

REPUBLIC OF KENYA



THE SENATE

THIRTEENTH PARLIAMENT - SECOND SESSION

SELECT COMMITTEE ON COUNTY PUBLIC INVESTMENTS AND  
SPECIAL FUNDS

REPORT ON NON-REMITTANCE OF PENSION DEDUCTIONS TO THE  
PENSION SCHEMES BY COUNTY ENTITIES

PAPERS L	
DATE	14/12/2024
TABLED BY	Chair - C.P.I.C
COMMITTEE	C.P.I.C
CLERK AT THE TABLE	Njeto

**Rt. Hon. Speaker**  
You may approve for tabling  
J. M. Nyegenye, C.B.S.,  
Clerk of the senate/secretary, PSC  
Date: 07/12/23  
  
11/01/24

Clerk's Chambers,  
Parliament Buildings,  
NAIROBI.

COS  
This is forwarded and recommended  
for approval for tabling  
07/12/2023

December, 2023

Mr. Hon. Speaker  
You may observe that  
I am not a member of  
the House of Representatives  
and I am not a member of  
the Senate.

## TABLE OF CONTENTS

ANNEXES .....	iii
LIST OF ABBREVIATIONS AND ACRONYMS .....	iv
PREFACE .....	v
COMMITTEE MEMBERSHIP .....	vi
ACKNOWLEDGEMENT .....	vii
CHAIRPERSON'S FOREWORD .....	viii
CHAPTER ONE: INTRODUCTION .....	1
1.1. Introduction .....	1
1.2. Purpose of the inquiry .....	2
1.3. Conduct of the inquiry .....	3
CHAPTER TWO: LEGAL FRAMEWORK .....	4
2.1. Provision of pension services pre-devolution .....	4
2.2. Provision of pension services post-devolution .....	4
2.3. Regulation of the retirement benefits sector .....	5
2.3.1 Recovery of unremitted deductions and contributions under the Retirement Benefits Act .....	6
CHAPTER THREE: SUBMISSIONS FROM STAKEHOLDERS .....	9
3.1. National Government entities .....	9
A. The National Treasury and Economic Planning .....	9
B. The Office of the Attorney General .....	10
C. Office of the Controller of Budget .....	11
D. Kenya Revenue Authority (KRA) .....	12
3.2. Pension institutions .....	13
A. Retirement Benefits Authority .....	13
B. National Social Security Fund .....	15
C. LAPFUND .....	17
D. LAPTRUST AND COUNTY PENSION FUND (CPF) .....	18
3.3. County entities .....	19
A. The Council of County Governors (CoG) .....	19
B. The County Assemblies Forum .....	20
C. The Kenya County Governments Workers Union .....	21
3.4. Other entities .....	23
A. The Intergovernmental Relations Technical Committee (IGRTC) .....	23
CHAPTER FOUR: OBSERVATIONS AND RECOMMENDATIONS .....	26

APPENDICES ..... 30

Annex 1: Minutes of the Committee ..... 31

Annex 2: Proposed Amendments to the Retirement Benefits Act, 1997 ..... 64



ANNEXES

Annex 1	Minutes
Annex 2	Proposed Amendments to the Retirement Benefits Act, 1997

## LIST OF ABBREVIATIONS AND ACRONYMS

CALCs	-	County Assets and Liabilities Committees
CoG	-	Council of Governors
CPF	-	County Pension Fund
EACC	-	Ethics and Anti-Corruption Commission
IGRTC	-	Intergovernmental Relations Technical Committee
IPPD	-	Integrated Payroll Processing Database
KCGWU	-	Kenya County Governments Workers Union
LAPFUND	-	Local Authorities Provident Fund
LAPTRUST	-	Local Authorities Pensions Trust
NSSF	-	National Social Securities Fund
OCoB	-	Office of the Controller of Budget
RBA	-	Retirement Benefits Authority
WSP	-	Water Service Provider

**PREFACE**

**Hon. Speaker,**

The Committee was first constituted on 19<sup>th</sup> October, 2022 pursuant to Standing Order No. 194 of the Senate Standing Orders. The County Public Investments and Special Funds Committee is one of the financial audit committees through which the Senate under the provisions of Article 96(3) of the Constitution conducts ex-post scrutiny on Public Investments and Special Funds in Counties.

## COMMITTEE MEMBERSHIP

### Hon. Speaker,

The membership of the Committee comprises of the following Senators-

- |  |                           |
|--|---------------------------|
| 1. Sen. Godfrey Atieno Osotsi, MP            | - <b>Chairperson</b>      |
| 2. Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP | - <b>Vice-Chairperson</b> |
| 3. Sen. William Kipkemoi Kisang, MP          | - Member                  |
| 4. Sen. Paul Karungo Thangwa, MP             | - Member                  |
| 5. Sen. Miraj Abdillahi Abdulrahman, MP      | - Member                  |
| 6. Sen Eddy Gicheru Oketch, MP               | - Member                  |
| 7. Sen. Hamida Kibwana Ali, MP               | - Member                  |
| 8. Sen. Maureen Tabitha Mutinda, MP          | - Member                  |

## COMMITTEE SECRETARIAT

- |                         |                            |
|-------------------------|----------------------------|
| 1. Mr. Yussuf Shimoy    | - Clerk Assistant I        |
| 2. Mr. David Angwenyi   | - Clerk Assistant I        |
| 3. Mr. Erick Njogu      | - Clerk Assistant III      |
| 4. Mr. Godfrey Nyaga    | - Clerk Assistant III      |
| 5. CPA Kennedy Owuoth   | - Fiscal Analyst III       |
| 6. Ms. Lillian Waweru   | - Legal counsel II         |
| 7. Ms. Raisa Mwithi     | - Research Officer III     |
| 8. Mr. Matano Kataa     | - Research Officer III     |
| 9. Mr. Josphat Ng'enh   | - Media Relations officer. |
| 10. Ms. Winfred Ocholla | - Audio officer            |
| 11. Mr. Josphat Ng'enh  | - Media Relations Officer. |
| 12. Mr. John Pere       | - Serjeant-at-arms         |

## ACKNOWLEDGEMENT

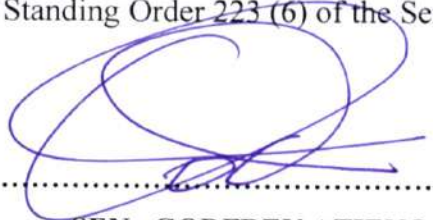
**Hon. Speaker,**

The Committee appreciates and acknowledges all the stakeholders for their time and the valuable information availed to the Committee for the purpose of the inquiry. I also express my sincere gratitude to the members of the Committee for their commitment in the consideration of the matter.

The Committee further extends its appreciation to the Office of the Speaker and the Office of the Clerk of the Senate for facilitating the work of the Committee in undertaking its constitutional mandate.

**Hon. Speaker,**

It is now my pleasant duty and privilege to table the report of the County Public Investments and Special Funds Committee (CPISFC) on the inquiry of the non-remittance of pension deduction to pension schemes by the county entities pursuant to the provisions of Standing Order 223 (6) of the Senate Standing Orders.

SIGNED:..........DATE: 06/12/2023

SEN. GODFREY ATIENO OSOTSI, MP

CHAIRPERSON, COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS  
COMMITTEE



## **CHAIRPERSON'S FOREWORD**

### **Hon. Speaker,**

The County Public Investments and Special Funds Committee (CPISFC) is established pursuant to Standing Order No. 194 of the Senate Standing Orders and is mandated to—

- (a) examine the reports and accounts of county public investments; and
- (b) examine the reports, if any, of the Auditor-General on the county public investments.

In the course of its oversight role of scrutinizing audit reports of the County water companies, the Committee noted very high pending bills arising from the non-remittance of pension deductions by the County Government entities to the relevant pension schemes. The total outstanding pension liabilities accrued as submitted by the CoB indicates a total of Kshs. 85 billion as at 31<sup>st</sup> March, 2023. In this regard, the Committee resolved to conduct an inquiry to establish the reasons for non-remittance of the statutory deductions, as well as find a solution to settle the outstanding debt with the aim of—

- (i) ensuring that county government employees are able to access their pension payments on time once they retire;
- (ii) helping the County Governments curb/prevent unnecessary penalties due to non-remittance of pension deductions;
- (iii) reducing the accumulation of county government pending bills; especially those of the Pension Schemes;
- (iv) helping Pension Schemes to meet their obligations as they arise/as they fall due, besides achieving the regulatory requirements; and
- (v) endeavouring to find a sustainable solution to the matter of late remittance by the County Governments to have a clear payment plan to settle the outstanding pension liability.

The Committee invited the relevant stakeholders to make their submissions on the matter. The invited stakeholders included—

- (i) The National Treasury and Economic Planning;
- (ii) The Kenya County Governments Workers Union;
- (iii) Local Authorities Pensions Trust (LAPTRUST/County Pension Fund (CPF);
- (iv) Local Authorities Provident Fund (LAPFUND);
- (v) The Inter-Governmental Relations Technical Committee (IGRTC);
- (vi) Council of Governors (CoG);
- (vii) Controller of Budget (CoB);
- (viii) Retirements Benefits Authority (RBA);
- (ix) Kenya Revenue Authority (KRA); and
- (x) National Social Security Fund (NSSF).

The National Treasury and Economic Planning, in its appearance before the Committee submitted that the matter of the outstanding pension liability was weighty, and was therefore requested by the Committee to plan for a public participation forum bringing all the relevant stakeholders together to deliberate on the matter. The forum was held in Mombasa in August, 2023 and arrived at a number of resolutions to settle the huge pension debt.




**Hon. Speaker,** having considered the submissions from the various key stakeholders, the Committee made a number of observations. The debts owed to the various pension schemes by County Governments have been outstanding for many years thus resulting in an accumulation of not only the pension payment arrears, but also penalties and interest payments due to the delay in remittance of the pension deductions and contributions. Additionally, there has been a significant increase in the debts owed to pension schemes post-devolution, almost ten times more than the amounts owed prior to devolution. The Committee also observed that a comparison between the data provided on the outstanding pension debt by the County Governments and the respective pension schemes shows great discrepancies which require reconciliation. The Committee further observed that diversion of budgeted pension contributions to other activities, non-sustainable pension contribution rates in the public sector, changes in employer institutional arrangement and delay in disbursement of funds by the National Treasury and Economic Planning, and administrative lapses caused by poor record keeping are some of the reasons given for the non-remittance of pension liabilities.

**Hon. Speaker,** to arrive at a lasting solution in regards to the challenge of non-remittance of pension deductions, the Committee has recommended a number of measures. Key to note is the formation of a Multi-Agency Taskforce spearheaded by the National Treasury and Economic Planning comprising of the CEO CPF/LAPTRUST, CEO LAPFUND, CEO NSSF, CEO RBA, the CS National Treasury, the CEO IGRTC, the Chairperson CAF, the CoB, the Attorney General, the Chairperson of CoG and Chair of CECM of Finance or their representatives, so as to reconcile the liabilities, and harmonize the proposals, and develop a formula and a framework for payment that is agreeable to all the parties in the clearance of the outstanding debt. The agreement should be deposited with the Office of the Attorney General and a copy submitted to the Office of the Auditor-General.



**ADOPTION OF THE REPORT OF THE SELECT COMMITTEE ON COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS ON THE INQUIRY INTO THE NON-REMITTANCE OF PENSION FUNDS BY COUNTY ENTITIES**

We, the undersigned Members of the Select Committee on County Public Investments and Special Funds, do hereby append our signatures to adopt this report.

No.	Name	Signature
1.	Sen. Godfrey Atieno Osotsi, MP ( <i>Chairperson</i> )	
2.	Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP ( <i>Vice-Chairperson</i> )	
3.	Sen. William Kipkemai Kisang, MP	
4.	Sen. Paul Karungo Thangwa, MP	
5.	Sen. Miraj Abdillahi Abdulrahman, MP	
6.	Sen. Eddy Gicheru Oketch, MP	
7.	Sen. Hamida Kibwana Ali, MP	
8.	Sen. Maureen Tabitha Mutinda, MP	

## **CHAPTER ONE: INTRODUCTION**

### **1.1. Introduction**

1. Pensions are an essential component of retirement planning and play a critical role in ensuring financial security for retirees. In execution of its mandate, the Committee considered audit reports of the Financial Statements of various County Water Service Providers (WSPs) and noted that majority of the companies had a major cross-cutting audit query on the non-remittance of pension deductions. County government entities had huge outstanding pension liabilities owed to various pension schemes.
2. County Government entities were faced with the issue of non-remittance of pension deductions to the various pension schemes, which resulted in delayed or sometimes non-payment of pensions to retirees. Additionally, the non-remittance of these deductions also resulted in the accrual of penalties and interest payments, therefore greatly increasing the liabilities of the county entities. In light of this issue, the committee resolved to carry out an inquiry on the Pension Funds Liability within county entities.
3. The inquiry began with the Committee inviting various stakeholders, including LAPFUND, LAPTRUST, the Retirement Benefits Authority (RBA), the Inter-Governmental Relations Technical Committee (IGRTC), Controller of Budget (COB), the Kenya County Governments Workers Union (KCGWU) and the National Treasury and Economic Planning, to give insight on the issue of non-remittance of pension deductions. Following these stakeholder engagements, during the meeting with the National Treasury and Economic Planning on Monday 3<sup>rd</sup> July 2023, the Committee observed that there were discrepancies on the information on pension liabilities in counties and resolved to hold a Multi-stakeholder Forum which would bring together all the relevant stakeholders under one roof to deliberate on the matter and collaboratively come up with resolutions on the way forward.
4. The non-remittance of pension deductions is not a new issue within public entities. According to LAPTRUST/CPF, the issue began in the 1980's when the defunct Local Authorities continuously defaulted in remitting pension contributions. Unfortunately, after the inception of devolution, the problem continued under the succeeding county governments.
5. According to the data collected by the County Assets and Liabilities Committees (CALCs) from records of the 175 Defunct Local Authorities (DLAs) as at 27<sup>th</sup> March, 2013, the County Governments inherited liabilities totaling to Kshs.



9,978,836,848.58 in relation to non-remitted pension deductions from the DLAs post devolution. This included—

- i. KES 5,080,320,267.95 owed to LAPTRUST;
- ii. KES 1,085,671,440.40 owed to NSSF; and
- iii. KES 3,812,845,140.23 owed to LAPFUND.

6. As stated by numerous stakeholders, including the Kenya County Government Workers Union (KCGWU), the issue of non-remittance of pension deductions took a turn for the worst at the onset of devolution owing to a lack of proper regulations and enforcement. Ten years into devolution, pension debts have increased almost tenfold. This was underscored during most presentations. For instance, in the statistics presented by LAPFUND, the debt owed to them increased from Kshs. 6 billion pre-devolution to Kshs. 50 billion post devolution.
7. According to the National Treasury and Economic Planning, the current returns submitted by pension schemes responsible for overseeing the retirement benefits of county government employees have reported over Kshs. 81 Billion in unremitted pension contributions.
8. According to the Office of the Controller of Budget, these unremitted deductions are as a result of underperformance in revenue collection by counties, delays in the approval of supplementary budget estimates to adopt prior-year pending bills in the current budget, delays by the National Treasury and Economic Planning in the disbursement of funds to County Governments, diversion of funds meant for payment of pending bills to other activities, political interference and refusal by successive County Administrations to honor the obligations, and discrepancies between pension data from the County governments and the Pension Schemes.

## **1.2. Purpose of the inquiry**

9. The Committee resolved to inquire into the matter with the objective of—
  - (i) ensuring that county government employees are able to access their pension payments on time once they retire;
  - (ii) helping the county governments curb/prevent unnecessary penalties due to non-remittance of pension deductions;
  - (iii) reducing the accumulation of county government pending bills; especially those owed to the Pension Schemes;
  - (iv) helping Pension Schemes to meet their obligations as they arise/as they fall due, besides achieving the regulatory requirements; and



- (v) endeavouring to find a sustainable solution to the matter of late remittance by the County Governments to have a clear payment plan to settle the outstanding pension liability.

### **1.3. Conduct of the inquiry**

10. Following the realization of the cross-cutting nature of the non-remittance of pension deductions across County Water companies, the Committee resolved to invite the following stakeholders to shed light on the matter through both written and oral submissions—

- (i) The National Treasury and Economic Planning
- (ii) The Kenya County Governments Workers Union
- (iii) Local Authorities Pensions Trust (LAPTRUST/County Pension Fund (CPF)
- (iv) Local Authorities Provident Fund (LAPFUND)
- (v) The Inter-Governmental Relations Technical Committee (IGRTC)
- (vi) Council of Governors (CoG)
- (vii) Controller of Budget (CoB)
- (viii) Retirements Benefits Authority (RBA)
- (ix) Kenya Revenue Authority (KRA)
- (x) National Social Security Fund (NSSF)

11. The Committee also participated in a two-day Multi-Stakeholder Engagement Forum organized by National Treasury and held in Mombasa County on the 9<sup>th</sup> of August 2023 to the 11<sup>th</sup> of August 2023 where the stakeholders discussed the outstanding pension liabilities owed to pension schemes by County Governments.

## **CHAPTER TWO: LEGAL FRAMEWORK**

### **2.1. Provision of pension services pre-devolution**

12. Prior to promulgation of the Constitution of Kenya, 2010, there were several pension schemes established to cater for employees of the local authorities. These included:
- (a) The Local Authorities Pension Trust (LAPTRUST Defined Benefits Scheme) established under Local Authorities Pension Trust Rules, 2007;
  - (b) The Local Authorities Provident Fund (LAPFUND) established under Local Authorities Provident Fund Act Cap 272; and
  - (c) the LAPTRUST (Umbrella) Retirement Fund (LAPTRUST Defined Contribution Scheme) which was established under an irrevocable Trust Deed registered under the Retirement Benefits Act. This has since been renamed as the County Pension Fund.
13. LAPTRUST was established as a defined benefits scheme in which the benefit is computed using a formula that is based on years of service, salary at exit and a pension formula, regardless of the amount contributed by the employee and the employer, paying part of the benefit in lump sum and part as monthly drawdown during the lifetime of a pensioner. It closed its door to new members in 2012.
14. LAPFUND on the other hand was established under Local Authorities Provident Fund Act Cap 272 and operates as a provident fund that pays the benefit as a one-off lump sum.

### **2.2. Provision of pension services post-devolution**

15. Upon promulgation of the Constitution in 2010, the County Governments Act, no. 17 of 2012 was enacted as one of the core statutes supporting the devolved system of government. As regards pensions, section 132 of the Act provides that—
- Subject to the transitional provisions herein, all members, officers and staff of a county government shall subscribe to an existing pension scheme for officers and staff of local government.*
16. The Council of Governors, on 14<sup>th</sup> June 2014, issued Circular no. 1 to all County Public Service Boards. In the Circular, the CoG noted that it had endorsed the LAPTRUST (Umbrella) Retirement Fund (now County Pension Fund – CPF), as the scheme of choice to offer retirement benefits in line with section 132 of the County Governments Act, and it encouraged members to enroll new employees under that scheme.



17. The CoG therefore requested the chairmen and secretaries of the County Public Service Boards to adopt the resolution of the CoG and additionally, to resolve to participate in the LAPTRUST (Umbrella) Retirement Fund in respect of new employees, and retain the the Local Authorities Pension Trust (LAPTRUST Defined Benefits Scheme) and the Local Authorities Provident Fund (LAPFUND) until full transition and phase out.
18. In 2019, Parliament enacted the County Governments' Retirement Scheme Act No. 21 of 2019 to create a single retirement benefits scheme for persons working in devolved units by repealing the Local Authorities Pension Trust Rules, 2007 (which created LAPTRUST), the Local Authorities Provident Fund Act Cap 272 (which created LAPFUND) and further sought to revoke the LAPTRUST (Umbrella) Retirement Fund (LAPTRUST DC Scheme) now County Pension Fund (CPF).
19. This act was challenged in court in the case of *Okoti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 236 of 2019 & 36 of 2022 (Consolidated)) [2022] KEELRC 13584 (KLR)*.
20. In a judgement rendered on 20<sup>th</sup> December 2022, the Employment and Labour Relations Court found that the County Governments Retirement Scheme Act, 2019, was unconstitutional for lack of public participation and for being in conflict with Article 1, 2(1) and (4), 3(1), 6, 10, 35, 40(2)(a), 4(1), 43(1)(e), 118, 191(2)(b) and 258 of the Constitution of Kenya.
21. For the above reason, the Local Authorities Pension Trust Rules, 2007, and the Local Authorities Provident Fund Act remain in force, as well as the three retirement benefits schemes, and the counties remain liable to remit contributions as well as cover any liabilities incurred by local authorities prior to devolution.

### **2.3. Regulation of the retirement benefits sector**

22. The Retirement Benefits Act, no. 3 of 1997 is the principal legislation regulating the pensions sector. The act establishes the Retirement Benefits Authority (RBA), and gives it the mandate to regulate the sector, and supervise and promote retirement benefit schemes.
23. Section 24 of the Retirement Benefits Act provides that retirement schemes not established through written law have to be registered under the Act, hence explaining why LAPFUND and LAPTRUST are not registered by the RBA,

whereas the CPF scheme is registered under the RBA. However, all schemes are regulated by the RBA.

### **2.3.1 Recovery of unremitted deductions and contributions under the Retirement Benefits Act**

24. As regards recovery of unremitted deductions and contributions, it is noted that the Local Authorities Pension Trust Rules, 2007, and the Local Authorities Provident Fund Act do not have any provisions on recovery of remitted funds. As such, the provisions of the Retirement Benefits Act guide how unremitted deductions and contributions may be recovered.
25. Section 53A(1) provides that “*where an employer, having made a deduction from the employee's emoluments for remittance to the scheme, fails to remit the deduction within fifteen days of the deduction, the scheme may, after giving such employer not less than seven days' notice, institute proceedings for the recovery of the deduction*”. The notice has to be in writing and copied to the Authority.
26. Section 53A(3) provides that any sum which is the subject of proceedings for summary recovery under this section shall attract a compound interest at the rate of three percent per month.
27. Section 53A(4) provides that a person who refuses or fails to comply with a notice given to him under subsection (1) commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings, or in the case of a natural person, to imprisonment for a term not exceeding three years, or to both.
28. Additionally, if it is a continuing offence, the person shall be liable to a further fine of one thousand shillings for every day or part thereof during which the offence continues.
29. As regards recovery of unremitted employer contributions, section 53B provides that—
- ...where there is non-remittance of the contribution by the employer, the Authority shall —*
- (a) require the employer to —*



*(i) pay the contributions and interest accrued to the scheme in full within the period specified in the notice and a penalty of five per cent of unremitted contributions or twenty thousand shillings whichever is higher, payable to the Authority within seven days of receipt of the notice;*

*(ii) pay the penalty specified in paragraph (a)(i) and submit to the Authority for approval a remedial plan providing the period within which the accumulated contributions and interest thereon shall be offset; or*

*(iii) immediately cease further deductions from employees' emoluments and notify all the members of the scheme of the cessation: Provided that —*

*(b) initiate the process of winding up the scheme and facilitate members to join individual schemes where their contributions shall be remitted.*

30. Section 53B(2) additionally provides that where an employer has failed to remit contributions, the Trustees may with the approval of the Authority, appoint the Kenya Revenue Authority, as an agent, to collect unremitted contributions, interests, and penalties. The Trustees are required to request the Authority for approval and shall demonstrate that they have taken all reasonable effort to recover unremitted contributions from a defaulting employer without any success. The RBA may approve or reject the request within twenty-one days from the date of receipt of the request.

31. Additionally, where the Authority is of the opinion that the Trustees have failed or have not made reasonable effort to recover the unremitted contributions, interests and penalties, section 53B(5) provides that the Authority shall give notice to the Trustees instructing them to appoint the Kenya Revenue Authority as an agent to recover the unremitted contributions, interests and penalties.

32. Section 53B(6) provides that once appointed, the KRA shall issue a twenty-one-day notice in writing to the defaulting employer requiring it to remit the unremitted contributions, interests, penalties and recovery costs.

33. Section 53B(7) provides that where an employer fails to comply with the notice, the Kenya Revenue Authority shall —

- (a) serve such employer and the employer's bank with an agency notice;
- (b) attach the bank accounts of the defaulting employer; and
- (c) remit the attached funds to the Scheme, within thirty days.

The cost of the recovery of unremitted contributions shall be borne by the defaulting employer.



34. The Retirement Benefits Act gives very practical solutions to recovery of unremitted pension deductions and contributions. The counties, the RBA and the schemes to which pension monies have not been remit could engage with a view to entering into binding payment plans which if not honoured, can be enforced through the involvement of the KRA or through summary proceedings instituted in Kenyan courts.

### **CHAPTER THREE: SUBMISSIONS FROM STAKEHOLDERS**

35. The Committee invited various stakeholders to make submissions on the issue of unremitted pension liabilities on various dates. The minutes of these meetings are annexed as *Annex I*. However, despite numerous invitations, the CoG did not attend any of the one-on-one meetings they were invited to, but they were represented by various County Executive Committee Members for Finance in a public participation forum held in Mombasa.

36. During a public participation forum held in Mombasa County from 9<sup>th</sup> August, 2023 to 11<sup>th</sup> August, 2023, the Committee along with other stakeholders met to collaboratively discuss the outstanding pension liabilities owed to pension schemes by County Governments. The two-day event, organized by the National Treasury and Economic Planning, allowed the following stakeholders to make presentations and generate solutions to this very pressing matter—

- (i) The National Treasury and Economic Planning;
- (ii) The Senate Committee on County Public Investments and Special Funds;
- (iii) County Executive Committee Members for Finance Caucus;
- (iv) County Assemblies Forum;
- (v) Retirement Benefits Authority;
- (vi) National Social Security Fund;
- (vii) LAPFUND;
- (viii) LAPTRUST
- (ix) CPF;
- (x) Intergovernmental Relations Technical Committee (IGRTC);
- (xi) Office of the Controller of Budget;
- (xii) Office of the Attorney General and Department of Justice;
- (xiii) Kenya Revenue Authority (KRA);
- (xiv) Office of the Auditor-General; and
- (xv) Kenya County Government Workers Union.

#### **3.1. National Government entities**

##### **A. The National Treasury and Economic Planning**

37. During a meeting held on Monday, 3<sup>rd</sup> July 2023, the Cabinet Secretary of the National Treasury and Economic Planning, Prof. Njuguna Ndung'u, CBS, appeared before the Committee to make a presentation on the matter of Non-remittance of Pension Deductions by various County entities. It was during this engagement that the committee resolved to have a multi-stakeholder meeting led by the National Treasury and Economic Planning. The stakeholders involved included The National Treasury and Economic Planning, The Senate, The Controller of Budget, The

Council of Governors, Local Authorities Pension Fund (LAPFUND), Local Authorities Provident Trust (LAPTRUST) and all CECMs and Chief Officers in-charge of finance in the 47 counties.

## **B. The Office of the Attorney General**

38. The Office of the Attorney General submitted as follows—

- (a) That part of the mandate of the Office of the Attorney General is to mediate on disputes between Government agencies and to mitigate financial implication against Governance e.g. Disputed pension contributions, pending bills among others;
- (b) That the legislative framework for non-remittance of pension contributions by counties include; The Constitution of Kenya 2010, Article 22 and 43(1); The International Covenant on Economic, Social and Cultural Rights-Article 9; The Universal Declaration on Human Rights, Article 22; The Retirement Benefits Act, No. 3 of 1997, Section 53; The Retirement Benefits Act Regulations on Occupational Pension Schemes, Minimum Funding and winding up of schemes; The County Government Act, Section 132;
- (c) that according to the Oxford Dictionary, the word non remittance means failure to pay money that is owed. Another word for non-remittance is defaulting, evasion, dodging;
- (d) that social security has four elements namely affordability, accessibility, adequacy and availability; and
- (e) that the following recommendations would assist in the recovery of the existing pension liabilities and prevent the same accumulations from occurring in the future—
  - (i) Kenya Revenue Authority should be appointed as the collecting agent of the unremitted pension contributions in line with Section 50B of the Retirement Benefits Act and collect the accrued interests thereof for pension contributions;
  - (ii) county governments should pay contribution arrears and penalties owed to NSSF. In addition to this NSSF should issue a compliance certificate to County Government prior to disbursement of funds;
  - (iii) an actuarial evaluation on the pension schemes to ascertain its financial soundness and projections for the near future to cater for proper planning and investment choices in the coming future; and
  - (iv) contributions to schemes should be based on affordability. Pension schemes should not be the ones to set the rates.



### **C. Office of the Controller of Budget**

39. During a meeting held on Monday, 3<sup>rd</sup> July 2023, the Controller of Budget appeared before the Committee to make a presentation on the matter of non-remittance of pension deductions by various entities in counties. The Controller of Budget submitted as follows—

- (a) that after obtaining data on outstanding pension liabilities by all counties from Lap Fund and CPF and also from 32 Counties on their outstanding pension contributions as at 31st March, 2023, it was observed that data from counties and those from pension schemes revealed some discrepancies that included; instances where counties reported no outstanding balances while data from schemes indicated liabilities;
- (b) that outstanding Pension Contributions is one form of pending bills which have been inherited from the defunct local authorities and incurred by the post devolution County governments;
- (c) that these pending bills resulted from—
  - (i) underperformance in revenue collection, leading to budget deficits and unfunded commitments;
  - (ii) delayed approval of supplementary budget estimates to adopt prior-year pending bills in the current budget, leading to payment delays;
  - (iii) delays by the National Treasury and Economic Planning to disburse funds to County Governments on a timely basis, leading to outstanding payments at the end of the financial year;
  - (iv) claims not settled within the financial year due to inadequate supporting documentation, leading to pending bills;
  - (v) diversion of funds for payment of pending bills to other activities. Lack of adherence to systems and procedures leads to the diversion of funds to other purposes;
  - (vi) IFMIS-related challenges, such as the system allowing de-commitment of a valid IFMIS commitment creating room for more expenditure;
  - (vii) political interference and refusal by successive governments to honour obligations; and
  - (viii) discrepancies between pension data from the County governments and the Pension Schemes. This has led to questions on the outstanding amounts.

40. The CoB noted that the issue of non-remittance of pension deductions may be resolved through the implementation of the following recommendations—

- (i) non-diversion of funds meant for the settlement of pension liabilities. As such, payroll deductions should be paid alongside staff salaries;

- (ii) incoming leaders should ensure that the outstanding pension liabilities are budgeted and paid promptly;
- (iii) the National Treasury and Economic Planning should release the equitable share of revenue raised nationally to counties in line with the Funds Disbursement schedule;
- (iv) counties should develop realistic budgets for their own-source revenue to avoid hidden budget deficits and enable them to finance their budgets;
- (v) county governments and pension funds should develop a repayment plan for settling outstanding debts that should be monitored closely;
- (vi) pension institutions should consider waiving penalties and/or interest on outstanding amounts to motivate the counties to pay; and
- (vii) undertaking reconciliations of the discrepancies between the data from the pension funds and Counties over the outstanding debt.

#### **D. Kenya Revenue Authority (KRA)**

41. During a meeting held on Monday 22nd May 2023, the Kenya Revenue Authority (KRA), appeared before the Committee led by the Deputy Commissioner Policy and Tax Advisory, Esther Wahome, to make a presentation on the following—

- (a) with reference to the provisions of the Retirement Benefits Act, 1997, the role of Kenya Revenue Authority (KRA) in addressing the issue of pension non-remittance by county entities;
- (b) how Kenya Revenue Authority can assist the County Pension Schemes to recover the outstanding pension deductions from county entities; and
- (c) measures County Pension Schemes can take to address the matter of non-remittance of pension deductions by County entities.

42. They submitted as follows-

- (a) that, section 53B of the Retirement Benefits Act, as amended through Section 72 of the Finance Act, 2021 grants powers to Pension Schemes, upon approval of the Retirement Benefits Authority (RBA), to appoint KRA to collect contributions from employers who have failed to remit their portion;
- (b) KRA held engagements with Retirement Benefits Authority (RBA) and agreed that collection of unremitted pension contributions is viable, by way of an agreement with the Trustees of the Pension Schemes. However, it was noted that the legal provisions still had shortcomings that could not enable collection in the manner envisaged and as such, there was need to further enhance the provisions of the Retirement Benefits Act and to amend the KRA Act, which RBA was to pursue;
- (c) the Kenya Revenue Authority (KRA) communicated to the Retirement Benefits Authority (RBA) the proposed legal amendments required to



adequately support the collection by KRA before further engagements on the terms of the Agreement;

- (d) upon amendment of the law, KRA will be able to engage RBA to facilitate agreements with Trustees of pension schemes, including county pension schemes, for purposes of collection of unremitted pension contributions on their behalf. KRA will leverage on its existing compliance and enforcement management systems to ensure collection of the contributions;
- (e) the County Pension schemes can engage RBA to fast-track the legislative amendments proposed by KRA to facilitate collection of unremitted pension contributions on behalf of the pension schemes; and
- (f) the Trustees of the County Pension Schemes can take advantage of Section 53B of the Retirement Benefits Act, 1997, once amended, to appoint KRA, with prior approval of the Retirement Benefits Authority (RBA), to collect unremitted contributions, penalties and interest from employers.

### 3.2. Pension institutions

#### A. Retirement Benefits Authority

43. The Retirement Benefits Authority submitted as follows-

- (a) that the status of pension deductions as at 31<sup>st</sup> March 2023 can be summarized as follows-

Pension Scheme	Unremitted Contributions Pre-devolution	Penalties Pre-devolution	Unremitted Contributions Post-devolution	Penalties Post-devolution
LAPTRUST	1.2 Billion	7.5 Billion	6.7 Billion	15 Billion
LAPFUND	6.95 Billion	0	2.17 Billion	37.79 Billion
CPF	0	0	2.18 Billion	1.73 Billion

- (b) that the issue of non-remittance of pension deductions is as a result of the following—
  - (i) employer financial challenges and insolvency;
  - (ii) non-sustainable contribution rates in the public sector;
  - (iii) changes in the employer institutional arrangements (change from local authorities to county governments);
  - (iv) changes in laws, policies and operating environment including reduction of capitation to public universities, and salaries adjustments

to members' collective bargaining agreements and the impact on pension contributions;

- (v) administrative lapses caused by poor record keeping; and
- (vi) diversion of budgeted pension funds to other activities.

44. The RBA further submitted that it had implemented the following measures to address the issue of non-remittance of pension deductions—

- (a) enforcement Action to County Governments to remit contributions pursuant to provisions of Section 53B of the Retirement Benefits Act, 1997 – as a result, some counties put in place remedial plans for the remittance of outstanding contributions;
- (b) engagements with the Trustees of the three (3) Schemes (CPF, LAPTRUST, LAPFUND) to discuss the challenge of unremitted contributions;
- (c) engagements with the Senate to assist in addressing the issue of non-remittance of pension contributions;
- (d) engagement with the National Treasury and Economic Planning to assist with the recovery of unremitted contributions; and
- (e) revitalizing the Retirement Benefits Act to address concerns on unremitted contributions that have led to amendments to the Act to provide mechanisms to recover unremitted contributions.

45. The Authority further submitted that Section 53B was amended through the Finance Act of 2021 to introduce Kenya Revenue Authority as a debt collector for schemes (as an alternative to the litigation route which had proved lengthy and ineffective). However, the Kenya Revenue Authority pointed out that the amendment in its current state is unimplementable thus, they recommended a raft of changes.

46. The RBA noted that the following proposals and mitigating measures would help in the recovery of the unremitted pension contributions—

- (a) counties and Schemes to reconcile pension liability (IGRTC report July 2022);
- (b) the penalties and interest levied by the schemes are punitive, thus the laws establishing schemes be revised to provide for reasonable interest and interest levied on outstanding debts be capped to the 365 days Treasury bill rates;
- (c) provision of pension for County workers be centralized to one scheme. Consolidation will reduce the arbitrage costs;
- (d) Since the payroll processing for the County employees is done through the Integrated Payroll Processing Database (IPPD) for the government, the budgeted contributions be deducted at source and remitted to the scheme and that the Public Finance Management Act be amended appropriately;



- (e) contributions to schemes be based on affordability;
- (f) pension liabilities be treated as first charge of County resources and be enforced by Office of the Controller of Budget;
- (g) clearance of pending principal contributions;
- (h) process of transfer of land and other assets provided for debt swap be simplified;
- (i) amending powers of KRA to attach accounts of institutions with outstanding pension contributions;
- (j) Amending the Kenya Revenue Authority Act to grant it powers to act as agent to collect pension contributions on behalf of schemes as their proposed amendments;
- (k) addressing the gaps within the Retirement Benefits Act on recovery of unremitted contributions (powers to sue an employer who fails to remit contributions);
- (l) The National Treasury be advised to allocate funds for the settlement of outstanding public sector unremitted contributions;
- (m) Simplification of the process of transfer of properties to schemes where debt swaps option is adopted; and
- (n) Where a repayment plan is adopted, the Controller of Budget remits contributions directly to the scheme agreed amounts as disbursements are being made to the Counties.

## **B. National Social Security Fund**

47. The National Social Security Fund submitted as follows—

- (a) That, the implementation of the NSSF Act 2013 pushed contributions from Kshs.1.4 billion to Kshs.1.7 billion, indicating a gain for all stakeholders in terms of improved savings;
- (b) that, based on 2023 Economic Survey, there are approximately 217,300 workers within the County Government however, only 89,913 pay NSSF contributions;
- (c) as at 30<sup>th</sup> June 2023 the County Governments owed NSSF a total of Kshs.2,772,525,280 out of which Kshs.2,092,877,715 represented accumulated penalties;
- (d) as at 30<sup>th</sup> June 2023 the pension debt inherited from the defunct local authorities totaled to Kshs.1,873,078,769 out of which Kshs.1,648,649,919 represented accumulated penalties;
- (e) the NSSF carried out recovery initiatives including engagements and sensitization on NSSF Act, 2013 to employers and members. Their efforts resulted in the recovery of Kshs.226,399,430 in contribution debts owed



by fifteen defunct local authorities through payments made by four county governments;

(f) the Fund experienced the following challenges when collecting the NSSF contributions—

- (i) under-registration with NSSF of the total workforce in county Governments;
- (ii) non-remittance of contributions for all employees engaged by county governments;
- (iii) inconsistent monthly contributions and skipped contributions;
- (iv) non-submission of employee contributions returns;
- (v) submission of erroneous Fund membership numbers in monthly returns;
- (vi) Integrated Payroll and Personnel Database is not configured to allow for deduction of NSSF contributions for all employees;
- (vii) missing narrative of payments made through RTGS (Employer registration number and period of payment);
- (viii) delay in recovery of NSSF contributions for workers who were previously engaged in defunct local authorities; and
- (ix) difficulty in access to payroll information from County Government offices.

48. The NSSF further noted that the following recommendations would improve the contribution collection moving forward—

- (a) registration with NSSF of all employees in county governments;
- (b) payment of contributions for all employees engaged;
- (c) prompt submission of accurate and complete returns;
- (d) Treasury to impose a requirement for submission of NSSF compliance certificates by County Governments prior to disbursement of funds to County Governments;
- (e) payment of contribution arrears and penalties by County Governments;
- (f) maintenance and submission of accurate Fund membership numbers to enhance prompt update of member accounts and payment of NSSF benefits;
- (g) configuration of the payroll system to allow for payment of NSSF contributions for all employees engaged by County Governments; and
- (h) reflection of all required narratives, including Employer registration number and period of payment, when making NSSF contribution payments through RTGS.

### C. LAPFUND

49. LAPFUND submitted as follows—

- (a) That, the Retirement Benefits Act requires that the amount deducted be remitted by 15<sup>th</sup> of the subsequent month but however, LAPFUND frequently experience delays in receiving remittance of contributions from the sponsors which has led to accumulation of debt in form of principal and accrued interest;
- (b) That, as at 30th June 2023, LAPFUND had an outstanding debt of Kshs. 57.5bn of which Kshs. 50.6bn was owed by the County Governments while Kshs. 6.9bn was inherited from the defunct local authorities;
- (c) That, the debts inherited from the defunct local authorities, Kshs. 4,028,737,800 represented the accrued interests and penalties emanating from the delay in remittance of pension contributions; and
- (d) That of the debts owed by the County Governments, Kshs. 47,766,854,880 represented the accrued interests and penalties emanating from the delay in remittance of pension contributions.

50. LAPFUND further submitted that the scheme implemented the following debt collection strategies in an effort to resolve the issue of non-remittance of pension contributions—

- (a) sending of monthly/quarterly statement of account as well as continues reconciliation with the sponsors;
- (b) regular follow-ups on non-remittance;
- (c) negotiating on outstanding debt repayment plan; and
- (d) engaging of other Government Agencies e.g. IGTRC, RBA and CoB.

51. It also noted that the issue of non-remittance of pension contributions may be resolved through the implementation of the following recommendations—

- (a) Office of Controller of Budget to recover and submit statutory deductions to statutory bodies;
- (b) re-introduction of the Annual Statutory clearance process;
- (c) county governments to sign debt repayment plan and submit to the Office of Controller of Budget for implementation;
- (d) legal mechanisms to recover from source; and
- (e) debt swaps with viable assets.



#### **D. LAPTRUST AND COUNTY PENSION FUND (CPF)**

52. During a meeting held on Monday 22<sup>nd</sup> May 2023, the County Pension Funds and the Local Authorities Pension Trust Fund (CPF and LAPTRUST), appeared before the Committee led by the Group Managing Director, Mr. Hosea K. Kili, OGW, to make a presentation on—

- (a) the status of the Unremitted Pension Contribution deductions (Debt) owed to schemes under the administration;
- (b) the measures and efforts taken to collect the said unremitted contributions; and
- (c) the list of Counties that have instituted repayment plans and number of staff who have retired and have been affected by the said non-remittance of the contributions.

53. LAPTRUST and CPF submitted as follows—

- (a) That, the issue of defaulting in the remittance of pension contributions by public entities began in the 1980's with the defunct local authorities and has progressively worsened with the successive County Governments post-devolution;
- (b) That, as of 30<sup>th</sup> June 2023, the pension liabilities owed to LAPTRUST and CPF have accumulated to Kshs.33.7 billion and Kshs.4.1 billion respectively;
- (c) That, the defaulting in remittances led to underfunding and accumulation of actuarial deficits within the LAPTRUST DB Scheme;
- (d) That, as at 30<sup>th</sup> June 2023, the outstanding debt for the LAPTRUST (DB) scheme for County Governments stood at Kshs.33,551,098,110 with Kshs. 10,964,083,069 being the debt pre-devolution and Kshs.22,587,015,041 being the debt post-devolution;
- (e) That, as at 30<sup>th</sup> June 2023, the outstanding debt for the County Pension Fund (DC) scheme owed by all sponsors stood at Kshs.4,105,211,018 of which Kshs.3,763,542,009 was owed by the County Governments while the balance was owed by the County Assemblies;
- (f) That, of the debts owed to LAPTRUST (DB) scheme and County Pension Fund (DC) scheme Kshs.23,674,254,538 and Kshs.2,395,591,651 make up the interests and penalties charged above the liabilities; and
- (g) That, through past debt collection efforts, LAPTRUST and CPF managed to collect Kshs.983 million from Mombasa County Government, Kisumu County Government and Nakuru County Government in 2011 and Kshs.161 million after an engagement with IGR TC and the County Governments in 2022.



54. It was further submitted that the issue of non-remittance of pension contributions may be resolved through the implementation of the following recommendations—

- (a) for future contributions should to be paid directly from the County Revenue Fund Account in line with section 109(4)(b) of the Public Finance Management Act. This is to ensure they are paid without undue delay;
- (b) issuance of special bonds by the National Government on behalf of the Counties and deducting the same from the Counties' share of revenue. This is proposed to apply to high value debts above Kshs.1 billion. Low value debts below Kshs.1 billion to be managed through debt repayment agreements;
- (c) enforcing transfer of Contribution in lieu of rates (CILOR) by National Government, directly to the Schemes on behalf of the Counties in settlement of the debts owed;
- (d) enforcing an arrangement where sponsors should sign a debt repayment plan and deposit with the Controller of Budget for monitoring; and
- (e) asset-debt swap agreements for the sponsors with substantial debts and ensuring the assets swapped are clean.

### **3.3. County entities**

#### **A. The Council of County Governors (CoG)**

55. The Council of County Governors submitted as follows-

- (a) That, The Verified Pension liabilities as at 27<sup>th</sup> March, 2013 amounted to Kshs. 53.76 billion. Following the concerted efforts by CoG, IBEC, IGRTC, the National Treasury, CoB and RBA, a meeting with the CECM Finance Caucus and the Pension Financial Institutions to evaluate the pension amount, the accruing interest and settlement options was held on 21<sup>st</sup> July, 2022. The meeting resolved that each County Government develops payment plans to offset the pension debts. As at 31<sup>st</sup> March, 2023 County Governments owed the different pension schemes Kshs. 40.5 billion having offset Kshs.13.26 billion. The current pension liability comprises of:
  - i. County Pension Fund(CPF)/ LAPTRUST Ksh. 32.38 B
  - ii. LAPFUND Ksh. 6.95 B
  - iii. KUSCCO Ksh. 1.25B
  - iv. NSSF Ksh. 1.2B

- (b) That, the Council wished to reiterate the Commitment of County Governments in off-setting the remaining difference of Kshs. 40.5 billion as per the payment plans developed and submitted to the various pension institutions.
- (c) That, the main cause of the non-remittance of pension deductions was the delayed disbursement of County Government Equitable share of Revenue where the National Treasury had consistently on average been three (3) months in arrears when it came to the disbursement of equitable share causing the delays in disbursement of pension deductions.
- (d) Further, they urged the Senate to take measures to ensure that the disbursement schedules approved are properly adhered to as the delays in disbursement form part of the causes for the failure to remit pension dues by the Counties.
- (e) Further, they took note of the recent efforts made by the National Government, which resulted in the full disbursement of the FY 2022/23 County Government Equitable share of revenue on 23<sup>rd</sup> June, 2023. In view of this, they advised the County Governments to prioritize the settlement of the pension deductions as well as eligible pending bills.

#### **B. The County Assemblies Forum**

56. The County Assemblies Forum submitted as follows—

- (a) That, delayed or inaccurate remittances can jeopardize the retirement security of employees and affect the compounding effect of contributions and hinder pension institutions' ability to invest and generate returns;
- (b) That, county assemblies should advocate for the inclusion of social security remittances in the county executive's budget to ensure consistent funding for pension contributions;
- (c) That, county assemblies should organize workshops and seminars with the purpose of raising awareness and educating county officials, employers and stakeholders about the legal obligations and benefits of timely remittances;
- (d) That, there should be implementation of penalties for non-compliance with the aim of creating a strong incentive for county governments and employers to prioritize timely remittances thus safeguarding employees' future financial security; and
- (e) That, there should be established collaborative monitoring mechanisms involving county assemblies, pension institutions, and regulatory bodies like RBA to enable regular assessment of remittance compliance, early issue identification, and effective problem-solving.



### **C. The Kenya County Governments Workers Union**

57. During a meeting held on Monday, 29<sup>th</sup> May 2023, the Secretary General of Kenya County Government Workers Union, Hon. Roba S. Duba appeared before the Committee to make a presentation on—

- (a) the information on non-remittance of pension deductions by county entities;
- (b) information and data, if any, on complaints from retired county employees who are not able to access their pension dues;
- (c) concerns, if any, on the issue of non-remittance of pension deductions from county workers by county entities; and
- (d) suggestions on how the matter of non-remittance of pension deductions should be resolved.

58. The Kenya County Government Workers Union submitted as follows-

- (a) That, the issue of non-remittance of pension funds began way before devolution, wherein some counties such as Nairobi, Mombasa and Kisumu inherited these pension arrears as part of the inherited liabilities in line with section 58 of the Urban and Cities Act 2011;
- (b) That, the Transitional Authority recommended to the newly formed devolved units the option of transferring property to the pension schemes/statutory bodies as part of settlement of the existing pension debts. However, the debts inherited at the time were not huge and were manageable as there were regulations in place that couldn't allow for piling up of statutory arrears, such as the Local Authority Transfer Fund (LATF) regulations 1998, which required the various Local Authorities to seek authorization from the respective statutory bodies before funds were released to their accounts;
- (c) That, the issue of non-remittance of pension contributions worsened at the onset of devolution due to a lack of proper regulations and enforcement. The pension liabilities in some Counties has increased to almost ten times more than what it was pre-devolution;
- (d) That, out of the total outstanding debt owed to the Pension Schemes by the Counties which stands Kshs.65.7 billion, Nairobi City County leads the Counties in terms of amounts owed as debts as their total outstanding dues owed to the two pension schemes stands at Kshs.39.65 billion shillings, Mombasa County follows the debt tray at Kshs.9.43 billion shillings, with Garissa at Kshs.1.83 billion coming in third and then Migori at Kshs.1.73 billion; and



- (e) That, due to competition amongst LAPFUND, LAPTRUST CPF and NSSF for membership of the employees within the Counties it has been an uphill task for the schemes to compel remittance.

59. The Union submitted that it had implemented the following interventions in an effort to resolve the issue of non-remittance of pension contributions—

- (a) taking legal steps to compel counties to remit statutory deductions. For example, the case against Wajir County Government under Employment and Labour Relations Court case no. E332 of 2022 wherein the Union was able to obtain orders compelling the County Government of Wajir to remit pension and other statutory deductions amounting to Kshs. 800,000,000;
- (b) raising of the issue of non-remittance with the National Treasury and Economic Planning, the Controller of Budget, Retirement Benefits Authority, Senate, National Assembly and the Ethics and Anti-Corruption Commission (EACC) however, the same was not addressed appropriately to yield the desired results; and
- (c) advocating for property debt swaps.

60. The Union observed that the issue of non-remittance of pension contributions may be resolved through the implementation of the following recommendations—

- (a) that Parliament come up with regulations similar to those of the Local Authority Transfer Fund (LATF) regulations 1998, which would compel the County Governments and their entities to seek clearance with the various statutory bodies before they access their funds from their accounts at the National Treasury and Economic Planning to avoid accruals of current remittance;
- (b) empowerment of the office the Controller of Budget through parliamentary legislation to enable the office holder to rein-in on the Counties to ensure compliance with remittance of statutory deductions;
- (c) parliamentary legislation to empower the National Treasury and Economic Planning to disburse funds directly to statutory institutions/bodies, i.e. to enable the statutory bodies to access their funds at source;
- (d) issuance of special bonds by the national government on behalf of the counties and deducting the same from the county's share of revenue to be credited directly to the schemes; and
- (e) review of the County Government Act 2012 and other regulations to leverage on individual responsibility and stiff punishment for office holders who fail to remit statutory deductions in real time.

### 3.4. Other entities

#### A. The Intergovernmental Relations Technical Committee (IGRTC)

61. The Intergovernmental Relations Technical Committee (IGRTC) submitted as follows—

- (a) That as part of its mandate, IGRTC undertook the exercise on identification, verification and transfer of assets and liabilities of 175 defunct local authorities through the County Assets and Liabilities Committees (CALCs). It then received reports from the 47 counties and prepared a consolidated report in 2018 which was submitted to IBEC in a meeting held on 18th June, 2019 and detailed the liquidation options for the settlement of liabilities of the defunct local authorities;
- (b) the aforementioned report recommended that the liquidation plans be factored in respective national and county governments' budgets as provided for in law where necessary and settlement of the same should be undertaken in a three-year financial period with effect from the date of adoption of the report by IBEC;
- (c) the liquidation options provided for in the report included the following—
  - (i) counties to budget for the offsetting of the liabilities from their own respective equitable share of revenues;
  - (ii) National Government to consider allocating conditional grants for payment of the liabilities as a strategic intervention mechanism;
  - (iii) National Government and county governments to consult and agree on offsetting the liabilities jointly through an agreed percentage;
  - (iv) Government institutions e.g. the Office of the Auditor General (OAG) to consider writing off debts owed;
  - (v) where applicable, current assets be used to off-set the liabilities on a county-by-county basis. Secondly, liabilities arising from investments in income generating projects (water, housing etc), should be paid from the same facilities; and
  - (vi) debt swap as a liquidation option should be considered based on a framework that determines actual values as established through an appropriately developed legal framework/agreement.

62. The IGTRC further submitted that according to the data collected by County Assets and Liabilities Committees (CALCs) from records of the 175 DLAs as at 27th March, 2013, inherited liabilities amounted to Kshs. 53,756,398,754.25 of which the County Governments have repaid Kshs. 5,422,865,330.13 leaving a balance of Kshs. 48,333,533,424.12 as at 2018.



63. Additionally, they noted that out of the total inherited liabilities, unremitted pension amounted to KES 9,978,836,848.58 which was broken down as follows—
- (a) LAPTRUST - Kshs. 5,080,320,267.95;
  - (b) NSSF - Kshs. 1,085,671,440.40; and
  - (c) LAPFUND - Kshs. 3,812,845,140.23.
64. Further, of the aforementioned inherited pension liabilities, Nairobi city County accounted for Kshs. 5,562,144,667 representing over 60% of all the inherited pension liabilities.
65. IGTRC further submitted that it took the following initiatives in a bid to resolve the issue of non-remittance of pension contributions—
- (a) engaging IBEC on settlement of historical liabilities;
  - (b) establishing pending liabilities multi-agency team;
  - (c) developing a debt repayment agreement model;
  - (d) holding meetings with NSSF, LAPFUND and CPF on the matter;
  - (e) structured engagements with stakeholders to validate, reconcile and develop payment plans;
  - (f) sensitisation of county officers on settlement of inherited liabilities;
  - (g) communication to governors on the matter;
  - (h) presentation of the status report to the 9th summit; and
  - (i) appraising the senate committee on the progress made.
66. The IGTRC noted that their initiatives yielded the following successes—
- (a) five county governments (Nyeri, Tana River, Nyamira, Kakamega and Kwale) signed debt payment agreements with CPF and have so far made efforts to offset their debts amounting to over Ksh. 160 million; and
  - (b) four county governments (Kisumu, Kirinyaga, Makueni and Bungoma) agreed on a payment plan with CPF.
67. They further submitted that the following proposals and mitigating measures would help in the recovery of the unremitted pension contributions—
- (a) reconciliation and harmonization of figures;
  - (b) waivers;
  - (c) structured engagements with stakeholders;
  - (d) property swaps;
  - (e) special purpose account to ring-fence pension remittances;
  - (f) development of a common debt settlement framework;
  - (g) issuance of a bond by the National Treasury and Economic Planning; and



(h) involvement of the Senate, CoB, Treasury and IGRTC to monitor and enforce the agreed options.

## **CHAPTER FOUR: OBSERVATIONS AND RECOMMENDATIONS**

### **4.1. Observations**

68. Having considered the submissions made by various stakeholders, the Committee observed that—

- (a) a comparison between the data provided on the outstanding pension debt by the County Governments and the respective pension schemes shows great discrepancies which requires reconciliation; for instance, the records submitted by the pension schemes show liabilities amounting to Kshs. 80.1 billion while data submitted by Council of County Governors (CoG) shows that the liabilities stand at Kshs. 40.5 billion,
- (b) that out of the four pension entities, the debts owed to the various pension schemes by County Governments have been outstanding for many years thus resulting in an accumulation of not only the pension payment arrears, but also penalties and interest payments due to the delay in remittance of the pension deductions and contributions;
- (c) there has been a significant increase in the debts owed to pension schemes post-devolution, and the debts comprise of majorly accrued interest and penalties;
- (d) the compound interest charged by Lapfund, CPF and Laptrust has led to growth of the interest and penalties to unmanageable levels thus discouraging settlement of the same by counties governments;
- (e) the stakeholders attributed the non-remittance of pension contributions include financial challenges, diversion of budgeted pension contributions to other activities, non-sustainable pension contribution rates in the public sector, changes in employer institutional arrangements, delay in disbursement of funds by the National Treasury and Economic Planning and administrative lapses caused by poor record keeping;
- (f) city counties, i.e. Nairobi and Mombasa County have the highest pension debt according to data submitted by the Kenya County Government Workers Union. For instance, Nairobi City County has the highest recorded liabilities of Kshs. 39.66 billion while Mombasa owes Kshs.9.43 billion;
- (g) so far, from data provided by pension entities, two counties, that is Nyamira County and Nyeri County, have settled their principal pension contributions in full after entering into debt settlement agreements with the pension entities, while Tana River County, Kakamega County and Kwale County have entered into debt settlement agreements but not yet paid the agreed amounts in full;
- (h) it has been evident that successive County Governments fail to recognize or honor the pension liabilities owed by the County when they come into power;

- (i) past collaborative efforts between the IGTRC and CPF have yielded recovery of about Kshs. 160 million that were owed by defunct Local Authorities as at July, 2022;
- (j) based on 2023 Economic Survey, out of the 217,300 workers within the County Government, only 89,913 (41.4%) pay NSSF contributions;
- (k) Stakeholders in their submissions proposed several varied for clearing the outstanding pension liability, therefore, there is need for establishment of a multi-sector team to consider and agree on suitable ways of settling the pension liabilities;
- (l) though the IGTRC ought to have been at the centre of resolving the matter of non-remittance of pension deductions particularly on pre-devolution, they have not done much towards mitigating the matter;
- (m) the Retirement Benefits Act, 1997 had a shortcoming such that it does not adequately support the collection of pension debt by KRA when it is appointed as the collection agent under the Act; and
- (n) LAPFUND is a provident Fund. It is a state corporation under the Ministry of National Treasury and Economic Planning.
- (o) The LAPTRUST (Umbrella) Retirement Fund (LAPTRUST Defined Contribution Scheme) which was established under an irrevocable Trust Deed registered under the Retirement Benefits Act. This has since been renamed as the County Pension Fund (CPF).

## 4.2. Recommendations

69. The Committee therefore recommends that—

- (a) the Cabinet Secretary in charge of the National Treasury and Economic Planning establishes and gazettes a Multi-Agency Taskforce within 30 days of adoption of this Report by the Senate; and further that—
  - (i) the Taskforce shall comprise of the CS in charge of the National Treasury, Attorney General, CEO CPF/LAPTRUST, CEO LAPFUND, the CoB, CEO NSSF, CEO RBA, CEO IGTRC, CAF, Chair of the CoG & Chair of CECM of Finance or their respective representatives;
  - (ii) the Taskforce shall—
    - (1) establish the actual pension liabilities by reconciling and harmonizing the amounts owed, including the principal amount owed, the accrued interest and accumulated penalties. In its reconciliation the Task force shall ensure that the contribution rates, chargeable interest levied and accumulated penalties on unremitted contribution is as per the law/ regulations that establish each of the schemes.



- (2) come up with specific strategies for the implementation of the Senate recommendations;
  - (3) develop appropriate formula and a framework for payment of Pension liabilities that will enable the clearance of the outstanding pension debt by the County Government;
  - (4) submit biweekly status reports to the Senate on its activities; and
  - (5) submit a final report to the Senate within 60 days of its establishment.
- (b) once the report of the Taskforce is adopted by the Senate, the Attorney General formulates debt settlement agreements between the county entities with outstanding pension liabilities and the pension schemes. The agreements shall be formulated and signed within 90 days of adoption of the Taskforce report by the Senate, and shall also be signed by the Controller of Budget and the Attorney General as witnesses and a copy be submitted to the Office of the Auditor-General;
  - (c) if the counties fail to settle the amounts owed to the pension funds as agreed in the debt settlement agreements, the RBA shall appoint KRA as a collecting agent in accordance with section 53B of the Retirement Benefits Act;
  - (d) the National Treasury shall initiate stoppage of funds in accordance with Article 225 of the Constitution and Section 96 of the Public Finance Management Act, 2012, to counties which fail to co-operate with the Taskforce during the reconciliation process, as well as the counties which fail to sign the debt settlement agreements, or honour their debt settlement agreements;
  - (e) the National Treasury ensures that a county's share of revenue raised by the national government shall be transferred to the county without undue delay in compliance with Article 219 of the Constitution;
  - (f) where there is a delay in transfer of funds from the Exchequer to County Revenue Fund (CRF), any interest or penalty attributable to the delay shall be paid by the National Government;
  - (g) counties ensure timely remittance of current and future pension obligations through the administrative and existing legal framework including amendment to the law to attach personal liability to the accounting officers in the event of non-remittance of funds once the funds are received from the exchequer;
  - (h) the Public Finance Management Act, No. 18 of 2012, be amended to provide for statutory dues such as taxes and pension deductions as a first charge on the County Revenue Fund;

- (i) the Controller of Budget ensures that monthly payroll payment requests are inclusive of any statutory dues, deductions and contributions before authorising withdrawals, and to monitor payment of the same once funds are released;
- (j) the National Government, through the National Treasury considers issuing a conditional grant to counties for the settlement of the pension liabilities owed pre-devolution, however, for counties to be eligible to access the above conditional grant, the county has to produce a clearance certificate or document showing that they have cleared all statutory dues including tax and pension contributions that accrued in the post-devolution period;
- (k) Parliament shall initiate amendments to the Kenya Revenue Authority Act, No. 2 of 1995, to anchor the collection of unremitted contributions as part of the functions of KRA under the Act, and the Retirement Benefits Act, 1997 to adequately guide and support the collection of pension debt by KRA. The proposed amendments are annexed as *Annex 2*; and
- (l) The Taskforce considers the issuance of bonds by the National Treasury for debt values above one billion shillings and the same deducted from the county share of revenue.

APPENDICES



**Annex 1: Minutes of the Committee**



### 13<sup>TH</sup> PARLIAMENT 2<sup>ND</sup> SESSION

**MINUTES OF THE A HUNDRED AND TWENTY FOURTH MEETING OF THE COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS COMMITTEE ON THE CONSIDERATION AND ADOPTION OF THE REPORT ON PENSION NON-REMITTANCE BY COUNTY ENTITIES HELD ON MONDAY, 6<sup>TH</sup> NOVEMBER, 2023 AT THE IMPALA ROOM, FIRST FLOOR, KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC) AT 11.00 A.M.**

#### **PRESENT**

- |  |                    |
|--|--------------------|
| 1. Sen. Godfrey Atieno Osotsi, MP            | - Chairperson      |
| 2. Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP | - Vice-Chairperson |
| 3. Sen. William Kipkemai Kisang, MP          | - Member           |
| 4. Sen. Eddy Gicheru Oketch, MP              | - Member           |
| 5. Sen. Hamida Kibwana Ali, MP               | - Member           |
| 6. Sen. Maureen Tabitha Mutinda, MP          | - Member           |

#### **ABSENT WITH APOLOGY**

- |   |          |
|---|----------|
| 1. Sen. Paul Karungo Thangwa, MP        | - Member |
| 2. Sen. Miraj Abdullahi Abdulrahman, MP | - Member |

#### **SECRETARIAT**

- |                        |                           |
|------------------------|---------------------------|
| 1. Mr. Yussuf Shimoy   | - Clerk Assistant I       |
| 2. Mr. David Angwenyi  | - Clerk Assistant I       |
| 3. Mr. Erick Njogu     | - Clerk Assistant III     |
| 4. Mr. Godfrey Nyaga   | - Clerk Assistant III     |
| 5. Mrs. Lillian Waweru | - Legal Counsel           |
| 6. Mr. Kennedy Owouth  | - Fiscal Analyst          |
| 7. Ms. Raisa Mwithu    | - Researcher officer      |
| 8. Ms. Winfred Ocholla | - Audio officer           |
| 9. Mr. Josphat Ng'enh  | -Media Relations Officer. |
| 10. Mr. John Pere      | - Serjeant-At-arms        |
| 11. Mr. Alvin Muzuni   | - Attachee                |

**MIN NO. /SEN/CPICSF/766/2023      PRAYER**

The meeting was called to order by the Chairperson at twenty-two minutes past eleven O'clock followed by a word of prayer.

**MIN NO. /SEN/CPICSF/767/2023      ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Hamida Kibwana Ali, MP and seconded by Sen. Eddy Gicheru Oketch, MP, as follows –

1. Prayer
2. Adoption of the Agenda
3. Confirmation of Minutes
4. Matters arising from the Previous Minutes
5. Consideration and adoption of the report on pension non-remittance by County entities
6. Any Other Business
7. Date of the Next Meeting and Adjournment

**MIN. NO. SEN/CPICSF/768/2023      CONFIRMATION OF MINUTES**

The following sets of minutes were confirmed as by the Committee-

- i) The Minutes of the hundred and twentieth Sitting held on Friday, 27<sup>th</sup> October, 2023 were confirmed as a true record of the proceedings and signed by the Chairperson after being proposed and seconded by Sen. William Kipkemai Kisang, MP and Sen. Hamida Kibwana Ali, MP respectively.
- ii) The Minutes of the fifty-eight Sitting held on Tuesday, 6<sup>th</sup> June, 2023 were confirmed as a true record of the proceedings and signed by the Chairperson after being proposed and seconded by Sen. Eddy Gicheru Oketch, MP and Sen. Hamida Kibwana Ali, MP respectively.

**MIN. NO. SEN/CPICSF/769/2023      MATTERS ARISING FROM THE PREVIOUS MINUTES**

There was no matter arising from the previous minutes.

**MIN. NO. SEN/CPICSF/770/2023      CONSIDERATION AND ADOPTION OF THE REPORT ON PENSION-NON-REMITTANCE BY COUNTY ENTITIES**

The Committee considered and adopted the report on pension non-remittance by County entities having been proposed by Sen. William Kipkemai Kisang, MP and seconded by Sen. Hamida Kibwana Ali, MP respectively.



Further, the Committee resolved to propose amendments to address all legislative gaps identified on area of the law governing the matter of pension contributions. The proposed amendments to be annexed in the report.

**MIN. NO. SEN/CPICSF/771/2023      ANY OTHER BUSINESS**

The chairperson informed the Committee the Council of Governors had shown interest in making contributions in regard to issues in the water sector arising from the meetings the Committee had with Water Service providers in counties and Water Works Development Agencies.

The Committee resolved to invite the Council of Governors' Committee on Water, Forestry and Natural Resources Management Committee.

**MIN. NO. SEN/CPICSF/772/2023      DATE OF NEXT MEETING & ADJOURNMENT**

The Chairperson adjourned the meeting at twenty-five minutes to one o'clock in the afternoon. The next meeting would be held on Thursday, 9<sup>th</sup> November, 2023 at 9:30 am.



14/11/2023

**SIGNED: ..... DATE: .....**

**(CHAIRPERSON: SEN. GODFREY ATIENO OSOTSI, MP.)**



### 13<sup>TH</sup> PARLIAMENT 2<sup>ND</sup> SESSION

**MINUTES OF THE FIFTIETH SITTING OF THE COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS COMMITTEE WITH THE CPF/LAPTRUST HELD ON MONDAY, 22<sup>ND</sup> MAY, 2023 AT THE VIP LOUNGE, FIRST FLOOR, KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC) AT 10.00 A.M.**

#### **PRESENT**

- |  |                    |
|--|--------------------|
| 1. Sen. Godfrey Atieno Osotsi, MP            | - Chairperson      |
| 2. Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP | - Vice-Chairperson |
| 3. Sen. Ledama Olekina, MP                   | - Member           |
| 4. Sen. William Kipkemoi Kisang, MP          | - Member           |
| 5. Sen. Eddy Gicheru Oketch, MP              | - Member           |
| 6. Sen. Hamida Kibwana Ali, MP               | - Member           |
| 7. Sen. Maureen Tabitha Mutinda, MP          | - Member           |
| 8. Sen. Miraj Abdullahi Abdulrahman, MP      | - Member           |

#### **ABSENT WITH APOLOGY**

- |                               |          |
|-------------------------------|----------|
| Sen. Paul Karungo Thangwa, MP | - Member |
|-------------------------------|----------|

#### **SECRETARIAT**

- |                        |                            |
|------------------------|----------------------------|
| 1. Mr. Yussuf Shimoy   | - Clerk Assistant I        |
| 2. Mr. David Angwenyi  | - Clerk Assistant I        |
| 3. Mr. Erick Njogu     | - Clerk Assistant III      |
| 4. Mr. Godfrey Nyaga   | - Clerk Assistant III      |
| 5. Mr. Kenneth Owoth   | - Fiscal Analyst           |
| 6. Ms. Raisa Mwithu    | - Researcher officer       |
| 7. Mr. Kataa Matano    | - Researcher officer       |
| 8. Mr. Andrew Nyairo   | - Legal counsel            |
| 9. Ms. Winfred Ocholla | - Audio officer            |
| 10. Mr. Josphat Ng'eno | - Media Relations Officer. |
| 11. Mr. John Pere      | - Serjeant-At-arms         |



## **IN ATTENDANCE**

### **COUNTY PENSION FUNDS/LOCAL AUTHORITIES PENSION TRUST FUND**

- |                      |                 |
|----------------------|-----------------|
| 1. Mr. Hosea Kili    | - C.E.O/GMD-CPF |
| 2. Mr. George Okioma | - CPF           |
| 3. Mr. Gideon Mueke  | - CPF           |

### **ETHICS AND ANTI-CORRUPTION COMMISSION**

Mr. Patrick Kinoti - Liaison Officer, EACC

#### **MIN. NO. SEN/CPICSF/304/2023 PRAYER**

The meeting was called to order by the Chairperson at twenty-seven minutes past ten O'clock followed by a word of prayer.

#### **MIN. NO. SEN/CPICSF/305/2023 ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by S Sen. Ledama Olekina, MP and seconded by Sen. Maureen Tabitha Mutinda, MP, as follows –

1. Prayer
2. Adoption of the Agenda
3. Administration of oath of witness and Tabling of Documents
4. Meeting with CPF/LAPTRUST.
5. Any Other Business
6. Date of the Next Meeting and Adjournment

#### **MIN. NO. SEN/CPICSF/306/2023 ADMINISTRATION OF OATH OF WITNESS AND TABLING OF DOCUMENTS**

The Group Managing Director of County Pension Funds/Local Authorities Pension Trust Fund (CPF/LapTrust), Mr. Hosea K. Kili, OGW, took oath of witness and tabled the report on the County Pension Funds/Local Authorities Pension Trust Fund.

#### **MIN. NO. SEN/CPICSF/307/2023 MEETING WITH CPF/LAPTRUST**

The Group Managing Director of County Pension Funds/Local Authorities Pension Trust Fund (CPF/LapTrust), Mr. Hosea K. Kili, OGW, appeared before the Committee and made a presentation on the following key areas as requested by the Committee –

- a) the status of the Unremitted Pension Contribution deductions (Debt) owed to schemes under the administration;
- b) the measures and efforts taken to collect the said unremitted contributions; and
- c) Counties that had instituted repayment plans and number of staff who had retired and have been affected by the said non-remittance of the contributions.

Mr. Kili informed the Committee that CPF Finance Limited is a Pension Administration Company registered and regulated by the Retirement Benefits Authority (RBA) to offer Pension Administration Services. Further, he indicated that the Company is jointly owned and offers pension administration services to the following schemes serving the County Governments-

- a) LAPTRUST Defined Benefits (DB) Scheme;
- b) County Pension Fund Defined Contributory (DC) Scheme; and
- c) CPF Individual Personal Pension Scheme.

**a. Status of unremitted pension contribution liabilities**

The Committee was informed that the total liability owed to CPF Finance Limited by both the defunct local authorities and the County Governments was Kshs. 36,284,729,685 as at 31<sup>st</sup> March 2023.

**b. Efforts made to collect the outstanding pension liabilities**

The CEO informed the Committee that CPF Finance Limited had taken the following measures to collect the outstanding pension liabilities –

- a) Property Swap;
- b) Sponsor Visits;
- c) Engagement of Stakeholders;
- d) Debt Factoring;
- e) Interest Waivers;
- f) Structured engagement of Sponsors;
- g) Issuing of Special Bond by National Government; and
- h) Other Collection Strategies.

**c. County Governments that had instituted a payment plan in the recent past to clear their outstanding pension liabilities and retired staff affected by non-remittance**



The Committee was informed that before a County Government instituted a payment plan, a reconciliation of the debt was undertaken and upon an agreement of the outstanding balances, a settlement plan was drawn and executed.

The CEO submitted the following list of County Government which had instituted a payment plan to settle the debt-

- a) Nyeri County Government – Signed a Debt Repayment Plan for settlement of Kshs. 21.2 Million in April 2022 and settled the same in full in May 2022;
- b) Tana River County Government – Signed a Debt Repayment Plan for settlement of Kshs. 91.9 Million in July 2022 and settled the same in full in January;
- c) Nyamira County Government – Signed a Debt Repayment Plan for settlement of Kshs. 12.6 Million in September 2022 and settled the same in full in October 2022;
- d) Kwale County Government – Signed a Debt Repayment Plan in July 2022 to settle a debt of Kshs. 26.1 M but had not settled the debt.
- e) Kakamega County Government – Signed a Debt Repayment Plan in August 2022 to settle a debt of Kshs. 47.6 M and had made partial settlement of Kshs. 35.4 M in September 2022.

The Committee was further informed that CPF Finance Limited had reached an agreement on the outstanding debt liability amount with the following counties but were yet to sign Debt Repayment Plans –

- a) Kisumu County Government;
- b) Kirinyaga County Government;
- c) Bungoma County Government; and
- d) Makueni County Government.

The Committee noted that the rest of the other County Governments were to respond and that CPF Finance Limited was still pursuing them.

The Committee also noted that CPF Financial Services had not withheld any payment of pension to retired staff from County Governments as the institution was utilizing contributions for members who are young to settle benefits for those who were retiring, in the Laptrust scheme.

The CEO however stated that the Board of Trustees was considering stoppage of payments of pensions to assist in enforcing collection of the unremitted contributions.

In his recommendations on the way forward, he proposed the following interventions to facilitate counties in the settlement of outstanding liabilities –

- a) Issuing of special bonds by the National Government on behalf of the Counties and deducting the same from the Counties' share of revenue;
- b) Instituting a LATF -like legal mechanism that will allow Statutory Creditors access the deductions from Source, either from the Treasury or from the Controller of budget; and
- c) Enforcing transfer of payments in lieu of rates by National Government, directly to the Schemes on behalf of the Counties in settlement of the debts owed.

After deliberations the committee resolved to further engage CPF/LapTrust on any matter that may need their response.

**MIN. NO. SEN/CPICSF/308/2023      ANY OTHER BUSINESS**

There was no any other business.

**MIN. NO. SEN/CPICSF/309/2023      DATE OF NEXT MEETING & ADJOURNMENT**

The Chairperson adjourned the meeting at ten minutes to one o'clock. The next meeting would be held on Tuesday, 23<sup>rd</sup> May, 2023 at 10:00 am.



14/11/2023

**SIGNED: ..... DATE: .....**

**(CHAIRPERSON: SEN. GODFREY ATIENO OSOTSI, MP.)**



### 13<sup>TH</sup> PARLIAMENT 2<sup>ND</sup> SESSION

**MINUTES OF THE FIFTY THIRD SITTING OF THE COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS COMMITTEE WITH THE RETIREMENT BENEFITS AUTHORITY HELD ON MONDAY, 29<sup>TH</sup> MAY, 2023 AT THE VIP LOUNGE, FIRST FLOOR, KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC) AT 12.00 P.M.**

#### **PRESENT**

- |                                     |                      |
|-------------------------------------|----------------------|
| 1. Sen. Godfrey Atieno Osotsi, MP   | - <b>Chairperson</b> |
| 2. Sen. Ledama Olekina, MP          | - Member             |
| 3. Sen. William Kipkemai Kisang, MP | - Member             |
| 4. Sen. Paul Karungu Thangwa, MP    | - Member             |
| 5. Sen. Hamida Kibwana Ali, MP      | - Member             |
| 6. Sen. Maureen Tabitha Mutinda, MP | - Member             |

#### **ABSENT WITH APOLOGY**

- |  |                           |
|--|---------------------------|
| 1. Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP | - <b>Vice-Chairperson</b> |
| 2. Sen. Eddy Gicheru Oketch, MP              | - Member                  |
| 3. Sen. Miraj Abdullahi Abdulrahman, MP      | - Member                  |

#### **SECRETARIAT**

- |                        |                            |
|------------------------|----------------------------|
| 1. Mr. Yussuf Shimoy   | - Clerk Assistant I        |
| 2. Mr. David Angwenyi  | - Clerk Assistant I        |
| 3. Mr. Erick Njogu     | - Clerk Assistant III      |
| 4. Mr. Godfrey Nyaga   | - Clerk Assistant III      |
| 5. CPA Kenneth Owoth   | - Fiscal Analyst           |
| 6. Ms. Raisa Mwithu    | - Researcher officer       |
| 7. Mr. Kataa Matano    | - Researcher officer       |
| 8. Mr. Andrew Nyairo   | - Legal counsel            |
| 9. Ms. Winfred Ocholla | - Audio officer            |
| 10. Mr. Joshat Ng'eno  | - Media Relations Officer. |
| 11. Mr. John Pere      | - Serjeant-At-arms         |



## **IN ATTENDANCE**

### **A. RETIREMENT BENEFITS AUTHORITY**

- |                          |                                     |
|--------------------------|-------------------------------------|
| 1. Mr. Charles Macharia  | - Chief Executive Officer           |
| 2. Mr. Jackson Manthu    | - Director Supervision              |
| 3. Mr. Antony Kiaraha    | - Assistant Director Legal Services |
| 4. Mrs. Caroline Wabwire | - Deputy Director Supervision       |

### **B. ETHICS AND ANTI-CORRUPTION COMMISSION**

Mr. Patrick Kinoti - Liaison Officer, EACC

#### **MIN. NO. SEN/CPICSF/322/2023 PRAYER**

The meeting was called to order by the Chairperson at thirty minutes past noon followed by a word of prayer.

#### **MIN. NO. SEN/CPICSF/323/2023 ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Maureen Tabitha Mutinda, MP and seconded by Sen. William Kipkemai Kisang, MP, as follows –

1. Prayer
2. Adoption of the Agenda
3. Administration of oath of witness and Tabling of Documents
4. Meeting with Retirement Benefits Authority
5. Any Other Business
6. Date of the Next Meeting and Adjournment

#### **MIN. NO. SEN/CPICSF/324/2023 ADMINISTRATION OF OATH OF WITNESS AND TABLING OF DOCUMENTS**

The Chief Executive Officer of the Retirement Benefits Authority took Oath of Witness and tabled the Management responses and supporting documents for the report of the Retirement Benefits Authority.

#### **MIN. NO. SEN/CPICSF/325/2023 MEETING WITH THE RETIREMENT BENEFITS AUTHORITY**

The Chief Executive Officer (CEO) of Retirement Benefits Authority, Mr. Charles M. Macharia, appeared before the Committee to make a presentation on the matter of non-remittance of pension deductions by entities in counties.

The Committee noted that the documents tabled by the CEO for presentation on the matter under consideration were not submitted through the official channels and that they were not signed, hence the meeting could not proceed. The Committee resolved to reschedule the meeting to a later date and directed the CEO to resubmit the documents in the required format by Friday, 2<sup>nd</sup> June, 2023.

**MIN. NO. /SEN/CPICSF/326/2023      ANY OTHER BUSINESS**

There was no any other business.

**MIN. NO. SEN/CPICSF/327/2023      DATE OF NEXT MEETING & ADJOURNMENT**

The Chairperson adjourned the meeting at forty minutes past one o'clock. The next meeting would be held on Monday, 29<sup>th</sup> May, 2023 at 2:00 pm.



14/11/2023

**SIGNED: ..... DATE: .....**

**(CHAIRPERSON: SEN. GODFREY ATIENO OSOTSI, MP.)**



### 13<sup>TH</sup> PARLIAMENT 2<sup>ND</sup> SESSION

**MINUTES OF THE FIFTY FOURTH SITTING OF THE COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS COMMITTEE WITH THE INTER GOVERNMENTAL RELATIONS TECHNICAL COMMITTEE HELD ON MONDAY, 29<sup>TH</sup> MAY, 2023 AT THE VIP LOUNGE, FIRST FLOOR, KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC) AT 2.00 P.M.**

#### **PRESENT**

- |                                     |                      |
|-------------------------------------|----------------------|
| 1. Sen. Godfrey Atieno Osotsi, MP   | - <b>Chairperson</b> |
| 2. Sen. Ledama Olekina, MP          | - Member             |
| 3. Sen. William Kipkemoi Kisang, MP | - Member             |
| 4. Sen. Paul Karungo Thangwa, MP    | - Member             |
| 5. Sen. Hamida Kibwana Ali, MP      | - Member             |
| 6. Sen. Maureen Tabitha Mutinda, MP | - Member             |

#### **ABSENT WITH APOLOGY**

- |  |                           |
|--|---------------------------|
| 1. Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP | - <b>Vice-Chairperson</b> |
| 2. Sen. Eddy Gicheru Oketch, MP              | - Member                  |
| 3. Sen. Miraj Abdullahi Abdulrahman, MP      | - Member                  |

#### **SECRETARIAT**

- |                          |                            |
|--------------------------|----------------------------|
| 1. Mr. Yussuf Shimoy     | - Clerk Assistant I        |
| 2. Mr. David Angwenyi    | - Clerk Assistant I        |
| 3. Mr. Erick Njogu       | - Clerk Assistant III      |
| 4. Mr. Godfrey Nyaga     | - Clerk Assistant III      |
| 5. CPA Kenneth Owoth     | - Fiscal Analyst           |
| 6. Ms. Raisa Mwithu      | - Researcher officer       |
| 7. Mr. Kataa Matano      | - Researcher officer       |
| 8. Mr. Andrew Nyairo     | - Legal counsel            |
| 9. Ms. Winfred Ocholla   | - Audio officer            |
| 10. Mr. Josphat Ng'enhoh | - Media Relations Officer. |
| 11. Mr. John Pere        | - Serjeant-At-arms         |



## **IN ATTENDANCE**

### **A. INTERGOVERNMENTAL RELATIONS TECHNICAL COMMITTEE**

- |                        |                |
|------------------------|----------------|
| 1. Mr. Kithinji Burugu | - Chair IGRTC  |
| 2. Mr. John Burugu     | - Member IGRTC |
| 3. Mrs. Angeline Hongo | - Member IGRTC |

### **B. ETHICS AND ANTI-CORRUPTION COMMISSION**

Mr. Patrick Kinoti - Liaison Officer, EACC

#### **MIN. NO. SEN/CPICSF/328/2023 PRAYER**

The meeting was called to order by the Chairperson at thirty minutes past two O'clock followed by a word of prayer.

#### **MIN. NO. SEN/CPICSF/329/2023 ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. William Kipkemoi Kisang, MP and seconded by Sen. Hamida Kibwana Ali, MP, as follows –

1. Prayer
2. Adoption of the Agenda
3. Administration of oath of witness and Tabling of Documents
4. Meeting with Intergovernmental Relations Technical Committee.
5. Any Other Business
6. Date of the Next Meeting and Adjournment

#### **MIN. NO. SEN/CPICSF/330/2023 ADMINISTRATION OF OATH OF WITNESS AND TABLING OF DOCUMENTS**

The Chairperson of the Intergovernmental Relations Technical Committee took Oath of Witness and tabled the Management responses and supporting documents for the report of the Intergovernmental Relations Technical Committee.

#### **MIN. NO. SEN/CPICSF/331/2023 MEETING WITH THE INTERGOVERNMENTAL RELATIONS TECHNICAL COMMITTEE**

The Chairperson of the Intergovernmental Relations Technical Committee (IGRTC), Mr. Kithinji Kiragu, OGW, MBS, appeared before the Committee to make a presentation on the matter of non-remittance of pension deductions by entities in counties.

The Committee noted that the documents tabled by the Chairperson for presentation on the matter under consideration were not submitted through the official channels and that they were not signed, hence the meeting could not proceed. The Committee resolved to reschedule the meeting to a later date and directed the Chairperson to resubmit the documents in the required format by Friday, 2<sup>nd</sup> June, 2023.

Further, the Committee noted that there were discrepancies observed in the data submitted by some stakeholders who had appeared initially, and directed the Chairperson to ensure IGRTC submits detailed and accurate information in their possession on non-remittance of pension deductions by both current County Governments and the defunct local authorities.

**MIN. NO. SEN/CPICSF/332/2023      ANY OTHER BUSINESS**

There was no any other business.

**MIN. NO. SEN/CPICSF/333/2023      DATE OF NEXT MEETING & ADJOURNMENT**

The Chairperson adjourned the meeting at twenty minutes past three o'clock. The next meeting would be held on Monday, 29<sup>th</sup> May, 2023 at 3:00 pm.



14/11/2023

**SIGNED: ..... DATE: .....**

**(CHAIRPERSON: SEN. GODFREY ATIENO OSOTSI, MP.)**



**13<sup>TH</sup> PARLIAMENT 2<sup>ND</sup> SESSION**

**MINUTES OF THE FIFTY FIFTH SITTING OF THE COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS COMMITTEE WITH THE LOCAL AUTHORITIES PROVIDENT FUND HELD ON MONDAY, 29<sup>TH</sup> MAY 2023 AT THE VIP LOUNGE, FIRST FLOOR, KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC) AT 3.00 P.M.**

**PRESENT**

- |                                      |                      |
|--------------------------------------|----------------------|
| 7. Sen. Godfrey Atieno Osotsi, MP    | - <b>Chairperson</b> |
| 8. Sen. Ledama Olekina, MP           | - Member             |
| 9. Sen. William Kipkemai Kisang, MP  | - Member             |
| 10. Sen. Paul Karungo Thangwa, MP    | - Member             |
| 11. Sen. Hamida Kibwana Ali, MP      | - Member             |
| 12. Sen. Maureen Tabitha Mutinda, MP | - Member             |

**ABSENT WITH APOLOGY**

- |  |                           |
|--|---------------------------|
| 4. Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP | - <b>Vice-Chairperson</b> |
| 5. Sen. Eddy Gicheru Oketch, MP              | - Member                  |
| 6. Sen. Miraj Abdillahi Abdulrahman, MP      | - Member                  |

**SECRETARIAT**

- |                         |                            |
|-------------------------|----------------------------|
| 12. Mr. Yussuf Shimoy   | - Clerk Assistant I        |
| 13. Mr. David Angwenyi  | - Clerk Assistant I        |
| 14. Mr. Erick Njogu     | - Clerk Assistant III      |
| 15. Mr. Godfrey Nyaga   | - Clerk Assistant III      |
| 16. CPA Kenneth Owoth   | - Fiscal Analyst           |
| 17. Ms. Raisa Mwithu    | - Researcher officer       |
| 18. Mr. Kataa Matano    | - Researcher officer       |
| 19. Mr. Andrew Nyairo   | - Legal counsel            |
| 20. Ms. Winfred Ocholla | - Audio officer            |
| 21. Mr. Josphat Ng'eno  | - Media Relations Officer. |
| 22. Mr. John Pere       | - Serjeant-At-arms         |



## **IN ATTENDANCE**

### **A. LOCAL AUTHORITIES PROVIDENT FUND**

1. Mrs. Chemashack Ndiwa - Manager Finance and Investment
2. Mr. Erick Otieno - Coordinator Finance and Investment
3. Mr. Moses Maroa - Coordinator Account Receivable

### **B. ETHICS AND ANTI-CORRUPTION COMMISSION**

Mr. Patrick Kinoti - Liaison Officer, EACC

## **MIN. NO. SEN/CPICSF/334/2023 PRAYER**

The meeting was called to order by the Chairperson at thirty minutes past three O'clock followed by a word of prayer.

## **MIN. NO. SEN/CPICSF/335/2023 ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Maureen Tabitha Mutinda, MP and seconded by Sen. Ledama Olekina, MP, as follows –

8. Prayer
9. Adoption of the Agenda
10. Administration of oath of witness and Tabling of Documents
11. Meeting with Local Authorities Provident Fund
12. Any Other Business
13. Date of the Next Meeting and Adjournment

## **MIN. NO. SEN/CPICSF/336/2023 ADMINISTRATION OF OATH OF WITNESS AND TABLING OF DOCUMENTS**

There was no administration of Oath of Witness and Tabling of Documents as LAPFUND did not have a substantive accounting officer.

## **MIN. NO. SEN/CPICSF/337/2023 MEETING WITH THE LOCAL AUTHORITIES PROVIDENT FUND**

The Committee invited the Chief Executive Officer (CEO) of the Local Authorities Provident Fund (LapFund) to appear before the Committee to make a presentation on the matter of non-remittance of pension deductions by entities in counties.

However, officers from the LapFund appeared before the Committee and informed the Committee that the substantive CEO had since left the organization following his

appointment as CEO, National Social Security Fund (NSSF) and that the said officers did not have authority to respond to the matters under consideration.

Further, the Committee noted that LapFund's Board of Directors was not properly constituted as it had no chairperson and Vice-Chairperson thus an acting CEO could not be appointed, putting the operations of the fund at risk.

Consequently, the Committee resolved to invite the Cabinet Secretary for National Treasury and Economic Planning, being the parent ministry for the fund, to deliberate on the way forward.


**MIN. NO. /SEN/CPICSF/338/2023      ANY OTHER BUSINESS**

The Committee considered the matter of the summons it had issued to Hon. Susan Kihika, the Governor of Nakuru County, requiring her to appear at its meeting that was scheduled for Thursday, 25<sup>th</sup> May, 2023 at 11.30 a.m. The Committee noted the Governor failed to honour the summons but instead sent a letter requesting the rescheduling of her appearance before the Committee.

The Committee deliberated on the matter and noted that there was need for the Governor to honour the summons without fail and resolved to reschedule her appearance before the Committee to Wednesday, 7<sup>th</sup> June, 2023, pending Speaker's approval to hold a meeting on the said date or on Tuesday 4<sup>th</sup> July, 2023 in event the Speaker declines the request to hold on the requested Wednesday.

**MIN. NO. SEN/CPICSF/339/2023      DATE OF NEXT MEETING & ADJOURNMENT**

The Chairperson adjourned the meeting at twenty minutes to six o'clock. The next meeting would be held on Tuesday, 30<sup>th</sup> May, 2023 at 10:00 am.



**SIGNED:** ..... **DATE:** 14/11/2023 .....

**(CHAIRPERSON: SEN. GODFREY ATIENO OSOTSI, MP.)**





### 13<sup>TH</sup> PARLIAMENT 2<sup>ND</sup> SESSION

**MINUTES OF THE SIXTY EIGHTH SITTING OF THE COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS WITH THE CONTROLLER OF BUDGET HELD ON MONDAY, 3<sup>RD</sup> JULY, 2023 AT THE SHIMBA HILLS HALL, FIRST FLOOR, KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC) AT 12.00 P.M.**

#### **PRESENT**

- |   |               |
|---|---------------|
| 1. Sen. Godfrey Atieno Osotsi, MP       | - Chairperson |
| 2. Sen. Ledama Olekina, MP              | - Member      |
| 3. Sen. William Kipkemai Kisang, MP     | - Member      |
| 4. Sen. Eddy Gicheru Oketch, MP         | - Member      |
| 5. Sen. Miraj Abdillahi Abdulrahman, MP | - Member      |
| 6. Sen. Hamida Kibwana Ali, MP          | - Member      |

#### **ABSENT WITH APOLOGY**

- |  |                    |
|--|--------------------|
| 1. Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP | - Vice-Chairperson |
| 2. Sen. Paul Karungu Thangwa, MP             | - Member           |
| 3. Sen. Maureen Tabitha Mutinda, MP          | - Member           |

#### **SECRETARIAT**

- |                        |                            |
|------------------------|----------------------------|
| 1. Mr. Yussuf Shimoy   | - Clerk Assistant II       |
| 2. Mr. David Angwenyi  | - Clerk Assistant II       |
| 3. Mr. Erick Njogu     | - Clerk Assistant III      |
| 4. Mr. Matano Kataa    | - Researcher officer       |
| 5. Mr. Andrew Nyairo   | - Legal counsel            |
| 6. Ms. Felistus Mutune | - Media Relations Officer. |
| 7. Ms. Winfred Ocholla | - Audio officer            |
| 8. Mr. John Pere       | - Serjeant-at-arms         |

#### **IN ATTENDANCE**

#### **OFFICE OF THE CONTROLLER OF BUDGET**

- |                        |                        |
|------------------------|------------------------|
| Dr. Margaret Nyakang'o | - Controller of Budget |
|------------------------|------------------------|



**MIN. NO. SEN/CPICSF/412/2023      PRAYER**

The meeting was called to order by the Chairperson at nineteen minutes past noon followed by a word of prayer.

**MIN. NO. SEN/CPICSF/413/2023      ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Miraj Abdillahi Abdulrahman, MP and seconded by Sen. William Kipkemoi Kisang, MP, as follows –

1. Prayer
2. Adoption of the Agenda
3. Administration of oath of witness and Tabling of Documents
4. Meeting with the Controller of Budget
5. Any Other Business
6. Date of the Next Meeting and Adjournment

**MIN. NO. SEN/CPICSF/414/2023      ADMINISTRATION OF OATH OF WITNESS  
AND TABLING OF DOCUMENTS**

The Controller of Budget took Oath of Witness and tabled her submissions and the accompanying annexures on the matter of Non-remittance of Pension Deductions by various Entities in Counties.

**MIN. NO. SEN/CPICSF/415/2023      MEETING WITH THE CONTROLLER OF  
BUDGET**

The Controller of Budget, Dr. Margaret Nyakang'o, appeared before the Committee and made her presentation.

From the presentation, the Committee noted the following –

- i. Out of the total outstanding amount owed to the various pension funds by county entities, 40% was penalties;
- ii. There were earlier attempts by the Intergovernmental Budget and Economic Council (IBEC) to resolve the matter of non-remittance where during its 17<sup>th</sup> ordinary session held on 31<sup>st</sup> April, 2022, the Council resolved to develop avenues for negotiations on lowering the penalties on pensions and reach an agreement on how to settle them once the figures were reasonable. Further, a follow up meeting on the same that was to be re-convened in October 2022 never took place;
- iii. The amounts owed to the Pension Schemes as reported by the various stakeholders had, and this included the principle amounts;
- iv. Some counties reported no outstanding balances whereas records by the schemes indicated that they had pending balances;

- v. Some of the challenges that led to the high outstanding balances included underperformance in revenue collection by counties, delays by the National Treasury to release funds to counties, diversion of funds for payment of pending bills by counties among others;
- vi. There were debt settlement agreements between County Governments and the various Schemes. However, the Office of the Controller of Budget could not enforce the agreements as her office was not party to them; and
- vii. Property swap as way of resettling the outstanding balances needed careful consideration and that it could only be considered upon evaluation of the level of liabilities vis-à-vis the valuation of the asset.

In a bid to resolve the matter of non-remittance, the Office of the Controller of Budget gave the following recommendations-

- i. Timely release of county allocations by the National Treasury;
- ii. Counties should not divert funds meant for pending bills;
- iii. Counties and the Schemes to undertake reconciliations to ascertain the true outstanding balances; and
- iv. Counties to develop realistic budgets to avoid deficits.

**MIN. NO. SEN/CPICSF/416/2023      ANY OTHER BUSINESS**

There was no any other business.

**MIN. NO. SEN/CPICSF/417/2023      DATE OF NEXT MEETING & ADJOURNMENT**

The Chairperson adjourned the meeting at three minutes past two O'clock. The next meeting would be held on Monday, 3<sup>rd</sup> July, 2023 at 3:30 pm.



**SIGNED: ..... DATE: 14/11/2023**

**(CHAIRPERSON: SEN. GODFREY ATIENO OSOTSI, MP.)**





### 13<sup>TH</sup> PARLIAMENT 2<sup>ND</sup> SESSION

**MINUTES OF THE SIXTY NINTH SITTING OF THE COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS WITH THE CABINET SECRETARY, THE NATIONAL TREASURY AND ECONOMIC PLANNING HELD ON MONDAY, 3<sup>RD</sup> JULY, 2023 AT THE SHIMBA HILLS HALL, FIRST FLOOR, KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC) AT 3.30 P.M.**

#### **PRESENT**

- |   |               |
|---|---------------|
| 1. Sen. Godfrey Atieno Osotsi, MP       | - Chairperson |
| 2. Sen. Ledama Olekina, MP              | - Member      |
| 3. Sen. Eddy Gicheru Oketch, MP         | - Member      |
| 4. Sen. Miraj Abdillahi Abdulrahman, MP | - Member      |
| 5. Sen. Hamida Kibwana Ali, MP          | - Member      |

#### **ABSENT WITH APOLOGY**

- |  |                    |
|--|--------------------|
| 1. Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP | - Vice-Chairperson |
| 2. Sen. William Kipkemai Kisang, MP          | - Member           |
| 3. Sen. Paul Karungu Thangwa, MP             | - Member           |
| 4. Sen. Maureen Tabitha Mutinda, MP          | - Member           |

#### **SECRETARIAT**

- |                        |                            |
|------------------------|----------------------------|
| 1. Mr. Yussuf Shimoy   | - Clerk Assistant II       |
| 2. Mr. David Angwenyi  | - Clerk Assistant II       |
| 3. Mr. Erick Njogu     | - Clerk Assistant III      |
| 4. Mr. Matano Kataa    | - Researcher officer       |
| 5. Mr. Andrew Nyairo   | - Legal counsel            |
| 6. Ms. Felistus Mutune | - Media Relations Officer. |
| 7. Ms. Winfred Ocholla | - Audio officer            |
| 8. Mr. John Pere       | - Serjeant-at-arms         |



## **IN ATTENDANCE**

### **THE NATIONAL TREASURY AND ECONOMIC PLANNING**

- |                               |  |
|-------------------------------|--|
| 1. Prof. Njuguna Ndung'u, CBS | - Cabinet Secretary                      |
| 2. Mr. Michael A. Kagika, EBS | - Pensions Secrtrary                     |
| 3. Mr. George Okioma          | - Director CPF/LAPTRUST                  |
| 4. FCPA Isabella Kogei        | - Deputy Director, Parliamentary Affairs |

#### **MIN. NO. SEN/CPICSF/418/2023 PRAYER**

The meeting was called to order by the Chairperson at quarter to four followed by a word of prayer.

#### **MIN. NO. SEN/CPICSF/419/2023 ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Miraj Abdillahi Abdulrahman, MP and seconded by Sen. William Kipkemoi Kisang, MP, as follows –

1. Prayer
2. Adoption of the Agenda
3. Administration of oath of witness and Tabling of Documents
4. Meeting with the Cabinet Secretary, National Treasury and Economic Planning
5. Any Other Business
6. Date of the Next Meeting and Adjournment

#### **MIN. NO. SEN/CPICSF/420/2023 ADMINISTRATION OF OATH OF WITNESS AND TABLING OF DOCUMENTS**

The Cabinet Secretary, Prof. Njuguna Ndung'u, CBS took Oath of Witness and tabled his submissions and the accompanying annextures on the matter of Non-remittance of Pension Deductions by various Entities in Counties.

#### **MIN. NO. SEN/CPICSF/421/2023 MEETING WITH THE CABINET SECRETARY, NATIONAL TREASURY AND ECONOMIC PLANNING**

The Cabinet Secretary, National Treasury and Economic Planning, Prof. Njuguna Ndung'u, CBS appeared before the Committee and made his presentation.

From the presentation, the Committee noted the following –

- i. As at 31<sup>st</sup> December, 2022, all counties had outstanding remittances of varying amounts to Local Authorities Pension Fund (LAPFUND).
- ii. As at 31<sup>st</sup> December, 2022, the status of pension remittance to CPF/LAPTRUST was as follows-
  - a. **Cleared Payments:** Three (3) counties had cleared all their outstanding balances with both the County Pension Fund Direct Contribution Scheme (CPF-DC) and the Local Authorities Pension Trust Direct Benefits

- Scheme (LAPTRUST-DB). They included Kajiado, West Pokot and Nyeri Counties;
- b. **Partial Payments:** Eight had made partial payments to both the DC and the DB schemes. They included Nyamira, Kakamega, Tana River, Bungoma, Kitui, Makueni, Uasin Gishu and Lamu; and
  - c. **Outstanding Payments:** The remaining 36 counties were yet to make any remittances to the schemes.
- iii. As of 31<sup>st</sup> May 2023, the outstanding pension debt liabilities to the LAPTRUST-DB and the CPF-DC Schemes by counties were Kshs. 33,015,883,456 and Kshs. 3,686,826,751 respectively. In the case of LAPFUND, as at the same period, the outstanding liabilities stood at Kshs. 54 billion, whereby County Governments and the Defunct Local Authorities owed Kshs. 47 billion and 7 billion, respectively. Further, the principal debt was Kshs. 6 billion, whereas the accrued interest was Kshs. 48 billion.
  - iv. Some challenges cited by the National Treasury as crucial contributing factors to the high outstanding balances included non-remittance and delayed contributions to the schemes by County Governments.
  - v. LAPFUND had no substantive Chief Executive Officer (CEO) following the resignation of Mr. David Koros, and that the Board of Directors had, during a special meeting held on 26<sup>th</sup> May, 2023, appointed Mr. Benard Weru Mbogoh as the Acting CEO for a period of six (6) months or until the position was substantively filled, whichever came earlier. However, the information on the Board's sitting contradicted the information submitted to the Committee at its meeting held on Monday, 29<sup>th</sup> May 2023, that LAPFUND's Board was not properly constituted as it had no Chairperson and Vice-Chairperson.

Upon deliberations, the Committee resolved as follows-

- i. The Cabinet Secretary to submit evidence of LAPFUND's Board of Directors' meeting held on 26<sup>th</sup> May, 2023 where the decision to appoint an Acting CEO was arrived at, that is, the Minutes of the Board's meeting and Letters of appointment for the Acting CEO;
- ii. To have an engagement with the following stakeholders to resolve the matter
  - a. The National Treasury;
  - b. The Senate;
  - c. The Controller of Budget;
  - d. The Council of Governors;
  - e. Local Authorities Pension Fund (LAPFund);
  - f. Local Authorities Provident Trust (LAPTrust); and
  - g. All CECMs and Chief Officers in-charge of finance in the 47 counties.

Further, the Committee requested the National Treasury to take a lead role in the matter.



**MIN. NO. SEN/CPICSF/422/2023      ANY OTHER BUSINESS**

The Committee noted that Counties were in the process acquiring revenue collectors and directed the National Treasury to issue a circular requiring counties to only use softwares that were approved by the Central Bank and that were accessible to the public.

**MIN. NO. SEN/CPICSF/423/2023      DATE OF NEXT MEETING & ADJOURNMENT**

The Chairperson adjourned the meeting at half past five. The next meeting would be held on Tuesday, 4<sup>th</sup> July, 2023 at 10:00 am.



14/11/2023

**SIGNED: ..... DATE: .....**

**(CHAIRPERSON: SEN. GODFREY ATIENO OSOTSI, MP.)**





### 13<sup>TH</sup> PARLIAMENT 2<sup>ND</sup> SESSION

**MINUTES OF THE A HUNDRED AND TWENTY SECOND MEETING OF THE COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS COMMITTEE WITH THE KENYA REVENUE AUTHORITY HELD ON THURSDAY, 2<sup>ND</sup> NOVEMBER, 2023 AT THE IMPALA ROOM, FIRST FLOOR, KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC) AT 9.30 A.M.**

#### **PRESENT**

- |                                     |               |
|-------------------------------------|---------------|
| 1. Sen. Godfrey Atieno Osotsi, MP   | - Chairperson |
| 2. Sen. William Kipkemai Kisang, MP | - Member      |
| 3. Sen. Eddy Gicheru Oketch, MP     | - Member      |
| 4. Sen. Maureen Tabitha Mutinda, MP | - Member      |

#### **ABSENT WITH APOLOGY**

- |  |                    |
|--|--------------------|
| 1. Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP | - Vice-Chairperson |
| 2. Sen. Paul Karungu Thangwa, MP             | - Member           |
| 3. Sen. Hamida Kibwana Ali, MP               | - Member           |
| 4. Sen. Miraj Abdillahi Abdulrahman, MP      | - Member           |

#### **SECRETARIAT**

- |                        |                             |
|------------------------|-----------------------------|
| 1. Mr. Yussuf Shimoy   | - Clerk Assistant I         |
| 2. Mr. David Angwenyi  | - Clerk Assistant I         |
| 3. Mr. Erick Njogu     | - Clerk Assistant III       |
| 4. Mr. Godfrey Nyaga   | - Clerk Assistant III       |
| 5. Ms. Faith Wangui    | - Legal Counsel             |
| 6. CPA. Kennedy Owuoth | - Fiscal Analyst            |
| 7. Ms. Winfred Ocholla | - Audio officer             |
| 8. Mr. Josphat Ng'enh  | - Media Relations Officer.  |
| 9. Mr. Alvin Muzuni    | - Attached to the Committee |
| 10. Mr. John Pere      | - Serjeant-At-arms          |

## **IN ATTENDANCE**

### **A. KENYA REVENUE AUTHORITY**

1. Ms. Esther Wahome - Deputy Commissioner Kenya Revenue Authority
2. Mr. Benard Ondieki - Chief manager
3. Mr. Isaac Kweyu - Manager Kenya Revenue Authority
4. Mrs. Elizabeth Roimen - Officer -stakeholder engagement
5. Mrs. Michelle Kinga - Officer-stakeholder engagement
6. Mrs. Mary Muthama - Officer-stakeholder engagement

### **B. OFFICE OF THE AUDITOR GENERAL**

Mr. David Sumali - Liaison Officer - OAG

### **C. ETHICS AND ANTI-CORRUPTION COMMISSION**

Mr. Patrick Kinoti - Liaison Officer, EACC

### **D. THE NATIONAL TREASURY**

Dr. Jackson Ndung'o - Deputy Accountant T.N.T

## **MIN NO. /SEN/CPICSF/754/2023 PRAYER**

The meeting was called to order by the Chairperson at ten O'clock followed by a word of prayer.

## **MIN NO. /SEN/CPICSF/755/2023 ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. William Kipkemai Kisang, MP and seconded by Sen. Maureen Tabitha Mutinda, MP, as follows

14. Prayer
15. Adoption of the Agenda
16. Administration of oath of witness and Tabling of Documents
17. Meeting with the Kenya Revenue Authority.
18. Any Other Business
19. Date of the Next Meeting and Adjournment

## **MIN. NO. SEN/CPICSF/756/2023 ADMINISTRATION OF OATH OF WITNESS AND TABLING OF DOCUMENTS**

Ms. Esther Wahome, the Deputy Commissioner, Kenya Revenue Authority, took Oath of Witness and tabled the submissions on pension non-remittance by county entities.

## **MIN. NO. SEN/CPICSF/757/2023 MEETING WITH THE KENYA REVENUE AUTHORITY.**

In the preliminaries, the Committee considered a letter Ref: KRA/5/1002/5(9893) dated 31st October, 2023 that it received from Mr. Humphrey Wattanga, the Commissioner



General, Kenya Revenue Authority (KRA) requesting the Committee to allow Ms. Esther Wahome, the Deputy Commissioner – Policy & Tax Advisory to represent him as he would not be available due to prior scheduled engagements. The Committee acceded to the request.

The Chairperson then informed the meeting that the Committee requested the following from KRA on the matter of Non-Remittance of Pension Deductions by Entities in Counties-

- a) In reference to the provisions of the Retirement Benefits Act, 1997, what is the role of Kenya Revenue Authority in addressing the issue of pension non-remittance by county entities;
- b) How Kenya Revenue Authority can help the county pension schemes recover the outstanding pension deductions from county entities; and
- c) Measures county pension schemes can use to address the matter of non-remittance of pension deductions by county entities.

Kenya Revenue Authority (KRA) informed the Committee as follows-

1. In regard to the role of KRA in addressing the issue of pension non-remittance by county entities, that under Section 53B of the Retirement Benefits Act, as amended through Section 72 of the Retirement Benefits Authority (RBA) Act, grants powers to the pension schemes, upon approval of RBA, to appoint KRA to collect contributions from employers who have failed to remit their portion;
2. KRA held engagements with RBA and agreed that collection of unremitted pension contributions is viable, by way of an agreement with the Trustees of the Pension Schemes;
3. That the legal provisions in the RBA Act still had shortcomings that could not enable collection in the manner envisaged and as such there was need to further enhance the provisions of the Retirement Benefits Act and to amend the KRA Act, which RBA was to pursue;
4. KRA communicated to RBA the proposed legal amendments required to adequately support the collection by KRA before further engagements on the terms of the Agreement;
5. On how the Kenya Revenue Authority can assist the County Pension Schemes to recover the outstanding pension deductions from county entities, the KRA would be able to engage RBA to facilitate agreements with Trustees of Pension Schemes including county pension schemes for purposes of collection of unremitted pension contributions on their behalf;
6. KRA will leverage on its existing compliance and enforcement management systems to ensure collection of the contributions;
7. In regard to measures County Pension Schemes can take to address the matter of non-remittance of pension deductions by county entities, the County Pension



schemes can engage RBA to fast-track the legislative amendments proposed by KRA to facilitate collection of unremitted pension contributions on behalf of the pension schemes;

8. the Trustees of the County Pension Schemes can take advantage of Section 53B of the RBA Act, once amended, to appoint KRA, with the approval of the RBA, to collect unremitted contributions, penalties and interests from employers.

Upon deliberations the –

1. The Committee noted that the engagements between KRA and RBA on how to address existing gaps on the laws governing pension contributions inordinately delayed;
2. The Committee observed that there were gaps in the Kenya Revenue Authority Act, 1995 and the Retirement Benefits Authority Act, 2013 that hindered Kenya Revenue Authority's ability to enforce collection of deduction when appointed as agent. The Committee further noted that KRA had informed Retirement Benefits Authority (RBA) about the matter with proposed amendments vide a letter Ref: KRA/DTD/P&TA/1003/2F dated 23<sup>rd</sup> February, 2023 but RBA has not given feedback. The Committee resolved to take up the matter and ensure the amendments are done.

**MIN. NO. SEN/CPICSF/758/2023**

**ANY OTHER BUSINESS**

There was no any other business.

**MIN. NO. SEN/CPICSF/759/2023**

**DATE OF NEXT MEETING &  
ADJOURNMENT**

The Chairperson adjourned the meeting at nineteen minutes past eleven o'clock. The next meeting would be held on Thursday, 2<sup>nd</sup> November, 2023 at 11:30 am.



14/11/2023

**SIGNED: ..... DATE: .....**

**(CHAIRPERSON: SEN. GODFREY ATIENO OSOTSI, MP.)**



### 13<sup>TH</sup> PARLIAMENT 2<sup>ND</sup> SESSION

**MINUTES OF THE A HUNDRED AND TWENTY THIRD MEETING OF THE COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS COMMITTEE WITH THE NATIONAL SOCIAL SECURITY FUND HELD ON THURSDAY, 2<sup>ND</sup> NOVEMBER, 2023 AT THE IMPALA ROOM, FIRST FLOOR, KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC) AT 11.30 A.M.**

#### **PRESENT**

- |                                     |               |
|-------------------------------------|---------------|
| 1. Sen. Godfrey Atieno Osotsi, MP   | - Chairperson |
| 2. Sen. William Kipkemai Kisang, MP | - Member      |
| 3. Sen. Eddy Gicheru Oketch, MP     | - Member      |
| 4. Sen. Maureen Tabitha Mutinda, MP | - Member      |
| 5. Sen. Hamida Kibwana Ali, MP      | - Member      |

#### **ABSENT WITH APOLOGY**

- |  |                    |
|--|--------------------|
| 1. Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP | - Vice-Chairperson |
| 2. Sen. Paul Karungu Thangwa, MP             | - Member           |
| 3. Sen. Miraj Abdillahi Abdulrahman, MP      | - Member           |

#### **SECRETARIAT**

- |                        |                             |
|------------------------|-----------------------------|
| 1. Mr. Yussuf Shimoy   | - Clerk Assistant I         |
| 2. Mr. David Angwenyi  | - Clerk Assistant I         |
| 3. Mr. Erick Njogu     | - Clerk Assistant III       |
| 4. Mr. Godfrey Nyaga   | - Clerk Assistant III       |
| 5. Ms. Faith Wangui    | - Legal Counsel             |
| 6. CPA. Kennedy Owuoth | - Fiscal Analyst            |
| 7. Ms. Winfred Ocholla | - Audio officer             |
| 8. Mr. Josphat Ng'enh  | - Media Relations Officer.  |
| 9. Mr. Alvin Muzuni    | - Attached to the Committee |
| 10. Mr. John Pere      | - Serjeant-At-arms          |

#### **IN ATTENDANCE**

##### **A. NATIONAL SOCIAL SECURITY FUND**

- |                      |  |
|----------------------|--|
| 1. Mr. David Koross  | - MT and Chief Executive Officer         |
| 2. Mr. Hilary Mwaita | - Ag. Manager Legislative and Compliance |
| 3. Mrs. Hellen Koech | - Ag. Manager Legal                      |



4. Mr. Fred Kaplaigiya

- Ag. Assistant Manager Technical advisor

**B. OFFICE OF THE AUDITOR GENERAL**

Mr. David Sumali

- Liaison Officer - OAG

**C. ETHICS AND ANTI-CORRUPTION COMMISSION**

Mr. Patrick Kinoti

- Liaison Officer, EACC

**D. THE NATIONAL TREASURY**

Dr. Jackson Ndung'o

- Deputy Accountant T.N.T

**MIN NO. /SEN/CPICSF/760/2023 PRAYER**

The meeting was called to order by the Chairperson at thirty minutes past eleven O'clock followed by a word of prayer.

**MIN NO. /SEN/CPICSF/761/2023 ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. William Kipkemai Kisang, MP and seconded by Sen. Maureen Tabitha Mutinda, MP, as follows

1. Prayer
2. Adoption of the Agenda
3. Administration of oath of witness and Tabling of Documents
4. Meeting with the National Social Security Fund
5. Any Other Business
6. Date of the Next Meeting and Adjournment

**MIN. NO. SEN/CPICSF/762/2023 ADMINISTRATION OF OATH OF WITNESS AND TABLING OF DOCUMENTS**

The Chief Executive Officer, National Social Security Fund Mr. David Koross, took Oath of Witness and tabled the submissions on pension non-remittance by county entities.

**MIN. NO. SEN/CPICSF/763/2023 MEETING WITH THE NATIONAL SOCIAL SECURITY FUND.**

The Chief Executive Officer, National Social Security Mr. David Koross informed the Committee that the Fund has been making a follow up on outstanding contribution debts owed by county governments and that-

1. That as at 30<sup>th</sup> June, 2023 the County Governments owed NSSF a total of Kshs.2,772,525,280 out of which Kshs.2,092,877,715 represented accumulated penalties; and



2. That as at 30<sup>th</sup> June, 2023 the pension debt inherited from the defunct local authorities totaled to Kshs.1,873,078,769 out of which Kshs.1,648,649,919.

The CEO further provided to the Committee a breakdown of the outstanding liabilities detailing the principal amounts and interest accrued from each count.

Further, the Chief Executive Officer outlined measures and efforts that NSSF made to recover outstanding pension liabilities which included-

1. Engagement and sensitization forums/sessions on the NSSF Act, 2013 through NSSF field offices located throughout the country; and
2. Various engagements with the intergovernmental Relations Technical Committee on recovery of contribution debts owed by defunct local authorities;

In order to address the issue of non-remittance, the Chief Executive Officer proposed the following mitigating measures-

1. Requirement for issuance of NSSF compliance certificate to County Governments prior to disbursement of funds to County Governments;
2. Prompt submission of accurate and complete returns;
3. Reconciliation and validation of amounts owed with respect to defunct local authorities; and
4. Provision of payroll information to NSSF officers undertaking routine compliance activities.

The CEO further stated there was no county government that has instituted a payment plan to clear outstanding contribution dues as at the date of the meeting. County governments have been giving priority to payment of contribution arrears and penalties whenever they receive annual disbursements from the National Treasury.

All county government employees who retire are also paid their benefits when they submit their applications.

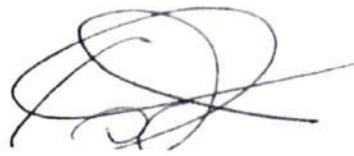
After deliberations the Committee noted that counties had huge outstanding pension liabilities owed to NSSF and resolved to incorporate their proposals on how to tackle the matter of pension non-remittance in its report.

**MIN. NO. SEN/CPICSF/764/2023      ANY OTHER BUSINESS**

There was no any other business.

**MIN. NO. SEN/CPICSF/765/2023      DATE OF NEXT MEETING & ADJOURNMENT**

The Chairperson adjourned the meeting at nineteen minutes past eleven o'clock. The next meeting would be held on Monday, 6<sup>th</sup> November, 2023 at 11:00 am.



**SIGNED:** ..... **DATE:** 14/11/2023 .....

**(CHAIRPERSON: SEN. GODFREY ATIENO OSOTSI, MP.)**

**Annex 2: Proposed Amendments to the Retirement Benefits Act, 1997**



**THE RETIREMENT BENEFITS LAWS (AMENDMENT) BILL, 2023**

**A Bill for**

**AN ACT** of Parliament to amend various statutes to facilitate the collection of unremitted contributions by the Kenya Revenue Authority; and for connected matters.

**ENACTED** by the Parliament of Kenya, as follows—

Short title.

**1.** This Act may be cited as the Retirement Benefits Laws (Amendment) Act, 2023.

Amendment of the First Schedule of No. 2 of 1995.

**2.** The Kenya Revenue Authority Act be amended in the First Schedule by inserting the following new paragraph in Part II—

15. The Retirement Benefits Authority Act (No. 3 of 1997).

Amendment of section 2 of No. 3 of 1997.

**3.** The Retirements Benefits Act is amended in section 2 by inserting the following new definitions in their proper alphabetical sequence—

“agency notice” means the notice issued under this act to a person to remit contributions on behalf of an employer;

“Commissioner” means the commissioner appointed under the Kenya Revenue Authority Act

Amendment of section 53B(7) of No. 3 of 1997.

**4.** Section 53B of the Retirements Benefits Act is amended by deleting subsection (7) and substituting therefore the following new subsection (7)—

(7)

(a) Where an employer fails to comply with the notice, the Commissioner shall by an agency notice in writing, require a person, hereinafter referred to as a “Third Party”—

- (i) who owes or may subsequently owe money to the employer;
- (ii) who holds or may subsequently hold money, for or on account of the employer;
- (iii) who holds or may subsequently hold money on account of some other person for payment to the employer; or
- (iv) who has authority from some other person to pay money to the employer,

to pay the amount specified in the notice to the Commissioner being an amount that shall not exceed the amount of the unremitted contributions, interests, and penalties.

- (b) A Third Party shall pay the amount specified in the agency notice by the date specified in the notice, being a date that does not occur before the date that the amount owed by the Third Party to the employer becomes due to the employer or is held on the employer's behalf.

- (c) This section shall apply to a joint account when—

- (i) all the holders of the joint account have unremitted contributions; or
- (ii) the employer can withdraw the funds from their accounts without the signature or authorisation of the other account holders.

- (d) When a Third Party fails to comply with the notice by reason of a lack of money held by the Third Party on behalf of, or due by the Third Party to an employer, the person shall notify the Commissioner in writing within fourteen days of receiving the notice setting out the reasons for the Third Party's inability to comply.

- (e) When the Commissioner is notified, under paragraph (d), by a Third Party that the Third Party is unable to pay the amount due, the Commissioner

shall within a period of 30 days in writing to the Third Party—

- (i) accept the notification and cancel or amend the agency notice; or
  - (ii) reject the notification.
- (f) The Commissioner shall notify a Third Party in writing of a revocation or amendment of an agency notice given under paragraph (a) where the employer pays the whole or part of the contributions due, or has made an arrangement satisfactory to the Commissioner for the payment of the contributions.
- (g) The Commissioner shall serve the employer with a copy of the agency notice when serving the Third Party.
- (h) A payment made by a Third Party to the Commissioner in accordance with a notice issued under this section shall be treated as having been made on behalf of the employer and shall discharge the Third Party of any liability through the employer or any other person.
- (i) The Commissioner may require in writing any person, within a period of at least 30 days to provide a return to the Commissioner showing any monies which may be held by that person for an employer referred to in subsection 7 or monies held by that person which are due to an employer referred to in subsection 7.
- (j) A Third Party who without reasonable cause fails to comply with an agency notice or a requirement by the Commissioner under this section shall be personally liable for the amount specified in the agency notice or requirement.
- (k) The Commissioner shall remit the funds paid by a Third Party to the Scheme within 30 days of receipt of the funds.



*The Retirement Benefits Laws (Amendment) Bill, 2023*

---

Amendment of  
section 149 of  
No. 18 of 2012.

5. Section 149 of the Public Finance Management Act is amended in subsection (2) by inserting a new paragraph immediately after paragraph (l)—
- (la) comply with any tax, levy, duty, pension, and audit commitments as may be provided for by legislation;

**MEMORANDUM OF OBJECTS AND REASONS**

**Statement of the Objects and Reasons for the Bill**

The main object of the Bill is to amend section 53B(7) of the Retirement Benefits Act, No. 3 of 1997 to clarify how the Kenya Revenue Authority, once appointed by retirement benefit schemes as a collecting agent in respect of unremitted pension contributions, is to go about issuing agency notices and recovering the unremitted contributions on the schemes' behalf. This amendment is necessitated by the current situation whereby county governments owe billions to retirement benefit schemes, with most of the debt being attributed to failure to remit contributions, as well as accrued interest and penalties. This high level of debt threatens the well-being of persons retiring from the service of county governments.

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

The Bill does not delegate any legislative powers, and it does not limit any fundamental rights or freedoms.

**Statement on how the Bill concerns county governments**

County governments are among the largest public sector employers and pension contributors in Kenya. It seeks to ensure that counties meet their pension obligations, and is therefore a Bill concerning counties within the meaning of Article 110 of the Constitution.

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

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

Dated the ....., 2023

Godfrey Osoisi,  
*Chairperson, Select Committee on County Public  
Investments and Special Funds.*

*Second Schedule of No. 2 of 1995, which it is proposed to amend –*

**FIRST SCHEDULE**

[s. 2 & 5]

**WRITTEN LAWS RELATING TO REVENUE**

**PART I**

1. The Income Tax Act (Cap. 470).
2. The Customs and Excise Act (Cap. 472).
3. The Value Added Tax Act (Cap. 476).
4. The Road Maintenance Levy Fund Act, 1993 (No. 9 of 1993).
5. The Air Passenger Service Charge Act (Cap. 475).
6. The Entertainment Tax Act (Cap. 479).
7. The East African Community Customs Management Act, 2004.
8. The Annexes to the Protocol on the Establishment of the East African Community Customs Union.
9. Value Added Tax Act, 2013.
10. Excise Duty Act, 2015.
11. Tax Procedures Act, 2015.
12. Miscellaneous Fees and Levies Act, 2016.
13. The Alcoholic Drinks Act, 2010.

**PART II**

1. The Traffic Act (Cap. 403).
2. The Transport Licensing Act (Cap. 404).
3. The Second-Hand Motor Vehicles Purchase Tax Act (Cap. 484).
4. The Civil Aviation Act (Cap. 394).
5. The Widows' and Children's Pensions Act (Cap. 195).



6. The Parliamentary Pensions Act (Cap. 196).
7. The Betting, Lotteries and Gaming Act (Cap. 131).
8. The Stamp Duty Act (Cap. 480).
9. The Horticultural Crops Development Authority (Imposition of Fees and Charges) Order, 1995 (L.N. 225 of 1995).
10. The Standards Levy Order, 1990 (L.N. 267 of 1990).
- 10A. The Industrial Training Act (Cap. 237).
11. The Government Lands Act (Cap. 280).
12. The Sugar Act (No. 10 of 2001).
13. The National Social Security Fund Act, 2013.
14. Public Finance Management Act, 2012.

PART III

[Section 25.]

1. The Income Tax Act (Cap. 470).
2. The Customs and Excise Act (Cap. 472).
3. The Value Added Tax Act (Cap. 476).
4. The Entertainment Tax Act (Cap. 479).
5. The East African Community Customs Management Act, 2004.
6. The Annexes to the Protocol on the Establishment of the East African Community Customs Union.
12. The Sugar (Imposition of Levy) Order, 2002 (L.N. 385/2002).

*Section 2 of No. 3 of 1997, which it is proposed to amend –*

## **2. Interpretation**

In this Act, unless the context otherwise requires—

**“actuary”** means a person who is a Fellow of the Institute of Actuaries in England, or the Faculty of Actuaries in Scotland, or the Canadian Institute of Actuaries, or the Society of Actuaries of the United States of America or the Institute of Actuaries of Japan or the Institute of Actuaries of Australia or a person holding such equivalent qualification as the Board may, by notice in the Gazette, prescribe;

**“administrator”** means a person appointed by trustees to administer a scheme in accordance with such terms and conditions of service as may be specified in the instrument of appointment;

**“authority”** means the Retirement Benefits Authority established by section 3;

**“Board”** means the Board of Directors of the Authority constituted under section 6;

**“Chief Executive Officer”** means the Chief Executive Officer of the Authority appointed under section 11;

**“corporate trustee”** means a limited liability company incorporated under the Companies Act, 2015 (No.17 of 2015), which is, for the time being, empowered under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers to mainly undertake trusts, and includes a trust corporation;

**“custodian”** means a company whose business includes taking responsibility for the safe custody of the funds, securities, financial instruments and documents of title of the assets of scheme funds;

**“financial year”—**

- (a) in relation to the Authority, has the meaning assigned to it in section 19;
- (b) in relation to a scheme, means such accounting period as may be prescribed in the scheme rules;

**“Fund”** means the Retirement Benefits Authority Fund established by section 17;

**“Levy”** means the Retirement Benefits Levy to be imposed under section 16;

**“manager”** means a company whose business includes—

- (i) undertaking, pursuant to a contract or other arrangement, the management of the funds and other assets of a scheme fund for purposes of investment;
- (ii) providing consultancy services on the investment of scheme funds; or
- (iii) reporting or disseminating information concerning the assets available for investment of scheme funds;

**“member”** means a member of a retirement benefits scheme and includes a person entitled to or receiving a benefit under a retirement benefits scheme;

**“Minister”** means the Minister for the time being responsible for matters relating to Finance;

**“pooled fund”** means a fund established by a limited liability company, other than an approved issuer, for purposes of pooling scheme funds for collective investment;

**“post-retirement medical fund”** means a fund established under this Act into which contributions are made and from which costs of medical benefits can be met in accordance with the medical fund rules;

**“retirement benefits scheme”** means any scheme or arrangement (other than a contract for life assurance) whether established by a written law for the time being in force or by any other instrument, under which persons are entitled to benefits in the form of payments or post-retirement medical cover determined by age, length of service, amount of earnings or otherwise and payable primarily upon retirement, or upon death, termination of service, or upon the occurrence of such other event as may be specified in such written law or other instrument;

**“scheme”** means a retirement benefits scheme;

**“scheme fund”** means the retirement benefits scheme fund to be established pursuant to the provisions of [section 32](#);

**“scheme rules”** means the rules specifically governing the constitution and administration of a particular scheme;

**“sponsor”** means a person who establishes a scheme;

**“statutory fund”** has the meaning assigned to it in section 2 of the Insurance Act ([Cap. 487](#));

**“Tribunal”** means the Appeals Tribunal established under [section 48](#);



**“trust corporation”** means a company incorporated under the Companies Act (Cap. 486) having a subscribed capital of not less than ten million shillings and which is for the time being empowered (by or under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers) to undertake trusts;

Provided that such company does not, by any prospectus, circular, advertisements, or other documents issued by it or on its behalf, state or hold out that any liability attaches to the Public Trustee or to the Consolidated Fund in respect of any act or omission of the company when acting as an executor or administrator;

**“trustee”** means a trustee of a scheme fund and includes a trust corporation.

*Section 53B of No. 3 of 1997, which it is proposed to amend –*

**53B. Powers to recover unremitted contributions**

- (1) Notwithstanding the provisions stated under section 53A, where there is non-remittance of the contribution by the employer, the Authority shall —
  - (a) require the employer to —
    - (i) pay the contributions and interest accrued to the scheme in full within the period specified in the notice and a penalty of five per cent of unremitted contributions or twenty thousand shillings whichever is higher, payable to the Authority within seven days of receipt of the notice;
    - (ii) pay the penalty specified in paragraph (a)(i) and submit to the Authority for approval a remedial plan providing the period within which the accumulated contributions and interest thereon shall be offset; or
    - (iii) immediately cease further deductions from employees' emoluments and notify all the members of the scheme of the cessation: Provided that —
  - (b) initiate the process of winding up the scheme and facilitate members to join individual schemes where their contributions shall be remitted.

- (2) Where an employer has failed to remit contributions, the Trustees may with the approval of the Authority, appoint the Kenya Revenue Authority, as an agent, to collect unremitted contributions, interests, and penalties.
- (3) Subject to subsection (2), the Trustees shall in writing request the Authority for approval and shall demonstrate that they have taken all reasonable effort to recover unremitted contributions from a defaulting employer without any success.
- (4) The Authority shall either approve or reject the request in writing within twenty-one days from the date of receipt of the request.
- (5) Despite subsection (2), where the Authority is of the opinion that the Trustees have failed or have not made reasonable effort to recover the unremitted contributions, interests and penalties, the Authority shall give notice to the Trustees instructing them to appoint the Kenya Revenue Authority as an agent to recover the unremitted contributions, interests and penalties.
- (6) Upon appointment under subsection (2) or (5), the Kenya Revenue Authority shall issue a twenty-one-day notice in writing to the defaulting employer requiring it to remit the unremitted contributions, interests, penalties and recovery costs.
- (7) Where an employer fails to comply with the notice, the Kenya Revenue Authority shall —
  - (a) serve such employer and the employers bank with an agency notice;
  - (b) attach the bank accounts of the defaulting employer; and
  - (c) remit the attached funds to the Scheme, within thirty days.
- (8) The cost of the recovery of unremitted contributions shall be borne by the defaulting employer.

*Section 149 of No. 18 of 2012, which it is proposed to amend –*

**149. Responsibilities of accounting officers designated for county government entities**

- (1) An accounting officer is accountable to the county assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is—

  - (a) lawful and authorised; and
  - (b) effective, efficient, economical and transparent.
- (2) In carrying out a responsibility imposed by subsection (1), an accounting officer shall, in respect of the entity concerned—

  - (a) ensure that all expenditure made by the entity complies with subsection (1);
  - (b) ensure that the entity keeps financial and accounting records that comply with this Act;
  - (c) ensure that all financial and accounting records that the entity keeps in any form including in electronic form are adequately protected and backed up;
  - (d) ensure that all contracts entered into by the entity are lawful and are complied with;
  - (e) ensure that all applicable accounting procedures are followed when acquiring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safe guarding and maintenance;
  - (f) bring a matter to the attention of the County Executive Committee member responsible for the entity if, in the accounting officer's opinion a decision or policy or proposed decision or policy of the entity may result in resources being used in a way that is contrary to subsection (1);
  - (g) prepare a strategic plan for the entity in conformity with the medium term fiscal framework and financial objectives of the county government;
  - (h) prepare estimates of expenditure of the entity in conformity with the strategic plan referred to in paragraph (g);
  - (i) submit the estimates of an entity, which is not a county corporation, to the County Executive Committee member for finance;



- (j) submit the estimates of an entity, which is a county corporation, to the executive committee member responsible for the entity who, after approving it, shall forward it to the County Executive Committee member for finance;
  - (k) not later than three months after the end of each financial year, prepare annual financial statements for that financial year and submit them to the Auditor-General for audit, with a copy to the County Treasury;
  - (l) try to resolve any issues resulting from an audit that remain outstanding;
  - (m) manage the assets of the entity to ensure that it receives value for money when acquiring, using or disposing of its assets;
  - (n) dispose of assets at the most competitive price and at the lowest possible cost ensuring that the proceeds from all asset disposals are deposited in a bank account of the entity;
  - (o) ensure that the respective county government entity has adequate systems and processes in place to plan for, procure, account for, maintain, store and dispose of assets, including an asset register that is current, accurate and available to the relevant County Treasury or the Auditor-General;
  - (p) provide the County Treasury with any information it requires to fulfil its functions under this Act;
  - (q) provide information on any frauds, losses, or any violations of subsection (1) and provide explanations for the actions taken to prevent similar conduct in future; and
  - (r) carry out such other responsibilities as may be specified in regulations by the County Executive Committee member for finance.
- (3) Not later than three months after the county assembly has adopted a report by a committee of the county assembly with respect to a report submitted by the Controller of Budget

**under Article 228(6) of the Constitution, an accounting officer shall, for each entity for which the officer is designated—**

- (a) prepare a report on actions taken by the entity to implement any recommendations made in the committee's report as adopted by the county assembly; and**
  - (b) submit the report to the county assembly with a copy to the County Treasury.**
- (4) Not later than one month after receiving a report by an accounting officer under subsection (3), the County Treasury shall submit to the county assembly the accounting officer's report and any comments on the report by the County Treasury.**
- (5) The report referred to in subsection (3) shall be published and publicised.**

