


PARLIAMENTARIANS FOR GLOBAL ACTION KENYA

THE LEGAL FRAMEWORK ON BWC

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REGIONAL MEETING, DAR ES SALAAM**

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INTRODUCTION

- The BWC entered into force on 26 March 1975
 - It prohibits the development, production, acquisition, transfer, retention, stockpiling and use of biological and toxin weapons
 - Kenya acceded to the Convention on the 7th of January 1976
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INTRODUCTION CONT...

- Kenya has faced growing acts of violent extremism over the last few years.
- It is feared that some of these groups may use more sophisticated methods including the development of biological weapons especially with the advent of genetic engineering and gene synthesis

INTRODUCTION CONT...

- Kenya has so far taken certain actions to deal with these threats through legislation and other initiatives
 - Kenya's legislation so far focuses on biosafety and not biosecurity
 - This means the legislative framework focuses on preventing non-intentional acts (biosafety) and not deliberative actions of aggression (Biosecurity)
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CONSTITUTIONAL FRAMEWORK

- Article 2 (5) of the Constitution provides that the general rules of International law shall form part of the law of Kenya.
- Article 2(6) further provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya.

CONSTITUTIONAL FRAMEWORK CONT...

- This implies that if Kenya has ratified the BWC, then it automatically becomes part of the laws of Kenya.
- The Treaty Making and Ratification Act, provides a legal framework for ratification of treaties that requires a parliamentary approval.


CONSTITUTIONAL FRAMEWORK CONT...

- It however covers treaties that are ratified after it's coming into force
 - This means that arguably, the BWC could be considered part of the laws of Kenya without a domesticating law
 - Challenge though is that it contains principles and no implementation framework
 - For effective implementation, an enhanced or comprehensive legislative framework is needed.
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CONSTITUTIONAL FRAMEWORK CONT...

- **The Constitution does not have direct provisions on biological weapons but has principles that promotes the values of the BWC**
- **Art. 10(1) on national values and governance acknowledges human dignity and human rights.**

CONSTITUTIONAL FRAMEWORK CONT...

- **Chapter IV on the Bill of Rights affirms the right to life (Article 26 (1));**
 - **The right to inherent dignity and the right to have that dignity respected (Article 28);**
 - **The right to clean and healthy environment (Article 42, 69 and 70)**
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CONSTITUTIONAL FRAMEWORK CONT...


- The right not to be subjected to torture, whether physical or psychological or to be treated in a cruel, inhuman or degrading manner (Article 29 © and (f));
- Also health rights Article 48?

GENEVA CONVENTIONS ACT, CAP 178


Article 50: Grave breaches

Grave breaches defined to include any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. Attracts life imprisonment

OTHER LAWS

- **Plant and Seeds Varieties Act**
 - **Noxious Weeds Act**
 - **Environmental Management Act**
 - **Crop Act**
 - **Livestock Management**
 - **Industrial Property Act**
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KENYA BIOSAFETY LAW

- Kenya has a Biosafety Law whose objective is:
 - (a) to facilitate responsible research into, and minimize the risks that may be posed by, GMOs;
 - (b) to ensure an adequate level of protection for the safe transfer, handling and use of GMOs that may have an adverse effect on the health of the people and the environment; and
 - (c) to establish a transparent, science-based and predictable process for reviewing and making decisions on the transfer, handling and use of GMOs and related activities.
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OTHER INITIATIVES

- Kenya has partnered with other government such as Denmark (on Development of law and policy) and the USA on programs for Biological Threat Reduction
- The aim of the agreement is to improve the ability of the county to prevent, detect and respond to infectious disease outbreaks.

OTHER INITIATIVES CONT...

- **Through the initiative, the US Government agreed to support the GoK to put in place measures to improve 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**

OTHER MEASURES CONT...

- In order to enhance Biosafety and Biosecurity, Kenya has established 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
 - 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.
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OTHER MEASURES CONT...

- **The GoK has established a Biosafety Course at the University of Nairobi to build technical capacity in the country.**
- **Kenya has also domesticated other treaties and agreements in the fight against illicit acquisition of weapons of mass destruction**