



NATIONAL MUSEUMS OF KENYA

WHERE HERITAGE LIVES ON

REGULATORY IMPACT STATEMENT

FOR

**THE NATIONAL MUSEUMS AND HERITAGE (ADMISSION FEES)
REGULATIONS, 2023**

NOVEMBER 2023

REGULATORY IMPACT STATEMENT

1.0 INTRODUCTION

1.1 National Museums of Kenya (NMK) is a State Corporation established under Section 3 of the National Museums and Heritage Act, 2006 (NMK Act). NMK is a multi-disciplinary institution whose role is to collect, preserve, study, document and present Kenya's past and present heritage for purposes of enhancing knowledge, appreciation and posterity. Pursuant to this mandate, NMK manages many sites and monuments of national and international importance across the country to which it (NMK) charges entry fees as published from time to time. Currently, NMK charges admission fees to its various sites and monuments using rates that were last reviewed more than ten (10) years ago. NMK intends to review these rates through the proposed National Museums and Heritage (Admission Fees) Regulations, 2023.

1.2 This regulatory impact statement outlines the objectives of the said proposed Regulations, justifications for the same, legal framework upon which the regulations are anchored, an overview of the proposed regulations, public participation and consultations, consideration of alternative options and a cost-benefit analysis of the proposed regulations.

2.0 OBJECTIVE AND EFFECT OF IMPLEMENTING THE PROPOSED NATIONAL MUSEUMS AND HERITAGE (ADMISSION FEES) REGULATIONS, 2023

2.1 The National Museums and Heritage (Admission Fees) Regulations, 2023 (hereinafter referred as "***The Statutory Instrument***") aims to review admission fees that have been administered by National Museums of Kenya for the past about ten (10) years with respect to entry into its sites and monuments across the country. The proposed increase aims to boost internal revenue to support NMK's efforts in heritage conservation for posterity. The increased revenue collection would also enhance NMK's financial sustainability, and address the emerging socio-economic issues such as inflation, increased dollar exchange rates, emerging government policies, revenue volatility among others.

- 2.2** The Statutory Instrument will upon Implementation, repeal the National Museums and Heritage (Admission Fees) (Amendment) Regulations, 2012.
- 2.3** In terms of scope, the proposed National Museums and Heritage (Admission Fees) Regulations, 2023 will prescribe gate admission fees for various sites and monuments managed by NMK across the country.

3.0 JUSTIFICATIONS FOR THE PROPOSED NATIONAL MUSEUMS AND HERITAGE (ADMISSION FEES) REGULATIONS, 2023

- 3.1** Being a service industry, the main source of funds for the National Museums of Kenya is the National Government through the National Treasury. Out of the total budget of National Museums of Kenya, the National Government mainly funds costs for personnel emoluments (salaries) leaving NMK to cater for its operational costs from internally generated revenue. The government has also been advocating for state corporations to strive towards self sustainability.
- 3.2** Furthermore, the area of heritage conservation is subjected to a significant competition for funds against other crucial public expenditures such as education, defence, law among others, and, consequently, NMK is more often underfunded in that respect. The admission fees and other commercial activities at NMK go towards NMK's efforts to protect, preserve, conserve and promote the national heritage for posterity.
- 3.3** The last review of NMK admission fees and other commercial activities which include among others hire of spaces for events was carried out more than ten (10) years ago through the National Museums and Heritage (Admission Fees) (Amendment) Regulations, 2012. The current applicable charges have thus been overtaken by factors which include the rising cost of conservation, development of exhibition, utility bills, emolument for service providers, insurances among other expenditures and above all the high inflation rates. Moreover, many sites and monuments have been refurbished in the recent past but no admission fees has been gazetted for the same.

Further, Section 21 of the Statutory Instruments Act, 2013 considers obsolete statutory instruments that have existed for more than ten (10) years.

- 3.4** The foregoing factors calls for an urgent review of the admission fees and all other NMK commercial activities. The increased revenue collection will go far in facilitating NMK to improve visitor experience by re-investing in infrastructure improvements.

4.0 LEGAL FRAMEWORK AND COMPLIANCE

- 4.1 Section 5 (k)** of the NMK Act gives NMK powers to charge fees for admission to a national museum, lecture, exhibit, conducted tour, course of instruction or other facility, or for publications as NMK may, subject to any regulations made under the Act, think fit. Further, **Section 66 (j) of the NMK Act** gives the Cabinet Secretary power, in consultation with the NMK Board of directors, to make rules prescribing fees to be charged under the Act. The fourth schedule of the Constitution of Kenya, 2010 assigned the museum function to county governments (*part 2(4)(g)*) leaving the national government to manage ancient and historical monuments of national importance (*part 1 (25)*). Hence, **Sections 5 (k) 66 (j)** of the NMK Act as read together with the fourth schedule of the Constitution of Kenya, 2010, gives the Cabinet Secretary power, in consultation with the NMK Board of directors, to make rules prescribing entry fees into sites and monuments being managed by National Museums of Kenya.
- 4.2** The proposed National Museums and Heritage (Admission Fees) Regulations, 2023 have been drafted pursuant to the above stated powers. The draft regulations amounts to a '**Statutory Instrument**' within the meaning of the Statutory Instruments Act, 2013. The said Act defines a 'Statutory Instrument' as *any rule, order, regulation, direction, form, tarriff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.*

4.3 Sections 6 and 7 of the Statutory Instruments Act, 2013 requires that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument. This regulatory impact statement is prepared in fulfilment of the said requirements.

5.0 AN OVERVIEW OF THE PROPOSED NATIONAL MUSEUMS AND HERITAGE (ADMISSION FEES) REGULATIONS, 2023

5.1 A copy of the draft proposed National Museums And Heritage (Admission Fees) Regulations, 2023 is annexed to this statement. A copy of the same can also be accessed on NMK's website www.museums.or.ke. The current applicable NMK admission fees is also accessible on NMK's website.

5.2 A look at the proposed regulations shows upon full implementation, the proposed new admission fees would be double the current applicable rates. The implementation is proposed to be phased in three phases with the first phase being a 50% increase from the current rates for the 1st year upon coming into force of the regulations. The second phase which commences from the 2nd year onwards would see a further 25% increase (*25% of the current applicable rates*). The last phase would be a final 25% further increase (*25% of the current applicable rates*) implementable from the 3rd year onwards. Thus, at the end of the 3rd phase, a 100% increase from the current rates would have been achieved. For stations where the proposed phased approach increase results to amounts less than Kshs. 50/= increase per phase, increase would be done in one or two phases only as may be appropriate.

5.3 In some stations such as Tambach, the proposed regulations would be introducing the charges for the first time. These are stations where renovations have been done in the recent past and thus qualifies to charge admission fees.

5.4 On currency, the proposed regulations uses dollars for foreigners and East Africa Residents and Kenyan shillings for Kenyan citizens. This is due to the volatile fluctuation of dollar exchange rates which sometimes leads to loss of revenue when exchange rate goes high.

6.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATIONS

6.1 Public Participation is a process by which members of the public take part in the conduct of public affairs to influence decisions, policies, programs, legislation, and provide oversight in service delivery, development and other matters concerning their governance and public interest, either directly or through freely chosen representatives. Article 10 of the Constitution requires participation of the people, inclusivity, transparency, and accountability whenever the State or public officer applies the Constitution, enacts any law, or makes or implements a public policy. This power entitles the people to unfettered access to the process of making public decisions through their involvement. Further, Article 232 of the Constitution of Kenya, 2010 provides for values and principles of public service which requires involvement of the people in the process of policy making.

6.2 Regarding the subsidiary legislation making process, the Statutory Instruments Act, 2013 requires that the regulatory making authority shall undertake public consultations before making statutory instruments (Regulations), and particularly, where the proposed Regulations are likely to have a direct or a substantial indirect effect on business. The Statutory Instruments Act further requires that the persons to be consulted should either directly or by advertisement through representative organizations be invited to make submissions by a specified date, which should not be lesser than fourteen days or be invited to participate in public hearings concerning the proposed statutory instrument.

Process of public participation.

6.3 NMK is committed to transparent and inclusive stakeholder engagement in the regulatory process. Public participation and consultations for the proposed regulations will be conducted in line with the above stated legal requirements in order to gather diverse perspectives and expertise on economic implications of the increased admission fees, social and community impact, operational and administrative efficiency, regulatory compliance among others.

6.4 An internal NMK multi-sectoral committee tasked with spearheading the review of NMK admission fees would organize for public participation forums within the four NMK regions covering the whole

country. These regions are: Coastal region, Central region, Western region and Nairobi region. The committee has already engaged NMK internal stakeholders in the initial stages that led to the draft proposed regulations. A newspaper advert would be published inviting members of the public to submit comments for the proposed regulations. Specific relevant stakeholders would also be mapped out and invited to submit comments and/or attend the organized public forums. A two weeks notice would be issued prior to the public participation forums. The public participation forums shall take both physical and virtual hearings. The draft regulations would be posted in NMK's website for easy access and downloading. Links for virtual hearings will also be shared via NMK's website. Submission of comments and memoranda would be via an email to be provided in the newspaper advert. The same could also be physically submitted to venues and physical addresses to be provided.

- 6.5** All comments collected during the public hearings and received memoranda will be considered with a view to inform the proposed regulations.

7.0 CONSIDERATION OF ALTERNATIVES TO THE PROPOSED REGULATIONS

This part considers three options namely maintaining the status quo, using administrative measures and implementing the proposed regulations. Based on the evaluation of each option, recommendations are given as regards best option to implement.

7.1 Maintaining the status quo

Maintaining the status quo means maintaining NMK admission fees at the current existing rates. The current existing rates were last reviewed in 2012/2013, a period of more than ten (10) years ago. In terms of section 21 of the Statutory Instruments Act, 2013, such rates having existed for more than 10 years are considered to have been outdated hence needs review. Maintaining the status quo would thus amount to continued use of outdated rates.

Further, the various reasons of justification espoused under part 3 above justify an upward review of the admission fees in order to support NMK's efforts in heritage conservation for the country's posterity. The increase

would also ensure increased internal revenue collection to enhance NMK's financial sustainability and address the emerging socio-economic issues such as inflation, increased dollar exchange rates, emerging government policies, revenue volatility among others. Maintaining the status quo would hinder the achievement of these objectives.

7.2 Using administrative measures

The National Museums and Heritage Act, 2006 envisages enactment of regulations to prescribe admission fees for NMK's sites and monuments. Section 5(k) of the Act gives NMK powers to charge admission fees for its facilities as it thinks fit subject to any regulations made under the Act. Section 66(j) of the same Act gives the Cabinet Secretary powers, in consultation with NMK Board of directors, to make rules/regulations prescribing the fees to be charged under the Act. The NMK Act thus expressly obligates the Cabinet Secretary to come up with regulations on admission fees for NMK sites and monuments. As such, reducing this process to an administrative process of issuing orders and circulars prescribing NMK admission fees would defy the spirit of the cited sections of the law which requires proper regulations to be put in place. Moreover, regulations have a binding force which lacks in administrative orders and circulars.

7.3 Adopting the proposed regulations.

Article 94 of the Constitution contemplates circumstances under which Parliament may, through legislation, confer the power on any person or body to make subsidiary legislation. The Statutory Instruments Act, 2013 sets out the way subsidiary legislation may be developed. Parliament, through section 66(j) of the National Museums and Heritage Act, 2006 conferred the Cabinet Secretary responsible for matters relating to heritage the power to make regulations prescribing fees to be charged under the Act. Section 5(k) of the NMK Act gives NMK powers to charge admission fees to its various sites and monuments. The proposed National Museums and Heritage (Admission Fees) Regulations, 2023 is in line with the above cited requirements of the law and would thus have a binding force for easy implementation. Adopting the proposed regulations is thus the most appropriate option in prescribing admission fees for NMK sites and monuments.

8.0 COST-BENEFIT ANALYSIS OF THE PROPOSED REGULATIONS

The proposed National Museums and Heritage (Admission Fees) Regulations, 2023 would boost availability of necessary financial resources to enable NMK support its conservation efforts and improve visitor experience in its sites and monuments. Improved facilities due to improved revenue collection would also promote local community enterprise activities around and within NMK facilities.

9.0 CONCLUSION

The proposed regulations are clear, consistent, comprehensive and a strategic approach to enhance NMK's financial sustainability in order to promote heritage conservation. After consultations, NMK will take into consideration the comments and concerns raised by the general public as it prepares a draft regulations for tabling before parliament.