

Report on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

BOTSWANA

I. Information on the implementation of the UNESCO Convention of 1970

1. Ratification of the Convention

Botswana has not ratified the 1970 Convention. Botswana is not currently considering ratification.

2. Implementation in the national legal system and in the organization of services

(a) References of the principal national regulations adopted in order to implement the 1970 Convention.

As the Convention is not ratified, no explicit national regulation stands to mention.

(b) Definition of "cultural property" used by the national laws

By inference, the term "Cultural Property" is covered under the following statutes: the Monuments and Relics Act (Cap 59:03) for the protection of monuments and archaeological sites; the Industrial Property Act (Cap 68:03) for the registration of patents; two acts in accordance with CITES, the Wildlife Conservation Act (Cap 38:01) for the protection of flora and fauna, and the Forest Act (Cap 38:03) for the preservation of forests; and the National Archives and Records Services Act (Cap 59:04) for the preservation of old publications and archives.

(c) Specialized units

Botswana is party to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict as of January 2002, the 1972 Convention for the Protection of the World Cultural and Natural Heritage as of February 1999, the 2001 Protocol on Culture, Information, and Sports in the Southern African Development Community Region as of August 2001, the 2003 Convention for the Safeguarding of Intangible Cultural Heritage as of September 2009, and the Statutes of the International Centre for the Study of the Preservation and Restoration of Cultural Property as of November 2001.

(d) Administrative coordination

(e) Working Meetings

The Archeology and Monuments Division is particularly charged with protecting national heritage. The Salvage Unit of the Archaeology Division conducts preemptive impact assessment of development, which has led to the discovery and protection of culturally significant heritage sites. The Natural History and Ethnology Divisions are charged with implementing the aforementioned 2001 Monuments and Relics Act. Such are examples of the coordination and cooperation between respective administrative divisions.

3. Inventories and identification

(a) Inventories

Objects collected at archaeological sites are documented on a recording form that includes the name, number, type, and location of the site. These forms are documented first manually at the Botswana National Museum Archaeological Research Laboratory, then digitally and electronically using a database specifically designed for archaeological documentation.

(b) Definition of "cultural property" and "national treasures"

“Cultural Property” is not explicitly defined as covered by international conventions. There is no such list of “national treasures” provided.

(c) Reference to the Object ID standard

All objects recovered from sites are assigned a unique accession code that identifies its site of origin, its composition material(s), and its laboratory storage location.

(d) Systems to combat theft and to train staff

All archaeological researchers are typically charged with documenting heritage sites and the objects found there. Museum curators, too, are responsible for a systematic recording of sites and collections.

4. Archaeological excavations

(a) Basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force

Regulations are articulated in Section 16 of the aforementioned Monuments and Relics Act. The act stipulates that researchers must have a permit issued by the Secretary of the relevant Ministry before archaeological excavation may begin. They must also sign a Memorandum of Understanding with the Botswana National Museum, as well as be accompanied on site by museum staff, who ensure the terms of the permit are observed. All excavated objects are placed at the National Museum. Researchers who wish to remove objects from the country must obtain a permit from the museum director, shoulder all associated costs of shipping and insurance, and provide photographs, plans, and possible publications. Those found to conduct research in a manner contrary to which they are permitted may be subject to fine and imprisonment. The National Museum employs the Salvage Unit of the Archaeology Division to assess the impact of future development on the cultural value of a given site.

(b) Illegal excavations

Aside from two isolated instances – one in which a man was fined for conducting illegal excavation in the Tsodilo world heritage site in the 2000s, and another in which an historic grave was vandalized at the Basotho Kop cultural landscape in 2009 – illegal excavation does not pose a recurring problem. Due to developmental projects that proceed without proper assessment from the Archaeology Division, sites have been destroyed. Nevertheless, this is more a reflection of ignorance of the Monuments and Relics Act than an excavation intent on illicit trade of cultural materials.

5. Monitoring of the export and import of cultural property

- (a) Estimate of the scale of the illicit export or import of cultural property (statistics)
- (b) Problem of the illicit export of cultural property
- (c) Main rules for monitoring the export and import of cultural property

No statistical data on the scale of the illicit export or import of cultural property exists. The exchange of cultural property is monitored according to the following regulations: For importation, the Collections Manager of the Archaeological Division may borrow artifacts and goods provided that such goods are accompanied by a written loan agreement from the lending institution, a description and identifying number, a digital image, an assessment of the condition of the object, and contact information of the lending institution and/or relevant individuals. Borrowed artifacts are subject to similar conditions that govern the National Museum collections and the storage capacity of the borrowing institutions. For exportation, artifacts may be loaned for research, education, and exhibition for a maximum of two years - with exceptions made under special circumstance – to individuals and institutions that have a research permit and are affiliated with the National Museum or another educational institution of Botswana. Loans may not be transferred from the borrower to a third party. To avoid destructive measures, a small sample of the object may be loaned where complete transference would threaten its integrity. Expenses for transportation and handling are the responsibility of the borrower. Photographs are for record and

research purposes and may not be reproduced without permission of the National Museum. Documentation regarding the export and import of objects is kept on file. The permanent collections of the National Museum are maintained and monitored by climate control and surveillance security.

- (d) Rules provided for the restitution of illicitly imported cultural property
- (e) Obstacles encountered in securing the restitution of illicitly exported cultural property
- (f) Circumstances in securing the restitution of a stolen cultural object

The rules do not provide for the restitution of illicitly imported cultural property.

6. System for trade-in, acquisition, ownership and transfer of cultural property

(a) Description of the cultural goods market in the country (financial volume of the market, number and turnover of auction houses including via the Internet).

(b) Rules governing trade in cultural goods, measures in place for such trade (maintenance of a police register), in particular through the Internet (reference to the basic measures proposed by UNESCO, INTERPOL and ICOM)

(c) Existing Measures to control the acquisition of cultural property

(d) Existing legal system concerning ownership of cultural property:

(e) Special rules on the transfer of title deeds in respect of cultural property

7. Bilateral agreements

(a) Bilateral agreements concluded with other countries on the import, export and return of cultural property

(b) Conditions settled by the importing country with regard to the admissibility of requests for restitution from a country of origin

(c) Administrative aid or any other type of cooperation with neighboring countries, particularly in respect to police and customs services?

Botswana has concluded a number of Memoranda of Understanding (“MOU”) for cooperation in the area of culture; however, no such memorandum covers the issues of the import, export, and return of cultural property.

II. Code of ethics, awareness raising and education

1. Ethical standards

(a) Application of the UNESCO International Code of Ethics for Dealers in Cultural Property and the ICOM for museums

2. Awareness raising and education

(b) Dissemination of the “One hundred missing objects” series and the ICOM Red Lists

(c) Description of activities carried out to raise the awareness of the authorities and educate the public, children in particular, regarding the serious damage that can be caused by illegal excavations, theft of cultural property and illegal export.
How far can UNESCO contribute to these activities?

III. Cooperation with other international and regional agencies

Police

(a) State of national cooperation with INTERPOL. Specialized police services to whom the heritage officials can call on for enquiries, legal proceedings and punitive measures

(b) Check on the INTERPOL database on stolen objects when a cultural object is stolen. Transmission of information on the persons implicated in the theft of cultural property

(c) Specific training program for members of police services

(d) Punishment of fraud and theft related to cultural property via criminal law provisions. Specialized judges in this field

(e) Cooperation with the United Nations Office on Drugs and Crime (UNODC)

Customs

(f) Status of cooperation with the World Customs Organization. Specialized customs services which could assist heritage officials in preventing the illicit export of cultural property

(g) Specific training program for members of the customs administration

(h) Reference to the UNESCO-WCO Model Export Certificate for Cultural Objects

European Union - Application of the Council of the European Communities Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State

IV. Other legislative, legal and administrative measures taken by the State

1. Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

Botswana has not ratified the 1995 Convention. Botswana is currently not considering ratification.

2. Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Botswana is not involved in the work of the UNESCO Intergovernmental Committee.

3. UNESCO Database of National Cultural Heritage Laws – contribution and update

Botswana has not contributed to the database, nor has it confirmed its content of historical and existing laws and regulations.