

Approved for tabling in the House. *BW*

SNA
22/12/2020

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION 2020

DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND TOURISM

REPORT ON THE CONSIDERATION OF THE ANTI-DOPING (AMENDMENT) BILL,

2020

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 22 DEC 2020	DAY: TUESDAY
TABLED BY: DIRECTOR	CHAIR, COMMITTEE SPORTS
CLERK-AT THE-TABLE:	R. K. TIAMPATY <i>(Signature)</i>

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

DECEMBER, 2020

TABLE OF CONTENTS

APPENDIX.....	2
ABBREVIATIONS	3
CHAIRPERSON'S FOREWORD.....	4
1.0 ESTABLISHMENT AND MANDATE OF THE COMMITTEE	6
1.1 COMMITTEE MEMBERSHIP	7
1.2 COMMITTEE SECRETARIAT	8
2.0 CONSIDERATION OF THE ANTI-DOPING (AMENDMENT) BILL, 2020.....	9
2.1 INTRODUCTION.....	9
2.2 SALIENT FEATURES OF THE BILL	10
3.0 SUBMISSIONS FROM MINISTRIES/STATE DEPARTMENTS AND STAKEHOLDERS..	13
3.1 SUBMISSION FROM THE ANTI-DOPING AGENCY OF KENYA.....	13
4.0 COMMITTEE OBSERVATIONS	15
5.0 COMMITTEE RECOMMENDATIONS	16

APPENDIX

- 1. Adoption List**
- 2. Minutes**
- 3. Advert for Call for Public Memorandum**
- 4. Submissions by Stakeholders**

ABBREVIATIONS

Anti-Doping Agency of Kenya	-	ADAK
International Standard for Code Compliance by Signatories	-	ISCCS
International Standard for Education	-	ISE
International Standard for Laboratories	-	ISL
International Standard for Results Management	-	ISRM
International Standard for Testing and Investigations	-	ISTI
International Standard for the Protection of Privacy and Personal Information	-	ISPPPI
International Standard for Therapeutic Use Exemptions	-	ISTUE
Therapeutic Use Exemption	-	TUE
United Nations Educational, Scientific and Cultural Organization	-	UNESCO
World Anti-Doping Agency	-	WADA

CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings of the consideration of the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020), sponsored by the Leader of Majority Party, Hon. (Dr.) Amos Kimunya, MP.

Since the Bill had been published when the House was in the long recess (4th December 2020 – 8th February 2021), pursuant to the House resolution that Bills published during this period be committed to the respective Committee, the Bill was committed to the Committee for consideration and the First Reading and subsequent stages were to be undertaken upon resumption of the House. The House passed the resolution in its afternoon sitting on December 3, 2020.

The Committee considered the Bill and facilitated public participation pursuant to Article 118 of the Constitution of Kenya and Standing Order 127.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and the Standard Newspapers on 16th December, 2020 pursuant to Article 118 of the Constitution of Kenya and Standing Order 127(3). The Committee received memorandum and views from the Anti-Doping Agency of Kenya.

In considering the Bill, the Committee noted that the principal object of the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020) is to amend the Anti-Doping Act, 2016 to harmonize the legislative framework with the 2021 World Anti-Doping Code and Regulations. This effort will aid in the achievement of compliance by Kenya to the internationally adopted Code and facilitate the continued participation of Kenyan athletes in local, regional, and international competitions, while appreciating the relevance of curbing doping in sports.

The Committee observed the following during consideration of the Bill and engagement with stakeholders:

1. The principal object of the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020) is to amend the Anti-Doping Act, 2016 to harmonize the legislative framework with the 2021 World Anti-Doping Code and Regulations. This effort will aid in the achievement of compliance by Kenya to the internationally adopted Code and facilitate the continued participation of Kenyan athletes in local, regional, and international competitions, while appreciating the relevance of curbing doping in sports.
2. Kenya established the Anti-Doping Agency of Kenya (ADAK) in 2016 through the Anti-Doping Act (No. 5 of 2016).
3. Having ratified the UNESCO convention against doping in Sport in 2009, Kenya became a Member State and was thus bound to the International regulations on Anti-Doping.
4. The Code has a five-year life cycle. This is informed by the dynamic nature of doping. Unscrupulous characters have the tendency to attempt to beat the Anti-Doping system using crafty, shrewd, and canny doping methods. Luckily, technology evolves, and the doping detection system is ever improving.

5. The first Code was adopted in 2004. It was amended and a new one adopted in 2009. The current Code was ratified in 2015 and is due to be replaced by the 2021 Code which will become operational on 1st January 2021.
6. A new Code establishes different international standards, improved implementation mechanisms and an informed approach to the fight against doping in sports.
7. The 2021 Code has introduced new international standards, being the 2021 International Standard for Education (ISE) and the 2021 International Standard for Results Management (ISRM).
8. It is incumbent upon Member States to align their national Anti-Doping legal framework with the provisions of the Code. A failure to align the national legal framework with the 2021 Code, within the set timeline, will result in a declaration of non-compliance from WADA. The deadline for action is 31st December 2020.
9. Non-compliance status means that Kenya shall be barred from participating in all future international sporting competitions. These include regional and international events.

The Committee therefore recommends that the House passes the Anti-Doping (Amendment) Bill 2020 (National Assembly Bill No. 51 of 2020) in its current form to enable Kenya comply with the 2021 Code within the set timelines.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the Ministry of Sports, Culture and Heritage and the Anti-Doping Agency of Kenya for their participation during the whole process of considering the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee who dedicated their time and made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Sports, Culture and Tourism and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020).



The Hon. Patrick Makau Kingóla, MP

Chairperson of the Departmental Committee on Sports, Culture and Tourism

1.0 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Departmental Committee on Sports, Culture and Tourism is one of the fifteen (15) Departmental Committees of the National Assembly established under *Standing Order 216* and mandated to -

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) study and review all the legislation referred to it;
- d) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- g) examine treaties, agreements and conventions;
- h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- i) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- j) examine any questions raised by Members on a matter within its mandate.

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters of; Sports, Culture, National Heritage, Betting and Lotteries, Tourism and Tourism Promotion and Management.

In executing its mandate, the Committee oversees the following government Ministries;

1. Ministry of Sports, Culture and Heritage
2. State Department for Tourism

1.1 COMMITTEE MEMBERSHIP

The Committee on Sports, Culture and Tourism comprises of the following Members:

Chairperson

Hon. Patrick Makau King'ola, M.P

Mavoko Constituency

Wiper Democratic Party

Vice Chairperson

Hon. (Dr.) Korei Ole Lemein, M.P

Narok South Constituency

Jubilee Party

Hon. Christopher Omulele, M.P

Luanda Constituency

Orange Democratic Movement Party

Hon. Jeremiah Lomurukai, M.P

Loima Constituency

Orange Democratic Movement Party

Hon. Cyprian Kubai Iringo, M.P

Igembe Central Constituency

Jubilee Party

Hon. Charles Ngusya Nguna, M.P

Mwingi West Constituency

Wiper Democratic Party

Hon. Jones Mlolwa, M.P

Voi Constituency

Orange Democratic Movement Party

Hon. Titus Mukhwana Khamala, M.P

Lurambi Constituency

Amani National Congress

Hon. Daniel Wanyama Sitati, M.P

Webuye West Constituency

Jubilee Party

Hon. Beatrice Kones, M.P

Bomet East Constituency

Jubilee Party

Hon. (Prof.) Jacqueline Oduol, M.P

Nominated

Orange Democratic Movement Party

Hon. Jayne Njeri Wanjiru Kihara, M.P

Naivasha Constituency

Jubilee Party

Hon. (Dr.) Tecla Chebet Tum, M.P

Nandi County

Jubilee Party

Hon. Mohamed Hire Garane, M.P

Lagdera Constituency

KANU Party

Hon. Jane Jepkorir Kiptoo Chebaibai, M.P
Elgeyo Marakwet County
Jubilee Party

Hon. Florence Chepngetich Koskey, M.P
Kericho County
Jubilee Party

Hon. Lydia Haika Mnene Mizighi, M.P
Taita Taveta County
Jubilee Party

Hon. Nelson Koech, M.P
Belgut Constituency
Jubilee Party

Hon. Sylvanus Maritim, M.P
Ainamoi Constituency
Jubilee Party

1.2 COMMITTEE SECRETARIAT

Mr. Samuel Kalama

Senior Clerk Assistant

Mr. Fredrick Otieno
Second Clerk Assistant

Mr. Salem Lorot
Legal Counsel II

Mr. Joe Okongó
Media Relations Officer

Mr. Vitus Okech
Research officer III

Mr. Omar Abdirahim
Fiscal Analyst III

Ms. Sheila Chebotibin
Sergeant At-Arms

2.0 CONSIDERATION OF THE ANTI-DOPING (AMENDMENT) BILL, 2020

2.1 INTRODUCTION

1. The Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020), sponsored by the Leader of Majority Party, Hon. (Dr.) Amos Kimunya, MP was published on 7th December, 2020.
2. The principal object of the Bill is to amend the Anti-Doping Act, 2016 to harmonize the legislative framework with the 2021 World Anti-Doping Code and Regulations. This effort will aid in the achievement of compliance by Kenya to the internationally adopted Code and facilitate the continued participation of Kenyan athletes in local, regional, and international competitions, while appreciating the relevance of curbing doping in sports.
3. Kenya enacted the Anti-Doping Act (No. 5 of 2016) in 2016. The Act provides for the implementation of the United Nations Educational, Scientific and Cultural Organization Convention Against Doping in Sport; the regulation of sporting activities free from the use of prohibited substances and methods in order to protect the health of athletes; the establishment and management of the Anti-Doping Agency of Kenya and provides for the Agency's powers, functions and management.
4. The United Nations Educational, Scientific and Cultural Organization Convention Against Doping in Sport was adopted unanimously by the 33rd UNESCO General Conference on October 19, 2005 and came into force on 1 February 2007 and now has 189 States Parties. Kenya ratified the Convention in 2009.
5. The Convention helps to harmonize anti-doping legislation, guidelines, regulations, and rules internationally in order to provide a fair and equitable playing environment for all athletes. States Parties commit to:
 - (a) encourage international cooperation to protect athletes and the ethics of sport;
 - (b) limit the availability of prohibited substances and methods by combating trafficking;
 - (c) facilitate doping controls and support national testing programmes;
 - (d) encourage producers and distributors of nutritional supplements to establish 'best practice' in the labelling, marketing, and distribution of products which might contain prohibited substances;
 - (e) support the implementation of anti-doping education programmes; and
 - (f) promote anti-doping research.
6. The World Anti-Doping Agency (WADA) was established in 1999 as an international independent agency composed and funded equally by the sport movement and governments of the world. Its key activities include scientific research, education, development of Anti-Doping capacities, and monitoring the implementation of the

World Anti-Doping Code (Code), which is the document harmonizing Anti-Doping policies in all sports and in all countries.

7. The Code is the core document that harmonizes anti-doping policies, rules and regulations within sport organizations and among public authorities around the world. It works in conjunction with six International Standards which aim to foster consistency among anti-doping organizations in various areas. These Standards are: the International Standard for Testing and Investigations (ISTI), the International Standard for Laboratories (ISL), the International Standard for Therapeutic Use Exemptions (ISTUE), the International Standard for the Prohibited List (The List), the International Standard for the Protection of Privacy and Personal Information (ISPPPI), and the International Standard for Code Compliance by Signatories (ISCCS).
8. In addition to the above Standards, two new International Standards are set to come into force on 1 January 2021 alongside the 2021 World Anti-Doping Code and related suite of Standards. These are: The International Standard for Education (ISE) and The International Standard for Results Management (ISRM).
9. The revision process for the 2021 Code began at the end of 2017 and, following three phases of consultation over a two-year period, with over 2,000 comments received, the revised Code was unanimously approved on 7 November 2019 at the World Conference on Doping in Sport in Katowice, Poland. The revised Code is set to come into force on 1 January 2021.
10. The Bill is aimed at ensuring that the national Anti-Doping legislative framework is aligned to the Code and the international standards.

2.2 SALIENT FEATURES OF THE BILL

11. The general overview of the Bill is as follows:
12. Clause 1 of the Bill sets out the short title of the Bill.
13. Clause 2 of the Bill proposes to amend section 2 of the Act by inserting definitions of new terms and phrases and deleting terms that have become obsolete or no longer appear in the body of the Act.
14. Clause 3 of the Bill seeks to amend section 3 of the Act to broaden the application of the Act to include board members, directors, officers and specified employees, and delegated third parties and their employees, who are involved in any aspect of doping control.
15. Clause 4 of the Bill proposes to amend section 4 of the Act by inserting an additional purpose for the Act, which is to safeguard the physical health and mental integrity of athletes.
16. Clause 5 of the Bill proposes to amend section 5 of the Act to provide further clarity and guidance on the powers of the Agency.

17. Clause 6 of the Bill proposes to amend section 7 of the Act to provide clarity as to the functions of the Agency and to provide clarity with respect to the institutions the Agency is responsible for monitoring compliance from.
18. Clause 7 of the Bill proposes to amend section 9 of the Act by introducing a statement on independence of the Agency and the Committee from any undue influence in the conduct of its activities and actions regarding anti-doping.
19. Clause 8 of the Bill proposes to amend section 10 of the Act by introducing further qualifications required for any person to be appointed to the Board of the Agency. The clause also provides for the signing of a conflict of interest and confidentiality declaration by any new Board member of the Agency.
20. Clause 9 of the Bill proposes to amend section 12 of the Act to enhance the disqualification criteria for any Board member.
21. Clause 10 of the Bill proposes to amend section 14 of the Act to enhance the independence of the Board and the Secretariat of the Agency.
22. Clause 11 of the Bill proposes to amend section 17 of the Act to provide clarity as to the role of the chief executive officer with respect to the Therapeutic Use Exemption.
23. Clause 12 of the Bill proposes to amend section 19 of the Act to disqualify from employment by the Agency of persons who in the past have been involved in any form of anti-doping rule violation
24. Clause 13 of the Bill proposes to amend the Act by introducing a new section 22A to provide that other government agencies responsible for functions that co-relate to any anti-doping efforts shall collaborate with the Agency in enforcement, monitoring and curbing of anti-doping activities.
25. Clause 14 of the Bill proposes to amend section 23 of the Act to provide for the signing of a conflict of interest and confidentiality declaration by members of the Therapeutic Use Exemption Committee and its composition.
26. Clause 15 of the Bill proposes to amend section 24 of the Act to enhance clarity on the appeal procedure arising out of a TUE application.
27. Clause 16 of the Bill proposes to amend section 25 of the Act to comply with the Data Protection Act, 2019 and to introduce gender neutral language in the Act.
28. Clause 17 of the Bill proposes to amend section 27 of the Act to reinforce obligations arising to all relevant persons from the Code and the Rules.
29. Clause 18 of the Bill proposes to amend section 28 of the Act to provide for the use of samples and related analytical data collected from athletes, the laboratories that can test athletes and the submission of all test samples to the Agency.
30. Clause 19 of the Bill proposes to amend section 29 of the Act with the objective of providing an enhanced framework for anti-doping compliance officers in the Agency.

31. Clause 20 of the Bill proposes to amend the Act by repealing and replacing section 31 of the Act so as to clarify the distinct original and appellate jurisdictional role of the Sports Dispute Tribunal in relation to anti-doping cases that are placed before the Tribunal.
32. Clause 21 of the Bill proposes to amend the Act by inserting new sections 31A, 31B, 31C, 31D, 31E, and 31F to provide for the establishment, functions, and operations of the Anti-Doping Results Management Panel in order to enhance the aspect of results management in cases of anti-doping rule violations.
33. Clause 22 of the Bill proposes to amend section 32 of the Act to enhance clarity on the applicability of the appeal to the Court of Arbitration for Sports on doping matters.
34. Clause 23 of the Bill proposes to amend section 41B of the Act in order to provide for the responsibility of sports federation in enforcing the Anti-Doping Rules within the Federations.
35. Clause 24 of the Bill proposes to amend section 41D of the Act to provide that any other anti-doping organisations shall co-operate with the Agency in fulfilling its mandate under the Act.
36. Clause 25 of the Bill proposes to amend section 42 of the Act to provide a linkage between an anti-doping rule violation and the resultant sanction to be in accordance with the Anti-Doping Rules.

3.0 SUBMISSIONS FROM MINISTRIES/STATE DEPARTMENTS AND STAKEHOLDERS

37. The Committee is required, pursuant to Standing Order 127(3), to facilitate public participation on the Bill through an appropriate mechanism including-
- (a) inviting submission of memoranda;
 - (b) holding public hearings;
 - (c) consulting relevant stakeholders in the sector;
 - (d) consulting experts on technical subjects.
38. The requirement for the Committee to conduct public participation on the Bill is a constitutional imperative flowing from Article 118 of the Constitution which provides that Parliament shall-
- (a) *conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and*
 - (b) *facilitate public participation and involvement in the legislative and other business of Parliament and its committees.*
39. Following the call for memoranda from the public as contained in an advertisement in the Daily Nation and the Standard newspapers on 16th December, 2020 the Committee received one memorandum from the Anti-Doping Agency of Kenya.

3.1 SUBMISSION FROM THE ANTI-DOPING AGENCY OF KENYA

40. The Anti-Doping Agency of Kenya in their submission informed the Committee that:
- i. Kenya established the Anti-Doping Agency of Kenya (ADAK) in 2016 through the Anti-Doping Act of 2016.
 - ii. Having ratified the United Nations Educational, Scientific and Cultural Organization Convention Against Doping in Sport in 2009, Kenya became a Member State and was thus bound to the International regulations on Anti-Doping.
 - iii. The World Anti-Doping Code (Code), has a five-year life cycle. This is informed by the dynamic nature of doping. Unscrupulous characters have the tendency to attempt to beat the Anti-Doping system using crafty, shrewd, and canny doping methods. Luckily, technology evolves, and the doping detection system is ever improving.
 - iv. The first Code was adopted in 2004. It was amended and a new one adopted in 2009. The current Code was ratified in 2015 and is due to be replaced by the 2021 Code which will become operational on 1st January 2021.

- v. A new Code establishes different international standards, improved implementation mechanisms and an informed approach to the fight against doping in sport.
- vi. The 2021 Code has introduced new international standards, being the 2021 International Standard for Education (ISE) and the 2021 International Standard for Results Management (ISRM).
- vii. It is incumbent upon Member States to align their national Anti-Doping legal framework with the provisions of the Code.
- viii. The proposed amendments are aimed at ensuring that the national Anti-Doping legislative framework is aligned to the Code and the International Standards. The deadline for action is 31st December 2020.
- ix. The amendment process commenced in February 2020 with the visit of the WADA legal and compliance team, who held several sessions with ADAK.
- x. It was demanded by WADA that all drafts must be reviewed by their legal and compliance team at all stages before the final draft is presented for enactment into law. This was meant to ensure that the final law passed must be in compliance with the provisions of the Code and with the various International Standards.
- xi. Several drafts were exchanged between WADA and ADAK for a period of eight months.
- xii. These drafts included the various legal stages including public participation which was done in June 2020 and in compliance with Article 10 of the Constitution.
- xiii. The Ministry of Sports, Culture and Heritage (the parent ministry) hosted the National Assembly's Departmental Committee on Sports, Culture and Tourism in October 2020 to a retreat to review the Amendment Bill. The Committee's views, feedback and comments were taken, and an enriched draft was shared with WADA.
- xiv. WADA concurred with the views and reverted in November 2020, whereby the Bill was forwarded to the Attorney General who formatted the document and the Bill was then approved by the Cabinet.
- xv. Failure to align the national legal framework with the 2021 Code, within the set timeline, will result in a declaration of non-compliance from WADA.
- xvi. Non-compliance status means that Kenya shall be barred from participating in all future international sporting competitions. These include regional and international events. This will affect thousands of Kenyans who depend on sports as their only source of livelihood. Further, it will also affect Athlete Support Personnel and sports administrators who depend on sports earnings whose number is four times that of athletes.

4.0 COMMITTEE OBSERVATIONS

The Committee observed the following during public participation and engagement with various stakeholders:

1. The principal object of the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020) is to amend the Anti-Doping Act, 2016 to harmonize the legislative framework with the 2021 World Anti-Doping Code and Regulations. This effort will aid in the achievement of compliance by Kenya to the internationally adopted Code and facilitate the continued participation of Kenyan athletes in local, regional, and international competitions, while appreciating the relevance of curbing doping in sports.
2. Kenya established the Anti-Doping Agency of Kenya (ADAK) in 2016 through the Anti-Doping Act (No. 5 of 2016).
3. Having ratified the UNESCO convention against doping in Sport in 2009, Kenya became a Member State and was thus bound to the International regulations on Anti-Doping.
4. The Code has a five-year life cycle. This is informed by the dynamic nature of doping. Unscrupulous characters have the tendency to attempt to beat the Anti-Doping system using crafty, shrewd, and canny doping methods. Luckily, technology evolves, and the doping detection system is ever improving.
5. The first Code was adopted in 2004. It was amended and a new one adopted in 2009. The current Code was ratified in 2015 and is due to be replaced by the 2021 Code which will become operational on 1st January 2021.
6. A new Code establishes different international standards, improved implementation mechanisms and an informed approach to the fight against doping in sports.
7. The 2021 Code has introduced new international standards, being the 2021 International Standard for Education (ISE) and the 2021 International Standard for Results Management (ISRM).
8. It is incumbent upon Member States to align their national Anti-Doping legal framework with the provisions of the Code. A failure to align the national legal framework with the 2021 Code, within the set timeline, will result in a declaration of non-compliance from WADA. The deadline for action is 31st December 2020.
9. Non-compliance status means that Kenya shall be barred from participating in all future international sporting competitions. These include regional and international events.

5.0 COMMITTEE RECOMMENDATION


Having considered the Bill and submissions from stakeholders, the Committee recommends that the House passes the Anti-Doping (Amendment) Bill 2020 (National Assembly Bill No. 51 of 2020) in its current form to enable Kenya comply with the 2021 World Anti-Doping Code and Regulations within the set timelines.



SIGNED: DATE: 21/12/20

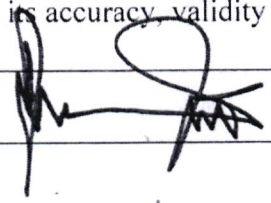

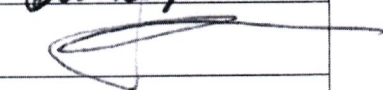
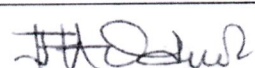

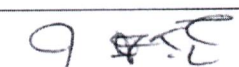
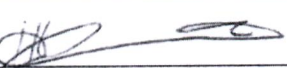
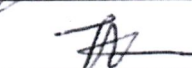
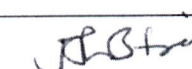
THE HON. PATRICK MAKAU KINGÓLA, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND TOURISM

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 22 DEC 2020	
DAY:	
TABLED BY:	
CLERK-AT THE-TABLE:	

**DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND TOURISM
ADOPTION OF THE REPORT ON CONSIDERATION OF THE ANTI-DOPING
(AMENDMENT) BILL, 2020**

We, the undersigned Honorable Members of the Departmental Committee on Sports, Culture and Tourism, today 21st December, 2020 do hereby affix our signatures to this **Report on the Consideration of the Anti-Doping (Amendment) Bill, 2020** to affirm our approval and confirm its accuracy, validity and authenticity: -

1.	The Hon. Patrick Makau King'ola, MP. - Chairperson	
2.	The Hon. (Dr.) Korei Ole Lemein, MP. – Vice-Chairperson	
3.	The Hon. Christopher Omulele, MP.	
4.	The Hon. Cyprian Kubai Iringo, MP.	
5.	The Hon. Jones Mlolwa, MP.	
6.	The Hon. Daniel Wanyama Sitati, MP.	
7.	The Hon. (Prof.) Jacqueline Oduol, MP.	
8.	The Hon. (Dr.) Tecla Chebet Tum, MP.	
9.	The Hon. Jane Jepkorir Kiptoo Chebaibai, MP.	
10.	The Hon. Lydia Haika Mnene Mizighi, MP.	
11.	The Hon. Sylvanus Maritim, MP.	
12.	The Hon. Jeremiah Lomurukai, MP.	
13.	The Hon. Charles Ngusya Nguna, MP.	
14.	The Hon. Titus Mukhwana Khamala, MP.	
15.	The Hon. Beatrice Kones, MP.	
16.	The Hon. Jayne Nyeri Wanjiru Kihara, MP.	
17.	The Hon. Mohamed Hire Garane, MP.	
18.	The Hon. Florence Chepngetich Koskey, MP.	
19.	The Hon. Nelson Koech, MP.	

REPUBLIC OF KENYA

Twelfth Parliament



Fourth Session

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – (FOURTH SESSION)

**MINUTES OF THE 33RD SITTING OF THE DEPARTMENTAL COMMITTEE ON
SPORTS, CULTURE AND TOURISM HELD ON MONDAY 21ST DECEMBER, 2020 IN
THE MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS AT 2:30 PM**

PRESENT

1. The Hon. Patrick Makau Kingóla, MP. - **Chairperson**
2. The Hon. Christopher Omulele, MP (CBS).
3. The Hon. Kubai Iringo, MP.
4. The Hon. Jones Mlolwa, MP.
5. The Hon. (Prof.) Jacqueline Oduol, MP.
6. The Hon. Jeremiah Lomorukai, MP.
7. The Hon. Charles Ngusya Nguna, MP.
8. The Hon. Lydia Haika Mnene Mizighi, MP.
9. The Hon. Titus Mukhwana Khamala, MP.
10. The Hon. Mohamed Hire Garane, MP.

Virtual

The Hon. (Dr.) Tecla Chebet Tum, MP.

APOLOGY

1. The Hon. (Dr.) Korei Ole Lemein, MP. - **Vice Chairperson**
2. The Hon. Daniel Wanyama Sitati, MP.
3. The Hon. Jane Jepkorir Kiptoo Chebaibai, MP.
4. The Hon. Sylvanus Maritim, MP.
5. The Hon. Beatrice Kones, MP.
6. The Hon. Jayne Nyeri Wanjiru Kihara, MP.
7. The Hon. Florence Chepngetich Koskey, MP.
8. The Hon. Nelson Koech, MP.

IN-ATTENDANCE -NATIONAL ASSEMBLY

THE SECRETARIAT

1. Mr. Fredrick Otieno - Second Clerk Assistant
2. Mr. Salem Lorot - Legal Counsel II
3. Mr. Vitus Oketch - Research Officer
4. Mr. Eugene Luteshi - Audio Officer

ANTI-DOPING AGENCY OF KENYA

1. Mr. Japther K. Rugut - Chief Executive Officer
2. Ms. Sarah Shibutse - Director
3. Mr. Bildad Rogoncho - AG. Director Legal

MIN.NO.NA/SCT/2020/125: PRELIMINARIES & ADOPTION OF AGENDA

The Chairperson called the meeting to order at half past two O'clock and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed and seconded by the Hon. Kubai Iringo, MP. and the Hon. (Prof.) Jacqueline Oduol, MP. respectively.

Agenda:

1. Prayers
2. Introductions/preliminaries
3. Communication from the Chair
4. Confirmation of Previous Minutes
5. Matters arising
6. Pending Petition(s): None
7. Questions: None
8. **Agenda:**
 - i. **Consideration of the Anti-Doping (Amendment) Bill, 2020 (Briefing by the Legal Counsel)**
 - ii. **Consideration and adoption of the report on consideration of the Anti-Doping (Amendment) Bill, 2020**
9. Any Other Business
10. Adjournment & Date for the Next Sitting

MIN.NO.NA/SCT/2020/126: - BRIEFING BY THE LEGAL COUNSEL ON THE ANTI-DOPING (AMENDMENT) BILL, 2020

The Legal Counsel briefed the Committee on the Bill as follows:

THAT;

1. The Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020) was published on 7th December, 2020 and is sponsored by the Leader of Majority Party.
2. The principal object of this Bill is to amend the Anti-Doping Act, 2016 to harmonize the legislative framework with the 2021 World Anti-Doping Code and Regulations. This effort will aid in the achievement of compliance by Kenya to the internationally adopted Code

and facilitate the continued participation of Kenyan athletes in local, regional, and international competitions, while appreciating the relevance of curbing doping in sports.

3. Kenya established the Anti-Doping Agency of Kenya (ADAK) in 2016 through the Anti-Doping Act (No. 5 of 2016).
4. Having ratified the UNESCO convention against doping in sport in 2009, Kenya became a Member State and was thus bound to the International regulations on Anti-Doping.
5. The Code has a five-year life cycle. This is informed by the dynamic nature of doping. Unscrupulous characters have the tendency to attempt to beat the Anti-Doping system using crafty, shrewd, and canny doping methods. Luckily, technology evolves, and the doping detection system is ever improving.
6. The first Code was adopted in 2004. It was amended and a new one adopted in 2009. The current Code was ratified in 2015 and is due to be replaced by the 2021 Code which will become operational on 1st January 2021.
7. A new Code establishes different international standards, improved implementation mechanisms and an informed approach to the fight against doping in sport.
8. The 2021 Code has introduced new international standards, being the 2021 International Standard for Education (ISE) and the 2021 International Standard for Results Management (ISRM).
9. It is incumbent upon Member States to align their national Anti-Doping legal framework with the provisions of the Code. A failure to align the national legal framework with the 2021 Code, within the set timeline, will result in a declaration of non-compliance from WADA. **The deadline for action is 31st December 2020.**
10. Non-compliance status means that Kenya shall be barred from participating in all future international sporting competitions. These includes regional and international events.
11. This is the basis for undertaking this amendment process.

SALIENT FEATURES OF THE BILL

12. Clause 1 of the Bill sets out the short title of the proposed Act.
13. Clause 2 of the Bill proposes to amend section 2 of the Act by inserting definitions of new terms and phrases and deleting terms that have become obsolete or no longer appear in the body of the Act.
14. Clause 3 of the Bill seeks to amend section 3 of the Act to broaden the application of the Act.

15. Clause 4 of the Bill proposes to amend section 4 of the Act by inserting an additional purpose for the Act, which is to safeguard the physical health and mental integrity of athletes.
16. Clause 5 of the Bill proposes to amend section 5 of the Act to provide further clarity and guidance on the powers of the Agency.
17. Clause 6 of the Bill proposes to amend section 7 of the Act to provide clarity as to the functions of the Agency and to provide clarity with respect to the institutions the Agency is responsible for monitoring compliance from.
18. Clause 7 of the Bill proposes to amend section 9 of the Act by introducing a statement on independence of the Agency and the Committee from any undue influence in the conduct of its activities and actions regarding anti-doping.
19. Clause 8 of the Bill proposes to amend section 10 of the Act by introducing further qualifications required for any person to be appointed to the Board of the Agency. The clause also provides for the signing of a conflict of interest and confidentiality declaration by any new Board member of the Agency.
20. Clause 9 of the Bill proposes to amend section 12 of the Act to enhance the disqualification criteria for any Board member.
21. Clause 10 of the Bill proposes to amend section 14 of the Act to enhance the independence of the Board and the Secretariat of the Agency.
22. Clause 11 of the Bill proposes to amend section 17 of the Act to provide clarity as to the role of the chief executive officer with respect to the Therapeutic Use Exemption.
23. Clause 12 of the Bill proposes to amend section 19 of the Act to disqualify from employment by the Agency of persons who in the past have been involved in any form of anti-doping rule violation
24. Clause 13 of the Bill proposes to amend the Act by introducing a new section 22A to provide that other government agencies responsible for functions that co-relate to any anti-doping efforts shall collaborate with the Agency in enforcement, monitoring and curbing of anti-doping activities.
25. Clause 14 of the Bill proposes to amend section 23 of the Act to provide for the signing of a conflict of interest and confidentiality declaration by members of the Therapeutic Use Exemption Committee and its composition.
26. Clause 15 of the Bill proposes to amend section 24 of the Act to enhance clarity on the appeal procedure arising out of a TUE application.

27. Clause 16 of the Bill proposes to amend section 25 of the Act to comply with the Data Protection Act, 2019 and to introduce gender neutral language in the Act.
28. Clause 17 of the Bill proposes to amend section 27 of the Act to reinforce obligations arising to all relevant persons from the Code and the Rules.
29. Clause 18 of the Bill proposes to amend section 28 of the Act to provide for the use of samples and related analytical data collected from athletes, the laboratories that can test athletes and the submission of all test samples to the Agency.
30. Clause 19 of the Bill proposes to amend section 29 of the Act with the objective of providing an enhanced framework for anti-doping compliance officers in the Agency.
31. Clause 20 of the Bill proposes to amend the Act by repealing and replacing section 31 of the Act so as to clarify the distinct original and appellate jurisdictional role of the Sports Dispute Tribunal in relation to anti-doping cases that are placed before the Tribunal.
32. Clause 21 of the Bill proposes to amend the Act by inserting new sections 31A, 31B, 31C, 31D, 31E, and 31F to provide for the establishment, functions, and operations of the Anti-Doping Results Management Panel in order to enhance the aspect of results management in cases of anti-doping rule violations.
33. Clause 22 of the Bill proposes to amend section 32 of the Act to enhance clarity on the applicability of the appeal to the Court of Arbitration for Sports on doping matters.
34. Clause 23 of the Bill proposes to amend section 41B of the Act in order to provide for the responsibility of sports federation in enforcing the Anti-Doping Rules within the Federations.
35. Clause 24 of the Bill proposes to amend section 41D of the Act to provide that any other anti-doping organisations shall co-operate with the Agency in fulfilling its mandate under the Act.
36. Clause 25 of the Bill proposes to amend section 42 of the Act to provide a linkage between an anti-doping rule violation and the resultant sanction to be in accordance with the Anti-Doping Rules.

**MIN.NO.NA/SCT/2020/127: - CONSIDERATION AND ADOPTION OF THE
REPORT ON CONSIDERATION OF THE ANTI-
DOPING (AMENDMENT) BILL, 2020**

The Committee considered and unanimously adopted the report with the following observations and recommendations having been proposed and seconded by the Hon. Jones Mlolwa, MP. and seconded by the Hon. Kubai Iringo, MP respectively.

Observations

THAT;

1. The principal object of the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020) is to amend the Anti-Doping Act, 2016 to harmonize the legislative framework with the 2021 World Anti-Doping Code and Regulations. This effort will aid in the achievement of compliance by Kenya to the internationally adopted Code and facilitate the continued participation of Kenyan athletes in local, regional, and international competitions, while appreciating the relevance of curbing doping in sports.
2. Kenya established the Anti-Doping Agency of Kenya (ADAK) in 2016 through the Anti-Doping Act (No. 5 of 2016).
3. Having ratified the UNESCO convention against doping in Sport in 2009, Kenya became a Member State and was thus bound to the International regulations on Anti-Doping.
4. The Code has a five-year life cycle. This is informed by the dynamic nature of doping. Unscrupulous characters have the tendency to attempt to beat the Anti-Doping system using crafty, shrewd, and canny doping methods. Luckily, technology evolves, and the doping detection system is ever improving.
5. The first Code was adopted in 2004. It was amended and a new one adopted in 2009. The current Code was ratified in 2015 and is due to be replaced by the 2021 Code which will become operational on 1st January 2021.
6. A new Code establishes different international standards, improved implementation mechanisms and an informed approach to the fight against doping in sports.
7. The 2021 Code has introduced new international standards, being the 2021 International Standard for Education (ISE) and the 2021 International Standard for Results Management (ISRM).
8. It is incumbent upon Member States to align their national Anti-Doping legal framework with the provisions of the Code. A failure to align the national legal framework with the 2021 Code, within the set timeline, will result in a declaration of non-compliance from WADA. The deadline for action is 31st December 2020.
9. Non-compliance status means that Kenya shall be barred from participating in all future international sporting competitions. These include regional and international events.

Recommendation

THAT; the House passes the Anti-Doping (Amendment) Bill 2020 (National Assembly Bill No. 51 of 2020) in its current form to enable Kenya comply with the 2021 World Anti-Doping Code and Regulations within the set timelines.

MIN.NO.NA/SCT/2020/128: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the meeting was adjourned four O'clock.

Signed.....

**HON. PATRICK MAKAU KINGÓLA, M.P
(CHAIRPERSON)**

Date.....



Darby
Naton
16/12/2020

TWELFTH PARLIAMENT
THE NATIONAL ASSEMBLY

**INVITATION FOR PUBLIC PARTICIPATION & SUBMISSION
OF MEMORANDA**

SUBJECT: THE ANTI-DOPING (AMENDMENT) BILL, 2020
*(Article 118 (1)(b) of the Constitution and Standing Order 127(3) of the
National Assembly Standing Orders*

In the matter of consideration by the National Assembly: The Anti-Doping (Amendment) Bill, 2020

WHEREAS the National Assembly on Thursday, 3rd December 2020, resolved that the following procedure shall apply to Bills published during the period of the long recess (4th December, 2020-8th February, 2021)-

"Should a Bill be published during the said period, or a published Bill becomes due for First Reading during the period, the Speaker shall, upon lapse of at least three days following the publication of the Bill and following a determination that such Bill is of priority, forthwith refer such Bill to the relevant Committee for consideration pursuant to the provisions of Standing Order 127 (Committal of Bills to Committees and public participation) and upon resumption of the House, cause the Bill to be read a First Time and the Second Reading may be taken forthwith, or on such other day as the House Business Committee may determine."

The Anti-Doping (Amendment) Bill, 2020, which was published on 14th December, 2020 proposes to amend the Anti-Doping Act, 2016 in order to put in place an enhanced results management system for anti-doping rules violations, to safeguard the physical health and mental integrity of athletes and provide clarity and guidance on the powers and functions of the Agency. The Bill also seeks to provide for the establishment, functions, and operations of the Anti-Doping Results Management Panel for purposes of enhancing results management in cases of anti-doping rule violations. Finally, the Bill seeks to provide for the responsibility of sports federation in enforcing the Anti-Doping Rules within the Federations and clarify the role of the Sports Dispute Tribunal in relation to anti-doping cases *vis-à-vis* the Court of Arbitration for Sports on doping matters.

WHEREAS the Bill has been determined to be of priority and stands committed to the Departmental committee on Sports, Culture and Tourism in accordance with the said resolution.

NOW THEREFORE, pursuant to Article 118 (1)(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly invites interested members of the public, organisations and sector-specific stakeholder groups and associations, to submit any views or make representations regarding the Bill for consideration by the **Departmental Committee on Sports, Culture and Tourism**. The Bill may be found on the Parliament website at <http://www.parliament.go.ke/the-national-assembly/house-business/bills> or <http://www.kenyalaw.org>. The views, representations or written Memoranda may be forwarded to the **Clerk of the National Assembly**, P.O Box 41842-00100, Nairobi: hand-delivered to the **Office of the Clerk**, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke, or samuelkalama984@gmail.com; to be received on or before Monday, 21st December, 2020 at 5:00 pm.

MICHAEL SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

*"For the Welfare of Society and the Just Government of the People"
The National Assembly speaks for you, Our results speak for themselves"*



Standard
Wed. 16th
DEC. 2020

TWELFTH PARLIAMENT THE NATIONAL ASSEMBLY

INVITATION FOR PUBLIC PARTICIPATION & SUBMISSION OF MEMORANDA SUBJECT: THE ANTI-DOPING (AMENDMENT) BILL, 2020

(Article 118 (1)(b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders)

In the matter of consideration by the National Assembly: The Anti-Doping (Amendment) Bill, 2020

WHEREAS the National Assembly on Thursday, 3rd December 2020, resolved that the following procedure shall apply to Bills published during the period of the long recess (4th December, 2020-8th February, 2021)-

"If a Bill be published during the said period, or a published Bill becomes due for First Reading during the period, the Speaker shall, upon lapse of at least three days following the publication of the Bill and following a determination that such Bill is of priority, forthwith refer such Bill to the relevant Committee for consideration pursuant to the provisions of Standing Order 127 (Committal of Bills to Committees and public participation) and upon resumption of the House, cause the Bill to be read a First Time and the Second Reading may be taken forthwith, or on such other day as the House Business Committee may determine."

The Anti-Doping (Amendment) Bill, 2020, which was published on 14th December, 2020 proposes to amend the Anti-Doping Act, 2016 in order to put in place an enhanced results management system for anti-doping rule violations, to safeguard the physical health and mental integrity of athletes and provide clarity and guidance on the powers and functions of the Agency. The Bill also seeks to provide for the establishment, functions, and operations of the Anti-Doping Results Management Panel for purposes of enhancing results management in cases of anti-doping rule violations. Finally, the Bill seeks to provide for the responsibility of sports federation in enforcing the Anti-Doping Rules within the Federations and clarify the role of the Sports Dispute Tribunal in relation to anti-doping cases vis-à-vis the Court of Arbitration for Sports on doping matters.

WHEREAS the Bill has been determined to be of priority and stands committed to the Departmental committee on Sports, Culture and Tourism in accordance with the said resolution.

NOW THEREFORE, pursuant to Article 118 (1)(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly invites interested members of the public, organisations and sector-specific stakeholder groups and associations, to submit any views or make representations regarding the Bill for consideration by the **Departmental Committee on Sports, Culture and Tourism**. The Bill may be found on the Parliament website at <http://www.parliament.go.ke/the-national-assembly/house-business/bills> or <http://www.kenyalaw.org>. The views, representations or written Memoranda may be forwarded to the Clerk of the National Assembly, P.O Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke, or samuelkalama984@gmail.com; to be received on or before Monday, 21st December, 2020 at 5:00 pm.

MICHAEL SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

"For the Welfare of Society and the just Government of the People"
"The National Assembly speaks for you, Our results speak for themselves"



**ANTI-DOPING
AGENCY
OF KENYA**

Fred

When replying please quote:

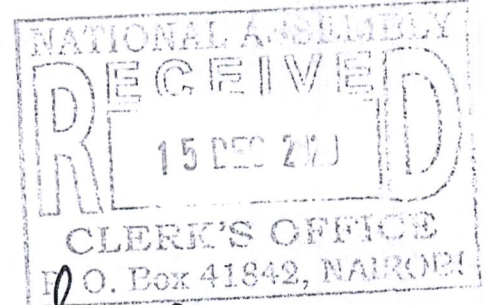
Ref: ADAK/1/18/Vol. 1 (19)

Date: Tuesday, 15th December 2020

Michael Sialai, EBS
Clerk's Chambers National Assembly
Parliament Buildings
P.O Box 41842-00100
NAIROBI.

Dear *Michael*

*Mr Fred
Okumu
Pseudonym
CWA
16/12/20*



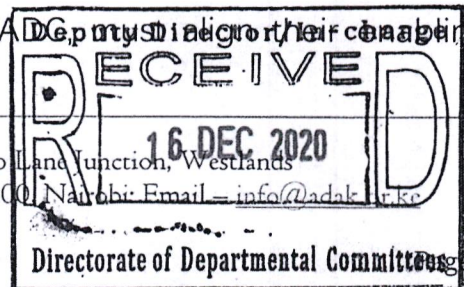
RE: THE ANTI-DOPING AMENDMENT BILL 2020

The Anti-Doping Agency of Kenya (ADAK) is a State Corporation established vide the Anti-Doping Act No. 5 of 2016. Part of the Agency's mandate is to ensure compliance with the World Anti-Doping Code (WADC) by creating awareness amongst stakeholders on doping issues in sports and by testing athletes in all sports disciplines.

The Code has a life cycle of five (5) years to change its operational details and keep pace with the dynamic nature of doping. The current Code was adopted in 2015 and is due to be replaced by the 2021 Code which becomes operational on 1st January 2021. The new Code introduces different International Standards, improved implementation mechanisms and an informed approach to the fight against doping in sport.

Every Member State that has ratified the UNESCO Convention against Doping in Sport and hence become a signatory to the WADC, must sign their enabling statutes to the new Code.

Parklands Plaza, 6th Floor, Muthithi Road/Chiromo Land Junction, Westlands
Phone: +254 722269584/733837385; P.O Box 66458 - 00800 Nairobi; Email - info@adak.or.ke



This process started in the month of February 2020 and involved intense consultation with the legal officers from the World Anti-Doping Agency (WADA). The collaboration and continuous consultation were meant to avoid non-conformity to the Code.

This process was completed in the month of September 2020 and the final document forwarded to the parent Ministry of Sports, Culture and Heritage for onward processing through the relevant Committee in Parliament, the Attorney General's office and the Cabinet. The Cabinet gave its approval on Tuesday, 8th December 2020 in readiness for debate in Parliament.

Attached please find details taken to arrive at this position and the basis on which this process was undertaken.

Yours, *Sincerely*



Japhter K. Rugut, EBS
CHIEF EXECUTIVE OFFICER

Cc The Hon. Attorney General
The Cabinet Secretary, Ministry of Sports, Culture and Heritage
The Principal Secretary, State Department for Sports
Chairman, ADAK Board



Stay Clean, Win Right

**ANTI-DOPING
AGENCY
OF KENYA**

THE ANTI-DOPING AMENDMENT BILL 2020

- The amendment process commenced in February 2020 with the visit of the WADA legal and compliance team, who held several sessions with ADAK.
- It was demanded by WADA that all drafts must be reviewed by their legal and compliance team at all stages before the final draft is presented for enactment into law. This was meant to ensure that the final law passed must be in compliance with the provisions of the CODE and with the various International Standards.
- Several drafts were exchanged between WADA and ADAK for a period of eight months.
- These drafts included the various legal stages including public participation which was done in June 2020 and in compliance with Article ten (10) of the constitution.
- The Ministry of Sports, Culture and Heritage (the parent ministry) hosted the National Assembly's Departmental Committee on Sports, Culture and Tourism in October 2020 to a retreat to review the Amendment Bill. Their views, feedback and comments were taken, and an enriched draft was shared with WADA.
- WADA concurred with the views and reverted in November 2020, whereby the Bill was forwarded to the Attorney General who formatted the document and the same was finally approved by cabinet on 8th December 2020.
- The deadline for action is 31st December 2020 for implementation on 1st January 2021.

- The following is the basis for undertaking this amendment process:
- The International Convention against Doping in Sport (Convention) is the first global treaty against doping in sport.
- It was adopted unanimously by the 33rd UNESCO General Conference on October 19, 2005, and went into force on 1 February 2007, following the 30th ratification.
- UNESCO Member States started ratifying it individually according to their respective constitutional jurisdictions.
- Kenya ratified the same in 2009.
- Kenya commenced the Anti-Doping activities in 2010 through the Kenya Anti-Doping Agency (KADA) which was an administrative organ domiciled within the National Olympic Committee (NOC).
- KADA worked closely with the Regional Anti-Doping Organization (RADO).
- The World Anti-Doping Agency (WADA) was established in 1999 as an international independent agency composed and funded equally by the sport movement and governments of the world. Its key activities include scientific research, education, development of Anti-Doping capacities, and monitoring the implementation of the World Anti-Doping Code (Code), which is the document harmonizing Anti-Doping policies in all sports and in all countries.
- WADA created the Regional Anti-Doping Organizations (RADO) Program in 2004 to strengthen the protection of Clean Sport by developing innovative Anti-Doping strategies for those countries that most needed it. The Program supports underfunded and understaffed National Anti-Doping Organizations (NADOs) and National Olympic Committees (NOCs) acting as NADOs with funding, training, and ongoing Anti-Doping assistance.

- Kenya falls into the AFRICA ZONE V RADO and it includes countries such as, Burundi, Egypt, Eritrea, Ethiopia, Rwanda, Sierra-Leone, Somalia, South Sudan, Sudan, Tanzania, Gambia, and Uganda.
- Kenya, Ethiopia, and Egypt have since established NADOs that are fully functional.
- Kenya established the Anti-Doping Agency of Kenya (ADAK) in 2016 through the Anti-Doping Act of 2016.
- Having ratified the UNESCO convention against doping in sport in 2009, Kenya became a Member State and was thus bound to the International regulations on Anti-Doping.
- The Code has a five-year life cycle. This is informed by the dynamic nature of doping. Unscrupulous characters have the tendency to attempt to beat the Anti-Doping system using crafty, shrewd, and canny doping methods. Luckily, technology evolves, and the doping detection system is ever improving.
- The first Code was adopted in 2004. It was amended and a new one adopted in 2009. The current Code was ratified in 2015 and is due to be replaced by the 2021 Code which will become operational on 1st January 2021.
- A new Code establishes different international standards, improved implementation mechanisms and an informed approach to the fight against doping in sport.
- The 2021 Code has introduced new international standards, being the 2021 International Standard for Education (ISE) and the 2021 International Standard for Results Management (ISRM).
- It is incumbent upon Member States to align their national Anti-Doping legal framework with the provisions of the Code.

- The proposed amendments are aimed at ensuring that the national Anti-Doping legislative framework is aligned to the CODE and the International Standards.
- The proposed amendments are:
- Clause 1 of the Bill sets out the short title of the proposed Act.
- Clause 2 of the Bill proposes to amend section 2 of the Act by inserting definitions of new terms and phrases and deleting terms that have become obsolete or no longer appear in the body of the Act.
- Clause 3 of the Bill seeks to amend section 3 of the Act to broaden the application of the Act.
- Clause 4 of the Bill proposes to amend section 4 of the Act by inserting an additional purpose for the Act, which is to safeguard the physical health and mental integrity of athletes.
- Clause 5 of the Bill proposes to amend section 5 of the Act to provide further clarity and guidance on the powers of the Agency.
- Clause 6 of the Bill proposes to amend section 7 of the Act to provide clarity as to the functions of the Agency and to provide clarity with respect to the institutions the Agency is responsible for monitoring compliance from.

- Clause 7 of the Bill proposes to amend section 9 of the Act by introducing a statement on independence of the Agency and the Committee from any undue influence in the conduct of its activities and actions regarding anti-doping.
- Clause 8 of the Bill proposes to amend section 10 of the Act by introducing further qualifications required for any person to be appointed to the Board of the Agency. The clause also provides for the signing of a conflict of interest and confidentiality declaration by any new Board member of the Agency.
- Clause 9 of the Bill proposes to amend section 12 of the Act to enhance the disqualification criteria for any Board member.
- Clause 10 of the Bill proposes to amend section 14 of the Act to enhance the independence of the Board and the Secretariat of the Agency.
- Clause 11 of the Bill proposes to amend section 17 of the Act to provide clarity as to the role of the chief executive officer with respect to the Therapeutic Use Exemption.
- Clause 12 of the Bill proposes to amend section 19 of the Act to disqualify from employment by the Agency of persons who in the past have been involved in any form of anti-doping rule violation

- **Clause 13** of the Bill proposes to amend the Act by introducing a new section 22A to provide that other government agencies responsible for functions that co-relate to any anti-doping efforts shall collaborate with the Agency in enforcement, monitoring and curbing of anti-doping activities.

- **Clause 14** of the Bill proposes to amend section 23 of the Act to provide for the signing of a conflict of interest and confidentiality declaration by members of the Therapeutic Use Exemption Committee and its composition.

- **Clause 15** of the Bill proposes to amend section 24 of the Act to enhance clarity on the appeal procedure arising out of a TUE application.

- **Clause 16** of the Bill proposes to amend section 25 of the Act to comply with the Data Protection Act, 2019 and to introduce gender neutral language in the Act.

- **Clause 17** of the Bill proposes to amend section 27 of the Act to reinforce obligations arising to all relevant persons from the Code and the Rules.

- **Clause 18** of the Bill proposes to amend section 28 of the Act to provide for the use of samples and related analytical data collected from athletes, the laboratories that can test athletes and the submission of all test samples to the Agency.

- **Clause 19** of the Bill proposes to amend section 29 of the Act with the objective of providing an enhanced framework for anti-doping compliance officers in the Agency.
- **Clause 20** of the Bill proposes to amend the Act by repealing and replacing section 31 of the Act so as to clarify the distinct original and appellate jurisdictional role of the Sports Dispute Tribunal in relation to anti-doping cases that are placed before the Tribunal.
- **Clause 21** of the Bill proposes to amend the Act by inserting new sections 31A , 31B, 31C, 31D, 31E and 31F to provide for the establishment, functions, and operations of the Anti-Doping Results Management Panel in order to enhance the aspect of results management in cases of anti-doping rule violations
- **Clause 22** of the Bill proposes to amend section 32 of the Act to enhance clarity on the applicability of the appeal to the Court of Arbitration for Sports on doping matters.
- **Clause 23** of the Bill proposes to amend section 41B of the Act in order to provide for the responsibility of sports federation in enforcing the Anti-Doping Rules within the Federations.
- **Clause 24** of the Bill proposes to amend section 41D of the Act to provide that any other anti-doping organizations shall co-operate with the Agency in fulfilling its mandate under the Act.

- Clause 25 of the Bill proposes to amend section 42 of the Act to provide a linkage between an anti-doping rule violation and the resultant sanction to be in accordance with the Anti-Doping Rules.
- A failure to align the national legal framework with the 2021 Code, within the set timeline, will result in a declaration of non-compliance from WADA.
- Non-compliance status means that Kenya shall be barred from participating in all future international sporting competitions. These includes regional and international events.
- The importance of sports in Kenya cannot be overstated. Thousands of Kenyans depend on sports as their only source of livelihood. Sports is a source of pride for Kenya.
- Apart from athletes, the number of Athlete Support Personnel and sports administrators who depend on sports earnings is four times that of athletes.
- Sports is not only a recreational activity, but the economic value is exponential. As an example, the recently concluded Continental Tour amassed a total of Kshs. 91,000,000/= in revenue collected. This included the prize money for our athletes, bonuses, travel/accommodation, and sponsorship deals. The road races generate Kshs. 6,000,000,000/= annually, through prize monies, appearance, and endorsement fees. The World Rally Championships will require an injection of Kshs. 1,600,000,000/= as estimated costs of hosting the event. In return the country will receive Kshs. 6,000,000,000/= through direct remittance by the visiting teams, tabulated as participation fee, travel/accommodation, and local tourism.
- Athletes have continued to promote the growth and expansion of the north rift counties through various investment projects which have created employment for the youth.

- Sports is a unifying factor among the citizenries. Kenya cannot afford to be banned from participating in all international sporting events. The ripple effect would be catastrophic.
- The fight against doping in sport is not only a legal requirement but a public health concern. The effects of the banned substances or performance enhancing drugs (PEDs) on the human body is appalling, scary and outrightly horrific.
- Some of the PEDs have such shocking effects on a human being. Some lead to physical changes on the body. Men having enlarged breasts, diminished sperm production and even sterility. Women becoming masculinized, such as deepening of the voice, male-pattern baldness, broadening of shoulders and developing beards.
- Apart from the physical effects, PEDs lead to increased risk of tendinitis and tendon rupture, liver abnormalities and tumours, high blood pressure, heart, and blood circulation problems, aggressive behaviour, rage or violence, psychiatric disorders, such as depression, infections or diseases such as HIV or hepatitis if you're injecting the drugs and inhibited growth and development, and risk of future health problems in teenagers.
- The doping scourge is a threat to posterity. This must be curbed, failure to which the future of this country will be at risk.
- The universal healthcare agenda will be greatly affected if such a vice is left to thrive since it will ultimately lead to lowered life expectancy figures.
- ADAK has put up a good fight, reaching out to children below sixteen (16) years and trying to inculcate the positive sporting values such as honesty, ethics, fair-play among others since the allure of fame, riches and lavish lifestyles by athletes who have excelled in various sporting

disciplines is one of the factors contributing to increased cases of doping among the young and budding athletes.

- This Bill requires urgent action to save our sporting sector, the health, and lives of our future generations.



JAPHTER K. RUGUT, EBS
CHIEF EXECUTIVE OFFICER