

NAIROBI CITY COUNTY ASSEMBLY



SECOND ASSEMBLY - SIXTH SESSION

**THE REPORT OF THE SECTORAL
COMMITTEE ON TRADE, TOURISM AND COOPERATIVES
ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY
BETTING, GAMING AND LOTTERIES (AMENDMENT) BILL, 2021**

**Clerks Chambers
Nairobi City County Assembly
City Hall Buildings
Nairobi**

JUNE, 2022

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 - b. Association of Gaming Operators – Kenya (AGOK);
 - c. Betting Control and Licensing Board; and
 - d. Jockey Club of Kenya
- ii) Minutes

1.0. PREFACE

1.1. Committee Mandate

Mr. Speaker Sir,

The Sectoral Committee on Trade, Tourism and Cooperatives is established under Standing Order No. 203. Its mandate pursuant to Standing Order 203(6) is to:-

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;*
- b) study the programme and policy objectives of departments and the effectiveness of the implementation;*
- c) study and review all county legislation referred to it;*
- d) study, assess and analyse the relative success of the departments as measured by the results obtained as compared with its stated objectives;*
- e) investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;*
- f) vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 185(Committee on Appointments); and*
- g) make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.*

Mr. Speaker Sir,

In accordance with the Third Schedule of the Standing Orders, the Sectoral Committee is mandated to consider all matters relating to:-

- a) Trade development and regulation including markets, trade licenses (excluding regulation of professions);*
- b) Fair trading practices;*
- c) Local tourism and Cooperative societies; and*
- d) Betting and Casinos and other forms of Gambling and liquor Licensing.*

1.2. Committee Members

The Committee comprises the following Members:-

- 1. Hon. Daniel Ngengi, MCA - Chairperson**
- 2. Hon. Clarence Munga, MCA - Vice-Chairperson**
3. Hon. Anthony Gatune, MCA
4. Hon. Benson Mwangi, MCA
5. Hon. Charles Thuo, MCA
6. Hon. Doris Kanario, MCA
7. Hon. Chege Mwaura MCA
8. Hon. Elias Okumu, MCA
9. Hon. Geoffrey Ng'ang'a, MCA
10. Hon. Jane Muasya, MCA
11. Hon. Jayendra Malde, MCA
12. Hon. Jeremiah Themendu, MCA
13. Hon. Joseph Ndonji MCA
14. Hon. Maina Njoka, MCA
15. Hon. Mary Arivisa, MCA
16. Hon. Mary Njambi, MCA
17. Hon. Maurice Ochien'g, MCA
18. Hon. Naftaly Mathenge, MCA
19. Hon. Nicholas Okumu, MCA
20. Hon. Rose Kulla, MCA
21. Hon. Carolyn Mayunzu, MCA
22. Hon. Paul Shilaho, MCA
23. Hon. Wilson Ochola, MCA
24. Hon. Laurah Mwende, MCA
25. Hon. Lawrence Otieno, MCA

2.0. EXECUTIVE SUMMARY

2.1. Background

Mr. Speaker Sir,

Betting, gaming and lotteries has recently generated an overwhelming interest worldwide and has been seen as a potential trading sector. This industry trend commands qualified attention towards cross-border legal complexities and ambiguities amidst an approaching inevitable future.

Mr. Speaker sir,

In light of the growing global betting, lotteries and gaming trends and the emergence of newer and more complicated electronic versions, there has been increasing concern on the legal regulatory framework on gambling in Kenya. The overriding aim has been to strike an ideal balance between the positive aspects and the potential negative effects.

Mr. Speaker Sir,

It is important to note that mobile technology has changed the face of betting, gaming and lotteries by bringing it to the fingertips of the consumers of this trade. Nairobi County has seen an increase in the accessibility of betting, gaming and lottery websites and venues consequently increasing problematic consumers and owners of these trades.

The betting, gaming and lotteries craze has engulfed the County and has turned into a source of pain for some families with reports of individuals committing suicides, loosing properties, students squandering school fees etc. The integrity of operators is not easily guaranteed because of the mass registration of this trade thus aggravating the problem and the risk factors involved.

Mr. Speaker Sir,

Many facets of the laws relating to the betting, lotteries and gaming have become obsolete and are not sensitive to the new modes and unprecedented growth of this industry. There is need for adequate regulatory frameworks that address the concerns of law enforcement and enforce any limitations on this trade.

Mr. Speaker Sir,

In view of the foregoing therefore, the Nairobi City County Betting, Gaming and Lotteries (Amendment), Bill 2021 was introduced in the Assembly on Thursday 25th November, 2021. The essence was to amend the Nairobi City County Betting, Gaming and Lotteries Act, 2021.

Mr. Speaker Sir,

The Bill aims to provide additional regulatory areas not captured in the said Act such as operational hours of betting and gaming establishments as well as online casinos and sports betting.

Mr. Speaker Sir,

It is worth noting that the proposed legislation provides for enhanced penalties for persons convicted of operating outside the hours of 8pm to 6am, displaying a house signage on any betting, lotteries and gaming activities and premises without the approval of the County Executive Committee Member responsible for Physical Planning amongst other penalties.

Mr. Speaker Sir,

The Sectoral Committee is therefore mandated to critically consider the provisions of the said Bill taking into account the provisions of Article 196 (b) of the

Constitution and standing orders 131(3) before submitting its report to the Assembly for enactment into a law.

2.2. Introduction of the Bill in the Assembly

Mr. Speaker Sir,

The Nairobi City County Betting, Gaming and Lotteries (Amendment) Bill, 2021 was read a First Time on **Thursday 25th November, 2021** and thereafter committed to the Sectoral Committee on Trade, Tourism and Cooperatives for consideration pursuant to Standing Order 131. The bill was sponsored by Hon. Waithera Chege.

2.3. Legislative powers of the County Assembly

Mr. Speaker Sir,

Article 185 of the Kenya's Constitution state that;-

- (1) The legislative authority of a county is vested in, and exercised by, its county assembly.
- (2) A county assembly may make any laws that are necessary for or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.
- (3) A county assembly, while respecting the principle of the separation of powers, may exercise oversight over the county executive committee and any other county executive organs.

Mr. Speaker Sir,

Further, the County Governments Act, 2012 provides that;-

- (1) A county assembly shall exercise its legislative power through Bills passed by the county assembly and assented to by the governor.
- (2) A Bill may be introduced by any member or committee of the county assembly, but a money Bill may be introduced only in accordance with subsection (4).

2.4. Public participation and the legal Underpinning

Mr. Speaker Sir,

Article 196(b) of the Constitution of Kenya states that;

- *'The County Assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and its committees'.*

Mr. Speaker Sir,

Further, Standing Order 131(3) provides that;-

'The sectoral Committee to which a bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its report to the County Assembly'

In view of the above, Mr. Speaker Sir, the Assembly placed a notice in the local dailies, the Standard and Daily Nation on Thursday 3rd February, 2022 calling for any representations and amendments from the public on the Bill. The Committee also identified key stakeholders to the Bill and invited them to submit their comments on the Bill.

Following the notice and the invitations, the Committee received written memoranda from the following stakeholders;-

01. Nairobi City County;
02. Association of Gaming Operators – Kenya (AGOK);
03. Betting Control and Licensing Board; and
04. Jockey Club of Kenya.

Mr. Speaker,

The Committee held a number of meetings in deliberation on the contents of the said Bill where Members were briefed on the objectives of the Bill and considered the memoranda received.

Mr. Speaker, Sir,

The proposed amendments are aimed at ensuring that all aspects of betting, gaming and lotteries in the County are covered, execution of the Bill is easily attained and the concerns of the stakeholders are catered for.

Mr. Speaker Sir,

This report contains Committee observations, proposed amendments by key stakeholders and the Committee as outlined in the attached Bill Matrix. The Committee report also contains sound and actionable recommendations.

2.5. Acknowledgement

Mr. Speaker Sir,

I wish to acknowledge with gratitude the offices of the Speaker and the Clerk of the County Assembly for the support extended to the Committee in the consideration of this crucial Bill.

Mr. Speaker Sir,


I also wish to extend my gratitude to members of the Public and the Key stakeholders who submitted their views on this piece of legislation in order to enrich it in line with the spirit of Public Participation.

Mr. Speaker Sir,

Finally, much thanks to the Members of the Committee, and the Secretariat for their dedication, untiring commitment and valuable contributions during the consideration of this Bill.

Mr. Speaker Sir,

On behalf of the Committee, I now have the honor and pleasure to present the Report of the Committee on Consideration of the Nairobi City County Betting, Gaming and Lotteries (Amendment) Bill, 2021 for consideration and adoption.

Signed

Hon. Daniel Ngengi MCA

(Chairperson)

Sectoral Committee on Trade, Tourism and Cooperatives

Dated this 06.....day of June 2022

3.0. THE CONTENTS OF THE NAIROBI CITY COUNTY BETTING, GAMING AND LOTTERIES (AMENDMENT), BILL 2021

3.1. The Summary of the provisions and the Salient features of the Bill

3.1.1. Object and purpose of the Bill

Mr. Speaker Sir,

01. The principle objective of the Bill is to amend the Betting, Lotteries and Gaming Act, 2021 to provide additional regulatory areas not captured in the act such as operational hours of betting and gaming establishments as well as online casinos and sports betting.

Mr. Speaker Sir,

02. Article 185 of the Constitution provides that the power to make county laws vests exclusively in the county assemblies. However, it is a well-established principle in law making that a legislature may be unable to enact a law that would be responsive to every present and future circumstance. It is in this context that the implementers of legislation such as the Executive arm of government are usually given the power to make subsidiary legislation. The legislature delegates its law making power to the Executive or any other body charged with implementing the law.
03. The Nairobi City County Betting, Gaming and Lotteries (Amendment) Bill 2021 seeks to amend the Betting, Lotteries and Gaming Act, 2021. In essence, the Bill seeks to amend the Parent Act specifically-
 - a. Amendment of section 2 of No. 2 of 2021;
 - b. Amendment of Section 17 of No. 2 of 2021; and
 - c. Insertion of new Sections into No. 2 of 2021

3.1.2. Salient provisions of the Bill;-

Mr. Speaker Sir,

04. **Amendment of Section 2 of No.2 of 2021:** the Bill seeks to insert new definitions i.e “advertisement”, “betting premises”, “online gaming” and “watershed period”.

Mr. Speaker Sir,

05. **Amendment of Section 17 of No. 2 of 2021:** seeks to delete subsection 17(3) of the parent Act and to replace with the following-

A person who intends to operate any betting, lotteries or gaming premise in the County shall not be licensed to operate unless the establishment is domiciled within a five (5)-Star Hotel as rated by the Tourism Regulatory Authority.

A person who contravenes the provisions of sub sections (1) and (2) commits an offence and shall be liable upon conviction to a fine not exceeding Kshs. Five Million Kenya shillings or to imprisonment for a term not exceeding two (2) years or both.

Mr. Speaker Sir,

06. **Insertion of new Sections into No. 2 of 2021:** This clause seeks to insert a new clause after section 33 of the Parent Act as follows-

33A. (1) All licensed Betting, Lotteries and Gaming premises and online gaming shall only operate within the hours of 8pm to 6am.

No broadcasting of video or audio programming that promotes betting, gaming and gaming adverts through shall be done during the watershed period as prescribed in the Kenya Information and Communications Act, 1998 and the Kenya Communication (Broadcasting) Regulations and the programming code.

(3) A person who contravenes the provisions of sub sections (1) and (2) commits an offence and shall be liable upon conviction to a fine not exceeding

Kshs. Ten million Kenya shillings or to imprisonment for a term not exceeding four(4) years or both.

33B. (1) A person shall not erect or display any advertisement, billboard or luminous signage in relation to betting, lotteries and gaming activities and premises.

(2) A person shall not erect or display a house signage on any betting, lotteries and gaming activities and premises without the approval of the County Executive Committee Member for the time being responsible for physical planning.

(3) The County Executive Committee Member for the time being responsible for physical planning shall prescribe regulations within three months of the passing of this Act on the rules and guidelines relating to the display of house signages.

(2) A person who contravenes the provisions of sub section(1) and (2) commits an offence and shall be liable upon conviction to a fine not exceeding Kenya shillings Ten million to imprisonment for a term not exceeding four(4) years or both.

Mr. Speaker Sir,

This clause seeks to insert a new clause after section 38 of the Parent Act as follows

07. 38A. (1) All Betting, Lotteries and Gaming premises shall within six (6) months of enactment of this Act cause to only have cashless modes of betting within the establishment.

(2) A person who contravenes this provision commits an offence and shall be liable to a fine of Kenya shillings five Million Kenya shillings or to imprisonment for a term not exceeding two (2) years or both.

4.0. COMMITTEE CONSIDERATION OF THE NAIROBI CITY COUNTY BETTING, GAMING AND LOTTERIES (AMENDMENT), 2021

01. While examining the Bill, the Committee noted the following:

The principle objective of the Bill is to amend the Betting, Lotteries and Gaming Act, 2021 to provide additional regulatory areas not captured in the act such as operational hours of betting and gaming establishments as well as online casinos and sports betting.

02. The Bill seeks to amend the Parent Act (Nairobi City County Betting and Lotteries Act, 2021(No. 2 of 2021) specifically-

- i. Amendment of section 2 of No. 2 of 2021;
- ii. Amendment of Section 17 of No. 2 of 2021; and
- iii. Insertion of new Sections into No. 2 of 2021;

03. Amendment of section 2 of No. 2 of 2021

This clause seeks to insert new definitions i.e “advertisement”, “betting premises”, “online gaming” and “watershed period”.

04. Amendment of Section 17 of No. 2 of 2021

This clause seeks to delete subsection 17(3) of the parent Act and to replace with the following-

2. A person who intends to operate any betting, lotteries or gaming premise in the county shall not be licensed to operate unless the establishment is domiciled within a five (5)-Star Hotel as rated by the Tourism Regulatory Authority.

3. A person who contravenes the provisions of sub sections (1) and(2) commits an offence and shall be liable upon conviction to a fine not exceeding Kshs. Five Million Kenya shillings or to imprisonment for a term not exceeding two(2) years or both.

The County Executive recommended entire rejection of the proposed clause as investment in Betting and Lotteries is capital intensive and this clause will lead to loss of capital invested and mass relocation of these activities to other counties. This will also lead to loss of revenue to the County Government.

Association of gaming Operators Kenya (AGOK) suggested entire rejection of the proposed clause for casino industry is already overtaxed and any further increase in operational costs will just lead to a closure of the same. Similarly this will boost illegal gaming activities.

Betting Control and Licensing Board dubbed the proposal unreasonable in that development of gaming policy and betting standards is a function of the National Government thus rejected it.

Jockey Club of Kenya opined that the provision should not apply to totalisator horse betting as these events of horse racing are live and cannot be done in a hotel setting hence recommended entire rejection of the proposed clause.

The Committee agreed with the entire clause.

05. Insertion of new Sections into No. 2 of 2021

This clause seeks to insert a new clause after section 33 of the Parent Act as follows:-

33A. (1) All licensed Betting, Lotteries and Gaming premises and online gaming shall only operate within the hours of 8pm to 6am.

The Nairobi County Department of Commerce Tourism and Cooperatives stated that the County Government will lose over 230million targeted on premises and entertainment tax hence make the National Government benefit from online gambling. It will also lead to burgeoning of illegal gambling dens. The Department recommended that operating hours be maintained but regulated from time by the Board based on the economic circumstances prevailing in the Country.

Association of gaming Operators Kenya opined that the proposal favours online gaming and will boost illegal gaming activities .AGOK proposed that the entire proposal be rejected.

Betting Control and Licensing Board rejected the entire clause since it interferes with the operationalization of section 46(2) of the Betting and Lotteries and Gaming Act which grants the Board with powers to impose conditions on the manner in which a license is to conduct its business. This includes the suitability, conditions and conduct of premises and hours during which the premises may be open for business.

The proposed clause was rejected by Jockey Club of Kenya There as it leaves the club with no capacity to conduct horse racing after daylight and this is a safe family entertainment event.

The Committee agreed with the proposed clause.

(2) No broadcasting of video or audio programming that promotes betting, gaming and gaming adverts through shall be done during the watershed period as prescribed in the Kenya Information and Communications Act, 1998 and the Kenya Communication (Broadcasting) Regulations and the programming code.

(3) A person who contravenes the provisions of sub sections(1) and (2) commits an offence and shall be liable upon conviction to a fine not exceeding Kshs. Ten million Kenya shillings or to imprisonment for a term not exceeding four(4) years or both.

06. 33B. (1) A person shall not erect or display any advertisement, billboard or luminous signage in relation to betting, lotteries and gaming activities and premises.

(2)A person shall not erect or display a house signage on any betting, lotteries and gaming activities and premises without the approval of the County Executive Committee Member for the time being responsible for physical planning.

(3) The County Executive Committee member for the time being responsible for physical planning shall prescribe regulations within three months of the passing of this Act on the rules and guidelines relating to the display of house signages.

(2) A person who contravenes the provisions of sub section (1) and (2) commits an offence and shall be liable upon conviction to a fine not exceeding Kenya shillings Ten million to imprisonment for a term not exceeding four (4) years or both.

The County Executive, Association of gaming Operators Kenya, Betting Control and Licensing Board and Jockey Club of Kenya suggested entire rejection of the proposed clause.

Jockey Club of Kenya and Betting Control and Licensing Board rejected the entire clause in that National legislation gives adequate regulatory framework on this issue and the proposed amendment is beyond the jurisdiction of the County.

The Committee agreed with the proposal.

07. 38A. (1) All Betting, Lotteries and Gaming premises shall within six (6) months of enactment of this Act cause to only have cashless modes of betting within the establishment.

(2) A person who contravenes this provision commits an offence and shall be liable to a fine of Kenya shillings five Million Kenya shillings or to imprisonment for a term not exceeding two (2) years or both.

The County Executive opined that this clause may cause unnecessary litigations & intergovernmental conflicts as the National Government through the Betting, Control & Licensing Board issues operating licenses (Bookmakers/Betting, Gaming & Lotteries) cutting across the Counties. The Sector rejected the entire proposed clause.

AGOK stated that current slot machines do not have a technical compatibility with cashless operations. Further it's expensive to acquire cashless slot machines and will force operators to rent the systems which are extremely expensive. AGOK proposes entire

rejection of the proposed clause and further proposes a minimum waiting period of two years before implementation.

Betting Control and Licensing Board rejected the proposed amendment as Counties have no powers to issue authorization for private lotteries cutting across Counties. It noted that the provision only refers to Nairobi County. The totalisator equipment used to conduct betting is configured to cash transactions only hence the stakeholder proposes entire rejection of the proposed clause

The Committee agreed with the proposal.

5.0. KEY COMMITTEE OBSERVATIONS

Mr. Speaker Sir, while examining the said Bill, the committee observed the following amongst others:

That,

1. Main objective of the Bill is to provide additional regulatory areas not captured in the act such as operational hours of betting and gaming establishments as well as online casinos and sports betting.
2. The Committee resolved to amend the existing Nairobi City County Betting, Gaming and Lotteries Act, 2021.

6.0. KEY COMMITTEE RECOMMENDATION

Mr. Speaker sir,

The Committee recommends that *this assembly ADOPTS the Nairobi City County Betting, Gaming and Lotteries (Amendment) Bill 2021.*

MINUTES OF THE 14TH SITTING OF THE SECTORAL COMMITTEE ON TRADE,
TOURISM AND COOPERATIVES HELD ON MONDAY 6TH JUNE, 2022 AT 10.00AM AT
THE ASSEMBLY CHAMBER

PRESENT

1. Hon. Daniel Ngengi, MCA - Chairperson
2. Hon. Clarence Munga, MCA - Vice-Chairperson
3. Hon. Laura Mwendu, MCA
4. Hon. Jeremiah Themendu, MCA
5. Hon. Jayendra Malde, MCA
6. Hon. Doris Kanario, MCA
7. Hon. Mary Njambi, MCA
8. Hon. Rose Ogonda, MCA
9. Hon. Mary Ariviza, MCA

ABSENT

1. Hon. Maina Njoka, MCA
2. Hon. Jane Muasya, MCA
3. Hon. Joseph Ndonji MCA
4. Hon. Anthony Gatune, MCA
5. Hon. Geoffrey Ng'ang'a, MCA
6. Hon. Chege Mwaura MCA
7. Hon. Wilson Ochola, MCA
8. Hon. Benson Mwangi, MCA
9. Hon. Maurice Ochien'g, MCA
10. Hon. Carolyn Mayunzu, MCA
11. Hon. Nicholas Okumu, MCA
12. Hon. Elias Okumu, MCA
13. Hon. Paul Shilaho, MCA
14. Hon. Naftaly Mathenge, MCA
15. Hon. Charles Thuo, MCA
16. Hon. Lawrence Otieno, MCA

IN ATTENDANCE

SECRETARIAT

Ms. Hellen Mutie – Committee Clerk

COUNTY TRADE, TOURISM AND INDUSTRIALIZATION

1. Mr. Geoffrey Mwithimbu- Director, Gaming and Betting
2. Mr. Orega Gichana – Assistant Director, Gaming and Betting

ASSOCIATION OF GAMING OPERATORS KENYA (AGOK)

1. Mr. Daniel Masi Mogeni – Secretary
2. Ms. Reginalda Tendwa - Secretary

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT- BETTING CONTROL AND LICENSING BOARD

1. Mr. Peter K. Mbugi – Director
2. Mr. Fredrick M. Mbasi – Deputy Director
3. Ms. Judy Kirichu- Senior state counsel

JOCKEY CLUB OF KENYA

1. Mr. John Mutua – Consulatant, Gaming and Betting
2. Ms. Vivian Odiwa- Senior Legal Counsel

CT GAMING

Mr. Roderick Leviton – Chief Executive Officer at Advanced Innovations LTD/CT
Gaming Africa

Agenda

1. Preliminaries (prayers & adoption of the Agenda)
2. Stakeholder engagement on The NCC Betting, Gaming and Lotteries (Amendment) Bill, 2021
3. Any Other Business
4. Adjournment

Min. No.056/TTC/June/2022: Communication from the Chairperson

— The meeting was called to order at thirty minutes past ten O'clock and the Chairperson said the prayer before calling for self-introduction of those present. The agenda was adopted as proposed by Hon. Jayendra Malde and seconded by Hon. Mary Ariviza. He then invited the participants to deliberate on the day's agenda.

Min. No.057/ TTC /June/2022: Stakeholder engagement on The NCC Betting, Gaming and Lotteries (Amendment) Bill, 2021

— The stakeholders made their submissions in the following order;

1. Ministry of Interior and Coordination of National Government- Betting Control And Licensing Board
2. County Trade, Tourism and Industrialization
3. Association of Gaming Operators Kenya (AGOK)
4. Jockey Club of Kenya
5. CT Gaming

- The stakeholders presented their submissions on The NCC Betting, Gaming and Lotteries (Amendment) Bill, 2021. *(Details of submissions made by the stakeholders are contained in the annexures of the Report on the consideration of The NCC Betting, Gaming and Lotteries (Amendment) Bill, 2021)*

Min. No.058/ TTC /June/2022: Any Other Business

There were no items under this agenda.

Min. No.059/ TTC /June/2022: Adjournment and date of next meeting

There being no other business to deliberate on, the meeting adjourned at 12.11 pm. The next meeting was scheduled for 2.00pm the same day.

CONFIRMED AS TRUE RECORD OF THE PROCEEDINGS

SIGNATURE 

(Chairperson)

DATE..... 

MINUTES OF THE 15TH SITTING OF THE SECTORAL COMMITTEE ON TRADE,
TOURISM AND COOPERATIVES HELD ON MONDAY 6TH JUNE, 2022 AT 2.00PM AT
THE ASSEMBLY CHAMBER

PRESENT

- | | |
|--------------------------------|--------------------|
| 1. Hon. Daniel Ngengi, MCA | - Chairperson |
| 2. Hon. Clarence Munga, MCA | - Vice-Chairperson |
| 3. Hon. Laura Mwendu, MCA | |
| 4. Hon. Jeremiah Themendu, MCA | |
| 5. Hon. Jayendra Malde, MCA | |
| 6. Hon. Doris Kanario, MCA | |
| 7. Hon. Mary Njambi, MCA | |
| 8. Hon. Rose Ogonda, MCA | |
| 9. Hon. Mary Ariviza, MCA | |

ABSENT

1. Hon. Maina Njoka, MCA
2. Hon. Jane Muasya, MCA
3. Hon. Joseph Ndonji MCA
4. Hon. Anthony Gatune, MCA
5. Hon. Geoffrey Ng'ang'a, MCA
6. Hon. Chege Mwaura MCA
7. Hon. Wilson Ochola, MCA
8. Hon. Benson Mwangi, MCA
9. Hon. Maurice Ochien'g, MCA
10. Hon. Carolyne Mayunzu, MCA
11. Hon. Nicholas Okumu, MCA
12. Hon. Elias Okumu, MCA
13. Hon. Paul Shilaho, MCA
14. Hon. Naftaly Mathenge, MCA
15. Hon. Charles Thuo, MCA
16. Hon. Lawrence Otieno, MCA

SECRETARIAT

Ms. Hellen Mutie

– Committee Clerk

Agenda

- I. Preliminaries (prayers & adoption of the Agenda)
2. Confirmation of the Minutes from the previous sitting(s) and Matters Arising
3. Adoption of the report on the consideration of The NCC Betting, Gaming and Lotteries (Amendment) Bill, 2021
4. Any Other Business
5. Adjournment/ Date of Next Meeting

Min. No.060/TTC/June/2022: Communication from the Chairperson

- The meeting was called to order at six minutes past two O'clock and the Vice-Chairperson said the prayer. The agenda was adopted as proposed by Hon. Rose Ogonda and seconded by Hon. Mary Njambi.

Min. No.061/ TTC /June/2022: Adoption of the report on the consideration of The NCC Betting, Gaming and Lotteries (Amendment) Bill, 2021

- The report on the consideration of The NCC Betting, Gaming and Lotteries (Amendment) Bill, 2021 was adopted having been proposed by Hon. and Hon.

Min. No.062/ TTC /June/2022: Any Other Business

None

Min. No.063/ TTC /June/2022: Adjournment and date of next meeting

There being no other business to deliberate on, the meeting adjourned at 2.28pm. The date for the next meeting would be communicated.

CONFIRMED AS TRUE RECORD OF THE PROCEEDINGS

SIGNATURE .....
(Chairperson)

DATE...7/6/22.....



ASSOCIATION OF GAMING OPERATORS - KENYA

(10th Floor Utalii House, Suite 1020, Utalii Street, Nairobi)

3RD FEBRUARY 2022

*Mr. PCX (U)
Pls deal*

*Mr. Clerk
2/2/22*

TO *Mr. Joshua*



NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

REF: NCCA/SC-TTC/CORR/2022/(001)

MEMORANDA ON THE CONSIDERATION OF THE NAIROBI CITY
COUNTY BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL 2021

CC: National Betting Control & Licensing Board
Nairobi City County Betting Control & Licensing Board
Intergovernmental Relations Technical Committee

*C.A. Heller
Pls TNA
1/2/22
3/02/2022
T.ICA
H. B.*



ASSOCIATION OF GAMING OPERATORS - KENYA

(10th Floor Utalii House, Suite 1020, Utalii Street, Nairobi)

AGOK is of the opinion that such proposal is just going in favor of the "Online operators" without any other general benefit to the public. Land based gaming business will be pushed to close and only who will benefit are "Online operators". Please notice that by the Gazette Notice 8753 County Government cannot control/regulate "Online Gaming".

WORKING HOURS 8PM-06AM:

We are not sure what might be the agenda behind such a proposal. Please note that by the Gazette Notice 8753 County Government cannot control/regulate "Online Gaming" and such platforms will still run 24/7. Such a proposal is discriminatory against Land based Gaming establishments, and it directly favors "Online gaming/betting establishments".

Land based gaming operators are main employment creators in Gaming/Betting Industry. Currently permitted working hours, by National Betting Control and Licensing Board are 10am - 05am. Any change in such working hours will lead to a permanent closure of 1-2 Land based casino shifts and few thousands of Kenyans will lose jobs. Illegal establishments will flood the market, punters will just engage in gaming/betting via local online platforms or foreign online platforms (Not regulated by Kenyan government, full loss of revenue and taxes). Such proposal will also lead to a massive loss of employment; reduction of revenue collected by National government.

AGOK is of the opinion that such proposal is going in a favor of the "Online operators" without any other general benefit to the public.

CASHLESS:

We would like to express several concerns and implementation challenges, regarding full cashless gaming. Our explanation and inputs take into consideration, table games and various slot machines crediting systems.



ASSOCIATION OF GAMING OPERATORS - KENYA

(10th Floor Utalii House, Suite 1020, Utalii Street, Nairobi)

A) TABLE GAMES:

As per our current information 100% cashless table games are not conducted at any international jurisdiction. With the implementation of the full cashless table games in the Republic of Kenya, we might create a precedent in international gaming history, which has been in existence for over 200 years.

We all know that all table games include cash drop boxes, where the value chips "Buying in" money is locked, till the moment of the physical closure of the casino business, for that particular operational day (To ensure transparency and accountability). By counting that cash and chips status (at the opening and closing), daily Government BCLB inspectors are able to close a table and to determine a table result.

In a scenario where all chips should be purchased at the cash desk, operators and regulators will have a massive issue of a proper value chips tracking. This might open a Pandora's Box with the various options for a value chips manipulation/theft, by customers or gaming staff personnel.

Non casino CCTV systems are not adjusted to cover a line of movement within a premises, focus is on a particular table and transactions conducted on the same. During a chips buying in process, money is counted, as per the manner which is ensuring that all notes are visible, by CCTV system, table gaming staff, BCLB gaming inspector and customer. Once money is confirmed, customers will be given an equivalent in value chips and money will be placed inside the locked "Cash drop box". Please note that cash drop box can be removed, unlocked and open only during casino closing time, in the presence of regulatory authority officer (BCLB). On this way a full transparency is guaranteed and each shilling is accountable.

Full "Buying in" process, conducted on a table (**Cash count – Issuing of value chips – Money placed inside the locked drop box**), is assisting to gaming establishments and BCLB officer to track all process, at one place, and to act in a case of a possible dispute resolution. This is the only way to implement a proper **"Dispute resolution scheme"**. Anyway, Covid pandemic was a "Game changer", for all of us, and we needed to adjust, as much as possible to the new life situation.

It is also very important to understand that "Fast transactions" on a table game and by the mathematical nature of the same, is the way casino table games are creating income. **Slowing down, such transactions (movement of players to cash desk and back), for sure will lead to loss of income and will create confusion with the value chips tracking.** Cash transactions conducted at the table are 100% visible via CCTV systems and it is the best way to ensure regularity of the all gaming process.



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Potential issues:

1. Tracking of the chips between cash desk and tables, for the operators and regulator officer present (BCLB), will be almost impossible
2. Transparency of the chips buying in process will be compromised (No proper CCTV coverage for the full chips movement)
3. Tables "Value chips float boxes" are not created to receive massive quantity of the extra chips (Which in cashless gaming, will be all chips purchased at the cash desk and brought to the table). **In this case and during a busy day, many "Extra chips" will be exposed and there will be a threat from manipulating/stealing the same)**
4. Challenges in dispute resolution
5. Buying in on cash desk will slow down the game and will lead to the loss of the business

Advantages of the cash transactions on the table:

1. Full transparency of the chips buying in process and game conducted
2. Full transparency of the table closure process (Opening and closing chips status and transparent cash count)
2. All buying in process is recorded by CCTV system and disputes are easy to be managed
3. Faster game, more revenue and more tax payable
4. No space for value chips manipulation or theft

B). SLOT MACHINES:

Regarding slot machines, firstly we need to take into consideration three current ways, In Kenya, how machines are credited.

1." KEY IN" on this way customer is giving money to a slot attendant, which is by special electronic or manual key, crediting machine.

In this scenario cash money movement is conducted in the following manner:

- Cash handover from customer to slot attendant
- Slot attendant surrendering money to cash desk officer



ASSOCIATION OF GAMING OPERATORS - KENYA

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- At the casino closing time, key in money must be confirmed by shift manager
- In the morning all key in money must be confirmed by management

On this way of the slot machines crediting, we can notice that at least four (4) persons are involved in cash handling process. In our opinion it is not a good idea, especially during this Covid pandemic.

Disadvantages of this process:

1. There are too many cash handlers, during Covid pandemic
2. Human being errors - Slot attendant might key in more or less credit (Dispute issues which is hard to be sorted till full closing of the casino)
3. Not all Slot machines have this as crediting option
4. Chance that fake notes might be accepted (Check option with the money acceptors)

2. "MONEY ACCEPTORS"

- Most popular and safest way of machine crediting (For operators and as well regulators)

Advantages of this machine crediting process:

1. Money acceptors are furnished with the notes software's which prevents acceptance of fake notes
2. Potential mistakes in machine crediting are equal to "0". No potential mistakes by slot attendant. No fake notes and machine crediting process is 100% accurate
3. 100% ensured transparency and accountability in cash flows (Machines IN-OUT meters' statuses)
4. Cash handling is just by customer and casino management when making cash count. No involvement of the slot attendant, cash desk officer or shift manager.

3. CASHLESS CARD SYSTEM

Regarding implementation of such a system, we need to understand that slot machines must have a technical compatibility with the same. In our opinion, over 90% of the slot machines, currently operating at the Kenyan market, do not have a technical compatibility with such platforms/systems (Not existing SAS protocols or similar).



ASSOCIATION OF GAMING OPERATORS - KENYA

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Such systems are also extremely expensive and it is not possible to buy them. The only option is to rent them from a several foreigners registered and certified companies. Such service providers are having various contact agreement options but mostly they charge 2%-5% from GGR (As system maintenance fee). Considering our current tax regime, any additional cost of running a business, might lead to the closure of the same.

To procure such a system, operator in Republic of Kenya, firstly will need to have slot machines compatible with such technology. Secondly, every month operators will need to pay, abroad, contractual fees (Service providing fees) to a foreign company. It is a very important to note that many Kenyan banks are refusing to process foreign SWIFT remittances for clients involved in gaming/betting activities. Due to this, operators might not be able to maintain their contractual obligations to service providers.

Disadvantages of this process:

1. High cost of the card system renting
2. Technical implementation challenges
3. Issues with commercial banks regarding gaming/betting establishments foreigner SWIFT remittances
4. Such service providers' contracts ***might be misused by irresponsible operators*** to repatriate profits generated with Republic of Kenya and to reduce tax payable locally. This subject is an extremely sensitive, as currently; there are no policies which are regulating such service providers' payments. For example, some irresponsible operator might sign such a contract by which service fees are payable at the rate of **20-30% of GGR** and on this way to **repatriate profits** with increasing cost of business and **declaring a small profit/loss** (Corporative tax).

In our view it will be impossible to move on 100% cashless and we should maintain current and transparent transaction with the maximum focus to reduce physical cash handling. Each operator should advice on the steps taken, at their own establishments, and their technical possibilities/challenges to handle cash in the best possible manner.

Cash was always a part of our business and we should not change best proven international gaming practices. Last 2 years, our businesses were strongly affected by Covid 19 pandemic and we had massive financial challenges to sustain our business and employment levels.



ASSOCIATION OF GAMING OPERATORS - KENYA

(10th Floor Utalii House, Suite 1020, Utalii Street, Nairobi)

SECTION	PROPOSED AMENDMENTS	REASONS AND PROBLEMS	RECOMMENDATIONS
17(2)	A person who intends to operate any Betting, Lotteries or Gaming premise in the county shall not be licensed to operate unless the establishment is domiciled within a five (5) star hotel as rated by the Tourism Regulatory Authority.	<ul style="list-style-type: none"> - This curtails the freedom choice of location and only meant to benefit a few landlords not considering the financial implications of such buildings and the spaces needed for gaming machines. The regulator should come up with zoning mechanism and restrict number of Casinos/Betting premises within the locality but not confine them to a 5 star hotel buildings only. - All foreigner Land based gaming investors will withdraw from the market and they will relocate (Direct loss of foreigner investments) - Loss of revenue to the Country - Loss of revenue to the County - Over 10,000 Kenyans will lose jobs (Direct/Indirect) - Boost of illegal gaming activities - Only Online gaming operators will benefit (By Gazette Notice 8753 County doesn't have any jurisdiction within Online gaming) - Proposal against Gazette Notice 8753 and superseding National legislation CAP 131. - No future foreigner investment in land based gaming - Proposal against Gazette Notice 8753 and superseding National legislation CAP 131. 	<p>By retaining the original Act and deleting Proposed amendment where licensing is pegged to 5 (five) star hotel only.</p> <p>We request for the full rejection of the amendment.</p>

<p>33A. (1)</p>	<p>All licensed Betting, Lotteries and Gaming premises & online gambling shall only operate within the hours of 8 pm to 6 am.</p>	<ul style="list-style-type: none"> - Proposal will lead to closure of 2 casino shifts and massive loss of employment. - By the Gazette Notice 8753 County Government cannot control/regulate "Online Gaming" and such platforms will still run 24/7. Such proposal is discriminatory against Land based Gaming establishment, and it directly favors "Online gaming/betting establishments". - "0" future foreigner investments - All foreigner Land based gaming investors will withdraw from the market and they will relocate(Direct loss of Foreigner investments) - Loss of revenue to the Country - Loss of revenue to the County - Over 10,000 Kenyans will lose jobs (Direct/Indirect) - Increase in illegal gaming activities - Proposal against Gazette Notice 8753 and superseding National legislation CAP 131. 	<p>We request for the Full rejection of the amendment</p>
	<p>Operating Hours (3) (2) Restrictions on operating hours as proposed in the amended legislation and the penalty thereon are punitive and retrogressive to the growth of the industry</p>	<ul style="list-style-type: none"> - Regulating operating hours to start from 8 p.m. to 6.00 am has far reaching negative implication. If allowed to pass will directly reduce the staff. Negate vision 2030 of having 24 hours economy and eventually reduce the contributions in the form of taxes to the exchequer. At some point will encourage capital flight. The county should ensure responsible gaming and encourage business growth just like other jurisdiction as opposed to punitive laws meant to close the businesses. 	<p>The operating hours to be maintained AS 24/7 but regulated from time to time by the board based on the economic circumstances prevailing in the country.</p>

38A. (1)	All Betting, Lotteries & Gaming premises shall within six (6) months of enactment of this Act cause to only have cashless modes of Betting within the establishment.	<ul style="list-style-type: none"> - Such decision is conflicting Gazette Notice 8753. It might create intergovernmental issues and potential court cases - Technical implementation challenges as described within introduction - Issues which Gaming/Betting operators already have with commercial banks - Dispute resolution issues - Value chips tracking issues 	We request for the Full rejection of the amendment
	Insertion of new sections into no. 2 of 2021 as proposed in the Amendment Bill	<ul style="list-style-type: none"> - Vision 2030 envisaged a 24 hour economy and restricting the timing of this nature of business only meant to reduce the taxes paid by the entities to the exchequer. Equally these hours will totally reduce the number of staff who draws their income by way of working in these establishments. With Covid - 19 still with us. Many families who are directly and indirectly benefitting from these establishments will go hungry. In the past we have witnessed when we had a lockdown and our businesses were closed totally. Many Kenyan families were exposed to long suffering leading to domestic violence to some extent. The County Government should benchmark with other developing economies where operations are 24/7 with sound regulatory framework supported by players in the industry. 	The principal Act in section 33 to remain and the proposed amendment is deleted as proposed in 33A. restricting the hours of operations to between 8p m to 6 a m
D 4	Prohibition against Advertisement Section 33B Prohibition against any advertisement on canopy of premises totally misplaces the purpose of having a business.	<ul style="list-style-type: none"> - Our businesses are legal and should not be treated as illegal by hiding us from the general public. We contribute to the development of this country and should therefore be viewed just like any other business. The rules should not be prohibitive but rather conducive for businesses to thrive. 	All businesses should be identified by location and when an advert is approved by Nairobi City County to be placed on the canopy of a building to show direction of the

			<p>services to any needy client. This should not be viewed as undue influence the way the proposed amendment portrays.</p>
<p>E5 Section 38</p>	<p>Insertion of a new section into No. 2 of 2021 Immediately after Section 38</p> <p>-The proposed amendment is not factual bearing in mind that machines used as gaming devices required some software's which needs to be developed to suit cashless gaming. It should be remembered that the nature of casino business is not logical but rather emotional and especially to the brick and motor Casino operations.</p>	<p>- If passed as envisaged in the proposed bill. Many of our machines which use bill acceptors will be rendered useless. This will amount to several losses of investment as the machines are costly and not locally assembled.</p>	<p>While we advocate to have cashless operations in the gaming industry. Enough time should be given as these programs are not locally found. Even the developed economies like USA are still grappling with cashless gaming. Several innovations are being tested in the market and hence it would be prudent to wait and be able to see what best works for us with the machines. We propose a minimum period of two years.</p>

ATTACHMENT:

Page: 5120

GAZETTE NOTICE NO. 8753

THE CONSTITUTION OF KENYA
THE INTERGOVERNMENTAL RELATIONS ACT
(NO. 2 OF 2012)

DELINEATION OF FUNCTIONS

BETTING, CASINOS AND OTHER FORMS OF GAMBLING

IT IS notified for the general information of the public that the Intergovernmental Relations Technical Committee has approved the delineation of the functions relating to betting, casinos and other forms of gambling between the National and county governments in the manner set out in the Schedule.

Schedule

<i>National Government</i>		<i>County Government</i>	
1	(a) Policy formulation, legislation, standards and norms; (b) Development of standards and norms; (c) Regulation of the gaming industry; (d) Capacity building and technical assistance.	1	(a) Implementation of policy, standards and norms; (b) Periodic monitoring and evaluation of betting, lotteries and gaming; (c) Development and implementation of county legislation on betting and other forms of gambling.
2	Licensing of public gaming (casino).	2	(a) Licensing of public gaming (casino) premises; (b) Enforcement and compliance i.e. sport checks, daily supervisions of casinos.
3	Vetting, security checks and due diligence.	3	N/A
4	Licensing of prize competitions cross cutting several counties (on promotion of product and	4	Licensing of prize competitions for promotions confined to a county.

	services).		
5	N/A	5	Licensing of amusement machines.
6	Licensing of national lotteries.	6	Licensing and supervision of county lotteries (lotteries confined within a county).
7	(a) Licensing of on-the course totalisators (b) Licensing of off-the course totalisators.	7	Licensing of premises for totalisators.
8	N/A	8	Licensing and issuance of pool table permits within the counties.
9	Licensing of bookmakers	9	Licensing of betting premises.
10	Online gaming.	10	N/A
11	Handling of complaints and arbitration.	11	Handling of complaints and arbitration.

JOCKEY CLUB OF KENYA



The Office of the Clerk

Nairobi City Council Assembly

2nd Floor, City Hall Building.

Nairobi.

clerk@nairobiassembly.go.ke

Dear Sir/Madame,

The Jockey club of Kenya is a stake holder in the Betting industry, being the holder of the Totalisator Betting License for horse racing betting in Kenya.

The Jockey club of Kenya conducts and governs the sport of thoroughbred Horse Racing in Kenya. Totalisator Betting on the Horse racing meetings held at our Ngong Race course premises – this is the only racecourse within the larger East Africa, a tourist destination listed among the top places to visit in the country - is an integral part of the entertainment offered to the public attending these Race meetings. In addition, Totalisator Betting provides a small revenue source that is reinvested in the horse racing industry in the country.

Horse Racing Totalisator Betting is NOT done for profit, but rather to help the industry survive. It is important to note that none of the Directors or members of the Jockey Club of Kenya gets dividends nor are they paid to attend Board meetings. The Jockey Club of Kenya is a company limited by guarantee with all revenues generated going back to maintain the racecourse.

We have in place stringent systems to ensure that Betting cannot be conducted by persons under the age of 18. In addition, all our staff have clear instructions that no children will be allowed to place bets on the premises of Ngong Racecourse.

Being a stake holder in the Betting industry and in view of the fact that our operations are conducted within the County of Nairobi, we wish to submit our views to be considered when the proposed amendment comes up for debate and discussion.

1. The amendment proposal to section 17 of no 2 of 2021 proposes “ A person who intends to operate any Betting, Lotteries or Gaming premise in the county, shall not be licensed to operate unless the establishment is domiciled within a 5 star hotel as rated by the Tourism Regulatory Authority”

Our objection to this proposed amendment is that:

- i) in the case of Totalisator Horse Racing Betting, all betting is done on LIVE horse racing that the punters watch. It is important to know that the betting public must see the horses being paraded before a race to be able to gauge its disposition at the state of a race to tell if to bet on it or not. After a race, the winners are paraded at the winner’s circle as the jockeys go in to get weighed to ascertain their weight has remained the same as at the start of the race. These events are LIVE before a race, during and after and cannot be conducted in a hotel setting
 - ii) The Ngong Racecourse is not rated or licensed by the Tourism Regulatory Authority and therefore cannot attain the 5-star rating referred to in this amendment leaving the racecourse with no option but to close down an industry that has been in the country for over 100 years. We believe this is not the intention of the Honorable Assembly and this must be corrected.
 - iii) This would mean a loss of jobs for the Kenyans employed directly and indirectly in this industry and the small source of revenue Betting provides the Horse Racing Industry in the country.
 - iv) The absence of Betting would also take away from the entertainment for Race goers and therefore result in a decline in the industry which employs hundreds of people within the County.
2. Amendment proposed to section 33A (1) “all Betting, Lotteries and Gaming premises and online gaming shall only operate between the hours of 8pm to 6am”
 - i) In this country, since the first races were organized around 1870s using Somali ponies, all race meetings are run between 12noon and 5pm. We do not have the capacity to conduct horse racing without daylight. If we must operate within these hours then it means that if this proposed amendment was passed it would effectively drive us out of business.
 - ii) We need to appreciate that a large part of horse racing is the entertainment aspect of having the thrill in a certain horse performing well in the race. A day out at the races is still one of the safest family entertainment events offered in this country and we urge you to make this consideration while debating this bill and not take this important sport away from Kenyans.

- iii) Subsection 2, "No broadcasting of video or audio programming that promotes betting, gaming and gaming adverts through shall be done during the watershed period as prescribed in the Kenya Information and Communications Act, 1998 and the Kenya Communication (Broadcasting) Regulation and the programming code."
- a. Here at the Ngong racecourse we have our in-house video production that covers a race from start to finish for the benefit of the public as well the officials (Stewards and Judges) of a race meeting.
 - b. The race track is approximately 2.4 kilometers and it is not possible to always see the horses running in the furthest part of the track without the benefit of the in-house broadcast during a live race. To remove this component is to take away the single most beneficial viewing aspect of a race meeting. We need to get the wording of this subsection amended to allow for broadcasting of horse racing in the same way football broadcasting is unrestricted during live matches.

The adoption of this proposed amendment would effectively close down the Ngong Racecourse and bring to an end by way of regulation a long standing and continuing history of this country as well as an end to Totalisator Betting which is primarily conducted on live horse racing.

3. Proposed Insertion of a new section immediately after section 38 to be called 38 A Cash less operations "All Betting, Lotteries and Gaming premises shall within 6 months of enactment of this Act cause to only have cashless modes of betting within the establishment"
- i) For various reasons including speed required in taking and paying out bets as well as the low values of bets and winnings being typical with horse racing, non-cash modes of betting are impractical. Furthermore, the betting equipment – we use specialized totalisator equipment to conduct betting - for the Totalisator is all configured to using cash transactions. All transactions are recorded in the Totalisator system as this is what is used to calculate the winner's dividends.
 - ii) Besides under the constitution the Kenyan shilling is legal tender and must be respected as such.

We sincerely hope and trust that our observations and objections as outlined in this submission will be taken into account when the proposed amendments are discussed in the County assembly. Please take note that we are available, at your invitation, to make oral submissions in support of our objections to the proposed amendments.

John Mutua



CONSULTANT

The Jockey Club of Kenya

7th February, 2022.

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John Mutua



CONSULTANT

The Jockey Club of Kenya

7th February, 2022.

NAIROBI CITY COUNTY



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Email: info@nairobi.go.ke
Website: www.nairobi.go.ke

City Hall,
P. O. Box 30075-0010,
Nairobi, Kenya.

COMMERCE TOURISM & COOPERATIVES

REF: NCC/CTC/CECM0/10/02/2022

2ND February, 2022

THE CLERK,
NAIROBI CITY COUNTY ASSEMBLY,
NAIROBI.



RE: SUBMISSION OF MEMORANDA ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL, 2021

Reference is made to your letter Ref: NCCA/SC-TTC/CORR/2022 dated 26th January, 2022 on the above subject matter.

Attached herein please find the Memorandum on the Nairobi City County Betting, Lotteries and Gaming (Amendment) Bill, 2021 for your attention.

A handwritten signature in black ink.

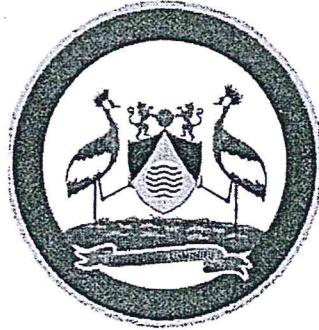
WINFRED GATHAGU
CECM – COMMERCE, TOURISM & COOPERATIVES

CC: Ag. County Secretary - Nairobi City County

C.A. Heilou
Pc TNA
16/11/2021
3/2/2022

NAIROBI CITY COUNTY

Telephone: +254 20 2221349
Website: www.nairobi.go.ke



City Hall
P. O. Box 30075 00100
Nairobi
Kenya

MEMORANDUM ON THE NAIROBI CITY COUNTY BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL, 2021

TO

THE COUNTY ASSEMBLY

FROM

**CECM – COMMERCE TOURISM &
CO-OPERATIVES SECTOR**

(GAMING AND BETTING DEPARTMENT)

INTRODUCTION

The Nairobi City County Betting, Lotteries and Gaming Act, 2021 was Gazzeted on 6th May, 2021. This was adopted in strict adherence to the Schedule four (4) of the constitution and Gazette notice 8753 on delineation of functions between the Counties and the National Government dated 8th September 2017. Betting, Lotteries and Gaming are a concurrent function of both the National and County governments.

According to the final orders of the petition No. 295 of 2014, both the National, Betting, Lotteries and Gaming Act and the Nairobi City County Betting, Lotteries and Gaming Act should only be implemented as per the Gazette Notice 8753 on delineation of functions of 8th September, 2017. Therefore, when considering any legislation, this should be the point of reference. The Nairobi City County Betting, Lotteries and Gaming Act, 2021 is currently being implemented and has started generating revenue to the Nairobi City County Government. When the Act is fully implemented the targeted revenue will be 230 million i.e approximately 30 million from Betting, Lotteries & Gaming premises and 200 million from entertainment tax.

Currently the Betting, Lotteries and Gaming industry employs over 20,000 people directly and even more are employed indirectly. Therefore, the proposed amendments will affect the investors and the employees respectively and also loss of revenue to the county. Investment in the Betting, Lotteries and Gaming industry, is capital intensive and any disruption of the status quo will result to loss of capital already invested.

The National Government as per the delineated functions issues bookmakers (Betting) operating license, Lotteries cutting across the counties operating licenses and Gaming operating licenses and online licenses. Therefore, any amendment affecting these licenses requires consultation with issuing authority Betting Control & Licensing Board.

SECTION	PROPOSED AMENDMENTS	CONSEQUENCES OF THE AMENDMENTS	RECOMMENDATIONS
17(2)	A person who intends to operate any Betting, Lotteries or Gaming premise in the county shall not be licensed to operate unless the establishment is domiciled within a five (5) star hotel as rated by the Tourism Regulatory Authority.	<ul style="list-style-type: none"> - Investment in Betting, Lotteries & Gaming activities are capital intensive therefore, the proposed amendment will lead to loss of capital invested and also lead to mass relocation to other counties. - Loss of revenue to the county if the premises are limited to five (5) star hotels. - Over 20,000 Nairobians will lose their jobs directly from the industry and many more indirectly. - This would also lead to mushrooming of illegal gambling dens. - Online gambling will thrive which will only benefit the National Government on Betting, Lotteries & Gaming revenue. - Most of the licensed and inspected Gaming & Betting premises are as good as five(5) star hotel standards. They are monitored & supervised on daily basis by the county Gaming inspectors. Limiting them to five star hotels will affect their investment which have been duly licensed. This will lead to unnecessary and costly litigation to the county. 	We request for the rejection of the amendment.
33A. (1)	All licensed Betting, Lotteries and Gaming premises & online gambling shall only operate within the hours of 8 pm to 6 am.	<ul style="list-style-type: none"> - Online Betting & Gaming is a function of the National Government therefore; the counties cannot regulate online activities as per Gazette Notice 8753 on delineated functions dated 8th September, 2017. - This will kill the land Betting & Gaming investment industry which employs over 20,000 Nairobians directly & make the National Government benefit from online gambling. - Nairobi County will lose over Kshs 230 million targeted on the premises and entertainment tax through implementation of the Nairobi City County Betting, Lotteries and Gaming Act, 2021. - The County Government will lose revenue while the National Government will gain through licensing of online Betting, Lotteries and Gaming activities. - Limiting the time will not deter the young people from gambling through their mobile phones on national and international platforms. - This will also lead to mushrooming of illegal gambling dens which will affect the youth more and also lead to loss of revenue. 	We request for the rejection of the amendment.

		- Recently the Nairobi County employed 45 new Gaming Inspectors to supervise monitor and generate daily returns. These and other officers will be affected.	
38A. (1)	All Betting, Lotteries & Gaming premises shall within six (6) months of enactment of this Act cause to only have cashless modes of Betting within the establishment.	- National Government through the Betting, Control & Licensing Board issue operating licenses (Bookmakers/ Betting, Gaming & Lotteries cutting across the counties. Betting, Control & Licensing Board determines the terms & conditions of each license issued. The amendment therefore may cause unnecessary litigations & intergovernmental conflicts.	We request for the rejection of the amendment.

THESE ARE THE DELINEATED FUNCTIONS BETWEEN NATIONAL AND COUNTY GOVERNMENT:

Page: 5120

GAZETTE NOTICE NO. 8753
THE CONSTITUTION OF KENYA
THE INTERGOVERNMENTAL RELATIONS ACT
(NO. 2 OF 2012)
DELINEATION OF FUNCTIONS

BETTING, CASINOS AND OTHER FORMS OF GAMBLING

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2	Licensing of public gaming (casino).	2	(a) Licensing of public gaming (casino) premises; (b) Enforcement and compliance i.e. sport checks, daily supervisions of casinos.
3	Vetting security checks and due diligence	3	N/A
4	Licensing of prize competitions cross cutting several counties(on promotion of product and services)	4	Licensing of prize competitions for promotion confined to a county
5	N/A	5	Licensing of Amusement machines

6	Licensing of national lotteries.	6	Licensing and supervision of county lotteries (lotteries confined within a county).
7	(a) Licensing of on-the-course totalisators (b) Licensing of off-the-course totalisators.	7	Licensing of premises for totalisators.
8	N/A	8	Licensing and issuance of pool table permits within the counties.
9	Licensing of bookmakers	9	Licensing of betting premises.
10	Online gaming.	10	N/A
11	Handling of complaints and arbitration.	11	Handling of complaints and arbitration.

CIA Hellen
PLS INA
1/2/2022
PLS
8/2/2022

PCA SCJ
PLS deal!
B. Clerk
4/2/22



OFFICE OF THE PRESIDENT
MINISTRY OF INTERIOR AND
CO-ORDINATION OF NATIONAL GOVERNMENT
BETTING CONTROL AND LICENSING BOARD
Kenya Charity Sweepstake House, 3rd & 8th floor, Mama Ngina Street

Telephone : 0111021400
Email : info@bclb.go.ke

P. O. Box 43977 - 00100,
NAIROBI.

BCLB 1/20 VOL.I/(39)

4th February, 2022

The Clerk
Nairobi City County Assembly
City Hall Buildings
P.O. Box 45844-00100
NAIROBI



RE: SUBMISSION OF MEMORANDA ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL 2021

This is in reference to your letter No.NCC A/SC-TCC/CORR/2022/(003) dated 26th January, 2022 over the above matter. The Board has examined the Amendment Bill and wish note the following:-

Betting Control and Licensing Board is established under Section 3 of Betting Lotteries and Gaming Act Cap 131 Laws of Kenya. The Act provides for the Control and Licensing of betting and gaming premises; for imposition and recovery of a tax on betting and gaming; for authorization of public lotteries and for connected purposes.

The Constitution of Kenya 2010 under the fourth Schedule on distribution of functions between National and County Government placed betting and gambling under shared/concurrent function.

Under Part 1 (34) of the said schedule, the national betting, casino and other forms of gambling are placed under the National Government while;

Under Part 2 (4)(a) betting, casino and other forms of gambling are placed under the County Government

In order to create order, avoid conflict, overlap and duplication of efforts, wide consultations were carried out under the stewardship of the Intergovernmental

Relations Technical Committee to unbundle and assign functions. In September 2017 the Committee within their mandate under the Intergovernmental Relations Act No.2 of 2012 approved the delineation of functions relating to betting, casinos and other forms of gambling between the National and County Governments. The said approval was contained in a Gazette Notice No.8753 issued on 8th September 2017 (attached).

The Board has held the view that any legislation by a County government relating to betting, casinos or any form of gambling must of necessity be guided by the provisions of the gazette notice No.8753 that gave clarity to the functions as delineated for each level of Government. Ignoring to do so will not only create unnecessary confusion and disorder in the industry and expose the country to serious security challenges resulting from unregulated gambling but also will be a bad law as it will be in conflict with a National Legislation.

Lastly, it is important to note that gambling and related activities are of security in nature and that is why the Government placed Betting Control and Licensing Board under the State Department for Interior and Citizen Services which is in charge of National Security.

The Board is confident that in considering the amendment bill, the Assembly will be guided by the Gazette Notice and do what it must do which should be within the County's Jurisdiction.

The Board wishes to make the following comments on the proposed amendments:-

1. Gambling is regulated uniformly in Kenya under certain set norms and standards provided for under the Betting, Lotteries and Gaming Act CAP 131 Laws of Kenya. The national legislation applies uniformly throughout Kenya. The overall policy objective of regulating gaming is to ensure that it is conducted with due propriety, Keep Gaming crime free, Protect members of the public against fraud, Safeguard the underage and the vulnerable, Ensure that the public and government visibly gain from Gaming operations, through employment creation, revenue generation and tourism stimulation.
2. **Section 17(2):** The development of gaming policy and betting standards is a function of the National Government. The proposed amendment to only allow operation of casinos in five star hotels is unreasonable and not based on any study. National legislation has provided for the standard requirement for

public gaming (casino) in Kenya therefore the proposed amendment will be in conflict with the national government policy on operation of casinos. The emerging trend in the world is to locate casinos in Integrated Resorts and not in hotels. This proposed amendment should therefore be rejected.

3. Section 33A(1); The proposed amendment to change the operating hours of gaming establishments interferes with the operationalization of section 46(2) of the Betting Lotteries and Gaming Act Chapter 131 Laws of Kenya which grants the Board with powers to impose conditions on the manner in which a licensee is to conduct its business. This includes the suitability, conditions and conduct of the premises and hours during which the premises may be open for business. This proposed amendment in our view is beyond the legislation jurisdiction of the county.
4. Section 33A(2): The national legislation provides adequate regulatory framework on advertisement of gambling activities in mass and print media. It is obvious that advertisement outlets cover a general area extending to more than one county unless the advertisement is localized within a County. The proposed amendment is beyond the jurisdiction of the county.
5. Online Gaming which includes Virtual Poker, Virtual Casinos and Sports Betting are operations beyond any County boundary. The activity is national and therefore in our view it is a national function beyond county legislation.
6. Section 33(1)(2)(3): The mandate of the county governments under the unbundled functions is limited to licensing of gaming premises and does not include licensing of totalisator which is a function of the national Government. It is our considered view that the Bill should address the authorization in so far as it relates to totalisator premises only.
7. Section 38 (1); under the delineation of functions, counties have no powers to issue authorization for private lotteries cutting across counties. Therefore it should be made clear that the private lottery referred to under this section is lotteries whose activities or sale of tickets are exclusively confined within the county.
8. Section 17(1), 33(1); in referring to a license, it should be clear on the nature of license to be issued by the county. In our view and as per the gazette notice

on delineation of functions, license under these sections should refer to a premise License.

CONCLUSION

The Board submits that the proposed amendments if passed will cause unnecessary confusion in the industry and conflict of laws in regulating gambling in the country.

It is the Boards considered view that the proposed amendments are in conflict with the guideline provided for under gazette notice No. 8753 on delineation of functions and hence they should be rejected.



P.K MBUGI, OGW
DIRECTOR

✓ CC: The Principal Secretary
State Department for Interior and Citizen Services
P.O. Box 30510-00100
NAIROBI

Chief Executive Officer
Intergovernmental Relations Committee
P.O. Box 44880-00100
NAIROBI



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CORRIGENDA

IN Gazette Notice No. 1554 of 2017, Cause No. 188 of 2016, *amend* the petitioner's name printed as "Paul Kihanyu Njoroge" to read "Paul Kihanyu Njoroge".

IN Gazette Notice No. 8159 of 2017, Cause No. 74 of 2017, *amend* the deceased's name printed as "Gladys Wachere Kimani" to read "Mary Wambui Karuga".

IN Gazette Notice No. 8094 of 2017, Cause No. 383 of 2017, *amend* the first petitioner's name printed as "Margaret Wagiri Wamwea" to read "Margaret Magiri Wamwea" and the place of death printed as "Nairobi West Hospital" to read "Nairobi Women Hospital".

IN Gazette Notice No. 6563 of 2017, Cause No. 143 of 2017, *amend* the deceased's date of death printed as "27th August, 2015" to read "27th August, 2016" and the signature date printed as "27th April, 2016" to read "27th April, 2017".

IN Gazette Notice No. 4091 of 2017, Cause No. 25 of 2017, *amend* the deceased's name printed as "Mukoma Njubi" to read "David Kanyutu Kariuki".

IN Gazette Notice No. 5581 of 2017, *amend* "Cause No. 18 of 2016, to read "Cause No. 18 of 2017" and the petitioner's name printed as "Alving Steve Chege Kibui" to read "Alvin Steve Chege Kibui".

IN Gazette Notice No. 8011 of 2017, Cause No. 2549 of 2015, *amend* the petitioner's name printed as "Hannah Wanjiku" to read "Hannah Wanjiru".

IN Gazette Notice No. 663 of 2017, Cause No. 47 of 2016, *amend* the petitioner's name printed as "Joseph Kalimbi Stephen" to read "Gethamuta M'Rarama".

IN Gazette Notice No. 8150 of 2017, Cause No. 175 of 2017, *amend* the deceased's name printed as "Eunice Wambui Muchori" to read "Eunice Wairimu Muchiri".

GAZETTE NOTICE NO. 8753

THE CONSTITUTION OF KENYA

THE INTERGOVERNMENTAL RELATIONS ACT

(No. 2 of 2012)

DELINEATION OF FUNCTIONS
BETTING, CASINOS AND OTHER FORMS OF GAMBLING

IT IS notified for the general information of the public that the Intergovernmental Relations Technical Committee has approved the delineation of the functions relating to betting, casinos and other forms of gambling between the National and county governments in the manner set out in the Schedule.

SCHEDULE

National Government	County Government
1 (a) Policy formulation, legislation, standards and norms; (b) Development of standards and norms; (c) Regulation of the gaming industry; (d) Capacity building and technical assistance.	1 (a) Implementation of policy, standards and norms; (b) Periodic monitoring and evaluation of betting, lotteries and gaming; (c) Development and implementation of county legislation on betting and other forms of gambling.
2 Licensing of public gaming (casino).	2 (a) Licensing of public gaming (casino) premises; (b) Enforcement and compliance i.e. sport checks, daily supervisions of casinos.

National Government	County Government
3 Vetting, security checks and due diligence.	3 N/A
4 Licensing of prize competitions cross cutting several counties (on promotion of product and services).	4 Licensing of prize competitions for promotions confined to a county.
5 N/A	5 Licensing of amusement machines.
6 Licensing of national lotteries.	6 Licensing and supervision of county lotteries (lotteries confined within a county).
7 (a) Licensing of on-the-course totalisators (b) Licensing of off-the-course totalisators.	7 Licensing of premises for totalisators.
8 N/A	8 Licensing and issuance of pool table permits within the counties.
9 Licensing of bookmakers	9 Licensing of betting premises.
10 Online gaming.	10 N/A
11 Handling of complaints and arbitration.	11 Handling of complaints and arbitration.

KAREGA MUTAHL

Chairman, Intergovernmental Relations Technical Committee.

GAZETTE NOTICE NO. 8754

THE COMPETITION ACT

(No. 12 of 2010)

PROPOSED ACQUISITION

PURSUANT to the provisions of section 46 (6) (a) (ii) of the Competition Act, 2010, it is notified for general information of the public that the Competition Authority of Kenya has authorized the proposed acquisition of 40% of the ordinary shares in AAH (BV) Limited by Oman Trading International Limited with certain veto rights.

Dated the 30th August, 2017.

WANG'OMBE KARIUKI,
Director-General.

GAZETTE NOTICE NO. 8755

THE COMPETITION ACT

(No. 12 of 2010)

PROPOSED ACQUISITION

PURSUANT to the provisions of section 46 (6) (a) (ii) of the Competition Act, 2010, it is notified for general information of the public that the Competition Authority of Kenya has authorized the proposed acquisition of control in AON Kenya Insurance Brokers Limited by Extoligix Proprietary Limited through Heartland Holdings Limited.

Dated the 30th August, 2017.

WANG'OMBE KARIUKI,
Director-General.

GAZETTE NOTICE NO. 8756

THE COMPETITION ACT

(No. 12 of 2010)

PROPOSED ACQUISITION

PURSUANT to the provisions of section 46 (6) (a) (ii) of the Competition Act, 2010, it is notified for general information of the public that the Competition Authority of Kenya has authorized the

