
REPUBLIC OF KENYA



COUNTY GOVERNMENT OF KITUI

THE COUNTY ASSEMBLY OF KITUI

FIRST COUNTY ASSEMBLY – (SECOND SESSION)

COMMITTEE ON ADMINISTRATION AND COORDINATION OF COUNTY AFFAIRS

REPORT ON THE KITUI COUNTY ALCOHOLIC DRINKS CONTROL BILL, 2014.

JULY

2014

ADMINISTRATION AND CO-ORDINATION OF COUNTY AFFAIRS COMMITTEE
REPORT ON THE KITUI COUNTY ALCOHOLIC DRINKS CONTROL BILL 2014

INTRODUCTION

Mr. Speaker, the Kitui County Alcoholic Drinks Control Bill (Assembly Bill No.4), was published in the special issue of the Kitui County Gazette Supplement No. 10 on 10th March 2014, pursuant to section 23 of the County Government Act No. 12, of 2012.

After its publication, the bill was then introduced to the County Assembly on 21st May, 2014 for its first reading in accordance with the Interim County Assembly Standing order No. 120, after which it was committed to the Administration and Co-ordination of County Affairs Committee in accordance with the Interim County Assembly standing orders No.121(1).

Mr. Speaker, pursuant to provisions of Article 196(1) (b) of the Constitution of Kenya, the Administration and Co-ordination of County Affairs Committee facilitated public participation through forums held in three different stations within the County of Kitui on the 19th day of June, 2014. The three stations included the multi-purpose in Kitui Central, Mwingi County hall in Mwingi town, and the chief's camp in Mutomo town as publicized in the Standard Daily Newspaper of 6th June, 2014. During this exercise of public participation, the committee was able to collect from members of the public, various views on the Bill from both Kitui and Mwingi towns, as well as a memorandum from Bar Owners Association of Mutomo sub-county.

The Administration and Co-ordination of County Affairs committee would like to appreciate members of the public, who turned in good numbers to give their input on the Bill as well as those who submitted a memorandum, not forgetting members of the County Assembly and the Assembly staff who committed themselves to make the whole exercise of public participation a success.

Mr. Speaker, despite the success of the public participation exercise, there was a concern on preparation and creating awareness to members of the public as far as the exercise is concerned. They urged the concerned parties that in future, they would like copies of the bill to be

distributed to them early enough prior to public participation so that they can familiarize themselves with the contents of the bill and identify areas of input.

COMPOSITION OF THE COMMITTEE.

Mr. Speaker, interim County Assembly standing order No.191 (1) establishes sectoral committees with specific mandates among them studying and reviewing all county legislation referred to it, as well as making reports and recommendations to the county assembly as often as possible, including recommendation of proposed legislation, pursuant to interim County Assembly standing order No. 191(5c & g).

The current member composition of Administration and Co-ordination of County Affairs Committee is as follows:

<u>Name</u>	<u>Designation</u>
Hon. Mwove Kinyala	Chairman
Hon. Bernard Munyasya	Vice Chairman
Hon. Daniel Ngoima	Member
Hon. Catherine Kasimu	Member
Hon. Deiys Mukala	Member
Hon. Jenniffer Munuve	Member
Hon. Jemima Mbiti	Member
Hon. Johnray Ngava	Member
Hon. Stephen Kithuka	Member
Hon. Phoebe Kisee	Member
Hon. Nelson Kitema	Member

These members offered excellent guidance and leadership throughout the exercise of public participation on this bill on the date aforementioned, and thereafter committed themselves to a three (3) day retreat in the County of Nairobi to put into consideration all the views and inputs submitted by the public, before arriving at the recommendations presented in this report.

During this retreat Mr. Chairman, the committee took ample time to thoroughly scrutinize the bill, incorporating public views that it deemed necessary together with their own.

OVERVIEW ON THE KITUI COUNTY ALCOHOLIC DRINKS CONTROL BILL 2014.

The bill seeks to provide for the licensing and regulation of production, sale, distribution, consumption and outdoor advertising of alcoholic drinks in fulfilment of County functions set forth in Part II of the Fourth Schedule of the Kenya Constitution.

RECOMMENDATIONS OF THE COMMITTEE

Mr. Speaker, after analysing, evaluating and integrating various views, suggestions and proposals, the committee recommends the following amendments to the bill:

A. (i) In the entire bill, all the areas using the word “section”, be amended by replacing it thereof with the word **clause**.

(ii) In the entire Bill, the words “Executive Member” be amended by substituting the thereof with the words “**County Executive Committee Member**”

B. Arrangement of clauses.

1. Part I-Preliminary

Clauses 1 to 3 as printed in arrangement of clauses

2. Part II-Administration

i) Clauses 6 as printed

ii) Clause 4 be amended by substituting the word “**sub-county**” which is in between the words “the” and “committee” thereof with the word “**County**”

iii) Clause 5 be amended by inserting the words “**Establishment of**” between “number 5”. and the word “rehabilitation”.

3. Part III-Licensing

(i) That this part cover clause 7 up to clause 31.

(ii) That the sub-title under clause 11 be amended to read; “**Ad-hoc subcommittees**”

4. **Part IV- General Requirements**

(i) That this part cover clause 32 up to clause 36.

(ii) That the sub-title under clause 33 be amended to read: “Supply to persons under the age of 18 years.”

5. **Part V – Sale and Consumption**

i) That this part cover clause 37 up to clause 47.

ii) That the repeated word “License” in the sub-title under clause 39 be deleted.

6. **Part VI – Advertisement and Promotion**

That this part cover clause 48 up to clause 50.

7. **Part VII – Enforcement**

That this part cover clause 51 up to clause 67.

8. **Part VIII – Miscellaneous.**

That this part cover clause 68 up to clause 69.

Clauses without Amendments

The committee recommends that the following clauses be adopted as printed in the bill:

Part I – Preliminary

Clause 3 - Object and Purpose of the Act.

Part III – Licensing.

Clause 7 – Control of Alcoholic Drinks.

Clause 17- Validity and renewal of licences.

Clause 21 – Licences to body Corporate

Clause 22 – Types of Licences

Clause 24 – Removal of Licence

Clause 25 – Licence to be displayed

Clause 26 – Employment for Sale of Alcoholic Drinks

Clause 27 – Drunken Behaviour

Clause 28- Debt from sale of Alcoholic Drinks

Clause 30 – Reports by Public Health Officers and Police Officers.

Part IV – General Requirements.

Clause 32 – Conformity with requirements

Clause 34 – Display of Signs

Clause 35 – Vending Machines

Clause 36 – Selling in Sachets

Part V – Sale and Consumption.

Clause 37- Sale to intoxicated person

Clause 40 –Sale to authorized Officer

Clause 41 –Non- disclosure of Conviction

Clause 42 –Sale without Licence

Clause 43 –Sale of Adulterated Drinks

Clause 44 –Proof of Sale

Clause 45 –Burden of Proof

Clause 46 –Endorsement of conviction on Licence

Clause 47 –Forfeiture of Licence upon conviction

Part VII – Enforcement.

Clause 58 –Court to issue Warrant

Clause 60 –Certificate of Analysis

Clause 61-Assistance of Officers

Clause 62-Obstruction

Clause 63 -Seizure

Clause 64 –Order for restoration

Clause 65-General Penalty

Clause 66-Nature of Offences

Clause 67-Nature of evidence in proceedings

Clauses with Amendments

Part II – Administration

Clause 4

- i) That sub clause 1 be amended by substituting the phrase “**in every sub county**” which is in between the words “established” and “alcoholic” thereof with the phrase “**in the County**”
- ii) That the incorrectly used tense in sub clause (2c) be corrected so that it shall read; “**lay down statutory frameworks**”.

Clause 5

That the word “**County**” be inserted between the words “the” and “Committee” in the first sentence of this clause.

Clause 6

- (i)** That sub clause 3(a) be amended by inserting the words “**of this Act**” immediately after the word section 4.
- (ii)** That paragraph (c) of sub clause 3 be deleted hence renumber paragraph (d) as paragraph (c)

Part III - Licencing

Clause 8

- (i) The committee recommends an inclusion of a person living with disability in the membership of the sub-county committee, as well as reducing the number of members from seven to four, thus an amendment to sub clause (4d) to read: “four residents of the sub-county appointed by the executive member through a competitive process. **One of whom shall be youth, one person living with disability and at least one woman.**”
- (ii) That the misquoted previous section, {9 (4d)} instead of {8 (4d)} in sub clause (4e) be corrected so that it shall read: “**on their first meeting the committee shall elect a vice chairperson from among the persons in section 8 (4d) who shall be of opposite gender to the chairperson.**”

Clause 9

That the improperly used adjective in sub clause (a) where a definite article “*the*” is used in place of indefinite article “*a*” be corrected to read “**A holder of a licence in the County under this Act.**”

Clause 10

- (i) That the subheading “*Meetings*” be moved to form a margin note.
- (ii) That the brackets on number “10” be removed.
- (iii) That the word “sub-paragraph” in sub-clause (c) which is between “Notwithstanding” and “(a)” be replaced with the word “sub-clause”.
- (iv) That sub clause (i) be amended to read, “**Subject to sub-clause (e), no proceedings of the sub county committee shall be invalid by reason only of a vacancy among the members thereof.**”

Clause 11

- (i) That the word “*Ad-hoc*” be inserted before the sub heading “*sub-committees*” to read: **Ad-hoc sub committees.**
- (ii) That the same word, “*Ad-hoc*” be inserted before the word “Subcommittee (s)” as used in the entire clause.
- (iii) That all the sub clauses be denoted by numbers instead of consonants.
- (iv) That the words “established under clause 8 of this Act” be inserted after the words “sub county committee” in the first sentence of sub clause (a) (now 1 after the amendment in bullet ii)
- (v) That the word “sub-paragraph” in sub-clauses (b) and (d) (now 2 and 4 respectively after the amendment in bullet ii) which is between “under” and “(1)” be replaced with the word “sub-clause”.

Clause 12

- (i) That the words “in the sub county” appearing between the words “committee and where”, in the fifth sentence of sub clause one be substituted with the words “**established under clause 8 of this Act**”.
- (ii) That the words “for necessary action” immediately after the word Division in sub clause 3(e) be deleted.
- (iii) That the repeated numbering of sub clause 9 be renumbered as sub-clause 10 thus, renumbering of the following clauses:
 - Sub-clause 10 as sub-clause 11,
 - Sub-clause 11 as sub-clause 12,
 - Sub-clause 12 as sub-clause 13,
 - Sub-clause 13 as sub-clause 14,
 - Sub-clause 14 as sub-clause 15,
 - Sub-clause 15 as sub-clause 16, and
 - Sub-clause 16 as sub-clause 17.
- (iv) That the word “local” appearing between the words “the and authority” in the fourth sentence of the newly renamed sub clause 13 be substituted thereof with the word “**County**”

Clause 13

- (i) That the misquoted clause 10 in sub-clause 1 and 2 be correctly quoted with the right clause which is clause 12.
- (ii) That the words “**or the Kenya Gazette**” be inserted immediately after the last word Gazette, in sub clause 7.

Clause 14

- (i) That the misquoted clause 10 and clause 11 in sub-clauses 1 and 3 be correctly quoted with the right clauses which are clauses 12 and 13 respectively.
- (ii) That the use of the word “Committee” in Sub- clause 1 be substituted thereof by the word “Sub-county committee”

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- (iii) That the misquoted clause 15 be correctly quoted with the right clause which is clause 15 (1a).

Clause 15

- (i) That the misquoted sub-clause 1 in the first sentence of sub-clause 3 be correctly quoted with the right sub-clause which is sub-clause 1 (c).
- (ii) That the words “**twenty one**” in between “of” and “to” in the last sentence of sub clause 3 (d), be substituted thereof with the word “**eighteen**”.

Clause 16

- (i) That sub clause (1b) be amended to read “**has not stayed for at least 12 months after being convicted of an offence under this Act or of any offence of which the sentence is imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months; or**”
- (ii) That the noun “Kenya” in sub clause 1 (c) be substituted thereof with the noun “Kitui”
- (iii) That Sub clause (2c) which directly relates to sub clause (1b) be amended similarly to read: “**the licensee has not stayed for at least 12 months after being convicted of an offence under this Act or of any offence of which the sentence is imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months; or**”

Clause 18

That the words “**executive member**” in the last sentence of sub clause 1 be substituted by the words “**review Committee**”

Clause 19

That the misquoted clause 16 in the first sentence of this clause be correctly quoted with the right clause which is clause 18.

Clause 20

That the misquoted clause 16 in the first sentence of sub clause 2 be correctly quoted with the right clause which is sub clause 1.

Clause 23

That the misquoted sub clause 3 in the second sentence of sub clause 2 be correctly quoted with the right clause which is clause 18.

Clause 29

That the contradiction between the margin note and its actual contents as well as an omission of the definite article “*the*” be amended so that the margin note reads: “**Access by persons under the age of eighteen years**” instead of “Access to persons under age of twenty one years”.

Clause 31

- (i) That the misquoted clause 28 in the second sentence of sub-clause 1 be correctly quoted with the right clause which is clause 30.
- (ii) That the misquoted sub clause 5 in the second sentence of sub clause 7 be correctly quoted with the right sub clause which is sub clause 6.
- (iii) That the verb “**deem**” in the sixth sentence of sub clause 7 and which is in between the words “may” and “necessary” be substituted thereof by the verb “**consider**”

Part IV – General Requirements.

Clause 33

- i) That the wordings of the margin note in this clause be changed to read: “Supply to persons under the age of 18 years.”
- ii) **THAT**, the words “**young person**” as used in sub clause 3 be substituted with the words, “**persons under the age of eighteen years**”

Part V – Sale and Consumption

Clause 38

- (i) That the second paragraph of sub-clause 4 be numbered as paragraph “(b)”.
- (ii) That sub clause be deleted since it is a duplication of Clause 37.

Clause 39

That sub clause 1b be split to create a paragraph (c) from the word “and” in the fourth sentence of paragraph (b).

Part VI- Advertisement and Promotion

Clause 48

That a sub clause 3 be inserted to read: Pursuant to Article 24(2) of the Constitution, the right to freedom of expression set out in Article 33 of the Constitution is limited to the extent specified in this section for the purpose of-

- (a) protecting consumers of alcoholic drinks from misleading or deceptive inducements to use alcoholic drinks; and
- (b) Protecting persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks.

Clause 49

That a sub clause 3 be inserted to read: “Pursuant to Article 24(2) of the Constitution, the right to freedom of expression set out in Article 33 of the Constitution is limited to the extent specified in this section for the purpose of protecting persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks”

Clause 50

That a sub clause 3 be inserted to read: “Pursuant to Article 24(2) of the Constitution, the right to freedom of expression set out in Article 33 of the Constitution is limited to the extent specified in this section for the purpose of protecting consumers of alcoholic drinks from misleading or deceptive inducements to use alcoholic drinks and also for the purpose of protecting persons

under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks”

Part VII – Enforcement.

Clause 51

That a paragraph (c) in sub clause 3 be inserted to read: “And officers appointed under the weights and measures Act and the Anti-counterfeit Act.

Clause 52

- (i) That the numbering of sub-clause (1) be deleted thus this clause remains without a sub-clause.
- (ii) That the words “**Sub County**” in the first sentence of this clause be substituted thereof with the words “**County Committee**”.

Clause 53

- (i) That paragraph (a) be amended to read “**co-ordinate the enforcement of this Act**”.
- (ii) That a sub clause 2 be inserted to read: “Pursuant to Article 24(2) of the Constitution, the right to privacy set out in Article 31 of the Constitution is limited to the extent specified in this section for the purpose of protecting consumers of alcoholic drinks by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks as specified in this Act”

Clause 54

That the misquoted clause 50(2) in the last sentence of sub-clause 2 be correctly quoted with the right clause which is clause 51 (2).

Clause 55

- (i) That the misquoted clause 52 in the second sentence of this clause be correctly quoted with the right clause which is clause 54.
- (ii) That a sub clause 2 be inserted to read: “Pursuant to Article 24(2) of the Constitution, the rights to privacy and property set out in Articles 31 and 40 of the Constitution are

limited to the extent specified in this section for the purpose of enforcement of this Act and for protecting consumers of alcoholic drinks by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks as specified in this Act.

Clause 56

- (i) That the repeated numbering of sub clause (c) be renumbered as sub-clause (d) thus renumbering of sub-clause (d) as sub-clause (e).
- (ii) That a sub clause 2 be inserted to read: “Pursuant to Article 24(2) of the Constitution, the rights to privacy and property set out in Articles 31 and 40 of the Constitution are limited to the extent specified in this section for the purpose of protecting consumers of alcoholic drinks by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks as specified in this Act”.

Clause 57

That the misquoted clause 56 in the last sentence of this clause be correctly quoted with the right clause which is clause 58.

Clause 59

That the misquoted clause 56 in the second sentence of this clause be correctly quoted with the right clause which is clause 58.

Part VIII – Miscellaneous.

Clause 68

That the words “**Sub county committee**” in the second sentence of sub clause 1 be substituted thereof with the words “**County Committee on alcoholic drinks control**”

Clause 69

That the erroneous numbering of this clause as “**Clause 70**” be corrected by renumbering it as Clause 69.

Interpretations:

- (i) That the words “**of this Act**” be inserted immediately after the words “Section 50” in the interpretation of “Authorised Officer” in clause 2.
- (ii) That the interpretation of **Enforcement Committee** in clause 2 be amended to read: “means the County Alcoholic Drinks Control Committee”
- (iii) That the bracketed phrase, “who is in charge of alcoholic drinks control” be deleted from the interpretation of **Executive Member** in clause 2.
- (iv) That Connector “by” in between the words “established” and “section” in the interpretation of **Fund** in clause 2 be substituted by “**Under**”
- (v) That the brackets used in the interpretation of **locality** in clause 2 which are in between the words “urban area” and “sub county”, and also in between the words “village” and “as”, be removed.
- (vi) That the interpretation of **Sub county committee** be amended to read: means the sub county alcoholic drinks regulations committee appointed under clause 8 of this Act.

Long Title:

THAT, the long title as printed, be the long title of the bill.

Short Title:

THAT, the short title as printed, be the short title of the bill.

**ADOPTION OF THE COMMITTEE’S REPORT ON THE KITUI COUNTY
ALCOHOLIC DRINKS CONTROL BILL, 2014 (BILL. NO. 4)**

<u>Name</u>	<u>Designation</u>	<u>Signature</u>
1. Hon. Mwove Kinyala	Chairman	.....
2. Hon. Bernard Munyasya	Vice Chairman	.....
3. Hon. Daniel Ngoima	Member	.....
4. Hon. Catherine Kasimu	Member	.....
5. Hon. Deiys Mukala	Member	.....
6. Hon. Jenniffer Munuve	Member	.....
7. Hon. Jemima Mbiti	Member	.....
8. Hon. Johnray Ngava	Member	.....
9. Hon. Stephen Kithuka	Member	.....
10. Hon. Phoebe Kisee	Member	.....
11. Hon. Nelson Kitema	Member	.....
12. Hon. Jane Mutua	(Invited member)	.....