



**THE PRESIDENCY**  
**EXECUTIVE OFFICE OF THE PRESIDENT**  
**HEAD OF THE PUBLIC SERVICE**

Telegraphic Address

Telephone: +254-20-2227436

When replying please quote

STATE HOUSE

P.O. Box 40530-00100

Nairobi, Kenya

**OP/CAB.9/1A**

**27<sup>th</sup> February, 2018**

Ref. No. ....  
and date

....., 20.....

**All Cabinet Secretaries**

**The Attorney General**

**All Principal Secretaries**

**TERMS OF SERVICE FOR STATE CORPORATIONS CHIEF  
EXECUTIVE OFFICERS**

The Government has noted a lack of clarity on terms of service for Chief Executive Officers of State Corporations and concerns at service period, which has in some instances led to litigation.

The appointment of Chief Executive Officers in State Corporations is guided by the general provisions of Section 5(3) of the State Corporations Act Cap. 446, the specific Acts of Parliament under which individual State Corporations are established, the Articles of Association for State Corporations established under the Companies Act Cap. 446 and the Regulations on the appointment of board of directors for public listed State Corporations issued under Capital Markets Authority Cap. 485A. Section 6(2) of the Act provides that the Chief Executive Officer shall be appointed for a renewable period of five (5) years or shorter period as may be specified in the notice of appointment.

For avoidance of doubt, the Terms of Service for State Corporation Chief Executive Officers is contractual and renewable based on performance and business requirements. They are not subject to the general Public Service policy on mandatory retirement at 60 or 65 years or limit as to number of terms served. **The Circular No. OP.CAB.2/7A of 20<sup>th</sup> March, 2009** on Review of the Mandatory Retirement Age for Public Servants is, therefore, not applicable to State Corporations' Chief Executive Officers.

You are required to bring the contents of this circular to Boards of Directors of State Corporations in your docket and to ensure they have put in place a robust mechanism for measuring performance of Chief Executive Officers and leadership requirements over time.



**JOSEPH K. KINYUA, EGH**  
**HEAD OF THE PUBLIC SERVICE**

**Copy to:   The Secretary**  
State Corporations Oversight Authority  
**NAIROBI.**



THE PRESIDENCY  
EXECUTIVE OFFICE OF THE PRESIDENT  
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

Telegraphic Address  
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When replying please quote

STATE HOUSE  
P.O. Box 40530-00100  
Nairobi, Kenya

Ref. No. **OP/CAB.9/1A**.....  
and date

**8th December, 2017**  
....., 20.....

**Prof. Githu Muigai, EGH, SC,**  
Attorney-General  
State Law Office and Department of Justice  
**NAIROBI.**

Dear Sir,

**TERMS OF SERVICE FOR STATE CORPORATIONS' CHIEF EXECUTIVE OFFICERS**

This is in reference to your legal opinion on the retirement age of public servants N. AG/MISC/2017 of 7th April, 2017.

We have considered your opinion and found it necessary to issue a general circular to clarify on terms and conditions of service for Chief Executive Officers. The draft circular is attached.

It would however not be prudent to issue the circular without clearing with your office to ensure it is legally correct. This is therefore to request you to look at the contents of the draft and advice as appropriate.

Yours

*Sincerely*  
*Stephen K. Kirogo*

**STEPHEN K. KIROGO, CBS**  
**FOR: CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE**

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REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

Your Ref.: OP/CAB.9/1A

Our Ref.: AG/CONF/2/C/31 VOL.V

4th December 2017

Dr Joseph K. Kinyua, EGH  
Chief of Staff & Head of Public Service  
State House  
NAIROBI

RE: CIRCULAR ON THE TERMS OF SERVICE FOR STATE CORPORATION'S CHIEF EXECUTIVE OFFICERS


The above matter and your letter dated 8th December 2017 in which you have forwarded to us the draft circular on the terms of service for state corporation's chief executive officers.

We have reviewed the terms of the circular and seek to expound on the legal framework on the appointment of the CEO's as set out in paragraph 2 for purposes of clarity and consistency of the policy as follows;

*The appointment of Chief Executive Officers in State Corporations is guided by the general provisions of the State Corporations Act Cap 446, the specific Acts of Parliament under which individual State Corporations are established, the Articles of Association for State Corporations established under the Companies Act Cap 486 and the regulations on appointment of board of directors for public listed State Corporations issued under the Capital Markets Act Cap 485A.*

*Section 6(2) of the State Corporations Act provides that the Chief Executive Officer shall be appointed for a renewable period of five (5) years or shorter period as may be specified in the notice of appointment.*

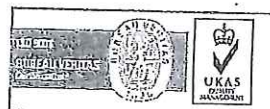
Be guided accordingly.

  
GITHU MUIGAI, EGH, SC  
ATTORNEY GENERAL

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THE PRESIDENCY



GOVERNMENT SPOKESMAN

Press Release

12<sup>TH</sup> APRIL 2018

### **TERMS OF SERVICE FOR STATE COOPERATIONS' CHIEF EXECUTIVES.**

Our attention has been drawn to recent misleading reports from a section of the media to the effect that the Head of Civil Service had issued a circular on *Terms of Service for State Corporation Chief Executives* substantially granting the CEOs infinite tenure of office (*for life*)

From the onset, we wish to observe that the circular has since become a matter of litigation in a court of law and therefore we shall limit ourselves to clarification on the misleading impression given to the public by the misrepresentation of the contents of the circular. We are particularly keen to comply and be seen to comply with the subjudice rule.

We therefore wish to state that all Chief Executive Officers of State Corporations serve on contract terms, which contracts set out the terms and conditions of service including renewal and separation. These terms incorporate prescriptions outlined in the State Corporations Act, the enabling legislation under which the individual State Corporations is established, the Articles of Association of the Corporation, the Head of Public Service, State Corporations Advisory Committee (*Mwongozo Code of Conduct*) and other statutory bodies.



The circular under reference reaffirms the established corporate governance principle that performing Chief Executive Officers will have their terms renewed upon successful evaluation of their performance by their respective Board of Directors, while non-performing Chief Executive Officers will have their terms terminated – notwithstanding the contract term served. The term limits as set in enabling legislation, policy guideline as well as the *Mwongozo* Code of Conduct remain.

For purpose of citizen information, we wish to reiterate that the essence of the circular was to underpin legislative, policy directives, business requirements and performance of the Chief Executive Officer as key to renewal of contracts, notwithstanding any other considerations. Indeed, the circular took due consideration to the provisions of the public Service Commission's *"Human Resource Policies and Procedures Manual for the Public Service"* in respect of exit from the service.

As such, continued service of State Corporations Chief Executive Officers is dependent upon the **appointing instruments**.

**Kiraithe E.K. MBS**  
**Government Spokesman.**





# State denies scrapping term limits for parastatal chiefs :: Kenya

Geoffrey Mosoku



Joseph Kinyua, State House Chief of Staff and Head of Civil Service

The Government has denied scrapping age and term limits for State corporation chiefs.

It says a recent directive by the head of Civil Service Joseph Kinyua was not meant to allow the executives to serve for life, but to reaffirm the circumstances under which renewal of their contracts would be extended.

## **ALSO READ: Homes expo opens today**

Already, the High Court has suspended the implementation of the circular until a case filed by activist Okiya Omtatah is heard and determined.

Government spokesman Eric Kiraithe said that although the matter is now a subject to litigation in courts, the State wanted to limit itself to clarifications on the "misrepresentation" of the public information to avoid contravening the *sub-judice* rule, which bars people from commenting on a matter before a court of law.

He said Mr Kinyua's circular dated February 27, 2018 only reaffirmed established corporate governance principle where performing CEOs have their terms renewed while non-performers' contracts are terminated.

"We wish to reiterate that the essence of the circular was to underpin legislative, policy directives, business requirements and performance of CEOs as key to renewal of contracts, notwithstanding any other considerations," Mr Kiraithe said in a letter to *The Standard*.

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