



REPUBLIC OF KENYA



## INTERNAL MEMO

To: Speaker of the Senate

Through': Clerk of the Senate

Through': Deputy Clerk (EG)

*Recommended for approval for tabling*  
Through: Ag. Director, Socio-Economic Committees (MJC)  
*forwarded and recommended for approval for tabling 29/05/2023*

Through: Principal Clerk Assistant (HOD) (VK)  
*Forwarded and recommended for approval for tabling.*

From: Senior Clerk Assistant

Date: 26<sup>th</sup> May, 2023



RE: APPROVAL FOR TABLING OF THE REPORT OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE HERITAGE AND MUSEUMS BILL, 2023 (SENATE BILLS NO. 8 OF 2023)

The Standing Committee on Labour and Social Welfare has concluded its consideration on the Heritage and Museums Bill, 2023 (Senate Bills No. 8 of 2023), and is ready to table its report.

This is to request your approval for tabling of the attached report.

Thank you.

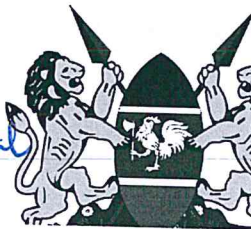
*Mwanate Shaban*

Mwanate Shaban

**Rt. Hon. Speaker**  
You may approve for tabling  
J. M. Nyegenye, C.B.S.,  
Clerk of the senate/ secretary, PSC  
Date: *29/05/23*  
*[Signature]*



REPUBLIC OF KENYA



THE SENATE

THIRTEENTH PARLIAMENT | SECOND SESSION

STANDING COMMITTEE ON LABOUR AND SOCIAL  
WELFARE

REPORT ON THE HERITAGE AND MUSEUMS BILL, 2023  
(SENATE BILLS NO. 8 OF 2023)

**Rt. Hon. Speaker**  
You may approve for tabling.  
J. M. Nyegenye, C.B.S.,  
Clerk of the senate/secretary, PSC  
Date: 29/05/23

Clerk's Chambers,  
The Senate,  
Parliament Buildings,  
NAIROBI.

PAPERS LAID	
DATE	31/5/2023
TABLED BY	
COMMITTEE	Labour
CLERK AT THE TABLE	Chania

May, 2023

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## PRELIMINARIES

### Establishment and Mandate of the Committee

The Senate Standing Committee on Labour & Social Welfare is established pursuant to standing order 228 of the Senate Standing Orders. 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.*

### Membership of the Committee

The Committee is comprised of –

- |   |                    |
|---|--------------------|
| 1)Sen. Julius Murgor Recha, MP,                 | - Chairperson      |
| 2)Sen. George Mungai Mbugua, MP,                | - Vice Chairperson |
| 3)Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP, | - Member           |
| 4)Sen. Mohamed Faki Mwinyihaji, MP,             | - Member           |
| 5)Sen. Erick Okong'o Mogeni, SC, MP,            | - Member           |
| 6)Sen. Alexander Munyi Mundigi, MP,             | - Member           |
| 7)Sen. Crystal Kegehi Asige, MP,                | - Member           |
| 8)Sen. Miraj Abdullahi Abdulrahman, MP,         | - Member           |
| 9)Sen. Gloria Magoma Orwoba MP,                 | - Member           |

## FOREWORD BY THE CHAIRPERSON

**Hon. Speaker,**

The Heritage and Museums Bill, 2023 (Senate Bills No. 8 of 2023), sponsored by the Chairperson, Labour and Social Welfare, Sen. Recha Julius Murgor, MP was published *vide* Kenya Gazette Supplement No.20 of 28<sup>th</sup> February, 2023. The Bill was read a First Time in the Senate on Wednesday, 22<sup>nd</sup> March, 2023 and thereafter stood committed to the Standing Committee on Labour and Social Welfare for consideration.

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.

**Hon. Speaker,**

Pursuant to Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee published an advertisement in the Daily Nation and Standard Newspapers on Friday, 24<sup>th</sup> March, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. The advertisement was also posted on the Parliament website and social media platforms. Following the call for submissions, the Committee received written memoranda from stakeholders.

The Committee proceeded to consider the Bill extensively, scheduled and held meetings with various stakeholders including the Ministry of Tourism, Wildlife and Heritage, the Council of Governors, National Museums of Kenya, Nature Kenya, Attorney General and the Turkana Basin Institute. The minutes of the Committee in considering the Heritage and Museums Bill, 2023 (Senate Bills No. 8 of 2023) are annexed to this Report as *Appendix 2*.

The Committee received amendments to the Bill from some of the above mentioned stakeholders, and this Report by the Committee is therefore an account of the deliberations, including its resolutions at Committee Stage Amendments attached to the Report as *Appendix 1*.

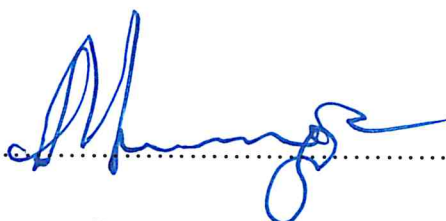
**Hon. Speaker,**

May I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Bill successful. I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this assignment.

**Hon. Speaker,**

It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to present the Report of the Standing Committee on Labour and Social Welfare on the Heritage and Museums Bill, 2023 (Senate Bills No. 8 of 2023).

Signed .....



Date.....

Friday, 12<sup>th</sup> May, 2023

**SEN. JULIUS MURGOR RECHA, MP**  
**CHAIRPERSON, STANDING COMMITTEE ON LABOUR AND SOCIAL**  
**WELFARE**

## CHAPTER ONE: INTRODUCTION

### 1.0 Background

1. The National Heritage and Museums Bill, 2023 (Senate Bills No. 8 of 2023) sponsored by the Chairperson of the Standing Committee on Labour and Social Welfare, Senator, Julius Murgor Recha, MP, was published *vide* Kenya Gazette Supplement No. 20 dated 28<sup>th</sup> February 2023. The Bill was introduced in the Senate by way of First Reading on 22<sup>nd</sup> March, 2023 and thereafter stood committed to the Standing Committee on Labour and Social Welfare for consideration. A copy of the Bill is annexed to this Report as *Appendix 3*.
2. Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee published an advertisement in the Daily Nation and Standard Newspapers on 24<sup>th</sup> March, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. A copy of the advertisement is attached as *Appendix 4*. The advertisement was also posted on the Parliament website and social media platforms.
3. Following the call for submissions, the Committee received written memoranda from various stakeholders including the Council of Governors, National Museums of Kenya, Nature Kenya, Attorney General and the Turkana Basin, etc.
4. The Heritage and Museums Bill, 2023 (Senate Bills No. 8 of 2023) seeks to repeal the National Museums and Heritage Act and enact a new Bill that conforms to the Constitution.
5. The Bill purposes to ensure that Paragraph 25 of Part 1 of the Fourth Schedule to the Constitution which designates ancient and historical monuments of national importance as a part of the functions of the national government and that Paragraph 4 of Part 2 of the Fourth Schedule to the Constitution which states that cultural activities, public entertainment and public amenities including museums are a function of the county governments.

#### 1.1. Overview of the Bill

6. The Bill proposes to—
  - (a) retain the National Museums of Kenya;
  - (b) provide for the functions of counties in relation to heritage and museums;
  - (c) establish county museums and their functions;

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

## **1.2. The National Museums of Kenya**

- 7. 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.

### **(a) Functions of county governments**

- 8. 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 and cultural heritage that are important to the respective county.

### **(b) Management of national heritage, antiquities and monuments**

- 9. 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.

### **(c) Exploration and discovery**

- 10. Under the Bill, it is mandatory to obtain an exploration license 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.

(d) Protected areas

11. 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.

(e) Monuments

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

(f) Antiquities and protected objects

13. 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 also prohibits the sale of antiquities and protected objects.

(g) Exports

14. 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.

(h) Powers of enforcement

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

(i) The Heritage Tribunal

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

### **1.3. Consequences of the Bill**

17. 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.
-

## CHAPTER TWO: PUBLIC PARTICIPATION ON THE BILL

### 2.0 Committee Undertakings

18. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Friday, 24<sup>th</sup> March, 2023, inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is annexed to this Report as *Appendix 4*.
19. Subsequently, during consideration of the Bill, the Committee also resolved to invite additional submissions from the key stakeholders, including –
  - a) The Ministry of Tourism, Wildlife and Culture;
  - b) National Museums of Kenya;
  - c) Council of Governors;
  - d) Turkana Basin Institute;
  - e) County Assemblies Forum; and
  - f) Nature Kenya.
20. In response to the said invitations, the Committee received submissions from the Ministry of Tourism, Wildlife and Culture through the National Museums of Kenya, Council of Governors, Nature Kenya, Attorney General and the Turkana Basin Institute.
21. The Council of Governors were not in support of the Bill while the Ministry, the National Museums, Nature Kenya and TBI generally agreed with the contents of the Bill.
22. Copies of the written submissions are attached to this Report as *Appendix 5 (a) – (f)*. Additionally, a matrix analysing the stakeholder submissions clause-by-clause is annexed as *Appendix 6*.
23. The Committee proceeded to consider the Bill extensively, together with the stakeholder submissions received thereon.

### 2.1 Overview of Stakeholder Submissions on the Bill

24. Below is an overview of the stakeholder submissions on the Heritage and Museums Bill, 2023 (Senate Bills No.8 of 2023).
25. The Council of Governors submitted as follows –
  - a) In clause 2, delete the interpretation of the term “national museums”.

- b) Delete clause 5.
  - c) Amend 6 (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.*
  - d) Amend sub clause 6 (c) 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.*
  - e) Amend sub clause 6 (d) 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.*
  - f) Amend sub clause 6 (k) 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.*
  - g) Amend clause 7 (1) (b) to read— *Appoint committees for heritage conservation in consultation with the county governments in furtherance of its functions.*
  - h) In clause 8, delete the phrase - “of county importance” in paragraphs (a), (d), (e) and (g).
  - i) In clause 31, include consultation with county governments in section 31 (1) and (2).
26. The National Museums of Kenya submitted as follows –
- a) In clause 41, amend the marginal note at Section 41 to read “temporary protection order” instead of “compulsory repair”.
  - b) Amend section 43(2) of the Bill by deleting (2) (c) which reads - “importance to conservation of biodiversity, including identification, documentation, establishment and curation of a national biodiversity inventor”.
  - c) Amend section 43(2) (d) to read: “*research in field of scientific, technological, biomedical/ and human interest*”.
  - d) Amend section 43(2)(e) to read: “*Dissemination and transmission of knowledge from biomedical research*’.

## CHAPTER THREE: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

### 3.0 Committee Observations on the Bill

27. Having considered the Heritage and Museums Bill, 2023 (Senate Bills No.8 of 2023) and the submissions received thereon, the Standing Committee on Labour and Social Welfare therefore made the following observations -
- (a) The Council of Governors raised concerns that Bill was not aligned to the 2010 Constitution and devolution; and
  - (b) The National Museums of Kenya, Nature Kenya, Turkana Basin Institute and the Attorney General supported the Bill.

### 3.1 Committee Recommendations

28. Arising from the above observations, the Committee **recommends** that the Senate passes the Heritage and Museums Bill, 2023 (Senate Bills No.8 of 2023) with the following amendments –
- a) Introduce a clause on consultation between the national and county governments on all issues relating to heritage and museums;
  - b) Include a clause on capacity building for county governments by national government in the heritage and museums sectors; and
  - c) Amend clause 43 to align it with the functions of the National Museums of Kenya and provide for mandate of other research institutions in the area of heritage and museums.

## APPENDICES

*Appendix 1:* Committee Stage Amendments of the Heritage and Museums Bill, 2023  
(Senate Bills No. 8 of 2023)

*Appendix 2:* Minutes of the sittings

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*Appendix 3:* The Heritage and Museums Bill (Senate Bills No.8 of 2023)

*Appendix 4:* Advertisement published in the *Daily Nation* and *Standard* Newspapers  
on Friday, 24<sup>th</sup> March, 2023

*Appendix 5:* Public Participation Matrix

*Appendix 6:* Public Participation Submissions (a – f)



24<sup>th</sup> May, 2023

The Clerk of the Senate,  
Parliament Buildings,

**NAIROBI.**

**RE: COMMITTEE STAGE AMENDMENTS TO THE HERITAGE AND MUSEUMS  
BILL, 2023, SENATE BILLS NO. 8 OF 2023**

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**NOTICE** is given that Sen. Recha Julius Murgor, the Chairperson to the Standing Committee on Labour and Social Welfare, intends to move the following amendments to the Heritage and Museums Bill, 2023, Senate Bills No. 8 of 2023, at the Committee Stage—

**CLAUSE 31**

**THAT** clause 31 of the Bill be amended in subclause (1) by inserting the words “and council of county governors” immediately after the words “the Board”.

**CLAUSE 41**

**THAT** clause 41 of the Bill be amended by deleting the marginal note and substituting therefor the following new marginal note —

Compulsory protection order.

**CLAUSE 43**

**THAT** clause 43 of the Bill be amended in subclause (2) by —

(a) deleting paragraph (c);

(b) deleting paragraph (d) and substituting therefor the following new paragraph—

(d) research in fields of scientific, technological, biomedical or human interest; and

(c) deleting paragraph (e).

## CLAUSE 98

**THAT** the Bill be amended by deleting clause 98.

## CLAUSE 100

**THAT** clause 100 (1) of the Bill be amended by—

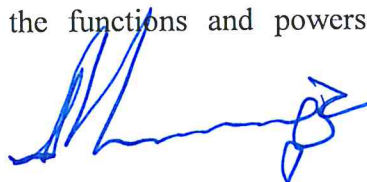
- (a) inserting the words “in consultation with council of county governors” immediately after the words “Cabinet Secretary may” in the introductory clause; and
- (b) deleting paragraph (c).

## NEW CLAUSE 99A

**THAT** the Bill be amended by inserting the following new clause immediately after clause 99 —

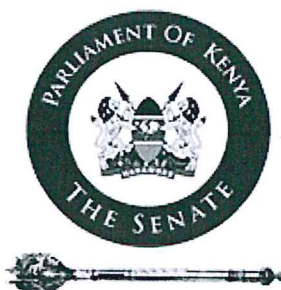
Consultation between the National and county governments.	<b>98A.</b> (1) The national and county governments shall perform their functions and powers under this Act on the basis of consultation and cooperation.
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(2) The National Museums of Kenya shall, in carrying out its functions under this Act, consult council of county governors on any matter that affects the functions and powers of county governments.



Date... Wednesday, 24<sup>th</sup> May..., 2023.

Sen. Recha Julius Murgor,  
Chairperson,  
Committee on Labour and Social Welfare.



**MINUTES OF THE 46<sup>TH</sup> MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON FRIDAY, 12<sup>TH</sup> MAY, 2023 AT 11.00 AM IN MADUNGUNI CONFERENCE ROOM, PRIDE INN PARADISE RESORT, MOMBASA COUNTY.**

**MEMBERS PRESENT**

- |   |                    |
|---|--------------------|
| 1. Sen. Julius Murgor Recha, MP                 | - Chairperson      |
| 2. Sen. George Mungai Mbugua, MP                | - Vice-Chairperson |
| 3. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member           |
| 4. Sen. Mohamed Faki Mwinyihaji, MP             | - Member           |
| 5. Sen. Alexander Munyi Mundigi, MP             | - Member           |
| 6. Sen. Miraj Abdulahi Abdulrahman, MP          | - Member           |
| 7. Sen. Gloria Orwoba, MP                       | - Member           |
| 8. Sen. Crystal Kegehi Asige, MP                | - Member           |

**ABSENT WITH APOLOGIES**

- |                                      |          |
|--------------------------------------|----------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Member |
|--------------------------------------|----------|

**SECRETARIAT**

- |                       |                              |
|-----------------------|------------------------------|
| 1. Ms. Mwanate Shaban | - Senior Clerk Assistant     |
| 2. Ms. Marale Sande   | - Principal Research Officer |
| 3. Mr. Jeremy Chabari | - Legal Counsel              |
| 4. Mr. Rhyan Injendi  | - Research Officer           |
| 5. Mr. Joseph Otieno  | - Audio Officer              |
| 6. Mr. John Chege     | - SAA                        |

**MIN/SEN/SCLSW/215/2023: PRAYERS**

The Chairperson called the meeting to order at 11.00 am followed by a word of prayer.

**MIN/SEN/SCLSW/216/2023: ADOPTION OF AGENDA**

The Agenda of the fifth session of the Retreat Program was adopted having been proposed by Sen. Miraj Abdillahi, MP and seconded by Sen. Stewart Madzayo, MP as follows-

1. Prayers;
2. Adoption of the Agenda;
3. Consideration and adoption of the Committee Stage Amendments of the Museums and Heritage Bill, 2023, (Senate Bills No. 8 of 2023);
4. Consideration and adoption of the Report of the Museums and Heritage Bill, 2023, (Senate Bills No. 8 of 2023);
5. Consideration of the Petition concerning alleged fraud by the First Choice Recruitment and Consultancy Agency Limited;
5. Any Other Business; and
6. Adjournment.

**MIN/SEN/SCLSW/217/2023: CONSIDERATION OF THE COMMITTEE STAGE AMENDMENTS OF THE HERITAGE AND MUSEUMS BILL, 2023, (SENATE BILLS NO. 8 OF 2023);**

The Committee considered the following amendments and resolved to propose them at the Committee stage -

1. Introduce a clause on consultation between the national and county governments on all issues relating to heritage and museums;
2. Include a clause on capacity building for county governments by national government in the heritage and museums sectors; and
3. Amend clause 43 to align it with the functions of the National Museums of Kenya and provide for mandate of other research institutions in the area of heritage and museums.

**MIN/SEN/SCLSW/218/2023: CONSIDERATION AND ADOPTION OF THE REPORT ON THE MUSEUMS AND HERITAGE BILL, 2023, (SENATE BILLS NO. 8 OF 2023);**

The Committee considered the report on the Heritage and Museums Bill, 2023, (Senate Bills No. 8 of 2023) and adopted it after being proposed by Sen. Mohammed Faki, MP, and seconded by Sen. (Rtd.) Justice Stewart Madzayo, MP.

**MIN/SEN/SCLSW/219/2023: CONSIDERATION OF THE PETITION CONCERNING ALLEGED FRAUD BY THE FIRST CHOICE RECRUITMENT AND CONSULTANCY AGENCY**

1. The Committee deliberated on the above petition and noted that a stakeholder meeting had been scheduled for Wednesday, 17<sup>th</sup> May, 2023 where the Committee was to meet the Ministry of Labour and Social Protection, the National Employment Authority, the Inspector General of Police, the Commissioner of Insurance and the Management of the Company;

2. The Committee also resolved to schedule a date to meet the Ministry of Health on Data protection of Health records; and
3. The Committee noted that prominent senior and honourable persons had been mentioned adversely by the Petition and resolved to invite them to a meeting to hear from them.

**MIN/SEN/SCLSW/220/2023**

**ADJOURNMENT AND TIME OF THE NEXT MEETING**

There being no other business, the meeting was adjourned at 12.10 pm, in readiness for the next meeting.

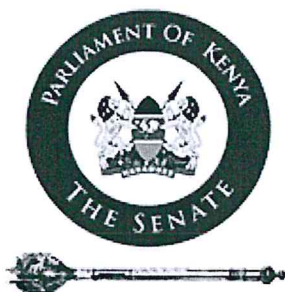
SIGNED.....

DATE Monday, 22<sup>nd</sup> May, 2023

(CHAIRPERSON: SEN. JULIUS MURGOR RECHA, MP)

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE





**MINUTES OF THE 43<sup>RD</sup> MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY, 11<sup>TH</sup> MAY, 2023 AT 1.00 PM IN MADUNGUNI CONFERENCE ROOM, PRIDE INN PARADISE RESORT, MOMBASA COUNTY.**

**MEMBERS PRESENT**

- |  |                    |
|--|--------------------|
| 1. Sen. Julius Murgor Recha, MP        | - Chairperson      |
| 2. Sen. George Mungai Mbugua, MP       | - Vice-Chairperson |
| 3. Sen. Mohamed Faki Mwinyihaji, MP    | - Member           |
| 4. Sen. Alexander Munyi Mundigi, MP    | - Member           |
| 5. Sen. Miraj Abdulahi Abdulrahman, MP | - Member           |
| 6. Sen. Gloria Orwoba, MP              | - Member           |

**ABSENT WITH APOLOGIES**

- |   |          |
|---|----------|
| 1. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member |
| 2. Sen. Erick Okong'o Mogeni, SC, MP            | - Member |
| 3. Sen. Crystal Kegehi Asige, MP                | - Member |

**SECRETARIAT**

- |                        |                              |
|------------------------|------------------------------|
| 1. Ms. Mwanate Shaban  | - Senior Clerk Assistant     |
| 2. Ms. Getrude Nthiiri | - First Clerk Assistant      |
| 3. Ms. Marale Sande    | - Principal Research Officer |
| 4. Mr. Jeremy Chabari  | - Legal Counsel              |
| 5. Mr. Rhyan Injendi   | - Research Officer           |
| 6. Mr. Joseph Otieno   | - Audio Officer              |
| 7. Mr. John Chege      | - SAA                        |

**MIN/SEN/SCLSW/200/2023: PRAYERS**

The Chairperson called the meeting to order at 1.00 pm followed by a word of prayer.

**MIN/SEN/SCLSW/201/2023: ADOPTION OF AGENDA**

The Agenda of the second session of the program was adopted having been proposed by Sen. Alexander Munyi Mundigi, MP and seconded by Sen. George Mungai Mbugua, MP as follows-

1. Prayers;
2. Adoption of the Agenda;
3. Consideration of the Public Participation matrix of the Heritage and Museums Bill, 2023 (Senate Bills No. 8 of 2023);
4. Any Other Business; and
5. Adjournment.

**MIN/SEN/SCLSW/202/2023: CONSIDERATION OF THE PUBLIC PARTICIPATION MATRIX OF THE HERITAGE AND MUSEUMS BILL, (SENATE BILLS NO. 8 OF 2023);**

1. The Legal Counsel informed the Committee that the Committee had received oral and written submissions from the following stakeholders, the National Museums of Kenya, the Council of Governors, Nature Kenya, Turkana Basin Institute and the Attorney General.
2. He added that the National Museums of Kenya, Nature Kenya, Turkana Basin Institute and the Attorney General supported the Bill.
3. He then took the Committee through the submissions and the Committee resolved as outlined in the table below –

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
2	Council of Governors	Delete the interpretation of the term “national museums”.	County governments are assigned the museum function in entirety under the Constitution.	Not adopted. It is a shared function between the National and county governments.
5	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 adopted.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
6	Council of Governors	<p>Amend 6 (a) to read—</p> <p>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 should be a shared function undertaken by a joint entity of national and county governments.</p>	<p>Include a clause on consultation between the national and county governments on all issues.</p>
		<p>Amend sub clause 6 (c) to read—</p> <p>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>Include a clause on consultation between the national and county governments on all issues.</p>
		<p>Amend sub clause 6 (d) to read—</p> <p>Subject to the principles and obligations of cooperative devolved government, disseminate and transmit knowledge from</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>Include a clause on consultation between the national and county governments on all issues.</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		research on cultural heritage, natural heritage, biomedical, ancient and historical monuments and sites of national importance.		
		Amend sub clause 6 (k) 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.	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.	
7	Council of Governors	Amend clause 7 (1) (b) to read—  (b) Appoint committees for heritage conservation in consultation with the county governments in furtherance of its functions.	Paragraph 4 of the Part 2 of the Fourth Schedule of the Constitution assigns cultural activities to the county governments.	Include a clause on consultation between the national and county governments on all issues.
8	Council of Governors.	Delete the phrase—  “of county importance” in paragraphs (a), (d), (e) and (g).	Paragraph 4 of the Part 2 of the Fourth Schedule of the Constitution assigns cultural activities to the county governments.	Not adopted.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
31	Council of Governors	Include consultation with county governments in section 31 (1) and (2).	There is no determination and classification of ancient and historical monuments of national importance. Counties should be involved too.	Include a clause on consultation between the national and county governments on all issues.
41	National Museums of Kenya	The marginal note at Section 41 should be amended to read "temporary protection order" instead of "compulsory repair".	This section addresses issues of protection and not repair.	Adopted.
43	National Museums of Kenya	<p>(a) Amend section 43(2) of the Bill by deleting (2) (c) which reads- "importance to conservation of biodiversity, including identification, documentation, establishment and curation of a national biodiversity inventory"</p> <p>(b) Amend section 43(2) (d) to read: "research in field of scientific, technologic</p>	<p>(a) Research on natural and cultural heritage is a core function of the National Museums of Kenya under the National Government. This is pursuant to the Constitution of Kenya Part 1 clause 16 whereby National Museums of Kenya is a registered research institution by the National Commission for Science Technology and Innovation (NACOSTI). National Museums of Kenya applies scientific and technological approaches to undertake explorations, field investigations and data analysis on heritage conservation in</p>	Adopted. Include a clause on capacity building.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		<p>al, biomedical/ and human interest”</p> <p>(c) Amend section 43(2)(e) to read: “Dissemination and transmission of knowledge from biomedical research”</p>	<p>order to document heritage collections which range from prehistory, zoological, botanical, geological, ethnographical and art collections, historical and archival materials and other artifacts. National Museums of Kenya also undertakes public programmes, exhibitions, tours or publications to advance the heritage research mandate as well as in management of ancient and historical monuments of national importance.</p> <p>(b) Identification and documentation of biodiversity (i.e. plant and animal life and their habitat) including taxonomy of plants and animals of national importance and hotspots-ecosystems is a critical component of research on heritage undertaken by National Museums of Kenya.</p> <p>(c) Dissemination and</p>	

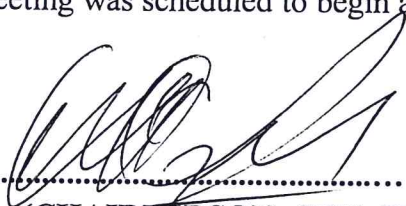
CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			knowledge in the fields of cultural heritage, natural heritage, ancient and historical monuments and sites of national importance is already performed by National Museums of Kenya pursuant to section 6 of the Bill. Thus, the biomedical field which is not in harmony with the cultural and natural heritage has been reserved for other institutes that may be established by the Cabinet Secretary under Section 43.	

MIN/SEN/SCLSW/203/2023

ADJOURNMENT AND TIME OF THE NEXT MEETING

There being no other business, the meeting was adjourned at 2.20 pm for the lunch break. The next meeting was scheduled to begin at 3.20 pm.

SIGNED.....



(CHAIRPERSON: SEN. JULIUS MURGOR RECHA, MP)

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

DATE Monday, 22<sup>nd</sup> May, 2023





**MINUTES OF THE 35<sup>TH</sup> MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY, 20<sup>TH</sup> APRIL, 2023 9.00 AM AT THE SENATE CHAMBER, MAIN PARLIAMENT BUILDINGS.**

**MEMBERS PRESENT**

- |                                     |               |
|-------------------------------------|---------------|
| 1. Sen. Julius Murgor Recha, MP     | - Chairperson |
| 2. Sen. Crystal Kegehi Asige, MP    | - Member      |
| 3. Sen. Alexander Munyi Mundigi, MP | - Member      |

**ABSENT WITH APOLOGIES**

- |   |                    |
|---|--------------------|
| 1. Sen. George Mungai Mbugua, MP                | - Vice-Chairperson |
| 2. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member           |
| 3. Sen. Erick Okong'o Mogeni, SC, MP            | - Member           |
| 4. Sen. Mohamed Faki Mwinyihaji, MP             | - Member           |
| 5. Sen. Miraj Abdulahi Abdulrahman, MP          | - Member           |
| 6. Sen. Gloria Orwoba, MP                       | - Member           |

**IN ATTENDANCE**

**Council of Governors**

- |                          |   |
|--------------------------|---|
| 1. H.E Patrick Ole Ntutu | - Chairperson, Tourism and Wildlife /Governor, Narok County |
| 2. Mr. Francis Wanyeki   | - Chief of Staff, Narok County                              |
| 3. Ms. Mukami Kibaara    | - Senior Legal Officer, COG                                 |
| 4. Mr. Kelly Lanken      | - Officer Narok County                                      |
| 5. Mr. Ken Oluoch        | - Council of Governors                                      |

**Ministry of Tourism, Wildlife and Heritage**

- |                     |                    |
|---------------------|--------------------|
| 1. Mr. Kiprop Legat | - Director Culture |
|---------------------|--------------------|

**National Museums of Kenya**

- |                        |  |
|------------------------|--|
| 1. Ms. Margret Njoroge | - Chief State Counsel                      |
| 2. Mr. Isaiah Nyaga    | - Legal Officer, National Museums of Kenya |
| 3. Ms. Damaris Mutuo   | - Legal Assistant                          |

**Turkana Basin**

- |                     |                                |
|---------------------|--------------------------------|
| 1. Dr. Dino Martins | - CEO, Turkana Basin Institute |
|---------------------|--------------------------------|

2. Ms. Wendy Mwatania - PA to the CEO

**Nature Kenya**

1. Mr. Paul Matiku - Executive Director  
2. Ms. Caroline Kabilu - Programme Support Manager

**SECRETARIAT**

1. Ms. Mwanate Shaban - Senior Clerk Assistant  
2. Ms. Getrude Nthiiri - First Clerk Assistant  
3. Mr. Jeremy Chabari - Legal Counsel  
4. Mr. Rhyan Injendi - Research Officer  
5. Ms. Felistas Mutune - Media Relations Officer  
6. Mr. Joseph Otieno - Audio Officer  
7. Mr. John Chege - SAA

**MIN/SEN/SCLSW/157/2023: PRAYERS**

The Chairperson called the meeting to order at 9.17am followed by a word of prayer. He thereafter requested the stakeholders to introduce themselves.

**MIN/SEN/SCLSW/158/2023: ADOPTION OF AGENDA**

The Agenda of the meeting was adopted having been proposed by Sen.Alexander Munyi Mundigi, MP and seconded by Sen. Chrystal Kagehi Asige, MP as follows-

1. Prayers & Introductions;
2. Adoption of the Agenda;
3. Communication from the Chairperson;
4. Meeting with Stakeholders on the Heritage and Museums Bill, 2023 (Senate Bills No.8 of 2023);
5. Any Other Business; and
6. Adjournment/Date of the Next Meeting.

**MIN/SEN/SCLSW/159/2023: COMMUNICATION FROM THE CHAIRPERSON**

The Chairperson welcomed the stakeholders and noted that the Committee had requested the presence of the Cabinet Secretary, Ministry of Tourism, Wildlife and Heritage who had written giving her apologies as she was appearing before another Committee in the Senate. She had however assured the Committee that the Principal Secretary would be attendance.

The Chairperson noted that the Principal Secretary had instead sent a Director in the Directorate of Culture. He communicated that moving forward, the Committee would only engage the Cabinet Secretary.

**MIN/SEN/SCLSW/160/2023: MEETING WITH STAKEHOLDERS ON THE  
HERITAGE AND MUSEUMS BILL, 2023  
(SENATE BILLS NO.8 OF 2023);**

1. The Committee received submissions from the following stakeholders-
  - a) The Council of Governors;
  - b) The National Museums of Kenya;
  - c) The Turkana Basin; and
  - d) The Ministry of Tourism, Wildlife and Heritage.
2. The Committee observed that all the stakeholders invited were in favour of the Bill, except the Council of Governors who maintained that the Museums and heritage function are devolved as per Schedule Four of the Constitution. The Council called for the Senate to protect and serve the interests of Counties and ensure that the National Government does not take up County functions through legislation; and
3. The Committee resolved to hold a meeting the Intergovernmental Relations Technical Committee (IGTRC) to resolve the matter noting that there was need to agree on how to unbundle the functions as per the provisions of schedule four of the constitution.

**MIN/SEN/SCLSW/161/2023 ADJOURNMENT AND DATE OF THE NEXT  
MEETING**

There being no other business, the meeting was adjourned at 10:25 am. The next meeting was scheduled for Monday 24<sup>th</sup> April, 2023 at 2:30 pm.

SIGNED..........DATE Thursday, 4<sup>th</sup> May, 2023  
(CHAIRPERSON: SEN JULIUS MURGOR RECHA, MP)  
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE





**MINUTES OF THE 23<sup>RD</sup> MEETING OF THE STANDING COMMITTEE ON  
LABOUR AND SOCIAL WELFARE HELD ON TUESDAY, 28<sup>TH</sup> MARCH, 2023  
11.00 AM IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS**

**MEMBERS PRESENT**

- |                                   |                      |
|-----------------------------------|----------------------|
| 1. Sen. Gloria Orwoba, MP         | - Member (Ag. Chair) |
| 2. Sen. George Mungai Mbugua, MP  | - Vice-Chairperson   |
| 3. Sen. Crystal Kegechi Asige, MP | - Member             |

**ABSENT WITH APOLOGIES**

- |   |               |
|---|---------------|
| 1. Sen. Julius Murgor Recha, MP                 | - Chairperson |
| 2. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member      |
| 3. Sen. Erick Okong'o Mogeni, SC, MP            | - Member      |
| 4. Sen. Mohamed Faki Mwinyihaji, MP             | - Member      |
| 5. Sen. Alexander Munyi Mundigi, MP             | - Member      |
| 6. Sen. Miraj Abdulahi Abdulrahman, MP          | - Member      |

**SECRETARIAT**

- |                        |                           |
|------------------------|---------------------------|
| 1. Ms. Mwanate Shaban  | - Senior Clerk Assistant  |
| 2. Mr. Jeremy Chabari  | - Legal Counsel           |
| 3. Mr. Rhyan Injendi   | - Research Officer        |
| 4. Ms. Lilian Onyari   | - Fiscal Analyst          |
| 5. Ms. Felistas Mutune | - Media Relations Officer |
| 6. Ms. Swaluha Yusuf   | - Protocol Officer III    |
| 7. Mr. Bernard Sika    | - SAA                     |

**PRAYERS**

The Chairperson called the meeting to order at 11.20 am followed by a word of prayer.

**MIN/SEN/SCLSW/95/2023**

**- ADOPTION OF AGENDA**

The Agenda of the meeting was adopted after being proposed by Sen. Crystal Asige, MP. and seconded by Sen. George Mungai Mbugua, MP. as follows-

1. Prayer
2. Adoption of the Agenda;
3. Communication from the Chair;

4. Confirmation of Minutes –
  - a) Minutes No. 14 of Thursday, 2<sup>nd</sup> March, 2023 at 10.00 am;
  - b) Minutes No. 16 of Monday, 13<sup>th</sup> March, 2023 at 2.00 pm;
  - c) Minutes No. 20 of Monday, 20<sup>th</sup> March, 2023 at 2.00 pm; and
  - d) Minutes No. 22 of Friday, 24<sup>th</sup> March, 2023 at 2.30 pm.
5. Consideration of the Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023), and the Heritage and Museums Bill, 2023 (Senate Bills No. 8 of 2023) (Committee Paper No. 11)
6. Any Other Business; and
7. Adjournment and Date of the Next Meeting.

**MIN/SEN/SCLSW/96/2023**

**COMMUNICATION FROM THE CHAIR**

The Chairperson welcomed the Members to the meeting and informed them that members were going to be briefed on two bills that had been referred to the Committee on Wednesday, 22<sup>nd</sup> March, 2023.

**MIN/SEN/SCLSW/97/2023**

**CONSIDERATION AND ADOPTION OF MINUTES**

- a) The Minutes of the 22<sup>nd</sup> Sitting held on Friday, 24<sup>th</sup> March, 2023, at 2.30 pm were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Crystal Asige, MP and seconded by Sen. George Mungai Mbugua, MP;
- b) The Minutes of the 20<sup>th</sup> Sitting held on Monday, 20<sup>th</sup> March, 2023 at 2.00 pm were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Crystal Asige, MP and seconded by Sen. Gloria Orwoba, MP;
- c) The Minutes of the 16<sup>th</sup> Sitting held on Monday, 13<sup>th</sup> March, 2023 at 2.00 pm were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Crystal Asige, MP and seconded by Sen. Gloria Orwoba, MP; and
- d) The Minutes of the 14<sup>th</sup> Sitting held on Thursday, 2<sup>nd</sup> March, 2023 at 10.00 am were postponed due to lack of quorum of Members present.

**MIN/SEN/SCLSW/98/2023**

**-CONSIDERATION OF THE PERSONS WITH DISABILITIES BILL, 2023 (SENATE BILLS NO. 7 OF 2023), AND THE HERITAGE AND MUSEUMS BILL, 2023 (SENATE BILLS NO. 8 OF 2023) (COMMITTEE PAPER NO. 11)**

1. The Legal Counsel took the Committee through the Persons with Disabilities Bill, 2023 whose principal object is to repeal the Persons with Disabilities Act, No. 14 of 2003 and have in place a law that is consistent with the Constitution. The Bill places emphasis on human rights approach towards the realization of specific rights for persons with disabilities. The Bill also sets out the obligations of both the National and County Governments in line with the Constitution to ensure that the County Government obligations are delineated in accordance with the provisions of the Fourth Schedule to the Constitution.

2. Members were also briefed on the Heritage and Museums Bill, 2023 whose principal object is to repeal the National Museums and Heritage Act and enact a new Bill that conforms to the Constitution which 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.

**Resolutions**

The Committee noted that the advertisement calling for written submissions was posted in the local dailies on Friday, 24<sup>th</sup> March, 2023 and therefore set the public hearing dates for the Heritage and Museums Bill, 2023 on Tuesday, 11<sup>th</sup> April, 2023; and for the PWD Bill, 2023 on Thursday, 13<sup>th</sup> April, 2023.

**MIN/SEN/SCLSW/99/2023**

**ADJOURNMENT AND DATE OF THE NEXT MEETING**

There being no other business, the meeting was adjourned at 12.16 pm and the next meeting was on notice.

SIGNED.....

DATE Thursday, 30<sup>th</sup> March, 2023

(CHAIRPERSON: SEN. JULIUS MURGOR, MP)

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE



**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 20 (Senate Bills No. 8)*



REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

**SENATE BILLS, 2023**

**NAIROBI, 28th February, 2023**

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**THE HERITAGE AND MUSEUMS BILL, 2023****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, 2023. 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 10;

“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 20;

“exploration licence” means an exploration licence issued under section 45;

“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 70;

“heritage” includes cultural and natural heritage;

“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; or

(h) the holistic approach to nature, society and social relationships;

“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 5 of this Act;

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

“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 52 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- SYSTEM FOR MANAGEMENT OF NATIONAL HERITAGE RESOURCES**

3. (1) Every person shall, in the management of heritage resources, take into account — General principles.

- (a) the lasting value of natural resources to the Kenyan society;
- (b) the valuable, finite, non-renewable and irreplaceable nature of the resources and the need to ensure their survival;
- (c) the responsibility by every generation to act as trustee of the national heritage for succeeding generations;
- (d) the need to promote the interests of all Kenyans;
- (e) the need to promote reconciliation, understanding and respect, take account of all relevant cultural values and indigenous knowledge systems;
- (f) the involvement of communities in the management of heritage resources;
- (g) the respect of cultural values and the dignity of the communities to whom the resource is connected;
- (h) the need to ensure that the process and resources are researched, documented and recorded; and
- (i) the need to 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.

4. The National Museums of Kenya shall, in consultation with the Cabinet Secretary and the county Heritage assessment criteria and

executive committee member in each county prescribe a system of grading of places and objects which form part of the national heritage and shall distinguish between—

grading.

- (a) grade I category consisting of heritage resources with qualities so exceptional that they are of special national significance;
- (b) grade II consisting of heritage resources considered to have special qualities which make them significant within the context of a county or a region; and
- (c) such other grade assessment criteria as the National Museum of Kenya shall consider appropriate.

### **PART III – ESTABLISHMENT OF THE NATIONAL MUSEUMS OF KENYA**

5. 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 —

Establishment of the National Museums.

- (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
- (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.

6. 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) undertake research in fields of ancient, historical, scientific, cultural, natural, technological and human interest;
- (d) disseminate and transmit knowledge from research on cultural heritage, natural heritage, ancient and historical monuments and sites of national importance;
- (e) identify and manage grade I heritage resources in accordance with this Act;
- (f) protect and conserve heritage sites of national and global importance and attributes therein, including global biodiversity;
- (g) promote sustainable utilization of heritage resources for national development;
- (h) develop principles, standards and policies for the management of the national heritage resources;
- (i) liaise with the county governments, national, regional and international institutions on heritage management;
- (j) promote the public's enjoyment and understanding of the national heritage, biodiversity, antiquities and monuments;
- (k) advise the Cabinet Secretary on the issuance of excavation, exploration and export licenses in connection with national heritage;
- (l) secure and exhibit the national heritage, antiquities and monuments to the public; and
- (m) undertake other functions incidental or relevant to the attainment of the mandate of the National Museums of Kenya.

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

- (a) erect, maintain and improve buildings, including staff quarters

Powers of the  
National  
Museums of  
Kenya

- (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;
- (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.

**8. 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;

Functions of  
County  
Governments in  
relation to  
Museums

- (c) identify and manage of grade II heritage resources in accordance with this Act;
- (d) document the intangible heritage of county importance;
- (e) conserve the tangible and intangible heritage of humanity and its environment that is of county importance for purposes of education, study and enjoyment;
- (f) protect and conserve materials and objects of historical, cultural and natural importance relevant to the respective county;
- (g) publicise the tangible and intangible heritage of humanity and its environment that is of county importance for purposes of education, study and enjoyment;
- (h) promote awareness and education programmes for different audiences within the context of museums;
- (i) promote cultural activities and cultural festivals relevant to the respective counties;
- (j) develop and exhibit materials and objects of historical, cultural and natural importance relevant to the respective counties for purposes of education, study and enjoyment;
- (k) implement national standards on museums and heritage;
- (l) 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
- (m) license of private museums within the respective counties.

9. (1) A county executive committee member may establish a county museum for the management of the heritage resources within the respective county.

County museum.

(2) Notwithstanding the generality of subsection (1), a county museum shall—

- (a) advise the county executive committee member on the implementation of this Act or relevant county legislation;
- (b) submit an annual report to the county 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 fulfils the heritage assessment criteria prescribed under this Act for grade I status;
- (f) 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
- (g) establish policy, objectives and strategic plans for heritage resources management in the county.

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

- (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, arts and general outstanding interest in, and contribution to the work of, the national heritage, one of whom shall be nominated by Nature Kenya;
- (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

Composition of  
the Board 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.

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

- (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

Qualifications for appointment of chairperson and members of the Board.

- (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.

12. The chairperson and members of the Board other than an *ex-officio* member shall hold office for a period of three years and shall be eligible for re-appointment for one further final term of three years.

Tenure of office.

13. 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.

**14.** 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.

**15.** (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.

**16.** (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.

**17.** 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

**18.** (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.

**19.** (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.

**20.** (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

21. (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.

22. 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.

23. (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 IV – FINANCIAL PROVISIONS**

24. 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.

25. 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.

26. (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.

27. 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.

28. (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.

29. (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 V— MANAGEMENT OF NATIONAL HERITAGE**

30. (1) National heritage shall be managed by the National Museums established under section 5 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.

31. (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.

32. (1) The Cabinet Secretary shall, before declaring a place or object a national heritage -

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.

33. (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 degazetement is rejected, the Cabinet Secretary shall cause a notice to be published in the Gazette within two months from the date of that decision.

**34.** (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.

**35.** 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.

36. (1) A person may petition –

- (a) the National Museums of Kenya for a place to be declared a national heritage site; or
- (b) the respective county museum for a place to be declared a county heritage site.

Petition for  
declaration of  
National and  
county heritage  
sites.

(2) The Cabinet Secretary shall develop regulations on petitions for declaration of National and county heritage sites.

37. (1) The National Museums of Kenya shall keep and maintain an inventory of national heritage.

Inventory of  
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 this Act 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; and
- (c) places and objects subject to general protection under this Act or a county legislation for the management of heritage resources.

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

(4) The National Museums of Kenya shall from time to time, and in consultation with the relevant county museum review and update the inventory of national heritage.

(5) The National Museums of Kenya shall make the inventory of national heritage accessible to members of the public.

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

**38.** (1) A county museum shall compile and maintain heritage register specifying the heritage resources in the respective county in accordance with this Act. Heritage registers.

(2) A county museum shall, in the heritage register, set out the heritage resources in accordance with—

- (a) the sub categories prescribed under this Act;
- (b) the area of jurisdiction; and
- (c) such other categories as the Cabinet Secretary shall prescribe.

(3) The respective county executive committee member shall prescribe the procedure and information required for—

- (a) the entry of a resource into the heritage register; and
- (b) the compilation of an inventory of heritage resources.

(4) A county museum may approve an application for the entry of heritage resource in the heritage register submitted to it by any person in the prescribed form.

(5) A county museum shall not enter a place in a heritage register unless the museum has consulted with owner of such place regarding the protection of that place.

**39.** (1) The National Museums of Kenya may provide assistance to an approved body or an individual for a project in line with the provisions and the principles prescribed under this Act. National heritage resources assistance programme.

(2) The Cabinet Secretary shall, in consultation with the National Museums of Kenya, prescribe the procedure for the application for approval and granting of assistance and the criteria for the assessment of projects.

**40.** (1) The National Museums of Kenya or a county museum may enter into an agreement with a conservation body, a person, or a community for the conservation or improvement of a heritage resource. Heritage agreements.

(2) A heritage agreement may provide for—

- (a) the maintenance and management of a heritage resource;

- (b) the custody of the resource;
- (c) the occupation or use of the place by the owner;
- (d) the facilities of access to be permitted to the public;
- (e) the payment of any expenses incurred by the owner in connection with the maintenance of the heritage resource;
- (f) the duration of the agreement; and
- (g) the procedure for the resolution of any dispute arising out of the agreement.

41. 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 prescribed manner.

Compulsory  
repair order.

42. (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 account the need for the designation of heritage areas to protect any place of environmental or cultural interest.

Heritage areas.

(2) A county government may, in consultation with National Museums of Kenya, by notice in the county gazette, designate any area or land to be a heritage area if such area or land is of environmental or cultural interest or has heritage resources.

(3) A county government shall provide for the protection of a heritage area through the provisions of its planning laws or legislation.

43. (1) The Cabinet Secretary may by notice in the *Gazette* establish other research institutes and grant a Certificate of Registration in accordance with the provisions of the Science, Technology and Innovation Act.

Establishment of  
research  
institutions.

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

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- (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;
  - (d) research in fields of ancient, historical, scientific, cultural, natural, technological, biomedical and human interest; and
  - (e) dissemination and transmission of knowledge from research on cultural heritage, natural heritage, biomedical, ancient and historical monuments and sites of national importance.
- (3) 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.

## **PART VI – EXPLORATION AND DISCOVERY**

**44. (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.

**45. 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.

46. (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.

47. (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 47 (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 47 (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.

48. 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.

49. 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

Restriction on moving objects.

exploration licence, or by written authorization from the Cabinet Secretary.

**50. A person who –**

Offences.

- (a) engages in a search contrary to section 45;
- (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 47;
- (d) fails to give notice of discovery in accordance with the provisions of section 49; or
- (e) moves a monument or object of archaeological or paleontological interest contrary to section 50,

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 VII – PROTECTED AREAS**

**51.** 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.

**52.** 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.

53. 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.

54. 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 53; or
- (b) breaches any regulation made by the Cabinet Secretary under section 53,

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 VIII – MONUMENTS

55.(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.

56. 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.

57. (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.

58. (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.

**59.** 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 58;
- (c) if the monument is the subject of an agreement for its protection and preservation as provided by section 59; or
- (d) if the owner of the monument is willing to confer guardian thereof to the National Museums as provided by section 58 or to enter into an agreement for its protection as provided by section 59 or to give, sell or lease to the National Museums the monuments on acceptable terms.

60. (1) A monument which is for the time being —

Duties of National Museums to protect and maintain monuments.

- (a) owned by the National Museums;
- (b) under the guardianship of the National Museums as provided by section 58; or
- (c) the subject of an agreement for its protection or preservation as provided by section 59,

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.

61. 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.

62. (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 IX – ANTIQUITIES AND PROTECTED OBJECTS

**63.** (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.

**64.** 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.

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

Prohibition of  
removal of  
antiquities and  
protected objects.

**66. (1)** A person shall not –

Prohibition of sale  
of antiquities and  
protected objects.

(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

(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.

**67. (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.

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

(a) 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

**68.** A person who—

Offences under  
Part VIII.

(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 65;

- (b) willfully destroys or damages an antiquity or protected object;
- (c) removes an antiquity or protected object contrary to section 66; 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 67,

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 X – EXPORT**

69. (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.

**70.** 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.

**71.** 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 70 or section 71;
- (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 XI – POWERS OF ENFORCEMENT**

**72. (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.

73. (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.

74. 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.

75. 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.

76. 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.

77. (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.

**78.** (1) Anything seized under section 77 or section 78 shall as soon as possible be taken before a magistrate who shall —

Forfeiture to government after seizure.

- (a) in respect of seizure under section 78, 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 77, 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 77 or section 78.

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

**79.** 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.

**80.** A person who—

Offence under Part X.

- (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 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 80,

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.

**81.(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 XII – HERITAGE TRIBUNAL**

**82.(1)** There is established a Heritage Tribunal to be appointed by the Chief Justice.

Establishment of  
Tribunal.

(2) The Tribunal shall consist of the following members, appointed by the Judicial Service Commission –

- (a) a chairperson who shall be a person qualified for appointment as a judge of the High Court;

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

(3) The Chairperson and members of the Tribunal shall be recruited and appointed in accordance with the provisions of the Third Schedule to the Judicial Service Act, 2011.

(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.

83. (1) 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.

(2) A person appointed under this Act shall cease to hold office if that person—

- (a) resigns from office by notice in writing addressed to the Judicial Service Commission;
- (b) becomes a public servant;
- (c) is absent from three consecutive meetings of the Tribunal without the permission of the Chairperson;
- (d) is adjudged bankrupt by a Court of competent jurisdiction;
- (e) is convicted of an offence of a criminal offence;
- (f) is unable to perform the functions of the office arising by reason of infirmity of body or mind; or
- (g) is otherwise unable or unfit to discharge the functions of the office.

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

Remuneration of the members of the Tribunal.

85. (1) The Tribunal shall have a secretary who shall be a public officer appointed by the Judicial 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 Judicial 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.

**86.** 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.

**87.** (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.

**88.** (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.

**89.** (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, at least one of whom shall be an advocate of the High Court.

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.

**90.** 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.

91. 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.

### **PART XIII – MISCELLANEOUS PROVISIONS**

92. The Cabinet Secretary of the National Treasury may make such orders as he may determine regarding incentives to heritage conservation that may be issued under this Act.

Incentives.

93. (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.

94. 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.

95. 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

96. (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.

97. 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.

98. A county may establish a county hall of fame to honour the achievements of persons who have made significant contributions to the county or to the country.

County hall of  
fame.

99. A person who commits an offence under this Act 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.

General penalty.

100. (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) establishment of a county hall of fame;
- (d) 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;
- (e) prescribing conditions for the protection, preservation, alteration, access to and use of areas of natural and cultural heritage;
- (f) prescribing the forms of, and conditions to be implied in exploration licenses and export permits;

- (g) regulating the management of a protected area;
- (h) controlling the reproduction of objects of archaeological or paleontological interest;
- (i) licensing dealers in antiquities;
- (j) prescribing penalties for breach of any such Regulations; and
- (k) 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.

**101.** (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.

**102.** (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.

**103.** 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	<p>Section 36 (2) of the Mining Act is amended by inserting the following new paragraph immediately after paragraph (h) –</p> <p>(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;</p>
The Physical and Land Use Planning Act.	s.71	<p>Section 71 of the Physical and Land use Planning is amended in –</p> <p>(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</p> <p>(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”.</p>
The Environment Management and Co-ordination Act.	s.38	<p>Section 38 of the Environment Management and Co-ordination Act is amended –</p> <p>(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</p> <p>(b) by inserting the following new paragraph immediately after paragraph(jj)–</p>

		(jjj) undertake a heritage impact assessment within the meaning of Heritage and Museums Act 2020.
The Land Registration Act. No.3 of 2012.	s.76	Section 76 of the Land Registration Act is amended by inserting the following new paragraph immediately after paragraph (3)– “(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

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**THE THIRTEENTH ORDINARY SESSION OF THE PLENARY ASSEMBLY OF  
THE FORUM OF PARLIAMENTS OF MEMBER STATES OF THE  
INTERNATIONAL CONFERENCE ON THE GREAT LAKES REGION**

**RESOLUTION 13 OSPA/02/2023**

**DRAFT RESOLUTIONS ON THE POLITICAL, SECURITY AND HUMANITARIAN  
SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO**

**The Plenary Assembly:**

- **Pursuant** to the provisions of Articles 4 and 22 paragraph 1 of the Pact on Security, Stability and Development in the Great Lakes Region signed on December 15<sup>th</sup>, 2006 in Nairobi, Republic of Kenya;
- **Whereas** the provisions of the Articles 2 and 6 of the Inter-parliamentary Accord establishing the Forum of Parliaments of Member States of the International Conference on the Great Lakes Region signed on December 4<sup>th</sup>, 2008 in Kigali, Republic of Rwanda;
- **Recalling** its resolution 10/OSPA/02/2019 of December 7<sup>th</sup>, 2019 on the Political, Security and Humanitarian situation in the Democratic Republic of Congo (DRC);
- **Expressing deep concern** over the prevailing insecurity and the deterioration of the humanitarian and socio-economic development in the eastern part of the Democratic Republic of Congo due to violence and human rights abuses committed by the armed groups and negative forces including the March 23 Movement (M23), the Democratic forces for the liberation of Rwanda (FDLR) and the Allied Democratic Forces (ADF), among others,
- **Considering** that the insecurity is taking on very worrying proportion in view of the persistent reports of mass killings and massive displacements of peaceful populations from their homes to uncertain destinations where they are no longer safe from attacks by these armed groups;
- **Noting** that, in accordance with the outcomes of the Luanda and Nairobi processes, as well as the Communiqué of the Mini-Summit of Luanda of 23 November 2022, all armed groups, including the M23, FDLR ADF, among others, are compelled to immediately cease hostilities and unconditionally withdraw from the eastern part of the DRC;

- **Stressing** that all ICGLR member States, in accordance with the Pact on Security, Stability and Development in the Great Lakes Region, subsequent protocols and relevant international and African legal instruments on the status of refugees have to play role in contributing to the restoration of security, peace and stability in Eastern DRC and to refrain from any act or initiative that would be equivalent to political, material or diplomatic support to any armed group or politico-military organization in the territory of the DRC;
- **Welcoming** the deployment of the EAC Regional Forces to the eastern to promote regional peace and security;
- **Reaffirming** that the Peace, Secure and Cooperation Framework Agreement between the DRC and the Region remains a viable instrument to support the DRC and institutions in the region to achieve peace and stability;
- **Expressing concern** about the current humanitarian situation in the DRC which remains worrying with a significant increase in the number of people in need of protection and humanitarian assistance, in particular internally displaced persons (IDPs) and refugees fleeing to neighboring countries due to the activities of armed groups or militias;

**Adopts the following resolutions:**

1. **Strongly condemns** the violent conflicts that have resulted into loss of lives and caused immense suffering, and displacements to the population in Eastern DRC leading to forced migrations whereby many people have become refugees or internally displaced;
2. **Further condemns** attacks against Peacekeeping Forces and humanitarian aid workers in Eastern DRC and **expresses** its heartfelt condolences to the bereaved families and the respective Governments;
3. **Expresses** its concern at the alarming humanitarian situation in the DRC in general and more particularly at the significant increase in the number of people in need of protection and humanitarian assistance and **Urges** humanitarian agencies to continue responding to the assistance needs of internally displaced persons (IDPs), refugees, victims of sexual violence and other vulnerable groups of the population;
4. **Appeals** all armed groups, including the M23, FDLR, ADF, and other negative forces operating in Eastern DRC to immediately cease hostilities and unconditionally withdraw from the area in accordance with the outcomes of the Luanda and Nairobi processes, as well as the Communiqué of the Mini-Summit of Luanda of 23 November 2022;
5. **Welcomes** the deployment of the EAC Regional Forces to the eastern DRC for the promotion of regional peace and security;
6. **Reaffirms** that the Framework Agreement for Peace, Security and Cooperation between DRC and the Region remains a viable instrument to support the DRC and institutions in the region to achieve peace and stability and **encourages** any

initiative, bilateral or regional, geared toward restoring peace in the eastern part of the Democratic Republic of the Congo;

7. **Urges** all parties for the expeditious implementation of the outcomes of the Luanda and Nairobi processes, as well as the Communiqué of the Mini-Summit of Luanda of 23 November 2022;
8. **Calls on** all ICGLR member States, in accordance with the Pact on Security, Stability and Development in the Great Lakes Region, subsequent protocols and relevant international and African legal instruments on the status of refugees, to contribute to the restoration of security, peace and stability in Eastern parts of DRC and to refrain from any act or initiative that would be equivalent to political, material or diplomatic support to any armed group or politico-military organization in the territory of the DRC ;
9. **Encourages** the Government of the DRC to pursue national unity, strengthen the rule of law and promote political inclusion and peacebuilding,
10. **Supports and encourages** all initiatives geared toward coordinating efforts among ICGLR Member States, in the spirit of African solidarity, with a view to eradicating insecurity and instability in the Region, on the one hand, and creating optimal conditions for cooperation among ICGLR States and for its development, on the other;
11. **Commends** H.E. João Manuel Lourenço, President of the Republic of Angola, the Chair of ICGLR and AU Champion for Peace and Reconciliation, and H.E. Evariste Ndayishimiye, President of the Republic of Burundi, for their concerted efforts in accompanying the DRC in its pursuit of stabilizing the eastern part of the country;
12. **Extends appreciation** to H.E. Uhuru Kenyatta, former President of the Republic of Kenya as the EAC Facilitator for the DRC for his peace efforts since his appointment;
13. **Decides** to deploy a fact-finding mission on the conflict in Eastern DRC to augment the ongoing peace process
14. **Requests** the Secretary General of the FP-ICGLR to monitor the developments in the Political, Security and Humanitarian situation of the DRC and to report on it at the next Plenary Assembly;
15. **Decides** to remain seized of the Political, Security and Humanitarian situation in the DRC.

Done in Juba, on 1<sup>st</sup> April, 2023

Right Honourable Amason Jeffah Kingi, EGH, MP

President of FP-ICGLR

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# MPs among Helb defaulters, says Ringera

► Some 140,000 students in universities and TVET colleges may miss out on the funding.

► Helb boss warns that employers are equally liable for any loan default.

MIKE KIHAKI, NAIROBI

**E**lected leaders are among the people defaulting on repaying their university loans, crippling the fund and "killing many students' career dreams".

Higher Education Loans Board (Helb) Chief Executive Charles Ringera told MPs that the fund is struggling to collect money from legislators, making it difficult for other needy students to advance their studies.

Ringera revealed that some 140,000 students in universities and TVET colleges may miss out on the funding, he said, needs at least Sh5.7 billion to cater for the student, money it does not have.

"At the moment we are cashless and anytime the money comes the following day it is auctioned to nine

authorised banks for disbursement," Ringera said.

Ringera was speaking when he appeared before the Public Investment Committee on Education and Governance on Wednesday.

"Even with this Parliament, what I can complain about are the once who have failed to repay. The MPs are men and women of means and maybe what we need to encourage is for them to come and pay the loans," said Ringera.

Sotik MP Francis Sigei scoffed at legislators who do not repay their loans.

"MPs who do not pay their Higher Education Loans Board loans are painting us in bad light. We should be leading by example," Sigei said.

Sigei said failing to repay Helb loan denies other needy students chance to further their education.

"When you pay the money, you enable the board to lend to other deserving students to advance their education. Chair, you need to write to the National Assembly and the Senate on this issue so that you can be assisted to recover the money," Sigei said.

Ringera however said that in the recent past, there has been a high lev-



Helb CEO Charles Ringera when he appeared before the National Assembly Education Committee on February 27. (Boniface Okendo, Standard)

el of compliance across the market with some employers adhering to the implementation of loans submission.

He warned that the employers are equally liable for any loan default.

Ringera revealed that the waivers given through the credit policy has gone a long way in recovering money from the students, citing the 100 per cent waiver during the Covid-19 pandemic.

"During the Covid-19 waiver, we collected Sh800 million extra, making us in last year alone, a net of Sh5.2 billion," he stated.

Ringera noted that if the Parliamentary Service Commission fails to recover the loans, a penalty of Sh3,000 per month on the loanee and also the employer will continue to be surcharged.

Ringera further said anytime the loanee fails to engage her account the system charges Sh5,000.

The committee chairman, Bumula MP Jack Wamboka, vowed to ensure all pending bills in government institutions are paid by all defaulters.

"This is a trend in most of our government institutions across the country and we must stop it. We will ensure we force them to pay," Wamboka said.

Ringera also blamed the government for the existing deficit of Sh4.5 billion.

newsdesk@standardmedia.co.ke

## REPUBLIC OF KENYA



### THIRTEENTH PARLIAMENT THE SENATE

#### INVITATION FOR SUBMISSION OF MEMORANDA

At sittings of the Senate held on Wednesday, 22<sup>nd</sup> March, 2023 and Thursday, 23<sup>rd</sup> March, 2023, 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 145(5) of the Senate Standing Orders, the respective Standing 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 to the Clerk of the Senate on the address: [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke) or copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before Monday, 10<sup>th</sup> April, 2023.

	Committee Referred To	Email
a) The County Boundaries Bill, 2023 (Senate Bills No. 3 of 2023)	Standing Committee on Devolution and Intergovernmental Relations	<a href="mailto:senate.devolution@parliament.go.ke">senate.devolution@parliament.go.ke</a>
b) The Kenya Sign Language Bill, 2023 (Senate Bills No. 9 of 2023)	Standing Committee on Education	<a href="mailto:educationcommittee.senate@parliament.go.ke">educationcommittee.senate@parliament.go.ke</a>
c) The Persons with Disability Bill, 2023 (Senate Bills No. 7 of 2023)	Standing Committee on Labour and Social Welfare	<a href="mailto:laboursocialwelfarecomm.senate@parliament.go.ke">laboursocialwelfarecomm.senate@parliament.go.ke</a>
d) The Heritage and Museums Bill, 2023 (Senate Bills No. 8 of 2023)	Standing Committee on Labour and Social Welfare	<a href="mailto:laboursocialwelfarecomm.senate@parliament.go.ke">laboursocialwelfarecomm.senate@parliament.go.ke</a>
e) The Division of Revenue Bill, 2023 (Senate Bills No. 9 of 2023)	Standing Committee on Finance and Budget	<a href="mailto:financebudgetcomm.senate@parliament.go.ke">financebudgetcomm.senate@parliament.go.ke</a>

The Bills may be accessed on the Parliament Website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

J.M. NYEGENYE, CBS,  
CLERK OF THE SENATE.



## National Environment Management Authority

P.O. Box 67839-00200, Nairobi, Kenya  
Tel: (254 020) 6005522, 6001945, Fax: (254 020) 6008997 E-mail: [dg@nema.go.ke](mailto:dg@nema.go.ke) Website: [www.nema.go.ke](http://www.nema.go.ke)

### NOTICE TO THE PUBLIC TO SUBMIT COMMENTS ON AN ENVIRONMENTAL IMPACT ASSESSMENT STUDY FOR THE PROPOSED RESIDENTIAL APARTMENT ON PLOT L.R. NO. 10119/7, GARDEN CITY PHASE 2, NAIROBI COUNTY

Pursuant to Regulation 21 of the Environmental Management and Coordination (Impact Assessment and Audit) Regulations, 2003, the National Environment Management Authority (NEMA) has received an Environmental Impact Assessment Study Report for the above proposed project.

4) The proposed development will comprise of 16no. of floors per block with 3beds, 2beds duplexes and 1bed duplexes, 3 parking levels and associated facilities and amenities on Plot L.R. No. 10119/7, Garden City Phase 2, Nairobi County.

The following are the anticipated impacts and proposed mitigation measures:

Impacts	Mitigation measures
Soil erosion	• Control earthworks; • Install drainage structures to control flow of storm water; • Ensure management of excavation activities
Loss of vegetation	• Only areas earmarked for development should be cleared; • Plant trees, shrubs and flowers on remaining open spaces
Air pollution	• Stockpiles of earth should be sprayed with water or covered during dry seasons; • Provide dust masks for the personnel in dusty areas; • Sensitize construction workers on pollution control measures; Cover all trucks hauling soil, sand and other loose materials; Provide dust screen where necessary
Noise pollution	• Install portable barriers to shield compressors and other small stationary equipment where necessary; • Display signs to indicate construction activities; • Maintain all equipment; • Adhere to provisions of Noise Prevention and Control Rules 2005, Legal notice no. 24 regarding noise limits at the workplace as well as NEMA Noise and Excessive Vibration Pollution Control Regulations, 2000.
Road traffic disruption	• No overloading of trucks and good driving practices to be practiced. • Suitable junction/access point to be provided. • Use of appropriate & legible signage.
Water Sources	• Employment of formal flagmen / women to ensure the public safety. • Observe, protect and conserve the riparian reserve in compliance with the water Act 2016 and water reserve management rules 118 (1).
Increased generation of waste	• Adopt waste minimization at source; • Monitoring the fate of disposed wastes to ensure they are legally land filled at a recognized controlled site. • Adhering to waste management regulations of 2006
Public health and occupational safety	• Ensure proper solid waste disposal and collection facilities; Ensure dustbin cubicles are protected from animals, rains and are well covered; • Provide suitable safety gear for all personnel; • Proper treatment of waste water. • Adherence to the ministry of health guidelines on preventing spread of the SARS-CoV-19 virus

The full report of the proposed project is available for inspection during working hours at:

1. Principal Secretary, Ministry of Environment Climate Change and Forestry, NHF Building, 12th Floor, Ragati Road, Upper Hill P.O. BOX 30126 - 00100, NAIROBI, NAIROBI COUNTY
2. Director General NEMA, P.O. Box 67839-00200 NAIROBI
3. County Director of Environment

A copy of the EIA report can be downloaded at [www.nema.go.ke](http://www.nema.go.ke)

NEMA invites members of the public to submit oral or written comments within thirty (30) days from the date of publication of this notice to the Director General, NEMA to assist the Authority in the decision making process for this project. Kindly quote ref. No. NEMA/EIA/S/2024.

Comments can also be e-mailed to [dg@nema.go.ke](mailto:dg@nema.go.ke)

DIRECTOR GENERAL

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**THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE.**

**THE HERITAGE AND MUSEUMS BILL  
(SENATE BILLS NO. 8 OF 2023)**

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
2	Council of Governors	Delete the interpretation of the term “national museums”.	County governments are assigned the museum function in entirety under the Constitution.	
5	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.	
6	Council of Governors	Amend 6 (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.	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 should be a shared function undertaken by a joint entity of national and county governments.	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		Amend sub clause 6 (c) 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.	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.	
		Amend sub clause 6 (d) 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.	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.	
		Amend sub clause 6 (k) 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.	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.	
7	Council of Governors	Amend clause 7 (1) (b) to read— (b) Appoint committees for heritage conservation in consultation with the county governments in furtherance of its functions.	Paragraph 4 of the Part 2 of the Fourth Schedule of the Constitution assigns cultural activities to the county governments.	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
8	Council of Governors.	Delete the phrase— “of county importance” in paragraphs (a), (d), (e) and (g).	Paragraph 4 of the Part 2 of the Fourth Schedule of the Constitution assigns cultural activities to the county governments.	Approved.
31	Council of Governors	Include consultation with county governments in section 31 (1) and (2).	There is no determination and classification of ancient and historical monuments of national importance. Counties should be involved too.	
41	National Museums of Kenya	The marginal note at Section 41 should be amended to read “temporary protection order” instead of “compulsory repair”.	This section addresses issues of protection and not repair.	
43	National Museums of Kenya	(a) Amend section 43(2) of the Bill by deleting (2) (c) which reads- “importance to conservation of biodiversity, including identification, documentation, establishment and curation of a national biodiversity inventor” (b) Amend section 43(2) (d) to read: “research in field of scientific, technological,	(a) Research on natural and cultural heritage is a core function of the National Museums of Kenya under the National Government. This is pursuant to the Constitution of Kenya Part 1 clause 16 whereby National Museums of Kenya is a registered research institution by the National Commission for Science Technology and Innovation (NACOSTI). National	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		<p>biomedical/ and human interest”</p> <p>(c) Amend section 43(2)(e) to read: “Dissemination and transmission of knowledge from biomedical research”</p>	<p>Museums of Kenya applies scientific and technological approaches to undertake explorations, field investigations and data analysis on heritage conservation in order to document heritage collections which range from prehistory, zoological, botanical, geological, ethnographical and art collections, historical and archival materials and other artifacts. National Museums of Kenya also undertakes public programmes, exhibitions, tours or publications to advance the heritage research mandate as well as in management of ancient and historical monuments of national importance.</p> <p>(b) Identification and documentation of biodiversity (i.e. plant and animal life and their habitat) including taxonomy of</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			<p>plants and animals of national importance and hotspots- ecosystems is a critical component of research on heritage undertaken by National Museums of Kenya.</p> <p>(c) Dissemination and transmission of knowledge in the fields of cultural heritage, natural heritage, ancient and historical monuments and sites of national importance is already performed by National Museums of Kenya pursuant to section 6 of the Bill. Thus, the biomedical field which is not in harmony with the cultural and natural heritage has been reserved for other institutes that may be established by the Cabinet Secretary under Section 43.</p>	

### **OTHER COMMENTS**

The National Museums of Kenya, Nature Kenya, Turkana Basin Institute and the Attorney General supported the Bill.

### **LIST OF STAKE HOLDERS**

- (a) The National Museums of Kenya.
- (b) The Council of Governors.
- (c) Nature Kenya.
- (d) Turkana Basin Institute.
- (e) Attorney General.



**MINISTRY OF TOURISM, WILDLIFE AND HERITAGE  
OFFICE OF THE CABINET SECRETARY**

Telephone: 254-020-3344230  
Email: [cs@tourism.go.ke](mailto:cs@tourism.go.ke)  
Website: [www.tourism.go.ke](http://www.tourism.go.ke)  
When replying please quote:

NSSF Building, Block 'A'  
20<sup>th</sup> Floor, Eastern Wing  
P. O. Box 30027-00100  
**NAIROBI**

**Ref. SDCH 1/17**

**17<sup>th</sup> April, 2023**

**J. M. Nyegenye, CBS**  
Clerk of the Senate  
Parliament Buildings  
**NAIROBI**

Dear *Mr. Nyegenye*,

**RE: STAKEHOLDERS ENGAGEMENT ON THE HERITAGE & MUSEUMS BILL, 2023  
(SENATE BILLS NO. 8 OF 2023)**

Reference is made to your letter Ref. SEN/DSEC/SCLSW/2023/53 dated 11<sup>th</sup> April, 2023 on the above subject.

This is to inform you that I am supposed to appear before the Senate Committee on Land, Environment and Natural Resources on the same day.

This is therefore to request for my Principal Secretary to represent me or reschedule the meeting.

Yours *Sincerely*,

**Hon. Peninah Malonza, OGW**  
**CABINET SECRETARY**

**Copy to: Ms. Ummi Bashir**  
Principal Secretary  
State Department for Culture  
**NAIROBI**





**MINISTRY OF TOURISM, WILDLIFE AND HERITAGE  
STATE DEPARTMENT FOR CULTURE AND HERITAGE  
OFFICE OF THE PRINCIPAL SECRETARY**

E-mail: [pscultureheritage@tourism.go.ke](mailto:pscultureheritage@tourism.go.ke)  
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KNLS Building  
P.O. Box 30221-00100  
Upper hill  
**NAIROBI**

**REF: SDCH 1/92VOL.1/30**

**19<sup>th</sup> April, 2023**

J. M. Nyegenye, CBS  
Clerk of the Senate  
Parliament Buildings  
**NAIROBI**

**HERITAGE AND MUSEUMS BILL, 2023 (SENATE BILL NO. 8 OF 2023)**

Reference is made to letter reference No. SEN/DSEC/SCLSW/2023/53 dated 11<sup>th</sup> April, 2023 on the above subject matter.

Enclosed herein please find signed Memoranda on Heritage and Museums Bill, 2023 for preparation for the meeting on Thursday the 20<sup>th</sup> April, 2023.

Umme Mohamed Bashir (Ms.)  
**PRINCIPAL SECRETARY**

**Encl.**

**Copy to:** **Hon. Peninah Malonza**  
Cabinet Secretary  
Ministry of Tourism, Wildlife and Heritage  
NSSF Building  
**NAIROBI**

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**Republic of Kenya**

**PARLIAMENT**

**THE HERITAGE AND MUSEUMS BILL, 2023 (Senate Bills  
No. 8 of 2023)**

(A Bill published in the Kenya *Gazette* Supplement No. 20 (*Senate Bills No. 8*))

**MEMORANDUM**

**BY THE MINISTRY OF TOURISM, WILDLIFE AND  
HERITAGE**

**Submitted to the Clerk of the Senate and to the Senate  
Standing Committee on Labour and Social Welfare**

**WHEREAS** a Bill entitled "An Act of Parliament to provide for the conservation, preservation, protection, research and management of cultural and natural heritage at the national and county levels of Government; and for connected purposes. The short title of which is "The Heritage and Museums Bill, 2023 which was read a First Time in the Senate on 22<sup>nd</sup> March, 2023 and was thereafter committed the Senate Standing Committee on Labour and Social Welfare for consideration;

**AND WHEREAS** The Clerk of the National Senate has invited The Ministry of Tourism, Wildlife and Heritage to submit its views on the Bill;

**NOW THEREFORE** The Ministry of Tourism, Wildlife and Heritage hereby states as follows:

### **Background**

The National Government through the National Museums of Kenya is the custodian of Kenya's national heritage. Kenya's national identity is preserved through heritage collections from all the forty-seven (47) counties of Kenya preserved at the national repositories.

Heritage collections range from prehistory, zoological, botanical, geological, ethnographical and art collections, historical and archival materials and other artifacts. The national heritage collections are the nation's unifying factor representing Kenya's past, present and future generations.

The Constitution of Kenya, 2010 under the Fourth Schedule under Part 1- clause 25, assigns the function of ancient and historical monuments of national importance to the National Government. The Fourth Schedule under Part 1- clause 16 also assigns the research function to the National Government, this comprises research on cultural and natural heritage which is performed by the National Museums of Kenya under the National Government. The National Museums of Kenya, is registered as a research institution by the National Commission for Science, Technology and Innovation (NACOSTI).

Part 2 clause 25 of the Fourth Schedule to The Constitution of Kenya, 2010, assigns the museums function to the County level of Government.

The National Government, through its predecessor, the Ministry of the Ministry of Tourism, Wildlife and Heritage (herein after the Ministry) in consultation with the Senate Committee on Labour and Social Welfare initiated review of the National Museums and Heritage Act No.6 of 2006 to align with the Constitution of Kenya 2010. The process was to, among others, address the functions that were assigned to the National and County levels of Government by the Fourth Schedule of the Constitution of Kenya, 2010.

The consultative process between the Senate and the Ministry culminated into the publication of the Heritage and Museums Bill, 2023.

National Museums of Kenya supports the Bill and has already submitted its memoranda to the Senate.

**The Ministry's Comments on the amended Bill are as follows:**

- A. The Ministry supports the principal object of the Bill which is to provide for the conservation, preservation, protection, research and management of cultural and natural heritage at the national and county levels of Government; and for connected purposes.
- B. The Ministry notes that **Section 43** of the Bill, seeks to establish research institutes to conduct research and other functions that are already reserved for National Museums of Kenya under Section 6 of the Bill.

In order to avoid overlapping/duplication of mandates the Ministry makes the **following recommendations:**

- (i). Amend section 43(2) of the Bill by deleting (2) (a) which reads- "*scientific, natural, cultural, or technological importance by means of exploration and field investigations, data analysis, public programmes, exhibitions, tours or publications*"**

**Justification:**

Research on natural and cultural heritage is a core function of the National Museums of Kenya under the National Government. This is pursuant to the Constitution of Kenya Part 1 clause 16 whereby National Museums of Kenya is a registered research institution by the National Commission for Science Technology and Innovation (NACOSTI). National Museums of Kenya applies

scientific and technological approaches to undertake explorations, field investigations and data analysis on heritage conservation in order to

document heritage collections which range from prehistory, zoological, botanical, geological, ethnographical and art collections, historical and archival materials and other artifacts. National Museums of Kenya also undertakes public programmes, exhibitions, tours or publications to advance the heritage research mandate as well as in management of ancient and historical monuments of national importance.

Therefore, this function should not be assigned to other institutions.

**(ii). Amend section 43(2) of the Bill by deleting (2) (c) which reads- *"importance to conservation of biodiversity, including identification, documentation, establishment and curation of a national biodiversity inventory"***

**Justification:**

Identification and documentation of biodiversity (i.e. plant and animal life and their habitat) including taxonomy of plants and animals of national importance and hotspots- ecosystems is a critical component of research on heritage undertaken by National Museums of Kenya.

This function should be performed by the National Museums of Kenya since it has the technical capacity to handle it.

**(iii). Amend section 43(2)(d) to read: *"research in field of scientific, technological, biomedical and human interest"***

### **Justification:**

As currently drafted, the institutes to be established will *"research in fields of ancient, historical, scientific, cultural, natural, technological, biomedical and human interest"*.

We note that the research fields of ancient, historical, cultural and natural are the core mandate of National Museums of Kenya, therefore should not be assigned to other institutes.

**(iv). Amend section 43(2)(e) to read: *"Dissemination and transmission of knowledge from biomedical research"***

### **Justification:**

As currently drafted, the institutes to be established will undertake *"dissemination and transmission of knowledge from research on cultural heritage, natural heritage, biomedical, ancient and historical monuments and sites of national importance."*

Dissemination and transmission of knowledge in the fields of cultural heritage, natural heritage, ancient and historical monuments and sites of national importance is already performed by National Museums of Kenya pursuant to section 6 of the Bill. Thus the biomedical field which is not in harmony with the cultural and natural heritage has been reserved for other

institutes that may be established by the Cabinet Secretary under Section 43.

- C. The Ministry recommends that the marginal note at Section 41 should be amended to read "**temporary protection order**" instead of "compulsory repair".

**Justification:** This section addresses issues of protection and not repair.

- D. The Ministry recommends that the Bill under the Second Schedule titled consequential amendments be amended by substituting the words "the Heritage and Museums Bill, 2020" whenever they appear with the words "the Heritage and Museums Bill, 2023."

- E. The Ministry of looks forward to consideration of the recommendations contained herein by the Senate Committee on Labour and Social Welfare and to the fast-tracking of the enactment of the Bill into an Act of Parliament.

DATED  12 - 04 - 2023

HON PENINAH MALONZA

CABINET SECRETARY

MINISTRY OF TOURISM, WILDLIFE AND HERITAGE





## COUNCIL OF GOVERNORS

Westlands Delta House 2<sup>nd</sup> Floor, Waiyaki Way.  
P.O. BOX 40401-00100,  
Nairobi.



Tel: (020) 2403314, 2403313  
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Our Ref: COG/2/18 Vol. 6 (62)

11<sup>th</sup> April 2023

Mr. Jeremiah Nyegenye, CBS  
Clerk of the Senate  
Parliament Buildings  
**NAIROBI**



Dear

*Mr. Nyegenye CBS*

### SUBMISSION OF THE LEGISLATIVE MEMORANDUM ON THE HERITAGE AND MUSEUMS BILL 2023

The above subject matter refers.

The Council has reviewed the Heritage and Museums Bill 2023. This review is critical in order to address the continued claw back on County Governments' powers and functions in relation to the management of museums.

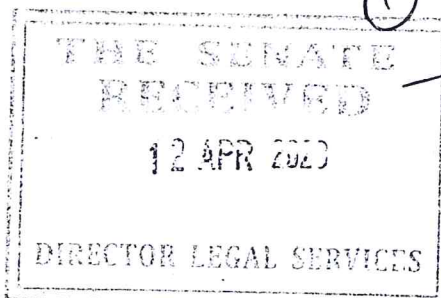
We therefore wish to forward the attached legislative memorandum for your consideration.

Please accept the assurance of our highest esteem and consideration.

Yours

*Sincerely,*

Mary Mwiti  
**Chief Executive Officer**



① DSEC ✓  
DLS  
Note and Deal.  
12/04/2023

③ Ms. Mwanate  
Kindly deal.  
12/04/2023

② HED - Ms. Kibati  
Kindly deal  
12/04/2023



# COUNCIL OF GOVERNORS

MEMORANDUM FOR THE COUNCIL OF GOVERNORS

DATE: 10/10/1961

TO: THE COUNCIL OF GOVERNORS

FROM: THE SECRETARY

SUBJECT: [Illegible]

[Illegible line of text]



COUNCIL OF GOVERNORS

**LEGISLATIVE MEMORANDUM ON THE HERITAGE AND MUSEUMS BILL 2023**

**TO**

**THE SENATE**

**FROM**

**THE COUNCIL OF GOVERNORS**

## **Introduction**

The Council of Governors,

**In recognition** of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

**In further recognition** of Article 6 (2) that governments at the national and county levels are distinct; and

**Aware** of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

The Council hereby notes as follows on **THE HERITAGE AND MUSEUMS BILL 2023**

### **A. General comments**

Unbundling and transfer of functions is a matter of constitutional interpretation. The Heritage and Museums Bill attempts to undertake this without recourse to an intergovernmental agreement. Unbundling and transfer of functions ought to be objectively undertaken based on the constitutional provisions and informed by among others, the following guiding principles:

**Assignment of functions by implication using the ‘national’ and ‘county’ prefixes where, a common functional area is assigned to both levels of government but differentiated by referring to certain aspects of the functional area as national while other aspects are referred to as county.** Those differentiated aspects are assigned exclusively to each of the two levels of government. Instructive lessons from comparative experience indicate that a bottom-up approach to interpretation of such exclusive functions and powers is the best way to address the problem of overlaps in exclusive functional areas. This approach commences by asking the question of whose functions and powers should be defined first. The essence of the bottom-up approach is that the interpretation must begin by determining and scooping out the exclusive functions and powers of the county governments before determining the remainder as national government exclusive functions and powers.

**Assignment of functions by implications using the ‘including’ principle where the functions and powers of county governments could be interpreted as having been assigned by implication depending on whether the ‘including’ is used.** The content of most county government functions is defined and broadened by the use of the term ‘including’ followed by a listing of some of the activities that constitute the functional area. The significance of the use of this term is that the list is not exhaustive and closed, other related items can be identified and added to the list. For example, in respect of the functions under consideration, the county governments have the functional area of ‘Cultural activities, public entertainment and public amenities, including (a) betting, casinos and other forms of gambling; (b) racing; (c) liquor licensing; (d) cinemas; (e) video shows and hiring; (f) libraries; (g) museums; (h) sports and cultural activities and facilities; and (i) county parks, beaches and recreation facilities’. This means that other activities related to museums and cultural activities and facilities have been assigned to county governments by implication. It is for this reason that ancient and historical monuments that are not of national importance should be interpreted as assigned to county governments by implication. Things like protected sites can be identified as cultural facilities that are assigned to county governments.

**Assignment of functions and powers by implication using the incidental powers and functions principle.** An incidental power refers to a situation where a matter that would have fallen in the functional area of the national government is regarded as being so integrally linked to matters in a functional area of county government as to be incidental and form part of that functional area. Incidental powers and functions deal with grey areas around cut-off points of the functional areas; however, they are not meant to introduce new functional areas for county governments. While Article 185(2) expressly provides for county government incidental powers, it is instructive to note that the Constitution does not expressly provide for national government incidental powers. This should be interpreted as a deliberate omission intended to protect the county domain from invasion by national government. Article 185(2) read together with this deliberate omission imply an intention to protect and empower county governments to be able to effectively perform their functions and exercise their powers.

**The full effect principle.** This approach as recommended by the South African Constitutional Court requires that functional areas and powers be interpreted in a manner that gives full effect to the functions and powers of the levels of government.

The Court rejected the idea of any presumptions in favour of any one of the levels of government. Instead, it emphasized a functional view which seeks to ensure that each level of government is enabled to discharge its 'responsibilities completely and successfully' and to exercise its powers fully and effectively. Each functional area must be determined in the light of its vision informed by its textual context, the objects of devolution and the core values of the Constitution.

Additionally, the assignment of functions and powers under Article 186(2) of the constitution recognizes that while some functions are assigned as exclusive functions of each level of government, others are concurrent functions of both levels of government. Unbundling and transfer of the monuments and museum functions must seek to indicate which functions are interpreted as being exclusive and which ones are concurrent. The interpretation must also recognize that while certain functional areas may be assigned to both levels of government, aspects of the functional area may be assigned as exclusive functions of each of the two levels of government.

For now, it needs to be pointed out that given the functions the Bill seeks to assign to the National Museums of Kenya, such institution, if necessary, ought to be established as a joint entity of both national and county government. Indeed, it cannot be referred to as the National Museums of Kenya but instead, it should be referred to as the Ancient Monuments, Heritage and Museums of Kenya or the Monuments and Museums of Kenya.

Finally, such law must have very clear provisions regarding the sharing of revenue generated by the monuments and Museums between the national government and the county governments.

Accordingly, the Council of Governors has reviewed the Heritage and Museums Amendment Bill and observes that the Bill violates the functional and institutional integrity of the Counties as assigned by the Constitution of Kenya, 2010 on matter collaboration and cooperation and most importantly, the devolved functions as seen in the fourth schedule.

## B. Specific Comments

Section of the Act	Provision of Section in the Act	Proposed Amendment	Rationale/Justification for Amendment
Interpretation National Museum	Means a museum vested in the National Museums	Delete the entire section.	County Governments are assigned the museum function in entirety under the Constitution with no distinction between national museums and county museums therefore there cannot exist a National Museum.
Part III Section 5	Establishment of the National Museums of Kenya	Delete the proposal	The Council opposes the establishment of an incorporation at the National Government which will carry out functions that have been devolved and assigned to County Governments under the fourth schedule of the constitution.

<p><b>Section 6 (a)</b></p> <p><b>The functions of the National Museums of Kenya</b></p>	<p>The functions of the National Museums shall be to identify, acquire and record ancient and historical monuments and sites that are of national importance for inclusion in the national heritage inventory;</p>	<p><b><i>Amend to read as follows;</i></b></p> <p>identify, acquire and record ancient and historical monuments and sites that are of national importance in consultation with the Counties for inclusion in the national heritage inventory</p>	<p>Rename the body to align it with the constitutionally assigned functions of the National Government. Maintaining the name National Museum upsets the constitutional framework.</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.</p> <p>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)).</p> <p>This should be a shared function undertaken by a joint entity of national and county governments.</p>
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<p><b>Section 6 (c)</b></p> <p><b>The functions of the National Museums of Kenya</b></p>	<p>Undertake research in fields of ancient, historical, scientific, cultural, natural, technological, biomedical and human interest</p>	<p><b><i>Amend to read as follows;</i></b></p> <p><b>In consultation with the County Governments,</b> 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>
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<p><b>Section 6 (d)</b></p> <p><b>The functions of the National Museums of Kenya</b></p>	<p>Disseminate and transmit knowledge from research on cultural heritage, natural heritage, biomedical, ancient and historical monuments and sites of national importance</p>	<p>Amend to read as follows;</p> <p><b>Subject to the principles and obligations of cooperative devolved government,</b> 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 governments function intersects with and impacts upon the county government museum and cultural activities functions.</p>
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<p><b>Section 6 (k)</b></p> <p><b>The functions of the National Museums of Kenya</b></p>	<p>Advise the Cabinet Secretary on the issuance of excavation, exploration and export licenses in connection with national heritage</p>	<p><b>Amend to read as follows;</b></p> <p><b>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.</b></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><b>Section 7 (1)</b></p> <p><b>Powers of the National Museums of Kenya</b></p>	<p>The National Museums of Kenya shall have powers to:</p> <p>b) Appoint committees for heritage conservation in furtherance of its functions.</p>	<p><b>Amend the section to read as follows;</b></p> <p>b) Appoint committees for heritage conservation in <b>consultation with County Governments</b> in furtherance of its functions.</p>	<p>As per the definitions provided in the Act, it is stated that heritage includes culture.</p> <p>Pursuant to function 4 of the fourth schedule of the Constitution, cultural activities are allocated to the County Governments. Therefore, it is imperative that any appointments made for committees pertaining to cultural activities should be done in consultation with the relevant County Governments.</p>

	i) Charge for admission to a <b>national museum</b> , national heritage center, 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.	<b><i>Amend the section to delete;</i></b> i) <b>Charge for admission to a national museum</b>	The management of museums is the responsibility of the respective Counties as provided in the Constitution. As such, the National Museums of Kenya do not possess the legal authority to levy admission fees for entry into a museum.
<b>Section 8</b> <b>Functions of County Governments in relation to Museums</b>	Provision a, d, e and g	Delete the phrase; <b>‘Of county importance’</b>	As per the provisions of the Constitution, the museums and cultural functions are assigned in their entirety to the Counties, without any restriction imposed solely on those of County significance. Therefore, the language in question is deemed to impose undue limitation upon the assigned functions of the Counties and should be expunged.
<b>Part V</b> <b>Management of National Heritage</b>	31. (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	Amend to read as follows;  The Cabinet Secretary may, <b>after consultation with the County Governments</b> , by notice in the gazette, declare any place or object to be heritage of national importance	The content of this function as provided in the Constitution does not include the determination and classification of ancient and historical monuments of national importance. Therefore the criteria of determining whether an ancient and historical monument is of national importance cannot be a National Government exclusive function.

	<p>31. (3) The Cabinet Secretary may make regulations for the proper discharge of functions under this section</p>	<p>Amend to read as follows;</p> <p>The Cabinet Secretary may in consultation with the County Governments make Regulations for the proper discharge of functions under this section</p>	<p>Though the Cabinet Secretary has the responsibility of making regulations, this should be done in consultation with County Governments in fulfillment of section 6 (2) of the Constitution</p>
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### C. Recommendations

1. For the Senate to consider the above proposals by the Council of Governors





**NatureKenya**

THE EAST AFRICA NATURAL HISTORY SOCIETY

National Museums of Kenya, Museum Hill  
P.O. Box 44486, 00100 GPO Nairobi  
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Cell: +254 (0)771 343138, (0)780 149200  
Email: office@naturekenya.org  
www.naturekenya.org

**The Chairman**

Senate Standing Committee on Labour and Social Welfare  
Parliament Buildings

P O Box 41842- 00100, Nairobi, Kenya

E-mail: csenate@parliament.go.ke

Senatecommittee.labour@parliament.go.ke

31<sup>st</sup> March 2023

Dear Chairman, Senate Labour and Social Welfare Committee

**Senate Heritage and Museums Bill 2023**

The East Africa Natural History Society – now better known as Nature Kenya – thanks the Senate Standing Committee on Labour and Social Welfare for considering and acting upon our comments regarding the Senate Heritage and Museums Bill.

Should any questions arise, we again summarise the historical association between Nature Kenya – the East Africa Natural History Society – and the National Museums of Kenya:

Nature Kenya—the East Africa Natural History Society (EANHS)—is Africa's oldest environmental Society, established in 1909 to promote the study and conservation of nature in eastern Africa. The first members of the Society collected and identified plant and animal specimens. They founded a museum in 1910 to house the collections and educate the public. On 28<sup>th</sup> May 1937, a commission of enquiry was appointed by the Governor of The Colony and Protectorate of Kenya. This commission discussed and explored with the East Africa and Uganda Natural History Society (now the East Africa Natural History Society – Nature Kenya), the modalities for the museum to be handed over to the Government, and made recommendations. Pursuant to this Committee, the museum was conditionally transferred to the Government, eventually becoming the famous National Museums of Kenya. The permanent conditions include Recommendation II, where "Two Trustees representing the East Africa and Uganda Natural History nominated by the Society" were included in the Board of Trustees.

This history has been honoured through the years, with a Member of the Board of Directors being nominated by Nature Kenya – the East Africa Natural History Society.

In 1910, the members of the Society also founded a scientific journal. This journal is still published today, in collaboration with the National Museums of Kenya, as the *Journal of East African Natural History*. This journal and other environmental publications are found at the Society's Library, co-managed with the National Museums. The Society also continues strategic research collaboration with the National Museums, the permanent host and home for the Society.

Yours sincerely,

**Dr Paul Matiku**

*Executive Director, Nature Kenya – the East Africa Natural History Society*

Cc

Cabinet Secretary, Ministry of Tourism, Wildlife and Heritage  
Principal Secretary, Ministry of Tourism, Wildlife and Heritage  
Chairman of the Board of the National Museums of Kenya  
NMK Director-General  
NMK Corporation Secretary



**BirdLife** Partner in Kenya  
INTERNATIONAL





April 19<sup>th</sup>, 2023

J.M. Nyegenye, CBS  
Clerk of the Senate  
Clerk's Chambers  
Parliament Buildings  
P.O. Box 41842-00100  
**NAIROBI**

Dear Mr. Nyegenya,

**RE: STAKEHOLDERS' ENGAGEMENT ON THE HERITAGE AND MUSEUMS BILL, 2023 (SENATE BILLS NO. 8 OF 2023)**

Thank you to the Clerk of the Senate for providing us with the opportunity to give feedback on the Heritage and Museums Bill 2023.

I would like to congratulate the Committee and Senate for developing this bill as the Turkana Basin Institute we are pleased to see the support for the National Museums of Kenya and Heritage in the Country.

The Turkana Basin Institute (TBI), founded by Dr Richard Leakey, supports, and leads science in the Turkana Basin in human origins, palaeontology, ecology, evolution, sustainability, and other fields. TBI has two campuses in Northern Kenya: along the Turkwel River east of Lodwar in Turkana County and at Ileret south of the Ethiopian border in Marsabit County. We have offices in Nairobi and at Stony Brook University, our academic home. Collaboration and community are central to the mission of TBI and scientists and students from Kenya and around the world make use of the facilities.

Our comments on the bill focus on strengthening research partnerships and collaboration, facilitating the smooth movement of materials for science, and providing more support for other institutions holding collections on behalf of the Museum and more broadly the future of Kenya.

The National Museums of Kenya is a center of excellence for many aspects of Heritage and for science and scientific research.

Based on discussions with our stakeholders, including scientists around the world, it would be important to see the aspect of science and recognizing the museum as a scientific center be captured better in this bill. Two key areas where the museum is the world leader in Heritage are in the fields of palaeontology and biodiversity.

Kenya holds some of the most important fossil discoveries ever made including those of the very first humans. In addition, the National Museum has stewardship of some of the most important collection for East Africa. These collections include materials from neighboring countries that have been accumulated over the past 100 years.

Both of this areas of science require highly specialized training and capacity building at the National Museum. There is scop for this to be developed further through collaboration and by providing the NMK Board the mandate to sign the Memorandum of Understanding (MOU) to foster on more collaboration within Kenya and International.

We thank you for the opportunity to provide our feedback.

Kind regards



**Dino J. Martins, PhD.**  
CEO, Turkana Basin Institute,  
[ceo@turkanabasin.org](mailto:ceo@turkanabasin.org)  
[www.turkanabasin.org](http://www.turkanabasin.org)

## COMMENTS ON HERITAGE AND MUSEUMS BILL 2023

### **Representation On the Board.**

The bill mentions Nature Kenya representation on the board, this is important as Nature Kenya (the East Africa Natural History Society) built the original museum before it was handed to the government in 1931. There are shared assets, such as the library, which is an important resource for the country at the national museum. Perhaps this can be captured as part of the important stewardship role of the national museum? Also, many museums around the world are able to co-opt members onto their boards for strategic reasons such as research or fundraising.

### **Financial Stability of the National Museums**

Should the bill authorize NMK to create and manage endowment funds? There needs to be some consideration of how the museum can achieve a level of financial stability. Museums around the world are looking to more creative ways of sustaining themselves, including through creating endowments.

### **Specific Comments:**

Page 354: ““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”. – This definition should be clarified; to me it means that all these things except books and documents are antiquities if created before 1895, which could be clarified by moving that to the end, e.g., “except books and documents”

Page 356: ““museum” means a public or private institution which collects, preserves, analyses and exhibit objects of cultural and natural heritage”. – Does this mean that a “museum” must have exhibits? Museums could consist of special collections for research purposes, and not necessarily have exhibits.

Page 361: “...including maintaining the national biodiversity inventory...” and page 379 “... including identification, documentation, establishment and curation of a national biodiversity inventory”. This is an important function that needs to be linked with other key state agencies (KWS, WRTI, NEMA, KFS). Perhaps it would be useful to mention that this inventory can be developed in collaboration with other key agencies and partners. Also needs a definition of biodiversity and connect to other relevant acts.

Page 369: Qualifications of the DG. Sometimes the best DGs are not necessarily academic leaders, and the academics are best left to a Director for Research, or other scientific leadership roles. A suggestion is to require an advanced degree in a relevant field. Many museums around the world are looking to engage more broadly in recruitment and connecting with the private sector, so perhaps this is something to have more flexibility on?

Page 390, movement, and specimens export: How are objects that are not antiquities or protected to be dealt with? For example, with biological specimens? The National Museum holds important biological collections along with the expertise to curate and steward these materials. The movement of material between museums and research institutes is crucial for modern scientific research and to help solve problems such as in identification of new disease vectors, important plants etc.

