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Alcohol and Youths: Suggestions for Law Reform



by

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Alcohol abuse is widely acknowledged to be a huge problem in Namibia, and there is a wide range of opinion on how best to address the problem. The topic is a broad one. This paper focuses on suggestions for strengthening provisions concerning alcohol consumption by Namibian youth, within the context of the existing liquor laws.

1. INTRODUCTION

Underage drinking has become a significant problem in Namibia. A Ministry of Health study on substance use amongst Namibians found that 53.5% of youths aged 13-30 use alcohol.¹ The same study found that, among 13-16 year olds, 11% of girls and 18% of boys use alcohol regularly, 28.4% of youths use alcohol at least once a week and 6.8% of youths use alcohol daily.²

Children are also beginning to drink at earlier and earlier ages; A 2006 UNICEF study found that, in a focus group of 10-14 year olds, one in ten had already used alcohol, beginning at age 10 on average.³ Perhaps most worrisome of all, underage

¹ JL Strijdom & OH Angell, *Substance Use Among the Youth in Namibia*, Centre for the Partnership in Development, Ministry of Health and Social Services & University of Namibia, 1998, at page 71.

² Id at pages 70, 82.

³ UNICEF, *HIV and AIDS Knowledge, Attitudes, Practice and Behaviour (KAPB) Study in Namibia*, 2006, at page 19.

drinking appears to be on the rise. In 1992, only 19.8% of 13-16 year olds had experimented with alcohol. By 1998, that number had risen to 50%.⁴

Another study on alcohol use in Namibia found that more than half of the respondents felt that youth had easy access to alcohol, and almost half felt that communities were contributing to alcohol use by youth in some way:

- 65% of respondents agreed that it was easy for the youth to get access to alcohol at shops in their community;
- 57% of respondents believed that it was easy for the youth to get access to home-brewed alcohol in their communities;
- 49% of respondents agreed that in their community, very young children were given home-brewed alcohol to ease their hunger or stop them from crying; and
- 41% of respondents felt that their communities had become more tolerant of underage drinking.⁵

This rising tide of alcohol abuse leads to increased violence, unwanted, unplanned or unprotected sexual behaviour, and a 3.51 times greater probability of HIV risk behaviour.⁶ Unfortunately, existing Namibian law is poorly equipped to fight this disturbing trend.

2. THE CURRENT LAW

Currently, the only Namibian law that touches directly on the subject of underage drinking is the Liquor Act 6 of 1998. "Liquor" is defined for purposes of the act as including any wine or beer containing 3% alcohol or more, as well as tombo and other "homebrews" of the same strength. The definition of liquor does not include "methylated spirits" which are mentioned separately in some provisions of the Act.⁷

⁴ Strijdom & Angell at page 74.

⁵ SIAPAC (for Ministry of Health and Social Services), *Nationwide Knowledge, Attitudes and Practice (KAP) Baseline Survey on Alcohol and Drug Use and Abuse in Namibia*, 2002.

⁶ UNICEF at 20.

⁷ Section 1 defines "liquor" as "(a) any spirituous liquor or any wine or beer containing three per cent or more by volume of alcohol, excluding methylated spirit; (b) tombo or any other fermented, distilled, spirituous or malted drink, traditional or non-traditional, which contains three per cent or more by volume of alcohol; (c) any drink or concoction which the Minister by notice in the Gazette declares to be liquor".

It defines "tombo" as "the traditional or home-brewed alcoholic drink, also known as sorghum beer, made from a fermentation of mahango, sorghum or other cereal or vegetable matter, with or without additives".

It defines "methylated spirits" as "(a) spirit denatured in terms of any law relating to the denaturation or methylation of spirit; (b) any other detoured, medicated, perfumed or otherwise treated spirit which the Minister by notice in the Gazette declares to be methylated spirit for the purpose of this Act".

The general regulatory framework authorises licences for consumption of liquor on the premises of several different categories of establishments: hotels, restaurants, shebeens, clubs (which refers to membership bodies rather than night clubs) and parks. Special liquor licences are available for other places where alcohol is consumed, such as theatres, sports grounds, night clubs and dance halls, tourist safari camps, railway stations and trains, international motor coaches, ships and airports or aerodromes. Temporary liquor licences are available to allow the serving of alcohol at public functions such as exhibitions, shows, races, sports events and fairs.⁸ Premises licenced for the consumption of liquor must sell snacks or meals and at least two kinds of non-alcoholic beverages.⁹ The law also covers off-sales licences, where liquor is sold in sealed containers for consumption elsewhere.¹⁰ The consumption of liquor in public places is prohibited.¹¹ It is a criminal offence to be intoxicated in a licenced premises, or in a public place.¹² It is illegal to produce any traditional drink containing more than 3% alcohol without a licence, if this is for sale or supply to another; it appears to be acceptable to produce homebrew of any strength for one's own consumption without a licence, unless the particular beverage in question has been named as a prohibited drink by regulation.¹³

The Liquor Act makes the buying and selling of liquor to persons under the age of 18 criminally punishable. The provisions pertaining to underage drinking are scattered throughout the law, making them somewhat difficult to navigate.

Section 56 of the Liquor Act declares that

No licensee, or manager or employee of such licensee, shall, in the course of business conducted in terms of a licence, sell to any person under the age of 18 years, or supply such person with, any drink or substance which contains more than three per cent of alcohol by volume.

In addition, section 71(1)(s) of the Liquor Act provides that

Any person, whether or not he or she is a licence holder, who . . .

(s) sells or supplies any drink or substance referred to in section 56 to a person under the age of 18 years . . .

is guilty of an offence.

Section 49 of the Liquor Act states that all licence-holders must prominently display "a notice in the prescribed form stating that it is prohibited by law to sell to any person under the age of 18 years any drink containing more than three per

⁸ Liquor Act 6 of 1998, sections 2-8, 14-15.

⁹ Id, section 42.

¹⁰ Id, sections 2, 9-15.

¹¹ Id, section 57.

¹² Id, section 71(1)(h)-(i).

¹³ Id, sections 58-59.

cent of alcohol by volume". Article 58 of the Liquor Regulations supplements this rule by requiring that

(1) *A licensee must display in or on the licensed premises a notice in the form as set out in Form 34 of the prohibition imposed by section 56 of the Act concerning the sale or supply of liquor to persons under the age of 18 years.*

(2) *The notice referred to in subregulation (1) must be displayed –*

(a) *in letters not less than two centimetres in height; and*

(b) *at a conspicuous place in or on the licensed premises.*

The underage purchaser of the alcohol is covered by section 71(1)(l) if the Liquor Act:

Any person, whether or not he or she is a licence holder, who . . .

(l) *purchases or obtains any liquor at a time when, or at a place at which, or in circumstances in which, it is unlawful for such liquor to be sold or supplied to, or to be obtained by, him or her. . .*

is guilty of an offence.

It also appears that section 71(1)(c) makes it illegal to use a fake or altered identification document as "proof" of being over 18, although the wording of the section is somewhat convoluted:

Any person, whether or not he or she is a licence holder, who . . .

(c) *unlawfully and with the intent to deceive –*

(i) *alters, destroys, damages or renders illegible;*

(ii) *withholds from any person entitled to take possession or to scrutinize; or*

(iii) *uses fraudulently or for any unlawful purpose,*

any licence, authority, certificate or other document issued under, or for the purpose of, this Act...

is guilty of an offence.

The penalty under these provisions for a first offence is a fine of up to N\$4000 or imprisonment for up to a year. For a second offence the penalty potentially doubles.¹⁴ A license-holder who is convicted of supplying alcohol to an underage person is also disqualified from holding a liquor licence for the next five years.¹⁵

¹⁴ Id, section 72.

¹⁵ Id, section 19.

The language of the Liquor Act thus makes it clear that no person can sell or supply liquor to a person under the age of 18. This appears to include not only shop-owners and liquor licence-holders, but also parents and even other under-18 year olds.

However, while the language is broad enough to cover all such situations, the lack of specificity may cause confusion as to the permissibility or unlawfulness of certain underage drinking practices. For example, the law makes no exception for wine used for religious sacraments or for relatively harmless consumption of alcohol such as where a teenager participates in a toast at a wedding or tastes a parent's drink – while it can be argued that allowing teenagers to have gradual exposure to the responsible consumption of alcohol under appropriate supervision is one way to encourage responsible drinking practices.

The law as it now stands does not generally prohibit under-18 year olds from being present in any categories of licenced establishments, although this prohibition may be imposed as a condition of specific liquor licenses.¹⁶ Section 70 of the Liquor Act says:

A licensee or manager, or any person employed by or acting for or on behalf of a licensee or of a manager, who –

(d) allows to be in any bar upon the licensed premises any person who is, in terms of this Act or of any other law, or of any condition imposed under this Act or such other law, not permitted to be in such bar

is guilty of an offence.

It appears that the persons who serve liquor have differing understandings of the present law; Legal Assistance Centre was told at one Windhoek bar that under-18 year olds are allowed in bars as long as they are not drinking alcohol, while a bartender in another establishment said that under-18 year olds are not allowed in bars unless accompanied by an adult (such as a parent). The fact that bars and shebeens are required to display signs saying "No alcohol served to those under 18" can be taken as an indication that persons under 18 can be present on the premises.¹⁷ This is an area of the law which stands in need of clarification.

The law makes it illegal for an under-18 year old to buy or "obtain" liquor, but not to drink it or possess it. Presumably, then, an under-18 year old would be able to lawfully manufacture and drink his own homebrew – because as noted above, homebrew is only illegal when manufactured for the purpose of selling or supplying it to another.

Finally, Namibian law does not extend liability to the supplier of the liquor for death or injury caused by intoxicated under-18 year olds.

¹⁶ Id, section 17.

¹⁷ Informal interviews in randomly-selected bars in the Windhoek area.

3. COMPARATIVE LAW

South Africa

South Africa's laws on underage drinking, in comparison to Namibia's, more explicitly delineate the unlawful aspects of underage drinking and its surrounding activities. Section 10 of the South African Liquor Act 59 of 2003 bars a person from selling or supplying liquor to a person under age 18, but includes an exception which allows an under-18 year old to consume a moderate quantity of liquor in the presence of a parent, a guardian or a person responsible for administering a religious sacrament.

The South African law also requires a person to take reasonable measures to determine accurately whether or not a person is under age 18 before selling or supplying liquor. In addition, it specifically places responsibility on the under-18 year old him or herself not to produce, import, or supply liquor to another, as well as prohibiting an under-18 year old from lying about his or her age to obtain alcohol.¹⁸

The penalty for violating these prohibitions is a fine not exceeding R1 000 000, or imprisonment for a period not exceeding five years.¹⁹

Prohibition of supply of liquor or methylated spirits to minor

- 10.** (1) A person must not sell or supply liquor or methylated spirits to a minor.
- (2) Despite subsection (1), the parent, adult guardian of a minor or a person responsible for administering a religious sacrament, may on occasion supply to that minor a moderate quantity of liquor to be consumed by the minor in the presence and under the supervision of that parent, guardian or other person.
- (3) A person must take reasonable measures to determine accurately whether or not a person is a minor, before selling or supplying liquor or methylated spirits to that person.
- (4) A minor must not make a false claim about age in order to induce a person to sell or supply liquor or methylated spirits to him or her.
- (5) A person must not make a false claim about the age of a minor in order to induce a person to sell or supply liquor or methylated spirits to him or her.
- (6) A minor must not –
- (a) produce liquor;
 - (b) import liquor; or
 - (c) supply liquor to any other person.

South African Liquor Act 59 of 2003

¹⁸ South African Liquor Act 59 of 2003, section 10.

¹⁹ *Id.*, section 35.

It should also be noted that the South African legislative restrictions on the sale of liquor to minors cover weaker alcoholic beverages than Namibia's comparable provisions, including some beverages with alcohol content greater than 1%.²⁰

United States

American laws on underage liquor consumption differ from state to state, but there are some notable trends.

Many states have enacted "zero tolerance" laws in an effort to reduce underage drinking and driving. In effect, zero tolerance laws ensure that any person under 21 (the legal drinking age in the United States) who is found with a measurable level of alcohol in his bloodstream while driving, or who refuses testing upon a police officer's request, will be penalised, *even if* the driver is not impaired in any way. One common penalty is the automatic revocation of the youth's driver's license.

Many states have also enacted "social host" liability laws which hold social hosts (including non-commercial vendors) who provide alcohol to another person liable for death or injury that the intoxicated person inflicts on another. When it comes to minors, some courts have also held that social hosts could be held liable for injuries or death suffered by an intoxicated minor guest to whom the host furnished the alcoholic beverages.²¹

Australia

Several states in Australia provide good examples of comprehensive and detailed laws on underage drinking.

For example, New South Wales and Queensland both list precisely what forms of identification will be accepted as proof of age. New South Wales makes it an offence

²⁰ Section 1 of the South African Liquor Act 59 of 2003 defines "liquor" to mean "(a) a liquor product, as defined in section 1 of the Liquor Products Act, 1989; (b) beer or traditional African beer; or (c) any other substance or drink declared to be liquor under section 42(2)(a) [ie by regulation]".

It defines "beer" to include "(a) ale, cider and stout; and (b) any other fermented drink, other than traditional African beer – (i) that is manufactured as, or sold under the name of beer, ale, cider or stout, if it contains more than one per cent volume of alcohol; or (ii) that is declared to be beer under section 42(2)(a) [ie by regulation]".

"Traditional African beer" is defined in terms of its manufacturing process rather than its alcohol content (see Schedule 1 of the Liquor Act 59 of 2003).

The Liquor Products Act 60 of 1989 defines liquor products to include wine, alcoholic fruit beverages, spirits, grape-based liquors and spirit-based liquors (amongst other products). The listed substances are all described with reference to their production processes rather than their alcohol content, although the definitions allow for the prescription of alcohol content by regulation for each category of substance.

²¹ See *Keson v Unkel*, No. 311300, 1994 WL 146490, *1, (Conn Super, Apr 13, 1994); *Batten v Bobo*, 528 A.2d 572 (NJ Super, 1986), *Ryan v Friesenhahn*, 911 S.W.2d 113, (Tex.App 1995). But see *Spivey v Sellers*, 363 S.E.2d 856, (Ga. App 1987), *Charles v Seigfried*, 165 Ill.2d 482, (1995).

to use false identification to obtain alcohol. Queensland also specifically makes it an offence to use a friend's identification document (ID) or to alter an ID for this purpose, and authorises spot fines as well as confiscation of the ID in such circumstances. The procedure works as follows:

Under the law, if a security guard or bar tender thinks your ID is fake or it does not belong to you, by law they must take it from you. They will send it to the Compliance Unit of the Liquor Licensing Division or the closest regional office. A letter will then be forwarded to the owner of the ID, requesting that they contact an investigator in relation to the confiscation. If your ID is real and you have not borrowed one from a friend, it will be given back to you. However, if it is fake or you lent it to a friend, an infringement notice or complaint and summons may be issued and the ID will be kept as evidence for court purposes.²²

²² *Alcohol, the law and you!*, State of Queensland, Department of Tourism, Fair Trading and Wine Industry Development, 2005.

A receipt must be provided for the seized document, which must be returned within six months, or when it is no longer required as evidence. The owner of the document has a right to have access to it to make copies.

The text of the relevant legal provisions reads as follows:

158 False representation of age

(1) A person must not falsely represent himself or herself to have attained 18 years for a wrongful purpose.

(2) A person must not –

- (a) make a false document that could reasonably be taken to be genuine acceptable evidence of age for the purposes of this Act; or
- (b) give such a false document to another person;

knowing the document to be false and with intent that the document be used as acceptable evidence of age for the purposes of this Act.

(3) A person must not falsely represent to an entity that the person has reached 18 years to obtain a proof of age card mentioned in section 6(a)(i) knowing the representation to be false.

(4) In subsection (1), *wrongful purpose*, of a minor, means –

- (a) intending to be supplied with liquor; or
- (b) entering into premises to which a licence or permit relates.

159 Wrongful dealing with genuine evidence of age

(1) A person must not knowingly give a document that is evidence of age of the person mentioned in the document (the *specified person*) to someone else, if the person giving the document knows or has reasonable grounds to suspect that the document may be used –

- (a) as evidence of age, under this Act, of someone other than the specified person; or
- (b) to obtain a proof of age card mentioned in section 6(a)(i) for someone other than the specified person.

(2) A person must not wilfully or negligently deface or interfere with a document that is acceptable evidence of age for the purposes of this Act of the person or another person.

Queensland amended its liquor laws in 2007 to add an offence on the “irresponsible supply” of alcohol to underage persons in private places.

Irresponsible supply of liquor to a minor at a private place etc.

(1) An adult must not supply liquor to a minor at a private place, unless the adult is a responsible adult for the minor.

(2) A responsible adult for a minor must not supply liquor to the minor at a private place, unless the supply is consistent with the responsible supervision of the minor.

(3) For subsection (2), in considering whether the supply is consistent with the responsible supervision of the minor, relevant factors include the following –

- (a) whether the adult is unduly intoxicated;
- (b) whether the minor is unduly intoxicated;
- (c) the age of the minor;
- (d) whether the minor is consuming the liquor supplied with food;
- (e) whether the adult is responsibly supervising the minor's consumption of the liquor supplied;
- (f) the quantity of liquor supplied and the period over which it was supplied.

Queensland Liquor and Other Acts Amendment Act 48 of 2008

Queensland also recently expanded police powers to allow liquor to be seized from an underage drinker on licenced premises or in a public place, even if the underage drinker is not charged with a criminal offence. The purpose of this law reform is to minimise the risk of harm to the young person. The police have similar powers of seizure in respect of the offence which prohibits the supply of liquor to an underage drinker adjacent to licenced premises or in a public place. (An example of the targeted situation given in the Explanatory Memorandum accompanying the law is where a vehicle being driven by an 19 year old carrying multiple 16 year old passengers contains a large quantity of unopened liquor and

160 Seizure of document wrongly used as evidence of age

- (1) If a contravention of section 158 consists in production of –
 - (a) a genuine document that is acceptable evidence of age for the purposes of this Act of the person specified in the document; or
 - (b) a false document that could reasonably be taken to be genuine acceptable evidence of age for the purposes of this Act;

the person to whom the document is produced must seize and confiscate the document and give it to an investigator.

(2) A person does not commit an offence by contravening subsection (1) if the person is not aware of the falsity of the representation as to age made by producing the document.

police reasonably suspect that the driver has committed or is about to commit an offence by supplying the liquor to the 16 year olds.) Police are also empowered to seize liquor from an underage person in a private place if that person is in possession or control of liquor in opened or unopened containers, and the police officer reasonably suspects that the minor is not being responsibly supervised by a responsible adult. Liquor seized by police in these circumstances is forfeited and may be disposed of by the police.²³

New South Wales has rules about functions for minors in hotels and public places of entertainment, which prohibit the sale or consumption of alcohol in the function area. This would presumably apply to youth functions such as matric dances, sporting events and private parties, which often operate as catalysts for underage drinking.²⁴

4. SUGGESTIONS FOR LAW REFORM IN NAMIBIA

Given the relative ease of access to liquor by under-18 year olds in Namibia and the rising prevalence of underage drinking, it is crucial to address the problem of youth alcohol use in Namibia by strengthening Namibia's laws surrounding underage drinking.²⁵ This monograph proposes three recommendations for immediate law reform to strengthen protections against underage drinking, and four proposals for further debate to see if they might be appropriate for Namibia.

All of the proposed law reforms – including the proposed amendments to various others statutes – could be incorporated into the forthcoming Child Care and Protection Act as part of the effort to protect children against the irresponsible use of alcohol.

It should be noted that although some of the proposed offences would apply to under-18 year olds, the penalties for such person would be limited to fines, and possibly attendance at educational sessions on underage drinking. These criminal penalties are also intended to sanction the immediate confiscation of liquor by the police where it is in possession of under-18 year olds. While it is unlikely to be helpful to create a large class of young offenders who are imprisoned or saddled with criminal records, there is a need for under-18 year olds to take responsibility for abstaining from alcohol consumption and from using fraud to obtain alcohol illegally. The proposed reforms attempt to provide an approach which encourages responsibility without excessive criminalisation. We would suggest that enforcement and prosecution should continue to focus on the sale and supply of liquor to underage persons rather than the consumption of liquor by underage persons.

²³ Queensland Liquor and Other Acts Amendment Act 48 of 2008 (Amendment of Police Powers and Responsibilities Act 2000).

²⁴ NSW Office of Liquor, Gambling & Racing, *Underage Drinking Laws*, November 2008.

²⁵ Strijdom & Angell at page 74.

Proposed law reforms

- (1) **Consolidate the rules in the current Liquor Act relating to underage drinking to make more them clear and accessible, and expand them to cover areas which are currently neglected.**

We suggest amending the Liquor Act to consolidate and strengthen the provisions on underage drinking in the indicated areas.

Prohibit the presence of persons under 18 in certain categories of establishments except where in the company of a parent or guardian: The presence of under-18 year olds is not necessarily problematic in places such as restaurants and hotels, but it would seem inadvisable to admit persons who are under the legal age for purchasing alcohol to shebeens and night clubs unless they are with their parents.²⁶ Restricting the presence of under-18s in this way would help keep youths out of bars, shebeens and other places where alcohol consumption is a central activity. It should be noted, however, that the proposed amendment which would allow persons under 18 to be present in shebeens with their parents or guardians (such as a baby accompanying the mother) still does *not* authorise licence-holders to supply alcohol to these under-age persons.

Clarify permissible exceptions on the supply of alcohol to persons under age 18 by their parents or guardians: It is necessary to clarify parental duties with respect to liquor. For example, during focus group discussions held by the Legal Assistance Centre throughout Namibia during 2008, examples of situations where minors are taken to shebeens were frequently given and some participants cited concerns about situations where babies in shebeens are fed with alcohol to keep them quiet. Therefore, the proposed provisions strictly prohibit the supply of liquor to anyone under the age of 14, even by a parent or guardian, except for a very narrow exception aimed at the wine used in some religious sacraments.

It was suggested that the proposed amendment should define "moderate". We suggest that it is better to leave this concept deliberately undefined, as what is "moderate" would depend on the age of the child. There is probably nothing wrong with allowing an older teen to drink one beer or glass of wine at a family dinner, but it would be highly irresponsible to give this amount of alcohol to an infant. Therefore, the proposal for statutory amendment made below suggests measuring what would be considered "moderate" against the

²⁶ The Liquor Act defines a shebeen as "any premises exclusively or mainly used for the sale to, and the consumption on the premises by, the public of light liquor and refreshments, and includes a tavern, but does not include an accommodation establishment, restaurant or club or any enterprise or undertaking referred to in section 7(1)". Despite the specific exclusion of a "club" from the definition of shebeen, it seems likely that this definition of shebeen does include many places that are colloquially called "clubs." Section 7(1), however, makes a distinction between the types of licenses available for shebeens and for "night clubs" or "dance halls."

age of the child. Moderate could be defined with respect to age categories if necessary by means of regulations.

For the further protection of infants and young children who might be allowed to accompany their parents or guardians to shebeens, it was suggested that the revised law should prohibit the supply of further alcohol to a parent or guardian who is clearly intoxicated, or if the vendor is concerned about the welfare of the under-18 year old. This suggestion has been incorporated into the draft proposed below.

In some countries, underage persons may be present in licensed establishments if accompanied by a "responsible adult" rather than a parent. For example, in New South Wales, a person below the legal drinking age can be present on licenced premises in the company of a parent, step-parent, guardian, spouse or someone standing in as the parent. However, we do not propose such a broad exemption in the case of Namibia, as this might be applied to the prevalent situation of young people in unhealthy sexual relationships with adults; there may already be pressure on such youths to enter into ill-advised sexual activity, and it would not be helpful to facilitate the fuelling of such situations with alcohol.

Create a legal responsibility for alcohol suppliers and sellers to check identification: We suggest amending the Liquor Act by including a section similar to the South African provision to place affirmative duties on licenced establishments to check IDs. This would ensure that a person must take active measures to confirm the age of the liquor purchaser or face potential liability. Such a provision would help to encourage stricter enforcement of identification checks in licenced establishments.

Clarify rules on the use of fraudulent IDs and provide for confiscation of fake IDs: We would suggest that the provisions on identification checks should be bolstered by provisions on the use of fake IDs and the IDs of other persons – both techniques which are employed in practice by Namibian under-18s to obtain alcohol illegally. We propose a provision allowing for confiscation of IDs in suspicious circumstances, based on the Queensland, Australia framework.

Prohibit manufacture of homebrew by under-18 year olds for personal use as well as any possession of liquor by under-18 year olds, and provide for the immediate confiscation of liquor in such situations: We propose making it an offence for under-18s to consume or possess liquor, coupled with a provision empowering the police to confiscate the alcohol if the possessor cannot provide acceptable proof of age. Such an enforcement technique might be the most effective way to prevent immediate harm. At the same time, we suggest that under-18s who are first offenders in such circumstances should be subject to fines (but not imprisonment) and possibly required to attend education sessions on the risks of alcohol. The goal should be persuasive discouragement rather than a focus on severe criminal sanctions.

We would recommend the following provision, modelled primarily on the South African law with additional features suggested by the Australian examples:

- (1)
 - (a) It shall be an offence for any person to sell or supply liquor to a person under the age of 18 years.²⁷
 - (b) A person must take reasonable measures to determine accurately whether or not a person is over the age of 18, before selling or supplying liquor to that person, and failure to do so will bar a person who has violated subsection (a) from asserting the defence that he or she was mistaken about the age of a person in respect of that subsection.
- (2)
 - (a) Notwithstanding subsection (1), it is permissible for a person who is over age 14 and under age 18 to consume a moderate quantity of liquor, in light of his or her age, in the presence and under the responsible supervision of the parent or guardian of such person.
 - (b) Notwithstanding subsection (1), it is permissible for a person who is under age 18 to consume a small quantity of liquor as part of a religious sacrament in the presence of the person responsible for administering the religious sacrament.
- (3)
 - (a) It is an offence for a licensee, or manager or employee of such licensee to allow any person who is under the age of 18 to be present in a licenced shebeen, night club or dance hall unless accompanied by his or her parent or guardian.
 - (b) A licensee, or manager or employee of such licensee, must take reasonable measures to determine accurately
 - (i) the age of the person in question; or
 - (ii) whether an adult accompanying a person under the age of 18 is in fact the parent or guardian of the under-18 year oldbefore admitting such person to a licenced shebeen, night club or dance hall, and failure to do so will bar a person who has violated subsection (a) from asserting the defence that he or she was mistaken about the age or identity of any person in respect of that subsection.
 - (c) Where a person under the age of 18 is present in a licenced shebeen, night club or dance hall with his or her parent or guardian, it shall be an offence for a licensee, or manager or employee of such licensee to sell or otherwise provide

²⁷ The Liquor Act 6 of 1998 currently makes reference to "*any drink or substance which contains more than three per cent of alcohol by volume*" in connection with underage drinking, but the definition of liquor in the Act seems to cover the same ground (see footnote 7).

liquor to such parent or guardian if that parent or guardian appears to a reasonable person to be intoxicated or if the vendor is reasonably concerned about the health, safety or welfare of the under-18 year old.

- (4) (a) It shall be an offence for a person to falsely represent himself or herself, or any other person, to have attained the age of 18 years for the purpose of obtaining liquor in violation of this law, or for the purpose of entering into premises where the presence of persons under age 18 is restricted.
 - (b) It shall be an offence for a person to –
 - (i) make a false document;
 - (ii) sell or supply a false document to another person; or
 - (iii) willfully deface or alter any document;with knowledge or a reasonable suspicion that the document may be used as false evidence of age for the purposes of this Act.
 - (c) It shall be an offence for a person to give a document that is evidence of age of the person mentioned in the document to someone else, if the person giving the document knows or has a reasonable suspicion that the document may be used as evidence of the age of someone other than the person actually referred to in the document, for the purposes of this Act.
 - (d) A licensee, or manager or employee of such licensee who has a reasonable suspicion that a document is being presented as false evidence of age in violation of this subsection must seize and confiscate the document and turn it over to a member of the Namibian Police Force or a municipal police force within 48 hours for purposes of police investigation.
- (5) (a) It shall be an offence for a person under the age of 18 to –
 - (i) consume liquor other than as provided in subsection (2);
 - (ii) produce liquor;
 - (iii) possess liquor;
 - (iv) import liquor; or
 - (v) supply liquor to any other person.
 - (b) A member of the Namibian Police Force or a municipal police force who finds liquor, whether in an opened or unopened container, in the possession of a person who cannot provide reasonable evidence that he or she has attained the age of 18 years may immediately confiscate that liquor without a warrant.
- (6) The provisions of the Criminal Procedure Act 51 of 1977 on seizure and forfeiture shall apply to any documents or liquor seized in terms of this section.

- (7) (a) A first offender under the age of 18 who is guilty of any offence under this section, and a first offender of any age who is guilty of an offence under subsection (4), shall be subject to a fine not exceeding N\$300, which may be dealt with in terms of section 57 of the Criminal Procedure Act 51 of 1977, and in addition to such fine, may be required to attend educational sessions on the dangers of underage drinking upon conviction or admission of guilt.²⁸
- (b) The penalties set forth in section 72 shall otherwise apply to the offences set forth in this section, provided that an offender may be required to attend educational sessions on the dangers of underage drinking in addition to the penalties provided therein.²⁹

(2) Define certain types of coercive, induced or permitted alcohol consumption as child abuse.

A provision that equates coerced alcohol consumption with child abuse would help protect children. The provision might also be drafted to include induced and encouraged alcohol consumption, particularly in large amounts and particularly by younger children. At focus group discussions conducted by the Legal Assistance Centre in 2008, examples were given of where children are prevented from attending school and instead go to the shebeens with their parents. This is a form of alcohol-related child abuse.

The point is not to create a situation whereby a parent that permits a 17 year old child to have a glass of wine at dinner could be convicted of child abuse, but rather a situation where an irresponsible adult who allows or encourages unhealthy alcohol consumption by children could be held accountable, even if he or she is not the direct supplier of the liquor.

This provision is designed to supplement the proposed provisions in the Liquor Act which prohibit the supply of alcohol to under-18s with an exception whereby parents or guardians can allow supervised consumption of a moderate amount of liquor by children between the ages of 14 and 18. We suggest adding a provision to the Child Care and Protection Act to provide additional sanctions for the most serious instances of supplying alcohol to underage children. This could also have the advantage of triggering social worker involvement under that legal framework in cases of alcohol-related child abuse.

²⁸ The low level for this fine and the reference to section 57 of the Criminal Procedure Act 51 would allow the fine to be dealt with as an admission of guilt fine, meaning that it could be paid without a court appearance in the same manner as fines for certain traffic violations. There should be no effort to imprison under-18 year olds for the proposed offences.

²⁹ As noted above, the penalty under section 72 for a first offence is a fine of up to N\$4000 or imprisonment for up to a year, with the maximum penalty potentially doubling for subsequent offences.

It is noted that the same result might be reached by interpreting current statutory definitions of abuse to include coerced or encouraged alcohol consumption. For example, section 18(1) of the Children's Act 33 of 1960 (which is expected to be substantially re-enacted in the forthcoming Child Care and Protection Act) reads:

Any parent or guardian of a child or any person having the custody of a child who ill-treats, neglects. . . or abandons that child or allows it to be ill-treated, shall be guilty of an offence if as a result of the ill-treatment, neglect or abandonment the child is likely to suffer unnecessarily or any part or function of its mind or body is likely to be injured or detrimentally affected, even though no such suffering, injury or detriment has in fact been caused

"Ill-treatment" here, could easily be read to include coerced or encouraged alcohol consumption. However, given the broad nature of this language, it would be preferable to have a provision specifically delineating coerced or induced alcohol use as a form of abuse written into the forthcoming Child Care and Protection Act. This would leave no doubt, as well as raising awareness of the wrongfulness of encouraging alcohol consumption by children.

Some additional protection for women and female children against the use of liquor in connection with sexual abuse is contained in the Combating of Immoral Practices Act 21 of 1980. Section 16 states that:

Any person who applies, administers to or causes to be taken by any female any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower her so as thereby to enable him to have unlawful carnal intercourse with her, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

The same offence and penalty is applied by section 5 to person who administers drugs or liquor to a female for the purpose of enabling a third party to have unlawful carnal intercourse with her.

We would suggest that a similar provision should be applied for the protection of all children, male and female, in the forthcoming Child Care and Protection Act, with much stiffer penalties.

We would recommend adding the following provisions to the Child Care and Protection Act:

- (1) Any adult who
 - (a) coerces any person under 18 to drink any liquor or methylated spirits; or

- (b) allows, induces or encourages any person under the age of 14 to drink any liquor or methylated spirits except as part of a generally-recognised religious sacrament;

shall be guilty of an offence and liable on conviction to a fine of up to N\$XXXX or imprisonment for up to 10 years, or both, and in addition to such punishment, may be required to attend educational sessions on the dangers of underage drinking.

(2) Any person who applies, administers to or causes to be taken by any child under the age of 18 any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that child so as thereby to enable him or a third party to engage in sexual contact with that child shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

(3) Create a more restrictive provision for under-21 year olds who drink and drive.

We propose the introduction of stiff penalties for any under-21 year old who is found driving with liquor in his or her bloodstream, even if the amount is below the legal limit required for drunk driving. Such a provision could help encourage underage abstention at social functions and would hopefully cut down, not only on underage drinking, but also on the car accidents caused by the inebriation of youths who generally have less experience than adults on how alcohol may impair their driving ability.

According to the World Health Organization, about 1049 youths under age 25 are killed worldwide in car accidents every day. While these young road users are at greater risk for a number of reasons, alcohol usage stands as a major risk factor in youth-driving injury and death. In fact, at any level of blood alcohol content, teenage drivers have more than five times the risk of a fatal crash compared with drivers older than 30. In response to this overwhelming problem, the World Health Organization has advocated instituting lower blood alcohol content limits for younger drivers.³⁰

Along with most of the world, Namibia struggles with the problem of drunk driving. In fact, a recent police sting in just one weekend in Windhoek led to 86 drivers being charged with drunk driving.³¹ Considering the excess risk that young drunk drivers face (and cause), the law needs to be tougher on preventing underage drinking and driving.

In the United States, where many states have implemented "zero tolerance" laws on youth drinking and driving, there have been some complaints that

³⁰ World Health Organization, *Youth and Road Safety* (prepared by Tami Toroyan and Margie Peden), 2007, at pages 24-25.

³¹ "86 Arrested in City on Drunken Driving Charges", *The Namibian*, 4 August 2008 at page 3.

the laws don't differentiate enough between youths who are driving with a low blood-alcohol content and those who are driving while completely impaired. To address this issue, an amendment to section 82 of the Road Traffic and Transport Act 22 of 1999 could grade the severity of the penalty by the level of alcohol in the bloodstream, while still penalising even the lowest blood alcohol content.

A "zero tolerance" provision set at an age slightly higher than the legal age for alcohol purchase and consumption could be viewed as a transitional provision designed to encourage responsible drinking by youths who have only recently reached the legal age for alcohol purchase and consumption.³²

In this regard, a recent radio debate in Windhoek canvassed the issue of whether the legal age of drinking should be 18 or 21.³³ Whilst there are proponents for each age limit, we believe that the legal drinking age should remain at 18. We believe that the proposed "zero tolerance" provision on driving, if rigorously enforced, might in itself encourage a transitional phase of drinking by inspiring some 18-21 year olds to forego alcohol on social occasions in order to drive without fear of the legal consequences.

According to section 82 of the Road and Transportation Act 22 of 1999, persons are prohibited from operating a motor vehicle while the concentration of alcohol in any specimen of blood taken from any part of the body exceeds 0,079 grams per 100 millilitres or while the concentration of alcohol in any specimen of breath exhaled exceeds 0,37 milligrams per 1 000 millilitres.

We recommend amending the Road and Transportation Act 22 of 1999 by adding a provision which would lower the bar for younger drivers. However, the precise measurements of alcohol concentration in the blood or breath for this purpose would have to be calculated by experts in this field; it is not advisable to place the level at 0.00 because it is possible for use of cough syrup or mouthwash to result in a slight increase in blood alcohol content.³⁴

It was suggested by the Coalition on Responsible Drinking that young offenders convicted of drinking and driving offences – and perhaps all first offenders – should be ordered to attend educational sessions on alcohol and drug abuse as part of their sentences. This educational aspect of punishment for the crime was reportedly used successfully in Namibia in the past. We agree that this would be a very sensible approach, for drivers of all ages.

³² An example of a slightly different approach comes from New South Wales in Australia, where holders of learners' licences or provisional driving licences (drivers in their first year of being licenced) are subject to zero alcohol limits when driving, regardless of their age.

³³ Katatura Community Radio, 19 November 2008.

³⁴ In most states that have enacted zero tolerance provisions in the United States, a minor will be recognised as illegally operating a motor vehicle with .01 or .02 of one per centum by weight of alcohol in the his or her blood, as shown by chemical analysis of blood, breath, urine or saliva.

- (1) (a) Any person under the age of twenty-one who operates a motor vehicle after having consumed any liquor or methylated spirits is guilty of an offence and liable on conviction to a fine of up to N\$XXXX or suspension of his or her driving licence for a period of up to 6 months, or both, and in addition to such punishment, may be required to attend educational sessions on the dangers of drinking and driving.
- (b) For purposes of this subsection, a person under the age of twenty-one will be deemed to have consumed alcohol only if such person has a blood concentration of alcohol greater than xxx grams per 100 millilitres or where the concentration of alcohol in any specimen of breath is more than xxx milligrams per 1000 millilitres in a sample taken within two hours after the alleged offence.
- (2) (a) Any person under the age of twenty-one who operates a motor vehicle while intoxicated is guilty of an offence and liable on conviction to a fine of up to N\$XXXX or suspension of his or her driving licence for a period of up to one year, or both, and in addition to such punishment, may be required to attend educational sessions on the dangers of drinking and driving.
- (b) For purposes of this subsection, a person under the age of twenty-one will be deemed to be intoxicated if such person has a blood concentration of alcohol greater than xxx grams per 100 millilitres or where the concentration of alcohol in any specimen of breath is more than xxx milligrams per 1000 millilitres in a sample taken within two hours after the alleged offence.

Proposals for further discussion

- (1) **Provide for a phased drinking age, by setting 18 as the legal age for consumption of beer and wine, but prohibiting the consumption of spirits until age 21.**

A phased approach to drinking by young people could assist them to drink responsibly. This idea is also consistent with the fact that the current age of majority in Namibia is 21, and with the proposal above for a phased approach to permissible alcohol limits in the bloodstream whilst driving.

However, it is possible that Namibia may decide to lower its age of majority to 18, as has been done in South Africa. Furthermore, since 18 year olds are considered responsible enough to make most major life activities (voting, marriage, driving), it could be argued that it would be inconsistent to limit the consumption of spirits by under-21 year olds.

Other possible arguments against a phased approach based on age are that this might cause 18 year olds to underestimate the potential dangers of beer and wine consumption, or that it could make stronger spirits appear more desirable, by causing them to be associated with greater age and "maturity".

The most common minimum legal drinking age is 18 worldwide, including in most countries in southern Africa. A few countries, such as China and Georgia, set no minimum age for alcohol purchase or consumption. A few, such as Italy and Malta, allow purchase and consumption of some types of alcoholic beverages from age 16. Some countries, including the United States, set the minimum drinking age at 21 – this appears to be the highest minimum drinking age in the world. In some countries, the legal drinking age corresponds to the age of majority, while in others it does not.

Some countries, including Greece and Indonesia, focus their legislation solely on the legal age for purchasing alcohol, and do not set a minimum age for consumption. Most countries set age limits for drinking in venues outside the home, such as taverns, bars, restaurants and night clubs while few laws apply to alcohol consumption in the home or in other private settings.

Several countries set different drinking ages for different types of alcohol products. For example, in France, Germany and the Netherlands, the drinking age for wine and beer is 16, compared to age 18 for spirits. In Norway, the age limit is 18 for wine and beer and 20 for spirits.³⁵

Case study: New Zealand

New Zealand reexamined the minimum drinking age legislation after it had been described as "inefficient, unmanageable, confusing, and frustrating for the public, hospitality industry and enforcement bodies".

The previous legislation in New Zealand specified a minimum drinking age of 20, which applied to the purchase of alcohol, not consumption. However, there are a number of exceptions to this law revolving around where the alcohol is consumed ("restricted areas, supervised areas or other areas"), whether or not an adult is present and whether or not the alcohol accompanies a meal. If the right circumstances were met, then the drinking age is 18.

³⁵ International Centre for Alcohol Policies, (ICAP), "Drinking Age Limits", ICAP Reports 4, March 1998, updated March 2002, www.grsroadsafety.org/themes/default/pdfs/Drinking_Age_Limits.pdf; International Centre for Alcohol Policies, (ICAP), "Minimum Age Limits Worldwide" based on World Health Organization (WHO), *Global status report: Alcohol policy*, 2004, http://63.134.214.153/Portals/0/download/all_pdfs/Tables/Table%20-%20Minimum%20Age%20Limits%20Worldwide.pdf; "Legal Drinking Age", South African Industry Association for Responsible Alcohol Use (ARA), http://ara.co.za/viewpoints/legal_drinking_age, all accessed 5 December 2008.

After considering almost 233 submissions to the committee (112 submissions for age 20, 106 submissions for age 18 and 15 submissions recommending a variety of different ages) on whether changes should be made to the minimum drinking age law, the New Zealand Advisory Committee Report recommended lowering the drinking age to 18 with one exception, "...a person under the age of 18 years may have access to any licensed premises, other than restricted areas, and may be sold or supplied liquor provided he or she is accompanied by a parent or legal guardian."

In arriving at their decision the Committee had four objectives for the law. First, it should be clear that abuse of alcohol was the target of the law and not the age of the person; second, the law should be clear so that it could be easily understood and enforced; third, it must have a high degree of public acceptance; and, fourth, it must be fair in regard to other restrictions or rights.

It recognised that most of those advocating maintaining a 20 year age limit justified this recommendation on the theory of availability, that is when overall consumption is lowered there is a consequent reduction in alcohol problems. The Committee rejected this reasoning on the grounds that liberalisation in alcohol availability in safe drinking areas brought about by the current Act showed a reduction in consumption rather than an increase. They also felt that if the theory of availability were taken to its logical conclusion the law would cure alcohol abuse at all ages by a general prohibition on sale and supply of alcohol. "Most people know from historical experience that this is an impossible dream."

They considered research conducted by other countries but felt that New Zealand was different. For instance, the committee did not see sufficient evidence that there would be a marked increase in abuse by lowering the drinking age to 18 because it felt that young people below the legal minimum age were already gaining access to alcohol through adults, parents or the exceptions provided in the present law. They also noted that most countries already had a drinking age of 18.

The Advisory Committee's recommendations went to the Cabinet in New Zealand and eventually went to Parliament. The Sale of Liquor Amendment Act passed in August 1999 and as of December 1, 1999, the minimum drinking age became 18 years, meaning that anyone 18 years of age or older is allowed to be in a licensed premise and can purchase and consume alcohol.

Before the passage of the Sale of Liquor Amendment Act, alcohol could be sold to those under the minimum age, granted they were accompanied by a parent, guardian, spouse or in some situations, an older family member. However, the new law mandates that the legal age is 18 and is being described as "a hard 18." The law specifies that no one under the legal age can be sold alcohol in licensed premises with one exception. In a licensed premise, the only way an underage person can have alcohol is if it is given to them by a parent or legal guardian. Older family members including grandparents, aunts and uncles, and older siblings as well as sports coaches or anyone acting in a parental role may not supply alcohol.

With the lowering of the legal age, penalties for both suppliers and underage drinkers have increased significantly with high fees and suspension of licenses (for managers/suppliers).

International Centre for Alcohol Policies, (ICAP), ICAP Reports 4, March 1998, updated March 2002, www.grsproadsafety.org/themes/default/pdfs/Drinking Age Limits.pdf [footnotes omitted]

We suggest that the pros and cons of a phased approach to legal alcohol consumption should be discussed more widely. The following proposal could be considered:

Amend section 56 of the Liquor Act to read that

No licensee, or manager or employee of such licensee, shall, in the course of business conducted in terms of a licence, sell or supply any liquor to any person under the age of 18 years, or sell or supply any liquor other than beer, wine or tombo to any person under the age of 21 years.

Amend section 71(1)(s) of the Liquor Act to state that

Any person, whether or not he or she is a licence holder, who . . .

(s) sells or supplies any drink or substance referred to in section 56 to a person under the legal age as provided in that section. . . .

is guilty of an offence.

Amend Article 58 of the Liquor Regulations accordingly.

(2) Create liability for social hosts if injury or death occurs due to an under-18 year old's intoxication

Another possible law reform on alcohol and under-18 year olds would be to extend civil liability to any person, including a social host, who provides liquor to an under-18 year old should that youth then harm him- or herself or another. Specifically, this liability would cover injuries resulting from drunk-driving accidents, but could also include other injuries resulting from intoxication. This provision would ensure that a host who provided liquor to an under-18 year old could not only face a N\$4000 fine for the violation of section 71 of Namibia's Liquor Act, but also a heftier civil claim for damages.

The category of "social host" would include any person who allows a youth to drink while on their premises, and so would cover a person who hosts a party or invites guests to his or her home. The incentive to forbid underage drinking at home or in other social situations would rise correspondingly.

It should be noted, however, that social hosts may not have full control over the alcohol consumption of their guests. For example, young people often bring their own concealed alcohol to social events, or hide drink in cars parked outside, so it may not be feasible for the social host to know that under-18 year olds are consuming alcohol. It is also possible that an under-18 year old might have consumed alcohol elsewhere before arriving at a particular social event, thus raising complex issues of proof relating to civil liability. This approach may be less well-suited to Namibia than to the United States, as civil claims for damages in Namibia are less common than in the United States and more expensive to pursue.

The following provision could be considered:

(1) Any person who suffers damages from an intoxicated person under 18 years old, or in consequence of the intoxication of any person under 18 years old, shall have a right of action against any person or persons who have caused in whole or in part such intoxication by selling or supplying intoxicating liquor to a person under 18 years old.

(2) A person under 18 years old who is injured in person as a consequence of his or her own intoxication shall have a right of action against any person or persons who caused in whole or in part such intoxication by selling or supplying intoxicating liquor to that person under 18 years old.

(3) A social host who knowingly furnishes intoxicating liquor to a person under 18 years old may be held liable if the social host knew, or a reasonable person in the same circumstances would have known, that the person who received the intoxicating liquor was under 18 years old.

(4) For the purpose of this section, "social host" means any person who provides liquor to others and is not the holder of a liquor license and is not required under Liquor Act 6 of 1998 to hold a liquor license.

(3) Place legal restrictions on advertising aimed at youth

The Namibian Self-Regulating Alcohol Industry Forum (SAIF) has a "Code of Commercial Communication & Conduct" which includes detailed restrictions on alcohol advertising aimed at young people.

The Code states that alcohol marketing communication must not:

- *feature or foster irresponsible drinking*
- *encourage irresponsible or risky consumption or encourage a general increase in drinking*
- *induce people to prefer a drink because of its higher alcohol content or intoxicating effect*
- *suggest alcohol consumption under circumstances generally regarded as inadvisable, improper or illegal*

- *depict pregnant women*
- *have an association with violent or anti-social imagery or behaviour*
- *suggest any association with illicit drugs or drug culture*
- *imply that alcohol consumption is essential to business and social success or acceptance*
- *present abstinence or moderate consumption in a negative light*
- *claim that alcohol has curative qualities or offer it expressly as a stimulant, sedative or tranquilliser*
- *be suggestive of sexual indulgence or permissiveness employ religion or religious themes*
- *have special appeal to under age persons or be directed at underage persons*
- *employ characters or icons which have a special appeal to children.*³⁶

Several of the more detailed Rules appended to the Code pertain to advertisements which target youth and misperceptions which may be common amongst young people:

- *Advertisements will not feature or foster irresponsible drinking. This applies, for example, to the quantity of drink being consumed or shown in the advertisement.*
- *Advertisements will be directed towards brand selling to develop brand loyalty, or to persuade people to change brands or type of alcoholic beverage. Advertisements will not set out to encourage a general increase in the consumption of alcohol.*
- *Liquor advertising will not be directed at persons under the age of 18 years. No one associated with the act of drinking in an advertisement will be younger than 25. Persons under the age of 18 will not be depicted in advertisements except where it would be usual for them to appear, e.g. in family scenes or in background crowds. They will not be shown drinking alcoholic beverages, nor may it be implied that they are.*
- *Advertisements will not imply that alcoholic beverage consumption is essential to business and social success or acceptance, or that refusal is a sign of weakness. Nor will they be based on a dare or imply any failing in those who do not accept the challenge of a particular alcoholic beverage.*
- *Advertisements will not be suggestive of sexual indulgence or permissiveness, portray nudity or present an improper portrayal of near nudity, present any situation derogatory to the virtue of either sex or claim or suggest that alcoholic beverages can contribute directly to sexual success or seduction.*
- *All advertisements in print, television and cinema media will carry the message "Not for sale to persons under the age of 18". [Specific rules about the size and visibility of this text are included.]*
- *Advertisements must not employ creative devices which have a special appeal to children.*³⁷

³⁶ Namibian Self-Regulating Alcohol Industry Forum, *Code of Commercial Communication & Conduct*, www.nambrew.com/fileadmin/user_upload/downloads/SAIF_Code-1.pdf, version approved 20 February 2007.

³⁷ Id, Appendix 1. These rules are identical to those applied to alcohol by the Advertising Standards Authority (ASA) of South Africa, Advertising Code, Appendix B – Liquor, www.asasa.org.za/. The ASA is an independent body set up and paid for by the marketing communication industry to apply a system of self-regulation in the public interest.

Additional rules state that

- *Advertisements may not be transmitted in the commercial breaks immediately before, during or immediately after children's programmes on television or radio.*
- *Advertisements will not be placed in any medium aimed specifically at children.*³⁸

It is also prohibited to market alcohol in packaging "*directed at persons under the age of 18*".³⁹

Another appendix to the Code contains additional rules regarding promotions, which include several restrictions specific to young people:

1. *Events and competitions directed primarily at persons under the age of 18 will not be linked to any brand or product through sponsorship. It should be specifically stated that persons under the age of 18 are ineligible to participate in events and competitions aimed at promoting a brand or product. Events and activities, which form part of a member's Corporate Social Responsibility activities, are acceptable.*
2. *All product launches or promotions will exclude activities which encourage excessive or irresponsible consumption such as "boat races", "down-downs" or any other form of excessive drinking competition which encourages irresponsible and increased consumption.*
3. *Consumers who attend promotions will be encouraged to assume personal responsibility for their decision to drink or not drink, and for the quantity consumed.*
4. *Extended promotions and tasting will not be confined to the consumption of alcoholic beverages alone. Appropriate snacks or meals should be available.*
5. *On campus promotions will be arranged in a manner which meets with the approval of the university authorities and care will be taken to avoid serving alcoholic beverages to under-age consumers.*
6. *Members will not run promotions which encourage increased consumption over a limited period of time, such as "happy hours, two for the price of one, or half price" promotions. Price may, however, be used in on-premise promotional activity provided that this is not done over a limited period of time.*
7. *In accordance with the law, SAIF members will not deliver or sell to unlicensed outlets.*⁴⁰

Compliance with the Code must be secured as a pre-requisite when awarding business to advertising agencies, market research companies, media buyers, events management companies and other external consultants. Furthermore, each member of the SAIF is "*required to sign an annual Certificate of Compliance confirming the extent of their compliance or non-compliance to the Code and remedial action taken in the case of the latter*".

³⁸ Id, Appendix 5.

³⁹ Id, Appendix 4.

⁴⁰ Id, Appendix 3.

Any member of the public can file a written complaint about violation of the Code's rules on advertising, in confidence. Complaints are referred to an independent arbitrator for a hearing. If a party is found to have violated the SAIF advertising rules, they will be issued with a written warning and a request to take appropriate action within a stipulated time frame. Failure to comply will result in expulsion from SAIF and a public announcement of the expulsion and the reasons for it. SAIF may also issue a public statement indicating that it does not condone the offending behaviour.⁴¹

The industry is to be commended for its detailed attention to underage drinking in this Code. However, another topic which might be addressed is rules concerning advertising at sporting events and other social functions aimed at youth. It would also be useful to give greater publicity to the existing rules and to encourage members of the public to report violations of them.

In South Africa, the self-regulatory approach to liquor advertising has been bolstered by a statutory provision which prohibits the advertising of any liquor or methylated spirits "*in a manner intended to target or attract minors*".⁴² The rules on advertising developed by the industry are also incorporated by reference into the laws which apply to broadcast media.⁴³ The Namibian government might want to consider, in consultation with key stakeholders, whether there is any need to similarly supplement the efforts of the Namibian alcohol industry to regulate itself.

(4) Warning labels

South Africa recently issued regulations in terms of its Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 requiring the introduction of "health messages" on the container labels of all alcoholic beverages, (defined to include any liquor with an alcohol content above 1% by volume, including beer and traditional African beer). The label must include one of the following messages:

1. *Alcohol reduces driving ability, don't drink and drive.*
2. *Don't drink and walk on the road, you may be killed.*
3. *Alcohol increases your risk to personal injuries.*
4. *Alcohol is a major cause of violence and crime.*
5. *Alcohol abuse is dangerous to your health.*
6. *Alcohol is addictive.*
7. *Drinking during pregnancy can be harmful to your unborn baby.*

The health messages must appear in the same language as the other information on the label, and the regulations include specifications designed to ensure that the warnings are sufficiently prominent and legible.

⁴¹ Id, Appendix 2.

⁴² South African Liquor Act 59 of 2003, section 9.

⁴³ All advertising on electronic broadcast media in South Africa is subject to the Electronics Communications Act 36 of 2005, which requires adherence to the ASA Code. The SAIF Code in Namibia is not legally binding in this way.

The regulations also prohibit "words, pictorial representations and descriptions" on the containers of alcoholic beverages which may create the impression that the drink has been manufactured in accordance with recommendations made by a health professional or a health organisation. It is also prohibited to use the words "health", "healthy", "heal", "cure" or "restorative" as part of the name or description of the alcoholic beverage, as well as any other words or symbols claiming that the alcoholic beverage has health-giving, medicinal, therapeutic or prophylactic properties.

Contravention of the regulations is a criminal offence subject to a fine or imprisonment for up to five years.⁴⁴

In 2001, the South African Medical Research Council surveyed a nationally-representative sample of 2 536 adults and found that almost three-quarters (74%) of respondents answered "yes" to the question: "Should the government require alcohol manufacturers to place warning labels on alcohol containers?".⁴⁵

The final regulations were the outcome of an extensive consultation process. The South African government published draft regulations for comment in 2005, and altered its initial proposals in light of input from the industry and other stakeholders.

The Director of the Alcohol & Drug Abuse Research Unit at the Medical Research Council suggested that the effectiveness of warning labels is likely to be enhanced if they are rotated from time to time, and that it might be useful to include pictures with the health messages on the labels given South Africa's relatively low rates of adult literacy. He also suggested that greater emphasis should be placed on more active forms of counter-advertising, with radio, television and print advertisements on the dangers of drinking funded by a levy placed on alcohol advertising. He further recommended that

- alcohol labels should indicate the number of standard drinks in the container, the calorific content and the ingredients in the beverage
- products with a clear youth appeal should be restricted; and
- special labelling and bottling requirements should be mandated so that alcoholic beverages are clearly distinguishable from non-alcoholic beverages.⁴⁶

⁴⁴ Regulations Relating to the Labelling of Alcoholic Beverages, South African Government Notice No R 109, Government Gazette 27236 of 11 February 2005 (draft published for comment) and Alcoholic Beverages Health Message Regulations, South African Government Notice No R 764, Government Gazette 30184 of 24 August 2007 (final regulations).

⁴⁵ Prof Charles Parry, Director: Alcohol & Drug Abuse Research Unit, Medical Research Council, "Regulations relating to the labelling of alcoholic beverages: Comments", *SA Healthinfo*, 24 February 2005, www.sahealthinfo.org/admodule/comment.htm.

⁴⁶ Ibid.

Most of these suggestions were not incorporated into the South Africa framework. The industry objected to a proposal for rotation of the health messages as well as to some of the initial proposals on the use of indigenous languages on the grounds of cost, and these requirements were altered in the end.⁴⁷

The South African Industry Association for Responsible Alcohol Use (ARA) has helped to guide consistent implementation of the new regulations by issuing guidelines based on international best practice with respect to the interpretation of aspects of the new regulations which were not clear.

Namibian producers have already made moves to add health messages to their labels to ensure their acceptability for export to the South African market.

Namibia: Drinking Beer Dangerous

Namibia Breweries Limited (NBL) has responded to South Africa's new law, which requires all alcoholic beverages to carry a health warning message on their labels, by placing hazard signs on its intoxicating products.

It is hoping that the move will promote responsible drinking. The warning labels will also appear on containers of beer sold locally. The wording on the labels include "Alcohol abuse is dangerous to your health", "Alcohol reduces driving ability, do not drink and drive", and "Drinking during pregnancy can be harmful to your unborn baby".

South Africa has passed a law that requires all alcoholic beverages entering the market after 24 February 2009 to carry the health warning messages. The country remains NBL's largest export market...

MD Desmond van Jaarveld said in Windhoek that the new labels would cost the company N\$1 million. "The conduct of those who abuse alcohol is not only unacceptable to society, but even to our industry for it is because of such conduct that the use of alcoholic beverages earns a bad reputation. Reducing harmful drinking is indeed an overarching business objective of the alcohol industry," van Jaarveld said.

He said, with the company and the Self-regulating Alcohol Industry Forum (SAIF) having endorsed the messages, consumers, distributors and retailers will all realise that the brewery takes responsible drinking seriously, and they should too.

NBL already runs several awareness campaigns aimed at promoting responsible drinking, which include the "Much is too much" campaign....

Chamwe Kaira, *Namibia Economist*, 7 November 2008

⁴⁷ See, for example, "Making the BEST of a bad situation—health warnings on liquor products", *Wineland*, August 2008, www.wineland.co.za/200808-health.php3.

Many other countries also require health messages on alcoholic beverages, as the table below indicates – and the table is not exhaustive of all the jurisdictions which currently require such labels. It is noteworthy that several of the countries in question require special cautions to young drinkers, or messages about the illegality of selling liquor to underage persons. Other countries, including France, Panama and Paraguay, require health messages in advertisements but not on containers.⁴⁸

COUNTRY	MANDATORY LABELLING
Argentina	(a) Drink with moderation. (b) Prohibited for people under 18 years old.
Brazil	Avoid the risks of excessive alcohol consumption.
Colombia	(a) This product is harmful to the health of children and pregnant women. (b) The excessive use of alcohol is harmful to your health. (c) Prohibited for sale to minors
Costa Rica	One of the two following messages must be placed on bottles: (a) Drinking liquor is harmful to health. OR (b) The abuse of liquor is harmful to health.
Ecuador	Warning: The excessive consumption of alcohol restricts your capacity to drive and operate machinery, may cause damage to your health, and adversely affects your family. Ministry of Public Health of Ecuador. Sale prohibited to minors under 18 years of age.
Guatemala	(a) The excessive consumption of this product is harmful to the health of the consumer. (b) The consumption of this product causes serious harm to your health.
Mexico	Excessive consumption of this product is hazardous to health.

⁴⁸ International Centre for Alcohol Policies, (ICAP), "Health Warning Labels", ICAP Reports 3, September 1997, www.icap.org/Publication/ICAPReports/tabid/147/Default.aspx; Alcohol Healthwatch (New Zealand), Alcohol Health and Safety Advisory Statements (Warning Labels) in New Zealand, Briefing Paper 2003, www.ahw.co.nz/pdf/warning_labels_position_briefing_paper.pdf; Tim Stockwell, "A Review of Research into the Impacts of Alcohol Warning Labels on Attitudes and Behaviour", Centre for Addictions Research of British Columbia, Canada, February 2006, <http://carbc.ca/portals/0/resources/Alc%20Warning%20Labels%20TS.pdf>, all accessed 5 December 2008.

Portugal	Drink alcohol in moderation.
South Korea	<p>One of the following three messages must be placed on alcohol beverage containers:</p> <p>(a) Warning: Excessive consumption of alcohol may cause liver cirrhosis or liver cancer and is especially detrimental to the mental and physical health of minors. OR</p> <p>(b) Warning: Excessive consumption of alcohol may cause liver cirrhosis or liver cancer, and especially, women who drink while they are pregnant increase the risk of congenital anomalies. OR</p> <p>(c) Excessive consumption of alcohol may cause liver cirrhosis or liver cancer, and consumption of alcoholic beverages impairs your ability to drive a car or operate machinery and may increase the likelihood of car accidents or accidents during work.</p> <p>On all spirits containers: Excessive drinking may cause cirrhosis of the liver or liver cancer and increase the probability of accidents while driving or working.</p>
Taiwan	<p>(a) Excessive consumption of alcohol is harmful to health (b) To be safe, don't drink and drive. (c) Excessive drinking is harmful to you and others. (d) Please do not drink if you are a minor.</p>
Thailand	<p>(a) Warning: Drinking liquor reduces driving ability. (b) Forbidden to be sold to children under 18 years old.</p>
United States	<p>GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcohol impairs your ability to drive a car or operate machinery, and may cause health problems.</p>
Venezuela	<p>One of the following warning statements or something similar is required:</p> <p>(a) The abuse of alcoholic beverages can damage the health. OR (b) Excessive consumption can be harmful to health.</p>
Zimbabwe	<p>(1) Alcohol may be hazardous to health if consumed to excess. (2) Operation of machinery or driving after the consumption of alcohol is not advisable.</p>

Sources: International Centre for Alcohol Policies, (ICAP), ICAP Reports 3, September 1997 and Tim Stockwell, "A Review of Research into the Impacts of Alcohol Warning Labels on Attitudes and Behaviour", Centre for Addictions Research of British Columbia, Canada, February 2006. Stockwell reports that labels are also mandated in Iceland, Armenia, and some parts of India and Canada.

Studies of the impact of alcohol labelling have produced contradictory findings which are sometimes attributable to the methodologies employed. A 2006 review of international research on this topic found that the most detailed and well-designed studies concerned the US labelling law and came to the following conclusion:

Reviews and primary studies concerning the impacts of the US alcohol warning label experience, whether written by independent researchers or those employed by the alcohol industry, agree fairly closely that impacts on drinking behaviour are either nonexistent or minimal. All the reviews and most of the individual studies also indicate that the introduction of US warning labels in 1989 led to the unsurprising finding of greater awareness of the messages they contained. Health researchers commenting on the studies have almost universally suggested that warning labels have the potential to contribute to positive outcomes as part of a larger range of more proven strategies, and especially if they are enhanced so as to be more noticeable, impactful and varied. These researchers have also been more likely to highlight (i) the high and increasing levels of public support for alcohol warning labels in the US since their introduction; (ii) evidence that the highest risk groups of drinkers (including young people, pregnant women, and heavy drinkers) are particularly likely to recall the messages; (iii) evidence that, especially early after their introduction, the labels prompted drinkers and high-risk drinkers to engage in more discussion about the risks of drinking alcohol; and (iv) evidence that recall of warning labels was associated with being less likely to report having engaged in drunk driving. Health researchers reviewing the literature are also more likely to emphasise the very low costs of implementing warning labels and the fact that no negative consequences have been demonstrated.⁴⁹

Using South Africa as an example, Namibia could consider regulations on mandatory health warnings on alcohol products in terms of the Foodstuffs, Cosmetics and Disinfectants Ordinance 18 of 1979. However, because the introduction of labelling requirements can have substantial cost implications for alcohol producers, we suggest that any proposed legal requirements should be discussed with the industry and harmonised with the policies pertaining in all of the countries to which Namibia exports alcohol products.

⁴⁹ Tim Stockwell, "A Review of Research into the Impacts of Alcohol Warning Labels on Attitudes and Behaviour", Centre for Addictions Research of British Columbia, Canada, February 2006.

Related issues

(1) Enforcement

The current law already criminalises selling or supplying alcohol to under-18 year olds, as well as the purchase of alcohol by under-18 year olds. Companies such as Namibia Breweries have made efforts to publicise the fact that underage drinking is illegal through media advertisements and, according to the regulations issues in terms of Namibia's Liquor Act, notices to this effect must be displayed in letters not less than two centimetres in height at a conspicuous place in or on the licensed premises. However, these steps alone do not seem to have been effective in curbing underage drinking.



It should also be noted that large scale fining or imprisonment of youths who drink is not an effective way to protect their welfare. Increased efforts at preventing underage drinking prevention should rather focus on diminishing the supply of ready liquor by holding the adults who supply it responsible.

Although Namibian laws on underage drinking should certainly be strengthened, lack of enforcement of the existing laws also stands as a major problem in the fight against underage drinking. A stronger law without stronger enforcement might not provide any palpable benefits. On the other hand, some of the recommendations mentioned above manage to sidestep the problematic enforcement of the liquor laws by placing the enforcement mechanism in the realm of civil actions (delict) or criminal proceedings directed against a broader spectrum of responsible adults (including parents and social hosts). However, any reform of the laws around underage drinking should be accompanied by a campaign to step up enforcement.

(2) Proof of age

It should also be noted that age-related regulations will remain problematic as long as many children lack birth registration certificates or identification documents.⁵⁰ Thus, campaigns to extend the spread of identity documents should be strengthened along with any increased obligations on establishments which serve alcohol to verify age, and with other age-related provisions.

⁵⁰ The 2006-07 Demographic and Health Survey reported that only 67% children born in the last five years were registered for birth certificates.

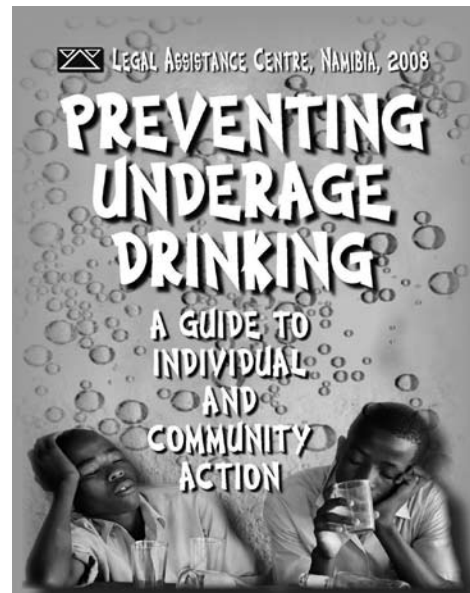
Because of the lack of proper documentation of age for many children, we suggest that prescribing acceptable proof of age for purposes of alcohol consumption should be left as a step for the future.

(3) Information and education

All of the legal issues discussed here will be effective only if imbedded in larger prevention and education efforts aimed at Namibian youth. Young people need factual, non-judgemental information on the health and social impacts of alcohol. Parents also need more information on why alcohol consumption can be more risky for young people than for adults.

(4) Alternative leisure activities

We believe that underage drinking cannot be effectively curbed unless young people are offered more leisure activities which do not centre around drinking. There a range of possibilities which could be developed, including physical activities such as roller-blading, miniature golf, darts, ice-skating or go-carting; more sedate pursuits such as craft activities, reading groups or movie evenings; or well-monitored alcohol-free clubs where under-18s can meet for dancing and socialising. This is an area where communities, schools, churches and local authorities could all contribute.



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