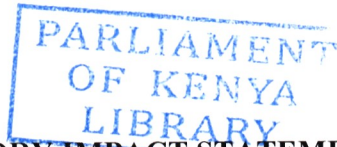


Laid by the Majority Leader
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REGULATORY IMPACT STATEMENT (RIS) UNDER THE
STATUTORY INSTRUMENTS ACT, 2013

TOBACCO CONTROL REGULATIONS, 2014

Introduction

Tobacco consumption and exposure to tobacco smoke cause disease, disability and death. The tobacco epidemic is the leading preventable cause of death. It kills nearly six million people per year, of whom more than five million are users or ex-users and more than 600, 000 are non-smokers exposed to second-hand smoke¹. If current smoking patterns continue, the annual death toll will increase to eight million by 2030, with more than 80% of the deaths taking place in low- and middle-income countries. Tobacco kills many people at the height of their productivity, depriving families of breadwinners and nations of a healthy workforce².

Increased trade, foreign investment, global marketing and other complex international phenomena have led to the globalization of the tobacco epidemic. As the epidemic transcends national borders, its control requires international cooperation and multilateral regulation.

Due to the foregoing, the World Health Organization Framework Convention on Tobacco Control (WHO-FCTC) was developed as a global response to the globalization of the tobacco epidemic. Adopted in June of 2003, the WHO-FCTC quickly became one of the most widely embraced treaties in United Nations' history, becoming international binding law on 27 February 2005. In this regard, the WHO-FCTC is emphatic that "*in setting and implementing their public health policies with respect to tobacco control, Parties shall act*

¹ WHO Report on Global Tobacco Epidemic, 2011

² Why Tobacco is a public health priority:
http://www.who.int/tobacco/health_priority/en/



to protect these policies from commercial and other vested interests of the tobacco industry.”

There is no doubt that reducing the rates of uptake and consumption of tobacco will save lives and that the WHO FCTC is the evidence-based tool with which to do it. It has been projected that with a progressive 50% reduction in uptake and consumption rates, as many as 200 million lives could be saved by the year 2050 — and hundreds of millions more thereafter.

In this regard, WHO-FCTC was ratified by Kenya on 25th June, 2004 and consequently entered into force in Kenya on 27th February, 2005. Two (2) later, and in order to domesticate the provisions of WHO-FCTC, Kenya enacted the Tobacco Control Act (TCA), 2007. However, due to the extensive Tobacco Industry’s influence in the policy making processes, it has taken Kenya seven (7) to enact the Tobacco Control Regulations. Therefore, the time to enact these Regulations in order to give effect to the Act is now.

1. Objectives of the Proposed Tobacco Control Regulations

The objective of the Regulations is to give effect to the Act. The Regulations have been designed in order to prescribe and/or prohibit anything required under Act and for the better carrying out of the objects of Act as set out under section 3 thereof.

2. Effects of the proposed Tobacco Control Regulations

The negotiations, consultations and stakeholder involvement leading to the development of these Regulations have revolved around the principle of sustainable development. This principle calls for a convergence between the three pillars of economic development, social equity, and environmental protection in order to meet the needs of the present generation without compromising the ability of future generations to meet their own needs.

The principle of sustainable development is firmly anchored in the Constitution and also in the Vision 2030 Blueprint which spells the distinct pillars of economic, social and political which are needed to propel Kenya to the middle income level status by the year 2030.

Outlined below are the economic, social and environmental effects of the proposed Tobacco Control Regulations.

i) Economic Impact analysis

The aim of economic development is to create social, political and economic conditions that allow each and every person to reach his or her full potential.

According to the Tobacco Free Initiative (TFI) of the WHO, the economic costs of tobacco use are equally devastating. In addition to the high public health costs of treating tobacco-related diseases, tobacco users are also less productive due to increased sickness, and those who die prematurely deprive their families of much-needed income.

Further, tobacco use and poverty are inextricably linked. Many studies have shown that in the poorest households in some low- and middle-income countries, more than 10% of total household expenditure is on tobacco. This means that these families have less money to spend on such basic items as food, education and health care. In addition to its direct health effects, tobacco use leads to increased health-care costs. It contributes to higher malnutrition and illiteracy rates, since money that could have been used for food and education is spent on tobacco. Therefore, the role of tobacco use in exacerbating poverty and hindering economic development needs to be fully recognized and firmly dealt with.

There are many cost-effective tobacco control measures that can be used in different settings and have a significant impact on tobacco consumption. The most cost-effective strategies outlined in the WHO-FCTC are those encompass population-wide public policies and which have been implemented in Kenya and they include; bans on advertising, promotion and sponsorship of tobacco products; and forbidding smoking in all public and workplaces. Further, the policy requiring large, clear and visible graphic health messages on tobacco packaging was difficult to implement under the TCA 2007 alone but now with the enactment of the proposed Regulations, it will be adequately addressed thereby lowering the levels of tobacco consumption.

The table below outlines the economic effects of tobacco use.

Table 1: Economic Impact Analysis

Impact	Impact Incidence Analysis	Impact Magnitude Analysis	Risk Assessment
Trigger economic development & Healthy workforce	<p>It will accelerate economic development because:</p> <ul style="list-style-type: none"> ➤ Low tobacco consumption will free health related financing to development vote. ➤ Healthy workforce will lead to increased productivity. 	Significant	Low
Alternative cropping	<ul style="list-style-type: none"> ➤ The government will have a new revenue stream if tobacco farmers embark on more productive cropping. 	Significant	Low
Impact on the National Wage Bill	<ul style="list-style-type: none"> ➤ No new institutions created. There are already existing institutions in place for implementation of the TCA 2007 and the Regulations. E.g. Tobacco Control Board. ➤ However, increased campaigns against tobacco use through seminars & display of bill boards with graphic signs etc. 	Moderate	Low
Promote increased awareness	<ul style="list-style-type: none"> ➤ More Kenyans will be well informed on the effects of Tobacco; ➤ A well-educated and informed citizenry leads to increased empowerment. 	Significant	Low

Positive Kenya Brand	<ul style="list-style-type: none"> ➤ Kenya is leading Africa in tobacco control. ➤ Enactment of these Regulations will have a positive image on Kenya hence advancing her competitiveness globally. 	Significant	Low
Reduced financial stress in families	<ul style="list-style-type: none"> ➤ Tobacco use leads to increased financial stress and reduces material wellbeing because a lot of money is used for tobacco. ➤ Regulations will increase stigma among smokers hence leading to cessation. More resources will be channeled to sound development activities. 	Significant	Low

ii) Social Effects

In order to achieve sustainable development, both the Constitution and the Vision 2030 Blueprint underscore the need for a clean and secure environment where social justice and equity thrive.

By requiring a tobacco free environment, the Regulations in conjunction with the TCA 2007 will ensure that all Kenyans enjoy and live in a safe and secure environment.

The table below outlines the social effects of tobacco.

Table 2: Analysis of Social Impacts.

Impact	Impact Incidence Analysis	Impact Magnitude Analysis	Risk Assessment
Accelerate community development	<ul style="list-style-type: none"> ➤ Tobacco crop is labour intensive thereby leading to child labour, lack of education hence diminished capacity. ➤ A tobacco free community is an 	Significant	Low

	empowered community hence increased development.		
Healthy nation	<ul style="list-style-type: none"> ➤ Smokers are unhealthy due to increased tobacco related illnesses which in turn make smokers to be shunned socially. ➤ Proposed Regulations with graphic messages will increase awareness hence leading to a smoke free health nation. 	Significant	Low
Promote social cohesion and reduce conflicts	<ul style="list-style-type: none"> ➤ Smokers usually exhibit negative social associations which usually lead to social conflicts and also social stigma and isolation. ➤ Graphic messages displayed in the Regulations will lead to reduced/zero tobacco use hence increased social cohesion. 	Significant	Low
Increased freedom of association	<ul style="list-style-type: none"> ➤ Current restrictions on smoking areas lead to social isolation. ➤ Regulations will promote cessation and lead to increased freedom of association. 	Significant	Low
Reduced diseases & disabilities	<ul style="list-style-type: none"> ➤ Tobacco causes respiratory & heart diseases. ➤ Regulations will trigger reduced tobacco use will thereby reducing chronic diseases and disabilities in families. 	Significant	Low
Enhanced consumer protection	<ul style="list-style-type: none"> ➤ Many people perish due to lack of knowledge. ➤ Regulations will ensure that people are informed adequately hence making healthy and informed decision on consumables. 	Significant	Low

iii) Environmental Effects

The Constitution has called upon all citizens to be respectful of environment in order to attain sustainable development. One of the key constitutional principles firmly anchored in the TCA 2007 and which will be given effect by the Regulations is the right to a clean and healthy environment which includes right to be protected from exposure to second-hand smoke.

The environmental impacts of tobacco use are tabulated below:

Table 3: Environmental impact analysis

Impact	Impact Incidence Analysis	Impact Magnitude Analysis	Risk Assessment
Increased environmental sustainability	<ul style="list-style-type: none"> ➤ Increase pollution through Cigarette butts, plastic filter and remnants of smoked cigarettes, are discarded in natural environments. These remains are resistant to bio-degradation hence persist in the environment for long. ➤ Regulations will trigger reduced smoking hence low environmental pollution. 	Significant	Low
Improved Soil fertility	<ul style="list-style-type: none"> ➤ Tobacco farming leads to soil degradation due to increased nutrient intake from the soils. ➤ Regulations will lead to implementation of TCA 2007 which requires the Ministry of Agriculture to promote alternative cropping. 	Significant	Low
Improved forest cover	<ul style="list-style-type: none"> ➤ Tobacco production results in; <ul style="list-style-type: none"> - Deforestation as a result of wood is used in the farm-based process of curing the crop (drying the leaves). - Solid, liquid, and airborne wastes produced during the 	Significant	Low

	<p>manufacturing process ; and</p> <ul style="list-style-type: none"> - Fires caused by cigarette smoking. <p>➤ Implementation of these Regulations will help protect the environment by improving the forest cover for sustainable development.</p>		
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3. Regulatory Alternatives

Tobacco consumption being a global menace, there are no regulatory alternatives in this sector.

4. Consistency with other policy and regulations

These Regulations have been prepared taking into account that there is no inconsistency with the Constitutional provisions and other legal frameworks which would impact on its implementation.

5. The reasons why the other means are not appropriate

Tobacco control can only be effectively under the TCA 2007 and the proposed Regulations.

Others means outside the legal framework have not borne any fruit. Effective implementation of TCA 2007 together with the Tobacco Regulations is the most appropriate means of effectively reducing tobacco consumption.