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SNA  
3/12/24*

THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES  
DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE

 THE NATIONAL ASSEMBLY PAPERS LAID		
DATE:	03 DEC 2024	DAY: <i>Tuesday</i>
TABLED BY:	<i>Hon. Daniel Wanyama (Chairperson, Sports and Culture Committee)</i>	
CLERK-AT THE TABLE:	<i>Arastacia</i>	

REPORT ON THE CONSIDERATION OF THE CULTURE BILL, 2024  
(NATIONAL ASSEMBLY BILL No. 12 OF 2024)

CLERKS CHAMBERS  
DIRECTORATE OF DEPARTMENTAL COMMITTEES  
PARLIAMENT BUILDINGS  
NAIROBI

DECEMBER, 2024

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## CHAIRPERSON'S FOREWORD

The Culture Bill, 2024 (National Assembly Bill No. 12 of 2024), sponsored by the Hon. Kimani Ichung'wah, EGH, M.P, seeks 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.

The Bill was published on Tuesday 5<sup>th</sup> March, 2024 and went through the First Reading on 18<sup>th</sup> April, 2024. Thereafter, it was committed to the Departmental Committee on Sports and Culture for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Committee placed advertisements in the print media on 19th April 2024 seeking public views on the Bill as required by Article 118 of the Constitution of Kenya and National Assembly Standing Order 127(3). The Committee received written memoranda from three (3) stakeholders.

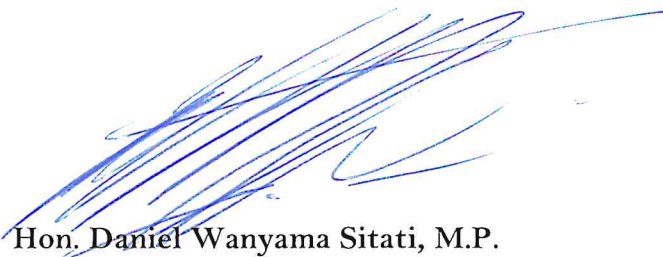
While considering the Bill, the Committee observed that there is a need to provide a legal framework to promote and protect Kenya's cultural heritage, which aims at giving effect to Article 11 of the Constitution. The Culture Bill, 2024 establishes policies to support the creative economy and empower cultural practitioners, while emphasizing devolved governance for localized culture policies. It addresses restitution and repatriation of cultural heritage, protects cultural workers, and proposes national cultural and creative hubs.

Further, the Committee observed that the proposed amendment seeks to delineate the functions of National and County Governments to ensure each level of government performs their distinct functions.

The Committee recommends that, with the proposed amendments, the Bill proceeds.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Bill. I wish to express appreciation to the Honourable Members of the Committee and the Committee Secretariat for their resilience and commitment to duty, which made the consideration of the Bill successful. On behalf of the Committee, I also thank and appreciate the stakeholders who submitted memoranda on the Bill. Indeed, their views informed considerations of the Bill.

On behalf of the Committee and pursuant to provisions of Standing Order 137 (1) and 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the Culture Bill (National Assembly Bill No. 12 of 2024).



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

## PART ONE

### 1.0 PREFACE

#### 1.1 Establishment of the Committee

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

#### 1.2 Mandate of the Committee

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

### 1.3 Committee Membership

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

<b>Chairperson</b>		
Hon. Daniel Wanyama Sitati, MP		
Webuye West Constituency		
<b><u>UDA Party</u></b>		
<b>Vice-Chairperson</b>		
Hon. James Githua Wamacukuru, MP		
Kabete Constituency		
<b><u>UDA Party</u></b>		
<b><u>Members</u></b>		
Hon. Naomi Jillo Waqo, MP		Hon. Samuel Gonzi Rai, MP
Marsabit County		Kinango Constituency
<b><u>UDA Party</u></b>		<b><u>PAA Party</u></b>
Hon. Mary Emaase Otucho, MP		Hon. Charles Ngusya Nguna, MP
Teso South Constituency		Mwingi West Constituency
<b><u>UDA Party</u></b>		<b><u>WDM –K Party</u></b>
Hon. Stephen Mutinda Mule, MP		Hon. Janet Jepkemboi Sitienei, MP
Matungulu Constituency		Turbo Constituency
<b><u>WDM-K Party</u></b>		<b><u>UDA Party</u></b>
Hon. Chege Njuguna, MP		Hon. Richard Kipkemoi Yegon, MP
Kandara Constituency		Bomet East Constituency
<b><u>UDA Party</u></b>		<b><u>UDA Party</u></b>
Hon. Catherine Nakhabi Omanyoo, MP		Hon. Caroli Omondi, MP
Busia County		Suba South Constituency
<b><u>ODM Party</u></b>		<b><u>ODM Party</u></b>
Hon. Paul Ekwom Nabuin, MP		Hon. Robert Ngui Basil, MP
Turkana North Constituency		Yatta Constituency
<b><u>ODM Party</u></b>		<b><u>WDM-K Party</u></b>
Hon. BSP. (EM) Dr. Jackson Kipkemoi Kosgei, MP		
Nominated		
<b><u>UDA Party</u></b>		

#### **1.4 Committee Secretariat**

5. The Committee is facilitated by the following secretariat:

Mr. Adan Gindicha  
**Principal Clerk Assistant II/Head of Secretariat**

Ms Mary Kinyunye  
**Clerk Assistant III**

Mr. Vitus Owino  
**Research Officer II**

Ms. Christine Odhiambo  
**Senior Legal Counsel**

Mr. Wilson Mwangi  
**Fiscal Analyst III**

Mr. Moses Omoit  
**Audio Officer III**

Mr. Peter Atsiaya  
**Media Relations Officer III**

Mr. Said Babo Wako  
**Assistant Serjeant-At-Arms**

## PART TWO

### 2. BACKGROUND OF LEGISLATION OF CULTURE IN KENYA

#### 2.1 INTRODUCTION

6. The Culture Bill 2024 was introduced to address several gaps in Kenya's cultural heritage management, to give effect to Article 11 of the Constitution, and to provide for the promotion and protection of culture and cultural heritage of communities in Kenya. The Bill aims to safeguard both tangible and intangible cultural heritage, support the growth of cultural industries, and enhance cultural rights for all Kenyans. Published by the National Assembly on 5<sup>th</sup> March 2024, it underwent its First Reading on 18<sup>th</sup> April 2024, marking a significant step towards preserving Kenya's rich and diverse cultural identity.

#### 2.2 SITUATIONAL ANALYSIS

7. Heritage management and cultural legislation have always existed in the African continent, even before the days of written laws. However, it is often perceived that it was with the 'taking over' of the continent that civilization and heritage legislation were first implemented. The 'new' legislation did not recognize the indigenous means of management and ignored the fact that heritage sites have existed long prior to the scramble for the continent.
8. Culture is now, more than ever before, seen as a medium of generating revenue. Away from all the glossy things that can be said about culture, we must not shy away from desiring to enjoy the full benefits that come with protecting and propagating our culture. The two can work together very well with proper buttress on legislation and management.
9. The implications of the bill include better coordination, collaboration and synergy between the two levels of government. The Cabinet Secretary in charge of culture shall inter alia, be responsible for: development of national policies and regulations and standards on cultures and cultural heritage and expressions; promotion of the diverse cultures, cultural heritage and cultural expressions including protection, safeguarding, preservation, conservation and rehabilitation of cultures, cultural heritage and cultural expressions; and monitoring compliance with standards and regulations.
10. On offenses and Penalties, the Bill provides for up to 10 offenses and the penalties as a way to deter contravention of provisions. Further provisions: on damages to cultural heritage, loans, registration, wrongful possession, conducting of research and failure to comply among others have been addressed.

#### 2.3 COMPARATIVE ANALYSIS

11. **In South Africa**, although South Africa was colonized from 1652, with the final conquest in 1879, it was not until 1911 that the first heritage legislation was passed. This was at the insistence of the South African National Society (SANS). The main aim of the act was to control the export of original rock paintings and engravings, which at the time posed a serious threat to South African rock art (Woodhouse, 1988; Rudner, 1989; Deacon, 1993a).
12. This legislation was later adopted in **Botswana** (Campbell, 1998) and **Zimbabwe**. Twelve years later (1923), still not satisfied, the SANS continued exerting pressure on the government. This pressure led to the proclamation of the Natural, Historical and Monuments Act in 1923 (no. 6 of



1923), which operated alongside the Bushmen Relics Protection Act (Rudner, 1989; Deacon, 1991; Kotze and van Rensburg, 2002; Whitelaw, 2005).

13. The 1923 act made provision for the appointment of a **Commission for the Protection of Natural and Historical Monuments of the Union of South Africa**. This body was tasked with, among other things, compiling a register of monuments that in its opinion ought to be preserved.
14. There were many legislations between 1923 and 1994 when South Africa gained its independent rule. Despite the detested system of apartheid that was legalized from 1948 and rooted in colonization, this only draws more focus on the African natives' zeal to protect their culture and heritage.
15. **In Tanzania**, The Antiquities Act of 1964 (amended in 1979 and 1985), is the basic legislation for the management, protection, and preservation of movable and immovable tangible cultural heritage resources. Under the Act, the Director of Antiquities authorizes and manages tangible heritage resources and grants licenses to research heritage sites.
16. **The 1997 cultural policy**: recognizes visual arts, music, film, and performing arts. It also encourages traditional and customs observance, recreation areas, and media participation.
17. **In India**, The Protection and Promotion of Intangible Cultural Heritage Bill proposes to establish a board and secretariat to promote and protect intangible cultural heritage in India. It also includes provisions for annual surveys, written documents on local traditions and publicizing, conserving and promoting intangible cultural heritage.
18. **The Heritage Conservation and Preservation Act, 2010**: This act protects historic, cultural, religious, aesthetic, architectural, and environmental significance.
19. **The Protection of Traditional Knowledge Bill, 2022**. This bill aims to incentivize the formation of knowledge societies and the socio-economic development of people who practice traditional knowledge.
20. **The Protection and Promotion of Intangible Cultural Heritage Bill** proposes to establish a board and secretariat to promote and protect intangible cultural heritage in India. The bill also includes provisions for annual surveys, written documents on local traditions, and publicizing, conserving, and promoting intangible cultural heritage.
21. **The Heritage Conservation and Preservation Act, 2010** protects historic, cultural, religious, aesthetic, architectural, and environmental significance.
22. **The Protection of Traditional Knowledge Bill, 2022** aims to incentivize the formation of knowledge societies and the socio-economic development of people who practice traditional knowledge.
23. **India's Constitution** also guarantees the right to conserve one's distinct language, script, or culture to any section of citizens. This article protects and preserves the culture of minorities.
24. Other countries that have Legislated on Culture include the following:
  - i. **Estonia**;
  - ii. **Slovakia**;
  - iii. **Panama and**;
  - iv. **Estonia**

## **PART THREE**

### **3.1 OVERVIEW OF THE CULTURE BILL (NATIONAL ASSEMBLY BILL NO. 70 OF 2024)**

25. The Culture Bill (National Assembly Bill No. 12 of 2024), sponsored by the Hon. Kimani Ichung'wah, EGH, M.P, seeks to give effect to Article 11 of the Constitution which recognize culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.
26. The Bill provides for the promotion and protection of culture and cultural heritage of communities in Kenya.
27. The Bill is divided into four Parts consisting of 33 clauses and one Schedule. The following are the key highlights of the Bill:

#### **Part I -Preliminary Provision**

28. Part I of the Bill contains the short title and interpretation of terms used in the Bill. This Part defines the key terms used in the Bill, which include cultural property, cultural heritage and culture. this Part also sets out the objects of the Act, which is to ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage, as well as to provide a framework to guide national cultural development.

#### **Part II - Management of Culture**

29. Part II of the Bill provides for the role of the national government in the management of culture, which are-
- (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.

This Part also provides for the role of county governments in the management of culture, which are to-

- (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.

### **Part III - OFFENCES AND PENALTIES**

30. Part III of the Bill provides for the offences and penalties under the Bill, which include—

- (a) stealing or is wrongful possession of a cultural property protected under this Act or under any other written law;
- (b) selling a cultural property protected under this Act or under any other written law without a permit or license;
- (c) transfer, without a permit or license, or trafficking a cultural property protected under this Act or under any other written law;
- (d) aiding or abetting 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) committing forgery or fraud with the intent to have an article declared an article of cultural interest;
- (f) damaging a cultural expression;
- (g) not reporting imminent danger to a cultural expression;
- (h) failing 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) exporting a cultural expression without a permit or a license, or
- (j) removing or attempting to remove without authorization any cultural property.

The other offences under this Part are—

- (a) non-compliance with conditions of registration;
- (b) undertaking research without a permit;
- (c) loaning without a permit;
- (d) damage or destruction of inventoried cultural property;
- (e) wrongful possession of cultural property;
- (f) counterfeiting and misrepresentation of cultural property;
- (g) using images without consent;
- (h) false or misleading information; and
- (i) wilfully impeding or obstructing a person.

### **Part IV - General Provisions**

31. Part IV of the Bill contains general provisions, and provides that—

- (a) Fees and levies shall be published in the *Gazette* by the Cabinet Secretary;
- (b) A general penalty of a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or both;
- (c) 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;
- (d) 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;
- (e) 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; and
- (f) The Cabinet Secretary may make regulations generally for the better carrying out of the provisions of this Act.

## PART FOUR

### 4.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

#### 4.1 Legal Framework Public Participation

32. Article 118 (1)(b) of the Constitution provides that:

*“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”*

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

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

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

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

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

*(d) consulting experts on technical subjects.*

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

#### 4.2 Memoranda Received on the Culture Bill, 2024

34. The Departmental Committee on Sports and Culture received memoranda from stakeholders as annexed in this report.

35. The stakeholders submitted as follows:

##### 4.2.1 State department for culture, the arts and heritage

**This is similar to the recommendations from the office of the Attorney-General.**

36. That clause 2 be amended by

i. Deleting the definition of “cultural expression”

ii. Amending the definition of “protection” by deleting the words “cultures, cultural heritage and expression” and substituting therefor the words “culture, cultural heritage and cultural property”;

37. Clause 3 be amended in paragraph (b), by deleting the words “and cultural expression” and substituting therefor the words “culture, cultural heritage and cultural property”;

38. Clause 5 be amended in sub-clause (1)(b). by deleting the “cultures. Cultural heritage and expression” and substituting therefor the words “cultures, cultural heritage and cultural property”;

39. Clause 17 be amended

i. In the marginal note, by deleting the words “cultural heritage and expressions” and substitute therefor the words “cultures, cultural heritage and cultural property”;

ii. By deleting the words “cultural expressions as national expressions” and substitute therefor the words “cultures, cultural heritage and cultural property”;

40. Clause 18 be amended by-

i. In the marginal note, by deleting the words “cultural heritage and expressions” substitute therefor the words “cultures, cultural heritage and cultural property”

- ii. In sub-clause 2, by deleting the words “cultural expressions and cultural heritage” and substitute therefor the words “cultures, cultural heritage and cultural property”;
41. Clause 20 be amended in sub-clause (1)(f), by deleting the words “cultural expression” and substitute therefor the words “cultural property”.

#### **4.2.2 Pastoralists Alliance for Resilience and Adaptation Across Nations (PARAAN)**

- 42. In Part I- Preliminary, the Bill should better outline who exactly are the bearers/owners of a certain culture and how they can be identified.
- 43. In general, the Bill assumes that culture is rigid and inflexible. This should be amended to reflect the ability of culture to change over time.
- 44. Part II in section 5, 6 & 7 should outline how traditional cultural mechanisms, leadership and institutions in county databases shall be managed
- 45. Culture and heritage are owned by the people and not institutions. The Bill should be clear to respective communities and show responsibilities, registration, transferring, protecting and recognizing culture.
- 46. Part II Section 11(1) on loaning of culture give a leeway for commercialization of culture. The part of the loaners is not catered for and thus, the whole section should be deleted.
- 47. Delete Part II section 13(3) on registration fees to the Cabinet Secretary or the County government. This is totally unnecessary.
- 48. Provisions in Part III section 20, make it illegal for one to practice without registration. This is an infringement on people's right to their cultural expressions. Should be deleted.
- 49. Amend by adding a new clause on conflict resolution where there is contestation about the ownership of culture, cultural property and heritage.
- 50. The Bill is devoid of the present in-situ documentation that are present in some communities. This should be catered for in the Bill.
- 51. Members of an indigenous community should not have to apply for a research permit from any government institution to conduct research on their own culture or cultural heritage.

#### **4.2.3 Creative Economy Working Group (CEWG)**

- 52. The following were the Proposed Amendment by Creative Economy Working Group:
- 53. **Part I: Preliminary Interpretation**, Definition of Artist should include a clear definition of 'artist' based on UNESCO guidelines.
- 54. **Part II: Management of Culture the following were proposed:**
- 55. **Restitution Framework:**
  - Empower the Cabinet Secretary to create policies for the restitution and repatriation of cultural heritage illicitly held.
  - i. **Cultural Diplomacy Coordination:**
    - Integrate the coordination of cultural diplomacy activities within the Ministry of Culture to ensure coherence with the Ministry of Foreign Affairs.
  - ii. **Research Linkages:**
    - Establish linkages with research institutions to inform policy formulation on Kenya's cultures and heritage.

iii. **National Cultural and Creative Hubs:**

Develop national cultural and creative hubs to foster creativity and protect Intellectual Property Rights.

**56. County Responsibilities:**

1. Include a function for counties to initiate cultural activities.
2. Ensure the protection of cultural workers and support their professional development.
3. Include the development of cultural tourism as a function of county governments.

**4.2.4 The Tourism Fund**

57. The Tourism Fund is a corporate entity within the Ministry of Tourism and Wildlife, established by the Tourism Act Cap. 381 of Kenya, which replaced the Catering and Tourism Development Levy Trustees in 2012. Its primary functions, as outlined in Section 69 of the Act, include financing the development of tourism products and services, marketing Kenya as a tourist destination, supporting tourism research and intelligence, and enhancing the activities of the Tourism Sector Safety, Communication, and Crisis Management Centre. The Fund also focuses on training and capacity development in the tourism and hospitality sector.
58. The Fund is responsible for collecting the tourism levy, establishing tourism training institutions, and creating a tourism training revolving fund, all aimed at improving the tourism sector's infrastructure and workforce.
59. The Fund supports the Culture Bill 2024, recognizing that Kenyan culture plays a key role in distinguishing the country as a unique tourist destination. The Bill's provisions, such as the establishment of a cultural database, access to information, and clear roles for the government in managing culture, are seen as valuable in refining Kenya's tourism offerings. The Fund believes that the Bill will strengthen the sustainable development of the tourism sector, making Kenya's destination offerings more attractive regionally and internationally.

**4.2.5 The National Museums of Kenya**

60. The National Museums of Kenya generally supports the Culture Bill 2024 as it aligns with Article 11 of the Constitution and complements previous legislation such as the Protection of Traditional Knowledge and Cultural Expressions Act, 2016.
61. The functions outlined in Sections 5 and 6 of the Bill are consistent with Schedule 4 of the Constitution, which delineates the functions of the National and County governments.
62. The Bill will require several regulations to be established to ensure effective implementation, particularly in areas such as compensation and registration.
63. Specific Comments and Proposed Amendments include:
1. **Section 18 (4):** Add the word "it" in between the words "if appears" to clarify the clause.

2. **Clause 20 (1h)**: Amend the clause to read:  
*"Conducts an activity or development at a place that has a cultural expression or heritage without a requisite permit or license."*
3. **Section 20 (2)**: The proposed fine of **Kshs. 200,000** is too low. It is recommended to raise the maximum fine to between **Kshs. 500,000** and **1 million**.
4. **Section 22**: The proposed penalty of **10 years imprisonment** is considered too high. It is suggested that the imprisonment term be reduced to between **1 and 2 years**.
5. **Section 24**: The proposed penalty of **life imprisonment** for destroying a cultural property is deemed too harsh. It is recommended to lower the sentence to **1 to 2 years** imprisonment.
6. **Section 33(g)**: Delete all words starting from "we need to capture," as they are seen as unnecessary.

64. These amendments are aimed at refining certain penalties and clarifying some of the language in the Bill to ensure a more balanced and effective legal framework for cultural preservation and management

#### 4.2.6 The Bomas of Kenya

65. Bomas of Kenya is a cultural center dedicated to promoting and preserving Kenya's diverse cultural heritage. Established in 1971, it offers a platform for showcasing traditional music, dance, crafts, and art from various ethnic groups. The center serves as a hub for cultural exchange and education, hosting performances, exhibitions, and events that highlight the country's rich cultural diversity. Bomas of Kenya also plays a key role in tourism, offering visitors an opportunity to experience authentic Kenyan culture. Its cultural performances, particularly the popular traditional dance displays, attract both local and international audiences.

66. **Clause 2 (Interpretation of Cultural Property)**:

1. Include **performing arts** as one of Kenya's cultural properties, which encompasses **drama, dance, music,** and cultural rituals.
2. **Cultural games and sports** like **bull fighting, ajua,** and **boat racing** should be recognized as cultural properties.
3. **Architectural designs of traditional homesteads**, such as the **Maasai Manyatta, Luo,** and **Kikuyu** houses, should be distinguished from other heritage buildings like **Fort Jesus** or **Lamu Old Town**.
4. **Food, drinks, and traditional medicines** should be added as cultural properties due to their nutritional, medicinal, and cultural significance.

67. **Clause 2 (Interpretation of Cultural Property)** Continued:

Emphasize the importance of **protecting traditional medicines** used for preventive and curative purposes, including efforts like the **Bomas of Kenya's botanical garden** that preserves **Kenyan medicinal herbs**.



68. **Conclusion on Clause 2:**

The current interpretation does not fully align with **Article 11** of the **Constitution**, which calls for both **tangible and intangible** cultural properties to be recognized. The **musical instruments** and **furniture** should be integrated within **performing arts**.

69. **Schedule Page 16:**

Include **Bomas of Kenya** as a national cultural institution, as it is crucial in preserving **Kenya's intangible cultural heritage**, such as **folk music**, **musical instruments**, **cultural dances**, and **cultural cuisines**.

## PART FIVE

### 5.0 COMMITTEE OBSERVATIONS

70. Having considered the submissions on the Culture Bill, 2024, the Committee observed that:-

1. Article 11(3) of the Constitution mandates Parliament to enact legislation to ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage.
2. There is need to enact legislation to domesticate the international treaties to which Kenya is a party and which relate to the protection and conservation of culture.
3. Culture is a shared function between the national government and county governments. As such, there is need to ensure that there is a clear delineation of functions relating to culture between the two levels of government.
4. There is need to ensure that all cultural property is inventoried for accountability and to guard against theft or loss.

PART SIX

6.0 COMMITTEE RECOMMENDATION

71. Pursuant to Standing Order 127, the Committee recommends that the National Assembly **APPROVES** the Culture Bill (National Assembly Bill No. 12 of 2024) **with amendments as proposed in the Schedule of Amendments** under Part Seven of this Report.

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

## PART SEVEN

### 7. SCHEDULE OF AMENDMENTS

72. The Committee proposed the following amendments to be considered by the House in the Committee Stage:

#### **Clause 2**

**THAT**, clause 2 of the Bill be amended-

- (a) in the definition of “cultural property” by deleting paragraph (d) and substituting therefor the following new paragraph-
  - “(d) buildings and architectural designs;”
- (b) by deleting the definition of “cultural expression”;
- (c) by deleting the definition of “culture”;
- (d) in the definition of “protection” by deleting the word “expression” and substituting therefor the words “cultural property”;
- (e) by inserting the following new definition in its proper alphabetic sequence-
  - “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, beliefs, language, ideas, customs, codes, institutions, works of art, rituals and ceremonies;”

#### **Justification**

The amendment seeks to include the unique architectural designs of various communities within the ambit of cultural property.

The amendment also seeks to ensure that the Bill does not conflict with the existing Protection of Traditional Knowledge and Cultural Expressions Act, Cap. 218A. The amendment deletes the definition of “cultural expression” which is already provided for in the existing Act.

The amendment also seeks to broaden the scope of what may be defined as culture, to include language, cultural practices and ceremonies as well as cultural rituals.

#### **Clause 3**

**THAT**, clause 3 of the Bill be amended in paragraph (b) by deleting the words “and cultural expression” and substituting therefor the words “culture, cultural heritage and cultural property”.

#### **Justification**

The amendment seeks to ensure that the objects of the Bill address matters of culture, cultural heritage and cultural property, so as to eliminate the possibility of conflict with the existing Protection of Traditional Knowledge and Cultural Expressions Act, Cap. 218A, which relates to cultural expressions.

#### **Clause 4**

**THAT**, clause 4 of the Bill be amended in sub-clause (2) by deleting the words “cultural activities, expressions and practices” and substituting therefor the words “culture and cultural heritage”.

### **Justification**

The amendment seeks to ensure that the culture and cultural heritage as defined in the Bill and which forms the object of the Bill, shall be in conformity with the Constitution.

### **Clause 5**

**THAT**, clause 5 of the Bill be amended-

- (a) in sub-clause (1)-
  - (i) by deleting the word “expressions” appearing in paragraph (b) and substituting therefor the word “property”;
  - (ii) by inserting the following new paragraphs immediately after paragraph (g)-
    - “(ga) in consultation with institutions specializing in statistics, collecting, processing and maintaining national statistical data on cultural heritage;
    - (gb) developing mechanisms for restitution and repatriation of illegally acquired cultural property;
    - (gc) establishment of linkages with institutions undertaking research on Kenya’s cultures and cultural heritage;
    - (gd) establishment of national cultural centres for promotion of cultural participation and fostering of creativity;”
- (b) in sub-clause (2) by deleting the word “Second”.

### **Justification**

The amendment seeks to provide clarity that the Cabinet Secretary shall be responsible for the promotion of culture, cultural heritage and cultural property which is the object of the Bill. The amendment also seeks to provide additional responsibilities of the Cabinet Secretary, which include establishment of cultural centres, development of mechanisms for the restitution of illegally acquired cultural property as well as the establishment of linkages for purposes of cultural research.

The amendment to sub-clause (2) seeks to provide correct referencing to the Schedule to the Bill.

### **Clause 6**

**THAT**, clause 6 of the Bill be amended-

- (a) by deleting the words “cultural heritage and cultural expression” appearing in paragraph (c) and substituting therefor the words “culture and cultural heritage”;
- (b) by inserting the following new paragraphs immediately after paragraph (b)-
  - “(ba) establishment and management of county cultural institutions;
  - (bb) in consultation with institutions specializing in statistics, collecting, processing and maintaining county statistical data on cultural heritage;”

### **Justification**

The amendment seeks to provide clarity that the county governments shall be responsible for the promotion of culture, cultural heritage and cultural property at the county level.

The amendment further seeks to provide additional functions of county governments, which is the maintenance of county statistical data on culture as well as the establishment and management of county cultural institutions.

**Clause 13**

**THAT**, clause 13 of the Bill be amended-

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause-
- “(1) A person who wishes to register a property as a cultural property under this Act shall apply to the county government or the Cabinet Secretary in the prescribed manner:

Provided that an application made to the Cabinet Secretary shall only be done after the property has been registered by a county government.”

- (b) in sub-clause (3) by deleting the words “or person” appearing immediately after the words “register the property”;
- (c) in sub-clause (5) by deleting the words “or a person”; and
- (d) in sub-clause (6) by deleting the words “or a person”.

**Justification**

The amendment seeks to remove the possibility of a natural person being registered as a cultural property.

**Clause 17**

**THAT**, clause 17 of the Bill be amended-

- (a) in the marginal note by deleting the words “cultural expressions” and substituting therefor the words “culture, cultural heritage and cultural property”; and
- (b) by deleting the words “cultural expressions as national expressions” and substituting therefor the words “culture, cultural heritage and cultural property”.

**Justification**

The amendment seeks to ensure that regulations shall be developed for the recognition and promotion of culture, cultural heritage and cultural property which is the subject matter of the Bill, so as to avoid any conflict with the existing Protection of Traditional Knowledge and Cultural Expressions Act, Cap. 218A, which relates to cultural expressions.

**Clause 18**

**THAT**, clause 18 of the Bill be amended-

- (a) in the marginal note by deleting the words “cultural heritage and expressions” and substituting therefor the words “culture, cultural heritage and cultural property”;
- (b) in sub-clause (2) by deleting the words “cultural heritage and expressions” and substituting therefor the words “culture, cultural heritage and cultural property”; and
- (c) in sub-clause (4) by inserting the word “it” immediately after the words “where there is or might be a cultural heritage if”.

**Justification**

The amendment seeks to ensure that the Bill provides for matters relating to culture, cultural heritage and cultural property, so as to avoid conflict with the existing Protection of Traditional Knowledge and Cultural Expressions Act, Cap. 218A, which relates to cultural expressions.

The amendment to sub-clause (4) seeks to correct a grammatical error.

**Clause 20**

**THAT**, clause 20 of the Bill be amended-

- (a) in sub-clause (1)-
- (i) by deleting the words “a cultural expression” appearing in paragraph (f) and substituting therefor the words “cultural property”;
  - (ii) by deleting paragraph (h) and substituting therefor the following new paragraph-  
“(h) conducts an activity or development at a cultural property or cultural heritage site without the requisite permit or license;”
  - (iii) by deleting the words “cultural expression” appearing in paragraph (i) and substituting therefor the words “cultural property”.
- (b) by deleting sub-clause (2) and substituting therefor the following new sub-clause-  
“(2) A person who commits an offence under this section shall be liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years, or to both.”

#### **Justification**

The amendment seeks to provide clarity in respect to the offences of damage and illegal importation of cultural property.

The amendment to sub-clause (2) seeks to correct a grammatical error as well as to enhance the penalty for the offences provided in the clause.

#### **Clause 22**

**THAT**, clause 22 of the Bill be amended by deleting the word “ten” and substituting therefor the word “two”.

#### **Justification**

The amendment seeks to reduce the proposed term of imprisonment for the offence of undertaking research without a permit, from ten years to two years. This is necessary to ensure proportionality of the offence and the punishment.

#### **Clause 24**

**THAT**, clause 24 of the Bill be amended by deleting the words “imprisonment for life” and substituting therefor the words “a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both”.

#### **Justification**

The amendment deletes the penalty of life imprisonment for the offence of destruction of cultural property, and instead provides for a penalty of five million shillings or five years imprisonment, to ensure proportionality of the offence and the punishment.

#### **Clause 33**

**THAT**, clause 33 of the Bill be amended in sub-clause (2) by deleting paragraph (g) and substituting therefor the following new paragraph-

“(g) prescribing the manner of interlinkage with research institutions in regards to research relating to culture;”

#### **Justification**

The amendment seeks to introduce an additional matter in respect of which the Cabinet Secretary may prescribe regulations.

**Schedule**

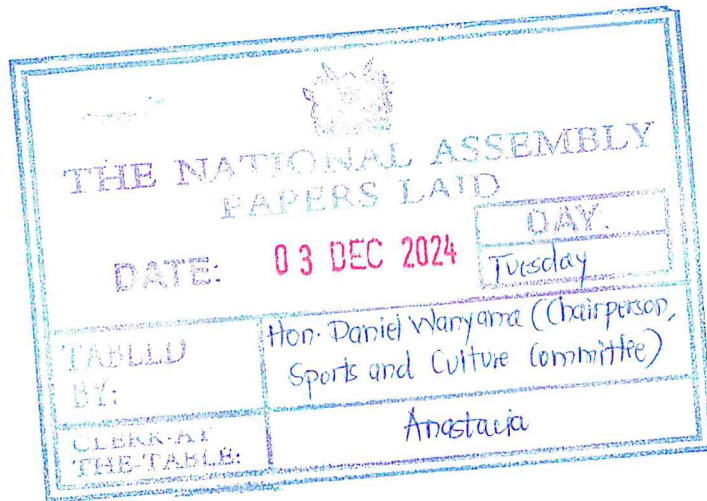
**THAT**, the Schedule to the Bill be amended by inserting the following new paragraph immediately after paragraph 4-

“5. Bomas of Kenya”

**Justification**

The amendment seeks to ensure the inclusion of Bomas of Kenya among the national cultural institutions that shall be under the management of the national government.

SIGNED..... DATE.....  
 3/12/2024  
HON. DANIEL WANYAMA SITATI, MP  
CHAIRPERSON,  
DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE







THE NATIONAL ASSEMBLY

13<sup>TH</sup> PARLIAMENT - THIRD SESSION - 2024

DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE

REPORT ADOPTION SCHEDULE

DATE: 30/11/2024 VENUE: HILTON GARDEN INN

REPORT ON CONSIDERATION OF CULTURE BILL 2024

No.	NAME	SIGNATURE
1.	The Hon. Daniel Wanyama Sitati, M.P. – Chairperson	
2.	The Hon. James Githua Wamacukuru, M.P. – Vice Chairperson	
3.	The Hon. Naomi Jillo Waqo, M.P. CBS	-
4.	The Hon. Samuel Gonzi Rai, M.P.	-
5.	The Hon. Stephen Mutinda Mule, M.P.	
6.	The Hon. Mary Emaase Otucho, M.P.	
7.	The Hon. Janet Jepkemboi Sitienei, M.P.	
8.	The Hon. Charles Ngusya Nguna, M.P.	
9.	The Hon. Caroli Omondi, M.P.	
10.	The Hon. Catherine Nakhabi Omanyoo, M.P.	
11.	The Hon. Chege Njuguna, M.P.	-
12.	The Hon. Paul Ekwom Nabuin, M.P.	
13.	The Hon. Robert Ngui Basil, M.P.	-
14.	The Hon. Richard Kipkemoi Yegon, M.P.	-
15.	The Hon. BSP. (EM) Dr. Jackson Kipkemoi Kosgei, M.P.	

