

THE FOUNDERS OF THE NATION (HONOURING
PROCEDURES) ACT, 2004

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THE UNITED REPUBLIC OF TANZANIA



No. 18 OF 2004

I ASSENT,

Benjamin W. Mkapa

President

19th January 2005.

An Act to provide for the regulation of the honouring procedures and preservation of historical heritage of the Founders of the Nation and to provide for related matters.

[.....]

ENACTED by Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Founders of the Nation (Honouring Procedures) Act, 2004, and shall come into operation on the date on which the Minister may, by notice in the *Gazette*, appoint.

Short title and Commencement

2. This Act shall apply to Mainland Tanzania as well as to Tanzania Zanzibar.

Application

3. In this Act unless the context requires otherwise:-

Interpretation

"Act" means the Founders of the Nation (Honouring Procedures) Act, 2004;

"Board" means the Board of Trustees established by section 19(1);

"Centre" means the Centre established under section 4(1);

"disposition" means the final decision concerning a set of documentary materials and, or objects which have lost or do not have quality for preservation as historical heritage;

"documentary materials" means books, correspondence, memorandum, documents, papers, pamphlets, works of art, models, pictures,

photographs, placards, maps, films and motion pictures including but not limited to audio, audio visual or other electronic or mechanical recordings of the Founders of the Nation;

"Founders of the Nation" when used with respect to this Act, means the First President of the United Republic of Tanzania and First President of Zanzibar;

"historical heritage" means documentary materials or objects created or received by the Founders of the Nation or reasonably cited portion thereof;

"legacy" means personality not attached to immovable property and includes but not limited to documentary materials, ideas, beliefs and ideological inclination;

"Minister" means the Minister for the time being responsible for management of public records and archives;

"objects" means in relation to this Act, movable and immovable items which includes wood, metal, iron, treasures, clothes, furniture, houses, statue and buildings of the Founders of the Nation; and

"Trust Fund" means the Trust Fund established by section 18.

PART II

THE FOUNDERS OF THE NATION CENTRE

Establishment of the Centre

4.-(1) There is hereby established the Founders of the Nation Centre.

(2) The Centre may designate other existing public offices performing functions similar to those performed by the Centre within the United Republic as branches of the Centre.

(3) The Centre shall reckon and co-operate with any person, institution or organisation which performs the functions aimed at or geared towards the promotion and protection of the legacy of the Founders of the Nation by preservation of historical heritage, documentary materials and objects.

Functions of the Centre

5.-(1) The functions of the Centre shall be—

(a) to ensure that documentary materials and objects preserved by the Centre are well documented and made known to the general public;

- (b) to collect, preserve and reconstitute documentary materials and objects of the Founders of the Nation;
- (c) to establish and implement procedures for the timely disposal of documentary materials and objects which do not have enduring value;
- (d) in collaboration with the Trust Fund to solicit resources which may be necessary for use by or in the performance of any function relating to the Centre; and
- (e) to encourage, promote, and facilitate the conduct of research and publication of tangible and non-tangible things about the Founders of the Nation.

(2) Without prejudice to the generality of subsection (1), the Centre shall establish a networking relations with any person, institution or organisation, whether public or private performing similar or ancillary functions to those of the Centre.

6.-(1) There shall be the office of the Director of the Founders of the Nation Centre who shall be responsible for the management and development of the Centre.

Establishment of office of the Director

(2) The Director of Records and Archives shall, by virtue of office, be the Director of the Founders of the Nation Centre.

7.-(1) The duties of the Director shall be:-

Duties of the Director

- (a) to ensure that documentary materials and objects are accessible to the public;
- (b) to ensure that documentary materials and objects are deposited in the Centre or other designated facility;
- (c) in fitting cases, to consult the legal representative of the Founders of the Nation regarding establishment and implementation of the procedures for transfer of historical heritage;
- (d) to make inventory of movable and immovable properties received as gifts by the Founders of the Nation of historical or legacy value, be they in the form of medals, pictures, photographs, historic objects, documents or other memorabilia of interest to the public; and

(e) to acquire and keep documentary materials and objects of the Founders of the Nation.

(2) For the purpose of this section, the term "designated facility" means an individual person, group of persons, a family, an institution or organisation.

PART III

PRESERVATION OF THE FOUNDERS OF THE NATION'S HISTORICAL HERITAGE

Preservation of historical heritage

8.-(1) It shall be the duty and responsibility of the Government of the United Republic to regulate and control the preservation, disposition and honouring of historical heritage, documentary materials and objects including tangible and non-tangible things of the Founders of the Nation.

(2) The historical heritage shall be administered in accordance with the provisions of this Act and any other law relating to the management of historical heritage provided however that, the decision with regards to classification of documentary materials or objects warranting preservation as historical heritage shall be made after consultation and with the consent of the legal representative of the respective families of the Founders of the Nation.

(3) Without prejudice to the preceding provisions of this section, any person, institution or organisation which performs functions similar to the Centre shall, in relation to the collection, preservation and restitution of documentary materials and objects of the Founders of Nation, have regard and observe the provisions of this Act.

(4) Where, in the opinion of the Director, a person, institution or organisation has failed to preserve documentary materials or objects of the Founders of the Nation which is or are in the possession of such person, institution or organisation, the Director may direct on the best manner in which such documentary materials or objects are to be preserved.

(5) If, upon direction by the Director made pursuant to subsection (4), a person, institution or organisation fails to comply with any directive given, the Director may further direct such person, institution or organisation to transfer such documentary materials or objects to the Centre or to any other person who or institution or organisation which performs functions similar to the Centre in order to ensure safe and better preservation of such documentary materials or objects.

(6) Without prejudice to the generality of this section, the Director may apply for purchase from any person, institution or organisation any documentary materials or objects of the Founders of the Nation if by so doing it is more likely to ensure better preservation and disposition of such documentary materials or objects and the person to whom or institution or organisation to which a request for the purchase of documentary materials or objects has been made, shall first give opportunity to the Director to buy before such opportunity is given to any other person, institution or organisation.

9. All documentary materials and objects which at the time of coming into operation of this Act were expressly given, deposited or bequeathed by the Founders of the Nation to—

Vesting of documentary materials and objects in the Centre

(a) the Government of the United Republic or the Revolutionary Government of Zanzibar; or

(b) any other person indicating that such documentary materials or objects are for the public use or private use shall remain in possession of such person until such time when that person gives, deposits, bequeaths or sells to the Government, shall vest in the Centre.

10.-(1) The Minister shall take steps as may be necessary to ensure that, preservation or disposition of the historical heritage and all matters relating to such historical heritage are properly managed and adequately documented in accordance with the requirement of this Act or any other written law.

Responsibilities of the Minister

(2) The Minister may, by order published in the *Gazette*, regulate the use of official photographs of Founders of the Nation in matters of public interest including but not limited to the making of statue and, shall consult the Minister responsible for finance for the use of such photographs on notes of legal tender.

11.-(1) For the purposes of preserving the legacy and historical heritage of the Founders of the Nation, there shall be the Nyerere Day and Karume Day which shall respectively be marked each on the 14th day of October and 7th day of April.

The Nyerere Day and Karume Day

(2) The Nyerere Day and the Karume Day shall each be marked in accordance with the provisions of the Public Holidays Ordinance.

Cap 35

Procedures
for preservation or
disposal of docu-
mentary
materials
and objects

12.-(1) The Minister shall, through the respective Ministers consult with the Records and Archives Management Advisory Board or the Antiquities Advisory Board or the National Museum Board with the view to working out procedures necessary to facilitate preservation or disposition of documentary materials or objects where—

- (a) any particular documentary materials or objects are of special interest to the National Assembly; or
- (b) following consultation further with representatives of the families of the Founders of the Nation, it is found that such documentary materials or objects are no longer of special interest to the Nation and that their disposition was necessary;
- (c) following further consultation with representatives of the Founders of Nation's families regarding special interest which such documentary materials or objects have to the Nation, it is found that it is necessary that they are preserved by the Centre.

(2) Subject to the provisions of subsection (3), where the Minister is minded of making any disposition of documentary materials or objects following consultation made pursuant to subsection (1) may order their disposition.

(3) Where the Minister has ordered the disposition of any documentary materials or objects, he shall issue a notice to that effect in the *Gazette* at least sixty days prior to the date on which the disposition is to be made thereby inviting any person who may wish to make objection thereof to do so in writing and within a prescribed time.

(4) Where the objection to the disposition of any documentary materials or objects has been made, the Minister shall decide either to uphold or reject the objection and in the event that the Minister rejects the objection, he shall allow fourteen days within which the objector may appeal to the President against the order of the Minister.

(5) An appeal made to the President shall contain statement of the reasons why the decision of the Minister should be varied and in the event that the President rejects the appeal, the Minister shall order the disposition to take place.

PART IV

ACCESS TO DOCUMENTARY MATERIALS AND OBJECTS

13.-(1) Subject to any other written law, documentary materials and objects of the Founders of the Nation shall be accessed by the public in accordance with this Act.

Access to documentary materials and objects

(2) The Centre may establish a website for the Founders of the Nation's documentary materials and objects as a means of accessing such documentary materials or objects.

14.-(1) The Director in consultation with Directors of Antiquities and National Museum shall specify the documentary materials and objects of Founders of the Nation which are to be restricted within one or more places in the event of existence of the following reasons—

Restriction to documentary materials and objects

- (a) an order of the Government to be kept secret in the interest of national security or foreign policy;
- (b) poor condition;
 - (i) requires the documentary materials and, or objects be withheld from the public in such a manner to leave no discretion regarding their issue, to the public;
 - (ii) establishes particular criteria for withholding or referring to the particular types of documentary materials or objects;
- (c) personnel, personal and medical files and other similar files the disclosure of which may constitute unwarranted intrusion into personal privacy.

(2) Any documentary materials and objects of the Founders of the Nation or part of it shall be restricted to such degree and manner in which the Director may, with the approval of the Minister determine.

(3) Any record which does not contain information of the category restricted or contains information of the category for which the duration of restriction has expired, shall be exempted from the provisions of subsection (2).

15. Notwithstanding any restriction on access imposed pursuant to subsection (1) of section 14—

Exception to restricted access

- (a) the Director and staff of the Centre shall in the course of their duties, have access to Founders of the Nation documentary materials and objects;
- (b) subject to any rights, defences, or privileges which the United Republic or any agency or person may invoke, Founders of the Nation documentary materials or objects shall be made available—
 - (i) to the court pursuant to a warrant or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceedings.
 - (ii) to the President, if such documentary materials or objects contain information, that is needed for the conduct of current business of his office; and
 - (iii) to the National Assembly if such documentary materials or objects contain information that is needed for the conduct of its business.

Denial of
access

16.-(1) Any person who is denied access to the Founders of the Nation documentary materials or such documentary materials and or objects by the Director may appeal to the Minister.

(2) The Minister shall establish procedures whereby any person who is denied access to the founders of the Nation's documentary materials and, or objects may appeal to the Minister and the decision of the Minister shall be final.

Use of the
Founders
of the
Nation's
name or
names:
Act No. 12
of 1986

17.-(1) Subject to the Trade and Service Marks Act, no person other than a member of the family of the Founders of the Nation shall use the name or names of the Founders of the Nation—

- (a) as a trade or service mark or copyright for any article sold or offered for sale;
- (b) in furtherance of or as an advertisement for any trade, business, industry, selling or profession;
- (c) on any article which is sold, offered for sale or intended to be sold;

(d) on any article which is used by any person otherwise than for a purpose approved by the Minister.

(2) The Minister may, after consultation with the Committee, by an order published in the *Gazette*, prescribe procedure by which the provisions of this section may be applied.

(3) For the purpose of subsection (2), there shall be a Committee of six persons being—

- (a) the Director responsible for records and archives of Tanzania;
- (b) the Director responsible for archives of the Revolutionary Government of Zanzibar;
- (c) two representatives one from each family of the Founders of the Nation;
- (d) one person appointed by the Minister; and
- (e) one person being the representative of the Attorney-General.

PART V

THE MWALIMU JULIUS KAMBARAGE NYERERE AND SHEIKH ABEID AMANI KARUME TRUST FUND

18.—(1) There is hereby established a Trust Fund to be known as the Mwalimu Julius Kambarage Nyerere and Sheikh Abeid Aman Karume Trust Fund.

Establish-
ment of the
Trust Fund

(2) The Trust Fund shall be a body corporate with a common seal and shall—

- (a) in its corporate name be capable of suing and being sued;
- (b) subject to the provisions of this Act, be capable of acquiring, holding and alienating any movable or immovable property; and
- (c) with the approval of the Minister, have power to borrow such sums as it may require for the purpose of the Centre.

19.—(1) There shall be the Board of Trustees which shall administer and manage the Trust Fund.

Manage-
ment of the
Trust Fund

(2) The Board shall be composed of—

- (a) Chairman who shall be appointed by the President;

- (b) not less than four and not more than eight members appointed by the Minister in consultation with the Minister responsible for Archives in the Revolutionary Government of Zanzibar; and
 - (c) two members from each of the family of Founders of the Nation.
- (3) The tenure of office of members of the Board of Trustees shall be for a term of three years and shall be eligible for appointment for a further term.
- (4) The Director of the Centre shall be the Secretary of the Board of Trustees.

Functions
of the Trust
Fund

20. The functions of the Trust Fund shall be—

- (a) to receive moneys generated through sale, publication or reproduction of documentary materials or objects of the Founders of the Nation that have been bequeathed to, given out, collected, gathered or purchased by the Centre pursuant to the provisions of sections 8 or 9 and to which the provisions of the Copyright and Neighbouring Right Act, 1999 do not apply;
- (b) to invest and use or disburse funds to support the management of documentary materials or objects and their preservation;
- (c) adjust expenditure limits to take account of circumstances not reasonably foreseeable at the time the budget was prepared, subject to submitting a supplementary budget to the Minister within two months of the adjustment of expenditure limits becoming necessary;
- (d) such other functions which in the opinion of the Board of Trustees are necessary to give effect to the functions of the Trust Fund; and
- (e) to promote and further the ideals for which the Founders of the Nation stood for.

Sources of
the Trust
Fund

21. The Sources of the Trust Fund shall consist of—

- (a) such moneys or assets as may vest in or accrue to the Trust Fund from other sources by way of grants, gifts donations and bequests or in any other way;

- (b) any sums of property which in any manner become payable to or vested in the Trust Fund; and
- (c) any such moneys as may be appropriated by Parliament.

PART VI
FINANCIAL PROVISIONS

22. The Funds of the Centre shall include—

Funds of
the Centre

- (a) any sums which may be appropriated by Parliament for the purposes of the Centre;
- (b) any sums which may be payable to the Centre by way of donation, gifts or bequests;
- (c) any sums which may accrue to the Centre by way of fees or other payment for services rendered by the Centre;
- (d) any sums which may be appropriated by the Trust Fund to the Centre.

23. There shall be fees charged for entrance, supply of copies, certification of copies of documentary materials and objects, and provision of other services by the staff of the Centre and such fees shall be as prescribed by regulations made under section 30 of this Act.

Fees

24.-(1) The Director shall cause to be kept proper books of accounts and records in respect of the receipt and expenditure of funds accruing to the Centre and to the Trust Fund.

Accounts

(2) The books and accounts of the Centre and Funds shall be audited each year by the Controller and Auditor General.

25. The Director shall, not later than three months before the end of each financial year, prepare and submit to the Minister detailed estimates of income and expenditure for the next financial year.

Annual
estimate

PART VII

LEGAL PROVISIONS

Prohibition for use of documentary materials Act No. 7 of 1999

26. Documentary materials or part of such documentary materials of the Founders of the Nation may not be produced, stored in a retrieval system or transmitted in any way, be it by electronic, mechanical, photocopying, recording or otherwise for commercial purposes and all documentary materials or part thereof shall, without further assurance, be subject to the Copyright and Neighbouring Rights Act, 1999.

Right to ownership

27.-(1) Subject to the provisions of sections 8(2), 9 and subsection (2), documentary materials and objects which were owned by Founders of the Nation prior to the coming into operation of this Act shall remain owned as such or by their legal successors.

(2) The documentary materials and objects owned by the Founders of the Nation or by their legal successors shall not be modified, sold, destroyed, damaged or defaced or shall not be changed without prior consultation with the Minister.

Application of other laws. Acts No.: 3 of 2002; 7 of 1980; Cap. 550; 3 of 1970.

28. Subject to restriction imposed by sections 14, 26 and 27, the Founders of the Nation's documentary materials and objects shall be administered in accordance with law relating to the National Security Act, 1970 or the Records and Archives Management Act, 2002, the Antiquities Act, 1964, the National Leaders Act, 2002 enacted by the House of Representatives of Zanzibar as the case may be, by the Museum Act, 1980 and for purposes of such laws, such documentary materials and objects shall be accessible to the public on non-discriminatory terms.

PART VIII

OFFENCES AND PENALTIES

Offences penalties

29. Any person who—

- (a) illegally removes documentary materials or objects;
- (b) illegally transfers or exports the documentary materials or objects;
- (c) steals the documentary materials or objects;
- (d) intentionally disfigures or damages or destroys documentary materials or objects;

- (e) illegally sells documentary materials or objects;
- (f) illegally reproduces documentary materials or objects against the law in force;
- (g) upon being directed by the Director in pursuance to subsection (5) of section 8 fails to transfer documentary materials or objects as directed; or
- (h) uses names of the Founders of the Nation contrary to section 17;

commits an offence and is liable on summary conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

PART IX

MISCELLANEOUS PROVISIONS

30.-(1) The export from the United Republic of Tanzania of documentary materials or objects of the Founders of the Nation is prohibited except in accordance with the terms of a licence to export issued by the Director with the approval of the Minister.

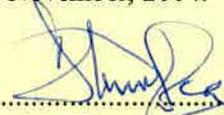
Export of
historical
heritage

(2) A licence issued under the provisions of subsection (1) shall specify documentary materials or objects of Founders of the Nation to which the licence relates and contain such conditions as the Director may prescribe.

31. The Minister may make regulations providing for the better carrying out of the objects and purposes of this Act.

Regulations

Passed in the National Assembly on the 10th November, 2004.


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Clerk of the National Assembly