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THE MAKUENI COUNTY CULTURAL HERITAGE ACT, 2016
No. 5 of 2016

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THE MAKUENI COUNTY CULTURAL HERITAGE ACT, 2016
AN ACT of the County Assembly of Makueni to promote and protect culture and cultural heritage in the county and for connected purposes

ENACTED by the County Assembly of Makueni, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Makueni, County Cultural Heritage Act, 2016.

Interpretation

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

“authorised officer” means an officer appointed under section 5;

“camping” means—

- (a) occupying land for picnic,
- (b) occupying land with a caravan or vehicle for sleeping or as a shelter or protection against the weather, or
- (c) erecting a tent for sleeping or as a shelter or protection against the weather;

“camping site” means land set aside by the county government as a public picnic, camping or caravan park site or a similar private facility on private land licensed by the Department;

“cultural activity” means an activity which by its nature, use or purpose embodies or conveys a cultural expression, and which activity may be an end in itself or contributes to the production of an article or service;

“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 and licensed by the county government, which exhibits a cultural way of life or in which cultural activities are undertaken;

“Department” means the county government department responsible for cultural heritage;

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"Executive Committee Member" means the county Executive Committee Member responsible for cultural heritage;

"inland waters" includes any lake, river, dam marsh or other body of water;

"nature reserve" means a nature reserve registered as a local nature reserve by the county;

"notice board" includes a sign, poster or other device on which the county displays information;

"park" means any piece of land registered by the county as a park and maintained by it for the use of the public;

"vehicle" means any device driven by mechanical, animal, natural or human power on land or water, and includes any craft or aircraft, but does not include a wheeled chair or a device drawn or propelled by hand and used solely for the conveyance of a child or invalid.

Objects of the Act

3. The objects of this Act are to regulate, protect and promote the following activities and services for the interest and enjoyment of the community and persons visiting the county—

- (a) cultural sites;
- (b) cultural activities;
- (c) ensure respect for and safeguard the culture and cultural heritage of the communities, groups and individuals in the county;
- (d) create awareness of the culture and cultural heritage in the county through the promotion of cultural goods, services and activities;
- (e) protect and promote the diversity of culture and cultural heritage in the county;
- (f) encourage dialogue among persons of different cultures and cultural heritage to promote inter-cultural respect and mutual benefits;
- (g) recognize, promote and protect the distinctive nature of the different cultures, cultural heritage and the distinctive activities, goods and services;
- (h) uphold the constitutional provisions to preserve the dignity of individuals, groups and communities irrespective of their cultural beliefs; and

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(i) provide 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.

Application of this Act

4. The provisions of this Part shall apply to cultural activities and heritage in the county which are not—

- (a) declared or deemed to have been declared national heritage; or
- (b) under the National Museums of Kenya.

PART II—PROTECTION AND REGULATION OF CULTURAL ACTIVITIES AND HERITAGE

Administration of Cultural Heritage

Authorised Officers

5. The Executive Committee Member shall with approval of the county assembly, appoint such number of officers to be authorised officers to oversee the activities taking place in cultural sites under this Act.

Responsibilities of the County Government

6. (1) The county government shall, through the Department or other agency delegated by the county government—

- (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 as well as 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 activities, whether taking place within or outside the county;
- (e) facilitate, support and oversee the co-ordination of cultural activities within the county;
- (f) conduct and facilitate civic education and public discussion to stimulate awareness on pertinent issues relating to cultural articles, and activities;
- (g) where necessary determine activities which amount to cultural activities;

- (h) determine the compensation, royalties or other benefits to be received by communities or groups for their cultural goods, services, activities or other cultural heritage based on the prevailing market prices;
- (i) assist communities, groups and individuals to patent, copyright or otherwise protect items of their cultural activity or heritage;
- (j) do such other things as may be incidental or conducive to the attainment of the objects of this Act.

(2) Except as provided under section 15, the county government shall not, through the Department, its agency, any organization or any person, sell, mortgage or otherwise part possession with any cultural article it holds in trust for any community.

Protection of Individuals

7. The Department shall, in the discharge of the responsibilities under section 6, 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 consent;
- (b) the performance or enjoyment of any cultural activity by any individual or community does not prejudice the rights and fundamental freedoms of other residents of the county; and
- (c) cultural activities, practices or rites which undermine human dignity are discouraged.

Establishment of Cultural Centre

8. (1) The Department shall establish at least one cultural centre in each Sub-County, the objects of which 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) The Executive Committee Member may establish other cultural centres and cultural sites as may be necessary for the development of cultural activities in the county.

Establishment of a Cultural Forum

9. (1) The Department shall establish public forum for the purpose of encouraging participation of the community in the cultural activities in the county.

(2) The public forum shall consist of—

(a) A coordinator appointed by the County Executive Committee Member;

(b) members of the community in whose immediate area a cultural activity under discussion is to take place;

(c) representatives of the departments participating in the organization of the cultural activity led by an officer not being below the position of Director ;

(d) persons representing the interests of—

(i) persons with disability; and

(ii) minority communities in the area.

(3) The forum shall be involved in the organization of any major cultural activity taking place in the county.

(4) A person, organization, group of persons or member of a community may initiate a cultural activity or submit input on any cultural activity under consideration.

(5) A person, organization, group of persons or member of a community initiating a cultural activity shall notify the Department to enable it determine the magnitude of the activity and, where necessary, to convene the forum.

(6) The members of the public forum, except the Coordinator, will be appointed by the County Executive Committee Member following an election by the residents.

Protection of Cultural Articles and Activities**Determination of an Article of a Cultural Nature**

10. (1) The Department may, where necessary, determine whether an article is an article of a cultural nature 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 nature, the Department shall declare it to be an article protected under this Act.

Protection of Cultural Articles

11. The Department shall take measures that may be necessary to protect a cultural article or activity which may be endangered including—

- (a) the patenting, purchasing or registering of the article or activity;
- (b) licensing of persons or organisations producing or dealing with the articles or activity;
- (c) suspension of trade in the endangered article, for a given period; or
- (d) the management of the production and maintenance of the article or activity for a given period.

Patent or Copyright of a Cultural Article

12. The Department or the recognized elders of a community in the county may patent or register a copyright of a cultural heritage, article or activity.

Establishment of Cultural Industries

13. (1) The Department shall encourage the relevant 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.

Provisions Relating to Cultural Sites**Declaration of a Cultural Site**

14. (1) The Executive Committee Member responsible for cultural activities 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 Department may enter into a written agreement with any person, State organ, local community or organisation—

- (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

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

- (a) the patenting, purchasing or registering of the site;
- (b) licensing of persons or organisations dealing with the sites;
- (c) temporary closing of the endangered site for a given period; and
- (d) the management and maintenance of 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

16. (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

17. (1) The Department shall determine the times, dates and conditions under which a cultural site declared under section 20 is open to the public.

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

(3) The Department may grant to any person or persons, 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 by the shortest route available to the public.

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

(a) the maximum number of persons or vehicles that may be in or at a cultural site at any time; and

(b) classes of vehicles that may be in or at a cultural site

Notice Board at a Site

18. (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 17(4).

(2) No person, other than an authorised 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

19. 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) throw or roll a rock, stone, bottle or other object unless when required to dispose it in the designated place;

(c) unless authorised to do so, pull out, pick, cut, damage or have possession of any flora growing in the cultural site;

(d) walk on a flowerbed;

(e) walk, stand, sit or lie on grass in contravention of a notice;

(f) write, paint, draw pictures or a symbol, emblem or the like on a structure or path in the site;

- (g) excavate soil, sand or stone or remove organic or inorganic objects unless one is in possession of a permit issued in relation thereto;
- (h) interfere with or obstruct water flow, divert a stream or drain a wetland;
- (i) deface or disfigure anything within the site by pasting or affixing in any way any bills, papers, placards, notices or anything else;
- (j) wash, polish or repair a vehicle in the site, except emergency repairs;
- (k) burn refuse, litter or dump any refuse, garden refuse or building materials;
- (l) dispose of any burning or smouldering object contrary to the manner provided on the notice board ;
- (m) behave or conduct oneself in an improper, indecent or unbecoming manner;
- (n) enter or use a toilet facility indicated by notice for use by members of the opposite sex;
- (o) hunt, injure, disturb, feed, kill, hurt, follow, disturb, ill-treat or catch an animal, or displace, disturb, destroy or remove a bird, nest or egg, or skin or gut an animal, except where authorised to do so;
- (p) in any way inconvenience or prejudice the safety or rights of other persons on the site
- (q) enter or leave a cultural site other than by way of the official entry and exit or without having paid the entrance fees;
- (r) release or introduce any wild animal, fish, bird or flora into the site;
- (s) swim or catch fish if not authorised to do;
- (t) feed any fish without approval of the authorised officer; or
- (u) use any craft on inland waters at any place other than as indicated on the notice board.

(2) A person who contravenes a provision of subsection (1) commits an offence.

PART III—MISCELLANEOUS PROVISIONS

Register of Cultural Articles and Sites

20. 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.

Grant of Short-term Custody

21. (1) The Department may, with the approval of the Executive Committee Member and the community to which a cultural article belongs, grant short term custody of a cultural article, held in trust by it, to a person seeking to have the article.

(2) The short term custody of a cultural article shall be upon execution of an agreement specifying—

- (a) the period of custody not exceeding twelve months;
- (b) the monetary and cultural value of the article; and
- (c) the conditions of custody that may be agreed by the parties.

(3) The Department shall, in addition to the conditions specified in the agreement, require the person receiving the short-term custody to display it abroad, to pay surety or insure the article.

Offences

22. 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 a 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) or any other section under this Part is liable, on conviction to a fine not exceeding two hundred thousand shillings or to a term of imprisonment not exceeding two years or both.

(3) In addition to the penalty imposed under subsection (1) the offender, shall pay any expenses incurred by the county government as a consequence of the commission of the offence.

Power to issue Permit

23. The Department may issue permits relating to the management of cultural centres, sites or institution and the use flora or fauna of cultural

importance in accordance with the provisions of this Act and any relevant national legislation.

Declaration of National Cultural Article, Activity or Site

24. A cultural article, activity or site may be 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

25. 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

26. The Executive Committee Member may make regulations for the better carrying into effect of the provisions of this Act and without prejudice to the generality of the foregoing may prescribe—

- (a) the fees to be charged in respect of any license or permit in accordance with the relevant Act;
- (b) the form of applications for the licence or permit;
- (c) the form of records to be kept;
- (d) hours during which cultural sites may be open to the public;
- (e) conditions subject to which the Department may issue permits for private places of public entertainment, public amenities, camping sites or cultural sites; and
- (f) any matter that the executive member considers necessary for the administration of this Act

Powers of Entry by Police Officer or Authorised Officer

27. (1) A police officer or authorised officer appointed for the purpose by the Executive Committee Member may, at all reasonable times, enter upon any cultural site in which there is reason to believe that any activity or event is being or is about to take place, with a view to ensuring that the provisions of this Act are complied with.

(2) Despite subsection (1), the inspector shall produce a valid identification document before entering any premises.

(3) A police officer or an authorised officer shall order any activity or event to cease immediately when satisfied that—

