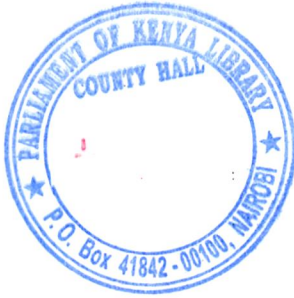


Approved for tabling.

BSA
SNA
19/4/16



REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT- FOURTH SESSION- 2016

THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON

THE ANTI-DOPING BILL, 2016

DIRECTORATE OF COMMITTEE SERVICES

CLERK'S CHAMBERS

PARLIAMENT BUILDINGS

NAIROBI

APRIL, 2016

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1.0 PREFACE

Hon Speaker,

On behalf of the Departmental Committee on Labour and Social Welfare, 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 Bill, 2016. The Bill was read a first time and referred to the Committee on Tuesday, 5th April, 2016 and it is on the basis of this that the Committee makes this report pursuant to Standing Order 127.

1.1 Mandate of the Committee

The Committee on Labour and Social Welfare is one of the Committees of the National Assembly established under Standing Order 216 and mandated to:-

- i) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- ii) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- iii) to study and review all legislation referred to it;**
- iv) to study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- v) to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
- vi) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

1.2 Committee membership

The Committee was constituted by the House on Thursday 16th May, 2013 comprising of the following Members:

1. Hon. David Were, MP - **Chairperson**
2. Hon. Tiyah Galgalo, MP - **Vice Chairperson**
3. Hon. Janet Teyiaa, MP
4. Hon. Peris Tobiko, MP
5. Hon. John Ndirangu Kariuki, MP
6. Hon. Winnie Karimi Njuguna, MP
7. Hon. Janet Nangabo, MP
8. Hon. John Serut, MP
9. Hon. Samuel Gichigi, MP
10. Hon. Elijah Lagat, MP
11. Hon. Cornelly Serem, MP
12. Hon. Abdi Noor Ali, MP
13. Hon. Daniel Wanyama, MP
14. Hon Regina Nyeris, MP
15. Hon. Wesley Korir, MP
16. Hon. Kinoti Gatobu, MP
17. Hon. Elijah Mosomi Moindi, MP
18. Hon. James Onyango K'Oyoo, MP
19. Hon. Omondi John Ogutu, MP
20. Hon. Aisha Jumwa Karisa, MP
21. Hon. Patrick Wangamati, MP
22. Hon. Rose Museo Mumo, MP
23. Hon. Silvance Onyango Osele, MP
24. Hon. Nyasuna Gladys Wanga, MP
25. Hon. John Owuor Onyango Kobado, MP
26. Hon. Mwanyoha Hassan Mohammed, MP
27. Hon. Mlolwa Jones Mwagogo, MP
28. Hon. Ferdinand Waititu, MP

1.3 Consideration of the Anti-Doping Bill, 2016

The Anti-Doping Bill, 2016 was published and read a first time on Tuesday 5th April, 2016 and thereafter committed to the Departmental Committee on Labour and Social Welfare for consideration pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on Friday, 8th April, 2016 pursuant to Article 118 of the Constitution. The Committee also met with officers from the Ministry of Sports, Culture and the Arts and several other stakeholders whose views are captured and contained in the body of the Report.

The Committee having held meetings with the various stakeholders, analyzed submissions from the public observed that the bill is critical in the registration and regulation of the Athletes but also falls short in certain areas to which the Committee will be proposing amendments as contained in the Report during the Committee Stage of the Bill.

1.4 Adoption of the Report

We the members of the Departmental Committee on Labour and Social Welfare have pursuant to Standing Order 199 adopted this Report on the Anti-Doping Bill, 2016 and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today Tuesday, 19th April, 2016:-

1.5 Acknowledgment

Mr. Speaker, Sir,

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 all the stakeholders for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Labour and Social Welfare, to table its Report on the consideration of the Anti-Doping Bill, 2016 in the House pursuant to Standing Order 127.

Signed  Date 19/4/2016

HON. DAVID WERE, MP CHAIRPERSON

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

2.0 BACKGROUND

The principal object of this Bill is to give effect to the World Anti-doping Code and the United Nations Educational Scientific and Cultural Organization Convention Against Doping in Sport in order to —

- (a) protect the fundamental right of athletes to participate in sports activities that are free from doping; and
- (b) put in place coordinated and effective mechanisms to detect, deter and prevent the use of prohibited substances or prohibited methods in competitive and recreational sport with the aim of ensuring fairness and equity in sporting activities and promoting the health of athletes globally.

3.0 CONSIDERATION OF THE ANTI-DOPING BILL, 2016

3.1 Stakeholder Views on the Anti-Doping Bill, 2016

3.1.1 Ministry of Sports, Culture and Arts and the Anti-Doping Agency of Kenya Board

The Committee held meetings with the Ministry of Sports, Culture & the Arts and the Anti-Doping Agency of Kenya Board to consider the Bill from Friday, 8th to Saturday 9th April, 2016 at Pride Inn Hotel, Mombasa. They considered the Bill Clause by Clause and proposed the following amendments:-

CLAUSE 2

THAT, clause 2, be amended by inserting the following new terms and meanings in correct alphabetical order—

“athlete” means any person who competes in sport at the international level as defined by an international federation or at the national level as defined by the Agency;

“health care professional” includes any person who has obtained health professional qualifications and licensed by the relevant regulatory body;”

“Anti- Doping Rules” includes the Regulations made under this Act;

CLAUSE 7

THAT clause 7 of the Bill in sub clause (1) be amended by inserting the following new paragraph immediately after paragraph (d) -

“(da) periodically gazette International Standards.”

CLAUSE 10

THAT clause 1

0. of the Bill be amended —

(a) in sub clause (1) by—

(i) inserting the following new paragraph immediately after paragraph (b)-

“(ba) The Attorney General or a representative designated in writing by the Attorney General;”

(ii) inserting the following words “who shall be the Secretary to the Board;” immediately after the words “Chief Executive Officer;” appearing in paragraph(d)

(b) in sub clause (2)

(i) by deleting paragraph (a) and substituting therefor following new paragraph

“(a) holds a post-secondary school education qualification recognised in Kenya;”

(ii) by deleting the words ‘sports or administration’ and substituting therefor the words ‘sports, management, administration or any other relevant field’ under paragraph (a)

(c) in sub clause (3) by deleting the words ‘the representation of women, youth and persons with disabilities’ appearing immediately after the word ‘ensure’ and substituting therefor the words ‘compliance with the Constitution’

(d) in sub clause (5) by deleting paragraph (c)

CLAUSE 17

THAT clause 17 of the Bill be amended in sub clause (2) by deleting the word “ten” appearing immediately after the words “at least” and substituting therefor the word “five” under paragraph (a)

CLAUSE 27

THAT clause 27 of the Bill be amended in sub clause (5) by deleting paragraph (a) and substituting therefor the following paragraph—

“(a) shall comply with the Anti-Doping Rules;”

CLAUSE 29

THAT, clause 29 be amended-

(a) in sub clause (2) —

- (i) by deleting the word “have” appearing in paragraph (b) and substituting therefor the words “with permission authorized in writing by the Inspector General of Police exercise”;
- (i) by deleting the words “subject to the direction of the Director of Public Prosecution” appearing in paragraph (c) and substituting therefor the words “may cooperate with the Office of the Director of Public Prosecutions to”

CLAUSE 30

THAT, clause 30 be amended—

(a) in sub clause (3) by deleting the prefatory statement and substituting therefor the following prefatory statement—

“(1) An authorised Anti-Doping compliance officer acting in accordance with the enabling statutory provisions may—”

(b) in sub clause (4) by deleting the words “ or without” appearing immediately after the word “may with”

CLAUSE 33

THAT, clause 33 of the Bill be amended in sub clause (1) by deleting the word "Parliament" appearing in paragraph (a) and substituting therefor the words "National Assembly"

CLAUSE 42

That Clause 42 of the Bill be amended—

(a) in sub clause (1)—

- (i) by deleting the words "or body" appearing immediately after the word "person" in the prefatory statement;
- (ii) by deleting paragraph (d);
- (iii) by deleting paragraph (g);
- (iv) by deleting paragraph (h).

(b) in sub clause (2)—

- (i) by deleting the words "or body" appearing in the prefatory statement;
- (ii) in paragraph (b) in paragraph (b) by deleting the words "stocks" and substituting therefor the words "sells, stocks or transports";
- (iii) by deleting the words "not less than three million shillings or imprisonment of not less than three years" and substituting therefor the following words "not exceeding five million shillings or imprisonment for a period not exceeding five years" appearing immediately after the words "fine of" appearing in the closing statement

(c) in sub clause (3)—

- (i) by deleting the words "sells, stocks, transports" appearing in paragraph (d);
- (ii) by deleting the words "not less than one hundred thousand shillings or imprisonment of not less than one year" and substituting therefor the following words "not exceeding five hundred thousand shillings or imprisonment for a period not exceeding one year" appearing immediately after the words "fine of" appearing in the closing statement;

- (iii) by inserting the words “found guilty of wilfully committing any of the offences prescribed under this section,” immediately after the word “personnel” appearing in the proviso
- (iv) by inserting the following new sub clause immediately after sub clause (3)—

“(3A) A person who violates the rules relating to confidentiality, public disclosure and privacy of data commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.”

(d) in sub clause (4)—

- (i) by deleting the prefatory statement and substituting therefor the following prefatory statement—

“A healthcare practitioner who—“

- (i) by deleting the words “not less than three million shillings or imprisonment of not less than three years” and substituting therefor the following words “not exceeding three million shillings or imprisonment for a term not exceeding three years” appearing immediately after the words “fine of” appearing in the closing statement;

(e) in sub clause (6) by deleting the words “ this Act” and substituting therefor the words “the Anti-Doping Rules” appearing immediately after the words “out under”

3.1.2 Ministry of Health (Pharmacy and Poisons Board)

The Committee having invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on Friday, 8th April, 2016 had only received two submissions from the Ministry of Health (Pharmacy and Poisons Board) and Transparency International-Kenya by end of business on Thursday, 14th April, 2016.

The Ministry of Health (Pharmacy and Poisons Board) proposed the following amendments, that:-

That under **Section 10 of the Bill** a **representative from the National Medicines Regulator** ought to be included in the membership of the ADAK Board.

That under **Section 23(b)** of the Bill, on the composition of the Therapeutic Use Exemption Committee(TUEC), a **Clinical Pharmacist** of not less than five years experience should be included in place of one Medical Doctor.

The Committee adopted the following amendment, that;-

“(b) a medical doctor of not less than five years experience in matters relating to sports;

(ba) a clinical pharmacist of not less than five years experience in matters relating to sports;”

1.1.3 Transparency International-Kenya

The Committee having received submission from the above Organization, considered the submission and adopted the amendment shown below;-

CLAUSE 33

THAT, clause 33 of the Bill be amended in sub clause (1) by deleting the words “Parliament for the purposes of the Agency” appearing in paragraph (a) and substituting therefor the words “National Assembly for the purposes of the Agency which funds shall be a charge on the Consolidated Fund”

JUSTIFICATION

The clause provides that Parliament shall ensure that the Agency is adequately funded for it to effectively and efficiently perform all of its function yet under Article 95 of the Constitution it is the National Assembly that appropriates funds for the expenditure by national state organs.

4.0 COMMITTEE OBSERVATIONS

The Committee observed that the Anti-Doping Bill, 2016 is very important in giving effect to the World Anti-doping Code and the United Nations Educational Scientific and Cultural Organization Convention against Doping in Sport.

The Committee also observed that the word 'athlete' was not defined in the Bill.

5.0 COMMITTEE RECOMMENDATIONS

Having held meetings with the Stakeholders, and through its analysis of the Bill, the Committee recommends the following amendments, that:-

CLAUSE 2

THAT, clause 2, be amended by inserting the following new terms and meanings in correct alphabetical order—

“athlete” means any person who competes in sport at the international level as defined by an international federation or at the national level as defined by the Agency;

“health care professional” includes any person who has obtained health professional qualifications and licensed by the relevant regulatory body;”

“Anti- Doping Rules” includes the Regulations made under this Act;

JUSTIFICATION

2. The word “athlete” is not defined in the Bill.
3. The word “healthcare professional” is lifted from the recently passed Health Bill and it ensures uniformity and clarity in the definition of the classification of health practitioners.
4. The Bill makes reference to Rules which appear not to be defined in the Bill.

CLAUSE 7

THAT clause 7 of the Bill in sub clause (1) be amended by inserting the following new paragraph immediately after paragraph (d) -

“(da) periodically gazette International Standards.”

JUSTIFICATION

The amendment will ensure that the ADAK will constantly create awareness among athletes of the prohibited list of banned substances published by the World Anti Doping Agency.

CLAUSE 10

THAT clause 1

0 of the Bill be amended —

(e) in sub clause (1) by—

(iii) inserting the following new paragraph immediately after paragraph (b)-

“(ba) The Attorney General or a representative designated in writing by the Attorney General;”

JUSTIFICATION

The amendment brings the Bill in compliance with the State Corporations Act that prescribes that during the formation of a Board there must be a representative of the Attorney General’s Office.

(iv) inserting the following words “who shall be the Secretary to the Board;” immediately after the words “Chief Executive Officer;” appearing in paragraph(d)

(f) in sub clause (2)

(iii) by deleting paragraph (a) and substituting therefor following new paragraph

“(a) holds a post-secondary school education qualification recognised in Kenya;”

(iv) by deleting the words ‘sports or administration’ and substituting therefor the words ‘sports, management, administration or any other relevant field’ under paragraph (a)

(g) in sub clause (3) by deleting the words ‘the representation of women, youth and persons with disabilities’ appearing immediately after the word ‘ensure’ and substituting therefor the words ‘compliance with the Constitution’

JUSTIFICATION

The amendment brings the Bill in compliance with provisions of the Constitution, that is, Article 232 (i) by ensuring all inclusive representation in public service offices..

(h) in sub clause (5) by deleting paragraph (c)

JUSTIFICATION

The clause has been deleted because membership to a political party will not compromise the independence of the Agency to carry out its operations.

CLAUSE 17

THAT clause 17 of the Bill be amended in sub clause (2) by deleting the word “ten” appearing immediately after the words “at least” and substituting therefor the word “five” under paragraph (a)

CLAUSE 23

THAT clause 23 of the Bill be amended in sub clause (2) by deleting paragraph (b) and substituting therefor the following new paragraphs—

“(b) a medical doctor of not less than five years experience in matters relating to sports;

(ba)a clinical pharmacist of not less than five years experience in matters relating to sports;”

JUSTIFICATION

The amendment brings diversity in the nature of medical representation to ensure a highly skilled constituted Therapeutic Use Committee.

CLAUSE 27

THAT clause 27 of the Bill be amended in sub clause (5) by deleting paragraph (a) and substituting therefor the following paragraph—

“(a) shall comply with the Anti-Doping Rules;”

JUSTIFICATION

The amendment shall clarify that an athlete has a duty under the Bill to comply with the Anti-Doping Rules to be adopted under subsidiary legislation.

CLAUSE 29

THAT, clause 29 be amended-

(a) in sub clause (2) —

(ii) by deleting the word ”have” appearing in paragraph (b) and substituting therefor the words “with permission authorized in writing by the Inspector General of Police exercise”;

JUSTIFICATION

The amendment brings the Bill in compliance with Constitution by permitting the officers of the Agency only to exercise police powers with permission and guidelines of the Inspector General of Police.

(ii) by deleting the words “subject to the direction of the Director of Public Prosecution” appearing in paragraph (c) and substituting therefor the words “may cooperate with the Office of the Director of Public Prosecutions to”

JUSTIFICATION

The amendment brings the Bill in compliance with Constitution by permitting the officers of the Agency to undertake prosecution in collaboration with the Office of Director of Public Prosecutions.

CLAUSE 30

THAT, clause 30 be amended—

(b) in sub clause (3) by deleting the prefatory statement and substituting therefor the following prefatory statement—

“(1) An authorised Anti-Doping compliance officer acting in accordance with the enabling statutory provisions may—”

(b) in sub clause (4) by deleting the words “ or without” appearing immediately after the word “may with”

JUSTIFICATION

The amendments brings the Bill in compliance with the Constitution and the Section 29 of the Criminal Procedure Code Act by permitting the officers of the Agency who exercise police powers of arrest, seizure and search do so within the permitted legal framework and with a warrant.

CLAUSE 33

THAT, clause 33 of the Bill be amended in sub clause (1) by deleting the word “Parliament” appearing in paragraph (a) and substituting therefor the words “National Assembly”

JUSTIFICATION

The National Assembly is the House of Parliament that appropriates funds.

CLAUSE 42

That Clause 42 of the Bill be amended—

(a) in sub clause (1)—

(i) by deleting the words “or body” appearing immediately after the word “person” in the prefatory statement;

JUSTIFICATION

The amendment brings clarity in reference as a person under law may be understood as the natural or a legal/corporate person..

(iii) by deleting paragraph (d);

(iv) by deleting paragraph (g);

(v) by deleting paragraph (h).

JUSTIFICATION

The amendment brings clarity as (d) and (g) are ambiguous in interpretation and (h) has been moved to a standalone provision to provide for a stiffer penalty.

(b) in sub clause (2)—

- (i) by deleting the words “or body” appearing in the prefatory statement;
- (ii) in paragraph (b) by deleting the words “stocks” and substituting therefor the words “sells, stocks or transports”;

JUSTIFICATION

The amendment brings clarity in referencing and makes interpretation of the said sub clauses clear.

- (iii) by deleting the words “not less than three million shillings or imprisonment of not less than three years” and substituting therefor the following words “not exceeding five million shillings or imprisonment for a period not exceeding five years” appearing immediately after the words “fine of” appearing in the closing statement

JUSTIFICATION

The amendment provides for a stiffer penalty.

(c) in sub clause (3)—

- (i) by deleting the words “sells, stocks, transports” appearing in paragraph (d)

:

- (ii) by deleting the words “not less than one hundred thousand shillings or imprisonment of not less than one year” and substituting therefor the following words “not exceeding five hundred thousand shillings or imprisonment for a period not exceeding one year” appearing immediately after the words “fine of” appearing in the closing statement;

- (iii) by inserting the words “found guilty of willfully committing any of the offences prescribed under this section,” immediately after the word “personnel” appearing in the provision

JUSTIFICATION

The amendment provides for a stiffer penalty and defines the category of offenders that are subject to the Anti-Doping Rules to be adopted later as subsidiary legislation.

- (d) by inserting the following new sub clause immediately after sub clause (3)—

“(3A) A person who violates the rules relating to confidentiality, public disclosure and privacy of data commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.”

JUSTIFICATION

The amendment is to cater for the deleted (1)(h) as a standalone provision to provide for a stiffer penalty.

(e) in sub clause (4)—

(ii) by deleting the prefatory statement and substituting therefor the following prefatory statement—

“A healthcare practitioner who—“

JUSTIFICATION

The amendment brings uniformity and clarity by referring to medical practitioners as “healthcare practitioners” as defined under the Health Bill.

(iii) by deleting the words “not less than three million shillings or imprisonment of not less than three years” and substituting therefor the following words “not exceeding three million shillings or imprisonment for a term not exceeding three years” appearing immediately after the words “fine of” appearing in the closing statement;

(f) in sub clause (6) by deleting the words “ this Act” and substituting therefor the words “the Anti-Doping Rules” appearing immediately after the words “out under”

JUSTIFICATION

The amendment brings uniformity and clarity tenure that athletes under this Bill will be subject to the procedures and sanctions provided for under the Anti- Doping Rules.

ANNEX 1- MINUTES

MINUTES OF THE 21ST SITTING OF THE LABOUR AND SOCIAL WELFARE COMMITTEE HELD ON TUESDAY 19TH APRIL, 2016 AT NEW MEMBERS LOUNGE, MAIN PARLIAMENT BUILDING, AT 10:00 AM.

PRESENT

1. Hon. Tiyah Galgalo, MP - **Vice Chairperson**
2. Hon. John Serut, MP-Chairing
3. Hon. John Owuor O. Kobado, MP
4. Hon. Peris Tobiko, MP
5. Hon. Abdinoor Mohamed Ali, MP
6. Hon. Omondi John Ogutu, MP
7. Hon. Winnie Karimi Njuguna, MP
8. Hon. Kinoti Gatobu, MP
9. Hon. Cornelly Serem, MP
10. Hon. Mwanyoha Mohammed, MP
11. Hon. Dan Wanyama, MP
12. Hon. Mlolwa Jones Mwangogo, MP
13. Hon. Elijah Mosomi Moindi, MP
14. Hon. John Ndirangu Kariuki, MP
15. Hon. Rose Museo Mumo, MP
16. Hon. Janet Nangabo, MP

APOLOGIES

1. Hon. David Were, MP - **Chairperson**
2. Hon. Samuel Gichigi, MP
3. Hon. Aisha Jumwa Karisa, MP
4. Hon. Patrick Wangamati, MP
5. Hon. Ferdinand Waititu, MP
6. Hon. Nyasuna Gladys Wanga, MP
7. Hon. James Onyango K'Oyoo, MP
8. Hon. Regina Nyeris Changorok, MP
9. Hon. Wesley Korir, MP
10. Hon. Janet Teyiaa, MP
11. Hon. Elijah Lagat, MP
12. Hon. Silvanse Onyango Osele, MP

IN ATTENDANCE

1. Mr. Erick Nyambati
2. Mr. Abdirahman G. Hassan
3. Ms. Nuri K. Nataan
4. Mr. Sydney Okumu
5. Ms. Lorna Okatch

NATIONAL ASSEMBLY

- Third Clerk Assistant(Lead Clerk)
Third Clerk Assistant
Third Clerk Assistant
Legal Counsel
Research Officer

MIN/DC-LSW/2016/111

PRELIMINARIES

The Vice Chairperson called the meeting to order at 10:20am and said the opening prayers.

MIN/DC-LSW/2016/112

CONFIRMATION OF MINUTES

The Minutes of the 19th Sitting was confirmed as a true record of the proceedings having been proposed and seconded by Hon. Elijah Mosomi Moindi, MP and Hon. Abdinoor Mohamed Ali, MP respectively.

The Minutes of the 20th Sitting was confirmed as a true record of the proceedings having been proposed and seconded by Hon. Mwanyoha Hassan, MP and Hon. Rose Museo Mumo, MP respectively.

MIN/DC-LSW/2016/113

MATTERS ARISING

No matters arose

MIN/DC-LSW/2016/114

ADOPTION OF THE REPORT ON THE ANTI-DOPING BILL, 2016

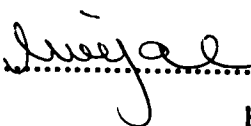
Having considered the Bill and the Memoranda from the Pharmacy & Poisons Board and the Transparency International, the Committee considered and unanimously adopted the Report on the Anti-Doping Bill, 2016.

MIN/DC-LSW/2016/115

ADJOURNMENT

There being no other business, the meeting was adjourned at 11.35am. The next meeting will be called on notice.

SIGNED.....



.....DATE.....

19/4/2016

HON. TIYAH GALGALO ALI, M.P

(Vice Chairperson)

MINUTES OF THE 20TH SITTING OF THE LABOUR AND SOCIAL WELFARE COMMITTEE HELD ON THURSDAY 14TH APRIL, 2016 IN THE BOARDROOM ON 11TH FLOOR PROTECTION HOUSE, PARLIAMENT BUILDING, AT 11:00 AM.

PRESENT

1. Hon. David Were, MP - **Chairperson**
2. Hon. John Serut, MP-Chairing
3. Hon. John Owuor O. Kobado, MP
4. Hon. Silvance Onyango Osele, MP
5. Hon. Peris Tobiko, MP
6. Hon. Abdinoor Mohamed Ali, MP
7. Hon. Omondi John Ogutu, MP
8. Hon. Winnie Karimi Njuguna, MP
9. Hon. Kinoti Gatobu, MP
10. Hon. Cornelly Serem, MP
11. Hon. Mwanyoha Mohammed, MP
12. Hon. Dan Wanyama, MP
13. Hon. Mlolwa Jones Mwangogo, MP
14. Hon. Elijah Mosomi Moindi, MP
15. Hon. John Ndirangu Kariuki, MP
16. Hon. Janet Teyiaa, MP
17. Hon. Elijah Lagat, MP

APOLOGIES

1. Hon. Tiyah Galgalo, MP - **Vice Chairperson**
2. Hon. Samuel Gichigi, MP
3. Hon. Janet Nangabo, MP
4. Hon. Aisha Jumwa Karisa, MP
5. Hon. Rose Museo Mumo, MP
6. Hon. Patrick Wangamati, MP
7. Hon. Ferdinand Waititu, MP
8. Hon. Nyasuna Gladys Wanga, MP
9. Hon. James Onyango K'Oyoo, MP
10. Hon. Regina Nyeris Changorok, MP
11. Hon. Wesley Korir, MP

IN ATTENDANCE

1. Mr. Erick Nyambati
2. Mr. Abdirahman G. Hassan
3. Ms. Nuri K. Nataan
4. Mr. Sydney Okumu
5. Ms. Lorna Okatch

NATIONAL ASSEMBLY

- Third Clerk Assistant(Lead Clerk)
Third Clerk Assistant
Third Clerk Assistant
Legal Counsel
Research Officer

MIN/DC-LSW/2016/107

PRELIMINARIES

The Interim Chair Hon. John Serut, MP called the meeting to order at 11:20am and said the opening prayers.

MIN/DC-LSW/2016/108

CONFIRMATION OF MINUTES

Agenda deferred to the next sitting.

MIN/DC-LSW/2016/109

**CONSIDERATION OF MEMORANDA ON THE
ANTI-DOPING BILL, 2016**

The Committee having invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on Friday, 8th April, 2016 had only received two submissions from the Ministry of Health (Pharmacy and Poisons Board) and Transparency International-Kenya by end of business on Thursday, 14th April, 2016.

(I) Ministry of Health (Pharmacy and Poisons Board)

The Ministry of Health (Pharmacy and Poisons Board) proposed the following amendments, that:-

That under **Section 10 of the Bill** a **representative from the National Medicines Regulator** ought to be included in the membership of the ADAK Board.

That under **Section 23(b)** of the Bill, on the composition of the Therapeutic Use Exemption Committee (TUEC), a **Clinical Pharmacist** of not less than five years experience should be included in place of one Medical Doctor.

The Committee adopted the following amendment, that:-

“(b) a medical doctor of not less than five years experience in matters relating to sports;

(ba) a clinical pharmacist of not less than five years experience in matters relating to sports;”

(II) Transparency International-Kenya

The Committee having received submission from the above Organization, considered the submission and adopted the amendment as follows:-

Clause 33

THAT, clause 33 of the Bill be amended in sub clause (1) by deleting the words “Parliament for the purposes of the Agency” appearing in paragraph (a) and substituting therefor the words “National Assembly for the purposes of the Agency which funds shall be a charge on the Consolidated Fund”

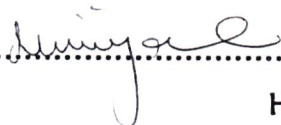
JUSTIFICATION

The clause provides that Parliament shall ensure that the Agency is adequately funded for it to effectively and efficiently perform all of its function yet under Article 95 of the Constitution it is the National Assembly that appropriates funds for the expenditure by national state organs.

MIN/DC-LSW/2016/110

ADJOURNMENT

There being no other business, the meeting was adjourned at 12.50 pm. The next meeting will be called on notice.

SIGNED..........DATE.....19/4/2016.....

HON. DAVID WERE, M.P
(Chairperson)

MINUTES OF THE 19TH SITTING OF THE LABOUR AND SOCIAL WELFARE COMMITTEE HELD ON TUESDAY 12TH APRIL, 2016 IN THE BOARDROOM ON 11TH FLOOR PROTECTION HOUSE, PARLIAMENT BUILDING, AT 11:00 AM.

PRESENT

1. Hon. Tiyah Galgalo, MP - Vice Chairperson
2. Hon. Winnie Karimi Njuguna, MP
3. Hon. Kinoti Gatobu, MP
4. Hon. Samuel Gichigi, MP
5. Hon. Cornelly Serem, MP
6. Hon. Mwanyoha Mohammed, MP
7. Hon. Dan Wanyama, MP
8. Hon. Mlolwa Jones Mwangogo, MP
9. Hon. Elijah Mosomi Moindi, MP
10. Hon. John Ndirangu Kariuki, MP
11. Hon. Janet Teyiaa, MP
12. Hon. Elijah Lagat, MP

APOLOGIES

1. Hon. David Were, MP - Chairperson
2. Hon. John Owuor O. Kobado, MP
3. Hon. Janet Nangabo, MP
4. Hon. Abdinoor Mohamed Ali, MP
5. Hon. Aisha Jumwa Karisa, MP
6. Hon. Rose Museo Mumo, MP
7. Hon. Patrick Wangamati, MP
8. Hon. Omondi John Ogutu, MP
9. Hon. Ferdinand Waititu, MP
10. Hon. Peris Tobiko, MP
11. Hon. Nyasuna Gladys Wanga, MP
12. Hon. Silvanice Onyango Osele, MP
13. Hon. James Onyango K'Oyoo, MP
14. Hon. Regina Nyeris Changorok, MP
15. Hon. Wesley Korir, MP
16. Hon. John Serut, MP

IN ATTENDANCE

1. Mr. Erick Nyambati
2. Mr. Abdirahman G. Hassan
3. Ms. Nuri K. Nataan
4. Mr. Sydney Okumu
5. Ms. Lorna Okatch

NATIONAL ASSEMBLY

- Third Clerk Assistant(Lead Clerk)
Third Clerk Assistant
Third Clerk Assistant
Legal Counsel
Research Officer

MIN/DC-LSW/2016/103

PRELIMINARIES

The Vice Chairperson called the meeting to order at 11:25 am and said the opening prayers.

MIN/DC-LSW/2016/104

CONFIRMATION OF MINUTES

Agenda deferred to the next sitting.

MIN/DC-LSW/2016/105

CONSIDERATION OF THE
REPORT ON THE ANTI-DOPING
BILL, 2016

The Committee considered the Bill with the following amendments:-

CLAUSE 2

THAT, clause 2, be amended by inserting the following new terms and meanings in correct alphabetical order—

“athlete” means any person who competes in sport at the international level (as defined by each International Federation), or the national level (as defined by each National Anti-Doping Organization). An Anti-Doping Organization has discretion to apply anti-doping rules to an *Athlete* who is neither an *International-Level Athlete* nor a *National-Level Athlete*, and thus to bring them within the definition of “Athlete.” In relation to *Athletes* who are neither *International-Level* nor *National-Level Athletes*, an Anti-Doping Organization may elect to: conduct limited *Testing* or no *Testing* at all; analyze *Samples* for less than the full menu of *Prohibited Substances*; require limited or no whereabouts information; or not require advance *TUEs*. However, if an Article 2.1, 2.3 or 2.5 anti-doping rule violation is committed by any *Athlete* over whom an *Anti-Doping Organization* has authority who competes below the international or national level, then the *Consequences* set forth in the *Code* (except Article 14.3.2) must be applied. For purposes of Article 2.8 and Article 2.9 and for purposes of anti-doping information and education, any *Person* who participates in sport under the authority of any *Signatory*, government, or other sports organization accepting the *Code* is an *Athlete*.

“health care professional” includes any person who has obtained health professional qualifications and licensed by the relevant regulatory body;”

“Rules” means the Anti- Doping Rules:

Justification

1. The word “athlete” is not defined in the Bill.
2. The word “healthcare professional” is lifted from the recently passed Health Bill and it ensures uniformity and clarity in the definition of the classification of health practitioners.
3. The Bill makes reference to Rules which appear not to be defined in the Bill.

CLAUSE 7

THAT clause 7 of the Bill in sub clause (1) be amended by inserting the following new paragraph immediately after paragraph (d) -

“(da) periodically gazette international standards.”

JUSTIFICATION

The amendment will ensure that the ADAK will constantly create awareness among athletes of the prohibited list of banned substances published by the World Anti Doping Agency.

CLAUSE 10

THAT clause 10 of the Bill be amended —

(a) in sub clause (1) by—

- (i) inserting the following new paragraph immediately after paragraph (b)-

“(ba) The Attorney General or a representative designated in writing by the Attorney General;”

JUSTIFICATION

The amendment brings the Bill in compliance with the State Corporations Act that prescribes that during the formation of a Board there must be a representative of the Attorney General’s Office.

- (ii) inserting the following words “who shall be the Secretary to the Board;” immediately after the words “Chief Executive Officer;” appearing in paragraph(d)

- (b) in sub clause (2)
 - (i) by deleting the words 'holds a degree from a University' and substituting therefor the words 'holds post- secondary qualifications' under paragraph (a)
 - (ii) by deleting the words 'sports or administration' and substituting therefor the words 'sports, management, administration or any other relevant field' under paragraph (a)
- (c) in sub clause (3) by deleting the words 'the representation of women, youth and persons with disabilities' appearing immediately after the word 'ensure' and substituting therefor the words 'compliance with the Constitution'

JUSTIFICATION

The amendment brings the Bill in compliance with provisions of the Constitution, that is, Article 232 (i) on appropriate representation in public service..

- (d) in sub clause (5) by deleting paragraph (c)

JUSTIFICATION

The clause has been deleted because membership to a political party will not compromise the independence of the Agency to carry out its operations.

CLAUSE 17

THAT clause 17 of the Bill be amended in sub clause (2) by deleting the word "ten" appearing immediately after the words "at least" and substituting therefor the word "five" under paragraph (a)

CLAUSE 27

THAT clause 27 of the Bill be amended in sub clause (5) by deleting paragraph (a) and substituting therefor the following paragraph—

“(a) shall comply with the Rules;”

JUSTIFICATION

The amendment shall clarify that an athlete has a duty under the Bill to comply with the Anti-Doping Rules to be adopted under subsidiary legislation.

CLAUSE 29

THAT, clause 29 be amended-

(a) in sub clause (2) —

- (i) by deleting the word "have" and substituting therefor the words "shall with permission authorized in writing by the Inspector General of Police exercise" immediately after the word "shall" appearing in paragraph (b);

JUSTIFICATION

The amendment brings the Bill in compliance with Constitution by permitting the officers of the Agency only to exercise police powers with permission and guidelines of the Inspector General of Police.

- (ii) by deleting the words "subject to the direction of the Director of Public Prosecutions " and substituting therefor the words "may cooperate with the Office of the Director of Public Prosecutions to" immediately after the word "may" appearing in paragraph (c)"

JUSTIFICATION

The amendment brings the Bill in compliance with Constitution by permitting the officers of the Agency to undertake prosecution in collaboration with the Office of Director of Public Prosecutions.

CLAUSE 30

THAT, clause 30 be amended—

- (a) in sub clause (3) by deleting the prefatory statement and substituting therefor the following prefatory statement—

"(1) An authorised Anti-Doping compliance officer acting in accordance with the enabling statutory provisions may—"

- (b) in sub clause (4) by deleting the words " or without" appearing immediately after the word "may with"

JUSTIFICATION

The amendments brings the Bill in compliance with the Constitution and the Section 29 of the Criminal Procedure Code Act by permitting the officers of the Agency who exercise police powers of arrest, seizure and search do so within the permitted legal framework and with a warrant.

CLAUSE 33

THAT, clause 33 be amended in sub clause (1) by inserting the words “which funds shall be a charge on the Consolidated Fund” immediately after the words “the Agency” (pending consultation with the budget office)

JUSTIFICATION

- (i) The Agency is expected to be independent both financially and in its operations in order to meet international standards as a pre-condition of compliance and removal of the threat of a ban.
- (ii) The Agency is modelled along the lines of the World Anti-Doping Agency (WADA) and in negotiations, WADA has been clear that the budget for the agency must be guaranteed to enable it perform its functions effectively
- (iii) The Agency being created must maintain a lot of international linkages, for example, with the World Anti-Doping Agency (Montreal, Canada), UNESCO (Paris, France), the International Olympic Committee, International Sports Federations (in many countries overseas), the Court of Arbitration for Sport (Lausanne, Switzerland), Interpol, other similar national organisations worldwide, and WADA Accredited Laboratories,
- (iv) There is a lot of confidentiality around the work of the Agency to protect the reputation and careers of those involved

CLAUSE 42

That Clause 42 of the Bill be amended—

(a) in sub clause (1)—

- (i) by deleting the words “or body” appearing immediately after the word “person” in the prefatory statement;

JUSTIFICATION

The amendment brings clarity in reference as a person under law may be understood as the natural or a legal/corporate person..

- (i) by deleting paragraphs (d), (g) and (h);

JUSTIFICATION

The amendment brings clarity as (d) and (g) are ambiguous in interpretation and (h) has been moved to a standalone provision to provide for a stiffer penalty.

(b) in sub clause (2)—

- (i) by deleting the words "or body" appearing in the prefatory statement;
- (ii) in paragraph (b) by deleting the words "stocks" and substituting therefor the words "sells, stocks or transports";

JUSTIFICATION

The amendment brings clarity in referencing and makes interpretation of the said sub clauses clear.

- (i) by deleting the words "not less than three million shillings or imprisonment of not less than three years" and substituting therefor the following words "not exceeding five million shillings or imprisonment not exceeding five years" appearing immediately after the words "fine of" after in the closing statement

JUSTIFICATION

The amendment provides for a stiffer penalty.

(c) in sub clause (3)—

- (i) by deleting the words "sells, stocks, transports" appearing in paragraph (d):
- (ii) by deleting the words "not less than one hundred thousand shillings or imprisonment of not less than one year" and substituting therefor the following words "not exceeding one hundred thousand shillings or imprisonment not exceeding one year" appearing immediately after the words "fine of" after in the closing statement;
- (iii) by inserting the words "found guilty of wilfully committing any of the foretasted offences under this section,"

JUSTIFICATION

The amendment provides for a stiffer penalty and defines the category of offenders that are subject to the Anti-Doping Rules to be adopted later as subsidiary legislation.

- (iv) by inserting the following new sub clause immediately after sub clause (3)—

“(3A) A person who violates the rules relating to confidentiality, public disclosure privacy of data commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or imprisonment not exceeding three years or to both such fine and imprisonment.”

JUSTIFICATION

The amendment is to cater for the deleted (1)(h) as a standalone provision to provide for a stiffer penalty.

(d) in sub clause (4)—

- (i) by deleting the prefatory statement and substituting therefor the following prefatory statement—

“A healthcare practitioner who—“

JUSTIFICATION

The amendment brings uniformity and clarity by referring to medical practitioners as “healthcare practitioners” as defined under the Health Bill.

- (ii) by deleting the words “not less than three million shillings or imprisonment of not less than three years” and substituting therefor the following words “not exceeding three million shillings or imprisonment not exceeding three years” appearing immediately after the words “fine of” after in the closing statement;

- (e) in sub clause (6) by deleting the words “ this Act” and substituting therefor the words “the Rules” appearing immediately after the words “out under”

JUSTIFICATION

The amendment brings uniformity and clarity tenure that athletes under this Bill will be subject to the procedures and sanctions provided for under the Anti- Doping Rules.

MIN/DC-LSW/2016/106

ADJOURNMENT

There being no other business, the meeting was adjourned at 13.20 pm. The next meeting will be called on notice.

SIGNED.....*David Were*.....DATE.....*19/4/2016*.....

HON. DAVID WERE, M.P
(Chairperson)

ANNEX II- ADOPTION LIST

The National Assembly



11th Parliament—4th Session-2016

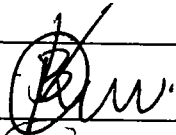
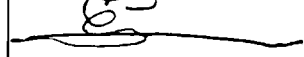
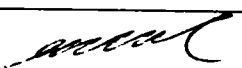
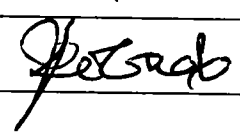
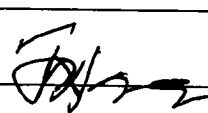

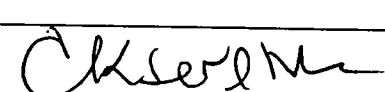
Departmental Committee—J: Labour and Social Welfare

AGENDA: Adoption of the Report on the Anti-Doping Bill, 2016

VENUE: New Members Lounge

DATE: Tuesday 19th April, 2016 at 10:00a.m.

NO.	NAME	SIGNATURE
1.	Hon. David Were (Chairperson), MP	
2.	Hon. Tiyah Galgalo (Vice Chairperson), MP	
3.	Hon. John Serut, MP	
4.	Hon. Samuel Gichigi, MP	
5.	Hon. Dan Wanyama, MP	
6.	Hon. Mwanyoha Mohammed, MP	
7.	Hon. Janet Nangabo, MP	
8.	Hon. Mlolwa Jones Mwangogo, MP	
9.	Hon. Peris Tobiko, MP	
10.	Hon. Abdinoor Mohamed Ali, MP	
11.	Hon. Rose Museo Mumo, MP	
12.	Hon. Winnie Karimi Njuguna, MP	
13.	Hon. Elijah Lagat, MP	
14.	Hon. Nyasuna Gladys Wanga, MP	
15.	Hon. Wesley Korir, MP	

16.	Hon. Kinoti Gatobu, MP	
17.	Hon. Elijah Mosomi Moindi, MP	
18.	Hon. Janet Teyiaa, MP	
19.	Hon. Regina Nyeris Changorok, MP	
20.	Hon. Omondi John Ogutu, MP	
21.	Hon. John Owuor O. Kobado, MP	
22.	Hon. Patrick Wangamati, MP	
23.	Hon. John Ndirangu Kariuki, MP	
24.	Hon. James Onyango K'Oyoo, MP	
25.	Hon. Cornelly Serem, MP	
26.	Hon. Silvance Onyango Osele, MP	
27.	Hon. Aisha Jumwa Karisa, MP	
28.	Hon. Ferdinand Waititu, MP	

Erick Nyambati–Committee Clerk

For: CLERK OF THE NATIONAL ASSEMBLY

ANNEX III- MEMORANDA

MIGRATION NOT COMMON

BY LUCAS BARASA
@datotwoto
@barass@kenationmedia.com
AND ALEX NJERU
@AJNjeru
nwendakere@gmail.com

Farmers in Meru, Tharaka-Nithi and Embu counties are worried by the destruction of vegetation on their farms by butterflies.

Mr. Silas Mugaribi, a farmer from Giampango village in Tharaka-Nithi showed the *Notion* vegetation on his farm that had been destroyed by the butterflies.

Mr. Mugaribi, however, said there were fewer butterflies since the rains started. He said the insects have left many trees defoliated after consuming all the leaves.

He feared the insects might invade crops. "We have planted and if these caterpillars continue invading plants they will consume the crops," said Mr. Mugaribi.

He added that in all his life he has never seen so many butterflies. He said they were also a menace for drivers on the road.

Scientists have raised the alarm over

of Kenya said.

A statement from the museums public relations officer, Ms Juliana Kuto, said the migration of "members of this family is not as common as those of another family called *piezidae*."

"These are normally the whitish/yellowish species pretty well known by Kenyans. *Salpig hotiduzui* may have migrated before but there exists no record of this happening in Kenya," she said, quoting the museums research scientists.

She added: "This may be the very first record in Kenya." Ms Ruto said butterfly experts have, however, seen the species in Ethiopia many years ago.

She said the migration has been happening between Meru and Rungwe in numbers that have baffled residents.

"The general direction of migration

These are normally the whitish/yellowish species well known by Kenyans. *Salpig hotiduzui* may have migrated before but there exists no record of this happening in Kenya."

Juliana Ruto, museums officer



ALEX NJERU/NAION

Mr. Silas Mugaribi, a farmer from Giampango village in Tharaka-Nithi County, shows a defoliated tree after caterpillar invasion.

was from West to East and normally during the hottest time of the day.

"Museumists have claimed that the migrating butterflies have made visibility poor," Ms Ruto said.

Unlike most other migrations, this species was reported to breed along its path, helping to keep the numbers high.

"Thousands of larvae and pupae were observed on a particular species of tree.

"It has since been identified in the herbarium department of the museum as *sapium* sp. in the family *euphorbiaceae*. The affected trees appear dry, something that has annoyed many farmers," she said.

She said staff from the invertebrate zoology section of museums visited Chuka on April 2, to collect specimens as well as report on the migration.

Collections were done in Giampango village in Chuka.

REPUBLIC OF KENYA



NATIONAL ASSEMBLY ELEVENTH PARLIAMENT - FOURTH SESSION

In the Matter of consideration by the National Assembly of the Country/Early Childhood Education Bill (Senate Bill No. 32), 2014

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees." Standing Order 127(3) states that "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House."

The Country Early Childhood Education Bill (Senate Bill No. 32), 2014 has undergone First Reading pursuant to Standing Order 127(3) and is now committed to the Departmental Committee on Education, Research and Technology for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the Public to submit any representations they may have on the said Bill. The representations 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 Buildings, Nairobi; or emailed to clerk@parliament.go.ke to be received on or before Thursday 14th April, 2016 at 5.00 pm.

JUSTIN N. BUNDI, CBS

CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



NATIONAL ASSEMBLY ELEVENTH PARLIAMENT - FOURTH SESSION

In the Matter of consideration by the National Assembly of the Anti-Doping Bill, 2016

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees." Standing Order 127(3) states that "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House."

The Anti-Doping Bill, 2016 has undergone First Reading pursuant to Standing Order 127(3) and is now committed to the Departmental Committee on Labour and Social Welfare for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the Public to submit any representations they may have on the said Bill. The representations 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 Buildings, Nairobi; or emailed to clerk@parliament.go.ke to be received on or before Thursday 14th April, 2016 at 5.00 pm.

JUSTIN N. BUNDI, CBS

CLERK OF THE NATIONAL ASSEMBLY

442



REPUBLIC OF KENYA
MINISTRY OF HEALTH
PHARMACY AND POISONS BOARD

② back
ple deaf
FA
12/4

Telegram: "MINHEALTH" Nairobi
Telephone: 020-2716905/6, 020-3562107
Cellphone: 0733-884411/0720 608811
Fax: 2713409
E-mail: info@pharmacyboardkenya.org
Website: www.pharmacyboardkenya.org

PHARMACY AND POISONS BOARD HOUSE
LENANA ROAD
P.O. Box 27663-00506
NAIROBI

When replying please quote

PPB/PAR/VOL.II/LT//016/005

12th April, 2016

The Clerk
The National Assembly
Parliament Buildings
P.O. Box 41842-00100
Nairobi

① D/Committee
TO bring to the
attention of the
Chief. Gialdi
12/4/16

Dear Sir,

RE: PROPOSED CHANGES TO THE ANTI-DOPING BILL, 2016

The above matter refers.

We wish to propose the following changes to be reflected in the above-mentioned bill;

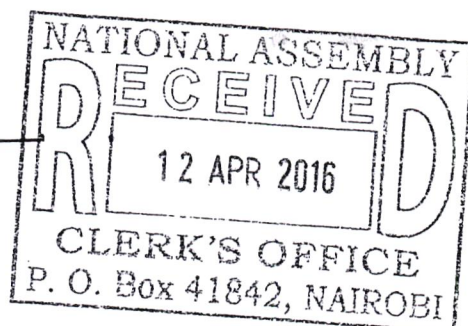
1. That under **Section 10** of the Bill a representative from the National Medicines Regulator ought to be included in the membership of the ADAK Board.
2. That under **Section 23(b)** of the Bill, on the composition of the Therapeutic Use Exemption Committee (TUEC), a **Clinical Pharmacist** of not less than five years experience should to be included in place of one Medical Doctor.

Thank you for your continued support.

Yours faithfully,

Dr. Kipkerich C. Koskei, *OGW*
REGISTRAR

NA/pm





**TRANSPARENCY
INTERNATIONAL
KENYA**

Transparency International-Kenya
P.O. Box 198, 00200 City Square
Nairobi, Kenya.
3rd Floor, ACK Garden House, Wing D
1st Ngong Avenue off Bishop's Road
Tel: +254 20 2727763/5, 2730324/5
Mobile: 0722 296589, 0733 834659
Fax: +254 20 2729530
Email: transparency@tikenya.org
<http://www.tikenya.org>

30th March 2016

**Labour and Social Welfare Committee
National Assembly
Parliament Buildings**

Dear Sirs,

RE: MEMORANDUM TO THE ANTI-DOPING BILL, 2016

Transparency International Kenya (TI-Kenya) is a not-for-profit organisation founded in 1999 in Kenya with the aim of developing a transparent and corruption free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement that are all bound by a common vision of a corruption-free world. TI-Kenya works to support governance institutions in enhancing transparency and accountability as well as to strengthen the watchdog and legislative roles of Parliament; enhance effective policy and legislation in the fight against corruption; and, nurture a consistent culture of transparency and accountability in Kenya. To this end, TI-Kenya supports enactment and implementation of enabling policies and legislations that pertain to the realization of its objectives.

Doping is fundamentally contrary to the spirit of sport. It is a global problem that keeps evolving. Attempts by sports federations to curb this menace before 1999 proved fruitless. From 1999, governments were roped in to be co-actors with the birth of the World Anti-Doping Agency (WADA). This was closely followed by the 2005 International Convention against Doping in Sport. Kenya ratified this Convention in 2009 after the National Olympic Committee of Kenya (NOC-K) had attempted to form a National body to deal with anti-doping – the Kenya Anti-Doping Agency (KADA). Unlike WADA that enjoys funding from governments and sports organizations, KADA was not legally recognized due to the absence of a legal framework governing its creation and operations. It was also never facilitated with the required resources and lacked an office, staff or budget. Kenya has continued to hit international headlines with allegations of doping becoming predominant. Despite the earlier denials by both the government and NOC-K, the severity of this problem has seen a task force set up to establish the prevalence of the use and access to prohibited substances in sport, to recommend measures to be taken against those found to be doping, and to recommend legislative measures necessary to curb this menace. It is against this backdrop that this Bill is developed to promote the participation in competitive and recreational sport, free from the use of prohibited substances or methods intended to artificially enhance performance, thereby rendering impermissible doping practices which are contrary to the principles of fair play and medical ethics, in the interest of the health and well-being of sportspersons.

CONTINUATION

The publication and consequent introduction into Parliament of the Anti-Doping Bill, 2015 is a commendable step towards regulating this problem that has the potential to ruin Kenya's reputation in sports. TI-Kenya supports this initiative and continues to advocate for its enactment. Having reviewed the Bill, TI-Kenya makes the following proposals to enrich the law and ensure its effectiveness.

Clause	Comment/ Rationale	Recommendation
Short Title	The short title of the Bill fails to capture the word 'sport'. It should speak succinctly to the subject to which the Bill speaks, in this case, sport.	The short title of the Bill should therefore include 'sport' to read "This Act may be cited as the Sports Anti-Doping Act, 2015....."
Clause 2	This clause does not define what a drug is.	The clause should thus define "Drug" includes; <ul style="list-style-type: none"> • Any substance (whether naturally occurring or otherwise) and; • A prohibited substance within the meaning of the World Anti-Doping Code; and • A prohibited substance within the meaning of the UNESCO Anti-Doping Convention
Clause 2	WADA in the interpretation section should be written in full to avoid confusion and for ease of clarity especially under the definition of 'Adverse Analytical Finding' where it is being introduced for the first time.	WADA should be replaced with World Anti-Doping Agency (WADA).
Clause 2	The Bill does not define what doping is.	Doping should be defined as per the UNESCO Convention
Clause 2	Definition of 'Athlete' and 'possession' has a lot of details some of which can be provided for in the main clauses.	The clause should only define 'athlete and possession' and the rest of the details be moved to the substances clauses
Clause 3	Addresses purpose of the Bill. It has been numbered 1 yet the short title is number 1.	This should be numbered 3.

CONTINUATION

<p>Clause 3</p>	<p>Provides for objects and purpose of the law. Sub-clause (c) provides for the purpose as to constitute Anti-Doping Agency of Kenya as an independent body charged with implementing the Code in Kenya.</p>	<p>This should also include the following objects:</p> <ul style="list-style-type: none"> • Promote a drug-free environment for sport and provide athletes and athlete support personnel, with protection of their right to participate in drug free sport, and thus promote health, fairness and equality for all participants in sports; and • Ensure harmonized, coordinated and effective sports anti-doping programmes at the national level and international level with regard to the detection, deterrence and prevention of doping; and • Respect the rights of individuals and national sporting organizations by the application of fair procedures for, and means to oversee, doping control, determination of Anti-Doping Rules Violations and their consequences, and other decisions made in the interest of drug-free sports.
<p>Part II</p>	<ul style="list-style-type: none"> • The Functions of the Agency as provided for under this part are general and this may create ambiguity (Clause 7). The functions should be clearly provided for under 	<p>Move the provision to clause 16 which provide for functions of the Agency.</p>



TRANSPARENCY INTERNATIONAL

Transparency International-Kenya
 P.O. Box 198, 00200 City Square
 Nairobi, Kenya
 3rd Floor, ACK Garden House, Wing D
 1st Ngong Avenue off Bishop's Road
 Tel: 254-20-2729530 / 20303215
 Mobile: 254-792-296589 / 733-834659
 Fax: 254-20-2729530

Email: transparency@tikenya.org
<http://www.tikenya.org>

	<p>KENYA a separate sub-clause.</p> <ul style="list-style-type: none"> The numbering is also wrong. The establishment should be one clause and the rest of the provisions fall as sub-clauses 	<p>Break down provisions into sub-clauses.</p>
<p>Clause 8</p>	<ul style="list-style-type: none"> The provision on the Independence of the agency is ambiguous and mixed up. It should read that the agency in exercising its powers and functions shall not be subject to the direction or control of any person, body etc The Clause should provide for reporting mechanisms to promote for the independence of the Agency. 	<p>Amend the clause to read: "the agency in exercising its powers and functions shall not be subject to the direction or control of any person, body, authority or agency." The Agency should report to National Assembly like all other independent bodies for checks.</p>
<p>Clause 9</p>	<ul style="list-style-type: none"> Clause 9 provides that the Agency shall be independent in its activities and operations. This is repetition since non-interference has already been provided for under clause 8. 	<p>Delete clause 9.</p>
<p>Clause 14</p>	<p>The clause provides that Parliament shall ensure that the Agency is adequately funded for it to effectively and efficiently perform all of its functions. It means that both National Assembly and Senate yet National Assembly is the house that approves budgets and funds</p>	<p>Parliament should be replaced with National Assembly for clarity.</p>
<p>Clause 15</p>	<p>Clause 15 provides for the objectives of the Agency but these are presented like functions of the Agency</p>	<p>The title should thus be changed from objectives to functions</p>
<p>Clause 16</p>	<p>Provides for functions and powers of the Agency. These speak more to powers of the Agency</p>	<p>Amend title to read powers of the Agency Delete the word functions</p>
<p>Clause 16(1)(h)</p>	<p>Clause 16(1)(h) gives the Anti-Doping agency prosecutorial powers. This raises a</p>	<p>Delete this provision</p>

CONTINUATION

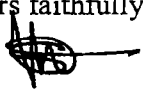
	<p>number of questions as to whether the agency has the capacity to carry out this mandate effectively. It also means equipping the Agency with prosecutors which adds to the already blooming wage Bill.</p>	
<p>Clause 16(1)(g)</p>	<p>Provides for access to information by athletes, athlete support personnel and doping control officers. This should extend to any other person who may need the information in furtherance of Article 35 on the right of access to information as articulated by the Constitution of Kenya and in promoting the principle of pro-active disclosure of information</p>	<p>Amend to provide that any other person may get the information upon request to the Agency.</p>
<p>Clause 18</p>	<ul style="list-style-type: none"> • Composition of the Board- This should be moved to the Clause after establishment of the Agency (under Part II) for logical flow • The qualifications of members of the Board should be clear. It should provide for the specific graduate qualifications which one should have attained to be appointed e.g. law, political science, sports etc. leaving it open to degree holder means any graduate qualification can pass. 	<p>Move to provide for this after the clause on establishment of the Agency</p> <p>Provide for the specific degree courses which apply</p>
<p>Clause 20</p>	<p>Provides for powers of the Board to form committees: The Board may form as many relevant committees as it deems convenient for the efficient carrying out of its mandate such as committee on Education and Research, committee on administration and finance, and committee on testing and investigations. This may reduce the</p>	<p>Delete the part that reads: such as committee on Education and Research, committee on administration and finance, and committee on testing and investigations</p>

CONTINUATION

	Board into committees whereas exercise of this power should be discretionary.	
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As of January 2016, 18 Kenyan athletes had been suspended for doping. This has tainted Kenya's image and thus the need to put measures in place to ensure sports free from doping. We therefore support the enactment of this law with the proposed amendments which is the first step to achieving this. The Bill should thus be fast tracked for Kenya to be WADA compliant and continue participating in international sports especially the upcoming Olympics in August.

Yours faithfully,



Samuel Kimeu
Executive Director