

Zambia

National Heritage Conservation Commission Act, 1989

Chapter 173

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National Heritage Conservation Commission Act, 1989

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Zambia

National Heritage Conservation Commission Act, 1989

Chapter 173

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[23 of 1989; 13 of 1994]

An Act to repeal and replace the Natural and Historical Monuments and Relics Act; to establish the National Heritage Conservation Commission; to define the functions and powers of the Commission; to provide for the conservation of ancient, cultural and natural heritage, relics and other objects of aesthetic, historical, prehistorical, archaeological or scientific interest; to provide for the regulation of archaeological excavations and export of relics; and to provide for matters connected with or incidental to the foregoing.

Part I – Preliminary

1. Short title

This Act may be cited as the National Heritage Conservation Commission Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"**ancient heritage**" means—

- (a) any building, ruin, or remaining portion of a building or ruin;
- (b) any pillar or statue;
- (c) any settlement, cave or natural rock shelter with traces showing that people once lived there, any house site or church-site of any kind, or remains or parts of these, any mound representing the midden of an ancient settlement, and any other site with concentrations of buildings, such as trading centres, town sites and the like, or remains of these;
- (d) any site and remains of workings and any other place of work of any kind, such as a quarry or other mining site, iron extraction site, charcoal kiln and any other trace of a craft or industry;
- (e) any trace of any kind of cultivation of land, such as a pile of stones heaped up when land was cleared, a ditch and any trace of ploughing;
- (f) any fence or dry stone wall, and any enclosure or arrangement for hunting, fishing or snaring;
- (g) any road or other track entirely unpaved or paved with stones, wood or other materials;
- (h) any dam, weir, bridge, ford, harbour-works, landing place or ancient slip-way or the remains of such;
- (i) any bar made of sunken vessels;
- (j) any landmark for use on land or on water;
- (k) any kind of defence such as a fort, entrenchment, fortress and remains of these;

- (l) any site for holding council, any cult site or any place where objects were thrown for purposes of magic, any well, spring or other place with which archaeological finds, tradition, belief, legends or customs are associated;
- (m) any stone or solid rock with inscriptions or pictures such as rock carvings, rock paintings, cup marks, ground grooves or any other rock art;
- (n) any monolith, cross or other such heritage;
- (o) any stone setting, stone paving or the like;
- (p) any burial place of any kind, individually or in collected sites, such as a burial mound, burial cairn, burial chamber, cremation patch, urn burial and coffin burial;
- (q) any place or thing which is designed by the Commission as an ancient heritage;

which is known or believed to have been erected, constructed or used as the case may be, before 1st January, 1924, whether above ground, underground or underwater.

"badge" means the emblem or seal of the Commission;

"Commission" means the National Heritage Conservation Commission established under section three;

"committee" means a committee constituted by the Commission under section twelve;

"conservation" means the professional care of any heritage so that it shall continue to play a useful role for present and future generations;

"cultural heritage" means—

- (a) any area of land which is of archaeological, traditional or historical interest or contains objects of such interest;
- (b) any old building or group of buildings of historical or architectural interest;
- (c) any relic, national monument or ancient heritage;
- (d) any other object constructed by man, other than a relic, of aesthetic, archaeological, historical or scientific value or interest;

"Director" means the Director of the Commission appointed under section fifteen;

"Deputy Director" means the Deputy Director of the Commission appointed under section sixteen;

"excavation" includes any process of digging or unearthing or any act involved in such process and "excavate" shall be construed accordingly;

"heritage" includes—

- (a) any ancient heritage;
- (b) any cultural heritage;
- (c) any natural heritage;
- (d) any national monument;
- (e) any relic;

"Honorary Commissioner" means a person designated to be an Honorary Commissioner under section nineteen;

"member" means a member of the National Heritage Conservation Commission appointed under section five;

"national monument" means a heritage declared to be a national monument under section twenty-seven and includes any property provisionally so declared for a period of five years from the date of the provisional declaration;

"natural heritage" means—

- (a) any area of land which has distinctive beautiful scenery or has a distinctive geological formation; and includes any palaeontological area;
- (b) any area of land containing rare distinctive or beautiful flora or fauna;
- (c) any waterfall, cave, grotto, old tree or avenue of trees;
- (d) any other natural object with aesthetic, or scientific value or interest;
- (e) any natural relic and national monument;

"plaque" means a sign erected by the Commission which indicates that an object is an ancient heritage, relic or has been declared as a national monument;

"Registrar" has the same meaning assigned to it in the Lands and Deeds Registry Act;

[Cap. 185]

"relic" means—

- (a) a fossil of any kind;
- (b) any drawing, painting, petroglyph or carving on stone commonly believed to have been executed in Zambia before 1st January, 1924;
- (c) any object of historical, scientific, anthropological, archaeological, aesthetic or cultural value made or used in Zambia before 1st January, 1924;
- (d) any object of ethnological interest;
- (e) any ethnographical material associated with traditional beliefs such as witchcraft, sorcery, exorcism, rituals or other rites;
- (f) any object associated with a person or an event prominent in Zambian history;
- (g) any product of archaeological excavation (whether regular or clandestine) or of archaeological discoveries;
- (h) any anthropological, historical or archaeological contents of any ancient heritage; or
- (i) any other object of historical, scientific, anthropological, archaeological, aesthetic or cultural value declared a relic by the Minister under section thirty-two.

Part II – National Heritage Conservation Commission

3. Establishment of Commission

- (1) The Commission for the Preservation of Natural and Historical Monuments and Relics as established under the Natural and Historical Monuments and Relics Act is hereby continued as if established under this Act but shall henceforth be known as the National Heritage Conservation Commission.
- (2) The Commission shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may lawfully do or perform.

4. Seal of Commission

- (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Director.
- (2) The Commission may use a wafer or rubber stamp in lieu of the seal.
- (3) The affixing of the seal shall be authenticated by the signatures of the Chairman or the Vice-Chairman together with the Director or Deputy Director.
- (4) Any contract or instrument which would not be required to be under seal, if entered into or executed by a person not being a body corporate, may be entered into or executed without seal on behalf of the Commission by the Director or any other person generally or specifically authorised by the Commission in that behalf.
- (5) Any document purporting to be a document under the seal of the Commission or issued on behalf of the Commission shall be received in evidence without further proof.

5. Composition of Commission

- (1) The Commission shall consist of the following members:
 - (a) a Chairman;
 - (b) the Permanent Secretary in the Ministry responsible for heritage who shall be an *ex-officio* member; and
 - (c) not less than seven but not more than ten other members who shall be persons with experience in matters related to the functions of the Commission.
- (2) The Chairman and the other members, other than the *ex-officio* member, shall be appointed by the Minister.
- (3) There shall be a Vice-Chairman elected by the Commission from amongst its members.
- (4) Where the *ex-officio* member is for any reasonable cause unable to attend any meeting of the Commission, he may, nominate in writing another senior official from his Ministry to attend that meeting in his stead and the person so nominated shall be deemed to be a member for the purpose of that meeting.

6. Tenure of office and vacancy

- (1) A member appointed under paragraph (a) or (c) of subsection (1) of section five shall hold office for a period of three years from the date of the appointment and may be re-appointed upon the expiration of that term.
- (2) A member referred to in subsection (1) may resign upon giving one month's notice in writing to the Minister and may be removed by the Minister upon giving like notice.
- (3) The office of a member shall become vacant—
 - (a) if he is declared to be of unsound mind;
 - (b) if he is adjudged bankrupt;
 - (c) if he is lawfully detained, or the member's freedom of movement is restricted under any law in force in Zambia for a period in excess of six months;
 - (d) if he is sentenced to a term of imprisonment for a period in excess of six months;
 - (e) upon the expiration of not less than one month's notice given in writing by the member to the Minister of the member's intention to resign from the Commission;

- (f) if he is absent, without leave, from three consecutive meetings of the Commission, of which the member has had notice; or
- (g) upon the expiration of not less than one month's notice given in writing by the Minister to the member terminating the member's appointment.

7. Remuneration and allowances

A member shall be paid such remuneration or allowance as the Minister may determine.

8. Functions of Commission

- (1) The functions of the Commission shall be to conserve the historical, natural and cultural heritage of Zambia by preservation, restoration, rehabilitation, reconstruction, adaptive use, good management, or any other means.
- (2) Without prejudice to the generality of subsection (1) the Commission shall—
 - (a) co-ordinate all activities connected with any heritage;
 - (b) carry out studies and surveys in order to identify areas which may be declared protected areas;
 - (c) prepare regional or national plans for conservation of heritage in protected areas;
 - (d) keep a register or site index of all national monuments ancient heritage, which it has acquired or which have been brought to its notice;
 - (e) investigate and report any matter relating to any heritage;
 - (f) preserve, repair, or restore any heritage.
- (3) In the performance of its functions under this Act the Commission may—
 - (a) affix to any monument a plaque;
 - (b) erect signs, notices and memorial tablets giving information in the official language, of events of interest relating to any heritage;
 - (c) purchase or otherwise acquire any heritage;
 - (d) make a list of all heritage whose declaration as a national monument is considered desirable;
 - (e) take steps to ascertain the owner of any heritage;
 - (f) assume control over any heritage if requested to do so by the person having the ownership or control of it;
 - (g) give notice to any owner of a heritage requiring him to take reasonable steps to maintain it;
 - (h) lend or give, subject to the provisions of this Act, any relic to any museum or other public institution;
 - (i) undertake the excavation of any ancient heritage and, by writing under the hand of the Director, authorise any act to be done which it may consider necessary for the excavation, exploration or safe preservation of any ancient heritage or relic where-ever situated or found by whosoever owned or controlled;
 - (j) enter upon and inspect any heritage, monument, museum or archaeological excavation, or any land where excavation or similar operations are being carried out for archaeological purposes;
 - (k) carry out excavations or surveys in any area for the purposes of discovering any ancient heritage;

- (l) subject to the rights of any owner or occupier of property, do such things as may be necessary to facilitate the access of the public to any heritage or monument which is the property of the Commission or which, by agreement with the owner, is under its control;
- (m) take such steps as may be necessary to provide or ensure the provision of access roads, shelters, site museums, information centres and campsites within any area or place which is an ancient heritage or has been proclaimed to be a national monument;
- (n) endeavour to ensure that land adjacent to, or in the immediate vicinity of, any national monument or ancient heritage is not developed in such a manner as to obstruct the view of that heritage; and
- (o) generally do all such acts as are necessary or appropriate for the carrying out of the purposes of this Act.

9. Delegation of functions

The Commission may, by directions in writing and subject to such terms and conditions as it thinks fit, delegate to the Director, Deputy Director, or any member, any of its functions under this Act.

10. Ministerial directions

The Minister may give to the Commission such general or specific directions with respect to the discharge of its functions as he may consider necessary and the Commission shall give effect to such directions.

11. Proceedings of Commission

- (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.
- (2) The Commission shall meet for the transaction of business at least twice every twelve months at such places and at such times as the Chairman may decide.
- (3) Upon giving notice of not less than fourteen days, a meeting of the Commission may be called by the Chairman and shall be called if not less than five members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of fourteen days notice, a special meeting may be called, upon giving a shorter notice.
- (4) Five members shall form a quorum at any meeting of the Commission.
- (5) There shall preside at any meeting of the Commission—
 - (a) the Chairman; or
 - (b) in the absence of the Chairman, the Vice-Chairman; or
 - (c) in the absence of the Chairman and the Vice-Chairman, such member as the members present may elect for the purpose of that meeting.
- (6) A decision of the Commission on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.
- (7) The Commission may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Commission but that person shall have no vote.
- (8) The validity of any proceedings, act or decision of the Commission shall not be affected by any vacancy in the membership of the Commission or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.
- (9) The Commission shall cause minutes to be kept of the proceedings of every meeting of the Commission and of every meeting of any committee established by the Commission.

12. Committees of Commission

- (1) The Commission, for the purpose of performing its functions under this Act, may constitute committees and delegate to any committee such of its functions as it thinks fit.
- (2) The Commission may appoint as members of a committee constituted under subsection (1), persons who are or are not members of the Commission and those persons shall hold office on such terms and conditions as the Commission may determine.
- (3) Subject to any specific or general direction of the Commission any committee constituted under subsection (1) may regulate its own procedure.

13. Disclosure of interest

- (1) If a person is present at a meeting of the Commission or any committee of the Commission at which any matter is the subject of consideration and which matter the person or his spouse is directly or indirectly interested in a private capacity, he shall, disclose his interest as soon as practicable after the commencement of the meeting, and unless the Commission or committee otherwise directs shall not take part in any consideration or discussion of, or vote on, any question touching that matter.
- (2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

14. Immunity of members

No action or other proceedings shall lie or be instituted against any member or member of any committee for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.

Part III – Administration

15. Director

The Commission, with the approval of the Minister, shall appoint a Director who shall be the chief executive officer of the Commission and who shall be responsible for the administration of this Act subject to the control of the Commission.

16. Deputy Director

The Commission, may on such terms and conditions as it may determine, appoint a Deputy Director to assist the Director.

17. Attendance at meetings of the Commission

- (1) The Director, or in his absence the Deputy Director, shall attend meetings of the Commission and may address those meetings, but shall not vote on any matter.
- (2) The person presiding at any meeting of the Commission may require the Director or Deputy Director, as the case may be, to withdraw from a meeting.
- (3) Section thirteen shall apply, with the necessary changes, to the Director and the Deputy Director.

18. Staff of Commission

- (1) There shall be a Secretary to the Commission who may be the Director.

- (2) If the Secretary is not the Director, the Commission shall appoint a Secretary to the Commission on such terms and conditions as it may determine.
- (3) The Commission may, on such terms and conditions as it may determine, appoint any other staff it considers necessary for the performance of its functions under this Act.

19. Honorary Commissioners

- (1) The Commission may designate any person to be an Honorary Commissioner on such terms and conditions as the Commission may determine and may revoke such a designation at any time.
- (2) An Honorary Commissioner, when authorised by the Commission, either generally or specifically, may exercise or perform all or any of the powers or duties of an employee of the Commission.
- (3) An Honorary Commissioner may be invited to any meeting of the Commission.

20. Prohibition of publication or disclosure of information to unauthorised persons

- (1) No person without the consent in writing given by or on behalf of the Commission, shall publish or disclose to any person, otherwise than in the course of his duties, the contents of any document, communication or information whatsoever, which relates to, and which has come to his knowledge in the course of, his duties under this Act.
- (2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding one thousand two hundred and fifty penalty units or to imprisonment for a term not exceeding three years, or to both.
- (3) If any person having information which to his knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates that information to any other person, he shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding one thousand two hundred and fifty penalty units or to imprisonment for a term not exceeding three years, or to both.

[As amended by Act [No. 13 of 1994](#)]

Part IV – Financial provisions

21. Funds of Commission

- (1) The funds of the Commission shall consist of such moneys as may—
 - (a) be appropriated by Parliament for the purposes of the Commission;
 - (b) be paid to the Commission by way of grants or donations; and
 - (c) vest in or accrue to the Commission.
- (2) The Commission may—
 - (a) accept moneys by way of grants or donations from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia;
 - (b) subject to the approval of the Minister raise by way of loans or otherwise such moneys as it may require for the discharge of its functions; and
 - (c) charge and collect fees in respect of programmes, seminars, consultancy services, and other services provided by the Commission.
- (3) There shall be paid from the funds of the Commission—
 - (a) the salaries and allowances of, and loans to, the staff of the Commission;

- (b) such reasonable travelling, transport subsistence allowances for members or members of any committee of the Commission when engaged in the business of the Commission at such rates as the Minister may determine; and
 - (c) Any other expenses incurred by the Commission in the performance of its functions.
- (4) The Commission may invest in any manner it thinks fit any of its funds which it does not immediately require for the performance of its functions.

22. Financial year

The financial year of the Commission shall be the period of twelve months ending on the 31st December in each year.

23. Accounts

The Commission shall cause to be kept proper books of account and other records relating to its accounts.

24. Annual report

As soon as practicable, but not later than six months after the expiry of each financial year, the Commission shall submit to the Minister a report concerning its activities during that financial year.

25. Contents of report

The report shall include information on the financial affairs of the Commission and there shall be appended thereto—

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may require.

26. Tabling report

The Minister shall, not later than seven days after the first sitting of the National Assembly next after the receipt of the report referred to in subsection (1), lay it before the National Assembly.

Part V – Conservation of heritage

27. Declaration of national monuments

- (1) Upon the recommendation of the Commission, and if the Minister considers it to be in the national interest that any heritage be conserved, protected or maintained he may, by statutory notice, subject to subsection (2) declare or provisionally declare the heritage or relic to be a national monument.
- (2) The Minister shall not make any declaration under subsection (1) in respect of any heritage or relic belonging to a person, other than the Commission, without the consent of that person unless the Minister is satisfied that—
 - (a) the Commission at least one month before making the recommendation had served upon the owner of, and any person in possession of, the heritage, or relic by post or by delivering personally, a notice in writing advising him of the proposed recommendation and his right to lodge objections with the Commission within one month of the date of service of the notice;
 - (b) the Commission has submitted to him all objections lodged with it by the owner and the person in possession of that heritage or relic.

28. Entry on land for purposes of surveying

- (1) Whenever under this Act any heritage or relic—
- (a) has been declared or provisionally declared to be a national monument;
 - (b) has been recommended to be declared a national monument or to be part of a national monument; or
 - (c) is being investigated as to the desirability of it being declared or forming a part of a national monument;

the Commission or any person authorised by it in writing, either generally or for any particular purpose, may, for the purpose of surveying, creating markers, drawing up a diagram of that area of land—

- (i) enter at all reasonable hours upon any land with such persons, vehicles, appliances, instruments and materials as are necessary for such survey;
 - (ii) break up the surface of any part of such land to facilitate the removal of any heritage or relic;
 - (iii) take and carry away any heritage or relic found thereon;
 - (iv) fix any post, stone mark or object to be used in the survey of any such land;
 - (v) dig up any ground for the purpose of fixing any such post, stone, mark or object; and
 - (vi) enter into or upon any land through which it may be necessary to pass for the purpose of surveying, creating markers or drawing up diagrams.
- (2) When exercising the powers conferred under subsection (1) it shall not be lawful to fix any object, post, stone or mark within any walled or fenced garden or orchard without the consent of the owners or occupiers thereof.
- (3) Notice in writing of the intention to exercise any of the powers conferred by this section shall be given in the *Gazette* and in a newspaper circulating in the area where the land is situated at least fourteen days before the exercise of the powers unless such land is unalienated state land.
- (4) As little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section.
- (5) Before abandoning any land all excavations opened shall be filled back.
- (6) The Commission or any other person authorised by it shall not be liable for anything done, in good faith in the performance of any function under this section.

29. Registrar to be notified

Whenever any land upon or under which a heritage is situated has been declared or provisionally declared to be, or to form part of, a national monument the Commission shall furnish the Registrar with a copy of the statutory notice made under section twenty-seven together with the particulars of the survey undertaken and a diagram of the area of land.

30. Endorsement on title

- (1) The Registrar shall note in any manner he thinks fit in any record maintained by the Registrar and upon any Certificate of Title or Provisional Certificate of Title particulars of any declaration made in a statutory notice that has been lodged in his office which affects the land referred to or comprised in the record maintained by the Registrar, in any Certificate of Title or Provisional Certificate of Title.

- (2) Where a statutory notice made under section twenty-seven is revoked or amended the Commission shall lodge with the Registrar a copy of the statutory notice and the Registrar shall note the particulars contained in the notice on any relevant record maintained by the Registrar, or on any Certificate of Title or Provisional Certificate of Title.

31. Restriction on alienating, mortgaging subdividing etc.

- (1) The Commission, except with the written approval of the Minister, shall not sublet, mortgage, charge, sell, transfer, assign or in any manner whatsoever encumber, or part with the possession of, any national monument or relic.
- (2) Any person who owns any land that is the subject of any statutory notice made under section twenty-seven and who wishes to subdivide, sell, transfer, assign, sublet, mortgage, charge or in any manner whatsoever encumber, or part with the possession of, that land, shall forthwith inform the Commission of the name and address of the person in whose favour the transaction is intended to be made.

32. Object to be declared a relic

If the Commission considers an object to be of historical, scientific, anthropological, aesthetic or cultural value the Minister, on the recommendation of the Commission may, by statutory notice, declare the object to be a relic notwithstanding that the object may not have been made or used in Zambia before 1st January, 1924.

33. No alteration, removal etc. without consent of Commission

Subject to section forty-one, no person shall, without the written consent of the Commission—

- (a) alter, remove, destroy, damage, excavate or export as the case may be, from Zambia, any ancient heritage or relic or part of it; or
- (b) disfigure, destroy, remove, alter or damage any national monument, memorial tablet, plaque, seal or sign erected or affixed by the Commission.

34. Export of heritage

- (1) Any person who desires to export from Zambia any ancient heritage or relic or any part thereof shall apply to the Commission for an export permit.
- (2) The applicant shall—
 - (a) supply the Commission with a drawing showing the site where the item is located and shall state the exact locality in which it is situated and the place to which he desires to export it; and
 - (b) define the type of object, its age, size and what material it is made of.

35. Destruction of heritage

- (1) Any person who intends to destroy, demolish, alter or remove from its original site any national monument, relic or ancient heritage shall apply to the Commission for permission.
- (2) The applicant shall—
 - (a) state the nature and extent of the intended alteration, removal, destruction or demolition and the locality of the area;
 - (b) supply diagrams or sketch plans and any other relevant information; and
 - (c) define the type of object, its age, where possible, size and what material it is made of.

36. Actions to protect safety and avoid risk

Section thirty-five shall not apply in respect of the alteration or demolition of a property which is immediately necessary—

- (a) in the interests of the safety of persons in or about the property; or
- (b) to avoid any reasonable risk of substantial damage being caused by the property to any other property in its vicinity.

37. Permits for collection or excavation

- (1) Any person who desires to excavate any ancient heritage or collect relics shall apply to the Commission for a permit to excavate or collect.
- (2) The applicant shall give details of—
 - (a) the project;
 - (b) the exact location of the area;
 - (c) the problems, scope and objectives of the investigation or collection; and
 - (d) any other relevant information.

38. Conditions of permit

A permit issued under section thirty-seven shall be subject to the following conditions:

- (a) the holder shall within the time specified in the permit, furnish to the Commission a progress report on the work done in such detail as the Commission may require;
- (b) the holder of a permit, after completion of the excavation, shall restore the site to its normal condition in so far as it is reasonable to do so unless the Commission otherwise authorises;
- (c) the holder shall deliver to the Commission possession of all relics or other objects recovered while excavating pursuant to the permit; and
- (d) any other conditions the Commission may prescribe according to the circumstances.

39. Acts authorised by permit

A permit issued under section thirty-seven authorises the holder to do some or all of those acts specified in the application, at such time or within such period and subject to such terms, conditions, restrictions or directions as may be specified by the Commission.

40. Offence and penalty

- (1) No person shall excavate, collect or export, as the case may be, any ancient heritage, any relic or part thereof, or alter, destroy, damage or remove from its original site any ancient heritage, national monument or relic contrary to sections thirty-three to thirty-nine.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding two thousand five hundred penalty units, or to imprisonment for a term not exceeding four years, or to both.
- (3) The Court in addition to any fine or imprisonment may order that person—
 - (a) to pay to the Commission such sum as the court may determine for the repair of any damage caused to, or for the value of, anything specified in subsection (1); or

- (b) in the case of any thing specified in subsection (1) which has been removed and which is still in the possession of that person, to restore such thing to the Commission.

[As amended by Act [No. 13 of 1994](#)]

41. Normal mining, engineering and agricultural operations not prohibited

Nothing in sections thirty-three to thirty-seven, inclusive, shall be construed as prohibiting any person in the normal course of mining, engineering or agricultural operations from doing any act which would otherwise be an offence under those sections if that person—

- (a) was the owner of land acquired or held under customary law; or
- (b) was the holder of a valid mining licence or certificate of title;

and the ancient heritage or relic affected had not been known or the heritage had not been declared to be a national monument before the performance of that act.

42. Discovery of ancient heritage or relic

Any person, who discovers what appears to be an ancient heritage or relic shall—

- (a) report his discovery to the Commission within fourteen days;
- (b) suspend his operations in the immediate vicinity of his discovery until thirty days after the delivery of his report, unless the Commission authorises their continuance; and
- (c) deliver to the Commission as soon as practicable, or request the Commission to examine and remove, any object which is, or appears to be, a relic.

43. Powers of Commission when discovery reported

Upon receipt of a report under section forty-two the Commission may—

- (a) examine and remove any relic;
- (b) allow the person to continue his activities;
- (c) order suspension of the operations not in excess of thirty days to carry out an environmental impact assessment or archaeological survey or recovery analysis of the discovery areas; or
- (d) order the engineering, mining or agricultural project to pay for the costs of the assessment, survey, or analysis.

44. Resumption of operations

If the Commission does not exercise any of its powers under section forty-three the person may resume his operations thirty days after delivery of his report.

45. Ownership of relics

Any relic whose ownership cannot be reasonably determined shall be deemed to belong to the Commission.

46. Compensation for removal of relic

Where a relic is not owned by any person and the Commission removes the relic from land, the compensation to be paid to the person occupying the land shall only be for the temporary loss of use of the land or any damage caused during the time required by the Commission to remove the relic.

47. Acquisition of relic

- (1) Where a relic is owned by a person, the Commission shall have a right or option to acquire the ownership of the relic so discovered upon payment to the owner of a sum of money to be agreed upon as fair and reasonable compensation, or, failing agreement, by reference to two arbitrators in accordance with the Arbitration Act.
- (2) If within six months after receipt of the first notice of any discovery in terms of section forty-two the Commission has failed to notify the owner of such ancient heritage or relic that it intends to exercise its option, such option shall be deemed to have lapsed.

[Cap. 40]

48. Negotiations for heritage sites

Where any heritage is located on land held by any person, the Commission may negotiate with the holder of the land to—

- (a) arrange for preservation, restoration, rehabilitation and reconstruction of the heritage;
- (b) arrange times, terms, and conditions for admission of the public to the site;
- (c) arrange for supervision, maintenance and protection of the site;
- (d) arrange for a lease of the site, access to it, and the terms and conditions of any right of entry;
- (e) acquire the land or any part of it on such terms and conditions as the parties may agree upon; or
- (f) arrange any other matter connected with the conservation, use and enjoyment of the heritage.

49. Regulations

- (1) The Minister, upon the recommendation of the Commission, may by statutory instrument make regulations—
 - (a) regulating the access of the public to any heritage which is the property of the Commission or which by agreement with the owner is under its control;
 - (b) fixing fees payable to the Commission for admission to any heritage;
 - (c) safe guarding any heritage, national monument, tablet, or relic from disfigurement, alteration, destruction, unauthorised export or removal;
 - (d) regulating the excavation of any ancient heritage and the removal export or collection of any relic;
 - (e) regulating the conditions of use by any person of any area of land which has been declared to be a national monument and which is under the control of the Commission;
 - (f) regulating the conditions for the erection of any building or structure on any area of land declared to be a national monument; or
 - (g) prohibiting or regulating any specified acts in or in respect of any heritage.
- (2) Any regulation may prescribe fines not exceeding two thousand five hundred penalty units for any contravention of, or non-compliance with the regulations.

[As amended by Act [No. 13 of 1994](#)]

50. National monuments Continued

Any Government Notices, Declarations by the Minister, or Statutory Instruments which declares any heritage to be a national monument under the Natural and Historical Monuments and Relics Act shall continue in full force and effect, as though made pursuant to section twenty-seven of this Act.

[Cap. 266 of 1947]

51. Repeal of Cap. 266 of the 1971 Edition

The Natural and Historical Monuments and Relics Act is hereby repealed.