

Law N°024-2007 RELATING TO CULTURAL HERITAGE PROTECTION IN BURKINA FASO

AS/HO
BURKINA FASO
Unity-Progress-Justice

Decree N°2007-816 / PRES
Promulgating the law n°024-
2007/AN OF 13TH November 2007
relating to the protection of cultural
heritage in BURKINA FASO

**THE PRESIDENT OF FASO,
PRESIDENT OF THE COUNCIL OF MINISTERS**

Considering the constitution;
Considering the letter n°2007-083/AN/PRES/SG/DGSL/DSC of 21st November 2007 of the president of the national Assembly transmitting for promulgation the law n°024- 2007/AN of 13th November 2007 relating to the protection of cultural heritage of Burkina Faso;

DECREES

Article 1: Is promulgated the law n°024- 2007/AN of 13th November 2007 relating to the protection of cultural heritage of Burkina Faso;

Article 2: The present decree will be published in the Official Newspaper of Faso

Ouagadougou, 3rd December 2007

Blaise COMPAORE

THE NATIONAL ASSEMBLY

Considering the Constitution;

Considering the Resolution n° 001-2007/AN of 4th June, 2007 relating to Members of Parliament's Mandate validation;

Considering the order n°85-049/CNR/PRES of 29th August, 1985 relating to cultural heritage protection,

deliberated in its session of 13th November, 2007 and adopted the law with the following content:

TITLE I: GENERAL PROVISIONS

CHAPTER I: OBJECT AND OBJECTIVE

Article 1:

This law sets the rules of cultural heritage protection in Burkina Faso.

Article 2:

Protecting cultural heritage aims at safeguarding and protecting it.

CHAPTER II: DEFINITIONS

Article 3:

According to the terms of this law, is meant by cultural heritage the whole cultural, natural, movable, immovable, immaterial, public or private, religious or profane properties whose preservation or conservation presents a historical, artistic, scientific, legendary or picturesque interest.

Article 4:

According to the terms of this law, is meant by:

-movable cultural heritage, the movable properties which can be moved without causing any damage to them and to their environment;

-immovable cultural heritage, the properties that, either by nature or by destination can't be moved without causing damage to them and to their environment;

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Are mainly comprised in this category the monuments and the sites as well as the stations and ancient deposits, archaeological and historical properties, ethnological properties, groups of architectural buildings, immovable works of art, collections and rare zoological, botanical and mineralogical specimens, objects of paleontological interest.

- **immaterial cultural heritage**, the practices, representations, expressions, knowledge and skills as well as instruments, objects, artefacts and cultural landscapes, connected to them that communities, groups, and in some cases, individuals recognize as part of their cultural heritage.

- **natural cultural heritage**, the natural monuments, geological and physiographical formations and natural sites with cultural significance and whose components are enumerated below:

- the natural monuments made of geological and physiological formations or groups of such formations with an outstanding scientific and aesthetical value;
- the geological and physiographical formations and strictly delimited areas used as habitats for animal and plant endangered species with outstanding scientific and conservation value;
- natural sites or natural areas strictly delimited with outstanding scientific, conservation and natural beauty value;
- **owner**, the person holding all the prerogatives on a cultural property;
- **possessor** , the person with material control over one property, regardless of any title that might justify it;
- **area owner**, the person with property rights on buildings and plantations on a plot of land.

TITLE II: PROTECTION OF CULTURAL HERITAGE

CHAPTER I: COMMON PROVISIONS

Article 5:

The State and its dismemberments, and to some extent, the grassroots populations concerned are responsible for protecting and safeguarding the cultural heritage.

Article 6:

Protection comprises the whole measures aiming at defending cultural properties, as defined in article 3 of this law, against:

- Destruction;
- Transformation;
- Alienation;
- Anarchical and/or illicit excavations;
- Illicit imports and exports;
- Despoilment.

Article 7:

It's the duty of the State to proceed to the realisation of the inventory and constitutive classification of the cultural heritage.

CHAPTER II: THE REGISTRATION TO THE INVENTORY

Article 8:

The listing in the inventory consists in registering the movable, immovable and immaterial properties belonging to the State, local authorities, communities, associations or natural person or legal entity, that without any need for immediate classification, present enough interest for their preservation as regards history, art, thought, science, technique and other cultural aspect.

Article 9:

Registering in the inventory is pronounced by decision taken by the competent authority that notifies to the area owner, possessor, holder or the user of the property within forty five days. The decision to register is debarred after such deadline.

Article 10:

Registering in the inventory cancels the prohibition for the persons mentioned in article 9 of this law, to undertake, without first obtaining the competent authority's permission, any alteration of these places or objects or any works apart from the normal conservation or habitual exploitation.

The competent authority must react within sixty days.

Article 11:

Registering helps to prevent the exportation of movable cultural properties listed in the conditions stipulated in articles 29 and 30 of this law.

Article 12:

When parcelling or removing works of a listed monument are destined to use separately, alienate or transfer the removed materials and when these works are concerned by the sixty days' notice stipulated in article 10 of this law, the competent authority must, before this deadline expires, notify the owner or area owner of his/her objection to such works. The objection means the interdiction to undertake the planned works under the registration period, which can be extended to one hundred and eighty days.

Article 13:

When the works defined in the previous article will not have been concerned by a former authorization request and as soon as the competent authority is informed about them, the competent authority must immediately order such works to be stopped and the area to be restored at the offenders' expense. In such a situation, the duration of the registration in the natural and cultural heritage list is of course extended till the area is fully reconstructed and, in any case, three years maximum.

Article 14:

Alienating totally or partially a registered building is free, on condition that the bill of sale or deed of gift explicitly mentions the relating protection measure and servitudes and a true certified copy be sent to the office in charge of cultural heritage protection.

Article 15:

Any sale or gift regardless of the article 14 aforementioned is null and of no effect.

CHAPTER III: CLASSIFICATION AND DECLASSIFICATION

Section I: CLASSIFICATION NOTION AND PROCEDURE

Article 16:

Classification is an act used by the State, through the registration of cultural properties in a register created for that purpose, to impose on the proprietor or user of the said properties, servitudes forbidding use or possession.

Article 17:

The cultural properties so defined in article 3 of this law can be classified or proposed for classification.

It's the same thing for properties to be necessarily classified with the view to isolating or cleaning up a monument that is or to be classified.

The classification proposal is notified To Whom It May Concern; it becomes null and void if within three hundred and sixty five days the classification is not pronounced or notified.

Cultural properties can be classified either through negotiation with the holders or unilateral decision of the authorities.

Article 18:

The classification of any cultural property is pronounced by decree on the advice of the committee set up for that purpose.

The competent authority notifies the proprietor, holder, user or landowner of the classification.

Section II: Classification effects

Article 19:

Classification results in putting a cultural property in the State's heritage.

A classified property cannot be altered or much modified.

The classification comes into effect from the day the proprietor or holder of the object was notified.

The classification effects attached to the property are inviolable in any possession circumstance.

Whoever transfers a classified property must, before the end of the transaction inform the buyer for fear of nullity.

Article 20:

A classified property belonging to a moral entity governed by public law cannot be transferred without the competent authority's explicit authorisation.

Article 21:

The monuments recommended for classification or classified cannot be partly or totally demolished or liable to repairing or restoration works or modified without former authorisation of the department in charge of cultural property protection that sets the conditions and monitors the execution.

The State can pay for works that are necessary to the conservation of classified monuments belonging to private individuals. To that end, it can ex officio take possession of the areas and objects for the whole duration of the works.

Article 22:

When works defined in article 12 of this law have been undertaken on a monument recommended for classification or classified regardless of the article 2 of this law, such works can be interrupted and the restoration to its former shape will be ordered like for registered monuments.

In addition, when the order for reconstitution is of no effect, the expropriation of the vestiges can be legally decided without any indemnity.

Article 23:

The alienation of the materials removed from a monument recommended for classification or classified, the same as for any contract aiming to transfer to a third party the possession or holding of such materials are null and of no effect.

The third parties are jointly responsible with the proprietors or the area possessors for positioning back such materials. They can't claim any indemnity from the State.

Article 24:

No new building can be either set up either in a classified area or against a classified building without explicit authorisation by the competent authority in charge of cultural property protection.

Legal servitudes aiming at damaging buildings are not applicable to classified monuments.

It's forbidden to post bills or set up advertisement systems on classified monuments and eventually in the legally delimited neighbourhood in each specific case.

No new buildings should be set up in any classified area within an urbanisation plan.

Article 25:

Classification administrative acts determine the conditions for amicable classification.

In case the proprietor or the landowner does not consent, the classification is ex officio decided. Payment or indemnification may be used to compensate the resulting prejudice.

The request for indemnification must be sent to the administration within one hundred and eighty days from the notification date for the classification act (notification,) for fear of foreclosure. Any conflict that may arise from the negotiation must be notified to the county court, in the jurisdiction of which, the building is or the furniture is held.

Article 26:

The State can expropriate, in conformity with relating legislation, for public use, classified buildings, as well as buildings the acquisition of which is necessary to isolate, extricate or clear a cultural property.

Article 27:

The declaration of public utility legally results in the classification of the building in question.

However, the indemnity to be paid, in conformity with the article 25 of this law, may be claimed and obtained only if in the declaration year, the private agreement report is not issued or if the legal decision of expropriation of the incriminated thing is not made official yet.

Article 28:

No building, classified or recommended for classification can be taken into account in an investigation for expropriation for public utility or in a special zone land development unless it has been previously declassified or if the recommendation for classification hasn't been notified because of the priority given to the planned land development on cultural basis; there is no exception unless such an operation, in no way, compromises the cultural property conservation and preservation.

Article 29:

Is prohibited the export of cultural movable properties which have been classified, recommended for classification or registered on the inventory list.

The export can be exceptionally authorized by the minister of culture with the view to lending them for the duration of an exhibition organised by a foreign State or with its guarantee, every time when Burkina Faso can draw some cultural benefit.

Article 30:

Is liable to previous authorisation by the competent department, the export of any art object, including recent handicraft objects.

Article 31:

In any case, and even if the answer request for export is positive, the State, on its own or on other public moral entity's own, can claim the objects mentioned in articles 29 and 30 of this law, for the payment of an amicably fixed price or on expert's advice.

The competent department notifies the proprietor of their intention to acquire the object in case of expropriation, and immediately takes possession of the object for a description document accepted by both parties. The State loses the retention right after ninety days from the day the price is fixed.

They must then pay, consign the price or give up the claim.

When the objects mentioned in articles 29 and 30 of this law are put on auction sale, the State, through a duly mandated agent can, once the auction is over, whether it has taken part in it or not, get the object or make use of its pre-emptive right within ninety days. The price to pay to the public officer is the auction sale price increased by the taxes amount.

Section III: The declassification

Article 32:

The declassification consists in subtracting from classification effects a previously classified cultural or natural property.

The declassification is pronounced by decree on the advice of the national Committee in charge of cultural and natural properties.

TITLE III: SAFEGUARDING CULTURAL HERITAGE

Article 33:

Safeguarding cultural heritage as defined in article 3 of this law is effective through the creation of museums, regulation of archaeological excavations and development of cultural heritage.

Article 34:

In the framework of cultural and natural heritage protection, conservation and development, a fund will be created by decree taken in cabinet meeting.

CHAPTER I: MUSEUMS

Article 35:

Museums are in charge of safeguarding, conserving and developing cultural heritage and other material evidences.

Article 36:

The museums creation, organisation and functioning methods will be fixed by decree taken in cabinet meeting.

CHAPTER II: EXCAVATIONS AND DISCOVERIES

Article 37:

Excavations or boring with the view to looking for monuments or objects likely to interest prehistory, history, art or archaeology all over the national territory are liable to former authorisation.

Excavation conditions and results processing are fixed by decree (in) taken in cabinet meeting.

Article 38:

The archaeological aspect must be included in the study fees of big building works or land development, the nature of which is defined by decree taken in cabinet meeting.

CHAPTER III: DEVELOPING IMMATERIAL CULTURAL HERITAGE

Article 39:

The State must ensure and guarantee the development of immaterial cultural heritage mainly by:

- making the inventory of the immaterial cultural heritage;
- classifying the significant manifestations of the immaterial cultural heritage on the list of the national heritage;
- creating frameworks to motivate know-how transmission;
- sensitizing communities about the importance of immaterial cultural heritage.

TITLE IV: NATIONAL COMMITTEE FOR NATURAL AND CULTURAL PROPERTIES

Article 40:

A National Committee for Natural and Cultural Properties (NCNCP) was created, and its responsibilities, organisation and functioning are fixed by decree taken in cabinet meeting.

TITLE V: SANCTIONS

Article 41:

Is liable to two-month to two-year jail penalty and a fifty thousand (50 000) to one million five hundred thousand (1 500 000) francs fine or one of these two penalties only, anyone who will have:

- altered a classified monument or undertaken on such monument works different from maintenance and current exploitation ones;
- alienated a monument which is classified or recommended for classification regardless of the obligations to inform and notify, stipulated in article 19 of this law.
- infringed the prescriptions in article 37 of this law.

Article 42:

Is liable to six-month to three-year jail penalty and a fifty (50 000) to two million (2 000 000) francs fine or one of these two penalties only, anyone who will have:

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-neglected to respect the classification effects stipulated in articles 19, 20 and 21 of this law applicable to monuments which are classified or recommended for classification or in the process of expropriation;

-exported or tried to export, without former authorization, one of the objects aimed at in article 30 of this law.

Article 43:

Is liable to one to five-year jail penalty and a nine hundred thousand (900 000) to one five million (5 000 000) francs fine or one of these two penalties only, anyone who will have exported or tried to export an object which is classified, recommended for classification or registered.

In addition, the confiscation of the incriminated object will be pronounced.

The same penalties will be applicable to the proprietor of one of these objects aimed at in articles 29 and 30 of this law, who after notification provided for in article 31 of this law or after being informed, will have got rid of the object during the retention right period. The same penalties will be applicable to the proprietor of one of these objects aimed at in articles 29 and 30 of this law, who will fraudulently taken again possession of this object during the retention right period.

Article 44:

Without prejudice to damages stipulated in article 21 of this law, anyone who undertakes cleansing or parcelling works on a monument that is classified or recommended for classification or undertakes the same works on a registered monument without former authorization or regardless of the prohibition he was notified of, is liable to a jail penalty and a fine determined in the previous article.

When the reconstitution of the monument by putting back the removed materials is impossible, the penalties aforementioned in article 43 are applicable to the offenders.

Article 45:

Is liable to five to ten-year jail penalty and a nine hundred (900 000) to ten million (10 000 000) francs fine or one of these two penalties only anyone who will have stolen or tried to steal cultural properties from museums, altars, shrines and other sacred places.

Article 46:

Is liable to penalties provided for in article 45 above, anyone who will have demolished, pulled down, mutilated or damaged a monument or a site that is classified or recommended for classification.

Article 47:

Anyone who will have knowingly alienated or acquired discoveries regardless of the article 37 of this law will be sentenced, without prejudice to all damages, to one to five-year prison and to a fine standing for the double of the value of the discovery which shouldn't be less than five million (5 000 000) CFA francs or one of these two penalties only.

Article 48:

The offences will be noticed through reports by officers of the criminal investigation department and by any qualified public authority.

TITLE VI: FINAL PROVISION

Article 49:

This law, that abrogates any former contradictory provisions, will be executed as a State law.

Done and deliberated in public session
in Ouagadougou, 13th November, 2007

Kanidoua NABOHO

First Vice-President,
acting for the President of the National
Assembly

Idrissa TANDAMBA,
the secretary of meeting