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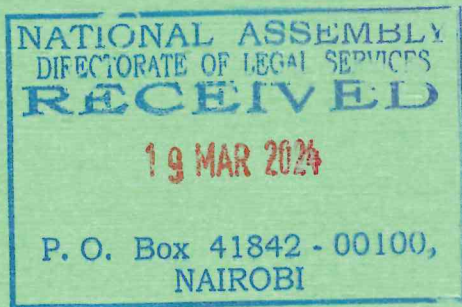
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2024

NAIROBI, 5th March, 2024

CONTENT

Bill for Introduction into the National Assembly —	PAGE
The Culture Bill, 2024	331



NATIONAL ARCHIVES
1964
RECORDS
1964
NATIONAL ARCHIVES
1964

THE CULTURE BILL, 2024
ARRANGEMENT OF CLAUSES

Clauses

PART I—PRELIMINARY

- 1—Short title
- 2—Interpretation
- 3—Object and purpose of the Act
- 4—Guiding principles

PART II—MANAGEMENT OF CULTURE

- 5—Role of the National Government
- 6—Role of County Governments
- 7—Establishment of cultural database
- 8—Access to information
- 9—Compensation for use of cultural property
- 10—Exceptions and limitations to compensation for use of culture and cultural heritage.
- 11—Export, import and transfer of cultural property
- 12—Application to conduct research.
- 13—Application for registration
- 14—Refusal to register
- 15—Cancellation of registration
- 16—Validity of registration
- 17—Recognition and promotion of cultural expressions and indigenous technologies by public entities
- 18—Protection of cultural heritage and expressions
- 19—Seizure and disposition of tangible cultural heritage

PART III—OFFENCES AND PENALTIES

- 20—Offences
- 21—Non-compliance with conditions of registration
- 22—Undertaking research without permit

- 23—Loaning without a permit
- 24—Damage or destruction of inventoried cultural property.
- 25—Wrongful possession of cultural property.
- 26—Counterfeiting and misrepresentation of cultural property
- 27—Using images without consent
- 28—False and misleading information
- 29—Willfully obstructing or impeding an officer

PART IV—GENERAL PROVISIONS

- 30—Fees, charges and levies to be published in the *Gazette*
- 31—General penalty
- 32—Transitional provisions
- 33—Regulations

SCHEDULE

National Cultural institutions

THE CULTURE BILL, 2024

A Bill for

AN ACT of Parliament to give effect to Article 11 (3) (a) of the Constitution; to provide for the protection and promotion of culture and the cultural heritage of communities; and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Culture Bill, 2024.

Short title.

2. In this Act unless the context otherwise requires—

Interpretation.

“art” means the physical manifestation of the internal creative impulse influenced by culture and expressed, in the form of literature, performing arts, culinary arts, media arts, or visual arts;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to culture;

“community” means a culturally homogeneous and consciously distinct group of people who share any of the following attributes—

- (a) common ancestry;
- (b) similar culture or mode of livelihood or language;
- (c) geographical space;
- (d) ecological space; or
- (e) community of interest;

“community of interest” means the possession or enjoyment of common rights, privileges or interests and living in the same place or having some apparent association;

“cultural property” means property which, on religious or secular grounds, is specifically designated as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories—

- (a) rare collections;

- (b) products of archaeological excavations;
- (c) elements of artistic or historical monuments;
- (d) buildings;
- (e) objects of ethnological interests;
- (f) original works of art and engravings;
- (g) rare manuscripts;
- (h) archives;
- (i) articles of furniture; and
- (j) musical instruments;

“cultural expression” means those expressions that result from the creativity of individuals, groups and societies and that have cultural content and may communicate a cultural symbolic meaning or convey a cultural value;

“culture” means the set of distinctive spiritual, material, intellectual and emotional features of a community or a social group, and includes the lifestyle, social interactions, value systems, traditions and beliefs;

“cultural heritage” means —

- (a) tangible cultural heritage including —
 - (i) movable cultural heritage;
 - (ii) immovable cultural heritage; and
 - (iii) underwater cultural heritage;
- (b) intangible cultural heritage;
- (c) natural heritage including natural sites with cultural aspects such as cultural landscapes, physical, biological or geological formation; or
- (d) heritage in the event of armed conflict;

“cultural industries” means an industry that produces and distributes goods and services centred around tangible or intangible artistic and creative outputs such as texts, symbols and images;

“cultural practitioner” means a person who manifests any cultural knowledge and skills especially in regard to

traditional and customary practices of a particular ethnic or other cultural group;

“intangible cultural heritage” means the practices, representations, expressions, knowledge, skills and cultural spaces associated with a community, social group or individual and recognized as part of the community, social group or individual’s cultural heritage;

“national expressions” means expressions that have cultural content with national resonance that result from creativity of individuals, groups or societies;

“prior informed consent” means the giving of, by the prospective user, complete and accurate information, and based on that information, the prior acceptance, by the concerned communities, to the use of their cultures, cultural heritage and cultural property;

“protection” means a measure aimed at, adopted or implemented for the promotion, preservation, safeguarding and enhancement of cultures, cultural heritage and expression; and

“safeguarding” means any measure taken by a county, community, social group or individual, aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

3. The object and purpose of this Act is to—

- (a) give effect to Article 11 of the Constitution;
- (b) promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;
- (c) ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage; and
- (d) provide a framework to guide national cultural development.

Object and
purpose of the
Act.

4. (1) In the performance of functions and exercise of powers under this Act, State organs, State officers, other public officers and any other persons shall —

Guiding principles.

- (a) be guided by the national values and principles set out in Articles 10, 27, 201 and 232 of the Constitution; and
- (b) give equal recognition, dignity and respect to all cultures, including cultures of minorities or marginalized peoples.

(2) Notwithstanding the provisions of this Act, cultural activities, expressions and practices shall not be inconsistent with the Bill of Rights set out in Chapter Four of the Constitution.

PART II—MANAGEMENT OF CULTURE

5. (1) The Cabinet Secretary shall be responsible for—

Role of the National Government.

- (a) development of national policies and regulations and standards on cultures and cultural heritage and expressions;
- (b) promotion of the diverse cultures, cultural heritage and cultural expressions including protection, safeguarding, preservation, conservation and rehabilitation of cultures, cultural heritage and cultural expressions;
- (c) monitoring compliance with standards and regulations concerning culture and cultural heritage;
- (d) management of national cultural institutions established by or under the control of the national government;
- (e) prescribing regulations and standards to guide cultural databases and for development of county cultural facilities and activities;
- (f) prescribing regulations and standards to guide the development of cultural facilities and activities;
- (g) implementing bilateral and multilateral agreements on culture;

- (h) promoting national values, social cohesion and national identity; and
- (i) performing any other function as may be necessary for the purposes of this Act.

(2) The institutions set out in the Second Schedule shall be managed by the national government.

6. County governments shall—

Role of county governments.

- (a) promote, protect and manage cultural activities and facilities at the county level in line with the national policy;
- (b) enact county policies and laws for the promotion of cultural activities and facilities;
- (c) promote cultural activities, public entertainment and infrastructure for cultural heritage and cultural expression at the county level; and
- (d) develop and manage a county database of cultural activities.

7. (1) The Cabinet Secretary, in consultation with county governments, shall establish and maintain a database on culture and heritage including a database of registered cultural practitioners, groups and associations.

Establishment of cultural database.

(2) The Cabinet Secretary shall, in consultation with county governments, develop a system for collecting and preserving information on culture and cultural heritage.

(3) The Cabinet Secretary shall prescribe the standards for compatibility with the national database and data to be submitted by county governments for the national database of culture and cultural heritage.

8. (1) Any person shall have the right to the information held in the national database of culture and cultural heritage:

Access to information.

Provided that it is not information protected by this Act or any other written law.

(2) A person who requires a copy of the information in the database may be given such a copy after the payment of a reasonable fee as may be prescribed by regulations made under this Act.

9. (1) The Cabinet Secretary shall, in consultation with relevant stakeholders and county governments, establish mechanisms for the determination and payment of compensation or royalties to communities for the use of the communities' culture and cultural heritage.

Compensation for use of culture and cultural heritage.

(2) The determination of compensation or royalties shall be guided by, among other things—

- (a) the impact of the culture or cultural heritage on the economy of the community;
- (b) the economic value of the culture or cultural heritage;
- (c) the cultural value of the culture or cultural heritage;
- (d) whether or not the culture or cultural heritage shall be used continuously or periodically;
- (e) whether or not the culture or cultural heritage will be subject to derivative works and the type of ownership of the derivative works;
- (f) the type and amount of investment by a State organ in the culture or cultural heritage;
- (g) the effect of the use of the culture or cultural heritage on the environment; and
- (h) the potential for large scale use of the culture or cultural heritage.

(3) The share of the royalties or compensation between the two government levels, the communities and individuals shall be prescribed by the Cabinet Secretary in Regulations.

(4) In establishing mechanisms under subsection (1) the Cabinet Secretary shall—

- (a) establish a register of cultural property;
- (b) establish a register of cultural practitioners, groups and associations; and
- (c) prescribe regulations to combat illicit trafficking of cultural property.

(5) The Cabinet Secretary shall, in consultation with the departments responsible for industrial property and copyright, develop guidelines for the payment of compensation or royalties to the national or county governments, as the case may be, and to, communities, social groups and individuals for the use of cultural property, knowledge or heritage.

10.(1) Notwithstanding the provisions of section 9, the mechanisms for compensation for the use of culture and cultural heritage may, in the public interest, exempt from or limit the requirement to compensate for use of a culture or cultural heritage —

Exceptions and limitations to compensation for use of culture and cultural heritage.

- (a) where the exemption or limitation does not restrict or impede the normal usage, development, exchange, dissemination or transmission of the culture or cultural heritage by the members of the community according to the community's norms;
- (b) where the exemption or limitation is for the purposes of non-commercial use of the culture or cultural heritage including for teaching, research, exhibition, the reporting of current events and during judicial determination; or
- (c) where the exemption or limitation is for the purposes of making a recording or reproduction of the culture or cultural heritage in a public archive or inventory for safeguarding.

(2) A person who intends to use a culture or cultural heritage shall obtain the prior informed consent of the owner or owners of the culture or cultural heritage and acknowledge their ownership of the culture or cultural heritage and the geographical place where the culture or cultural heritage is practiced or occurs.

(3) A person who uses or intends to use a culture or cultural heritage shall do so in a manner that is compatible with fair practice, and is not offensive or derogatory to the owner or owners of the culture or cultural heritage.

11.(1) A person, community or social group whose cultural property has been entered in national database of culture and cultural heritage, and wishes to loan, export, import and transfer such property locally or internationally,

Export, import and transfer of inventoried cultural property.

shall apply to the Cabinet Secretary in the prescribed form for approval.

(2) In determining an application under this section, the Cabinet Secretary shall have regard to—

- (a) the security of the cultural property;
- (b) the spiritual, cultural or sentimental value of the cultural property;
- (c) the fragility of the cultural property;
- (d) the rarity of the cultural property;
- (e) the cultural property's economic value;
- (f) whether or not the cultural property is insured;
- (g) the loaning period;
- (h) whether the cultural property has any prescribed restrictions placed on it; and
- (i) international treaties or conventions relating to culture or cultural heritage which Kenya has ratified.

(3) The Cabinet Secretary shall, if he or she approves the loan, export, import or transfer of the cultural property, issue a certificate of authorisation in the form prescribed by regulations made under this Act.

(4) A person shall not export out of Kenya any cultural property which has been unlawfully acquired or recovered.

12.(1) Notwithstanding any approval, permit or license granted under any other written law, a person who desires to conduct research regarding any cultural property that has been entered in the national database of culture and cultural heritage shall apply to the Cabinet Secretary in the prescribed manner, and the application shall be accompanied by such information or documentation as the Cabinet Secretary may prescribe.

Application to
conduct research.

(2) The Cabinet Secretary shall consult the owner of a cultural property before the relevant authority makes a determination regarding an application under this section.

13. (1) A person who wishes to register a property or person as a cultural property or entity, as the case may be, under this Act, shall apply to the county government or the Cabinet Secretary in the prescribed manner:

Application for registration.

Provided that an application made to the Cabinet Secretary shall only be done after the property or person, as the case may be, has been registered by a county government.

(2) An application under subsection (1) shall be accompanied by such information or documentation as may be prescribed by Regulations made under this Act.

(3) The county government or the Cabinet Secretary, as the case may be, shall, upon payment of the prescribed fees, register the property or person as cultural property where, after consideration of an application under subsection (1) and after such investigation and enquiry as may be necessary, the county government or the Cabinet Secretary, as the case may be, is satisfied that—

- (a) the property in respect of which the application is made—
 - (i) historically belongs to the community, social group or individual seeking registration;
 - (ii) is not the subject of controversy regarding ownership;
 - (iii) complies with identification criteria set by the Cabinet Secretary; or
 - (iv) is of cultural interest to more than one social group and an agreement has been reached by the interested groups regarding registration;
- (b) the person is engaged in cultural development or the arts; and
- (c) registration of such property is not contrary to public interest.

(4) The Cabinet Secretary or the county government, as the case may be, shall make regulations to guide the registration process under this section at the national government level or the county government level, as the case may be.

(5) The Cabinet Secretary shall consult the relevant county government before registering a property or a person under this Act.

(6) Each county government shall, upon registering a property or a person as a cultural property or entity, as the case may be, shall notify the Cabinet Secretary of the registration and such notification shall contain the relevant details of the registration and, soon thereafter, the Cabinet Secretary shall cause the information to be entered in the national database.

14. Where the Cabinet Secretary or county government refuses to register a property or institution under section 11, the Cabinet Secretary or county government shall provide the applicant, in writing, with the reasons for such refusal.

Refusal to register.

15. (1) The Cabinet Secretary or county government may cancel the registration of a cultural property if the Cabinet Secretary or county government is satisfied that —

Cancellation of registration.

- (a) the holder of a registered cultural property has, in connection with the registration, contravened or failed to comply with a condition relating to the registration;
- (b) it is contrary to the public interest that such cultural property to remain registered; or
- (c) the applicant gave false or misleading information to obtain registration of the property.

(2) Before the registration of a cultural property is cancelled, the Cabinet Secretary or the county government shall notify in writing the holder of the registered cultural property of the intention to cancel the registration, specifying the grounds for the intended cancellation in the notification, and invite the holder to make representations in respect of the intended cancellation.

16. The register of cultural property and the certificate of registration issued in respect of the registration of a cultural property shall lapse on the cancellation of registration under section 15.

Validity of registration.

17. The Cabinet Secretary shall develop Regulations to determine the criteria for the recognition and promotion of cultural expressions as national expressions.

Recognition and promotion of cultural expressions by public entities.

18. (1) The Cabinet Secretary shall prescribe, by notice in the *Gazette*, cultural property that shall not be sold or exported.

Protection of cultural heritage and expressions.

(2) The Cabinet Secretary shall develop regulations for the promotion and protection of endangered cultural expressions and cultural heritage.

(3) A person who discovers an archaeological heritage shall not interfere with it:

Provided that a county government has permitted that person to disturb that archaeological heritage and the Cabinet Secretary has issued that person with a license.

(4) The Cabinet Secretary and the county government shall not approve any activity or development to be undertaken in an area where there is or might be a cultural heritage if appears that the activity or development shall unreasonably endanger or damage the cultural heritage.

19. (1) A tangible cultural heritage shall be subject to seizure if—

Seizure and disposition of tangible cultural heritage.

- (a) it has been recovered without a valid permit;
- (b) it has been stolen, imported or exported without a permit; or
- (c) unlawfully transferred to the ownership of another person.

(2) A seized cultural heritage under this Act shall be registered, protected and stabilised.

PART III—OFFENCES AND PENALTIES

20. (1) A person commits an offence if that person—

Offences.

- (a) steals or is wrongfully in possession of a cultural property protected under this Act or under any other written law;
- (b) sells a cultural property protected under this Act or under any other written law without a permit or license;
- (c) transfers, without a permit or license, or traffics in a cultural property protected under this Act or under any other written law;

- (d) aids or abets another person to steal, sell or otherwise be wrongfully in possession of a cultural property protected under this Act or under any other written law;
- (e) commits forgery or fraud with the intent to have an article declared an article of cultural interest;
- (f) damages a cultural expression;
- (g) does not report imminent danger to a cultural expression;
- (h) fails to apply for a permit or a license to conduct an activity or development at a place that has a cultural expression or heritage;
- (i) exports a cultural expression without a permit or a license, or
- (j) removes or attempts to remove without authorization any cultural property.

(2) A person convicted of an offence under this section shall be liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

(3) The court may, in addition to any penalty it may impose under this section—

- (a) direct that any expenses incurred for the repair or replacement of a cultural object as a consequence of the commission of an offence under this section be paid by the offender;
- (b) order the restitution of a cultural property protected under this Act or under any other written law to its rightful owner; or
- (c) make an order for the forfeiture of the proceeds or profits from the commission of the offence.

21. Any person whose property or association has been registered and who fails to comply with the conditions of registration under this Act commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months.

Non-compliance
with conditions of
registration.

22. Any person who undertakes research under this Act without a research permit issued under this Act commits an offence and is liable on conviction to a fine not exceeding one million shillings or imprisonment for a term not exceeding ten years.

Undertaking research without a permit.

23. A person, who loans a cultural property contrary to the provisions of this Act, commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years.

Loaning without a permit.

24. Any person who intentionally damages or destroys an inventoried cultural property or artifact commits an offence and shall, on conviction, be liable to imprisonment for life.

Damage or destruction of inventoried cultural property.

25. A person who is found in possession of cultural property to which he or she has no lawful right commits an offence.

Wrongful possession of cultural property.

26. Any person who—

Counterfeiting and misrepresentation of cultural property.

(a) produces an object or assists another person to produce an object with the intention of presenting it as a genuine cultural property; or

(b) knowingly misrepresents an object to be a cultural property,

commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years.

27. (1) Any person who uses an image of a cultural property without the written prior informed consent of the owner of that cultural property commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years.

Using images without consent.

(2) The burden of proof shall, under this section, lie on the person alleging to have obtained the written prior informed consent.

(3) The Cabinet Secretary shall take such measures as may be necessary to ensure payment for use of images of

cultural property where such images have been or are being used without consent outside Kenya.

28. A person commits an offence if he or she knowingly provides false or misleading information and shall be liable, on conviction, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months.

False or misleading information.

29. Any person who willfully obstructs or impedes any person in the exercise of any of the powers, or in the performance of any of the duties conferred or imposed upon him or her by this Act commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months.

Willfully impeding or obstructing a person.

PART VI—GENERAL PROVISIONS

30. (1) Where this Act stipulates levies, charges or fees for any services or for use of facilities, the Cabinet Secretary shall publish a schedule of the levies, charges or fees in the *Gazette*.

Fees and levies to be published in the *Gazette*.

(2) The schedule of charges shall come into force on the date specified therein, which shall be at least thirty days following publication in the *Gazette*.

31. A person convicted of an offence under this Act for which no other penalty is prescribed shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or both.

General penalty.

32. (1) Any license or permit issued by the Cabinet Secretary in regard to a cultural object before the commencement of this Act shall continue to be valid as if it had been issued under this Act.

Transitional provisions.

(2) Any inventory or register of culture and cultural heritage in existence before the commencement of this Act shall continue to be valid as if it had been established or kept under this Act.

(3) Any agreement or contract entered into between the Government and any other person regarding the protection and promotion of culture and the cultural heritage of communities shall continue to bind the parties as if the agreement or contract had been made under this Act.

(4) Any agreement or contract entered into by the Government with any other person regarding the protection or promotion of culture and the cultural heritage of communities before the commencement of this Act that contravenes any provision of this Act shall, on commencement of this Act, become null and void to the extent of that contravention.

33. (1) The Cabinet Secretary may make regulations generally for the better carrying out of the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations —

- (a) prescribing the information to be captured in the registers;
- (b) prescribing the forms under this Act;
- (c) prescribing the criteria for the identification of cultural property;
- (d) prescribing the manner in which the loaning of cultural property shall be undertaken;
- (e) prescribing the standards for the maintenance, presentation and storage of cultural objects;
- (f) prescribing compensation on use of community cultures and payment of royalties;
- (g) prescribing research relating to culture we need to capture this in a way that recognizes the role of the body in charge of research in Kenya; and
- (h) generally for the better carrying out of the purposes and provisions of this Act.

SCHEDULE*(Section 5(2))***National Cultural Institutions**

1. Kenya Cultural Centre
2. National Libraries
3. National Museums of Kenya
4. Kenya National Archives and Documentation Service

MEMORANDUM OF OBJECTS AND REASONS

The Culture Bill, 2024, has been made to give effect to Article 11 of the Constitution as well as to provide for the promotion and protection of culture and cultural heritage of communities in Kenya. It is divided into four Parts consisting of 33 clauses and one Schedule.

Part I of the Bill (clauses 1–4) provides for preliminary matters including the interpretation of key terms; guiding principles of the Bill; and the object and purpose of the Bill.

Part II of the Bill (clauses 5–19) provides for the management of culture in Kenya and delineates the functions of both the national government and the county governments. It also provides for the establishment of a cultural database, access to information relating to the management of culture in Kenya, compensation to individuals, groups or communities for the use of cultural properties, research into culture and cultural heritage and the registration of cultural properties. It also provides for the recognition and promotion of cultural expressions and indigenous technologies by public entities, the protection of cultural heritage and expressions, and the protection of endangered communities and cultures.

Part III of the Bill (clauses 20–29) provides for offences and penalties in relation to culture, cultural heritage and cultural properties.

Part IV of the Bill (clauses 30–33) makes general provisions in relation to fees and charges, a general penalty, the power to make Regulations under the Act and transitional matters.

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

The Bill delegates legislative powers to the Cabinet Secretary but does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

Pursuant to paragraph 4 of Part 2 of the Fourth Schedule to the Constitution, cultural activities is a function of county governments. Consequently, the Bill contains provisions that affect the functions and powers of the county governments in terms of Article 110 (1)(a) of the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 13th February, 2024.

KIMANI ICHUNG'WAH,
Leader of Majority Party.

