



# **MINISTRY OF HEALTH**

## **TOBACCO CONTROL BOARD**

### ***Regulatory Impact Statement for the Public Health (Control of Waterpipe Tobacco Products) Rules, 2026***

***This Regulatory Impact Assessment (RIA) has been prepared by the Ministry of Health in consultation with the Tobacco Control Board pursuant to Section 36 (m) of the Public Health Act.***

**April, 2026**

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# CHAPTER 1

## INTRODUCTION AND BACKGROUND

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### 1.1 INTRODUCTION

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Tobacco use, in all its forms, remains a significant public health challenge worldwide and is the leading preventable cause of morbidity and mortality. Annually, it is responsible for more than eight million deaths a year, including around 1.2 million deaths from exposure to second-hand smoke. Alarmingly, 80% of these deaths occur in low- and middle-income countries, which are already burdened by communicable diseases. Over 80% of the world's population, which translates to 1.3 billion tobacco users, live in low and middle-income countries and constitute a majority of countries in Africa. Without effective intervention, tobacco-related fatalities are projected to keep increasing, with a disproportionate rise in premature deaths in developing nations<sup>1</sup>.

In the World Health Organization (WHO) African Region, tobacco use prevalence stands at approximately 14%, with a rising trend attributed to rapid population growth, increased economic prosperity, and aggressive marketing strategies by the tobacco industry. The WHO Global Report on Mortality Attributable to Tobacco Use indicates that 3% of all deaths in Africa can be linked to tobacco use<sup>2</sup>.

Tobacco consumption and exposure to second-hand smoke adversely affect every organ of the human body. Many tobacco-related illnesses, including cancers, chronic obstructive pulmonary disease (COPD), and cardiovascular diseases, manifest after prolonged use. Prenatal and early postnatal exposure to tobacco smoke also leads to severe health complications, such as low birth weight, sudden infant death syndrome (SIDS), impaired neurodevelopment, and

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<sup>1</sup> World Health Organization. Tobacco: Key Facts.  
<http://www.who.int/mediacentre/factsheets/fs339/en/>.

<sup>2</sup> WHO Global Report: Mortality Attributable to Tobacco, 2012.

increased susceptibility to respiratory infections and childhood cancers<sup>3</sup>. These adverse effects persist from infancy through adulthood.

Recognizing the global tobacco epidemic, the WHO developed the Framework Convention on Tobacco Control (FCTC) to protect present and future generations from its devastating health, social, environmental, and economic consequences. To support the implementation of FCTC provisions, WHO introduced the MPOWER package in 2008<sup>4</sup>, consisting of six evidence-based tobacco control strategies:

- **Monitor** tobacco use and prevention policies.
- **Protect** people from tobacco smoke exposure.
- **Offer** help to quit tobacco use.
- **Warn** about the dangers of tobacco.
- **Enforce** bans on tobacco advertising, promotion, and sponsorship.
- **Raise** taxes on tobacco.

Tobacco use poses a major obstacle to sustainable development. Reducing tobacco consumption is crucial for achieving the Sustainable Development Goals (SDGs), particularly SDG 3a, which calls for strengthened implementation of the FCTC. Additionally, controlling tobacco use contributes to attaining other SDGs by addressing its well-established linkages to poverty, economic losses, and environmental degradation.

The Tobacco Control Act (Cap. 245A) was enacted to regulate the production, manufacture, sale, and consumption of tobacco products in Kenya<sup>5</sup>. Waterpipe tobacco smoking, commonly known as *shisha*, is a method of smoking tobacco through a waterpipe, often involving flavored tobacco heated with charcoal. The resulting smoke passes through water before being inhaled. Despite perceptions

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<sup>3</sup> Hofhuis W, de Jongste JC, Merkus PJ. Adverse health effects of prenatal and postnatal tobacco smoke exposure on children. *Arch. Dis. Child.* 2003;88:1086–1090.

<sup>4</sup> [https://www.afro.who.int/sites/default/files/2017-06/mpower\\_english.pdf](https://www.afro.who.int/sites/default/files/2017-06/mpower_english.pdf)

<sup>5</sup> <https://www.chskenya.org/wp-content/uploads/2016/05/Tobacco-Control-Act-2007-.pdf>

of reduced harm due to water filtration, shisha smoke contains high levels of toxins, including nicotine, carbon monoxide, tar, and heavy metals.<sup>6</sup>

Shisha smoking is typically marketed as a trendy, social activity, especially among the youth. Its appeal is enhanced by exotic flavors and the communal nature of its use in lounges and bars. This marketing often downplays health risks, contributing to misconceptions about its safety<sup>1</sup>.

The Eastern Mediterranean region (including countries in the Middle East and North Africa) has the highest prevalence of shisha smoking in the world, with its popularity growing among the youth category<sup>7</sup>. According to the Global Youth Tobacco Survey (GYTS), the age 13-15 bracket has the highest rate of use in the Middle East and Eastern Europe, with countries such as Lebanon (36.9%) and Latvia (22.7%) leading the way. In Kenya, at least 6.2% of youth have tried shisha, according to the GYTS.<sup>8</sup>

In Kenya, shisha became increasingly popular, particularly among youth, before it was banned in 2017. The ban was a response to escalating public health concerns, including the detection of narcotics like heroin and cocaine in flavoured shisha products, widespread youth uptake, and evidence of its association with serious health outcomes.

Despite this ban, water pipe smoking was gaining popularity in Kenya, especially among young people and in hospitality establishments such as lounges, bars, and nightclubs. This trend is fuelled by aggressive marketing, exotic flavouring, and the social nature of shisha use.

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<sup>6</sup> <https://nacada.go.ke/shisha-smoking-could-be-conduit-hard-drugs-use-youth-kenya>

<sup>7</sup> World Health Organization. Advisory Note: Waterpipe tobacco smoking: health effects, research needs and recommended actions for regulators, 2nd Ed. Geneva, Switzerland, 2018

<sup>8</sup> Centers for Disease Control and Prevention. Global Youth Tobacco Survey Kenya 2013.

The partial regulatory efforts have proved insufficient due to the increased access and availability of shisha, misconceptions about its safety and weak enforcement and fragmented regulatory oversight, creating a need for a regulatory ban on waterpipe tobacco smoking, hence the development of the Public Health (Control of Waterpipe Tobacco Products) Rules, 2026.

## **1.2 REGULATION MAKING AUTHORITY AND THE LEGAL MANDATE**

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The Tobacco Control Board (TCB) is Kenya's principal regulatory authority for tobacco control. Established under the Tobacco Control Act of 2007, the Board oversees the implementation, compliance, and enforcement of tobacco control measures to safeguard public health.

### **Legal Mandate of the Tobacco Control Board**

The Tobacco Control Act, 2007, provides the legal framework for tobacco regulation in Kenya, outlining the responsibilities of the Tobacco Control Board. The key functions of the Board include:

#### **1. Regulation and Policy Formulation**

- The Board is responsible for developing and recommending policies and regulations to control the production, sale, advertising, and use of tobacco products.
- It ensures that Kenya complies with its obligations under the World Health Organization Framework Convention on Tobacco Control.

#### **2. Implementation of Tobacco Control Laws**

- The Board oversees the enforcement of the Tobacco Control Act, 2007, ensuring compliance with its provisions.
- It monitors and evaluates the effectiveness of existing tobacco control measures and recommends amendments where necessary.

### **3. Oversight of Tobacco Product Packaging and Labeling Regulations**

- The Board ensures that all tobacco products sold in Kenya comply with packaging and labeling requirements, including health warnings and restrictions on misleading descriptors.
- It has played a key role in the introduction of graphic health warnings to deter smoking.

### **4. Regulation of Public Smoking and Tobacco Advertising, Promotion, and Sponsorship**

- The Board enforces restrictions on smoking in public places in line with national regulations and international best practices.
- It regulates and restricts tobacco advertising, promotion, and sponsorship, ensuring that tobacco companies do not target vulnerable populations, including minors.

### **5. Monitoring and Research on Tobacco Use and its Effects**

- The Board conducts research and collaborates with relevant agencies to monitor tobacco use trends, public health impacts, and the effectiveness of tobacco control interventions.
- It provides recommendations based on evidence to strengthen Kenya's tobacco control framework.

### **6. Collaboration with Other Agencies and Stakeholders**

- The Board works closely with government ministries, health organizations, law enforcement agencies, and civil society groups in the fight against tobacco use.
- It fosters partnerships to enhance public awareness campaigns and compliance monitoring.

### **7. Enforcement of Tobacco Product Taxes and Revenue Collection**

- In collaboration with the Kenya Revenue Authority (KRA) and other relevant bodies, the Board ensures that tobacco taxes are effectively implemented to reduce affordability and consumption.

## 8. Regulation of Tobacco Industry Interference

- The Board has the legal authority to monitor and counteract the tobacco industry's interference in policymaking and public health initiatives.
- It ensures that industry players do not undermine government efforts through lobbying, misinformation, or deceptive marketing tactics.

### **1.2 PURPOSE OF THE REGULATORY IMPACT STATEMENT**

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The *Statutory Instruments Act, 2013*, under sections 6 and 7(1) and (2) requires a Regulatory Impact Statement to be prepared by the regulation-making authority for any proposed statutory Instrument that is likely to impose significant costs on the community or a part of the community.

It also requires that there be a process of public consultation in developing the proposed regulatory measures. The Regulation-making Authority for these Regulations is the Cabinet Secretary for Health and the Board of the Social Health Authority (SHA).

Under the *Statutory Instruments Act, 2013*, a regulatory impact statement shall contain;

- a) a statement of the objectives of the proposed legislation and the reasons for them;
- b) a statement explaining the effect of the proposed legislation, including in the case of a proposed legislation which is to amend an existing statutory instrument, the effect on the operation of the existing statutory instrument;
- c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;

- d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- e) the reasons why the other means are not appropriate;
- f) any other matters specified by the guidelines;
- g) a draft copy of the proposed statutory rule

### **1.3 SCOPE OF THE REGULATORY FRAMEWORK**

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The proposed Public Health (Control of Waterpipe Tobacco Products) Rules, 2026, are made under section 36 (m) of the Public Health Act (Cap. 242).

These Rules aim to prohibit the importation, manufacture, supply, sale, advertisement, promotion, display, and use of waterpipe tobacco products (commonly known as shisha) in Kenya.

The Rules cover:

- i. Importation, Manufacture (Rule 4); Total ban on bringing into the country, producing, selling, promoting, or displaying waterpipe tobacco products.
- ii. Use and Consumption (Rule 5); Prohibition on inhaling or using waterpipe tobacco products in public or private premises, and also prohibition on such use on one's premises (including homes, businesses, or public parks).
- iii. Publication of Misinformation (Rule 5 continuation); Ban on promoting shisha through misleading claims about reduced health risks.
- iv. Enforcement (Rule 6); Implementation is assigned to both National and County Governments, through health authorities and officers under the Public Health Act.
- v. Penalties (Rule 7); Offenders are liable to a fine of up to Kshs 1 million, or imprisonment of up to 6 months, or both.

- vi. Legal Transition (Rule 8); Revokes the previous Public Health (Control of Shisha Smoking) Rules, 2017, replacing them with a more comprehensive 2026 framework.

This makes the 2026 Rules more robust and comprehensive, expanding regulation from consumption alone to all aspects of the supply chain and public messaging.

## **1.4 OBJECT OF THE RULE**

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The object of the Rules is to prohibit the importation, manufacture, supply, sale and use of waterpipe tobacco products.

### **1.4.1 OVERALL OBJECTIVES**

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The objective of the Rules is to protect and promote public health by regulating and prohibiting the importation, manufacture, sale, distribution, promotion, and use of shisha products in Kenya, to reduce exposure to harmful substances associated with shisha smoking.

### **1.4.2 SPECIFIC OBJECTIVES**

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The specific objective for these Rules is to:

- a) To prohibit the importation, manufacture, sale, and distribution of shisha products;
- b) To ban the consumption of shisha in all public places, workplaces, and public service vehicles
- c) To enforce legal restrictions on advertising, promotion, and sponsorship of shisha products
- d) To provide enforcement mechanisms, including inspection, seizure, and penalties
- e) To promote public awareness of the health risks associated with shisha smoking.

- f) To align Kenya’s domestic tobacco control efforts with international obligations, in particular to support implementation of the WHO Framework Convention on Tobacco Control (WHO FCTC), particularly Articles 8, 13, and 16.

## **1.5 JUSTIFICATION FOR THE PROPOSED RULES**

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The implementation of the Public Health (Control of Waterpipe Tobacco Products) Rules, 2026, is justified on compelling public health and economic reasons.

### **1.5.1 PUBLIC HEALTH IMPERATIVE**

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Shisha smoking poses significant health risks to both users and non-users. Research shows that a single shisha session can expose a person to more smoke and harmful chemicals than smoking several cigarettes. The use of shared mouthpieces also increases the risk of spreading communicable diseases such as tuberculosis, hepatitis, and COVID-19.

The World Health Organization (WHO) has confirmed that shisha smoke contains toxic substances, including nicotine, tar, carbon monoxide, heavy metals, and carcinogens. These substances contribute to addiction, respiratory illnesses, heart disease, and cancer. Given the growing popularity of shisha—especially among young people and in urban entertainment venues—there is an urgent need to curb its use to protect public health.

### **1.5.2 RISING PREVALENCE AND NORMALIZATION**

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Waterpipe smoking has become increasingly common in social settings, often viewed as a harmless or fashionable activity. Its flavored variants and use in group settings have contributed to its rising popularity, especially among youth and women.

This normalization poses a threat to public health efforts by undermining anti-smoking campaigns and creating a gateway to other forms of tobacco use. The proposed rules aim to reverse this trend by restricting availability, regulating consumption, and educating the public on the real risks involved.

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### 1.5.3 LEGAL AND POLICY ALIGNMENT

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Kenya is a signatory to the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), which obligates parties to adopt measures to protect citizens from exposure to tobacco smoke, regulate tobacco products, and ban advertising, promotion, and sponsorship.

The implementation of the Public Health (Control of Waterpipe Tobacco Products) Rules, 2026, is aligned with:

- Article 43 of the Constitution of Kenya, which guarantees every person the right to the highest attainable standard of health;
- The Tobacco Control Act, Cap. 245A, which provides for the regulation of tobacco products; and
- The Public Health Act, Cap. 242, which mandates the government to protect citizens from public health hazards.

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### 1.5.4 CLOSING REGULATORY GAPS

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Although general tobacco regulations exist in Kenya, they do not sufficiently address the unique nature of shisha smoking. Shisha products are often excluded or misclassified, creating loopholes in enforcement. The proposed Rules are specifically tailored to address the manufacture, importation, sale, and use of shisha, thus closing critical regulatory gaps and strengthening the overall tobacco control framework.

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## CHAPTER 2

### CONTEXT FOR THE PROPOSED REGULATIONS

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In Kenya, shisha was banned in 2017; the ban covered its use, import, manufacture, sale, offer of sale, advertising, promotion, distribution and encouraging or facilitating its use. Kenya was the fourth East African country, after Uganda, Tanzania and Rwanda, to ban it.

However, even with the ban, some nightclubs continued to sell the product. The punishment for contravening the ban is a fine not exceeding Kshs. 50,000 or imprisonment for a term not exceeding six months or both.<sup>9</sup>

Before the ban, the Ministry of Health and the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) had banned 19 shisha flavors that were found to contain bhang, cocaine and heroin; according to analysis, 79.2% of Shisha samples collected tested positive for heroin.<sup>10</sup>

Compliance with the ban has been varied. In a study conducted by the Kenya Tobacco Control Alliance (KETCA) on compliance at public hospitality venues, more than 200 venues across different localities in Nairobi County were assessed, with visits conducted from 7 pm to 2 am on Friday, Saturday and Sunday evenings. From the visits, 82% of the hospitality venues were found to comply, and shisha smoking was rarely observed in restaurants (5%). However, shisha smoking and/or equipment were more prevalent in nightclubs (24%) and bars (20%).<sup>10</sup>

#### 2.1 GLOBAL CONTEXT: REGULATION AND PUBLIC HEALTH

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Use of the waterpipe has traditionally been considered to be less harmful and less addictive than cigarettes. Even worse, in the eyes of many users, it was, and is still, not even considered to be a form of tobacco smoking. However, studies

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<sup>9</sup> <https://www.kenyanews.go.ke/government-to-continue-operations-to-enforce-shisha-ban/>

<sup>10</sup> <https://ketca.org/wp-content/uploads/2022/03/Shisha-Ban-Compliance-Study-Nairobi.pdf>

have shown that this is not true, and that the waterpipe is as harmful and as addictive as cigarettes.<sup>11</sup>

In the past decade, the World Health Organization has gathered evidence on the growing prevalence of shisha smoking and its health impact. In the WHO Study Group on Tobacco Product Regulation scientific advisory note, it provides more thorough breakdown of the health effects of waterpipe smoking, including the fact that waterpipe tobacco smoke has ample quantities of toxicants that can cause diseases such as cancer, and that these toxicants are effectively absorbed by waterpipe users and are present in their blood, breath and urine.<sup>4</sup>

Accordingly, the evidence also shows that waterpipe tobacco smoking can be a contributor to oral, oesophageal and lung cancers, not to mention association with respiratory, cardiovascular and periodontal diseases.<sup>12</sup>

Noting that the rules and regulations stipulated by the WHO Framework Convention on Tobacco Control (WHO FCTC) apply to all tobacco products and not just cigarettes, meaning these regulations also cover tobacco consumed by use of the waterpipe. A paper published by the secretariat of the WHO Framework Convention on Tobacco Control (FCTC) titled ‘Control and Prevention of Waterpipe Tobacco Products’ noted the following:

- Although cigarette smoking is the dominant form of tobacco use in most parts of the world, waterpipe use accounts for a significant and growing share of tobacco use globally<sup>1,2</sup>. Waterpipe is also known under several names, such as *shisha*, *narghile*, *arghile*, *hookah*, *hubble-bubble*, and *goza*. It has a variety of designs and shapes, but the tobacco smoke passes through a water bowl (base, bottle) before it reaches the mouth of the smoker via a hose.
- Globally, policymakers have not paid full attention to waterpipe smoking and the regulatory peculiarities that are unique to its use. Thus far, most

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<sup>11</sup> Studies on Waterpipe Smoking in Egypt, accessed via <https://applications.emro.who.int/dsaf/dsa746.pdf>.

<sup>12</sup> <https://www.emro.who.int/tfi/news/advisory-note-on-waterpipe-tobacco-smoking-second-edition.html>

regulations have targeted cigarettes, excluding waterpipe smoking. In addition to the tobacco leaves, additives, flavourings, and the charcoal used to heat or burn the tobacco leaves during waterpipe smoking have negative environmental and public health effects that necessitate special regulatory measures.

- Several parties to the WHO FCTC (e.g. Argentina, Bangladesh, Ecuador, India, Namibia, South Africa, and Viet Nam) have specifically included waterpipe tobacco smoking in the definition of tobacco products in their laws, and some (e.g. Israel, Lebanon, Russian Federation and Turkey) have specific warning requirements on waterpipe tobacco packages.
- Standards and *validation methods used to test the contents of waterpipe products* are lacking. The heterogeneity of waterpipe in developing countries poses an additional challenge to regulation and testing, but such information should be mandated, particularly in view of the documented presence of several toxicants and carcinogens among the contents and emissions of WP tobacco. Such data could be shared among the parties and thus contribute to more effective regulation.
- Targeted interventions are required to address the need for services that help waterpipe users to quit.
- There is limited support available for cessation of waterpipe use. There is a need to promote cost-effective interventions and sharing of information, knowledge and tools for waterpipe dependence treatment among developing countries with high prevalence of waterpipe use. This can be done through proposals for public education programmes specifically geared to waterpipe products to dispel the notion of its safety or the reduced harm of its use.
- Banning misleading information on packages and signs in visible locations in cafés and restaurants and informing the public of the prohibition on waterpipe smoking, is also necessary. For example, the rules could provide that *the CS shall ensure that owners, occupiers, lessees, etc, put up signs*

*in visible locations in cafes, restaurants and bars to inform the public of the prohibition of waterpipe smoking.*

## **2.2 COMPARATIVE ANALYSIS OF THE PROPOSED RULES WITH OTHER SIMILAR LAWS IN OTHER JURISDICTIONS**

While waterpipe smoking is regulated in some countries, several African have banned it use for several reasons. Waterpipe tobacco products are controlled in UK, Canada and South Africa through measures on its importation, manufacturing, sale, and use.

**Table 1: African Countries that have banned waterpipe smoking**

<b>Country</b>	<b>Year of Ban</b>	<b>Reason for Ban</b>	<b>Applicable Law</b>
Kenya	2017	Links to drug abuse: WHO recommendations. <sup>1</sup>	The Tobacco Control Act (CAP 245A) of 2007 is the governing law on tobacco control.  <b>The Public Health (Control of Shisha Smoking) Rules 2017</b> , issued in a special gazette notice in December 2017, ban the import, manufacture, sale, offer for sale, use, advertising, promotion or distribution of shisha in Kenya.
Rwanda	2017	Aggressive youth marketing; WHO advisory <sup>13</sup> .	Law No. 08/2013 of March 1, 2013, relating to the Control of Tobacco, is the primary tobacco control law in Rwanda that regulates smoking.  The ban on shisha/waterpipe tobacco use, advertisement and imports was affected through a <b>Ministry of Health</b>

<sup>13</sup> <https://www.afro.who.int/news/rwanda-banned-totally-shisha>

			<b>public notice effective 15th December 2017.</b>
Cameroon	2022	High youth usage (as much as 46%) and serious health risks <sup>14</sup> .	Law No. 2006/018 governs tobacco advertising, promotion and sponsorship, while Joint Order No. 0001/2018 governs tobacco packaging and labelling.  <b>Order No. 024 of 2022 prohibits the sale and use of waterpipe tobacco (issued in March 2022).</b>
Uganda	2014	Health concerns and as part of broader tobacco control measures.	The Tobacco Control Act, 2015, is the primary legislation regulating tobacco products and tobacco use in Uganda.  <b>Part VI, Section 16, Clause 2(b) prohibits the import, manufacture, distribution, processing, sale, or offer for sale of waterpipe tobacco</b> delivery systems, while 2(c) prohibits smokeless or flavoured tobacco products.

In Asia and Europe, the following countries have fully banned shisha smoking.

**Table 2: Asian and European Countries That Have Banned Waterpipe Smoking**

<b>Country</b>	<b>Year of Ban</b>	<b>Reason for Ban</b>	<b>Applicable Law</b>
Cambodia	2014	Health concerns; youth attraction to nicotine products.	001/14 Sor.Nor.No National Authority for Combating Drugs (NACD) Measures to Prevent and Terminate Consumption, Sale, and Import of Shisha and E-Cigarettes is the primary legal measure.

<sup>14</sup> <https://www.africanews.com/2022/03/14/shisha-smoking-banned-in-cameroon/>

			<p><b>NACD Circular No 001/21 S.N.NA.CH.B.KH.NH prevents and stops the use, sale, and importation of Shisha and electronic cigarettes in the Kingdom of Cambodia</b> and halts the use and sale of HTPs by confiscation.</p>
Thailand	2014	Harmful effects; potential for youth addiction.	<p>The Tobacco Products Control Act of 2017 (TPCA) governs tobacco control in Thailand.</p> <p>In <b>2014, the Ministry of Commerce issued a Notification banning the import and sale of e-cigarettes and Heated Tobacco Products</b> (HTPs – in which shisha falls), and a further 2015 Order 9/2015 by the Consumer Protection Board banned the import and sale of e-cigarettes and HTPs.</p>
Turkey	2023	As a way of preventing environmental hazards (and forest fires).	<p>The primary law governing tobacco control is the Law on Prevention and Control of Hazards of Tobacco Products, Law No. 4207 (as amended).</p> <p><b>The Tobacco &amp; Alcohol Market Coordination Committee’s Decision No.2149 concerning Electronic Cigarettes and Similar Devices</b> and Certain Tobacco Products and Products that are used to Imitate Tobacco Products bans the import of e-cigarettes and HTPs.</p>

In countries where shisha smoking is regulated, it is done so for the following reasons:

**Table 3: Countries Regulating Waterpipe Smoking**

<b>Country</b>	<b>Regulation Measure</b>	<b>Rationale</b>
United Kingdom	The UK has implemented age restrictions, health warnings, and public smoking bans in certain areas.  The government is considering expanding the Tobacco and Vapes Bill to implement an outdoor smoking ban in pub gardens, outside football stadiums, and other public spaces.	These measures aim to protect people from second-hand smoke inhalation and reduce smoking-related health costs.
United States	Regulations vary by state; some have implemented age restrictions and public smoking bans. Shisha lounges are subject to state and local tobacco control laws.	The measures aim to reduce tobacco use and protect public health, particularly among youth.
South Africa	The Tobacco Products Control Act regulates tobacco use, including public smoking bans. Shisha use is subject to the same regulations as other tobacco products.	The regulations aim to reduce tobacco-related health risks and protect non-smokers from second-hand smoke
Canada	The Tobacco and Vaping Product Act regulates the manufacture, sale, packaging and labelling, advertising, promotion and sponsorship of e-cigarettes and tobacco products, including HTPs.	The regulation aims to provide a distinction between where it is legally allowed or prohibited to smoke to protect non-smokers.

## 2.3 CONCLUSION

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NACADA published a report in 2023<sup>15</sup> which showed that despite the 2017 ban, shisha smoking has gradually become popular in Kenya among young people, especially in cities and towns with many bars. Flavoured brands, such as fruit shisha, have become particularly popular, with young people attracted to shisha's romantic allure and being seen as fashionable and glamorous. The report notes that the sight of shisha in most pubs is an open secret, and in fact and smokers no longer hide in special rooms anymore.

Based on this, there is an urgent need for strict control and regulation of water pipe smoking in Kenya. The proposed rules are a necessary public health intervention to safeguard the health of Kenyans from the harmful effects of water pipe tobacco products.

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<sup>15</sup> <https://nacada.go.ke/shisha-smoking-could-be-conduit-hard-drugs-use-youth-kenya>

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## CHAPTER 3

### PROBLEM DEFINITION

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#### 3.1 INTRODUCTION

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Despite existing tobacco control measures in Kenya, the use of waterpipe tobacco products has remained widespread, particularly among youth and in urban social settings. The regulatory framework established under the Public Health (Control of Shisha Smoking) Rules, 2017, proved inadequate, as it did not sufficiently address the full supply chain—such as importation, manufacture, promotion, and sale—nor did it provide clear enforcement mechanisms across national and county governments. The continued availability and normalization of shisha use have undermined Kenya’s broader public health goals, increased the burden of non-communicable diseases, and conflicted with the country’s obligations under the WHO Framework Convention on Tobacco Control.

The Public Health (Control of Waterpipe Tobacco Products) Rules, 2026, were developed to respond to these gaps and the need for a comprehensive and enforceable legal framework to prohibit the importation, manufacture, sale, promotion, and consumption of waterpipe tobacco products.

These Rules aim to strengthen the regulatory oversight, protect public health, especially among vulnerable populations, and align national efforts with international best practices in tobacco control.

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## CHAPTER 4

### POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK

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The implementation of the Public Health (Control of Waterpipe Tobacco Products) Rules, 2026, is grounded in Kenya's national legal and health policies and is aligned with global commitments aimed at promoting a tobacco-free environment.

The legal and policy framework governing the implementation of graphic health warnings on tobacco products in Kenya is anchored in both national laws and international obligations. This framework provides the legal basis for the introduction, enforcement, and monitoring of graphic health warnings as part of broader tobacco control efforts aimed at protecting public health.

#### 4.1 NATIONAL LEGAL FRAMEWORK

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##### **a) The Constitution of Kenya (2010)**

The Constitution of Kenya provides the supreme legal foundation for tobacco control measures, including the use of graphic health warnings. Article 43(1)(a) guarantees every person the right to the highest attainable standard of health, including the right to health-related information. Additionally, Article 46 recognizes consumer rights, mandating that consumers be provided with accurate and clear information regarding products that may be harmful to their health. These constitutional provisions justify the use of graphic images on tobacco packaging to inform consumers about the dangers of tobacco use.

##### **b) Public Health Act (Cap. 242)**

The Public Health Act grants the government the authority to take necessary actions to prevent diseases and protect the public. This is the enabling law under which the Rules are made. Section 36(m) of this Act empowers the Cabinet

Secretary for Health to make regulations for the prevention and suppression of public health nuisances, including tobacco use.

### **c) The Tobacco Control Act, Cap. 245A**

The Tobacco Control Act, Cap. 245A is the principal law governing tobacco control in Kenya. The Act provides provisions for tobacco product regulation, including restrictions on advertising, packaging, and promotion. The 2026 Rules reinforce and complement these provisions specifically for waterpipe tobacco.

The rules are also aligned with the following policy instruments:

- **Kenya Health Policy 2014–2030:** Provides a framework for strengthening health systems and addressing risk factors for non-communicable diseases (NCDs), including tobacco use.
- **National Tobacco Control Action Plan (NTCAP):** Operationalizes the implementation of the Tobacco Control Act, including measures to reduce tobacco consumption through education, cessation support, and enforcement of tobacco-free environments.
- **National Strategy for the Prevention and Control of NCDs 2021–2025:** Identifies tobacco use as a key modifiable risk factor and outlines strategic interventions to reduce its prevalence, including legislative and regulatory controls.

## **4.2 INTERNATIONAL POLICY FRAMEWORK**

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### **4.2.1 THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL (WHO FCTC)**

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Kenya is a signatory to the WHO Framework Convention on Tobacco Control, a global treaty aimed at reducing tobacco use and its harmful effects. In Africa, 44 countries have ratified or acceded to the Framework, with implementation being the biggest focus for these nations.

WHO Framework Convention on Tobacco Control (FCTC) obligates member states to implement effective measures to restrict tobacco use, including bans on flavored tobacco, promotion, and misleading information. To most countries, prevention is the most cost-effective measure, with comprehensive monitoring vital to helping governments and civil society allocate resources where they are most needed and will be most effective.

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#### 4.2.2 SUSTAINABLE DEVELOPMENT GOALS (SDGS)

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Tobacco control is linked to the United Nations Sustainable Development Goals (SDGs), particularly, SDG 3 (Good Health and Well-being). Reducing tobacco use contributes to the prevention of non-communicable diseases (NCDs) and promotes overall public health.

Kenya's efforts to ban water pipe smoking align with these global development goals, demonstrating its commitment to improving health outcomes and reducing the burden of tobacco-related diseases.

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#### 4.2.3 THE AFRICAN TOBACCO CONTROL FRAMEWORK

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At the regional level, Kenya is a participant in the African Tobacco Control Framework, which encourages the adoption of stringent tobacco control policies across the continent. The Framework has been adapted to address specific challenges on the continent such as rising tobacco use among youth and women, economic impacts, and tobacco industry tactics.

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### 4.3 ENFORCEMENT AND COMPLIANCE MECHANISMS

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The implementation of the Public Health (Control of Waterpipe Tobacco Products) Rules 2026 will be guided by the existing legal, policy and institutional framework. Effective implementation will require strategic coordination across multiple institutions spanning national and county governance levels.

The Rules require coordinated action across multiple government agencies, including health authorities, law enforcement, customs officials, and local government units. Successful implementation depends on public awareness campaigns, robust enforcement mechanisms, and sustained commitment to tobacco control objectives at all levels of government.

- i. **Ministry of Health (MoH):** The Ministry serves as the central coordinating body, providing strategic policy direction and technical oversight. Key responsibilities include developing public awareness campaigns, issuing technical guidance on tobacco control measures, and establishing robust monitoring and evaluation systems to track implementation progress across all levels of government.
- ii. **National Government Administration Officers (NGAOs):** NGAOs function as critical enforcement agents at the grassroots level, bridging national policy with local implementation. They conduct regular compliance assessments, identify non-compliant premises, and monitor illegal trade activities within their jurisdictions, ensuring comprehensive coverage in both urban and rural areas.
- iii. **County Health Departments:** County departments will lead localized enforcement initiatives while maintaining close collaboration with municipal health officers. These departments possess administrative powers to impose sanctions against violators, including the authority to temporarily or permanently close non-compliant establishments. They also spearhead community-based education programs tailored to local contexts and cultural considerations.
- iv. **National Police Service and Law Enforcement Agencies:** Law enforcement agencies will provide essential support for regulatory enforcement through coordinated inspections, targeted raids on suspected illegal operations, and arrests of individuals violating the Rules. Their role proves particularly crucial in addressing cross-border smuggling and unauthorized importation activities.

- v. **Kenya Revenue Authority (KRA) and Kenya Ports Authority (KPA):** These agencies form the first line of defense against illegal waterpipe tobacco products entering the country. Through border control mechanisms and comprehensive customs inspection procedures, they monitor and restrict unauthorized imports while ensuring compliance with international trade regulations.
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## **CHAPTER 5**

### **OVERVIEW OF THE PROPOSED PUBLIC HEALTH (CONTROL OF WATERPIPE TOBACCO PRODUCTS) RULES, 2026**

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The Public Health (Control of Waterpipe Tobacco Products) Rules, 2026 are subsidiary legislation enacted under Section 36(m) of the Public Health Act (Cap. 242) by the Cabinet Secretary responsible for health matters. These Rules replace the previous Public Health (Control of Shisha Smoking) Rules, 2017, demonstrating Kenya's evolving approach to tobacco control and public health protection.

#### **5.1 PROPOSED RULES**

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The Rules establish a comprehensive prohibition framework designed to eliminate the importation, manufacture, supply, sale, and consumption of waterpipe tobacco products in Kenya. This represents a complete reflection of the government's determination to address public health concerns associated with these products.

The Rules define "waterpipe tobacco product" as any tobacco product, whether flavored or non-flavored, consumed through single or multi-stemmed water pipe delivery systems. These products pass smoke through water or other liquids before reaching the user and typically contain tobacco syrup mixed with molasses, honey, vegetable glycerol, and fruit flavors. This definition encompasses what is commonly known as shisha, hookah, or narghile products.

The Rules establish absolute prohibitions on all commercial aspects of waterpipe tobacco products, including:

- Importation into Kenya
- Local manufacture or production
- Sale, distribution, or supply
- Advertisement and promotion activities
- Prominent display with intent to sell.

Individual consumption is prohibited, with the Rules targeting:

- Personal inhalation or use of waterpipe tobacco products,
- Presence in premises where such products are used,
- Prohibiting premises to be used for waterpipe tobacco consumption, particularly in public buildings, trade premises, parking lots, and public parks.

Further, the rules prohibit publishing or disseminating information that promotes waterpipe tobacco products, especially content designed to influence consumers through perceived reduced health risks.

## **5.2 ENFORCEMENT FRAMEWORK**

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Implementation responsibility is shared between the National and County Governments as respective health authorities under the Public Health Act. Health officers are empowered to exercise all powers conferred by the Parent Act, ensuring comprehensive enforcement capabilities at both national and local levels.

## **5.3 PENALTIES AND SANCTIONS**

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Violations of the Rules carry significant consequences, with convicted offenders facing:

- Fines up to one million Kenyan shillings
- Imprisonment for up to six months
- Both fine and imprisonment are at the court's discretion

#### **5.4 LEGAL TRANSITION**

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The Rules formally revoke the Public Health (Control of Shisha Smoking) Rules, 2017 (L.N.292/2017), establishing an updated legal framework that addresses gaps in the previous legislation and strengthens enforcement mechanisms.

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## CHAPTER 6

# THE COST-BENEFIT ANALYSIS FOR THE PROPOSED THE PUBLIC HEALTH (CONTROL OF WATERPIPE TOBACCO PRODUCTS) RULES, 2026

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### 6.1 INTRODUCTION

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This section seeks to assess the changes proposed by the regulations in terms of their costs and benefits to justify the proposals pursuant to Section 7(d) of the Statutory Instruments Act.

This analysis examines the costs of implementation against projected benefits, demonstrating that the long-term economic and health gains outweigh the initial implementation costs and potential revenue losses.

### 6.2 COSTS ON THE PROPOSED PUBLIC HEALTH (CONTROL OF WATERPIPE TOBACCO PRODUCTS) RULES, 2026

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The implementation of the proposed Public Health (Control of Waterpipe Tobacco Products) Rules, 2026, will involve substantial financial and administrative investment by the government across several sectors.

A key area of expenditure is the establishment of enforcement infrastructure, which will include the creation and operationalization of monitoring and inspection units within public health departments, customs agencies, and law enforcement bodies.

In addition, training and capacity-building programs will be required to equip public health officers, customs officials, police personnel, and county-level administrators with the necessary skills to enforce the Rules effectively. The

government will also need to invest in public awareness and education campaigns.

Legal costs are also anticipated, particularly in the form of expenses arising from litigation and enforcement actions against non-compliant businesses or individuals during the transition period.

Beyond administrative costs, the Rules will generate economic transition costs linked to the restructuring or closure of businesses currently engaged in the importation, manufacture, sale, or distribution of waterpipe tobacco products.

To prevent the illegal importation and smuggling of waterpipe products following the implementation of the ban, the government will need to strengthen its border control capacity. This will involve investment in enhanced surveillance technology, infrastructure upgrades at key border points, and coordination mechanisms.

### **6.3 POTENTIAL RISKS AND MITIGATION**

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Key risks include enforcement complexity, the emergence of illegal markets, and initial public and business resistance. Effective collaboration is needed among national and county governments, customs, law enforcement, and health agencies. Inconsistent capacity and priorities across jurisdictions may hinder uniform enforcement.

The emergence of illegal markets, as restrictions on legal waterpipe products could drive demand underground. This includes illicit importation, clandestine manufacturing, and unregulated consumption venues, undermining public health goals and increasing enforcement burdens.

There is likely to be compliance resistance from both businesses and consumers during the early stages, as retailers face financial losses and consumers seek alternatives. In some communities, waterpipe smoking is a cultural or social activity, adding to the complexity in regulating it. Conversely, users may switch

to other tobacco or intoxicating substances, or simply switch shisha use to private settings, making exposure and enforcement less visible but still harmful.

To mitigate these risks, the government should:

- Implement the Rules gradually (e.g., starting with urban centers or targeting manufacturing/importation first).
- Introduce alternative livelihood programs for affected businesses (e.g., microfinance, retraining, and business support).
- Pursue international cooperation for cross-border enforcement to prevent smuggling, share intelligence, and coordinate customs efforts.

## **6.4 CONCLUSION**

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The cost-benefit analysis strongly supports the implementation of the Public Health (Control of Waterpipe Tobacco Products) Rules, 2026. The substantial long-term health and economic benefits significantly outweigh implementation costs and short-term economic disruptions. The policy represents sound public investment with measurable returns in public health protection, healthcare system sustainability, and overall economic productivity.

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## CHAPTER 7

### SOCIAL ECONOMIC IMPACTS

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The implementation of the proposed Rules will have both short-term and long-term socio-economic impacts. These impacts can be grouped into short-term transitional impacts and long-term effects.

#### 7.1 TRANSITIONAL SOCIO-ECONOMIC IMPACTS (SHORT-TERM)

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a) **Business Disruption and Job Losses**

The immediate effect of the ban will be the closure or restructuring of businesses engaged in the importation, manufacture, sale, and service of waterpipe tobacco products. This includes shisha lounges, cafes, kiosks, and retailers. As a result, workers in these sectors—particularly youths and informal sector employees—may face temporary unemployment and income loss.

b) **Reduced Income for Small Entrepreneurs**

Small-scale vendors who rely on waterpipe-related sales may suffer income disruption, especially in urban and peri-urban areas where shisha use is more widespread.

c) **Increased Demand for Social Support**

Displaced workers may require government support in the form of retraining, job placement, and social protection programs. Without timely intervention, vulnerable populations could experience increased economic hardship.

d) **Cultural Resistance and Social Tensions**

In some communities, especially among urban youth, waterpipe smoking is considered a social or recreational activity. Enforcement of the Rules may generate resistance or social tension, particularly if alternative recreational or economic options are not offered.

## **7.2 TRANSFORMATIONAL SOCIO-ECONOMIC IMPACTS (LONG-TERM)**

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a) **Improved Public Health and Productivity**

The reduction in waterpipe tobacco consumption will lower the prevalence of tobacco-related illnesses such as cancer, cardiovascular, and respiratory diseases. This will lead to healthier populations, increased productivity, and fewer days lost to illness.

b) **Lower Healthcare Costs**

With fewer tobacco-related diseases, the burden on public and private healthcare systems will decrease, leading to substantial cost savings for both the government and households. These resources can be redirected toward other social development priorities.

c) **Longer Working Life and Enhanced Economic Output**

Improvements in health and life expectancy will allow individuals to remain economically active for longer, enhancing national productivity and economic resilience.

d) **Opportunities for Economic Diversification**

Entrepreneurs displaced by the ban can be supported to transition into alternative, legal, and more sustainable ventures. This shift can stimulate

innovation and diversification in local economies, particularly in urban informal sectors.

e) **Strengthened Regulatory Environment**

Successful implementation will reinforce the rule of law and set a precedent for future public health-oriented policies. It may also improve Kenya’s global standing in tobacco control and public health governance.

### 7.3 IMPACT ANALYSIS OF THE OPTIONS

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*Matrix of impact of options on key sectors*

<b>Impact on Sectors</b>	<b>Option 1: Maintain Status Quo</b>	<b>Option 2: Administrative Measures Only</b>	<b>Option 3: Full Implementation of the Public Health (Control of Waterpipe Tobacco Products) Rules, 2026</b>
<b>Public Health</b>	Continued exposure to waterpipe tobacco risks rising rates of tobacco-related illnesses.	Limited improvement: minor reduction in public exposure, but health risks remain prevalent.	Significant improvement in population health; reduced incidence of respiratory, cardiovascular, and cancer-related diseases.
<b>Healthcare System</b>	High burden of preventable tobacco-related diseases.	Slight reduction in healthcare costs, but long-term burden remains.	Reduced strain on healthcare resources; cost savings redirected to other health priorities.
<b>Law Enforcement</b>	No additional burden,	Increased monitoring efforts	Higher administrative burden initially but

Impact on Sectors	Option 1: Maintain Status Quo	Option 2: Administrative Measures Only	Option 3: Full Implementation of the Public Health (Control of Waterpipe Tobacco Products) Rules, 2026
<b>and Administration</b>	continued challenges controlling or unrestricted business operations;	but in effectiveness illegal to a lack of harmful enforceable regulations.	limited improved regulatory control and coordination of mechanisms over time.
<b>Business Sector (Retail &amp; Hospitality)</b>	continued revenue self-regulate from waterpipe minimally. services.	Minor adjustments; businesses may self-regulate minimally.	Business model disruption for shisha lounges and vendors; short-term economic losses, but potential for transition to legal sectors.
<b>Employment (Shisha-Related Jobs)</b>	Sustained employment in the waterpipe tobacco trade despite health risks.	Minor disruption with voluntary adjustments.	Short-term job losses; potential for re-employment through retraining and alternative livelihood programs.
<b>Environment</b>	Continued air pollution and charcoal/tobacco waste in urban conditions.	Slight improvement in environmental conditions.	Significant improvement in indoor air quality and reduced environmental degradation from charcoal and tobacco waste.

<b>Impact on Sectors</b>	<b>Option 1: Maintain Status Quo</b>	<b>Option 2: Administrative Measures Only</b>	<b>Option 3: Full Implementation of the Public Health (Control of Waterpipe Tobacco Products) Rules, 2026</b>
<b>Economic Productivity</b>	Long-term loss due to reduced life expectancy and illness-related productivity decline.	Modest gains if administrative measures are effective.	Long-term gains from improved health, reduced absenteeism, and extended working life.
<b>Government Revenue</b>	Continued collection of waterpipe tax is offset by healthcare costs.	Minor reduction in tax revenue; waterpipe products meaningful by economic benefit.	Loss of tax revenue from tobacco is offset by healthcare savings and increased productivity.

## 7.4 CONCLUSION

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While the implementation of the Rules may lead to short-term socio-economic disruption, particularly among informal businesses and low-income earners, the long-term impacts are positive. Improved public health, enhanced workforce productivity, reduced healthcare spending, and economic diversification offer significant gains for individuals and the nation as a whole. Effective mitigation measures, such as increasing employment programs for youth for alternative livelihood will be key to maximizing these benefits and minimizing social resistance.

## CHAPTER 8

### CONSIDERATION OF ALTERNATIVES FOR THE PROPOSED PUBLIC HEALTH (CONTROL OF WATERPIPE TOBACCO PRODUCTS) RULES, 2026

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The Statutory Instruments Act requires a regulator to carry out an informed evaluation of a variety of regulatory and non-regulatory policy measures by considering relevant issues such as costs, benefits, distributional effects and administrative requirements. Regulations or rules should be the last resort in realising policy objectives.

In assessing the most appropriate policy approach to address the growing public health concerns associated with waterpipe tobacco use in Kenya, three options were considered: maintaining the status quo, adopting administrative measures only, and implementing the proposed Public Health (Control of Waterpipe Tobacco Products) Rules, 2026.

#### 8.2 OPTION ONE: MAINTENANCE OF THE STATUS QUO

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Under this option, no new regulatory or enforcement measures will be introduced by the government, and current practices around the sale and use of waterpipe tobacco products will continue unaltered. While this approach places no additional administrative burden on government institutions and allows businesses involved in the waterpipe trade to operate freely, it poses significant risks to public health. Continued exposure to harmful waterpipe smoke would exacerbate the burden of tobacco-related illnesses such as respiratory diseases, cardiovascular conditions, and various cancers.

Furthermore, the normalization of shisha use among youth, particularly in urban areas, would remain unchecked, increasing long-term health and social costs. Although the government would retain some tax revenue from the sale of

these products, this would be outweighed by the escalating healthcare expenditures and economic losses related to decreased productivity and premature mortality.

### **8.3 OPTION TWO: ADMINISTRATIVE MEASURES**

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This option involves introducing soft administrative interventions such as awareness campaigns, voluntary guidelines for businesses, and limited surveillance without legally enforceable regulations. While this approach signals government concern over waterpipe tobacco use, its impact would be marginal.

Public health benefits would be limited, as businesses and users would face no legal compulsion to change their behaviour. Administrative costs may increase due to public sensitization efforts and partial enforcement, but without a clear legal framework, the effectiveness of such measures would be constrained. Additionally, without formal restrictions, enforcement agencies would lack the mandate to act against non-compliance, resulting in a continuation of harmful practices. While less disruptive economically in the short term, this option fails to produce the transformative changes required to safeguard public health.

### **8.4 OPTION THREE: IMPLEMENTATION OF THE PUBLIC HEALTH (CONTROL OF WATERPIPE TOBACCO PRODUCTS) RULES, 2026**

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This option involves full implementation of the proposed rules to prohibit the importation, manufacture, sale, distribution, and public use of waterpipe tobacco products. Although it presents the highest initial administrative and economic costs, the long-term benefits are substantial.

Implementation and targeted support programs for affected stakeholders.

### **8.5 PREFERRED OPTION**

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The third option, full implementation of the proposed Rules, offers the most comprehensive, sustainable, and impactful solution, aligning with Kenya’s public health objectives and international commitments under the WHO Framework Convention on Tobacco Control (FCTC). With proper planning, mitigation strategies, and stakeholder engagement, the benefits of implementation will far outweigh the costs.

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## CHAPTER 9

### PUBLIC PARTICIPATION AND CONSULTATION

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#### 9.1 LEGAL REQUIREMENTS RELATING TO PUBLIC PARTICIPATION AND CONSULTATION

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It is a constitutional requirement to conduct public participation whenever a state or public officer enacts any law or makes or implements a public policy. This requirement is based on Article 1 of the Constitution on the sovereignty principle, which vests all sovereign power in the people of Kenya. This power entitles the people access to the process of making public decisions through their involvement. Public participation ought to be inclusive, transparent and accountable.

Article 174 gives powers of self-governance to the people and enhances their participation in the exercise of the powers of the State and in making decisions affecting them and recognize the rights of communities to manage their affairs and to further their development.

The values and principles of public service require the involvement of the people in the process of policy making through the provision of timely and accurate information to the public.

The Statutory Instruments Act obligates a regulation-making authority to conduct appropriate consultations before making statutory instruments (Regulations) where the proposed regulations are likely to have a direct or a substantial indirect effect on business or restrict competition. It further provides that in determining whether any consultation that was undertaken is appropriate, the regulation-making authority shall have regard to all relevant matters, including the extent to which the consultation:

- (a) drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and
- (b) ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

The Statutory Instruments Act also states that the persons to be consulted should be notified either directly or by advertisement through representative organizations. They shall also be invited to make submissions by a specified date, which should not be less than 14 days or be invited to participate in public hearings concerning the proposed instrument.

## **9.2 INITIAL PARTICIPATION OF THE STAKEHOLDERS**

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According to Section 5 of the Statutory Instruments Act, Cap. 2A, the Board, in consultation with the Ministry of Health, will identify specific stakeholders whom it has engaged in a consultative process.

The consultation process involved engaging various stakeholders through public forums, expert discussions, and industry feedback sessions. Health advocacy groups and consumer rights organizations strongly supported the introduction of more graphic and larger warnings.

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## CHAPTER 10

### COMPLIANCE AND IMPLEMENTATION

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#### 10.1 INSTITUTIONS

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It is the duty of the regulatory making authority to assess the adequacy of the institutional framework and other incentives through which the regulations will take effect and design responsive implementation strategies that make the best use of them<sup>16</sup>.

The implementation and enforcement of the Rules will be undertaken through the existing institutional framework at the national level (the Tobacco Control Board in consultation with the Cabinet Secretary responsible for matters relating to Public Health) and the County level (County Governments through the responsible County Executive Committee Member).

#### 10.2 CONCLUSION

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The proposed Public Health (Control of Waterpipe Tobacco Products) Rules, 2026, represent a timely and necessary intervention to address the escalating public health, social, and environmental risks associated with waterpipe tobacco use in Kenya.

The full implementation of the proposed Rules presents a high-impact, evidence-based approach that will substantially reduce the prevalence of waterpipe

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<sup>16</sup> Source: OECD (1995), the 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation, Paris.

tobacco use, prevent future health complications, and strengthen Kenya's alignment with global tobacco control commitments, including the WHO Framework Convention on Tobacco Control (FCTC).

### **10.3 RECOMMENDATION**

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Given the above conclusion, it is recommended that the proposed Public Health (Control of Waterpipe Tobacco Products) Rules, 2026, be approved.