

SPECIAL ISSUE

Kenya Gazette Supplement No. 102 (Acts No. 18)



REPUBLIC OF KENYA

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# KENYA GAZETTE SUPPLEMENT

## ACTS, 2016

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NAIROBI, 27th June, 2016

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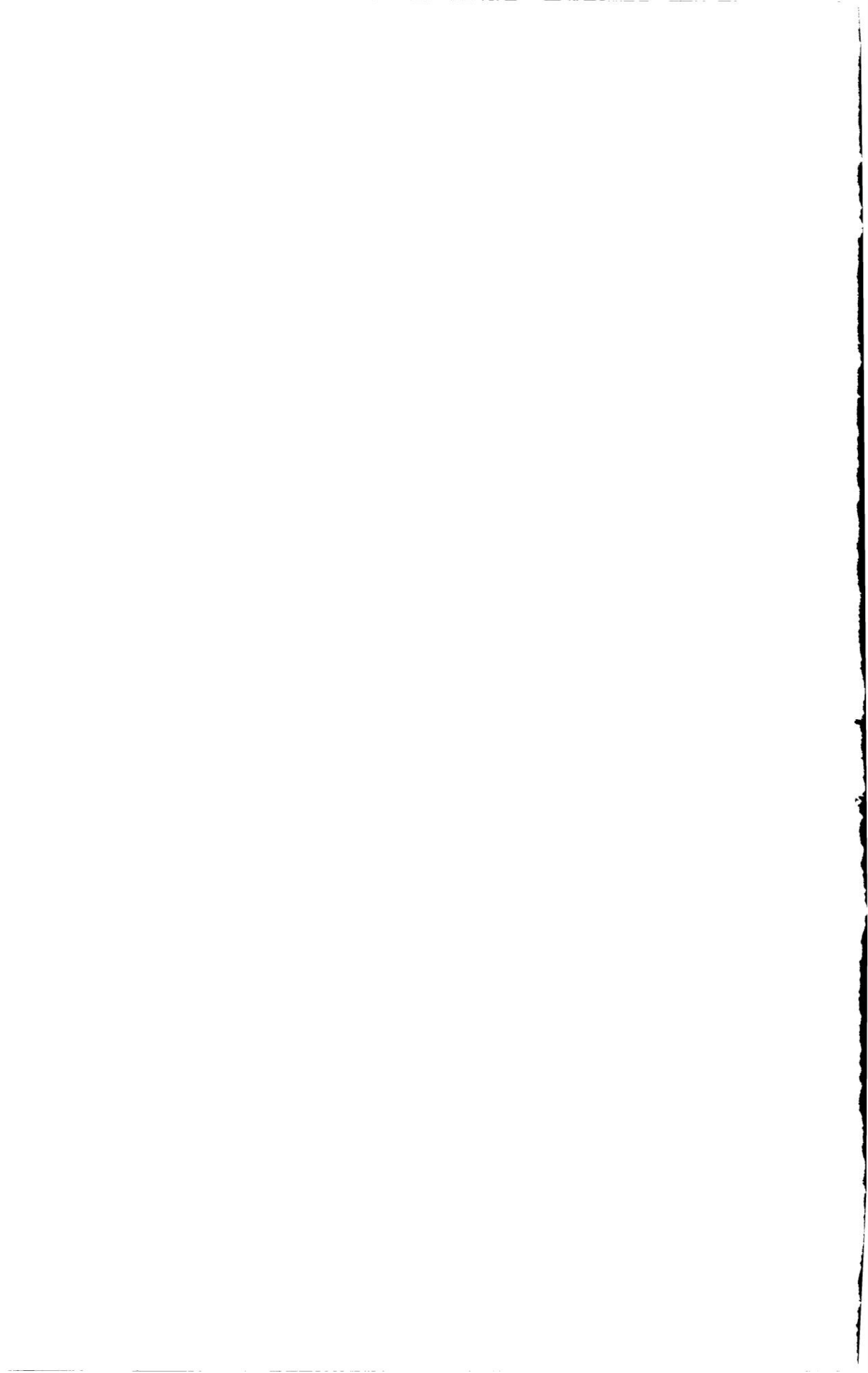
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THE ANTI-DOPING (AMENDMENT) ACT

No. 18 of 2016

Date of Assent: 23rd June, 2016

Date of Commencement: 27th June, 2016

AN ACT of Parliament to amend the Anti-Doping Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Anti-Doping (Amendment) Act, 2016 and shall come into force upon publication in the Gazette.

2. The Anti-Doping Act, 2016, hereinafter referred to as the "principal Act" is amended in section 2—

- (a) by deleting the definition of the word "attempt".
- (b) by deleting the definition of the word "health care practitioner";
- (c) by deleting the definition of the word "national level athlete" and substituting therefor the following new definition—

"national level athlete" means athletes who compete in sport at the national level, as defined by each national anti-doping organisation, consistent with the International Standard for Testing and Investigations. In Kenya, national level athletes are defined as any athletes who— (i) participate in the national leagues, county leagues, events or competitions organized by their federations or by any sports organisation or club;

- (ii) are affiliated to a federation, national league, county league, sports organisation or club; or
- (iii) participate in competitions or events organized by schools, colleges or other institutions;

(d) by deleting the definition of the word "out-of-competition";

Short title.

Amendment of section 2 of No. 5 of 2016.

(e) by deleting the definition of the word "prohibited association" and substituting therefor the following new definition—

"prohibited association" means association by an athlete or other person subject to the authority of an anti-doping organisation in a professional or sport-related 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 anti-doping rules if Code-compliant rules had been applicable to such person;

(f) by deleting the definition of the word "trafficking" and substituting therefor the following new definition —

"trafficking" means selling, giving, transporting, sending, delivering or distributing, or possessing for any such purpose, a prohibited substance or prohibited method (either physically or by any electronic or other means) by an athlete, athlete support person or any other person subject to the jurisdiction of an anti-doping organisation to any third party:

Provided, however, this definition shall not include the actions of "bona fide" medical personnel involving a prohibited substance used for genuine and legal therapeutic purposes or other acceptable justification, and shall not include actions involving prohibited substances which are not prohibited in out-of-competition testing unless the circumstances as a whole demonstrate such prohibited substances are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance;

"out-of-competition" means any period when not in-competition;

3. Section 3 of the principal Act is amended in paragraph (b) —

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(a) by  
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inserting

therefor the following new subparagraph—

Amendment of section 5 of No. 5 of 2016.

- (i) athletes and athlete support personnel who are members or licence holders of any national federation in Kenya, or of any member or affiliate organisation of any national federation in Kenya including any clubs, teams, associations or leagues;

Amendment of section 7 of No. 5 of 2016.

(b) by deleting subparagraph (ii) and substituting therefor the following new subparagraph —

- (ii) athletes and athlete support personnel who participate in such capacity in events, competitions and other activities organized, convened, authorized or recognized by any national federation in Kenya, or by any member or affiliate organisation of any national federation in Kenya including any clubs, teams, associations or leagues, wherever held

4. Section 5 of the principal Act is amended by inserting the following new subsection immediately after subsection (2) —

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

5. Section 7 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (u)—

- (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;

(ud) implement the Anti-Doping Administration and Management System program.

6. Section 22 of the principal Act is amended in subsection (3) by deleting the word "Authority" and substituting therefor the word "Agency".

7. Section 23(2) of the principal Act is amended by deleting paragraph (e) and substituting therefor the following new paragraph—

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

8. The principal Act is amended by deleting section 26.

9. Section 27 of the principal Act is amended— (a) by deleting subsection (4);

(b) in subsection (6) (a) by deleting the words "Athlete Testing Program" and substituting therefor the words "anti-doping program of the Agency".

10. Section 29 of the principal Act is amended in subsection (2) by deleting the expression "section 26" appearing in paragraph (d) and substituting therefor the words "this Act".

11. The principal Act is amended by deleting section 31 and substituting therefor the following new section—

Jurisdiction Tribunal. of the Sports 31. (1) The Tribunal shall have jurisdiction to hear and determine all cases on anti-doping 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

2016

Anti-Doping (Amendment)

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## ing Rules, amongst other legal sources.

Amendment of section 22 of No. 5 of 2016.

Amendment of section 23 of No. 5 of 2016.

Deletion of section 26 of No. 5 of 2016.

Amendment of section 27 of No. 5 of 2016.

Amendment of section 29 of No. 5

of 2016.

Deletion of section 31 of No. 5 of 2016.

(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.

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thin 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 AntiDoping 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.

12. S  
ection 37 of  
the principal  
Act is  
amended in  
subsection  
(2) by  
inserting the  
words "and  
such report  
shall be  
published  
publicly and  
a copy  
provided to  
the World

Amendment of  
section 37 of No. 5  
of 2016.

Anti-Doping Agency" immediately after the words " of the  
Agency",



2016

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13. The principal Act is amended by inserting the following new sections immediately after section 41—

Insertion of new sections in No. 5 of 2016.

All persons to be bound by Rules.

41 A. All persons shall be bound by the Anti-Doping Rules.

Athletes and athlete

41 B. Each sports federation shall

support personnel to be bound by Rules.

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.

Reports on violations.

41C. All persons shall report any information suggesting or relating to an anti-doping rule violation to the Agency, and if it is a national federation, to its international federation.

Co-operation with the Agency.

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

Amendment of section 42 of No. 5 of 2016.

14. Section 42 of the Act is amended— (a) in subsection (5) by—

- (i) deleting the expression "in section appearing in the introductory portion substituting therefor the words "under

26"  
and  
this

Act";

- (ii) deleting the expression "subsection (4)"

appearing in the proviso and substituting therefor the expression "sub-section (6)";

- (b) by deleting subsection (6) and substituting therefor the following new subsection—

"(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;
- (D) 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."

