

SPECIAL ISSUE

Kenya Gazette Supplement No. 13 (Machakos County Bills No. 5)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

MACHAKOS COUNTY BILLS, 2021

NAIROBI, 25th October, 2021

CONTENT

Bill for Introduction into the County Assembly of Machakos—	PAGE
The Machakos County Cultural Heritage Bill, 2021	1

THE MACHAKOS COUNTY CULTURAL HERITAGE BILL, 2021

ARRANGEMENT OF CLAUSES

Clause

PART I — PRELIMINARY

- 1— Short title.
- 2— Interpretation.
- 3— Objects and purpose of the Act.
- 4— Application of the Act.

**PART II — ADMINISTRATION, PROTECTION AND
REGULATION OF CULTURAL ACTIVITIES AND HERITAGE**

- 5— Responsibilities of the County government on culture.
- 6— Protection of individual cultural choice.
- 7— Staff of the Department.
- 8— Establishment of cultural centres.
- 9— Determination of article of a cultural nature.
- 10— Protection of cultural articles and activities.
- 11— Registration of a cultural articles.
- 12— Establishment of cultural industries.
- 13— Declaration of cultural site.
- 14— Protection of cultural articles and sites.
- 15— Private cultural sites.
- 16— Admission to cultural sites.
- 17— Notice board at a site.
- 18— Conditions of entry.

PART III — FINANCIAL PROVISIONS

- 19— Funds of the Department.
- 20— Annual estimates.

21—Quarterly reports.

22—Annual report.

PART IV—MISCELLANEOUS PROVISIONS

23—Register of cultural articles and sites.

24—Offences.

25—General Penalty.

26—Power to issue permit.

27—Declaration of national cultural article, activity or site.

28—Protection from personal liability.

29—Regulations.

THE MACHAKOS COUNTY CULTURAL HERITAGE BILL, 2021

A Bill for

AN ACT of the County Assembly of Machakos to provide for the promotion, protection and enjoyment of culture and cultural heritage in the County; to provide for the participation of people in the cultural life of their choice; to provide for the recognition of the diversity of cultures in the County; to provide for the establishment of the Machakos County Cultural Center and for connected purposes

ENACTED by the County Assembly of Machakos, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Machakos County Cultural Heritage Act, 2021.

Interpretation

2. In this Act, unless the context otherwise requires—

“Authorized Officer” means an officer appointed under section 7;

“County” means Machakos County;

“County Assembly” means the County Assembly of Machakos;

“County Cultural Center” means the Machakos County Cultural Center established under section 8;

“cultural activities” means those activities which at the time are considered as a specific attribute, their use or purpose embody or convey cultural expressions, irrespective of the commercial value they may have;

“cultural diversity” means the manifold ways in which the cultures of groups and communities find expression which are passed on within and among the groups and communities;

“cultural expressions” means those expressions that result from the creativity of individuals, groups and communities and have symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities;

“cultural heritage” includes cultural activities, articles and sites;

“cultural industries” means industries producing or distributing cultural articles;

“cultural site” means a place, owned or managed by the County government or private person or organization, which exhibits a cultural way of life or in which cultural activities are undertaken;

“Department” means the County Department responsible for matters relating to culture;

“Executive Committee Member” means the County Executive Committee Member responsible for matters relating to culture;

“protection” means the adoption of measures aimed at the preservation, safeguard and enhancement of the diversity of cultural expressions, and the word “protect” shall be construed accordingly.

Object and purpose of Act

3. The object and purpose of this Act is to provide for the—
- (a) regulation, protection and promotion of culture in the County;
 - (b) respect for and safeguarding of culture and cultural heritage of the communities, groups and individuals in the County;
 - (c) protection and promotion of the diversity of culture and cultural heritage in the County;
 - (d) protection, preservation and promotion of cultural sites;
 - (e) promotion of cultural activities in the County;
 - (f) upholding of the constitutional provisions to preserve the dignity of individuals, groups and communities irrespective of their cultural beliefs;
 - (g) recognition, promotion and protection of the distinctive nature of different cultures, cultural heritage, cultural expressions and the distinctive activities, goods and services from them;
 - (h) awareness creation of the culture and cultural heritage in the County through the promotion of cultural goods, services and activities;
 - (i) a framework under which communities and groups within the County will receive compensation, royalties or other benefits from the activities, goods, services and use of their culture and cultural heritage; and
 - (f) encouragement of dialogue among persons of different cultures and cultural heritage to promote inter- cultural respect and mutual benefits.

Application of this Act

4. This Act applies to cultural activities and heritage within the County and which have not been declared part of national heritage and which are not covered under the National Museums of Kenya.

**PART II — ADMINISTRATION, PROTECTION AND
REGULATION OF CULTURAL ACTIVITIES AND HERITAGE**

Responsibilities of the County Government on Culture

5. (1) The County government shall promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication information, mass media, publications, libraries and other cultural heritage.

(2) The County government shall—

- (a) hold in trust for the communities in the County, any cultural articles and cultural sites not owned by an individual or organization;
- (b) protect cultural sites and historical monuments in the County and promote tourism in relation thereto;
- (c) promote and facilitate research and recording of cultural history and the archiving of historical records and artefacts;
- (d) participate, promote, develop and encourage different communities, groups and individuals in the County to participate in cultural expressions and activities within and outside the County including—
 - (i) performing arts;
 - (ii) traditional craftsmanship;
 - (iii) oral traditions and expressions including language as a vehicle of the intangible cultural heritage;
 - (iv) social practices, rituals and festive events; and
 - (v) knowledge and practices concerning nature and the universe.
- (e) facilitate, support and oversee the co-ordination of cultural activities within the County; conduct and facilitate civic education and public discussions to create awareness on pertinent issues relating to cultural articles and activities;
- (f) where necessary, determine activities which amount to cultural activities;

- (g) promote research and the teaching of culture and heritage in learning institutions within the County;
- (h) in collaboration with the relevant national government agencies, set up County libraries and county museums;
- (i) determine the compensation, royalties or other benefits to be received by communities or groups for the use of their cultural goods, services, activities or other cultural heritage;
- (j) assist communities, groups and individuals to patent, copyright or otherwise protect items of their cultural activity or heritage;
- (k) determine and ban retrogressive and harmful cultural practices;
- (l) promote cultural tourism; and
- (m) undertake such other activities as may be necessary for the attainment of the objects of this Act.

(3) The County Government shall put in place legislative, policy and administrative measures to ensure the recognition, respect and the upholding of the culture and cultural heritage of the people of Machakos including—

- (a) integrate culture in its development policies; and
- (b) resource allocation for cultural activities and cultural heritage.

(4) The County Government shall collaborate with the national government agencies, non-governmental agencies, private entities, artists and other cultural professionals to develop and promote the free exchange and circulation of ideas, cultural expressions and cultural activities, goods and services and stimulate both creative and entrepreneurial spirit in their activities.

Protection of individual cultural choice

6. The Department shall, in the discharge of the responsibilities under section 5, ensure that—

- (a) no person is compelled to participate in a cultural activity or perform, observe or undergo any cultural practice or rite without that person's choice;
- (b) the performance or enjoyment of any cultural activity by any individual or community does not prejudice the rights and fundamental freedoms of other people; and
- (c) cultural activities, practices, expressions or rites which undermine human dignity are discouraged.

Staff of the Department

7. The County Public Service Board, in consultation with the Executive Committee Member shall appoint such staff as may be necessary for the administration of this Act.

Establishment of cultural centres

8. (1) There is established the Machakos County Cultural Center.

(2) The objectives of the County Cultural Center are to provide—

- (a) a theatre for the performance of music, dance and drama;
- (b) a place for the exhibition of works of art and craft and cultural artefacts;
- (c) a stage for film shows of cultural, educational, developmental, hygienic or social importance to the community;
- (d) a place to hold meetings to discuss matters of literary, historical, scientific or educational interest or importance; and
- (e) such other use as the Department may approve.

(2) To achieve similar objectives as the County Cultural Center, the Department shall establish at least one cultural center at each Sub-County.

Determination of article of a cultural nature

9. (1) The Department may, where necessary, determine whether an article is an article of a cultural value taking into consideration its usage, historical significance and any other relevant matter.

(2) If an article is determined to be an article of a cultural value, the Department shall declare it to be an article protected under this Act.

Protection of Cultural Articles and Activities

10. (1) The Department shall take measures to protect cultural articles or activities which maybe endangered including by—

- (a) purchasing or registering the article or activity;
- (b) licensing persons or organizations producing or dealing with the articles or activity;
- (c) encouraging the collection, preservation and sale of cultural articles and activities;
- (d) ensuring fair compensation to owners of cultural articles or activities who offer for sale those articles or activities;

- (e) encouraging the growing of traditional Kamba food crops;
- (f) maintaining the traditional methods of preparing, preserving and presenting of traditional Kamba foods;
- (g) promoting the consumption, development and popularization of inter-ethnic traditional dishes and drinks;
- (h) suspending of trade in the endangered article, for a given period; or
- (i) managing the production and maintenance of the article or activity for a given period.

(2) The Department shall promote local languages particularly the Kamba language by—

- (a) encouraging the speaking of the Kamba language and other local languages;
- (b) supporting research in the Kamba culture;
- (c) holding and supporting cultural events that promote the Kamba language;
- (d) encouraging the teaching of the Kamba language in learning institutions in the County; and
- (e) promoting the documentation of the Kamba culture including the Kamba language, the history of the Kamba people and any other information concerning their culture.

Registration of a cultural article

11. The Department, in consultation with the recognized elders of a community in the County, may register a copyright of a cultural heritage article or activity.

Establishment of cultural industries

12. (1) The Department shall encourage communities to establish cultural industries of the patented or copyrighted articles or activities for the purpose of creating employment and other benefits for the community and where possible, provide financial support to ensure the establishment of the industry.

(2) The cultural articles produced by any industry established under subsection (1) shall be provided in the open market by the community.

Declaration of a cultural site

13. (1) The Executive Committee Member may, after consultation with the Department and after taking into consideration the usage,

historical significance and other relevant matters relating to a site, declare any site to be a cultural site protected under this Act.

(2) The Executive Committee Member may enter into a written agreement with any person, State organ, local community or organization—

- (a) to provide for the management and maintenance of a cultural site; and
- (b) to regulate and control human activities within a cultural site.

Protection of cultural sites

14. (1) The Department shall take such measures as may be necessary to protect any cultural site which may be endangered including—

- (a) purchasing or registering of the site;
- (b) licensing of persons or organizations dealing with the sites;
- (c) temporary closing an endangered site for a given period; and
- (d) managing and maintaining a site for a given period.

(2) If the owner of a private cultural site desires to sell the site, the owner shall inform the Department and the Department shall have the first priority to purchase the site.

Private cultural sites

15. (1) A person on whose land a cultural spot or property is situated may request the Department to declare the spot or property to be a cultural site and shall apply for the management of the spot or property as a cultural site.

(2) The Department shall inspect the site and if satisfied that it meets the requirements of a cultural site declare it to be a private cultural site and issue a permit with or without conditions.

Admission to cultural sites

16. (1) The Department shall determine the times, dates and conditions under which a cultural site declared under section 13 is open to the public.

(2) The Department shall determine the activities that may or may not be undertaken in a cultural site.

(3) The Department may grant admission to any person during such hours and for a period that it may specify the exclusive use of a cultural site.

(4) The Department may for reasons of maintenance, development, security, public health, or any other relevant matter temporarily or permanently—

- (a) close a cultural site or a portion thereof; or
- (b) suspend all or any activities on the cultural site.

(5) Where a person in a cultural site commits an offence relating to this Part, an authorized officer may order that person to leave the cultural site, and a person ordered to leave must leave the premises within the shortest time possible.

(6) The Department may, depending on the size and nature of the cultural site, determine—

- (a) the maximum number of persons or vehicles that maybe in or at a cultural site at any time; and
- (b) the classes of vehicles that maybe in or at a cultural site.

Notice board at site

17. (1) The Department shall erect a notice board at the entrance or within a reasonable distance from the entrance of a cultural site on which information shall be displayed for the public, indicating—

- (a) the dates, time and conditions of entry;
- (b) the activities that may be undertaken on the site;
- (c) the fees payable for entry; and
- (d) where it applies, information on closure of the site under section 16 (4).

(2) No person, other than an Authorized Officer, may remove or alter the contents of a notice displayed on the notice board.

(3) A notice displayed on the notice board may contain a graphic representation to convey the required meaning.

(4) A person who defaces or alters a notice displayed on the notice board or otherwise contravenes any of the provisions of this section, commits an offence.

Conditions of entry

18. No person shall, while in or at a cultural site—

- (a) break, damage, destroy, tamper with, remove, misuse, disfigure or use anything or fail to observe any instruction issued by the Department;

- (b) unless authorised to do so, pull out, pick, cut, damage or have possession any flora growing in the cultural site;
 - (c) write, paint, draw pictures or a symbol, emblem or the like on a structure or path in the site;
 - (d) excavate soil, sand or stone or remove organic or inorganic objects unless one is in possession of a permit issued in relation thereto;
 - (e) deface or disfigure anything within the site by pasting or affixing in any way any bills, papers, placards, notices or anything else;
 - (f) wash, polish or repair a vehicle in the site, except emergency repairs;
 - (g) burn refuse, litter or dump any refuse, garden refuse or building materials;
 - (h) dispose of any burning or smouldering object contrary to the manner provided on the notice board; and
 - (i) enter or leave a cultural site other than by way of the official entry and exit or without having paid the entrance fees.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

PART III — FINANCIAL PROVISION

Funds of the Department

19. The funds of the Department shall consist of—

- (a) monies appropriated by the County Assembly for the purposes of promoting and protecting culture and cultural heritage in the County;
- (b) monies appropriated by the County Assembly for the purposes of compensation, payment of royalties or other benefits from the activities, goods and services and use of their culture and cultural heritage; and
- (c) any grant, credits, gifts, donation and other endowments provided to the Department.

Annual Estimates

20. (1) Before the commencement of each financial year, the Department shall cause to be prepared estimates of the revenue and expenditure of the Department for that year in accordance with provisions

of Public Finance Management Act, 2012.

(2) The annual estimates shall make provision for all the estimated expenditure of the Department for the financial year concerned.

Quarterly report

21. The Department shall prepare a report for each quarter of the financial year in respect of the Department in accordance with the Public Finance Management Act, 2012.

Annual report

22. (1) The Department shall, at the end of each financial year cause an annual report to be prepared.

(2) The Department shall submit the annual report to the County Executive Committee Member for finance who shall act on the report in accordance with provisions of Public Finance Management Act, 2012.

(3) The financial year of the Department shall be the period of twelve months ending on the thirtieth day of June in each year.

PART IV — MISCELLANEOUS PROVISIONS

Register of cultural articles and sites

23. The Department shall keep a register of all articles of a cultural nature and cultural sites declared under this Act and shall include in the register the type of article or site, the community to which it relates and any other information of interest relating to the article or site.

Offences

24. A person commits an offence who—

- (a) is wrongfully in possession of a cultural article;
- (b) aids or abets another person to steal a cultural article;
- (c) sells or attempts to sell an endangered cultural article without authority;
- (d) destroys or attempts to destroy a cultural article, site or activity;
- (e) forges or defrauds with intent to have an item declared a cultural article; or
- (f) removes or attempts to remove a cultural article from its lawful custody, without authority to do so.

(2) A person who commits an offence under subsection (1) is liable, upon conviction to a term of imprisonment not exceeding two years or to a fine not exceeding two hundred thousand shillings or to both.

General penalty

25. A person who commits an offence under this Act for which no other penalty has been given shall, upon conviction, be liable to a term of imprisonment not exceeding six months or to a fine not exceeding fifty thousand shillings or to both.

Power to issue permit

26. The Department shall issue permits relating to the management of cultural centres, sites or institution and the use flora or fauna of cultural importance in accordance with this Act and any relevant national legislation.

Declaration of national cultural article, activity or site

27. A cultural article, activity or site maybe declared a national cultural article, activity or site after discussions and negotiations between the County government and the relevant national authority.

Protection from personal liability

28. No action or omission by a public officer shall, if the act was done in good faith for the purpose of carrying out the provisions of this Act or any other law, subject the person to any liability, action, claim or demand.

Regulations

29. (1) The Executive Committee Member may make regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) the Regulations under this Act may provide for—

- (a) the declaration of cultural sites;
- (b) compensation for declared cultural sites and articles acquired by the Government;
- (c) the fees to be charged in respect of any license or permit in accordance with the relevant Act;
- (d) the form of applications for a license or permit;
- (e) the form of records to be kept;
- (f) hours during which cultural sites may be open to the public;
- (g) conditions subject to issue permits for entertainment, public cultural sites; and
- (h) any matter necessary for the administration of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of this Bill is to provide for a legislative framework for purposes of promoting and protecting culture and cultural heritage in Machakos County.

PART I (Clauses 1-4) is on preliminary matters and sets out the short title of the Bill, interpretation of terms as used in the Bill, the object and purpose of the Bill.

PART II (Clauses 5-18) provides for the administration, protection and regulation of cultural activities and heritage. It provides for the responsibilities of the County Government on administration, promotion and protection of cultural heritage, provides for the establishment of the Machakos County cultural centre and other centres at the sub-county level. It also provides for cultural industries and administration of cultural sites. It also makes provision for authorized officers whose responsibility is to oversee the activities taking place in cultural sites in accordance with the Act.

PART III (Clauses 19-21) sets out the financial provisions. This Part provides for the sources of the funds of the Department, which includes budgetary allocations by County assembly and donations. It provides for period of financial year annual estimates and annual report.

Part IV (Clauses 22-28) set out the miscellaneous provisions. It makes provisions the register of all articles of a cultural nature and cultural sites declared under this Act which shall be kept by the Department. It also makes provisions on the Department power to issue permits relating to the management of cultural centres, sites or institution and the use flora or fauna of cultural importance provided the activity is in accordance with the Act. Provisions on offences and general penalty are also encompassed under this part.

The enactment of this Bill shall occasion additional expenditure of public funds to be provided through the estimates.

HELLEN NDETI,
Member of the County Assembly.