

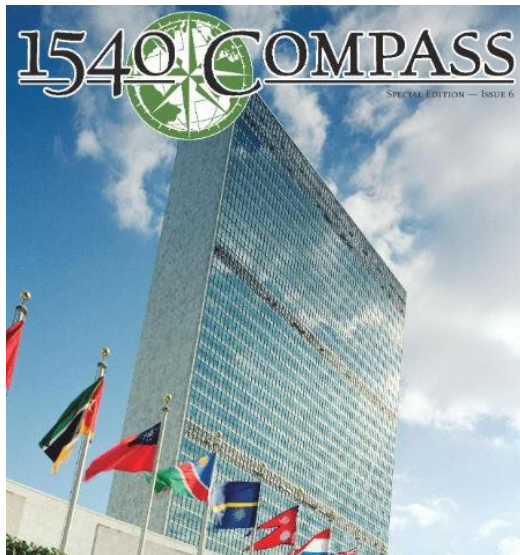
THE STRATEGIC GOODS CONTROL BILL 2024 REPORT

The Country is in the process adopting the Strategic Goods Control Bill, 2024, which seeks to strengthen Kenya's trade control regime through the control of export, import, re-export, transit and trans-shipment of strategic goods, technology and related services to prevent mishandling and further misuse in non-peaceful uses. The proposed SGC Bill, 2024, is aimed at facilitating trade controls over dual-use goods, stimulate socio-economic development, promote public safety and domesticate the United Nations Security Council Resolution (UNSCR) 1540. The UNSCR 1540, established under Chapter 7 of the UN Charter, obligates member states to prevent non-state actors from acquiring strategic goods, technology and related services for development of Weapons of Mass Destruction (WMD) or their means of delivery.

Strategic goods are dual-use goods, conventional arms, technology and software that can be used for both civilian and military applications, and/or contribute to the proliferation of weapons of mass destruction.

In view of the aforementioned, the Strategic Trade Control (STC) Committee, is undertaking stakeholder engagements, aimed at enlightening the participants on aspects of the SGC Bill, 2024, and its relevance in advancing Kenya's National Interest.

¹On 28 April 2004, United Nations Security Council Resolution 1540 (2004) was unanimously adopted under Chapter 7 of the UN Charter, making it a mandatory obligation for all member states to implement. Years later, this remains to be a key pillar for international order in preventing the proliferation of Weapons of Mass Destruction (WMD), and their means of delivery. How can the Kenya successfully strengthen existing governance frameworks to promote trade and development while providing for the implementation and enforcement of the UNSCR 1540?



As Kenya seeks to grow its financial prudence and improve quality of life through trade and development, so does the risk of increased proliferation, under the pretext of advanced globalization of economies. This creates a complex scenario for policymakers on whether and how to regulate the thriving sectors without further complicating processes through the deployed detections efforts.² To this effect, the Government has a role in balancing National Interests when maintaining viable economic postures, fostering geo-political diplomatic during connotations and safeguarding National Security controlling trade in strategic goods (dual use goods, technology and related services).

¹ <https://unrcpd.org/wp-content/uploads/2014/05/Implementation-In-the-Asia-Pacific-merged.pdf>.

https://www.unodc.org/unodc/en/terrorism/latest-news/issi_1540-compass-review.html. UNODC. Accessed May 11, 2023.

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² Russell, James A., and James J. Wirtz. *Globalization and WMD Proliferation: Terrorism, Transnational Networks and International Security*. Routledge, 2009.

Benefits of Adopting the SGC Bill

Taking cognizance of Kenya's geo-strategic position as a trade, transportation, technology and financial hub, it is envisaged that the passage and adoption of the SGC Bill will:

- i. **Foster economic growth in trade and commerce:** Establishing a framework for strategic trade control compliance within, will open up the Country to global economic hubs that are otherwise hesitant to engage due to regulation violations.
- ii. **Access to emerging converging technologies and innovation:** Increasing access to strategic goods, technology and related services required for the civil application of science, technology and innovation to advance the Country's Sustainable Development Goals (SDG).
- iii. **Strengthen border security controls:** Increasing Kenya's ability to control its borders and regulate trade flows considering the country faces a challenge of being an attractive target for smuggling and proliferation networks seeking to circumvent existing trade restrictions.
- iv. **Promote Peace and Security:** The end-use and end-user controls (catch-all controls) will help in limiting access to dual-use goods by non-state actors (terrorist, organized crime, proliferation networks), thus contribute to National, Regional and International stability and support of non-proliferation efforts.
- v. **Increase Kenya's Regional Standing:** It will establish the country as a leader in Strategic Trade Control (STC) on the continent, joining South Africa and Morocco as the only African countries with a strategic trade control laws.

Relevance of the SGC Bill

In line with the UNSCR 1540 provisions, Kenya qualifies as a key priority state for the implementation of the binding obligation on the following basis of relevance:

- i. **Regional transportation and financial hub** – Kenya is depended upon by countries in the region for vital trade routes, handling an average exceeding 1,000,000 Twenty-foot Equivalent Units (TEU) of container throughput, annually. Additionally, the presence of porous borders presents a perfect entry point for smugglers of illicit goods or diversion by organized crime networks. This increases the proliferation paths for the WMD related capability from within and without.

Image source:
<https://www.kwatos.kpa.co.ke> © 2008 TSB.CO., LTD..





Image source
<https://www.standardmedia.co.ke/testbed/business/health-science/article/2001459905/kemri-seeks-who-approval-of-new-malaria-testing-kit>

ii. **Point of Origin or Destination for dual-use goods** – The civil application of Science, Technology and Innovation (STI) to achieve Sustainable Development Goals (SDG), creates necessity to regulate handling of Chemical, Biological, Radiological and Nuclear (CBRN) materials, technology and related services within Kenya.

iii. **Regional Conflict and Terrorism risks** – the militant/ terrorist groups within the region could exploit weak regulatory gaps and legitimate trade e structures to acquire or develop WMD and their means of delivery.



Dr Mohamed Ali who has been jailed for 12 years for being a member of the ISIS terrorist. Richard Munguti | Nation Media Group

IN 2016 KENYA POLICE FOILED AN ANTHRAX ATTACK BY ISIS AFFILIATED GROUP

- Mohamed Abdu Ali (Dr.) was arrested in 2016 at Wote District Hospital and further sentenced to 12 years for being a member of a terrorist group.
- He was convicted of being a leader of the Islamic State (ISIS) terrorist group and of planning to carry out a terrorist attack in Kenya using a biologically produced anthrax bacteria.

Source: Richard Munguti, Court Reporter, Nation Media Group

KENYAN TRADER ‘SHIPS ARMS TO AL SHABAAB’

May 2023, A Kenyan businessman bought military equipment from CHINA on behalf of Al Shabaab (Daily Nation).

- 5 high specification JS crop drones
- Military grade equipment: communication, spyware, rolls of material for making military uniforms, tents and others
- Portable solar panels

Image source: Somali National Television (SNTV)



A police vehicle that was hit by an IED on June 20, 2023

USE OF IMPROVISED EXPLOSIVE DEVICES (IED) TO SPREAD TERRORIST ACTIVITIES WITHIN KENYA

In the past, Al-shabaab militants have applied use of dual-use strategic goods to develop IEDs, which have resulted in human fatalities and destruction of property within different areas of the northern frontier and coast region.

Image source: <https://www.the-star.co.ke/news/realtime/2023-06-21-three-killed-in-ied-attack-in-mandera/>

Summary of the SGC Bill, 2024

Contents of the SGC, Bill 2024



PART I

- Outlines title, function and interpretation of text in the context of the law,
- Defines the **National Control List** which specifies the strategic goods that are subject to the provisions of this Act; and
- Provides that the NCL be in conformity with the **international and regional commitments of Kenya**

PART II

- Establishes the Strategic Goods Control Committee, and membership
- Sets out the functions of the Committee:
 - **oversight** in the control of trade in strategic goods and related services;
 - **develop standards and procedures** for the effective implementation of the Act
 - **formulate and review** of the National Control List etc.
- Establishes leadership for the Secretariat (technical team) responsible for the day to day management of the Secretariat; Record keeping, correspondence, communicate with clients, and any other support required by the SGC committee.

Part III

- Sets out the procedures related to **registration and licensing** and provides for **end use controls** for the strategic goods as stipulated on the National Control List.

PART IV

- Provides for **enforcement** measures and sets out the **offences** which include fraudulent misrepresentation, obstruction of the Committee or its representatives, forgery of registration, licence or any other document issued under the Act.

PART V

- Contains miscellaneous provisions that provide for the general penalty, confidentiality, voluntary disclosure and the power of the Cabinet Secretary to make regulations.

Part VI

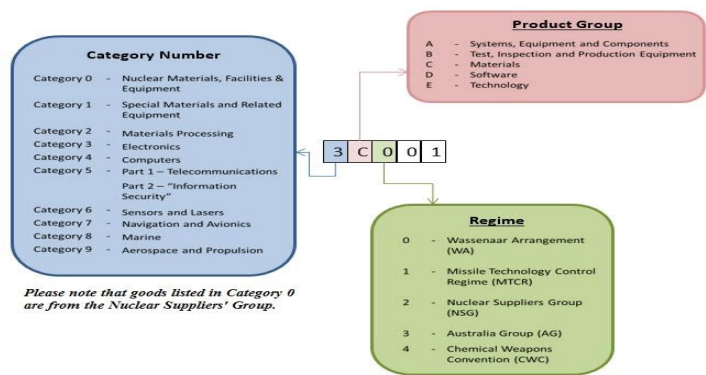
- Contains consequential amendments to the Fire Arms Act (Cap 114), the Pharmacy and Poisons Act (Cap 244) the Fertilizer and Animal Foodstuffs Act (Cap 345) and the Pest Control Products Act (Cap 346), The Explosives Act (Cap 115), The Mining Act (306), Nuclear Regulatory Act (Cap 243)

The National Control List (NCL)

The NCL specifies the strategic goods, technology (tangible and intangible) that are subject to control under the SGC Bill.

It includes:

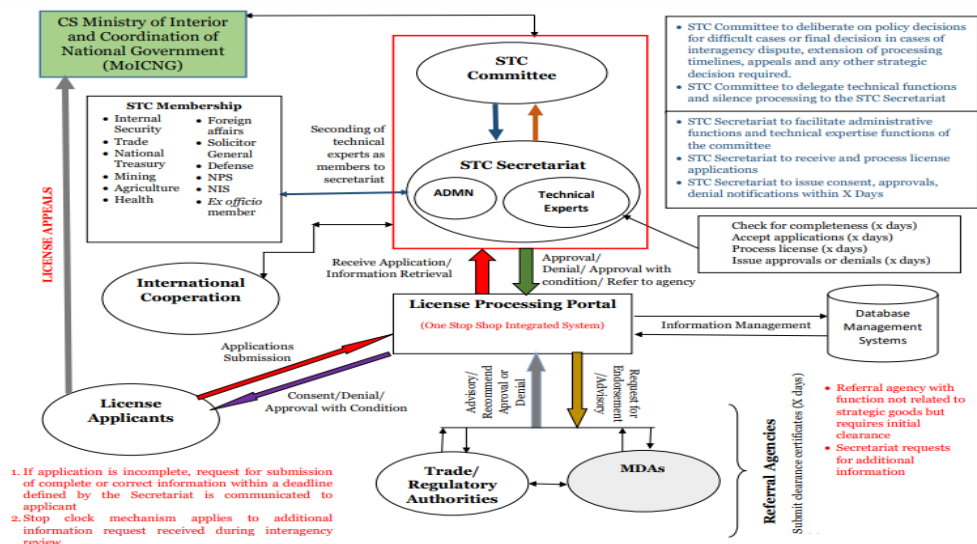
- Part A: **Military List**
- Part B: **Dual Use List**



The SGC Bill, 2024 Licensing Framework

The SGC Licensing Framework is designed to capitalize on existing structures to prevent disruption of administrative bureaucratic process as well as creation of obstruction in existing trade flows. Focus areas covered is the law if enacted will include but not limited to:

- Introduction of catch-all to monitor the end use and end user controls in the context of strategic goods, technologies and related services
- Enhance capacity building through the implementation of the Strategic Trade Control (STC) Curriculum developed and implemented by the Kenya School of Revenue Administration (KESRA), which is World Custom Organization (WCO) accredited. This will promote awareness and increase industry outreach efforts among entities and persons in the sector.
- Establish an interagency committee to provide technical expertise and capacity in license processing to improve on delivery timelines.
- Enhance information sharing and access by authorized persons through the existing government single window portal.



Kenya's Binding Obligations

In addition to other obligation, key areas of focus in implementation of the proposed law include:

	EAST AFRICA FREE TRADE	AFRITRADE	UNSCR 1540
Region/ Scope	East Africa	Africa	Global
Implementing Body	East Africa Community(EAC) Secretariat	Africa Union (AU),and subsequent Regional Economic Communities (RECs).	United National Security Council Resolution 1540 Committee
Mandate	Enhance regional economic integration and trade through free movement of goods and services		Chapter 7 UN Charter; Prevent the spread of WMDs by establishing global control measures
Focus	Trade liberalization through regional policies to promote free movement of goods and services and economic integration		Non-proliferation and security

Similar Approaches by Other Countries

	SOUTH AFRICA	PHILLIPINES
Law	Regulations of the Control of the Export of Certain Goods and Technologies Act, 2007	Strategic Trade Management Act (STMA) or Republic Act No. 10697
Lead Agency	National Conventional Arms Control Committee (NCACC)	Strategic Trade Management Office (STMO), National Security Council (NSC)
Ministry	Department of Defence and Military Veterans	Department of National Defense (DND)
Regional Body	Southern African Development Community (SADC)	Association of Southeast Asian Nations (ASEAN)
Member Countries	Angola, Botswana, Comoros, DR Congo, Eswatini, Lesotho, Madagascar, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia, Zimbabwe	Philippines, Singapore, Myanmar, Thailand, Vietnam, Malaysia, Lao PDR, Indonesia, Cambodia, Brunei Darussalam, Timor-Leste
Role of Regional Bodies in STC	<ul style="list-style-type: none"> •Regional cooperation •Capacity building / Technical assistance •Policy Frameworks 	<ul style="list-style-type: none"> •Information Sharing (Intelligence exchange) •Collaboration with International Bodies

Conclusion

The adoption of the SGC Bill in Kenya is likely to foster socio-economic growth by increasing the confidence of the Country's trading partners, foreign investors and domestic industry. Additionally, it will provide an avenue to mitigate challenges of being an attractive target for smuggling and proliferation networks, which seek to circumvent existing trade restrictions.