



Institute of
Economic Affairs

THE UNINTENDED

**Effect of
Kenya's
Alcohol
Regulation
Policies**

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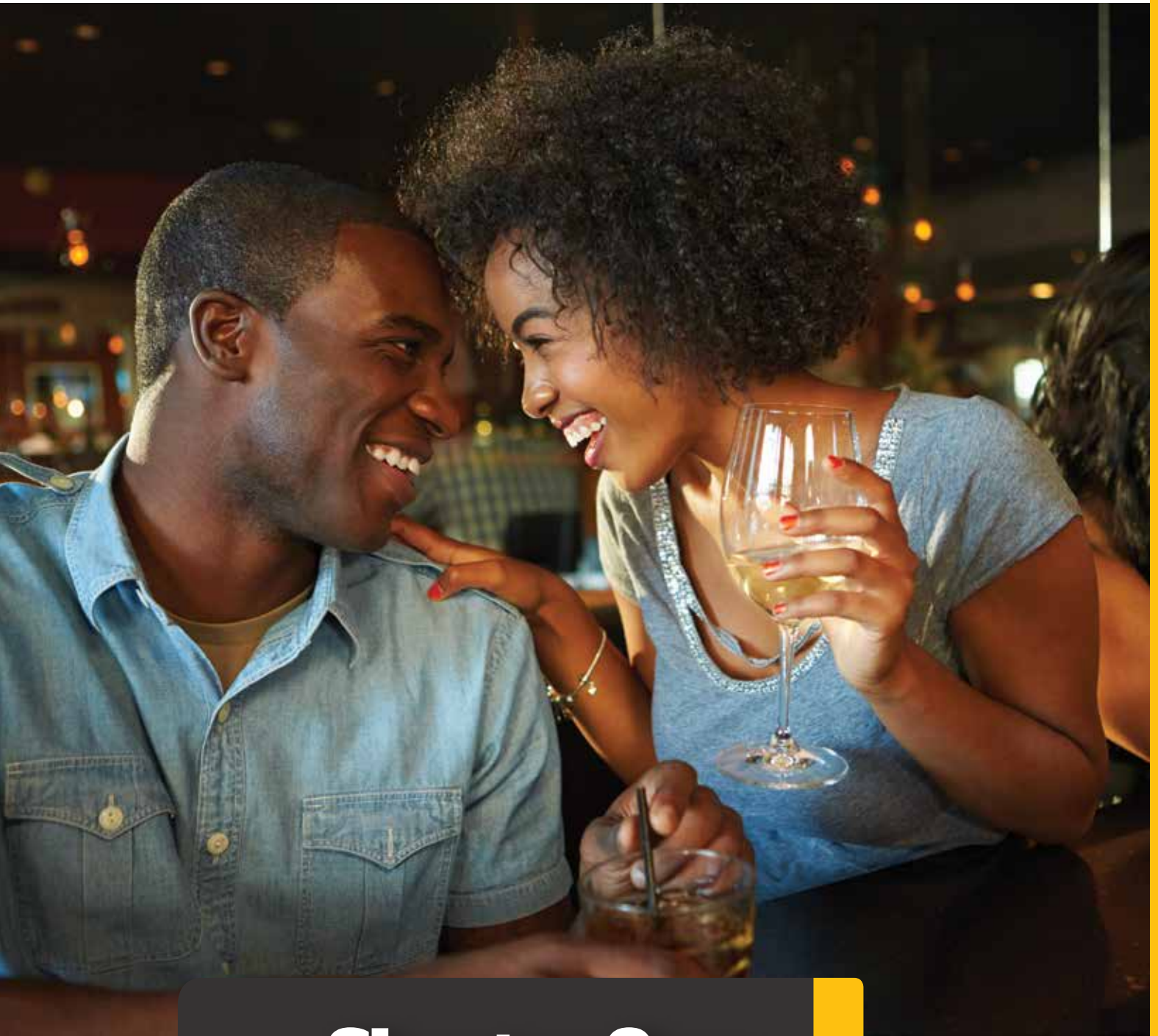
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Chapter One: Alcohol Market Landscape in Kenya

Introduction

Alcohol forms part of Kenyan culture and every other country globally. Culture is an important determinant of the level and pattern of alcohol consumption. Most people consume it before, during and after meals, to celebrate, socialise with friends and as a relaxant. Alcohol can be simply used as a means of enjoyment. In this paper, we define Alcohol as an alcoholic beverage intended for human consumption and hence throughout, the term 'alcohol' covers all forms of alcoholic drinks, including beer, spirits and wine brands.

In Vision 2030 industrialisation plans, Kenya's economic planners have singled out manufacturing as a key growth sector. Alcohol production is a significant part of Kenya's manufacturing sector. The manufacturing, distribution and marketing networks employ the biggest number of people in the country.

The existence of Duality in the Alcohol Industry

The alcohol industry exists in a dual nature and can be categorised into formal and informal sector:

- The formal sector is characterised by regulated supply chains.
- Informal sector producers operate outside the bounds of regulation.

There's difficulty in estimating data that evaluates the size of the market for informal alcohol. Therefore it is not possible to find the overall amount of alcoholic beverages that are produced in the informal markets. The alcohol produced and marketed in the formal markets is documented more accurately and the market size can be estimated with a high degree of accuracy.

Alcohol Market Landscape in Kenya

As already highlighted, the landscape for alcohol supply and consumption in Kenya has a dual nature with the formal and informal sectors.

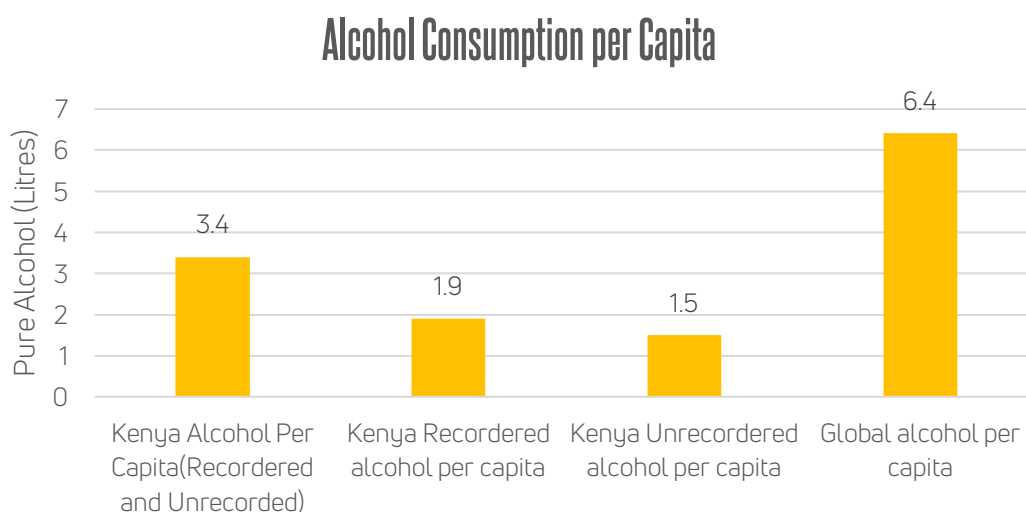
i. Kenya's Alcohol Consumption

In Kenya, the consumption per capita in 2018 stood was of 3.4 litres of pure alcohol in 2018 with the consumption being primarily in beer. Recorded Alcohol Per Capita stood at 1.9 litres of pure alcohol while unrecorded Alcohol Per capita was 1.5 litres of pure alcohol per year. The recorded and unrecorded alcohol is defined as follows:

- **Unrecorded Alcohol** – Defined as alcohol that is not accounted for in national official statistics on alcohol taxation or sales as it is usually produced, distributed and sold outside the formal channels under governmental control (WHO, 2004).
- **Recorded Alcohol** – Defined as alcohol produced, distributed and sold within the formal sector under government control and can be accounted for by National Statistics (WHO, 2004).

In relative terms, Kenyans are not heavy drinkers. 2018 worldwide per capita alcohol consumption of persons aged 15 and above stood at 6.4 litres (2018 WHO Global Status Report on Alcohol and Health). The legal drinking in Kenya is set at the age of 18 years by the Alcoholic Drinks Control Act (ADCA) but WHO's Global Status Report on Alcohol and Health (GSAH) typically measures alcohol consumption from the age of 15 and standardizes this measure for all countries in that report. While it would be illegal for a Kenyan below the age of 18 years old to purchase and consume alcohol, this measure is used in this study owing to this global measurement convention.

Figure 1: Trend Analysis of Alcohol Consumption Per in Kenya and Globally

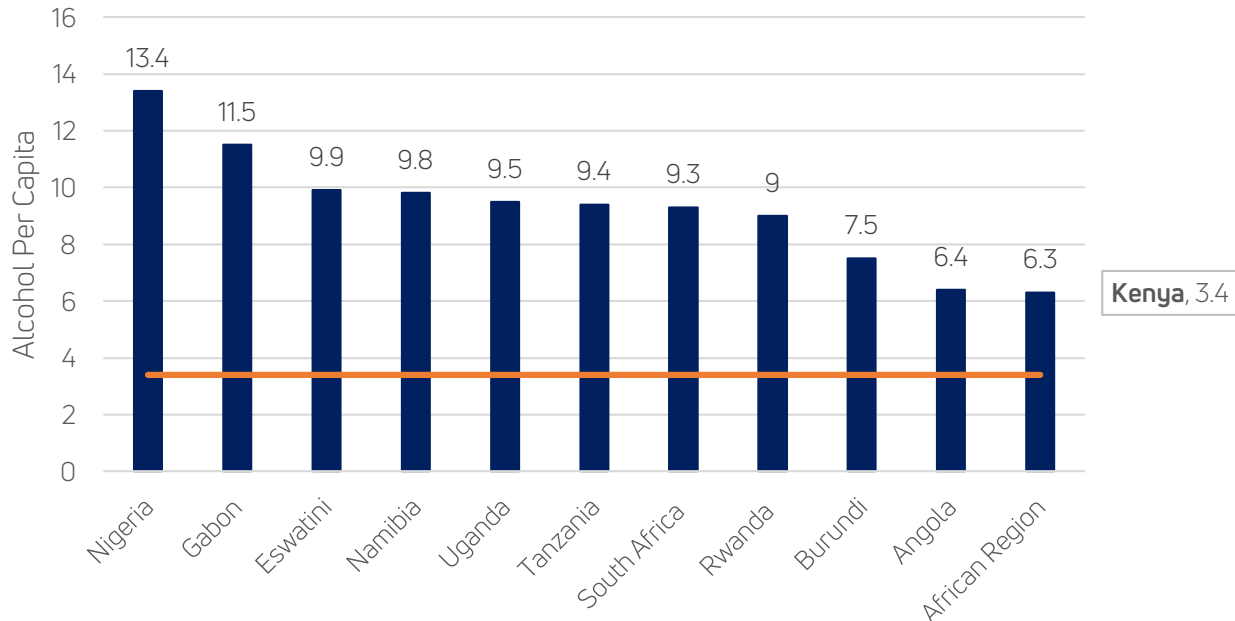


Source: 2018 WHO Global Status Report on Alcohol and Health

ii. Alcohol Consumption for Selected Countries

Although consumption of pure Alcohol per capita in Africa is high, Kenya has low alcohol per capita consumption in relative terms to its peers in the region.

Figure 2: Comparison of Kenya's Alcohol Consumption per Capita with other Countries



Source: 2018 WHO Global Status Report on Alcohol and Health



Nigeria, Gabon, Swaziland, Namibia, Uganda, Tanzania, South Africa and Rwanda all consume 9 litres of alcohol per capita. Burundi and Angola each consume 7.5 and 6.4 litres of pure alcohol per annum. The total alcohol per capita for Africa Region is 6.3 litres of pure alcohol per year. Kenya alcohol per capita ranks low at 3.4 litres of pure alcohol.



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iii. Alcohol Product Taxation

The alcohol industry is one of the top contributors of ordinary revenue to Government. The revenue generated from taxation of alcohol represents a gain to Kenya because it provides resources that may be directed for other useful purposes like public service delivery. It is also best practice that taxes collected be used in mitigation of externalities caused by excessive consumption of alcohol. Some of the mitigation efforts include public education.

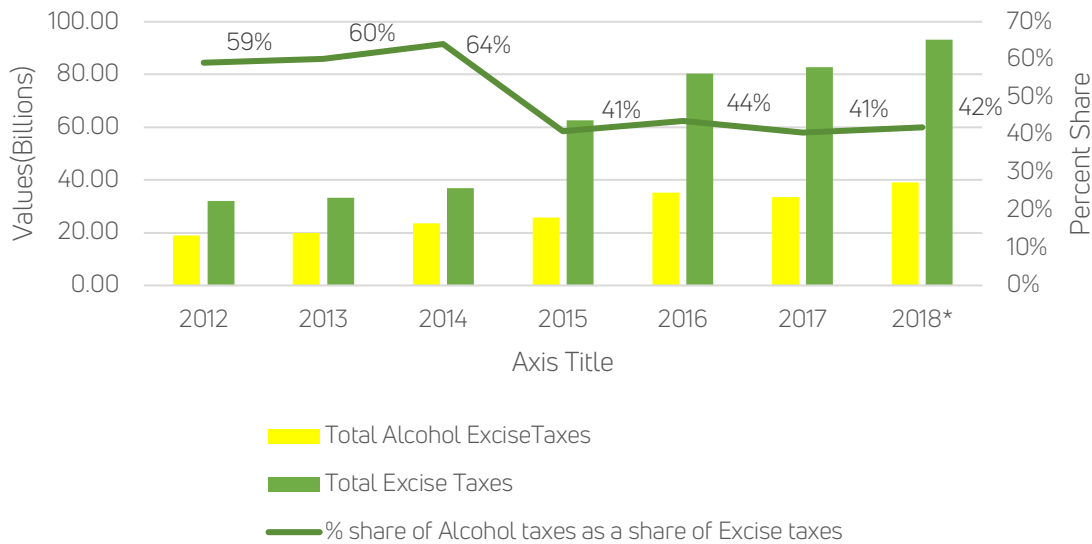
Alcohol contributes a significant portion of excise taxes among categories of total excisable goods. Throughout the period from 2012 to 2017, excise taxes on alcoholic beverages remained as the single largest contributor to excise taxes and accounted for between 64 and 41% of excise revenues recorded.

¹Areas to consider in public education include benefits of moderate drinking, effects of excessive consumption of alcohol, social skills of drinking(mostly referred to as Drink IQ)

Figure 3 below shows a trend analysis from 2012 to 2017. It is clear from the data that Alcohol excise tax data in nominal terms has maintained an upward trend since 2012 to present. Nominal excise tax revenues from alcoholic beverages peaked in 2016 at Kshs. 35.1 billion while it peaked in 2014 as a share of total excise taxes. This is explained by the fact that while tax collections for alcoholic beverages continued to rise above GDP growth and overall taxation growth, the GoK fiscal policy and use of excise taxes was expanded to many more services and goods, leading to an increase in overall excise tax collections.

Table 1 below shows a trend analysis from 2012 to 2017. It is clear from the data that Alcohol excise tax data in nominal terms has maintained an upward trend since 2012 to present. Nominal excise tax revenues from alcoholic beverages peaked in 2016 at Kshs. 35.1 billion while it peaked in 2014 as a share of total excise taxes. This is explained by the fact that while tax collections for alcoholic beverages continued to rise above GDP growth and overall taxation growth, the GoK fiscal policy and use of excise taxes was expanded to many more services and goods, leading to an increase in overall excise tax collections.

Figure 3: Excise Revenue from alcohol

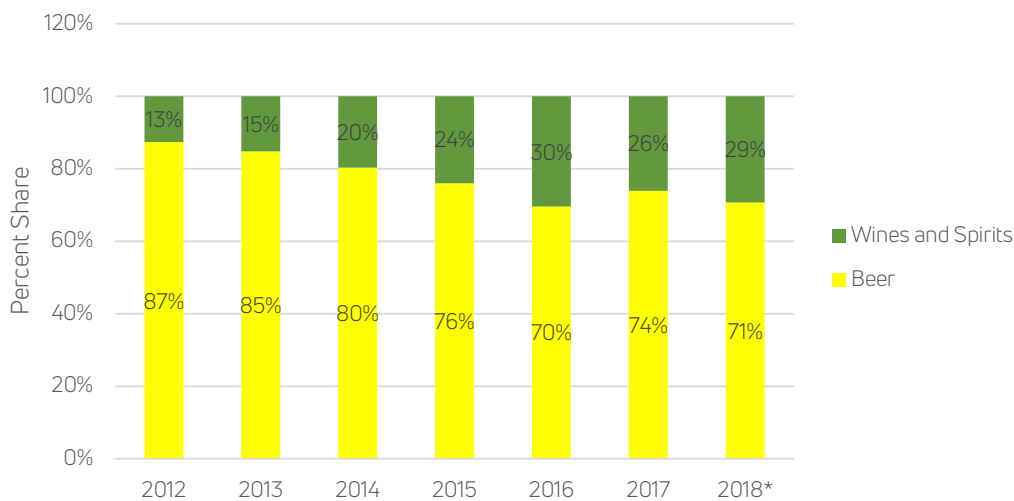


Source: Authors own calculations, Statistical Abstract 2017 and Statistical Abstract 2018

Alcoholic beverages have been split into two categories by the Government of Kenya for the purposes of taxation (IEA-Kenya, Kenyatta University, ILA, 2015). The taxes are levied on wines and spirits on one hand and beer on the other hand. Figure 4 below shows the majority of excise revenues is dependent on beer taxation.

beverage in Kenya within the formal alcohol industry based on volumes consumed. Alcohol taxes in Kenya are predominantly dependent on Kenya's beer market because the taxation policy is still largely determined by volume. For that reason, a greater share of excise taxes on all alcoholic beverages is borne by the beer industry as illustrated in figure 4 below.

Figure 4: Share of Excise Revenue by Commodity

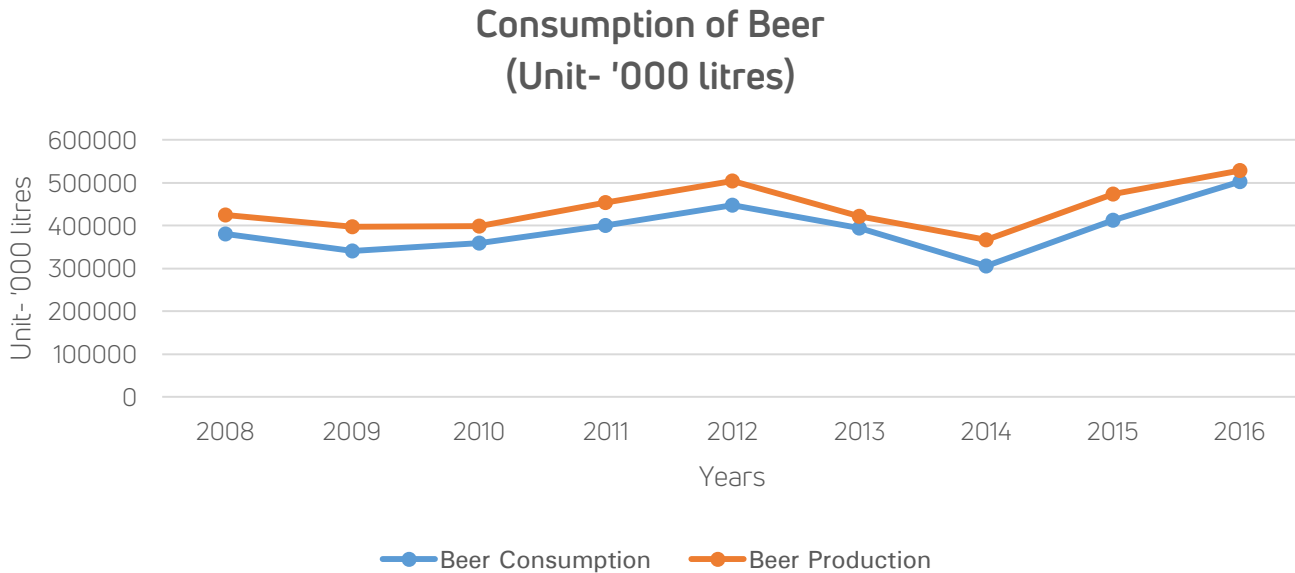


Source: Statistical Abstract 2017 & Statistical Abstract 2018 & Economic Survey 2019

iv. Production and Consumption of Alcoholic Beverages in Kenya

In the formal alcohol markets in Kenya and among the traded categories of alcohol, beer is the most consumed product among the main categories of alcohol beverages traded in Kenya. While the Economic Survey does include the tax receipts from beer and spirits separately, the production data does not disaggregate and this constrains the analysis of the production and consumption levels for spirits in Kenya.

Figure 5: Trends in Beer Production and Consumption (2008-2016)



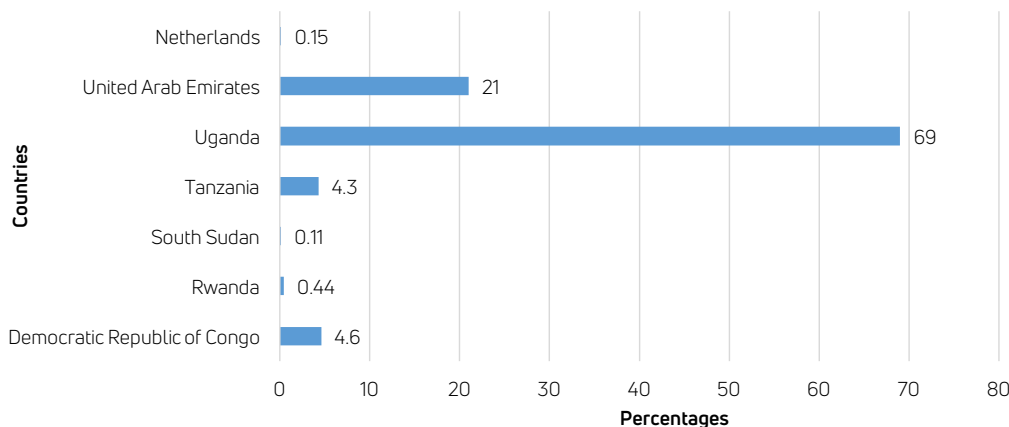
Source: Statistical Abstract 2017

Available data from 2008-2012 shows that the consumption of beer is lower than the production level at any given year. The production and consumption trends have not been static but are correlated with each other and economic variables such as income, taxation and GDP growth rates. This data demonstrates that Kenya produces a surplus of beer.

v. Opportunities in Exports

As the production figures above illustrate, Kenyan firms have a small but significant surplus of beer products and this presents commercial opportunity for regional exports. These firms have been exporting alcohol and its derivatives to the regional markets hence it can be stated as a foreign income earner. Data available from various issues of the Economic Survey shows an annual average export of 15.2 million litres of alcohol and its derivatives thereof from 2013 to 2017.

Figure 6: Destination of Kenyan Alcohol Exports (2017)



Source: Observatory Economic Complexity, 2017

In 2017, Kenya exported alcohol worth Ksh. 281 Million to various destinations (OEC, 2017). Kenyan alcohol exports in 2017 went to seven countries: 69% of the exports went to Uganda, 21% going to the United Arab Emirates with the rest going to Democratic Republic of Congo, Rwanda, South Sudan, Tanzania and The Netherlands.



Chapter Two: Contribution of Alcohol Sector to the Economy

The formal alcohol production industry constitutes a significant part of Kenya's Manufacturing industry. There are typical manufacturing activities that support the alcohol sector which include: logistics, production, supply of raw materials and manufacturing tools, employment opportunities, research and innovation.

i. Employment and Earnings

The alcoholic beverages industry directly provides many formal sector jobs and full-time job equivalents. The

formal sector alcohol manufacturing industry has a high service employment multiplier. The industry sources most of its raw materials and primary inputs domestically through purchases from other sectors within Kenya. The manufacturing industry is characterized by high skills, high levels of productivity and high earnings per person employed. Employment associated with the formal sector Alcohol industry comes in three ways; direct employment, indirect employment and additional employment effects.

Figure 7:
Illustration of
Employment
in the Formal
Alcohol Industry

**DIRECT
EMPLOYMENT**

**INDIRECT
EMPLOYMENT**

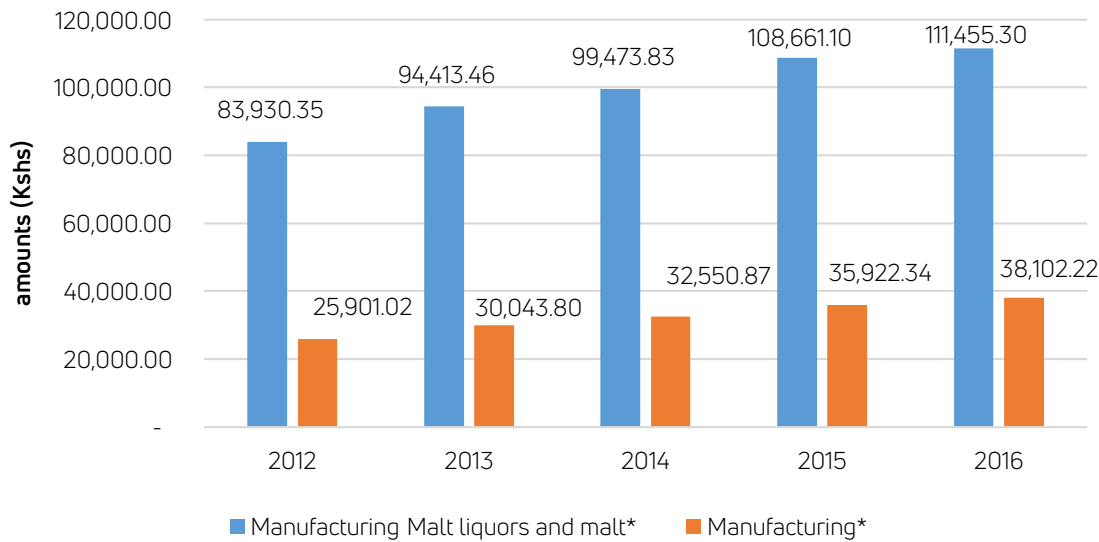
**ADDITIONAL
EMPLOYMENT
IMPACT**

The formal alcohol production industry constitutes a significant part of Kenya's Manufacturing industry. There are typical manufacturing activities that support the alcohol sector

The different kinds of employment are as follows:

- i. Direct employment in the manufacturing, distribution and retail segments.
- ii. Indirect employment from the providers of inputs to the industry such as fittings and refurbishment in premises, food suppliers and general services.
- iii. The additional employment impact of the expenditure arising from income from direct and indirect employment.

Figure 8: Trends in Annual Income of Employees in Kenya's Manufacturing Industry



Source: Statistical Abstract 2017

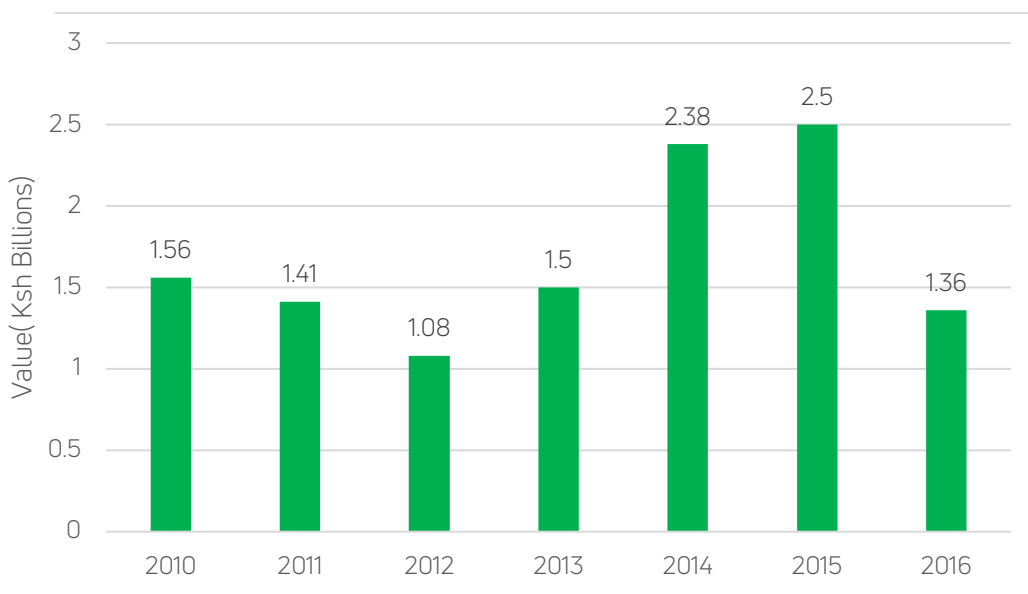
Most employment in the formal alcoholic beverages industry constitutes high-value jobs and this is evident from high incomes per person compared to the rest of the manufacturing industry. Wages in the formal alcohol industry, represented by the beer sub-industry have consistently been at least 3 times higher than the wages paid

in the rest of the manufacturing industry.

ii. Support for other Sectors

The formal alcohol sector relies on materials and inputs from other sectors. The most prominent one is barley produced locally in Kenya where the largest percentage feeds directly into domestic beer production.

Figure 9: Trends in Barley Marketed Value at Current Prices (Ksh. Billion)



Source: Statistical Abstract 2017








Barley production value peaked in 2015 at Ksh. 2.47 billion. The average marketed value of barley was Ksh 1.7 billion.

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Other sectors supported by the formal alcohol industry include; water, energy, supply chain management of raw materials manufacturing tools, logistics, research and innovation. The primary activities involved in the formal sector manufacturing of alcohol include physical creation of the product, its marketing and delivery to buyers. There are also other support activities that provide the inputs and infrastructure in order to facilitate the primary activities (Porter, Millar, 1985).

Every activity employs purchased inputs, human resources, and a combination of technologies. Firm infrastructure, including such functions as general management, legal work, and accounting, supports the entire chain. Within each of these different categories, the players in the alcohol beverages industry perform a number of separate activities, depending on the particular business. Other services frequently used include activities such as installation, repair, adjustment, upgrading, and parts inventory management (Porter, Millar, 1985). A summary of the whole value chain analysis is indicated in Table 1 below:

Table 1: Summary of Formal Alcohol Value Chain Analysis

Incoming logistics		<ul style="list-style-type: none"> • Receipt of raw materials • Storage • Stock control • Internal distribution of inputs
Manufacturing process		<ul style="list-style-type: none"> • Production process • Quality control processes • Packaging
Outgoing logistics		<ul style="list-style-type: none"> • Distribution of finished goods • Stock control & inventory • Distribution of final product to buyers
Sales & Marketing		<ul style="list-style-type: none"> • Advertising • Promotions activities • Sponsorships
Service		After sales support

Source: Porter, M.E. and Millar, V.E., 1985. "How information gives you a competitive advantage"

The leading market player in the alcohol industry, East Africa Breweries Limited (EABL) is Kenya's biggest alcohol manufacturer. Together with other formal alcohol industry players, EABL makes a significant contribution to the economy. In indirect terms, the EABL value-chain sustains many livelihoods. In 2017, the company paid Ksh 1.1 billion to 33,000 farmers (EABL 2018). In the quest to maintain product quality and safety, all alcoholic beverage manufacturers are required by Kenyan consumer protection laws and internal quality processes to maintain high quality standards in production and marketing.

iii. The full economic welfare cost of alcohol use

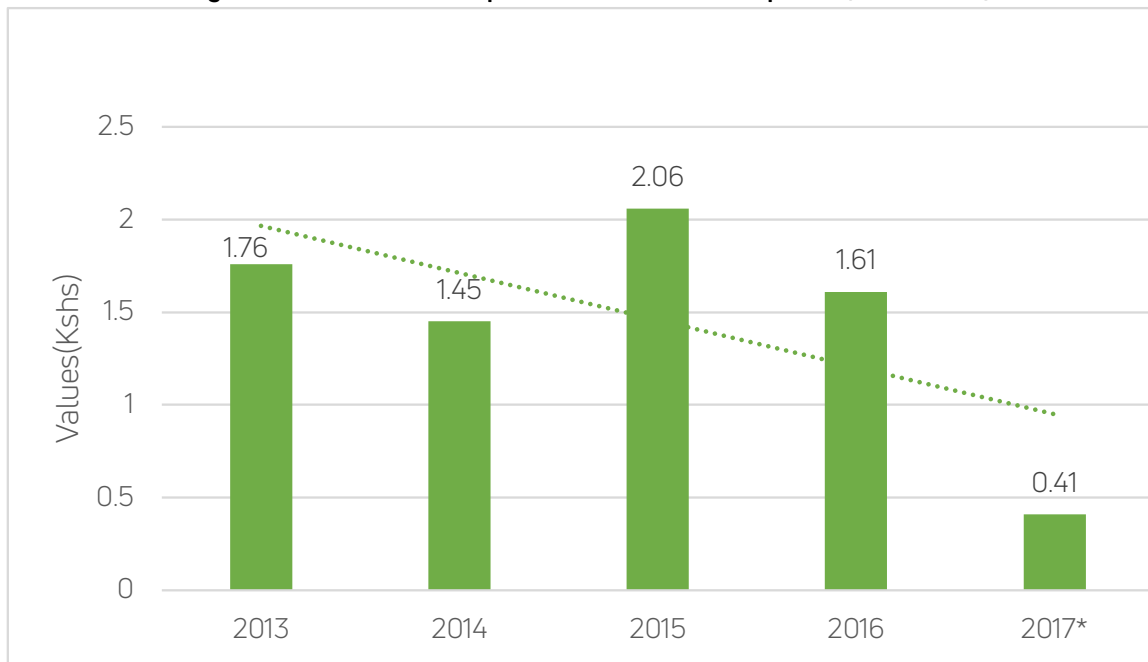
The full economic welfare cost of alcohol use is expressed in terms of the individual "utility" – the degree that goods and services satisfy human wants. This is close to what

most people would call consumption-related "happiness" (Black RDC, 2008; Black J, Hashimzade & Myles, 2009). That individuals are able to make consumption decisions as adults implies that they are cognizant of the consequences of their behaviour. However, there are also social costs that come as a result of alcohol consumption and thus a legitimate reason for regulation of consumption, production and sale.

iv. Foreign exchange earner

Alcohol has a very strong balance of payments surplus. The relative foreign exchange earning capacity is higher than official trade data indicated because of the low import content of the sector's production. Kenya has exported alcohol at an average of 1.5 billion Kenya Shillings in the year 2013-2017.

Figure 10: Values of Principal Domestic Alcohol Exports- (Ksh. Billion)



Source: KNBS Economic Survey 2018
2018*- Provisional

v. Revenue Contribution

The alcoholic beverages industry is a leading contributor to the exchequer in terms of excise revenue and Value Added Tax (VAT). In addition, the industry generates income tax paid through its employees, corporations tax and pension contributions. The leading market player in this industry estimated that it made tax contributions of up to Ksh. 42 billion in the fiscal year 2018. The significance of the industry is amplified because the direct tax contribution represented 2.74% of all government revenues for the financial year 2017/18.

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Regulatory Policy in the Alcohol Beverages Industry

Kenya Alcohol Regulation Policy as outlined in the principal regulation law popularly known as Alcoholic Drinks Control Act (2010) (ADCA) is what policy makers refer to as population-based policies. Globally, public policy touching on the alcohol beverages sector have been divided into three main groups: population-based policies, problem-directed policies and direct interventions (Godfrey & Maynard (1995).

(a) Population Based Policies are aimed at altering levels of alcohol consumption among the population (Godfrey & Maynard 1995). They include policies on taxation, advertising, availability controls including prohibition, rationing, promotion of beverages with low or no alcohol content, regulation of density of outlets, hours and days of the sale, drinking locations, and minimum drinking age, health promotion campaigns and school-based education on the adverse effects of alcohol use (Godfrey & Maynard, 1995).

Population-based policies are usually seen as imprecise measures relative to more targeted measures. Rather than these measures being directed at the problem drinkers, they affect all consumers (IEA-Kenya, Kenyatta University, ILA, 2015. The alcohol-related harms that come from heavy drinkers will not be solved by instruments in the Population-based policies. A bigger part of the Alcoholic Drinks Control Act is centred on the population-based policies.

(b) Problem Directed Policies are aimed at specific alcohol-related problems such as drunk driving (e.g. promoting widespread random breath testing) or alcohol-related offences (IEA-Kenya, Kenyatta University, ILA, 2015. These policies are more focused and are less likely to affect the non-problem drinker. However, there is a risk that focusing on achieving reductions in one problem only might, in turn,


cause others to go unnoticed and maybe even worse in magnitude (Godfrey & Maynard 1995).

(c) Direct Intervention Policies involve interventions directed at individual drinkers (IEA-Kenya 'et al' , 2015. These include brief interventions, treatment and rehabilitation programs. Except for brief interventions, many such treatments are administered only to those individuals with the most severe problems. Successful interventions have potentially a major impact in improving the individual's quality of life but would have to encompass a sizable population of this particular group in order to have a noticeable impact on the macro-level of problems (Godfrey & Maynard 1995).

Kenya's alcohol policies should not be exclusive but should encompass a mixed approach involving Problem Directed Policies and Direct Intervention Policies. Population Based Policies are easier to administer but are unlikely to be most successful in Kenya given the low per capita consumption of alcohol, demographic changes, dual market structure and expected income growth among Kenya's working population.

The regulation of the alcohol industry in Kenya is multifaceted and covers the production, distribution, sale and consumption activities. There are other laws apart from ADCA that govern the production, promotion, sale, consumption and licensing of alcohol and alcohol-related products with the principal one being ADCA .

ADCA mandates counties with functions relating to alcohol regulation. County governments were tasked with implementing county laws through county committees and liquor licensing boards after the Act's 2013 amendment. Some of the alcohol regulations enacted by Parliament in ADCA are listed in Table 2 (see next page).



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Table 2: Alcohol Regulations as Provided by the Alcoholic Drinks Control Act

Section of ADCA	Regulation/Offense	Penalty
Section 7	Trading without a license	Fine not exceeding Ksh 500,000 or imprisonment for a term not exceeding three years or both
Section 7A-2013	Cease of Importation and Manufacture of Alcoholic Drinks and Registration of Alcoholic Drinks	Fine not exceeding Ksh 500,000 or imprisonment for a term not exceeding three years or both
Section 20	False licensing	Fine not exceeding Ksh 500,000 or imprisonment for a term not exceeding three years or both
Section 21	Employment of underage or convicted persons for sale of alcoholic drinks	Fine not exceeding Ksh 500,000 or imprisonment for a term not exceeding three years or both
Section 22	Drunk and Disorderliness	Fine not exceeding Ksh 500,000 or imprisonment for a term not exceeding three years or both
Section 28	Manufacture and Distillation of spirituous liquor	Fine not exceeding Ksh two million, or imprisonment for a term not exceeding five years, or both
Section 28(6)	Sale of objects resembling or imitating alcoholic drinks	Fine not exceeding Ksh 500,000 or to imprisonment for a term not exceeding three years, or both
Section 29	Display of Warning Messages	Fine not exceeding Ksh 50,000 or imprisonment for a term not exceeding 6 months or both
Section 30	Sale of Alcohol using Automatic vending machines	Fine not exceeding Ksh 100,000, or to imprisonment for a term not exceeding 12 months, or to both
Section 31(3)	Selling in sachets and containers less than 250ml	Fine not exceeding Ksh 50,000 or imprisonment for a term not exceeding 6 months or both
Section 32	Display of Health Warning messages	Fine not exceeding Ksh one million, or imprisonment for a term not exceeding three years, or both
Section 45(1A)-2013 Amendment	The proximity of Alcoholic Drinks adverts and billboards from learning Institutions (300 meters), advertisement times in media and endorsement of Alcoholic Drinks by Sportspersons and painting of buildings with Alcoholic messages	Fine not exceeding Ksh 500,000 or imprisonment for a term not exceeding three years or both
Section 45-2013 Amendment	Prohibition of promotion and advertisement between 6:00 am to 10:00 pm, false promotion or promotion with the intent of creating false impressions so as to encourage consumption	Fine not exceeding Ksh 500,000 or imprisonment for a term not exceeding three years or both
Section 46	Promotion at underage events	Fine not exceeding Ksh 500,000 or imprisonment for a term not exceeding three years or both
Section 47	Giving free drinks to encourage consumption	Fine not exceeding Ksh 500,000 or imprisonment for a term not exceeding three years or both
Section 48	Promotion of prohibited content in the media	Fine not exceeding Ksh three million or imprisonment for a term not exceeding three years, or both
Section 62	General penalty for offences whose penalties have not been mentioned	Fine not exceeding Ksh 500,000 or imprisonment for a term not exceeding three years or both

Source: IEA 'et al' (2014)

i. Marketing

Marketing of alcoholic beverages is now a global industry in which large corporations have an international reach across countries of varying income levels (Jernigan, 1997; Parry, 1998; Riley and Marshall, 1999; WHO, 1999; Odejide 2006). This trend has been reaching new markets in developing economies, including Kenya.

ADCA and the subsequent regulations have defined how alcohol should be marketed. They limited alcohol advertising in broadcast media. Specifically, the act requires alcohol adverts to only air from 2:00 pm on radio and 9:30 pm on television. The act also prohibits alcohol sale or advertising during events that include the participation of children (IEA-Kenya "et al, 2015).

ii. Role of Government in Public Education

According to ADCA, NACADA is obligated to conduct public education on alcohol use and effects. The law also provides for the integration of education on the effects of alcohol use into syllabuses and healthcare programs. Drinking is a social skill and there's a need to educate adults on alcohol use and its effects. The foundations for harmful alcohol use are laid in early ages and adolescence (Cnossen, 2006). Hence

educating young people will help mitigate risks early enough.

NACADA has been tasked with establishing working relationships with the Executive, private sector players and other non-state actors to provide holistic support for its activities across sectors and communities in Kenya. The authority has undertaken this mandate but will need more support to reach its full potential.

iii. Excise Goods Management System (EGMS)

Kenya's National Treasury published The Excise Duty (Excisable Goods Management System) Regulations, 2017 in the Kenya Gazette Supplement No. 44 under Legal Notice No. 48. It requires manufacturers and importers of various categories of excisable goods such as alcohol to affix Excise stamps on every package. These stamps cost between 1.5 shillings and 2.8 shillings, payable to Kenya Revenue Authority in advance.

The categories of excisable goods include beer, wines & spirits, mineral & aerated water, flavoured water, tobacco, fruit juices, cosmetics and beauty products. The manufacturer or importer of excisable goods is required to apply to the Commissioner of Revenues at Kenya Revenue Authority for





The main problem is that alcoholic beverages industry producers are incurring extra production costs in compliance with these regulations. The main argument for these regulations was to deter counterfeiting, facilitate tracking and authentication of excisable goods along the supply chain. In complying with this regulation, the producers in the alcohol industry bear significant costs.

Excise stamps in a prescribed form at least sixty days before the manufacture or importation of the excisable goods.

Payment of the excise stamp fees by a manufacturer or importer of excisable goods shall be made after the Commissioner's approval. The Commissioner may issue Excise stamps to an importer of excisable goods before importation. Proof of importation by an importer of excisable goods is required by the Commissioner before issuing the importer with the Excise stamps. The law exempts security forces, privileged institutions as outlined under the law, duty-free goods and goods imported as samples into Kenya from adherence with the requirement to affix the stamps.

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iv. Availability of Alcohol

The focus of ADCA 2010 was to regulate the availability of alcohol. Regulation of availability of alcohol touches on hours of sale, minimum purchase age requirements, licenses and licensing procedures. Regulations on hours of sale are stipulated in licenses held by different vendors and are enforced to varying degrees in different locations.

The availability of alcohol in Kenyan markets is premised on the type of license that the alcoholic beverage seller holds. They are two types:

- **On-premise license holders⁵** - They are permitted to sell alcohol for the hours stipulated in their license for consumption on the premise of the licensed venue.
- **Off-premise license holders⁶** - They are permitted to sell alcohol for consumption off the premise of the licensed venue.

The primary means of controlling the availability of alcohol in Kenya is through licensing requirements, which limit when, how and to whom licensed outlets can sell alcoholic beverages. However, the 2013 amendment to ADCA decentralized licensing venues to comply with the establishment of Kenya's 47 County Governments (IEA-Kenya 'et al', 2015). The result is different levels of capacity and diligence in granting licenses to applicants with the result that some outlets hold licenses that do not fit their business profile. Also, there is no provision preventing a single venue from holding multiple licenses.

⁵Examples of On-Premise include General Retail, Hotel, Restaurant, Members Club, Proprietary club, Theatre, Traveler's, Railway, Steamship, Temporary venues

⁶Examples of off-premise license holders include General Retail, Supermarket

Chapter Four:



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Effect of Kenya's Alcohol Regulation Policies

The Twin Markets

Kenya's alcohol sector regulatory model fails to recognise the existence of the formal and informal '(dual) nature of the market. ADCA and the regulations that support its enforcement are focussed on regulation of the formal market while the informal market is not subject to the same production, sales and consumption policy. Kenya has a deep informal alcoholic beverages industry tied to the fact that many households in Kenya's rural areas are farmers who produce grain and starches that are inputs into the local alcoholic beverage production.

Heavy regulation of the formal sector can drive up the consumption and production in the informal industry mainly because these alcoholic beverages are substitutes. The marginal consumer who is sensitive to price changes may be led towards consuming informal industry alcohol since the twin markets sell the interchangeable products. The informal sector markets for traditional and other spirits are active in Kenya's low income areas and the countryside and their size is partly determined by the affordability and access of the products.

Furthermore, more robust regulation of the formal sector is a failure to appreciate the economic significance of that sector and its potential contributions to Kenya's industrialisation efforts. In sum, excessive regulation can generate the unintended consequences of driving demand for alcoholic beverages in the informal sector and generate worse health outcomes owing to the production methods employed in the latter. The unintended consequences of the regulatory model for alcoholic beverages production are both economic and social.

i. Marketing

Effective regulation policy for marketing and promotion of alcohol in developing countries should involve the use of industry initiatives. ADCA provides for the regulation of alcohol advertisement whose enforcement through media monitoring is expensive. Given the limited resources allocated to NACADA, it should seek to establish concurrence with the manufacturers and marketers on industrial advertising norms and allow for self regulation. (IEA-Kenya 'et al', 2015).

The firms in the Kenyan media houses have developed independent initiatives of self-regulation. Most of these policies ensure that they comply with ADCA but also try to adopt global best practices. A spot-check of major media houses that publish newspapers in Kenya shows they have an internal policy restricting advertisements of alcoholic beverages from the pages meant for underage readers, especially during the weekends.

Given limited resources allocated to NACADA, the Government should support industry initiatives of self-regulation. Incentives must be given to those players with a high level of compliance.

ii. Pricing

Governments recognise that excessive consumption of alcohol has negative externalities, meaning that this consumption would generate adverse effects that are not accounted for within the price. Through parliament, the government of Kenya has placed excise taxes on alcoholic products in the quest to limit the externalities generated by consumption of alcohol. The direct effect of this excise duty is raising the price of the product and thereby reducing the overall quantity of alcohol consumed. The taxes have raised the prices over the last five years immensely with the National Treasury increasing excise taxes well above economic growth rates and reported inflation. The belief by Government is that reducing the affordability of alcohol will reduce both alcohol consumption and alcohol-related harm.

However, for a price rise to reduce alcohol-related harm, there must be a level of certainty that:

- (a) reducing average consumption will reduce harm (the Ledermann Hypothesis), and;
- (b) higher prices will reduce average consumption (Duffy, Snowdon 2012).

However, studies show that the higher the per capita consumption, the lower the price sensitivity. Research has shown that price elasticity for the heaviest drinkers is "not significantly different from zero". They will purchase alcohol at almost any cost (Purshouse, 2009; p. 76).

It is important to note that heavy drinkers adjust to cheaper options instead of cutting down on alcohol consumption. We explain that the expansion of informal alcohol sector in Kenya is caused by heavy drinkers who are substituting formal alcohol with alcohol in the informal sector. This situation confirms the view that the Problem Directed Policies is and Direct Intervention Policies would be the most cost effective policy choices for Kenya. The existence of the "Twin Markets" undermines the use of price and marketing regulations to prevent the harms that public policy is rightly concerned about.

iii. Regulation on Availability

The regulation environment in Kenya is premised on the Lederman Hypothesis, where government focusses on reducing the availability of alcohol to the population through various strategies such as licensing.

The availability hypothesis was crafted by Lederman (1956) where he attempted to introduce attention to detail into the proposition that there is a relationship between the availability of alcohol, levels of consumption and alcohol-related harm. Lederman put forward a mathematical relationship between levels of drinking and the number of drinkers consuming excessive amounts in society.

This theory states that the given number of X% of consumers always consume Y% of the total alcohol market. Therefore, to reduce the consumption by the top X%, total alcohol consumption has to be reduced" (Amber, 2009; p. 174). If this

theory is then true, the Ledermann hypothesis suggests that policies aimed at reducing alcohol consumption across the general population will affect heavy drinkers via a statistical machine and so policies aimed at heavy drinkers themselves are not required (Duffy, Snowden, 2012).

There are reasons to closely interrogate this theory:

1. A relatively low rate of per capita alcohol consumption is no guarantee of better health if a bigger percentage is consumed by a few numbers of the heaviest drinkers. This theory also doesn't give psychological and societal factors which lead to excessive alcohol use or operation of motor vehicles while above accepted blood level limits.

2. The theory states that the availability of alcohol results in higher average consumption. Countries with lighter regulations on the availability of alcohol have witnessed dropping rates of average consumption over time. United Kingdom Licensing Act of 2005 made alcohol available on 24-hour basis and have witnessed a continuous drop in the pure alcohol consumed per capita. At the same time, this theory is irrelevant for Kenya since per capita consumption levels in Kenya are below peers in the region and the world.

Different agencies and ministries in different counties are responsible for licensing, and there is no national record of the number or type of licenses granted, suspended or revoked. Requirements in ADCA that 15% of licensing fees be put toward relevant civil society programs, and that the County Fund of licensing fees be used in part to support cessation and rehabilitation programs have not been observed.

iv. Excise Tax

There are several unintended consequences of the excise tax regime in Kenya which is based on how it is levied, compliance cost and rate of taxes. Some of these consequences are:

- **Differentiation Problem-** an excise tax on alcoholic drinks should be differentiated based on the alcohol content of each drink as opposed to a blanket charge on the volume as it is now. Alcoholic beverages should be taxed based on the percentages of pure alcohol in the beverages as opposed to product volume.
- **Compliance Cost-** alcohol industry manufacturers are

required to purchase excise stamps to be affixed on the packaging or bottle. This has increased the cost of production overall without any evidence that it has improved compliance or affected consumption.

- **Excise tax rates-** The excise tax revenues in the last 6 years have increased by a higher proportion than inflation and economic growth. This is despite the fact that alcohol consumers in Kenya have different demands or cost functions and hence regulatory policy should impose different optimal duties on them. Based on the best practice, there's a need to design an optimal uniform pigouvian alcohol excise duty for Kenya. In the end, there's the need to have a tax rate that has been the weighted average of each consumer non-uniform optimal duty with the weights of the same consumer's standardized price derivative of demand.

v. Role of Government in Public Education

NACADA has prioritized education on alcohol use and effects. This has made the adult literacy on alcohol use and effects surge. As illustrated in figure 11 below, the alcohol dependence among the populations (15years and above) remained stagnant at 1.4% for the period 2014-2018 despite the introduction of stringent regulatory measures. However, the share of deaths attributable to alcohol (AFFs) reduced markedly from 4% to 2.6% of all deaths in the same period. Education in this area should be premised on the fact that consumption of alcohol is a social skill. Most professionals refer it to responsible drinking or as "Drink IQ". Education should improve knowledge of how to take personal responsibility in alcohol consumption and beneficial effects of moderate drinking.

It is important to note that the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), published by the American Psychiatric Association classifies alcohol use disorders into 11 different symptoms⁷. However, the most prominent problems related to alcohol consumption in Kenya are Alcohol Dependence (AD), Binge Drinking, Harmful Use of Alcohol (HU) and Heavy Episodic Drinking (HED).

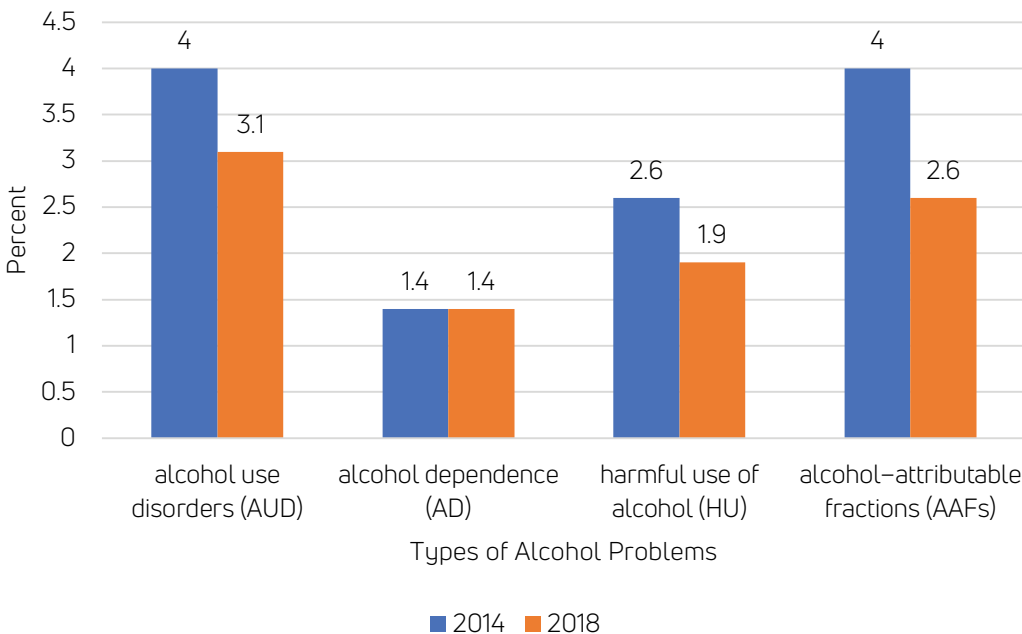
Public education focusing on responsible consumption to raise Drink IQ will reduce alcohol harm related activities generated by these disorders.



NACADA has prioritized education on alcohol use and effects. This has made the adult literacy on alcohol use and effects surge.

⁷ <https://www.verywellmind.com/diagnosis-alcohol-use-disorder-67880>

Figure 11: Health Consequences of Alcohol Use



Source: 2014 WHO Global status report on Alcohol and Health, 2018 WHO Global status report on Alcohol and Health

Education on use and effect is not sufficient alone to deal with the four categories of alcohol-related problems. Data from the World Health Organization underscores the need to change public education strategies to address the four problems of alcohol-related harms.

vi. Excessive Regulation

The role of fighting counterfeits and ensuring compliance with Kenya’s laws and regulations has not been clearly established as required in ADCA. NACADA continues to work at the National level and also with county governments. At the same time, three government agencies are working on fighting counterfeit products namely, Commissioner of Revenues at Kenya Revenue Authority who issues excise stamps, Kenya Bureau of Standards and Anti Counterfeit Authority. There is a need for agency coordination that will not increase compliance costs.

Defining roles will ease compliance and make the process as seamless as possible. Cost of complying with government regulations is a business cost on the producer’s side. It is important for the government to dedicate resources intended for regulation to other areas that need it most.

vii Barriers to Market Entry

The ADCA law used in the regulation of the alcohol beverages industry had the intention of ensuring the producers in the informal sector are brought into the formal system (IEA-Kenya ‘et al’,2015). However, they regulations have raised costs in both the formal markets, while expanding the reach of informal markets because informal sector traders could not attain the standards required. Few informal sector players are pursuing licenses and the majority of alcohol consumed remains in the informal, unregulated, unlicensed

and potentially unsafe market. This result confirms that direct intervention and problem directed approaches to policy are required to generate solutions to the problem of unlicensed trade.

viii Expansion of the Informal Sector

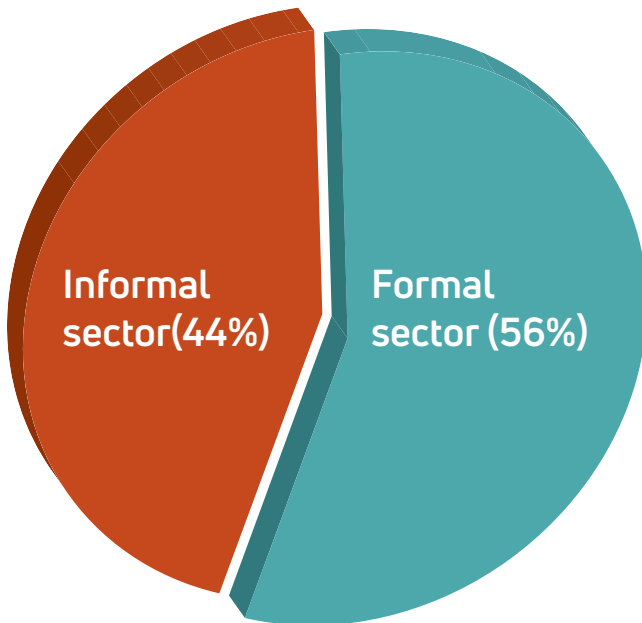
The World Health Organization’s Global Strategy to Reduce the Harmful Use of Alcohol (2009) recognizes limits on the public availability of alcohol have “a reciprocal influence on the social availability of alcohol and thus contribute to changing social and cultural norms that promote harmful use of alcohol.”

The World Health Organization Global Strategy also recognizes that in many low- and middle-income countries, informal markets are the main source of alcohol and that although policies limiting alcohol availability should address the informal markets, restrictions “that are too strict may promote the development of a parallel illicit market,” leading to an increase in organized crime, decreased respect for the rule of law, loss of tax revenue, and corruption of law enforcement and other public officials (WHO, 2009). The prices in the formal sector alcohol producers coupled with the regulatory environment have continuously driven up prices of alcohol.

Alcohol is considered a normal good where consumption is inversely proportional to income (An increase in income would lead to increased consumption of alcohol). Increased alcohol prices would make consumers substitute with cheaper choices which in this case would be alcohol from the informal sector. In the Kenyan Market, alcohol from the informal sector acts as a substitute for alcohol in the formal sector.

The WHO 2018 status report on health and alcohol puts Kenya's Per Capita Consumption of alcohol at 3.4 litres of pure alcohol per annum with 1.9 litres of pure alcohol being recorded (formal markets) and 1.5 litres of pure alcohol being unrecorded (informal markets).

Figure 12: Health Consequences of Alcohol Use



What this implies is the alcohol sourced from formal and informal markets stands at 56% and 44% respectively as a share of total alcohol consumed every year per person adjusted at per capita level. The WHO Global Status Report on health and Alcohol says the Kenya alcohol informal sector grows by 2.66% annually. The users in the informal sector have an adult literacy rate of 78.70% (WHO, 2018).

The regulation of alcohol availability in Kenya should seek to reasonably limit consumption toward reducing alcohol-related harms without heavy-handed policies that promote an illicit market for alcohol (IEA-Kenya, Kenyatta University, ILA, 2015). The principal regulation law, ADCA should focus on policies that will bring everyone to the formal alcohol sector⁸.

Consequences of Informal Sector Expansion

The substitution of formal alcohol with the informal sector alcohol has some direct implications. Some of them are as follows;

a. Revenue loss to the Government

There are no established mechanisms to ensure informal sector players pay up revenue levied to alcohol manufacturers under the law. Figure 5 shows the drop of excise revenue in all categories and this may be explained by substitution from formal towards informal alcohol markets. Given the reality of the "Twin Market" in alcohol sale and consumption in Kenya, the displacement of consumers from the formal market towards the informal market would represent direct revenue

losses for government.

b. Health Consequences

Due to the nature of the informal sector industry, it is difficult to determine the alcohol content of alcoholic beverages produced and sold in that sector. This lack of standards in labelling without labelling and information to the consuming public, the consumers assume a high risk that they may be harmed from improperly prepared products. Most of the time, alcohol from the informal sector surpasses the required alcohol content as listed in regulations and laws. The WHO's Global Status Report on Alcohol and Health of 2018 shows the prevalence of Heavy Episodic Drinking in among the 15-19 year age cohort.

c. Job losses

Reduced production in the formal sector could turn into jobs losses within the industry because it remains untenable and impossible to maintain a bigger workforce. The substitution response to the formal alcohol will cause a spiral effect on production and supply chain and in jobs directly. Companies would have to adjust its workforce to meet its reduced production capacity.

d. Industry competitiveness

Alcohol industry players also manufacture derivatives which are inputs for other industries. Shrinking production will reduce competitiveness and hence Kenyan market players but be edged out in the long run by manufacturers in destinations with preferential treatment. Regulations that will affect the supply of ethanol which is used in producing alcohol will affect other industries. These industries include pharmaceutical, cosmetics and chemical manufacturing industries.



Reduced production in the formal sector could turn into jobs losses within the industry because it remains untenable and impossible to maintain a bigger workforce.

⁸ Policies that will unify the formal and informal sector

Case Study 1: Alcohol Policy Regulation in Denmark

Denmark has comprehensive subnational policies on alcohol and includes nation-wide awareness-raising activities. Health warning labels are mandatory on alcohol advertisements and bottles and containers of alcoholic beverages. The Industry in its own initiative has ensured it affixed health warning labels on containers and bottles of alcoholic beverages⁹.

Alcohol retailers, academia, Non-Governmental Organizations and HORECA¹⁰ businesses play a role in the prevention of underage drinking. They offer targeted support for harmful and hazardous drinkers, prevention of drink-driving, and public policy development to reduce alcohol-related harm.

On drinking environment, players in the retail sector organize regular server training courses at the trade, technical and vocational schools. On alcohol-free public environments, Denmark uses voluntary or self-regulation for educational buildings, government premises and workplaces. There are no restrictions for health care establishments, parks, streets, sporting events, leisure events and also religious places.

Denmark has also invested in primary health care response on health promotion and disease intervention. They offer

Counselling to children in families with alcohol problems and give specific interventions to pregnant women with alcohol use disorders or alcohol problems.

Alcohol laws in Denmark are separated into two with one being for spirits and another for beer and wine. The age limit under the law for buying beer and wine in Denmark is 16 years in shops and 18 years for bars and restaurants. For buying alcohol with a percentage higher than 16.5%, the legal age in Denmark is 18 everywhere. Alcohol can be accessed generally in many of the convenience stores and supermarkets across Denmark.

Alcohol Taxation Policy

Denmark reduced the tax on spirits by 45 per cent in 2003 without facing an upsurge in alcohol consumption (Mäkelä, 2008; Grittner, 2009). Over time, there was a drop in alcohol-related problems (Bloomfield, 2010). Before the Danish tax cuts on spirits in 2003, most people had predicted that alcohol consumption would go up in southern Sweden. This is due to the reason that most Swedes would cross the Danish border to buy cheap alcohol (Duffy, Snowdon, 2012). That happened but the alcohol consumption in southern Sweden fell overall while consumption in the distant north of Sweden went up (Gustafsson, 2010).

⁹ <http://www.amphoraproject.net/files/Denmark%20-%20Country%20Report.pdf>

¹⁰ Horeca (also HoReCa, HORECA) is an abbreviation for the foodservice industry. The term is a syllabic abbreviation of the words Hotel/Restaurant/Café



Denmark reduced the tax on spirits by 45 per cent in 2003 without facing an upsurge in alcohol consumption

Case Study 2 : Regulation on Availability of Alcohol in France and the United Kingdom

It has been the assumption among policy makers and other stakeholders involved in the alcohol health-related campaigns that restrictive licensing laws would reduce per capita consumption. Reduced consumption of alcohol per capita in their logic would reduce alcohol-related harms. That assumption has not been backed by real evidence. However, some examples have proven otherwise as indicated below.

i. France

France has a national written alcohol policy whose coordination and implementation are done by its Ministry of Health. The principal law is called the Loi Evin¹¹ and was passed in France in 1991 in order to control the advertising of alcohol and tobacco.

The need for the industry to work together is underscored by the role played by academia and research organizations in alcohol policy implementation and monitoring. The role played by those stakeholders is given high regard. There are immense nation-wide awareness-raising activities in areas targeting young people's drinking, drink-driving, alcohol's impact on health, social harms, alcohol and pregnancy. Other policies that form the key focal point include community-based interventions involving Non-Governmental Organizations and Drink-driving policies and its countermeasures. Overall, the alcohol control policy in

France is considered balanced, effective and comprehensive.

Another important feature of this policy is the alcohol-free public environments. Alcohol has been totally banned from public transport. There's the partial statutory restriction for educational buildings and sporting events. Health care establishments, government office, workplaces and religious places are supposed to be self-regulated. They are voluntarily expected to regulate themselves and other areas like parks, streets and other leisure events have no restrictions on at all.

French regulation focused on other areas instead of restrictions on availability. As most of Europe regulated availability of alcohol, France focused on was on other areas. They have witnessed a dramatic decline in alcohol consumption since the 1960s despite availability remaining unchanged (Romelsjö, 2010). The decline in alcohol consumption has been about 1% per year since 1960.

ii. United Kingdom

The United Kingdom in 2005 enacted a Licensing Act that aimed to increase the number of hours alcohol can be served to theoretically at least 24 hours a day. They were popularly known as '24-hour drinking' laws. This measure was controversial. The Royal College of Physicians said then that the law would increase alcohol consumption, the police chiefs complained that their forces would be overstretched in dealing with issues arising from excess and harmful alcohol consumption¹².



The United Kingdom in 2005 enacted a Licensing Act that aimed to increase the number of hours alcohol can be served to theoretically at least 24 hours a day.

¹¹ <http://www.ias.org.uk/What-we-do/Publication-archive/The-Globe/Issue-2-2004-amp-1-2004/The-Loi-Evin-a-French-exception.aspx>

¹² <https://www.bbc.com/news/magazine-34881193>

The Implementation of the laws coincided with the beginning of a persistent slump in per capita alcohol consumption in the United Kingdom (Duffy, Snowden, 2012). Since the era of that new Licensing Act in 2005, the average weekly alcohol consumption has fallen by nearly twenty per cent (Office for National Statistics, 2012). Binge drinking also decreased overall during the existence of the act to present with the proportion of this group bingeing at least once a week going down from 29% in 2005 to 18% in 2013¹³.

Another significant and important aspect is allowing market players to undertake self-regulation in respect to marketing and communications¹⁴. Alcohol industry players are required under the law not to encourage consumers to drink and drive. They must, where relevant, include a prominent warning on the dangers of drinking and driving and must not suggest that the effects of drinking alcohol can be concealed¹⁴.

¹³ <https://www.bbc.com/news/health-31452735>

¹⁴ The law that supports self-regulation is (Article 4.6 The CAP Code The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing)

¹⁵ <https://eucam.info/regulations-on-alcohol-marketing/great-britain/>

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