

# Challenges Facing The Implementation Of Kenya's Alcoholic Drinks Control Act 2010

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## Abstract

The negative effects of alcohol consumption in Kenya are known and acknowledged in different perspectives: socially, it has disintegrated families; economically, it has derailed the lives of individuals; societal and national capital and health wise, it has caused untimely deaths. Alcohol is blamed for different diseases. It is the source of suffering in families through domestic violence, neglect of responsibilities and high poverty levels. The Alcoholic Drinks Control Act 2010 was introduced by the government as a legal framework to counter all the problems related to alcohol through regulation of alcohol promotions, licensing and provisions of treatment and rehabilitation of addicts. Despite the presence of the legislation in Kenya, the problems associated with alcohol are still rampant. This is evidenced by illicit brew trade and deaths associated with it, proliferations of counterfeit alcoholic brands, liquor outlets operating without proper licensing, and underage drinking and adulteration of liquor. This study sought to examine the challenges facing the implementation of the Alcoholic Drinks Control Act 2010. The study is qualitative, and utilized secondary sources of data by analyzing research reports from studies carried out in different parts of Kenya on challenges facing the implementation of the law. It found that the main challenges facing the implementation of the law are: corruption, inadequate human resources to implement the law, trade in counterfeit alcohol brands that is not properly regulated, devolution of alcohol control function, litigations against the Act, and inadequate knowledge concerning the law.

## 1.1 Background

Alcohol control policies in Kenya are traced back to the pre-colonial era where the different societies had their means of regulating alcohol production and consumption to curb social harm (WHO, 2014). There were unwritten rules and regulations, the most common being alcohol consumption as a strict reserve of only adult males, verbal warnings to abusers and limits to how much alcohol was to be consumed (Odenije, 2006; Willis, 2006; Birech, Kabiro, Misaro and Kariuki, 2013). As a regulatory measure, consumption of alcoholic brews was limited to socio-cultural events like birth and initiation ceremonies, celebration of good harvests, successful hunting, dowry negotiations and payment (Rok, 2011).

The coming of Europeans led erosion of traditional structures to regulate alcohol abuse. Colonization along with globalization changed local structures and attitudes thus the problem of alcoholism arose (Kipchumba, 2017). To secure labor supply in their plantations, the colonial government in the British East African Protectorate formulated and enacted legal frameworks to control alcohol production, distribution and consumption for both local traditional alcoholic beverages and industrial alcohol imported from colonial masters' home countries (Korieh, 2003; Odenije, 2006).

The Act of Brussels, 1889-90, was the first formal alcohol control policy in East Africa in the colonial time and was aimed at, among other things, protecting African native populations from harm

caused by Western alcoholic beverages (Korieh, 2003). With support from both Islamic and Christian religions, the policy led to introduction of liquor licenses and prohibition of alcohol among natives (Kalema, Vindevogel, Baguma and Plasschen, 2015).

In the Kenyan colony, Traditional Liquor Act was passed to control local community alcoholic brews by curbing its production, consumption and sale (Rok, 2011). In 1902, the Village Headmen Regulation Act became a law to control native alcohol (Muregi, 2017).

After Kenya's independence, the colonial laws were adopted and remained in practice till 1971 when the Traditional Liquor Licensing Act was introduced but, as is reported by, Taeka (2017), did not meet its intended purpose in alcohol control.

Rampant methanol poisoning in the country called for a new legal provisions and in 1980, Chang'aa Prohibition Act was passed to combat negative effects emanating from traditional illicit alcohol (Jenkins, et al., 2015). The act was operational until 2010 when the current alcohol control policy, The Alcoholic Drinks Control Act, 2010, was passed to repeal the Chang'aa Prohibition Act of 1980 (Taeka, 2015; Takahashi et al, 2017).

## The Alcoholic Drinks Control Act 2010

This is Kenya's current legal framework meant to regulate the alcohol industry. Its major aim was to consolidate several laws regulating alcohol into one (Muregi, 2017; Gikonyo, Owino and Ombati, 2017). The law is attributed to John Mututho, the Member of Parliament of Naivasha Constituency who sponsored the bill in Parliament (Mututho, 2014).

The Act was initiated because previous policies failed to control the injuries and harms emanating from consumption of chang'aa (Jenkins et al., 2015). In April 2010, 12 people lost their lives in Nairobi's Shauri Moyo Estate; July 2010 saw the loss 5 people in Thindigwa, Kiambu county; 23 passed on in August 2010 in Nairobi's Kibera slum; 5 died in Ngobit, Laikipia County; and 140 died and

tens were blinded in Mukuru kwa Njenga, Nairobi (Kwambai and Kimutai, 2017; NACADA, 2011). A report by Musungu and Kosgei (2015) noted that the deaths occurring due to alcohol related problems was 6,557 in the year 2010, 5,395 in 2011 and 7,146 in 2012, a clear indication that there are still some faults in the implementation of the policy.

The Alcoholic Drinks Control Act was assented to and signed into law on 10th August 2010 by President Mwai Kibaki, gazetted on 22nd November 2010 and was effected on 27th November 2010 (Akoth, 2012). It aimed at regulating all alcoholic drinks from manufacture to promotion, sale and consumption (Lutta, 2016; Akoth, 2012). Its provisions protect underage persons from alcohol consumption, ensure the public know the alcohol related effects and offer rehabilitation services to affected individuals (Lutta, 2016; Mututho, 2014). It regulates award of licenses to alcoholic beverage traders, regulates promotion and advertisement of alcohol and offers regulations of alcohol quality (Mututho, 2014). Enforcement of Alcoholic Drinks Control Act 2010 aims at ensuring that the livelihoods of the people is improved, societal cultures preserved and alcohol health related problems are prevented from occurring (Lutta, 2016).

The Act, among other provisions, has some guidelines concerning adulteration of alcohol (Taeka, 2015), drinking environment (Musungu and Kosgei, 2015), production and packaging standards and restriction of sale of alcohol to certain hours (Ndetei, Mbwanyo, Mutiso and Khasakhala, 2012). Of note is that bars are to operate between 5pm - 11 pm during weekdays, and on 2pm - 11pm on weekends (Rok, 2010).

## Statement of the problem

The Alcoholic Drinks Control Act 2010 was enacted to control problems arising from alcohol. The policy has been partly successful in some of its provisions, but unsuccessful in others. Despite having a consolidated and addition of multiple alcohol restrictions and introduction of licensing of traditional brews, studies such as Jenkins et al., (2015) on alcohol consumptions in Western Kenya, indicate that illicit brew consumers, regardless, has risen from 3.8 - 4.2% (Takahashi et al., 2017). Correlation of alcohol

consumption shows that illicit brews are commonly consumed in many Kenyan rural areas, especially in Western Kenya. In addition to this, Rostrup et al. (2016) in a study on methanol poisoning reported that on 4th May 2014, Central Kenya suffered a massive setback when consumption of illicit brews led to the death of 60 persons and hospitalization of 70. Other cases of methanol poisoning were reported in Kapsabet, Nandi County and in Eldoret, Uasin Gishu County, on 10th and 11th July 2014. This was further confirmed by NACADA (2014) while reporting on alcohol consumption mortality and morbidity that in the month of May 2014 alone, 105 people were killed in different counties and 98 hospitalized due to adulteration of illicit brews. Luta (2016) on factors influencing the implementation of alcohol policies posited that Kenyans have even gone further, despite the Alcoholic Drinks Control Act, to expose alcohol to children and engage more of them in drinking. This led to a further 8 deaths and blinding of 7 in Nyahururu on 14th September 2014 and 4 deaths in Narok County. Further to these, alcohol has caused family breakdown, increase of criminal activities, loss of productive youth to alcohol, and wastage of family finances on alcohol (Lutta, 2016).

With all these problems, the public has at some instances resorted to staging demonstrations against inadequate enforcement of Alcoholic Drinks Control Act 2010 that left some members of their families financially incapacitated, their husbands impotent and the youth unproductive.

In light of the foregoing, this study examined the challenges that the Act is facing in its implementation process, hence not achieving its intended goals.

## Objective of the study

The objective of the study was to examine the factors that challenge implementation of Alcoholic Drinks Control Act 2010 in Kenya.

## Methodology

This study is qualitative. Secondary sources of data were utilized by looking at journals, reports, thesis and dissertations that investigated the implementation of the Alcoholic Drinks Control Act

2010 in different parts of Kenya. The result of the study is thematically presented.

## Results and discussion

Based on analysis of the study findings, the challenges facing the implementation of Alcoholic Drinks Control Act 2010 are presented below:

### Poor enforcement

The Alcoholic Drinks Control Act is reported to be poorly enforced, hence challenging its intended result. Mututho (2014), on campaign against drug abuse in Kenya, blamed the poor enforcement on corrupt practices by the Kenya National Police Services which facilitate operation of alcohol outlets way beyond the stipulated legal hours. Lutta (2016) on drug abuse policy implementation in Nairobi's Kawangware Estate reported that poor enforcement of the policy is a barrier to its objectives, but noted that it is due to existence of weak implementation links among those charged with the responsibility.

This has been affirmed by other studies including Gitau, Mutai and Kinyukia (2016) who investigated non adherence to alcohol regulations and reported that in Thika municipality, alcohol outlets operated beyond the stipulated hours, with 50% of the respondents opening their business before 5 pm and 42.7% operating overnight. Willis (2014) on alcohol licensing hours noted that illicit brews outlets are operational at all times of the day and totally disregard licensing procedures and alcohol operating hours provided for in the law.

This therefore indicates that despite having a policy provision to regulate hours for alcohol sale, it has not been implemented because of poor enforcement.

### Counterfeit alcohol

The presence of counterfeit alcohol, packaged in brand names of popular alcoholic drinks, is on the rise in Kenya (Mututho, 2014). People resort to consumptions of these products due to its low prices (Nduati, 2014). The content of these counterfeit packages are sometimes laced with methanol to boost their strength, leading to deaths in some instances. Institutions meant to curb counterfeit alcohol are not effective enough, and through

corrupt deals, standardize illicit alcohol (Kwambai and Kimutai, 2017). The implementing officers do not have the knowledge required to differentiate between counterfeit and true alcoholic brands because they are not pre-trained. This leads to sale of counterfeit alcohol masquerading as famous brands in formalized alcohol outlets. Lack of knowledge on how to differentiate between formal and informal alcohol becomes a barrier in implementing alcohol control policies.

## Corruption

Corruption is a major barrier to enforcement of the Alcoholic Drinks Control Act 2010. The institutions tasked with enforcing the law are compromised, including the police, the Chiefs and Assistant chiefs who quite often seek rent to protect culprits (Akala, Rono, Chamwada and Owigar, 2016; Mututho, 2014 ;). Illicit brewers, according to Muregi (2017), pay the police to be allowed to continue with their illicit trade. Lutta (2016), on corruption, reported that 54% of respondents in Nairobi's Kawangware slum admitted that corruption hindered effective policy implementation through bribery and extortions by the police, Chiefs and Assistant Chiefs, and during processing of licenses.

To be corrupt, the implementing officers are offered cash or drinks to let go of the culprits. Some engage in weekly or monthly collection of rent from alcohol traders as a way of protecting their illegal businesses. When the people tasked with implementing all the provisions of alcoholic brews choose to protect law breakers for money, the policy automatically loses its significance in the first place hence a challenge.

Corruption is mainly at the licensing and implementation stage. According to Lutta (2016), the County Alcohol Control Boards take bribes to erroneously license improper alcohol outlets.

A bribe of between Ksh 50 - 200 would be taken by the police from revelers if found drunk and disorderly and drinking beyond the hours stipulated by the policy. Those who owned bars would pay a bribe ranging between. Ksh 500 - 1,500 or would offer free meals and drinks if found without licenses or operating outside the recommended hours (Lutta, 2016). There is a higher magnitude of corruption in Kenya. It is present in all sectors, alcohol industry

included. Globally, Kenya's public sector was ranked 136 out of 177 countries on corruption (Transparency International 2013). This ranking at the bottom of the index clearly explains the magnitude of how corrupt dealings affect implementation of alcohol control policy hence unattainment of intended policy goals.

## Enforcement officers

The officers who implement the policy are in themselves a challenge. Some Police officers, Chiefs and Assistant Chiefs are alcohol dependent (Kwambai and kimutai, 2017).

Secondly, their numbers in relation to the population they serve is wanting, hence raising the inadequacy of the human resources dedicated to implementing the Act (Lutta, 2016). There is a shortage of personnel in the rehabilitation and treatment sectors, acting as a barrier to part of the policy's objective (Mututho, 2014).

The low enforcer to population ratio is a challenge because efficiency will not be achieved.

Sometimes, the Chiefs and the police are not in good terms thus jeopardizing implementation of the Act that requires cooperation within the policing sectors. When implementing bodies are not in harmony and when there is inadequate numbers, then the Act will not be adequately put into practice.

## Devolution of the function of alcohol control

The alcohol control function was devolved to County government when the Constitution of Kenya 2010 was adopted (Lutta, 2016; Amuya and Onantwa, 2017; Kwambai and Kimutai, 2017). This provision has therefore derailed earlier gains in alcohol control because it is reported that the modelled framework for alcohol control was faulted by county governments (Lutta, 2016; Amuya and Onantwa, 2017). Instead, they considered the function a means towards generating additional revenues (Kwambai and Kimutai, 2017). Consequently, this led to haphazard licensing, sale of adulterated alcoholic drinks and breach of alcohol outlets legal operational hours (Lutta, 2016). The county governments also have inadequate technical

capacity and legal framework to effectively execute the policy (Mututho, 2014).

When the national policy and county government policies in terms of control of alcoholic brews are not in harmony, then the implementation process suffers a blow.

Licensing local brews to operate outside the policy's stipulated hours and without the meeting the requirements of the policy to be licensed raises conflicts of interests in terms of implementation among the parties hence a challenge.

## Litigation

Since its enactment, the Act has been fought by actors in the alcohol industry who have filed about 20 cases in court against it or the provisions of some of its parts (Mututho, 2014). These occurrences pull back efforts towards the success of the policy.

## Insecurity

In the process of implementing the Alcoholic Drinks Control Act 2010, there are reports indicating that the officers' security is not guaranteed, causing fear and hence non-implementation. This, as noted by Akala et al., (2016) is evident when alcohol brewers and consumers join hands against law enforcement officers, sometimes killing or injuring them. There have been reports of chiefs and police killed while on duty by irate illicit brewers and consumers, while some were injured. Coupled with their small numbers, corrupt officials and inadequate coordination, implementers of the Act for fear of their safety, which is a barrier to full implementation of the policy.

## Inadequate knowledge of Alcoholic Drinks Control Act 2010

It has been reported by prior studies that there is inadequate knowledge of Alcoholic Drinks Control Act 2010 by both policy implementers and alcohol trade operators. According to a study by Kwambai and Kimutai (2017), 94 % of respondents were ignorant on the contents of the Act. The lack of knowledge on the Act acts as a barrier to its implementation. People will continue going against the law as long as they are not aware of any legal provisions against it. This assertion was further reported by 89% of

the respondents who cited absence of constant educational campaigns in the community about the Act hence its inefficiency in controlling alcohol.

When the policy implementers are not knowledgeable about the policy, implementation becomes inadequate. Equally, when the citizen are not aware of the provisions of the legislation concerning alcohol, compliance will not be attained hence a challenge.

## Lack of public participation

There is lack of community involvement in the entire implementation process (Kwambai and Kimutai, 2017). This has led to members of the public either ignoring the illicit alcohol problem or aiding it by developing a surveillance system to alert each other on an intended raids hence defeating the efforts of the policy implementers (Akala, et al., 2016). This is carried out by use of 'coded' language, signals and mobile technology. Any attempt to implement the Act therefore becomes fruitless due to these neighborhood watches and alienation of the members of the public in the implementation process who feel as outsiders.

## Conclusion

Although the Alcoholic Drinks Control Act 2010 has been in place and achieved certain milestones, there are barriers especially at the implementation level that hinder it from achieving its intended goals. The challenge emanates from multiple level of stakeholders, including officers at the county and national government levels, as well as the citizens.

Training on the provisions of the alcohol control policies is key to effective implementation of Alcoholic Drinks Control Act 2010. If actors in the alcohol industry are not aware of the legal provisions, then the Act will be redundant especially when coupled with inadequate implementation personnel, inadequate citizen participation and corruption.

The Alcoholic Drinks Control Act 2010 is a comprehensive policy and if its implementation challenges are eliminated, alcohol control in Kenya will be effective and efficient. Alcohol related deaths, illicit brewing and consumption, counterfeit

alcohol, adulteration among other alcohol related evils will be a thing of the past. Revenue collection will also rise thus achieving both social, health and economic balance.

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