



*Approved
SNA
6/11/25*

REPUBLIC OF KENYA


THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON:

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

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

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER 2025

TABLE OF CONTENTS

Table of Contents	i
List of Abbreviations and Acronyms.....	ii
List of Annexures	iii
Chairperson’s Foreword	iv
CHAPTER ONE	1
1 Preface	1
1.1 Establishment of the Committee	1
1.2 Mandate of the Committee	1
1.3 Committee Membership	3
1.4 Committee Secretariat	4
CHAPTER TWO.....	5
2 Overview of the Judges’ Retirement Benefits Bill (National Assembly Bill No. 27 of 2025)	5
2.1 Background	5
2.2 Summary of Legal Provisions	5
CHAPTER THREE.....	9
3 Public Participation and Stakeholder Engagement on the Bill	9
3.1 Legal Framework on Public Participation	9
3.2 Memoranda Received on the Bill.....	9
3.2.1 Submissions in support of the Bill.....	10
3.2.2 Submissions on Proposed Amendments	11
CHAPTER FOUR.....	24
4 Committee Observations.....	24
CHAPTER FIVE.....	26
5 Committee Recommendations	26

LIST OF ABBREVIATIONS AND ACRONYMS

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

LIST OF ANNEXURES

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

CHAIRPERSON'S FOREWORD

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

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

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

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

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

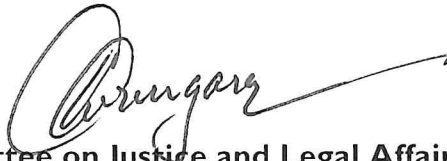
The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank the KJWA, JSC, the Judges' Retirement Benefits Bill Taskforce, AG, LSK, KLRC,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

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

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

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

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



CHAPTER ONE

I PREFACE

I.1 Establishment of the Committee

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

I.2 Mandate of the Committee

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

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

I.3 Committee Membership

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

Chairperson

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

Vice-Chairperson

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

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

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

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

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

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

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

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

Hon. Muchangi Karemba, CBS MP
Runyenjes Constituency
UDA Party

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

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

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

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

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

1.4 Committee Secretariat

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

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

Mr. Ronald Walala
Senior Legal Counsel

Mr. Abdikafar Abdi
Clerk Assistant III

Ms. Jael Ayiego
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel II

Mr. Omar Abdirahim
Fiscal Analyst I

Ms. Vivienne Ogega
Research Officer III

Mr. John Nduaci
Serjeant-At-Arms

Mr. Meldrick K. Sakani
Audio Assistant

Ms. Mary Kamande
Public Communications Officer III

Mr. Calvin Karung'o
Media Relations Officer III

Mr. Silas Opanga
Hansard Reporter III

CHAPTER TWO

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

2.1 Background

6. The Bill, sponsored by the Hon. Kimani Ichung'wah, EGH, MP, was published on 11th June 2025 and read a First Time in the House on 26th June 2025 (*Annexure 3*). It was thereafter committed to the Committee in line with Standing Order 127(1) of the National Assembly Standing Orders.

2.2 Summary of Legal Provisions

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

8. In particular:

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

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

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

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

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

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

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

3.2 Memoranda Received on the Bill

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

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

16. They submitted as follows:

3.2.1 Submissions in support of the Bill

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

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

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

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

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

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

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

3.2.2 Submissions on Proposed Amendments

Clause 2

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

Committee Observation

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

Clause 3

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

Committee Observation

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

Clause 6

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

Committee Observation

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

Clauses 8 and 9

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

Committee Observation

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

Clause 10

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

Committee Observation

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

Clause 13

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

Committee Observation

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

Clause 14

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

Committee Observation

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

Clause 19

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

Committee Observation

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

Clause 22

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

Committee Observation

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

Clauses 23

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

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

Committee Observation

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

Clause 25

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

Committee Observation

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

Clause 26

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

Committee Observation

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

Clause 27

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

Committee Observation

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

Clause 29

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

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

Committee Observation

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

Clause 30

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

Committee Observation

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

Clause 31

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

Committee Observation

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

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

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

Committee Observation

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

Clause 32

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

Committee Observation

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

Clause 36

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

Committee Observation

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

Clause 37

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

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

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

Committee Observation

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

Clause 38

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

Committee Observation

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

Clause 40

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

Committee Observation

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

Clause 41

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

Committee Observation

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

Clause 42

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

Committee Observation

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

Clause 43

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

Committee Observation

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

Clause 45

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

Committee Observation

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

Clause 46

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

Committee Observation

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

Clause 52

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

Committee Observation

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

Clause 55

106. In its memorandum dated 25th July, **SRC** proposed the deletion of paragraph (a) on the provision of a medical cover on retirement awaiting the SRC's policy on contributions to post-retirement medical schemes for State Officers.
107. In addition, and vide its memoranda dated 22nd September and 3rd November, **SRC** proposed amending paragraph (a) to provide that medical cover shall be as set by the SRC pursuant to Article 230(4) and (5) of the Constitution which mandates the SRC to set and review the remuneration and benefits of judges and State officers. In the Commission's view, legislating on matters of remuneration and benefits may limit the SRC in exercising its mandate.

Committee Observation

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

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

Clause 56

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

Committee Observation

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

Clause 57

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

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

Committee Observation

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

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

Clause 58

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

Committee Observation

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

Clause 61

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

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

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

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

Committee Observation

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

Clause 62

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

Committee Observation

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

Clause 66

124. The **Office of the Controller of Budget** proposed excluding retroactive extension of benefits to judges who retired before the Bill's enactment unless appropriated to prevent unbudgeted liabilities.

125. In its memorandum dated 25th July 2025, **SRC** noted that Part IV excludes judges who retired before 27th August 2010 which may be reviewed as discriminatory. In addition, SRC proposed the deletion of the clause on provision of a medical cover awaiting the Commission's policy on contributions to post-retirement medical schemes for State officers.

126. Further, in its memorandum dated 22nd September and 3rd November 2025, **SRC** proposed amending paragraph (a) to provide that medical cover shall be as set by the SRC pursuant to Article 230(4) and (5) of the Constitution which mandates the SRC to set and review the remuneration and benefits of judges and State officers. In the Commission's view, legislating on matters of remuneration and benefits may limit the SRC in exercising its mandate.

Committee Observation

127. The Committee observed that the Bill is guided by Article 160(4) of the Constitution which requires any pensions reforms that affect Judges should not vary the remuneration and benefits payable to a judge to their disadvantage. Article 160(4) requires judges who are in a Defined Benefits Scheme to remain in such a Scheme or for the components of the Scheme to be enhanced.

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

Clause 67

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

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

Committee Observation

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

General Submissions

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

Committee Observation

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

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

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


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

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

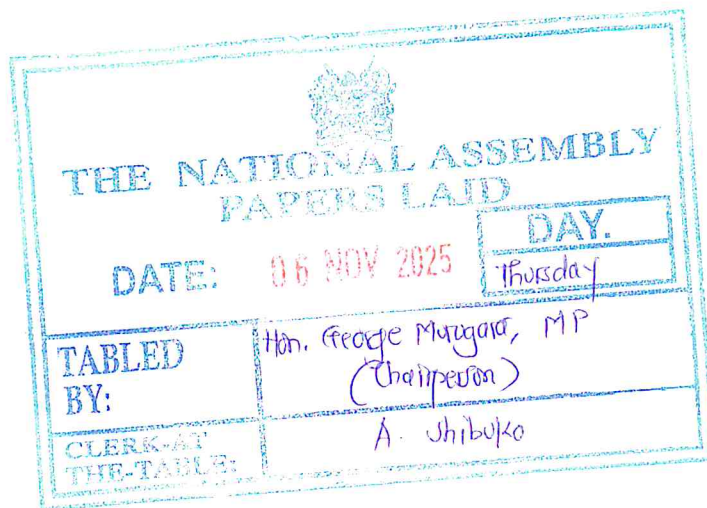
CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

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

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

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





DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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

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

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

Murugara

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

Mutuse

3. Hon. Gladys Boss, MGH, MP

Boss

4. Hon. Farah Maalim, EGH, MP

Maalim

5. Hon. Silvanus Osoro Onyiego, CBS, MP

.....

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

.....

7. Hon. Muchangi Karemba, CBS, MP

Virtual

8. Hon. Timothy Wanyonyi Wetangula, CBS, MP

.....

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

Otiende

10. Hon. Michael Mwangi Muchira, MP

Virtual

11. Hon. Aden Daud, EBS, MP

Aden Daud

12. Hon. John Okwisia Makali, MP

Makali

13. Hon. Stephen M. Mogaka, MP

.....

14. Hon. Amina Udgoon Siyad, MP

Amina

15. Hon. CPA Suleka Hulbale Harun, MP

Suleka

