

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

**REPORT OF THE DEPARTMENTAL COMMITTEE ON SPORTS
CULTURE AND TOURISM ON THE CONSIDERATION OF STATUTE
LAW (MISCELLANEOUS AMENDMENTS) BILLS, 2018**



DIRECTORATE OF COMMITTEE SERVICES

CLERK'S CHAMBERS

NAIROBI

JUNE 2018

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ABBREVIATIONS

- CBTC - Community Based Tourism Consortium
- COG - Council of Governors
- TRA - Tourism Regulatory Authority

1.0 PREFACE

Mr. Chairman,

On behalf of the Departmental Committee on Sports, Culture and Tourism and pursuant to provisions of Standing Order 207 (6), it is my pleasant privilege and honor to present to the Justice and Legal Affairs Committee the report of the Committee on its Considerations of the Statute Law (Miscellaneous Amendments) Bill, 2018. The Bill was committed on 18th April 2018, and it is on this basis that the Committee makes this report pursuant to Standing Order 127.

1.1 Mandate of the Committee and Membership

The Departmental Committee on Sports, Culture and Tourism is one of the fifteen departmental committees of the House established pursuant to Article 124 of the Constitution of Kenya 2010 and Standing Order 216 of the National Assembly and mandated to—

- (a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (b) Study the programs and policy objectives of ministries and departments and the effectiveness of the implementation;
- (c) Study and review all legislation referred to it;
- (d) Study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) Investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
- (f) Vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Departmental Committee on Sports, Culture and Tourism oversees the following Ministries/Departments/Agencies:

1. State Department of Sports Development
2. State Department of Heritage; and
3. State Department of Tourism

1.2 Committee Membership

The Hon. (Dr.) Victor Kioko Munyaka, M.P	-	Chairperson
The Hon. (Dr.) Korei Ole Lemein, M.P.	-	Vice Chairperson
The Hon. Christopher Omulele, MP		
The Hon. (Dr.) Christine Ombaka, MP		
Hon. Cyprian Kubai Iringo, M.P		
The Hon. Jones Mlolwa, MP		
The Hon. Daniel Wanyama Sitati, M.P.		
The Hon. Benard Masaka Shinali, M.P.		
The Hon. (Prof.) Jacqueline Oduol, MP		
The Hon. (Dr.) Tecla Chebet Tum, M.P		
The Hon. Jane Jepkorir Kiptoo Chebaibai, M.P		
The Hon. Lydia Haika Mnene Mizighi, M.P.		
The Hon. George Risa Sunkuyia, M.P.		
The Hon. Annie Wanjiku Kibeh, M.P.		
The Hon. Sylvanus Maritim, M.P.		
The Hon. Jeremiah Lomurukai, MP		
The Hon. Charles Ngusya Nguna,MP		
The Hon. Titus Mukhwana Khamala, MP		

1.3 Committee Secretariat

Helen Kina	-	Third Clerk Assistant
Fredrick Otieno	-	Third Clerk Assistant
Clarah Kimeli	-	Legal Counsel I
Vitus P.O Owino	-	Research Officer III
Catherine Gati	-	Fiscal Analyst
James Macharia	-	Media Relations Officer
Sheila Chebotibin	-	Sergeant At-Arms

1.4 CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE THREE ACTS CONTAINED IN THE STATUTE LAW (MISCELLANEOUS AMENDMENTS), BILL 2018

1.4.1 Publication, Committal and objectives of the Bill

Statute Law (Miscellaneous Amendments) Bill 2018, National Assembly Bill No. 12, was published on 10th April 2018, and read a First time on 18th April, 2018, and thereafter committed to the Departmental Committee on Sports, Culture and Tourism for consideration, pursuant to Standing Order 127.

1.4.2 This Bill is drafted in keeping with the practice of making various amendments that do not merit the publication of separate Bills thus consolidating them into one bill. The Bill proposes several amendments to various Acts of Parliament.

1.4.3 Pursuant to the provisions of Standing Order 127 (1) of the National Assembly Standing Orders, the Bill was committed to the Departmental Committee on Sports, Culture and Tourism, for consideration of the various amendments proposed to the various Acts of Parliament under its purview.

1.4.4 The Committee during its sitting on Thursday 17th May, 2018, resolved to hold a consultative workshop with the State Department of Tourism, the State Department of Heritage and the Attorney General to consider the implications of the proposed amendments in the Statute Laws (Miscellaneous Amendment) Bill, 2018, under the Committee's purview.

1.4.5 The Committee further extended an invitation to the Chief Executive Officer, Rural Tourism Network among other stake holders.

1.4.6 The proposed amendments to the Public Archives Documentation Service Act, Cap 19, seeks to align the provisions of the Act with the Constitution of Kenya, 2010.

1.4.7 The proposed amendments to the Tourism Act No. 28 of 2011, seeks to reallocate responsibilities in regards to policy formulation with the aim of ensuring efficiency in the implementation of those policies, and clarifying the roles of the Ministry and that of its Semi-Autonomous agencies; formulate guidelines and prescribe measures for tourism establishments and operations; and regulate tourism activities and services countywide in accordance with the National Tourism Strategy.

1.4.9 The Proposed amendments to the Protection of Traditional Knowledge and Cultural Expressions Act, 2016 (No. 33 of 2016) seeks to define clearly the Cabinet Secretary responsible for matters relating to intellectual property rights, rectify the definition of Cabinet Secretary in the parent Act, while giving effect to particular provisions of the Constitution of Kenya.

1.5 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

Having analyzed the Bill and the submissions from the stakeholders, the Committee observed the following—

1. There is need to have Section 2 of the Public Archives Documentation Service Act, aligned to the provisions of the Constitution of Kenya, 2010.
2. The Public Archives Documentation Service has always been domiciled in the Ministry for the time being responsible for Culture and National Heritage, thus the State Department of Heritage, being the State Department responsible for the exercising of the Act, is the proper department to oversee the same..
3. The amendment on section 7(1)(a) of the Tourism Act creates a regulatory lacuna as it does not clearly transfer the roles that the amendment seeks to repeal to any other body, this may pose a challenge to effecting and maintaining quality and standards of tourism establishments and activities in the country;
4. The committee noted that the role of ensuring sustainable tourism (and formulation of guidelines and standards) is anchored at the Ministry's policy level and thus is not meant to be undertaken by one single agency, under the ministry-the Tourism Regulatory Authority (as is the case in the current Act).
5. The Committee noted that there is need to include other actors in regulation of tourism; TRA, should be one of the agencies contributing towards such formulation in Consultation with the Ministry.

1.5.6 RECOMMENDATIONS

1.5.6.1 The Public Archives and Documentation Service Act Cap 19

- (i) deleting the proposed amendment to section 2 and substitute therefor—
s.2 insert the following new definition in its proper alphabetical sequence—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to culture and national heritage.”;

- (ii) deleting the proposed definition of “Minister”;

1.5.6.2 On the Tourism Act (No. 28) of 2011

General Recommendations:

1. That the (TRA) Tourism Regulatory Authority needs to work in conjunction the Ministry of Tourism, Wildlife, county governments, and other stakeholders in order to deliver on its mandate to promote sustainable tourism across the country;
2. Tourism is a devolved function and counties have a role in regulatory enforcement; the current scope that gives sweeping mandate to the Tourism Regulatory Authority has made it impractical for implementation; and
3. The State Department of Tourism had developed the National Tourism Blueprint which had since been adopted by the Cabinet for implementation there is therefore need to establish a legal framework for execution of the blueprint which if implemented would be a key vehicle towards the delivery of Vision 2030.

Specific Recommendations

1. Delete the proposed amendments to section 7(1) (a) and substitute with:

7(1)(a) delete and substitute therefor the following new paragraph
“formulate guidelines and prescribe measures for sustainable establishments and operations to realize sustainable tourism development”
2. Proposed amendments to section 7(1)(b) be deleted;
3. Section 7(1)(g) be amended as proposed;
4. Section 7(1)(h) be amended as proposed;

5. Section 31(a) be amended as proposed; and
6. Section 42(b) be amended as proposed.

1.6 ACKNOWLEDGEMENT

Mr. Chairman,

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank all the stakeholders for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee who made useful contributions towards the preparation and production of this report.

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Sports, Culture and Tourism to table its Report on the consideration of the various Acts under the Committee's purview and contained in the Statute Law (Miscellaneous Amendment) Bill 2018, pursuant to Standing Order 127.

Signed  Date 20/06/2018

(HON. DR. VICTOR K. MUNYAKA, MP)

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND
TOURISM**

2.0 CONSIDERATION OF THE BILL

2.1 BACKGROUND INFORMATION

The Departmental Committee on Sports, Culture and Tourism is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate as provided for in S.O. 216(5) is to —

- (a) Oversight over the day to day running and administration of Ministries, Departments and Agencies under its purview;
- (b) Consider Estimates of the said Ministries, Departments and Agencies;
- (c) Consider relevant legislation and recommend enactment of laws; and
- (d) Carry out vetting of State/Public Officers as required by law.

The Committee undertook a four-day workshop at the Boma Hotel on 27th May to 1st June to consider the Statute Law (Miscellaneous Amendment) Bills, 2018 and Statute Law (Miscellaneous Amendment) Bills, 2018 with the line State Departments and other Stakeholders.

The objective of the workshop was to consider the proposed amendments relevant to the Committee contained in the Statute Law (Miscellaneous Amendment) Bills, 2018, and come up with this report on the proposed amendments to the House. In order to make an informed consideration on the amendments, the Committee met the various stakeholders-

- a) The Ministry of Sports and Heritage- The State Department of Heritage;
- b) The State Department of Tourism; and
- c) The Community Based Tourism Consortium of Kenya.

The following acts were under consideration by the committee—

- a) The Public Archives and Documentation Service Act Cap 19;
- b) The Tourism Act No. 28 of 2011; and
- c) The Protection of Traditional Knowledge and Cultural Expressions Act, 2016 (No. 33 of 2016).

2.2 CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE PUBLIC ARCHIVES DOCUMENTATION SERVICE ACT (CAP 19)

The State Department of Heritage through the proposed amendments seeks to align the Public Archives Documentation Service Act with the current position of the law under the Constitution.

2.2.1 SUBMISSIONS BY THE STATE DEPARTMENT OF HERITAGE

The State Department of Heritage sought to amend Section 2 of the Act to define the term “Minister” herein interpreted to mean Cabinet Secretary responsible for matters relating to Culture and National Heritage. This is justified by the fact that since the Act came into effect before the promulgation of the Constitution of Kenya, 2010, the Act then did not require to define the word “Minister”, since the Old Constitution had already done so. The latest proposal to amend Section 2 is to align it with the current position of the law.

2.2.2 OBSERVATIONS OF THE COMMITTEE

- a) There is need to have Section 2 of the Public Archives Documentation Service Act, aligned to the provisions of the Constitution of Kenya, 2010.
- b) The Public Archives Documentation Service has always been domiciled in the Ministry for the time being responsible for Culture and National Heritage, thus the State Department of Heritage, being the State Department responsible for the exercising of the Act, was in order to seek the amendment.

2.3 CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE TOURISM ACT, 2011

- a) The Tourism Act, 2011 was enacted shortly after the promulgation of the Constitution of Kenya, 2010. The Ministry of Tourism has cited challenges to the implementation of the Tourism Act 2011, thus proposing basic amendments to the Act so as to locate responsibility where it is due, thus ensuring efficiency in implementation of the Act and clarifying roles.
- b) Currently, the role of regulation of tourism activities in the country is undertaken by the Tourism Regulatory Authority (TRA) which is a corporate body established by the Tourism Act No. 28 of 2011 under section 7. The regulatory roles of TRA were operationalized through the gazettelement of legal notice No. 128 (Tourism Regulatory Authority Regulations 2014) vide the Kenya Gazette Supplement No. 142.

2.3.1 PRESENTATION BY THE STATE DEPARTMENT OF TOURISM

The State Department captured the concerns of the Council of Governors and the Community Based Tourism Network (Comprising of the Kenya Community Based Tourism Network, Eco-tourism Kenya and Rural Tourism Network of Kenya). The submissions are summarized hereunder-

- a) In **Sections 7(1)(a)**, the State Department sought the deletion of the word “*sustainable*” and in its place the Insertion of the phrase “*establishments and operations*” immediately after the word “*tourism*”. This proposal, they submitted, is meant to formulate guidelines and prescribe measures for sustainable tourism throughout the country;
- b) The State Department also presented a proposal in regards to the section by the Community Based Tourism Consortium (CBTC), and which they objected the (CBTC) had sought the wording of the stated section as follows: “*Formulate guidelines and prescribe measures for tourism establishments and operations to realize sustainable tourism throughout the country. Insert “establishments and operations to realize sustainable tourism development.”*”;
- c) In their submissions, the State Department of Tourism objected the proposal submitting that the role of sustainable tourism is handled at the policy level and is not a role of a single entity (Tourism Regulatory Authority- TRA) as envisaged by the current Act. They also objected the usage of the phrase ‘throughout the country’, observing that it is unnecessary as it precludes county governments and other agencies;
- d) The State Department of Tourism sought the deletion of the subsection that gives mandate to the Tourism Regulatory Authority to “*Regulate tourism activities and services countrywide, in accordance with the National Tourism Strategy;*” domiciled under **Section 7(1) (b)**, of the Tourism Act, arguing that this role is meant for the Ministry and not the ministry’s semi-autonomous agencies;
- e) CBTC proposed that the sub-section be retained as is in the Act noting that deleting this sub-section could occasion a legal lacuna on that sub-section of the Act;
- f) The State Department however submitted that this sub section contains the role of nationwide regulation of tourism activities which is too wide a scope, as this role is a

shared role with the ministry, county governments and other agencies. Further, this role for the Authority is already provided more clearly under Sections 7(1) (a);

- g) In regards to **Sections 31(a)** of the Act, the State Department of Tourism proposed an amendment to provide as *“implement and co-ordinate a national tourism marketing strategy developed in conjunction with the Ministry”*;
- h) The proposed amendment varied with the submission submitted to the Ministry by the Council of Governors (CoG) and sought that the Section reads, *“Implement and co-ordinate a National Tourism Marketing Strategy developed in conjunction with the Ministry and in consultation with County Governments”*;
- i) The State Department in opposing the amendment by CoG, submitted that Consultation with all stakeholders (including county governments and COG) is a mandatory constitutional and mandatory requirement for development of policies, laws and even administrative procedures. It may therefore be superfluous to put it only in this sub-section.

2.3.2 PRESENTATION BY COMMUNITY BASED TOURISM CONSORTIUM OF KENYA

They submitted as follows—

- (a) Section 7(1) (a) Formulate guidelines and prescribe measures for sustainable tourism throughout the country.

The Statute Law proposes to delete the word ‘**sustainable**’ from section 7 (1) (a) and inserting the words “establishments and operations” immediately after word ‘tourism’.

The consortium representatives proposed the insertion of the sentence *“to realize sustainable tourism development”* after the word ‘operations’. Hence, the new section would read: *formulate guidelines and prescribe measures for tourism establishments and operations to realize sustainable tourism development throughout the country.*

- (b) This is to keep in line with TRA’s role of formulation of guidelines and measures for tourism establishments and operations.

the Consortium objected the intended deletion of **Section 7 (b)** of the Act which reads: *regulate tourism activities and services countrywide, in accordance with the national tourism strategy.*

The Consortium submitted that the role of regulation of tourism activities in the country was given to the TRA which is a body corporate established by the Tourism Act No. 28 of 2011 under section 7. The regulatory roles of TRA were operationalized through the *gazettement* of legal notice No. 128 (Tourism Regulatory Authority Regulations 2014) vide the Kenya Gazette Supplement No. 142. The TRA regulates the Tourism sector through standardization and licensing as provided for in the TRA regulations 2014.

The Consortium submitted that, the amendment would take away the legally mandated regulatory role of TRA without necessarily assigning the same role to another body corporate. That the proposed amendment would create a regulatory lacuna that may pose a challenge to effecting and maintaining quality and standards of tourism establishments and activities in the country. They further recommended that the regulatory roles remain, in the interim, with the TRA until such a time when such roles shall be partially or fully given to another body or institution.

2.3.3 OBSERVATIONS OF THE COMMITTEE TO THE PROPOSED AMENDMENTS TO TOURISM ACT

- a) The amendment creates a regulatory lacuna as it does not clearly transfer the roles that the amendment seeks to repeal to any other body, this may pose a challenge to effecting and maintaining quality and standards of tourism establishments and activities in the country;
- b) The committee agreed with the State Department's submission that the role of ensuring sustainable tourism (and formulation of guidelines and standards) is anchored at the Ministry's policy level and thus is not meant to be undertaken by one single agency, under the ministry-the Tourism Regulatory Authority (as is the case in the current Act).
- c) The Committee also termed the phrase "throughout the country", as superfluous adding that it precludes county governments and other agencies. TRA, should be one of the agencies contributing towards such formulation in Consultation with the Ministry.

2.4 CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS ACT 2017(NO. 33 OF 2016)

The Committee adopted the proposed amendments to align the Act with the provisions of the Constitution of Kenya, 2010 and observed that there is need for the State Department of Heritage to commence the process of repatriation of the Kenyan artefacts domiciled in foreign countries for proper safeguarding by the State Department

3.0 COMMITTEE RECOMMENDATIONS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL 2018

3.1 The Public Archives and Documentation Service Act Cap 19

the proposed amendments to the Public Archives and Documentation Service Act—

- (iii) by deleting the proposed amendment to section 2 and substitute therefor—

s.2 insert the following new definition in its proper alphabetical sequence—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to culture and national heritage.”;

- (iv) deleting the proposed definition of “Minister”;

3.2 On the Tourism Act (No. 28) of 2011

3.2.1 General Recommendations:

4. That the (TRA) Tourism Regulatory Authority needs to work in conjunction the Ministry of Tourism, Wildlife, county governments, and other stakeholders in order to deliver on its mandate to promote sustainable tourism across the country;
5. Tourism is a devolved function and counties have a role in regulatory enforcement; the current scope that gives sweeping mandate to the Tourism Regulatory Authority has made it impractical for implementation; and
6. The State Department of Tourism had developed the National Tourism Blueprint which had since been adopted by the Cabinet for implementation there is therefore need to establish a legal framework for execution of the blueprint which if implemented would be a key vehicle towards the delivery of Vision 2030.

3.2.2 Specific Recommendations

7. Delete the proposed amendments to section 7(1) (a) and substitute with:

7(1)(a) delete and substitute therefor the following new paragraph

“formulate guidelines and prescribe measures for sustainable establishments and operations to realize sustainable tourism development”

8. Proposed amendments to section 7(1)(b) be deleted;
9. Section 7(1)(g) be amended as proposed;
10. Section 7(1)(h) be amended as proposed;
11. Section 31(a) be amended as proposed; and
12. Section 42(b) be amended as proposed.

**MINUTES OF THE 35TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
SPORTS, CULTURE AND TOURISM HELD ON FRIDAY 31ST MAY, 2018 IN
SIMBA BOARD ROOM AT THE BOMA INN 1ST FLOOR AT 4.30 PM.**

P PRESENT

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - **Chairperson**
2. The Hon. (Dr.) Korei Ole Lemein, MP. - **Vice Chairperson**
3. The Hon. (Prof.) Jacqueline Oduol, MP.
4. The Hon. Christopher Omulele, MP.
5. The Hon. Jones Mlolwa, MP.
6. The Hon. Daniel Wanyama Sitati, MP.
7. The Hon. Annie Wanjiku Kibeh, MP.
8. The Hon. (Dr.) Tecla Chebet Tum, MP.
9. The Hon. Dr. Christine Ombaka, MP.
10. The Hon. Benard Masaka Shinali, MP
11. The Hon. Charles Ngusya Nguna, MP.
12. The Hon. George Risa Sunkuyia, MP.
13. The Hon. Sylvanus Maritim, MP.
14. The Hon. Jeremiah Lomorukai, MP.

APOLOGY .

1. The Hon. Kubai Iringo, MP.
2. The Hon. Lydia Haika Mnene Mizighi, MP.
3. The Hon. Jane Jepkorir Kiptoo Chebaibai, M.P.
4. The Hon. Titus Mukhwana Khamala, MP.

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Hellen Kina - Third Clerk Assistant
2. Ms. Clara Kimeli - Legal Officer
3. Mr. James Macharia - Media Relations Officer
4. Mr. Vitus Okech - Research Officer
5. Mrs. Jane Serem - Audio Officer
6. Mrs. Sheila Cheboitibin - Senior Sergeant At -Arms
7. Ms. Christine Sabdio - Office Assistant

MIN.NO. SCT/168/2018: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past four O'clock, and thereafter a prayer was said.

MIN.NO.SCT.169/2018: CONFIRMATION OF PREVIOUS MINUTES.

Minutes of the 30th, 31st, 32nd, 33rd, and 34th, sitting held on 29th and 31st of May 2018 respectively were confirmed as true records having being proposed by the Hon. Korei Lemein and Seconded by The Hon. Daniel Wanyama.

MIN.NO. SCT/170/2018: CONSIDERATION AND ADOPTION OF THE REPORT STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILLS, 2018

The committee considered and adopted the report on the Statute Law (Miscellaneous Amendments) Bills, 2018 with the following recommendations.

RECOMMENDATIONS OF AMENDMENTS TO THE BETTING, LOTTERIES AND GAMING ACT (CAP 131)

1. A complete overhaul and review on the Bill, but which should be informed by benchmarking against the best world practices.
2. The Committee noted that the amendment to law needs not be rushed. It is only prudent to give the legislation ample time for proper review so as to come up with a comprehensive law that does not address piece-meal concerns but which institutes a raft of other measures that are in tandem with the current trends in the gaming and lotteries industry.
3. That when a new law to properly regulate the industry is instituted, it will consider consolidating all the forty eight (48) offences envisaged under the current law under a common regulatory framework to ensure that all elements of the industry are properly regulated and to curb unfair competition among the various platforms within the industry.
4. There is need to clearly anchor different tax regimes for different forms of gaming and lotteries in Law. For example, there is need to develop a different tax regime for gaming, lottery, betting and gambling, since their operations are different.
5. The Committee strongly recommends that specific regulations for online gaming platforms be well captured in law, to safeguard the public against fraud, while keeping in check avenues for abuse on those platforms.

6. The players in the industry must offer genuine justification for any proposed amendments to the Committee to enable the committee make informed decisions and guide the House on how to amend the law for posterity.
7. Revenue generated from the betting, lotteries and gaming industry should be well channeled to supporting sports development in the country.
8. The number of casinos allowed in a given area should be clearly stipulated in law. This will have a ripple effect on the issues needed to be handled when regulating casinos in Kenya.
9. The specifics needed to start a casino should also be known and very clear for them to act as a deterrent.
10. The tax rate of 35% is not too much as is being voiced by some people. There is no rush in this specific amendment and that due diligence has to be done in the process of Law making.
11. To curb age cheating, it would be nice to have membership cards with benefits which would exclude under age persons. There can be membership cards which are used to access on line platforms.
12. The board has not put in place measures to ensure that all winnings are paid on time and to ensure that the winners are not subjected to public exposure.
13. The tax regime on gaming, lotteries, gambling and betting in Kenya needs to be looked at afresh. This will ensure that it is all encompassing and implementable.

RECOMMENDATION OF AMENDMENTS TO THE PUBLIC ARCHIVES DOCUMENTATION SERVICE ACT CAP 19

The Committee adopted the proposed amendments in order to align the Act with the provisions of the Constitution of Kenya, 2010.

RECOMMENDATIONS OF AMENDMENTS TO THE PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSION ACT,

1. The Committee adopted the proposed amendments to align the Act with the provisions of the Constitution of Kenya, 2010.
2. The Committee challenged the State Department of Heritage to start the process of repatriation of the Kenyan artefacts domiciled in foreign countries for proper safeguarding by the State Department

RECOMMENDATIONS OF AMENDMENTS TO THE TOURISM ACT, 2011

1. The Committee resolved that the amendments are necessary to allow for clarity on the roles and mandates of the various stakeholders within the Ministry and to allow the Ministry to drive the process of the formulation of policy guidelines and prescribing measures for tourism establishments and operators.
2. The Committee however did not agree with the Ministry's position of the amendment of Section 7(1) (b) that seeks the deletion of the subsection, "Regulate tourism activities and services countrywide, in accordance with the national tourism agency", and which had been opposed by the Community Based Tourism Consortium, and hence the amendment was not carried.
3. There is need to establish a legal framework for execution of the National Tourism blueprint which if implemented would be a key vehicle towards the delivery of vision 2030.

MIN/NO.STC/171/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at forty minutes past six O'clock.

SIGN:  DATE: 31/05/2018

CHAIRPERSON

MINUTES OF THE 34TH SITTING OF THE DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND TOURISM HELD ON THURSDAY 30TH MAY, 2018 IN SIMBA BOARD ROOM AT THE BOMA INN 1ST FLOOR AT 2.30 PM.

PRESENT

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - **Chairperson**
2. The Hon. (Dr.) Korei Ole Lemein, MP. - **Vice Chairperson**
3. The Hon. (Prof.) Jacqueline Oduol, MP.
4. The Hon. Christopher Omulele, MP.
5. The Hon. Jones Mlolwa, MP.
6. The Hon. Daniel Wanyama Sitati, MP.
7. The Hon. Annie Wanjiku Kibeh, MP.
8. The Hon. (Dr.) Tecla Chebet Tum, MP.
9. The Hon. Dr. Christine Ombaka, MP.
10. The Hon. Benard Masaka Shinali, MP
11. The Hon. Charles Ngusya Nguna, MP.
12. The Hon. George Risa Sunkuyia, MP.
13. The Hon. Sylvanus Maritim, MP.
14. The Hon. Jeremiah Lomorukai, MP.

APOLOGY .

1. The Hon. Kubai Iringo, MP.
2. The Hon. Lydia Haika Mnene Mizighi, MP.
3. The Hon. Jane Jepkorir Kiptoo Chebaibai, M.P.
4. The Hon. Titus Mukhwana Khamala, MP.

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Hellen Kina - Third Clerk Assistant
2. Ms. Clara Kimeli - Legal Officer
3. Mr. James Macharia - Media Relations Officer
4. Mr. Vitus Okech - Research Officer
5. Mrs. Jane Serem - Audio Officer
6. Mrs. Beatrice Auma - Personal Secretary Committee Services
7. Mrs. Sheila Cheboitibin - Senior Sergeant At -Arms

8. Ms. Christine Sabdio - Office Assistant

STATE DEPARTMENT OF TOURISM

1. Mrs. Fatuma Hirsi Mohamed Principal Secretary Tourism
2. Mr. Said Athman Tourism Secretary
3. Mrs. Margaret Byama Chief Finance Officer Tourism
4. Mr. David Hajj Budget Advisor Tourism

COMMUNITY BASED TOURISM CONSORTIUM

1. Ms. Mary Atieno Anyango CBT Consortium
2. Ms. Grace Nderitu CBT Consortium
3. Vincent Oluoch CBT Consortium
4. Nicholus Ayimba CBT Consortium

MIN.NO. SCT/161/2018: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past two O'clock followed by a word of prayer from the Hon. Jones Mlolwa, MP. He then welcomed the Principal Secretary State Department of Tourism and representatives from the Community based consortium to the meeting and thereafter requested everyone to do self-introduction.

MIN/NO.162/2018: SUBMISSION FROM THE COMMUNITY BASED TOURISM CONSORTIUM

The Community based tourism consortium of Kenya made their submissions on the proposed amendments on the Tourism Act as follows;

That,

The Community Based Tourism Consortium of Kenya comprises of several legally registered organizations working together to enhance livelihoods of local communities through Community Based Tourism. These institutions include: The Kenya Community Based Tourism Network (KECOBAT), The Ecotourism Kenya (EK), and Rural Tourism Network of Kenya (RTN).

We write to provide our analysis of "The Miscellaneous Amendment Bill No. 12 of 2018 which is currently before various relevant departmental committees of the National Assembly

Our input seeks to provide a critical analysis of the notice to amend The Tourism Act No.28 2011 taking into account international principles and best practices in tourism governance.

The Proposed amendments to the Act and our position.

The bill sees to make the following amendments to the Tourism Act No. 28 of 2011:

1. **Section 7 (1) (a).** Formulate guidelines and prescribe measures for sustainable tourism throughout the country.

Proposed amendment: Deletion of the word ‘sustainable’ from section 7 (1) (a) and inserting the words “establishments and operations” immediately after word ‘tourism’.

After the amendment, the section will then read: formulate guidelines and prescribe measures for tourism establishments and operations throughout the country.

Our position.

The concept of sustainable tourism is gaining traction as an approach that seeks to reconcile economic, environmental and social impacts of tourism development. The popularity and the need to promote sustainable tourism development was underscored in 2017 when the United Nations declared 2017 the International Year of Sustainable Tourism for Development in order to promote a change in policies and business practices within the sector and also in the habits of consumers and travelers.

As Community Based Tourism stakeholders, we hold the view that sustainable tourism has never been more relevant than in today’s world where environmental and cultural degradation are the commonplace of tourism development in various destinations of the world.

Consequently, it is incumbent upon various stakeholders- such as policy makers- to formulate policies and regulations that promote sustainable tourism development in the country. As such, we are not in agreement with the intention to expunge sustainability from the current section of the Act.

Our proposal: we propose insertion of the sentence “to realize sustainable tourism development” after the word ‘operations’ as the ultimate goal or aspirations of the TRA’s role of formulation of guidelines and measures for tourism establishments and operations. Hence, the new section should read: *Formulate guidelines and prescribe measures for tourism*

establishments and operations to realize sustainable tourism development throughout the country.

2. The Bill intends to delete section 7 (b) of the Act which reads: regulate tourism activities and services countrywide, in accordance with the national tourism strategy.

The role of regulation of tourism activities in the country was donated to the TRA which is a body corporate established by the Tourism Act No. 28 of 2011 under section 4. The regulatory roles of TRA were operationalized through the gazette of legal notice No. 128 (Tourism Regulatory Authority Regulations 2014) vide the Kenya Gazette Supplement No. 142. The TRA regulates the Tourism sector through standardization and licensing as provided for in the TRA regulations 2014.

Our position:

The amendment seeks to take away this legally mandated regulatory role of TRA without necessarily donating the same role to any other body corporate. It is our considered view that this shall create a regulatory lacuna that may pose a challenge to effecting and maintaining quality and standards of tourism establishments and activities in the country. We recommend that the regulatory roles remain in the interim with the TRA until such a time when such roles shall be partially or fully donated to another body or institution.

Conclusion.

Our analysis of the Amendment Bill has demonstrated that the concept of sustainable tourism development is very relevant today in the face of several development initiatives that have negative socio-environmental externalities in the tourism destinations. As such, we have argued for the inclusion of the concept of 'sustainable tourism development' - in the proposed amendment of section 7 (1) (a) of the Tourism Act 2011- as the ultimate goal of the TRA's role of formulation of guidelines and measures for tourism establishments and operations. We have also critiqued the intention to take away- without transferring elsewhere- the regulatory roles of the Tourism Regulatory Authority as captured in section 7 (b) of the Tourism Act 2011. We have proposed that the role of regulation of tourism establishment and activities should remain with the TRA in the interim until such roles shall be transferred in part or in full to any other institution.

While amendments of legislations are welcome, we take note of the speed with which the promoters of the Bill intend to rush it through the parliament. We propose that a detailed participatory review of the Tourism Act 2011 is necessary for elaborate inclusion of the interests of Community Based Tourism Enterprises.

This memorandum is prepared, signed and respectfully submitted by:

MIN/NO.STC/163/2018: PRESENTATION BY THE STATE DEPARTMENT OF TOURISM ON THE STATUTE LAW MISCELLANEOUS BILL, 2018

The Principal Secretary appeared before the Committee and Presented on the proposed laws as indicated below.

PARENT ACT	PROVISION IN THE PARENT ACT	PROPOSED AMENDMENTS	MINISTRY JUSTIFICATIONS
The Tourism Act	s. 7(1) (a) formulate guidelines and prescribe measures for sustainable tourism throughout the country;	<ul style="list-style-type: none"> • Delete the word “sustainable” and Insert the words “establishments and operations” immediately after the word “tourism”. • Delete the phrase “throughout the country” <p><i>Proposed Sections 7(1) (a) to read: Formulate guidelines and prescribe measures for tourism establishments and operations)</i></p>	The role of sustainable tourism is at policy level and not for a single agency. Also the phrase “throughout the country”, is unnecessary.
	b) regulate tourism activities and services countrywide, in accordance with the national tourism strategy;	<ul style="list-style-type: none"> • Retain this sub section to ensure compliance with the standards, 	Tourism is a devolved function and counties have a role in regulatory enforcement. The current scope is too wide for a single

		<p>guidelines and rule established under the Act.</p> <ul style="list-style-type: none"> • Replace the term “Regulate” with the phrase “Formulate guidelines for the regulation of” <p><i>Proposed Sections 7(1) (b) to read:</i> Formulate guidelines for the regulation of tourism activities and services countrywide, in accordance with the national tourism strategy.</p>	<p>agency and impractical in implementation.</p>
	(g) ensure the development and implementation of high quality tourism sector;	Delete	This role is a policy function by the Ministry to ensure coherence and not of a single state corporation.
	(h) vet and recommend expatriates seeking employment in the tourism sector;	Delete	This role is not a regulatory function but policy issue to be performed by the

			Ministry.
	S.31(a) develop, implement and co-ordinate a national tourism marketing strategy;	Delete and substitute therefore the following new paragraph— “(a) implement and coordinate a national tourism marketing strategy developed in conjunction with the Ministry.”	The Ministry has overall responsibility in policy direction that ensures Kenya as a tourist destination increases tourist numbers, earnings and bed night occupancy, while guaranteeing that the benefits of tourism spread all over the country.
	s. 42(b) develop and implement the national meetings, incentives for conferences and exhibitions strategy, in collaboration with the Tourism Board upon consultation with relevant stakeholders;	Delete the words “Develop and”. Insert the words “developed in conjunction with the Ministry immediately after the word “strategy”.	KICC as a convention centre is both a facility and venue for meetings. The role prescribed of developing a National strategy for Meetings, Incentives and Conferences (MICE) is a policy function to be performed by the Ministry in consultation with other key stakeholders including KICC itself as prescribed by the Public Participation requirements of the constitution of Kenya.

MIN/NO.STC/164/2018: PRESENTATION BY THE STATE DEPARTMENT OF TOURISM ON THE CONSIDERATION OF THE PRESENTATION FROM THE COMMUNITY BASED TOURISM CONSORTIUM.

The State Department captured the concerns of the Council of Governors and the Community Based Tourism Network (Comprising of the Kenya Community Based Tourism Network, Ecotourism Kenya and Rural Tourism Network of Kenya). The submissions have been summarized here under:-

- a) Vide **Sections 7(1) (a)**, the State Department sought the deletion of the word “*sustainable*” and in its place the Insertion of the phrase “*establishments and operations*” immediately after the word “*tourism*”. This proposal, they submitted, is meant to formulate guidelines and prescribe measures for sustainable tourism throughout the country.
- b) The State Department also presented a proposal in regards to the section by the Community Based Tourism Consortium (CBTC), and which they objected:- The (CBTC) had sought the wording of the stated section as follows: “*Formulate guidelines and prescribe measures for tourism establishments and operations to realize sustainable tourism throughout the country. Insert “establishments and operations to realize sustainable tourism development.”*”
- c) In its submissions, the State Department of Tourism rejected the proposal adding that the role of sustainable tourism is handled at the policy level and is not a role of a single entity,(Tourism Regulatory Authority- TRA) as wrongly envisaged by the current Act. They also objected the usage of the phrase ‘throughout the country’, observing that it is unnecessary as it precludes county governments and other agencies.
- d) The State Department of Tourism sought the deletion of the subsection that gives mandate to the Tourism Regulatory Authority to “*Regulate tourism activities and services countrywide, in accordance with the National Tourism Strategy;*” domiciled under **Section 7(1) (b)**, of the Tourism Act, arguing that this role is meant for the Ministry and not the ministry’s semi-autonomous agencies.

- e) However, (CBTC) proposed that the sub-section be retained as is in the Act noting that deleting this sub-section could occasion a legal lacuna on that sub-section of the Act.
- f) The State Department however submitted that this sub section contains the role of nationwide regulation of tourism activities which is too wide a scope, as this role is a shared role with the ministry, county governments and other agencies. Further, this role for the Authority is already provided more clearly under Sections 7(1) (a).
- g) In regards, **Sections 31(a)** of the Act, the State Department of Tourism proposed an amendment to read as follows: *“implement and co-ordinate a National Tourism Marketing Strategy developed in conjunction with the Ministry”*.
- h) This amendment however varied with the submission submitted to the Ministry by the Council of Governors (CoG) and sought that the Section reads, *“Implement and co-ordinate a National Tourism Marketing Strategy developed in conjunction with the Ministry and in consultation with County Governments”*.
- i) However, the State Department in opposing the amendment by CoG, submitted that Consultation with all stakeholders (including county governments and COG) is a mandatory constitutional and mandatory requirement for development of policies, laws and even administrative procedures. It may therefore be superfluous to put it **ONLY** in this sub-section.

MIN/NO.STC/165/2018 COMMITTEE OBSERVATIONS.

The Committee observed as follows;

1. That the amendment creates a regulatory lacuna as it does not clearly transfer these roles to any other body. We argue that this may pose a challenge to effecting and maintaining quality and standards of tourism establishments and activities in the country.
2. The committee agreed with the State Department’s submission that the role of ensuring sustainable tourism (and formulation of guidelines and standards) is anchored at the Ministry’s policy level and thus is not meant to be undertaken by one single agency, under the ministry- The Tourism Regulatory Authority (as is the case in the current Act). The Committee also termed the phrase “throughout the country”, as superfluous adding that it precludes county governments and other agencies. TRA, should be one of the agencies contributing towards such formulation

1. The Ministry officials seemed not to agree on the proposed amendments and did not convince the Committee sufficiently why the proposed amendments had to be instituted urgently rather than wait for a comprehensive amendment to the law, so it mirrors with the realities of the Constitution of Kenya, 2010.
2. That the (TRA) Tourism Regulatory Authority needs to work in conjunction with the County governments, the ministry of Tourism and Wildlife and other stakeholders in order to deliver on its mandate to promote sustainable tourism across the country.
3. Tourism is a devolved function and counties have a role in regulatory enforcement. The current scope that gives sweeping mandate to the Tourism Regulatory Authority made it impractical for implementation.
4. The State Department of Tourism had developed the National Tourism Blueprint which had since been adopted by the Cabinet for implementation. There is therefore need to align the existing act with the aspirations of the blueprint which if implemented would be a key vehicle towards the delivery of Vision 2030.

MIN/NO.STC /166/2018: COMMITTEE RECOMMENDATIONS

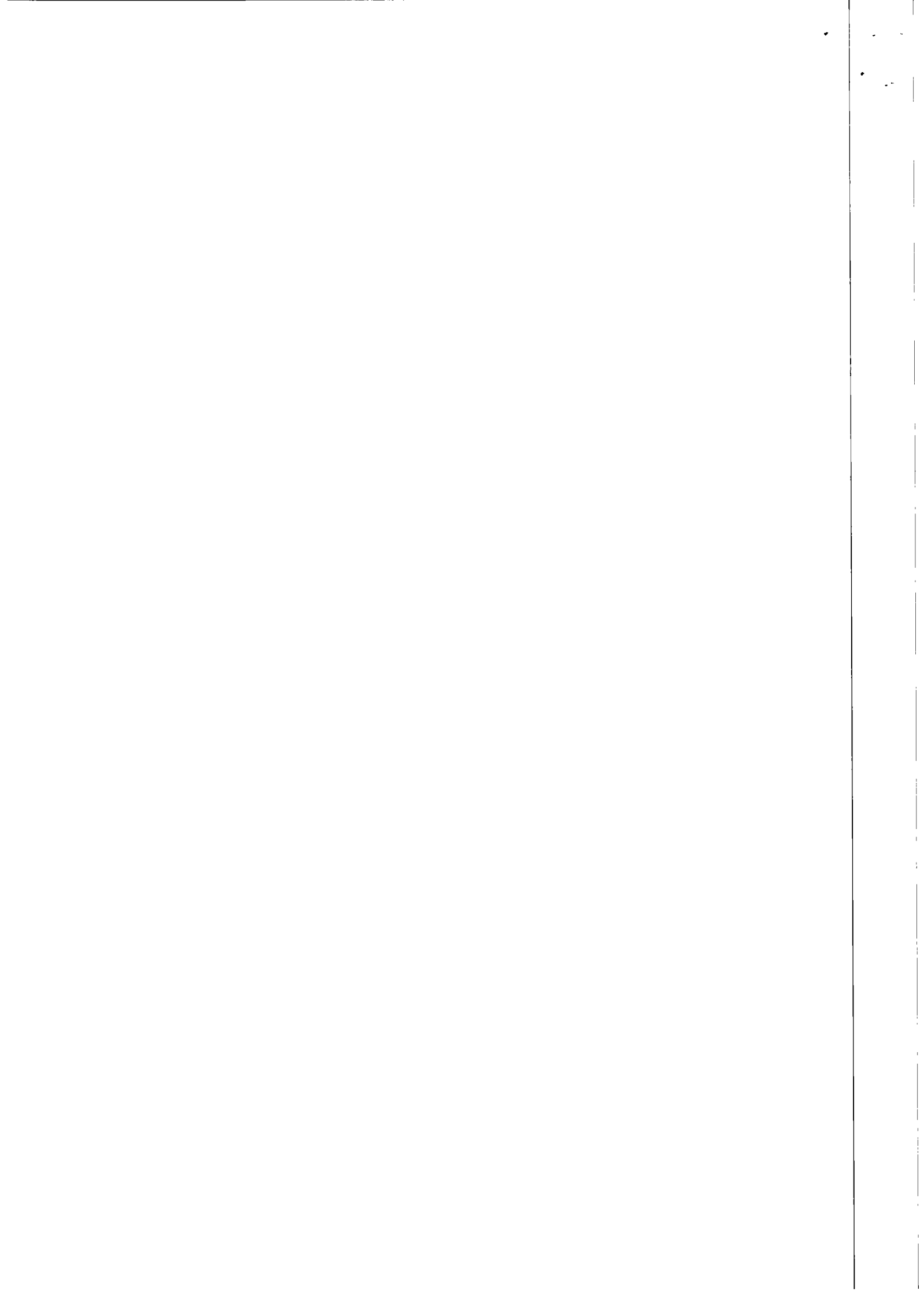
1. The Committee resolved that the amendments are necessary to allow for clarity on the roles and mandates of the various stakeholders within the Ministry and to allow the Ministry to drive the process of the formulation of policy guidelines and prescribing measures for tourism establishments and operators.
2. The Committee however did not agree with the Ministry’s position of the amendment of Section 7(1) (b) that seeks the deletion of the subsection, “Regulate tourism activities and services countrywide, in accordance with the national tourism agency”, and which had been opposed by the Community Based Tourism Consortium, and hence the amendment was not carried.

MIN/NO.STC/167/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at forty minutes past six O’clock.

SIGN:  DATE: 31/08/2018

CHAIRPERSON



MINUTES OF THE 33 RD SITTING OF THE DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND TOURISM HELD ON THURSDAY 30TH MAY, 2018 IN SIMBA BOARD ROOM AT THE BOMA INN 1ST FLOOR AT 10.30 AM.

PRESENT

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - **Chairperson**
2. The Hon. (Dr.) Korei Ole Lemein, MP. - **Vice Chairperson**
3. The Hon. (Prof.) Jacqueline Oduol, MP.
4. The Hon. Christopher Omulele, MP.
5. The Hon. Jones Mlolwa, MP.
6. The Hon. Daniel Wanyama Sitati, MP.
7. The Hon. Annie Wanjiku Kibeh, MP.
8. The Hon. (Dr.) Tecla Chebet Tum, MP.
9. The Hon. Dr. Christine Ombaka, MP.
10. The Hon. Benard Masaka Shinali, MP
11. The Hon. Charles Ngusya Nguna, MP.
12. The Hon. George Risa Sunkuyia, MP.
13. The Hon. Sylvanus Maritim, MP.
14. The Hon. Jeremiah Lomorukai, MP.

APOLOGY .

1. The Hon. Kubai Iringo, MP.
2. The Hon. Lydia Haika Mnene Mizighi, MP.
3. The Hon. Jane Jepkorir Kiptoo Chebaibai, M.P.
4. The Hon. Titus Mukhwana Khamala, MP.

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Hellen Kina - Third Clerk Assistant
2. Ms. Clara Kimeli - Legal Officer
3. Mr. James Macharia - Media Relations Officer
4. Mr. Vitus Okech - Research Officer
5. Mrs. Jane Serem - Audio Officer
6. Mrs. Beatrice Auma - Personal Secretary Committee Services
7. Mrs. Sheila Cheboitibin - Senior Sergeant At -Arms
8. Ms. Christine Sabdio - Office Assistant

STATE DEPARTMENT OF CULTURE

1. Ms. Josepha O. Mukoba - Principal Secretary Department of Heritage
2. Mr. John .W. Njogu - State Department Of Heritage
3. Mr. Jeremiah Were - State Department Of Heritage

MIN.NO. SCT/156/2018: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past ten followed by a word of prayer from the Hon. Jones Mlolwa, MP. He then welcomed the Principal Secretary State Department of Heritage to the meeting and thereafter requested everyone to do self-introduction.

MIN/NO.STC/157/2018: PRESENTATION BY THE STATE DEPARTMENT OF HERITAGE ON THE CONSIDERATION OF AMENDMENTS ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSION ACT.

The Principal Secretary made her presentation on the traditional knowledge Act as follows:-
That:-

The State Department of Heritage through the proposed amendments sought to align the Public Archives Documentation Service Act with the current position of the law under the Constitution of Kenya, 2010. And further amend Section 2 of the Act to define the term "Minister" herein interpreted to mean Cabinet Secretary responsible for matters relating to Culture and National Heritage. This is justified by the fact that since the Act came into effect before the promulgation of the Constitution of Kenya, 2010, the Act then did not require to define the word "Minister", since the Old Constitution had already done so. The latest proposal to amend Section 2 is to align it with the current position of the law.

MIN/NO.STC/158/2018: COMMITTEE OBSERVATIONS

1. The Committee noted that the proposed amendments were geared towards aligning the Act with the provisions of the Constitution of Kenya 2010, while safeguarding the responsibility for the protection of Intellectual Property Rights within a relevant legal framework.
2. The Committee further observed that there are many Kenyan artefacts that are currently domiciled in foreign countries without the necessary authority from Kenya, probably because there is no strong legal framework to take care of the same.

MIN/NO.STC/159/2018: COMMITTEE RECOMMENDATION

1. The Committee adopted the proposed amendments to align the Act with the provisions of the Constitution of Kenya, 2010.
2. The Committee challenged the State Department of Heritage to start the process of repatriation of the Kenyan artefacts domiciled in foreign countries for proper safeguarding by the State Department.

MIN/NO.STC/160/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at forty minutes past Twelve O'clock.

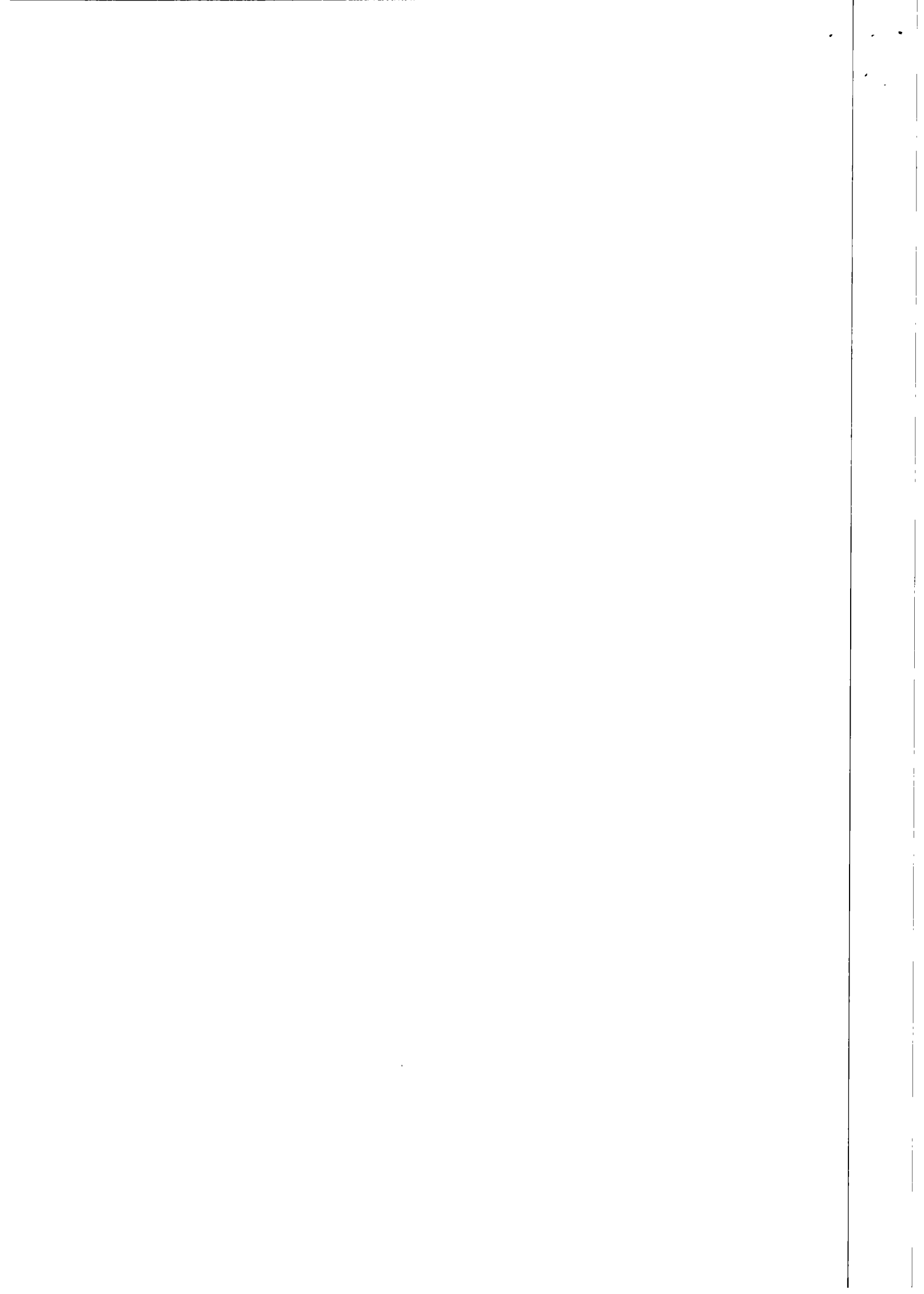
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DATE:

31/10/2018

CHAIRPERSON



MINUTES OF THE 32ND SITTING OF THE DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND TOURISM HELD ON THURSDAY 30TH MAY, 2018 IN SIMBA BOARD ROOM AT THE BOMA INN 1ST FLOOR AT 9.30 AM.

PRESENT

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - **Chairperson**
2. The Hon. (Dr.) Korei Ole Lemein, MP. - **Vice Chairperson**
3. The Hon. (Prof.) Jacqueline Oduol, MP.
4. The Hon. Christopher Omulele, MP.
5. The Hon. Jones Mlolwa, MP.
6. The Hon. Daniel Wanyama Sitati, MP.
7. The Hon. Annie Wanjiku Kibeh, MP.
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10. The Hon. Benard Masaka Shinali, MP
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12. The Hon. George Risa Sunkuyia, MP.
13. The Hon. Sylvanus Maritim, MP.
14. The Hon. Jeremiah Lomorukai, MP.

APOLOGY .

1. The Hon. Kubai Iringo, MP.
2. The Hon. Lydia Haika Mnene Mizighi, MP.
3. The Hon. Jane Jepkorir Kiptoo Chebaibai, M.P.
4. The Hon. Titus Mukhwana Khamala, MP.

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Hellen Kina - Third Clerk Assistant
2. Ms. Clara Kimeli - Legal Officer
3. Mr. James Macharia - Media Relations Officer
4. Mr. Vitus Okech - Research Officer
5. Mrs. Jane Serem - Audio Officer
6. Mrs. Beatrice Auma - Personal Secretary Committee Services
7. Mrs. Sheila Cheboitibin - Senior Sergeant At -Arms
8. Ms. Christine Sabdio - Office Assistant

STATE DEPARTMENT OF CULTURE

1. Ms. Josepha O. Mukoba - Principal Secretary Department of Heritage
2. Mr. John .W. Njogu - State Department Of Tourism
3. Mr. Jeremiah Were - State Department Of Tourism

MIN.NO. SCT/156/2018: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past nine followed by a word of prayer from the Hon. Jones Mlolwa, MP. He then welcomed the Principal Secretary State Department of Heritage to the meeting and thereafter requested everyone to do self-introduction.

MIN/NO.STC/157/2018: PRESENTATION BY THE STATE DEPARTMENT OF HERITAGE ON THE CONSIDERATION OF AMENDMENTS ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSION ACT.

The Principal Secretary made her presentation on the traditional knowledge Act as follows:-
That:-

The State Department of Heritage through the proposed amendments sought to align the Public Archives Documentation Service Act with the current position of the law under the Constitution of Kenya, 2010. And further amend Section 2 of the Act to define the term "Minister" herein interpreted to mean Cabinet Secretary responsible for matters relating to Culture and National Heritage. This is justified by the fact that since the Act came into effect before the promulgation of the Constitution of Kenya, 2010, the Act then did not require to define the word "Minister", since the Old Constitution had already done so. The latest proposal to amend Section 2 is to align it with the current position of the law.

MIN/NO.STC/158/2018: COMMITTEE OBSERVATIONS

1. The Committee noted that the proposed amendments were geared towards aligning the Act with the provisions of the Constitution of Kenya 2010, while safeguarding the responsibility for the protection of Intellectual Property Rights within a relevant legal framework.
2. The Committee further observed that there are many Kenyan artefacts that are currently domiciled in foreign countries without the necessary authority from Kenya, probably because there is no strong legal framework to take care of the same.

MIN/NO.STC/159/2018: COMMITTEE RECOMMENDATION

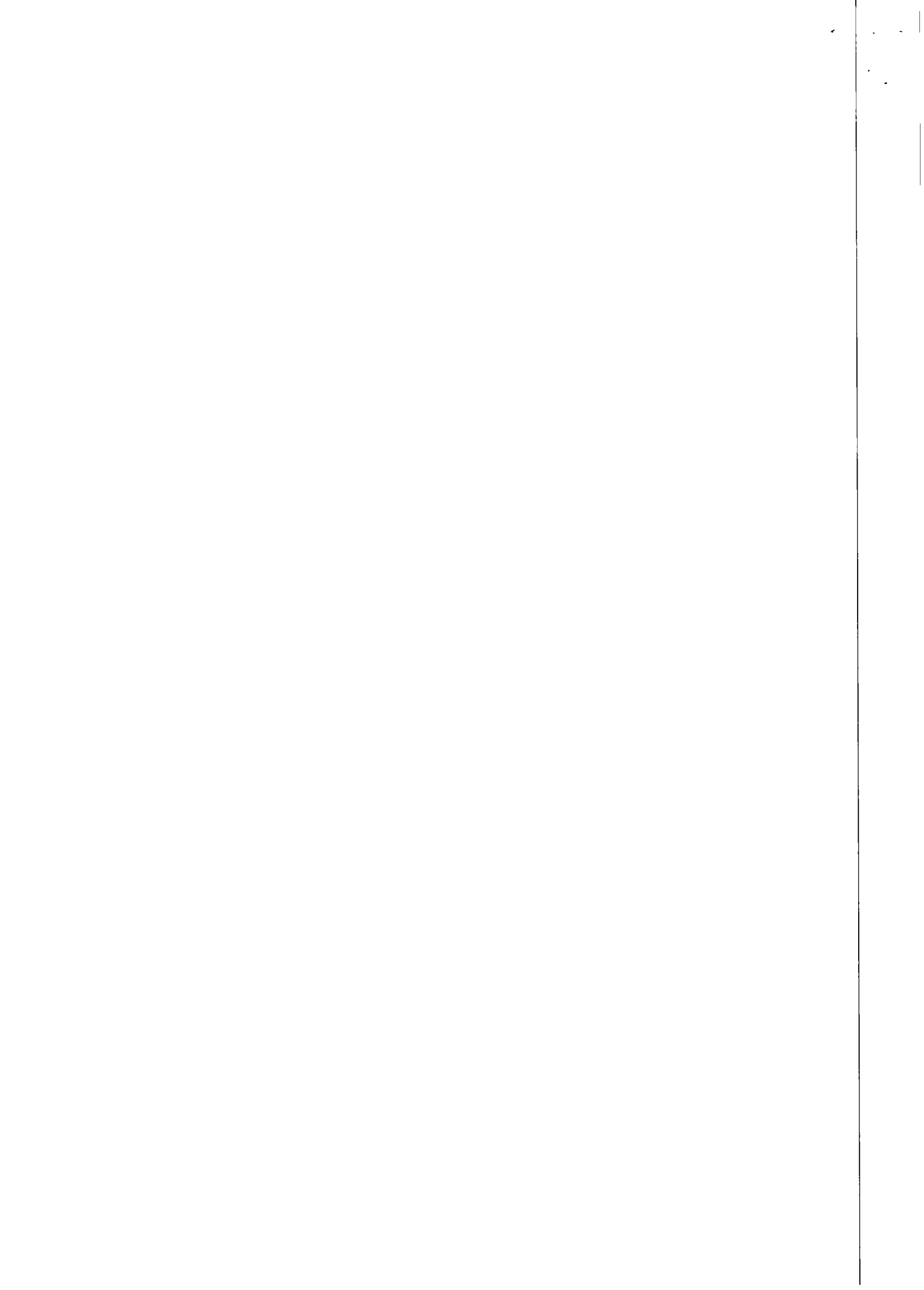
1. The Committee adopted the proposed amendments to align the Act with the provisions of the Constitution of Kenya, 2010.
2. The Committee challenged the State Department of Heritage to start the process of repatriation of the Kenyan artefacts domiciled in foreign countries for proper safeguarding by the State Department.

MIN/NO.STC/160/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at forty minutes past Twelve O'clock.

SIGN:  DATE: 31/05/2018

CHAIRPERSON





1309
D/Committee
11/05

REPUBLIC OF KENYA
MINISTRY OF SPORTS AND HERITAGE
STATE DEPARTMENT OF HERITAGE

Telegrams Tel: (254 -02) 2226007, Nairobi
Mob: 0722509212
E-mail: info@archives.go.ke
Website: <http://www.archives.go.ke>

KENYA NATIONAL ARCHIVES
AND DOCUMENTATION
MOI AVENUE
P.O. Box 49210-00100
NAIROBI, KENYA.

Ref: KNA/1/53 Vol. 2 (30)

10th May, 2018

Clerk of the National Assembly
P.O. Box 41842-00100
NAIROBI.

Dear Sir,

**SUBMISSION OF MEMORANDUM IN RELATION TO THE STATUTE LAW
(MISCELLANEOUS AMENDMENT ACT) BILL, 2018.**

THE PUBLIC ARCHIVES AND DOCUMENTATION SERVICE ACT CAP 19

The Public Archives and Documentation Service Act Cap 19 (Cap.19) was enacted in 1965. With the passing of time, the records and archives management environment has undergone a major evolution, mainly because of the advancing technology. The evolving environment has rendered Cap. 19 ineffective in the management of public records and archives, since they are created in various formats and managed in very advanced record keeping systems.

Secondly, the promulgation of the Constitution of Kenya 2010 and enactment of the Access to Information Act, No. 31, 2016, have had profound effects on Cap 19. Some of the sections in Cap 19 that are reeling from the consequential amendments include:

- Section 5A that requires records creating agencies to restrict circulation of information to ONLY documents and reports that fall under 'exempt information', according to section 6 of the Access to Information Act.
- Section 6 which confines access to public archives to inspection of archives which have been in existence for a period of not less than thirty years; through deletion of sections 6 (2) and (3) of Cap.19.

Ms. Hellen Kisa

Pls TNA

14/05/2018



- Section 7 which has been amended such that authority to destroy valueless records can only be issued in concurrence with the Commission on Administrative Justice.

Under these circumstances, we wish to make a representation in regard to the Public Archives and Documentation Service Act as reflected in the attached document.

Yours faithfully,



Mary Wangithi Kuchio (Mrs)

FOR: DIRECTOR

L A W S O F K E N Y A

Proposed Sections for amendment to Cap.19 of Laws of Kenya

Change the title of the Act to read as;

National Archives, Records and Documentation Service Act

CHAPTER 19

Revised 2018
Printed and Published by the Government Printer
Nairobi

Arrangement of Sections

- 1 Short title and citation.
- 2 Interpretation.
- 3 Establishment of Kenya National Archives, Records and Documentation Service.
- 4 Powers and responsibilities of the Director in respect to:
 - (1) current and semi-current records
 - (2) electronic records
 - (3) archives
 - (4) private and historical records
 - (5) National and County Documentation Service
 - (6) oral archives
 - (7) destruction of public records and archives
 - (8) access to public records
- 5 Responsibilities of Head of Public and State Offices in respect to public records and archives
- 6 Responsibilities of the owners of private archives and historical records
- 7 Access to public archives
- 8 Offences
- 9 Declaration of historical records
- 10 Export of historical records
- 11 Legal validity of public archives
- 12 Certified copies of public archives admissible as evidence
- 13 Official seal of the Service
- 14 Copyright
- 15 Archives, Records and Documentation Advisory Council
- 16 Regulations

Schedule

- 1: Public records

Subsidiary legislation

Archives, Records and Documentation (Advisory Council) Regulations

Title: Change the title to read as;

CHAPTER 19

NATIONAL ARCHIVES, RECORDS AND DOCUMENTATION SERVICE ACT CAP.19 2018

Commencement: _____

Below commencement; Change to read as;

An Act of Parliament to establish the Kenya National Archives, Records and Documentation Service and to provide for the management of public records and archives in a continuum of care and for connected purposes.

Section 1

Short title & Citation: Change to read as;

1. This Act may be cited as the National Archives, Records and Documentation Service Act.

Section 2

Include proposed additions below;

Interpretation:

In this Act, unless the context otherwise requires:

“**appraisal**” means process of determining the value of records in order to establish the “disposal action”;

“**archives**” [1] means records of enduring value selected for permanent preservation;

“**Archives**” [2] means organization or part of an organization responsible for selection, acquisition, preservation and access to archives;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for the National Archives, Records and Documentation Service;

“**classification scheme**” means systematic identification and arrangement of business activities and/or records into categories according to logically structured conventions, methods, and procedures represented in a classification system;

“**Council**” means the Archives, Records and Documentation Advisory Council as contemplated in section 15 of the Act;

“**County Documentation Service**” means a County agency responsible for the selection, acquisition, processing, storage and access to government information materials;

“**county records**” means records created, maintained and used in public and state offices at the county level;

“**current records**” means records used for the conduct of current business of an institution or individual;

“**Director**” means the person responsible for the National Archives, Records and Documentation Service;

“**Documentation Link Centre**” means an information centre/resource centre in a Ministry or a Department responsible for selection, acquisition, processing, storage and access to government information materials;

“**electronic record**” means any information generated, processed and stored by means of computer technology;

“**exempt information**” means a record to which access is restricted in accordance with section 7 of this Act;

“**historical records**” means an account, writing or narrative description of past events remembered and preserved in some authentic form due to their historical value;

“**National Archives**” [1] means the place or places wherein are housed or preserved such public records and public archives as have been, or are required to be, transferred to the national archives, and such other records as the Director may have acquired or received to form part of public archives;

“**National Archives**” [2] means records, both public and private, of enduring value selected for permanent preservation;

“**National Documentation Service**” means a national agency within the Service responsible for the selection, acquisition, processing, storage and access to government information materials;

“**national records**” means records created, maintained and used in public and state offices at the national level;

“**non-current records**” means records rarely needed for current business;

“oral archives” means oral history and traditions either collected, captured, processed and preserved as archives due to their enduring historical or informational value;

"place of deposit" means a place approved as such under section 4(3)(j);

“private archives” means private records of enduring value selected for permanent preservation;

"private records" means records other than public records specified in the schedule to this Act;

“Public/State offices” as stipulated in article 260 of the Constitution of Kenya 2010;

"public office" means an office in the national government, county government or the public service which creates, receives or maintains public records;

“public records” means the records specified in the schedule.

"record" means recorded information regardless of form or medium created, received and maintained by any institution or individual in the pursuance of its legal obligations or in the transaction of its business and providing evidence of the performance of those obligations or that business;

"Records Centre" means a place designated for the economical storage, maintenance and use of semi-current records pending their eventual disposal;

“records disposal” means the act of removal of records from their place of origin, for either destruction or transfer to a records centre for storage or Archives for preservation;

"retention and disposal schedule" means a control document that describes records of an organization, establishes their retention period and provides legal authorization for their disposal;

"semi-current records" means records occasionally required in the conduct of current business;

“Service” means the Kenya National Archives, Records and Documentation Service.

“state corporation” means a corporate body established within the ambit of the state corporations Act (Cap.446) of the laws of Kenya.

Under Establishment of the Kenya National Archives and Documentation Service, change to read as:

Section 3:

Establishment of Kenya National Archives, Records and Documentation Service

(1) There shall be established, constituted and maintained a public office to be known as the Kenya National Archives, Records and Documentation Service for which there shall be appointed a Director and such other staff as may be necessary for purposes of this Act.

(2) The Director shall be responsible for and shall have charge of the Service and of the management of the public records and public archives of the National and County Governments, State Corporations, Commissions and all public and state offices; and shall take all practicable steps for the proper creation, use, control, preservation and housing of all public archives and public records.

(3) The Service shall have such number of regional offices as may be determined by the Director from time to time.

Section 4

Under the powers of the Director, include as proposed below.

Powers and Responsibilities of the Director

Subject to this Act and any subsidiary legislation made hereunder and to any special or general directions which may be given by the Cabinet Secretary, the Director and any officer of the Service authorized by him/her, shall have power to do all such things as may be necessary or expedient for the exercise of his/her duties and performance of his/her functions under this Act or any subsidiary legislation made hereunder, and without prejudice to the generality of the foregoing he may exercise the following powers:-

(1) Powers and responsibilities of the Director in respect to current and semi-current records

In relation to current and semi-current records, the Director shall have the power to:-

- (a) examine any public records and advise on the care, preservation, custody and control thereof;
- (b) advice, issue guidelines, standards and instructions, on best practices for the creation, maintenance, use and disposal of public records;
- (c) monitor and evaluate compliance with this Act by state and public offices;
- (d) train state and public officers on best practices in archives, records management and documentation services; and
- (e) carry out any other matter necessary for, or ancillary to the administration of this Act.

(2) Powers and responsibilities of the Director in respect to electronic records

Records creating agencies shall consult the Director to determine the standards, systems and conditions under which:

- a) Current and semi-current electronic records shall be created, used, maintained and disposed of in public offices
- b) Non-current electronic records may be preserved and used in the service.
- c) Analogue records may be reformatted into digital format

(3) Powers and responsibilities of the Director in respect to archives:-

In relation to public archives, the Director shall have the power to:-

- (a) require the transfer to his/her custody of any public records which he/she considers should be housed in the National Archives;
- (b) compile, make available and publish guides and other finding aids to all public archives;
- (c) prepare publications concerning the activities and facilities provided by the Service;
- (d) regulate the conditions under which members of the public may access the public archives or use the facilities provided by the Service;
- (e) provide for the making of, and authentication of, copies of and extracts from the public archives, for use as evidence in legal proceedings or for any other purpose;
- (f) make arrangements for the separate housing of film, sound and records in other formats which require to be kept under special conditions;
- (g) acquire, or accept gifts or testamentary bequests or loans of, any document, book, record, or other material of any description of historical or other value, or any copy or replica thereof which he/she considers should be added to the public archives;
- (h) take such steps as may be necessary to acquire and have returned to Kenya any public records or records of historical value to Kenya, which may have been taken out of the country;
- (i) lend, on such conditions as he/she considers necessary, any public archives for display at commemorative exhibitions or for other special purposes;
- (j) approve any institution, whether private or otherwise, as a place wherein may be deposited, housed or preserved either permanently or temporarily any records which have been declared historical records under section 9 or public archives or records;
- (k) carry out such activities as are incidental or conducive to the attainment of the objectives and functions of the National Archives, Records and Documentation Service.

(4) Powers and responsibilities of the Director in respect to Private and Historical records

(a) The Director shall, as far as possible, cause all non-current records and historical documents owned, held or possessed by private bodies and individuals in Kenya to be inspected and surveyed and advise or cause advice to be given as to their safe custody, preservation and care.

(b)(i) The Director shall keep a register (in this section referred to as “the register”) into which shall be entered, non-current records, materials and historical documents mentioned in section 9 of this Act which are not deposited in the National Archives or in a place of deposit.

(ii) Entry into the register under subsection (1) of this section shall be made on the basis of a declaration by the private body or individual owning, holding or possessing the records, materials or historical documents or on the basis of investigation conducted by the Director concerning the existence of the record, material or historical documents.

(iii) The Director may require from any person information concerning private noncurrent records, materials or historical documents owned, held or possessed by him/her and it shall be the duty of such person to supply the information.

(iv) No record, material or historical document which is less than twenty-five years old shall be entered into the register, unless it has, in the opinion of the Director, major historical interest and significance.

(v) A record, material or historical document entered in the register shall assume the status of private archives.

(vi) Private archives shall not be disposed of by their owners, holders or possessors, except with the written permission of the Director.

(vii) The ownership, tenure or possession of private archives shall not be transferred whether for payment or free of charge, without the prior knowledge of the Director who, in the case of sale, may exercise the right of pre-emption.

(viii) The Director may, as far as the resources available to him/her permit, assist the owner, holder or possessor of private archives in arranging, classifying, listing, describing and restoring his/her archives.

(ix) The Director shall transfer for preservation in the National Archives any private archives which in his/her opinions are in danger of loss, dispersal, deterioration or destruction.

(x) The Director may receive gifts of records and historical documents of any provenance or purchase them with public funds provided they are of major historical interest and significance.

(5) Powers and responsibilities of the Director in respect to National and County

Documentation Service

(a) Every head of a public office, a state office and a state corporation shall supply to the Director two copies of any published or generally circulated document or report produced by that office either in hard copy or any other format.

(b) The Government Printer or their authorized agent shall supply to the Service two copies of every publication produced by them.

(c) The Director of the Kenya National Bureau of Statistics shall supply to the Service two copies of every publication produced by the bureau.

(d) The Service shall, every six months, publish and circulate to all the major libraries in the country and in the link centres in the public service an accession list of reports and documents acquired.

(e) The Service shall provide technical advice for the establishment and improvement of Documentation Link Centres in Government ministries, departments, state corporations and counties.

(f) The Service shall, through the Documentation Link Centres, co-ordinate the acquisition and preservation of reports and other generally circulated documents in the public service.

(6) Powers and Responsibilities in respect to Oral Archives

(a) The Director may acquire and preserve oral archives from institutions, centres and individuals involved in the collection and storage of oral traditions and history.

(b) The Director shall maintain a master register for oral archives, traditions or history of various collections in various institutions and centres.

(c) The Director shall ensure that such institutions and centres update and maintain lists of their collections and forward copies of the same to the Service.

(7) Powers and Responsibilities of the Director in respect to destruction of public records and archives:

Where the Director is of the opinion that any public archives or records are duplicated, or that for some other special reason any public archives or records should not be preserved, he may, in consultation with the Commission on Administrative Justice and with the approval of the Cabinet Secretary and of such other person as the Cabinet Secretary considers to be primarily concerned with public archives or records of the category in question, authorize the destruction or other disposal of such public archives or records.

Provided that nothing in this section shall empower the Director to authorize the destruction or other disposal of any public archives or records obtained otherwise than by transfer under section 4(8) (c) and (d) below, contrary to the terms or conditions under which they were obtained, or, if they were obtained by gift, during the lifetime of the donor without his/her consent.

(8) Powers and Responsibilities of the Director in respect to access to public records

(a) It shall be the duty of every person responsible for, or having the custody of any public records to afford to the Director or any officer of the Service authorized by him/her reasonable access to such public records and appropriate facilities for the examination and selection thereof, and to comply without any undue delay with any lawful directions given by the Director or such officer concerning the assemblage, safe keeping and preservation of such public records or of the transfer of any such public records to the Service to form part of the public archives.

(b) Any public records required by the Director, or any officer of the Service authorized by him/her, to form part of the public archives, may, with the consent of, and subject to such conditions as to their care, control, and preservation as may be imposed by, the Director, be retained by their office of origin, or may be temporarily returned thereto if required for administrative or special purposes, but for the purposes of this Act such public records shall be deemed to be and remain part of the public archives.

(c) Notwithstanding anything contained in this Act or any subsidiary legislation made thereunder, the Director or any officer of the Service authorized by him/her, shall not have power to examine any public records, access to which is restricted by any written law or otherwise to a person or category of persons which does not include the Director or such officer.

(d) Where there are transferred to the Service any public records containing information obtained from members of the public or from other sources the disclosure of which is by or under any written law prohibited or restricted to certain purposes, the Director and all officers of the Service having access to such public records shall take such oath or make such declaration relating to secrecy (with such modifications as the circumstances require) as is required by or under that written law to be taken or made by persons having access to such records, before their transfer, and every person who takes such oath or makes such declaration shall, for the purposes of any provision of such written law making punishable any disclosure in contravention of the

written law, be deemed to be a person employed in carrying out the provisions of that written law.

Section 5

Under Director's powers in respect of public records delete entire section

Section 5A in the current Act is now section 4 (5) in the proposed amendment document and shall read as stated.

Section 5

Responsibilities of Head of Public and State Offices in respect to public records and archives

(1) The head of a public and state office shall make or cause to be created such records which are essential for:

(b) the full documentation of his/her organisation, functions, policies, procedures and transactions;
and

(c) the efficient, economical and orderly execution of their duties.

(a) the continuity of his or her office;

(2) It shall be the responsibility and duty of public and state officers to ensure proper care, use, maintenance, control and disposal of public records under their purview.

(3) The head of a public and state office shall take steps to ensure that officers hand over all records to their successors and establish such safeguards against removal or loss of records as he/she shall deem necessary or as may be provided by rules and regulations.

(4) The head of public and state office at the county or district level of government shall be responsible for the establishment of records management units for the purpose of managing public records.

(5) The records management units shall be under qualified records management officers responsible for the implementation of standards and guidelines which includes but not limited to:

- (a) creation and maintenance of current records within appropriate filing classification schemes;
 - (b) records retention and disposal schedules;
 - (c) provide appropriate and adequate resources for managing semi-current records;
 - (d) transfer of non-current records into the custody of the Director
- (6) The County Governors shall liaise with the Director on professional matters under this Act.
- (7) Any records centre or archival repository for public records established in any county shall adhere to standards and guidelines set by the Service for the purpose of managing public records and archives.
- (8) A public and state office shall not transfer its non-current records to any other body, public office, library, museum other than the National Archives.

Section 6

Responsibilities of the owners of private archives and historical records

A private body that, or an individual who, owns, holds or possesses registered records under section 4 (4) and (6) shall—

- (a) preserve the records/archives with all due care;
- (b) arrange, classify, list and describe the records/archives;
- (c) transmit a copy of such lists or descriptions to the Director;
- (d) open the archives for the use of the public at request, under such conditions as may be agreed upon the Director;
- (e) make arrangements to publicise such archives as the Director may require or submit such archives to the Director for publicity; and
- (f) report any losses of such archives to the Director.

Section 7 Public Access to archives

Section 6 in the current Act is now Section 7 in the proposed amendment document and shall read as follows;

Subject to any written law prohibiting or restricting the disclosure of information obtained from members of the public and to the provisions of this section, public archives which have been in existence for a period of not less than thirty years may be made available for public inspection, and it shall be the duty of the Director to provide reasonable facilities at such times, and on the payment of the prescribed fees, for members of the public to inspect or obtain copies of, or extracts from, such public archives.

Section 7

Under Destruction of Public records has moved to section 4(7) above

Section 8 - Offences

(1) Subject to section 4(7), any person who wilfully destroys or otherwise disposes of, defaces, mutilates or damages any public record or archives shall be guilty of an offence.

(2) Any person who wilfully destroys or otherwise disposes of any public records, except with, and in accordance with the terms and conditions of, the written consent of the Director shall be guilty of an offence.

(3) Any person who exports any public archives or public records except under and in accordance with the terms and conditions of a licence issued by the Director shall be guilty of an offence.

(4) Any person who removes from its place of custody any public records or archives except with, and in accordance with the terms and conditions of, the written consent of the Director shall be guilty of an offence.

(5) Any person who wilfully obstructs or hinders the Director or any officer of the Service authorized by him in the exercise of their duties or the performance of their functions under this Act or any subsidiary legislation made thereunder, or who wilfully disobeys or contravenes any lawful order or direction of the Director or such officer given in accordance with this Act or any subsidiary legislation made thereunder, shall be guilty of an offence.

Section 8 (6) has been moved to section 4(7) b in the proposed Act

Change No. (7) to read as;

(6) Any person who is guilty of an offence under this section shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding two million shillings or to both.

Section 9

Under section (9) declaration of Historical records and export of Historical records are treated distinctively and rephrased as below:

Section 9

Declaration of Historical Records

Where the Director is satisfied that any record which is in, or was made in Kenya, is of historical value to Kenya, he/she may, by notice in the Gazette, or by writing under the Director's hand served on the person having the custody of such record, declare such record to be an historical record.

Section 10

Export of Historical Records

(1) The Director shall prohibit the export of any record declared an historical record under section 9 except under and in accordance with the terms and conditions of a license issued by the Director.

(2) A license issued for the export of an historical record declared as such under section 9 shall contain a description of the record sufficient to identify it, and may contain such terms and conditions as to the custody, use, preservation and return of the record as the Director deems fit.

(3) Any person aggrieved by the declaration of any record as an historical record under section 9, or by the refusal of the Director to issue a licence for the export of such record or by any terms and conditions contained in a licence issued by the Director under this section, may appeal to the Cabinet Secretary whose decision thereon shall be final and shall not be questioned in any court.

(4) Any person who:-

- (a) knowing any record to be declared an historical record under section 9, exports or attempts to export it without a licence issued by the Director, or
- (b) contravenes or fails to comply with the terms and conditions of any licence issued to him/her under this section: or
- (c) knowing any record to be declared an historical record under section 9, wilfully destroys or otherwise disposes of, defaces, mutilates or damages such record or, if he/she has custody of such record, fails to take all reasonable steps to preserve and protect it,

Shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding two million shillings or to both.

Section 10 in the current Act is now section 11 in the proposed amendment document and therefore shall read as follows:

Section 11

Legal Validity of Public Archives

When it is a requirement of the validity of any public records that it be kept in or produced from legal custody, the validity of such record shall not be affected by the fact of its transfer to the National Archives.

Section 11 in the current Act is now section 12 in proposed amendment document and shall be as follows;

Section 12

Certified copies of public archives admissible as evidence

A copy of or extract from any public archives purporting to be duly certified as a true and authentic copy or extract by the Director, or by an officer of the Service authorized by him in that behalf, and authenticated with the official seal of the Service, shall be admissible in evidence in any proceedings, without further proof, if the original record would have been admissible in evidence in such proceedings.

Section 12 in the current Act is now section 13 in proposed amendment document and shall be as follows;

Section 13

Official Seal of the Service

- (1) There shall be an official seal of the Service of a design and format approved by the Cabinet Secretary, which seal shall be judicially noted.
- (2) The seal of the Service shall be kept in the custody of the Director and may be used by him/her or by an officer of the Service authorized by him/her in that behalf for the purposes of the Service.

Section 13 in the current Act becomes Section 14 in the proposed Act and shall read as follows;

Section 14 Copyright

Where any work in which copyright subsists, or a reproduction of such work, is comprised in any public archives which are open to public inspection under this Act, the copyright in such work shall not be deemed to have been infringed by the making or the supplying to any person of any reproduction of the work by or under the direction of the Director:

Provided that, in its application to any public archives obtained otherwise than under section 4(8) (c) and (d), this section shall have effect subject to any express terms or conditions under which the same was obtained.

Section 15 - Archives, Records and Documentation Advisory Council

Section 14 in the current Act becomes section 15 in the proposed Act and shall read as follows;

- (1) The Cabinet Secretary may make regulations establishing and constituting a Council, to be known as the Archives, Records and Documentation Advisory Council, and, subject to this Act, providing for matters incidental to and connected with the establishment and constitution of such council, and the functions thereof.
- (2) The functions of the Archives, Records and Documentation Advisory Council shall be to advise the Cabinet Secretary on all matters relating to the location, preservation and use of public archives, access by members of the public to the archives, and the export under licence of public archives, records or historical records and archives.

Section 16: Regulations

Section 15 in the current Act becomes section 16 in the proposed Act and shall read as follows;

The Cabinet Secretary may make regulations generally for the better carrying out of the purpose of this Act, and without prejudice to the generality of the foregoing may make regulations providing for –

- (a) the admission of the public to the national archives and their access to the archives;
- (b) the transfer of any public records to national archives;
- (c) the responsibilities of persons having the custody of public records;
- (d) the examination, disposal or destruction of public archives and public records;

- (e) the conditions under which public archives may be reproduced, or published or extracts made therefrom;
- (f) the issuing of licences for the exportation from Kenya of public archives, public records or historical records or oral archives, or the terms and conditions which may be attached to such licences; and
- (g) the fees to be paid for access to the national archives or the use of the archives or the facilities or services provided by the Service.

SCHEDULE (s. 2)

Public Records

Change to read as:

1. The records of any Ministry, Government Department, County Government and of any commission, office, board or other body or establishment under the Government or established by or under an Act of Parliament:

Provided that nothing referred to in this paragraph shall include the records of the Public Trustee or the Registrar General relating to individual trusts or estates.

2. The records of the Supreme Court, Court of Appeal, High Court and of any other court or tribunal.
3. The records of the National Assembly, the Senate and County Assemblies.
4. The official records of the Presidency
5. The records of authorities established for purposes of managing cities and urban areas.

SUBSIDIARY LEGISLATION

Regulations under section 15

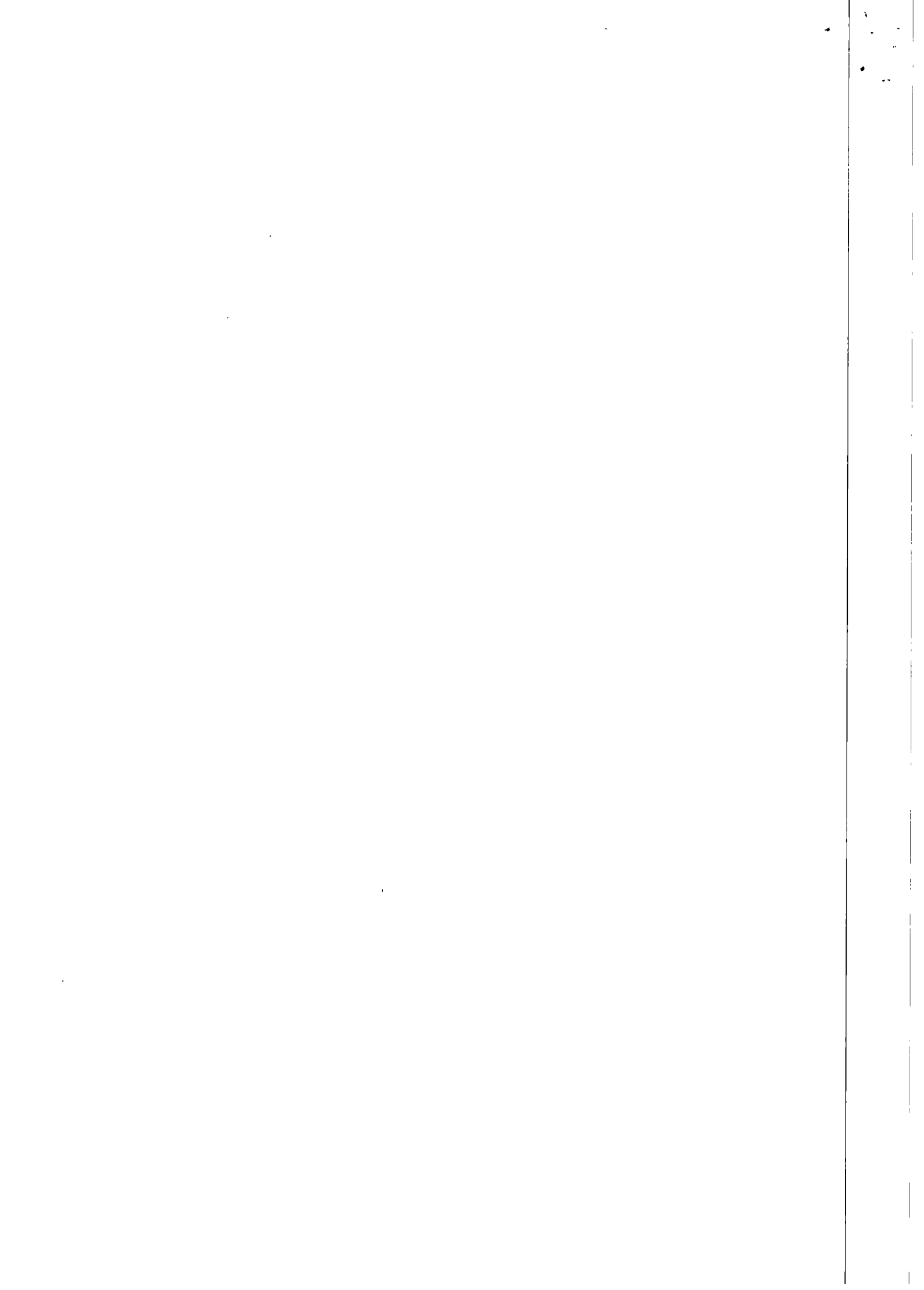
Change title to read as follows:

ARCHIVES, RECORDS AND DOCUMENTATION (ADVISORY COUNCIL) REGULATIONS

1. These Regulations may be cited as the Archives, Records and Documentation (Advisory Council) Regulations.
2. There is hereby established a Council, to be known as the Archives, Records and Documentation Advisory Council (in these Regulations referred to as the Council).
3. The Council shall consist of not more than thirteen members appointed by the Cabinet Secretary on the approval of the President from among persons who are knowledgeable in, or have an interest in records and archival matters as follows;
 - (a) the Principal Secretary of the Ministry for the time being responsible for the National Archives;
 - (b) two lecturers from the information science department(s) of any of the universities in the country;
 - (c) two lecturers from the history department(s) of any of the universities in the country;
 - (d) a representative from the Directorate of Public Service Management;
 - (e) Chief of Staff and Head of Public Service;
 - (f) the Principal Secretary, National Treasury ;
 - (g) the Principal Secretary, Ministry of ICT
 - (h) four other members appointed to represent the interest of owners of records.
4. (1) Each appointed member of the Council shall hold office for a term of two years, unless his appointment is earlier revoked by the Cabinet Secretary, and at the end of that term shall be eligible for re-appointment.

- (2) Where the Cabinet Secretary terminates an appointment, or an appointed member dies, the member appointed by the Cabinet Secretary in his place shall hold office for the unexpired residue of the period of office of the member replaced.
5. (1) The President, on the advice of the Cabinet Secretary, shall appoint a member of the Council to be chairperson who shall preside over all meetings of the Council, and in the event of his/her being incapacitated by illness, absence or other cause, the vice-chairperson shall preside and in absence of the vice-chairperson, members present may appoint a member among themselves to preside at that meeting.
 - (2) The chairperson and vice-chairperson shall hold office in accordance with the provisions of regulation 4 (1).
 - (3) The vice-chairperson shall be elected by members of the Council from among their number.
6. (1) The decision of the majority of the members present and voting at a meeting of the Council shall be deemed to be the decision of the Council.
 - (2) The quorum of the Council shall be the chairperson (or vice-chairperson as the case may be) and four other members.
7. If any member of the Council is temporarily incapacitated by illness, absence or other cause from performing the duties of his/her office, the Cabinet Secretary may appoint another person to act in his/her place, and such person shall be deemed to be a member of the Council until the member is again able to perform those duties or ceases to hold office as a member.
8. (1) The Council shall hold ordinary meetings not more than four times in each year, but may hold additional ordinary meetings in consultation with the Director, and such meetings shall be convened by the chairperson, or where the chairperson is not available the vice- chairperson.
 - (2) The chairperson, or where the chairperson is not available the vice-chairperson, may at any time convene a special meeting of the Council, and shall in any case do so within a month of receiving a written request by a majority of the members.
- 3) Where a meeting is convened, notice specifying the place, day and hour of the meeting shall be given to each member by being delivered at or sent by post, courier or electronic mail to, their usual place of business or residence or postal address, at least fourteen days before the date of the meeting.
9. Subject to these Regulations, the Council may have power to regulate its own procedure.

10. The Director shall be the secretary to the Council.





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MINISTRY OF SPORTS AND HERITAGE
STATE DEPARTMENT OF HERITAGE
OFFICE OF THE PRINCIPAL SECRETARY

Tel: +254-020-2251164/005, 2250576
Fax: +254-020-316187
Website: www.nationalheritage.go.ke
Email: info@nationalheritage.go.ke
When replying please quote:

Kencom House,
P.O. Box 49849-00100
Nairobi, Kenya

REF: MOSCA 24/6(C) Vol.I (13)

18th May 2018

The Clerk
National Assembly
Parliament Buildings
P.O. Box 41802-00100
NAIROBI

(1) DCS

21/5/18

Attn: Chairman
Departmental Committee on Sports, Culture and Tourism

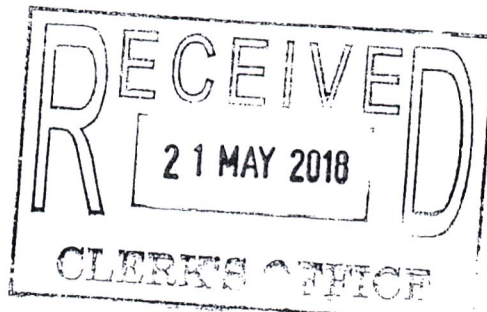
THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) NO. 2 BILL: THE MINISTRY'S JUSTIFICATION ON THE PROPOSED AMENDMENTS TO THE PUBLIC ARCHIVES AND DOCUMENTATION SERVICE ACT CAP 19 AND THE PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS ACT, 2016 (NO. 33 OF 2016)

Reference is made to the National Assembly letter Ref. No. KNA/DCS/SCT/2018(019) dated 7th May, 2018 that summoned the Cabinet Secretary to appear before the Departmental Committee on Sports, Culture and Tourism to consider the budget estimates for FY 2018/19, among other things.

Consequently, I would like to submit the following justifications on the proposed amendments-

In respect to the Public Archives Documentation Service Act Cap 19:

1. The Act is being aligned to the Constitution of Kenya, 2010 where the Minister means the Cabinet Secretary;



2. The Act did not require to define the Minister since the Old Constitution had done that. We are therefore amending it to bring it to the current position of the Law;
3. The Public Archives Documentation Service has always been in the Ministry for the time being responsible for culture and national heritage and hence the amendments.

In respect to the Protection of Traditional Knowledge and Cultural Expressions Act:

1. The Act gives effect to Article 11, 40, and 69(1)(C) of the Constitution of Kenya, 2010 which are largely related to culture than intellectual property rights;
2. There is no current Cabinet Secretary Office relating to Intellectual Property rights. The definition of Cabinet Secretary in the Parent Act was a mistake;
3. The Act relates to issues of Culture which are housed in the Ministry of Sports and Heritage and hence the amendments


JOSEPHTA O. MUKOBE (MS), CBS
PRINCIPAL SECRETARY

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FA 15/5/18

The Community Based Tourism Consortium of Kenya

MEMORANDUM TO THE NATIONAL ASSEMBLY OF KENYA

To: The Clerk of the National Assembly of Kenya.

CC: The Parliamentary Committee on Sports, Culture and Tourism.

From: The Community Based Tourism Consortium of Kenya.

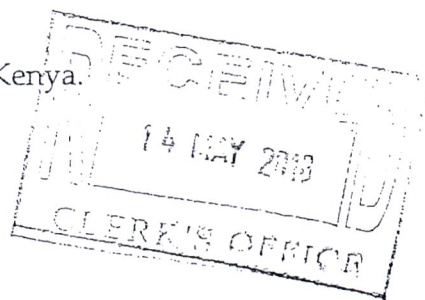
Date: May 14, 2018

Subject: The Miscellaneous Amendment Bill No. 12 of 2018.

The Community Based Tourism Consortium of Kenya comprises of several legally registered organizations working together to enhance livelihoods of local communities through Community Based Tourism. These institutions include: The Kenya Community Based Tourism Network (KECOBAT), Ecotourism Kenya (EK), and Rural Tourism Network of Kenya (RTN).

We write to provide our analysis of "The Miscellaneous Amendment Bill No. 12 of 2018 which is currently before various relevant departmental committees of the National Assembly.

Our input seeks to provide a critical analysis of the notice to amend The Tourism Act No.28 of 2011 taking into account international principles and best practices in tourism governance.



The Community Based Tourism Consortium of Kenya

The Proposed amendments to the Act and our position

The bill seeks to make the following amendments to the Tourism Act No. 28 of 2011:

1. *Section 7 (1) (a)*. Formulate guidelines and prescribe measures for sustainable tourism throughout the country.

Proposed amendment: Deletion of the word 'sustainable' from section 7 (1) (a) and inserting the words "establishments and operations" immediately after word 'tourism'. After the amendment, the section will then read: formulate guidelines and prescribe measures for tourism establishments and operations throughout the country.

Our position

The concept of sustainable tourism is gaining traction as an approach that seeks to reconcile economic, environmental and social impacts of tourism development. The popularity and the need to promote sustainable tourism development was underscored in 2017 when the United Nations declared 2017 the International Year of Sustainable Tourism for Development in order to promote a change in policies and business practices within the sector and also in the habits of consumers and travelers.

As Community Based Tourism stakeholders, we hold the view that sustainable tourism has never been more relevant than in today's world where environmental and cultural degradation are the commonplace of tourism development in various destinations of the world.

Consequently, it is incumbent upon various stakeholders- such as policy makers- to formulate policies and regulations that promote sustainable tourism development in the country. As such, we are not in agreement with the intention to expunge sustainability from the current section of the Act.

The Community Based Tourism Consortium of Kenya

Our proposal: we propose insertion of the sentence “to realize sustainable tourism development” after the word ‘operations’ as the ultimate goal or aspirations of the Tourism Regulatory Authority’s (TRA) role of formulation of guidelines and measures for tourism establishments and operations. Hence, the new section should read:
Formulate guidelines and prescribe measures for tourism establishments and operations to realize sustainable tourism development throughout the country.

2. The Bill intends to delete section 7 (b) of the Act which reads: regulate tourism activities and services countrywide, in accordance with the national tourism strategy.

The role of regulation of tourism activities in the country was donated to the TRA which is a body corporate established by the Tourism Act No. 28 of 2011 under section 4. The regulatory roles of TRA were operationalized through the gazette of legal notice No. 128 (Tourism Regulatory Authority Regulations 2014) vide the Kenya Gazette Supplement No. 142. The TRA regulates the Tourism sector through standardization and licensing as provided for in the TRA regulations 2014.

Our position:

The amendment seeks to take away this legally mandated regulatory role of TRA without necessarily donating the same role to any other body corporate. It is our considered view that this shall create a regulatory lacuna that may pose a challenge to effecting and maintaining quality and standards of tourism establishments and activities in the country. We recommend that the regulatory roles remain in the interim with the TRA until such a time when such roles shall be partially or fully donated to a relevant body or institution.

The Community Based Tourism Consortium of Kenya

Conclusion

Our analysis of the Amendment Bill has demonstrated that the concept of sustainable tourism development is very relevant today in the face of several development initiatives that have negative socio-environmental externalities in the tourism destinations. As such, we have argued for the inclusion of the concept of 'sustainable tourism development' - in the proposed amendment of section 7 (1) (a) of the Tourism Act 2011- as the ultimate goal of the TRA's role of formulation of guidelines and measures for tourism establishments and operations. We have also critiqued the intention to take away- without transferring elsewhere- the regulatory roles of the Tourism Regulatory Authority as captured in section 7 (b) of the Tourism Act 2011. We have proposed that the role of regulation of tourism establishment and activities should remain with the TRA in the interim until such roles shall be transferred in part or in full to any other relevant institution.

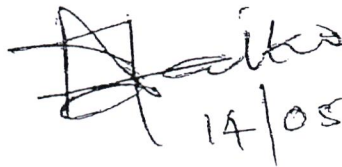
While amendments of legislations are welcome, we take note of the speed with which the promoters of the Bill intend to rush it through the parliament. We propose that a detailed participatory review of the Tourism Act 2011 is necessary for elaborate inclusion of the interests of Community Based Tourism Enterprises.

The Community Based Tourism Consortium of Kenya remains willing to make an elaborate presentation of our position should we be accorded the chance.



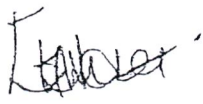
The Community Based Tourism Consortium of Kenya

This memorandum is prepared, signed and respectfully submitted by:


14/05/2018

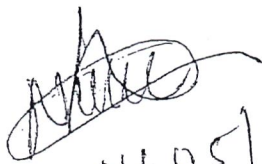


Mr. Taiko Lemayian (Executive Director)
Kenya Community based Tourism (KECOBAT)


14/05/2018

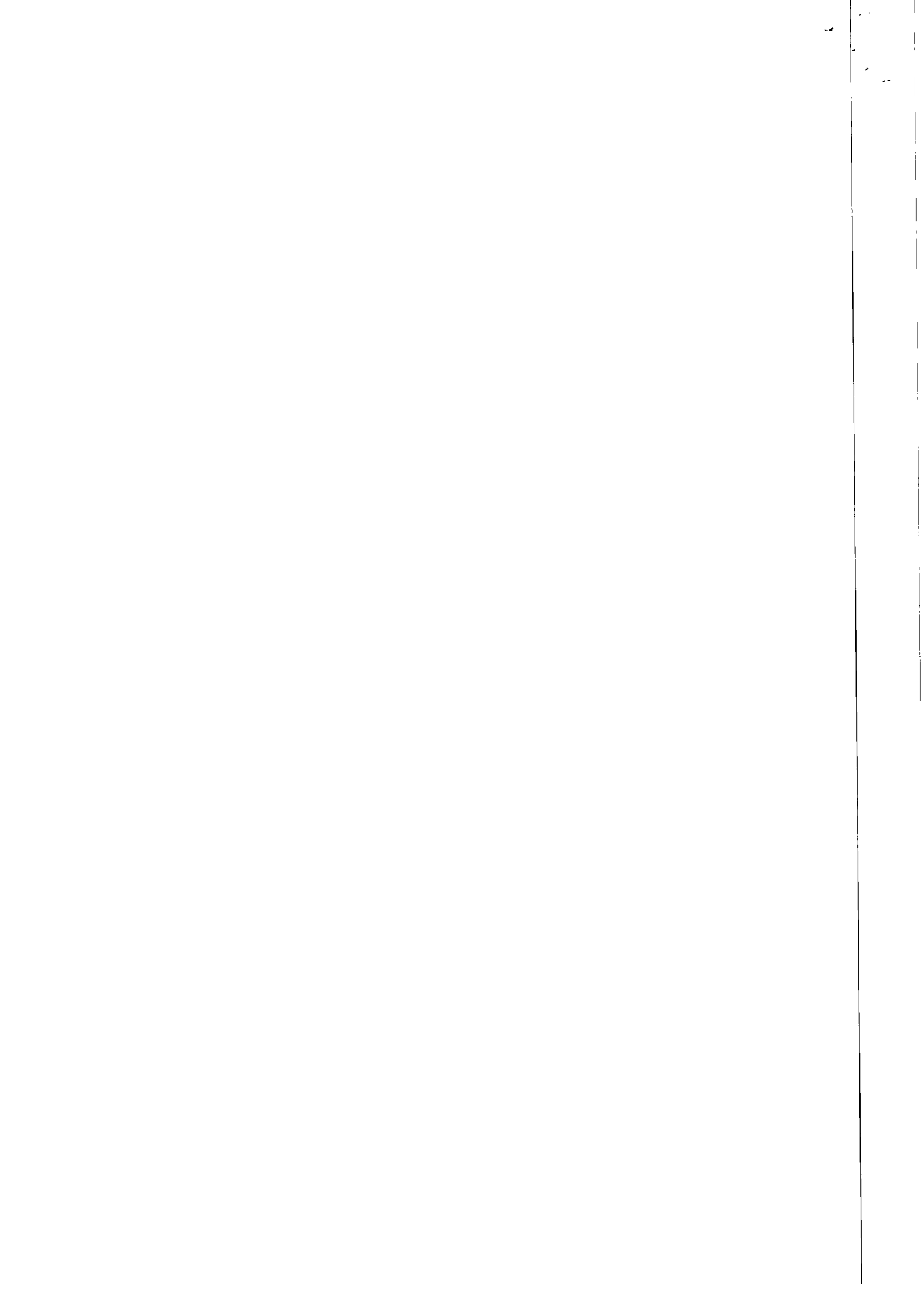


Ms. Grace Nderitu (Chief Executive Officer)
The Ecotourism Kenya (EK)


14/05/2018



Mr. Nicholas Ayimba (Chief Executive Officer)
The Rural Tourism Network (RTN)





REPUBLIC OF KENYA

MINISTRY OF TOURISM AND WILDLIFE
STATE DEPARTMENT FOR TOURISM

OFFICE OF THE PRINCIPAL SECRETARY

Telephone: 254-20-3315001/4
Email: ps@tourism.go.ke
When replying please quote

TELPOSTA TOWERS
P.O. Box 30430-00100
NAIROBI, KENYA

MTEF/3/12 Vol.I

28th May, 2018

Mr. Michael R. Sialai, EBS
Clerk of the National Assembly
Parliament Buildings
NAIROBI

Dear *Mr Sialai,*

**MISCELLANEOUS AMENDMENT BILL, 2018 (TOURISM ACT 2011)
RESPONSE TO THE PETITIONER**

Reference is made to our letter Ref. MTEF/3/12 Vol.I dated 18th May, 2018 on the above subject.

Attached please find our response to inform the Departmental Committee on issues raised by the petitioners on the above matter.

Yours

Sincerely,

Fatuma Hirsi Mohamed (Mrs.), CBS
PRINCIPAL SECRETARY

Encls.

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MINISTRY OF TOURISM AND WILDLIFE

STATE DEPARTMENT OF TOURISM

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL 2018

TOURISM ACT 2011 (Amendments)

PROPOSED AREAS OF AMENDMENT TO THE TOURISM ACT 2011

RESPONSES TO THE PUBLIC PETITIONS

A. BACKGROUND

The Tourism Act 2011, was developed immediately after dawn of Constitution of Kenya 2010. During the period, the government policy was to allow, almost exclusively, the semi-autonomous agencies (SAGAs), the authority in implementing the mandate of the government at the time. This experience has proved unworkable. The government has since changed its approach and now requires the Ministry to develop the policies and the Semi –Autonomous agencies to implement the strategies.

The Ministry of Tourism, noting the challenges the Tourism Act 2011 has poised, has proposed basic amendments to the Tourism Act 2011 to locate responsibility where it is due thus ensuring efficiency in implementation and clarifying roles.

Following the publication of the Amendments the National Assembly has received two petitions on the said amendments from the following institutions:

1. Council of Governors
2. The Community Based Tourism Consortium (Comprising Kenya Community Based Tourism Network, Ecotourism Kenya, Rural Tourism Network of Kenya)

B. SUMMARY PROPOSALS BY PETITIONERS

Petitioner: Council of Governors

New Amendment to Sections 31(a)

Implement and co-ordinate a National Tourism Marketing Strategy developed in conjunction with the Ministry and in consultation with County Governments

Petitioner: Community Based Tourism Consortium

1. New Amended Sections 7(1) (a) should read:

Formulate guidelines and prescribe measures for tourism establishments and operations to realise sustainable tourism throughout the country

2. Amendment to Sections 7(1) (b)

Retain the section as is in the Act

C. ANALYSIS OF PROPOSALS BY PETITIONERS

1. Sections 7(1) (a):

Proposed Amendment: Formulate guidelines and prescribe measures for tourism establishments and operations

Petitioner (CBTC) Proposal: Formulate guidelines and prescribe measures for tourism establishments and operations to realise sustainable tourism throughout the country

Our comments: The role of sustainable tourism (and formulation of guidelines

and standards) is at policy level and not for a single agency. Also the phrase "throughout the country", is unnecessary and precludes county governments and other agencies. TRA, should be one of the agencies **contributing** towards such formulation.

2. Sections 7(1) (b)

Proposed Amendment: Delete Sub-Section

"Regulate tourism activities and services countrywide, in accordance with the national tourism strategy;"

Petitioner (CBTC) Proposal: Retain the sub-section as is in the Act

Petitioner notes that deleting this sub-section may leave a legal lacuna.

Our Comments: The sub section contains the role of nationwide regulation of tourism activities which is too wide a scope, as this role is a shared role with the ministry, county governments and other agencies. Further, this role for the Authority is already provided more clearly under Sections 7(1)(a)

We propose that the section be amended to:

Formulate guidelines for the regulation of tourism activities and services countrywide, in accordance with the national tourism strategy

3. Sections 31(a)

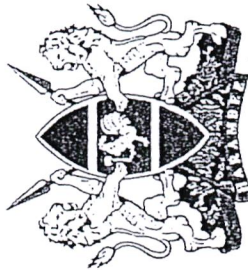
Proposed Amendment: *implement and co-ordinate a National Tourism Marketing Strategy developed in conjunction with the Ministry*

Petitioner (COG) Proposal: *Implement and co-ordinate a National Tourism Marketing Strategy developed in conjunction with the Ministry and in consultation with County Governments.*

Our Comments: Consultation with all stakeholders (including county governments and COG) is a mandatory constitutional and mandatory requirement for development of policies, laws and even administrative procedures. It may therefore be superfluous to put it **ONLY** in this sub-section.

D. RESPONSE TO OTHER COMMENTS BY PETITIONERS

- The Tourism Policy, Tourism Act and Regulations will undergo a comprehensive revision and a roadmap has been developed that will involve all stakeholders including the petitioners, county government, tourism trade associations amongst others. These miscellaneous amendments are to facilitate immediate roll out of National Tourism Blueprint 2030 and avoid conflict of roles.
- Sustainable tourism is a key pillar and ingredient in Kenya's tourism agenda and is mainstreamed in all instruments and programmes of government.



COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM TO THE SPORTS, CULTURE AND TOURISM COMMITTEE ON THE STATUTE LAW
MISCELLANEOUS BILL, 2018 ON THE TOURISM ACT

To:
THE NATIONAL ASSEMBLY

From:
THE COUNCIL OF GOVERNORS

PRINT
pls send
PA 21/1/18

MEMORANDUM ON THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2018

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

The Council hereby notes as follows on the Statutory Miscellaneous Amendment Bill, 2018

A. General Comments

The Council notes that the Tourism Act, 2011 was enacted prior to the advent of the current Constitution and as such it does not take into account the existence of County Governments especially with regards to the Fourth Schedule of the Constitution which alienates functions between the National Government and County Governments. It is therefore our considered opinion that the Act should be reviewed in its entirety to ensure alignment with the Fourth Schedule of the Constitution.

Nevertheless, the Council reviewed the Statute Law (Miscellaneous Amendment) Bill, 2018 and proposes the following with regards to the Tourism Act, 2011.

B. Comments on Specific Provisions:

Section of the Bill	Proposed Amendments in the Bill	CoG's Proposal	Rationale/Justification for Amendment
Section 31 Functions of the Tourism Board	Delete and substitute therefor the following new paragraph - (a) implement and coordinate a national tourism marketing strategy developed in conjunction with the Ministry.	Further amend the section to read as follows: The Tourism Board shall - (a) Coordinate a national tourism marketing strategy developed in conjunction with the Ministry and in consultation with County Governments.	County Governments have a role in local tourism as provided for under Function 7 (d) of Part 2 of the Fourth Schedule of the Constitution. In this regard, the national tourism strategy should be developed by the Ministry and in consultation with County Governments. The County Governments should then implement the strategy.

C. Recommendations:

As the National Assembly considers the proposed amendments to the Tourism Act 2011, keen consideration of the existence of County Governments and their functions as provided for in the Fourth Schedule of the Constitution should be taken into account. As such, deliberate measures should be made to ensure that the Act is aligned to the Constitution, specifically, the devolved system of governance.

Local tourism is a devolved function. However, the Act does not reflect this whereby many roles and functions are still vested in the National Government bodies created by the Tourism Act No. 28 of 2011. The Council therefore recommends that the Act be reviewed in its entirety to ensure that the bodies created therein respect the devolution of tourism and consult and coordinate with County Governments.

