

MARSABIT COUNTY CULTURAL HERITAGE BILL, 2018

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A Bill for

AN ACT of the County Assembly of Marsabit to promote and protect culture and cultural heritage in the county and for connected purposes.

ENACTED by the County Assembly of Marsabit as follows-

PART 1 – PRELIMINARY

Short title 1. This Act may be cited as the Marsabit County Cultural Heritage Bill, 2018.

Interpretation 2. In this Act-

"**authorised officer**" means an officer appointed under section 5;

"**cultural activity**" means an activity which by its nature, use or purpose embodies or 'conveys a cultural expression,;

"**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 government department responsible for matters relating to cultural heritage ;

"**Executive Committee Member**" means the Executive Committee Member for the time being responsible formatters relating to 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;

Objects of the 3. The objects of this Act are to:

Act a) regulate, protect and promote cultural sites and cultural activities for the interest and enjoyment of the community and persons visiting the county:

(a) ensure respect for and safeguard the culture and cultural heritage of the communities, groups and individuals in the county;

(b) create awareness of the culture and cultural heritage in the county through the promotion of cultural goods, services and activities;

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

Responsibilities of Directorate 5. (1) Directorate shall be responsible for the protection and promotion of cultural sites, cultural activities and cultural heritage within the county.

(2) The Directorate 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 as well as the archiving of historical records and artefacts;

(d) promote 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 of pertinent issues relating to cultural articles,

and activities;

(g) where necessary determine activities which amount to cultural activities;

(h) assist communities, groups and individuals to patent, copyright or otherwise protect items of their cultural activity or heritage;

(i) 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 Directorate, 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

6. The Directorate shall 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 residents of the county; and

(c) Cultural activities, practices or rites which undermine human dignity are prohibited.

Establishment of cultural centres

7. (1) The Directorate shall establish at least one Cultural Centre in each sub-county.

2) The cultural Centre may 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 Directorate may approve.

Establishment of a cultural forum

8. (1) The Directorate shall establish at least one public cultural forum in each sub-county for the purpose of encouraging participation of the community in the cultural activities in the county.

(2) The public forum shall consist of-

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

(b) the official or officials of the directorate participating in the organization of the cultural activity ;

(c) a person nominated by the Executive Committee Member; and

(d) one person representing the interests of-

i). persons with disability;

ii). the gender ; and

iii). 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 Directorate to enable it determine the magnitude of the activity and, where necessary, to convene the forum.

Determination of article of a cultural nature

9. (1) The Directorate 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 Directorate shall declare it to be an article protected under this Act.

- Protection of cultural articles** 10. The Directorate 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 organizations 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** 11. The Directorate or any member of the county may patent or register a copyright of a cultural heritage, article or activity for the benefit of the county
- Establishment of cultural industries** 12. (1) The Directorate shall establish cultural industries of the patented or copyrighted articles or activities for the purpose of creating employment and other benefits for the community.
- (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 Governor may 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 Directorate 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 Directorate shall protect any cultural site which may be endangered including-
- (a) the purchasing or registering of the site;
 - (b) licensing of persons or organizations 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 Directorate and the Directorate 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 Directorate 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 Directorate 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 public cultural sites

16. (1) The Directorate shall determine the times, dates and conditions under which a cultural site declared under section 14 is open to the public.

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

(3) The Directorate 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 Directorate 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 Directorate may, depending on the size and nature of the cultural site, determine the maximum number of persons or vehicles that may be in or at a cultural site at any time; and classes of vehicles that may be in or at a cultural site.

Notice board at a site

17. (1) The Directorate 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

- 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) throw or roll a rock, stone, bottle or other object;
 - (c) unless authorised to do so, pull out, pick, cut, damage or have possession 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, , 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 **19.**The Directorate 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 **20.**(1) The Directorate 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 Directorate shall, in addition to the conditions specified in the agreement, require the person receiving the short term custody for display outside the county, to pay surety or insure the article.

Offences **21.** A person 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

Commits an offence.

(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

22. The Directorate t 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 county or national cultural article, activity or site

23. A cultural article, activity or site may be declared a county or national cultural article, activity or site after discussions and negotiations between the county government and the relevant national authority.

24.1)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.

2) The Regulations must comply with objectives of this Act

- Powers of entry by police officer or authorised officer
- 25.** (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
- (a) the activity or event is being performed or presented contrary to the provisions of this Act; and
 - (b) there is clear and present danger to the members of the public.
- (4) A person preventing or obstructing a police officer, or authorized officer acting under subsection (1) commits an offence.
- General penalty
- 26.** A person who is convicted of an offence under this Act, for which no other penalty is provided shall, on conviction, be liable to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months or both.

MEMORANDUM AND OBJECTS OF 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 the County.

PART I (Clauses 1-4) contains preliminary matters.

Clauses 1 and 2 set out the short title of the Bill and interpretation of the terms respectively while clauses 3 and 4 provide for the Objects of the Bill and the scope and applications respectively.

PART II (Clauses 5-19) provides for the protection and regulation of cultural activities and heritage.

Clause 5 provides for authorised officers whose responsibility is to oversee the activities taking place in cultural sites in accordance with the Act. Clause 6 outlines the responsibilities of the county government with regard to cultural activities while clause 7 provides for protection of individuals from being forced to participate in cultural activities. Clause 8 provides for establishment of cultural centres and sets out their objectives while clause 9 provides for establishment for a cultural forum.

Clause 10 provides for determination of an article of a cultural nature while clause 11 provides for their protection. Clause 12 provides for patent or copyright of a cultural article while clause 13 provides for the establishment of cultural industries. Clause 14 provides that 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 which will be protected under the Act while clause 15 provides for protection of those cultural sites.

Clause 16 and 17 provide for private cultural sites and admission to cultural sites respectively. Clause 18 requires the Department to erect a notice board at the entrance or within a reasonable distance from the entrance of a cultural site indicating the activities that are carried out in the site while Clause 19 outlines the condition of entry in the site.

Part III (Clauses 20-28) set out the miscellaneous provisions.

Clause 20 requires the Department to keep a register of all articles of a cultural nature and cultural sites declared under this Act while clause 21 is on grant of short term custody to a person seeking to have the article. Clause 22 makes provision on offences while clause 23 gives 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 provisions of this Act.

Clause 24 provides for declaration of a national cultural article, 16 The Marsabit County Cultural Heritage Bill, 2018 activity or site while clause 25 makes provision on protection from personal liability. Clause 26 is on regulations, clause 27 sets out the power of authorised persons to enter any cultural site to ensure compliance of the provisions of the Act while clause 28 sets out the general penalty.

Dated the2018

Hon. Qabale Huka,
Chairperson, Tourism, Culture, Gender and Social Services Committee
County Assembly of Marsabit

COUNTY EXECUTIVE COMMITTEE MEMORANDUM ON THE PROPOSED MARSABIT COUNTY CULTURAL HERITAGE BILL, 2018

1.0 PURPOSES

The purpose of this Memorandum is to seek approval from the County Executive members to approve the Marsabit County Cultural Heritage Bill, 2018 for submission to the County Assembly of Marsabit.

2.0 BACKGROUND

Article 11 of the Constitution of Kenya 2010 recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.

It stipulates that the state shall promote all forms of national and cultural expressions through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage under article 11 subsection 2(a).

The role of enacting legislation in regards to culture and heritage is vested with the County Assembly as provided under article 4 part 2 Schedule four of the constitution.

3.0 OUTLINE OF THE BILL

This Bill provides for the establishment of legal framework to promote and protect culture and cultural heritage in the county and for connected purposes. The Bill provides for the following preliminary provisions: short title, interpretation, objectives of Act and its application.

The substantive provisions of the Bill contains:

PART II contains provisions on protection and regulation of cultural activities and heritage.

This part sets out responsibilities of the county government, protection of individuals, establishment of cultural centres, establishment of a cultural forum, determination of article of a cultural nature, protection of cultural articles and sites among others.

PART III outlines the miscellaneous provisions including register of cultural articles and sites, grant of short term custody, offences, power to issue permit, declaration of national cultural article, activity or site.

Powers of entry by police officer or authorised officer and General Penalty are also set out under this part.

4.0 RECOMMENDATIONS

The County Executive Members are requested to:

- (a) note the content of this memorandum
- (b) approve the Marsabit County Cultural Heritage Bill, 2018 and;
- (c) authorize the CEC Tourism and Culture and to publish the Bill and present it to the County Assembly for enactment.