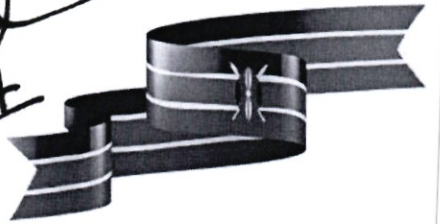


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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE

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

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 5th March, 2024 and went through the First Reading on 18th 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 27th October 2022 and comprises of the following members:

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

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 5th March 2024, it underwent its First Reading on 18th 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:

Part1 -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.....
HON. DANIEL WANYAMA SITATI, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE

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



THE NATIONAL ASSEMBLY
13TH 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.	

MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE HELD ON SATURDAY 30TH NOVEMBER 2024 AT 3:45 PM IN PAVILION SUIT - HILTON GARDEN INN, NAIROBI

PRESENT

1. **The Hon. Daniel Wanyama Siatati, M.P -Chairperson**
2. **The Hon. Githua Wamacukuru, M.P. -Vice Chairperson**
3. The Hon. Stephen Mutinda Mule, M.P
4. The Hon. Mary Emaase Otucho, M.P.
5. The Hon. Janet Jepkemboi Sitienei, M.P.
6. The Hon. Charles Ngusya Nguna, M.P.
7. The Hon. Catherine Nakhabi Omanyoo, M.P.
8. The Hon. Paul Ekwom Nabuin, M.P.
9. The Hon. BSP.(EM) Dr. Jackson Kipemoi Kosgei, M.P

APOLOGY

1. The Hon. Naomi Jillo Waqo, M.P.
2. The Hon. Samuel Gonzi Rai, M.P.
3. The Hon. Caroli Omondi, M.P.
4. The Hon. Chege Njuguna, M.P.
5. The Hon. Robert Ngui Basil, M.P.
6. The Hon. Richard Kipkemoi Yegon, M.P.

IN-ATTENDANCE

Committee Secretariat

1. Ms. Mary Kinyunye - Clerk Assistant III
2. Ms. Christine Odhiambo - Senior Legal Counsel
3. Mr. Vitus Oketch
4. Mr Wilson Mwangi - Fiscal Analyst III
5. Mr. Calvin Karung'o - Media Relation Officer III
6. Ms. Josephine Osiba - Harsard Reporter

AGENDA

1. Prayers;
2. Preliminaries;
 - i. Adoption of the Agenda;
 - ii. Communication from the Chairperson;
3. Consideration of the Draft Reports on
 - i. **THE Budget Implementation Monitoring 2023/2024**
 - ii. **The Senate Amendments to the Gambling Control Bill, (National Assembly Bill 70 of 2023)**
 - iii. **The Culture Bill, 2024(National Assembly Bill 12 of 2024)**
4. Any Other Business; and
5. Adjournment.

MIN.NO. DC/SC/2024/297: PRAYER AND PRELIMINARIES

The meeting commenced at 3.45 p.m. with the Prayer followed welcoming remarks from the Chairperson.

MIN.NO. DC/SC/2024/298: ADOPTION OF THE AGENDA

The Agenda was adopted without amendments, having been proposed and seconded by the Hon. Mary Emaase Otucho, M.P. and the Hon. BSP.(EM) Dr. Jackson Kipemoi Kosgei, M.P. respectively.

MIN.NO. DC/SC/2024/299: CONFIRMATION MINUTES OF THE PREVIOUS OF SITTING

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

MIN.NO. DC/SC/2024/300: CONSIDERATION AND ADOPTION OF A REPORT ON THE BUDGET IMPLEMENTATION.

The Committee considered and adopted the report on the consideration of the Budget Implementation Monitoring having been proposed by the Hon. Charles Ngusya Nguna, M.P and Seconded by the Hon. Catherine Nakhabi Omanyo, M.P.

MIN.NO. DC/SC/2024/301: CONSIDERATION AND ADOPTION OF A REPORT ON THE SENATE AMENDMENTS TO THE GAMBLING CONTROL BILL 70 OF 2023.

The Committee considered and adopted the report on the consideration of the Senate Amendments to the Gambling Control Bill, No. 70 of 2023 and having been proposed by the Hon. Charles Ngusya Nguna, M.P and Seconded by the Hon. Janet Jepkemboi Sitienei, M.P:-

MIN.NO. DC/SC/2024/302: CONSIDERATION AND ADOPTION OF A REPORT ON THE CULTURE BILL 12 OF 2024.

The Committee considered and adopted the report on the consideration of the Culture Bill, No. 12 of 2024 and having been proposed by the Hon. Paul Ekwom Nabuin, M.P and Seconded by the Hon. Charles Ngusya Nguna, M.P:-

COMMITTEE OBSERVATIONS AND RESOLUTION

Resolution:

The Committee resolved that sufficient funding must be allocated to the **Kenya Cinema Project** and all related projects under its purview to ensure their timely completion. The committee expressed concern over the delays in completing the **Regional Stadium**, which did not meet the

international standards as initially required. They called for immediate action to expedite the completion of key stadia projects, particularly the **Rirungu Stadium** and **Kiratu Stadium**.

Additionally, the committee emphasized the importance of being well-informed and thoroughly familiarized with the **SASDEF report** to enhance project oversight and ensure transparency and accountability in the use of allocated funds. This knowledge is crucial for the Committee to make informed decisions and to ensure the effective implementation of all projects.

MIN.NO. DC/SC/2024/303: ANY OTHER BUSINESS

No Any Other Business Arose

MIN.NO. DC/SC/2024/304: ADJOURNMENT/DATE OF THE NEXT SITTING

There being no other business, the meeting was adjourned at 5.00 p.m until 10.00 a.m 1st December, 2024.

SIGNED:



**THE HON. DANIEL WANYAMA SIATATI, M.P.
(CHAIRPERSON)**

DATE: 3/12/2024

MINUTES OF THE 18TH SITTING OF THE DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE HELD ON SATURDAY, 20TH APRIL, 2024 AT 09:43 AM IN ACACIA B CONFERENCE ROOM, HILTON GARDEN INN HOTEL, MACHAKOS.

PRESENT

1. **The Hon. Daniel Wanyama Sitati, M.P** -Chairperson
2. The Hon. Samuel Rai Gonzi, M.P.
3. The Hon. Charles Ngusya Nguna, M.P.
4. The Hon. Caroli Omondi, M.P.
5. The Hon. Catherine Omanyo Nakhabi, M.P.
6. The Hon. Chege Njuguna, M.P
7. The Hon. Richard Yegon Kipkemoi, M.P.
8. The Hon. BSP.(EM) Dr. Jackson Kipkemoi Kosgei, M.P

APOLOGY

1. **The Hon. Githua Wamacukuru, M.P.** - Vice Chairperson
2. The Hon. Naomi Jillo Waqo, M.P. CBS
3. The Hon. Mary Otucho Emaase, M.P.
4. The Hon. Janet Sitienei Jepkemboi, M.P.
5. The Hon. Stephen Mule Mutinda, M.P
6. The Hon. Robert Ngui Basil, M.P
7. The Hon. Paul Nabuin Ekwom, M.P.

Committee Secretariat

1. Ms. Mary Kinyunye - Clerk Assistant III
2. Ms. Christine Odhiambo - Senior Legal Counsel
3. Mr. Vitus Okech - Research Officer
4. Mr Wilson Mwangi - Fiscal Analyst III
5. Ms. Josephine Osiba - Hansard Reporter III
6. Mr. Moses Esamai - Audio Officer
7. Mr. Said wako - Serjeant-At-Arm

AGENDA

1. Prayers;
2. Preliminaries;
 - i. Introductions & Adoption of the Agenda;
 - ii. Communication from the Chairperson;
 - iii. Confirmation of Committee Minutes and Matters Arising
3. **Submissions by the Sports, Arts and the Social Development Fund**
4. **Clause by clause discussion of the KNLS Bill 2023**
5. Any Other Business; and
6. Adjournment.

MIN.NO. DC/SC/2024/097: PRAYER AND PRELIMINARIES

The meeting commenced at 9.43 a.m. with the Prayer followed by introductions. The Ag. Chairperson welcomed the stakeholders to the Committee meeting.

MIN.NO. DC/SC/2024/098: ADOPTION OF THE AGENDA

The Agenda was adopted without amendments, having been proposed and seconded by the Hon. Samuel Rai Gonzi, M.P. and the Hon. Richard Yegon Kipkemoi, M.P. respectively.

MIN.NO.DC/SC/2024/099: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

MIN.NO. DC/SC/2024/100: SUBMISSIONS BY THE SPORTS, ARTS AND THE SOCIAL DEVELOPMENT FUND

The Committee Members raised concerns regarding the absence of the CEO SASDF and stressed on the need for the aforementioned to attend Committee meetings and in instances where the Ministry officials were held up on other work-related exigencies, a written apology should be conveyed on time to the Committee through the office of the Clerk.

MIN.NO.DC/SC/2024/101: SUBMISSION OF MEMORANDA

To give effect to the functions of the national government and the functions of county governments in relation to library services, the County of Governors, the Kenya National Library Service and the Inter-Governmental Relations Technical Committee presented to the Committee an agreed position as follows:

The stakeholders proposed amendments to the Bill as follows:

- a. The Long title to amended to provide clarity in the purpose of the Bill by including the key mandates of KNLS such as collecting, preserving, making available and promoting the national documentary heritage.
- b. Amend by deleting Clause 5 (a) and replacing therefor with “*establish, equip, develop, manage and maintain the Kenya National Library Service and its repository centres*” this was for modification to include other repository centres.
- c. Amend by deleting Clause 5 (b) and replacing therefore with “*acquire, preserve and maintain a collection of library resources including books produced within and outside Kenya and such other materials and sources of knowledge necessary for a comprehensive national bibliography*” to cover all forms of information resources.
- d. Amend by deleting Clause 5 (e) and replacing therefore with “*To promote information awareness and information literacy*” to make it clearer and shorter
- e. Amend by deleting Clause 5 (g) and replacing therefore with “Render a national bibliographic service and act as the national replacement bibliographic agency” proposed replacement
- f. Amend Clause 5 (h) to Capitalize the word cat. webCAT-web catalogue, is a tool to extract metadata and generate RDF description from existing web document.

- g. Amend by delete the word *Library* in Clause 5(i) to read “*Provide a national library reference and referral service*”
- h. Amend by deleting Clause 5 (k) and replacing therefore with “*support establishing of referral repository centers at regional and County levels*” to distinguish the role of county libraries and national library.
- i. A proposed addition to the function of the National Library as Clause 5 (p) therefore to read “*to promote awareness and appreciation of the national published documentary heritage*”
- j. A proposed addition to the function of the National Library to enhance the Library Profession as Clause 5(q) to read “*To provide facilities for the study of, and for training in the principles, procedures and techniques of librarianship and such other related subjects*”
- k. Amend and delete Clause 6(d) as This is a National Library function and the Ministry of Education will better suited to work with the public libraries as they directly work with Schools and supplement curriculum education and in giving technical advice in the establishment of school libraries.
- l. Amend and deleting Clause 6(g) and replace therefore with “*The Chairperson of County of Governors (COG) or a representative designated in writing*”
- m. Amend Clause 6(h) To be in line with Mwongozo guidelines on the number of independent Board member representation and read “*Three persons appointed by the Cabinet Secretary in accordance with section 7 (2)*”
- n. Amend by deleting Clause 15(2) (b) and replacing therefore with “*Holds a master's degree in library and Information Science, knowledge management, Information technology from a recognized institutions*” in the new dispensation of devolved units, the national library requires a professional to ensure that the international standards are met.
- o. Amend by deleting Clause 15(2) (c) and replacing therefore with “*Has at least fifteen cumulative years in relevant field of which at least twelve years at a senior management*” as the best practice as per Public Service Commission (PSC)
- p. Amend by deleting First Schedule Clause 15 and replacing therefore with “*The minutes of each meeting of the Board or of a Committee of the Board shall be kept by the Corporate Secretary and shall be confirmed by the Board or the Committee at the succeeding meeting and be duly signed by the Chairperson or the person presiding and the Director-General*” to replace Director General with Corporate Secretary in line with Mwongozo.
- q. Amend by deleting First Schedule Clause 15 (c) and replacing therefore with “*Submit declaration of income assets and liabilities to the body responsible for such declarations from public officers in accordance with the law*” in line with existing governing laws.
- r. A proposed addition Clause 5(q) and therefore read “*to provide facilities for the study of, and for training, and award of certificates and diploma in the principles, procedures and techniques of librarianship and such other related subjects*” to the functions of the National Library to enhance the Library Profession

COMMITTEE OBSERVATIONS

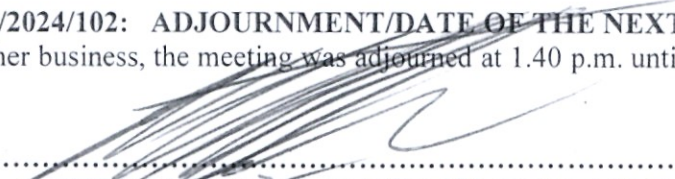
Having considered the submission on Kenya National Library Services, the Committee observed that:-

Having considered the submission on Kenya National Library Services, the Committee observed that there was need to amend clause 5 of the Bill by separating the role of the national government from the role of county governments in relation to library services. A distinction in the Bill was therefore necessary, to include a clause on the role of the national government, which would be the functions of the Kenya National Library Service, and the insertion of a new clause providing for the role of county governments.

MIN.NO. DC/SC/2024/102: ADJOURNMENT/DATE OF THE NEXT SITTING

There being no other business, the meeting was adjourned at 1.40 p.m. until 2.43 p.m, same day, same venue.

SIGNED:



THE HON. DANIEL WANYAMA SITATI, M.P.
(CHAIRPERSON)

DATE: 17/5/2024

MINUTES OF THE 19TH SITTING OF THE DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE HELD ON TUESDAY 30TH APRIL 2024 AT 12:45 PM IN COMMITTEE ROOM 2ND FLOOR, PARLIAMENT BUILDINGS

PRESENT

1. **The Hon. Daniel Wanyama Sitati, M.P** -Chairperson
2. The Hon. Samuel Rai Gonzi, M.P.
3. The Hon. Charles Ngusya Nguna, M.P.
4. The Hon. Caroli Omondi, M.P.
5. The Hon. Catherine Omanyo Nakhabi, M.P.
6. The Hon. Chege Njuguna, M.P
7. The Hon. Richard Yegon Kipkemoi, M.P.
8. The Hon. BSP.(EM) Dr. Jackson Kipkemoi Kosgei, M.P

APOLOGY

1. **The Hon. Githua Wamacukuru, M.P.** - Vice Chairperson
2. The Hon. Naomi Jillo Waqo, M.P. CBS
3. The Hon. Mary Otucho Emaase, M.P.
4. The Hon. Janet Sitienei Jepkemboi, M.P.
5. The Hon. Stephen Mule Mutinda, M.P
6. The Hon. Robert Ngui Basil, M.P
7. The Hon. Paul Nabuin Ekwom, M.P.

Committee Secretariat

1. Ms. Mary Kinyunye - Clerk Assistant III
2. Ms. Christine Odhiambo - Senior Legal Counsel
3. Mr. Vitus Okech - Research Officer
4. Mr Wilson Mwangi - Fiscal Analyst III
5. Ms. Josephine Osiba - Hansard Reporter III
6. Mr. Moses Esamai - Audio Officer
7. Mr. Said wako - Serjeant-At-Arm

AGENDA

1. Prayers;
2. Preliminaries;
 - i. Adoption of the Agenda;
 - ii. Communication from the Chairperson;
3. **Confirmation of Committee Minutes; and**
 - i. **Comparative Analysis of Culture Bill, 2024**
 - ii. **Legal Brief and Clause-by-Clause Consideration of the Culture Bill, 2024**
4. Any Other Business; and
5. Adjournment.

MIN.NO. DC/SC/2024/103: PRAYER AND PRELIMINARIES

The meeting commenced at 12.45 p.m. with the Prayer followed with welcoming remarks from the Chairperson.

MIN.NO. DC/SC/2024/104: ADOPTION OF THE AGENDA

The Agenda was adopted without amendments, having been proposed and seconded by the Hon. Naomi Jillo Waqo, M.P. and the Hon. Richard Kipkemoi Yegon, M.P. respectively.

MIN.NO. DC/SC/2024/105: CONFIRMATION MINUTES OF THE PREVIOUS OF SITTING

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

MIN.NO. DC/SC/2024/106: MATTERS ARISING

No Matters Arose

MIN.NO. DC/SC/2024/107: COMPARATIVE ANALYSIS OF CULTURE BILL, 2024

The Committee was taken through the Bill comparative analysis by the Committee Researcher as follows:-

1. The object of the bill is 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
2. Article 11(1) of the Constitution dictates that Culture forms the foundation of the nation and as the cumulative civilization of the Kenyan people and the nation
3. Clause 2(b) further provides that for the nation to develop, the role of science and indigenous technologies must be recognized.
4. The Bill provides for the management of culture in Kenya and breaks down the functions of both the National Government and the County Governments.
5. 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.
6. That, if enacted, endangered communities, cultures, cultural expressions and indigenous technologies will be recognized, promoted and promoted by public entities.
7. The Bill also addresses the Fourth Schedule of the Constitution, which outlines and distinguishes the functions between the National Government and County Governments as cultural activities are a devolved function of County Governments.
8. The Bill comes after Parliament recently ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, joining a global fight against illicit trafficking of cultural artefacts.
9. The definition of the word 'culture' according to UNESCO 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.

10. While 'cultural heritage' can be defined as the legacy of physical artifacts (cultural property) and intangible attributes of a group or society inherited from the past. Cultural Heritage is a concept which offers a bridge between the past and the future with the application of particular approaches in the present.
11. The Bill aims to improve coordination and collaboration between government levels, with the Cabinet Secretary responsible for developing national policies, promoting diverse cultures, and monitoring compliance.
12. It also includes penalties for offenses, damages to cultural heritage, loans, registration, wrongful possession, research, and non-compliance.
13. Since the latter part of the 20th century, domestic legislation and policies affecting cultural heritage have been strongly influenced by international and regional legislation.
14. The UNESCO Conventions on Protection of Cultural Property in Armed Conflict, preventing illicit transfer, protecting underwater cultural heritage and recognising intangible cultural heritage have all been influential.
15. The Bill has conceived the Five principles of good governance that is Legitimacy and voice, direction, performance, accountability and fairness.

COMMITTEE OBSERVATIONS

Having considered the Bill comparative analysis, the Committee observed that—

- i. There is need for the Bill to address the peoples identity before and after colonial rule, that is to preserve peoples culture and tribes without promoting tribalism.
- ii. There is need to provide for the self-preservation and long-term development of national pride.
- iii. The Bill should clearly define the functions of the National Government and the County Governments in order to avoid conflict or duplication of roles.
- iv. There is need for a comparative analysis and to ensure that the Bill conforms to the African Union Model Law on the Protection of Cultural Property and Heritage
- v. There is need for incorporation of identity such as naming of monuments to be included int the Bill as well as the aspect of language as a component of cultural heritage.

MIN.NO. DC/SC/2024/108: LEGAL BRIEF ON THE CULTURE BILL, 2024

The Legal Counsel took the Committee through the bill as highlighted below:-

- 1) The Bill seeks 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.
- 2) The Bill contains the following:
 - i. Preliminary, the bill contains the short title and interpretation of terms used in the Bill
 - ii. This Part also sets out the objects of the Act which are 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.
- 3) Part I further defines the Guiding Principles of the Bill, which are–
 - a) the national values and principles set out in Articles 10, 27, 201 and 232 of the Constitution; and
 - b) equal recognition, dignity and respect to all cultures, including cultures of minorities or marginalized peoples.
- 4) The Bill provides that cultural activities, expressions and practices shall not be inconsistent with the Bill of Rights set out in Chapter Four of the Constitution.
- 5) In Part II the bill highlights the management of culture and sets out the roles of the national government and the roles of county governments as follows:
 - i. 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.
 - ii. 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.
- 6) This Part also provides for the establishment of a cultural database by the Cabinet Secretary in consultation with county governments, which may be accessed by the public upon payment of a prescribed fee for the issuance of a copy of the information in the database.
- 7) This Part also provides that 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.
- 8) 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.

- 9) This Part also provides for the export, import and transfer of inventoried cultural property, and gives power to the Cabinet Secretary to approve the same.
- 10) This Part provides that a person who intends to register a cultural property shall make an application to the county government or to the Cabinet Secretary.
- 11) Part III provides for the offences and penalties under the Bill, which include—
 - i. stealing or is wrongful possession of a cultural property protected under this Act or under any other written law;
 - ii. selling a cultural property protected under this Act or under any other written law without a permit or license;
 - iii. transfer, without a permit or license, or trafficking a cultural property protected under this Act or under any other written law;
 - iv. 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;
 - v. committing forgery or fraud with the intent to have an article declared an article of cultural interest;
 - vi. damaging a cultural expression;
 - vii. not reporting imminent danger to a cultural expression;
 - viii. 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;
 - ix. exporting a cultural expression without a permit or a license, or
 - x. removing or attempting to remove without authorization any cultural property.
- 12) The other offences under this Part are—
 - i. non-compliance with conditions of registration;
 - ii. undertaking research without a permit;
 - iii. loaning without a permit;
 - iv. damage or destruction of inventoried cultural property;
 - v. wrongful possession of cultural property;
 - vi. counterfeiting and misrepresentation of cultural property;
 - vii. using images without consent;
 - viii. false or misleading information; and
 - ix. wilfully impeding or obstructing a person
- 13) Part IV provides for general provisions that—
 - i. Fees and levies shall be published in the Gazette by the Cabinet Secretary;
 - ii. A general penalty of a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or both;
 - iii. 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;
 - iv. 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;
 - v. 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;
 - vi. The Cabinet Secretary may make regulations generally for the better carrying out of

the provisions of this Act.

COMMITTEE OBSERVATIONS


Having considered the legal counsel brief, the Committee observed that—

- i. There was need for the Committee to hold a meeting with the Ministry of Gender, Culture, the Arts and Heritage to harmonize the Culture Bill with the Protection of Traditional Knowledge and Cultural Expressions Act, Cap. 218A and the National Museums and Heritage Act, Cap. 216.

MIN.NO. DC/SC/2024/109: ADJOURNMENT/DATE OF THE NEXT SITTING

There being no other business, the meeting was adjourned at 2.30 pm. The date of the next meeting to be communicated by notice.

SIGNED:



THE HON. DANIEL WANYAMA SIATATI, M.P.
(CHAIRPERSON)

DATE: 17/5/2024

Soldiers, police in scuffle at Likoni channel

- ▶ Military vehicle tried to gain entry into ferry using exit lane, sparking fight
- ▶ A private guard who was injured during the scuffle is receiving treatment

BENARD SANGA, MOMBASA

The five soldiers involved in a scuffle with police officers on Saturday at the Likoni crossing channel tried to gain entry into the ferry using the exit, sparking a confrontation.

Multiple interviews revealed that the soldiers tried to force their way in after they failed to convince a private guard to allow them in because they were in a hurry.

Although most dignitaries, military and police vehicles use the exit during peak time, the guard said the soldiers would obstruct vehicles.

"Dignitaries and military vehicles always use the exit to enter the ferry. The guard refused to give way even after one of the soldiers alighted from the vehicle to talk to him," said a witness.

He said the other four soldiers alighted from the van after the guard called police officers to help him and members of the public started charging towards the scene and the soldiers.

"Members of the public who witnessed the incident also started to approach the military vehicle. Some had started to collect stones. It could have turned ugly," he said.

A trader who witnessed the incident added: "I could hear the soldiers complaining that the police and guards were inciting members of the public against them."

A report filed at the Ferry Police Station identified the soldiers as naval officers from Kenya Navy who were on a military tactical Land Cruiser that was crossing from the island to Likoni.

"The Land Cruiser approached from town and blocked the exit lane and naval officers jumped out of the vehicle and started assaulting the security guard who sought assistance from the police who were providing security at the lock-up," states the police report.

It states that the police, who tried to intervene, were also assaulted by the soldiers. The private security



Five KDF soldiers were involved in a scuffle with police as the army men tried to access the Likoni crossing channel using the exit. [File: Standard]

guard assaulted was Wilson Obege of Istmax Guard.

Efforts to reach Mr Obege proved futile as his phone was switched off. A source at the Likoni Police Station said he had gone to a hospital to seek treatment and fill P3 forms.

"He sustained injuries as a result of the attack. Members of the public

wanted to attack the military personnel but were contained by police officers," states the report.

In the video clip that has since gone viral, a soldier is seen slapping a security guard before he runs to a police officer who was approaching a charged crowd, chanting against the soldiers.

The witness said the other four soldiers scared away members of the public who were charging towards their colleague.

In a brief statement, KDF said the military police and other investigating agencies were handling the matter, adding that the incident was "highly regrettable".

"As KDF personnel, we are beholden to the core value of professionalism," stated the statement from KDF.

KDF has had a tighter security routine at the Likoni crossing channel since 2013, when cases of terrorism increased at the Coast.

In 2019, during Heroes Day at Mama Ngina Drive, the naval forces had a similar confrontation with the police and the residents.

The Saturday incident at the Likoni channel was the second one after police in Kilifi also reported that they had arrested a soldier for assaulting a police officer from Kambe Ribe Police Station.

A report from Kambe Police Station indicates that the soldier from 6 Brigade Garissa obstructed the police from arresting his cousin wanted for an assault case. newsdesk@standardmedia.co.ke



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - THIRD SESSION (2024)
THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118(1)(b) OF THE CONSTITUTION AND

- IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:
1. THE CULTURE BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2024);
 2. THE COFFEE BILL (SENATE BILL NO. 10 OF 2023); AND
 3. THE PREVENTION OF LIVESTOCK AND PRODUCE THEFT BILL (SENATE BILL NO. 12 OF 2023).

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1)(b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS the Culture Bill (National Assembly Bill No. 12 of 2024), the Coffee Bill (Senate Bill No. 10 of 2023), and the Prevention of Livestock and Produce Theft Bill (Senate Bill No. 12 of 2023) were read a First Time in the House and referred to the relevant Departmental Committees for consideration and reporting back to the House;

IT IS NOTIFIED that:

1. The Culture Bill (National Assembly Bill No. 12 of 2024) is a Bill sponsored by the Leader of the Majority Party that seeks to—
 - (a) give effect to Article 11 of the Constitution on the promotion and protection of culture and cultural heritage of communities in Kenya;
 - (b) promote 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.
2. The Coffee Bill (Senate Bill No. 10 of 2023) is a Bill sponsored by Sen. Kamau Muranga, MP and co-sponsored in the National Assembly by the Leader of the Majority Party. The Bill seeks to provide for the development and regulation of the Coffee industry in Kenya. It proposes to reorganize the coffee industry by transitioning the regulatory and commercial roles currently being undertaken by the Agriculture and Food Authority to the Coffee Board of Kenya. The Bill further seeks to transition the research of coffee currently being undertaken by the Coffee Research Institute under the Kenya Agricultural and Livestock Research Organization to the Coffee Research Institute.
3. The Prevention of Livestock and Produce Theft Bill (Senate Bill No. 12 of 2023) is a Bill sponsored by Sen. Samson Cherarkey, MP and co-sponsored in the National Assembly by the Hon. Abdul Rahim Dawood, MP. The Bill provides for a legal framework for the identification of livestock; the movement of livestock; the prevention of livestock theft; the regulation of trade in livestock; and the return of legally acquired livestock. The Bill, additionally—
 - (a) outlines a framework for the branding of livestock and the requirement to obtain a removal permit when livestock is to be moved from one premises to another to facilitate the tracing and recovery of livestock;
 - (b) creates various offences, including illegal possession of livestock or produce, the killing of livestock with intent to steal, tampering with identification brands, unlawful conveyance of livestock or produce, theft of livestock or produce, and use of unregistered brands;
 - (c) obligates the National and county governments to put in place measures to protect livestock-keeping communities from livestock theft and enhance the socio-economic welfare of the communities through education and the promotion of alternative means of livelihood;
 - (d) repeals section 278 of the Penal Code which currently provides for the offence of stealing stock; and
 - (e) repeals and replaces the Stock and Produce Theft Act (Cap. 355) and the Branding of Stock Act (Cap. 357).

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees as listed below:

Bill No.	Bill Name	Committee
1	The Culture Bill (National Assembly Bill No. 12 of 2024)	Social and Culture
2	The Coffee Bill (Senate Bill No. 10 of 2023)	Agriculture and Livestock
3	The Prevention of Livestock and Produce Theft Bill (Senate Bill No. 12 of 2023)	Agriculture and Livestock

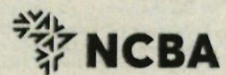
Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/ Issues: business@pa.ke

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to cnat@parliament.go.ke to be received on or before **Wednesday, 8th May 2024 at 5.00 p.m.**

S. NKOROGI, CBS
CLERK OF THE NATIONAL ASSEMBLY
23rd April 2024

"For the Welfare of Society and the just Government of the People"

PUBLIC NOTICE



CHANGE OF GROUP COMPANY SECRETARY

The Board of NCBA Group PLC is pleased to announce the appointment of Ms. Kathryn Mwandu as Group Company Secretary in accordance with the provisions of the Companies Act and following receipt of regulatory approval from the Capital Markets Authority and pending approval from the Central Bank of Kenya. In this capacity, Kathryn will serve as the company secretary for NCBA Group PLC and all Kenyan subsidiaries.



Kathryn is a governance expert and legal practitioner with over 19 years' experience having previously worked with Bowmans - Stamford Corporate Services LLP and with Deloitte in the East African countries of Kenya, Uganda and Tanzania, guiding local and multinational companies and their boards in discharging their statutory and corporate governance mandate. Prior to joining NCBA, she served as Company Secretary for four leading blue-chip companies listed on the Nairobi Securities Exchange.

Kathryn is a practicing Advocate of the High Court of Kenya, a practicing Certified Public Secretary, a serving Council Member of the Institute of Certified Secretaries - Kenya, a member of the Women on Boards Network and an Independent Director on the Board of the Anti-Doping Agency of Kenya.

She holds a Post Graduate Certificate in International Business Law from the University of London, Bachelor of Laws (LLB - Hons) from the University of Nairobi, and a Diploma in Law from the Kenya School of Law together with other certifications and accreditations.

Her appointment follows the resignation of the previous holder of the role, Mr. Waweru G. Mathenge, from service to the NCBA Group to pursue private interests. Waweru leaves behind a strong legacy of excellence in corporate governance practices culminating in the NCBA Group being awarded Winner, Champions of Governance (COG) Award during the Institute of Certified Secretaries COG Awards ceremony held on 1st December 2023, during which he was also awarded Winner, Company Secretary of the Year.

The Board takes this opportunity to congratulate Kathryn on her appointment, and sincerely thanks Waweru for his invaluable service and support over the years, wishing him all the best in his future endeavours.

By Order of the Board
John Gachora
Group Managing Director
29th April 2024

DISCLAIMER: This announcement has been issued with the approval of the Capital Markets Authority pursuant to the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002 as amended. As a matter of policy, the Capital Markets Authority assumes no responsibility for the correctness of the statements appearing in this announcement.

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2
National News

Gloom and doom Weatherman warns of more rains which have left a trail of destruction as parents' and teachers'

Kenya Airways diverts flights due to heavy rains, poor visibility

BY HILARY KIMUYU

Kenya Airways (KQ) on Saturday night diverted flights to other airports due to heavy rains and poor visibility at Jomo Kenyatta International Airport (JKIA).

In a statement, the national carrier also warned of potential delays in departures from JKIA due to poor visibility caused by the torrential downpours on Saturday night.

"Due to the heavy rains and poor visibility in Nairobi, we have diverted a number of our flights, which may lead to extended delays for some of our departures out of Nairobi," KQ said.

The airline apologised for the inconvenience caused but emphasised that safety remains the top priority.

"We apologise for the inconvenience caused to our customers. The safety and well-being of our crew and customers is our num-

ber one priority," it added.

The flight disruption came at the same time when the Kenya Airports Authority (KAA) announced that all vehicles must use the main gate of JKIA to enter and exit the airport indefinitely.

In a statement yesterday, KAA said that persistent heavy rains in Nairobi have led to flooding at JKIA's Tower Avenue underpass.

"Normal flight operations at the airport are still ongoing and access to all terminals remains available. However, due to the situation, traffic is expected to be heavier than normal. We recommend that all vehicles use the main entrance to enter and exit the airport until further notice," the statement read in part.

KAA's Managing Director, Henry Kegoye, said recent leaks in airport roofs were due to refurbishment works, with further infrastructure improvements scheduled through June this year.



Schools in flood-hit areas to remain shut: Machogu

Machogu says Term Two will begin as scheduled, but some schools postpone opening date by a week to monitor the situation



A flooded area in Pipeline, Nairobi County, yesterday after heavy rains hit the capital the previous evening. DENNIS ONSONGO | NATION

BY WINNIE ATIENO

Schools affected by floods that have, so far, killed over 80 people and displaced at least 131,450, will not reopen today for Term Two as per the education calendar.

The Kenya Meteorological Department Director David Gikungu warned that the rains would continue in various parts of the country for the next seven days. He also said there is a risk of landslides on steep slopes.

Education Cabinet Secretary Ezekiel Machogu told the Nation that schools will reopen as earlier scheduled except the ones in areas affected by floods.

"Schools are reopening as earlier scheduled apart from those affected by floods," he said.

Tana River is one of the counties badly affected by floods. Some families have been forced to move out of their homes as a swollen River Tana threatens to break its banks. Other residents in the region have been living in displaced people's camps since last year after their houses were destroyed by El-Nino rains.

Other regions where floods have left families homeless are

Nairobi, parts of the Rift Valley, Nyanza, Western and Central Kenya.

The National Parents Association chairman Silas Obuhatsa lauded the ministry for maintaining the school calendar.

He said schoolchildren were affected during the Covid-19 pandemic when the government suspended learning for more than eight months.

Mr Obuhatsa said that the State cannot make a general decision of postponing the reopening of schools across the country, even though some areas have been experiencing flooding.

Speaking to the Nation, Mr Obuhatsa said in 2020 Kenyan children were deprived of education due to the covid-19 pandemic and this should be avoided by all means necessary.

"We learnt our lessons during the pandemic period when the


school calendar was delayed, and learners and teachers suffered. The syllabus was not completed and performance went down. This time round, the State has given instructions that only schools affected by floods should postpone reopening. We support this move," said Mr Obuhatsa.

However, the association urged the government to ensure that children in flood-hit areas are taken to safer places.

Mr Obuhatsa urged the State to concentrate in areas like Tana River and Kisumu counties where flooding has always a major disaster. He said that some schools have been submerged.

"In such areas, the government cannot reopen schools. The safety of our learners and teachers is crucial," said Mr Obuhatsa.

He urged the government to give a new date for the reopening of schools in the flood-affected



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT- THIRD SESSION (2024)
THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 18(1) (b) OF THE CONSTITUTION AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:
1. THE CULTURE BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2024);
2. THE COFFEE BILL (SENATE BILL NO. 10 OF 2023); AND
3. THE PREVENTION OF LIVESTOCK AND PRODUCE THEFT BILL (SENATE BILL NO. 12 OF 2023).

INVITATION TO SUBMIT MEMORANDA

WHEREAS Article 18(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS the Culture Bill (National Assembly Bill No. 12 of 2024), the Coffee Bill (Senate Bill No. 10 of 2023) and the Prevention of Livestock and Produce Theft Bill (Senate Bill No. 12 of 2023) were read a First Time in the House and referred to the relevant Departmental Committees for consideration and reporting back to the House;

IT IS NOTIFIED that:

- The Culture Bill (National Assembly Bill No. 12 of 2024) is a Bill sponsored by the Leader of the Majority Party that seeks to:
 - promote national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;
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- The Coffee Bill (Senate Bill No. 10 of 2023) is a Bill sponsored by Sen. Kamau Muringo, MP and co-sponsored in the National Assembly, by the Leader of the Majority Party. The Bill seeks to provide for the development and regulation of the coffee industry in Kenya. It proposes to reorganize the coffee industry by transferring the regulatory and commercial roles currently being undertaken by the Agriculture and Food Authority to the Coffee Board of Kenya. The Bill further seeks to transition the research of coffee currently being undertaken by the Coffee Research Institute under the Kenya Agricultural and Livestock Research Organization to the Coffee Research Institute.
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 - outlines a framework for the branding of livestock and the requirement to obtain a removal permit when livestock is to be moved from one premises to another to facilitate the tracing and recovery of livestock;
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 - repeals section 278 of the Penal Code which currently provides for the offence of stealing stock; and
 - repeals and replaces the Stock and Produce Theft Act (Cap. 355) and the Branding of Stock Act (Cap. 357).

NOW THEREFORE, in compliance with Article 18(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees as listed below:-

NO.	BILL	COMMITTEE
1.	The Culture Bill (National Assembly Bill No. 12 of 2024)	Sports and Culture
2.	The Coffee Bill (Senate Bill No. 10 of 2023)	Agriculture and Livestock
3.	The Prevention of Livestock and Produce Theft Bill (Senate Bill No. 12 of 2023)	Agriculture and Livestock

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to csa@parliament.go.ke to be received on or before Wednesday, 07th May 2024 at 5.00 p.m.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
29th April 2024

"For the Welfare of Society and the just Government of the People"



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

Ref. NA/DDC/SC/2024/ (044)

24th July, 2024

Hon. Shadrack Mose
Solicitor General
Office of the Attorney-General and Department of Justice,
Sheria House, Harambee Avenue
NAIROBI.

Dear Hon Mose

**REF: CONSIDERATION OF THE CULTURE BILL, 2024 (NATIONAL ASSEMBLY
BILL NO. 12 OF 2024) BY THE DEPARTMENTAL COMMITTEE ON
SPORTS AND CULTURE-**

The Departmental Committee on Sports and Culture is established under National Assembly Standing Order 216, part (5) (c) of which mandates it to *'study and review all legislation referred to it'*.

Your letter Ref: AG/LDD/206/1/8 dated 12th June, 2024 on the above matter refers. You will recall that in the letter, you requested the rescheduling of the meeting with the Committee planned for 15th June, 2024 to a later date.

In this regard, the Committee has scheduled the meeting for **Thursday, August 1st, 2024, at 10:00 a.m. in Committee Room 21 on the 5th Floor, Bunge Tower, Parliament Buildings.**

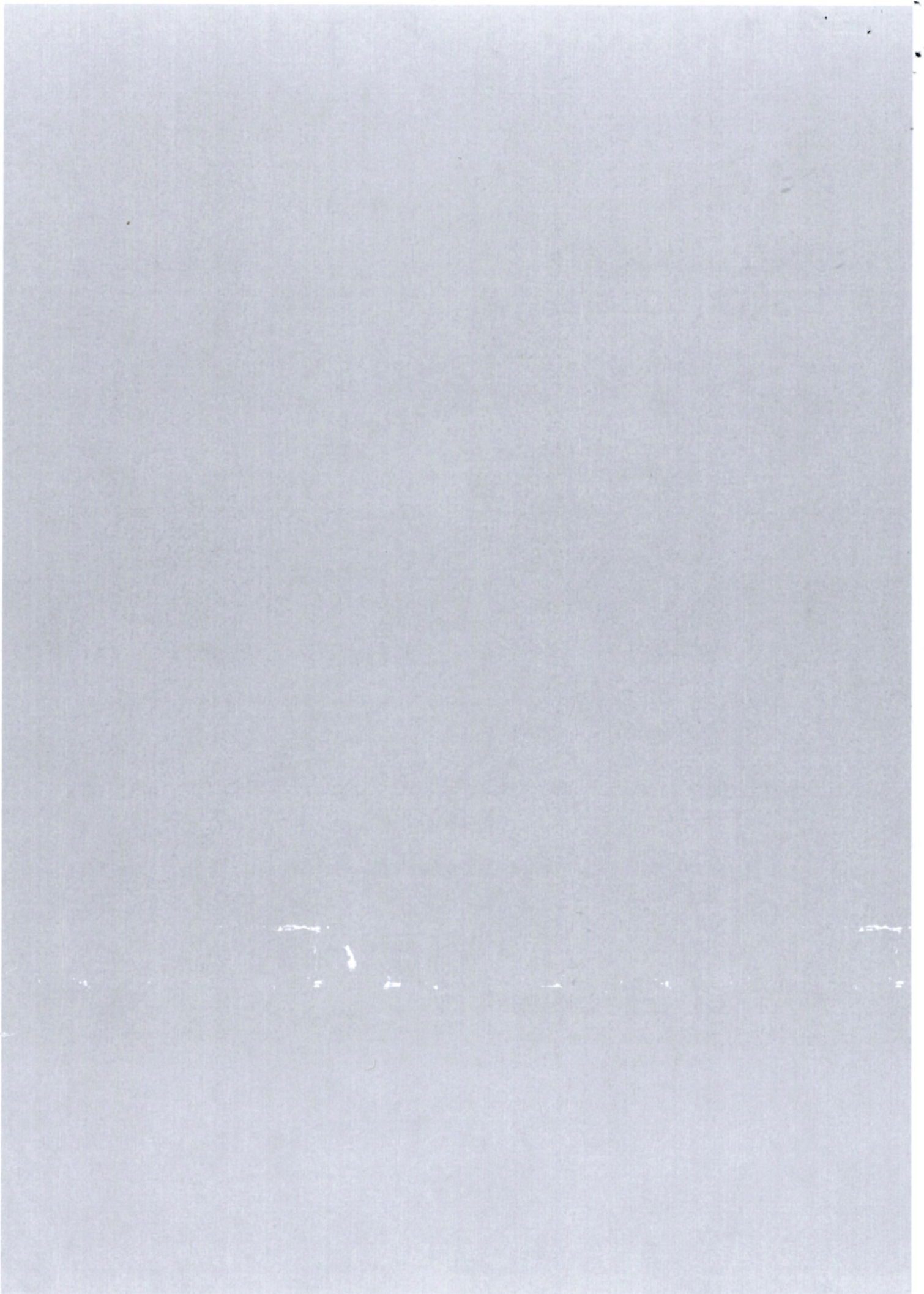
The liaison officers on this subject are **Mr. Adan Gindicha** who may be contacted on Tel No. 0720450112 or email address: adan.gindicha@parliament.go.ke and **Ms. Mary Kinyunye**, Tel No. 0723179346 or email: mary.kinyunye@parliament.go.ke.

Yours

JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: -

Ms. Ummi Mohamed Bashir, CBS
Principal Secretary,
State Department for Culture, the Arts and Heritage
Ministry of Gender, Culture, the Arts and Heritage
NAIROBI.





THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote
Ref. NA/DDC/SC/2024/ (084)

18th November, 2024

Dr. James G. Njogu, HSC
Ag. Secretary General/Chief Executive Officer
UNESCO, Kenya National Commission
P.O. Box 72107-00200
16th Floor, National Bank
Building Harambee
NAIROBI

Dear *Dr. Njogu*

**REF: STAKEHOLDER ENGAGEMENT ON THE CULTURE BILL, 2024
(NATIONAL ASSEMBLY BILL NO. 12 OF 2024) BY THE
DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE - 23RD AND
24TH NOVEMBER, 2024**

The Departmental Committee on Sports and Culture is established under National Assembly Standing Order 216, part (5) (c) of which mandates it to *'study and review all legislation referred to it'*.

As you are aware, the Culture Bill, (National Assembly Bill No.12) 2024, is before the Committee for consideration and reporting to the House in accordance with National Assembly Standing Order 127. In this regard, the Committee acknowledges with appreciation the receipt of your submissions on the Bill.

The Committee is in the process of preparing its report to the House in order to facilitate further processing of the same. In order to enrich its report and enable Members ventilate on your submissions and seek clarifications where necessary, the Committee has convened a two-day retreat from **Friday, 22nd to Saturday, 23rd November, 2024** at a venue to be communicated within Mombasa County.

The purpose of this letter is to invite you to the retreat. Whereas the Committee will cater for the costs of conference facilities, it is expected you will cater for your transport and subsistence costs for the retreat.

We request that you avail twenty (20) hard copies of your submissions during the meeting and send soft copies to the **Office of the Clerk of the National Assembly, Parliament Buildings** via email address: cna@parliament.go.ke on or before **Wednesday, 20th November 2024, at 5.00 pm.**

The Bill can be accessed on the Parliamentary Website via www.parliament.go.ke/the-national-assembly/house-business/bills.

The liaison officers on this subject are **Mr. Adan Gindicha** who may be contacted on **Tel No. 0720450112** or **email address: adan.gindicha@parliament.go.ke** and **Ms. Mary Kinyunye**, **Tel No. 0723179346** or email: mary.kinyunye@parliament.go.ke.

Yours



JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: - **Dr. Alfred N. Mutua, EGH**
Cabinet Secretary
Ministry of Tourism and Wildlife
Tourism Fund Building
NAIROBI



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote
Ref. NA/DDC/SC/2024/ (082)

18th November, 2024

Mr. John Lekakeny Ololtuaa, CBS
Principal Secretary
State Department for Tourism
Tourism Fund Building, 10th Floor
NAIROBI

Mr. Stephen Kinyanjui
Chief Executive Officer
Tourism Promotion Fund
Tourism Fund Buildings, 1st Floor
NAIROBI

Mr. David Mwangi
Ag. Chief Executive Officer
Tourism Fund
Tourism Fund Buildings, 5th Floor
NAIROBI

Dear

**REF: STAKEHOLDER ENGAGEMENT ON THE CULTURE BILL, 2024
(NATIONAL ASSEMBLY BILL NO. 12 OF 2024) BY THE
DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE – 23RD
24TH NOVEMBER, 2024**

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The Committee is in the process of preparing its report to the House in order to facilitate further processing of the same. In order to enrich its report and enable Members ventilate on your submissions and seek clarifications where necessary, the Committee has convened a two-

day retreat from **Friday, 22nd to Saturday, 23rd November, 2024** at venue to be communicated within **Mombasa County**.

This is therefore to invite you to the meeting together with Chief Executive officers of the following Funds under the State Department:

- i. Tourism Promotion Fund; and
- ii. Tourism Fund

Whereas the Committee will cater for the costs of conference facilities, it is expected that all invited participants will cater for their transport and subsistence costs for the retreat.

The request that you avail twenty (20) hard copies of your submissions during the meeting and send soft copies to the **Office of the Clerk of the National Assembly, Parliament Buildings** via email address: cna@parliament.go.ke on or before **Wednesday, 20th November 2024**, at 5.00 pm.

The Bill can be accessed on the Parliamentary Website via www.parliament.go.ke/the-national-assembly/house-business/bills.

The liaison officers on this subject are **Mr. Adan Gindicha** who may be contacted on **Tel No. 0720450112** or **email address: adan.gindicha@parliament.go.ke** and **Ms. Mary Kinyunye**, **Tel No. 0723179346** or email: mary.kinyunye@parliament.go.ke.

Yours

JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: - **Dr. Alfred N. Mutua, EGH**
Cabinet Secretary
Ministry of Tourism and Wildlife
Tourism Fund Building
NAIROBI





THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote
Ref. NA/DDC/SC/2024/ (081)

18th November, 2024

Ms. Ummi Mohamed Bashir, CBS
Principal Secretary,
State Department for Culture, the Arts and Heritage
Ministry of Gender, Culture, the Arts and Heritage
NAIROBI

Dear *Ms Bashir*

**REF: STAKEHOLDER ENGAGEMENT ON THE CULTURE BILL, 2024
(NATIONAL ASSEMBLY BILL NO. 12 OF 2024) BY THE
DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE – 23RD
AND 24TH NOVEMBER, 2024**

The Departmental Committee on Sports and Culture is established under National Assembly Standing Order 216, part (5) (c) of which mandates it to *'study and review all legislation referred to it'*.

The Culture Bill, (National Assembly Bill No.12) 2024 is before the Committee for consideration and reporting to the House in accordance with National Assembly Standing Order 127. In this regard, the Committee acknowledges with appreciation the receipt of your submissions on the Bill.

The Committee is in the process of preparing its report to the House in order to facilitate further processing of the same. In order to enrich its report and enable Members ventilate on your submissions and seek clarifications where necessary, the Committee has convened a two-day retreat from **Friday 22nd to Saturday 23rd November, 2024** at a venue to be communicated in **Mombasa County**.

This is therefore to invite you to the meeting together with Chief Executive officers of the following agencies under the State Department:

- i. National Museum of Kenya;
- ii. Bomas of Kenya;
- iii. Kenya Cultural Centre, and
- iv. Heroes Council

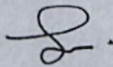
Whereas the Committee will cater for the costs of conference facilities, it is expected that all invited participants will cater for their transport and subsistence costs for the retreat.

We request that you avail twenty (20) hard copies of your submissions during the meeting and send soft copies to the **Office of the Clerk of the National Assembly, Parliament Buildings** via email address: cna@parliament.go.ke on or before **Wednesday, 20th November 2024**, at 5.00 pm.

The Bill can be accessed on the Parliamentary Website via www.parliament.go.ke/the-national-assembly/house-business/bills.

The liaison officers on this subject are **Mr. Adan Gindicha** who may be contacted on **Tel No. 0720450112** or **email address: adan.gindicha@parliament.go.ke** and **Ms. Mary Kinyunye**, **Tel No. 0723179346** or email: mary.kinyunye@parliament.go.ke.

Yours



JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

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Main Parliament Buildings

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www.parliament.go.ke/the-national-assembly

When replying, please quote

REF: NA/DDC/S&C/2024/063

3rd September, 2024

Dr. James G. Njogu, HSC
Ag. Secretary General/Chief Executive Officer
UNESCO, Kenya National Commission
P.O Box 72107-00200
16th Floor, National Bank
Building Harambee
NAIROBI.

Dear

Dr. Njogu

RE: MEETING WITH THE DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE TO CONSIDER THE CULTURE BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2024)

The Departmental Committee on Sports and Culture is established pursuant to National Standing Order 216 of the National Assembly Standing Orders, and is mandated *inter alia*; 'to study and review all legislation referred to it'.

The Culture Bill (National Assembly Bills No. 12 of 2024) is before the Committee for study, review and reporting to the House. The Bill which seeks to give effect to Article 11 (3) (a) of the Constitution was Read a first time in the House on Wednesday, 18th April 2024. Pursuant to Standing Order 127 (1), the Bill was committed to the Departmental Committee on Sports and Culture for consideration and tabling of its report to the House.

Article 118(1) of the Constitution of Kenya and Standing Order 127(3) require Parliamentary Committees considering Bills to facilitate public participation and involvement.

In compliance with the provisions of Article 118 (1) (b) of the Constitution and Standing Order 127(3), the Committee invites you for a meeting to discuss the said Bill. The meeting will be held on **Thursday, 19th September, 2024 at 9.30 a.m. in Committee Room 23 on 5th Floor, Bunge Tower, Parliament Buildings.**

We request that you avail twenty (20) hard copies of your submissions to the meeting and send soft copies to the **Office of the Clerk of the National Assembly, Parliament Buildings** via email address: cna@parliament.go.ke on or before **Tuesday, 17th September, 2024 by 5.00 pm.**

The Bill can be accessed on the Parliamentary Website via www.parliament.go.ke/the-national-assembly/house-business/bills.

Our contact persons on this subject are Mr. Adan Gindicha, Tel No. 0720450112 or email: adan.gindicha@parliament.go.ke and Ms. Mary Kinyunye, Tel No. 0723179346 or email: mary.kinyunye@parliament.go.ke

Yours



JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

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Email: cna@parliament.go.ke

www.parliament.go.ke/the-national-assembly

When replying, please quote

Ref. NA/DDC/SC/2024/ (044)

24th July, 2024

Hon. Shadrack Mose

Solicitor General

Office of the Attorney-General and Department of Justice,

Sheria House, Harambee Avenue

NAIROBI.

Dear Hon Mose

REF: CONSIDERATION OF THE CULTURE BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 12 OF 2024) BY THE DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE-

The Departmental Committee on Sports and Culture is established under National Assembly Standing Order 216, part (5) (c) of which mandates it to *'study and review all legislation referred to it'*.

Your letter Ref: AG/LDD/206/1/8 dated 12th June, 2024 on the above matter refers. You will recall that in the letter, you requested the rescheduling of the meeting with the Committee planned for 15th June, 2024 to a later date.

In this regard, the Committee has scheduled the meeting for **Thursday, August 1st, 2024, at 10:00 a.m. in Committee Room 21 on the 5th Floor, Bunge Tower, Parliament Buildings.**

The liaison officers on this subject are **Mr. Adan Gindicha** who may be contacted on Tel No. 0720450112 or email address: adan.gindicha@parliament.go.ke and **Ms. Mary Kinyunye**, Tel No. 0723179346 or email: mary.kinyunye@parliament.go.ke.

Yours

JEREMIAH NDOMBI, MBS

For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: -

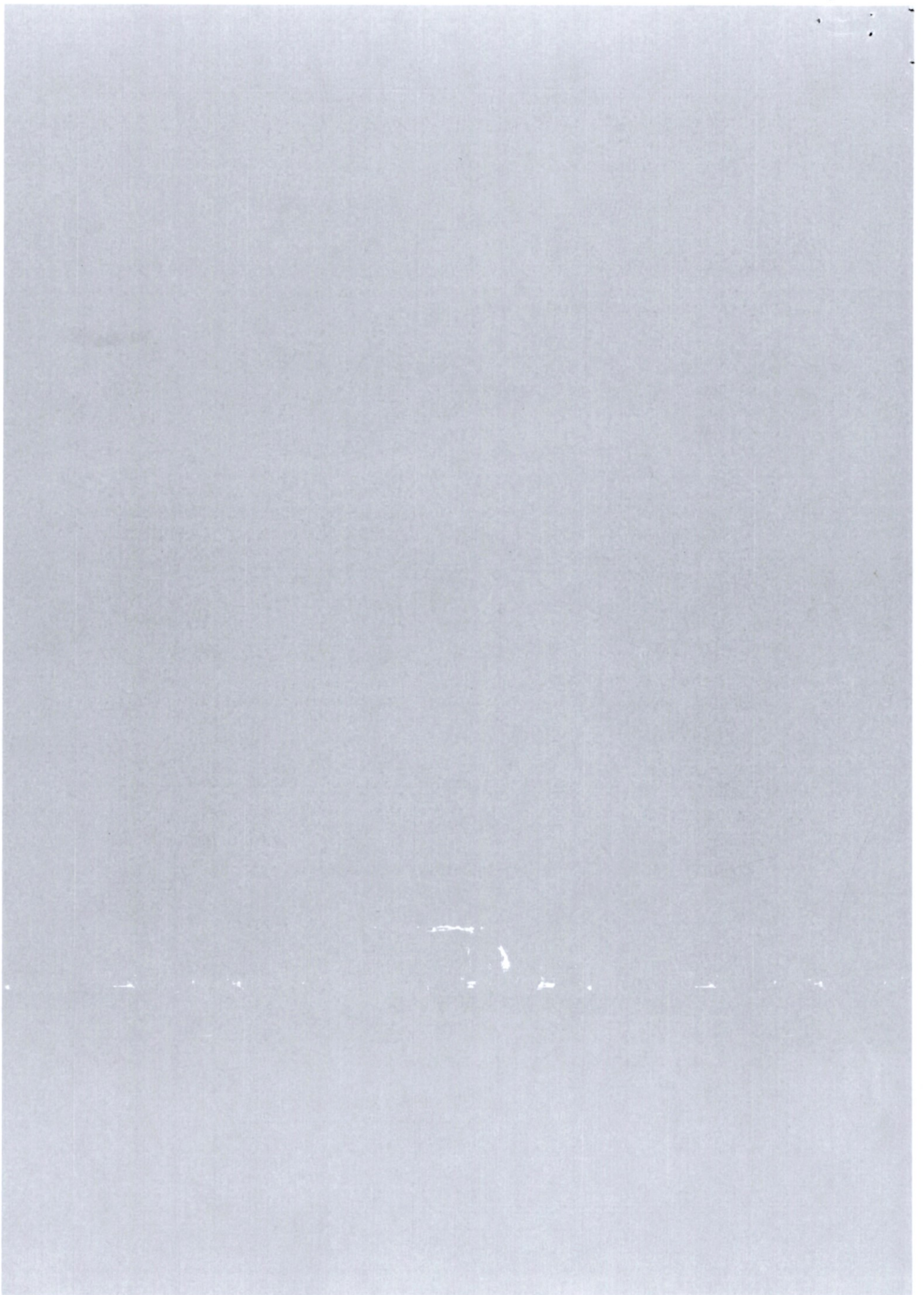
Ms. Umami Mohamed Bashir, CBS

Principal Secretary,

State Department for Culture, the Arts and Heritage

Ministry of Gender, Culture, the Arts and Heritage

NAIROBI.





**Box 66872-00800
NAIROBI**

20th November, 2024

SUBMISSION ON THE CULTURE BILL 2024

The Creative Economy Working Group (CEWG) is grateful to the National Assembly Departmental Committee on Sports and Culture for giving us the opportunity to make submissions on the Culture Bill, 2024 (National Assembly Bill No. 12 of 2024) during the Committee Retreat of Friday 22nd and Saturday 2024 in Mombasa County. CEWG is a network of institutions and individuals working in the culture and creative sector advocating for the development of facilitative policy and legislative frameworks for the advancement of culture, arts and media in Kenya. The network have been engaged in the development of the National Culture Policy and Bill at different stages and provided input.

The following are the institutional members of the Creative Economy Working Group:

1. Twaweza Communications (Convenor)
2. The GoDown Arts Centre
3. Performing Arts Ltd
4. Kenya Scriptwriters Guild
5. The Creatives Garage
6. Book Bunk Trust
7. The Orature Collective
8. Content Development & Intellectual Property Trust
9. Go Sheng Services
10. Docubox – EADFF
11. Content House
12. The Nest Collective
13. Buni Media
14. CINE Arts Afrika
15. PAWA 254
16. TICAH
17. Nairobi Film Festival
18. Bloggers Association of Kenya
19. HEVA Fund LLP
20. African Digital Heritage

General Comments

1. The Working Group commends the National Assembly Departmental Committee on Sports and Culture for its commitment towards a policy and legislative framework that would ensure that the cultures of the peoples of Kenya are harnessed and promoted as carriers of knowledge, experiences and aspirations of communities as well as sites of community and national identity. Cultures and arts have extrinsic and intrinsic value whether expressed in music, performing arts, visual arts, film, fashion or other manifestation of creativity. By building clarity on the place of culture in social and economic development, the people of Kenya will gain more confidence and dignity as they engage the rest of the world because they have a ground on which they stand to express themselves and interact with others.
2. Recognizing that culture is devolved, the Culture Bill, 2024, will provide direction to County governments as they develop county culture policies, legislations, regulations and programmes. Without the National Culture Bill, counties are developing frameworks that are not synergized.
3. The Bill provides as opportunity for social and economic growth in Kenya. Culture - which is expressed through the arts in their various forms - accounts for approximately 3.1% of the Global Domestic Product (GDP) and 6.2% of all employment, especially among the youth. According to the UNCTAD 2022 *Outlook Report*, creative industries make a significant contribution to international trade in goods. World exports of creative goods increased from US\$ 208 billion in 2002 to US\$ 524 billion in 2020. Since 2007, Asia has been the largest exporter of creative goods with the exports of creative goods amounting to US\$ 308 billion in 2020, followed by Europe at US\$ 169 billion, and Northern America at US\$ 37 billion. It is China that drives the dominance of Asia in creative goods by accounting for 32 per cent of global creative goods exports. Kenya can benefit from creativity and innovation by deliberately investing in enabling and conducive culture and arts policies, infrastructure, institutional capacities and processes to harness the cultural and creative industries.
4. The Culture Bill, 2024 ought to empower the Cabinet Minister to put in place mechanisms for restitution and reparation of Kenya's cultural heritage illicitly acquired. This is in recognition of the ongoing national, regional and global debate on the responsibility of former colonial powers over cultural resources acquired from former colonies through theft or illicit trade.
5. The Charter for African Cultural Renaissance adopted in 2006 establishes the resolve to ensure repatriation of illicitly acquired or stolen heritage resources. Chapter (iv) and (v) of the Charter spells out how African countries should protect their African artistic goods and services and how to protect their African cultural heritage respectively. Kenya is however yet to sign this Charter. The Departmental Committee can address the matter of ratifying the Charter for African Cultural Renaissance.

Article	Issue	Proposal	Rationale
PART 1: Preliminary Interpretation	'artist' not defined, although 'art' is defined	Define artist as 'any person who creates or gives creative expression to, or re-creates works of art, who considers his artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist, whether or not he is bound by any relations of employment or association.	This definition is derived from the UNESCO (https://www.unesco.org/en/legal-affairs/recommendation-concerning-status-artist).
PART 11 (5)	Management Culture Restitution and repatriation of cultural heritage not included as part of management of culture. Article 9 (4, c) gives authority to the Cabinet Secretary to prescribe regulations to combat trafficking of cultural property	The Bill should empower the Cabinet Secretary to develop policies and regulations on restitution and repatriation of cultural heritage illicitly held in foreign nations.	Efforts at restitution of Kenya's cultural heritage require a framework for engagement with foreign museums, academic institutions, private collectors etc. Currently, no framework exists. Although Article 9 (4, c) gives authority to the Cabinet Secretary to prescribe regulations to combat trafficking of cultural property, this is inadequate. A restitution and repatriation framework would be needed
	Cultural diplomacy	Include "coordination of cultural diplomacy activities	The Ministry of Foreign Affairs undertakes cultural diplomacy. However, there is need to build synergies with the Ministry in charge of culture to build coherence.
	Linkages with research institutions	Include establishment of linkages with institutions undertaking research on Kenya's cultures and heritage	Research is an important basis for policy formulations on culture

	National Cultural and Creative Hubs	Include 'develop national cultural and creative hubs and strengthen trade in cultural goods and services'	Cultural and creative hubs can be centers of creativity and innovation, linked to trade and industry. . It would be important to ensure the Intellectual Property Rights (IPRs) of creators in the hubs are protected
(6)	Responsibilities of County government		
	(6) (a) No provision for 'initiation' of cultural activities	Include a function on 'initiating; cultural activities	Counties should take initiative to design cultural activities
	Protection of cultural workers is not included	Include 'Protection of cultural workers and support their professional development'	This would ensure fair compensation for offering cultural goods and services
	Cultural tourism is not included	Include 'the development of cultural tourism' as a function of county governments	Cultural tourism is important for income generation, intercultural understanding and national cohesion. Cultural tourism can diversify sources of income in a sustainable manner because it is tied to creativity and human experiences

Sincerely



Kimani Njogu, Ph.D

Chair,

Creative Economy Working Group.



Your ref: NA/DDC/SC/2024(082)

Date: 19th November, 2024

Our ref: TF/4/26(06)

Office of the Clerk of the National Assembly,
P.O Box 41482 – 00100,
Main Parliament Buildings,
Nairobi, Kenya.

Attn: Jerimiah Ndombi, MBS

Dear Sir,

SUBJECT: Tourism Fund's Submission on Culture Bill 2024.

Reference is made to the parliamentary departmental committee on sports and culture's letter dated 18th November 2024 requesting the Fund to make submissions as captioned above.

The Fund submits as follows:

1. Tourism Fund is a body corporate within the Ministry of Tourism and Wildlife established by the Tourism Act Cap. 381 Laws of Kenya which came into operation on 1st September, 2012 vide a special issue Kenya Gazette Supplement No. 93 of 24th August, 2012. The Fund is the legal successor to Catering and Tourism Development Levy Trustees which had been in operation since 1972 under the umbrella of the repealed Hotels and Restaurants Act Cap.494, Laws of Kenya.
2. In accordance to Section 69 of the aforementioned Act, The Fund's mandates includes financing the following and mobilising resources to the benefit of tourism related activities;
 - a. Development of tourism products and services
 - b. Marketing of Kenya as a tourist destination through the Tourism Board;
 - c. Activities of the Protection Service;
 - d. Tourism research, tourism intelligence and the national Tourism information management system;
 - e. Activities of the Tourism Sector Safety, Communication and Crisis Management Centre to be established and managed by the parent Ministry;



- f. Training and capacity development activities of Kenya Utalii College and any other offering training in tourism hospitality;
3. Aligned to Section 69 of the stated Act, the following are part functions of the Fund;
 - a. Collect tourism levy,
 - b. Establish, equip and control such other tourism and hospitality training institutions as it may necessary upon approval,
 - c. Establish a tourism training revolving fund
4. Kenyan culture is a key component in packaging and marketing the country as a unique tourist destination in comparative to both the regional and international competitors. The Fund therefore welcomes the 'Culture Bill 2024' for once enacted will define the management of culture for the country's culture to the benefit of refining tourism product and services offering.
5. These includes aspects like the anticipated establishment of a cultural database, defined access to information and the envisaged roles of Government in the Management of the Culture that shall definitely leverage the tourism sector attractiveness.
6. The Fund therefore supports the processing and enactment of the 'Culture Bill 2024' since it shall amongst others; strengthen the sustainable development of the tourism sector through refined destination offering as a resultant.

Yours Sincerely,

David K. Mwangi, MBS
Ag. Chief Executive Officer

PROPOSED AMENDMENTS TO THE CULTURE BILL, 2024

(BY NATIONAL MUSEUMS OF KENYA (NMK))

- I.** National Museums of Kenya generally supports the Bill. The Bill gives effect to Article 11 of the Constitution and is complimentary to previous Legislations such as The Protection of Traditional Knowledge and Cultural Expressions Act, 2016.
- II.** The functions as allocated under sections 5 and 6 of the Bill are well in accordance with schedule 4 of the Constitution on delineation of functions between the National and County governments
- III.** Several regulations will be required to be put in place to ensure the Bill, once enacted, is implemented. (on compensation, registration etc)

SPECIFIC COMMENTS

IV. On offences:

Section 18 (4): Second last line: add the word “it” in between the words (if appears).

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.

Sec. 20 (2): Fine of Kshs. 200,000/- as maximum is too low. Propose for between Kshs. 500,000 to 1 million as maximum fine.

Sec. 22: 10 years imprisonment proposed as penalty is too high. Propose for between 1 and 2 years.

Sec. 24: Proposal for a life imprisonment for destroying a cultural property is too harsh. 1 to 2 years would be adequate.

Sec. 33(g): Amend by deleting all works from ‘we need to capture.....



Submission

**Stakeholder engagement on the Culture Bill 2024
Presentation to the National Assembly Committee on Sport
and Culture on 23rd and 24th November 2024**

At Traveller's Beach Resort, Mombasa

By

Jimmy Okidiang'I

Ag. Chief Executive Officer

1. Clause 2: Interpretation of cultural property (Meaning-property which on religious or secular grounds is specifically designated as being of importance for archeology, prehistory, history, literature, art or science)

- ▶ **Performing arts**-This should be included under clause 2 as one of Kenya's cultural properties because, performing arts encompass all cultural art forms in which communities use their bodies and voices, in relation to other objects, to convey cultural artistic expressions. The Bill identifies musical instruments as the only cultural property. Performing arts include drama, dance, music, rituals, and recitals. Bomas preserves cultural dances like Isukuti (of the Luhya), Eunoto (Maasai initiation), Mwadzindika (spiritual dance of Giriama, and Mwinjiro (therapeutic dance of Embu and Meru) among many others. This cultural heritage is of cultural and religious importance.

Kenya has a rich heritage of cultural games and sports that the Bill should capture. Examples include bull fighting of Isukha, ajua commonly with the Luo community , and boat racing and restling of the Banyala .

1. Clause 2: Interpretation of cultural property Conti.....

- ▶ Architectural designs of Kenya's cultural homesteads may not be suitably captured under Buildings (clause 2 (d)). Examples of gazetted heritage buildings include Fort Jesus and Lamu old town. This is a different heritage from the architectural designs of Kenya's traditional homesteads like the Maasai Manyatta, the Luo, and the Kikuyu.....
- ▶ Food, drinks, and traditional medicines are Kenya's cultural properties that need safe guarding due to their scientific properties. The culinary habits of each community has made them develop specific ways of preparing food and drinks, while acknowledging accompanying taboos and etiquette. The food and drinks guarantee Kenyan communities nutritional requirements and have medicinal value.

As regards medicine, tangible efforts, through this Bill, should be taken to protect traditional medicines for preventive and curative management of her citizens. Bok has a botanical garden that has a variety of Kenyan medicinal herbs.

1. Clause 2: Interpretation of cultural property Conti.....

► Conclusion

Article 2 has not captured the spirit of Article 11 of the Constitution of Kenya Sub article 2 which calls for recognition and promotion of the tangible and intangible cultural properties. Properties like the articles of furniture and musical instruments should not be treated as stand-alone items. Musical instruments be under performing arts. Further, the cultural properties listed are not exhaustive and representative. They are heavy on archives and museums.

2. Schedule Page 16

- ▶ Bomas of Kenya, a premier institution in the preservation and promotion of Kenya's cultural heritage has not been included as one of the national cultural institutions. Bomas' mandate is completely different from the other cultural institutions and it is the custodian of Kenya's intangible and tangible cultural properties like Kenya's folk music, musical instruments, cultural dances, cultural homesteads, artifacts, and cultural cuisines.

Thank you!



① DDC
8
7/5

**MINISTRY OF GENDER, CULTURE, THE ARTS AND HERITAGE
STATE DEPARTMENT FOR CULTURE, THE ARTS AND HERITAGE
OFFICE OF THE PRINCIPAL SECRETARY**

Tel: +254 - 020-2251164, 2251005/ 2250576/2217508/9
Fax: +254 - 316187

KNLS Building
P.O. Box 49849-00100
Nairobi, Kenya

When replying please Quote:

SDCH 1/17(C) VOL 11 (40)

6th May 2024

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Office of the Clerk
Main Parliament Buildings
P.O Box 41842-00100
NAIROBI

② Mr. Adam Binduka
Pls INA. DM 08/05/24

Dear Sir,

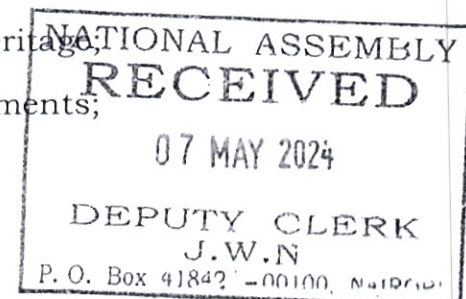
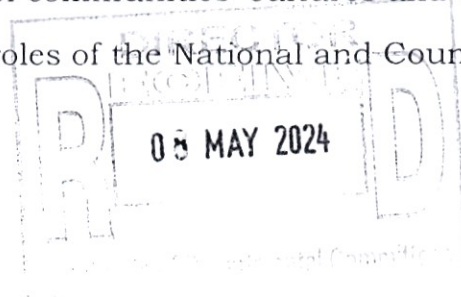
THE CULTURE BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2024)

Reference is made to the above subject matter and the invitation to submit Memoranda on the **Culture Bill (National Assembly Bill No. 12 of 2024)** sponsored by the Leader of the Majority Party.

The State Department for Culture, the Arts and Heritage fully supports the enactment of the Culture Bill (National Assembly Bill No. 12 of 2024) into law. The Bill seeks to recognize and give effect to Article 11(3) (a) of the Constitution of Kenya including promotion and protection of communities' cultures and cultural heritage as well as provide a framework to guide on national cultural development, a policy intervention prescribed by the National Culture and Heritage Policy.

The implementation of the envisaged Culture Act is expected to benefit the Country in the following ways:

- i. Equal recognition, respect and dignity for all cultures including marginalized communities;
- ii. Realization of job opportunities for youth and unemployed;
- iii. Protection of communities' cultures and cultural heritage;
- iv. Delineate roles of the National and County Governments;



v. Monitoring compliance with standards and regulation concerning culture and cultural heritage;

vi. Implementing bilateral and multilateral agreements relating to culture.

The State Department for Culture, the Arts and Heritage has addressed highlights between the Culture Bill, 2024 (National Assembly Bill No. 12 of 2024) and the Protection of Traditional Knowledge and Cultural Expressions Act, 2016 to aide better understanding of both the Bill and the Act as being separate and distinct.

On behalf of the State Department, we assure you of our highest consideration as we look forward to the enactment of the Culture Bill, 2024 (National Assembly Bill No. 12 of 2024) into law.

Yours sincerely,



Ms. Ummi Bashir, CBS
PRINCIPAL SECRETARY

Encls.

Copy to: Hon. Aisha Jumwa Katana, EGH
Cabinet Secretary
Ministry of Gender, Culture, the Arts and Heritage
KNLS Building
NAIROBI

Hon. Daniel S. Wanyama M.P
Chairman
Parliamentary Committee on Sports & Culture
Parliament Buildings
NAIROBI



MINISTRY OF GENDER, CULTURE, THE ARTS AND HERITAGE
STATE DEPARTMENT FOR CULTURE, THE ARTS AND HERITAGE

**SIMILARITIES BETWEEN THE CULTURE BILL, 2024 AND THE PROTECTION
OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS ACT**

1.0 Background

The **Culture Bill, 2024 (National Assembly Bill No. 12 of 2024)**, is anchored upon Article 11 of the Constitution of Kenya 2010 and also in the National Culture and Heritage Policy of 2021. The Bill seeks to provide a legal framework for the promotion of all forms of national and cultural expressions and a means of ensuring that communities receive compensation or royalties from the use of their cultural expression and heritage.

Kenya has ratified various international cultural instruments, pursuant to Article 2 (6) of the Constitution. The Bill aims to give effect to these international instruments including, the International covenant on Economic, Social and Cultural Rights, 1966, the 1972 UNESCO Convention on Protection of the world Cultural and Natural Heritage, the 2003 UNESCO Convention on Safeguarding of Intangible Cultural Heritage and the 2005 UNESCO Convention on Protection and Promotion of Diversity of Cultural Expressions.

Culture is central to sustainable social and Economic development of a country. The United Nations Educational, Scientific and Cultural Organization (UNESCO) acknowledge that no Society can flourish without culture nor can any development be sustainable without culture. The enactment of the Bill will therefore provide the people of Kenya with an opportunity to exploit their rich cultural heritage and achieve economic and social development as envisaged by the international conventions and also the Constitution of Kenya.

The Bill provides a framework which will guide the national and county governments in promotion of national values, heritage and knowledge. It also establishes structures and processes securing culture and the philosophy of the people.

Additionally, the drafting of the bill involved consultations between the Ministry through the State Department for Culture and Heritage and the Council of Governors.

2.0 Similarities between the Culture Bill, 2024 & the Protection of Traditional Knowledge and Cultural Expressions Act

The Protection of Traditional Knowledge and Cultural Expressions Act, gives effect to Article 11, 40 & 69(1)(c) of the Constitution.

The Culture Bill, 2024 gives effect to **Article 11(3) (a) of the Constitution (ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage).**

a. Definitions

The definitions of "Cabinet Secretary", "community", "cultural heritage", "intangible cultural heritage" and "prior informed consent" are similar in the Culture Bill, 2024 and the TK & C Act.

"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;

"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;

"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;

“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;

Response

- i. The Definition of “Cabinet Secretary” is adopted noting that it is preempted that the Cabinet Secretary in charge of both the Bill & Act will be the CS Culture.
- ii. The Definitions of “community”, “cultural heritage”, “intangible cultural heritage” and “prior informed consent” in both the Bill & Act are adopted from the definitions contained in the UNESCO Conventions (the 1972 UNESCO Convention on Protection of the world Cultural and Natural Heritage, the 2003 UNESCO Convention on Safeguarding of Intangible Cultural Heritage and the 2005 UNESCO Convention on Protection and Promotion of Diversity of Cultural Expressions).

The Conventions are the standard instruments used in the definition of culture and, therefore, had to apply for both the Culture Bill and the Protection of Traditional Knowledge and Cultural Expressions Act.

b. Guiding Principles

The guiding principles of the Culture Bill, 2024 and the TK & C Act are comparable. Section 3 of the Act and Clause 4 of the Bill.

Response

The guiding principles are anchored on the National values and principles of governance. (*Article 10 of the Constitution*)

The guiding principles are equally derived from the Constitution. We could not, therefore, change these, and therefore concur that these are similar. This additionally responds to Articles 27, 201 and 232.

c. Establishment of a database

Clause 7 of the Culture Bill, 2024 Provides that 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.

Section 5 (a) of the TK & C Act Provides for the establishment and maintenance of a Traditional Knowledge Repository at the Kenya Copyright Board.

Section 8 of the Act Provides that every county government shall, establish and maintain a register which shall contain information on traditional knowledge and cultural expressions.

(Clause 7 of the Bill seems to replicate section 8(3) of the TK & C Act).

Response

The database envisioned by Section 5 (a) of the TK & C Act is specific to traditional knowledge and cultural expressions (from a traditional domain) for the purpose of ascertaining ownership of the knowledge for the purpose of benefits in accordance to Article 11 (a) where communities are paid compensation for their cultures and cultural heritage.

Conversely, Article 7 of the bill is the establishment of a database for all cultural practitioners and aspects of national heritage.

d. Protection of Cultural Heritage

Clause 18 of the Bill and section 18 of the TK & C Act deal with the protection of cultural heritage (same intention, different styles).

Response

Article 18 of the Act deals mainly with the protection of traditional knowledge against any misappropriation, misuse, abuse or unlawful access and exploitation.

Article 18 of the Bill is more on protection of tangible cultural property such as artefacts and archaeological sites. The specificities are therefore different.

e. Offences

Clause 20 of the Bill and section 38 of the TK & C Act provide for offences relating to cultural heritage. Both the Act and the Bill provide for different offences in certain instances.

Response

Article 20 of the Bill broadly covers aspects of tangible cultural property while the offences in section 38 of the TK & C Act is more on traditional knowledge and cultural expressions. The Department of Culture, proposes expunging aspects of cultural expressions in the Bill in order that it only deals with tangible cultural property.

3.0 Conflicts in the Bill and the TK & C Act

i. Definition of Cultural expression

The definitions of 'cultural expression' in the Bill and the TK & C Act are different.

The Bill defines cultural expression as;

"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;

The TK & C Act defines cultural expression as;

"cultural expressions" means any forms, whether tangible or intangible, in which traditional culture and knowledge are expressed, appear or are manifested, and comprise of the following forms of expressions or combinations thereof—

- (a) verbal expressions including stories, epics, legends, poetry, riddles; other narratives; words, signs, names, and symbols;
- (b) musical expressions including songs and instrumental music;
- (c) expressions by movement, including dances, plays, rituals or other performances, whether or not reduced to a material form;
- (d) tangible expressions, including productions of art, drawings, etchings, lithographs, engravings, prints, photographs, designs, paintings, including body-painting, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewelry, basketry, pictorial woven tissues, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments, maps, plans, diagrams architectural buildings, architectural models; and architectural forms;

The definition in the TK & C Act is more comprehensive.

Response

The TK & C Act provides an elaborate definition of cultural expressions in comparison to that in the Bill. The Department of Culture proposes adopting the definition in the TK & C Act.

ii. Definition of prior informed consent

The Bill defines 'prior informed consent' differently from the TK & C Act. The Bill provides for consent from the concerned communities while the Act provides for consent from the owners

The Bill provides as thus;

"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;

The TK & C act provides;

"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 owners, to the use of their traditional knowledge or cultural expressions;

Response

While the two may broadly appear to be similar, the prior informed consent with respect to the TK & C Act is more specific to traditional knowledge and traditional cultural expressions. What is in the Bill is broader and captures all the other aspects of culture. The Department of Culture has no objection if this aspect is dropped from the Bill.

iii. Power of the Cabinet Secretary

Clause 5 of the Bill gives powers to the CS to prescribe regulations and standards and to implement bilateral and multilateral agreements on culture. The TK & C Act does not grant such powers to the CS.

Response

Section 43 of the TK & C Act grants the Cabinet Secretary the power to make regulations for the better carrying into effect of the Act. Indeed three (3) sets of draft regulations have already been developed.

This is a standard provision for many legislations.

iv. Seizure and disposition of tangible cultural heritage

Clause 19 of the Bill provides for conditions in which there can be seizure and disposition of tangible cultural heritage which includes recovered without a valid permit. Section 17 of the TK & C Act provides for protection as long as the criteria under section 14 is fulfilled which includes where the identity of the individual is unknown.

Response

Section 19 of the Bill is with respect to archaeological, artistic or paleontological in nature that is considered as national heritage in accordance with the National Museums and Heritage Act which requires one to have a permit to excavate, hold or export. This may not necessarily relate to any known community.

Conversely, Section 17 of the TK & C Act is on the protection of cultural expressions pertaining to a community's identity whose exploitation will demand that the particular owners are compensated.

v. Offences

Clause 20 of the Bill and Section 37 of the TK & C Act provide for different offences in the same sector.

Response

This has been responded to above.

vi. Register

Section 8 of the TK & C Act already establishes a register of cultural expressions and traditional knowledge. Clause 13 of the Bill provides for application for registration of cultural property.

Response

The answer to this is the same as that on the database above.

4.0 Conclusion

- i. Pursuant to Paragraph 4 of Part 2 of the Fourth Schedule to the constitution, the function of cultural activities is for the county governments. However, the Bill provides that the National Government has a wider role in the regulation of these activities. This may be interpreted as unconstitutional.

Response

While culture is a devolved function, there are aspects of culture that should be handled by the national government or in collaboration with the county government issues of national identity, research, national repository of culture and protection of national heritage could remain at the national level. Culture defines national identity, values and principles which should apply uniformly, including in the counties hence the need to leave some of these aspects with the Ministry. Kindly note that all aspects that were injurious to the Council of Governors were expunged after engaging the Council of Governors.

- ii. Second Schedule to the Act; Libraries and Museums are devolved function. (s.5(2))

Response

These two aspects are currently under discussion by the Intergovernmental Technical Relations Committee with the two identified institutions. It our understanding that the museums and libraries to be devolved are already agreed upon.

- iii. Has the Ministry (State Department) considered introducing amendments to the existing Act rather than introducing a new Bill?

The Culture Bill was approved by the previous Cabinet as well as the current Cabinet. Since independence, Kenya has never enacted a comprehensive legislative framework to support the integration of culture in national development agenda. Therefore, the country has not fully harnessed the potential of culture, cultural and creative industries, cultural resources, cultural diversity, traditional knowledge and associated intellectual property rights to enhance socio-cultural, political and economic development.

The Bill seeks to recognize and give effect to Article 11(3) (a) of the Constitution of Kenya including promotion and protection of communities' cultures and cultural heritage as well as provide a framework to guide on national cultural development, a policy intervention prescribed by the National Culture and Heritage Policy.

The implementation of the envisaged Culture Act is expected to benefit the country in the following ways:

- Equal recognition, respect and dignity for all cultures including marginalized communities;
- Realization of job opportunities for youth and unemployed;
- Protection of communities' cultures and cultural heritage;
- Delineate roles of the National and County Governments;
- Monitoring compliance with standards and regulation concerning culture and cultural heritage;
- Implementing bilateral and multilateral agreements relating to culture.

5.0 New Ideas introduced by the Culture Bill, 2024 that are not in the TK & C Act

1. Clause 9 of the Bill provides for compensation for use of culture and cultural heritage which is not provided for in the Act.
2. Clause 10 of the Bill introduces exceptions and limitations to compensation for use of culture and cultural heritage.
3. Clause 11 of the Bill introduces export, import and transfer of inventoried cultural property.
4. Clause 12 of the Bill introduces application to conduct research.
5. Clause 13 under the Bill introduces payment of registration fees for cultural property.
6. Clause 14 and 15 of the Bill introduces refusal to register and cancellation of registration under some circumstances.
7. The Bill defines community of interest, cultural property, culture, cultural industries, cultural practitioner, national expressions, protection and safeguarding. These phrases are not defined under the TK & C Act.

NATIONAL ASSEMBLY
RECEIVED
09 MAY 2024
DEPUTY CLERK
J.W.N
P.O. Box 41842 -00100, NAIROBI



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**MINISTRY OF GENDER, CULTURE, THE ARTS AND HERITAGE
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SDCH 1/17(C) VOL 11 (40)

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
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P.O Box 41842-00100
NAIROBI

6th May 2024

NATIONAL ASSEMBLY
RECEIVED
★ 09 MAY 2024 ★
CLERK'S OFFICE
P O Box 41842, NAIROBI

Dear Sir,

THE CULTURE BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2024)

Reference is made to the above subject matter and the invitation to submit Memoranda on the **Culture Bill (National Assembly Bill No. 12 of 2024)** sponsored by the Leader of the Majority Party.

The State Department for Culture, the Arts and Heritage fully supports the enactment of the Culture Bill (National Assembly Bill No. 12 of 2024) into law. The Bill seeks to recognize and give effect to Article 11(3) (a) of the Constitution of Kenya including promotion and protection of communities' cultures and cultural heritage as well as provide a framework to guide on national cultural development, a policy intervention prescribed by the National Culture and Heritage Policy.

The implementation of the envisaged Culture Act is expected to benefit the Country in the following ways:

- i. Equal recognition, respect and dignity for all cultures including marginalized communities;
- ii. Realization of job opportunities for youth and unemployed;
- iii. Protection of communities' cultures and cultural heritage;
- iv. Delineate roles of the National and County Governments;

DIRECTOR
MAY 2024


v. Monitoring compliance with standards and regulation concerning culture and cultural heritage;

vi. Implementing bilateral and multilateral agreements relating to culture.

The State Department for Culture, the Arts and Heritage has addressed highlights between the Culture Bill, 2024 (National Assembly Bill No. 12 of 2024) and the Protection of Traditional Knowledge and Cultural Expressions Act, 2016 to aide better understanding of both the Bill and the Act as being separate and distinct.

On behalf of the State Department, we assure you of our highest consideration as we look forward to the enactment of the Culture Bill, 2024 (National Assembly Bill No. 12 of 2024) into law.

Yours sincerely,


Ms. Umme Bashir, CBS
PRINCIPAL SECRETARY

Encls.

Copy to: **Hon. Aisha Jumwa Katana, EGH**
Cabinet Secretary
Ministry of Gender, Culture, the Arts and Heritage
KNLS Building
NAIROBI

Hon. Daniel S. Wanyama M.P
Chairman
Parliamentary Committee on Sports & Culture
Parliament Buildings
NAIROBI



MINISTRY OF GENDER, CULTURE, THE ARTS AND HERITAGE
STATE DEPARTMENT FOR CULTURE, THE ARTS AND HERITAGE

**SIMILARITIES BETWEEN THE CULTURE BILL, 2024 AND THE PROTECTION
OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS ACT**

1.0 Background

The **Culture Bill, 2024 (National Assembly Bill No. 12 of 2024)**, is anchored upon Article 11 of the Constitution of Kenya 2010 and also in the National Culture and Heritage Policy of 2021. The Bill seeks to provide a legal framework for the promotion of all forms of national and cultural expressions and a means of ensuring that communities receive compensation or royalties from the use of their cultural expression and heritage.

Kenya has ratified various international cultural instruments, pursuant to Article 2 (6) of the Constitution. The Bill aims to give effect to these international instruments including, the International covenant on Economic, Social and Cultural Rights, 1966, the 1972 UNESCO Convention on Protection of the world Cultural and Natural Heritage, the 2003 UNESCO Convention on Safeguarding of Intangible Cultural Heritage and the 2005 UNESCO Convention on Protection and Promotion of Diversity of Cultural Expressions.

Culture is central to sustainable social and Economic development of a country. The United Nations Educational, Scientific and Cultural Organization (UNESCO) acknowledge that no Society can flourish without culture nor can any development be sustainable without culture. The enactment of the Bill will therefore provide the people of Kenya with an opportunity to exploit their rich cultural heritage and achieve economic and social development as envisaged by the international conventions and also the Constitution of Kenya.

The Bill provides a framework which will guide the national and county governments in promotion of national values, heritage and knowledge. It also establishes structures and processes securing culture and the philosophy of the people.

Additionally, the drafting of the bill involved consultations between the Ministry through the State Department for Culture and Heritage and the Council of Governors.

2.0 Similarities between the Culture Bill, 2024 & the Protection of Traditional Knowledge and Cultural Expressions Act

The Protection of Traditional Knowledge and Cultural Expressions Act, gives effect to Article 11, 40 & 69(1)(c) of the Constitution.

The Culture Bill, 2024 gives effect to **Article 11(3) (a) of the Constitution (ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage).**

a. Definitions

The definitions of "Cabinet Secretary", "community", "cultural heritage", "intangible cultural heritage" and "prior informed consent" are similar in the Culture Bill, 2024 and the TK & C Act.

"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;

"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;

"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;

“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;

Response

- i. The Definition of “Cabinet Secretary” is adopted noting that it is preempted that the Cabinet Secretary in charge of both the Bill & Act will be the CS Culture.
- ii. The Definitions of “community”, “cultural heritage”, “intangible cultural heritage” and “prior informed consent” in both the Bill & Act are adopted from the definitions contained in the UNESCO Conventions (the 1972 UNESCO Convention on Protection of the world Cultural and Natural Heritage, the 2003 UNESCO Convention on Safeguarding of Intangible Cultural Heritage and the 2005 UNESCO Convention on Protection and Promotion of Diversity of Cultural Expressions).

The Conventions are the standard instruments used in the definition of culture and, therefore, had to apply for both the Culture Bill and the Protection of Traditional Knowledge and Cultural Expressions Act.

b. Guiding Principles

The guiding principles of the Culture Bill, 2024 and the TK & C Act are comparable. Section 3 of the Act and Clause 4 of the Bill.

Response

The guiding principles are anchored on the National values and principles of governance. (*Article 10 of the Constitution*)

The guiding principles are equally derived from the Constitution. We could not, therefore, change these, and therefore concur that these are similar. This additionally responds to Articles 27, 201 and 232.

c. Establishment of a database

Clause 7 of the Culture Bill, 2024 Provides that 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.

Section 5 (a) of the TK & C Act Provides for the establishment and maintenance of a Traditional Knowledge Repository at the Kenya Copyright Board.

Section 8 of the Act Provides that every county government shall, establish and maintain a register which shall contain information on traditional knowledge and cultural expressions.

(Clause 7 of the Bill seems to replicate section 8(3) of the TK & C Act).

Response

The database envisioned by Section 5 (a) of the TK & C Act is specific to traditional knowledge and cultural expressions (from a traditional domain) for the purpose of ascertaining ownership of the knowledge for the purpose of benefits in accordance to Article 11 (a) where communities are paid compensation for their cultures and cultural heritage.

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Clause 18 of the Bill and section 18 of the TK & C Act deal with the protection of cultural heritage (same intention, different styles).

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Article 18 of the Act deals mainly with the protection of traditional knowledge against any misappropriation, misuse, abuse or unlawful access and exploitation.

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Article 20 of the Bill broadly covers aspects of tangible cultural property while the offences in section 38 of the TK & C Act is more on traditional knowledge and cultural expressions. The Department of Culture, proposes expunging aspects of cultural expressions in the Bill in order that it only deals with tangible cultural property.

3.0 Conflicts in the Bill and the TK & C Act

i. Definition of Cultural expression

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The answer to this is the same as that on the database above.

4.0 Conclusion

- i. Pursuant to Paragraph 4 of Part 2 of the Fourth Schedule to the constitution, the function of cultural activities is for the county governments. However, the Bill provides that the National Government has a wider role in the regulation of these activities. This may be interpreted as unconstitutional.

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Kindly note that all aspects that were injurious to the Council of Governors were expunged after engaging the Council of Governors.

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Response

These two aspects are currently under discussion by the Intergovernmental Technical Relations Committee with the two identified institutions. It our understanding that the museums and libraries to be devolved are already agreed upon.

- iii. Has the Ministry (State Department) considered introducing amendments to the existing Act rather than introducing a new Bill?

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7. The Bill defines community of interest, cultural property, culture, cultural industries, cultural practitioner, national expressions, protection and safeguarding. These phrases are not defined under the TK & C Act.



REPUBLIC OF KENYA
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KENYA

When replying please quote:

Our Ref. SDCH 1/17(C) VOL. 11(44)

27th May, 2024

Mr. Samuel Njoroge CBS
Clerk of the National Assembly
Clerk's Chambers, National Assembly
Parliament Buildings
NAIROBI

RE: THE CULTURE BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 12 OF 2024) – REQUEST FOR SUBMISSIONS BY THE DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE

This has reference to the Invitation by the Departmental Committee on Sports and Culture to make submissions on the Culture Bill, 2024 (National Assembly Bills No. 12 of 2024) at the Committee's sitting at Serena Beach Resort & Spa Mombasa on 27th May, 2024. This also has reference to the Hon. Attorney-General's advisory of the 15th May, 2024, that, with the concurrence of the Ministry of Gender, Culture, the Arts and Heritage, the Bill be withdrawn from consideration by Parliament.

As the Committee is aware, the Culture Bill, 2024, was informed by Article 11 of the Constitution of Kenya, which recognizes culture as the foundation of the nation and cumulative civilization of the Kenyan people. It commits the Government to promote all forms of national and cultural expressions and ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage.

Since Independence, Kenya has never enacted a comprehensive legislative framework to support the integration of culture and cultural heritage in the National Development Agenda. Therefore, Kenya is yet to fully harness the potential of culture, cultural property, cultural heritage, creative industries and Kenya's cultural diversity to promote and enhance socio-cultural, political and economic development. Furthermore, Kenya's traditional values and morals have been seriously eroded leading to poor national ethos, national pride and unity, and the exploitation of cultural diversity to foment ethnic animosity and division.

Through the enactment of the Culture Bill, 2024, Kenya shall be in a position to address these issues in a systematic and comprehensive fashion.

The Culture Bill, 2024, is also intended to facilitate the implementation of international conventions and treaties that have been ratified by Kenya including the International Convention on Economic, Social and Cultural Rights of 1966, the UNESCO Convention on the Protection of the World Cultural and Natural Heritage of 1972, and the UNESCO Convention of the Safeguarding of Intangible Cultural Heritage of 2003. If the Bill is enacted, it will also facilitate the implementation UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural property of 1970 that Kenya ratified in April 2024.

We have consulted **extensively** with the Office of the Attorney-General regarding the previous advisory and agreed that the said advisory should be **withdrawn**.

A copy of the Hon. Attorney-General's notification of the withdrawal of the advisory is annexed hereto for the Committee's information. Furthermore, the Hon. Attorney-General also advises that several provisions of the Culture Bill, 2024, contain provisions that may lead to a conflict with the interpretation and application of the Protection of Traditional Knowledge and Cultural Expressions Act (Cap. 218A of the Laws. Of Kenya) and therefore, it is necessary to amend the Culture Bill, 2024.

In light of the foregoing, the Ministry seeks the support of the Departmental Committee on Sports and Culture in the enactment of the Culture Bill, 2024, to ensure that culture, cultural property and cultural heritage are embedded in all spheres of National Development Agenda.

On the Hon. Attorney-General's advice, and in order to address the potential conflict between the provisions of the Culture Bill, 2024, and the Protection of Traditional Knowledge and Cultural Expressions, we submit that the Bill, be **amended** in the following ways:

Clause 2

THAT, clause 2 of the Bill be amended—

- (a) by deleting the definition of "cultural expression";
- (b) in the definition of "protection", by deleting the words "cultures, cultural heritage and expression" and substituting therefor the words "cultures, cultural heritage and cultural property".

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".

Clause 5

THAT, of the Bill 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".

Clause 17

THAT, clause 17 of the Bill be amended—

(a) in the marginal note, by deleting the words "cultural expressions" and substitute therefor the words "cultures, cultural heritage and cultural property";

(b) by deleting the words "cultural expressions as national expressions" and substitute therefor the words "cultures, cultural heritage and cultural property".

Clause 18

THAT, of the Bill be amended—

(a) in the marginal note, by deleting the words "cultural heritage and expressions" and substitute therefor the words "cultures, cultural heritage and cultural property";

(b) in sub-clause (2), by deleting the words "cultural expressions and cultural heritage" and substitute therefor the words "cultures, cultural heritage and cultural property".

Clause 20

THAT, clause 20 of the Bill be amended in sub-clause (1)(f), by deleting the words "cultural expression" and substitute therefor the words "cultural property".

Yours Sincerely,

Hon. Aisha Jumwa Katana, EGH
CABINET SECRETARY

Encls.

Copy to: **Ms. Ummi Bashir, CBS**
Principal Secretary
State Department Culture, the Arts & Heritage
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Hon. Shadrack J. Mose
Solicitor General
Attorney General's Office and
Department of Justice
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Hon. Daniel S. Wanyama M.P
Chairman
Parliamentary Committee on Sports and Culture
Parliament Building
NAIROBI



**MINISTRY OF GENDER, CULTURE, THE ARTS AND HERITAGE
STATE DEPARTMENT FOR CULTURE, THE ARTS AND HERITAGE**

RE: SUBMISSIONS IN SUPPORT THE CULTURE BILL 2024

A. Introduction

1. This has reference to the Invitation by the Departmental Committee on Sports and Culture to make submissions on the Culture Bill, 2024 (National Assembly Bills No. 12 of 2024) at the Committee's sitting at Serena Beach Resort & Spa Mombasa on 27th May, 2024.
2. **Summary of the Culture Bill, 2024 (National Assembly Bills No. 12 of 2024)**
The Culture Bill, 2024, was 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 was published by the National Assembly on the 5th March, 2024, and underwent First Reading on the 18th April, 2024.
3. Part I of the Bill consists of clauses 1 to 4 and deals with preliminary matters. Clause 1 states the short title; and clause 2 provides for the definitions of key terms used in the Bill. Clause 3 of the Bill provides for the object and purpose of the Bill, including giving effect to Article 11 of the Constitution; the promotion of national and cultural expressions; ensuring that communities receive compensation and royalties from the use of their cultures and cultural heritages; and providing a framework to guide national cultural development. Clause 4 of the Bill sets out the guiding principles including the national values and dignity and respect to all cultures, including cultures of minorities or marginalized peoples.

SUBMISSIONS FOR THE MINISTRY OF GENDER, CULTURE, THE ARTS & HERITAGE

4. Part II of the Bill, which consists of clauses 5 to 19 establishes a framework for the management of culture. Clause 5 set out the role of the national government while clause 6 sets out that of county governments. Clause 7 provides for the establishment of a cultural database by the national government and by county governments with the assistance of the national government. The Cabinet Secretary responsible for matters relating to culture shall be responsible for establishing the standards for compatibility between the national and county government databases.
5. Clause 8 deals with access to information by any person with respect to cultural information held in a database established under the Act. Such access will not include access to information protected under the Act or any other written law. Clause 9 provides for the establishment of mechanisms by the Cabinet Secretary, in consultation with stakeholders, for determination and payment of royalties to communities or the use of their culture and cultural heritage. Clause 10 provides for the circumstances where compensation, in the public interest, will not be required to be paid.
6. Clause 11 of the Bill deals with the procedure for the export, import and transfer of inventoried cultural property under the supervision and direction of the Cabinet Secretary. Clause 12 prescribes the procedure for the application to the Cabinet Secretary and consideration of applications for the conduct of research on any cultural property entered in the national database. This provision shall apply despite any other approval to conduct research in Kenya that may have been granted to the applicant under any other written law. Clauses 13, 14 and 15 provide for the procedure for the registration of cultural property, the manner of notification when registration has been refused, and the validity of a register and certificate of registration of a cultural property. Clauses 17 and 18 deal with the recognition, promotion and protection of cultural expressions. Clause 19 of the Bill deals with the circumstances under which a tangible cultural heritage shall be seized and disposed of under the Act.
7. Part III of the Bill, which consists of clauses 20 to 29, deals with offences and penalties. The offences include theft of cultural property; sale of protected cultural property; forgery or fraud relating to cultural property; damage to cultural expressions; exportation of cultural property without a permit; and unauthorised removal of cultural property. Other offences are failure to comply with the conditions for the registration of cultural property; undertaking research into cultural property without a permit; loaning cultural properties without a permit; damage to inventoried cultural property; wrongful possession of cultural

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- property; counterfeiting and misrepresentation of cultural property; the use of images of cultural property without permission; providing false and misleading information under the Act; and wilfully impeding or obstructing a person performing a function or exercising a power under the Act. The penalties include fines of up to five hundred thousand shillings or imprisonment for a term of up to two years or both.
8. Part IV of the Bill, which consists of clauses 30 to 33, deals with general provisions. Clause 30 deals with the publication of a schedule of fees and levies that may be imposed under the Act. Clause 31 provides for a general penalty of a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or both where a penalty has not been prescribed for an offence under the Act. Clause 32 provides for transitional matters including licenses and permits that were issued before the commencement of the Act; the treatment of inventories and registers established before the commencement of the Act, and contracts and agreements relating to cultural property that were in existence before the commencement of the Act. Clause 33 provides for the Cabinet Secretary's power to make Regulations including Regulations on information to be captured in registers; forms used under the Act; criteria for the identification of cultural property; procedures for the loaning of cultural property; compensation payable to communities for the use of their cultures and cultural properties; and research relating to culture.
 9. The Schedule to the Bill provides for the National Cultural Institutions, that is, Kenya Cultural Centre, National Libraries, National Museums of Kenya, and Kenya National Archives and Documentation Service.
- C. Summary of the Protection of Traditional Knowledge and Cultural Expressions Act (Cap. 218A)**
10. The Protection of Traditional Knowledge and Cultural Expressions Act was passed by the National Assembly on the 15th March, 2016. It was assented to by His Excellency the President on the 31st August, 2016, and commenced on the 21st September, 2016.
 11. Part I of the Act, which consists of sections 1 to 5, deals with preliminary matters. Section 1 provides for the short title of the Act; and section 2 deals with the definition of key terms used in the Act; Section 3 provides for the guiding principles of the Act, that is, the national values and principles of governance set out in Article 10 of the Constitution.

12. Section 4 of the Act prescribes the responsibilities of county governments. These are exercised by the County Executive Committee Member responsible for matters relating to culture and include registration of traditional knowledge and cultural expressions; preservation and conservation of traditional knowledge and cultural expressions; protection and promotion of the traditional knowledge and cultural expressions; facilitation of collaboration, access to or the sharing of information and data; allocation of financial resources for the promotion of cultural activities; and establishment of mechanisms for using culture as a tool for conflict resolution and promotion of cohesion.
13. Section 5 of the Act prescribes the functions of the national government including establishment and maintenance of the Repository at the Kenya Copyright Board; promotion and conservation of traditional knowledge and cultural expressions of communities in Kenya; protection of traditional knowledge and cultural expressions from misuse and misappropriation; and facilitation of access of information and the sharing of information and data relating to traditional knowledge and cultural expressions.
14. Part II of the Act, which consists of sections 6 to 13, deals with the protection of traditional knowledge. Section 6 prescribes the criteria for the traditional knowledge that shall be protected under the Act. Section 7 provides for the formalities relating to the protection of traditional knowledge including recognition, registration, maintenance of records relating to shared traditional knowledge, the treatment of concurrent claims of traditional knowledge by more than one community, and that registration does not confer rights over traditional knowledge.
15. Section 8 provides for the establishment and maintenance of registers of traditional knowledge by county governments and a comprehensive Traditional Knowledge Digital Repository by the national government, and collaboration and cooperation between county governments and the national government in the establishment of the Repository. Section 9 of the Act provides that owners and holders of traditional knowledge shall have the right to protection of that knowledge. Section 10 provides for the rights of the holders of traditional knowledge including the right to authorize the exploitation of their traditional knowledge; and prevent any person from exploiting their traditional knowledge without their prior informed consent; and that every community shall make and adopt its community rules prescribing the procedures for the authorization of the exploitation of their traditional knowledge.

16. Section 11 of the Act requires any person who uses traditional knowledge or cultural expressions beyond its traditional context shall acknowledge the owner of the knowledge, indicate the source of the knowledge or expression and where possible, the origin of the knowledge or expression, and use such knowledge or expression in a manner that respects the cultural values of the holders.
17. Section 12 prescribes a procedure for the Cabinet Secretary to confer a compulsory licence, with the consent of the owner or holder of rights in traditional knowledge and subject to Article 40(3)(b) of the Constitution, to a person if the owner or holder refuses to grant licenses for exploitation. Section 13 provides that traditional knowledge shall be protected for so long as the knowledge fulfils the protection criteria referred to under section 6.
18. Part III of the Act, which consists of sections 14 to 17, deals with the protection of cultural expressions. Section 14 prescribes the criteria for the protection of cultural expressions; section 15 provides for the formalities relating to the protection of cultural expressions; section 16 provides that the owners and holders of cultural expressions shall have the right to protection of those expressions; and section 17 provides that cultural expressions shall be protected against all acts of misappropriation, misuse, unlawful access or exploitation for as long as the cultural expressions fulfil the protection criteria set out in section 14.
19. Part IV of the Act, which consists of sections 18 to 20, contains general provisions. Section 18 provides for the protection of traditional knowledge and cultural expressions against unlawful acts; section 19 provides for exceptions and limitations relating to the exploitation of traditional knowledge and culture expressions by persons other than holders of rights in traditional knowledge and cultural expressions.
20. Section 20 for the rights in derivative works based on traditional knowledge and cultural expressions; and the conclusion of authorised user agreements between rights holders and any person who intends to use traditional knowledge or cultural expressions for commercial or industrial purposes.
21. Part V of the Act, which consists of sections 21 to 24, deals with moral rights. Section 21 provides for the meaning of moral rights; and section 22 provides for right of owners of traditional knowledge or cultural expressions shall have the right to assign and conclude licensing agreements. Section 23 provides that cultural rights in traditional knowledge or cultural expressions shall be in addition to any rights that may subsist under

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- any law relating to copyright, trademarks, patents, designs or other intellectual property and shall not in any way affect the subsisting rights.
22. Section 24 of the Act provides for the equitable sharing of benefits of rights arising out of traditional knowledge and cultural expressions. It provides that the protection of owners and holders of traditional knowledge or cultural expressions shall include the right to fair and equitable sharing of benefits arising from the commercial or industrial use of their knowledge, to be determined by mutual agreement between the parties.
23. Part VI, which consists of sections 25 to 36, deals with the management of rights. Section 25 provides for the process of authorisation of the use of traditional knowledge and cultural expressions; section 26 excludes access to traditional knowledge relating to genetic resources from an authorisation to use traditional knowledge or cultural expression under the Act; while section 27 provides for the procedure for applying for consent to use traditional knowledge or cultural expressions.
24. Section 28 provides for public participation regarding any application under section 27; section 29 provides for the responsibility of the Cabinet Secretary to determine in writing the rights holders who have been identified in respect of traditional knowledge or cultural expressions; section 30 provides for the resolution of uncertainty or disputes relating to the identification and determination of rights holders; and section 31 provides for situations where no claim of ownership has been made regarding traditional knowledge or cultural expression.
25. Section 32 provides for decisions of owners of traditional knowledge or cultural expressions regarding authorised user agreements; section 33 provides for consultations with members of communities regarding whether or not to enter into authorised user agreements; and section 34 provides for the terms and conditions of authorised user agreements; and provides for the manner of determining whether prior informed consent was obtained in respect of an authorised user agreement and section 36 deals with the manner of obtaining prior informed consent of rights holders without applying to the Cabinet Secretary for the same.
26. Part VII of the Act, which consists of sections 37 to 41, deals with sanctions and remedies. Section 37 deals with offences and penalties; section 38 deals with the procedure of initiating civil proceedings in a court of competent jurisdiction seeking any action provided in section 39 against any person who carries out any of the acts mentioned in section 18, without the

holder's prior informed consent; section 39 provides for civil remedies in respect of proceedings under section 38; section 40 provides for alternative dispute resolution mechanisms to resolve disputes; and section 41 provides that the rights and remedies provided in the Act shall not affect any other rights of action or remedies provided under other written laws.

27. Part VIII of the Act, which consists of sections 42 to 44), deals with transitional measures. And miscellaneous provisions. Section 41 provides for transitional matters including the requirement to comply with the provisions of the Act within 12 months after its commencement; and the harmonisation with the Act of cultural expression rights acquired before the commencement of this Act.

28. Section 43 provides that the Cabinet Secretary may make Regulations for the better carrying into effect of the Act; and section 44 provides that in accordance with reciprocal arrangements, the Act may provide the same protection to traditional knowledge and cultural expressions originating in other countries or territories as is provided to traditional knowledge and cultural expressions originating in Kenya.

D. Conclusion and Way Forward

29. The Culture Bill contains several definitions that are the same as the definitions contained in the Act. These are the definitions of:

- (a) community;
- (b) cultural expression;
- (c) cultural heritage;
- (d) intangible cultural heritage;
- (e) prior informed consent; and
- (f) safeguarding.

30. In every other respect, the Culture Bill **does not** contain similar provisions to the Protection of Traditional Knowledge and Cultural Expressions Act. However, the Culture Bill contains provisions that contain the expression "cultural expression", and this may occasion conflict between the application of the Bill if enacted in its current form with the provisions of the Protection of Traditional Knowledge and Cultural Expressions Act. In this respect, the

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Ministry in consultation with the Office of the Attorney General recommend the amendment of the Bill as follows:

- (a) that clause 2 of the Bill be amended—
 - (i) by deleting the definition of “cultural expression”;
 - (ii) by amending the definition of “protection” by deleting the words “cultures, cultural heritage and expression” and substituting therefor the words “cultures, cultural heritage and cultural property”;
- (b) 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”;
- (c) clause 5 of the Bill 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”;
- (d) that clause 17 of the Bill be amended—
 - (i) in the marginal note, by deleting the words “cultural 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”;
- (e) that clause 18 of the Bill 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) in sub-clause (2), by deleting the words “cultural expressions and cultural heritage” and substitute therefor the words “cultures, cultural heritage and cultural property”;
- (f) that clause 20 of the Bill be amended in sub-clause (1)(f), by deleting the words “cultural expression” and substitute therefor the words “cultural property”.

② Gindicha
Desf

13/5/24

① DDC
8
9/5/24



Pastoralists Alliance for Resilience and Adaptation Across Nations

*Building and strengthening resilient, transformational
partnerships and social movements*

Memorandum to the National Assembly's Relevant Committee on **The Culture Bill, 2024 –** by the Pastoralists Alliance for Resilience and Adaptation Across Nations (PARAAN)

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13 MAY 2024
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1.0. BACKGROUND INFORMATION

1.1. Introduction.

On behalf of all thirty-four (34) member organizations of the Pastoralists Alliance for Resilience and Adaptation Across Nations (PARAAN), I wish to thank Hon. Kimani Ichung'wah for bringing in this important bill that seeks to protect and promote Culture and the Cultural Heritage of Communities in Kenya.

Once enacted as a law, this legislation will assist to better manage and protect the various communities, cultures, cultural expressions, and indigenous technologies in Kenya, by recognizing and promoting the existence of distinct cultural heritage. Hence, the bill will be in line with the already existing legal body that respects the basic cultural rights of all Kenyans, as enshrined in The Constitution of Kenya 2010, Article 11 (3) (a) and the Traditional Knowledge and Cultural Expression Act (2016) among other laws with relevancy.

As the promotion on protection of Culture and Cultural Heritage is specifically important for the marginalized and indigenous communities of Kenya, PARAAN wishes to acknowledge that the proposed legislation is also in line with the United Nations Declaration on the Rights of Indigenous Peoples (2007), the African Convention on the Conservation of Nature and Natural Resources (1968), the Africa Union Agenda of 2063 and the ILO Convention No 169 amongst others.

In recent years, many indigenous communities in Kenya have faced unprecedented internal and external pressures that impeded them to follow their traditional lifestyle(s) and therefore hindered them to promote and protect their cultural knowledge and cultural heritage.

It was towards addressing these and other social issues of common concerns that, the thirty-four indigenous peoples organization joined hand to form PARAAN, which is a social justice movement with the purpose of consolidating and amplifying a collective voice on the inclusion and rights of indigenous and marginalized peoples to promote self-determination of peoples and the protection of indigenous knowledge and culture. The thirty-four (34) indigenous people member organizations were drawn from across nine (9) counties, as detailed in the Annex 1 of this memorandum.

With this memorandum, PARAAN seeks to add the voice of its thirty-four (34) member organizations to the further development of the proposed bill. Hence, PARAAN is referring to Article 118(1)(b) of The Constitution of Kenya, which mandates the Kenyan Parliament to "facilitate public participation and involvement in the legislative and other business of Parliament and its committees".

2.0. SUMMARY OF THE ISSUES/CONCERNS RAISED BY PARAAAN-Members: -

Under the current arrangement, we wish to highlight the followings: -

1. Kenya is the home of various peoples and communities with an immense number of different Cultures and Cultural Heritages Also, amongst Kenya's marginalized and/or indigenous population Culture and Cultural Heritage greatly varies.
2. Indigenous peoples possess their own traditional mechanisms and institutions to promote and protect their Culture and Cultural Heritage. However, due to many years of political and socioeconomic marginalization many traditional indigenous mechanisms and institutions have weakened The bill must ensure that traditional indigenous mechanisms and institutions are recognized and involved in the promotion and protection of Indigenous Culture and Indigenous Cultural Heritage
3. In general, the promotion and protection of Culture and Cultural Heritage is a very sensitive issue that needs to be addressed in a very sensitive manner, and which needs to involve and respect the "culture bearers".
The bill seeks to manage Culture and Cultural Heritage. It must ensure that it involves the "culture bearers" in 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.
4. Indigenous Culture and Indigenous Cultural Heritage belongs to the Indigenous Communities. Of recent, it appears that Indigenous Culture and Indigenous Cultural Heritage is increasingly misused for commercial purposes by people who either do not have the traditional mandate to use the Culture and/or Cultural Heritage or who do not even belong to a certain community. This development must be stopped and must be considered in the bill.
5. Indigenous Culture and Indigenous Cultural Heritage manifest in many ways among them are Language, Religion, Traditional Beliefs, Traditional Medicine, Lifestyle, Land Ownership, Land Management, Sacred Places etc are finally just an expression of Culture The bill should provide a toolbox how to protect cultural expressions that are not following the "mainstream".
6. Some indigenous communities are claiming the same (or similar) cultural expressions and in this regard, the bill must provide for a conflict resolution section that caters for such

3.0. OUR PRAYERS

In regard to the above mentioned, we hereunder pray that the responsible departmental committee takes its time and revises the bill according to the following. -

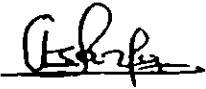
- 1 In Part I – Preliminary the bill should stronger outline who exactly the bearers/owners of a certain Culture are and how they can be identified
- 2 In general, the bill displays Culture as a fixed and inflexible entity It should acknowledge that Culture or the expressions of Culture may change over time and provide for it

- accordingly. Furthermore, it is necessary to define the term "Cultural Property" properly in the preliminary.
3. In Part II the bill should clearly outline in the section 5 to 7, how to involve traditional cultural mechanisms, leadership, and institutions in developing and managing county-based databases for Culture and Cultural Heritage.
 4. Culture and Cultural Heritage is owned by people but not institutions. In the entire Part II ; the bill should devolute more responsibilities in regarding registering, cancelling, transferring, protecting and recognizing Culture and Cultural Heritage to the respective communities or that specific cultural practioners.
 5. In Part II section 11 sub-section 1, the bill explains that the loaning of Culture may be permitted under certain circumstances This gives a leeway for commercializing of Culture, especially as the precise regulations for the loanee are not sufficiently well stated Our recommendation is to expunge the entire section or to elaborate on this section in much greater detail, to avoid commercial misuse of Culture and Cultural Heritage.
 6. In Part II section 13 sub-section 3; the bill talks about a registration fee that is supposed to be paid to the Cabinet Secretary and/or the County Government for registering "cultural property".
We see this as creating bearers and unnecessary bureaucracy and we recommend that, there should be no such fees imposed to register Culture or Cultural Heritage
 7. In Part III section 20, the bill implicitly illegalizes the practice of culture without a pre-registration fee to the Cabinet Secretary and/or the County Government by penalizing it This clearly limits people who do not have enough financial resources to freely use and life and practice their Culture.
This contradicts the provisions in various legislations with relevancy among them the Traditional Knowledge and Cultural Expression Act no 33 of 2016, which provides that owners and holders of traditional knowledge and cultural expressions have the right to protection of that very knowledge.
The act states that communities shall have the exclusive right to authorize the exploitation of their traditional knowledge and to prevent any person exploiting their traditional knowledge without their consent. This inherent right of the owners and holders of cultural expression should not be taken away from them.
 8. The Culture bill 2024, should contain an additional conflict resolution section in case the same cultural expressions (e g artefacts, traditional sites, or other cultural expressions) are claimed by members from different communities with different cultures.
 9. We further wish to state that, some communities have developed and documented their cultural and identity protection tools with some calling it 'Community Bio-Cultural Protocol'. Towards this we recommend that, this bill should take cognizant of such existing relevant documentations, with special clause dedicated to these details These should include respect to "Free, Prior, Informed, Consent – FPIC".
 - 10 We recognize that, there are various state drafted and enacted laws in relations to community livelihoods, identities and natural resource uses, and we recommend that this bill should take sensitive cognizant of these all. For PARAAN, such laws of interest are Land laws among others.

11. Finally, members of indigenous communities should not have to apply for a research permit with any government institution when researching their own Culture or Cultural Heritage
Whenever indigenous researchers are granted a mandate from their respective traditional authorities to conduct research on cultural aspects of their own community, they should be considered "culture bearers" and therefore be allowed to conduct research on their own Culture. In these, we further recommend that state should protect communities against exploitation by external research by regulating the same

In summing up, PARAAN as a representative of thirty-four (34) indigenous peoples' organizations (listed below in annex 1 of this memo), prays that the honorable relevant departmental committee considers our above-stated requests as an amplified voice from our members.

Sincerely Yours,



Liban Golicha
Membership Coordinator PARAAN
On Behalf of PARAAN Members

Annex 1: - PARAAN MEMBER ORGANIZATIONS: -

NO.	ORGANIZATION	CONTACT	COUNTY
1.	Indigenous Movement for Peace Advancement and Conflict Transformation	Mali Ole Kaunga +254 722 663 090	Laikipia
2	Kivulini Trust	Dr. Hussein A. Isack +254 721 301 150	Isiolo
3.	Land, Environment, Advocacy and Research Net (LEARN) – Waso	Guyo Adi +254 711 963 593	Isiolo
4.	Indigenous Strategies and Institution for Development	Mohamed Dida +254 721 881 397	Marsabit
5.	Samburu Women Trust	Jane Meriwas +254 722 889 973	Laikipia
6.	Isiolo Gender Watch	Grace Lolim +254 727 046 313	Isiolo
7	Pastoralists Women for Health & Education	Shoba Mohamed Liban +254 726 844 850	Isiolo
8	Regional Pastoralist Peace Link	Halima A. Racho +254 710 961 194	Isiolo
9.	The New Dawn Pace Setters	Emily Rosa +254 711 595 100	Laikipia
10.	Yaaku Laikipia Trust	Jeniffer Koinante +254 705 375 288	Laikipia
11.	Indigenous Women and Girls Initiative	Monicah Yator +254 722 597 332	Baringo
12.	Mukogodo Girls Empowerment Program	Josphine Ndirias +254 713 634 728	Laikipia
13	Pastoralist Peoples Initiative	Margaret Serayon +254 702 624 224	Marsabit
14	Maasai Cultural Heritage	Linda Lissah	Laikipia

15.	Nasaru Women Group	+254 718 156 173	
		Juliana Rono	Kajiado
16	Endorois Indigenous Women Empowerment Network	+254 720 805 235	
		Christine Kandie	Baringo
17	Endorois Welfare Council	+254 726 017 464	
		Wilson Kipkazi	Baringo
18	Indigenous Peoples Climate Change Watch	+254 721 549 649	
		Mohamed Yusuf Goni	Garissa
19.	Environmental Justice Team Samburu	+254 723 071 576	
		Andrew Lokitambaa	Samburu
20	Community Empowerment and Development Initiative	+254 746551172	
		Salad Boru	Isiolo
21	Laikipia North Community Conservation Initiative	+254 722 915 699	
		Bernad Lolasho	Laikipia
22.	Sangida Foundation	+254 743 208644	
		Jacinta Silakan	Laikipia
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		Eunice Lepariyo	Baringo
24.	Center for Research and Development in Drylands	+254 722 232 007	
		Hussein Tadicha	Marsabit
25	Kaptur Resource Management Organization	+254 721 839 306	
		Ekitela Fredrick Lucas	Turkana
26	Marti Elite Home Grown Peace Initiative	+254 721 848 474	
		Benjamen Lokor	Samburu
27.	Gurapau Women Group	+254 721 813 060	
		Chrstine Louwai	Marsabit
28.	Livestock Direct	+254 722 662 798	
		Edward Ramat	Laikipia
		+254 726 968 030	

29	Marsabit Women Advocacy and Development Organization	Nuria Golo +254 725 401 221	Marsabit
30.	Samburu Well-Being Initiative for All	Gabriella Lorere +254 700 388 808	Samburu
31.	Rebuilding Pastoralist Livelihoods	James Orre +254 704 000 204	Marsabit
32	Laikipia Paralegals Organization	Manasseh Matunge +254 723 121262	Laikipia
33	Isiolo Conservation Trust	Issa Boru +254 742028634	Isiolo
34.	Ardha Jabesa Foundation	Mohamed Halake +254 724867106	Isiolo