

**Twelfth Parliament
(No. 087)**



**Fifth Session
(1373)**

REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (FIFTH SESSION)

SPECIAL SITTING

VOTES AND PROCEEDINGS

TUESDAY, JANUARY 25, 2022 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past two O'clock.
2. The proceedings were opened with Prayer said by the Speaker.
3. **COMMUNICATION FROM THE CHAIR**

The Speaker conveyed the following Communication from the Chair-

“Honourable Senators,

I once again, during this long recess period, take this opportunity to welcome you to Special Sitzings of the Senate running from today, Tuesday, 25th January, 2022 until Thursday, 27th January, 2022.

Honourable Senators,

The Special Sitzings are convened pursuant to Standing Order No. 30, on the request of the Senate Majority Leader and with the support of the requisite number of Senators, via letter Ref. No. SEN/SML/CORR, dated 18th January, 2022. Consequently, vide Gazette Notice No. 429 of 21st January, 2022, I appointed today, Tuesday, 25th January, 2022 (afternoon), Wednesday, 26th January, 2022 (afternoon) and Thursday, 27th January, 2022 (morning and afternoon) for the Special Sitzings of the Senate.

In the Gazette Notice, I indicated that the business to be transacted at the Special Sitzings shall be consideration of-

- i) The Political Parties (Amendment) Bill (National Assembly Bill No. 56 of 2021);

- ii) The County Oversight and Accountability Bill (Senate Bills No. 17 of 2021);
- iii) The Heritage and Museums Bill (Senate Bills No. 22 of 2021);
- iv) The County Governments (Amendment) Bill, (Senate Bills No. 38 of 2021); and
- v) The Intergovernmental Relations (Amendment) Bill, (Senate Bills No. 37 of 2021).

Honourable Senators,

In accordance with Standing Order 30 (5), I wish to remind you all that the business specified in the Gazette Notice, and as outlined in the Order Paper and the Weekly Programme, shall be the only business before the Senate during the Specialittings, following which the Senate shall stand adjourned until Tuesday, 8th February, 2022 at 2:30 p.m.

I thank you”.

4. **PAPER LAID**

The following paper was laid on the Table of the Senate –
Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Political Parties (Amendment) Bill (National Assembly Bills No. 56 of 2021).

(Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights)

5. **COMMUNICATION FROM THE CHAIR ON PROCESSING OF AMENDMENTS TO THE POLITICAL PARTIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 56 OF 2021)**

The Speaker conveyed the following Communication from the Chair-

“Honourable Senators,

The Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights has just tabled the report of the Committee on the Political Parties (Amendment) Bill (National Assembly Bills No. 56 of 2021). A copy of the report will be availed to all Senators immediately for their advance reading in readiness for the Second Reading of the Bill which is scheduled for tomorrow, Wednesday, 26th January, 2022, at 2.30 pm.

Pursuant to Standing Order 145, upon conclusion of the Second Reading, the Bill will stand committed to the Committee of the Whole. At the Committee of the Whole, Senators may submit amendments to the Bill for consideration.

Honourable Senators,

The process to guide the Committee of the Whole is as outlined at Standing Order 147. In particular Standing Order 147 (2) provides that-

“No amendment shall be moved to any part of a Bill by any Senator, other than the Senator in charge of the Bill, unless written notification of the amendment shall have been given to the Clerk at least twenty-four hours before the commencement of the sitting at which that part of the Bill is considered in Committee of the Whole”.

Honourable Senators,

In this regard, I direct that all amendments to the Political Parties (Amendment) Bill (National Assembly Bills No. 56 of 2021) must be submitted to the Office of the Clerk by Wednesday, 26th January, 2022 at 2.30 pm, with no exception. Any amendment received after this time will not be accepted.

Honourable Senators,

As we debate the Political Parties (Amendment) Bill (National Assembly Bills No. 56 of 2021), I urge that we exercise restraint, maintain decorum that is expected of a functioning legislature, and adhere to the Standing Orders.

The Senate stands guided”.

6. COMMITTEE OF THE WHOLE

Order for Committee read;

IN THE COMMITTEE

Ag. Chairperson of Committees (Sen. Rose Nyamunga, MP) – in the Chair

The Heritage and Museums Bill (Senate Bills No. 22 of 2021)

Clause 3

Motion made and Question proposed;

THAT, Clause 3 be part of the Bill.

(Sen. (Dr.) Alice Milgo, MP)

Clause 3 – vote deferred

Clause 4 - amendment proposed

THAT the Bill be amended by deleting clause 4.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Clause 4 - vote deferred

Clause 5 - amendment proposed

THAT clause 5 of the Bill be amended by—

- (a) inserting the following new paragraph immediately after paragraph (b) –
 - (ba) identify and manage grade I heritage resources in accordance with this Act; and

deleting paragraphs (d) and (e).

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Clause 5 – vote deferred

Clause 6

Motion made and Question proposed;

THAT, Clause 6 be part of the Bill.

(Sen. (Dr.) Alice Milgo, MP)

Clause 6 – vote deferred

Clause 7 - amendment proposed

THAT clause 7 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b) –

- (ba) identify and manage of grade II heritage resources in accordance with this Act.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Clause 7 – vote deferred

Clause 8 - amendment proposed

THAT clause 8 of the Bill be amended—

(a) in subclause (1) by deleting paragraph (d) and substituting therefor the following new paragraph—

(d) three persons representing scientific, arts and general outstanding interest in, and contribution to the work of, the national heritage, one of whom shall be nominated by Nature Kenya;

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Clause 8 – vote deferred

Clauses 9 to 33

Motion made and Question proposed;

THAT, Clauses 9 to 33 be part of the Bill.

(Sen. (Dr.) Alice Milgo, MP)

Clauses 9 to 33 – vote deferred

Clauses 34 to 39 - amendment proposed

Motion made and Question proposed;

THAT the Clauses 34 to 39 be deleted.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Clauses 34 to 39 – vote deferred

Clauses 40 to 100

Motion made and Question proposed;

THAT, Clause 40 to 100 be part of the Bill.

(Sen. (Dr.) Alice Milgo, MP)

Clauses 40 to 100 – vote deferred

The First, the Second and the Third Schedules

Motion made and Question proposed;

THAT, the First, the Second and the Third Schedules be part of the Bill.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

The First, the Second and the Third Schedules - vote deferred

New Clause 2A - insertion of New Clause proposed

THAT the Bill be amended by inserting the following new clauses immediately after clause 2—

**PART IA - SYSTEM FOR MANAGEMENT OF NATIONAL
HERITAGE RESOURCES**

General
principles.

2A. (1) Every person shall, in the management of heritage resources, take into account —

- (a) the lasting value of natural resources to the Kenyan society;
 - (b) the valuable, finite, non-renewable and irreplaceable nature of the resources and the need to ensure their survival;
 - (c) the responsibility by every generation to act as trustee of the national heritage for succeeding generations;
 - (d) the need to promote the interests of all Kenyans;
 - (e) the need to promote reconciliation, understanding and respect, take account of all relevant cultural values and indigenous knowledge systems;
 - (h) the involvement of communities in the management of heritage resources;
 - (i) the respect of cultural values and the dignity of the communities to whom the resource is connected;
 - (j) the need ensure that the process and resources are researched, documented and recorded; and
 - (k) the need to guard against the use of heritage for sectarian purposes or political gain.
- (2) To ensure that heritage resources are effectively managed—
- (a) the skills and capacities of persons and communities involved in heritage resources management shall be developed; and
 - (b) provision shall be made for the ongoing education and training of existing and new heritage resources management workers.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, new clause 2A be now read a Second Time.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 2A – vote deferred

New Clause 2B - insertion of New Clause proposed

THAT the Bill be amended by inserting the following new clauses immediately after clause 2—

Heritage assessment
criteria and grading.

2B. The National Museums of Kenya shall, in consultation with the Cabinet Secretary and the county executive committee member in each county prescribe a system of grading of places and objects which form part of the national heritage and shall distinguish between—

- (a) grade I category consisting of heritage resources with qualities so exceptional that they are of special national significance;
- (b) grade II consisting of heritage resources which, although forming part of the national heritage, can be considered to have special qualities which make them significant within the context of a county or a region; and

such other grade assessment criteria as the National Museum of Kenya shall consider appropriate.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, new clause 2B be now read a Second Time.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 2B – vote deferred

New Clause 7A - insertion of New Clause proposed

THAT the Bill be amended by inserting the following new clause immediately after clause 7—

County
museum.

7A. (1) A county executive committee member may establish a county museum for the management of the heritage resources within the respective county.

(2) Notwithstanding the generality of subsection (1), a county museum shall—

- (a) advise the county executive committee member on the implementation of this Act or relevant county legislation;
- (b) submit an annual report to the county executive committee member regarding its activities for each financial year;
- (c) promote the systematic identification, recording and assessment of heritage resources and heritage objects which form part of the national heritage in a county;
- (d) protect and manage heritage resources in a county which fulfil the heritage assessment criteria prescribed under this Act for grade II status;
- (e) notify the National Museums of Kenya of the presence of any heritage resource in the county which fulfils the heritage assessment criteria prescribed under this Act for grade I status;
- (f) maintain data bases on heritage resources in accordance with national standards, and at regular intervals furnish the National Museums of Kenya with such data; and
- (g) establish policy, objectives and strategic plans for heritage resources management in the county.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, new clause 7A be now read a Second Time.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 7A – vote deferred

New Clause 33A - insertion of New Clause proposed

THAT the Bill be amended by inserting the following new clauses immediately after clause 33—

Petition for
declaration of
National and
county heritage
sites.

33A. (1) A person may petition –

- (a) the National Museums of Kenya for a place to be declared a national heritage site; or
- (b) the respective county museum for a place to be declared a county heritage site.

(2) The Cabinet Secretary shall develop regulations on petitions for declaration of National and county heritage sites.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, new clause 33A be now read a Second Time.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 33A – vote deferred

New Clause 33B - insertion of New Clause proposed

THAT the Bill be amended by inserting the following new clauses immediately after clause 33—

Inventory of
national heritage.

33B. (1) The National Museums of Kenya shall keep and maintain an inventory of national heritage.

(2) The inventory of national heritage shall be in the form of a data base of information on heritage resources, including—

(a) an object, monument or protected area declared this Act to be a protected object, monument or protected area;

(b) all places and objects protected through the publication of notices in the *Gazette* or *county gazette*, whether under this Act or a county legislation; and

(c) places and objects subject to general protection under this Act or a county legislation for the management of heritage resources.

(3) The National Museums of Kenya shall list heritage resources in the inventory under the categories prescribed under this Act.

(4) The National Museums of Kenya shall from time to time, and in consultation with the relevant county museum review and update the inventory of national heritage.

(5) The National Museums of Kenya shall make the inventory of national heritage accessible to members of the public.

(6) The National Museums of Kenya shall, at regular intervals, publish a summary and analysis of the inventory of national heritage.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, new clause 33B be now read a Second Time.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 33B – vote deferred

New Clause 33C - insertion of New Clause proposed

THAT the Bill be amended by inserting the following new clauses immediately after clause 33—

Heritage registers.

33C. (1) A county museum shall compile and maintain heritage register specifying the heritage resources in the respective county in accordance with this Act.

(2) A county museum shall, in the heritage register, set out the heritage resources in accordance with—

(a) the sub categories prescribed under this Act;

(b) the area of jurisdiction; and

(c) such other categories as the Cabinet Secretary shall prescribe.

(3) The respective county executive committee member shall prescribe the procedure and information required for—

(a) the entry of a resource into the heritage register; and

(b) the compilation of an inventory of heritage resources.

(4) A county museum may approve an application for the entry of heritage resource in the heritage register submitted to it by any person in the prescribed form.

(5) A county museum shall not enter a place in a heritage register unless the museum has consulted with owner of such place regarding the protection of that place.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, new clause 33C be now read a Second Time.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 33C – vote deferred

New Clause 33D - insertion of New Clause proposed

THAT the Bill be amended by inserting the following new clauses immediately after clause 33—

National heritage
resources
assistance
programme.

33D. (1) The National Museums of Kenya may provide financial assistance in the form of a grant or a loan to an approved body or an individual for a project in line with the provisions and the principles prescribed under this Act.

(2) The Cabinet Secretary shall, in consultation with the National Museums of Kenya, prescribe the procedure for the application for approval and granting of financial assistance and the criteria for the assessment of projects.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, new clause 33D be now read a Second Time.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 33D – vote deferred

New Clause 33E - insertion of New Clause proposed

THAT the Bill be amended by inserting the following new clauses immediately after clause 33—

Heritage
agreements.

33E. (1) The National Museums of Kenya or a county museum may enter into an agreement with a conservation body, a person, or a community for the conservation or improvement of a heritage resource.

(2) A heritage agreement may provide for—

- (a) the maintenance and management of a heritage resource;
- (b) the custody of the resource;
- (c) the occupation or use of the place by the owner;
- (d) the facilities of access to be permitted to the public;
- (e) the payment of any expenses incurred by the owner in connection with the maintenance of the heritage resource;
- (f) the duration of the agreement; and
- (g) the procedure for the resolution of any dispute arising out of the agreement.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, new clause 33E be now read a Second Time.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 33E – vote deferred

New Clause 33F - insertion of New Clause proposed

THAT the Bill be amended by inserting the following new clauses immediately after clause 33—

Compulsory repair
order.

33F. The National Museums of Kenya or a county museum 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 prescribed manner.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, new clause 33F be now read a Second Time.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 33F – vote deferred

New Clause 33G - insertion of New Clause proposed

THAT the Bill be amended by inserting the following new clauses immediately after clause 33—

Heritage areas.

33G. (1) The National and county governments shall at the time of revision of a national or county planning laws, or the compilation or revision of a spatial plan, take into account the need for the designation of heritage areas to protect any place of environmental or cultural interest.

(2) A county government may, by notice in the *county gazette*, designate any area or land to be a heritage area if such area or land is of environmental or cultural interest or has heritage resources.

(3) A county government shall provide for the protection of a heritage area through the provisions of its planning laws or legislation.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, new clause 33G be now read a Second Time.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 33G – vote deferred

New Clause 33H - insertion of New Clause proposed

THAT the Bill be amended by inserting the following new clauses immediately after clause 33—

Burial grounds and
graves.

33H. (1) Where it is not the responsibility of any other body, the National Museums of Kenya shall conserve and generally care for burial grounds and graves protected under this Act.

(2) The National Museums of Kenya shall identify and record the graves of victims of conflict and any other graves which it considers to be of cultural significance and may, or this purpose, erect memorials associated with the graves and maintain such memorials.

(3) A person shall not, unless such person has applied for and obtained a permit from by the National Museums of Kenya or a county museum—

- (a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;
- (b) destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than sixty years which is situated outside a formal cemetery administered by a county government; or
- (c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.

(4) The National Museums of Kenya or a county museum may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such graves, at the cost of the applicant.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, new clause 33H be now read a Second Time.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 33H – vote deferred

New Clause 33I - insertion of New Clause proposed

THAT the Bill be amended by inserting the following new clauses immediately after clause 33—

Establishment of
research
institutions No. 28
of 2013.

33I. (1) The Cabinet Secretary may, on the recommendation of the National Museums of Kenya, by notice in the *Gazette* establish research institutes and grant a Certificate of Registration in accordance with the provisions of the Science, Technology and Innovation Act.

(2) The research institutes established under subsection (1) may research and conduct other activities of –

- (a) scientific, natural, cultural or technological importance by means of exploration and field investigations, data analysis, public programmes, exhibitions, tours or publications;
 - (b) biomedical importance by use of non-human primates and other animal models;
 - (c) importance to conservation of biodiversity, including identification, documentation, establishment and curation of a national biodiversity inventory;
 - (d) research in fields of ancient, historical, scientific, cultural, natural, technological, biomedical and human interest; and
 - (e) dissemination and transmission of knowledge from research on cultural heritage, natural heritage, biomedical, ancient and historical monuments and sites of national importance.
- (3) An order under this section may specify—
- (a) that the institute to which it relates shall have corporate personality;
 - (b) the duties, powers and functions of the institute;
 - (c) the manner in which the institute shall be governed; and

- (d) such other matters with respect to the conduct and management of the institute, as the Cabinet Secretary may find it necessary or desirable to provide for.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, new clause 33I be now read a Second Time.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 33I – vote deferred

Clauses 2 - amendment proposed

THAT clause 2 of the Bill be amended by inserting the following new definition immediately after the definition of the word “heritage”—

“living heritage” means the intangible aspects of inherited culture, and may include—

- (a) cultural tradition;
- (b) oral history;
- (c) performance;
- (d) ritual;
- (e) popular memory;
- (f) skills and techniques;
- (g) indigenous knowledge systems; or
- (h) the holistic approach to nature, society and social relationships;

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Clauses 2 – vote deferred

The Title and Clause 1

Motion made and Question proposed;

THAT, the Title and Clause 1 be part of the Bill.

(Sen. (Dr.) Alice Milgo, MP)

The Title and Clause 1 - vote deferred

Progress report;

Motion made;

THAT, pursuant to SO 148, I beg to move, that the Committee of the Whole do report progress on its consideration of the Heritage and Museums Bill (Senate Bills No. 22 of 2021) and seek leave to sit again tomorrow.

(Sen. (Dr.) Alice Milgo, MP)

Before the Question was put and pursuant to Standing Order 79(1), Ag. Chair (Sen. Rose Nyamunga, MP) ruled that the Question did not affect counties;

Question put and agreed to.

7. **HOUSE RESUMED** – (Deputy Speaker - in the Chair)
8. **THE HERITAGE AND MUSEUMS BILL (SENATE BILLS NO. 22 OF 2021)**

Progress reported;

Motion made and Question Proposed;

THAT, the House do agree with the Committee in the said report.

(Sen. Alice Milgo, MP)

There being no Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 79, the Deputy Speaker ruled that the Question did not affect counties;

Question put and agreed to.

9. **COMMITTEE OF THE WHOLE**
THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL (SENATE BILLS NO. 17 OF 2021)

(Sen. Ledama Olekina, MP)

(Resumption of debate interrupted on Wednesday, 22nd December, 2021 – Morning Sitting)

(Division)

Order deferred.

10. **COMMITTEE OF THE WHOLE**
THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILLS NO. 38 OF 2021)

(Sen. Moses Kajwang', MP)

(Resumption of debate interrupted on Wednesday, 22nd December, 2021 – Morning Sitting)

(Division)

Order deferred.

11. **COMMITTEE OF THE WHOLE**
THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL (SENATE BILLS NO. 37 OF 2021)

(The Chairperson, Standing Committee on Devolution and Intergovernmental Relations)

(Resumption of debate interrupted on Wednesday, 22nd December, 2021 – Morning Sitting)

(Division)

Order deferred.

And there being no other Business in the Order Paper, the Deputy Speaker adjourned the Senate at Forty two minutes past three O'clock and pursuant to Standing Order 31(1), the Deputy Speaker adjourned the Senate.

12. **SENATE ROSE** – at Forty two minutes past three O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Wednesday, January 26, 2022 at 2.30 p.m.*

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