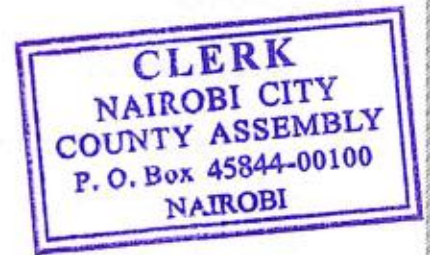


Report laid on 11th March 2014

by chairperson Sectoral Committee
on Culture & Community Services

REPUBLIC OF KENYA

COUNTY GOVERNMENT OF NAIROBI CITY



NAIROBI CITY COUNTY ASSEMBLY

FIRST ASSEMBLY – SECOND SESSION

REPORT OF THE
SECTORAL COMMITTEE ON CULTURE AND COMMUNITY SERVICES ON THE
CONSIDERATION OF THE NAIROBI CITY COUNTY ALCOHOLIC DRINKS CONTROL
AND LICENSING BILL, 2014.

CLERK'S CHAMBERS
NAIROBI CITY COUNTY ASSEMBLY
CITY HALL BUILDINGS
NAIROBI

MARCH, 2014

PREFACE

Mr. Speaker, Sir,

The Sectoral Committee on Culture and Community Services is constituted pursuant to the provisions of Standing Order No. 191 of the Nairobi County Assembly and has executed its mandate in accordance with the provisions of the said Standing Order 191(5), which mandates the Committee to, inter alia;

- (i) study and review all County legislation referred to it;*
- (ii) make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.*

Mr. Speaker, Sir,

The Committee, according to Schedule II of the Standing Orders, examines the following subjects:

- i. All matters related to;
 - a. cultural activities and facilities and County parks, beaches and recreation facilities,
 - b. public entertainment and public amenities including betting, casinos and other forms of gambling, racing, liquor licensing, cinemas, video shows and hiring, libraries, museums
 - c. firefighting services and disaster management
 - d. control of drugs and pornography
 - e. Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in Governance at the local level.

Mr. Speaker, Sir,

The following are the Members of the Committee:

1. Hon. Ronald Milare, MCA - (Chairman)
2. Hon. Oscar Lore, MCA - (Vice-Chairman)
3. Hon. Kennedy Ng'ondi, MCA
4. Hon. Martin Kinyanjui, MCA
5. Hon. Andrew Macharia, MCA
6. Hon. Asha Abdi Sosso, MCA
7. Hon. Nancy Luchiri, MCA
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9. Hon. Tabitha Ndigirigi, MCA
10. Hon. Paul Kiguathi Kados, MCA
11. Hon. David Mberia, MCA
12. Hon. Janet Kimondo, MCA
13. Hon. Jackson Kiama, MCA
14. Hon. Janet Wala, MCA
15. Hon. Bernadette Ng'ang'a, MCA
16. Hon. Joash Omwenga, MCA
17. Hon. Nancy Mwaura, MCA

Mr. Speaker, Sir,

The Alcoholic Drinks Control and Licensing Bill, 2014, underwent the First Reading on Tuesday, 28th January, 2014 and was effectively committed to the Committee on Culture and Community Services, as provided for under Standing order 121(1).

Pursuant to Article 196(b) of the Constitution and Standing Order 121(3) which require public participation and involvement in the legislative and other business of the County Assembly and its Committees, a notification was placed in the mainstream print media on 03rd February, 2014, informing the public that the Committee was considering amendments to the Nairobi City County Alcoholic

Drinks Control and Licensing Bill, 2014, and inviting them to submit any representations they might have on the proposed amendments.

Mr. Speaker, Sir,

The Committee held a total of ten meetings and a retreat to consider final amendments to the Bill. A number of meetings were held with stakeholders from the County Executive during the scrutiny of the Bill. Specifically, the Department of Trade, Industrialization, Cooperative Development, Tourism & Wildlife met twice with the Committee on the proposed amendments to the Bills.

The Committee also received written memoranda from the following:-

1. National Authority for Campaign Against Alcohol and Drug Abuse (NACADA)
2. Pubs and Restaurants Association of Kenya (PERAK)
3. East African Breweries Ltd (EABL)

— **Consideration of Memoranda on the Nairobi City County Alcoholic Drinks Control and Licensing Bill, 2014**

On the memorandum by the National Authority for Campaign Against Alcohol and Drug Abuse (NACADA), the Committee noted that the organization raised several key issues that warranted further consideration. Several proposed amendments to the Bill by the organization were adopted.

These include amendments touching on:

- ✓ reorganization and grouping of Sections in parts for easy navigation;
- ✓ amendments to Clause 2; Clause 3; Clause 4; Clause 5; Clause 6; Clause 11 and Clause 43.

Some of the amendments dealt with typographical anomalies while others were substantive. The Committee however declined amendment proposals to channel 35% of revenues collected under the Act to NACADA for research. It was also agreed that an amendment to Clause 6 subsection 3 to bring a national officer responsible for coordination of national government functions be shelved, as it

would complicate matters in terms of accountability of the said officer to the Nairobi City County Assembly.

On the memoranda from Pubs and Restaurants Association of Kenya (PERAK), the Committee was in agreement that the Memoranda raised serious concerns with specific reference to Clause 33 on liability for underage persons found in pubs or clubs in breach of the Act and the Third Schedule on "opening and end of sale" timelines provided for in the Alcoholic Drinks Control and Licensing Bill, 2014.

It was agreed that Clause 33 be amended to provide for criminal liability for adults in whose company underage persons are found in clubs and pubs in breach of the law. The Bill had proposed that Club or pub owners be solely held liable for the same, a position vehemently opposed by PERAK. PERAK's proposed amendments to the Third Schedule to provide for specific closure time were also considered and amendments proposed to take care of the same. It was noted that national legislation only provides for "closure on selling," not of the premise. This has however been abused by enforcement officers to extort money from PERAK members.

On the memorandum from the East African Breweries Ltd, the company raised concerns regarding inconsistencies between the Bill and national legislation, specifically with reference to licensing, packaging, licensing hours, conditions and exceptions. The Committee was in agreement with the Company's proposal for an amendment to Clause 40 (2) of the Bill on packaging of alcoholic drinks in glass containers of not less than 200 milliliters. This is in conformity with national legislation on the same under Section 9A of the Customs and Excise Act (Chapter 472 of the Laws of Kenya).

During its meeting on the Bills with the County Executive Committee Member for Trade, Industrialization, Cooperative Development, Tourism & Wildlife, Mrs. Anna Othoro, the Committee was informed that the purpose of the Alcoholic Drinks Control and Licensing Bill, 2014, is to regulate the manufacture, distribution and sale of alcoholic drinks in Nairobi City County.

The Alcoholic Drinks Control and Licensing Bill, 2014, will provide for the licensing of operators and individuals in Nairobi City County that;

- Manufacture;
- Distribute and or;
- Sell alcoholic drinks within the County, as provided for under the Fourth Schedule to the Constitution.

The Bills seek, through effective regulation and public engagement, to permit the manufacture and sale of alcoholic drinks and ensure:

- It is crime free;
- The activities are undertaken fairly and openly;
- And that Children and vulnerable people are protected.

Mr. Speaker, Sir,

The Constitution mandates and empowers the county governments with the responsibility of liquor licensing. The national legislation, namely the Alcoholic Drinks Control Act gives this function to the National Authority for the Campaign Against Drug Abuse (NACADA).

The purpose of this Bill is to ensure that the function of liquor licensing is immediately and effectively implemented at the county level and that mechanisms are provided for this in county legislation.

The national government is empowered to make legislation that has the following qualities that will apply and override county legislation if the following conditions exist—

- a) the national legislation provides for a matter that cannot be regulated effectively by legislation enacted by the individual counties;
- b) the national legislation provides for a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing-
 - i. norms and standards; or
 - ii. national policies; or

- c) the national legislation is necessary for —
- i. the maintenance of national security;
 - ii. the maintenance of economic unity;
 - iii. the protection of the common market in respect of the mobility of goods, services, capital and labour;
 - iv. the promotion of economic activities across county boundaries;
 - v. the promotion of equal opportunity or equal access to government services; or
 - vi. the protection of the environment.

The conditions set out above have been reviewed and they would apply to the following extent—

- a) control of drinking hours;
- b) security considerations;
- c) levels of alcohol content;

The county government is at liberty to establish its own institutions that will manage the licensing of liquor trade. These institutions should be able to implement the national government policy on the control of alcoholic drinks. The Bill also provides for collaboration between the two governments on this issue especially on enforcement.

This Bill provides for the County Alcoholic Drinks Licensing and Control Board to be chaired by a person appointed by the Governor. The other members will be drawn from various departments of the national and county governments. The Sub-county Alcoholic Drinks Control and Licensing committees shall be responsible for licensing at the sub-county level. The enactment of this Bill shall entail expenditure of county public funds to be provided for in the estimates.

The Alcoholic Drinks Control and Licensing Bill, 2014, will thus enable the Nairobi City County Government generate crucial revenues to supplement its other sources.

The committee notes that it is important to ensure amendments are in tune with the spirit of the Bill, which is designed to regulate and ensure fairness in manufacture, distribution and sell of alcoholic drinks within the county.

The Committee was informed that the Bill is crucial as it seeks to give exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the County.

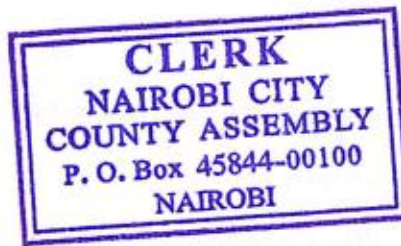
Mr. Speaker, Sir,

The Committee is thankful to the Office of the Speaker and the Clerk of the Nairobi City County Assembly for the logistical and technical support accorded to it during its Sittings in consideration of the Bills.

Mr. Speaker, Sir,

On behalf of the Committee, and pursuant to Standing Order 130 (1), it is my pleasant duty to table in the Assembly the Report of the Sectoral Committee on Culture and Community Services on its scrutiny of the Nairobi City County Alcoholic Drinks Control and Licensing Bill, 2014.

Thank you.



Signed..... *Ronald Milare* Date..... *11/3/2014*

Hon. Ronald Milare, MCA
Chairperson, Sectoral Committee on Culture and Community Services

THE NAIROBI CITY COUNTY ALCOHOLIC DRINKS CONTROL AND LICENSING BILL, 2014

The Committee deliberated on the Bill as follows;

Clause 1	- Agreed to
Clause 2 to 6	- Proposed amendments
Clause 7	- Agreed to
Clause 8 to 9	- Proposed amendments
Clause 10	- Agreed to
Clause 11	- Proposed amendment
Clause 12-15	- Agreed to
Clause 16	- Proposed amendment
Clause 17 to 34	- Agreed to
Clause 35	- Proposed amendment
Clause 36 to 39	- Agreed to
Clause 40	- Proposed amendment
Clause 41 to 42	- Agreed to
Clause 43	- Proposed amendment
Schedules	- Proposed amendment
Title	- Agreed to

Report laid on 11 March,
2014 by chairperson

Sectoral Committee on
Culture & Community
Services.

REPUBLIC OF KENYA

COUNTY GOVERNMENT OF NAIROBI CITY



CLERK
NAIROBI CITY
COUNTY ASSEMBLY
P. O. Box 45844-00100
NAIROBI

NAIROBI CITY COUNTY ASSEMBLY

FIRST ASSEMBLY – SECOND SESSION

REPORT OF THE
SECTORAL COMMITTEE ON CULTURE AND COMMUNITY SERVICES ON THE
CONSIDERATION OF THE NAIROBI CITY COUNTY BETTING, LOTTERIES AND GAMING
BILL, 2014

CLERK'S CHAMBERS
NAIROBI CITY COUNTY ASSEMBLY
CITY HALL BUILDINGS
NAIROBI

MARCH, 2014

PREFACE

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Mr. Speaker, Sir,

The Nairobi City County Betting, Lotteries and Gaming Bill, 2014, underwent the First Reading on Tuesday, 28th January, 2014, and was effectively committed to the Committee on Culture and Community Services, as provided for under Standing order 121(1).

Pursuant to Article 196(b) of the Constitution and Standing Order 121(3) which require public participation and involvement in the legislative and other business of the County Assembly and its Committees, a notification was placed in the mainstream print media on 03rd February, 2014, informing the public that the

Committee was considering amendments to the Nairobi City County Betting, Lotteries and Gaming Bill, 2014, and inviting them to submit any representations they might have on the proposed amendments.

Mr. Speaker, Sir,

The Committee held a total of ten meetings and a retreat to consider final amendments to the Bill. A number of meetings were held with stakeholders from the County Executive during the scrutiny of the Bills. Specifically, the Department of Trade, Industrialization, Cooperative Development, Tourism & Wildlife met twice with the Committee on the proposed amendments to the Bills.

The Committee also received written memoranda from the following:-

1. Lumumba and Lumumba Advocates
2. Betting Control and Licensing Board
3. Safaricom Kenya Limited
4. Association of Gaming Operators-Kenya

— Consideration of Memoranda on the Nairobi City County Betting, Lotteries and Gaming Bill, 2014

On the memorandum from Lumumba and Lumumba Advocates on behalf of their Client, the Committee was of the opinion that the memorandum did not raise any specific areas in which the Betting, Lotteries and Gaming Bill, 2014 is inconsistent with National legislation.

The memorandum merely dealt with interpretation of the Constitution on National vs. County laws. It was agreed that the memorandum had no substantive concerns, being nothing more than a delaying tactic meant to forestall the enactment of the said law; with threats of legal action should the Bill become law. Matters raised in the memorandum regarding Section four of the Bill were therefore not considered since the Committee was of the opinion that Section four of the Betting, Lotteries and Gaming Bill, 2014, as it is contravenes no National legislation. On the contrary, the Committee was of the opinion that

Section four of the Bill fills a gap in the National Legislation and avoids a vacuum in its application within Nairobi City County.

On the memorandum from the Betting Control and Licensing Board, the Committee noted that the memorandum did not raise any substantive, specific matters to be addressed before enacting the Bill. Whereas the memorandum made note of threats to National Security posed by unregulated gambling and gaming, it does not pinpoint the specific clauses of the Bill that would encourage the same. It was therefore agreed that the matters raised in the memo did not warrant further consideration.

On the memorandum from Safaricom Ltd, the Committee noted that some specific concerns raised by the mobile services provider warranted further consideration, while others were improper. The Company argued that the Fourth Schedule to the Constitution is ambiguous on what constitutes “national” betting and gaming activities. The company proposed that to get around the matter, a company that obtains a National gaming or betting license should automatically be exempt from County licenses for the same. As such, Safaricom proposed an amendment to Section 10 of the Bill to provide for the foregoing concern.

In its considerations, the Committee was of the opinion that the matter had indeed been taken care of and there were modalities to avoid double licensing, in light of the devolution of gaming and betting activities. It was agreed that since the Bill only seeks to regulate gaming, betting and lotteries within Nairobi City County, (which generates considerable National revenue from gaming, lotteries and betting activities), and Clause 10 of the Bill provides for the National Law where the County Law is silent and vice versa, the matter does not arise.

The memorandum from Safaricom Ltd further proposed the inclusion of “remote gambling,” covering online betting, telephone and other communication devices. An amendment by way of introduction of new Clause 3A to provide for the foregoing was proposed.

In its consideration, the Committee was of the opinion that the inclusion of new Clause 3A would remove the main revenue stream under the Act. Instead, the

committee agreed on an amendment to Clause 2 (interpretation) to include a wider definition for Betting, to take care of Safaricom's concerns as regards "remote gambling," without losing the crucial revenue stream for the County Government of Nairobi.

Further to the foregoing, Safaricom Ltd proposed the deletion of Section 12 of the Bill, arguing that it essentially imposed an income tax pursuant to Section 209 (1)(a) of the Constitution, thus contravening national legislation. The Committee agreed to shelve section 12 of the Bill as it undertakes further consultation on the way forward. It was resolved that should a way forward be established, an amendment to bring effect to provisions of section 12 would be brought at a later date. Further, the Committee was in agreement with the Company's proposal on the need to include reasonable licensing timelines, through amendments to Section 10(2), 10 (4) and 10 (6). These amendments were therefore carried, with minor modifications.

On the Memorandum from the Gaming Operators Association of Kenya, the Committee was in agreement that the memoranda be shelved. It did not raise any substantive matter that warranted further consideration.

During its consideration of the Bill with stakeholders from the executive, Members were informed that the Betting, Lotteries and Gaming Bill, 2014 was meant to propose the adoption of the County Betting Control and Licensing Act that will be derived from the Betting, Lotteries and Gaming Act (Chapter 131 of Kenyan Laws) and that will provide for the formation of a Board to oversee the enforcement of the Act within the county.

Mr. Speaker, Sir,

The need to regulate betting, lotteries and gaming in a fair, transparent, accountable, proportionate, and consistent way cannot be understated.

Specifically, fairness in betting, lotteries and gaming requires that the regulation focuses its resources on those issues and operators that potentially present the greatest risk to licensing objectives.

The object of this Bill is therefore to provide for the control and licensing of betting and gaming premises; for the imposition and recovery of a tax on betting and gaming; for the authorizing of public lotteries in the county; and for connected purposes.

Mr. Speaker, Sir,

The Constitution mandates and empowers the county governments with the responsibility of betting control and licensing.

Further, the purpose of this Bill is to ensure that the function of betting control and licensing is immediately and effectively implemented at the county level and those mechanisms are provided for this in county legislation.

The objects of the proposed law as set out in clause 4 are—

- a) to give further effect to paragraph 4 of the Fourth Schedule to the Constitution which mandates the county government with the function of betting control and licensing;
- b) to ensure that the national government policy on the control of betting as set out in the national legislation is implemented at the county level in accordance with the requirements of the Constitution to the effect that Government at either shall among other things, as appropriate, implement the legislation of the other level of government; and
- c) to provide for the county institutions and for procedures applicable to the control and licensing of betting within the county.

The county government is at liberty to establish its own institutions that will manage the licensing and control of betting. These institutions are also expected to implement the national government policy on the control and regulation of betting.

This Bill provides for the County Betting Licensing and Control Board to be chaired by a citizen resident in the county and who shall be appointed by the Governor.

The other members will be drawn from various sectors and stakeholder groups and the county public service. There would be need for collaboration between the two governments on this issue especially on enforcement.

The Betting, Lotteries and Gaming Bill, 2014, will enable the Nairobi City County Government generate crucial revenues to supplement its other sources.

The Committee notes that it is important to ensure amendments are in tune with the spirit of the Bill, which is designed to regulate and ensure fairness in gaming, lotteries and betting within the county. The Betting, Gaming and Lotteries Bill is aimed to achieve fairness for gamers, gamblers and residents of Nairobi who participate in lotteries, and for the commercial entities that undertake the same.

Mr. Speaker, Sir,

The Committee is thankful to the Office of the Speaker and the Clerk of the Nairobi City County Assembly for the logistical and technical support accorded to it during its Sittings in consideration of the Bill.

Mr. Speaker, Sir,

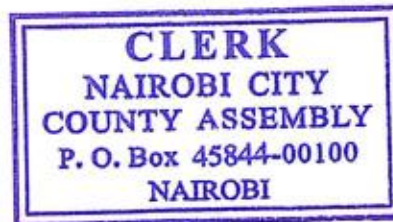
On behalf of the Committee, and pursuant to Standing Order 130 (1), it is my pleasant duty to table in the Assembly the Report of the Sectoral Committee on Culture and Community Services on its scrutiny of the Nairobi City County Betting, Lotteries and Gaming Bill, 2014.

Thank you.

Signed *Ronald Milare* Date 11/3/2014

Hon. Ronald Milare, MCA

Chairperson, Sectoral Committee on Culture and Community Services



THE NAIROBI CITY COUNTY BETTING, LOTTERIES AND GAMING BILL, 2014

The Committee deliberated on the Bill as follows;

Clause 1	- Agreed to
Clause 2 to 7	- Proposed amendments
Clause 8	- Agreed to
Clause 9 to 11	- Proposed amendments
Clause 12	- Proposed amendment
Clause 13	- Agreed to
Title	- Agreed to

