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MOMBASA COUNTY BILLS, 2017

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**THE MOMBASA COUNTY CULTURAL HERITAGE
BILL, 2017**

A Bill for

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

ENACTED by the County Assembly of Mombasa, as follows—

PART I— PRELIMINARY

1. This Act may be cited as the Mombasa County Cultural Heritage Act, 2017 and shall come into operation upon publication in the *Gazette*. Short title and commencement

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

“County Assembly” means the County Assembly of Mombasa;

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

“County government” means the County Government of Mombasa;

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

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

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

3. (1). The object of this Act is to— Objects of the Act

- (a) give effect to the constitution as regards cultural practices;
- (b) protect, preserve, conserve and promote the county’s cultural heritage, its property and histories;
- (c) establish and strengthen cultural institutions;

- (d) protect cultural workers and ensure their professional development and well-being; and
- (e) establish and maintain a financially sustainable mechanism for the development, protection and promotion of cultural activities;

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

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

Guiding Principles
and Values

PART II— POLICY, COORDINATION AND OVERSIGHT OF CULTURAL ACTIVITIES

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

Responsibilities of
the county
government.

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

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

Powers and Duties
of County
Executive
Committee
member

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

- (a) in relation to the repository and for the purpose of collecting and compiling information relating to cultural activities;
 - (i) the primary registration of cultural activities within the county for the purposes of recognition under this Act;
 - (ii) the receipt, documentation, storage and updating of information relating to cultural activities from communities within the county;
- (b) the protection and promotion of cultural activities of communities within the county; and
- (c) the facilitation of collaboration, access to or the sharing of information and data relating to cultural activities between county governments.
- (a) the protection of cultural practices from misuse and misappropriation; and
- (b) the facilitation of access to information and the sharing of information and data relating to cultural activities.

(3) For purposes of securing broad support for cultural heritage related activities, the County Executive Committee member, in performance of functions and duties under this Act;

- (i) may consult with other executive departments, public agencies or agencies of the county government whose functions affect or relate to cultural activities;
- (ii) may consult with relevant non-governmental entities, including private sector and research institutions; and
- (iii) shall secure public participation, including

setting up, through regulations, of specific mechanism for regular engagement of stakeholders on policy matters.

PART III—ADMINISTRATION OF CULTURAL ACTIVITIES

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

Department of
Cultural Heritage

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

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

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

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

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

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

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

- (a) advice the county government on matters relating to culture;
- (b) serve as a link between the national government,

the county government, communities, groups and individuals;

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

(8) The County Executive Committee member shall, in consultation with the County Public Service Board, determine the staff establishment required for the department to effectively perform its functions under this Act

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

Financial
sustainability of
the Department

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

- (a) investment planning on infrastructure and asset development;
- (b) options for Public-Private Partnerships where necessary;
- (c) strategies for full operations and maintenance cost coverage;
- (d) human resource management plan, including grievance mechanisms.

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

County funds for cultural activities promotion

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

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

Public Private Partnerships
(No. 15 of 2013)

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

Monitoring and Evaluation

PART IV— PROTECTION OF CULTURAL HERITAGE

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

Protection of cultural heritage

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

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

Protection of cultural heritage not subject to any formality

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

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

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

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

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

Right to protection of cultural heritage

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

Rights conferred to registered communities

(a) authorize the use of their culture; and

(b) prevent any person from exploiting their culture without their prior informed consent.

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

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

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

PART V— CULTURAL HERITAGE FUND

16. There is established a fund, to be known as the Mombasa County Cultural Heritage Fund.

Establishment of the Mombasa County Cultural Heritage Fund.

17. The Fund shall consist of—

Sources of funds for the Fund

(a) levies, fees and other moneys paid under this Act; and

(b) any moneys that may be payable to the Fund

from moneys appropriated for the purpose by the County Assembly; and

- (c) any moneys that the Fund may obtain, with the approval of the County Executive Committee Member and the County Executive Committee Member responsible for finance, by way of donations, loans or other financial assistance; and
- (d) any other moneys that may vest in or accrue to the Fund, whether in terms of this Act or otherwise.

18. (1) The County Executive Committee Member for finance and economic planning shall designate the Chief Officer for the time being responsible for cultural activities as the person responsible for administering the fund and who shall:

Administration of
the Fund

- (a) Supervise and control the administration of the Fund;
- (b) Be the accounting officer of the fund;
- (c) Prepare a budget and such plans for the administration of the fund to be approved by the County Executive Committee;
- (d) Impose conditions and restrictions on the use of any expenditure arising from the fund;
- (e) ensure that the earnings of, or accruals to the fund are retained in the fund, unless the County Executive Committee member for finance directs otherwise;
- (f) ensure that money held in the fund, including any earnings or accruals referred to in paragraph (e) is spent only for the purposes for which the fund is established;
- (g) prepare accounts for the fund for each financial year;
- (h) ensure that the accounts for the fund and the annual financial statements relating to those accounts comply with the accounting standards prescribed and published by the Accounting Standards Board from time to time;
- (i) not later than three months after the end of each

financial year, submit financial statements relating to those accounts to the Auditor-General;

- (j) furnish such additional information as may be required for examination and audit by the Auditor-General or under any applicable law;
- (k) present the financial statements to the County Assembly;

(2) All monies of the fund shall be maintained in a separate bank account in the name of the fund opened and administered in accordance with the provisions of the Public Finance Management Act, 2012.

(3) The balance of the fund at the close of each financial year shall be retained in the fund for the purpose for which the fund is established.

19. Moneys in the Fund shall be applied for the following purposes—

Application of the Fund

- (a) protection and promotion of cultural activities;
- (b) meeting the expenses of the department provided that no moneys shall be applied towards any expense that is not provided for in a budget approved by the County Assembly; and
- (c) any other purpose which the County Executive Committee Member, after consultation with the department, considers necessary for the fulfilment of the objectives of this Act.

20. The financial year of the Fund shall be the period of twelve months ending on the 30th June each year.

Financial year of the Fund

21. (1) The County Executive Committee Member shall ensure that—

Books of account

- (a) proper accounts and other records relating thereto are kept in relation to all the financial transactions of the Fund and department; and
- (b) in respect of each financial year—
 - (i) a balance-sheet; and
 - (ii) a statement of the transactions referred to in paragraph (a); are prepared without undue delay.

22. (1) The County Executive Committee Member

Accounts and audit.

shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Fund and department.

(2) The annual accounts of the must be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the law relating to public audit.

PART VI— GENERAL PROVISIONS

23. (1) Employees of the department shall have immunity from liability and prosecution for any losses to the department, arising from actions taken in good faith, in execution of lawful duties.

Conduct of
Employees of the
Department

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

Cap 63
Cap 65
Cap 183

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

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

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

Impersonation of
Department Staff

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

Obstruction/
misrepresentation

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

26. (1) The County Executive Committee member ^{Regulations} may make regulations for the better carrying out of the provisions of this Act.

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

MEMORANDUM OF OBJECTS AND REASONS

1. PURPOSE

The purpose of this Memorandum is to request the County Assembly's consideration and approval of the Mombasa Cultural Heritage Bill, 2017 and its direction that the Bill be introduced in the County Assembly.

2. BACKGROUND

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

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

3. OUTLINE OF THE BILL

Part I

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

Part II

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

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

Part III

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

Part IV

This part establishes the Cultural Heritage Fund. It inter alia, expounds on how the monies for the fund will be appropriated as well as how the funds will be utilized.

Part V

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

4. RECOMMENDATIONS

The Assembly is requested to:

- (a) note the contents of this Memorandum;
- (b) publish the Bill and table it for first Reading;
- (c) that in line with the legislative and constitutional platforms, the relevant house committee commences consultations with the relevant stakeholders and subject the Bill to thorough public participation.
- (d) approve the Mombasa County Cultural Heritage Bill, 2017 annexed to this Memorandum;

The enactment of this Bill may occasion additional expenditure of public funds which shall be provided in the estimates.

MCA.
Committee on Tourism and Culture.