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THE NATIONAL ASSEMBLY

13TH PARLIAMENT – SECOND SESSION – 2023

DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE

REPORT ON:

THE 1970 UNESCO CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

THE NATIONAL ASSEMBLY

DATE: 12 OCT 2023

THURS 12/10/2023

Hon. Daniel Wanyama, MP
Chair, Sports & Culture Committee

A. Shubiko

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER 2023

TABLE OF CONTENTS	
LIST OF ABBREVIATIONS AND ACRONYMS	1
ANNEXURES	2
CHAIRPERSON'S FOREWORD	3
CHAPTER ONE	4
1.0. PREFACE	4
1.1 Establishment and Mandate of the Committee	4
1.2. Subjects under the Committee	4
1.3. Committee Membership	5
1.3. Committee Secretariat	6
2.0 ANALYSIS OF THE CONVENTION	7
2.1. Background.....	7
2.2. Clause by Clause Analysis of the Convention.....	7
CHAPTER THREE	11
3.0 ANALYSIS OF THE MEMORANDUM SUBMITTED BY THE MINISTRY OF FOREIGN AND DIASPORA AFFAIRS	11
3.1 Object and Subject Matter of the Convention	11
3.2. Benefits of Acceding to the Convention.....	11
3.3. Obligation to Kenya upon ratifying the Convention	12
3.4. Process of the Treaty Making.....	13
CHAPTER FOUR	14
4.0. SUBMISSIONS BY MINISTRIES AND OTHER STAKEHOLDERS	14
4.1. Ministry of Tourism, Wildlife and Heritage.....	14
4.2. The Office of the Prime Cabinet Secretary	14
4.3. The Law Society Kenya (L.S.K)	15
4.4 The Council of Governors (C.O.G)	16
4.5. Ministry of Defence.....	17
4.6. Ministry of Interior and National Administration	18
CHAPTER FIVE	19
5.0. OBSERVATIONS	20
CHAPTER SIX	23
6.0. RECOMMENDATIONS	24

LIST OF ABBREVIATIONS AND ACRONYMS

UNESCO	-	United Nations Educational, Scientific and Cultural Organization
UNGA	-	United Nations General Assembly
KNATCOM	-	Kenya National Commission for UNESCO
COG	-	Council of Governors
MOD	-	Ministry Of Defence
UGNM&M	-	Uhuru Gardens National Monument & Museums

ANNEXURES

Annexure 1: Minutes

Annexure 2: Newspaper Advertisement on public participation

Annexure 3: Submissions by Ministries and other stakeholders

Annexure 4: The Memorandum and the Convention

Annexure 5: Adoption Schedule

CHAIRPERSON'S FOREWORD

The Cabinet Secretary, Ministry of Foreign Affairs, submitted a memorandum to the National Assembly dated 22nd March, 2023 regarding the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Transfer of Ownership of Cultural Property. The Convention and the Memorandum were committed to the Departmental Committee on Sports and Culture on 11th May 2023 for consideration and reporting to the House.

The main objective of the Convention is to recommend the preservation of cultural heritage by creating awareness on the need to protect cultural property and prevent the illegal cross-border trafficking of cultural property. The Convention therefore seeks to oblige the State Parties, among other things, to take all necessary measures to protect their cultural property against illicit import, export and transfer of ownership and to prohibit the exportation of cultural property from their territory unless accompanied by an export certificate.

In 1968, the General Conference of UNESCO adopted a resolution authorizing the convening of a committee to draft a Convention. The text submitted for adoption was approved by a Special Committee of Governmental Experts in April 1970 and the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Transfer of Ownership of Cultural Property was adopted in Paris on 14th November 1970. The Convention came into force on April 24th 1972. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Transfer of Ownership of Cultural Property currently has 141 States Parties to the Convention.

Pursuant to Article 118(1)(b) of the Constitution and section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed advertisements in two local dailies of nationwide circulation, on 6th June 2023 requesting for memoranda on the Convention. The Committee received a memorandum in support of the Convention from the Creative Working Group by close of business on 16th June 2023.

Further, the Committee discussed the Convention with the Ministry of Tourism, Wildlife and Heritage, the Ministry of Foreign and Diaspora Affairs, the Office of the Prime Cabinet Secretary, the Office of the Attorney-General, Law Society of Kenya, the Kenya National Commission for UNESCO, the Council of Governors and the Ministry of Defence. The Committee also received written submissions from the Ministry of Interior and National Administration and undertook a familiarization visit at the Uhuru Gardens Monuments and Museums.

The Committee is grateful to the Office of the Speaker and the Clerk of the National Assembly for logistical and technical support accorded to it during its Sittings. May I appreciate all the Committee Members for their patience, sacrifice and commitment, which enabled the Committee to complete the task and compile this report. May I also thank the Committee Secretariat for the technical and logistical support accorded to the Committee. Finally, I thank all the agencies for their time and submissions to the Committee.

Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199, it is my pleasant duty to present to the House the Report of the Departmental Committee on Sports and Culture on its consideration of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Transfer of Ownership of Cultural Property.

CHAPTER ONE

1.0. PREFACE

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Sports and Culture is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:
 - a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - b) *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
 - ba) *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - c) *study and review all legislation referred to it;*
 - d) *study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - e) *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;*
 - f) *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)*
 - fa) *examine treaties, agreements and conventions;***
 - g) *make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
 - h) *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - i) *examine any questions raised by Members on matters within its mandate.*

1.2. Subjects under the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider the following subjects:- Sports; Culture; Language; Creative Economy including promotion of music; Arts; Film promotion and Development; National Heritage and Betting & Lotteries.
3. In executing its mandate, the Committee oversees the State Department for Sports, State Department for Youth Affairs and the Arts in the Ministry of Youth Affairs, the Arts and Sports and State Department for Culture and Heritage in the Ministry of Tourism, Wildlife and 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

UDA Party

Vice-Chairperson

Hon. James Githua Wamacukuru, MP
Kabete Constituency

UDA Party

Members

Hon. Naomi Jillo Waqo, MP
Marsabit County

UDA Party

Hon. Mary Emaase Otucho, MP
Teso South Constituency

UDA Party

Hon. Stephen Mutinda Mule, MP
Matungulu Constituency

WDM-K Party

Hon. Chege Njuguna, MP
Kandara Constituency

UDA Party

Hon. Catherine Nakhabi Omanyoo MP
Busia County

ODM Party

Hon. Paul Ekwom Nabuin, MP
Turkana North Constituency

ODM Party

Hon. BSP. (EM) Dr. Jackson Kipkemoi Kosgei, MP
Nominated

UDA Party

Hon. Samuel Gonzi Rai, MP
Kinango Constituency

PAA Party

Hon. Charles Ngusya Nguna, MP
Mwingi West Constituency

WDM –K Party

Hon. Janet Jepkemboi Sitienei, MP
Turbo Constituency

UDA Party

Hon. Richard Kipkemoi Yegon, MP
Bomet East Constituency

UDA Party

Hon. Caroli Omondi
Suba South Constituency

ODM Party

Hon. Robert Ngui Basil, MP
Yatta Constituency

WDM-K Party

1.4. Committee Secretariat

5. The Committee secretariat is comprised of the following:

Mr. John Mugoma
Clerk Assistant I/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

Moses Omoit
Audio Officer III

Mr. Luka Mutua
Serjeant-At-Arms I

Mr. Calvin Njoroge
Media Relations Officer III

Mr. Stephen Otieno
Assistant Serjeant-At-Arms

CHAPTER TWO

2.0 ANALYSIS OF THE CONVENTION

2.1. Background

6. The main objective of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is to recommend the preservation of cultural heritage by creating awareness on the need to protect cultural property and prevent the illegal cross-border traffic in cultural property.
7. The Convention therefore seeks to oblige the State Parties, among other things, to take all necessary measures to protect their cultural property against illicit import, export and transfer of ownership and to prohibit the exportation of cultural property from their territory unless accompanied by an export certificate.
8. The Convention provides for the restitution of cultural property illegally imported, exported or transferred after the entry into force of the Convention, that is, after 1972. Article 15 of the Convention provides that in respect of cultural property illegally acquired before 1972, the concerned State Parties may enter special agreements among themselves for the restitution of such property.

2.2. Analysis of the Convention

9. **Article 1** defines the term ‘cultural property’ to mean property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science. These properties may include, among others—
 - a) rare specimen of flora and fauna;
 - b) historical property;
 - c) products of archaeological excavations;
 - d) artistic or historical monuments;
 - e) antiques and furniture more than 100 years old;
 - f) rare manuscripts; and
 - g) sound, photographic and cinematographic archives.
10. **Article 2** provides that State Parties undertake to oppose, and make the necessary reparations against the illicit import, export and transfer of ownership of cultural property.
11. **Article 3** provides that the import, export or transfer of ownership of cultural property effected contrary to the provisions of the Convention shall be illicit.
12. **Article 4** provides for the categories of property which form part of the cultural heritage of each State. These include—
 - a) cultural property created by an individual, group of nationals or stateless persons resident within that State;
 - b) cultural property found within the national territory;

- c) cultural property acquired by archaeological or natural and scientific means, with the consent of the country of origin;
 - d) cultural property which is the subject of a freely agreed exchange; and
 - e) cultural property received as a gift or purchased legally with the consent of the country of origin.
13. **Article 5** provides that State Parties undertake to set up national services for the protection of the cultural heritage, which services shall include—
- a) formation of draft laws and regulations to give effect to the Convention;
 - b) keeping an inventory of public and private cultural property;
 - c) establishment of scientific and technical institutions to preserve cultural property;
 - d) supervision of archaeological excavations;
 - e) establishing rules in conformity with the ethical principles of the Convention;
 - f) educational measures aimed at spreading knowledge of the provisions of the Convention; and;
 - g) ensuring that appropriate publicity is given to the disappearance of any cultural property.
14. **Article 6** provides that State Parties undertake to develop an export certificate that shall authorize and accompany the export of any cultural property. Further, the State Parties undertake to prohibit and publicize the prohibition of the export of cultural property unless accompanied by the export certificate.
15. **Article 7** provides that State Parties undertake—
- a) to take the necessary measures to prevent museums within their territories from acquiring cultural property that is illegally exported from another country, as well as to inform the State of origin of such illegal export;
 - b) to prohibit the import of any cultural property stolen from a museum or other institution of another country;
 - c) to take appropriate steps to recover and return any cultural property at the request of the State Party of origin, and upon payment of just compensation to an innocent purchaser;
 - d) not to impose customs duties or other charges on any cultural property returned under this Article.
16. **Article 8** provides that State Parties undertake to impose penalties or administrative sanctions on any person responsible for infringing the prohibition on the export of cultural property without an export certificate or the prohibition on the import of stolen cultural property.
17. **Article 9** provides that State Parties undertake to participate in international efforts to determine the origin of any cultural property whose origin is in question.
18. **Article 10** provides that State Parties undertake—
- a) to restrict illegal movement of cultural property;
 - b) oblige antique dealers to maintain a register of cultural items; and
 - c) to promote public awareness of the value of cultural property and the threat to cultural heritage caused by the illicit excavation, import and export of cultural property.
19. **Article 11** provides that the export and transfer of ownership of cultural property under direct or indirect compulsion by a foreign power shall be regarded as illicit.

20. **Article 12** provides that State Parties undertake to respect the cultural heritage of other countries, and shall take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property.
21. **Article 13** provides State Parties undertake—
- a) to prevent the transfer of ownership of cultural property which is likely to promote the illicit import or export of such property;
 - b) to ensure that their competent services cooperate in facilitating the restitution of illegally exported cultural property;
 - c) to admit actions for recovery of lost or stolen cultural property brought by or on behalf of the rightful owners; and
 - d) to recognize each country's right to classify and declare certain cultural property as inalienable.
22. **Article 14** provides that each State Party shall provide its relevant national services responsible for the protection of its cultural heritage with an adequate budget and, where necessary, establish a fund for this purpose.
23. **Article 15** allows State Parties to enter into special agreements among themselves for the restitution of cultural property removed from their territory of origin before the entry into force of the Convention (ie. any cultural property wrongfully transferred before 1972).
24. **Article 16** provides that State Parties undertake to submit periodic reports to the UNESCO General Conference stating the legislative and administrative efforts taken by the State Parties towards the application of the Convention.
25. **Article 17** gives the State Parties the power to request for technical assistance from UNESCO in regards to—
- a) information and education;
 - b) consultation and expert advice; and
 - c) co-ordination and good offices.

On its part, UNESCO undertakes to—

- a) conduct research and publish studies on matters relevant to the illicit movement of cultural property;
 - b) call on the co-operation of any competent NGO;
 - c) make proposals to State Parties for the implementation of the Convention; and
 - d) on the request of at least two State Parties to the Convention, extend its good offices to reach a settlement between State Parties engaged in a dispute over the implementation of the Convention.
26. **Article 18** provides that the Convention is drafted in English, French, Russian and Spanish, and each of the four texts are equally authoritative.
27. **Article 19** provides that the Convention shall be subject to ratification by States that are members of UNESCO, and the instruments of ratification shall be deposited with the Director-General of UNESCO.

28. **Article 20** provides that the Convention may be acceded to by states who are not members of UNESCO, and such accession shall be effected by the deposit of an instrument of accession with the Director-General of UNESCO.
29. **Article 21** provides that the Convention shall enter into force 3 months after the date of deposit of the instrument of ratification.
30. **Article 22** provides that State Parties recognize that the Convention is applicable to the metropolitan and other territories to which the State Party is responsible for their international relations. State Parties therefore undertake to consult the governments or other competent authorities of the territories in the ratification process.
31. **Article 23** gives power to any State Party to denounce the Convention on its own behalf or on behalf of any territory to which the State Party is responsible. The denunciation shall be effected by notice in writing deposited with the Director-General of UNESCO, and shall take effect 12 months after receipt of the instrument of denunciation.
32. **Article 24** provides that the Director-General of UNESCO shall inform all States that are members of UNESCO as well as States not members of UNESCO but who have acceded to the Convention, of the deposit of instruments of ratification or denunciation.
33. **Article 25** provides that the Convention may be revised by UNESCO General Conference, and such revision shall only bind the States that shall become parties to the revising Convention. Once a new revised Convention is adopted, this Convention shall no longer be open to ratification.
34. **Article 26** provides that the Convention shall be registered with the UN Secretariat at the request of the Director-General of UNESCO.

CHAPTER THREE

3.0 ANALYSIS OF THE MEMORANDUM SUBMITTED BY THE MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

Amb. James N. Waweru, MBS, the Registrar of Treaties, appeared before the Committee on 6th July 2023 and submitted that:

3.1 Object and Subject Matter of the Convention

35. The 1970 UNESCO Convention calls for the States Parties to take measures to prohibit and prevent the illicit import, export, and transfer of ownership of cultural property. It establishes a standard framework for State Parties to implement measures to restrict and prevent the import, export, and transfer of cultural property.
36. The return and restitution of cultural property is vital to the Convention, and its mission is not only to remember but also to fundamentally defend peoples' identities and create peaceful communities, thereby strengthening the spirit of solidarity.
37. The convention recommends the enforcement of the protection of cultural property in the following three main pillars:
 - i. Preventive measures:- provides that the States signatory to the treaty are to enforce the security and safety of cultural property, such as taking inventory, exportation certifications, monitoring of trade and imposition of penal sanctions;
 - ii. Restitution provisions:- provides that each Sovereign State is to assist one another in the retrieval of stolen cultural property; and
 - iii. International cooperation:- this is an attempt by the Convention to strengthen international ties between signatories, and provide assistance and cooperation with one another. That any party may seek the recovery and assistance of another State party, albeit, only after the enforcement of the Convention in both States.
38. That the 1970 Convention is consistent with the Constitution of Kenya in particular Article 11, the National Museums and Heritage Act No. 6 of 2006 and the United Nations 2030 Agenda's Sustainable Development Goals.
39. The 1970 Convention has One Hundred and Forty Four (144) State Parties and Kenya will be the 145th State to accede to the Convention.

3.2. Benefits of Acceding to the Convention

40. The benefits that Kenya will gain upon acceding to the 1970 UNESCO Convention include:

- i. Kenya will qualify for UNESCO technical support on information, education, consultation and expert advice as well as coordination and good offices.
- ii. Kenya's accession will enhance Kenya's legislative measures that protect its heritage from illicit exportation of cultural property.
- iii. Kenya will also benefit from international cooperation and collaboration from member states in the event its cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials.

3.3. Obligation to Kenya upon ratifying the Convention

41. As a country, Kenya would have the following obligations after ratifying the Convention:

- i. Ensure the protection of their cultural property against illicit import, export and transfer of ownership.
- ii. Set up within their territories one or more national services, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of their mandates.
- iii. Introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized.
- iv. Prohibit the exportation of cultural property from their territory unless accompanied by the export certificate.
- v. Publicize prohibitions by appropriate means, particularly among persons likely to export or import cultural property.
- vi. Take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property origination in another State Party, which has been illegally exported after entry into force of the Convention, in the State concerned.
- vii. Prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to the Convention after the entry into force of the Convention for the States concerned, if such property is documented as appearing in the inventory of that institution.
- viii. Impose penalties or administrative sanctions on any person responsible for infringing the prohibitions.
- ix. At the request of the State Party of origin, take appropriate steps to recover and return any such cultural property imported after the entry into force of the Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property.

- x. Respect the cultural heritage within the territories for the international relations of which they are responsible, and take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories.

3.4. Process of the Treaty Making

42. That the following procedure of Making Treaty is stipulated under the Treaty Making and Ratification Act, 2012 (Sections 8,9,10) :

- i. Once the relevant Departmental Committee approves the ratification of a treaty, the relevant Cabinet Secretary prepares the instrument of ratification of the treaty within thirty days of the date of approval.
- ii. The instrument of ratification shall be signed, and sealed by the Cabinet Secretary, Ministry of Foreign and Diaspora Affairs and be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization as per Article 20 of the Convention and a copy thereof shall be filed with the Registrar of Treaties.

CHAPTER FOUR

4.0. SUBMISSIONS BY MINISTRIES AND OTHER STAKEHOLDERS

4.3. The following stakeholders appeared before the Committee on various dates and made submissions before the Committee:-

4.1. Ministry of Tourism, Wildlife and Heritage

Hon. Peninah Malonza, Cabinet Secretary for Tourism, Wildlife and Heritage appeared before the Committee on 6th July, 2023 and submitted as follows:

- 4.4. In 1960, the United Nations General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples, which led to the recovery of important items from African cultural heritage.
- 4.5. The loss of these items continued unabated, with illicit trafficking increasing due to the opening up of the world market in antique items. Kenya, with a rich and diverse cultural heritage, has been affected by the plunder of its cultural resources since the pre-colonial period.
- 4.6. Kenya has initiated the process of ratifying the 1970 UNESCO Convention on the Prevention of Illicit Import, Export, and Transfer of Ownership of Cultural Property.
- 4.7. The Convention recommends three main pillars for the enforcement of cultural property protection: preventive measures, restitution provisions, and international cooperation.
- 4.8. States signatories to the treaty must enforce the security and safety of cultural property, assist one another in the retrieval of stolen cultural property, and strengthen international ties between signatories.
- 4.9. Kenya initiated the ratification processes through consultation with the Ministry of Foreign Affairs and Kenya National Commission for UNESCO (KNATCOM), and a Cabinet Memo was approved in 2022.
50. The ratification measures include: preparing inventories, monitoring trade, imposing sanctions, and educational as well as campaigns raising awareness.
51. Kenya will be part of the international cooperation framework among State Parties. However, the Convention has limitations, such as:
 - i. Lack of retroactive application;
 - ii. No binding mechanism for dispute resolution;
 - iii. No role for communities to participate.

4.2. The Office of the Prime Cabinet Secretary

52. Ms. Aurelia Rono, the Principal Secretary for Parliamentary Affairs appeared before the Committee on 6th July, 2023 and submitted as follows:

53. The Ministry of Foreign Affairs prepared a Memorandum for Kenya's accession to the 1970 UNESCO Convention which the National Security Council approved during its meeting held on April 1, 2022.
54. The 1970 UNESCO Convention emphasizes the prevention and international cooperation in cultural property ownership, promoting awareness and protecting cross-border traffic.
55. The State Parties must protect cultural property from illicit import, export, and transfer, prohibiting export without a certificate. Though the objectives of the Convention are aligned with the constitutional amendments, there is need to domesticate the Convention by amending the National Museums and Heritage Act, the Environmental Management and Coordination Act, the Copyright Act, the Mining Act and the Local Government Act.
56. The Accession to the Convention will protect Kenya's natural and cultural heritage, including archaeological sites, wildlife, landscapes, and folklore which are facing vulnerability due to antique global market openings.

4.3. The Law Society Kenya (LSK)

The Law Society of Kenya Chief Executive Officer, Ms. Florence Muturi and the Deputy Secretary, Mr. Collins Odhiambo appeared before the Committee on 6th July, 2023 and submitted as follows:

57. The calls for the repatriation of plundered cultural artefacts around the world have consistently been intensifying, with Kenya being one of the countries that has lost its cultural property. Repatriation is important for a variety of reasons since it restores the dignity of countries once under colonial rule.
58. The 1970 UNESCO Convention established a framework of international cooperation and mutual assistance, and obligates states to identify, protect and restitute cultural property stolen or exported illegally. This Convention further created awareness on the need to protect cultural objects against cross-border trafficking. Repatriation will address historical injustices and restore the dignity of the country after having suffered under colonial rule.
59. Notably, the skull of freedom fighter and Nandi Chief Koitalel Arap Samoei is still held in Britain, even though the relics he owned that were stolen by the British officer who killed him were returned in 2006.
60. Western governments, especially Britain, have largely resisted calls to return objects, even those on loan, claiming that they are the custodians and conservers of humanity's cultural and natural treasures. This is despite these objects having been unlawfully appropriated over the ages through conquest and colonialism.
61. The legislative and institutional framework regulating cultural expressions in Kenya was primarily governed by the Constitution of Kenya and several other laws and regulations.

62. The process of accession is necessary as it speaks directly to the sovereignty of the Kenyan State and its people. The benefits include economic, cultural and social benefits, national identity and sovereignty, political benefits and constitutional obligations.
63. The process of accession is essential and will benefit national identity and sovereignty as well as the economy, politics, culture, and society. To assure Kenya's conformity with the 1970 UNESCO Convention, the following significant reforms are suggested:
 - i. Enactment of comprehensive legislation;
 - ii. Strengthened export and import controls;
 - iii. Establishment of a national database; and
 - iv. Enhanced awareness and capacity building.
64. Kenya's accession to the 1970 UNESCO Convention on the illicit import, export, and transfer of cultural property is crucial to the preservation and protection of our rich cultural heritage.
65. By enacting necessary legislative changes and enhancing the existing regulations, Kenya will demonstrate its commitment to international standards, safeguard its cultural treasures, and contribute to global efforts against illicit trafficking.

4.4 The Council of Governors (C.O.G)

Ms. Irene Moraa, Director of Legal Services at the Council of Governors appeared before the Committee on behalf of the Chairperson and the CEO of the Council of Governors on 27th July 2023 and submitted as follows:-

66. Whereas some of the instruments included in the Convention had an impact on County Governments, the Council observed that International/Regional Conventions, Treaties, Agreements, and Protocols were within the control of the National Government. As a result, County Governments needed to be actively involved in the negotiating and acceding process.
67. The Council recognizes that Kenya is endowed with cultural heritage assets, such as archaeological specimens and artefacts, monuments, cultural objects, manuscripts, cultural landscapes, and folklore. In the past, a lot has been looted and fears of illegal smuggling are still a concern.
68. Since the pre-colonial period, Kenya has been losing its cultural heritage resources. For instance, the thousands of artefacts exhibited in various museums across Europe and North America with little context of how they were obtained.
69. The Convention provides a foundation for repatriating stolen cultural heritage, including the skull of the freedom fighter, Koitalel Arap Samoei and the traditional drum ngadji, which are protected and illegally exported from Kenya, as per Article 6(b) of the Convention.
70. Kenya's accession to the Convention on the Illicit Import, Export, and Transfer of Cultural Property is crucial for protecting and restoring its cultural heritage. Ratification offers economic and cultural benefits and does not violate the Constitution or morals.

71. The Council consents to the ratification of the Convention's and requests Parliament's action on the following issues:
- a) That the National Government, through the Ministry of Foreign and Diaspora Affairs, develops, signs and seals the ratification/ accession instrument and deposits the same with the Director General of the United Nations Educational, Scientific and Cultural Organization forthwith.
 - b) That upon accession, a joint Committee consisting of officials from the National and County Governments embarks on developing policy and legislation to give effect to the Convention as envisaged in Article 5(a). Some of the policies and legislation include;
 - i. National Policy on Culture and Heritage, 2021
 - ii. National Museums and Heritage Act, 2006
 - iii. The Protection of Traditional Knowledge and Cultural Expressions Act, 2016
 - c) That the joint Committee embarks on stocktaking of the stolen or illegally exported cultural objects. Further, costing of the stolen items based on lost economic opportunities be undertaken;
 - d) That the County Governments shall form part of the Government delegation on the periodic reporting on implementation pursuant to Article 16 and any negotiations related to the Convention as envisaged in Article 15.

4.5. Ministry of Defence

Hon. Aden Bare Duale, EGH, the Cabinet Secretary for Defence appeared before the Committee on 3rd August 2023 and submitted as follows:

72. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was adopted in Paris on 14th November 1970 and entered into force on 24th April 1972.
73. The Convention was considered by an Inter-Ministerial Committee and a draft position paper on the same developed. The Ministry of Defence actively supports the accession to the subject Convention.
74. The Convention mandates State Parties to prevent illicit trafficking of cultural property and gives a common framework for import, export, and transfer measures. It also requires cooperation on the return and restitution of the unlawfully exported cultural property and grants national responsibility for seizing and returning imported cultural property.
75. The Convention further requires State Parties to cooperate on the return and restitution of cultural property unlawfully exported from a State Party. The Convention grants State Parties at the national level, the responsibility of seizing and returning unlawfully imported cultural property.
76. The significant cultural properties belonging to the Republic of Kenya have in the past been exported to other countries. The 1970 UNESCO Convention provides a framework for Kenya to demand the restitution of such cultural property.

77. The Ministry of Defence through the Steering Committee of Project 58 (Uhuru Gardens Monument and Museum) observed that critical artefacts required to be displayed at Project 58, such as the man-eaters of Tsavo, were unlawfully exported to foreign States where they are on display. Kenya should accede to the 1970 UNESCO Convention to provide a framework for the restitution of those artefacts.
78. The accession to the 1970 UNESCO Convention will require the enactment of national legislation to implement its provisions as the Convention is not self-executing.
79. The Ministry of Defence therefore supports the accession to the Convention due to its superintendence role at Project 58 (Uhuru Gardens Monument and Museum)

4.6. Ministry of Interior and National Administration

The Ministry of Interior and National Administration presented a written submission to the Committee stating that:

80. The 1970 UNESCO Convention calls for State Parties to take measures to prohibit and prevent the illicit import, export, and transfer of ownership of cultural property. It establishes a standard framework for State Parties to implement measures to restrict and prevent the import, export, and transfer of cultural property.
81. The return and restitution of cultural property is vital to the Convention, and its mission is to remember and fundamentally defend peoples' identities and create peaceful communities, thereby strengthening the spirit of solidarity.
82. The 1970 UNESCO Convention was consistent with our Constitution, particularly **Article 11'**, the National Museums and Heritage Act No. 6 of 2006 and the United Nations 2030 Agenda on Sustainable Development Goals.
83. The benefits of ratifying the 1970 UNESCO Convention include:
 - i. Kenya is already accruing benefits for technical support of UNESCO on recovery and repatriation of cultural properties taken away from its communities, without consent, during the colonial period;
 - ii. Accession would enhance Kenya's legislative measures that protect its heritage from unlawful exportation of any form of cultural property;
 - iii. Kenya would further gain from international cooperation and collaboration in the event some of its cultural patrimony is in jeopardy from the pillage of archaeological or ethnological materials.
84. The mandate of the directorate in implementing the 1970 UNESCO Convention included the following:

- i. The Directorate of Immigration is a key player in the cross-border movement of persons. The Directorate works with other border agencies through a collaborative initiative to facilitate the movement of bona fide travellers through gazetted land and sea borders. To meet its mandate in border control, the Directorate is affiliated to several establishments tasked with border security management. These establishments include the Border Control and Coordination Committee (BCOCC), the Border Management Secretariat (BMS), and the Border Management Committees (BMC). The Directorate of Immigration plays a key role within these institutions through the advancement of acceptable norms in migration policy practice and management.
 - ii. The Directorate of Migration while facilitating the movement of persons across borders, is cognizant of the people carrying with them goods and cultural artefacts. To enforce the 1970 UNESCO Convention in Kenya, the Directorate tacitly collaborates with other agencies in identifying and apprehending any individuals that are suspected of perpetrating illegal transfer of cultural artefacts. In this manner, the Directorate indirectly facilitates prevention, recovery and repatriation of any illegally transferred cultural property and heritage.
 - iii. Although the main role of the Directorate at the border is to regulate the movement of persons to enter or exit the territory of Kenya, it further complements other agencies in their roles to clear goods and luggage. These include the Customs, the Kenya Wildlife Services and Kenya Forestry Service among the other enforcement agents that form part of the Border management initiatives. Through the border control security system, the Directorate monitors the movement of flagged-down dealers of illegal transfers of cultural properties and would be suspects. We facilitate apprehension and hand over them to the relevant agencies for further processing.
 - iv. The Directorate of Immigration officials from time to time participate in joint training to be appraised on their role in the prevention of the illegal transfers of cultural properties. The training involves identifying the cultural properties suspected to have been illegally acquired, identifying possible suspects facilitating the illegal transfers and measures to take when they come across such findings.
85. The Directorate of Immigration recognized the obligations of the Republic of Kenya upon ratifying the 1970 UNESCO Convention. The Government in this view undertakes the following steps in conformity to the Convention's stipulations:
- i. To ensure continuous protection of any cultural property against illicit import, export and transfer of ownership;
 - ii. To set up within Kenya's territory, one or more national services which do not already exist, with a qualified staff for the protection of cultural properties and heritage;
 - iii. To have a certification procedure for exports of all forms of cultural property to other states;
 - iv. To sensitize the public through various campaigns on laws and regulations of export and import of cultural properties as well as their display in museums;
 - v. To impose penalties or administrative sanctions on any person responsible for infringing the prohibitions;
 - vi. Upon request by any state that is party to the Convention, appropriate steps should be taken for the recovery and return of any imported cultural properties as well as compensation of an innocent purchaser who has a valid title to that property.

CHAPTER FIVE

5.0. OBSERVATIONS

90. The Committee having considered the Convention made the following observations:-

- 1) **That**, the memorandum submitted by the Cabinet Secretary, Ministry of Foreign and Diaspora affairs dated 22nd March, 2023 indicated that the ratification process of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was approved by the National Security Council during its meeting held on 1st April 2022;
- 2) **That**, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was adopted in Paris on 14th November 1970 and it came into force on 24th April 1972.
- 3) **That**, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property currently has 141 State Parties. Thirty-Nine (39) African Countries are members of the Convention: Algeria, Angola, Burkina Faso, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of Congo, Egypt, Equatorial Guinea, Gabon, Guinea, Libya, Madagascar, Mali, Mauritania, Mauritius, Morocco, Niger, Nigeria, Rwanda, Senegal, South Africa, Tunisia, United Republic of Tanzania, Zambia and Zimbabwe.
- 4) **That**, the objective of the Convention is the prevention of destruction and illegal trafficking of cultural property and the cross-border traffic in objects.
- 5) **That**, upon ratification of the Convention, Kenya will be required to:
 - a) Ensure the protection of its cultural property against illicit import, export and transfer of ownership.
 - b) Set up within its territories one or more national services, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of their mandates.
 - c) Introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized.
 - d) Prohibit the exportation of cultural property from its territory unless accompanied by the export certificate.
 - e) Publicize prohibitions by appropriate means, particularly among persons likely to export or import cultural property.
 - f) Take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property origination in

another State Party, which has been illegally exported after entry into force of the Convention, in the State concerned.

- g) Prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to the Convention after the entry into force of the Convention for the States concerned, if such property is documented as appearing in the inventory of that institution.
 - h) Impose penalties or administrative sanctions on any person responsible for infringing the prohibitions.
 - i) At the request of the State Party of origin, take appropriate steps to recover and return any such cultural property imported after the entry into force of the Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property.
 - j) Respect the cultural heritage within the territories for the international relations of which they are responsible, and take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories.
- 6) **That**, the benefits of ratifying the Convention for Kenya include:
- i. Kenya will qualify for UNESCO technical support on information, education, consultation, and expert advice as well as coordination and good offices.
 - ii. Kenya's accession will enhance Kenya's legislative measures that protect its heritage from illicit exportation of cultural property.
 - iii. Kenya will also benefit from international cooperation and collaboration from member states in the event its cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials.
- 7) **That**, the implementation of the Convention and any activity related to the Convention will be the responsibility of the Ministry of Tourism, Wildlife and Heritage. The Office of the Attorney General and Department of Justice, and the Ministry of Foreign Affairs will coordinate the reporting process on State obligations pursuant to the Treaty Making and Ratification Act No. 45 of 2012.
- 8) **That**, there will be no subscription costs for the Kenyan Government associated with acceding to the Convention. The financial requirements during implementation will be catered for during the normal budgetary estimates of relevant Ministries, Departments and Agencies.
- 9) **That**, all expenses associated with the return and delivery of the objects are borne by the requesting State. The Cost will vary according to the circumstances of each occasion when the convention is invoked.

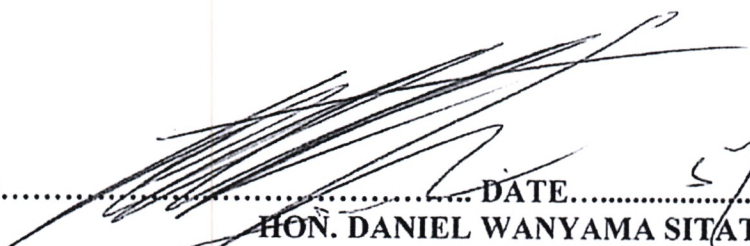
- 10) **That**, the Convention is consistent with the Constitution and promotes constitutional values and objectives, and it does not require the amendment of the Constitution.
- 11) **That**, Kenya will have to enact domestic legislation or amend existing relevant laws to enable implementation of the Convention. Some of these laws include the National Museums and Heritage Act, the Environmental Management and Co-ordination Act, the Land Act, the Copyright Act, the Local Government Act and the Mining Act.
- 12) **That**, some of the changes that will need to be effected by the revised legislation or the new Act would be on the following areas:-
- i. Import restrictions on certain classes of archaeological or ethnographic material;
 - ii. Compensation of good faith purchasers;
 - iii. The process of recovery and return of illegally imported cultural objects;
 - iv. Prohibiting the import of objects stolen from museums and similar institutions and creating appropriate penalties to the same;
 - v. Extending to foreign individuals and State Parties access to Kenya Courts to seek return of stolen and illegally exported cultural objects; and
 - vi. Establishing a central national authority that would also be a focal point for international co-operation between relevant ministries involving public agencies, the police, customs and representatives of the trade in art and antiquities.
- 13) **That**, Article 2(5) of the Constitution of Kenya, 2010 provides that the general rules of international law shall form part of the laws of Kenya, while Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the laws of Kenya;
- 14) **That**, Pursuant to section 8(4) of the Treaty Making and Ratification Act, No. 45 of 2012, the National Assembly may approve the ratification of a treaty with or without reservations. However, the Convention does not permit reservations;
- 15) **That**, the procedure for approval of Treaties as outlined in section 8 of the Treaty Making and Ratification Act, 2012 was adhered to;
- 16) **That**, all the stakeholders concurred and supported the Kenyan's accession to the Convention. Acceding would also help to strengthen the domestic legislation in order to improve the protection and preservation of Kenya's cultural heritage.
- 17) **That**, Kenya's cultural objects attract international interest and are potentially liable to illicit export. There is a need to recover illegally acquired cultural property that belongs to Kenya and to protect its cultural heritage from further illegal trade.
- 18) **That**, Kenya has more than 32,000 artefacts recorded to be out of the country and many *de facto* custodians are willing to repatriate Kenya's artefacts and cultural properties though others are still reactant and are masking our artefacts hiding and erasing some information which made the Ministry of Tourism, Wildlife and Heritage team up with Britain Museum to digitalize records.

- 19) **That**, there are more than thirty-five thousand objects documented that belong to Kenya that are in various countries globally and some countries like Britain and Scotland were willing to return the artefacts.
- 20) **That**, an Inter-government Cultural outfit be put in place to conduct forums and discussions between the two levels of government since the protection of our culture and repatriation of artefacts is a shared responsibility.
- 21) **That**, the Ministry of Tourism, Wildlife and Culture in consultation with the Office of the Attorney-General expedite the consideration of necessary legislations that will give effect to the operationalization of the Convention once it is acceded to.
- 22) **That**, it is critical to protect Kenya's cultural heritage by ratifying the Convention, which will ensure that unlawfully acquired cultural property is recovered and penalties are levied on the perpetrator.

CHAPTER SIX

6.0. RECOMMENDATION

91. Having considered the Convention and the submissions from stakeholders, and pursuant to Section 8 of the Treaty Making and Ratification Act, the Committee recommends that the House **APPROVES** the accession to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

SIGNED.......... DATE..... 5/10/2023
HON. DANIEL WANYAMA SITATI, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE

12 OCT 2023
TITLES
12-10-23
HON DANIEL WANYAMA, MP
CHAIR, SPORTS & CULTURE
A. SITIBUKU