

DRAFT DISCUSSION DOCUMENT

TOWARDS A POLICY FRAMEWORK FOR THE PROTECTION, CONSERVATION, MANAGEMENT AND PROMOTION OF HERITAGE OBJECTS

INTRODUCTION

The National Heritage Resources Act, No 25 of 1999 makes provision for the protection of heritage objects (s32). SAHRA is the custodian of the country's heritage resources which form part of the national estate. Heritage objects may be declared as types of heritage objects (Government Gazette No 1512 of 6 December 2002) or they may be specifically declared as heritage objects (see "Specifically declared heritage objects" below). Some heritage objects are located in public institutions and others are privately owned. Declaration of a specifically declared heritage object does not change its ownership status.

THE ROLE OF SAHRA CONCERNING SPECIFICALLY DECLARED HERITAGE OBJECTS

SAHRA's role is to:

- manage the issuing of a permit for the export of types of heritage objects as well as specifically declared heritage objects;
- permit restoration or repair work to be done on specifically declared heritage objects;
- formulate a system for the identification and declaration of heritage objects;
- monitor specifically declared heritage objects to ensure that they are being curated according to best practice;
- monitor the national loans of specifically declared heritage objects;
- formulate a generic loans policy;
- formulate policy for replication of specifically declared heritage objects.

DEFINITION OF HERITAGE OBJECTS

In terms of the Act (s2), an "object" means any movable property of cultural significance which may be protected in terms of any provisions of the Act, including:

- a) any archaeological artefact;
- b) palaeontological and rare geological specimens;
- c) meteorites; and
- d) other objects.

A heritage object is defined as 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 SAHRA deems it necessary to control, and which may be declared a heritage object, including:

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

- b) objects to which oral traditions are attached and which are associated with living heritage;
- c) ethnographic art and objects; Objects to which oral traditions are attached and which are associated with living heritage;
- d) military objects;
- e) objects of decorative or fine art;
- f) objects of scientific or technological interest; and
- g) 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).

According to the Act, objects found under the ground or under water, are archaeological artefacts, owned by the State and they are managed under section 35. However, when they are specifically declared as heritage objects their conservation is managed under section 32 as is the case with the Mapungubwe collection.

HERITAGE OBJECTS FORM PART OF THE NATIONAL ESTATE

A place or object is to be considered part of the national estate if it has cultural significance or other special value because of:

- its importance in the community, or pattern of South Africa's history;
- its possession of uncommon, rare or endangered aspects of South Africa's natural or cultural heritage;
- its potential to yield information that will contribute to an understanding of South Africa's natural or cultural heritage;
- its importance in demonstrating the principal characteristics of a particular class of South Africa's natural or cultural places or objects;
- its importance in exhibiting particular aesthetic characteristics valued by a community or cultural grouping;
- its importance in demonstrating a high degree of creative or technical achievement at a particular period;
- its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- its strong or special association with the life or work of a person, group or organisation of importance in the history of South Africa.

TYPES OF HERITAGE OBJECTS (GENERIC LIST)

In terms of the Act (S32(5)(b)(i)) SAHRA has declared a list of heritage objects as generic types of heritage objects and these are protected in terms of the NHRA and a permit is required for export of such objects from the country. This generic list is described in Government Gazette No 1512 of 6 December 2002.

Permits may be issued for temporary or permanent export of types of heritage objects. Although these objects may meet the criteria set out in the Gazette, they may not necessarily be of such significance that they may not be exported temporarily or even permanently. Therefore, the Permit Committee is also informed by guidelines (as stipulated in the Act) to assess whether an object is of such significance that it forms

part of the national estate that it should not be allowed to leave the country. (See “Heritage objects form part of the national estate”)

PROCEDURE FOR SPECIFICALLY DECLARING HERITAGE OBJECTS

The Act (s32) stipulates the procedure for declaring heritage objects. Policy and procedure for this process have been drafted and approved. SAHRA keeps a register both of specifically declared heritage objects and types of heritage objects. Specifically declared heritage objects may be publicly or privately owned. SAHRA monitors specifically declared heritage objects to ensure that they are managed according to best practice.

CULTURAL TREASURES AND MOVABLE NATIONAL MONUMENTS

S.(58)(11)(f)

In terms of the Act, “cultural treasures ... and movable national monuments ... are heritage objects”. Cultural treasures were easily identifiable and dealt with in the previous section.

It is SAHRA’s policy to accept responsibility for all declared cultural treasures and former movable national monuments. A list is in the process of being compiled, some of which are reflected. The owners must be informed that their national monument status has been changed to that of heritage objects.

SAHRA is responsible for the management of all heritage objects, regardless of their provincial or national significance (grading). Provinces wishing to declare heritage objects should inform SAHRA of their significance and request SAHRA to take the declaration forward.

There are a number of heritage objects that were declared as national monuments under the previous legislation which are not easily separated from the sites where they are currently located. Movable objects were declared national monuments prior to an amendment to the National Monuments Act in 1981 which allowed for the declaration of cultural treasures. However, there are cases, for example when an object has been fixed to a plinth, where it is not clear whether the object is movable or not. In addition, there are examples where an object fixed to a plinth had been moved from one site to another, such as a ship’s cannon (Belfast High School) and the ZAR Post Box (Lydenburg).

The National Heritage Resources Act (s7) stipulates that the Minister and MEC of every province must by regulation establish a system of grading of places and objects which form part of the national estate. However, there is no reference made to the grading of heritage objects in section 32.

There are two possible interpretations regarding the grading of heritage objects. On the one hand it can be argued that types of heritage objects are of national significance and the Act therefore controls their movement internationally. If objects are graded and some of them are of provincial or local significance it would not make sense to control their movement nationally.

On the other hand, provinces could grade heritage objects for specific declaration and thereafter inform SAHRA to allow these objects to be listed in the relevant part of the Register of Heritage Objects as well as on the general inventory of the national estate. Even if Provinces request that the Act should be amended to enable them to manage heritage objects in their Provinces, overseas loans of such objects should be done in consultation with SAHRA. The export of types of heritage objects would remain a national SAHRA function.

SPECIFICALLY DECLARED HERITAGE OBJECTS

In terms of the National Heritage Resources Act, No 25 of 1999 (s32(2)), “an object within a type of objects” may be declared a heritage object. There are seventeen specifically declared heritage objects. Fourteen of the specifically declared heritage objects were declared as cultural treasures under the previous National Monuments Act. In terms of the current Act (s58(11)(f)) previous cultural treasures are heritage objects.

The specifically declared heritage objects below, represent various periods in the country’s history and are associated with various cultures and traditions. However, they are not fully representative of the diverse cultures and heritage of South Africa:

1. The Jan Smuts study, at the Smuts House Museum, Doornkloof, Pretoria;
2. The symbolic silver Vice Admiralty Oar of the Cape of Good Hope, at Iziko Museums in Cape Town;
3. The socio-historical collection of the Genadendal Mission Museum, in the Mission Museum, Genadendal;
4. The late nineteenth century panoramic painting of Cape Town by JL Pickering, 28 Corporation Street, Cape Town;
5. The Voortrekker pulpit, in the Voortrekker Church, Pietermaritzburg
6. Castor and Pollux, two 6.3 inch RML Howitzer Guns in Ladysmith Town Hall, Ladysmith;
7. The One O’Clock Gun, 12 PR ML Naval Gun, Pietermaritzburg;
8. Ten Harvard Aircraft, at the Heidelberg Airfield, Gauteng;
9. The Commemorative Cross of the Christianenburg Berlin Mission Church, Krause Street, Clermont, Pinetown, KZN;
10. The collection of cultural artefacts including the gold rhino, bowl and sceptre, associated with the Iron Age settlements on Mapungubwe Hill, the Southern Terrace, K2 and Bambandyanalo, situated on the farm Greefswald, Messina District, exhibited at the Mapungubwe Museum, located at the University of Pretoria, hereafter referred to as the Mapungubwe collection;
11. The Groote Schuur collection, Cape Town;
12. The Kuruman Press, Kuruman;
13. The South African Mint Collection, Centurion, Pretoria;
14. The Ethnographic and Art Collections at the University of Fort Hare, Alice;
15. Antique collection and memorabilia, Castle Hill Museum, Port Elizabeth (catalogue outstanding);
16. William Fehr collection at the Castle of Good Hope and Rust and Vreugd, Cape Town;
17. Kirby collection of musical instruments, UCT, Cape Town

Addition of list of identified previously declared national monuments

- Clock, Administration Building B, University of Stellenbosch, Victoria Street, Stellenbosch
- Printing Press of GRA, Huguenot Museum, Paarl
- 9 Inch MLR Gun, Middle North Battery, Simonstown
- Pulpit, Rhenish Church, The Braak, Stellenbosch
- Van Plettenberg Beacon, SA Cultural History Museum, Cape Town
- VOC Beacon, George Museum, George
- Organ, Mission Museum, Genadendal
- Bronze cannon salvaged from the wreck of the Nossa Senhora de Atalaia do Pinheiro
- Bronze Bocarro Cannon, salvaged from the wreck of the Nossa Senhora de Atalaia do Pinheiro
- Bronze Feyo naval cannon, salvaged from the wreck of the Nossa Senhora de Atalaia do Pinheiro
- Bronze cannon, salvaged from the wreck of the Nossa Senhora de Atalaia do Pinheiro
- Miracle Cannon from Wreck of Sacramento, King George VI Art Gallery, Park Drive, Port Elizabeth
- Hill Organ, Grahamstown
- Moffat Press, Moffat Mission, Seodin Street, Kuruman
- Steam locomotive 'Clara', O'Okiep Copper Company Museum, Nababeep, Namaqualand District
- Moffat's Pulpit, Mary Moffat Museum, Main Street, Griquatown
- Gnome aircraft engine, Military Museum Fort Bloemfontein, Church Street, Bloemfontein
- Naval Gun Barrel, High School Belfast, Duggen Street, Belfast
- Dias Cross, University of the Witwatersrand, Johannesburg
- NZASM Locomotive No. 242, Pretoria Station, Pretoria
- NZASM railway carriage No. 18, Pretoria Station, Pretoria

NATIONAL AND INTERNATIONAL HERITAGE-RELATED ORGANISATIONS

Repositories of heritage objects that are members of national (SAMA) and international organisations (ICOM, AFRICOM, etc) are encouraged to comply with international standards. However, the NHRA takes precedence over any other codes of ethics and codes of practice with respect to specifically declared heritage objects and the export of heritage objects.

THE ROLE OF THE OWNER/CUSTODIAN OF SPECIFICALLY DECLARED HERITAGE OBJECTS

The owner or custodian is responsible for the conservation of the specifically declared heritage object(s) (s32(15)). The institution curating the specifically declared heritage objects pays for the security, display, conservation, etc. as they are the repository for the heritage objects.

The NHRA does not empower SAHRA to manage national loans. It is appropriate for national loans to be the prerogative of the repository. However, since SAHRA manages specifically declared heritage objects, SAHRA should be informed of the movement of specifically declared heritage objects.

The NHRA stipulates that SAHRA is responsible for the management of international loans and the repository is responsible for making the application to SAHRA for the foreign loan of specifically declared heritage objects.

Use of specifically declared heritage objects

SAHRA does not have legislative imperative for use of specifically declared heritage objects. This is the prerogative of the repository.

It is the responsibility of custodians of heritage objects to implement SAHRA policy.

PROCEDURE FOR DECLARATION S.32 (3)-(6)

See “Policy and procedure to specifically declare heritage objects”

DIVISION OF THE REGISTER INTO CATEGORIES OR OTHER SUB-DIVISIONS S.32(7)

It appears that the current division of the Register into types of heritage objects and specifically declared heritage objects is practical. However, we have been involved with the identification and assessment of firearms designated for destruction at certain police stations. Wherever our experts advised that such firearms were of heritage value, we have recommended that these be relocated to relevant museums. SAHRA may have to consider listing such firearms separately in the Register.

CIRCUMSTANCES UNDER WHICH INFORMATION WILL BE MADE AVAILABLE TO THE PUBLIC: S.32(8) and (9)

1. Anyone wishing to obtain information concerning information contained in the register, must apply in writing stating the reasons for requesting the information and how it will be used.
2. The request will be assessed by either the Permit Committee or the Council or its Executive, depending on which meeting is to be held first.
3. The decision of the Committee or Council shall be final.
4. The criteria to be used would consider:

- (a) whether the owner is in agreement or not;
- (b) whether by making the information public the object(s) and/or the owner or curator would be placed at risk; and
- (c) whether the manner in which the information would be used would promote the significance and integrity of the heritage object(s) and the national estate.

REGULATIONS RELATING TO THE REGISTRATION OF DEALERS IN HERITAGE OBJECTS S.32(14)

Regulations concerning the registration of dealers in heritage objects must still be drafted. The policy document concerning the registration of dealers must clarify how the information will be accumulated and used.

POLICY ON HOW THE SECURITY AND CONSERVATION OF HERITAGE OBJECTS WILL BE ASSESSED AND THE CRITERIA THAT WILL BE APPLIED S.32(15)-(18)

SAHRA views applications to export heritage objects temporarily for exhibition and research purposes as an opportunity to showcase South African cultural, scientific and aesthetic achievements and to share these with the rest of the world.

Heritage resources are irreplaceable and certain heritage objects, particularly the specifically declared heritage objects, are often the only one of a kind in the country and, like the golden rhino may be fragile and could be damaged if exported for study or exhibition purposes. Therefore, there have been occasions when such requests were declined. Foreign institutions generally request the loan of original objects because of the aura of that object. However, loan of original objects is the prerogative of the nation concerned. SAHRA will develop policy around the export of specifically declared heritage objects and may advise owners or repositories of declared collections, to commission the replication/copy of such specifically declared heritage objects for export purposes.

Application forms to loan heritage objects overseas for exhibition or study purposes must be accompanied by a draft loan agreement between the South African institution and the foreign institution. The loan agreement stipulates the conditions under which the heritage objects are being loaned as well as the responsibilities (financial and otherwise) of the two parties concerned. A SAHRA generic loan agreement is available to guide the process.

APPLICATION FORMS TO EXPORT HERITAGE OBJECTS (S.32(21-32))

See policy on the export of heritage objects. Form 304 is available.

PROHIBITING EXPORT S.32(22)-(32)

See “Procedure to be followed in the case of prohibiting the export of a cultural heritage object”.

IMPORT OF HERITAGE OBJECTS (S.33)

The import of heritage objects needs the co-operation of, and liaison with, the Minister of Arts and Culture as well as with the Minister of Foreign Affairs. SAHRA must identify

- a) the person(s) responsible for liaison on the matter in the Departments of Arts and Culture and Foreign Affairs;
- b) a list of countries with whom agreements should be drawn up must be identified and the criteria to be used in assessing imported objects must be identified in each case;
- c) a generic agreement must be drafted and approved by SAHRA Council; and
- d) a procedure for customs officials must be drafted and discussed with the Department of Customs and Excise.

RESTITUTION (S.41)

A regulation on restitution has been drafted as well as a guideline and will be submitted to Council in July 2004. Mechanisms for public participation on this regulation and guideline should be considered.

HERITAGE AGREEMENTS (S.42)

The NHRA (s42) makes provision for a heritage agreement (binding contract) to be negotiated between the owner of “a clearly defined heritage resource” and SAHRA to provide for the conservation, improvement or presentation of a declared heritage object. The advantage of a heritage agreement between the two parties concerned is that it would stipulate roles, responsibilities, use of the specifically declared heritage object and any other conditions considered appropriate for the object(s) concerned.

The heritage agreement between the then NMC and the University of Pretoria drafted in 1996 before declaration (10 October 1997), cites the University of Pretoria as the owner. According to our legal advisor, that heritage agreement is still valid and there is a need for SAHRA to review the agreement in light of the provisions of the new Act that defines sites to include objects found thereon (s2).

SAHRA manages and advises on specifically declared collections and most of the current heritage agreements drawn up between SAHRA (previously NMC) and repositories stipulate that SAHRA should be informed of changes to the collection. Issues associated with specifically declared heritage objects such as:

- commissioning a copy for loan and/or study;
- use as a logo;
- copyright; and
- use of photographic image; and conservation management plans,

were not anticipated when these heritage agreements were drafted. These issues impact on the development and management of the specifically declared heritage objects.

SAHRA:

1. must revisit the terms of all heritage agreements drafted between the then NMC and repository should be revisited to establish whether they can be re-negotiated to suit the current Act and issues such as commissioning a copy for loan and/or study, use as a logo, use of photographic image; and conservation management plans should be incorporated.
2. may draft a generic agreement to serve as a guide for redrafting previous and future agreements between ourselves and institutions concerned.
3. may request five-yearly reports on specifically declared heritage objects as part of a revolving programme for heritage objects.

OFFENCES AND PENALTIES S.51(1)(f)

Any person or institution who contravenes sections 32(13, 16, 20) 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. If there is contravention of any of the aforementioned, the matter would be handed over to the police for investigation.

This document was discussed at the Permit Committee meeting held on 21 October 2003 where it was amended and recommended for discussion at Council. Subsequent to that it was published in the SAMA publication (SAMANTICS) of September 2004 and not a single comment was received.