

NATIONAL HERITAGE BILL 2006

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NATIONAL HERITAGE BILL 2006

A Bill for

An Act to provide for the protection, preservation and conservation of cultural, natural and living heritage of Lesotho, and for connected matters.

Enacted by the Parliament of Lesotho.

PART 1 – PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the National Heritage Act 2006 and shall come into operation on such a date as the Minister may, by notice published in the Gazette, appoint.
- (3) This Act shall bind the State.

Interpretation

2. In this Act, unless the context otherwise requires-

“archaeological object”, includes –

- (i) remains of materials resulting from human activity which are in state of disuse and are in or on land and are older than 100 years,
- (ii) rock art in the form of painting, engraving or other graphic representation on fixed rock surface, or loose rock stone which was executed by human and is older than---years old;
- (iii) features, structures and artifacts associated with military activities and are older than ---years including the sites on which they are found;

“Commission” means the Heritage Commission established under section 5;

“conservation” includes protection, maintenance, preservation, and sustainable use of places or objects so as to safeguard their cultural significance;

“cultural significance” means aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance;

“Department” means the Department of Culture;

“development” means any physical intervention, excavation, or action, other than those caused by natural forces, which may result in a change to the nature, appearance, or physical nature of a place, or influence its stability and future well-being;

“District Development Coordinating Committee (DDCC)” has the same meaning as in the Local Government Act 1997¹;

“heritage resource” means any place or object of cultural significance;

“heritage site” means a place declared to be a national heritage under section 16;

“heritage authority” means, the Commission, DDCC or local authorities designated as such, under Part III of this Act;

“improvement” includes the repair, restoration, and rehabilitation of a place protected in terms of this Act;

“living heritage” means intangible aspects of inherited culture and includes-

- (i) cultural tradition;
- (ii) oral history;
- (iii) performance;
- (iv) ritual;
- (v) popular memory;
- (vi) skills and technique;
- (vii) indigenous knowledge; or
- (viii) approach to nature, society and social relationships;

“local authority” has the same meaning as in the Local Government Act 1997;

“Minister” means the Minister responsible for culture;

“national heritage” means all heritage resources which are under the power and control of the heritage authorities and are for the enjoyment of the present and future generation;

“object” means any movable property of cultural significance which is protected in terms of this Act;

“palaeontological material” means any fossilized remains of or fossil trace of animals or plants which existed in the geological past, but excludes fossil fuel or fossiliferous rock intended for industrial use and any site which contains such fossilized remains or trace;

‘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 with them.

PART II – GENERAL PRINCIPLES

General Principles

3. The heritage authorities established or designated under Part III shall ensure that the general principles on heritage management set out in the Schedule to this Act are observed.

PART III – INSTITUTIONAL ARRANGEMENTS

Department of Culture

4. (1) The Department of Culture is designated as the responsible body for the purpose of the implementation and the administration of this Act and any regulations made pursuant to this Act.
- (2) The primary functions of the Department of Culture are:
 - (a) to oversee the control and management of the Heritage Commission established under this Act;
 - (b) to promote the co-ordination of policy formulation and planning for the management of national heritage;
 - (c) to advise the Minister on matters concerning heritage management;
 - (d) to promote public awareness and education concerning the activities regulated under this Act;
 - (e) to furnish the Minister with such information as the Minister may require; and
 - (f) to provide secretarial services to the Commission.

Heritage Commission

5. There is hereby established the Heritage Commission whose members shall be appointed by the Minister by notice in the Gazette.

Composition of the Heritage Commission

6. (1) The Heritage Commission shall consist of:
 - (a) twelve ex officio members each representing the following Ministries or organisations:
 - i. Ministry responsible for culture;
 - ii. Ministry responsible for environment;
 - iii. Ministry responsible for education;
 - iv. Ministry responsible for public works;
 - v. Ministry responsible for local government;
 - vi. Lesotho Highlands Development Authority;
 - vii. Lesotho Tourist Development Corporation;
 - viii. Lesotho National Development Corporation;
 - ix. National University of Lesotho – Historical Studies Department
 - x. Lesotho History Teachers Association;
 - xi. Traditional leaders Association
 - xii. One declared cultural /heritage organisation.
 - (b) three members appointed by the Minister for their renowned contribution or expertise in heritage matters.
- (2) Members of the Commission shall be appointed by the Minister and shall have training or knowledge in at least one of the following fields:
 - (a) archeology,
 - (b) palaeontology;
 - (c) palaeo –anthropology
 - (d) developmental studies

- (e) history
 - (f) culture and tradition
 - (g) sociology
 - (h) indigenous heritage systems;
 - (i) financial management;
 - (j) any other field that shall be deemed sufficient for the purposes of this Act and the regulations made hereunder.
- (3) The Minister shall designate a chairman and a deputy chairman from among the members of the Commission.

Tenure of office

7. (1) A member appointed in terms of section 6 (1) (b),
- (a) shall hold office for a period not exceeding three (3) years from the date of appointment and shall be eligible for reappointment upon an expiration of his term;
 - (b) may resign his office upon giving one (1) month notice in writing to the Minister.
- (2) A member appointed in terms of section 6 (1) (b) may be removed from office as a member,
- (a) if he has been absent from three (3) consecutive meetings of the Commission without the permission of the chairman; or
 - (b) if in the opinion of the Minister, he is unable to discharge the functions of his office due to infirmity of the body or mind or for misconduct, or for any other valid reason.
- (3) Where a member appointed in terms of section 6 (1) (b), has resigned or been removed from office, the Minister shall, by notice in the Gazette, fill the vacancy with a new appointment and the person so appointed shall hold office for the unexpired term of his predecessor.
- (4) A member may be paid such allowances and expenses as the Minister after consultation with the Minister responsible for finance may determine.

Functions of the Commission

8. The functions of the Commission are,
 - (a) to operate a national historical preservation program that identifies and protects historic buildings, archeological sites, monuments, palaeontological sites, historical burial sites, geological natural foundations, landmarks, bridges, historical routes, ceremonial sites, religious sites, sacred sites, living heritage sites and any matter of a heritage nature;
 - (b) to facilitate a cooperative working relationship with developers, private land owners, local agencies, and communities;
 - (c) to conduct proactive surveys and to compile, maintain and update a register of all natural, cultural and living heritage;
 - (d) to implement this Act and all other legislation on heritage protection, conservation and preservation;
 - (e) to conduct surveys and make inventories of all heritage resources,
 - (f) to establish and maintain a database of the country's heritage resources;
 - (g) to conduct research or through others conduct research and publish findings, reports and other preparations related to establishing new heritage resources;
 - (h) to coordinate and monitor the identification of natural heritage resources;
 - (i) to control the export and import of heritage resources;
 - (j) to develop, in conjunction with the Department, policy initiatives on the promotion and management of heritage protection and preservation;
 - (k) to develop, plan and implement in conjunction with the Department, lectures series, displays and exhibits of heritage resources;
 - (l) to initiate and facilitate training programs for community leaders in protection, preservation and restoration of heritage resources;
 - (m) to ascertain the owners of any objects and purchase or otherwise acquire ownership or control of such objects for purposes of protection, preservation or restoration;
 - (n) to coordinate the repatriation of Lesotho's heritage from other countries;

- (o) to play a leading role in the development of heritage management instruments such as the conventions ,protocols or other agreements;
- (p) to grade and develop assessment criteria for grading heritage sites; and
- (q) to advise the Department on all matters pertaining to heritage management.

Funding

- 9. The Parliament shall appropriate annual sum of money for use by the Commission for the efficient discharge of its functions under this Act.

Meetings of the Commission

- 10. (1) The Commission shall meet at such times and places as the chairman may determine and as often as necessary, but at least four times per year provided that the first meeting shall be held at a time and place to be determined by the Minister.
- (2) Notwithstanding subsection (1) the chairman shall at the written request of not less than three members convene a special meeting to transact any extraordinary business on a date specified in the request. A written notice shall be addressed and send to the members at least one month prior to the date of the meeting.
- (3) The quorum for any meeting of the Commission shall be five members.
- (4) The decision of the Commission shall be taken by resolution of the majority of members present at any meeting of the Commission, and, in the event of an equality of votes on any matter, the chairperson of the meeting shall have a casting vote in addition to his deliberative vote as a member of the Commission.
- (5) The minutes of every meeting of the Commission shall be recorded in a minute book by the Secretary and signed by the Chairman and the Secretary.
- (6) The Commission may whenever it deems necessary, co-opt non-voting knowledgeable persons to serve on the Commission to advise on any issue.
- (7) The Commission may invite written comments from knowledgeable persons on any aspect of the heritage management which lies within the mandate of the Commission.
- (8) Subject to this Act, the Commission shall regulate its own procedure.

Committees of the Commission

11. The Commission 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 Commission considers competent or possess specific skills and expertise.

Secretary of the Commission

12. The Department shall appoint a senior member of its staff as the Secretary of the Commission.

Reports

13. (1) As soon as practicable after the end of the financial year, the Commission shall compile and submit to the Minister a report on all of its activities during that financial year, including a balance sheet and statements of income and expenditure certified by the Auditor –General.

(2) The report referred to in subsection (1), shall include a description of the condition of the national heritage during the period to which the report relates, including destruction and other losses incurred, threats to specific heritage and an account of offences, prosecutions and results of such prosecutions.

(3) The Minister shall table the report referred to in subsection (1) in Parliament within 14 days after receipt of the report 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.

District Development Coordinating Committees (DDCC)

14. (1) The District Development Coordinating Committees established in terms of the Local Government Act 1997, are hereby designated as a heritage authorities at the district level, and shall in consultation with the Commission, and in accordance with the provisions of this Act, in addition to their existing roles, be responsible for and coordinate all activities relating to heritage management within the districts;

(2) Without the prejudice to the generality of subsection (1), the DDCC shall-

(a) promote the systematic identification, recording and assessment of heritage resources and heritage objects which form part of the national heritage in the districts;

- (b) protect and manage heritage resources in the district which fulfill the heritage assessment criteria prescribed in this Act for Grade 2 status;
- (c) notify the Commission of the presence of any heritage resource in the district which it considers to fulfill the assessment criteria prescribed for Grade 1 status, nominate such resource for national level protection and furnish the Commission with the information in its possession relating to the resource;
- (d) maintain data bases on the district heritage resources within the districts and annually furnish the Commission with such data;
- (e) coordinate and monitor the performance of local authorities in the implementation of their responsibilities in terms of this Act;
- (f) provide for any areas of responsibility in terms of this Act, when a local authority does not have competence, or has insufficient capacity, to perform function in terms of the criteria prescribed under this Act;
- (g) report to the Commission on all activities relating to heritage management within its jurisdiction once in every year or as the Commission may require.

Local Authorities

15. For the purposes of this Act, the local authorities established under Local Authorities Act 1997 are hereby designated as heritage authorities responsible in accordance with the provisions of this Act, for heritage resources within their areas of jurisdiction.

General powers and duties of heritage authorities

16. The Commission, the DDCCs, and the local authorities are designated as heritage authorities for the purpose of this Act, and in this capacity shall-

- (1) furnish information, advice and assistance to sensitize and raise the public's awareness in the need for management of the national heritage;
- (2) maintain a list of conservation bodies which have a geographical area or a category of heritage resources;
- (3) regularly inspect heritage resources which are formally protected by it;

- (4) endeavor to assist any community or body of persons with an established interest in any heritage resource to obtain access to such heritage resource, should they request it and may for this purpose-
 - (a) enter into negotiations with the owner of such resource;
 - (b) facilitate the making of arrangements as may be required for the achievement of such access, including the execution of the heritage agreement in terms of this Act;
 - (c) refer the matter to the Minister if such negotiations are unsuccessful;
- (5) make arrangements to ensure the protection and management of all heritage resources and property owned or controlled by it or vested in it;
- (6) promote and engage in research relating to the identification, assessment and management of the national heritage as necessary;
- (7) publish, or by any means make available or distribute in any form, or cause to be published or distributed, any knowledge relating to the national heritage and any of its functions or activities;
- (8) inspect or document any heritage resource which –
 - (a) has the potential to become protected in terms of this Act;
 - (b) is , or which it has reason to believe may be so protected;
 - (c) it wishes to document for research purposes, for building up a public record heritage resources or as part of an investigation into suspected offence in terms of the Act, and shall maintain a register of such inspections;
- (9) take such steps as it considers , in investigating the desirability of protecting any place in terms of this Act-
 - (a) for erecting beacons on the corners of and surveying and preparing a diagram or plan of such place;
 - (b) 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;
- (10) undertake or make arrangements for the presentation of any place under its control or after consultation with the Government Department concerned, any heritage site which is owned by the Government;

- (11) by agreement with the authority concerned, cooperate in the management of heritage resource which is owned or controlled by the Government or a parastatal;
- (12) lend anything under its control, if it so wishes, to a museum or public institution subject to such conditions as it deems necessary and appropriate;
- (13) create or register with the relevant authorities a badge or emblem for the authority, any of its projects or any category of protection provided under this Act;
- (14) where appropriate affix to or otherwise display at any place protected in terms of this Act a badge or other sign indicating its status;
- (15) produce, acquire and market products relating to the national heritage or enter into arrangements for the production, acquisition and marketing of such products;
- (16) recover costs incurred by it and where appropriate charge fees for services rendered in terms of this Act.

PART IV – PROTECTION AND MANAGEMENT OF HERITAGE RESOURCES

Identification of heritage sites

17. (1) The Commission, in conjunction with the DDCC, local authority, the public and members of the local community shall identify the places that are of special national significance in terms of the heritage assessment criteria set out in the Schedule to this Act, for the purpose of declaring them as national heritage sites.
 - (2) A DDCC, in conjunction with the local authority, the public and members of the local community shall identify those places which have special qualities which make them significant in the context of the district, in terms of the criteria set out in this Act, and must investigate the desirability of their declaration as District heritage sites.
 - (3) Any person may notify the Commission or the DDCC of a place to be declared a national or district heritage site, as the case may be, by sending a written motivation to the Commission or the DDCC.

Declaration of heritage sites

18. (1) The Commission shall, by notice in the Gazette, declare any place referred to in section 17 to be a national heritage site if it has given at least sixty (60) days notice to the owner, mortgage holder, occupier or any person with a registered interest in the property to enable him to make representations with respect to the proposed declaration.
- (2) The DDCC shall, by notice in the Gazette, declare any place referred to in section 17 to be a district heritage site if it has given at least sixty (60) days notice to the owner, mortgage holder, occupier or any person with a registered interest in the property to enable him to make representations with respect to the proposed declaration.
- (3) The Commission or the DDCC may by similar notice –
 - (a) amend any notice published under this section; or
 - (b) withdraw any notice published under this section.
- (4) The Commission shall be responsible for the protection of national heritage sites declared in terms of this Act.
- (5) The DDCC shall be responsible for protection of the heritage sites under its jurisdiction.
- (6) Except in cases where the Commission considers it inappropriate, all heritage sites shall be marked to indicate their status.
- (7) Before declaration of a place as a heritage site, or amendment or withdrawal of a notice, the Commission or the DDCC as the case may be,
 - (a) shall notify the owner;
 - (b) shall notify the mortgage holder, the occupier and any other person with a registered interest in the property;
 - (c) shall notify all conservation bodies which have registered their interest in the geographical area in which the proposed heritage 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.

- (8) The Commission or the DDCC shall consider all submissions made in terms of sub-section (7), before a final decision could be made.
- (9) No person shall 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 Commission or the DDCC within its respective jurisdiction.
- (10) A person who contravenes the provisions of subsection (4) commits an offence and is liable on conviction to a fine not exceeding M20, 000.00 or to imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.

Conservation of site belonging to an owner

19. (1) The Commission or the DDCC as the case may be, may, by agreement with the owner of a heritage site –
- (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 on such land, fences, walls or gates;
or
 - (d) erect signs on or near a heritage site.
- (2) No person shall damage any fence, wall or gate constructed or sign erected by the Commission or the DDCC in terms of subsection (1).
- (3) A person who contravenes the provisions of subsection (2) commits an offence and is liable on conviction to a fine not exceeding M20, 000.00 or to imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.

Reproduction rights in respect of a heritage site

20. No person, other than the owner of the site shall make reproductions in respect of a heritage site for a profit without a permit issued by the Commission or the DDCC as the case may be

Protected Areas

21. (1) The Commission or the DDCC as the case may be, shall with the consent of the owner of an area, by notice in the Gazette, designate as a protected area such area of land surrounding a national or district heritage site as is necessary to ensure the protection and enjoyment of such site, or to protect the view of and from such site.

(2) No person shall damage, disfigure, alter, subdivide, or in any other way develop any part of a protected area unless he has consulted the Commission or the DDCC as the case may be, at least sixty (60) days prior to such activity.

(3) A person who contravenes the provisions of subsection (2) commits an offence and is liable on conviction to a fine not exceeding M20, 000.00 or to imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.

Heritage sites registers

22. (1) The DDCC shall compile and maintain a heritage register listing all heritage sites that have been declared district heritage or given a Grade 2 category in terms of the criteria set out the schedule to this Act.
- (2) The listing in the register shall be done in accordance with -
- (a) Categories of Grade 2 and 3 heritage resources prescribed under the schedule to this Act;
 - (b) The areas of jurisdiction of local authorities; and
 - (c) Any additional categories prescribed by the DDCC in consultation with the Commission.

Heritage areas

23. Where DDCC is of the opinion that the need exist to protect a place of environmental or cultural interest as a heritage area, it may request LSPP to investigate its designation in accordance with proposals submitted by DDCC with its request.

Declaration of national heritage objects

24. (1) The Commission may declare as heritage object, an object, collection of objects, a type of object or a list of objects which is within the country, which shall include –
- (a) archeological, palaeontological, rare geological specimens, objects recovered from the soil or waters within the country;
 - (b) visual art objects;
 - (c) military objects;

- (d) objects of cultural and historical significance;
- (e) objects to which oral traditions are attached and which are associated with living heritage;
- (f) objects of scientific or technological interest;
- (g) books, records, documents, photographic positives and negatives, graphic materials, film or video or sound recordings;
- (h) any other object which may be by the Minister.

(2) Except as the circumstances do not allow, before declaring any object as a heritage object, the Commission shall give the owner at least 60 days to make representations or submissions with respect to the proposed declaration.

(3) An object or collection shall be deemed to be protected as a heritage object for 6 months from the date of service or publication of a notice given under subsection (2) or until such notice is withdrawn or the object or collection or type objects is declared to be heritage object whichever is the shorter period.

Register of heritage objects

25. (1) The Commission shall maintain a register of heritage objects in which all objects, collection of objects and types of objects which have been declared heritage objects must be listed.
- (2) The Commission may provide to the owner or custodian of a heritage object listed in the register, a certificate indicating its status.
- (3) The owner of a heritage object mentioned in subsection (2) shall notify the Commission of the name and address of the new owner when such object is sold or otherwise alienated, and shall provide the new owner with the certificate given in under subsection (2).
- (4) No person shall destroy, damage, disfigure or alter any heritage object, or disperse any collection which is listed on the register, without a permit issued by the Commission.
- (5) No person shall carry out any work of restoration or repair of a heritage object without a permit issued by the Commission;
- (6) No person shall export or attempt to export from the country any heritage object without a permit issued by the Commission

(7) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine not exceeding M20, 000.00 or to imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.

PART V – GENERAL HERITAGE PROTECTION

Import of objects into Lesotho

26. (1) No person shall import into the country any foreign cultural property unless-
- (a) it is through a customs port of entry;
 - (b) an export permit or other permit issued by the country of origin of the object is produced to a customs officer before an import is effected or allowed.
 - (c) it has been legally exported from a country of the origin.
- (2) A customs officer who has reason to believe that a person is importing an object in contravention of this section, may confiscate such object and keep it in custody of the Commission until such time as will not exceed six months, to allow necessary investigation to take place.

Structures

27. (1) No person shall alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the Commission.
- (2) The Commission may at its discretion, by notice published in the Gazette, make exemption from the requirements of subsection (1) provided that it is satisfied that the heritage concerned has been identified and is adequately provided for in terms of this Act.

Archeology and palaeontology

28. (1) The Commission or the DDCC shall ensure that archeological and palaeontological objects within their respective jurisdictions are lodged with a museum or other public institution that has a collection policy acceptable to its heritage policy and may in so doing establish such terms and conditions as it deems fit for the conservation of the objects in question.

(2) A person who discovers archeological or palaeontological objects or material in the course of development or agricultural or any other activity shall immediately report it to the Commission or the local authority or museum.

(3) No person shall without a permit issued by the Commission -

- (a) destroy, damage, excavate, alter, deface or otherwise disturb any archeological or palaeontological site;
- (b) destroy, damage or excavate, remove from its original position, collect or own any archeological or palaeontological object;
- (c) trade in, sell, export or attempt to export from the country any archeological or palaeontological object.

(4) Whenever the Commission or the DDCC as the case may be, has reasonable cause to believe that any activity or development which will destroy, damage, or alter any archeological or palaeontological site is underway, and no application for a permit has been submitted and no heritage management plan has been followed, it may-

- (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 archeological or palaeontological site exists and whether mitigation is necessary;
- (c) if mitigation is deemed necessary by the Commission or the DDCC or any other heritage authority, assist the person on who the order has been served to apply for a required permit;
- (d) recover the costs of the investigation from the owner or occupier of the land on which it is believed an archeological or palaeontological site, serve a notice on the owner to prevent activities within a specified distance from such site.

(5) Within a period of two years from the commencement of this Act, any person who is in possession of any archeological or palaeontological object which was acquired contrary to this Act, or any lawful means, must lodge with the Commission or the relevant heritage authority lists of such objects and any other information which the Commission may require. 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.

(6) The Commission may, by notice in the Gazette exempt any institution from the requirements of sub section (5) subject to such conditions as may be specified in the notice.

Burial grounds, graves, prison cells

29. (1) Where it is not the responsibility of any other authority, the Commission or the relevant heritage authority shall conserve and care for burial grounds, graves, protected in terms of this Act and shall make arrangements for their conservation as it sees fit.
- (2) The Commission or relevant heritage authority shall identify and make record of burial grounds and graves, which it deems to be of cultural significance.
- (3) No person shall without a permit issued by the Commission or relevant heritage authority, 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.
- (4) The Commission may not issue a permit for any activity under this section unless it is satisfied that the applicant has, in accordance with the regulations made hereunder-
- (a) made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such grave, burial ground or post;
 - (b) reached agreements with such communities and individuals regarding the future of such grave , burial ground or post.

Public monuments and memorials

30. Public monuments and memorials shall be protected without a need to publish a notice to this effect.

Living heritage

31. (1) The Commission or relevant heritage authority shall in consultation with relevant local communities, groups and non-governmental organizations safeguard and protect all living heritage existing within its area of jurisdiction through-
- (a) conducting of research;
 - (b) identification;

- (c) preservation;
- (d) protection;
- (e) promotion;
- (e) enhancement;
- (f) transmission
- (g) conducting formal and non- formal education; and

Offence

32. A person who contravenes the provisions of this part commits an offence and is liable on conviction to a fine not exceeding M20, 000.00 or to imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.

PART VII – AN IMPACT ASSESSMENT STUDY

Impact assessment Study

33. (1) The Impact assessment study will be undertaken in accordance with the Environment Act and the Environment Impact Assessment Regulations with respect to all developments that are likely to affect the heritage resources and which are clearly specified in the First Schedule to the Environment Act.
- (2) It shall be the responsibility of the Commission or any other relevant heritage authority in whose area of jurisdiction a development or project referred to in subsection (1) takes place, to participate in the EIA process as appropriate, to ensure that the EIA study conducted has adequately covered the heritage impact assessment with respect to the development or project intended.

PART VIII – MANAGEMENT

Inventory of national heritage

34. (1) The Commission shall compile and maintain an inventory of national heritage which shall be in the form of a database of information on heritage which it considers to be worthy of conservation including -
- (a) all heritage which had been dealt with in the preceding legislation;
 - (b) any other place and object which it considers to be of interest.

- (2) The Commission shall list the heritage resources in the format and under the categories which it shall prescribe.
- (3) The Commission may from time to time, after consultations with relevant heritage bodies and the relevant local authority make, amend or delete entries in the inventory;
 - (a) all places listed in any heritage registers shall be entered in the inventory;
 - (b) a local authority shall inform the Commission on the destruction of a place listed in a heritage register, so that the destruction could be recorded in the inventory.
- (4) The inventory referred to in sub-section (3), shall be open for public at the offices of the Commission.
- (5) The Commission shall publish a summary and analysis of the inventory at the interval of every three years.

Assistance programme

35. (1) The department shall in consultation with the Commission 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 of this Act.

(2) The Commission shall prescribe the procedures for applications for approval and granting of financial assistance and the criteria for the assessment of the projects.

Restitution of heritage objects

36. (1) When a community, a body or individual with bona fide interest makes a claim for the restitution of a movable heritage resource which is part of the national heritage held by or curated in a publicly funded institution, the relevant heritage authority concerned shall consult with the claimants regarding the future of the heritage resource.

(2) If the parties mentioned in subsection (1) fail to reach consensus regarding the heritage resource, an aggrieved party may appeal to the Minister who shall -
 - (a) mediate between the parties concerned, with the aim of finding a mutually satisfactory solution;
 - (b) make a final decision on the future of the heritage resource should the parties fail to reach consensus after the mediation by the Minister.

Heritage agreements

37. (1) The Commission or the DDCC may negotiate and agree with any organization, body, local authority, individual 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.
- (2) The agreement reached in terms of subsection (1) shall be reduced into writing.
- (3) 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.
- (4) Without limiting the provisions of subsection (3), 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.
- (5) A heritage agreement may, with the consent of the owner of the resource concerned, be varied or cancelled by agreement between the parties.
- (6) The consent of the owner of the resource concerned to the heritage agreement or any variation agreement may be given, subject to the conclusion 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.
- (7) Nothing in this Act requires a heritage authority to negotiate or agree with any person or authority to enter into or execute any heritage agreement.
- (8) A heritage agreement in respect of a place attached to the land is binding on the owner of the place, as at the execution of the agreement while the agreement remains in force.
- (9) The owner of a national heritage site, district heritage site or a place listed in a heritage register may by a heritage agreement entered into with the relevant heritage authority or any person or body approved by such authority, appoint the heritage authority or the local authority or the person or body concerned, the guardian of the place.
- (10) The heritage agreement 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;
 - (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 deputized by the guardian to inspect or maintain the place;
 - (f) the presentation of the place;
 - (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;
 - (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 of the agreement by any of the parties; and
 - (k) the procedure for the resolution of any dispute arising out of the agreement.
- (11) 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.
- (12) Every heritage agreement has effect according to its tenor but subject to the provisions of this Act, provided that-
- 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 resources; and
- (13) Nothing in terms of any heritage agreement shall permit or allow any person to perform any act contrary to this Act or regulations made hereunder.

Incentives

38. (1) On advice of the Commission, the Minister, in consultation with the Minister of Finance, may publish regulations on financial incentives for the conservation of the national heritage, or for promoting the purpose of this Act.
- (2) A heritage authority or a local authority may in planning schemes or by-laws under this Act or by any means provide incentives for the conservation of heritage resources provided in subsection(1).

Presentation of protected heritage

39. (1) The Department, the Commission, the District Development Coordinating Committee, the local authorities and all stakeholders involved in heritage management shall coordinate and promote the presentation and use of places of cultural significance and heritage resources which form part of the national heritage and for which they are responsible, for public enjoyment, education, research and tourism.
- (2) The public enjoyment, education, research and tourism shall include –
- (a) the erection of explanatory tablets, interpretive facilities, interpretive centres and visitor facilities;
 - (b) the training and provision of guides;
 - (c) the mounting of exhibitions;
 - (d) the erection of memorials; and
 - (e) any other means necessary for the effective presentation of the national heritage.
- (3) Where a heritage resource which is formally protected in terms of this Act 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 authority which is responsible for the protection of such heritage resource regarding the contents of interpretive material or programmes.
- (4) A person may only erect a plague 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 authority responsible for the protection of the place.

Compulsory repair order

40. (1) Where the Commission or relevant heritage authority considers that a heritage site has been allowed to fall into disrepair or is neglected to such an

extent that it will lose its potential for conservation, it may serve on the owner an order to repair or maintain such site, within a reasonable period as specified in the order, provided that the Commission shall specify only such work, as in its opinion, is necessary to prevent any further deterioration in the condition of the place.

(2) Where the owner has failed to comply with the terms of an order given under subsection(1), the Commission or relevant authority may itself take such steps as may be necessary for the repair or maintenance of the site and recover the costs from the owner.

(3) An owner may within 21 days of service of an order under subsection (1)

- (a) apply to the Commission or relevant heritage authority for an extension of time; or
- (b) appeal to the Minister.

Expropriation

41. (1) The Minister may, on the advice of the Commission, and after consultations with the Minister responsible for finance, or subject to compensation, expropriate any property for the conservation or any purpose under this Act or the regulations to this Act if such expropriation is for public purpose or in the public interest.

(2) The amount of compensation and the time and manner of payment shall be determined in accordance with the Constitution, and the owner of the property in question shall be given a hearing before any property is expropriated.

PART IX – MISCELLANEOUS

Permits

42. (1) A heritage authority may prescribe the manner in which an application is made to it for any permit in terms of this Act or other requirements for permit applications, including-

- (a) any particulars or information to be furnished in the application and any document, drawing, plans, photograph, and fees which should accompany the application;
- (b) minimum qualifications and standards for practice required of persons making application for a permit to perform specified actions in relation to particular categories of protected heritage resources;

- (c) standards and conditions for the excavation and curation of archaeology and palaeontological objects and material recovered by authority of a permit;
 - (d) the conditions under which before a permit is issued, a financial deposit be lodged and held in trust for the duration of the permit or such period as the heritage authority may specify, and conditions of forfeiture of such deposit;
 - (e) conditions of a temporary export and return of objects protected under this Act;
 - (f) the submission of reports on work to be done under authority of a permit; and
 - (g) the responsibilities of the heritage 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 authority may in its discretion issue to such person a permit to perform such actions at such times and to subject them to such terms, conditions and restrictions or directions as may be specified in the permit including a condition -
- (a) that the applicant give his security in such form and such amount determined by the heritage 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
 - (b) stipulating that design proposals be revised; or
 - (c) regarding the qualifications and expertise required to perform the actions for which the permit is issued.
- (3) heritage authority may at its discretion, in respect of any heritage resource protected by it by notice in the Gazette grant an exemption to obtain a permit from it for such activities or class of activities by such persons or class of persons in such circumstances as specified in the notice.

Appeals

43. (1) Any person who is aggrieved by the decision of the Commission under this Act may appeal to the Minister in writing within 30 days.

- (2) On receiving the notice of appeal, the Minister shall appoint an independent tribunal consisting of three members having expertise in the matter.
- (3) The tribunal constituted in terms of subsection (2) shall have regard to-
 - (a) the cultural significance of the heritage in question;
 - (b) heritage conservation principles; and
 - (c) any relevant factor which is brought to its attention by any of the parties to the appeal.

Heritage inspectors

- 44. (1) The Minister shall designate the existing inspectors in other fields as heritage inspectors.
- (2) The heritage inspector shall be issued with an identity card displaying his photograph and the signature.
- (3) Subject to the provisions of any other law, a heritage inspector may at all reasonable times enter upon any land or premises for the purpose of inspecting any heritage protected in terms of this Act, and may take photographs, make measurements and sketches and record the information in whatever manner he deems fit for the purposes of the Act or the regulations to the Act.
- (4) Where a heritage inspector has reasonable grounds to suspect that an offence is being committed or is about to be committed, in contravention of the provisions of this Act, he may –
 - (a) enter and search any place, premises vehicle or craft and stop and detain any vehicle or craft in or on which the inspector believes on reasonable grounds there is evidence related to the offence;
 - (b) confiscate and detain any heritage or evidence concerned with the commission of the offence pending further order from the Commission;
 - (c) take such action as reasonably necessary to prevent the commission of an offence under this Act.
- (5) An 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 order from the Commission.
- (6) An inspector may require any person who he has reason to believe to have committed an offence in terms of this Act to supply his name and address and identity.
- (7) A person who-

- (a) fails to comply with a request made in terms of this section when capable of so complying;
- (b) knowingly furnish information that is false or misleading;
- (c) hinders or obstructs any inspector in the exercise of his or her powers in terms of this section

commits an offence and is liable on conviction to a fine of an amount not exceeding M5,000.00 or to an imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

Offences and penalties

45. A person who contravenes the provision of this Act and for which no penalty is prescribed commits an offence and is liable on conviction to a fine of an amount not exceeding M5,000.00 or to an imprisonment for a term not exceeding 3 months or to both such fine or imprisonment.

Transitional provisions and repeals

46. (1) The following legislation are repealed-

- (a) Historical Monuments, Relics, Fauna and Flora Act 1967;
- (b) Museums Act 1967.

(2) All the assets, rights, liabilities and obligations under these Acts devolve upon the Department.

Regulations

47. The Minister may by notice in the Gazette make regulations for the purpose of giving effect to the provisions of this Act.

FIRST SCHEDULE (Section 3)

General principles on heritage management

The general principles on heritage management referred to in section 3 are as follows-

1. General principles for heritage resource management

- (a) heritage resources have lasting value in their own right and provide evidence of the origins of a State, as they are valuable, finite, non-renewable and irreplaceable they must be carefully managed to ensure their survival;
- (b) every generation has a moral responsibility to act as trustee of the national heritage for future generations and the State has an obligation to manage heritage resources in the interests of all citizens;
- (c) heritage resources must be used to promote reconciliation, understanding and respect, and contribute to the development of a unifying identity,
- (d) heritage management must guard against the use of heritage for sectarian purposes or for political gain;
- (e) to ensure that heritage is managed effectively-
 - (i) the skills and capacities of persons and communities involved in heritage management must be developed; and
 - (ii) provision must be made for the ongoing education and training of existing and new heritage management workers;
- (f) the laws, procedures and administrative practices on heritage management must-
 - (i) be clear and generally available to those affected by them;
 - (ii) in addition to serving as regulatory measures, also provide guidance and information to those affected by them;
 - (iii) give further content to the fundamental rights set out in the Constitution;
- (g) as heritage forms an important part of the history and beliefs of communities it must be managed in a way that acknowledges the right of affected communities to be consulted and to participate in heritage management;

- (h) as heritage contributes significantly to research, education and tourism it must be developed and presented for these purposes in a way that ensures dignity and respect for cultural values;
- (i) policy, administrative practice and legislation on heritage management must promote the integration of heritage conservation in urban and rural planning and social and economic planning;
- (j) identification, assessment and management of heritage must –
 - (i) take account of all relevant cultural values and indigenous knowledge systems;
 - (ii) take account of material of cultural heritage value and involve the least possible alteration or loss of it;
 - (iii) promote the use and enjoyment of and access to heritage resources, in a way consistent with their cultural significance and conservation and needs;
 - (iv) contribute to social and economic development;
 - (v) safeguard the options of present and future generations;
 - (vi) be fully researched, documented and recorded.

2. National heritage

The national heritage is constituted by the heritage resources which are of cultural significance or other special value for enjoyment by the present generation and for future generation and should fall within the purview of the bodies entrusted with heritage management and 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 significance;
- (f) archaeological and palaeontological sites;

- (g) graves and burial grounds, including- ancestral graves, royal and traditional leaders graves, graves of individuals designated by Minister by notice in the Gazette, historical graves and cemeteries;
- (h) sites of significance relating to history of “lifaqane/cannibalism;
- (i) movable objects including-
 - (i) objects recovered from the soil or waters, including archaeological and palaeontological objects or materials and rare geological specimens;
 - (ii) objects to which oral traditions are attached or which are associated with living heritage;
 - (iii) ethnographic art and objects;
 - (iv) objects of decorative or fine art;
 - (v) objects of scientific or technological interest;
 - (vi) books, records, documents, photographic positives and negatives, graphic, film or video or sound recordings;
- (j) a place or object is to be considered part of national heritage if it has cultural significance or other special value due to –
 - (i) its importance in the community;
 - (ii) its possession of uncommon, rare or endangered aspects of Lesotho’s natural or cultural heritage;
 - (iii) its potential to yield information that will contribute to an understanding of Lesotho’s natural or cultural heritage;
 - (iv) its importance in demonstrating the principal characteristics of a particular class of Lesotho’s natural or cultural places or objects;
 - (v) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
 - (vi) its importance in demonstrating a high degree of creative or technical achievements at a particular period;

- (vii) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- (viii) its strong or special association with the life or work of a person, group, organization of importance in the history of Lesotho;

3. Heritage assessment criteria and grading

The heritage authorities must establish a system of grading of places and objects which form part of national heritage and which distinguishes between the following categories-

- (a) Grade 1 – Heritage resources with qualities so exceptional that they are of special national significance;
- (b) Grade 2 – Heritage resources which, although forming part of national heritage, can be considered to have special qualities which make them significant within the context of local communities;
- (c) Grade 3 – other heritage worthy of conservation;

The system of grading must prescribe an assessment criteria which must be used by bodies involved with heritage management 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 properly allocated.

4. Institutional arrangements, responsibilities and competencies of institutions that deal with heritage management

- (a) Lesotho shall follow a three-tier system for heritage resources management whereby the Commission shall be responsible for all national level heritage functions, the District Development Co-ordinating Committees shall be responsible for district level functions, and the local authorities shall be responsible for local level functions.
- (b) The bodies referred to in paragraph (a), shall be accountable for their actions and decisions and the performance of the functions under this system.

- (c) The Commission is responsible for identification and management of Grade 1 heritage and heritage resources in accordance with this Act, and shall co-ordinate and monitor the management of the national heritage.
- (d) The District Development Co-coordinating Committee is responsible for identification and management of Grade 2 heritage resources and heritage resources deemed in terms of this Act to be the responsibility of the Districts as opposed to national responsibility.
- (e) A local authority is responsible for the identification and management of Grade 3 heritage resources which are deemed to fall within their competence in terms of this Act.
- (f) For the purposes of an application for permit or other authorization to perform any activity regulated by this Act, a formal protection by heritage institution at a higher level takes precedence over any formal or general protection at a local level, without any incentives offered at any level.
- (g) The District Development Coordinating Committee or a local authority shall not perform any function in terms of this Act or any other law, unless it is competent to do so. The competence of the District Development Coordinating Committee or local authority shall be assessed in terms of the guidelines that shall be prescribed by the Minister, including availability of adequate staff, expertise, experience and administrative systems to be applied by-
 - (i) the Commission, in the assessment of the capacity of District Development Coordinating Committee to perform functions prescribed for them;
 - (ii) the District Development Coordinating Committee, to establish the competence of local authorities to perform any function under this Act;
- (h) In the event of dispute with respect to assessment contemplated in paragraph (g), the matter shall be submitted to arbitration;
- (i) Where the District Development Coordinating Committee (DDCC) or the local authority does not have the competence or capacity to perform a specific function for which it is responsible under this Act, that function shall be performed on agency basis by the Commission in the case of the DDCC functions or DDCC in case of the local authority function.

- (j) A DDCC or a local authority shall apply to the relevant institution for the assessment of its competence in the manner prescribed by the assessing institution, and may apply for reassessment within a period and on conditions prescribed by the assessing institution.
- (k) The assessing institution may at any time, and shall at least every 2 years, reassess the competence of the institution assessed in terms of paragraph (j) and review the assumption of functions and powers under this Act.

5. Rights, duties and exemptions of Government Ministries, parastatals and other bodies supported by the Government

- (a) The Government of Lesotho, its parastatals and other bodies financially or otherwise supported by the Government, must give heritage authorities all assistance in the performance of their functions as is reasonably practicable.
- (b) The Government, parastatals and other bodies supported by the Government, must on request from a heritage authority, make available for its use and incorporation into its data base any information which it has on record on heritage resource and its control.
- (c) Each Government ministry, parastatal or a body supported by the Government must-
 - (i) maintain and conserve the heritage resources under its control in accordance with the standards and procedures set out by the Commission;
 - (ii) submit annually to the Commission a report on the maintenance and development of such resources;
 - (ii) prepare management plans for specified heritage resources;
 - (iii) 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 minimize the adverse effect will be taken;
 - (iv) at the initiation of the planning process of the project, or at least 90 days before taking of any action that could adversely affect the heritage resource, inform the Commission of the proposed

action and give them a reasonable opportunity to consider and comment on it;

- (v) where the destruction of such heritage resource is permitted in terms of the heritage legislation, record such resources in accordance with the standards set by the Commission;
- (d) Where the Commission has been informed of an action by a Government Ministry, parastatal or a body supported by Government which would affect a heritage resource (such as a recommendation, decision, approval of a programme, the issue of a licence, the granting of a permit), it must as soon as practicable, submit its comments to such Ministry, parastatal or a body supported by Government.
- (e) The Commission must be informed of an intention by Government to destroy or delete any architectural or technical drawings in whatever medium, as may be defined, and must make such drawings available to the Commission free of charge;
- (f) The Registrar of Deeds must if requested by the Commission furnish particulars of registration of transfer or subdivision of any place which is formally protected by the Commission.

6. General principles on procedure

- (a) A decision on administration and management of a national heritage by the heritage authority must be taken in accordance with the following principles-
 - (i) the decision must be consistent with the provisions of this Act;
 - (ii) a meeting at which decisions are taken, must be open to the public and the agenda and minutes must be available for public scrutiny;
 - (iii) a person who may be affected by the decision has the right of appearance at such meeting;
 - (iv) written reasons must be given for any decision upon request.