

## **Factors Influencing the Use of Discretion in The Control of Illicit Brew Trade in Kenya, A Case of Kakamega and Uasin Gishu Counties**

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### **Abstract**

Discretionary powers among street-level bureaucrats have the capacity of changing public policy on the spot, from its intended goals to new policies. Research on the use of discretion in the implementation of alcohol control policy on illicit brews is scanty. The paper, therefore, sought to examine the factors that influenced the Chiefs and their assistants in Kakamega and Uasin Gishu counties to utilize discretionary powers. The research utilized a cross-sectional research design, using a sample size of 124 respondents. A structured questionnaire was used to collect both qualitative and quantitative data and were analyzed using descriptive statistics and presented using tables. The research established that inadequate personnel, insecurity, inadequate stakeholder co-ordination, expansive jurisdictions, the status of the traders and inadequate means of transportation were the driving factors behind the use of discretion among the administrators, negatively impacting the control of illicit brew trade in the counties.

**Key words:** *Discretionary powers, policy implementation, illicit brews, street-level bureaucracy*

### **Introduction**

Street-level bureaucracy is a theoretical model developed by Michael Lipsky in 1980 in his seminal book 'street-level bureaucracy' (Lipsky, 1980). It is a policy implementation framework used to explain the behavior of frontline and the lowest level of an organization's policy implementers and how their decisions directly affect the outcome of policies (Thao, 2017). According to Lipsky (2010), street-level bureaucracies are 'public service agencies that employ a significant number of street-level bureaucrats. The street-level bureaucrats on the other hand are 'the public service workers who directly interact with the citizen in the course of their jobs, and possess substantial discretion in the execution of their work' (Lipsky, 1980).

Street-level bureaucrats are all front-line workers in an organization such as the teachers, nurses, police officers, counsellors, among others whose duty involves direct interaction with citizen while implementing tasked public policies (Evans, 2016, Hupe, 2007). Public policy implementers at the street level possess some level of autonomy in implementing public policies, alcohol control inclusive. They are faced with real situations that are not catered for by legislations, forcing them to utilize discretion (Tummers & Bekkers, 2014).

Discretion is the authority vested upon government administrators in making policy implementation decisions, offering them the freedom to choose alternatives considered most appropriate in policy implementation. The chosen alternatives are expected to suit public interests (Vitanski, 2015). Regrettably, this is usually not the case. Lipsky (1980) and Evans (2010) defined discretion as; the extent to which a front line worker can exercise their freedom of choice in particular contexts based on specific factors in deciding whether to implement a policy as it is, or alter it to suit the shortcomings of the implementation process.

Interestingly, public policy implementation is influenced by multifaceted, complex and multi-level factors, particularly policies meant to control 'wicked problems' that have overtime proved to be resistant to changes, and are diverse based on their local contexts (Rittel & Webber, 1973), such as alcohol and drug abuse, that has been in existence for centuries. Policy implementation debates have highlighted the fact that policies do not fail or succeed in their merit, but due to complex and messy government systems (Hudson & Hunter, 2019), discretion being one of the factors. Additionally, the street-level bureaucrats of a top-down system, carry out the actual policy implementation, and are always in constant touch with the citizens. In the course of implementing public policies, they respond to the citizen problems, mostly with inadequate information and limited time to make decisions. Their responses to the citizen in some instances do not necessarily follow the laid down legislations because of myriad policy implementation gaps such as inadequate resources, high public expectations, inadequate measures of performance and ill-defined policy goals in the organizations (Evans, 2016). Consequently, the bureaucrats, employ coping mechanism such as the use of discretionary authority to overcome the demands of their work, utilize limited resources at their disposal and to handle conflicting organizational goals. Moreover, their roles are dichotomized; they are expected to follow a 'rigid' script emphasizing organizational policies and goals, and at the same time, expected to be compassionate, treating each client on a case-by-case basis (Lipsky, 2010).

According to Lipsky's work (1969), Street-Level bureaucrats are identified as people employed by the government who display some specific trends: they are constantly called upon to interact with citizens in the regular course of their jobs, have significant independence in job decision-making, despite working in a bureaucratic organization. Additionally, their actions have the potential to intensively impact the lives of their clients and change the intended goal of the policies they action. Furthermore, the bureaucrats possess relative autonomy from management and enjoy a wide range of discretionary authority when making decisions to execute public policies. Thus, are not strictly bounded by precise rules in making their daily decisions, despite laid down codes of conduct. Therefore, the discretionary authority that they possess allows their actions to shape public policy outcome on the spot (Lipsky, 2010). Illicit brews are the traditional artisanal alcohol that is brewed at home from locally available materials. The liquor has not undergone any standardization procedure and therefore deemed illegal.

It is against this background, this paper examines research findings focusing on use of discretion, particularly, by the National Government Administrative Officers (NGAOs), specifically, the Chiefs and Assistant chiefs.

## Statement of the problem

Implementation of alcohol control policies in Kenya can be traced back to the British colonial government in the East African protectorate. The government introduced the Act of Brussels 1880-90, to control the consumption of alcohol, both traditional artisanal and imported liquor in East Africa (Mututho, 2014). The illicit brew has since been addressed by various alcohol control policies, in different post-colonial government regimes. Having gone through several appeals, the current policy on alcohol in Kenya is the Alcoholic Drinks Control Act 2010, an amended Act of Parliament that consolidated all other laws on alcohol into one (Musungu & Kosgei, 2015; Mututho, 2014).

Several scholars have investigated the implementation of the Alcoholic Drinks Control Act 2010 (Kwambai & Kimutai, 2017; Akoth, 2012; Gitau, 2018, Mututho, 2014), but were carried out in different contexts in Kenya. Local studies in Kakamega and Uasin Gishu counties, have also been carried on illicit brews and their effects and control (Takahashi et al, 2017; Were, 2011; Barasa, 2018; Mmbali, 2016; Tuwei, 2014 and Komen, 2014), but were not directly investigating discretionary factors that drive national government administration bureaucrats in Kakamega and Uasin Gishu counties while implementing policy on illicit brew, a gap that the study sought to fill.

## Research objective

The research objective of the study was to determine the factors influencing national government administration officers to use discretion in implementing alcohol control policy on illicit brews in the study area

## Methodology

### Research design

The study employed a cross-sectional descriptive research design because it favors studies carried out in contextual, natural, and real-life settings. The design also allows the researcher to probe details, to understand why people act in certain ways and how they account for their actions (Gray, 2010). The study, therefore, adopted the design to explain the factors influencing the Chiefs and Assistant chiefs to use discretion in implementing alcohol control policy on illicit brews in Kakamega and Uasin Gishu counties.

### Target population

The study targeted all the national government administration officers at the street level from Kakamega and Uasin Gishu counties. They comprised 486 Chiefs and Assistant chiefs as presented in Table 1.

**Table 1: Target population**

Name of the County	No. of Chiefs	No. of Assistant Chiefs
Kakamega County	81	241
Uasin Gishu County	57	107
<b>Total</b>	<b>138</b>	<b>348</b>

**Sources:** Office of the CC, Kakamega and Uasin Gishu Counties, 2019

Kakamega County had a total of 81 Chiefs and 241 Assistant chiefs while Uasin Gishu had 57 Chiefs and 107 Assistant chiefs (Office of the County Commissioners, Kakamega and Uasin Gishu Counties, 2019).

### Sample and sampling technique

Additionally, 30% of the Chiefs (41) and Assistant chiefs (104) respectively were sampled. The sample size was therefore 145 National government administrative officers at the street-level, as provided in Table 2.

**Table 2: Sample size**

Group	Kakamega County (12 sub-counties)	Uasin Gishu sub-county (6 Sub-counties)	Totals
Chiefs	24	12	36
Assistant chiefs	72	36	108
<b>Total</b>	<b>96</b>	<b>48</b>	<b>144</b>

### Data collection and research instrument

Self-administered questionnaires with both structured and open-ended questions were used to collect data between 8th August 2019 and 25th July 2020. The NGAOs were given adequate time to fill the questionnaires. A total of 124 of the questionnaires were correctly filled and returned. The collected data was both qualitative and quantitative.

### Data analysis

Quantitative data were analyzed using descriptive statistics while the qualitative data was analyzed thematically. Qualitative data was transcribed from its written form, edited and coded to create categories and themes.

### Research results and discussion

The Chiefs and Assistant Chiefs are the street-level bureaucrats in the Ministry of Interior and Co-ordination of national government. They form part of the stakeholders at the street level implementing alcohol control policies through law enforcement, facilitating inter-agency collaboration, carrying out public education and advocacy on alcohol and drug abuse reduction (RoK, 2018). According to the National Government Co-ordination Act, 2013, the NGAOs, play a role in coordinating national government functions, protecting the peoples' safety and well-being, alcohol and drug abuse inclusive. The Chiefs and Assistant Chiefs,

therefore, play a crucial role in the fight against illicit brews, through presidential directives and executive orders but their efforts, such as raids, arrests, and civic education are hampered by factors that push them to exercise discretion.

### Factors driving the use of discretionary powers

The objective of the study was to examine the factors driving the National government administrative officers at the street level to utilize discretion while implementing illicit brew control policy. Their responses are presented in Table 3

**Table 3: Factors driving the use of discretionary powers**

Reasons for discretion	Frequency (f)	Percentage (%)
Inadequate personnel	91	73.4
Inadequate means of transportation	87	70.2
Inadequate stakeholder co-ordination	86	69.4
Insecurity	61	49.2
Other administrative duties	48	38.7
Status of the trader	53	42.7
Vast jurisdictions	33	26.6

**Source:** Field data, 2019

### Inadequate Personnel

The Majority, 73.4 % of the administrators resorted to the use of discretion because the personnel needed to control illicit brews was inadequate. To achieve satisfactory control, the Chiefs require the support of their colleagues and that of the police and other stakeholders, such as the county government, the community policing committees and village elders. It was thus observed that some of the jurisdictions were vacant, while others had no police posts. In the local police posts, the officers were reported to be inadequate and required pre-planning for allocation of officers in illicit brew control. This led to implementation gaps, hence discretion.

It was also noted that the bureaucrats depended on the services of village elders, nyumba kumi initiatives and youth who were hired to help in the implementation of the policy. However, catering for their services brought with it additional financial implications. Thus, in the absence of adequate personnel, they resorted to their discretionary authority, implying that, illicit brew trade would continue unabated, until the officers' acquired adequate human resource reinforcement.

### Inadequate means of transportation

It was reported by 70.2% of the Administrators that inadequate means of transportation forced them to resort to use of discretion. Most of them (62.1%) had reported that they did not have any formal means of transportation provided by their Ministry while 33.9% reported having government motorbikes. However, 77.4% reported having used hired motorbikes

(bodabodas) during raids, arrests and transportation of suspects and exhibits.

It was also found that government vehicles available at the ward and sub-county offices were used in controlling illicit alcohol, but availability highly depended on the NGAOs negotiation and co-ordination skill with the office of the Assistant County Commissioner, or the Deputy County Commissioner, where applicable, the police and the county government. Unavailability implied resorting to discretionary powers, implying that the bureaucrats may not partake in raids and arrests.

### **Inadequate stakeholder co-ordination**

It was reported by 69.4% of the Administrators that they resorted to using discretion because there was inadequate stakeholder coordination in the process of controlling illicit brews. According to Ferreira-Borges et al. (2013), stakeholder coordination within and outside government in most African countries were lacking in the control of alcohol. Moreover, Lutta (2016) noted that to achieve effective control of alcohol in Kenya, there has to be a good working relationship and coordination between the Police officers and the National government administrative officers.

According to the National Alcohol and Drug Abuse Policy of 2018, it was contended that Kenya was experiencing weak linkages among public sector stakeholders controlling alcohol and between public and private stakeholders, coupled with inadequate policy enforcement. The policy therefore aimed at enhancing harmony and coordination among stakeholders (RoK, 2018).

The adoption of a devolved system of government further saw the transfer of some services, from the central government to the county government, inclusive of alcohol control (Rok, 2013). Additionally, National Authority for Campaign Against Alcohol and Drug abuse (NACADA) Act, 2012, was established by parliament in 2012, to coordinate a multi-sectoral campaign against alcohol and drug abuse. Moreover, NACADA is tasked with policy development and dissemination, creation of alcohol and drug abuse awareness, research, monitoring and training and reporting (NACADA, 2014; Rok, 2018)

However, 44.7% of the Chiefs and Assistant chiefs reported as having not been trained on how to implement the Alcoholic Drinks Control Act 2010, implying that the coordination between the Ministry of Interior and other stakeholders responsible for training policy implementers was inadequate. Moreover, the police officers, who constitute a key stakeholder was reported to often sabotage illicit brew implementation efforts by the NGAOs. It was further reported by 37.9% that the NGAOs and the police were corrupt, often receiving bribes from illicit brew traders. Furthermore, some collected weekly or monthly 'returns', while others were informers of planned raids because they benefited from the informal trade.

The county government on the other hand offered licenses to traders, capitalizing on the trade to collect revenue. This has led to unstandardized alcohol sale in the region, duplication of licenses and derailed illicit brew control efforts. In addition, some of the village elders were reported to trade illicit brews while others were consumers. Some members of the public on the other hand condoned the vice, making it hard to work in unison in implementing the policy against illicit alcohol.

The courts were also another stakeholder linked to inadequate coordination in the fight against trade and consumption of illicit brews. It was reported by 23.4% that, the penalties given to illicit brew traders presented to the court were too lenient to deter them from reverting to the illicit enterprise. As a driver for discretion, it was observed that, in the counties, there was disconnect between stakeholders controlling illicit brews, with success stories only applicable between two stakeholders, cutting out the rest. Consequently, giving the NGAOs the discretionary authority on when and when not to control the trade.

## **Insecurity**

Some of the respondents 49.2%, reported about insecurity in their working environment while controlling illicit brew trade motivated them to utilize discretion. It was clear that, while controlling illicit artisanal alcohol, the bureaucrats were faced with both personal and family threats, emanating from traders, consumers, and sometimes local political leaders.

It was further noted that the rural areas were not different from the urban slums, though the slums posed more risks to the bureaucrats because of large populations and community watches set up by both traders and consumers, acting as informers of any intended raid within their communities. The infiltration of mobile technology has further complicated the insecurities that face the administrators. The technology was reported to be used to either sabotage their operations or warn them from discharging their duties, coupled with a high number of intoxicated and irate youth, ready to fight off officers entering illicit brew trade premises.

Moreover, double standards by other administrative officers controlling illicit alcohol such as the police, the community policing members and the county government askaris put the Chiefs and Assistant chiefs at risk. Some support the trade for their benefits, creating antagonism. Additionally, the Chiefs and Assistant chiefs are not armed, hence, compromising their security while on duty. This outcome supports Michael Lipsky's (2010) theoretical assumptions that street-level bureaucrats, exercise discretion as a coping mechanism to evade psychological and physical threats, consequently changing the policy implementation process and goals.

## **Other administrative duties**

Besides the control of illicit brews in their jurisdictions, 38.7% of the Chiefs and Assistant chiefs reported that other administrative duties, forming part of their core functions, forced them to resort to discretion in controlling illicit artisanal liquor. Therefore, they perform their functions based on the priorities at their disposal.

The administrative functions of the Chiefs and Assistant Chiefs are provided in the Ministry of Interior and National Co-ordination Act, 2013. They are expected to co-ordinate national government functions such as crime prevention in their areas of jurisdictions, maintaining order, and provide administrative services, among others (RoK, 2012). If rapid result initiatives are introduced, such as registration of persons, their priorities shift, thus, control of artisanal liquor, is held back. This implies that other administrative duties give the bureaucrats no option other than to exercise their discretionary powers in deciding which duty to perform. On the other hand, it jeopardizes efforts earned in illicit brew control. As a result, traders take advantage of their busy schedules to brew, sell and distribute the informal liquor.

## Vast jurisdictions

Difficulties posed by expansive areas of jurisdictions were reported by 26.6% of the NGAOs. The rationale behind vast jurisdictions was the vacant offices in locations and sub-locations, and therefore, other administrators covered the vacant positions to ensure continuous service delivery, inclusive of illicit brew control.

The vast jurisdiction is further complicated by inadequate stakeholder coordination, demand for services from the citizens, and other administrative duties. It was also reported that delayed recruitment of NGAOs to fill vacant posts was a force behind discretionary authority in alcohol control. The officers become overstretched, balancing between offering services in the areas they were appointed to serve, and other jurisdictions they serve at an acting capacity, and temporarily. The demand for their services, therefore, leads them to use coping mechanisms, hence discretion, affecting how they implement alcohol control policy on illicit brews.

## Status of a trader

The status of the trader was reported by 42.7% of the respondents, as one of the driving force towards use of discretion in the control illicit alcohol. As argued by Lipsky (1969), street-level bureaucrat's work in implementing public policies is dichotomous; they are expected to strictly follow policies while actioning them to achieve desired goals but are also expected to show compassion to their clients in the process of implementation of the policy.

According to Angervil (2017), bureaucrats are expected to strictly follow policies and at the same time be compassionate to their clients while acting on policies. They, therefore, use their judgment on the clients and decide the costs and benefits that they can offer. The NGAOs in Kakamega and Uasin Gishu counties practiced their discretionary judgment based specific individual status of the traders.

First, illicit brew traders with specific medical afflictions were not arrested by the NGAOs. They were deemed to suffer and taking them to court would further damage their health condition, and they might be blamed by their communities for any adversities arising from their arrest. Known epileptics, HIV positive patients identified from previous arrests, persons with hypertension and other illnesses were not arrested.

Secondly, people living with disability, those taking care of disabled members of their families also benefited from the administrators' discretion. Thirdly, mothers with dependent children, who were sole breadwinners in their households, expectant mothers and guardians to underage children were not arrested during raids. The fourth group were the aged illicit brew traders who were above 70 and were viewed as senior citizens and respected. Finally, the NGAOs reported that there were individuals who lived in extreme poverty that illicit brewing and selling was their only means of survival. The administrators, therefore, processed them and imposed costs on them, instead of arresting and having them judged in a court of law.

## Contribution to new Knowledge

Discretionary powers at the street level is a relatively new concept that has not been actively utilized in policy implementation studies in Kenya. From the findings, The implementation of alcohol control policy on illicit brews was hampered by the discretionary powers of the Chiefs



and Assistant chiefs blamed on inadequate human and capital resources, vast jurisdictions, threats in the working environment and vast jurisdictions, policy implementations variables that when catered for can lead to effective control of illicit brew at the street level. Lipsky's theoretical assumptions on discretion were therefore validated by the research outcome.

## Conclusion

Conclusively, the study established that public policy implementation highly depends on the complexity between legislations and practical reality on the ground. The use of discretion by the Chiefs and Assistant chiefs often changes the desired goals to curb illicit brews, either creating a status quo, or escalating the illicit trade. This is because the policy requires adequate human and physical resources to achieve efficiency, but also due to empathy and dichotomy of what it is expected of them. The Chiefs and Assistant chiefs therefore, possess significant levels of discretion that can be curtailed by management by addressing personnel inadequacy, improving their security, strengthening stakeholder coordination and revamping both material and financial resources. Discretionary powers among the Chiefs and Assistant Chiefs therefore emanate from the gaps in policy implementation process and as a result, derail the gains in controlling illicit brew trade.

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