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THE NATIONAL MUSEUMS AND HERITAGE ACT

CAP. 216

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National Museums and Heritage Act

Cap. 216

Legislation as at 11 December 2023

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NATIONAL MUSEUMS AND HERITAGE ACT

CAP. 216

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An Act of Parliament to consolidate the law relating to national museums and heritage; to provide for the establishment, control, management and development of national museums and the identification, protection, conservation and transmission of the cultural and natural heritage of Kenya; to repeal the Antiquities and Monuments Act and the National Museums Act; and for connected purposes

Part I – PRELIMINARY

1. Short title

This Act may be cited as the National Museums and Heritage Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"antiquity" means any movable object other than a book or document made in or imported into Kenya before the year 1895, or any human, faunal or floral remains of similar minimum age which may exist in Kenya;

"Board" means the National Museums Board established under section 6;

"cultural heritage" means—

(a) monuments;

(b) architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of universal value from the point of view of history, art or science;

(c) groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding value from the point of view of history, art or science;

(d) works of humanity or the combined works of nature and humanity, and areas including archaeological sites which are of outstanding value from the historical, aesthetic, ethnological or anthropological point of view, and includes objects of archaeological or palaeontological interest, objects of historical interest and protected objects;

"Director-General" means the Director-General of the National Museums appointed under section 14;

"exploration licence" means an exploration licence issued under section 27;

"export permit" means a permit to export a monument or part thereof, an antiquity, or a protected object, issued by the Cabinet Secretary under section 52;

"geo-park" means an area of natural heritage;

"heritage" means natural and cultural heritage;

"heritage warden" means a person appointed under section 57;

"maintenance" includes the fencing, covering in, repairing, restoring and cleansing of a monument or the fencing or covering of a protected area, and the doing of any act which may be necessary for the purpose of maintaining or protecting a monument or a protected area or of securing convenient access thereto;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for the National Museums;

"monument" means—

(a) a place or immovable structure of any age which, being of historical, cultural, scientific, architectural, technological or other human interest, has been and remains declared by the Cabinet Secretary under section 25(1)(b) to be a monument;

(b) a rock-painting, carving or inscription made on an immovable object;

(c) an ancient earthwork or other immovable object attributable to human activity;

(d) a structure which is of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attached to it; and has been and remains declared by the Cabinet Secretary under section 25(1)(b) to be a monument;

(e) a shipwreck more than fifty years old, and such adjoining land as may be required for maintenance thereof;

"museum" means a public or private institution which collects, preserves, analyses and exhibit objects of cultural and natural heritage;

"national museum" means a museum vested in the National Museums;

"natural heritage" means—

(a) natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;

(b) geological or physiographical formations of special significance, rarity or beauty;

(c) precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science, conservation or natural beauty; or

(d) areas which are or have been of religious significance, use or veneration and which include but are not limited to Kayas;

"object of archaeological or palaeontological interest" means an antiquity which was in existence before the year 1800;

"object of historical, cultural or scientific interest" means an object which came into existence in or after the year 1800;

"open space" means an open space not built upon in any urban or peri- urban area whether in a municipality or not to which the public has access and which may be used for parks, gardens, recreation grounds or any other use whatsoever;

"owner" includes a joint owner invested with powers of management on behalf of himself and other joint owners, and an agent or trustee exercising powers of management over a monument, and the successor in title of any such owner, the successor in office of any such agent or trustee; but nothing in this Act shall be deemed to extend the powers which may be lawfully exercised by the owner, agent or trustee;

"permit" means a valid and subsisting permit issued by the Cabinet Secretary under the provisions of this Act;

"private land" means land privately owned and land the subject of a grant, lease or licence from the Government, and includes Trust land;

"protected area" means a site which has been and remains declared by the Cabinet Secretary under section 25(1)(a) or (c) or (f) to be a protected area;

"protected building" means a building of special architectural or historical interest declared by the Cabinet Secretary to be a protected building under section 25(1)(e) and includes any object or structure fixed to the building;

"protected object" means—

(a) a door or door-frame carved in an African or Oriental style before the year 1946; or

(b) any other object or type of object, whether or not part of an immovable structure, which being of historical or cultural interests has been and remains declared by the Cabinet Secretary under section 25(1)(d) to be a protected object;

"the National Museums" means the National Museums of Kenya established under section 3.

(2) This Act extends to heritage including monuments, antiquities and shipwrecks in lakes and waters within Kenya, or on the seabed within the territorial waters of Kenya.

Part II – ESTABLISHMENT, FUNCTIONS AND POWERS OF THE NATIONAL MUSEUMS OF KENYA

3. Establishment of the National Museums of Kenya

There is established a body corporate to be known as the National Museums of Kenya with perpetual succession and a common seal and which shall be capable in its corporate name of—

(a) suing and being sued;

(b) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(c) borrowing money;

(d) entering into contracts;

(e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

4. Functions of National Museums

The National Museums shall—

(a) serve as national repositories for things of scientific, cultural, technological and human interest;

(b) serve as places where research and dissemination of knowledge in all fields of scientific, cultural, technological and human interest may be undertaken;

(c) identify, protect, conserve and transmit the cultural and natural heritage of Kenya; and

(d) promote cultural resources in the context of social and economic development.

5. Powers of the National Museums

(1) The National Museums may—

(a) purchase or exchange, take on lease, or acquire by gift or otherwise, movable or immovable property including an existing museum, for any purpose of or connected with the National Museums;

(b) sell, lease or exchange immovable property from time to time vested in the National Museums which is no longer, or not for the time being, required for any such purposes;

(c) erect, maintain and improve buildings, including staff quarters, to be used for any such purpose;

(d) mortgage or charge immovable property from time to time vested in the National Museums as security for repayment, with or without interest, of any money borrowed for the purposes of the National Museums;

(e) appoint advisory committees for museums;

(f) acquire by way of gift or purchase, or accept by way of loan or deposit, any object of scientific, cultural, technological, historical or human interest;

(g) exchange, sell or otherwise dispose of objects not required for the purpose of the National Museums and lend objects vested in the National Museums to any person or institution whether within or outside Kenya:

Provided that no object which is accessioned and registered as part of the collection of a national museum shall be—

(i) sold, given away, mortgaged, pledged or in any way permanently disposed of save under authority of a resolution of the Board and with the consent in writing of the Cabinet Secretary; or

(ii) lent to any person or organization, within or outside Kenya, unless under authority of a resolution of the Board and with the consent of the Cabinet Secretary;

(h) with consent of the Cabinet Secretary form companies to take over or assist in any of the functions of the National Museums;

(i) apply money received on the sale or disposal of movable property or by way of payment for admission to a museum or by way of gift or grant or otherwise, in the purchase of any object which in the opinion of the Board it is desirable to acquire for a national museum or in furthering interest in and increasing the utility in a national museum;

(j) solicit and accept and receive subscriptions, donations, devices and bequests (whether of movable or immovable property and whether absolute or conditional) for the general or special purposes of a national museum or subject to any trust;

(k) charge for admission to a national museum, or to any lecture, exhibit, conducted tour, course of instruction or other facility, or for publications, such fees or prices as the National Museums may, subject to any regulations made under this Act, think fit;

(l) borrow, with or without security, such moneys as may from time to time be needed for any purposes of the National Museums;

(m) in consultation with the National Commission for Science, Technology and Innovation, maintain existing research institutions and establish new ones;

(n) subject to the provisions of the Environmental Management and Co-ordination Act (Cap. 387), conduct environmental impact assessments;

(o) enter into association with other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in the furtherance of the purposes for which the National Museums is established;

(p) open a bank account or bank accounts for the funds of the National Museums;

(q) do all such other lawful things as may seem to the National Museums to be incidental or conducive to the attainment of any of the functions of the National Museums.

(2) The National Museums may receive moneys from any source and may apply those moneys to defray its expenses in carrying out the functions and exercising the powers conferred on it by this Act including the reimbursement of expenses incurred by members of the Board in attending meetings of the Board.

6. Board of Directors

(1) There is established a Board of Directors of the National Museums of Kenya which shall be the governing body of the National Museums and shall consist of the following members—

(a) a chairperson appointed by the Cabinet Secretary after consultation with the President;

(b) four persons representing scientific interests appointed by the Cabinet Secretary of whom one shall be nominated by Nature Kenya, one by the University of Nairobi, one from one other university and one from the National Commission for Science, Technology and Innovation;

(c) the Principal Secretary in the Ministry for the time being responsible for national heritage;

(d) the Principal Secretary in the Ministry for the time being responsible for finance;

(e) the Principal Secretary in the Ministry for the time being responsible for defence;

(f) not more than three persons to be appointed by the Cabinet Secretary by virtue of their outstanding interest in and contribution to the work of national museums;

(g) one person appointed by the Cabinet Secretary from the private sector;

(h) one person appointed by the Cabinet Secretary upon nomination by the Kenya Tourist Board;

(i) a Director-General appointed by the Cabinet Secretary after consultation with the Board who shall be an *ex officio* member and secretary to the Board.

(2) The Board shall elect a vice-Chairperson from among its members.

(3) The Board shall have the general management, development and control of the National Museums and all functions vested in the National Museums by this Act.

[Act No. 19 of 2023, Sch.]

7. Tenure of office

(1) The chairperson or a member of the Board other than an *ex officio* member shall hold office for a period of three years and shall be eligible for re-appointment.

(2) The quorum of the Board shall be seven members excluding the *ex officio* members.

(3) The powers of the Board shall not be affected by any vacancy in the membership thereof.

(4) A member of the Board, other than an *ex officio* member, may resign his office by notice in writing under his hand addressed to the Cabinet Secretary.

8. Termination of appointment of the chairperson and members of the Board

The appointment of the chairperson or member of the Board may be terminated by the Cabinet Secretary, if the chairperson or member—

(a) is unable to perform the functions of his office by reason of mental or physical infirmity;

(b) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(c) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

(d) is, without reasonable cause, absent from three consecutive meetings of the Board; or

(e) is otherwise unfit or unable to discharge his functions.

9. Disclosure of interest by chairperson and members of the Board

(1) The Chairperson or a member of the Board who has a direct or indirect personal interest in a matter being considered or to be considered by the Board shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Board.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting of the Board and the chairperson or member shall not take part in the consideration or discussion of or vote during any deliberations on the matter by the Board.

10. Meetings of the Board

(1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule, but subject thereto, the Board may regulate its own procedure.

(2) The Board may co-opt any person to participate in its deliberations on any particular issue, but a person so co-opted shall have no right to vote at any meeting of the Board.

11. Delegation by the Board

The Board may, by resolution generally or in any particular case, delegate to any committee of the Board the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

12. Protection from personal liability

Subject to section 13, no matter or thing done by a member of the Board or agent of the Board shall, if the matter or thing is done *bona fide* for executing the functions, powers and duties of the Board under this Act, render the member, or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

13. Liability of the Board in contract and tort

The provisions of section 12 shall not relieve the Board of the liability in tort or contract, to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act, or any other written law.

14. The Director-General

(1) There shall be a Director-General of the National Museums, who shall be appointed by the Cabinet Secretary on the recommendation of the Board on terms and conditions specified in the instrument of his appointment.

(2) The Director-General shall hold the minimum of a doctorate and have experience in any field or discipline relating to the work of the National Museums.

(3) The Director-General shall be the chief executive officer of the National Museums and shall be responsible to the Board for the day-to-day management of the National Museums.

15. Staff

The Board may appoint such officers and staff as are necessary for the proper discharge of the functions of the National Museums under this Act upon such terms and conditions of service as the Board may determine.

16. Appointment of advisory committees

(1) The National Museums may appoint a separate advisory committee for any national museum or group of national museums.

(2) An advisory committee may include at least one person nominated by the local authority in whose jurisdiction the national museum is situated.

(3) Except as otherwise provided by any regulations made under this Act, the National Museums may delegate to an advisory committee all or any of its powers and obligations under this Act in respect of the museums for which the committee has been appointed.

17. National Museums to undertake research, etc.

The National Museums may, so far as its financial and other resources permit, undertake research and conduct other activities of scientific, cultural, technological or human interest by means of lectures, exhibits, tours or publications.

Part III – FINANCIAL PROVISIONS

18. Funds of the National Museums

The funds of the National Museums shall comprise—

(a) such monies as may be appropriated by Parliament for the purposes of the National Museums;

(b) such monies as may accrue to or vest in the National Museums in the course of the exercise of its powers or the performance of its functions under this Act;

(c) all monies from any other source provided for, donated or lent to the National Museums.

19. Financial year

The Financial Year of the National Museums shall be the period of twelve months ending on thirtieth June in every year.

20. Annual estimates

(1) The Board shall before the commencement of a financial year cause to be prepared estimates of revenue and expenditure of the Board for that financial year.

(2) The annual estimates shall make provisions for all the estimated expenditure of the Board for the financial year concerned and in particular shall provide for—

(a) the payment of salaries, allowances and other charges in respect of the staff of the National Museums;

(b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the National Museums;

(c) the proper maintenance of buildings and grounds of the National Museums;

(d) the funding of training, research and development activities of the National Museums;

(e) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the National Museums;

(f) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval:

Provided that once approved, the sum provided in the estimates shall not be increased without the prior consent of the Board.

(4) No expenditure shall be incurred for the purposes of the National Museums except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorization of the Board with the prior approval of the Cabinet Secretary.

21. Investment of funds

The Board may invest any of the funds of the National Museums in securities in which for the time being trustees may by law invest funds or in any other securities which the Treasury may from time to time approve for that purpose.

22. Restriction on loans to Board member and staff

The National Museums may not grant to a member of the Board or staff any loan or advance, or arrange any credit facility for the member except with regulations made by it under this section and approved by the Treasury.

23. Accounts and audit

(1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the National Museums.

(2) The Board shall within three months from the end of the financial year submit to the Auditor-General or an auditor appointed under subsection (3), the accounts of the National Museums together with—

(a) a statement of income and expenditure during the year; and

(b) a statement of the assets and liabilities of the National Museums on the last day of that year.

(3) The accounts of the National Museums shall be audited by the Auditor-General or by an auditor appointed by the Board with the written approval of the Auditor-General.

(4) The appointment of an auditor shall not be terminated by the Board without the prior written consent of the Auditor-General.

(5) The Auditor-General may give general or specific directions to an auditor appointed under subsection (3) and the auditor shall comply with such directions.

(6) An auditor appointed under subsection (3) shall report directly to the Auditor-General on any matter relating to the directions given under subsection (5).

(7) The Auditor-General shall within six months after the end of the financial year report on the examination and audit of the accounts of the National Museums to the Cabinet Secretary, and where an auditor has been appointed under subsection (3) he shall transmit a copy of the report to the Auditor- General.

(8) The fee payable to an auditor appointed under subsection (3) shall be fixed and paid by the Board.

(9) Nothing in this Act shall be construed to prohibit the Auditor-General from carrying out an inspection of the National Museums accounts or records whenever it appears to him desirable.

(10) Notwithstanding anything in this Act, the Auditor-General may transmit to the Cabinet Secretary a special report on any matters incidental to his power under this Act and the Public Audit Act (412B).

24. Annual report

(1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the Board for the immediate preceding year.

(2) The Cabinet Secretary shall lay the annual report before the National Assembly within three months of the day the Assembly next sits after the report is presented to him.

Part IV – HERITAGE DECLARATIONS

25. Declaration of monuments, etc.

(1) After consultation with the National Museums the Cabinet Secretary may by notice in the *Gazette* declare—

(a) an open space to be a protected area within the meaning of this Act;

(b) a specified place or immovable structure which the Cabinet Secretary considers to be of historical interest, and a specified area of land under or adjoining it which is in the Cabinet Secretary's opinion required for maintenance thereof, to be a monument within the meaning of this Act;

(c) a specified site on which a buried monument or object of archaeological or palaeontological interest exists or is believed to exist, and a specified area of land adjoining it which is in the Cabinet Secretary's opinion required for maintenance thereof, to be a protected area within the meaning of this Act;

(d) a specified object or type of object, whether or not part of an immovable structure, which the Cabinet Secretary considers to be of historical, cultural, or scientific interest, to be a protected object within the meaning of this Act;

(e) a building and a specified area of land adjoining it which in the Cabinet Secretary's opinion is required for the maintenance thereof to be a protected building within the meaning of this Act; or

(f) a geopark to be a protected area within the meaning of this Act,

and the notice shall state that objections to a declaration made under this section shall be lodged with the Cabinet Secretary within two months from the date of publication of the notice.

(2) A copy of every notice published under subsection (1) shall, if referring to an immovable object or site, be posted by the National Museums in a conspicuous place, on or near that object or site or on the area to which it relates, and if referring to a specified movable object, be delivered or sent to the person in whose possession that object is or is believed to be.

(3) On the expiration of the period of two months, the Cabinet Secretary, after considering the objections, if any, shall confirm or withdraw the notice.

(4) An object or area of land declared by or under the Preservation of Objects of Archaeological and Palaeontological Interest Act, or under the Antiquities and Monuments Act (both now repealed) to be a protected object, monument or protected area shall be deemed to be a protected object, monument or protected area, as the case may be, within the meaning of this Act.

(5) No declaration made and gazetted by the Cabinet Secretary under this section may be revoked without the consent of the National Museums.

(6) Notice of the proposal for revocation shall be published in the *Gazette* and the Cabinet Secretary shall consider all objections or recommendations made to the Cabinet Secretary within two months after the publication of the notice.

(7) Where it appears to the Director-General that any heritage which the Director-General considers requires to be protected by a declaration under this section is in imminent danger of serious damage or destruction, the Director- General may make an order protecting the said heritage in the manner set out by him.

(8) An order made under subsection (7) shall have effect in applying all the provisions of this Act including criminal penalties with immediate effect as if the notice had been given by the Cabinet Secretary and confirmed under subsection (3).

(9) Immediate notice of an order made under subsection (7) shall be given to the Cabinet Secretary and the order shall be operative for one month, save that if a recommendation has in that time been made by the National Museums to the Cabinet Secretary for a declaration under subsection (1), the order shall be operative until the decision of the Cabinet Secretary.

26. Registers

The National Museums shall maintain a register or registers of—

(a) all collections of all museums, and all instruments under its control;

(b) all declarations made or deemed to have been made by the Cabinet Secretary under this Act,

which register or registers the public may search.

Part V – SEARCHES AND DISCOVERIES

27. Exploration licences

(1) Unless authorized by an exploration licence issued by the Cabinet Secretary after consultation with the Board, no person shall by means of excavation or surface operations search for a buried monument or buried part of a monument, or for a buried antiquity, whether or not in a protected area.

(2) Before making recommendations to the Cabinet Secretary on the issuance of an exploration licence, the National Museums shall satisfy itself that the applicant is competent by both training and experience to carry out an exploration or excavation in accordance with the most recent scientific methods, and may require the applicant to satisfy it that he has the support, financial and otherwise, of an archaeological or scientific society or institution of repute.

(3) Every exploration licence issued under this section shall contain an agreement that the licensee, or the institution which the licensee represents, will, at such intervals or within such period as may be specified by that licence, produce a detailed written report or publication on the results of the exploration and excavation, and will deposit with the National Museums two copies of the report or publication.

(4) An exploration licence may specify, in regard to the acts which it authorizes, such limitations and conditions as the Cabinet Secretary considers necessary—

(a) in order to protect a monument from injury, removal or dispersion;

(b) in respect of antiquities for the removal of finds to a place in Kenya, or temporarily to a place outside Kenya for the purpose only of special examination or preservative treatment.

28. Conditions and forms of exploration licence

An exploration licence—

(a) shall be valid for a period not exceeding one year, but may be renewed for a further period or further periods not exceeding one year at a time;

(b) may be revoked at any time if the Cabinet Secretary is of the opinion that the holder thereof has failed to conform with any of his express or implied obligations thereunder;

(c) shall be in the prescribed form; and

(d) shall not entitle the holder thereof to enter upon any land without the consent of the owner thereof, otherwise than as provided by section 29.

29. Entry onto land under exploration licence

(1) For the purposes of an exploration licence, the holder thereof may enter upon any area of land specified in the licence, whether or not private land, and whether or not a protected area, and exercise there all rights conferred by the exploration licence, for such period and subject to such limitations and conditions as may be stated in the licence.

(2) Where the holder of an exploration licence intends, pursuant to any licence, to enter upon private land, the holder shall give not less than seven days' notice to the occupier, and if practicable to the owner of the land.

(3) In the case of Trust land service on the county council in which the land is vested of a written notice, specifying the exploration licence and the nature and duration of, and the land affected by it, shall be sufficient notice of all subsequent activities in accordance with the exploration licence, both to the county council and to the residents for whose benefit the council holds the land.

(4) Whenever, in the course of operations carried on by the holder of an exploration licence, disturbance of the rights of the owner or occupier of private land, or damage to the land, or to crops, trees, buildings, stock or works therein or thereon, is caused, the holder of an exploration licence shall be liable to pay or make to the owner or occupier such compensation as is fair and reasonable having regard to the extent of the disturbance or damage and to the interest of the owner or occupier in the land.

(5) If the holder of an exploration licence fails to pay or make compensation when demanded under subsection (4), or if an owner or occupier is dissatisfied with the amount or nature of any compensation offered to him thereunder, the owner or occupier may, within six months of the date on which the demand or offer is made, but not in any case later than two years after the occurrence of the disturbance or damage, appeal to the Cabinet Secretary whose decision shall be final.

(6) In the case of disturbance of the rights of occupiers of Trust land, or damage to any such land—

(a) an occupier who claims to be entitled to compensation under subsection (4) shall, within six months after the occurrence of the disturbance or damage, apply to the District Commissioner of the district in which the land is situated;

(b) the District Commissioner shall notify the Cabinet Secretary and the holder of the exploration licence of the application made under paragraph (a);

(c) the Cabinet Secretary shall appoint a panel of three persons under the chairmanship of the District Commissioner, which shall afford the owner or occupier a reasonable opportunity of being heard in relation thereto, and if satisfied that the applicant is entitled to compensation, shall make an award in his favour in accordance with subsection (4);

(d) the panel shall give notice in writing to the applicant and to the holder of the exploration licence of the award or of the rejection of the award;

(e) the applicant or the holder of an exploration licence may appeal to the Cabinet Secretary against the decision of the panel under paragraph (d) and the Cabinet Secretary's decision shall be final;

(f) a sum payable under an award shall be deposited by the holder of the exploration licence with the District Commissioner upon the expiry of thirty days from notification of the award or from a final appeal decision, as the case may be;

(g) the District Commissioner shall be responsible for paying the compensation awarded to the person entitled thereto, and every such payment shall be made in a single payment;

(h) an award made under this subsection shall be enforceable as if it were a decree of a competent court.

30. Notification of discovery

Where a person discovers a monument or object of archaeological or palaeontological interest, the person shall, within seven days, give notice thereof, indicating the precise site and circumstances of the discovery, to the National Museums, and in the case of an object, shall deliver the object to the National Museums or to the District Commissioner to keep it for any particular purpose or for any particular period.

31. Restriction on moving objects

Subject to section 27, no person shall move a monument or object of archaeological or palaeontological interest from the place where it has been discovered otherwise than in such manner and to such place as may be allowed by an exploration licence, or by written permit from the Cabinet Secretary after consultation with the National Museums.

32. Offences

A person who—

(a) engages in a search contrary to section 27;

(b) being the holder of an exploration licence, fails to conform with any of the Cabinet Secretary's express or implied obligations under the licence;

(c) enters upon private land pursuant to the licence without having given previous notice and such security, if any, as may have been directed in accordance with section 29;

(d) fails to comply with the provisions of section 30; or

(e) moves a monument or object of archaeological or palaeontological interest contrary to section 31,

commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Part VI – PROTECTED AREAS

33. Where protected area is Trust land

A protected area or part thereof which is an area of Trust land may be set aside as such in accordance with the provisions of section 118 of the Constitution.

34. Control of access, etc., to protected area

The Cabinet Secretary may, in respect of a protected area, from time to time—

(a) by notice in the *Gazette*, prohibit or restrict access thereto or any development thereof, or the use thereof for agriculture or livestock, or activity thereon which in the Cabinet Secretary's opinion is liable to damage a monument or object of archaeological or palaeontological interest therein;

(b) place the protected areas under the control of the National Museums, on such terms and with and subject to such powers and duties as he may direct;

(c) take, or authorize the National Museums to take, such steps as are in the Cabinet Secretary's opinion necessary or desirable for the maintenance thereof;

(d) make or authorize the National Museums to make by-laws for controlling access thereto, with or without payment, and the conduct therein of visitors thereto.

35. Compensation to owner of land in protected area

(1) Where private land is included in a protected area, and the development or other use of that land by the owner or occupier thereof is prohibited or restricted by the Cabinet Secretary, or, by reason of any steps taken by the Cabinet Secretary, or by the Board with the authority of the Cabinet Secretary, on or in relation to the private land, the rights of the owner or occupier are disturbed in any way, or damage to the land, or to crops, trees, buildings, stock or works therein or thereon is caused, the Government shall on demand pay to the owner or occupier such compensation as is fair and reasonable having regard to the extent of the prohibition, restriction, disturbance or damage and to the interest of the owner or occupier in the land.

(2) The provisions of subsections (4) and (5) of section 29 shall apply *mutatis mutandis* to a claim for compensation under this section.

36. Offences

A person who—

(a) enters upon a protected area or does therein any act or thing contrary to a prohibition or restriction of which notice has been given by the Cabinet Secretary under section 34(a); or

(b) commits a breach of any law made by the Cabinet Secretary or by the National Museums under section 34(d),

commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Part VII – MONUMENTS

37. Inspection and repair of monuments

A heritage warden, or any other person authorized in writing by the National Museums, may at any reasonable time—

(a) enter and inspect a monument; or

(b) make photographs, measurements, drawings or other records of particulars of a monument; or

(c) if so required by the National Museums carry out, at the expense of the National Museums, repairs to a monument:

Provided that where a monument is inhabited, not less than one month's previous notice in writing shall be given to the occupier of the intention to carry out repairs thereto.

38. Acquisition of monuments and antiquities

The National Museums may purchase or take on lease or accept a gift or bequest of a monument or antiquity.

39. Guardianship of monuments

(1) The owner of a monument may, by written instrument, constitute the National Museums the guardian of the monument, if the National Museums agrees.

(2) The National Museums shall be the guardian of any monument which is the property of the Government or has no apparent owner.

(3) An instrument which constitutes the National Museums the guardian of a monument shall provide for the matters mentioned in section 40(2) as if it were an agreement under that section.

40. Agreements for protection or preservation of monuments

(1) The National Museums may enter into a written agreement with the owner of a monument and any other person or persons for the protection or preservation of the monument.

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

(a) the maintenance of the monument;

(b) the custody of the monument and the duties of any person who may be employed in connexion therewith;

(c) the occupation or use of the monument by the owner or otherwise;

(d) the restriction of the right of the owner or occupier to build or to do other acts or things on or near the site of the monument;

(e) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the National Museum to inspect or maintain the monument;

(f) the notice to be given to the National Museum in case the owner intends to offer the land on which the monument is situated for sale, lease or other disposal thereof, and the right to be reserved to the National Museum to have first refusal of any such sale, lease or other disposal;

(g) the payment of any expenses incurred by the owner or by the National Museums in connection with maintenance of the monument;

(h) the removal of the monument or any part thereof, subject to the provisions of this Act, to a place of safe custody;

(i) the duration of the agreement, with provision for earlier termination thereof by any party thereto;

(j) the procedure relating to the settlement of any dispute arising out of the agreement; and

(k) any other matter connected with the protection or preservation of the monument which is a proper subject of agreement between the owner and the National Museum.

(3) The terms of an agreement under this section may be altered from time to time with the consent of all parties thereto.

(4) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates through or under a party by whom on or whose behalf the agreement was executed.

(5) Any rights acquired by the National Museums or by the owner in respect of expenses incurred in maintenance shall not be affected by the termination of an agreement under this section.

41. Enforcement of agreements for protection of monuments

(1) If the owner or any other person who is bound by the terms of an instrument which constitutes the National Museums guardian of a monument under section 39(3) or of an agreement for the protection and preservation of a monument under section 40 refuses to do an act which is in the opinion of the National Museums is both necessary for the protection, preservation or maintenance of the monument and the responsibility of the owner or other person in accordance with the terms of the instrument or agreement, or neglects to do the act within such reasonable time as may be fixed by the National Museums, the National Museums may authorise any person to do that act and the expense thereof, if and so far as it is established to have been the responsibility of the owner or other person, shall be recoverable from him.

(2) If the National Museums establishes that the owner or occupier of a monument which is the subject of any such instrument or agreement intends to build or to do any other act or thing in contravention of the terms of the instrument or agreement, the High Court may grant an injunction to restrain that building or other act or thing.

42. Compulsory purchase of monuments

If the Cabinet Secretary considers that a monument is in danger of being destroyed, injured or allowed to fall into decay, he may acquire the monument by way of compulsory purchase under the provisions of the Land Acquisition Act (Cap. 295) but that power shall not be exercised—

(a) in the case of a monument which, or any part of which, is periodically used for religious observances;

(b) so long as the monument is under the guardianship of the National Museums as provided by section 39 or the subject of an agreement for its protection and preservation as provided by section 40; and

(c) if the owner of the monument is willing to constitute the National Museums guardian thereof as provided by section 39 or to enter into an agreement for its protection as provided by section 40 or to give, sell or lease to the Government or the National Museums the monuments on acceptable terms, and has executed the necessary instrument or agreement for that purpose within two months after being invited so to do.

43. Duties of National Museums to protect and maintain monuments

(1) A monument which is for the time being owned by the National Museums, or under the guardianship of the National Museums as provided by section 39, or the subject of an agreement

for its protection or preservation as provided by section 40, shall be properly maintained by the National Museums, except so far as its maintenance is, by such guardianship or agreement the responsibility of the owner of the monument or of any other person.

(2) The National Museums may enforce all obligations of the owner of the monument or of any other person to maintain it.

(3) When any such monument or any part thereof is used periodically for religious observances, the National Museums shall make due provision for the protection of the monument from pollution or desecration—

(a) by prohibiting entry therein, except in accordance with by-laws made with the concurrence of the persons in religious charge of the monument or part thereof, of any person not entitled so to enter by the religious usage of the sect or community by which the monument or part thereof is used; or

(b) by taking such other action the National Museums deems necessary.

(4) Subject only to any by-laws made under subsection (3) in respect of a monument or part thereof used for religious observances, and to the terms of any instrument whereby the National Museums has been constituted guardian or of any agreement for protection or preservation of a monument, the public shall have right of access to a monument referred to in subsection (1) on such conditions as regards payment, if any, and otherwise as the National Museums approves.

44. Power of National Museums to relinquish rights over monuments

Subject to the conditions of any instrument or other transaction, the National Museums may—

(a) where rights have been acquired by it in respect of a monument by virtue of a sale, lease, gift or bequest, relinquish those rights in favour of the person who would for the time being be the owner of the monument if those rights had not been acquired; or

(b) relinquish any guardianship which the Board has accepted under the provisions of this Act.

45. Offences

(1) A person who—

(a) destroys, removes, injures, alters or defaces or does any act that imperils the preservation of a monument;

(b) obstructs the exercise by a heritage warden or other duly authorized person of any of the powers conferred by section 37; or

(c) commits a breach of any by-laws regulating the entry of persons into a monument which is used for religious observances, or of any other condition of access to a monument,

commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment, and on conviction of an offence against paragraph (a) may be ordered by the convicting court to pay to the National Museums for the purpose of making good any damage caused by that offence such sum of money as may be found by that court to be necessary to defray the cost thereof.

(2) In the event of any threatened or continuing act contrary to subsection (1)(a) the High Court may on the application of the National Museums grant an injunction to restrain such act or its continuance.

Part VIII – ANTIQUITIES AND PROTECTED OBJECTS

46. Antiquities property of Government

(1) All antiquities which are lying in or under the ground, or on the surface of any land already protected under any law as a monument or being objects of archaeological, palaeontological or cultural interest are discovered in a part of Kenya after the commencement of this Act, shall be the property of the Government.

(2) The Cabinet Secretary may, on the recommendation of the National Museums, by notice in the *Gazette*, disclaim the ownership of any such antiquity.

47. Information concerning antiquities and protected objects

A person shall, if so required in writing by the National Museums, within such period, not being less than one month as may be specified by the notice, furnish the National Museums with full particulars of all objects in the person's possession which the person knows or has reason to believe to be antiquities or protected objects.

48. Prohibition of removal of antiquities and protected objects

The Cabinet Secretary may after consultation with the National Museums, by notice in the *Gazette*, prohibit removal, without a permit from the Cabinet Secretary, of a specified antiquity or protected object, or of a specified class or type thereof respectively, from the place where the antiquity or protected object or class or type thereof is then situated.

49. Prohibition of sales, etc., of antiquities and protected objects

(1) No person shall, without a permit from the Cabinet Secretary, sell or otherwise part with ownership or possession of a protected object.

(2) No person shall buy or take by way of exchange an antiquity unless he has been licensed by the Cabinet Secretary in consultation with the National Museums to deal in antiquities.

(3) No person shall sell or give by way of exchange an antiquity to a person who has not been licensed by the Cabinet Secretary in consultation with the National Museums to deal in antiquities.

(4) The provisions of this section do not apply to acquisition by the Government or by the National Museums of a protected object or antiquity by way of sale, exchange, gift, bequest or loan.

50. Compulsory acquisition of antiquities and protected objects

(1) If the Cabinet Secretary considers that an antiquity or protected object is in danger of being destroyed, injured or allowed to fall into decay, or of being unlawfully removed, the Cabinet Secretary may after consultation with the National Museums acquire the antiquity or protected object by way of compulsory purchase, on the grounds that acquisition is necessary in the interests of the utilization of the antiquity or protected object by preservation and display for the public benefit, subject to the prompt payment of full compensation as provided by section 75 of the Constitution.

(2) The power of compulsory acquisition under subsection (1) shall not be exercised if the owner of the antiquity or protected object is willing to deposit it with the National Museums by way of loan either permanently or for such period as the Cabinet Secretary deems necessary, and has executed the necessary agreement for that purpose within one month after being invited so to do.

51. Offences

A person who—

(a) without just cause fails to furnish the National Museums with full particulars of all objects in his possession which he knows or believes to be antiquities or protected objects, after being required in writing so to do within the period lawfully specified by a notice, as provided under section 47;

(b) wilfully destroys or damages an antiquity or protected object;

(c) removes an antiquity or protected object contrary to section 48; or

(d) sells or otherwise parts with ownership or possession of a protected object, or sells or buys or gives or takes by way of exchange an antiquity, contrary to section 49,

commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or twice the value of the antiquity or protected object concerned, whichever is the greater, or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Part IX – EXPORT

52. Conditions relating to export

(1) No monument or part thereof, nor any antiquity or protected object may be removed from Kenya unless its removal has been specially authorized by a provision in an exploration licence, or by an export permit issued by the Cabinet Secretary on the recommendation of the National Museums under this section.

(2) An application for an export permit shall be made in writing to the Cabinet Secretary, and shall contain a full description of the monument or part thereof, or antiquity or protected object in respect of which it is made, the reason for the proposed removal, the place to which and the person into whose care it is to be removed, and such further information as may be prescribed.

(3) Before issuing an export permit the Cabinet Secretary may cause an inspection to be made, and the monument antiquity or protected object to be sealed or placed in his custody.

(4) The Cabinet Secretary may issue an export permit subject to such terms and conditions as the Cabinet Secretary may deem fit, or may, without assigning any reason, refuse to issue any export permit in respect of a specified monument or part thereof, an antiquity, or a protected object.

(5) An export permit may in particular be made subject to all or any of the conditions that—

(a) the subject-matter thereof shall be deposited in a specified place and in the care of specified persons;

(b) the subject-matter thereof shall be returned to Kenya within a specific period; and

(c) a specified portion of the subject-matter thereof shall be surrendered to the National Museums, or be deposited with the National Museums by way of loan permanently or for a specified period.

53. Notice to Cabinet Secretary to acquire by compulsory purchase

(1) In the event of the Cabinet Secretary's refusal to issue an export permit for an object of historical value, or imposing conditions which the owner does not accept, the owner may by notice to the Cabinet Secretary within three months thereafter require the Cabinet Secretary, as an alternative to issuing an export licence, to acquire the object by way of compulsory purchase as provided by section 42.

(2) The Cabinet Secretary shall, within six months after receipt of a notice under this section, either grant an unconditional export licence in respect of the object or proceed without undue delay to acquire it by way of compulsory purchase.

54. Export through Customs port of entry

No monument or part thereof, antiquity or protected object shall be removed from Kenya otherwise than through a Customs port of entry; and the relevant export permit, or a copy of the relevant exploration licence certified by or on behalf of the Cabinet Secretary or the National Museums, as the case may be, shall be surrendered to a Customs officer before removal from Kenya is effected or allowed.

55. Offences

A person who—

(a) removes a monument or part thereof, an antiquity, or a protected object, from Kenya contrary to section 52 or section 54;

(b) fails to comply with any of the terms of conditions of an export permit; or

(c) obtains an export permit by an application containing information which the person knows to be false or incomplete in any material particular,

commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Part X – POWERS OF ENFORCEMENT

56. Inspection by the National Museums

(1) An authorized representative of the National Museums may at any time inspect work being done in connexion with a monument or object of archaeological or palaeontological interest, and may for that purpose without warrant enter any premises, and may order the cessation of any such work pending further order from the National Museums.

(2) The National Museums shall report to the Cabinet Secretary any such order for cessation of work and the reasons for the order.

57. Heritage wardens

(1) The Cabinet Secretary may by notice in the *Gazette* appoint persons recommended by the National Museums to be heritage wardens for the purpose of enforcing this Act.

(2) A heritage warden appointed under subsection (1) may, with leave of the Director of Public Prosecutions be appointed prosecutor for purposes of prosecuting offences committed under this Act.

58. Power of heritage wardens to inspect

A heritage warden may at any reasonable time inspect an antiquity or protected object which is the subject of a notice under section 48, and may for that purpose with written authority from the National Museums enter premises, where the antiquity or protected object is or should be, and require the production of the antiquity or protected object or information as to its whereabouts.

59. Power of arrest

A police officer or heritage warden may—

(a) require any person whom the heritage warden has reason to believe has committed an offence under this Act to supply his name and address and reasonable evidence of his identity, and may without warrant arrest a person who refuses to comply with those requirements; and

(b) upon obtaining a warrant, at any time search any person or the premises occupied by any person whom he reasonably suspects of having acquired ownership or possession of a protected object, or of having bought or taken by way of exchange an antiquity, contrary to section 49, and seize anything which has been so acquired, bought or taken by way of exchange, together with any container thereof.

60. Power of customs officers

A customs officer may at any time without warrant search anything intended to be removed from Kenya, or any person intending to leave Kenya, if the officer reasonably suspects that thing or person of containing or carrying a monument or part thereof, or an antiquity or protected object, and seize anything which the officer believes to be a monument or part thereof or antiquity or protected object that is in process of being removed from Kenya contrary to section 52 or section 54, together with any container thereof.

61. Forfeiture to Government after seizure

(1) Anything seized under section 59 or section 60 shall as soon as possible be taken before a magistrate who—

(a) in respect of seizure under section 59, shall order forfeiture to the Government of the thing seized together with any container thereof if it is established that the thing seized is a protected object the ownership or possession of which has been acquired, or an antiquity that has been bought or taken by way of exchange, contrary to section 49; and

(b) in respect of seizure under section 60, shall order forfeiture to the Government of the thing seized together with any container thereof if it is established that the thing seized is a monument or part thereof, an antiquity or protected object that was in the process of being removed from Kenya contrary to section 52 or section 54,

whether or not the magistrate also convicts any person of an offence committed under this Act in relation to the same thing and imposes on that person any other penalty.

(2) Anything forfeited to the Government under subsection (1) shall, unless the Cabinet Secretary sees fit to restore it to its owner, be deposited with the National Museums.

62. Notices

The National Museums may attach to or erect on a monument or protected area such notice or notices as it deems necessary for the better protection of the monument or protected area.

63. Offences

A person who—

(a) obstructs an authorized representative of the National Museums, a police officer, heritage warden, or Customs officer, in the exercise of his powers or duties under this Act;

(b) fails without reasonable cause to comply with a lawful order or requirement of an authorized representative of the National Museums, a police officer, heritage warden, or Customs officer, under this Act; or

(c) destroys, removes or damages a notice attached or erected by the National Museums in exercise of the power conferred by section 62,

commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Part XI – GENERAL

64. Burden of proof

In any proceedings under this Act, where the Cabinet Secretary has certified in writing that in his opinion, on the advice of the National Museums, a thing is a monument, an object of archaeological or palaeontological interest, an object of historical interest or a protected object, as the case may be, the burden of proof shall lie upon any person who asserts the contrary.

65. Exemption from stamp duty

An instrument or agreement executed under this Act shall be exempt from stamp duty chargeable under the Stamp Duty Act (Cap. 480).

66. Rules

After consultation with the Board, the Cabinet Secretary may make rules for carrying out any of the purposes of this Act, and without prejudice to the generality of the foregoing for all or any of the following purposes—

(a) prescribing conditions for the preservation and use of open spaces which may prescribe different conditions for different open spaces;

(b) prescribing conditions for the protection, preservation and alteration of national monuments;

(c) prescribing conditions for the protection, preservation, alteration and access to and use of protected buildings including the manner in which application may be made and consent given for any alteration, internal or external, to such protected buildings;

(d) prescribing conditions for the protection, preservation, alteration and access to and use of areas of natural heritage;

(e) prescribing the forms of, and conditions to be implied in exploration licences and export permits;

(f) regulating the management of a protected area;

(g) controlling the reproduction of objects of archaeological or palaeontological interest;

(h) licensing dealers in antiquities;

(i) prescribing penalties for breach of any such rules;

(j) prescribing the fees to be charged under this Act.

67. Licensing of museums

(1) No person shall operate a museum except in accordance with a licence granted by the Cabinet Secretary, which shall be subject to such terms and conditions as the Cabinet Secretary may think fit.

(2) An application for a licence in respect of an existing museum shall be made within six months of the coming into operation of this Act.

68. Regulations

The Cabinet Secretary may, on the advice of the National Museums, make Regulations—

(a) providing for the administration of any National Museum or for any separate activity engaged in under this Act;

(b) providing for the preservation of objects required for the purpose of any National Museum;

(c) regulating the conditions for the admission of members of the public to any National Museum; or

(d) generally for the carrying out of the objects and purposes of this Act.

69. [Spent]

70. [Spent]

Part XII – MISCELLANEOUS

71. [Spent]

72. [Spent]

73. [Spent]

74. [Spent]

75. [Spent]

76. [Spent]

77. [Spent]

78. [Spent]

79. [Spent]

80. [Spent]

81. [Spent]

SCHEDULE [s. 10]

PROVISIONS AS TO THE CONDUCT OF THE AFFAIRS OF THE BOARD

1. Meetings

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the Director-General may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The chairperson shall preside at every meeting of the Board at which he is present but in his absence, the vice-Chairperson shall preside and shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(5) In the event of the absence of both the chairperson and the vice-Chairperson, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the chairperson or the vice-Chairperson or the person presiding shall have a casting vote.

(7) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

2. The common seal

The affixing of the common seal of the Board shall be authenticated by the signature of the chairperson and the Director-General and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairperson and the Director-General:

Provided that the Board shall, in the absence of either the chairperson or the Director-General in any particular matter, nominate one member to authenticate the seal of the Board on behalf of either the chairperson or the Director-General.

3. Contracts and instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorised by the Board for that purpose.