

REPUBLIC OF SOUTH AFRICA

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# WORLD HERITAGE CONVENTION BILL

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*(As amended by the Portfolio Committee on Environmental Affairs and Tourism (National Assembly)) (The English text is the official text of the Bill and the Afrikaans text is the official translation)*

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(MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM)

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# BILL

To provide for—

the incorporation of the World Heritage Convention into South African law; the enforcement and implementation of the World Heritage Convention in South Africa; the recognition and establishment of World Heritage Sites; the establishment of Authorities and the granting of additional powers to existing organs of state; the powers and duties of such Authorities, especially those safeguarding the integrity of World Heritage Sites; the establishment of Advisory Boards and Executive Staff Components of the Authorities; integrated management plans over World Heritage Sites; land matters in relation to World Heritage Sites; and financial, auditing and reporting controls over the Authorities; and to provide for incidental matters.

## PREAMBLE

**Recognizing** that the cultural heritage and the natural heritage are among the priceless and irreplaceable possessions, not only of the Republic, but of humankind as a whole;

**Acknowledging** that the loss, through deterioration, disappearance or damage through inappropriate development of any of these most prized possessions, constitutes an impoverishment of the heritage of all the peoples of the world and, in particular, the people of South Africa.

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:

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## CHAPTER I

## DEFINITIONS, OBJECTIVES, PRINCIPLES AND IMPLEMENTATION

## Definitions

1. In this Act, unless inconsistent with the context—
  - (i) “Advisory Board” means the Advisory Board referred to in section 14; 5
  - (ii) “Authority” means an existing Authority which is declared as an authority in terms of section 8 or an Authority which is established in terms of section 9;
  - (iii) “Convention.’, as well as “World Heritage Convention”, means the Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted by the General Conference of United Nations Education, Scientific and Cultural organization (Unesco) on 16 November 1972 and ratified by the Republic on 10 July 1997, a copy of which is set out in the Schedule; 10
  - (iv) “cultural heritage” has the meaning given to it in Article 1 of the Convention;
  - (v) “Department” means the Department of Environmental Affairs and Tourism; 15
  - (vi) “ecosystem” has the meaning given to it in section 1 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
  - (vii) “environment” has the meaning given to it in section 1 of the National Environmental Management Act, 1998;
  - (viii) “establishment date” means the date determined by the Minister in terms of section 8 or 9; 20
  - (ix) “Executive Staff Component” has the meaning given to it in Chapter 111;
  - (x) “historically disadvantaged persons” means persons or categories of persons that were unfairly discriminated against on the basis of past legislation, policies, prejudice and stereotypes; 25
  - (xi) “integrated management plans” has the meaning given to it in Chapter IV,
  - (xii) “MEC” means the Member of the Executive Council responsible for environmental, cultural or heritage affairs, as the case may be, in the province concerned;
  - (xiii) “Minister” means the Minister of Environmental Affairs and Tourism; 30
  - (xiv) “natural heritage’ has the meaning given to it in Article 2 of the Convention;
  - (xv) “Operational Guidelines” means the operational guidelines for the implementation of the Convention prepared by the World Heritage Committee;
  - (xvi) “pollution” has the meaning given to it in section 1 of the National Environmental Management Act, 1998; 35
  - (xvii) “prescribe.’ means prescribed by regulation in terms of this Act;
  - (xviii) “private land” means any land that is not State land or provincial land;
  - (xix) “regulation.’ means a regulation made in terms of this Act;
  - (xx) “sustainable development” has the meaning given to it in section 4(2) of this Act; 40
  - (xxi) “this Act” includes the Convention, regulations and any notice issued under this Act;
  - (xxii) “World Heritage Committee” means the World Heritage Committee established in terms of Article 8 of the Convention;
  - (xxiii) “World Heritage Fund” means the World Heritage Fund established in terms of Article 15(1) of the Convention; 45
  - (xxiv) “World Heritage List” means the World Heritage List established in terms of Article 11(2) of the Convention;
  - (xxv) “World Heritage Site” means any place in the Republic which—
    - (a) has been included on— 50
      - (i) the World Heritage List; or
      - (ii) the tentative list of the Republic referred to in Article 12 l(a)(i) of the Operational Guidelines, and is proclaimed by the Minister by notice in the *Gazette* to be a World Heritage Site; or 55
    - (b) upon the recommendation of the Minister, after consultation with the Minister concerned, and, if applicable, the relevant MEC, and subject to a resolution by Parliament, is identified as a special place of cultural heritage or natural heritage for management in accordance with this Act and is proclaimed by the Minister by notice in the *Gazette* to be a special 60 heritage site.

## Enactment of the Convention as part of South African law

2. The Convention is enacted into law in the Republic.

### Objectives of Act

3. The objectives of this Act are to—

- (a) provide for—
  - (i) the cultural and environmental protection and sustainable development of, and related activities within, World Heritage Sites; and
  - (ii) giving effect to the values of the Convention;
- (b) make the Convention part of South African domestic law and to create a framework to ensure that the Convention and the Operational Guidelines are effectively implemented in the Republic, subject to the Constitution and the provisions of this Act;
- (c) promote, manage, oversee, market and facilitate tourism and related development in connection with World Heritage Sites in accordance with applicable law, the Convention and the Operational Guidelines in such a way that the cultural and ecological integrity is maintained;
- (d) ensure that everything done in terms of this Act conforms with the obligations of the Republic in terms of the Convention and the Operational Guidelines;
- (e) ensure the identification and transmission to future generations of the cultural and natural heritage of the Republic;
- (f) ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage of the Republic;
- (g) encourage investment and innovation in connection with World Heritage Sites;
- (h) encourage job creation in connection with World Heritage Sites;
- (i) promote the development of culturally, environmentally and, if applicable, economically sustainable projects in connection with World Heritage Sites; and
- (j) promote empowerment and advancement of historically disadvantaged persons in projects related to World Heritage Sites.

### Fundamental principles

4. (1) For purposes of this Act, the fundamental principles listed in the following paragraphs are recognised by the State and apply throughout the Republic to the actions of all organs of State and Authorities in relation to World Heritage Sites, subject to applicable law, including, without limitation, the National Environmental Management Act, 1998, and the National Heritage Resources Act, 1999 (Act No. 29 of 1999), but in the event of any conflict between the principles of this Act and the said Acts, the provisions of the said Acts prevail:

- (a) cultural and natural heritage management must be sensitive to the people and their needs and must equitably serve their physical, psychological, developmental, cultural and social interests;
- (b) development must be socially, culturally, environmentally and economically sustainable;
- (c) equitable access to World Heritage Sites must be pursued and special measures must be taken to ensure access thereto by historically disadvantaged persons;
- (d) the participation of all interested and affected parties in the governance of cultural and natural heritage must be promoted;
- (e) all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation;
- (f) participation by vulnerable and historically disadvantaged persons must be ensured;
- (g) decisions must take into account the interests, needs and values of all interested and affected parties;
- (h) community well-being and empowerment must be promoted through cultural and natural heritage education, the raising of cultural and natural heritage awareness, the sharing of knowledge and experience and other appropriate means;

- (i) the social, economic, cultural and natural heritage consequences of activities, including disadvantages and benefits, must be considered;
  - (j) decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with applicable law;
  - (k) there must be intergovernmental co-ordination and harmonisation of policies, 5 legislation and actions relating to the cultural and natural heritage;
  - (l) actual or potential conflicts of interest between—
    - (i) organs of state;
    - (ii) an organ of state and an Authority; or
    - (iii) Authorities. 10
 should be resolved through appropriate conflict resolution procedures and the principles of co-operative government in accordance with the Constitution;
  - (m) policy, administrative practice and legislation and the interpretation of existing legislation relating to the cultural and natural heritage must promote the integration of these resources in provincial, urban and rural planning and 15 social and economic development;
  - (n) global and international responsibilities relating to the cultural and natural heritage must be discharged in the national interest;
  - (o) the cultural and natural heritage is held in public trust for the people, the beneficial use of cultural and environmental resources must serve the public 20 interest and the cultural and natural heritage must be protected as the common heritage of the people; and
  - (p) sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, dolomitic land and ridges, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially 25 where they are subject to significant human resource usage and development pressure.
- (2) For the purposes of this Act, sustainable development of World Heritage Sites includes that—
- (a) the unnatural disturbance of ecosystems and loss of biological diversity are 30 avoided, or, where they cannot be avoided, are mitigated;
  - (b) pollution and degradation of the environment are avoided, or, where they cannot be avoided, are mitigated;
  - (c) the unnatural disturbance of landscapes and sites that constitute the cultural and natural heritage of the Republic is avoided, or, where it cannot be avoided, 35 is mitigated, and that the cultural and natural heritage of the Republic must be enhanced;
  - (d) waste is avoided, or, where it cannot be avoided, minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner;
  - (e) the use and exploitation of non-renewable natural resources is responsible and 40 equitable, and takes into account the consequences of the depletion of the resource;
  - (f) the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised; 45
  - (g) a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions;
  - (h) negative impacts on the environment and on the environmental rights of the people must be anticipated and prevented, and where they cannot be prevented, must be mitigated; 50
  - (i) cultural and natural heritage may promote reconciliation, understanding and respect, and contribute to the development of a unifying South African identity; and ‘
  - (j) cultural and natural heritage management must guard against the use of this heritage for purposes of threatening a culture based on equality and freedom 55 or for party political gain.

### Enforcement and implementation of Convention

5. The Minister is responsible for enforcing and implementing this Act and the Convention in the Republic, including—

- (a) after consultation with the relevant provinces and other organs of state concerned, submitting an inventory as described in Article 11 of the Convention;
- (b) publishing such particulars as may be prescribed of any new World Heritage Site in the *Gazette* within a reasonable period of time; 5
- (c) applying to the World Heritage Committee for international assistance in terms of Article 13 and Part V of the Convention;
- (d) entering into agreements in terms of Article 13 of the Convention;
- (e) making applications to the World Heritage Fund and overseeing the proper use of any financing obtained in terms of the Convention; 10
- (f) preparing reports as required by Article 29 of the Convention after due consultation with the provinces and organs of state concerned;
- (g) disseminating information related to the Convention and reports from Convention meetings;
- (h) initiating steps regarding research, education, training, awareness raising and capacity building; and 15
- (i) ensuring public participation.

### Identification and nomination of World Heritage Sites

6. (1) The Minister is responsible for the procedure relating to the nomination of World Heritage Sites in accordance with this Act, the Convention and the Operating Guidelines. 20
- (2) The Department or a body determined by the Minister must identify places of potential cultural or natural heritage and investigate the desirability of nominating such places for inclusion on the World Heritage List.
- (3) Any person may submit a proposal in writing to the Department or, if it is in existence, the body referred to in subsection (2), for a place in the Republic to be nominated for inclusion on the World Heritage List. 25
- (4) The Minister may determine the format and procedures for—
- (a) the proposal referred to in subsection (3);
  - (b) an investigation into such proposal; and 30
  - (c) the nomination of any place in the Republic for inclusion on the World Heritage List.
- (5) A written motivation for the declaration of a place as a World Heritage Site must be prepared and kept by the Department in accordance with the requirements of the Convention and the Operating Guidelines. 35

## CHAPTER II

### AUTHORITIES

#### Consultation prior to declaration or establishment of Authority

7. (1) The Minister must consult with the Minister of Arts, Culture, Science and Technology and with interested parties before acting in terms of section 8 or 9, which consultation must be, in the case of interested parties, in the form of public hearings and must include consultation with representatives from the relevant affected— 40
- (a) provinces;
  - (b) local governments;
  - (c) cultural authorities; 45
  - (d) nature conservation authorities;
  - (e) heritage authorities; and
  - (f) other organs of state.
- (2) The consultation with interested parties referred to in subsection (1) must be in a manner that the Minister considers to be appropriate, including— 50
- (a) calling on interested parties to participate in the public hearings referred to in subsection (1); and
  - (b) specifying particulars of the consultation process by notice in the *Gazette*, in at least two nationally distributed newspapers, appropriate local newspapers and radio stations. 55
- (3) The Minister must, after consultation in terms of subsection (1), but before acting in terms of section 8 or 9, if applicable, notify—

- (a) the owner of the area affected by the proposed action;
  - (b) the mortgage holder, the occupier and any other person with a registered interest in the area affected by the proposed action; and
  - (c) cultural, nature conservation, heritage and similar public interest bodies with an interest in the area affected by the proposed action. 5
- (4) The notification referred to in subsection (2) must be effected by notice in the *Gazette*, in at least two nationally distributed newspapers, appropriate local newspapers and radio stations.

#### Existing organ of state declared as Authority

8. Where an existing organ of state is already lawfully managing or involved in a World Heritage Site, the Minister may, after consultation with the relevant affected MEC or Minister, if applicable—

- (a) declare that such organ of state is an Authority under this Act and that any existing structure, board or committee of such organ of state is an Advisory Board or Executive Staff Component, as the case may be; 15
- (b) give or impose, by notice in the *Gazette*, such additional powers or duties referred to in section 13 to that organ of state in relation to that World Heritage Site.

#### Establishment of new Authorities

9. The Minister may, by notice in the *Gazette*, establish an Authority which is a juristic person with the capacity to sue and be sued in its own name, with so much of the powers and duties set out in this Act, as the Minister may determine. 20

#### Organs of Authorities

10. An Authority declared in terms of section 8 or established in terms of section 9 may consist of an Advisory Board or an Executive Staff Component or both, with such powers and duties referred to in sections 13 and 15(1), as the Minister may determine.

#### Name of Authority

11. The Minister may, by notice in the *Gazette*, determine a name for an Authority

#### Disestablishment of Authority and revocation of powers

12. (1) An Authority referred to in section 9 must only be disestablished in terms of 30 a resolution by Parliament.

(2) The Minister may, at any time, investigate the performance by an Authority of its powers and duties in terms of this Act, the Convention or the Operational Guidelines.

(3) As part of any such investigation, the Minister must afford the Authority the opportunity of refuting any allegations against it. 35

(4) If that investigation reveals that an Authority is not performing its functions properly, the Minister must submit a report to Parliament for consideration by the National Assembly and the National Council of Provinces.

(5) If the National Assembly and the National Council of Provinces pass a resolution amending, suspending, revoking or terminating the powers of such an Authority or disestablishing it, the Minister must give effect to such a resolution by notifying that Authority accordingly. 40

(6) Where an Authority is disestablished in terms of this section, the Minister must ensure that—

- (a) the assets of the Authority are protected; and 45
- (b) the resolutions of the National Assembly and the National Council of Provinces are published in the *Gazette* for public information.

#### Powers and duties of Authorities

13. (1) In the case where an Authority controls one or more World Heritage Sites, the Minister may, by notice in the *Gazette*, give some or all of the following powers to an Authority over one or more specified World Heritage Sites, namely to— 50

- (a) implement the Convention, including to ensure—
  - (i) the identification, protection, conservation, presentation and transmission of the cultural and natural heritage to future generations; and
  - (ii) that effective and active measures are taken for the effective protection, conservation and presentation of the cultural and natural heritage; 5
- (b) exercise all the powers reasonably necessary to fulfil the duties of an Authority spelled out in subsection (2);
- (c) liaise with relevant cultural, nature conservation and similar authorities on a local, provincial, national and, with the consent of the Department, international level; 10
- (d) conserve, manage, promote, facilitate and monitor cultural and natural heritage;
- (e) manage cultural and natural heritage in accordance with all applicable national and provincial legislation, policies and management plans;
- (f) negotiate land claims over— 15
  - (i) State land with claimants, in consultation with the Department of Land Affairs, in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), and settle any such claims, with the approval of the Minister for Agriculture and Land Affairs or his or her delegate; or
  - (ii) private land forming part of or affecting World Heritage Sites or land 20 affecting World Heritage Sites, with the owner, and settle any such claims;
- (g) enter into agreements, subject to section 217 of the Constitution, with any person for the provision of goods and services, including the performance of powers and duties of the Authority, but the Minister may prescribe the 25 procedure to be adopted in procuring and negotiating such agreements, or in any particular matter determine that an agreement requires his or her prior written approval;
- (h) acquire land or rights in land by contract, donation or otherwise;
- (i) charge fees, rent or other consideration for— 30
  - (i) any function it fulfils; or
  - (ii) any right it grants;
- (j) use for gain or reward any movable and immovable asset under its control, subject to all applicable law, where such asset is not required by the Authority for the fulfillment of its functions, but such movable and immovable property, 35 as listed in the nomination file for the World Heritage Site, may not be alienated, leased or encumbered without the prior written approval of the Minister;
- (k) undertake, or cause to be undertaken, research or investigations relevant to a World Heritage Site; 40
- (l) co-ordinate with—
  - (i) the relevant tribunals under the Development Facilitation Act, 1995 (Act No. 67 of 1995), if applicable; or
  - (ii) similar bodies or relevant planning authorities, on a national, provincial 45 and local level.
 in order to expedite sustainable development in World Heritage Sites and to ensure that development takes place in accordance with all applicable laws and procedures;
- (m) initiate, assist, comment on or facilitate any application under the Development Facilitation Act, 1995, or other applicable development, planning or 50 management law relating to or affecting a World Heritage Site;
- (o) with the consent of the Minister, perform any function, on contractually agreed terms that are fair in relation to the obligations imposed on an Authority, at the request of—
  - (i) a national government department; 55
  - (ii) an institution or statutory body;
  - (iii) another country;
  - (iv) a province;
  - (v) a regional council;
  - (vi) a local government; or 60
  - (vii) any other entity or person approved by the Minister;
- (p) employ persons or entities on a permanent or temporary basis;

- (q) make rules in connection with the World Heritage Site under its jurisdiction regarding such matters as the Minister may determine;
  - (r) establish committees and subcommittees and otherwise arrange its internal affairs in a manner it deems necessary;
  - (s) enter into contracts in an open and transparent manner regarding cultural development or nature conservation with a competent national, provincial or local government or private nature conservation entity, with the necessary administrative capacity and resources; and
  - (t) do all things incidental or reasonably necessary for the proper fulfilment of paragraphs (a) to (s).
- (2) An Authority has, unless the Minister prescribes otherwise, the following duties in connection with a World Heritage Site under its control, namely to—
- (a) develop measures for the cultural and environmental protection and sustainable development of, and related activities within, World Heritage Sites and to ensure that the values of the Convention are given effect to;
  - (b) promote, manage, oversee, market and facilitate tourism and related development in connection with World Heritage Sites in accordance with applicable law, the Convention and the Operational Guidelines in such a way that the cultural and ecological integrity are maintained;
  - (c) identify cultural and natural heritage that must be transmitted to future generations;
  - (d) take effective and active measures for the protection, conservation and presentation of the cultural and natural heritage;
  - (e) facilitate steps that encourage investment and innovation;
  - (f) facilitate programmes that encourage job creation;
  - (g) take measures to ensure that the values of the Convention are promoted;
  - (h) establish and implement the Integrated Management Plan;
  - (i) initiate steps regarding research, education, training, awareness raising and capacity building; and
  - (j) liaise with, and be sensitive to, the needs of communities living in or near World Heritage Sites.
- (3) In giving the powers referred to in subsection (1), the Minister must specify the powers which must be exercised by either the Advisory Board or the Executive Staff Component, or both, as the case may be.
- (4) The Minister may, by notice in the *Gazette*, publish model rules to be used as a guideline by Authorities.

### CHAPTER III

#### ADVISORY BOARD AND EXECUTIVE STAFF COMPONENT

##### Establishment of Advisory Board

14. (1) The Minister may, by notice in the *Gazette*, establish an Advisory Board for an Authority, subject to subsection (2) and section 8.

(2) Before the Minister establishes an Advisory Board in terms of subsection (1), the Minister must—

- (a) invite nominations by notice in the *Gazette* and in at least two nationally distributed newspapers; and
- (b) stipulate in such incitation the procedures to be adopted regarding such nominations.

(3) An Advisory Board may not have less than five and not more than nine members.

(4) The Minister must ensure that the Advisory Board is broadly representative and multidisciplinary, with members who may make a contribution towards the proper functioning of the Authority, and may include, without limitation, representatives from—

- (a) national Government;
- (b) provincial government departments and cultural or nature conservation authorities;
- (c) directly affected adjacent communities;
- (d) heritage bodies;
- (e) organised business;
- (f) affected adjacent tribal authorities;

- (g) nature conservation bodies;
- (h) cultural organisations;
- (i) non-governmental organisations;
- (j) scientific or academic expert bodies;
- (k) local authorities;
- (l) private landowners; and
- (m) international cultural or nature conservation bodies.

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### **Powers and duties of Advisory Board**

15. (1) With regard to the Authority for which an Advisory Board is established, the Advisory Board has the powers reasonably necessary to—
- (a) be responsible for the policy of, and general oversight over, that Authority;
  - (b) provide directions to the Executive Staff Component of that Authority;
  - (c) monitor the activities of the Executive Staff Component of that Authority to ensure compliance with this Act; and
  - (d) co-ordinate with Advisory Boards of other Authorities.
- (2) The Minister may give to an Advisory Board any of the powers referred to in section 13, in addition to the powers referred to in subsection (1).
- (3) The Minister may review decisions, actions and policies of the Advisory Board.

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### **Terms of employment of Advisory Board**

16. (1) The Minister may prescribe matters relating to the terms of employment of the Advisory Board including—
- (a) term of office, service conditions and remuneration of Advisory Board members;
  - (b) filling of vacancies on the Advisory Board and resignation or removal from office of Advisory Board members; and
  - (c) the size of the Advisory Board and the number of Advisory Board members required to constitute a quorum at a meeting.
- (2) The Advisory Board may delegate and assign any of its functions, subject to the approval of the Minister.

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### **Appointment of Executive Staff Component**

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17. (1) The Advisory Board must appoint an Executive Staff Component for an Authority.
- (2) The Executive Staff Component must be under the control and supervision of a Chief Executive Officer, who is nominated by the Advisory Board and appointed by the Minister.
- (3) The Advisory Board must ensure that the Executive Staff Component is broadly representative and multidisciplinary, with members qualified to make a substantial contribution towards the effective day-to-day and long-term functioning of the Authority, and may include members who are skilled in matters relating to—
- (a) finances;
  - (b) business acumen;
  - (c) cultural heritage;
  - (d) natural heritage;
  - (e) tourism;
  - (f) project management;
  - (g) marketing;
  - (h) community involvement; and
  - (i) legal matters.
- (4) The Minister may prescribe whether or not the Executive Staff Component and other employees of an Authority are subject to the provisions of, and the directives, rules and policies made under, the Public Services Act, 1994 (Proclamation 103 of 1994).
- (5) Where the Minister prescribes that the provisions, directives, rules and policies referred to in subsection (4) do not apply to an Authority, the Minister must, with the concurrence of the Minister of Finance, prescribe the conditions of employment applicable to the Executive Staff Component or other employees of an Authority, including, without limitation, regulations regarding vacation of office, resignation, removal from office and remuneration.

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### **Powers of Executive Staff Component**

18. ( 1 ) An Executive Staff Component has all the necessary powers to be responsible for the effective day-to-day management and functioning of an Authority.

(2) The Minister may, in addition to the powers referred to in subsection (1), give any power referred to in section 13 to an Executive Staff Component. 5

### **Terms of employment of Executive Staff Component**

19. ( 1 ) The Minister may prescribe matters relating to the functioning of the Executive Staff Component, subject to section 17(4), including—

(a) term of office, service conditions and remuneration of Executive Staff Component members: 10

(b) filling of vacancies on the Executive Staff Component; and

(c) the number of Executive Staff Component members required to constitute a quorum at a meeting.

(2) The Executive Staff Component may delegate and assign any of its functions.

## **CHAPTER IV**

15

### **INTEGRATED MANAGEMENT PLANS**

#### **Preparation and implementation of integrated management plans**

20. (1) Every Authority must prepare and implement an integrated management plan for the World Heritage Site under its control to fulfil Articles 4 and 5 of the Convention.

(2) An Authority must conduct its affairs in accordance with an integrated management plan. 20

#### **Harmonisation of integrated management plans**

21. In preparing an integrated management plan, an Authority must have due regard for, and seek to integrate and harmonise that integrated management plan with the requirements of the Convention and the Operational Guidelines, and with applicable— 25

(a) plans in terms of the National Environmental Management Act, 1998, the National Heritage Resources Act, 1999, the Cultural Institutions Act, 1998 (Act No. 119 of 1998), the Development Facilitation Act, 1995, and the National Parks Act, 1976 (Act No. 57 of 1976);

(b) provincial government planning and development plans; 30

(c) regional planning and development plans;

(d) local government planning and development plans; and

(e) existing planning and development plans of an existing organ of state referred to in section 8.

#### **Objects of integrated management plans**

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22. The object of every integrated management plan is to ensure the protection and management of the World Heritage Site concerned in a manner that is consistent with the objectives and principles of this Act.

#### **Contents of integrated management plans**

23. In addition to the requirements of the Convention, the Operational Guidelines and the directives of the Minister for a plan of this nature, every integrated management plan must contain, at least— 40

(a) a co-ordinated policy framework;

(b) such planning measures, controls and performance criteria as may be prescribed; 45

(c) a programme for the implementation of the plan;

(d) procedures for public participation;

(e) procedures for participation by nature conservation, tourism and other relevant experts;

(f) cultural or nature conservation components required by— 50

- (i) applicable law; and
- (ii) the directives of the Minister:
- (g) provisions regarding the—
  - (i) activities allowed within a particular geographical area;
  - (ii) terms and conditions for conducting activities; 5
  - (iii) prohibition of activities prescribed by the Minister:
  - (iv) control over the frequency, size, impact or manner of conducting activities in a particular geographical area, including without limitation, the use of, or access to, structures;
  - (v) a description of the World Heritage Site conceded, an assessment of its 10 significance and an evaluation of material threats to its significance; and
  - (iv) alienation, lease or encumbrance of movable and immovable property referred to in section 13(j) in accordance with this Act, inapplicable.

### **Approval of integrated management plans**

24. (1) An Authority must submit its first integrated management plan to the Minister 15 for approval within six months of the establishment of that Authority or such later date set by the Minister.

(2) The World Heritage Site must be managed as prescribed pending the approval by the Minister of the integrated management plan.

(3) An integrated management plan must be submitted to the Minister in terms of 20 subsection (1) after the Authority has consulted with—

- (a) surrounding communities on, or immediately adjacent to, the World Heritage Site;
- (b) owners of private land in, or immediately adjacent to, the World Heritage Site; 25 and
- (c) claimants in terms of the Restitution of Land Rights Act, 1994, with claims over World Heritage Sites or land affecting World Heritage Sites.

(4) The Minister must, upon receipt of an integrated management plan and after consultation with the Minister of Arts, Culture, Science and Technology, the relevant MEC and planning authority, and if applicable, the Council established in terms of 30 section 14 of the National Heritage Resources Act, 1999—

- (a) approve that plan with or without conditions; or
- (b) reject that plan but a rejected plan maybe re-submitted if it has been amended to the satisfaction of the Minister.

(5) An integrated management plan becomes effective once approved by the Minister. 35

(6) Upon approval in terms of subsection (4), the Authority must make such plan available at its main place of business for public inspection during regular office hours.

(7) The Minister may, after consultation in terms of subsection (4), approve the existing planning and development plans of an existing organ of state referred to in section 8, as the integrated management plan for purposes of this chapter, if the Minister 40 is satisfied that such plans comply materially with this chapter.

### **Duration of integrated management plan**

25. (1) Every integrated management plan must cover a period of at least five years or such longer period as the Minister may determine but where new opportunities or threats arise, or in the case of changed circumstances, an integrated management plan may be 45 reviewed and amended as and when necessary by an Authority, and submitted to the Minister for approval in accordance with section 24(4).

(2) An Authority must submit subsequent integrated management plans to the Minister to be dealt with in accordance with section 24(4) before the end of the second 50 last year of the operation of a current integrated management plan.

### **Amendment or termination of integrated management plan by Minister**

26. (1) The Minister may amend or terminate an integrated management plan if in the opinion of the Minister—

- (a) that integrated management plan is inefficient; or
- (b) that integrated management plan does not comply with the Convention, the 55 Operational Guidelines or applicable law.

(2) The Minister may not amend or terminate an integrated management plan if the effect of such amendment or termination is likely to have an adverse effect on the contractual rights of a rights-holder under a contract, licence, grant or similar instrument.

### **Model integrated management plan**

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27. (1) The Minister may prepare model integrated management plans or sections thereof after consultation with the Minister of Arts, Culture, Science and Technology.

(2) The Minister may prescribe norms and standards in connection with the preparation and contents of integrated management plans after consultation with the Minister of Arts, Culture, Science and Technology>’.

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## **CHAPTER V**

### **LAND**

#### **Purchase of land for World Heritage Site purposes**

28. The Minister may, with the concurrence of the Minister of Public Works, purchase any property and reserve it for purposes contemplated in this Act in relation to World Heritage Sites, if that purpose is in the public interest.

#### **Expropriation of land for World Heritage Site purposes**

29. The Expropriation Act, 1975 (Act No. 63 of 1975), applies to all expropriations under this Act and any reference to the Minister of Public Works in that Act must be read as a reference to the Minister for purposes of such expropriations.

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#### **Transfer and alienation of movable or immovable property, and consolidation of land**

30. (1) The Minister may, with the concurrence of the Minister of Finance, transfer any movable or immovable property belonging to the State to an Authority to enable it to perform its powers and duties or to achieve any of its objects.

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(2) Immovable property transferred to an Authority in terms of subsection (1), may not, without the prior written approval of the Minister, granted with the concurrence of the Minister of Finance, be alienated, leased or encumbered.

(3) The Minister may—

(a) subject to section 40 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), consolidate land of which the State is the owner and forming part or potentially forming part of a World Heritage Site;

(b) subject to section 65 of the Deeds Registries Act, 1937, register by notarial deed, entered into between the State and an owner or owners, a condition over land forming part or potentially forming part of a World Heritage Site to the effect that such land may not be separately alienated, leased or encumbered without the prior written consent of the Minister, and the said notarial deed may be accompanied by a sketch plan of such land.

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(4) The Minister must before giving written consent in terms of subsection (3), consult with all relevant parties, including the relevant-

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(a) land owners;

(b) mortgage holders; and

(c) cultural, nature conservation, heritage and similar public interest bodies with an interest in the area affected by the proposed action.

(5) A registrar defined in section 102 of the Deeds Registries Act, 1937, must, upon submission to him or her of a certificate by the Minister that land has been transferred to an Authority in terms of this section, make such entries and endorsements as he or she may deem necessary in or on any relevant register or other document in his or her office or laid before him or her, in order to register such land in the name of the Authority, and no stamp duty, office or other fee is payable in respect of such registration.

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(6) If an Authority is disestablished in terms of section 12, and without derogating from the generality of section 12(4)(U), a registrar must, upon submission to him or her of a certificate by the Minister that land transferred to an Authority in terms of

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subsection (5) has been transferred back from such Authority to the State, make such entries and endorsements as he or she may deem necessary in or on any relevant register or other document in his or her office or laid before him or her, in order to register such land in the name of [he State, and no stamp duty, office or other fee is payable in respect of such registration.

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## CHAPTER VI

### FINANCES AND REPORTS

#### Application of chapter

31. The Minister may, by notice in the *Gazette*, declare some or all of the sections in this chapter to apply to an Authority.

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#### Funding

32. Subject to applicable law, an Authority may receive and raise monies from any legal source, including—

- (a) contract;
- (b) loan;
- (c) donor funding from inside or outside the Republic;
- (d) interest;
- (e) joint venture income;
- (f) fees, including, without limitation, fees related to—
  - (i) turnover;
  - (ii) rights granted by an Authority; or
  - (iii) services provided by an Authority;
- (g) sale income;
- (h) income from the development or leasing of its assets;
- (i) subsidies and loans from any organ of State; or
- (j) appropriation by Parliament or a provincial legislature.

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#### Security

33. Without derogating from the objectives of this Act, an Authority may use any of its unencumbered assets as security for debt or other obligations, with the consent of the Cabinet and, if applicable, the relevant MEC.

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#### Expenditure of monies

34. (1) The monies received or raised by an Authority in terms of section 32 must be used in accordance with the business and financial plan of the Authority as approved by the Minister.

(2) An Authority may establish and operate a reserve fund with the approval of the Minister and with the concurrence of the Minister of Finance and the relevant MEC.

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#### Annual financial plan

35. (1) (a) An Authority must submit to the Minister its annual financial plan for approval for the following financial year not later than 30 days before the end of each financial year.

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(b) The annual financial plan for the first financial year of an Authority must be submitted to the Minister for approval within 90 days after the establishment date.

(2) The annual financial plan must set out and explain proposed operations, projects, activities and other objectives of an Authority for the following financial year, including—

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- (a) the cost of those operations, projects, activities and other objectives;
- (b) the manner in which it is proposed to finance them;
- (c) the performance indicators applicable to them;
- (d) a statement of estimated income and expenditure for that financial year;
- (e) any other information and particulars that may be prescribed; and
- (f) any additional relevant information that may be requested by the Minister in writing from time to time.

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### Strategic plan

36. (1) (a)(i) An Authority must submit a five year strategic plan to the Minister for approval, not later than 30 days before the end of its first financial year.

(ii) Thereafter, a revised strategic plan must be submitted to the Minister for approval every financial year. 5

(b) A five year strategic plan must be annexed to the annual financial plan of an Authority.

(2) This chapter does not prevent the Authority from undertaking any planning for a longer term.

### Financial regulations

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37. The following matters may be prescribed:

(a) the contents, format and structure of the annual financial plan and, if considered necessary, those of the strategic plan;

(b) the extent to, and manner in, which an Authority must consult with interested persons or members of the public in connection with any annual financial plan 15 or any strategic plan; and

(c) the procedure regarding the opening and keeping of a bank account by an Authority.

### Accounting

38. (1) An Authority must keep proper books and records of account, subject to 20 applicable law, for each financial year in accordance with generally accepted accounting practice, with regard to its income, expenditure and transactions during the financial year and the state of its assets and liabilities during, and as at the end of, the financial year.

(2) Annually, within six months of the end of the financial year, an Authority must 25 have the following financial statements:

(a) a statement of income and expenditure;

(b) a cash-flow statement; and

(c) a balance sheet,

prepared for that year, which must accurately reflect transactions and financial sources 30 as well as the position and state of affairs of an Authority so as to comply with the requirements of the Companies Act, 1973 (Act No. 61 of 1973 j).

### Audit

39. (1) j The Minister must as soon as is practicable inform the Auditor-General in writing of the establishment of an Authority. 35

(2) The books and records of account and financial statements of an Authority must be audited annually by the Auditor-General.

(3) The Chief Executive Officer must annually submit, within six months after the end of the financial year, financial statements of an Authority approved by the Executive Staff Component and the Advisory Board and certified to that effect by the chairperson 40 of the Advisory Board, to the Auditor-General for auditing.

(4) Upon completion of the audit, the Auditor-General must furnish a report to the Minister through the chairperson of the Advisory Board.

### Report by Auditor-General

40. (1) The Auditor-General must express an opinion in the report referred to in 45 section 39(4), amongst other things, as to whether—

(a) the information contained in the financial statements of an Authority has been presented on a basis consistent with that of the previous financial year, where applicable, and is a fair representation of the financial position and results of operations and cash-flows for the period; and 50

(b) the transactions and activities of an Authority which came to the attention of the Auditor-General had been authorised in terms of this Act.

(2) The report of the Auditor-General must draw attention to inadequate management measures identified during the course of the audit and to any other matter arising from the audit which, in the opinion of the Auditor-General, must be brought to the notice of 55 the Minister and Parliament.

## Annual report

41. An Authority must submit to the Minister, within six months after the end of each financial year, an annual report that includes—
- (a) in connection with the integrated management plan—
    - (i) compliance with the integrated management plan, including compliance with applicable performance indicators; 5
    - (ii) the efficiency of the integrated management plan; 4.
    - (iii) possible improvements to the integrated management plan; and
    - (iv) other matters in connection with the integrated management plan which the Authority wants to draw to the attention of the Minister; 10
  - (b) the extent to which the Authority succeeded or failed to meet its obligations in terms of the Convention, the Operational Guidelines and this Act, including—
    - (i) fulfillment of performance indicators;
    - (ii) the result of a five-year independent review of the overall performance; and 15
    - (iii) such other matters in connection with the duties and obligations of an Authority as the Minister may determine; and
  - (c) details of agreements entered into by the Authority in terms of section 13(g) and (j).

## CHAPTER VII 20

### GENERAL

#### Delegation

42. ( 1 ) The Minister may, by notice in the *Gazette*, delegate or assign any power, duty or function conferred upon him or her by or in terms of this Act, excluding the power to make regulations, to— 25
- (a) the Director-General of the Department;
  - (b) an Authority;
  - (c) a provincial government;
  - (d) a local government; or
  - (e) an organ of state. 30
- (2) The Minister may exercise any power or perform any duty or function despite subsection (1).
- (3) The Director-General may delegate or assign any of his or her powers, duties or functions— 35
- (a) to an Authority;
  - (b) with the concurrence of the MEC, to a provincial authority; or
  - (c) to a statutory body that is primarily involved in cultural matters or nature conservation,
- but such delegation may not affect the obligations of the Department under the Convention. 40

#### Regulations

43. (1) The Minister may, subject to the objectives and fundamental principles of this Act, make regulations that are consistent with the Act with regard to—
- (a) anything which in terms of this Act must be prescribed;
  - (b) generally, all matters which are reasonably necessary to be prescribed in order to achieve the objects of this Act. 45
- (2) Subject to the applicable law, the Minister may make regulations regarding—
- (a) the conditions of service, employment, transfer, promotion and, where an Authority is already in existence, the continued employment of its employees;
  - (b) the transfer of employees from an organ of state to an Authority; 50
  - (c) the management and administration of an Authority;
  - (d) the determination of criteria for the making of appointments to an Advisory Board, including criteria for the determination of the rights of interested parties;
  - (e) the financial and accounting activities of an Authority; 55
  - (f) the identification, investigation and nomination of a future World Heritage Site;

- (g) the management and control of a World Heritage Site;
  - (h) the administration, management and control of movable and immovable assets of an Authority; and
  - (i) the time, manner and form of complying with any administrative, technical or reporting requirements of the Convention. 5
- (3) The Minister may—
- (a) prescribe norms and standards for cultural or natural heritage that are consistent with the provisions of this Act; and
  - (b) prescribe national policy relating to the management of cultural or natural heritage in addition to, but not inconsistent with, the objectives and principles 10 set out in this Act.
- (4) The Minister may, by regulation, incorporate as many of, or all of, the Operational Guidelines as maybe necessary, with the necessary changes, where appropriate, for their effective implementation in the Republic.

#### **Short title and commencement**

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44. This Act is called the World Heritage Convention Act, 1999, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

## Schedule

### CONVENTION CONCERNING THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

The General Conference of the United Nations Education, Scientific and Cultural Organization meeting in Paris from 17 October to 21 November 1972, at its seventeenth session.

**Noting** that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction,

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**Considering that deterioration** or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world,

**Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it** requires and of the insufficient economic, scientific, and technological resources of the country where the property to be protected is situated,

**Recalling that the Constitution of the Organization provides that it will maintain, increase, and diffuse knowledge by assuring the conservation and protection of the world's heritage, and recommending to the nations concerned the necessary international conventions,**

**Considering that the existing international conventions, recommendations and resolutions** concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong,

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**Considering that parts of the cultural or natural heritage are of outstanding interest and therefore** need to be preserved as part of the world heritage of mankind as a whole,

**Considering that in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance** which, although not taking the place of action by the State concerned, will serve as an efficient complement thereto.

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**Considering that it is essential for this purpose to adopt new provisions in the form of a convention establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods,**

**Having decided, at its sixteenth session, that this question should be made the subject of an international convention,**

**Adopts this sixteenth day of November 1972 this Convention.**

## I. DEFINITION OF THE CULTURAL AND NATURAL HERITAGE

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### Article 1

For the purpose of this Convention, the following shall be considered as "cultural heritage": monuments, 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 outstanding universal value from the point of view of history, art or science, groups of buildings, groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or

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science, sites, works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

## Article 2

For the purposes of this Convention, the following shall be considered as “natural heritage”: 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, geological and physiographical formations and 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 or conservation, natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

## Article 3

It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above. 15

## II. NATIONAL PROTECTION AND INTERNATIONAL PROTECTION OF THE CULTURAL AND NATURAL HERITAGE

### Article 4

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain. 25

### Article 5

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country— 30

- (a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmed;
- (b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions; 35
- (c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage: 40
- (d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and
- (e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field. 45

## Article 6

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate. 50

2. The States Parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and presentation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request.

3. Each State Party to this Convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other States Parties to this Convention.

#### **Article 7**

For the purpose of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage.

### **III. INTERGOVERNMENTAL COMMITTEE FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE**

#### **Article 8**

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1. An Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Committee", is hereby established within the United Nations Education, Scientific and Cultural Organization. It shall be composed of 15 States Parties to the Convention, elected by States Parties to the Convention meeting in general assembly during the ordinary session of the General Conference of the United Nations Educational, Scientific and Cultural Organization. The number of States members of the Committee shall be increased to 21 as from the date of the ordinary session of the General Conference following the entry into force of this Convention for at least 40 States.

2. Election of members of the Committee shall ensure an equitable representation of the different regions and cultures of the world.

3. A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre), a representative of the International Council of Monuments and Sites (ICOMOS) and a representative of the International Union for Conservation of Nature and Natural Resources (IUCN), to whom may be added, at the request of States Parties to the Convention meeting in general assembly during the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization, representatives of other intergovernmental or non-governmental organizations, with similar objectives, may attend the meetings of the Committee in an advisory capacity.

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#### **Article 9**

1. The term of office of States members of the World Heritage Committee shall extend from the end of the ordinary session of the General Conference during which they are elected until the end of its third subsequent ordinary session.

2. The term of office of one-third of the members designated at the time of the first election shall, however, cease at the end of the first ordinary session of the General Conference following that at which they were elected; and the term of office of a further third of the members designated at the same time shall cease at the end of the second ordinary session of the General Conference following that at which they were elected. The names of these members shall be chosen by lot by the President of the General Conference of the United Nations Education, Scientific and Cultural Organization after the first election.

3. States members of the Committee shall choose as their representatives persons qualified in the field of the cultural or natural heritage.

#### **Article 10**

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1. The World Heritage Committee shall adopt its Rules of Procedure.

2. The Committee may at any time invite public or private organizations or individuals to participate in its meetings for consultation on particular problems.

3. The Committee may create such consultative bodies as it deems necessary for the performance of its functions.

## Article 11

1. Every State Party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance.

2. On the basis of the inventories submitted by States in accordance with paragraph 1, the Committee shall establish, keep up to date and publish, under the title of "World Heritage List," a list of properties forming part of the cultural heritage and natural heritage, as defined in Articles 1 and 2 of this Convention, which it considers as having outstanding universal value in terms of such criteria as it shall have established. An updated list shall be distributed at least every two years.

3. The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute.

4. The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of "list of World Heritage in Danger", a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately.

5. The Committee shall define the criteria on the basis of which a property belonging to the cultural or natural heritage may be included in either of the lists mentioned in paragraphs 2 and 4 of this article.

6. Before refusing a request for inclusion in one of the two lists mentioned in paragraphs 2 and 4 of this article, the Committee shall consult the State Party in whose territory the cultural or natural property in question is situated.

7. The Committee shall, with the agreement of the States concerned, co-ordinate and encourage the studies and research needed for the drawing up of the lists referred to in paragraphs 2 and 4 of this article.

## Article 12

The fact that a property belonging to the cultural or natural heritage has not been included in either of the two lists mentioned in paragraphs 2 and 4 of Article 11 shall in no way be construed to mean that it does not have an outstanding universal value for purposes other than those resulting from inclusion in these lists.

## Article 13

1. The World Heritage Committee shall receive and study requests for international assistance formulated by States Parties to this Convention with respect to property forming part of the cultural or natural heritage, situated in their territories, and included or potentially suitable for inclusion in the lists mentioned referred to in paragraphs 2 and 4 of Article 11. The purpose of such requests may be to secure the protection, conservation, presentation or rehabilitation of such property.

2. Requests for international assistance under paragraph 1 of this article may also be concerned with identification of cultural or natural property defined in Articles 1 and 2, when preliminary investigations have shown that further inquiries would be justified.

3. The Committee shall decide on the action to be taken with regard to these requests, determine where appropriate, the nature and extent of its assistance, and authorize the conclusion, on its behalf, of the necessary arrangements with the government concerned.

4. The Committee shall determine an order of priorities for its operations. It shall in so doing bear in mind the respective importance for the world cultural and natural heritage of the property requiring protection, the need to give international assistance to the property most representative of a natural environment or of the genius and the history of the peoples of the world, the urgency of the work to be done, the resources available to the States on whose territory the threatened property is situated and in particular the extent to which they are able to safeguard such property by their own means.

5. The Committee shall draw up, keep up to date and publicize a list of property for which International assistance has been granted.

6. The Committee shall decide on the use of the resources of the Fund established under Article 15 of this Convention. It shall seek ways of increasing these resources and shall take all useful steps to this end.

7. The Committee shall co-operate with international and national governmental and non-governmental organizations having objectives similar to those of this Convention. For the implementation of its programmed and projects, the Committee may call on such organizations, particularly the International Centre for the Study of the Preservation and Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN), as well as on public and private bodies and individuals.

8. Decisions of the Committee shall be taken by a majority of two-thirds of its members present and voting. A majority of the members of the Committee shall constitute a quorum.

#### Article 14

1. The World Heritage Committee shall be assisted by a Secretariat appointed by the Director-General of the United Nations Educational, Scientific and Cultural Organization.

2. The Director-General of the United Nations Educational, Scientific and Cultural Organization, utilizing to the fullest extent possible the services of the International Centre for the Study of the Preservation and the Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN) in their respective areas of competence and capability, shall prepare the Committees documentation and the agenda of its meetings and shall have the responsibility for the implementation of its decisions.

### IV. FUND FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

#### Article 15

1. A Fund for the Protection of the World Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Fund.", is hereby established.

2. The Fund shall constitute a trust fund, in conformity with the provisions of the Financial Regulations of the United Nations Educational, Scientific and Cultural Organization.

3. The resources of the Fund shall consist of—

(a) compulsory and voluntary contributions made by States Parties to this Convention,

(b) Contributions, gifts or bequests which may be made by—

(i) other States;

(ii) the United Nations Educational, Scientific and Cultural Organization, other organizations of the United Nations system, particularly the United Nations Development Programme or other intergovernmental] organizations;

(iii) public or private bodies or individuals;

- (c) any interest due on the resources of the Fund;
- (d) funds raised by collections and receipts from events organized for the benefit of the fund; and
- (e) all other resources authorized by the Fund's regulations, as drawn up by the World Heritage Committee.

4. Contributions to the Fund and other forms of assistance made available to the Committee may be used only for such purposes as the Committee shall define. The Committee may accept contributions to be used only for a certain programme or project, provided that the Committee shall have decided on the implementation of such programme or project. No political conditions may be attached to contributions made to the Fund.

## Article 16

1. **Without prejudice to any supplementary voluntary contribution, the States Parties** to this Convention undertake to pay regularly, every two years, to the World Heritage Fund, contributions, the amount of which, in the form of a uniform percentage applicable to all States, shall be determined by the General Assembly of States Parties to the Convention, meeting during the sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization. This decision of the General Assembly requires the majority of the States Parties present and voting, which have not made the declaration referred to in paragraph 2 of this Article. In no case shall the compulsory contribution of States Parties to the Convention exceed 1% of the contribution to the regular budget of the United Nations Educational, Scientific and Cultural Organization.

2. However, each State referred to in Article 31 or in Article 32 of this Convention may declare, at the time of the deposit of its instrument of ratification, acceptance or accession, that it shall not be bound by the provisions of paragraph 1 of this Article.

3. A State Party to the Convention which has made the declaration referred to in paragraph 2 of this Article may at any time withdraw the said declaration by notifying the Director-General of the United Nations Educational, Scientific and Cultural Organization. However, the withdrawal of the declaration shall not take effect in regard to the compulsory contribution due by the State until the date of the subsequent General Assembly of States parties to the Convention.

4. In order that the Committee may be able to plan its operations effectively, the contributions of States Parties to this Convention which have made the declaration referred to in paragraph 2 of this Article, shall be paid on a regular basis, at least every two years, and should not be less than the contributions which they should have paid if they had been bound by the provisions of paragraph 1 of this Article.

5. Any State Party to the Convention which is in arrears with the payment of its compulsory or voluntary contribution for the current year and the calendar year immediately preceding it shall not be eligible as a Member of the World Heritage Committee, although this provision shall not apply to the first election. The terms of office of any such State which is already a member of the Committee shall terminate at the time of the elections provided for in Article 8, paragraph 1 of this Convention.

## Article 17

The States Parties to this Convention shall consider or encourage the establishment of national public and private foundations or associations whose purpose is to invite donations for the protection of the cultural and natural heritage as defined in Articles 1 and 2 of this Convention.

## Article 18

The States Parties to this Convention shall give their assistance to international fund-raising campaigns organized for the World Heritage Fund under the auspices of the United Nations Educational, Scientific and Cultural Organization. They shall facilitate collections made by the bodies mentioned in paragraph 3 of Article 15 for this purpose.

## V. CONDITIONS AND ARRANGEMENTS FOR INTERNATIONAL ASSISTANCE

### Article 19

Any State Party to this Convention may request international assistance for property forming part of the cultural or natural heritage of outstanding universal value situated within its territory. It shall submit with its request such information and documentation provided for in Article 21 as it has in its possession and as will enable the Committee to come to a decision. 5

### Article 20

Subject to the provisions of paragraph 2 of Article 13, sub-paragraph (c) of Article 22 and Article 23, international assistance provided for by this Convention may be granted only to property forming part of the cultural and natural heritage which the World Heritage Committee has decided, or may decide, to enter in one of the lists mentioned in paragraphs 2 and 4 of Article 11. 10

### Article 21

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1. The World Heritage Committee shall define the procedure by which requests to it for international assistance shall be considered and shall specify the content of the request, which should define the operation contemplated, the work that is necessary, the expected cost thereof, the degree of urgency and the reasons why the *resources* of the State requesting assistance do not allow it to meet all the expenses. Such requests shall be supported by experts' reports whenever possible. 20

2. Requests based upon disasters or natural calamities should, by reasons of the urgent work which they may involve, be given immediate, priority consideration by the Committee, which should have a reserve fund at its disposal against such contingencies.

3. Before coming to a decision, the Committee shall carry out such studies and consultations as it deems necessary. 25

### Article 22

**Assistance granted by the World Heritage Fund may take the following forms—**

- (a) studies concerning the artistic, scientific and technical problems raised by the protection, conservation, presentation and rehabilitation of the cultural and natural heritage, as defined in paragraphs 2 and 4 of Article 11 of this Convention; 30
- (b) provisions of experts, technicians and skilled labour to ensure that the approved work is correctly carried out;
- (c) training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage; 35
- (d) supply of equipment which the State concerned does not possess or is not in a position to acquire;
- (e) low-interest or interest-free loans which might be repayable on a long-term basis; 40
- (f) the granting, in exceptional cases and for special reasons, of non-repayable subsidies.

### Article 23

The World Heritage Committee may also provide international assistance to national or regional centres for the training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage. 45

### Article 24

International assistance on a large scale shall be preceded by detailed scientific, economic and technical studies. These studies shall draw upon the most advanced 50

techniques for the protection, conservation, presentation and rehabilitation of the natural and cultural heritage and shall be consistent with the objectives of this Convention. The studies shall also seek means of making rational use of the resources available in the State concerned.

#### **Article 25**

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As a general rule, only part of the cost of work necessary shall be borne by the international community. The contribution of the State benefiting from international assistance shall constitute a substantial share of the resources devoted to each programme or project, unless its resources do not permit this.

#### **Article 26**

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The World Heritage Committee and the recipient State shall define in the agreement they conclude the conditions in which a programme or project for which international assistance under the terms of this Convention is provided, shall be carried out. It shall be the responsibility of the State receiving such international assistance to continue to protect, conserve and present the property so safeguarded, in observance of the 15 conditions laid down by the agreement.

### **VI. EDUCATIONAL PROGRAMMED**

#### **Article 27**

1. The States Parties to this Convention shall endeavour by all appropriate means, and in particular by educational and information programmed, to strengthen appreciation 20 and respect by their peoples of the cultural and natural heritage defined in Articles 1 and 2 of the Convention.

2. They shall undertake to keep the public broadly informed of the dangers threatening this heritage and of the activities carried on in pursuance of this Convention.

#### **Article 28**

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States Parties to this Convention which receive international assistance under the Convention shall take appropriate measures to make known the importance of the property for which assistance has been received and the role played by such assistance.

### **VII. REPORTS**

#### **Article 29**

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1. The States Parties to this Convention shall, in the reports which they submit to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the 35 experience acquired in this field.

2. These reports shall be brought to the attention of the World Heritage Committee.

3. The Committee shall submit a report on its activities at each of the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization.

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### **VIII. FINAL CLAUSES**

#### **Article 30**

This Convention is drawn up in Arabic, English, French, Russian and Spanish, the five texts being equally authoritative.

**Article 31**

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.

2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

**Article 32**

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited by the General Conference of the Organization to accede to it.

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

**Article 33**

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This Convention shall enter into force three months after the date of the deposit of the twentieth instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments of ratification, acceptance or accession on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

**Article 34**

The following provisions shall apply to those States Parties to this Convention which have a federal or non-unitary constitutional system—

- (a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States parties which are not federal States;
- (b) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of individual constituent States, countries, provinces or cantons that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

**Article 35**

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1. Each State Party to this Convention may denounce the Convention.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. It shall not affect the financial obligations of the denouncing State until the date on which the withdrawal takes effect.

**Article 36**

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the organization, the States not members of the Organization which are referred to in Article 32, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, or accession provided for in Articles 31 and 32, and of the denunciations provided for in Article 35.

### Article 37

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.

2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the ~~date~~ on which the new revising convention enters into force.

### Article 38

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

**Done in Paris, this twenty-third day of November 1972, in two authentic copies bearing the signature of the President of the seventeenth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited** in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 31 and 32 as well as to the United Nations.

## MEMORANDUM ON THE OBJECTS OF THE WORLD HERITAGE CONVENTION BILL, 1999

### PART 1

#### BACKGROUND

1. In terms of section 231(4) of the Constitution, a treaty such as the World Heritage Convention becomes law in South Africa when it is enacted into law by national legislation. The Convention imposes an obligation on the national Government to, *inter alia*, guarantee its implementation and ensure that legal protection is provided, management plans are developed and implemented, appropriate institutional structures are in place, periodic monitoring occurs and adequate resources, particularly finances, are provided to discharge South Africa's obligations under the Convention. 5 10

2. The incorporation of the World Heritage Convention into South Africa's domestic law is a clear signal to the World Heritage Committee of our full commitment to the World Heritage Convention. The Committee decides whether South Africa's nominations qualify for this coveted status or not. 15

3. The Bill ensures that the principles of the Convention are given genuine, substantive application over South Africa's World Heritage Sites and ensures that these Sites are developed in ways that also meet the social and economic needs of our people.

4. The Minister of Environmental Affairs and Tourism is introducing the World Heritage Convention Bill, 1999 ("the Bill") in Parliament with a view to— 20

4.1 incorporating the Convention Concerning The Protection of the World Cultural and Natural Heritage ("the Convention") into South African domestic law and to ensure that everything done in terms of this Act conforms with the Convention and its Operational Guidelines;

4.2 creating a legal framework for the establishment of Authorities designed to oversee the management and development in a culturally and environmentally responsible manner of World Heritage Sites or, if appropriate, to strengthen the powers of existing bodies looking after these Sites; 25

4.3 creating an Advisory Board or an Executive Staff Component for each Authority that will oversee and manage the Authority; 30

4.4 ensuring that effective measures are taken for the protection, conservation and presentation of World Heritage Sites in the Republic and providing for the preparation of integrated management plans;

4.5 promoting, managing, overseeing, marketing and facilitating tourism and related development in World Heritage Sites in accordance with applicable law, the Convention and its Operational Guidelines; and 35

4.6 providing for proper financial and auditing controls over each Authority and the preparation of an annual report outlining the activities of each Authority.

5. The Convention recognises cultural and natural properties of outstanding universal value and provides for their protection and conservation. South Africa deposited its ratification of the Convention in July 1997, and submitted its first three nominations (Robben Island, the Greater St Lucia Wetland Park and the Sterkfontein Caves) for listing as World Heritage Sites in May 1998. 40

### PART 2

#### IMPLICATIONS FOR PROVINCES AND LOCAL GOVERNMENT 45

1. The Bill will have the following implications for the provinces and local government:

1.1 An Authority has the power to liaise with relevant Cultural and nature conservation bodies at local, provincial and national and, ~~with the~~ consent of the Department of Environmental Affairs and Tourism, at international level. 50

1.2 Subject to it being so empowered by the Minister, ~~an Authority may conserve, manage, promote, facilitate and monitor cultural development and nature conservation and related tourism activities over the World Heritage Sites under its control.~~ If appropriate, an Authority may be of assistance to a province, regional council or local government in the discharge of duties related to the Convention or a World Heritage Site. 55

1.3 At the request of a province, a regional council or a local government, and with the consent of the Minister, an Authority may perform functions on contractually agreed terms. An Authority may also enter into contracts with a province, regional council or a local government regarding any matter that concerns the Contention or a World Heritage Site. 5

1.4 In preparing an integrated management plan an Authority must have due regard for, and seek to integrate and harmonise that integrated management plan with, applicable provincial, regional and local planning and development plans. 5

### **PART 3**

#### **OTHER DEPARTMENTS AND BODIES CONSULTED**

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Consultation took place with and comments were received from relevant or affected national government departments, provincial government departments, local governments, cultural and natural heritage bodies, non-governmental organisations, organised business and international heritage bodies.

### **PART 4**

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#### **FINANCIAL IMPLICATIONS FOR THE STATE**

A once off start up capital will be required to establish the St. Lucia Wetland Park Authority. However, the Authority should be a self-sustaining entity, depending on the concession fees and entry levies that it will charge from its clientele. The Department is currently preparing a financing strategy and a business plan for the St. Lucia Wetland 20 Park Authority and Cabinet will be informed of progress in this regard.

### **PART 5**

#### **PARLIAMENTARY PROCEDURE**

1. The Department of Environmental Affairs and Tourism and the State Law Advisers are of the opinion that the Bill should be dealt with in accordance with section 76 of the 25 Constitution, as it falls within a functional area listed in Schedule 4 to the Constitution, namely, Environment.

1.1 The draft Bill was published in the *Gazette* in terms of section 154(2) of the Constitution and an explanatory summary of the Bill was published in the *Gazette* in terms of Rule 241 (c) of the Rules of the National Assembly. 30