

APPLIED ARCHAEOLOGY:
Heritage Conservation

*Cultural Resource Management
and Archaeotourism*



Only study guide for AGE302C

Revised and edited by
F P Coetzee

DEPARTMENT OF ANTHROPOLOGY
AND ARCHAEOLOGY
University of South Africa, Pretoria

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Introduction

The aim of this module is to introduce you to conservation and management practices regarding cultural heritage and the different principles relating to heritage legislation and conservation, cultural resource management, archaeotourism, contract archaeology, archaeology and education, archaeology and the public and archaeology as a profession.

Students taking this module as an elective, please note:

We realise that some students who have enrolled for this module (as an elective) may not have any background in archaeological theory, methods and techniques, and — more importantly — no understanding of the temporal framework and scope of study of the subject (taken from the Study Guide AGE1501: Introduction to Archaeology). For this reason we are including a study unit that will give students grounding in some of these key concepts, which are essential to understanding cultural heritage legislation and cultural resource management.

Recommended books

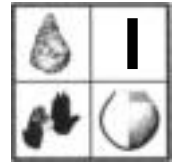
- Deacon, HJ & Deacon, J. 1999. *Human beginnings in South Africa: uncovering the secrets of the Stone Age*. Cape Town: David Philip. (Chapter 11)
- Fagan, BM. 2009. *In the beginning. An introduction to archaeology*. 12th edition. New York: Longman. (Chapter 18)
- Hall, M. 1996. *Archaeology Africa*. Cape Town: David Philip.
- Mitchell, P. 2002. *The archaeology of southern Africa*. Cambridge: Cambridge University Press. (Chapter 13)
- Muckle, RJ. 2006. *Introducing archaeology*. Toronto: Broadview.
- Renfrew, C & Bahn, P. 2008. *Archaeology: theories, methods, and practice*. 5th edition. London: Thames & Hudson. (Chapter 14)
- Thomas, DH. 2009. *Archaeology*. 5th edition. Fort Worth: Harcourt Brace College Publishers.

How to use this study guide

- It is essential that you do not depend solely on reading the study guide. Everything you need to know will be in the joint package of the recommended textbooks and the study guide. Read chapter 11 in the recommended book by Deacon and Deacon and chapter 18 of the book by Fagan first, as this will introduce you to the heritage management principles and legislative protection discussed in the study guide. Remember that the study guide contains information that you will not find in the recommended textbooks.
- Each study unit of the study guide starts by stating objectives or outcomes. These summarise what you need to know after studying the study guide and the relevant chapters in the recommended textbooks.
- The list of recommended readings for each study unit is particularly important for completing your assignment.

- Where appropriate, there will be self-assessment exercises to complete as you work through the study guide. These will help you to understand a new or complex concept or apply your knowledge to a particular aspect of heritage management or cultural heritage legislation.
- Do not assume that the study guide and the textbooks contain fully up-to-date information. Keep a lookout for articles and case studies in newspapers and magazines on issues relating to heritage conservation and management around the world.

Study unit



Introduction to archaeology

Outcomes

After studying this unit, you should:

- have a basic understanding of the scope, methods and techniques used in archaeology
- have a basic temporal framework of archaeological divisions

1.1 Introduction

Many people still regard archaeology as a romantic and glamorous pastime, even though — after almost two centuries of practice — it has been turned into a meticulous discipline. The excitement, however, still exists in the many diverse and highly detailed reconstructions of life in the past that result from scientific inquiry. Archaeologists are continually developing new methods to reconstruct the lifeways of prehistoric humans, to document the earliest art, to outline the processes of plant and animal domestication and to investigate many other aspects of prehistoric existence.

Archaeologists investigate the preserved remains of ancient societies. It is not the “treasures” that interest them, but the data that result from excavating and properly recording archaeological sites. Today’s archaeologist is as interested in why people lived the way they did as in the objects they made or the buildings they erected. In addition to research and theoretical approaches, archaeologists are increasingly concerned with the management and conservation of the rapidly vanishing archaeological record. Daily activities include strategies to combat looting, measures to mitigate the destruction and potential plunder caused by thousands of tourists’ feet at places like Egypt’s pyramids, as well as finding ways to preserve our cultural heritage and ensure the long-term survival of the archaeological record.

By developing various research methods, archaeology has become a refined “high-tech” discipline, with many professional archaeologists working in highly specialised fields. Specialists are necessary because no one person can possibly be an expert in the entire diverse practice of archaeology. This has resulted in not only a knowledge explosion but also the development of ever-more sophisticated methods for studying the specific aspects of the past.

1.2 Background to archaeology

Archaeology is a comparatively young branch of scientific studies. It originated in the second half of the nineteenth century in the Western world, its origin being intimately bound up with the emergence of historical and anthropological studies.

The term ‘‘archaeology’’ is derived from the Greek words *arkhaios* (meaning antiquity) and *logos* (meaning word, conversation or discourse). Freely translated, it means the scientific study of antiquity. In particular, it is the study of the antiquity of humans and their culture.

It is the aim of archaeology to extend our insight — as far as the development of humans and their culture is concerned — into the distant past, back to the period in which humans first appeared as creators of culture. The material on which this investigation is based comprises the tangible cultural objects that have been handed down to us by people who no longer exist. Such objects are obtained mainly by excavation, although other methods are used as well.

1.3 The concept of culture in archaeological research

Culture can be defined briefly as a society’s or a people’s collective adaptation to the environment and other societies in the broadest sense. A society’s culture includes shared customs, beliefs and attitudes, as well as typical artefacts, all of which form an integrated whole.

For the purposes of study, however, culture can be divided into a number of cultural aspects or systems, namely economy, religion, political organisation, kinship, judicial system, education, language, art and play. Artefacts, an important source of information regarding the culture of extinct peoples, do not constitute a separate cultural aspect since they may serve different purposes in connection with different aspects of culture. Artefacts may, for example, be used in religious, economic and political activities and this enables the archaeologist to draw inferences regarding these activities from a study of artefacts. Archaeologists do not only work on individual sites to reconstruct past cultures, they also study the material remains found in related sites. Archaeological cultures, then, are identified by a consistent patterning that appears in the artefact assemblages occurring in a specific time-and-space context at several sites. Reconstruction of an entire culture involves geographic and environmental data as well as a large body of archaeological data.

The link between archaeology and history led to a three-tier division of archaeology into the following:

- a. **Prehistoric archaeology:** This term refers to that aspect of archaeology which concerns itself with the development of humans and their culture before the invention of writing. In South Africa, prehistoric archaeology covers the whole of the Pleistocene, a geological epoch which commenced about 2 million years ago, as well as the greater part of the current geological epoch, the Holocene, until the establishment of the first permanent European settlements during the seventeenth century AD. Prehistoric archaeology thus comprises the study of the Early Stone Age, the Middle Stone Age and the greater part of the Later Stone Age and the Iron Age. These prehistoric periods are discussed in Module AGE1601.
- b. **Protohistorical archaeology:** When written documentation begins in a certain area at a certain time, but evidence gleaned from the earth shows that other peoples and cultures must have existed before that time, it is the task of archaeological research to establish the tie that may have existed between cultural phenomena before and after the beginning of written documentation.

For example, in Europe there is a possible relation between the Neolithic, Bronze and Early Iron Ages and the early Celts and Germans; in southern Africa, there is a possible connection between the San, the Khoekhoen and the Bantu speakers and certain sites, dwellings or other structures. This transitory phase, which precedes the historical period, is sometimes also called proto-history or early history. Since, to some extent, written sources are used here, that is to say, written sources on the protohistorical peoples or cultures compiled by literate foreign observers or newcomers to the region, the historical approach plays a greater part.

- c. **Historical archaeology:** This refers to that aspect of archaeology which is complementary to history, based on the study of written sources. The time span covered by historical archaeology differs from region to region. For instance, written documentation originated in Egypt and Mesopotamia almost 3 000 years before the Christian era. In Europe it began much later, and other peoples have only recently become acquainted with writing. Generally speaking, however, this classification is useful because it reveals the differences inherent in the methodological approach.

1.4 The aims of archaeological research

Most researchers distinguish four major aims in archaeological research, namely reconstructing cultural history, reconstructing past lifeways, explaining cultural process or change, and understanding the archaeological record. The first three aims have been described as the *what*, *where* and *when* (cultural history), the *how* (lifeways) and the *why* (cultural process) of archaeological research. These aims are complementary. In practice they frequently overlap and researchers may deal with several simultaneously.

1.4.1 The reconstruction of cultural history

The reconstruction of cultural history implies the description of past cultures. History in this sense is defined as ‘‘the study of the unique events of the past which make up the developmental continuum for a particular group of people’’. The focus is on arranging events (or artefactual materials) in chronological sequence and, therefore, this is a necessary preliminary to the study of lifeways and the cultural process. Archaeological sites and, in particular, the artefacts and structures found there are investigated within the context of space and time. Remains are classified and dated and chronologies established. Local sequences of archaeological sites are set up and related to regional and larger sequences to form a picture of cultural development through time. However, archaeological remains are often poorly preserved and archaeologists may hesitate to draw inferences regarding non-material cultural features.

This approach to cultural history unfortunately restricts many researchers to the production of mere classifications.

1.4.2 The reconstruction of past lifeways

While cultural history focuses on unique developmental events, this aim of archaeological research is concerned with how prehistoric peoples lived and how

their cultures changed. Archaeological cultures are described in much the same way as anthropologists describe contemporary cultures; consequently, this second objective is sometimes referred to as palaeo-ethnography. The aim is, therefore, still descriptive, but it is recognised that cultures interact with other cultures and with the natural environment. Because it is necessary to understand *how* cultures change before an attempt can be made to explain *why* they change, the reconstruction of past lifeways is the basis for interpreting cultural process or change.

Every human culture is the result of a complex adaptation to a particular environment and, in order to understand how cultures adapt in response to changes in the environment, it is not sufficient to study artefacts and structures only; it is necessary to understand the environmental context as well. A multidisciplinary approach is required to reconstruct ancient environments and subsistence patterns, and the services of botanists, soil scientists and pollen analysts are used for this purpose. As a result of the fragmentary nature of archaeological evidence, emphasis is often placed upon the reconstruction of past economic systems. However, this aim also includes the reconstruction of social and political systems, as well as settlement, religious and ideological patterns.

1.4.3 Explaining cultural process or change

Whereas the previous aims are directed at establishing sequences of cultural development and describing archaeological cultures, the study of cultural process (or processual archaeology) attempts to discover why cultures change or do not change. Scholars who follow this approach argue that prehistoric archaeology is a science and that archaeological research should produce testable propositions by means of which past cultural changes may be explained. The final objective is to identify general principles which underlie the process of cultural change. This aim was advocated mainly by the proponents of the "new archaeology", which emerged in the 1960s.

According to this approach, the theoretical framework within which an archaeological research project is conducted should be made explicit and, in an attempt to explain cultural change, hypotheses should be formulated beforehand so that these can be tested against the archaeological data. Although the formulation of general laws of cultural dynamics is no longer a central concern of this approach, there can be no doubt that archaeology remains our most important source of information regarding long-term cultural evolution and that it can make an important contribution to identifying the general principles which underlie the process of cultural change.

1.4.4 Understanding the archaeological record

According to Fagan and DeCorse (2005), the fourth goal, namely the pursuit of "understanding the archaeological record", involves attempts to determine how the archaeological remains were formed and preserved until their discovery and investigation by archaeologists. On the one hand this includes experimental studies aimed at identifying the factors which influence the preservation of archaeological remains, and on the other hand it includes ethno-archaeological studies in which the relation between human behaviour and the patterns of distribution of artefacts and food remains is investigated among contemporary groups.

The archaeological record: the subject matter of archaeological investigation

The subject matter of the archaeological record comprises more than cultural objects alone. The following is a possible classification:

1.4.4.1 Artefacts

An artefact is “any portable object used, modified, or made by humans ...”, in other words, material cultural creations such as tools and weapons, pottery and other equipment (of stone, wood, plants or metal), ornaments and works of art. Features are non-portable artefacts such as postholes, hearths, storage pits, floors, et cetera.

1.4.4.2 Archaeological sites

Archaeological sites are places where artefacts, features, structures and organic and environmental remains are found together.

The following table is a chronological time frame used in archaeology to broadly classify various types of site according to set criteria.

Period	Approximate date
Early Stone Age	c. 3 million years ago – c. 250 000 years ago
Middle Stone Age	c. 250 000 years ago – c. 25 000 years ago
Later Stone Age (includes San rock art)	c. 25 000 years ago – c. AD 200 (up to historic times in certain areas)
Early Iron Age	c. AD 400 – c. AD 1025
Late Iron Age (stone-walled sites)	c. AD 1025 – c. AD 1830 (c. AD 1640 – c. AD 1830)

Study unit



What is heritage?

Outcomes

After studying this unit, you should be able to explain

- the concept ‘‘heritage’’
- the role of the World Heritage Convention

and recognise that

- the division between cultural and natural heritage is not clear
- heritage is a nonrenewable resource

2.1 Introduction

‘‘**Heritage** is the sum total of wildlife and scenic parks, sites of scientific and historical importance, national monuments, historic buildings, works of art, literature and music, oral traditions and museum collections and their documentation which provides the basis for a shared culture and creativity in the arts’’ (South Africa 1996).

Heritage has been defined as that which we in the present have **inherited** from the past, or have **created** in the present and consider to be of sufficient **importance** to ensure it is looked after and passed on to **future generations**. Traditionally, heritage has been split up into cultural and natural elements. Cultural heritage is generally seen to include architectural, technological, mechanical or scientific accomplishments made by humans at various points in history. Thus, for example, the pyramids, as well as the first spaceship, are important parts of cultural heritage. This dynamic connection between culture and heritage is also further illustrated by the following:

‘‘Culture refers to the dynamic totality of distinctive spiritual, material, intellectual and emotional features which characterise a society or social group. It includes the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions, heritage and beliefs developed over time and subject to change’’ (South Africa 1996).

Natural heritage, on the other hand, is seen to include sites of particular beauty, such as forests, coastal areas and mountains, and areas considered to be unique, such as the fynbos vegetation found in the Cape, South Africa.

Fynbos is a vegetation type characterised by evergreen shrublets with hard, needle-shaped leaves. It is exceptionally rich in plant species diversity, especially among

the Restionaceae, Ericaceae, Proteaceae and the bulbous plants. It is closely associated with quartzitic and sandstone substrates of (mainly) the Western Cape, with large areas subjected to winter rains and summer drought.

However, it has been acknowledged that often the distinction between cultural and natural heritage is not clear. In South Africa, for example, “natural” places often also have cultural significance. A cave, body of water or landscape may be important because it is linked with a particular group’s ancestors; it may be regarded as a cultural landscape that is fundamental to the group’s identity and wellbeing.

Heritage may be **tangible** or **intangible**. **Archaeological heritage** is a tangible heritage as it comprises the **material record** of human activity and achievement. This record consists of many different kinds of cultural remains: from buildings to monuments, to objects or artefacts that are located on the surface, below ground, or even under water. Examples would include the site of Great Zimbabwe, the Golden Rhino found at Mapungubwe, the early hominid “Mr Ples” (*Australopithecus africanus*) and the ship “Oosterland”, which sank off the Cape coast. Archaeological heritage is considered to be of particular importance as it comprises the knowledge and understanding of human origins, development and prehistoric endeavour.

Living heritage, on the other hand, is **intangible** — it is not something that can be readily seen or touched. Examples of living heritage would be cultural traditions like dance, music, oral history, ritual or popular memory. These elements are considered to be central to a group’s cohesion and continuity.

Lastly, heritage is of value to people in the present; people are proud to be associated with places, objects or traditions and these elements provide people with a sense of identity and belonging. For this reason heritage may be viewed as a **resource** as it can **be used** to attain both immaterial and material benefits. Heritage can **be used** to shape cultural identity, enhance spiritual wellbeing and influence nation building, as well as develop tourism and the economy.

2.2 Heritage under threat

Heritage is unfortunately a highly vulnerable, nonrenewable resource that can be — and has been — neglected, abused, damaged and destroyed. There are many processes, both natural and cultural, that have a negative effect on archaeological heritage. Sites are destroyed during war or political unrest, or damaged by looters looking for valuable objects to sell. Development, such as building, mining and industry, also impacts negatively on archaeological sites. Air and water pollution contribute to the deterioration of buildings, objects and paintings. Recently, for example, part of the right shoulder of the Sphinx at Giza fell off because, among other things, sewage water (and corrosive salts) from a slum in Cairo had seeped into the monument structure (Renfrew & Bahn 2008:570). Sites are also affected by climatic extremes, such as humidity, vegetation growth and other natural factors. For example, the 3.5–3.7 million-year-old footprints at Laetoli, Tanzania, are in danger of being destroyed by weeds growing through the hardened lava ash. Unfortunately, restoring and protecting these sites are costly endeavours and may not be considered high priority in poorer countries. Even tourism, which may help to finance the upkeep of a site, is seen to be a growing threat to many archaeological

sites. Some of the wall paintings in the smaller tombs in Egypt, for instance, have been damaged by visitors accidentally brushing against them (Chase-Harrell 1989:172). Furthermore, various wars in the Middle East have had a tremendous impact on heritage sites and museum collections in the past 10 years.

It is clear that politics, unrest, development priorities and available funding impact on cultural heritage. In order to maintain and protect these cultural resources, it is imperative that countries see them as high priority. This requires the recognition, support and commitment of every level of society in a chain of responsibility, from the individual through various levels of government: local, national and international.

2.3 The World Heritage Convention

Growing awareness of the negative effects of two world wars and increasing industrialisation on cultural heritage prompted the League of Nations (now the United Nations) to appeal to countries around the world to cooperate in matters relating to heritage conservation (UNESCO 1998:62). This work was further facilitated after 1945 through the establishment of the United Nations Educational, Scientific and Cultural Organization (UNESCO), which launched several campaigns to save sites and began drafting international conventions and recommendations to protect cultural heritage (UNESCO 1998:62).

In the 1950s UNESCO undertook its first major international campaign to save a cultural heritage site: the Abu Simbel Temples of Egypt. The flooding of the Aswan high dam would have resulted in the temples being submerged underwater if UNESCO had not rallied enough international support and funding to physically relocate the monuments. The Aswan initiative demonstrated that:

“there are sites in the world that are of such **outstanding universal value** that they are the concern of the peoples far beyond the territory on which the site is located. It showed the importance of shared responsibility and solidarity of different nations in heritage conservation (UNESCO 1998:64: original emphasis).

As a consequence, UNESCO joined forces with the International Council on Monuments and Sites (ICOMOS) and began to put together a draft convention for the protection of cultural heritage. Shortly thereafter, the United States of America and a nature conservation group, the International Union for the Conservation of Nature (IUCN), proposed that the draft convention cover both natural and cultural heritage. This proposal was presented in **September 1972** at the United Nations Conference on the Human Environment held in Sweden. A few months later, at the general conference of UNESCO, the **Convention Concerning the Protection of the World Cultural and Natural Heritage** was adopted (UNESCO 1998:66, see **APPENDIX VI, Schedule**).

The convention is important for three reasons:

- It is an international instrument that stipulates the need to identify and protect cultural and natural heritage of universal value.
- It affirms a shared moral and financial responsibility for the protection and conservation of immovable cultural and natural heritage.

- It calls on all countries who have signed the convention (ie state parties) to teach people to appreciate and respect their own cultural and natural heritage.

(UNESCO 1998:68–69)

In 1994 the World Heritage Committee became concerned that not all regions of the world were adequately represented. The majority of world heritage sites were large monuments found in Europe, Asia and Mesoamerica. For this reason the criteria for world heritage status were reviewed (Saouma Forero 1998). These revisions saw the emergence of a more comprehensive notion of cultural heritage, a greater acceptance of the link between cultural and natural heritage, and a movement away from the notion of the ‘‘artistic masterpiece’’ (Saouma Forero 1998:99). In this way sites from places like Africa, where little distinction is made between cultural and natural heritage, were able to meet the criteria set out by the World Heritage Committee.

2.4 South Africa

The Convention Concerning the Protection of the World Cultural and Natural Heritage, also known as the World Heritage Convention, was ratified by the Republic of South Africa on 10 July 1997 and thus ushered in a new era for the international status of South African heritage sites. The signing of the convention culminated in the promulgation of the **World Heritage Convention Act (Act No 49 of 1999)** (see **APPENDIX VI**), which enables South Africa to identify and nominate cultural and natural heritage sites for possible inclusion on the world heritage list. If such an application is approved by the World Heritage Committee, the proposed site will receive world heritage status. South African heritage sites that have been awarded world heritage site status thus far are

- iSimangaliso Wetland National Park (1999)
- Robben Island (1999)
- uKhahlamba-Drakensberg Park (2000)
- Cradle of Humankind (1999, extension 2005)
- Mapungubwe Cultural Landscape (2003)
- Cape Floral Region (2004)
- Vredefort Dome (2005)
- Richtersveld Cultural and Botanical Landscape (2007)

Various other sites in South Africa are currently being prepared for nomination.

Central objectives of the Act are to ensure the effective protection, conservation and presentation of the cultural and natural heritage, to promote investment and tourism, encourage job creation and the empowerment of historically disadvantaged persons (South Africa 1999).

2.5 Conclusion

Heritage is a valuable resource that can contribute towards a community’s sense of wellbeing, as well as offer a means for economic development. However, heritage is a nonrenewable resource and therefore requires recognition and protection from all levels of society. The World Heritage Convention recognises that there are certain sites and places that are of value to all humanity and are therefore a global

responsibility. As such, it represents an international level of commitment to the preservation and conservation of heritage, but it also has certain expectations of the countries who have signed the convention. It requires that all countries participating in the protection of global heritage demonstrate, through legislation and other policies, that they are morally and legally committed to the development of their own heritage.

Self-assessment exercise

When did South Africa sign the World Heritage Convention and what are the implications?

What sites in South Africa have been nominated for world heritage status? Choose one of these sites and design a brochure advertising the ‘‘outstanding universal value’’ of the site.

References

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Study unit



Is heritage political?

Outcomes

After studying this unit, you should be able to

- explain how the past is influenced by the present
- discuss how heritage can play a positive and a negative role in identity formation or development

‘A nation without a past is a lost nation. And a people without a past is a people without a soul’ (Sir Seretse Khama, former president of Botswana).

3.1 Positive heritage

Countries or groups preserve their heritage by collecting and maintaining objects, recording stories and oral traditions and protecting and caring for historical or archaeological sites, among other things. The decision to preserve one aspect of heritage and not another is most often based on the **perceived** aesthetic, religious, political, cultural, scientific, linguistic or technical **significance** of the object, site, building, dance, and so on. These decisions, in turn, reflect the values that are upheld by a group or country.

Does this mean that as values change, notions of heritage change too?

There are many reasons why heritage is considered important. The most common reasons are that heritage provides people with a link to their past, or their roots, which provides them with a sense of continuity, familiarity and belonging. This, in turn, provides them with a sense of identity in that they are able to situate themselves within a group or society. A group of people with similar roots, or background, are able to share a sense of solidarity and pride in their common heritage. These sentiments may be shared by a specific or small ethnic group, or appeal to the nation as a whole. Thus within communities, countries and between countries there can be a wide diversity of heritage resources and traditions. For this reason heritage education is seen to be important; when children are taught to respect and appreciate other people’s heritage, it enables them to empathise with other peoples’ beliefs, values and experiences and it promotes tolerance. Finally, the promotion of heritage may also have economic benefits in that the last few years have seen a large growth in cultural tourism.

3.2 Negative heritage

Unfortunately, heritage can also be used in a negative way. Heritage can and has been used as propaganda to bolster one group or nation at the expense of another.

Prior to the Second World War, for example, German archaeologist Gustaf Kossina became so fired with patriotism that he declared the Germans to be the most ‘noble subjects of archaeological research’ (Trigger 1997:163). He devoted his time to searching for the original homeland of the Germans and demonstrating that the Germans were a ‘biologically pure master race’ (Trigger 1997:163). It was this version of prehistory that was adopted and taught in German schools and used to rationalise German expansionism. Any archaeologist who disagreed with this version of the past was labelled unpatriotic, dismissed and even forced to leave Germany (Trigger 1997:163–4).

Germany is not unique in this regard. There are many examples where a country’s past or heritage has been manipulated and used as a political tool to legitimise people’s actions in the present. South Africa is a prime example. The apartheid government was instrumental in creating a distorted impression of the history of South Africa, and hence the value of the associated heritage. Legislation, education and museum programmes all played down the history of the majority of South Africans. The heritage of black, coloured and Asian people in South Africa was denigrated and greater value was placed on a white colonial past. In this way the apartheid government was able to rationalise white rule and, through the selective use and distortion of history, was able to justify various actions, such as creating ‘historically’ linked homelands and sending people to live in them. Not surprisingly, many young black South Africans chose to dissociate themselves from this distorted, inferior version of their past and became generally mistrustful of ‘white’ versions of history. The following response to a survey on the content of the first issue of the *African Drum* magazine (later to become the *Drum* magazine) in the 1950s illustrates this phenomenon:

‘Tribal music! Tribal history! Chiefs! We don’t care about chiefs! Give us jazz and film stars, man! ... Yes, brother, anything American. You can cut out this junk about kraals and folk-tales and Basutos in blankets — forget it! You’re just trying to keep us backward, that’s what ...’ (Sampson 1983:20).

3.3 From the negative to the positive

The knowledge that heritage has the potential to affirm cultural difference positively and contribute towards nation building prompted the new South African government in 1994 to put together a task group to revise existing heritage bodies and policies that were rooted in apartheid structures and ideology. Steps have been taken to revise the education policy and museums have undergone a process of reconstruction and change. Most importantly, however, new legislation was put in place that protects the heritage of all South Africans and establishes mechanisms for the redress of inequalities and the rebuilding of cultural identity and a more tolerant nation.

Various museum exhibitions and school programmes have been developed to educate and inform learners and the public about South Africa’s precolonial history and prehistory that go back almost 3 million years.

Our heritage helps us to define our cultural and national identity, it celebrates our achievements, mourns our losses and redresses past inequities. It educates, deepens our understanding of society and encourages us to empathise with the

experiences of others. It facilitates healing and material symbolic restitution and it promotes new and neglected research into our rich and oral traditions and customs (South Africa 1996).

3.4 Conclusion

It is clear that things from the past that people choose to identify with in the present are often determined by the beliefs and values of the present. The emotional nature of heritage makes it a powerful tool that can be used both to build and destroy groups or nations.

It is imperative for countries to put sound heritage management practices in place that protect everyone's right to a past; place equal value on the heritage of different groups; provide effective mechanisms for the protection, conservation and presentation of heritage; and ensure that people are educated about and have a say in all levels of heritage management — local, provincial and national.

Self-assessment exercise

Why was South Africa allowed to sign the World Heritage Convention only recently?

Write an essay on the **political nature of the past**. Use examples from Germany, Zimbabwe and South Africa to formulate your argument.

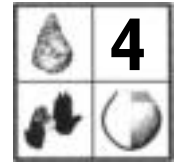
Additional reading

- Hall, M. 1996. *Archaeology Africa*. Cape Town: David Philip (chapters 1–3).
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Study unit



National systems for heritage management

Outcomes

After studying this unit, you should be able to

- describe the way in which South African cultural heritage legislation has developed over the last 100 years
- explain the need for change in legislation

It should be clear from the previous study units that legislation must protect the cultural heritage that is appropriate to the needs, history and traditions of each group or region within a country. South Africa's cultural heritage legislation has developed, changed and evolved over the last 100 years, with the most significant changes being made within the last 10 years. For comparative purposes, it is necessary to provide a brief overview of the history of heritage legislation in South Africa, specifically in relation to archaeological heritage.

The first part of this overview is based largely on the work of Deacon and Pistorius (1996) and Abrahams (1989).

4.1 Early protection and legislation

Concerns about heritage conservation surfaced at the end of the nineteenth century in response to the impact of industrial growth and development. In 1905, proposals to demolish the Castle, built by the Dutch in Cape Town around 1667, inspired the formation of the first conservation body in the country, namely the South African National Society. The society soon grew and branches were established in Grahamstown, Durban and Pietermaritzburg. The society promoted heritage conservation and highlighted the need for appropriate legislation. One of the major concerns of the society was the plundering of rock art by amateur collectors and local and overseas scientists. As a result, the first heritage legislation was concerned with the protection of archaeological heritage. This Act, known as the Bushman Relics Protection Act of 1911, provided for the protection of San rock art, graves, caves, rock shelters and shell middens.

In 1923 the Natural and Historical Monuments Act was introduced and the first conservation authority appointed, namely the Historical Monuments Commission. It was the task of this commission to compile a register of monuments. It could, however, only provide limited protection for these monuments through the application of bylaws or through agreement with individuals who owned the monument or

the property on which the monument was found. This situation was improved in 1934 with the introduction of the Natural and Historical Monuments, Relics and Antiques Act and the repeal of both previous Acts. The commission was now in a position to recommend that a place or object be proclaimed a national monument, and made the destruction, alteration, removal and export of a monument, relic or antique illegal and punishable.

4.2 National Monuments Act and the National Monuments Council

In 1969 industrial growth and development once more prompted concern about heritage. As a result, the National Monuments Act no. 28 of 1969 was promulgated and the National Monuments Council (NMC) was formed. The NMC was a larger body than the Historical Monuments Commission and had greater administrative duties. It was responsible for the protection and conservation of a wide range of sites and objects, such as buildings older than 50 years, fossils and archaeological sites, graves and objects of indigenous people dating to before 1652, rock paintings and engravings and British and Boer War Graves. The Act made it illegal to destroy, damage, alter, excavate, remove or export these protected objects or sites without a permit from the NMC. The NMC was granted the power to purchase properties for preservation and restoration, and was able to proclaim heritage resources as national monuments. It should be noted, however, that more than 95% of all sites proclaimed as monuments were buildings constructed by people of European origin.

During the 1970s and 1980s, various amendments were made to the National Monuments Act to cope with the pace of development and popular request. For example, public interest in shipwrecks prompted an amendment that made it possible for the NMC to declare certain shipwrecks national monuments. Likewise, the War Graves and National Monuments Amendment Act of 1986 instituted the British War Graves and Burgergrafte Committee to identify, record and conserve graves of Brit or burgher who had died in various South African wars or rebellions. This was an entirely Eurocentric endeavour that ignored the graves of black, coloured and Asian people who had died in the same or similar conflicts.

By the 1980s the lack of integrated conservation was taking its toll. Town and regional planners were not required to consult with the NMC and development was proceeding unchecked. As a result, attempts were made to try and make entire towns or districts national monuments, but this was a slow and cumbersome process. Eventually, in 1986, the National Monuments Act was amended to include listings of conservation areas. This enabled the NMC to designate and protect an area based on aesthetic, historic or scientific interest. In this way planning authorities were forced to consult with the NMC before an activity could be undertaken in the designated areas. The 1986 amendment also gave blanket protection to all sites older than 50 years. There were, however, some discrepancies in that 'unmarked graves', for example, were not afforded the same protection as graves marked with headstones in formal cemeteries.

Thus, although the legislation was strengthened by various changes and amendments over the years, in practice it did not grant equal protection to all cultural heritages or recognise the full range of cultural heritage in South Africa. By 1994, although some 4 000 national monuments had been proclaimed, only 38 dated to

the precolonial period, despite the fact that more than 49 000 archaeological sites were on record. This Eurocentric bias coupled with the NMC's general reluctance and inability to enforce their own legislation proved frustrating for many archaeologists, as archaeological remains were often damaged, stolen or removed without any recourse to the law. In fact, on many occasions credit for the effective management of archaeological heritage should be given to individual archaeologists working within the NMC and the archaeological fraternity as a whole. For example, during the 1970s and 1980s, archaeologists at the South African Museum set up a national data recording centre and archaeologists at regional museums set up similar centres to create a database of archaeological remains to aid in the detection of archaeologically sensitive areas.

4.3 New legislation for national heritage

After 1994 the new government began to review the heritage conservation system and revise legislation. Through a process of intensive consultation with various South African stakeholders, international heritage legislation experts and the study of legislation from other countries, a new vision for heritage management was produced.

In 1999 the National Heritage Resources Act (NHRA) was tabled in parliament. This Act, which was promulgated in April 2000 and came into effect that year, introduced a more "integrated and interactive system for the management of the national heritage resources" (see **APPENDIX I**). The Act effectively dissolved the NMC and established the South African Heritage Resources Agency (SAHRA) to coordinate and promote the management of heritage resources. The name SAHRA was chosen to replace the NMC as it reflected a greater range of heritage categories than the term "monument".

Intangible or "living heritage", for example, was included as a cultural resource for the first time (National Monuments Council [sa]).

4.4 South African Heritage Resources Agency (SAHRA)

SAHRA is a statutory body which was established under the National Heritage Resources Act (Act no 25 of 1999) as the national administrative body responsible for the protection of South Africa's cultural heritage. As such, SAHRA is mandated to coordinate the identification and management of the national estate (all archaeological and palaeontological remains and meteorites belong to the state). Furthermore, SAHRA's **aims** are to introduce an integrated system for the identification, assessment and management of these heritage resources and to enable the Provincial Heritage Resources Authorities (PHRAs) of each province and local authorities (municipalities) to adopt powers to protect and manage them. As a result, all qualified archaeologists and palaeontologists planning on conducting excavations in South Africa must apply for a permit from SAHRA.

SAHRA is also responsible for setting up and keeping an inventory of the national estate; this is continually updated through communication with the Provincial Heritage Resources Authorities (PHRAs), who must compile a heritage register.

4.5 What will be considered national heritage or national estate?

The Act aims to encourage greater public consultation and participation in decisions made about cultural heritage resources. An object, building, grave, settlement, landscape, archaeological site, and so forth may be considered national heritage, or part of the national estate, if it is of cultural, religious, scientific, aesthetic significance or other special value to any community in South Africa. Thus local authorities and communities are encouraged to undertake surveys and identify places they consider to be significant. In this way it is hoped that the Eurocentric bias of the past will be redressed (National Monuments Council [sa]).

Section 3(3) of the NHRA stipulates clear criteria to help define what heritage is perceived to be of significance in South Africa (South Africa 1999):

3. (3) Without limiting the generality of subsections (1) and (2), a place or object is to be considered part of the national estate if it has cultural significance or other special value because of —
 - (a) its importance in the community, or pattern of South Africa's history;
 - (b) its possession of uncommon, rare or endangered aspects of South Africa's natural or cultural heritage;
 - (c) its potential to yield information that will contribute to an understanding of South Africa's natural or cultural heritage;
 - (d) its importance in demonstrating the principal characteristics of a particular class of South Africa's natural or cultural places or objects;
 - (e) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
 - (f) its importance in demonstrating a high degree of creative or technical achievement at a particular period;
 - (g) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
 - (h) its strong or special association with the life or work of a person, group or organisation of importance in the history of South Africa; and
 - (i) sites of significance relating to the history of slavery in South Africa.

The Act also creates a three-tier management system to deal with objects and sites that form part of the national estate. This system operates at national, provincial and local level:

Section 7(1) gives the following divisions:

National — **Grade I** heritage resources, which possess qualities so exceptional that they are regarded as being of national significance, are managed at a national level by SAHRA. Examples include Robben Island and the Sterkfontein Caves.

Provincial — **Grade II** heritage resources, while still forming part of the national estate, have special qualities which make them significant to people within a specific province or a region. These resources are managed by provincial heritage resources authorities. Examples include a mine dump or mining headgear in Gauteng or District Six in the Western Cape.

Local — **Grade III** heritage resources are considered to be worthy of conservation and are the responsibility of local authorities. They may include a local chief's grave or part of the landscape that has ritual or ancestral significance.

SAHRA is also responsible for setting up and keeping an inventory of the national estate; this is continually updated through communication with the provincial authorities, who keep a heritage register.

4.6 Legislation pertaining specifically to archaeological remains

Under the NHRA (Act no 25 of 1999), all archaeological remains are automatically the property of the state and may not be removed from their original site or sold without a permit. The protection of archaeological sites and materials is the responsibility of the provincial heritage resources authority, which acts on behalf of the state to ensure the effective management of archaeological resources. Certain archaeological sites or objects considered to be of exceptional value may be granted national status and become the responsibility of SAHRA. Sites like Sterkfontein, Mapungubwe and Makapansgat, and objects such as the Golden Rhino from Mapungubwe fall into this category.

National Heritage Resources Act (Act No. 25 of 1999), section 35(4):

- (4) No person may, without a permit issued by the responsible heritage resources authority —
- (a) destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite;
 - (b) destroy, damage, excavate, remove from its original position, collect or own any archaeological or palaeontological material or object or any meteorite;
 - (c) trade in, sell for private gain, export or attempt to export from the Republic any category of archaeological or palaeontological material or object, or any meteorite; or
 - (d) bring onto or use at an archaeological or palaeontological site any excavation equipment or any equipment which assist in the detection or recovery of metals or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites.

The Act clamps down on members of the public who have a tendency to remove or tamper with archaeological objects and sites. Members of the general public who are in possession of archaeological material are requested to lodge them with their provincial heritage resources authority by the year 2002. Material that is not listed by this date will be deemed to have been removed illegally and people possessing these materials will be fined accordingly. Similarly, the Act offers protection to sites on privately owned land. For example, if a site is situated on private property, the owner may be served with a notice preventing him/her from carrying out any activities within a specified distance from the site (NHRA, section 35).

The Act demands that any developers undertaking certain categories of construction, for example building a road, a pipeline or a bridge, must notify the provincial heritage resources authority before commencing development and provide it with

full details of the proposed development. If it seems likely that archaeological resources will be affected by the development, the heritage authority will request an impact assessment to determine the impact of the development on the archaeological resources. The outcome of the assessment will determine whether development may or may not proceed, or whether it may proceed with limitations or conditions (NHRA, section 38).

The Act also offers greater protection to graves that are older than 60 years, situated both inside and outside of a formal cemetery. Under the former National Monuments Act, graves with no headstones were granted little protection; now a permit is required to excavate all graves, and this will be granted only if the heritage authority is satisfied that

- sufficient effort has been made to contact and consult with individuals and communities who “by tradition” have an interest in the burial ground or grave;
- an agreement has been reached with the individual or community about the future of the grave or burial ground.

If a grave is discovered during excavation or development, the police need to be notified along with SAHRA. Once it is established that the grave falls under the protection of the NHRA, the above requirements apply (NHRA, section 36(5)).

The Act also makes provision for communities with a legitimate interest in a cultural object held in a museum or other public-funded institute to make a claim for its restitution and ask that it be returned to the community. A process of negotiation must be undertaken. If no decision can be made or compromise reached between the institute and the community, SAHRA will intervene and make a final decision (NHRA, section 41).

4.7 National Heritage Council

The National Heritage Council, a Schedule 3A public entity that came into existence through an amendment of the Cultural Laws Second Amendment (Act No 69 of 2001), was officially constituted through the National Heritage Council Act (Act No 11 of 1999), tabled on 14 April 1999 and promulgated on 26 February 2004.

The function of the council is primarily to advise the Minister of Arts and Culture on heritage issues, of which the following are among the most important:

- national policies on heritage matters, including indigenous knowledge systems, living treasures, restitution and other relevant matters (Also advise the minister on the allocation of core funding to the declared cultural institutions.)
- making grants to any person, organisation or institution in order to promote and develop national heritage activities and resources
- monitoring and coordinating the transformation of the heritage sector, with special emphasis on the development of living heritage projects
- generally supporting, nurturing and developing access to institutions and programmes that promote and bring equity to heritage management
- promoting awareness of the history of all our peoples, including the history of enslavement in South Africa
- lobbying in order to secure funding for heritage management and to create a greater public awareness of the importance of our nation’s heritage

4.8 Conclusion

The National Heritage Resources Act gives archaeological heritage priority status and affords it greater protection than the former National Monuments Act. It ensures that archaeological heritage is an important component of local, provincial and national development policy and planning. It stresses the obligation of the state to manage heritage resources and recognises the value and importance of educating future generations to take responsibility for the country's heritage. It encourages individuals and communities to participate in heritage management, and requires that community consultation, negotiation and education become an important part of archaeological practice. As such, the legislation provides a framework for effective archaeological heritage management.

Heritage legislation in South Africa: an overview

Although the **South African National Society, established in 1905**, was not associated with any legislation, it did foster an appreciation of South African heritage, made the public aware of vandalism on certain sites, and advocated the need for protective legislation.

The **Bushman Relics Protection Act (Act No 22 of 1911)** was prompted by the need to protect prehistoric San paintings and engravings. Although limited, it provided for the protection of San rock art, contents of caves, rock shelters, graves and shell middens.

The **Natural and Historical Monuments Act (Act No 6 of 1923)** provided for the appointment of the Historical Monuments Commission. However, no conservation funding was allocated to the commission and it had no power to proclaim national monuments.

The **Natural and Historical Monuments, Relics and Antiques Act (Act No 4 of 1934)** partly remedied some of the abovementioned deficiencies, but also repealed the two previous Acts of 1911 and 1923. The Act empowered the Historical Monuments Commission to recommend the proclamation of any monument, relic or antique to the minister. The commission could control access to proclaimed areas and issue permits for archaeological and palaeontological excavations, the export of antiques and for the destruction and alteration of proclaimed monuments. The Act was subsequently amended in 1937 and 1967 to broaden the powers of the commission.

The **National Monuments Act (Act No 28 of 1969)** not only replaced the previous Act but also established the new National Monuments Council (NMC), which replaced the Historical Monuments Commission. The Act has been amended several times (1970, 1971, 1975, 1979, 1980, 1981 and 1986) to keep up with development and public request. It is thus illegal to destroy, damage, alter, excavate, remove or export fossils, archaeological sites, graves, rock paintings and engravings, British and Boer War graves, shipwrecks and buildings older than 50 years. The council also had to compile and maintain a register of immovable property and a national list of cultural treasures. One of the major deficiencies of the Act was a lack of integrated conservation, with the result that regional and town planners, as well as developers, were not required to liaise with the heritage authority when planning new developments.

The **National Heritage Resources Act (Act No 25 of 1999)** came into effect on 1 April 2000. The Act heralded a new era of integrated and interactive management of national heritage resources. The premise of the new Act is that all national heritage resources of significance are considered to be part of the national estate and thus belong to the state. Compulsory environmental impact assessment (EIA), focusing on the integrated management of cultural heritage, is enforced for the first time. The Act promotes the proactive involvement of the community in heritage management, especially when determining cultural significance. The Act also established the South African Heritage Resources Agency (SAHRA), which replaced the NMC. The term ‘heritage’, as used in the new Act, embraces a broader cultural focus than previous legislation, with the result that living heritage (ie oral history) is included as a resource for the first time.

Self-assessment exercise

1. List the differences between the National Monuments Act (NMA) and the National Heritage Resources Act (NHRA).
2. Read the NHRA and answer the following questions:
 - How is archaeology defined?
 - How old do graves have to be before they are covered by the Act?
 - How old do buildings have to be before they are covered by the Act?
 - What mechanisms have been put into place to ensure that everyone can participate in heritage management?
 - What are the implications for archaeologists and institutions in possession of archaeological heritage?

Additional reading

Deacon, J. 1996. *Monuments and sites South Africa*. ICOMOS Scientific Publications.
South Africa. 1999. National Heritage Resources Act 25 of 1999. Pretoria: Government Printer. (www.polity.org.za/gnuindex.html) (see **APPENDIX I**).

References

Abrahams, G. 1989. A review of the South African cultural heritage legislation, 1987. In Cleere, HF (ed). *Archaeological heritage management in the modern world*. London: Unwin Hyman.

Deacon, J & Pistorius, P. 1996. Introduction and historical background to the conservation of monuments and sites in South Africa. In Deacon, J (ed). *Monuments and sites South Africa*. Paris: ICOMOS Scientific Publications.

National Monuments Council. [Sa]. *New legislation for national heritage: celebrating our achievements and redressing past inequities*. Cape Town. South Africa. 1999. National Heritage Resources Act 25 of 1999. Pretoria: Government Printer (www.polity.org.za/gnuindex.html).



Study unit

Archaeological heritage management

Outcomes

After studying this unit, you should be able to

- explain what archaeological heritage management entails
- evaluate the value of archaeological heritage management

5.1 Introduction

Legislation is effective only if it is implemented properly. It provides the necessary legal backing for the protection of archaeological property and sets in place mechanisms for the effective management of this resource. However, it is up to individuals and communities to work hand in hand with legislation to ensure the protection and conservation of the archaeological past. It is, for example, the responsibility of the archaeological community to become actively engaged in the protection and conservation of archaeological remains, as well as presenting the archaeological past to the public to inform them of, and allow them to participate in, decisions made about archaeological resources. This requires that archaeologists become involved in archaeological heritage management.

5.2 What is archaeological heritage management?

Archaeological heritage management is concerned with the protection, conservation, and presentation of archaeological heritage. It operates at many levels, ranging from the development and implementation of legislation for the protection of archaeological heritage to the actual recording, excavation and conservation of archaeological sites and artefacts. It involves interfacing with the public, engaging with education, drawing up tourist plans and establishing standards for people working in the field of archaeology and heritage management.

Archaeological heritage management (AHM) thus draws on a broad range of knowledge and skills to achieve its goal, namely the protection, conservation and presentation of archaeological heritage. As a result, many areas of specialisation have sprung up within AHM. For example, an archaeologist can choose to specialise in rescue archaeology or cultural resource management (CRM) (see study units 10–11), educational archaeology (study unit 7) or archaeotourism (study unit 9). (These specialist areas will be discussed in greater detail in the relevant study

units.) However, there is a certain knowledge base and a set of principles that form the basis of sound AHM; these will be discussed under five different headings.

5.2.1 An archaeological background

It should be immediately apparent that because AHM deals with the management of archaeological remains, the basic criteria for engaging in AHM are a thorough knowledge of the archaeological past and an understanding of archaeological theory and practice.

5.2.2 A background in legislation

Involvement in AHM means participating in the development and implementation of legislation and being informed about the various rulings and criteria set up by the legislation that relate directly to the **protection** and **conservation** of archaeological remains. This is important as legislation sets the ground rules for AHM. For example, in South Africa the heritage legislation (National Heritage Resources Act 25 of 1999) provides guidelines and assessment criteria against which archaeologists must measure the **significance** of an archaeological site, feature, grave, building or object (See section 3(3) of the act for guidelines). These guidelines determine the amount of protection afforded by the state to the archaeological resource and whether it is significant enough to achieve national status (grade I), provincial status (grade II) or local status (grade III) — or whether it is unique enough to stop or delay development. The legislation also spells out the responsibility of the developer towards archaeological heritage and the steps that need to be taken in order to evaluate the impact of development on archaeological remains. Furthermore, it indicates the penalty for destruction and illegal removal of archaeological remains and provides guidelines regarding the excavation of graves and sites and expectations about community participation and claims to archaeological heritage.

It is also in the best interest of archaeologists to open channels of communication with the SA National Heritage Resources Agency (SAHRA), as well as provincial and local heritage authorities, to set up an efficient feedback system. This will ensure that permits for excavation are granted promptly by the agency or authority and, in return, that site reports and archaeological information about excavations or site development are submitted by the archaeologist, SAHRA or the Provincial Heritage Resources Authority (PHRA).

5.2.3 Conservation

AHM requires a knowledge and understanding of the basic principles of conservation.

Conservation involves

- looking after archaeological remains in such a way that they retain their cultural significance
- making provision for the future maintenance and protection of the archaeological remains

Generally, this means developing short- and long-term protection strategies to rescue archaeological remains from — or protect them against — natural and human impacts, without altering their social or scientific value. Strategies will differ according to the perceived status of the archaeological remains. National heritage sites, for example, will be afforded greater protection than other sites; fences and boardwalks may be set up, parts of the site may be restored or reconstructed, and plans may be made to promote tourism.

At the most basic level of conservation, archaeologists are required to survey, identify and record archaeological information. If, for example, a site needs to be excavated for research or rescue purposes, the physical nature and context of the site must be thoroughly documented; in other words, it must be photographed, surveyed and mapped before excavation commences. Research archaeologists are required to conserve part of the archaeological deposit *in situ* for future research. This is important as research questions change over time and new and better techniques and methods are developed. It is also necessary, after excavation, to curate and set up an inventory of excavated material and to produce a report on the excavation and its finds. These procedures are, in part, also followed to fulfil the requirements stipulated in the excavation's permit.

Conservation may also involve restoring or reconstructing part or all of a site, feature, building or object. To restore something means to return it to its earlier state, for example removing layers of paint or other accretions. Reconstruction, on the other hand, involves reconstructing archaeological remains by reassembling broken pieces or inserting missing pieces to return it to its original state. Good practice demands that all materials, glues, cements or other chemicals used during restoration and reconstruction should not alter the original archaeological material in any way and should also be reversible.

5.2.4 Development — community interaction, education and tourism

A very important aspect of AHM involves the presentation of archaeological heritage to the public. This is essential to create opportunities for communities to participate in discussions about their cultural heritage, negotiate access to and use of archaeological sites and objects and foster notions of mutual responsibility towards cultural heritage. Educational resources and programmes also need to be developed at sites and in the classroom to create an awareness of and interest in the archaeological past among the youth. Sites may be developed for tourism as a source of income for local communities and as a means of funding further research.

5.2.5 Qualifications and standards

It is necessary for all archaeologists involved in archaeological heritage management to set up and monitor the academic qualifications and standards required to practise any aspect of AHM. It may even be necessary to set up codes of conduct for specialist areas, for example a code of conduct for people working specifically as rescue archaeologists or in archaeotourism development. This is important to ensure that a high standard of professionalism is upheld and maintained.

5.3 The value of archaeological heritage management

Archaeological heritage management is important and valuable for several different reasons. Firstly, it is of local, national and international value in that it provides and protects information about the development of humanity, which plays a role in establishing social coherence and identity. Secondly, it has an educational function; it has been shown internationally, for example, that the application of archaeology methodology in the classroom is an excellent way of achieving modern educational outcomes (ie OBE), as well as communicating the importance of archaeological heritage. Thirdly, it has an economic basis in that well-managed sites with interesting exhibits are becoming an important part of tourist routes. Government recognition of the intrinsic value of archaeological sites means that developers need to pay to have areas for development archaeologically assessed. Lastly, it has an academic function in that it produces and protects a database of sites and artefacts, which forms the basis of research projects.

5.4 Conclusion

The protection, conservation and presentation of archaeological resources require that archaeologists practise sound archaeological heritage management. AHM sets out principles and standards for all archaeological activities to ensure that archaeological resources, and the knowledge derived from these resources, are adequately protected, conserved and presented to the public.

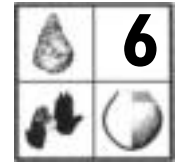
Self-assessment exercise

Briefly discuss why it is necessary to lay down principles for the effective management of archaeological heritage.

Additional reading

Hall, M. 1996. *Archaeology Africa*. Cape Town. David Philip.

Convention Concerning the Protection of the World Cultural and Natural Heritage (see APPENDIX VI: World Heritage Convention Act [Act No 49 of 1999] Schedule)



Study unit

Public and educational archaeology pre-1994

Outcomes

After studying this unit, you should be able to explain

- the way in which the apartheid government in South Africa influenced and affected archaeology, especially with regard to education
- the reasons why archaeological knowledge has been slow in reaching the public domain

6.1 Introduction

An important aspect of archaeological heritage management is the presentation of archaeological material to the public. In South Africa this is doubly important as many people remain unaware of the nature and value of our archaeological heritage. The reasons for this educational neglect are manifold and require discussion. This unit provides an overview of public and educational archaeology prior to 1994.

6.2 Archaeology, apartheid and education

In 1948 the National Party came to power in South Africa and introduced the policy of apartheid, which was the legalised separation of different races. Apartheid not only heralded the institutionalised policy of segregating the race groups, but also promoted and entrenched white superiority. In 1949 the National Party appointed the Eiselen Commission to make plans for the “education of the natives as an independent race” (cited in Christie 1985:78). On the basis of this report, the Bantu Education Act of 1953 was passed and “Bantu education” was born as a separate education system for black South Africans to meet the development plans for apartheid. Dr HF Verwoerd, the architect of “Bantu education”, stated in 1953: “When I have control over native education, I will reform it so that natives will be taught from childhood that equality with Europeans is not for them” (cited in Christie 1985:12).

How did these beliefs impact on the archaeology of the day and thereafter? Two major events around the time of Verwoerd’s comment provide an indication of how the then National Party government perceived archaeological matters. Firstly, at the first Pan-African Congress of Prehistory and Related Studies, held in Nairobi in 1947, an invitation by the then Prime Minister of South Africa to hold the next congress in South Africa in 1951 “was accepted with acclamation” (*South African*

Archaeological Bulletin 5(17) 1950:1). According to this editorial, it was generally felt that this was a most appropriate gesture given the archaeological work that had already taken place in South Africa. However, the invitation was not honoured by the newly elected National Party government, who claimed it would be too costly.

In response to this development, the editorial in a later edition of the *South African Archaeological Bulletin* (5(18) 1950:2) commented: "There is no further news of the Second Pan-African Congress on Prehistory, due to be held in 1951 ... Both the Union [of South Africa], and now Southern Rhodesia, have missed this opportunity in leadership. Presumably the future pattern of scientific congresses will include delegates nominated by the powers that be, discussing questions posed by those same powers."

Secondly, shortly after the Pan-African Congress debacle, the South African Government celebrated with great fanfare the tricentenary of the arrival of Jan Van Riebeeck and the Dutch at the Cape. Archaeologists were asked to prepare a display for this, but were instructed to exclude the concept of evolution.

The above two examples were clear signs of the way in which the National Party government was going to deal with archaeology and precolonial history.

The Christian National Education school syllabi that were enforced in South Africa during the 1950s — and which, to a large extent, have persisted until recently — "stressed obedience, communal loyalty, ethnic and national diversity, acceptance of allocated social roles, piety, and identification with rural culture" (Molteno cited in Ndlovu 1994:11 and 12). Furthermore, this education policy used history as a means of perpetuating the ideology of apartheid. The school history syllabus placed whites at the centre of the narrative, stressing great events, exercising of power by white men, and legitimising white claims to certain territories.

The presentation of pre- and early colonial history was integral to the process mentioned above. Several publications during the 1980s highlighted the distortions in South African school history textbooks (for example Cornevin 1980, Dean et al 1983, Mazel & Stewart 1987, Smith 1983, 1985). After investigating 25 textbooks, Mazel and Stewart (1987:169) concluded that, "on the whole there has not been an adequate response to allegations of bias and inaccuracies in the treatment of the San and the origin of Black people in school history textbooks. Whilst it is evident that some attempt has been made to avoid overtly racist statements, there remains a noticeable lack of sensitivity in the treatment of the subject matter. In addition, almost no effort has been made ... to incorporate recent research findings."

By distorting the history and omitting data on the settlement of black agriculturists and San hunter-gatherers in South Africa, these textbooks were achieving what Smith (1983:41) regarded as one of the main projects of textbook writers of the time, which was to give the impression that all of South Africa's population were immigrants and "that none of the people of South Africa are really indigenous". In doing so, these texts promoted the National Party government's agenda and myths about the peopling of South Africa and ignored archaeological research that went contrary to these views. This is particularly highlighted in the stance taken on the origins of the San. Archaeological research has demonstrated that the first humans emerged in South Africa some two million years ago. These people and their descendants, of which the San hunter-gatherers are the most recent, have lived in

South Africa continuously for this entire period, during which time they formed well-developed societies which changed through time. However, textbook writers chose to portray the San as mindless people continually occupied by a desperate search for food and survival. There were even some textbooks that suggested that the San were immigrants from the north.

In terms of the arrival of black agriculturists in South Africa, some of the textbooks indicated that these people arrived in this country during the second millennium AD. However, settlements of the earliest farming communities in South Africa date to about 400 AD. Further, archaeologists have shown that these early agriculturists lived in settled village communities, had cereals, domestic stock and pottery, and knowledge of smelting and smithing metals.

With regard to these myths, Hall (1988:63–64) noted that, “Intentionally or not ... archaeological research has knocked the stuffing out of a central tenet of South African history ... There can be no doubt that archaeological research has the capability to chip away at the historical images that have been built up around apartheid.” But to what extent were these archaeological versions of the past being communicated to the general public?

In 1970, Inskip bemoaned the lack of accessible archaeological material for the lay public. “It is a sobering thought that at present the only textbook ... of the prehistory of southern Africa is the Pelican book with that title, published over a decade ago, and also out of print.” He commented further, “but research into the past is not in itself, sufficient; there must be communication, and communication must not be limited, as it tends to be at present, to exchanges between those involved in the task of unravelling the past. It must be extended both to the student and to the public at large, and this may require two, or three quite different kinds of literature” (Inskip 1970:302).

Archaeologists trained by Inskip at the University of Cape Town in the 1960s and early 1970s would no doubt have been aware of his sentiments and, for the most part, sympathetic to them. Nonetheless, very little was produced for the lay public by archaeologists during the 1970s and 1980s. Part of the reason for this inertia probably lay in the fact that South African archaeology was experiencing an information revolution and archaeologists may have felt the need to know more before producing material for public consumption. However, there also seems to have been a lack of real commitment to public education, as Deacon (1990:40) commented, “Archaeologists have been eager to publicise their work in international journals but up to now have been slow to do the same in academically less prestigious ways. The result is a gulf between what they believe about the past and what is believed by the general public.”

The 1980s were turbulent years for South Africa and the country’s archaeologists were confronted by the events of the time. The first direct challenge to South African archaeologists came in 1983 when an anti-apartheid motion, requiring the Southern African Association of Archaeologists (SAAA) to take a stand against apartheid, was put to the annual general meeting of the SAAA in Gaborone. Voting on this issue was deferred. The SAAA constitution was, however, modified shortly thereafter to include some of the issues raised in the 1983 motion, but by then many of the southern African members from outside South Africa had left the association as a result of the motion not being carried at the Gaborone meeting.

In 1985 South African archaeologists were banned from the World Archaeological Congress meeting in Southampton in protest against South Africa's apartheid government. News of this came through during the biennial SAAA conference in Grahamstown. At this conference, a group of young archaeologists met and formed the Archaeology Awareness Workshop (AAW), whose primary aims were to deepen archaeologists' understanding of the relationship between archaeology and society, and to work on educating the community at large about archaeology. In 1988 the SAAA formed an education subcommittee to investigate public archaeological education, to try to improve the archaeological content of school history syllabi and textbooks and to publicise archaeology to the general public.

The abovementioned developments were instrumental in influencing some archaeologists to examine the questions they were pursuing and their archaeological constructions, and served to impress upon them their responsibility to society (Parkington & Smith 1986, Mazel 1991). Furthermore, archaeologists began increasingly to acknowledge that to ensure the long-term future of their discipline in South Africa, they would need to publicise it and make it more relevant. The AAW and SAAA initiatives, together with the political and social developments in the country in the 1980s, had the effect of galvanising some members of the South African archaeological community into action with regard to public education. Indeed, the decade before 1994 witnessed a considerable increase in the amount of material written by archaeologists for public consumption. What follows are brief highlights of some of the public education initiatives undertaken by archaeologists during the mid- and late 1980s and early 1990s, concentrating on the printed media.

Archaeologists wrote books on the practice of archaeology and various aspects of early South African history (for example Hall 1987, Humphreys 1986, Thackeray et al 1990, Mason 1987). These books have been produced at different educational levels. For example, the Hall (1987) publication which deals with the history of agriculturists in southern Africa between 200–1860 AD was aimed at tertiary students and the public with some form of tertiary education. In contrast, Thackeray et al (1990:1), produced by the South African Archaeological Society, 'aims to assist history teachers to give young South Africans access to a more complete and balanced view of their long, dynamic and fascinating historical heritage.' A publication by Mason (1987), entitled *Origins of the African people of the Johannesburg area*, is also aimed at history teachers. The opening words to the book are: 'South African school children need to learn history from printed books and from the ancient villages, furnaces and other things found by archaeologists in South Africa.' Both the Mason (1987) and Thackeray et al (1990) publications encourage teachers and pupils to visit archaeological sites and to get involved in hands-on activities.

Archaeologists have also contributed chapters to general history books (for example Lewis-Williams 1986, Maggs 1986, 1988, 1989, Mazel 1989). However, as with Hall (1987), these publications reached only a small proportion of South Africans.

South Africa is well endowed with rock art and this has generally attracted the attention of a mostly white public. Amateur archaeologists have for some time produced material for the general public on this subject. However, from the late 1980s onwards, professional archaeologists began to produce material for this

market. Several books have been published that are devoted exclusively to rock art (for example Dowson 1992, Lewis-Williams 1990, Lewis-Williams & Dowson 1989, 1992, Yates et al 1990). The Yates et al (1990) book was aimed specifically at history teachers, with a view to providing the children of South Africa with a better understanding of the country's history. Unfortunately, the high cost of some of these books prevents them from being widely read.

There have also been newspaper history series that have dealt with archaeological material. The Wright and Mazel (1991/2) series in *Learn with Echo* (a weekly adult basic education newspaper supplement) dealt with the history of KwaZulu-Natal, but also included the various ways in which we can learn about the past. The *New Nation* (1991/2) series, written by archaeologists and palaeontologists, dealt with evolution, archaeology and history. These two series were aimed at people that have been educationally disadvantaged and who learn through English as a second language. These non-formal learning materials have probably reached a larger audience than any of the other materials mentioned earlier in this section. For example, *Learn with Echo* has a distribution of 55 000 copies a week, with at least six readers per copy.

Some archaeologists have developed close links with newspapers that are positive about covering archaeological stories. These articles have generally led to increased public exposure of the discipline.

Magazines produced by museums and conservation agencies have also regularly carried articles by archaeologists on archaeological subjects during the last decade.

These articles have been wide-ranging, covering differing themes, research of sites and areas, as well as archaeological methodology.

Staff from the Department of Archaeology at the University of the Witwatersrand have produced a booklet for an archaeologist interest badge for the Boy Scout movement (*Archaeology in a nutshell* 1991). Cartoon strips have also been used in trying to communicate archaeological information to schoolchildren (*Spider's place* [sa]), and other educational materials and posters have been produced by the University of the Witwatersrand to promote archaeology among various South African communities and in schools (see www.wits.ac.za/ardp).

Unlike the publications by non-archaeologists, the publications by archaeologists themselves are more accurate in terms of the archaeological information presented. Furthermore, because archaeologists have a deeper understanding of pre- and early colonial historical processes, the articles produced by them deal favourably with this aspect of the archaeological discipline.

6.3 Conclusion

The years ahead are likely to be decisive for South African archaeology. As we move further into the new social and political dispensation, there are likely to be many changes to the fabric of society. New demands will be placed on archaeologists as the producers of information about the country's early history. The way in which archaeologists respond to these changes, and the challenges they present, will become increasingly important. A major issue will be the way in which archaeologists communicate their discipline — and the knowledge generated by it — to the

general public. It is imperative that archaeologists continue to communicate their discipline, and its results, to the widest possible public. Not having the required writing skills, it is unlikely that archaeologists will be able to do this effectively by themselves. They will need to team up with, among others, educators and journalists, who have appropriate skills and knowledge about language levels, and so on. At the same time, archaeologists must ensure that what they communicate is both relevant and meaningful to the target audience, otherwise it will not have the desired impact.

Self-assessment exercises

- List and discuss at least four different ways in which archaeology and prehistory were misrepresented in school textbooks.
- Locate any of the educational materials produced by archaeologists and critically assess the content and presentation. For example, state whether you think the material achieves its goal of communicating and promoting archaeology, and whether you think it will be effective among its target audience.

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Study unit

Public and educational archaeology after 1994

Outcomes

After studying this unit, you should

- understand the role that archaeology plays in the new curriculum
- recognise the potential for development in the field of educational archaeology

7.1 Introduction

As we have already discussed, archaeology was largely excluded from school syllabi up until 1994. The substance of archaeology, namely the evolution of humans and early southern African history, did not suit the apartheid government in South Africa. Rather, the view of history that was taught in schools ‘‘omitted, distorted, or vilified the role of blacks, ‘coloureds’ and Asians in the countries past’’ (Dean & Sieborger 1995:32). Although many South African archaeologists tried to redress the myths imparted in textbooks and the classroom, their attempts were met with resistance in mainstream school history.

The 1994 change in government signalled a radical change in the education system and, not surprisingly, the ANC’s education policy stressed the need for the ‘‘reconstruction’’ of school curricula in order to ‘‘rid the education and training system of a legacy of racism, dogmatism and outmoded teaching practices’’ (African National Congress 1994:1011). During 1995, interim core curricula were put into place. Unfortunately, these curricula differed only slightly from the previous ones in that they remained content-laden and provided no link with the outcomes-based paradigm which was to be implemented in 2005. Prehistory was included, but seemed to have been tacked on as an afterthought, and archaeologists were not consulted. For this reason the educational standing committee of the South African Association of Archaeologists (SAAA) began lobbying for the inclusion of more archaeology in the National Qualifications Framework (NQF), which was implemented in 2005. In August 1995, members of the archaeological community met for three days and drew up a supplementary history curriculum. This was presented to the history teaching community, to members of parliament and, finally, to the Deputy Director of Curriculum Development. Following these meetings, archaeologists from the different provinces participated in the formulation of the human and social sciences and natural sciences learning areas. As a result, archaeology now forms part of the NQF.

7.2 Does archaeology fit the new educational paradigm?

The new education system represents an entire paradigm shift.

The National Qualifications Framework (NQF)

- has done away with the old defined subjects of history, geography, biology, etc and has integrated these subjects into broader learning areas. For example, history, geography, religious studies and archaeology now all form part of the human and social sciences learning area.
- stresses learning across the areas so that themes can be pursued in an integrated manner.
- promotes lifelong learning so that adults with no formal schooling, but who have been trained in the workplace, can be assessed and re-enter the education system.
- focuses on learning experiences and problemsolving abilities. Thus education no longer involves just learning facts off by heart; it requires that pupils demonstrate an ability to frame, understand and solve problems encountered in daily life. This is termed outcomes-based education and training.

(Lifelong learning through a National Qualifications Framework 1996)

Local and international research (for example Devine 1989, Esterhuysen & Smith 1998, Smartz 1989) has demonstrated that archaeology is well suited to achieving the ends of ‘‘outcomes-based’’, integrative curricula. Firstly, because archaeology draws on information from many other subjects, it is already a fairly broad-based discipline which comfortably integrates the arts and the sciences. Secondly, the application of archaeological methodology in the classroom allows learners to develop problemsolving abilities and provides scope for developing ingenuity and imagination. Thirdly, archaeology draws on a whole range of different kinds of evidence: mummies in the desert, microscopic droplets of blood on stone tools, bedding material in a cave, rock art, the chemical make-up of bones, and monumental structures; the list is endless. In this way learners’ experience of history or the past is not limited to the comparison of written texts; rather, it opens their eyes to many clues about the past that exist independent of the written word. Interaction with actual artefacts can provide the pupil with a more ‘‘hands-on’’ experience of the past. For example, the teeth of a sabre-toothed cat and the puncture marks in the head of an early hominid create a vivid picture of the life of early humans and also introduce debates around what it is to be human, how we as hunters were once hunted, how the food chain has been altered, and other ecological issues. The introduction of a more visual and tactile past is a valuable and effective means of promoting empathy and an eagerness to engage with the past.

Lastly, there is a strong relationship between archaeological research methodology and the **essential outcomes** that underpin the new curriculum.

The NQF states that learners must be able to

- apply different and appropriate learning strategies
- communicate effectively across a range of contexts using visual, mathematical and language skills
- collect, analyse, organise, critically select and evaluate information from a variety of sources for appropriate use — classification/typology
- work independently and cooperatively as a member of a team

- use science and technology critically
- demonstrate cultural and aesthetic sensitivity across a range of social contexts

(Lifelong learning through a National Qualifications Framework 1996)

Archaeology is thus highly suited to the new education system in that it offers a new and innovative way of teaching the past, through which history can be made exciting and tangible. It enables learners to engage with the past in a critical manner and to develop an interest in and willingness to engage with the history around them. All of this is consistent with the goals of outcomes-based education.

Today, archaeology — especially prehistoric sites such as Mapungubwe and Thulamela — features prominently in school textbooks.

7.3 Educational archaeology

The changes in curriculum have provided archaeologists with the opportunity to become involved in curriculum development and educational materials development. Essentially, it has created opportunities for archaeologists to specialise in **educational archaeology**. The role of the educational archaeologist is varied. Firstly, it requires monitoring the way that archaeological information is presented in school textbooks and to the public in general. Secondly, the educational archaeologist may, with adequate funding, begin to produce educational materials that teachers can use in the classroom or during a visit to an archaeological site. Thirdly, the educational archaeologist may become involved in the training of teachers to ensure that archaeology is taught in the classroom. Lastly, it is important that the educational archaeologist engage in curriculum development at a government level to ensure that educationalists at the policy level recognise the importance of archaeology in the classroom.

To date, there are very few educational archaeologists in South Africa, but as the field grows it will become more and more important to develop a set of standards and ethics for educational archaeologists. As these specialists are in a position to develop and perpetuate an “official” version of the archaeological past, it is important that archaeologists in this field regularly assess and reassess one another’s work.

7.4 Conclusion

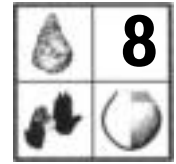
Change in the education system allowed archaeology to be introduced into the South African school curriculum. It is thus evident that archaeology is well suited to achieving the goals of outcomes-based education. The success of archaeology in the classroom has created the opportunity for archaeologists to specialise in educational archaeology. Archaeologists specialising in this area can become involved in all levels of education: from pupil to adult education; teacher training; or the writing of materials, curricula and policies.

Self-assessment exercise

Create a one-page handout for school pupils promoting an aspect of archaeology. Try to achieve some of the outcomes set out by the **National Qualifications Framework (NQF)**.

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Communication with and responsibility towards the community: repatriation and reburial

Outcomes

After studying this unit, you should be able to

- explain the current positions adopted by various countries towards repatriation and reburial
- explain the different points of view with regard to repatriation and reburial
- recognise the importance of community participation in archaeological studies

8.1 Introduction

Worldwide it has been acknowledged that it is no longer appropriate to carry out research in “scientific isolation”, and archaeologists are required to interface with the public at every level. They need to create an awareness of archaeology as a discipline through school programmes and other means of community outreach. More importantly, archaeologists need to establish relationships of trust through recognising and acknowledging local sources of knowledge and being sensitive to the needs of communities who are in the process of building their own identities and heritage. As Peter Stone has pointed out (1997:32), “if ... professionals cannot work with and appreciate the beliefs and feelings of those they often most directly affect, then what hope is there of changing the common charge that archaeology is simply a self-indulgent pastime?”

More and more archaeologists are becoming accountable to communities who may have a stake or interest in their area of study. They may also become involved in negotiations to return cultural and human remains to various interest groups. Members of the community being studied are often recognised as partners in research, so the display of cultural artefacts or writings about their past is carried out in a way that promotes dignity and pride.

8.2 Science in conflict

For many years archaeologists regarded artefacts or remains of the past as scientific data to be measured, studied, interpreted and stored. In fact, as we have discussed, it is standard management procedure to store and curate artefacts for many years, anticipating a time when new comparative materials are produced or new technolo-

gies developed to address changing questions and issues of significance. However, not all archaeological materials are value-free; some archaeological remains form an integral part of the history of living people or are perceived by people to play an active role in their past. As we have already seen in study unit 3, because the past is interpreted in the present, interpretations can generate conflict and emotions and can be used to serve political ends in the present. Most frequently, conflicts arise over objects or places of religious significance and human remains. Indeed, the excavation, study, display and storage of human remains and ritual objects have been the cause of much debate throughout North America, Canada, Australia, New Zealand and South Africa.

In this context, the terms ‘‘repatriation’’ and ‘‘restitution’’ need clarification. The term ‘‘repatriation’’ was used in most documents and legislation pertaining to litigation between countries where cultural artefacts were claimed and returned. However, Thomas (2006) quotes Clement Meighan, a senior archaeologist at UCLA, who states that repatriation is a loaded and improper term. According to him, using the term ‘‘repatriation’’ implies or acknowledges that the object belongs to the people or country claiming it. A more neutral term, namely ‘‘restitution’’, is currently preferred. Although restitution usually takes place between countries, note that South Africa is one of the few countries in the world that apply an internal restitution approach to heritage. Several applications have been lodged to move heritage objects between provinces, and even from one institution to another in the same province. This is mostly the result of local communities re-appropriating their ancestry (and identity) by reclaiming objects of cultural significance.

8.3 North America

Sockbeson (1990) relates how, in 1986, a group of Northern Cheyenne chiefs visited the Smithsonian Institute in Washington DC. Whilst on tour, they were shown a room containing drawers of human bones, a collection, they were told, that comprised more than 18 500 ‘‘Indian’’ (native american) skeletons. A large portion of the remains had been collected around 1868 when the Surgeon General of the US ordered the army to collect as many ‘‘Indian’’ crania as possible, which resulted in the rifling of many burial scaffolds and graves. But a significant amount had been gained through ‘‘scientific’’ excavation. In 1930, for example, an anthropologist/archaeologist ignored the protests of the natives of Kodiak Island and removed more than 300 skeletons from a cemetery next to a village (Sockbeson 1990:2).

The discovery of the Smithsonian collection inspired a nationwide ‘Indian’ movement. Indian groups demanded the return of human remains, funerary objects and sacred objects, arguing that the human remains of their ancestors deserved the same respect accorded to non-‘Indian’ remains. This action resulted in the enactment of the Native American Graves Protection and Repatriation Act (NAGPRA) (Sockbeson 1990).

The response from the Society for American Archaeology was initially fairly negative. The academic community felt that to accede to the demands of the indigenous people would ‘‘compromise the integrity of science’’ (Preucel & Hodder 1996:606) and terminate the many valuable studies carried out on human remains. They argued that human remains provide important information on burial practices, demography, disease, diet, genetic relationships and that the continued curation of collections was necessary for future research.

Although they accepted that individuals and cultural groups may have real concerns stemming from cultural and religious beliefs about the treatment of the skeletal remains, they were totally opposed to the wholesale reburial of human remains:

In 1986 the Society for American Archaeology opposed universal or indiscriminate reburial of human remains, either from ongoing excavations or from extant collections. Conflicting claims concerning the proper treatment and disposition of particular human remains must be resolved on a case-by-case basis through consideration of scientific importance of the material, the cultural and religious values of interested individuals or groups and the strength of their relationship to the remains in question.

However, this initial apprehension felt by the archaeological community began to dissipate as they came into contact with native peoples. Once they began to communicate, the larger, more abstract issues like "science" versus "religion" became grounded in real contexts and situations (Preucel & Hodder 1996:606). It also became clear that the native people did not wish to rob archaeologists of their research but rather wanted to become part of research programmes carried out on their own people. They were willing to enter into partnerships with the scientific community if they were founded in mutual respect and sensitivity. This became clear in the negotiations between the Costanoan/Ohlone Muwekma Tribe of California and Stanford University (Cambra 1989):

"We desire that, if there are impacts to our ancestral villages and cemeteries, and an archaeological recovery programme must be formulated, then we want to be part of the decision making process rather than being treated in the traditional 'after the fact' token fashion."

And their requests about the ancestral remains being kept at Stanford University were equally reasonable:

We request that those human remains thought not to have any further research value for the scientific community be turned over to us for proper reburial ... And finally, ... if some of these ancestral remains do indeed have additional research potential prior to reburial, then we request that the scientific community generate their research designs and propose their scope of work in a reasonable time frame. We desire as much as anybody else to know more about our ancestral lifeways and heritage. We want people to communicate their scientific proposals to us so that we can work with these scholars (Cambra 1989).

During 1990 the Native American Graves Protection and Repatriation Act was promulgated and for the first time legislation was put into place that recognised the rights of native people to cultural and religious freedom (Preucel & Hodder 1996). The Act recognised that basic human rights with respect to the dead supersede scientific enquiry, and it provided Native Americans with the power to participate in the study and presentation of their own past (Preucel & Hodder 1996).

The NAGPRA makes provision for the repatriation of human remains, funerary objects and certain cultural items (Monroe 1993). The Act requires that museums and other federal agencies compile lists of Native American human remains, funerary and cultural objects, and that the appropriate tribes be notified of these possessions. If the tribe is able to establish a cultural affiliation with the archaeological remains, they may request the return of the items and the museum or federal agency must do so promptly (Monroe 1993:31). With respect to sacred objects,

objects of cultural patrimony and unassociated funerary objects, the Act sets out steps for resolving questions of ownership. In this case the Native American group must establish strong cultural affiliation and demonstrate that they have a greater right to ownership than the federal agency or museum (Monroe 1993:31). The Act also prevents the commercial trade of human remains and cultural items, and grants Native American tribes control over human remains and cultural objects found on tribal or federal land (Monroe 1993, Preucel & Hodder 1996:607).

Since the inception of the Act, many museums and universities have complied with the Act and have made contact with the relevant Native American groups. But rather than witnessing the depletion of their collections and displays, they have experienced a greater involvement and interest by Native Americans in their past traditions and cultures. In the words of Preucel and Hodder (1996:607), "rather than the loss of scientific information, the legislation is generating a wealth of new information for both native peoples and museums."

8.4 Australia

During the 1980s, Australia also embarked on a programme to rebury the disturbed remains of ancestors stored in museums and universities. In fact, since the mid-1980s, most skeletal remains held by these institutions had been returned to Aboriginal and Torres Strait Islander communities (Bromilow 1993:31). Unprovenanced remains were also reburied in designated cemeteries in each state. A plaque placed on one tomb lists the names of the original 38 Aboriginal tribes of the state of Victoria and bears the message:

Rise from your grave
Release your anger and pain
As you soar with the winds
Back to your homelands.
There find peace with our
Spiritual mother the land
Before drifting off into the
"Dreamtime"

(Bromilow 1993:33).

More recently, Aboriginal communities, with the support of the Australian Government, began lobbying for the return of the remains of their ancestors from overseas collections (Bromilow 1993:32). In 1990 an interim policy adopted by the Australian Aboriginal Affairs Council (AAAC) stated that: "Aboriginal and Torres Strait Islander people should be given the rights of ownership over Aboriginal and Torres Strait Islander and skeletal remains (including tissue material), burial artefacts, and objects having religious and cultural significance in accordance with Aboriginal or Torres Strait Islander tradition, which are at present in the possession of museums, universities, other research centres and collecting institutions, and in private collections, in Australia and overseas" (as quoted by Bromilow 1993:33).

Although institutions within Australia recognised the appropriateness of returning human and cultural remains, many of the overseas museums remained opposed to the practice. In most cases the return of artefacts from the "world's museums to their original native owners" became an intensely political issue (Terrell 1993:36). The spokesperson for the Aboriginal and Torres Strait Islander programme, Roni

Ellis, felt that the refusal by Britain and British Commonwealth countries to return Aboriginal cultural and human remains was offensive, especially as in many cases it was inconsistent with their own country's legislative procedure (Bromilow 1993). Britain, for example, demands that British subjects be reburied five years after discovery (Bromilow 1993:34).

Once again, where attempts were made to communicate and negotiate, both foreign and Aboriginal parties have been able to work together and develop a culture of respect and understanding. Rather than losing important treasures, these museums and institutions have learnt about the meaning and importance of various objects to different groups of people, and through shared decisionmaking, they have learnt to display cultural artefacts in a way that is sensitive to the beliefs of living descendants.

8.5 South Africa

For the first time in South Africa, legislation such as the National Heritage Resources Act (NHRA) (Act No 25 of 1999) encourages greater public consultation and participation in decisions made about cultural heritage resources. Communities need to be proactive and undertake surveys and identify places of significance. As with the National Environmental Management Act (NEMA), the National Heritage Resources Act (NHRA) places much more responsibility and accountability on the general public for the management, protection and preservation of their own heritage than did previous legislation. South Africans are starting to realise that they have to get involved and make a direct contribution to heritage conservation and develop a sense of ownership in respect of their heritage.

The South African legislation also specifically addresses the issue of restitution by making it possible for people to request, for the first time, the return of significant heritage objects (which form part of the national estate). The relevant section is as follows (NHRA Act no. 25 of 1999, section 41):

1. When a community or body with a *bona fide* interest makes a claim for the restitution of a movable heritage resource which is part of the national estate and is held by or curated in a publicly funded institution, the institution concerned must enter into a process of negotiation with the claimants regarding the future of the resource.
2. The Minister may make regulations regarding the establishment of *bona fide* interest in terms of subsection (1) and the conditions under which such claims may be made.
3. In the absence of an agreement on a heritage resource which is the subject of negotiations in terms of subsection (1), the claimants or the institution concerned may appeal to the Minister, who must, with due regard to subsection 5(4) and in a spirit of compromise —
 - a. mediate between the parties concerned with the aim of finding a mutually satisfactory solution; and
 - b. in the absence of agreement between the parties concerned, make a final decision on the future of the resource, including any conditions necessary to ensure its safety, the conditions of access of the claimants or the institution or any other interested party to the resource, or any other appropriate conditions.

In terms of the global repatriation debate, South African's case involving the repatriation of the remains of Saartje Baartman, a symbol of colonial exploitation, has only recently been resolved. After her remains had spent 180 years in the Musée de l'Homme in Paris, France, negotiations were initiated in 1995 by the Griqua National Conference, supported by UNESCO, to return her remains for burial in South Africa (Deacon & Deacon 1999:197). In February 1999 the director of the museum announced a Khoisan research project which would involve the remains of Saartje Baartman and several others. No mention was made of the repatriation of her remains, leaving the issue unresolved (see **APPENDIX III**).

After several years of lobbying, the French National Assembly voted unanimously, on 21 February 2002, to repatriate the remains of Saartje Baartman to South Africa. Her remains landed at Cape Town Airport on 3 May 2002. Her elaborate burial ceremony took place at Hankey in the Eastern Cape on 9 August 2002, National Women's Day.

The Thulamela project in the Kruger National Park serves as a case study to illustrate the valuable contribution the community is making in the reconstruction and management of a stone-walled Iron Age site. Local communities with hereditary links to the site were consulted with the aim of using the archaeological site and information for education and tourism purposes. Even when graves were discovered on the site, a process of consultation with the local communities resulted in the researchers being able to study the remains before reburial took place (Deacon & Deacon 1999:197). An increase in community awareness, focusing on heritage conservation, is of central importance to this issue.

8.6 Conclusion

Archaeologists are becoming accountable to communities who may have a stake or interest in their area of study. It has been recognised that basic human rights with respect to the dead and objects and places of religious or spiritual significance supersede scientific enquiry. Case studies have shown that communities become more involved and interested in their past traditions and cultures when they are included as partners in research. Their involvement has seldom led to the depletion or destruction of collections and displays. Rather than compromise the integrity of science, archaeologists and museums have benefited from these positive interactions.

Self-assessment exercise

The sociopolitical development of South Africa has been remarkably different from that of North America and Australia, yet the moral and ethical issues that underlie restitution, repatriation or reburial are the same. South African archaeologists are going to have to grapple with the issues surrounding the recuperation of indigenous peoples who have been deprived of their cultural, economic and political rights. As we have seen in the North American and Australian examples, the return of cultural and human remains can play an important role in reclaiming power, pride and dignity.

1. What provision does the National Heritage Resources Act (Act No 25 of 1999) make for the restitution (repatriation) of archaeological remains?

2. What protection does the Act offer graves and burials?
3. Read extracts A and B (see **APPENDIX III**) and answer the following questions:
 - i. Why did the Khoekhoen indigenous first nations of South Africa want the remains of Saartjie Baartman to be returned to South Africa? What has she come to represent? What is the significance of her repatriation?
 - ii. Read Morris, AG 1987. The reflection of the collector: San and Khoi skeletons in museum collections. *The South African Archaeological Bulletin* 42:12–22 (see **APPENDIX IV**) and comment on whether you think the reasons offered by the French scientist De Lumley for keeping Saartjie are acceptable.
4. Read extract C (see **APPENDIX III**). Briefly comment on the relationships between Richards Bay Minerals, the archaeologists and the Mbonambi and Sokhulu groups. State whether you think this is an effective project and whether you think it is a good example of archaeological heritage management.

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Study unit



Tourism

Outcomes

After studying this unit, you should have developed a knowledge and understanding of

- tourism and its potentially positive and negative impacts on heritage sites
- the Tshwane declaration
- the need for effective archaeological heritage management at archaeological sites

9.1 Introduction

Tourism has grown over the last forty years. Reasons for this growth are, among other things, improved travel coupled with higher living standards and paid vacations (UNESCO 1998:120). Heritage sites are some of the most popular destinations among foreign visitors to a country. This has created opportunities for the development and management of archaeological sites for tourism purposes. However, this is often seen as a double-edged sword: on the one hand, it offers opportunities to promote archaeology and attract funding for conservation, research and community development; on the other hand, it can lead to the deterioration of sites, as well as create economic and social tensions (UNESCO 1998:120–126).

9.2 The good and bad sides of tourism

The positive side of tourism is that it is one of the fastest-growing industries and therefore offers one of the few means of ensuring the conservation of significant sites, while enhancing the general public's appreciation of the site and providing opportunity for community development.

Thus tourism

- is one of the most effective means of promoting an understanding and appreciation of the diversity of cultures and heritage among people from all walks of life (UNESCO 1998:120)
- is often regarded as being synonymous with development, as it is seen to create jobs, attract foreign currency and can lead to improved infrastructures like roads, electricity and communication facilities (UNESCO 1998:125)

The negative side of tourism is that it can come into conflict with the following principles of heritage management:

- **Conservation** — An increase in visitors, traffic and buildings can have a negative impact on archaeological sites if the site is not managed properly. Therefore, a conservation management plan (CMP) should be compiled and implemented to protect the heritage resources and control access to archaeological and historical sites. Note that a CMP is compulsory in South Africa when the presentation or use (ie for tourism) of places of cultural significance is envisaged (see National Heritage Resources Act (Act no 25 of 1999), section 44)).
- **Promoting the site in a way that highlights the significance and value of the resource** — Often the marketing and promotion of the heritage resource are done in a way that deprecates its significance or value. For example, tourist memorabilia, such as mugs and T-shirts bearing rock art images, may be seen to belittle the ritual or religious significance of rock art. Owing to a lack of sensitivity, people may be deprived of their dignity and places may be denied their intrinsic value.
- **Community development** — Tourism can produce social and economic imbalances (UNESCO 1998:126). Firstly, the profits from tourism may be invested in the development of tourist facilities such as hotels and swimming pools, instead of in supporting the development of local schools or hospitals. Secondly, increased tourism can create social problems. It has been demonstrated, for example, that “increasing tourism has led to the exploitation of women and children by sex tourists ... (and) ... extravagant golf courses and mega theme parks often mean a loss of control over land, water and the exclusion of local communities from any kind of material benefits” (Parker quoted in *Ilifa Labantu* 1998:4). Lastly, tourism development can alienate communities from their own heritage.

9.3 Tshwane declaration

Awareness of the negative effects of tourism prompted the South African Museums Association to compile the Tshwane declaration (see **APPENDIX II**) to provide guidelines for the tourism development of heritage resources of significance in South Africa.

For example, it states that tourism development should

- ensure the conservation, presentation and interpretation of resources in an authentic manner, consistent with local character and community development. The sensitive and respectful use of these resources should be encouraged.
- ensure the development of sound visitor management strategies which comply with the laws and policies dealing with the conservation of significant heritage resources.
- uphold all natural and cultural conservation legislation.
- recognise the cultural and economic right of the community.
- ensure adherence to a standard of community development that is grounded in the principles of reconstruction and development.
- encourage respect and consideration of community norms, customs, spiritual and religious beliefs in the development of tourist brochures, memorabilia and programmes.
- harness the talents of the local artists and craftspeople.
- establish a policy that ensures the community shares in the economic benefits.

(South African Museums Association 1997)

9.4 Archaeotourism

The growth of international tourism in South Africa has resulted in a greater interest being shown in archaeological sites and archaeological tours. Archaeologists can now become specialists in the area of archaeotourism, working in association with tourist agencies to promote and develop archaeological tours, as well as forming archaeotourist consultancies to develop sites for tourism. This field requires a fair amount of business sensibility. For example, the archaeotourist developer will need to assess the potential for tourism, engage with investors and speculate about the financial success of the project. Furthermore, the archaeotourist developer will be expected to practise sound archaeological heritage management. He or she will also be expected to show that the archaeological site will be properly protected and conserved, and that sites' significance and value will not be compromised. As part of this management procedure, the archaeotourist developer will be expected to engage with local communities to inform and involve them in the process of development. Local communities need to be included in the development plan so that they can participate in the management of their own heritage and benefit from the project in a positive way, that is to say, through capacity building, better infrastructure, education and economic benefits. Thus the archaeotourist developer will need to adhere to both the guidelines set out in the Tshwane declaration, as well as the principles of archaeological heritage management.

9.5 Conclusion

Tourism has both positive and negative consequences. On the one hand it is the perfect way to promote heritage and an understanding of different cultures and ideas, attract foreign investment, create jobs and improve infrastructure. On the other hand, tourism development can contribute to the destruction of heritage and the social fabric of the people who live in the vicinity of the site. The Tshwane declaration has been set up to minimise the negative effects of tourism. Archaeologists wishing to specialise in this area need to carry out sound archaeological management principles, as well as adhere to the guidelines set out by the Tshwane declaration.

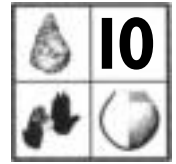
Self-assessment exercise

1. List the negative and positive impacts of tourism.
2. Make a summary of the issues raised in the Tshwane declaration.

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Study unit



Cultural resource management (CRM)

Outcomes

After studying this unit, you should be able to explain CRM and the procedures carried out by a CRM practitioner in the face of development.

10.1 Introduction and definitions

Large-scale development, ongoing mining operations, changing land use and general exploitation of the environment pose a direct threat to archaeological heritage. As archaeological resources are finite and nonrenewable, they need to be carefully monitored and protected in the face of such development. The term ‘cultural resource management (CRM)’ is used in South Africa to refer specifically to ‘pre-development’ or ‘rescue archaeology’. It involves carrying out set procedures and making recommendations to the authorities to protect archaeological heritage in the face of development. CRM may be defined in the following ways:

Cultural Resource Management (CRM) is the application of management skills to preserve important (significant) parts of our cultural heritage, both historic and prehistoric, for the benefit of the public today and in the future (Fagan 2009).

Cultural Resource Management (CRM), in a broad sense, is a multi-disciplinary applied effort that draws on the expertise of cultural anthropologists, historians, architectural historians, historical architects, engineers, archivists, and many others to help respect the integrity and relevance of the past. CRM is concerned with all kinds of historic buildings and structures, artifacts, documents and of course archaeological sites (Thomas 2006).

In the past, loopholes in the legislation and insignificant fines made it easy for developers to evade responsibility towards archaeological heritage. It was quicker and cheaper for developers simply to destroy archaeological remains and then pay a fine than to pay an archaeologist to carry out a survey and possible excavation. However, the last few years have seen the promulgation of new laws and regulations that place a far greater responsibility on directors of companies and all organs of state to practise responsible environmental and cultural management. In addition to the National Heritage Resources Act (Act no 25 of 1999), the following legislation also governs archaeological heritage:

- general environmental policy (1994)
- amendments made in 1997 to the Environmental Conservation Act (Act No 73 of 1989)

- the National Environmental Management Act (NEMA) (Act No 107 of 1998) (See also summary document of the Act: *A user guide to the National Environmental Management Act (NEMA)*, guide 1, by the Department of Environmental Affairs and Tourism.)

All of the above provide for the protection of archaeological resources by demanding that developers carry out sound environmental management programmes (EMPs).

Archaeological remains are protected by environmental laws because the definition of “environment” adopted by these Acts includes both the natural and cultural features that occur within the environment. Under the National Environmental Management Act (NEMA), for example, any activity that is to have an impact on the environment, socioeconomic conditions of people and cultural heritage must be “considered, investigated and assessed” (NEMA, sections 5, 24(1)). Thus archaeological assessment has become a standard part of integrated environmental management procedures. It should be noted, then, that where development impacts on more than **just** cultural heritage, NEMA — which encompasses both natural and cultural heritage — takes precedence over the National Heritage Resources Act (NHRA) — which deals with cultural heritage only.

One of the chief ways in which the new legislation clamps down on developers is by increasing the liability of the company director. NEMA states that the person who was the director of a firm at the time of an offence will be responsible for the offence, regardless of whether the director was involved in the offence or just failed to take reasonable steps to prevent it. Protection is also offered to members of the public who “blow the whistle” or report poor environmental practices to the authorities.

Like NHRA, NEMA also stresses the need for community consultation and public participation. It acknowledges that the public has the right to be informed of development every step of the way. Thus interested or affected parties are also permitted to provide input.

10.2 What does CRM involve?

The main objective of the new legislation is to ensure that sound environmental management principles are integrated at all levels of planning and development so that one is able to “identify, predict and evaluate” the effects that certain activities will have on the environment (NEMA 1998:76). This is called **integrated environmental management (IEM)**. In order to understand the role of the CRM practitioner better, as well as IEM procedure, let’s take a closer look at the IEM procedure set out for developers initiating a new project, and also examine the role of archaeologists in this process:

STEP 1: Proposal

A proposal outlining the nature and extent of the development e.g. building, road, etc — is set out in a concise report.

STEP 2: Review

The relevant environmental authority, in consultation with the South African Heritage Resources Agency (SAHRA) or the provincial heritage authority, reviews the proposal and determines whether or not the proposed activity is in conflict with environmental management principles or other legislation, and whether the activity is permissible at all. If the authority decides that the activity is permissible, a scoping report will be requested. The developer will hire either an independent consultancy or independent consultants to carry out the scoping report. The aim of this report is to determine whether there is any **apparent** ‘‘environmental’’ reason why the development should not proceed, or should proceed with caution.

STEP 3: Scoping

A CRM practitioner is hired by the developer or a larger consultancy to provide recommendations and opinions based on existing archaeological knowledge or research that has already been carried out in the proposed area. The CRM practitioner will carry out a literature survey, consider all prior archaeological research carried out in the area, determine which sites have been recorded in the area and identify significant issues of concern. Thus the scoping report is essentially a ‘‘desktop study’’.

STEP 4: Review

The scoping report is reviewed by the authorities. If the report contains enough information for a decision to be made, the proposal may be accepted or rejected. For example, if it is immediately apparent that the development will destroy an important heritage site or valuable botanical species, the developer will be turned down. If, however, the information is less conclusive, but suggests that the activity may have a negative impact on the environment, an impact assessment will be requested.

STEP 5: Environmental impact assessment (EIA)

An EIA refers to the ‘‘evaluation of effects likely to arise from a major project (or activity) significantly affecting the natural and man-made environment’’ (Wood 1995:1). During this phase (sometimes called phase I by CRM practitioners), the archaeologist will survey and map the area in which the development is to take place, and may, with permission from SAHRA, auger samples or dig test pits to investigate the nature and depth of archaeological deposits. Based on these investigations, the CRM practitioner will (see Act 25 of 1999, Section 38(3))

- provide an assessment of the potential impacts and cumulative effects of the proposed activity. Thus, apart from assessing the direct impact on sites, the assessment must take into account the secondary impact of heavy vehicles or more humans in the area. For example, a rock art site may not be directly affected by development, but the vibration of heavy vehicles may cause the rock face and the art to flake off.
- assess the significance of the impact on the archaeological resources in the area. This involves assessing the significance or value of each site in the area in terms of the criteria laid out in the National Heritage Resources Act (NHRA, Section 3(3)). Thus an important part of the assessment procedure may involve

consulting with local communities, fellow archaeologists and other interested parties, and presenting the results of this communication.

- be expected to provide advice regarding mitigation, that is, the measures that will be needed to rescue or minimise the loss of important cultural material or research information before the activity can continue. If the archaeological resource is of particular significance or value, the archaeologist may suggest alternatives to protect the archaeological resource — such as shifting the road — or may choose to exercise the “no go” option and stop development altogether.

STEP 6: Conditions agreement

The complete EIA is reviewed once again by the environmental authority in consultation with SAHRA. Based on the EIA, permission for the activity may be refused or permitted, subject to certain conditions, for example subject to the mitigation and rescue of certain archaeological resources.

STEP 7: Environmental management programme (EMP)

The developers are required to put together an EMP, which provides a detailed plan or schedule of how they plan to achieve the conditions of agreement.

STEP 8: Review

The draft EMP is reviewed by the environmental authority and interested and affected parties.

STEP 9: Approval of the EMP

The environmental authority approves the EMP once it is satisfied that it will achieve the conditions of agreement.

10.3 Mitigation

Once a project or activity has been approved, the CRM practitioner will be called on — in accordance with the developer’s EMP — to carry out the mitigation procedures suggested in the EIA. Mitigation may only involve a single phase (phase II in CRM terms) in which the sites are sampled through the excavation and collection of artefacts. But if sampling reveals new or unexpected material, an additional phase (phase III) of more extensive excavation may be warranted.

Generally, every site is unique in time and space and therefore the CRM practitioner is expected to rescue a representative sample of the site for future reference and study. Bulk samples of the deposit should be taken and charcoal or organic material removed for the purpose of radiocarbon dating. For the purpose of sound heritage management, the archaeologist is required to sort, identify and count the material and make sure that it is adequately curated and stored. A copy of the report must be lodged with SAHRA.

(Adapted from Deacon 1996, Heydenrych & Claassen 1998 and the National Heritage Resources Act (Act No 25 of 1999) — see **APPENDIX I**)

An outline of CRM assessment phases, as stipulated by SAHRA regulations

Cultural heritage assessments should be followed in various phases:

- **Pre-phase 1:** An initial pre-assessment (scoping) phase, where the specialist establishes the scope of the project and terms of reference for the developer.
- **Phase 1:** An impact assessment, which identifies sites, assesses their significance and comments on the impact of a given development on the sites. Recommendations for site mitigation or conservation are also made during this phase.
- **Phase 2:** Mitigation/rescue involves planning the protection of significant sites or sampling through excavation or collection (in terms of a permit) at sites that may be lost as a result of a given development.
- **Phase 3:** A heritage site management plan (for heritage conservation) is required in rare cases where the site is so important that development will not be allowed. Sometimes developers are encouraged to enhance the value of the sites retained on their properties with appropriate interpretive material or displays.

10.4 Contract archaeology versus academic archaeology

By nature, CRM (contract) work, which is associated with independent heritage practitioners, is in stark contrast with academic research, which is usually associated with universities. This is a debate primarily highlighted in Fagan's (2009) discussion on CRM in the USA, but it has equal relevance in South Africa. A systematic overview of the two sides to this debate is outlined below.

The departure, aims and nature of CRM archaeology are different from those of academic archaeology and are reflected in the following:

- The emphasis is on compliance with legislation and management of cultural resources.
- CRM archaeology is mostly involved in collecting scientific data from very specific geographic locations.
- CRM practitioners see archaeology as descriptive and research as piecemeal, resulting in inductive, descriptive site reports.

The role of archaeology within the academic sphere is somewhat different:

- It focuses on basic research.
- Present research is mostly deductive, with the aim of using excavations only when specific problems need solving or when hypotheses need to be tested.

CRM institutions often have excellent technical resources and large project budgets which enable them to conduct detailed research and high-quality field and laboratory work. The scope and level of large-scale investigations often cannot be matched by underfunded academic departments (also refer to Renfrew & Bahn 2008:558–559). CRM archaeology also offers unique opportunities to test, refine and adapt field techniques, theories and models. These benefits should be realised by academics and applied in the classroom in order to educate a new generation of competent CRM practitioners.

10.5 Conclusion

CRM practitioners are expected to carry out set procedures to fulfil the criteria laid down by the legislation to protect archaeological heritage in the face of development. The CRM practitioner is required to fulfil two sets of expectations. Firstly, in accordance with the principles of integrated environmental procedure, the CRM practitioners are expected to provide the necessary expertise to ensure that adequate steps are taken to protect and conserve archaeological remains. Secondly, in accordance with archaeological heritage management procedures, the CRM practitioners will be expected to ensure that their assessment of a site is based upon the fullest possible knowledge of the nature and extent of the site, that representative samples are taken and provision made for the proper long-term conservation and curation of these samples, and that interested or affected parties, such as local or archaeological communities, are informed and consulted.

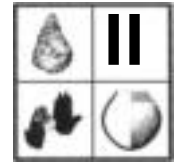
Self-assessment exercise

You are approached by AA consultancies, who have been hired by PP Builders to carry out an EIA in an area that is known to possess Early Iron Age and rock art sites. Early Iron Age sites are fairly scarce and information on these sites is limited. A community lives in the area and uses the rock art sites to carry out various rituals. Describe the procedure you would follow and the recommendations you would make to satisfy the legislation and meet the needs of interested and affected parties.

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Study unit



Cultural resource management: qualifications and training

Outcomes

After studying this unit, you should

- know the levels of qualification and expertise required to practise CRM
- recognise the CRM practitioner's responsibility to both the archaeological discipline and the client

11.1 Introduction

The new environmental regulations provide a great deal of opportunity for professional archaeologists to become cultural resource managers (CRMs) at a time when financial restrictions on universities and museums have forced more and more archaeologists to engage with the private sector and launch independent commercial ventures. Many independent archaeological consultancies have also been set up and archaeologists have been given the opportunity to become part of larger environmental consultancies. However, this highly specialised field demands that standards of professional training and conduct be established and maintained.

The Association for Southern African Professional Archaeologists (ASAPA) (previously the Southern African Association of Archaeologists (SA3), which was established in 1970) is a nonprofit, nongovernmental organisation that exists for the purpose of establishing, maintaining and promoting archaeology in southern Africa.

Archaeology is now recognised as an important component of our heritage, but that heritage is increasingly threatened by urban development. Professional archaeologists have a crucial role to play in studying, preserving and promoting our archaeological heritage.

In response to the changing status of archaeology, which was prompted by new legislation, ASAPA decided to become a formal professional body in 2004. The ASAPA constitution was accepted at the biennial general meeting on 10 April 2006. A CRM standing committee was formed as part of ASAPA — to which heritage practitioners must also apply — which enables members to conduct CRM contract work. As such, members are “dedicated to maintaining high standards of archaeology in southern Africa through self regulation” and are willing to “become a signatory to a code of conduct, disciplinary procedures and minimum standards” (Hart 1997:5).

The CRM standing committee has produced the following guidelines for CRM practitioners:

11.2 Level of qualification

CRM members are rated according to their level of qualification and expertise. The following structure applies:

- A **principal investigator** requires a master's degree in archaeology plus three years' experience. The principal investigator signs the contract with the developer or consultancy and bears the legal responsibility for completing the project. He/she is responsible for hiring suitable field directors and supervisors and coordinating each phase of a project.
- A **field director** needs a master's degree in archaeology. It is the field director's role to carry out all field operations, from impact assessments to mitigation. A field director may be a specialist in a specific field, for example rock art or Stone Age.
- A **field supervisor** must possess an honours degree in archaeology. A field supervisor will carry out surveys and excavations under the supervision of the field director.

11.3 Responsibilities to the discipline

All members of the CRM section are bound by the Association for Southern African Professional Archaeologists (ASAPA) constitution and code of conduct (see **APPENDIX V**). However, as CRM practitioners are essentially hired to rescue the research potential of a site and not to carry out research, it is their responsibility to ensure that they have adequately assessed the research value of a site, as well as taken steps to ensure that research can be carried out at a later stage.

For this reason, in addition to deciding whether the site or object is of specific significance to a particular community or group for social or spiritual reasons, the CRM practitioner needs to be aware of the archaeological value of sites to archaeologists carrying out research. If it is accepted that they are saving the research potential of a site that will be destroyed, they need to be fully aware of the questions that research archaeologists see as important, as well as decide whether the site has implications for future research. In order to aid CRM practitioners, archaeologists and heritage agencies have set up a medium-term research and heritage conservation priority list. These research priorities provide guidelines as to the types of sites that are considered worthy of mitigation. For example, Middle Stone Age sites with well-preserved bone are seen to be important and therefore worthy of rescue.

CRM practitioners often excavate, take samples, and so on in order to rescue the research potential of a site. It is important that these data be presented in accordance with accepted archaeological standards so that the archaeologists reading the report at a later date can access, understand and use the information. These reports must be lodged with the provincial heritage authority and SAHRA.

Lastly, the CRM practitioner must ensure that materials are properly curated and stored in centres, such as museums or universities, to facilitate further study of the material.

11.4 Responsibilities to the client

A client appeal forum is being set up within the CRM section to enable clients to express their grievances and complaints about CRM practitioners. This feedback is important to maintain a high standard of practice. Action needs to be taken against substandard work which not only brings the discipline into disrepute, but jeopardises the conservation of archaeological heritage.

11.5 Conclusion

In conclusion, CRM is a growing area within the discipline of archaeology, but the competitive nature of the field, along with the expectations of both the discipline and the client, demand that a high standard of archaeology be practised. For this reason it is necessary for practitioners to monitor one another to ensure that professional standards and conduct are maintained.

Self-assessment exercise

Briefly state in what way and why CRM practitioners need to be responsible to the discipline and the client.

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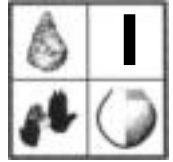
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Appendix



REPUBLIC OF SOUTH AFRICA

**NATIONAL HERITAGE
RESOURCES ACT**

REPUBLIEK VAN SUID-AFRIKA

**WET OP NASIONALE
ERFENISHULPBRONNE**

No 25, 1999

ACT

To introduce an integrated and interactive system for the management of the national heritage resources; to promote good government at all levels, and empower civil society to nurture and conserve their heritage resources so that they may be bequeathed to future generations; to lay down general principles for governing heritage resources management throughout the Republic; to introduce an integrated system for the identification, assessment and management of the heritage resources of South Africa; to establish the South African Heritage Resources Agency together with its Council to co-ordinate and promote the management of heritage resources at national level; to set norms and maintain essential national standards for the management of heritage resources in the Republic and to protect heritage resources of national significance; to control the export of nationally significant heritage objects and the import into the Republic of cultural property illegally exported from foreign countries; to enable the provinces to establish heritage authorities which must adopt powers to protect and manage certain categories of heritage resources; to provide for the protection and management of conservation-worthy places and areas by local authorities; and to provide for matters connected therewith.

PREAMBLE

This legislation aims to promote good management of the national estate, and to enable and encourage communities to nurture and conserve their legacy so that it may be bequeathed to future generations. Our heritage is unique and precious and it cannot be renewed. It helps us to define our cultural identity and therefore lies at the heart of our spiritual well-being and has the power to build our nation. It has the potential to affirm our diverse cultures, and in so doing shape our national character.

Our heritage celebrates our achievements and contributes to redressing past inequities. It educates, it deepens our understanding of society and encourages us to empathise with the experience of others. It facilitates healing and material and symbolic restitution and it promotes new and previously neglected research into our rich oral traditions and customs.

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SCHEDULE

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Application and interpretation

- 1. This Act binds the State.

Definitions

5

- 2. In this Act, unless the context requires otherwise—
 - (i) “alter” means any action affecting the structure, appearance or physical properties of a place or object, whether by way of structural or other works, by painting, plastering or other decoration or any other means; (xiii)
 - (ii) “archaeological” means—
 - (a) material remains resulting from human activity which are in a state of disuse and are in or on land and which are older than 100 years, including artefacts, human and hominid remains and artificial features and structures; 10
 - (b) rock art, being any form of painting, engraving or other graphic representation on a fixed rock surface or loose rock or stone, which was executed by human agency and which is older than 100 years, including any area within 10m of such representation; 15
 - (c) wrecks, being any vessel or aircraft, or any part thereof, which was wrecked in South Africa, whether on land, in the internal waters, the territorial waters or in the maritime culture zone of the Republic, as defined respectively in sections 3, 4 and 6 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), and any cargo, debris or artefacts found or associated therewith, which is older than 60 years or which SAHRA considers to be worthy of conservation; and 20

25

- (d) features, structures and artefacts associated with military history which are older than 75 years and the sites on which they are found; (ii)
- (iii) “conservation”, in relation to heritage resources, includes protection, maintenance, preservation and sustainable use of places or objects so as to safeguard their cultural significance; (vi) 5
- (iv) “Council” means the Council of the South African Heritage Resources Agency established in terms of section 14; (xxxv)
- (v) “cultural property agreement” in relation to a foreign state, means an agreement between South Africa and a foreign state or an international agreement to which South Africa and a foreign state are both parties, relating to the prevention of illicit international traffic in cultural property; (xx) 10
- (vi) “cultural significance” means aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance; (xix)
- (vii) “Department” means the national department responsible for arts and culture and heritage; (viii) 15
- (viii) “development” means any physical intervention, excavation, or action, other than those caused by natural forces, which may in the opinion of a heritage authority in any way result in a change to the nature, appearance or physical nature of a place, or influence its stability and future well-being, including—
- (a) construction, alteration, demolition, removal or change of use of a place or a structure at a place; 20
- (b) carrying out any works on or over or under a place;
- (c) subdivision or consolidation of land comprising, a place, including the structures or airspace of a place;
- (d) constructing or putting up for display signs or hoardings; 25
- (e) any change to the natural or existing condition or topography of land; and
- (f) any removal or destruction of trees, or removal of vegetation or topsoil; (xxix)
- (ix) “Director-General” means the Director-General of the Department; (ix) 30
- (x) “expropriate” means the process as determined by the terms of and according to procedures prescribed in the Expropriation Act, 1975 (Act No. 63 of 1975); (xxviii)
- (xi) “foreign cultural property”, in relation to a reciprocating state, means any object that is specifically designated by that state as being of importance for archaeology, history, literature, art or science; (vii) 35
- (xii) “*Gazette*” means the *Government Gazette*; (xl)
- (xiii) “grave” means a place of interment and includes the contents, headstone or other marker of such a place, and any other structure on or associated with such place; (xvi)
- (xiv) “heritage agreement” means an agreement referred to in section 42; (xiii) 40
- (xv) “heritage register” means a list of heritage resources in a province; (xiv)
- (xvi) “heritage resource” means any place or object of cultural significance; (xi)
- (xvii) “heritage resources authority” means the South African Heritage Resources Agency, established in terms of section 11, or, insofar as this Act is applicable in or in respect of a province, a provincial heritage resources authority; (xii) 45
- (xviii) “heritage site” means a place declared to be a national heritage site by SAHRA or a place declared to be a provincial heritage site by a provincial heritage resources authority; (xv)
- (xix) “improvement”, in relation to heritage resources, includes the repair, restoration and rehabilitation of a place protected in terms of this Act; (xivl) 50
- (xx) “land” includes land covered by water and the air space above the land; (xvii)
- (xxi) “living heritage” means the intangible aspects of inherited culture, and may include—
- (a) cultural tradition;
- (b) oral history; 55
- (c) performance;
- (d) ritual;
- (e) popular memory;

- (f) skills and techniques;
- (g) indigenous knowledge systems; and
- (h) the holistic approach to nature, society and social relationships; (xxi)
- (xxii) “local authority” means a municipality as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993); (xxxii) 5
- (xxiii) “management”, in relation to heritage resources, includes the conservation, presentation and improvement of a place protected in terms of this Act; (v)
- (xxiv) “MEC”, unless otherwise stated and insofar as a provision of this Act is applicable in or in respect of a province, means the member of the executive council of a province responsible for cultural matters; (xxii) 10
- (xxv) “meteorite” means any naturally-occurring object of extraterrestrial origin; (xxiii)
- (xxvi) “Minister” means the Minister responsible for arts and culture; (xxiv)
- (xxvii) “national estate” means the national estate as defined in section 3; (xxv)
- (xxviii) “national symbols” means any heraldic representation so determined under section 5 of the Heraldry Act, 1963 (Act No. 18 of 1963); (xxvi) 15
- (xxix) “object” means any movable property of cultural significance which may be protected in terms of any provisions of this Act, including—
- (a) any archaeological artefact;
- (b) palaeontological and rare geological specimens; 20
- (c) meteorites; and
- (d) other objects referred to in section 3; (xvii)
- (xxx) “owner” includes the owner’s authorised agent and any person with a real interest in the property and—
- (a) in the case of a place owned by the State or State-aided institutions, the Minister or any other person or body of persons responsible for the care, management or control of that place; 25
- (b) in the case of tribal trust land, the recognised traditional authority; (x)
- (xxxi) “palaeontological” means any fossilised remains or fossil trace of animals or plants which lived in the geological past, other than fossil fuels or fossiliferous rock intended for industrial use, and any site which contains such fossilised remains or trace; (xxxi) 30
- (xxxii) “place” includes—
- (a) a site, area or region;
- (b) a building or other structure which may include equipment, furniture, fittings and articles associated with or connected with such building or other structure; 35
- (c) a group of buildings or other structures which may include equipment, furniture, fittings and articles associated with or connected with such group of buildings or other structures; 40
- (d) an open space, including a public square, street or park; and
- (e) in relation to the management of a place, includes the immediate surroundings of a place; (xxxiii)
- (xxxiii) “planning” means urban and regional planning, as contemplated in the Physical Planning Act, 1991 (Act No. 125 of 1991), and provincial town planning and land use planning legislation; (iii) 45
- (xxxiv) “planning authority” means an office of the State, including a province, a local authority or a regional authority, which is invested with a physical planning capacity; (iv)
- (xxxv) “prescribe” means prescribed by regulation; (xvi) 50
- (xxxvi) “presentation” includes—
- (a) the exhibition or display of;
- (b) the provision of access and guidance to;
- (c) the provision, publication or display of information in relation to; and
- (d) performances or oral presentations related to, 55
- heritage resources protected in terms of this Act; (i)

- (xxxvii) “provincial heritage resources authority”, insofar as this Act is applicable in a province, means an authority established by the MEC under section 23; (xxxiv)
- (xxxviii) “public monuments and memorials” means all monuments and memorials—
 (a) erected on land belonging to any branch of central, provincial or local government, or on land belonging to any organisation funded by or established in terms of the legislation of such a branch of government; or
 (b) which were paid for by public subscription, government funds, or a public-spirited or military organisation, and are on land belonging to any private individual; (xxx)
- (xxxix) “reciprocating state” means a foreign state that is party to a cultural property agreement; (xviii)
- (xl) “regulations” means regulations made under this Act; (xxxvi)
- (xii) “SAHRA” means the South African Heritage Resources Agency, established in terms of section 11; (xxxvii)
- (xiil) “site” means any area of land, including land covered by water, and including any structures or objects thereon; (xii)
- (xiiil) “State” includes a province; (xxxix)
- (xivl) “structure” means any building, works, device or other facility made by people and which is fixed to land, and includes any fixtures, fittings and equipment associated therewith; (xi)
- (xv) “supported body” means a body funded or financially supported by the State, and includes State-owned enterprises; (xxvii)
- (xvi) “this Act” includes the regulations; (xviii)
- (xvii) “victims of conflict” means—
 (a) certain persons who died in any area now included in the Republic as a direct result of any war or conflict as specified in the regulations, but excluding victims of conflict covered by the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992);
 (b) members of the forces of Great Britain and the former British Empire who died in active service in any area now included in the Republic prior to 4 August 1914;
 (c) persons who, during the Anglo-Boer War (1899-1902) were removed as prisoners of war from any place now included in the Republic to any place outside South Africa and who died there; and
 (d) certain categories of persons who died in the “liberation struggle” as defined in the regulations, and in areas included in the Republic as well as outside the Republic; (xxxviii)
- (xviii) “wreck” has the meaning given under the definition of “archaeological” in this section. (xviii)

CHAPTER I

SYSTEM FOR MANAGEMENT OF NATIONAL HERITAGE RESOURCES

Part 1: General Principles

National estate

3. (1) For the purposes of this Act, those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations must be considered part of the national estate and fall within the sphere of operations of heritage resources authorities.

(2) Without limiting the generality of subsection (1), the national estate may include

- (a) places, buildings, structures and equipment of cultural significance;
 (b) places to which oral traditions are attached or which are associated with living heritage;
 (c) historical settlements and townscapes;
 (d) landscapes and natural features of cultural significance;

- (e) geological sites of scientific or cultural importance;
 - (f) archaeological and palaeontological sites;
 - (g) graves and burial grounds, including—
 - (i) ancestral graves;
 - (ii) royal graves and graves of traditional leaders; 5
 - (iii) graves of victims of conflict;
 - (iv) graves of individuals designated by the Minister by notice in the *Gazette*;
 - (v) historical graves and cemeteries; and
 - (vi) other human remains which are not covered in terms of the Human Tissue Act, 1983 (Act No. 65 of 1983); 10
 - (h) sites of significance relating to the history of slavery in South Africa;
 - (i) movable objects, including
 - (i) objects recovered from the soil or waters of South Africa, including archaeological and palaeontological objects and material, meteorites and rare geological specimens; 15
 - (ii) objects to which oral traditions are attached or which are associated with living heritage;
 - (iii) ethnographic art and objects;
 - (iv) military objects;
 - (v) objects of decorative or fine art; 20
 - (vi) objects of scientific or technological interest; and
 - (vii) books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings, excluding those that are public records as defined in section 1(xiv) of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996). 25
- (3) Without limiting the generality of subsections (1) and (2), a place or object is to be considered part of the national estate if it has cultural significance or other special value because of—
- (a) its importance in the community, or pattern of South Africa's history;
 - (b) its possession of uncommon, rare or endangered aspects of South Africa's natural or cultural heritage; 30
 - (c) its potential to yield information that will contribute to an understanding of South Africa's natural or cultural heritage;
 - (d) its importance in demonstrating the principal characteristics of a particular class of South Africa's natural or cultural places or objects; 35
 - (e) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
 - (f) its importance in demonstrating a high degree of creative or technical achievement at a particular period;
 - (g) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons; 40
 - (h) its strong or special association with the life or work of a person, group or organisation of importance in the history of South Africa; and
 - (i) sites of significance relating to the history of slavery in South Africa.

Application 45

4. This Chapter establishes the national system for the management of heritage resources which it applies throughout the Republic and—
- (a) also applies to the actions of the State and a local authority;
 - (b) serves as guidelines by reference to which any heritage resources authority, whether established in terms of this Act or any other law, and any other competent authority must exercise any discretion or take any decision in terms of this Act or any other law dealing with heritage resources management; 50
 - (c) serves as the general framework with which
 - (i) any heritage resources authority must perform its functions and make recommendations; and 55

- (ii) those recommendations must be considered by any competent authority in terms of this Act or any other law dealing with heritage resources management; and
- (d) establishes the South African Heritage Resources Agency to manage the national estate and makes provision for the establishment of provincial heritage resources authorities to manage provincial and local heritage resources. 5

General principles for heritage resources management

5. (1) All authorities, bodies and persons performing functions and exercising powers in terms of this Act for the management of heritage resources must recognise the following principles: 10

- (a) Heritage resources have lasting value in their own right and provide evidence of the origins of South African society and as they are valuable, finite, non-renewable and irreplaceable they must be carefully managed to ensure their survival; 15
 - (b) every generation has a moral responsibility to act as trustee of the national heritage for succeeding generations and the State has an obligation to manage heritage resources in the interests of all South Africans;
 - (c) heritage resources have the capacity to promote reconciliation, understanding and respect, and contribute to the development of a unifying South African identity; and 20
 - (d) heritage resources management must guard against the use of heritage for sectarian purposes or political gain.
- (2) To ensure that heritage resources are effectively managed—
- (a) the skills and capacities of persons and communities involved in heritage resources management must be developed; and 25
 - (b) provision must be made for the ongoing education and training of existing and new heritage resources management workers.
- (3) Laws, procedures and administrative practices must
- (a) be clear and generally available to those affected thereby; 30
 - (b) in addition to serving as regulatory measures, also provide guidance and information to those affected thereby; and
 - (c) give further content to the fundamental rights set out in the Constitution.
- (4) Heritage resources form an important part of the history and beliefs of communities and must be managed in a way that acknowledges the right of affected communities to be consulted and to participate in their management. 35
- (5) Heritage resources contribute significantly to research, education and tourism and they must be developed and presented for these purposes in a way that ensures dignity and respect for cultural values.
- (6) Policy, administrative practice and legislation must promote the integration of heritage resources conservation in urban and rural planning and social and economic development. 40
- (7) The identification, assessment and management of the heritage resources of South Africa must—
- (a) take account of all relevant cultural values and indigenous knowledge systems; 45
 - (b) take account of material or cultural heritage value and involve the least possible alteration or loss of it;
 - (c) promote the use and enjoyment of and access to heritage resources, in a way consistent with their cultural significance and conservation needs; 50
 - (d) contribute to social and economic development;
 - (e) safeguard the options of present and future generations; and
 - (f) be fully researched, documented and recorded.

Principles for management of heritage resources

6. (1) SAHRA, after consultation with the Minister, may by notice in the *Gazette*
- (a) prescribe any principle for heritage resources management in addition to, but not inconsistent with, the principles set out in section 5;
 - (b) prescribe any principle as set out in section 5 in greater detail, but not inconsistent therewith; 5
 - (c) publish for general information national policy relating to heritage resources management or any aspect thereof which is consistent with the principles set out in section 5 or prescribed under paragraphs (a) and (b), 10
- whereupon such principle or policy must apply throughout the Republic.
- (2) A provincial heritage resources authority may, by notice in the *Provincial Gazette*
- (a) prescribe any principles for heritage resources management in addition to, but not inconsistent with, the principles set out in section 5 or prescribed by SAHRA under subsection (1); 15
 - (b) prescribe any principle as set out in section 5 or prescribed by SAHRA under subsection (1) in greater detail, but not inconsistent therewith; and
 - (c) publish for general information provincial policy relating to heritage resources management or any aspect thereof which is consistent with the principles set out in section 5 or prescribed under subsection (1) or paragraphs (a) and (b) of this subsection, 20
- whereupon such principle or policy shall apply in the province on the basis set out in section 5.
- (3) A heritage resources authority must, before prescribing any principle or general policy under subsection (1) or (2) 25
- (i) make a draft of such principle or policy available to the public; and
 - (ii) consider any comment on such draft received from any person during a reasonable period after such publication.

Heritage assessment criteria and grading

7. (1) SAHRA, in consultation with the Minister and the MEC of every province, must by regulation establish a system of grading of places and objects which form part of the national estate, and which distinguishes between at least the categories— 30
- (a) Grade I: Heritage resources with qualities so exceptional that they are of special national significance;
 - (b) Grade II: Heritage resources which, although forming part of the national estate, can be considered to have special qualities which make them significant within the context of a province or a region; and 35
 - (c) Grade III: Other heritage resources worthy of conservation,
- and which prescribes heritage resources assessment criteria, consistent with the criteria set out in section 3(3), which must be used by a heritage resources authority or a local authority to assess the intrinsic, comparative and contextual significance of a heritage resource and the relative benefits and costs of its protection, so that the appropriate level of grading of the resource and the consequent responsibility for its management may be allocated in terms of section 8. 40
- (2) A heritage resources authority may prescribe detailed heritage assessment criteria, consistent with the criteria set out in section 3(3), for the assessment of Grade II and Grade III heritage resources in a province. 45

Responsibilities and competence of heritage resources authorities and local authorities for identification and management of national estate

8. (1) There is a three-tier system for heritage resources management, in which national level functions are the responsibility of SAHRA, provincial level functions are the responsibility of provincial heritage resources authorities and local level functions are the responsibility of local authorities. Heritage resources authorities and local authorities are accountable for their actions and decisions and the performance of functions under this system. 50 55

(2) SAHRA is responsible for the identification and management of Grade I heritage resources and heritage resources in accordance with the applicable provisions of this Act, and shall co-ordinate and monitor the management of the national estate in the Republic.

(3) A provincial heritage resources authority is responsible for the identification and management of Grade II heritage resources and heritage resources which are deemed to be a provincial competence in terms of this Act. 5

(4) A local authority is responsible for the identification and management of Grade III heritage resources and heritage resources which are deemed to fall within their competence in terms of this Act. 10

(5) For the purpose of any application for a permit or other authorisation to perform any action which is controlled in terms of this Act or provincial heritage legislation, a formal protection by a heritage resources authority at a higher level takes precedence over any formal or general protection at a local level, without prejudice to any incentives offered at any level. 15

(6) (a) A provincial heritage resources authority or a local authority shall not perform any function in terms of this Act or any other law for the management of heritage resources unless it is competent to do so. The capacity of a provincial heritage resources authority or local authority shall be assessed in terms of criteria prescribed by the Minister, including the availability of adequate staff, expertise, experience and administrative systems, to be applied— 20

(i) by SAHRA, in the assessment of the capacity of provincial authorities to perform specific functions in relation to prescribed categories of heritage resources; and

(ii) by provincial heritage resources authorities, to establish the capacity of local authorities to perform any function under this Act: 25

Provided that, in the event of a dispute, the matter shall be submitted to arbitration.

(b) If an authority at provincial or local level does not have the capacity or is not competent to perform a specific function for which it is responsible under this section, that function shall be performed on an agency basis by an authority at a higher level or a competent authority on the same level. 30

(c) A provincial heritage resources authority or a local authority shall apply to the relevant authority for the assessment of its competence under paragraph (a) in the manner prescribed by the assessing authority, and may apply for reassessment within the period and on the conditions prescribed by the assessing authority. 35

(d) The assessing authority may at any time, and shall at least every two years, reassess the competence of a subordinate authority and review the assumption of functions and powers under this Act.

Rights, duties and exemptions of State and supported bodies

9. (1) All branches of the State and supported bodies must give heritage resources authorities such assistance in the performance of their functions as is reasonably practicable. 40

(2) All branches of the State and supported bodies must, on the request of a heritage resources authority, make available for its use and incorporation into its data base any information which it has on record on heritage resources under its control: Provided that the body supplying such information may set out conditions regarding the disclosure and distribution of such information by the heritage resources authority. 45

(3) Each State department and supported body must—

(a) maintain and conserve the heritage resources under its control in accordance with standards and procedures set out in regulations by SAHRA in consultation with the Department of Public Works; 50

(b) submit annually to SAHRA a report on the maintenance and development of such resources;

- (c) in accordance with regulations, on the request of the Minister, or within 10 years from the commencement of this Act, compile and submit to SAHRA, information on and an inventory of such heritage resources;
- (d) on the request of the Minister and in accordance with regulations, prepare management plans for specified heritage resources; 5
- (e) not take any action that adversely affects such a resource unless the authority concerned is satisfied that there is no feasible and prudent alternative to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken;
- (f) at the initiation of the planning process of the project, or at least 90 days 10 before taking any action that could adversely affect such heritage resource, whichever is the greater, inform SAHRA of the proposed action and give them a reasonable opportunity to consider and comment on it; and
- (g) where the destruction of such heritage resources is permitted in terms of this Act, record such resources in accordance with standards set by SAIIRA and 15 undertake any other mitigating actions which may be required by SAHRA.
- (4) Where SAHRA has been informed of a proposed action by a State Department or supported body, it must, as soon as practicable, submit its comments to the Department or supported body.
- (5) An action for the purpose of this section shall be deemed to include the making of 20 a recommendation which, if adopted, would affect a heritage resource, the making of a decision, the approval of a programme, the issue of a licence or the granting of a permission.
- (6) Compliance with subsection (3) does not exempt a State Department or supported body from complying with requirements in terms of this Act, regarding any heritage 25 resource in its ownership which is protected in terms of this Act or equivalent provincial legislation.
- (7) The head of a government body at the national level of government must—
- (a) inform SAHRA of his or her intention to destroy or delete any architectural or technical drawings in whatever medium, as may be defined in the regulations 30 published by SAHRA in consultation with the National Archivist; and
- (b) make such drawings available to SAHRA free of charge if requested by SAHRA.
- (8) The head of a government body at the provincial or local level of government 35 must
- (a) inform the provincial heritage resources authority of his or her intention to destroy or delete any architectural or technical drawings in whatever medium; and
- (b) make such drawings available to a heritage resources authority free of charge.
- (9) The Registrar of Deeds must inform SAHRA or the relevant heritage resources 40 authority, in a notice as prescribed, of the particulars of the registration of transfer or subdivision of any place which is formally protected by such heritage resources authority in terms of Part 1 of Chapter 2 of this Act, within 14 days of such registration.
- (10) When
- (a) a place has been declared a national heritage site or a provincial heritage site 45 under section 27;
- (b) a place has been designated a protected area under section 28;
- (c) a place has been provisionally protected for a period longer than six months under section 29;
- (d) a place has been entered in a heritage register under section 30; 50
- (e) a place has been included in a heritage area under section 31;
- (f) a heritage agreement has been entered into in respect of a place for a period exceeding six months under section 42;
- (g) an order of no development under section 51(8) has been made in respect of 55 a place,

- the heritage resources authority concerned must furnish the Surveyor-General and the Registrar of Deeds in whose deeds registry the land in question is registered with—
- (i) a copy of the notice in the *Gazette* or the *Provincial Gazette*;
 - (ii) the particulars of the protection;
 - (iii) a copy of any survey, including any diagram or plan, made under section 25(2)(d); and
 - (iv) a copy of the relevant order of no development or of a heritage agreement.
- (11) The Registrar of Deeds must—
- (a) endorse the title deed of the place in question filed in the deeds office;
 - (b) make an entry in the appropriate registers and upon the owner's title deed as soon as it is lodged in the deeds office, relating to the particulars furnished in terms of subsection (10);
 - (c) identify the area of the protected place; and
 - (d) clearly state the particulars of the protection order or heritage agreement.
- (12) The Surveyor-General must
- (a) endorse upon the relevant records filed in his or her office an entry referring to the notice furnished in terms of subsection (10); and
 - (b) state the particulars of the protection order or heritage agreement in broad terms.
- (13) (a) When
- (i) any notice is amended or withdrawn under section 27(7);
 - (ii) the designation of a protected area is withdrawn under section 28(1) or (2);
 - (iii) a provisional protection for a period longer than six months is withdrawn under section 29(1)(b) or (2)(b);
 - (iv) an entry in a heritage register is amended or deleted;
 - (v) a place is excluded from a heritage area; or
 - (vi) an order of no development is amended or repealed under section 51(11),
- the heritage resources authority concerned must furnish a copy of the notice or order to the Registrar of Deeds and the Surveyor-General.
- (b) The Registrar of Deeds must make the necessary endorsement upon the relevant title deeds and in the appropriate registers.
 - (c) The Surveyor-General must make the necessary endorsement upon the relevant records filed in his or her office.

General principles of procedure

10. (1) The general principles of procedure set out in subsection (2) apply to any decision regarding the administration and management of the national estate by an authority to which a responsibility has been assigned in terms of section 7 and any other competent authority to which functions and powers for the administration and management of the national estate have been assigned or delegated, including any decision—
- (a) to formally protect a heritage resource by notice in the *Gazette* or *Provincial Gazette*;
 - (b) to issue or not to issue a permit; and
 - (c) taken by any person or authority to whom an appeal is made.
- (2) The decisions contemplated in subsection (1) must be taken in accordance with the following general principles:
- (a) The decisions must be consistent with the principles or policy set out in section 5 or prescribed under section 6;
 - (b) a meeting at which decisions are taken, must be open to the public and the agenda and minutes must be available for public scrutiny: Provided that when there is good reason to do so, a matter may, by decision of the majority of members present, be declared confidential and the discussion and minutes may be excepted from public scrutiny;
 - (c) a person who may be affected by a decision has the right of appearance at such meeting; and
 - (d) written reasons must be given for any decision upon request.

Part 2: Constitution, function, powers and duties of heritage resources authorities

Establishment of South African Heritage Resources Agency

11. There is hereby established an organisation to be known as the South African Heritage Resources Agency (SAHRA) which shall be a body corporate capable of suing and being sued in its corporate name and which shall be governed by a Council established in terms of section 14. 5

Object of SAHRA

12. The object of SAHRA is to co-ordinate the identification and management of the national estate.

Functions, powers and duties of SAHRA 10

- 13.** (1) The general functions of SAHRA are to—
- (a) establish national principles, standards and policy for the identification, recording and management of the national estate in terms of which heritage resources authorities and other relevant bodies must function with respect to South African heritage resources; 15
 - (b) co-ordinate the management of the national estate by all agencies of the State and other bodies and monitor their activities to ensure that they comply with national principles, standards and policy for heritage resources management;
 - (c) identify, record and manage nationally significant heritage resources and keep permanent records of such work; 20
 - (d) advise, assist and provide professional expertise to any authority responsible for the management of the national estate at provincial or local level, and assist any other body concerned with heritage resources management;
 - (e) promote and encourage public understanding and enjoyment of the national estate and public interest and involvement in the identification, assessment, recording and management of heritage resources; 25
 - (f) promote education and training in fields related to the management of the national estate; and
 - (g) perform any other functions assigned to it by this Act or as directed by the Minister. 30
- (2) Without limiting the generality of subsection (1) and in addition to the general powers and duties conferred in terms of section 25, SAHRA—
- (a) must investigate and advise the Council on
 - (i) the state of South Africa's heritage resources and any steps necessary to protect and conserve them; 35
 - (ii) national policy for the management of the national estate;
 - (iii) legislative amendment and enactment for the management of the national estate;
 - (iv) the repatriation of heritage resources which have been removed from South Africa and which SAHRA considers to be significant as part of the national estate; 40
 - (v) the role of the national estate in the development and promotion of a cultural profile for South Africa;
 - (vi) action and expenditure by the State for the identification and management of heritage resources, including financial incentives and concessions for heritage resources management; 45
 - (vii) education and training at all levels to promote the effective identification and management of the national estate;
 - (viii) any matter related to the operation of this Act; and
 - (ix) any other matter pertaining to the national estate or its management; 50

- (b) must establish and maintain, for its own use and for the use of all heritage authorities and bodies and the public, the national heritage resources library, including documentary and other records relating to the national estate;
- (c) must promote the systematic identification and recording of the national estate by—
- (i) the development of a national strategy for the identification and assessment of heritage resources; 5
 - (ii) the establishment and funding of a standing South African Heritage Resources Survey which is tasked with annual projects aimed at identifying, assessing and documenting heritage resources; 10
 - (iii) the co-ordination and support of initiatives by provincial heritage resources authorities, any other bodies and persons to survey and record heritage resources;
 - (iv) the administration, co-ordination and funding of projects and research programmes aimed at the creation of graphic and other records of heritage resources; 15
 - (v) training programmes and other relevant activities aimed at conserving and documenting traditional South African building techniques and structural forms;
 - (vi) promoting the identification and recording of aspects of living heritage associated with heritage resources; and 20
 - (vii) projects aimed at increasing the volume and detail of information held in the inventory of the national estate referred to in section 39; and
- (d) must prescribe national norms and standards for the recording of information about heritage resources in data bases maintained by itself and by provincial heritage resources authorities. 25

Establishment and constitution of SAIIRA Council

- 14.** (1) The affairs of SAHRA are under the control, management and direction of a Council consisting of—
- (a) at least nine but not more than 15 members appointed by the Minister in the prescribed manner, of which nine members must respectively represent each of the provinces of South Africa; and 30
 - (b) the chief executive officer of SAHRA.
- (2) The members of the Council contemplated in subsection (1)(a) must be appointed in accordance with the principles of transparency and representivity and their appointment must take into account the desirability that the members
- (a) have among them qualifications or special experience or interest in fields relevant to heritage resources, and the financial knowledge needed for the efficient functioning of SAIIRA; and
 - (b) be representative of the relevant sectoral interests and the cultural and demographic characteristics of the population of the Republic. 40
- (3) A member of the Council must vacate the office if the member—
- (a) resigns in writing;
 - (b) has been absent from three consecutive meetings of the Council without the leave of the Council; 45
 - (c) is an unrehabilitated insolvent;
 - (d) is found to be of unsound mind by a competent court; or
 - (e) is convicted of an offence involving dishonesty or bodily harm and is sentenced to imprisonment without the option of a fine.
- (4) The Minister may, after consultation with the Council, remove a member of the Council from office if in the opinion of the Minister there are sound reasons for doing so after hearing the member on those reasons. 50
- (5) A member of the Council holds office for a period not exceeding three years, and may be reappointed.
- (6) No member may serve more than two consecutive terms. 55

(7) If a member of the Council dies or vacates the office before the expiration of the period for which the member has been appointed, another person may be appointed to fill the vacancy for the unexpired portion of the period for which the member was appointed.

Chairperson of Council 5

15. (1) The chairperson of the Council is elected from the appointed members of the Council and holds office for the period or the unexpired portion of the period for which he or she has been appointed as member of the Council, unless the Council otherwise determines.

(2) If the chairperson of the Council vacates the office as chairperson before the expiration of the period for which he or she was appointed, another member of the Council must, subject to subsection (1), be elected as a chairperson of the Council from the appointed members of the Council. 10

(3) If the chairperson of the Council is absent from a meeting of the Council or not able to preside at that meeting, the members present must elect one of their number to preside at that meeting and that person may, during that meeting and until the chairperson resumes his or her functions, perform all those functions. 15

Functions of Council

- 16.** The functions of the Council are to
- (a) advise the Minister on matters concerning heritage resources management; 20
 - (b) be responsible and accountable for the implementation of the functions, powers and duties of SAHRA;
 - (c) advise and assist SAHRA in the performance of its functions, powers and duties;
 - (d) promote the co-ordination of policy formulation and planning for the management of the national estate at national and provincial levels; and 25
 - (e) furnish the Minister with such information as the Minister may require.

Meetings of Council

17. (1) The Council may meet as often as necessary, but at least twice a year.

(2) A quorum for a meeting of the Council shall be a majority of its members. 30

(3) Any decision of the Council shall be taken by resolution of the majority of the members present at any meeting of the Council, and, in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote as a member of the Council.

Committees of Council 35

18. The Council may establish committees to assist it in the performance of its functions and, in addition to any members, it may appoint to such committees persons whom the Council considers competent or who possess specific skills and expertise.

Reimbursement of expenses incurred by members of Council and committees

19. The Minister may, with the concurrence of the Minister of Finance, determine the reimbursement of expenses incurred by members of the Council and any committees it may establish who are not in the full-time employ of the State. 40

Employees of Council

20. (1) The Council must appoint a senior member of staff as chief executive officer, who must— 45

- (a) be responsible for the management of the affairs of SAHRA and who must report on those affairs to the Council as the Council may require;

- (b) be the accounting officer charged with the responsibility of accounting for all the money received and the utilisation thereof and be responsible for the property of SAHRA;
- (c) furnish the Council with an annual report on the financial affairs of SAHRA;
- (d) be responsible for the appointment and management of the staff in accordance with the staffing policy in terms of subsection (2); and
- (e) perform any other activities and duties assigned to the chief executive officer from time to time by the Council.

(2) The Council must, in consultation with the chief executive officer, determine the staff needs and staffing policies of SAHRA and the posts, conditions of service, remuneration, allowances, subsidies and other benefits of the staff in accordance with a system approved by the Minister with the concurrence of the Minister of Finance.

(3) The Council must designate one of the staff of SAHRA as acting chief executive officer when the office of chief executive officer is vacant or when the chief executive officer is absent.

Finances and property

21. (1) The funds of SAHRA consists of

- (a) moneys appropriated by Parliament to enable it to perform its functions and exercise its powers;
- (b) fees and fines received under the regulations;
- (c) fees received in payment of services;
- (d) funds raised by and donations and contributions to it;
- (e) trust funds vested in it;
- (f) interest derived from investments; and
- (g) moneys received from any other source.

(2) Subject to this section, SAHRA must use its funds to defray expenditure in connection with the performance of its functions.

(3) The Council may invest any money not required for immediate use or as a reasonable operating balance in accordance with the directions determined by the Minister in consultation with the Minister of Finance.

(4) The Council may establish and operate a reserve fund and may deposit therein such amounts as become available from time to time.

(5) SAHRA, with the approval of the Council—

- (a) may not lend or borrow any money without the consent of the Minister given with the concurrence of the Minister of Finance;
- (b) may purchase or otherwise acquire, hold, let, hire or receive in trust any real right in any immovable or movable property; and
- (c) may not make over to any person to hold in trust or sell, exchange or otherwise alienate, or hypothecate, burden with a servitude or otherwise confer any real right in immovable property, without the approval of the Minister given with the concurrence of the Minister of Finance.

(6) Once during every financial year, at a time determined by the Minister, SAHRA must submit a statement of its estimated income and expenditure for the following financial year to the Minister for approval, granted with the concurrence of the Minister of Finance.

(7) SAHRA may during the course of a financial year submit supplementary estimates of its expenditure for that financial year to the Minister for approval, granted with the concurrence of the Minister of Finance.

(8) SAHRA must not incur any expenditure except in accordance with an estimate of expenditure approved under subsections (6) and (7).

(9) SAHRA must—

- (a) keep full and correct accounts and records of all its financial transactions and affairs, including all its transactions in its capacity of trustee of any trust fund, and all properties under its control, and must ensure that all payments out of its funds are correctly made and properly authorised and that adequate control is maintained over its assets, or those in its custody, and the incurring of liabilities; and

- (b) as soon as possible after the end of the financial year, draw up annual financial statements which must show money received and expenditure incurred and its assets and liabilities at the end of the financial year concerned.
- (10) The financial year of SAHRA ends on 31 March each year.
- (11) The accounts and annual financial statements referred to in subsection (9)(b) must be audited by the Auditor-General. 5
- (12) The accounts and annual financial statements referred to in subsection (9)(b) must be available for public inspection.

Reports

- 22. (1) As soon as practicable after the end of the financial year, SAHRA must compile and submit to the Minister a report on all its activities during that financial year, including a balance sheet and statements of income and expenditure certified by the Auditor-General. 10
- (2) The report referred to in subsection (1) must include a description of the condition of the national estate during the period to which the report relates, including destruction and other losses incurred, threats to specific heritage resources or categories of heritage resources, and an account of offences and prosecutions and the results thereof. 15
- (3) The Minister must table the report referred to in subsection (1) in Parliament within 14 days after receipt thereof if Parliament is in ordinary session or, if Parliament is not in ordinary session, within 14 days after the commencement of its next ordinary session. 20

Establishment of provincial heritage resources authorities

- 23. An MEC may establish a provincial heritage resources authority which shall be responsible for the management of the relevant heritage resources within the province, which shall be a body corporate capable of suing and being sued in its corporate name and which shall be governed by a Council constituted as prescribed by regulations published in the *Provincial Gazette*: Provided that the members of the Council shall be appointed in a manner which applies the principles of transparency and representivity and takes into account special competence, experience and interest in the field of heritage resources. 25
30

Functions, powers and duties of provincial heritage resources authority

- 24. (1) A provincial heritage authority must—
 - (a) advise the MEC on the implementation of this Act or relevant provincial or municipal legislation;
 - (b) annually submit a report to the MEC regarding its activities during that year; 35
 - (c) promote the systematic identification, recording and assessment of heritage resources and heritage objects which form part of the national estate in a province;
 - (d) protect and manage heritage resources in a province which fulfil the heritage assessment criteria prescribed under section 7(1) for Grade II status; 40
 - (e) notify SAHRA of the presence of any heritage resource in the province which it considers fulfils the heritage assessment criteria prescribed under section 7(1) for Grade I status, nominate such resource for national level protection and furnish SAHRA with the information in its possession relating to such resource; 45
 - (f) maintain data bases on heritage resources in accordance with national standards, and at regular intervals furnish SAHRA with such data;
 - (g) establish policy, objectives and strategy plans for heritage resources management in the province;
 - (h) determine the competence of local authorities to manage heritage resources in accordance with the national system for the heritage grading of local authorities prescribed under section 8(6); 50
 - (i) co-ordinate and monitor the performance of local authorities in the implementation of their responsibilities in terms of this Act and provincial heritage legislation; 55

- (j) assist local authorities to manage heritage resources in their areas of jurisdiction; and
- (k) provide for any areas of responsibility in terms of this Act or any provincial heritage resources legislation when a local authority does not have competence, or has insufficient capacity, to perform a function in terms of the criteria prescribed under section 8(6). 5

General powers and duties of heritage resources authorities

25. (1) A heritage resources authority must—
- (a) furnish information, advice and assistance to enhance public sensitivity towards and awareness of the need for management of the national estate; 10
 - (b) maintain a list of conservation bodies which have, in accordance with regulations by the heritage resources authority concerned, registered their interest in
 - (i) a geographical area; or
 - (ii) a category of heritage resources; 15
 - (c) regularly inspect heritage resources which are formally protected by the heritage resources authority concerned in terms of any provision of Part 1 of Chapter II;
 - (d) endeavour to assist any community or body of persons with an established interest in any heritage resource to obtain reasonable access to such heritage resource, should they request it, and may for this purpose 20
 - (i) enter into negotiations with the owner of such resource;
 - (ii) facilitate the making of arrangements as may be required for the achievement of such access, including the execution of a heritage agreement under section 42; and 25
 - (iii) if such negotiations are unsuccessful, refer the matter to the Minister or MEC, as the case may be; and
 - (e) make arrangements to ensure the protection and management of all heritage resources and property owned or controlled by it or vested in it. 30
- (2) A heritage resources authority may—
- (a) promote and engage in research relating to the identification, assessment and management of the national estate as necessary for the performance of its functions; 30
 - (b) publish, or by any other means make available or distribute in any form, or cause to be published or distributed, any knowledge and information relating to the national estate and any of its functions or activities; 35
 - (c) inspect or document any heritage resource—
 - (i) which has the potential to become protected in terms of this Act;
 - (ii) which is, or which the heritage authority has reason to believe may be, so protected; or 40
 - (iii) which it wishes to document for research purposes, for purposes of building up a public record of heritage resources or as part of an investigation into a suspected offence in terms of this Act, and must maintain a register of such inspections;
 - (d) whenever it is investigating the desirability of protecting any place in terms of this Act, take such steps as it considers necessary— 45
 - (i) for erecting beacons on the corners of and surveying and preparing a diagram or plan of such place; or
 - (ii) for determining by survey the location of such place or object in relation to the beacons and boundaries of the land on which it is situated; 50
 - (e) undertake or make arrangements for the presentation of any place under its control or, after consultation with the Department concerned, any heritage site which is owned by the State;
 - (f) by agreement with the authority or body concerned, co-operate in the management of any heritage resource which is owned or controlled by the State or a supported body; 55

- (g) lend anything under its control to a museum or public institution, subject to such conditions as it deems necessary and appropriate;
- (h) subject to the provisions of section 59, make and from time to time amend regulations relating to any matter which the heritage authority concerned considers to be necessary or expedient to prescribe to fulfil its functions and implement its powers and duties under this Act, including—
 - (i) the standards of practice and qualifications required of individuals, institutions or other bodies for the performance of work on heritage resources protected in terms of, and in the various fields covered by, this Act; and
 - (ii) the monitoring of activities at protected sites;
- (i) create and where necessary register with the relevant authorities a badge, or an emblem for the authority, any of its projects or any category of protection provided for in terms of this Act;
- (j) where appropriate, affix to or otherwise display at any place protected in terms of this Act a badge or other sign indicating its status;
- (k) produce, acquire and market products relating to the national estate, or enter into arrangements for the production, acquisition and marketing of such products;
- (l) recover costs incurred by it and, where appropriate, charge for the provision of services rendered in terms of this Act, including but not limited to the
 - (i) processing of applications received;
 - (ii) carrying out of investigations;
 - (iii) production, acquisition and marketing of products; and
 - (iv) provision of information;
- (m) arrange for the provision of insurance cover for—
 - (i) itself against any loss, damage, risk or liability which it may suffer or incur regarding any property under its control;
 - (ii) members of the council of a heritage resources authority, co-opted members, members of committees and members of its staff, in respect of bodily injury, illness, disablement or death incurred wholly and directly in the course of the performance of their duties on behalf of the heritage resources authority concerned;
- (n) enter into contracts; and
- (o) employ consultants to assist in the performance of its functions.

Delegation of functions or powers of heritage resources authorities

26. (1) Subject to subsection (3), the Minister or MFC, as the case may be, may make regulations to enable a heritage resources authority to delegate in writing any of its functions or powers under this Act to all or any of the following:

- (a) In the case of SAHRA, any member of the Council;
- (b) in the case of a provincial heritage resources authority, any member of its council;
- (c) a committee or any member of a committee;
- (d) any employee, heritage inspector, volunteer or other representative of the authority concerned;
- (e) specified office bearers or members of a conservation body registered with it in terms of section 25(1)(b);
- (f) in the case of SAHRA, a provincial heritage resources authority, provincial government, local authority, and any other authority which shows competence to perform such functions, by agreement with such authority;
- (g) in the case of a provincial heritage resources authority, a local authority or any other body which is competent to perform such functions, by agreement with such authority or body.

(2) A power delegated under subsection (1), when exercised by the delegate, shall for the purposes of this Act be deemed to be exercised by the heritage resources authority concerned: Provided that a delegate shall be held accountable to the heritage resources authority for all actions performed by him, her or it during the period of delegation.

(3) A heritage resources authority may not delegate power to do any of the following:

- (a) Delegate any of its functions or powers under this section;
- (b) make a recommendation to the Minister or MEC in terms of this Act;
- (c) borrow money under section 21(5)(a);
- (d) acquire or dispose of real property under section 21(5)(b) or (c); or
- (e) adopt any statement of general policy or conservation management plan under section 47. 5

(4) A delegation under this section shall be revocable at will and no such delegation shall prevent the exercise of any power by the heritage resources authority: Provided that the delegation of any power to a provincial heritage resources authority in terms of an agreement under subsection (1)(f) shall only be revoked by SAIIRA with the consent of the Minister, after SAHRA has consulted such provincial heritage resources authority. 10

CHAPTER II

PROTECTION AND MANAGEMENT OF HERITAGE RESOURCES

Part 1: Formal protections

National heritage sites and provincial heritage sites 15

27. (1) SAIIRA must identify those places with qualities so exceptional that they are of special national significance in terms of the heritage assessment criteria set out in section 3(2) and prescribed under section 6(1) and (2), and must investigate the desirability of their declaration as national heritage sites.

(2) A provincial heritage resources authority must identify those places which have special qualities which make them significant in the context of the province or a region in terms of the heritage assessment criteria set out in section 3(2) and prescribed under section 6(1) and (2) and must investigate the desirability of their declaration as provincial heritage sites. 20

(3) Any person may submit a nomination to SAHRA for a place to be declared a national heritage site or to the provincial heritage resources authority for a place to be declared a provincial heritage site. The heritage resources authority concerned may prescribe the format and procedures for such nominations. 25

(4) A written motivation for the declaration of a place as a heritage site must be prepared and kept on record by the heritage resources authority. 30

(5) SAHRA may, by notice in the *Gazette*, declare any place referred to in subsection (1) to be a national heritage site.

(6) A provincial heritage resources authority may, by notice in the *Provincial Gazette*, declare any place referred to in subsection (2) and described in the notice to be a provincial heritage site. 35

(7) The heritage resources authority concerned may, by similar notice—

- (a) amend any notice published under subsection (5) or (6); or
- (b) withdraw any notice published under subsection (5) or (6) or paragraph (a) of this subsection.

(8) Before declaration of a place as a heritage site, or amendment or withdrawal of a notice under subsection (7), the heritage resources authority 40

- (a) must notify the owner;
 - (b) must notify the mortgage holder, the occupier and any other person with a registered interest in the property;
 - (c) must notify all conservation bodies which have, in terms of section 25(1)(b), registered their interest in the geographical area in which the proposed heritage site is situated, and give them at least 60 days to make submissions regarding the proposed declaration, amendment or withdrawal, and in the case of the owner, to propose conditions under which the action will be acceptable. 45
- All submissions must be considered by the heritage resources authority before a final decision is made; and 50

(d) before notifying the owner as provided in paragraph (a), must give to the owner reasonable opportunity for representations or submissions to be made in regard to the proposed notification.

(9) A heritage resources authority may at any time withdraw a notice which it has served in terms of subsection (8)(a). 5

(10) For the purposes of subsections (15) to (22), a place shall be deemed to be protected as a heritage site for six months from the date of service of a notice under subsection (8)(a) or until the notice is withdrawn or the place is declared to be a heritage site, whichever is the shorter period.

(11) Subject to subsection (12), if the owner objects to the proposed declaration of a place or proposes conditions which the heritage resources authority reasonably considers to be unacceptable, the heritage resources authority may, prior to the expiry of the notice in terms of subsection (10), renew a notice under subsection (8)(a), whereupon the protection under subsection (10) shall be extended for a further six months. If during this time consultation between the heritage resources authority and the owner fails to lead to the withdrawal of the owner's objection or the proposal of acceptable conditions, the heritage resources authority may declare the place to be a heritage site. 10 15

(12) The Minister, on the advice of SAHRA, must prescribe circumstances in which the State, a local authority or a supported body may object to the declaration as a heritage site of a place which it owns or controls. 20

(13) SAIIRA must inform the provincial heritage resources authority, the provincial planning authority and the local authority within whose area of jurisdiction a national heritage site falls, within 30 days of its declaration.

(14) A provincial heritage resources authority must inform SAHRA, the provincial planning authority and the local authority within whose area of jurisdiction a provincial heritage site falls, within 30 days of its declaration. 25

(15) SAIIRA is responsible for the protection of national heritage sites in accordance with the provisions of this section.

(16) A provincial heritage resources authority is responsible for the protection of provincial heritage sites in accordance with the provisions of this section. 30

(17) Except in cases where the heritage resources authority considers it inappropriate, all heritage sites must be marked with a badge indicating their status.

(18) No person may destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of any heritage site without a permit issued by the heritage resources authority responsible for the protection of such site. 35

(19) The responsible heritage resources authority may make regulations pertaining to heritage sites under its control, or to any other heritage site with the consent of the owner of that site—

(a) safeguarding heritage sites from destruction, damage, disfigurement, excavation or alteration; 40

(b) regulating the conditions of use of any heritage site or the conditions for any development thereof;

(c) regulating the admission of members of the public to a heritage site, and the fees payable for such admission. 45

(20) Any branch of the State or supported body which is the owner of a heritage site must maintain such site according to a minimum standard and according to a procedure prescribed by the responsible heritage resources authority after consultation with the relevant Departments of Works.

(21) The responsible heritage resources authority may, by agreement with the owner of a heritage site— 50

(a) conserve or improve any heritage site;

(b) construct fences, walls or gates around or on a heritage site;

(c) acquire or construct and maintain an access road to a heritage site over any land, and construct upon such land fences, walls or gates; or 55

(d) erect signs on or near a heritage site.

(22) No person may damage any fence, wall or gate constructed or sign erected by a heritage resources authority in terms of subsection (21).

(23) (a) All reproduction rights either in two or three dimensions in respect of a heritage site, subject to any existing rights and the agreement of the owner of such site, belong to the State and vest in the heritage resources authority responsible for the protection of such site or, by agreement, with the authority or public institution responsible for the management of such site. 5

(b) Subject to the provisions of paragraph (a), no person other than the owner of the site may make such reproduction for profit without a permit issued by SAHRA or a provincial heritage resources authority, as the case may be, which may prescribe the fees payable in respect of such reproduction and must deposit such fees in a trust fund dedicated to the conservation of such site or of heritage resources in general. 10

Protected areas

28. (1) SAHRA may, with the consent of the owner of an area, by notice in the *Gazette* designate as a protected area—

(a) such area of land surrounding a national heritage site as is reasonably necessary to ensure the protection and reasonable enjoyment of such site, or to protect the view of and from such site; or 15

(b) such area of land surrounding any wreck as is reasonably necessary to ensure its protection; or

(c) such area of land covered by a mine dump.

(2) A provincial heritage resources authority may, with the consent of the owner of an area, by notice in the *Provincial Gazette* designate as a protected area— 20

(a) such area of land surrounding a provincial heritage site as is reasonably necessary to ensure the protection and reasonable enjoyment of such site, or to protect the view of and from such site; or

(b) such area of land surrounding any archaeological or palaeontological site or meteorite as is reasonably necessary to ensure its protection. 25

(3) No person may damage, disfigure, alter, subdivide or in any other way develop any part of a protected area unless, at least 60 days prior to the initiation of such changes, he or she has consulted the heritage resources authority which designated such area in accordance with a procedure prescribed by that authority. 30

(4) With regard to an area of land covered by a mine dump referred to in subsection (1)(c) SAHRA must make regulations providing for the protection of such areas as are seen to be of national importance in consultation with the owner, the Minister of Minerals and Energy and interested and affected parties within the mining community.

(5) A heritage resources authority may make regulations providing for specific protections for any protected area which it has designated, including the prohibition or control of specified activities by any person in the designated area. 35

(6) A local authority may, with the agreement of the heritage resources authority which designated a protected area, make provision in its town planning scheme or in by-laws for the management of such area. 40

Provisional protection

29. (1) SAHRA, or a provincial heritage resources authority, may, subject to subsection (4), by notice in the *Gazette* or the *Provincial Gazette*, as the case may be—

(a) provisionally protect for a maximum period of two years any— 45

(i) protected area;

(ii) heritage resource, the conservation of which it considers to be threatened and which threat it believes can be alleviated by negotiation and consultation; or

(iii) heritage resource, the protection of which SAHRA or the provincial heritage resources authority wishes to investigate in terms of this Act; 50
and

(b) withdraw any notice published under paragraph (a).

(2) A local authority may, subject to subsection (4), by notice in the *Provincial Gazette*—

- (a) provisionally protect for a maximum period of three months any place which it considers to be conservation-worthy, the conservation of which the local authority considers to be threatened and which threat it believes can be alleviated by negotiation and consultation; and
- (b) withdraw any notice published under paragraph (a): 5
 Provided that it notifies the provincial heritage resources authority within seven days of such provisional protection.
- (3) A provincial heritage resources authority may, by notice in the *Provincial Gazette*, revoke a provisional protection by a local authority under subsection (2) or provisionally protect a place concerned in accordance with subsection (1). 10
- (4) A heritage resources authority or a local authority may not provisionally protect any heritage resource unless it has notified the owner of the resource in writing of the proposed provisional protection.
- (5) A heritage resource shall be deemed to be provisionally protected for 30 days from the date of service of a notice under subsection (4) or until the notice is withdrawn or the resource is provisionally protected by notice in the *Gazette* or the *Provincial Gazette*, whichever is the shorter period. 15
- (6) A heritage authority or a local authority may at any time withdraw a notice which it has issued under subsection (4).
- (7) SAHRA shall inform the relevant provincial heritage authority and local authority within 30 days of the publication or withdrawal of a notice under subsection (1). 20
- (8) A provincial heritage resources authority shall inform the relevant local authority within 30 days of the publication or withdrawal of a notice under subsection (1).
- (9) A local authority shall inform the provincial heritage authority of the withdrawal of a notice under subsection (2)(b). 25
- (10) No person may damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of a provisionally protected place or object without a permit issued by a heritage resources authority or local authority responsible for the provisional protection.

Heritage Registers 30

- 30.** (1) A provincial heritage resources authority must compile and maintain a heritage register listing the heritage resources in the province which it considers to be conservation-worthy in terms of the heritage assessment criteria set out in section 3(3) and prescribed under section 7.
- (2) Subject to subsection (7), a provincial heritage resources authority may, by notice in the *Provincial Gazette*, list a heritage resource or amend or delete an entry in a heritage register. 35
- (3) Heritage resources must be listed in accordance with—
- (a) the sub-categories of Grade II and Grade III heritage resources prescribed under section 7, if any; 40
- (b) the areas of jurisdiction of local authorities; and
- (c) any additional categories prescribed by the provincial heritage resources authority in consultation with SAHRA.
- (4) A provincial heritage resources authority must prescribe the procedure and information required for— 45
- (a) the nomination of a resource for listing in a heritage register; and
- (b) the compilation of an inventory of heritage resources referred to in subsection (5),
- which shall require at least compliance with such minimum standards as may be prescribed by SAHRA for the recording of information under section 39. 50
- (5) At the time of the compilation or revision of a town or regional planning scheme or a spatial development plan, or at any other time of its choosing, or at the initiative of a provincial heritage resources authority where in the opinion of a provincial heritage resources authority the need exists, a planning authority shall compile an inventory of the heritage resources which fall within its area of jurisdiction and submit such inventory to the relevant provincial heritage resources authority, which shall list in the heritage register those heritage resources which fulfil the assessment criteria under subsection (1). 55
- (6) A provincial heritage resources authority may approve an inventory of heritage resources submitted to it by any person for listing in the heritage register. 60

(7) A provincial heritage resources authority shall not list a place in a heritage register without having consulted the owner of such place regarding *inter alia* the provisions to be established under subsection (11) for the protection of the place.

(8) The MEC may, after consultation with the MEC for local government, prescribe the process of consultation referred to in subsection (7). 5

(9) On publication of a notice in the *Provincial Gazette* concerning the listing in the heritage register of a place within its area of jurisdiction, or the amendment or deletion of an entry for such place, a local authority must notify the owner of such place.

(10) A local authority shall notify SAHRA and the provincial heritage resources authority when a place within its area of jurisdiction which is listed in the heritage register is destroyed, whereupon the provincial heritage resources authority shall record the destruction of the place against the entry in the heritage register for that place, and SAHRA shall record such destruction in the inventory of the national estate. 10

(11) Within six months of the publication of a notice in the *Provincial Gazette* concerning the inclusion in the heritage register of a place falling within its area of jurisdiction, every local authority must make provision for the protection of such place through the provisions of its planning scheme or by-laws under this Act: Provided that any such protective provisions shall be jointly approved by the provincial heritage resources authority, the relevant local authority and the provincial planning authority, and provided further that— 15

(a) the special consent of the local authority shall be required for any alteration to or development affecting a place listed in the heritage register; 20

(b) the local authority must, prior to the consideration of an application under paragraph (a), notify any conservation bodies which have, in terms of section 25(1)(b), registered their interest in the geographical area or type of property concerned and give them a reasonable period in which to register an objection or make other representations with respect to the application; 25

(c) in assessing an application under paragraph (a), the local authority shall consider—

(i) the cultural significance of the place and how this could be affected by the proposed alteration or development; and 30

(ii) any objection or representations under paragraph (b);

(d) where the local authority resolves to approve an application under paragraph (a) which would materially affect the cultural significance of the place and an objection to such approval has been registered under paragraph (b), unless the conservation body concerned withdraws such objection, the objection shall be deemed to be an appeal in terms of section 49 and the local authority shall submit the application and all relevant information to the relevant appeal body; and 35

(e) in the event of any alteration or development of a place listed in a heritage register being undertaken without the consent of the local authority, the local authority may require the owner to stop such work instantly and restore the site to its previous condition within a specified period. If the owner fails to comply with the local authority's requirements the local authority shall have the right to carry out such restoration work itself and recover the cost thereof from the owner. 40 45

(12) A provincial heritage resources authority or a local authority within whose area of jurisdiction such site is located may provisionally protect any place in an inventory referred to in subsections (5) and (6): Provided that such provisional protection shall be withdrawn when the place is listed in the heritage register. 50

(13) A local authority may mark any place falling within its area of jurisdiction listed in a heritage register with a badge indicating its status.

(14) Inclusion of a place in a heritage register shall not exempt any person from complying with the provisions of sections 35 and 36.

Heritage areas 55

31. (1) A planning authority must at the time of revision of a town or regional planning scheme, or the compilation or revision of a spatial plan, or at the initiative of the provincial heritage resources authority where in the opinion of the provincial heritage

resources authority the need exists, investigate the need for the designation of heritage areas to protect any place of environmental or cultural interest.

(2) Where the provincial heritage resources authority is of the opinion that the need exists to protect a place of environmental or cultural interest as a heritage area, it may request a planning authority to investigate its designation in accordance with proposals submitted by the provincial heritage resources authority with its request. The planning authority must inform the provincial heritage resources authority within 60 days of receipt of such a request whether it is willing or able to comply with the request. 5

(3) Where the planning authority informs the provincial heritage resources authority that it is willing and able, the provincial heritage resources authority must assist the planning authority to investigate the designation of the place as a heritage area. 10

(4) Where the planning authority does not so inform the provincial heritage resources authority, or informs the provincial heritage resources authority that it is not so willing and able, the provincial heritage resources authority may investigate the designation of the place as a heritage area and, with the approval of the MEC, designate such place to be a heritage area by notice in the *Provincial Gazette*. 15

(5) A local authority may, by notice in the *Provincial Gazette*, designate any area or land to be a heritage area on the grounds of its environmental or cultural interest or the presence of heritage resources, provided that prior to such designation it shall consult—

(a) the provincial heritage resources authority; and 20

(b) owners of property in the area and any affected community,

regarding *inter alia* the provisions to be established under subsection (7) for the protection of the area.

(6) The MEC may, after consultation with the MEC responsible for local government, publish regulations setting out the process of consultation referred to in subsection (5). 25

(7) A local authority must provide for the protection of a heritage area through the provisions of its planning scheme or by-laws under this Act, provided that any such protective provisions shall be jointly approved by the provincial heritage resources authority, the provincial planning authority and the local authority, and provided further that— 30

(a) the special consent of the local authority shall be required for any alteration or development affecting a heritage area;

(b) in assessing an application under paragraph (a) the local authority must consider the significance of the area and how this could be affected by the proposed alteration or development; and 35

(c) in the event of any alteration or development being undertaken in a heritage area without the consent of the local authority, it shall have the power to require the owner to stop such work instantly and restore the site to its previous condition within a specified period. If the owner fails to comply with the requirements of the local authority, the local authority shall have the right to carry out such restoration work itself and recover the cost thereof from the owner. 40

(8) A local authority may erect signage indicating its status at or near a heritage area.

(9) Particular places within a heritage area may, in addition to the general provisions governing the area, be afforded further protection in terms of this Act or other heritage legislation. 45

Heritage objects

32. (1) An object or collection of objects, or a type of object or list of objects, whether specific or generic, that is part of the national estate and the export of which SAIIRA deems it necessary to control, may be declared a heritage object, including 50

(a) objects recovered from the soil or waters of South Africa, including archaeological and palaeontological objects, meteorites and rare geological specimens;

(b) visual art objects;

(c) military objects; 55

(d) numismatic objects;

- (e) objects of cultural and historical significance;
 - (f) objects to which oral traditions are attached and which are associated with living heritage;
 - (g) objects of scientific or technological interest;
 - (h) books, records, documents, photographic positives and negatives, graphic material, film or video or sound recordings, excluding those that are public records as defined in section 1(xiv) of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996), or in a provincial law pertaining to records or archives; and 5
 - (i) any other prescribed category. 10
- (2) For the purposes of this section, an object within a type of objects declared to be a heritage object is deemed to be a heritage object.
- (3) Before declaring any object contemplated in subsection (1) as a heritage object, SAHRA may give to the owner such prior opportunity for representations or submissions to be made in regard to the proposed declaration as may be practicable in the circumstances and in such manner as may be prescribed. Nothing herein contained shall oblige SAHRA to give such prior opportunity if the circumstances militate against this. 15
- (4) SAHRA with the approval of the Minister may, by notice in the *Gazette*—
- (a) declare an object, or a collection thereof, or a type of object or list of objects, whether specific or generic, to be a heritage object; 20
 - (b) amend any notice published under paragraph (a); or
 - (c) withdraw any notice published under paragraph (a) or amended under paragraph (b).
- (5) SAIIRA may not exercise its power under subsection (4) unless— 25
- (a) in the case of a specific object or collection, it has served on the owner a notice of its intention and has given him or her at least 60 days to lodge an objection or suggest reasonable conditions regarding the care and custody of such object under which such declaration is acceptable; or
 - (b) in the case of a type of objects, it has— 30
 - (i) published a notice of provisional declaration in the *Gazette*;
 - (ii) by public advertisement and any other means it considers appropriate, made known publicly the effect of the declaration and its purpose; and
 - (iii) invited any interested person who might be adversely affected to make submissions to or lodge objections with SAIIRA within 60 days from the date of the notice, 35
- and has considered all such submissions and objections.
- (6) An object or collection shall be deemed to be protected as a heritage object for six months from the date of service or publication of a notice under subsection (5)(a) or (5)(b)(i), or until such notice is withdrawn or the object or collection or type of objects is declared to be a heritage object, whichever is the shorter period. 40
- (7) SAHRA must maintain a register of heritage objects in which all objects, collections of objects and types of objects which have been declared heritage objects must be listed.
- (a) The register shall be in two parts: 45
 - (i) Part I: Heritage objects listed by type.
 - (ii) Part II A: Specific heritage objects as listed in the inventory of a public museum in South Africa or otherwise displayed or kept in secure conditions.
 - (iii) Part II B: Other specific heritage objects. 50
 - (b) SAHRA may prescribe the further division of the parts of the register into categories or other subdivisions.
- (8) SAHRA must make available to the public, subject to subsection (9), a summary of information contained in the register.
- (9) Where it is necessary to ensure the proper protection of a heritage object which is entered in the register, no information which may identify the location of the object must be accessible to any person except with the express consent of SAHRA, for so long as SAHRA may determine. 55

(10) SAIIRA may designate any person or any institution in South Africa as an expert examiner for the purposes of this section, on the basis of his, her or its special knowledge.

(11) SAHRA may provide to the owner or custodian of a heritage object listed in Part II of the register of heritage objects a certificate or badge indicating its status. 5

(12) The owner of a heritage object listed in Part II of the register of heritage objects must notify SAHRA of the name and address of the new owner when such object is sold or otherwise alienated and must provide the new owner or custodian with any certificate or badge under subsection (11) relating to such a heritage object.

(13) No person may destroy, damage, disfigure or alter any heritage object, or disperse any collection which is listed in Part II of the register, without a permit issued by SAHRA. 10

(14) SAHRA may make regulations relating to the registration of dealers in heritage objects and the control of trade in heritage objects.

(15) It is the responsibility of the owner or custodian of a heritage object listed in Part II of the register of heritage objects, to keep the heritage object in good condition and in a secure place. 15

(16) The owner or custodian of a heritage object, listed in Part II of the register of heritage objects, must immediately report to SAHRA any loss of or damage to such a heritage object or any part thereof upon discovery of such loss or damage. 20

(17) No person may carry out any work of restoration or repair of a heritage object, listed in Part II of the register of heritage objects, without a permit issued by a duly authorised representative of SAIIRA.

(18) On application by the owner or custodian of a heritage object listed in Part II of the register of heritage objects, SAIIRA may at its discretion assist in funding any restoration or repair work undertaken by a restoration or repair craftsman approved by SAHRA. 25

(19) No person may export or attempt to export from South Africa any heritage object without a permit issued by SAHRA.

(20) No heritage object may be removed from South Africa other than through a customs port of entry, and the relevant export permit issued under subsection (19) or certificate of exemption issued under subsection (32) must be produced to a custom officer before removal from South Africa is effected or allowed. 30

(21) An application for such an export permit must be made in the manner and contain such information as prescribed by SAHRA. 35

(22) On receipt of an application to export a heritage object SAHRA may refer it to one or more expert examiners, who must submit to SAHRA a written report on the application.

(23) SAHRA must consider the report and

(a) issue a permit to export the object concerned, subject to such conditions, if any, as SAHRA considers necessary; or

(b) refuse to issue a permit. 40

(24) In considering an application to export any object of a type listed in Part I of the register of heritage objects permanently, an expert examiner and SAHRA must consider whether the object— 45

(a) is of outstanding significance by reason of its close association with South African history or culture, its aesthetic qualities, or its value in the study of the arts or sciences; and

(b) is of such a degree of national importance that its loss to South Africa would significantly diminish the national heritage, 50

and if satisfied that the object fulfils both these criteria, may not recommend the issue of a permit, or issue a permit, as the case may be, to export the object permanently.

(25) In the event of SAIIRA refusing to issue an export permit the applicant may, within 30 days after such refusal, by written notice require the compulsory purchase of the heritage object to which such refusal relates. 55

(26) On receipt of a notification under subsection (25) SAHRA must—

(a) if it is of the opinion that a fair offer to purchase the object concerned might be made by a person or public authority in South Africa within the following six months, establish a delay period of not less than two months and not more

- than six months during which an export permit may not be issued in respect of such object; or
- (b) on its own behalf or on behalf of a public institution or authority in South Africa or a person who will undertake to keep the object in the country, offer to purchase the object either by an immediate cash payment or by payment of compensation in such manner as the Minister in consultation with the Minister of Finance may determine; or
- (c) in any other case, issue a permit to export the object concerned.
- (27) Where SAHRA establishes a delay period under subsection (26)(a) in respect of a heritage object, it—
- (a) must give written notice of the delay period to the applicant, and the Minister;
- (b) must advise such institutions and public authorities in South Africa as it sees fit of the delay period and of the object in respect of which such delay period was established;
- (c) may by public advertisement or any other means it deems appropriate make known the delay period and the object in respect of which it was established; and
- (d) may stipulate that the heritage object concerned is deposited on temporary loan with a specified South African museum or public authority for the duration of the delay period.
- (28) SAHRA, in consultation with the Minister, may extend a delay period established under subsection (26)(a) for a maximum period of two years.
- (29) In the event that—
- (a) during a delay period established under subsection (26)(a), an offer to purchase the heritage object concerned is made and the applicant and a public authority or person making such offer cannot agree as to the amount of a fair cash offer; or
- (b) SAHRA and the applicant cannot agree as to the amount of a fair offer or compensation under subsection (26)(b),
- such dispute must be arbitrated by a panel appointed by the Minister, consisting of equal representatives of dealers in heritage objects, museums and collectors of heritage objects, which must determine the amount of a fair cash offer to purchase such heritage object and must notify the parties concerned and SAHRA thereof.
- (30) Where a delay period established under subsection (26)(a) expires without a fair offer being made to purchase the heritage object concerned, SAHRA must forthwith on the request of the applicant issue a permit to export such heritage object.
- (31) Where a delay period established under subsection (26)(a) expires and SAHRA is satisfied that a fair offer to purchase the heritage object concerned has been made, SAHRA may not issue a permit to export such heritage object.
- (32) A person who intends to import an object which is of a type listed in Part I of the register of heritage objects, for temporary purposes or in circumstances in which the person may subsequently wish to export the object, may apply to SAHRA for a certificate of exemption authorising the export of the object concerned for the period specified in the certificate.

Part 2: General protections

Import of objects protected in terms of laws of foreign states

- 33.** (1) No person may import into South Africa any foreign cultural property other than through a customs port of entry, and the export permit or other permission issued in the country of origin of such object must be produced to a customs officer before import to South Africa is effected or allowed.
- (2) After a cultural property agreement between South Africa and a reciprocating state comes into force, no person may import into South Africa any foreign cultural property that has been illegally exported from a reciprocating state.
- (3) A customs officer who has reason to believe that a person is attempting to import an object in contravention of subsection (1) or (2), may withhold the object concerned and such object must be kept in the custody of SAHRA until such time, not exceeding six months, as an investigation into the provenance of such object is completed.

(4) SAITRA may, with the consent of the Minister and the Minister of Foreign Affairs, liaise and co-operate with the authority responsible for the protection of cultural property in any reciprocating state and may enter into agreements with any such authority with regard to the return to the country of origin of any heritage object or cultural property which is illegally imported into South Africa or the reciprocating state, whether specifically or in general. 5

Structures

34. (1) No person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority. 10

(2) Within three months of the refusal of the provincial heritage resources authority to issue a permit, consideration must be given to the protection of the place concerned in terms of one of the formal designations provided for in Part 1 of this Chapter.

(3) The provincial heritage resources authority may at its discretion, by notice in the *Provincial Gazette*, make an exemption from the requirements of subsection (1) within a defined geographical area, or for certain defined categories of site within a defined geographical area, provided that it is satisfied that heritage resources falling into the defined area or category have been identified and are adequately provided for in terms of the provisions of Part 1 of this Chapter. 15

(4) Should the provincial heritage resources authority believe it to be necessary it may, following a three-month notice period published in the *Provincial Gazette*, withdraw or amend a notice under subsection (3). 20

Archaeology, palaeontology and meteorites

35. (1) Subject to the provisions of section 8, the protection of archaeological and palaeontological sites and material and meteorites is the responsibility of a provincial heritage resources authority: Provided that the protection of any wreck in the territorial waters and the maritime cultural zone shall be the responsibility of SAHRA. 25

(2) Subject to the provisions of subsection (8)(a), all archaeological objects, palaeontological material and meteorites are the property of the State. The responsible heritage authority must, on behalf of the State, at its discretion ensure that such objects are lodged with a museum or other public institution that has a collection policy acceptable to the heritage resources authority and may in so doing establish such terms and conditions as it sees fit for the conservation of such objects. 30

(3) Any person who discovers archaeological or palaeontological objects or material or a meteorite in the course of development or agricultural activity must immediately report the find to the responsible heritage resources authority, or to the nearest local authority offices or museum, which must immediately notify such heritage resources authority. 35

(4) No person may, without a permit issued by the responsible heritage resources authority 40

(a) destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite;

(b) destroy, damage, excavate, remove from its original position, collect or own any archaeological or palaeontological material or object or any meteorite;

(c) trade in, sell for private gain, export or attempt to export from the Republic any category of archaeological or palaeontological material or object, or any meteorite; or 45

(d) bring onto or use at an archaeological or palaeontological site any excavation equipment or any equipment which assist in the detection or recovery of metals or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites. 50

(5) When the responsible heritage resources authority has reasonable cause to believe that any activity or development which will destroy, damage or alter any archaeological or palaeontological site is under way, and where no application for a permit has been submitted and no heritage resources management procedure in terms of section 38 has been followed, it may— 55

- (a) serve on the owner or occupier of the site or on the person undertaking such development an order for the development to cease immediately for such period as is specified in the order;
- (b) carry out an investigation for the purpose of obtaining information on whether or not an archaeological or palaeontological site exists and whether mitigation is necessary;
- (c) if mitigation is deemed by the heritage resources authority to be necessary, assist the person on whom the order has been served under paragraph (a) to apply for a permit as required in subsection (4); and
- (d) recover the costs of such investigation from the owner or occupier of the land on which it is believed an archaeological or palaeontological site is located or from the person proposing to undertake the development if no application for a permit is received within two weeks of the order being served.

(6) The responsible heritage resources authority may, after consultation with the owner of the land on which an archaeological or palaeontological site or a meteorite is situated, serve a notice on the owner or any other controlling authority, to prevent activities within a specified distance from such site or meteorite.

(7) (a) Within a period of two years from the commencement of this Act, any person in possession of any archaeological or palaeontological material or object or any meteorite which was acquired other than in terms of a permit issued in terms of this Act, equivalent provincial legislation or the National Monuments Act, 1969 (Act No. 28 of 1969), must lodge with the responsible heritage resources authority lists of such objects and other information prescribed by that authority. Any such object which is not listed within the prescribed period shall be deemed to have been recovered after the date on which this Act came into effect.

(b) Paragraph (a) does not apply to any public museum or university.

(c) The responsible authority may at its discretion, by notice in the *Gazette* or the *Provincial Gazette*, as the case may be, exempt any institution from the requirements of paragraph (a) subject to such conditions as may be specified in the notice, and may by similar notice withdraw or amend such exemption.

(8) An object or collection listed under subsection (7)—

- (a) remains in the ownership of the possessor for the duration of his or her lifetime, and SAHRA must be notified who the successor is; and
- (b) must be regularly monitored in accordance with regulations by the responsible heritage authority.

Burial grounds and graves

36. (1) Where it is not the responsibility of any other authority, SAHRA must conserve and generally care for burial grounds and graves protected in terms of this section, and it may make such arrangements for their conservation as it sees fit.

(2) SAHRA must identify and record the graves of victims of conflict and any other graves which it deems to be of cultural significance and may erect memorials associated with the grave referred to in subsection (1), and must maintain such memorials.

(3) (a) No person may, without a permit issued by SAHRA or a provincial heritage resources authority

- (a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;
- (b) destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or
- (c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.

(4) SAHRA or a provincial heritage resources authority may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3)(a) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such graves, at the cost of the applicant

and in accordance with any regulations made by the responsible heritage resources authority.

(5) SAHRA or a provincial heritage resources authority may not issue a permit for any activity under subsection (3)(b) unless it is satisfied that the applicant has, in accordance with regulations made by the responsible heritage resources authority— 5

- (a) made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground; and
- (b) reached agreements with such communities and individuals regarding the future of such grave or burial ground.

(6) Subject to the provision of any other law, any person who in the course of development or any other activity discovers the location of a grave, the existence of which was previously unknown, must immediately cease such activity and report the discovery to the responsible heritage resources authority which must, in co-operation with the South African Police Service and in accordance with regulations of the responsible heritage resources authority 10 15

- (a) carry out an investigation for the purpose of obtaining information on whether or not such grave is protected in terms of this Act or is of significance to any community; and
- (b) if such grave is protected or is of significance, assist any person who or community which is a direct descendant to make arrangements for the exhumation and re-interment of the contents of such grave or, in the absence of such person or community, make any such arrangements as it deems fit. 20

(7) (a) SAHRA must, over a period of five years from the commencement of this Act, submit to the Minister for his or her approval lists of graves and burial grounds of persons connected with the liberation struggle and who died in exile or as a result of the action of State security forces or *agents provocateur* and which, after a process of public consultation, it believes should be included among those protected under this section. 25

(b) The Minister must publish such lists as he or she approves in the *Gazette*.

(8) Subject to section 56(2), SAHRA has the power, with respect to the graves of victims of conflict outside the Republic, to perform any function of a provincial heritage resources authority in terms of this section. 30

(9) SAHRA must assist other State Departments in identifying graves in a foreign country of victims of conflict connected with the liberation struggle and, following negotiations with the next of kin, or relevant authorities, it may re-inter the remains of that person in a prominent place in the capital of the Republic. 35

Public monuments and memorials

37. Public monuments and memorials must, without the need to publish a notice to this effect, be protected in the same manner as places which are entered in a heritage register referred to in section 30.

Heritage resources management 40

38. (1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as

- (a) the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;
- (b) the construction of a bridge or similar structure exceeding 50 m in length; 45
- (c) any development or other activity which will change the character of a site
 - (i) exceeding 5 000 m² in extent; or
 - (ii) involving three or more existing erven or subdivisions thereof; or
 - (iii) involving three or more erven or divisions thereof which have been consolidated within the past five years; or 50
 - (iv) the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;
- (d) the re-zoning of a site exceeding 10 000 m² in extent; or
- (e) any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority, 55

must at the very earliest stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details regarding the location, nature and extent of the proposed development.

(2) The responsible heritage resources authority must, within 14 days of receipt of a notification in terms of subsection (1)—

- (a) if there is reason to believe that heritage resources will be affected by such development, notify the person who intends to undertake the development to submit an impact assessment report. Such report must be compiled at the cost of the person proposing the development, by a person or persons approved by the responsible heritage resources authority with relevant qualifications and experience and professional standing in heritage resources management; or
- (b) notify the person concerned that this section does not apply.

(3) The responsible heritage resources authority must specify the information to be provided in a report required in terms of subsection (2)(a): Provided that the following must be included:

- (a) The identification and mapping of all heritage resources in the area affected;
- (b) an assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7;
- (c) an assessment of the impact of the development on such heritage resources;
- (d) an evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;
- (e) the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;
- (f) if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
- (g) plans for mitigation of any adverse effects during and after the completion of the proposed development.

(4) The report must be considered timeously by the responsible heritage resources authority which must, after consultation with the person proposing the development, decide—

- (a) whether or not the development may proceed;
- (b) any limitations or conditions to be applied to the development;
- (c) what general protections in terms of this Act apply, and what formal protections may be applied, to such heritage resources;
- (d) whether compensatory action is required in respect of any heritage resources damaged or destroyed as a result of the development; and
- (e) whether the appointment of specialists is required as a condition of approval of the proposal.

(5) A provincial heritage resources authority shall not make any decision under subsection (4) with respect to any development which impacts on a heritage resource protected at national level unless it has consulted SAHRA.

(6) The applicant may appeal against the decision of the provincial heritage resources authority to the MEC, who—

- (a) must consider the views of both parties; and
- (b) may at his or her discretion
 - (i) appoint a committee to undertake an independent review of the impact assessment report and the decision of the responsible heritage authority; and
 - (ii) consult SAIIRA; and
- (c) must uphold, amend or overturn such decision.

(7) The provisions of this section do not apply to a development described in subsection (1) affecting any heritage resource formally protected by SAIIRA unless the authority concerned decides otherwise.

(8) The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environment Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent. 5 10

(9) The provincial heritage resources authority, with the approval of the MEC, may, by notice in the *Provincial Gazette*, exempt from the requirements of this section any place specified in the notice.

(10) Any person who has complied with the decision of a provincial heritage resources authority in subsection (4) or of the MEC in terms of subsection (6) or other requirements referred to in subsection (8), must be exempted from compliance with all other protections in terms of this Part, but any existing heritage agreements made in terms of section 42 must continue to apply. 15

Part 3: Management

Inventory of national estate 20

39. (1) For the purposes of the consolidation and co-ordination of information on heritage resources, SAHRA must compile and maintain an inventory of the national estate, which must be in the form of a data base of information on heritage resources which it considers to be worthy of conservation, including—

- (a) all places and objects with which it and its predecessors have been involved; 25
 - (b) all places and objects protected through the publication of notices in the *Gazette* or *Provincial Gazette*, whether in terms of this Act or provincial legislation;
 - (c) places and objects subject to general protections in terms of this Act or provincial legislation for the management of heritage resources; and 30
 - (d) any other place and object which it considers to be of interest,
- and for this purpose it must co-ordinate, and may prescribe, national standards for the recording of information by provincial heritage authorities.

(2) Heritage resources must be listed in the inventory in the format and under the categories prescribed by SAHRA. 35

(3) SAHRA may from time to time, after consultation with the relevant provincial heritage resources authority and the local authority concerned, make, amend or delete entries in the inventory: Provided that—

- (a) all places listed in any heritage register must be entered in the inventory; 40
- (b) a local authority must inform SAHRA on the destruction of a place listed in a heritage register, whereupon SAHRA must record such destruction in the inventory.

(4) A provincial heritage resources authority must, within 30 days of the listing of a heritage resource in a heritage register or the amendment or deletion of an entry, notify SAHRA and provide details of the listing, amendment or deletion. 45

(5) A provincial heritage resources authority must, at regular intervals in the manner prescribed by SAHRA, provide SAHRA with any information about heritage resources in the province which would increase the volume and detail of information held in the inventory.

(6) Any person has access to the inventory at the offices of SAHRA: Provided that information may be withheld if its disclosure may impact negatively on the privacy or economic interests of the owner or any person with an interest in a property, or a potential investor, or on the continued conservation of a heritage resource. 50

(7) SAHRA must at regular intervals, publish a summary and analysis of the inventory of the national estate. 55

National heritage resources assistance programme

40. (1) Subject to section 21, SAHRA may provide financial assistance in the form of

a grant or a loan to an approved body or an individual for any project which contributes to the purpose, and is in accordance with the principles as prescribed.

(2) SAHRA must prescribe the procedures for applications for approval and granting of financial assistance and the criteria for the assessment of projects.

(3) A loan may be approved in such amount and subject to such terms and conditions as SAHRA determines: Provided that a loan must be 5

(a) at the rate of interest for the time being fixed by the Minister, in consultation with the Minister of Finance; or

(b) if the Minister, in consultation with the Minister of Finance, so approves—

(i) at the rate of interest fixed by the Minister in respect of that loan; or 10

(ii) without interest.

(4) Any financial assistance in terms of this section is to be provided out of a fund reserved by SAHRA for this purpose, which shall be called the National Heritage Resources Fund.

Restitution of heritage objects 15

41. (1) When a community or body with a *bona fide* interest makes a claim for the restitution of a movable heritage resource which is part of the national estate and is held by or curated in a publicly funded institution, the institution concerned must enter into a process of negotiation with the claimants regarding the future of the resource.

(2) The Minister may make regulations regarding the establishment of *bona fide* interest in terms of subsection (1) and the conditions under which such claims may be made. 20

(3) In the absence of an agreement on a heritage resource which is the subject of negotiations in terms of subsection (1), the claimants or the institution concerned may appeal to the Minister, who must, with due regard to subsection 5(4) and in a spirit of compromise 25

(a) mediate between the parties concerned with the aim of finding a mutually satisfactory solution; and

(b) in the absence of agreement between the parties concerned, make a final decision on the future of the resource, including any conditions necessary to ensure its safety, the conditions of access of the claimants or the institution or any other interested party to the resource, or any other appropriate conditions. 30

Heritage agreements

42. (1) (a) SAHRA, or a provincial heritage resources authority may negotiate and agree with a provincial authority, local authority, conservation body, person, or community for the execution of a heritage agreement to provide for the conservation, improvement or presentation of a clearly defined heritage resource: Provided that the consent of the owner of such resource must be given. 35

(b) Such a heritage agreement must be in the form of a binding contract.

(2) A heritage agreement may include such terms and conditions as the parties think fit, including provision for public access, and provision for financial or other assistance from the heritage authority concerned. 40

(3) Without limiting subsection (2), a heritage agreement may be expressed to have effect in perpetuity or for any specified term, or to terminate upon the happening of a specific event. 45

(4) A heritage agreement may, with the consent of the owner of the resource concerned, be varied or cancelled by agreement between the parties.

(5) The consent of the owner of the resource concerned to the heritage agreement or any variation of the heritage agreement may be given, subject to the inclusion in the heritage agreement of any additional provisions or modified provisions, or to the deletion of such provisions, as the owner giving the consent considers necessary. 50

(6) Nothing in this Act requires a heritage resources authority to negotiate or agree with any person or authority to enter into or execute any heritage agreement.

(7) A heritage agreement in respect of a place attached to the land is binding on the owner of the place, as at the date of execution of the agreement while the agreement remains in force. 55

- (8) The owner of a national heritage site, a provincial heritage site or a place listed in a heritage register may, by a heritage agreement entered into with the heritage resources authority or local authority responsible for the protection of such place, or any person or body approved by such authority, appoint the heritage resources authority or the local authority or the person or body concerned, the guardian of the place. 5
- (9) The heritage agreement referred to in subsection (7) or (8) may provide for—
- (a) the maintenance and management of the place;
 - (b) the custody of the place and the duties of any person who may be employed in connection therewith;
 - (c) the occupation or use of the place by the owner or otherwise; 10
 - (d) the restriction of the right of the owner or occupier to do certain acts or things on or near the place;
 - (e) the facilities of access to be permitted to the public and to persons deputed by the guardian to inspect or maintain the place;
 - (f) the presentation of the place; 15
 - (g) the notice to be given to the guardian in case the owner intends to offer the land on which the place is situated for sale, lease or other disposal, and the right to be reserved to the guardian to have first refusal of such sale, lease or other disposal;
 - (h) the payment of any expenses incurred by the owner or by the guardian in connection with the maintenance of the place; 20
 - (i) any other matter connected with the protection or management of the place which is agreed to by the owner and the guardian;
 - (j) the duration of the agreement, with provision for the earlier termination thereof by any party thereto; and 25
 - (k) the procedure for the resolution of any dispute arising out of the agreement.
- (10) The owner of a place which is under guardianship shall, except as expressly provided by this Act, continue to have the same estate, right, title and interest in and to the place as before.
- (11) Every heritage agreement has effect according to its tenor but subject to the provisions of this Act. Provided that— 30
- (a) the execution of a heritage resources agreement in respect of a heritage resource must not prevent the heritage authority responsible for its protection from exercising any powers in this Act in relation to that resource; and
 - (b) nothing in terms of any heritage agreement shall permit or allow any person to carry out any act contrary to this Act. 35

Incentives

43. (1) On advice from SAHRA the Minister, in concurrence with the Minister of Finance, may publish regulations on financial incentives for the conservation of heritage resources which form part of the national estate, or otherwise promote the purpose of this Act. 40

(2) An MEC or a local authority may in planning schemes or in by-laws under this Act or by any other means provide incentives for the conservation of heritage resources as provided for in subsection (1).

Presentation of protected resources

44. (1) Heritage resources authorities and local authorities must, wherever appropriate, co-ordinate and promote the presentation and use of places of cultural significance and heritage resources which form part of the national estate and for which they are responsible in terms of section 5 for public enjoyment, education, research and tourism, including— 50

- (a) the erection of explanatory plaques and interpretive facilities, including interpretive centres and visitor facilities;
- (b) the training and provision of guides;
- (c) the mounting of exhibitions;
- (d) the erection of memorials; and 55

(e) any other means necessary for the effective presentation of the national estate.

(2) Where a heritage resource which is formally protected in terms of Part 1 of this Chapter is to be presented, the person wishing to undertake such presentation must, at least 60 days prior to the institution of interpretive measures or manufacture of associated material, consult with the heritage resources authority which is responsible for the protection of such heritage resource regarding the contents of interpretive material or programmes. 5

(3) A person may only erect a plaque or other permanent display or structure associated with such presentation in the vicinity of a place protected in terms of this Act in consultation with the heritage resources authority responsible for the protection of the place. 10

Compulsory repair order

45. (1) When the heritage resources authority responsible for the protection of a heritage site considers that such site

(a) has been allowed to fall into disrepair for the purpose of— 15

(i) effecting or enabling its destruction or demolition;

(ii) enabling the development of the designated land; or

(iii) enabling the development of any land adjoining the designated land; or

(b) is neglected to such an extent that it will lose its potential for conservation, the heritage resources authority may serve on the owner an order to repair or maintain such site, to the satisfaction of the heritage resources authority, within a reasonable period of time as specified in the order: Provided that the heritage resources authority must specify only such work as, in its opinion, is necessary to prevent any further deterioration in the condition of the place. 20

(2) Subject to subsection (3), upon failure of the owner to comply with the terms of an order under subsection (1) within the specified time, the authority which served the order may itself take such steps as may be necessary for the repair or maintenance thereof and recover the costs from the owner. 25

(3) If the owner can show good cause, he or she may, within 21 days of the service of a repair order under subsection (1)— 30

(a) apply to the heritage resources authority which served the repair order for the extension of the time specified in the order; or

(b) appeal to the Minister, in the manner prescribed under section 49.

Expropriation

46. (1) The Minister may, on the advice of SAHRA and after consultation with the Minister of Finance, purchase or, subject to compensation, expropriate any property for conservation or any other purpose under this Act if that purpose is a public purpose or is in the public interest. 35

(2) The Expropriation Act, 1975 (Act No. 63 of 1975), applies to all expropriations under this Act, and any reference to the Minister of Public Works in that Act must be read as a reference to the Minister for the purposes of such expropriation. 40

(3) Notwithstanding the provisions of subsection (2), the amount of compensation and the time and manner of payment must be determined in accordance with section 25(3) of the Constitution, and the owner of the property in question must be given a hearing before any property is expropriated. 45

General policy

47. (1) SAHRA and a provincial heritage resources authority—

(a) must, within three years after the commencement of this Act, adopt statements of general policy for the management of all heritage resources owned or controlled by it or vested in it; and 50

(b) may from time to time amend such statements so that they are adapted to changing circumstances or in accordance with increased knowledge; and

(c) must review any such statement within 10 years after its adoption.

(2) Each heritage resources authority must adopt for any place which is protected in terms of this Act and is owned or controlled by it or vested in it, a plan for the management of such place in accordance with the best environmental, heritage 55

conservation, scientific and educational principles that can reasonably be applied taking into account the location, size and nature of the place and the resources of the authority concerned, and may from time to time review any such plan.

(3) A conservation management plan may at the discretion of the heritage resources authority concerned and for a period not exceeding 10 years, be operated either solely by the heritage resources authority or in conjunction with an environmental or tourism authority or under contractual arrangements, on such terms and conditions as the heritage resources authority may determine. 5

(4) Regulations by the heritage resources authority concerned must provide for a process whereby, prior to the adoption or amendment of any statement of general policy or any conservation management plan, the public and interested organisations are notified of the availability of a draft statement or plan for inspection, and comment is invited and considered by the heritage resources authority concerned. 10

(5) A heritage resources authority may not act in any manner inconsistent with any statement of general policy or conservation management plan. 15

(6) All current statements of general policy and conservation management plans adopted by a heritage resources authority must be available for public inspection on request.

CHAPTER III

GENERAL PROVISIONS 20

Part 1: Enforcement, appeals, offences and penalties

Permits

48. (1) A heritage resources authority may prescribe the manner in which an application is made to it for any permit in terms of this Act and other requirements for permit applications, including— 25

- (a) any particulars or information to be furnished in the application and any documents, drawings, plans, photographs and fees which should accompany the application;
- (b) minimum qualifications and standards of practice required of persons making application for a permit to perform specified actions in relation to particular categories of protected heritage resources; 30
- (c) standards and conditions for the excavation and curation of archaeological and palaeontological objects and material and meteorites recovered by authority of a permit;
- (d) the conditions under which, before a permit is issued, a financial deposit must be lodged and held in trust for the duration of the permit or such period as the heritage resources authority may specify, and conditions of forfeiture of such deposit; 35
- (e) conditions for the temporary export and return of objects protected under section 32 or section 35; 40
- (f) the submission of reports on work done under authority of a permit; and
- (g) the responsibilities of the heritage resources authority regarding monitoring of work done under authority of a permit.

(2) On application by any person in the manner prescribed under subsection (1), a heritage resources authority may in its discretion issue to such person a permit to perform such actions at such time and subject to such terms, conditions and restrictions or directions as may be specified in the permit, including a condition— 45

- (a) that the applicant give security in such form and such amount determined by the heritage resources authority concerned, having regard to the nature and extent of the work referred to in the permit, to ensure the satisfactory completion of such work or the curation of objects and material recovered during the course of the work; or 50
- (b) providing for the recycling or deposit in a materials bank of historical building materials; or
- (c) stipulating that design proposals be revised; or 55
- (d) regarding the qualifications and expertise required to perform the actions for which the permit is issued.

(3) A heritage resources authority may at its discretion, in respect of any heritage resource protected by it in terms of the provisions of Chapter II, by notice in the *Gazette* or the *Provincial Gazette*, as the case may be, grant an exemption from the requirement to obtain a permit from it for such activities or class of activities by such persons or class of persons in such circumstances as are specified in the notice. 5

Appeals

49. (1) Regulations by the Minister and the MEC must provide for a system of appeal to the SAHRA Council or a provincial heritage resources council against a decision of a committee or other delegated representative of SAHRA or a provincial heritage resources authority. 10

(2) Anybody wishing to appeal against a decision of the SAHRA Council or the council of a provincial heritage resources authority must notify the Minister or MEC in writing within 30 days. The Minister or MEC shall then appoint an independent tribunal, consisting of three experts, having expertise regarding the matter.

(3) The tribunal contemplated in subsection (2), in considering the appeal referred to it by the Minister or the MEC, must have due regard to 15

- (a) the cultural significance of the heritage resources in question;
- (b) heritage conservation principles; and
- (c) any other relevant factor which is brought to its attention by the appellant or the heritage resources authority. 20

Appointment and powers of heritage inspectors

50. (1) SAHRA or a provincial heritage resources authority may, in writing, appoint heritage inspectors: Provided that if a heritage inspector is a staff member of a government department or supported body, such appointment must only be made by agreement with the Minister or other person in charge of the administration of such department or body. 25

(2) By force of this section, each member of the South African Police Services and each customs and excise officer is deemed to be a heritage inspector.

(3) The heritage resources authority must issue to each heritage inspector, other than a person referred to in subsection (2), an identity card containing a photograph and the signature of the heritage inspector. 30

(4) For the purposes of this section, a reference to an identity card in relation to a person referred to in subsection (2), is a reference to written evidence of the fact that he or she is a member of the bodies referred to in subsection (2).

(5) A person who ceases to be a heritage inspector must forthwith return his or her identity card to the heritage authority concerned. 35

(6) A heritage inspector, other than a customs and excise officer or a member of the South African Police Services in uniform, may not exercise his or her powers in terms of this Act in relation to another person unless the heritage inspector first produces the identity card for inspection by the other person: Provided that if the production of the identity card would endanger the health or safety of the heritage inspector, he or she must produce it as soon as is practicable to do so. 40

(7) Subject to the provisions of any other law, a heritage inspector or any person authorised by a heritage resources authority in writing, may at all reasonable times enter upon any land or premises for the purpose of inspecting any heritage resource protected in terms of the provisions of this Act, or any other property in respect of which the heritage resources authority is exercising its functions and powers in terms of this Act, and may take photographs, make measurements and sketches and use any other means of recording information necessary for the purposes of this Act. 45

(8) A heritage inspector may at any time inspect work being done under a permit issued in terms of this Act and may for that purpose at all reasonable times enter any place protected in terms of this Act. 50

(9) Where a heritage inspector has reasonable grounds to suspect that an offence in terms of this Act has been, is being, or is about to be committed, the heritage inspector may with such assistance as he or she thinks necessary 55

- (a) enter and search any place, premises, vehicle, vessel or craft, and for that purpose stop and detain any vehicle, vessel or craft, in or on which the heritage inspector believes, on reasonable grounds, there is evidence related to that offence;

- (b) confiscate and detain any heritage resource or evidence concerned with the commission of the offence pending any further order from the responsible heritage resources authority; and
- (c) take such action as is reasonably necessary to prevent the commission of an offence in terms of this Act. 5

(10) A heritage inspector may, if there is reason to believe that any work is being done or any action is being taken in contravention of this Act or the conditions of a permit issued in terms of this Act, order the immediate cessation of such work or action pending any further order from the responsible heritage resources authority.

(11) A heritage inspector may require any person who he or she has reason to believe has committed an offence in terms of this Act to supply his or her name and address and reasonable evidence of his or her identity, and may arrest a person who refuses to comply with those requirements. 10

(12) A person

- (a) must comply with a request or requirement lawfully made in terms of this section to the extent that the person is capable of complying with it; 15
- (b) may not knowingly furnish information that is false or misleading; and
- (c) may not hinder or obstruct any heritage inspector in the exercise of his or her powers in terms of this section.

Offences and penalties 20

51. (1) Notwithstanding the provisions of any other law, any person who contravenes—

- (a) sections 27(18), 29(10), 32(13) or 32(19) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 1 of the Schedule; 25
- (b) sections 33(2), 35(4) or 36(3) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 2 of the Schedule;
- (c) sections 28(3) or 34(1) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 3 of the Schedule; 30
- (d) sections 27(22), 32(15), 33(1), 35(6) or 44(3) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 4 of the Schedule;
- (e) sections 27(23)(b), 32(17), 35(3), 36(3) or 51(8) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 5 of the Schedule; 35
- (f) sections 32(13), 32(16), 32(20), 35(7)(a), 44(2), 50(5) or 50(12) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 6 of the Schedule. 40

(2) The Minister, with the concurrence of the relevant MEC, may prescribe a penalty of a fine or of imprisonment for a period not exceeding six months for any contravention or failure to comply with regulations by heritage resources authorities or by-laws by local authorities.

(3) The Minister or the MEC, as the case may be, may make regulations in terms of which the magistrate of the district concerned may 45

- (a) levy admission of guilt fines up to a maximum amount of R10 000 for infringement of the terms of this Act for which such heritage resources authority is responsible; and
- (b) serve a notice upon a person who is contravening a specified provision of this Act or has not complied with the terms of a permit issued by such authority, imposing a daily fine of R50 for the duration of the contravention, subject to a maximum period of 365 days. 50

(4) The Minister may from time to time by regulation adjust the amounts referred to in subsection (3) in order to account for the effect of inflation. 55

(5) Any person who—

- (a) fails to provide any information that is required to be given, whether or not on the request of a heritage resources authority, in terms of this Act;
- (b) for the purpose of obtaining, whether for himself or herself or for any other person, any permit, consent or authority in terms of this Act, makes any statement or representation knowing it to be false or not knowing or believing it to be true; 60

- (c) fails to comply with or performs any act contrary to the terms, conditions, restrictions or directions subject to which any permit, consent or authority has been issued to him or her in terms of this Act;
- (d) obstructs the holder of a permit in terms of this Act in exercising a right granted to him or her by means of such a permit; 5
- (e) damages, takes or removes, or causes to be damaged, taken or removed from a place protected in terms of this Act any badge or sign erected by a heritage authority or a local authority under section 25(2)(j) or section 27(17), any interpretive display or any other property or thing;
- (f) receives any badge, emblem or any other property or thing unlawfully taken or removed from a place protected in terms of this Act; and 10
- (g) within the terms of this Act, commits or attempts to commit any other unlawful act, violates any prohibition or fails to perform any obligation imposed upon him or her by its terms, or who counsels, procures, solicits or employs any other person to do so, 15
- shall be guilty of an offence and upon conviction shall be liable to such maximum penalties, in the form of a fine or imprisonment or both such fine and such imprisonment, as shall be specified in the regulations under subsection (3).
- (6) Any person who believes that there has been an infringement of any provision of this Act, may lay a charge with the South African Police Services or notify a heritage resources authority. 20
- (7) A magistrate's court shall, notwithstanding the provisions of any other law, be competent to impose any penalty under this Act.
- (8) When any person has been convicted of any contravention of this Act which has resulted in damage to or alteration of a protected heritage resource the court may 25
- (a) order such person to put right the result of the act of which he or she was found guilty, in the manner so specified and within such period as may be so specified, and upon failure of such person to comply with the terms of such order, order such person to pay to the heritage resources authority responsible for the protection of such resource a sum equivalent to the cost of making good; or 30
- (b) when it is of the opinion that such person is not in a position to make good damage done to a heritage resource by virtue of the offender not being the owner or occupier of a heritage resource or for any other reason, or when it is advised by the heritage resources authority responsible for the protection of such resource that it is unrealistic or undesirable to require that the results of the act be made good, order such person to pay to the heritage resources authority a sum equivalent to the cost of making good. 35
- (9) In addition to other penalties, if the owner of a place has been convicted of an offence in terms of this Act involving the destruction of, or damage to, the place, the Minister on the advice of SAHRA or the MEC on the advice of a provincial heritage resources authority, may serve on the owner an order that no development of such place may be undertaken, except making good the damage and maintaining the cultural value of the place, for a period not exceeding 10 years specified in the order. 40
- (10) Before making the order, the local authority and any person with a registered interest in the land must be given a reasonable period to make submissions on whether the order should be made and for how long. 45
- (11) An order of no development under subsection (9) attaches to the land and is binding not only on the owner as at the date of the order, but also on any person who becomes an owner of the place while the order remains in force. 50
- (12) The Minister on the advice of SAHRA, may reconsider an order of no development and may in writing amend or repeal such order.
- (13) In any case involving vandalism, and whenever else a court deems it appropriate, community service involving conservation of heritage resources may be substituted for, or instituted in addition to, a fine or imprisonment. 55
- (14) Where a court convicts a person of an offence in terms of this Act, it may order

the forfeiture to SAHRA or the provincial heritage resources authority concerned, as the case may be, of a vehicle, craft, equipment or any other thing used or otherwise involved in the committing of the offence.

(15) A vehicle, craft, equipment or other thing forfeited under subsection (14) may be sold or otherwise disposed of as the heritage resources authority concerned deems fit. 5

Part 2: Miscellaneous

Notices

52. (1) SAHRA may, by publication of a further notice, amend or withdraw any notice which it has published in the *Gazette*.

(2) A provincial heritage resources authority may by publication of a further notice amend or withdraw any notice which it has published in the *Provincial Gazette*. 10

(3) SAHRA or a provincial heritage resources authority may prescribe the manner in which legally enforceable property descriptions may be published in notices in the *Gazette* or in the *Provincial Gazette*, as the case may be, in terms of the provisions of this Act including— 15

- (a) methods of technology permissible in measuring areas; and
- (b) methods to be used in compensating for margins of error in measurement.

Delegation of powers by Minister or MEC

53. (1) The Minister may delegate any power, duty or function conferred or imposed upon him or her under this Act to the Deputy Minister or the incumbent of a designated post in the Department. 20

(2) The Minister may delegate any power, duty or function conferred or imposed upon him or her under this Act to the incumbent of a designated post in the provincial department responsible for culture.

By-laws by local authorities 25

54. (1) A local authority may, with the approval of the provincial heritage resources authority, make by-laws—

- (a) regulating the admission of the public to any place protected under this Act to which the public is allowed access and which is under its control, and the fees payable for such admission; 30
- (b) regulating the conditions of use of any place protected under this Act which is under its control;
- (c) for the protection and management of a protected area;
- (d) for the protection and management of places in a heritage register;
- (e) for the protection and management of heritage areas; and 35
- (f) providing incentives for the conservation of any place protected under this Act within its area of jurisdiction.

(2) Any by-laws made under this section may prescribe fines for contravention thereof or failure to comply therewith, not exceeding an amount prescribed by the Minister under section 51(2). 40

Limitation of liability

55. No person is liable in respect of anything done in terms of this Act in good faith and without negligence.

Exercise of powers outside Republic

56. (1) A heritage resources authority may assist and co-operate with heritage bodies outside the Republic. 45

(2) If agreed upon between the Government of South Africa and the government of any other state, SAHRA has power, with the concurrence of the Minister, to perform in that state any functions which a heritage resources authority would be capable of performing in South Africa in terms of this Act. 50

(3) The Minister may make regulations concerning the application of any international convention, treaty or agreement relating to the protection of heritage resources which, in accordance with sections 231 to 233 of the Constitution of the

Republic of South Africa, 1996 (Act No. 108 of 1996), forms part of the law of the Republic.

Applicability of provincial legislation

57. Without prejudice to the provisions of this Act, in any province which has enacted legislation for the establishment of a provincial heritage resources authority and the management of heritage resources at provincial level, the provisions of such legislation must, as far as they relate to provincial areas of competence, take precedence over the equivalent provisions of this Act. 5

Transitional provisions and consequential amendments

58. (1) For the purposes of this section, “the previous Act” means the National Monuments Act, 1969 (Act No. 28 of 1969). 10

(2) The National Monuments Council established by section 2 of the previous Act is hereby abolished and all its assets, rights, liabilities and obligations shall devolve upon SAIIRA without formal transfer and without payment of any duties, taxes, fees or other charges. The officer in charge of registration of deeds registry must, on submission of the title deed and on application by the authority concerned, endorse such a title deed with regard to such development. 15

(3) Any person who was in the employment of the Council referred to in subsection (2), is regarded to have been appointed under this Act.

(4) The remuneration and other conditions of service of an employee contemplated in subsection (3) may not be less favourable than the remuneration and other conditions of service to which that employee was entitled to before. 20

(5) If a person appointed under subsection (3) or a person regarded to be so appointed, is dismissed, that person may within 14 days after the date of notification of the dismissal, appeal in writing against the dismissal to the Minister, who may confirm, vary or set aside the dismissal. 25

(6) The National Monuments Council library shall become part of the national heritage resources library established under section 13(2)(b).

(7) The committees established by section 3A of the previous Act are hereby abolished and all their assets, rights, liabilities and obligations shall devolve upon SAHRA without formal transfer and without payment of any duties, taxes, fees or other charges. 30

(8) Unless it would in any particular case obviously be inappropriate, any reference in any law, document or register, to the National Monuments Council must be construed as a reference to SAHRA and any such reference to an officer or employee of the National Monuments Council must be construed as a reference to an employee of SAHRA performing functions or exercising powers similar to those of the first-mentioned officer or employee. 35

(9) All trust funds for which the National Monuments Council acted as trustee, including the War Graves Trust Fund referred to in section 9A of the previous Act, shall on the date of commencement of this Act become vested in SAIIRA as part of the National Heritage Resources Fund referred to in section 40, and SAIIRA must act as trustee on the same terms and conditions as existed prior to the commencement of this Act. 40

(10) On the establishment of a provincial heritage resources authority, arrangements must be made for the transfer of such assets, rights, liabilities and obligations of SAIIRA in that province to the provincial heritage resources authority as the Minister and the MEC deem fit. 45

(11) Sites and objects which prior to the commencement of this Act were protected by notices in the *Gazette* in terms of the previous Act, shall, subject to the provisions of any provincial legislation for heritage resources conservation and any agreement in that regard, and without the need for the publication of notices in the *Gazette*, continue to be protected in terms of the following provisions of this Act: 50

(a) Immovable national monuments in terms of section 10 of the previous Act shall be provincial heritage resources sites: Provided that within five years of the commencement of this Act, the provincial heritage resources authorities in consultation with SAHRA, must assess the significance of such sites in accordance with the heritage assessment criteria set out in section 3(3) and prescribed under section 7(1) and SAIIRA must declare any place which fulfils the criteria for Grade I status a national heritage site; 55 60

- (b) immovable properties entered in the register in terms of section 5(1) of the previous Act must be entered in the heritage register for the province in which they are situated and in the inventory of the national estate;
 - (c) conservation areas in terms of section 5(9) of the previous Act shall be heritage areas: Provided that where no provision has been made for the protection of such areas in by-laws under the previous Act or in a town or regional planning scheme 5
 - (i) sections 31(7)(a), (b) and (c) of this Act automatically apply to such heritage areas; and
 - (ii) the local or other planning authority concerned must provide for the protection of such area in accordance with the provisions of section 31 within three years of the commencement of this Act; 10
 - (d) provisionally declared immovable properties in terms of section 5(1)(c) of the previous Act are provisionally protected for such remaining period as specified in the notice of provisional declaration; 15
 - (e) national gardens of remembrance in terms of section 9C of the previous Act are provincial heritage sites;
 - (f) cultural treasures in terms of section 5(c) and movable national monuments in terms of section 10 of the previous Act are heritage objects.
- (12) A notice under section 10(3)(a) or 5(5)(b) of the previous Act which was served within six months prior to the commencement of this Act shall be deemed to be a notice served by a provincial heritage resources authority in terms of section 27(8) or section 29(1) and (2) of this Act, as the case may be. 20
- (13) A permit issued under the previous Act shall be deemed to be a permit issued by the responsible heritage authority under the relevant section of this Act. 25

Regulations

59. The Minister may, by notice in the *Gazette* make regulations regarding—
- (a) any matter which may or shall be prescribed in terms of this Act;
 - (b) any other matter which may be necessary or expedient in order to achieve the objects of this Act. 30

Repeal

60. The National Monuments Act, 1969 (Act No. 28 of 1969), and section 41(2) of the Environment Conservation Act, 1989 (Act No. 73 of 1989), are hereby repealed.

Short title and commencement

61. This Act shall be called the National Heritage Resources Act, 1999, and shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*. 35

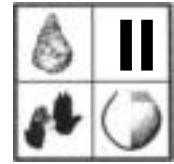
SCHEDULE

PENALTIES FOR NATIONAL HERITAGE ACT

(Section 51)

1. A fine or imprisonment for a period not exceeding five years or to both such fine and imprisonment.
2. A fine or imprisonment for a period not exceeding three years or to both such fine and imprisonment.
3. A fine or imprisonment for a period not exceeding two years or to both such fine and imprisonment.
4. A fine or imprisonment for a period not exceeding one year or to both such fine and imprisonment.
5. A fine or imprisonment for a period not exceeding six months or to both such fine and imprisonment.
6. A fine or imprisonment for a period not exceeding three months or to both such fine and imprisonment.

Appendix



Tshwane declaration

Standard Setting for Tourism Development of Heritage Resources of Significance in South Africa

Preamble

Heritage resources are increasingly drawn into tourism development. This has given rise to serious concerns about the protection of environmental and cultural conservation values. While the heritage resources provide the content for product development tourism facilitates the promotion and marketing of these products. As the world's largest growth industry, tourism has the responsibility, potential and purpose to ensure the conservation of heritage resources of significance, the enhancement of their appreciation and providing for community development. Heritage and tourism industries have a responsibility to present and future generations in ensuring the preservation, continuation, interpretation and management of heritage resources of significance. In the development of heritage tourism products and the presentation and interpretation of heritage resources of significance, the responsible agencies and visitors should respect the community values embedded in the heritage resource being used. The following guidelines were developed by participants from a diversity of heritage and cultural tourism interest groups in South Africa at the pre-conference workshop of The Way Forward: Harnessing Cultural and Heritage Tourism Conference in February, 1997. The workshop participants formed a significant portion of the participants in the conference. The following declaration was amended and adopted at the final plenary session of the Conference.

Acknowledging that heritage tourism

- provides a unique opportunity to combine South Africa's heritage with the tourism industry to create social, economic and environmental benefits
- offers South Africans and their visitors learning experiences on the personality of South Africa
- nurtures experiences derived from South African cultural, artistic and natural heritage
- can assist in providing equitable access to heritage and financial resources
- could be harnessed to achieve a more equitable distribution of the capacity to engage in economic and cultural systems in South Africa

Recognising that a partnership between heritage and tourism sectors can result in:

- quality products, information and services for the visitors
- diversification of tourism products that enable visitors to experience the diversity of South African culture and heritage
- promotion of cooperative marketing enabling effective and efficient use of facilities and resources
- the responsibility of the tourism industry contribution to heritage conservation
- enhanced social and economic outcomes contributing to the reconstruction and development of South Africa

Principles for Heritage Tourism

We, the coalition of participants, at the conference entitled *The Way Forward: Harnessing Cultural and Heritage Tourism, convened from 5–7 February 1997*, including a diversity of members of various South African heritage and tourism industry sectors resolve and recommend the following principles in the promotion of constructive partnerships whose aim is to provide quality experiences for visitors without compromising the conservation and significance of affected heritage resources.

Identity, Image and Profile

- South Africa is a country of diverse cultures and all heritage tourism activities should be based on the full diversity of South African cultures
- Include arts, culture and heritage in all future tourism information materials such as printed, media, audio visual materials, film and video as well as new multimedia formats
- Base the imaging of South Africa on indigenous symbols and forms of communication using local materials in all sectors of the industry
- Use South African artistic and cultural practitioners in portraying the natural attractions and heritage
- Encourage cross cultural communication and meaningful exchanges
- Encourage imaging which addresses national, regional and local priorities

Conservation

- Tourism should be recognised as an effort towards conserving and enhancing in a responsible manner the presentation of heritage resources including tangibles such as places, collections and artworks of heritage significance and intangibles such as voices, values and the traditions of people
- Tourism development should ensure that conservation, presentation and interpretation of resources in an authentic manner that is consistent with local character and the promotion of community development. Conservation of heritage resources does not prohibit the encouragement of economic development through the sensitive and respectful use of these resources for tourism in a manner that ensures their preservation for future generations
- Ensure the development of visitor management strategies that comply with the laws, conventions and regulations dealing with the conservation of heritage resources of significance and respect for the rules and protocols of the community as keepers, custodians and caretakers of places of significance
- All natural and cultural conservation legislation should be upheld
- Tourism development should recognise the cultural and economic rights of the community

Community Participation

- Ensure adherence to a standard of community development that is grounded in principles of the Reconstruction and Development Program including the identification of benefactors and priority for employment of local people through creation of appropriate training opportunities
- Encourage respect and consideration of community norms, customs, spiritual and religious beliefs in the development of tourism products and programs
- Ensure the building of capacity amongst local artists and crafts people and local tourism destination managers to enable them to participate in development activities without exploitation by middlemen or copyright violations
- Establish a policy environment that will ensure that communities share economic benefits that heritage tourism generates

Presentation and Interpretation

- Effective interpretation of a heritage resource is important in making the message exciting, meaningful and authentic. The history and heritage connected to a resource and its environment are what visitors wish to experience. Assisting visitors to respect and appreciate the significance of the heritage resources should be the aim
- Training of guide-interpreters, educational personnel and volunteers through accredited programs is important for quality interpretation, conveyance of multiplicity of perspectives and communication of heritage values to visitors
- Access to interpretation in a variety of formats and appropriate languages and the employment of local community members are critical to the development of sustainable heritage tourism
- Recognition of existing knowledge in the community and encouragement for the participation of the public in the representation of cultural identities

Heritage and Tourism Partnerships

- Promotion of the active participation of public and private sectors is necessary to maximise use of local expertise, resources and opportunities
- Establishment of quality and management criteria that takes into consideration elements of physical environment, common values and aspirations is important in the determination of planning procedures for heritage sites
- Ensure that the economic benefits derived from tourism are also used for heritage conservation, development, maintenance, interpretation and community capacity building by means of funds generated from tourism income
- Heritage Tourism potential of an area should include mapping of regional heritage resources; establishing their market potential; developing partnerships with regional services; ensuring community readiness and the building organisational capacity
- Promotion of joint policies, planning and programs between the different national, provincial and local government departments of Arts and Culture; Environment and Tourism; Trade and Industry; Sport and Recreation; Education; Housing and Town Planning; Safety and Security and Foreign Affairs

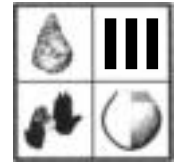
Implementation

The coalition of participants has agreed to establish a Heritage and Tourism Forum to promote and implement these principles.

Bodies, organisations, agencies and persons involved in heritage and tourism management are encouraged to adopt this declaration.

The following people led the workshops and the conference resulting in the Tshwane Declaration: Andries Oliphant (Chairperson); Professor Amareswar Galla (Professional facilitator and researcher); Kobus Basson, Mimi van Vuuren and Rochelle Keene (Conveners). Proceedings are edited by A Galla and KA Denison.

Appendix



Extracts

EXTRACT A

Skotnes, Pippa, 1996. *Miscast: Negotiating the Presence of the Bushmen* (p 9). Cape Town: University of Cape Town Press

Foreword

On 14 December 1995 Cecil le Fleur asked the South African parliament, on behalf of the Griqua people, to intervene in the return of the plaster cast and skeletal and other remains of Saartje Baartman, the young woman who was publicly displayed at salons, fairs and animal acts in London and Paris from 1810 to 1815, when she died. This plea followed a letter sent to the French government in which the authorities were requested to return Saartje Baartman to the Griquas, the “guardians and custodians of continuous, uninterrupted and unbroken Cape Aboriginal Khoikhoi heritage” (Cape Times, 12 December 1995). The Griqua National Conference of South Africa is the latest group to join in the Campaign demanding her return and burial. Why has the pitiful life, and fate after death, of Saartje Baartman become the focus of so much concern and action?

Saartje is a potent symbol of the humiliation suffered by indigenous people in general and indigenous South Africans in particular. I knew something of her history through Penny Siopis’ research and her paintings; I knew that the Musée de l’Homme in Paris housed the plaster cast made upon her death, as well as her skeleton and sexual organs. None of it, however, prepared me for the encounter with Saartje Baartman’s death cast at Musée d’Orsay, in May 1994, on an exhibition entitled *La sculpture ethnographique de la Venus hottentote á la Tehura de Gauguin*. The naked horror of her plight and suffering, the sense of untold pain and shame, and the knowledge that it was part of my own history, were overwhelming.

Saartje Baartman has become a focus of the way in which human beings were used by eighteenth- and nineteenth-century theorists of race to prove the superiority of Europeans; she stands for all those who were reduced to specimens and scientific information. Her people were regarded as closer to the animal kingdom than to humankind, or at least among the most primitive of human types. As a result, they became the most brutalized people in the history of southern Africa — victims of genocide and slavery, stripped of their land and the fabric of their lives and their culture. Until recently, Khoisan resistance to the colonial powers and settler developments has remained unrecorded in our history books, their interaction with and cultural influence on other groups has been ignored, and the astonishing art created on the surfaces of rocks excluded from art history books and art museums. The people were portrayed as wild, as murderers and robbers without intellect or history.

Saartje Baartman puts the descendants of the Khoisan populations at the centre of contemporary political and cultural debates — debates with national and international implications and ramifications. The retention, display and repatriation of human remains and other sensitive material are matters of concern in many countries. So are natural-history museum displays of

naked body casts and objects that are associated with nature rather than with culture, with primitivism rather than civilization — and forever relegated to the past. Her odyssey of exploitation and public exhibition finds a poignant echo in the lives of people who are displayed for tourists.

Some see the situation of ‘‘Bushman’’ living on the Kagga Kamma reserve as no more than ‘‘a modern version of the old freak shows of the past’’ (The Sunday Times 25 June 1995). Saartje Baartman is becoming an icon (hopefully not a pawn) in fractious post-apartheid colored politics. There is a growing pride in having indigenous roots, and people are choosing to identify with the original inhabitants of southern Africa. Many will claim her. For all of us she stands as a reminder of the agonies of the past, of our need to face and deal with history and memory, and of our collective responsibility to resist a desire for historical amnesia. The debates around her also impact on issues of redress and restitution of land, and land is inextricably linked to place and identity. Facing history, and accepting the challenges to work through the past and find solutions for the present, reside in the exhibition Miscast.

A number of ground-breaking exhibitions have been curated at the South African National Gallery (SANG) over the past few years. These involved working hand-in-hand with the people whose histories and/or visual culture we were representing, or engaging individuals in the production of the exhibition and written documentation. Guest curator Pippa Skotnes went to considerable effort to consult with San groups in the preparation for Miscast, but there are few voices around to articulate this particular past, and consultations with groups took place through the medium of attorneys and other agents. What we hope to achieve through the catalogue, the exhibition and associated education programmes, is to begin the process of dealing with the complex issues, to tell the story of genocide in southern Africa, to reveal the extraordinary cultural and artistic achievement of the San, to focus on the need to acknowledge and preserve rock art as part of our heritage, and to raise and stimulate awareness of the conditions, aspirations and interests of Khoisan descendants in southern Africa.

EXTRACT B

It’s unlikely that Saartje’s remains will return to SA

Louw, Liesl. Independent Foreign Service February 1999. The Star

Paris — The French museum which holds the remains of the ‘‘Hottentot Venus’’ is considering a new plan to give Saartje Baartman back to South Africa on a long-term loan to a local museum. The plan could bring an end to a dispute over the remains of Baartman — who died in France in 1815 — which has been dragging on for several years.

Henri de Lumley, director of the French Museum of Man, this week revealed the contents of the French proposal, which includes a joint scientific study of the Khoi-San people using the skeleton of Baartman and several others held by the museum. This solution does not include a ‘‘repatriation’’ of Baartman with a dignified burial of her remains, which is what South African organisations have been campaigning for.

Baartman died in France after having been brought to Britain from the Cape, to be exposed as a ‘‘curiosity’’ and a ‘‘circus freak’’ because of her unusually large behind and genitals. After her death, her remains were kept in the Museum of Man and exhibited.

The dispute surrounding Baartman began several years ago when Paris’s Orsay museum wanted to exhibit the plaster model made of her body before her death. The SA embassy in Paris protested against this parade of a woman brought to Europe against her will.

In the past few years, the symbolic value of Baartman as a ‘‘artyr of colonial exploitation’’ has been rising. During the World Archaeological Conference held in Cape Town recently, Cecil le Fleur, representing the KhoiKhoi indigenous First Nations of South Africa, said Baartman ‘‘had to display, her posterior and genitalia in order to amuse callous, inhuman, insensitive crowds and white audiences’’.

De Lumley, who heads the negotiations about Baartman’s remains with SA anthropologist Professor Phillip Tobias, rejects views that Baartman was paraded like a circus animal in France and denies that any ‘‘glass bottles with parts of Saartjie’s body’’ are gathering dust on shelves in his museum.

Sending Baartman’s remains will first have to be endorsed by the French parliament. This is highly unlikely to happen, says De Lumley. Her remains are considered to be part of the permanent collection of objects in the museum.

To send Baartman’s skeleton to a museum in SA to be held there ‘‘in trust’’, according to a long-term agreement, would be a more realistic option.

‘‘Saartjie’s remains are a scientific tesimony to the Khoi-San people. Her skeleton can be valuable to study DNA, for example.’’ The-proposed joint study by scientists from France and SA could result in a book on the Khoi-San, he adds.

EXTRACT C

Earthyear: The Essential Environmental Guide. December 1998 – June 1999 Edition 18

DUNE MINING UNEARTHES RELICS OF THE PAST

A REMARKABLE ARCHAEOLOGICAL SURVEY INTEGRATED WITH A DUNE MINING OPERATION IN RICHARDS BAY IS UNEARTHING THE SECRETS OF THE PAST IN A UNIQUE PARTNERSHIP BETWEEN THE HERITAGE AUTHORITIES OF KWAZULU-NATAL, THE RURAL COMMUNITY OF MBONAMBI AND RICHARDS BAY MINERALS (RBM).

When archaeological sites dating back to the Early Iron Age were uncovered during mining in 1994, RBM sought the assistance of the Natal Museum and Amafa aKwaZulu-Natali (then known as the KwaZulu-Natal Monuments Council).

So began an ongoing archaeological survey which has resulted in the recording of over 100 important sites.

These have been divided into three main periods:

- The Early Iron Age (AD 300–1000) when the formative farmers of southern Africa kept domestic animals (cattle, sheep and goats), cultivated crops (sorghum, millet, legumes and squashes), and manifested a sophisticated iron working technology and a complex hierarchical society. The people spoke a Bantu language and decorated ceramic vessels distinctively.
- The Late Iron Age (AD 1000–1830) heralded a dramatic change in society. The sites tended to be situated on higher locations such as hilltops, and homesteads were spatially reorganised. According to Gavin Anderson of the Natal Museum, few Late Iron Age sites have been systematically excavated in KwaZulu-Natal and this time period remains a relative mystery other than that, in the Richards Bay area, it includes the Northern Nguni (colloquially referred to as Tsonga) and some of the early Zulu occupation of the area.

- The Historical Period from 1830 to the present which coincides approximately with the settlement of European colonists in the province. Some of the sites are shell middens or refuse middens outside former homesteads. These have stratified deposits which can show changes of food through time. Shellfish like oysters can be used for oxygen isotope analysis to indicate changes in sea temperatures, while fish bones from nearby lakes may show variances in salinity over the years. Pottery shards found on the sites reveal a number of styles indicative of different ethno-linguistic groups, as do necklaces, beads, smoking pipes and tools. Many of the sites have hearths or fireplaces. All of these features and artefacts tell a story about the lifestyle of the inhabitants, providing information on subsistence patterns, environmental change and the impact of social activities on the resources of the area.

Archaeological work is carried out between the dune clearance (removal of vegetation and topsoil) and the dune mining phases. The sites are about 30 cm below the vegetation and, if it were not for dune clearance, would not be easily located. A week or two after the vegetation is removed, the archaeologists literally walk onto exposed sites.

“People have suggested that the archaeological sites should not be damaged by mining,” says Anderson. “From our point of view this is not so because the coastal dune cordon is biotically active, and undisturbed sites are not preserved indefinitely. Mining has given us the opportunity to uncover sites which could otherwise have been lost forever.”

The excavation work has been supplemented by a two-year project to record *amasiko*, the dwindling centuries-old African tradition of preserving history via oral story-telling, told by the wisdom keepers of the Mbonambi and Sokhulu tribal authorities.

This invaluable information, along with many of the artefacts uncovered on the dunes, has formed the basis for an exciting new development, the building of a unique archaeological interpretative centre in Mbonambi to showcase the history of this community and to enhance the appreciation of the local people of their heritage.

The new Manango Heritage Centre, which has been described as a living memorial combining the Western concept of a museum with the truly African sense of history, tradition and ancestry, was opened by His Majesty King Goodwill Zwelithini during October 1998. Designed in association with Amafa aKwaZulu-Natali, the three-rondavel structure was constructed using traditional building methods — loosely woven double-layer stick mesh filled with red clay, plastered with a mixture of red and white clay and thatched. The floors are made of sand mixed with ant hill and dung, and polished to a high sheen.

The centre, which bears the name of the dune where the Mbonambi amakhosi (chiefs) are buried also features a *muti* garden explaining the medicinal properties of traditional herbs, and a mini plantation of *ukhova* or Shakan bananas favoured by the legendary King Shaka.

King Goodwill Zwelithini congratulated everyone associated with the project. “The centre should repay its cost many times over in building citizens who understand their roots and take pride in their heritage.”

Len van Schalkwyk of Amafa aKwaZulu-Natali said that he was gratified to see the participation of members of the local communities in drawing up their own histories, as opposed to being merely passive observers of a research process.

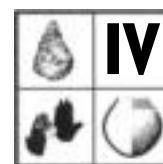
“The centre is a gift to the people of Mbonambi of their rich history,” said Jabu Kubheka, general manager of public and community affairs for RBM.

“We hope that it will become a valuable educational resource for the community”.

Keith Rumble, managing director of RBM said that his company had funded the archaeological programme in the belief that it was essential to ensure a balance between the protection of heritage sites and commercial development.

The project has enabled us to highlight the value of archaeological research and the importance of managing heritage sites. However, while RBM is very aware of its responsibilities as a corporate citizen, this project goes beyond responsibility.

“People in Mbonambi have guarded their iron smelting technology for centuries, producing iron implements and weapons of war which are said to have been used by the great army of King Shaka. While the scale and technology of iron smelting has developed over the years, it could be said that RBM continues the tradition. The minerals in these same dunes are being mined and processed to fight the global economic war, generating much-needed foreign exchange earnings for South Africa.”



Appendix

12

The South African Archaeological Bulletin

THE REFLECTION OF THE COLLECTOR: SAN AND KHOI SKELETONS IN MUSEUM COLLECTIONS*

ALAN G. MORRIS

*Department of Anatomy, University of Cape Town
7925 Observatory*

ABSTRACT

The documentation for ethnically identified Khoi and San specimens of human skeletons in museum collections is examined. It is shown that very few of these specimens can be actually verified as specifically Khoi or San, and in many cases there is evidence to show that any attempt to label the specimens as one or the other of these categories would be misleading.

* Received October 1986, revised January 1987

A distinctive feature of nineteenth and early twentieth century museums was their inclination to collect large series of human skeletons. These osteological remains were considered to be part of the native fauna of distant lands and no natural history collection could be considered complete unless it contained a representative quantity of human skulls. Among the most actively sought specimens have been the crania of Khoi (Hottentot) and San (Bushmen) peoples.

The acquisition of Khoisan skulls can be traced at least as far back as August 1805 when Lichtenstein obtained the cranium of an unknown female Khoi who had been found dead in the veld (Lichtenstein 1929). Other Khoisan skulls are known to have been part of early nineteenth century private collections, and both Blumenbach in Göttingen and Morton in Philadelphia listed 'Bushman' or 'Hottentot' specimens in their catalogues (Wagner 1856; Gould 1978). By 1850 Khoisan specimens could be found in nearly all of the major European museums. Most of these skulls were donated by or purchased from travellers who had acquired them as curiosities during their visits to southern Africa.

The active collection and curation of skeletons in South Africa did not begin until late in the nineteenth century, but by 1910 large series were present in Cape Town, Kimberley and Grahamstown, and within another two decades Johannesburg, Pretoria, Port Elizabeth and Bloemfontein could each boast an appreciable sample of Khoisan crania. The South African collections differed from their European counterparts in the large number of individuals represented and in their regional specificity, but it must be emphasized that the majority of these specimens were drawn from archaeological contexts.

Methodological approach and Khoisan ethnic identity

Scientific curiosity in Khoisan crania, beyond the mere desire for collection, was first aroused early in the nineteenth century. Very brief descriptions of isolated Khoisan specimens were published in France (Cuvier 1824), in Dublin (Williamson 1857), in the United States (Wyman 1862), in London (Flower & Murie 1867; Rolleston 1881),

and in Edinburgh (Turner 1884), but the first systematic study was that of Shrubbsall (1898). Shrubbsall drew his specimens from the University of Cambridge, the British Museum, the Royal College of Surgeons in London, and from the collection of the Royal Army Medical School at Netley. In later studies, Shrubbsall (1907, 1911, 1922) was able to augment his sample with archaeological specimens from South African institutions. The total sample in his 1922 report included 217 individuals which he subdivided into 'Hottentots', 'Kalahari Bushmen', 'Colonial Bushmen', and "Strandlopers from caves and middens along the South African Coast".

The pioneering work of Shrubbsall was followed over the next 60 years by numerous papers which described the skeletal anatomy and speculated about the origins of Khoisan peoples. Since most of the specimens considered in these studies were from poorly excavated contexts, there was no way in which to confirm the ethnic identity of specific individuals. Therefore morphology was used to sort the samples into 'Bushmen', 'Hottentot', 'Strandloper' and other osteological categories. The studies often reached conflicting conclusions, but all of them shared a dogmatic typological approach as their methodological basis. It was assumed that the carefully selected morphologies were a reflection of 'pure races' and that variation was a sign of 'impurity'.

During the latter half of the 1960s, it was realised that the earlier descriptions of Khoisan skeletal populations were unsatisfactory. Typological sample selection had resulted in data being representative only of the pre-conceived morphological patterns that the investigator had intended to describe at the outset. Although historical evidence supported a Khoi and a San dichotomy based on economic and linguistic differences, there was little real observational support for the plethora of physical types created by the osteological typologists. Arbitrary categories based on morphology alone were dropped, and an attempt was made to exclude all individuals from the samples who could not be clearly assigned an ethnic status based on cultural association or historical documentation.

Studies using the revised criteria for sample selection have been published by Stern & Singer (1967), Rightmire (1970), Howells (1973) and Hausman (1980). These workers have not attempted to describe the 'typical' form, but have instead tried to indicate the range of variation present in the skeletal samples. Concentration has been placed on the differences between Khoi (Hottentot-speaking herder) and San (Bushman-speaking hunter) populations.

The standard approach has been to assemble reference collections of ethnically assured specimens of Khoi and San and to analyse the morphological variability of the samples.

The crania used to construct the Khoi and San reference samples are overwhelmingly those specimens collected in the nineteenth and early twentieth centuries. The bodies of comparatively recent Khoisan peoples have not been

generally available as cadavers for medical education (the source of most modern skeletal material) and our moral compunctions now prevent us from exhuming the graves of known individuals simply for craniological comparison. The new approach to craniology is a vast improvement on the older typological methodology, but a few problems remain. Most important in the view of this paper is the acceptability of the cultural determinations. Where the typologists assumed that 'pure' populations had a specific morphology, the modern researchers have assumed that the ethnic documentation as obtained from the skeletal accession records can be accepted at face value. The key problem with this assumption is that definitions of ethnicity are not absolute, and self-perceived ethnicity (for known-in-life specimens) need not be equivalent to donor-perceived ethnicity (as defined by the donor of the skeleton), and neither of these may be the same as our own ethnic perceptions today (Hall & Morris 1983).

This paper therefore examines the specific documentation of the various ethnically identified Khoi and San specimens and attempts to check the reliability of their identification.

The documented specimens

All of the authors who have studied documented crania have verified their identifications by means of data present in the repository accession records. These data are in the form

of (1) personal testimony from the individual that he regarded himself as Khoi or San, (2) testimony from the donor of the skeleton that the individual was known to him personally as San or Khoi, or (3) circumstantial evidence that indicates that the individual could only be San or Khoi. The descriptions below are a summary of this documentation.

Rather than to try at the outset to group the specimens according to the kind of documentation, it is best to consider the specimens from different institutions as a unit. Each of the various collections has its own character according to the period of acquisition and the activities of the donors. Places mentioned are marked on the map (Fig. 1).

Anatomical Museum, University of Edinburgh

The prestigious medical school at the University of Edinburgh has contributed to anthropological knowledge for more than a century and a half, but the bulk of its cranial series was assembled under the direction of Sir William Turner in the late nineteenth and early twentieth century. The collection contains three Khoi and three San skulls which have adequate documentation.

The Khoi, two males (E.27a & 45) and one female (E.43), were collected by Dr Robert Broom in 1897. At that time Broom had been resident in South Africa for less than a year and was acting as a medical locum tenens at Port

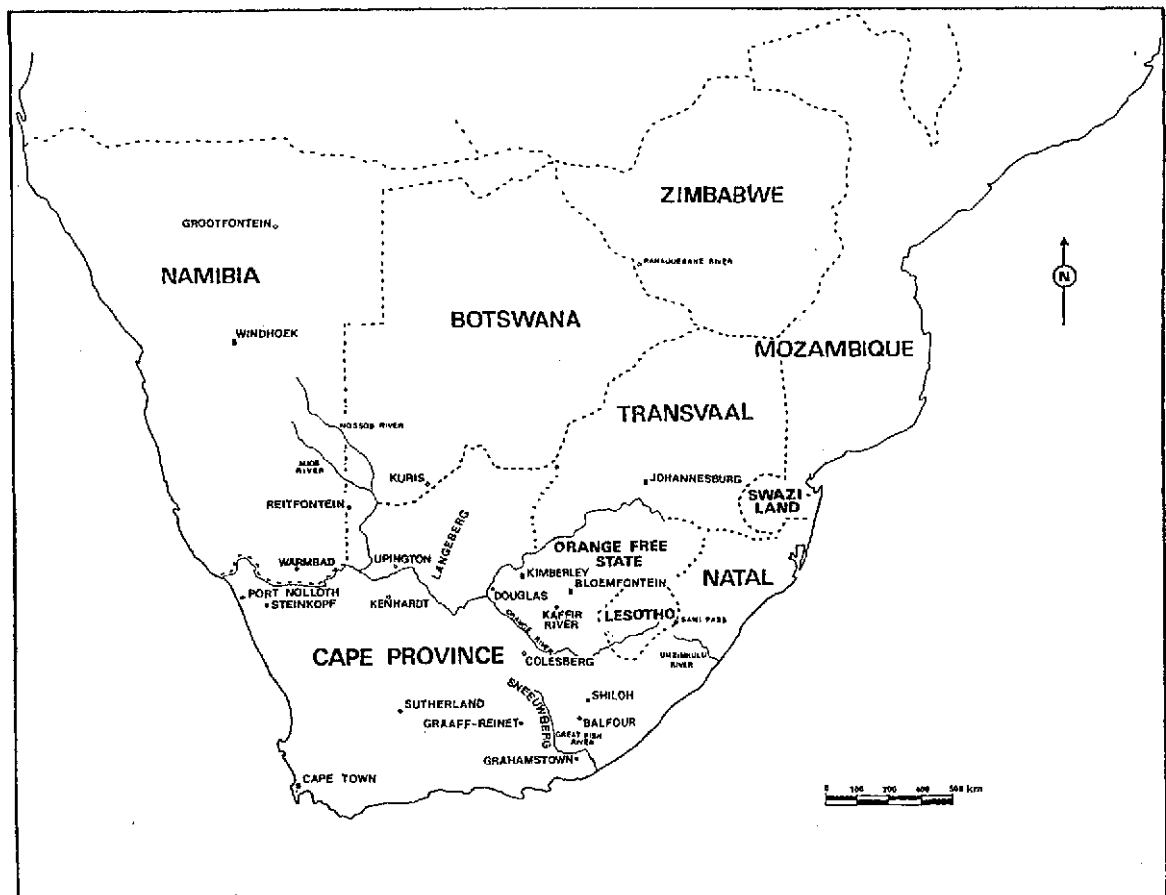


Fig. 1. Map showing locations mentioned in text.

Nolloth in Namaqualand (Findlay 1972). A severe drought was in progress and many Namaqualand 'Hottentots' were coming into the town where a few of the older people died. Broom later wrote to L. H. Wells about this incident and he reported: "I cut their heads off and boiled them in paraffin tins on the kitchen stove and sent them to Turner" (Wells 1951:97). The identification of the skeletons as Nama Khoi rests entirely on Broom's ability to identify these people. He has left no evidence as to how he based his classification (morphological, linguistic or cultural), but his letter to Wells indicated that he had not yet developed the strict typological system evident in his later scientific publications (Wells 1951). It is reasonable to assume that Broom based his ethnic identification of these people on the testimony of local informants at Port Nolloth.

Two of the 'Bushman' crania (E.12 & 21) are examples of what L. H. Wells has called 'trophy' skulls (Wells 1957). Skulls collected as trophies in the early nineteenth century are fairly common in Europe and many are accompanied by affidavits compiled by the collector. The late eighteenth and early nineteenth centuries were a time of violent conflict between European farmers and 'Bushmen' on the Cape Frontier, and there is a long and sad history of expeditions to hunt 'Bushmen' (Marks 1972; Sampson 1972). Khoisan groups who threatened colonial cattle were ruthlessly persecuted. In the case of E.12 there is a detailed 'confession' which is undoubtedly bogus. The individual was killed by a commando at Agtersneuberg east of Graaff-Reinet during the third decade of the nineteenth century. E.21 is listed as a 'Bushman Robber' donated by T. Pringle in 1824. He was almost certainly shot by a commando in the eastern Cape districts (Wells 1957). The identification of these individuals as San cannot be accepted without question. Marks (1972) and Elphick (1977) have shown that the late eighteenth century colonial definition of 'Hottentot' and 'Bushman' was essentially an economic categorization. Destitute Khoi who hunted and gathered would be called 'Bushmen' and they would undoubtedly be labelled as 'Bushman Robbers', if they raided the colonists' cattle. 'Hottentot' described colonial Khoisan who were 'productively employed' as farm labourers but included people of mixed Caucasoid and Khoisan parentage. Howells (personal communication) has questioned the stated male sex of E.21 because its gracile form is more consistent with a female gender. The re-assignment of this skull as a female would not affect its documentation because historical evidence suggests the commandos did not differentiate between the sexes and men and women were equal targets (Wright 1971; Sampson 1972).

The third San specimen (E.42) is a complete skeleton with exceptionally good supporting records. He was captured on 15 March 1862 by a commando sent out in response to a raid on a farm in the Natal Drakensberg (Wright 1971). The boy was about 15 years old when captured and he was handed over to the service of William Proudfoot for three years on the condition that every effort was made to 'civilize' him. He worked for Proudfoot for 12 years but died of phthisis and was buried on Proudfoot's farm (Turner 1884). The body was exhumed by Dr Sutherland and the bones were presented to the Edinburgh museum. This individual had been a member of a hunter-gatherer band near the headwaters of the

Umzimkulu River in the Sani Pass area of the eastern Drakensberg mountains and it seems unlikely that he could have been of destitute Khoi origin. Wright (1971) demonstrates that there was a continuity of San groups over time in this region.

British Museum (Natural History), London

The crania in the collection of the Anthropology Department of the British Museum of Natural History have been drawn from three major sources: the Anatomical Museum of the Royal Army Medical Corps (RAMC), the Department of Anatomy at Oxford University, and the Departments of Zoology and Ethnology of the British Museum itself. The RAMC Anatomical Museum was started at Fort Pitt, Chatham, in 1815, and was transferred to Netley Hospital sometime after 1858. The human cranial specimens were eventually removed to Oxford and combined with that institution's anatomical collection. The combined cranial series has been placed on permanent loan to the British Museum. The British Museum now houses nearly 50 Khoisan individuals, but very few of these are well documented.

A great many of these British Museum specimens are probably trophy skulls. Then 'Hottentot' specimens are dried heads with glass eyes inserted, and it is difficult to imagine how the specimens could have been collected except in a situation of military action or execution of criminals. Only three specimens have enough documentary evidence to ensure their identification as trophy skulls (Wells 1957). Af 63/418 is the cranium of 'Arie, a bushman chief' presented by Mr Ford, assistant surgeon of the 72nd regiment. Af 63/419 is the skull of a 'Bushman' killed by a commando in 1825, and Af 63/420 is a cranium of a 'notorious Bushman murderer' presented by Dr Andrew Smith. The donation of a specimen by Smith is of interest because he was stationed at Fort Pitt as Principal Medical Officer from 1837 to 1845 (Kirby 1965). This was after his return from the Cape Colony and his influence must have insured a flow of South African specimens to the RAMC collection.

One of the RAMC specimens (Af 62/49) is labelled 'Hottentot shot at Balfour, 22 February 1851'. The village of Balfour is in the old Kat River settlement and the calendar reference is the precise date when the British forces crushed the Kat River Khoi rebellion in the eastern Cape. The 'Hottentots' of the Kat River settlement were in fact a combination of displaced Khoi, Bastards and emancipated slaves who were given land in the region in order to act as a buffer between European colonists and the Xhosa (Marais 1939). We know that many of the Kat River Khoi were killed in this engagement, and it may be that Af 62/49 is one of these unfortunate individuals.

The British Museum collection contains the only historically documented San specimens from Zimbabwe. These three crania were collected by Frank Oates on his ill-fated journey to the Victoria Falls in 1873 (Oates 1881) and were donated to Oxford University by his son. Oates had heard that a group of San people had been murdered at their encampment by the Matabele the year before his arrival. He visited the site on the Ramaquebane River (latitude 20.54S, longitude 27.42E) and found the three skulls (Af 63/1070-1072) and a number of isolated human post-cranial bones

and mandibulae (Af 63/1073) scattered amongst the ruins of huts, game bones and pots. Oates did not meet any of these 'Bushman' in life, and therefore his identification is not absolutely certain, but both Dornan (1925) and Schapera (1930) believe they were part of the Hiechware San. Westphal (1971) includes the Hiechware within his Tshu-Khwe group and identifies them as Hottentot-speakers who lived as hunter-gatherers.

Royal College of Surgeons, London

The Royal College of Surgeons in London was one of the largest repositories of human skeletal remains in Britain. Within its collection were nine 'Bushman' and six 'Hottentots', but all of these specimens were destroyed during World War II. The post-cranial portions of some skeletons were salvaged from the ruins of the College and these are now housed in the British Museum. Although the crania are lost, many of the measurements can be found in the literature. Two specimens can be described as documented Khoi or San.

One 'Hottentot' male cranium (RCS 1296) is listed as belonging to a rebel killed in the siege and capture of Shiloh by the British forces under Major Tylden in February 1851. This refers to the same military action described above for A 62/49. The Khoi living on the Moravian Mission at Shiloh in the eastern Cape rose in revolt against British rule along with most of the Kat River people in January 1851. The Khoi hoped to use the British Army's preoccupation with the Xhosa in the '8th Kaffir' border war as an opportunity to avenge grievances they had against the English settlers (Marais 1939). The rebellion was brutally suppressed by the Cape government in February of that year. The specific identity of this individual is not given in the records.

The other Royal College of Surgeons specimen that is reasonably well documented is that of a female 'Bushman' of about 22 years of age at death (RCS 1302). She was brought to England along with her younger brother in 1852 from somewhere along the Orange River. Unfortunately, the original *London Illustrated News* article (Anonymous 1852) does not provide information on how the two children ended up being transported to England. Perhaps the children were captured by a commando since it was a common occurrence for children to be recruited as farm labour in this manner (Marks 1972). The boy died within a few years of his arrival in England, but the girl lived until June 1864. Her body was dissected at the college and an account of the dissection was published by Flower & Murie (1867). It is impossible to associate this woman with a specific San grouping, and the same 'Hottentot-Bushman' confusion as is present for the trophy skulls exists about her identity.

Cranial measurements for RCS 1296 and 1302 are provided in Flower's first (1879) and second (1907) editions of the *Catalogue*, and in Shruballs (1898). Additional measurements of the mandible of RCS 1302 are presented in Thomson (1915).

Department of Physical Anthropology, Cambridge

Although Shruballs (1898) and Tobias (1959) have drawn many Khoisan data from this collection, there are only two specimens which can be even vaguely considered as verified Khoi or San individuals. The supporting documentation is weak in both cases.

CAM 1738 is listed in the accession register as a 'Bushman' presented by Dr Phillipson. A very badly preserved paper label is glued to the cranium on which the following words are visible but barely distinct:

Transvaal. . . of the . . . here labouring . . . 1869. . .
where . . . his body was found near Blaauwkraantz. . .
district . . . 1874

Sadly, the poor preservation of this label prevents a satisfactory identification of the specimen. The second cranium (CAM 1751) is labelled "skull of a Bushman chief" presented by Dr Mathew, 1893. This appears to be another of the ubiquitous trophy skulls, and the presence of a dried 'Bushman' head in the collection suggests that other undocumented 'Bushman' and 'Hottentot' skulls are of the same source.

Musée de l'Homme, Paris

The Musée de l'Homme collection contains at least 14 specimens labelled as 'Hottentot' or 'Bushman', but only one specimen (MH 1603) is accompanied by satisfactory records. This skeleton is of a 26 year old female named Saartje Baartman and is one of the better documented individuals available.

Saartje Baartman was taken to England in 1810 by an English ship's surgeon who wished to publicly exhibit her extraordinary steatopygia (Kirby 1949). The unfortunate woman was displayed as 'The Hottentot Venus' in public shows throughout England and became something of a celebrity (Altick 1978). She was similarly exhibited in Paris during 1815 and finally died there of an "inflammatory and eruptive malady" on 29 December 1815. In March 1815, Saartje was examined by several leading French scientists (Cuvier 1824), and her nude portrait was drawn from both lateral and anterior views (Fig. 2). After her death, Cuvier had the body cast in wax, dissected, and the skeleton fully articulated.

The ethnic identification of Saartje Baartman is not very clear, but some masterful archival work by Kirby (1954) has shed some light on her origin and her life in South Africa. She was apparently born on the borders of Caffraria (the present day eastern Cape Province near the Great Fish River), but she lived at least part of her life in a small shack very near to Cape Town itself. Kirby considers her to be "a Bushwoman who possessed a certain proportion of alien blood" (1949:62), but this assessment is an interpretation of physical appearance rather than ethnic documentation.

Institut für Humanbiologie, University of Vienna

The University of Vienna has over 150 human skeletons from South Africa which were collected by Rudolf Pösch between 1907 and 1909. Pösch travelled through central Namibia, northern Botswana, the western Transvaal, and extensively in the northern Cape, with the express purpose of gathering ethnographical and anthropological specimens. In a few cases he excavated the graves himself, but more often he made use of the local European residents to identify and donate skeletons. The result of this procedure is that relatively few of the crania have secure identifications. The collection has been partially described by Pacher (1961), but

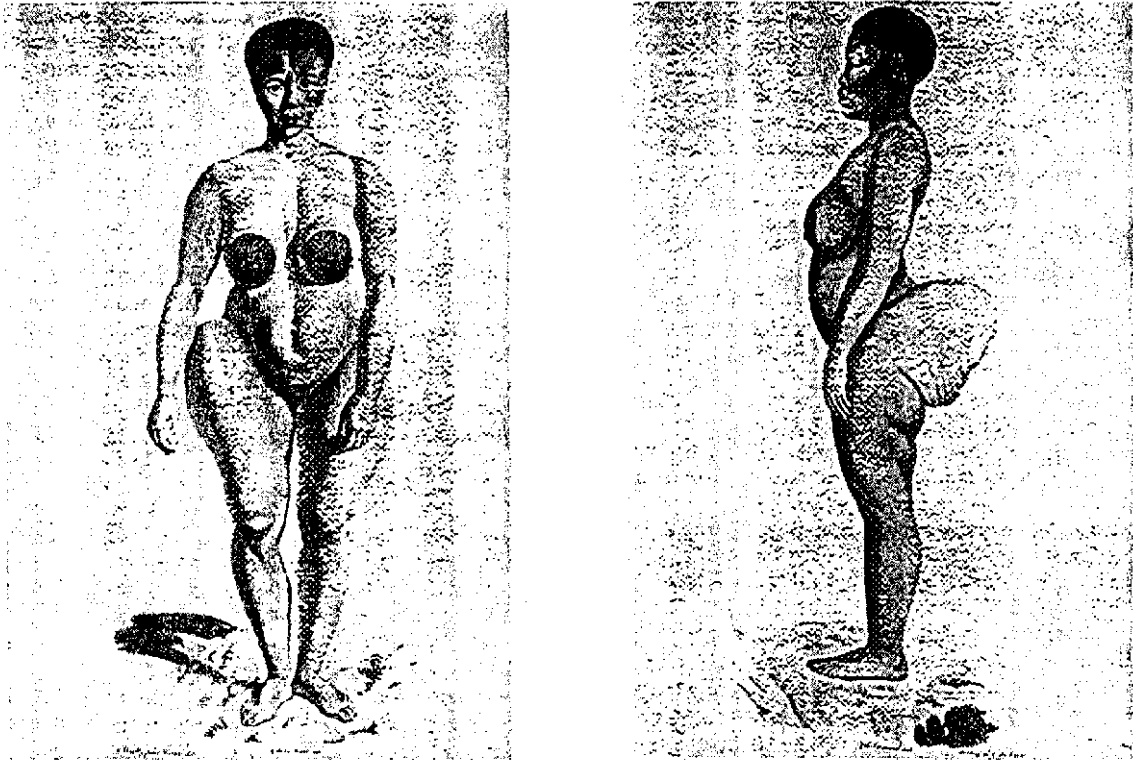


Fig. 2. Portraits of Saartjie Baartman (MH 1603) after Cuvier (1824). Left: facial aspect; right: lateral aspect.

it is currently being re-examined by Dr E. Winkler in the light of Pösch's original field notes.

Pacher's monograph gives a wide range of ethnic identities for these skeletons and there are at least ten 'Korana' and a scattering of Sarwa, Gabe and /Kham 'Bushman'. The only individuals which can be considered as known in life are a group of skeletons from the Bastard-owned farm /Kuris on the north bank of the Molopo river north of Upington. These individuals were San servants of the Bastards, were known to them by name, and were buried by them. The /Kuris skeletons include four males (S 39, 42, 47, 48), six adult females (S 38, 40, 44, 45, 46, 47a) and seven children (C 32-38). Pösch calls these people 'nu Bushmen', but this is unlikely to be a tribal name. /nu in the !ora dialect means 'to this side' and reflects a location rather than an ethnic group (Engelbrecht 1935). The identification of the /Kuris specimens as San rests with the testimony of the local inhabitants, but ethnographic evidence from the southern Kalahari suggests that master-servant relationships between San and other peoples were common. Whole San bands are known to have been clients of Khoi and Bantu-speakers (Dorman 1925; Mossop 1935; Silberbauer & Kuper 1966), and many of the European-owned farms in the Ghanzi district of Botswana have San families resident on them as labourers (Van Reenen 1966).

Other non-South African Institutions

Khoi and San specimens can be found in other European and North American Institutions, but in the opinion of this

author, none of these individuals possesses adequate documentary evidence to confirm their ethnic identity in life. Shrubbsall (1898) refers to a Transvaal 'Bushman' in the Vesalianum at Basle. Fritsch (1872) lists eight Khoi and seven San skulls in the Berlin Museum but all of these are either excavated or donated without supporting evidence of identity. One articular skull in the Berlin Museum (No. 3559) is listed as donated by Lichtenstein, but it is not possible to associate this specimen with that described in Lichtenstein's journal. A Richtersveld San was sent to the University of Manitoba in 1925 in exchange for a Canadian Indian skeleton (UCT 245), but both the documentation and the San specimen are now lost. The American Museum of Natural History in New York has ten 'Bushman' and four 'Hottentot' skeletons, but the catalogue provides no verification of the detail demanded here.

Department of Anatomy, University of Cape Town

The University of Cape Town Anatomy collection contains some 350 skeletons nearly all of which are drawn from an archaeological context. Nine verified Khoi and San individuals, disinterred from graves on farms in the Cape Province, are included. In each case the verification is based on the testimony of the farm owner who stated that he knew the individual in life.

Mr C. G. Coetzee of the farm Kruis River in the Sutherland District presented six San and two Khoi skeletons to the Anatomy Department between 1925 and 1927. These were the remains of people who had lived on

the farm in the nineteenth century and were known in life to either Mr Coetzee or his father. UCT 50 and 43 are the skeletons of a San man and wife who died on the farm about 1880. The woman, Saartje, was about 60 or 70 years of age and the man, Klaas, was 30 or 40 years at death. The age discrepancy may indicate that the relationship was mother and son rather than wife and husband. They were 'caught' by Mr Coetzee's great-grandfather in the region between Carnarvon and Sutherland. UCT 51 and 52 are the children or grandchildren of this couple. The confusion of generations adds support to the idea that the adults were mother and son. UCT 54 is the skeleton of a young San woman, Jannetje, who died about 1875. Her parents were 'wild Bushmen'. The last San individual (UCT 29) was known personally to Mr Coetzee, and this old man, Voetje, was buried by him in 1913.

The two Khoi skeletons from Kruis River are the remains of Cornelius Abraham (UCT 44), who was buried in 1878, and Totje (UCT 45), a young man who died of tetanus in 1888. No further information about the ethnic association of these individuals is known.

The remaining University of Cape Town specimen is the skeleton of a male San (UCT 35) from the farm Sputzunderwater in the Kenhardt District presented in March 1926. The catalogue states that he was reputed to be 108 years old at death. Although the age estimate is probably not accurate, the information implies that this individual was known in life.

Coetzee's testimony is consistent with known historical events. 'Wild' San individuals were 'caught' in the Karoo and adjacent regions during the first half of the nineteenth century (see description of specimen E.42 above). These individuals were usually children because the adults were shot on sight, and they invariably ended as domestics, shepherds or labourers on colonial farms. Coetzee's detailed knowledge of the specific people buried on his farm points to the validity of his information. The data for the specimen from Sputzunderwater is of less reliability.

South African Museum, Cape Town

The extensive collection of human skeletons in the South African Museum contains at least seven and as many as 13 well documented Khoi and San specimens.

A male San (SAM 1147) was donated by the Rev. H. Kling of Steinkopf in February 1909. This individual lived about 40 km from Steinkopf and was about 50 years old when he died in approximately 1892. He was a shepherd for a Bastard family by the name of Bok and was known to have been accidentally burned during his lifetime. Kling also provided the skeleton of the man's daughter (SAM 1148) who was about 20 years old. She died about the same time as her father. A third skeleton sent by Kling (SAM 1264) is of a male Bondelswart Khoi who had died in the veld about 1890. Kling provided skeletons for both the South African Museum and the Albany Museum in Grahamstown and the reliability of his ethnic determinations is discussed below.

Two male skeletons (SAM 1262 & 1263) were donated by Mr H. Drew in 1911. These were apparently the remains of two San who were murdered at Rielfontein in the northern Cape Province in 1910. Another male skeleton (SAM 1876) was obtained by the museum from Major F. Brownlee in

1917. This young male 'Bushman' was reported to have been shot dead by a German farmer in 1916 on the farm Choigonab near Grootfontein, Namibia. He was in his late 'teens and stood 1,32 m in height.

Namibia is also the source of a male 'Hottentot' (SAM 1870) who was taken prisoner by the Germans in the uprising of 1905. He was shot while trying to escape. Because 'Hottentot' was used to describe all of the Khoi, Orlam and Bastard opponents of the German colonial power, the usefulness of this ethnic determination is unclear.

Six more 'Bushman' skeletons at the South African Museum are accepted by some authors as verified San. These individuals are said to be 'Khomabushmen from German South West Africa' (SAM 1241, 1243, 1244) and 'Kowabushmen from inside the Cape Colony' (SAM 1249, 1251, 1253). They were sold to the museum by a Mr G. Lennox in 1909. Lennox is reputed to have had an extensive knowledge of San peoples in the northern Cape and southern Namibia, but the skeletons are in fact undocumented. The interesting case of the Lennox sales to the South African and McGregor Museums is considered in the next section.

McGregor Memorial Museum, Kimberley

The catalogue of the McGregor Museum contains entries for over 200 skeletons, but it is very difficult to verify particular specimens. This problem stems from the fact that Dr Robert Broom has annotated each entry with a typological assessment of the cranial morphology. The notations are ethnically specific and include morphological identifications of 'Bush', 'Korana', 'Griqua' and 'Morolong'.

As a result of this intentional confusion of ethnic name and morphology, relatively few of the identifications can be believed unless there is additional documentation.

Broom was responsible for adding two cadaver specimens to the Kimberley collection during 1921 (Broom 1941). The first individual was a lora male (MMK 264) named Andreas Links. He born at Kenhardt and died in the Douglas jail. Broom used this specimen as his 'type Korana'.

The second skeleton (MMK 283) is that of an approximately 18 year old male 'Bushman' from Langeberg. He and his younger brother were imprisoned at Douglas, where he was unfortunate enough to develop a fatal case of tuberculosis. Portraits in facial and lateral view (Fig. 3) as well as a full frontal photograph (Fig. 4) were taken by A.M. Duggan-Cronin before the individual's death. Broom testifies that these Langeberg brothers were regarded by themselves as 'pure Bushmen'. Broom's method of obtaining these two skeletons is revealed in a letter he wrote to a colleague in 1925 in which he says:

If a prisoner dies and you want his skeleton, probably two or three regulations stand in the way, but the enthusiast does not worry about such regulations. I used to get the body sent up . . . then the remains would be buried in my garden, and in a few months the bones would be collected (Findlay 1972:50).

No further information about MMK 264 and 283 can be obtained because the records of the Douglas jail were destroyed in a fire in 1944 (South African Prison Service, personal communication).



Fig. 3. Portrait of Langeberg Bushman (MMK 283) after Broom (1941).

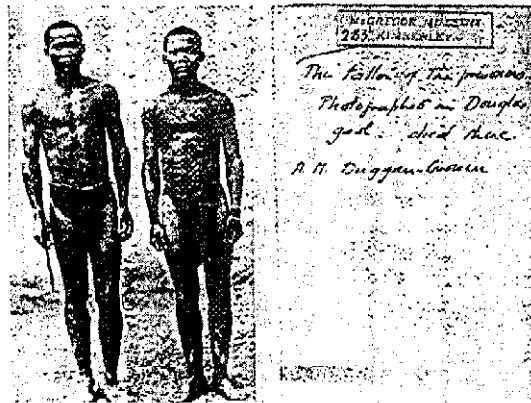


Fig. 4. Portrait of Langeberg Bushman (MMK 283) from a photograph at the McGregor Museum, Kimberley.

Fifteen 'Bushmen' and 'Hottentot' skeletons were sold to the McGregor Museum by Mr Lennox in 1910 and 1911. These skeletons, along with the six Lennox specimens at the South African Museum, make up a significant portion of the San specimens accepted by Rightmire (1970) and Hausman (1980). Since there is no detailed information about the acquisition of the skeletons, the ethnic identification rests solely on Lennox's word.

George St Leger Gordon Lennox (1845-1919) was a frontiersman living under the pseudonym 'Scotty Smith' in the northern Cape Province for much of the late nineteenth and early twentieth centuries (Metrowich 1983). His exploits are now famous, and it has become difficult to separate the truth from the myth. Born in Perthshire, Scotland, he came to South Africa in 1877 and moved to the northern border in 1882. He lived as a freebooter out of Taungs and Mafikeng for a while, but moved westwards in 1891 and settled on a farm at Leitland's Pan near Rietfontein. It is known that he was involved in illegal diamond buying, horse and cattle theft, smuggling, gun-running and armed robbery, but he was never successfully prosecuted by the Cape, Transvaal or German Colonial governments. He was granted free pardon from prosecution by the British in 1902 for services rendered as an intelligence agent during the Anglo-Boer War, and he

continued this kind of service by running supplies to the anti-German forces during the Khoikhoi rebellion of 1904-5 in southern Namibia. The collections of human skeletons was a money-earning enterprise that he set up in his later years. He received between £5 and £15 per specimen and sold his skeletons to Pösch in Vienna, and to the Berlin, McGregor and South African Museums. The magistrate at Upington even provided him with a permit to exhume 'Bushman' skeletons which remained valid from 1910 to July 1912. Much legend exists about how Lennox came by the bones, and it is even said that he shot the required number of 'Bushmen' whenever he needed their skeletons (Metrowich 1983). Lennox certainly was very familiar with the native people of the region, and a more likely explanation is that he excavated graves based on information provided by local native informants.

The Lennox 'Bushmen' skeletons at the Kimberley museum include seven males (MMK 143, 145, 151, 161, 163, 166, 175) and five females (MMK 144, 150, 165, 167, 174), as well as three 'Bondelswart Hottentot' men (MMK 142, 158, 159). All of the San individuals appear to have come from the Gordonia District and the Bondelswarts were from near Warmbad in Namibia.

National Museum, Bloemfontein

Two skeletons in the National Museum (NMB 1062a & b) can be accepted with a limited degree of certainty as San individuals. The catalogue does not provide much information but the skeletons are accompanied by labels which were obviously part of a display some time in the past. These labels indicate that the skeletons are of a man and wife who lived on the farm Nootgedacht at Kaffir River in the Bloemfontein District. The man died in 1888 and his wife two years later. Their respective ages at death were given as 90 and 100 years.

The National Museum specimens are undoubtedly the remains of 'farm Bushmen' and are similar to the Sutherland and Kenhardt specimens in Cape Town. The claims of nonagenarian and centenarian status for the Nootgedacht skeleton cannot be supported without question since few San people reached such ages in the present or past (Howell 1979). San skin is known to lose its elasticity at a relatively early age (Singer 1978), and the wizened appearance of a San in the fifth or sixth decade of life would indicate a very advanced age to an uninformed European observer.

Albany Museum, Grahamstown

The Albany Museum received four skeletons from Rev. H. Kling between 1909 and 1912. Kling's correspondence has fortunately been preserved, and it is possible to obtain evidence of Khoi and San identity for two of these specimens. HS 49 is the partial skeleton of a 'grass Bushman' from near Steinkopf. Kling sent the specimen, along with a covering letter, to Professor Schwarz of Rhodes University of 21 April 1909. In the letter Kling remarked: "This Bushman was about 4 years old when he died, he was well known here and called Kusib". The ethnic identity of the individual was further discussed in a subsequent letter to Schwarz (21 May 1909) which includes the following passage:

There is the thin grass bushman called /hoen or /nabi.

They are living in the Kalahari, shore of the Orange River, and Fish River. They are leading an awful life, antes [sic], snakes, mice, locusts and grass is there food [sic]. I do not know much re their language but same is different from the Hottentots language.

The cranium of this specimen is now missing.

The second documented specimen donated by Kling (HS 94) is a Khoi individual. Kling wrote to John Hewitt on 12 March 1912 in reference to the skeleton: "It is from a black Bondelswart hottentot clear race, who died in the field about 17 years ago. I have seen the man himself, while in life." The skeleton has been fully articulated.

Kling was minister at the Steinkopf Rhenish Mission station from 1893 to 1899 and again from 1907 to 1919 (Strassberger 1969). Although he seems to have had no training in anthropology, he was familiar with the local populations and contributed both skeletal and ethnological specimens to southern African museums. His first appointment at Steinkopf overlapped with the severe Namaqualand drought of 1895-1897, and it was during this period that many of the people died whose skeletons Kling later donated to the South African and Albany Museums.

Department of Anatomy, University of the Witwatersrand

The large R.A. Dart collection of human skeletons in the Department of Anatomy has been the source of a number of 'Bushman' and 'Hottentot' skeletons of cadaver origin. Stern & Singer (1967), Rightmire (1970), Howells (1973) and Hausman (1980) all included four female San (A43, 199, 222, 1035) in their studies, and Rightmire and Hausman also included nine male and three female Khoi (see Table 1).

Of the Khoi specimens, A82, 143 and 171 are listed as 'mixed race' in one form or other and the remaining specimens have absolutely no support for an ethnic identification other than the word 'Hottentot'. In each case, the individual lived in or near the urban townships of Johannesburg and it seems unlikely that these people could be Khoi. Working in the early 1950s Grobbelaar (1957) was able to find only 30 individuals in the western Transvaal and none on the Witwatersrand who regarded themselves as Khoi. These 'Hottentot' specimens are much more likely to be in the 'coloured' or genetically mixed spectrum. Since hospital racial identifications are often based on the typological assessment made by untrained clerical staff, people who showed Khoisan facial features and had a skin colour lighter than the accepted norm for Bantu-speakers may have been classed as 'Hottentot' or 'Bush'. Further support for this idea comes from the twentieth century use of the term 'Hotnot'. This is the shortened and derogatory form of 'Hottentot', and has become synonymous in South Africa with the racial category 'coloured'.

The one acceptable Khoisan skeleton is accompanied by impeccable support for a San ethnic identity. A43 is described in the cadaver catalogue as the body of Keri Keri, a 35 year old 'Bushwoman' who died on the 15th September 1939 at the Royal South Western Hospital at Oudtshoorn, Cape Province. The cause of death is listed as septic pneumonia. Her body was taken to the Department of Anatomy at the University of the Witwatersrand where it was dissected by the Science class during November 1939.

Two years previously, Keri Keri (or more correctly /Keri/Keri) had been studied in life by a team of researchers on an expedition to the junction of the Arob and Nossob rivers in the southern Kalahari. The object of this expedition was to secure some San groups for public display as part of

Table 1. Cadaver skeletons listed as 'Hottentot' at the University of the Witwatersrand.

Catalogue Number	Name	Sex	Age	Address	Year of Death	Comments from Catalogue
A 82	Frederick Statie	male	71	none given	1926	mixed Hottentot
A 94	Annie Louis	female	68	Severfontein, Johannesburg	1926	Hottentot
A 143	Issac du Plessis	male	70	no fixed abode	1927	Hottentot mixed
A 171	Harry Bosman	male	30	Twyfontein, Johannesburg	1927	Hottentot mixed
A 178	Lizzie Tembo	female	40	Johannesburg	1928	Hottentot
A 188	Abrams Mieter	male	56	Jeppe, Johannesburg	1928	Hottentot
A 223	Daniel	male	70	Turffontein, Johannesburg	1929	Hottentot
A 450	Paulus van Wyk	male	50	Vrededorp, Johannesburg	1933	Hottentot
A 663	Ala Kaatje Exus	female	80	Pretoria	1942	Hottentot
A 906	Jerry Lowens	male	67	Doornfontein, Johannesburg	1940	Hottentot
A 1472	Phillip Martius	male	50	Newton, Johannesburg	1947	Hottentot (Eurafrican)
A 2097	Andries Mathews	male	83	Alexandria, Johannesburg	1957	Hottentot

Each of these skeletons is said to have been prepared from whole bodies brought into the Department for dissection and therefore all of them are fully documented and their identity easy to verify.

A check of the cadaver records shows that, except for A43, none of the Witwatersrand specimens can be accepted as known Khoi or San. A222 is a skull donated without supporting documentation. A199 is entered as 'Msutu Bantu', but the 'Msutu' portion has been crossed out and replaced by the word 'Bush'. A1035 is called 'Bush?' in the records, but the line following reads "race given as mixed".

the 1937 Empire Exhibition in Johannesburg and Cape Town. In all, 77 people from three family clusters visited urban South Africa. Physical measurements, family relationships, disease patterns, language and material culture were recorded, and the results of these investigations were published in a monograph (Bantu Studies 11 (3): 159-294). /Keri/Keri's vital statistics are included, and Dart (1937) provides a long list of her physical characteristics, her place in the clan genealogy, and her photograph (Fig. 5). An error is present for the age of /Keri/Keri in the cadaver records. Her stated age is 35 years, but both the published and



Fig. 5. Photograph of /Keri/Keri (A43) (central figure) taken in July 1936. After Dart (1937).

osteological ages point to a girl in her early 20s. No explanation is given how an individual from the southern Kalahari came to die in a hospital at Oudtshoorn nor how Dart managed to obtain permission to claim her body.

Discussion

The primary goal of many modern physical anthropologists working in southern Africa has been to clarify the enigmatic relationship of the Khoikhoi with the San. It has been assumed that the dichotomy between them has been real in both the prehistoric and historic periods. Recent research has indicated that a true genetic/cultural dichotomy may have existed in certain locations before the advent of European colonization (Parkington 1984; Smith 1983), but after the beginning of the eighteenth century the distinction between them was blurred throughout the regions in or near the Cape colony (Marks 1972; Elphick 1977). Therefore, specific knowledge of where and when the Khoi and San skeletons come from is critical because samples from different time periods must be interpreted differently.

Morris (1986) has shown that the set of interesting specimens described above is of little value to our understanding of past Khoi and San populations. For the most part, they are a sample of late historic individuals who represent the dynamic biological reorganization of nineteenth century populations. They have the potential to tell us a great deal about this exciting time period, but they are too late in time to reflect the prehistoric patterns evident in southern Africa.

Even extant populations of hunter-gatherers cannot be used as perfect models for the description of long dead groups. Schrire (1980, 1984) has shown that the desire to reflect these groups as living examples of ancestral peoples is patently inconsistent with the facts. None of these groups has turned out to be as isolated and ideal as we have been made to believe, and few, if any, of them have escaped the cultural and technological impact of contact with other peoples during the last few millennia. To assume a straightforward biological, or even cultural, continuity of modern or nineteenth century populations with prehistoric groups would be wishful thinking and would undoubtedly result in inaccurate reconstructions of past populations.

Further confusion in southern African studies is present because the terminology used by historical and modern observers is inconsistent. Guenther (1980) has outlined the changing attitude of Europeans to the San and has demonstrated how the stereotypes have changed with the socio-political context of the historic period. When terminology from lay sources is used, the confusion of terms becomes even more muddled. The term the procurer of the skeleton used to describe Khoi or San populations was dependent not only on his time period but also on his relationship with Khoisan people as colonial administrator, missionary, scientist or trader. Therefore the classification of the museum skeletons tell us more about the collector than the collected.

Perhaps the most interesting information we can learn from the collectors is the level of detachment that is maintained by these people. All workers employed in dealing with human remains go to some mental effort to distance themselves from the fact that the bodies they are handling once belonged to living individuals. Scientists too go through this process, but the effect is magnified when the remains are from people of a distant land or culture alien to that of the researcher. It is almost frightening to realize the detached point of view of these early scientists. The action of Robert Broom in sending decapitated specimens back to Scotland at the turn of the century is only eclipsed by the addition of glass eye inserts to dried heads in the English museums.

Although we must reject the use of the museum collections as Khoisan reference samples, perhaps we can salvage some of their value by studying the situations in which they came to reside in their respective museums.

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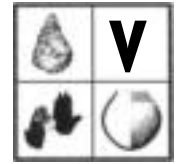
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ASAPA CONSTITUTION AND APPENDICES AS ACCEPTED AT THE BIENNIEL GENERAL MEETING OF THE ASSOCIATION OF SOUTHERN AFRICAN PRO- FESSIONAL ARCHAEOLOGISTS ON 10 APRIL 2006

APPENDIX A TO THE CONSTITUTION OF ASAPA: CODE OF ETHICS FOR ASAPA MEMBERS

The Code of Ethics establishes ethical standards for all ASAPA members to follow in fulfilling the objectives of the ASAPA Constitution and their responsibilities to the archaeological profession, affiliated activities, and the residents of southern Africa.

In adherence to this code ASAPA members shall:

1. Carry out their professional and affiliated activities, as far as possible, in accordance with established principles of research, teaching, cultural resource management and sustainable development with the highest standards of protection in the spirit of the Charter for the management of the archaeological heritage approved by ICOMOS (International Council on Monuments and Sites) in 1990, or relevant updated equivalent Charter.
2. Place the integrity of cultural heritage resources, and the health, safety and enrichment of society as a whole above any commitment to sectoral or private interests.
3. Draw to the attention of the relevant authorities any threats to archaeological heritage, including the plundering of sites and monuments and illicit trade in antiquities, and to use all the means at their disposal to ensure that action is taken in such cases by the relevant authorities.
4. Not illicitly deal in, sell, trade, nor knowingly aid any individual or organisation in the illicit sale, trade, or transfer of any antiquity (archaeological object, site or property) for the purpose of anyone's personal profit, and support the terms of the UNESCO 1970 convention, or relevant updated equivalent, regarding illegal import, export, or transfer of ownership of cultural property.

5. Contribute to general education about the cultural heritage value of artefacts, sites and contemporary human attachments to these.
6. Acknowledge and respect community views of the cultural heritage value of artefacts and sites, and incorporate consultation and participation with communities where appropriate.
7. Provide ethical leadership, and not mislead students, technicians, affiliates, volunteers or the public concerning their limitations, training or abilities.
8. Not conduct professional or affiliated activities in a manner involving dishonesty, fraud, deceit or misrepresentation.
9. Refrain from advertising or presenting their knowledge and services in a manner that may bring discredit to the profession or affiliated activities.
10. Ensure that they have the necessary experience and expertise for the tasks at hand, or obtain and support the necessary specialists/experts to complete such tasks.
11. Avoid and counter the spread of false, erroneous, biased, unwarranted or exaggerated statements concerning archaeology to protect the profession and affiliated activities from misunderstanding and misrepresentation.
12. Be obliged, when they have substantial evidence of a breach of the ASAPA Constitution, Code of Ethics, Code of Conduct or Minimum Standards of Practice to bring such conduct to the attention of the offending member and to Council.

APPENDIX B TO THE CONSTITUTION OF ASAPA: CODE OF CONDUCT FOR ASAPA MEMBERS

It is the responsibility of all archaeologists, archaeological technicians and affiliated practitioners in southern Africa to work for the long-term research, conservation and protection of the archaeological record by practising and promoting appropriate stewardship, and adhering to the Minimum Standards of Practice of ASAPA (Appendix C of the Constitution).

I CONDUCT TOWARDS THE PUBLIC AND CULTURAL HERITAGE RESOURCES

In acknowledgement of archaeologists' responsibility to the public and to the cultural heritage resources of southern Africa, ASAPA members shall:

- 1.1 Carry out professional and affiliated activities, in accordance with the understanding that cultural heritage is an inter-connected and often finite resource that belongs to the people of southern Africa.
- 1.2 Acknowledge that appropriate access to knowledge from the past is an essential part of human cultural heritage, and that the conservation of that heritage is a preferred option.
- 1.3 Restore sites in a timely fashion, unless superseding factors, such as conservation or public outreach and education prerogatives intervene.
- 1.4 Endeavour to ensure that cultural heritage sites that are open to the public are protected through adequate and sustainable survey, management, planning and infrastructure and that their heritage value is not jeopardised by commercial requirements.
- 1.5 Within reasonable limits of time, finance and expertise, volunteer their special knowledge, skills and training to the public for the benefit of society as a whole, and where possible provide information about cultural heritage for educational and humanitarian purposes.

- 1.6 Be sensitive to, and respect the legitimate concerns of individuals and groups whose cultural heritage is the subject of archaeological investigations.
- 1.7 Act with sensitivity in all dealings with archaeological human remains, recognising that such remains and associated objects may be of special significance to contemporary communities or individuals, and that extraction and curation requires consultation and co-operation with, and permission from, all affected parties.
- 1.8 Present, upon request by rightful petitioner, evidence of qualifications, accreditation, professional training, expertise and experience.
- 1.9 Refrain from expressing a professional opinion, making a public report, or giving a legal testimony involving archaeological matters without being as thoroughly informed as might reasonably be expected.

2 CONDUCT TOWARDS PEERS AND ASSOCIATES

In acknowledgement of archaeologists' responsibility to the integrity of the archaeological profession, peers, colleagues, archaeological technicians and affiliated practitioners, ASAPA members shall:

- 2.1 Understand that professionalism implies that maximum use will be made of resources, knowledge and competencies with honesty and integrity.
- 2.2 Avoid conflicts of interest with awareness that the profession is often judged by the performance of an individual.
- 2.3 To the best of their ability, keep informed of advances in archaeological and related knowledge and techniques, and legal requirements for the practice of archaeology in the country/ies they practise, and integrate such knowledge and techniques into their professional, technical and affiliated activities, including teaching and mentorship.
- 2.4 In all communication, give full and proper credit to, and avoid misrepresentation of, the work and ideas of others.
- 2.5 Communicate and co-operate with colleagues with common professional, technical or affiliated interests and, wherever reasonable, give due respect to colleagues' interests in, and rights to, information about sites, areas, collections, or data where there exists a mutual or potential active research concern.
- 2.6 In all actions regarding research, teaching, fieldwork, laboratory work and the public arena, promote the appropriate management of cultural heritage and associated materials and their context.
- 2.7 Offer professional, technical or affiliated advice only on those subjects in which they are informed and qualified through professional training and experience.
- 2.8 Ensure that ASAPA members act in a manner consistent with the stature of ASAPA and the honour and standing of the discipline of archaeology and affiliated activities.
- 2.9 Mentor less experienced colleagues and co-workers to encourage personal, professional or technical development, and an enthusiasm for the profession and its affiliated activities.
- 2.10 Not represent themselves as spokespersons for heritage authorities without foundation, or imply that they can influence any cultural heritage authorisation processes.
- 2.11 Not seek employment, grants or gain or by offers of gifts or favours.

- 2.12 Not attempt to unjustly injure the reputation or opportunities for employment of another archaeologist, archaeological technician or affiliated practitioner by false, biased or undocumented claims.

3 CONDUCT FOR ARCHAEOLOGICAL IMPACT ASSESSORS AND CONTRACTORS

In acknowledgement of the responsibility of professional archaeologists who act as impact assessors or contract archaeologists, ASAPA members shall:

- 3.1 Consider all reasonable alternatives when assessing mitigation or destruction of cultural heritage resources.
- 3.2 Inform employers or clients of any professional or personal interest that may impair the objectivity of their work.
- 3.3 Provide clients with access to the provisions of this code and the Minimum Standards of Practice.
- 3.4 Assist government departments wherever reasonable by supplying adequate and accurate information.
- 3.5 Report on concerns beyond their own brief to the relevant heritage resources authority and ASAPA.
- 3.6 Respect requests for confidentiality expressed by clients (**confidentiality can only be applied to information of non-archaeological nature gained in the course of the contract**), provided that such confidence will not contribute to unnecessary degradation of the cultural heritage resources or jeopardise the interests of the public in respect of the national estate. Should a conflict develop, ASAPA members shall notify the client in writing, and advise the appropriate heritage authority that such conflict exists.
- 3.7 Specify limitations, constraints and knowledge gaps and clearly indicate aspects that could not be investigated, and the reasons for these omissions.
- 3.8 Record all relevant communications and decisions in writing.
- 3.9 Involve specialists where appropriate or required and not attempt to conduct work for which they are not accredited, or do not have the necessary experience and/or expertise.
- 3.10 Reflect any community or stakeholder issues that have been identified and indicate how each has been considered/resolved.
- 3.11 Recognise, respect, and protect where necessary, the knowledge of local and affected communities.
- 3.12 Respect the confidentiality requirements of stakeholder communities, e.g., initiation sites, ceremonies, burial rites and sacred artefacts and localities where these are affected.
- 3.13 Accept that, in cases of query or conflict of interest, evaluations shall be peer reviewed, where possible under the aegis of ASAPA and/or the relevant heritage authorities.
- 3.14 Notify the appropriate heritage authorities of any technical and legal loopholes in the legislation.
- 3.15 Refrain from unethical bidding for contracts, and allow the prospective client/s to select professional archaeologists on the basis of ability and expertise as accredited by ASAPA and the legislation and guidelines of the various southern African countries.
- 3.16 Describe fully in writing all salaries or fees and the extent and kinds of service to be rendered.

- 3.17 Accept payment for a particular service or report from one source only, except with the full knowledge and consent of multiple parties, were so concerned.
- 3.18 Refrain from undertaking assessments for which they are not accredited, or do not have, or cannot provide, the relevant experience and/or expertise.
- 3.19 Not mislead the public or clients in any way.
- 3.20 Refuse to accept briefs that involve benefit from the illicit sale of protected material or any other illegal activities.
- 3.21 Refuse to accept limited briefs, and ensure that all aspects and areas associated with the development are covered, e.g., increased traffic, tourism activities, construction access roads, or position of construction camps.

APPENDIX C TO THE CONSTITUTION OF ASAPA: MINIMUM STANDARDS OF PRACTICE FOR ASAPA MEMBERS

ASAPA members agree that all archaeological work, including research, teaching, contract and rescue archaeology, must be conducted according to these minimum standards of practice. Archaeologists, archaeological technicians and affiliated practitioners have a responsibility to design and conduct projects that will add to our understanding of the past and/or develop better theories, methods, or techniques for interpreting the archaeological record, while causing minimal attrition of the archaeological resource base. In the conduct of an archaeological or affiliated project, the following minimum standards apply:

I STANDARDS FOR PROJECT INITIATION

Archaeologists, archaeological technicians and affiliated practitioners have a responsibility to prepare adequately for any archaeological or affiliated project, research or otherwise. ASAPA members shall:

- 1.1 Assess the adequacy of their qualifications for the demands of the project, and minimise inadequacies by acquiring additional expertise and/or bringing in associates with the requisite qualifications, or by modifying the scope of the project.
- 1.2 Inform themselves of any previous relevant research and documentation.
- 1.3 Develop a specific project plan that specifies the objectives of the project, takes into account previous relevant research and documentation, and employ a suitable methodology that provides for the most economical use of the resource base consistent with the objectives of the project and ASAPA's general aims and methods.
- 1.4 Ensure the availability of adequate and competent staff and support facilities to carry the project to completion, and arrange adequate, suitable and sustainable curational facilities for material and records.
- 1.5 Comply with all legal and safety requirements and obtain all necessary permits and permission from the relevant authorities, landowners, legal custodians or other stakeholders.
- 1.6 Inform themselves of any existing minimum standards required by the appropriate authorities before starting the project.
- 1.7 Determine whether the project is likely to interfere with the programme or projects of other researchers and initiate negotiations to minimise interference if there is such likelihood.

2 STANDARDS FOR SURVEYING, COLLECTING, EXCAVATION AND CURATION

Procedures for field surveys, shovel tests/auguring, collection, excavation, recording and curation must meet the following minimum standards:

- 2.1 The management of all archaeological and affiliated projects in southern Africa must respect the National and Provincial Standards relating to permitting, conditions of employment and safety of the country/ies in which the project is taking place.
- 2.2 The minimum standards set by the appropriate authorities of the region in which the work is being conducted should be followed in addition to any stipulations in this document.
- 2.3 A field record must be established for every survey undertaken including CRM surveys, and submitted to the appropriate national or regional recording centre and/or heritage agency of the country where the survey or project is being conducted. Such documents should be complete, and able to stand alone, regardless of its possible submission as part of an Environmental or Heritage Impact Assessment.
- 2.4 Reports/records shall contain the following minimum information:
 - Where possible, a national site number as allocated by the appropriate regional recording centres or authorities in the country where the work is being conducted (not the recorder's own site number).
 - Recorder's name and institution, date of recording.
 - Site name and co-ordinates (indicate whether these were derived from a GPS reading).
 - Map sheet 1:50 000 indicating the location of the site/s or surveyed area.
 - Site category/ies; e.g.: Earlier Stone Age, Middle Stone Age, Later Stone Age, Early Iron Age, Middle Iron Age, Late Iron Age, Rock Art, Historical.
 - Site type; e.g.: open, shelters, cave, structure.
 - Owner/s and/or occupier/s of the site.
 - Merits of conservation, salvage, research.
 - Existing threats if any.
 - Site description.
 - Location of photographic record (artefacts should be photographed as close to their original positions as possible using a cm or m scale).
 - Relevant background or other information or where appropriate, a full desktop study.
- 2.5 Members of ASAPA who author and/or sign research or CRM reports dealing with southern African archaeology shall deposit copies of said reports within one calendar month of the date of producing the document with the relevant governmental heritage authority (RGHA).
- 2.6 Members of ASAPA agree to allow *ad hoc* peer review committees to review reports that they have deposited with the RGHAs, and to have the right to appeal the findings of such committees.
- 2.7 If artefacts or samples are collected during a survey or as a result of excavation or affiliated activity, it should be noted on the field record, and a system for recording their proveniences must be maintained.
- 2.8 During surveys, excavation or affiliated activities, uncollected entities such as artefacts, environmental or cultural features, depositional strata, and the like, must be fully and accurately documented by appropriate means.

- 2.9 ASAPA does not encourage the excavation of entire sites under normal circumstances. Substantial portions of sites should be preserved to allow future work by other archaeologists. The absolute minimum requirement is that a witness section must be retained for future investigation.
- 2.10 All excavated sites should be dated as accurately as possible.
- 2.11 Sites must be restored in a timely fashion, unless superseding factors, such as conservation or the construction of display facilities intervene.
- 2.12 During the survey, excavation or restoration any rock art should be protected from all contact, for example dust resulting from such activities.
- 2.13 The methods employed to collect data must be fully and adequately described. Significant stratigraphy and/or relationships amongst artefacts, other specimens, cultural and environmental features and oral histories must be accurately recorded.
- 2.14 All records should be intelligible to other archaeologists, archaeological technicians or affiliated practitioners. If terms lacking commonly held referents are used, they should be clearly defined.
- 2.15 In so far as possible, the interests of other researchers should be considered. For example, upper levels of a site should be scientifically excavated, recorded and curated, even if the focus of the project is on underlying levels.
- 2.16 During accessioning, analysis, and curation of archaeological material and records, precautions must be taken to ensure that accurate correlation between the material and the field records are maintained.
- 2.17 Archaeological material and research records associated with a project must be deposited at an institution with permanent curatorial facilities that provide long-term access to archaeological collections, records, and reports, unless otherwise required by law.
- 2.18 Institutions housing archaeological material and data archives must have written collections management policies covering procedures on acquisition, processing, documentation, storage management, conservation, inventory control, and the management of human remains where applicable.
- 2.19 Researchers, including CRM practitioners, must comply with the curation requirements and the collections policy of the archaeological materials repository.

3 ADDITIONAL MINIMUM STANDARDS FOR CRM PRACTITIONERS

In addition to section 2 of this document all ASAPA members conducting contracted mitigation shall:

- 3.1 Outline the logic of the mitigation strategy as relating to the site description and the significance rating applied to the site.
- 3.2 Describe the mitigation and its yield using accepted archaeological recording and documentation methods.
- 3.3 Discuss the results of the mitigation that places the sites in the regional context and indicate how the mitigation has contributed to archaeological knowledge or identified areas for future research.
- 3.4 Where possible, date sites that are excavated as a result of mitigation (it is understood that the cost incurred is borne by the developer).

- 3.5 Where possible, collect samples of datable material from sites that will be destroyed without mitigation.

4 ADDITIONAL MINIMUM STANDARDS FOR ROCK ART PRACTITIONERS

In addition to section 2 of this document all ASAPA members conducting rock art research and/or recording shall:

- 4.1 Acquire the necessary permits from the appropriate authorities to conduct any research or recording (special note: although some rock art research does not require a permit in South Africa, all rock art research and recording requires a permit in most other SADC countries).
- 4.2 Conduct research and recording with respect to rock arts' makers and descendant communities.
- 4.3 Ensure that their work involves minimal contact with the rock art or the adjacent rock support except in the instance of direct tracing (see clause 4.10 of this document).
- 4.4 Implement measures to ensure that the generation of dust is controlled when working near the art.
- 4.5 Refrain from wetting the rock art or rock support or applying any other substance to the art or to the rock support, except in the instance of direct tracing (see clause 4.10 of this document).
- 4.6 Refrain from making rubbings or castings of rock engravings unless circumstances make this a viable option and that this is explicitly authorised by a valid permit from the appropriate authorities.
- 4.7 Refrain from removing any rock art from its original context unless this is explicitly authorised by a valid permit from the appropriate authorities.
- 4.8 Refrain from disturbing other archaeological remains or deposits (e.g. by using mats to stand on while tracing and not excavate around engravings over which deposit has accumulated).
- 4.9 Ensure that rock art research, conservation and outreach are given precedence over commercial interests.
- 4.10 If tracing is permitted the following conditions should be complied with:
 - Direct tracing should only be conducted by members who have received specialist training, or members under the direct supervision of a specialist tracer.
 - No tracings shall be made if the rock surface, engraving or painting is flaking, unstable or fragile. In such cases, non-contact recording methods should be used.
 - Only tape or adhesive that leaves very little residue should be used to affix tracing sheets, and such materials should never be placed over the rock art.
 - Tracing sheets should be acid-free and generate the minimum of electro-static charge (drafting film is the standard for rock paintings and plain polythene for engravings)
 - Tracing instruments should not place undue pressure on the art or leave any residue on the art or the rock surface (fine propelling pencils are the standard for tracing rock paintings and fine marker pens are the standard for recording rock engravings).
 - All tracings and copies thereof must be lodged with an appropriate institution with a demonstrable capacity to catalogue and curate the tracings and copies.

5 ADDITIONAL MINIMUM STANDARDS FOR UNDERWATER ARCHAEOLOGICAL PRACTICE

In addition to section 2 of this document all ASAPA members conducting recording or research on wrecks shall:

- 5.1 Provide the presumed name of the vessel, date of the wreck and the name of the nearest port on the site record and other reports.
- 5.2 Provide a record of the names and details of all participating divers on permit applications and in reports.
- 5.3 Keep a log of all dives on the wreck site to be submitted with the site record and other reports, recording the date, times, names of persons involved, weather and sea conditions and the work accomplished.
- 5.4 Where appropriate provide the contact details of any collaborating institutions, companies or individuals to the appropriate authorities and on the site record and other reports.
- 5.5 Make a formal, legal agreement with collaborating institutions, companies or individual regarding the curation and/or disposal of any objects recovered from the wreck and any proposed division of such objects between the member and the collaborators.
- 5.6 Comply with the appropriate authorities' requirements for salvage licences and customs regulations.
- 5.7 Dispose of objects recovered from a wreck only to the appropriate heritage authority, collaborating institutions, companies or individuals, except where the permission of the appropriate authorities has been obtained to do otherwise.
- 5.8 Resort to the use of explosives, cranes or other equipment designed to move large quantities of overburden or obstructions only with written permission from the appropriate authorities.
- 5.9 Remove wood, ivory, other organic materials or ferrous materials only once special facilities for their recovery and curation have been arranged.
- 5.10 Not allow divers other than those listed on the permits to take part in the project without permission from the appropriate authorities.

6 ADDITIONAL MINIMUM STANDARDS FOR EXCAVATING HUMAN REMAINS

In addition to section 2 of this document all ASAPA members conducting research or management projects on human remains, associated objects, gravesites or burial grounds shall:

- 6.1 Adhere to all relevant legislative requirements of the respective countries where archaeological work is being conducted on human remains and associated objects.
- 6.2 Show due respect for all human remains and the customs, beliefs and practices of any person/s or community/ies concerned with such graves, burial grounds and/or associated objects.
- 6.3 Provide the correct contact details on the site record and other reports of the owner of the land on which the grave or burial ground is situated, as well as contact details of individuals, groups or communities with claims to the graves, burial grounds and/or associated objects.
- 6.4 Include in the report the details any of arrangements for the exhumation and reinterment of the contents of graves in the case of the destruction of graves or burial grounds.
- 6.5 Make a concerted and documented effort to identify, contact and consult communities, groups and/or individuals that may have an interest in the graves or burial grounds.

- 6.6 Provide copies of agreements reached with such communities or individuals regarding the future of the graves or burial grounds to the relevant authorities.
- 6.7 Refrain from disturbing any previously unknown grave discovered in the course of excavation, development or any other activity, except when mandated to do so by the relevant authorities.

7 ADDITIONAL MINIMUM STANDARDS FOR CURATING HUMAN REMAINS

In addition to section 2 of this document all ASAPA members shall:

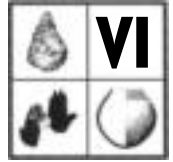
- 7.1 Adhere to all relevant legislative requirements of the respective countries, regarding the curation of human remains.
- 7.2 Deposit human remains with an institution with permanent curatorial facilities, unless arrangements for re-interment have been made (as per 6.4).
- 7.3 Deposit human remains only with curatorial institutions that have developed, or are developing, institutional policy for the responsible curation of human remains.

8 STANDARDS FOR DISSEMINATION

Archaeologists, archaeological technicians and affiliated practitioners are responsible for the dissemination of the results of their research or related projects to the appropriate constituencies with reasonable dispatch.

- 8.1 Intellectual property, as contained in the knowledge and documents created through the study of archaeological resources, is part of the archaeological record. As such it is best treated in accord with principles of stewardship. If there is a compelling reason, and no legal restrictions or strong countervailing interests, a researcher may have primary access to original materials and documents for a period of 10 years, after which these materials and documents must be made available to others. Disputes will be dealt with in accordance to the Grievance Procedures for ASAPA Members (Appendix D to the Constitution).
- 8.2 Failure to complete a full scholarly report within 10 years after completion of a research project shall be construed as a waiver of an archaeologist's right of primacy with respect to analysis and publication of the data. Upon expiration of such 10-year period, or earlier, if the archaeologist shall determine not to publish results, such data should be made fully accessible to other archaeologists or qualified parties for analysis and publication.
- 8.3 Results that are considered significant contributions to substantive knowledge of the past, or advancements in theory, method or technique should be disseminated to colleagues and other interested persons by appropriate means such as publications, reports at professional meetings or letters to colleagues.
- 8.4 Requests from qualified colleagues for information on research results should be honoured, if consistent with the researcher's prior rights to publication and with her/his other professional responsibilities.
- 8.5 While contractual obligations in reporting must be respected, archaeologists should not enter into a contract that prohibits the archaeologist from including her/his own interpretations in the contractual reports, or from the right to use the data after completion of the project.
- 8.6 The intellectual property of communities under/amongst whom archaeological work is conducted must be acknowledged and protected where appropriate.

Appendix



REPUBLIC OF SOUTH AFRICA

—

**WORLD HERITAGE
CONVENTION ACT**

No 49, 1999

ACT

To provide for—

the incorporation of the World Heritage Convention into South African law; the enforcement and implementation of the World Heritage Convention in South Africa; the recognition and establishment of World Heritage Sites; the establishment of Authorities and the granting of additional powers to existing organs of state; the powers and duties of such Authorities, especially those safeguarding the integrity of World Heritage Sites; where appropriate, the establishment of Boards and Executive Staff Components of the Authorities; integrated management plans over World Heritage Sites; land matters in relation to World Heritage Sites; financial, auditing and reporting controls over the Authorities; and to provide for incidental matters.

PREAMBLE

Recognising that the cultural heritage and the natural heritage are among the priceless and irreplaceable possessions, not only of the Republic, but of humankind as a whole;

Acknowledging that the loss, through deterioration, disappearance or damage through inappropriate development of any of these most prized possessions, constitutes an impoverishment of the heritage of all the peoples of the world and, in particular, the people of South Africa,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:

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CHAPTER I

DEFINITIONS, OBJECTIVES, PRINCIPLES AND IMPLEMENTATION

Definitions

- I. In this Act, unless inconsistent with the context—
- (i) "Authority" means an existing Authority which is declared as an Authority in terms of section 8 or an Authority which is established in terms of section 9; 5
 - (ii) "Board" means the Board referred to in section 14;
 - (iii) "Convention", as well as "World Heritage Convention", means the Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted by the General Conference of United Nations Education, Scientific and Cultural Organization (Unesco) on 16 November 1972 and ratified by the Republic on 10 July 1997, a copy of which is set out in the Schedule; 10
 - (iv) "cultural heritage" has the meaning given to it in Article 1 of the Convention;
 - (v) "Department" means the Department of Environmental Affairs and Tourism; 15
 - (vi) "ecosystem" has the meaning given to it in section 1 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
 - (vii) "environment" has the meaning given to it in section 1 of the National Environmental Management Act, 1998;
 - (viii) "establishment date" means the date determined by the Minister in terms of section 8 or 9; 20
 - (ix) "Executive Staff Component" has the meaning given to it in Chapter III;
 - (x) "historically disadvantaged persons" means persons or categories of persons that were unfairly discriminated against on the basis of past legislation, policies, prejudice and stereotypes; 25
 - (xi) "integrated management plans" has the meaning given to it in Chapter IV;
 - (xii) "MEC" means the Member of the Executive Council responsible for environmental, cultural or heritage affairs, as the case may be, in the province concerned;
 - (xiii) "Minister" means the Minister of Environmental Affairs and Tourism; 30
 - (xiv) "natural heritage" has the meaning given to it in Article 2 of the Convention;
 - (xv) "Operational Guidelines" means the operational guidelines for the implementation of the Convention prepared by the World Heritage Committee;
 - (xvi) "pollution" has the meaning given to it in section 1 of the National Environmental Management Act, 1998; 35
 - (xvii) "prescribe" means prescribed by regulation in terms of this Act;
 - (xviii) "regulation" means a regulation made in terms of this Act;
 - (xix) "sustainable development" has the meaning given to it in section 4(2) of this Act;
 - (xx) "this Act" includes the Convention, regulations and any notice issued under this Act; 40
 - (xxi) "World Heritage Committee" means the World Heritage Committee established in terms of Article 8 of the Convention;
 - (xxii) "World Heritage Fund" means the World Heritage Fund established in terms of Article 15(1) of the Convention; 45
 - (xxiii) "World Heritage List" means the World Heritage List established in terms of Article 11(2) of the Convention;
 - (xxiv) "World Heritage Site" means any place in the Republic which—
 - (a) has been included on—
 - (i) the World Heritage List; or 50
 - (ii) the tentative list of the Republic referred to in Article 121(a)(i) of the Operational Guidelines, and is proclaimed by the Minister by notice in the *Gazette* to be a World Heritage Site; or
 - (b) has been proclaimed by the Minister by notice in the *Gazette* to be a special heritage site for management in accordance with this Act as if that site qualified under paragraph (a)—
 - (i) after consultation with the Minister affected by such a proclamation;
 - (ii) if applicable, after consultation with the relevant MEC; and
 - (iii) subject to a resolution of Parliament, 60but such a special heritage site cannot be referred to as a World Heritage Site.

- (j) the social, economic, cultural and natural heritage consequences of activities, including disadvantages and benefits, must be considered;
 - (k) decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with applicable law;
 - (l) there must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the cultural and natural heritage; 5
 - (m) actual or potential conflicts of interest between—
 - (i) organs of state;
 - (ii) an organ of state and an Authority; or
 - (iii) Authorities, 10
 should be resolved through appropriate conflict resolution procedures and the principles of co-operative government in accordance with the Constitution;
 - (n) policy, administrative practice and legislation and the interpretation of existing legislation relating to the cultural and natural heritage must promote the integration of these resources in provincial, urban and rural planning and social and economic development; 15
 - (o) global and international responsibilities relating to the cultural and natural heritage must be discharged in the national interest;
 - (p) the cultural and natural heritage is held in public trust for the people, the beneficial use of cultural and environmental resources must serve the public interest and the cultural and natural heritage must be protected as the common heritage of the people; and 20
 - (q) sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, dolomitic land and ridges, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure. 25
- (2) For the purposes of this Act, sustainable development of World Heritage Sites includes that—
- (a) the unnatural disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be avoided, are mitigated; 30
 - (b) pollution and degradation of the environment are avoided, or, where they cannot be avoided, are mitigated;
 - (c) the unnatural disturbance of landscapes and sites that constitute the cultural and natural heritage of the Republic is avoided, or, where it cannot be avoided, is mitigated, and that the cultural and natural heritage of the Republic must be enhanced; 35
 - (d) waste is avoided, or, where it cannot be avoided, minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner;
 - (e) the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource; 40
 - (f) the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised; 45
 - (g) a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions;
 - (h) negative impacts on the environment and on the environmental rights of the people must be anticipated and prevented, and where they cannot be prevented, must be mitigated; 50
 - (i) cultural and natural heritage may promote reconciliation, understanding and respect, and contribute to the development of a unifying South African identity; and
 - (j) cultural and natural heritage management must guard against the use of this heritage for purposes of threatening a culture based on equality and freedom or for party-political gain. 55

Enforcement and implementation of Convention

5. The Minister is responsible for enforcing and implementing this Act and the Convention in the Republic, including—

- (a) after consultation with the relevant provinces and other organs of state concerned, submitting an inventory as described in Article 11 of the Convention;
- (b) publishing such particulars as may be prescribed of any new World Heritage Site in the *Gazette* within a reasonable period of time; 5
- (c) applying to the World Heritage Committee for international assistance in terms of Article 13 and Part V of the Convention;
- (d) entering into agreements in terms of Article 13 of the Convention;
- (e) making applications to the World Heritage Fund and overseeing the proper use of any financing obtained in terms of the Convention; 10
- (f) preparing reports as required by Article 29 of the Convention after due consultation with the provinces and organs of state concerned;
- (g) disseminating information related to the Convention and reports from Convention meetings;
- (h) initiating steps regarding research, education, training, awareness raising and capacity building; and 15
- (i) ensuring public participation.

Identification and nomination of World Heritage Sites

6. (1) The Minister is responsible for the procedure relating to the nomination of World Heritage Sites in accordance with this Act, the Convention and the Operating Guidelines. 20

(2) The Department or a body determined by the Minister must identify places of potential cultural or natural heritage and investigate the desirability of nominating such places for inclusion on the World Heritage List.

(3) Any person may submit a proposal in writing to the Department or, if it is in existence, the body referred to in subsection (2), for a place in the Republic to be nominated for inclusion on the World Heritage List. 25

(4) The Minister may determine the format and procedures for—

- (a) the proposal referred to in subsection (3);
- (b) an investigation into such proposal; and 30
- (c) the nomination of any place in the Republic for inclusion on the World Heritage List.

(5) A written motivation for the declaration of a place as a World Heritage Site must be prepared and kept by the Department in accordance with the requirements of the Convention and the Operating Guidelines. 35

CHAPTER II

AUTHORITIES

Consultation prior to declaration or establishment of Authority

7. (1) The Minister must consult with the Minister of Arts, Culture, Science and Technology and with interested parties before acting in terms of section 8 or 9, which consultation, in the case of interested parties, may be in the form of public hearings and must include consultation with representatives from the relevant affected— 40

- (a) provinces;
- (b) local governments;
- (c) cultural authorities; 45
- (d) nature conservation authorities;
- (e) heritage authorities; and
- (f) other organs of state.

(2) The consultation with interested parties referred to in subsection (1) must be in a manner that the Minister considers to be appropriate, including— 50

- (a) calling on interested parties to participate in the public hearings referred to in subsection (1); and
- (b) specifying particulars of the consultation process by notice in the *Gazette*, in at least two nationally distributed newspapers, appropriate local newspapers and radio stations. 55

(3) The Minister must, after consultation in terms of subsection (1), but before acting in terms of section 8 or 9, if applicable, notify—

- (a) the owner of the area affected by the proposed action;
 - (b) the mortgage holder, the occupier and any other person with a registered interest in the area affected by the proposed action; and
 - (c) cultural, nature conservation, heritage and similar public interest bodies with an interest in the area affected by the proposed action. 5
- (4) The notification referred to in subsection (2) must be effected by notice in the *Gazette*, in at least two nationally distributed newspapers, appropriate local newspapers and radio stations.

Existing organ of state declared as Authority

8. Where an existing organ of state is already lawfully managing or involved in a World Heritage Site, the Minister may, after consultation with the relevant affected MEC or Minister, if applicable, by notice in the *Gazette*— 10
- (a) declare that such organ of state is an Authority under this Act which is a juristic person with the capacity to sue and be sued in its own name;
 - (b) give or impose such additional powers or duties referred to in section 13 to that organ of state in relation to that World Heritage Site. 15

Establishment of new Authorities

9. The Minister may, by notice in the *Gazette*, establish an Authority which is a juristic person with the capacity to sue and be sued in its own name, with so much of the powers and duties set out in this Act, as the Minister may determine. 20

Organs of new Authorities

10. An Authority established in terms of section 9 may exercise its powers and duties through a Board or an Executive Staff Component or both, as the Minister may determine by notice in the *Gazette*.

Name of Authority 25

11. The Minister may, by notice in the *Gazette*, determine a name for an Authority.

Disestablishment of Authority and revocation of powers

12. (1) An Authority referred to in section 9 must only be disestablished in terms of a resolution by Parliament.
- (2) The Minister may, at any time, investigate the performance by an Authority of its powers and duties in terms of this Act, the Convention or the Operational Guidelines. 30
- (3) As part of any such investigation, the Minister must afford the Authority the opportunity of refuting any allegations against it.
- (4) If that investigation reveals that an Authority is not performing its functions properly, the Minister must submit a report to Parliament for consideration by the National Assembly and the National Council of Provinces. 35
- (5) If the National Assembly and the National Council of Provinces pass a resolution amending, suspending, revoking or terminating the powers of such an Authority or disestablishing it, the Minister must give effect to such a resolution by notifying that Authority accordingly. 40
- (6) Where an Authority is disestablished in terms of this section, the Minister must ensure that—
- (a) the assets of the Authority are protected; and
 - (b) the resolutions of the National Assembly and the National Council of Provinces are published in the *Gazette* for public information. 45

Powers and duties of Authorities

13. (1) In the case where an Authority controls one or more World Heritage Sites, the Minister may, by notice in the *Gazette*, give some or all of the following powers to an Authority over one or more specified World Heritage Sites, namely to—

- (a) implement the Convention, including to ensure—
 - (i) the identification, protection, conservation, presentation and transmission of the cultural and natural heritage to future generations; and
 - (ii) that effective and active measures are taken for the effective protection, conservation and presentation of the cultural and natural heritage; 5
- (b) exercise all the powers reasonably necessary to fulfil the duties of an Authority spelled out in subsection (2);
- (c) liaise with relevant cultural, nature conservation and similar authorities on a local, provincial, national and, with the consent of the Department, international level; 10
- (d) conserve, manage, promote, facilitate and monitor cultural and natural heritage;
- (e) manage cultural and natural heritage in accordance with all applicable national and provincial legislation, policies and management plans;
- (f) negotiate land claims over— 15
 - (i) State land with claimants, in consultation with the Department of Land Affairs, in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), and settle any such claims, with the approval of the Minister for Agriculture and Land Affairs or his or her delegate; or
 - (ii) private land forming part of or affecting World Heritage Sites or land affecting World Heritage Sites, with the owner, and settle any such claims; 20
- (g) enter into agreements, subject to section 217 of the Constitution, with any person for the provision of goods and services, including the performance of powers and duties of the Authority, but the Minister may prescribe the procedure to be adopted in procuring and negotiating such agreements, or in any particular matter determine that an agreement requires his or her prior written approval; 25
- (h) acquire land or rights in land by contract, donation or otherwise;
- (i) charge fees, rent or other consideration for— 30
 - (i) any function it fulfils; or
 - (ii) any right it grants;
- (j) use for gain or reward any movable and immovable asset under its control, subject to all applicable law, where such asset is not required by the Authority for the fulfilment of its functions, but such movable and immovable property, as listed in the nomination file for the World Heritage Site, may not be alienated, leased or encumbered without the prior written approval of the Minister; 35
- (k) undertake, or cause to be undertaken, research or investigations relevant to a World Heritage Site; 40
- (l) co-ordinate with—
 - (i) the relevant tribunals under the Development Facilitation Act, 1995 (Act No. 67 of 1995), if applicable; or
 - (ii) similar bodies or relevant planning authorities, on a national, provincial and local level, 45
 in order to expedite sustainable development in World Heritage Sites and to ensure that development takes place in accordance with all applicable laws and procedures;
- (m) initiate, assist, comment on or facilitate any application under the Development Facilitation Act, 1995, or other applicable development, planning or management law relating to or affecting a World Heritage Site; 50
- (n) with the consent of the Minister, perform any function, on contractually agreed terms that are fair in relation to the obligations imposed on an Authority, at the request of—
 - (i) a national government department; 55
 - (ii) an institution or statutory body;
 - (iii) another country;
 - (iv) a province;
 - (v) a regional council;
 - (vi) a local government; or 60
 - (vii) any other entity or person approved by the Minister;
- (o) employ persons or entities on a permanent or temporary basis;

- (p) make rules in connection with the World Heritage Site under its jurisdiction regarding such matters as the Minister may determine;
 - (q) establish committees and subcommittees and otherwise arrange its internal affairs in a manner it deems necessary;
 - (r) enter into contracts in an open and transparent manner regarding cultural development or nature conservation with a competent national, provincial or local government or private nature conservation entity, with the necessary administrative capacity and resources; and
 - (s) do all things incidental or reasonably necessary for the proper fulfilment of paragraphs (a) to (r).
- (2) An Authority has, unless the Minister prescribes otherwise, the following duties in connection with a World Heritage Site under its control, namely to—
- (a) develop measures for the cultural and environmental protection and sustainable development of, and related activities within, World Heritage Sites and to ensure that the values of the Convention are given effect to;
 - (b) promote, manage, oversee, market and facilitate tourism and related development in connection with World Heritage Sites in accordance with applicable law, the Convention and the Operational Guidelines in such a way that the cultural and ecological integrity are maintained;
 - (c) identify cultural and natural heritage that must be transmitted to future generations;
 - (d) take effective and active measures for the protection, conservation and presentation of the cultural and natural heritage;
 - (e) facilitate steps that encourage investment and innovation;
 - (f) facilitate programmes that encourage job creation;
 - (g) take measures that ensure that the values of the Convention are promoted;
 - (h) establish and implement the Integrated Management Plan;
 - (i) initiate steps regarding research, education, training, awareness raising and capacity building; and
 - (j) liaise with, and be sensitive to, the needs of communities living in or near World Heritage Sites.
- (3) In giving the powers referred to in subsection (1) to an Authority established in terms of section 9, the Minister must specify the powers which must be exercised by either the Board or the Executive Staff Component, or both, as the case may be.
- (4) The Minister may, by notice in the *Gazette*, publish model rules to be used as a guideline by Authorities.

CHAPTER III

BOARD AND EXECUTIVE STAFF COMPONENT

Establishment of Board for new Authority

14. (1) The Minister may, by notice in the *Gazette*, establish a Board for an Authority established in terms of section 9, subject to subsection (2).
- (2) Before the Minister establishes a Board in terms of subsection (1), the Minister must—
- (a) invite nominations by notice in the *Gazette* and in at least two nationally distributed newspapers; and
 - (b) stipulate in such invitation the procedures to be adopted regarding such nominations.
- (3) A Board may not have less than five and not more than nine members.
- (4) The Minister must ensure that the Board is broadly representative and multidisciplinary, with members who may make a contribution towards the proper functioning of the Authority, and may include, without limitation, representatives from—
- (a) national Government;
 - (b) provincial government departments and cultural or nature conservation authorities;
 - (c) directly affected adjacent communities;
 - (d) heritage bodies;
 - (e) organised business;
 - (f) affected adjacent tribal authorities;

- (g) nature conservation bodies;
- (h) cultural organisations;
- (i) non-governmental organisations;
- (j) scientific or academic expert bodies;
- (k) local authorities;
- (l) private landowners; and
- (m) international cultural or nature conservation bodies.

Powers and duties of Board of new Authority

15. (1) With regard to the Authority for which a Board is established, the Board has the powers reasonably necessary to—
- (a) be responsible for the policy of, and general oversight over, that Authority;
 - (b) provide directions to the Executive Staff Component of that Authority;
 - (c) monitor the activities of the Executive Staff Component of that Authority to ensure compliance with this Act; and
 - (d) co-ordinate with Boards of other Authorities.
- (2) The Minister may give to a Board any of the powers referred to in section 13, in addition to the powers referred to in subsection (1).
- (3) The Minister may review decisions, actions and policies of the Board.

Terms of employment of Board of new Authority

16. (1) The Minister may prescribe matters relating to the terms of employment of the Board, including—
- (a) term of office, service conditions and remuneration of Board members;
 - (b) filling of vacancies on the Board and resignation or removal from office of Board members; and
 - (c) the size of the Board and the number of Board members required to constitute a quorum at a meeting.
- (2) The Board may, subject to the approval of the Minister, delegate and assign its powers and duties, excluding the power with regard to policy.

Appointment of Executive Staff Component of new Authority

17. (1) The Board must appoint an Executive Staff Component for an Authority established in terms of section 9.
- (2) The Executive Staff Component of an Authority established in terms of section 9 must be under the control and supervision of a Chief Executive Officer, who is nominated by the Board and appointed by the Minister.
- (3) The Board must ensure that the Executive Staff Component is broadly representative and multidisciplinary, with members qualified to make a substantial contribution towards the effective day-to-day and long-term functioning of the Authority, and may include members who are skilled in matters relating to—
- (a) finances;
 - (b) business acumen;
 - (c) cultural heritage;
 - (d) natural heritage;
 - (e) tourism;
 - (f) project management;
 - (g) marketing;
 - (h) community involvement; and
 - (i) legal matters.
- (4) The Minister may prescribe whether or not the Executive Staff Component and other employees of an Authority established in terms of section 9 are subject to the provisions of, and the directives, rules and policies made under, the Public Service Act, 1994 (Proclamation 103 of 1994).
- (5) Where the Minister prescribes that the provisions, directives, rules and policies referred to in subsection (4) do not apply to an Authority, the Minister must, with the concurrence of the Minister of Finance, prescribe the conditions of employment applicable to the Executive Staff Component or other employees of an Authority established in terms of section 9, including, without limitation, regulations regarding vacation of office, resignation, removal from office and remuneration.

Transfer of staff members where existing organ of state is declared as Authority	
18. Subject to applicable law, a staff member of an organ of state referred to in section 8 may, without interrupting his or her service or any change to accrued employment rights, benefits and obligations, be transferred to be a staff member in a similar position in an Authority established in terms of section 8.	5
Powers of Executive Staff Component of new Authority	
19. (1) An Executive Staff Component has all the necessary powers to be responsible for the effective day-to-day management and functioning of an Authority.	
(2) The Minister may, in addition to the powers referred to in subsection (1), give any power referred to in section 13 to an Executive Staff Component.	10
Terms of employment of Executive Staff Component of new Authority	
20. (1) The Minister may prescribe matters relating to the functioning of the Executive Staff Component, subject to section 17(4).	
(2) The Executive Staff Component may delegate and assign any of its functions.	
CHAPTER IV	15
INTEGRATED MANAGEMENT PLANS	
Preparation and implementation of integrated management plans	
21. (1) Every Authority must prepare and implement an integrated management plan for the World Heritage Site under its control to fulfil Articles 4 and 5 of the Convention.	
(2) An Authority must conduct its affairs in accordance with an integrated management plan.	20
Harmonisation of integrated management plans	
22. In preparing an integrated management plan, an Authority must have due regard for, and seek to integrate and harmonise that integrated management plan with the requirements of the Convention and the Operational Guidelines, and with applicable—	25
(a) plans in terms of the National Environmental Management Act, 1998, the National Heritage Resources Act, 1999, the Cultural Institutions Act, 1998 (Act No. 119 of 1998), the Development Facilitation Act, 1995, and the National Parks Act, 1976 (Act No. 57 of 1976);	
(b) provincial government planning and development plans;	30
(c) regional planning and development plans;	
(d) local government planning and development plans; and	
(e) existing planning and development plans of an existing organ of state referred to in section 8.	
Objects of integrated management plans	35
23. The object of every integrated management plan is to ensure the protection and management of the World Heritage Site concerned in a manner that is consistent with the objectives and principles of this Act.	
Contents of integrated management plans	
24. In addition to the requirements of the Convention, the Operational Guidelines and the directives of the Minister for a plan of this nature, every integrated management plan must contain, at least—	40
(a) a co-ordinated policy framework;	
(b) such planning measures, controls and performance criteria as may be prescribed;	45
(c) a programme for the implementation of the plan;	
(d) procedures for public participation;	
(e) procedures for participation by nature conservation, tourism and other relevant experts;	

- (f) cultural or nature conservation components required by—
 - (i) applicable law; and
 - (ii) the directives of the Minister;
- (g) provisions regarding the—
 - (i) activities allowed within a particular geographical area; 5
 - (ii) terms and conditions for conducting activities;
 - (iii) prohibition of activities prescribed by the Minister;
 - (iv) control over the frequency, size, impact or manner of conducting activities in a particular geographical area, including without limitation, the use of, or access to, structures; 10
 - (v) a description of the World Heritage Site concerned, an assessment of its significance and an evaluation of material threats to its significance; and
 - (vi) alienation, lease or encumbrance of movable and immovable property referred to in section 13(1)(f) in accordance with this Act, if applicable.

Approval of integrated management plans 15

25. (1) An Authority must submit its first integrated management plan to the Minister for approval within six months of the establishment of that Authority or such later date set by the Minister.

(2) The World Heritage Site must be managed as prescribed pending the approval by the Minister of the integrated management plan. 20

(3) An integrated management plan must be submitted to the Minister in terms of subsection (1) after the Authority has consulted with—

- (a) surrounding communities on, or immediately adjacent to, the World Heritage Site;
- (b) owners of private land in, or immediately adjacent to, the World Heritage Site; 25
- and
- (c) claimants in terms of the Restitution of Land Rights Act, 1994, with claims over World Heritage Sites or land affecting World Heritage Sites.

(4) The Minister must, upon receipt of an integrated management plan and after consultation with the Minister of Arts, Culture, Science and Technology, the relevant MEC and planning authority, and if applicable, the Council established in terms of section 14 of the National Heritage Resources Act, 1999—

- (a) approve that plan with or without conditions; or
- (b) reject that plan but a rejected plan may be re-submitted if it has been amended to the satisfaction of the Minister. 35

(5) An integrated management plan becomes effective once approved by the Minister.

(6) Upon approval in terms of subsection (4), the Authority must make such plan available at its main place of business for public inspection during regular office hours.

(7) The Minister may, after consultation in terms of subsection (4), approve the existing planning and development plans of an existing organ of state referred to in section 8, as the integrated management plan for purposes of this chapter, if the Minister is satisfied that such plans comply materially with this chapter. 40

Duration of integrated management plan

26. (1) Every integrated management plan must cover a period of at least five years or such longer period as the Minister may determine but where new opportunities or threats arise, or in the case of changed circumstances, an integrated management plan may be reviewed and amended as and when necessary by an Authority, and submitted to the Minister for approval in accordance with section 25(4). 45

(2) An Authority must submit subsequent integrated management plans to the Minister to be dealt with in accordance with section 25(4) before the end of the second last year of the operation of a current integrated management plan. 50

Amendment or termination of integrated management plan by Minister

27. (1) The Minister may amend or terminate an integrated management plan if in the opinion of the Minister—

- (a) that integrated management plan is inefficient; or 55
- (b) that integrated management plan does not comply with the Convention, the Operational Guidelines or applicable law.

(2) The Minister may not amend or terminate an integrated management plan if the effect of such amendment or termination is likely to have an adverse effect on the contractual rights between the Authority and a rights-holder under a contract, licence, grant or similar instrument.

Model integrated management plan 5

28. (1) The Minister may prepare model integrated management plans or sections thereof after consultation with the Minister of Arts, Culture, Science and Technology.

(2) The Minister may prescribe norms and standards in connection with the preparation and contents of integrated management plans after consultation with the Minister of Arts, Culture, Science and Technology. 10

CHAPTER V

LAND

Purchase of land for World Heritage Site purposes

29. The Minister may, with the concurrence of the Minister of Public Works, purchase any property and reserve it for purposes contemplated in this Act in relation to World Heritage Sites, if that purpose is in the public interest. 15

Expropriation of land for World Heritage Site purposes

30. The Expropriation Act, 1975 (Act No. 63 of 1975), applies to all expropriations under this Act and any reference to the Minister of Public Works in that Act must be read as a reference to the Minister for purposes of such expropriations. 20

Transfer and alienation of movable or immovable property, and consolidation of land

31. (1) (a) The Minister may, with the concurrence of the Minister of Finance, transfer any movable property belonging to the State to an Authority to enable it to perform its powers and duties or to achieve any of its objectives. 25

(b) The Minister may, with the consent of the Minister responsible for the administration of that land in terms of the State Land Disposal Act, 1961 (Act No. 48 of 1961), and with the concurrence of the Minister of Finance, transfer any immovable property belonging to the State to an Authority to enable it to perform its powers and duties or to achieve any of its objectives. 30

(2) Immovable property transferred to an Authority in terms of subsection (1), may not, without the prior written approval of the Minister, granted with the concurrence of the Minister of Finance, be alienated, leased or encumbered.

(3) The Minister may—

(a) subject to section 40 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), consolidate land of which the State is the owner and forming part or potentially forming part of a World Heritage Site; 35

(b) subject to section 65 of the Deeds Registries Act, 1937, register by notarial deed, entered into between the State and an owner or owners, a condition over land forming part or potentially forming part of a World Heritage Site to the effect that such land may not be separately alienated, leased or encumbered without the prior written consent of the Minister, and the said notarial deed may be accompanied by a sketch plan of such land. 40

(4) The Minister must before giving written consent in terms of subsection (3), consult with all relevant parties, including the relevant— 45

(a) land owners;

(b) mortgage holders; and

(c) cultural, nature conservation, heritage and similar public interest bodies with an interest in the area affected by the proposed action.

(5) (a) A registrar defined in section 102 of the Deeds Registries Act, 1937, must upon submission of a certificate by the Minister that land has been transferred to an Authority in terms of this section, make entries and endorsements in, or on, any relevant register or other document in his or her office to register such land in the name of the Authority. 50

- (b) Stamp duty, office fee or other fee is not payable in respect of such registration.
- (6) (a) If an Authority is disestablished in terms of section 12, a registrar must, upon submission of a certificate by the Minister that land transferred to an Authority in terms of subsection (5) has been transferred back from such Authority to the State, make such entries and endorsements in, or on, any relevant register or other document in his or her office to register such land in the name of the State. 5
- (b) Stamp duty, office fee or other fee is not payable in respect of such registration.

CHAPTER VI

FINANCES AND REPORTS

Application of chapter 10

32. The Minister may, by notice in the *Gazette*, declare some or all of the sections in this chapter to apply to an Authority.

Funding

33. Subject to applicable law, an Authority may receive and raise monies from any legal source, as the Minister may prescribe with the concurrence of the Minister of Finance, including— 15

- (a) contract for goods and services;
- (b) loan;
- (c) donor funding from inside or outside the Republic;
- (d) interest; 20
- (e) joint venture income;
- (f) fees, including, without limitation, fees related to—
 - (i) turnover;
 - (ii) rights granted by an Authority; or
 - (iii) services provided by an Authority; 25
- (g) sale income;
- (h) income from the development or leasing of its assets;
- (i) subsidies from any organ of state; or
- (j) appropriation by Parliament or a provincial legislature.

Security 30

34. Without derogating from the objectives of this Act, an Authority may use any of its unencumbered assets as security for debt or other obligations, with the consent of the Cabinet and, if applicable, the relevant MEC.

Expenditure of monies

35. (1) The monies received or raised by an Authority in terms of section 33 must be used in accordance with the business and financial plan of the Authority as approved by the Minister. 35

(2) An Authority may, with the approval of the Minister, granted with the concurrence of the Minister of Finance and the relevant MEC, authorise the chief executive officer to invest any unspent portion of the funds of the Authority, but any surplus at the end of a financial year must be carried over to the next financial year and be utilised to defray expenses incurred by the Authority during that financial year. 40

Annual financial plan

36. (1) (a) An Authority must submit to the Minister its annual financial plan for approval for the following financial year not later than 30 days before the end of each financial year. 45

(b) The annual financial plan for the first financial year of an Authority must be submitted to the Minister for approval within 90 days after the establishment date.

(2) The annual financial plan must set out and explain proposed operations, projects, activities and other objectives of an Authority for the following financial year, including— 50

- (a) the cost of those operations, projects, activities and other objectives;

- (b) the manner in which it is proposed to finance them;
- (c) the performance indicators applicable to them;
- (d) a statement of estimated income and expenditure for that financial year;
- (e) any other information and particulars that may be prescribed; and
- (f) any additional relevant information that may be requested by the Minister in writing from time to time. 5

Strategic plan

37. (1) (a)(i) An Authority must submit a five year strategic plan to the Minister for approval, not later than 30 days before the end of its first financial year.
- (ii) Thereafter, a revised strategic plan must be submitted to the Minister for approval every financial year. 10
- (b) A five-year strategic plan must be annexed to the annual financial plan of an Authority.
- (2) This chapter does not prevent the Authority from undertaking any planning for a longer term. 15

Financial regulations

38. The following matters may be prescribed:
- (a) the contents, format and structure of the annual financial plan and, if considered necessary, those of the strategic plan;
 - (b) the extent to, and manner in, which an Authority must consult with interested persons or members of the public in connection with any annual financial plan or any strategic plan; and 20
 - (c) the procedure regarding the opening and keeping of a bank account by an Authority.

Accounting

39. (1) An Authority must keep proper books and records of account, subject to applicable law, for each financial year in accordance with generally accepted accounting practice, with regard to its income, expenditure and transactions during the financial year and the state of its assets and liabilities during, and as at the end of, the financial year. 30
- (2) Annually, within six months of the end of the financial year, an Authority must have the following financial statements:
- (a) A statement of income and expenditure;
 - (b) a cash-flow statement; and
 - (c) a balance sheet, 35
- prepared for that year, which must accurately reflect transactions and financial sources as well as the position and state of affairs of an Authority so as to comply with the requirements of the Companies Act, 1973 (Act No. 61 of 1973).

Audit

40. (1) The Minister must as soon as is practicable inform the Auditor-General in writing of the establishment of an Authority. 40
- (2) The books and records of account and financial statements of an Authority must be audited annually by the Auditor-General.
- (3) The Chief Executive Officer must annually submit, within six months after the end of the financial year, financial statements of an Authority approved by the Executive Staff Component and the Board and certified to that effect by the chairperson of the Board, to the Auditor-General for auditing. 45
- (4) Upon completion of the audit, the Auditor-General must furnish a report to the Minister through the chairperson of the Board.

Report by Auditor-General

41. (1) The Auditor-General must express an opinion in the report referred to in section 40(4), amongst other things, as to whether—
- (a) the information contained in the financial statements of an Authority has been presented on a basis consistent with that of the previous financial year, where 50

- applicable, and is a fair representation of the financial position and results of operations and cash-flows for the period; and
- (b) the transactions and activities of an Authority which came to the attention of the Auditor-General had been authorised in terms of this Act.
- (2) The report of the Auditor-General must draw attention to inadequate management measures identified during the course of the audit and to any other matter arising from the audit which, in the opinion of the Auditor-General, must be brought to the notice of the Minister and Parliament. 5

Annual report

42. An Authority must submit to the Minister, within six months after the end of each financial year, an annual report that includes— 10
- (a) in connection with the integrated management plan—
- (i) compliance with the integrated management plan, including compliance with applicable performance indicators;
 - (ii) the efficiency of the integrated management plan; 15
 - (iii) possible improvements to the integrated management plan; and
 - (iv) other matters in connection with the integrated management plan which the Authority wants to draw to the attention of the Minister;
- (b) the extent to which the Authority succeeded or failed to meet its obligations in terms of the Convention, the Operational Guidelines and this Act, including— 20
- (i) fulfilment of performance indicators;
 - (ii) the result of a five-year independent review of the overall performance; and
 - (iii) such other matters in connection with the duties and obligations of an Authority as the Minister may determine; and 25
- (c) details of agreements entered into by the Authority in terms of section 13(1)(g) and (h).

CHAPTER VII

GENERAL

Delegation 30

43. (1) The Minister may, by notice in the *Gazette*, delegate or assign any power, duty or function conferred upon him or her by or in terms of this Act, excluding the power to make regulations, to—
- (a) the Director-General of the Department;
 - (b) an Authority; 35
 - (c) a provincial government;
 - (d) a local government; or
 - (e) an organ of state.
- (2) The Minister may exercise any power or perform any duty or function despite subsection (1). 40
- (3) The Director-General may delegate or assign any of his or her powers, duties or functions—
- (a) to an Authority;
 - (b) with the concurrence of the MEC, to a provincial authority; or
 - (c) to a statutory body that is primarily involved in cultural matters or nature 45 conservation,
- but such delegation may not affect the obligations of the Department under the Convention.

Regulations

44. (1) The Minister may, subject to the objectives and fundamental principles of this Act, make regulations that are consistent with the Act with regard to— 50
- (a) anything which in terms of this Act must be prescribed;
 - (b) generally, all matters which are reasonably necessary to be prescribed in order to achieve the objectives of this Act.
- (2) Subject to the applicable law, the Minister may make regulations regarding— 55
- (a) the conditions of service, employment, transfer, promotion and, where an Authority is already in existence, the continued employment of its employees;

- (b) the transfer of employees from an organ of state to an Authority;
 - (c) the management and administration of an Authority;
 - (d) the determination of criteria for the making of appointments to a Board, including criteria for the determination of the rights of interested parties;
 - (e) the financial and accounting activities of an Authority; 5
 - (f) the identification, investigation and nomination of a future World Heritage Site;
 - (g) the management and control of a World Heritage Site;
 - (h) the administration, management and control of movable and immovable assets of an Authority; and 10
 - (i) the time, manner and form of complying with any administrative, technical or reporting requirements of the Convention.
- (3) The Minister may—
- (a) prescribe norms and standards for cultural or natural heritage that are consistent with the provisions of this Act; and 15
 - (b) prescribe national policy relating to the management of cultural or natural heritage in addition to, but not inconsistent with, the objectives and principles set out in this Act.
- (4) The Minister may, by regulation, incorporate as many of, or all of, the Operational Guidelines as may be necessary, with the necessary changes, where appropriate, for their 20 effective implementation in the Republic.

Short title and commencement

45. This Act is called the World Heritage Convention Act, 1999, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Schedule

CONVENTION CONCERNING THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

The General Conference of the United Nations Education, Scientific and Cultural Organization meeting in Paris from 17 October to 21 November 1972, at its seventeenth session, 5

Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction, 10

Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world,

Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific, and technological resources of the country where the property to be protected is situated, 15

Recalling that the Constitution of the Organization provides that it will maintain, increase, and diffuse knowledge by assuring the conservation and protection of the world's heritage, and recommending to the nations concerned the necessary international conventions, 20

Considering that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong, 25

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole,

Considering that in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an efficient complement thereto, 30

Considering that it is essential for this purpose to adopt new provisions in the form of a convention establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods, 35

Having decided, at its sixteenth session, that this question should be made the subject of an international convention,

Adopts this sixteenth day of November 1972 this Convention.

I. DEFINITION OF THE CULTURAL AND NATURAL HERITAGE 40

Article I

For the purpose of this Convention, the following shall be considered as "cultural heritage": monuments, architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science, groups of buildings, groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or 45

science, sites, works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

Article 2

For the purposes of this Convention, the following shall be considered as “natural heritage”: natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view, geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation, natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

Article 3

It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above.

II. NATIONAL PROTECTION AND INTERNATIONAL PROTECTION OF THE CULTURAL AND NATURAL HERITAGE

Article 4

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

Article 5

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country—

- (a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;
- (b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions;
- (c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage;
- (d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and
- (e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field.

Article 6

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.

2. The States Parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and presentation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request.

3. Each State Party to this Convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other States Parties to this Convention. 5

Article 7

For the purpose of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage. 10

III. INTERGOVERNMENTAL COMMITTEE FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

Article 8

1. An Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Committee", is hereby established within the United Nations Education, Scientific and Cultural Organization. It shall be composed of 15 States Parties to the Convention, elected by States Parties to the Convention meeting in general assembly during the ordinary session of the General Conference of the United Nations Educational, Scientific and Cultural Organization. The number of States members of the Committee shall be increased to 21 as from the date of the ordinary session of the General Conference following the entry into force of this Convention for at least 40 States. 20

2. Election of members of the Committee shall ensure an equitable representation of the different regions and cultures of the world. 25

3. A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre), a representative of the International Council of Monuments and Sites (ICOMOS) and a representative of the International Union for Conservation of Nature and Natural Resources (IUCN), to whom may be added, at the request of States Parties to the Convention meeting in general assembly during the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization, representatives of other intergovernmental or non-governmental organizations, with similar objectives, may attend the meetings of the Committee in an advisory capacity. 30 35

Article 9

1. The term of office of States members of the World Heritage Committee shall extend from the end of the ordinary session of the General Conference during which they are elected until the end of its third subsequent ordinary session.

2. The term of office of one-third of the members designated at the time of the first election shall, however, cease at the end of the first ordinary session of the General Conference following that at which they were elected; and the term of office of a further third of the members designated at the same time shall cease at the end of the second ordinary session of the General Conference following that at which they were elected. The names of these members shall be chosen by lot by the President of the General Conference of the United Nations Education, Scientific and Cultural Organization after the first election. 40 45

3. States members of the Committee shall choose as their representatives persons qualified in the field of the cultural or natural heritage.

Article 10

1. The World Heritage Committee shall adopt its Rules of Procedure.

2. The Committee may at any time invite public or private organizations or individuals to participate in its meetings for consultation on particular problems. 50

3. The Committee may create such consultative bodies as it deems necessary for the performance of its functions.

Article 11

1. Every State Party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance. 5

2. On the basis of the inventories submitted by States in accordance with paragraph 1, the Committee shall establish, keep up to date and publish, under the title of "World Heritage List," a list of properties forming part of the cultural heritage and natural heritage, as defined in Articles 1 and 2 of this Convention, which it considers as having outstanding universal value in terms of such criteria as it shall have established. An updated list shall be distributed at least every two years. 10 15

3. The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute.

4. The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of "list of World Heritage in Danger", a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately. 20 25 30

5. The Committee shall define the criteria on the basis of which a property belonging to the cultural or natural heritage may be included in either of the lists mentioned in paragraphs 2 and 4 of this article. 35

6. Before refusing a request for inclusion in one of the two lists mentioned in paragraphs 2 and 4 of this article, the Committee shall consult the State Party in whose territory the cultural or natural property in question is situated.

7. The Committee shall, with the agreement of the States concerned, co-ordinate and encourage the studies and research needed for the drawing up of the lists referred to in paragraphs 2 and 4 of this article. 40

Article 12

The fact that a property belonging to the cultural or natural heritage has not been included in either of the two lists mentioned in paragraphs 2 and 4 of Article 11 shall in no way be construed to mean that it does not have an outstanding universal value for purposes other than those resulting from inclusion in these lists. 45

Article 13

1. The World Heritage Committee shall receive and study requests for international assistance formulated by States Parties to this Convention with respect to property forming part of the cultural or natural heritage, situated in their territories, and included or potentially suitable for inclusion in the lists mentioned referred to in paragraphs 2 and 4 of Article 11. The purpose of such requests may be to secure the protection, conservation, presentation or rehabilitation of such property. 50

2. Requests for international assistance under paragraph 1 of this article may also be concerned with identification of cultural or natural property defined in Articles 1 and 2, when preliminary investigations have shown that further inquiries would be justified. 55

3. The Committee shall decide on the action to be taken with regard to these requests, determine where appropriate, the nature and extent of its assistance, and authorize the conclusion, on its behalf, of the necessary arrangements with the government concerned.

4. The Committee shall determine an order of priorities for its operations. It shall in so doing bear in mind the respective importance for the world cultural and natural heritage of the property requiring protection, the need to give international assistance to the property most representative of a natural environment or of the genius and the history of the peoples of the world, the urgency of the work to be done, the resources available to the States on whose territory the threatened property is situated and in particular the extent to which they are able to safeguard such property by their own means.

5. The Committee shall draw up, keep up to date and publicize a list of property for which International assistance has been granted.

6. The Committee shall decide on the use of the resources of the Fund established under Article 15 of this Convention. It shall seek ways of increasing these resources and shall take all useful steps to this end.

7. The Committee shall co-operate with international and national governmental and non-governmental organizations having objectives similar to those of this Convention. For the implementation of its programmes and projects, the Committee may call on such organizations, particularly the International Centre for the Study of the Preservation and Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN), as well as on public and private bodies and individuals.

8. Decisions of the Committee shall be taken by a majority of two-thirds of its members present and voting. A majority of the members of the Committee shall constitute a quorum.

Article 14

1. The World Heritage Committee shall be assisted by a Secretariat appointed by the Director-General of the United Nations Educational, Scientific and Cultural Organization.

2. The Director-General of the United Nations Educational, Scientific and Cultural Organization, utilizing to the fullest extent possible the services of the International Centre for the Study of the Preservation and the Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN) in their respective areas of competence and capability, shall prepare the Committee's documentation and the agenda of its meetings and shall have the responsibility for the implementation of its decisions.

IV. FUND FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

Article 15

1. A Fund for the Protection of the World Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Fund", is hereby established.

2. The Fund shall constitute a trust fund, in conformity with the provisions of the Financial Regulations of the United Nations Educational, Scientific and Cultural Organization.

3. The resources of the Fund shall consist of—

- (a) compulsory and voluntary contributions made by States Parties to this Convention,
- (b) Contributions, gifts or bequests which may be made by—
 - (i) other States;
 - (ii) the United Nations Educational, Scientific and Cultural Organization, other organizations of the United Nations system, particularly the United Nations Development Programme or other intergovernmental organizations;
 - (iii) public or private bodies or individuals;

- (c) any interest due on the resources of the Fund;
- (d) funds raised by collections and receipts from events organized for the benefit of the fund; and
- (e) all other resources authorized by the Fund's regulations, as drawn up by the World Heritage Committee. 5

4. Contributions to the Fund and other forms of assistance made available to the Committee may be used only for such purposes as the Committee shall define. The Committee may accept contributions to be used only for a certain programme or project, provided that the Committee shall have decided on the implementation of such programme or project. No political conditions may be attached to contributions made to the Fund. 10

Article 16

1. Without prejudice to any supplementary voluntary contribution, the States Parties to this Convention undertake to pay regularly, every two years, to the World Heritage Fund, contributions, the amount of which, in the form of a uniform percentage applicable to all States, shall be determined by the General Assembly of States Parties to the Convention, meeting during the sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization. This decision of the General Assembly requires the majority of the States Parties present and voting, which have not made the declaration referred to in paragraph 2 of this Article. In no case shall the compulsory contribution of States Parties to the Convention exceed 1% of the contribution to the regular budget of the United Nations Educational, Scientific and Cultural Organization. 15 20

2. However, each State referred to in Article 31 or in Article 32 of this Convention may declare, at the time of the deposit of its instrument of ratification, acceptance or accession, that it shall not be bound by the provisions of paragraph 1 of this Article. 25

3. A State Party to the Convention which has made the declaration referred to in paragraph 2 of this Article may at any time withdraw the said declaration by notifying the Director-General of the United Nations Educational, Scientific and Cultural Organization. However, the withdrawal of the declaration shall not take effect in regard to the compulsory contribution due by the State until the date of the subsequent General Assembly of States Parties to the Convention. 30

4. In order that the Committee may be able to plan its operations effectively, the contributions of States Parties to this Convention which have made the declaration referred to in paragraph 2 of this Article, shall be paid on a regular basis, at least every two years, and should not be less than the contributions which they should have paid if they had been bound by the provisions of paragraph 1 of this Article. 35

5. Any State Party to the Convention which is in arrears with the payment of its compulsory or voluntary contribution for the current year and the calendar year immediately preceding it shall not be eligible as a Member of the World Heritage Committee, although this provision shall not apply to the first election. The terms of office of any such State which is already a member of the Committee shall terminate at the time of the elections provided for in Article 8, paragraph 1 of this Convention. 40

Article 17

The States Parties to this Convention shall consider or encourage the establishment of national public and private foundations or associations whose purpose is to invite donations for the protection of the cultural and natural heritage as defined in Articles 1 and 2 of this Convention. 45

Article 18

The States Parties to this Convention shall give their assistance to international fund-raising campaigns organized for the World Heritage Fund under the auspices of the United Nations Educational, Scientific and Cultural Organization. They shall facilitate collections made by the bodies mentioned in paragraph 3 of Article 15 for this purpose. 50

V. CONDITIONS AND ARRANGEMENTS FOR INTERNATIONAL ASSISTANCE

Article 19

Any State Party to this Convention may request international assistance for property forming part of the cultural or natural heritage of outstanding universal value situated within its territory. It shall submit with its request such information and documentation provided for in Article 21 as it has in its possession and as will enable the Committee to come to a decision. 5

Article 20

Subject to the provisions of paragraph 2 of Article 13, sub-paragraph (c) of Article 22 and Article 23, international assistance provided for by this Convention may be granted only to property forming part of the cultural and natural heritage which the World Heritage Committee has decided, or may decide, to enter in one of the lists mentioned in paragraphs 2 and 4 of Article 11. 10

Article 21

1. The World Heritage Committee shall define the procedure by which requests to it for international assistance shall be considered and shall specify the content of the request, which should define the operation contemplated, the work that is necessary, the expected cost thereof, the degree of urgency and the reasons why the resources of the State requesting assistance do not allow it to meet all the expenses. Such requests shall be supported by experts' reports whenever possible. 15 20

2. Requests based upon disasters or natural calamities should, by reasons of the urgent work which they may involve, be given immediate, priority consideration by the Committee, which should have a reserve fund at its disposal against such contingencies.

3. Before coming to a decision, the Committee shall carry out such studies and consultations as it deems necessary. 25

Article 22

Assistance granted by the World Heritage Fund may take the following forms—

- (a) studies concerning the artistic, scientific and technical problems raised by the protection, conservation, presentation and rehabilitation of the cultural and natural heritage, as defined in paragraphs 2 and 4 of Article 11 of this Convention; 30
- (b) provisions of experts, technicians and skilled labour to ensure that the approved work is correctly carried out;
- (c) training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage; 35
- (d) supply of equipment which the State concerned does not possess or is not in a position to acquire;
- (e) low-interest or interest-free loans which might be repayable on a long-term basis; 40
- (f) the granting, in exceptional cases and for special reasons, of non-repayable subsidies.

Article 23

The World Heritage Committee may also provide international assistance to national or regional centres for the training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage. 45

Article 24

International assistance on a large scale shall be preceded by detailed scientific, economic and technical studies. These studies shall draw upon the most advanced 50

techniques for the protection, conservation, presentation and rehabilitation of the natural and cultural heritage and shall be consistent with the objectives of this Convention. The studies shall also seek means of making rational use of the resources available in the State concerned.

Article 25 5

As a general rule, only part of the cost of work necessary shall be borne by the international community. The contribution of the State benefiting from international assistance shall constitute a substantial share of the resources devoted to each programme or project, unless its resources do not permit this.

Article 26 10

The World Heritage Committee and the recipient State shall define in the agreement they conclude the conditions in which a programme or project for which international assistance under the terms of this Convention is provided, shall be carried out. It shall be the responsibility of the State receiving such international assistance to continue to protect, conserve and present the property so safeguarded, in observance of the conditions laid down by the agreement. 15

VI. EDUCATIONAL PROGRAMMES

Article 27

1. The States Parties to this Convention shall endeavour by all appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect by their peoples of the cultural and natural heritage defined in Articles 1 and 2 of the Convention. 20

2. They shall undertake to keep the public broadly informed of the dangers threatening this heritage and of the activities carried on in pursuance of this Convention.

Article 28 25

States Parties to this Convention which receive international assistance under the Convention shall take appropriate measures to make known the importance of the property for which assistance has been received and the role played by such assistance.

VII. REPORTS

Article 29 30

1. The States Parties to this Convention shall, in the reports which they submit to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field. 35

2. These reports shall be brought to the attention of the World Heritage Committee.

3. The Committee shall submit a report on its activities at each of the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization. 40

VIII. FINAL CLAUSES

Article 30

This Convention is drawn up in Arabic, English, French, Russian and Spanish, the five texts being equally authoritative.

Article 31

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.

2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization. 5

Article 32

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited by the General Conference of the Organization to accede to it. 10

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 33

15

This Convention shall enter into force three months after the date of the deposit of the twentieth instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments of ratification, acceptance or accession on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession. 20

Article 34

The following provisions shall apply to those States Parties to this Convention which have a federal or non-unitary constitutional system—

(a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States parties which are not federal States; 25

(b) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of individual constituent States, countries, provinces or cantons that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption. 30

Article 35

35

1. Each State Party to this Convention may denounce the Convention.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. It shall not affect the financial obligations of the denouncing State until the date on which the withdrawal takes effect. 40

Article 36

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 32, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, or accession provided for in Articles 31 and 32, and of the denunciations provided for in Article 35. 45

Article 37

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.

2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force. 5

Article 38

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization. 10

Done in Paris, this twenty-third day of November 1972, in two authentic copies bearing the signature of the President of the seventeenth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 31 and 32 as well as to the United Nations. 15 20