REPUBLIC OF KENYA

PARLIAMENT OF KENYA

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RATIFICATION AND IMPLEMENTATION OF BIOLOGICAL AND TOXIN WEAPONS CONVENTION

1.0 BACKGROUND

The Biological Weapons Convention (BWC) or Biological and Toxin Weapons Convention (BTWC) entered into force on 26 March 1975. One of its objectives was to supplement the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.[1] The convention is critical to all international efforts to address the threats posed by biological weapons –whether in the hands of governments or non-state actors. It effectively prohibits the development, production, acquisition, transfer, retention, stockpiling and use of biological and toxin weapons.

The BWC is a multilateral treaty of indefinite duration that is open to any country. It currently has 178 States Parties and six Signatory States.[2]

Under Article 1 of the Convention, the State Parties undertook *"never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:*

[1] .unog.ch/80256EE600585943/(httpPages)/04FBBDD6315AC720C1257180004B1B2F?OpenDocument, accessed on 21/3/2017
[2] .unog.ch/80256EE600585943/(httpPages)/77CF2516DDC5DCF5C1257E520032EF67?OpenDocument accessed on 21/3/2017

1. *Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;*
2. *Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict."*

The 20th century saw the use of biological weapons by individuals and groups committing criminal acts or targeted assassinations, biological warfare conducted by states, and the accidental release of pathogens from laboratories. There were also several false accusations of biological weapons use, highlighting the difficulty in differentiating between naturally-occurring disease, accidents, and deliberate use. [3]

There are various instances where biological and toxin weapons have been used on other nations- the Japanese-cult Aum Shinrikyo is known to have experimented with anthrax and botulinum toxin. In September and October 2001, letters containing anthrax spores were sent to two US senators and several US journalists. These letters resulted in 22 anthrax infections and five deaths, but the case was never officially solved.[4] This illustrates the danger posed to human life by biological weapons.

The more sophisticated capabilities, including genetic engineering and gene synthesis, spread around the globe, the greater the potential that terrorists will use them to develop biological weapons. Therefore, the need to manage the proliferation of biological and toxin weapons is more urgent, now than ever. This is exacerbated by the fact that there is increased formation of violent extremist groups across Africa, such as *Boko Harram* and *Al Shabaab.*

2.0 IMPLEMENTATION OF THE CONVENTION

In order to fully implement the BWC, States Parties are obliged to translate the commitments in the Convention into effective national action. Article IV of the Convention requires each State Party to "take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of

[3] http://bwc1972.org/home/the-biological-weapons-convention/about-biological-weapons/ accessed 22/3/2017
[4] Manish, BWC Review, 2016

delivery specified in Article I of the Convention (quoted above), within the territory of such State, under its jurisdiction or under its control anywhere".

State Parties have convened a conference five yearly to review and improve upon the treaty's implementation. Further, to enhance confidence and promote cooperation among State Parties, at the Second BCW review conference in 1986 member states agreed to implement a set of confidence-building measures. Under these politically binding measures, states should[5]:

- Exchange data on high-containment research centers and laboratories or on centers and laboratories that specialize in permitted biological activities related to the convention.
- Exchange information on abnormal outbreaks of infectious diseases.
- Encourage the publication of biological research results related to the BWC and promote the use of knowledge gained from this research.
- Promote scientific contact on biological research related to the convention.

Subsequent review conferences have expanded on the scope of measures to embrace emerging trends in biological and toxin weapons.

The Seventh Review Conference held in 2011 called upon States Parties "to adopt, in accordance with their constitutional processes, legislative, administrative, judicial and other measures, including penal legislation" to enhance domestic implementation and ensure the safety and security of microbial or other biological agents or toxins.[6] To strengthen the implementation of Article IV, States Parties agreed upon the value of:

- Implementing voluntary management standards on biosafety and biosecurity
- Encouraging the promotion of awareness of obligations to the Convention as well as relevant national legislation amongst those working in the biological sciences and related professionals in the private and public sectors
- Encouraging the development of education programmes and voluntary codes of conduct to promote a culture of responsibility for those with access to biological agents and toxins relevant to the Convention

[5] Kimball D, BWC, 2012
[6] UNOG, 7th Review Conference BWC/CONF.VII/7, 2012

- Strengthening methods and capacities for surveillance and detection of outbreaks of disease at the national, regional and international levels.

3.0 KENYA'S POSITION

In a statement delivered to the UN Security Council Committee, Kenya does not own or possess any nuclear, chemical or biological weapons, nor does it have, and has never had, any nuclear, chemical or biological weapons production facility anywhere under its territory, nor transferred either directly or indirectly, any equipment for the production of such weapons. The country does not provide any assistance to any non-State actor to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons or their means of delivery.[7]

Additionally, Kenya has put up a number of national measures in her efforts to implement the convention. Some of the interventions reported at the 2015 Biological and Toxins Weapons Convention meeting of State Parties include[8]:

i. Collaboration with various State Parties such as Government of Denmark which has supported Kenya to develop a National Biosafety Framework aimed at development of Biosafety policy and Law. Further, Kenya signed a five-year agreement with the United States of America on Biological Threat Reduction under the auspices of the Global Health Security Agenda (GHSA). The aim of the agreement is to improve the ability of the county to prevent, detect and respond to infectious disease outbreaks. Through this initiative, the US Government will support the Government of Kenya to put in place measures to improve the protections against threats related to dangerous biological agents. This will ensure a whole government National Biosafety and Security system is in place, anchored in country specific bio-safety legislation.

ii. In order to implement Voluntary Management Standards on Biosafety and Biosecurity, Kenya has undertaken the establishment of a National Biosecurity Centre to promote Biosecurity and related issues in the country. Further, a Biosecurity Survey was conducted to gather information on the Biosecurity level and laboratory capacity in

[7] Permanent Mission of Kenya to UN Note verbale, 17 December 2007
[8] Permanent Mission of Kenya to UN, Statement, 2016

Kenya, as well as provide information outlining relevant components for Biosecurity Legislation and its implementation.

iii. The Government is also developing a national Biosciences policy and bill to govern sustainable exploitation, use, conservation and management of biological resources in a safe, secure and ethical manner. The bill is still in its draft form.

iv. Establishing a Biosafety Course at the University of Nairobi to build technical capacity in the country.

Apart from just implementing the BWC, Kenya has also domesticated other treaties and agreements of the international community in the fight against illicit acquisition of weapons of mass destruction. *(Refer to annex for detailed list of treaties and agreements)*

4.0 AFRICA CONTEXT

African states are far from reaching their full potential in implementing the BWC. Eight African states are still not parties to the BWC, (Angola, Chad, Comoros, Djibouti, Eritrea, Guinea, Namibia, South Sudan), while six African states are signatories only (the Central African Republic, Côte d'Ivoire, Egypt, Liberia, Somalia and Tanzania). The decision to join an international convention is a prerogative of national sovereignty, and no state should be forced to do so against its will. However, that such a high number of states are not parties to the BWC sends a troubling message about Africa's commitment to prevent the proliferation of biological weapons.[9]

Further, only a limited number of African states parties participate in the confidence-building mechanism developed in the framework of the BWC. The framework relies on states parties to provide information annually to instill trust in the peaceful nature of their activities. Over the past 20 years, only 16 African states parties have participated at least once in the mechanism. In 2014 for example, only four African states parties submitted a declaration.[10]

[9] issafrica.org/iss-today/mauritania-joins-the-biological-weapons-convention, accessed on 22/3/2017
[10] wmdafricafiles.blogspot.co.ke/2015/03/mauritania-joins-biological-weapons.html, accessed on 22/3/2017

5.0 CHALLENGES FACING THE IMPLEMENTATION OF THE BWC

Throughout its 40-year existence, the BWC has faced a number of challenges. These include:

i. **Lack of universality**- many countries are not parties to the convention

ii. **Lack of verification**- the BWC contains neither measures to check for compliance of States nor monitoring mechanism for its implementation.

iii. **Non-compliance-** some States Parties have violated the BWC for example the Soviet Union, a State Party maintained an enormous offensive biological weapons program after ratifying the BWC. In 2001, the US accused Iraq and North Korea of breaching the convention[11]. Others are suspected to be operating illegal biological weapons programs.

iv. **Advances in biosciences and biotechnology-**developments in these areas are rapid thus increasing the risk that biological weapons will spread. There are now increased threats emanating from misuse of biological agents, materials, technology, and knowledge for hostile purposes by non-state actors e.g. terrorist groups.

v. **Dual-use chemical processes**- also present a series of ongoing challenges as the chemicals could be diverted to illegal use.

vi. **Inability to respond to biological attacks-** the Convention does not provide for a means of responding to an attack, despite the growing risk of such an attack.[12]

6.0 WAY FORWARD

The Parliamentarians for Global Action should support all multilateral instruments that aim to promote non-proliferation of weapons of mass destruction. Parliaments and parliamentarians, as the expression of the hopes and aspirations of citizens for a better and safer world, have a crucial responsibility to protect the world and its future generations[13].

1. Four priorities areas by the Parliamentarians for Global Action with regard to promoting BWC should be:[14]

[11] Kimball D, BWC, 2012
[12] United Nations, Statement by Secretary General at Review Conference Opening, 2016
[13] IPU, Supporting Nuclear Non-Proliferation and Disarmament, 2012
[14] Graham A. et al, The World at Risk : The Report of the Commission on the Prevention of WMD Proliferation and Terrorism, 2008

i. Building and sustaining confidence in compliance with BWC by helping in improving the quality and quantity of declarations submitted under the Confidence Building Mechanism System;

ii. Supporting national implementation action plans;

iii. Supporting the UN Secretary-General's Mechanism for investigation of alleged use of biological weapons and agents; and

iv. Promoting universality by encouraging more countries to be signatories through peer to peer consultative sessions by outlining the benefits of joining the convention.

2. Parliaments should also facilitate legislation on laws that will promote realization of the national commitments under the convention.

3. There is also need to develop a protocol that once ratified will compel State Parties to implement the provisions of the Convention. This will eventually increase compliance by states. The protocol should stipulate the verification mechanisms for monitoring compliance, penalties and other provisions that are not expressly stated in the Convention as it is.

4. Parliaments also play a big role of ratifying the Conventions for their respective countries.

7.0 CONCLUSION

Bioweapons remain a great risk to humanity today. This is explained by increased availability of biotechnology, to not only states, but also groups of people with varied interests, including terrorists. Therefore, accession or ratification of the Biological and toxin Weapons Convention by all states is an important development agenda. It will build more trust in the peaceful nature of activities of states and strengthen the global move towards elimination of biological weapons. Further, the implementation of the Convention requires collective action at the national, regional and global levels.

8.0 ANNEX

KENYA'S STATUS OF IMPLEMENTATION OF CONVENTIONS ON WEAPONS OF MASS DESTRUCTION

International Instruments	Entry into force	Signed	Ratified	Acceded
CTBT: Comprehensive Nuclear-Test Ban Treaty		15/10/1996	11/07/2003	
Convention on Nuclear Safety		20/09/1994		
Convention on the Physical Protection of Nuclear Material	30/05/2003			30/04/2003
Environmental Modification Convention: Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques				19/12/1991
Biological Weapons Convention: Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction				28/09/2001
Chemical Weapons Convention: Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction	29/04/1997	13/01/1993	14/08/1995	
Nuclear Terrorism Convention: International Convention for the Suppression of Acts of Nuclear Terrorism	02/04/2011			03/03/2011
1925 Geneva Protocol: Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare				27/01/1992
Partial Test Ban Treaty: Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water		14/08/1963		
Treaty on the Non-Proliferation of Nuclear Weapons				12/01/1995
Sea-bed Treaty: Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof				27/01/1992
Treaty relating to the Use of Submarines and Noxious Gases in Warfare				
Treaty of Pelindaba: African Nuclear Weapon Free Zone Treaty		11/04/1996	11/02/1998	

Source: *United Nations Regional Centre for Peace and Disarmament in Africa*