



THE SENATE

INTERNAL MEMO

To: Speaker of the Senate
Through': Clerk of the Senate
Through': Senior Deputy Clerk
Through: Director, Committee Services – Senate
From: Clerk Assistant
Date: 29th December, 2020

Hon. Speaker
Forwarded and recommended
for approval for tabling-
[Signature]
29/12/2020

APPROVAL FOR TABLING OF THE REPORT OF THE ANTI DOPING (AMENDMENT) BILL, 2020 (NATIONAL ASSEMBLY BILLS NO. 51 OF 2020)

The Standing Committee on Labour and Social Welfare has concluded its deliberations on the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bills No. 51 of 2020) and is ready to table its report.

This is to request your approval for tabling of the Bill duly adopted by the Committee and signed by the Chairperson.

Thank you.

Shaban

Mwanate Shaban

REPUBLIC OF KENYA



PAPERS LAID	
DATE	29.12.2020
TABLED BY	Se-faluya Ali
COMMITTEE	Labour
CLERK AT THE TABLE	I-mbaya

Hon. Speaker

Forwarded and recommended for approval for tabling.

PARLIAMENT

29/12/20

THE SENATE

Approved
[Signature]
29/12/2020

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

TWELFTH PARLIAMENT- FOURTH SESSION

REPORT ON THE ANTI-DOPING (AMENDMENT) BILL, 2020
(NATIONAL ASSEMBLY BILLS NO. 51 OF 2020)

CLERK'S CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

DECEMBER, 2020

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PREFACE

1. The Standing Committee on Labour and Social Welfare was constituted in December, 2017 during the First Session of the Twelfth (12th) Parliament pursuant to the provisions of Senate standing order 187.

The Committee is mandated to consider all matters related to: *manpower and human resources planning, pension, gender, culture and social welfare, youth, National Youth Service, children's welfare; national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation.*

The Standing Committee on Labour and Social Welfare was constituted in December, 2017 during the first session of the twelfth (12th) Parliament pursuant to the provisions of Senate Standing Order 187. The Committee is mandated to consider all matters related to: *manpower and human resources planning, pension, gender, culture and social welfare, youth, National Youth Service, children's welfare; national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation.*

2. In executing its mandate, the Committee oversees the Ministries of:
 - a) Labour and Social Protection;
 - b) Public Service and Gender Affairs; and,
 - c) Sports Culture and Heritage.

3. The Committee comprises the following Members:

1. Sen. Sakaja Johnson Arthur, CBS, MP	-Chairperson
2. Sen. Mwaruma Johnes Mwashushe, MP	-Vice Chairperson
3. Sen. Madzayo Stewart Mwachiru, MP	-Member
4. Sen. Mwangi Paul Githiomi, MP	-Member
5. Sen. Kihika Susan Wakarura, MP	-Member
6. Sen. Makori Beatrice Kwamboka, MP	-Member
7. Sen. (Dr.) Mwaura Isaac, CBS, MP	-Member
8. Sen. (Dr.) Milgo Alice Chepkorir, MP	-Member
9. Sen. Masitsa Naomi Shiyonga, MP	-Member

ACKNOWLEDGEMENT

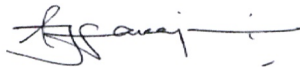
Mr. Speaker Sir,

The Committee wishes to acknowledge the time and considerable effort made by all parties who volunteered information before it. I also wish to express my gratitude to my colleagues for their thoughtful input and engaged contributions to the matter. Further, the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating all the actions that led to the production of this report. The Committee also wishes to recognize the commitment and dedication of the staff of the committee that made the work of the Committee and the production of this report possible.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 143 (1), to present and lay on the table of the House the report of the Committee on Labour and Social Welfare on the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020) for consideration by the House.

SIGNED



DATE: Tuesday, 29th December, 2020

SEN. JOHNSON SAKAJA, CBS,

CHAIRPERSON,

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE.

1 INTRODUCTION

1.1 Background Information

The Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020) originated in the National Assembly and was published in the Kenya Gazette Supplement No. 229 as an ordinary bill on 7th December, 2020. It was passed by the National Assembly without amendments on 22nd December, 2020.

The Bill was read a first time in the Senate on Tuesday, 29th December, 2020 and committed to the Standing Committee on Labour and Social Welfare pursuant to Standing Order 140(1).

Pursuant to Article 118 of the Constitution and Standing Order No. 140 (5), of the Senate Standing Order, the Standing Committee of the Senate on Labour and Social Welfare invited the public to make written submission of their views on the Bill through advertisements in the National Newspapers dated 27th December, 2020. The Committee also invited targeted stakeholders to make oral and written submissions through a virtual meeting held on the Zoom platform on Tuesday, 29th December, 2020. This was to take into account the views and recommendations of the public while preparing this report.

According to its objects and memoranda, the Bill seeks 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 World Anti-Doping Code (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 the following six International

Standards that aim to foster consistency among anti-doping organizations in various areas—

- (a) The International Standard for Testing and Investigations (ISTI);
- (b) The International Standard for Laboratories (ISL);
- (c) The International Standard for Therapeutic Use Exemptions (ISTUE);
- (d) The International Standard for the Prohibited List (The List);
- (e) The International Standard for the Protection of Privacy and Personal Information (ISPPPI); and
- (f) The International Standard for Code Compliance by Signatories (ISCCS).

In addition to the above Standards, the following two new International Standards are set to come into force on 1st January, 2021 alongside the 2021 World Anti-Doping Code and related suite of Standards—

- (a) The International Standard for Education (ISE); and
- (b) The International Standard for Results Management (ISRM)

The revision process for the 2021 Code began at the end of 2017 and was unanimously approved on 7th November, 2019 at the World Conference on Doping in Sport in Katowice, Poland. The revised Code is set to come into force **on 1st January 2021.**

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.

The United Nations Educational, Scientific and Cultural Organization Convention Against Doping in Sport was adopted unanimously by the 33rd UNESCO General Conference on October 19th, 2005 and came into force on 1st February, 2007 and now has 189 States Parties. Kenya ratified the Convention in 2009.

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.

Kenya enacted the Anti-Doping Act (No. 5 of 2016) in 2016. The Act provides for—

- (a) the implementation of the United Nations Educational, Scientific and Cultural Organization Convention Against Doping in Sport;
- (b) the regulation of sporting activities free from the use of prohibited substances and methods in order to protect the health of athletes;
- (c) the establishment and management of the Anti-Doping Agency of Kenya (ADAK); and
- (d) the Agency's powers, functions and management.

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).

All Member States are mandated 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.

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.

The deadline for action is 31st December, 2020, hence the need for this legislative framework.

The Committee at its meetings held on Tuesday, 29th December, 2020 and resolved that the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020) be adopted without amendments.

The Bill has been processed by the Committee and is now ready for presentation to the House for consideration.

1.2 Overview of the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020)

1.2.1 Purpose of the Bill

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 (the principal Act) 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.

1.2.2 Overview of the legislative proposal

The Bill—

- (a) inserts definitions of new terms and phrases as contained in the 2021 World Anti-Doping Code and Regulations and deletes terms that have become obsolete or no longer appear in the body of the principal Act;
- (b) broadens the application of the principal 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;

- (c) inserts an additional purpose of the principal Act to safeguard the physical health and mental integrity of athletes;

1.2.3 Anti-Doping Agency of Kenya

(d) provides—

- (i) that the Anti-Doping Agency of Kenya (the Agency) shall be the only organization to carry out anti-doping activities in the country and its authority shall be recognized by all national and international sports federations and national and international sports organisations;
- (ii) clarifies the functions of the Agency and the institutions the Agency is responsible for monitoring compliance from;
- (iii) 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;
- (iv) for further qualifications required for any person to be appointed to the Board of the Agency;
- (v) for the signing of a conflict of interest and confidentiality declaration by any new Board member of the Agency;
- (vi) for enhanced disqualification criteria for a Board member;
- (vii) for the independence of the Board and the Secretariat of the Agency;
- (viii) for the role of the chief executive officer of the Agency with respect to the Therapeutic Use Exemption;
- (ix) for the disqualification from employment by the Agency of persons who in the past have been involved in any form of anti-doping rule violation;
- (x) for introduction of a new section 22A to mandate other government agencies responsible for functions that co-relate to any anti-doping efforts to collaborate with the Agency in enforcement, monitoring and curbing of anti-doping activities.

- (e) reinforces obligations arising to all relevant persons from the Code and the Rules under clause 17;
- (f) provides 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.
- (g) provides an enhanced framework for anti-doping compliance officers in the Agency;
- (h) clarifies the jurisdictional role of the Sports Dispute Tribunal to include, among others—
 - (i) anti-doping rule violations on national and lower level athletes and athletes personnel;
 - (ii) anti-doping rule violations on other persons subject to subject to Anti-Doping Rules;
 - (iii) Therapeutic Use Exemptions (TUE) of Anti-Doping Agency of Kenya; and
 - (iv) matters of compliance of sports organisations in the first instance and appellate level.
- (i) provides 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;
- (j) provides for the responsibility of sports federations in enforcing the Anti-Doping Rules within the Federations; and
- (k) provides for a linkage between an anti-doping rule violation and the resultant sanction to be in accordance with the Anti-Doping Rules.

1.2.4 Consequences of the Bill

The Bill will harmonize the Anti-Doping Act, 2016 with the 2021 World Anti-Doping Code and Regulations. This will ensure compliance by Kenya to the internationally adopted Code and facilitate the continued participation of Kenyan athletes in local, regional, and international competitions.

2 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 140 (5), the Committee invited written submissions from the public and held a stakeholder forum on Tuesday, 29th December, 2020. The Committee received submissions from the following stakeholders –

- a) Anti-Doping Agency of Kenya;
- b) Mr. Peter Githuna;
- c) County Assemblies Forum;
- d) Council of Governors; and
- e) Athletics Kenya.

Below is a summary of the submissions received from stakeholders-

2.1 Submission from the Anti-Doping Agency of Kenya

The Anti-Doping Agency of Kenya (ADAK) submitted as follows—

1. The International Convention against Doping in Sport (Convention) is the first global treaty against doping in sport.
2. 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.
3. UNESCO Member States started ratifying it individually according to their respective constitutional jurisdictions.
4. Kenya ratified the same in 2009.
5. Kenya commenced the implementation of 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).
6. KADA worked closely with the Regional Anti-Doping Organization (RADO).

7. 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.
8. 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 implementation assistance.
9. 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.
10. Kenya, Ethiopia, and Egypt have since established NADOs that are fully functional.
11. Kenya established the Anti-Doping Agency of Kenya (ADAK) in 2016 through the Anti-Doping Act of 2016.
12. 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, including but not limited to the World Anti-Doping Code (Code).
13. 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. The Anti-Doping technology evolves too and the doping detection system is ever improving.
14. 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.

15. A new Code establishes different international standards, improved implementation mechanisms and an informed approach to the fight against doping in sport.
16. 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).
17. It is incumbent upon Member States to align their national Anti-Doping legal framework with the provisions of the Code.
18. The amendment process **commenced in February 2020** with the visit of the WADA legal and compliance team, who held several sessions with ADAK.
19. It was a requirement 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.
20. Several drafts were exchanged between WADA and ADAK for a period of eight months.
21. 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.
22. 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.
23. 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.
24. The Bill was introduced and passed by the National Assembly on 22nd December 2020.

25. The proposed amendments are aimed at ensuring that the national Anti-Doping legislative framework is aligned to the CODE and the International Standards.
26. 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.
27. Non-compliance status means that Kenya shall be barred from participating in all future international sporting competitions. These includes regional and international events.
28. 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.
29. Apart from athletes, the number of Athlete Support Personnel and sports administrators who depend on sports earnings is four times that of athletes.
30. 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.
31. 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.
32. 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.
33. 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.

34. 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.
35. 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 are injecting the drugs and inhibited growth and development, and risk of future health problems in teenagers.
36. The doping scourge is a threat to posterity. This must be curbed, failure to which the future of this country will be at risk.
37. 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.
38. 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.
39. This Bill requires urgent action to save our sporting sector, the health, and lives of our future generations.
40. The deadline for action is 31st December 2020.

2.2 Submissions from Mr. Peter Githuna

Mr. Githuna made the following written submissions

1. That the word “sportsperson” to remain in Section 7 of 2016, since even footballers need to be tested and are not athletes.
2. That Section 31A (2) on Establishment of Anti-doping results panel 31A (2) to be defined as follows -
 - (a) Legal practitioner - should be specific to an advocate of high court of Kenya with more than 15 years’ experience

- (b) Retired Athlete - retired athlete should be both male and female hence should be two
 - (c) Scientific expert - the word scientific expert is broad, it should only include those relates to sport medicine or life science and should also include statisticians in the board or those with knowledge of computer science for the management of the data.
3. In 31 B on Results management panel to impose sanction – this will be usurping the role of the board hence only Adak and Wada have the powers not a panel within the board.
 4. In 31D. (1) b Ensures the cases are referred to it are heard, concluded and decision delivered within six months from date of receipts of charge. - Six months' period is a long period and will be unfair for an athlete hence should be reduced to less than two months.
 5. Amendment of pharmacy and poison board act to include - All drugs manufactured locally and internationally should possess Anti-doping Mark to avoid prescription to innocent athletes - Section 18(c) any athletes who is false fully accused and after appeals is not found guilty of any offences should be compensated amount not less than one million.

2.3 Submission from the County Assemblies Forum

The County Assemblies Forum made the following submissions—

1. The enactment of the bill is expected to support 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. CAF commends the National Assembly for developing the bill which will seek to criminalise doping in sports, a move that will see offenders serve jail terms as the country intensifies the fight against the vice that has rocked its international recognition as an international athletics powerhouse.
3. However, CAF recommends the bill is amended to provide a framework for harmonisation of Anti-doping laws vis-à-vis all legislation relating to drugs i.e., the Pharmacy and Poisons Act, the Narcotics and Psychotropic Substances (Control) Act and the Medical Practitioners and Dentists Act

should deepen the Anti-Doping Act through amendments which incorporate doping.

4. Further, the bill should be amended to provide the requisite framework to develop physical anti-doping infrastructure in the country. Kenya depends on other nations for testing of samples. This has been disadvantageous because of the costs and delay of results.

2.4 Submission from the Council of Governors

The Council of Governors requested for more time to enable them submit their submission.

2.5 Submission from Athletics Kenya

Athletics Kenya submitted a brief on the status of doping in the country.

Their submissions and the Committee Observations and Recommendations are outlined in the matrix below -

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION
14	The County Assemblies Forum	Amend Clause 14 to state that- The section 23(d) of the principal is amended by including the following clause after “retired”: - “an international level athlete who has retired <i>at least 5 years prior to the appointment</i> ”	Following the precedence followed in the formation of the result management panel under clause 21(b) it fair the appointed athlete to have retired at least five years to be effectively considered inactive from sports.
21	The County Assemblies Forum	Amend the clause to state:- “ensure that cases referred to it are heard, concluded and decisions delivered within three months from date of receipt of the charge”	The six months period is quite long CAF proposes 3 months in the spirit of expeditious conclusion of cases so as to save time and cost
	Peter Githuna	Amend proposed section 31A (2) as follows— (a) Legal practioner should be specific to an advocate of high court of Kenya with more than 15 years' experience; (b) The retired athlete should be both male and female hence should be two; (c) The word scientific expert is broad, it should only include those relates to sport medicine or life science; and	

		(d) also include statisticians in the board or those with knowledge of computer science for the management of the data.	
		Clause 31B (c) will be usurping the role of the board hence only Adak and Wada have the powers not a panel within the board.	
		Clause 31D (1) (b) Six month period is a long period and will be unfair for an athlete hence should be reduced to less than two months.	
	Peter Githuna	Amend section 7 by deleting the word sportsperson and replacing with the word athletes	The word sportsperson to remain since even footballers needs to be to be tested and are not athletes
Pharmacy and Poisons Act	Peter Githuna	All drugs manufactured locally and internationally should possess Antidoping Mark to avoid prescription to innocent athletes	
	Peter Githuna	Section 18(c) any athletes who is false fully accused and after appeals is not found guilty of any offences should be compensated amount not less than one million.	

3.0 COMMITTEE OBSERVATIONS AND RECOMENDATIONS

3.1 Committee Observations

Following Public Participation held on Tuesday, 29th December, 2020, the Committee noted –

1. That the World Anti-Doping Code 2021 will come into effect 1st January, 2021.
2. That the Bill should be passed by 31st December, 2020 in compliance with World Anti-Doping Code;
3. That there are emerging issues that require further review of the existing law beyond its alignment to the World Anti-Doping Code, 2021, including its domestication to the local situation;
4. That the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020) is time bound; and
5. That there is need to have more stakeholder engagements and therefore the Committee committed to review the existing law in six months' time.

3.2 Committee Recommendations

The Committee recommends that the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020) be passed without amendment

Minutes of the Committee

MINUTES OF THE 64TH (ZOOM ONLINE) MEETING OF THE STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON TUESDAY, 29TH DECEMBER, 2020 FROM 12.30 PM.

MEMBERS PRESENT

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | - Chairperson |
| 2. Sen. Mwaruma Johnes | - Vice Chairperson |
| 3. Sen. (Dr.) Milgo Alice Chepkorir | - Member |
| 4. Sen. Mwangi Paul Githiomi | - Member |
| 5. Sen. Kihika Susan Wakarura | - Member |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|----------|
| 1. Sen. Madzayo Stewart Mwachiru | - Member |
| 2. Sen. (Dr.) Mwaura Isaac, CBS | - Member |
| 3. Sen. Makori Beatrice Kwamboka | - Member |
| 4. Sen. Masitsa Naomi Shiyonga | - Member |

SENATE SECRETARIAT

- | | |
|-----------------------|-------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Jeremy Chabari | - Legal Counsel |
| 3. Ms. Sarah Rukwaro | - SAA |
| 4. Ms. Fatuma Abdi | - Audio Officer |

MINUTE SEN/SCLSW/294/2020: PRELIMINARIES

The Chairperson called the meeting to order at 12.30 pm followed by a word of prayer.

MINUTE SEN/SCLSW/295/2020: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after being proposed by Sen. Shiyonga and seconded by Sen. (Dr.) Mwaura as follows –

AGENDA

1. Preliminaries (Prayers);
2. Adoption of the Agenda;
3. **Adoption of the Report on the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bills No. 51 of 2020).**
4. Any Other Business & Adjournment

MINUTE SEN/SCLSW/296/2020: ADOPTION OF THE REPORT ON THE ANTI-DOPING (AMENDMENT) BILL, 2020 (NATIONAL ASSEMBLY BILLS NO. 51 OF 2020).

1. The Committee observed that Following Public Participation held on Tuesday, 29th December, 2020, the Committee noted –
 - a. That the World Anti-Doping Code 2021 will come into effect 1st January, 2021.
 - b. That the Bill should be passed by 31st December, 2020 in compliance with World Anti-Doping Code;
 - c. That there are emerging issues that require further review of the existing law beyond its alignment to the World Anti-Doping Code, 2021, including its domestication to the local situation;
 - d. That the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020) is time bound; and
 - e. That there is need to have more stakeholder engagements and therefore the Committee committed to review the existing law in six months' time.
2. The Committee recommends that the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020) be passed without amendments

MINUTE SEN/SCLSW/297/2020: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business, the meeting was adjourned at 1.00 pm.

SIGNATURE:



(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: Tuesday, 29th December, 2020

MINUTES OF THE 63RD (ZOOM ONLINE) MEETING OF THE STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON TUESDAY, 29TH DECEMBER, 2020 FROM 12. 30 PM.

MEMBERS PRESENT

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | - Chairperson |
| 2. Sen. Mwaruma Johnes | - Vice Chairperson |
| 3. Sen. (Dr.) Milgo Alice Chepkorir | - Member |
| 4. Sen. Masitsa Naomi Shiyonga | - Member |
| 5. Sen. Kihika Susan Wakarura | - Member |
| 6. Sen. Makori Beatrice Kwamboka | - Member |
| 7. Sen. Mwangi Paul Githiomi | - Member |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|----------|
| 1. Sen. Madzayo Stewart Mwachiru | - Member |
| 2. Sen. (Dr.) Mwaura Isaac, CBS | - Member |

SENATE SECRETARIAT

- | | |
|-----------------------|-------------------|
| 5. Ms. Mwanate Shaban | - Clerk Assistant |
| 6. Mr. Jeremy Chabari | - Legal Counsel |
| 7. Ms. Sarah Rukwaro | - SAA |
| 8. Ms. Fatuma Abdi | - Audio Officer |

MINUTE SEN/SCLSW/290/2020: PRELIMINARIES

The Chairperson called the meeting to order at 12 noon followed by a word of prayer.

MINUTE SEN/SCLSW/291/2020: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after being proposed by Sen. Shiyonga and seconded by Sen. (Dr.) Mwaura as follows –

AGENDA

1. Preliminaries (Prayers);
2. Adoption of the Agenda;
3. **Consideration of the Amendments on the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bills No. 51 of 2020).**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/292/2020: CONSIDERATION OF THE AMENDMENTS ON THE ANTI-DOPING (AMENDMENT) BILL, 2020 (NATIONAL ASSEMBLY BILLS NO. 51 OF 2020).

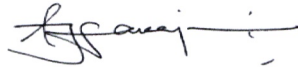
The Committee went through the Public Participation submissions and noted that based on the submissions of the stakeholders, there were several issues that require further consultation and comprehensive review of the Anti-Doping Act, 2016.

However due to the timelines within which the law needs to be passed to make Kenya compliant with the World Anti-Doping Code, 2021, the Committee resolved to pass the Bill as is. Further the Committee resolved to engage the Stakeholder in six months to undertake a comprehensive review of the law to domesticate it to the local situation.

MINUTE SEN/SCLSW/293/2020: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business, the meeting was adjourned at 12. Noon.

SIGNATURE:



(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: Tuesday, 29th December, 2020

MINUTES OF THE 62ND (ZOOM ONLINE) MEETING OF THE STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON TUESDAY, 29TH DECEMBER, 2020 FROM 11.00 AM.

MEMBERS PRESENT

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | - Chairperson |
| 2. Sen. Mwaruma Johnes | - Vice Chairperson |
| 3. Sen. Mwangi Paul Githiomi | - Member |
| 4. Sen. (Dr.) Milgo Alice Chepkorir | - Member |
| 5. Sen. Masitsa Naomi Shiyonga | - Member |
| 6. Sen. Kihika Susan Wakarura | - Member |
| 7. Sen. Makori Beatrice Kwamboka | - Member |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|----------|
| 1. Sen. Madzayo Stewart Mwachiru | - Member |
| 2. Sen. (Dr.) Mwaura Isaac, CBS | - Member |

IN ATTENDANCE

1. Sen. Samson Cherargey
2. Ministry of Sports, Culture and Heritage led by the Principal Secretary
3. Anti-Doping Agency of Kenya led by the Director General
4. Athletics Kenya led by the President
5. Sports Kenya led by the Director General
6. Mr. David Njoroge

SENATE SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Ms. Marale Sande | - Senior Research Officer |
| 3. Mr. Reuben Chesire | - Senior SAA |
| 4. Mr. Jeremy Chabari | - Legal Counsel |
| 5. Ms. Sarah Rukwaro | - SAA |
| 6. Ms. Fatuma Abdi | - Audio Officer |

MINUTE SEN/SCLSW/286/2020: PRELIMINARIES

The Chairperson called the meeting to order at 11.07 am followed by a word of prayer. This was followed by introductions from all present.

MINUTE SEN/SCLSW/287/2020: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after being proposed by Sen. (Dr.) Milgo and seconded by Sen. Kwamboka as follows –

AGENDA

1. Preliminaries (Prayers & Introductions);
2. Adoption of the Agenda;

3. **Public Participation on the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bills No. 51 of 2020).**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/288/2020: PUBLIC PARTICIPATION ON THE ANTI-DOPING (AMENDMENT) BILL, 2020 (NATIONAL ASSEMBLY BILLS NO. 51 OF 2020)

a) Welcoming Remarks by the Chair

1. The Chairperson welcomed all present. He then briefly explained that the Bill had been read in the Senate on Tuesday, 29th December 2020 after which it was formally committed to the Committee on Labour and Social Welfare.
2. He indicated that the Committee in anticipation had called for written submissions from the Public through advertisements in the Daily Nation and the Standard of Sunday, 27th December, 2020. The Committee had also written to the following stakeholders and invited them to the meeting to get their views –
 - a) The Ministry of Sports, Culture and Heritage
 - b) Anti-Doping Agency of Kenya
 - c) Council of Governors
 - d) County Assemblies Forum; and
 - e) Athletics Kenya
3. He then invited the stakeholders to make their presentations, noting that the Second Reading of the Bill was due to take place in the afternoon from 2.30 pm.

b) Briefing by the Legal Counsel

The Legal Counsel stated that the World Anti-Doping Code (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 the following six International Standards that aim to foster consistency among anti-doping organizations in various areas—

- (g) The International Standard for Testing and Investigations (ISTI);
- (h) The International Standard for Laboratories (ISL);
- (i) The International Standard for Therapeutic Use Exemptions (ISTUE);
- (j) The International Standard for the Prohibited List (The List);
- (k) The International Standard for the Protection of Privacy and Personal Information (ISPPPI); and
- (l) The International Standard for Code Compliance by Signatories (ISCCS).

In addition to the above Standards, the following two new International Standards are set to come into force on 1st January, 2021 alongside the 2021 World Anti-Doping Code and related suite of Standards—

- (c) The International Standard for Education (ISE); and
- (d) The International Standard for Results Management (ISRM)

The revision process for the 2021 Code began at the end of 2017 and was unanimously approved on 7th November, 2019 at the World Conference on Doping in Sport in Katowice, Poland. The revised Code is set to come into force on 1st January 2021.

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.

The United Nations Educational, Scientific and Cultural Organization Convention Against Doping in Sport was adopted unanimously by the 33rd UNESCO General Conference on October 19th, 2005 and came into force on 1st February, 2007 and now has 189 States Parties. Kenya ratified the Convention in 2009.

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.

Kenya enacted the Anti-Doping Act (No. 5 of 2016) in 2016. The Act provides for—

- (e) the implementation of the United Nations Educational, Scientific and Cultural Organization Convention Against Doping in Sport;
- (f) the regulation of sporting activities free from the use of prohibited substances and methods in order to protect the health of athletes;
- (g) the establishment and management of the Anti-Doping Agency of Kenya (ADAK); and
- (h) the Agency's powers, functions and management.

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).

All Member States are mandated 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.

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.

He gave a brief overview of the Bill and stated that the deadline for action is 31st December, 2020, hence the need for this legislative framework.

He concluded by outlining the principal object of the Anti-Doping (Amendment) Bill, 2020 (National Assembly Bill No. 51 of 2020) as to amend the Anti-Doping Act, 2016 (the principal Act) 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.

c) Submission by Ministry of Sports, Culture and Heritage.

The Ministry in collaboration with Anti-Doping Agency of Kenya gave brief highlights of their written submissions.

d) Submission by Athletics Kenya

Raised concerns on the penalties on violation of the anti-doping laws. They emphasized on enhancing penalties in the existing laws on Anti- Doping.

e) Way Forward

The Committee noted that due to the compliance timelines, the Committee will have to pass the law as it is and review the Law after six months to make it into a better law.

MINUTE SEN/SCLSW/289/2020: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business, the meeting was adjourned at 12.37 pm.

SIGNATURE:



(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: Tuesday, 29th December, 2020