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THE HERITAGE AND MUSEUMS BILL, 2021**A Bill for**

AN ACT of Parliament to provide for the conservation, preservation, protection, research and management of cultural and natural heritage at national and county levels of Government; and for connected purposes

ENACTED by Parliament of Kenya, as follows—

PART 1 – PRELIMINARY

1. This Act may be cited as the Heritage and Museums Act, 2021. Short title.

2. In this Act – Interpretation.

“ancient” means an object, building or remains of a building, which being of historical age, is designated for preservation and protection under this Act;

“antiquity” means any movable object but excludes a book or document made in Kenya or imported into Kenya before the year 1895, or any human remains, faunal or floral remains of similar minimum age which exists in Kenya:

“Board” means the Board of the National Museums of Kenya appointed under section 8;

“Cabinet Secretary” means the Cabinet Secretary responsible for national heritage, ancient and national and historical monuments of national importance and antiquities;

“County Executive Committee member” means the County Executive committee member responsible for matters relating to county cultural heritage and museums;

"county museum" means a museum vested in a County;

“cultural heritage” means –

(a) monuments;

(b) architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of

universal value from the point of view of history, art or science;

- (c) groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding value from the point of view of history, art or science;
- (d) works of humanity or the combined works of nature and humanity, and areas including archaeological sites which are of outstanding value from the historical, aesthetic, ethnological or anthropological point of view; and;
- (e) objects of archaeological or paleontological interest, objects of historical interest and protected objects;

“Director-General” means the Director-General of the National Museums of Kenya appointed under section 18;

“exploration licence” means an exploration licence issued under section 40;

“export permit” means a permit to export a monument or part thereof, an antiquity or a protected object, issued by the Cabinet Secretary pursuant to section 65;

“heritage” includes cultural and natural heritage;

“maintenance” includes the fencing, covering in, repairing, restoring and cleansing of a monument or the fencing or covering of a protected area, and the doing of any act which may be necessary for the purpose of maintaining or protecting a monument or a protected area or of securing convenient access thereto;

"museum" means a public or private institution which collects, preserves, analyses and exhibit objects of cultural and natural heritage;

“monument” means –

- (a) a place or immovable structure of any age which, being of historical, cultural, scientific, architectural, technological or other human interest is declared by the Cabinet Secretary to be a monument;

- (b) a rock-painting, carving or inscription made on an immovable object;
- (c) an ancient earthwork or other immovable object attributable to human activity;
- (d) a structure which is of public interest by reason of the historic architectural, traditional, artistic or archaeological interest attached to it and is declared by the Cabinet secretary to be a monument; or
- (e) a shipwreck more than fifty years old;

and such adjoining land as may be required for maintenance thereof;

“natural heritage” means —

- (a) natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;
- (b) geological features and landscapes or physiographical formations of special significance, rarity or beauty;
- (c) specifically, delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science, conservation or natural beauty; or
- (d) areas which are of religious significance, use or veneration;

“National Museums” means the National Museums of Kenya established in section 3 of this Act;

"national museum" means a museum vested in the National Museums of Kenya;

“national heritage centre” means a national heritage centre established in accordance with section 38;

“national heritage inventory” means the national heritage inventory;

“object of archaeological or paleontological interest” means an antiquity which was in existence before the year 1800;

“object of historical, cultural or scientific interest” means an object which came into existence in or after the year 1800;

“open space” means an open space not built upon in any urban or peri-urban area whether in a municipality or not to which the public has access and which may be used for parks, gardens, recreation grounds or any other use;

“owner” includes a joint owner vested with powers of management on his own behalf and other joint owners, and an agent or trustee exercising powers of management over a monument, and the successor in title of any such owner, the successor in office of any such agent or trustee; but nothing in this Act shall be deemed to extend the powers which may be lawfully exercised by the owner, agent or trustee;

“private land” means land privately owned and land the subject of a grant, lease or licence from the government in accordance with Article 64 of the Constitution and includes Trust land;

"protected area" means a site which has been and remains declared by the Cabinet Secretary under section 47 to be a protected area;

“protected building” means a building of special architectural or historical interest declared by the Cabinet Secretary to be protected building and includes any object or structure fixed to the building;

“protected object” means;

- (a) a door or door frame carved in an African or Oriental style before the year 1946;
- (b) any other object or type of object, whether or not part of an immovable structure, which being of historical or cultural interest has been and remains declared by the Cabinet Secretary to be a protected object; and
- (c) any material of biological and paleontological nature declared by the Cabinet Secretary to be a protected object;

“repository” means a place where things of national importance, of scientific, cultural, natural; technological and human interest are kept for safe keeping;

“safeguarding” means any measure taken by a county, community, social group or individual, aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

“standards” means best practices, guidelines and generally accepted level of attainment that all museums are expected to achieve for heritage management;

“tradition” means a belief or behavior with symbolic meaning or special significance with origins in the past and passed down within a society or social group with symbolic meaning or special significance with origins in the past;

“traditional knowledge” means any knowledge originating from a local or traditional community that is the result of intellectual activity and insight in traditional context, including knowhow, skills, innovations, practices and learning where knowledge is embodied in the traditional lifestyle of the community, or contained in the codified knowledge systems passed from one generation to another; and

“world heritage site” means a site listed by The *United Nations Educational, Scientific and Cultural Organization (UNESCO)* World Heritage Committee as a world heritage site.

PART II – ESTABLISHMENT OF THE NATIONAL MUSEUMS OF KENYA

3. There is established the National Museums of Kenya, a corporate body, with perpetual succession and a common seal and which shall in its corporate name be capable of -

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; or

Establishment of
the National
Museums.

- (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

4. (1) The headquarters of the National Museums shall be in Nairobi.

Headquarters of the National Museums of Kenya.

(2) The National Museums shall decentralize its services to all counties for the proper implementation of this Act.

(3) The National Museums may establish such regional research institutes or national heritage centres, as it considers necessary for the effective performance of its functions.

5. The functions of the National Museums shall be to

Functions of the National Museums of Kenya.

—

- (a) identify, acquire and record ancient and historical monuments and sites that are of national importance for inclusion in the national heritage inventory;
- (b) serve as a national repository for things of scientific, natural, cultural, technological and human interest that are of national importance including maintaining the national biodiversity inventory;
- (c) protect and conserve heritage sites of national and global importance and attributes therein, including global biodiversity;
- (d) undertake research in fields of ancient, historical, scientific, cultural, natural, technological, biomedical and human interest;
- (e) disseminate and transmit knowledge from research on cultural heritage, natural heritage, biomedical, ancient and historical monuments and sites of national importance;
- (f) promote sustainable utilization of heritage resources for national development;
- (g) develop principles, standards and policies for the management of the national heritage resources;

- (h) liaise with the county governments, national, regional and international institutions on heritage management;
- (i) promote the public's enjoyment and understanding of the national heritage, biodiversity, antiquities and monuments;
- (j) advise the Cabinet Secretary on the issuance of excavation, exploration and export licenses in connection with national heritage;
- (k) secure and exhibit the national heritage, antiquities and monuments to the public; and
- (l) undertake other functions incidental or relevant to the attainment of the mandate of the National Museums of Kenya.

6. (1) The National Museums of Kenya shall have the power to –

- (a) erect, maintain and improve buildings, including staff quarters
- (b) appoint committees for heritage conservation in furtherance of its functions;
- (c) partner with any county government for conservation of historical sites and monuments of national importance;
- (d) exchange, sell or otherwise dispose of objects not required for the purpose of the National Museums of Kenya as specified in the Regulations;
- (e) with the consent of the Cabinet Secretary and with the authority of a resolution by the Board, lend objects vested in the National Museums of Kenya to any person or institution whether within or outside Kenya;
- (f) loan, for research purposes, specimens and collections under the appropriate loaning agreements;
- (g) purchase of an object which in the opinion of the Board it is desirable to acquire for a National Heritage Centre or in furthering interest in and increasing the utility in a National Heritage Centre;

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National
Museums of
Kenya

- (h) solicit, accept and receive subscriptions, donations, deices and bequests, whether of movable or immovable property and whether absolute or conditional, for the general or special purposes of the National Museums or subject to any trust;
- (i) charge for admission to a national museum, national heritage centre, or to any lecture, exhibition, conducted tour, course of instruction or other facility, or for publications, such fees or prices as the Board may consider, subject to any regulations made under this Act;
- (j) conduct heritage impact assessments, subject to the provisions of the national laws and international treaties and conventions;
- (k) enter into association with such bodies or organisations within or outside Kenya as the Board may consider in furtherance of the purposes for which the National Museums is established;
- (l) establish branches in counties;
- (m) establish national heritage centres;
- (n) advise on standards and best practices on heritage management;
- (o) monitor ancient and historical monuments and sites of national importance for purposes of preservation and conservation;
- (p) create, develop, own, protect and exploit inventions and innovations resulting from research activities undertaken on or by the aid of heritage resources;
- (q) establish mechanisms for effective dissemination of information on heritage;
- (r) set fees or other charges prescribed under this Act as may be necessary or expedient for—
 - (i) preserving and increasing the utility of the collections; or
 - (ii) securing the administration of anything vested in or acquired by the National Museums through this Act or other written law; and

(s) undertake functions incidental to the mandate of the National Museums of Kenya.

(2) The National Museums of Kenya may receive moneys from any source and may apply such moneys to defray its expenses in carrying out the functions and exercising the powers conferred on it by this Act.

7. The functions of county governments shall be to –

- (a) acquire the tangible and intangible heritage of humanity and its environment that is of county importance for purposes of education, study and enjoyment;
- (b) identify, collect materials and objects of historical, cultural and natural importance relevant to the respective county;
- (c) document the intangible heritage of county importance;
- (d) conserve the tangible and intangible heritage of humanity and its environment that is of county importance for purposes of education, study and enjoyment;
- (e) protect and conserve materials and objects of historical, cultural and natural importance relevant to the respective county;
- (f) publicise the tangible and intangible heritage of humanity and its environment that is of county importance for purposes of education, study and enjoyment;
- (g) promote awareness and education programmes for different audiences within the context of museums;
- (h) promote cultural activities and cultural festivals relevant to the respective counties;
- (i) develop and exhibit materials and objects of historical, cultural and natural importance relevant to the respective counties for purposes of education, study and enjoyment;
- (j) implement national standards on museums and heritage;

Functions of
County
Governments in
relation to
Museums

- (k) in consultation with the Cabinet Secretary, exchange, sell or otherwise dispose of objects not required for the purpose of the county museums and lend objects vested in the county museum to any person or institution whether within or outside Kenya; and
- (l) license of private museums within the respective counties.

8. (1) The Management of the National Museums of Kenya shall vest in a Board which shall comprise of –

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary for matters related to national heritage, antiquities and monuments;
- (c) the Principal Secretary for matters related to finance;
- (d) three persons representing scientific interests with outstanding interest in and contribution to the work of the national museums;
- (e) one person nominated by the Kenya Tourism Board;
- (f) two persons with outstanding interest in and contribution to the work of the national museums nominated by the Council of County Governors; and
- (g) the Director-General who shall be an *ex officio* member and secretary to the Board with no rights to vote.

Composition of the Board of the National Museums .

(2) The Cabinet Secretary shall appoint the persons nominated under subsection (1) (b), (c), (d), (e), (f) and (g).

(3) The Board shall elect a vice chairperson from among its members.

(4) The chairperson and vice chairperson of the Board shall be of opposite gender.

(5) The persons appointed under subsection (1) (b) and (c) may designate, in writing, a representative to attend and participate in the meetings of the Board on their behalf.

(6) In appointing persons under subsection (1) (d), (e) and (f), the Cabinet Secretary shall take cognizance of the provisions of the Constitution regarding gender, persons with disability, marginalized persons and the youth.

(7) The Board shall be responsible for the general management, development and control of the National Museums and all functions vested in the National Museums of Kenya by this Act.

9. (1) A person shall be qualified for appointment as the chairperson of the Board, if that person –

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least fifteen years' experience in the relevant field, seven of which are in a managerial position; and
- (c) meets the requirements of leadership and integrity in Chapter Six of the Constitution.

(2) A person is qualified for appointment as a member, is that person –

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years' experience in the relevant field, five of which are in a managerial position; and
- (c) meets the requirements of leadership and integrity in Chapter Six of the Constitution.

(3) A person shall not be qualified for appointment as the chairperson or as a member, if that person –

- (a) is a member of a governing body of a political party;
- (b) is an undischarged bankrupt;
- (c) has been convicted of a criminal offence and sentenced to a term of not less than six months' imprisonment;
- (d) has been removed from any public office for contravening the provisions of the Constitution or any other written law;
- (e) is a member of Parliament or county assembly; or
- (f) has not met his or her legal and statutory obligations relating to tax and other statutory obligations.

10. The chairperson and members of the Board other than an *ex-officio* member shall hold office for a period of

Qualifications for appointment of chairperson and members of the Board.

Tenure of office.

three years and shall be eligible for re-appointment for one further final term of three years.

11. A person shall cease to be a member of the Board, if that person—

Vacancy of office.

- (a) is unable to perform the functions of his office by reason of mental or physical infirmity;
- (b) is adjudged bankrupt;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) is absent from at least three consecutive meetings of the Board without the permission of the Board;
- (e) resigns, in writing, addressed, in the case of the chairperson to the President, and in the case of any other member, to the Cabinet Secretary;
- (f) violates the Constitution or any other law; or
- (g) dies.

12. The chairperson or member of the Board may be removed from office for –

Removal of the chairperson or member of the Board.

- (a) physical or mental incapacity to perform the functions of the office;
- (b) gross misconduct;
- (c) being absent for at least three consecutive meetings of the Board without notice to the chairperson or without sufficient cause;
- (d) incompetence; or
- (e) serious violation of the Constitution including contravention of Chapter Six.

13. (1) The conduct and regulation of the business and affairs of the board shall be as provided in the First Schedule, but subject thereto, the Board may regulate its own procedure.

Meetings of the Board.

(2) The Board may invite any person to participate in its deliberations on any particular issue, but a person so invited shall have no right to vote at any meeting of the Board.

14. (1) The Board may, from time to time, establish such committees as it considers necessary for the effective carrying out of its functions under this Act.

Committees of the Board

(2) Subject to subsection (4), the Board may co-opt into its membership a person whose knowledge and skills are found necessary for the functions of National Museums.

(3) A person co-opted under subsection (2) shall have no right to vote.

(4) Despite subsection (2), the Board shall not co-opt more than two people at any one time.

15. The Board may, by resolution generally or in any particular case, delegate to any committee of the Board the exercise of any of the powers or the performance of any of the functions or duties under this Act.

Delegation by the Board

16. (1) A member of the Board with a personal interest in a matter being considered or to be considered by the Board shall disclose the nature of their interest to the Board.

Disclosure of interest.

(2) A member who has declared an interest under subsection (1) shall not take part in the consideration or discussion of or vote during the deliberations on the matter by the Board.

17. (1) A member of the Board or agent of the Board shall not be personally liable to any action, claim or demand for acts done in the course of executing the functions, powers and duties of the Board under this Act.

Protection from personal liability.

(2) The Board shall however, not be relieved of the liability to pay compensation or damages to a person for an injury suffered by the person, their property, or any of their interests arising directly or indirectly from the exercise of any power conferred by this Act or any other written law.

18. (1) There shall be a Director-General of the National Museums who shall be appointed by the Board through a competitive recruitment process.

Appointment of the Director-General.

(2) A person shall be qualified for appointment as Director-General, if that person—

- (a) holds a doctorate degree from a university recognised in Kenya;
- (b) has at least fifteen years' professional experience of which five shall be at a management level, in any field or discipline related to the work of the National Museums; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(3) The Director-General shall—

- (a) be responsible for the day to day management of the National Museums;
- (b) be responsible for the direction of the affairs and transactions of the National Museums;
- (c) be the chief executive officer of the National Museums; and
- (d) perform such other duties as may be assigned by the Board from time to time.

(4) The Director-General shall hold office for a term of three years and shall be eligible for re-appointment for a further final term of three years

19. (1) The Board may appoint such officers and staff necessary for the proper discharge of the functions of the National Museums under this Act.

Staff of the National Museums.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

20. The members and the employees of the Board shall subscribe to the code of conduct as prescribed under the Regulations to this Act.

Code of conduct

21. (1) The common seal of the National Museums shall be kept by the Director-General and shall only be used on order of the Board.

Common seal.

(2) The common seal of the Board shall be authenticated by the signature of the Director-General and the chairperson of the Board or in the absence of the chairperson, such other member of the Board who shall be designated by the Board for that purpose.

(3) The common seal of the Board shall, when affixed to a document and authenticated, be judicially and officially noticed and unless the contrary is proved, any order or authorisation by the Board under this section shall be presumed to have been duly given.

PART III – FINANCIAL PROVISIONS

22. The funds of the National Museums shall comprise –

Funds of the National Museums.

- (a) money allocated by Parliament for the purposes of the National Museums;
- (b) any grants, gifts, donations or other endowments given to the National Museums;
- (c) such monies as may accrue to or vest in the National Museums in the course of the exercise of its powers or the performance of its functions under this Act.

23. The financial year of the National Museums shall be the period of twelve months ending on the thirtieth of June in each year.

Financial year.

24. (1) The Board shall, at least three months before the end of each financial year, cause to be prepared estimates of the revenue and expenditure of the National Museums for that financial year.

Annual estimates

(2) The annual estimates shall make provision for all the estimated expenditure of the National Museums for the financial year concerned and in particular, shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the staff of the National Museums;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the National Museums;
- (c) the proper maintenance of buildings and grounds of the National Museums;

- (d) the funding of training, research and development of activities of the National Museums;
- (e) the acquisition, maintenance, repair and replacement of at the equipment and other movable property of the National Museums; and
- (f) the creation of such funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matters as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary responsible for finance for tabling in Parliament.

25. The Board may invest any of the funds of the National Museums in securities in which for the time being trustees may by law invest funds or in any other securities which the Treasury may from time to time approve for that purpose.

Investment of funds.

26. (1) The Board shall cause to be kept proper books of account of the income, expenditure, assets and liabilities of the National Museums.

Accounts and Audit

(2) The Board shall within three months from the end of the financial year submit to the Auditor-General the accounts of the National Museums together with—

- (a) a statement of income and expenditure during the year; and
- (b) a statement of the assets and liabilities of the National Museums on the last day of that year.

27. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the National Museums for the immediate preceding year.

Annual Reports.

(2) The Cabinet Secretary shall lay the annual report before Parliament within three months.

PART IV— MANAGEMENT OF NATIONAL HERITAGE

28. (1) National heritage shall be managed by the National Museums established under section 3 of this Act.

Heritage of National importance

(2) for the purposes of this Act, a place or object shall be considered to be of national importance if the resource is of -

- (a) ancient origin;
- (b) historical importance;
- (c) natural or cultural significance to the nation;
- (d) world heritage sites;
- (e) a site, monument or object declared to be a monument ; or
- (f) special value to the people of Kenya.

29. (1) The Cabinet Secretary may, after consultation with the Board, by notice in the *gazette*, declare any place or object to be heritage of national importance, if it satisfies any of the following criteria -

Declaration of heritage of national importance.

- (a) it is of ancient origin;
- (b) it is of historical importance;
- (c) it constitutes rare or endangered aspects of Kenya's natural or cultural heritage;
- (d) it is important in exhibiting particular aesthetic characteristics valued nationally;
- (e) it is strong or special in association with the life or work of a person, group or organization of importance in the history of Kenya.

(2) A national heritage may include –

- (a) a place, building, structure or equipment of cultural and natural significance it is of ancient origin;
- (b) a place to which oral traditions are attached or which are associated with living heritage;
- (c) historical settlements and townscapes
- (d) landscapes, seascapes, open spaces and natural features of national significance;
- (e) geological sites and landscapes of scientific or cultural importance;
- (f) archaeological and paleontological sites;

- (g) historical graves or cemeteries;
- (h) graves of individuals designated by an Act of Parliament; and
- (i) sites of significance relating to the history of slavery, history of colonialism, or ancient migratory patterns of the Kenyan people as recorded in Kenya;
- (j) movable objects, including –
 - (i) objects recovered from the soil or waters of Kenya, including archaeological and paleontological objects and material, meteorites and rare geological specimens;
 - (ii) objects to which oral traditions are attached or which are associated with living heritage;
 - (iii) ethnographic art and objects;
 - (iv) military objects;
 - (v) objects of decorative or fine art;
 - (vi) objects of scientific or technological interest; and
 - (vii) natural and cultural collections of national significance.

(2) All natural and cultural heritage collections of national importance shall be deposited with the National Museums, as the custodian of objects of national importance, and shall be displayed in accordance with the Regulations.

(3) The Cabinet Secretary may make Regulations for the proper discharge of functions under this section.

30. (1) The Cabinet Secretary shall, before declaring a place or object a national heritage under section 24 -

Cabinet Secretary
to issue notice.

- (a) publish in the Gazette a declaration notice; and
 - (b) invite members of the public to lodge any objections within two months from the date of publication of the notice published under paragraph (a);
- (2) On the expiry of the period of two months -

- (a) if no objection has been lodged, or if lodged, has been heard and dismissed, the Cabinet Secretary shall confirm the declaration of the place or object as a national heritage; or
- (b) if an objection has been lodged and upheld, the Cabinet Secretary shall withdraw the notice.

Provided that the decision to uphold or withdraw a declaration notice following an objection should be concluded within a period of three months.

(3) An object, monument or protected area declared under the National Museums and Heritage Act, 2006 to be a protected object, monument or protected area shall be a protected object, monument or protected area within the meaning of this Act.

31. (1) The Cabinet Secretary may degazette a place or object declared to be a national heritage.

Degazettement of place or objects as national heritage

- (2) A place or object shall be degazetted –
 - (a) if the Board resolves unanimously to degazette the place or object; and
 - (b) a notice of intent has been published in the gazette and at least two newspapers with wide national circulation and members of the public invited to lodge any objections within two months from the date of publication of the notice and no objections have been made, or if so made, have been heard and dismissed;

(3) Where the proposal for degazettement is rejected, the Cabinet Secretary shall cause a notice to be published in the Gazette within two months from the date of that decision.

32. (1) The Board may lend any object the property in which is vested in the National Museums and which is comprised in their collections for purposes of exhibition and specialized analysis.

Lending or borrowing of objects

- (2) The Board shall when lending an object–
 - (a) give special consideration to a request for the loan of an object for public exhibition and specialized research; and

- (b) have regard to suitability of the prospective borrower, the purpose of the loan and the physical condition of the object.

(3) The Board may accept loaning of objects for exhibition, study or research by the National Museums.

33. The Board may dispose of an object, the property in which is vested in National Museums if the disposal is –

Disposal of objects

- (a) by way of sale, exchange or gift of an object which is a duplicate of another object the property in which is so vested and which is so comprised;
- (b) by way of sale, exchange or gift of an object which in the Board's opinion is unsuitable for retention in their collections and can be disposed of without detriment to national and scientific interest; or
- (c) of an object which the Board is satisfied has become useless for the purposes of their collections by reason of damage, physical deterioration, or infestation by destructive organisms.

34. (1) The Director-General may, where it appears that any place or object is in imminent danger of serious damage or destruction and requires to be protected by a declaration under this Act, make an order protecting the said place or object in the manner set out by the Director-General.

Director-General to issue temporary protection orders.

(2) The Director General shall, where an order is made under this section, immediately inform the Cabinet Secretary and the Board.

35. (1) The Board shall establish, maintain and manage the National Heritage Register.

National Heritage Register

(2) All declarations made by the Cabinet Secretary under this Act, shall be entered into the National Heritage Register.

(3) Every gazetted place or object shall be recorded in the National Heritage Register in the manner prescribed in the Regulations.

(4) A person may search the National Heritage Register established under this section in the prescribed manner.

36. (1) The National Museums shall establish a heritage database for collections.

National Heritage
Data base

(2) The National Museums may make the data and information it holds available and accessible upon payment of the prescribed fee.

37. (1) The Cabinet Secretary may, in consultation with the National Museums by notice in the gazette –

General principles
for management
of heritage
resources.

- (a) prescribe any principles for the management of the heritage nationally in addition to, but not inconsistent with, the principles set out in this Act;
- (b) publish for general information, national policy and standards relating to the management of the heritage nationally, or any aspect thereof which is consistent with the principles set out in this Act; and
- (c) publish a list of heritage wardens whose role shall be to engage stakeholders on the identification and management of heritage resources.

38. (1) The National Museums shall establish and maintain National Heritage Centres in each county and at any other place as the Board may consider necessary.

National Heritage
Centres.

(2) A National Heritage Centre established under this section shall be managed by such a committee as the Board may determine.

39. (1) The National Museums may undertake research and conduct other activities of scientific, natural, cultural or technological importance by means of exploration and field investigations, data analysis, public programmes, exhibitions, tours or publications.

Research by
National
Museums.

(2) The National Museums may undertake research and conduct other activities of biomedical importance by use of non-human primates and other animal models.

(3) The National Museums may undertake research and conduct other activities of importance to conservation of biodiversity. This will include identification, documentation, establishment and curation of a national biodiversity inventory.

(4) The research under this section shall be exempt from all permits or license fees requirements under this Act.

PART V – EXPLORATION AND DISCOVERY

40. (1) A person shall not by means of excavation or surface operations search for a buried monument, a buried part of a monument, or a buried antiquity, whether or not in a protected area, unless that person is in possession of an exploration licence issued under this section.

Exploration
licence.

(2) A person who desires to carry out a search for a buried monument, a buried part of a monument, or a buried antiquity, shall apply to the Cabinet Secretary for an exploration licence in the prescribed form.

(3) The Cabinet Secretary shall on receipt of the application under subsection (2) and on recommendation of the National Museums certify-

- (a) that the proposed research is scientifically ethical and sound;
- (b) that the person has the financial support; and
- (c) the person has received competent training and experience to carry out an exploration or excavation in accordance with the most recent scientific methods.

(4) The Cabinet Secretary shall consider the application and determine whether to issue a licence upon payment of the prescribed fees.

(5) An exploration licence issued under this section shall contain an agreement that the licensee, or the institution which the licensee represents, shall, within such period as may be specified in the licence deposit with the Cabinet Secretary and the National Museums copies of a detailed report or publication on the results of the exploration and excavation.

(6) The exploration licence shall specify, such limitations and conditions as the Cabinet Secretary considers necessary –

- (a) to protect a monument from injury, removal or dispersion; and
- (b) in respect of antiquities, for the removal of finds to a place in Kenya, or temporarily to a place outside Kenya for the purpose only of special examination or preservative treatment.

41. An exploration licence –

- (a) shall be valid for a period not exceeding three years, but may be renewed for a further period not exceeding one year at a time;
- (b) may be revoked at any time, if the Cabinet Secretary is of the opinion that the holder has failed to conform with any express or implied obligations under the licence;
- (c) shall be in the prescribed form; and
- (d) shall not entitle the holder to enter upon any land without the consent of the owner.

Conditions and form of exploration licence.

42. (1) The holder of an exploration licence, may enter upon any area of land specified in the licence, including private land or a protected area, and exercise therein all rights conferred by the exploration licence, for such period and subject to such limitations and conditions as may be stated in the licence.

Entry on to land under exploration licence.

(2) Where the holder of an exploration licence intends, pursuant to any licence, to enter upon private land, the holder shall give a month's notice to the occupier and the owner of the land.

(3) In the case of community land, the licensee shall serve the notice on the County Government in which the land is vested and the residents for whose benefit the county holds the land. The notice shall specify-

- (a) the nature of licence;
- (b) duration of the licence;
- (c) the land affected by the licence; and
- (d) activities to be undertaken in accordance with the exploration licence.

(4) Where, in the course of operations carried on by the holder of an exploration licence, disturbance of the rights of the owner or occupier of private land, or damage to the land, or to crops, trees, buildings, stock or works thereon, is caused, the holder of an exploration licence shall be liable to pay or compensate the owner or occupier as is fair and reasonable having regard to the extent of the disturbance or damage and to the interest of the owner or occupier in the land.

(5) If the holder of an exploration licence fails to pay or compensate when demanded under subsection (4), or if an owner or occupier is dissatisfied with the amount or nature of any compensation offered to him, the owner or occupier may, within six months of the date on which the demand or offer is made, but not later than two years after the occurrence of the disturbance or damage, appeal to the Heritage Tribunal.

(6) A person who is dissatisfied with the decision of the Heritage Tribunal may appeal to the High Court within thirty days of the decision.

43. (1) In the case of disturbance of the rights of owners or occupiers of private land, or damage to any such land, an owner or occupier who claims to be entitled to compensation under section 42 (4) shall, within six months after the occurrence of the disturbance or damage, apply for compensation to the holder of an exploration licence

Compensation on private land.

(2) The holder of an exploration licence shall notify the Cabinet Secretary and the National Museums of the application made under subsection (1).

(3) The Cabinet Secretary shall appoint a panel of three persons to hear and determine the claim in accordance with section 42 (4).

(4) The panel shall give notice in writing to the applicant and to the holder of the exploration licence of the award or of the rejection of the award.

(5) The applicant or the holder of an exploration licence may appeal to the Cabinet Secretary against the decision of the panel under subsection (4).

(6) A sum payable under an award shall be deposited by the holder of the exploration licence to the owner or occupier of a private land upon the expiry of thirty days from the date of notification of the award or from the date of the final appeal decision, as the case may be.

(7) An award made under this section shall be enforceable as if it were a decree of a court.

44. Where a person discovers a monument or object of archaeological or paleontological interest, the person shall—

Notification of discovery.

- (a) within seven days, give notice indicating the precise site and circumstances of the discovery to the National Museums; and
- (b) in case of an object, deliver the object to the National Museums for identification or custody for any particular purpose or period.

45. A person shall not move a monument or an object of archaeological or paleontological interest from the place where it has been discovered otherwise than in such manner and to such place as may be allowed by an exploration licence, or by written authorization from the Cabinet Secretary.

Restriction on moving objects.

46. A person who –

Offences.

- (a) engages in a search contrary to section 40;
- (b) being the holder of an exploration licence, fails to conform with any express or implied obligations under the licence;
- (c) enters upon private land pursuant to the licence without having given prior notice and such security, if any, as may have been directed in accordance with section 42;
- (d) fails to give notice of discovery in accordance with the provisions of section 44; or
- (e) moves a monument or object of archaeological or paleontological interest contrary to section 45,

commits an offence and is liable, on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

PART VI – PROTECTED AREAS

47. A protected area, which is part of community land, may be set aside in accordance with the provisions of Article 63 of the Constitution.

Where protected area is community land.

48. The Cabinet Secretary may, in respect of a protected area, from time to time –

Control of access to protected area.

- (a) by notice in the *gazette*, prohibit or restrict access, development, use for agriculture or livestock purposes, or an activity which in the opinion of the

Cabinet Secretary is likely to damage a monument or an object of archaeological or paleontological interest;

- (b) place the protected area under the control of the National Museums on prescribed terms;
- (c) take steps necessary for the maintenance of the protected area; or
- (d) make regulations to control access into the protected area and the conduct of visitors in such an area.

49. Where private land is included in a protected area and—

Compensation to owner of land in protected area.

- (a) the use by the owner or occupier is prohibited or restricted under this Act;
- (b) the rights of the owner or occupier are infringed;
- (c) there is damage to the land, crops, trees, buildings, stock or works;
- (d) the State shall pay the owner or occupier a fair and a reasonable compensation having regard to the extent of the prohibition, restriction, disturbance or damage and to the interest of the owner or occupier in the land.

50. A person who—

Offences

- (a) enters upon a protected area or within such area does any act contrary to a prohibition or restriction of which notice has been given by the Cabinet Secretary under section 48; or
- (b) breaches any regulation made by the Cabinet Secretary under section 48,

commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

PART VII – MONUMENTS

51. (1) A heritage inspector or any other person authorized in writing by the National Museum may at any reasonable time—

Inspection and repair of monuments.

- (a) enter and inspect a monument;
- (b) take photographs, measurements, drawings or other records of particulars of a monument; or
- (c) if so required by the Board carry out, at the expense of the National Museums, repairs to a monument:

(2) Where a monument is occupied, one month's prior notice in writing shall be given to the occupier of the intention to carry out repairs thereto.

52. The Board may purchase or take on lease or accept a gift or bequest of a monument or an antiquity.

Acquisition of monuments and antiquities.

53. (1) The owner of a monument may, by a written instrument, confer to the National Museums the guardianship of the monument.

Guardianship of monuments.

(2) The National Museums shall be the guardian of any monument which is the property of the State or has no apparent owner.

54. (1) The National Museums may enter into a written agreement with the owner of a monument or any other person for the protection or preservation of a monument.

Agreements for protection or preservation of monuments.

(2) An agreement under this section may provide for the following matters—

- (a) the maintenance of the monument;
- (b) the custody of the monument;
- (c) the occupation or use of the monument by the owners;
- (d) the restriction of the right of the owner or occupier to build or to do other acts or things on or near the site of the monument;
- (e) access by the public;
- (f) access by persons deputed by the owner or the National Museums to inspect or maintain the monument;
- (g) the notice to be given to the National Museums in case the owner intends to offer the land on which the monument is situated for sale, lease or other

disposal thereof, and the right to be reserved to the National Museums to have first refusal of any such sale, lease or other disposal;

- (h) the payment of any expenses incurred by the owner or by the National Museums in connection with maintenance of the monument;
- (i) the removal of the monument or any part to a place of safe custody;
- (j) the duration of the agreement;
- (k) the procedure relating to the settlement of any dispute arising out of the agreement; or
- (l) any other matter connected with the protection or preservation of the monument.

(3) The terms of an agreement under this section may be altered from time to time with the consent of all parties to the agreement.

(4) An agreement under this section shall be binding on any person claiming to be the owner of the monument to which it relates to or under a party by whom on or whose behalf the agreement was executed.

(5) Any rights acquired by the National Museums or by the owner in respect of expenses incurred in maintenance shall not be affected by the termination of an agreement under this section.

55. If the Cabinet Secretary considers that a monument is in danger of being destroyed, injured or allowed to fall into decay, the Cabinet Secretary may acquire the monument by way of compulsory acquisition under the provisions of the Land Act, 2012 but that power shall not be exercised—

Compulsory purchase of monuments.

- (a) in the case of a monument which or any part of which, is periodically used for religious observances;
- (b) if the monument is under the guardianship of the National Museums as provided by section 53;
- (c) if the monument is the subject of an agreement for its protection and preservation as provided by section 54; or

- (d) if the owner of the monument is willing to confer guardian thereof to the National Museums as provided by section 53 or to enter into an agreement for its protection as provided by section 54 or to give, sell or lease to the National Museums the monuments on acceptable terms.

56. (1) A monument which is for the time being –

- (a) owned by the National Museums;
- (b) under the guardianship of the National Museums as provided by section 47; or
- (c) the subject of an agreement for its protection or preservation as provided by section 48,

shall be properly maintained by the National Museums except where its maintenance is by such guardianship or agreement, the responsibility of the owner of the monument.

(2) When any such monument or any part thereof is used periodically for religious observances, the National Museums shall make provision for the protection of the monument from pollution or damage –

- (a) by prohibiting entry of any person not entitled to enter by the religious usage or community by which the monument or part thereof is used; or
- (b) by taking such other action that the National Museums considers necessary.

(3) Subject to regulations made under subsection (2) and to the terms of any instrument whereby the National Museums has been constituted guardian or of any agreement for protection or preservation of a monument, the public shall have right of access to a monument referred to in subsection (1) on such conditions as approved by the National Museums.

57. The National Museums may subject to the conditions of any instrument—

- (a) where rights have been acquired by it in respect of a monument by virtue of a sale, lease, gift or bequest, relinquish those rights in favor of the person who would be the owner of the monument if those rights had not been acquired; or

Duties of National Museums to protect and maintain monuments.

Relinquishing rights over monuments.

- (b) relinquish any guardianship which the Board has accepted under the provisions of this Act.

58. (1) A person who—

Offences under
Part VII

- (a) destroys, removes, injures, alters or defaces or does any act that imperils the preservation of a monument;
- (b) obstructs a national heritage inspector or other duly authorized person in the exercise of any of the powers conferred by this part; or
- (c) breaches any regulations regulating the entry of persons into a monument which is used for religious observances, or of any other condition of access to a monument;

commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both

(2) In addition to the penalty under subsection (1), the court may order, a person convicted of an offence under paragraph (a), to pay to the National Museums such sum of money as may be determined by that court to be necessary to defray the cost thereof.

PART VIII – ANTIQUITIES AND PROTECTED OBJECTS

59. (1) All antiquities lying on or under the ground of any land whether protected or not, objects of archaeological, paleontological or cultural interest discovered in any part of Kenya under this Act shall be the property of the State.

Antiquities
property of the
Government.

(2) The Cabinet Secretary may, on the recommendation of the National Museums, by notice in the *gazette*, disclaim the ownership of any such antiquity.

60. A person shall, if required in writing by the National Museums, within one month, furnish the National Museums with full particulars of all objects in the person's possession which the person knows are antiquities or protected objects.

Information
concerning
antiquities and
protected objects.

61. The Cabinet Secretary may, after consultation with the National Museums, by notice in the *gazette*, prohibit removal of a specified antiquity or a protected object from

Prohibition of
removal of
antiquities and
protected objects.

the place where the antiquity or the protected object is situated by way of sale, exchange, gift, bequest or loan.

62. (1) A person shall not –

- (a) sell or otherwise part with ownership or possession of a protected object without a permit from the National Museums;
- (b) buy or take by way of exchange an antiquity without a license to deal in antiquities; or
- (c) sell or give by way of exchange an antiquity to a person without a license to deal in antiquities

Prohibition of sale of antiquities and protected objects.

(2) This section shall not apply to acquisition by the State or by the National Museums of a protected object or antiquity by way of purchase, exchange, gift, bequest or loan.

63. (1) The Cabinet Secretary may, in consultation with the National Museums, if they consider that an antiquity or protected object is in danger of being destroyed, injured or allowed to fall into decay, or of being unlawfully removed—

Compulsory acquisition of antiquities and protected objects.

- (a) acquire the antiquity or protected object by way of compulsory acquisition on the grounds that acquisition is necessary in the interests of the utilisation of the antiquity or protected object by preservation and display for the public benefit; and
- (b) ensure prompt compensation as provided by Article 40 of the Constitution.

(2) The power of compulsory acquisition under subsection (1) shall not be exercised if the owner of the antiquity or a protected object is willing to deposit it with the National Museums by way of loan either permanently or for such period as the Cabinet Secretary considers necessary

64. A person who—

- (a) without just cause fails to furnish the National Museums with full particulars of all objects in his possession which he knows are antiquities or protected objects, or misrepresents after being required in writing so to do within the period specified by a notice under section 54;

Offences under Part VIII.

- (b) willfully destroys or damages an antiquity or protected object;
- (c) removes an antiquity or protected object contrary to section 55; or
- (d) sells or otherwise parts with ownership or possession of a protected object, or sells or buys or gives or takes by way of exchange an antiquity, contrary to section 56,

commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or twice the value of the antiquity or protected object concerned, whichever is the greater, or to imprisonment for a term not exceeding twelve months or to both.

PART IX – EXPORT

65. (1) A monument, an antiquity or a protected object shall not be removed from Kenya unless its removal has been specially authorized in an exploration licence or by an export permit issued by the Cabinet Secretary on the recommendation of the National Museums under this section.

Conditions relating to export.

(2) An application for an export permit shall be made in writing to the Cabinet Secretary and shall contain—

- (a) a full description of the monument or part thereof, antiquity or protected object in respect of which it is made;
- (b) the reason for the proposed removal;
- (c) the place to which and the person into whose care it is to be removed; and
- (d) such further information as may be prescribed.

(3) The Cabinet Secretary may before issuing an export permit, cause an inspection to be made and the monument, antiquity or protected object to be sealed or placed in their custody.

(4) The Cabinet Secretary may, in consultation with the National Museums, issue an export permit subject to such terms and conditions as the Cabinet Secretary considers fit.

(5) An export permit may, in particular, be issued under the conditions that—

- (a) the subject-matter thereof shall be deposited in a specified place and in the care of specified persons;
- (b) the subject-matter thereof shall be returned to Kenya within a specific period;
- (c) part of the subject-matter thereof may be subjected to scientific destructive analysis; and
- (d) a specified portion of the subject-matter thereof shall be surrendered to the National Museums, or loaned permanently or for a specified period.

66. A monument or part of an antiquity or a protected object shall only be removed from Kenya—

Export through
customs port of
entry

- (a) through a customs port of exit and
- (b) the relevant export permit or a copy of the relevant exploration licence certified by the Cabinet Secretary shall be surrendered to a customs officer before removal from Kenya is effected or allowed.

67. A person who –

Offences under
Part IX.

- (a) removes a monument or part thereof, an antiquity, or a protected object, from Kenya contrary to section 65 or section 66;
- (b) fails to comply with any of the terms of conditions of an export permit; or
- (c) obtains an export permit by an application containing information which the person knows to be false or incomplete in any material particular,

commits an offence and is, on conviction, liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both.

PART X – POWERS OF ENFORCEMENT

68. (1) An authorised representative of the National Museums may—

Inspection

- (a) at any time inspect work being done in connection with a monument or object of archaeological or paleontological interest; and
- (b) without warrant enter any premises and order the cessation of any such work.

(2) The National Museums shall report to the Cabinet Secretary any such order for cessation of work and the reasons for the order.

69. (1) The Cabinet Secretary may by notice in the Gazette appoint a person recommended by the National Museums to be a national heritage inspector for the purpose of enforcing this Act.

National heritage inspectors.

(2) A person shall be qualified as a national heritage inspector under subsection (1) if that person –

- (a) holds a minimum qualification of a degree in a relevant field from a university recognised in Kenya; and
- (b) has at least three years' working experience in a relevant profession.

(3) A national heritage inspector appointed under subsection (1) may by notice published in the gazette by the Director of Public Prosecutions, be designated as a prosecutor for offences committed under this Act.

70. A national heritage inspector may –

Power of national heritage inspectors to inspect

- (a) inspect an antiquity or protected object; and
- (b) with written authority from the National Museums enter premises where the antiquity or protected object is or should be, and require the production of the antiquity or protected object or information as to its whereabouts.

71. A police officer or national heritage inspector may arrest any person whom the national heritage inspector or police officer has reason to believe has committed an offence under this Act.

Power of arrest.

72. A national heritage inspector or a police officer may upon obtaining a warrant, at any time search any person or the premises occupied by any person whom they reasonably suspect of have acquired ownership or possession of a protected object, or of having bought or taken by way of exchange an antiquity, contrary to this Act.

Power to search.

73. (1) A customs officer may at any time without a warrant, search anything intended to be removed from Kenya or any person intending to leave Kenya, if the officer reasonably suspects that thing, or person is carrying,

Power of customs officers

a monument or part of monument, an antiquity or protected object.

(2) The customs officer may seize anything which he believes to be a monument or part of a monument, antiquity or protected object including any container that is in the process of being removed from Kenya contrary to this Act.

74. (1) Anything seized under section 72 or section 73 shall as soon as possible be taken before a magistrate who shall –

Forfeiture to government after seizure

- (a) in respect of seizure under section 73, order forfeiture to the State of the thing seized including any container if it is established that—
 - (i) the thing seized is a protected object; and
 - (ii) the ownership or possession of which has been acquired; or
 - (iii) an antiquity that has been bought or taken by way of exchange is contrary to this Act;
- (b) in respect of seizure under section 72, order forfeiture to the State of the thing seized together with any container thereof if it is established that the thing seized is a monument or part thereof, an antiquity or protected object that was in the process of being removed from Kenya contrary to section 72 or section 73.

(2) Anything forfeited to the State under subsection (1) shall, be deposited with the National Museums.

75. The National Museums may attach to or erect on a monument or protected area in the official language and the local language commonly used in that area, such notice as it considers necessary for the better protection of the monument or protected area.

Notices

76. A person who—

- (a) obstructs an authorised representative of the National Museums, a police officer, national heritage inspector, or customs officer, in the exercise of his powers or duties under this Act;
- (b) fails without reasonable cause to comply with a

Offence under Part X

lawful order or requirement of an authorised representative of the National Museums, a police officer, national heritage inspector or customs officer, under this Act; or

- (c) destroys, removes or damages a notice attached or erected by the National Museums under section 75,

commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

77. (1) The county executive committee member responsible for culture may appoint county heritage inspectors.

County Cultural
Inspectors

(2) The county cultural inspectors shall undertake the following functions—

- (a) make a full assessment of the state of compliance with county legislation on county culture and county museums;
- (b) ensure that county culture and museums are preserved and maintained properly;
- (c) consult with any person on any violations of county heritage regulations on county culture and museums encountered and what further action they intend to take;
- (d) make reports on any violations on county culture and museums to the county executive committee member for action; and
- (e) inspect any damage to county museums and advise the county executive committee member on appropriate actions to be taken.

PART XI – HERITAGE TRIBUNAL

78. (1) There is established the Heritage Tribunal which shall consist of –

Establishment of
Tribunal.

- (a) a chairperson nominated by the Judicial Service Commission and appointed by the Cabinet Secretary who shall be a person qualified for

appointment as a judge of the High Court;

- (b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya and appointed by the Cabinet Secretary; and
- (c) three other persons who have demonstrated competence and a high level of integrity in the heritage conservation sector appointed by the Cabinet Secretary.

(2) The nomination and appointment of members of the Tribunal under subsection (1) shall be through a competitive process.

(3) The chairperson and vice-chairperson shall be of opposite gender.

(4) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

79. A member of the Tribunal shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

Tenure of office.

80. (1) The office of a member of the Tribunal shall become vacant –

Vacation of office.

- (a) at the expiry of three years from the date of appointment;
- (b) if a member is removed from membership of the Tribunal by the Cabinet Secretary for failure to discharge the functions of the office or for misbehavior;
- (c) if a member resigns by writing to the Cabinet Secretary; or
- (d) if a member dies.

(2) The members of the Tribunal shall be paid the allowances approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

81. (1) The Tribunal shall have a secretary who shall be a public officer appointed by the Public Service Commission through a competitive process.

Secretary and staff to the Tribunal

(2) The secretary shall hold office on the terms and

conditions specified by the Public Service Commission.

(3) The secretary shall be responsible for the day to day affairs of the Tribunal and shall be answerable to the Tribunal in the performance of their functions.

(4) The secretary shall perform any other functions determined by the Tribunal.

(5) There shall be such other staff of the Tribunal as may be necessary for the performance of its functions.

82. The Tribunal shall have the jurisdiction to hear and determine –

Jurisdiction of the Tribunal

- (a) appeals arising from any decision made under this Act;
- (b) any complaints arising from the exercise of the Cabinet Secretary's powers under this Act;
- (c) any conflicts that may arise between heritage institutions and agencies established under this Act; and
- (d) any complaints by any person aggrieved by any act done by any person under this Act.

83. (1) A person may make a complaint or appeal, in writing, within sixty days of the act, omission or decision complained of.

Proceedings of the Tribunal

(2) On the hearing of a complaint or an appeal, the Tribunal shall have all the powers of a subordinate court to –

- (a) summon witnesses;
- (b) take evidence on oath or affirmation;
- (c) order the production of documents; or
- (d) summon expert witnesses as may be necessary.

(3) All summons, notices or other documents issued under the hand of the chairperson of the Tribunal shall be considered to have been issued by the Tribunal.

(4) The Tribunal shall sit at such times and in such places as it may appoint.

(5) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause,

otherwise directs.

(6) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings as it considers fit.

(7) Any person who is a party to the proceedings before the Tribunal may appear in person or be represented by an Advocate.

84. (1) The Tribunal may -

Awards of the
Tribunal.

- (a) award damages;
- (b) confirm, vary or set aside the decision appealed against; or
- (c) make interim orders

(2) The Tribunal shall have power to award the costs of any proceedings before it and to direct that the costs shall be taxed within such a scale as it may proscribe.

(3) The Tribunal may, on its own motion or upon application by an aggrieved party, review its decisions, awards or orders.

(4) Judgments of the Tribunal shall be executed and enforced in the same manner as judgments of a subordinate court.

85. A person who –

Contempt of the
Tribunal.

- (a) fails to attend the Tribunal after being summoned by the Tribunal;
- (b) refuses to take an oath or affirmation before the Tribunal, or being a public officer, refuses to produce any article or document when lawfully required to do so by the Tribunal;
- (c) knowingly gives evidence or information before the Tribunal which the person knows to be misleading;
- (d) at any sitting of the Tribunal –
 - (i) willfully insults any member or officer of the Tribunal;
 - (ii) willfully interrupts the proceedings or commits any other act of contempt of the Tribunal; or
- (e) fails or neglects to comply with a decision, order, direction or notice confirmed by the Tribunal,

commits an offence.

86. (1) The quorum for the hearing and determining of a cause or a matter referred to the Tribunal shall be the chairperson and two other members.

Quorum for the Tribunal.

(2) The chairperson shall preside at the meetings of the Tribunal and in the absence of the chairperson, the vice chairperson or a member elected by members present and voting.

87. A member of the Tribunal who has an interest in the matter for consideration by the Tribunal shall disclose, in writing, the nature of that interest and shall not participate in the deliberations of the Tribunal in respect of that matter.

Disclosure of interest.

88. (1) A person aggrieved by a decision or order of the Tribunal may, within thirty days of that decision or order, appeal against the decision or the order to the High Court.

Appeals to the High Court.

(2) Upon the hearing of an appeal under this section, the High Court may –

- (a) confirm, set aside or vary the decision;
- (b) remit the proceedings to the Tribunal with instructions for further consideration, report, proceedings or evidence as the court may deem fit;
- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
- (d) make any other order as it may consider just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

89. A person aggrieved by the decision or order of the High Court may, within sixty days of that decision or order, appeal against that decision or order to the Court of Appeal on a matter of law.

Appeals to the Court of appeal.

PART XIII – MISCELLANEOUS PROVISIONS

90. The Cabinet Secretary of the National Treasury may make such orders as he may determine regarding incentives to heritage conservation that may be issued

Incentives.

under this Act.

91. (1) The National Museums of Kenya may request a court or other competent authority of another country to order the return of a cultural object illegally exported from the territory of the Republic of Kenya.

Return of illegally exported cultural objects.

(2) A cultural object which has been temporarily exported from the territory of the Republic of Kenya, for purposes such as exhibition, research or restoration, under a permit issued under this Act and not returned in accordance with the terms of that permit shall be considered to have been illegally exported.

92. In any proceedings under this Act, where the Cabinet Secretary has certified in writing that in his or her opinion, on the advice of the National Museums, a thing is a monument, an object of archeological or paleontological interest, an object of historical and scientific interest or a protected object, as the case may be, the burden of proof shall lie upon any person who asserts the contrary.

Burden of proof.

93. An instrument or agreement executed under this Act shall be exempt from stamp duty chargeable under the Stamp Duty Act.

Exemption from stamp duty.
Cap.480

94. (1) All mining activities in any protected heritage area including caves, rock shelters and any such areas of potential heritage importance shall require a written permit from the Cabinet Secretary on recommendation of National Museums.

Mining activities in protected heritage areas

(2) A person who desires to carry out mining activities in terms of this section shall make an application to the Cabinet Secretary in the prescribed form.

(3) The Cabinet Secretary shall within sixty days of receipt of an application under subsection (1) and on payment of such fees as may be required, either issue a permit with or without conditions or reject the application giving reasons, in writing, for the rejection.

95. All research conducted by the National Museums in furtherance of its functions and powers to protect and conserve national heritage under this Act, shall be exempt from payment of access, permit or export fees payable under any laws contained in the Third Schedule to this Act.

Access and payment of fees.

96. A person who commits an offence under this Act

General penalty.

for which no penalty is prescribed shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a period not exceeding twelve months, or to both.

97. (1) The Cabinet Secretary may make regulations for the better carrying out of this Act, and without prejudice to the generality of the foregoing for any of the following purposes –

Regulations.

- (a) prescribing conditions for the preservation and use of open spaces of national importance which may prescribe different conditions for different open spaces;
- (b) prescribing conditions for the protection, preservation and alteration of national monuments;
- (c) prescribing conditions for the protection, preservation, alteration and access to and use of protected buildings including the manner in which application may be made and consent given for any alteration, internal or external, to such protected buildings;
- (d) prescribing conditions for the protection, preservation, alteration, access to and use of areas of natural and cultural heritage;
- (e) prescribing the forms of, and conditions to be implied in exploration licenses and export permits;
- (f) regulating the management of a protected area;
- (g) controlling the reproduction of objects of archaeological or paleontological interest;
- (h) licensing dealers in antiquities;
- (i) prescribing penalties for breach of any such Regulations; and
- (j) prescribing the fees to be charged under this Act.

(2) The county executive committee member responsible for matters relating to county museums may make regulations relevant to county and private museums for the better carrying out of any of the purposes of this

Act.

98. (1) The National Museums and Heritage Act, 2006 is hereby repealed.

Repeal of No.6 of 2006.

(2) Despite subsection (1), any gazette notices, declarations by the Cabinet Secretary or statutory instructions which declared any heritage to be a monument under the repealed Act shall continue to be in full force and effect as though made pursuant to this Act.

(3) Despite subsection (1), all subsidiary legislation, regulations, rules and legal notices made under the repealed National Museums and Heritage Act, 2006 shall continue to operate as if made under this Act.

99. (1) In this section –

Transitional provisions.

“commencement date” means the day this Act comes into operation;

(2) All rights, obligations and contracts which, immediately before the coming into operation of this Act, were vested in or imposed on the National Museums shall by virtue of this section, continue to be the rights, obligations and contracts of the National Museums.

(3) Subject to the Intergovernmental Relations Act, 2012, all property, assets, rights, liabilities, obligations, agreements and arrangements delineated for purposes of the museums function and assigned to a county government shall, upon commencement of this Act, be deemed to have vested in or have been acquired, incurred or entered into by or on behalf of the relevant county government to the same extent as they were enforceable by or against the National Museums before the commencement of this Act.

(4) The Cabinet Secretary will prepare, in consultation with the County Government and relevant public sector institutions, a plan of transfer of staff, assets, liabilities and contracts.

(5) The transfer of staff who, immediately before the appointed day was an officer or member of staff of the National Museums, for purposes of the museums function shall be handled by the body responsible for transition to County Governments in line with the Intergovernmental

Relations Act, 2012.

(6) The term of any person who is, at the commencement of this Act, a member of the Board of the National Museums shall continue to be member of the Board of the National Museums for the remainder of his term upon commencement of this Act.

100. The Acts specified in the Second Schedule are amended in the manner specified in the Second Schedule.

Consequential amendments to other Acts.

FIRST SCHEDULE**S. 13****THE CONDUCT OF MEETINGS AND AFFAIRS OF THE BOARD**

1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall lapse between the date of one meeting and the date of the next meeting.

Meetings of the Board.

(2) Notwithstanding subparagraph (1), the Director-General may, and upon requisition in writing by at least five members, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The chairperson shall preside at every meeting of the Board at which he is present but in his absence, the vice-chairperson shall preside and shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(5) In the event of the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the chairperson, the vice-chairperson if chairing the meeting or the person presiding shall have a casting vote.

(7) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure of any committee of the Board and for the attendance of other persons at its meetings.

2. (1) The quorum of the Board shall be five members excluding the ex-officio members.

Quorum of the Board

(2) The powers of the Board shall not be affected by any vacancy in the membership thereof.

SECOND SCHEDULE**Consequential Amendments**

- The Mining Act. s.36 Section 36 (2) of the Mining Act is amended by inserting the following new paragraph immediately after paragraph (h) –
- (i) the approval of the Cabinet Secretary responsible for matters relating to Heritage, where the land is situated within a protected heritage area including caves, rock shelters and any such areas of potential heritage importance;
- The Physical and Land Use Planning Act. s.71 Section 71 of the Physical and Land use Planning is amended in—
- (a) subsection (1) by deleting the words “the National Museums and Heritage Act, 2006” appearing immediately after the words “provisions of” and substituting therefor the words “the Heritage and Museums Act, 2020”; and
- (b) subsection (2) by deleting the words “the National Museums and Heritage Act, 2006” appearing immediately after the words “declared under” and substituting therefor the words “the Heritage and Museums Act, 2020”.
- The Environment Management and Co-ordination Act. s.38 Section 38 of the Environment Management and Co-ordination Act is amended—
- (a) in paragraph (jj) by delete the words “the National Museums and Heritage Act” appearing immediately after the words “Cabinet Secretary under” and substituting therefor the words “the Heritage and Museums Act, 2020”; and
- (b) by inserting the following new paragraph immediately after paragraph(jj)–
- (jjj) undertake a heritage impact assessment within the meaning of Heritage and Museums Act 2020.
- The Land Registration Act. s.76 Section 76 of the Land Registration Act is amended by inserting the following new paragraph immediately after paragraph (3)–

No.3 of 2012.

“(4) The Registrar shall make a restriction expressed to last until the making of a further order when the Registrar is informed by the National Museums that a declaration of heritage by the Cabinet Secretary under the “The Heritage and Museums Act, 2020” has been applied for, or is about to be gazette or has been gazette affecting the property in question and upon gazette the restriction shall take effect as a charge over the land”.

THIRD SCHEDULE (S.95)

**Exemption of the National Museums of Kenya from
payment of access fees, permit, license fees and export
fees for heritage research**

- (a) The Science, Technology and Innovation Act,
No.28 of 2013 Part IV, section 12
- (b) The Wildlife Conservation and Management Act,
No.47 of 2013
Part IV, section 22
Part IX, section 80 (1) d, and 81

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of the Bill is to give effect to the Fourth Schedule to the Constitution. The Bill proposes to retain the National Museums of Kenya already established under the National Museums and Heritage Act, 2006, to provide for national and county museums; the preservation, protection and management of cultural and natural heritage at National and County levels of Government; and to repeal the National Museums and Heritage Act, 2006.

Part I of the Bill provides for the preliminary matters.

Part II of the Bill provides under clause 4 of the Bill the establishment of the National Museums of Kenya vested with the mandate of conserving cultural and natural heritage of national importance. The management of National Museums of Kenya is vested in the Board.

The Bill also provides for the Functions of County Governments pertaining to County museums. In relation to museums function, County Governments will have the mandate of collection, documentation, exhibition of materials, objects of historical, cultural and natural heritage important to the respective County.

The composition, qualification, tenure of office of the members of the Board. The Board of National Museums of Kenya has been given powers to establish committees for effective carrying on of its functions. The part also provides for the appointment of the Director-General who shall be responsible for the day to day management and general administration of the National Museums of Kenya subject to the Board's directions.

Part III of the Bill contains provisions relating to financial matters. The part provides for the Funds of the National Museums of Kenya, financial year of National Museums of Kenya, the annual estimates and investment of funds.

Part IV of the Bill provides for management of national heritage, antiquities and monuments. Under this Part, the Cabinet Secretary may after consultation with the Board declare, or gazette a place, or an object as heritage of national importance. The Board may lend borrow or, dispose of objects vested in the National Museums of Kenya. The Board is mandated to deliberate and pass a resolution on degazettement of a place or object as national heritage. The Part further provides for the general principles for management of heritage resources nationally.

Part V of the Bill deals with the requirement of obtaining an exploration license before pursuing excavation or surface search operations for buried monuments. The Part provides for a procedure for

compensation in the case of disturbance of the rights of occupiers of Trust land, or damage to any such land, of an occupier who claims compensation. The National Museums of Kenya must be notified of any discovery made. The Part restricts the movement of objects of archeological or paleontological interest without authorization.

Part VI of the Bill provides for protected areas and ways of compensation to owners of land declared to be a protected area. The Cabinet Secretary is empowered to prohibit or restrict access to any development or use of a protected area for agriculture or livestock or any activity which would damage a monument or object for archeological interest.

Part VII of the Bill deals with the acquisition, protection and maintenance of monuments, inspection, repair, acquisition and guardianship of monuments.

Part VIII of the Bill deals with antiquities and protected objects. Antiquities are considered property of the Government. Removal of antiquities and protected objects from the place where such is situated is prohibited under the Bill. The Bill prohibits the sale, etc of antiquities and protected objects.

Part IX of the Bill provides the conditions relating to export of monuments, antiquities or protected objects. The Bill provides that a monument, antiquity or protected object shall not be removed from Kenya otherwise than through a customs port of entry.

Part X of the Bill provides for enforcement mechanism of the National Museums of Kenya, to ensure compliance with the provisions of the proposed Act. The Bill provides for inspection by the National Museums and for the appointment of national heritage inspectors for the purpose of enforcing the Act. The national heritage inspector has been given powers to inspect, arrest and search under the Bill.

Part XI of the Bill provides for the establishment of the Heritage Tribunal which shall hear appeals and complaints, resolve conflicts and address questions relating to refusal to grant a license under this Act or unreasonable delay in making of that grant.

Part XII of the Bill makes provision for miscellaneous matters among them the making of regulations on heritage of national importance by the Cabinet Secretary. The County Executive Committee Member will be responsible for formulation of regulations pertaining to county and private museums. The Bill repeals the National Museums and Heritage Act, 2006. It further provides for the Transitional and Savings provisions.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill, once enacted, will enable county governments to carry out their mandate as per the Fourth Schedule of the Constitution.

Statement on how the Bill concerns county governments.

The proposed Bill concerns county governments in terms of Article 110(1)(a) of the Constitution as it contains provisions that affect the functions and powers of the county governments with respect to cultural activities, public entertainment and public amenities as set out under paragraph 4 of part 2 of the Fourth Schedule to the Constitution. The Bill outlines the functions of the national government and the county museums. The Bill therefore affects the functions and powers of county governments as provided under the Constitution.

Statement that the Bill is not a money Bill, 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.

Dated the 1st March, 2021.

ALICE MILGO,
Senator.