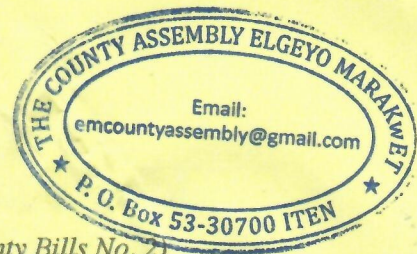
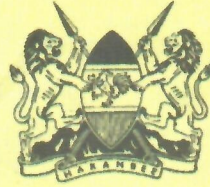


SPECIAL ISSUE



Kenya Gazette Supplement No. 3 (Elgeyo Marakwet County Bills No. 2)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ELGEYO/MARAKWET COUNTY BILLS, 2019

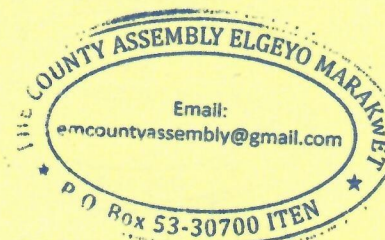
NAIROBI, 20th March, 2019

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**THE ELGEYO/MARAKWET COUNTY CULTURAL
HERITAGE BILL, 2019**

A Bill for

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

ENACTED by the County Assembly of Elgeyo/Marakwet as follows—

PART 1—PRELIMINARY

Short title and Commencement

1. This Act may be cited as The Elgeyo/Marakwet County Cultural Heritage Act, 2019 and shall come to operation upon publication in *Gazette*.

Interpretation

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

“authorized officer” means an officer appointed under section 12;

“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;

“county assembly” means the County Assembly of Elgeyo/Marakwet;

“cultural activities, goods and services” means those activities, goods or services which at the time are considered as a specific attribute, their use or purpose embody or convey cultural expressions, irrespective of the commercial value they may have. Cultural activities may be an end in themselves or they may contribute to the production of goods and services;

“cultural content” means the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities;

“cultural diversity” means the manifold ways in which the cultures of groups and communities find expression which expressions are passed on within and among the groups and communities;

“cultural expressions” means those expressions that result from the creativity of individuals, groups and communities and have cultural content;

“cultural heritage” includes cultural activities, articles and sites;

“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;

“department” means the County Government Department responsible for cultural heritage;

“executive committee member” means the County Executive Committee Member responsible for cultural heritage;

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

“Protection” means the adoption of measures aimed at the preservation, safeguard and enhancement of the diversity of cultural expressions, and the word “protect” shall be construed accordingly.

Objects and purpose of the Act

3. The object of this Act is to regulate, protect and promote the following activities and services 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 cultural 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 cultural heritage.

Application of this Act

4. The provisions of this 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) matters under National Government as provided under the Protection of Traditional Knowledge and Cultural Expressions act (No. 33 of 2016).

PART II—ADMINISTRATION, PROTECTION AND REGULATION OF CULTURAL ACTIVITIES AND REGULATION OF CULTURAL ACTIVITIES AND HERITAGE

Administration of Cultural Heritage Responsibilities of the County Government

5. The County Government shall, 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 thereto;
- (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 the County, conduct and facilitate civic education and public, discussion to stimulate awareness of pertinent issues relating to cultural articles, and activities’;
- (f) where necessary determine activities which amount to cultural activities;
- (g) determine the compensation, royalties or other benefits to be received by communities or group for their cultural goods, services, activities or other cultural heritage;
- (h) promote cultural tourism; and
- (i) any such other things as may be incidental or conducive to the attainment of the objects of this Act.

Protection of Individuals

6. The Department shall, in the discharge of the responsibilities under section 5 ensure that—

- (a) no person is compelled to participate in a cultural activity or perform, observe or undergo any cultural practice or rite without that person’s choice;
- (b) 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; and
- (c) cultural activities, practices or rites which undermine human dignity shall be prohibited.

Repository of traditional knowledge and cultural expressions

7. The County Government shall, through the County Executive Committee member—

- (a) in relation to the repository and for the purpose of collecting and compiling information relating to traditional knowledge and cultural expressions;
- (b) the primary registration of traditional knowledge and cultural expressions;

- (c) the receipts, documentation, storage and updating of information relating to traditional knowledge and cultural expressions from communities within the County.

Registration and documentation

8. (1) The department shall, collect information, document and register traditional knowledge.

(2) The registration under subsection (1) shall be undertaken willingly by the owners of traditional knowledge upon obtaining prior informed consent but shall not require the public disclosure of the traditional knowledge concerned.

(3) Where the community in the County shares traditional knowledge with a community outside the County, the Department shall register the owners of the traditional knowledge in the County and maintain the relevant records.

(4) Where the concurrent claims arise from different communities, the Department shall, while determining the claim consider customary law and protocol of the communities in question, local information sources and any other means that may be applicable.

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

Registration of Herbalists

9. (1) The Department shall establish mechanisms for the registration of herbalists in the county and an association formed in their name.

(2) The association shall comprise the entire practicing herbalist in the county.

(3) No herbalist shall be allowed to practice traditional medicine in the county unless he or she is registered and or belonging to the association.

(4) The herbalist shall have full rights as owners of traditional knowledge as provided for under this Act.

The Community Participation in Conservation

10. Community conservation efforts aimed at protecting and conserving cultural heritage shall be documented and maintained as part of the register.

Maintenance of Registers

11. (1) The Department shall, establish and maintain a register which shall contain information relating to traditional knowledge and cultural expressions collected and documented by the County Government during the registration process.

(2) The registers maintained under subsection (1) may relate to specific forms of protection, and shall compromise the status of undisclosed traditional knowledge or the interests of holders of traditional knowledge that relate to the undisclosed elements of their knowledge.

(3) The department shall, upon collecting and documenting information on traditional knowledge and cultural expressions and registering the traditional knowledge or cultural expressions relating to any community transmit the complete and validated information relating to the traditional knowledge of cultural expressions for entry in the Repository in the form or manner prescribed by the County Executive Committee Member.

Authorized officers

12. The County Public Service Board, in consultation with the Executive Committee Member shall appoint such staff as may be necessary for the administration of this Act.

Establishment of cultural centers

13. (1) The Department shall establish at least one cultural centre at each subcounty.

(2) The objects of Cultural Centre shall be 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; and
- (e) such other use as the Department may approve.

Determination of Article of a Cultural Nature

14. (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.

(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 and Activities

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

- (a) the patenting, 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.

Protection from the Unlawful Access

16. (1) The department shall establish mechanisms that enable the communities to prevent the misappropriation, misuse or unlawful access and exploitation of tradition knowledge and cultural expressions, without prior consent.

(2) In addition, the department shall assist the recognized owners of traditional knowledge or cultural expressions in ascertaining their rights that exist in relation to derivative work including copyright, trademark, patent, industrial design, geographical indication or other intellectual property right as provided by the relevant intellectual property law.

Patent or Copyright of a Cultural Article

17. The Department or the recognized elders of a community in the County may patent or register a copyright of a cultural heritage article or activity.

Documentation and Registration of Clans and Age-Sets

18. (1) The Department shall document and register all the clans and age-sets of the ethnic communities found in the county as part of cultural expressions.

(2) The age-sets shall be regarded as cultural diversity and shall enjoy cultural expression rights as provided for under this Act.

Recognition of Traditional Surgery as Traditional Knowledge

19. The Department shall establish mechanisms of recognizing tradition surgeons in the county as owners of traditional knowledge and

ascertain their rights that exist as provided for under this Act or under any other relevant national law.

Establishment of Cultural Industries

20. (1) The Department shall encourage the relevant communities to establish cultural industries of the patented or copyrighted articles 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.

Purposes of Cultural Sites

21. Cultural sites shall be used as vessels of cultural values that contribute to the identity of the communities within the county.

Establishment of Botanical Gardens as Cultural Sites

21. (1) The Department shall identify at least in each subcounty a botanical garden.

(2) The gardens shall be secured as a cultural site and its original habitat maintained.

(3) The gardens shall be dedicated to the collection, cultivation, preservation, conservation research and display of wide range of specialist medicinal plants.

(4) The County Government may enter into partnership agreements with universities or other scientific research organizations associated with herbaria and research programmes in plant taxonomy or some other aspect of botanical sciences for purposes of managing and carrying out related research.

(5) Notwithstanding the provisions of subsection (4), the county government in collaboration with recognized herbalists and or herbalist association in maintaining the botanical gardens declared cultural site.

Declaration of a Cultural Site

23. (1) 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 protected under this Act.

(2) The Executive Committee Member 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

24. (1) The Department shall take measure that may be necessary to protect any cultural site which may be endangered including —

- (a) the patenting 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 which shall have the first priority to purchase the site.

Private Cultural Sites

25. (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 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 Public Cultural Sites

26. (1) The County Executive Committee Member shall determine the times, dates and conditions under which a cultural site declared under section 22 is open to the public.

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

(3) The Department may grant admission 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 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 the cultural site, and a person ordered 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 Site

27. (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 of entry; and
- (d) where it applies, information on closure of the site under section 16(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

28. (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) unless authorized to do so, pull out, pick, cut, damage or have possession any flora growing in the cultural site;
- (c) write, paint, draw pictures or a symbol, emblem or the like on a structure or path in the site;

- (d) excavate soil, sand or stone or remove organic or inorganic objects unless one is in possession of a permit issued in relation thereto;
- (e) deface or disfigure anything within the site by pasting or affixing in any way any bills, papers, placards, notices or anything else;
- (f) wash, polish or repair a vehicle in the site, except emergency repairs;
- (g) burn refuse, litter or dump a vehicle in the site, except emergency repairs;
- (h) dispose of any burning or smoldering object contrary to the manner provided on the notice board;
- (i) enter or leave a cultural site other than by way of the official entry and exit or without having paid the entrance fees;
- (j) walk on the flower bed;
- (k) walk, stand, sit or lie on grass in contravention of a notice;
- (l) behave or conduct oneself in an improper, indecent or unbecoming manner;
- (m) enter or use a toilet facility indicated by notice for use by members of the opposite sex;
- (n) hunt, injure, disturb, feed, kill, hurt, follow, ill-treat or catch an animal or displace, destroy or remove a bird, net or egg or skin or gut an animal, except where authorized to do so;
- (o) release or introduce any wild animal, fish, bird or flora into the site;
- (p) swim or catch fish if not authorized to do;
- (q) feed any fish without approval of the authorized officer;
- (r) use any craft on inland waters at any place other than as indicated on the notice board; or
- (s) in any way inconvenience or prejudice the safety or rights of other persons on the site.

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

User agreements

29. (1) The owners shall have the discretion in deciding whether to accept or reject an application for usage.

(2) The holders shall then inform the County Executive Committee Member, in writing, of their decision and the County Executive Committee Member shall inform the applicant of the holder's decision, in writing.

(3) The owners of the traditional knowledge or cultural expressions shall, before entering into an authorized user agreement, consult the members of the community on the proposed terms and conditions of the agreement.

(4) The County Executive Committee Member shall make regulations generally on matters relating but not limited to user agreements.

County Library

30. (1) There is established under this Act a County Library which shall be a repository for preserving and making available of historical materials relating to the county.

(2) The County Library shall be used to document county traditional and cultural expressions that are unique and domiciled in the county.

Annual County Cultural Festival

31. (1) The Department shall organize an annual tourism and cultural festival with the aim of promoting cultural diversity, peaceful co-existence and boost tourism.

(2) The festival will feature unique performances and cultural traditions from all the ethnic communities in the county whereof the best performances shall be recognized.

PART III—FINANCIAL PROVISION**Funds of the Department**

32. The funds of the Department shall consist of —

- (a) monies appropriated by the County Assembly for the purposes of promoting and protecting culture and cultural heritage in the County;
- (b) monies appropriated by the county assembly for the purposes of compensation, payment of royalties or other benefits from the activities, goods and services and use of their culture and cultural heritage; and

- (c) any grant, credits, gifts, donation and other endowments provided to the Department.

Annual Estimates

33. (1) Before the commencement of each financial year, the Department shall cause to be prepared estimates of the revenue and expenditure of the Department for that year in accordance with provisions of Public Finance Management Act, 2012.

- (2) The annual estimates shall make provision for all the estimated expenditure of the Department for the financial year concerned.

Quarterly Report

34. The Department shall prepare a report for each quarter of the financial year in respect of the Department in accordance with the provisions of the Public Finance Management Act, No. 18 of 2012.

Annual Report

35. (1) The Department shall, at the end of each financial year cause an annual report to be prepared.

(2) The Department shall submit the annual report to the County Executive Committee Member for finance who shall act on the report in accordance with provisions of Public Finance Management Act, No. 18 of 2012

36. The financial year of the Department shall be the period of twelve months ending on the thirtieth day of June in each year.

PART IV—MISCELLANEOUS PROVISIONS

Register Cultural Articles and Site

37. The Department shall keep a register of all articles of a cultural nature 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.

Offences

38. A person who—

- (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 and endangered 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 commit an offence.

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

General Penalty

39. A person who commits an offence under this Act for which no other penalty has been given shall, upon conviction, be liable to a term of imprisonment not exceeding six months or to a fine not exceeding Kenya Shillings Fifty Thousand only or to both.

Power to Issue Permit

40. The Department shall issue permits relating to the management of cultural centres, sites or institution and the use flora or fauna of cultural importance in accordance with the provisions of this Act and any relevant national legislation.

Declaration of National Cultural Article, Activity or Site

41. A cultural article, activity or site may be declared a national cultural article, activity or site after discussions and negotiations between the County Government and the relevant national authority.

Powers of Entry by Police Officer or Authorized Officer

42. (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 a 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 Act are complied with.

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

(3) In addition to the penalty imposed under section 38, subsection (2) of this Act, or any other this part, the offender shall pay any expenses incurred by the County Government as a consequence of the commission of the offence.

(4) 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.

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

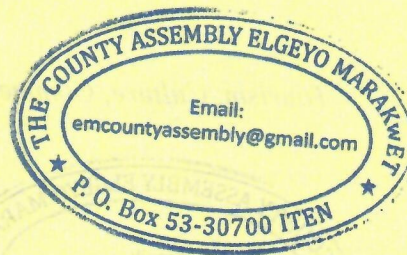
Protection from Personal Liability

43. No action or omission by a public officer shall, if the act was done in good faith for the purpose of carrying out the provision of this Act or any other law, subject the person to any liability, action, claim or demand.

Regulations

44. The Executive Committee Member may make regulations for the better carrying int 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 licence or permit in accordance with the relevant Act;
- (b) the form of application for the licence 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 issue permits for entertainment, public cultural sites; and
- (f) any matter that the Executive Committee Member considers necessary for the administration of this Act.



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 Elgeyo/Marakwet County.

Part I (Clauses 1-4) is on preliminary matters and sets out the short title of the Bill, interpretation of terms as used in the Bill, the object of and the scope and application of the Bill.

Part II (Clauses 5-30) provides for the administration, protection and regulation of cultural activities and heritage. It provides the responsibilities of the County Government on administration, promotion and protection of cultural heritage, provides for establishment of cultural centres and cultural industries and administration of cultural sites. It also makes provision for authorized officers whose responsibility is to oversee the activities taking place in cultural sites in accordance with the Act.

Part III (Clauses 31-34) Sets out the financial provisions. This part provides from the sources of the funds of the Department, which includes budgetary allocations by County assembly and donations. It provides for period of financial year annual estimates and annual report.

Part IV (Clauses 35-42) set out the miscellaneous provisions. It makes provisions the register of all articles of a cultural nature and cultural sites declared under this Act which shall be kept by the Department. It also makes provisions on the Department power to issue permits relating to the management of cultural centres, sites or institution and the use flora or fauna or cultural importance provided the activity is in accordance with the provisions of this Act. Provisions on offences and general penalty are also encompassed under this part.

The enactment of this Bill shall occasion additional expenditure of public funds to be provided through the estimates.

MUSA LIMO,
Chairperson,

Tourism, Culture, Commerce and Industry Committee.

