

The Case of Kenya: Key Considerations for Governments in Establishing a National Anti-Doping Program (NADO)

Background

Sports in Kenya is intertwined with the rich Kenyan culture and is also as old as the archaeological context of the origin of mankind. Different local traditional sports have prevailed in Kenya as elements of culture and a way of life since the history of mankind. Some of the traditional games and sports prevalent in Kenya since antiquity included wrestling, racing exercises, stick fights, hunting (using spears and arrows), board games, bull fights, and dances among others.

The history of Kenya's modern-day sports can be traced to as far back as 1956 when the country participated in the Summer Olympic Games for the first time in Melbourne, Australia. Team Kenya then comprised of 25 competitors; 24 gentlemen and 1 lady. The athletes took part in 10 events spread across 4 sports (Athletics, Hockey, Shooting and Swimming).

Currently many sports are popular in Kenya, played both professionally and as recreational physical activities. Sports played in Kenya today include athletics (track & field), cricket, motorsports, Soccer, rugby, netball, and baseball among others. Globally, Kenya is mainly known for its dominance in middle-distance and long-distance races.

Introduction

Kenya ratified the UNESCO Convention against Doping in Sports on 29th August 2009 becoming the 123rd party to the International Convention. In addition to the above, Article 22 of the World Anti-Doping Code 2015 further specifies that each Government will put in place measures to enhance cooperation and sharing of information and data with Anti-Doping Organisations as provided in the Code.

In 2011, the Ministry of Sports together with the National Olympic Committee of Kenya (NOCK) formed what was called the Kenya Anti-Doping Agency (KADA). The establishment of KADA enabled Team Kenya to participate in the

2012 London Olympics. However, KADA lacked legal backing hence it was not sustainable.

As a short-term measure, His Excellency the President established the Anti-Doping Agency of Kenya (ADAK) through an Executive Order of November 2015. The Executive Order was followed by a Legal Notice No.256 of 24th December 2015. Even then all those measures did not meet the World Anti-Doping Agency (WADA) requirement of establishing a National Anti-Doping Organization (NADO).

It is against this backdrop that the Government of Kenya established the Anti-Doping Agency of Kenya (ADAK) as a State Corporation through an Act of Parliament after the enactment of the Anti-Doping Bill to an Anti-Doping Act, No.5 on 22nd April 2016.

The Anti-Doping Agency of Kenya (ADAK) as a National Anti-Doping Organization (NADO)

Political goodwill and support

ADAK has enjoyed immense political good will before during and after its establishment. Political players, fully aware of the value of sports in the country, dedicated their efforts in ensuring that the Agency was up and running. On 20th May, 2016 a notice appearing in the Kenya Gazette (legal government publication) was published recalling members of Parliament (MPs) from their month-long recess. In the notice the MPs were informed that the main reason for their recall was *□□ the consideration in all stages of the Anti-Doping (Amendment) Bill, 2016 and any other business related to the International Anti-Doping policies.*□

While supporting enactment of the Anti-Doping Act 2016, legislators unanimously agreed that Kenya as a country was a sporting powerhouse. This meant that the consequences of being declared non-compliant by the World Anti-Doping Agency (WADA) would negatively impact on the country's image besides relegating Kenya's sporting talent and spirit. In addition, the non-compliance status would greatly impact on the citizens' sense of patriotism majorly promoted by sports.

President Uhuru Kenyatta demonstrated the Government's commitment to the establishment of ADAK when he signed into law an amended Anti-Doping Bill, in April, 2016 creating a National Anti-Doping Organization (ADAK) and

making doping an offence punishable by imprisonment and, or, fines. When officially opening the IAAF World U18 Championship in Nairobi on Wednesday 12th July, 2017 the President emphasized on the Government's commitment to the promotion of clean sport. *"My administration fully supports the fight against unfair sporting practices as part of developing this industry,"* said the President.

Legal framework

Kenya's supreme law, the Constitution, is the over-arching legislative framework that binds all state organs. ADAK's operations are thus also grounded and guided by the requirements and aspirations of the Kenyan constitution.

Other legal documents supporting ADAK's operations are the Anti-Doping Policy, Anti-Doping Rules, Sports Act 2012 and the Sports Registrar's Rules, 2016.

Over and above the Anti-Doping Act, 2016 which is the main law upon which ADAK is established, the Agency continues to be guided by other legal provisions. The Act recognizes Kenya's status as a signatory to the World Anti-Doping Code and the 2005 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Doping in Sport.

The Anti-Doping Act, 2016 (in Section 9) spells out ADAK's and the Therapeutic Use Exemptions Committee (TUEC) operational independence. Section 25 of the Act obligates the Agency to set up a registered testing pool and to establish a criteria for including athletes in the pool. Other sections in the Act spell out the requirements by athlete support personnel to accept the Anti-Doping Code and other related obligations in writing. The position of a Compliance Officer is created, as well as, the identification of a Sports Disputes Tribunal as the Results Management Panel for both first instance and appeal. The various offences related to doping are also clearly spelt out in the Act together with their sanctions.

ADAK also launched a four-year strategic plan which outlines the activities that the Agency plans to undertake over a four-year period from 2016/17 through to 2019/20.

In the plan, ADAK seeks to undertake various interventions which are estimated to cost USD \$24 million. The rationale behind preparation of the strategic plan is premised on the fact that Kenya is a sporting powerhouse and

as such there is need to ensure that the sporting environment is clean, as well as, making sure that the athletes' well-being is catered for.

Partnerships

So as to effectively discharge its mandate ADAK has partnered with various stakeholders, both local and international. Globally the Agency has partnered with the United Nations Education, Scientific and Cultural Organization (UNESCO) and the World Anti-Doping Agency (WADA) with a view to ensuring that all its processes are in line with the Anti-Doping Code requirements.

Similarly, WADA continues to be the main strategic partner that ADAK regularly consults with a view to promote clean sports, athletes' well-being and advocate for fairness in sporting activities.

ADAK has also partnered with the Anti-Doping Norway (ADNO) with a view to coordinating mutual efforts in the fight against doping in sports, as well as, conducting consultations in the field of Anti-Doping programme development. In the partnership that culminated in signing a Memorandum of Understanding (MoU) ADNO will assist ADAK in the development of Anti-Doping programmes in compliance with the World Anti-Doping Code and its related International Standards.

As a member of international bodies ADAK submits annual subscription fees to WADA, RADO and to the Institute of National Anti-Doping Organizations (iNADO)

Besides ADNO the Agency has also collaborated with the following partners:

**Anti-Doping Norway
(ADNO)**

**United Kingdom Anti-
Doping (UKAD).**

**Africa Zone V
RADO**



**South African Institute
for Drug Free Sports
(SAIDS).**



**Kenya Pharmacy and
Poisons Board.**



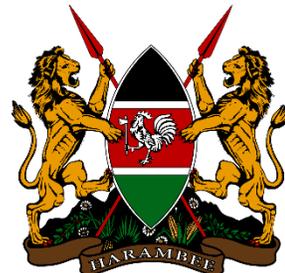
**Department of
Immigration.**



**Kenya Medical
Practitioners and Dentist
Board.**



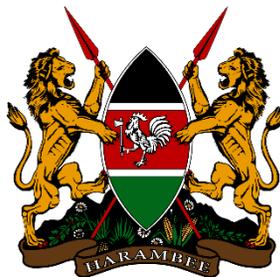
**Ministry of
Education Science
and Technology.**



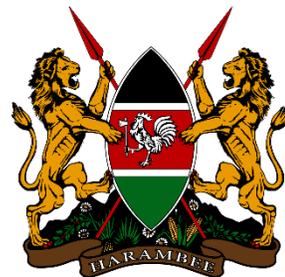
Customs Department.



**National Registration
Bureau.**



**Ministry of Sports,
Culture & the Arts.**



Finances

The National Treasury of the Republic of Kenya set aside USD \$ 5 Million for the establishment and funding of ADAK activities for a period of one financial year (2016/2017). The amount has been utilized for various activities such as Anti-Doping Education, Testing and Compliance, administrative duties and purchase of equipment.

The funding has been adequate for the Agency to achieve its goals which are aligned to the international requirements by WADA for the last financial year. A similar amount has been allocated for this year (2017/2018) though the Agency has negotiated for enhancement as the current work plan indicates increased activities.

The Agency has initiated discussions with the National Treasury towards approving the collection of Appropriation in Aid (A in A) from international federations and event organizers who request ADAKs services. The money collected will be used to fund other areas of the Agency's core mandate.

Staffing

When the Anti-Doping Act was operationalized, the Government deployed members of Staff from the Ministry of Sports, Culture and the Arts who kick started the process of setting up ADAK. The Agency now has 26 members of Staff after a successful recruitment exercise and they are distributed as follows;

The Management Team:

□ **Mr. Japhter Rugut, EBS**

Chief Executive Officer

□ **Ms. Sarah Shibutse**

Director, Compliance and Testing

□ **Mrs. Agnes Mandu**

Director, Anti-Doping Education and Research

□ **Ms. Peninah Wahome**

Manager, Compliance and Testing

□ **Ms. Ednah Koitie**

Assistant Manager, Human Capital & Administration

The Management Team is assisted by the following Officers:

- Senior Research & Development Officer
- Senior Records Management Officer
- Compliance Officer
- Anti-Doping Education Officer
- Corporate Communications Officer
- Accountant
- Testing Assistant
- Senior Office Administrative Assistant
- Supply Chain Management Assistant
- Principal Assistant, Office Administration
- Human Capital Management Assistant
- 5 Drivers
- 2 Support Staff

Key Departments: Compliance and Testing (incorporates investigations).

Anti-Doping Education and Research

Legal (incorporates Results Management and Appeals)

The Future: Way forward

- ✓ Establishment of a WADA accredited laboratory to safeguard sample quality and ensure quick testing. This is particularly for blood samples.
- ✓ Tax waiver on testing kits and other related equipment to ensure more resource deployment to the testing process.
- ✓ Enactment of more punitive Anti-Doping laws to deter the vice among established and upcoming athletes.
- ✓ Provision of more multi-government agency support especially for enforcement of judicial orders, as well as, during investigations.
- ✓ More funding to facilitate enhanced Anti-Doping education, information sharing, awareness campaigns and capacity building of the Educators, Doping Control Officers and Chaperones.
- ✓ Inclusion of Values-Based Education programmes into schools curricular.
- ✓ Increased local and international partnerships and collaborations aimed at providing ADAK with the necessary support to fulfil its mandate.