

**SPECIAL ISSUE**

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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2020**

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**NAIROBI, 7th December, 2020**

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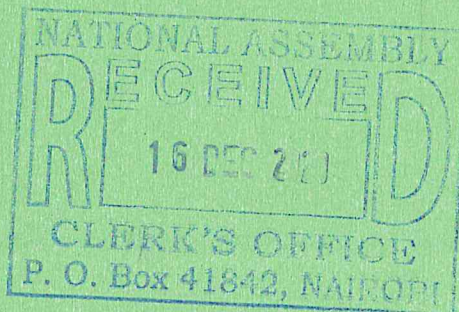
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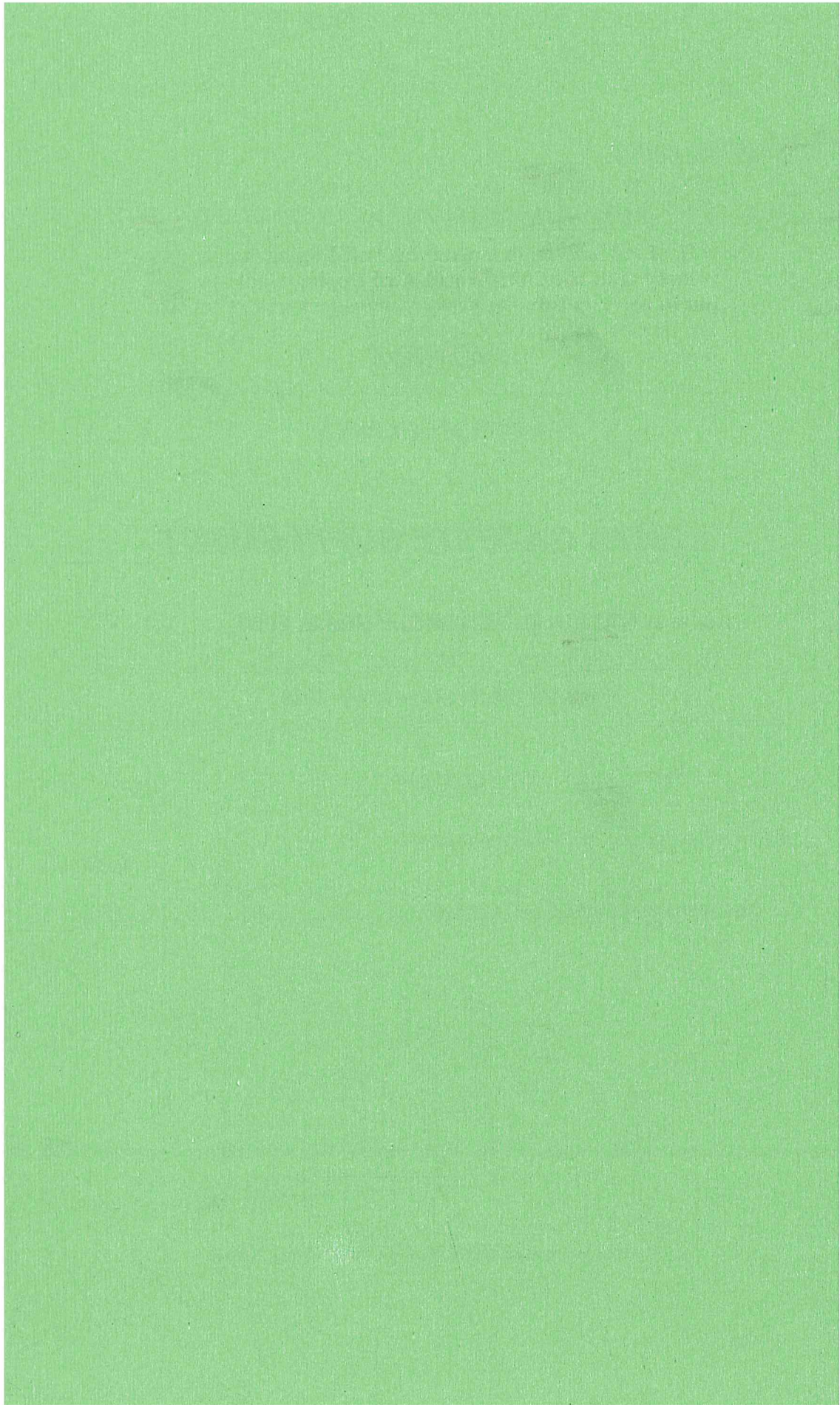
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**THE ANTI-DOPING (AMENDMENT) BILL, 2020**

**A Bill for**

**AN ACT of Parliament to amend the Anti-Doping Act to comply with the 2021 World Anti-Doping Code; to put in place an enhanced results management system for anti-doping rule violations and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Anti-Doping (Amendment) Act, 2020 and shall come into operation as follows—

Short title and commencement.

- (a) section 21 on such date as the Cabinet Secretary may, by notice in the Gazette, appoint; and
- (b) all other sections, on the date of assent.

2. Section 2 of the Anti-Doping Act, in this Act referred to as the “principal Act”, is amended—

Amendment of section 2 of No. 5 of 2016.

- (a) in the definition of “accredited laboratory”, by deleting the word “test” and substituting therefor the word “analyse”;
- (b) by deleting the definition of “administration”;
- (c) by deleting the definition of “complicity”;
- (d) by deleting the definition of “doping control” and substituting therefor the following definition—
 

“doping control” means the steps and processes commencing with test distribution planning to the disposition of any appeal and the enforcement of consequences, including steps and processes in between, including but not limited to provision of testing, investigations, whereabouts information, therapeutic use exemptions, sample collection and handling, laboratory analysis, results management, and hearings and appeals, and investigations or proceedings relating to violations of Article 10.14 (status during ineligibility or provisional suspension) of the World Anti-Doping Code;
- (e) in the definition of “in-competition”, by deleting the words “twelve hours” and substituting therefor the words “one minute to midnight on the day”;

- (f) by deleting the definition of “possession”;
- (g) by deleting the definition of “prohibited association”;
- (h) by deleting the definition of “tampering”;
- (i) by deleting the definition of “Therapeutic Use Exemption” and substituting therefor the following definition—

“Therapeutic Use Exemption” means an exemption that allows an athlete with a medical condition to use a prohibited substance or prohibited method, but only if the conditions set out in Article 4.4. of the World Anti-Doping Code and the International Standard for Therapeutic Use Exemptions are met;

- (j) by inserting the following new definitions in their proper alphabetical sequence—

“anti-doping activities” means anti-doping education and information, test distribution planning, maintenance of a registered testing pool, managing Athlete Biological Passports, conducting testing, organising analysis of samples, gathering of intelligence and conduct of investigations, processing of therapeutic use exemptions applications, results management, hearings, monitoring and enforcing compliance with any consequences imposed, and all other activities related to anti-doping to be carried out by or on behalf of an anti-doping organisation, as set out in the World Anti-Doping Code and in the International Standards;

“athlete biological passport” means the program and methods of gathering and collating data as described in the International Standard for Testing and Investigations and International Standard for Laboratories;

“delegated third party” means any person to which the Agency delegates any aspect of doping control or anti-doping education programs including, but not limited to, third

parties or other Anti-Doping Organisations that conduct sample collection or other doping control services or anti-doping educational programs for the Agency, or individuals serving as independent contractors who perform doping control services for the Agency, but does not include the Court of Arbitration for Sport (CAS);

“education” means the process of learning to instill values and develop behaviors that foster and protect the spirit of sport, and to prevent intentional and unintentional doping;

“institutional independence” means the independence of the hearing panels on appeal from the Anti-Doping Organisation responsible for results management;

*Note:* They must therefore not in any way be administered by, connected or subject to the Anti-Doping Organisation responsible for results management;

“operational independence” means—

- (a) that board members, staff members, commission members, consultants and officials of the Anti-Doping Organization with responsibility for results management or its affiliates who may include a member federation or confederation, as well as any person involved in the investigation and pre-adjudication of the matter cannot be appointed as members or clerks (to the extent that such clerk is involved in the deliberation process or drafting of any decision) of hearing panels of that Anti-Doping Organization with responsibility for results management; and
- (b) that hearing panels shall be in a position to conduct the hearing and decision-making process without interference from the Agency or any third party;

“protected person” means an athlete or other natural person who at the time of the anti-doping rule violation—

- (a) has not reached the age of sixteen years;
- (b) has not reached the age of eighteen years and is not included in any Registered Testing Pool and has never competed in any international event in an open category; or
- (c) for reasons, other than age has been determined to lack legal capacity under applicable national legislation;

“recreational athlete” means any person who engages or participates in sport or fitness activities for recreational purposes and does not include any person who, within the five years prior to committing any anti-doping rule violation, has been an international-level athlete (as defined by each International Federation consistent with the International Standard for Testing and Investigations) or national-level athlete (as defined by each National Anti-Doping Organization consistent with the International Standard for Testing and Investigations), has represented any country in an international event in an open category or has been included within any Registered Testing Pool or other whereabouts information pool maintained by any International Federation or National Anti-Doping Organization; and

“results management” means the process encompassing the timeframe between notification as per Article 5 of the International Standard for Results Management, or in cases which may include Atypical Finding, Athlete Biological Passport or whereabouts failure, such pre-notification steps expressly provided for in Article 5 of the International Standard for Results Management, through the charge until the final resolution of the matter, including the end of the hearing process at first instance or on appeal, if an appeal is lodged.

3. Section 3 of the principal Act is amended by adding the following new paragraph immediately after paragraph (d)—

Amendment of section 3 of No. 5 of 2016.

“(e) board members, directors, officers and specified employees, and delegated third parties and their employees, who are involved in any aspect of doping control, of the entities specified under paragraphs (a) to (d).”

4. Section 4 of the principal Act is amended by adding the following new paragraph immediately after paragraph (b)—

Amendment of section 4 of No. 5 of 2016.

“(c) safeguard the physical health and mental integrity of athletes.”

5. Section 5 of the principal Act is amended—

Amendment of section 5 of No. 5 of 2016.

(a) by deleting subsection (2A) and substituting therefor the following subsection—

“(2A) The Agency shall be the only organisation permitted to carry out anti-doping activities in Kenya and its authority to enforce this Act, including any consequence for the breach thereof, shall be recognized by all national and international sports federations and national and international sports organisations.”

(b) by deleting subsection (3); and

(c) by deleting subsection and (4).

6. Section 7 of the principal Act is amended—

Amendment of section 7 of No. 5 of 2016

(a) in subsection (1)—

(i) in paragraph (g), by deleting the words “and sports organisations” and substituting therefor the words “national and international sports federations, and national and international sports organisations”;

(ii) in paragraph (n), by deleting the word “sportspersons” and substituting therefor the word “athletes”;

(iii) in paragraph (o), by deleting the word “sportspersons” and substituting therefor the word “athletes”;

- (iv) in paragraph (q), by inserting the words “and encourage reciprocal testing between anti-doping organisations” immediately after the word “mandate”;
- (v) by deleting paragraph (ua) and substituting therefor the following paragraph—
  - “(ua) plan, implement, evaluate and promote anti-doping education in line with the requirements of the International Standard for Education”;
- (vi) by deleting paragraph (ub) and substituting therefor the following paragraph—
  - “(ub) vigorously undertake results management and ensure proper enforcement of consequences in accordance with the Agency's rules and the Code”;
- (vii) by deleting paragraph (uc);
- (viii) by inserting the following new paragraph immediately after paragraph (ud)—
  - “(ue) adopt a policy implementing the requirements for the encouragement and protection of whistleblowers;”
- (b) in subsection (2), by deleting paragraph (c) and substituting therefor the following paragraph—
  - “(c) ensure that data privacy requirements and the rights of everyone involved in the doping control procedures are respected.”
- (c) by adding the following new subsections immediately after subsection (2) —
  - “(3) The Agency may delegate any aspect of doping control or anti-doping education to a delegated third party and shall—
    - (a) require the delegated third party to perform such aspects in compliance with the Code, International Standards, and this Act; and
    - (b) always remain fully responsible for ensuring that the delegated aspects are performed in compliance with the Code.”



“(4) The Kenya Bureau of Standards, the Pharmacy and Poisons Board, the Medical Practitioners and Dentists Council, the Ministry for the time being responsible for matters relating to Health and all other aligned or relevant agencies, shall collaborate with the Agency in aligning their standards in accordance with the requirements of the Code and this Act.”

7. Section 9 of the principal Act is amended—

Amendment of section 9 of No. 5 of 2016.

- (a) by re-numbering section 9 as section 9(1); and
- (b) by adding the following new sub-section immediately after subsection (1)—

“(2) The Agency and Committee shall be independent in their operational decisions and activities from sport and government, including, without limitation from any involvement in their operational decisions or activities by any person who is at the same time involved in the management or operations of any national and international sports federations, national and international sports organisations, Major Event Organization, National Olympic Committee, National Paralympic Committee, or Ministry or other government department with responsibility for sports or anti-doping.”

8. Section 10 of the principal Act is amended—

Amendment of section 10 of No. 5 of 2016.

- (a) in subsection (5), by inserting the following new paragraph immediately after paragraph (d)—

“(da) is provisionally suspended or serving a period of ineligibility under the Agency’s Anti-Doping Rules and has been directly or intentionally engaged in conduct within the previous six years which would have constituted a violation of the Agency’s Anti-Doping Rules if such Rules had been applicable to them.”

- (b) by adding the following new subsection immediately after subsection (5)—

“(6) Before serving as a member of the Board, each proposed member shall sign a conflict of interest and confidentiality declaration form as provided by the Agency.”

9. Section 12 of the principal Act is amended, in subsection (1), by adding the following new paragraph immediately after paragraph (f)—

Amendment of section 12 of No. 5 of 2016.

“(g) no longer meets the requirements for their appointment as set out in section 10(2) and (5) of this Act.”

10. Section 14 of the principal Act is amended—

Amendment of section 14 of No. 5 of 2016.

(a) in subsection (1), by deleting the word “for” and substituting therefor the words “to oversight”;

(b) in subsection (2)—

(i) in paragraph (d), by deleting the word “open” and substituting therefor the words “authorize the opening of”;

(ii) in paragraph (f), by inserting the words “approve the strategic plan,” immediately before the word “lay”; and

(iii) in paragraph (h), by deleting the word “other” and substituting therefor the word “oversight”.

11. Section 17(4) of the principal Act is amended in paragraph (b) by deleting sub-paragraph (vi) and substituting therefor the following new subparagraph—

Amendment of section 17 of No. 5 of 2016.

“(vi) administrative support to the Therapeutic Use Exemption Committee”;

12. Section 19 of the principal Act is amended by adding the following new subsection immediately after subsection (2)—

Amendment of section 19 of No. 5 of 2016.

“(3) Subject to applicable law, the Agency may not employ a person in any position involving doping control (other than authorized anti-doping education or rehabilitation programs) who—

(a) has been provisionally suspended;

- (b) is serving a period of ineligibility under the Agency’s Anti-Doping Rules or the World Anti-Doping Code; or
- (c) was not subject to the Rules and the Code, but has directly and intentionally engaged in conduct within the previous six (6) years which would have constituted a violation of Anti-Doping Rules if they had been applicable to such person”.

13. The principal Act is amended by inserting the following new section immediately after section 22—

Insertion of new section 22A.

Board members and staff to be bound by the Act.

22A. Subject to applicable law, as a condition of such position or involvement, all of the Board members, directors, officers, and those employees (and those of appointed delegated third parties), who are involved in any aspect of doping control, shall be bound by this Act and any other anti-doping rules as persons in conformity with the Code for direct and intentional misconduct, or to be bound by comparable Rules and Regulations put in place by the Agency.

14. Section 23 of the principal Act is amended—

Amendment of section 23 of No. 5 of 2016.

- (a) in subsection (2), by adding the words “persons appointed by the Agency” immediately after the word “following”;
- (b) by inserting the following new subsection immediately after subsection (3)—

“(3A) Before serving as members of the Committee, each member shall sign an Oath of Secrecy and Declaration of Conflict of Interest Form as provided by the Agency.”

- (c) in subsection (4), by deleting the words “two, shall be doctors” and substituting therefor the words “one, shall be a doctor”; and
- (d) in subsection (5)(a), by adding the words “and International Standards” immediately after the word “Code”.

15. Section 24 of the principal Act is amended—

Amendment of section 24 of No. 5 of 2016.

- (a) in subsection (2), by inserting the words “directly to its international federation” immediately after the words “apply”; and
- (b) by adding the following new subsection immediately after subsection (3)—

“(4) The decision of the Committee may be appealed in a manner specified in the Anti-Doping Rules.”

**16. Section 25 of the principal Act is amended—**

Amendment of section 25 of No. 5 of 2016.

- (a) in subsection (2), by deleting the words “the name of”; and
- (b) in subsection (3), by deleting the words “the inclusion of his or her name” and substituting therefor with the words “that athlete inclusion”.

**17. Section 27 of the principal Act is amended—**

Amendment of section 27 of No. 5 of 2016.

- (a) in subsection (1), by inserting the words “as well as all Board members, directors, officers, employees and appointed delegated third parties who are involved in any aspect of doping control” immediately after the words “a minor”;
- (b) in subsection (5)—
  - (i) in paragraph (c), by adding the words “and take responsibility to make sure that any medical treatment received does not violate the Anti-Doping Rules” immediately after the word “methods”; and
  - (ii) by adding the following new paragraph immediately after paragraph (e)—
 

“(f) disclose the identity of their athlete support personnel upon request by the Agency.”
- (c) in subsection (6), by adding the following new paragraphs immediately after paragraph (b)—
 

“(c) be knowledgeable of and comply with the Anti-Doping Rules;

- (d) not use or possess any prohibited substance or prohibited method without valid justification; and
- (e) not use the defence of lack of knowledge or the requirement to comply with the Anti-Doping Rules as a defence for any infringement under this Act.”

(d) by adding the following new subsection immediately after subsection (6)—

“(7) Other persons subject to this Act shall be knowledgeable of, and comply with the Anti-Doping Rules provided that lack of such knowledge shall not be used as a defence in case of infringement of any provision of this Act.”

**18.** Section 28 of the principal Act is amended—

Amendment of  
section 28 of No.  
5 of 2016.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

“(1) A sample taken from an athlete shall be analysed at an accredited laboratory or laboratory otherwise approved by the World Anti-Doping Agency to detect prohibited substances or its metabolites and markets.”

(b) by deleting subsection (2) and substituting therefor the following new subsection—

“(2) A sample and related analytical data or doping control information shall be analysed—

- (a) to detect prohibited substances and prohibited methods identified on the prohibited list and other substances as may be directed by the World Anti-Doping Agency;
- (b) to assist an anti-doping organization in profiling relevant parameters in an athlete’s urine, blood or other matrix, including for DNA or genomic profiling; or
- (c) for any other legitimate anti-doping purpose.”

- (c) by deleting subsection (3) and substituting therefor the following new subsection—

“(3) Samples, related analytical data and doping control information may be used for anti-doping research purposes, subject to written consent of the athlete.”

- (d) by adding the following new subsections immediately after subsection (3) —

(4) Samples and related analytical data or doping control information used for research purposes shall first be processed in such a manner as to prevent samples and related analytical data or doping control information being traced back to a particular athlete.

(5) The results of all tests sample analysis shall be submitted to the Agency.

- 19.** Section 29 of the principal Act is amended—

Amendment of section 29 of No. 5 of 2016.

- (a) by deleting subsection (1) and substituting therefor the following new subsection—

“(1) The Agency shall for purposes of enforcing this Act appoint anti-doping compliance officers.”

- (b) in subsection (2)—

- (i) in paragraph (a), by deleting the word “Board” and substituting therefor the word “Agency”;

- (ii) by deleting paragraphs (b) and (c); and

- (c) by deleting subsection (4).

- 20.** The principal Act is amended by repealing section 31 and replacing therefor the following section—

Repeal and replacement of section 31 of No. 5 of 2016.

Jurisdiction of Sports Tribunal.

**31.** (1) The Tribunal shall have jurisdiction to hear and determine cases on—

- (a) anti-doping rule violations on national and lower level athletes and athlete support personnel;

- (b) anti-doping rule violations on other persons subject to the Anti-Doping Rules;
- (c) anti-doping rule violations arising from national and lower level events;
- (d) Therapeutic Use Exemptions (TUE) decisions of Anti-Doping Agency of Kenya (ADAK); and
- (e) matters of compliance of sports organisations in the first instance and appellate level.

(2) The Tribunal shall be guided by the Code, the International Standards established under the Code, the 2005 UNESCO Convention Against Doping in Sports, the Sports Act, and the Agency's Anti-Doping Rules, amongst other legal sources.

(3) The Tribunal shall establish its own procedures.

(4) Appeal level disputes involving national and lower level athletes, athlete support personnel, sports federations, sports organisations, professional athletes and other persons subject to the Anti-Doping Rules shall be resolved by the Tribunal—

- (a) which shall consist of a panel of three members appointed by the Chairperson of the Tribunal; and
- (b) after the panel members have signed a no conflict of interest declaration in form provided by the Agency.

(5) The World Anti-Doping Agency, the International Olympic Committee, the International Paralympic Committee, and the relevant International Federations shall have the right to a second appeal to the

Court of Arbitration for Sports (CAS) with respect to the appeal decisions of the Tribunal.

(6) For the avoidance of doubt, the Tribunal shall not have jurisdiction over Appeals involving International Level athletes or arising from the participation in International Events or national crimes related to doping.

(7) The Cabinet Secretary may prescribe rules to give effect to this section.”

**21.** The principal Act is amended by inserting the following new sections immediately after section 31—

Insertion of new sections 31A, 31B, 31C, 31D, 31F and 31G in No. 5 of 2016.

Establishment of the Anti-Doping Results Management Panel.

**31A.** (1) There is established the Anti-Doping Results Management Panel.

(2) The Results Management Panel consists of—

(a) a pool of professionals of not less than five years’ experience in—

- (i) legal practice;
- (ii) sports administration;
- (iii) medical practice;
- (iv) a relevant scientific field; and

(b) retired sportsmen, who shall have retired at least five years prior to the appointment.

(3) The Agency shall publish the names of the members of the Panel on the Agency’s website.

(4) The Agency shall review the competence of the Results Management Panel every two years and such review shall be in accordance with the Code and the International Standards.

(5) The members of the Results Management Panel shall serve on a part-time basis.



Powers of the Results Management Panel.

**31B.** The Results Management Panel shall—

- (a) conduct Results Management hearings related to Anti-Doping rule violations referred to it by the Agency;
- (b) determine whether an Anti-Doping violation has occurred;
- (c) impose sanctions; and
- (d) perform any other functions that may be conferred to it by the Agency in accordance with the Anti-Doping Rules.

Constitution of a Results Management Panel.

**31C.** (1) Where the athlete, athlete support personnel or other person charged with an anti-doping rule violation requests a hearing, the Agency shall lodge a charge with the Results Management Panel by—

- (a) notifying the concerned athlete, athlete support personnel or other person to select one member from the pool of the members of the Results Management Panel; and
- (b) selecting one member from the pool of the members of the Results Management Panel.

(2) The two members selected by the athlete, athlete support personnel or other person and the Agency under subsection (1) shall select one member from the pool of the members of the Results Management Panel, who shall be the Chairperson of the Results Management Panel and shall meet the criteria set under subsection (6).

(3) The hearing and determination of any anti-doping matter in the first instance shall be conducted by a Results Management Panel consisting of three members, unless the Chairperson considers that—

- (a) taking into account the circumstances; and
- (b) complexity of the specific case, additional members need to be appointed.

(4) The Chairperson shall ensure that the total number of the members of the Results Management Panel shall at all times be an odd number.

(5) Upon appointment to constitute a Results Management Panel under section 31C, each Results Management Panel member shall—

- (a) sign a no conflict of interest declaration, kin as provided by the Agency; and
- (b) if such facts or circumstances arise at a later stage of the hearing process, the relevant Results Management Panel member shall promptly disclose them to the parties and recuse themselves from the case, in which case a new member shall be appointed by the party who appointed the recused member.

Hearing process.

**31D.** (1) Upon the receipt of a confirmed charge from the Agency alleging the occurrence of an anti-doping violation, the Results Management Panel shall—

- (a) conduct a hearing within fourteen days of receipt of the charge;
- (b) ensure that the cases referred to it are heard, concluded and decisions delivered within six months from the date of receipt of the charge;
- (c) grant not more than three adjournments to each party in the case;

- (d) ensure that the adjournments granted under (c) shall not be for more than fourteen days;
- (e) have powers to order the parties to proceed with the hearing in the event that three adjournments are exhausted;
- (f) ensure to conclude the hearing at least thirty days before the six months' time limit under (b); and
- (g) issue a written decision within twenty days after the conclusion of the hearing.

(2) These deadlines may be extended in duly justified circumstances.

Secretarial services.

**31E.** (1) Results Management Panel shall be operationally independent from the Agency.

(2) The Agency shall provide the secretariat services to the Results Management Panel.

(3) The Agency shall be responsible for—

- (a) prompt notification of the Results Management Panel's decisions to the athlete or other person and to other Anti-Doping Organisations with a right of appeal under Code Article 13.2.3; and
- (b) promptly reporting and publishing the decision.

Right of Appeal.

**31F.** (1) All parties with a right to appeal except World Anti-Doping Agency (WADA) may file an appeal within fourteen days from the date of the delivery of the decision by the Results Management Panel.

(2) The filing deadline for an appeal filed by WADA shall be the later of—

- (a) twenty-one days after the last day on which any other party having a right to appeal could have appealed; or
  - (b) twenty-one days after WADA's receipt of the complete file relating to the decision.
- (3) The following persons may lodge an appeal where dissatisfied by a decision from the Results Management Panel—
- (a) the athlete or other person who is the subject of the decision being appealed;
  - (b) the other party to the case in which the decision was rendered;
  - (c) the relevant International Federation;
  - (d) the national anti-doping organisation of the athlete's or other person's country of residence or countries where the athlete or other person is a national or license holder;
  - (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and
  - (f) World Anti-Doping Agency.
- (4) An appeal lodged in accordance with this section may be made at—
- (a) the Tribunal where the matters involve a national and lower level athletes or other persons; or

(b) the Court of Arbitration for Sports where the matter involves an international level athlete or arises from the participation in the international event.

(5) Notwithstanding any other provision, the only person who may appeal from the imposition of a provisional suspension is the athlete or other person upon whom the provisional suspension is imposed.

(6) Where an appeal is preferred in accordance with the provision of this section, the decision of the Results Management Panel shall remain in effect until the determination of the appeal.

**22.** Section 32 of the principal Act is amended by deleting subsection (2).

Amendment of section 32 of No. 5 of 2016.

**23.** The principal Act is amended by repealing section 41B and substituting therefor the following new section—

Repeal and replacement of section 41B of No. 5 of 2016.

Internal Rules to conform with the Code.

**41B.** Each sports federation shall prepare Rules requiring all athletes preparing for or participating in a competition or activity authorized or organised by a national federation or one of its member organisations, and each athlete support personnel associated with such athletes to agree to be bound by Anti-Doping Rules and the Agency's results' management authority in conformity with the Code as a condition for such participation.

**24.** Section 41D of the principal Act is amended by adding the words “or other anti-doping organisation” immediately after the word “Agency”.

Amendment of section 41D of No. 5 of 2016.

**25.** Section 42 of the principal Act is amended by deleting subsection (6) and substituting therefor with the following—

Amendment of section 42 of No. 5 of 2016.

“(6) An athlete, athlete support personnel or other person subject to the Anti-Doping Rules who commits a violation contrary to the Anti-Doping Rules shall be subject to the requisite sanctions, as set out in the Anti-Doping Rules.”

## MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Anti-Doping Act, 2016 to harmonize the legislative framework with the 2021 World Anti-doping Code and Regulations. This effort will aid in the achievement of compliance by Kenya to the internationally adopted Code and facilitate the continued participation of Kenyan athletes in local, regional, and international competitions, while appreciating the relevance of curbing doping in sports.

The structure of the Bill is as follows:

**Clause 1** of the Bill sets out the short title of the proposed Act.

**Clause 2** of the Bill proposes to amend section 2 of the Act by inserting definitions of new terms and phrases and deleting terms that have become obsolete or no longer appear in the body of the Act.

**Clause 3** of the Bill seeks to amend section 3 of the Act to broaden the application of the Act.

**Clause 4** of the Bill proposes to amend section 4 of the Act by inserting an additional purpose for the Act, which is to safeguard the physical health and mental integrity of athletes.

**Clause 5** of the Bill proposes to amend section 5 of the Act to provide further clarity and guidance on the powers of the Agency.

**Clause 6** of the Bill proposes to amend section 7 of the Act to provide clarity as to the functions of the Agency and to provide clarity with respect to the institutions the Agency is responsible for monitoring compliance from.

**Clause 7** of the Bill proposes to amend section 9 of the Act by introducing a statement on independence of the Agency and the Committee from any undue influence in the conduct of its activities and actions regarding anti-doping.

**Clause 8** of the Bill proposes to amend section 10 of the Act by introducing further qualifications required for any person to be appointed to the Board of the Agency. The clause also provides for the signing of a conflict of interest and confidentiality declaration by any new Board member of the Agency.

**Clause 9** of the Bill proposes to amend section 12 of the Act to enhance the disqualification criteria for any Board member.

**Clause 10** of the Bill proposes to amend section 14 of the Act to enhance the independence of the Board and the Secretariat of the Agency.

**Clause 11** of the Bill proposes to amend section 17 of the Act to provide clarity as to the role of the chief executive officer with respect to the Therapeutic Use Exemption.

**Clause 12** of the Bill proposes to amend section 19 of the Act to disqualify from employment by the Agency of persons who in the past have been involved in any form of anti-doping rule violation

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

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

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

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

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

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

**Clause 19** of the Bill proposes to amend section 29 of the Act with the objective of providing an enhanced framework for anti-doping compliance officers in the Agency.

**Clause 20** of the Bill proposes to amend the Act by repealing and replacing section 31 of the Act so as to clarify the distinct original and appellate jurisdictional role of the Sports Dispute Tribunal in relation to anti-doping cases that are placed before the Tribunal.

**Clause 21** of the Bill proposes to amend the Act by inserting new sections 31A , 31B, 31C, 31D, 31E, and 31F to provide for the establishment, functions, and operations of the Anti-Doping Results



Management Panel in order to enhance the aspect of results management in cases of anti-doping rule violations.

**Clause 22** of the Bill proposes to amend section 32 of the Act to enhance clarity on the applicability of the appeal to the Court of Arbitration for Sports on doping matters.

**Clause 23** of the Bill proposes to amend section 41B of the Act in order to provide for the responsibility of sports federation in enforcing the Anti-Doping Rules within the Federations.

**Clause 24** of the Bill proposes to amend section 41D of the Act to provide that any other anti-doping organisations shall co-operate with the Agency in fulfilling its mandate under the Act.

**Clause 25** of the Bill proposes to amend section 42 of the Act to provide a linkage between an anti-doping rule violation and the resultant sanction to be in accordance with the Anti-Doping Rules.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill confers on the Cabinet Secretary the powers to make Rules under the Act for the purposes of giving effect to the provisions relating to the Tribunal. The Bill does not limit any fundamental rights or freedoms.

**Statement that the Bill does not concern county governments**

The Bill does not concern county governments in terms of Article 110 (1) (a) of the Constitution as it does not affect the functions and powers of County Government set out in the Fourth Schedule.

**Statement of the Bill as a money Bill within the meaning of Article 114 of the Constitution**

The Bill is not a Money Bill within Article 114 of the Constitution.

Dated the 7th December, 2020.

AMOS KIMUNYA,  
*Leader of Majority Party.*

*Section 2 of No. 5 of 2016 which it is proposed to amend—*

“accredited laboratory” means a laboratory approved by the World Anti-doping Agency to test samples for the presence of prohibited substances in accordance with International Standards;

“administration” means providing, supplying, supervising, facilitating, or otherwise participating in the use or attempted use by another person of a prohibited substance or prohibited method; Provided that it shall not include the actions—

- (a) of bona fide medical personnel involving a prohibited substance or prohibited method used for genuine and legal therapeutic purposes or other acceptable justification; and
- (b) involving a prohibited substance which is not prohibited in out-of-competition testing unless the circumstances as a whole demonstrate that such a prohibited substance is not intended for genuine and legal therapeutic purposes or is intended to enhance sport performance;

“complicity” means assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional act or omission involving an antidoping rule violation, an attempted anti-doping rule violation or violation of Article 10.12.1 of the World Anti-Doping Code by another person;

“doping control” means the steps and processes commencing with test distribution planning to the disposition of any appeal including steps and processes such as provision of whereabouts information, sample collection and handling, laboratory analysis, therapeutic use exemptions, results management and hearings;

“in-competition” means the period commencing twelve hours before a competition in which the athlete is scheduled to participate through the end of such competition and the sample collection process related to such competition, unless provided otherwise in the rules of an international federation or the body in charge of an event;

“possession” means the actual and physical possession, or the constructive possession:

Provided that—

- (a) if the person does not have exclusive control over the prohibited substance or prohibited method or the premises in which a prohibited substance or prohibited method exists, constructive possession shall only be found if the person knew about the

presence of the prohibited substance or prohibited method and intended to exercise control over it; and

- (b) there shall be no Anti-Doping Rule violation based solely on possession if, prior to receiving notification of any kind that the person has committed an Anti-Doping Rule violation, the person has taken concrete action demonstrating that the person never intended to have possession and has renounced possession by explicitly declaring it to an Anti-Doping Organization; and
- (c) the purchase of a prohibited substance or prohibited method constitutes possession by the person who makes the purchase;

“prohibited association” means association by an athlete or other person subject to the authority of an anti-doping organisation in a professional or sportrelated capacity with any athlete support person who, if subject to the authority of an anti-doping organization, is serving a period of ineligibility, or, if not subject to the authority of an anti-doping organisation, and where ineligibility has not been addressed in a results management process pursuant to the Code, has been convicted or found in a criminal, disciplinary or professional proceeding to have engaged in conduct which would have constituted a violation of antidoping rules if Code-compliant rules had been applicable to such person;

“Therapeutic Use Exemption” means an exemption to use a prohibited substance or prohibited method and which is obtained in a manner as described in Appendix 1 and Article 4.4. of the World Anti-Doping Code;

“tampering” means altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing, misleading or engaging in any fraudulent conduct to alter results or prevent normal procedures from occurring;

*Section 5 of No. 5 of 2016 which it is proposed to amend—*

(2A) The Agency shall be the only organisation permitted to carry out antidoping activities in Kenya and its authority shall be recognized by all national federations in Kenya.

(3) The Agency shall be the successor in title to the Anti-doping Agency established under the Anti-doping Agency of Kenya Order, 2015 (L.N 256/2015), which shall cease to have effect immediately upon the commencement of this Act.

(4) The transitional provisions set out in section 44 shall have effect upon the commencement of this Act.

*Section 7 of No. 5 of 2016 which it is proposed to amend—*

- (1) The functions of the Agency shall be to—
  - (g) implement anti-doping activities in the country including the testing of collected samples in all sports, sport federations and sport organisations;
  - (n) select sportspersons who are to be requested to provide samples for testing when necessary;
  - (o) collect samples from sportspersons in accordance with approved guidelines and International Standards, and secure the safe transit of samples to laboratories accredited by the World Anti-Doping Agency, for testing;
  - (u) prosecute anti-doping offences before the Tribunal or the courts;
    - (ua) promote anti-doping education;
    - (ub) undertake results management in accordance with the Agency's rules and the Code;
    - (uc) oversee all activities of the Therapeutic Use Exemption Committee;
- (2) In the performance of its functions, the Agency shall—
  - (c) ensure that the rights of everyone involved in the doping control procedures are respected.

*Section 14 of No. 5 of 2016 which it is proposed to amend—*

- (1) The Board shall have the powers necessary for the proper performance of the functions of the Agency under this Act.
- (2) Without prejudice to the generality of the foregoing, the Board shall have power to—
  - (d) open such banking accounts for the funds of the Agency as may be necessary;
  - (f) lay down policy guidelines for operations and management of all funds collected by the Agency;
  - (h) perform all such other acts or undertake any activity as may be incidental or conducive to the attainment or fulfillment of any of the functions of the Agency under this Act.

*Section 17 of No. 5 of 2016 which it is proposed to amend—*

17. The Chief Executive Officer shall be responsible for the—

(b) day to day management of the affairs of the Agency and in particular for the implementation of the policies and programmes in relation to anti-doping activities including but not limited to—

(vi) Therapeutic Use Exemption applications;

*Section 23 of No. 5 of 2016 which it is proposed to amend—*

(2) The Committee shall comprise of the following—

(a) a chairperson who is a medical doctor with over seven years' experience in matters related to sport;

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

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

(d) an international level athlete who has since retired; and

(e) a sports administrator who shall have retired at least two years prior to the appointment.

(4) The quorum for the conduct of the business of the Committee shall be three members of whom at least two, shall be doctors.

(5) The Committee shall be guided by the following in the performance of their work—

(a) the Code;

*Section 24 of No. 5 of 2016 which it is proposed to amend—*

(2) An international-level athlete, or an athlete who participates in an international event, with a medical condition requiring the use of a prohibited substance or prohibited method, may, in accordance with the International Standard for Therapeutic Use Exemptions, apply no later, except in emergency situations, than—

(a) thirty days before his participation in an international event; or

(b) such other period as may be provided for in the anti-doping rules of the relevant International Federation, to the relevant International Federation for an exemption and provide the Committee with a copy of the application prior to the international event.

*Section 25 of No. 5 of 2016 which it is proposed to amend—*

(1) The Agency shall establish a Registered Testing Pool.

(2) The Agency, shall in accordance with the Anti- Doping Rules, publish criteria for the inclusion of the name of an athlete in its Registered Testing Pool.

(3) The Agency shall notify an athlete, in writing, of the inclusion of his or her name in its Registered Testing Pool.

*Section 27 of No. 5 of 2016 which it is proposed to amend—*

(1) An athlete or an athlete support personnel who is not a minor shall be required to accept the Code by signing a declaration of the acceptance of the Code and submit the approval to the Agency.

(5) An athlete shall—

(c) inform medical personnel of his or her obligation not to use prohibited substances and prohibited methods;

*Section 28 of No. 5 of 2016 which it is proposed to amend—*

(1) A sample taken from an athlete shall be analysed at an accredited laboratory to detect prohibited substances and prohibited methods.

(2) A sample shall not be analysed for a purpose other than that referred to under subsection (1) unless—

(a) the athlete consents in writing; and

(b) any means of identification is removed to ensure that the sample cannot be traced back to the athlete.

(3) The results of all tests shall be submitted to the Agency.

*Section 29 of No. 5 of 2016 which it is proposed to amend—*

(1) The Agency shall for purposes of enforcing this Act appoint such number of anti-doping compliance officers with the relevant training and issue such anti-doping compliance officers with the certificates of authority to act as anti-doping compliance officers.

(2) A person appointed as an anti-doping compliance officer under subsection (1)—

(a) shall hold office subject to such terms and conditions as the Board may determine;

(b) shall with permission authorized in writing by the Inspector General of Police exercise police powers in the exercise of his or her duties under this Act;

(c) may cooperate with the Office of the Director of Public Prosecutions to summon, examine witnesses under oath or

affirmation and conduct prosecutions for any offence committed under this Act;

(4) The appointment of anti-doping compliance officers under this section shall be by notice in the Gazette for a period of three years.

*Section 31 of No. 5 of 2016 which it is proposed to amend—*

(1) The Tribunal shall have jurisdiction to hear and determine all cases on antidoping rule violations on the part of athletes and athlete support personnel and matters of compliance of sports organisations.

(2) The Tribunal shall be guided by the Code, the various international standards established under the Code, the 2005 UNESCO Convention Against Doping in Sports, the Sports Act, and the Agency's Anti-Doping Rules, amongst other legal sources.

(3) The Tribunal shall establish its own procedures.

(4) Disputes involving national and county level athletes, athlete support personnel, sports federations, sports organisations, professional athletes and professional sports persons shall be resolved by the Tribunal both at the first instance and at appeal, each consisting of three members appointed by the Chairperson of the Tribunal.

(5) Save as otherwise provided for under Article 4.4.7 of the Code on Therapeutic Use Exemptions, disputes involving International level athletes shall be resolved by the Tribunal at the first instance with an appeal to Court of Arbitration for Sport.

(6) In all disputes, there shall be a right of appeal within thirty working days from the date of communication of the Tribunal's decision by the accused, the Agency, the national anti-doping organisation of the person's country of residence, World Anti-Doping Agency, International Paralympic Committee International Sports Federation, the International Olympic Committee and any other international sports body.

(7) For the avoidance of doubt, the Tribunal shall not have jurisdiction over national crimes related to doping as they relate to recreational athletes and other persons, entities or organisations.

(8) The Cabinet Secretary may prescribe rules to effect this section.

*Section 31 of No. 5 of 2016 which it is proposed to amend—*

(1) The Agency may lodge an appeal against a decision of the World Anti-Doping Agency or an International Federation to the Court of Arbitration for Sport in accordance with Article 4.4 of the Code.

(2) An international level athlete, an athlete support personnel, the Agency, an international federation or the World Anti-Doping Agency may appeal against a decision of the Tribunal to the Court of Arbitration for Sport in accordance with article 13 of the Code.

*Section 41B of No. 5 of 2016 which it is proposed to amend—*

Each sports federation shall prepare rules requiring all athletes and each athlete support personnel who participates as coach, trainer, manager, team staff, official, medical or paramedical personnel to agree to be bound by Anti-Doping Rules and the Agency's results' management authority in conformity with the Code as a condition for such participation.

*Section 41D of No. 5 of 2016 which it is proposed to amend—*

All persons shall cooperate with any investigations conducted by the Agency.

*Section 42 of No. 5 of 2016 which it is proposed to amend—*

(6) An athlete or athlete support personnel who violates any of the following anti-doping rules—

- (a) presence of a prohibited substance or its metabolites or markers in an athlete's sample;
- (b) use or attempted use by an athlete of a prohibited substance or a prohibited method;
- (c) evading, refusing or failing to submit to sample collection;
- (d) whereabouts failures;
- (e) tampering or attempted tampering with any part of doping control;
- (f) possession of a prohibited substance or prohibited method;
- (g) trafficking or attempted trafficking in any prohibited substance or prohibited method;
- (h) administration or attempted administration to any athlete in competition of any prohibited substance or prohibited method, or administration or attempted administration to any athlete out-of-competition of any prohibited substance or prohibited method that is prohibited out-of-competition;
- (i) complicity; or
- (j) prohibited association, commits an anti-doping rule violation and shall be handled in the manner set out in the Agency's Anti-Doping Rules