



2ND September, 2021

**JOINT PRESS STATEMENT BY THE COUNCIL OF GOVERNORS AND
COUNTY ASSEMBLIES FORUM ON THE VARIOUS CIRCULARS
ISSUED BY THE HEAD OF PUBLIC SERVICE REQUIRING LAPTRUST
AND COUNTY PENSION FUND (CPF) TO COMPLY WITH THE
PROVISIONS OF THE STATE CORPORATIONS ACT**

The Council of Governors and the County Assemblies Forum's attention have been drawn to a circular **dated 22nd August, 2021** issued by the Head of Public Service titled **'outcomes of the consultative meeting on the Local Authorities Pension Trust'**

The Circular follows a series of other circulars issued earlier by the Head of Public Service which require Cabinet Secretaries and other officers of the National Government to exercise pervasive control and direction on the management and administration of pension schemes for County Government workers.

The Council and CAF are of the position that the circulars are unconstitutional, illegal and ultra vires for the following reasons;

1. Laptrust and CPF are neither state corporations nor agencies of the National Government to warrant the pervasive control and direction embodied in the impugned Directives.

2. Laptrust and CPF are pension schemes for the employees of the County Governments as opposed to the National Government.
3. Laptrust and CPF **DO NOT** receive, spend or manage any funds from or on behalf of the National Government to warrant the pervasive control and direction embodied in the impugned Directives.
4. The National Government is **NOT** a sponsor or member of Laptrust or CPF to warrant the pervasive control and direction embodied in the impugned Directives.
5. Further, the CPF is one of the best run pension schemes managed by Trustees drawn from the following; PS Ministry of Devolution, employees of the Counties, Water Service Providers, the pensioners, an accountant and the Law Society of Kenya.
6. It is worth noting that a trust is a legal matter that can only be revoked as prescribed in law and not in any other way.
7. There exist many occupational pension schemes for public entities in Kenya. They are managed by Trustees without ANY interference from the National Government because they are not deemed to be state corporations within the meaning of the State Corporations Act.
8. It is our considered view that implementation of the circulars will pose conflicts between the trustees' fiduciary duties to the members and

sponsors of Laptrust and CPF. Further, the trustees do not have a fiduciary duty to obey Directives issued by the Cabinet Secretaries, the State Corporations Advisory Committee or any other agencies of the National Government named in the directives in question.

9. Indeed, the Head of Public Service convened a consultative meeting on **17th August 2021** where the Council gave its position on the issue at hand. The issuance of the most recent circular certainly goes against the spirit of consultations between the two levels of Government that was agreed upon at the meeting.
10. Further, the role of National Government on Pension Matters for county employees is limited to prescribing standards for social security and professional pension plans, pursuant to the fourth schedule, paragraph 14 of the Constitution of Kenya, 2010, which states:

“Consumer protection, including standards for social security and professional pension plans”.
11. It is the position of Council and of CAF that the constitutional mandate of the National Government with regards to matters pension of the county employees does not extend beyond consumer protection and prescribing of norms and standards.
12. The functions of the National Government by extension the National Treasury, is assigned to the Retirement Benefits Authority under Section 5 (d) the retirement Benefits Act which states:

“The object and functions of the Authority shall be to— advise the Minister on the national policy to be followed with regard to retirement benefits schemes and to implement all Government policies relating thereto.”

13. The role of County Governments (Employers) on matters relating to management of human resource including Pension matters is anchored under Article 235 of the Constitution and section 59 of the County Governments Act, which recognize County Governments as employers within their respective counties, thus have the authority and mandate to determine pension arrangements for their employees as an exclusive County Governments’ function.

Article 235 (1) – “A County Government is responsible, within a framework of uniform norms and standards prescribed by an Act of Parliament for—

- (a) establishing and abolishing offices in its public service;***
- (b) appointing persons to hold or act in those offices, and confirming appointments;***
- (c) exercising disciplinary control over and removing persons holding or acting in those offices.”***

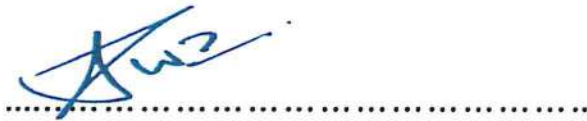
Section 59 of the County Governments Act (1) – “The functions of the County Public Service Board shall be, on behalf of the County Government, to— make recommendations to the Salaries and Remuneration Commission, on behalf of the county government, on the remuneration, pensions and gratuities for county public service employees.”

14. From the foregoing we ask the State Corporations Advisory Committee to refrain from proceeding with the matter until such a time that the two levels of Government amicably resolve the issue at hand.

Thank you. Mungu awabariki.



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Chairman, Human Resource and Social Welfare Committee



Hon. Ndegwa Wahome, MBS
Chairperson, County Assemblies Forum

