

BOTSWANA'S REPORT ON EXISTING LEGISLATION
REGULATING THE EXPORT OF CULTURAL OBJECTS

The principal legislation that regulates the export of Botswana's cultural objects is contained in the Monuments and Relics Act 2001. Section 18 of the Act proscribes the export of cultural objects from Botswana without the Ministers permission. To allow for export, regulations are in place in this Section as are sanctions for breaching them as contained in clauses 1(b), 3,4,5 and6, viz;

(1) A person shall not, without the written permission of the Minister, given after consultation with the Commissioner:-

(2) remove or allow to be removed from its original site, or export or allow to be exported from Botswana, any national monument, monument, relic or recent artefact, or any part thereof.

(3) A person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 1 year, or to both.

(4) In the case of any national monument, monument, relic or recent artefact, or part thereof, situated in a Tribal Territory, no permission in terms of subsection (1) shall be given without the concurrence of the Tribal Land Board for that Tribal Territory,

(5) Any person who desires to remove from its original site or to export from Botswana any national monument, monument, relic or recent artefact, 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, monument, relic or recent artefact, 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.

(6) Any permission or consent, given in terms of this section, may at any time be withdrawn if any person has, in an application to the Minister for his permission or consent, knowingly made any statement which is false in any material particular or supplied therewith any drawing or photograph which is false in any material particular.

In a general manner the Act, in Section 22, provides for powers of arrest, seizure or removal from site to relevant officers viz,

(1) The Commissioner, every inspector and every custodian may arrest without warrant:-

(a) any person who commits an offence under this Act in his presence;

(b) any person whom he has reasonable grounds to suspect has committed an offence under this Act;

(c) any person whom he finds attempting to commit an offence under this Act or clearly manifesting an intention to do so.

(2) The Commissioner, every police officer, every inspector and every custodian may take or seize from any person to whom subsection (1)(a), (b), or (c) 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 sale 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 may eject from the site owned by or in control of the State, of any national monument,

protected heritage area, monument, relic or recent artefact, any person to whom subsection (1)(a), (b) or (c) applies and any person whose presence on such site or whose access to such national monument, protected heritage area, monument, relic or recent artefact is prohibited under the provisions of this Act or regulations made thereunder.

Further, regarding offences and penalties Section 23 states that,

(1) (a) in an application to the Minister for his permission in terms of section 18, knowingly makes a statement which is false in any material respect or supplies therewith a drawing or photograph which is false in any material respect, commits an offence and is liable upon conviction to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 1 year, or to both.

reinforced by 23(2 a and b)

(2) If a person is convicted of an offence under this Act or any regulations made thereunder which has involved or resulted in damage to, or destruction or removal of, any national monument, monument, relic or recent artefact, any part thereof or any tablet, plaque or other identification notice which the Commissioner has caused to be erected, the court may, in addition to any 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 State 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.

The fauna and flora of Botswana is protected by the Wildlife Conservation and National Parks Act of 1992 thereby giving effect to the Convention on International Trade in Endangered Species of Wild Fauna or Flora (CITES), and any other international conventions for the protection of fauna and flora to which Botswana is from time to time a Party. The Forest Act 1968 amended last by Act No. 8 of 2005 and consolidated as at 31 December 2008, declares CITES to have the force of law in Botswana in relation to trading in any species of flora to which the Convention applies. The Wildlife Conservation Act and the Forest Act have thus protected cultural property as defined by the 1970 Convention which in its definition of cultural property in Article 1(a) includes: "Rare collections and specimens of fauna, flora ... and objects of palaeontological interest. Thus, Section 19A of the Forest Act states

(1) Subject to the provisions of this section, no person shall import, export or re-export, possess or transport any species of flora specified in the Convention except in accordance with a permit or certificate, as the case may be, issued by a management authority in consultation with the scientific authority.

(2) The Minister may make regulations for the issue and renewal of import, export or re-export, possession or transportation permits or certificates, and the conditions and duration of the permits or certificates.

(3) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding P2,000 or to imprisonment for a term not exceeding two years, or to both.

Chapter 54 of the Finance and Audit Act provides, through Statutory Instrument No70 of 2010 for the National Environmental Fund Order. This Order establishes a fund to,

4.1 finance and promote activities designed to conserve, protect and manage Botswana's environment which includes the

4.(2)(c) support to the eco-tourism sector and to the development of national heritage sites; under which cultural objects are subsumed.

This fund administered through the Ministry of Environment, Natural Resources Conservation and Tourism, is used in cases where Botswana seeks to recover cultural objects from an innocent possessor in another country and the issue of compensation arises.

Additionally, Botswana's Ministry of Finance and Economic Development and particularly the Botswana Unified Revenue Service, which is in charge of customs duties, have been advised of the obligation of exempting custom duties and other charges on the importation of recovered cultural property.

Finally, we are working to pass a comprehensive Botswana Museums, Monuments and Service Bill which will inter alia explicitly address issues relating to the the1970 UNESCO Convention of the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 1954 Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.