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BUNGOMA COUNTY BILLS, 2022

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CONTENT

Bill for Introduction into the County Assembly of Bungoma—

PAGE

The Bungoma County Cultural Heritage Bill, 2022 1

THE BUNGOMA COUNTY CULTURAL HERITAGE BILL, 2022

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

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

PART II—PROTECTION AND REGULATION OF CULTURAL
ACTIVITIES AND HERITAGE

Administration of Cultural Heritage

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

Protection of Cultural Articles

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

Provisions Relating to Cultural Sites

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

PART III—MISCELLANEOUS PROVISIONS

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

22—Offences.

23 —Power to issue permit.

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

25—Protection from personal liability.

26—Regulations.

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

28—General Penalty.

THE BUNGOMACOUNTY CULTURAL HERITAGE BILL, 2022

A Bill for

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

ENACTED by the County Assembly of Bungoma, follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Bungoma County Cultural Heritage Act, 2022.

Interpretation

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

“authorized officer” means an officer appointed under section 5;

“camping” means—

(a) occupying land for picnic;

(b) occupying land with a caravan or vehicle for sleeping or as a Shelter or protection against the weather, or

(c) erecting a tent for sleeping or as a shelter or protection against the weather;

“camping site” means land set aside by the County government as a public picnic, camping or caravan park site or a similar private facility on private land licensed by the Department;

“creative/cultural industries” means those industries which have their origin in individual creativity, skill and talent and which have a potential for wealth and job creation through the generation and exploitation of intellectual property;

“cultural activity” means an activity which by its nature, use or purpose embodies or conveys a cultural expression, and cultural activity may be an end in itself or contribute to the production of an article or service;

“cultural heritage” means cultural activities, articles, sites, community practices, community representations and community expressions of county importance;

“cultural industries” means industries producing or distributing cultural articles;

“cultural site” means a place, owned or managed by the county government or private person or organization, which exhibits a cultural way of life or in which cultural activities are undertaken;

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

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

“Executive Committee Member” means the County Executive Committee Member responsible for Cultural Heritage;

“inland waters” includes any lake, river, dam marsh or other body of water;

“nature reserve” means a nature reserve registered as a local nature reserve by the County;

“notice board” includes a sign, poster or other device on which the county displays information;

“park” means any piece of land registered by the county as a park and maintained by it for the use of the public;

“vehicle” means any device driven by mechanical, animal, natural or human power on land or water, and includes any craft or aircraft, but does not include a wheeled chair or a device drawn or propelled by hand and used solely for the conveyance of a child or invalid.

Objects and purpose

3. The objects of the Act are to regulate, protect and promote the following activities and services of county importance for the interest and enjoyment of the community and persons visiting the county—

- (a) cultural sites;
- (b) cultural activities;
- (c) ensure respect for and safeguard the culture and cultural heritage of the communities, groups and individuals in the county;
- (d) create awareness of the culture and cultural heritage in the county through the promotion of cultural goods, services and activities;
- (e) protect and promote the diversity of culture and cultural heritage in the county;

- (f) encourage dialogue among persons of different cultures and cultural heritage to promote inter-cultural respect and mutual benefits;
- (g) recognize, promote and protect the distinctive nature of the different cultures, cultural heritage and the distinctive activities, goods and services from them;
- (h) uphold the constitutional provisions to preserve the dignity of individuals, groups and communities irrespective of their culture beliefs; and
- (i) provide a framework under which communities and groups within the County will receive compensation, royalties or other benefits from the activities, goods, services and use of their culture and cultural heritage in consultation with the National Government.

Application of the Act

4. The provisions of the Act shall apply to cultural activities and heritage in the county which are not—

- (a) declared or deemed to have been declared national heritage;
- (b) under the National Museums of Kenya; or
- (c) vested under the national level of government by virtue of the Constitution.

PART II—PROTECTION AND REGULATION OF CULTURAL ACTIVITIES AND HERITAGE

Administration of Cultural Heritage

Authorized officers

5. The Executive Committee Member shall, by notice in the county Gazette, appoint such number of officers with knowledge and experience in culture to be authorized officers to oversee the activities taking place in cultural sites under this Act.

Responsibilities of the County government

6. (1) The county government shall at the county level, through the Department or other agency delegated by the county government—

- (a) hold in trust for the communities in the county, any cultural articles and cultural sites not owned by an individual or organization;
- (b) protect cultural sites and historical monuments in the County and promote tourism in relation;

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

(2) Except as provided under section 15, the County government shall not, through the Department, its agency, any organization or any person, sell mortgage or otherwise part possession with any cultural article it holds in trust for any community.

Protection of individuals

7. The Department shall, in the discharge of the responsibilities under section 6, ensure that—

- (a) no person shall compel another to perform, observe or undergo any cultural practice or rite;
- (b) sufficient information on cultural activities is disseminated to ensure that persons intending to participate in any cultural activities are well informed;
- (c) the performance or enjoyment of any cultural activity by any individual or community does not prejudice the rights and fundamental freedoms of other residents of the county;
- (d) cultural activities, practices or rites do not undermine human dignity and the Bill of rights; and
- (e) cultural activities do not undermine national cohesion and security.

Establishment of cultural centres

8. (1) The Department shall establish cultural infrastructure and in consultation with the Kenya Cultural Centre, at least one cultural centre the objects of which are to provide—

- (a) a theatre for the performance of music, dance and drama;
- (b) a place for the exhibition of works of art and craft, and cultural artifacts;
- (c) a stage for film shows of cultural, educational, developmental, hygienic or social importance to the community;
- (d) a place to hold meetings to discuss matters of literary, historical, scientific or educational interest or importance;
- (e) focal points for promotion of intercultural dialogue, national cohesion and cultural expression at the county level; and
- (f) such other use as the Department may approve.

(2) The Executive Committee Member may establish other cultural centres and cultural sites as may be necessary for the development of cultural activities in the County.

Establishment of a cultural forum

9. (1) The Department shall establish at least one public forum for the purpose of encouraging participation of the community in the cultural activities in the county.

(2) The public forum shall consist of—

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

(3) The forum shall be involved in the organization of any major cultural activity taking place in the county.

(4) A person, organization, group of persons or member of a community may initiate a cultural activity or submit input on any cultural activity under consideration.

(5) A person, organization, group of persons or member of a community initiating a cultural activity shall notify the Department to enable it determine the magnitude of the activity and, where necessary, to convene the forum.

Protection of Cultural Articles and Activities

Determination of article of a cultural nature

10. (1) The Department may, where necessary, determine whether an article is an article of a cultural nature taking into consideration its usage, historical significance and any other relevant matter-Provided that—

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

(2) If an article is determined to be an article of a cultural nature, the Department shall declare it to be an article protected under this Act.

Protection of cultural articles

11. The Department shall take measures that may be necessary to protect a cultural article or activity which may be endangered including—

- (a) the purchasing or registering of the article or activity;

- (b) licensing of persons or organizations producing or dealing with the articles or activity;
- (c) suspension of trade in the endangered article, for a given period; or
- (d) the management of the production and maintenance of the article or activity for a given period.

Registration of cultural articles

12. The department, in consultation with the recognized elders of a community may register a cultural article.

Establishment of cultural and creative industries

13. (1) The department shall encourage the relevant communities to establish develop, support and protect creative and cultural industries or activities for the purpose of creating employment and other benefits for the community and where possible, provide financial support to ensure the establishment of the industry

(2) The cultural articles produced by any industry established under subsection (1) shall be provided in the open market by the community.

Provisions Relating to Cultural Sites

Declaration of Cultural Sites

14. (1) The Executive committee Member responsible for cultural activities may, after consultation with the National Government and after taking into consideration the usage, historical significance and other relevant matters relating to a site, declare any site to be a cultural site protected under this Act.

(2) The Department may enter into a written agreement with any person, state organ, local community or organization—

- (a) to provide for the management and maintenance of a cultural site; and
- (b) to regulate and control human activities within a cultural site.

Protection of cultural sites

15. (1) The Department in consultation with the National Government, shall take measures that may be necessary to protect any cultural site of county importance which may be endangered including —

- (a) the, purchasing or registering of the site;
- (b) licensing of persons or organizations dealing with the sites;

- (c) temporary closing of the endangered site for a given period; and
- (d) the management and maintenance of site for a given period.

(2) If the owner of a private cultural site desires to sell the site, the owner shall inform the Department and the Department shall have the first priority to purchase the site.

Private cultural sites

16. (1) A person on whose land a cultural spot or property is situated may request the Department to declare the spot or property to be a cultural site in consultation with the National Government and shall apply for the management of the spot or property as a cultural site.

(2) The Department shall inspect the site and if satisfied that it meets the requirements of a cultural site declare it to be a private cultural site and issue a permit with or without conditions.

Admission to cultural sites

17. (1) The Department shall determine the times, dates and conditions under which a cultural site declared under section 20 is open to the public.

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

(3) The Department may grant to any person or persons, during such hours and for a period that it may specify the exclusive use of a cultural site.

(4) The Department may for reasons of maintenance, development, security, public health, or any other relevant matter temporarily or permanently—

- (a) close a cultural site or a portion thereof; or
- (b) suspend all or any activities on the cultural site.

(5) Where a person in a cultural site commits an offence relating to this Part, an authorized officer may order that person to leave must leave the premises by the shortest route available to the public.

(6) The Department may, depending on the size and nature of the cultural site, determine—

- (a) the maximum number of persons or vehicles that may be in or at a cultural site at any time; and
- (b) classes of vehicles that may be in or at a cultural site.

Notice board at a site

18. (1) The Department shall erect a notice board at the entrance or within a reasonable distance from the entrance of a cultural site on which information shall be displayed for the public, indicating—

- (a) the dates, time and conditions of entry;
- (b) the activities that may be undertaken on the site;
- (c) the fees payable for entry; and
- (d) where it applies, information on closure of the site under section 17 (4).

(2) No person, other than an authorized officer, may remove or alter the contents of a notice displayed on the notice board.

(3) A notice displayed on the notice board may contain a graphic representation to convey the required meaning.

(4) A person who defaces or alters a notice displayed on the notice board or otherwise contravenes any of the provisions of this section, commits an offence.

Conditions of entry

19. (1) No person shall, while in or at a cultural site—

- (a) break, damage, destroy, tamper with, remove, misuse, disfigure or use anything or fail to observe any instruction issued by the Department;
- (b) throw or roll a rock, stone, bottle or other object;
- (c) unless authorized to do so, pull out, pick, out, damage or have possession any flora growing in the cultural site;
- (d) walk on a flowerbed;
- (e) walk, stand, sit or lie on grass in contravention of a notice;
- (f) write, paint, draw pictures or a symbol, emblem or the like on a structure or path in the site;
- (g) excavate soil, sand or stone or remove organic or inorganic objects unless one is in possession of a permit issued in relation thereto;
- (h) interfere with or obstruct water flow, divert a stream or drain a wetland;

- (i) deface or disfigure anything within the site by pasting or affixing in any way any bills, papers, placards, notices or anything else;
- (j) wash, polish or repair a vehicle in the site, except emergency repairs;
- (k) burn refuse, litter or dump any refuse, garden refuse or building materials;
- (l) dispose of any burning or smoldering object contrary to the manner provided on the notice board ;
- (m) behave or conduct oneself in an improper, indecent or unbecoming manner;
- (n) enter or use a toilet facility indicated by notice for use by members of the opposite sex;
- (o) hunt, injure, disturb, feed, kill, hurt, follow, disturb, ill-treat or catch an animal, or displace, disturb, destroy or remove a bird, nest or egg, or skin or gut an animal, except where authorized to do so;
- (p) in any way inconvenience or prejudice the safety or rights of other persons on the site
- (q) enter or leave a cultural site other than by way of the official entry and exit or without having paid the entrance fees;
- (r) release or introduce any wild animal, fish, bird or flora into the site;
- (s) swim or catch fish if not authorized to do;
- (t) feed any fish without approval of the authorized officer; or
- (u) use any craft on inland waters at any place other than as indicated on the notice board.

(2) A person who contravenes a provision of subsection (1) commits an offence.

PART III — MISCELLANEOUS PROVISIONS

Register of cultural articles and sites

20. (1) The Department shall develop, manage and keep a register of all traditional knowledge, cultural expressions, cultural articles and cultural sites declared under this Act and shall include in the register the type of article or site, the community to which it relates and any other information of interest relating to the article or site.

(2) The complete and validated information contained in the register in subsection (1) shall be transmitted to the National Government.

Grant of short term custody

21. (1) Where the cultural articles of a community are not being sufficiently exploited, the Department may, with the approval of the Executive Committee Member and the community to which a cultural article belongs, grant a license for exploitation.

(2) The license of a cultural article shall be upon execution of an agreement specifying—

- (a) the period of custody not exceeding twelve months;
- (b) the monetary and cultural value of the article; and
- (c) the conditions of custody that may be agreed by the parties.

(3) The Department shall, in addition to the conditions specified in the agreement, require the person receiving the license to insure the article.

Offences

22. A person commits an offence—

- (a) is wrongfully in possession of a cultural article;
- (b) aids or abets another person to steal a cultural article;
- (c) sells or attempts to sell a cultural article without authority;
- (d) destroys or attempts to destroy a cultural article, site or activity;
- (e) forges or defrauds with intent to have an item declared a cultural article; or
- (f) removes or attempts to remove a cultural article from its lawful custody, without authority to do so commits an offence.

(2) A person who commits an offence under subsection (1) or any other section under this Part is liable, on conviction to a fine not exceeding two hundred thousand shillings or to a term of imprisonment not exceeding two years or both.

(3) In addition to the penalty imposed under subsection (1) the offender, shall pay any expenses incurred by the county government as a consequence of the commission of the offence.

Power to issue permit

23. The Department may issue permits relating to the management of cultural centres, sites or institution and the use of protected flora or fauna

of cultural importance in accordance with the provisions of this Act and national legislation.

Declaration of National cultural article, activity or site

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

Protection from personal liability

25. No action or omission by a public officer shall, if the Bill was done in good faith for the purpose of carrying out the provisions of this Bill or any other law, subject the person to any liability, action, claim or demand as long as the said Act is in line with the Constitution and the Public Officer code of conduct.

Regulations

26. The Executive Committee Member may make regulations in consultation with the National Government for the better carrying into effect of the provisions of this Act and without prejudice to the generality of the foregoing may prescribe—

- (a) the fees to be charged in respect of any license or permit in accordance with the relevant Act;
- (b) the form of applications for the license or permit;
- (c) the form of records to be kept;
- (d) hours during which cultural sites may be open to the public;
- (e) conditions subject to which the department may issue permits for private places of public entertainment, public amenities, camping sites or cultural sites; and
- (f) any matter that the executive member considers necessary for the administration of this Act.

Powers of entry by police officer or authorized officer

27. (1) A police officer or authorized officer appointed for the purpose by the Executive Committee Member may, at all reasonable times, enter upon any cultural site in which there is reason to believe that any activity or event is being or is about to take place, with a view to ensuring that the provisions of this Bill are complied with.

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

(3) A police officer or an authorized officer shall order any activity or event to cease immediately when satisfied that—

(a) the activity or event is being performed or presented contrary to the provisions of this Act; and

(b) there is clear and present danger to the members of the public.

(4) A person preventing or obstructing a police officer, or authorized officer acting under subsection (1) commits an offence.

General Penalty

28. A person who is convicted of an offence under this Act, for which no other penalty is provided shall on conviction, be liable to a fine not exceeding Fifty Thousand Shillings or imprisonment for a term not exceeding six months or to both.

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of this Bill is to provide for a legislative framework for purposes of promoting and protecting culture and cultural heritage in the county.

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

Clauses 1 and 2 set out the short title of the Bill and interpretation of terms respectively while clause 3 and 4 provide for the objects of the Bill and the scope and application respectively.

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

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

Clause 10 provides for determination of an article of a cultural nature while Clause 11 provides for their protection. Clause 12 provides for patent or copyright of a cultural article while clause 13 provides for the establishment of cultural industries.

Clause 14 provides that the Executive Committee Member may, after consultation with the Department and after taking into consideration the usage, historical significance and other relevant matters relating to a site, declare any site to be a cultural site which will be protected under the Act while clause 15 provides for protection of these cultural sites. Clause 16 and 17 provide for private cultural sites and admission to cultural sites respectively. Clause 18 requires the Department to erect a notice board at the entrance or within a reasonable distance from the entrance of a cultural site indicating the activities that are carried out in the site while Clause 19 outlines the condition of entry in the site.

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

Clause 20 requires the Department to keep a register of all articles of a cultural nature and cultural sites declared under this Act while clause 21 is on grant of short term custody to a person seeking to have the article. Clause 22 makes provision on offences while clause 23 gives the Department power to issue permits relating to the management of cultural centres, sites or institution and the use flora or fauna of cultural importance provided the activity is in accordance with the provisions of

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

STEPHEN WAMALWA,
Member of County Assembly.