

Rwanda

Law on the Preservation of Cultural Heritage and Traditional Knowledge

Law 28 of 2016

Legislation as at 15 August 2016

FRBR URI: /akn/rw/act/law/2016/28/eng@2016-08-15

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Published in Official Gazette 33 on 15 August 2016

Assented to on 22 July 2016

Commenced on 15 August 2016

[This is the version of this document from 15 August 2016.]

We, KAGAME Paul,

President of the Republic;

THE PARLIAMENT HAS ADOPTED AND WE SANCTION, PROMULGATE THE FOLLOWING LAW AND ORDER IT BE PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA

THE PARLIAMENT:

The Chamber of Deputies, in its session of 17 March 2016;

Pursuant to the Constitution of the Republic of Rwanda of 2003 revised in 2015, especially in Articles 34, 35, 44, 47, 64, 69, 70, 88, 90, 91, 106, 120, 168 and 176;

Pursuant to the Convention for the Safeguarding of the Intangible Cultural Heritage adopted in Paris, France on 17 October 2003 as ratified by the Presidential Order no 53/01 of 02/11/2012;

Pursuant to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted in Paris, France, on 20 October 2005 as ratified by Presidential Order no 60/01 of 11/10/2012;

Pursuant to the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the Framework of the African Regional Intellectual Property Organization (ARIPO), as ratified by the Presidential Order n° 17/01 of 16/02/2011 ratifying the Additional Protocol on the Agreement of Lusaka, Zambia of 09 December 1976 on the Creation of the African Regional Intellectual Property Organisation (ARIPO) on patents and industrial designs within the framework of the African Regional Intellectual Property Organisation (ARIPO) adopted in Harare, Zimbabwe, on 10 December 1982;

Pursuant to Law n° 31/2009 of 26/10/2009 on the protection of intellectual property especially in Article 289;

Having reviewed the Decree of 16 August 1939 on the protection of sites, monuments and production of indigenous art made enforceable in Rwanda by O.R.U n° 21/112 of 14 August 1956;

ADOPTS:

Chapter One General provisions

Article One – Purpose of this Law

This Law determines the preservation of cultural heritage and traditional knowledge.

Article 2 – Definitions

For the purposes of this Law, the following terms are defined as follows:

- 1° restoration: the renovation of objects including buildings, cultural works and others so as to return them to their original condition;
- 2° classification: an act whereby the State declares that a public or private tangible cultural heritage has been inventoried for the protection of public or private interest of cultural heritage;
- 3° expression of folklore: forms or manners, in which cultural knowledge is expressed or manifested;
- 4° certificate: a document delivered by a competent authority attesting to the rights held by or authorisation granted to an individual, a moral person or a country with respect to cultural heritage, expression of folklore and traditional knowledge;
- 5° inventory: the listing of movable and immovable cultural heritage belonging to the State, to communities, to associations or to individuals;
- 6° registration: an act whereby intangible cultural heritage, whether public or private, which is included in the inventory and protected is declared by the State as being a national cultural characteristic;
- 7° Ministry: the Ministry in charge of culture;
- 8° Minister: the Minister in charge of culture;
- 9° traditional knowledge: knowledge originating from a local community manifested through particular cultural activities passed down from one generation to another or knowledge registered by an individual on behalf of the family from one generation to another;
- 10° person: an individual, a group of co-owners, a company, an organization or an association with legal personality;
- 11° cultural heritage: a tangible and intangible heritage of a local community or of natural person related to the cultural tradition, passed down from generation to generation and with a particular value in terms of science, technology, history and archaeology, philosophy, art and religion and other areas related to culture.

Chapter II Preservation and protection of cultural heritage

Section One – Cultural heritage

Article 3 – Components of cultural heritage

The cultural heritage is composed of the following:

- 1° tangible cultural heritage;
- 2° intangible cultural heritage.

Article 4 – Tangible cultural heritage

The tangible cultural heritage is composed of the following:

- 1° movable and immovable heritage;
- 2° mixed cultural and natural heritage;

3° underwater heritage.

Article 5 – Intangible cultural heritage

The intangible cultural heritage is composed of:

- 1° oral tradition, oral literature, songs, cultural dances, rituals and taboos, intangible art, crafts and folklore, festivals, cultural events, knowledge and practices;
- 2° documentary heritage: rare manuscripts, pictures, slideshows and speeches.

An Order of the Minister determines other tangible and intangible culture heritage elements.

Article 6 – National Ballet

There is hereby established a National Ballet.

A Prime Minister's Order determines the mission, structure, organization and functioning of the National Ballet.

Section 2 – Inventory

Article 7 – Cultural heritage inventory and its purpose

The inventory presents the assets of the country's cultural heritage, both tangible and intangible, movable and immovable.

The purpose of inventory of cultural heritage elements is to identify, classify, enhance the value of, protect and preserve such assets.

Article 8 – Organs in charge of inventory of cultural heritage

The cultural heritage inventory is done by the District authority and approved by the Ministry.

The District authority is responsible for inventory of cultural heritage progressively found within its jurisdiction and submits the listing to the Ministry.

Article 9 – Notification of cultural heritage

A list of classified cultural heritage is displayed at the office of the District, Sector and Cell in whose jurisdiction the heritage is located.

Any person who knows any unregistered cultural heritage must immediately notify the administrative authority of the District where the heritage is located.

When a person who knows the unregistered cultural heritage does not have access to the District authority, he/she notifies the nearest local administrative authority.

Section 3 – Classification of tangible cultural heritage

Article 10 – Organs in charge of classification

The classification of tangible cultural heritage is carried out by the Ministry.

Article 11 – Criteria for classification of cultural heritage

A cultural heritage is classified if it meets at least one of the following criteria:

- 1° to represent a masterpiece of creative genius of either a Rwandan citizen or a foreign national;
- 2° to be directly associated with cultural tradition, philosophy, beliefs and artistic works;
- 3° to be a historical area, building, visual representation, and monuments showing artistic talent;
- 4° to bear a unique or exceptional testimony to development and Rwandan civilisation in terms of arts, technology and history from generation to generation.

Article 12 – Publication and notification of provisional classification

The Minister publishes the provisional classification of tangible cultural heritage before its final classification.

The Minister notifies in writing the owner of cultural heritage or its manager before its final classification.

Article 13 – Appeal against a decision of provisional classification of a cultural heritage

A person dissatisfied with the decision of provisional classification of a cultural heritage appeals in writing against the decision to the Minister within a period not exceeding sixty (60) days from the date of publication of the classification and receives an answer within thirty (30) days from the date of receipt of the appeal.

Article 14 – Final classification of tangible cultural heritage

An Order of the Minister determines the final classification of tangible cultural heritage.

Article 15 – Restrictions on classified heritage

Apart from routine tasks of maintaining cultural heritage, no person shall destroy, move, repair or modify in any way classified cultural heritage without prior written approval of the Minister within sixty (60) days from the date of receipt of the complete file.

In case the Minister fails to reply within the prescribed period, the application is deemed accepted.

No person shall affix texts, images or install advertising signs on a historical monument or in its neighbouring area.

Article 16 – Declassification of cultural heritage

The Minister may declassify cultural heritage at any time that the reason for classification thereof no longer exists.

Article 17 – Right to an in-kind exchange or fair compensation

The final classification of cultural heritage may give an individual or the owner the right to an in-kind exchange or fair compensation in accordance with relevant legal provisions.

Section 4 – Registration of intangible cultural heritage

Article 18 – Organ in charge of registration of intangible cultural heritage

Intangible cultural heritage is registered by the organ in charge of registration.

Article 19 – Criteria for registration of intangible cultural heritage

Intangible cultural heritage is registered if it meets at least one of the following characteristics of the national culture:

- 1° to demonstrate a sublime cultural value to the society or the nationals;
- 2° to represent the originality of a work and an artistic genius passed down from generation to generation traditionally;
- 3° to be linked to cultural rites, philosophy, beliefs and human arts and practices;
- 4° to be likely to disappear and need special protection;
- 5° to bear a unique or exceptional testimony to the development and Rwandan civilization in terms of arts, technology and history from generation to generation.

Article 20 – Income generation through cultural heritage

An Order of the Minister determines modalities for income generation from and use of cultural heritage.

Section 5 – Repatriation and exportation of cultural heritage

Article 21 – Repatriation of Rwandan cultural heritage

Upon request by the Minister, the Minister in charge of foreign affairs claims for the return to Rwanda of cultural heritage exported unlawfully or kept beyond the designated time abroad.

When exported cultural heritage has been damaged, the country in which the heritage is located returns it after restoration or give fair compensation pursuant to the convention between both countries.

In case there is no convention between Rwanda and the concerned country, international conventions apply.

Article 22 – Exportation of national cultural heritage

The permanent exportation of national cultural heritage is prohibited.

However, the Minister may authorize the exportation of national cultural heritage for the purpose of restoration, valorisation, research or exhibition for a period that he/she determines according to the export purpose.

Article 23 – Power to issue cultural heritage export certificate

Cultural heritage export certificate is only issued by the Minister.

When the exported cultural heritage belongs to an individual, the individual transmits the heritage to the Ministry after obtaining acknowledgment of receipt from the Ministry.

Article 24 – Protection of cultural heritage registered in another country

If the cultural heritage registered in foreign country is imported to Rwanda, it must be automatically treated and protected as the cultural heritage registered in Rwanda in accordance with the law and international conventions to which Rwanda is a party.

Article 25 – Notification of a cultural heritage unlawfully imported into Rwanda

Any person who becomes aware of the existence of any cultural heritage that was unlawfully imported into Rwanda, he/she notifies the Ministry. Upon request by the Ministry, the Ministry in charge of foreign affairs notifies the concerned State.

Article 26 – Request for return of a cultural heritage unlawfully imported into Rwanda

The State requesting for the return of a cultural heritage unlawfully imported into Rwanda provides the Ministry in charge of foreign affairs with evidence of ownership of the cultural heritage to justify return thereof.

Section 6 – Research

Article 27 – Authorisation of research on cultural heritage

Research on cultural heritage on the ground, under the ground or under water is subject to a request for authorization from the competent authority.

The request and authorization are notified to the Ministry.

An Order of the Minister determines requirements for the researcher before being granted authorization to conduct research, his/ her obligations and rights.

Article 28 – Release of research results

Any person authorized to conduct research in accordance with the provisions of this Law has the obligation to present research results to the organ having granted him/her authorization, with a copy to the Minister.

Chapter III

Preservation and protection of expressions of folklore and traditional knowledge

Section One – Protection of expressions of folklore

Article 29 – Means of protection of expressions of folklore

The registrar of intellectual property rights keeps the register of expressions of folklore which belong to the national heritage and ensures that they are protected.

Article 30 – Beneficiaries of protection of expressions of folklore

A country, a private institution or an individual who has registered their expressions of folklore to the competent authority is the beneficiary of protection of the expressions of folklore.

The expression of folklore must be kept and used in its traditional practices.

Article 31 – Restrictions on registered expression of folklore

No person shall misappropriate, use outside traditional context or unlawfully exploit a registered expression of folklore.

Article 32 – Limitations applicables to the protection of an expression of folklore

Subject to the provisions of Article 34 of this law and after compliance with the ordinary traditional use of an expression of folklore, it is permitted to:

- 1° expand and extend its use, its development, transmission, dissemination or its cession;
- 2° be subject to exceptions for the purposes of teaching and research, private use, reporting of current events, use in the course of legal proceedings, the making of recordings and reproductions of an expression of folklore for inclusion in an archive or inventory exclusively for the purposes of safeguarding national heritage.

Article 33 – Duration of protection of expressions of folklore

Expressions of folklore belonging to the national heritage are protected for so long as the expression fulfils the protection criteria referred to under this Law.

However, where an expression of folklore belongs exclusively to an individual, protection last fifty (50) years from the date of the death of the owner after which it is regarded and protected as the national heritage.

Article 34 – Rights to economic interests arising from an expression of national folklore

Any person who uses an expression of national folklore for economic interests pays royalties determined by the competent authority.

Article 35 – Rights to economic interests arising from the transfer of an expression of national folklore

The transfer in whole or in part of the right to an expression of national folklore for economic interests or the transfer of any other right for economic interests is subject to the payment of royalties determined by the competent authority.

Article 36 – Use of expression of folklore belonging to another person for economic benefits

For a person to use an expression of folklore belonging to another person for economic benefits, he/she must enter into a contract with the holder.

Article 37 – Rights to economic interests arising from the transfer of an expression of folklore belonging to an individual

The transfer in whole or in part of the right to an expression of folklore belonging to an individual for economic interests, or the transfer of any other right for economic interests, is done in accordance with the contract between both parties.

Section 2 – Protection of traditional knowledge

Article 38 – Traditional knowledge to be protected

Traditional knowledge to be protected is the one:

- 1° generated, preserved and transmitted in a traditional and intergenerational context;
- 2° distinctively associated with Rwandan community;
- 3° integral to the cultural identity of a community of people living in a particular place that are recognized as holding the knowledge through a form of collective and cultural ownership;
- 4° the products of creative and cumulative intellectual activity, such as individual creativity or collective creativity where the identity of the individual is unknown;
- 5° characteristic of a nation's cultural identity and traditional heritage which has been maintained, used or developed by such a nation in accordance with the practices of the nation.

Article 39 – Rights conferred to a holder of traditional knowledge

The holder of traditional knowledge has the right to prevent anyone from exploiting their traditional knowledge without his/her prior informed consent.

The holder of traditional knowledge has the right to institute legal proceedings against any person who exploits his/her traditional knowledge without his/her written permission.

Article 40 – Moral rights in traditional knowledge

The owner of traditional knowledge is the holder of the moral rights in the traditional knowledge.

The moral rights of the traditional holders of traditional knowledge are:

- 1° the right of attribution of ownership in relation to traditional knowledge;
- 2° the right not to have ownership of traditional knowledge falsely attributed to them;
- 3° the right not to have their traditional knowledge subject to derogatory treatment.

Moral rights in the traditional knowledge continue in force in perpetuity and are inalienable, and cannot be waived or transferred.

Article 41 – Representation of the interests of the traditional knowledge holder

Interests of the holder of traditional knowledge may be represented by his/her authorized representative.

Foreign natural persons and legal entities are entitled to act through their official representatives.

Article 42 – Beneficiaries of protection of traditional knowledge

The action of protecting traditional knowledge is reserved to the nation or a group of people who share that knowledge and who has registered their traditional knowledge to the relevant authority.

The traditional knowledge must be preserved and used in their traditional practices.

Article 43 – Assignment and licensing

A holder of traditional knowledge having registered it with the relevant authority, may assign to anyone who so wishes the right to use such traditional knowledge provided that a written agreement is concluded between both parties.

The relevant authority may assign to anyone the right to use the traditional knowledge belonging to the national heritage.

Article 44 – Exceptions to traditional knowledge

For educational, research and security purposes, the owner of the traditional knowledge accepts to report on the current event by means of photography, broadcasting or sound or visual recording, provided that the extent of such utilization is justified by the informatory purpose and the source is indicated.

Chapter IV Final provisions

Article 45 – Drafting, consideration and adoption of this Law

This Law was drafted in French, considered and adopted in Kinyarwanda.

Article 46 – Repealing provision

The Decree of 16 August 1939 on the protection of sites, monuments and production of indigenous art made enforceable in Rwanda by O.R.U. n° 21/112 of 14 August 1956 as well as all prior legal provisions contrary to this Law are repealed.

Article 47 – Commencement

This Law comes into force on the date of its publication in the Official *Gazette* of the Republic of Rwanda.