DRAFT NATIONAL RETIREMENT BENEFITS POLICY

JUNE 2023

:

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Table 1: LIST OF ABBREVIATIONS AND ACRONYMS

APTAK	Association of Pension Trustees and Administrators of Kenya
ARBS	Association of Retirement Benefits Schemes
AKI	Association of Kenya Insurance
COFEK	Consumers Federation of Kenya
CAK	Communications Authority of Kenya
CBK	Central Bank of Kenya
COTU	Central Organization Of Trade Unions
DB	Defined Benefits
DC	Defined Contribution
DOJ	Department of Justice
EAC	East African Community
FKE	Federation of Kenya Employers
FMA	Fund Managers Association
ILO	International Labour Organization
IRA	Insurance Regulatory Authority
KRA	Kenya Revenue Authority
M&E	Monitoring and Evaluation
NSSF	National Social Security Fund
NCPD	National Council of Population and Development
OAG	Office of the Attorney General
PSC	Parliamentary Service Commission
RBA	Retirement Benefits Authority
SASRA	Sacco Societies Regulatory Authority
TNT	The National Treasury
TUC	Trade Union Congress
VSRS	Voluntary Savings Retirement Scheme

DEFINITION OF TERMS

In this policy, unless the context otherwise requires, terms and expressions shall have the following meaning: -

(a) **"Annuity"** is a form of financial contract mostly sold by life insurance companies that guarantees a fixed or variable payment of income benefit for the life of a person(s) or for a specified period of time.

(b) **"Beneficiary**" means a member of a retirement benefits scheme or a dependant who is entitled to receive a benefit from the scheme following the death of the member.

(c) **"Benefits"** are any payments made to a beneficiary, including lump sums, retirement benefits payments, death, survivors and invalidity benefits.

(d) **"Contributory Retirement Benefits Scheme"** means a retirement benefits scheme which requires contributions to be made by active members of the scheme.

(e) **"DB scheme" (Defined benefit scheme**) is a scheme in which the benefits are defined by a formula in the scheme rules and accrue independently of the contributions payable and investment returns.

(f) **"DC scheme" (Defined contribution scheme)** is a scheme in which the benefits are dependent on the level of contributions payable and investment returns.

(g) "**Indexation"** is the mechanism of adjusting pension benefits to take into account the changes in the cost of living.

(h) **"Informal Sector"** is part of a country's economy that is not taxed and its activities

are not included in a country's Gross National Product.

(i) **"Portability"** is the ability of a plan member to transfer the commuted value of his or her deferred vested benefits to another retirement savings arrangement on termination of employment before retirement age.

Other terms shall have the meanings attributed to them under the Retirement Benefits Act 2007 and Regulations.

FOREWORD

The quality of life among the elderly especially the poor among them describes the decency of our Kenyan society. The elderly persons are often exposed to poverty, sudden reduction of income upon attaining retirement age, deteriorating health and limited access to services. The quality of life in old age is supported by a bouquet of social security programs ranging from access to quality housing, affordable health services, food, income safety nets and retirement benefits to maintain consumption smoothing into retirement years. Access to social security programs is a basic right under the Kenyan Constitution and the Kenyan Government will progressively enable citizens realize these rights. The government has also developed a regulatory framework to enable citizens during their economically productive years to accumulate long terms savings to provide income replacement during retirement years.

A combination of government social security programs and individual efforts to save for retirement under a secure regulatory environment, will afford most of the elderly persons with a decent quality of life in retirement. Owing to a myriad of reason, some citizens during their prime years may not be able to save for retirement. This category of citizens will be covered by government social security programs such as *inua jamii* to cushion them from sinking to abject poverty.

From colonial days the retirement benefits schemes have operated in Kenya. During colonial days, access to pensions was limited to white employees in colonial government and private multinational companies. After independence the African public service and local government employees were admitted to the then existing pension schemes and were promised pensions upon retirement. In 1965 the National Social Security Fund was established to extend coverage to formal workers in the country. The sector made major reforms in 1997 when the government enacted the Retirement Benefits Act to create the regulatory agency for the retirement benefits sector and set minimum standards expected of funded retirement benefits schemes. Since the year 2000 when the Retirement Benefits Act was fully commenced, the sector has witnessed tremendous growth in the accumulation of assets, improved governance and extended growth within the formal sector.

In spite of the growth witnessed in the retirement benefits sector there are challenges which still affect faster growth of the sector. The challenges include: fragmentation in the system where public service pension schemes established under legislation covering different categories of public and state officers; exclusion of the informal sector workers from the current schemes which initially were designed for formal workers; inadequate retirement benefits due to regulatory and scheme design weaknesses; problems of benefits portability especially across borders in view of the fact that Kenyan workers have tended to migrate to other countries for work; lack of adequate medical insurance to retirees because many medical insurance providers tend to exclude from coverage the elderly or if they provide cover the premium is expensive for the elderly to afford; limited investment opportunities especially in long term investment vehicles which are better aligned to long term nature of retirement savings; and inadequate dispute resolution mechanism to fairly and expeditiously determine disputes to save retirees from a long wait of their retirement benefits. These challenges, among others, contribute to low coverage, inadequate benefits and insufficient trust in the sector by potential participants of the system.

This Policy has been developed to consolidate the gains achieved in the retirement benefits sector and address the challenges slowing the faster growth of the sector. The overall objective of this policy is to provide a framework for the coordination, determination good governance expected of schemes, development and growth of the retirement benefits sector to ensure income security in old age for all workers by ensuring affordable, adequate, and sustainable retirement benefits. Broadly, if properly implemented the policy will enable the elderly citizens afford a decent life by accessing a regular income replacement in old age which is adequate and affording medical services without exposing households to extreme poverty on account of medical expenses.

The implementation of this policy requires collaborative effort among stakeholders including government ministries, government agencies, financial sector regulators, stakeholders in the retirement benefits sector, other countries through bilateral or multilateral agreements including development partners. This policy recognizes the respective roles of all the actors to enhance synergy and limit duplication of functions which inhibit efficiency.

The policy implications will largely focus on the review of the current legislation relating to pension schemes in the public sector to stem fragmentation and create a system which is affordable, sustainable, equitable, predictable and subject to regulation. Other laws such as the Retirement Benefits Act and the regulations made thereunder will be reviewed to improve coverage, benefits adequacy, improve governance, enable portability among other needed reforms.

This policy has not departed from Kenya’s arrangement of pension provision which is premised on the law of trusts but introduces reforms in the system which will enhance the achievement of the basic purposes of a pension system, namely consumption smoothing and mitigation against poverty in old age. Largely as a voluntary system, the actors in the implantation of the policy will need to create adequate awareness in the public of the need to save for retirement. Coupled with the tax incentives the government continues to provide to the sector and the reformed framework of the sector, it is expected that more citizens will opt to participate and save for retirement.

The implementation of this Policy will, without doubt, require huge financial outlays. I have no doubt that all stakeholders will work in partnership to help mobilize these resources as well as fully participate in the, implementation, monitoring, and evaluation of this policy.

I believe this Policy will help to positively transform the lives of the elderly Kenyan people.

HON.
THE NATIONAL TREASURY

ACKNOWLEDGEMENT

This policy was developed through a consultative process involving the Consultant who worked with the members of a Task Force set up by the National Treasury. The majority of the members of the Task Force were from the retirement benefits sector and it represents the wider thoughts of professionals and players in the retirement benefits sector. The policy was further presented to the public for their participation. The relevant views of the members of the public were captured to engender public ownership.

I wish to thank all those who gave their time and input either individually or through their respective organizations.

I commend the Chairperson of the Inter Agency Task Force for Development of the Comprehensive National Retirement Benefits Policy in Kenya, Prof. Dulacha Barako; Dr. Shem Ouma, Chief Manager, Research and Development at the Retirement Benefits Authority; and other representatives of the National Treasury, the Retirement Benefits Authority, the Capital Markets Authority, the Insurance Regulatory Authority, Association of Kenya Insurers, the Association of Retirement Benefit Schemes; Ministry of Labour; Federation of Kenya Employers; Office of the Attorney General and Department of Justice; Fund Managers Association; Council of Governors; Clerks Chambers; and the National Social Security Fund. I also commend Mr. David Nyakundi of Simba & Simba Advocates who was the Consultant that diligently guided the Task Force in the course of developing this policy.

EXECUTIVE SUMMARY

This National Retirement Benefits Policy provides a framework for the arrangement, provision and management of retirement benefits in Kenya. It discusses the background and objectives of the retirement benefits sector and provides policy guidelines to ensure development, growth, coordination and enhanced coverage of workers in Kenya. It also envisages coverage of Kenyan workers in the diaspora through all-inclusive agreements.

Prior to 1997, the retirement benefits sector was largely unregulated. The only regulations governing the sector were those inscribed under the Income Tax Act and trust laws. The provisions in the tax and trust laws were broad regulations which did not encompass the desired developmental objectives.

In the absence of a clear policy and regulatory framework, the sector was characterized by inadequate protection of the interests of members and dominance of employers in scheme affairs. As a result, management and investment decisions made were in many cases not focused on the best interest of the members. This posed significant risks to members' funds and the development of the retirement benefits sector.

The Retirement Benefits Act 1997 (hereinafter also referred to as "the Act") was thus enacted to provide a regulatory framework and streamline the retirement benefits sector. It was also envisaged to restore the confidence of stakeholders in the retirement benefits sector. In addition, the Act was to encourage more retirement savings, which also contribute towards national development and boost the domestic savings. The Act also created the Retirement Benefits Authority to oversee the management and development of the retirement benefits sector in a prudent and coordinated manner.

Since the enactment of the Retirement Benefits Act, the sector has achieved tremendous growth, for example, in terms of savings and the number of retirement benefits schemes. However, the sector is still faced with myriad challenges including lack of a comprehensive national retirement benefits policy and uncoordinated legislative and policy agenda, low pension coverage at 22 percent,[1] and low replacement rate below the recommended ILO standard of 40 percent of the previous earnings,[2] among others.

The Constitution of Kenya 2010 contains a comprehensive Bill of Rights under Chapter Four, which inter alia, guarantees Kenyans socio-economic rights under Article 43. Article 43(1)(e) asserts the right of every person to social security while Article 43(3) binds the State to provide appropriate social security to persons who are unable to support themselves and their dependants. On the other hand, Article 21(2) obligates the State to take legislative, policy, and other measures including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43.

[1] See Retirement Benefits Authority Statistical Digest, 2020.

[2] Article 67 of C102 – Social Security (Minimum Standards) Convention 1952 (No.102) – ILO Conventions

This policy therefore highlights issues that need consideration in the retirement benefits sector in line with the Constitution of Kenya 2010, the different retirement benefits systems and the different levels of development in the sector. It also appreciates the developments in the East African Community (EAC) and the need to facilitate the free movement of labor and capital within the EAC Partner States and other jurisdictions. The Policy systematically addresses these issues in order to achieve the desired development agenda as envisioned in Kenya's Vision 2030.

The key policy areas discussed under this Policy therefore include the following;

a) **Legal Framework and Structure of Retirement Benefits:** the policy seeks to provide a comprehensive retirement benefits system framework that follows a structure that recognizes the different level of needs, utilizes various sources of funding and reflects the various roles of different stakeholders. The policy proposes the development and implementation of a harmonized retirement benefits legal and regulatory framework.

b) **Retirement Benefits Coverage:** The policy seeks to have measures in place to broaden retirement benefits coverage in both formal and informal sectors to enhance social protection for all citizens.

c) **Consumer Protection:** The policy seeks to develop mechanisms of consumer protection of members, their beneficiaries and stakeholders of retirement benefits schemes.

d) **Transferability and Portability of Retirement Benefits:** There is need to allow for portability of accrued benefits to other retirement savings arrangements in the country, EAC region and in other countries under bilateral arrangements with Kenya.

e) **Administration and Management of Retirement Benefits Schemes Funds:** The policy seeks to come up with innovative ways to optimize administrative costs in relation to returns in order to grow members' retirement benefits savings.

f) **Annuities and Income Drawdown:** The policy seeks to promote the development of Annuities' market and income drawdown in Kenya.

g) **Indexation:** The policy seeks to promote indexation of pension benefits in order to avoid erosion of retirement benefits

h) **Mutual Recognition:** The policy seeks to encourage retirement benefits supervisors to practice mutual recognition of service providers and share information pertaining to registration to allow retirement benefits players registered in one EAC Partner State to operate in another Partner State and other countries with bilateral arrangements with Kenya.

An appropriate strategy for implementation of the policy will be put in place together with a Monitoring and Evaluation (M&E) framework to monitor the progress and assess the level of achievement of the specific targets compared to the planned objectives.

CHAPTER 1

1.1 INTRODUCTION

The purpose of Kenya's retirement benefits system is to address socio-economic risks facing the retired population, being the elderly in society. Retirement benefits schemes are established to provide a framework through which individuals can maintain consumption into old age and also mitigate against extreme poverty among the elderly. The two key risks associated with income security in old age are; insufficient old age income resulting in old age poverty and the risk of outliving one's savings. The two risks affect the dignity and financial security of persons upon retirement. A retirement benefits scheme serves as a device intended to provide a mechanism through which people save a portion of their earnings during their economically productive years to provide income security and maintain their consumption into retirement years. The savings made during early years before retirement should grow over the years and be made available in retirement to provide the intended income replacement during sunset years.

For members of society who are unable to save or cannot save enough during their early years on account of poverty, the pension system is designed to include an allocation of resources in the form of cash transfers to the elderly poor with the core purpose of mitigating extreme poverty in old age.

This National Retirement Benefits Policy therefore provides a framework for the arrangement of the sector, provision and management of retirement benefits in Kenya. It discusses the background and objectives of the retirement benefits sector and provides a framework for the arrangement of the sector and policy guidelines to ensure development, growth, coordination and enhanced adequacy, sustainability as well as coverage of retirement benefits in Kenya. It also envisages a framework of adequate coverage of the informal sector workers; coverage for Kenyan workers in the diaspora through all-inclusive agreements; and coverage for dynamic employees under short term contracts.

The policy framework aims to enhance the achievement of the primary purpose of the retirement benefits sector of providing benefits in the event of the individuals' earning power ceases or is interrupted and thereby mitigating against the risk of old age poverty and also providing income replacement. The sector also enhances income security in old age and thus improving and maintaining individual welfare besides insuring against disability and providing for dependants of a worker in the event of death of a member.

The retirement benefits sector plays an important socio-economic role in enhancing resource mobilization for economic development. The attainment of these goals requires implementation of the policy guidelines stated herein and an enabling legal and regulatory infrastructure that supports retirement benefits reforms.

1.2 HISTORICAL BACKGROUND

The retirement benefits sector in Kenya dates back to colonial days, when the colonial government enacted the Pensions Act (cap 189), which came into force in 1946. The Pensions Act established the unfunded civil service pension scheme to provide pensions to retired civil servants. In the private sector, few private pension schemes were set up by private multinational companies to guarantee old age income for their retired workers. Due to racism, the pensions system covered mostly white employees. The natives relied on informal systems of social security where the extended families took care of the old and children.

To reform the public service pension scheme, the Public Service Superannuation Scheme established under the Public Service Superannuation Scheme Act, 2012 and commenced its operations in January 2021. The scheme requires civil servants above forty-five years and government to contribute to the scheme to provide retirement benefits to civil servants.

Kenyans started participating in the formal retirement benefits sector after independence especially after the establishment of the mandatory National Social Security Fund in 1965. The scheme extended coverage to majority of the formal workers. The National Social Security Fund (hereinafter also referred to as "NSSF") was established by an Act of Parliament as a Provident Fund being a mandatory national retirement benefits scheme to cover formal sector employees except those exempted.

In order to reform the National Social Security Fund, the government in 2013 enacted the National Social Security Act (No.45 of 2013). The new legislation, repealed the National Social Security Act (cap 258). The NSSF Act 2013, was set to commence on 10th January 2014. However, the commencement of the Act was delayed owing to legal disputes by employers and employees opposed to the requirement for increased contributions provided for in the Act. The commencement of the Act has been a contentious issue since February 2023 where the Act was fully implemented, however we are alive to the fact that there is an appeal in the supreme court

The objects of the NSSF Act 2013 include:

a) to establish a pension fund as opposed to the previous provident fund where benefits were paid in lump sum at retirement;
b) increase coverage to the previously uncovered workers in both the informal and formal sectors by promoting voluntary membership in a new provident fund established under the new Act; and
c) provide for contracting out of the scheme in respect of tier two contributions to permitted supplementary occupational retirement benefits schemes.

In order to manage transition from the previous scheme, the NSSF Act 2013 ring-fences the assets and liabilities of the previous scheme until the payment of the benefits of the last member. The NSSF Act 2013 will improve the benefits on account of enhanced contributions and the introduction of pension benefits instead of the previous lump sum payments.

Voluntary private retirement benefits schemes were not regulated by statute except for those schemes registered by employers under the provisions of the Income Tax Act (cap 470) for purposes of tax exemptions.

Prior to 1997 voluntary private retirement schemes remained largely unregulated and operated without a harmonized legislative framework. The applicable Income Tax Act and trust law did not adequately recognize and protect the rights of members in a retirement benefits scheme.

Owing to the lack of a regulatory framework for the pension system, the sector continued to experience a myriad of problems including: poor governance; underfunding; growing implicit pension debt in the civil service pension scheme; inappropriate investments of scheme assets; non-payment or delayed payment of benefits and a system which was fragmented.

Voluntary private Occupational Pension Schemes equally encountered problems which included under-funding due to non-remittance by employers of deducted contributions, poor investments of the pension assets, diversion of scheme funds by employers, poor administration of schemes which resulted in delayed payment of benefits and outright misappropriation of scheme assets.

In order to address the foregoing problems, the government commenced reforms in the sector in 1997 with the enactment of the Retirement Benefits Act. However, the broad Regulations under the Retirement Benefits Act did not encompass developmental objectives for the retirement benefits sector. The scheme governance structure in place often did not prioritize the interests of members. As a result, investment decisions were in many cases made in the interest of other vested parties and neither in the interest of members nor of the economy as a whole. The Act provided a regulatory framework and resulted in the streamlining of the retirement benefits sector and restoration of confidence in stakeholders and employees and enabled them save more for retirement. This has contributed towards national economic development by enhancing domestic savings. The Act also established the Retirement Benefits Authority ("the Authority" or "RBA") to oversee the management and development of the retirement benefits sector in a prudent and coordinated manner.

The Authority supervises all private retirement benefits plans and the National Social Security Fund. The mandate of the Authority as per the Retirement Benefits Act includes to;

1. Regulate and supervise the establishment and management of retirement benefits schemes;
2. Protect the interest of members and sponsors of retirement benefits schemes;
3. Promote the development of the retirement benefits sector;
4. Advise the Cabinet Secretary for the National Treasury on the national policy to be followed with regard to the retirement benefits sector;
5. To implement all government policies relating to the Retirement Benefits sector.

1.3 OBJECTIVES OF THE POLICY

1.3.1 Overall Objective

The main objective of this policy is to provide a framework to guide the coordination, good governance, development and growth of the retirement benefits sector to ensure income security in old age for all workers by ensuring affordable, adequate, and sustainable retirement benefits.

1.3.2 Specific Objectives

The specific objectives include to:

i. Increase the coverage of retirement benefits for both formal and informal sector workers;
ii. Provide for coordination and harmonization in the existing legal and regulatory framework;
iii. Provide mechanisms of good governance and sustainability of the retirement benefits system;
iv. Promote and facilitate portability of retirement benefits between schemes and across-borders.
v. Promote and facilitate innovation in the retirement benefits sector.
vi. Promote affordable, adequate and sustainable retirement benefits for both formal and informal sector workers.

1.4 RATIONALE OF THE POLICY

The retirement benefits sector has achieved tremendous results in terms of growth and governance structures, following retirement benefits reforms. However, the sector still lacks a comprehensive retirement benefits policy for proper coordination, governance and development. Consequently, the legislative and policy agenda is fragmented and uncoordinated.

In addition, majority of Kenyans remain uncovered with the retirement benefits coverage at about 22 percent of the recorded employment, at the time of developing this policy in year 2023. The adequacy of retirement benefits is low compared to the recommended ILO standard of 40 percent income replacement rate.

Article 43 of the Constitution of Kenya 2010 requires the State to provide appropriate social security to persons who are unable to support themselves and their dependants. In addition, Kenya's long term socio-economic development strategy, Vision 2030, requires that the country provides a high quality of life to its citizens. Therefore, the need for a comprehensive retirement benefits policy to address the various issues and challenges faced in the retirement benefits sector. The challenges include mobilizing long term funding for economic development, which cannot be overemphasized.

Article 57 of the Constitution also obligates the state to protect the elderly in particular by ensuring that they live in dignity, respect and protected from abuse. Poverty in old age exposes the elderly into indignity. Enabling Kenyans to save during their economically active years will contribute towards protection of the elderly from indignity and improve their quality of life in old age.

1.4.1 National Government Mandate under the Constitution of Kenya 2010

The Fourth Schedule to the Constitution outlines the functions to be performed by the National and County Governments. With regard to pensions, Part 1 (14) provides that it shall be the function of the National Government to provide a policy and regulatory framework on matters pertaining to *"Consumer protection, including standards for social security and professional pension plans".* The standards have been set through the Retirement Benefits Authority (RBA) Act 1997 that established the Retirement Benefits Authority to regulate, supervise, promote and oversee management and development of the retirement benefits sector, including schemes in the country.

Under Section 5 (d) of the Retirement Benefits Act, the Retirement Benefits Authority bears the mandate to advise the National Treasury on the national policy to be followed with regard to retirement benefits schemes and to implement all Government policies relating to the pension sector. The mandate to develop a national policy relating to retirement benefits is a function of the National Government and is executed by the National Treasury.

1.5 SCOPE OF THE POLICY

The Scope of the policy will cover players of the retirement benefits sector, specifically: - providers of or those establishing retirement benefits scheme, governing bodies of retirement benefits schemes, members and potential members of retirement benefits schemes and service providers.

The Policy serves as a reference and guideline upon which the management of retirement benefits shall be based.

In developing and implementing this National Pensions Policy, the Government shall formulate strategies to ensure sustainability of retirement benefit plans

2 CHAPTER 2

2.1 SITUATIONAL ANALYSIS

The Policy describes the background of the retirement benefits sector and describes the landscape of the sector as follows:

2.1.1 Structure of Retirement Benefits Sector in Kenya

The retirement benefits system predominantly covers the working population in the public and the private sector to the exclusion of the unemployed population who are majorly in the informal sector. The system has three pillars: The Zero Pillar, which is means tested; the First Pillar which is the mandatory, National Social Security Fund (NSSF) and the Second Pillar comprising civil service pension schemes, occupational, individual and umbrella retirement benefits schemes.

The Zero Pillar comprises of the state funded pension for citizens who meet set criteria. It is a poverty alleviation programme which targets the elderly of age 65 and above to provide a basic income. This ensures that people with low lifetime incomes are provided with a basic protection in old age. This pillar is currently covered under the social protection programme managed by the Ministry in charge of social protection.

The First pillar is contributory and mandatory to all workers, with an element of voluntary contribution introduced through the NSSF Act, 2013 to cater for the self-employed. The mandatory contribution is by both employer and employees. It targets all workers in both formal and informal sector.

The Second Pillar is mainly employer based and contributory except the civil service pension schemes, including county schemes, which are undergoing reforms. Umbrella funds are mainly set up by financial institutions with structures and rules to which the participating employers adhere to. Individual retirement benefits schemes, on the other hand, are established and operated by independent legal entities mostly financial institutions. The establishment of these schemes is voluntary in nature. It is the intention of the Government to convert non-contributory public service pension schemes into contributory schemes.

2.1.2 Scheme Design

Retirement benefits schemes in Kenya are established under trusts, an Anglo-Saxon legal tradition where trustees legally own the assets of the scheme for the beneficial interest of members of the scheme. Unless duly incorporated as a legal person, retirement benefits trusts are not body corporates and trustees assume joint and several liability.

Retirement benefits schemes are made up of Defined Benefits, Defined Contributions and Hybrid Schemes which have the components of both designs. Currently, a majority the schemes are Defined Contribution Schemes. The scheme sponsors have the liberty to convert schemes from one design to another, subject to the approval of the regulator. In the recent past, there have been numerous conversions from Defined Benefits Schemes to Defined Contributions Schemes.

2.1.3 Funding

Save for the public service superannuation scheme and other registered pension schemes all other schemes registered under the Retirement Benefits Act are required to be fully funded. Some public sector pension schemes are non-contributory or are partially contributory. meaning that the benefits are funded out of the Consolidated Fund. Further, these public sector schemes are also not registered under the Retirement Benefits Act.

2.1.4 Benefits Payout

Benefits payout is structured as provident and pension. Provident funds pay out benefits in one lump sum while pension schemes pay part of the benefits as a lump sum and the remaining portion on a periodical basis. The gradual growth of provident funds as opposed to pension schemes is indicative of an inherent problem in the system which needs to be addressed. The appetite for provident funds demonstrates a lack of appreciation of longevity risks in retirement. Further, the growth of provident funds may be indicative that the pricing of annuities is discouraging to retirees and the income drawdowns are not understood.

2.1.5 Taxation of Benefits

The current tax model of Exempt Contributions, Exempt Investment Income and Tax Benefits (EET) and the manner it is provided for in the Income Tax Act is complex for users. It is partial exemptions on contributions, returns on investments and relief on benefits paid.

2.2 BENCHMARK BETWEEN KENYA AND OTHER SELECTED JURISDICTIONS

Retirement Benefits systems are designed in many countries around the world to address two main functions, namely, to alleviate poverty in old age and smooth consumption over an individual's lifecycle. Whereas cash transfers are state programs intended to alleviate extreme poverty among the elderly, other retirement saving plans are generally designed to provide income replacement in old age. Barr and Diamond state that "the primary objective of pensions is economic security in old age, achieved through consumption smoothing, insurance, poverty relief and redistribution. The primary objective of designing a retirement benefits system is to optimize old age security, including the cost of providing it"[3].

In order to effectively design a retirement benefits system to achieve the desired objectives, countries have come up with different retirement benefits systems informed by a number of local conditions which vary from country to country. The experience of World Bank which over the years has supported many countries to reform pension systems indicated that there are no universal solutions to the complex array of retirement benefits issues nor is there a single simple reform model that can be applied in all settings[4]. While there are lessons which Kenya may learn from other jurisdictions, an appropriate design of a retirement benefits system will

[3] Barr, Nicholas and Peter Diamond. 2008. *Reforming Pensions: Principles and Policy Choices.* Oxford: Oxford University Press, p. 25

[4] 45728 World Bank Pension Reform Primer: Pension Conceptual Framework, p. 1

take into account an assessment of local conditions and capacities in order for the adopted system to settle well within the obtaining factors in the country.

This comparative analysis will focus on how Kenya compares with some selected countries with regard to some thematic areas addressed in this policy. The brief study may inform possible strategies as appropriate which may be adopted to fill identified gaps in the system. For purposes of this comparative brief, the following countries will be considered: Chile, Nigeria, India and South Africa.

i. Pension Pillars

The World Bank recommended a multi-pillared pension system to the needs of the main target populations and provide security against the multiple risks facing pension systems. The various pillars proposed are not intended to be adopted by each country but provide a wide spread of options to countries to identify and adopt suitable pillars depending on local conditions, capacities and core objectives of the system. The overall framework of the recommended pension system is shown in the table below.

Table 2: World Bank Multi-Pillar Pension Taxonomy[5]

	Target group			*Main criteria*		
Pillar	*Lifetime*	*Informal*	*Formal*	*Characteristics*	*Participation*	*Funding or*
0	X	X	x	"Basic" or "social pension," at least social assistance (universal or	Universal or residual	Budget or general revenues
1			X	Public pension plan, publicly managed (defined benefit or	Mandated	Contributions, perhaps with some financial
2			X	Occupational or personal pension plans (fully funded defined benefit or fully	Mandated	Financial assets
3	x	X	X	Occupational or personal pension plans (partially or fully funded defined	Voluntary	Financial assets
4	X	X	X	Access to informal support (family), other formal social programs (health care), and other individual financial and nonfinancial assets	Voluntary	Financial and nonfinancial assets

[5] R. Holzmann and R. Hinz: Old Age Income Support in the 21st Century, 2005 P. 10. World Bank Publications 32672

Note: The size and appearance of x reflect the importance of each pillar for each target group in the following increasing order of importance: x, X, ***X.***

The Zero Pillar shall extend some level of income security to all of the elderly where social conditions warrant and fiscal circumstances can sustain such a system. The first pillar shall an appropriately sized mandatory pillar with the objective of replacing some portion of lifetime pre-retirement income through contributions linked to earnings, and which is either partially funded or financed on a pay-as-you-go basis. The second pillar shall comprise of a funded mandatory defined contribution pillar that typically provides privately-managed individual savings accounts establishing a clear linkage between contributions, investment performance and benefits, supported by enforceable property rights and which may be supportive of financial market development. The third pillar shall be a funded voluntary pillar taking many forms, and the fourth pillar shall comprise of nonfinancial pillar that includes access to informal support such as from families, other formal social programs such as health and housing, and individual assets.

Kenya's retirement benefits system incorporates some of the pillars recommended by the World Bank. The system retirement benefits system pillars are summarized as follows:

Table 3: Kenya Pension Pillars

Pillar	Scheme	Characteristics
1	Cash Transfer Program of *"inua jamii*	It is a "Basic" social assistance cash transfer scheme. An elderly person above 65 and neglected or abandoned without support or living and begging on the street. It is a means tested scheme. The scheme is funded through government general tax revenues.
2	Mandatory National Social Security Fund	A fully funded national defined contribution covering all formal sector workers except those expressly excluded in the law. The scheme is fully funded through contributions, with some minimum investment guarantee.
3	Public pensions	Non-funded Pay As You Go Public service pension scheme covering civil servants, teachers, police, military, Retired Presidents and other designated state officers. It is mandatory for public and state officers eligible for pensions. The scheme is funded though government general tax revenues.

		Public Service Superannuation Scheme is a fully funded defined contributions scheme for a category of public offers in civil service. This scheme covers Civil servants, Teachers, policy, military and the partially funded scheme for Members of Parliament. It is mandatory to all eligible public and state officers. The scheme is funded though government general tax revenues.
4	Occupational and individual retirement schemes	Occupational and individual retirement schemes (fully funded defined benefit or funded defined contribution) covering formal sector workers in private sector and government state corporations. These schemes are mostly voluntary with some mandatory obligations under respective statutes especially those established by state corporations. The schemes are funded scheme financial assets created by contributions and investment income. Under this pillar there are micro-pensions established by private sector providers.

In an ideal structure, Pillar III and IV are meant to be a supplementary pillar to the mandatory National Social Security Fund. But that arrangement is not well developed because most public and state officers are not covered under NSSF and those who are covered the savings are so low to sustain retirement needs of a retiree.

The retirement benefits system mirrors the historical influence of the colonial past. With the introduction of the modern state, traditional social support systems were gradually dismantled, and market-based social protection policies were introduced with the gradual collapse of traditional social protection practices, new policies were established, which rewarded civil servants who remained loyal to the colonial government. The current pay as you go civil service pension scheme was established in 1946 by the colonial administration. The effect of providing coverage to loyal civil servants was that the rest of the citizenry remained uncovered, including the casual and agricultural workers employed in white-owned plantations.

The establishment of the mandatory National Social Security Fund to cover all formal employees except those who were exempted, extended coverage to the formal sector workers to the exclusion of the burgeoning informal workers in sectors such agriculture, industrial, logistics, etc. Pillar I addresses the risk of extreme poverty among the elderly in Kenya and has contributed towards poverty reduction among households. The informal sector workers have not been adequately covered in the current framework. This policy proposes strategies intended to extended coverage to all workers in particular the formal sector workers.

The challenges of the public pension pillar are varied including sustainability, equitability, adequacy and fragmentation. In particular, the pay as you go system faces fragmentation where different cadres of public and state officers clamor for their own unique pension schemes. Fragmentation results in inequitable benefits among different officers in public and state officers. There are cases where some state officers seek to be granted gratuity even when they are on pension creating challenges of unpredictability in system. Even in existing pay as you go public service schemes, accrual factors and pensionable emoluments are dissimilar resulting in different benefits across income groups. The policy proposes measures to limit fragmentation, promote sustainable and affordable schemes with equitable provisions.

Chile

The current Chilean system was established in 1981 by effectively privatizing the old age pension. Employees that entered the labour market after the system was introduced were required to join a defined contribution (DC) pension plan funded by employee contributions. The pillars of the pension system in Chile[6] are –

[6] IOPS County Profile: Chile.

Table 4: Chile Pension Pillars

Pillar	Scheme	Characteristics
1	Public Pension	It is an old age poverty solidarity pillar intended to prevent scheme. The scheme replaced the former welfare pension program and the minimum old age pension guarantee which was tax financed. The old pay-as-you-go system is still in place for individuals who did not switch to the new system. The scheme includes two different programs. First, a pension program for members who remained in the old pay – as – you – go system. The second scheme guarantees that all individuals in the least affluent comprising of 60% of the population have access to a basic pension, regardless of their contributory record.
2	Personal Pensions - Mandatory	The scheme is mandatory and covers all employees who joined the labour force after December 1982. The members of the old pay as you go system who voluntarily switched to the new system are covered under this scheme. It is a fully-funded defined contribution scheme with individual accounts managed by private firms. The scheme is intended to enable consumption smoothing.
3	Private pensions – Voluntary	The scheme is voluntary and covers employees and self – employed workers. It is a fully-funded individual account scheme and the balance can be transferred to the mandatory individual account upon retirement to augment benefits in old age.

Employers who had paid contributions into the pay as you go system were free to switch to the individual capitalization system. If the switch was made, their accrued benefits under the old system were recognized by an instrument called "recognition bond".

The Chilean pension system is widely known for its mandatory contributory component which covers all formal workers except the military and police who have their own scheme[7]. In 2008 the government introduced a non-contributory component administered by the state. While the system in overall comprises non-contributory, mandatory contribution, and voluntary contribution mechanisms, the pension system is to a large extent premised on the ability of an

[7] IOPS Country Profile: Chile.

individual ability to save for retirement. Those without capacity to save are covered under pillar I, a person with weak or medium ability will receive the solidarity-based top-up benefit, and those who have a significant ability to save will make voluntary contributions and enjoy their benefits. The system therefore relied on individual contribution and tax revenue for its funding.

The individual savings accounts are managed by private pension administration companies or firms registered and regulated by their pension regulatory agency. An individual has the liberty to move from one pension administration company to another. The mandatory contribution rate is 10% of monthly income. Pillar I is largely depended on government budget. Benefits payable under Pillar I comprise the basic solidarity pension as a legal right for those unable to make contributions and solidarity-based top-up benefit for those with little capacity to make contributions. Owing to low savings capacity beyond the legally mandated rate, informality of the labour market and short saving periods[8], the benefits members access upon retirement may not be adequate[9].

In Chile mandatory contributions and returns are tax-exempted. Benefits are taxed as income.

Nigeria

The current pension system in Nigeria was established in 2004 following reforms which were anchored in the Pension Reform Act, 2004. The system was highly influenced by the Chilean Pillar II mandatory defined contribution scheme. The pillars of the Nigerian pension system are as follows[10] –

Table 5: Nigeria Pension Pillars

Pillar	Scheme	Characteristics
1	Public Service Pension	Some State Governments in Nigeria still operate closed public pension schemes which are now reforming to comply with the Pension Reform Act, 2004 which required all public and private sector employees to make contributions to the Mandatory Contribution Pension Scheme. Those Federal Government Employees who retired before 2007 still receive their pension from the old non-contributory civil service pension scheme.
2	Mandatory Private Pensions	The Pension Reform Act, 2004 established the Mandatory Pension scheme. It is a filly funded individual accounts scheme privately managed by private pension companies. It is

[8] Augusto T. & Heinz P.R.: The Troubled State of Pension System in Latin America. 2018; www.brookings.edu/research

[9] L. Lurie, E. Colon-Neila & P.A. Ortoz: Social Participation in Pension Systems and their Reforms: Chile, Spain and Israel, 2020; www.scielo.org.mx

[10] IOPS Country Profile: Nigeria

		mandatory for both public and private sector employers employing at least 3 persons.
3	Voluntary Private pensions	Participation in the mandatory Private Pension scheme is voluntary for the self-employed, informal sector workers and those employers with less than 3 employees are not obligated to participate. The voluntary private pension scheme managed by private firms provide a framework where those not covered under pillar II can save for retirement.

The system has features of the Chilean except that it does not have the solidarity pillar for those unable to save for retirement. The system has managed to consolidate both public and private schemes into one mandatory defined contribution scheme. The pension assets have since the reform grown tremendously. The assets have grown at an average rate of 18% per annum since 2015 culminating at an asset base of Nigerian Naira of 12.3 trillion (USD. 29.9) as at December 31st December 2020[11].

Public services employees and private sector employees pay a minimum of 8% of their gross monthly earnings. Employers also pay a minimum contribution of 10% and may pay the full 18% themselves.

Upon retirement the member has a choice as to how to receive his retirement benefits:

- programmed monthly or quarterly withdrawals, based on life expectancy;
- annuity for life purchased form a life insurance company (with monthly or quarterly payments);
- a lump sum, provided that the amount left after that lump sum withdrawal is sufficient to permit an annuity or programmed withdrawals of at least 50 per cent of the employee's annual pre- retirement salary.

Section 10 of the Pension Reform Act, 2014 exempts contributions, investment income and benefits from income tax. Early withdrawals (withdrawn from voluntary additional contributions) are taxed.

The employee is free to choose an administrator. Custodians hold the employees' assets and execute transactions for the employee. The pension fund administrators invest the assets of the schemes in accordance with the guidelines set out in the law.

[11] AVCA and PenOp Launch Inaugural Report on Pension Funds and Private Equity Investment in Nigeria; December 2021: www. Avca-africa.org

South Africa Pension System

The pension system in South Africa is comprised of the following pillar:- [12]

Table 6: South Africa Pension Pillars

Pillar	Scheme	Characteristics
1	Public Pension	Means-tested old age pensions: non-contributory, fully financed by the government.
2	Private pensions: occupational	This pillar comprises of DC pension plans, mostly established by enterprises in the private formal sector. It also comprises DB pension plans mostly established by the public sector including the large funded Public Service pension scheme. There are some hybrid pension schemes
3	Other Private pensions	The third pillar comprises of • Retirement annuities, mainly offered by insurance companies • Preservation funds[13] • Unclaimed benefit funds, and • Beneficiary funds

Like Kenya and Chile, South Africa has a social old age grant is a non-contributory and means-tested old age pension which is funded by a pay-as-you-go tax system. The grant is only paid to people whose financial income is below a certain level. The pension is payable to South African citizens of 60 years or older. With effect from 1 April 2017, the old age grant amounts to ZAR1 600 per month for pensioners over the age of 60 years and ZAR1 620 per month for those over 75 years. Certain retirement funds established under separate legislation such as the Government Employees Pension Fund are not subject to the Pensions Funds Act nor supervised by Financial Services Board.

All employer-paid contributions to pension, provident and retirement annuity funds are regarded as a deductible employment expense for the employer and a taxable fringe benefit in the hands of the employee. These taxable employer-paid contributions will however be deemed to have been made by the employee for personal income tax deduction purposes,

[12] IOPS Country Profile: South Africa

[13] A preservation fund serves as a savings vehicle into which proceeds from a pension or provident fund are paid. The only purpose of a preservation fund is to house and preserve proceeds from pension or provident funds Proceeds are transferred to a preservation fund when one leaves employment, is dismissed or retrenched. Only withdrawal is permitted from the preservation fund before retirement date. There are no contributions made into the preservation fund.

who shall in turn be eligible for a tax deduction for such contributions to approved funds, in addition to any contributions made by themselves to any of the three fund types.

Benefits and annuities payable from a pension fund are taxable to the extent that contributions have been allowed as a deduction for tax purposes.

India

Pension policy in India has traditionally been based on financing through employer and employee participation. As a result, coverage has been restricted to the organized sector, and the vast majority of the workforce in the unorganized sector has no access to formal channels of old-age financial support[14]. The system is also fragmented with a myriad of legislation providing for various pension schemes including: 1) Civil Service Schemes 2) Employee's Provident Fund Organization Schemes (EPFO) 3) Occupational Pension Schemes 4) Public Provident Fund 5) National Old Age Pension Scheme 6) National Pension Scheme 7) Micro-pensions and Other Alternatives. The pension pillars in India could be summarized as follows –

Table 7: India Pension Pillars

Pillar	Scheme	Characteristics
1	National Old Age Pension Scheme	The Indira Gandhi National Old Age Pension Scheme (NOAPS) was launched in 1995 for persons below poverty line (BPL) who were aged 60 and above. The pension amount consists of Rs. 200 per month from the central government plus a contribution by the state, varying state-wise, according to discretion of the State Government. For those citizens above the age of 80, the monthly pension is Rs.500.
2	Private Sector Employee's Mandatory Schemes	Mandatory occupational schemes covering established under the Employees' Provident Fund & Miscellaneous Provisions Act, 1952. The schemes are Employees' Provident Fund (DC Scheme) and Employees' Pension Scheme (DB Scheme). It covers all employers with over 20 workers. The schemes are administered by the Employees' Provident Fund Organization. Part of the DC scheme converted to DB scheme to enable mandatory annuity to members. Asset management are outsourced to selected professional asset managers.
3	National Pension	This Pillar is voluntary for participants. Plans in this pillar include the voluntary segment of the National Pension System (NPS), the

[14]IMF elibrary; India's Pension Reform Initiative: https://www.elibrary.imf.org/view/books/

	System (NPS) and micro pensions	micro-pension[15] schemes such as the Atal Pension Yojana, mutual fund retirement plans, pension plans from insurance companies and Public Provident Fund (PPF). NPS was made operational from December 22, 2003 and mandatory for all new recruits of central government employees (except for the armed forces) joining service on or after January1, 2004. The scheme is a defined contribution scheme and operates to all citizens on a voluntary basis. The government under NPS established micro-pensions for informal sector workers initially with government matching contributions.

Pillar II enjoys an EEE (exempt, exempt, exempt) regime where it is tax free during contribution, growth and withdrawal phase. Pillar III, on the other hand is under an EET (Exempt, Exempt, Taxed) regime where maturity benefits are taxed[16].

2.3 LESSONS FOR KENYA

There a number of lessons Kenya may learn from these other jurisdictions. Three critical ones have been identified below.

i. ***Fragmentation:*** Chile and Nigeria have managed to consolidate all employees whether in public or public sectors into one national defined contribution scheme. This policy option may stem fragmentation of schemes in Kenya. The systems also inhibit proliferation of many small schemes which are costly to operate.

ii. ***Informal sector inclusion:*** Nigeria has developed micro-pension regulations under the Pension Reform Act 2014 to regulate the participation of informal sector workers in the system. The regulations among other provide for long term retirement savings and short-term savings which are funded by a split of contributions. India has leveraged on technology to enroll and administer micro-pensions and initially the government provided matching of contributions as an incentive.

iii. ***Migration to defined contribution schemes:*** In line with the ongoing systemic pension reforms in many countries, Kenya and the cited countries have over the years noted a migration from the traditional defined benefits schemes to defined contribution schemes. The conversion of DB schemes to DC schemes comes along with stricter regulation and supervision to enhance scheme governance guarantee protection of the

[15] Micro-pensions are provided by microfinance institutions. They have gained considerable relevance in India in recent years with the development of MFI's and NGO's. Micro-pensions adhere to the needs of very specific individual groups or local communities in exchange of low contributions and low premium.
[16] OECD Pension at a Glance 2021; Country Profile - India

interests of members largely because the investment risk is transferred to members under the DC schemes. The increased regulatory and supervisory framework of the retirement benefits sector in Kenya is thus a response to the reforms which the sector has been undergoing over the years an experience also noted in many other countries.

2.4 MAIN GAPS AND CHALLENGES AND THEIR DESCRIPTION

The retirement benefits sector is largely well structured and governed. However, continual reforms need to be undertaken to address the following existing gaps.

2.4.1 Lack of Coordinated Legal and Regulatory Framework

The legal framework governing retirement benefits in Kenya is currently fragmented and uncoordinated. The nature of fragmentation in both public and private sector includes;

- Existence of over 1200 retirement benefits schemes most of which are small in terms of membership and asset size, which potentially makes supervision ineffective and costly.
- Public sector pension schemes which are established under different legislation and some of which are not subject to the regulation and supervision of RBA.
- Lack of uniform minimum standards applicable to all retirement benefits schemes to enable sustainable funding, benefits adequacy, governance, etc. in these schemes.
- Portability of benefits challenges between government sponsored schemes established under statute. The portability of benefits between public schemes and private schemes is equally not feasible currently.
- Occupational and individual schemes are governed under the Retirement Benefits Act and established under irrevocable trusts. The mandatory scheme, NSSF, is established by an Act of Parliament and governed by both the Retirement Benefits Act and NSSF Act, 2013. The civil service pension schemes are governed by the Pensions Act and other Acts managed by the Pensions Department at the National Treasury.

Since each arrangement has some degree of autonomy entrenched in the different Acts and Ministries, the developments in the retirement benefits sector are undertaken without proper coordination, thus creating a gap. There is therefore a need for an overall policy and legal framework to encompass, harmonize and direct the retirement benefits related sector.

2.4.2 Low Retirement Benefits Coverage

Retirement benefits coverage is low largely because most workers are employed in the informal sector and are not enrolled in any retirement benefits arrangement. The retirement benefits sector is also voluntary in nature. Historically, the system was designed to cover formal workers and that explains why the current system basically covers formal sector workers to the exclusion of informal sector workers. The current regulatory framework does not effectively support establishment of informal sector schemes.

The establishment of occupational schemes is dependent on the willingness of employers to offer benefits to their employees. Workers in the informal sector have limited access to enrolment as their sector is not adequately regulated and the informal sector workers do not have clear remuneration structure despite the existence of a minimum wage. There are also no compelling incentives for employers to set up schemes to cover their employees. Although the NSSF scheme is mandatory, most of the employers in the informal sector and self-employed workers have neither registered nor contribute to the scheme. The low retirement benefits coverage can also be attributed to low financial literacy and other socio-economic conditions, informality of employment contracts and the poor saving culture for retirement.

There is therefore need for a legislative framework which promotes innovation and development flexible and responsive retirement benefits products.

2.4.3 Old Age Poverty

Given the improved health care and quality of life, the life expectancy has been on the rise. This may pose a challenge in the retirement benefits sector due to longevity risks. The retirement benefits system in Kenya also does not provide the majority of workers with suitable opportunities to save for their retirement. Similarly, the breakdown of traditional channels of old age support has aggravated this situation.

2.4.4 Inadequate Benefits

The average income replacement rate is below the minimum recommended rate by ILO of 40 percent. The low replacement rate is attributed to among other things; low priority given to savings for retirement benefits; early access to benefits before retirement; low return on investment; lack of flexible investments options for members; short contribution periods arising from late entrance into the labour market and job retention; volatility on investments; as well as the scheme design parameters including pensionable emoluments and contribution rates. Other reasons for inadequate benefits include;

- The diminishing of defined benefits schemes and the lack of benefit targeting in defined contribution schemes have equally contributed to inadequate benefits in retirement.
- Lack of a policy response to curb further migration of DC pension schemes to provident funds which further compromises effective management of longevity risks.
- Motivation to adequately save for retirement is inadequate due to; myopic view of old age income safety risks, inadequate tax incentives, limited capacity to save owing to current consumption needs and inadequate financial education.
- Lack of adequate policy and regulatory framework on benefit indexation resulting in value erosion on account of inflation.

2.4.5 Portability of Benefits

Members of retirement benefits schemes should be able to have their benefits transferred from one scheme to another upon changing jobs or exiting from employment. While this process should be seamless, this has not been the case in some schemes particularly where schemes are of different designs and/or different legislation.

Labour mobility across countries has become common globally. Kenyans in the diaspora who contribute to the various social security services in their countries of residence should be able to transfer their benefits upon return to Kenya. However, the arrangements that would facilitate the transfer of benefits to a registered scheme in Kenya and abroad are lacking. Lack of a clear mechanism for transfer of benefit rights across borders may result into some members losing their rights or being unable to qualify for better benefits.

2.4.6 Taxation

Tax incentives play a key role in enhancing and promoting retirement benefits savings. The incentives at the payout phase are insufficient especially for the senior citizens above the age of 65. Further, incentives for micro-pensions under the Income Tax Act are unclear.

The current tax model of Exempt Contributions, Exempt Investment Income and Tax Benefits (EET) and the manner it is provided for in the Income Tax Act is complex for users. Its complication in administration discourages schemes and stakeholders. The review of the maximum tax-deductible contributions is unpredictable and has remained unchanged for a considerable period of time.

2.4.7 Management of Pay-Out Phase

Retirement benefits schemes have two phases; the accumulation phase which include funding through contribution and investments of scheme assets and the payout phase which involves the payment of benefits accumulated in the scheme by a member. The payout phase involves various circumstances and products through which these benefits may be paid out.

The increasing number of circumstances and products through which benefits may be paid out from the scheme is increasingly getting complex for scheme members. There is need to describe in the regulatory framework the existing and permitted pay-out products, the eligibility criteria and the process. The benefits payable out of the scheme include; withdrawal benefits, early retirement benefits, emigration benefits, ill-health benefits, normal retirement benefits and late retirement benefits. These benefits can be accessed through: lump sum payments, primary annuities, secondary annuities, income drawdown and minor beneficiary funds

Additionally, funds established and operating in the market to hold and pay benefits on behalf of minors or persons who are severely incapacitated are unregulated.

2.4.8 Reciprocal Agreements

Labour mobility across borders has become common globally. Kenyans in the diaspora, including the EAC region, may contribute to the various retirement benefits arrangements in their host countries. On conclusion of their contracts, portability of retirement benefits savings becomes a challenge due to lack of relevant agreements, such as those on double taxation.

Regional and international labor mobility raises questions about retirement benefits for workers who migrate to other countries in the region or internationally. Across border portability of benefits is hindered by a number of factors including; different designs of pension systems, varied taxation regimes, investment environment which are dissimilar, lack of reciprocal agreements and lack of totalization of contribution periods.

2.4.9 Governance of Retirement Benefits Schemes

The retirement benefits sector lacks a clear regularized standard of governance that cuts across private and public schemes. This leaves a lot of room for poor governance practices adopted and practiced by various boards to the detriment of scheme members. There is need to provide for a framework which specifies clear governance standards expected of all schemes and which require all schemes to be regulated and supervised by the Retirement Benefits Authority.

2.4.10 Leveraging of ICT/Fintech in the sector

Leveraging ICT and Financial technologies (Fintech) can solve problems within retirement benefits sector for members, sponsors and service providers. Introduction of Fintech solutions in the retirement benefits sector is critical in the development of the retirement benefits sector. Manual operation in scheme registration, member enrolment update of member records and communication to members, among other services can be digitized to enable wider participation of members at lower costs. Leveraging of ICT and innovative Fintech solutions have not been adequately adopted in the market to spur industry growth.

2.5 EMERGING ISSUES AND TRENDS

i. Shift from Defined Benefit Schemes to Defined Contribution schemes

Traditional DB pension plans are gradually losing their dominance in the occupational pension systems of many countries; over the past few decades there has been a gradual shift towards DC pensions and, in some countries, DC plans now account for the majority of invested assets in private sector occupational pension plans[17]. Kenya has witnessed a rapid migration of defined benefit schemes to defined contribution schemes since commencement of the Retirement Benefits Act. A number of explanations have been offered for the shift from DB to DC pension plans. In Kenya the shift has been informed by government policy which required all defined benefit scheme established by state corporation to be converted to defined contribution schemes. This policy was informed by the rising actuarial deficits which state

[17] J.Broadbent and Others: The Shift from Defined Benefit to Defined Contribution Pension Plans – Implications for Asset Allocation and Risk Management; 2006. www.bis.org

corporations were required to fund in order to comply with the RBA. Other private sector defined benefit schemes converted owing to underlying actuarial liabilities schemes were facing.

Other reasons justifying the Shift of DB schemes to DC schemes include introduction of funding requirement of DB schemes, the rising cost of funding the benefit guarantees in DB schemes, changes in labour dynamics where most employees are working short term in contracts with employers and capital market volatility which exposes the sponsors to unknown liabilities when schemes underperform. The shift to DC schemes thus lays the risk of investment performance of schemes on members and therefore requiring improved scheme governance and member involvement in investment decisions.

ii. Labour Dynamics

The labour market in Kenya has been changing since independence. Long term employment of an individual in one organization has shrunk over the years resulting in short term work contracts. This change in the labour market means employees have short periods of work to sufficiently save for retirement.

Owing to increased education opportunities, the labour supply in the market has continued to increase that many of the skilled and unskilled labour are unable to be absorbed in the limited formal employment. Accordingly, the informal economy has continued to emerge contributing to employment creation.

The informal sector is not covered or insufficiently covered by formal arrangements. The workers in the informal sector are partially or casually employed with low and intermittent income. The current pension system is not suitable for informal sector workers and thus they are excluded from coverage. This policy framework cognizant of the changing labour markets proposes pension products suitable for the short-term workers and informal sector workers.

iii. Increase of Migrant Workers

Besides the experiences of short-term employment contracts, the growing of the informal economy and increasing unemployment, labour migration is now common not only within the EAC region but even to other countries such as the Gulf region, Northern America, Europe and Southern Africa among others. The migration of labour is informed by a number of factors including regionalization of common markets such as EAC Common Market, unemployment inspiring individuals to migrate to other countries in search of employment and others seeking better-paying jobs abroad. Labour migration challenges the existing framework in terms of ability to save for retirement in Kenya while working out of the country and portability of retirement benefits across borders. The policy framework will address limitations in the current pension arrangement in regard to migrant workers to support portability and saving for retirement by workers in diaspora.

iv. Ongoing Pension reforms

Across the globe since the 1980s pension reforms have been taking place informed by a number of factors including aging populations exposing the sustainability of the traditional pay-as-you-go pension systems. This problem has informed pensions reforms in most of the developed countries. In transitional economies low national outputs and increasing dependency ratio due to unemployment has also informed pension reforms. In Kenya pension reforms commenced in 1997 when the Retirement Benefits Act was enacted. The reforms were informed by governance deficits in existing and unregulated schemes and the cost of funding pay-as-you-go pensions in state corporations. The reform agenda has since been going on in the sector resulting in the reform of the civil service pension scheme to stem the cost of providing pensions to civil servants. The enactment of the Retirement Benefits Act has greatly contributed to the current tremendous growth of the sector. The assets have rapidly grown and thus contributing to creation of long-term savings in the country. In spite of the growth there are gaps in the system which the policy needs to address to enhance continued growth, increased coverage and sustainability.

3 CHAPTER 3

3.1 POLICY FRAMEWORK

This policy addresses issues, overall policy statements and various policy implementation strategies. The overarching objective of this Policy is to ensure that every worker and their dependants live in dignity on leaving employment and exploit their human capabilities to further their own social and economic development. Provision of comprehensive social security services and retirement benefits should follow a structure that recognizes different levels of needs, different funding sources and reflects the roles of the various stakeholders.

The retirement benefits sector has witnessed growth in the recent past. However, there are challenges which need to be addressed including:

i. Fragmentation of the sector and the regulatory framework;
ii. Low retirement benefits coverage;
iii. Low returns on scheme investments;
iv. Inadequate retirement benefits at retirement;
v. Limited access and complexity of payout products;
vi. Portability of retirement benefits;
vii. Need for reciprocal agreements;
viii. Limited coordination of the retirement benefits sector stakeholders;
ix. Complex taxation of retirement benefits;
x. Weak consumer protection mechanism in the sector;
xi. Weak governance structures in the sector;
xii. Leakages in the retirement benefits system;
xiii. Weaknesses in the dispute resolution process;
xiv. Inadequate leverage of ICT and FINTECH innovation solutions;
xv. Lack of awareness of the framework for retirement benefits saving for diaspora workers;
xvi. Post-retirement medical benefits;
xvii. Short-term Employment Contracts; and
xviii. Labor migration;

3.1.1 Fragmentation of the Sector and Regulatory Framework

The retirement benefits sector architecture in Kenya has to an extent borrowed from the World Bank and ILO frameworks. The frameworks recommend a structured system based on several pillars and takes into consideration the pertinent issues necessary to the development and growth of the retirement benefits sector in Kenya. The provision of retirement benefits in Kenya shall be structured as follows:

a) **Zero Pillar: Social Assistance Programme/Old Age Pension**: this is a basic poverty alleviation state grant either universal means tested or affluence tested to all citizens above the age of 70 years a threshold funded from the tax revenue. The objective of the Zero Pillar, otherwise known as Older Persons Cash Transfer, is to avert old age poverty by ensuring that the elderly live within acceptable standards of living.

b) **Pillar 1: Mandatory Contribution Scheme**: Compulsory contributions to a defined contribution scheme (National Social Security Fund) for all employers and employees with an opt-out provision to qualifying retirement benefits schemes. Clear provisions should be provided to allow occupational schemes which are registered by the Retirement Benefits Authority and are fully compliant to receive the mandatory contributions.[18] The objective of the first pillar is to provide basic income in retirement to citizens who have had the opportunity to work.

c) **Pillar 2: Supplementary Schemes**: these are tax incentivized voluntary contributions to occupational retirement schemes which can also receive mandatory pillar 1 contributions. These also include the proposed reformed contributory Public Service Schemes for the National and County Governments as well as individual retirement benefits schemes. The mandatory contributions received by the supplementary schemes will be accorded similar protection as in the mandatory scheme.

3.1.1 Policy Issue

The retirement benefits sector is fragmented with its various schemes having evolved at different times; and schemes in the sector are established and operate in different uncoordinated laws with different designs, contributions rates, benefit structures and eligibility criteria.

Within the public sector, there are different schemes covering different categories of state and public officers. Some schemes in the public sector are non-contributory with benefits paid from the general tax revenues and other schemes are not subject to the provisions of the Retirement Benefits Act for regulation and supervision. Further, there are different pension accrual rates in different public sector pension schemes. For example, the under the Pensions Act, the pension accrual rate for pensionable civil servants is 1/480 while that of the Armed Forces under the Kenya Defence Forces Act is 1/400. The accrual rate for Members of Parliament pension under the Parliamentary Pensions Act is 1/300. While the Parliamentary Pensions scheme is partially contributory, the Civil Service and Armed Forces schemes are non-contributory and benefits are fully paid from the general tax revenues.

Besides funding and accrual rate differences, public sector schemes do not have uniform treatment of widows and widowers when paying dependant pensions. Similarly, the treatment of public officers on transfer of service is different from other officers in the event if death in

[18] This includes the tier 1 contributions as per the NSSF Act, 2013.

service. The definition of pensionable salary and eligibility for pensions vary from one public service scheme to the other.

While pension schemes of state corporations and some other government agencies have been converted to defined contribution schemes, the pension provided under the Pensions Act for civil servants and Parliamentary Pensions Act for members of parliament remain expensive defined benefits schemes. The establishment of schemes in the public sector do conform to any set of standards to stem the creation of schemes which are not in harmony with other schemes.

The private sector retirement benefits schemes established under trust law are about 1200 in number most with small membership and assets. The large number of schemes while useful in promoting coverage, they also compromise the effectiveness of supervision besides those small schemes losing out on the economies of scale on administration cost and on investment opportunities.

Fragmentation of the sector also results in differences in the treatment of people concerning retirement benefits. Owing to the lack of policy to coordinate the structure and approach of the sector, workers in the public sector are likely to demand establishment of their own schemes which may further fragment the sector in terms of legislation and schemes.

3.1.2 Overall Policy Statement

To review the current retirement benefits system and the applicable laws to ensure that the system is affordable, sustainable, equitable, predictable and subject to one regulatory and supervisory framework.

3.1.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other stakeholders will undertake the following –

i. Review and consolidate the legal framework under which public sector retirement benefits schemes operate to provide that public and state officers shall be eligible to either a pension or gratuity but not both benefits.
ii. Enhance and promote uniform standards to be applicable to all public sector retirement benefits schemes.
iii. Review and amend the Retirement Benefits Act so as to apply to all retirement benefits schemes in Kenya setting out the basic standards which every scheme shall comply with. Develop measures to promote establishment of viable schemes.

3.2 Low Retirement Benefits Coverage

3.2.1 Policy Issue

Kenya's population though still young, is gradually aging and the country lacks a comprehensive retirement benefits coverage thus exposing the elderly to old age poverty after retirement.

The retirement benefits system currently covers about 22% of the labour force which coverage is almost exclusively in the formal sector. Most workers employed in the informal sector are not enrolled in any retirement benefits arrangement. Although the NSSF scheme is mandatory, most of the employers in the informal sector and self-employed workers have neither registered nor contribute to the scheme.

The informal sector workers are excluded from the retirement benefits coverage due to a number of reasons including the following –

i. While the informal sector workers are not a homogenous group and a substantial number of them have potential to save for retirement, the existing retirement benefits products do not serve the needs of the informal sector workers.
ii. The existing stand-alone retirement benefits schemes for the informal sector workers are not popular among these workers because they do not address the short-term financial needs of informal sector workers besides being costly. The studies carried out on Mbao Scheme showed that the total administration costs averaged somewhere between 1.64% of year-end assets in 2016 to 2.02% in 2015.
iii. Except where mandated by respective legislation, the establishment of the occupational schemes is dependent on the willingness of employers to offer benefits to their employees. There are no compelling incentives for employers to set up schemes to cover their employees in the informal sector.
iv. The regulatory framework does not effectively support the establishment of informal sector workers taking into regard the unique dynamics and heterogeneous character of informal sector workers. The existing retirement benefits system was designed to provide coverage for the formal sector workers.

Besides the low coverage of the informal sector workers, some formal sector workers are equally uncovered because of the myopic view of old age risks by potential savers due to inadequate financial literacy, other socio-economic conditions, poor saving culture for retirement and voluntariness of the system to a large extent.

Further, enforcement of compliance under the National Social Security Act has not been effective resulting in under-coverage of workers who under the said Act are mandated to participate.

3.3 Overall Policy Statement

To undertake appropriate legislative and administrative reforms to extend coverage of the retirement benefits sector to formal and informal sector workers.

3.3.1 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and stakeholders will undertake the following-

i. Enhance mechanisms to support the existing national retirement savings schemes extend coverage to informal sector workers.

ii. Government to put in place measures towards establishment of an informal sector retirement benefits scheme to enhance coverage in the informal sector.
iii. Develop appropriate measures to promote existing informal sector schemes
iv. Provide for long term and short term products for all schemes.
v. Develop incentives to encourage employers to establish and sustain retirement benefit schemes;
vi. Develop measures, incentives and infrastructure to extend coverage to Kenyans in the Diaspora.
vii. Promote research into and consider viable options for extending retirement benefits coverage to various categories of self-employed persons and develop innovative products and services to encourage retirement savings.
viii. Undertake public education strategies on retirement benefits including financial literacy.

3.4 Investment of Retirement Benefits Funds

3.4.1 Policy Issue

Sustainability and adequacy of retirement benefit funds, particularly for DC schemes, largely depends on prudent investment of scheme assets. Prudent asset management has been supported by issuance and regular review of investment guidelines from time to time. The capital market has limited listed companies and actively traded shares thus limiting opportunities for diversification of scheme investments. However, as Kenya's capital market is on the growth path with development of more tradeable investment classes, the investment opportunities for pension schemes is expected to increase.

The number of retirement benefits schemes is about 1200 in the market most of which are very small schemes both in terms of membership and fund size. These small schemes do not benefit from the economies of scale in terms of investment opportunities and cost. There is lack of the practice of daily unitization of investment returns to individual accounts especially in investment of assets of informal sector schemes.

The current investment of scheme assets has remained traditional and has not adopted innovative ways of investing scheme funds to increase value within tolerable risks. The opportunity to invest scheme assets in domestic infrastructure projects has not been fully utilized.

3.4.2 Overall Policy Statement

To promote growth of retirement benefits funds through prudent investment activities.

3.4.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other stakeholders will undertake the following –

i. Develop long term investment classes through innovation and research to support diversification, security, liquidity of members' funds and enable schemes' participation in infrastructure investments to grow members' funds;
ii. Promote research and development of new investment vehicles in order to deepen the capital market;
iii. Put in place measures to enable scheme members make investment choices in their respective retirement benefits schemes.
iv. Promote information sharing amongst financial sector regulators relating to investments.

3.5 Inadequacy of Benefits at Retirement

3.5.1 Policy Issue

The average income replacement rate is below the minimum recommended rate by ILO of 40 percent. The low replacement rate is attributable to among other things; low priority given towards savings for retirement; early access to benefits before retirement; high administration costs; limited member investment choices; low contribution rates; short contribution periods arising from late entrance into the labour market and job retention; volatility on investments; high unemployment rate; as well as the scheme design parameters including pensionable emoluments and contribution rates. Other reasons for inadequate benefits include;

- Effects of migration from Defined Benefit (DB) to Defined Contribution (DC) schemes which resulted in the loss of guaranteed and targeted benefits in DB schemes.
- Lack of an appropriate policy response on conversion of DB Schemes to DC schemes such as requiring targeting benefits in DC schemes.
- Lack of a policy response to curb further migration of DC pension schemes to provident funds which compromises effective management of longevity risks.
- Inadequate motivation to save for retirement owing to; myopic view of old age income safety, inadequate tax incentives, limited capacity to save owing to current consumption needs and inadequate financial education.
- Lack of adequate policy and regulatory framework on benefit indexation resulting in value erosion due to inflation.

3.5.2 Overall Policy Statement

To introduce measures for continuous improvement of income replacement rate, incentives and administrative activities to promote consumption smoothing into retirement years by members of schemes

3.5.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other stakeholders will undertake the following –

i. Review the regulatory framework and introduce measures to enable benefits targeting in defined contribution schemes but without guarantees;

ii. Introduce measures to discourage provident funds unless the lump sums are used to buy annuities after retirement;

iii. Implement measures to introduce preservation of benefits and discourage benefits access when scheme members change employers;

iv. Promote and encourage additional voluntary contributions;

v. Encourage scheme management that minimizes schemes operating costs in order to grow members' retirement benefits savings.

3.6 Management of Payout Phase

3.6.1 Policy Issue

The benefits payable out of retirement benefits scheme include; withdrawal benefits, early retirement benefits, emigration benefits, medical benefits, normal retirement benefits andlate retirement benefits. These benefits can be accessed through: lump sum payments, primary annuities, secondary annuities, income drawdown, minor beneficiary funds and direct payment to house vendors.

Retirement benefits payout channels have become increasingly complex with members facing a wide choice of products on limited information and understanding. The regulatory framework regarding the management of payout phase requires clarity and simplicity. Further, funds established and operating in the market to hold and pay benefits on behalf of minors are unregulated.

Owing to expected further industry reforms requiring that schemes, especially informal sector schemes, to establish sub-funds to provide a holistic financial solution to informal sector workers in terms of short-term and long-term needs, the pay-out phase products are expected to get even more complex.

3.6.2 Overall Policy Statement

To review the current products at the payout phase of retirement benefits schemes with a view to making them simple, clearly understood and regulate some pay out phase products which are unregulated in the market.

3.6.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other stakeholders will undertake the following-

i. Promote innovation on payout products and anchor them in the regulatory framework.

ii. Develop a framework for the protection of minor trust funds.

iii. Develop and promote easy access to financial information including setting up of information desks,Centre's and conduct member financial education.

3.7 Portability of Benefits

3.7.1 Policy Issue

Labour mobility within and between the private and public sector is common. However, portability of benefits is limited across schemes due to differing scheme designs, regulatory framework, delay of transfer of management and administration data, and the nature of funding.

Members of retirement benefits schemes should be able to have their benefits transferred from one scheme to another upon changing jobs or exiting from employment. While this process should be seamless, this has not been the case in some schemes. Transfer of administration and management data is sometimes delayed owing to delayed portability.

3.7.2 Overall Policy Statement

To provide mechanisms and a regulatory framework which will facilitate portability of benefits between schemes in the country.

3.7.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority will undertake to do the following-

i. Develop a legal and regulatory framework to enhance portability of retirement benefits across schemes

ii. Amend the Retirement Benefits Act to provide for immediate vesting of accrued benefits and contributions of members of retirement benefits schemes.

3.8 Reciprocal Agreements

3.8.1 Policy Issue

The labour mobility across countries has also become common globally. Kenyans in the diaspora including EAC region who contribute to the various social security services in their host countries are not be able to transfer their benefits upon return to Kenya. On expiry of their employment contracts, portability of retirement benefits savings becomes a challenge. Across border portability is hindered by, among other factors –

- Different designs of pension systems within the region and other countries;
- Taxation of pension schemes varies from one country to another and lack of double taxation agreements;
- Different regulatory and investment environment of the retirement benefits sector within the region which discourages regional portability of benefits;
- Lack of reciprocal agreements between regional countries and other countries;
- Lack of totalization of contribution periods (the totalized coverage period is taken into account when benefit is being determined).
- Lack of reciprocal agreements in other countries to facilitate and promote portability of retirement benefits across borders.

According to the Diaspora Investor Survey Country Report[19] there is considerable interest in saving and investing in Kenya. Despite majority of the Kenyan diaspora expressing interest in investing in Kenya, some do not have any form of saving or investment in the country. This mismatch suggests that there is a gap between investment interest and practice. There are barriers to saving and investment by Kenyan diaspora which require a solution to close the gap. Some of the barriers to diaspora investment include a weak legal framework, inappropriate tax policies, insecure financial system, high transaction costs, etc. Over 31% of Kenyan diaspora have an interest to invest in the retirement benefits sector.

A framework that would enable transfer of benefits by a Kenyan in Diaspora to a registered scheme in Kenya or transferring benefits abroad is lacking.

3.8.2 Overall Policy Statement

To provide a framework and enter into international and bilateral agreements to promote portability of retirement benefits savings.

3.8.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other stakeholders will undertake the following –

i. To facilitate portability of retirement benefits across borders;

ii. In particular, negotiate with the East African Community partner states to set up a framework for portability of retirement benefits savings regionally including harmonization of tax treatment of benefits transferred from one EAC member state to another

iii. Promote programmes on the awareness on members' rights and obligations on various agreements.

[19] Understanding the Investment Potential of the Kenyan Diaspora; The Commonwealth Secretariat, 2018

3.9 Limited Coordination of the Retirement Benefits Sector Stakeholders

3.9.1 Policy Issue

The regulatory framework of the retirement benefits sector is fragmented and not well coordinated making it difficult to achieve a common and shared goal for the sector. There are overlapping retirement benefits products offered by other subsectors within the financial sector which inhibit adequate supervision. Besides, various categories of schemes have different governing and reporting structures. The various players in the sectors are governed by different regulatory bodies and fall under different Ministries. Currently, financial sector regulators collaborate on various areas under a memorandum of understanding (MOU) which covers information sharing, capacity building, joint supervision, financial literacy and public education, among others. However, this is not legally binding and largely depends on the goodwill of the parties.

There are also other various private sector key stakeholders in the retirement benefits sector who are organized as associations to offer specific services in the industry. There is not a framework to coordinate the activities and services of these stakeholders in the development of the sector.

Lack of coordination and recognition of these organized industry stakeholders results in non-appreciation of their views, a feeling of being left out in legal and policy developments for the industry and hence creating industry conflict with the regulator or policy makers. Further, the views of various associations in the industry are often conflicted on same issues due to business interests in the sector.

3.9.2 Overall Policy Statement

To develop measures to enhance coordination and information sharing between the financial sector regulators and stakeholders in the retirement benefits sector without impeding the statutory obligations of the regulator.

3.9.3 Policy Strategies

i. Promote institutional arrangement to facilitate coordination and information sharing

ii. Review the various legislation in the financial sector to ensure harmony in the retirement benefits sector.

iii. Consult stakeholders when considering any changes in the regulatory framework.

3.10 Incentives

3.10.1 Policy Issue

Taxation plays a key role in enhancing retirement benefits savings and the government from time to time has offered tax incentives. Tax incentives need to be regularly reviewed to take into consideration the dynamic economic situation, mobility beyond borders and the labour market. Stakeholders are not aware of some of the tax incentives the government provides to the retirement benefits sector because of complexity of pension taxation procedures and unpredictability of some of the incentives provided. Additionally, incentives for micro-pensions under the Income Tax Act are unclear.

3.10.2 Overall Policy Statement

To adopt incentives which support the development of the retirement benefits sector.

3.10.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other relevant stakeholders will undertake the following:

i. Regularly review the taxation framework of retirement benefits schemes to provide incentives for growth of the sector, simplify the tax procedures applicable to retirement benefits schemes and ensure equity in the application of the incentives.

ii. Owing to its uniqueness consider specific taxation rules applicable to informal sector schemes to encourage participation and savings by informal sector workers.

iii. Ensure broader consultations when negotiating bilateral and multilateral agreements in order to avoid double taxation.

iv. Carry out research to introduce suitable incentives to spur growth in the retirement benefits sector.

v. Enhance awareness on taxes applicable within the retirement benefits sector.

3.11 Consumer Protection

3.11.1 Policy Issue

Currently, there is low awareness among members of schemes with regard to their benefits and rights including complaint handling procedure. There is need to develop consumer protection mechanisms including promoting financial literacy and thereby protecting stakeholders. Regardless of the various types of regulatory and supervisory structures adopted, the pension supervisors have an important role in maintaining and enhancing consumer protection.

3.11.2 Overall Policy Statement

To develop and implement consumer protection measures for the retirement benefits sector including embracing and enforcing market-conduct principles

3.11.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other stakeholders will undertake the following –

i. Develop a code of consumer protection standards applicable in the financial sector.
ii. Develop a legal framework to protect members, beneficiaries' and employers' interests.
iii. Enhance consumer education and awareness campaigns.
iv. Introduce statutory measures that will treat members' accrued benefits and unremitted contributions as a secured benefit in case of insolvency of the sponsor
v. Promote transparency, fair competition, working and business practices by service providers including consistent legislative frameworks on consumer transactions and agreements.
vi. Enable development of suitable products and services to meet consumer needs
vii. Educate members on consumer protection rights, dispute resolution and matters retirement to enable them make informed choices on matters pertaining to their scheme and benefits.

3.12 Governance

3.12.1 Policy Issue

Good governance in retirement benefits schemes is anchored on adequate controls, regulations, accountability and proper supervision. Good governance can bring indirect benefit to retirement benefits fund. The basic goal of scheme governance is to minimize the potential agency problems and conflicts of interest that can arise between scheme members and those responsible for the management of the scheme and which can adversely affect the security of the scheme fund and benefits. Good governance also spares the scheme the cost of over regulation. Over the past, many schemes have had various governance issues ranging from fraud, excessive administrative cost to improper institutional arrangement.

The retirement benefits sector lacks clear governance principles that cut across private and public schemes, thus leaving room for governance deficits which expose schemes to underperformance and reduced confidence in the sector.

3.12.2 Overall Policy Statement

To review the current governance framework of the retirement benefits schemes with a view to develop a framework that ensures transparent, effective and efficient management of schemes.

3.12.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other stakeholders will undertake the following –

i. Determine and clearly provide for governance principles in the guidelines to include but not limited to the following –
   - Fiduciary responsibility
   - Governance framework
   - Roles and responsibilities
   - Performance monitoring
   - Knowledge and skills
   - Governance information
   - Risk management
   - Oversight and compliance
   - Transparency and accountability
   - Code of conduct and conflict of interest
   - Governance review

ii. Define the roles of the parties involved in the governance, management and administration of the scheme in a governance code.

iii. Review the existing regulatory framework relating to governance to incorporate governance principles and improve enforceability of governance principles.

3.13 Leakages and Preservation

3.13.1 Policy Issue

Leakages in pension benefits, relate to access to retirement savings for reasons other than retirement. These leakages arise in form of withdrawal upon cessation of service from the sponsor, job migration, ill-health benefits, , access by banks in the event of default in mortgage repayment among others. These benefit leakages contribute to benefits inadequacy in retirement and compromises the core objective of the retirement benefits sector.

There are two conflicting goals which need to be considered in determining how to address the challenge posed by early withdrawal of benefits from the scheme. Those goals are:

i. The need to preserve benefits in the scheme until retirement

ii. Allowing access to those who under difficult circumstances need their funds, which may encourage participation and contribution to schemes.

3.13.2 Overall Policy Statement

To review the current framework with a view to limiting early access of retirement benefits, providing for short term financial needs and maintaining the core objective of the retirement benefits sector of providing adequate retirement benefits in retirement.

3.13.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other stakeholders will undertake the following –

i. Expand the existing social security products to all citizens.

ii. Review the legal framework to introduce sub-accounts in retirement benefits schemes besides retirement savings to address short term financial needs of scheme members.

iii. Disallow in the law payment of emigration benefits to scheme members migrating within East African Community because of the Common Market Protocol which permits labour mobility.

3.14 Dispute Resolution

3.14.1 Policy Issue

The current dispute resolution process in the retirement benefits sector includes determination of complaints filed with the Retirement Benefits Authority. The Authority is required to make a decision on the complaint. A party dissatisfied with the decision of the Authority may file an appeal against the decision at the Retirement Benefits Appeals Tribunal. The judgment of the Tribunal is final unless a judicial review against the judgment is filed at the High Court to challenge the hearing process at the Tribunal.

The dispute resolution process was established to provide an expeditious and a cost effective means of resolving disputes primarily between scheme members and the trustees of their schemes. The process was intended to assist members who felt they had been unfairly treated by their schemes and to provide appropriate remedies.

The disputes which are mostly handled by the tribunal relate to benefit calculation in defined benefit schemes. Most of these complaints are triggered by amendments of the scheme rules or conversion of defined benefit schemes to defined contribution schemes.

There are challenges under the current dispute resolution mechanism which affect fair management of pension disputes. Some of those challenges include –

i. Under section 46, the Chief Executive Officer of the Retirement Benefits Authority is mandated to investigate, accord a hearing of both parties and determine a complaint filed with the RBA. Where a complaint arises from a previous supervisory function of RBA (e.g. approval of an amendment of the trust deed which is the subject of the dispute) the complainant may perceive RBA as biased in investigating and deciding on the complaint. This occasions dissatisfaction of decisions of RBA under section 46 triggering a number of appeals at the Retirement Benefits Appeals Tribunal and delaying the payment of benefits to retirees.

ii. The period within which the Chief Executive Officer should investigate and determine a complaint is not provided for in the law and some complaints take long to be determined.

iii. Although the process of filing complaints and appeals is simple and the rules of procedure for hearing of appeals is also simplified, over time the procedures have become complicated due to lawyers' creativity and hence defeating the original intention of a simplified dispute resolution process.

iv. The law is restrictive to the effect that it allows the appeals to be carried out to the Appeals Tribunal within thirty (30) days of the decision of the Chief Executive Officer of RBA.

v. Under section 48 of the Retirement Benefits Act persons aggrieved by the decision of the Chief Executive Officer made under section 46 of the Act have a right to file an appeal at the Retirement Benefits Appeals Tribunal. Rule 8 of the Retirement Benefits (Tribunal) Rules, 2000 provides that the Chief Executive Officer who made the decision which is appealed against, is made the respondent at the appeal. The judgement of the Tribunal is made against the Chief Executive officer making the execution of the judgment complicated because the scheme which triggered the dispute is not a party at the appeal.

3.14.2 Overall Policy Statement

To review the dispute resolution process and provide for a simple, fair, expeditious and a cost-effective means of resolving disputes primarily between scheme members and retirement benefits schemes.

3.14.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other stakeholders will undertake the following –

i. Carry out a study of existing dispute resolution processes in other jurisdictions and develop a regulatory framework well aligned with the Constitution to provide for a fair and expeditious retirement benefits disputes.

ii. Review the Tribunal Rules to –

    a. Simplify the procedure of filing and determining complaints and appeals.

    b. Provide for the period within which complaints should be determined by the Chief Executive Officer of the Authority

    c. Extend the period within which an appeal may be filed at the Retirement Benefits Appeals Tribunal

    d. Determine the right parties or litigants of an appeal at the Retirement Benefits Appeals Tribunal

iii. Develop framework to guide schemes in adopting alternative dispute resolutions mechanisms in the scheme rules.

iv. Educate scheme members about the procedures of resolving disputes between parties in a retirement benefits scheme.

v. The Judicial Service Commission under its constitutional mandate to appoint members of the Retirement Benefits Appeals Tribunal and take charge of the Tribunal.

vi. Review the current structure of the Dispute Resolution Mechanisms in the Retirement Benefits Sector to ensure independence, fairness, and expeditious resolution of disputes in the sector.

3.15 ICT Leveraging and Fintech Solutions

3.15.1 Policy Issue

Financial technology ("FinTech") and related technological developments such as RegTech (using technology to facilitate regulatory compliance) have the potential to reshape retirement benefits design and delivery. Individuals are increasingly required to make complex choices about their retirement savings, and consumer engagement with financial services in general is becoming more digital. FinTech can improve the ways in which scheme providers interact with individual members such as:

i. enhancing communication techniques;

ii. encouraging greater engagement;

iii. digital disclosure can reduce compliance costs;

iv. enabling robo-advice which can make financial planning more accessible to members.

New technologies are also relevant to retirement benefits scheme providers' internal processes, including product design, transaction processing, risk management and compliance. The improvements in efficiency that technology allows can also translate into lower costs both for scheme providers and for members.

There is limited use of ICT and Financial technologies (Fintech) in the retirement benefits sector, leading to inefficiencies, low coverage and high cost of providing services to members.

For improved design and delivery of retirement benefits services, there is need to embrace modern technology by schemes, the regulator and service providers. Leveraging technology will replace manual operation, enable digital enrollment of members, access to member information such as accrued benefits more regularly, updating of member records, contributions, member communication and benefit payments.

3.15.2 Overall Policy Statement

To review the supervisory framework and incorporate the use of emerging technologies, to improve the design and delivery of retirement benefits sector.

3.15.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other stakeholders will undertake the following –

i. To adopt a suitable ICT framework including FinTech and RegTech solutions for the retirement benefits sector.
ii. Promote use of common ICT Framework for the informal sector schemes.

3.16 Inclusion of Kenyans in Diaspora

3.16.1 Policy Issue

There is lack of awareness on the existing framework to facilitate the participation of Kenyans in diaspora in the local retirement benefits schemes. There are products within the retirement benefits sector which are designed to accommodate Kenyans working in diaspora to save for their retirement in retirement benefits schemes registered in Kenya.

3.16.2 Overall Policy Statement

Facilitate awareness of the existing framework of saving for retirement in Kenya for Kenyans working in diaspora.

3.16.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other stakeholders will undertake the following –

i. To collaborate with relevant stakeholders in creating awareness for Kenyans in the Diaspora to participate in Retirement Benefit Schemes in Kenya.
ii. To develop an appropriate legal regime to protect the interests of Kenyans in Diaspora savings in Retirement Benefits Schemes.

3.17 Short Term Employment Contracts

3.17.1 Policy Issue

There is a category in the workforce holding short term contracts and shifting employment from one employer to another after short engagements. Owing to employment challenges, there are a number of workers who secure employment late in their active life. The net effect of short-term contracts and entering the formal employment late is that the period of saving for retirement is shortened resulting in inadequate retirement savings.

3.17.2 Overall Policy Statement

Create awareness and innovate a framework that covers short term contract workers in the Retirement Benefits Sector.

3.17.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other stakeholders will undertake the following –

i. To understand the evolving labour dynamics and intergenerational worldview and carry out informed awareness in retirement saving among young people
ii. Carry out continuous research and studies to understand the current generation of young people and their priorities in saving for retirement

3.18 Post-Retirement Medical Benefits

3.18.1 Policy Issue

Upon attaining retirement most members of schemes lose their medical insurance offered by respective previous employers. Medical insurance providers are often reluctant to provide medical insurance to retirees or if they provide, the premium is often expensive. With advancement of age, most retires health start to deteriorate exposing them to expensive medical services. Schemes lack adequate structures to provide post-retirement medical products for the ageing population.

3.18.2 Overall Policy Statement

Create awareness and promote contributions towards saving for post-retirement medical cover.

3.18.3 Policy Strategies

The Government in consultation with the Retirement Benefits Authority and other stakeholders will undertake the following: –

i. To enhance the framework regulating savings for post-retirement medical benefits in retirement benefits schemes.
ii. To educate members about the benefits of saving for post-retirement medical cover.
iii. To review the current framework on voluntary contributions towards post-retirement medical fund with a view to promote mandatory contributions by both members and sponsors.

4 CHAPTER 4 – POLICY IMPLICATIONS

The policy identifies a number of issues relating to various thematic areas and the policy strategic statements intended to address the gaps identified. The policy strategies will be implemented in the manner prescribed in the implementation matrix of this policy. The implementation of this policy has legal, institutional and financial implications. Below is a table summarizing the implication of the policy with regard to each thematic area.

Table 7: Policy implications on each thematic area

Theme	Objective	Implications		
Fragmentation of the sector	To review the current retirement benefits system and the applicable laws to ensure that the system is affordable, sustainable, equitable, predictable and subject to one regulatory and supervisory framework.	***Legal***	***Institutional***	***Financial***
		Amendment of the Retirement Benefits Act, the Pensions Act and other legislation affecting public schemes	None	Budget for – - the consultant to review the legislation and process the amendments - promotional activities on viable schemes
Low Coverage	To undertake appropriate legislative and administrative reforms to extend coverage of the retirement benefits sector to formal and informal sector workers.	New legislative enactment, Amendments of Retirement Benefits Act and publication of Regulations	Institution to host pension administration computer platform	Budget for – - Legislative amendments - Procurement of pension platform - Promotional activities - Cost of incentives
Investments of Funds	To promote growth of retirement benefits funds	Amendments of investment regulations to	Financial Sector Regulators to share	Budget for – - Research for long term and

	through prudent investment activities.	accommodate member choice	investment information	new investment vehicles
Benefits Inadequacy	To introduce measures for continuous improvement of income replacement rate, incentives and administrative activities to promote consumption smoothing into retirement years by members of schemes	Amendments of the RBA Regulations to enable DC schemes benefit targeting, preservation and discouraging provident funds	None	Budget for – - Regulations amendments process - Promotional activities
Management of payout phase	To review the current products at the payout phase with a view to making them simple, clearly understood and regulate some payout products currently unregulated	Legislative amendments to protect minor trust funds	None	Budget for – - Promotion of innovation of payout products - Promotion of access to financial information
Portability of Benefits	To provide mechanisms and a regulatory framework which will facilitate portability of benefits between schemes in the country.	Amendment of RB Act & Regulations to enhance portability and enable immediate vesting	None	Budget for – - Amendment process of legislation
Reciprocal Agreements	To provide a framework and	None	Government to commence	- Budget for EAC and

	enter into international and bilateral agreements to promote portability of retirement benefits savings.		negotiations with other countries to enable benefit portability	international negotiations - Awareness campaigns about international agreements
Limited Coordination among stakeholders	To develop measures to enhance coordination and information sharing between the financial sector regulators and stakeholders in the retirement benefits sector without impeding the statutory obligations of the regulator.	Review financial sector laws to enhance harmonization	Enhance coordination between Financial Sector Regulators and stakeholders	Budget for – - Consultant to review financial sector legislation
Incentives	To adopt incentives which support the development of the retirement benefits sector.	Amend Income Tax Act to provide tax incentives	Government negotiations with other countries to avoid double taxation	Budget for – - Negotiations to avoid double taxation - Research on suitable incentives - Awareness campaigns on tax application to schemes
Consumer Protection	To develop and implement consumer protection measures for the	Amend insolvency laws to protect unremitted	None	Budget for – - Developing a code of standards of

	retirement benefits sector including embracing and enforcing market-conduct principles	contributions as unsecured benefit		consumer protection - Consumer protection awareness campaigns
Governance	To review the current governance framework of the retirement benefits schemes with a view to develop a framework that ensures transparent, effective and efficient management of schemes	Amend RBA Regulations to incorporate governance principles and role of parties in governance	None	Budget for amendment process of the RBA Regulations
Leakages and Preservation	To review the current framework with a view to limiting early access of retirement benefits, providing for short term financial needs and maintaining the core objective of the retirement benefits sector of providing adequate retirement benefits in retirement	Amend the RB Act to introduce sub-accounts in schemes and disallow emigration benefits those migrating within EAC	None	Budget for – - Amendment process - Cost of providing extra social security programs

Dispute Resolution	To review the dispute resolution process and provide for a simple, fair, expeditious and a cost-effective means of resolving disputes primarily between scheme members and retirement benefits schemes.	Amend the Tribunal Rules to simplify the procedure, extend period to file appeals and determine right parties at the appeal.	Negotiation between MoF and Judiciary to take over the functions of the Tribunal	Budget for – - Research on suitable pension dispute resolution process for Kenya - Amendment process - Awareness campaign on dispute resolution process, and - Promotion of Alternative Dispute Resolutions
ICT Leveraging	To review the supervisory framework and incorporate the use of emerging technologies, to improve the design and delivery of retirement benefits sector.	None	None	Budget for – - Adoption of ICT for the sector including informal sector
Inclusion of Kenyans in Diaspora	Facilitate awareness of the existing framework of savings for retirement in Kenya for Kenyans working in diaspora.	Amend the RB Act to protect interests of Kenyans in Diaspora investing in schemes	None	Budget for – - Creation of awareness in collaboration with stakeholders

Short term employment contracts	Create awareness and innovate a framework that covers short term contract workers in the Retirement Benefits sector	None	None	Budget for – - Informed awareness campaigns to the youth on retirement saving - Research on youth culture in saving for retirement
Post-retirement medical benefits	Create awareness and promote contributions towards saving for post-retirement medical cover.	Amend RBA legislation to enhance the post-retirement medical benefits	None	Budget for – - Amendment process - Awareness campaign on the importance of post-retirement medical cover

The bulk of the implications of the policy relate to legislative changes of the Retirement Benefits Act and other laws relating to retirement benefit sector. The policy does not have major institutional implications except some consultation required between government departments and stakeholders to enhance the development of the retirement benefits sector. There are financial implications in legislative processes in Kenya especially when the services of consultants may be required to review a legislation, public participation and consultative meetings. Owing to research and awareness campaigns required in addressing gaps in respect of some thematic areas, the responsible institutions will be required to make financial provisions to undertake those activities.

5 CHAPTER 5 – MONITORING, EVALUATION AND REVIEW OF POLICY

5.1 Coordination, Implementation, Monitoring and Evaluation

5.1.1 Coordination and Implementation

The National Treasury and Economic Planning is charged with the mandate to coordinate the implementation of this policy. Section 5(d) of the Retirement Benefits Act mandates the Retirement Benefits Authority to implement all government policies relating to retirement benefits. However, owing to the wide implication of the policy, the implementation process will involve other ministries, government departments and agencies, county governments in collaboration with retirement benefits schemes, service providers and relevant stakeholders.

The Retirement Benefits Authority shall be responsible for effective coordination and participation of all stakeholders in the implementation of this policy.

One of the major challenges facing the retirement benefits sector in Kenya is the fragmentation of institutions and functions. This has led to duplication and inconsistencies in the operation and implementation in the various interventions. The implementation of proposals in this policy may require major reforms while some of the reforms may be short term.

Legislative, regulatory and administrative infrastructure will be paramount to drive the reforms. There is therefore need to streamline and coordinate the various functions being undertaken by the various social security institutions. There is also need for an effective collaboration and partnership with the various stakeholders at both the national and county level. Further, there is a need for urgent harmonization of the various social security interventions in the country and align them with best practices and international standards.

5.1.1.1 Roles and Responsibilities

5.1.1.1.1 The National Treasury

The National Treasury shall, among other functions, be responsible for the following:

i. Policy development and coordination of all matters relating to retirement benefits in Kenya.

ii. Issue administrative measures and prepare legislative bills for enactment by Parliament towards implementation of the retirement benefits policy.

iii. Communicate the policy to all ministries, government departments and stakeholders.

iv. Provide necessary budget towards the implementation of the policy.

v. Undertake relevant studies and research relating to retirement benefits to inform further development of the sector.

vi. Monitoring and Evaluation.

5.1.1.1.2 Ministry Responsible for Labour and Social Protection

The Ministry responsible for Labour and Social Protection shall among other functions, be responsible for the following:

i. Development and implementation of social security programmes intended to support the realization of the core objectives of the retirement benefits sector.

ii. Monitory the governance and performance of the National Social Security Fund to ensure coverage of all formal sector workers as required by the relevant legislation.

5.1.1.1.3 Retirement Benefits Authority

The Retirement Benefits Authority shall among other functions, be responsible for the following:

i. Coordinate the implementation of the retirement benefits policy.

ii. Advise the National Treasury on the required policy reviews and legislative reforms towards better implementation of the policy and related laws.

iii. Develop awareness programmes to promote the policy among stakeholders.

iv. Undertake industry oversight and quality assurance of the services rendered to scheme members under the policy.

v. Provide monitoring and evaluation reports to the National Treasury on policy implementation.

vi. Undertake relevant studies and research of innovative products and governance in the schemes to promote development of the sector.

5.1.1.1.4 National Social Security Fund

The National Social Security Fund shall among other functions be responsible for the following:

i. Implement the retirement benefits policy as it affects the national mandatory scheme

ii. Develop administrative procedures to enhance enforcement regarding coverage of all formal employees as required under the National Social Security Act, 2013.

iii. Develop appropriate products to extend coverage to informal sector schemes

5.1.1.1.5 County Governments

County Governments shall be responsible for the following:

i. Mainstream the issues of the policy at the County public service.

ii. Develop county policies and legislation to provide for retirement benefits for county public service officers in line with this policy.

iii. Create awareness of the policy to county public service officers.

5.1.1.1.6 Industry Associations and Retirement Benefits Schemes

The various industry associations shall be responsible for the following:

i. In collaboration with the Retirement Benefits Authority under training of the contents of the policy to scheme members and other interested parties of schemes.

ii. Review scheme constitutive documents to comply with resultant laws following policy implementation.

iii. Engage regularly with the Authority on the implementation of the policy and sector development.

iv. Promote the interests of scheme members and service providers in the sector.

5.1.1.1.7 Other Stakeholders

other Stakeholders shall be responsible for the following:

i. Parliament will exercise its oversight and legislative role in the implementation of this policy.

ii. Judiciary will exercise its constitutional mandate in clarifying roles, settling disputes, giving advisory opinions and interpreting any questions arising from this policy.

iii. Constitutional Commissions and Independent Offices; They will provide guidance and leadership in the implementation of this policy.

iv. Intergovernmental Relations Technical Committee (IGRTC); The IGRTC will implement the decisions of the Summit and the Council in relation to this policy.

v. Non-state actors will play roles in the provision of advocacy, civic education, and community mobilization in relation to the implementation of this policy

5.1.2 Monitoring and Evaluation

Monitoring and evaluation is integral to the implementation of this policy. A Monitoring and Evaluation (M&E) framework shall be put in place to monitor the progress and assess the level of attainment of specific targets. The M&E framework will include key performance indicators (KPI), and a performance tracking system for measuring achievements of milestones and targets on a periodic basis.

The responsibility for monitoring and evaluation of the National Retirement Benefits Policy implementation shall be vested with the retirement benefits regulator/supervisor. For effective reporting, a comprehensive communication strategy needs to be put in place.

5.2 Policy Review

This policy will be reviewed every five (5) years in response to the needs, demands and the dynamics in the retirement benefits sector.

ANNEX 1: IMPLEMENTATION MATRIX

Policy Issue	Objective	Strategies	Performance Indicator	Implementing Institution	Timeframe	Budget
Fragmentation of the sector and the regulatory framework	To strengthen legal and regulatory framework	Review the legal framework for public sector schemes to limit eligible public or state officers to either pension or gratuity	Proposals for Amendment of Legislation Reviewed and Harmonized Laws	TNT, RBA, Parliament, OAG&DOJ, CoG	December 2023	50,000,000
		Enhance and Promote Uniform Standards in the Public Sector Schemes	Amended Retirement Benefits Act, Pensions Act, Defence Forces Act and Parliamentary Pensions Act.	RBA, TNT, Parliamentary Service Commission (PSC), Defence Council, OAG & DOJ, CoG	December 2023	10,000,000
		Enhance supervision to all schemes and promote basic standards for compliance by all schemes.	Amended Retirement Benefits Act and all legislation establishing public sector schemes	RBA, TNT, Parliament, OAG & DOJ, CoG	December 2023	10,000,000

Low Retirement Benefits Coverage	To undertake legislative and administrative reforms to extend coverage to formal and informal sector	Support existing national schemes to extend coverage to informal sector workers.	Number of products developed to encourage informal sector workers inclusion in retirement benefits sector	RBA, NSSF, FKE, COTU, ARBS, TUC, Kenya National Federation of Jua Kali Association, NCPD, Min of ICT	December 2023	50,000,000
		Government to provide an enabling infrastructure to support informal sector workers participation in retirement saving	A procured and implemented ICT infrastructure	TNT, RBA,	June 30, 2023	50,000,000
		Promote awareness amongst informal sector workers to participate in retirement saving.	Awareness campaign programs developed and implemented	RBA, NSSF, TNT, FKE, COTU, ARBS, TUC, Kenya National Federation of Jua Kali Association, NCPD, Min of ICT	December 2023	10,000,000
		Provide for measures to promote existing informal sector schemes.	Level of awareness among informal sector workers of	RBA, TNT, ARBS, CoG, NSSF, COTU, TUC, Federation of Jua Kali Association	June 2023	10,000,000

			existing informal sector schemes			
		Provide for long term and short term products for all schemes.	Amendment of the Retirement Benefits Act and Regulations.	TNT, RBA, NSSF, ARBS, Schemes, IRA, AKI, Scheme service providers	December 2023	10,000,000
		Provide employer incentives for establishment of schemes locally and for people in the diaspora.	1. Amendment of tax laws to incentivize scheme establishment 2. Implementation of other invectives to provide sector growth establishment Amendment of the Retirement Benefits Act and Regulations.	TNT, RBA, FKE, KRA, Min of Labour, PSC.	April 2024	100,000,000

		Promote financial literacy and retirement savings awareness.	1. Enhanced education curriculum to include financial education in basic education 2. Implemented Financial literacy programs to targeted groups	KICD, RBA, Schemes, Industry Associations, COFEK, FKE.	December 2025	15,000,000
Investment of Retirement Benefit Funds	To promote growth of retirement benefits funds through prudent investment activities	Promote long term and prudent investments.	Amendments to the Investment Guidelines	TNT, RBA, CMA, Parliament, OAG&DOJ, ARBS, FMA, CoG, Schemes, APTAK	June 2023	5,000,000
		Promote research and development of new investment vehicles in order to deepen the capital market	Carried out research on new investment opportunities On Investments	TNT, RBA, CMA, FMA, NSSF, FKE, APTAK AKI	December 2023	15,000,000

		Develop measures to guide scheme members make investment choices.	Amendment of RBA Investment Guidelines, Developed relevant guidelines and manuals on investment choices.	TNT, RBA, FMA, Schemes, APTAK, ARBS, KRA, CMA	June 2023	2,000,000
		Promote information sharing amongst financial sector regulators relating to investments.	Developed information sharing Agreements	FRC, CAK, CBK, CMA, IRA, SASRA	December 2024	3,000,000
Inadequacy of Benefits at Retirement	Promote income replacement rate incentives and administrative activities by members of schemes	Review the regulatory framework for benefits targeting in defined contribution schemes but without guarantees.	Amended Retirement Benefits Act and Regulations	TNT, RBA Parliament, ARBS, APTAK, CoG, AG&DOJ	December 2025	5,000,000
		Discourage provident funds unless the lump sums are	Amended Retirement	TNT, RBA Parliament, ARBS,	December 2023	50,000,000

		used to buy annuities after retirement.	Benefits Act and Regulations	APTAK, CoG, AG&DOJ		
		Iintroduce preservation of benefits and discourage benefits access when scheme members change employers	Amended Retirement Benefits Act and Regulations	TNT, RBA Parliament, ARBS, APTAK, CoG, AG&DOJ	December 2023	50,000,000
		Promote and encourage additional voluntary contributions	Developed awareness manuals and implemented activities to promote the need for additional voluntary contributions.	RBA, ARBS, APRAK, CoG, Schemes, FKE, Federation of Jua Kali Association	December 2023	10,000,000
		Encourage scheme management that minimizes schemes operating costs	1. Implementation of Good Governance Guidelines in schemes 2. Regular monitoring of value for money	RBA, ARBS, NSSF, APTAK, FMA, Custodians Forum, Schemes, CoG, FMA, APTAK, Pension Schemes, Schemes	December 2023	5,000,000

			of services rendered to schemes	Custodians Forum, ARBS		
Management of Pay-out Phase	Review, simplify and regulate products at the payout phase.	Promote innovation on payout products and anchor them in the regulatory framework.	1. Increased pay-out phase products 2. Amended Retirement Benefits Act and Regulations to regulate all pay-out phase products	TNT, RBA, NSSF, ARBS, APTAK, Parliament, AG&DOJ, Schemes, IRA, AKI	December 2024	15,000,000
		Develop a framework for the protection of minor trust funds.	Amended Retirement Benefits Act and Regulations to regulate minors' trust funds Reviewed regulations on minor trust funds	TNT, RBA, NSSF, Parliament, AG&DOJ, CoG, ARBS, APTAK, Schemes, IRA, AKI	June 2023	10,000,000

		Develop and promote easy access to financial information	Established Information desks and centres	TNT, RBA, CAK, CoG, Schemes, CMA, IRA, ICTA	December 2023	10,000,000
Portability of Benefits	To provide mechanisms and a regulatory framework which will facilitate portability of benefits between schemes in the country.	Amendment of Retirement Benefits Regulations on portability	Amended Regulations	TNT, RBA, OAG&DOJ, Parliament, CoG, NSSF, ARBS, Schemes, APTAK	December 2023	10,000,000
		Amend the Retirement Benefits Act to provide for immediate vesting of accrued benefits and contributions of scheme members	Amended Retirement Benefits Act Regulations	TNT, RBA, OAG&DOJ, Parliament, CoG, NSSF, ARBS, Schemes, APTAK	December 2024	5,000,000
Reciprocal Agreements	To provide a framework and enter into international and bilateral agreements to promote portability	Facilitate portability of retirement benefits across borders.	Developed reciprocal agreements and MOUs	TNT, Min of Foreign Affairs, Min of EAC and Regional Development, Parliament, OAG&DOJ, RBA	December 2023	10,000,000

	of retirement benefits across borders	Develop a framework for portability of retirement benefits savings in the East African Community.	EAC Reciprocal agreements and MOUs.	TNT, Min of Foreign Affairs, Min of EAC and Regional Development, Parliament, OAG&DOJ, RBA		
		Promote programmes on the awareness on members' rights and obligations on various agreements.	Developed awareness materials and awareness activities on various agreements.	TNT, RBA, Min of Foreign Affairs, Min of EAC and Regional Development, ARBS, APTAK, AKI	December 2025	10,000,000
Limited Coordination of the Retirement Benefits Sector Stakeholders	To develop measures to enhance coordination and information sharing in the financial sector without impeding statutory obligations of the regulator.	Promote institutional arrangement to facilitate coordination and information sharing.	Developed MOUs on information sharing between stakeholders	RBA, CBK, IRA, CMA, SASRA, AKI, FMA, ARBS, CUSTODIANS FORUM, APTAK	December 2023	5,000,000
		Review the framework in the financial sector to ensure harmony in the retirement benefits sector.	Comprehensive review of financial sector laws and amended Laws and Regulations	TNT, RBA, CBK, IRA, CMA, SASRA, OAG&DOJ, Parliament, CoG, NSSF, ARBS, APTAK, AKI, Schemes	June 2024	15,000,000

Incentives	To adopt incentives which support the development of the retirement benefits sector.	Review the taxation framework to provide incentives and simplify the tax procedures for retirement benefits schemes.	Amended of tax laws related to retirement benefits schemes to promote sector growth	TNT, RBA, KRA, OAG&DOJ, Parliament, CoG, NSSF, ARBS, AKI, Schemes, APTAK	December 2023	5,000,000
		Develop specific taxation rules for informal sector schemes.	Amended tax laws to provide for incentives for informal sector schemes	TNT, RBA, KRA, OAG&DOJ, Parliament, CoG, NSSF, ARBS, Schemes, APTAK	December 2023	5,000,000
		Promote consultations when negotiating bilateral and multilateral agreements to avoid double taxation.	Established inclusive task force to participate in consultations	TNT, RBA, Min of Foreign Affairs, EAC & Regional Development.	December 2024	10,000,000
		Carry out research to introduce suitable incentives to spur growth in the retirement benefits sector.	Research Reports on suitable industry incentives	TNT, RBA, NSSF, KRA, CMA, IRA	December 2023	10,000,000
		Enhance awareness on taxes applicable within the retirement benefits sector.	Training programs on taxation of retirement benefits schemes	RBA, ARBS, KRA, APTAK, College of Insurance	December 2023	5,000,000

Consumer Protection	To develop and implement consumer protection measures for the retirement benefits sector including embracing and enforcing market-conduct principles	Develop a code of consumer protection standards applicable in the financial sector.	Code developed.	RBA, NSSF, ARBS, Min of Labour, FKE, Pension Schemes, Trade Union Congress, COFEK.	December 2023	10,000,000
		Develop a legal framework to protect members, beneficiaries' and employers' interests.	Amended legislation establishing public sector schemes and Retirement Benefits Act Regulations to provide for protection of interests.	TNT, RBA, OAG&DOJ, Parliament, CoG, NSSF, ARBS, Schemes, APTAK	June 2024	10,000,000
		Enhance consumer education and awareness campaigns.	Infrastructure for awareness developed.	RBA, NSSF, ARBS, APTAK, Min of Labour, FKE, Schemes, Workers Unions, COFEK.	December 2023	10,000,000
		Introduce statutory measures on treatment of members' accrued benefits and unremitted contributions as a secured	Amendment of insolvency laws and developed Measures	TNT, RBA, OAG&DOJ, Parliament, CoG, NSSF, ARBS, Schemes, APTAK	June 2024	10,000,000

		benefit in case of insolvency of the sponsor.				
		Promote transparency, fair competition, working and business practices by service providers including consistent legislative frameworks on consumer transactions and agreements.	Developed and Implemented Guidelines.	RBA, ARBS, AKI, APTAK, Schemes, Competition Authority, COFEK, FKE	June 2024	10,000,000
		Enable development of suitable products and services to meet consumer needs	Products and services developed.	RBA, NSSF, ARBS, APTAK, Min of Labour, FKE, Schemes, Workers Unions, COFEK.	December 2023	5,000,000
		Educate members on consumer protection rights, dispute resolution and matters retirement to enable them make informed choices on matters pertaining to their scheme and benefits.	Awareness infrastructure developed.	RBA, NSSF, ARBS, Min of Labour, FKE, Schemes, Trade Union Congress, COFEK.	December 2023	10,000,000

Governance	To review the current governance framework of the retirement benefits schemes with to develop a framework that ensures transparent, effective and efficient management of schemes.	Provide for governance principles in the guidelines	Issued governance guideline for Schemes	TNT, RBA, NSSF, ARBS, APTAK	December 2023	5,000,000
		Define the roles of the parties involved in the governance, management and administration of the scheme in a governance code	Governance code providing for roles of parties	RBA, NSSF, ARBS, APTAK, Schemes	December 2023	5,000,000
		Review the existing framework for governance to incorporate and improve enforceability of governance principles.	Amended Retirement Benefits Act, Regulations and Guidelines.	TNT, RBA, NSSF, ARBS, OAG&DOJ, Parliament, CoG	December 2023	5,000,000
Leakages and Preservation	To review the current framework to limit early access of retirement benefits, providing for short term financial needs and maintaining the core objective of	Expand the existing social security products to all citizens.	Expanded social security products	TNT, Min. responsible for social security, RBA, OAG&DOJ, Parliament, CoG, NSSF, ARBS, Schemes, APTAK	December 2023	20,000,000
		Review the legal framework to introduce sub-accounts in retirement benefits schemes besides retirement	Amended Retirement Benefits Act and Regulations	TNT, RBA, OAG&DOJ, Parliament, CoG,	June 2024	10,000,000

	the retirement benefits sector.	savings to address short term financial needs of scheme members.		NSSF, ARBS, Schemes, APTAK		
		Review laws to stop payment of emigration benefits to scheme members migrating within East African Community.	Amended Retirement Benefits Act Regulations, NSSF Act and public pension legislation.	TNT, RBA, OAG&DOJ, Parliament, CoG, NSSF, ARBS, Schemes, APTAK	December 2023	10,000,000
Dispute Resolution	To review the dispute resolution process for resolving disputes between scheme members and retirement benefits schemes.	Research on existing dispute resolution processes in other jurisdictions to adopt and align with the Constitution to provide for a fair and expeditious retirement benefits disputes.	Comparative study done and recommendations made	TNT, Judicial Service Commission, RBA, NSSF	June 2024	15,000,000
		Review the Tribunal Rules	RBA Appeals Tribunal Rules amended	TNT, Chief Justice, RBA, ARBS, Schemes, APTAK.	June 2024	15,000,000
		Promote alternative dispute resolutions mechanisms in the scheme rules.	Amended Retirement Benefits Act Regulations to include ADR	TNT, RBA, Schemes, Retirement Benefits Tribunal	December 2023	10,000,000

		Create awareness amongst members on dispute resolution.	Infrastructure for awareness developed.	RBA, NSSF, ARBS, FKE, Workers Unions Schemes, COFEK.	December 2023	5,000,000
		Institutionalize the Retirement Benefits Appeals Tribunal within the Judicial Service Commission including appointment of Tribunal Members.	Appointments by the Judicial Service Commission.	The Judiciary, JSC, TNT, RBA Appeals Tribunal members	December 2023	10,000,000
		Review the existing Dispute Resolution Mechanisms to ensure independence, fairness, and expeditious resolution of disputes in the sector.	Independent Budget, operational staff.	TNT, RBA, OAG&DOJ, Parliament, CoG,	June 2023	10,000,000
ICT Leveraging and FinTech Solutions	To review the supervisory framework and incorporate the use of emerging technologies, to improve the design	To adopt a suitable ICT framework including FinTech and RegTech solutions for the retirement benefits sector.	ICT Framework adopted	TNT, RBA, ARBS, APTAK, AKI, Min responsible for ICT, CAK, Schemes, Mobile Service Providers, Professional Bodies	December 2024	15,000,000

	and delivery of retirement benefits sector.	Promote use of common ICT Framework for the informal sector schemes.	Common ICT Framework adopted.	TNT, RBA, ARBS, APTAK, AKI, Min responsible for ICT, CAK, Schemes, Mobile Service Providers, Professional Bodies	December 2024	10,000,000
Inclusion of Kenyans in Diaspora	Facilitate awareness of the existing framework of saving for retirement in Kenya for Kenyans working in diaspora.	To create awareness for Kenyans in the Diaspora to participate in Retirement Benefit Schemes in Kenya.	Awareness infrastructure developed.	Kenya-Diaspora Alliance, Min of Foreign Affairs, TNT, Min of EAC and Regional Development, RBA	June 2024	15,000,000
		To develop a legal framework to protect interests of Kenyans in Diaspora in Retirement Benefits Schemes.	Reviewed Retirement Benefits Act and Regulations.	TNT, RBA, Kenya-Diaspora Alliance, Min of Foreign Affairs, Min of EAC and Regional Development	June 2024	5,000,000
Short Term Employment Contracts	Create awareness and innovate a framework that covers short term contract workers in	To understand the evolving labour dynamics and intergenerational worldview and carry out informed awareness in retirement saving among young people	Research framework and infrastructure created	TNT, RBA, Min of Labor, FKE, Min responsible for Youth Affairs, TSC, PSC	June 2024	10,000,000

	the Retirement Benefits Sector.	Carry out continuous research and studies to understand the current generation of young people and their priorities in saving for retirement	Research framework and infrastructure created	TNT, RBA, Min of Labor, FKE, Min responsible for Youth Affairs, TSC, PSC	June 2024	10,000,000
Post-Retirement Medical Benefits	Create awareness and promote contributions towards saving for post-retirement medical cover.	To enhance the framework regulating savings for post-retirement medical benefits in retirement benefits schemes.	Amended Retirement Benefits Act and Regulations	TNT, RBA, Parliament, OAG & DOJ Min of Health, NSSF, AKI, IRA, RBA, NHIF, ARBS, APTAK	December 2023	10,000,000
		To educate members about the benefits of saving for post-retirement medical cover.	Awareness infrastructure created	RBA, ARBS, APTAK, Min of Health, NSSF, AKI, IRA, NHIF	December 2023	5,000,000
		To review the current framework on voluntary contributions towards post-retirement medical fund with a view to promote mandatory contributions by both members and sponsors.	Amended Retirement Benefits Act and Regulations reviewed	TNT, RBA, Parliament, OAG & DOJ Min of Health, NSSF, AKI, IRA, RBA, NHIF, ARBS, APTAK	December 2023	10,000,000

References

1. Augusto T. & Heinz P.R.: The Troubled State of Pension System in Latin America. 2018; www.brookings.edu/research
2. AVCA and PenOp Launch Inaugural Report on Pension Funds and Private Equity Investment in Nigeria; December 2021: www. Avca-africa.org
3. Barr, Nicholas and Peter Diamond. 2008. *Reforming Pensions: Principles and Policy Choices.* Oxford: Oxford University Press.
4. IMF elibrary; India's Pension Reform Initiative: https://www.elibrary.imf.org/view/books/
5. IOPS Country Profile: Nigeria
6. IOPS Country Profile: South Africa
7. IOPS County Profile: Chile.
8. J.Broadbent and Others: The Shift from Defined Benefit to Defined Contribution Pension Plans – Implications for Asset Allocation and Risk Management; 2006. www.bis.org
9. L. Lurie, E. Colon-Neila & P.A. Ortoz: Social Participation in Pension Systems and their Reforms: Chile, Spain and Israel, 2020; www.scielo.org.mx
10. OECD Pension at a Glance 2021; Country Profile – India
11. R. Holzmann and R. Hinz: Old Age Income Support in the 21st Century, 2005 P. 10. World Bank Publications 32672
12. Retirement Benefits Authority Statistical Digest, 2020
13. Social Security (Minimum Standards) Convention 1952 (No.102) – ILO Conventions
14. Understanding the Investment Potential of the Kenyan Diaspora; The Commonwealth Secretariat, 2018
15. World Bank Pension Reform Primer: Pension Conceptual Framework.