

THE MONUMENTS AND RELICS ACT, 1970

No 15



of 1970

AN ACT TO PROVIDE FOR THE BETTER PRESERVATION AND PROTECTION OF ANCIENT MONUMENTS, ANCIENT WORKINGS, RELICS AND OTHER OBJECTS OF AESTHETIC, ARCHAEOLOGICAL, HISTORICAL OR SCIENTIFIC VALUE OR INTEREST AND FOR OTHER MATTERS CONNECTED THEREWITH.

Date of Assent: 3.6.1970

Date of Commencement: 10.6.1970

ENACTED by the Parliament of Botswana.

Short title

1. This Act may be cited as the Monuments and Relics Act, 1970.

Interpretation of terms

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

“ancient monument” means any building, ruin, remaining portion of a building or ruin, stone circle, grave, cave, rock shelter, midden, shell mound or other site or thing of a similar kind, which is known or believed to have been erected, constructed or used before the 1st June, 1902, but does not include an ancient working;

“ancient working” means any shaft, cutting, tunnel or stope or any building or machinery appertaining thereto, which was made or used for mining purposes and was in existence before the 1st June, 1902;

“Board” means the National Museum and Art Gallery Board established under the National Museum and Art Gallery Act, 1967;

“Commissioner” means the Commissioner of Monuments appointed under section 3;

“custodian” means a custodian appointed under section 3;

“excavation” includes any process of digging or unearthing and any act involved in such process, and “excavate” bears a corresponding meaning;

“Inspector” means an Inspector of Monuments appointed under section 3;

“monument” means —

- (a) any ancient monument;
- (b) any area of land which is of archaeological or historical interest or contains objects of such interest;
- (c) any area of land which has distinctive or beautiful scenery or a distinctive geological formation;
- (d) any area of land containing rare or distinctive or beautiful flora;
- (e) any cave, rock shelter, grove of trees, tree, old structure or other object or article (whether natural or constructed by man) other than a relic, of aesthetic, archaeological, historical or scientific value or interest;

“national monument” means a monument, ancient working or relic which has been proclaimed a national monument under section 11;

“relic” means —

- (a) any fossil;
- (b) any drawing, painting or carving on stone or petroglyph executed in Botswana before the 1st June, 1902;
- (c) any artefact, implement or ornament of archaeological, historical or scientific value made or used in Botswana before the 1st June, 1902;
- (d) any anthropological or archaeological contents of any ancient monument or ancient working;
- (e) any treasure trove discovered in Botswana.

Appointment of officers

3. (1) The Minister shall appoint an officer in the public service to be Commissioner of Monuments.

(2) The Minister shall appoint one or more officers in the public service to be Inspectors of Monuments.

(3) The Minister may appoint custodians and such other staff as may be necessary for the purposes of this Act, and fix any wages or remuneration to be received by them.

(4) Any appointment made under the provisions of subsection (1) or (2) shall be made only with the consent of any Minister in whose Ministry the officer appointed is employed, and shall be notified in the Gazette.

Honorary officers

4. (1) The Minister, by notice in the Gazette, may appoint fit and proper persons to be honorary officers for the purpose of assisting in the carrying out of the provisions of this Act and the regulations made thereunder.

(2) An honorary officer shall have such powers as may be prescribed which shall not exceed the powers conferred upon an Inspector of Monuments by this Act and the regulations made thereunder.

(3) An honorary officer shall hold office for a period of three years unless the appointment be sooner revoked.

Functions of a custodian

5. A custodian shall preserve and protect from interference any monument, ancient working or relic assigned to his custody by the Commissioner.

Functions of an inspector

6. An Inspector shall —

- (a) report to the Commissioner any monument, ancient working or relic, not being a national monument, of which he becomes aware, the proclamation of which as a national monument or the control or custody of which by the State may be considered desirable;
- (b) when required by the Commissioner, investigate and report upon any matter relating to any monument, ancient working or relic and upon the desirability of proclaiming any monument, ancient working or relic as a national monument;
- (c) have reasonable access at all reasonable times to any monument, ancient working or relic in order to secure the utilisation thereof as part of the cultural resources of Botswana for the benefit of the community;
- (d) undertake such other functions as the Commissioner may direct.

Functions of the Commissioner

7. The Commissioner may —

- (a) receive reports from Inspectors on monuments, ancient workings and relics of which they become aware;

- (b) instruct Inspectors to investigate and report upon any matter relating to any monument, ancient working or relic and upon the desirability of proclaiming any monument, ancient working or relic as a national monument;
- (c) assign to Inspectors such further functions as he may deem fit for the purpose of assisting him in discharging his functions under this Act;
- (d) recommend to the Minister the proclamation of any monument, ancient working or relic as a national monument;
- (e) recommend to the Minister the negotiation or conclusion of agreements for the acquisition, protection or preservation of monuments, ancient workings or relics;
- (f) undertake, with the written permission of the Minister, the excavation or exploration of any monument, ancient working or relic owned by the Republic or in respect of which the Minister has concluded with the owner an agreement permitting such excavation or exploration;
- (g) in the case of any monument, ancient working or relic owned by the Republic or in respect of which the Minister has concluded with the owner an agreement for its protection or preservation do or authorise to be done any act (not inconsistent with any agreement which may be applicable) which he considers necessary for its investigation, protection or preservation;
- (h) cause tablets to be erected in suitable places giving information about historical events which have occurred at or near such places;
- (i) compile a register of all national monuments and of such monuments, ancient workings and relics as have been acquired for the Republic or as have been brought to his notice;
- (j) advise the Minister on the exercise of his functions under this Act.

Functions of the Minister

8. (1) The Minister may —

- (a) purchase or take on lease or on loan any monument, ancient working or relic;
- (b) accept a gift or bequest of any monument, ancient working or relic;
- (c) accept from the owner of any monument, ancient working or relic the custody and control thereof;
- (d) preserve, protect, repair, restore or insure any monument, ancient working or relic which is owned by the Republic or under its control;
- (e) with the agreement of the Board, give, lend, let, sell or give in exchange any movable monument or relic to any person, body or institution whether within or without Botswana.

(2) The powers conferred by this section shall be exercised by the Minister as agent for the Government of the Republic and shall be exercised after consultation with the Commissioner.

Agreements for preservation of monuments and relics

9. (1) The Minister, after consultation with the Commissioner, may enter into a written agreement with the owner of any national monument for its protection or preservation.

(2) An agreement under this section may provide for all or any of the following matters —

- (a) the maintenance of the national monument;
- (b) its custody and the duties of any person who may be employed in connection therewith;
- (c) the restriction of the owner's right to destroy, remove, alter or deface the national monument or, in the case of a fixed or immovable national monument, to build on or near its site;
- (d) the facilities of access to be permitted to the public or to any portion thereof, and to persons deputed by the owner or Minister to inspect or maintain the national monument;
- (e) the notice to be given to the Minister in case the land on which the national monument is situated is offered for sale by the owner, and the right to be reserved to the Minister to purchase such land or any specified portion of such land at its market value and to acquire rights of access thereto;
- (f) the payment of any expenses incurred by the owner or the Minister in connection with the protection or preservation of the national monument;
- (g) the procedure for resolving any dispute arising out of the agreement;
- (h) any matter connected with the protection or preservation of the national monument which is a proper subject of agreement between the owner and the Minister; and
- (i) the removal of the national monument, if movable, to a place of safe custody.

(3) The terms of an agreement under this section may be altered from time to time by agreement between the parties.

(4) An agreement under this section shall be expressed to endure either for a specified period or in perpetuity. If it is expressed to endure for a period of ten years or upwards or in perpetuity, and if it relates to a national monument which is not a movable object, it shall on the application of the Minister be registered in the Deeds Registry without fee or other charge against the title to any land in or upon which the national monument is situated.

F.72

(5) An agreement under this section, notwithstanding that it is not registered, shall be binding on any person claiming to be owner of the national monument to which it relates through or under a party by whom or on whose behalf the agreement was executed.

(6) For the purposes of this section an owner under disability may be represented by any person legally competent to act on his behalf.

Proclamation of national monuments

10. (1) The Minister may, after consultation with the Commissioner, by notice in the Gazette, proclaim any monument, ancient working or relic to be a national monument:

Provided that at least one month before the proclamation of any monument, ancient working or relic which is not owned by the Republic, the Minister shall notify the owner thereof in writing that he proposes so to proclaim the monument, ancient working or relic, and such owner may lodge with the Minister objections in writing to the proposed proclamation.

(2) The President may, after consultation with the Minister and the Commissioner, cancel by notice in the Gazette, the proclamation of any national monument.

Notification of discoveries – Minister's option to acquire ownership

11. (1) The discovery of any ancient monument, ancient working or relic shall be notified in writing to the Minister without delay by the discoverer, and also by the owner or occupier of the land upon which such ancient monument, ancient working or relic is discovered as soon as such discovery comes to his notice.

(2) The Minister shall have a right of option to acquire for the Republic, after consultation with the Commissioner, the ownership of any national monument, ancient monument, ancient working or relic, together with the site thereof, whether or not its discovery has been notified in terms of subsection (1), upon payment to the owner thereof and to any other person having an interest therein or right thereover of a sum of money to be agreed upon as fair and reasonable compensation or, failing agreement, upon payment of such sum as may be determined by the High Court on application made by the Minister.

(3) The right conferred by subsection (2) may only be exercised in order to secure the utilisation of a national monument, ancient monument, ancient working or relic as part of the cultural resources of Botswana for the benefit of the community.

(4) Any dispute as to the interest or right of any person claiming to have an interest in or right over any national monument, ancient monument, ancient working or relic intended to be acquired or as to the legality of the exercise by the Minister of the right conferred by subsection (2) shall be determined by

the High Court on application made by the Minister before the national monument, ancient monument, ancient working or relic concerned is acquired.

Minister's power to acquire access to national monument

12. (1) The Minister shall have power to acquire, after consultation with the Commissioner, the right of access for members of the public and for persons exercising functions under this Act, to any ancient monument situated on land not owned by the Republic, both across such land and across any adjoining or adjacent land by payment to the owner thereof and to any other person having an interest therein or right thereover of a sum of money to be agreed as fair and reasonable compensation, or failing agreement, upon payment of such sum as may be determined by the High Court on application made by the Minister.

(2) The right conferred by subsection (1) may only be exercised in order to secure the utilisation of the national monument as part of the cultural resources of Botswana for the benefit of the community.

(3) Any dispute as to the interest or right of any person claiming to have an interest in or right over land across which the Minister intends to acquire a right of access in terms of subsection (1) or as to the legality of the exercise of the Minister's power under that subsection, or as to the definition of the right of access and the conditions subject to which it is to be acquired shall be determined by the High Court on application made by the Minister before such right is acquired.

Minister's power to prevent access to national monuments

13. (1) The Minister shall have power by order published in the Gazette to specify and define sites or portions of sites of national monuments which no person shall enter upon without the permission of the Commissioner or a person authorised by him to grant such permission.

(2) No person shall without such permission enter upon any site or portion of a site specified or defined in terms of subsection (1) save, in the case of a site or portion of a site upon land not owned by the Republic, the owner or occupier of such land or persons visiting the site with the consent of the owner or occupier.

No excavation without permission of Minister

14. (1) No person shall, without the written permission of the Minister, given after consultation with the Commissioner, and after making such enquiries as he may deem fit, excavate any national monument, ancient monument, ancient working or relic or, if he receives such permission, excavate it contrary to any conditions which may have been imposed in such permission or which may be prescribed.

(2) The Minister may grant permission in terms of subsection (1) in respect of an ancient monument, ancient working or relic, other than a national monument,

F.74

only with the consent of the owner of the land in or upon which it is situated and of any other person having an interest therein or right thereover.

(3) The Minister may grant permission in terms of subsection (1) in respect of a national monument which shall entitle the grantee to enter upon the land in or upon which such monument is situated with such assistants or servants, animals, vehicles, appliances and instruments as may be necessary for the purpose of excavation and to excavate such monument:

Provided that, in the case of a national monument situated in or upon land which is not State land —

- (i) the consent of the owner of such land and of any person having an interest therein or right thereover to such entry and excavation shall have been obtained; or payment of such sum of money as may be determined by the High Court on application made by the Minister or by the person seeking the Minister's permission as fair and reasonable compensation to such owner or other person for such entry and excavation shall have been made; and
- (ii) any dispute as to the interest or right of any person claiming to have an interest in or right over the land in or upon which the national monument is situated or as to the legality of the exercise by the Minister of the power conferred by this subsection shall have been determined by the High Court.

Establishment of Monuments and Relics Fund

15. (1) There is established a fund called the Monuments and Relics Fund which shall comprise —

- (a) monies allocated by the Government for the acquisition, administration, excavation, protection, repair or improvement of national monuments, monuments, ancient workings or relics, or to promote the knowledge and study thereof or public interest therein;
- (b) monies contributed by any person to the fund for any of the said purposes;
- (c) monies contributed by any person to the Government for any of the said purposes.

(2) The Commissioner shall be responsible, under the supervision of the Minister for the management and administration of the fund, and shall keep proper accounts of the fund and other records in relation thereto, and shall prepare in respect of each financial year a statement of accounts showing in detail the assets, liabilities, revenue and expenditure of the fund in a form which shall conform with the best commercial standards.

(3) No payment in excess of R50 shall be made from the fund except upon the authority of the Minister:

Provided that the Minister may delegate to the Commissioner authority to pay recurrent and periodical administration expenses in excess of R50.

(4) The Minister may, in his discretion, sanction payments from the fund for any of the purposes mentioned in subsection (1), which, without prejudice to the generality thereof, shall include —

- (a) the protection of national monuments and of monuments, ancient workings and relics from damage of any kind, including their fencing and repair;
- (b) the payment of wages and remuneration to custodians;
- (c) the investigation, exploration and excavation of national monuments and of monuments, ancient workings and relics;
- (d) the provision of signs at sites of national monuments and on roads and routes leading thereto.

(5) The accounts of the fund in respect of each financial year shall within four months after the end of such financial year be audited by auditors to be appointed by the Minister:

Provided that no person shall be qualified to be so appointed unless he holds one or more of the qualifications referred to in section 124(1) of the Companies Proclamation, 1959.

(6) The auditors shall report, in respect of the accounts for each financial year, whether or not —

- (a) they have received all the information and explanations which, to the best of their knowledge and belief, were necessary for the performance of their duties as auditors;
- (b) the accounts and related records of the fund have been properly kept;
- (c) the Commissioner has complied, in relation to his administration of the fund, with all the provisions of this Act with which it is his duty to comply; and
- (d) the statement of accounts prepared by the Commissioner presents a true and fair view of the information and explanations given and the accounts and records produced to them.

(7) The Minister shall, within 30 days of receiving the report of the auditors and a copy of the audited accounts, lay such report and accounts before the National Assembly.

Reports

16. (1) As soon as possible after the 31st December in each year the Commissioner shall report to the Minister on all actions taken by the Minister or the Commissioner under the provisions of this Act during that year and on any other matters connected with national monuments, monuments, ancient workings or relics which he may wish to bring to his notice.

F.76

(2) Before the 31st March in each year the Minister shall lay before the National Assembly the Commissioner's report in respect of the preceding year together with his observations thereon.

No alteration, damage or removal without consent of Minister

17. (1) No person shall without the written consent of the Minister given after consultation with the Commissioner —

- (a) make any alteration to, or destroy or damage; or
- (b) remove or allow to be removed from its original site or export or allow to be exported from Botswana;
any national monument, ancient monument, ancient working or relic or any part thereof.

(2) In the case of any national monument, ancient monument, ancient working or relic or any part thereof situated in a tribal territory, no consent in terms of subsection (1) shall be given without the concurrence of the Tribal Land Board.

(3) Any person who desires to remove from its original site or to export from Botswana any national monument, ancient monument, ancient working or relic or any part thereof shall, when applying to the Minister for his consent, supply the Minister with a drawing or photograph of the national monument, ancient monument, ancient working or relic or part thereof in question, and shall state the exact locality in which it is situated and the place to which and the purpose for which he desires to remove or export it.

Damage to tablets erected by the Commissioner

18. No person shall deface, damage or destroy any tablet erected by the Commissioner under the powers conferred by paragraph (h) of section 7.

Arrest, seizure and ejectment

19. (1) The Commissioner and every Inspector and every custodian is hereby authorised to arrest without warrant —

- (a) every person who commits an offence under this Act in his presence;
- (b) every person whom he has reasonable grounds to suspect has committed an offence under this Act;
- (c) every person whom he finds attempting to commit an offence under this Act or clearly manifesting an intention to do so.

(2) The Commissioner and every police officer, every Inspector and every Custodian is hereby authorised to take or seize from any person to whom paragraph (a), (b) or (c) of subsection (1) applies any article by means of which or in respect of which such person has committed, or is on reasonable grounds suspected of having committed, or is found attempting or clearly manifesting an intention to commit, an offence under this Act.

(3) Any person taking or seizing any article in pursuance of subsection (2) shall without delay deliver it to a judicial officer for safe custody pending the determination of any legal proceedings which may be instituted in which the said article may be produced in evidence.

(4) The Commissioner, every police officer, every Inspector and every custodian is hereby authorised to eject from the site, owned by or in control of the Republic, of any national monument, ancient monument, ancient working or relic any person to whom paragraph (a), (b) or (c) of subsection (1) applies and any person whose presence on such site or whose access to such national monument, ancient monument, ancient working or relic is prohibited under the provisions of this Act or of regulations made thereunder.

Offences and penalties

20. (1) Any person who —

- (a) contravenes any provision of this Act relating to a national monument or a tablet under section 7(h);
- (b) knowingly or having reason to believe that any ancient monument, ancient working or relic is such, contravenes any provision of this Act relating to such ancient monument, ancient working or relic;
- (c) in any application to the Minister for his consent in terms of section 17 knowingly makes any statement which is false in any material respect or supplies therewith any drawing or photograph which is false in any material respect;

shall be guilty of an offence and liable to a fine of R2,000 or, in default of payment, imprisonment for two years or to both such fine and imprisonment.

(2) If any person is convicted of an offence under this Act or any regulations made thereunder which has involved or resulted in damage to, or the destruction or removal of, any national monument, ancient monument, ancient working or relic or any part thereof or any tablet which the Commissioner has caused to be erected, the Court may, in addition to any other penalty which it may impose—

- (a) order him to pay such sum as the Court may determine for the purpose of repairing such damage or of compensating the Republic or any person who has sustained loss by the removal or destruction of any article or thing for the value of such article or thing;
- (b) order the confiscation of any article or thing removed and of any tool or implement used in committing such offence.

Regulations

21. (1) The Minister may make regulations —

- (a) prescribing anything which in terms of this Act is to be or may be prescribed;

F.78

- (b) regulating the access of the public to any monuments, whether national or not, ancient workings or relics which are the property of the Republic or (in a manner not inconsistent with any agreement made under section 9) to monuments whether ancient or not, ancient workings or relics which by agreement with the owner are under the custody or control of the Republic;
 - (c) fixing fees which shall be payable for such access;
 - (d) regulating the excavation of national monuments, ancient monuments, ancient workings and relics and the removal of relics from national monuments, ancient monuments or ancient workings;
 - (e) generally for the better carrying out of the provisions of this Act.
- (2) Such regulations may prescribe fines of R1,000 for contravention thereof.

Repeal

22. The Bushman Relics Proclamation (Chapter 180) is repealed:

Provided that any object declared to be a natural and historical monument or relic or monument under the provisions of section 7 of that Proclamation shall, unless the declaration is cancelled under section 10(2) of this Act be deemed to be a national monument for the purposes of this Act.

Passed by the National Assembly this day, the 25th March, 1970

G. T. MATENGE,
Clerk of the National Assembly