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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE

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REPORT ON THE CONSIDERATION OF THE GAMBLING CONTROL BILL (NATIONAL
ASSEMBLY BILL NO. 70 OF 2023)

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS AND ACRONYMS.....	3
ANNEXURES	4
CHAIRPERSON'S FOREWORD.....	5
CHAPTER ONE.....	7
1.0 PREFACE	7
1.1 Establishment of the Committee.....	7
1.2 Mandate of the Committee.....	7
1.3 Committee Membership	8
1.4 Committee Secretariat	9
CHAPTER TWO.....	10
2.0 OVERVIEW OF THE GAMBLING CONTROL BILL (NATIONAL ASSEMBLY BILL NO. 70 OF 2023)	10
2.1 Background.....	10
2.2 Situational Analysis.....	10
2.3 Comparative Analysis.....	11
2.3.1 United Kingdom	11
2.3.2 South Africa	13
2.4 Summary of Legal Provisions.....	15
CHAPTER THREE	21
3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL	21
3.1 Legal Framework Public Participation	21
3.2 Memoranda Received on the Gambling Control Bill, 2023	21
3.2.1 Taskforce on the Establishment of the National Lottery	22
3.2.2 Ministry of Youth Affairs, Creative Economy and Sports	23
3.2.4 Kenya Revenue Authority	26
3.2.5 Commission on Revenue Allocation	26
3.2.6 Office of the Data Protection Commissioner.....	28
3.2.7 National Gender and Equality Commission	29
3.2.9 The Law Society of Kenya	32
3.2.9 Financial Reporting Centre.....	33
3.2.10 County Assemblies Forum	36
3.2.11 Association of Gaming Operators Kenya.....	36
3.2.12 Media Owners Association.....	49
3.2.13 Gaming Awareness Society of Kenya	52
CHAPTER FOUR.....	53
4.0 COMMITTEE OBSERVATIONS	53
CHAPTER FIVE.....	54
5.0 COMMITTEE RECOMMENDATION.....	54
CHAPTER SIX.....	55
SCHEDULE OF PROPOSED AMENDMENTS.....	55

LIST OF ABBREVIATIONS AND ACRONYMS

AG	– Attorney General
AGOK	– Association of Gaming Operations Kenya
AML	– Anti-Money Laundering
AU	– African Union
BCLB	– Betting Control and Licensing Board
BL&GA	– Betting License and Gaming Act
CAF	– County Assemblies Forum
CEO	– Chief Executive Officer
CFT	– Counter Financing of Terrorism
CIE	– Complaints, Investigations and Enforcement
COG	– Council of Governors
CoK	– Constitution of Kenya
CPA	– Certified Public Accountant
CPF	– Counter Proliferation Financing
CRA	– Commission on Revenue Allocation
CS	– Cabinet Secretary
CSR	– Corporate Social Responsibility
DNFBPs	– Designated Non-Financial Businesses and Professions
DPA	– Data Protection Act
FATF	– Financial Action Task Force
FRC	– Financial Reporting Centre
GASK	– Gaming Awareness Society of Kenya
GDPR	– General Data Protection Regulation
GGR	– Gross Gambling Revenue
KRA	– Kenya Revenue Authority
ML	– Money Laundering
NGEC	– National Gender and Equality Commission
NGR	– Net Gambling Revenue
NLB	– National Lottery Board
NLF	– National Lottery Fund
ODM	– Orange Democratic Movement
ODPC	– Office of Data Protection Commission
PAA	– Pamoja African Alliance
PF	– Proliferation Financing
PFM	– Public Finance Management
POCAMLA	– Proceeds of Crime Anti-Money Laundering Act
PS	– Principle Secretary
PWDs	– Persons with Disabilities
SASDF	– Sports, Arts and Social Development Fund
UDA	– United Democratic Alliance
WDP-K	– Wiper Democratic Party Kenya

ANNEXURES

Annexure 1: Adoption Schedule

Annexure 2: Minutes

Annexure 3: Advertisement inviting the public to submit memoranda on the Bill

Annexure 4: Letter inviting stakeholders for meetings with the Committee

Annexure 5: Memoranda by Stakeholders

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committees on Sports and Culture on its consideration of the Gambling Control Bill (*National Assembly Bill No. 70 of 2023*) which was published on 31st October 2023.

The Bill went through the First Reading on 8th November 2023 and was thereafter committed to the Departmental Committee on Sports and Culture for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill has one hundred and six (126) Clauses and seeks to repeal and replace the Betting, Lotteries and Gaming Act (Cap 131), provide for a legislative framework for the regulation of gambling in Kenya, and incorporate safe gambling principles in gambling sector. Further, the Bill seeks to regulate betting, casinos and other forms of gambling including the authorization of prize competitions, public lotteries and media promotions.

The Bill concerns County Governments in terms of Article 110 (1) (a) of the Constitution and the Fourth Schedule to the Constitution.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on Friday 10th November, 2023 inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Clerk of the National Assembly vide letter REF: NA/DDC/S&C/2023/078 and REF: NA/DDC/S&C/2023/079 dated 15th November 2023 for a stakeholders' engagement meetings on the Bill which were held at Hilton Garden Inn Hotel on 21st to 22nd November 2023 where stakeholders submitted both written and oral presentations to the Committee.

The Betting Control and Licensing Board, the State Department for Parliamentary Affairs, Ministry of Youth Affairs, Creative Economy and Sports, State Law Office, Kenya Law Reform Commission, Kenya Revenue Authority, Commission on Revenue Allocation, Office of the Data Protection Commissioner, Law Society of Kenya, National Gender and Equality Commission, Financial Reporting Centre, Council of Governors, County Assemblies Forum, Association of Gaming Operators Kenya, Media Owners Association, and Gaming Awareness Society of Kenya gave their views on the Bill which the Committee considered in the preparation of this report.

While considering the Bill, the Committee observed that while the Bill is seeking to establish self-exclusion mechanisms that will enable licensees to exclude persons with gambling addiction from all gambling establishments and all controlled games including online gambling or any other gambling activities or privileges. The Gambling Control Bill will establish the Gambling Regulatory Authority. However, all rights duties, obligations, assets and liabilities from the Betting, Control and Licensing Board shall be transferred to the Authority.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank the sponsor of the Bill, Hon. Kimani Ichung'wah, MP, Leader of the Majority Party and all stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honourable

Members of the Committee and Secretariat who made useful contributions towards consideration of the Bill and production of this report.

On behalf of the Departmental Committee on Sports and Culture and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Gambling Control Bill (*National Assembly Bill No. 70 of 2023*)

It is my pleasure to report that the Committee has considered the Gambling Control Bill (*National Assembly Bill No. 70 of 2023*) and has the honour to report back to the National Assembly with the recommendation that the Bill be **approved with amendments as reported by the Committee.**

Hon. Daniel Wanyama Sitati, M.P.
Chairperson, Departmental Committee on Sports and Culture

CHAPTER ONE

1.0 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Sports and Culture is one of the twenty (20) Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
 - iii. *On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. ***To study and review all the legislation referred to it;***
 - v. *To study, access and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *To 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;*
 - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);*
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider:-
 - a) Sports;
 - b) Culture;
 - c) Language;
 - d) Creative Economy including promotion of music, arts, film promotion and development;
 - e) National Heritage;
 - f) Betting and Lotteries.
3. In executing its mandate, the Committee oversees the following Ministries/Departments:
 - a) Ministry of Youth Affairs, Creative Economy and Sports; and
 - b) Ministry of Gender, Culture, the Arts & Heritage.

1.3 Committee Membership

4. The Departmental Committee on Sports and Culture was constituted by the House on 27th October 2022 and comprises of the following members:

Chairperson

Hon. Daniel Wanyama Sitati, MP
Webuye West Constituency

UDA Party

Vice-Chairperson

Hon. James Githua Wamacukuru, MP
Kabete Constituency

UDA Party

Members

Hon. Naomi Jillo Waqo, MP
Marsabit County

UDA Party

Hon. Mary Emaase Otucho, MP
Teso South Constituency

UDA Party

Hon. Stephen Mutinda Mule, MP
Matungulu Constituency

WDM-K Party

Hon. Chege Njuguna, MP
Kandara Constituency

UDA Party

Hon. Catherine Nakhabi Omanyoo, MP
Busia County

ODM Party

Hon. Paul Ekwom Nabuin, MP
Turkana North Constituency

ODM Party

Hon. BSP. (EM) Dr. Jackson Kipkemai
Kosgei, MP

Nominated

UDA Party

Hon. Samuel Gonzi Rai, MP
Kinango Constituency

PAA Party

Hon. Charles Ngusya Nguna, MP
Mwingi West Constituency

WDM –K Party

Hon. Janet Jepkemboi Sitienei, MP
Turbo Constituency

UDA Party

Hon. Richard Kipkemai Yegon, MP
Bomet East Constituency

UDA Party

Hon. Caroli Omondi, MP
Suba South Constituency

ODM Party

Hon. Robert Ngui Basil, MP
Yatta Constituency

WDM-K Party

1.4 Committee Secretariat

5. The Committee is facilitated by the following secretariat:

Mr. John Mugoma
Clerk Assistant I/Head of Secretariat

Ms Mary Kinyunye
Clerk Assistant III

Mr. Vitus Owino
Research Officer II

Ms. Christine Odhiambo
Senior Legal Counsel

Mr. Wilson Mwangi
Fiscal Analyst III

Mr. Moses Omoit
Audio Officer III

Mr. Isaac Nabiswa
Legal Counsel II

Mr. Stephen Otieno
Assistant Serjeant-At-Arms

Mr. Calvin Njoroge
Media Relations Officer III

Mr. Daniel Ominde
Research Officer III

CHAPTER TWO

2.0 OVERVIEW OF THE GAMBLING CONTROL BILL (NATIONAL ASSEMBLY BILL NO. 70 OF 2023)

2.1 Background

6. The Bill which was sponsored by the Majority Leader, Hon. Kimani Ichung'wah, MGH, MP, was published on Monday 31st October 2023 and read for the first time in the House on Wednesday 8th November, 2023. It was thereafter committed to the Departmental Committee on Sport and Culture.

2.2 Situational Analysis

7. Kenya's gambling history dates back to traditional games played by local tribes before British colonialists introduced casino games and horse racing. Gambling, initially banned, was decriminalized in 1952. The Betting, Lotteries, and Gaming Act, 1966, currently governs the sector but has struggled to keep up with industry evolution, particularly the impact of the internet and mobile phones.
8. Gambling is deeply rooted in Kenyan culture, fuelled by passion for sports and gaming, especially through online platforms. The percentage of adults engaging in gambling increased from 1.9% to 13.9% between 2019 and 2021. Gambling is considered by many Kenyan adults as a source of income, particularly through mobile money channels. Indeed, unemployment and aspirations for a better future have contributed to the popularity of gambling in Kenya.
9. The gambling sector is a vital industry in Kenya, encompassing bookmakers, public lotteries, and public gaming. Bookmaking dominates the industry, followed by public gaming and lotteries. Despite generating over KShs 200 billion annually, the sector faces varied performance across segments. For instance, strict compliance and high taxation have seen decreased revenues among the bookmakers.
10. It is worth noting that, taxation varies across segments, with bookmakers paying 7.5% betting tax and 15% of Gross Gaming Revenue as withholding tax. Public lotteries and gaming also have specific tax structures. Late payments incur penalties and interest, and operators face additional license, compliance, and renewal fees.
11. Kenya's gambling sector growth, mirroring global trends, is driven by demographic factors, technological advances, increased product access, aggressive marketing, urbanization, unemployment, and global investments. However, the taxation approach, which varies across segments, has raised questions about economic optimization, attracting investment, creating quality jobs, and addressing sector negatives.
12. In many societies, gambling is seen as a problem characterized by disruptive and harmful impacts on an individual's health and well-being, including mental health issues, relationship difficulties, substantial financial losses, and, in extreme cases, crime or suicide. The severity and variety of harms vary among individuals and can be exacerbated by irresponsible conduct from gambling operators, such as encouraging excessive play. Harm from gambling extends beyond the gamblers themselves and can also affect friends, family, co-workers, and anyone connected to the individual engaging in gambling activities.
13. The regulation of gambling in Kenya is governed by the Betting, Lotteries and Gaming Act, Cap 131. This legislation outlines the control and licensing of betting and gaming premises, the imposition and

recovery of taxes related to betting and gaming, and the authorization of public lotteries. Supporting regulations include the Betting, Lotteries and Gaming Regulations (Remittance of Pool Betting Scheme Tax) Order, 1966; the Betting, Lotteries and Gaming Regulations; Betting, Gaming and Lotteries (Online Gaming) Regulations, 2019; and Legal Notice Number 81/2005 on the Authorization of the Executive Officer of the Board.

14. Section 3 of the Act establishes the Betting Control and Licensing Board (BCLB) to oversee gambling activities in Kenya. The Board comprises a chairperson appointed by the Cabinet Secretary, the Principal Secretary to the Treasury or their delegate, the Principal Secretary of the Ministry responsible for the police or their delegate, the Principal Secretary of the Ministry responsible for Betting, Lotteries and Gaming or their delegate, and up to five other members appointed by the Cabinet Secretary.
15. However, concerns arise regarding the lack of clarity on the functions of the head of the secretariat and the Secretary to the Board, potentially leading to a concentration of power and deviation from principles of good governance. The authority granted to the chairperson to unilaterally appoint officers raises the risk of abuse and conflicts with the principles of collective governance. For instance, section 4(3) of the Act allows the Board to authorize the chairperson to act on its behalf, potentially leading to power abuse and weakened controls.
16. The Act defines a game of chance to encompass both games of chance and skill combined, as well as pretended games of chance or those combining chance and skill, excluding athletic games or sports. It also defines gaming to involve playing a game of chance for winnings in money or money's worth. For a game to qualify as a game of chance under the Act, it must involve three elements: a player, consideration for money or money's worth, and an element of chance.
17. The legislative framework for regulating gaming activities is structured around three main objectives: establishing a licensing framework, implementing controls for specific gaming activities, and criminalizing certain conduct related to gaming. BCLB is required to supervise and inspect betting and gaming activities, oversee public lottery and prize competition draws, conduct spot checks on nationwide betting, lotteries, and gaming operations, and authorize amusement machines and pool tables.
18. Section 4(1) of the Act empowers BCLB to issue licenses and permits in accordance with the Act and its associated regulations. The issuance of a license or permit is contingent upon the Board's satisfaction that the applicant is a fit and proper person to hold such authorization and that the premises, if applicable, are suitable for the intended purpose.
19. The existing legal and institutional framework lacks responsiveness to contemporary challenges in the gambling sector. While county governments authorize select gambling activities, national oversight raises concern about organization, enforcement, and consumer protection. Attempts to develop a Gaming Policy and Gambling Bill were rejected by the National Assembly in 2019, emphasizing the need to avoid micromanaging county governments in these matters.

2.3 Comparative Analysis

2.3.1 United Kingdom

20. Approximately half of adults in the UK engage in gambling activities, involving paying to participate in games of chance with the opportunity to win monetary prizes. Various avenues, such as arcade games, online bingo, casinos, and sports betting, cater to diverse preferences within the gambling sphere. The UK's gambling industry generates approximately £3 billion annually in gambling duty.

21. The landscape of the gambling industry, like many sectors, undergoes changes influenced by technological and social advancements. Notably, the industry has expanded and become more accessible, experiencing a 57% real terms growth (equivalent to £4.1 billion) in licensed gambling over the past decade. This surge is primarily attributed to the substantial increase in licensed online and mobile gambling, a sector that required no UK licensing before November 2014 if operated from overseas.
22. In the UK, gambling encompasses activities such as gaming, betting, and participation in lotteries. Remote gambling refers to gambling conducted through remote communication channels, including the internet, telephone, television, radio, or other electronic technologies. The Gambling Act of 2005 specifies that providing facilities for gambling includes inviting others to gamble under one's arrangements, operating or administering gambling arrangements, or participating in the operation or administration of gambling by others. Additionally, providing facilities for gambling involves making remote communication facilities available, ensuring their adaptation or presentation encourages or highlights their potential for gambling use.
23. Gaming on the other hand, refers to engaging in a game of chance for a prize. Such games involve a combination of chance and skill, a chance element eliminable by exceptional skill, or a game presented as chance-based but not categorized as a sport. According to the Gambling Act, playing a game of chance occurs when an individual participates in it, regardless of the presence of other participants or computer-generated representations. Playing a game of chance for a prize involves acquiring a chance to win a prize, irrespective of the risk of losing something. In the context of gaming, a prize refers to monetary value, encompassing both prizes provided by organizers and money won through betting.
24. Betting involves making or accepting a bet on the outcome of various events, such as races, competitions, or processes, as well as the likelihood of events occurring or not, or the truth of statements. A betting intermediary is a person facilitating bets between others, and acting as such entails providing betting facilities.
25. The Gaming Act distinguishes between simple and complex lotteries. A simple lottery involves participants paying for a chance to win prizes allocated solely by chance to one or more members of a class. A complex lottery on the other hand, requires payment for participation and allocates prizes to a class through a series of processes, with the first process relying entirely on chance. In the context of this Act, a prize in lotteries encompasses money, articles, or services, regardless of the description, and whether consisting wholly or partly of contributions from the participating class.
26. Section 20(1) of the Gambling Act establishes the Gambling Commission. The Commission is mandated to pursue and consider the licensing objectives while exercising its functions under the Act, allowing gambling as long as it aligns reasonably with these objectives. The licensing objectives include preventing gambling-related crime, disorder, or support for crime, ensuring fair and transparent gambling practices, and safeguarding children and vulnerable individuals from harm or exploitation. Local authorities serve as the licensing authorities under the Gambling Act, while the Commission is responsible for issuing guidance on how local authorities should carry out their functions.
27. Additionally, the Commission provides advice to the Secretary of State on gambling incidence, conduct, effects, and regulation. The Commission is further empowered to ensure compliance with the Gambling Act, investigate potential offenses, and initiate criminal proceedings under the Act.
28. Section 33 of the Act criminalizes providing gambling facilities without a valid operating license or in violation of license terms. It is an offense for a person to use premises, or cause or permit premises

to be used, for operating a casino, providing facilities for playing bingo, making a gaming machine available for use, offering other gaming facilities, or providing facilities for betting without obtaining an authorized premises license.

29. Manufacturing, supplying, installing, or adapting gambling software without an operating license is also an offense. Gambling software refers to computer software for use in remote gambling, excluding anything intended solely for gaming machines. Cheating at gambling, attempting to deceive or interfere with the gambling process, is also an offense under the Act. Additionally, inviting others to join or participating in a chain-gift scheme, where participants make payments and recruit others, is prohibited.
30. Regarding children, it is an offense to invite, cause, or permit a child or young person to gamble or enter gambling premises. Young individuals participating in gambling activities or providing gambling facilities also commit offenses. It is prohibited to employ a child or young person for gambling-related activities, including lottery, football pools, bingo, or on premises with casino, betting, or adult gaming licenses under the Act. Offenders under the foregoing provisions are liable to imprisonment for up to six months or a fine not exceeding level 5 on the standard scale (maximum £5,000) upon summary conviction.
31. Section 83(1) of the Act mandates licensees to promptly return any money received from a child or young person using gambling facilities covered by an operating license and to refrain from awarding prizes to such individuals. Furthermore, the Act directs the Secretary of State to make Regulations that restrict activities permitted under an operating license, set limits on stakes and participation fees, control prize amounts, mandate a specified proportion of stakes for prizes, and establish specific requirements for multi-premises bingo games.

2.3.2 South Africa

32. In South Africa, the gambling industry plays an important role in the economy and job creation. The high unemployment rate, coupled with economic desperation, have contributed to widespread gambling in the country. Additionally, the accessibility of gambling through mobile devices, especially among young people, have further intensified the prevalence of gambling activities.
33. The gambling industry in South Africa has notably evolved, with younger individuals participating due to evolving offerings and technological advancements. Mobile devices facilitate simultaneous betting on various contingencies, appealing to new player demographics. Advertising, encompassing sponsorships and social media influence have equally played a role in fostering the industry's growth in South Africa.
34. The South African betting industry experienced annual growth in Gross Gambling Revenue (GGR), reaching R32 billion in FY2019/20. Taxes and levies totalled R3.2 billion, underscoring the need for effective industry regulation. Compulsive and addictive gambling presents a notable social problem affecting individuals, families, and society.
35. To address the issue, the Constitution of the Republic of South Africa designates gambling as a concurrent legislative function, necessitating regulation by both national and provincial governments. Subsequently, the government enacted the National Gambling Act, 2004, to coordinate national and provincial legislative competence over casinos, racing, gambling, and wagering. The Act seeks to regulate these matters, establish uniform norms and standards for national and provincial regulation and licensing of certain gambling activities, and create additional uniform norms and standards applicable throughout the country.

36. According to the Act, a gambling activity involves placing or accepting a bet or wager, totalisator bet, or making available and playing licensed bingo or gambling games. Placing or accepting a bet occurs when a player stakes money on a fixed-odds or open bet with a bookmaker, or when a bookmaker accepts such a stake. Placing or accepting a totalisator bet involves staking money on an event's outcome, with winnings distributed proportionally among winning bets. The Act defines placing or accepting bets and totalisator bets, encompassing various betting scenarios and systems.
37. A gambling game is defined as an activity played upon payment of consideration, with the chance that the player might become entitled to or receive a pay-out, determined by the skill of the player, chance, or both. It also includes a bet or wager placed in a casino. A pay-out refers to any form of value won by a player, irrespective of the skill of the player or operator, the application of chance, or both, and regardless of the form of the pay-out, such as money, merchandise, property, cheque, credit, electronic credit, debit, token, ticket, or any other valuable item.
38. The Act prohibits and restricts specific gambling activities. Section 7 outlines that engaging in, conducting, or making available a gambling activity is prohibited if its outcome depends on an unlawful event, if gambling machines are used for such purposes, if premises are maintained or operated for gambling without proper authorization, or if premises under one's control are permitted for gambling without authorization.
39. Section 8 prohibits engagement in, conducting, or making available a gambling activity except for licensed ones, licensed social gambling, or informal bets with valid contractual grounds. Additionally, Section 9 outlines restrictions on importing, manufacturing, supplying, selling, leasing, possessing, or altering gambling machines or devices without proper authorization. Section 10 imposes restrictions on maintaining or operating premises for restricted gambling activities without authorization, permitting unauthorized use of premises, and allowing individuals to engage in restricted gambling activities without proper authorization. Section 12 establishes offenses related to minors engaging in specific gambling activities or falsely claiming to be of legal age.
40. Moreover, it is an offense in section 15(2), to advertise gambling activities in a false, misleading, or unlawful manner, targeting minors, or promoting free or discounted gambling activities. This section also mandates warnings about addictive gambling in advertisements and prohibits promoting gambling activities as available to the public free of charge or at a discounted rate.
41. The Act establishes the National Gambling Policy Council to facilitate consultations between the national and provincial governments on the determination and establishment of national gambling policy, laws, and the promotion of uniform norms and standards at both levels. The Council addresses matters related to gambling within the national or provincial government's jurisdiction, the management or monitoring of gambling nationally or in specific provinces, and the resolution of disputes among provincial licensing authorities or between a provincial licensing authority and the board. Furthermore, the Council has the authority to provide oversight and direction to the board, refer matters for reports or recommendations, and make findings of non-compliance with the Act by a provincial licensing authority, with the power to direct corrective measures.
42. The Act establishes the National Gambling Board with responsibilities to oversee and investigate the issuance of national licenses by provincial licensing authorities for compliance with the Act. Additionally, the Board is mandated to monitor and assess the adherence to the Act by provincial licensing authorities, entering into agreements with them to address any deficiencies and providing recommendations to the National Gambling Policy Council on relevant matters. The Board is further tasked with monitoring socio-economic patterns of gambling activity nationwide and maintaining crucial registers and systems, including the national register of excluded persons, the national central

electronic monitoring system, the national register of gambling machines and devices, and a central registry of information, as well as the national probity register.

43. Section 30 of the Act grants exclusive jurisdiction to provincial licensing authorities within their respective provinces to investigate, consider applications for, and issue provincial licenses for activities such as casinos, racing, gambling, or wagering, excluding those requiring a national license under the Act. Each provincial licensing authority is tasked with preventing, detecting, and prosecuting unlawful activities associated with casinos, racing, gambling, and wagering, as well as unlicensed gambling activities within its jurisdiction. In contrast, a national license applies nationwide, enabling the licensee to conduct, engage in, or make available the licensed activities at any location within the country.

2.4 Summary of Legal Provisions

44. The Gambling Control Bill seeks to repeal and replace the Betting, Lotteries and Gaming Act (Cap 131) provide for a legislative framework for the regulation of gambling in Kenya incorporate safe gambling principles in gambling sector. Further, the Bill seeks to regulate betting, casinos and other forms of gambling including the authorization of prize competitions, public lotteries and media promotions.

45. The Bill has One Hundred and Twenty-Six (126) Clauses and has the following provisions:

PART I contains the preliminary provisions.

- i. The objects of the Bill are to—
- (b) provide a framework for regulation and control of gambling activities;
 - (c) authorise some gambling activities and prohibit the rest as unlawful gambling;
 - (d) promote the development of a responsible gambling industry;
 - (e) minimize social harm associated with gambling;
 - (f) ensure integrity and fairness in licensed gambling activities; and
 - (g) provide for the establishment of mechanisms for resolution of disputes relating to gambling.

PART II

- ii. **Clauses 4-5** contains provision on the functions of the National Government and county governments in the regulation of gambling activities. The functions of the national government are to—
- (a) establish policies, norms and standards for the conduct of betting, lotteries, casinos and other forms of gambling;
 - (b) regulate the gambling industry in accordance with Act;
 - (c) licence gambling activities including online gambling in accordance with this Act;
 - (d) licence national lotteries;
 - (e) conduct security checks, vetting and due diligence in respect of gambling activities;
 - (f) enforce compliance with this Act;
 - (g) conduct anti-money laundering risk-based inspections and inspections to combat financing of terrorism through casinos and any other forms of gambling;

- (h) pursuant to section 36A of the Proceeds of Crime and the Anti-money Laundering Act, 2009, supervise and enforce compliance with that Act or any instruction, direction, guideline or rule made pursuant to or in terms of that Act by all licensees;
- (i) provide capacity building and technical assistance to county governments; and
- (j) perform any other function as may be prescribed under this Act or any other written law.

i. The functions of the county governments are to—

- (a) enforce compliance of this Act and other applicable laws;
- (b) issue single business permits for gambling premises;
- (c) implement policy standards and norms of gambling within its jurisdiction; and
- (d) periodic monitoring and evaluation of betting, lotteries and gaming licensed by counties;
- (e) handling of complaints and arbitration
- (f) perform such other functions as are incidental to the exercise of any or all of the county government functions provided for under this Act.

Part III

- iii. **Clauses 6-26:** contains provisions on establishment of the Gambling Regulatory Authority as a body corporate, the composition of the Board, functions and powers of the Board, the conduct of business and affairs and remuneration of the Board. The Authority shall be the successor of the Betting Control and Licensing Board established under section 3 of the Betting, Lotteries and Gaming Act.
- iv. **Clause 7:** provides that the management of the Authority is vested in the Board, comprised of a Chairperson appointed by the President, the Principal Secretary for Interior and National Administration or a designated representative, the Principal Secretary for the National Treasury or a designated representative, the Attorney-General or a designated representative, three individuals appointed by the Cabinet Secretary, one person nominated by the Council of Governors and appointed by the Cabinet Secretary, and the Director-General.
- v. **Clause 10:** provides that the Authority shall oversee the development and maintenance of standards for gambling, issue licenses, and formulate policies, including a savings component for social benefits. It provides that the Authority shall monitor policy implementation, conduct security checks, and investigate compliance. It further provides that the Authority shall address illegal gambling, advise county governments, and handle complaints.
- vi. **Clause 11:** provides that the Authority shall issue and update codes of practice for gambling, focusing on fairness, protection of vulnerable individuals, data security, and ethical marketing. It provides that non-compliance with the code does not attract civil or criminal proceedings. It requires the Authority to consult various stakeholders, including government officials, law enforcement, gambling businesses, and the public before issuing the code.
- vii. **Clause 12:** provides that the Board shall manage the Authority's assets, receive and disburse funds, conduct investigations, address licensee complaints, and provide services as determined by the Authority. It also provides that the Board shall approve the opening, operating, and closing of the Authority's bank accounts.

- viii. **Clauses 13-15:** provide for the conduct of business and affairs of the Board, committees of the Board, and remuneration of the Board.
- ix. **Clauses 16-18** provide for the appointment of the Chief Executive Officer, Corporation Secretary and other staff of the Board.
- x. **Clauses 21-24** contain the financial provision of the Board. Clause 25 provides for preparation and submission of quarterly and annual financial and non-financial reports to the national Treasury and its performance and the performance of the operator.

PART IV

- xi. **Clauses 27-52:** contains provisions on issuance of licences and permits for gambling activities, application for licence and permits, license fees, application for gambling permits, permits fee, submission of security, security for casinos and online gambling, gambling capital.
- xii. **Clause 27** requires licensing for all gambling activities under the Act. It provides that the Authority shall issue licences for a range of activities, including public gambling, the national lottery, bookmaking, online gambling, and various aspects of gambling equipment.
- xiii. **Clause 28** requires license applicants under the Act to be corporations with a minimum of thirty percent of shares owned by Kenyan citizens and to maintain an account with a registered Kenyan financial institution.
- xiv. **Clause 29** details license application requirements, including documentation, fees, and proof of capital and security. It provides that the Authority shall assess applicants based on financial, educational, and regulatory factors, evaluating competence and integrity. It provides that fitness considerations encompass legal compliance, business practices, internal controls, and overall business affairs.
- xv. **Clauses 33-36** contains provisions on renewal of a licence, refusal to grant or renew a licence, revocation of a licence, suspension of licence, duration of a licence, display of a licence, and transfer of a licence.
- xvi. **Clause 36-39** provide for investigation by the Authority, duplicate licence, and register of licences.
- xvii. **Clause 40** mandates licensees to provide an insurance security bond or bank guarantee specified in the Fourth Schedule to cover potential liabilities from the licensed activity. It provides that the Authority can use the deposit to offset any incurred liabilities, and for activities not explicitly covered in the Act.
- xviii. **Clause 41** requires licensees to show sufficient capital for operations, with the Authority mandated to determine specific amounts for each regulated gambling activity.
- xix. **Clauses 42-43** provide for Keeping of books of accounts and submission of accounts by licensees.

- xx. **Clause 45** establishes a fifteen percent gambling tax on gross gambling revenue (GGR), due to the Collector by the 20th day of the following month, with proceeds deposited into the Sports, Art, and Social Development Fund under the Public Finance Management Act, 2012.
- xxi. **Clause 46** establishes a monthly gambling levy, not exceeding one percent of the monthly gross gambling revenue, payable by licensees to the Authority for purposes including mental health research, public awareness on gambling addiction, treatment programs, and eradicating illegal gambling.
- xxii. **Clause 47** requires gambling licence holders to apply for a permit from the county government for the licensed premises. It outlines the application process, including prescribed fees, licence issued by the Authority, and additional information at the discretion of the applicant.
- xxiii. **Clauses 48-52** provide for endorsement, revocation, duration, transfer, display of a permit.

PART V

- xxiv. **Clauses 53-60** provides for authorization of public lotteries for charitable purposes, the powers of the Authority in respect of public lotteries, authorization of lotteries relating to horse racing, exemption of certain types of lotteries conducted for charitable, sporting or other purposes, exemption of licence on lotteries for charitable, sporting or other specified purposes and regulation of private lotteries.
- xxv. **Clause 53** provides that the Authority shall license nationwide or multi-county public lotteries for charitable purposes, while county governments can license lotteries within their jurisdictions for up to one year. It provides that the Cabinet Secretary, in consultation with the Authority, shall set the percentage of gross revenue allocated to the lottery's purpose, ranging from thirty to forty-five percent.
- xxvi. **Clause 55** provides that county governments may issue licenses for horse race-related lotteries within or outside Kenya, and the Authority can issue on-the-course permits or off-course lottery licenses in Kenya.
- xxvii. **Clause 56** permits lotteries for charitable societies, with the Authority having the power to impose conditions, including uniform ticket prices and allocation of proceeds to society purposes. **Clause 57** provides for issuance of nationwide permits, multi-county, or media lottery licenses by the Authority and local lottery licenses by county governments.
- xxviii. **Clause 58** authorizes the Authority to issue licenses for individuals to organize and manage lotteries linked to sports or games, specifying the permitted type. It provides that conditions may be imposed on the conduct, operating hours, premises suitability, fraud protection, responsible gambling measures, and admission fees payment for gambling individuals.
- xxix. **Clause 59** provides that the Authority shall issue licences for private lotteries. It provides that conditions, such as dedicating net proceeds, exhibiting lottery notices, ensuring uniform ticket prices, indicating promoter details, restricting ticket sales, prohibiting returns, and disallowing postal ticket delivery, may be imposed upon licensees.

PART VI

- xxx. **Clause 61-66** provides for the issuance of permits for betting premises, issuance of bookmakers licence, totalisator licence and, laying of totalisator, betting pools and betting odds, promoters licence in respect of betting schemes and authorization of bookmaking at a race meeting and the control of betting machines.
- xxxi. **Clause 61** provides that the Authority shall issue on-the-course, off-the-course, on/off-course race, and online bookmaker's licenses.
- xxxii. **Clause 62** provides that the Authority shall issue on-the-course, off-the-course, and on/off-course totalisator licenses for each race day or up to one year.
- xxxiii. **Clause 63** provides that the Cabinet Secretary, in consultation with the Authority, shall establish rules for totalisator operations. It provides that license holders must adhere to these rules, ensuring that aggregate returns for winning bets are at least eighty-five percent of the total pooled amount or an Authority-approved amount for specific events.
- xxxiv. **Clause 64** provides that the Authority shall issue a promoter's license for one pool betting scheme at a time, enabling the promoter to operate within Kenya.
- xxxv. **Clause 65** outlines the process for a race meeting promoter to apply for a bookmaking license from the Authority, specifying the required fees and application form. It provides that the Authority, shall upon receiving the application, issue a license for bookmaking at a designated race meeting.
- xxxvi. **Clause 66** provides that licensees shall place betting machines exclusively in casinos, meeting international standards, and prohibits operating them without a valid bookmaker's license.

PART VII

- xxxvii. **Clauses 67-69** provides for the licensing of casinos, the prescription of the maximum number of casinos, and the power of the Authority to inspect casinos and to ensure compliance by the presence of its officers in casinos. **Clause 67** empowers the Cabinet Secretary to regulate the quantity of gambling establishments and machines within counties in consultation with the Authority and Council of Governors.

PART VIII

- xxxviii. **Clauses 70-83** provides for licensing of online gambling, conditions for grant of a licence, control of online gambling activities, conformity of online gambling systems to standards and conditions set by the Authority, online gambling transactions, payment of prizes and remittance of profits and winnings.
- xxxix. **Clause 70** outlines the application process for individuals seeking to engage in online gambling in Kenya. It requires applicants to submit a prescribed form for licenses such as online bookmakers, online lottery, or online casino, along with a proposed gambling control system, subject to the Authority for evaluation.

- xl. **Clause 71** provides that online gambling licensees shall adhere to an approved gambling control system covering security, safety, payment processes, age protection, vulnerability safeguards, awareness, responsible advertising, and data protection.
- xli. **Clause 74** provide for the minimum amount a person can bet online, registration of players, players accounts to be kept, dealing with players' monies restricted, handling of players' monies, players' monies to be kept in separate accounts, financial reporting by a licensee and the requirements to be met foreign operators for the issuance of a licence.

PART IX

- xlii. **Clauses 84-89** provides for the authorisation of amusements with prizes, amusement machines, prize competitions, media promotions with prizes and chain letters.

PART X

Provides for the manner in which advertisements of gambling activities should be carried out.

PART XI

- xliii. **Clauses 91-94** provides for establishment and jurisdiction of the Gambling Appeals Committee, the composition of the Committee and qualifications for appointment to the Committee, appeals from the decisions of the Committee and the conduct of business and the affairs of the Committee.

PART XII

- xliv. **Clause 95-114** provides for offences and penalties.

Part XIII

- xlv. **Clauses 115-126** contains provisions on miscellaneous provisions including the appointment of inspectors, power to enter and inspect premises, self-exclusion mechanisms, forfeiture of licence or security, power to seize machines, transitional provisions and consequential amendments.
- xlvi. **First Schedule** sets the Provisions for the meetings and procedure of the Board.
- xlvi. **Second Schedule** prescribes the licensing fee for the various types of gambling activities.
- xlvi. **Third Schedule** provides for declarations to be made by an applicant of a Gambling licence.
- xlix. **Fourth Schedule** provides for the amounts of security that licensee should deposit with the Authority to defray the liabilities of licensee which may arise from a licensed gambling activity.

CHAPTER THREE

3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework Public Participation

46. 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."

47. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

*"(3) The Departmental Committee to which a Bill is committed shall **facilitate public participation on the Bill** through an appropriate mechanism including-*

*(a) **inviting submission of memoranda;***

*(b) **holding public hearings;***

*(c) **consulting relevant stakeholders in a sector; and***

*(d) **consulting experts on technical subjects.***

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 Memoranda Received on the Gambling Control Bill, 2023

48. Pursuant to the aforementioned provisions of law, the Clerk of the National Assembly placed an advertisement in the print media on Friday 10th November, 2023 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Clerk of the National Assembly vide letters Ref. No. NA/DDC/S&C/2023/078 and NA/DDC/S&C/2023/079 dated 15th November, 2023 invited key stakeholders to submit views on the Bill and attend a public participation forum on Tuesday 21st to 22nd November, 2023.

49. To this end, the Departmental Committee on Sports and Culture received memoranda from the Department for Parliamentary Affairs, Ministry of Youth Affairs, Creative Economy and Sports, State Law Office, Kenya Law Reforms Commission, Kenya Revenue Authority, Commission on Revenue Allocation, Office of the Data Protection Commissioner, Betting Control and Licensing Board, National Gender and Equality Commission, the Law Society of Kenya, Financial Reporting Centre, Council of Governors, County Assemblies Forum, Association of Gaming Operators Kenya, Gaming Awareness Society of Kenya and Media Owners Association. The memoranda are annexed to this report as **Annexure 5**.

50. The Committee also held a consultative meeting with the Presidential Taskforce on the Establishment of a National Lottery where the Committee was briefed on the policy that informed the development of the Gambling Control Bill, 2023.

51. The Kenya Law Reforms Commission, the Kenya Revenue Authority, Commission on Revenue Allocation, the Office of Data Protection Commissioner, Law Society of Kenya, County Assembly Forum, Association of Gaming Operators, Media Owners Association and Gaming Awareness Society of Kenya submitted amendments to the Bill.

52. The Betting Control and Licensing Board, and the State Law Office supported the Bill without reservations. The Ministry of Youth Affairs, Creative Economy and Sports supported the Bill with some reservations.
53. The Council of Governors opposed the Bill in its entirety and called for its withdrawal since it takes away the functions and revenue of county governments. They stated that there is a need for the introduction of a new Bill that conforms with the constitutional assignment of functions and powers.
54. The stakeholders submitted as follows:

3.2.1 Taskforce on the Establishment of the National Lottery

The taskforce met with the Committee on 20th November 2023 and briefed the Committee on the policy that informed the development of the Bill. The taskforce informed the Committee that:-

55. Kenya's gambling industry, deeply rooted in its culture and fueled by a passion for sports and gaming, plays a significant role in the country's economy, particularly through online platforms. Despite the sector's substantial growth, the existing legal framework falls short in addressing contemporary challenges such as addiction, underage participation, lack of transparency, enforcement issues, and the failure to adopt global best practices.
56. Recognizing its potential contribution to the GDP, there have been calls for enhanced regulation to address issues like consumer protection and mitigate problem gambling. In the upshot, His Excellency the President, Hon. William Samoei Ruto, PhD., C.G.H. established the Presidential Taskforce on the Establishment of the National Lottery through Gazette Notice No. 2101 dated February 17, 2023. In regard to gambling, the Taskforce's primary objectives included (i) examining the current administrative, institutional, policy, and legislative structures in the betting and gaming industry, (ii) developing a prioritized implementation matrix for immediate, medium, and long-term sectoral reforms, (iii) expediting the review of the draft Gambling Bill for Cabinet consideration and onward transmission to Parliament, and (iv) addressing any other ancillary matters or subjects related to gambling.
57. The Taskforce, in adherence to its prescribed Terms of Reference, conducted essential meetings, reviewed pertinent documentation, and executed necessary functions to advance its objectives. As outlined in the Gazette Notice, the Taskforce formulated the draft Gambling Policy for Kenya, 2023, with the aim of transforming the gambling sector into a catalyst for social progress. Additionally, the Taskforce developed a draft Gambling Control Bill, 2023 to establish a framework for the reformation, regulation, and control of gambling activities in Kenya, emphasizing responsible gambling practices.
58. The potential repeal of the Betting, Lotteries, and Gaming Act Cap. 131 was poised to usher in a transformative phase in the licensing of public lotteries, betting, and gaming. This was aimed to address current societal challenges and align with the State's commitment to safeguarding the wellbeing of all individuals through the promotion of a national culture and ethos centered around 'responsible betting and gaming.'

3.2.2 Ministry of Youth Affairs, Creative Economy and Sports

The Ministry of Youth Affairs, Creative Economy and Sports submitted an additional clause on Gambling Tax: -

59. **Clause 45(4)** This provision shall apply to all games of chance included games of chance operated by the National Lottery Board under the National Lottery Act or any other law. That it is necessary for harmonization of laws: the Income Tax Act, the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018 the Gambling Control Bill, the National Lottery Bill.

Committee Observation

The Committee was of the opinion that the National Lottery Board under the proposed National Lottery Bill can operate any game of chance, but within the regulation of the law relating to gambling, and therefore rejected the proposal.

3.2.3 Kenya Law Reform Commission

The Kenya Law Reform Commission made submissions on the following clauses:

60. **Clause 7(4)(a)** and **Clause 7(4)(e)** be recast to provide that board members of the Gambling Regulatory Authority to be appointed through an open and competitive process so as to guarantee transparency, fair competition and merit as a basis for appointment as contemplated under Articles 10 and 232 (1) (g) of the Constitution.

Committee Observation

The Committee agreed to the proposal to recast the clauses.

61. That the phrase “**without the option of a fine**” be added immediately after the words “six months” in **Clause 8(2)(b)** to ensure that the membership of the Authority is not affected where a member has paid the requisite fine.

Committee Observation

The Committee agreed to the proposal to insert the phrase “without the option of a fine.”

62. **Clause 10(1)(b)** be deleted as the provision is redundant. All the functions of the Authority listed between Clause 10 (a-q) aim at regulating and controlling gambling activities.

Committee Observation

The Committee agreed to the proposal to delete clause 10(1)(b).

63. **Clause 10(1)(e)** be deleted as the issue of monitoring compliance with policies and regulations on gambling is repeated under clause 10(1)(j).

Committee Observation

64. **Clause 10(1)(l)** be deleted as issue of monitoring the socio-economic impacts of gambling is repeated under clause 10(1)(i).

Committee Observation

The Committee agreed to the proposal to delete clause 10(1)(l).

65. **Clause 10(1)(o)** be redrafted to provide that the Gambling Regulatory Authority shall receive **and make a determination** on complaints from companies and the public on matters pertaining to games of chance so as to align to drafting standards.

Committee Observation

The Committee agreed to the proposal to redraft 10(1)(o).

66. The Phrase 'Code of practice' in **Clause 11** be replaced with 'Gambling Practice Guidelines' to facilitate enforcement under the Statutory Instruments Act, 2013.

Committee Observation

The Committee agreed to the proposed replacement of the title, and recommended the deletion of sub-clause (8).

67. **Clause 11(11)** to be amended to include a representation from the National Council for Children Services; the Office of the Secretary of Children's Services and other institutions on the welfare of children to facilitate consideration of the best interests of the child as contemplated by Article 53(2) of the Constitution.

Committee Observation

The Committee agreed to the proposed amendment.

68. **Clause 15** be amended to include the Salaries and Remuneration Commission as the institution responsible for offering advice on the remuneration and benefits of public officers so as to comply with Article 230(4) (b) of the Constitution.

Committee Observation

The Committee agreed to the proposed amendment.

69. **Clause 29(3)(d) and Clause 29(3)(e)** be deleted as the threshold provided under (d) and (e) is subjective and not measurable.

Committee Observation

The Committee agreed to the deletion of clause 29(3)(d) and recommended that clause 29(3)(e) be redrafted.

70. The phrase “**Mutatis Mutandis**” in **Clause 33(2)** be deleted as legalese is discouraged in modern styles of drafting law.

Committee Observation

The Committee agreed to the deletion of the legalese in the clause.

71. The phrase “**prominently**” appearing immediately after the words “that is” be deleted as it is an editorial error.

Committee Observation

72. Delete the word “prominently” appearing immediately after the words “that is” in **clause 35**.

Committee Observation

The Committee agreed to the proposal.

73. **Clause 46(3)(d)** be redrafted to provide clarity on the specific activities to be undertaken in eradication of illegal gambling so as to avoid ambiguity.

Committee Observation

The Committee agreed to the proposed amendment, and further recommended the deletion of clause 46(3)(d) to avoid ambiguity.

74. **Clause 47(2)(c)** be recast to establish the County Government as the ‘subject’ in the sentence. The County Government has the responsibility of determining any additional information that it may require for the purposes of considering an application.

Committee Observation

The Committee agreed to the proposed amendments subject to further redrafting.

75. **Clause 67(4)** should define the distance from a learning or religious institutions within which gambling activities are prohibited to be measurable in units. The use of the word ‘near’ is subjective and prone to abuse.

Committee Observation

The Committee recommended that sub-clause (4) be amended to require the responsible Cabinet Secretary to prescribe the proximity in Regulations.

76. **Clause 90(1)** be redrafted to read “A person may, promote the advertisement of a gambling activity on electronic medium or any other form, with the approval of the Authority” to avoid double negatives in drafting.

Committee Observation

The Committee was of the opinion that the proviso is already provided for in the Bill and therefore rejected the proposed amendment.

3.2.4 Kenya Revenue Authority

77. The Kenya Revenue Authority presented recommendations suggesting the **inclusion of a new clause, providing that taxes outlined in section 45** should be collected in accordance with the provisions of the Tax Procedures Act, Cap 469B. The rationale for the proposed amendment is to establish assessment and enforcement powers for the Collector of gambling tax, functions previously provided for in section 69AA of the Betting, Lotteries, and Gaming Act, Cap 131

Committee Observation

The Committee rejected the proposed inclusion of a new clause.

78. Additionally, the Kenya Revenue Authority **recommended the incorporation of a new clause** to establish a transitional provision for treatment of taxes that had been due under the Betting, Lotteries, and Gaming Act, Cap 131, which is slated for repeal. The transitional clause, is designed to empower the Collector to enforce the collection of any outstanding taxes under the Betting, Lotteries and Gaming Act, Cap 131.

Committee Observation

The Committee rejected the proposed amendment since the clause on transition adequately provides for liabilities.

3.2.5 Commission on Revenue Allocation

The Commission on Revenue Allocation made submissions and recommended the following:

79. That the definitions “**Horse race**”, “**online gambling**” and “**remote communications**” in **Clause 2** be redrafted as they were ambiguous and lacked clarity.

Committee Observation

The Committee noted that there was no proposed amendment.

80. That the phrase ‘**single business permits**’ in **Clause 5(b)** be replaced with ‘**trade licenses**’ to align with constitutional language as per **section 7(b) Part 2 of the Fourth Schedule** of the Constitution of Kenya. Committee agreed to the proposed substitution of the phrase “single business permit” with “trade licences.”

Committee Observation

The Committee accepted the proposed amendment.

81. That the number of persons appointed by the Cabinet secretary in **Clause 7(e)** be reduced from '3' to '2' and the number of persons nominated by the Council of Governors in **Clause 7(f)** be increased from '1' to '2' as Counties are under-represented in the Board compared to the national government, yet gambling is a concurrent function under the Fourth Schedule of the Constitution.

Committee Observation

The Committee rejected the proposed reduction of the number of persons appointed by the Cabinet Secretary.

82. Increase the number of persons nominated by the Council of Governors under **clause 7(1)(f)** from "1" to "2". Counties are underrepresented in the Board compared to the national government yet gambling is a concurrent function under the Fourth Schedule of the Constitution.

Committee Observation

The Committee was of the opinion that the concerns have been addressed in the Bill and rejected the proposed amendment.

83. The phrase "**based on performance**" after the word "**years**" at the end of the statement in **Clause 7(3)** be added in order to align with the Mwongozo Code of Governance for State Corporations.

Committee Observation

The Committee agreed to the proposed amendment.

84. That a **new provision** be included requiring for the appointing authority of the Board membership to pay due regard to gender balance and representation of special interest groups in the Board and in all other appointments under the proposed law to align with Article 27 of the Constitution of Kenya on equality.

Committee Observation

The Committee rejected the proposed introduction of a new clause noting that the same is already catered for.

85. That the phrase "**the relevant government agencies**" in **Clause 15** be replaced with "**the Salaries and Remuneration Commission**" as the institution responsible for offering advice on the remuneration and benefits of public officers in compliance with Article 230(4) (b) of the Constitution of Kenya.

Committee Observation

The Committee agreed to the proposed amendment.

86. Include the phrase “based on performance” after the word “years” at the end of the statement in **clause 16(4)**.

Committee Observation

The Committee agreed to the proposed amendment.

87. That a percentage of the gambling levy going towards the financing of the Authority be set in **Clause 21(b)** to avoid ambiguity.

Committee Observation

The Committee rejected the proposed amendment and instead proposed a deletion of clause 46.

88. **That Clause 21(c)** be deleted as the Authority is set to receive 3% from the National Lottery to cater for its administrative function. This is to ensure that there is prudent management of financial resources in line with Article 201 of the Constitution of Kenya.

Committee Observation

The Committee rejected the proposal to delete sub-clause 21(c).

89. That the phrase “Public Finance Act, 2012” in **Clause 23** and **Clause 24** be replaced with “Public Finance Management Act, 2012” to quote the correct citation of the Act.

Committee Observation

The Committee agreed to the proposal but recommended that the proposals be redrafted to conform to the House drafting style.

90. That **Clause 28(1)(a)** be harmonized with **Clause 23(2)** of the National Lottery Bill, 2023 to define the operator of a license for clarity.

Committee Observation

The Committee agreed to the proposal to harmonize clause 28(1)(a) with clause 23(2).

91. That **Clause 91** provides for an appeal framework be included for county level decisions as the Bill only caters to appeals at the national level.

Committee Observation

The Committee agreed to the proposed amendment, recommending that sub-clause (8)(a) be amended to include County Lotteries.

3.2.6 Office of the Data Protection Commissioner

92. **Clause 29 (1)** - The Office of Data Protection Commissioner noted that the Bill as it is currently lacked the provision on the data protection policies and procedures accompanying application for the license.

They recommended that the Bill be amended by inserting a new subsection after paragraph g, “Data protection policies and procedures in line with the Data Protection Act” to ensure necessary steps are taken to secure the integrity of personal data under their possession.

Committee Observation

The Committee was of the opinion that the proposal was already provided for in the Bill and rejected the proposed amendment.

93. **Clause 31** - The Office of Data Protection Commissioner further noted the Bill in its current form did not provide for the need to adopt data protection measures and therefore recommended inserting a new section (d), “The Application does not provide for data protection measure under the Data Protection Act.” This, they emphasized is to ensure necessary steps are taken to protect the personal data under their possession and control.

Committee Observation

The Committee rejected the proposed amendment since the provisions of the Data Protection Act will automatically apply to the implementation of the Gambling Control Bill, 2023.

94. **Clause 39** - The Office of the Data Protection Commissioner submitted that the bill did not give an obligation to ensure the register of licenses is kept and maintained in accordance with the Data Protection Act. They proposed an amendment to insert a new subsection after paragraph 2, “The register kept and maintained by the Authority in clause (1) shall be maintained in accordance with the principles of data protection set out in the Data Protection Act.”

Committee Observation

The Committee rejected the proposed amendment since the provisions of the Data Protection Act will automatically apply to the implementation of the Gambling Control Bill, 2023.

95. The Office of the Data Protection Commissioner noted that the Bill did not have a provision that referenced the Data Protection Act. They recommended an amendment to include additional provision that reads “**The register kept and maintained by the Authority in clause (1) shall be maintained in accordance with the principles of data protection set out in the Data Protection Act No. 24 of 2019,**” to ensure any processing of personal or sensitive data is done in accordance with the Data Protection Act and the Data Protection Principles.

Committee Observation

The Committee rejected the proposed amendment since the provisions of the Data Protection Act will automatically apply to the implementation of the Gambling Control Bill, 2023.

3.2.7 National Gender and Equality Commission

The National Gender and Equality Commission recommended the following amendments:

96. That **Clause 7(1)(e)** be amended to read “Three other persons representing:
i.) Persons with Disabilities,

- ii.) ii.) Civil society organizations,
- iii.) iii.) Faith-based organizations

So as to factor in inclusivity and not affect the wider society represented by the persons proposed by the Commission.

Committee Observation

The Committee accepted the proposed amendment to clause 7(1)(e).

97. That **Clause 7(5)** is amended to read as “The appointment of the members of the Board shall be staggered to ensure continuity of the business of the Board” as the Sub-clause as proposed is not very clear on the reason for the appointments and exits of Board members at different times. The proposal is also in line with the *Mwongozo* code (and generally great practices in governance).

Committee Observation

The Committee rejected the proposed amendment since it is already contained in the Bill.

98. That a new sub clause is added to **Clause 7(6)** to read as “The Cabinet Secretary in making appointments shall ensure that no more than two-thirds of the members are of the same gender, shall observe the principle of regional and ethnic balance and, shall have due regard to the principle of fair representation for persons with disabilities.”. This sub-clause is proposed so as to comply with the *Mwongozo* code on the composition of Boards of public entities.

Committee Observation

The Committee agreed with the proposed amendment, noting however, that PWDs are already catered for in clause 7(1)(e).

99. That **sub-clause 8(1)(d)** is deleted the without any replacement, as this qualification is discriminatory as there is no justification for not allowing an employee to rise through the ranks if they have the requisite qualifications.

Committee Observation

The Committee rejected the proposed deletion of sub-clause (d) without any replacement.

100. That **Clause 8(2)** is amended by substituting the phrase “at the time of appointment” with “holds a political office” as a holder of a political office is disqualified from being considered for the position unless they have resigned

Committee Observation

The Committee rejected the proposed substitution of phrase “at the time of appointment” with “holds a political office.”

101. That **Clause 9(2)** is deleted as the clause is prejudicial and discriminatory to persons with physical and mental disabilities who are entitled to reasonable accommodation in line with the provisions in the Convention on the Rights of Persons with Disabilities (CRPD) once appointed to an office that will enable them to carry out the duties of that office.

Committee Observation

The Committee rejected the proposed deletion of clause 9(2), since inability to perform the functions of office by reason of physical or mental incapacity is a valid ground for removal from office.

102. That **Clause 10(1)** is amended by inserting the words "*and recommend corrective measures*" after the word consequences and to delete the word "*within*" after the word "*activities*" as it is not enough for the Board to undertake research and identify consequences without recommending corrective measures.

Committee Observation

The Committee agreed to the proposed amendment, but with further improvement.

103. That a **New Sub-Clause under Clause 16** be included to state the factors for the removal of the Director General to read as "**The Director General may be removed from office by the Board in accordance with the terms and conditions of service for**
- a) gross misconduct or misbehavior;
 - b) incompetence or neglect of duty;
 - c) violation of the Constitution; or
 - d) any other ground that would justify removal from office under the terms and conditions of service.

Before the Director General is removed under subsection (1), the Director General Officer shall be given –

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to present his or her defense against the allegations" as the proposed Bill does not contain an exit clause for the Director General.

Committee Observation

The Committee agreed to the proposed inclusion of the new sub-clause.

104. That **Clause 91(2)(b)** is amended to read as "ten members of whom four members shall be advocates of the high court of Kenya with at least seven years in dispute handling and six other members with qualifications and experience enumerated in sub section 4 (ii) and (iii)" as sub-clause (2) as phrased is not very clear.

Committee Observation

The Committee rejected the proposed amendment.

105. That **Clause 112** should include regulations that will be effective in protecting children effectively as provided for in clause 122 on "powers to make Regulations" as Children are not protected from the dangers of gambling in spite of the current law sought to be repealed.

Committee Observation

The Committee rejected the proposed amendment.

106. That **Clause 115** be amended by substituting the word “may” after the word “government” with the word “shall” as “May” is discretionary but “shall” places an obligation on the duty bearers that must be complied with.

Committee Observation

The Committee agreed to the proposed amendment.

107. That **Clause 118** is deleted as **self-exclusion** may not be realized because it involves a person who has become addicted to gambling and is in no state of mind to exclude themselves from such activities and a license holder who is business minded interested in profit making and maybe not interested in the welfare of the addicted persons.

Committee Observation

The Committee rejected the proposed amendment, further recommending that interested parties be included with the approval of the Authority.

3.2.9 The Law Society of Kenya

108. **Long title-** The title of the Authority should be “The National Gambling Regulatory Authority”. The title should speak to Parts 1 and 2 of the Fourth Schedule to the Constitution.

Committee Observation

The Committee agreed to the proposed amendment noting that the Authority be renamed to Gambling Regulatory Authority of Kenya.

109. The content of **Clause 3** should be merged to form the Long Title of the Bill. To rid the legislation of superfluous provisions. The Committee rejected the proposal, noting that it is proper drafting practice to include a clause on the objects and purpose of the Bill.

Committee Observation

The Committee rejected the proposed amendment.

110. **Part II (4&5)** – Part II be deleted. The functions are already provided for under the Fourth Schedule to the Constitution. The Committee rejected the proposed deletion of Part II noting that it is necessary to expressly delineate the functions of the respective governments since gambling is a concurrent function of the national and county governments.

Committee Observation

The Committee rejected the proposed amendment.

111. **Clause 5(a)** be deleted - This conflicts with Article 243 of the Constitution which grants the mandate of law enforcement to the National Police Service. The Committee agreed to the proposed amendment noting that there is need to redraft the clause to eliminate ambiguity.

Committee Observation

112. **Amend Clause 11(11)(d)-** to add the words “in accordance with Chapter Six of the Constitution.” The public participation must accord with the constitutional imperative of public participation.

Committee Observation

The Committee rejected the proposed amendment as it is not necessary to restate the provisions of the Constitution.

3.2.9 Financial Reporting Centre

The **Financial Reporting Centre** submitted as follows:

113. **Clause 2** should be amended by adding the definition of the word “Beneficiary Owner” - “Beneficial owner” has the meaning assigned to it under the Companies Act, 2015 - To provide the definition of a beneficial owner in line with the Financial Action Task Force (FATF) Recommendations and to mirror the definition under the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA);

Committee Observation

The Committee agreed to the proposed amendment, noting that the term is used in the Third Schedule to the Bill.

114. **Clause 2** be further amended by adding the definition of the word “Reporting Institution” - “Reporting Institution” means a Reporting Institution as defined under Section 2 of the Proceeds of Crime and Anti-Money Laundering Act - To provide definition of a Reporting Institution as provided for under Section 2 of the Proceeds of Crime and Anti-Money Laundering Act and limit the application of the anti-money laundering provisions to casinos only. Section 2 of POCAMLA identifies casinos, including internet casinos as being subject to regulation under POCAMLA;

Committee Observation

The Committee agreed to the proposed amendment.

115. **Clause 4 (1)** is amended by deleting and inserting therefor: 4 (1) The National Government, in undertaking its functions under this Act, shall do so through the Gambling Regulatory Authority established pursuant to Section 6 of this Act - To insert Clause 4 (1) to indicate that the National Government shall undertake its functions through the Gambling Regulatory Authority.

Committee Observation

The Committee agreed that the clause may be mended for clarity.

116. **Clause 4 (1)** is amended by deleting sub-paragraph (h) and inserting therefor to read as follows: (h) pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, regulate and supervise, for anti-money laundering and combating the financing of terrorism and countering proliferation financing purposes by Reporting Institutions licensed under this Act.

Committee Observation

The Committee agreed to the proposed amendment.

117. Add the words “in accordance with Chapter Six of the Constitution” to **clause 11(11) (d)**.

Committee Observation

The Committee rejected the proposed amendment.

118. **Clause 29** is amended by inserting a new sub-clause (h) to read as follows: 29 (1) An application for a license shall be made in the prescribed form and, be accompanied by— (a) ... (h) A sworn declaration of the ownership structure of the applicant, including a declaration of the beneficial owner or the proposed beneficial owners, whichever is applicable, in the form prescribed by the Authority - To amend Clause 4(1)(h) to include monitoring compliance with the Prevention of Terrorism Act and limit the application of this Act to Reporting Institutions as defined under Section 2 of POCAMLA who are licensed under the Act. These are casinos, including internet casinos, as is the requirement in the FATF Standards.

Committee Observation

The Committee accepted the proposed amendment.

119. **Clause 126** be amended by deleting Clause 126 (a) to read as follows: 126. The Proceeds of Crime and Anti-Money Laundering Act, 2009 is amended —
(a) in the First Schedule by deleting paragraph (c) and substituting therefor the following paragraph—
(c) Gambling Regulatory Authority –
The proposed section would broaden the application of the Proceeds of Crime and Anti-Money Laundering Act beyond the scope of the FATF Standards. These standards only require the regulation of casinos and does not extend to other regulated entities under the proposed bill. There is no objection to the amend the First Schedule of POCAMLA by deleting paragraph (c) to include the Gambling Regulatory Authority in place of the Betting Control and Licensing Board;

Committee Observation

The Committee agreed to the proposed amendment.

120. **Clause 10** be amended by inserting a new Section 10A to read as follows: Powers on anti-money laundering, combating the financing of terrorism and Countering proliferation financing matters - Insert a new section to give the Authority powers to supervise for AML/CFT/CPF in accordance with the FATF Standards.

Committee Observation

The Committee rejected the proposed amendment.

121. Pursuant to Sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Gambling Regulatory Authority shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the Gambling Regulatory Authority and to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.

Committee Observation

The Committee agreed to the proposed insertion of the new clause subject to redrafting to remove repetitions.

122. In undertaking its mandate under subsection (1), the Gambling Regulatory Authority may—
- a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;
 - b) conduct onsite inspection;
 - c) conduct offsite surveillance;
 - d) undertake consolidated supervision of a reporting institution and its group;
 - e) compel the production of any document or information the Gambling Regulatory Authority may require for the purpose of discharging its supervisory mandate under the Proceeds of Crime and Anti-Money Laundering Act, 2009;
 - f) impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
 - g) issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
 - h) cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and
 - i) take such action as is necessary to supervise and enforce compliance by reporting institutions in line with the provisions of the Proceeds of Crime and Anti Money Laundering Act, 2009 and any regulations, guidelines, rules, instruction or direction made or issued thereunder.
 - j) For purposes of this section, “reporting institution” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

Committee Observation

The Committee rejected the proposed amendment.

3.2.10 County Assemblies Forum

The County Assemblies Forum appeared before the committee and recommended for the following amendments;

123. That **Clause 18** be amended to include the phrase “as advised by the Salaries and Remuneration Commission” at the end of the clause. The inclusion of the Salaries and Remuneration Commission (SRC) aligns with the constitutional mandate bestowed upon the SRC by Article 230(4) of the Constitution.

Committee Observation

The Committee agreed to the proposed amendment.

124. That **Clause 74** be amended to read “A player in an online gambling activity shall not bet an amount of less than **ten** shillings in a competition.” As capping the bets at KES 20 might restrict access to low-stakes gambling, affecting those who engage in casual, recreational betting.

Committee Observation

The Committee rejected the proposed amendment.

3.2.11 Association of Gaming Operators Kenya

125. The Association of Gaming Operators Kenya made the following submissions: -

Clause 2

126. The **definition** of the word “**betting premises**” is incomplete as the words “**and which is**” are **misplaced** due to most likely clerical error. They proposed definition be amended to read “betting premises” means premises used for the purposes of betting to which the public has access;

Committee Observation

The Committee agreed to the proposed amendment.

127. The **definition** of “**gross gambling revenue**” is ambiguous and does not match the definition provided by London’s Financial Reporting Interpretations Committee. They recommended an amendment to read “gross gambling revenue” means the overall difference between the total amount played and the amount paid out to punters before any deductions are made;

Committee Observation

The Committee rejected the proposed amendment.

128. The use of words “**or otherwise howsoever**” in defining “**lottery**” causes unlimited generality. They suggested an amendment to the definition to read “lottery” includes a sweepstake, a raffle and any scheme, arrangement, system plan or device for the sale, gift, disposal or distribution of any

property depending upon or as determined by a slot or a chance, whether by throwing or casting a dice, or by withdrawing a ticket, card, slot, numbers or figures, or by means of a wheel;

Committee Observation

The Committee agreed to the proposed amendment.

129. The **definition** of “**manufacture**” be revised to reflect grammatical correctness. They proposed the amendment to read “manufacture” means to produce, import, sell, lease, make available, distribute, maintain or repair a gambling device and, may include—

- (a) to supply;
- (b) to perform maintenance of gambling equipment; or
- (c) to provide gambling services;

Committee Observation

The Committee agreed to the proposed amendment.

130. **New Definition-** That “**Net gambling revenue**” be defined to mean the gross gambling revenue after the applicable taxes and have been deducted; to enable the bill to consider the globally accepted definition of “net gambling revenue” which considers the applicable taxes in order to calculate the after-tax sum.

Committee Observation

The Committee noted the proposed amendment which is not used in the Bill.

131. That the **definition** of “**a player**” in the bill narrows it to only lottery and promotional competition whereas other forms of gambling should be included as well as for the purpose of the Act. To that effect, they recommend the word “player” be accordingly replaced with the word “**punter**” throughout the text of the Bill.

Committee Observation

The Committee agreed to the proposed amendment.

132. The Bill lacks precision in defining “**pool betting**.” They recommend it be amended to read “**pool betting**” means the making of bets (other than bets made by means of totalisator), whether the bets are made on the system known as a fixed odds betting or otherwise, by a number of persons on terms that the winnings of such of those persons as are winners shall be, or be a share of, or be determined by reference to, the stake money paid or agreed to be paid by those persons;

Committee Observation

The Committee agreed to the proposed amendment.

133. The **definition** of the word “**winning**” be revised to “winning” means the difference between the pay-out received on the valid receipt issued by a licensee relating to gambling and the bet or stake placed by a punter to adapt it to the language used in the Gambling Control Bill.

Committee Observation

The Committee agreed to the proposed amendment.

Part II-

134. **Clause 4 (1) (h)**, be amended to read “pursuant to section 36A of the Proceeds of Crime and the Anti-Money Laundering Act, 2009, supervise and enforce compliance with that Act or any instruction, direction, guideline, or rule made pursuant to or in terms of that Act **applying to** all licensees; for grammatical precision and avoiding confusion.”

Committee Observation

The Committee rejected the proposal noting that the proposal was not necessary.

135. **Clause 4 (2)** be amended to read “In the discharge of its mandate under subsection (1) the authority shall collaborate with county governments and county gambling regulatory authorities in the discharge of the functions relating to betting, lotteries, casinos and other forms of gambling **given under this Act**. That using the term concurrent in the Bill is not desirable as it may create confusion and conflict of powers between national and county offices.

Committee Observation

The Committee rejected the proposed amendment.

136. **Clause 10 (1)(d)** be amended to read “develop policies for betting, lotteries and gambling and other forms of gambling; so that it can describe how the competent bodies distribute all the incoming proceeds from the licensees to social causes.

Committee Observation

The Committee rejected the proposed amendment.

137. **Clause 21 (b)** be deleted to remove the introduction of additional tax to the gambling industry.

Committee Observation

The Committee agreed to the proposed amendment.

138. **Clause 29(1)(b)** be amended to read “sufficient evidence to show that the applicant is in possession of, or commands **the adequate** gambling capital.” This is because the Bill does not provide the amount prescribed gambling capital.

Committee Observation

The Committee rejected the proposed amendment.

139. **Clause 29 (1) (g)** be amended to read “a declaration of the good causes the applicant intends to undertake”

Committee Observation

The Committee rejected the proposed amendment.

140. **Clause 29 (8)** be deleted because the gambling betting industry in Kenya is already burdened with excessive tax obligations.

Committee Observation

The Committee agreed to the proposed amendment.

141. **Clause 31 (1) (c)** be deleted as it introduces legal uncertainty which has the potential to introduce the possibilities of abuse, manipulations and subjectivity in the interpretation of the acquired rights.

Committee Observation

The Committee agreed to the deletion of the phrase “as may be determine” in clause 31(1)(c) and substitution with “as may be prescribed.”

142. **Clause 32 (1) (d)** be amended to read “if the licensee is in breach of any condition attached to the license as prescribed in provisions of this Act to define the wording of the provision in which conditions attached to licenses.” This is to avoid broad interpretations that can open the doors of abuse, manipulation and subjectivity when deciding on revocation of the license.

Committee Observation

The Committee agreed to the proposed amendment.

143. **Clause 32 (8)** be amended to change the number of years of eligibility to hold a license from 5 years to one year. A period of five years of prohibition to apply for a gambling license is unjustifiably long given that the grounds for revocation of license provided in Subsection (1) of the Section 32 of the Bill are given on general terms, whereas precise stipulations of legal offences were not provided. Hence, a five-year prohibition to apply for a license is unproportionally long period given the provisions regulating the acts of breach by the licensee.

Committee Observation

The Committee rejected the amendment, noting that punishment must serve as a deterrent.

144. **Clause 36 (1)** be amended to change the application of transfer of licenses from five years to one year so as to accommodate the business reality, the period after which the transfer could be possible is shortened. Moreover, and due to similar grounds, conditions for the transfer of locational permits should be alleviated.

Committee Observation

The Committee agreed to the deletion of clause 36 to deter possibility of money-laundering. The Committee noted that each applicant should make a fresh application to the Authority in the prescribed manner.

145. **Clause 36 (5)** be amended to read “A report under subsection (3) may include the particulars of any conviction recorded against a person to the extent that those particulars are relevant for the purposes of determining whether the proposed licensee is qualified to hold any interest in the business to which a license relates” The Clause was shortened and revised as to accommodate the previous proposed revision from this submission.

Committee Observation

The Committee rejected the proposed amendment.

146. **Clause 40 (3)** be deleted since requiring security bonds or even bank guarantees for activities not prescribed in the Act and not requiring a license under the Act opens the door to various abuses, manipulations and subjectivity when deciding on gambling activities by the Authority. Accordingly, it can be argued that the terms of clause, otherwise unknown in comparative practice, will directly permit numerous unlawfulness.

Committee Observation

The Committee agreed to the proposed amendment.

147. **Clause 40 (4)** be deleted since it is a repetition of Section 40 (2).

Committee Observation

The Committee agreed to the proposed deletion of clause 40(4).

148. **Clause 41 (2)** be amended to be in conjunction with Section 41(1) “to note and take into account provisions under this Act that gives prescription of how gambling capital is determined” If gambling capital is to be one of the conditions for the issuance of the license, its precise amounts should be determined in a legislative procedure in force for the Act itself.

Committee Observation

The Committee rejected the proposed amendment.

149. **Clause 44 (c) and (d)** be amended to read “have a certificate issued by the Supplier indicating the model and the functions of the machine”; and

(d) “undergo standards verification after every calendar year from the day it was put into operation”

That the Section in its entirety should be moved to PART VII—CASINO, SLOT MACHINE AND OTHER FORMS OF GAMBLING of the Bill which regulates gambling machines. Here it is underlined that the issuance of import certificates for gambling machines and their certification every third month would burden and over formalize the process and eventually dissuade licensees from installing gambling machines, leading to the growth of unlicensed gambling market.

Committee Observation

The Committee rejected the proposed amendment.

150. **Clause 45** be amended to add a **new subsection** to be “(4) The tax under subsection (1) shall be the only tax, i.e., levy to be charged on licensees directly or indirectly in connection with their gambling operations. No other tax can be imposed on the licensees by the virtue of other bills or acts or any legal acts of any kind except in this Act and its Schedules.”

That the gambling and betting industry in Kenya is already burdened with excessive tax obligations, thus the introduction of additional taxes and/or levies will lead to the shutting down of business activities by legal gambling and betting operators, encourage the boom of the illegal market and consequently result in a reduction in revenues of State Treasury.

Committee Observation

The Committee rejected the proposed addition of a new sub-section.

151. **Clause 46** be deleted in its entirety. That this is because the gambling and betting industry in Kenya is already burdened with excessive tax obligations, thus the introduction of additional taxes and/or levies will lead to the shutting down of business activities by legal gambling and betting operators, encourage the boom of the illegal market and consequently result in a reduction in revenues of State treasury.

Committee Observation

The Committee agreed to the proposed amendment.

152. **Clause 47** be amended to ensure there is proper numbering in the sections further to ensure the requirements which determine the grant of a permit given by county government should be precisely set in the Act, so that the licensees are not subject to discretionary and uncertain requirements.

Committee Observation

The Committee rejected the proposed amendment, noting that the county governments should determine suitability of premises before grant of a permit.

153. **Clause 48** be amended to read “A permit issued under this Act shall state the location of the premise to which it relates”

That no further conditions should be imposed on the licensees except those clearly stipulated under the present Act. Since the Act does not elaborate on such conditions, the licensees cannot be exposed to legal uncertainty regarding their given rights nor to the possibility of a broad interpretation and open door to various abuses, manipulations and subjectivity in the interpretation of the acquired rights.

Committee Observation

The Committee agreed to the proposed amendment.

154. **Clause 49 (1)** should be amended to ensure that no further conditions should be imposed on the licensees except those clearly stipulated under the present Act. Since the Act does not elaborate on such conditions, the licensees cannot be exposed to legal uncertainty regarding their given rights nor to possibility of a broad interpretation and open door to various abuses, manipulations and subjectivity in interpretation of the acquired rights.

Committee Observation

The Committee agreed to the proposed amendment.

155. **Clause 49 (9)** to be amended to read “The holder of a permit that is revoked shall surrender the permit to the county government and shall not be eligible to hold a permit under this Act for a period of one year with effect from the effective date of the revocation”

That the period of five years of prohibition to apply for a permit is unjustifiably long period given that no precise grounds for revocation of the permit or conditions attached to the license are presented in the Bill. Five-year long prohibition period has a punishment character and as such should be prescribed for specified and named offences and acts.

Committee Observation

The Committee rejected the proposed amendment.

156. **Clause 61 (d)** be amended to read “online bookmakers license that includes any form of betting by means of remote communications (betting, virtual games, virtual sports, as well as other forms of gambling and betting)”

In order to eliminate potential legal gaps and doubts, avoid different interpretations and to provide legal certainty and rule of law, it is necessary to specify in the Act precise meaning of online bookmakers’ license.

Committee Observation

The Committee recommended that the definition be moved to clause 2.

157. **New Subsections (2) and (3)** are added to the Section 61 as follows: (2) Licensee is entitled to install betting terminals, electronic table gaming machines and terminals for electronic games of chance in an authorized betting premise. The Authority may approve to the licensee to place

aforementioned terminals and gaming machines in public premises. (3) Licensee is entitled to install up to ten slot machines in each of the authorized betting premises.”

For the purpose of more rational use of business premises, it is proposed that an operator who owns a license to carry on the business of a bookmaker at authorized betting premises has the right to place betting terminals, electronic table gaming machines, terminals for electronic games of chance, as well as slot machines in the same premises.

Committee Observation

The Committee rejected the proposed amendment, noting that the matter will be addressed in Regulations.

158. **Clause 66** be amended to expound the control of betting machines - Betting machines should be allowed in all locations for which licensee already has a license and / or permit, not only in casinos. For example, there is no compelling argument as to why a betting machine should not be allowed in at an authorized betting premise. Furthermore, both issuance of import certificates for both betting and gambling machines and their certification every third month would burden and over formalize licensing process and eventually dissuade licensees from installing betting and gambling machines, leading to the growth of unlicensed gambling market. Amount in the Subsection 3 was adapted to reflect the economic reality in the gambling industry.

Committee Observation

The Committee agreed to the proposed amendment.

159. **Clause 67 (4)** be deleted - Given that the term “near” is not defined in the Act nor in its Schedules, wording of the provision of the Subsection (4) in which the conditions regarding the location of gambling machines including slot machines in relation to other objects are not defined, leads to the possibility of a broad interpretation and opens the door to various abuses, manipulations and subjectivity in the interpretation of the acquired rights.

Committee Observation

The Committee agreed to the proposed amendment noting that the distance should be prescribed in Regulations.

160. **Clause 67 (5)** be amended to make a single bet in a casino machine shall be played to be a minimum of ten shillings from a minimum of twenty shillings - Amount in the Subsection 5 was adapted to reflect the economic reality in the gambling industry.

Committee Observation

The Committee rejected the proposed amendment.

161. **Clause 69** be deleted. This is because the continued presence of the officers of the Authority in all casinos is contrary to the nature of casino as private businesses not controlled nor founded by any government. Given the legal nature of casinos and the fact that the Authority has powers of inspection

provided in the Clause 68, continuous presence of the officers of the Authority is contrary to constitutional rights and freedoms of licensees, and does not exist as such in the comparative practice

Committee Observation

The Committee agreed to the proposed amendment.

162. **Clause 70** be amended by adding a new subsection (2) to be – “In this Act online gambling means any form of betting and gambling (betting, slots and other casino games, virtual games, as well as other forms of gambling) in which persons participate by the use of remote communication.” In order to eliminate potential legal gaps and doubts, avoid different interpretations and to provide legal certainty and rule of law, it is necessary to specify in the Act precise meaning of online gambling.

Committee Observation

The Committee agree to the proposed amendments noting however that the definition should be moved to clause 2.

163. **Clause 71 (3)** be amended to be a requirement of an approved gambling control system as a condition of the license granted under subsection (1) which the licensee shall be required to strictly comply with is outlined in Fifth Schedule to this Act - Since the grant and validity of the licence are preconditioned upon requirement of requirement of an approved gambling control system, the licensees, due to reasons of legislative and constitutional fairness, should have such requirements outlined beforehand in a schedule to this act or its accompanying regulations. Licensees should not be left to discretionary imposition of such conditions by the Authority at any given time, but should rather cooperate with it as to find the reasonable and applicable solution for the industry. Furthermore, as not complying with the requirements of this system leads to offence in accordance with the next subsection of the Bill, and due to the fundamental and worldwide legal principle – *Nullum crimen sine lege* – Latin for “no crime without law”, such legal provisions, existence thereof conditioning an offence, have to be provided in advance to the licensees and the protentional licensees.

Committee Observation

The Committee agreed to the proposed amendment but recommended that the proposal be moved to application.

164. **Clause 71 (8)** be amended to have a customer care centre within Kenya by removing **within Kenya**. That given the global tendencies, maintaining a customer care centre within the territory of the respective country is not necessary if respective customer care centre performs all its designated duties within the prescribed work hours, in which it is fully available to provide customer care.

Committee Observation

The Committee rejected the proposed amendment.

165. **Clause 73 (4)** be deleted as the section in not necessary.

Committee Observation

The Committee recommended that sub-clause 73(4) be redrafted in line with the Unclaimed Financial Assets Act, 2011.

166. **Clause 74 (2)** be deleted since the clause is misleading as to imply that social security fee is going to be due on each bet made. Rather, these policies should describe how the competent bodies distribute all the incoming proceeds from licensees (from gambling tax and licence and other fees) to social causes.

Committee Observation

The Committee rejected the proposed amendment.

167. **Clause 75 (7)** be amended to read “A licensee shall not induce, facilitate or aid a player to place a wager or a bet by advancing credits or meeting third party costs incurred by a player and does not include free bets, bonus bets, done in the ordinary course of business.” That credit cards are worldwide accepted means of payment across all the industries, hence it is contrary to the postulates of modern market economy to omit them as a mean of payment. Free bets and bonus bets are promotions activities and not financing.

Committee Observation

The Committee agreed to the proposed amendment further recommending that the proposal be redrafted in proper language.

168. **Clause 76 (4)** be amended to read “A licensee may receive funds from a player through-
- (a) a credit card;
 - (b) a debit card;
 - (c) an electronic funds transfer;
 - (d) mobile money transfer;
 - (e) cash deposits to the player’s account made at the locations with permits given under this Act; or
 - (f) any other method as may be approved by the Authority from time to time

As stated above, credit cards are worldwide accepted means of payment across all the industries. There is no compelling reason to exclude this payment mean from Kenyan gambling legislature. Moreover, there is no reason not to accept cash deposits made by players at the locations with permits, since this is accepted mean of depositing funds on player’s account balance worldwide and is in accordance with industry accepted standards and norms.

Committee Observation

The Committee agreed to the proposed amendment.

169. **Clause 77 (1)** to be amended to read “A licensee shall not provide credit to a player or on a player’s account or act as an agent for a credit provider to facilitate the provision of credit to a player.” That the subsection b) and c) of the section use general terms which may lead to the interpretation of the Act as to prohibit bonuses to players, which are worldwide accepted in the industry and in all

developed gambling jurisdictions departing thereby from restrictive and retrograde approach to bonuses. Free bets and bonus bets are promotions activities and not financing.

Committee Observation

The Committee agreed to the proposed amendment.

170. **Clause 79(1)** be amended to read “A licensee shall deposit all the player’s money in a bank account or, upon player’s request, directly pay the player out with cash at the locations with permits given under this Act.” This is because a requirement for approval of the Board with regard to licensees’ banks and their accounts on which the players’ money is received would lead to over formalization of the gambling payment procedure, both regarding receiving deposits and paying out the players. The reason to omit this requirement should be also taken into account with the fact that, in the current climate, many banks, due to legally unfounded reasons, are reluctant to open accounts for operators of games of chance and gambling. Moreover, if direct cash deposit from the player is accepted as a mean of receiving players’ deposits, direct cash out to the player on the location with permit should be accepted as well.

Committee Observation

The Committee agreed to the proposed amendment.

171. **Clause 79(3)** be amended to read “A licensee’s bank account holding a player’s money shall –
- (a) not enforce or execute, any charge, write-off, set-off or other claim against a licensee’s account;
 - (b) not combine the account with any other account in respect of any debt owed to it by a licensee;
 - or
 - (c) credit any interest payable on a licensee’s account, only to the account.

That it should be clarified that set-off prohibition relates to licensee’s account since the term client could be misleading given the lack of its definition and interpretation in the Act.

Committee Observation

The Committee agreed to the proposed amendment.

172. **Clause 80 (1)** be amended to read “Where a transaction has not been recorded on a player’s account for eighteen months, a licensee shall remit the balance in the account to a player.” That more reasonable time period to record player’s activity is proposed in accordance with the postulates of modern market economy and industry accepted standards.

Committee Observation

The Committee agreed to the proposed amendment recommending however, that the reasonable time period be reduced to twelve months.

173. **Clause 80 (2)** be amended to read “Where a player may not be satisfactorily located, the money may be remitted to the Unclaimed Financial Assets Authority.” This is because potential set-off could

only be done in relation to the player, but since he was inactive for eighteen months and has no claims against licensee, no set-off is possible in accordance with this Subsection.

Committee Observation

The Committee agreed to the proposed amendment.

174. **Clause 81 (d)** be amended to read “the good causes they implemented.” This is because the conditions which could be attached to the license in general are not defined neither in the Gambling Control Bill nor in its Schedules. However, licensees could provide good causes report at the end of each financial year.

Committee Observation

The Committee agreed to the proposed amendment.

175. **Clause 82 (1) (d)** be deleted. That the operators should in advance know all the requirements regarding the conditions for issuance of license to foreign operators and not be left to uncertain conditions which would later be discretionarily prescribed. Such legal uncertainty would open door to various abuses, manipulations and subjectivity in interpretation of the acquired rights.

Committee Observation

The Committee agree to the proposed amendment.

176. **Clause 86 (2) (b) (ii)** be deleted. This is because the wording of the provisions of the cited subsections relates to the conditions attached to the licence which are not defined neither in the Act nor in its Schedules thereby leading to the possibility of a broad interpretation and open door to various abuses, manipulations and subjectivity in interpretation of the acquired rights, at the same time prescribing severe monetary and personal sanctions.

Committee Observation

The Committee rejected the proposed amendment.

177. **Clause 87 (3)** be amended to read “Any person who promotes or advertises any prize license issued under this section shall in every case procure that no person under the age of eighteen years shall play an amusement machine unless in the presence of, and with the permission of the parent or guardian.” The wording of the provisions of the Subsection (3) in which conditions attached to the license are not defined neither in the Act nor in its Schedules but are to be later defined either by the Authority or county governments leads to the possibility of a broad interpretation and opens the door to various abuses, manipulations and subjectivity in interpretation of the acquired rights.

Committee Observation

The Committee agreed to the proposed amendment.

178. **Clause 87 (4)** be deleted. This is because it is a repetition of the previous subsection. Section 87 (3).

Committee Observation

The Committee agreed to the proposed amendment.

179. **Clause 91 (12)** be deleted because the provision stipulating that the Committee shall operate as quasi-judicial body without any further clarification as to which functions or characteristics of its decisions render it a “quasi-judicial body” leads to the possibility of a broad interpretation and opens the door to various abuses, manipulations and subjectivity in interpretation of the acquired rights.

Committee Observation

The Committee rejected the proposed amendment, recommending that sub-clause (12) be amended to change Gambling Appeals Committee to Gambling Appeals Tribunal and for the same to be redefined in clause 2.

180. **Clause 118 (3)** be deleted since the cited subsection should stipulate precise amount of the administrative fine, given that, according to the worldwide accepted principles of penalty and criminal law, both the offence and its penalty should be clearly prescribed in the law. Hence, such an imprecise provision would lead to the possibility of a broad interpretation and open the door to various abuses, manipulations and subjectivity in interpretation.

Committee Observation

The Committee rejected the proposed amendment, further recommending an insertion of a general penalty clause of one million shillings or one year.

181. **Clause 122 (2) (f) (h) (j)** be deleted because passing of such provisions should be done through legislative procedure for passing or amending the Act in the Parliament, given the fact they regulate and refer to completely new statutory obligations for licensees and as such could only be prescribed by the Parliament as the only body in Kenya empowered to pass such legislative acts. Anything to the contrary would lead to unconstitutionality of the cited clauses and is in fact contrary to the terms of Section 122 (2) (b) of the which itself sets limit to the authority of the Cabinet Secretary to pass such regulations: *the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section.*

Committee Observation

The Committee rejected the proposed amendment, only acceding to the deletion of paragraph (h).

182. The **Fourth Schedule** on gambling security be amended so that the security bond be based on the size and business operation of each company. They can borrow from the Insurance and Banking Industry. The Fourth Schedule to the Gambling Control Bill should be rephrased to show the matching of risks to the security basically all game companies do not carry the same risk.

Committee Observation

The Committee agreed to the proposed amendment.

3.2.12 Media Owners Association

183. The Media Owners Association of Kenya proposed the following amendments:

Clause 2

184. The word “**Lottery**” should be amended to include a sweepstake, a raffle and any scheme, arrangement, system plan or device for the sale, gift, disposal or distribution of any property depending upon or as determined a chance, whether by throwing or casting a dice, or by withdrawing a ticket, card, slot, numbers or figures, or by means of, or otherwise howsoever.

Committee Observation

The Committee rejected the proposed amendment.

185. The word “**players**” should be amended to mean a person who is in possession of a valid ticket for a lottery or a promotional competition or a player that makes a bet.

Committee Observation

The Committee rejected the proposed amendment.

186. The word “**winning**” should be amended to mean “total revenue received from a gambling activity after prizes, good causes and tax.”

Committee Observation

The Committee rejected the proposed amendment.

187. The word “**gross gambling revenue**” should be amended to read, “total revenue received from a gambling activity after prizes, good causes and tax.”

Committee Observation

The Committee rejected the proposed amendment.

188. **Clause 10 (1) (d)** be deleted since it amounts to double taxation. Gambling is done with disposable income, players have already paid for social health insurance etc.

Committee Observation

The Committee agreed to the proposed deletion of the phrase “social healthcare” in sub-clause (1) (d).

189. **Clause 29 (8)** be deleted since it is anti-competitive and arbitrary. This is also because GGR in definitions is defined as gross revenue. This could make any operator bankrupt based on the whims of the Cabinet Secretary.

Committee Observation

The Committee agreed to the deletion of clause 29(8).

190. Amend clauses on licensing in **clause 34**.

Committee Observation

The Committee agreed to the amendment.

191. **Clause 36 (1)** be amended to read “the holder of a license issued under the Act to apply after a period of one year to transfer a license or a permit to any person who is eligible for a license under this Act upon payment of the prescribed fees to the Authority.”

Committee Observation

The Committee rejected the proposed amendment.

192. **Clause 45 (1)** be amended to read, “There shall be a tax to be known as gambling tax chargeable at the rate of fifteen per cent of the gross gambling revenue. This may be problematic as the definition of Gross Gambling Revenue implies the Gross Revenue.

Committee Observation

The Committee rejected the proposed amendment.

193. **Clause 46** be deleted as it is yet another financial obligation to be met by each licensee to the government, despite the Bill providing under sub-clause (2) that this levy shall not exceed one per cent of the monthly gross gambling revenue of a licensee.

Committee Observation

The Committee agreed to the proposed amendment.

194. **Clause 53 (4)** be deleted. Lotteries are singled out to only have licenses for one year

Committee Observation

The Committee agreed to the proposed amendment.

195. **Clause 53 (6)** be deleted as this it is unworkable, similar in structure to the national lottery. There is no mechanism for how this to be an open discussion with the Cabinet Secretary.

Committee Observation

The Committee rejected the proposed amendment.

196. **Clause 54 (2) (a)** be deleted since there is a complete lack of understanding of operating costs are in the industry. Lotteries have been singled out as having a cap but not casinos or bookmakers.

Committee Observation

The Committee rejected the proposed amendment.

197. **Clause 54 (2) (c)** be deleted because the industry is completely dependent on success and sales.

Committee Observation

The Committee agreed to the proposed amendment.

198. **Clause 54 (3)** be deleted due to the definition for Gross Gambling as specified in the definitions.

Committee Observation

The Committee rejected the proposed amendment.

199. **Clause 63 (3)** be deleted since it is an operator's decision based on market conditions.

Committee Observations

The Committee rejected the proposed amendment noting that gross gaming revenue (GGR) is already defined.

200. **Clause 74 (2)** be deleted as it will result to double taxation.

Committee Observation

The Committee rejected the proposed amendment.

201. **Clause 88 (1) and (2)** be deleted because these clauses leaves media houses exposed to the whims of the Authority which may decide to impose conditions that the media houses may deem impossible to meet. Moreover, the amount payable to acquire the license to air the promotions is also not indicated in the Bill. This will lead to over regulation and licensing of media houses which are already bleeding and unable to sustain the high costs being imposed across Board.

Committee Observation

The Committee rejected the proposed amendment recommending that sub-clause (2) be redrafted to provide for Regulations.

202. **Clause 90 (1) (c) and (g)** be deleted because it affects advertising revenue earned by those activities.

Committee Observation

The Committee agreed to the proposed amendment.

203. **Clause 90 (3) (d)** be deleted because this clause shouldn't be there since there are different rules for different products. That why are live sporting events allowed when lotteries (including the national lottery) are not anti-competitive.

Committee Observation

The Committee agreed to the proposed amendment.

204. **Clause 90 (4)** should be deleted since seeks to deny media houses revenue that they earn from advertising their own gambling services. It would be improper to deny media houses to earn revenue from their gambling services despite paying the necessary taxes and after they have sought and received licenses from the Betting Control and Licensing Board.

Committee Observation

The Committee agreed to the proposed amendment.

205. **Clauses on licensing** should be amended since no durations of the license period for the various categories of licenses are spelt out including such information in the addendums/ schedules attached.

3.2.13 Gaming Awareness Society of Kenya

206. The Gaming Awareness Society of Kenya (GASK) proposed the inclusion of the following provisions in the Bill:

- (a) Establish strict deposit limits to introduce a maximum betting amount in online gambling accounts to prevent individuals from impulsively gambling away substantial amounts.
- (b) Prohibit Credit facilities for gambling payment by banning those facilities from using platforms such as Fuliza for gambling payments to prevent individuals from using borrowed money to gamble.
- (c) Allocate resources for public awareness to facilitate education and outreach programs that inform the public about responsible gambling.
- (d) Provision objecting licensing of gambling prediction apps which the GASK submitted that they mislead players by promoting a false sense of assured winnings. The Gambling apps therefore exacerbate gambling addiction, especially among young people.

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS

207. Upon reviewing the Bill and the submissions received, the Committee made the following observations:

- a) That the Bill seeks to repeal and replace the Betting, Lotteries and Gaming Act (Cap 131), provide for a legislative framework for the regulation of gambling in Kenya, and incorporate safe gambling principles in gambling sector. Further, the Bill seeks to regulate betting, casinos and other forms of gambling including the authorization of prize competitions, public lotteries and media promotions.
- b) The public participation exercise highlighted the need to amend various provisions of the Bill to correct grammatical errors; align the contents with the provisions of the Constitution and written law and to include missing provisions for purposes of clarity and completeness of the proposed legislation.
- c) The bill proposes concurrent functions of the National and County Governments in the regulation of gambling activities therefore transitioning Kenya's gambling law in to the governance realities under the Constitution of Kenya.
- d) Taxes under Clause 45 need to be collected in accordance with the provisions of the Tax Procedure Act, Cap 469B so as to provide for assessment and enforcement powers to the collector of the gambling tax.
- e) That tax exemptions in the bills should be included in the Income Tax Act. In addition, there is need for clarity to expound the provision on the exemption to provide clarity on what provisions under the proposed Gambling Bill applies to.
- f) That there is need for a transition clause that will enable the collector to enforce collection of any taxes that are due under the Betting, Lotteries and Gaming Act that is being repealed by the proposed bill, as well as provide for assessment and enforcement powers to the collector of the gambling tax.
- g) That gambling is a demerit good and has risks if over indulged like similar products. Therefore, the bill proposed measures to mitigate harm from gambling such as: public sensitization; self-exclusion measures; enforcements to curb illegal gambling; promotion of responsible gambling behaviours; restriction in advertising; and criminalizing gambling by young persons and the vulnerable in the community.
- h) That the Gambling Regulatory Authority that is transiting from the Betting Control and Licensing Board, should be empowered to ensure compliance with Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATION

208. The Committee, having considered the Gambling Control Bill (*National Assembly Bill No. 70 of 2023*) and the submissions from members of the public and stakeholders, **recommends that the House approves the Bill with amendments as proposed in the Schedule of Amendments.**

for



SIGNED.....

DATE.....

25th NOV 2023

HON. DANIEL WANYAMA SITATI, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE

CHAPTER SIX

SCHEDULE OF PROPOSED AMENDMENTS

209. In view of the observations made, the Committee proposed the following amendments to the Bill to be considered by the House in the Committee Stage:

LONG TITLE

THAT, the Long Title be amended by inserting the words “of Kenya” immediately after the words “Gambling regulatory Authority”.

Justification

The amendment seeks to change the name of the Authority to the Gambling Regulatory Authority of Kenya.

CLAUSE 2

THAT, clause 2 of the Bill be amended—

- (a) in the definition of “Authority” by inserting the words “of Kenya” immediately after the words “Regulatory Authority”;
- (b) by deleting the definition of “betting premises”;
- (c) in the definition of Cabinet Secretary” by deleting the word “gambling” and substituting therefor the words “internal security and national administration”;
- (d) by deleting the definition of “Committee”;
- (e) in the definition of “lottery” by deleting the words “or otherwise howsoever”;
- (f) by deleting the definition of “manufacture”;
- (g) by deleting the definition of “online gambling”;
- (h) by deleting the definition of “player”;
- (i) by deleting the definition of “pool betting”;
- (j) by deleting the definition of “winning”;
- (k) by inserting the following new definitions in their proper alphabetic sequence—

“beneficial owner” has the meaning assigned to it in the Companies Act;

“betting premises” means premises used for the purposes of betting to which the public has access and which are kept or used, whether on one occasion or more than one, for the purpose of—

- (a) bets being made therein between persons resorting to the premises and the owner, occupier or keeper thereof, or any person using the premises, or any person procured or employed by or acting for or on behalf of the owner, occupier, keeper or person using the premises, or of any person having the care or management or in any manner conducting the business thereof; or
- (b) any money or valuable thing being received by or on behalf of the owner, occupier, keeper or person aforesaid as or for the consideration for any assurance, undertaking, promise or

agreement, express or implied, to pay or give, or for securing the paying or giving by some other person of, any money or valuable thing on any horse race, or other race, fight, game, sport, lottery or exercise, or any other event or contingency;

“manufacture” means to produce, import, sell, lease, make available, distribute, maintain or repair a gambling device and may include—

- (a) to supply;
- (b) to perform maintenance of gambling equipment; or
- (c) to provide gambling services;

“online bookmaker’s licence” means any form of betting by means of remote communications, including virtual games, virtual sports as well as other forms of gambling;

“online gambling” means any form of gambling in which persons participate by the use of remote communication and on the internet;

“pool betting” means the making of bets, other than bets made by means of totalisator, whether the bets are made on the system known as a fixed odds betting or otherwise, by a number of persons on terms that the winnings of such of those persons as are winners shall be, or be a share of, or be determined by reference to, the stake money paid or agreed to be paid by those persons;

“punter” means a person who is in possession of a valid ticket or other kind of valid receipt issued by a licensee relating to gambling;

“reporting institution” has the meaning assigned to it in the Proceeds of Crime and Anti-Money Laundering Act;

“Tribunal” means the Gambling Appeals Tribunal established in section 91;

“winning” means the difference between the pay-out received on valid receipt issued by a licensee relating to gambling and the bet or stake placed by a punter.”

Justification- The amendments in clause 2 seek to—

- (a) change the name of the Authority to the Gambling Regulatory Authority of Kenya;**
- (b) introduce the definition of the term “beneficial owner” which is used in the Third Schedule to the Bill;**
- (c) amend the definition of “Cabinet Secretary” to ensure that the Cabinet Secretary responsible for national administration shall provide the ministerial oversight over gambling activities as well as to offer policy guidance. Further, the Cabinet Secretary for national administration would be best placed to put in place enforcement measures to curb illegal gambling, tax evasion money laundering and financing of terrorism;**
- (d) remove the brackets appearing in the definition of “betting premises” as well as the capital letter appearing in paragraph (b), so as to conform to the House drafting style;**
- (e) eliminate the ambiguity in the definition of “lottery” by deleting the words “or otherwise howsoever”;**
- (f) to correct grammatical errors in the definition of the term “manufacture”;**
- (g) introduce the definition of “online bookmaker’s licence” which is used in the Bill;**

- (h) redraft the definition of the term ‘online gambling’ for clarity purposes;
- (i) to amend the definition of “pool betting” so as to avoid the use of broad terms and overlap of other games of chance;
- (j) replace the definition of “player” with the term “punter” so as to expand its scope as well as to extend its application to all forms of gambling;
- (k) introduce the definition of the term “reporting institution” so as to subject casinos to the application of the anti-money laundering provisions as contained in the Proceeds of Crime and Anti-Money Laundering Act;
- (l) change the name of the appeals body to the Gambling Appeals Tribunal;
- (m) to amend the definition of the term “winning” for clarity purposes.

CLAUSE 4

THAT, clause 4 of the Bill be amended in sub-clause (1) by deleting paragraph (h) and inserting the following new paragraph—

“(h) pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, regulate and supervise the reporting institutions licensed under this Act;”

Justification

The amendment seeks to ensure that reporting institutions regulated under the Bill will also be subject to the regulation by the Financial Reporting Centre established under the Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009.

CLAUSE 5

THAT, clause 5 of the Bill be amended—

(a) by deleting paragraph (a) and inserting the following new paragraph—

“(a) implement and ensure compliance to this Act;”

(b) in paragraph (b) by deleting the words “single business permits” and substituting therefor the words “trade licences”;

(c) in paragraph (d) by inserting the word “ensure” immediately before the words “periodic monitoring”; and

(d) by deleting paragraph (e) and inserting the following new paragraph—

“(e) handle complaints and facilitate arbitration; and”

Justification- The amendment seeks to correct grammatical errors as well as to insert the the word “trade licences” which aligns with the language used in Paragraph 7(b) of Part 2 of the Fourth Schedule to the Constitution.

PART III

THAT, the title to Part III be amended by inserting the words “OF KENYA” immediately after the words “REGULATORY AUTHORITY”.

Justification

The amendment seeks to change the name of the Authority to the Gambling Regulatory Authority of Kenya.

CLAUSE 6

THAT, clause 6 of the Bill be amended—

- (a) in sub-clause (1) by inserting the words “of Kenya” immediately after the words “Regulatory Authority”;
- (b) by deleting sub-clause (3) and inserting the following new sub-clause—
“(3) The Authority shall be the successor to the Betting Control and Licensing Board established under section 3 of the Betting, Lotteries and Gaming Act.”
- (c) by deleting sub-clause (4).

Justification

The amendment seeks to—

- (a) **change the name of the Authority to the Gambling Regulatory Authority of Kenya; and**
- (b) **correct grammatical errors as well as to delete sub-clause (4) whose provisions are already contained in clause 124 of the Bill.**

CLAUSE 7

THAT, clause 7 of the Bill be amended—

- (a) in sub-clause (1) by deleting paragraph (e) and inserting the following new paragraph—
“(e) three persons, not being public officers appointed by the Cabinet Secretary, being persons with background in finance, law, betting and lotteries or business management, of whom—
(i) one shall represent persons with disabilities;
(ii) one shall represent the civil society organizations; and
(iii) one shall represent faith-based organizations.
- (b) by deleting sub-clause (4) and inserting the following new sub-clause—
“(4) In appointing the members of the Board under subsection (1)(e), the Cabinet Secretary shall ensure that not more than two-thirds of the members are of the same gender, shall observe the principle of regional and ethnic balance and shall have due regard to the principle of fair competition and merit as the basis for the appointments.”
- (c) in sub-clause 3 by inserting the words “based on satisfactory performance” immediately after the words “one further term of three years”.

Justification

The amendments to the clause seek to—

- (a) **provide for greater inclusivity in the membership of the Board, since the objectives of the Bill affect the wider society who may be represented by persons with disability, civil society organisations and faith-based organisations;**
- (b) **provide for fair competition and merit as a basis for appointment, so as to align to the provisions of Articles 10 and 232 of the Constitution;**
- (c) **expressly provide that re-appointment to the Board shall be based on previous satisfactory performance of the members.**

CLAUSE 8

THAT, clause 8 of the Bill be amended—

- (a) in sub-clause (1) by deleting paragraph (d) and inserting the following new paragraph—
“(d) was a director, employee or shareholder of a gambling operator in the preceding five years;”
- (b) in sub-clause (2) by inserting the words “without the option of a fine” immediately after the words “imprisonment for a term exceeding six months”;

Justification

The amendments seek to—

- (a) delete paragraph (d) to allow for current and former employees of the Authority to be eligible for appointment as the Chairperson of the Board, to allow for institutional memory and technical expertise;
- (b) inserting a new paragraph (d) to prohibit persons who were, in the preceding five years, directors or employees of gambling operators, so as to avoid conflict of interest; and
- (c) amend sub-clause (2)(b) to insert the aspect of imprisonment without an option of a fine, for clarity purposes.

CLAUSE 10

THAT, clause 10 of the Bill be amended—

- (a) in sub-clause (1) by deleting paragraph (d) and inserting the following new sub-clause—
“(d) develop policies for placing of bets for betting, lotteries and gambling that includes a savings component;”
- (b) by deleting the opening sentence in paragraph (i) and inserting the following new opening sentence—
“(i) monitor socio-economic patterns of gambling activities at the national level including to undertake research and identify factors relating to, and patterns, causes, and consequences of—”
- (c) by deleting paragraph (j);
- (d) by deleting paragraph (l); and
- (e) in paragraph (o) by inserting the words “and make determination on” immediately after the word “receive”.

Justification

The amendments seek to—

- (a) provide clarity in paragraph (d), and to eliminate the ambiguity that would arise with the requirement that the policies on betting must contain a savings element for social health insurance;
- (b) correct a grammatical error in paragraph (i), as well as to delete the aspect of monitoring at the county level, since the Bill only provides for the conduct of national lotteries at the national government level;
- (c) delete paragraph (j) which is a repetition of the provisions contained in paragraph (e);
- (d) delete paragraph (l) which is a repetition of the provisions contained in sub-paragraph (i) of paragraph (h);
- (e) to add the words in paragraph (o) for clarity purposes.

CLAUSE 11

THAT, the Bill be amended by deleting clause 11 and inserting the following new clause—

Gambling operation
guidelines.

11. (1) The Cabinet Secretary shall, in consultation with the Authority, prescribe guidelines of practice on the manner in which facilities for gambling are operated, whether by the holder of a licence under this Act or by any other person.

(2) A guideline issued under subsection (1) shall describe arrangements that should be made by a person providing facilities for gambling for the purposes of—

No. 24 of 2019.

- (a) ensuring that gambling is conducted in a fair and open way;
- (b) protecting children and other vulnerable persons from being harmed or exploited by gambling;
- (c) making assistance available to persons who are or may be affected by problems related to gambling;
- (d) protecting of vulnerable gamblers;
- (e) information and data protection in accordance with the Data Protection Act;
- (f) online payment protection;
- (g) creation of secure online gambling environment;
- (h) ethical and responsible marketing;
- (i) safety measures against criminal activities, anti-money laundering and terrorism; and
- (j) public awareness and education campaigns.

(3) The Cabinet Secretary may, in consultation with the Authority, review the guidelines issued under this section.

No. 29 of 2022.

(4) Before issuing or revising the guidelines under this section, the Cabinet Secretary and the Authority shall consult—

- (a) any person who represents licensing authorities;
- (b) the body responsible for the protection of the best interests of the child, as established in the Children Act;
- (c) any person who represents the Inspector General of Police;
- (d) any person who represents the interests of punters; and
- (e) the members of public in such manner as the Authority considers appropriate.

Justification

The amendment seeks to—

- (a) redraft clause 11 to provide that the Cabinet Secretary shall prescribe guidelines which shall have the force of law as stipulated in the Statutory Instruments Act, No. 23 of 2013;
- (b) include the aspect of consultation with the body responsible for the protection of the best interests of the child, so as to give effect to the provisions of Article 53(2) of the Constitution which provides that a child's best interests are of paramount importance in every matter concerning the child.

CLAUSE 12

THAT, the Bill be amended by deleting clause 12 and inserting the following new clause—

Powers of the Board. **12.** (1) The Board shall have all powers necessary for the proper performance of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Board shall have power to —

- (a) control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;
- (b) receive any grants, gifts, donations or endowments made to the Authority and make disbursements therefrom in accordance with the provisions of this Act;
- (c) conduct such investigations as may be necessary for the enforcement of this Act;
- (d) approve the opening, operation and closing of the bank accounts of the Authority with the approval of the National Treasury;
- (e) conduct such investigations as may be necessary for the implementation of the Act;
- (f) inquire into any complaint against a licensee; and
- (g) undertake any activity necessary for the fulfilment of any of the functions of the Board.

Justification

The amendment seeks to redraft the clause for purposes of proper grammatical flow.

CLAUSE 15

THAT, clause 15 of the Bill be amended by deleting the words “in consultation with relevant government agencies” and substituting therefor the words “on the advice of the Salaries and Remuneration Commission.”

Justification

The amendment seeks to align the provision with the provisions of Article 230(4) of the Constitution which provides that the Salaries and Remuneration Commission shall advise the national and county governments on the remuneration and benefits of public officers.

CLAUSE 16

THAT, clause 16 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “in consultation with relevant government agencies” and substituting therefor the words “on the advice of the Salaries and Remuneration Commission,”;
- (b) in sub-clause (4) by inserting the words “based on satisfactory performance” immediately after the words ‘one further term of three years’

Justification

The amendment seeks to—

- (a) align the provision with the provisions of Article 230(4) of the Constitution which provides that the Salaries and Remuneration Commission shall advise the national and county governments on the remuneration and benefits of public officers; and
- (b) provide for the requirement that the reappointment of the Director-General shall be based on satisfactory performance.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 16—
Removal of the Director-General. **16A.** (1) The Director-General may be removed from office by the Board in accordance with the terms and conditions of service for—

- (a) gross misconduct or misbehavior;
- (b) bankruptcy;
- (c) incompetence or neglect of duty;
- (d) violation of the Constitution or any other written law; or
- (e) inability to perform the functions of office by reason of physical or mental incapacity.

(2) Before the Director General is removed under subsection (1), the Director-General shall be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to present his or her defence against the allegations.

Justification

The amendment seeks to provide for the grounds for removal of the Director-General from office, which is not included in the Bill.

CLAUSE 17

THAT, clause 17 of the Bill be amended in sub-clause (2)—

- (a) by deleting the word “keeping” appearing in paragraph (f) and substituting therefor the word “keep”; and
- (b) by deleting the word “keeping” appearing in paragraph (g) and substituting therefor the word “keep”.

Justifications

The amendment seeks to correct grammatical errors.

CLAUSE 18

THAT, clause 18 of the Bill be amended by deleting the words “in consultation with the relevant Government agencies” and substituting therefor the words “on the advice of the Salaries and Remuneration Commission”.

Justification

The amendment seeks to align the provision with the provisions of Article 230(4) of the Constitution which provides that the Salaries and Remuneration Commission shall advise the national and county governments on the remuneration and benefits of public officers.

CLAUSE 21

THAT, clause 21 of the Bill be amended in paragraph (g) by deleting the word “lend” and substituting therefor the word “lent”.

Justification

The amendment seeks to correct a grammatical error.

CLAUSE 23

THAT, the Bill be amended by deleting clause 23 and inserting the following new clause—

Annual estimates. **23.** (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board of that year.

(2) The annual estimates shall make provisions for all estimated expenditure of the Board for the financial year concerned, and in particular shall provide for the—

- (a) payment of salaries, allowances and other charges in respect of the staff of the Board;
- (b) payment of pensions, gratuities and other charges in respect of former staff of the Board;
- (c) proper maintenance of the buildings and grounds of the Board;
- (d) maintenance, repair and replacement of the equipment and other property of the Board;
- (e) payment of allowances of the members of the Board and the members of the Board; and
- (f) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Board may deem fit.

Justification

The amendment seeks to provide for the comprehensive provision on annual estimates as per the House drafting style.

CLAUSE 24

THAT, clause 24 of the Bill be amended in sub-clause (2) by inserting the word “Management” immediately after the words “Public Finance”.

Justification

The amendment seeks to provide the correct citation of the Public Finance Management Act.

CLAUSE 26

THAT, clause 26 of the Bill be amended by deleting paragraph (b).

Justification

The amendment seeks to remove the gambling levy as a source of fund of the Authority, since clause 46 of the Bill providing for the payment of gambling levy is deleted.

CLAUSE 27

THAT, clause 27 of the Bill be amended

- (a) in sub-clause (1) by inserting the words “or service” immediately after the words “the activity”; and
- (b) by deleting paragraph (r).

Justification

The amendment seeks to—

- (a) insert the words for clarity purposes; and**
- (b) delete paragraph (r) so as to eliminate the possibility of ambiguity that would arise with allowing the Authority to issue licences in respect of any other form of gambling as it may deem fit.**

CLAUSE 29

THAT, clause 29 of the Bill be amended—

- (a) in sub-clause (3)—**
 - (i) by inserting the words “in relation to the body corporate and its directors, as applicable” immediately after the words “consider” appearing in the opening sentence;**
 - (ii) by deleting paragraph (d);**
 - (iii) by deleting paragraph (e);**
- (b) in sub-clause (4)—**
 - (i) by inserting the words “or the directors of the body corporate” immediately after the word “applicant” appearing in the opening sentence in paragraph (a);**
 - (ii) by deleting the words “in the opinion of the Authority, was” appearing in sub-paragraph (a)(iii) and substituting therefor the words “is proven to be”;**
- (c) in sub-clause (6) by deleting the word ‘applicant’ and substituting therefor the word “person”;**
- (d) by deleting sub-clause (8).**

Justification

The amendment seeks to—

- (a) amend sub-clauses (3) and (4) to ensure that the considerations shall be applied both to the body corporate as well as its directors;**
- (b) delete paragraphs (3)(d) and (e), since the threshold provided for consideration in the paragraphs is subjective and not measurable; and**
- (c) to ensure that correct reference is made to a person in subclause (6) to ensure that the penalty imposed attaches to a natural person who makes a false statement.**

CLAUSE 30

THAT, clause 30 of the Bill be amended by deleting sub-clause (3) and inserting the following new sub-clause—

“(3) A gambling licence issued under this section shall be valid for a period of twelve months from the date of issue.”

Justification

The amendment seeks to ensure that the validity period of licenses issued under the Bill is expressly stated in the main legislation and not left to be prescribed in regulations.

CLAUSE 31

THAT, clause 31 of the Bill be amended in sub-clause (1) by deleting the words “may be determined by the Communications Authority of Kenya from time to time” appearing in paragraph (c) and substituting therefor the words “prescribed by the Cabinet Secretary in consultation with the Authority and the Communications Authority of Kenya”.

Justification

The amendment seeks to ensure that all licence conditions are made available to the applicants in regulations to avoid uncertainty.

CLAUSE 32

THAT, clause 32 of the Bill be amended in sub-clause (1) by deleting the words “attached to the” appearing in paragraph (d) and substituting therefor the words “in the Act required for the issuance of a”.

Justification

The amendment seeks to provide clarity, and ensure that all license conditions shall be those set out in the Act.

CLAUSE 33

THAT, clause 33 of the Bill be amended in sub-clause (2) by deleting the words “mutatis mutandis” and substituting therefor the words “with the necessary modifications”.

Justification

The amendment seeks to provide simple language as required in the House drafting style.

CLAUSE 34

THAT, the Bill be amended by deleting clause 34.

Justification

The amendment seeks to delete the provision on varying licence periods, since clause 30(3) as amended provides for a 12-month validity period in respect of gambling licences issued under the Bill.

CLAUSE 35

THAT, clause 35 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “prominently” wherever it appears;
- (b) in sub-clause (3) by deleting the word “licenses” and substituting therefor the word “license”.

Justification

The amendment seeks to remove subjective drafting and correct a grammatical error.

CLAUSE 36

THAT, the Bill be amended by deleting clause 36.

Justification

The amendment seeks to remove the provisions on transfer of licences from the Bill. Instead, any entity intending to be issued with a gambling licence must make an application to the Authority in the prescribed manner. This will ensure the deterrence of the possibility of money laundering by the gambling operators.

CLAUSE 40

THAT, clause 40 of the Bill be amended—

- (a) by deleting sub-clause (3); and

(b) by deleting sub-clause (4).

Justification

The amendment seeks to—

- (a) delete the requirement of security bonds for a gambling activity not provided for under the Bill. This would open avenues for abuse, since the Bill expressly sets out the gambling activities to be regulated under the Bill. Any other gambling activity not regulated under the Bill is therefore illegal, and the consequences for illegal gambling activities should ensue in that respect.
- (b) provide for the deletion of sub-clause (4) is necessary since it is a repetition of sub-clause (2).

CLAUSE 43

THAT, clause 43 of the Bill be amended in sub-clause (1) by deleting the word “by”.

Justification

The amendment seeks to correct a grammatical error.

CLAUSE 45

THAT, clause 45 of the Bill be amended in sub-clause (1) by deleting the word “fifteen” and substituting therefor the word “thirteen”.

Justification

The amendment seeks to lower the amount of gambling tax from fifteen per cent to thirteen per cent. This will create a conducive economic environment for the gambling sector and allow the State to collect more revenue, while discouraging tax evasion and illegal offshore gambling.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 45—

Collection of taxes. No. 29 of 2015.	45A. The taxes under section 45 shall be collected in accordance with the provisions of the Tax Procedures Act.
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Justification

The amendment seeks to provide for assessment and enforcement powers to the Collector of the gambling tax. These powers had been provided for under section 69AA of the Betting, Lotteries and Gaming Act, Cap 131.

CLAUSE 46

THAT, the Bill be amended by deleting clause 46.

Justification

The amendment seeks to remove the introduction of the gambling levy.

The gambling and betting industry in Kenya is already burdened with excessive tax obligations, thus the introduction of additional taxes or levies will lead to the shutting down of business activities

by legal gambling and betting operators, encourage the boom of the illegal market and consequently result in a reduction in revenues of State treasury.

CLAUSE 47

THAT, the Bill be amended by deleting cause 47 and inserting the following new clause—

Application for a permit. **47.** (1) A holder of a gambling licence issued by the Authority under section 27 shall apply for a permit from the respective county government for a premise within which the person intends to carry out the licensed gambling activity.

(2) An application for a gambling permit shall be in such manner as may be prescribed by the respective county government and shall be accompanied by—

- (a) the fee prescribed by the respective county government;
- (b) a licence issued by the Authority; and
- (c) such other information as the county government may consider necessary for the determination of the application.

(3) A county government shall grant a permit upon determining the suitability of the intended premises for which the application is made and considering the requirements set out in subsection (2).

(4) A permit issued under this Act shall not be transferable.

Justification

The amendments seek to—

- (a) remove the errors in numbering of the clauses and referencing;
- (b) amend paragraph (2)(c) to ensure that the county government shall have the responsibility of determining any additional information that it may require for the purposes of considering the application; and
- (c) amend sub-clause (4) to ensure that a permit once issued shall not be transferable to another party.

CLAUSE 48

THAT, clause 48 of the Bill be amended by deleting the words “and shall be endorsed with all conditions imposed by the Authority and respective county government.”

Justification

The amendment seeks to ensure that there should be no further conditions imposed on the licences except those stipulated under the Bill, so as to avoid abuse and ambiguity in interpretation of the provision.

CLAUSE 49

THAT, clause 49 of the Bill be amended in sub-clause (1) by deleting the word “permit” appearing in paragraph (a) and substituting therefor the word “licence”.

Justification

The amendment seeks to ensure that a revocation of a permit may occur where the holder breaches a license condition issued by the Authority.

CLAUSE 50

THAT, clause 50 of the Bill be amended by deleting the words “unless a different duration has been prescribed under this Act”.

Justification

The amendment seeks to ensure that the validity period of a permit is expressly stated in the Act, as well as to remove the ambiguity in the provision.

CLAUSE 51

THAT, the Bill be amended by deleting clause 51.

Justification

The deletion of clause 51 seeks to ensure that no transfer of permits shall be allowed under the Bill, and any license holder intending to acquire a permit from the county government shall make an application to the respective county government in the prescribed manner for issuance of the permit. This further corresponds to the Committee proposal that transfer of a licence issued by the Authority should be prohibited.

CLAUSE 53

THAT, clause 53 of the Bill be amended in sub-clause (4) by deleting the word “above”.

Justification

The amendments seek to correct a grammatical error in sub-clause (4).

CLAUSE 54

THAT, the Bill be amended by deleting clause 54 and inserting the following new clause—

Conduct of a public lottery. 54. (1) The Authority or county government shall, in respect of any public lottery impose the conditions prescribed in the Act or in regulations to ensure that a lottery is promoted and conducted efficiently for the purpose for which it is being promoted.

- (2) In conducting a public lottery under this Act, a promoter—
 - (a) may deduct operating expenses not exceeding twenty per cent of gross proceeds of the lottery;
 - (b) shall provide insurance bond or bank guarantee for the conduct of the lottery;
 - (c) shall ensure proper and equitable distribution of the charitable funds of the lottery;
 - (d) shall take reasonable measures to ensure that a purchaser of a ticket or a chance in a lottery is protected against fraud; and

(c) shall take such steps as it may deem necessary to ensure that any conditions imposed by the Authority are complied with.

(3) In this section, the term “gross proceeds” means the total proceeds received from a lottery prior to any deductions.

JUSTIFICATION

The amendment seeks to—

- (a) remove the possibility of the Authority or the county government imposing conditions that are not expressly provided in the Bill or regulations; and
- (b) to remove repetition in paragraphs (b) and (e).

CLAUSE 56

THAT, clause 56 of the Bill be amended in sub-clause (2) by deleting paragraph (l).

Justification

The amendment seeks to delete the ambiguity contained in paragraph (l), since a promoter who conducts a public lottery should receive money for tickets.

CLAUSE 59

THAT, clause 59 of the Bill be amended in sub-clause (2)—

- (a) by deleting the words “or otherwise” appearing in paragraph (b); and
- (b) by deleting the words “or otherwise” appearing in paragraph (c).

Justification

The amendment seeks to remove ambiguity and uncertainty in the paragraphs.

CLAUSE 63

THAT, clause 63 of the Bill be amended—

- (a) in sub-clause (1) by inserting the word “the” immediately after the words “in consultation with”; and
- (b) by deleting sub-clause (3).

Justification

The amendment seeks to—

- (a) correct a grammatical error in sub-clause (1); and
- (b) by eliminating the ambiguity contained in sub-clause (3), since the definition of gross gambling revenue has been provided.

CLAUSE 66

THAT, the Bill be amended by deleting clause 66 and inserting the following new clause—

Control of betting machines. 66. (1) A licensee shall ensure that their betting machines—

- (a) are sourced from a certified source with international certification standards;

- (b) have an import certificate issued by the Authority indicating the model and the functions of the machine; and
- (c) undergo standards verification after every three months.

(2) The standards verification referred to in subsection (1)(c) shall be conducted by the Authority in consultation with the Kenya Bureau of Standards.

(3) A person shall not operate a betting machine unless the person has been issued with a valid bookmaker's licence.

(4) A single bet in a gambling machine shall be a minimum of twenty shillings only.

Justification

The amendment seeks to—

- (a) correct the numbering in the clause;
- (b) allow for betting machines to be placed in areas approved by the Authority; and
- (c) ensure that the standards verification is guarded against abuse, and is conducted by the Authority in consultation with the Kenya Bureau of Standards, which is the body mandated to set standards in Kenya.

CLAUSE 67

THAT, clause 67 of the Bill be amended by deleting sub-clause (4) and inserting the following new sub-clause—

“(4) The Cabinet Secretary shall, in consultation with the Authority, develop regulations prescribing the places where gambling machines shall be placed, and in doing so the Cabinet Secretary shall prescribe the proximity to—

- (a) learning institutions;
- (b) religious establishment; and
- (c) residential areas.”

Justification

The amendment seeks to delete the word “near” as used in the Bill which would be subject to vague interpretations, and to expressly provide that the Cabinet Secretary shall bear the responsibility to prescribe the actual proximity within which gambling machines shall not be placed near the various institutions.

CLAUSE 70

THAT, clause 70 of the Bill be amended in sub-clause (3) by inserting the word “the” immediately after the words “prescribed under”.

Justification

The amendment seeks to correct a grammatical error.

CLAUSE 71

THAT, clause 71 of the Bill be amended—

- (a) in sub-clause (2) by deleting the word “ecosystem” appearing in paragraph (c) and substituting therefor the word “system”;
- (b) in sub-clause (3) by deleting the word “strictly”;
- (c) in sub-clause (4) by deleting the word “may” and substituting therefor the word “shall”; and
- (d) in sub-clause (6) by deleting the opening sentence in paragraph (a) and inserting the following new opening sentence—
“(a) the platforms for participation which may, where applicable, include—”

Justification

The amendments seek to—

- (a) correct grammatical errors;
- (b) ensure that a failure to comply with the gambling control system shall lead to a revocation of a licence.

CLAUSE 75

THAT, clause 75 of the Bill be amended in sub-clause (7) by inserting the following proviso—

“Provided that this provision shall not apply to free bets and bonus bets conducted in the ordinary course of business.”

Justification

The amendment seeks to ensure that free bets and bonus bets are not included in the ambit of the prohibition of inducement, since free bets and bonus bets are promotional activities which cannot be termed as financing.

CLAUSE 76

THAT, clause 76 of the Bill be amended in sub-clause (4) by deleting paragraph (d) and inserting the following new paragraph—

“(d) cash deposits to the player’s account.”

Justification

The amendment seeks to allow for cash payments in the conduct of gambling activities, since the minimum amount as provided in the Bill is twenty shillings, which payment may not be possible to be made through debit card or electronic funds transfer.

CLAUSE 77

THAT, clause 77 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “permitting or assisting” appearing in paragraph (c);
- (b) by deleting sub-clause (3) and inserting the following new sub-clause—

“(3) Nothing in this section shall be construed as limiting an operator from offering free bets and bonus bets in the ordinary course of business.”

Justification

The amendment seeks to—

- (a) amend sub-clause (1) for clarity, since for a licensee to conduct a gambling activity they must permit persons to gamble; and
- (b) to correct grammatical errors in sub-clause (3).

CLAUSE 79

THAT, clause 79 of the Bill be amended—

- (a) by deleting sub-clause (1) and inserting the following new sub-clause—
 - “(1) A licensee shall deposit all the player’s money in a bank account or, upon player’s request, make a cash payment to the player.”
- (b) by deleting sub-clause (3) and inserting the following new sub-clause—
 - “(3) A licensee holding a player’s bank account shall—
 - (a) not enforce or execute, any charge, write-off, set- off or other claim against a player’s account;
 - (b) not combine the account with any other account in respect of any debt owed to it by a player; or
 - (c) credit any interest payable on a player’s account, only to the player’s account.”

Justification

The amendment seeks to—

- (a) remove the requirement that a player’s bank account must be approved by the Authority, as this is not possible;
- (b) provide correct reference to a player’s account in sub-clause (3).

CLAUSE 80

THAT, clause 80 of the Bill be amended—

- (a) by deleting sub-clause (2) and inserting the following new sub-clause—
 - “(2) Where the whereabouts of a player remain unknown for a period of five years, the monies standing to the credit of the player’s account shall be presumed abandoned and the licensee shall remit such monies to the Unclaimed Financial Assets Authority.”
- (b) by deleting sub-clause (3) and inserting the following new sub-clause—
 - “A licensee shall maintain a register of all monies remitted under subsection (2).”

Justification

The amendment seeks to—

- (a) align the Bill with the provisions of section 6 of the Unclaimed Financial Assets Act, No. 40 of 2011 which provides for a presumption of abandonment of monies after five years; and
- (b) impose an obligation on a licensee to maintain a register of all monies remitted to the Unclaimed Financial Assets Authority, for accountability purposes.

CLAUSE 81

THAT, clause 81 of the Bill be amended—

- (a) in paragraph (c) by deleting the words ‘collector of taxes’ and substituting therefor the word “Collector”;
- (b) by deleting paragraph (d) and inserting the following new paragraph—
“(d) the good causes implemented.”

Justification

The amendment seeks to—

- (a) make use of the term “Collector” as defined in the Bill; and
- (b) remove the requirement that implementation of good causes is a condition for issuance of a license under the Bill.

CLAUSE 82

THAT, clause 82 of the Bill be amended in sub-clause (1) by deleting paragraph (d) and inserting the following new paragraph—

“(d) meets the requirements prescribed by the Authority in regulations.”

Justification

The amendment seeks to guard against uncertainty by ensuring that all license conditions are prescribed in regulations.

CLAUSE 83

THAT, clause 83 of the Bill be amended by deleting the word “Committee” and substituting therefor the word “Tribunal”.

Justification

The amendment seeks to change the name of the appeals body to the Gambling Appeals Tribunal.

CLAUSE 86

THAT, clause 86 of the Bill be amended by deleting sub-clause (2) and inserting the following new sub-clause—

- “(2) A person who—
- (a) uses or permits the use of an amusement machine in respect of which a licence has not been issued under subsection (1); or
 - (b) contravenes or allows the contravention of any condition provided for or imposed by the county government,
- commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.”

Justification

The amendment is necessary for purposes of proper grammatical flow, and to remove the repetition in sub-paragraphs (i) and (ii).

CLAUSE 87

THAT, clause 87 of the Bill be amended—

- (a) in sub-clause (3) by deleting the words “as may be imposed” and substituting therefor the words “as shall be prescribed in regulations”;
- (b) by deleting sub-clause (4).

Justification

The amendment seeks to—

- (a) expressly provide that conditions shall be prescribed in regulations; and
- (b) delete sub-clause (4) which is a repetition of sub-clause (3).

CLAUSE 88

THAT, the Bill be amended by deleting clause 88 and inserting the following new clause—

Authorization of media promotions with prizes. **88.** (1) A person shall not, without a license issued by the Authority, conduct a media promotion with prizes.

(2) A person who undertakes media promotion in either electronic or print media with prizes licenced under this section shall be subject to the conditions prescribed by the Authority in regulations.

(3) The conditions referred to in subsection (2) shall include—

- (a) eligibility of participants;
- (b) costs of participation;
- (c) dates of the promotion;
- (d) prizes to be won;
- (e) verification of winnings by the Authority;
- (f) process of claiming prizes won; and
- (g) publication of prize awards.

Justification

The amendment seeks to redraft clause 88 for proper grammatical flow, as well as to provide the scope of conditions for media promotions which shall be prescribed in regulations.

CLAUSE 90

THAT, the Bill be amended by deleting clause 90 and inserting the following new clause—

Advertisement of gambling. **90.** (1) A person shall not, without the approval of the Authority, promote the advertisement of a gambling activity on electronic medium or any other form of communication by—

- (a) holding himself out by advertisement, promotion, notice or public placard with the aim of enticing members of the public to participate in gambling;
- (b) displaying any written or printed placard or notice relating to any form of game of chance in any shape or form so as to be visible in a public street or place;
- (c) printing or publishing, or causing to be printed or published, any advertisement or notice;

- (d) using a prominent personality or celebrity, public vehicle or lifestyle advertising to promote gambling; or
 - (e) advertising gambling by organizing, promoting or sponsoring a sporting event, trade fairs, exhibitions, shows, cultural, artistic, recreational, educational or entertainment programmes or any other event.
- (2) A gambling advertisement shall—
- (a) indicate the addictive nature of gambling;
 - (b) notify players to play responsibly;
 - (c) prohibit children from playing;
 - (d) not use false, misleading or deceptive message likely to create an erroneous positive impression of gambling;
 - (e) not be featured or broadcasted on television or radio between six o'clock in the morning and ten o'clock in the evening unless during a live sporting event;
 - (f) not be erected on an advertisement billboard of close proximity to a learning institution; and
 - (g) dedicate ten per cent of aired advertisement towards promotion of responsible gambling.
- (3) The Cabinet Secretary may, in consultation with the Authority, make regulations providing for—
- (a) the circumstances under which the national lottery, and licensed gambling activities may be advertised;
 - (b) information that is to appear in an advertisement;
 - (c) the places where, circumstances or manner in which signs relating to a national lottery or gambling activity may be displayed;
 - (d) conditions requiring advertisements about the gambling service authorised by the licence including—
 - (i) publication only to certain classes of persons;
 - (ii) the content which may require specified words to be included in the advertisement;
 - (iii) content not to be included in an advertisement;
 - (iv) content not to be published in certain types of publications or media; and
 - (v) requirement for the content of the advertisement to be approved by the Authority.
- (4) A person who contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding ten years, or to both.

Justification

The amendment seeks to—

- (a) correct grammatical and referencing errors;
- (b) delete paragraphs (1)(e) and (f) which are a repetition, and move the prohibition to sub-clause (2) which provides for the content of a gambling advertisement; and
- (c) delete the ambiguity caused in paragraph (3)(f) by use of the words “a place frequented by children”.

CLAUSE 91

THAT, the Bill be amended by deleting clause 91 and inserting the following new clause—

The Gambling Appeals Tribunal. 91. (1) There is established a body to be known as the Gambling Appeals Tribunal.

- (2) The Tribunal shall consist of—
 - (a) a Chairperson appointed by the President from among persons qualified to be judges of the High Court;
 - (b) two persons appointed by the Judicial Service Commission who shall be advocates of the High Court; and
 - (c) four persons appointed by the Cabinet Secretary from among persons who possess knowledge and experience in matters relating to gambling, business administration, risk management or law enforcement studies.

(3) The Chairperson and members of the Tribunal shall be appointed by the Cabinet Secretary by notice in the *Gazette*.

(4) A person shall be eligible for appointment as a member of the Tribunal if that person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) has a relevant bachelors' degree from a university recognized in Kenya;
- (c) has at least ten years' experience in a relevant sector;
- (d) is not a public officer;
- (e) has not at any time within the preceding five years been an employee of the Authority or the National Lottery Board;
- (f) has not been convicted of an offence under any law and sentenced to imprisonment for a term exceeding six months without the option of a fine;
- (g) has not been adjudged bankrupt by a court of competent jurisdiction; and
- (h) has not in the last twelve months immediately preceding the appointment, had direct or indirect personal or commercial interest in the sector regulated under this Act.

(5) The Chairperson or a member of the Tribunal shall hold office—

- (a) in case of the Chairperson, for a term not exceeding three years and shall not be eligible for re-appointment; and
- (b) in case of a member, for a term not exceeding three years and shall be eligible for re-appointment for one further term of three years based on satisfactory performance.

(6) The members of the Tribunal, other than the Chairperson, shall serve on a part-time basis.

(7) The Chairperson or member of the Tribunal shall cease to hold office if that person—

(a) resigns from office by notice in writing addressed to—

- (i) the President, in the case of the Chairperson; or
- (ii) the Cabinet Secretary, in the case of a member;

(b) becomes a public servant or an employee of the Authority or the National Lottery Board;

(c) is absent from three consecutive meetings of the Tribunal without the permission of the Chairperson;

(d) is adjudged bankrupt by a court of competent jurisdiction;

(e) is convicted of a criminal offence under any law and sentenced to imprisonment for a term exceeding six months without the option of a fine;

(f) is unable to perform the functions of the office by reason of physical or mental infirmity; or

(g) is otherwise unable or unfit to discharge the functions of the office.

(8) A person appointed as the Chairperson or a member of the Tribunal shall, before assuming office, take or subscribe to the oath or affirmation before the Chief Registrar of the Judiciary.

(9) The functions of the Tribunal shall be to hear and determine appeals from, the national or county governments,—

(a) against any decision of the Authority or the National Lottery Board;

(b) regarding complaints arising out of the outcome of a gambling transaction;

(c) regarding complaints arising out of the functionality of gambling machines and equipment; and

(d) regarding any other matter as may be prescribed under this Act or referred to it by the Board.

(10) Save as expressly provided by this Act, the Tribunal shall regulate its own procedure.

(11) The Judicial Service Commission shall provide secretariat services to the Tribunal and shall assign or appoint such secretary and other support staff as may be necessary for the Tribunal to effectively perform its functions.

(12) The Cabinet Secretary shall prescribe, in regulations, the procedures for the operationalization of the Tribunal.

Justification

The amendment seeks to—

- (a) correct the grammatical errors in the clause;**
- (b) change the name of the appeals body to the Gambling Appeals Tribunal;**
- (c) provide for the appointing authority of the Chairperson of the Tribunal as the President;**
- (d) provide for membership of the Tribunal of persons with knowledge in matters relating to gambling and business administration; and**
- (e) provide for the power of the Cabinet Secretary to prescribe regulations to give better effect to the provisions of the clause.**

CLAUSE 92

THAT, the Bill be amended by deleting clause 92 and inserting the following new clause—

Remuneration of members of the Tribunal.	92. The Chairperson and the members of the Tribunal shall be paid such remuneration and allowance as shall be determined by the Cabinet Secretary on the advice of the Salaries and Remuneration Commission.
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Justification

The amendment seeks to make reference to the Tribunal instead of Committee, as amended, as well as to delete the ambiguity caused by reference to consultation with relevant government agencies.

CLAUSE 94

THAT, clause 94 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “Committee” and substituting therefor the word “Tribunal”;**
- (b) in sub-clause (2)—**
 - (i) by deleting the word “Committee” appearing in paragraph (a) and substituting therefor the word “Tribunal”;**
 - (ii) by deleting the word “Committee” appearing in paragraph (c) and substituting therefor the word “Tribunal”; and**
- (c) in sub-clause (5) by deleting the word “Committee” and substituting therefor the word “Tribunal”.**

Justification

The amendment seeks to change the name of the appeals body from a Committee to a Tribunal.

CLAUSE 95

THAT, clause 95 of the Bill be amended in the opening sentence by inserting the words “who, being the” immediately after the words “A person”.

Justification

The amendment is necessary for proper grammatical flow.

CLAUSE 98

THAT, clause 98 of the Bill be amended by inserting the words “or to both” immediately after the words “term not exceeding one year”.

Justification

The amendment is necessary for purposes of proper grammatical flow.

CLAUSE 106

THAT, the Bill be amended by deleting clause 106 and inserting the following new clause—

- Promotion of 106. A person who—
unauthorized pool betting.
- (a) promotes a pool betting scheme within Kenya in contravention of the terms of a licence issued under this Act; or
 - (b) promotes, receives or negotiates bets on behalf of a promoter of an unauthorized pool betting scheme,
- commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

Justification

The amendment is necessary for purposes of correction of grammatical and drafting errors.

CLAUSE 112

THAT, clause 112 of the Bill be amended in the closing sentence by deleting the words ‘be liable’ appearing immediately after the words ‘shall be liable upon conviction’.

Justification

The amendment is necessary to remove repetition of the words “be liable” for proper grammatical flow.

CLAUSE 115

THAT, clause 115 of the Bill be amended in sub-clause (1) by deleting the word “may” and substituting therefor the word “shall”.

Justification

The amendment seeks to eliminate the discretionary nature of the use of the word “may” and instead ensure that the Authority and the county governments shall have an obligation to appoint inspectors.

CLAUSE 118

THAT, clause 118 of the Bill be amended—

- (a) in sub-clause (2)—
 - (i) by deleting the word “or” appearing in paragraph (a);
 - (ii) in paragraph (e) by inserting the words “the licensee’s” immediately after the words “gain access to”;
- (b) in sub-clause (3) by deleting the words “shall be liable to pay an administrative fine as may be prescribed by the Authority” and substituting therefor the words “commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both”;
- (c) by inserting the following new sub-clause immediately after sub-clause (3)—

“(3) Despite the provisions of this section, the Cabinet Secretary shall prescribe regulations providing for the manner in which an affected person may petition the Authority for the application of the self-exclusion provisions on a vulnerable gambler.”

Justification

The amendments seek to—

- (a) correct grammatical errors;
- (b) amend sub-clause (2)(e) to ensure that the obligation to deny access to a self-excluded gambler shall attach to a licensee only in respect of the licensee's gambling services. It may not be practical to require that the licensee shall deny access to such a person in respect of gambling services offered by other operators;
- (c) provide that the Cabinet Secretary shall prescribe regulations to allow affected persons to petition the Authority for application of the self-exclusion provisions to a vulnerable gambler.

CLAUSE 122

THAT, clause 122 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “may” and substituting therefor the word “shall”;
- (b) in sub-clause (2)—
 - (i) by deleting the word “foregoing” appearing in the opening sentence and substituting therefor the words “generality of subsection (1)”;
 - (ii) by deleting paragraph (h);
- (c) by deleting the expression “(2) For purposes of Article 94(6) of the Constitution—” and substituting therefor the expression “(3) For purposes of Article 94(6) of the Constitution—”.

Justification

The amendment seeks to—

- (a) ensure that the Cabinet Secretary shall have an express obligation and not a discretion to prescribe regulations to give better effect to the provisions of the Bill once enacted;
- (b) to delete the power of the Cabinet Secretary to prescribe fees and levies, so that they may be expressly provided for in the Act;
- (c) conform to the House drafting style; and
- (d) correct numbering.

CLAUSE 123

THAT, clause 123 of the Bill be amended by deleting the word “Gambling” and substituting therefor the word “Gaming”.

Justification

The amendment seeks to provide the correct title of the Act to be repealed, being the Betting, Lotteries and Gaming Act, Cap. 131.

CLAUSE 124

THAT, clause 124 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “at”;
- (b) in sub-clause (2) by deleting the words “Government on behalf of the”;
- (c) in sub-clause (3) by inserting the words “for the unexpired period of their term” immediately after the words “be deemed to be a member of the Board”;
- (d) by deleting sub-clause (4) and inserting the following new sub-clause—

“(4) A person who was, immediately before the commencement of this Act, an employee of the former Board shall, upon the commencement of this Act, be deemed to be an employee of the Authority, subject to subsection (5).”

(e) in sub-clause (5)—

- (i) by deleting the expression “(2)” and substituting therefor the expression “(4)”;
- (ii) by deleting the words “Government who were serving at the”.

Justification

The amendments seek to—

- (a) correct grammatical errors;
- (b) provide that the members of the former Board shall continue to serve as members of the Board of the Authority for the unexpired period of their term, to ensure smooth transition;
- (c) conform to the House drafting style; and
- (d) provide correct referencing.

CLAUSE 126

THAT, clause 126 of the Bill be amended by deleting paragraph (a).

Justification

The amendment seeks to ensure that the application of the Proceeds of Crime and Anti-Money Laundering Act is not broadened beyond its scope, as provided by the Financial Accounting Taskforce Standards. These standards only require the regulation of casinos and does not extend to other regulated entities under the Bill.

FOURTH SCHEDULE

THAT, the Bill be amended by deleting the Fourth Schedule and inserting the following new Schedule—

FOURTH SCHEDULE (s. 40(1))

Gambling Security

Type of Gambling	Amount (shillings)
(a) Casinos including public Gambling for conducting tables and slots machines	15,000,000
(b) online Gambling	150,000,000
(c) National lottery	150,000,000
(d) Totalisator	3,750,000
(e) Prize competition	3,750,000
(f) Non-online Gambling including non-online bookmakers, non-online casinos, non-online lotteries	15,000,000
(g) Amusement with prizes	150,000
(h) A premise or a shop operating under a licence of online Gambling including online	375,000

bookmaker, online casino and
online lottery

Justification

The amendment seeks to reduce the amounts required to be paid by licensees as gambling security. There is need to reduce the amount required as gambling security so as to guard against the possibility of the opening up of illegal gambling avenues that would result in the State losing out on tax collections.

**HON. DANIEL WANYAMA, MP,
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE.**

