

Safeguarding Kenyan Culture and Cultural Heritage through the Culture Bill, 2024

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The National Assembly passed the Culture Bill, 2024 (National Assembly Bills No. 12 of 2024) on 12th June 2025. The Bill was sponsored by Hon Kimani Ichungwa. It is now before the Senate for consideration. The Bill seeks to protect and promote culture and cultural heritage by addressing existing regulatory and institutional gaps in cultural governance and preservation. It also captures the aspiration of developing a comprehensive system through which local communities can be compensated or granted royalties for the use of their cultures and cultural heritage. While this Bill is timely and progressive, there are some issues that require introspection.

Culture gives us a sense of identity and strengthens our social fabric. Culture has received more attention in the 21st century particularly with African states demanding the repatriation of cultural artifacts. A more challenging issue is how to apportion economic value to cultural expressions and heritage given that valuation has been problematic even in intellectual property rights.

The Culture Bill, 2024 defines cultural heritage as being tangible and intangible with the latter including songs, poems, medical knowledge, witchcraft, folklore and mythologies. The Kenyan creative sector draws a lot of inspiration from cultural expressions and instruments like musical hits “Ler” By Jabidii and “Disco” by Kodong’ Klan that use “Orutu.”

Kenya already has a comprehensive Act, the Protection of Traditional Knowledge and Cultural Expressions Act, 2016 (2016 Act) which regulates access and benefit sharing for cultural expressions under Part III that provides their protection criteria. The 2016 Act defines cultural expressions more expansively than the Culture Bill. Remarkably, the drafters of the Culture Bill replicated the definition of cultural heritage from the 2016 Act without making any reference to it.

The Culture Bill makes three significant contributions. First, we need to build a repository and database of Kenyan culture and cultural heritage since culture is mainly transmitted orally hence vulnerable to distortion and loss. Secondly, owners of culture and cultural heritage should be entitled to equitable compensation and

royalties. However, Clause 9(4) of the Culture Bill implies that royalties shall only be paid to registered cultural expressions. This excludes unregistered culture and cultural expressions. Counties can act as trustees of unregistered cultural heritage on behalf of local communities as envisaged under the Fourth Schedule of the Constitution.

Clause 13 of the Culture Bill is also not clear on who can register cultural property and the criteria of appointing or identifying cultural practitioners or those who can pursue registration on behalf of a community. Can juristic persons like Big Pharma who have historically appropriated Kenyan culture also apply for registration or it is only natural persons? Also, the Bill fails to define derivative works; who owns them; and whether there is need for any authorization for their use.

Thirdly, the Culture Bill recognizes that communities should grant Prior Informed Consent for the use of their culture and cultural heritage. The drafters merely replaced “owners” in the 2016 Act with “concerned communities.” As indicated earlier, Clause 10(2) of the Culture Bill does not define who these “owners” who should grant the prior informed consent are. The Culture Bill also appears to exalt intergovernmental consultations with minimal and close no reference to the place of public input in the collection, registration, and licensing. Instead, the Bill grants the Cabinet Secretary overarching powers including setting standards, licensing to sanctions.

Culture can only be legislated upon within a particular context. Culture is communally owned and its enjoyment should not be unnecessarily restricted by fees. The 2016 Act removed any formalities for registration of cultural expressions but Clause 13(3) of the Culture Bill provides that registration of cultural property is conditional on payment of registration fees.

Counties are tasked with building a county repository that the national government adopts. The Bill grants the national government powers to develop a national criteria and standards that county repositories should conform to despite counties having better capacities to develop standards reflecting local circumstances and contexts.

Any proposed legislation must be informed by a cogent understanding of Kenya's sociocultural and political economy of cultural misappropriation. The Bill should

have been confined to the use, misuse and appropriation of cultural artifacts and cultural property because cultural expressions are already sufficiently covered under the 2016 Act. The challenge Kenya faces is that legislators do not understand the laws they make. Parliament must integrate cultural realities, dynamics, politics and knowledge. During parliamentary debates, most legislators confused 'culture' 'cultural property' and 'cultural expression.' A Member of Parliament when discussing the Culture Bill argued that rainmaking is akin to Artificial Intelligence. Kenyan historians like Prof ES Atieno Odhiambo, Okoth Okombo, Bethwell Ogot, William Ochieng' and Calestous Juma would turn in their graves listening to these debates.

Culture has traditionally been governed by informal sanctions like taboos. Culture is also subjective and community-centered hence regulation must be tailored to meet certain achievable objectives. Hon Ndindi Nyoro stated that Kenya should pursue common and collective ethos, ideals, values and principles just like Article 10 of the Constitution. Similarly, Parliament should strike a balance between formal and informal frameworks of regulation to maintain its content, meaning and expression of culture. Culture is also not static hence regulation should be flexible and adaptable to reflect contemporary issues.

In November 2023, Kenya ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Kenya also has a comprehensive National Policy on Culture and Heritage, 2020 which encourages Kenya to fully implement the 2003 UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage to safeguard intangible cultural heritage.

The National Museums of Kenya have been documenting cultural heritage. But, Kenya should integrate information and communication technology in mapping, documenting and safeguarding endangered aspects of cultural heritage. The Culture Bill could have been limited to cultural property and cultural heritage; however, cultural heritage is already covered under the National Museums and Heritage Act. Unfortunately, the National Museums of Kenya also submitted memoranda in support of the Culture Bill, 2024.

There must be clarity on whether the Culture Bill seeks to amend the National Museums and Heritage Act; repeal the 2016 Protection of Traditional Knowledge and Cultural Expressions Act and regulations or it is a mere replica of the same. The Protection of Traditional Knowledge and Cultural Expressions (Licensing and Access of Traditional Knowledge and Cultural Expressions) Regulations, 2022 also regulate access and benefit sharing when cultural expressions are utilized for commercial, research, education and development. The regulations recognize the role of counties in protecting and promoting culture and this takes into account local contexts and circumstances.

Cultural heritage and property may provide an alternative sustainable model of revenue generation but Kenya has fragmented legal frameworks. The Cabinet Secretary should consider developing regulations for the repatriation of Kenya's cultural heritage held in foreign jurisdictions. Political and institutional goodwill and adequate resource allocation are also important for these laws to be effective including mainstreaming cultural expressions and knowledge into the economy.

Fragmentation of laws leads to regulatory overlaps and challenges in implementation. So far, it is quite difficult to discern the legislative intendment of the Culture Bill, 2024 and whether it seeks to amend the 2016 Act through the backdoor or it intends to repeal the entire Act. There is simply no clear linkage between the two. Any proposed legislation must be fit-for-purpose to avoid having fragmented laws and regulations. While we need to protect our culture and cultural heritage, there is need for a nuanced understanding of the role of law in cultural preservation – is the problem the *lack of* laws or our sheer lack of respect for indigenous culture, knowledge and expressions?

What do you think? Feel free to share your insights with us.