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**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

**SUBMISSIONS TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS ON IMPLEMENTATION OF THE JOINT COMMITMENT TO EFFECTIVELY ADDRESSING AND COUNTERING THE WORLD DRUG PROBLEM WITH REGARD TO HUMAN RIGHTS**

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1. **INTRODUCTION**

The Kenya National Commission on Human Rights is an independent national human rights institution accredited ‘A’ status by the Global Alliance of National Human Rights Institutions. The Commission is established under Article 59 of the Constitution and has a broad mandate to promote a culture and the respect of human rights in the Republic of Kenya. The Operations of the Commission are regulated by the Kenya National Commission on Human Rights Act, the Prevention of Torture Act, 2017 and the United Nations principles relating to the status of national institutions commonly referred to as the Paris Principles.

1. **BACKGROUND**

Kenya has acceded to the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971[[1]](#footnote-1) and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.[[2]](#footnote-2) The three treaties forms part of Kenyan law vide section 2 (6) of the Constitution of Kenya, 2010. Domestically, the Narcotic Drugs and Psychotropic Substance (Control) Act[[3]](#footnote-3) and the National Authority for the Campaign against Alcohol and Drug Abuse Act[[4]](#footnote-4) form the basis of drug control regime.

The Narcotics Drugs and Psychotropic Substances (Control) Act was enacted to control possession of and trafficking in narcotics and psychotropic substances. The National Authority for the Campaign against Alcohol and Drug Abuse Act establishes the Authority which has a mandate broad mandate to co-ordinate multi-sectoral efforts to prevent, control and mitigate the effect of alcohol and drug abuse in Kenya.

The three treaties together with the Narcotics Drugs and Psychotropic Substances Control Act and the National Authority for the Campaign against Drugs and Alcohol, form part of the drug control regime in Kenya.

The Constitution of Kenya gives county governments the mandate to develop laws, policies and action plans on control of drugs within their respective counties. The efforts are to be supplemented by the National Campaign against Alcohol and Drug Abuse.

The Constitution of Kenya encompasses a broad framework on human rights which obligates the state to protect, respect and fulfil human rights when carrying out its functions.[[5]](#footnote-5) Therefore, the state has an obligation to uphold rights when countering the drug problem in Kenya. Most relevant to countering the drug problem is the respect for human dignity[[6]](#footnote-6), right to the highest attainable standards of health[[7]](#footnote-7), the prohibition of arbitrary arrest and detention[[8]](#footnote-8), the prohibition of torture and other cruel inhuman or degrading treatment or punishment.[[9]](#footnote-9)

1. **HUMAN RIGHTS AND COUNTERING THE DRUG PROBLEM IN KENYA**

Kenya’s approach to countering the drug problem is punitive and entails laws that criminalise drug use. The Narcotic Drugs and Psychotropic Substances Control Act criminalises the possession and use[[10]](#footnote-10); trafficking[[11]](#footnote-11); being found in a room where people use drugs; being the owner of a room where people produce or consume drugs and being found with drug related paraphernalia. [[12]](#footnote-12) The Act provides for penalties ranging from 20 years imprisonment to life imprisonment or fines twenty million Kenya shillings (USD 20,000). The rationale for criminalising drug use is deterrence to reduce supply and use of drugs.

Data from the Kenya National Bureau of Statistics indicates that there are currently 5,397 persons in prisons for drug related offences.[[13]](#footnote-13) Of the 5,387 persons, 5,243 persons are male while 154 are female. The number of persons in prisons serving sentences for drug related offences stands at 6.5% of the total prison population. An Audit of the Criminal Justice System[[14]](#footnote-14) carried out in 2017 shows that 7.19% of criminal cases against children relate to drug offences. Almost one quarter consists of possession charges.

The state also approaches the drug problem through HIV prevention programs. Kenya has one of the highest HIV prevalence rates in the general population standing at 5.6%.[[15]](#footnote-15) However, HIV prevalence rates amongst persons who inject drugs is at 18% compared to prevalence rate amongst general population which stands at 5.6%. The situation has called for programs geared towards fighting HIV in this community. The Kenya AIDS Strategic Framework 2014/2015-2018/2019[[16]](#footnote-16) by the Ministry of Health has prioritised harm reduction strategies for persons who inject drugs as part of the HIV prevention strategy. The strategies proffered include the needle and syringe programs and provision of medically assisted therapy for opioid dependents.[[17]](#footnote-17) Other interventions listed include alcohol screening and addiction support, provision of pre-exposure prophylaxis, anti-retroviral therapy, condom distribution, screening and management of Hepatitis B and C, and HIV testing and counselling. The National Government through National AIDS & STI Control Programme and County Governments have the responsibility of providing these services. The framework prioritises prison-based HIV and AIDS programs that also responds to drug misuse in prison. Other frameworks that support this initiative include the National Guidelines for the Comprehensive Management of Health Risks and Consequences of Drug Use, the Standard Operating Procedures for Needle and Syringe Programs and Standard Operating procedures for Opioid Substitution Therapy.

Whereas the framework is a step in the right direction, the repressive and punitive nature of the Narcotic Drugs and Psychotropic Substances Act acts as a barrier towards provision of health services to persons who use drugs. The enforcement of drug laws have been documented to have a negative impact on uptake of harm reduction services by persons who use drugs for fear of incarceration.[[18]](#footnote-18) The Ministry of Interior under which the implementation of the Narcotic Drugs and Psychotropic Substances Act falls favors criminalization over treatment. Drug users and outreach workers providing harm reduction services are often arrested and charged with either being found in an area commonly used to consume drugs or being found with drug related paraphernalia. The result of this is drug users are not taking up harm reduction services and at the same time outreach workers providing harm reduction services are discouraged to go to the drug dens to provide the services leading to risky drug consumption behaviors.[[19]](#footnote-19) In a recent crackdown against illicit brews and drugs following a presidential directive, police and other stakeholder involved in the crackdown were accused of using excessive force and destroying of property.

The Kenya AIDS strategic Framework 2014/2015-2018/2019 has identified two key priority areas in response to this as:

1. The review of laws and policies to ensure they impact response on HIV positively; and
2. The sensitization of law makers and law enforcement agencies on HIV and the consequences of their interpretation and implementation of the law in the provision of HIV services to priority populations including persons who inject drugs.

The review of laws and policies to ensure they positively impact HIV response is yet to be commenced. The sensitization of law enforcement and law makers on interpretation and implementation of laws to ensure protection of key populations has been and continues to be driven by Civil Society Organizations.

Additionally, non-governmental organisations continue to provide the bulk of harm reduction services, addiction treatment and rehabilitative services in the country.[[20]](#footnote-20) There are only 5 government Opioid Substitution Therapy sites in Kenya[[21]](#footnote-21) whereas there is no government facility providing for the needle and syringe exchange program.

The National Campaign against Alcohol and Drug Abuse also recognises that treatment and rehabilitative centres are few, expensive and remain largely an NGO/private sector affair. Additionally, treatment and rehabilitative centres operate in a policy vacuum where services provided lack standardization and quality control.[[22]](#footnote-22) In 2015, the Ministry of Health had announced its intentions of setting up nine detoxification centres in the Coast region to help addressing the gap.

1. Acceded to on 18th October 2000 [↑](#footnote-ref-1)
2. Acceded to on 19th October 1992 [↑](#footnote-ref-2)
3. Act No 4 of 1994 [↑](#footnote-ref-3)
4. Act No 14 of 2012 [↑](#footnote-ref-4)
5. Article 21 (1) Constitution of Kenya [↑](#footnote-ref-5)
6. Article 28 Constitution of Kenya [↑](#footnote-ref-6)
7. Article 43 (1)(a) of the Constitution of Kenya [↑](#footnote-ref-7)
8. Article 48 Constitution of Kenya [↑](#footnote-ref-8)
9. Article 29 (d) & (f) Constitution of Kenya [↑](#footnote-ref-9)
10. Section 3 of the Narcotic Drugs and Psychotropic Substances Act [↑](#footnote-ref-10)
11. Section 4 of the Narcotic Drugs and Psychotropic Substances Act [↑](#footnote-ref-11)
12. Section 5 of the Narcotic drugs and Psychotropic Substances Act [↑](#footnote-ref-12)
13. Kenya National Bureau of Statistics ‘Economic Survey 2018’ available at <https://www.knbs.or.ke/download/economic-survey-2018/> (accessed on 8th May 2018) [↑](#footnote-ref-13)
14. National Council on the Administration of Justice ‘*Criminal Justice System in Kenya: An Audit’* available at <http://kenyalaw.org/kenyalawblog/wp-content/uploads/2017/01/Criminal_Justice_Report.pdf> [↑](#footnote-ref-14)
15. National AIDS and STI Control Program ‘Kenya AIDS Indicator Survey 2012: Preliminary Report’ available at <https://reliefweb.int/sites/reliefweb.int/files/resources/167580994-Preliminary-Report-for-Kenya-AIDS-indicator-survey-2012-pdf_0.pdf> (accessed on 10th May 2018) [↑](#footnote-ref-15)
16. Available at <http://www.undp.org/content/dam/kenya/docs/Democratic%20Governance/KENYA%20AIDS%20STRATEGIC%20FRAMEWORK.pdf> (accessed on 9th May 2018) [↑](#footnote-ref-16)
17. Page 17 of the Kenya AIDS Strategic Framework 2014/2015-2018/2019 [↑](#footnote-ref-17)
18. See the Kenya AIDS Strategic Framework 2014/2015-2018/2019 page 29; See Emmy Kageha *‘Drug Laws and Human Rights in Kenya: Disharmony in the Law and Training Recommendations to Law Enforcement’* available at <https://www.hivgaps.org/wp-content/uploads/2015/10/34.-Drug-laws-and-human-rights-in-Kenya-Disharmony-in-the-law-and-training-recommendations-to-law-enforcement.pdf> (accessed on 9th May 2018) [↑](#footnote-ref-18)
19. Interview with KELIN on Impact of Drug Policies on Harm Reduction Programs in Kenya [↑](#footnote-ref-19)
20. International Drug Policy Consortium ‘HIV, Harm Reduction and Drug Policy in Kenya: Briefing Paper (November 2013)’ available at <http://fileserver.idpc.net/library/IDPC-briefing-paper_drug-policy-harm-reduction-Kenya.pdf> (accessed 10th May 2018); [↑](#footnote-ref-20)
21. Methadone Therapy is only available in five government facilities namely Coast General Hospital (Mombasa), Kisauni Health Center (Mombasa), Kombani (Kwale), Mathari Hospital (Nairobi) and Malindi. See article by Standards Newspaper titled ‘Drug Addicts in Kenya’s Coast Region to receive Special Treatment to Break Addiction available at <https://www.standardmedia.co.ke/article/2000175471/drug-addicts-kenya-s-coastal-region-to-receive-special-treatment-to-break-addiction> (accessed on 10th May 2018) [↑](#footnote-ref-21)
22. Information available at <http://nacada.go.ke/?page_id=156> (accessed 10th May 2018) [↑](#footnote-ref-22)