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2/24/23
COUNTY GOVERNMENT OF BUNGOMA



COUNTY ASSEMBLY OF BUNGOMA

THIRD ASSEMBLY-FIRST SESSION

A REPORT OF THE COMMITTEE ON GENDER, CULTURE AND SOCIAL WELFARE ON THE BUNGOMA COUNTY CULTURAL HERITAGE BILL, 2022

Clerk's Chambers

County Assembly of Bungoma

P.O BOX 1886-50200

BUNGOMA, KENYA

DECEMBER, 2022

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CHAPTER ONE

1.0 Preface

Mr., Speaker Sir, on behalf of the Members of the Committee on Gender, Culture and Social Welfare, it is my pleasure and duty to present to this House the Report of the committee on the Bungoma County Cultural Heritage Bill, 2022.

1.1 Committee's Mandate

Mr. Speaker Sir, the Committee on Gender, Culture and Social Welfare is constituted pursuant to the provisions of standing order No. (217) (1) of the County Assembly of Bungoma Standing Orders and executes its mandate in accordance with Standing Order (217) (5) which provides that the Committee's function shall be to-

- a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations, coordination, control and monitoring of budget;
- b) Consider quarterly reports of the assigned departments and report to the House within twenty-one (21) sitting days upon being laid;
- c) Study the programme and policy objectives of the effectiveness of the implementation;
- d) Study and review all county legislation referred to it;
- e) Study, access and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives;
- f) Investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;
- g) To vet and report on all appointments where the constitution or any requires the House to approve, except those under Standing Order 209(Committee on Appointments); and
- h) Make reports and recommendations to the House as often as possible, including recommendation of the proposed legislation.

1.2 Committee membership

Mr. Speaker Sir, the Committee on Gender, Culture and Social Welfare as currently constituted comprises the following Members:

1. Hon. Jack	Kawa	Chairperson
2. Hon. Abraham	Obama	Vice Chairperson
3. Hon. Joseph	Juma	Member
4. Hon. James	Mukhongo	Member
5. Hon. Sudi	Busolo	Member
6. Hon. Eunice	Yeko	Member
7. Hon. Metrine	Nangalama	Member
8. Hon. Florence	Juma	Member
9. Hon. Alfred	Mukhanya	Member
10. Hon. Jeremiah	Kuloba	Member
11. Hon. John	Wanyama	Member
12. Hon. Mourine	Wafula	Member
13. Hon. Godfrey	Wanyama	Member
14. Hon. Mildred	Barasa	Member
15. Hon. George	Kwemoi	Member

1.3 Acknowledgement

The Committee wishes to thank the offices of the Speaker and Clerk of the County Assembly of Bungoma for the support accorded to it that culminated to this report. Further, the committee is grateful to the Members of the Committee, their Commitment before and during the retreat which contributed immensely to the success of this report. The Committee also wishes to thank the secretariat for the support extended to it. Finally, the Committee is grateful to the Sponsor of the Bill Hon. Deputy Speaker, Stephen Wamalwa, for having introduced the Bill to the House and Members of the Public for their valuable input during the Public Participation exercise.

It is therefore my pleasure and honour, on behalf of the Committee on Gender, Culture and Social Welfare to table this report on the Bungoma County Cultural Heritage Bill, 2022 before this House.

Sign..........Date.....6/12/2022.....

HON. JACK KAWA; MCA BOKOLI WARD

CHAIRPERSON, COMMITTEE ON GENDER, CULTURE AND SOCIAL WELFARE

CHAPTER TWO

The Bungoma County Cultural Heritage Bill, 2022

2.1 Objects and Purpose of the Bill

The objects of the Bill are to regulate, protect and promote the following activities and services of County importance 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 for them;
- (h) upheld the constitutional provisions to preserve the dignity of the individuals, groups and communities irrespective of their culture beliefs; and
- (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 in consultation with the National Government.

2.2 Legislative Framework

2.2.1 International Conventions and the constitution of Kenya

Mr. Speaker Sir,

Kenya adheres to the United Nations Educational, Scientific and Cultural Organization (UNESCO) definition of culture as “that whole complex of distinctive spiritual material, intellectual and emotional features characterizing a society or social group. This definition encompasses art and literature, lifestyles, ways of living together, value accepted systems, traditions and believe. UNESCO has underscored the role of culture as an integral part of development of any nation.

Article 13 of the UNESCO Convention on the protection and promotion of the diversity of cultural expression(CPPDCE) enjoins state parties to integrate culture in their development policies,in particular,to achieve poverty eradication.

Further, Article 26 of the same Convention provides that cultural diversity, protection, promotion and maintenance of cultural diversity are essential requirement for sustainable development for the benefit and future generation.

The preamble to the Constitution of Kenya states that we the people of Kenya-

Are proud of our ethnic, cultural and religious diversity and are determined to live in peace and unity as one indivisible sovereign nation;

Are respectful of the environment which is our heritage and determined to sustain it for the benefit of future generations.

Article 11 of the Kenyan Constitution 2010 on culture:

- 1) recognises culture as the foundation of the nation and as a cumulative civilisation of the Kenyan people and nation.
- 2) The state shall-
 - a) 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;
 - b) recognise the role of science and indigenous technologies in the development of the nation;and
 - c) promote the intellectual rights of the people of Kenya.

Part 2 of the fourth schedule to the Constitution of Kenya provides for cultural activities as one of the functions of the County Governments.

The objects of the devolution of Government in chapter 11 of the Constitution includes fostering of national unity by recognizing diversity, recognizing the right of communities to manage their own affairs and to further development,protecting and promoting the interests and rights of the minorities and marginalized communities and promotion of social and economic development and the provision of proximate,easily accessible services throughout the country.

Mr. Speaker Sir, Article 185 of the Kenyan constitution 2010 provides that-

- 1) The legislative authority of a County is vested in, and exercised by, its County Assembly.
- 2) A County Assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the County Government under the fourth schedule.
- 3) A County Assembly, while respecting the principle of the separation of powers, may exercise oversight over the County Executive committee and any other County Executive organs.
- 4) A County Assembly may receive and approve plans and policies for-
 - (a) the management and exploitation of the county's resources; and
 - (b) the development and management of its infrastructure and institutions.

2.2.2 Protection of Traditional Knowledge and Cultural Expressions Act.

Mr. Speaker Sir, Section 4 of the Protection of Traditional Knowledge and Cultural Expressions Act stipulates the responsibilities of County Governments on matters culture;

- (1) a County Government shall through the County Executive Committee Member responsible for matters relating to culture, be responsible for:
 - a) in relation to the repository and for the purpose of collecting and compiling information relating to traditional knowledge and cultural expression;
 - b) the preservation and conservation of traditional knowledge and cultural expressions;
 - c) the protection and promotion of the traditional knowledge and cultural expressions of communities within a county.
 - d) the facilitation of collaboration, access to or the sharing of information and data relating to traditional knowledge and cultural expression between county governments;
 - e) the allocation of financial resources for the promotion of cultural activities;
 - f) subject to the Act or any other law, the establishment of mechanism, for using culture as a tool for conflict resolution and promotion of cohesion.

2.2.3 Committal of the Bill to the Committee

The County Assembly of Bungoma Standing Order no: 140(1) provides that:

A Bill having been read a First Time shall stand committed to the relevant Committee without question put.

(2) The Sectoral Committee to which a Bill is Committed shall facilitate public participation on the Bill through an Appropriate mechanism, including-

- (a) Inviting submission of memoranda
- (b) holding public hearings
- (c) Consulting relevant stakeholders in the Sector and;
- (d) consulting experts on technical subjects

(3) The Sectoral Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.

Mr. Speaker Sir, it's on this basis that when this Bill was introduced to the House by a Hon. Member, Hon. Stephen Wamalwa, it was committed by the Hon. Speaker to the Committee on Gender, Culture and Social Welfare on 9th November, 2022 for processing and report back to the House.

The Committee held two meetings during which planning for the Bill was widely discussed. Members resolved to have the public participation conducted on 24th November, 2022.

2.2.4 Public Participation

The committee sought and received views from the public on 24th November, 2022 at Santa Mara hotel following the advert in the Daily Nation on 18th November, 2022. (Annex 1) and pursuant to the provisions of article 196(1) (b) of the Kenyan constitution 2010 which provides that:

A county Assembly shall facilitate public participation and involvement in the legislative and other business of the Assembly and its committees.

The public views were received in the following manner:

1. Oral submission during public participation forum
2. Written memoranda from stakeholders

These views have been considered by this committee and will form part of the amendment proposed by this committee to the Bill.

CHAPTER THREE

3.0 General overview of the Bungoma County Cultural Heritage Bill, 2022

Mr. Speaker Sir,

Bungoma County Cultural Heritage Bill, 2022 is divided into three parts with at least 28 clauses.

PART I

Mr. Speaker Sir,

Part one is the preliminary part and has four clauses from clause 1-4 touching on short title, interpretations, objects and purpose of the Bill and how the Bill shall be applied when it becomes an Act respectively.

PART II

Mr. Speaker Sir,

This part has a total of 15 clauses beginning from clause 5 to clause 19 of the Bill. The part talks about the protection and regulation of cultural activities and heritage.

It is divided into three areas touching on:

1. Administration of cultural heritage where it allows for appointment of knowledgeable and experienced officers to authorized officers to oversee the activities taking place in cultural sites under the Act.
2. Other matters include the responsibility of the County Government through the department or other agency, protection of the individuals, establishment of cultural centers and forums in the County.
3. Protection of Cultural Articles and Activities where determination and protection of articles of a cultural nature in the County is provided for, how such articles shall be registered and how cultural and creative industries shall be established in the County.
4. Provisions relating to Cultural Sites. This area deals with declaration and protection of Cultural Sites including private Sites in consultation with the national Government and how the public shall be admitted into such Sites.

PART III

Mr. Speaker Sir,

This part is on miscellaneous provisions. It gives authority to the department to develop, manage and keep a register of all traditional knowledge, cultural expressions, articles and sites declared under this Act, where license shall be granted on cultural articles of a community which are not being sufficiently exploited, the liability of offender, issuance of permits related to management of such cultural sites, declaration of National cultural articles, activity or site. It also gives power to the executive Committee Member to make regulations for better carrying into action the provisions of this Bill when it becomes an Act.

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

4.1 Committee Observations

1. The public raised the issue of lack of policy to cater for matters which have not been provided for in the Bill.
2. The public demonstrated vast knowledge of their culture and cultural heritage
3. The Bill contains some progressive provisions which will enhance the culture of communities involved i.e., registration of cultural articles, establishment of cultural centers and cultural forums
4. Whereas the Bill provides for a platform for consultation, the line of consultation is mostly with the national government and the community feels it has been left out.

4.2 Committee Recommendations

Mr. Speaker Sir,


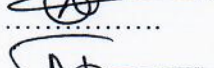

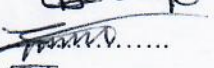
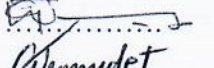
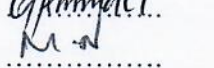
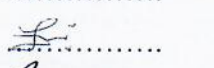
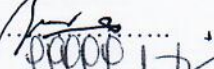
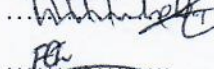
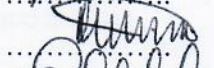
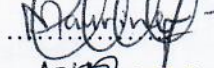




The Committee has come up with several additional proposals and amendments to the Bill in consideration of the stakeholders and public views. The additional proposals and amendments are herein attached and I urge this honourable House to deliberate and adopt them together with this report during the Committee of the Whole House.

Mr Speaker Sir, I beg to move the motion

Thank you.

ADOPTION SCHEDULE

We the undersigned members of the Committee on Gender, Culture and Social Welfare append our signatures adopting this report with the contents therein.

Name	Designation	signature
1. Hon. Jack Kawa	Chairperson	
2. Hon. Abraham Obama	Vice chairperson	
3. Hon. Joseph Juma	Member	
4. Hon. James Mukhongo	Member	
5. Hon. Isaiah Busolo	Member	
6. Hon. Godfrey Wanyama	Member	
7. Hon. George Tendet	Member	
8. Hon. Metrine Nangalama	Member	
9. Hon. Eunice Yeko	Member	
10. Hon. Alfred Mukhanya	Member	
11. Hon. Jeremiah Kuloba	Member	
12. Hon. Florence Juma	Member	
13. Hon. John Wanyama	Member	
14. Hon. Mourine Wafula	Member	
15. Hon. Mildred Barasa	Member	

SPECIAL ISSUE

Kenya Gazette Supplement No. 5 (Bungoma County Bills No.4)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

BUNGOMA COUNTY BILLS, 2022

NAIROBI, 7th March, 2022

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THE BUNGOMA COUNTY CULTURAL HERITAGE BILL, 2022
ARRANGEMENT OF CLAUSES

Clause

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

PART II—PROTECTION AND REGULATION OF CULTURAL
ACTIVITIES AND HERITAGE

Administration of Cultural Heritage

- 5—Authorised officers.
- 6—Responsibilities of the county government.
- 7—Protection of individuals.
- 8—Establishment of cultural centres.
- 9—Establishment of a cultural forum.

Protection of Cultural Articles

- 10—Determination of article of a cultural nature.
- 11—Protection of cultural articles.
- 12—Patent or copyright of a cultural article.
- 13—Establishment of cultural industries.

Provisions Relating to Cultural Sites

- 14—Declaration of cultural site.
- 15—Protection of cultural articles and sites.
- 16—Private cultural sites.
- 17—Admission to cultural sites.
- 18—Notice board at a site.
- 19—Conditions of entry.

PART III—MISCELLANEOUS PROVISIONS

- 20—Register of cultural articles and sites.
- 21—Grant of short term custody.

22—Offences.

23 —Power to issue permit.

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

25—Protection from personal liability.

26—Regulations.

27 —Powers of entry by police officer or authorized officer.

28—General Penalty.

“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;

“culture” means that set of features that includes knowledge, beliefs, arts, morals, lifestyles, customs, value systems, heritage, traditions and beliefs and any other capabilities and habits of a society or social group;

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

“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 and purpose

3. The objects of the Act are to regulate, protect and promote the following activities and services of county importance 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;

- (c) promote and facilitate research and recording of cultural history as well as the archiving of historical records and artifacts;
- (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 of pertinent issues relating to cultural articles, and activities;
- (g) where necessary determine activities which amount to cultural activities in consultation with stakeholders of that cultural community;
- (h) in consultation with the relevant stakeholders and the National Government, determine the compensation, royalties or other benefits to be received by communities or groups for the use of their culture, cultural goods, services, articles or cultural heritage;
- (i) assist communities, groups and individuals to protect items of their cultural activity or heritage;
- (j) develop and manage a county database of cultural activities;
- (k) promote cultural activities, public entertainment and infrastructure for cultural heritage and cultural expression;
- (l) support programmes to identify, nurture and promote creative talents;
- (m) put measures to ensure the participation of the people in the development process to ensure development programmes are responsive to the peoples' needs;
- (n) support programmes to identify, nurture and promote creative talents;
- (o) provide institutional framework to support cultural industries;
- (p) do such other things as may be incidental or conducive to the attainment of the objects of this Part.

(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.

- (2) The public forum shall consist of—
- (a) members of the community in whose immediate area a cultural activity under discussion is to take place;
 - (b) the official or officials of the departments participating in the organization of the cultural activity ;
 - (c) a person nominated by the Executive Committee Member; and
 - (d) persons representing the interests of—
 - (i) persons with disability;
 - (ii) the gender in minority;
 - (iii) minority communities in the area; and representatives of youth and artistes.
- (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.

Protection of Cultural Articles and Activities

Determination of 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-Provided that—

- (a) the article is not declared to be a National Cultural article; and
- (b) the determination is made in consultation with the National Government.

(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 purchasing or registering of the article or activity;

- (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 in consultation with the National Government 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 in 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 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.

- (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 smoldering 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 authorized 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 authorized to do;
- (t) feed any fish without approval of the authorized 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. (1) The Department shall develop, manage and keep a register of all traditional knowledge, cultural expressions, cultural articles 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.

of cultural importance in accordance with the provisions of this Act and 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 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 Bill was done in good faith for the purpose of carrying out the provisions of this Bill or any other law, subject the person to any liability, action, claim or demand as long as the said Act is in line with the Constitution and the Public Officer code of conduct.

Regulations

26. The Executive Committee Member may make regulations in consultation with the National Government 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 license 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 authorized officer

27. (1) A police officer or authorized 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 Bill are complied with.

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

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 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 terms respectively while clause 3 and 4 provide for the objects of the Bill and the scope and application 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 these 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



THIRD ASSEMBLY SECTORAL COMMITTEES

In the Matter of Article 196 (1) (b) of the Constitution and County Assembly of Bungoma
Standing Order 140 (3)

In the Matter of Consideration by the County Assembly of Bungoma on:-

1. Bungoma County Cultural and Heritage Bill, 2022
2. Bungoma County Equitable Development Bill, 2022
3. Bungoma County State of The County Address Bill, 2022

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Article 196 (1) (b) of the Constitution of Kenya provides that "A County Assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and its Committees." County Assembly of Bungoma Standing Order 140 (3) provides that "the Sectoral Committee shall take into account the views and recommendations of the public in its report to the House."

Pursuant to Article 196 (1) (b) of the Constitution of Kenya and County Assembly of Bungoma Standing Order 140 (3) the Clerk of the County Assembly of Bungoma hereby invites members of the public and relevant stakeholders to submit memoranda on the above Bills as per the schedule below:

S/No	NAME OF THE BILL	COMMITTEE IN CHARGE	VENUE	DATE	TIME
1.	Bungoma County Cultural and Heritage Bill, 2022	Gender, Culture and Social Welfare	Santa Mara Hotel, Bungoma	24/11/2022	9: 00 a.m- 12: 00 p.m
2.	Bungoma County Equitable Development Bill, 2022	Finance and Economic Planning	Santa Mara Hotel, Bungoma	25/11/2022	9: 00 a.m- 12: 00 p.m
3.	Bungoma County State of The County Address Bill, 2022	Public Administration	Santa Mara Hotel, Bungoma	25/11/2022	2:00 p.m- 5:00 p.m

Copies of the Bills are available at the County Assembly website: www.bungomaassembly.go.ke

The memoranda should be addressed to the Clerk of the County Assembly, P.O Box 1886-50200 BUNGOMA; hand-delivered to the Office of the Clerk, County Assembly Building, Bungoma, or www.bungomaassembly.go.ke; to be received on or before Thursday 24th November,

PROPOSED COMMITTEE AMENDMENTS TO THE BUNGOMA COUNTY CULTURAL HERITAGE BILL, 2022.

The committee having considered the Bill clause by clause and submissions by the various stakeholders propose the following amendments to the Bungoma County Cultural Heritage Bill, 2022: -

1. That Clause 2 of the Bill be amended by deleting the interpretation of the word “vehicle”.

Justification

The meaning of the word is clear and therefore it does not require interpretation.

1. Clause 3

THAT Clause 3 of the Bill be amended –

(a) by deleting the words “regulate, protect and promote the following activities and services of county importance for the interest and enjoyment of the community and persons visiting the county” immediately after the words “Act are”.

(b) by deleting paragraphs (a) and (b) and substituting therefor the following new paragraph-

(a) “Regulate, protect and promote the cultural sites and cultural activities for the interest and enjoyment of the community and persons visiting the county.”

(c) by re-numbering the existing paragraphs (c), (d), (e), (f), (g), (h), (i) as (b), (c), (d), (e), (f), (g), respectively

Justification

(a) to ensure clarity of the provisions

(c) to ensure correct numbering occasioned by deletion of paragraphs (a) and (b) and insertion of a new paragraph (a).

2. Clause 4

THAT Clause 4 of the Bill be amended by inserting the words “or Acts of Parliament” immediately after the word “Constitution”.

Justification

to make provisions for the scope of the application of the Act to exclude the cultural sites which might be vested in the national government by virtue of the Acts of parliament.

3. Clause 5.

THAT Clause 5 of the Bill be amended-

- (a) by inserting the word “in consultation with the County public Service Board” after the word “Member”.
- (b) by deleting the word “County”.

Justification

In conformity with section 59 of the County Governments Act on the functions of the County Public Service Board.

4. Clause 6

THAT Clause 6 of the Bill be amended-

- (a) In paragraph (b) by inserting the word “thereto” immediately after the word “individual”
- (b) in paragraph (i) by deleting the words “items of” after the word “protect” and inserting therefore, the words “and promote their intellectual property relating to.”
- (c) by deleting paragraph (n).
- (d) by re-numbering paragraphs (o) and (p) as (n) and (o) respectively

Justification

- (a) to improve clarity of the provision
- (b) to facilitate the promotion and protection of the intellectual property rights of the communities in the county. The amendment is in line with the provisions of Article 11(2)(d) of the Constitution.
- (c) To correct repetition of provisions in the paragraphs
- (d) to conform to the changes in the numbering of the paragraphs occasioned by deletion of paragraph(n).

5. Clause 7

THAT Clause 7 of the Bill be amended-

in paragraph (a) by deleting the words “shall compel another” after the words “no person” and substituting therefor the words “is compelled”;

Justification

To enhance the clarity of the provision.

6.Clause 8

THAT Clause 8 of the Bill be amended-

(a) by deleting the words “establish cultural infrastructure and “after the word “shall”

(b) by inserting the word “establish” after the word “center”.

Justification

To enhance clarity of the provision

7.Clause 9

THAT Clause 9 of the Bill be amended by inserting the word “cultural “immediately after the word “public”

Justification

The clause proposes to establish a cultural forum.

8.Clause 11.

THAT head notes in Clause 11 of the Bill be amended by inserting the word “and activities “immediately after the word “articles”

Justification

The clause places an obligation on the department to protect a cultural article or activity which may be endangered. The amendment is therefore necessary to ensure that the head notes are consistent with the contents of the proposed section.

10.Clause 14

THAT Clause 14 of the Bill be amended by inserting the words “and members of the community” immediately after the word “Government”.

Justification

To foster inclusivity and enhance participation of members of the community on matters culture in the county. The amendment is in conformity with the tenets of the Constitution in particular, Article 10 on values and principles of governance.

11.Clause 17

THAT Clause 17 of the Bill be amended –

(a)In sub-clause (1) by deleting the expression “20” and substituting therefor the expression “14”;

(b) In subclause (5) by inserting the words “the cultural site, and a person ordered to leave “immediately after the word “leave”.

Justification

- a) To correct a clerical error.
- b) To correct a citation error.

12. Clause 22

THAT Clause 22 of the Bill be amended-

- (a) by deleting the words “commits an offence” and substituting therefore the word “who”
- (b) by inserting a new sub-clause (1)
 - (1) “A person who- “
- (c) In sub-clause (2) by deleting the words “or any other section under this part” appearing after the words “under sub-section (1).
- (d) by deleting sub-clause (3).

Justification

- (a) to restructure the sentence in order to achieve the correct syntax.
- (b) the penalties apply to the offences committed under clause 22.

13. Clause 23

THAT Clause 23 of the Bill be amended by inserting the words “any relevant “after the words “this Act”.

Justification.

To make provision for the application of other national laws which have not been expressly mentioned in the Bill but may be referred to by the department when issuing permits.

16. Clause 25

THAT Clause 25 of the Bill be amended-

- (a) by deleting the words “as long as the said Act is in line with the Constitution and the Public Officers Code of Conduct”.

Justification

- (a) The Bill is in conformity with the Constitution and the relevant laws. The amendment thus seeks to cure verbosity in drafting of the provision.

17.Clause 27

THAT Clause 27 of the Bill be amended-

in subclause (2) by deleting the word “the inspector” after the article “the” and substituting therefor the words “such an officer”.

Justification

(a)to make reference to an officer under subclause (1) who is obligated to produce an identification certificate before entering any cultural site.

Dch
7.11.22
25/11/22

COUNTY GOVERNMENT OF BUNGOMA



COUNTY ASSEMBLY OF BUNGOMA
CLERK
25 NOV 2022
RECEIVED
P.O. Box 1886-50200, BUNGOMA

DEPARTMENT OF GENDER, CULTURE, YOUTH AND SPORTS
Office of the C.E.C.M

Telephone: 0725393939

County Executive Offices
Opp. Governor's Office 4th Flr
P.O BOX 437 - 50200
BUNGOMA

Our Ref: CG/BGM/MGC/CA/VOL. II (43)

Date: 25th November, 2022

The Clerk County Assembly
County Government of Bungoma
P O Box 1886-50200
BUNGOMA

Thro'

The County Secretary and Head of Public Service
County Government of Bungoma
P O Box 437 - 50200
BUNGOMA

COUNTY SECRETARY
BUNGOMA COUNTY GOVERNMENT
Forwarded On
Bungoma 25/11/22
Tel: 051 2030144
P. O. Box 437-50200, BUNGOMA

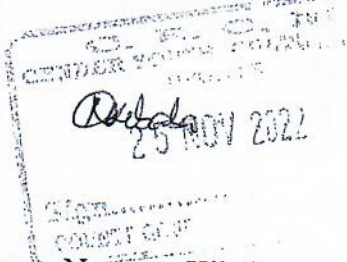
RE: SUBMISSION OF VIEWS ON THE CONSIDERATION OF BUNGOMA COUNTY CULTURAL HERITAGE BILL 2022

This is in reference to the letter No. BCACC/SEC/3/11 (108) dated 16th November, 2022 on the submission of views for consideration on the Bungoma County Culture and Heritage Bill.

The department wishes to submit as follows.

1. The title of the bill should read **"The Bungoma County Culture and Heritage Bill 2022"**
2. Section (3) of the proposed bill on objects and purpose should be amended to include the word preservation and therefor read "The objects and purpose of this act are to recognize, protect, promote, preserve and regulate the following activities and services of county importance for the interest and enjoyment of the community and persons visiting the county"

3. Provide a mandatory requirement for the establishment of a cultural festival and define its guiding principles including but not limited to: inclusion and involvement of all stake holders, all the six communities in Bungoma county, all cultural practioners etc
4. Include a provision on the establishment of the Bungoma County Cultural Advisory Council that shall have members drawn from the six indigenous communities in Bungoma and Diaspora/immigrants complete with representation of all cultural practioners i.e circumcisers, rain makers, black smiths, traditional birth attendants, crafters, herbalist, indigenous food industry, those with indigenous knowledge etc.
5. Highlight the six indigenous communities in Bungoma and ensure their inclusion and consultation in all the sections of the bill
6. Include cultural penalties in the offences in section 22.



Nancy NanyamaKibaba

CECM – GENDER, CULTURE, YOUTH AND SPORTS

BUKUSU COUNCIL OF ELDERS-KIMILILI BRANCH

THE KIMILILI CIVIL SOCIETY FORUM

TO: ~~GEC-MEMBER~~ CHAIRMAN - CULTURE
COUNTY ASSEMBLY

MINISTRY OF CULTURE AND SPORTS.

FROM: THE KIMILILI COMMUNITY.

DATE: 23/11/2022.

SUBJECT: OUR PROPOSAL TO PROPOSED BUNGOMA COUNTY CULTURAL HERITAGE BILL 2022

Kimilili civil society forum is an association of Kimilili civil societies. Bukusu council of elders-Kimilili branch is an association of Kimilili Bukusu elders.

On behalf of the Kimilili community we write this memorandum to appreciate and thank the drafters of the bill for the good work done.

We also appreciate the good will by the County government for this good initiative and intentions, we wish to request the duty bearers to fast track this good process so that the bill translates into an act within the shortest time possible.

However we noted a few issues that we wish to be addressed before the bill proceeds to the *next level*

Our issues are as follows;

- i. Clause 3- we support the objects to the act in totality. This serve on interest and community at large.
- ii. Part (i) clause 5- authorized officers
We propose this clause to be reframed as; the executive committee member shall by notice in the county gazette in consultation with the council of elders appoint such number of officers with knowledge and experience in culture to be authorized officers to oversee the activities taking place in the cultural sites under this act.
- iii. ^{Clause} Article 10 sub section 1 should be written as the department in consultation with the council of elders may when necessary determine whether an article is of cultural nature taking into consideration its usage, historical significance and any other relevant matter.
- iv. Article 14 sub section 1 should be written as; executive committee member responsible for cultural activities may after consultation with the National government and the council of

Clause 5, 10, 14, 15, 16, 21

elders 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.

- v. Article 15 sub sections 1 should be written as; the department in consultation with national government and the council of elders shall take measures that may be necessary to protect any cultural site of the county importance which maybe endangered.
- vi. Article 15 sub section 2 should be written as; if the owner of a private cultural site desires to sell the site the owner shall inform the department and the department in consultation with the council of elders should have the first priority to purchase the site.
- vii. Article 16 sub section 1 should be written as; the council of elders and the person whose land a cultural sport or property is situated may request the department to declare the sport or property a cultural site and shall apply to the management of sport or property as a cultural site.
- viii. Article 21 sub section 1 should be written as; where the cultural articles of a community are not being sufficiently exploited the department in liaison with the council of elders may with the approval with the executive committee member and the community to which the cultural article belongs grant a license for exploitation
- ix. Article 22 sub section 2; the penalty is too lenient and allows for impunity we therefore propose a harsher penalty and also the offender shall suffer the cultural penalty.
- x. Article 26 should read; executive committee member may make regulations in consultation with the national government, council of elders, civil society, the other stake holders for better carrying into effect of the provision of this act and without prejudice the generally of the foregoing may prescribe.

We are looking forward for your consideration of our proposal into this very good bill.

NAME	ORGANISATION	ID NUMBER	PHONE NO.	SIGNATURE
ENOS WAMALA	PAC	13660253	071449230	Enos
WANTONY/BWESA	BUKUSU ELD	2086221	0722739661	Besa
GEORGE SIMWAYI	"			
ELIAS WANJALA	"			
EMILY SIMIYO	PAC	14614952	011212110	Emily

Committee Clerk
Gender & Culture
28/11/22
7-1A
22/11/22
COUNTY ASSEMBLY OF BUNGOMA
CLERK
NOV 2022
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1386-50200, BUNGOMA.

**MEMORANDUM TO THE COUNTY ASSEMBLY OF BUNGOMA IN
RESPONSE TO A CALL ON PUBLIC PARTICIPATION ON THE
BUNGOMA COUNTY CULTURAL HERITAGE BILL 2022**

BACKGROUND

Rural Agency for Community Empowerment and Sustainability (RACES) is a registered Civil Society Organization working in the areas of Human rights, democracy and Governance in Bungoma County and its environs. We do these through civic education & Public participation programmes in promotion of good governance practices.

Having gone through the Bill, we wish to submit as follows:-

- (1) Looking at the definition;
Heritage – Practices that are handed down from the past by tradition and
Culture – Ideas, customs and social behavior of a particular people.
 - The bill to read: **The Bungoma County Culture and Heritage Bill, 2022**

- (2) PART II: This part to read:
Recognition and protection of Cultural activities and Heritage.
 - The rationale here is that introducing the word “Regulation at this point is inconsistent with the framework of the bill which will require regulations to operationalize some sections once passed into law. Section 26 speaks on this Bill speaks about it.

- (3) Bungoma County Cultural heritage Bill
To read:
A Bill for
An Act of the county Assembly of Bungoma to recognize, protect and promote Culture and Heritage in the County and for connected purposes.



Develop. Sustain

- (4) PAGE 4 Objects & Purpose
To read: **The objects of the Act are to recognize, protect and promote the following activities and services of County importance for the interest and enjoyment of the community and persons visiting the County:- Include indigenous knowledge and ideas.**
- (5) PART II - PAGE 5
To Read: **Recognition and protection of Cultural activities and Heritage**
- (6) Section 6 – Responsibilities of the County Government;
- (7) Include promotion of indigenous knowledge and ideas(**under sub-section 1**)
- (8) Section 14: - Declaration of cultural sites.
To read: **The County Executive Committee Member in charge of cultural activities may, after consultation with community of practice and working in collaboration with other relevant Counties & National Government and after taking into consideration the usage, historical significance and other relevant matters relating to the site, declare any site to be a cultural site protected under this Act.**
- (9) We propose the establishment of Bungoma county Culture and Heritage Council which is;

A body established by the County Executive Committee Member in charge of cultural activities to advice on the implementation of the objects of this Act whose composition reflects the cultural diversities of the County including diaspora, women, youth, Persons Living with Disabilities and religious groups including indigenous ones .

NAME: MUKENYA M. JOHN

SIGN

CONTACT: 0724 234 246/ 0733480625

DATE:

24/11/2022

EMAIL: races.africa1@gmail.com