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ELEVENTH PARLIAMENT – FIFTH SESSION-2017

THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON  
THE BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL, 2016

SECRETARY'S CHAMBERS,  
DIRECTORATE OF COMMITTEE SERVICES,  
PARLIAMENT BUILDINGS,  
NAIROBI.

MARCH, 2017

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## **CHAIRPERSON'S FOREWORD**

The Betting, Lotteries and Gaming (Amendment) Bill, 2016 was read a First Time on Thursday 1<sup>st</sup> December, 2016 and stood committed to the Departmental Committee on Labour & Social Welfare for consideration and it is on this basis that the Committee makes this report pursuant to Standing Order 127.

The principal object of the Bill is to amend the Betting, Lotteries and Gaming Act Cap. 131 to provide for a legal framework for regulating and controlling gambling activities and to establish the Kenya Betting Control and Licensing Authority in place of the current Betting Control and Licensing Board.

The Bill also seeks to provide a framework for regulating and controlling gambling activities, promote the development of a responsible gaming industry, protect young and excluded persons from negative effects of gambling, protect the society against the over-simulation of the demand for gambling in the society and prevent gambling from being a source of crime and from being used in money laundering activities.

The Committee operated under constrained timelines and was not able to have meetings with various key stakeholders including the National Treasury, Communications Authority of Kenya, Anti-Money Laundering Board and groups representing the consumers of betting, lotteries and gaming services.

On my own behalf, I wish to commend Members of the Committee for their patience, endurance and hard work during the long sitting hours under tight schedules, which enabled us to complete the tasks within the stipulated period. Furthermore, the assistance received from the offices of the Speaker and the Clerk of the National Assembly was invaluable. The Committee acknowledges the contribution of witnesses in the preparation of this report by way of submissions and presentations.

Finally, it is my pleasant duty, on behalf of the Departmental Committee on Labour & Social Welfare, to present this report in accordance with the provisions of Standing Orders and House Rules and regulations.

**Hon. David A. Were, MP**

**Chairperson, Departmental Committee on Labour and Social Welfare**

## EXECUTIVE SUMMARY

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In line with the constitutional requirement for public participation in legislative processes as contained in Article 118 of the Constitution, the Committee advertised and called for public participation in both the Daily Nation and Standard newspapers and invited the public to make submissions by December 2016. The Committee received submissions, from interested stakeholders which were duly considered by the Committee, consequently the Committee held meetings where it interrogated the received Memorandum and proposed legislation on a clause by clause review of the Bill.

The review process concluded with a list of agreed observations, which will be the basis for which the Committee will rely on in proposing suitable amendments for consideration and possible adoption by the House. In making its recommendations, the Committee examined the Bill clause by clause. Where objections were registered with respect to a particular clause in the Bill, the Committee intends to propose amendments on consensus using the available information and triangulating different sources of submissions made on the provisions of the clause to be amended. The Committee intends to move these amendments during the meeting of the Whole House.

## 1.0 PREFACE

On behalf of the Departmental Committee on Labour and Social Welfare and pursuant to provisions of the Standing Orders, it is my pleasure and duty to present the report of the Committee on its consideration of the Betting, Lotteries & Gaming (Amendment) Bill, 2016.

### 1.1 Mandate of the Committee

The Committee on Labour and Social Welfare is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to: -

- (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments.
- (b) study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- (c) **study and review all legislation referred to it.**
- (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives.
- (e) investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House.
- (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*).
- (g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider the following subjects:-

- (i) Labour
- (ii) Trade union relations
- (iii) Manpower or human resource planning
- (iv) Gender
- (v) Culture and social welfare
- (vi) Youth
- (vii) National youth service
- (viii) Children's welfare
- (ix) National heritage
- (x) Betting and Lotteries
- (xi) Sports

In executing its mandate, the Committee oversees the following Government Departments and Agencies, namely:-

- i) The State Department of Labour
- ii) The State Department of Social Protection
- iii) The State Department of Sports Development
- iv) The State Department of Culture and the Arts
- v) The State Department of Gender Affairs
- vi) The Department of Youth
- vii) The National Gender and Equality Commission
- viii) The Betting Control and Licensing Board

## 1.2 Members of the Committee

The Departmental Committee on Labour and Social Welfare was constituted on Thursday 16<sup>th</sup> May, 2013 and comprises the following Members:-

|                         |  |
|-------------------------|--|
| <b>Chairperson</b>      | The Hon. David Were, MP                |
| <b>Vice Chairperson</b> | The Hon. Tiyah Galgalo, MP             |
|                         | The Hon. John Serut, MP                |
|                         | The Hon. Peris Tobiko, MP              |
|                         | The Hon. John Ndirangu Kariuki, MP     |
|                         | The Hon. Winnie Karimi Njuguna, MP     |
|                         | The Hon. Janet Nangabo, MP             |
|                         | The Hon. Janet Teyiaa, MP              |
|                         | The Hon. Samuel Gichigi, MP            |
|                         | The Hon. Elijah Lagat, MP              |
|                         | The Hon. Cornelly Serem, MP            |
|                         | The Hon. Abdinoor Mohamed Ali, MP      |
|                         | The Hon. Daniel Wanyama, MP            |
|                         | The Hon. Regina Nyeris, MP             |
|                         | The Hon. Wesley Korir, MP              |
|                         | The Hon. Kinoti Gatobu, MP             |
|                         | The Hon. Elijah Mosomi Moindi, MP      |
|                         | The Hon. James Onyango K'Oyoo, MP      |
|                         | The Hon. Omondi John Ogutu, MP         |
|                         | The Hon. Aisha Jumwa Karisa, MP        |
|                         | The Hon. Patrick Wangamati, MP         |
|                         | The Hon. Rose Museo Mumo, MP           |
|                         | The Hon. Silvance Onyango Osele, MP    |
|                         | The Hon. Nyasuna Gladys Wanga, MP      |
|                         | The Hon. John Owuor Onyango Kobado, MP |
|                         | The Hon. Mwanyoha Hassan Mohammed, MP  |
|                         | The Hon. Mlolwa Jones Mwangogo, MP     |
|                         | The Hon. Ferdinand Waititu, MP         |
|                         | The Hon. Irshad Sumra, MP              |



### **1.3 Committee Secretariat**

**Third Clerk Assistant**

Mr. Erick Nyambati

**Third Clerk Assistant**

Mr. Abdirahman Gele Hassan

**Third Clerk Assistant**

Ms. Nuri Kitel Nataan

**Legal Counsel II**

Mr. Sydney Okumu

**Research Officer III**

Ms. Lorna Okatch

## **2.0 CONSIDERATION OF THE BETTING, LOTTERIES & GAMING (AMENDMENT) BILL, 2016**

### **2.1 PUBLIC PARTICIPATION: STAKEHOLDERS VIEWS**

In line with the constitutional requirement for public participation in legislative processes, the Committee advertised and called for public participation in both the Daily Nation and Standard newspapers on 15<sup>th</sup> December, 2016 and invited the members of the public to submit representations on the Bill by Friday 23<sup>rd</sup> December, 2016. The Committee received submissions, from interested stakeholders that were duly considered by the Committee. (Annex 2) Consequently the Committee held meetings where it interrogated the received Memorandum and the proposed legislation clause by clause.

#### **2.1.1 MEETING WITH THE HON. JAKOYO MIDIWO, MP**

The Hon. Jakoyo Midiwo, MP, the Sponsor/mover of the bill, appeared before the Committee on Thursday 26<sup>th</sup> January, 2017 to apprise the Committee on the Bill. In his presentation, the Member highlighted the following:-

The principal object of the Bill is to amend the Betting, Lotteries and Gaming Act Cap. 131 to provide for a legal framework for regulating and controlling gambling activities and to establish the Kenya Betting Control and Licensing Authority in place of the current Betting Control and Licensing Board.

The Bill also seeks to provide a framework for regulating and controlling gambling activities, promote the development of a responsible gaming industry, protect young and excluded persons from negative effects of gambling, protect the society against the over-simulation of the demand for

gambling in the society and prevent gambling from being a source of crime and from being used in money laundering activities.

**Clause 1** of the Bill is the short title.

**Clause 2** of the Bill seeks to introduce new definitions into the Bill.

**Clause 3** of the Bill spells out the objectives and purpose of the Bill.

**Clause 4** of the Bill redrafts the word Permanent Secretary to realign it with Article 155 of the Constitution.

**Clause 5** of the Bill seeks to amend the Act to establish the Kenya Betting Control and Licensing Authority.

**Clause 6** of the Bill seeks to amend the Act to outline the powers of the Authority.

**Clause 7** seeks to amend the Act to establish the Board of the Authority and set out provisions on the procedure of dealing with vacancies in the Board, the conduct of business and affairs of the Board, the remuneration of Board Members, delegation by the Authority, and the Chief Executive Officer and staff of the Authority.

**Clause 8** of the Bill seeks to delete the offence of a person who knowingly makes a false statement in an application for a licence to realign the clause with clause 6.

**Clause 9** of the Bill introduces new sections immediately after section 5 which spell out the conditions for granting licences and permits to an applicant, provide for a framework for the Authority to request for additional information when considering an application for a licence or permit and further puts restrictions on number of casino licences that can be issued by the Authority.

**Clause 10-18** of the Bill seek to align the penalties prescribed under section 8, 10, 11, 12, 14, 15, 17, 19 and 20 with the nature of the offences.

**Clause 19** of the Bill realigns the penalty prescribed under section 21 of the Act with the nature of the offence.

**Clause 20 and 21** of the Bill also seek to align the penalty prescribed by sections 23 and 24 of the Act with the nature of the offences.

**Clause 23 and 24** of the Bill further seek to align the penalties prescribed with the nature of the offences.

**Clause 22** of the Bill seeks to provide for the protection of young persons engaging in gambling activities.

**Clause 25** of the Bill makes provision for excluded persons, the duty of the authority to maintain a register for excluded persons, protection of excluded persons, restrictions on granting of credit to gamblers, restriction on advertisements and promotion on gambling activities and gambling discounts and restrictions on payment of winnings on gambling activities.

**Clause 26** of the Bill seeks to realign the penalty prescribed with the nature of the offence.

**Clause 28** of the Bill seeks to amend section 29A of the Act to enhance the betting tax chargeable to fifteen percent of the gross betting revenue.

**Clause 29** of the Bill amends section 35 of the Act to realign the penalty prescribed with the nature of the offence.

**Clause 30** of the Bill seeks to amend the Act by repealing section 36 in light of the proposed clause 45 of the Bill which contains provisions on the manner in which funds collected from gambling activities shall be utilized.

**Clause 31** of the Bill seeks to realign the penalty prescribed with the nature of the offence.

**Clause 32** of the Bill seeks to realign the penalty prescribed with the nature of the offence.

**Clause 33** of the Bill repeals section 43 of the Act as the protection of young persons from gambling activities is provided for under clause 22 of the Bill.

**Clause 34** of the Bill seeks to realign the penalty prescribed with the nature of the offence.

**Clause 35** of the Bill seeks to enhance the rate of lottery tax to twenty percent of the lottery turnover.

**Clause 36** of the Bill seeks to realign the penalty prescribed with the nature of the offence.

**Clause 37, 39, 40, 41 and 42** of the Bill seek to realign the penalties prescribed with the nature of the offences.

**Clause 44** of the Bill seeks to introduce a new part into the Bill to provide a framework for regulation of online gambling.

**Clause 45, 46, 47, 48 and 49** of the Bill seeks to realign the penalties prescribed with the nature of the offences.

**Clause 50** of the Bill enhances the rate of prize competition tax to twenty percent of total gross turnover.

**Clause 51** of the Bill amends the Act to introduce a winning tax chargeable at the rate of twenty percent of all winnings.

**Clause 52** of the Bill seeks to realign the penalty prescribed with the nature of the offence.

**Clause 53** creates the offence of gambling in relation to illegal activities and limits the total winnings from a gambling activity to thirty million shillings.

**Clause 54, 55 and 56** of the Bill seeks to align the penalties prescribed with the nature of the offences.

**Clause 58** of the Bill repeals section 70 of the Act and introduces new parts, which set out financial provisions and provisions on delegated powers.

**Clause 60** of the Bill outlines savings and transitional provisions.

#### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

This Bill delegates power to the cabinet Secretary. It does not limit any fundamental rights and freedoms.

#### **Statement on how the Bill concerns county governments**

The Bill concerns county governments in terms of Article 110 of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in Part II of the Fourth Schedule to the Constitution.

#### **Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The Bill is a money Bill as it contains provisions dealing with taxes.

### **2.1.2 MEETING WITH THE MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVERNMENT**

The Cabinet Secretary Hon. Joseph Nkaisserry, Mr. Micah Powen, the PS for Correctional Services, the Director, Betting Control & Licensing Board Mr. Charles Wambia and other officials of the Ministry appeared before the Committee and briefed them on the Bill as follows:-

#### **1. Draft Gaming Bill and Regulations**

They informed the committee that the Board within its mandate developed a draft Gaming Bill and Regulations. The Bill and the regulations are addressing the following;

- (i) Transforming the Board to a SAGA
- (ii) Evaluating operationalization of concurrence of Betting, casinos and other forms of gambling functions between the National and the County Governments as per schedule 4 of the constitution.

- (iii) Incorporate the advanced usage of technology in operations and in regulating and enforcing compliance to ensure that gaming is conducted with due propriety.
- (iv) Provide effective and efficient regulation of the gaming industry through;
  - Fines and sanctions
  - Enhanced fees for licenses and permits
  - Enhanced securities in form of Bank guarantees and Bonds
  - Vetting and licensing of key employees
- (v) Provide for licensing and control of a National Lottery
- (vi) Provide enabling environment for growth and development of the gaming industry by embracing new and emerging technologies to allow for new games, gaming devices and modes of operation and participation.
- (vii) Ensure competitiveness of gaming operation in Kenya
- (viii) Meet international standards of gaming regulation and operation
- (ix) Safeguard the young and the vulnerable
- (x) Ensure that Kenyans fully benefit from Betting, lotteries and Gaming operations.

## 2. Proposed Tax Measures

Betting lotteries and Gaming act Cap 131 of the laws of Kenya was recently amended through the National Act, 2016 to introduce taxes that took effect on 1<sup>st</sup> January 2017. These taxes are as follows;

- (i) Betting tax chargeable at the rate of 7.5% of gross earning revenue.
- (ii) Lottery tax chargeable at the rate of 5% of lottery turnover.
- (iii) Gaming tax chargeable at the rate of 12% of gross Gaming revenue
- (iv) Prize competition tax chargeable at the rate of 15% of the total gross turnover for premium rated promotions.

Bill has proposed to increase the above taxes as indicated below;

Betting tax from 7.5% to 15%

Lottery tax from 5% to 20%

Gaming tax from 12% to 20%

Prize competition tax from 15% to 20%

The Bill also introduces “Winning tax at the rate of 20%”

They pointed out that the taxes introduced by the Board were based on benchmarking and as per the industry practice and trends in other gaming jurisdictions. It is also worth noting that the gaming industry in Kenya is one of the fastest growing sectors of the economy and there is need to encourage investment, growth and development of the sector through enabling tax regime that would not encourage cheating and under declaration if the rates are too high. Introduction of winning tax amounts to withholding tax that had been tried before and was not successful.

### **3. Foreign Investment**

The Bill proposed to limit investment in the Gaming industry for online operation to locals only, while we appreciate this position, we wish to point out that investment in any form of gaming requires heavy financial and skills outlay, at the same time the Board has formulated draft regulations on online gaming and key among them is the requirements of at least 40% local shareholding. We therefore believe this aspect has been adequately addressed in the regulations, in addition it should not appear as if there is discrimination when investing in the Gaming Industry in Kenya, foreigners should be given an opportunity to invest as long as the shareholding requirement is complied with.

### **4. Penalties**

The Bill proposed increased fines and penalties for various offences. They stated that the Board’s draft Gaming bill has also proposed increased fines and jail terms with a view to enforcing compliance within the entire spectrum of its operations. The fines and jail were judiciously determined depending on the offence in question and the need to deter recidivism.

### **5. Operating Hours**

The Bill proposes to restrict the operating hours for lotteries and prize competition to between 7.00pm and 7.00am effectively making them night activities. It’s worth noting that Lotteries and Prize competitions do not take place in licensed premises. These are operations that can only manually be done during the day since most of them are done from outlets such as supermarkets or lottery kiosks.

The Bill also proposes to limit Gaming (casinos) operations to between 5:00pm and 7.00am. Further, the Board had been regulating operating hours for gaming since 1969 and they had been between 12:00noon and 4:00am with increased competition both locally and in the region the hours were reviewed to between 9:00am and 5:00am. This gives the customers an opportunity to choose their own hours to visit these facilities. The operators have also increased their employment level since most of them require three shifts.

It should also be noted that the worldwide practice is 24hours.

## **Restriction against the use of Telecommunication Platforms for Online Gambling**

The Bill seeks to restrict use of telecommunication platforms for online Gambling. The question would be the same would be conducted. The Ministry stated that Kenya has already embraced the use of mobile technology in virtually every sphere of life. In Gaming, the telecommunication platforms play a crucial role especially in complimenting enforcement and compliance as well as transparency and accountability of operations.

## **Repeal of the Section that authorises Lotteries**

The bill proposes to repeal section 36 of the current Act on the grounds that charity proceeds would be deduced from online operations. It should be noted that Lotteries not only in Kenya but also in all other gaming jurisdictions, are authorised for good cause purposes and separate from all other gaming activities. In Kenya, lotteries started way back in 1966 and contributed immensely to good cause projects, the operators have also invested heavily in the sector and repealing the section would have profound effects. They therefore stated that section 36 is one of the core sections of the current Act and should not be repealed.

## **CONCLUSION**

The Ministry and the Board appreciated the contents of the Betting, Lotteries and Gaming (Amendment) Bill, 2016. The Ministry invested time and money in development of the draft Gaming Bill and regulations, hence requested to be given an opportunity to harmonize the two documents and produce a formidable Bill that would realize all the objectives envisaged in each of the two draft Bills and in particular, the following:-

- (i) Protection of players and the public
- (ii) Protection of the young and the vulnerable
- (iii) Government benefits from the industry operations
- (iv) Investment, growth and development of the Gaming industry in Kenya

The Cabinet Secretary also informed the committee that the role of regulators in the 21<sup>st</sup> century is changing from conventional regulation and prohibition to facilitating and enabling business without compromising the core mandate. They further requested the committee to consider and allow the Bill to be a Government sponsored Bill.

### 1.3 MEETING WITH THE ASSOCIATION OF GAMING OPERATORS IN KENYA

The Association briefed the Committee on the Bill as follows, that:-

The Association of Gaming Operators – Kenya [AGOK] is a member based Society registered under the Societies Act, Chapter 108 of the Laws of Kenya and it brings together organizations duly licensed and regulated under the Betting, Lotteries and Gaming Act, Chapter 131 of the Laws of Kenya. This Association was officially formed in 2003 and officially registered by the Registrar of Societies on 1st March, 2005 (Certificate of Registration No.-24442).

The Betting, Lotteries and Gaming Act, Cap 131 of the Laws of Kenya creates separate and distinct classes of Licenses and Permits and provides for the regulation of the same.

#### 1. General Observations on the Bill

The Bill in their view addresses itself to four [4] main issues; these are –

- 1.1. Creation of an Authority which will be a body corporate to replace the Betting Control and Licensing Board.
- 1.2. Online Gaming
- 1.3. Taxation of the industry
- 1.4. Enforcement measures and penalties with respect to offences under the Betting, Lotteries and Gaming Act.

AGOK submitted that there appeared to be a concerted targeting of the industry through measures that evidently do not enhance the growth of the industry but are designed to cripple it.

#### 2. Overarching Concerns

##### 2.1. Constitutional Concerns:

Pursuant to Standing Order 117 (b), the Bill in its Memorandum of Objects and Reasons has a '*Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms*'; in the Statement the Bill is reported not to have proposals that limit any fundamental rights and freedoms.

They submitted that the Bill has Clauses that lend themselves to the very real possibility that if passed into law by the National Assembly and subsequently the Senate, would violate fundamental rights and freedoms enshrined in the Constitution of Kenya.

They unequivocally submitted that under Article 24 (3) of the Constitution, it is mandatory that the State or a person seeking to justify a particular limitation shall demonstrate to the Court, tribunal or other authority that the requirements of Article 24 have been satisfied.



JOK noted that Standing Order 119 requires every Bill that contains a provision limiting a right or fundamental freedom in terms of Article 24(2) of the Constitution shall contain separate and distinct provisions -

clearly expressing the specific right or fundamental freedom to be limited; and

the nature and extent of that limitation.

They argued that the Bill fails this critical requirement under the Constitution and the Standing Orders.

### **1. The Right to Property under Article 40 of the Constitution**

The term 'Property' is defined in the Constitution. The gaming industry in Kenya traditionally had significant investment from foreign investors and the recent developments that are causing the renewed public and legislative interest in the industry have been spurred by promoters and companies that have foreign shareholders who are not Kenyan Citizens.

Article 20 (1) of the Constitution of Kenya declares that the Bill of Rights applies to all law and binds all State Organs and all persons. Further at Sub-Article (2) it is declared that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.

The Bill at Clause 44 a new Part VA – Online Gaming is proposed for introduction into the Betting, Lotteries and Gaming Act, Cap 131 of the Laws of Kenya. It is further proposed at Section 55F (1) that Licensees should be body corporates fully owned by Kenyan Citizens.

The term 'person' in the Constitution is defined at Article 260 to include a company, association or other group of persons whether incorporated or unincorporated.

The Parliament at Article 40 (2) of the Constitution is prohibited from enacting a law that permits the State or any person to –

arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or

to limit, or in any way restrict the enjoyment of any right under Article 40 on the basis of any grounds not specified or contemplated in Article 27 (4).

### **2. Equality and Freedom from discrimination under Article 27**

The Association highlighted the declaration at Article 19 (1) of the Constitution of Kenya, 2010 where it is provided that – *“The Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies.”*

It is further enshrined under Article 27 (1) of the Constitution that every person is equal before the law and has the right to equal protection and equal benefit of the law.

The term 'person' includes companies.

The Bill proposes in light of the reality of ownership in the gaming industry in Kenya, to limit shareholding of online gaming licensees to Kenyan Citizens; the inevitable result of such a limitation will be the violation of the Constitutional protection for foreign investors under Article 27 (4) which forbids the State from discriminating directly or indirectly against any person on the grounds of *inter alia* ethnic or social origin, language or birth.

## 2.2. Form of Regulator

The Bill declares the following with respect to its principal objective –

*“The principal object of this Bill is to amend the Betting, Lotteries and Gaming Act Cap. 131 to provide for a legal framework for regulating and controlling gambling activities and to establish the Kenya Betting Control and Licensing Authority in place of the current Betting Control and Licensing Board.”*

There is no lacuna in law with respect to a legal framework for regulating and controlling gambling activities in Kenya. There is and has been a Regulator in the form of the Betting Control and Licensing Board pursuant to Section 3 of the Betting, Lotteries and Gaming Act.

Upon a close examination of the proposals in the Bill with respect to the creation of the Authority and the abolition of the Betting Control and Licensing Board, they noted the following–

- The Regulator proposed by the Bill is a corporate entity as opposed to the Betting Control and Licensing Board which is not.
- The day-to-day responsibility for the implementation of the Betting, Lotteries and Gaming Act, Cap 131 of the Laws of Kenya in the Bill is vested on the Chief Executive Officer whereas under the Betting Control and Licensing Board it is vested in the Chairman.
- The duties of the Chief Executive Officer under the Bill are stated to be –
  - (a) Responsible for the day to day management of the Authority;
  - (b) Responsible for facilitating, coordinating and ensuring execution of the Authority's mandate;

whereas under the current form of the Regulator, these responsibilities repose with the Chairman of the Board.

- They noted that under the transition provisions of the Bill, the current staff of the Betting Control and Licensing Board shall be the staff of the Authority which means that the current Director of the Board shall be the Chief Executive Officer of the Authority.

They wondered how the foregoing proposed changes to the form of the Regulator will achieve the declared objective – “.....*promote the development of a responsible gambling industry, protect young and excluded*

*sons from the negative effects of gambling, protect the society against the over-simulation of the demand gambling in the society and prevent gambling from being a source of crime and from being used in money laundering activities”*

Standing Orders number 117 (d) requires that a Bill have a statement on its financial implication and if expenditure of public moneys will be involved should the Bill be enacted, an estimate, where possible, of the expenditure and submitted that the Bill does not meet this requirement.

Association of Gaming Operators echoed that the proposal to change the form of the Regulator is a manifestation of a turf war between the Director and the Board as currently constituted and thus has nothing to do with achieving the stated objective.

### **Operational Concerns**

#### **3.1. Operating Hours:**

proposed to restrict the operating hours for licensees carrying out betting activity, operating a lottery or a competition to between 7.00 pm and 7.00 am.

Bill further proposes to restrict the operating hours for licensees engaged in gaming activity to between 7.00 pm and 7.00 am.

Association submitted that this major policy proposal has not been sufficiently explained nor have reasons been provided for the same.

In the overall context of the stated objectives of the Bill, the Association could not understand how the proposed restrictions on operating hours achieve the same.

#### **3.2. Proposed tax measures:**

Betting, Lotteries and Gaming Act, Cap 131 of the Laws of Kenya, has been amended by the Finance Act 2016 – Act no. 38 of 2016 to introduce new taxes which are to take effect on 1<sup>st</sup> January, 2017. The Act introduced the following taxes:

- a) A Betting tax chargeable at the rate of seven point five [7.5%] per cent of the gaming revenue.
- b) A Lottery tax chargeable at the rate of five [5%] per cent of the lottery turnover.
- c) A Gaming tax chargeable at the rate of twelve [12%] per cent of the gaming revenue.
- d) A Prize Competition tax chargeable on the cost of entry to a competition which is premium rated at the rate of fifteen [15%] per cent of the total gross turnover.

It is proposed by the Bill to amend the new provisions with respect to the introduced taxes in Betting, Lotteries and Gaming Act even before the said taxes have become effective. The Bill's proposals significantly enhance the taxes as follows: -

- (a) The Betting tax from a rate of seven point five [7.5%] per cent of the gaming revenue to a rate of fifteen [15%] of "gross betting revenue".
- (b) The Lottery tax from the rate of five [5%] per cent of the lottery turnover to twenty [20%].
- (c) The Gaming tax from the rate of twelve [12%] per cent of the gaming revenue to twenty [20%] per cent of "gross gaming revenue".
- (d) The Prize Competition tax from the rate of fifteen [15%] per cent of the total gross turnover to twenty [20%] per cent.

The Bill introduces a new tax called 'Winnings Tax' which is to be charged at the rate of twenty [20%] per cent of a person's winnings from gaming, betting or participating in a lottery or prize competition authorized under the Betting, Lotteries and Gaming Act, Cap 131 of the Laws of Kenya.

There has been until recently a 'withholding tax' on the winnings from betting, gaming activities and lottery participation. This tax measure had to be withdrawn due to its challenges in implementation and the inordinate cost of its collection. Circumstances have not changed and thus it is equally untenable and impractical to efficiently collect the intended 'winnings tax'.

It is further submitted that the proposed tax rates in the Bill are unsustainable in the current business climate and environment and they further do not satisfy the principles of taxation.

Taxation measures should be broad based and equitable and burden all individuals or entities in similar economic circumstances. The proposed measures in the Bill are discriminatory to the Betting, Lotteries and Gaming industry and place an inordinate and unfair tax burden on it.

### 3.3. **Limitation of winnings and amounts hazarded**

AGOK submitted that betting, gaming and lottery management is highly empirical and scientific; complex calculations and postulations are developed that determine the risk reward matrix. The hazards and winnings are not arbitrary determinations.

Industry practice globally has developed tools such as the 'Book', 'odds' and others to guide the determination of stakes/hazards and the winnings therefrom.

e Bill proposes to cap the amount that a player may hazard in an online gambling activity to Kenya Shillings Two Hundred [Kshs. 200]. This is an issue of concern for their members as the amount seems arbitrary and wondered how that amount was arrived at.

**Restriction on utilization of services from Licensees under Section 79 of the Kenya Information and Communications Act, Cap 411A of the Laws of Kenya for online gaming**

e Bill defines the term “online gambling” as gambling by use of the internet, telephone, radio, television or any other electronic or other technology for facilitating communication.

To contextualize the restriction, they set out the following definitions from the Kenya Information and Communications Act –

*“telecommunication operator” means a telecommunication operator licensed under section 79;*

*“telecommunication service” means any of the following—*

*(i) a service consisting of the conveyance by means of a telecommunication system of anything falling within subparagraphs (i) to (v) in the definition of “telecommunication system”;*

*(ii) a service consisting of the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to a telecommunication system; or*

*(iii) a directory information service, being a service consisting of the provision by means of a telecommunication system of directory information for the purposes of facilitating the use of a service falling within subparagraph (i) above and provided by means of that system;*

*“telecommunication system” means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of—*

*(i) speech, music and other sounds;*

*(ii) visual images;*

*(iii) data;*

*(iv) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sound, visual images or data; or*

*(v) signals serving for the activation or control of machinery or apparatus and includes any cable for the distribution of anything falling within (i) to (iv) above;*

Section 79 of the Kenya Information and Communications Act provides as follows -

***Grant of licence***

*The Commission may, upon expiry of the period of notice under section 78 grant a licence to the applicant if satisfied that the applicant should be licensed, subject to such conditions, including the payment of such licence fee as may be prescribed:*

*Provided that where the Commission does not grant a licence, it shall notify the applicant in writing of the reasons for refusal within thirty days of such refusal and the applicant may, if aggrieved, appeal to the Tribunal.*

The following is the wording of the restriction in the Bill -

*“The telecommunication operators licensed under the Kenya Information and Communications Act shall not permit licensees under this Act to use their telecommunication platforms including mobile phone-based money transfer, financing and micro financing services as a medium for persons to engage in online gambling activities.”*

They noted that the Kenya Information and Communications Act does not define the term ‘telecommunication platform’.

Having noted the means by which the Bill describes online gambling may be conducted and thereafter examined, the provisions of the Kenya Information and Communications Act with respect to licenses under section 79 and the definitions of a telecommunication operator, telecommunication service and telecommunication system; is the restriction therefore totally self-defeating as no online gambling can be carried out in Kenya for the following reason -

***The following means of engaging in online gambling according to the Bill;***

- *the internet,*
- *telephone,*
- *radio,*
- *television or*
- *any other electronic or*
- *other technology for facilitating communication,*

***can only by law be provided by a telecommunications operator licensed under section 79 of the Kenya Information and Communications Act, Cap 411A.***

They further noted that even in the event that the restriction was possible in Kenya, how would the proposal in the Bill stop anyone from accessing an online gambling service that is operated outside the country. The restriction therefore fails to achieve its objective.

The fate of companies duly licensed under Kenyan law and their staff, operators and providers of online gambling services and all support industry to the online gambling sector was not clear.

Association wondered how the Bill propose to fill the gap that would be created with respect to nsoring of sports, national teams, youth training camps among others if the online gambling licensees t down.

revenues that are causing this pandemonium will be earned by companies in other jurisdictions without ya receiving a kopek of tax revenue therefrom and thus render the unrealistic tax revenue ambitions in Bill useless.

industry is already subject to the financial reporting regulations in the Country and the members must ster with the Financial Reporting Centre.

fears that the operations of the industry may run afoul of the said regulations have been addressed by the vant statutes including but not limited to the Proceeds of Crime and Anti-Money Laundering Act.

thus unjustified to restrict licensees under the Kenya Information and Communication Act from iding services to the industry. Any person in Kenya today to have a mobile phone must register and in registration provide their personal identification. In the event that any person commits a discernible nce, the law has robust legal provisions currently to address the alleged crime. It is our submission that it ot the place of the Betting, Lotteries and Gaming Act to convolute the nascent measures that have been in place to address the Sponsor's concern with respect to crime and money laundering and echoed that is another glaring instance of the conscious stigmatization of the industry.

#### **MEETING THE COMMISSIONER GENERAL, KENYA REVENUE AUTHORITY**

Commissioner General Mr. John Njiraini briefed the Committee on the issues that needed clarification llows, that:-

##### **Impact present or projected on the operations of KRA;**

Bill is passed as it is, the immediate impact will be an increase in exchequer revenues but this benefit be short-lived depending on the elasticity of demand of the service. Our experience indicates that high ates even for commodities considered as socially undesirable ultimately lead to reduced demand. It may help develop an underground economy and promote tax evasion.

enhancement of the above tax rates and re-introduction of tax on winnings will enable KRA have access eful more intelligence for purposes of monitoring other taxes including corporate tax, withholding tax PAYE.

Bill further proposes to restrict players of the sector to the Kenyan citizens. This is not practical for e betting since the electronic platform would be available to persons inside and outside Kenya. over, there is no good basis to prevent non-Kenyans from participation as this would negatively impact ue collection.

**2. a) General opinion on Clause 28 (enhancing of betting tax)**

The enhancement of the rate from 7.5% to 15% brings Kenya in line with two African countries namely Rwanda (13%) and in Ghana (17.5%).

International benchmarking on the rate is critical in averting tax arbitrage and transfer pricing by the sector players. Excessive rates would have the impact of driving the service across borders leading to losses for Kenya.

A higher rate is not necessarily going to provide the expected benefits. If there is an increase, it should be benchmarked against the practice in comparable jurisdictions.

**3) General opinion on Clause 53 (limiting winnings to 30 million shillings)**

This section of the Bill seeks to set a limit for a winning for a betting, gaming, lottery or prize competition to an amount not exceeding 30 million shillings.

The principle of good legal drafting is to avoid legislation of such a threshold in the main law. It is therefore recommended if such threshold is to be considered it should be in the subsidiary legislation e.g. regulations in order to accord flexibility to accommodate emerging issues. The business model and the determination of winning is normally based on the operator's realization of proceeds from business volumes. The Regulating Authority may also give detailed guidelines on how winnings are determined.

The winnings of the player are the expenses of the operator and taxes are collected from both fronts. It is therefore our opinion an upper threshold is not justified based on revenue collection considerations.

**3. The current amount collected from online gambling & general gambling operators**

**Data analysis on betting companies returns with KRA:**

The KRA Domestic Taxes data base has Eight (8) major players in the Betting sector with a total revenue paid and payable amounting to Kshs 4.7B for 2014/15, 2015/16 and part of 2016/17 Financial Years as shown below:

| Tax Heads    | Financial Year     |                      |                      | Total                |
|--------------|--------------------|----------------------|----------------------|----------------------|
|              | 2014/15            | 2015/16              | 2016/17**            |                      |
| PAYE         | 15,491,594         | 333,843,878          | 215,897,189          | 565,232,661          |
| VAT ***      | ---                | -----                | ----                 | -----                |
| WHT          | 85,628,266         | 159,945,209          | 141,825,513          | 387,398,988          |
| CT           | 19,416,792         | 719,144,833          | 3,019,132,037*       | 3,757,693,662        |
| <b>Total</b> | <b>120,536,652</b> | <b>1,212,958,801</b> | <b>3,376,854,739</b> | <b>4,710,350,192</b> |



This represents corporate taxes paid and payable by the sector players for the financial year ending 30<sup>th</sup> June 2017. The figures are based on self-assessment.

The data for FY 2016/17 represent the full year collections tax declaration paid and payable.

\* These services are VAT Exempt, hence no collections on Vat from the Players.

Sinners and Book makers' income are not part of this analysis, by the nature of their business model.

Data obtained from Betting Control and Licensing Board further indicates that there are **Fifty (50)** registered and licensed Casino Operators in the Country. Bookmakers are **Twenty Five (25)** but with countrywide network of branches.

**Is graduated tax a possibility for clauses 50, 51? Why/why not?**

Clauses 50 and 51 are in respect to prize competition and winnings respectively. Graduated approach is meant to address progressive taxation for the purpose of bringing in equity and fairness. This is because there is a wide range in terms of value of the winnings.

The Bill proposes a flat rate of 20%, this is recommended to be retained as it accords with the principle of simplicity in tax administration.

**The current law and practice touching on paying tax on charitable purposes in Kenya and the challenges**

Charitable organizations are granted tax exemptions under Paragraph 10 of the Income Tax Act. This includes institutions and organization of public nature involved in activities intended to alleviate poverty and distress. Donations/expenditure by business enterprises to support such CSR programs would be tax deductible in the books of such private business enterprises and on condition that the recipient is tax exempt.

Charitable Organizations would however be liable to other taxes like VAT, Excise WHT and PAYE.

### Challenges

- i) Abuse of tax exemption status by charitable organizations incorporating special purpose vehicles in form of trusts, foundations, religious organizations, schools for purpose of concealing their otherwise profit oriented economic activities.
- ii) The current legal provision for granting tax exemptions is so general and susceptible to abuse. For instance under the current Income Tax Act, an exemption granted under any other Act of Parliament is recognized as valid hence making the monitoring of tax exemption complex.
- iii) Lack of a strong and centralized regulatory framework and institutions to monitor, register or license the sector players (charitable organizations).

5. **The amount recommended for charitable purposes from gambling revenue at either individual or corporate level.**

Section 55 (J) of the Bill is introducing sharing formula of funds obtained from gambling activities as follows;

- a) 30% as prize money
- b) 65% for charitable activities relating to health education and sports
- c) 5% to cover running costs

Betting companies are private enterprises set up for a profit making motive. Section 55 (7) effectively converts the enterprises into social outfits from which the proprietor receives no benefit. The Clause is therefore inconsistent with prudent business practice and should be deleted to allow the enterprises to determine the amounts they wish to allocate to charity.

7. **The international taxing practices with respect to taxing gambling revenue and model preferred**

The philosophy for taxing betting, lotteries and gaming revenues is partly to discourage gambling while also creating avenues for raising revenue. The application of this principle nevertheless requires moderation in relation to the imperative to ensure business continues to operate and thrive.

A comparative analysis of tax regimes across Africa gave the following results:

| Tax Type               | Kenya<br>(current<br>rates) | Kenya<br>(proposed)<br>Bill | Tanzania | Uganda | Rwanda | Ghana | South<br>Africa | Average |
|------------------------|-----------------------------|-----------------------------|----------|--------|--------|-------|-----------------|---------|
| Betting Tax            | 7.5%                        | 15%                         |          |        | 13%    | 17.5% |                 | 15.3%   |
| Lotteries Tax          | 5%                          | 20%                         | 10%      |        | 13%    | 17.5% |                 | 13.5%   |
| Gaming Tax             | 12%                         | 20%                         | 13%      |        | 13%    | 17.5% |                 | 14.5%   |
| Prize Competition Tax  | 15%                         | 20%                         |          |        |        |       |                 |         |
| Winnings (Withholding) |                             | 20%                         | 18%      | 15%    | 15%    | 17.5% | 15%             | 16.4%   |

Observations from the table above;

- i) The tax rates as contained in the proposed Bill substantially above the continental benchmarks except for betting tax.
- ii) The other tax jurisdictions appear to have the same description of revenue clusters upon which the Bill seeks to introduce enhanced tax rates.
- iii) Taxation of winning appears common; hence its reintroduction in the draft Bill is consistent with the practice across Africa.

iv) From the analysis, it appears better to retain the rate as stipulated in the current law and shown in the column I with an adjustment to accommodate Winnings Tax.

#### **An analysis of tax return made by betting companies in Kenya**

ting companies like any other business enterprise are expected to register with KRA and comply with the owing tax obligations where applicable;

- i) Corporation taxes
- ii) Withholding taxes
- iii) PAYE

analysis of the tax returns made by betting companies in Kenya for period 2014/15, 2015/16 and 2016/17 revealed compliance gaps by the operators and players in the sector.

ile betting, lotteries and gaming taxes are collected on an agency basis, compliance by the operators in r corporate withholding and payroll taxes obligations will require a clearer focus going forward. This will supported by the ambitious automation process and proposed strategic partnerships with other regulatory ncies.

re are a number of Tax Compliance Audits already registered by KRA on the Betting Operators as a first in ensuring their compliance with the existing tax laws. Since the enactment of Finance Act 2016, KRA also embarked on an aggressive stakeholder engagement with the objective of improving awareness.

analysis of the filing, payments and accuracy of declarations from the returns received by KRA for the ods 2014 – 2017 depicts a growing trend which will need to be sustained through automated sector pliance monitoring.

, the KRA web based online platform, has already been enhanced and reconfigured to fully support filing payment of various taxes by the sector players. Filing and payments by the Operators can now be done essagefully through the KRA *iTax* platform.

her analysis of data and statistic received from BC&LB have proved to be useful in planning KRA's ntrywide stakeholder engagements as informed by the geographical spread of the Operators.

#### **eral comments on tax collection on betting, lotteries and gaming sector**

KRA generally recommends simplification of legal regimes for ease of tax administration. Complex regimes generally complicate tax administration and encourage evasion.

- ) KRA recommends retention of existing regimes to provide time to understand lessons from implementation. Based on such lessons, proposals for amendment may be made which may include the need to consolidate rates as is the case for South Africa.
- i) KRA recommends the commissioning of a comprehensive study to determine the most appropriate regulatory and tax structure in respect of this industry that will balance between social, revenue collection and investment priorities.

## 3.0 COMMITTEE OBSERVATIONS

The Committee observed that—

1. The Bill seeks to provide a framework for;
  - i. regulating and controlling betting, lotteries and gaming activities, promote the development of a responsible gaming industry,
  - ii. protect young and excluded persons from negative effects of betting, lotteries and gaming activities,
  - iii. protect the society against the over-simulation of the demand for betting, lotteries and gaming activities in the society and
  - iv. prevent betting, lotteries and gaming from being a source of crime and from being used in money laundering activities.

However, the Bill as drafted has several clauses that have the effect of 'killing' the online betting, lotteries and gaming industry. These include:

- a. abolishing online betting, lotteries and gaming activities (clauses 55F, 55H, 55K)
  - b. excess tax levels and statutory commitments leaving operators with only 5% of net revenues to cover operation costs (clause 55J)
2. The proposed Bill has unconstitutional clauses for example clause 2 which defines a young person to be below twenty-five years of age) and clause 28A (5) & (6) that provide for the process of declaring an "excluded person" without affording the guarantees under the Fair Administrative Action Act.
  3. All stakeholders that appeared before the committee submitted that the current Betting Lotteries and Gaming Act required reforms save that the present proposal does not address the emerging issues and simply deals with challenges by outlawing online betting, lotteries and gaming activities.
  4. On taxation, the Kenya Revenue Authority submitted that the present tax levels should be retained since they are at par with other comparable jurisdictions but supported the introduction of a "winnings tax".
  5. All stakeholders who appeared before the committee submitted that there was no justification on the penalties as proposed in the Bill. Indeed the stakeholders were of the opinion that the proposed penalties could "kill" the betting, lotteries and gaming industry.
  6. The Ministry of Interior and Co-ordination of National Government and the Betting Control and Licensing Board have come up with a proposed penalty regime which appeared to be more realistic to the Committee.
  7. There is a challenge of regulating foreign based online firms due to lack of proper legislation which the Bill addresses by outrightly outlawing online betting, lotteries and gaming.
  8. Restricting participation by excluding persons is unconstitutional in that it does not offer such a person a hearing before orders are made against them thereby violating the principle of fair administrative action.
  9. The Stakeholders agreed with the Bill in the formation of an Authority which should replace the existing Board. However, the committee observed that the membership of the Board comprises of civil servants (except for the chairman) making it incapable of meeting its operational mandate.

10. Clauses 6 and 8 are not connected. Clause 8 seeks to delete offence of a person who makes a false statement in an application for a licence and realign the same with clause 6. However, a close reading of clause 6 discloses that it only outlines the powers of the Authority.
11. The Bill proposes to limit the number of Casinos to five in each County without giving any justification. This proposal will present challenges in implementation especially in Counties where more than five casinos already exist for instance Nairobi and Mombasa.
12. The Ministry of Interior and Co-ordination of National Government was not able to secure a further engagement as requested due to timeline constraints.
13. Memoranda from the Ministry of Interior and Co-ordination of National Government, Kenya Revenue Authority, Betting Control and Licensing Board, Association of Gaming Operators (AGOK), Kenya Private Sector Alliance, Telcomm Service Providers of Kenya (TESPOK), Kenya Bankers Association, Media Owners Association and sports federations submitted that the Bill should be rejected to give room for further engagement with stakeholders to enable enactment of a new legislation that will properly address emerging issues in the industry.
14. The Committee operated under constrained timelines and was not able to have meetings with various key stakeholders including the National Treasury, Communications Authority of Kenya, Anti-Money Laundering Board and groups representing the consumers of betting, lotteries and gaming services.
15. Clause 30 of the Bill outlaws public lotteries for charitable purposes without any justification. Should the Bill be passed in its present form there will be no online betting, lotteries and gaming industry to be regulated as the proposals outlaw charitable lotteries and tax the industry out any realm of profitability. Organizations like Kenya Charity Sweepstakes will therefore close and there will be ban effected on such lotteries held during funds drives.
16. The principle objectives of the Bill are not supported by the proposals contained therein.

## RECOMMENDATION

In view of the issues raised from the observations, the numerous stakeholders required to be engaged and in the fact that to address the issues raised by the stakeholders effectively means amending at least three parts of the Bill, the Committee recommends that—

1. the sponsor withdraws the Bill, or
2. the Bill be rejected,

to permit wider stakeholder consultations to allow for introduction of a comprehensive Bill to replace the current Betting, Lotteries and Gaming Act.

Signed..........Date.....01-03-2017.....

Hon. David Were, MP- Chairperson

Departmental Committee on Labour and Social Welfare

# ANNEXTURES

## **ANNEX 1- ADVERT ON MEMORANDUM**

PREPUBLIC OF KENYA



NATIONAL ASSEMBLY  
ELEVENTH PARLIAMENT – FOURTH SESSION

In the Matter of consideration by the National Assembly of the  
Betting, Lotteries and Gaming (Amendment) Bill, 2016

SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution provides that *“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. “Standing Order 127(3) states that “the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House.”*

The Betting, Lotteries and Gaming (Amendment) Bill, 2016 has undergone First Reading pursuant to Standing Order 127(3) and is now committed to the Departmental Committee on Labour and Social Welfare for consideration and thereafter submit its report to the House.

The Bill seeks to: -

- a) Provide a framework of regulating and controlling gambling activities;
- b) Promote development of a responsible gambling industry;
- c) Protect young and excluded persons from the negative effects of gambling;
- d) Protect the society against the over-simulation of the demand of gambling in the society; and
- e) Prevent gambling from being a source of crime and from being used in money laundering activities.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the public to submit any representations that they may have on the said Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, First Floor, Main Parliament Buildings, Nairobi, or emailed to [toclerk@parliament.go.ke](mailto:toclerk@parliament.go.ke), to be received on or before Friday 23<sup>rd</sup> December, 2016 at 5.00 pm.

A handwritten signature in black ink, appearing to read 'Justin Bundi'.

JUSTIN BUNDI, CBS  
CLERK OF THE NATIONAL ASSEMBLY



## **ANNEX 2- SUBMISSIONS FROM STAKEHOLDERS**

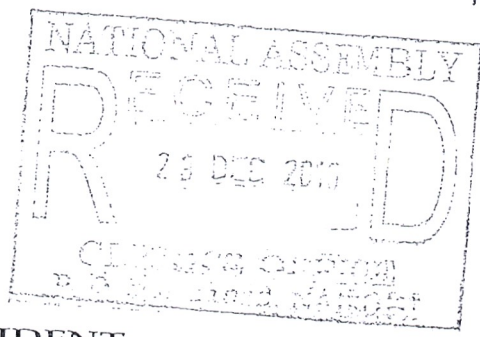
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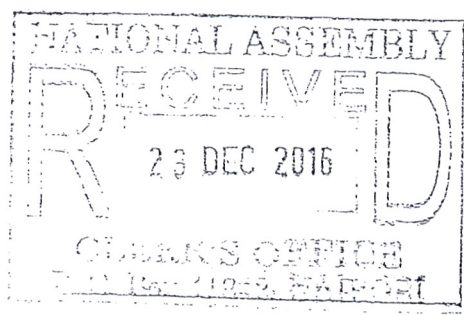
OFFICE OF THE PRESIDENT  
MINISTRY OF INTERIOR AND  
CO-ORDINATION OF NATIONAL GOVERNMENT  
BETTING CONTROL AND LICENSING BOARD

Kenya Charity Sweepstake House, 3rd & 8th floor, Mama Ngina Street  
P. O. Box 43977 - 00100 NAIROBI  
Telephone: 316471/2220186/343578/9

BCLB 1/15 VOL. I/(10)

22nd December 2016

The Clerk  
National Assembly  
Parliament Buildings  
P.O Box 41842-00100  
NAIROBI



Dear Justin

RE: MEMORANDUM TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE  
ON LABOUR AND SOCIAL WELFARE WITH RESPECT TO  
THE BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL, 2016

Bill Identifiers:

- Bill number: NA Bill No. 49 of 2016 [GP No. 43]
- Bill Type: Private Member's
- Sponsor: Hon. Jakoyo Midiwo, MGH, MP
- Dated: 16th November, 2016
- Maturity date: 29th November, 2016
- 1st Reading: 1st December, 2016

INTRODUCTION:

The Betting Control and Licensing Board is a body created by the Betting, Lotteries and Gaming Act, Chapter 131 of the Laws of Kenya and falls currently under the

Ministry of Interior and Co-ordination of National Government. We are not a body corporate nor are we independent of the National Government.

We as a Board in conjunction with other relevant arms and departments of Government have been in the process of formulating revised new laws and regulations to usher the betting, lotteries and gaming industry into its new realities in Kenya. To this end, the board has already made adequate regulations on online gaming(attached),and has a draft bill that covers issues in this bill and more. We acknowledge that the process of achieving the new legislation is taking time. This is due to the Constitutional imperative for consultation, stakeholder and public participation and also the need to borrow from best practices from other jurisdictions in the world.

**Stated Objective(s) of The Betting, Lotteries and Gaming (Amendment) Act, 2016:**

*“The principal object of this Bill is to amend the Betting, Lotteries and Gaming Act Cap. 131 to provide for a legal framework for regulating and controlling gambling activities and to establish the Kenya Betting Control and Licensing Authority in place of the current Betting Control and Licensing Board. The Bill also seeks to provide a framework for regulating and controlling gambling activities, promote the development of a responsible gambling industry, protect young and excluded persons from the negative effects of gambling, protect the society against the over-simulation of the demand for gambling in the society and prevent gambling from being a source of crime and from being used in money laundering activities.”*

**ISSUES ARISING:**

**1. Constitutional Concerns:**

**1.1. Violation of Article 40 fundamental rights:**

The Bill at Clause 44 seeks to introduce a new Part VA – Online Gaming into the Betting, Lotteries and Gaming Act, Cap 131 of the Laws of Kenya. The proposed new Section 55F (1) of the Betting, Lotteries and Gaming Act states that Licensees should be body corporates fully owned by Kenyan Citizens.

The Bill carries a “*Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms*” wherein it declares that it does not limit any fundamental rights and freedoms.

It is our submission that the Bill does seek to not just limit but deprive persons of the fundamental rights and freedoms protected under the Constitution of Kenya, 2010.

The reality of the gaming industry in Kenya is that it has significant investment by foreign investors and specifically the companies that have obtained licenses that are currently underpinning online gaming activities have shareholders who are not Kenyan Citizens.

Article 20 (1) of the Constitution states that the Bill of Rights applies to all law and binds all State Organs and all persons. Sub-Article (2) further states that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.

Article 40 (2) of the Constitution states that Parliament shall not enact a law that permits the State or any person (a) arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or (b) to limit, or in any way restrict the enjoyment of any right under Article 40 on the basis of any grounds specified or contemplated in Article 27 (4).

Article 260 defines a ‘person’ to include a company, association or other body of persons whether incorporated or unincorporated.

### **1.2. Violation of Article 27 (4) fundamental rights**

Building on the afore mentioned concern, the proposed legislation in seeking to limit ownership of online gaming licensees to Kenyan Citizens has the potential of violating the foreign investors protection under Article 27 (4) as the said Sub-Article forbids the State from discriminating directly or indirectly against any person on the ground of ethnic or social origin, language or birth.

### **1.3. Violation of Article 24 (3) of the Constitution**

It is a Constitutional imperative that the State or a person seeking to justify a particular limitation shall demonstrate to the Court, tribunal or other authority that the requirements of Article 24 have been satisfied.

The Sponsor of the Bill, the Speaker and the Clerk, the latter of the National Assembly in introducing and publishing the Bill have violated the provisions of Article 24 of the Constitution.

## 2. Concerns related to Operations of Licensees

### 2.1. Proposed tax measures:

The Betting, Lotteries and Gaming Act, Cap 131 of the Laws of Kenya has just recently been amended by The Finance Act, 2016 – Act no. 38 of 2016 to introduce new taxes which are to take effect on 01<sup>st</sup> January 2017. These taxes are the following –

- **Betting tax** chargeable at the rate of **seven point five** [7.5%] per cent of the **gaming revenue**.
- **Lottery tax** chargeable at the rate of **five** [5%] per cent of the **lottery turnover**.
- **Gaming tax** chargeable at the rate of **twelve** [12%] per cent of the **gaming revenue**.
- **Prize Competition tax** chargeable on the cost of entry to a competition which is premium rated at the rate of **fifteen** [15%] per cent of the **total gross turnover**.

The Bill now proposes to amend the foregoing before the said taxes have been implemented. The proposals in the Bill are for significant enhancement as follows:

- **Betting tax** from a rate of **seven point five** [7.5%] per cent of the **gaming revenue** to a rate of **fifteen** [15%] of “**gross betting revenue**”.
- **Lottery tax** from the rate of **five** [5%] per cent of the **lottery turnover** to **twenty** [20%].
- **Gaming tax** from the rate of **twelve** [12%] per cent of the **gaming revenue** to **twenty** [20%] per cent of “**gross gaming revenue**”.

- **Prize Competition tax** from the rate of **fifteen** [15%] per cent of the **total gross turnover** to **twenty** [20%] per cent.

The Bill introduces a new tax it calls “**Winnings Tax**” which is to be charged at the rate of **twenty** [20%] per cent of a person’s winnings from gaming, betting or participating in a lottery or prize competition authorized under the Betting, Lotteries and Gaming Act, Cap 131 of the Laws of Kenya.

The board recently introduced a new tax regime vide the current finance Act. In this regime, withholding tax was withdrawn due to the immense challenges continually encountered in collection of the same in the past.

Taxation measures should be broad based and equitable and burden all individuals or entities in similar economic circumstances. The proposed measures in the Bill are discriminatory to the Betting, Lotteries and Gaming industry and place an inordinate and unfair tax burden on it.

## **2.2.Operating Hours:**

The Bill proposes to restrict the operating hours to between 7.00 pm and 7.00 am for licensees carrying out betting activity, operating a lottery or prize competition.

The Bill further proposes to restrict the operating hours to between 5.00 pm and 7.00 am for licensees engaged in gaming activity.

In addition to the new tax measures proposed by the Bill it is not practical or conceivable that the time limits proposed would create the necessary opportunity for the licensees to operate viable businesses.

It is in the public domain that the Country is endeavoring to be a twenty four hour economy and it is our submission that the time restriction does not advance this stated objective.

## **2.3.Limitation of amounts hazarded:**

The Bill proposes to cap the amount that a player may hazard in an online gambling activity to Kenya Shillings Two Hundred [Kshs. 200]. This is an issue of concern for licensees as the amount seems arbitrary; How was this amount arrived at?

The industry is already subject to the financial reporting regulations in the Country and our members must register with the Financial Reporting Centre.

Any fears that the operations of the industry may run afoul of the said regulations have been addressed by the relevant statutes including but not limited to the Proceeds of Crime and Anti-Money Laundering Act.

It is thus unjustified to restrict licensees under the Kenya Information and Communication Act from providing services to the industry. Any person in Kenya today to have a mobile phone must register and in that registration, they provide their personal identification. In the event that any person commits a discernible offence, the law has robust legal provisions currently to address the alleged crime. It is our submission that it is not the place of the Betting, Lotteries and Gaming Act to convolute the nascent measures that have been put in place to address the Sponsor's concern with respect to crime and money laundering and we posit that this is another glaring instance of the conscious stigmatization of the industry.

### **3. Conclusion**

The Betting, Lotteries and Gaming industry is an industry that is statutorily regulated yet it appears from the flurry of uncoordinated legislative actions that it is an illegitimate of undesirable industry. The statement of problem in the Bill delegitimizes the industry and stigmatizes it yet it has become a significant and important contributor to the Kenyan economy through employment of the youth, the financing and facilitation of sporting activities, charity and corporate social responsibility initiatives.

The industry players have a legitimate expectation to be afforded the protection of the law, fairness and consultation when far reaching measures are to be considered.

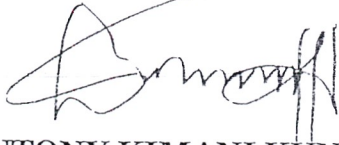
We oppose the Bill in its entirety and call for it to be deferred to allow broad based consultation with all relevant stakeholders including but not necessarily limited to—

- ✓ Ministry of Interior and Coordination of National Government
- ✓ Kenya Consumer Protection Advisory Committee
- ✓ The Ministry of Finance
- ✓ The Attorney General Chambers
- ✓ Licensees under the Betting, Lotteries and Gaming Act

to develop a workable framework to bridge the perceived gap between legislation, regulation and industry realities.

Attached please find a summary of the Boards observations and comments specific to each clause of the proposed bill.

Yours Sincerely,



**ANTONY KIMANI KUNG'U**

CHAIRMAN

BETTING CONTROL AND LICENSING BOARD

CC: HON. MAJ. GEN. (RTD). JOSEPH NKAISSERRY, EGH, CBS  
CABINET SECRETARY  
MINISTRY OF INTERIOR & COORDINATION OF  
NATIONAL GOVERNMENT

MICAH P. POWON  
PRINCIPAL SECRETARY  
STATE DEPARTMENT OF COORDINATION OF  
CORRECTIONAL & REHABILITATION SERVICES



① D/Committee  
W. T. Fasilipila



The Voice of Private Sector in Kenya

The meeting  
ought to  
be held

② Enock

Pls facilitate  
as requested

AA

01/12/17

Ref: 06/01-PPD/17

January 25, 2017

Mr. Justin Bundi, CBS  
The Clerk  
Kenya National Assembly  
Parliament Buildings  
P.O Box 41842-00100  
Nairobi  
clerk@parliament.go.ke

1/12/17



Dear Mr. Bundi,

RE: THE BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL, 2016

We wish to register our deep appreciation for the great support and cordial relationship between the Kenya Private Sector Alliance (KEPSA) and the National Assembly. We are committed to our partnership towards improving the business environment in Kenya.

The above referenced Bill was submitted for the First Reading on December 15, 2016 and was accordingly committed to the Departmental Committee on Labour and Social Welfare for further consideration. The National Assembly invited interested members of the public to submit representations on the said Bill on or before Friday, 23<sup>rd</sup> December, 2016.

The Private Sector is significantly concerned about this Bill whose provisions seek to substantially change the landscape of the gaming industry. It is, therefore, essential that there is adequate stakeholder consultation before the bill is committed to the third reading.

We recognize and appreciate the efforts by the National Assembly to actualize the constitutional principle of public access and participation embodied in Article 118 of the Constitution.

It is for this reason that the Kenya Private Sector Alliance (KEPSA) requests for audience with the Departmental Committee on Labour and Social Welfare to deliberate further on the proposed amendments to the bill.

We look forward to your facilitation of a meeting with the Departmental Committee on Labour and Social Welfare and thank you for your continued support and cooperation.

Sincerely,



Carole Kariuki, MBS, HSC  
Chief Executive Officer

Cc: Hon. David Aoko Were,  
Chairperson, Departmental Committee on Labour and Social Welfare,  
Parliament Buildings,  
P.O Box 41842-00100,  
Nairobi

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① D/Committees

22<sup>nd</sup> December, 2016

② Back  
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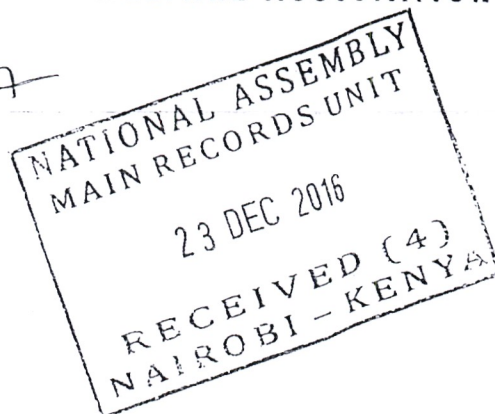
**YOUNG PEOPLE  
WELFARE ASSOCIATION**

The Clerk of the National Assembly

1<sup>st</sup> Floor Main Parliament Buildings, Parliament Road

P.O. Box 41842-00100

17/10/17



**NAIROBI**

Dear Mr. Justin Bundi, CBS

**RE: BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL, 2016**

Reference is made to the above matter and the advertisement in the print media of .... December 2016 requesting the public to make presentation on the proposed bill.

We request to be allowed to make oral submissions before the relevant National Assembly Committee to buttress and highlight concerns that we have regarding the proposed bill.

We are a registered organization under the Co-operative Societies Act that is composed of membership drawn from the youth and young persons of the Republic of Kenya.

We believe that the proposed Act is ill advised and infringes on the right of young persons.

Universally, it is accepted that a person over the age of 18 years is an adult and capable of making his own independent decision.

Indeed, the Constitution of Kenya under Article 55 provides that: -

The State shall take measures, including affirmative action programmes to ensure that the youth :-

- a) access relevant education and training;
- b) have opportunities to associate, be represented and participate in political, social, economic and other spheres of life;
- c) access employment and
- d) are protected from harmful cultural practices and exploitation

The proposed Act infringes on the youth's constitutional rights enshrined in the constitution as follows: -

**I. Increase of tax**

The proposed Act provides that there shall be an increase in tax on gaming business up to 20%. This provision disregards the fact a tax on the business was introduced barely 3 (three) months ago,. If tax a new tax is introduced to the tune of 20% it would imply that gaming business would be taxed up to 111% as follows

- a) 25% that is already in existence in the present Betting, Lotteries and Gaming Act Cap 131 Laws of Kenya.
- b) 16% VAT under the Income Tax Act
- c) 30% Corporate Tax under the Income Tax Act
- d) 20% that is proposed in the Betting, Lotteries and Gaming (Amendment) Bill, 2016.

- e) 20% tax on winnings that is proposed at Section 51 of the Betting, Lotteries and Gaming (Amendment) Bill, 2016

No business is capable of surviving under this kind of tax burden and this will lead to a direct loss of jobs for the youth.

## II. Freedom of belief, opinion and expression

The **Constitution of Kenya** under Articles 32 and 33 guarantees freedom of belief, opinion and expression which includes the right to freedom of thought, belief and opinion and freedom of artistic creativity. The proposed act provides that there shall be a limit of how much a person can place a bet on. This proposed law infringes on our rights under Articles 32 and 33 of the Constitution. How comes there is no law on how much alcoholic drinks a person can take, how many packets of cigarettes a person can smoke and how many acres of land a person can own?

## III. Protection of Right to Property

Article 40 of the constitution provides that every person has a right to acquire and own property of any description. The Bill at Section 53 proposes introduction of a Section 60 (B) to Cap 131 that puts a cap/ceiling on winnings to Kshs 30,000,000/=. This section is contrary to Articles 40 and 55 of the constitution.

## IV. Freedom of Movement

Article 39 of the Constitution of Kenya guarantees the right of movement. This implies that a person has a right to move around Kenya at any time. The Bill proposes introduction of a Section 60 (C) to Cap 131 that puts betting hours to 7.00 pm to 7.00 am. This implies that anybody wishing to place bets has to stay awake all night. This curtails a person's right to movement. Bets are placed on live games that are not necessary played between the hours of 7.00 pm to 7.00 am. This proposed section therefore does not make sense at all.

## V. Equality and Freedom from discrimination

Article 27 (4) of the Constitution of Kenya provides that the state shall not discriminate directly or indirectly against any person on any ground, including age.

Section 26 proposes introduction of a Section 28 (4) to Cap 131 that gives authority to a person to exclude another person from engaging in betting. This is discriminative as it gives an adult the unfettered discretion to decide the fate of another person without according any reason which is wrong.

The Bill at Section 2 proposes introduction of a new Section 2 to Cap 131 that introduces the definition of young to be a person below the age of 25. This section is not only discriminative contrary to Article 27 of the Constitution but also is inconsistent with Article 55 on the rights of the youth to have opportunities to participate in social and economic spheres of life and access to employment.

## VI. Separation of Powers

The Constitution of Kenya envisages separation of powers between the executive, the legislature and judiciary. The proposed Act goes against this principle in that it provides that County Governors shall form part of the regulatory body of gaming activities. Governors are elected in counties to govern counties and have business getting involved in matters that are purely executive at national level.

## VII. Equality before the law

Article 27 (1) of the Constitution provides that every person is equal before the law and has a right to equal protection and equal benefit of the law.

This implies therefore that persons who are engaged in the gaming/gambling business should enjoy the same treatment as any other legitimate business. 99.9% of the proposed amendments are breach of the rights enshrined under Articles 27 (1) and 27 (2) of the Constitution of Kenya

The same Article does not state "every Kenyan". This implies as long anybody is on Kenyan soil, regardless of his nationality, he is entitled to enjoy the rights to to equal protection and equal benefit of the law. The provision in the proposed amendment that limit the right of foreign national to participate and carry on legitimate business of gaming in Kenya is contrary to Article 27 of the Constitution.

The Bill also introduces hefty penalties that have no ceiling which implies that a judicial officer has powers to impose even 100 years' sentence.

VIII. Economic and Social rights

Article 43 of the Constitution provides that every person has the right to health care services, housing, freedom from hunger, clean and safe water, social security and education.

These rights can only be achieved through collection of taxes by the government. If the proposed amendments are approved, it would lead to collapse of an entire industry that is one of the major contributors of taxes in Kenya. This would lead to not only loss of jobs to hundreds of thousands of youth and also inability of the government to provide the attainment of rights enshrined in Article 43 of the Constitution

In conclusion, we submit that the proposed bill is a terrible piece of legislation and is in bad taste and should be abandoned

Yours faithfully,  
YOUNG PEOPLE WELFARE ASSOCIATION



**BERNARD OCHIENG OWINO**  
SECRETARY GENERAL

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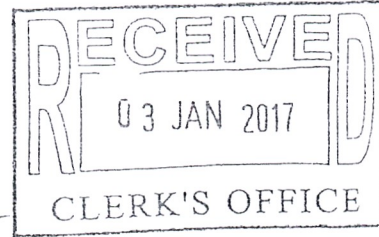
# Bradley Limited

*CD/Committee*

23 December 2016

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

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17/1/17*



Attention: Mr. Bundi,

**REF: PROPOSED AMENDMENTS TO THE BETTING, LOTTERIES AND GAMING BILL, 2016**

The above matter refers,

Our attention has been drawn to a newspaper advertisement published in the Daily Nation of Thursday 15<sup>th</sup> December 2016 on the above referenced subject.

We are a limited company domiciled in Kenya and licensed by the BCLB to operate lottery business in Kenya, operating as Bradley limited.

Our mission is to provide the best lottery product in Kenya. By doing this we benefit our stakeholders by creating wealth for our players, contributing to social investments through our Corporate Social Responsibility (CSR) initiatives, creating employment and contributing to the government revenue by paying taxes.

So far, we have created over 600 direct and indirect employment opportunities. In addition to supporting various charitable homes and initiatives, we have also contributed substantially in payment of taxes through PAYE and various taxes on our inputs.

We wish to express our deep concern for the legislation proposed by the Bill as it may result to the close of the business. Consequently, the following are the forecasted results of the Bill's enactment: loss of employment; loss of investment done by the shareholders; negative impact to the charitable institutions we are supporting through our good deeds program; and subsequent loss of government revenue which will have a negative impact to the economy.

The industry will be among the most heavily taxed industries in the country, when the Finance Act, 2016 comes into effect in January 2017.

Currently, the nature of the industry and underlying regulation by the BCLB imposes a very heavy cost structure to the business as our costs are shown below:

- 55% payments of prizes to winners
- 25% of our gross gaming revenue to good deeds
- 8% commissions to dealers and agents
- 30% Corporation tax
- 5% Tax on lottery revenue effective 1 January 2017



# Bradley Limited

- 16% VAT on all inputs, with no output claim

These total up to 139%. Its therefore ridiculous to impose another 20% to the same as there is no business that will operate with statutory commitments of 159%, this spells doom to the industry and its going to have a huge negative impact to the economy.

Besides taxes, the proposed law introduces a cap on the age of persons to be engaged in gaming activities at 25 years and also restricts the amount of bets and winnings.

The median age in Kenya is 18 years. At this age, the constitution of Kenya stipulates that such a person is an adult and therefore capable of making independent and informed decisions and therefore feel that their constitutional rights against discrimination and their right to own property are being infringed upon.

In the United Kingdom where we heavily borrow our laws from, 16 years is the minimum age an individual is allowed to play lottery.

We wish to bring to your attention that the proposed bill infringes on basic constitutional rights, some of which are outlined below;

## **Freedom of belief, opinion and expression**

Setting of betting amount limits to Ksh 200:

The **Constitution of Kenya** under **Articles 32 and 33** guarantees freedom of belief, opinion and expression which includes the right to freedom of thought, belief and opinion. The proposed act provides that there shall be a limit of how much a person can place a bet on. In Kenya, post paying taxes, one has the freedom to utilize their money in any manner that is lawful.

Therefore, the proposed law infringes on our rights under Articles 32 and 33 of the Constitution.

**Proposed restriction on advertisement and use mobile platforms** – we note the intention to curtail the providers of betting and lottery services from advertising and use of mobile platforms. Advertisement is used to educate consumers and give them an opportunity to their rights as enshrined in the constitution. There is no business which will grow without advertisements. The investors have a constitutional right to conduct business in Kenya. Advertisement is used as a medium for driving business.

This restriction goes against the spirit of Article 46 which guarantees that consumers have a right to information necessary for them to gain full benefit from goods and services.

The world over is in the digital age. The Government of Kenya, has in numerous occasions supported initiatives to drive digital inclusion including ecommerce. The proposed bill is counterproductive as it negates gains made in use of ICT channels.

# Bradley Limited

## Freedom of Movement

The Bill proposes introduction of a Section 60 (C) to Cap 131 that puts betting hours to 7.00 pm to 7.00 am. Article 39 of the Constitution of Kenya guarantees the right of movement which allows a person the right to move around Kenya at any time. The proposed law would thus mean that anybody wishing to place bets has to stay awake all night which infringes a person's right to movement.

## Equality before the law

Article 27 (1) of the Constitution provides that every person is equal before the law and has a right to equal protection and equal benefit of the law.

This therefore indicates that persons who are engaged in the gaming and betting business should enjoy the same treatment as any other business which is lawfully licensed. Therefore, the proposed amendments are breach of the rights enshrined under Articles 27 (1) and 27 (2) of the Constitution of Kenya.

## Equality and Freedom from discrimination

### Age limit:

Article 27 (4) of the Constitution of Kenya provides that the state shall not discriminate directly or indirectly against any person on any ground, including age.

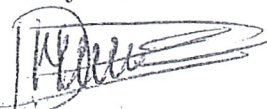
Section 26 proposes introduction of a Section 28 (4) to Cap 131 that gives authority to a person to exclude another person from engaging in betting. This is discriminative as it gives an adult the unfettered discretion to decide the fate of another person without according any reason which is wrong.

The Bill at Section 2 proposes introduction of a new Section 2 to Cap 131 that introduces the definition of young to be a person below the age of 25. This section is not only discriminative contrary to Article 27 of the Constitution but also is inconsistent with Article 55 on the rights of the youth to have opportunities to participate in social and economic spheres of life and access to employment. The proposed Act is ill advised and infringes on the right of young persons.

We therefore urge that the proposed legislation be abandoned because it spells doom to a lot of lives.

Yours faithfully,

Bradley Limited



Paul Kinuthia

Managing Director

1759



DD / committee

**KENYAN PREMIER LEAGUE**

*For the good of our sport and nation*  
Box 5350 Nairobi 00506 Kenya  
Telephone 254-20-4442070  
Mobile 254-700-313331  
Mobile 254-739-222000  
e-mail info@kpl.co.ke  
web www.kpl.co.ke

December 23, 2016

The Clerk of the National Assembly  
1st Floor Main Parliament Building  
Parliament Road  
P.O. Box 41842-00100  
NAIROBI

2) BACK  
pls deal  
FA  
17/01/17

Dear Mr Justin Bundi, CBS

**RE: MEMORANDUM ON BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL, 2016**

A publication in the Daily Nation of 15 th December 2016 regarding the aforementioned Bill of the National Assembly of Kenya has been brought to our attention and we wish to bring to your attention the following issues.

We are the organizers of the Kenyan Premier League, the top tier professional league in Kenya and are fully recognized by FIFA, the global body that manages football and football activities. Our main partner and sponsor is SportPesa, a leading betting company in Kenya.

Through the sponsorship we have been able to: -

- a) Run a smooth Kenyan Premier League which is Top Tier National League;
- b) Run a KPL Youth (under-20) Championship with 3 editions a year during the school holidays;
- c) Remunerate match officials who officiate in the league;
- d) Give monetary and other awards to best performing players in the Footballers of the Year Awards;
- e) Remit some of the funding to specific clubs thus creating paid employment;
- f) Smoothly run the KPL secretariat.

We are therefore directly affected by the proposed legislation since it negatively impacts on our sponsor's ability and capacity to continue the sponsorship.

The new law proposes an increase in tax by 40% i.e. 20% gaming tax and 20% winning tax. We believe that as a limited liability company in business, gaming companies under an obligation to pay 30% corporate tax, 16% VAT and dedicate 25% gross proceeds to charitable causes.

Should the 40% proposed in the new law be approved it will imply that gaming companies would pay 111% of their revenue in taxes. Instead of increasing the taxes on companies that are sponsoring sports clubs and federations, members of the National Assembly should be passing legislations to zero-rate taxes.

The proposed legislation is a bad law and if passed, it will adversely discourage foreign and local investors and it will certainly take football in Kenya back to the trenches.

It will also lead to an upsurge of crime as people especially the players that rely on football and sports in general will be without an income due to withdrawal of sponsorships

Yours Faithfully,

Jack Oguda  
Chief Executive Officer  
Kenyan Premier League

20 DEC 2016

1783

# GOR MAHIA F.C.



P.O. Box 55645 - 00200 Nairobi Tel: +254 722 710 514 / +254 735 000 077 Email: gormahiafootballclub@yahoo.com

23<sup>rd</sup> December, 2016

*OD / committees*

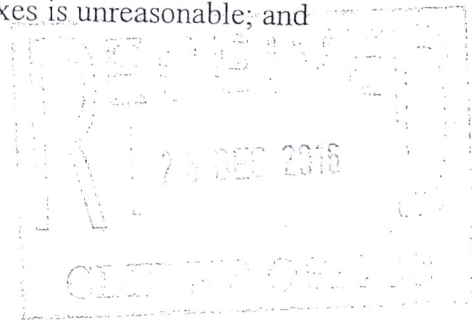
The Clerk  
National Assembly  
Parliament Building  
**NAIROBI**

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*pls deep*  
*FA*  
*17/01/17*

## RE: BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL 2016

Our attention has been drawn to the Betting, Lotteries and Gaming (Amendment) Bill 2016 published in the Kenya Gazette of 2<sup>nd</sup> December, 2016 which seeks to amend the Betting, Lotteries and Gaming Act (Chapter 131 of the Laws of Kenya). In the spirit of our constitutional right to public participation, we offer our opinion with regard to the proposed amendments hereunder.

1. While the stated objects of the Bill appear noble, the substantive amendments can only serve to kill the industry altogether and do not in fact seem to support the declared objectives.
2. The setting of an age limit of twenty five (25) years is unconstitutional and discriminatory in as much as it seeks to exclude a number of Kenyans that have attained the age of majority, some of whom may very well be heads of households.
3. The clause on self-exclusion is contradictory in that while it seeks to provide for self-exclusion, it gives rights to third parties to apply to exclude eligible participants from engaging in gambling activities. It in effect negates the use of the word "self".
4. Further and in any event, the provision for strict liability in self-exclusion is unconscionable.
5. As far as the tax matters are concerned:
  - a. the winnings taxes are not only unjustified but also exorbitant;
  - b. the doubling of betting taxes is onerous to the intended tax payer and unjustified;
  - c. the increase in the lottery and gaming taxes is unreasonable; and
  - d. the limit on winnings is unnecessary.



From the foregoing, the Bill should not be passed as is until the above-mentioned concerns are adequately addressed.

Yours faithfully,

  
For AMBROSE RACHIER  
CHAIRMAN  
For Gor Mahia Football Club

① D. Mule



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FA 17/01/17

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AFC Leopards S.C.  
P.O. Box 10652-00100  
Nairobi, Kenya  
Email: [info@afcleopards.co.ke](mailto:info@afcleopards.co.ke)

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31<sup>st</sup> December, 2016

The Clerk of the National Assembly  
1<sup>st</sup> Floor Main Parliament Buildings, Parliament Road  
P.O. Box 41842-00100  
NAIROBI

Dear Mr Justin Bundi, CBS

RE: MEMORANDUM ON BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL, 2016

A publication in the Daily Nation of 15<sup>th</sup> December 2016 regarding the aforementioned Bill of the National Assembly of Kenya has been brought to our attention and we wish to bring to your attention the following issues.

We participate in the Kenyan Premier league and are fully recognized by FIFA, the global body that manages football and football activities. Our main partner and sponsor is SportPesa, a leading betting company in Kenya.

Through the sponsorship we have been able to: -

- a) We run a Senior and youth (under 20) teams which participate in Kenyan Premier League and Nairobi County Leagues respectively.
- b) Give monetary and other awards to best performing players
- c) Smoothly run the Club secretariat.

We are therefore directly affected by the proposed legislation since it negatively impacts on our sponsor's ability and capacity to continue the sponsorship.

The new law proposes an increase in tax by 40% i.e. 20% gaming tax and 20% winning tax.

We believe that gaming companies are under an obligation to pay 30% corporate tax, 16% VAT and dedicate 25% gross proceeds to charitable causes. Should the 40% proposed in the new law be approved it will imply that gaming companies would pay 111% of their revenue in taxes.

It will also lead to an upsurge of crime as people that rely on football and sports in general will be without an income due to withdrawal of sponsorships

We petition parliament not to pass this Law given the above concerns.

Yours faithfully,



**DANIEL ANTHONY MULE**  
**CHAIRMAN**

## **ANNEX 3- MINUTES**



MINUTES OF THE 10<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LABOUR AND SOCIAL WELFARE HELD ON MONDAY, 27<sup>TH</sup> FEBRUARY 2017 AT  
WHITESANDS HOTEL IN MOMBASA AT 10.00 A.M.

PRESENT

1. Hon. David Were, MP- Chairperson
2. Hon. Janet Nangabo, MP
3. Hon. Peris Tobiko, MP
4. Hon. Dan Wanyama, MP
5. Hon. Kinoti Gatobu, MP
6. Hon. Cornelly Serem, MP
7. Hon. Irshad Sumra, MP
8. Hon. Wesley Korir, MP
9. Hon. James Onyango K'Oyoo, MP
10. Hon. John Serut, MP
11. Hon. Samuel Gichigi, MP
12. Hon. Jones Mlolwa, MP
13. Hon. Elijah Lagat, MP
14. Hon. Mwanyoha Hassan Mohamed, MP
15. Hon. Winnie Karimi Njuguna, MP
16. Hon. Rose Museo Mumo, MP
17. Hon. John Omondi Ogutu, MP

APOLOGIES

1. Hon. Tiyah Galgalo Ali, MP- Vice Chairperson
2. Hon. Gladys Wanga, MP
3. Hon. Abdinoor Mohamed Ali, MP
4. Hon. John O. Kobado, MP
5. Hon. John Ndirangu Kariuki, MP
6. Hon. Patrick Wangamati, MP
7. Hon. Elijah Mosomi Moindi, MP
8. Hon. Regina Nyeris, MP
9. Hon. Silvanice Onyango Osele, MP
10. Hon. Ferdinand Waititu, MP
11. Hon. Aisha Jumwa Karissa, MP
12. Hon. Janet Teyiaa, MP

## IN ATTENDANCE

### NATIONAL ASSEMBLY SECRETARIAT

- |                               |   |                             |
|-------------------------------|---|-----------------------------|
| 1. Mr. Erick Nyambati         | - | Third Clerk Assistant       |
| 2. Mr. Abdirahman Gele Hassan | - | Third Clerk Assistant       |
| 3. Ms. Nuri Kitel Nataan      | - | Third Clerk Assistant       |
| 4. Mr. Sydney Okumu           | - | Legal Counsel II            |
| 5. Ms. Lorna Okatch           | - | Research Officer III        |
| 6. Ms. Deborah Mupusi         | - | Media Relations Officer III |
| 7. Mr. Nickson Mutai          | - | Audio Officer               |
| 8. Ms. Peris Kaburi           | - | Serjeant-at-arms            |

### MINUTE/DC.LSW/2017/51

### PRELIMINARIES

The meeting was called to order at 10:25 a.m. followed by a word of prayer from the Chairperson.

### MINUTE/DC-LSW/2017/52

### CONFIRMATION OF MINUTES

Confirmation of the minutes of the previous sittings was deferred to the next sitting.

### MINUTE/DC.LSW/2017/53

### CONSIDERATION OF THE REPORT ON THE BETTING, LOTTERIES AND GAMING (AMENDMENTS) BILL, 2016

The Committee considered the Report on the Betting, Lotteries and Gaming (Amendment) Bill, 2016 and came up with the following observations and recommendations.

### **OBSERVATIONS**

The Committee observed that—

1. The Bill seeks to provide a framework for;
  - i. regulating and controlling betting, lotteries and gaming activities, promote the development of a responsible gaming industry,
  - ii. protect young and excluded persons from negative effects of betting, lotteries and gaming activities,
  - iii. protect the society against the over-simulation of the demand for betting, lotteries and gaming activities in the society and
  - iv. prevent betting, lotteries and gaming from being a source of crime and from being used in money laundering activities.

However, the Bill as drafted has several clauses that have the effect of 'killing' the online betting, lotteries and gaming industry. These include:

- a) abolishing online betting, lotteries and gaming activities (clauses 55F, 55H, 55K)

- b) excess tax levels and statutory commitments leaving operators with only 5% of net revenues to cover operation costs (clause 55J)
2. The proposed Bill has unconstitutional clauses for example clause 2 which defines a young person to be below twenty-five years of age) and clause 28A (5)&(6) that provide for the process of declaring an “excluded person” without affording the guarantees under the Fair Administrative Action Act.
  3. All stakeholders that appeared before the committee submitted that the current Betting Lotteries and Gaming Act required reforms save that the present proposal does not address the emerging issues and simply deals with challenges by outlawing online betting, lotteries and gaming activities.
  4. On taxation, the Kenya Revenue Authority submitted that the present tax levels should be retained since they are at par with other comparable jurisdictions but supported the introduction of a “winnings tax”.
  5. All stakeholders who appeared before the committee submitted that there was no justification on the penalties as proposed in the Bill. Indeed the stakeholders were of the opinion that the proposed penalties could “kill” the betting, lotteries and gaming industry.
  6. The Ministry of Interior and Co-ordination of National Government and the Betting Control and Licensing Board have come up with a proposed penalty regime which appeared to be more realistic to the Committee.
  7. There is a challenge of regulating foreign based online firms due to lack of proper legislation which the Bill addresses by out rightly outlawing online betting, lotteries and gaming.
  8. Restricting participation by excluding persons is unconstitutional in that it does not offer such a person a hearing before orders are made against them thereby violating the principle of fair administrative action.
  9. The Stakeholders agreed with the Bill in the formation of an Authority which should replace the existing Board. However, the committee observed that the membership of the Board comprises of civil servants (except for the chairman) making it incapable of meeting its operational mandate.
  10. Clauses 6 and 8 are not connected. Clause 8 seeks to delete offence of a person who makes a false statement in an application for a licence and realign the same with clause 6. However, a close reading of clause 6 discloses that it only outlines the powers of the Authority.
  11. The Bill proposes to limit the number of Casinos to five in each County without giving any justification. This proposal will present challenges in implementation especially in Counties where more than five casinos already exist for instance Nairobi and Mombasa.
  12. The Ministry of Interior and Co-ordination of National Government was not able to secure a further engagement as requested due to timeline constraints.
  13. Memoranda from the Ministry of Interior and Co-ordination of National Government, Kenya Revenue Authority, Betting Control and Licensing Board, Association of Gaming Operators (AGOK), Kenya Private Sector Alliance, Telecom Service Providers of Kenya (TESPOK), Kenya Bankers Association, Media Owners Association and sports.

federations submitted that the Bill should be rejected to give room for further engagement with stakeholders to enable enactment of a new legislation that will properly address emerging issues in the industry.

14. The Committee operated under constrained timelines and was not able to have meetings with various key stakeholders including the National Treasury, Communications Authority of Kenya, Anti-Money Laundering Board and groups representing the consumers of betting, lotteries and gaming services.
15. Clause 30 of the Bill outlaws public lotteries for charitable purposes without any justification. Should the Bill be passed in its present form there will be no online betting, lotteries and gaming industry to be regulated as the proposals outlaw charitable lotteries and tax the industry out any realm of profitability. Organizations like Kenya Charity Sweepstakes will therefore close and there will be ban effected on such lotteries held during funds drives.
16. The principle objectives of the Bill are not supported by the proposals contained therein.

#### RECOMMENDATION

In view of the issues raised from the observations, the numerous stakeholders required to be engaged and given the fact that to address the issues raised by the stakeholders effectively means amending at least three quarters of the Bill, the Committee recommends that—

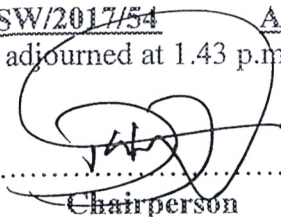
1. the sponsor withdraws the Bill, or
2. the Bill be rejected,

to permit wider stakeholder consultations to allow for introduction of a comprehensive Bill to replace the current Betting, Lotteries and Gaming Act.

MINUTE/DC.LSW/2017/54 ADJOURNMENT

The meeting was adjourned at 1.43 p.m.

Signature.....



Chairperson

Date.....

01-03-2017

MINUTES OF THE 11<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LABOUR AND SOCIAL WELFARE HELD ON MONDAY, 27<sup>TH</sup> FEBRUARY 2017 AT  
WHITESANDS HOTEL IN MOMBASA AT 3.00 P.M.

PRESENT

1. Hon. David Were, MP- Chairperson
2. Hon. Janet Nangabo, MP
3. Hon. Peris Tobiko, MP
4. Hon. Dan Wanyama, MP
5. Hon. Kinoti Gatobu, MP
6. Hon. Cornelly Serem, MP
7. Hon. Wesley Korir, MP
8. Hon. James Onyango K'oyoo, MP
9. Hon. John Serut, MP
10. Hon. Samuel Gichigi, MP
11. Hon. Jones Mlolwa, MP
12. Hon. Elijah Lagat, MP
13. Hon. Mwanyoha Hassan Mohamed, MP
14. Hon. Winnie Karimi Njuguna, MP
15. Hon. Rose Museo Mumo, MP

APOLOGIES

1. Hon. Tiyah Galgalo Ali, MP- Vice Chairperson
2. Hon. Gladys Wanga, MP
3. Hon. Abdinoor Mohamed Ali, MP
4. Hon. John O. Kobado, MP
5. Hon. John Ndirangu Kariuki, MP
6. Hon. Patrick Wangamati, MP
7. Hon. Elijah Mosomi Moindi, MP
8. Hon. Regina Nyeris, MP
9. Hon. Silvance Onyango Osele, MP
10. Hon. Ferdinand Waititu, MP
11. Hon. Aisha Jumwa Karissa, MP
12. Hon. Janet Teyiaa, MP
13. Hon. John Omondi Ogutu, MP
14. Hon. Irshad Sumra, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                               |   |                             |
|-------------------------------|---|-----------------------------|
| 1. Mr. Erick Nyambati         | - | Third Clerk Assistant       |
| 2. Mr. Abdirahman Gele Hassan | - | Third Clerk Assistant       |
| 3. Ms. Nuri Kitel Nataan      | - | Third Clerk Assistant       |
| 4. Mr. Sydney Okumu           | - | Legal Counsel II            |
| 5. Ms. Lorna Okatch           | - | Research Officer III        |
| 6. Ms. Deborah Mupusi         | - | Media Relations Officer III |
| 7. Mr. Nickson Mutai          | - | Audio Officer               |
| 8. Ms. Peris Kaburi           | - | Serjeant-at-arms            |

**MINUTE/DC.LSW/2017/55**

**PRELIMINARIES**

The meeting was called to order at 3:20 p.m. followed by a word of prayer from the Chairperson.

**MINUTE/DC.LSW/2017/56**

**CONFIRMATION OF MINUTES**

The Minutes of the 10<sup>th</sup> Sitting held on Monday 27<sup>th</sup> February 2017 was confirmed as a true record of the proceedings having proposed and seconded by Hon. Dan Wanyama, MP and Hon. Samuel Gichigi, MP respectively.

**MINUTE/DC.LSW/2017/57**

**ADITION OF THE REPORT ON THE  
BETTING, LOTTERIES AND GAMING  
(AMENDMENT) BILL, 2016**

The Committee Members present unanimously agreed and adopted the Report on the Betting, Lotteries and Gaming (Amendment) Bill, 2016.

**MINUTE/DC.LSW/2017/58**

**ADJOURNMENT**

The meeting was adjourned at 5.43 p.m.

Signature.....

  
Chairperson

Date.....

01-03-2017

## ANNEX 4- ADOPTION LIST

The National Assembly



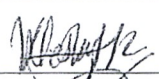
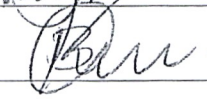
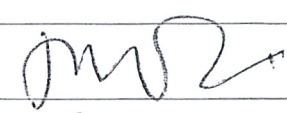
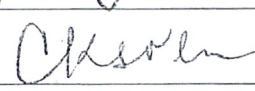
11<sup>th</sup> Parliament-5<sup>th</sup> Session-2017

Departmental Committee-J: Labour and Social Welfare  
MEMBERS ATTENDANCE LIST

AGENDA: ADOPTION OF THE REPORT ON BETTING, LOTTERIES & GAMING (AMENDMENT) BILL  
VENUE: INHITESANDS HOTEL - MOMBASA DATE: 27/2/2017

| NO. | NAME                                      | SIGNATURE |
|-----|---|-----------|
| 1.  | Hon. David Were (Chairperson), MP         |           |
| 2.  | Hon. Tiyah Galgalo (Vice Chairperson), MP |           |
| 3.  | Hon. John Serut, MP                       |           |
| 4.  | Hon. Samuel Gichigi, MP                   |           |
| 5.  | Hon. Dan Wanyama, MP                      |           |
| 6.  | Hon. Mwanyoha Mohammed, MP                |           |
| 7.  | Hon. Janet Nangabo, MP                    |           |
| 8.  | Hon. Mlolwa Jones Mwangogo, MP            |           |
| 9.  | Hon. Peris Tobiko, MP                     |           |
| 10. | Hon. Abdinoor Mohamed Ali, MP             |           |
| 11. | Hon. Rose Museo Mumo, MP                  |           |
| 12. | Hon. Winnie Karimi Njuguna, MP            |           |
| 13. | Hon. Elijah Lagat, MP                     |           |
| 14. | Hon. Nyasuna Gladys Wanga, MP             |           |



|     |                                  |   |
|-----|----------------------------------|---|
| 15. | Hon. Wesley Korir, MP            |    |
| 16. | Hon. Kinoti Gatobu, MP           |    |
| 17. | Hon. Elijah Mosomi Moindi, MP    |   |
| 18. | Hon. Janet Teyiaa, MP            |   |
| 19. | Hon. Regina Nyeris Changorok, MP |   |
| 20. | Hon. Omondi John Ogutu, MP       |   |
| 21. | Hon. John Owuor O. Kobado, MP    |   |
| 22. | Hon. Patrick Wangamati, MP       |   |
| 23. | Hon. John Ndirangu Kariuki, MP   |   |
| 24. | Hon. James Onyango K'Oyoo, MP    |   |
| 25. | Hon. Cornelly Serem, MP          |  |
| 26. | Hon. Silvance Onyango Osele, MP  |   |
| 27. | Hon. Aisha Jumwa Karisa, MP      |   |
| 28. | Hon. Ferdinand Waititu, MP       |   |
| 29. | Hon. irshad sumra, mp            |   |

Erick Nyambati-Committee Clerk

For: CLERK OF THE NATIONAL ASSEMBLY