

[Emblem of Mozambique] **BULLETIN OF THE REPUBLIC**
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3RD SUPPLEMENT

SUMMARY

People's Assembly

Law No. 10/88

Defining the legal protection of the tangible and intangible assets that constitute the cultural heritage of Mozambique.

Law No. 11/88

Creating the extraordinary tax entitled the Extraordinary Contribution in Support of National Reconstruction (CEARN), exceptionally in force for the 1989 and 1990 financial years.

PEOPLE'S ASSEMBLY

**Law No. 10/88
of December 22, 1988**

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One of the fundamental principles enshrined in the Constitution of the Republic is that of the State's duty to promote the development of Mozambique's culture and character.

This work, advocated by our Basic Law, entails the identification, recording, preservation and promotion of the material assets and spiritual wealth that make up the cultural heritage of Mozambique.

The memory of the people is embodied in our cultural heritage; by protecting it, we ensure that not only the historical, cultural and artistic legacy of our ancestors, but also contemporary advances, achievements and values will endure and will be passed on to future generations.

The cultural output of the Mozambican people is rich and vast, but it is also vulnerable to a number of risks.

The deterioration, disappearance or destruction of any part of our cultural heritage constitutes an irreparable loss and it is the responsibility of the various public and private bodies, as well as of citizens in

general, to ensure that our country's assets are not further diminished. It is therefore important to ensure that our cultural heritage enjoys the necessary protection.

Some work has already been done in the legislative field. The piecemeal, fragmentary nature of existing rules, however, points to the need for a fuller, more comprehensive legal instrument.

Drawing on international experience and scientific and technical advances in order to define fundamental concepts and designate bodies and mechanisms for the various procedures involved, the Law on Cultural Protection establishes the legal and institutional framework necessary for safeguarding and defending the cultural heritage of the Mozambican people.

Accordingly, pursuant to Article 44(a) of the Constitution, the People's Assembly hereby orders as follows:

CHAPTER I

Objective and Scope of Application

ARTICLE I

Objective

The objective of the present law is to ensure the legal protection of the tangible and intangible assets forming part of the cultural heritage of Mozambique.

ARTICLE 2

Scope of Application

1. This Law shall apply to assets forming part of Mozambique's cultural heritage in the possession of the State, public bodies or natural or legal persons, without prejudice to the property rights of the relevant holders.

2. The present Law shall extend to any cultural assets that may be discovered on Mozambican territory, in particular in the soil, subsoil, beds of inland bodies of water or continental shelf.

3. On the condition that there is reciprocity, cultural assets present in Mozambique belonging to other countries shall enjoy the protection afforded by the present Law.

CHAPTER II

Definitions

ARTICLE 3

Definitions

For the purposes of this Law, the following definitions shall be adopted:

1. *Cultural heritage*

"Cultural heritage" means all the tangible and intangible assets created or assimilated by the Mozambican people throughout history and of importance in terms of the definition of Mozambican cultural identity. Cultural heritage consists of both tangible and intangible cultural assets.

2. *Intangible cultural assets*

"Intangible cultural assets" means assets that are essential elements of the collective memory of the people, such as history and oral literature, popular traditions, rites and folklore, the various national languages, as well as works of the human mind, together with all forms of artistic and literary creation, irrespective of the medium or vehicle through which they are expressed.

3. *Tangible cultural assets*

"Tangible cultural assets" means immovable or movable assets which, owing to their archaeological, historical, bibliographical, artistic or scientific value, form part of the cultural heritage of Mozambique.

Natural features, sites and landscapes which are protected by law owing to their cultural value, or

which are liable to be so protected, shall be covered by the provisions of the present Law.

4. *Immovable cultural assets*

“Immovable cultural assets” includes the following categories:

- Monuments, complexes, locations or sites and natural features.

a) “Monuments” means, in particular, the following:

- constructions and buildings at archaeological sites;
- constructions and other works that are representative of pre-colonial societies, such as walled enclosures, *zimbabwes* (stone-walled settlements), *aringas* (fortified enclosures), etc.;
- works of art installed in public places or designed as part of urban settings;
- buildings of historic value which bear witness to the fact that different cultures and civilizations have lived together in our territorial space, such as Arab trading posts, Hindu temples, mosques, churches and chapels, old fortresses and more recent defense works, public buildings and residences, from colonial times and the era of the *prazeiros* [Portuguese or Afro-Portuguese estate owners] and private trading companies with a royal charter;
- buildings of particular architectural interest.

b) “Complexes” means groups of buildings which, owing to their architecture, their homogeneity or the way in which they fit into the landscape, are of particular historic, artistic or scientific interest. For the purposes of this law the following shall be regarded as complexes:

- ancient cities;
- the ancient areas around the main cities;
- other ancient urban nuclei such as Ibo and Mozambique Island.

c) “Locations or sites” means man-made works or works the result of a combination of nature and man’s efforts and adjacent areas recognized as being of archaeological, historical, aesthetic, ethnological or anthropological interest.

The following shall be regarded as locations or sites:

- archaeological sites;
- centers of power of pre-colonial societies, *inter alia* their capitals, main population centers and places of worship;
- mining centers;
- sites where historically important events involving pre-colonial societies have been recorded, in particular battlefields from the wars against colonization, sites of massacres and historic sites of the armed struggle for national liberation;
- sites marking the colonial occupation and exploitation of our country;
- sites linked to the slave trade;
- sites of ancient fairs or trading centers;
- sites where objects of anthropological, archaeological or historical interest have been discovered.

d) “Natural features” means physical or biological formations of particular interest from an aesthetic or scientific point of view, such as those located on Inhaca Island and in the Bazaruto Archipelago.

Natural features shall also include the following:

- geological and physiographical formations and areas that constitute the habitat of endangered species of animals and plants of outstanding value from the point of view of science or nature conservation;
- defined areas recognized as being of value from the point of view of science or nature conservation, in particular parks and reserves.

5. *Movable cultural assets*

“Movable cultural assets” include the following categories:

- a) species that are of scientific interest because of their rarity or uniqueness, such as minerals, rocks, fossils and phytobiological, zoological or anthropological matter;
- b) items of interest from the point of view of archaeology (stone tools, pottery), numismatics (coins, notes, medals and insignia), philately (seals, stamps, postcards and envelopes) or heraldry (emblems and crests);
- c) old manuscripts, rare editions, illustrations, maps, engravings and other printed matter of historical, bibliographical or documentary interest;
- d) historical objects and documents relating to economic, social and cultural services, institutions or bodies;
- e) ethnographic objects, utensils, tools, instruments, machines, weapons, typical or ceremonial clothing and ornaments (both secular and religious) and other objects of anthropological or artistic value;
- f) works of plastic art, objects of folk art, decorative art, applied art or handicrafts, which have artistic value or which represent eras, genres or styles;
- g) films and sound, mechanical, magnetic or other recordings relating to cultural items or expressions of culture, whether tangible or otherwise, such as oral history accounts, descriptions of traditions, rites or folklore, pieces of music, dance, theater or other forms of artistic or cultural expressions or historic events of the Mozambican people;
- h) documents and objects relating to leading figures in the national liberation movement or other figures who are of social or historical importance owing to their activities in the political, economic, social or cultural fields.

6. *Listed cultural heritage assets*

“Listed cultural heritage assets” means cultural assets that enjoy special protection from the State on account of their outstanding value.

7. *Assets undergoing listing*

“Assets undergoing listing” means goods put forward for listed status by the competent authority.

8. *Cultural Heritage Inventory*

The “Cultural Heritage Inventory” is the register of listed cultural heritage assets.

9. *Depositary*

“Depositary” means any body governed by public law or natural or legal person in possession of cultural heritage assets.

CHAPTER III

Responsibility for protecting and developing cultural heritage

ARTICLE 4

State responsibility

1. The following shall be the responsibility of the State:
 - a) to foster the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, and preservation and restoration workshops) necessary for the protection and development of cultural heritage;
 - b) to promote, through local bodies, the protection, preservation, development and revitalization of listed assets located in its territory, including the abovementioned measures in their work plans;
 - c) to encourage the use of the resources of the National Education System and social communication bodies to educate citizens about the importance of cultural heritage and the need to protect it;
 - d) to promoting the establishment of associations for the protection and development of the cultural heritage;

- e) to promote activities designed to attribute a function to each listed asset that integrates it into the social, economic, scientific or cultural life of the community;
- f) to foster the enjoyment of our cultural heritage and encouraging public participation in the protection and preservation of cultural assets.

2. The State shall have special responsibility for ensuring the protection of intangible cultural heritage assets, in particular by means of the following:

- a) the promotion of the study and revival of popular cultural traditions, rites and folklore;
- b) the promotion of the collection and the recording – graphically, photographically, on film or phonographically – of intangible cultural heritage assets.

3. The State of Mozambique shall work together with other States and international intergovernmental and non-governmental organizations on the protection, preservation, development, study and dissemination of the cultural heritage.

ARTICLE 5

Encouraging the preservation and development of listed assets

1. The State may grant financial support to individuals, or create special forms of credit, on favorable terms, for works and for the purchase of the items necessary for the preservation and restoration of listed cultural heritage assets.

2. A special system shall be set up for the leasing of listed immovable assets, in order to prevent their deterioration and to help ensure that they are preserved.

3. For the purposes of the supplementary tax, up to 15 per cent of the expenses incurred by the owners of listed assets relating to the preservation, recovery, restoration or development of the listed assets, and of the interest on debts contracted for the acquisition or preservation of listed immovable assets, shall be deducted.

ARTICLE 6

Responsibility of depositaries

1. The depositaries of cultural heritage assets shall ensure that they are protected, preserved and properly used.

2. In the case of cultural heritage assets belonging to the State, for the purposes of this law their depositaries shall be deemed to be the directors of the bodies in the inventories of which the said assets are registered.

3. District authorities and city councils shall be the depositaries of the assets referred to in Article 10(1) of this law located in their area.

4. The depositaries of cultural heritage assets shall have the following responsibilities:

- a) to inform the competent authority of any damage to, theft, deterioration or other change in the state of preservation of assets and to respond to all requests for information from the said authority;
- b) not to relocate assets, or carry out any excavation, construction or demolition work or any alteration without the authorization of the competent authority;
- c) not to carry out any restoration or conservation work without the authorization of the competent authority.

CHAPTER IV

Protection of cultural heritage assets

ARTICLE 7

Listing and cancellation of listed status of cultural heritage assets

1. The Council of Ministers shall be empowered to list or cancel the listed status of cultural heritage assets.

2. The following shall be declared listed cultural heritage assets with immediate effect:

- a) all archaeological monuments and features;

- b) all houses and buildings erected prior to 1920, the year marking the end of the first phase of armed resistance to colonial occupation;
- c) all imported movable cultural assets manufactured prior to 1900;
- d) the archives of the Mozambique Liberation Front (FRELIMO) and documentation on Mozambican nationalist movements;
- e) the main FRELIMO operating bases during the armed struggle for national liberation.

3. For the purposes of this law, assets in the process of being listed shall be covered by the protection system of protection reserved for listed cultural heritage assets.

ARTICLE 8

Notification of the possession of listed cultural heritage assets

Any body governed by public law and any natural or legal person in possession of a listed cultural heritage asset pursuant to paragraph 2 of the preceding Article shall notify the competent authority of that fact.

ARTICLE 9

Cultural Heritage Inventory

All listed cultural heritage assets shall be registered in the Cultural Heritage Inventory.

ARTICLE 10

Inalienable property of the State

The following cultural heritage assets, whether they are already known or are discovered at a future date in the territory of Mozambique, shall be deemed to be the inalienable property of the State:

- a) archaeological sites and objects;
- b) rock paintings;
- c) constructions and other works representative of pre-colonial societies such as walled enclosures, *zimbabwes*, *aringas*, mining centers and centers of power, population centers, commercial warehouses and places of worship.

2. Where the assets referred to in the preceding paragraph are located in an immovable asset that does not belong to the State, the owner of the immovable asset shall be deemed to be the depositary of the said assets.

ARTICLE 11

Transfer of ownership of listed assets

1. Assets listed pursuant to Article 7(2) of the present Law cannot be acquired by adverse possession.
2. The Ministry of Culture must be given prior notice of the alienation of a listed asset and the State shall enjoy a preferential right in the event of sale.
3. Ownership of listed assets shall be transferable by inheritance or legacy, and the Ministry of Culture must be notified of any such transfer, for the purposes of registration.
4. Prior authorization shall be required for any transfer of ownership or possession.

ARTICLE 12

Precautionary measures

1. Where listed assets are at risk of going astray, being lost or deteriorating, the competent authority shall in each case decide on the appropriate precautionary and preservation measures.
2. Where precautionary measures are judged inadequate or the preservation measures have not been complied with or have not been adopted within the time limit or under the specified conditions set, the Council of Ministers may decide that the listed assets in question should be handed over to another depositary for safe keeping.
3. Where it is acknowledged that the depositaries of listed assets are not in a position to comply with the measures referred to in Article 6 of this law, they may receive support from the State.

CHAPTER V

Unforeseen discoveries and archaeological excavations

ARTICLE 13

Unforeseen discoveries

Any person who discovers sites, constructions, objects or documents likely to be listed cultural assets shall notify the nearest administrative authority of the discovery.

ARTICLE 14

Archaeological excavations

1. Authorization from the competent authority shall be required in order to conduct archaeological work or to open caves, caverns or geological formations for the purpose of carrying out anthropological or paleontological research.

2. Excavation work shall be carried out in compliance with the applicable scientific standards and international principles.

CHAPTER VI

Import and export of cultural assets

ARTICLE 15

Import and export of cultural assets

1. The Council of Ministers shall regulate the import and export of cultural assets.

2. The export of cultural assets shall be permitted.

3. The export of listed cultural heritage assets shall be prohibited.

4. In exceptional circumstances, the temporary export of listed cultural heritage assets may be authorized by the Council of Ministers.

ARTICLE 16

Exemption from tax charges

1. The temporary or definitive import or export of cultural assets may be exempt from import and export duties on the condition that the assets are intended to be used for cultural or scientific purposes or in some other way in the public interest, within the context of agreements with States or international organizations or foreign public or private bodies.

2. The exemption referred to in the preceding paragraph shall also be applied to the import of materials and equipment intended for restoration work on cultural heritage assets.

3. For the purposes of this Article, cultural or scientific benefit and public interest shall be recognized under terms to be set out in a Regulation.

CHAPTER VII

Trade and the use of cultural heritage assets

ARTICLE 17

Trade

1. The granting of licenses and the conditions under which traders and commercial companies whose activity centers on cultural assets operate shall be regulated by a State body to be designated by the Council of Ministers.

2. Without prejudice to other registers imposed by the legislation currently in force, traders and commercial companies whose activity involves cultural assets shall be entered in a register to be opened at the offices of the State body responsible for the management of cultural affairs.

ARTICLE 18

Authorization to use listed assets

Express authorization in terms to be set out by the Council of Ministers shall be required for the use or exploitation of listed assets for industrial or commercial purposes.

CHAPTER VIII

National Cultural Heritage Council

ARTICLE 19

Duties and composition

1. The National Cultural Heritage Council shall be set up as a consultative body to issue opinions on proposals to list or to cancel the listed status of assets and to issue recommendations to the competent bodies concerning the protection, funding and use of cultural assets.

2. The National Cultural Heritage Council shall be composed of the directors of bodies and institutions performing duties in the sphere of the research, processing and protection of cultural heritage, as well as leading figures of recognized merit in the cultural field and representatives of State bodies.

CHAPTER IX

Penalties

ARTICLE 20

General liability

The owners or depositors of cultural heritage assets, whether natural or legal persons, shall be jointly and severally liable for breaches of the present Law, pursuant to the following Articles.

ARTICLE 21

Failure to comply with the obligations concerning depositaries

1. Without prejudice to any civil or criminal liability that may apply, failure to fulfill the obligations referred to in Article 6(4), Article 8 or Article 13 shall be punished by a fine ranging from Mozambican Metical (MT) 50,000.00 to double the value of the listed asset in question.
2. Depending on the seriousness of the prejudice produced to the cultural asset, in cases in which subparagraphs (b) and (c) of Article 4 have been infringed, the respective listed asset may be expropriated.

ARTICLE 22

Unauthorized alienation of listed assets

1. The alienation of any listed assets, in contravention of Article 11(2) or (4), shall be punished by the fine provided for in Article 21(1), to which may be added the confiscation of the said assets.

2. The penalties provided for in the preceding paragraph shall not preclude any civil or criminal liability to which the offender may be subject.

ARTICLE 23

Unauthorized archaeological excavations

Archaeological excavations or other works referred to in Article 14 carried out without the authorization of the competent body shall be punished pursuant to Article 21.

ARTICLE 24

Export of listed assets

The export of listed assets shall be punished pursuant to Article 21, without prejudice to any civil or criminal liability that may apply to the offender.

CHAPTER X
Final provisions

ARTICLE 25

Revenue

Revenue derived from the application of this Law on the Protection of Cultural Heritage shall revert to a fund intended for cultural development.

ARTICLE 26

Revocation of legislation

Legislative Decree No. 825 of February 20, 1943 and Resolution No. 4/79 of May 3, 1979 of the Standing Committee of the People's Assembly are hereby revoked.

ARTICLE 27

Regulations

The Council of Ministers shall publish the regulations necessary for the application of the present Law.

ARTICLE 28

Resolution of doubts

Any doubts arising with regard to the application of the present Law shall be addressed by a State body to be designated by the Council of Ministers.

Approved by the People's Assembly.

The President of the People's Assembly, *Marcelino dos Santos*

Let it be published

The President of the Republic, JOAQUIM ALBERTO CHISSANO

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**Law No. 11/88
of December 22, 1988**

The war and natural disasters afflicting the country have given rise to situations that are seriously affecting the most vulnerable population groups, spreading hunger and pov...