

## **CURBING ILLICIT BREWS IN KENYA**

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**Abstract:** *Illicit brew in Kenya has existed for over a century. There has been several legislations in place meant to curb its production, consumption and sale, due to its negative impacts among them, death and addiction, dating back to the pre-independence Kenya. The aim of this paper is to examine the chronological legislations of alcohol and its effects in terms of illicit brews control since the 1900s to date. The paper utilized secondary data from journals and research reports. The Alcohol control Act 2010, is a viable legislation that can absolutely eradicate illicit brews if properly implemented, though, previous legislations received minimal impact.*

**Keywords:** legislations, illicit brew, Act, policies.

**Research Area:** Humanities

**Paper Type:** Research Paper

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### **1. INTRODUCTION**

For many centuries, evidence has shown that alcoholic beverages have been known and used in human societies (WHO, 2002; Birech et al, 2013). Evidenced by numerous biblical examples and ancient myths on alcohol, Freeman and Perry (2006) have argued that, alcohol since antiquity has been part of human nature. Wine, beer, cedar, mead and other fermented beverages have been presented in nearly all human societies for thousands of years, basically consumed soon after brewing locally, and were rarely traded (WHO, 2002).

Alcohol was used for several reasons among different societies, among them, food, medicine, as mood changers and intoxicants. Other societies used alcohol for religious and cultural significance (WHO, 2002). In modern time, alcohol holds positive uses. The Roman Catholics use wine for sacraments, the traditional surgeons use as anesthesia during surgeries, and it's an important part of cultural ceremonies like circumcisions, peace talks and weddings.

Despite its positive uses in societies, alcohol has become the most abused substance in the world. There has therefore been an effort to curb the problem of alcohol through standardization, licensing and control of consumption. This led to formalization of some alcohol and illegalization of others based on the conditions of its manufacture, alcohol content, packaging, and licensing requirements. According to the WHO (2011), prohibition of illicit brews dates back to the years between 1919 and 1933 due to the negative implications that accompanied its consumption.

African history shows an existence of alcohol, its negative impacts and attempts to control it. Documentations, based on local oral history and archeology as explained by Freeman and Perry (2006) and Birech et al (2013) have suggested that consumption is part of African culture, rituals, tradition, and customs since time immemorial, though, in these societies, abuse of alcohol was firmly controlled through strictly put up social structures that defined who to take alcohol, when and why.

In sub-Saharan Africa, there was a traditional pattern of drinking based around ceremonies and events (Andrew, 2015). There was a change in alcohol consumption when colonization took shape, and the effects of westernization and recent globalization began to take root. The impact was an undermining of the traditional African culture, hence the loss of the alcohol regulation mechanisms that was pegged on cultural norms and practices (Musungu and Kosgei, 2015). This has been supported by the finding presented by the WHO (2002) that, the advent of governments by the colonial masters eroded local rules and regulations by providing legal frameworks. The legal frameworks introduced unrecorded alcohol (illicit brews) into limelight. According to WHO (2002), spirits were commonly used in the 16<sup>th</sup> century. With colonization, through the five hundred years, it spread to many parts of the world, hence, commercialization and taxation. The unrecorded, local alcoholic beverages were not regulated, monitored nor taxed, qualifying as illicit brews. Regardless of the times and place the implications were negative and evident. The colonial masters put up efforts to curb illicit since the available legal brews at the time were expensive for the masses who were poor and in some countries, it was a preserve of the colonial masters.

In Kenya, every society has its own traditional beverages. These are the distilled spirits (changaa), busaa, muratina, mnazi and miti ni dawa (Musungu and Kosgei, 2015). Alcohol abuse was first documented in 1902, when Alcoholism was experienced in former Fort Hall District, current day, Murang'a County, Central Kenya (Mututho, 2014). Abuse of alcohol was mainly due to frustrations by the colonial government, change of African cultural drinking patterns due to urbanization, industrialization and westernization. The traditional societies had lost control of their local brew drinking patterns as societies had been dismantled and changed. The WHO (2002) indicates that, alcohol use in the colonial countries was cut off to ensure the availability of manpower to the colonial masters. The colonial government came up with legislations to control the manufacture and consumption of illicit brews, and appointed local administrators, specifically chiefs to execute the passed alcohol legislations. Kenyans were also prohibited from accessing the legal bottled beer taken by their colonial masters.

This paper, examines the role of Kenyan government in the fight against illicit brews since colonial times to date, and the effects experienced. It endeavors to fill the gaps by identifying the efforts in place against alcohol abuse and illicit brews and the reasons why, despite efforts in the entire history of Kenyan independence, the presence of an operation policy on alcohol abuse, and government enforcing agencies, illicit brew is still in existence.

## **2. METHODOLOGY**

This research relied entirely on secondary data on the efforts to curb illicit brews in Kenya. It involved the utilization of previously collected data, journals, publications, research reports and legal policies in the country dating back to pre-independent Kenya, under the rule of British colonial masters.

## **3. EFFORTS TO CURB ILLICIT BREWS IN KENYA: HISTORICAL CONTEXT**

The desire to control alcohol production is not a new concept. In America, illicit brews was prohibited in the years 1919 to 1933 due to its negative impacts (Kihuria, 2014). The prohibition enhanced the growth of a massive underground illicit/unstandardized alcohol production, sale and consumption. In African traditional societies, there have been strong social

control structures that provide effective control on the use of alcohol (Musungu and Kosgei, 2015).

Alcohol in Africa have been used especially during weddings and initiation ceremonies, and settling of disputes (Andrew, 2015). Most traditional societies closely regulated it. According to Gathara (2015), drinking was an exclusive preserve for male elders and the youth engaging in drinking in the traditional culture were viewed as a threat to the existing social structures, which gave utmost respect to the elders, specifically male.

In Kenya, alcohol abuse is not new, The desire to control its production and consumption existed in pre-colonial times as depicted by Gathara (2015). Each society, depending on the event, had strict regulations, majorly based on inter-generational societal values on eligibility for its consumption. This therefore indicates that, efforts to control alcohol abuse was there in pre-colonial Kenya. The colonial masters were more concerned with labor supply that could be lost if their subjects indulged in alcohol. Their firms could suffer losses.

The efforts of the British to control alcohol dates back to the 1890's Act of Brussels. The act forbade the export of spirits to East Africa (Kenduiwa, 2012). Amber (2003), explains that, the colonial masters had complained about the dangers posed by endemic drunkenness in rural districts under their authority in central Kenya. The response to the threat was the attempt to suppress the production, sale and consumption of local beer in some areas. The main reason being the white settlers concerns on labor. They feared their firms could suffer losses if the local population indulged in alcoholic drinking.

The colonial authority banned the production and consumption of traditional beers dubbed illicit brews except during ceremonial times to control their workforce. (WHO, 2002, Kihuria, 2014). Bottled beer was then a reserve of the white masters (Kihuria, 2014). This led to coming up of illegal dens to brew, distribute and sell traditional alcohol. Although, according to Lausen et al (2009), alcohol was traditionally brewed by women for men, but not for sale. Alcohol abuse in Kenya is attributed to colonialism and industrial revolution, which dismantled the traditional African structures, giving way to its abuse. According to Birech et al (2013), the changes led to people crowding in slums, working in factories under deplorable conditions, hungry, diseased and without any hope of bettering their situation, escaped from reality through alcohol.

There were no written laws in Kenya during the colonial times. The British settlers formed the legislative council to domesticate British colonial legislation. Included was the alcohol consumption to local colony needs (Mututho, 2014). The new legislations absolutely restricted the brewing and consumption of traditional brews, including those meant for ceremonial purposes. This, led to an underground illegal alcohol business.

### *3.1 The Changaa prohibition Act of 1903*

This was the first legal regulation against illicit brews in Kenya. On 17<sup>th</sup> August 1903, the governor Sir James Hayes Sadler and his legislative council, created an alcohol control regulation, under the intoxication bill. The bill bore the Changaa (local spirit) Prohibition Act and the African Drinks Control Act, which was enacted to control indigenous alcohol production and consumption (Mututho, 2014). These traditional brews were generally called changaa, despite the differences. Amber (2014) and Gathara (2015) both argue that the British

administration, considered drunkenness as a nuisance, banned all drinking bouts, and restricted access to all the essential ingredients like sugar for manufacture of local brews. The first attempt to create a legislation to control the manufacture, sale and consumption of locally produced alcohol in Kenya was the year 1907.

The changaa prohibition Act was operational. The major executors were the local chiefs appointed by the British colonial masters. The tough regulations to prohibit consumption of illicit brews was not a success. The locals came up with their own means to manufacture and sell the brew. During the state of emergency in 1952, Kihuria (2014), stated that, traditional beers for ceremonial purposes was withdrawn, leaving Kenyans without any alcoholic beverages to drink. Clandestine of brewing and taking of the drinks sprouted as a result. The situation encouraged production of cheap, and lethal alcohol to meet the populations frustrations, although, there was an existence of the Chiefs Act that outlawed the manufacture, sale and consumption of illicit brews.

When Kenya attained independence, colonial laws were adopted (Gathara, 2015) the ban on illicit brew was relaxed, the brewing of changaa flourished although it was not legalized. The then Provincial Administration and the police would invade the brewers and extort bribes. Brewers stumbled on lucrative non-traditional illicit brews that took shorter time to make, to maximize on profit (Kihuria, 2014). The local beverages was adulterated by adding toxic chemicals to enhance potency. Formalin, battery acid and jet fuel are added to the local brews. Kelly et al (2015) also argued that, Feces, industrial discharge, fertilizer, decomposing animals and embalming fluid to the final product are some of the additives used to adulterate the local brews. This practice has been reported to be the cause of changaa poisoning, hence dire health consequences experienced in the country. This is evidenced by the reported death related cases based on methanol poisoning (Mmbali, 2016).

### *3.2 The Changaa Prohibition Act 1980:*

The changaa prohibition Act was passed in 1980 to combat methanol poisoning. It banned the manufacture, sale, supply, consumption and possession of changaa. The 1978 boom in the changaa industry was a motivating factor. It accounted for 35.6% of all alcohol consumption in the country and was responsible for numerous deaths and blindness. Changaa according to the Act meant almost any traditional drink or spirit (Kelly et al, 2015). This legislation provided that no person shall manufacture, sell, supply, consume or be in possession of Changaa. But the problem of illicit brew was present all times, mostly brewed in unmanned rural areas, if manned, bribery was rampant, or the executing officers were the customers, they themselves consumed changaa.

An administrative officer or a police officer in the Act may enter upon and search any premises at any time when he has reasonable grounds to believe that chang'aa is being manufactured, stored, sold, supplied or consumed thereon. The Act allowed them to arrest the occupier of the premises, take possession of any chang'aa and any implement, apparatus or utensil used for distillation, or designed or adapted therefore which is found thereon (Kenya law reports,2010).Although this legislation was practiced, most of the time, compromise and corruption ruled.

In case of violation of this Act, hefty fines were imposed, ranging from a fine of Ksh. 10,000 or two years in jail or both. All changaa equipment's discovered during raids were destroyed. Despite this legislation, changaa remained the culprit cause of many deaths and cases of blindness. In the year 2000, changaa, killed 113 people, and another 390 hospitalized

(Kelly et al, 2015). This became another avenue for the government to react to illicit brews, despite its pre-active legislation in place.

### *3.3 Alcoholic Drinks Control Act 2010:*

It's famously known as Muthuto law, named after the Member of Parliament who sponsored the bill to parliament. It was signed into law on 13<sup>th</sup> August 2010. This Act was a major legislation that took over the control of intoxication bill in 1903, a law that was in operation for one hundred and three years in the country. What followed the legislation for over the century was makeshift relations on alcohol control (Mututho, 2014).

The Alcoholic Drinks Control Act, 2010, as explained by kenduiwa (2012), come into operation on 22nd November, 2010 repealing the Chang'aa Prohibition Act (Cap 70) and the Liquor Licensing Act (Cap 121). It aimed at controlling the wide spread violence associated with alcohol, addressing poverty driven by negative impact of alcohol, and serious health related problems (Mututho, 2014). The Act was aimed at licensing regulations, promotion and advertisement regulations, quality control regulation and treatment and rehabilitation regulations (Mututho, 2014). The law provided for the law control of production, manufacture, sale, labeling, promotion, sponsorship and consumption of alcoholic drinks. This was to ensure that the health of individuals is taken care of, protect the consumers of alcoholic drinks from misleading and deceptive inducements (Kenduiwa, 2012, Kenya Law Reports, 2010).

The Act also aimed at protecting the health of persons under the age of 18 years, information and education of the public on health effects of alcohol abuse, adoption and implementing measures to eliminate illicit trade, promoting research and dissemination of relevant information, labeling all alcoholic drinks to differentiate between sales for local consumption and for export were outlined. Failure to comply with these regulation would lead to arrests, fines and jail terms. Selling an adulterated drink or a non-alcoholic drink which is adulterated with alcohol is outlawed and attracts hefty fines (Kenduiwa, 2012; Kenya Law Reports, 2010). The timing hours of opening and closing bars was regulated as well as the proximity to schools that the act addressed with the aim of ensuring that alcohol was as far as possible especially to those under the age of 18. The Alcohol Control Act 2010 legislations were successful in curbing illicit brews in Kenya. But there is still evident alcohol abuse, rampant illicit brews across the country, six years after it was signed into law. According to Musungu and Kosgei (2015), some unscrupulous Kenyans began adulterating local and surrogate alcoholic beverages by placing them with chemicals. Deaths based on alcohol have claimed thousands of lives.

## **4. EFFECTIVENESS OF THE CONTROL LAWS**

Various report show that, despite the existence of these legislations, illicit brews is still rife in the country and alcohol related deaths are on the rise. According to Musungu and Kosgei (2015), in the years 2010 to 2015 alone 19,098 Kenyans died due to alcohol related circumstances. This is an extreme trend especially with strict policies in place.

The multiple restrictions on the manufacture sale and distribution of alcohol have not deterred much of the illicit brews. Research shows that the percentage of changaa consumers according to Kelly et al (2015) has risen to 4.25 % from 3.8 percent. This leads to a questioning of the current functioning of alcohol policies. Underage school going children are reported to indulge in drinking and massive volumes are still napped during raids.

Although there has been successful operations to shut down illegal changaa breweries, most police officers have indicated that they require armed security to conduct any serious raid (Kelly et al., 2015). Despite having the information on illicit brews, the minimal number of officers in their stations hinders an absolute commitment to executing the policy on alcohol. Little numbers even with arms could lead to serious consequences from brewers and their consumers.

The devolution of liquor licensing control (Constitution of Kenya, 2010), is a good effort towards encouraging citizen participation in the policy issues, and encouraging decentralization. The many rules and regulations as argued by Kelly et al. (2015) legal standards are too high for changaa brewers to meet. Kenya Revenue Authority, health, zoning approval and a cost of about Ksh. 40 000 to legalize their brewing, is almost impossible for a local brewer.

The transition of the function to county government also left a loophole. As stated by Mututho (2014) most county governments see liquor licensing as an avenue for collecting additional revenue. This countered earlier efforts in reducing the number of alcohol outlets in the country. In some counties there are places that have more bars than schools. This usually drags down the efforts made by government and discourages the enforcement officers in the fight of the alcohol problem.

Since signing into a bill the Alcohol Drinks Control Act 2010 there has been more than 20 on-going court cases in relation to implementation of the Act (Mututho, 2014). This is a form of resistance from the alcohol industry managers, who view the regulation as negative move by the government to curtail their business. The alcohol policies are objective and its full implementation would bring sanity to already degrading societies and restore the countries youth who are lost in both licit alcohol and illicit brew dens.as indicated by Mututho (2014). Out of 42 million Kenyans, 13. 6% consume alcohol, 5.8% abuse alcohol and 5.5% are dependent on alcohol. This is a big number to control. It adds up to the trouble met by both administrative officers and health officers' in an effort to control illicit brews and rehabilitation.

## **5. CONCLUSION**

Legislations on alcohol abuse in Kenya are viable. If they are fully implemented, the objectives can be met within very short time. However, the high poverty level, coupled with high prices of standardized alcohol leave the poor masses with the option of cheap and easily available illicit brews that mostly goes on with little administrative officers and police presence. Even with the knowledge of local administrators the implementing officers usually have conflict of interest in the lucrative business.

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