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DEPARTMENT OF ARTS AND CULTURE

NO. 868

24 AUGUST 2018



an agency of the
Department of Arts and Culture

The South African Heritage Resources Agency (SAHRA) invite public comment (written submission or comments) on the draft Gazetted Regulations on the Restitution of Heritage Objects, by the Minister of Arts and Culture in terms of section 41 of the National Heritage Resources Act 25 of 1999 within 60 days of the publication of the notice in the Government Gazette Notice. Submissions/Comments may be forward to:

By email to either: Themba Monnye (tmonnye@sahra.org.za) or Cuan Hahndiek (chahndiek@sahra.org.za).

Alternatively, it may be delivered to:

SAHRA's Head Office in Cape Town, 111 Harrington Street, Cape Town, or the Satellite Office in Pretoria, 432 Paul Kruger Street, Pretoria, Attention: Mr Themba Monnye/Mr Cuan Hahndiek
111 Harrington Street
Cape Town, 8001

DRAFT REGULATIONS BY THE MINISTER OF ARTS AND CULTURE IN TERMS OF SECTION 41 OF THE NATIONAL HERITAGE RESOURCES ACT NO. 25 OF 1999

The South African Heritage Resources Agency has in terms of section 41 of the National Heritage Resources Act No 25 of 1999 made regulations set out in the Schedule to this Notice.

SCHEDULE

ARRANGEMENT OF REGULATION

CHAPTER I Definitions**CHAPTER II** Restitution of Heritage Objects**CHAPTER I****1. DEFINITIONS**

In these Regulations any word or expression which has been defined in the National Heritage Resources Act No 25 of 1999 shall have the meaning assigned to it in that Act.

- (1) **“Act”** means the National Heritage Resources Act No 25 of 1999;
- (2) **“Claimant”** means a community, person or body with a bona fide interest in a heritage resource held by or curated by a publicly funded institution;
- (3) **“Minister”** means the National Minister responsible for Arts and Culture;
- (4) **“Chief Executive Officer”** means the Chief Executive Officer of the South African Heritage Resources Agency;
- (5) **“Heritage resource”** means any place or object of cultural significance;
- (6) **“A heritage Object”** means any moveable property of cultural significance which may be protected that include:

- a) Objects recovered from the soil or waters of South Africa, including archaeological and paleontological objects and material, meteorites and rare geological specimens;
 - b) Objects to which oral traditions are attached or which are associated with living heritage;
 - c) Ethnographic art and objects;
 - d) Military objects;
 - e) Objects of decorative or fine art;
 - f) Objects of scientific or technological interest; and
 - g) Books, records, documents, photographic positives and negatives, graphic, film or video material our sound recordings, excluding those that are public records as defined in section 1(xiv) of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996).
- (7) “**SAHRA**” means the South African Heritage Resources Agency established in terms of section 14 of the Act;
- (8) “**Bona fide interest**” means a genuine and legitimate interest in a heritage resource.
- (9) “**Restitution**” shall mean the return of an object to the successful claimant who lost ownership of the object during a period in the history of South Africa, when ownership was denied.
- (10) “**Tribunal**” means an independent tribunal appointed by the Minister to mediate between the claimant and the institution regarding the future of the heritage resource in line with provisions of the Act.

CHAPTER II

2. RESTITUTION OF HERITAGE OBJECTS

- (1) A community, person or body with a bona fide interest may claim the restitution of a movable heritage resource which is part of the national

estate which is held by or curated in a publicly funded institution, the institution concerned must enter into a process of negotiation with the claimants regarding the future of the resource.

- (2) The claimant shall within 30 working days after having become aware of the existence of the heritage resource notify SAHRA of the existence of the heritage resource and its intention to lodge a claim for the restitution of the resource which is held by or curated in a publicly funded institution.
- (3) SAHRA shall be obliged to inform the institution within 21 working days from the date of receipt of the claimant's notice, informing the institution holding the heritage object that the claimant intends to lodge a claim for the restitution of the heritage resource held by or curated by it.
- (4) The affected institution must indicate whether they intend to contest any claim for the restitution or willing to negotiate with the claimant within a period of 21 working days after receipt of the notice of the claimant.
- (5) The claimant shall within 30 days lodge a formal claimant for restitution, after serving initial notification above.
- (6) The notification referred to in sub - regulation 2(3) –
 - (a) must clearly identify the heritage resource referred to in the notification of the claimant; and
 - (b) must be –
 - (i) headed by the words

**“NOTICE OF LODGMENT OF CLAIM FOR THE
RESTITUTION OF A HERITAGE RESOURCE”**,

in bold-faced, upper case letters at least 2 cm in height;

- (ii) in black lettering on the official letterhead of the heritage resources authority.
 - (c) must clearly indicate the date, time and venue for the enrolment of a meeting with the claimant and the institution concerned to enter into a process of negotiation regarding the future of the heritage resource.
- (7) The formal claimant referred to in sub-regulation 2(5)-
 - (a) must be accompanied by a copy of the notification referred in sub-regulation 2(3);
 - (b) establish the facts to rely on;
 - (c) submit motivation for the application of the restitution of the objects;
 - (d) submit assurance and proof that adequate feasible arrangement has been made for the transportation and storage of the objects, and it must be duly signed by the claimant or a duly authorized representative of the claimant.
- (8) The Chief Executive Officer must within 30 days after the issue of the notice referred to in sub-regulation 4(b) (i) appoint an independent committee, consisting of three experts, having expertise regarding the matter to facilitate the negotiations between the claimant and the institution regarding the future of the heritage resource.
- (9) The committee referred to in sub-regulation (8), must facilitate the negotiations referred to it by the Chief Executive Officer with the aim of finding a mutually satisfactory solution. The committee must have due regard to –

- (i) the bona fide interests of the parties concerned;
- (ii) section 5(4) and the spirit of compromise;
- (iii) the cultural significance of the heritage resource in question;
- (iv) heritage conservation principles; and
- (v) any other relevant factor which is brought to its attention by the claimant or the institution or a heritage resources authority.

3. **APPEAL PROCEDURE**

- (1) A community, person or body with a bona fide interest in a heritage resource held by or curated by a publicly funded institution may lodge an appeal to the Minister in terms of subsection (3) of section 41.
- (2) The appeal must be lodged with the Minister in duplicate within 30 days after the claimant or the institutions have failed to reach agreement regarding the future of the heritage resource.
- (3) Such appeal must clearly –
 - (a) indicate the name, identity number, residential and postal address and telephone number, and in the event of a juristic person, the institution's registration number, and where applicable the address of the registered post office, of the person or institution lodging the appeal;
 - (b) in the case of a conservation body making the claim on behalf of the claimant indicate the name of the professional body it is a member of and whether it has registered its interest with SAHRA in: –
 - (i) a geographical area, or
 - (ii) a category of heritage resources.

- (b) set out the grounds of appeal and refer to the heritage resource which were the subject of negotiations referred to in subsection (1) of section 41.
- (c) be considered by an independent tribunal appointed by the Minister within 21 working days of receiving the appeal.
- (d) The tribunal appointed by the Minister must with due regard to section 5(4) and the spirit of compromise –
 - (i) mediate between the parties concerned with the aim of finding a mutually satisfactory solution; and
 - (ii) in the absence of agreement between the parties concerned, make a final decision on the future of the resource, including any conditions necessary to ensure its safety, the conditions of access of the claimants or the institution or any other interested party to the resource, or any other appropriate conditions.