benefits under the Pensions Act

- 7.1 The pension benefits payable under the DC Section are based on the accumulation of contributions plus interest. The benefit may be entirely used to secure an income drawdown or an annuity. Alternatively, up to 1/3rd of the accumulated amount may be taken as a lumpsum with the balance used to secure an income drawdown or an annuity.
- 7.2 In order to assess whether the contributions set at the rate of 22.5% of pensionable emoluments would be sufficient to provide a reasonable pension at retirement to a Judge, we have compared the expected benefits under the DC Section to those that will be payable under the DB Section (which are an improvement of those payable under the Pensions Act Cap 189).
- 7.3 When comparing pension benefits for different schemes, an important concept is that of income replacement ratio. ("IRR"). The IRR measures the ability to maintain living standards after retirement to the level before retirement. This is defined as the ratio of after-tax income in the year after retirement divided by after-tax income in the year before retirement. It is generally accepted that for an employee retiring after a full career (30 years and above), an IRR of at least 67% would maintain living standards after retirement to broadly the same level as those before retirement.
- 7.4 We have projected the likely pensions at age 70 for typical Judges joining the judgeship at various ages and under various financial assumptions. In addition to showing the projected pensions and cash lumpsums that a Judge may expect at age 70, we have also shown the IRR before the Judge takes any cash lumpsum.
- 7.5 In interpreting the results shown below, it is important to appreciate that the cost (contribution rate) to provide the DB pension has not been shown. The results shown here compare only the benefits expected from the DC and DB types of schemes but do not compare the contribution rates that are required to support the benefits shown. The contribution rate under a DB scheme varies depending on the actual experience of the scheme whereas for a DC scheme, it is the benefit that varies depending on the actual experience of the scheme. The contribution rate to meet the cost of the DB type pension proposed in the Bill is shown in Section 12.6 above. We further note that Judges in the DB Section will not make contributions towards meeting their benefits but those in the DC Section are expected to contribute 7.5% of their pensionable emoluments into the Fund as part of meeting the costs of their benefits.
- 7.6 We reiterate that the illustrations shown are comparison of benefits and not contributions.

7.7 **Scenario 1:** The results below are derived from the assumptions described earlier in Section 5. above. We have assumed that annuities purchased will use the same assumptions when pricing the annuities. The assumptions with the most significant impact are:

Total contribution rate	:	22.5% of pensionable Emoluments
Salary escalation rate	:	7% p.a.
Interest on DC contributions	:	9% p.a.
Pensionable Emoluments at joining	:	K Shs 530,000 per month

Financial figures are in K Shs Millions

Age at Entry	Projected Monthly Pensionable Emoluments at age 70	Defined Contribution (DC)					Projected Monthly Pensionable Emoluments at age 70	Pen L 1/
		Accumulated Contributions at age 70	Expected Monthly Pension (Before Lumpsum) ¹	DC IRR	Lumpsum (1/3 of Accumulated Contributions)	Residual Monthly Pension		
40	3.8	421.1	4.2	110.4%	140.4	2.8	3.8	
45	2.7	237.9	2.4	87.5%	79.3	1.6	2.7	
50	1.9	129.2	1.3	66.6%	43.1	0.9	1.9	
55	1.4	65.8	0.7	47.6%	21.9	0.4	1.4	
60	1.0	29.8	0.3	30.2%	9.9	0.2	1.0	
65	0.7	10.1	0.1	14.4%	3.4	0.1	0.7	

7.8 If the assumptions made were to be realized, the DC Section would provide a higher IRR for Judges than the DB Section (the DB Section is financed by members contributions while benefit in the DB Section is fully financed by the Government). Although for Judges across all ages of entry, the lumpsums payable under the DC scheme are lower due to the distortions caused by the DB Section. The DB Section uses a higher commutation factor of 20, compared to the actuarially neutral factor used to value the DC Section.

7.9 It is important to note that the residual monthly pensions under the DB scheme is 3/4 of the projected pension to be commuted) whereas for the DC Section, 1/3 is commuted (leaving 2/3rds as pension for life).

7.10 If the assumptions made were to be borne out, the table above shows that a contribution rate of 22.5% of pensionable emoluments provides a decent pension (IRR of 67% for Judges who will serve for at least 20 years) under the DC Section.

7.11 It is expected that judges who join judgeship at later ages have accumulated pension benefits in other schemes where they would therefore the combined pension benefits from all the schemes (including earlier ones) would provide a sufficient income.

lower projected results displayed below are derived from assumptions similar to the those under Scenario 2 but with a lower contribution rate:

- Total contribution rate : 22.5% of pensionable Emoluments
- Salary escalation rate : 5% p.a.
- Interest on DC contributions : 7% p.a.
- Pensionable Emoluments at joining : K Shs 530,000 per

Financial figures are in K Shs Millions

Defined Benefit (DB)				Defined Contribution (DC)					Projected Monthly Pensionable Emoluments at age 70	Pen L/1/
Expected Monthly Pension (Before Lumpsum) 40 x Sal x Service	Age at Entry	Projected Monthly Pensionable Emoluments at age 70	Residual Monthly Pension	Accumulated Contributions at age 70	Expected Monthly Pension (Before Lumpsum) ¹	DC IRR	Lumpsum (1/3 of Accumulated Contributions)	Residual Monthly Pension		
1.6			1							
1.1	40	22.5%	24.1	0.8	242.9	2.1	96.8%	81.0	1.4	2.2
0.7	45	30.0%	40.2	0.5	150.7	1.3	76.6%	50.2	0.9	1.7
0.4	50	37.5%	13.6	0.3	89.8	0.8	58.3%	29.9	0.5	1.3
0.2	55	25.0%	12.3	0.2	50.2	0.4	41.6%	16.7	0.3	1.0
0.1	60	2.5%	0.8	0.1	25.0	0.2	26.4%	8.3	0.1	0.8
	65		0.6		9.3	0.1	12.6%	3.1	0.1	0.6

As a result of the relatively growing salary is relatively difficult to compare the DC Section to the DB Section. If the assumptions were borne out in reality, the DC Section will provide a higher IRR and hence higher benefits than the DB Section. However, the quantum of benefits is lower than in the previous scenarios because all other things being equal, a lower interest on result in the DC Section providing relatively lower benefits.

7.19 As before, the commuted lumpsums under the DB Section are higher due to the use of a factor of 20 as multiplier of the cause the quantum of contributions also

providing better benefits than the DB Section

- 7.20 We have shown above the expected lumpsums and pension payable from the DB Section and DC Section under the specified assumptions. The benefits payable from the DC scheme depend mainly on the contribution rate, interest allocated on the contributions and the annuity rates used to convert the accumulated contributions to a life pension. Higher contributions and interest rates on contributions will lead to higher DC benefits.
- 7.21 For a DB type of scheme, the benefits are defined in the scheme rules and depend on accrual rate, length of service and final salary. The higher the length of service the higher the expected pension. The higher the final salary, the higher the pension.
- 7.22 In conclusion, we have shown that the proposed contributions rate of 22.5% of salaries for the DC Fund is expected to provide adequate benefits (IRR greater than 67%) for judges serving for at least 20 years and above in most cases.**
- 7.23 For the specific scenarios illustrated above, there are distortions on the expected lumpsums and residual pensions due to the fact that the portions of pension commuted, and the commutation factors are different between the DC Section and DB Section. Accordingly, in these specific scenarios, a mere comparison of the IRR may be misleading. A proper comparison would be to look at both the expected lumpsums and the residual pensions.
- 7.24 It is important to also note that under the DC Scheme Judges will finance 1/3rd of the benefits whereas under the DB Section, the benefits are fully financed by the Government. This is unfortunately not a matter of choice but an implementation of Government policy on pensions across the entire Government.

Appendix A – Summary of the Proposed Benefits and Contributions

DB Section

Definitions

Commencement Date:	To be determined when the Bill becomes law.
Eligibility:	Serving Judges on or before the Commencement Date.
Normal Pension Date:	70 th birthday.
Pensionable Service:	Service as a Judge plus prior public service provided no break in service before appointment as a Judge.
Qualifying Service:	Pension is payable provided the Judge retires with at least 10 years of service. A gratuity of five times accrued pension is payable if less than 10 years of service has been completed.
Pensionable Emoluments:	Basic salary plus house allowance.

Scheme Benefits

On Normal Retirement:	A pension equal to 1/480ths of Final Pensionable Emoluments for each completed month of service.
On Early Retirement:	Permissible from age 65. A pension is payable calculated as for normal retirement.
On Ill-health Early Retirement:	A pension benefit of not less than 50% of the pension that the Judge would have been entitled to had they retired at the normal retirement age, based on their pensionable emoluments at the date of ill-health retirement.
On Death in Service:	Spouse's pension equal to 50% of the deceased Judge's pension calculated as for normal retirement but based on Pensionable Service and Final Pensionable Emoluments at the date of death. An eligible child pension is also payable up to a maximum of 4 eligible children at the rate of 12.5% of the Judge's pension. Spouse and children's pension are payable for a period of five years only.
On Death in Retirement:	50% of the pension that the Judge was earning is payable to an eligible spouse. A pension equal to 12.5% of the Judge's pension is also payable to each eligible child up to a maximum of 4 eligible children. Spouse and children's pension are payable for a period of five years only.
On Leaving Service:	Accrued pension payable from age 65 years.
Commutation:	A Judge may opt to commute up to ¼ of his pension with the balance taken as an annual pension. For each shilling of pension commuted, 20 shillings is paid in cash.
Pension Increases:	In line with Consumer Price Index, subject to a cap of 5% per annum and a floor of 1% per annum.

Contributions

Member

Judges are not required to contribute.

Government

Balance of cost met on PAYG basis from the Consolidated Fund

**Other Non-Pension Benefits
(provided service >10 years):**

A lumpsum transport allowance given once on retirement.

Health insurance cover for Judge and spouse until demise of the Judge.

Diplomatic passports for a retired Judge and their spouse until demise of the Judge.

Free access to Government VIP lounges in Kenyan airports for retired Judge and their spouse until demise of the Judge.

The last three benefits are to be extended to current retired Judges who retired after 27 October 2010.

DC Section

Definitions

Commencement Date:	To be determined once the Bill becomes law
Eligibility:	Mandatory for all Judges appointed after the Commencement Date
Normal Pension Date:	70 th birthday
Pensionable Service:	Service as a Judge
Qualifying Service:	Benefits vest immediately.
Pensionable Emoluments:	Basic salary plus house allowance

Scheme Benefits

On Normal Retirement:	Judges' accumulated contributions plus interest used to purchase an annuity from an insurance company, or used taken gradually as an income drawdown.
Commutation:	O Retirement, a Judge may take in a cash lumpsum up to 1/3 rd of their accumulated contributions
On Early Retirement:	Benefit same as for normal retirement.
On Ill-health Early Retirement:	Benefit same as for normal retirement.
On Death in Service:	The accumulated contributions plus interest are used to provide benefits to the member's dependants.
On Death in Retirement:	The benefits payable to the dependants are sat the level and terms agreed with the insurer of the annuity or income drawdown purchased by the Judge at retirement.
On Leaving Service:	A Judge may opt to be paid a refund of his own contributions plus interest, with the contributions from Government retained in the Fund to be payable once the Judge attains retirement age.

Contributions

Member	7.5 % of pensionable emoluments
Judiciary	15.0% of pensionable emoluments
Other Non-Pension Benefits:	Health insurance cover for Judge and spouse until demise of the Judge. Diplomatic passports for a retired Judge and their spouse until demise of the Judge. Free access to Government VIP lounges in Kenyan airports for retired Judge and their spouse until demise of the Judge.

Appendix B – Data Accuracy Certification

I,

(Director, Human Resource Management & Development)

being the Judiciary's Director of Human Resource Management & Development hereby do declare that to the best of my knowledge and belief the information furnished to the Actuary for the purpose of the actuarial valuation was correct and complete in every material respect and that a copy of the valuation report has been sent to the sponsor of the Scheme, the Judiciary.

Date:

Signature:

Appendix C – Actuarial Valuation Method and Assumptions for DC Section & Pensions Act

Actuarial Valuations

- C.1 One of the purposes of an actuarial valuation is to project the likely level of the emerging liabilities and to recommend a schedule of contributions that will enable funds to be accumulated from which these liabilities can be discharged.
- C.2 The liabilities of a pension scheme are extremely long term and the funds required to meet these liabilities are similarly accumulated over a long period. In assessing the adequacy of the contribution rate, therefore, it is necessary to make projections to determine the likely levels of the liabilities and the accumulating funds.
- C.3 The long-time scale involved also means that there are many different possible methods which can be adopted for the pace of contributions. Such methods and the actuarial basis cannot affect the actual cost of the pension scheme, which will be totally dependent on the actual economic and demographic experience, but they do affect the rate at which funds are provided to meet that cost.
- C.4 It is customary to discount the projected streams of income and outgo and to represent each of these two streams of payments by a single value. This amount is the sum of money which, if invested at the valuation date to earn the valuation rate of interest would be sufficient to meet the projected future outgo or replace the projected income.

Valuation Method

- C.5 The valuation method we have used to value the benefits under the Pensions Act and the DB Section is the funding method known as the Attained Age Method. Under this method, we calculate the contribution rate required to meet the cost of benefits accruing over the entire working lifetime of the current serving Judges. The actuarial liabilities disclosed for past service are based on projected salaries to the normal retirement date or date of exit if earlier.

Valuation Basis

- C.6 The elements of the actuarial basis for the valuation of the liabilities can be divided into the demographic elements and the economic elements.
- C.7 The demographic elements of the basis determine the assumed incidence of the benefit outflow and the contribution receipts. These consist of factors such as mortality (in service and in retirement), withdrawal from service, rates of ill-health retirements, proportions married and the ages of dependants.
- C.8 The economic elements of the basis determine the assumed size of the benefit outflow and contribution receipts and the discounted value of these payments at the present time. These would cover increases in earnings and the rate of interest used to calculate the discounted value of these payments.
- C.9 The results of the valuation are more sensitive to variations in the economic elements than to variations in the demographic elements.
- C.10 The assumptions used to value the benefits are set out below. It is important to appreciate that whilst individual elements of an actuarial basis may be subject to differences of opinion, it is the basis as a whole that is relevant rather than its constituent parts.

Economic Assumptions

- C.11 We have assumed a valuation rate of return of 9% per annum net of expenses and that Judges' pensionable emoluments will escalate at the rate of 7% per annum from the valuation date to date of retirement or earlier exit. We have assumed pension increases of approximately 1.5% per annum to value the benefits under the Pensions Act and pension increases of 5% per annum to value the benefits under the proposed DB Section of Bill. The difference between the valuation rate of interest and the rate of escalation of salaries is critical to the whole valuation basis. The smaller the difference, the bigger the value of liabilities arrived at.

Mortality

- C.12 We have assumed that the rate of mortality for serving Judges will follow the A1949/52 Ultimate Table of Assured Lives published by the Institute of Actuaries.
- C.13 The rates of mortality for retired Judges are based on the a(55) Table for Annuities published by the Institute and Faculty of Actuaries.

Withdrawals

- C.14 We have made no allowance for withdrawals from the service.

Ill-health Early Retirement

- C.15 We have allowed for ill-health early retirement from service based on the average experience of similar schemes.

Age	Percentage of Ill-Health Retirements in a Year (Females)	Percentage of Ill-Health Retirements in a Year (Males)
20	0.02%	0.03%
25	0.03%	0.03%
30	0.07%	0.06%
35	0.11%	0.08%
40	0.15%	0.10%
45	0.23%	0.14%
50	0.37%	0.23%
55	0.64%	0.42%

New Entrants

- C.16 We have not allowed for Judges employed in the future to join the DB Scheme.

Cash Commutation

- C.17 We have assumed Judges will commute one-quarter of their pensions with K Shs 20 paid in cash for each shilling of pension commuted.

Basis of Financing

- C.18 The DB Section will be unfunded and will operate on a pay-as-you-go basis.

Health Insurance for Self and Spouse

- C.19 We have assumed that the premium for the level of medical benefits currently payable to a Judge is K Shs 154,000 per annum in the year 2024 for a Judge aged 65 to 70 years. We have assumed that the same level of cover afforded to a Judge prior to retirement will be extended when a Judge is retired.
- C.20 C.22 We have also assumed that the increment in medical premiums due to old age would be approximately 8% for each year older. That is at any one point in future, it would cost 8% more to cover a Judge aged 71 years than one aged 70 years. Hence combining the inflation of medical costs and increased costs due to ageing by one year, the estimated premium in year 2024 is approximately K Shs 182,700.
- C.23 We have also assumed that all the current retired Judges who are eligible for non-pension benefits in the Scheme, will be provided with health insurance benefits for themselves and their spouses effective from the valuation date.

Lumpsum Transport Allowance given Once at Retirement

- C.25 Based on our discussions with the Taskforce, we have based the valuation of this benefit on the current level of basic salaries allowing for the salary escalation at the rate of 7% p.a. as in the in basis.

Appendix D – Sensitivity Analysis

- D.1 The DB Section’s pension liabilities have been calculated on a prudent basis. The effect of a change in the main assumption rate and the pension increases, on the financial position of the DB Section is illustrated below. Over the past 10 years note that the basic salaries of Judges who were present at both the current valuation and the previous valuation increased. We have been informed by the Taskforce that salaries for Judges are budgeted to grow by not more than 5% each year, which is the % annual growth in salaries.

	Base Case Salary Escalation of 7% per annum and Pension Increases of 5% p.a.		Sensitivity 1 Escalation of 5% per annum and Pension Increases of 5% p.a.	
	9 -7- 5		9 -5- 5	
K Shs Millions	Accrued Past Service Liability	Implied Contribution Rate for Future Liability as a % of Basic Salaries	Accrued Past Service Liability	Implied Contribution Rate for Future Liability as a % of Basic Salaries
Pension benefits	5,666.4	31.2%	4,944.9	25.1%

- D2 Assuming salaries for Judges would grow by 5% per annum, the estimated accrued past service (including prior service) is **K Shs 4.94bn** and the estimated notional contribution rate by the Government to provide for benefits accruing after 1997 is **25.1%** of basic salaries. The K Shs 4.94bn is inclusive of the cost of the improved pension benefits in the proposed DB Section. The **K Shs 1.2bn** on top of the cost of benefits that would have been payable under the Pensions Act.
- D3. If the rate of pension increases was at the rate of 1.5% per annum (Scenario 3) and the rate of salary growth was under Scenario 3 are K Shs 710.3 mn lower than if pension increases were at 5% per annum (Scenario 2). The required contribution rate would be 22.2% to 25.1%.

Appendix E – Comparative Study of Selected Countries

	Kenya	Tanzania	Uganda	South Africa	Nigeria	Botswana	Zambia
<p>ptions, e rs from the creased on 1 year. Hence we show a scenario with</p>	<p>Governing Law Pensions Act Cap 189 Widows and Children Pensions Act Cap 185</p>	<p>The Judges (Remuneration and Terminal Benefits) Act 2007</p> <p>The Public Service Retirement Benefits Act, 1999</p>	<p>Administration of the Judiciary Act 2020</p>	<p>Judges Remuneration and Conditions of Employment Act No 47 of 2001</p>	<p>Pensions Reform Act</p> <p>Pension Rights of Judges Act.</p>	<p>Judges' Pensions Act 2007</p>	<p>Judges (Conditions of Service) Act 1996</p>
<p>Escalation of 5% per annum and Pension Increases of 1.5% p.a.</p>	<p>Sensitivity 1 9 -5- 1.5</p>	<p>Age 60</p>	<p>Judges of Supreme court: Age 70</p> <p>Principal Judges: Age 65</p>	<p>Age 70</p>	<p>Supreme Court and the Court of Appeal: Age 70</p> <p>High Court and Sharia Court of Appeal: Age 65</p> <p>Customary Court of Appeal: Age 60</p>	<p>Age 70</p>	<p>Age 70</p>
<p>Accrued Past Service Liability</p>	<p>Retirement Age</p> <p>Implied Contribution Rate for Future Liability as a % of Basic Salaries</p>	<p>Salary inclusive of all allowances.</p>	<p>Consolidated salary.</p>	<p>Annual salary plus additional amounts (accommodation, transport, etc).</p>	<p>Chief Justice – last annual salary plus consolidated allowances.</p> <p>Other Judges – last annual salary and allowances if held office for more than 15 years.</p>	<p>Salary at retirement.</p>	<p>Salary and special addition to salary.</p>
<p>service) liability under the DC Section is r the valuation date is tion of the Bill, which is approximately 5% per annum, the projected red contribution rate would decline by</p>	<p>25.1% of Judges' basic salary excluding all allowances and additional benefits</p>						

	Kenya	Tanzania	Uganda	South Africa	Nigeria	Botswana	Zambia
Minimum Qualifying Period	10 years.	Not specified.	Not specified.	15 years.	15 years.	15 years.	10 years.
Retirement Pension	An annual pension of 80% of final pensionable pay provided a Judge has completed 32 years of service.	An annual pension of 80% of salary.	An annual pension of 100% of salary for a sitting CJ. An annual pension of 80% of the salary of a sitting Judge.	100% of salary if service is greater than 20 years and has attained the age of 70 years or 80% of salary if service is greater than 15 years and have attained the age of 65 years.	Chief Justice and Other Judges with PS over 15 years: Pension for life at the equivalent to his last annual salary plus consolidated allowances. Other Judges (PS below 15 years): Pension for life at a rate pro rata the number of years of service.	Annual pension of 80% of salary provided Judge has attained retirement age or has served for more than 15 years.	An annual pension of 80% of salary.
Lumpsum Benefits	Lumpsum benefits equal to 1/4 of a Judge's pension at an equivalent rate of 20 shillings for every 1 shilling of pension.	Not specified.	One off lump sum equal to 2.4% of annual salary * 5 * number of years of service.	Gratuity of 2 times annual salary times the number of years of service (not exceeding 20) divided by 15.	Not specified.	Lumpsum equivalent to 24 months of the salary the Judge earned at date of retirement or resignation.	Gratuity comprising 24 months of basic salary last received while in office.

	Bar	Kenya	Tanzania	Uganda	South Africa	Nigeria	Botswana	Zambia
	No contributions	10 years non-contributory.	Non-contributory.	Non-contributory.	Non-contributory.	Non-contributory.	Non-contributory.	7.5% of pensionable emoluments
l if lary.	Resignation or Removal from Office	No benefits payable. Annual pension equal to 2/3 of salary at the time of retirement. If service is less than 10 years, pro-rated pension is payable.	Judge paid terminal benefits plus any other benefits on removal from office.	No benefits payable.	Provided that the Judge has attained 65 years and served for more than 15 years, a pension of 80% of salary.	Not specified.	On resignation after serving for more than 15 years and having attained 65 years, an annual pension equal to 80% of the salary. On removal of office for any other reason other than misbehaviour, gratuity equal to 30% of salary or a gratuity equal to 15% of salary if removed due to misbehaviour.	Refund of Judges' contributions plus interest on removal from office. On resignation: a. Service more than 10 years: gratuity comprising 12 months of basic salary. b. Service less than 10 years: gratuity comprising 6 months of basic salary. Plus return of the Judge's contributions
g 60 f the y red ffice.	Lumpsum benefits equal to 1/4 of a Judge's pension at an equivalent rate of 12.5 shillings for every 1 shilling of pension.	Not specified.						

	Kenya	Tanzania	Uganda	South Africa	Nigeria	Botswana	Zambia
Death in Service	Lump sum of twice annual pensionable pay + pension to dependants payable for 5 years.	A grant equal to the pension which would have been paid shall be paid into the estate of the Judge.	Lump sum + pension benefits for spouse for a period of 15 years	Gratuity benefit + 66.7% of the pension to dependents plus gratuity.	Benefits payable to beneficiary under a will or laws of probation.	Gratuity of 30% of salary during period of service + pension of 50% of the pension that the Judge would have been entitled to.	Spouses pension + 50% of benefits to deceased Judge who have been entitled to lumpsum equal to 12 months basic salary (service greater than 10 years) lumpsum 30 months basic salary (service less than 10 years)
Death in Retirement	Spouse and children's pension benefit for 5 years or until 25 years for children. Under the Widow's and Children's Act Cap 195, the deceased Judge's pension would be payable for the life of the spouse.	No explicit benefit is specified for Judges who die after retirement. But pension of 60% of deceased Judges pension is payable for a retired Chief Justice.	Spouse entitled to monthly payment benefit for the unexpired period of 15 years.	66.7% of the deceased Judge's pension.	Not specified.	Not specified.	Not specified.

	Bar	Kenya	Tanzania	Uganda	South Africa	Nigeria	Botswana	Zambia
	Grat ann pensionable emoluments + spouse's pension of 2/3 of pension payable to deceased Judge + children's pension of 1/6 of the deceased Judges pension subject to a maximum of 4 children.	Annual specified pension equal to 50% of the pension that the Judge would have been entitled to + lumpsum of 1/60 of yearly salary + pension of 20% of the spouse's pension subject to a maximum of 4 children.	Diplomatic passport for retired Judge and spouse + Motor vehicle + Driver remuneration for four years + Fuel allowance + Maintenance grant + Use of VIP lounge at airports + Health insurance for Chief Justice + Funeral expenses + Transportation of personal effects on retirement.	Furnished housing/house allowance + Medical allowance + State security + Driven car + State funeral benefits	Not specified.	Annual salaries for domestic staff.	Remain on the medical aid scheme applicable to serving Judges.	Not speci
	No specified.	Annual pension equal to 50% of the	Tax exempt.	Not specified.	Lumpsum gratuity benefits not taxable.	Not specified.	Pension is taxable but lumpsum is exempt from tax.	Not speci
	Taxation of retirement benefits	per Tax that the Judge was receiving + pension of 20% of the spouse's pension subject to a maximum of 4 children.						

Appendix F – Comparative Analysis of Salary Levels

- F.1 The comparative study also included an analysis of the comparative level of salaries paid to Judges in other jurisdictions where the salary information was available.
- F.2 The table below shows the Kenya Shilling equivalent amounts of the salaries of Judges in other countries. Where we have converted from the countries' currency to the Kenya Shilling equivalent, we have shown the effective conversion rates applicable as at 27 October 2023. We have also indicated the effective dates that the salaries are applicable.

Country	Annual Pensionable Salary Amounts in K Shs				Effective Year for the Salaries
	Supreme Court Judges	Court of Appeal Judges	Judges of Courts of Equal Status	Units of K Shs equivalent to 1 unit of foreign currency	
Kenya	8,773,488	7,871,489	6,699,486		
Canada	43,959,700	36,929,200	36,929,200	92	August 2023
Barbados		12,319,471	11,338,303	14	April 2009
South Africa	14,205,383	14,205,383	11,541,814	8	September 2023
Botswana		5,794,008		9	2012
Uganda	4,650,483	4,491,944	4,332,837	0.04	2017/18

- F.3 In the table below, we have converted the amounts shown above into proportions of the Kenyan amounts for the purposes of comparability. We assume, in the Kenyan case that a Judge has retired with 40 or more years of service and hence they have a pension of 100% of final salary before commutation and in the other countries, a Judge has retired with maximum pension. We assume in all cases that a Judge retires in the respective countries with the corresponding salary.

Country	Salaries			Pensions and Lumpsums (Court of Appeal)			
	Supreme Court Judges	Court of Appeal Judges	Judges of Courts of Equal Status	Annual Pension as % of final Salary in Home Currency	Annual Pension as % of final Salary in K Shs Units*	Lump Sum Equivalent in Home Currency as a Multiple of Final Salary	Lump Sum Equivalent in K Shs Units as a Multiple of Final Salary*
Kenya	100%	100%	100%	75%	75%	5 * salary	5 * salary
Canada	501%	469%	551%	67%	314%		
Barbados		157%	169%	100%	157%	3.1 * salary	4.9 * salary
South Africa	162%	180%	172%	100%	180%	2.6 * salary	4.7 * salary
Botswana		74%		80%	59%	2 * salary	1.5 * salary
Uganda	53%	57%	65%	80%	46%	4.8 * salary	2.7* salary

*These columns compare only the Court of Appeal Judges and allow for commutation of pension as necessary.

- F.5 Judges in more developed countries than Kenya such as South Africa, Barbados and Canada earned relatively higher salaries and hence pensions as compared to Kenya, although the comparison does not include an adjustment for the relative cost of living in those countries.

- F.6 In terms of the lump sum equivalent, the generous commutation factor in Kenya of 20 results in a high lump sum as a multiple of final salary. For example, in Kenya, the lump sum benefit that a Judge with 40 or more years of service gets at retirement is 5 times their final salary while in Barbados the lump sum is 3.125 times their final salary.
- F.7 Kenya fares better in both salaries, pensions and lumpsums than some countries whereas it also fares worse than others.

Appendix G: Factors to Consider when Designing a Retirement Benefit Scheme

- G.1. In this section, we highlight factors that an employer (in this specific case, the Government through the Judiciary) should consider when designing a retirement arrangement for Judges.
- G.2. Some of the main factors which should be considered when redesigning the Judges' current retirement benefits arrangements include:
- The Judiciary's institutional objectives and financial constraints;
 - The effectiveness of the current retirement benefits arrangements;
 - The cost to the Judiciary (or Government) of providing the current benefits against any alternative arrangement;
 - The nature and level of benefit provision against the Judiciary's "peers". The peers could be either within or outside the country, private sector or public sector;
 - The level and quality of retirement benefits arrangements that the Judiciary wishes and is able to provide for its employees;
 - The legislative background for retirement schemes in Kenya;
 - The premise of the current scheme design (i.e., Pensions Act) vis-a-vis changing circumstances, market changes and remuneration structure;
 - Ensuring that the proposed arrangement is equitable between the current serving Judges and those to join in the future;
 - Recognizing the inherent strengths and 'defects' in the current design and how they contribute to the quality of life after retirement for the Judges;
 - Minimizing the risk of a legal or moral comeback by Judges against the Fund Trustees and Judiciary to the extent possible;
 - The significance of the Government's current total pension costs and how they are projected to move in the future;
 - Consistency with the Government's policy on retirement benefit provision; and
 - The practicability of any proposals considered from a legislative and an administrative viewpoint.
- G.3. From our discussions with the Taskforce, our understanding of the Judiciary's key retirement benefit objectives are:
- To make adequate retirement provision for the Judges and their dependants subject to financial constraints;
 - To offer a competitive package of benefits to attract and retain Judges with the required skills and experience; and
 - To adopt a coordinated approach to pension provision that is broadly in line with the "norm" for its peers.
- G.4. We further understand the Judiciary's objectives for the redesign of the retirement benefits arrangements to be as follows:
- To remove or limit the Government's defined benefit obligations;
 - To have predictability of costs and operate within the Government's financial constraints;
 - From a financial perspective, the amended arrangements should be designed to provide an efficient financing mechanism where Judges also participate in contributing towards their retirement benefits;
 - To provide benefits that compare satisfactorily with the 'norm' for its peers;

- To minimize the risks of a legal or moral challenge to the Judiciary;
- To ensure compliance with the retirement benefits legislation in Kenya and Government's policy as much as possible; and
- To provide benefits that are simple to communicate, understand and administer.

Judges' Viewpoint

G.5. When carrying out an actuarial valuation as at 31 December 2007 and later in a sensitization exercise for Judges Retirement Bill 2024 across the country, we had a chance to interact with some retired serving and retired Judges who gave us their experiences and expressed opinions on the changes they would wish to have in the retirement benefit provision. The Taskforce also has in our discussions shared with us some of the desired features that Judges would like to see in their retirement benefit arrangement. We provide below the Judges' viewpoint:

- There is preference for a scheme that is simple and easy to understand;
- They would wish to be in a non-contributory arrangement like most of their peers in other countries;
- They would prefer their benefits to be based on gross salaries;
- They would greatly value a scheme that provides regular pension increases during retirement;
- Increases during retirement should be commensurate to increases in salaries for the serving Judges so as to maintain the standard of living of Judges retiring at the same level (job group) in different generations;
- They would value additional non-pension benefits to be provided during retirement that compare satisfactorily with peers in other countries;
- There should be a guaranteed minimum level of benefits for a judge who has retired after serving for a minimum number of years;
- The scheme should provide adequate protection benefits in the event of demise before retirement; and
- They would value a scheme where there is immediate vesting of benefits with benefits not being lost even in cases of leaving service for reasons other than death or retirement.

G.6. Clearly, designing the Fund is thus a delicate balancing act of meeting as much as possible the objectives of both the Judiciary and the Judges within limited financial resources.

G.7. Some of the above objectives are best met through a DB arrangement (e.g., setting target pension increases in retirement) whereas others are best met through a DC arrangement (e.g., achieving predictability of costs and benefits flexibility).

Legislation and Legal Considerations

G.8. As mentioned earlier, Judges retirement benefits are currently governed by the provisions of the Pensions Act.

G.9. It would be important to ensure that the changes to remove Judges from the jurisdiction of the Pensions Act to subjects of a new Act be compliant and in consonance with the Constitution and possibly other relevant legislation such as the Retirement Benefits Act 1997 and Regulations, the Income Tax (Retirement Benefits) Rules 1994 and subsequent amendments under these Acts.

G.10. The Retirement Benefits Regulations 2000 require that:
"No alteration to a scheme's rules may be made which reduces the *"accrued"* benefits of scheme members". The term *"accrued"* is however not explicitly defined in the Regulations.

- G.11. The Retirement Benefits Regulations 2000 also prescribe other requirements in relation to scheme benefit design which would need to be borne in mind including requirement for no discrimination between members of a scheme.
- G.12. The inclusion of DB and DC Sections in the same scheme has been allowed in the past but we recommend that the appropriate legal advice be taken to be aware of any potential pitfalls and how to navigate them.

Appendix H: Different Types of Schemes and Relative Merits

- H.1. We discuss in this section the various types of retirement arrangements and the merits and demerits of each. We understand that the Taskforce has considered all the various options including consultations with the National Treasury before resolving to establish the Scheme in its hybrid basis (DB and DC Sections).
- H.2. In this section, we comment on the various types of retirement arrangements and their relative merits. A review of this section could be a good reference point for the Taskforce in relation to the other possible designs that were considered before settling on the proposed structure for the Scheme.
- H.3. We discuss first some overriding objectives of establishing a scheme which we will later comment on how best the various scheme designs meet them.

Objective of Setting up a Scheme

- H.4. The key aim of an employer offering a pension scheme is normally that it should be a valued part of the employee remuneration package. It can thereby help to recruit, retain, motivate and award staff.
- H.5. Typically, it is the sponsoring employer (be it in public or private sector) who meets the cost of a pension scheme after allowing for employees' contributions, if any. The sponsoring employer will view the cost of the pension scheme as part of the cost of the total remuneration package, including pay of employees.
- H.6. Further, an important aim of the sponsoring employer must be to set up and operate a pension scheme, which it considers appropriate to the various sections of the workforce, subject to considerations of costs and the practice of similar employers.
- H.7. In formulating pensions policy, an important, but often overlooked, objective of an employer is to aim to keep the standard of living of a long serving employee comparable pre and post-retirement.
- H.8. Thus, benefit design typically targets providing a post-retirement income (or income replacement ratio) that is reasonable in relation to pre-retirement income for a long-serving employee. A reasonable target benefit on retirement may be an income of 67% to 80% of an employee's pre-retirement income on the grounds that an individual's needs in retirement are likely to be less than those during their working lives.
- H.9. Whether the standard of living following retirement is maintained subsequently depends on the extent of pension increases, if any, granted. Hence, a good pension scheme would typically include provision for pension increases on a guaranteed or discretionary basis so that some protection against the erosion of the purchasing power of the pension from the effects of inflation is also provided.
- H.10. However, other objectives are now also important:
 - i) Pension benefits are increasingly regarded as deferred pay and there is a perception that pension benefits should be a fair amount of "deferred pay" whether a member stays or leaves the scheme;
 - ii) Protecting employees and their dependants;
 - iii) Simplicity of retirement benefit arrangements;
 - iv) Flexibility in the delivery of benefits;

- v) Value for money in term of meeting needs, costs and perceived value by employees;
- vi) As a means of rewarding long serving, high flying employees including special arrangements for senior management and staff; and
- vii) Being 'fair' and 'equitable' to different classes of employees.

H.11. We now look at the various types of schemes and how they meet the above objectives.

Pension Schemes vs Provident Funds

H.12. There are two principal types of retirement benefits schemes:

- Pension schemes which aim to provide a regular income in retirement
- Provident funds which provide lump sum benefits on retirement or earlier exit

H.13. Before retirement, i.e., while the funds are still in the hands of the trustees, pension schemes are typically more flexible than provident funds. Benefits can be paid in the form of a pension with members having an option of taking part of their benefits in the form of a cash lump and a reduced pension. The pension is often paid in accordance with the scheme rules which will dictate what benefits are payable on death and to whom and whether increases apply in retirement and at what rates. For provident funds, the trustees are obligated to pay the member his benefits in one lump sum.

H.14. Once the benefits are in the member's hands, a provident fund is more flexible in the sense that the member can decide on various options of utilizing his lumpsum e.g., part to purchase an annuity and to choose the annuity terms such as the rate of increases, whether or not to provide for dependants benefits on death. The main risk with provident funds is that members may squander the cash lumpsum and end up destitute sooner than later.

Defined Benefit vs Defined Contribution Schemes

H.15. There are two principal types of pension schemes:

i.) **Defined Benefit scheme ("DB") (also called Final Salary Schemes)**

The Pensions Act is an example of a DB pension scheme in which an employee's pension depends upon their salary at or near retirement; the amount of benefit is therefore determined according to a formula (e.g., the benefit formula which applies under the Pensions Act is for a retirement pension of 1/40ths of pensionable emoluments for each year of pensionable service).

The pension benefit is guaranteed by the sponsoring employer and is not dependent on the level of contributions or performance of investments (if any).

ii.) **Defined Contribution Scheme ("DC")**

In contrast, for a defined contribution scheme, the level of contributions is pre-determined and is invested in separate accounts for each employee. On retirement, the employee's accumulated fund is applied to secure a pension.

The level of contribution is therefore fixed, whereas the level of benefit ultimately bears no direct relationship to an employee's salary near retirement. There is no guarantee of the level of pension at retirement.

Relative Merits from Members' Point of View

H.16. The relative merits of the two main types of schemes from members'/employees' point of view are as follows:

Advantages of DB over DC

i) Up to the point of retirement, the level of benefit is guaranteed in real terms as it directly derives from the final salary at retirement. It is expected that salaries will have kept up in pace with inflation during employment. However, whether the pension keeps up with inflation after retirement depends on the level of pension increases granted during retirement.

The amount of benefit from a defined contribution scheme is uncertain as it depends on the level of contributions paid into the scheme, future investment returns relative to the rate of inflation, and market conditions at retirement.

- ii) Members do not bear any of the investment risk.
- iii) The member does not bear longevity risk (i.e., the employer guarantees to pay the pension for as long as the member lives after retirement).
- iv) Often, a level of increases to pensions in retirement is provided and sometimes guaranteed by the employer. This may provide a level of protection against inflation during retirement.
- v) Protection benefits on death or ill-health retirement are usually favorably and better structured in a DB scheme than a DC scheme.
- vi) DB schemes are perceived by many employees to be the best type of scheme to belong to and membership is therefore highly valued by them.

Advantages of DC over DB

- i) They are perhaps simpler for the member to understand although this is arguable.
- ii) There is more apparent transparency to a member as the member can observe the appreciation/depreciation of their benefit over time.
- iii) There can be more flexibility in the form in which benefits can be taken on retirement (e.g., the type of annuity to purchase, choice on level of increases, choice on level of dependants' benefits etc.).
- iv) They may offer better benefits to early leavers than a defined benefit scheme.
- v) There is no cross subsidy between members or different generations of members.
- vi) Members directly benefit from favorable investment returns as these will reflect on their accumulated funds. On the other hand, members suffer directly in case of poor investment returns.
- vii) There may be scope for investment choice over time to enable a member to have more say in the investments backing their retirement benefits rights.

Relative Merits from an Employer's Point of View

H.17. The relative merits of the two main types of schemes from an employer's point of view are:

Advantages of DB over DC

- i) A defined benefit scheme typically rewards long service employees more than short service employees and this may accord with the employer's intentions.
- ii) Although in theory there is the perception of an open-ended liability on the employer's part, there is a degree of flexibility in the pace at which benefits in a defined benefit scheme can be funded (i.e., there can be flexibility in terms of varying the level of contributions over time to take advantage of the sponsors changing financial fortunes).
- iii) A DB scheme can be more easily designed to target a given replacement ratio over a given period of service than it is to set appropriate contributions for a DC scheme to achieve the same replacement ratio over the same period.
- iv) Benefits can be easily designed to meet specific needs in various circumstances (e.g., ill-health retirement and death in service).
- v) DB schemes convey the concept of a sponsor's long-term existence and commitment more than DC schemes do.

Advantages of DC over DB

- i) There is a defined employer's cost which the employee can value. The employer is not exposed to the risk of additional costs as the investment and longevity risks are borne by the members.
- ii) There is no "open-ended liability" to the employer.
- iii) They are perceived to be simpler to administer compared to DB schemes (although this has been shown to be not always true in all contexts).
- iv) For private sector employers, financial accounting and reporting of employer pension costs is relatively more straightforward. The employer is not exposed to the risk of volatility in its financial statements on account of application of International Accounting Standards.

H.18. As can be seen from the above discussion, the choice of one type of arrangement over another involves compromises on some aspects and taking advantage over other aspects.

H.19. Ultimately, whether belonging to a DC or DB is better can only be known with hindsight after one has retired. Which scheme is better than the other will depend on the experience of each individual member.

Hybrid Schemes

H.20. Hybrid schemes combine features of both DB and DC schemes. For example, we can have a DC scheme with a benefit on retirement that is the minimum of the pension that can be afforded out the accumulated contributions and a pension calculated based on final salary for each year of service at a very low accrual rate e.g., 1/900ths.

H.21. A DB scheme that calculates some benefits, for example on withdrawal, as a refund of accumulated contributions can also be said to be a hybrid scheme.

The merits and demerits of hybrid schemes are a mix of those of DB and DC schemes.

Appendix J: Detailed Analysis of Benefits and Contributions Proposed under the DC Section

- J.1. In this section, we discuss the general features of a good DC scheme. Where necessary, we have commented on the appropriateness of the features of the proposed Fund in comparison to the best practice for DC Schemes.

Level and Structure of Contributions

Factors Influencing the Level of Contributions

- J.2. For a DB scheme, the rate of contribution is determined as the amount required to meet the cost of the future accrual of various target levels of benefit. The Sponsor typically meets the balance of cost after allowing for members' contributions (if any).
- J.3. For a DC scheme, the rate of contribution is typically determined by the following factors:
- The rate of contribution required to meet various target levels of benefits.
 - The rate of contribution required to provide benefits similar to those under the sponsor's DB Schemes (if any) after a full career, say approximately 30 to 40 years.
 - The positioning of the sponsor's retirement benefits package in the market and amongst peer group defined contribution schemes.
 - The financial strength of the sponsor.
 - Any legislation or regulatory requirements.
 - Setting the employees' contributions rate at a level they can afford.
- J.4. Often, the level of contribution by an employer is heavily influenced by their financial strength and the market positioning. It is also influenced by how much the employees may be willing to contribute. In general, a contribution rate of 20% to 30% of salary over a period of 30 to 40 years is expected to provide an income replacement ratio of more than 60% of salary. This partially depends on the contributions being invested to earn some decent investment returns net of expenses.
- J.5. The Bill proposes total contributions of 22.5% of pensionable emoluments to provide for all proposed pension benefits. The proposed total contributions of 22.5% of salary are expected to provide a reasonable benefit on retirement.
- J.6. As noted earlier, the proposed level of Government's rate of contribution is 15% of pensionable emoluments and the ratio of 2:1 between Government's contribution rate and the Judges' contribution rate meets the requirements imposed by the Treasury Circular No 18 of 2010 and No 9 of 2024 on the employer's absolute maximum contribution rate and the ratio to employees' contribution rate.

Factors Influencing the Structure and Different Structures of Contribution

- J.7. The main factors that will influence the structure of contributions under a DC Scheme are:
- The desire to maintain administrative simplicity;
 - Desire to mirror DB shape of contribution;
 - Desire to reward loyalty and productivity; and
 - Legislation and regulations which may limit discrimination.

- J.8. Depending on the age profile of the members and if more accurate targeting of DB type benefits is desired, a sponsor may consider age-related or, as a proxy, service-related, contributions. We discuss below the different types of sponsor's contribution structures that can be considered for a defined contribution scheme:

Plain Vanilla DC

- The key message is keep it simple
- All employees equally valued
- No penalties for leavers
- Appropriate for mobile employees
- Simple for ease of administration and understanding
- Most sponsors in Kenya have typically adopted this uniform contribution structure

Age-Related Contributions

- Contributions increase with age bands
- Can be structured to mirror the shape of DB scheme
- May be seen as form of ageism
- Common abroad where intent is to mirror a DB scheme benefits

Service-Related Contributions

- Contributions increase with service
- Organisation values loyalty
- Organisation values experience
- Also favours the old, but not explicitly

Profit Related Contributions

- Results matter
- This is a profits/results oriented organisation
- Contribution structure reinforces corporate message
- Can focus on measurable criteria
- Will depend on whether rest of the remuneration/benefits package is results oriented

Matching Contributions

- Targets resources on those who value them most
- Engenders an ethos of partnership
- Common abroad and has been introduced by a couple of banking institutions in Kenya

- J.9. Majority of DC schemes sponsors in Kenya have adopted the 'plain vanilla' type of structure. However, there are a few in the private sector who have adopted the 'matching structure'. Under the matching structure, the sponsor makes a base contribution for all members. Then members are encouraged to contribute for themselves with the sponsor matching the extra members' contributions up to some set limits. The level of matching may be set to increase with service or age.

- J.10. The Bill proposes a vanilla type of structure for the Fund. The main advantages of this structure are its ease of communication and administration as well as being perceived to meet the threshold of equity.

Additional Voluntary Contributions (“AVCs”)

- J.11. It is typical for both DB and DC schemes to allow members and option of supplementing their expected benefits from the scheme by making AVCs.
- J.12. The amount and frequency of the contributions is left to the volunteering members to decide. However, trustees may impose some guidelines in order to not complicate the administration work with too much heterogeneity. The guidelines may stipulate the minimum AVC contributions and the frequency with which members may vary their AVCs.
- J.13. Usually, there is flexibility given to the members with regard to the form (cash or regular income/pension) of benefits that they may derive from the AVCs.
- J.14. The Bill provides for Judges to make AVCs to the Fund. If the facility is actively promoted, it could prove popular and enable Judges to enhance their own retirement benefits.
- J.15. We would recommend that the finer details and guidelines on AVCs be dealt with by the Regulations that will accompany the Act.

Method of Allocating Investment Returns

- J.16. Usually, all the members’ funds in a DC scheme are pooled and invested together in a pool of assets. The administrator will maintain a book entry of each member’s contributions and the interest allocated to a particular date. Ideally, on any date, the Retirement Savings Account in the case of a Judge at any one time would represent the expected value in shillings of the share of the Fund assets that the Judge would be entitled to if the Fund assets were sold and realized their market values on that date.
- J.17. The Bill provides for Judges’ Retirement Savings Accounts (“the RSA”) to be credited with “accrued interest”. The “accrued interest” is defined in the Bill as *income or capital appreciation or depreciation, less any applicable tax and costs of administration credited to a member’s retirement savings account*.
- J.18. It is expected that the Regulations accompanying the Bill or specific policies that the Fund Trustees may adopt would deal with the method of determining and allocating “accrued interest”. This would also include specifying the frequency of such allocations. We provide below some guidelines that the Fund Trustees can use when making such policies.
- J.19. There are two methods that are commonly adopted by DC schemes for allocating interest to members’ accounts.

Smoothing Method

- J.20. Under this method, the trustees maintain an investment reserve that is intended to grow members’ accounts at a steady rate and members can plan ahead effectively using the amounts provided on their benefit statements.
- J.21. The investment reserve is created by under-allocating returns in periods when the scheme assets have performed well. In times of poor performance, a portion of the investment reserve is utilized to allocate returns that are higher than those earned on the scheme assets. In times of very poor investment performance, the investment reserve could be allowed to be negative in order to ensure, as a last resort, that a negative interest allocation is not made.
- J.22. The main disadvantage with this method is the administrative complexity of tracking the investment reserve. There could also be issues of cross-subsidy and difficulties in ensuring equity when sharing out the reserve to those members exiting the scheme completely.

Market Returns Method

- J.23. An alternative method is to allocate members the full market return earned on the assets of the scheme whether positive or negative. In this case, there is no investment reserve maintained in the scheme. Accordingly, members' balances can reduce from one period to another in times of extreme negative returns. Similarly, in times of very favourable returns, members enjoy better interest allocated to their balances.
- J.24. The main advantage of the market returns method is that it avoids cross-subsidy between members and avoids the administrative issues of tracking a reserve.
- J.25. To a large degree the decision on the method to adopt depends on the expectations of members. If members can appreciate and accept that their accounts could be reduced in times of poor performance, the market value approach may be most appropriate. If members' expectations are that their accounts should increase steadily over time and never be reduced in times of poor investment performance, then the route of smoothing is preferable.
- J.26. Under both methods, it is important for the trustees to deal with the issue of returns to be allocated to members exiting the scheme in the interval between the last financial period for which a rate was allocated and the end of the next financial period for which a return is yet to be allocated.
- 7.1 Some scheme trustees will set a long-term interim rate (a very low rate) that is to be allocated to members who exit the scheme for the partial year of exit for which a final rate of return has not been determined and allocated. Rather than set the interim rate at a long-term rate, the trustees may also set interim rate to apply only for the next period after which a new interim rate will be determined.
- J.27. It is also important for the trustees to specify in their policies whether members who get paid an interim rate would get top-up benefits (short fall interest) should the final interest rate allocated for that period be higher than the interim rate. When the interim rate is set at zero, it is usually the case that members who exit are later paid shortfall interest. The downside of paying shortfall interest is that it is administratively expensive as each members' calculation and benefit payment is done at least twice.
- J.28. To avoid having to pay shortfall interest, trustees can allocate interest more frequently, e.g., quarterly or monthly. In this case, they can set the interim rate at zero and pay no shortfall interest. The justification is that exiting members are disadvantaged only for a very short period in the event that positive returns were allocated in the last financial period.
- J.29. The more frequently the returns are allocated the more the administrative resources required. The fund managers and the custodians would also need to prepare their reports more frequently.

Investment Choices

- J.30. Offering investment choice to individual members has become the norm for defined contribution schemes in the more developed economies and is also becoming popular in South Africa.
- J.31. This entails setting up of sub-funds within the scheme with each sub-fund focusing on investing in a given portfolio of assets based on their riskiness. The sub-funds are based on the investment maxim of "the riskier the assets are, the higher the expected returns from them". Thus, the sub-funds would broadly be categorized as low risk, moderate risk and high risk. Some more intermediate sub-funds could also be created in between the low to high-risk spectrum.

- J.32. Members are usually advised to consult professional financial advisors before choosing which sub-funds their contributions should be invested. The scheme rules would also set how frequently members may change their chosen sub-funds and default funds for those members who do not indicate their preferred choices.
- J.33. Offering investment choice to members greatly increases the administrative complexity of the scheme.
- J.34. Investment choices are a feature that the trustees of the Fund may consider. This may need to be dealt with in the Regulations accompanying the Act rather than in the Act.

Cash Lumpsum on Retirement

- J.35. For a pension arrangement, the Retirement Benefits Regulations 2000 permit up to one-third of a member's accumulated fund to be taken as cash on retirement.
- J.36. We note that the Bill also provides that a Judge may opt be paid up to one third of his RSA as a cash lumpsum.
- J.37. The cash lumpsum is popular with many scheme members across the world. The cash lumpsum could be used to pay off a mortgage, to go on a lifetime holiday or start a business.

Method of Providing Pensions at Retirement

- J.38. In a defined contribution scheme, there are typically three ways of paying pensions:
- i) Converting member accounts into a pension paid from within the scheme;
 - ii) Requiring retiring members to buy an annuity from an insurance company;
 - iii) Income drawdown – under which a pensioner's member account remains invested (either in a sub-fund within the scheme or with another provider of drawdown facility) and the pensioner draws monies from the fund on a regular basis. There is some flexibility on the amounts and frequency of the drawings subject to limits that may be set by relevant authorities.
- J.39. The first option requires the sponsor to take on the investment and longevity risk in retirement. In effect, the scheme becomes DB when a member retires.
- J.40. The scheme trustees would need to ensure that the terms of converting the member's account into a pension represent fair value so that they do not expose the scheme and the sponsor to undue liability and also that they do not offer the member too low a pension. From the members' perspective, this option also limits the flexibility in the form in which the pension can be taken since the scheme would not be able to offer more than a limited number of options.
- J.41. Many members in Kenya favour the first option due to the link it maintains to their former employer as opposed to severing the link after retirement. There is also some perception that the pension is safer with the schemes (i.e., schemes are less risky) than insurance companies. These are largely unfounded. However, members can reasonably expect a scheme to offer better pensions than available in the insurance market, particularly because the scheme would not include any loading for profits when converting members' fund credits to pension.
- J.42. The second option of securing an annuity in respect of retiring members enables the scheme and the sponsor to transfer the longevity, investment and administration risks to the selected insurers. The risk of default of the insurer can be transferred too if the annuities are purchased in the name of the individual retiring members rather than being purchased in the name of the scheme. The insurance approach will also reduce the administration requirements and expenses since the scheme will not administer pension payments.

- J.43. The third option avoids the need to buy an annuity and the individual member's account remains invested in the scheme on a favorable tax basis. The income drawdown can be varied between an upper and lower limit and allows an individual to draw an income to suit their individual circumstances as long as the payments are made in accordance with agreed limits. It would be sensible though to have an annuity secured (with the entire or a portion of the fund) after the pensioner attains a particular age.
- J.44. This method of drawing benefits is becoming increasingly popular with members in some countries abroad and in Kenya as well. This method may be attractive for members retiring with a large accumulated fund. However, there is need for ongoing monitoring of the drawdown plan as the income is not guaranteed.
- J.45. The market practice amongst defined contribution schemes in Kenya is typically for annuities to be purchased from an insurance company for retiring members. Members have the choice of selecting the annuity provider (insurance company) from whom the annuity is secured. This tends to apply irrespective of the size of the scheme in terms of membership or assets.
- J.46. There are a few DC schemes that pay pensions from within the scheme.
- J.47. The Regulations were amended in 2008 to permit income drawdown as an alternative to annuity purchase and this option is becoming increasingly popular with members.
- J.48. In August 2012, the Retirement Benefits Authority ("RBA") issued Prudential Guidelines Number RBA 002 which provides a framework within which DC schemes may effect the income drawdown option. Further amendments of the Guidelines have been made subsequently.
- J.49. The Bill provides for Judges' retirement benefits under the Fund to be paid either as an income drawdown payable from within the Fund or as annuities purchased from insurance companies. We recommend that the finer details of effecting the two options be spelt out in the Regulations that will accompany the Act.
- J.50. We explore below the relative merits of each of the three options.

Relative Merits

- J.51. Some of the advantages of insuring pensions include:
- i) Transfer of longevity and interest rate risks to the insurer;
 - ii) Certainty of costs and liabilities;
 - iii) Reduces administration burden and costs of maintaining pensioner payroll;
 - iv) In some cases, members may get better annuity terms due to competition of insurers and their competitive edge on economies of scale;
 - v) The member is assured of a guaranteed income;
 - vi) Permits more flexibility in the form in which members may take their pension benefits; and
 - vii) Reduces investment and matching costs.
- J.52. Some of the disadvantages of insuring pensions include:
- i) Annuity terms in the market may not be competitive;
 - ii) Pensioners may feel a 'sense of not belonging'; and

iii) Risk of insurer insolvency.

J.53. Some of the advantages of income drawdown are:

- i) The income drawn down can be varied to suit individual circumstances provided within prescribed limits;
- ii) Avoids the need to buy an annuity and to contribute to the insurer's profits;
- iii) As the monies remain invested, they could grow; and
- iv) There is a possibility of leaving a huge sum to dependants in the event of early death.

J.54. Some of the disadvantages of income drawdown are:

- i) The monies invested may fall and the member's fund could run out;
- ii) Income is not guaranteed;
- iii) Ongoing monitoring of the drawdown plan is required as well as the need to consult personal financial planner which come at a cost; and
- iv) Charges may be higher than for an annuity purchase.

Death in Service and Disability Benefits

J.55. The Bill provides for benefits payable in the event of death of a Judge in office. The benefits payable are the Judge's Retirement Savings Account.

J.56. We have noted and commend the discretion given to the Trustees to decide the most suitable mode of payment of the dependant's benefits. The Regulations to the Act or Trustees' adopted procedures and policies can document the methods of determining whether to pay the benefits either as lump sums or pensions or a midway option.

J.57. We note that the Bill does not provide for disability benefits. There are disability benefits provided for in other Acts such as Work and Injury Benefits Act ("WIBA"). We believe that Judiciary has an insurance cover providing for benefits payable under WIBA.

J.58. WIBA would cover for injuries sustained while in the employer's premises or arising out of the premises but while on duty. However, it is still possible for the Fund Trustees to provide additional disability benefit as a rider to an insured death lump sum benefit. Usually, depending on the persuasiveness of the client or the insurance broker used, the additional disability benefit can be provided at no extra premium or a very minimal premium.

Spouse's and Dependants' Pension

J.59. For DB schemes, it is easier to set benefits that are payable to dependants in the event of death in service or death in retirement. This may take the form of a pension based on salary and service to the date of death, or sometimes potential service up to the normal retirement age. In a DC scheme, there is no direct equivalent to this type of pension benefit.

J.60. For DC Schemes, flexibility in benefit delivery is one of the selling points. This partly makes it relatively difficult to set the benefits payable to spouse and dependants in the event of death of the member. If full flexibility is given, members may not provide adequately for their spouses and dependants. This may expose the sponsor and Trustees to the risk of a moral comeback from a deceased pensioner's spouse or dependants. There is also the question of how much to provide for the dependants for those that are willing to provide.

- J.61. To avoid moral comeback, some sponsors may force members through the scheme rules to provide some minimum dependants' benefits. In our experience in Kenya, most DC schemes require the pension purchased on retirement to include either a 5- or 10-year guarantee. Some require a spouse's pension to be purchased for married members. The scheme rules may specify the minimum percentage (usually 30% to 50%) of the member's pension that must be purchased to be payable to the spouse in the event the member predeceases the spouse. Obviously, a member would be at liberty to purchase a higher pension for the spouse or dependent children.
- J.62. We note that the Bill provides for payment of retirement benefits to the dependants of a deceased retiree subject to the terms of the annuity or income drawdown purchased in retirement. The Judiciary would need to decide whether married Judges who opt to purchase annuities will be given full flexibility on whether and how much dependants' pension to provide. If the Judiciary favours enforcing some minimal provision for dependants, then these can be dealt with in the Regulations accompanying the Act.
- 7.2. On the death of a recent recruit, the RSA would not normally provide a generous level of protection for the spouse or dependants. Thus, additional protection may be required. Consideration may be given to insure a spouse's pension of a fixed proportion of pensionable emoluments at death (say 25% of the member's pensionable emoluments).
- J.63. Consideration may be given to purchasing an insurance policy to provide a lump sum benefit on the death of a Judge. A part of the lumpsum proceeds can be added to the member's RSA and used to secure a spouse's pension. Section 30 (2) provides the Trustees with the necessary flexibility to make policies that can effect this.

Ill-Health Retirement Benefits

- J.64. The Bill provides for benefits payable on ill-health retirement under Section 25. The benefits payable in this case are similar to those payable as for early or normal retirement.
- J.65. The most common arrangement for DC schemes in Kenya is for the proceeds of an individual member's account to be used to provide benefits for the member either as a lump sum or a pension.
- J.66. On long term ill-health, the member's account would not normally purchase a reasonable level of pension for short serving members.
- J.67. Two approaches that may be considered to make additional provision on ill-health retirement are:
- A Group Disability Insurance ("GDI") arrangement may be considered to provide an additional disability benefit. This would typically be done through a rider to a group life scheme.
 - A Permanent Health Insurance ("PHI") arrangement may be considered to be used in conjunction with the DC Scheme to provide income protection to retirement, say at 40 – 50% of salary.
- J.68. Only a limited number of insurance companies in Kenya offer Group Disability Insurance and PHI covers. If either of the options is chosen, the insurance company's underwriting policy and definition of sickness will apply and may affect the employer's overall policy on ill-health retirement.

Withdrawal Benefits

- J.69. Withdrawal benefits, in pensions terminology, refers to benefits that are payable on exits before reaching retirement for reasons other than death or ill-health (e.g., resignations, dismissals, terminations, etc.). The Bill provides for benefits payable on withdrawal. A Judge may on withdrawal opt to immediately be paid his own accumulated contributions plus interest. The contributions made by the Judiciary on his behalf would be compulsorily preserved in the Fund and be payable when the Judge attains retirement age.
- J.70. The Retirement Benefits Regulations allow a withdrawing member from a DC scheme to access up to 50% of the total value of their RSA. The remaining 50% of the Fund must be compulsorily preserved until the member attains retirement age.
- J.71. We recommend that the considerations be given to the proposed Bill to align the withdrawal benefit with the Retirement Benefits Regulations which allow a member to withdraw up to 50% of the total value of their RSA.

Vesting of Benefits

- J.72. The Bill provides that all benefits, both from a Judge's contribution shall vest immediately. Government contribution will vest after one year. Consideration may be given for Governments's contributions also to vest immediately.
- J.73. Historically, a long vesting period was used by many employers in order to retain employees. The reduction in vesting periods to almost full immediate vesting is as a result of regulators protecting members in the realization that many employees who changed jobs many times retired with low pensions. It has also been brought about by studies in productivity that showed that firm's productivity could be improved by providing genuine incentives to attract and retain good employees as well as providing incentives to allow the less productive ones to leave.

Treatment of Expenses

- J.74. The Bill provides for the the Government to meetthe setup costs of the Fund for the first five years and the Fund to meet its expenses from its resources henceforth. This is compliant with the Treasury Circular No 18 of 2010.
- J.75. In many DC schemes, expenses will be incurred mainly in respect of administrative and investment functions. The expenses are deducted from investment income before allocating the remaining income to members.
- J.76. We note that the Bill recommends for a cap on administrative expenses at a rate to be determined. Whereas the intention is to ensure that the Trustees control the administrative expenses, there is a possibility that in some period, there could be a genuine need to incur expenses higher than the set cap. The legislated cap may in that instance cripple the Funds' operations. It may therefore not be very prudent to legislate a cap on the expenses.
- J.77. We recommend that if the cap must be legislated, it should be set as a percentage of the Fund's assets rather than a percentage of the investment income.

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Submission **15**

**MEMORANDUM OF THE JUDICIAL SERVICE COMMISSION TO THE
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS COMMITTEE ON
THE JUDGES RETIREMENT BENEFITS BILL, 2025.**



**MEMORANDUM OF THE JUDICIAL SERVICE COMMISSION TO
THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS COMMITTEE ON THE JUDGES RETIREMENT
BENEFITS BILL, 2025.**

**PRESENTED BY HON. COMMISSIONER ISAAC K. RUTTO, EGH,
VICE CHAIRPERSON,
JUDICIAL SERVICE COMMISSION.**

7TH AUGUST, 2025

**MEMORANDUM OF THE JUDICIAL SERVICE COMMISSION TO THE
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS COMMITTEE ON
THE JUDGES RETIREMENT BENEFITS BILL, 2025.**

INTRODUCTION

The Judicial Service Commission (JSC) appreciates the opportunity to appear before the National Assembly Departmental Committee on Justice and Legal Affairs to present its views on the Judges' Retirement Benefits Bill, 2025.

The Bill represents a critical and long-overdue step in aligning the retirement framework for judges with the Constitution of Kenya, 2010. It is concerning that, over 15 years since the Constitution's promulgation, judges' retirement is still governed by the outdated Pensions Act of 1947—legislation that falls short of modern constitutional standards and the needs of an independent Judiciary.

To address this, the Hon. Chief Justice and Chairperson of the Commission appointed a Taskforce to develop a modern, principled, and sustainable retirement benefits framework. The Taskforce undertook a comprehensive and consultative process involving all relevant stakeholders. The result is the Judges' Retirement Benefits Bill, 2025, now before this Committee.

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The Commission emphasizes that judges occupy a unique constitutional role—bound by strict ethical codes, barred from private business, and entrusted with decisions of national significance. Securing their post-retirement welfare is essential not just for individual dignity, but to preserve institutional integrity. To enable judges to discharge their functions with full impartiality and without personal anxiety, they must be assured of security and dignity after service.

The Bill provides a sound legal foundation to achieve this goal. It reinforces judicial independence, affirms Kenya’s constitutional values, and ensures that those who serve with utmost sacrifice can retire with the dignity befitting their office.

Mandate of the Judicial Service Commission on Judicial Welfare

The Judicial Service Commission is established under Article 171 of the Constitution and is mandated, among other functions, to promote and facilitate the independence and accountability of the Judiciary.

Within that context, the Commission is empowered under Article 172 to review and make recommendations on the conditions of service of judges and judicial officers, excluding remuneration. This includes

**MEMORANDUM OF THE JUDICIAL SERVICE COMMISSION TO THE
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matters such as retirement benefits, post-retirement medical support, housing allowance, and other measures that uphold the dignity of judicial office both during and after service.

Approval and Endorsement of the Bill by the Commission

The Judges' Retirement Benefits Bill, 2025 was considered by the Judicial Service Commission following its development by the Taskforce appointed by the Hon. Chief Justice and Chairperson of the Commission. During a meeting held on **12th April, 2024**, the Commission engaged with the Taskforce to review and deliberate on the contents of the draft Bill.

Upon review, the Commission provided a set of recommendations aimed at strengthening the proposed framework. The Bill was subsequently approved by the Commission subject to the incorporation of those recommendations, which have now been reflected in the current draft.

Accordingly, the Commission affirms its support for the Bill and commends its timely presentation for enactment.

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THE JUDGES RETIREMENT BENEFITS BILL, 2025.

Grounds of Support by the JSC.

The Commission supports the Bill on the following key grounds:

1. **Strengthening judicial independence-** Security in retirement is critical to judicial independence. Judges must be assured that their welfare will not be compromised at the end of their service. This assurance enables them to carry out their duties without fear, influence, or distraction. The Bill lays a sound foundation for this confidence.
2. **A balanced transition to modern pension arrangement-**The Bill adopts a dual pension model preserving the Defined Benefit (DB) scheme for serving judges and introducing a Defined Contribution (DC) plan for future appointees. This ensures continuity for current judges while aligning new arrangements with broader public sector reforms and fiscal prudence.
3. **Realignment of pensionable emoluments-** historically, housing allowance has been excluded from the computation of pension, despite being a substantial part of judges' earnings. The Bill rightly includes housing allowance within pensionable emoluments,

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allowing for a smoother income transition upon retirement and better reflecting the financial realities of judicial life.

4. Provision of Essential Post-Retirement Benefits-the inclusion of non-pension benefits such as medical cover and transport support recognises the practical needs of judges after retirement. These are not luxuries, they are necessary supports that maintain the dignity of former judicial officers, many of whom retire at an age where re-employment opportunities are limited.

5. Recognition of the Unique Nature of Judicial Office-judicial service is unlike any other in the public sector. Judges are subject to extensive restrictions on conduct, lifestyle, and speech. Their professional isolation and ethical obligations merit a retirement framework that respects the uniqueness of their role and supports them accordingly.

Conclusion and Recommendations

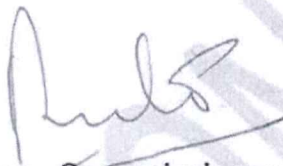
The Judicial Service Commission respectfully affirms that the Judges' Retirement Benefits Bill, 2025 presents a timely and much-needed legislative intervention. It offers a structured and principled framework

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for judicial retirement that acknowledges the unique role of the Judiciary, safeguards constitutional values, and reinforces both institutional independence and integrity.

In view of the foregoing, the Commission humbly urges the National Assembly Committee to consider and support the enactment of the Bill into law.

The Commission remains fully committed to continued collaboration with all stakeholders to ensure that judges are able to serve and retire with the dignity, and security befitting the high calling of judicial office.



Hon. Commissioner Isaac Rutto, EGH
Vice Chairperson
Judicial Service Commission

Submission **16**

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Ref: COB/NA/002/Vol.VI (41)

6th August, 2025

The Clerk
National Assembly
Parliament Buildings
NAIROBI

Attn: Mr. Jeremiah W. Ndombi, MBS

RE: JUDGES' RETIREMENT BENEFIT BILL, 2025

Reference is made to your letter Ref. NA/DDC/JLAC/2025/074 dated 30th July, 2025, seeking comments on the Judges Retirement Benefit Bill, 2025 (National Assembly Bill no. 27 of 2025).

I am attaching comments from the Office of the Controller of Budget.

I trust that the comments will enrich the Bill.

FCPA Dr Margaret Nyakang'o, CBS
CONTROLLER OF BUDGET

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JUDGES' RETIREMENT BENEFIT BILL

Introduction

This bill seeks to provide judges with a pension and benefits upon retirement. The Bill applies to Judges appointed after the enactment of the Constitution 2010. The Bill proposes the Judges' Retirement Benefit Scheme and the Judges' Retirement Contribution Scheme. The Retirement Benefit Scheme seeks to apply to Judges who retired before this proposed Bill, where they shall enjoy benefits such as Medical cover, diplomatic passports, and access to government lounges. The Contributions Scheme applies to Judges who are in service right now and are required to contribute towards the Scheme.

Key observations of the Judges' Retirement Benefit Bill

1. Clause 8 indicates that a Judge, within 12 months after commencement of this Act, applies to transfer to the Consolidated Fund all the accrued pension benefits under the judicial service pension scheme or any other contributory pension scheme in the public service for the period of service to be considered pensionable service under this Part.
2. Clause 9 states that Pension, benefits and gratuity, payable under this Part, shall be a charge on the Consolidated Fund. However, a Fund is established, as seen in Section 25, known as the Judges' Retirement Benefit Fund, to be managed and operated by a Board of Trustees, which shall be a body corporate (section 29).
3. Clause 27 indicates that the government shall meet the cost of a life insurance policy for each member, which includes death benefits.
4. Clause 38 indicates the powers of the Board that include the following:

- a) control, supervise and administer the assets of the Fund in such manner and for such purposes as shall best promote the purpose of the Fund;
 - b) determine the provisions to be made for capital and recurrent expenditure and reserves of the Fund;
 - c) receive contributions from members and the Government;
 - d) appoint a custodian, investment manager and administrator to carry out the functions specified under this Act or any other relevant written law; and
 - e) do such other things as are necessary to give effect to the provisions of this Act.
5. Clause 62 states what the Board functions are, namely:
- a. cause to be kept proper books, accounts, and records in relation to the Fund, its undertakings, investment activities and properties.
 - b. within three months after the end of each financial year, prepare, sign and transmit to the Retirement Benefits Authority-
 - a. a balance sheet showing in detail the assets and liabilities of the Fund;
 - b. a statement of income and expenditure of the Fund; and
 - c. such other statements of account as required by law.
 - c. The Board shall cause an audit of the funds' books of account to be conducted by a certified auditor under the provisions of the Public Audit Act no more than three months after the end of the financial year.
6. Clause 61 states that the government shall meet the costs of administering the fund for 5 years.

Gaps and Legal Inconsistencies Identified in the Bill

A review of the proposed Bill reveals several omissions and inconsistencies requiring legislative clarification or amendment:

1. The Bill does not recognise the constitutional mandate of the Salaries and Remuneration Commission under Article 230(4)(a), which requires SRC to set and regularly review the remuneration and benefits of State officers, including judges (Article 260).
2. There is an inconsistency between Clause 9, which declares pensions as a first charge on the Consolidated Fund, and the simultaneous establishment of a separate Judges' Retirement Benefits Fund. This dual structure creates ambiguity.

3. The role of the Controller of Budget, as provided in Article 228(5) and Article 206 of the Constitution, is not mentioned. Withdrawals from the Consolidated Fund require CoB approval, which is not addressed in the Bill.
4. The Bill does not provide for submitting withdrawal requests to the Controller of Budget before accessing pensions from the Consolidated Fund.
5. The establishment and management of the Fund appear to conflict with the Public Finance Management (PFM) Act. Notably, the Board of Trustees assumes the role of the Fund Administrator, contrary to Section 24(5) of the PFM Act, which mandates that the Cabinet Secretary appoint administrators of public funds for the National Treasury.
6. The Bill is silent on the requirement under Section 84 of the PFM Act for the administrator to prepare and submit annual financial statements.
7. The absence of explicit provisions on accountability to the Retirement Benefits Authority, beyond submission of financial statements, limits transparency and oversight.



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Proposed Amendments to Judges' Retirement Benefits Bill, 2025

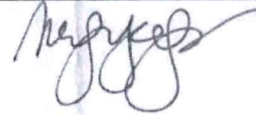
Clause	Proposed Amendment	Justification
2— Definition of "Pensionable emolument:"	Restrict 'pensionable emoluments' to basic salary only.	This is to comply with Article 230 and SRC advisories, which exclude house allowances from pension calculations.
Clause 66— Benefits of Judges who retired before the commencement of this Act	Exclude retroactive extension of benefits to judges retired before the Bill's enactment unless appropriated.	To prevent unbudgeted liabilities.
Clause 25— (Judges' Retirement Fund)	Provide a detailed governance framework including investment rules, fiduciary duties, and reporting standards.	Complying with PFM Regulations 39 and 79–83 enhances transparency and oversight.
Clause 25: Establishment of the Fund	Insert a sub-clause that the Fund's disbursements shall be subject to approval by the Controller of Budget in	This will ensure constitutionally mandated oversight over public fund withdrawals and prevent unauthorised disbursements.

	accordance with Article 228 of the Constitution	
Clause 61— Administration of the Fund	Amend that the Fund shall be administered by an Independent Board of Trustees rather than solely by the Cabinet Secretary or the National Treasury.	Part IV of the Retirement Benefits Act.
	“All withdrawals from the Judges' Retirement Benefits Fund shall be made only upon prior approval by the Controller of Budget, and must be in accordance with appropriated budgets.”	Upholds the constitutional mandate of the CoB under Article 228(4) and prevents fiscal abuse or bypassing of lawful expenditure controls.
Clause 46— Withdrawals from the Fund	Insert a sub-clause stating— “All withdrawals from the Judges' Retirement Benefits Fund shall be made only upon prior approval by the Controller of Budget.	
Clause 57(b)— Reporting Obligations	Provide quarterly reports of all transactions relating to the Fund to the Auditor General.	Section 21(2) of the Retirement Benefits Authority states: <i>Within four months after the end of each financial year, the Board shall submit to the Auditor-General or an auditor appointed</i>

		<p><i>under this section, the accounts of the authority together with—</i></p> <p><i>(a) a statement of income and expenditure during that year; and</i></p> <p><i>(b) a statement of the assets and liabilities of the Authority on the last day of that year.</i></p>
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FCPA Dr Margaret Nyakang'o, CBS
CONTROLLER OF BUDGET





Submission **16** (a)

OFFICE OF THE CONTROLLER OF BUDGET



REPUBLIC OF KENYA

Bima House, 12th Floor
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DDC
8
2/10/25

Ref: COB/NA/002/VOL. VI (51)

30th September 2025

Clerk of the National Assembly
P.O. Box 41842-00100
NAIROBI

Abenayo Wasike
pls deal
3/10/25

Att: Jeremiah W. Ndombi, MBS

THE JUDGES' RETIREMENT BENEFITS BILL, 2025 RESPONSE TO COMMENTS BY THE CONTROLLER OF BUDGET

Reference is made to your letter Ref: NA/DDC/JLAC/2025/103 dated 17th September 2025.

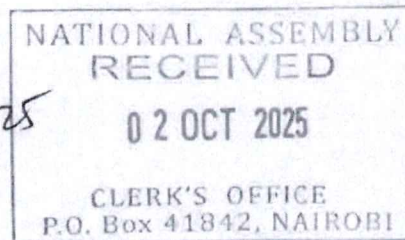
In the letter, the Committee invited my office to a meeting scheduled for Tuesday, 23rd September 2025 to present my views on the Judges' Retirement Benefits Bill, 2025. Prior to this, the Committee had advised consultation with the Judiciary in order to reach a common understanding.

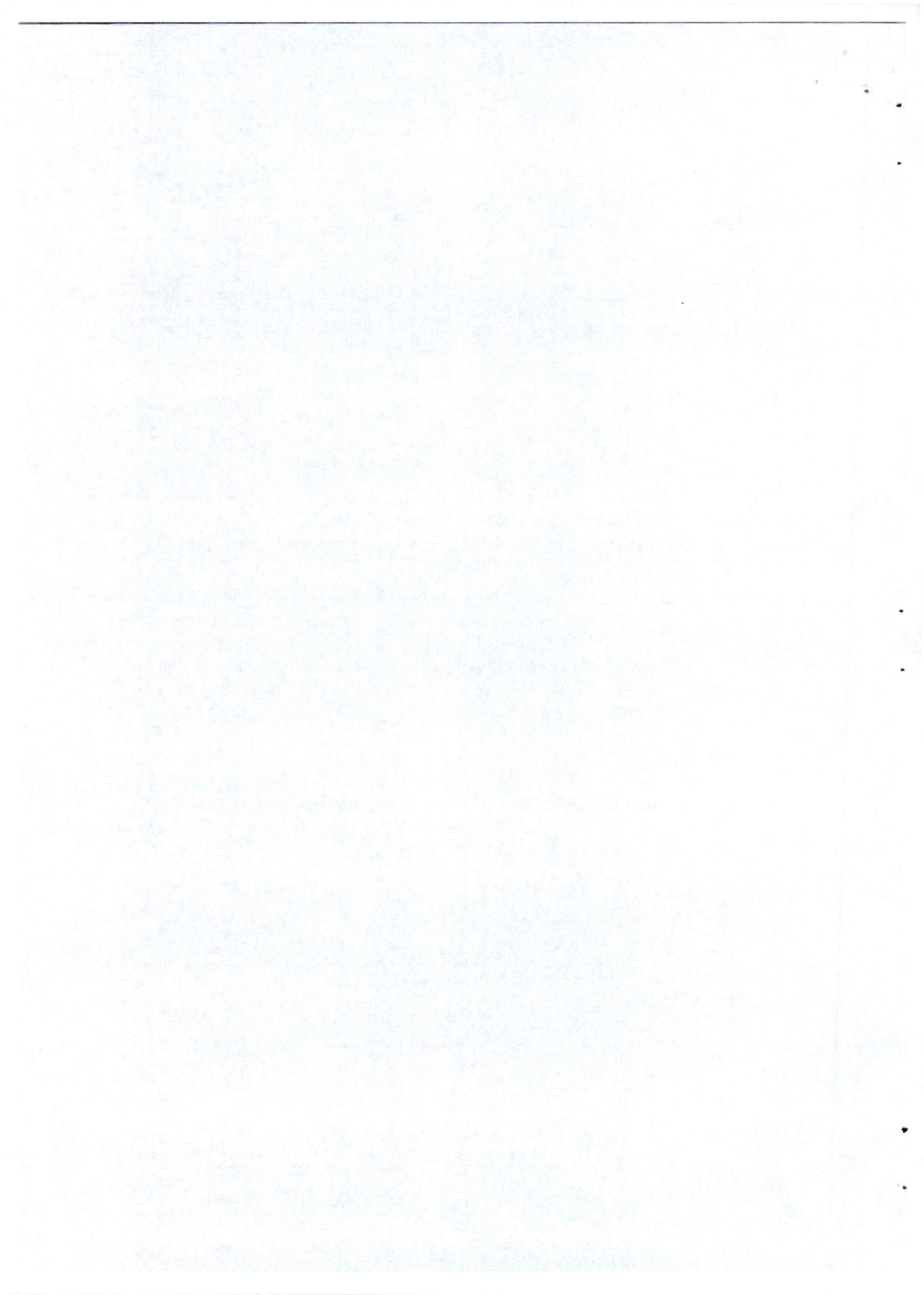
I wish to inform you that, upon review, the responses as attached are satisfactory. Accordingly, there will be no further need to convene a meeting on the matter.

I appreciate the Committee's support and collaboration.

FCPA Dr. Margaret Nyakang'o, CBS
CONTROLLER OF BUDGET

③ *Ahmed Salim*
TNA
DM
3/10/25





<i>Clause</i>	<i>Proposed amendment</i>	<i>Justification</i>	<i>Response</i>
	Benefits Fund shall be made only upon prior approval by the Controller of Budget.”		benefits to members and payment of expenses of the Fund. These do. Not require the approval of the Controller of Budget. In our considered view, the role of the Controller of Budget is confined to approving the disbursements of monies from the Consolidated Fund to the Judges Retirement Benefits Fund only.
57(b) – Reporting obligations	Provide quarterly reports of all transactions relating to the Fund to the Auditor-General.	Section 21(2) of the Retirement Benefits Authority [Act] states: “Within four months after the end of each financial year, the Board shall submit to the Auditor-General or an auditor appointed under this section, the accounts of the Authority together with— (a) a statement of income and expenditure during that year; and (b) a statement of the assets and liabilities of the Authority on the last day of the year.	Section 21 of the Retirement Benefits Act applies to the accounts and audit of the accounts of the Retirement Benefits Authority. The applicable provisions regarding the accounts and audit of accounts of retirement benefits schemes is to be found at section 34 of the Act, which the Board of Trustees of the Judges Retirement Benefits Fund are obligated to comply with. In our considered opinion, there is no need to amend the Bill as recommended by the Controller of Budget.

<i>Clause</i>	<i>Proposed amendment</i>	<i>Justification</i>	<i>Response</i>
			the Consolidated Fund only.
61. Administration of the Fund	Amend that the Fund shall be administered by an independent Board of Trustees rather than solely by the Cabinet Secretary and National Treasury.	Part IV of the Retirement Benefits Act	In light of the fact that the Government is the founder/sponsor of the Scheme, the appointing authority should remain the Cabinet Secretary. However, the membership of the Board of Trustees has sufficient numbers of members who are not connected to the National Treasury to confer on the Board a significant measure of independence. In our considered view, the composition of the Board of Trustees complies with Part IV of the Retirement Benefits Act.
	“All withdrawals from the Judges’ Retirement Benefits Fund shall be made only upon prior approval by the Controller of Budget and must be in accordance with appropriated budgets.”	Upholds the constitutional mandate of the Controller of Budget under Article 228(4) and prevents fiscal abuse or bypassing lawful expenditure controls.	“Withdrawals” refer to withdrawals by the Board of Trustees for payment of retirement benefits to members and payment of expenses of the Fund. These do. Not require the approval of the Controller of Budget. In our considered view, the role of the Controller of Budget is confined to approving the disbursements of monies from the Consolidated Fund to the Judges Retirement Benefits Fund only.
46. Withdrawals from the Fund.	Insert a subclause stating— All withdrawals from the Judges’ Retirement		“Withdrawals” refer to withdrawals by the Board of Trustees for payment of retirement

<i>Clause</i>	<i>Proposed amendment</i>	<i>Justification</i>	<i>Response</i>
			liabilities" therefore, will not arise.
25. Judges Retirement Fund.	Provide detailed governance framework including investment rules, fiduciary duties, and reporting standards.	Complying with PFM Regulations 39 and 79 – 83 enhances transparency and oversight.	<p>The superseding applicable legislative framework is contained in the Retirement Benefits Act and regulations made thereunder, and not the Public Finance Management Act or the regulations made thereunder.</p> <p>The governance structure set out in Part III of the Bill is consistent, and is to be read with, the provisions of the Retirement Benefits Act.</p> <p>In our considered view, there is no gap with respect to the governance of the proposed Fund.</p>
25. Establishment of the Fund	Insert a subclause that the Fund's disbursement shall be subject to approval by Controller of Budget in accordance with Article 228 of the Constitution.	This will ensure that the constitutionally mandated oversight over public fund withdrawals and prevent unauthorized disbursements.	<p>The applicable disbursements in this case are the ones made from the Consolidated Fund to the Judges Retirement Benefits Fund and not the disbursements out of the Judges Retirement Benefits Fund to <i>beneficiaries</i>. The Controller of Budget does not play any constitutional role in the payment of retirement benefits from a Defined Contribution Scheme.</p> <p>In our considered view, the role of the Controller of Budget is confined to approvals of withdrawals from</p>

THE JUDGES' RETIREMENT BENEFITS BILL, 2025
RESPONSE TO COMMENTS BY THE CONTROLER OF BUDGET

<i>Clause</i>	<i>Proposed amendment</i>	<i>Justification</i>	<i>Response</i>
2. Definition of "pensionable emolument"	Restrict "pensionable emolument" to basic salaries only.	This is to comply with Article 230 and SRC advisories which exclude house allowances from pension calculations.	<p>The proposed definition of "pensionable emoluments" set out in the Bill is not inconsistent with the powers of the SRC to set and regularly review the remuneration and benefits of State officers.</p> <p>In our considered view, the Bill does not set "basic salary" (remuneration) or "house allowance" (benefit). Those are still set by the SRC.</p> <p>Furthermore, national pensions policy is set by the National Treasury, which is responsible for the overall policy on the financial and economic affairs of the Government. The National Treasury has confirmed its concurrence with the provisions of the Bill as presented to the National Assembly following Cabinet approval.</p>
66. Benefits of Judges who retired before commencement of the Act	Exclude retroactive extension of benefits to judges retired before the Bill's enactment unless appropriated.	To prevent unbudgeted liabilities.	The proposed benefits will not be applied from the date the judges retired, but from the date the Bill is enacted. The benefits will not be payable in arrears. The question of "unbudgeted

Submission **17**



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

MEMORANDUM ON

THE JUDGES' RETIREMENT BENEFITS BILL, 2025

SUBMITTED TO

CLERK OF THE NATIONAL ASSEMBLY

DATED: 7TH JULY 2025

Kenya National Commission on Human Rights
1st Floor, CVS Plaza, Lenana Road
P.O. Box 74359-00200
NAIROBI, KENYA
Tel: 0726610159/0733780000
Website: www.knchr.org

A. INTRODUCTION

1. The Kenya National Commission on Human Rights (“KNCHR” or “National Commission”) is an independent National Human Rights Institution established under **Article 59** of the Constitution with a broad mandate to promote a culture of respect for human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the KNCHR Act and the United Nations *Paris Principles* on the establishment and functioning of independent national human rights institutions commonly referred to as the Paris Principles and as such enjoys an “A” status accreditation.
2. The National Commission under **Article 249** of the Constitution has a mandate to secure observance of all state organs of democratic values and principles and to promote constitutionalism. **Article 10** of the Constitution requires all state organs to uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the Constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through human rights monitoring, review of new and existing laws and policies, and the issuance of advisories informed by the KNCHR’s analysis.
3. In this regard, the KNCHR submits its comments on the Judges’ Retirement Benefits Bill, 2025, sponsored by the Hon. Kimani Ichung’wah, Leader of the Majority Party. The advisory has three parts; Section A covers preliminary introduction, Section B provides General observations and recommendations, while specific comments/observations on particular clauses of the **Judges’ Retirement Benefits Bill, 2025** are detailed in Section C.

B. GENERAL COMMENTS

4. The Commission welcomes the proposed legislation which seeks give effect to Article 160 of the Constitution. The Bill seeks to anchor Article 160 (3) and (4), particularly ensuring that the remuneration and benefits payable to or in respect of judges shall be a charge on the Consolidated Fund and that the remuneration and benefits payable to, or in respect of, a judge shall not be varied to the disadvantage of that judge, and the retirement benefits of a retired judge shall not be varied to the disadvantage of the retired judge during the lifetime of that retired judge.

5. The Commission notes that the Bill further seeks to enhance the independence of judges in line with the **United Nation’s Basic Principles on the Independence of the Judiciary**¹ which provides among others that the **conditions of service and pension** for judges shall be adequately secured by law.
6. Further, the Commission notes that the proposed legislation is in tandem with the **Magna Carta of Judges (Fundamental Principles)**² adopted by the Consultative Council of European Judges which provides that “following consultation with the judiciary, the State shall ensure the human, material and financial resources necessary to the proper operation of the justice system. In order to avoid undue influence, judges shall receive appropriate remuneration and be provided with an **adequate pension scheme, to be established by law.**”
7. Clause 17 of the Bill is particularly welcome for seeking to ensure that judges removed from office on account of inability to perform the functions of office due to mental or physical incapacity qualify for pension commutation and annual pension increase as proposed under Clauses 11 and 13 respectively. The Commission notes that this guarantees the affected judges’ the right to equality and freedom from discrimination and the right to human dignity under Article 27 and 28 of the Constitution respectively.
8. The Commission welcomes the provision under Clause 29 of the Bill which establishes the Judges' Retirement Benefits Fund Board of Trustees, whose members shall include both sitting and retired judges. This ensures effective representation and meaningful consultation between the Board and members as to the basis on which they are remunerated, or on matters concerning their social welfare, including their retirement pension under the proposed law.
9. The Commission however notes that Clause 37 provides that the chairperson and trustees of the Board shall be paid allowances or other remuneration as the Cabinet Secretary may determine. Allowing the Cabinet Secretary to solely determine the allowance and other remuneration of the trustees runs contrary to the provisions of Article 230 (4)(b), mandating the Salaries and Remuneration Commission to advise the national and county governments on the remuneration and benefits of all other public officers. The Cabinet Secretary should therefore consult with the Salaries and Remuneration Commission with respect to the remuneration of the Board’s trustees.
10. Lastly, the Commission recommends that Clause 67 of the Bill which mandates the Cabinet Secretary to be responsible for the payment of pensions, gratuities and provision of non-pension benefits to judges under the proposed legislation be deleted for duplicating the functions of the Board of Trustees, whose members include the Principal Secretary to the National Treasury or a representative nominated in writing

¹ Basic Principles on the Independence of the Judiciary <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary> para 11

² See <https://rm.coe.int/16807482c6> para 7

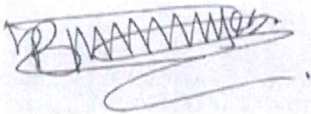
C. SPECIFIC COMMENTS

No.	Clause & Title	Proposed Amendment	Rationale
1.	Clause 37- Remuneration of trustees.	<p>Clause 37 of the Bill provides that the chairperson and trustees shall be paid such allowances or other remuneration as the Cabinet Secretary may determine.</p> <p>The Commission proposes that the Clause be amended to read as follows:</p> <p><i>37. The chairperson and trustees shall be paid such allowances or other remuneration as the Cabinet Secretary may determine in consultation with the Salaries and Remuneration Commission.</i></p>	<p>Article 230 (4)(b) of the Constitution as well as Section 11 of the Salaries and Remuneration Commission Act, Cap. 412D empowers Salaries and Remuneration Commission to advise the national and county governments on the remuneration and benefits of all other public officers and its concurrence should be sort.</p>
2.	Clause 67- Functions of the Cabinet Secretary	<p>The Commission recommends that Clause 67 be deleted in its entirety.</p>	<p>The function is already provided under Clause 33 (f) where the Board of Trustees shall ensure payment of pensions and other benefits to the members of the Fund and their dependants.</p>

D. CONCLUSION

The Commission acknowledges the need to protect judicial independence through among other ways securing judges' pension and social security in law, thereby aligning it with broader best practices in the sector like other designated State officers. The legislative proposal would be termed as all-inclusive for taking into consideration persons who have already retired as judges before its commencement as well as those currently serving and those who will serve as judges after its commencement. The Bill also in a special way recognizes judges removed from office on account of physical or mental incapacity, thereby guaranteeing them retirement in honour and dignity with assured pension and other benefits, thereby safeguarding their right to dignity under Article 28 of the Constitution. The Commission contends that the enhanced retirement benefits, including monthly pensions, service gratuities, medical coverage, and diplomatic privileges for retired judges and their dependants is a step in the right direction with regards to enhancing the functional independence and dedication of serving judges in affirming the judicial authority under Article 159 of the Constitution without undue influence, knowing that their future is well secured as proposed in the Bill.

SIGNED BY:

A handwritten signature in black ink, appearing to read 'Bernard Mogesa', is written over a light blue rectangular stamp. The signature is somewhat stylized and includes a long horizontal flourish at the bottom.

Dr. Bernard Mogesa, PhD., CPM

Commission Secretary/CEO

Submission **18**



LAW SOCIETY OF KENYA
Lavington, Opposite Valley Arcade
Gitanga Road
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Tel. +254 111 045 300

MEMORANDUM
TO
THE CLERK OF THE NATIONAL ASSEMBLY
ON
THE JUDGES' RETIREMENT BENEFITS BILL (NATIONAL ASSEMBLY BILL NO. 27 OF
2025)
JULY, 2025

Faith Mony Odhiambo, President Law Society of Kenya
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Gitanga Road P.O Box 72219 - 00200 Nairobi | Kenya
Tel: +254 111 045 300
Email: president@lsk.or.ke
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Introduction.

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- President, Faith Mony Odhiambo
- Vice President, Mwaura Kabata
- General Membership Representatives, Tom K'opere, Teresia Wavinya, Hosea Manwa
- Nairobi Representatives, Gloria Kimani, Irene Otto, Stephen Mbugua
- Up-country Representatives, Vincent Githaiga, Lindah Kiome, Hezekiah Aseso, Zulfa Roble
- Coast Representative, Elizabeth Wanjeri
- Secretary/CEO, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to this statutory mandate, the Law Society of Kenya makes a presentation on the **Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025)**.

GENERAL COMMENTS.

The Judges' Retirement Benefits Bill (National Assembly Bill No. 27 of 2025) seeks to provide for the pension and other retirement benefits of judges of the Supreme Court, the Court of Appeal, the High Court, the Employment and Labour Relations Court and the Environment and Land Court to further actualize Article 160 of the Constitution on the independence of the judiciary.

The Judges' Retirement Benefits Bill, 2025 is a progressive and timely legislative proposal that will bolster judicial independence, encourage institutional loyalty, and promote the dignity of retired judges.

The LSK supports the Bill and urges the National Assembly to adopt it with the proposed enhancements to ensure greater transparency, inclusiveness, sustainability, and alignment with Kenya's constitutional values. A scrutiny of the Bill, however, evinces that certain clauses could be refined to enhance its effectiveness and address potential ambiguities. Based on our review, we set out below our proposals and justifications; -

SPECIFICS COMMENTS.

No	Section	Provision/Issue	Proposal	Justification
1.	Clause 26 (4)	<p>The provision states that where the government fails to make payment as required, it shall be liable to any penalty that may be determined in accordance with applicable law.</p> <p>The provision lacks clarity on the specific penalty which raises enforceability concerns.</p>	Amend to specify the penalty.	It eliminates ambiguity and ensures consistent application of the law.

2.	Clause 29 (4)	<p>The provision refers to members appointed under subsection 3(b), (c), (d) and I shall be nominated by the Chief Justice yet there is no subsection I in section 3.</p> <p>On establishment of Board of Trustees.</p>	<p>We propose the amendment of the reference to accurately reflect the intended subsection.</p> <p>We recommend a provision for representation from LSK.</p>	<p>Accurate referencing avoids ambiguity, ensures internal consistency within the Bill and upholds legislative drafting standards.</p> <p>Representation of LSK is critical as a stakeholder in the justice sector reforms.</p>
3.	Clause 32	<p>The clause does not provide for the period within which the vacancy should be filled.</p>	<p>We propose setting a timeline for filling the vacancy.</p>	<p>Setting a specific timeline provides certainty on the timelines for filling the vacancy and mitigates the risk of prolonged institutional gaps.</p>
4.	Clause 37	<p>The clause provides that the allowances or other remuneration of the chairperson and the trustees shall be only determined by the Cabinet Secretary.</p>	<p>We propose that the determination of such allowances should also be based on the advice of the Salaries and Remuneration Commission.</p>	<p>The Salaries and Remuneration Commission is mandated under Article 230 (4) to set and regularly review the remuneration and benefits of all State officers and advise the national and county governments on the remuneration and benefits of all other public officers.</p>

5.	Clause 41	It lacks a subsection on the authentication of the common seal, which is a critical element for formalizing official documents and decisions.	We propose the inclusion of a subsection that provides that: The affixing of the common seal shall be authenticated by the signature of the chairperson of the Board or any other person authorized by the Board to act in that behalf.	Authentication of the common seal is essential in ensuring the validity and legal enforceability of the documents. Further, it safeguards unauthorized use of the seal.
6.	New clause	Lack of a provision outlining offences and penalties.	<p>We propose the following:</p> <ul style="list-style-type: none"> a) Offences by individuals and corresponding penalty. b) Offences by body corporate and corresponding penalty; and <p>Misappropriation of funds- Any employee of the Fund, manager, administrator or custodian who misappropriates the assets of the Fund commits an</p>	Clearly stating the offence and corresponding penalty enhances deterrence and promotes compliance.

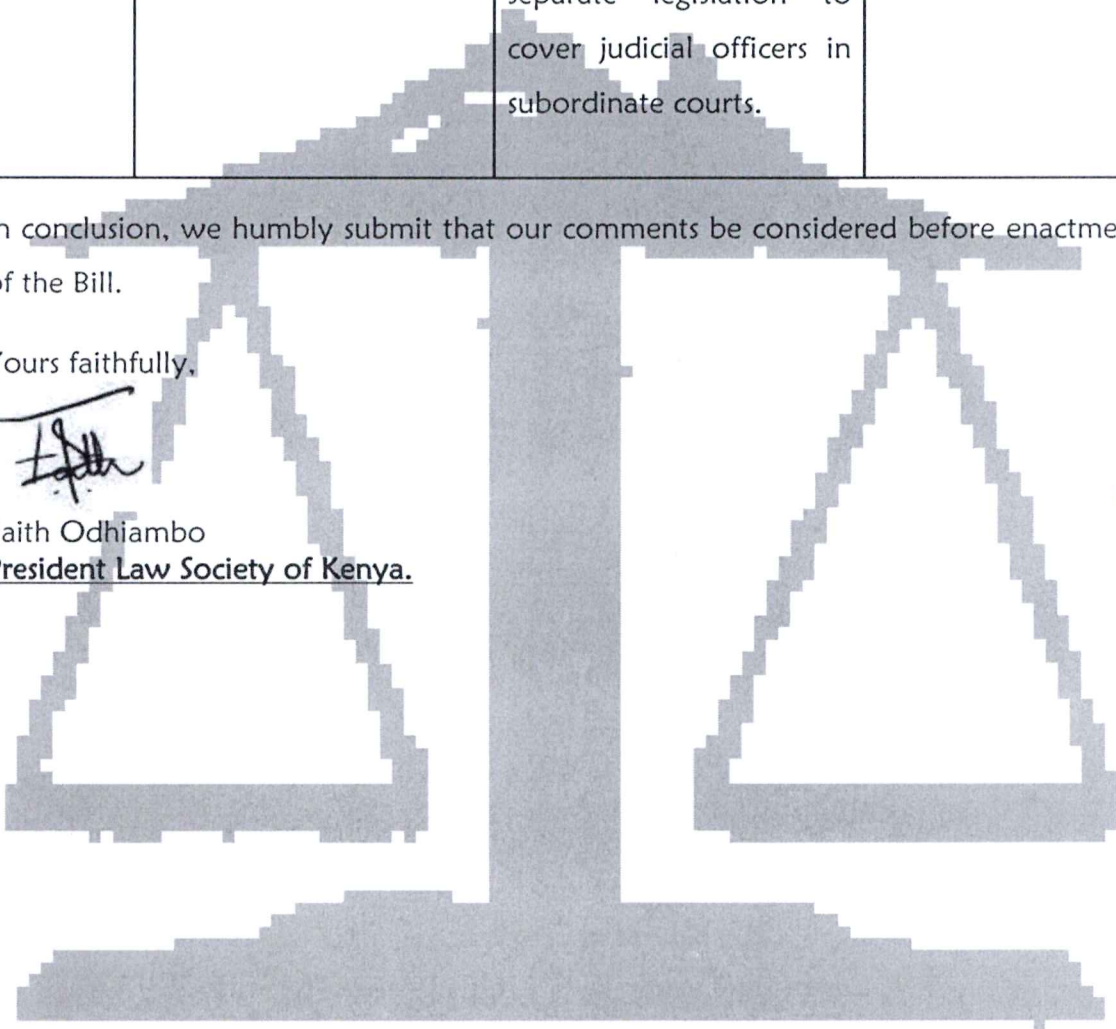
			offence. Further, provide a penalty.	
7.	Scope of coverage	The Bill is limited to judges of superior courts.	We recommend extended coverage, or provide a framework for separate legislation to cover judicial officers in subordinate courts.	This will promote equality and avoid institutional disparities.

In conclusion, we humbly submit that our comments be considered before enactment of the Bill.

Yours faithfully,



Faith Odhiambo
President Law Society of Kenya.



End