

KAMPALA INTERNATIONAL UNIVERSITY

SCHOOL OF LAW

**IMPACT OF THE ENACTED LAWS ON ALCOHOLIC DRINKS ON KENYA'S ECONOMIC,
SOCIAL AND POLITICAL SETTING**

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**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL FULFILLMENT
OF THE REQUIREMENT FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAW
AT KAMPALA INTERNATIONAL UNIVERSITY.**

FEBRUARY, 2016

DECLARATION

I, MWALUKUKU MAUREEN MILLY, declare that the content of this dissertation is purely my original work, unless otherwise quoted. To the best of my knowledge the same research has never been submitted for a degree in any other university.

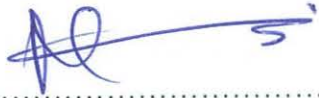
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MWALUKUKU MAUREEN MILLY

Date..... 23rd Feb 2016

APPROVAL

This is to certify that this dissertation has been submitted for examination with my approval as a University Supervisor.



Sign.....

SUPERVISOR

23/2/2016

Date.....

DEDICATION

This project is dedicated to my family and friends for their love, care, understanding and support throughout this venture,

May the good Lord continue to bless them.

ACKNOWLEDGEMENT

I wish to acknowledge all the help given towards the successful completion of this project. My special gratitude goes to my project supervisor, for guidance in the writing of this thesis. I want to appreciate the support.

I acknowledge the support I received from my beloved family who endured many hours of being away from them and assistance I received as I worked on this project. I wish to acknowledge the advice and editorial support given to me by my colleagues and friends.

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TABLE OF ACRONYMS

DADRC	District Alcoholic Drinks Regulation Committee
DHE	Department Of Health Education
DLU	Driving Under the Influence
HL	Health Communication
KAHC	Kenya Association of Hotel Keepers and Caterers
KTF	Kenya Tourist Federation
KPA	Kenya Ports Authority
MP	Members of Parliament
NACADA	National Coordinator for the Campaign against Drug Abuse
OT	Old Testament
P.E.R.A.K	Pubs Entertainment and Restaurant Association of Kenya
STI	Sexually Transmitted Infections
WHO	World Health Organization

CHAPTER ONE

1.0 Introduction

This chapter introduces the study which includes background of study, statement of problem, research objectives, research questions, scope of the study, significance of the study and the conceptual frame work.

1.1 Background of the problem

While no one knows when beverage alcohol was first used, it was presumably the result of a fortuitous accident that occurred at least tens of thousands of year's age. However, the discovery of late Stone Age beer jugs has established the fact that intentionally fermented beverages existed at least as early as the Neolithic 10,000 B.C¹ and it has been suggested that beer may have preceded bread as a staple wine clearly appeared as a finished product in Egyptian pictographs around 4,000 B.C. the earliest alcoholic beverages may have been made from berries or honey and wine making may have originated in the wild grape regions of the Middle East. Oral tradition recorded in the Old Testament² asserts that Noah planted a vineyard on Mt. Ararat in what is now eastern Turkey, in summer; beer and wine were used for medicinal purposes as early as 2,000 B.C.

Brewing dates from the beginning of civilization in ancient Egypt³ and alcoholic beverages were very important in that country, symbolic of this is the fact that while many gods were local or familial, Osiris, the god of wine, was worshipped throughout the entire country.⁴ The Egyptians believed that this

¹ Patrick, charter H alcohol, culture and society Durhamnorth Carolina, duke university press, 1952 (pp 12-13) reprint edition by Amis press New York.

² Genesis 9:20

³ Cherrington, 1925, (p.404) standard encyclopedia of the alcohol of the problem Vol.....diseases, injuries and risk factors in 1990 and projected to 2020, pp.....15,389-404. Makela.

⁴ Lucia. salavatore p. (ED.) alcohol and civilization New York: McGraw-Hill, 1963,p.178; blue p. 76 a b Tannahillp.....The Alcohol republic: an American Tradition. Oxford University Press. pp 152-154.

important god also invented beer, a beverage that was considered a necessity of life; it was brewed in the home “on an everyday basis”.

Beer was major beverage among the Babylonians, and as early as 2,700 B.C. they worshipped a wine godless.⁵

A variety of alcohol beverages have been used in china since prehistoric times. Alcoholic beverages were widely used in all segments of Chinese society, were used as a source of inspiration, were important for hospitality, were an antidote for fatigue, and were sometimes misused. While habitual drunkenness was rare, intoxication at banquets and festivals was not unusual. In fact, the symposium, a gathering of men for an evening of conversation, entertainment and drinking typically ended in intoxication. However, while there are no references to it among foreign peoples.

The early modern period was generally characterized by increasing prosperity and wealth. Towns and cities grew in size and number, foreign lands were discovered and colonized and trade expanded, perhaps more importantly, there developed anew view of the world. However, the protestant leaders such as Luther, the leaders of the Anglican Church did not differ substantially from the teachings of the Catholic Church, alcohol was a gift of God and created to be used in moderation for pleasure, enjoyment and health; drunkardness was viewed as a sin.⁶ This in the book of timothy it is written that “no longer only drink water but use a little wine for the sake of your stomach and your frequent ailments.”⁷ From this period through at least the beginning of the eighteenth century, attitude toward drinking were characterized by a continued recognition of the positive nature of moderate consumption and an increased concern over the negative effects of drunkardness. The latter, which was generally viewed as a rising out of the increased self indulgence of the time, was seen as a threat to spiritual salvation and society of wellbeing. Intoxication was also inconsistent with the emerging emphasis on a balanced mastery of self and world and on work and efficiency.

⁵ WWW2.POTSDAM.EDU/.../1114796842.HTML

⁶ [CHRISTIANITY.net.au/questions on alcohol](http://CHRISTIANITY.net.au/questions%20on%20alcohol)

⁷ Timothy 5:22

However, consumption of alcohol was often high. In the sixteenth century, alcohol beverage consumption reached 100 liter's per person per year in, Spain, and polish peasants consumed up to three liter's of beer per day. In Coventry, the average of amount of beer and ale consumed was about seventeenth litres per week compared to about three pints today nationwide, consumption was about one litter per day per capita. Swedish beer consumption may have been forty times. English sailors received a ration of a gallon of beer per day, while soldiers received two-third of a gallon. In Denmark, the usual consumption of beer appears to have been a gallon per day for adult lobbers and sailors.⁸

While drunkenness was still an accepted part of life in the eighteenth century, the nineteenth century would bring a change in attitude as a result of increasing industrialization and the need for a reliable and punctual work force. Self discipline was needed in place of self expression and task orientation 'a: replace relaxed hospitality. Drunkenness would corn to be defined as a threat o industrial efficiency and growth.

Problems commonly associated with industrialization and rapid urbanization was also attributed to alcohol. Thus, problems such as urban crime, poverty and high infant mortality rates were blamed on alcohol. Overtime, more and more person, social and religious/moral problems would be blamed on alcohol. And not only would it be enough to prevent drunkardness: any consumption of alcohol would come to be seen as unacceptable. Group s that began by promoting self control would ultimately become abolitionist and press for the complete and total prohibition of the production and distribution of beverage alcohol. Unfortunately, this would not eliminate social problems but would complex the situation by creating additional problems.

African societies have proverbs for every situation, dinking include. "He who is drunk from palm wine can sober up, he who drunk from wealth cannot," say Nigerians.⁹ Such proverbs and wise sayings on alcohol were invariably about men, since in most traditional settings, drinking was primarily an indulgence of the adult male. African drinks most of them illicit,

⁸ En.wikipedia.org/.../history of alcohol beverages

⁹ www.nation.co.ke.inDepth/Africa-insight/-/625262/.../-/index.html.....22nd April ppl

come with quick, drunken names, while Kenya has *chang 'aa* "Kill-me-quick," Botswana takes the gold in naming its backyard brews. It was *Tho-tho*, (the dizzy spell), *a lalafa* (you sleep right here), *laelamango* (say goodbye to your mother) *chechisa* (hurry up) and *motes o tenggodimo* (there is home in heaven).

These suggestive names and statistics notwithstanding, home made brews boast a frothy history in most African societies. Alcohol was used to appease ancestors as libation, loosen tongues during slippery dowry negotiate ones and to celebrate new seasons or victory in war. Then there were drinking sessions to celebrate births, mending rifts between warring factions and repentance. Among the Kofyar people of Jos Nigeria, for instance, presenting a brew was viewed as an act of affection and respect. Alcohol, gives or takes, and blessed status in Africa irrespective of class community or geography.

In pre-colonial Africa drink were fermented not distilled. The kikuyu of Kenya brewed and still brew *muratina* from honey and sugarcane; the Swahili at the Kenyan coast have their *mnazi* fermented from the coconut fruit. In eastern Kenya *Kamba* staggered and still do stagger on the strength of *uki*, brewed from fermented sugar or honey.

And even though seeing double was an occasional menace, traditional brews rarely killed, and certainly didn't blind as modern 'poisons' do. Colonialism introduced foreign drinks to Africa. Kenya's first president, Jomo Kenyatta ran Kenyatta stores where he sold cigarettes and Nubian gin to whites and Asians in Nairobi's Dagoretti area in 1920's as biographer.¹⁰ Jeremy Murray brown informs us of Kenyatta.

But the onset of colonialism in most parts of Africa corked brews up. Liquor laws were enacted banning "natives" from consuming bottled beer, or issuing with liquor licenses, preferring to allow indulgences during specific ceremonies and rises on the strength of a letter from a stern faced chief.

The laws aside, branch of colonialism had made it easy to brew; maize had replaced millet as the primary grain in alcohol production. Sugar, which has ethanol enhancing properties,

¹⁰ Jeremy Murray-Browns, Kenyattapp226, the university oof califonia, E.P.Ditton and co, 15th Feb 2007 vl 3453 of Fontana books.

became easily available making distillation the choice process of brewing *chang'aa* the preferred drink of Kenya's low, or no income earners.

After independence, African governments upheld the colonial liquor laws. Traditional brews were deemed "illicit" since their distillation and lack of packaging fell outside government and since land public health regulations.

1.2 Statement of the problem

In 1998, more than 80 people died in Machako's, Kenya,¹¹ after drinking *chang'aa* laced with methanol. Tragedy struck again when, in 130 people perished and over 390 were hospitalized in various stages of stupor in the same town. Over 20 went blind. And as if the death's of 98 were a pat on the back,¹² 49 others drinkers died in the same place. Since then alcohol has continued to take more lives, which eventually lead to this years parade authorized by president Uhuru Kenyatta to destroy all locally made brews that had killed numerous people mostly youths.

Kenyan women could not take it anymore. They routinely demonstrate against the demon drinks which they say, among other things, interferes with their conjugal rights.

Chang'aa is the drink of the poor in rural areas and city slums. Ironically, women do most of the brewing and selling of the illicit brews in Kenya from which they clothe, feed and educate their families. Such is the economic significance of the drink that it's common for Kenyan politicians to defend the trade claiming that they were educated with its profits.

To turn a profit, the brewers shortened the fermentation period by lacing the brew with methanol, Methanol, industrial alcohols used in products such as anti-freezants and are absorbed directly into the blood stream leading to coma, blinds and death.

¹¹ [http://www.nation.co.ke.tragedy in machakos](http://www.nation.co.ke.tragedy%20in%20machakos) 22nd april 2010 pp1-2

¹² <http://www.standardmedia.co.ke>, more die due to illicit brew,22nd April

To turn a profit, the brewers shortened the fermentation period by lacing the brew with methanol. Methanol, an industrial alcohol used in products such as anti-freezants and is absorbed directly into the blood stream leading to coma, blindness and death. The 15 deaths in Nairobi resulted from such a brew despite wide media coverage on its dangers. Four people have died in separate alcohol related incidents in Mbale, Taita-Taveta County in the past few weeks “*We are perturbed by the high number of people and see you there engaging in alcohol. The trend has not only adversely affected productivity but also education in the area,*” said Mbale Chief Peter Ilaku. Among the dead is a retired Kenya Ports Authority employee who collapsed after taking traditional brew locally known as *Mbangara*.

The incident comes shortly after President Kibaki signed into law the bill¹³ which, Naivasha MP John Mututho tabled in Parliament. The framers of the new laws were spurred on by the tragic cases of drinkers of illicit brews being blinded, rendered impotent or killed after downing concoctions laced with ethanol. On Kenyatta Day during his speech, President Mwai Kibaki finally threw in a line about alcohol and other drug misuse. Though this was hurriedly covered over by the inevitable warning over HIV/AIDs and other issues it was at least a tiny step and the first which the president has made in admitting that a problem did indeed exist. We cannot continue regarding alcohol as a social beverage but need to begin seeing and treating it for what it actually is-a mood altering drug capable of causing addiction and which has drug abuse potential.

Kenyans who patronize *chang'aa* (a common local brew) dens for a sip of their favorite now have a reason to smile as the bill legalizes the sale of the traditional liquor.

Before President Kibaki signed the bill¹⁴ into law, there were concerns that though well-meaning, the bill needed to be reviewed because of flaws that could render it bad law.

¹³ Alcoholic Drink Control Bill 2009

¹⁴ Alcoholic drink control bill 2009

The motives behind the new laws, meant to regulate the production and sale of all alcoholic drinks, including traditional brews like *chang'aa* and *Busaa*, is noble justified.

Changa'aa has received the most attention because of its devastating effects on families. It has always been cheaper than beer because it has been brewed in unsanitary conditions without observing basic minimum requirements for health and sanitation. The new laws will make *chang'aa* more expensive, but still cheaper than beer. However, unless properly enforced, they will not stamp out completely the horrible conditions under which most of the *chang'aa* is brewed. This newspapers call for caution is primarily prompted by concerns that the state lacks the teeth and capacity to enforce the demanding provisions of the bill, especially with regard to compliance with standards and quality.

There is also concern that some of the requirements, especially with regard to quality-like the demand that all alcoholic drinks, including traditional brewed like *chang'aa* be bottled and not sold in sachets-could fore illicit brews underground and into the control of gangs. And there is the danger that established brewers may switch to making *chang'aa* to protect their downstream revenue, locking out smaller brews. The bill is now law, but those concerns are as valid as they were when we mentioned them one month ago.

Today *chang'aa* drinkers and brewers all over the country are no doubt celebrating what they see as anew dawn of unbridled drinking and prosperity. Most have not read or been educated on the contents of the laws. This is serious oversight because without proper understanding of the spirit of the regulations and the heavy penalties involved in breaking them, the spirit of the Act will be defeated and much havoc will be wreaked before order is restored. Die (herds) of the local brews, say the law will ensure safety in the production of the liquor and the sale measures will ensure youth aged 18-years do not have to brews, spirits and drinks.

Sadly extreme drinking amongst teenagers is having an adverse effect on communities across the country principally within urban areas. Within 2 years child crime has gone up by approximately 20% mainly fueled by alcoholic consumption involving children as young as

seven. In contrast, burglary, vehicle crime and criminal damage have seen little or no rise whereas alcohol-related offences have increased by as much as a third. Those who could have been most productive for our vision 2030 are dying. Fathers are burying their sons and we really need to rise up.

It is in light of the above statement that necessitated this study to establish the impact of the newly enacted laws economically, socially as well as politically and give necessary recommendations as to my conclusions.

1.3 Justification of the problem

1. The study will be used to guide/influence the leaders, policy makers, legislators and all those who are concerned with administration of justice.
2. The study is of great importance to other researchers, teachers, practicing lawyers and the general public. In effect, it brings out a change in both practical and theoretical understanding of the law concerning alcoholic drinks.
3. The findings will add value to the existing literature and serve as up to date literature for future purposes. This will contribute to existing body of knowledge.
4. The study will help educate and provide a reference for other researchers who intend to base their study on this study.

1.4 Hypothesis

The purpose of the study is to enable the researcher to critically analyze how alcoholic drinks laws have affected the society and the country at large.

1.5 Research question

The researcher will be guided by the following research questions;

1. Is the alcoholic drinks law competent in regard to the purported significance?
2. What was the existing regulatory, laws' surrounding the alcoholic drinks market?

3. What is the effect of the passed alcoholic drinks laws to the society and the country at large?
4. What is the public's reaction to the passed alcoholic drinks laws?
5. What is the chance of success or failure of the alcoholic drinks laws?
6. What recommendations could be offered to the government in regard to the laws touching alcoholic drinks?

1.6 Statement of the objective

The study simply focuses on East African setting with emphasis on Kenya. It focuses on the alcoholic drinks laws narrowing down to the alcoholic drinks Act of 2010.

1.7 Theoretical frame work

The (DHE),¹⁵ ministry of health mission statement in its national health communication¹⁶ reads; the division of health education in partnership with other government ministries/departments, donors, non —governmental organizations, private sector and the general public, are committed to contribute the achievement and sustainability of good health by all Kenyan's through systematic well-planned and innovative health communication interventions.

It defines HC¹⁷ as 'the use of innovative communication techniques to teach defined audiences to inform, persuade, motivate and encourage them to adopt health promoting behaviors'.

To this end as far as alcohol abuse is concerned, the papers communication objectives for users are to increase public knowledge on the dangers of drugs and to assist users to stop through public interventions. For policy makers; increase their knowledge as well as that of

¹⁵ Divisions of health education

¹⁶ Strategy 1999-2010s

¹⁷ Health Communication

opinion leaders on the consequences of drug abuse and misuse while encouraging them to speak out against the same.

The general public too is not left out as the paper states that their knowledge should be increased on the serious consequences of drug abuse and misuse while enhancing the teamwork approach towards prevention and control of drug abuse.

It would look at penalties for drunk driving after having set legal limits and putting effect capacity legal and physical test and enforce this legislation. Currently what is the criterion for declaring a Kenyan DUT? (Driving under the influence). What would be the determining factor that I was drunk? I do not think that the Kenyan police have legal criteria for arresting somebody for drunk driving.

1.8 Research methodology

The methodology employed is in the line with the objectives and purposes of the research. This deals with various means, ways and strategies used such, as survey and study design. I will majorly derive my data using documentary analysis as a means of gathering information. The findings will be complimented and substantiated by relevant authorities ranging from statutes, case law and other legal articles and legal instruments.

1.9 Limitations

The researcher being a student will face the following challenges as anticipated before the research is completed.

- i. Time allocated to conduct the research is not enough since the researcher being still in school, lacked enough duration of days to conduct a comprehensive and continuous study.
- ii. Financial constraints also greatly hindered depending on individual funds.
- iii. The literature available in the libraries and other reference areas was not adequate enough to complement the research study.

1.10 Chapter Breakdown

CHAPTER ONE

This chapter focuses on the overview of the history of the problem under study, statement of the research problem, the general objectives of the study, specific objectives to the research study, research questions, and research methodology.

Alcohol is a product that has provided a variety of functions for people throughout all history, from the earliest times to the present, alcohol has played an important role in religion, feeding and worship. Historically, alcohol beverages have served as a source of needed nutrition and have been used as medicine, antiseptics, and analgesic properties. The role of such beverages as thirst quenchers is obvious and they play an important role in enhancing the enjoyment and quality of life. They can be social lubricant, can facilitate relaxation, can provide pharmacological pleasure, and increase the pleasure of eating. Thus, while alcohol has always been misused by a minority of drinkers, it has proved to be beneficial to most.¹⁸

CHAPTER TWO

In this chapter, the researcher will consider the existing literature related to alcohol regulating laws and the role played by the place and their setting.

CHAPTER THREE

This chapter deals with various means, ways and strategies the researcher will use such as, a survey and study design. The researcher will majorly derive data for this research using documentary analysis as a means of gathering information. The data collected for purposes of this research will be by documentary analysis.

¹⁸ David J. Hanson, Ph.D. [Http://www2.Potsdam//Hanson/AboutYourHost.html](http://www2.Potsdam//Hanson/AboutYourHost.html)

CHAPTER FOUR

This chapter brings forth the findings on the impact of the newly enacted laws on alcoholic drinks in Kenya's social, economic and political setting. Tables will be used to present the data collected. In some instances, the opinions and views of the respondents regarding the topic of study are also quoted.

CHAPTER FIVE

This chapter summarizes the findings of the study and makes conclusion based on the findings of the study, recommendations on how to improve on policy making and its implementation on a society considered to be a drinking nation and a majority of who does not welcome the new laws. Suggestions for further reading and research on policy making so as to touch on the very crucial lifestyle of the citizens.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

In this chapter, the researcher considered the existing literature related to alcohol regulating laws and the role played by the laws in place and their setting.

2.1 Theoretical framework

The (DHE)¹⁹, Ministry of Health mission statement in its National Health Communication²⁰ reads: ‘the Division of Health Education in partnership with other government ministries/departments, donors, non-governmental organizations, private sector and the general public, are committed to contribute to the achievement and sustainability of good health by all Kenyans through systematic well-planned and innovative health communication interventions.’”

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It would look at penalties for drunk driving after having set legal limits and putting into effect capacity legal and physical to test and enforce this legislation. Currently what is the criterion for declaring a Kenyan DUI? (Driving Under the Influence). What would be the determining factor that I was drunk? I do not think that the Kenyan police have legal criteria for arresting somebody for drunk driving.

This would also allow testing of anybody brought into the casualty departments of the hospitals or into clinics after accidents or violence (domestic or otherwise) to be tested to see if they were over the limit. It would also allow where there was thought to be a need for testing of those brought into police stations on various charges to again gauge whether they were over the limit. This knowledge would guide charges against offenders as well as enabling the identifying of repeat offenders so that appropriate action could be taken.

Treatment and rehabilitation issues should in regard of current scientific evidence and new positions which regard alcoholism as a disease, be clarified and guidelines issued on the criteria for starting and running of these centers. A 13 man task force set up last year by the Director of Medical Services, seems to have ran out of steam.

The National Coordinator for the Campaign against Drug Abuse (NACADA) Agency has also been vested with considerable powers in the licensing and distribution of the products.

The agency says by legalizing the sale of traditional liquor, this will bring sanity to the industry and prevent further loss of lives. NACADA has developed a national alcohol policy that will among other things challenge some of the provisions of the law governing children's access to alcohol. Though it is illegal in the Kenyan law to sell alcohol to children under the

age of 18 years, the same law, meant to restrict children's access to alcohol, is silent on the increasing trend of children frequenting premises where alcohol is sold and consumed while in the company of adults.

In its report²², it recommended that there is need to review and update policies that address the regulation of drugs and substance abuse. In particular, the commercialization of traditional brews needs to be reviewed. There is need for a policy that will ensure that children do not frequent places where alcohol is consumed.

On June 29 Point-Blank wrote that the Alcoholic Drinks Control Bill would have staggering implications, we did not expect the unprecedented cheers that followed the President's approval of the Alcoholic drinks control Act.

The WHO research indicates that Kenya is not only a working but also a drinking nation. Seventy per cent of Kenyan families are affected by alcoholism and not necessarily the illicit types.

The deadly cost of drinking includes lapses in morality leading to high-risk sexual behaviors and the attendant proliferation of HIV and STI infections and transmissions. Alcoholism also increases numbers of absenteeism and unemployment, child abuse and neglect, while 2.2 per cent of deaths and 25 to 30 per cent of hospital admissions in Africa, are alcohol related. The East African state has the highest per capita consumption of alcohol in the world, with Luxembourg and the Czech Republic, staggering closely behind²³.

A 1970s report had it that four out of five women in the *Mathare* slums, Nairobi, were engaged in *busaa* brewing. From the 1980s, *Chang'aa* took over as the primary brew and **source of income.**

²² Rapid situation assessment of drug and substance in Kenya, 2007-NACADA Report

²³ The 2010 world health organization report on global status report on alcohol

2.3 History of alcohol policies in Kenya

Kenya has been trying to curtail the production and use of alcohol through law for years. The implementation of such laws, often halted, will now be implemented. "From the earliest years of the colonial intrusion in the central region of Kenya British officers complained repeatedly and vehemently of the dangers posed by endemic drunkenness in the rural districts under their authority....Initially the British responded to this perceived threat simply by attempting to suppress the production, sale, and consumption of local beer in certain areas and to particular segments of the population." Kenyan drinking was seasonal: only when the labor could be diverted, and the sugar cane was available. But the arrival of British colonial rule brought more efficient transportation, so that alcohol could be brought in; more efficient cane-crushing techniques, so that alcohol could be made with less labor; and refining techniques, allowing sugar to be kept throughout the year and sugar, unlike sugar cane, didn't have to be hand-crushed, thus reducing labor further. Drinking previously had been limited to elders: men with children of circumcision age. Colonial officials claimed to see a huge rise in drinking, and in 1907 banned manufacture and sale of "native intoxicating liquors". **The 1890 Act of Brussels** forbade the export of spirits to East Africa. However, large amounts of liquor were imported to fill the demands of the growing population of white settlers. In 1916, they shifted direction and limited access to the essential raw material of brewing: sugar. They also completely banned 'the operation of crushing mills outright. The "epidemic of drunkenness" in Central Kenya apparently had as much to do with official insecurities and frustrations as with actual alcohol abuse. The administration regarded control of drinking as a major task of its local agents, but actual descriptions of increasing alcohol consumption, though frequently alarmist, appear only irregularly in colonial records.

Most [colonial administrators] carried with them stereotypical and preconceptions of African mentality and behavior. Common among these ideas was the notion that Africans could not hold their liquor. Drinking among whites did not appear to interfere with the preservation of order. The assumption among Europeans was that alcohol dissolved whatever rationality Africans possessed; hence Africans who had been drinking could be expected to be rude, insolent, and even rebellious. Beginning as early as 1910 the administration restricted

participation in dances and in some cases banned them outright the basic objective of the administration in its attempts to restrict dancing and drinking was the domestication of the warrior class. Across central Kenya the warrior class enjoyed a kind of privileged existence. Youths devoted themselves especially to dancing; in the words of one elder, "the task of the *mwanake* (youth or warrior) was first to be a fighter and next to dance." They spent long hours preparing their clothing, hair, and ornaments and practicing for communal dances that could go on for days. By 1919 the authorities in Fort Hall District were even considering forbidding youths to wear traditional warrior headdresses.

Kenya's alcohol system bears the traces of the country's colonial past. Legislation on alcohol is comprehensive; it covers all the relevant aspects of production, distribution and consumption of alcohol. It is worth noting, in particular, that licensing in each district of the country is taken care of by the provincial administration which is under the authority of the prestigious Office of the President. This privileged administrative status is due, presumably, to the significance of the economic benefits of alcohol trade in a support-based political system, rather than any considerations pertaining to alcohol policy. Nevertheless, the administrative apparatus made it possible to control the supply and availability of alcohol, and these possibilities have been taken advantage of in Kenya. When president Moi, who is known for his firm support of temperance, came to power in 1978, one of his first actions was to close the traditional beer halls everywhere but the largest cities. In later years he has strengthened the laws against distillation, attacked nightclubs in urban residential areas, expressed concern about a growing tendency of Nairobi residents to drink in their cars and ordered the closure of off-license premises selling beer because "they encouraged public officers to drink during working hours". However, according to all available information, the results of such measures have are not enough. Good intentions and comprehensive legislation have not been enough. The immediate reason for this is corruption, endemic in a country like Kenya. Enforcing the regulations in practice seems to be a pervasive problem in the field of alcohol, as in other fields of government action. Well-intended legislative and other measures are bound to become counterproductive.

Alcohol was first introduced in Kenyan roads in 2004, and turned out to be a nightmare for many motorists, who had to spend nights in cells besides paying fines in courts for driving while under influence of alcohol.

The ‘alcoblow’ rattled cages in 2006 and was suspended shortly after due to a court order. It as such became a most unpopular thing and a common enemy of drinkers, compelling some to move to court in seeking its outlawing. Opponents argued that the law will be misused by police to extort bribes from innocent motorist. The gadget was declared illegal by the high court forcing the government, to go back drawing board and come with a proper to entrench it in a bid to curb deaths on highways. Then, the gadget was opposed by beer manufacturers who charged the breathalyzer was unhygienic and could spread respiratory infections such as tuberculosis. It was re-introduced in April 2010 after parliament passed an amendment to the country’s traffic laws, introducing the use of alcohol to help nab drivers get behind the wheel while drunk, a habit blamed for high incidences of road accidents in Kenya. Parliament passed amendments to cap 403 laws of Kenya sections 44(1) and sections 45(1), of the traffic act giving police powers to use alcohol or breathalyzer in detecting levels of alcohol consumed by motorists.

2.4 The ‘Mututho laws’

In November 2009, a private member’s motion known as the Alcoholic Drinks Control Bill (2009) was introduced in Parliament by the Member for Naivasha, Hon. John Mututho. The Bill²⁴ seeks to mitigate the negative health, social and economic impact resulting from the abuse of alcohol.

Prior to this act there were other acts in relation to alcohol production, consumption and sale namely:²⁵ which outlawed the consumption of *chang’au* by prohibiting the manufacture,

²⁴ The Alcohol drinks control bill

²⁵ The Chang’aa prohibition Act Cap 70

supply and possession of *chang'aa*²⁶, addressed the issues of licenses to alcohol producers and sellers. It sought to control the manufacture for sale, and the sale of intoxicating liquor other than spirits of traditional types, for the control of premises upon which such liquor is manufactured or sold for the imposition of a tax upon the manufacture of such liquor and for connected purposes and which controlled the possession of industrial alcohol

A major loophole of the acts is that they failed to address the issues of alcohol at a social and economic level and instead focused primarily on the legalities. With the passing of the Alcoholic Drinks and Control Act, CAP 70 and CAP 121 are repealed as provided in section 69 and hence the Alcoholic Drinks Control Act is the only act currently relating to alcohol production, sale and consumption.

The backdrop of the need to enact a law that effectively and exhaustively addressed alcohol issues was the alarming rate of increase in consumption and production. There was urgent need to curb the accessibility, availability and affordability of alcohol.

Alcohol abuse, which is the excessive and/or unhealthy consumption of alcoholic drinks, has emerged as a major hindrance to the health, social and economic development of the people of Kenya. A study by NACADA in 2007 revealed that nationally 13% of the population currently consumes alcohol, and that illicit brews and second generation alcohol including *chang'aa* are consumed by over 15% of 15—64 year olds.

Alcohol abuse is responsible for a wide variety of harmful effects that Kenyans are exposed to, from failing health to diminished productivity, social disharmony, exposure to HIV/STIs infections and traffic accidents, among others. Between April and August 2010, more than 45 people lost their lives while many others were blinded following consumption of contaminated alcohol in various parts of the country. These include 12 people who died in Nairobi's *Shauri Moyo* Estate in April 2010, the 5 victims who died in *Thindigwa* Village of

²⁶ The Liquor Licensing Act Cap 121

Kiambu District in July 2010, the more than 23 people who died in Kibera Estate also in July 2010, and the 5 deaths confirmed in Laikipia in August 2010.

It was not until the occurrence of rampant incidences of deaths caused by consumption of adulterated alcohol-to be precise *chang'aa*- that the matter was given the due seriousness it deserves. In previous incidents, 50 people died of *chang'aa* poisoning in Machakos in July 2005 while close to 512 persons were admitted to Kenyatta National Hospital suffering from *chang'aa* poisoning in November 2000. Other related problems that led to the enactment of the act include;

- a) Riots, violence and burning down of property as a result of drunken state.
- b) The incident at St. Kizito Girls where drunken school boys invaded the School and raped the girls.
- c) Increased cases of road carnage due o drunken driving
- d) Increased under age drinking consequently affecting school attendance.

With this wake up call, the government, civil societies and even individuals saw the need to regulate alcohol consumption, sale and production. One such move was the demonstrations held by women from Central Kenya particularly in *Murang'a* and *Kiambu* counties to express their disapproval of the manner in which their spouses were consuming alcohol and particularly the illicit brew *chung'aa*. The women complained of the men's failure to play their role as husbands, in particular many could not sire children and some men had become impotent out of drinking the brew. A significant number had lost their jobs as a result of absenteeism resulting from alcohol consumption, some had lost their sight after consuming adulterated drinks and many had lost their lives. Women took matters into their hands as they burnt down some of the known common joints that their men were fond to.

Despite the negative attitude from the country towards the act some arguing that it will adversely affect the tourism sector since Kenya depends on this sector to obtain revenue in

response the government posed a question “Do the tourists come to Kenya for the beer”. The act got recognition from the high court in the case of.²⁷

It was petition seeking conservatory order of prohibition restraining the 1st and 2nd respondents from interfering with the petitioner’s business operations in dealing with alcoholic drinks. The issues were; whether the petitioner’s rights or those of its members to protection of right to acquire and own property was infringed, whether the petitioner had demonstrated how its rights or those of its members were infringed, whether the provisions of the Alcoholic Drinks Control Act were in conflict with the Constitution, whether the limitation of operational hours was rational-where the Alcoholic Drinks Control Act regulated the sale of alcoholic drinks to consumers between the hours of 5.00pm and 11.00pm on weekdays and 2.00pm and 1100pm on weekends, whether the transitional compliance period of nine months barred the implementation of the Alcoholic Drinks Control (Licensing) Regulations by the 1st and 2nd respondents and whether the petition had merit- Constitution **Articles 22 (1) (2), 23 (3) (b) & (c), 24, 27 (4), 40, 43 (a), 260**; Alcoholic Drinks Control Act (2010) **Sections 9 (1), 12 (c), 70**; Alcoholic Drinks Control (Licensing) Regulations (2010) **rule 4 (2)**.

Musinga J, gave a temporary injunction to the laws for two weeks the injunction was later lifted as the court sought to establish that the act was in fact not discriminatory and it favored the community as the ills of alcohol abuse could no longer harm the society.

Justice Musinga, with regard to a previous case²⁸ it was held that in order to determine the constitutionality of a statute, the court had to consider the purpose and effect of the statute. He said that the economic gain of the act would be more than the loss of income. There are notable trends in the production, manufacture, sale, promotion and consumption of alcoholic drinks that have fuelled alcohol abuse in this country. Such trends can be addressed through the law such as the with a view to reducing the harm occasioned by alcoholic drinks. Some of these patterns include:

²⁷ Muran’ga bar operators and another V minister for estate for provisional administration and internal security and 2 others/2011/eKLR

²⁸ Olum and another VS Attorney General

- a) Increase in the number of alcoholic drinks selling outlets mostly in urban residential areas, in or near learning institutions, in supermarkets and convenience stores, and in rural villages;
- b) Easy accessibility to and excessive consumption of alcohol even by persons under 18 years;
- c) Increase in adulterated alcoholic drinks and illicit brews leading to deaths and injury;
- d) Aggressive marketing, promotion of alcoholic drinks especially with messages targeting young people and sponsorship of events for persons below the age of 18 years by the alcoholic drinks industry.

Such concerns bring about the need to develop legislation, Alcoholic Drinks Control Act 2010, which would address the entire field of the alcoholic drinks industry from production to consumption. But more so, the legislation seeks, among other things, to mitigate the negative health, social and economic impact resulting from the excessive consumption and adulteration of alcoholic drinks.

The objective of the Act²⁹ is to provide a law for the control of production, manufacture, sale, labeling, promotion, sponsorship and consumption of alcoholic drinks in order to:

- a) Protect the health of individuals.
- b) Protect the consumers of alcoholic drinks from misleading and misleading inducements.
- c) Protect the health of persons under the age of 18 years.
- d) Inform and educate the public on health effects of alcohol abuse.
- e) Adopt and implement measures to eliminate illicit trade in alcohol like smuggling.
- f) Promote and provide for treatment and rehabilitation programmes.
- g) Promote research and distribution of relevant information.

²⁹ The Alcohol control Act

2.5 Necessity of the Act

There is no doubt there was desperate need for a law to bring good sense in as far as alcohol related activities were concerned. The act seeks to touch on the very core areas of life which are most affected by alcohol: economic, social and political. This is well articulated in S.3 (7) which sets out the objectives and purpose of the Act as:

- (a) Protect the health of the individual in the light of the dangers of excessive Consumption of alcoholic drinks;
- (b) Protect the consumers of alcoholic drinks from misleading or deceptive inducements and inform them of the risks of excessive consumption of alcoholic drinks;
- (c) Protect the health of persons under the age of twenty one years by preventing their access to alcoholic drinks;
- (d) Inform and educate the public on the harmful health, economic and social consequences of^r the consumption of alcoholic drinks;
- (e) Adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting;
- (f) Promote and provide for treatment and rehabilitation programmes for those addicted or dependent on alcoholic drinks;
- (g) Promote research and dissemination of information on the effects of alcoholic drink consumption, in particular the health risks that may arise there from.

2.6 The setting of the Act

2.6.1 Social setting.

This was the most affected area as it sought to bring devastating effects the Act has sought to address this area as the root of all problems which leads to alcohol consumption begins from the social life of an individual. Some of the reasons the led to the enactment of the Act include:

Irresponsibility; It is a common fact that the youth are Kenya's future for a better economy and leadership. They mainly play a major role in the country. The country however was at a downfall before the Act was enforced this is because bars were filled with youth 24/7, Bars

were a second home to the youth as they sought to find solace in bars instead of looking for ways to make life better. Alcohol consumption was not only among the adult it was an emerging trend seen among teens or rather under aged. It was and still is a rule among many bars that under aged (18) should not be allowed in, however this has been a myth as many bars allow under aged so that they can increase their sale hence many children are introduced to alcohol early, one rotten fruit spoils all fruits. Despite the age alcohol made the youth irresponsible as their time, money and productivity sought to be used in bars. It rises the drinking age from 18 to 21 years, meaning those below that age should not be allowed in a bar taken with a meal.

Sexual immorality; HIV /AIDS has been a major concern in the society as many national organizations and international instruments have geared to curb the spread of aids. Research has proven that among many ways through which the virus has been spread is through alcohol abuse as many people seek to make uninformed decisions when their drunk hence engaging in sexual immorality. Families have also fallen victim to this as husbands and wives find themselves '*mpango wa kando*' hence leading to the increase of Aids.

Health problems; Alcohol consumption has rendered many people ill out of excessive consumption, as there was no limit to which a person could consume alcohol. This problem is two-fold as it affected the economy and the social spheres. Section 3 protects the health of individuals in light of the dangers of Excessive alcohol consumption.

Social disharmony; It is a known fact that most drinkers make irrational decisions when their drunk hence getting into fights. This is also seen in the home setting as many husbands abuse their wives and vice versa. Domestic violence has been a major problem as many feminists seek to end this torture. Children are also affected as some men beat up their children out of their intoxicated state. Research has shown that many women prefer staying in their relationships because they are not independent to cater for their families hence leading to prolonged torture.

2.6.2 Economic setting

The economic setting is yet another key area greatly affected by excessive consumption of alcohol this is through:

Productivity effects; Alcohol abuse costs the economy in terms of lost productivity. Lost productivity also includes lost earnings resulting from work that is missed due to alcohol-related illness or disease. The lost productivity that results from alcohol abuse is difficult to measure precisely because of the lack of data on goods and services not produced.

Medical costs; Health-related costs include the costs of treating alcoholism and alcohol dependency, as well as the medical costs of treating alcohol-related diseases, such as cirrhosis of the liver. Treatment of alcohol dependency and diseases that result from alcohol abuse imposes billions in costs on health care systems and insurance carriers. These costs are passed on to individuals and employers in the form of higher medical costs and health insurance premiums.

Legal effects; Alcohol abuse also imposes costs on the criminal justice system. Law enforcement officials and legal authorities spend millions investigating and prosecuting alcohol-related offenses, including drunken driving, alcohol-fueled violence, looting, vandalisms and theft.

Millennium development goals; Vision 2030 geared to sustain economic growth momentum and catapult the country to a middle income status by 2030. Alcohol abuse plays a major role in making this vision impossible as the able bodied spend most of their time drinking rather than working to improve Kenya's economy.

Lost earnings: Alcohol abuse has contributed to the reduction of family earnings and decline in investments since most savings end up being used in buying alcohol hence leading to poverty which causes a decline in the economy.

Lost revenue; illicit trades have deprived the country the much needed revenue through taxation. This act is necessary to address the areas of smuggling, counterfeits and tax evasion all of which have a negative impact on the economy.

Loss of employment; excessive consumption of alcohol has resulted to loss of employment among the drinkers as a result of inability to perform their jobs effectively while in a drunken state, others have been sacked due to absenteeism. No doubt this adversely affects the economy as it leads to poverty and taking into account that the millennium development goals has geared to controlling poverty this will not have been fulfilled if no law controlled alcohol consumption.

2.6.3 Political setting

The political setting is the most important sector as it affects the whole country in that Kenyans future depends on the leadership as the people chosen by the citizens out of their right to vote through a democratic society this right would be wasted if no mechanism would be enforced to control drinking. This sector has been influenced through;

Uninformed decisions; political leaders end up making the wrong decisions this was not a problem that the society was facing before the enactment but looking at it in a larger perspective our leaders end up making the wrong decisions hence citizens are exposed to wrong decision making hence affecting their lives.

Unfair nomination; Leaders are nominated out of their giving heart instead of their honesty and good leadership. When our leaders are drunk they tend to give out money hence a common *mwananchi* may be deceived to think that the leader is willing hence leading to his nomination.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

The methodology employed by the researcher was in line with the objectives and purposes of the research. This chapter also deals with various means, ways and strategies the researcher used such a survey and study design. The researcher majorly derived its data using two broad ways that is documentary analysis as a means of gathering information. The findings were complimented and substantiated by relevant authorities ranging from statutes, case law and other legal articles and legal instruments.

3.1 Area of study

The research was a case study of East African countries more so Kenya. This was because the researcher is a native of Kenya and has a wide range of the research topic which has been the talk of the day currently. Various parts of Kenya were taken as study areas. Machakos has been in the limelight for illicit brewing with over 200 people losing their lives while others lose sight hence was the principle area of study target. Taita- taveta, Muranga district, Kirinyaga district Mbeere district follow closely thus making this study necessary.

3.2 Research design.

The researcher adopted the case studies qualitative in nature and cross-sectional as well. These methods were used for the type of results wanted and experiences and information on the alcoholic drinks laws.

The research was a case study of East African countries more specifically Kenya. This research was preferred since the researcher is based in Kenya as a native and found Kenya of all East African countries to be the major area of interest since it is the latest to usher in such kind of laws discussed in this study. The researcher also sought to appreciate the role played by the alcoholic drinks laws in East Africa and more emphatically in Kenya.

3.3 Data collection methods

This study derived its data from primary sources of interviews via questioners but mainly from secondary sources. In this case, the data was collected by means of documentary analysis of legal materials through books, magazines, law journals and workshop proceedings.

As part of the documentary analysis, the research was majorly from text books, research papers, government reports, workshop proceedings, newspapers articles, legal journals magazines and literature from internet. Document analysis was preferred because of its accuracy and completeness.

3.4 Data processing and analysis

The information gathered has been subjected to descriptive analysis through coding basing on the nature of the research. The data obtained was also processed by editing and tabulation of responses. Editing involved checking of answers to the questions of consistency, accuracy, uniformity, comprehensively and completeness.

3.5 Limitations

The researcher being a student faced the following challenges as anticipated before the research was completed;

- i. Time allocated to conduct the research was not enough since the researcher being still in school, lacked enough duration of days to conduct a comprehensive and continuous study.
- ii. Financial constraints also greatly hindered depending on individual funds.
- iii. The literature available in the libraries and other reference areas was not adequate enough to complement the research study.

3.6 Delimitations

Despite the anticipated limitations, the researcher found solutions to the shortcomings such as:

- i. Trying to mobilizing funds necessary to facilitate his study by easing the financial challenges of the research from willing sponsors.
- ii. The researcher dedicated and sacrificed more of his free time to conduct the research so as to ensure non-interference with academic work.
- iii. The researcher being financially weak tried to minimize the expenditure by trying to avoid any extra expenses this could be avoided.
- iv. The researcher made sure that the available literature was used maximally in aiding the research comprehensively to achieve the study purpose intended.

3.7 Quality control

The researcher used the following areas to improve the quality of data collected. These were;

- i. The researcher requested colleagues to check the quality and validity of data, who then advised the researcher on how the data could be improved.
- ii. Triangulation of different methods of data collection were improved such as structured and in depth interviews, team group discussions and participate observations.
- iii. The researcher let informants to read the research report and assess the whether the findings reflected the information which was collected from them.

CHAPTER FOUR

DATA PRESENTATION AND ANALYSIS

4.0 Introduction

This chapter brings forth the findings on the impact of the newly enacted laws on alcoholic drinks in Kenya's social, economic and political setting. The researcher mainly used tables to present the data collected, in some instances, the opinions and views of the respondents regarding the topic of study were also quoted.

PURPOSE AND STANDARDS SET IN THE ACT

4.1 Mechanisms the act seeks to achieve its objectives

it was observed that the act has put in place various mechanisms aimed at facilitating the achievement of the objectives set out in **Section 3**. They include, licensing, enforcement authorities, provision of education and information, criminalization, advertising provisions, promotion. if these mechanisms are fully implemented they will go along way in making the economic, social and political setting a success.

4.2 Licensing

Licensing is provided in **Section 7**, it has been made more strict and lengthy in process. Licensing under the act is acquired through the district committee and the procedure is also provided therein. Different types of license are provided in the first schedule such that one acquires the most appropriate to his business namely: wholesale license, retail license and brewer's license. Persons not eligible are provided in the act and those exempted are also specified they include: trustees in bankruptcy, administrators of a deceased estate, licensed auctioneer and alcohol for medical purposes.³⁰

³⁰ Section 9-26

4.3 Enforcement authorities

It was noted that the act recognizes various enforcement agencies to help in ensuring the act is complied with. The first of these agencies is the District alcoholic drinks regulation Committee established under **Section 8** which is charged with the responsibility of issuing licenses, transfer, renewal and revocation of the same.

A second enforcement agency is the Alcoholics Drinks Control Fund established under **Section 5** the fund provides the necessary financial resources to carry on the objectives of the act. This helps to ensure that the act can be followed to the letter without the excuses of lack of funds.

A third enforcement mechanism is NACADA (national campaign against drug abuse) which is the relevant body or department including its successor responsible for matters relating to alcoholics drinks. The Ministry of Internal Security is also stated in as the ministry to help in compliance of the act.

4.4 Provision of Education and Information.

It was notably evident that the act has acknowledged that lack of information on alcohol is one of the main factors behind excessive consumption. For this reason the act has prohibited circulation of information that is misleading or false section

Section 66 the relevant agency is to liaise with the Minister responsible for education, to integrate instruction on the health consequences, addictive nature and mortal threat posed by alcoholic drink consumption in subjects taught in public and private schools at all levels of education, including informal and non formal and indigenous learning systems. Information is also to be provided on the receptacle in form of a warning on the effects of alcohol such as 'alcohol consumption causes liver cirrhosis' this is stipulated in the second schedule of the Act.

4.5 Criminalization

It was observed that various offences have been identified in the act and heavy penalties for noncompliance set. **S.27** makes it an offence to sell, produce or any other handling of alcohol

without a license. A fine of two million shillings is imposed or imprisonment not exceeding 5 years or both.

Selling alcohol to minors is an offence in **S.28** attracting a fine of fifty thousand shillings or imprisonment not exceeding 1 year or both.

S.28 (5) makes it an offence to sell sweets, snacks and toys that resemble alcohol and the fine for contravention is a fine of five hundred thousand or imprisonment not exceeding 3 years or both.

It is an offence under **S.29 (3)** not to display a warning stating that alcohol is not to be sold to persons under the age of eighteen and also that alcohol consumption is harmful to health. The fine for this offence is fifty thousand shillings or imprisonment not exceeding 6 months.

S.30 criminalizes sale of alcohol through vending machines and the penalty is a fine not exceeding one hundred thousand or imprisonment not exceeding 12 months or both.

S.43-47 sets the fine for contravention of advertisement regulations at a fine of five hundred thousand shillings or imprisonment not exceeding 3 years or both.

Section 33 empowers the police force to arrest any person who is found drunk to be presented before the magistrate without unreasonable delay.

4.6 Advertising

It was also observed that the act has in place provisions on advertising. This is to ensure that the objects of the act are not watered down by advertisements that aim at encouraging alcohol consumption. Every retailer must display a board measuring at least 12 by eight inches displaying the message 'WARNING' together with the health effects of alcohol to the underage. **S.45** prohibits advertisements that purport alcohol to be a cure, or increase sexual pleasure, or that it is foolish for one not to consume alcohol. Advertisements and promotions are prohibited in **S.43** unless in accordance to the act's provisions. **S.46** prohibits advertising at events where there are minors while **S.47** prohibits advertising encouraging excessive consumption. Advertising as a mechanism is mainly aimed at the producers and sellers of the alcoholic drinks who have in the past dominated the media airwaves with misleading advertisements.

4.7 Promotion

it was noted that the act protects consumers from deceptive promotions through prohibiting sale of alcoholic drinks by means that may be deceptive including packaging that are false and misleading that are likely to create an erroneous character about the characteristics, health and social effects of the alcoholic drink **Section 44.**³¹

4.8 Standards set in the act

It was discovered that according to the Alcoholic Drinks Control Act anybody who sells alcohol to minors risks a jail term of one year or a fine of Sh150, 000 or both. To rein in on those who lace alcohol with poisonous substance, it was noted that the Bill prohibits the sale of adulterated alcoholic drinks. Those who violate this law risk five years in jail or a fine of Sh5 million or both. The Alcoholic Drinks Control Bill repeals the Chang'aa Prohibition Act, which made it illegal to produce or consume traditional liquors like chang'aa.

But there is a caveat — production and consumption of the drink must adhere to certain rules according to the new law.

Among the rules are that the drink shall only be manufactured, packed, sold, or distributed in glass bottles of a capacity of not less than 250 milliliters.

Table 1: Showing the number of plastic bottled spirit drinks per 5 bars across the 8 provinces in Kenya.

PROVINCE	Western	N. Eastern	Eastern	Nairobi	Central	Coast	R. Valley	Nyanza
No. of plastic spirit bottles (out of 250)	180	196	200	221	229	196	199	179
Percentage	72	78.4	80	88.4	91.6	78.4	79.6	71.6

Source: Kenyan daily post. News. Blog Spot

³¹ Section 43-48

In 2010, it was noted that 70% of spirited drinks were packed in plastic bottles hence this provision helped curb the issue. A total of eight spirit bars were selected across the eight provinces in Kenya to give a reflection on the entire nation. It was observed that central and Nairobi recorded the highest number of plastic bottles. This was because the business target population prefers such cheap brews. However, Nyanza recorded the lowest since the population mostly brews at home. The total outcome throughout the country was then 80%. The drink shall also not be sold to those under age.

The Act has set standards to be complied with. The standards are in relation to premises used for alcohol production, sale and consumption section 12. The relevant agencies such as the district committee and NACADA should ensure the premises uphold hygiene standards. For *changaa* it must be of the approved standards and not contain adulterations section 38. Packaging must be in glass receptacles and in no less than 250ml³².

The new law also outlaws the sale of alcohol through automatic vending machines and the sale or packaging of alcoholic drinks in sachets.

It also protects the purchasers or consumers of alcoholic drinks from misleading and deceptive inducements to consume alcoholic drinks and consequent dependence or abuse.

The new law seeks to provide a legal framework for the control of the production, sale, and consumption of alcoholic drinks, to protect public health.

It further seeks to strengthen the licensing regime for alcoholic drinks by repealing and reenacting with modifications the Liquor Licensing Act. It also proposes measures to eliminate illicit trade in alcoholic drinks, including smuggling, illicit manufacturing, and counterfeiting. It also has provisions for treatment and rehabilitation programmes for addicts.

4.9 General requirements for alcoholic drinks

It was therefore observed that the Act seeks to:

- Strengthen the licensing regime for alcoholic drinks by repealing and enacting with modifications the Liquor Licensing Act. Anyone intending to manufacture, sell.

³² Section 32

import or export alcoholic drinks will be required to apply for a license under the Act from The District Alcoholic Drinks Regulation Committee.

- Legalize the production and consumption of *chang'aa* by repealing the Chang'aa Prohibition Act. The legalizing of *chang 'aa* and its manufacture to conform to prescribed standards. The government through advice of the relevant agency shall develop standards for the manufacture of *chang 'aa* that shall be followed. This will ensure that the drink is safe for human consumption. Currently, similar alcoholic drinks are sold in the market legally such as local and imported spirits, Waragi from Uganda and Konyagi from Tanzania.
- The labeling of alcoholic drinks to differentiate between sales for local consumption and for export to eradicate smuggling of alcoholic drinks into and out of the country.
- The prohibition selling of alcoholic drinks to persons under the age of 18 years. Failure to adhere leads to fine of Kshs. 150,000 or 12 months imprisonment or both.
- The prohibition of sale of alcoholic drinks in sachets or in a container less than 250 ml. This is aimed at limiting the young people from accessing alcoholic drinks since selling in sachets makes easy for them to purchase the drinks.
- For the displaying of signs at visible places to inform the public that alcoholic drink are not sold to persons below the age of 18 years.
- Mandatory warning labels on information and potential health hazard as well as statement as to the constituents of the alcoholic drink. Such health warnings and messages include: excessive alcohol consumption is harmful to your health, excessive alcohol consumption can cause liver cirrhosis (liver disease) and not for sale to persons under the age of 18 years.

Flaws that could render it bad by people's reaction

An unjust law is itself a species of violence. Arrest for its breach is more so, so said Mohandas Kararmchand Gandhi³³, described as the pre-eminent political and ideological leader of India during the Indian independence movement. The real reason Mr. Gandhi is gracing this page today is through the efforts of Naivasha legislator John Mututho, who has

contributed to raging debate that is still ringing across the hills and social settings throughout the country on the so called Mututho Laws. The Act³⁴ restricts drinking hours between 5pm and 11pm on weekdays and 2pm to 11pm on weekend on ordinary bars and 7pm to 3pm for night clubs. The Act fails to address the genuine social problem it seeks to resolve which is irresponsible drinking behavior and consumption of illicit alcohol. Instead, it targets consumption of legal beverages, curbs freedom of choice, and ignores the root causes of alcohol abuse meaning it won't stop, but rather continue in more damaging, secret ways. Most Kenyans would agree that irresponsible drinking is a serious social problem. As such, the Alcohol Control Act is a welcome effort to tackle a very real problem. However, it fails to tackle the root causes of the problem, and carries many unintended, negative consequences.

Firstly, it was noted that this Act targets consumption of legal beverages by reducing the hours during which they can be sold at legal outlets. The Alcoholic Drinks Control Act restricts drinking hours between 5pm and 11pm on weekdays and 2pm to 11pm on weekend on ordinary bars and 7pm to 3pm for night clubs. While irresponsible drinking can involve legal beverages, the worst cases of alcohol abuse in Kenya involve illicit beverages brewed of unregulated and often highly-toxic ingredients. The consumption of illicit alcohol is widespread, causes dreadful damage to Kenyans' health, and yet is unaffected by this Act. In fact, by legislating against the consumption of legal beverages, responsible drinking is being penalized, while those who wish to abuse alcohol will seek illicit alternatives. So, the consumption of illicit alcohol is likely to rise with the implementation of this legislation. Just between April and August last year, 45 people were reported dead after consuming contaminated illicit alcohol in Mbeere district. It therefore necessitated an interview with the locals of the said district to establish why the situation was worsening after the act came into force.

³⁴ The Alcohol control Act

Table 2: Showing the ability to afford a decent drink by locals across Mbeere district.

CAN AFFORD DECENT DRINKS	YES	NO	YES	NO	YES	NO	YES	NO
MEN	10	15	16	34	11	16	4	14
WOMEN	5	15	8	20	13	5	4	10
AGE	18-25yrs	18-25yrs	26-36yrs	26-36yrs	35-45yrs	35-45yrs	Over 45 yrs	Over 45 yrs

Source: Data collected by the researcher.

200 locals were interviewed across the district. The number of men was 120 and that of women being 80. The number of men was slightly higher because in the recent incidents of death, they dominated in numbers. It was observed that the reason for the persistent consumption of illicit brews in the district was due to poverty to an extent that most of them could not afford a decent drink.

Secondly, it needs to be understood that alcoholism and irresponsible drinking are generally symptoms of a deeper problem. Around the world, alcohol abuse has been linked to poverty, but the Act fully ignores any causes and makes a misguided attempt to tackle the symptom.

Kenyans who abuse alcohol will not stop drinking because it is harder to access legal alcohol at certain times. They will simply seek illegal alternatives, exposing themselves to greater health risks.

Many who can no longer drink in a public place will instead do so at home, aggravating the suffering of their families. As Kenyans, we should each be empowered to make the best decisions for our own well-being. Yet this Act does not empower Kenyans, nor does it consider Kenyans as responsible citizens. In fact, the legislation restricts individual freedom by dictating when one can and cannot drink alcohol.

There is a genuine social problem to address, but restrictions on individual liberty do not provide the answer to a deep issue that requires an intelligent and thoughtful response.

Furthermore, it seems unfair that the law-abiding citizens who are at work between 5pm and 11pm on a weekday many doctors or nurses, for example, or indeed night watchmen are not allowed to enjoy a drink at the end of a hard day's work, yet those privileged enough to

belong to a private members' club or Parliament are unaffected by the legislation and continue to enjoy the freedom to choose when they can drink. Kenya's recently passed alcoholic drinks control act is too restrictive and will harm the country's crucial tourism sector. The law, which came into force late last year prohibits alcohol from being sold before 2:00 pm on weekends and 5:00 pm on weekdays and bans licensing for an establishment located within 300 meters of a school.

The new law was welcomed by anti-drug campaigners but many restaurant, hotel and bar owners were left spinning by the new law and contemplating their strategy to have some restrictions eased during the nine-month grace period granted to the main affected parties by the new act. The Kenya Tourism Federation has also expressed concern that the new act could negatively affect tourism, a top foreign currency earner. The alcohol control law will lead to massive job losses if it is affected in its current form, hoteliers and bar owners have warned. The law is punitive to the hospitality and tourism industries and it may shut down many businesses in this sector leading to job losses.

Finally, the Act will have a negative impact on the economy. It is hard to predict the magnitude of this impact, but clearly, bar-owners, beverage distributors, marketers and manufacturers will be negatively affected, let alone those who derive incomes from their association with the regulated alcohol industry. such as the thousands of farmers providing quality ingredients to legal brews.

So what now? What can be done? In an ideal world, this legislation would be scrapped and our MPs would start all over with the creation of a Bill that makes a real difference to Kenyans suffering from alcohol abuse and its consequences.

In the event that this fails, the government must do its utmost to ensure that it is implemented in such a way that it clearly reduces illicit alcohol consumption and irresponsible drinking behavior, does not negatively affect the economy, and genuinely seeks to address the causes of irresponsible drinking.

Chances of success of the act

The chances of its success are two-fold a case for its success and a case against its success.

Case for its success

It was discovered that the long term economic goals that come with the act are a factor likely to boost its success. Revenue previously lost by the government through illicit trade can now be taxed and it is approximated to be up to fifty million every year. In addition through licensing the government will get revenue. This economic advantage that will in the long run be beneficial to the entire country is likely to promote an overwhelming support of the act.

Table 3: Showing increase of revenue generated by taxing illicit brews in the next ten years by percentage.

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2021
%	0.05	0.01	0.02	0.04	0.08	0.16	0.32	0.64	0.28	2.56

Source: www.nationmedia.co.ke

The table represents the total increase in percentage of total revenue collected every year as a result of taxing brews for the next ten years. Given that the total Kenyan budget will stabilize at one trillion Kenyan shillings for the next ten years, it was keenly observed that the total revenue collected through illicit brews shall in ten years contribute to a minimum of 2.56% of the total budget which is remarkably encouraging.

There is a good chance that the act will succeed due to its mandatory nature. The act compels compliance to all the persons or entities it applies to from the consumers to the public. Heavy fines and sentences are provided to serve as a deterrence to would be offenders

Public support. majority of the public have taken it positively, since the enforcement of the act the public have adhered to the regulations displayed in the act.

Table 4: Showing people's views on the act

Town	Nairobi		Mombasa		Kisumu		Nakuru		Nyeri	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Men	30	70	29	71	44	66	18	82	35	75
Women	90	10	84	16	78	22	90	10	92	8
Totals	110	80	113	87	122	88	108	92	127	83

Source: Daily nation. www.nation.co.ke

A total of 1000 men and women in the ratio of 1:1 were interviewed on their take about the new Act. Five towns were selected and samples of 200 people were interviewed in each town. It was discovered that most men were against it in most towns. It was therefore discovered that the reason for this is because they are the ones who spend most of their time in the bars. It was also discovered that most women supported it reason being that they always get divided attention from their men due to their frequency in the bars.

All in all it was noted that the total outcome of those in support of the law was higher with a 58% support.

It was noted that the act states that any person convicted on more than three occasions in any period of twelve months shall be ordered by the convicting Magistrate to undergo at his own cost, rehabilitation programmes as may be appropriate in a public health institution and be forthwith reported by the convicting Magistrate to the District Committee, which shall inform such licensees as he deems desirable of such convictions, and thereupon, and until a period of twelve months has passed without any further such conviction in respect of that person, any licensee so informed who knowingly sells or supplies alcoholic drinks to or for delivery to that person commits an offence, and it shall furthermore be an offence for that person to be in possession of any alcoholic drink, **Section 33**.

This will play a great role as people will be enrolled into rehabilitation programmes hence can be able to mend their actions.

The Act has cured the problem of irresponsibility through; **Section 13 (1) e** provides that persons under 18 are not eligible for a license. **Section 21(1)** prohibits a licensee to employ under the age or apparent age of eighteen years. **section 24 (1) and (2)** strictly provides that no person holding a license to manufacture, store or consume alcoholic drinks under this Act shall allow a person under the age of eighteen years to enter or gain access to the area in which the alcoholic drink is manufactured, stored or consumed. Any person who contravenes commits an offence; **Section 46** prohibits sale of alcohol in social events to under the age of 18.

The act has sought to control people's behavior, this is brought out under³⁵ which states that any person found by a police officer to be drunk and incapable or drunk and disorderly in or near a street, road, licensed premises, shop, hotel or other public place may be arrested without warrant and brought without unreasonable delay before a Magistrate. This section controls the alcohol consumption of people as most people would not like to spend their nights in jail hence many watching the number of bottles they take through this they are able to make rational decisions. The act also prohibits the sale of alcohol to persons already intoxicated.

Case against its success

The first major blow to the success of the act was the question on its legality challenged through a High Court petition in the case of *Murang'a Bar Operators Association and Another v Minister for state for Provincial Administration and Internal Security*³⁶. The act was seen as a contravention of the constitutional provisions of Article 22(1) and (2) and 23 (3) (b) and (c) as well as Article 40³⁷ on the right to own property. This challenge led to the suspension of the act for duration of time while the matter was still debated upon but eventually the ban was lifted. Despite the act having been allowed by the courts, there could be further action brought forward especially by alcohol sellers, producers and owners of businesses who may rely on the constitution and claim infringement of fundamental rights and freedoms.

Critics of the act have raised arguments that consumers of alcohol are and have always been aware of the harmful effects and consequences of alcohol yet they have continued to consume anyway. Sale to persons under the age of eighteen has always been prohibited yet it has continued to happen notwithstanding the prohibition. Prior to the act, warnings on the

³⁵ Section 33

³⁶ petition no.3 of 2011 High court Nairobi

³⁷ 2010 constitution a.22, 23 and 40

effect of alcohol were still displayed on the alcohol receptacles and still the warning was not heeded. Critics are therefore concerned that the act has done nothing out of the ordinary and it will be yet another law that is there to be broken.

Table 5: Showing the number of students under 18yrs who take brews out of a 100

secondary School	Kamama boys	Nguviu	Kangaroo	Jamburi sec.	Njiris boys	Pioneer	Thika high
Brew consumers	29	34	16	33	41	10	22

Source: Data collected by the researcher

Despite the warning that alcohol should not be sold to persons under the age of 18 years, it was noted that most of them had and still have access to brews. A sample of seven secondary schools was preferred because it is believed that most if not all secondary school students are under age. It was observed that they clearly knew the effects of alcohol yet they continued to consume it. That being the case, it was therefore noted that the act brings no new thing to the public.

Availability of resources that will be injected into its implementation. Sources from the fund established in s.2 will not be adequate to carry out the objective stipulated. Massive resources are required to provide treatment and rehabilitation of addicts, ensuring compliance of standards of *chang'aa*, carrying out research and disseminating information and this the fund cannot meet. The fund may have to rely heavily on grants, gifts, contributions and other sources of income which will limit its operations.

Table 6: Showing the cost of setting up one rehabilitation Centre.

Professionals	2 counselors	2 psychiatrists	2 doctors	3 nurses
	Ksh.1200000	Ksh.1680000	Ksh.2160000	Ksh.1440000
Infrastructure	Land	Buildings	Facilities	Laboratories
	Ksh500000	ksh3000000	ksh1000000	ksh500000
General labor	Cleaners	Managers	Security	Constructors
	Ksh.60000	Ksh.480000	Ksh.180000	Ksh.500000
Total cost	Ksh.13,240,000			

Source: Nation media www.nation.co.ke

It was observed that in setting up a rehab Centre, all costs should be accounted. One Centre could be ran by 2 counselors, 2 doctors, 3 nurses and two psychiatrists, the cost of putting up the buildings and equipping it with relevant facilities as well as hiring other staffs could be estimated to ksh.13,240,000 every year. That means if at least one rehab Centre was to be set up across all the 47 counties, then the government will spend ksh.622, 240,000 of taxpayers money which will be too costly.

- The act is unlikely to succeed because its enforcement is left to select personnel. This is mainly the district committee which is prone to be greatly influenced by political factors. Corrupt officials will collaborate with alcohol sellers, producers and even consumers to escape following the act to the act and still escape liability.
- Section 33 will be a challenge to fulfill as most people will not be able to pay the required fee for enrolling in rehabilitation centers. In addition the establishment of the Alcoholic Drinks Control Fund does not cater for the fees for enrolling in rehabilitation centers.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMENDATIONS

5.0 Introduction

This study was carried out to find the effectiveness the Alcohol Control Act has impacted the society and the economy, what bar and restaurant owners perceive the new law. Governments of member countries are expected to provide feedback on the suitability of suggested policies.

This chapter summarizes the finding of the study and makes conclusion based on the findings of the study. Recommendations on how to improve on policy making and its implementation on a society considered to be a drinking nation and a majority of who does not welcome the new laws. Suggestions for further reading and research on policy making to a so new law that touches on the very crucial lifestyle of the citizen.

5.1 Summary.

Efforts by World Health Organization to implement a global campaign to reduce the harmful use of alcohol are greatly commendable. The most recent draft document sent to governments explores a wide range of strategies and policy options for reducing alcohol-related harm.

Uninhibited and excessive drinking smacks of irresponsibility and is physically unproductive. In this regard, the Act is spot on. However, manufacturers of these drinks are also some of the biggest taxpayers, considering alcohol and tobacco are widely consumed and attract a hefty sin tax.

Many involved in the packaging and distribution of the same are stumped by the shrunken drinking hours and have reported losses and announced lay-offs.

Further, hotel associations are beseeching the legislating authorities to involve them before rolling out punitive measures that are making a mockery of restauranting and especially tourism.

Some supermarket outlets feel they have been unfairly penalized by the blanket provisions of the Act since no alcohol is consumed on their premises. Indeed everything they display on their shelves is paid for and carted away for consumption elsewhere.

This makes a mockery of their being restricted by the narrow band of allowed selling hours.

There is also concern of capacity to enforce such a wide-reaching social law, as enforcement agents police, National Environmental Management Authority and National Campaign against Drug Abuse Authority could be spending excessive hours just to keep determined drinkers in line.

Another concern is to do with licensing and the fear that there exist avenues for corruption considering the stipulations regarding proximity to schools, minors, opening and closing hours, strict packaging and quality requirements, as well as type of establishment.

The stupor that has characterized the setting up of district licensing boards has left many establishments unsure of their future and some resorted to lying off staff and cutting their losses.

So as Gandhi would ask, is this a just law? Yes and No. Is it just to rebel against it? Most definitely not!

Kenya is a country in peacetime and struggling to straighten the delicate fabric of society, but it must be done within reason, consultation and involve the private sector in implementing laws that impact on private investments. Then only will the '*Mututho Law*', and any other for that matter, attract widespread support.

If not, there will be talk of there being too much government in private citizens' lives. The best laws are negotiated as each side gets to cede something so that the enjoyment of one does not necessarily impede the rights of the other.

The act recognizes that alcohol is a legal substance that has been manufactured and consumed safely for as long as man has walked the earth.

Indeed, many African ceremonies are incomplete without alcohol.

Marriage is an excellent example of an institution that in many cultures is sealed with exchange of alcoholic drinks between the in-laws.

Of the many miracles he was to perform, the Lord Jesus Christ chose making good wine his first miracle, and to this day the Act of Holy Communion among Christians is celebrated with bread and holy wine.

Additionally, no government has any role in supervising the morality of its sane adult citizens. Any law that purports to supervise adults in the conduct of their affairs, (other than where it negatively impacts on other people's rights and a privilege is a bad law).

Coming back to the Act, we find that it seeks to regulate licensing of premises, sale and consumption, promotion, education and crucially, the setting standard of drinks consumed.

Indeed the most important single reason for the act to have passed through Parliament so quickly may be related to the deaths and blindness caused by the sale and consumption of adulterated products.

Other possible reasons might include the fact of alleged population decline associated with excess consumption in some parts of the country.

There are some church groups that insist that the Act is too lenient on manufacturer of alcohol and some have gone as far as suggesting a full ban on all alcohol in Kenya. Those in the alcohol industry have on the other hand argued for more flexible "*Mututho*" hours as you call them.

A section MPs lauded the President's move, as bold but said there should be strict quality control rules.

Alego-Usonga MP Edwin Yinda rooted for big distilleries to be allowed to distribute to sellers the methodically and hygienically distilled drink to ensure standardization and safety standards.

'We have had resistance from Church leaders but we need to educate them that it is a positive move that comes with controls so that it is not abused,' said Mr. Yinda.

'it will be regulated and licensed and taxes levied. It can be a formal employer that will engage many people in the rural areas,' Yinda argued.

Assistant Minister Wilfred Ombui welcomed the President's move saying now the challenge was on the brewers and the Kenya Bureau of Standards.

The North Mugirango Borabu MP said: “The President has done what he was expected to do but now that alone will not work unless the brewers respect the lives of their customers by avoiding lacing the drink with other chemicals.”

Some MPs are, however, opposed to the new law with Chepalungu MP, Isaac Ruto, saying he will champion amendment to the law to eradicate the manufacture and consumption of the local brews. “Chang’aa should remain banned. I will bring an amendment to this new law,” said Ruto.

Mumias MP Benjamin Washiali said he is skeptical about how the Government will enforce the new requirements, pointing out that it would be hard to ensure all local brews are tested before being allowed into the market.

“How will we manage this, because the brews will have to undergo tests? I am still in doubt on the effectiveness of the new law. I don’t think the Government has the capacity to effect this,” said Washiali.

Manyatta MP Ernilio Kathuri said he did not support the law, pointing out it was better the drinks were banned.

Both opinions are from well-meaning Kenyans, and Government has the duty to listen to both, and then to make a judgment call, on what it thinks is the best interests of the people including you.

The Pubs. Entertainment and Restaurants Association of Kenya (Perak) and the Kenya Association of Hotels Keepers and Caterers (KAHC) say the law will hit tourism because it limits tourists from visiting hotels with their children.

“Most hotels and restaurants will be shut down if contentious clauses in this law are not removed. What we are asking for is for these clauses to be amended so as not to hurt the fragile industry,” Mr. Antony Njaramba, KAHC vice chairman said³⁸.

³⁸ THE DAILY NATION (27/8/2010)

Mr. Njaramba was speaking during a meeting of stakeholders in the tourism and hospitality industry at the Wild Waters Hotel in Mombasa. The meeting was organized to educate the members on the new law and to chart the way forward after its enactment.

Hoteliers and bar owners expressed their concerns about the requirement that bars must be situated at a distance of 300 meters away from schools saying that it is not applicable in urban areas which are usually heavily congested.

His sentiments were echoed by the chairman of Perak, Mr. Walter Reif, who said the industry, has its own internal codes of conduct and therefore introducing new legislation is not necessary³⁹.

They now want to be involved in the drafting of the rules and regulations which will enable the enactment of the new law.

He said they are in the process of addressing the complaints with NACADA, the body tasked with the responsibility of enforcing the law.

“We have decided to take a diplomatic approach and we have so far held various meetings with NACADA officials on how we can iron out these complaints,” said Mr. Njaramba adding that they will be forced to use other means if the talks don’t succeed.

5.2 Conclusion

It is clear that alcohol has been highly valued and in continuous use by peoples throughout history. Reflecting its vital role, consumption of alcohol in moderation has rarely been questioned throughout most of recorded time. From the earliest times alcohol has played an important role in religion, typically seen as a gift of deities and closely associated with their worship. Religious rejection of alcohol appears to be a rare phenomenon.

The Alcoholic Drinks Control Act of 2010 is a major step towards achieving the sobriety of the nation. It may have its loopholes and it may take a while for it to take root but it is an act that deserves an applause having tried to exhaustively cater for all significant areas affected.

³⁹ THE DAILY NATION (27/8/2010)

Despite the many critics raised against the act there is a great chance of success and should the act fail at least an attempt will have been made.

While many of the policies may not be new, the important point is that they will raise global awareness of the nature and health problems caused by alcohol use.

Alcohol accounts for over 2.5 million deaths each year and is the fifth leading cause of premature deaths, globally estimated to be over 2.3 million.

In the last 10 years alone, the world has lost over 20 million people to harmful use of liquor. Today, the WI-TO demographic data shows that almost half of the world population consumes alcohol. Alcohol-related harm on the socio-economic fabric of society should not be taken lightly by any government.

One interesting fact is that a significant portion of the masses know that this age-old social practice harms their health. Alcohol is known to cause dependence, and damage work and family if e.

Statistics indicate that the majority of road accidents are the result of poor judgment by drivers, under the influence.

However, recent research links harmful alcohol use to HIV and Aids, tuberculosis and cancer of esophagus. Research carried out by Dr. Sandra Brown, indicates that alcohol takes a greater toll on brain development of those under 21.

Adults would have to consume twice as many drinks to suffer the same damage as adolescents, and that even occasional heavy drinking injures young brains.

The AMA report also shows that adolescent drinkers scored worse than non-users on vocabulary, visual/spatial and memory tests, and were more likely to perform poorly in school, fall behind and experience social problems, depression, suicidal thoughts and violence.

The above findings and statistics bring us to an important question: Is there harmless use of alcohol? It seems that whatever amount of alcohol taken, whether regularly or occasional, poses some threat to health.

Interestingly, the policy interventions have always focused on restricting supply and availability of alcohol. Such interventions require vigorous enforcement and in the long run, are too costly especially in low-income countries.

Also these policies have not effectively tackled the root problems. The WHO draft document, in part, advocates for such restrictive policy interventions recycled from past experience.

Yet the notable trend is that alcohol consumption is steadily on the rise, especially in developing countries. This raises the question of how effective the policy interventions are.

For example, it would be impossible for governments to enforce control on informal beverages in many low-income settlements. In such areas, the more dangerous traditional liquors, *chang'aa* and *busaa*, are cheaply available.

Another challenge is whether multinationals in the beverage industry are truly willing to see their profits plummet due to increased taxation, reduced number of sales outlets, limited drinking hours and so forth, which the WHO suggests.

Concluded with selected quotes from the speech during the foundation laying ceremony at the Kisumu Brewery on 6th August, 1980 made by the recently retired President Daniel Toroitich arap Moi. "I fully recognize that after a hard day's work, a beer or two may sensibly be regarded as well earned refreshment.

There is a positive and profound social responsibility resting upon anyone who drinks. He should never endanger the lives of others, or diminish his own capacity for work and service' Any modest intake of drink, for pleasure or for courtesy, may do no harm. But we cannot afford sympathy now for the man who looks upon drinking as a means of escape from his obligations and duty."

Note the former president's sentiments - "a beer or two". And this is where Kenyans come a cropper. For we do not have a drinking culture, but a drinking 'sub-culture' where our drinking habits have deviated from the norm to form its own class which in turn regards its drinking-habit as normal.

5.3 Recommendations

The act has gone a long way to cater for the key areas that had not been adequately provided for the *Chang'aa* Prohibition Act and the Liquor Licensing Act however, there is still room for further improvement.

One recommendation I would make is on sentencing. Maximum sentence is provided but not minimum. This is left to the court's discretion and is prone to abuse. A fixed minimum for

each sentence should be expressly provided⁴⁰. For offences with a maximum sentence of five years imprisonment, I would propose a minimum sentence of three years. For those with a maximum of one year, the minimum should be six months and those with a maximum of ten would have a minimum of five years.

(2) A second recommendation I would make is in reference to the types of licenses. The types of licenses should be more specific rather than blanket license for example the wholesale license. Example of a license would be club license or pub license.

(3) A third recommendation I would propose is more inclusion of other sectors to help in implementation of the act. A suitable sector would be the civil society and Non-governmental organizations this is because they are less prone to political interferences unlike the District Committee or the Ministry of Internal Security.

(4) Fourthly, the contentious clauses on limiting the hours of drinking are too restrictive and will not serve the intended aim the act seeks to achieve. Hoteliers and bar should be consulted to reach on agreeable drinking hours.

Suggestion for further studies

The study carried out was focused on assessing the effect of the newly enacted laws on alcohol, the impact the laws have on citizens, hotels and bars and the country's economy at large. Since the laws are new the study was not efficiently carried out since the law was new and has not yet roused any real challenges yet. The study did not also include research methodologies due to limitations on time and funds; this could have been efficient on learning about the opinions of the people it affects have to say.

A further research can be carried out on the Act to find out the impacts it has on the economy and the citizens.

⁴⁰ Section 27

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