Approved for tabling. [signature] SNA 23/2/2021

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION (2021)

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

REPORT ON:

THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL, 2020

(NATIONAL ASSEMBLY BILLS No. 35 OF 2020)

Directorate of Departmental Committees,
The National Assembly,
Parliament Buildings,
NAIROBI

February, 2021

TABLE OF CONTENTS

LIST OF ANNEXURES

Annexure 1:	Minutes of Committee sittings on consideration of the Bill
Annexure 2:	Signed list of Members who attended the sitting which considered and adopted the report
Annexure 3:	Copy of newspaper advertisement inviting the public to make representations on the Bill
Annexure 4:	Submissions from Stakeholders

CHAIRPERSON'S FOREWORD

The Birth and Death Registration (Amendment) Bill, 2019 (National Assembly Bill No. 32 of 2019) was introduced in the National Assembly on 22nd December, 2020 and immediately thereafter committed to the Departmental Committee on Administration and National Security for review and report to the House pursuant to the provisions of Standing Order 216(5) (c).

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127 (3), the Committee through daily newspaper advertisements of 22nd January, 2021 invited the public to make representations on the Bill. The Committee received representations from the public which it took into account while considering the Bill. The Committee considered and adopted its report on the Bill in a sitting held on 9th February, 2021.

The report contains *inter-alia* analysis of public participation process, public views on the Bill, observations and recommendations. The analysis of the Bill contains stakeholder submissions which the Committee found relevant and useful in review of the Bill.

May I take this opportunity to thank and commend Committee Members for their devotion and commitment to duty which made the consideration of the Bill successful. May I also express gratitude to the Offices of Speaker and Clerk of the National Assembly for providing direction and the Committee secretariat for exemplary performance in providing technical and logistical support to the Committee.

On behalf of the Departmental Committee on Administration and National Security and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House a report of the Committee on the Birth and Death Registration (Amendment) Bill, 2019 (National Assembly Bill No. 32 of 2020).

HON. PAUL KOINANGE, M.P.
CHAIRPERSON,

PART 1

1.0 PREFACE

1.1. Mandate of the Committee

1. The Departmental Committee on Administration and National Security derives its mandate from the provisions of Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-

   (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;

   (b) study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;

   (c) study and review all legislation referred to it;

   (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;

   (e) investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;

   (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)

   (g) examine treaties, agreements and conventions;

   (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;

   (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and

   (j) examine any questions raised by Members on a matter within its mandate.

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-

(i) National security;

(ii) Police services;

(iii) Home affairs;

(iv) Public administration;

(v) Public service;

(vi) Prisons;

(vii) Immigration;

(viii) Management of natural disasters; and

(ix) Community service orders.

1.2. Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

Chairperson
Hon. Paul Karuga Koinange, MP
Kiambaa Constituency
Jubilee Party

Vice-Chairperson
Hon. Fatuma Gedi, MP
Wajir County
PDR Party

Hon. Peter Kaluma, MP
Homa Bay Town
ODM Party

Hon. (Dr.) Tecla Tum, MP
Nandi County
Jubilee Party

Hon. Dr. Makali Mulu, MP
Kitui Central Constituency
Wiper Party

Hon. Josphat Kabinga, MP
Mwea Constituency
Jubilee Party

Hon. Joshua Aduma Owuor, MP
Kitui Central Constituency
Wiper Party

Hon. Nimrod Mbai, MP
Kitui East Constituency
Jubilee Party

Hon. Rozaah Abuyu, MP
Kisumu County
ODM Party

Hon. Ngunjiri Wambugu, MP
Nyeri Town Constituency
Jubilee Party

Hon. Jeremiah Lomurukai, MP
Loima Constituency
ODM Party

Hon. Abdi Shurie Omar, MP
Balambala Constituency
Jubilee Party

Hon. Mishra Swarup, MP
Kesses Constituency
Jubilee Party

Hon. Halima Mucheke, MP
Nominated Member
Jubilee Party

Hon. Geoffrey King'ang'i, MP
Mbeere South Constituency
Jubilee Party

Hon. Oku Kaunya, MP
Teso North Constituency
ANC Party

Hon. Arbelle, Marselino Malimo, MP
Laisamis Constituency
Jubilee Party

Hon. William Chepkut, MP
Ainabkoi Constituency
Independent Party

Hon. Peter Masara, MP
Suna West Constituency
Independent Party

1.3. Committee Secretariat

4. The Committee's secretariat comprises the following officers-

Mr. George Gazemba, ACIArb, CPM
Principal Clerk Assistant

Mr. Joshua Ondari Clerk Assistant	Ms. Brigita Mati Legal Counsel
Mr. Edson Odhiambo Fiscal Analyst	Mr. Josphat Bundotich Serjeant-at-Arms
Ms Eva Kaare Serjeant-at-Arms	Mr. Yakub Ahmed Media Liaison Officer

PART 2

2.0 THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL, 2020 *(NATIONAL ASSEMBLY BILL No. 35 OF 2020)*

2.1 Memorandum of objects and reasons of the Bill

5. The Bill seeks to amend the Alcoholic Drinks Control Act, No. 10 of 2010 to ensure that packaging of alcoholic drinks is in quantities not less than 750 millilitres. This is intended to deal with menace of excessive drinking occasioned by the sale of low quantity packaged alcoholic drinks making them accessible to youths.

PART 3

3.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

3.1. Legal provisions on public participation

10. Article 118 (1) (b) of the Constitution of Kenya provides as follows-

> *"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees''*

11. Standing Order 127(3) provides as follows-

> *"The Departmental 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 recommendations to the House''*

12. The Committee conducted public participation on the Bill as required by the Constitution of Kenya and National Assembly Standing Orders. Those who made representations on the Bill were-

(i) Alcohol Beverages Association of Kenya;
(ii) Kenya Breweries Limited and UDV (Kenya) Limited;
(iii) Kenya Association of Manufacturers (KAM);
(iv) Kenya Wines Agencies Ltd;
(v) Kenya Private Sector Alliance (KEPSA);
(vi) Kabugu and Company Advocates;
(vii) Murimi Muthomi Associates Chambers;
(viii) State Department for Public Service;
(ix) Patialla Distributors Ltd; and
(x) Patiala Distillers Limited and Safari Wines Agencies.

PART 4

4. CLAUSE BY CLAUSE CONSIDERATION OF THE BILL

(xi) Clause 1- Short title

Clause 1 relates to the short title of the Bill.

(xii) Clause 2 and 3 of the Bill

The Bill seeks to amend section 31 (2) (a) and 68 of the Alcoholic Drinks and Control Act, 2010 to increase the permissible minimum alcohol packaging to 750 millilitres and to provide for deposit refund for the purchase of alcoholic drinks in glass bottles.

Stakeholder submissions

(I) Kenya Breweries Limited and UDV (Kenya) Limited

Kenya Breweries Limited and UDV (Kenya) Limited are subsidiaries of the East African Breweries Ltd Group who are key players in the alcoholic and beverage industry. They manufacture and export alcoholic and non-alcoholic beverages. Their views were largely drawn from those of the Alcoholic Beverages Association of Kenya and were supported by KEPSA (Kenya Private Sector Alliance), KWAL (Kenya Wine Agencies), KAM (Kenya Association of Manufactures) and Consol Ltd who are the Association's members.

Proposed amendment

Delete Section 2 and 3 of the Alcoholic Drinks And Control (Amendment) Bill, 2020.

Justification

A. Increased cost of doing business and un-competitiveness

Kenya Breweries Ltd (KBL) has a large inventory of beer returnable bottles, cans, crates, plant and machinery. The enactment of Clause 2 of the Bill would lead to a massive write-off cost of over Kshs 3.5 billion. All existing beer bottles, cans, crates, plant and machinery spare parts would be written off at the current book value. Further, KBL would be required to replace the beer glass packaging, cans, crates and install new machinery to package beer at 750ml, an investment that would cost over Kshs 7 billion.

Crate manufacturers have designed specific moulds to pack 300ml and 500ml glass bottles at a cost of Kshs 258 Million. The machines used to make the crates accrue an annual maintenance cost of Kshs 2.5 million in spare parts and maintenance. These moulds and spare parts will have to be written-off if the Bill is passed.

All KBL crates and 60% of returnable beer glass is manufactured and procured locally for use in Kenya, Uganda and Tanzania. With the passing of Clause 2 of the Bill, there will be underutilisation of crate and bottle inventory due to the incompatibility between the raw materials used in the three countries where the company operates.

If the Bill is enacted as is, transporters will be adversely impacted, with a loss of Kshs 124 million in revenue due to the decline in volumes of finished products within 6 months of the Bill being passed.

B. <u>Negative impact on jobs across the alcohol value chain</u>

With a decline of 30% and 40% in beer and spirits volume respectively, KBL's grain sourcing is expected to decline by 6,405 tonnes which is a Kshs 195.28 million loss in revenue for grain farmers in 6 months to June 2021. Due to the decline in factory productivity, KBL/UDV expects a loss of; 320 direct jobs with a total earning capacity of Kshs 52.8 million per month; 345 contracted warehouse employees with a total earning capacity of Kshs 27.8 million per month while144 jobs in the grain logistics value chain will be lost.

At the retail level, reduction in the volume of alcohol sold by KBL/UDV distributors will force them to cut the workforce by 33% (660 employees), with a total average income earning capacity of Kshs 26.4 million per month. Bars and establishments that heavily rely on alcohol sales will have to cut 60,000 jobs with a total earning capacity of Kshs 1.8 billion per month. This is an added negative impact on the bar sector which is trying to recover from the effects of the measure to control Covid-19 that were taken between March 2020 and September 2020 where over 50,000 people lost their jobs and Kshs 6 billion was lost in employment income.

C. Contravention of Free Trade Practices and International Treaties

Increasing the minimum packaging standards to 750ml for Kenya will create a technical barrier to trade across the East African Community (EAC) and the Africa Continental Free Trade Area (AfCFTA) markets.

Suppliers and KBL/UDV plants and machineries are configured to produce standardised alcoholic beverages, under internationally accepted standards, which make it easy to trade across borders. This trading advantage will be eroded for KBL/UDV and other alcohol exporters, who will lose their ability to produce for the Africa since the plant and machinery currently in use for manufacture of export goods will be rendered obsolete or unproductive. As a result, Kenyan alcohol manufacturers will be uncompetitive within EAC and against other countries when AfCFTA is implemented. Kenya will also be perceived to be an uncompetitive market globally due to introducing technical barriers to trade with other global markets which could attract reciprocal trade barriers.

D. Volume decline and loss of government revenue due to lack of access to affordable alcoholic products

If Clause 2 of the Bill is passed, KBL and UDV estimate a loss of 30% in bottled beer volume and 40% in spirits volume, mainly driven by: -

i) The reduced demand for higher priced, larger format products which will be out of reach for many adult consumers.

ii) Increased consumption of illicit brew and cheaper contraband alcohol from Tanzania, Uganda and Ethiopia. On Average, a bottled beer in Tanzanian and Ugandan beer is half the price of a beer in Kenya due to high excise taxes charged in Kenya. The proposed increase of minimum packaging of alcohol will worsen Kenya's competitiveness compared to other EAC partner states. Perennial excise duty rate increases on alcoholic products as prescribed in the Excise Duty Act 2015. Prices of alcoholic drinks in neighbouring EAC countries remain low since they have held excise tax rates on alcohol for the last 3 years. With the loss in volume due to the proposed, KBL/UDV expects a significant reduction in tax contribution to government of Kshs 12.9 billion in the first 6 months of implementation of the Bill.

E. <u>Health concerns driven by sharing bulk formats and inaccessibility of affordable alcoholic beverages</u>

Sharing is a ritual predominant and unique to 750ml Spirit SKUs. On average, close to 45% of all consumption occasions of 750ml products take place in affiliation (more than 1 person) and shared setting. However, a 250ml product is mainly consumed in solitary occasions.

A market void of 250ml would trigger a significant tilt towards sharing occasions (to +70%) which may not be conducive with the current post Covid-19 economic environment but also as we embark in the new normal. It is anticipated that retailers will be tempted to break bulk of the 750ml packaged alcoholic beverages into smaller formats to be able to sell the more affordable format. This presents the risk of sale of adulterated or contaminated alcoholic drinks which goes against Section 38 of the Alcoholic Drinks Control Act 2010 (ADCA).

Increasing minimum alcohol packaging size also presents the risk of encouraging excessive consumption of alcohol beyond what consumers are accustomed to consuming. This will lead to increased case of drunk driving and other health concerns related to excessive consumption of alcohol which the Bill seeks to prevent.

F. <u>Affordability Challenge</u>

Kenya has been described as a price-sensitive market, where a slight increase in the cost of a product results into a significant decline in the quantity consumed. For soft drinks firms, having learnt of the nature of Kenya's market, have developed what is now popularly known as the *'kadogo'* economy with such products as *Coke Mwala*. This has allowed them to address the growing commodity affordability concerns in Kenya and remain in business, as the cost of living continues to increase. Similarly, for alcohol manufacturing to remain viable in Kenya, delivering affordable products to all social economic groups means packaging alcohol in small formats.

Unlike the soft drinks sector where it is rare to find illicit products, alcohol sector has had a chronic illicit brew problem currently estimated to be at 44% (490 million litres). The affordability challenge in the alcohol manufacturing sector is compounded by the fact that the Excise Duty Act 2015 provides that excise tax rates on alcoholic beverages increase by inflation rate, every year. Adjusting the stock keeping unit (SKU) formats remains the only sustainable route to maintain legal alcoholic products in the market.

G. Switch from legal alcoholic product to local/illicit brew

Driven by accessibility for beer, 100% of all consumption occasions serves below 750ml whereas for spirits close to 69% of the alcohol packages are below 750ml. With approximately 9.5million adult alcohol consumers in Kenya, 65% of them purchase alcohol products that are below 750ml. In the case of KBL/UDV, alcohol packaged in 750ml containers and above contribute only 10% of the total volume sold;

Within the spirits product category, only 26% of the volume is sold in 750ml formats, 90% of which is consumed by adults with high disposable income socioeconomic category. 74% of total spirits sales are below 750ml package size and 50% of this volume is in the lower income earners category of consumers (earning less than Kshs 15,000/month).

KBL beers are packaged and consumed in packages that are less than 500ml (including cans). Senator keg is distributed in 50l barrels but dispensed at the outlet into 300ml and 500ml glass. Restricted access to small formats of legal alcohol encourages consumers to seek alternatives illicit alcohol which could either be contraband products from neighbouring countries such as Tanzania, Uganda, Ethiopia or local brew. This trend was evidenced between March and September, 2020 when on-premises consumption of alcohol was banned to prevent the spread of Covid-19.

H. Alcohol Drinks Control Act 2010 Provisions

The current legislation has comprehensive provisions regulating sale and
distribution, of alcoholic products. These provisions include: -

a) The Alcoholic Drinks and Control Act of 2010 under sections 21, 28, 29, 46 acknowledge the offences related to sale, promotion, employment or allowing access to alcoholic products to persons under the age of eighteen and provides penalties and fines for those convicted of such offences. The offences include imprisonment for a period not exceeding three years or fine ranging from Kshs 150,000 to Kshs 500,000 or both;

b) Section 32 of the Act provides that all alcoholic product packaging material clearly communicate that these products are not meant for consumption by minors;

c) County Alcoholic Drinks Control laws provide for stiff sanctions against indiscriminate access to alcoholic products by children and vulnerable groups. The sanctions include cancellation of licences, imprisonment and fines;

d) Section 29 of the Alcoholic Drinks and Control Act requires that all outlets that sell alcohol display signage indicating that they do not sell alcohol to persons under the age of 18. For example, Supermarkets are required to have a dedicated selling point for alcohol. There are stiff penalties for noncompliance with this provision;

e) Section 24 of the Act prohibits any person from allowing access to a minor to areas in which alcoholic drinks are manufactured, stored or consumed;

f) Section 30 and 31 of the Act prohibits the sale of alcoholic drinks in formats (sachets, PET) and medium (vending machines) that are easily accessible to minors.

I. Adequate administrative measure in place to manage glass waste

There is no problem with alcohol glass waste in Kenya. Currently, over 500 Micro, Small and Medium enterprises (MSMEs), employing over 20,000 people with a total average income earning capacity of Kshs 400 million/month, collect used non-returnable alcohol glass bottles, wash and sell them to alcohol manufacturing companies as packaging material.

Other glass manufacturers such as Consol and Milly glass collect, crush and reuse glass waste for the manufacturer of packaging glass. Kenya Association of Manufacturers (KAM) has been working with the government to implement a system proven to be effective in waste management in various parts of the world under the concept of Extended Producer Responsibility (EPR) program. The government has already made progress towards the implementation of the EPR program by developing the National Sustainable Waste Management Policy 2019 and the Environmental Management and Co-Ordination (EPR) Regulations, 2020.

The Kenya Association of Manufacturers (KAM) is in the advanced stages of establishing an industrywide Producer Responsibility Organisation (PRO) as envisaged in the draft EPR regulations 2020, scheduled to be launched this year. The plan already includes an economic incentive to promote recycling. Producers will pay fees to the PRO, charged per kilogram recycled, and annual membership fee. This approach not only creates employment by building a waste processing value chain, but also encourages specialization and skills development, where producers focus on manufacturing then recyclers focus on waste management.

Currently, alcohol manufacturers and distributors prescribe the deposit to secure all returnable bottles, and the system has worked well so far. The Bill proposes to give the responsibility of prescribing the deposit, not just on returnable bottles but all for non-returnable bottles, to the Cabinet Secretary in charge of Ministry of Interior and Co-ordination of National Government. However, the provision is not clear on where the retailer should remit the deposit and mechanism through which the deposit will help reduce glass waste.

(II) Kabugu and Company Advocates

They proposed deletion Section 2 and 3 of the Alcoholic Drinks and Control (Amendment) Bill, 2020.

Justification

The company submitted that the Alcoholic Drinks And Control (Amendment) Bill, 2020 will introduce laws that have a negative impact on the economy and the society at large. They submitted as follows—

Effect of the proposed amendments on the manufacturing industry

(a) The Bill has massive negative financial implication on investment. The current 250ml bottles, crates, machinery etc. will be rendered obsolete and require replacement. Manufacturers have invested heavily over the years on infrastructure that conforms to the current legislation. Compliance with the proposed legislation will require huge capital injection;

(b) As a consequence of above, manufacturers are likely to experience cash flow challenges which may result to closing businesses. The manufacturers will struggle to service existing loans and financial arrangements and thousands of Kenyans employed in the sector will lose their jobs;

(c) The export business will also be greatly affected as the proposed packaging requirements will be inconsistent with the demand in the export market. Kenyan brands are likely to become less attractive and competitive thus reducing the income generated through the export market;

(d) The proposal to introduce a returnable bottle policy will increase the cost of operating business because manufacturers will need to take into consideration the need for space and other logistics requirements;

(e) There is a possible risk of adulteration of manufacturers' products by resellers who will sell to the consumers in smaller quantities. The quality of the final product will be greatly compromised and the manufacturer may be exposed to numerous court actions by consumers in the event of poisoning.

Effects on young consumers

(a) A minimum package of 750ml is excessive for the young adults who are still growing up and may be exposed to overindulgence. Current smaller packaging (less than 750ml) indirectly or unconsciously rations the volume of alcohol the young adults drink;

(b) The 750ml bottle is more expensive especially for the young adults who may opt to seek for alternative and result to cheaper illicit alcohol;

(c) Resellers may opt to sell by tot to the young adults which may lead to malpractices like adulteration which will be a health risk to the public.

(III) Consumer Federation of Kenya (COFEK)

Consumer Federation of Kenya through its submission strongly objected to the proposed amendment to the Alcoholic Drinks Control Act, 2010. Their opposition was on grounds that the amendments are neither need based nor do they add socio economic value to the consumers and the people of Kenya.

(IV) Murimi Muthomi Associates Chambers

Proposed amendment

Delete Section 2 and 3 of the Alcoholic Drinks & Control (Amendment) Bill, 2020.

Justification

(a) The Amendment of the Section 31 of the Act subverts the right to economic development. By dint of Article 2 (6) of the Constitution of Kenya, which states that any treaty or convention ratified by Kenya shall form part of the Laws of Kenya. Kenya has ratified both the ***International Covenant on Civil and Political Rights (ICCPR)*** and the ***International Covenant on Economic, Social and Cultural Rights (ICESCRJ. Article 1 (1) of ICCPR and ICESCR*** state as follows ***"All people have the right of self-determination, to determine their political status and freely pursue their economic, social, and cultural development."*** The proposed amendment of Section 31 undermines the manufacturers right to economic development;

(b) The Amendment of Section 31 of the Act will undermine Kenya's ability to trade with other countries. Different blenders and distillers of alcoholic beverages across the world pack their products in different packaging from 50ml to 4000ml and more. Heineken beer which is brewed in Amsterdam is packaged and sold in cans and glass bottles of 250ml, 350ml and 650ml. Ciroc Vodka which is distilled in France and imported into Kenya by Diageo is packaged in 50ml cans, 700ml, 1000ml bottles. Absolut Vodka which is distilled in Sweden and imported in Kenya is packaged in 50ml, 100ml, 250ml, 500ml, 700ml glass bottles. With the proposed amendment passing into law, companies that import to sell such alcoholic products will suffer untold losses due to their inability to import such drinks due to packaging limitation and this in turn denies Kenya revenue generated from the import of such products;

(c) Consumer rights are enshrined in the Constitution of Kenya 201 O. Article 46 (1) (a) of the Constitution of Kenya states that the Consumer has a right to goods and services of reasonable quality. This is to mean that the consumer has the right to variety and should be able to autonomously decide what they wish to consume. Limiting the production and packaging of Alcoholic Products in 750ml bottles denies consumers right to goods and services of reasonable quality. Article 2 (4) of the same Constitution states that any law that is inconsistent with the Constitution is void. Since the proposed amendment of Section 31 of the Act subverts the right of the consumer, it is therefore void, repugnant and should not be passed into law.

(V) <u>Patiala Distillers Limited</u>

Patiala Distillers Limited as a manufacturer submitted that they were in objection to the amendment of the Alcoholic Drinks Control Act, No. 10 of 2010 that proposes packaging of alcoholic drinks in quantities not less than 750 millilitres as follows-

(a) The Bill has massive negative financial implication on investment. For instance, the current bottles, crates and machinery amongst others shall be rendered obsolete and hence to be replace. This will be quite challenging and costly to the industry;

(b) Possible cash flow challenges triggered by heavy capital investment requirement. This technically will result to business closure due to the inability of the manufacturers to put up with the bills and match with this requirement;

(c) Loss of business means an inability to service existing business loans and other financial arrangements;

(d) Serious job losses as businesses slow down or even close down altogether. The trickledown effect here will be a negative impact on the social economic state of the society;

(e) Alcohol export business in the country shall be impacted on negatively as its packaging requirements will become inconsistent and less competitive in the export markets;

(f) The Bill is technically inconsistent with tried and tested regional and global minimum alcohol packaging guidelines whose demographics are similar to those in this country;

(g) Returnable bottle policy means an added cost of operating business like need for more space and other logistics;

(h) Possible adulteration by resellers as they may sale to the consumer by the tot.
This means that consumers shall consume products with broken seals and that refilling with illicit alcohol may happen at the reseller level. This will expose consumers to health risks;

(i) Loss of revenue to the government as businesses will shrink or even close down.

(VI) <u>Patiala Distributors Limited</u>

Patiala Distributors Limited as an importer was opposed to the enactment of the Bill in its entirety on the following grounds-

(a) Global and regional suppliers to Kenya offer stock keeping units (SKUs) (e.g. 330,350,375,500, 700mls) that shall fall off based on the requirements of the Bill. These contribute immensely to the total business hence may lead to a serious business loss. The suppliers in the rest of the world shall not manufacture Kenya specific SKUs and may opt not to do business with Kenya meaning loss of revenue to the country;

(b) Loss of business will trigger job losses and impact the society's social economics negatively;

(c) Loss of business will result in inability to service business loans and other existing financial liabilities;

(d) Returnable bottle deposit is technically impossible as the one-way bottle is dominant in all imported brands;

(VII) <u>Safari Wines Agencies Ltd</u>

Safari Wines Agencies who are resellers objected to the enactment of the Bill in its entirety on the following grounds-

(a) Huge cost on infrastructure overhaul e.g. existing display shelves and distribution vehicle shelves which are designed to hold 250ml which accounts for over 85% of the space. To hold 750ml and higher volumes calls for demolition and a complete overhaul of the same at a cost approximated at 500,000 Ksh per outlet;

(b) The Bill if enacted will block most imported brands whose minimum package is less than 750ml and/or come in one-way bottle. Such imported brands contribute immensely to the total business and hence, this will lead to significant loss of business;

(c) Returnable bottle policy calls for extra storage space, additional transport cost; of course an added cost of doing business which players in the industry are not prepared for;

(d) Retailers will be encouraged to sale by the tot because the 750ml pack is too large. This will encourage illegal refilling possibly using illicit alcohol because they can sale alcohol with broken seal. The repercussions are many including poisoning consumer and loss of business among others;

(e) Loss of jobs as a result of lost business as several brands especially imported ones will be struck off the product catalogue;

(f) Government will loss revenue through collecting lesser taxes as businesses will shrink.

PART 5

5.0 COMMITTEES OBSERVATIONS

Upon scrutiny of the Bill, the made the following observations-

(a) The Bill if enacted as it is will have significant adverse effect across the alcohol beverage value chain, make Kenya less competitive compared to its neighbouring countries, lead to an exponential increase in illicit alcohol flooding the market and reduction industry and government revenues;

(b) There are adequate measures in place, both in law and practice, to mitigate against exposure of youth and other vulnerable persons in the community from access and excessive consumption of alcohol. Focus should be more on ensuring compliance and enforcement by the concerned authorities;

(c) Sections 21, 28, 29, 46 the Alcoholic Drinks and Control Act, 2010 acknowledge the offences related to sale, promotion, employment or allowing access to alcoholic products to persons under the age of eighteen and provides penalties and fines for those convicted of such offences. The offences include imprisonment of a period not exceeding three years or fines ranging from Kshs 150,000 to Kshs 500,000 or both;

(d) Section 32 of the Act provides that all alcoholic product packaging material to clearly communicate that these products are not for consumption by minors;

(e) Section 29 of the Act requires that all outlets that sell alcohol display signage indicating that they do not sell alcohol to persons under the age of 18. For example, Supermarkets are required to have a dedicated selling point for alcohol. There are stiff penalties for noncompliance with this provision;

(f) Section 24 of the Act prohibits any person from allowing access by minors to areas in which alcoholic drinks are manufactured, stored or consumed;

(g) Section 30 and 31 of the Act prohibits the sale of alcoholic drinks in formats (sachets, PET) and medium (vending machines) that are easily accessible to minors;

(h) County Alcoholic Drinks Control laws provide for stiff sanctions against indiscriminate access to alcoholic products by children and vulnerable groups. The sanctions include cancellation of licences, imprisonment and fines.

PART 6

6.0 COMMITTEE RECOMMENDATIONS

The Committee recommends that the Alcoholic Drinks and Control (Amendment) Bill, 2020, *(National Assembly Bill No. 35 of 2020)* be amended by deleting the proposed clause 2 and 3 of the Bill

Justification

(i) There are adequate measures in place, both in law and practice, to mitigate against exposure of youth and other vulnerable persons in the community from access and excess consumption of alcohol;

(ii) The proposed measures in the Bill will impact negatively on the alcoholic beverage industry consequently leading to job losses and reducing the amount of tax remitted to the government;

SIGNED...

HON. PAUL KOINANGE, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON

ADMINISTRATION AND NATIONAL SECURITY

DATE...23rd February 2021..................................

ANNEXURE 1

(Minutes of Committee sittings on consideration of the Bill)

MINUTES OF THE 4TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON TUESDAY, 9TH FEBRUARY 2021 AT 10.00 A.M. IN THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS.

PRESENT

1. Hon. Paul Koinange, MP - *Chairperson*
2. Hon. Fatuma Gedi Ali, CBS, MP - *Vice-Chairperson*
3. Hon. Dr. Makali Mulu, MP
4. Hon. Aduma Owuor, MP
5. Hon. Dr. Tecla Chebet Tum, MP
6. Hon. Dr. Swarup Mishra, MP
7. Hon. Halima Mucheke, MP
8. Hon. Josphat Kabinga Wachira, MP
9. Hon. Marselino Malimo Arbelle, MP
10. Hon. Abdi Omar Shurie, MP

ABSENT WITH APOLOGIES

1. Hon. Peter George Kaluma, MP
2. Hon. William Kamuren Chirchir Chepkut, MP
3. Hon. Col (Rtd) Geoffrey King'ang'i, MP
4. Hon. Nimrod Mbithuka Mbai, MP
5. Hon. Rozaah Buyu, MP
6. Hon. Ngunjiri Wambugu, MP
7. Hon. Peter Masara, MP
8. Hon. Jeremiah Ekamais Lomurukai, MP
9. Hon. Oku Kaunya, MP

IN ATTENDANCE-

NATIONAL ASSEMBLY

Hon. Shakeel Shabbir, MP

COMMITTEE SECRETARIAT

1. Mr. George Gazemba - Principal Clerk Assistant II
2. Mr. Joshua Ondari - Clerk Assistant II
3. Ms. Brigitta Mati - Legal Counsel II
4. Mr. James Oloo - Serjeant -At- Arms
5. Mr. Rodgers Kilungya - Audio Recording Officer

MIN No. 10/2021:- PRELIMINARIES AND COMMUNICATION FROM THE CHAIRPERSON

The Chairperson called the meeting to order at 10.15 am with a word of prayer.

MIN No. 11/2021:- **CONFIRMATION OF MINUTES**

1. Minutes of the 74th sitting held on Monday, 30th November, 2020 At 2.30 P.M. were confirmed as true record of proceedings and signed by the Chairperson. The confirmation was proposed and seconded by Hon. Dr. Tecla Chebet Tum, MP and Hon. Dr. Makali Mulu, MP respectively.
2. Minutes of the 1st sitting held on Tuesday 2nd February, 2021 At 10.00 A.M. were confirmed as true record of proceedings and signed by the Chairperson. The confirmation was proposed and seconded by Hon. Dr. Makali Mulu, MP and Hon. Paul Koinange, MP respectively.
3. Minutes of the 2nd sitting held on Wednesday, 3rd February, 2021 At 10.00 A.M. were confirmed as true record of proceedings and signed by the Chairperson. The confirmation was proposed and seconded by Hon. Josphat Kabinga Wachira, MP and Hon. Dr. Makali Mulu, MP respectively.
4. Minutes of the 3rd sitting held on Thursday, 4th February, 2021 At 10.00 A.M. were confirmed as true record of proceedings and signed by the Chairperson. The confirmation was proposed and seconded by Hon. Josphat Kabinga Wachira, MP and Hon. Dr. Makali Mulu, MP respectively.

MIN No. 12/2021:- **CONSIDERATION OF THE PENAL CODE (AMENDMENT) BILL, 2021 (LEGISLATIVE PROPOSAL)**

The Committee considered the proposal and observed the following-

a) The principal objective of the Bill is to amend the Penal Code Cap.63 in order to remedy the deficiency in section 96 of the Penal Code so that it is amended to conform with the Constitution as stipulated in section 7 of the Sixth Schedule to the Constitution; and

b) The Bill further proposes to create an offence to incitement to hatred of a person or a particular group of persons. It further seeks to strike a balance between one's right to freedom of expression and that of protection of human dignity and protection of a person from violence. Therefore statements that insult malign or defame a person with the intention to disturb public peace, and such statements assault the human dignity of others or such statements are deliberately or demonstrably untrue, shall be punishable under the law.

MIN No. 13/2021:- **ADOPTION OF THE REPORT ON THE BIRTH & DEATH REGISTRATION (AMENDMENT) BILL, 2020**

The report was adopted unanimously after having been proposed by Hon. Josphat Kabinga Wachira, MP and seconded by Hon. Dr. Swarup Mishra, MP.

MIN No. 14/2021:- **ADOPTION OF THE REPORT ON THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL, 2020**

The report was adopted unanimously after having been proposed by Hon. Marselino Malimo Arbelle, MP and seconded by Hon. Josphat Kabinga Wachira, MP.

MIN No. 15/2021:- **ADOPTION OF THE REPORT ON THE BIRTHS & DEATHS REGISTRATION (AMENDMENT) BILL, 2020**

The report was adopted unanimously after having been proposed by Hon. Josphat Kabinga Wachira, MP and seconded by Hon. Marselino Malimo Arbelle, MP.

MIN No. 16/2021:- **ADJOURNMENT**

There being no other business to transact, the Chairperson adjourned the meeting at thirty five minutes past noon. The next meeting will be held on notice.

Signed..

Chairperson

Date...23rd Feb 2021

ANNEXURE 2

(Signed list of Members who attended the sitting which considered and adopted the report on the Bill)

REPUBLIC OF KENYA

NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

ATTENDANCE SCHEDULE

DATE: 9/02/2021

TIME: 10.AM

VENUE: 2nd Floor Continental House

AGENDA:- Adoption of the Report Alcoholic Drinks Control (Amendment) Bill, 2020
- Adoption of the Report on the Births & Deaths Registration (Amendment) Bill, 2020

NO.	NAME	SIGNATURE
1.	Hon. Paul Koinange, MP - Chairperson	[signature]
2.	Hon. Fatuma Gedi, CBS, MP - Vice Chairperson	[signature]
3.	Hon. George Peter Kaluma, MP	[signature]
4.	Hon. Dr. Makali Mulu, MP	[signature]
5.	Hon. Aduma Owuor, MP	[signature]
6.	Hon. Dr. Tecla Chebet Tum, MP	[signature]
7.	Hon. Halima Mucheke, MP	[signature]
8.	Hon. Marselino Malimo Arbelle, MP	[signature]
9.	Hon. Josphat Kabinga Wachira, MP	[signature]

10.	Hon. Nimrod Mbithuka Mbai, MP	
11.	Hon. Ngunjiri Wambugu, MP	
12.	Hon. Abdi Omar Shurie, MP	
13.	Hon. Col (Rtd) Geoffrey Kingangi, MP	
14.	Hon. Peter Masara, MP	
15.	Hon. Oku Kaunya, MP	
16.	Hon. Rozaah Buyu, MP	
17.	Hon. Jeremiah Lomurukai, MP	
18.	Hon. William Chepkut, MP	
19.	Hon. Swarup Mishra, MP	

Signed……………………………………………Date………………………………
George Gazemba, ACIArb, CPM,
Principal Clerk Assistant,
Departmental Committee on Administration and National Security.

Signed……………………………………………Date………………………………
Peter Chemweno,
Deputy Director/ In-Charge, Directorate of Departmental Committee Services

ANNEXURE 3

(Copy of newspaper advertisement inviting the public to make representations on the Bill)

Education **SRC had okayed Sh8.8 billion, which unions had said was not adequate**

Dons set for pay rise after court approves Sh14bn deal

Judge orders Education ministry and Treasury to provide additional Sh5 billion for implementation of CBAs

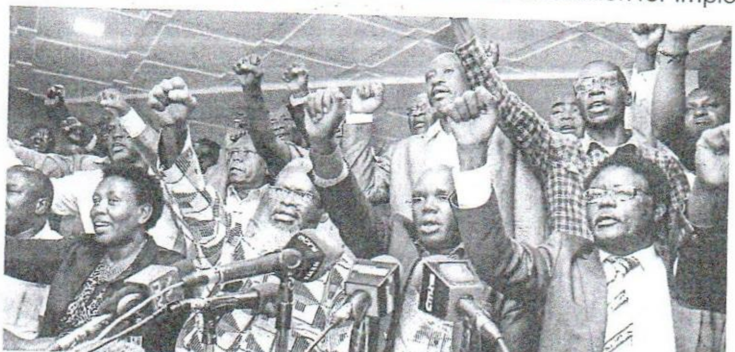
BY SAM KIPLAGAT AND RICHARD MUNGUTI

Public university lecturers have scored big after a court certified three collective bargaining agreements (CBAs) that cap their increased salaries and benefits at Sh13.8 billion.

Justice Maureen Onyango yesterday directed the Ministry of Education and the Treasury to provide an additional Sh5 billion for the implementation of the CBAs signed last year.

The judge agreed with the unions and the Inter-Public Universities Councils Consultative Forum (IPUCCF) that a Sh8.8 billion allocation recommended by the Salaries and Remuneration Commission (SRC) was not sufficient to implement the CBAs.

The court said the computation by the implementation committee of the IPUCCF was accurate and that Sh8.8 billion was not sufficient "as it did not include the annual increments and the resultant pension liabilities payable by IPUCCF members on behalf of their staff".



Uasu officials and members address journalists at Meridian Hotel in Nairobi in January last year. Lecturers are set to get a pay boost after a court certified three CBAs that cap their increased salaries and benefits at Sh13.8 billion. FILE | NATION

Vide a judgment entered on July 3, 2020, Justice Onyango had registered the three CBAs signed by the Universities Academic Staff Union (Uasu), the Kenya Universities Staff Union (Kusu) and the Kenya Union of Domestic, Hotels, Education Institutions and Hospital Workers (Kudheiha) with the IPUCCF.

The judgment authorised the salary and pension increments covering the years 2017-2021 at a cost of Sh13.8 billion.

RULING
Retirement age matter expunged

Justice Maureen Onyango said the retirement age was 65 in one of the CBAs and 75 years in another, but ruled that the retirement age for public servants is 60 years. She then expunged the retirement age matter, saying parties cannot negotiate outside public policy and guidelines. "The current practice as set out in the pension schemes for universities, the policies and guidelines and the provisions of any law that governs retirement age in the public sector shall apply," she said.

The figure had been arrived through consultative meetin held by public universities a the unions on how to impleme the CBAs.

The SRC, however, advised tl National Treasury to release on Sh8.8 billion.

The unions, arguing that th figures did not add up, agreed i court to receive the Sh8.8 billic as they started fresh negotiatior for the Sh5 billion difference.

Besides recommending the lov er figure, the SRC also contes ed the retirement clause, sayin it needed to be aligned with po icy in the public sector for the va ious categories of public officers.

The SRC further said the costin was above budgetary allocatio and there would be challenges : it is implemented.

Lawyer Ruth Kirwa, who repre sented the universities, said a though the employers had signe the CBA, some clauses in the CBA needed to be reviewed, amon them the retirement age and th implementation of the maste scales, so as to fit them within th amount that had been allocate by the government.

The judge ruled that th CBAs signed and registered as well as the computation by the implementation committees of the universities were correct and base on the unaltered matrix as presented to the IPUCCF and the SRC.

skiplagat@ke.nationmedia.com

ANNEXURE 4

(Stakeholder submissions)

Kabugu & Co.
Real Solutions

Muthithi Place, 3rd Floor,
Suite 3D, Muthithi Road
P.O. Box 22183 00400 Nrb
Tel: +254 20 240 3005
Office Cell:+254 792 005 405
Email: info@kabugu.co.ke
Website: www.kabugu.co.ke

George Gacemba
Pls deal
1/2/21

DD/D/Cmts
28/01/21

Date: 28th January 2021.

The Clerk of the National Assembly,
Main Parliament Building,
P.O BOX 41842-00100
NAIROBI.

Attn: Michael Sialai, EBS

Dear Sir,

RE: **INVITATION FOR PUBLIC PARTICIPATION & SUBMISSION OF MEMORANDA ON THE ALCOHOLIC DRINKS & CONTROL (AMENDMENT) BILL, 2020.**

We refer to the above subject matter and a notice published by the National Assembly on 21st January 2021 calling for public participation under Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders.

The Alcoholic Drinks & Control (Amendment) Bill, 2020 seeks to amend Section 31 (2) (a) of the Alcoholic Drinks Control Act, 2010 to increase the permissible minimum alcohol packaging to 750 milliliters and to provide for deposit refund for the purchase of alcoholic drinks in glass bottles.

The proposed amendments will have a negative impact on the industry stakeholders and the general public. Pursuant to the notice of 21st January 2021, we have collated different views from the stakeholders and the public and wish to submit them herein below as follows:

1. **Manufacturer's view.**

The proposed amendments are not conducive to the manufacturer for the following reasons:

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a) The bill has massive negative financial implication on investment. The current 250ml bottles, crates, machinery etc. will be rendered obsolete and require replacement. Manufacturers have invested heavily over the years on infrastructure that conforms to the current legislation. Compliance with the proposed legislation will require huge capital injection.

b) As a consequence of (a) above, manufacturers are likely to experience cash flow challenges which may result to closing businesses. The manufacturers will struggle to service existing loans and financial arrangements and thousands of Kenyans employed in the sector will lose their jobs.

c) The export business will also be greatly affected as the proposed packaging requirements will be inconsistent with the demand in the export market. Kenyan brands are likely to become less attractive and competitive thus reducing the income generated through the export market.

d) The proposal to introduce a returnable bottle policy will increase the cost of operating business because manufacturers will need to take into consideration the need for space and other logistics requirements.

e) There is a possible risk of adulteration of manufacturers' products by resellers who will sell to the consumers in smaller quantities. The quality of the final product will be greatly compromised and the manufacturer may be exposed to numerous court actions by consumers in the event of poisoning.

f) The revenue collected by the Government in form of taxes from the manufacturer will decline based on the above reasons.

2. **Importer's View**

The importers' business will be affected negatively in the following ways:

a) Global and regional suppliers to Kenya offer stock keeping units (SKUs) e.g. 250ml spirits, 330,350,375ml light beers and ciders, 500ml lager beer and 700 ml brandy and cognac brands that fall short of the requirements in the bill. The

products will become unavailable to the Kenyan market thus serious loss of business.

b) As a result of (a) above, Kenyans employed in the industry will lose their jobs and the importers will struggle to service existing loans and honour any financial obligations.

c) The returnable bottle policy is technically impossible as the one-way bottle policy is dominant in imported brands and is technically impossible to enforce.

d) All the above will result into a declined revenue for the Government.

3. **Reseller's View.**

The proposed amendments also have a negative impact on resellers as follows;

a) The resellers will incur huge costs on infrastructure overhaul. The existing display shelves and distribution vehicle shelves that are designed to hold 250ml and 500 ml bottles account for over 85% of retail space. The resellers will be required to conduct a complete overhaul of its stores to comply with legislation. The average estimated cost of such overhaul at one outlet is approximately Kshs. 500,000.00.

b) The reseller will lose business from the sale of imported brands which are packaged in less than 750 ml bottles. Loss of business translates to a decrease in revenue for the reseller.

c) Retailers will be encouraged to sell by the tot to consumers. This may encourage adulteration of the product. It is preferable that the consumers consume a product that is sealed and whose safety is guaranteed.

d) The returnable bottle policy will require resellers to make arrangements for extra space and additional costs. This will generally increase the cost of doing business.

e) The revenue collected by Government from resellers will decrease.

4. <u>Consumer's View.</u>

The impact on the consumer is as follows:

a) Some consumers prefer to consume their preferred drink in 250ml and 330ml bottles which are smaller in size, portable and comfortable to use.

b) Restricting the minimum size to 750 ml will encourage over-indulgence among the consumers and promote alcoholism. The consumers who are ordinarily content with the 250ml or the 330ml bottle will incur unnecessary expenditure by purchasing the 750ml bottle. Women consumers will in particular find it very difficult to finish a bottle of 750ml of any type of drink.

c) Some consumers prefer imported brands which come in small packages of 250ml or 330 ml. The proposed amendments will see these imported brands phased out of the Kenyan market thus limiting consumer's rights enshrined in Article 46 of the Constitution.

d) Resellers may opt to sell by the tot to the consumers. There is a high risk that consumers will buy a product that is adulterated at the point of purchase. It is preferable to sell to the consumers a sealed product whose safety is guaranteed.

5. <u>Parent's views</u>

The parents of consumers who are of age are concerned about the amendments the proposed legislation will introduce. Some of the concerns are as follows:

a) A minimum package of 750ml is excessive for the young adults who are still growing up and may be exposed to overindulgence. Current smaller packaging (less than 750ml) indirectly or unconsciously rations the volume of alcohol the young adults drink.

b) The 750ml bottle is more expensive especially for the young adults who may opt to seek an alternative and result to cheaper illicit alcohol.

c) Resellers may opt to sell by the tot to the young adults there is a high risk that they will buy a product that is adulterated and pose a danger to their health.

Based on the foregoing different views, the Alcoholic Drinks & Control (Amendment) Bill, 2020 will introduce laws that have a negative impact on the economy and the society at large. The Bill goes against the role of parliament as set out under Article 94 of the Constitution to *inter alia* manifest the diversity of the nation, represent the will of the people and exercise their sovereignty.

We propose that the National Assembly shelves any further deliberations on the Alcoholic Drinks & Control (Amendment) Bill, 2020 and to invite the relevant stakeholders to give views on how to best address the objects the Bill intends to address.

Yours Faithfully,

Kabugu & Co. Advocates.

Consol.

The best things come in glass.

Deputy Director/... RECEIVED 01 FEB 2021 Directorate of Departmental Committees

Our Ref: KAM/2020/04

27 January 2021

Clerk of the National Assembly
Parliament Building
Parliament Road
Nairobi
Email: clerk@parliament.go.ke

Attn: Mr. Michael Sialai, EBS

George Gazemba pls deal 1/2/21

DD/D/ants 29/1/21

Dear Sir

ALCOHOLIC DRINKS & CONTROL (AMENDMENT) BILL 2020

The above refers. The Glass Industry is hugely opposed to the amendment bill proposal that

(1) seeks to ensure that packaging of alcoholic drinks is in quantities not less than 750ml;

(2) The introduction of a mandatory glass deposit system,

(3) And other provisions provided for in the bill.

The Glass Subsector in Kenya plays a significant role in the economy. More than 90% of the glass industry's turnover is derived from sales to the alcohol industry. In the last 5 years it has contributed over KShs 3 Billion in taxes to the Kenya Treasury. The sector employs over 1,000 people directly with backward linkage resulting in employment of an even larger number of Kenyans. Glass Industry turnover stands at about KShs 5 Billion per annum and collapse of this industry exposes the country to a huge import bill, hence the need to protect it.

Our main reasons for objecting to the **Alcoholic Drinks & Control (Amendment) Bill 2020 S31 - 2 (a),** to ensure that packaging of alcoholic drinks is in quantities not less than 750ml, and to introduce a mandatory glass deposit system, are as follows:

- **It would kill the Alcohol Industry in Kenya through:**
  - Huge write off of bottles in trade that do not meet the minimum standard.
  - Even bigger investment in glass that meets new standard. Total estimated cost being KShs 160 Billion to write off and replace current bottles with the new "over 750ml bottles" and associated crates.

- **It would kill the glass industries.**
  - The Glass industry follows the Alcohol industry. The death of the Alcohol industry would lead to the closure of the Glass industry.
  - Such a move will also lead to huge inefficiencies.

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    - Total estimated cost if this Bill become law will be KShs 1.4 Billion to write off obsolete molds for bottles "below 750ml" and replace the same)
- **The proposal results in unnecessary interference with consumer choice**
    - There is no evidence that moving to a minimum of 750ml packaging will result in reduced misuse of alcohol, **indeed the opposite is true.**
    - Such a move would result in making access of Alcohol harder for poor Kenyans denying them their constitutional rights.
    - Such a move would also lead to an unprecedented increase in consummation of illicit alcohol.
- **Glass recycling is already happening and already governed by the EPR regulations.**
    - The glass recycling in Kenya is already in excess of 50%, which is one of the highest rates on the continent and compares favourable with the world's developed economies.
    - Mandatory Deposit Systems have proved to have failed in most developing and developed economies globally. There are no mandatory deposit systems in Africa.
    - The introduction of a mandatory glass deposit system, entrenches existing dominant alcohol brand owners in the market. The cost of introducing a returnable glass float and supply chain, is prohibitive, and favours large players at the expense of small business, and disincentivises new entrants.
    - Introducing a mandatory **glass** deposit system, is unfair and discriminatory against glass packaging Vis a Vis plastic, metal, aseptic card boards etc. (and is likely to be legally challenged).

We go ahead to explain our position hereunder:

1. RISK OF KILLING THE ALCOHOL INDUSTRY.

The Alcohol industry which is one of the biggest Economic Sectors in the country will be at risk of failure due to following:

1.1. Reduced Consumer Choice

The current glass packaging caters for alcohol ranges from 250ml to 3 Liters packing, enabling consumers to have choice depending on financial ability and consumption occasion. There will be decreased demand as consumers will be denied choice. As we all know the Kenyan economy is a "Kadogo" economy and increasing the volume to 750ml, especially for beer means that consumer will start sharing a beer exposing them to hygiene issues, which would be a high risk especially during the Covid-19 Pandemic.

We have evidence of the very unhygienic practice of beer sharing in countries such as Congo and Zambia where they have beer in 650ml and 730ml packs only.

1.2. Massive Losses on write-off of unused bottles

If the bill goes though it would mean replacing close to 50 Million crates of beer and an equivalent 1.25 Billion single bottles. Each crate carries 25 bottles. At an average price of KShs 1,000 per crate and KShs 30 per bottles, the replacement cost for the entire industry will be about KShs 169 Billion.

Cost of write off:

Estimated Beer Bottles in the market that would have to be written off				
Item	**Quantities in Pieces**	**Price (KShs)**	**Total Value in KShs**	
Crates	50,000,000	1,000.00	50,000,000,000	
Bottles	1,250,000,000	27.36	34,200,000,000	25 Bottles per Crate
			84,200,000,000	

Estimated Cost of replacing the "below 750ml" bottles with new "above 750ml" bottles.

Estimated New Bottles and Crates Replacement (Assuming a 750ml Bottle)				
Item	**Quantities in Pieces**	**Price per unit KShs**	**Total Value in KShs**	
Crates	65,972,222	KShs 800.00	52,777,777,778	
Bottles	791,666,667	41.04	32,490,000,000	12 Bottles per Crate
			85,267,777,778	

With the current severe economic challenges it would be unwise for The Kenyan Parliament to burden the alcohol industry with a bill of KShs 169 Billion. Further huge losses and closure of bars would also result in massive job losses.

Further the local glass industry may not even be in a position to produce all this glass within a short period to ensure industry compliance.

2. GLASS INDUSTRY

2.1. Glass Industries follow Glass Users

The Glass industry is dependent on glass users and the biggest user of glass is the alcohol industry. More than 90% of the glass industry's turnover is derived from sales to the alcohol industry. The death of the Alcohol Industry will thus mean a sure death for the Glass industry

2.2. Environmental Sustainability

Glass manufacturers play a pivotal role in the protection and conservation of our environment through glass waste recycling and the resulting death of the Glass industry due to the proposed law would leave the country worse off economically, socially and environmentally.

3. INTERFERENCE WITH CONSUMER CHOICE

3.1. Imported alcohol will be more expensive

Kenya imports a lot alcohol in sizes below 750ml. We foresee a situation where foreign manufacturers will need to run "special Production batches" to comply with the new regulations. Running such special batches may end up making such packs more expensive when brought into Kenya.

3.2. Consumer Health

The proposed law would leave quality alcohol out of reach of a significant portion of consumers driving them to illicit brews with dire impact to their lives, increased societal issues and the health system.

3.3. No Scientific Basis

There is no scientific evidence that supports the assertion that setting the minimum pack capacity to amounts greater than 750ml results in reduced drinking. In deed some countries such as South Africa that have beer packs on 750ml and 1 Litre are currently discussing new legislation to limit the pack size to no more that 660ml. Increasing pack sizes is therefore more likely to drive an increase in alcohol consumption.

4. IMPRACTICABILITY OF DEALING WITH IMPORTED ALCOHOL

It is a fact that Kenya imports a lot of alcohol. We are of the view that it would be impractical to re-export used glass emanating from imported alcohol. Any attempt then to exempt imported bottles from the "mandatory deposit" system would again be discriminatory and would be challenged in court.

5. MIS- UNDERSTANDING OF THE DEPOSIT SYSTEM

"Amendment *of section 68 of No. 10 of 2010, intends to amend Section 68 of the Principal Act in subsection (2) to include a prescription of a percentage of fees on the value of any form of alcoholic drink payable as deposit for the purchase of an alcoholic drink in a glass container."*

We also disagree with this proposal as it seeks to control a commercial arrangement that has been working perfectly for close to 100 years. Most of the beer and soft drinks companies have operated a voluntary bottle deposit system for close to 100 years and the deposits are determined by commercial and market realities.

Government interference at this level is not only intrusive but is bound to complicate an already complex deposit system. Mandatory Glass Deposit Systems have proven to have failed in the majority of cases in both developing and developed economies, globally.

The introduction of a mandatory glass deposit system, has the effect of creating an unfair competition environment and entrenches existing dominant alcohol brand owners in the market. The cost of introducing a returnable glass float and supply chain, is prohibitive, and favours large players at the expense of small business, and disincentivises new entrants.

Introducing a **glass** mandatory glass deposit system is unfair and discriminatory Vis a Vis plastic, metal, aseptic cardboard, etc. and non-alcoholic beverages, (and likely to invite a legal challenge).

We therefore believe that this amendment has the potential of not only disrupting a system that has been working well, but also increasing significantly the "deposit percentage" sent, leading to burdening consumers with high and unnecessary costs.

6. MISUNDERSTANDING OF RECYCLING

The Bill intends to make all alcoholic bottles 100% returnable. This again interferes with consumer freedom of choice and adds further inefficiency espousing consumers to further costs. The Bill also ignores the fact that there is a well-established recycling system. We boast of have a real circular economy where we recycled glass from between 60% to 80% using current collected from the trade and waste dumps. As an industry we have run glass re-cycling successfully, at above average world recycling rates, for the last 70 years.

As mentioned above Introducing a **glass** mandatory glass deposit system is unfair and discriminatory Vis a Vis plastic, metal, aseptic cardboard, etc. and non-alcoholic beverages, (and likely to invite a legal challenge).

Consol

The best things come in glass.

Further, glass recycling is already covered by the Environmental Management and Coordination Act (No. 8 of 1999), specifically by The Environmental Management and Co-ordination (Extended Producer Responsibility) Regulations 2020.

Therefore any attempt to cover glass recycling under another law or regulation is not called for and will create only create confusion.

7. CONCLUSION

We believe that the opportunity lies in engaging all the stakeholders in the alcohol and glass industry to develop progressive laws that will better regulate alcohol consumption and grow our ailing economy. With respect to glass recycling, the EPR regulations are already dealing with recycling rates of packaging and contend it is the not appropriate nor mandated in respect of the Alcohol Drinks and Control regulations.

Yours sincerely

Mureithi.

JOE MUREITHI
REGIONAL EXECUTIVE: EAST AFRICA
CONSOL GLASS KENYA LIMITED
Email: jmureithi@consol.ke

CC:

The Cabinet Ministry of Trade and Industrialization
NSSF Towers
Nairobi

The Cabinet Secretary The Treasury
Treasury Building
Harambee Avenue
Nairobi, Kenya.

The Commissioner of Domestic Taxes
Kenya Revenue Authority
Times Tower Building
Nairobi , Kenya

The CEO,
Kenya Association of Manufacturers
KAM House Westlands
Nairobi , Kenya
Email: ceo@kam.co.ke

APPENDIX ON THE GLASS SECTOR IN KENYA

Manufacturing in Kenya has been identified as one of the primary areas of focus by the Government and forms part of President Uhuru Kenyatta's Big Four Agenda.

The Glass Subsector in Kenya plays a significant role in the economy. In the last 5 years it has contributed to the Kenya Treasury over KShs 3 Billion in taxes. The sector employs directly close to 700 people with backward linkage resulting in employment of another 2,000 people. Industry turnover stands at about KShs 5 Billion per annum and collapse this industry exposes the country to a huge import bill and hence need to protect it.

Almost 100% raw materials used to manufacture glass are sourced locally saving the economy huge foreign exchange losses and at the same time providing business and job opportunities to numerous citizens involved in the supply chain ranging from mining, manufacturing, transport and services.

The Glass industry provides significant forward linkages to our food and beverage sector allowing the F&B sector to access environmentally friendly and healthy packaging at reasonable prices and superior quality.

The industry is amongst the largest consumers of electric power in the country.

Needless to say glass is the best packaging solution for any country that is seriously committed to reducing the long-term environmental harm caused by plastics.

Glass making is a continuous production process that can't be interrupted in the face of lack of market demand. As a result, the players in the country are forced to produce and hold stocks in times like this when demand for local glass is extremely low

Financing working capital is very expensive but the biggest threat is that these players are facing is the imminent closure of many factories if this situation does not change.

The glass sector therefore needs positive policies and laws that would save if from closure and enable further investment.

419

MAC
MURIITHI MUTHOMI ASSOCIATES CHAMBERS

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Brian Muriithi Muthomi
LL.B Hons(CUEA). Dip. Law (KSL)

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Deputy Director/In-charge
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25th January 2021,

CLERK OF THE NATIONAL ASSEMBLY,
MAIN PARLIAMENT BUILDING,
P.O BOX 41842-00100,
NAIROBI

ATTN: MICHAEL SIALAI, EBS

27/1/21

Dear Sir/Madam,

RE: INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

SUBJECT: THE ALCOHOLIC DRINKS CONTROL AMENDMENT BILL 2020, the Bill seeks to amend the Alcoholic Drinks Control Act No. 10 of 2010 to ensure that packaging of alcoholic drinks is in quantities not less than 750milliliters. This is in order to the menace of excessive drinking occasioned by the sale of low quantities of alcoholic drinks making them accessible to the youth.

Reference is made to the above subject matter and the Invitation published in The Daily Nation dated 21st January 2021, we hereby humbly submit our objection to the proposed amendment of Section 31 of the Alcoholic Drinks Control Act No. 10 of 2010.

Our points of objection the proposed amendment are as follows:

a. The Amendment of the Section 31 of the Alcoholic Drinks Control Act subverts the right to economic development. By dint of Article 2 (6) of the Constitution of Kenya, which states that any treaty or convention ratified by Kenya shall form part of the Laws of Kenya. Kenya has ratified both the ***International Covenant on Civil and Political Rights (ICCPR)*** and the ***International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 1 (1) of ICCPR and ICESCR*** state as follows ***"All people have the right of self-determination, to determine their political status and freely pursue their economic, social, and cultural development."*** The proposed amendment of Section 31 undermines the Manufacturers right to economic development.

b. The Amendment of Section 31 of the Alcoholic Drinks Control Act will undermine Kenya's ability to trade with other countries. Different Blenders and Distillers of Alcoholic Beverages across the world pack their products in

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Mr. George Gazemba
Pls TNA. 28/01/2021

different packaging from 50ml to 4000ml and more, to name but a few, Heineken Beer which is brewed in Amsterdam is packaged and sold in cans and glass bottles of 250ml, 350ml and 650ml, Ciroc Vodka which is Distilled in France and imported into Kenya by Diageo is packaged in 50ml cans, 700ml, 1000ml bottles, Absolut Vodka which is distilled in Sweden and imported in Kenya is packaged in 50ml, 100ml, 250ml, 500ml, 700ml glass bottles. With the proposed amendment passing into law, companies that import to sell such alcoholic products will suffer untold losses due to their inability to import such drinks due to packaging limitation and this in turn denies Kenya revenue generated from the import of such products.

c. The Competition Act Laws of Kenya Section 21 (1) which states as follows, *"Agreements between undertakings, decisions by associations of undertakings, decisions by undertakings or concerted practices by undertakings which have as their object or effect the prevention, distortion or lessening of competition in trade in any goods or services in Kenya, or a part of Kenya, are prohibited"*, prohibits Restrictive Trade Practices. The amendment of Section 31 of the Alcoholic Drinks Control Act undermines the spirit of Section 21(1) of the Competition Act as it limits the Manufacturers to a specific minimum quantity which in turn kills the ability of different Manufacturers to fairly compete in the industry.

d. Consumer rights are enshrined in the Constitution of Kenya 2010. Article 46 (1) (a) of the Constitution of Kenya states that the Consumer has a right to goods and services of reasonable quality. This is to mean that the consumer has the right to variety and should be able to autonomously decide what they wish to consume. Limiting the production and packaging of Alcoholic Products in 750ml bottles denies the consumer their right to good and services of reasonable quality. Article 2 (4) of the same constitution states that any law that is inconsistent with the Constitution is void. Since the proposed amendment of Section 31 of the Alcoholic Drinks and Control Act subverts the right of the consumer, it is therefore void, repugnant and should therefore not be passed into law.

e. Self-determination in matters health is a principle under common law. As Lord Scarman put it, patient self-determination is 'no more and no less than the right of a patient to determine for himself whether he will or will not accept the doctor's advice'.[1] Common law forms part of Kenyan law as provided for in **Article 2 of the Constitution and Section 3 of the Judicature Act**. The age of alcohol consumption in Kenya is 18 years old. Persons who sell alcohol, bars and restaurants ensure that they sell the same to persons above the age of 18. The alcohol packages are well labelled with the ingredients of the alcohol and warnings are added to the labels of the health detriments of excessive consumption of alcohol. The same warnings are mandatorily repeated after every advert that promotes the purchase of alcoholic drinks. It is therefore left to the discretion of the buyers of the alcohol to decide how much to purchase and consume. Increasing the least packaging

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[1] "Patient Involvement in Decision-making: The Right to Self-determination", Law Explorer, 2016, < https://lawexplores.com/patient-involvement-in-decision-making-the-right-to-self-determination/>.

measurement form 250ml to 750ml shall however not reduce the amount of alcohol consumption but instead injure the capability of Alcohol Manufacturers, Importers, Brewers, Blenders and Distillers to compete in the industry freely and fairly and therefore kill the economy of alcohol industry. The purchasers of the alcohol will now either consume greater amounts of alcohol as opposed to the lesser quantities offered in stores or team up with others to buy the larger bottles of alcohol and split the costs equally. This may in fact be cheaper hence increasing their capacity to consume more alcohol.

Yours Faithfully,
MURIITHI MUTHOMI ASSOCIATES CHAMBERS (MMAC ADVOCATES)

Brian Muriithi Muthomi
Managing Partner

22/01/2021

CLERK OF THE NATIONAL ASSEMBLY
MAIN PARLIAMENT BUILDING
P.O BOX 41842-00100
NAIROBI.

ATTN: MICHAEL SIALAI, EBS

Dear Sir,

RE: INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

SUBJECT: THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL, 2020

I refer to the above subject and hereby submit my opinion and objection to the amendment of the Alcoholic Drinks Control Act, No. 10 of 2010 that proposes packaging of alcoholic drinks in quantities not less than 750 millilitres (mls) as a parent of children aged between 17 and 28 years.

a) Two of my children are above 18 years of age and I am aware every once in a while they partake of alcohol. A minimum package of 750ml is for sure not "a little". These young ones shall overindulge if this bill passes into law and leaves me very worried. Our children are still growing up and may not as yet take a stable decision to consume volumes of alcohol that are just enough. Current smaller packaging (less than 750ml) does indirectly or even unconsciously ration the volume of alcohol our children drink in their post teenage. We are aware that these children go to clubs/bars to socialize, listen to music, access free Wifi etc and can have just one drink (small pack) for a very long time and eventually go home early. Now, this one drink will automatically be one too much as driven by this larger pack you are proposing. In fact, even when a 750ml at the early days is excess, it will mean that they will carry the balance home-something they do not do currently; posing a change in their alcohol consumption behavior from the current social perspective to doing it a home hence increasing the uptake frequency. I strongly do not agree with this narrative.
b) A 750ml minimum pack will certainly be more expensive especially for children in the age bracket mentioned in (a) above. However, as this group of our children seek an alternative, I am double sure they will settle on cheaper illicit alcohol. This is more dangerous and quite worrying. The architect of this bill seems to be ignoring the ripple effect.
c) There is a possibility that retailers shall sell by the tot (break it down) to suite the single serve mismatch (usually less than 750ml) as suggested in this bill. This will trigger Product adulteration. Am scared, our children will start to drink product with broken seals; this is Dangerous. Selling by the tot will also promote illicit alcohol business as product seals become less important at the retailer shelves. This means such bottles can even be refilled at retail outlet level. Our children will end up being poisoned. In fact, I am not quite sure how the manufacturers and my government shall manage this tot model and guarantee me that our children shall partake legit products.

Yours Faithfully,

Onesmus Mutinda
omutinda@yahoo.com
0722308383

25th January 2021.

CLERK OF THE NATIONAL ASSEMBLY
MAIN PARLIAMENT BUILDING
P.O BOX 41842-00100
NAIROBI

ATTN: MICHAEL SIALAI, EBS

Dear Sir,

RE: INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

SUBJECT: THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL, 2020

With reference to the above matter subject matter, i hereby submit my opinion and objection as a consumer to the amendment of the Alcoholic Drinks Control Act, No. 10 of 2010 that proposes packaging of alcoholic drinks in quantities not less than 750 millilitres (mls) as follows:

a) This poses a higher risk of overindulgence due to the large pack size. Normally I buy a 250ml or a 350ml and this has been adequate for me at any given time. Being forced to buy a 750ml will be asking me to overindulge against my right to take just what I consider enough for me. Besides, this could further pose a health risk and consequently immense negative implication on my liver.
b) The narrative that 750ml will be more expensive and less accessible to the youth is not well thought out. A common practice I have seen in the outlets is people drink together and split the bills which promotes the social wellbeing as a society and as Kenyans. I believe there are better ways to address this matter away from limiting pack sizes as proposed.
c) Globally we have beverages that are packed in sizes ranging from 250ml, 350ml, 375ml, 700ml and higher pack sizes. The bill will subsequently limit us from enjoying some of these imported brands that are brought into the country. As a consumer, my country should not pose rules that limit my choice of drink on pack size away from globally accepted pack sizes. I believe these global brands will not necessarily consider bringing in their products with such a restrictive proposition on pack sizes that the bill is recommending.
d) There is a high risk that as a consumer I may buy a product that is adulterated at the point of purchase. Where retailers decide to break bulk of the 750ml pack size in order to sell lower amounts/quantities to consumers, these drinks may be interfered with, posing a huge risk on the content of the drink that I may be served. The more reason I prefer a smaller pack size that I open for myself and are guaranteed of its safety.
e) For me the issue of alcohol abuse in Kenya should be addressed differently and not on pack sizes as abuse will still happen if an individual intends to abuse alcohol. Government agencies can devise better ways to curb abuse and have every player involved to do their part. We have seen commendable efforts in the past to curb illicit brews by the Chiefs and Police. This I see as one way among many other efforts to deal with this issue.

Yours Faithfully,

25/01/2021

Name: Patrick Gathara
Mobile Number: 0719229342

26th January 2021.

CLERK OF THE NATIONAL ASSEMBLY
MAIN PARLIAMENT BUILDING
P.O BOX 41842-00100
NAIROBI

ATTN: MICHAEL SIALAI, EBS

Dear Sir,

RE: INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

SUBJECT: THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL, 2020

With reference to the above matter subject matter, i hereby submit my opinion and objection as a consumer to the amendment of the Alcoholic Drinks Control Act, No. 10 of 2010 that proposes packaging of alcoholic drinks in quantities not less than 750 millilitres (mls) as follows:

a) As a lady, I enjoy my drinks in small pack sizes of 250ml or 330ml which I feel comfortable with. A 750ml pack size will be too much for me and against my wish.
b) Occasionally we meet up as ladies and share a drink together. Each of us has their own drink of choice served in smaller pack sizes. This bill will limit us by forcing us to buy pack sizes that may lead us to overindulge or cost us unnecessarily.
c) Some of the brands I consume are imported brands. Considering this bill limits the pack sizes, I see a situation where we may not get some of these brands in Kenya. This implies my choices are limited against my rights as a citizen of this great country.
d) In an instance that resellers may opt to serve the 750ml in smaller quantities due to consumer demand and serve in glasses, what guarantees me that the serve that I'm served from the 750ml pack size remaining is safe and not adulterated.

Yours Faithfully,

Name: Lilian Wambui
Mobile Number: 0722597381

(L120)

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Wholesaler & Distributors
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24th January 2021

CLERK OF THE NATIONAL ASSEMBLY
MAIN PARLIAMENT BUILDING
P.O BOX 41842-00100
NAIROBI

RECEIVED 27 JAN 2021 Directorate of Departmental Committees

DD / B / ands 28/1/21

ATTN: MICHAEL SIALAI, EBS

Dear Sir,

RE: INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

SUBJECT: THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL, 2020

With reference to the above matter subject matter, we hereby submit our opinion and objection ***(as a reseller)*** to the amendment of the Alcoholic Drinks Control Act, No. 10 of 2010 that proposes packaging of alcoholic drinks in quantities not less than 750 millilitres (mls) as follows:

a) Huge cost on infrastructure overhaul e.g. existing display shelves and distribution vehicle shelves alike are designed to hold 250ml (which accounts for over 85% of the space). In order to hold 750ml and higher volumes calls for demolition and a complete overhaul of the same – a cost approximated at 500,000 Ksh per outlet.
b) The new bill will block most imported brands whose minimum package is less than 750ml and/or come in one-way bottle. Such imported brands contribute immensely to the total business and hence, this will lead to significant loss of business.
c) Returnable bottle policy calls for extra storage space, additional transport cost; of course an added cost of doing business.
d) Retailers will be encouraged to sale by the tot because the 750ml pack is too big. This will encourage illegal refilling (possibly using illicit alcohol) because they can sale alcohol with broken seal. The repercussions are many including poisoning consumer, loss of business e.t.c.
e) Loss of jobs as a result of lost business as several brands (especially imported ones) get struck off my product catalogue.
f) Government will loss revenue through collecting lesser taxes as businesses shrinks.

Yours Faithfully,

Naomi Wangari Kabeu

NATIONAL ASSEMBLY RECEIVED 26 JAN 2021 CLERK'S OFFICE P. O. Box 41842, NAIROBI

Mr. George Gazemba
Pls TNA. 28/01/2021

Off Munyu Road, Opposite Apple Bees. P.O. Box 3470 - 00200 Nairobi.
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Rehema Place, Block F-45 Ngong Road/Ring Rd Kilimani
P.O Box 28053-00200,City Square
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Website: www.cofek.co.ke

COFEK

Consumers Federation of Kenya

Tel: 254-020-3861718, 3861719
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Email: hotline@cofek.co.ke
Twitter: @CofekRebranded

Our Services:

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Consumer publications

January 27, 2021

Clerk of the National Assembly
P.O Box 41842-00100
NAIROBI

DD/D/cuts
George Gasemba
pls deal
28/1/21

Dear Sir,

RE: IN THE MATTER OF CONSIDERATION BY NATIONAL ASSEMBLY ON ALCOHOLIC DRINKS CONTROL BILL, 2020

The abovementioned matter, and your media advertisement on the same, refers.

We are pleased to forward our representation on the abovementioned matter. As a key stakeholder and one who will be most affected by the financial implication on proposed decision on the said Bill, and considering consumer rights are constitutional matters as read together with Article 10 of the Constitution, we request to further make **oral submissions** to the Committee with a view to emphasizing the issue(s) therein.

In summary, we strongly object to the proposed changes in the Alcoholic Drinks Control Act, 2010. This is because they are neither need-based nor do they add socio-economic value to consumers and the people of Kenya.

We look forward to your early and favourable response. Thank you.

Yours faithfully,

PP
Stephen Mutoro
SECRETARY GENERAL

Consumers Federation of Kenya
COFEK
P. O. Box 2733 - 00200, NAIROBI.

Deputy Director/In-charge
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Directorate of Departmental Committees

NATIONAL ASSEMBLY
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28 JAN 2021
CLERK'S OFFICE
P. O. Box 41842, NAIROBI

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NAIROBI
Website: www.cofek.co.ke

COFEK
Consumers Federation of Kenya

Tel: 254-020-3861718, 3861719
Cell: 254-715555550, 0733180008;
Fax: 254-020-3861719
Email: hotline@cofek.co.ke
Twitter: @ConsumersKenya

COFEK REPRESENTATION TO THE NATIONAL ASSEMBLY ON THE ALCOHOLIC DRINKS CONTROL BILL, 2020

While the Consumers Federation of Kenya (COFEK) welcomes the spirit of the proposed changes to the Alcoholic Drinks Control (Amendment) Bill – 2020 as way to cut underage drinking, we are deeply concerned at the broad issues here below;

(a) The proposal by Hon Danson Mwakuwona is neither based on scientific, international benchmarks and or local socio-economic dynamics
(b) The timing of the proposal, during Covid-19, is unreasonable and unrealistic and would occasion pain for the consumer
(c) If allowed, the proposal would occasion more unintended consequences of growing the counterfeits challenge as well as compelling consumers to resort to illicit and unsafe alcoholic beverages
(d) The proposal could also lead to unprecedented cases of smuggling of smaller packaged alcoholic brands from the neighbouring countries i.e. Uganda, Tanzania and Ethiopia
(e) The prescription in the proposed law assumes that there is an informed diagnosis of the problem that is envisaged to be solved by merely increasing the smallest alcoholic beverage bottle content from current 250 mls to 750 mls. The current Alcoholic Drinks Control Act 2010 and County Alcoholic Drinks Control Act already provide stiff penalties and sanctions for those found selling alcohol to minors. Therefore, the solution to curb underage drinking is not more legislation and regulations but enforcement
(f) The proposed amendments will force retailers to break bulk of the 750ml packaged alcoholic beverages into smaller formats to be able to sell the more affordable and accessible format. This presents the risk of sale of adulterated or contaminated alcoholic drinks which goes against Section 38 of the Alcoholic Drinks Control Act 2010 (ADCA) and which poses serious health risks to consumers.
(g) Increasing minimum alcohol packaging size also presents the risk of encouraging excessive consumption of alcohol beyond what consumers are accustomed to consuming. This will lead to increased case of drunk driving and other health concerns related to excessive consumption of alcohol.
(h) Prescribing the fees and value for supposed 'deposit' of glass container goes against the clear free market economy forces of supply and demand and must be left to vendors to devise ways and means, including incentives, to see that consumers return and or hand over such empty glass bottles to them and or to the recyclers
(i) With no proposed comprehensive changes, as informed by clear rationale and possibly expert advice, the proposed law changes point to at best a gamble and at a worst, a potential self-interest driven legislation that won't serve any public interest.

(j) There are no mechanisms to enforce the Act and that the Honourable MP would have better worked with consumers, industry and government to understand overwhelming priority changes such as integrity of revenue stamp, illicit ethanol imports, excessive (sin) taxation,
(k) There is need for emphasis on parental discipline as opposed to economic antagonism

Specifically, we strongly object to the proposed changes for the reasons here below;

(a) That the move to increase minimum volumes of alcoholic glass bottles quantities from 250 mls to 750 mls is drastic, non-scientific, unreasonable and unprecedented
(b) That the move will be discriminatory - breaches Article 27(4) CoK and it will deny majority poor Kenyan consumers access to cheaper safe and regulated alcoholic beverages
(c) The cost of complying with such an irrational law will be too heavy to bear for the industry and which cost would wholly be shouldered by consumers
(d) COFEK estimates that nearly 75 per cent of alcoholic beverage glass bottles capacities in the market range between 250 mls to 500 mls. The transition period, which Hon Mwakuwona does not state, would need to be more than 3 calendar years to clear the stocks especially for non-fast moving brands
(e) With obvious higher cost of 750 mls bottled beverages, many consumers will resort to illicit, smuggled and counterfeit beverages denying the country much-needed national revenue as well as put their health at risk
(f) There is no single (un)scientific evidence that merely increasing the alcohol content per bottle will bar the under-age from alcohol. In any case, they can still contribute and buy the 750 mls bottle
(g) The Bill further seeks to provide for deposit refund for the purchase of alcoholic drinks in glass bottles. This is supposedly meant to encourage recycling of glass bottles and also to reduce environmental pollution by providing an economic incentive. Like scrap metals, collected by agents and then taken to scrap dealers and finally millers – glass bottles do not need the issue of deposit (which assumes the give-away bottle is not costed by the industry and paid by consumers) as an issue for the industry rather than consumers
(h) Consumer issues are well-articulated in Article 46(1)(a)

Patiala Distributors Ltd
P.O. Box 3470-00200,
Nairobi, Kenya.
020 821778
0763446548

23rd January 2021

CLERK OF THE NATIONAL ASSEMBLY
MAIN PARLIAMENT BUILDING
P.O BOX 41842-00100
NAIROBI

ATTN: MICHAEL SIALAI, EBS

Dear Sir,

RE: INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

SUBJECT: THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL, 2020

With reference to the above matter subject matter, we hereby submit our opinion and objection ***(as an importer)*** to the amendment of the Alcoholic Drinks Control Act, No. 10 of 2010 that proposes packaging of alcoholic drinks in quantities not less than 750 millilitres (mls) as follows:

a) Global/regional suppliers to Kenya offer stock keeping units (SKUs) (e.g. 330,350,375,500,700mls) that shall fall off based on the requirements of this bill. These contribute immensely to the total business hence may lead to a serious business loss. The suppliers (in the rest of the world) shall not manufacture Kenya specific SKUs; They may opt not to do business with us (and Kenya) meaning business loss.
b) Loss of business will trigger job losses and impact the society's social economics negatively.
c) Loss of business will result in an inability to service business loans and other existing financial liabilities.
d) Returnable bottle deposit is technically impossible as the one-way bottle is dominant in all imported brands.
e) Loss of business will lead to loss of revenue by government.

Yours Faithfully,

Mary W. Muthoni

Deputy Director/In-charge
RECEIVED
27 JAN 2021
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Mr. George Jusa Gazemba
Pls TNA.
2021/01/28

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Patiala Distillers (K) Ltd.

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25th January 2021.

CLERK OF THE NATIONAL ASSEMBLY
MAIN PARLIAMENT BUILDING
P.O BOX 41842-00100
NAIROBI
ATTN: MICHAEL SIALAI, EBS

Dear Sir,

RE: INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

SUBJECT: THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL, 2020

With reference to the above matter subject matter, we hereby submit our opinion and objection ***(as a manufacturer***) to the amendment of the Alcoholic Drinks Control Act, No. 10 of 2010 that proposes packaging of alcoholic drinks in quantities not less than 750 millilitres (mls) as follows:

a) The bill has massive negative financial implication on investment e.g. Current Bottles, crates, machinery e.t.c. shall be rendered obsolete and hence require replacement. Such infrastructure has been set up over many years due to the capital intensity nature it comes with. Ideally, such a requirement as suggested by the bill will pose a big challenge.
b) Possible cash flow challenges triggered by heavy capital investment requirement. This technically will result to business closure due to the inability of the Manufacturers to put up with the bills and match with this requirement.
c) Loss of business means an inability to service existing business loans and other financial arrangements.
d) Serious job losses as businesses slow down or even close down altogether. The trickledown effect here will be a negative impact on the social economic state of our society.
e) Alcohol export business shall be impacted negatively as our packaging requirements become inconsistent and less competitive in the export markets that we serve.
f) The bill is technically inconsistent with tried and tested regional/global minimum alcohol packaging guidelines whose demographics are similar to those in this country.

NATIONAL ASSEMBLY
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26 JAN 2021
CLERK'S OFFICE
P. O. Box 41842, NAIROBI

Mr. George Gazemba
Pls TNA 28/01/2021

g) Returnable bottle policy means an added cost of operating business e.g. space and other logistics
h) Possible adulteration by resellers as they may sale to the consumer by the tot (reparking). This means that consumers shall consume product with broken seals and that refilling (with illicit alcohol) may happen at the reseller level. This has many consumer poisoning implications.
i) Serious loss of government revenue/taxes as businesses shrink or even close down

Yours Faithfully,

Francis Kiambi