

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 BETTING, LOTTERIES AND GAMING
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
8. Hon. Elizabeth Sang, MCA
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 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..... Date.....

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

COMMITTEE’S PROPOSED AMENDMENTS TO THE NAIROBI CITY COUNTY BETTING, LOTTERIES AND GAMING BILL, 2014

The Committee proposes the following amendments to the Nairobi City County Betting, Lotteries and Gaming Bill, 2014;

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
<p style="text-align: center;">2</p>	<p>THAT CLAUSE 2 of the Bill be amended:-</p> <p>(a) by deleting the word “finance” immediately after the word “for” appearing in the definition of the expression “executive committee member” and substituting with the word “trade” thereof;</p> <p>(b) by inserting the following new definition in proper alphabetical sequence-</p> <p>“Betting” includes lotteries, gaming and gambling.</p> <p>(c) by deleting the figure “3” immediately after the word “Section” appearing in the definition of the expression “the Board” and substituting therefor the figure “6.”</p>	<p>Amendment corrects a drafting error that placed the Finance Department as a key stakeholder in the Bill instead of the primary Trade Department.</p> <p>Definition meant to widen the pool of possible revenue streams in terms of the diverse gaming, lotteries & betting activities.</p> <p>Cures a drafting error that wrongly refers to Section 6 instead of 3.</p>

<p style="text-align: center;">3</p>	<p>THAT CLAUSE 3 of the Bill be amended:-</p> <p style="padding-left: 40px;">by inserting a full stop after the word “County” appearing on the second line and deleting the expression “<i>but shall not extend to such activities when carried out as national betting, lotteries and gaming as contemplated under the Fourth Schedule to the Constitution.</i>”</p>	<p>Removes ambiguity from the extent to which the provisions of the Bill can be applied.</p>
<p style="text-align: center;">4</p>	<p>THAT CLAUSE 4 of the Bill be amended:-</p> <p>(a) in sub-clause 1 by inserting the word “such” immediately after the word “any” appearing in the third line;</p> <p>(b) in sub-clause 2 by deleting word “therefor” and substituting with the word “thereof”;</p> <p>(c) in sub-clause 2 paragraph (c) by inserting the word “the” immediately after the expression “boundaries of”</p>	<p>Widens scope of activities provisions of the Bill can apply to.</p> <p>Corrects a typographical error</p> <p>Correct a typographical error</p>

<p style="text-align: center;">5</p>	<p>THAT CLAUSE 5 of the Bill be amended:-</p> <p>(a) in paragraph (a) by deleting the words “control and licensing” and substituting with the words “regulation and licensing of” immediately after the word “of” in the third line;</p> <p>(b) in paragraph (c) by deleting the word “control” appearing immediately after the word “the” in the second line and substituting with the word “regulation” thereof.</p>	<p>Use the word “regulation” instead of control</p> <p>Again, use the word “regulation” instead of control</p>
<p style="text-align: center;">6</p>	<p>THAT CLAUSE 6 of the Bill be amended:-</p> <p>(a) in sub-clause 3 by deleting the expression “from the legal department” appearing immediately after the word “officer” and substituting with the words “with legal background” thereof;</p> <p>(b) in sub-clause 5 by deleting the letter “(e)” appearing immediately after the word “and” in the first line and substituting with the letter “(d)” thereof;</p>	<p>Amendment to widen the pool from which appointees of the Board with legal expertise can be drawn</p> <p>Correct a typographical error</p>

<p>(c) in sub-clause 6 by deleting the words “chief officer responsible for finance” and substituting with the words “chief licensing officer responsible for trade” thereof;</p>	<p>Amendment corrects a drafting error that placed the Finance Department as a key stakeholder in the Bill instead of the Trade Department.</p>
<p>(d) in sub-clause 8 by deleting the expression “in every three months” and substituting with the expression “every month” thereof;</p>	<p>Reduce the duration within which the Board can hold its meetings</p>
<p>(e) in sub-clause 12 by deleting the word “Parliament” appearing immediately after the word “by” and substituting with the expression “the County Assembly” thereof;</p>	<p>Correct a typographical error.</p>
<p>(f) in sub-clause 12 by deleting the word “Governor” appearing immediately after the word “the” on the third line and substituting with the words “executive committee member” thereof;</p>	<p>Bring in relevant CEC in determination of Board members remuneration.</p>
<p>(g) in sub-clause 12 by deleting the full stop immediately after the word “determine” and inserting the words “in consultation with the Governor” thereof;</p>	<p>Bring in Governor in determination of Board members remuneration in consultation with relevant CEC.</p>

	(h) in sub-clause 14 by deleting the words “an annual” appearing immediately after the word “publication” and substituting with the words “a quarterly” thereof;	Reduce period within which Board shall submit its report to the Governor.
7	<p>THAT CLAUSE 7 of the Bill be amended:-</p> <p>(a) in sub-clause 1 paragraph (a) by inserting the words “and the County executive committee member in charge” immediately after the word “Governor”;</p> <p>(b) in sub-clause 1 paragraph (a) by deleting the word “control” appearing immediately after the word “betting”;</p> <p>(c) in sub-clause 1 paragraph (b) by inserting the words “county inspectorate and or the” immediately after the expression “with the”;</p> <p>(d) in sub-clause 1 paragraph (c) by deleting the word “control” appearing immediately after the word “betting” and substituting with the word “regulation” thereof;</p>	<p>Provide for the Board’s advisory working relationship with the CEC.</p> <p>Use the word “regulation” instead of control.</p> <p>Provide for County inspectorate in enforcement of the provisions of the Bill.</p> <p>Use the word “regulation” instead of control.</p>

<p style="text-align: center;">9</p>	<p>THAT CLAUSE 9 of the Bill be amended:-</p> <p>(a) in sub-clause 4 by deleting the word “five” appearing immediately after the expression “not exceeding” and substituting with the word “fifty” thereof;</p>	<p>Increase penalty for persons who violate provisions of the Bill when applying for new or renewal of licenses.</p>
<p style="text-align: center;">10</p>	<p>THAT CLAUSE 10 of the Bill be amended:-</p> <p>a) In sub-clause 2 by inserting the words “within twenty one days” immediately after the word “shall”</p> <p>b) In sub-clause 4 paragraph (a) by deleting the words “thirty” and substituting with the words “twenty one” in place thereof.</p> <p>c) In sub-clause 6 by deleting the words “three months” and substituting with the words “a month” thereof.</p>	<p>Provide for a timeline within which considering the application under section 9.</p> <p>Reduce period within which the Board shall consider and approve/reject licensing requests;</p> <p>Reduce period within which the Board can consider and issue a licence in a revised application under subsection (5).</p>
<p style="text-align: center;">11</p>	<p>THAT CLAUSE 11 of the Bill be amended:-</p> <p>(a) in sub-clause 5 by deleting the figure 11 appearing immediately after the word “section” and substituting with the figures 9(4) thereof;</p>	<p>Correct a typographical anomaly.</p>

<p style="text-align: center;">12</p>	<p>THAT CLAUSE 12 of the Bill be deleted.</p>	<p>The clause raises a number of contentious issues for which concerned stakeholders are currently in talks with the Executive on the way forward. It was agreed that in the meantime, the Clause be deleted. An amendment bill will be brought once a way forward as regards the provisions of this deleted section is agreed on.</p>
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