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REPUBLIC OF KENYA

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By Hon. Mwangi MB
at table of the House
on 3/10/2018

12TH PARLIAMENT - SECOND SESSION

NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON HEALTH

REPORT OF THE 71ST SESSION OF THE WORLD HEALTH
ASSEMBLY HELD ON 21ST - 26TH MAY, 2018 IN GENEVA,
SWITZERLAND

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OCTOBER, 2018

ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
CHW	Community Health Workers
GAPPA	Global Action Plan on Physical Activity
HIV	Human Immunodeficiency Virus
TB	Tuberculosis
UHC	Universal Health Coverage
UN	United Nations
WHA	World Health Assembly
WHO	World Health Organization

as emerging issues. The Assembly in its deliberations focuses on a specific theme in each Session.

1.4 The Country Position on WHA 71

Kenya prepared a country position paper to articulate its position. The detailed briefing on the approach the delegation was to take was shared with all the delegates. In addition to adopting the position paper the delegates also attended a dinner meeting hosted by the Cabinet Secretary for Health, Sicily Kariuki, where important information was shared with the delegation. Further the delegates were apprised of important side events which the delegation participated.

1.5 Participation in the WHA 71

During the Meeting the Kenyan delegation attended daily Africa Group coordination meetings sessions organized by the Africa Group where pertinent issues related to the thematic areas of the session were discussed and agreed upon before attending the main sessions. These early morning sessions provided an important platform to coordinate and guide the delegation for optimal participation in the WHA 71 sessions. The Kenyan delegates actively participated in the proceedings of the main sessions and the numerous side events where they contributed both at the plenary discussions and at the question and answer discussions.

1.6 The Outcome of WHA 71

The 71st Session of the World Health Assembly adopted 8 decisions and 16 Resolutions on key health issues. The complete agreed resolution of the session with recommended actions for Member States are incorporated in this report.

1.7 Delegation

The National Assembly delegation to the WHA 71 consisted of the following-

- 1 Hon. (Dr) Swarup Ranjan Mishra, MP, Vice- Chairperson, **Leader of Delegation**
- 2 Hon.(Dr.) James Wambura Nyikal, MP,
- 3 Hon.(Dr.) James Kipkosgei Murgor, MP
- 4 Hon. Bernard Kipsengeret Kipgetich Koros, MP
- 5 Mr. Ahmed Odhwa, Principal Research Officer- Secretary to the Delegation
- 6 Ms. Winfred Akoth Kizia, Media Relations Officer

2.0 PRESENTATIONS

2.1 Africa Group meetings

The Kenyan delegation attended daily Africa Group coordination meetings sessions organized by the Africa Group where pertinent issues related to the thematic areas of the session were discussed and agreed upon before the attending the main sessions. These early morning sessions provided an important platform to coordinate and guide the delegation for optimal participation in the WHA 71 sessions.

2.2 Kenya's Position Paper and Country's Statement

Kenya prepared and adopted a country position paper. This paper guided the statement that was delivered during the proceedings of the WHA 71. The statement delivered by the Cabinet Secretary in the Plenary of the Assembly on 21 May 2018 highlighted the progress Kenya has made towards accelerating and implementation roadmap for the Universal Health Coverage. These include expanded *Linda Mama* scheme, health insurance subsidies for the poor, elderly and severely disabled, abolishment of user fees, review of the financing strategy among other components.

2.3 General Assembly deliberations

Through Committees A and B, the Assembly deliberated on a wide range of health strategic priorities, key among them: draft thirteenth general programme of work, 2019–2023, public health preparedness and response, Polio transition and post-certification, health, environment and climate change, preparation for the third high-level meeting of the General Assembly on the prevention and control of non-communicable diseases, to be held in 2018 and Preparation for a high-level meeting of the General Assembly on ending tuberculosis.

2.4 Key issues and lessons learnt from the Side Events

The key issues and lessons learnt from the various side events the delegation attended and participated in were as follows;

development and prosperity of a Country. A properly functioning health care system is an enabler for economic growth and development.

- viii) The Members States reiterated the need for countries to increase their prioritization of health in their budgets, and accelerate towards accessible, affordable and equitable universal Health coverage.
- ix) Parliamentarians act as the voice of those in need by translating interventions, making policies/legislations, approve budgets and hold governments to account and reach out for the most marginalised members of the society. Parliaments should allocate adequate resources through appropriation for country to meet its health policy goals and ensure accountability for the resources allocated.
- x) Lack of enabling regulatory framework hampers the availability and use of assistive technologies. Access and availability of assistive technology can be improved by investing in local production.

- ii) to reinvigorate the baby-friendly hospital initiatives, including by promoting full integration of the revised Ten steps to successful breastfeeding, in efforts and programmes aimed at improving quality of care for maternal, newborn and child health;
- iii) to implement and/or strengthen national mechanisms for effective implementation of measures aimed at giving effect to the International Code of Marketing of Breast-milk Substitutes, as well as other WHO evidence-based recommendations;
- iv) to promote timely and adequate complementary feeding in accordance with the guiding principles for complementary feeding of the breastfed child, as well as guiding principles for the feeding of the non-breastfed child 6–24 months of age;
- v) to continue taking all necessary measures in the interest of public health to implement recommendations to end inappropriate promotion of foods for infants and young children;
- vi) to take all necessary measures to ensure evidence-based and appropriate infant and young child
- vii) to celebrate World Breastfeeding Week as a valuable means to promote breastfeeding⁴

2. Poliomyelitis – Containment of polioviruses⁵

The discussions in this theme focused on completely eradicating the polio virus from the world—a polio free world. Delegates reviewed emergency plans to tackle the last remaining strains of the virus.

The resolution urged the member states to;

- i) Fully implement all strategic approaches outlined in the Polio Eradication and Endgame Strategic Plan 2013–2018;
- ii) Intensify efforts to accelerate the progress of poliovirus containment certification as outlined in national requirements as well as in the WHO Global Action Plan to minimize poliovirus facility-associated risk after type-specific eradication of wild polioviruses and sequential cessation of oral polio vaccine use (GAPIII);

⁴ http://apps.who.int/gb/e/e_wha71.html

⁵ http://apps.who.int/gb/e/e_wha71.html

- vi) Prepare a national response framework for use in the event of a breach of poliovirus containment and risk of community exposure and to conduct a polio-outbreak simulation exercise that covers the risk of poliovirus release from a facility⁶.

3. International Health Regulations⁷

The Assembly approved a five-year global strategic plan to improve public health preparedness and response, through implementation of the International Health Regulations, an international legal instrument that is binding on 196 countries across the globe with the aim to help the international community prevent and respond to acute public health risks that have the potential to cross borders and threaten people worldwide.

The regulations which entered into force on 15 June 2007 require countries to report certain disease outbreaks and public health events to WHO. The regulations define the rights and obligations of countries to report public health events, and establish a number of procedures that WHO must follow in its work to uphold global public health security. The Regulations is to operate under a five-year global strategic plan whose broad objective is to strengthen the capacities of both the Secretariat and Member States to ensure implementation of the International Health Regulations (2005), thereby continuously improving public health preparedness and response. The proposed strategic plan is further stratified into three pillars with specific objectives to be pursued under each of the pillars as follows;

Pillar 1: Building and maintaining States Parties' core capacities required under the International Health Regulations (2005). The objectives under this pillar are;

- to prioritize the Secretariat's provision of support to high-vulnerability, low-capacity countries;
- to mobilize financial resources to facilitate the implementation of the Regulations at the global, regional and national levels;
- to link the building of core capacities under the Regulations with health systems strengthening

⁶ http://apps.who.int/gb/e/e_wha71.html

⁷ http://apps.who.int/gb/e/e_wha71.html

available tools for prevention, diagnosis and treatment of the disease, impede further progress in addressing snakebite envenoming.

The Assembly in this resolution urged the member states to;

- i) to assess the burden of snakebite and, where necessary, establish and/or strengthen surveillance, prevention, treatment and rehabilitation programmes;
- ii) to improve the availability, accessibility and affordability of anti-venoms to populations at risk, and develop mechanisms to ensure that additional costs related to treatment and rehabilitation after snakebite envenoming are affordable for all;
- iii) to promote the transfer of knowledge and technology between Member States in order to improve the global availability of anti-venoms and the effective management of cases;
- iv) to integrate, where possible and appropriate, efforts to control snakebite envenoming with other relevant disease-control activities;
- v) to improve access to specific treatment and rehabilitation services for the individuals affected by snakebite envenoming, by mobilizing national resources;
- vi) to provide training to relevant health workers on the diagnosis and management of snakebite envenoming, with particular emphasis in regions of high incidence;
- vii) to intensify and support research on snakebite envenoming, particularly in order to develop new tools to diagnose, treat, prevent and measure the burden of the disease;
- viii) to promote community awareness of snakebite envenoming, through culturally contextualized public campaigns, in support of early treatment and prevention, and intensify community participation in awareness and prevention efforts;
- ix) to foster cooperation and collaboration among Member States, the international community and relevant stakeholders in order to strengthen national capacities to control, prevent and treat snakebite envenoming;

5. Rheumatic fever and rheumatic heart disease⁹

The Assembly agreed to a resolution urging the WHO to launch a coordinated global response to rheumatic heart disease, which affects around 30 million people each year. In 2015, the

⁹ http://apps.who.int/gb/e/e_wha71.html

- business models, content, evaluation, cost-effectiveness and sustainability, data security, ethical and legal issues, re-use and adaptation of existing digital health and other relevant tools;
- v) work towards and support interoperability of digital technologies for health by, inter alia, promoting the use of international and open standards as an affordable, effective and easily adaptable solution;
 - vi) to disseminate, as appropriate, best practices and successful examples of digital health architecture, programmes, and services, in particular effective policy design and practical implementation, with the international community, including through WHO, bilateral, regional, cross-regional and global networks, digital platforms and hubs;
 - vii) strengthen public health resilience and promote opportunities, as appropriate, through the use of digital technologies, including to improve access to, and monitoring, sharing and use of, quality data, direct citizen, health worker and government engagement, and to build capacity for rapid response to disease incidents and public health emergencies, leveraging the potential of digital information and communication technology to enable multidirectional communications, feedback loops and data-driven “adaptive management”;
 - viii) build, especially through digital means, capacity for human resources for digital health, as appropriate, across both health and technology sectors, and to communicate areas of specific need to WHO in order to receive appropriate technical assistance;
 - ix) to improve the digital skills of all citizens, including through working with civil society to build public trust and support for digital health solutions, and to promote the application of digital health technology in the provision of, and access to, everyday health services; 1 And, where applicable, regional economic integration organizations. WHA71.7
 - x) develop, as appropriate, legislation and/or data protection policies around issues such as data access, sharing, consent, security, privacy, interoperability and inclusivity consistent with international human rights obligations and to communicate these on a voluntary basis to WHO; (11) to develop, as appropriate, and in coordination with existing and emerging regional hubs and support mechanisms, effective partnerships with stakeholders from across all sectors in the use of digital health;

The plan's goal is a 15% reduction in the global prevalence of physical inactivity in adults and in adolescents by 2030.

9. Assistive technology¹²

Delegates adopted a resolution urging member states to develop, implement and strengthen policies and programme to improve access to assistive technology and requesting the Director-General to prepare by 2021 a global report on effective access to assistive technology.

Assistive technology, such as wheelchairs, hearing aids, walking frames, reading glasses and prosthetic limbs, enables people with difficulties in functioning to live productive and dignified lives, participating in education, the labour market and social life. Without such technology, people with disabilities and older people and others in need are often excluded, isolated and locked into poverty, and the burden of morbidity and disability increases.

An estimated 1 billion people would benefit from assistive products, a number that will rise to more than 2 billion by 2050. Yet 90% do not have access, owing to high costs and a lack of availability.

10. Digital health¹³

Member States were urged to assess their use of digital technologies for health, including in health information systems at the national and subnational levels, in order to identify areas of improvement, and to prioritize, as appropriate, the development, evaluation, implementation, scale-up and greater utilization of digital technologies, as a means of promoting equitable, affordable and universal access to health for all, including the special needs of groups that are vulnerable in the context of digital health.

11. Preparation for the third High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable¹⁴

The resolution urges Member States to:

¹² http://apps.who.int/gb/e/e_wha71.html

¹³ http://apps.who.int/gb/e/e_wha71.html

¹⁴ http://apps.who.int/gb/e/e_wha71.html

RECOMMENDATIONS

The Director General in his closing remarks affirmed that the member states had charted a new course for the Organization. Member states will be expected to support the work towards the "triple billion" targets which were approved in the World Health Organization's new five-year strategic plan. In the same breathe, the Committee makes the following recommendations, to be attained by 2023;

1. The Ministry of Health to ensure that the country's plan of attaining 100% Universal Health Coverage is attained. This will help in the global goal of achieving universal health coverage of 1 billion more people benefitting from universal health coverage;
2. The Ministry of Health to devise strategies for addressing health emergencies, in recognition of the conference resolution of having 1 billion more people better protected from health emergencies;
3. The Ministry and county governments to actively engage in campaigns towards promoting healthier citizens, towards the global aim of 1 billion more people enjoying better health and well-being.

Approved for tabling

REPUBLIC OF KENYA





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SNA
13/11/18

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- SECOND SESSION 2018

DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON THE RATIFICATION OF THE PROTOCOL TO ELIMINATE ILLICIT TRADE
IN TOBACCO PRODUCTS

 THE NATIONAL ASSEMBLY PAPERS LAID 13 NOV 2018	
TABLED BY:	VICE CHAIR, HEALTH COMMITTEE: HON. SHEIKH M.
CLERK-AT THE-TABLE:	

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NOVEMBER, 2018

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ABBREVIATIONS

COP	Conference of Parties
ITP	Illicit Trade in Tobacco Products
KRA	Kenya Revenue Authority
NCD	Non Communicable Diseases
NTA	National Taxpayers Association
UHC	Universal Health Coverage
WHO	World Health Organization
WHO-FCTC	World Health Organization Framework Convention on Tobacco Control

1.0 PREFACE

Hon. Speaker,

The Memorandum to Parliament on the ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products was committed to the Departmental Committee on Health on 30th August, 2018, in accordance with Section 8 of the Treaty Making and Ratification Act, 2012, and Standing Order 216 (fa) for consideration and report to the House. Once ratified, the Agreement shall become part of our Kenyan laws as provided for in Article 2(6) of the Constitution which provides that “*any treaty or convention ratified by Kenya shall form part of the Law of Kenya under this Constitution*”.

Hon. Speaker,

The submission of the Cabinet memoranda on the protocol to Parliament came after the Committee had pro-actively prodded the Ministry to hasten the process, through a letter dated 16th April, 2018. This was in recognition of the importance of the protocol towards curbing illicit trade and combatting Non-communicable diseases towards attainment of Universal Health Coverage.

The Committee was part of the Kenyan delegation to the Meeting of State Parties held in Geneva, Switzerland, in October, 2018. Due to non-ratification of the protocol at the time, the delegation attended as observers and shared experiences in coordination meetings. The meeting’s resolution was to call upon all state parties to ratify the protocol.

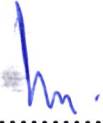
In consideration of the protocol, the Committee held a briefing meeting with the Ministry of Health which is the implementing agency of the Agreement. The Committee also invited and received memoranda from various members of the public including civil society, academia and other stakeholders. All the submissions are incorporated in this report. **The Committee recommends that the National Assembly Approves the ratification of the Agreement** as it will go a long way in enforcing a more forceful and effective response to illicit tobacco trade.

Hon. Speaker,

The Committee wishes to thank the Speaker and the Clerk of the National Assembly for the logistical and technical support they accorded the committee during the process.

Hon. Speaker,

On behalf of the Committee, it is my pleasant duty to table in the House the Report of the Departmental Committee on Health on the ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products for consideration and approval by the House pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199.

Signed  Date..... 8/11/18

Hon. Sabina Chege, MP
Chairperson, Departmental Committee on Health

COMMITTEE MANDATE

Mr. Speaker Sir,

The Departmental Committee on Health is established pursuant to the provisions of Standing Order No. 216(5) of the National Assembly and in line with Article 124 of the Constitution which provides for the establishment of the Committees by Parliament. The mandate and functions of the Committee is to;

- a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- b) Study the programme and policy objectives of the Ministries and departments and the effectiveness of the implementation;*
- c) Study and review all legislation referred to it;*
- d) Study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;*
- e) Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- f) Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204;*
- fa) Examine treaties, agreements and conventions;*
- g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- h) Consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- i) Examine any questions raised by Members on a matter within its mandate.*

The Departmental Committee is mandated to cover the functions of the Ministry of Health alongside its semi-autonomous agencies.

Committee Membership

The Committee comprises the following Honourable Members:

1. Hon. Sabina Chege, MP – **Chairperson**
2. Hon. (Dr.) Swarup Ranjan Mishra, MP – **Vice Chairperson**
3. Hon. (Dr.) Eseli Simiyu, MP
4. Hon. (Dr.) James Nyikal, MP
5. Hon. Alfred Agoi Masadia, MP
6. Hon. (Dr.) James Kipkosgei Murgor, MP
7. Hon. Muriuki Njagagua, MP
8. Hon. (Dr.) Mohamed Dahir Duale, MP
9. Hon. Stephen Mule, MP
10. Hon. Chris Karan, MP
11. Hon. Esther M. Passaris, MP
12. Hon. Gladwell Jesire Cheruiyot
13. Hon. Kipsengeret Koros, MP
14. Hon. Martin Peters Owino, MP
15. Hon. Mercy Wanjiku Gakuya, MP
16. Hon. Prof. Mohamud Sheikh Mohamed, MP
17. Hon. Patrick Munene Ntwiga, MP
18. Hon. Tongoyo Gabriel Koshal, MP
19. Hon. Zachary Kwenya Thuku, MP

The Committee is supported by the following members of the Secretariat:

- | | | |
|--------------------------------|---|----------------------------|
| 1. Mr. Victor Weke | - | Clerk Assistant I |
| 2. Mr. Muyodi Meldaki Emmanuel | - | Clerk Assistant III |
| 3. Mr. Ahmed Hassan Odhowa | - | Principal Research Officer |
| 4. Ms. Christine Odhiambo | - | Legal Counsel II |
| 5. Mr. Eric Kanyi | - | Fiscal Analyst |
| 6. Ms. Winnie Kiziah | - | Media Officer |
| 7. Ms. Catherine Wangui | - | Serjaent-at-Arms |

2.0 BACKGROUND

The World Health Assembly (WHO) Framework Convention on Tobacco Control (FCTC) is the first public health treaty adopted by the World Health Assembly in 2003. The FCTC was developed in response to the global high use of tobacco products which claims 7 million lives annually of which 600,000 result from exposure to tobacco smoke. The FCTC is an evidence-based treaty with tobacco control provisions that effectively address demand and supply reduction measures.

The governing body of the treaty is the Conference of Parties (COP) which meets biannually. A bureau for COP exists and it is made of 6 members representing the WHO regions. It meets at least 4 times between the COP sessions.

Kenya has actively participated in the development of the FCTC as well as its implementation guidelines. This participation has led to Kenya ably implementing the FCTC hence becoming a global leader with various best practices that are a reference point at the regional and global levels. Article 15 of the FCTC deals with combatting illicit trade and hence required a protocol to facilitate its implementation across national and international borders.

Kenya signed and ratified the FCTC on 24th June 2001. The Tobacco Control Act was passed in 2007 and was developed from the FCTC as the blue print. Following the recent court judgement in favour of the Tobacco Control Regulations 2014, the Regulations for the implementation of the Act took effect on 24th August, 2016.

Article 15 of the FCTC requires parties to the treaty to implement measures to eliminate illicit trade in tobacco products. Kenya led the AFRO region in the negotiation of the protocol.

The protocol came into force in 2018 after 40 parties ratified it.

Illicit trade practices are illicit manufacture (counterfeits) produced in legal or illegal facilities and not declared to the tax authorities. They also include illicit importation (smuggling) of products produced in other jurisdictions and illegally transported to avoid

applicable taxes. The impact of this trade is that it increases access, affordability and consumption of tobacco products, undermines tax policies, leads to loss of revenue, promotes corruption and undermines legal and health regulations.

Overview of the Protocol to eliminate Illicit Trade in Tobacco Products

This is the first Protocol to the WHO FCTC for the implementation of Article 15 of the treaty. The protocol was adopted in November 2012 in Seoul by the fifth session of the Conference of the Parties (COP5) to the WHO FCTC. The protocol has three broad provisions:

- i) Prevention of illicit trade; by securing the supply chain through registration and licensing of all manufactures, requiring record keeping and reports from manufacturers on products produced and their destination, the implementation of tracking and tracing system, requiring tobacco manufacturers to undertake due diligence, Tracking and tracing, banning sale of tobacco products by Internet , regulating free zones and international transit, banning duty free sales on tobacco products
- ii) Law enforcement; the Protocol establishes unlawful conduct. The Protocol does not contain a catalogue of criminal offences. However, Parties have discretion in determining which conduct is a criminal offence including on: Manufacture, sale, transport of tobacco products contrary to the provisions of the Protocol (e.g., without a license); Manufacture, sale, transport of tobacco products without payment of duties, taxes and other levies, or without bearing applicable fiscal stamps; and misdeclaring on official forms the description, quantity or value of tobacco products to evade payment of duties or taxes; Establishment of liability of legal persons; seizure payments; effective and dissuasive sanctions; special investigative techniques
- iii) International cooperation Exchange of enforcement information including: Providing technical assistance and cooperation in scientific, technical and technological matters; Law enforcement cooperation; Mutual administrative assistance; and Mutual legal assistance and extradition. The Protocol makes specific reference to enhanced cooperation between the Convention Secretariat

and the UN Office on Drugs and Crime (UNODC) and the World Customs Organization (WCO) and other bodies, as appropriate.

3.0 BRIEFING BY THE MINISTRY OF HEALTH

The Ministry of Health appeared before the Committee on 23rd October, 2018 led by the Director of Medical Services. They submitted as follows;

Background of the tobacco use problem

Tobacco use and exposure is one of the leading causes of chronic Non-Communicable Disease (NCDs) including: cardiovascular diseases, cancer, diabetes and chronic obstructive lung diseases. These diseases are the leading causes of morbidity and mortality globally, causing more deaths than all other causes combined. They kill 38 million people each year accounting for 63% of deaths globally, with 80% of these deaths occurring in developing countries whose fragile health systems are still grappling with a heavy burden of communicable diseases resulting to a double burden of disease.

The prevalence of tobacco use in the country is 23% for males and 4.1% for females. Of these 20% of males and 1% of women are daily smokers. Further, 9.9% of Kenyan school going children between the age of 13 and 15 years use some form of tobacco product indicating a growing and quickly transitioning public health crisis.

Tobacco is one of the risk factors that have contributed to the rising burden of the key Non-Communicable Diseases. These diseases accounts for more than 50% of total hospital admissions and over 55% of hospital deaths in Kenya. The major NCDs are cardiovascular conditions, cancers, diabetes, and chronic obstructive pulmonary diseases with their consequent conditions and their shared risk factors. Besides the burden of deaths and disability, Non- Communicable Diseases pose a greater social and economic burden to the country's economy.

Tobacco use and exposure threatens our progress in the post-2015 development agenda as poverty is closely linked with the rapid rise in NCDs and predicted to impede poverty

reduction initiatives in low-income countries, particularly by increasing household costs associated with health care.

In low-resource settings, health-care costs for cardiovascular diseases, cancers, diabetes or chronic lung diseases can quickly drain household resources, driving families into poverty. The exorbitant costs of NCDs, including often lengthy and expensive treatment and loss of breadwinners, are forcing millions of people into poverty annually, stifling development. Up to 80% of premature deaths from heart disease, stroke and diabetes can be averted with evidence based behavioral changes such as tobacco control and other measures.

Illicit trade

Illicit trade in tobacco products results in increased accessibility, affordability and consumption of tobacco products. This will give rise to increased prevalence of tobacco use which finally results in a rise in tobacco related diseases. This will impact negatively on public health efforts to reduce the burden of disease, disability and deaths attributed to non-communicable diseases. It undermines legal restriction & health regulations, such as those that deal with health warnings and sale to minors. It permits tobacco companies to subvert international cooperation in tobacco control.

Illicit trade in Tobacco Products means loss of huge amounts of revenue to governments each year. Illicit trade in tobacco accounts for about 15-20% of tobacco use globally resulting to a loss of about \$31 billion dollars in government revenue to illicit trade. It also distorts the market thus suppressing profits of compliant companies, which results to reduced taxes. The loss in tax revenues reduces governments' ability to provide public services including healthcare. Eliminating illicit trade in tobacco products would reduce one million premature deaths attributable to tobacco products every six years, mostly in middle- and low-income countries.

Illicit tobacco trade sponsors criminals and funds organized crime. These include drugs, human and arms trafficking, and armed insurgent groups with a possible impact on the general level of corruption and security. Tobacco is easy to transport and a 'fast moving' commodity. Most jurisdictions provide for the seizure and forfeiture of seized tobacco

products and the vessels but not the arrest of the perpetrators. These factors make illicit trade of tobacco a lucrative revenue stream for criminal groups.

State efforts to curb the problem and nexus with the protocol

In 2005, the Government signed and ratified the WHO Framework Convention on Tobacco Control (WHO-FCTC). By doing so, Kenya joined the international community in adopting an international Treaty to address the rising global epidemic of tobacco use and a subsequent increase in associated diseases. Kenya is therefore a Party to this Treaty and is obligated to implement its provisions.

In 2007, The Kenya Parliament passed the Tobacco Control Act 2007 which has been implemented by the Ministry of Health and other sectors resulting in major gains in protecting the public from the health, social and economic impacts of tobacco use and exposure to tobacco smoke.

On November 12th 2012, at the Fifth Session of the Conference of the Parties (COP 5) to the WHO FCTC, the global community while building upon and complementing Article 15 of the WHO FCTC adopted by consensus the Protocol to Eliminate Illicit Trade in Tobacco Products.

The Protocol was developed in response to the growing international illicit trade in tobacco products, which poses a serious threat to public health and addresses means of countering illicit trade in tobacco products. Illicit trade increases the accessibility and affordability of tobacco products, thus fueling the tobacco epidemic and undermining tobacco control policies.

An Intergovernmental Negotiating Body (INB) was established by the WHO-FCTC COP to develop the Protocol. Kenya was appointed to lead the African region in the development and negotiation of the Protocol in all the five sessions of the INB (between 2007 and 20120). The Kenyan negotiating team comprised of the Kenya Revenue Authority, The Attorney General's Office and the Ministry of Health.

Illicit trade in tobacco products causes substantial losses in Government revenues through evasion of taxes and at the same time contributes to the funding of transnational criminal activities. Kenya joined other nations of the world to support this Treaty by signing it on 29 May 2013.

The Protocol to eliminate illicit trade in tobacco products will help to protect Kenyans from the health risks of tobacco use and exposure to tobacco smoke. The tobacco epidemic is one of the biggest public health threats the facing our country.

Rationale for ratification of the Protocol by Kenya

Illicit trade in tobacco products has high impact on public health. It proliferates an environment that facilitates the supply of cheaper unregulated products which hooks young people into tobacco because they are more affordable; takes tax revenue away from the Government, that could have been spent on the provision of public services; and strengthens corruption and weakens good governance.

Kenya was an outstanding participant and leader in the development and adoption of the ITP. The country is currently fully implementing the protocol and is a reference point for best practice. Furthermore, Kenya has been the Bureau member for the AFRO region in two consecutive terms demonstrating the Region's confidence in Kenya's performance and leadership.

It is important that Kenya joins the Parties to the ITP to demonstrate its commitment to the protocol and the FCTC having led its development and advocated for its adoption by the Conference of Parties to the FCTC. In addition, Kenya is already implementing all the provisions of the protocol.

As a country that is the manufacturing hub for tobacco products (exporting to more than 22 countries in Africa and beyond) Kenya is at a high risk of illicit trade in tobacco products. Kenya is surrounded by porous borders making it prone to illicit trade. Moreover, Kenya has a highest tobacco tax rate in the region further raising the vulnerability to illicit trade in tobacco products. Once a Party to the ITP, the country

stands to benefit as a knowledge hub for the implementation of the protocol and could receive support to further improve the implementation of the protocol and to participate in the Meeting of the Parties (equivalent to the COP for the FCTC).

Kenya received the WHO Director General's award for the exemplary efforts in the implementation of the protocol. The country stands a high chance of making a history of becoming the first president of the Meeting of Parties (MOP 1) given its leadership in the development and implementation of the protocol.

Financial implications

There is no expected financial implication on the government as the Kenya Revenue Authority has already implemented most measures provided for in the Protocol at no cost as the cost was borne by licensed manufacturers in Kenya as a requirement for compliance. Key among them being the establishment of a State-of-the-art Global Tracking and Tracing System that is being used to secure the supply chain of Tobacco Products in Kenya and is being integrated into the EAC region.

There are no additional resources required to implement the requirements of this Treaty in Kenya. This step by KRA has also benefited control of other excisable goods such as beers and spirits.

Implementation of the Treaty will increase government revenue while at the same time curbing illicit trade in tobacco products. It will reduce the cost of health care occasioned by the high burden of non-communicable diseases caused by tobacco use and hence save the government valuable revenue.

4.0 MEMORANDA FROM THE PUBLIC AND OTHER STAKEHOLDERS

Pursuant to provisions of the Constitution on public participation under Article 118(1)(b) and Section 8 of the Treaty Making and Ratification Act, 2012, the Committee invited members of the public to submit memoranda of their views in support of or to the contrary, the ratification of the protocol, in the two major dailies of 22nd October, 2018.

A total of 14 individuals and organizations submitted their views. All were expressly in support of the ratification, save for British American Tobacco (BAT) Company Limited who even though did not oppose the ratification, called for strengthening of local mechanisms and stakeholder collaborations.

All the views are summarised as below;

	Name	Submission	Support/oppose
1	National tax payers Association	<ul style="list-style-type: none"> • Country has made progress in the implementation of tobacco control policies- This can be attributed to the implementation of the Tobacco control Act 2007; • Tobacco use and exposure contributes to disease, disability and death; • Illicit trade in tobacco products facilitates access to tobacco products that undermines public health policies geared towards reducing consumption and denies government revenue; • Pervasive spread of NCDs is attributable to consumption of tobacco products. NCDs are expensive to treat and strain the already underfunded health sector; • NTA advocates for increased taxation on tobacco products; • NTA commends the government for implementing the treaty. 	Support
2	Kenya Tobacco Control Alliance	<ul style="list-style-type: none"> • Tobacco is the leading preventable cause of death. It kills over 7 million people globally and over 10,000 in Kenya annually; • Over 800,000 people exposed to second-hand smoking and over 	Support

		<p>200,000 children are getting exposed to tobacco use daily;</p> <ul style="list-style-type: none"> • Illicit trade poses serious threat to public health and deprives the country vital revenue; • Ratifying the protocol will greatly boost to the fight against illicit trade; • Kenya has made strides in to curb illicit trade in tobacco products through the KRA's Excisable Goods Management System- a track and trace system. 	
3	Kenya Paediatric Association	<ul style="list-style-type: none"> • Tobacco use exposes users and those around them to dangerous cancer causing, allergy triggering and disease producing elements and increase risk of premature death; • Children are at greatest risk of secondary exposure to inhaled smoke; • The developing brain of children is susceptible to nicotine- hence risk of addiction and a gateway to the use of controlled drugs. 	Support
4	Students Campaign Against drugs	<ul style="list-style-type: none"> • Tobacco is a gateway to the use illicit drugs and alcohol; • 9.9 % of youth use tobacco and related products; • Global Youth Tobacco Survey indicates 77% of youth were never stopped from purchasing tobacco despite their age. 	Support
5	Den of Hope- Youth Group	<ul style="list-style-type: none"> • Tobacco consumption leads to use of hard drugs and also increases 	Support

		<p>school dropout rates;</p> <ul style="list-style-type: none"> • Young smokers have succumbed to tobacco related illnesses such as lung cancer and TB; • Ratification will curb availability of cheaper, counterfeit and more harmful products. 	
6	International Institute for Legislative Affairs	<ul style="list-style-type: none"> • Tobacco use and exposure is one of the leading causes of chronic non-communicable diseases; • The prevalence of tobacco use in the country is 23% male and 4.1% for females; • Illicit tobacco trade denies government revenue; • Kenya's ratification will form basis for stronger policy and legislative framework for the control of illicit trade in tobacco products; • It will give Kenya a voice in the global discussions on the implementation of the protocol. 	Support
7	The Co-operative University of Kenya	<ul style="list-style-type: none"> • Ratification will send a clear message that the illicit trade market will be monitored strictly to protect young children and other groups from exposure to low cost, easily available tobacco products; • It will help KRA to fight the importation of illicit tobacco products; • It will help government to further increase its revenues from excise tax from cigarettes. 	Support
8	Kenya Union of	<ul style="list-style-type: none"> • Tobacco smoking is one of the major behavioural risk factors 	Support

	Clinical Officers	<p>predisposing to cancer:</p> <ul style="list-style-type: none"> • Illicit trade avails cheap tobacco to the market hence increased consumption- most affected being the youth; • Ratification will eliminate illicit trade and will be a support towards universal health coverage. 	
9	Kenya Network of Cancer Organizations	<ul style="list-style-type: none"> • Tobacco use is the leading cause of cancer morbidity and mortality; • Tobacco kills at least half of its users prematurely at least before 70 years; • Tobacco use causes many types of cancer; • There is aggressive tobacco industry targeted marketing following stringent trade and legislative environment in developed countries; • Government needs to eliminate illicit tobacco trade if any progress was to be made to reduce incidences of tobacco related cancers. 	Support
10	East Africa Tax and Governance Network	<ul style="list-style-type: none"> • Illicit trade in tobacco undermines public health policies geared towards reducing consumption; • Adoption of laws and policies to curb illicit trade is necessary. 	Support
11	Hillary Kiplagat	<ul style="list-style-type: none"> • According to Financial Action Task force, African countries lose 1 trillion shillings annually to illicit tobacco trade; • Cheap supply of tobacco products 	Support

		<p>defeats health goals;</p> <ul style="list-style-type: none"> • More stringent laws with clear penalties should be enacted to curb illicit tobacco trade; • Ratification will help in international cooperation, law enforcement and prevention of illicit trade. 	
12	Online Voices	<ul style="list-style-type: none"> • Illicit tobacco trade poses health risks, undermines revenue generation and strengthens corruption and weakens governance. 	Support
13	Public Health Society of Kenya	<ul style="list-style-type: none"> • Supports the ratification of the protocol and will aim to contribute to the development and implementation of innovative digital technologies aimed at sensitizing Kenyans on the value of making Kenya a tobacco free zone; • Illicit trade worsens the tobacco problem. 	Support
14	British American Tobacco	<ul style="list-style-type: none"> • Estimated that 4.1 billion cigarettes consumed each year globally are illicit, an estimated USD 40 Billion tax loss to Governments; • Illicit trade in cigarettes cost Kenya 1.4 billion shillings in lost taxes, with 7.8 % of the cigarettes market being illicit; • Enforce existing laws to curb illicit trade; • Adopt to Kenya local needs; • Consultation and collaboration with the private actors; 	Did not indicate

		<ul style="list-style-type: none"> • Implementation cost not to be used as a revenue generation measure; • Protocol should not be used as a substitute to increased, sustained and coordinated enforcement by the government authorities mandated to address illicit trade in Kenya; • Ratification and implementation of protocol will benefit from robust, enforcement, punitive and deterrent sanctions. 	
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5.0 OBSERVATIONS

1. Tobacco use is a major contributor to the burden of Non-communicable Diseases in the country, and even globally. Illicit trade in its products compounds the problem including contributing to loss of tax revenue by the country. Tackling the menace will go a long way in combatting NCDs towards attainment of UHC;
2. Kenya already signed the protocol in 31st May 2013 as a first step towards domestication of the protocol. This has since received backing of the Cabinet in its third sitting of 14th August, 2018;
3. The country has already implemented two of the three time bound obligations of the protocol, as its own internal strengthening of laws as backed by legislation. These include the Electronic Cargo Tracking System as well as the Excisable Goods Management System by the KRA, and unique markings on cigarettes and their packaging;
4. The third obligation requires that within three years of entry into force of the protocol, the country will implement control in free zones;
5. There was no opposing view from the public seeking non ratification of the protocol;
6. The ratification would go a long way to enforce a more robust and effective response to illicit tobacco trade;

6.0 RECOMMENDATION

The Committee recommends that the National Assembly **approves** the ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products.

ANNEXURE

Minutes of Committee sittings

MINUTES OF THE NINETY THIRD (93RD) SITTING OF THE
DEPARTMENTAL COMMITTEE ON HEALTH HELD ON TUESDAY 22ND
OCTOBER 2018, IN 4TH FLOOR BOARDROOM, PROTECTION HOUSE,
PARLIAMENT BUILDINGS, AT 9.00 AM

PRESENT

1. Hon. Sabina Chege, MP – Chairperson
2. Hon. (Dr.) James Nyikal, MP
3. Hon. (Dr.) Eseli Simiyu, MP
4. Hon. (Dr.) James Kipkosgei Murgor, MP
5. Hon. (Dr.) Mohamed Dahir Duale, MP
6. Hon. Muriuki Njagagua, MP
7. Hon. Gladwell Jesire Cheruiyot, MP
8. Hon. Martin Peters Owino, MP
9. Hon. Tongoyo Gabriel Koshal, MP
10. Hon. Zachary Kwenya Thuku, MP

ABSENT WITH APOLOGIES

1. Hon. (Dr.) Swarup Ranjan Mishra, MP - Vice Chairperson
2. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
3. Hon. Alfred Agoi Masadia, MP
4. Hon. Stephen Mule, MP
5. Hon. Mercy Wanjiku Gakuya, MP
6. Hon. Patrick Munene Ntwiga, MP
7. Hon. Kipsengeret Koros, MP
8. Hon. Esther M. Passaris, MP
9. Hon. Chris Karan, MP

NATIONAL ASSEMBLY

- | | | |
|--------------------------------|---|---------------------|
| 1. Mr. Victor Weke | - | Clerk Assistant I |
| 2. Mr. Muyodi Meldaki Emmanuel | - | Clerk Assistant III |
| 3. Ms. Christine Odhiambo | - | Legal Counsel II |
| 4. Ms. Fatuma Abdi | - | Audio Officer |

IN-ATTENDANCE

MINISTRY OF HEALTH

- | | | |
|-----------------------|---|-------------------------------------|
| 1. Dr. Kioko Jackson | - | Director of Medical Services |
| 2. Dr. Kepha Ombacho | - | Director of Public Health |
| 3. Dr. Ephantus Maree | - | Deputy Director of Medical Services |

4. Dr. Gladwell Gachecha - Head of Division, Non-communicable Diseases
5. Dr. Dorcas Kiptui - Head-Tobacco Control unit
6. Ms. Betty Soi - Legal Officer

MIN. NO.NA/C.H/2018/349: PRELIMINARIES

The Chairperson called the meeting to order at 9.23 am and said a prayer. She then invited all present to a round of introductions.

MIN. NO.NA/C.H/2018/350: CONFIRMATION OF MINUTES

92th Sitting

Minutes of the 92nd sitting held on Thursday 18th October 2018 were confirmed as a true record of proceedings as proposed by Hon. (Dr.) James Nyikal, MP and seconded by Hon. Gladwell Jesire Cheruiyot, MP. There were no matters arising.

MIN. NO.NA/C.H/2018/351: BRIEFING BY THE MINISTRY OF HEALTH ON THE RATIFICATION OF THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS (ITP)

Dr. Kioko Jackson, Director of Medical Services informed the Committee as follows:

The Framework convention on Tobacco Control (FCTC) was developed by WHO in response to the global high use of tobacco product. The treaty was the first public health adopted by the World Health Assembly in 2003.

Due to its active involvement in the development of the FCTC and implementation of its guidelines, Kenya become a reference point and a global leader with various best practices that are being emulated by other countries.

Kenya signed and ratified the FCTC on 24th June 2004 and used it as blue print to develop the Tobacco Control Act that was passed in 2007. However, the regulations for the TCA took effect on 24th August, 2016 after the court ruled in favour of the TCA Regulations 2014.

The protocol emanated from article 15 of the (FCTC) which requires parties to the treaty to implement measures to eliminate illicit trade in tobacco products. Kenya led the AFRO region in the negotiation of the protocol which lasted between the years 2007 – 2014 and MOH and KRA provided technical support.

In 2013 MOH facilitated the signing of the protocol; however, Kenya is yet to ratify it. The protocol came into force this year after 40 parties ratified it.

A multisectoral technical consultation meeting to draw a road map to achieve ratification was convened with input from the AG, Ministry of Health, Foreign Affairs,

Trade, KRA and civil society. Cabinet later approved the memo calling for Kenya to ratify the protocol and it later directed the Ministry of Health and Foreign Affairs to submit to Cabinet the request for approval for ratification.

On 14th August 2018 Cabinet approved the memorandum and instructed that it be presented to the National Assembly for ratification.

He said that Kenya attended the MOPI as observer and only made interventions at the coordination meetings as it had not ratified the protocol.

The Committee was also informed that KRA had undertaken efforts in implementing the protocol, including roll out of the state-of-the-art tracking and tracing system that is being used to monitor the movement of tobacco products in the country.

In addition KRA had developed an app that they were now using to root out the illegal trade that eats up the tax revenue and the app which goes by the name "*soma label*" was available in the app stores and could be used by the common citizens to scan the stamps on consumer products to check if they are genuine or not.

The Chairperson informed the Ministry that the Committee had already placed an advertisement in the major dailies inviting members of the public to submit the views on the protocol. She urged the KRA and members of the Civil Society Organizations present in the meeting to present their views before the deadline.

MIN. NO.NA/C.H/2018/352: ANY OTHER BUSINESS

Health Laws (Amendment) Bill

The Chairperson informed the Committee that on Monday 22nd October 2018 she attended a meeting that was convened at the office of the Leader of Majority, Hon. Aden Duale. In attendance also was a team from the MOH led by the Cabinet Secretary. She said that the main agenda of the meeting was harmonization and consensus building of the Health Laws amendments.

She requested Members to be present in the House on Wednesday 24th October 2018 to defend the Committee's position as the Bill would be scheduled for Committee stage debate.

MIN. NO.NA/C.H/2018/353: ADJOURNMENT

There being no other business, the meeting adjourned at 11.44 am. Next meeting to be held on 25th October, 2018.

Sign.......... Date..........

(Chairperson)