

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

**HOMA BAY COUNTY BILLS, 2019**

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**THE HOMA BAY COUNTY CULTURAL HERITAGE BILL, 2019****A Bill for**

**AN ACT of the County Assembly of Homa Bay to identify, protect and promote culture activities in Homa Bay; to promote the knowledge, protection, enhancement and transmission of cultural heritage of Homa Bay; and for connected purposes**

**ENACTED** by the County Assembly of Homa Bay, as follows—

**PART I — PRELIMINARY****Short title and commencement**

1. This Act may be cited as the Homa Bay County Cultural Heritage Act, 2019 and shall come into operation upon publication in the *Gazette*.

**Interpretation**

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

“County Assembly” means the County Assembly of Homa Bay;

“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for matters relating to Cultural Heritage;

“County government” means the County Government of Homa Bay;

“Culture” means a way of life, especially the general customs and beliefs, of a particular group of people with indigenous roots or history in Homa Bay;

“Cultural heritage” means an expression of the ways of living developed by a community and passed on from generation to generation, including customs, practices, places, objects, artistic expressions and values.

“Department” means the County Government Department responsible for culture;

**Objects of the Act**

3. (1) The object of this Act is to—

- (a) give effect to the constitution as regards cultural practices;
- (b) protect, preserve, conserve and promote the county’s cultural heritage, its property and histories;
- (c) establish and strengthen cultural institutions;
- (d) protect cultural workers and ensure their professional development and well-being; and
- (e) establish and maintain a financially sustainable mechanism for

the development, protection and promotion of cultural activities;

(2). The rights and duties conferred by this Act are in addition to those conferred by any other applicable law.

#### **Guiding Principles and Values**

4. The County Executive Committee member and any person applying this Act shall be guided by the principles and values set out in Articles 10 and 232 of the Constitution.

### **PART II—POLICY, COORDINATION AND OVERSIGHT OF CULTURAL ACTIVITIES**

#### **Responsibilities of the county government**

5. It shall be the responsibility of the county government to—

- (a) safeguard the cultural heritage of the county;
- (b) ensure respect for the cultural heritage of the communities, groups and individuals concerned;
- (c) protect and promote the diversity of cultural expression;
- (d) create conditions for cultures to flourish and to freely interact in a mutually beneficial manner;
- (e) encourage dialogue among persons of different cultures with a view to ensuring inter-cultural respect and promoting a culture of peace in the county;
- (f) give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning;
- (g) uphold the constitutional provisions to preserve the dignity of individuals, groups and communities irrespective of their cultural beliefs;
- (h) provide a framework under which communities within the county will receive compensation or royalties for the use of their cultures and cultural heritage.

#### **Powers and Duties of County Executive Committee member**

6. (1) Subject to the provisions of this Act, the County Executive Committee member shall exercise control and provide guidance over cultural activities, and the implementation of this Act.

(2) Without prejudice to the generality of the foregoing, the County Executive Committee member shall be responsible for—

- (a) in relation to the repository and for the purpose of collecting and compiling information relating to cultural activities;
  - (i) the primary registration of cultural activities within the

- county for the purposes of recognition under this Act;
- (ii) the receipt, documentation, storage and updating of information relating to cultural activities from communities within the county;
- (b) the protection and promotion of cultural activities of communities within the county; and
  - (c) the facilitation of collaboration, access to or the sharing of information and data relating to cultural activities between county governments.
  - (d) the protection of cultural practices from misuse and misappropriation; and
  - (e) the facilitation of access to information and the sharing of information and data relating to cultural activities.
- (3) For purposes of securing broad support for cultural heritage related activities, the County Executive Committee member, in performance of functions and duties under this Act—
- (i) may consult with other executive departments, public agencies or agencies of the county government whose functions affect or relate to cultural activities;
  - (ii) may consult with relevant non-governmental entities, including private sector and research institutions; and
  - (iii) shall secure public participation, including setting up, through regulations, of specific mechanism for regular engagement of stakeholders on policy matters

### **PART III—ADMINISTRATION OF CULTURAL ACTIVITIES**

#### **Department of Cultural Heritage**

7. (1) The county government department responsible for cultural activities shall oversee the administration of cultural activities within the county.

(2) The department shall be the primary planning, programming, coordinating, implementing and regulatory county government agency in the protection and promotion of cultural activities.

(3) The department shall be headed by a Director of Cultural Heritage, who shall be competitively recruited and vetted by the County Public Service Board, in accordance with its guidelines and regulations.

(4) A person shall not qualify for appointment as Director, under this Act, unless such a person—

- (a) is a citizen of Kenya

- (b) holds a degree from a university recognized in Kenya in any cultural activities related discipline
- (c) has at least seven (7) years' experience at senior management level in a relevant field
- (d) meets the requirements of Chapter 6 of the Constitution

(5) The Director, appointed under subsection (2), shall be responsible for performance of the specific duties and functions of the department set out in subsection (7) below

(6) The Department shall operate under the direction of the County Executive Committee member, and provide advice on matters of legislation, policy, coordination, and the performance of the department.

(7) Without prejudice to the generality of the foregoing subsection, the department shall perform the following duties and functions—

- (a) advise the county government on matters relating to culture;
- (b) serve as a link between the national government, the county government, communities, groups and individuals;
- (c) establish, facilitate and support community cultural centers;
- (d) oversee the co-ordination of county cultural activities;
- (e) conduct and facilitate civic education in order to stimulate public discussion and awareness of pertinent issues relating to culture;
- (f) determine what constitutes an item of cultural interest;
- (g) assist communities, groups and individuals to patent or otherwise protect items of cultural interest;
- (h) do such other things as may be incidental or conducive to the attainment of the objects for which it is established.

(8) The County Executive Committee member shall, in consultation with the County Public Service Board, determine the staff establishment required for the department to effectively perform its functions under this Act human resource management plan, including grievance mechanisms.

#### **Financial sustainability of the Department**

8. (1) All funds of the department, and all revenues arising from provision of services by the department, shall be used solely for the purposes of protection and promotion of cultural activities.

(2) In order to ensure commercial viability and financial sustainability of the department, the County Executive Committee member and the Director shall annually agree on performance indicators for fulfillment by the department in execution of its mandate, including but not limited

to —

- (i) investment planning on infrastructure and asset development;
- (ii) Options for Public-Private Partnerships where necessary;
- (iii) strategies for full operations and maintenance cost coverage; and
- vi) human resource management plan, including grievance mechanisms.

#### **County funds for cultural activities promotion**

9. (1) The department shall annually make proposals to the County Executive Committee member on areas of cultural activities promotion required.

(2) The County Executive Committee member shall consider the proposals, in line with County development needs, priorities, and planning, and may recommend utilization of County funds for agreed activities to the County Assembly.

#### **Public Private Partnerships**

10. The department may pursue public private partnership options for the protection and promotion of cultural activities, subject to the provisions of national law

#### **Monitoring and Evaluation**

11. The County Executive Committee member shall undertake monitoring and evaluation of the department in the performance of its functions.

### **PART IV— PROTECTION OF CULTURAL HERITAGE**

#### **Protection of cultural heritage**

12. (1) The protection of cultural heritage under this Act shall relate to cultural activities of whatever mode or form, which are—

- (a) characteristic of a community's cultural identity and cultural heritage and have been maintained, used or developed by such community in accordance with the customary laws and practices of that community;
- (b) generated, preserved and transmitted from one generation to another, within a community, for economic, ritual, narrative, decorative or recreational purposes;
- (c) individually or collectively generated;
- (d) distinctively associated with or belongs to a community; and
- (e) integral to the cultural identity of community that is recognized as holding the knowledge through a form of custodianship,

guardianship or collective and cultural ownership or responsibility, established formally or informally by customary practices, laws or protocols.

**Protection of cultural heritage not subject to any formality**

13. (1) The protection of cultural heritage shall not be subject to any formality.

(2) Notwithstanding subsection (1), the county government may collect information and register cultural heritage of a community for the purposes of recognition.

(3) The registration under subsection (2) shall be undertaken willingly by a community upon obtaining prior informed consent.

(4) Where more than one community share the same culture, the county government shall register the communities and maintain relevant records.

(5) Registration shall have a mere declaratory function and may not in itself confer rights.

**Right to protection of cultural heritage**

14. A community registered under this Act shall have the right to protection of their cultural heritage.

**Rights conferred to registered communities**

15. (1) A community registered under this Act shall have the exclusive right to—

- (a) authorize the use of their culture; and
- (b) prevent any person from exploiting their culture without their prior informed consent.

(2) In addition to all other rights, remedies and action available, the owners shall have the right to institute legal proceedings against any person who exploits a culture without the community's permission.

(3) A community registered under this Act may make and adopt its community rules prescribing the procedures for the authorization of the exploitation of their culture.

(4) The rules shall be submitted to the county government during the registration of the community.

**PART VI—GENERAL PROVISIONS**

**Conduct of Employees of the Department**

16. (1) Employees of the department shall have immunity from liability and prosecution for any losses to the department, arising from



actions taken in good faith, in execution of lawful duties.

(2) Notwithstanding (1) above, any actions of employees of the department involving solicitation and receiving of bribes and corrupt practices shall be punishable, as appropriate, under Public Officer Ethics Act, Penal Code, or the Anti-Corruption and Economic Crimes Act.

(3) It is an offence for an employee of the department to willfully fail to perform their duties, when lawfully assigned to them.

(4) A person shall, upon conviction for the offences specified in (3), above, be liable to a sentence not less than three months, or a fine not exceeding fifty thousand shillings, or both.

#### **Impersonation of Department Staff**

17. Any person impersonating an employee of the department for purposes of misrepresenting themselves as being able to perform a function on behalf of the department, shall be guilty of an offence, and upon conviction, liable to a sentence of not more than one year, or a fine not exceeding fifty thousand shillings, or to both.

#### **Obstruction/misrepresentation**

18. (1) A person shall not knowingly obstruct or make a false or misleading statement to any authorized officer who is carrying out duties under this Act.

(2) Any person who contravenes the provisions of this section commits an offence and upon conviction is liable to imprisonment for a term not exceeding one year, or a fine not exceeding fifty thousand shillings, or both.

#### **Regulations**

19. (1) The County Executive Committee member may make regulations for the better carrying out of the provisions of this Act.

(2) Regulations made under this Act shall be subjected to public, consultations, and approval by the County Assembly.

**MEMORANDUM OF OBJECTS AND REASONS**

The purpose of this Memorandum is to request the County Assembly's consideration and approval of the Homa Bay County Cultural Heritage Bill, ~~2018~~ and its direction that the Bill be introduced in the County Assembly. ~~2018~~ <sup>2019</sup>

With the promulgation of the new constitution and advent of devolution, the constitution of Kenya, 2010 distributed functions between the national government and county governments. Part 2, paragraph 4 of the Fourth Schedule includes cultural activities among the county functions.

Homa Bay's rich cultural heritage especially being a regional tourist, cultural and economic hub should be upheld at whatever cost. It is in view of the above that the County Government of Homa Bay finds it prudent to deal firmly with this issue by complimenting the national government through County legislation intended to protect, preserve, promote and develop cultural activities.

PART I—This Part is preliminary. It contains provisions on the name of the proposed Act, interpretation of words used in the Bill, objects of the Bill and the guiding principles and values and principles to be adhered to.

PART II—This part contains provisions on policy, coordination and oversight of the cultural activities.

It among others elaborates on the responsibilities of the county government and the powers and duties of the county executive committee member responsible for culture.

PART III—This Part dwells on service delivery. It establishes the Cultural Heritage Department which will deliver services through various avenues such as public private partnerships, monitoring and evaluation.

PART IV—This part contains general provisions relating to conduct of employees of the Department, offences, county executive committee member power to draft regulations among other provisions.

**Statement of the delegation of legislative powers and the limitations of fundamental rights and freedoms**

The Bill does not delegate legislative powers neither does it limit any fundamental right and freedom.

**Statement of how the Bill concerns county government.**

The constitution of Kenya, 2010 distributed functions between the national government and county governments. Part 2, paragraph 4 of the

Fourth Schedule includes cultural activities among the county functions.

**Statement as to whether the Bill is within the meaning of Article 114 of the constitution**

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

**Statement of financial implication**

The Bill has no financial implication whatsoever.

Dated the 18th July, 2019.

NANCY ANYANGO,  
*Chairperson Tourism, Culture, Sports and Social Services.*