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THE SENATE

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

TWELFTH PARLIAMENT- FIFTH SESSION

REPORT ON THE HERITAGE AND MUSEUMS BILL (SENATE BILLS NO. 22
OF 2021)

CLERK'S CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

Rt. Hon. Speaker
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10/11/2021

NOVEMBER, 2021

Approved
John 11/11/2021

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PREFACE

1. The Standing Committee on Labour and Social Welfare was constituted in December, 2017 during the First Session of the Twelfth (12th) Parliament pursuant to the provisions of Senate standing order 212.

The Committee is mandated to consider all matters related to: *manpower and human resources planning, pension, gender, culture and social welfare, youth, National Youth Service, children's welfare; national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation.*

2. In executing its mandate, the Committee oversees the Ministries of:

- a) Labour;
- b) Public Service, Gender Affairs, Senior Citizens Affairs and Social Protection; and,
- c) Sports, Culture and Heritage.

3. The Committee comprises of the following Members:

- | | |
|--|-------------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | -Chairperson |
| 2. Sen. Mwaruma Johnes Mwashushe | -Vice-Chairperson |
| 3. Sen. Madzayo Stewart Mwachiru, CBS | -Member |
| 4. Sen. Mwangi Paul Githiomi | -Member |
| 5. Sen. Kihika Susan Wakarura | -Member |
| 6. Sen. (Dr.) Milgo Alice Chepkorir | -Member |
| 7. Sen. Makori Beatrice Kwamboka | -Member |
| 8. Sen. Shiyonga Naomi Masitsa | -Member |
| 9. Sen. (Dr.) Mwaura Isaac Maigua, CBS | -Member |

ACKNOWLEDGEMENT

Mr. Speaker Sir,

The Committee wishes to acknowledge the time and considerable effort made by all parties who volunteered information before it. I also wish to express my gratitude to my colleagues for their thoughtful input and engaged contributions to the matter. Further, the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating all the actions that led to the

production of this report. The Committee also wishes to recognize the commitment and dedication of the staff of the committee that made the work of the Committee and the production of this report possible.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 143 (1), to present and lay on the table of the House the report of the Committee on Labour and Social Welfare on the Heritage and Museums Bill (Senate Bills No. 22 of 2021) for consideration by the House.



SIGNED.....

**SEN. JOHNSON SAKAJA, CBS.
CHAIRPERSON,
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE.**

DATE: Thursday, 28th October, 2021

1.0 INTRODUCTION

Mr. Speaker Sir,

The Heritage and Museums Bill (Senate Bills No. 22 of 2021) originated in the Senate and was published on 15th April, 2021 as an ordinary Bill. The Bill was sponsored by Sen. (Dr.) Alice Milgo, Nominated Senator from Bomet County.

The Bill was read a first time in the Senate on 6th July, 2021 and committed to the Standing Committee on Labour and Social Welfare pursuant to Standing Order 140 (1).

Pursuant to Article 118 of the Constitution and Standing Order No. 140 (5), of the Senate Standing Order, the Standing Committee of the Senate on Labour and Social Welfare called for submission of written memoranda through advertisements in the Daily Nation and the Standard dated Friday, 9th July, 2021. The Committee also facilitated a virtual stakeholders' forum held on 4th August, 2021; and on 24th August, 2021 to take into account the views and recommendations of the public while preparing this report.

The Bill seeks to repeal the Museums and Heritage Act and enact a new Bill that conforms to the Constitution.

Paragraph 25 of Part 1 of the Fourth Schedule to the Constitution designates ancient and historical monuments of national importance as a part of the functions of the National Government. Paragraph 4 of Part 2 of the Fourth Schedule to the Constitution states that cultural activities, public entertainment and public amenities including museums are a function of the county governments.

The Bill therefore proposes to retain the Museums of Kenya already established under the National Museums and Heritage Act, 2006; provide for national and county museums; provide for the preservation, protection and management of cultural and natural heritage at National and County levels of Government; and repeal the National Museums and Heritage Act, 2006.

The Committee at its meetings held on 27th October, 2021 deliberated on the Bill and considered the submissions from the public hearing and stakeholders and recommended that the Heritage and Museums Bill, 2021 be adopted subject to the amendments contained in Annex I to be moved at Committee of the Whole.

The Bill has been processed by the Committee and is now ready for presentation to the House for consideration.

2.0 OVERVIEW OF THE HERITAGE AND MUSEUMS BILL (SENATE BILLS NO. 22 OF 2021)

2.1 Overview of the Bill

The Bill proposes to retain the National Museums of Kenya already established under the National Museums and Heritage Act, 2006, provide for functions of counties in relation to heritage and museums and establishment of county museums. The Bill further seeks to provide for appointment of County Heritage Inspectors in each county for purposes of compliance with the Bill and establishment of National Heritage Centres in each County. In addition, the Bill seeks to provide for maintenance of registers of all protected areas, ancient and historical monuments, and enforcement of agreements for monuments' protection. The Bill intends to establish the Heritage Tribunal to hear appeals and complaints, resolve conflicts and address all issues relating to heritage and museums.

The principal object of the Bill is therefore to repeal the National Museums and Heritage Act and enact a new Bill that conforms to the Constitution. The Bill proposes to—

- (a) retain the National Museums of Kenya already established under the National Museums and Heritage Act, 2006;
- (b) provide for national and county museums;
- (c) provide for the preservation, protection and management of cultural and natural heritage at National and County levels of Government; and
- (d) repeal the National Museums and Heritage Act, 2006.

2.2 Overview of the Bill

The Bill —

- (a) retains the National Museums of Kenya;
- (b) provides for the functions of counties in relation to heritage and museums;

- (c) establishes county museums and their functions;
- (d) provides for appointment County Heritage Inspectors in each county for purposes of compliance with the Bill;
- (e) provides for the establishment of National Heritage Centres in each county;
- (f) provides for the maintenance of registers of all protected areas and ancient and historical monuments of national importance; and
- (g) provides for the enforcement of agreements for protection of monuments.
- (h) establishes the Heritage Tribunal to hear appeals and complaints, resolve conflicts and address all issues relating to heritage and museums.

(a) The National Museums of Kenya

The Bill provides for the re-establishment of the National Museums of Kenya vested with the mandate of conserving cultural and natural heritage of national importance. The management of National Museums of Kenya is vested in the Board of National Museums. The Director-General shall be responsible for the day to day management and general administration of the National Museums of Kenya subject to the Board's directions.

(b) Functions of county governments

The Bill provides for the functions of county governments pertaining to county museums. In relation to museums, the county governments will have the mandate of collection, documentation and exhibition of materials, objects of historical, cultural and cultural heritage that are important to the respective county.

(c) Management of national heritage, antiquities and monuments

The Bill empowers the Cabinet Secretary responsible for matters relating to national heritage, antiquities and monuments, after consultation with the National Museums Board, to declare or gazette a place or an object as heritage of national importance. The Board is mandated to deliberate and pass a resolution on de-gazettement of a place or object as national heritage. The

Bill further provides for the prescription of general principles for the management of heritage resources nationally by regulation.

(d) Exploration and discovery

Under the Bill, it is mandatory to obtain an exploration licence before pursuing excavation or surface search operations for buried monuments. The Bill prescribes the procedure for compensation in the case of disturbance of the rights of occupiers of Trust land or damage to any such land, of an occupier who claims compensation. Under the Bill, the National Museums of Kenya must be notified of any discovery made. The Bill also restricts the movement of objects of archeological or paleontological interest without authorization.

(e) Protected areas

The Bill provides for protected areas and ways of compensation to owners of land declared to be a protected area. The Cabinet Secretary is empowered to prohibit or restrict access to any development or use of a protected area for agriculture or livestock or any activity which would damage a monument or object for archeological interest.

(f) Monuments

The Bill provides for the acquisition, protection, maintenance, inspection, repair, acquisition and guardianship of monuments.

(g) Antiquities and protected objects

Under the Bill, antiquities are considered property of the government. Removal of antiquities and protected objects from the place where such is situated is prohibited under the Bill. The Bill prohibits also the sale of antiquities and protected objects.

(h) Exports

The Bill provides the conditions relating to export of monuments, antiquities or protected objects. The Bill provides that a monument, antiquity or protected object shall not be removed from Kenya otherwise than through a customs port of entry.

(i) Powers of enforcement

The Bill provides an enforcement mechanism by the National Museums of Kenya to ensure compliance with the provisions of the proposed Act. The Bill provides for inspection by the National Museums and for the appointment of national heritage inspectors for the purpose of enforcing the Act. The national heritage inspector has been given powers to inspect, arrest and search under the Bill.

(j) The Heritage Tribunal

The Bill provides for the establishment of the Heritage Tribunal which shall hear appeals and complaints, resolve conflicts and address questions under the Bill.

2.3 Consequences of the Bill

The Bill will provide a legal framework for the implementation of the functions and powers of the county governments with respect to cultural activities, public entertainment and public amenities as set out under paragraph 4 of part 2 of the Fourth Schedule to the Constitution. The Bill will also repeal the National Museums and Heritage Act, 2006.

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

The Committee put up an advertisement in the local dailies, the Daily Nation and the Standard to seek submissions in written form from the public, on the Heritage and Museums Bill, 2021 on Friday, 9th July, 2021 as per the copy attached as Annex IV.

The Committee scheduled a stakeholder forum on 4th August, 2021 and on 24th August, 2021; and received submissions from the Ministry of Sports, Culture and Heritage, the Nature Kenya (The East Africa Natural History Society) and the Turkana Basin Institute as captured in the attached matrix (see Annex II) concerning the Heritage and Museums Bill, 2021.

3.1 Stakeholder Meetings on the Heritage and Museums Bill, 2021

3.1.1 Meeting on 4th August, 2021

The Committee met the Ministry of Sports, Culture and Heritage and Nature Kenya on Wednesday, 4th August, 2021 at 10.30 am to deliberate on the Bill. Below is the summary of the submissions from the two institutions.

a) Presentation by Dr. Paul Matiku, Executive Director Nature Kenya

The Committee received memorandum from Nature Kenya (The East Africa Natural History Society) as follows —

- (a) Nature Kenya is concerned that the Senate has not recognised history, and left out the Representative of Nature Kenya on the Museum Board. Nature Kenya representation on the Museum Board is guaranteed by the recommendations and agreement that handed the Museum over to the Government.
- (b) Therefore, Nature Kenya writes to request the Senate Committee on Labour and Social Welfare to reinstate Nature Kenya in Clause 8(1)(d) of the Heritage and Museums Bill 2021.
Reinstate Nature Kenya by amending Clause 8(1)(d) to say;

8(1)(d) Three persons representing scientific interests with outstanding interests in and contribution to the work of the national museums including one nominated by Nature Kenya (The East Africa Natural History Society)

OR

Reinstate the wording in the current Act (with slight updates) as follows;

8(1)(d) Three persons representing scientific interest appointed by the Minister of whom one shall be nominated by Nature Kenya, one by the University of Nairobi and one from the National Council for Science, Technology and Innovation.

b) Presentation by Ms. Josephta Mukobe- PS, Culture and Heritage- Ministry of Sports, Culture and Heritage

1. The Ministry appreciates the partnership with the Committee in the process of reviewing of the National Museums and Heritage Act No. 6 of 2006 to align to the Constitution of Kenya, 2010.
2. The Bill has harmonized the legislative proposals made by the Committee and the Ministry as articulated during previous engagements.
3. However, the Ministry forwarded proposals received from the Board of the National Museums of Kenya for an amendment to be made under Section 8(1) (d) of the Bill as follows:

AS PROVIDED IN THE BILL BEFORE THE SENATE	RECOMMENDED PROVISION	REASONS FOR THE RECOMMENDATION
Section 8 (1) The Management of the National Museums of Kenya shall vest in a Board which shall comprise of –	Section 8 (1) The Management of the National Museums of Kenya shall vest in a Board which shall comprise of –	The NMK Board’s concern is that the section 8(1) (d) as currently drafted excludes critical representation to the work of National Museums of

<p>(d)three persons representing scientific interests with outstanding interest in and contribution to the work of the national museums;</p>	<p>(d) Three persons representing Scientific, Arts and general outstanding interest in and contribution to the work of the National Museums of whom one shall be nominated Nature Kenya</p>	<p>Kenya (NMK). These are: (i) Nature Kenya (formerly the East Africa Natural History Society) which is the founding partner and (ii) The Arts interest which is key to NMK is excluded (this is in addition to scientific interest)</p>
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3.1.2 Meeting on 24th August, 2021

The Committee met the Director of the Turkana Basin Institute on 24th August, 2021 to deliberate on the Bill. Below is a summary of the deliberations -

a) **Presentation by Prof. Isaiah Nengo, Director, Research and Science, Turkana Basin Institute**

1. He informed the meeting that he was appearing before the Committee both on a personal and professional capacity.
2. He stated that he met Dr. Richard Leakey on a school field trip when he was 17 years old and they had a talk on origin of humans, which immensely contributed to his pursuit of a career in palaeontology.
3. After graduating with a degree in Palaeontology at the University of Nairobi, he worked for two years with the National Museums of Kenya.
4. He then got a scholarship in the Harvard University to pursue his Masters and PhD.
5. He returned home and joined Dr. Leakey in Turkana Basin Institute to educate people, protect heritage and stimulate paleo-tourism.
6. He stated that Kenya only has one museum in Nairobi, yet Kenya has millions of specimen.
7. He cautioned against the concentration of specimen, materials and resources in Nairobi and called for distribution across the country.

8. He acknowledged that according to Schedule 4 of the Constitution, ancient and historical monuments of national importance are under the purview of the National Government while County governments are tasked with management of museums.
9. The Bill does not provide for clear distinction of monuments, specimens, museums and the functions of the two levels of government.
10. As an expert, he invited the legal team of the Senate to discuss and create clear distinction.

b) Members interventions and Way Forward

The Committee resolved to consult further with Prof. Nengo and seek his professional advice on creating clear distinction of monuments, specimen and museums for the two levels of Government.

4.0 RECOMMENDATIONS OF THE COMMITTEE

The Committee unanimously agreed with the proposals and submissions to amend Section 8 (1) made by the Nature Kenya and the Ministry of Sports, Culture and Heritage to include a representative of Nature Kenya in the Museums Board.

Below is a summary of the Committee's other recommendations –

1. Amend Clause 2 of the Bill by inserting new definitions of commonly used terms
2. Add a new part 1A immediately after Clause '2' (2A – 2D) on 'System for management of National Heritage Resources' which will -
 - A-Provide for the principles of management of heritage resources
 - B-outline the principles for the management of heritage resources
 - C- provide the Heritage Assessment criteria and grading
 - D-outline the responsibilities of the National Museums of Kenya and County museums for identification and management of national heritage
3. Insert clauses 7A -7C immediately after Clause '7' to provide for –
 - A- the establishment of county museums
 - B-Functions, powers and duties of county museums
 - C-General powers and duties of National Museums of Kenya and county museums
4. Amend Clause 8 as follows –
 - (a) in sub clause (1) by deleting paragraph (d) and substituting therefor the following new paragraph—
 - (d) three persons representing scientific, arts and general outstanding interest in, and contribution to the work of the national heritage, one of whom shall be nominated Nature Kenya;
5. Amend Clause 31 by inserting the following new clauses after Clause 31 (31A- - 310) on the following -
 - A –National Heritage Sites and County Heritage Sites
 - B-Inventory of National Heritage

C-Heritage Registers

D-National Resources Programme – Heritage

E-Restitution of Heritage Objects

F-Heritage Agreements

G-Presentation of Protected resources

H-Compulsory Repair Order

I-Expropriation

J-Heritage Areas

K-Heritage Objects

L-Import of Objects Protected in terms of Laws of Foreign States

M-Archaeology, Palaeontology meteorites

N-Burial Grounds and graves

O-Establishment of Research Institutions

5. Delete Clause 34, 35, 36,37, 38, and 39.
6. Delete Clause 48 and replace with a new Clause on Designation of Protected areas by Heritage Authorities
7. Insert a new Clause 49 A to provide for Provisional protection.

Annex 1: Proposed Committee Stage Amendments of the Heritage and Museums Bill, 2021

30th October, 2021

The Clerk of the Senate,

Parliament Buildings,

NAIROBI.

RE: COMMITTEE STAGE AMENDMENTS TO THE HERITAGE AND MUSEUMS BILL, 2021, SENATE BILLS NO. 22 OF 2021

NOTICE is given that Sen. Johnson Sakaja, the Chairperson to the Standing Committee on Labour and Social Welfare, intends to move the following amendment to the Heritage and Museums Bill, 2021, Senate Bills No. 22 of 2021, at the Committee Stage—

CLAUSE 2

THAT clause 2 of the Bill be amended by inserting the following new definitions in their alphabetical order—

“alter” means any action affecting the structure, appearance or physical properties of a place or object, whether by way of structural or other works, by painting, plastering or other decoration or any other means;

“archaeological” means—

- (a) material remains resulting from human activity which are in a state of disuse and are in or on land and which are older than one hundred (100) years, including artefacts, human and hominid remains and artificial features and structures;
- (b) rock art, being any form of painting, engraving or other graphic representation on a fixed rock surface or loose rock or stone, which was executed by human agency and which is older than one hundred (100) years, including any area within ten (10) metres of such representation;
- (c) wrecks, being any vessel or aircraft, or any part thereof, which was wrecked in Kenya, whether on land, in the internal waters, the territorial waters or in the maritime culture zone of the Republic, and any cargo, debris or artefacts found or associated therewith, which is older than 60 years or which National Museums of Kenya considers worthy of conservation;
- (d) features, structures and artefacts associated with military history which are older than seventy five (75) years and the sites on which they are found;

“conservation” in relation to heritage resources, includes protection, maintenance, preservation and sustainable use of places or objects so as to safeguard their cultural significance;

‘cultural property agreement’ in relation to a foreign state, means an agreement between Kenya and a foreign state or an international agreement to which Kenya and a foreign state are both parties, relating to the prevention of illicit international traffic in cultural property;

“cultural significance” means aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance;

“development” means any physical intervention, excavation, or action, other than those caused by natural forces, which may in the opinion of a heritage authority in any way result in a change to the nature, appearance or physical nature of a place, or influence its stability and future well-being, including—

- (a) construction, alteration, demolition, removal or change of use of a place or a structure at a place;
- (b) carrying out any works on or over or under a place;
- (c) subdivision or consolidation of land comprising, a place, including the structures or airspace of a place;
- (d) constructing or putting up for display signs or hoardings;
- (e) any change to the natural or existing condition or topography of land; and
- (f) any removal or destruction of trees, or removal of vegetation or topsoil;

“foreign cultural property”, in relation to a reciprocating state, means any object that is specifically designated by that state as being of importance for archaeology, history, literature, art or science;

“heritage resource” means any place or object of cultural significance;

‘heritage site’ means a place declared to be a national heritage site by Kenya Heritage Authority or a place declared to be a county heritage site by a county heritage resources authority;

‘improvement’, in relation to heritage resources, includes the repair, restoration and rehabilitation of a place protected in terms of this Act;

“living heritage” means the intangible aspects of inherited culture, and may include—

- (a) cultural tradition;
- (b) oral history;
- (c) performance;
- (d) ritual;

- (e) popular memory;
- (f) skills and techniques;
- (g) indigenous knowledge systems; and
- (h) the holistic approach to nature, society and social relationships;

“management”, in relation to heritage resources, includes the conservation, presentation and improvement of a place protected under this Act;

“meteorite” means any naturally-occurring object of extraterrestrial origin;

“object” means any movable property of cultural significance which may be protected under this Act, including—

- (a) any archaeological artefact;
- (b) palaeontological and rare geological specimens;
- (c) meteorites; and
- (d) other objects referred to in this Act;

“palaeontological” means any fossilised remains or fossil trace of animals or plants which lived in the geological past, other than fossil fuels or fossiliferous rock intended for industrial use, and any site which contains such fossilised remains or trace;

“place” includes—

- (a) a site, area or region;
- (b) a building or other structure which may include equipment, furniture, fittings and articles associated with or connected with such building or other structure;
- (c) a group of buildings or other structures which may include equipment, furniture, fittings and articles associated with or connected with such group of buildings or other structures;
- (d) an open space, including a public square, street or park; and
- (e) in relation to the management of a place, includes the immediate surroundings of a place;

“planning” means urban and regional planning, as contemplated in the Physical and Land Use Planning Act and county planning and land use planning legislations;

“presentation” includes—

- (a) the exhibition or display of;
- (b) the provision of access and guidance to;
- (c) the provision, publication or display of information in relation to; and
- (d) performances or oral presentations related to, heritage resources protected under this Act;

“public monuments and memorials” means all monuments and memorials—

- (a) erected on land belonging to any level of government, or on land belonging to any organisation funded by or established in terms of the legislation of such a level of government; or
- (b) which were paid for by public subscription, government funds, or a public-spirited or military organisation, and are on land belonging to any private individual;

“reciprocating state” means a foreign state that is party to a cultural property agreement;

“site” means any area of land, including land covered by water, and including any structures or objects thereon;

“structure” means any building, works, device or other facility made by people and which is fixed to land, and includes any fixtures, fittings and equipment associated therewith;

PROPOSED INSERTION OF NEW PART IA

THAT the Bill be amended by inserting the following new part immediately after clause 2—

PART IA SYSTEM FOR MANAGEMENT OF NATIONAL HERITAGE RESOURCES

National Heritage.

2A. (1) Heritage resources which are of cultural significance or other special value shall be considered part of the national heritage.

(2) Without limiting the generality of subsection (1), the national heritage may include—

- (a) places, buildings, structures and equipment of cultural significance;
- (b) places to which oral traditions are attached or which are associated with living heritage;
- (c) historical settlements and townscapes;
- (d) landscapes and natural features of cultural significance;
- (e) geological sites of scientific or cultural importance;
- (f) archaeological and palaeontological sites;
- (g) graves and burial grounds, including—
 - (i) ancestral graves;
 - (ii) royal graves and graves of traditional leaders;
 - (iii) graves of victims of conflict;
 - (iv) graves of individuals designated by an Act of Parliament;
 - (v) historical graves and cemeteries; and
 - (vi) other human remains which are not covered under the laws of Kenya;

- (h) sites of significance relating to the history of slavery, history of colonialism, or ancient migratory patterns of the Kenyan people as recorded in Kenya;
- (i) movable objects, including—
 - (i) objects recovered from the soil or waters of Kenya, including archaeological and palaeontological objects and material, meteorites and rare geological specimens;
 - (ii) objects to which oral traditions are attached or which are associated with living heritage;
 - (iii) ethnographic art and objects;
 - (iv) military objects;
 - (v) objects of decorative or fine art;
 - (vi) objects of scientific or technological interest; and
 - (vii) books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings, excluding those that are public records under the laws of Kenya.

(3) Without limiting the generality of subsections (1) and (2), a place or object is to be considered part of the national heritage if it has cultural significance or other special value because of—

- (a) its importance in the community, or pattern of Kenya's history;
- (b) its possession of uncommon, rare or endangered aspects of Kenya's natural or cultural heritage;
- (c) its potential to yield information that will contribute to an understanding of Kenya's natural or cultural heritage;
- (d) its importance in demonstrating the principal characteristics of a particular class of Kenya's natural or cultural places or objects;
- (e) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- (f) its importance in demonstrating a high degree of creative or technical achievement at a particular period;
- (g) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- (h) its strong or special association with the life or work of a person, group or organisation of importance in the history of Kenya; and
- (i) sites of significance relating to the history of slavery in Kenya.

General principles for
heritage resources
management.

2B. (1) The management of heritage resources shall be guided by the following principles—

- (a) heritage resources have lasting value in their own right and provide evidence of the origins of the Kenyan society;
- (b) heritage resources are valuable, finite, non-renewable and irreplaceable they shall be carefully managed to ensure their survival;
- (c) every generation has a moral responsibility to act as trustee of the national heritage for succeeding generations;
- (d) the State has an obligation to manage heritage resources in the interests of all Kenyans;
- (e) heritage resources have the capacity to promote reconciliation, understanding and respect, and contribute to the development of a unifying Kenyan identity; and
- (f) heritage resources management shall guard against the use of heritage for sectarian purposes or political gain.

(2) To ensure that heritage resources are effectively managed—

- (a) the skills and capacities of persons and communities involved in heritage resources management shall be developed; and
- (b) provision shall be made for the ongoing education and training of existing and new heritage resources management workers.

(3) Heritage resources form an important part of the history and beliefs of communities and shall be managed in a way that promotes public participation.

(4) Heritage resources contribute significantly to research, education and tourism and they shall be developed and presented for these purposes in a way that ensures dignity and respect for cultural values.

(5) Policy, administrative practices and legislation shall promote the integration of heritage resources conservation in urban and rural planning and social and economic development.

(7) The identification, assessment and management of the heritage resources of Kenya shall—

- (a) take account of all relevant cultural values and indigenous knowledge systems;
- (b) take account of material or cultural heritage value and involve the least possible alteration or loss of it;

- (c) promote the use and enjoyment of and access to heritage resources, in a way consistent with their cultural significance and conservation needs;
- (d) contribute to social and economic development;
- (e) safeguard the options of present and future generations; and
- (f) be fully researched, documented and recorded.

Principles for management of heritage resources.

2C. (1) The Cabinet Secretary may, in consultation with the National Museums of Kenya and county museums, by notice in the *gazette*—

- (a) prescribe any principles for the management of the heritage, in addition to, but not inconsistent with, the principles set out in this Act;
- (b) prescribe county specific principles; and
- (c) publish for general information, national policy and standards relating to the management of the heritage nationally, or any aspect thereof which is consistent with the principles set out in this Act.

Heritage assessment criteria and grading.

2D. (1) The National Museums of Kenya shall, in consultation with the Cabinet Secretary and the County Executive Committee members of every county government, by regulation establish a system of grading of places and objects which form part of the national heritage and which distinguishes between at least the categories—

- (a) Grade I— Heritage resources with qualities so exceptional that they are of special national significance;
- (b) Grade II—Heritage resources which, although forming part of the national heritage, can be considered to have special qualities which make them significant within the context of a county or a region; and

(2) The system for grading heritage resources assessment criteria shall be, consistent with the criteria set out in section 2A (3).

(3) The National Museums of Kenya may prescribe detailed heritage assessment criteria, consistent with the criteria set out in section 2A (3), for the assessment of Grade II heritage resources in a county.

Responsibilities of National Museums of Kenya and county museums for

2E. (1) There is established a two tier system for heritage resources management, in which national level functions shall be the responsibility of

identification and management of national heritage.

the National Museums of Kenya while the county level functions shall be the responsibility of county museums.

(2) The National Museums of Kenya and county museums shall be accountable for their actions and decisions and the performance of functions under this system.

(3) The National Museums of Kenya shall be responsible for the identification and management of Grade I heritage resources and heritage resources in accordance with the applicable provisions of this Act, and shall co-ordinate and monitor the management of the national heritage in the Republic.

(4) A county museum shall be responsible for the identification and management of Grade II heritage resources and heritage resources which are considered to be a county function and power under the Constitution.

THAT the Bill be amended by inserting the following clauses immediately after clause 7—

Establishment of county museums.

7A. A County Executive Committee Member may establish a county museum which shall be—

- (a) responsible for the management of the relevant heritage resources within the county;
- (b) a body corporate capable of suing and being sued in its corporate name;
- (c) governed by a board constituted as prescribed by regulations published in the *county gazette*; and
- (d) appointed in a manner which applies the principles of transparency, regional balance and takes into account special competence, experience and interest in the field of heritage resources.

Functions, powers and duties of county museum.

7B. (1) A county heritage authority shall—

- (a) advise the County Executive Committee Member on the implementation of this Act or relevant county legislation;
- (b) annually submit a report to the Committee Executive Committee Member regarding its activities for each financial year;

- (c) promote the systematic identification, recording and assessment of heritage resources and heritage objects which form part of the national heritage in a county;
- (d) protect and manage heritage resources in a county which fulfil the heritage assessment criteria prescribed under this Act for Grade II status;
- (e) notify the National Museums of Kenya of the presence of any heritage resource in the county which it considers fulfils the heritage assessment criteria prescribed under this Act for Grade I status;
- (f) nominate such resource for national level protection and furnish the National Museums of Kenya with the information in its possession relating to such resource;
- (g) maintain data bases on heritage resources in accordance with national standards, and at regular intervals furnish the National Museums of Kenya with such data; and
- (h) establish policy, objectives and strategy plans for heritage resources management in the county.

General powers and duties of National Museums of Kenya and county museums.

7C. (1) The National Museums of Kenya and county museums shall—

- (a) promote public participation in the management of the national heritage;
- (b) maintain a list of conservation bodies which have registered their interest in—
 - (i) a geographical area; or
 - (ii) a category of heritage resources;
- (c) endeavour to assist any community or body of persons with an established interest in any heritage resource to obtain reasonable access to such heritage resource;
- (d) promote and engage in research relating to the identification, assessment and management of the national heritage as necessary for the performance of its functions;
- (e) publish, or by any other means make available or distribute in any form, or cause to be published or distributed, any knowledge and information relating to the national heritage and any of its functions or activities;
- (f) inspect or document any heritage resource which—
 - (i) has the potential to become protected in terms of this Act;
 - (ii) is, or which the heritage authority has reason to believe may be, so protected; or
 - (iii) it wishes to document for research purposes, for purposes of building up a public record of heritage resources or as part of

an investigation into a suspected offence in terms of this Act, and shall maintain a register of such inspections;

- (g) undertake or make arrangements for the presentation of any place under its control or any heritage site which is owned by the State;
- (h) by agreement with the authority or body concerned, co-operate in the management of any heritage resource which is owned or controlled by the State;
- (i) lend anything under its control to a museum or public institution, subject to such conditions as it deems necessary and appropriate;
- (j) make and from time to time amend regulations relating to any matter which the heritage authority concerned considers to be necessary or expedient to prescribe to fulfil its functions and implement its powers and duties under this Act, including—
 - (i) the standards of practice and qualifications required of individuals, institutions or other bodies for the performance of work on heritage resources protected in terms of, and in the various fields covered by, this Act; and
 - (ii) the monitoring of activities at protected sites;
- (k) create and where necessary register with the relevant authorities a badge, or an emblem for the authority, any of its projects or any category of protection provided for in terms of this Act;
- (l) where appropriate, affix to or otherwise display at any place protected in terms of this Act a badge or other sign indicating its status;
- (m) produce, acquire and market products relating to the national heritage, or enter into arrangements for the production, acquisition and marketing of such products;
- (n) recover costs incurred by it and, where appropriate, charge for the provision of services rendered in terms of this Act, including but not limited to the—
 - (i) processing of applications received;
 - (ii) carrying out of investigations;
 - (iii) production, acquisition and marketing of products; and
 - (iv) provision of information;
- (o) arrange for the provision of insurance cover for—
 - (i) itself against any loss, damage, risk or liability which it may suffer or incur regarding any property under its control; and
 - (ii) members of the board of a heritage resources authority, co-opted members, members of committees and members of its staff, in respect of bodily injury, illness, disablement or death incurred wholly and directly in the course of the performance of their duties on behalf of the heritage resources authority concerned;

- (p) enter into contracts; and
- (q) employ consultants to assist in the performance of its functions.

CLAUSE 8

THAT clause 8 of the Bill be amended—

(b) in sub clause (1) by deleting paragraph (d) and substituting therefor the following new paragraph—

(d) three persons representing scientific, arts and general outstanding interest in, and contribution to the work of the national heritage, one of whom shall be nominated Nature Kenya;

CLAUSE 31

THAT the Bill be amended by inserting the following new clauses immediately after clause 31—

National heritage sites
and county heritage
sites.

31A. (1) The National Museums of Kenya shall be in charge of national heritage sites as set out under Part IA of this Act.

(2) A county museum shall be in charge of county heritage sites as set out under Part IA of this Act.

(3) A person may petition the National Museums of Kenya for a place to be declared a national heritage site or to the relevant county museum for a place to be declared a county heritage site.

(4) The National Museums of Kenya may, by notice in the *Gazette*, declare any place referred to in subsection (1) to be a national heritage site.

(5) A county museum may, by notice in the *county Gazette*, declare any place referred to in subsection (2) and described in the notice to be a county heritage site.

(6) The National Museums of Kenya or a county museum shall, before declaration of a place as a heritage site—

- (a) notify the owner;
- (b) notify the occupier and any other person with a registered interest in the property;

- (c) notify all conservation bodies which have registered their interest in the geographical area in which the proposed heritage site is situated, and give them at least sixty (60) days to make submissions regarding the proposed declaration, amendment or withdrawal, and in the case of the owner, to propose conditions under which the action will be acceptable; and
- (d) give to the owner reasonable opportunity for representations or submissions to be made in regard to the proposed notification.

(7) A person may not destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of any heritage site without a permit issued by the body responsible for the protection of such a site.

(8) The National Museums of Kenya or a county museum may, by agreement with the owner of a heritage site—

- (a) conserve or improve any heritage site;
- (b) construct fences, walls or gates around or on a heritage site;
- (c) acquire or construct and maintain an access road to a heritage site over any land, and construct upon such land fences, walls or gates; or
- (d) erect signs on or near a heritage site.

Inventory of national heritage.

31B. (1) The National Museums of Kenya shall, for the purposes of the consolidation and co-ordination of information on heritage resources, compile and maintain an inventory of the national heritage

(2) The inventory of national heritage shall be in the form of a data base of information on heritage resources, including—

- (a) an object, monument or protected area declared under the National Museums and Heritage Act, 2006 to be a protected object, monument or protected area;
- (b) all places and objects protected through the publication of notices in the *Gazette* or *county gazette*, whether under this Act or a county legislation;
- (c) places and objects subject to general protections under this Act or a county legislation for the management of heritage resources; and
- (d) any other place and object which it considers to be of interest, and for this purpose it shall co-ordinate, and may prescribe, national

standards for the recording of information by county heritage authorities.

(2) The National Museums of Kenya shall list heritage resources in the inventory in the format and under prescribed categories under this Act.

(3) The National Museums of Kenya may from time to time, after consultation with the relevant county museums make, amend or delete entries in the inventory and ensure that all places listed in any heritage register shall be entered in the inventory.

(4) The National Museums of Kenya shall make the inventory of national heritage accessible by the public.

(5) The National Museums of Kenya shall, at regular intervals, publish a summary and analysis of the inventory of the national heritage.

Heritage registers.

31C. (1) The county museums shall compile and maintain heritage registers listing the heritage resources in their specific counties under the heritage assessment criteria set out under this Act.

(2) Heritage resources shall be listed in accordance with—

- (a) the sub categories as prescribed under this Act, if any;
- (b) the areas of jurisdiction; and
- (c) any additional categories prescribed by the National Museums of Kenya.

(3) A county museum shall prescribe the procedure and information required for—

- (a) the nomination of a resource for listing in a heritage register; and
- (b) the compilation of an inventory of heritage resources.

(4) A county museum may approve an inventory of heritage resources submitted to it by any person for listing in the heritage register.

(5) A county museum shall not list a place in a heritage register without having consulted the owner of such place regarding the protection of such a place.

National resources heritage programme.

heritage assistance

31D. (1) The National Museums of Kenya may provide financial assistance in the form of a grant or a loan to an approved body or an individual for any project which contributes to the purpose, and is in accordance with the principles as prescribed under this Act.

(2) The National Museums of Kenya shall prescribe the procedures for applications for approval and granting of financial assistance and the criteria for the assessment of projects.

Restitution of heritage objects.

31E. (1) A community or body with a *bona fide* interest may make a claim for the restitution of a movable heritage resource which is part of the national heritage.

(2) The Cabinet Secretary may make regulations regarding the establishment of *bona fide* interest in terms of subsection (1) and the conditions under which such claims may be made.

Heritage agreements.

31F. (1) The National Museums of Kenya or a county museum—

- (a) may enter into an agreement with a conservation body, person, or community for the execution of a heritage agreement to provide for the conservation, improvement or presentation of a clearly defined heritage resource with the consent of the owner; and
- (b) such a heritage agreement shall be in the form of a binding contract.

(2) The heritage agreement may provide for—

- (a) the maintenance and management of the place;
- (b) the custody of the place and the duties of any person who may be employed in connection therewith;
- (c) the occupation or use of the place by the owner or otherwise;
- (d) the restriction of the right of the owner or occupier to do certain acts or things on or near the place;
- (e) the facilities of access to be permitted to the public and to persons deputed by the guardian to inspect or maintain the place;
- (f) the presentation of the place;
- (g) the notice to be given to the guardian in case the owner intends to offer the land on which the place is situated for sale, lease or

- other disposal, and the right to be reserved to the guardian to have first refusal of such sale, lease or other disposal;
- (h) the payment of any expenses incurred by the owner or by the guardian in connection with the maintenance of the place;
- (i) any other matter connected with the protection or management of the place which is agreed to by the owner and the guardian;
- (j) the duration of the agreement, with provision for the earlier termination thereof by any party thereto; and
- (k) the procedure for the resolution of any dispute arising out of the agreement.

Presentation of protected resources.

31G. The National Museums of Kenya and county governments shall co-ordinate and promote the presentation and use of places of cultural significance and heritage resources which form part of the national estate and for which they are responsible under this Act for public enjoyment, education, research and tourism, including—

- (a) the erection of explanatory plaques and interpretive facilities, including interpretive centres and visitor facilities;
- (b) the training and provision of guides;
- (c) the mounting of exhibitions;
- (d) the erection of memorials; and
- (e) any other means necessary for the effective presentation of the national heritage.

Compulsory order. repair

31H. The National Museums of Kenya or a county museum may, where it appears that any place or object is in imminent danger of serious damage or destruction and requires to be protected by a declaration under this Act, make an order protecting the said place or object in the manner set out by the National Museums of Kenya.

Expropriation.

31I. The Cabinet Secretary or a County Executive Committee member may, on the advice of the National Museums of Kenya or a county museum respectively, purchase or, subject to compensation, expropriate any property for conservation or any other purpose under this Act if that purpose is a public purpose or is in the public interest.

Heritage areas.

31J. (1) The National and county governments shall at the time of revision of a national or county planning laws, or the compilation or revision of a spatial plan, take into consideration the need for the designation of heritage areas to protect any place of environmental or cultural interest.

(2) A county government may, by notice in the *county gazette*, designate any area or land to be a heritage area on the grounds of its environmental or cultural interest or the presence of heritage resources.

(3) A county government shall provide for the protection of a heritage area through the provisions of its planning laws or legislation under this Act provided that—

- (a) special consent of the county government shall be required for any alteration or development affecting a heritage area;
- (b) in assessing an application under paragraph (a) the county government shall consider the significance of the area and how this could be affected by the proposed alteration or development;
- (c) in the event of any alteration or development being undertaken in a heritage area without the consent of the county government, it shall have the power to require the owner to stop such work instantly and restore the site to its previous condition within a specified period; and
- (d) If the owner fails to comply with the requirements of a county government, the county government shall have the right to carry out such restoration work itself and recover the cost thereof from the owner.

(4) A county government may erect signage indicating its status at or near a heritage area.

(5) Particular places within a heritage area may, in addition to the general provisions governing the area, be afforded further protection under this Act or other heritage legislation.

Heritage objects.

31K. (1) An object or collection of objects, or a type of object or list of objects, whether specific or generic, that is part of the national heritage and the export of which the National Museums of Kenya considers it necessary to control, may be declared a heritage object, including—

- (a) objects recovered from the soil or waters of Kenya, including archaeological and palaeontological objects, meteorites and rare geological specimens;
- (b) visual art objects;
- (c) military objects;
- (d) numismatic objects;
- (e) objects of cultural and historical significance;
- (f) objects to which oral traditions are attached and which are associated with living heritage;
- (g) objects of scientific or technological interest;
- (h) books, records, documents, photographic positives and negatives, graphic material, film or video or sound recordings, excluding those that are public records; and
- (i) any other prescribed category.

(2) The National Museums of Kenya may, with the approval of the Cabinet Secretary, by notice in the *Gazette*—

- (a) declare an object, or a collection thereof, or a type of object or list of objects, whether specific or generic, to be a heritage object;
- (b) amend any notice published under paragraph (a); or
- (c) withdraw any notice published under paragraph (a) or amended under paragraph (b).

Import of objects protected in terms of laws of foreign states.

31L. (1) A person may not import into Kenya any foreign cultural property other than through a customs port of entry, and the export permit or other permission issued in the country of origin of such object shall be produced to a customs officer before import to Kenya is effected or allowed.

(2) A customs officer who has reason to believe that a person is attempting to import an object in contravention of this Act, may withhold the object concerned and such object shall be kept in the custody of the Kenya Heritage Authority until such time, not exceeding six months, as an investigation into the provenance of such object is completed.

(4) The National Museums of Kenya may, with the consent of the Cabinet Secretary, liaise and co-operate with the authority responsible for the protection of cultural property in any reciprocating state and may enter into agreements with any such authority with regard to the return to the country of origin of any heritage object or cultural property which is illegally

imported into Kenya or the reciprocating state, whether specifically or in general.

Archaeology,
palaeontology
meteorites.

and

31M. (1) The protection of archaeological and palaeontological sites and material and meteorites shall be the responsibility of a county museums.

(2) The National Museums of Kenya shall be responsible for the protection of any wreck in the territorial waters and the maritime cultural zone.

(2) All archaeological objects, palaeontological material and meteorites shall be the property of the State.

(3) The National Museums of Kenya or a county shall, on behalf of the State, at its discretion ensure that such objects are lodged with a museum or other public or private institution that has a collection policy acceptable to the heritage resources authority and may in so doing establish such terms and conditions as it sees fit for the conservation of such objects.

(4) A person may not, without a permit issued by the National Museums of Kenya—

- (a) destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite;
- (b) destroy, damage, excavate, remove from its original position, collect or own any archaeological or palaeontological material or object or any meteorite;
- (c) trade in, sell for private gain, export or attempt to export from the Republic any category of archaeological or palaeontological material or object, or any meteorite; or
- (d) bring onto or use at an archaeological or palaeontological site any excavation equipment or any equipment which assist in the detection or recovery of metals or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites.

(5) When the National Museums of Kenya has reasonable cause to believe that any activity or development which will destroy, damage or alter any archaeological or palaeontological site is under way, and where no application for a permit has been submitted and no heritage resources management procedure under this Act has been followed, it may—

- (a) serve on the owner or occupier of the site or on the person undertaking such development an order for the development to cease immediately for such period as is specified in the order;

- (b) carry out an investigation for the purpose of obtaining information on whether or not an archaeological or palaeontological site exists and whether mitigation is necessary; and
- (c) if mitigation is deemed by the heritage resources authority to be necessary, assist the person on whom the order has been served under paragraph (a) to apply for a permit.

Burial grounds and graves.

31N. (1) Where it is not the responsibility of any other authority, the National Museums of Kenya shall conserve and generally care for burial grounds and graves protected under this Act.

(2) The National Museums of Kenya shall identify and record the graves of victims of conflict and any other graves which it considers to be of cultural significance and may erect memorials associated with the grave referred to in subsection (1), and shall maintain such memorials.

(3) A person may not, without a permit issued by the National Museums of Kenya or a county museum—

- (a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;
- (b) destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than sixty (60) years which is situated outside a formal cemetery administered by a county government; or
- (c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.

(4) The National Museums of Kenya or a county museum may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3)(a) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such graves, at the cost of the applicant.

Establishment of research institutions.

31O. (1) The Cabinet Secretary may, on the recommendation of the National Museums of Kenya, by notice in the *Gazette* establish research institutes and grant a Certificate of Registration in accordance with the provisions of this Act.

(2) The research institutes established under subsection (1) may research and conduct other activities of –

- (a) scientific, natural, cultural or technological importance by means of exploration and field investigations, data analysis, public programmes, exhibitions, tours or publications;
- (b) biomedical importance by use of non-human primates and other animal models;
- (c) importance to conservation of biodiversity, including identification, documentation, establishment and curation of a national biodiversity inventory.

(2) An order under this section may specify—

- (a) that the institute to which it relates shall have corporate personality;
- (b) the duties, powers and functions of the institute;
- (c) the manner in which the institute shall be governed; and
- (d) such other matters with respect to the conduct and management of the institute, as the Cabinet Secretary may find it necessary or desirable to provide for.

CLAUSE 34

THAT the Bill be amended by deleting clause 34.

CLAUSE 35

THAT the Bill be amended by deleting clause 35.

CLAUSE 36

THAT the Bill be amended by deleting clause 36.

CLAUSE 37

THAT the Bill be amended by deleting clause 37.

CLAUSE 38

THAT the Bill be amended by deleting clause 38.

CLAUSE 39

THAT the Bill be amended by deleting clause 39.

CLAUSE 48

THAT the Bill be amended by deleting clause 48 and substituting therefor the following new clause—

Designation of protected areas by heritage authorities.

48. (1) The National Museums of Kenya may, with the consent of the owner of an area, by notice in the *Gazette* designate as a protected area—

- (a) such area of land surrounding a national heritage site as is reasonably necessary to ensure the protection and reasonable enjoyment of such site, or to protect the view of and from such site; or
- (b) such area of land surrounding any wreck as is reasonably necessary to ensure its protection; or
- (c) such area of land covered by a mine dump.

(2) A county museum may, with the consent of the owner of an area, by notice in the *county gazette* designate as a protected area—

- (a) such area of land surrounding a county heritage site as is reasonably necessary to ensure the protection and reasonable enjoyment of such site, or to protect the view of and from such site; or
- (b) such area of land surrounding any archaeological or palaeontological site or meteorite as is reasonably necessary to ensure its protection.

(3) A person may not damage, disfigure, alter, subdivide or in any other way develop any part of a protected area unless, at least sixty (60) days prior to the initiation of such changes, they have consulted the National Museums of Kenya.

(4) The National Museums of Kenya may make regulations providing for specific protections for any protected area which it has designated, including the prohibition or control of specified activities by any person in the designated area.

PROPOSED INSERTION OF NEW CLAUSE 49A

THAT the Bill be amended by inserting the following new clause immediately after clause 49—

Provisional protection.

49A. (1) The National Museums of Kenya or a county museum may by notice in the *Gazette* or the *county gazette*, as the case may be—

- (a) provisionally protect for a maximum period of two years any—

- (i) protected area;
- (ii) heritage resource, the conservation of which it considers to be threatened and which threat it believes can be alleviated by negotiation and consultation; or
- (iii) heritage resource, the protection of which the National Museums of Kenya or a county museum wishes to investigate under this Act; and

(b) withdraw any notice published under paragraph (a).

(2) A heritage resource shall be considered to be provisionally protected for thirty (30) days from the date of service of a notice under subsection (1) or until the notice is withdrawn or the resource is provisionally protected by notice in the *Gazette* or the *county gazette*, whichever is the shorter period.

(3) The National Museums of Kenya shall inform the relevant county museum within thirty (30) days of the publication or withdrawal of a notice under subsection (1).

(8) A person may not damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of a provisionally protected place or object without a permit issued by a heritage authority responsible for the provisional protection.

Dated: Thursday, 28th October, 2021



.....
**Sen. Johnson Sakaja, CBS,
Chairperson, Standing Committee on Labour and Social Welfare**

Annex 2: Minutes of the Committee

MINUTES OF THE 78TH MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY, 28TH OCTOBER 2021 AT 3.00 PM AT THE SOVEREIGN HOTEL, KISUMU COUNTY.

MEMBERS PRESENT

1. Sen. Johnson Sakaja, CBS - Chairperson
2. Sen. Madzayo Stewart Mwachiru, CBS - Member
3. Sen. Naomi Masitsa Shiyonga - Member
4. Sen. (Dr.) Milgo Alice Chepkorir - Member
5. Sen. Makori Beatrice Kwamboka - Member

ABSENT WITH APOLOGIES

1. Sen. Johnes Mwaruma - Vice-Chairperson
2. Sen. Susan Kihika - Member
3. Sen. Paul Mwangi Githiomi - Member
4. Sen. (Dr.) Isaac Mwaura, CBS - Member

SENATE SECRETARIAT

1. Ms. Mwanate Shaban - Clerk Assistant
2. Mr. Jeremy Chabari - Legal Counsel
3. Mr. Frank Mutulu - Media Relations Officer
4. Mr. Humphrey Ringera - Research Officer
5. Ms. Winnie Atieno - Audio Officer
6. Mr. John Pere - Serjeant-At-Arms
7. Ms. Agnes Muchoki - Secretary
8. Ms. Ann Mumbi - Accountant

MINUTE SEN/SCLSW/344/2021: PRELIMINARIES

The Chairperson called the meeting to order at 3.00 pm. followed by a word of prayer.

MINUTE SEN/SCLSW/345/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after it was proposed by Sen. Beatrice Kwamboka, MP and seconded by Sen. (Dr.) Milgo Alice Chepkorir, MP as follows-

AGENDA

1. Preliminaries (Prayers);
2. Adoption of the Agenda;
3. Consideration and adoption of the Report on the Heritage and Museums Bill, 2021 (Senate Bills No. 22 of 2021);
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/346/2021: CONSIDERATION AND ADOPTION OF THE REPORT ON THE HERITAGE AND MUSEUMS BILL, 2021 (SENATE BILL NO. 22 OF 2021)

The Committee considered the Committee Stage Amendments and adopted the Report of the Heritage and Museums Bill, 2021 after it was proposed by Sen. Beatrice Kwamboka, MP and seconded by Sen. Naomi Shiyonga, MP.

MINUTE SEN/SCLSW/347/2021: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business, the meeting was adjourned at 4.30 p.m.

SIGNATURE:



.....
(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: Saturday, 30th October, 2021

**MINUTES OF THE 64TH MEETING OF THE STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE
HELD ON SUNDAY, 3RD OCTOBER, 2021, AT 9.30 AM AT BARAZA 1, SAROVA WHITESANDS.**

MEMBERS PRESENT

1. **Sen. Sakaja Johnson Arthur, CBS** - **Chairperson**
2. **Sen. Mwaruma Johnes** - **Vice-Chairperson**
3. Sen. (Dr.) Milgo Alice Chepkorir - Member
4. Sen. Madzayo Stewart Mwachiru - Member

ABSENT WITH APOLOGIES

1. Sen. Kihika Susan Wakarura - Member
2. Sen. Mwangi Paul Githiomi - Member
3. Sen. (Dr.) Mwaura Isaac, CBS - Member
4. Sen. Masitsa Naomi Shiyonga - Member
5. Sen. Makori Beatrice Kwamboka - Member

SENATE SECRETARIAT

1. Ms. Mwanate Shaban - Clerk Assistant
2. Mr. Jeremy Chabari - Legal Counsel
3. Mr. Kevin Kibet - Hansard Reporter/CA
4. Ms. Marale Sande - Senior Research Officer
5. Ms. Fatuma Abdi - Audio Officer
6. Ms. Lucianne Limo - Media Relations Officer
7. Ms. Sakina Halako - Secretary
8. Mr. John Pere - SAA
9. Mr. Brown Mwangi - Office Assistant

MINUTE SEN/SCLSW/277/ 2021: PRELIMINARIES

The Vice-Chairperson called the meeting to order at 9.30 am followed by a word of prayer.

MINUTE SEN/SCLSW/278/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted unanimously as follows-

AGENDA

- 5. Preliminaries (Prayers);
- 6. Adoption of the Agenda;
- 7. **Consideration of the public participation matrix on the Heritage and Museums Bill (Senate Bills no. 22 of 2021); and**
- 8. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/279/2021: CONSIDERATION OF THE PUBLIC PARTICIPATION MATRIX ON THE HERITAGE AND MUSEUMS BILL (SENATE BILLS NO. 22 OF 2021)

Mr. Jeremy Chabari, the Legal Counsel presented as follows-

PUBLIC PARTICIPATION MATRIX ON THE HERITAGE AND MUSEUMS BILL
(SENATE BILLS NO. 22 OF 2021)

CLAUS	STAKE	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTIONS
1	HOLDE R	Amend the long title to read— AN ACT of Parliament to provide for the conservation, preservation, protection, research and management of cultural and natural heritage in the Republic of Kenya and for connected purposes.	Conservation, preservation, protection, research and management of cultural and natural heritage are matters that concerns more that the two levels of government.	Not approved
2	Turkana Basin Institute, Dr. Isaiah Nengo	THAT clause 2 of the Bill be amended by inserting the following new definitions in their alphabetical order— “alter” means any action affecting the structure, appearance or physical properties of a place or object, whether by way of structural or other works, by painting, plastering or other decoration or any other means; “archaeological” means— (e) material remains resulting from human activity which are in a state of disuse and are in or on land and which are older than one hundred (100) years, including artefacts, human and hominid remains and artificial features and structures;	To enrich the Bill with more definitions.	Approved and retain the National Museums of Kenya and expand the functions and powers of county governments and county museums in the Bill.

- (f) rock art, being any form of painting, engraving or other graphic representation on a fixed rock surface or loose rock or stone, which was executed by human agency and which is older than one hundred (100) years, including any area within ten (10) m of such representation;
- (g) wrecks, being any vessel or aircraft, or any part thereof, which was wrecked in Kenya, whether on land, in the internal waters, the territorial waters or in the maritime culture zone of the Republic, and any cargo, debris or artefacts found or associated therewith, which is older than 60 years or which Kenya Heritage Authority considers to be worthy of conservation;
- (h) features, structures and artefacts associated with military history which are older than seventy-five (75) years and the sites on which they are found;

“conservation”, in relation to heritage resources, includes protection, maintenance, preservation and sustainable use of places or objects so as to safeguard their cultural significance;

‘cultural property agreement’ in relation to a foreign state, means an agreement between Kenya and a foreign state or an international agreement to which Kenya and a foreign state are both parties, relating to the prevention of illicit international traffic in cultural property;

“(g) ‘‘cultural significance’’ means aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance;

“(h) ‘‘development’’ means any physical intervention, excavation, or action, other than those caused by natural forces, which may in the opinion of a heritage authority in any way result in a change to the nature, appearance or physical nature of a place, or influence its stability and future well-being, including—

- (g) construction, alteration, demolition, removal or change of use of a place or a structure at a place;
- (h) carrying out any works on or over or under a place;
- (i) subdivision or consolidation of land comprising, a place, including the structures or airspace of a place;
- (j) constructing or putting up for display signs or hoardings;
- (k) any change to the natural or existing condition or topography of land; and
- (l) any removal or destruction of trees, or removal of vegetation or topsoil;

“(m) ‘‘foreign cultural property’’, in relation to a reciprocating state, means any object that is specifically designated by that state as being of importance for archaeology, history, literature, art or science;

“(n) ‘‘heritage resource’’ means any place or object of cultural significance;

“heritage authority” means the Kenya Heritage Authority established under section 3, or, insofar as this Act is applicable in or in respect of a county, a county heritage resources authority;

“heritage site” means a place declared to be a national heritage site by Kenya Heritage Authority or a place declared to be a county heritage site by a county heritage resources authority;

“improvement”, in relation to heritage resources, includes the repair, restoration and rehabilitation of a place protected in terms of this Act;

“living heritage” means the intangible aspects of inherited culture, and may include—

- (i) cultural tradition;
- (j) oral history;
- (k) performance;
- (l) ritual;
- (m) popular memory;
- (n) skills and techniques;
- (o) indigenous knowledge systems; and
- (p) the holistic approach to nature, society and social relationships;

“management”, in relation to heritage resources, includes the conservation, presentation and improvement of a place protected under this Act;

“meteorite” means any naturally-occurring object of extraterrestrial origin;

“(e) any archaeological artefact;
(f) palaeontological and rare geological specimens;
(g) meteorites; and
(h) other objects referred to in this Act;

“(e) any archaeological artefact;
(f) palaeontological and rare geological specimens;
(g) meteorites; and
(h) other objects referred to in this Act;

“(e) any archaeological artefact;
(f) palaeontological and rare geological specimens;
(g) meteorites; and
(h) other objects referred to in this Act;

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(h) other objects referred to in this Act;

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(g) meteorites; and
(h) other objects referred to in this Act;

“(e) any archaeological artefact;
(f) palaeontological and rare geological specimens;
(g) meteorites; and
(h) other objects referred to in this Act;

“(e) any archaeological artefact;
(f) palaeontological and rare geological specimens;
(g) meteorites; and
(h) other objects referred to in this Act;

“(e) any archaeological artefact;
(f) palaeontological and rare geological specimens;
(g) meteorites; and
(h) other objects referred to in this Act;

“planning” means urban and regional planning, as contemplated in the Physical and Land Use Planning Act and county planning and land use planning legislation;

“presentation” includes—

- (e) the exhibition or display of;
- (f) the provision of access and guidance to;
- (g) the provision, publication or display of information in relation to; and
- (h) performances or oral presentations related to, heritage resources protected under this Act;

“county heritage resources authority”, insofar as this Act is applicable in a county, means an authority established by the County Executive Committee Member under section

“public monuments and memorials” means all monuments and memorials—

- (c) erected on land belonging to any level of government, or on land belonging to any organisation funded by or established in terms of the legislation of such a level of government; or
- (d) which were paid for by public subscription, government funds, or a public-spirited or military organisation, and are on land belonging to any private individual;

“reciprocating state” means a foreign state that is party to a cultural property agreement;

“site” means any area of land, including land covered by water, and including any structures or objects thereon;

‘structure’ means any building, works, device or other facility made by people and which is fixed to land, and includes any fixtures, fittings and equipment associated therewith;

NEW Turkana **PROPOSED INSERTION OF NEW PART IA**

PAR Basin
T IA Institute,

Approved.

Dr. **THAT** the Bill be amended by inserting the following new part
Isaiah immediately after clause 2—
Nengo

Approved.

PART SYSTEM FOR MANAGEMENT OF NATIONAL
IA HERITAGE RESOURCES

Approved.

To provide for better management of national heritage by making the Bill to be consistent with the 4th schedule Part 1, Clause 25 which categorically gives the National Government powers over ‘Ancient and historical monuments of national importance, and Part 2, Clause 4 which gives County Governments functions and powers over,

'cultural activities, public entertainment and public amenities, including (g) museums'.

National Heritage.

2A. (1) For the purposes of this Act, those heritage resources of Kenya which are of cultural significance or other special value for the present generation and for future generations shall be considered part of the national heritage and fall within the sphere of operations of National and county heritage authorities.

(2) Without limiting the generality of subsection (1), the national heritage may include—

- (j) places, buildings, structures and equipment of cultural significance;
- (k) places to which oral traditions are attached or which are associated with living heritage;
- (l) historical settlements and townscapes;
- (m) landscapes and natural features of cultural significance;
- (n) geological sites of scientific or cultural importance;
- (o) archaeological and palaeontological sites;
- (p) graves and burial grounds, including—
 - (vii) ancestral graves;
 - (viii) royal graves and graves of traditional leaders;

Approved.

- (ix) graves of victims of conflict;
 - (x) graves of individuals designated by the Cabinet Secretary by notice in the *Gazette*;
 - (xi) historical graves and cemeteries; and
 - (xii) other human remains which are not covered in terms of the Human Tissue Act (Cap. 252, Laws of Kenya);
- (q) sites of significance relating to the history of slavery, history of colonialism, or ancient migratory patterns of the Kenyan people as recorded in Kenya;
- (r) movable objects, including—
- (viii) objects recovered from the soil or waters of Kenya, including archaeological and palaeontological objects and material, meteorites and rare geological specimens;
 - (ix) objects to which oral traditions are attached or which are associated with living heritage;
 - (x) ethnographic art and objects;
 - (xi) military objects;
 - (xii) objects of decorative or fine art;
 - (xiii) objects of scientific or technological interest; and
 - (xiv) books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings, excluding those that are public records as defined in the

Public Archives and Documentation
Service Act (Cap. 19, Laws of Kenya).

(3) Without limiting the generality of subsections (1) and (2), a place or object is to be considered part of the national heritage if it has cultural significance or other special value because of—

- (j) its importance in the community, or pattern of Kenya's history;
- (k) its possession of uncommon, rare or endangered aspects of Kenya's natural or cultural heritage;
- (l) its potential to yield information that will contribute to an understanding of Kenya's natural or cultural heritage;
- (m) its importance in demonstrating the principal characteristics of a particular class of Kenya's natural or cultural places or objects;
- (n) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- (o) its importance in demonstrating a high degree of creative or technical achievement at a particular period;
- (p) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- (q) its strong or special association with the life or work of a person, group or organisation of importance in the history of Kenya; and

(r) sites of significance relating to the history of slavery in Kenya.

Applicatio
n.

2B. This Part establishes the national system for the management of heritage resources which it applies throughout the Republic and—

- (a) also applies to the actions of the National and county governments;
- (b) serves as guidelines by reference to which any heritage authority, whether established under this Act or any other law, and any other competent authority shall exercise any discretion or take any decision under this Act or any other law dealing with heritage resources management;
- (c) serves as the general framework with which—
 - (i) any heritage authority must perform its functions and make recommendations; and
 - (ii) those recommendations must be considered by any competent authority under this Act or any other law dealing with heritage resources management.

Approved.

General
principles
for
heritage
resources

2C. (1) All authorities, bodies and persons performing functions and exercising powers under this Act for the management of heritage resources shall be guided by the following principles—

Approved.

managem
ent.

- (g) heritage resources have lasting value in their own right and provide evidence of the origins of Kenyan society and as they are valuable, finite, non-renewable and irreplaceable they shall be carefully managed to ensure their survival;
 - (h) every generation has a moral responsibility to act as trustee of the national heritage for succeeding generations and the State has an obligation to manage heritage resources in the interests of all Kenyans;
 - (i) heritage resources have the capacity to promote reconciliation, understanding and respect, and contribute to the development of a unifying Kenyan identity; and
 - (j) heritage resources management shall guard against the use of heritage for sectarian purposes or political gain.
- (2) To ensure that heritage resources are effectively managed—
- (c) the skills and capacities of persons and communities involved in heritage resources management shall be developed; and
 - (d) provision shall be made for the ongoing education and training of existing and new heritage resources management workers.
- (3) Laws, procedures and administrative practices shall—
- (a) be clear and generally available to those affected thereby;

- (b) in addition to serving as regulatory measures, also provide guidance and information to those affected thereby; and
 - (c) give further content to the fundamental rights set out in the Constitution.
- (4) Heritage resources form an important part of the history and beliefs of communities and shall be managed in a way that acknowledges the right of affected communities to be consulted and to participate in their management.
- (5) Heritage resources contribute significantly to research, education and tourism and they shall be developed and presented for these purposes in a way that ensures dignity and respect for cultural values.
- (6) Policy, administrative practices and legislation shall promote the integration of heritage resources conservation in urban and rural planning and social and economic development.
- (7) The identification, assessment and management of the heritage resources of Kenya shall—
- (g) take account of all relevant cultural values and indigenous knowledge systems;
 - (h) take account of material or cultural heritage value and involve the least possible alteration or loss of it;
 - (i) promote the use and enjoyment of and access to heritage resources, in a way consistent with their cultural significance and conservation needs;

- (j) contribute to social and economic development;
- (k) safeguard the options of present and future generations; and
- (l) be fully researched, documented and recorded.

Principles for management of heritage resources.

2D. (1) The Cabinet Secretary may, in consultation with the Kenya Heritage Authority by notice in the *gazette*—

- (d) prescribe any principles for the management of the heritage nationally in addition to, but not inconsistent with, the principles set out in this Act;
- (e) publish for general information, national policy and standards relating to the management of the heritage nationally, or any aspect thereof which is consistent with the principles set out in this Act; and
- (f) publish a list of heritage wardens whose role shall be to engage stakeholders on the identification and management of heritage resources.

(2) A county heritage authority may, by notice in a county *gazette*—

- (a) prescribe any principles for heritage resources management in addition to, but not inconsistent with, the principles set out under this Act or prescribed by Kenya Heritage Authority under subsection (1);
- (b) prescribe county specific principles in greater detail; and

Approved and align with the Bill.

(c) publish for general information provincial policy relating to heritage resources management or any aspect thereof which is consistent with the principles set out under this Act.

(3) The National and county heritage authorities shall before prescribing any principle or general policy under subsection (1) or (2)—

- (a) make a draft of such principle or policy available to the public; and
- (b) consider any comment on such draft received from any person during a reasonable period after such publication.

Heritage
assessment
criteria
and
grading.

2E. (1) The Kenya Heritage Authority shall, in consultation with the Cabinet Secretary and the County Executive Committee members of every county government, by regulation establish a system of grading of places and objects which form part of the national heritage and which distinguishes between at least the categories—

- (c) Grade I— Heritage resources with qualities so exceptional that they are of special national significance;
- (d) Grade II—Heritage resources which, although forming part of the national heritage, can be considered to have special qualities which make them significant within the context of a county or a region; and

Approved.

(2) The system for grading heritage resources assessment criteria shall be, consistent with the criteria set out in section 2A (3).

(3) The system shall be used by the Kenya Heritage Authority or a county heritage authority to assess the intrinsic, comparative and contextual significance of a heritage resource and the relative benefits and costs of its protection, so that the appropriate level of grading of the resource and the consequent responsibility for its management may be allocated in under section 2F.

(3) The Kenya Heritage Authority may prescribe detailed heritage assessment criteria, consistent with the criteria set out in section 2A (3), for the assessment of Grade II heritage resources in a county.

Responsibilities and competence of Kenya Heritage Authority and county heritage authorities for identification and management

2F. (1) There is established a two tier system for heritage resources management, in which national level functions shall be the responsibility of Kenya Heritage Authority while the county level functions shall be the responsibility of county heritage authorities.

(2) The Kenya Heritage Authority and county heritage authorities shall be accountable for their actions and decisions and the performance of functions under this system.

Approved.

ent of
national
heritage.

(3) The Kenya Heritage Authority shall be responsible for the identification and management of Grade I heritage resources and heritage resources in accordance with the applicable provisions of this Act, and shall co-ordinate and monitor the management of the national heritage in the Republic.

(4) A county heritage authority shall be responsible for the identification and management of Grade II heritage resources and heritage resources which are deemed to be a county competence under this Act.

(5) For the purpose of any application for a permit or other authorisation to perform any action which is controlled in terms of this Act or a county heritage legislation, a formal protection by a heritage authority at a higher level takes precedence over any formal or general protection at a local level, without prejudice to any incentives offered at any level.

(6) Under this Act—

(a) a county heritage authority shall not perform any function in terms of this Act or any other law for the management of heritage resources unless it is competent to do so;

(b) the capacity of a county heritage authority shall be assessed in terms of criteria prescribed by the Cabinet Secretary, including the availability of

adequate staff, expertise, experience and administrative systems, to be applied—

- (i) by Kenya Heritage Authority, in the assessment of the capacity of county heritage authorities to perform specific functions in relation to prescribed categories of heritage resources; and
 - (ii) by county heritage authorities, to establish the capacity to perform any function under this Act:
- (c) if a county heritage authority does not have the capacity or is not competent to perform a specific function for which it is responsible under this section, that function shall be performed on an agency basis by the Kenya Heritage Authority;
 - (d) a county heritage authority shall apply to the Kenya Heritage Authority for the assessment of its competence under paragraph (a) in the manner prescribed and may apply for reassessment within the period and on the conditions prescribed by the Kenya Heritage Authority;
 - (e) the Kenya Heritage Authority may at any time, and shall at least every two years, reassess the competence of a county heritage authority and review the assumption of functions and powers under this Act.

General principles
2G. (1) The general principles of procedure set out in subsection (2) apply to any decision regarding the

Approved.

of
procedure.

administration and management of the national heritage by an authority to which a responsibility has been assigned in terms of section 2E and any other competent authority to which functions and powers for the administration and management of the national heritage have been assigned or delegated, including any decision—

- (a) to formally protect a heritage resource by notice in the *Gazette* or *county Gazette*;
- (b) to issue or not to issue a permit; and
- (c) taken by any person or authority to whom an appeal is made.

(2) The decisions contemplated in subsection (1) shall be taken in accordance with the following general principles—

- (a) the decisions shall be consistent with the principles or policy set out in section 2C or prescribed under section 2D;
- (b) a meeting at which decisions are taken, shall be open to the public and the agenda and minutes must be available for public scrutiny—
Provided that when there is good reason to do so, a matter may, by decision of the majority of members present, be declared confidential and the discussion and minutes may be excepted from public scrutiny;
- (c) a person who may be affected by a decision has the right of appearance at such meeting; and

(d) written reasons shall be given for any decision upon request.

3	Council of Governors	Delete the clause.	A Bill cannot establish an incorporation at the National Government which will carry out functions that have been devolved under the fourth schedule of the constitution.	Not approved
4	Council of Governors	Delete sub clause 4 (2) Amend sub clause 4 (3) to read— Subject to the principles and obligations of cooperative devolved government, the National Museums may establish such regional research institutes as it considers necessary for the effective performance of its functions.	The "Museum" function is devolved to County Governments as seen in the fourth schedule, part II 4(g). As such, National Museums may collaborate with the Counties but cannot be decentralized. This is necessary because heritage sites are devolved and are all located in counties. Further, national government cannot undertake activities in counties in total disregard of the county governments of such counties. In this	Not approved Not approved

		<p>respect, section 114 of the County Governments Act is quite instructive when it provides as follows:</p> <p>114(1) Development of nationally significant projects within counties shall be preceded by mandatory public hearings in each of the affected counties.</p> <p>114(2) Projects under subsection shall, subsequent to the mandatory public hearings, be considered and approved or rejected by the county assembly.</p>	
5	<p>Council of Governors</p> <p>Amend 5 (a) to read— Subject to the principles and obligations of cooperative devolved government, identify, acquire and record ancient and historical monuments and sites that are of national importance for inclusion in the national heritage inventory.</p>	<p>The function of identifying or classifying a monument as of national importance is a shared function, at least if designation is understood as signifying classification. Acquisition, in the case of land-based monuments and sites, is a planning function which is vested in the County Government (CGA Section 102 (2d)). This</p>	Not approved

		<p>should be a shared function undertaken by a joint entity of national and county governments.</p>	
	<p>Amend sub clause 5 (d) to read— Subject to the principles and obligations of cooperative devolved government, undertake research in fields of ancient, historical, scientific, cultural, natural, technological, biomedical and human interest.</p>	<p>This is necessary because the research would be on items and sites within county governments and in some cases affect county planning and development functions.</p>	<p>Not approved.</p>
	<p>Amend sub clause 5 (e) to read— Subject to the principles and obligations of cooperative devolved government, disseminate and transmit knowledge from research on cultural heritage, natural heritage, biomedical, ancient and historical monuments and sites of national importance.</p>	<p>This is necessary because such sites are all located in counties, and because the national government function intersects with and impacts upon the county government museum and cultural activities functions.</p>	<p>Not approved.</p>
	<p>Amend sub clause 5 (j) to read— Subject to the principles and obligations of cooperative devolved government, advise the Cabinet Secretary on the issuance of excavation, exploration and export licenses in connection with national heritage.</p>	<p>The county government function in respect of museums includes the policy and regulatory aspects. For this reason, regulation ought to be done by national government in a cooperative manner.</p>	<p>Not approved.</p>

	<p>Amend sub clause 5 (k) to read—</p> <p>Subject to the principles and obligations of cooperative devolved government, secure and exhibit the national heritage, antiques and monuments to the public.</p>	<p>This is necessary because such sites are all located in counties, and national government cannot undertake activities in counties in total disregard of the county governments of such counties.</p>	<p>Not approved.</p>
	<p>Turkana Basin Institute, Dr. Isaiah Nengo</p> <p>PROPOSED AMENDMENT OF PART II</p> <p>PAR T II</p> <p>THAT the Bill be amended by deleting the heading of Part II and substituting therefor the following new heading—</p> <p>PART II—CONSTITUTION, FUNCTIONS, POWERS AND DUTIES OF HERITAGE AUTHORITIES</p>	<p>Aligns this bill with the 4th schedule of the 2010 constitution by distributing and coordinating responsibilities for heritage management between the national government (sites and monuments) those devolved to the counties (museums) as stipulated in the constitution</p>	<p>Approved.</p>

7 **THAT** the Bill be amended by inserting the following clauses immediately after clause 7—

Approved.

Turkana
Basin
Institute,
Dr.
Isaiah
Nengo

Establish
ment of
county
heritage
resources
authorities

7A. A County Executive Committee Member may establish a county heritage authority which shall be—

- (r) responsible for the management of the relevant heritage resources within the county;
- (s) a body corporate capable of suing and being sued in its corporate name;
- (t) governed by a board constituted as prescribed by regulations published in the *county gazette*; and
- (u) appointed in a manner which applies the principles of transparency, regional balance and takes into account special competence, experience and interest in the field of heritage resources.

Approved.

Functions,
powers
and duties
of county
heritage
authority.

7B. (1) A county heritage authority shall—

- (i) advise the County Executive Committee Member on the implementation of this Act or relevant county legislation;
- (j) annually submit a report to the Committee Executive Committee Member regarding its activities for each financial year;
- (k) promote the systematic identification, recording and assessment of heritage resources and heritage objects which form part of the national heritage in a county;

(1) protect and manage heritage resources in a county which fulfil the heritage assessment criteria prescribed under this Act for Grade II status;

Approved.

- (m) notify the Kenya Heritage Authority of the presence of any heritage resource in the county which it considers fulfils the heritage assessment criteria prescribed under this Act for Grade I status;
- (n) nominate such resource for national level protection and furnish the Kenya Heritage Authority with the information in its possession relating to such resource;
- (o) maintain data bases on heritage resources in accordance with national standards, and at regular intervals furnish the Kenya Heritage Authority with such data; and
- (p) establish policy, objectives and strategy plans for heritage resources management in the county;

General powers and duties of heritage resources authorities

7C. (1) A heritage resources authority shall—

- (e) furnish information, advice and assistance to enhance public sensitivity towards and awareness of the need for management of the national heritage;
- (f) maintain a list of conservation bodies which have, in accordance with regulations by the heritage resources authority concerned, registered their interest in—
 - (iii) a geographical area; or
 - (iv) a category of heritage resources;
- (g) regularly inspect heritage resources which are formally protected by the heritage resources authority concerned under this Act;

Approved.

- (h) endeavour to assist any community or body of persons with an established interest in any heritage resource to obtain reasonable access to such heritage resource, should they request it, and may for this purpose—
 - (i) enter into negotiations with the owner of such resource;
 - (ii) facilitate the making of arrangements as may be required for the achievement of such access, including the execution of a heritage agreement; and
 - (iii) if such negotiations are unsuccessful, refer the matter to the Cabinet Secretary or County Executive Committee Member, as the case may be; and
 - (i) make arrangements to ensure the protection and management of all heritage resources and property owned or controlled by it or vested in it.
- (2) A heritage resources authority may—
- (a) promote and engage in research relating to the identification, assessment and management of the national heritage as necessary for the performance of its functions;
 - (b) publish, or by any other means make available or distribute in any form, or cause to be published or distributed, any knowledge and information relating to the national heritage and any of its functions or activities;
 - (c) inspect or document any heritage resource which—

- (iv) has the potential to become protected in terms of this Act;
- (v) is, or which the heritage authority has reason to believe may be, so protected; or
- (vi) it wishes to document for research purposes, for purposes of building up a public record of heritage resources or as part of an investigation into a suspected offence in terms of this Act, and shall maintain a register of such inspections;
- (d) whenever it is investigating the desirability of protecting any place in terms of this Act, take such steps as it considers necessary—
 - (i) for erecting beacons on the corners of and surveying and preparing a diagram or plan of such place; or
 - (ii) for determining by survey the location of such place or object in relation to the beacons and boundaries of the land on which it is situated;
- (e) undertake or make arrangements for the presentation of any place under its control or any heritage site which is owned by the State;
- (f) by agreement with the authority or body concerned, co-operate in the management of any heritage resource which is owned or controlled by the State;
- (g) lend anything under its control to a museum or public institution, subject to such conditions as it deems necessary and appropriate;
- (h) make and from time to time amend regulations relating to any matter which the heritage authority

concerned considers to be necessary or expedient to prescribe to fulfil its functions and implement its powers and duties under this Act, including—

(iii) the standards of practice and qualifications required of individuals, institutions or other bodies for the performance of work on heritage resources protected in terms of, and in the various fields covered by, this Act; and

(iv) the monitoring of activities at protected sites;

(i) create and where necessary register with the relevant authorities a badge, or an emblem for the authority, any of its projects or any category of protection provided for in terms of this Act;

(j) where appropriate, affix to or otherwise display at any place protected in terms of this Act a badge or other sign indicating its status;

(k) produce, acquire and market products relating to the national heritage, or enter into arrangements for the production, acquisition and marketing of such products;

(l) recover costs incurred by it and, where appropriate, charge for the provision of services rendered in terms of this Act, including but not limited to the—

(v) processing of applications received;

(vi) carrying out of investigations;

(vii) production, acquisition and marketing of products; and

(viii) provision of information;

(m) arrange for the provision of insurance cover for—

(iii) itself against any loss, damage, risk or liability which it may suffer or incur regarding any property under its control; and

(iv) members of the board of a heritage resources authority, co-opted members, members of committees and members of its staff, in respect of bodily injury, illness, disablement or death incurred wholly and directly in the course of the performance of their duties on behalf of the heritage resources authority concerned;

(n) enter into contracts; and

(o) employ consultants to assist in the performance of its functions.

Delegation of functions or powers of heritage authorities

7D. (1) The Cabinet Secretary or a county executive committee member, as the case may be, may make regulations to enable a heritage authority to delegate in writing any of its functions or powers under this Act to all or any of the following—

- (a) in the case of the Kenya Heritage Authority, any member of the Board;
- (b) in the case of a county heritage authority, any member of its board;
- (c) a committee or any member of a committee;
- (d) any employee, heritage inspector, volunteer or other representative of the authority concerned;

Not approved.

(e) specified office bearers or members of a conservation body registered with it under this Act; and

(f) in the case of the Kenya Heritage Authority, a county heritage authority, and any other authority which shows competence to perform such functions, by agreement with such authority.

(2) A power delegated under subsection (1), when exercised by the delegate, shall for the purposes of this Act be considered to be exercised by the heritage authority concerned and a delegate shall be held accountable to the heritage authority for all actions performed by him, her or it during the period of delegation.

(3) A heritage authority may not delegate power to do any of the following—

(a) delegate any of its functions or powers under this section;

(b) make a recommendation to the Cabinet Secretary or a county executive committee member under this Act;

(c) borrow money;

(d) acquire or dispose of real property under this Act; or

(e) adopt any statement of general policy or conservation management plan under this Act.

(4) A delegation under this section shall be revocable at will and no such delegation shall prevent the exercise of

any power by the heritage resources authority.

(5) The delegation of any power to a county heritage authority in terms of an agreement under subsection (1)(f) shall only be revoked by the Kenya Heritage Authority with the consent of the Cabinet Secretary, after the Kenya Heritage Authority has consulted such county heritage authority.

Approved.

Ministry **THAT** clause 8 of the Bill be amended—

of
Sports,
Culture
and
Heritage

8

(c) in sub clause (1) by deleting paragraph (d) and substituting therefor the following new paragraph—

(d) three persons representing scientific, arts and general outstanding interest in, and contribution to the work of the national heritage, one of whom shall be nominated Nature Kenya;

**PAR
T IV**

PROPOSED AMENDMENT OF PART IV

Approved.

Turkana
Basin
Institute,
Dr.

THAT the Bill be amended by deleting Part IV and substituting therefor the following new part—

Approved.

Isaiah
Nengo.

Improve management of
heritage by distributing
functions between the

**PART IV—PROTECTION AND MANAGEMENT
OF HERITAGE RESOURCES**

national government and counties, and to ensure that counties benefit from the heritage resources in the respective counties

National heritage sites and county heritage sites.

28. (1) The Kenya Heritage Authority shall identify those places with qualities so exceptional that they are of special national significance in terms of the heritage assessment criteria set out under Part IA of this Act.

(2) A county heritage authority shall identify those places which have special qualities which make them significant in the context of the county or a region in terms of the heritage assessment criteria set out under Part IA of this Act.

(3) A person may submit a petition to the Kenya Heritage Authority for a place to be declared a national heritage site or to the relevant county heritage authority for a place to be declared a county heritage site.

(4) The heritage resources authority concerned may prescribe the format and procedures for such nominations under subsection (3).

(5) The Kenya Heritage Authority may, by notice in the *Gazette*, declare any place referred to in subsection (1) to be a national heritage site.

Approved.

- (6) A county heritage authority may, by notice in the *county Gazette*, declare any place referred to in subsection (2) and described in the notice to be a county heritage site.
- (7) The heritage authority concerned may, by similar notice—
- (a) amend any notice published under subsection (5) or (6); or
 - (b) withdraw any notice published under subsection (5) or (6) or paragraph (a) of this subsection.
- (8) The relevant heritage authority shall, before declaration of a place as a heritage site, or amendment or withdrawal of a notice under subsection (7)—
- (e) notify the owner;
 - (f) notify the occupier and any other person with a registered interest in the property;
 - (g) notify all conservation bodies which have registered their interest in the geographical area in which the proposed heritage site is situated, and give them at least sixty (60) days to make submissions regarding the proposed declaration, amendment or withdrawal, and in the case of the owner, to propose conditions under which the action will be acceptable; and
 - (h) give to the owner reasonable opportunity for representations or submissions to be made in regard to the proposed notification.

(9) A heritage authority may at any time withdraw a notice which it has served in terms of subsection (8).

(10) The Cabinet Secretary shall, on the advice of the Kenya Heritage Authority, prescribe circumstances in which the National government, a county government or a supported body may object to the declaration as a heritage site of a place which it owns or controls.

(11) The Kenya Heritage Authority shall, within thirty (30) days, inform the relevant county heritage authority and the relevant county planning authority within whose area of jurisdiction a national heritage site falls, of its declaration.

(12) A county heritage authority shall, within thirty (30) days, inform the Kenya Heritage Authority and the relevant county government within whose area of jurisdiction a county heritage site falls, of its declaration.

(13) The Kenya Heritage Authority shall be responsible for the protection of national heritage sites in accordance with the provisions of this section.

(14) A county heritage authority shall be responsible for the protection of county heritage sites in accordance with the provisions of this section.

(15) Except in cases where a heritage resources authority considers it inappropriate, all heritage sites shall be marked with a badge indicating their status.

(16) A person may not destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of any heritage site without a permit issued by the heritage resources authority responsible for the protection of such site.

(17) The responsible heritage resources authority may make regulations pertaining to heritage sites under its control, or to any other heritage site with the consent of the owner of that site—

- (a) safeguarding heritage sites from destruction, damage, disfigurement, excavation or alteration;
- (b) regulating the conditions of use of any heritage site or the conditions for any development thereof;
- (c) regulating the admission of members of the public to a heritage site; and
- (d) the fees payable for such admission.

(18) The responsible heritage resources authority may, by agreement with the owner of a heritage site—

- (e) conserve or improve any heritage site;
- (f) construct fences, walls or gates around or on a heritage site;
- (g) acquire or construct and maintain an access road to a heritage site over any land, and construct upon such land fences, walls or gates; or

(h) erect signs on or near a heritage site.

Inventory
of national
heritage.

29. (1) The Kenya Heritage Authority shall, for the purposes of the consolidation and co-ordination of information on heritage resources, compile and maintain an inventory of the national heritage, which shall be in the form of a data base of information on heritage resources which it considers to be worthy of conservation, including—

Approved.

(e) all places and objects with which it and its predecessors have been involved;

(f) all places and objects protected through the publication of notices in the *Gazette* or *county gazette*, whether under this Act or a county legislation;

(g) places and objects subject to general protections under this Act or provincial legislation for the management of heritage resources; and

(h) any other place and object which it considers to be of interest, and for this purpose it shall co-ordinate, and may prescribe, national standards for the recording of information by county heritage authorities.

(2) The Kenya Heritage Authority shall list heritage resources in the inventory in the format and under prescribed categories under this Act.

(3) The Kenya Heritage Authority may from time to time, after consultation with the relevant county heritage authority make, amend or delete entries in the inventory and ensure that all places listed in any heritage register shall be entered in the inventory.

(4) A county heritage authority shall, within thirty (30) days of the listing of a heritage resource in a heritage register or the amendment or deletion of an entry, notify the Kenya Heritage Authority and provide details of the listing, amendment or deletion.

(5) A county heritage authority shall, at regular intervals in the manner prescribed by Kenya Heritage Authority, provide the Kenya Heritage Authority with any information about heritage resources in the county which would increase the volume and detail of information held in the inventory.

(6) A person shall have access to the inventory at the offices of the Kenya Heritage Authority provided that information may be withheld if its disclosure may impact negatively on the privacy or economic interests of the owner or any person with an interest in a property, or a potential investor, or on the continued conservation of a heritage resource.

(7) The Kenya Heritage Authority shall, at regular intervals, publish a summary and analysis of the inventory of the national heritage.

Heritage registers.

30. (1) The county heritage authorities shall compile and maintain heritage registers listing the heritage resources in their areas of jurisdiction which they consider to be conservation worthy in terms of the heritage assessment criteria set out under this Act.

(2) Heritage resources shall be listed in accordance with—

- (d) the sub categories as prescribed under this Act, if any;
- (e) the areas of jurisdiction; and
- (f) any additional categories prescribed by the Kenya Heritage Authority.

(3) A county heritage authority shall prescribe the procedure and information required for—

- (c) the nomination of a resource for listing in a heritage register; and
- (d) the compilation of an inventory of heritage resources.

(4) A county heritage authority may approve an inventory of heritage resources submitted to it by any person for listing in the heritage register.

(5) A county heritage authority shall not list a place in a heritage register without having consulted the owner of such place regarding the protection of such a place.

Approved.

National
heritage
resources
assistance
programm
e.

- 31.** (1) The Kenya Heritage Authority may provide financial assistance in the form of a grant or a loan to an approved body or an individual for any project which contributes to the purpose, and is in accordance with the principles as prescribed under this Act.
- (2) The Kenya Heritage Authority shall prescribe the procedures for applications for approval and granting of financial assistance and the criteria for the assessment of projects.
- (3) The Kenya Heritage Authority shall prescribe the terms and conditions for issuing a loan.

Approved.

Restitutio
n
of
heritage
objects.

- 32.** (1) When a community or body with a *bona fide* interest makes a claim for the restitution of a movable heritage resource which is part of the national heritage and is held by or curated in a publicly funded institution, the institution concerned shall enter into a process of negotiation with the claimants regarding the future of the resource.
- (2) The Cabinet Secretary may make regulations regarding the establishment of *bona fide* interest in terms of subsection (1) and the conditions under which such claims may be made.

Approved.

(3) The claimants or the institution concerned may appeal to the Cabinet Secretary in the absence of an agreement on a heritage resource which is the subject of negotiations in terms of subsection (1), and the Cabinet Secretary shall—

- (a) mediate between the parties concerned with the aim of finding a mutually satisfactory solution; and
- (b) in the absence of agreement between the parties concerned, make a final decision on the future of the resource, including any conditions necessary to ensure its safety, the conditions of access of the claimants or the institution or any other interested party to the resource, or any other appropriate conditions.

Heritage
agreement
s.

33. (1) A heritage authority—

- (c) may negotiate and agree with a county government, conservation body, person, or community for the execution of a heritage agreement to provide for the conservation, improvement or presentation of a clearly defined heritage resource with the consent of the owner; and
- (d) such a heritage agreement shall be in the form of a binding contract.

(2) A heritage agreement may include such terms and conditions as the parties think fit, including provision for public access, and provision for financial or other assistance from the heritage authority concerned.

Approved.

(3) Without limiting subsection (2), a heritage agreement may be expressed to have effect in perpetuity or for any specified term, or to terminate upon the happening of a specific event.

(4) A heritage agreement may, with the consent of the owner of the resource concerned, be varied or cancelled by agreement between the parties.

(5) The consent of the owner of the resource concerned to the heritage agreement or any variation of the heritage agreement may be given, subject to the inclusion in the heritage agreement of any additional provisions or modified provisions, or to the deletion of such provisions, as the owner giving the consent considers necessary.

(6) Nothing in this Act requires a heritage resources authority to negotiate or agree with any person or authority to enter into or execute any heritage agreement.

(7) A heritage agreement in respect of a place attached to the land is binding on the owner of the place, as at the date of execution of the agreement while the agreement remains in force.

(8) The owner of a national heritage site, a county heritage site or a place listed in a heritage register may, by a heritage agreement entered into with the heritage authority responsible for the protection of such place,

or any person or body approved by such authority, appoint the heritage resources authority or the local authority or the person or body concerned, the guardian of the place.

(9) The heritage agreement referred to in subsection (7) or (8) may provide for—

- (l) the maintenance and management of the place;
- (m) the custody of the place and the duties of any person who may be employed in connection therewith;
- (n) the occupation or use of the place by the owner or otherwise;
- (o) the restriction of the right of the owner or occupier to do certain acts or things on or near the place;
- (p) the facilities of access to be permitted to the public and to persons deputed by the guardian to inspect or maintain the place;
- (q) the presentation of the place;
- (r) the notice to be given to the guardian in case the owner intends to offer the land on which the place is situated for sale, lease or other disposal, and the right to be reserved to the guardian to have first refusal of such sale, lease or other disposal;
- (s) the payment of any expenses incurred by the owner or by the guardian in connection with the maintenance of the place;

- (t) any other matter connected with the protection or management of the place which is agreed to by the owner and the guardian;
- (u) the duration of the agreement, with provision for the earlier termination thereof by any party thereto; and
- (v) the procedure for the resolution of any dispute arising out of the agreement.

(10) The owner of a place which is under guardianship shall, except as expressly provided by this Act, continue to have the same estate, right, title and interest in and to the place as before.

(11) Every heritage agreement has effect according to its terms but subject to the provisions of this Act:

Provided that—

- (a) the execution of a heritage resources agreement in respect of a heritage resource must not prevent the heritage authority responsible for its protection from exercising any powers in this Act in relation to that resource; and
- (b) nothing in terms of any heritage agreement shall permit or allow any person to carry out any act contrary to this Act.

Presentati on of **34.** (1) Heritage authorities shall, wherever appropriate, co-ordinate and promote the presentation and use of places

Approved.

protected
resources.

of cultural significance and heritage resources which form part of the national estate and for which they are responsible under this Act for public enjoyment, education, research and tourism, including—

- (f) the erection of explanatory plaques and interpretive facilities, including interpretive centres and visitor facilities;
- (g) the training and provision of guides;
- (h) the mounting of exhibitions;
- (i) the erection of memorials; and
- (j) any other means necessary for the effective presentation of the national heritage.

(3) A person may only erect a plaque or other permanent display or structure associated with such presentation in the vicinity of a place protected under this Act in consultation with the heritage authority responsible for the protection of the place.

Compulsory
repair
order.

35.(1) When the heritage resources authority responsible for the protection of a heritage site considers that such site—

Approved.

- (a) has been allowed to fall into disrepair for the purpose of—
 - (i) effecting or enabling its destruction or demolition;
 - (ii) enabling the development of the designated land; or

(iii) enabling the development of any land adjoining the designated land; or

(b) is neglected to such an extent that it will lose its potential for conservation, the heritage resources authority may serve on the owner an order to repair or maintain such site, to the satisfaction of the heritage resources authority, within a reasonable period of time as specified in the order to prevent any further deterioration in the condition of the place.

(2) Subject to subsection (3), upon failure of the owner to comply with the terms of an order under subsection (1) within the specified time, the authority which served the order may itself take such steps as may be necessary for the repair or maintenance thereof and recover the costs from the owner.

(3) If the owner can show good cause, he or she may, within twenty one (21) days of the service of a repair order under subsection (1)—

- (a) apply to the heritage authority which served the repair order for the extension of the time specified in the order; or
- (b) appeal to the Cabinet Secretary, in the manner prescribed under this Act.

Expropriation.

36. (1) The Cabinet Secretary may, on the advice of the Kenya Heritage Authority, purchase or, subject to compensation, expropriate any property for conservation or any other purpose under this Act if that purpose is a public purpose or is in the public interest.

(2) The amount of compensation, the time and manner of payment shall be determined in accordance with Article 40 of the Constitution, and the owner of the property in question shall be given a hearing before any property is expropriated.

Approved.

Heritage areas.

37. (1) The National and county governments shall at the time of revision of a town or regional planning scheme, or the compilation or revision of a spatial plan, investigate the need for the designation of heritage areas to protect any place of environmental or cultural interest.

(2) A county government may, by notice in the *county gazette*, designate any area or land to be a heritage area on the grounds of its environmental or cultural interest or the presence of heritage resources, provided that prior to such designation it shall consult the owners of property in the area and any affected community for the protection of the area.

Approved.

(3) A county government shall provide for the protection of a heritage area through the provisions of its planning scheme or legislation under this Act provided that—

(e) special consent of the county government shall be required for any alteration or development affecting a heritage area;

(f) in assessing an application under paragraph (a) the county government shall consider the significance of the area and how this could be affected by the proposed alteration or development;

(g) in the event of any alteration or development being undertaken in a heritage area without the consent of the county government, it shall have the power to require the owner to stop such work instantly and restore the site to its previous condition within a specified period; and

(h) If the owner fails to comply with the requirements of a county government, the county government shall have the right to carry out such restoration work itself and recover the cost thereof from the owner.

(4) A county government may erect signage indicating its status at or near a heritage area.

(5) Particular places within a heritage area may, in addition to the general provisions governing the area, be afforded further protection under this Act or other heritage legislation.

Heritage
objects.

38. (1) An object or collection of objects, or a type of object or list of objects, whether specific or generic, that is part of the national heritage and the export of which the Kenya Heritage Authority considers it necessary to control, may be declared a heritage object, including—

Approved.

- (j) objects recovered from the soil or waters of Kenya, including archaeological and palaeontological objects, meteorites and rare geological specimens;
- (k) visual art objects;
- (l) military objects;
- (m) numismatic objects;
- (n) objects of cultural and historical significance;
- (o) objects to which oral traditions are attached and which are associated with living heritage;
- (p) objects of scientific or technological interest;
- (q) books, records, documents, photographic positives and negatives, graphic material, film or video or sound recordings, excluding those that are public records; and
- (r) any other prescribed category.

(2) For the purposes of this section, an object within a type of objects declared to be a heritage object is deemed to be a heritage object.

(3) The Kenya Heritage Authority may, with the approval of the Cabinet Secretary, by notice in the *Gazette*—

- (d) declare an object, or a collection thereof, or a type of object or list of objects, whether specific or generic, to be a heritage object;
- (e) amend any notice published under paragraph (a); or
- (f) withdraw any notice published under paragraph (a) or amended under paragraph (b).

(4) The Kenya Heritage Authority may not exercise its power under subsection (3) unless—

- (a) in the case of a specific object or collection, it has served on the owner a notice of its intention and has given them at least sixty (60) days to lodge an objection or suggest reasonable conditions regarding the care and custody of such object under which such declaration is acceptable; or
- (b) in the case of a type of objects, it has—
 - (i) published a notice of provisional declaration in the *Gazette*;
 - (ii) by public advertisement and any other means it considers appropriate, made known publicly the effect of the declaration and its purpose; and
 - (iii) invited any interested person who might be adversely affected to make submissions to or lodge objections with the Kenya Heritage Authority within sixty (60) days from the date of the notice,

and has considered all such submissions and objections.

Import of
objects
protected
in terms of
laws of
foreign
states.

39. (1) A person may not import into Kenya any foreign cultural property other than through a customs port of entry, and the export permit or other permission issued in the country of origin of such object must be produced to a customs officer before import to Kenya is effected or allowed.

(2) After a cultural property agreement between Kenya and a reciprocating state comes into force, no person may import into Kenya any foreign cultural property that has been illegally exported from a reciprocating state.

(3) A customs officer who has reason to believe that a person is attempting to import an object in contravention of subsection (1) or (2), may withhold the object concerned and such object must be kept in the custody of the Kenya Heritage Authority until such time, not exceeding six months, as an investigation into the provenance of such object is completed.

(4) The Kenya Heritage Authority may, with the consent of the Cabinet Secretary, liaise and co-operate with the authority responsible for the protection of cultural property in any reciprocating state and may enter into agreements with any such authority with regard to the return to the country of origin of any heritage object or cultural property which is illegally imported into Kenya or the reciprocating state, whether specifically or in general.

Approved.

Structures.

- 40. (1) A person may not alter or demolish any structure or part of a structure which is older than sixty (60) years without a permit issued by the relevant county heritage authority.
- (2) Within three months of the refusal of the county heritage authority to issue a permit, consideration must be given to the protection of the place concerned in terms of one of the formal designations provided for under this Act.
- (3) The county heritage authority may at its discretion, by notice in the *county gazette*, make an exemption from the requirements of subsection (1) within a defined geographical area, or for certain defined categories of site within a defined geographical area, provided that it is satisfied that heritage resources falling into the defined area or category have been identified and are adequately provided for under this Act.

Approved.

Archaeology, palaeontology and meteorites

- 41. (1) The protection of archaeological and palaeontological sites and material and meteorites shall be the responsibility of a county heritage authority.
- (2) The Kenya Heritage Authority shall be responsible for the protection of any wreck in the territorial waters and the maritime cultural zone.
- (2) All archaeological objects, palaeontological material and meteorites shall be the property of the State.

Approved.

This distributes the task of the day to day care of the vast and ever expanding heritage collections over multiple institutions both public and private as is the standard practice across the world. Public institutions alone cannot harness all the

(3) The responsible heritage authority shall, on behalf of the State, at its discretion ensure that such objects are lodged with a museum or other public or private institution that has a collection policy acceptable to the heritage resources authority and may in so doing establish such terms and conditions as it sees fit for the conservation of such objects.

(4) A person who discovers archaeological or palaeontological objects or material or a meteorite in the course of development or agricultural activity shall immediately report the find to the responsible heritage resources authority, or to the nearest county government offices or museum, which shall immediately notify the relevant heritage authority.

(5) A person may not, without a permit issued by the responsible heritage resources authority—

(e) destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite;

(f) destroy, damage, excavate, remove from its original position, collect or own any archaeological or palaeontological material or object or any meteorite;

(g) trade in, sell for private gain, export or attempt to export from the Republic any category of archaeological or palaeontological material or object, or any meteorite; or

(h) bring onto or use at an archaeological or palaeontological site any excavation equipment or

resources to adequately care for all heritage collections.

any equipment which assist in the detection or recovery of metals or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites.

(6) When the responsible heritage resources authority has reasonable cause to believe that any activity or development which will destroy, damage or alter any archaeological or palaeontological site is under way, and where no application for a permit has been submitted and no heritage resources management procedure under this Act has been followed, it may—

- (d) serve on the owner or occupier of the site or on the person undertaking such development an order for the development to cease immediately for such period as is specified in the order;
- (e) carry out an investigation for the purpose of obtaining information on whether or not an archaeological or palaeontological site exists and whether mitigation is necessary;
- (f) if mitigation is deemed by the heritage resources authority to be necessary, assist the person on whom the order has been served under paragraph (a) to apply for a permit; and
- (g) recover the costs of such investigation from the owner or occupier of the land on which it is believed an archaeological or palaeontological site is located or from the person proposing to undertake the development if no application for a

permit is received within two weeks of the order being served.

(7) The responsible heritage resources authority may, after consultation with the owner of the land on which an archaeological or palaeontological site or a meteorite is situated, serve a notice on the owner or any other controlling authority, to prevent activities within a specified distance from such site or meteorite.

Burial
grounds
and
graves.

Approved.

42. (1) Where it is not the responsibility of any other authority, the Kenya Heritage Authority shall conserve and generally care for burial grounds and graves protected under this section, and it may make such arrangements for their conservation as it considers fit.

(2) The Kenya Heritage Authority shall identify and record the graves of victims of conflict and any other graves which it considers to be of cultural significance and may erect memorials associated with the grave referred to in subsection (1), and shall maintain such memorials.

(3) A person may not, without a permit issued by the Kenya Heritage Authority or a county heritage authority—

- (d) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;

- (e) destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than sixty (60) years which is situated outside a formal cemetery administered by a county government; or
- (f) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.

(4) The Kenya Heritage Authority or a county heritage authority may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3)(a) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and reinterment of the contents of such graves, at the cost of the applicant and in accordance with any regulations made by the responsible heritage resources authority.

Establish
ment of
research
institution
s.

43. (1) The Cabinet Secretary may, on the recommendation of the Kenya Heritage Authority, by notice in the *Gazette* establish a research institute and grant a Certificate of Registration in accordance with the provisions of this Act.

(2) An order under this section may specify—

- (e) that the institute to which it relates shall have corporate personality;
- (f) the duties, powers and functions of the institute;

Approved.

- (g) the manner in which the institute shall be governed; and
- (h) such other matters with respect to the conduct and management of the institute, as the Cabinet Secretary may find it necessary or desirable to provide for.

24	Council of Governors	<p>Insert the following new sub clause on— The proper utilization and sharing of revenue raised between the National and host County Government for effective management and preservation.</p>	<p>There is need for proper utilization and sharing of proceeds/revenue from a national asset under the national government with the host county for effective preservation and management.</p>	Not approved.
32	Council of Governors	<p>Insert the following sub clause to include— The board shall carry out public participation prior to disposal of objects.</p>	<p>There is need for public participation before any object is disposed of by sale, exchange or gift to ensure accountability and transparency in line with the National Values outlined in Article 10 of the Constitution.</p>	Not approved.

48 **THAT** the Bill be amended by deleting clause 48 and substituting therefor the following new clause—

Approved.

LIST OF STAKE HOLDERS

- (a) Ministry of Sports, Culture and Heritage.
- (b) The National Museums of Kenya.
- (c) Nature Kenya.
- (d) The Council of Governors.
- (e) Turkana Basin Institute.
- (f) Dr. Isaiah Odhiambo Nengo.

MINUTE SEN/SCLSW/280/2021: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business, the meeting was adjourned at 12.10 p.m.



SIGNATURE:
(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: **Wednesday, 6th October, 2021**

MINUTES OF THE 50TH (ZOOM ONLINE) MEETING OF THE STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON TUESDAY, 24TH AUGUST, 2021, AT 9.30 AM.

MEMBERS PRESENT

1. Sen. Sakaja Johnson Arthur, CBS - Chairperson
2. Sen. Masitsa Naomi Shiyonga - Member
3. Sen. (Dr.) Milgo Alice Chepkorir - Member
4. Sen. Kihika Susan Wakarura - Member
5. Sen. Mwangi Paul Githiomi - Member
6. Sen. Makori Beatrice Kwamboka - Member

ABSENT WITH APOLOGIES

1. Sen. Mwaruma Johnnes - Vice Chairperson
2. Sen. Madzayo Stewart Mwachiru - Member
3. Sen. (Dr.) Mwaura Isaac, CBS - Member

SENATE SECRETARIAT

1. Ms. Mwanate Shaban - Clerk Assistant
2. Mr. Jeremy Chabari - Legal Counsel
3. Mr. Kevin Kibet - Hansard Officer/ CA
4. Ms. Fatuma Abdi - Audio Officer
5. Mr. Ruben Kimosop - Serjeant-at-Arms
6. Mr. Frank Mutulu - Media Relations Officer

IN ATTENDANCE

1. Prof. Isaiah Nengo - Director, Research and Science, Turkana Basin Institute
2. Ms. Grace Ng'ang'a - Journalist, Standard Group

MINUTE SEN/SCLSW/217/2021: PRELIMINARIES

The Chairperson called the meeting to order at 9.44 a.m. followed by a word of prayer. This was followed by introductions from all present.

MINUTE SEN/SCLSW/218/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after being proposed by Sen. Mwangi Paul Githiomi, MP and seconded by Sen. Naomi Masitsa Shiyonga, MP as follows –

AGENDA

1. Preliminaries (Prayers);
2. Adoption of the Agenda;
3. **Consultative Meeting with the Turkana Basin Institute on the Heritage and Museums Bill; and**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/219/2021: CONSULTATIVE MEETING WITH TURKANA BASIN INSTITUTE ON THE NATIONAL HERITAGE AND MUSEUMS BILL (SENATE BILLS NO. 22 OF 2021);

a) Presentation by Prof. Isaiah Nengo, Director, Research and Science, Turkana Basin Institute

1. He informed the meeting that he was appearing before the Committee both on a personal and professional capacity.
2. He stated that he met Dr. Richard Leakey on a school field trip when he was 17 years old and they had a talk on origin of humans, which immensely contributed to his pursuit of a career in palaeontology.
3. After graduating with a degree in Palaeontology at the University of Nairobi, he worked for two years with the National Museums of Kenya.
4. He then got a scholarship in the Harvard University to pursue his Masters and PhD.
5. He returned home and joined Dr. Leakey in Turkana Basin Institute to educate people, protect heritage and stimulate paleo-tourism.
6. He stated that Kenya only has one museum in Nairobi, yet Kenya has millions of specimen.
7. He cautioned against the concentration of specimen, materials and resources in Nairobi and called for distribution across the country.
8. He acknowledged that according to Schedule 4 of the Constitution, ancient and historical monuments of national importance are under the purview of the

National Government while County governments are tasked with management of museums.

9. The Bill does not provide for clear distinction of monuments, specimens, museums and the functions of the two levels of government.
10. As an expert, he invited the legal team of the Senate to discuss and create clear distinction.

b) Members interventions and Way Forward

1. Members commended Prof. Nengo for taking up his civic duty of participation and for enumerating the rich history of museums.
2. The Committee acknowledged that it welcomes views of all stakeholders so as to have an all-inclusive and quality legislation
3. The Committee resolved that the Legal Counsel should consult with Prof. Nengo to seek his professional advice on creating clear distinction of monuments, specimen and museums for the two levels of Government.
4. The Committee also resolved to fast-track the Bill to enable it be passed in the 12th Parliament.

MINUTE SEN/SCLSW/220/2021: ANY OTHER BUSINESS AND ADJOURNMENT

1. The Committee was informed that an In-House Meeting to consider pending business had been scheduled for the following day, Wednesday, 25th August, 2021 at 10.00 am;
2. The Committee also noted that activities in its Work Schedule had been adjusted to accommodate other House Activities that had taken place during the recess period; and
3. There being no other business, the meeting was adjourned at 10.21 a.m.



SIGNATURE:
(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: **Wednesday, 25th August, 2021**

MINUTES OF THE 46TH (ZOOM ONLINE) MEETING OF THE STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON WEDNESDAY, 4TH AUGUST, 2021, AT 10.30 AM.

MEMBERS PRESENT

- | | |
|-------------------------------------|----------------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | - Chairperson |
| 2. Sen. Madzayo Stewart Mwachiru | - Member |
| 3. Sen. Mwangi Paul Githiomi | - Member |
| 4. Sen. Kihika Susan Wakarura | - Member |
| 5. Sen. Masitsa Naomi Shiyonga | - Member |
| 6. Sen. (Dr.) Milgo Alice Chepkorir | - Member |
| 7. Sen. Makori Beatrice Kwamboka | - Member |

ABSENT WITH APOLOGIES

- | | |
|---------------------------------|---------------------------|
| 1. Sen. Mwaruma Johnnes | - Vice Chairperson |
| 2. Sen. (Dr.) Mwaura Isaac, CBS | - Member |

SENATE SECRETARIAT

- | | |
|-----------------------|---------------------------------------|
| 1. Ms. Mary Chesire | - Deputy Director, Committee Services |
| 2. Ms. Mwanate Shaban | - Clerk Assistant |
| 3. Mr. Jeremy Chabari | - Legal Counsel |
| 4. Ms. Marale Sande | - Research Officer |
| 5. Mr. Kevin Kibet | - Hansard Officer/ CA |
| 6. Ms. Fatuma Abdi | - Audio Officer |
| 7. Mr. Reuben Kimosop | - Serjeant-at-Arms |

IN ATTENDANCE

- | | |
|--------------------------|--|
| 1. Ms. Josephta Mukobe | - PS, Culture and Heritage, Ministry of Sports, Culture and Heritage |
| 2. Dr. Mzalendo Kibunja | - Director General, National Museums of Kenya |
| 3. Dr. Purity Kiura | - Director, National Museums of Kenya |
| 4. Mr. Geoffrey Mwachala | - National Museums of Kenya |
| 5. Mr. Rupert Watson | - Chairman, Nature Kenya |
| 6. Dr. Paul Matiku | - Executive Director, Nature Kenya |

MINUTE SEN/SCLSW/199/2021: PRELIMINARIES

1. The Chairperson called the meeting to order at 10.45 am followed by a word of prayer. This was followed by introductions from all present.
2. The Committee noted the apologies of the Council of Governors who undertook to send their written submissions at a later time.
3. The Committee also acknowledged the message from the County Assemblies Forum who stated that they are in agreement with the Bill and will be sending a written communication to that effect.

MINUTE SEN/SCLSW/200/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after being proposed by Sen. Naomi Shiyonga, MP and seconded by Sen. (Dr.) Alice Milgo, MP as follows –

AGENDA

1. Preliminaries (Prayers & Introductions);
2. Adoption of the Agenda;
3. **Stakeholder Meeting on the Heritage and Museums Bill (Senate Bills no. 22 of 2021);**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/201/2021: BRIEFING ON THE NATIONAL HERITAGE AND MUSEUMS BILL (SENATE BILLS NO. 22 OF 2021);

a) Briefing by the Legal Counsel

Mr. Jeremy Chabari presented as follows –

1. That, the principal object of the Bill is therefore to repeal the National Museums and Heritage Act and enact a new Bill that conforms to the Constitution. The Bill proposes to—
 - a) retain the National Museums of Kenya already established under the National Museums and Heritage Act, 2006;
 - b) provide for national and county museums;
 - c) provide for the preservation, protection and management of cultural and natural heritage at National and County levels of Government; and
 - d) repeal the National Museums and Heritage Act, 2006.
2. That the Bill -
 - a) retains the National Museums of Kenya;
 - b) provides for the functions of counties in relation to heritage and museums;
 - c) establishes county museums and their functions;

- d) provides for appointment County Heritage Inspectors in each county for purposes of compliance with the Bill;
 - e) provides for the establishment of National Heritage Centres in each county;
 - f) provides for the maintenance of registers of all protected areas and ancient and historical monuments of national importance; and
 - g) provides for the enforcement of agreements for protection of monuments.
 - h) establishes the Heritage Tribunal to hear appeals and complaints, resolve conflicts and address all issues relating to heritage and museums.
3. That, the Bill provides for the re-establishment of the National Museums of Kenya vested with the mandate of conserving cultural and natural heritage of national importance. The management of National Museums of Kenya is vested in the Board of National Museums. The Director-General shall be responsible for the day to day management and general administration of the National Museums of Kenya subject to the Board's directions.
 4. That, the Bill provides for the functions of county governments pertaining to county museums. In relation to museums, the county governments will have the mandate of collection, documentation and exhibition of materials, objects of historical, cultural and cultural heritage that are important to the respective county.
 5. The Bill also empowers the Cabinet Secretary responsible for matters relating to national heritage, antiquities and monuments, after consultation with the National Museums Board, to declare or gazette a place or an object as heritage of national importance. The Board is mandated to deliberate and pass a resolution on de-gazettement of a place or object as national heritage. The Bill further provides for the prescription of general principles for the management of heritage resources nationally by regulation.
 6. Under the Bill, it is mandatory to obtain an exploration licence before pursuing excavation or surface search operations for buried monuments. The Bill prescribes the procedure for compensation in the case of disturbance of the rights of occupiers of Trust land or damage to any such land, of an occupier who claims compensation. Under the Bill, the National Museums of Kenya must be notified of any discovery made. The Bill also restricts the movement of objects of archeological or paleontological interest without authorization.
 7. The Bill provides for protected areas and ways of compensation to owners of land declared to be a protected area. The Cabinet Secretary is empowered to prohibit or restrict access to any development or use of a protected area for agriculture or livestock or any activity which would damage a monument or object for archeological interest.
 8. The Bill provides for the acquisition, protection, maintenance, inspection, repair, acquisition and guardianship of monuments.
 9. Under the Bill, antiquities are considered property of the government. Removal of antiquities and protected objects from the place where such is situated is prohibited under the Bill. The Bill prohibits also the sale of antiquities and protected objects.

10. The Bill provides the conditions relating to export of monuments, antiquities or protected objects. The Bill provides that a monument, antiquity or protected object shall not be removed from Kenya otherwise than through a customs port of entry.
11. The Bill provides an enforcement mechanism by the National Museums of Kenya to ensure compliance with the provisions of the proposed Act. The Bill provides for inspection by the National Museums and for the appointment of national heritage inspectors for the purpose of enforcing the Act. The national heritage inspector has been given powers to inspect, arrest and search under the Bill.
12. The Bill provides for the establishment of the Heritage Tribunal which shall hear appeals and complaints, resolve conflicts and address questions under the Bill.

He concluded by stating that the Bill will provide a legal framework for the implementation of the functions and powers of the county governments with respect to cultural activities, public entertainment and public amenities as set out under paragraph 4 of part 2 of the Fourth Schedule to the Constitution. The Bill will also repeal the National Museums and Heritage Act, 2006.

b) Presentation by Dr. Paul Matiku, Executive Director Nature Kenya

1. He expressed his appreciation for the invitation and commended the Committee for giving Nature Kenya a chance to partake in public participation.
2. He stated that Nature Kenya is in support of the Bill but sought an amendment to recognize Nature Kenya by giving it representation in the National Museums Board by amending Clause 8(1)(d) of the Heritage and Museums Bill 2021 to state -
“Three persons representing scientific interests with outstanding interests in and contribution to the work of the national museums including one nominated by Nature Kenya (The East Africa Natural History Society)”

c) Presentation by Ms. Josephtha Mukobe- PS, Culture and Heritage- Ministry of Sports, Culture and Heritage

1. She stated that the Ministry appreciated the partnership with the Committee in the process of reviewing of the National Museums and Heritage Act No. 6 of 2006 to align to the Constitution of Kenya, 2010.
2. She added that the Bill has harmonized the legislative proposals made by the Committee and the Ministry as articulated during previous engagements.
3. She forwarded a proposal received from the Board of the National Museums of Kenya for an amendment to be made under Section 8(1) (d) of the Bill as follows:

AS PROVIDED IN THE BILL BEFORE THE SENATE	RECOMMENDED PROVISION	REASONS FOR THE RECOMMENDATION
<p>Section 8 (1) The Management of the National Museums of Kenya shall vest in a Board which shall comprise of –</p> <p>(d)three persons representing scientific interests with outstanding interest in and contribution to the work of the national museums;</p>	<p>Section 8 (1) The Management of the National Museums of Kenya shall vest in a Board which shall comprise of –</p> <p>(d) Three persons representing Scientific, Arts and general outstanding interest in and contribution to the work of the National Museums of whom one shall be nominated Nature Kenya</p>	<p>The NMK Board’s concern is that the section 8(1) (d) as currently drafted excludes critical representation to the work of National Museums of Kenya (NMK). These are: (i)Nature Kenya (formerly the East Africa Natural History Society) which is the founding partner and (ii) The Arts interest which is key to NMK is excluded (this is in addition to scientific interest)</p>

d) Presentation by Dr. Mzalendo Kibunja, DG-National Museums of Kenya

Dr. Mzalendo lauded the Committee for the work it is doing to ensure that the National Museums and Heritage Act is amended to align it to the 2010 Constitution.

e) Members interventions

1. Members acknowledged the role played by the Nature Kenya in establishment of the National Museums of Kenya.
2. Members unanimously agreed with the proposals and submissions to amend Section 8 (1) made by the Nature Kenya and the Ministry of Sports, Culture and Heritage to include a representative of Nature Kenya in the Museums Board.
3. Members undertook to fast-track the Bill for it to be passed in the 12th Parliament.

MINUTE SEN/SCLSW/202/2021: ANY OTHER BUSINESS AND ADJOURNMENT

1. The Committee deliberated on the Petition dealing with Kenya United Steel Company (KUSCO) and resolved that the Legal Counsel should brief the Committee in the next meeting, on how to deal with a case of a company that has been wound down.
2. The Committee deliberated on the Ewaso Ngi'ro North Development Authority (ENDDA) Report which had been referred back to the Committee by the Speaker following reservations by the Senator who raised the statement. The Committee resolved to –
 - a) write to Sen. Fatuma Dullo requesting her to formally submit her reservations to the Committee on the matter;
 - b) write to ENDDA to provide specific details of the 8 staff who were not reinstated and also details of Ms. Lucy Wanjau who was moved from the Department of Finance to Department of Planning.

There being no other business, the meeting was adjourned at 11.56 a.m.



SIGNATURE:
(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: Wednesday, 11th August, 2021

SPECIAL ISSUE

Kenya Gazette Supplement No. 61 (Senate Bills No. 22)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2021

NAIROBI, 15th April, 2021

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Museums of Kenya
from payment of
access fees,
permit/license fees and
export fees heritage
research

THE HERITAGE AND MUSEUMS BILL, 2021**A Bill for**

AN ACT of Parliament to provide for the conservation, preservation, protection, research and management of cultural and natural heritage at national and county levels of Government; and for connected purposes

ENACTED by Parliament of Kenya, as follows—

PART 1 – PRELIMINARY

1. This Act may be cited as the Heritage and Museums Act, 2021.

Short title.

2. In this Act –

Interpretation.

“ancient” means an object, building or remains of a building, which being of historical age, is designated for preservation and protection under this Act;

“antiquity” means any movable object but excludes a book or document made in Kenya or imported into Kenya before the year 1895, or any human remains, faunal or floral remains of similar minimum age which exists in Kenya;

“Board” means the Board of the National Museums of Kenya appointed under section 8;

“Cabinet Secretary” means the Cabinet Secretary responsible for national heritage, ancient and national and historical monuments of national importance and antiquities;

“County Executive Committee member” means the County Executive committee member responsible for matters relating to county cultural heritage and museums;

"county museum" means a museum vested in a County;

“cultural heritage” means –

(a) monuments;

(b) architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of

universal value from the point of view of history, art or science;

- (c) groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding value from the point of view of history, art or science;
- (d) works of humanity or the combined works of nature and humanity, and areas including archaeological sites which are of outstanding value from the historical, aesthetic, ethnological or anthropological point of view; and;
- (e) objects of archaeological or paleontological interest, objects of historical interest and protected objects;

“Director-General” means the Director-General of the National Museums of Kenya appointed under section 18;

“exploration licence” means an exploration licence issued under section 40;

“export permit” means a permit to export a monument or part thereof, an antiquity or a protected object, issued by the Cabinet Secretary pursuant to section 65;

“heritage” includes cultural and natural heritage;

“maintenance” includes the fencing, covering in, repairing, restoring and cleansing of a monument or the fencing or covering of a protected area, and the doing of any act which may be necessary for the purpose of maintaining or protecting a monument or a protected area or of securing convenient access thereto;

“museum” means a public or private institution which collects, preserves, analyses and exhibit objects of cultural and natural heritage;

“monument” means –

- (a) a place or immovable structure of any age which, being of historical, cultural, scientific, architectural, technological or other human interest is declared by the Cabinet Secretary to be a monument;

- (b) a rock-painting, carving or inscription made on an immovable object;
- (c) an ancient earthwork or other immovable object attributable to human activity;
- (d) a structure which is of public interest by reason of the historic architectural, traditional, artistic or archaeological interest attached to it and is declared by the Cabinet secretary to be a monument; or
- (e) a shipwreck more than fifty years old;

and such adjoining land as may be required for maintenance thereof;

“natural heritage” means —

- (a) natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;
- (b) geological features and landscapes or physiographical formations of special significance, rarity or beauty;
- (c) specifically, delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science, conservation or natural beauty; or
- (d) areas which are of religious significance, use or veneration;

“National Museums” means the National Museums of Kenya established in section 3 of this Act;

"national museum" means a museum vested in the National Museums of Kenya;

“national heritage centre” means a national heritage centre established in accordance with section 38;

“national heritage inventory” means the national heritage inventory;

“object of archaeological or paleontological interest” means an antiquity which was in existence before the year 1800;

“object of historical, cultural or scientific interest” means an object which came into existence in or after the year 1800;

“open space” means an open space not built upon in any urban or peri-urban area whether in a municipality or not to which the public has access and which may be used for parks, gardens, recreation grounds or any other use;

“owner” includes a joint owner vested with powers of management on his own behalf and other joint owners, and an agent or trustee exercising powers of management over a monument, and the successor in title of any such owner, the successor in office of any such agent or trustee; but nothing in this Act shall be deemed to extend the powers which may be lawfully exercised by the owner, agent or trustee;

“private land” means land privately owned and land the subject of a grant, lease or licence from the government in accordance with Article 64 of the Constitution and includes Trust land;

“protected area” means a site which has been and remains declared by the Cabinet Secretary under section 47 to be a protected area;

“protected building” means a building of special architectural or historical interest declared by the Cabinet Secretary to be protected building and includes any object or structure fixed to the building;

“protected object” means;

- (a) a door or door frame carved in an African or Oriental style before the year 1946;
- (b) any other object or type of object, whether or not part of an immovable structure, which being of historical or cultural interest has been and remains declared by the Cabinet Secretary to be a protected object; and
- (c) any material of biological and paleontological nature declared by the Cabinet Secretary to be a protected object;

“repository” means a place where things of national importance, of scientific, cultural, natural; technological and human interest are kept for safe keeping;

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

“standards” means best practices, guidelines and generally accepted level of attainment that all museums are expected to achieve for heritage management;

“tradition” means a belief or behavior with symbolic meaning or special significance with origins in the past and passed down within a society or social group with symbolic meaning or special significance with origins in the past;

“traditional knowledge” means any knowledge originating from a local or traditional community that is the result of intellectual activity and insight in traditional context, including knowhow, skills, innovations, practices and learning where knowledge is embodied in the traditional lifestyle of the community, or contained in the codified knowledge systems passed from one generation to another; and

“world heritage site” means a site listed by The *United Nations Educational, Scientific and Cultural Organization (UNESCO)* World Heritage Committee as a world heritage site.

PART II – ESTABLISHMENT OF THE NATIONAL MUSEUMS OF KENYA

3. There is established the National Museums of Kenya, a corporate body, with perpetual succession and a common seal and which shall in its corporate name be capable of -

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; or

Establishment of
the National
Museums.

- (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

4. (1) The headquarters of the National Museums shall be in Nairobi.

Headquarters of the National Museums of Kenya.

(2) The National Museums shall decentralize its services to all counties for the proper implementation of this Act.

(3) The National Museums may establish such regional research institutes or national heritage centres, as it considers necessary for the effective performance of its functions.

5. The functions of the National Museums shall be to

Functions of the National Museums of Kenya.

- (a) identify, acquire and record ancient and historical monuments and sites that are of national importance for inclusion in the national heritage inventory;
- (b) serve as a national repository for things of scientific, natural, cultural, technological and human interest that are of national importance including maintaining the national biodiversity inventory;
- (c) protect and conserve heritage sites of national and global importance and attributes therein, including global biodiversity;
- (d) undertake research in fields of ancient, historical, scientific, cultural, natural, technological, biomedical and human interest;
- (e) disseminate and transmit knowledge from research on cultural heritage, natural heritage, biomedical, ancient and historical monuments and sites of national importance;
- (f) promote sustainable utilization of heritage resources for national development;
- (g) develop principles, standards and policies for the management of the national heritage resources;

- (h) liaise with the county governments, national, regional and international institutions on heritage management;
- (i) promote the public's enjoyment and understanding of the national heritage, biodiversity, antiquities and monuments;
- (j) advise the Cabinet Secretary on the issuance of excavation, exploration and export licenses in connection with national heritage;
- (k) secure and exhibit the national heritage, antiquities and monuments to the public; and
- (l) undertake other functions incidental or relevant to the attainment of the mandate of the National Museums of Kenya.

6. (1) The National Museums of Kenya shall have the power to –

- (a) erect, maintain and improve buildings, including staff quarters
- (b) appoint committees for heritage conservation in furtherance of its functions;
- (c) partner with any county government for conservation of historical sites and monuments of national importance;
- (d) exchange, sell or otherwise dispose of objects not required for the purpose of the National Museums of Kenya as specified in the Regulations;
- (e) with the consent of the Cabinet Secretary and with the authority of a resolution by the Board, lend objects vested in the National Museums of Kenya to any person or institution whether within or outside Kenya;
- (f) loan, for research purposes, specimens and collections under the appropriate loaning agreements;
- (g) purchase of an object which in the opinion of the Board it is desirable to acquire for a National Heritage Centre or in furthering interest in and increasing the utility in a National Heritage Centre;

Powers of the
National
Museums of
Kenya

- (h) solicit, accept and receive subscriptions, donations, deices and bequests, whether of movable or immovable property and whether absolute or conditional, for the general or special purposes of the National Museums or subject to any trust;
- (i) charge for admission to a national museum, national heritage centre, or to any lecture, exhibition, conducted tour, course of instruction or other facility, or for publications, such fees or prices as the Board may consider, subject to any regulations made under this Act;
- (j) conduct heritage impact assessments, subject to the provisions of the national laws and international treaties and conventions;
- (k) enter into association with such bodies or organisations within or outside Kenya as the Board may consider in furtherance of the purposes for which the National Museums is established;
- (l) establish branches in counties;
- (m) establish national heritage centres;
- (n) advise on standards and best practices on heritage management;
- (o) monitor ancient and historical monuments and sites of national importance for purposes of preservation and conservation;
- (p) create, develop, own, protect and exploit inventions and innovations resulting from research activities undertaken on or by the aid of heritage resources;
- (q) establish mechanisms for effective dissemination of information on heritage;
- (r) set fees or other charges prescribed under this Act as may be necessary or expedient for—
 - (i) preserving and increasing the utility of the collections; or
 - (ii) securing the administration of anything vested in or acquired by the National Museums through this Act or other written law; and

(s) undertake functions incidental to the mandate of the National Museums of Kenya.

(2) The National Museums of Kenya may receive moneys from any source and may apply such moneys to defray its expenses in carrying out the functions and exercising the powers conferred on it by this Act.

7. The functions of county governments shall be to –

- (a) acquire the tangible and intangible heritage of humanity and its environment that is of county importance for purposes of education, study and enjoyment;
- (b) identify, collect materials and objects of historical, cultural and natural importance relevant to the respective county;
- (c) document the intangible heritage of county importance;
- (d) conserve the tangible and intangible heritage of humanity and its environment that is of county importance for purposes of education, study and enjoyment;
- (e) protect and conserve materials and objects of historical, cultural and natural importance relevant to the respective county;
- (f) publicise the tangible and intangible heritage of humanity and its environment that is of county importance for purposes of education, study and enjoyment;
- (g) promote awareness and education programmes for different audiences within the context of museums;
- (h) promote cultural activities and cultural festivals relevant to the respective counties;
- (i) develop and exhibit materials and objects of historical, cultural and natural importance relevant to the respective counties for purposes of education, study and enjoyment;
- (j) implement national standards on museums and heritage;

Functions of
County
Governments in
relation to
Museums

- (k) in consultation with the Cabinet Secretary, exchange, sell or otherwise dispose of objects not required for the purpose of the county museums and lend objects vested in the county museum to any person or institution whether within or outside Kenya; and
- (l) license of private museums within the respective counties.

8. (1) The Management of the National Museums of Kenya shall vest in a Board which shall comprise of –

Composition of
the Board of the
National
Museums .

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary for matters related to national heritage, antiquities and monuments;
- (c) the Principal Secretary for matters related to finance;
- (d) three persons representing scientific interests with outstanding interest in and contribution to the work of the national museums;
- (e) one person nominated by the Kenya Tourism Board;
- (f) two persons with outstanding interest in and contribution to the work of the national museums nominated by the Council of County Governors; and
- (g) the Director-General who shall be an *ex officio* member and secretary to the Board with no rights to vote.

(2) The Cabinet Secretary shall appoint the persons nominated under subsection (1) (b), (c), (d), (e), (f) and (g).

(3) The Board shall elect a vice chairperson from among its members.

(4) The chairperson and vice chairperson of the Board shall be of opposite gender.

(5) The persons appointed under subsection (1) (b) and (c) may designate, in writing, a representative to attend and participate in the meetings of the Board on their behalf.

(6) In appointing persons under subsection (1) (d), (e) and (f), the Cabinet Secretary shall take cognizance of the provisions of the Constitution regarding gender, persons with disability, marginalized persons and the youth.

(7) The Board shall be responsible for the general management, development and control of the National Museums and all functions vested in the National Museums of Kenya by this Act.

9. (1) A person shall be qualified for appointment as the chairperson of the Board, if that person –

Qualifications for appointment of chairperson and members of the Board.

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least fifteen years' experience in the relevant field, seven of which are in a managerial position; and
- (c) meets the requirements of leadership and integrity in Chapter Six of the Constitution.

(2) A person is qualified for appointment as a member, is that person –

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years' experience in the relevant field, five of which are in a managerial position; and
- (c) meets the requirements of leadership and integrity in Chapter Six of the Constitution.

(3) A person shall not be qualified for appointment as the chairperson or as a member, if that person –

- (a) is a member of a governing body of a political party;
- (b) is an undischarged bankrupt;
- (c) has been convicted of a criminal offence and sentenced to a term of not less than six months' imprisonment;
- (d) has been removed from any public office for contravening the provisions of the Constitution or any other written law;
- (e) is a member of Parliament or county assembly; or
- (f) has not met his or her legal and statutory obligations relating to tax and other statutory obligations.

10. The chairperson and members of the Board other than an *ex-officio* member shall hold office for a period of

Tenure of office.

three years and shall be eligible for re-appointment for one further final term of three years.

11. A person shall cease to be a member of the Board, if that person— Vacancy of office.

- (a) is unable to perform the functions of his office by reason of mental or physical infirmity;
- (b) is adjudged bankrupt;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) is absent from at least three consecutive meetings of the Board without the permission of the Board;
- (e) resigns, in writing, addressed, in the case of the chairperson to the President, and in the case of any other member, to the Cabinet Secretary;
- (f) violates the Constitution or any other law; or
- (g) dies.

12. The chairperson or member of the Board may be removed from office for — Removal of the chairperson or member of the Board.

- (a) physical or mental incapacity to perform the functions of the office;
- (b) gross misconduct;
- (c) being absent for at least three consecutive meetings of the Board without notice to the chairperson or without sufficient cause;
- (d) incompetence; or
- (e) serious violation of the Constitution including contravention of Chapter Six.

13. (1) The conduct and regulation of the business and affairs of the board shall be as provided in the First Schedule, but subject thereto, the Board may regulate its own procedure. Meetings of the Board.

(2) The Board may invite any person to participate in its deliberations on any particular issue, but a person so invited shall have no right to vote at any meeting of the Board.

14. (1) The Board may, from time to time, establish such committees as it considers necessary for the effective carrying out of its functions under this Act.

Committees of the Board

(2) Subject to subsection (4), the Board may co-opt into its membership a person whose knowledge and skills are found necessary for the functions of National Museums.

(3) A person co-opted under subsection (2) shall have no right to vote.

(4) Despite subsection (2), the Board shall not co-opt more than two people at any one time.

15. The Board may, by resolution generally or in any particular case, delegate to any committee of the Board the exercise of any of the powers or the performance of any of the functions or duties under this Act.

Delegation by the Board

16. (1) A member of the Board with a personal interest in a matter being considered or to be considered by the Board shall disclose the nature of their interest to the Board.

Disclosure of interest.

(2) A member who has declared an interest under subsection (1) shall not take part in the consideration or discussion of or vote during the deliberations on the matter by the Board.

17. (1) A member of the Board or agent of the Board shall not be personally liable to any action, claim or demand for acts done in the course of executing the functions, powers and duties of the Board under this Act.

Protection from personal liability.

(2) The Board shall however, not be relieved of the liability to pay compensation or damages to a person for an injury suffered by the person, their property, or any of their interests arising directly or indirectly from the exercise of any power conferred by this Act or any other written law.

18. (1) There shall be a Director-General of the National Museums who shall be appointed by the Board through a competitive recruitment process.

Appointment of the Director-General.

(2) A person shall be qualified for appointment as Director-General, if that person—

- (a) holds a doctorate degree from a university recognised in Kenya;
- (b) has at least fifteen years' professional experience of which five shall be at a management level, in any field or discipline related to the work of the National Museums; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(3) The Director-General shall—

- (a) be responsible for the day to day management of the National Museums;
- (b) be responsible for the direction of the affairs and transactions of the National Museums;
- (c) be the chief executive officer of the National Museums; and
- (d) perform such other duties as may be assigned by the Board from time to time.

(4) The Director-General shall hold office for a term of three years and shall be eligible for re-appointment for a further final term of three years

19. (1) The Board may appoint such officers and staff necessary for the proper discharge of the functions of the National Museums under this Act.

Staff of the National Museums.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

20. The members and the employees of the Board shall subscribe to the code of conduct as prescribed under the Regulations to this Act.

Code of conduct

21. (1) The common seal of the National Museums shall be kept by the Director-General and shall only be used on order of the Board.

Common seal.

(2) The common seal of the Board shall be authenticated by the signature of the Director-General and the chairperson of the Board or in the absence of the chairperson, such other member of the Board who shall be designated by the Board for that purpose.

(3) The common seal of the Board shall, when affixed to a document and authenticated, be judicially and officially noticed and unless the contrary is proved, any order or authorisation by the Board under this section shall be presumed to have been duly given.

PART III – FINANCIAL PROVISIONS

22. The funds of the National Museums shall comprise –

Funds of the
National
Museums.

- (a) money allocated by Parliament for the purposes of the National Museums;
- (b) any grants, gifts, donations or other endowments given to the National Museums;
- (c) such monies as may accrue to or vest in the National Museums in the course of the exercise of its powers or the performance of its functions under this Act.

23. The financial year of the National Museums shall be the period of twelve months ending on the thirtieth of June in each year.

Financial year.

24. (1) The Board shall, at least three months before the end of each financial year, cause to be prepared estimates of the revenue and expenditure of the National Museums for that financial year.

Annual estimates

(2) The annual estimates shall make provision for all the estimated expenditure of the National Museums for the financial year concerned and in particular, shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the staff of the National Museums;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the National Museums;
- (c) the proper maintenance of buildings and grounds of the National Museums;

- (d) the funding of training, research and development of activities of the National Museums;
- (e) the acquisition, maintenance, repair and replacement of at the equipment and other movable property of the National Museums; and
- (f) the creation of such funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matters as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary responsible for finance for tabling in Parliament.

25. The Board may invest any of the funds of the National Museums in securities in which for the time being trustees may by law invest funds or in any other securities which the Treasury may from time to time approve for that purpose.

Investment of funds.

26. (1) The Board shall cause to be kept proper books of account of the income, expenditure, assets and liabilities of the National Museums.

Accounts and Audit

(2) The Board shall within three months from the end of the financial year submit to the Auditor-General the accounts of the National Museums together with—

- (a) a statement of income and expenditure during the year; and
- (b) a statement of the assets and liabilities of the National Museums on the last day of that year.

27. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the National Museums for the immediate preceding year.

Annual Reports.

(2) The Cabinet Secretary shall lay the annual report before Parliament within three months.

PART IV—MANAGEMENT OF NATIONAL HERITAGE

28. (1) National heritage shall be managed by the National Museums established under section 3 of this Act.

Heritage of National importance

(2) for the purposes of this Act, a place or object shall be considered to be of national importance if the resource is of -

- (a) ancient origin;
- (b) historical importance;
- (c) natural or cultural significance to the nation;
- (d) world heritage sites;
- (e) a site, monument or object declared to be a monument ; or
- (f) special value to the people of Kenya.

29. (1) The Cabinet Secretary may, after consultation with the Board, by notice in the *gazette*, declare any place or object to be heritage of national importance, if it satisfies any of the following criteria -

Declaration of
heritage of
national
importance.

- (a) it is of ancient origin;
- (b) it is of historical importance;
- (c) it constitutes rare or endangered aspects of Kenya's natural or cultural heritage;
- (d) it is important in exhibiting particular aesthetic characteristics valued nationally;
- (e) it is strong or special in association with the life or work of a person, group or organization of importance in the history of Kenya.

(2) A national heritage may include -

- (a) a place, building, structure or equipment of cultural and natural significance it is of ancient origin;
- (b) a place to which oral traditions are attached or which are associated with living heritage;
- (c) historical settlements and townscapes
- (d) landscapes, seascapes, open spaces and natural features of national significance;
- (e) geological sites and landscapes of scientific or cultural importance;
- (f) archaeological and paleontological sites;

- (g) historical graves or cemeteries;
- (h) graves of individuals designated by an Act of Parliament; and
- (i) sites of significance relating to the history of slavery, history of colonialism, or ancient migratory patterns of the Kenyan people as recorded in Kenya;
- (j) movable objects, including –
 - (i) objects recovered from the soil or waters of Kenya, including archaeological and paleontological objects and material, meteorites and rare geological specimens;
 - (ii) objects to which oral traditions are attached or which are associated with living heritage;
 - (iii) ethnographic art and objects;
 - (iv) military objects;
 - (v) objects of decorative or fine art;
 - (vi) objects of scientific or technological interest; and
 - (vii) natural and cultural collections of national significance.

(2) All natural and cultural heritage collections of national importance shall be deposited with the National Museums, as the custodian of objects of national importance, and shall be displayed in accordance with the Regulations.

(3) The Cabinet Secretary may make Regulations for the proper discharge of functions under this section.

30. (1) The Cabinet Secretary shall, before declaring a place or object a national heritage under section 24 -

Cabinet Secretary
to issue notice.

- (a) publish in the Gazette a declaration notice; and
 - (b) invite members of the public to lodge any objections within two months from the date of publication of the notice published under paragraph (a);
- (2) On the expiry of the period of two months -

- (a) if no objection has been lodged, or if lodged, has been heard and dismissed, the Cabinet Secretary shall confirm the declaration of the place or object as a national heritage; or
- (b) if an objection has been lodged and upheld, the Cabinet Secretary shall withdraw the notice.

Provided that the decision to uphold or withdraw a declaration notice following an objection should be concluded within a period of three months.

(3) An object, monument or protected area declared under the National Museums and Heritage Act, 2006 to be a protected object, monument or protected area shall be a protected object, monument or protected area within the meaning of this Act.

31. (1) The Cabinet Secretary may degazette a place or object declared to be a national heritage.

Degazettement of place or objects as national heritage

- (2) A place or object shall be degazetted –
 - (a) if the Board resolves unanimously to degazette the place or object; and
 - (b) a notice of intent has been published in the gazette and at least two newspapers with wide national circulation and members of the public invited to lodge any objections within two months from the date of publication of the notice and no objections have been made, or if so made, have been heard and dismissed;

(3) Where the proposal for degazettement is rejected, the Cabinet Secretary shall cause a notice to be published in the Gazette within two months from the date of that decision.

32. (1) The Board may lend any object the property in which is vested in the National Museums and which is comprised in their collections for purposes of exhibition and specialized analysis.

Lending or borrowing of objects

- (2) The Board shall when lending an object–
 - (a) give special consideration to a request for the loan of an object for public exhibition and specialized research; and

(b) have regard to suitability of the prospective borrower, the purpose of the loan and the physical condition of the object.

(3) The Board may accept loaning of objects for exhibition, study or research by the National Museums.

33. The Board may dispose of an object, the property in which is vested in National Museums if the disposal is –

Disposal of objects

(a) by way of sale, exchange or gift of an object which is a duplicate of another object the property in which is so vested and which is so comprised;

(b) by way of sale, exchange or gift of an object which in the Board's opinion is unsuitable for retention in their collections and can be disposed of without detriment to national and scientific interest; or

(c) of an object which the Board is satisfied has become useless for the purposes of their collections by reason of damage, physical deterioration, or infestation by destructive organisms.

34. (1) The Director-General may, where it appears that any place or object is in imminent danger of serious damage or destruction and requires to be protected by a declaration under this Act, make an order protecting the said place or object in the manner set out by the Director-General.

Director-General to issue temporary protection orders.

(2) The Director General shall, where an order is made under this section, immediately inform the Cabinet Secretary and the Board.

35. (1) The Board shall establish, maintain and manage the National Heritage Register.

National Heritage Register

(2) All declarations made by the Cabinet Secretary under this Act, shall be entered into the National Heritage Register.

(3) Every gazetted place or object shall be recorded in the National Heritage Register in the manner prescribed in the Regulations.

(4) A person may search the National Heritage Register established under this section in the prescribed manner.

- 36.** (1) The National Museums shall establish a heritage database for collections. National Heritage Data base
- (2) The National Museums may make the data and information it holds available and accessible upon payment of the prescribed fee.
- 37.** (1) The Cabinet Secretary may, in consultation with the National Museums by notice in the gazette – General principles for management of heritage resources.
- (a) prescribe any principles for the management of the heritage nationally in addition to, but not inconsistent with, the principles set out in this Act;
- (b) publish for general information, national policy and standards relating to the management of the heritage nationally, or any aspect thereof which is consistent with the principles set out in this Act; and
- (c) publish a list of heritage wardens whose role shall be to engage stakeholders on the identification and management of heritage resources.
- 38.** (1) The National Museums shall establish and maintain National Heritage Centres in each county and at any other place as the Board may consider necessary. National Heritage Centres.
- (2) A National Heritage Centre established under this section shall be managed by such a committee as the Board may determine.
- 39.** (1) The National Museums may undertake research and conduct other activities of scientific, natural, cultural or technological importance by means of exploration and field investigations, data analysis, public programmes, exhibitions, tours or publications. Research by National Museums.
- (2) The National Museums may undertake research and conduct other activities of biomedical importance by use of non-human primates and other animal models.
- (3) The National Museums may undertake research and conduct other activities of importance to conservation of biodiversity. This will include identification, documentation, establishment and curation of a national biodiversity inventory.
- (4) The research under this section shall be exempt from all permits or license fees requirements under this Act.

PART V – EXPLORATION AND DISCOVERY

40. (1) A person shall not by means of excavation or surface operations search for a buried monument, a buried part of a monument, or a buried antiquity, whether or not in a protected area, unless that person is in possession of an exploration licence issued under this section.

Exploration licence.

(2) A person who desires to carry out a search for a buried monument, a buried part of a monument, or a buried antiquity, shall apply to the Cabinet Secretary for an exploration licence in the prescribed form.

(3) The Cabinet Secretary shall on receipt of the application under subsection (2) and on recommendation of the National Museums certify-

- (a) that the proposed research is scientifically ethical and sound;
- (b) that the person has the financial support; and
- (c) the person has received competent training and experience to carry out an exploration or excavation in accordance with the most recent scientific methods.

(4) The Cabinet Secretary shall consider the application and determine whether to issue a licence upon payment of the prescribed fees.

(5) An exploration licence issued under this section shall contain an agreement that the licensee, or the institution which the licensee represents, shall, within such period as may be specified in the licence deposit with the Cabinet Secretary and the National Museums copies of a detailed report or publication on the results of the exploration and excavation.

(6) The exploration licence shall specify, such limitations and conditions as the Cabinet Secretary considers necessary –

- (a) to protect a monument from injury, removal or dispersion; and
- (b) in respect of antiquities, for the removal of finds to a place in Kenya, or temporarily to a place outside Kenya for the purpose only of special examination or preservative treatment.

41. An exploration licence –

- (a) shall be valid for a period not exceeding three years, but may be renewed for a further period not exceeding one year at a time;
- (b) may be revoked at any time, if the Cabinet Secretary is of the opinion that the holder has failed to conform with any express or implied obligations under the licence;
- (c) shall be in the prescribed form; and
- (d) shall not entitle the holder to enter upon any land without the consent of the owner.

Conditions and form of exploration licence.

42. (1) The holder of an exploration licence, may enter upon any area of land specified in the licence, including private land or a protected area, and exercise therein all rights conferred by the exploration licence, for such period and subject to such limitations and conditions as may be stated in the licence.

Entry on to land under exploration licence.

(2) Where the holder of an exploration licence intends, pursuant to any licence, to enter upon private land, the holder shall give a month's notice to the occupier and the owner of the land.

(3) In the case of community land, the licensee shall serve the notice on the County Government in which the land is vested and the residents for whose benefit the county holds the land. The notice shall specify-

- (a) the nature of licence;
- (b) duration of the licence;
- (c) the land affected by the licence; and
- (d) activities to be undertaken in accordance with the exploration licence.

(4) Where, in the course of operations carried on by the holder of an exploration licence, disturbance of the rights of the owner or occupier of private land, or damage to the land, or to crops, trees, buildings, stock or works thereon, is caused, the holder of an exploration licence shall be liable to pay or compensate the owner or occupier as is fair and reasonable having regard to the extent of the disturbance or damage and to the interest of the owner or occupier in the land.

(5) If the holder of an exploration licence fails to pay or compensate when demanded under subsection (4), or if an owner or occupier is dissatisfied with the amount or nature of any compensation offered to him, the owner or occupier may, within six months of the date on which the demand or offer is made, but not later than two years after the occurrence of the disturbance or damage, appeal to the Heritage Tribunal.

(6) A person who is dissatisfied with the decision of the Heritage Tribunal may appeal to the High Court within thirty days of the decision.

43. (1) In the case of disturbance of the rights of owners or occupiers of private land, or damage to any such land, an owner or occupier who claims to be entitled to compensation under section 42 (4) shall, within six months after the occurrence of the disturbance or damage, apply for compensation to the holder of an exploration licence

Compensation on private land.

(2) The holder of an exploration licence shall notify the Cabinet Secretary and the National Museums of the application made under subsection (1).

(3) The Cabinet Secretary shall appoint a panel of three persons to hear and determine the claim in accordance with section 42 (4).

(4) The panel shall give notice in writing to the applicant and to the holder of the exploration licence of the award or of the rejection of the award.

(5) The applicant or the holder of an exploration licence may appeal to the Cabinet Secretary against the decision of the panel under subsection (4).

(6) A sum payable under an award shall be deposited by the holder of the exploration licence to the owner or occupier of a private land upon the expiry of thirty days from the date of notification of the award or from the date of the final appeal decision, as the case may be.

(7) An award made under this section shall be enforceable as if it were a decree of a court.

44. Where a person discovers a monument or object of archaeological or paleontological interest, the person shall—

Notification of discovery.

- (a) within seven days, give notice indicating the precise site and circumstances of the discovery to the National Museums; and
- (b) in case of an object, deliver the object to the National Museums for identification or custody for any particular purpose or period.

45. A person shall not move a monument or an object of archaeological or paleontological interest from the place where it has been discovered otherwise than in such manner and to such place as may be allowed by an exploration licence, or by written authorization from the Cabinet Secretary.

Restriction on moving objects.

46. A person who –

Offences.

- (a) engages in a search contrary to section 40;
- (b) being the holder of an exploration licence, fails to conform with any express or implied obligations under the licence;
- (c) enters upon private land pursuant to the licence without having given prior notice and such security, if any, as may have been directed in accordance with section 42;
- (d) fails to give notice of discovery in accordance with the provisions of section 44; or
- (e) moves a monument or object of archaeological or paleontological interest contrary to section 45,

commits an offence and is liable, on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

PART VI – PROTECTED AREAS

47. A protected area, which is part of community land, may be set aside in accordance with the provisions of Article 63 of the Constitution.

Where protected area is community land.

48. The Cabinet Secretary may, in respect of a protected area, from time to time –

Control of access to protected area.

- (a) by notice in the *gazette*, prohibit or restrict access, development, use for agriculture or livestock purposes, or an activity which in the opinion of the

Cabinet Secretary is likely to damage a monument or an object of archaeological or paleontological interest;

- (b) place the protected area under the control of the National Museums on prescribed terms;
- (c) take steps necessary for the maintenance of the protected area; or
- (d) make regulations to control access into the protected area and the conduct of visitors in such an area.

49. Where private land is included in a protected area and—

Compensation to owner of land in protected area.

- (a) the use by the owner or occupier is prohibited or restricted under this Act;
- (b) the rights of the owner or occupier are infringed;
- (c) there is damage to the land, crops, trees, buildings, stock or works;
- (d) the State shall pay the owner or occupier a fair and a reasonable compensation having regard to the extent of the prohibition, restriction, disturbance or damage and to the interest of the owner or occupier in the land.

50. A person who—

Offences

- (a) enters upon a protected area or within such area does any act contrary to a prohibition or restriction of which notice has been given by the Cabinet Secretary under section 48; or
- (b) breaches any regulation made by the Cabinet Secretary under section 48,

commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

PART VII – MONUMENTS

51. (1) A heritage inspector or any other person authorized in writing by the National Museum may at any reasonable time—

Inspection and repair of monuments.

- (a) enter and inspect a monument;
- (b) take photographs, measurements, drawings or other records of particulars of a monument; or
- (c) if so required by the Board carry out, at the expense of the National Museums, repairs to a monument:

(2) Where a monument is occupied, one month's prior notice in writing shall be given to the occupier of the intention to carry out repairs thereto.

52. The Board may purchase or take on lease or accept a gift or bequest of a monument or an antiquity.

Acquisition of monuments and antiquities.

53. (1) The owner of a monument may, by a written instrument, confer to the National Museums the guardianship of the monument.

Guardianship of monuments.

(2) The National Museums shall be the guardian of any monument which is the property of the State or has no apparent owner.

54. (1) The National Museums may enter into a written agreement with the owner of a monument or any other person for the protection or preservation of a monument.

Agreements for protection or preservation of monuments.

(2) An agreement under this section may provide for the following matters—

- (a) the maintenance of the monument;
- (b) the custody of the monument;
- (c) the occupation or use of the monument by the owners;
- (d) the restriction of the right of the owner or occupier to build or to do other acts or things on or near the site of the monument;
- (e) access by the public;
- (f) access by persons deputed by the owner or the National Museums to inspect or maintain the monument;
- (g) the notice to be given to the National Museums in case the owner intends to offer the land on which the monument is situated for sale, lease or other

disposal thereof, and the right to be reserved to the National Museums to have first refusal of any such sale, lease or other disposal;

- (h) the payment of any expenses incurred by the owner or by the National Museums in connection with maintenance of the monument;
- (i) the removal of the monument or any part to a place of safe custody;
- (j) the duration of the agreement;
- (k) the procedure relating to the settlement of any dispute arising out of the agreement; or
- (l) any other matter connected with the protection or preservation of the monument.

(3) The terms of an agreement under this section may be altered from time to time with the consent of all parties to the agreement.

(4) An agreement under this section shall be binding on any person claiming to be the owner of the monument to which it relates to or under a party by whom on or whose behalf the agreement was executed.

(5) Any rights acquired by the National Museums or by the owner in respect of expenses incurred in maintenance shall not be affected by the termination of an agreement under this section.

55. If the Cabinet Secretary considers that a monument is in danger of being destroyed, injured or allowed to fall into decay, the Cabinet Secretary may acquire the monument by way of compulsory acquisition under the provisions of the Land Act, 2012 but that power shall not be exercised—

Compulsory purchase of monuments.

- (a) in the case of a monument which or any part of which, is periodically used for religious observances;
- (b) if the monument is under the guardianship of the National Museums as provided by section 53;
- (c) if the monument is the subject of an agreement for its protection and preservation as provided by section 54; or

- (d) if the owner of the monument is willing to confer guardian thereof to the National Museums as provided by section 53 or to enter into an agreement for its protection as provided by section 54 or to give, sell or lease to the National Museums the monuments on acceptable terms.

56. (1) A monument which is for the time being –

- (a) owned by the National Museums;
- (b) under the guardianship of the National Museums as provided by section 47; or
- (c) the subject of an agreement for its protection or preservation as provided by section 48,

Duties of National Museums to protect and maintain monuments.

shall be properly maintained by the National Museums except where its maintenance is by such guardianship or agreement, the responsibility of the owner of the monument.

(2) When any such monument or any part thereof is used periodically for religious observances, the National Museums shall make provision for the protection of the monument from pollution or damage –

- (a) by prohibiting entry of any person not entitled to enter by the religious usage or community by which the monument or part thereof is used; or
- (b) by taking such other action that the National Museums considers necessary.

(3) Subject to regulations made under subsection (2) and to the terms of any instrument whereby the National Museums has been constituted guardian or of any agreement for protection or preservation of a monument, the public shall have right of access to a monument referred to in subsection (1) on such conditions as approved by the National Museums.

57. The National Museums may subject to the conditions of any instrument—

Relinquishing rights over monuments.

- (a) where rights have been acquired by it in respect of a monument by virtue of a sale, lease, gift or bequest, relinquish those rights in favor of the person who would be the owner of the monument if those rights had not been acquired; or

- (b) relinquish any guardianship which the Board has accepted under the provisions of this Act.

58. (1) A person who—

Offences under
Part VII

- (a) destroys, removes, injures, alters or defaces or does any act that imperils the preservation of a monument;
- (b) obstructs a national heritage inspector or other duly authorized person in the exercise of any of the powers conferred by this part; or
- (c) breaches any regulations regulating the entry of persons into a monument which is used for religious observances, or of any other condition of access to a monument;

commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both

(2) In addition to the penalty under subsection (1), the court may order, a person convicted of an offence under paragraph (a), to pay to the National Museums such sum of money as may be determined by that court to be necessary to defray the cost thereof.

PART VIII – ANTIQUITIES AND PROTECTED OBJECTS

59. (1) All antiquities lying on or under the ground of any land whether protected or not, objects of archaeological, paleontological or cultural interest discovered in any part of Kenya under this Act shall be the property of the State.

Antiquities
property of the
Government.

(2) The Cabinet Secretary may, on the recommendation of the National Museums, by notice in the *gazette*, disclaim the ownership of any such antiquity.

60. A person shall, if required in writing by the National Museums, within one month, furnish the National Museums with full particulars of all objects in the person's possession which the person knows are antiquities or protected objects.

Information
concerning
antiquities and
protected objects.

61. The Cabinet Secretary may, after consultation with the National Museums, by notice in the *gazette*, prohibit removal of a specified antiquity or a protected object from

Prohibition of
removal of
antiquities and
protected objects.

the place where the antiquity or the protected object is situated by way of sale, exchange, gift, bequest or loan.

62. (1) A person shall not –

- (a) sell or otherwise part with ownership or possession of a protected object without a permit from the National Museums;
- (b) buy or take by way of exchange an antiquity without a license to deal in antiquities; or
- (c) sell or give by way of exchange an antiquity to a person without a license to deal in antiquities

Prohibition of sale of antiquities and protected objects.

(2) This section shall not apply to acquisition by the State or by the National Museums of a protected object or antiquity by way of purchase, exchange, gift, bequest or loan.

63. (1) The Cabinet Secretary may, in consultation with the National Museums, if they consider that an antiquity or protected object is in danger of being destroyed, injured or allowed to fall into decay, or of being unlawfully removed—

Compulsory acquisition of antiquities and protected objects.

- (a) acquire the antiquity or protected object by way of compulsory acquisition on the grounds that acquisition is necessary in the interests of the utilisation of the antiquity or protected object by preservation and display for the public benefit; and
- (b) ensure prompt compensation as provided by Article 40 of the Constitution.

(2) The power of compulsory acquisition under subsection (1) shall not be exercised if the owner of the antiquity or a protected object is willing to deposit it with the National Museums by way of loan either permanently or for such period as the Cabinet Secretary considers necessary

64. A person who—

- (a) without just cause fails to furnish the National Museums with full particulars of all objects in his possession which he knows are antiquities or protected objects, or misrepresents after being required in writing so to do within the period specified by a notice under section 54;

Offences under Part VIII.

- (b) willfully destroys or damages an antiquity or protected object;
- (c) removes an antiquity or protected object contrary to section 55; or
- (d) sells or otherwise parts with ownership or possession of a protected object, or sells or buys or gives or takes by way of exchange an antiquity, contrary to section 56,

commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or twice the value of the antiquity or protected object concerned, whichever is the greater, or to imprisonment for a term not exceeding twelve months or to both.

PART IX – EXPORT

65. (1) A monument, an antiquity or a protected object shall not be removed from Kenya unless its removal has been specially authorized in an exploration licence or by an export permit issued by the Cabinet Secretary on the recommendation of the National Museums under this section.

Conditions relating to export.

(2) An application for an export permit shall be made in writing to the Cabinet Secretary and shall contain—

- (a) a full description of the monument or part thereof, antiquity or protected object in respect of which it is made;
- (b) the reason for the proposed removal;
- (c) the place to which and the person into whose care it is to be removed; and
- (d) such further information as may be prescribed.

(3) The Cabinet Secretary may before issuing an export permit, cause an inspection to be made and the monument, antiquity or protected object to be sealed or placed in their custody.

(4) The Cabinet Secretary may, in consultation with the National Museums, issue an export permit subject to such terms and conditions as the Cabinet Secretary considers fit.

(5) An export permit may, in particular, be issued under the conditions that—

- (a) the subject-matter thereof shall be deposited in a specified place and in the care of specified persons;
- (b) the subject-matter thereof shall be returned to Kenya within a specific period;
- (c) part of the subject-matter thereof may be subjected to scientific destructive analysis; and
- (d) a specified portion of the subject-matter thereof shall be surrendered to the National Museums, or loaned permanently or for a specified period.

66. A monument or part of an antiquity or a protected object shall only be removed from Kenya—

Export through
customs port of
entry

- (a) through a customs port of exit and
- (b) the relevant export permit or a copy of the relevant exploration licence certified by the Cabinet Secretary shall be surrendered to a customs officer before removal from Kenya is effected or allowed.

67. A person who —

Offences under
Part IX.

- (a) removes a monument or part thereof, an antiquity, or a protected object, from Kenya contrary to section 65 or section 66;
- (b) fails to comply with any of the terms of conditions of an export permit; or
- (c) obtains an export permit by an application containing information which the person knows to be false or incomplete in any material particular,

commits an offence and is, on conviction, liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both.

PART X – POWERS OF ENFORCEMENT

68. (1) An authorised representative of the National Museums may—

Inspection

- (a) at any time inspect work being done in connection with a monument or object of archaeological or paleontological interest; and
- (b) without warrant enter any premises and order the cessation of any such work.

(2) The National Museums shall report to the Cabinet Secretary any such order for cessation of work and the reasons for the order.

69. (1) The Cabinet Secretary may by notice in the Gazette appoint a person recommended by the National Museums to be a national heritage inspector for the purpose of enforcing this Act.

National heritage inspectors.

(2) A person shall be qualified as a national heritage inspector under subsection (1) if that person –

- (a) holds a minimum qualification of a degree in a relevant field from a university recognised in Kenya; and
- (b) has at least three years' working experience in a relevant profession.

(3) A national heritage inspector appointed under subsection (1) may by notice published in the gazette by the Director of Public Prosecutions, be designated as a prosecutor for offences committed under this Act.

70. A national heritage inspector may –

Power of national heritage inspectors to inspect

- (a) inspect an antiquity or protected object; and
- (b) with written authority from the National Museums enter premises where the antiquity or protected object is or should be, and require the production of the antiquity or protected object or information as to its whereabouts.

71. A police officer or national heritage inspector may arrest any person whom the national heritage inspector or police officer has reason to believe has committed an offence under this Act.

Power of arrest.

72. A national heritage inspector or a police officer may upon obtaining a warrant, at any time search any person or the premises occupied by any person whom they reasonably suspect of have acquired ownership or possession of a protected object, or of having bought or taken by way of exchange an antiquity, contrary to this Act.

Power to search.

73. (1) A customs officer may at any time without a warrant, search anything intended to be removed from Kenya or any person intending to leave Kenya, if the officer reasonably suspects that thing, or person is carrying,

Power of customs officers

a monument or part of monument, an antiquity or protected object.

(2) The customs officer may seize anything which he believes to be a monument or part of a monument, antiquity or protected object including any container that is in the process of being removed from Kenya contrary to this Act.

74. (1) Anything seized under section 72 or section 73 shall as soon as possible be taken before a magistrate who shall –

Forfeiture to
government after
seizure

- (a) in respect of seizure under section 73, order forfeiture to the State of the thing seized including any container if it is established that—
 - (i) the thing seized is a protected object; and
 - (ii) the ownership or possession of which has been acquired; or
 - (iii) an antiquity that has been bought or taken by way of exchange is contrary to this Act;
- (b) in respect of seizure under section 72, order forfeiture to the State of the thing seized together with any container thereof if it is established that the thing seized is a monument or part thereof, an antiquity or protected object that was in the process of being removed from Kenya contrary to section 72 or section 73.

(2) Anything forfeited to the State under subsection (1) shall, be deposited with the National Museums.

75. The National Museums may attach to or erect on a monument or protected area in the official language and the local language commonly used in that area, such notice as it considers necessary for the better protection of the monument or protected area.

Notices

76. A person who—

- (a) obstructs an authorised representative of the National Museums, a police officer, national heritage inspector, or customs officer, in the exercise of his powers or duties under this Act;
- (b) fails without reasonable cause to comply with a

Offence under
Part X

lawful order or requirement of an authorised representative of the National Museums, a police officer, national heritage inspector or customs officer, under this Act; or

- (c) destroys, removes or damages a notice attached or erected by the National Museums under section 75,

commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

77. (1) The county executive committee member responsible for culture may appoint county heritage inspectors.

County Cultural
Inspectors

(2) The county cultural inspectors shall undertake the following functions—

- (a) make a full assessment of the state of compliance with county legislation on county culture and county museums;
- (b) ensure that county culture and museums are preserved and maintained properly;
- (c) consult with any person on any violations of county heritage regulations on county culture and museums encountered and what further action they intend to take;
- (d) make reports on any violations on county culture and museums to the county executive committee member for action; and
- (e) inspect any damage to county museums and advise the county executive committee member on appropriate actions to be taken.

PART XI – HERITAGE TRIBUNAL

78. (1) There is established the Heritage Tribunal which shall consist of—

Establishment of
Tribunal.

- (a) a chairperson nominated by the Judicial Service Commission and appointed by the Cabinet Secretary who shall be a person qualified for

appointment as a judge of the High Court;

- (b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya and appointed by the Cabinet Secretary; and
- (c) three other persons who have demonstrated competence and a high level of integrity in the heritage conservation sector appointed by the Cabinet Secretary.

(2) The nomination and appointment of members of the Tribunal under subsection (1) shall be through a competitive process.

(3) The chairperson and vice-chairperson shall be of opposite gender.

(4) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

79. A member of the Tribunal shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

Tenure of office.

80. (1) The office of a member of the Tribunal shall become vacant –

Vacation of office.

- (a) at the expiry of three years from the date of appointment;
- (b) if a member is removed from membership of the Tribunal by the Cabinet Secretary for failure to discharge the functions of the office or for misbehavior;
- (c) if a member resigns by writing to the Cabinet Secretary; or
- (d) if a member dies.

(2) The members of the Tribunal shall be paid the allowances approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

81. (1) The Tribunal shall have a secretary who shall be a public officer appointed by the Public Service Commission through a competitive process.

Secretary and staff to the Tribunal

(2) The secretary shall hold office on the terms and

conditions specified by the Public Service Commission.

(3) The secretary shall be responsible for the day to day affairs of the Tribunal and shall be answerable to the Tribunal in the performance of their functions.

(4) The secretary shall perform any other functions determined by the Tribunal.

(5) There shall be such other staff of the Tribunal as may be necessary for the performance of its functions.

82. The Tribunal shall have the jurisdiction to hear and determine –

Jurisdiction of the Tribunal

- (a) appeals arising from any decision made under this Act;
- (b) any complaints arising from the exercise of the Cabinet Secretary's powers under this Act;
- (c) any conflicts that may arise between heritage institutions and agencies established under this Act; and
- (d) any complaints by any person aggrieved by any act done by any person under this Act.

83. (1) A person may make a complaint or appeal, in writing, within sixty days of the act, omission or decision complained of.

Proceedings of the Tribunal

(2) On the hearing of a complaint or an appeal, the Tribunal shall have all the powers of a subordinate court to –

- (a) summon witnesses;
- (b) take evidence on oath or affirmation;
- (c) order the production of documents; or
- (d) summon expert witnesses as may be necessary.

(3) All summons, notices or other documents issued under the hand of the chairperson of the Tribunal shall be considered to have been issued by the Tribunal.

(4) The Tribunal shall sit at such times and in such places as it may appoint.

(5) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause,

otherwise directs.

(6) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings as it considers fit.

(7) Any person who is a party to the proceedings before the Tribunal may appear in person or be represented by an Advocate.

84. (1) The Tribunal may -

Awards of the
Tribunal.

- (a) award damages;
- (b) confirm, vary or set aside the decision appealed against; or
- (c) make interim orders

(2) The Tribunal shall have power to award the costs of any proceedings before it and to direct that the costs shall be taxed within such a scale as it may proscribe.

(3) The Tribunal may, on its own motion or upon application by an aggrieved party, review its decisions, awards or orders.

(4) Judgments of the Tribunal shall be executed and enforced in the same manner as judgments of a subordinate court.

85. A person who -

Contempt of the
Tribunal.

- (a) fails to attend the Tribunal after being summoned by the Tribunal;
- (b) refuses to take an oath or affirmation before the Tribunal, or being a public officer, refuses to produce any article or document when lawfully required to do so by the Tribunal;
- (c) knowingly gives evidence or information before the Tribunal which the person knows to be misleading;
- (d) at any sitting of the Tribunal -
 - (i) willfully insults any member or officer of the Tribunal;
 - (ii) willfully interrupts the proceedings or commits any other act of contempt of the Tribunal; or
- (e) fails or neglects to comply with a decision, order, direction or notice confirmed by the Tribunal,

commits an offence.

86. (1) The quorum for the hearing and determining of a cause or a matter referred to the Tribunal shall be the chairperson and two other members.

Quorum for the Tribunal.

(2) The chairperson shall preside at the meetings of the Tribunal and in the absence of the chairperson, the vice chairperson or a member elected by members present and voting.

87. A member of the Tribunal who has an interest in the matter for consideration by the Tribunal shall disclose, in writing, the nature of that interest and shall not participate in the deliberations of the Tribunal in respect of that matter.

Disclosure of interest.

88. (1) A person aggrieved by a decision or order of the Tribunal may, within thirty days of that decision or order, appeal against the decision or the order to the High Court.

Appeals to the High Court.

(2) Upon the hearing of an appeal under this section, the High Court may –

- (a) confirm, set aside or vary the decision;
- (b) remit the proceedings to the Tribunal with instructions for further consideration, report, proceedings or evidence as the court may deem fit;
- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
- (d) make any other order as it may consider just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

89. A person aggrieved by the decision or order of the High Court may, within sixty days of that decision or order, appeal against that decision or order to the Court of Appeal on a matter of law.

Appeals to the Court of appeal.

PART XIII – MISCELLANEOUS PROVISIONS

90. The Cabinet Secretary of the National Treasury may make such orders as he may determine regarding incentives to heritage conservation that may be issued

Incentives.

under this Act.

91. (1) The National Museums of Kenya may request a court or other competent authority of another country to order the return of a cultural object illegally exported from the territory of the Republic of Kenya.

Return of illegally exported cultural objects.

(2) A cultural object which has been temporarily exported from the territory of the Republic of Kenya, for purposes such as exhibition, research or restoration, under a permit issued under this Act and not returned in accordance with the terms of that permit shall be considered to have been illegally exported.

92. In any proceedings under this Act, where the Cabinet Secretary has certified in writing that in his or her opinion, on the advice of the National Museums, a thing is a monument, an object of archeological or paleontological interest, an object of historical and scientific interest or a protected object, as the case may be, the burden of proof shall lie upon any person who asserts the contrary.

Burden of proof.

93. An instrument or agreement executed under this Act shall be exempt from stamp duty chargeable under the Stamp Duty Act.

Exemption from stamp duty.
Cap.480

94. (1) All mining activities in any protected heritage area including caves, rock shelters and any such areas of potential heritage importance shall require a written permit from the Cabinet Secretary on recommendation of National Museums.

Mining activities in protected heritage areas

(2) A person who desires to carry out mining activities in terms of this section shall make an application to the Cabinet Secretary in the prescribed form.

(3) The Cabinet Secretary shall within sixty days of receipt of an application under subsection (1) and on payment of such fees as may be required, either issue a permit with or without conditions or reject the application giving reasons, in writing, for the rejection.

95. All research conducted by the National Museums in furtherance of its functions and powers to protect and conserve national heritage under this Act, shall be exempt from payment of access, permit or export fees payable under any laws contained in the Third Schedule to this Act.

Access and payment of fees.

96. A person who commits an offence under this Act

General penalty.

for which no penalty is prescribed shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a period not exceeding twelve months, or to both.

97. (1) The Cabinet Secretary may make regulations for the better carrying out of this Act, and without prejudice to the generality of the foregoing for any of the following purposes –

Regulations.

- (a) prescribing conditions for the preservation and use of open spaces of national importance which may prescribe different conditions for different open spaces;
- (b) prescribing conditions for the protection, preservation and alteration of national monuments;
- (c) prescribing conditions for the protection, preservation, alteration and access to and use of protected buildings including the manner in which application may be made and consent given for any alteration, internal or external, to such protected buildings;
- (d) prescribing conditions for the protection, preservation, alteration, access to and use of areas of natural and cultural heritage;
- (e) prescribing the forms of, and conditions to be implied in exploration licenses and export permits;
- (f) regulating the management of a protected area;
- (g) controlling the reproduction of objects of archaeological or paleontological interest;
- (h) licensing dealers in antiquities;
- (i) prescribing penalties for breach of any such Regulations; and
- (j) prescribing the fees to be charged under this Act.

(2) The county executive committee member responsible for matters relating to county museums may make regulations relevant to county and private museums for the better carrying out of any of the purposes of this

Act.

98. (1) The National Museums and Heritage Act, 2006 is hereby repealed.

Repeal of No.6 of 2006.

(2) Despite subsection (1), any gazette notices, declarations by the Cabinet Secretary or statutory instructions which declared any heritage to be a monument under the repealed Act shall continue to be in full force and effect as though made pursuant to this Act.

(3) Despite subsection (1), all subsidiary legislation, regulations, rules and legal notices made under the repealed National Museums and Heritage Act, 2006 shall continue to operate as if made under this Act.

99. (1) In this section –

Transitional provisions.

“commencement date” means the day this Act comes into operation;

(2) All rights, obligations and contracts which, immediately before the coming into operation of this Act, were vested in or imposed on the National Museums shall by virtue of this section, continue to be the rights, obligations and contracts of the National Museums.

(3) Subject to the Intergovernmental Relations Act, 2012, all property, assets, rights, liabilities, obligations, agreements and arrangements delineated for purposes of the museums function and assigned to a county government shall, upon commencement of this Act, be deemed to have vested in or have been acquired, incurred or entered into by or on behalf of the relevant county government to the same extent as they were enforceable by or against the National Museums before the commencement of this Act.

(4) The Cabinet Secretary will prepare, in consultation with the County Government and relevant public sector institutions, a plan of transfer of staff, assets, liabilities and contracts.

(5) The transfer of staff who, immediately before the appointed day was an officer or member of staff of the National Museums, for purposes of the museums function shall be handled by the body responsible for transition to County Governments in line with the Intergovernmental

Relations Act, 2012.

(6) The term of any person who is, at the commencement of this Act, a member of the Board of the National Museums shall continue to be member of the Board of the National Museums for the remainder of his term upon commencement of this Act.

100. The Acts specified in the Second Schedule are amended in the manner specified in the Second Schedule.

Consequential amendments to other Acts.

FIRST SCHEDULE**S. 13****THE CONDUCT OF MEETINGS AND AFFAIRS OF
THE BOARD**

1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall lapse between the date of one meeting and the date of the next meeting.

Meetings of the Board.

(2) Notwithstanding subparagraph (1), the Director-General may, and upon requisition in writing by at least five members, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The chairperson shall preside at every meeting of the Board at which he is present but in his absence, the vice-chairperson shall preside and shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(5) In the event of the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the chairperson, the vice-chairperson if chairing the meeting or the person presiding shall have a casting vote.

(7) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure of any committee of the Board and for the attendance of other persons at its meetings.

2. (1) The quorum of the Board shall be five members excluding the ex-officio members.

Quorum of the Board

(2) The powers of the Board shall not be affected by any vacancy in the membership thereof.

SECOND SCHEDULE

Consequential Amendments

- The Mining Act. s.36 Section 36 (2) of the Mining Act is amended by inserting the following new paragraph immediately after paragraph (h) –
- (i) the approval of the Cabinet Secretary responsible for matters relating to Heritage, where the land is situated within a protected heritage area including caves, rock shelters and any such areas of potential heritage importance;
- The Physical and Land Use Planning Act. s.71 Section 71 of the Physical and Land use Planning is amended in—
- (a) subsection (1) by deleting the words “the National Museums and Heritage Act, 2006” appearing immediately after the words “provisions of” and substituting therefor the words “the Heritage and Museums Act, 2020”; and
 - (b) subsection (2) by deleting the words “the National Museums and Heritage Act, 2006” appearing immediately after the words “declared under” and substituting therefor the words “the Heritage and Museums Act, 2020”.
- The Environment Management and Co-ordination Act. s.38 Section 38 of the Environment Management and Co-ordination Act is amended—
- (a) in paragraph (jj) by delete the words “the National Museums and Heritage Act” appearing immediately after the words “Cabinet Secretary under” and substituting therefor the words “the Heritage and Museums Act, 2020”; and
 - (b) by inserting the following new paragraph immediately after paragraph(jj)–
 - (jjj) undertake a heritage impact assessment within the meaning of Heritage and Museums Act 2020.
- The Land Registration Act. s.76 Section 76 of the Land Registration Act is amended by inserting the following new paragraph immediately after paragraph (3)–

No.3 of 2012.

“(4) The Registrar shall make a restriction expressed to last until the making of a further order when the Registrar is informed by the National Museums that a declaration of heritage by the Cabinet Secretary under the “The Heritage and Museums Act, 2020” has been applied for, or is about to be gazette or has been gazette affecting the property in question and upon gazette the restriction shall take effect as a charge over the land”.

THIRD SCHEDULE (S.95)

Exemption of the National Museums of Kenya from payment of access fees, permit, license fees and export fees for heritage research

- (a) The Science, Technology and Innovation Act, No.28 of 2013 Part IV, section 12
- (b) The Wildlife Conservation and Management Act, No.47 of 2013
Part IV, section 22
Part IX, section 80 (1) d, and 81

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of the Bill is to give effect to the Fourth Schedule to the Constitution. The Bill proposes to retain the National Museums of Kenya already established under the National Museums and Heritage Act, 2006, to provide for national and county museums; the preservation, protection and management of cultural and natural heritage at National and County levels of Government; and to repeal the National Museums and Heritage Act, 2006.

Part I of the Bill provides for the preliminary matters.

Part II of the Bill provides under clause 4 of the Bill the establishment of the National Museums of Kenya vested with the mandate of conserving cultural and natural heritage of national importance. The management of National Museums of Kenya is vested in the Board.

The Bill also provides for the Functions of County Governments pertaining to County museums. In relation to museums function, County Governments will have the mandate of collection, documentation, exhibition of materials, objects of historical, cultural and natural heritage important to the respective County.

The composition, qualification, tenure of office of the members of the Board. The Board of National Museums of Kenya has been given powers to establish committees for effective carrying on of its functions. The part also provides for the appointment of the Director-General who shall be responsible for the day to day management and general administration of the National Museums of Kenya subject to the Board's directions.

Part III of the Bill contains provisions relating to financial matters. The part provides for the Funds of the National Museums of Kenya, financial year of National Museums of Kenya, the annual estimates and investment of funds.

Part IV of the Bill provides for management of national heritage, antiquities and monuments. Under this Part, the Cabinet Secretary may after consultation with the Board declare, or gazette a place, or an object as heritage of national importance. The Board may lend borrow or, dispose of objects vested in the National Museums of Kenya. The Board is mandated to deliberate and pass a resolution on degazettement of a place or object as national heritage. The Part further provides for the general principles for management of heritage resources nationally.

Part V of the Bill deals with the requirement of obtaining an exploration license before pursuing excavation or surface search operations for buried monuments. The Part provides for a procedure for

compensation in the case of disturbance of the rights of occupiers of Trust land, or damage to any such land, of an occupier who claims compensation. The National Museums of Kenya must be notified of any discovery made. The Part restricts the movement of objects of archeological or paleontological interest without authorization.

Part VI of the Bill provides for protected areas and ways of compensation to owners of land declared to be a protected area. The Cabinet Secretary is empowered to prohibit or restrict access to any development or use of a protected area for agriculture or livestock or any activity which would damage a monument or object for archeological interest.

Part VII of the Bill deals with the acquisition, protection and maintenance of monuments, inspection, repair, acquisition and guardianship of monuments.

Part VIII of the Bill deals with antiquities and protected objects. Antiquities are considered property of the Government. Removal of antiquities and protected objects from the place where such is situated is prohibited under the Bill. The Bill prohibits the sale, etc of antiquities and protected objects.

Part IX of the Bill provides the conditions relating to export of monuments, antiquities or protected objects. The Bill provides that a monument, antiquity or protected object shall not be removed from Kenya otherwise than through a customs port of entry.

Part X of the Bill provides for enforcement mechanism of the National Museums of Kenya, to ensure compliance with the provisions of the proposed Act. The Bill provides for inspection by the National Museums and for the appointment of national heritage inspectors for the purpose of enforcing the Act. The national heritage inspector has been given powers to inspect, arrest and search under the Bill.

Part XI of the Bill provides for the establishment of the Heritage Tribunal which shall hear appeals and complaints, resolve conflicts and address questions relating to refusal to grant a license under this Act or unreasonable delay in making of that grant.

Part XII of the Bill makes provision for miscellaneous matters among them the making of regulations on heritage of national importance by the Cabinet Secretary. The County Executive Committee Member will be responsible for formulation of regulations pertaining to county and private museums. The Bill repeals the National Museums and Heritage Act, 2006. It further provides for the Transitional and Savings provisions.

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

This Bill, once enacted, will enable county governments to carry out their mandate as per the Fourth Schedule of the Constitution.

Statement on how the Bill concerns county governments.

The proposed Bill concerns county governments in terms of Article 110(1)(a) of the Constitution as it contains provisions that affect the functions and powers of the county governments with respect to cultural activities, public entertainment and public amenities as set out under paragraph 4 of part 2 of the Fourth Schedule to the Constitution. The Bill outlines the functions of the national government and the county museums. The Bill therefore affects the functions and powers of county governments as provided under the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 1st March, 2021.

ALICE MILGO,
Senator.

Friday, 9th July 2021

REPUBLIC OF KENYA



TWELFTH PARLIAMENT | FIFTH SESSION THE SENATE

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Tuesday, 6th July, 2021, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 140 (5) of the Standing Orders of the Senate, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The Memoranda may be sent **by email** on the address: csenate@parliament.go.ke and copied to the respective Committee email addresses indicated at the fourth column below, to be received on or before **Friday, 23rd July, 2021 at 5.00pm.**

	Bill	Committee Referred To	Email Address
a)	The County Oversight and Accountability Bill (Senate Bills No. 17 of 2021)	Standing Committee on Devolution and Intergovernmental Relations	senatedevolution@gmail.com
b)	The National Cohesion and Peace Building Bill (Senate Bills No. 19 of 2021)	Standing Committee on National Cohesion, Equal Opportunity and Regional Integration	nationalcohesionc@gmail.com
c)	The County Boundaries Bill (Senate Bills No. 20 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke
d)	The Preservation of Human Dignity and Protection of Economic and Social Rights Bill (Senate Bills No. 21 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke
e)	The Heritage and Museums Bill (Senate Bills No. 22 of 2021)	Standing Committee on Labour and Social Welfare	senatecommittee.labour@parliament.go.ke
f)	The Coconut Industry Development Bill (Senate Bills No. 24 of 2021)	Standing Committee on Agriculture, Livestock and Fisheries	senatescalf@parliament.go.ke
g)	The Kenya Citizenship and Immigration (Amendment) Bill (Senate Bills No. 33 of 2021)	Standing Committee on National Security, Defence and Foreign Relations	scnsdfr2021@gmail.com
h)	The Alternative Dispute Resolution Bill (Senate Bills No. 34 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke
i)	The County Governments Grants Bill (Senate Bills No. 35 of 2021)	Standing Committee on Finance and Budget	scfinanceandbudget@gmail.com

The Bills may be found on the Parliament website at <http://www.parliament.go.ke/the-senate/senate-bills>.

**J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.**