

South African archaeology and palaeontology in legislative quagmire

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THE MALFUNCTIONING OR EVEN ABSENCE of provincial heritage agencies in various parts of the country, which are now required by the National Heritage Act, is playing havoc with plans to investigate new archaeological and palaeontological sites.

For the past year, archaeologists and palaeontologists in South Africa have been thrashing around in a legislative quagmire that stopped all new fieldwork. A number of international collaborations — with research awards already approved by institutions like the National Research Foundation of South Africa and the National Science Foundation of the U.S. — are on hold. The University of Cape Town has been unable to obtain a permit to start excavations at a new site as part of its annual July field school. South African archaeologists have refrained from starting new projects that have been planned for some time. In some unfortunate instances, developers could not comply with the laws that require archaeological investigations, since no authority could grant a permit for such work, and have simply proceeded to destroy archaeological sites.

In some parts of the country, an interim solution to the problem of obtaining research permits has now been achieved, although the problem is far from solved. In other parts, the situation simply remains impossible.

In order to understand what has been going on, one has to learn some Heritage Newspeak, a language in which museum employees, for example, have come to be known as heritage workers and archaeological remains are heritage resources. In 1999, Parliament passed Heritage Resources Act No. 25: the old National Monuments Council became the South African Heritage Resources Agency (SAHRA), with Grade I national heritage sites under its purview. The ten provinces were mandated to set up their own Provincial Heritage Resource Agencies (PHRAs) by 1 April 2002 to control provincial heritage sites (previous

national monuments); archaeological and palaeontological sites; and also structures more than sixty years old. In the interim, the Minister of Arts, Culture, Science and Technology promulgated a regulation to grant SAHRA the power to issue permits relating to provincial heritage sites until 1 April 2002.

April 2002 came and went and only KwaZulu-Natal had set up its own PHRA, known as Amafa. This proved relatively easy, since KwaZulu had started its own Monuments Council in about 1980, in parallel with the national body. The cost of the changeover, however, is said to have been about R10 million per year. In other parts of the country, SAHRA continued to exercise control over provincial heritage sites, but this access route was blocked by the 'Kroon decision' in a court case in the Eastern Cape. The court held that SAHRA could not issue permits in provinces without PHRAs, but that provincial heritage sites continued to be protected by the law even so. For the past year, if one applied for a research permit under the Heritage Act in a province other than KwaZulu-Natal, SAHRA wrote back regretfully to say that they cannot issue it; please approach your (non-existent) PHRA; and remember that if you do anything without a permit you are committing a criminal offence and will be liable to a fine or imprisonment.

Those among us who work at high-profile, Grade 1 national heritage sites — such as Sterkfontein, Mapungubwe, and the like — could receive permits, because these sites are within the purview of SAHRA; the others could not. In the cultural resource management field, where archaeological investigations and excavations are mandated before development projects can proceed, schedules are driven by big budgets and the situation became particularly acute. In some parts of the country, colleagues had to make difficult moral decisions: stay within the law and watch an archaeological or palaeontological site destroyed, or act outside the law and save the material. Some came to the conclusion that if

nobody could issue a permit for such work, it could not be a legal requirement. This was a courageous approach to the problem, but dangerous; it could yet involve some expensive litigation. As could have been predicted, some developers, when faced with this legislative quagmire, simply decided to go ahead with their projects and bulldoze the archaeological remains. Charges were laid, but the developers proceeded anyway, with little regard for the consequences. In the process, contempt for the Heritage Act has developed in some quarters. Given the circumstances, it is by no means clear that prosecutions would succeed in court, anyway.

Amid this drumbeat of crisis, some progress has been made towards setting up Provincial Heritage Resource Agencies. Setting up a PHRA involves, in the first instance, the appointment of a council, staffed by volunteers. In the Western Cape, of which I have some personal knowledge, the appropriate provincial legislation has been in place since the end of 2002 and a council was appointed in January 2003. Dr Janette Deacon — former secretary of the National Monuments Council — is the chair. The council met in March and applied to SAHRA for approval of competence to handle heritage matters in the province. After another round of advertisements in the *Government Gazette*, the necessary approval became active in June. The catch is that the cost of the national legislation was never calculated and no financial provision was made for the provinces to set up PHRAs, appoint staff or develop infrastructure for the purpose of supervising heritage sites and to grant research permits. Accordingly, the PHRA of the Western Cape has engaged SAHRA to act in its stead in these matters until such time as the national treasury comes up with the money. The earliest opportunity would be the national budget of 2004, although there is no information on whether this is being considered.

In the Western Cape, then, we are essentially back to the legal situation that pertained until April 2002, except that another layer of government has been added to the mix. The latest information is that Gauteng and the Eastern Cape have also jumped the necessary hurdles and are in the same situation as the Western Cape, while the Free State may get there by September. As far as I know, no other province (excepting, of course, KwaZulu-Natal) has the necessary legislation in place at this time. Some provinces are reported to be having difficulties with

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setting up heritage councils, especially those that do not have major museums or universities within their borders.

This is by no means the end of our problems, of course. The various provinces will have to develop functioning heritage agencies and appoint staff members who are competent to deal with heritage matters. These agencies will then function under the control of the provincial governments. Several colleagues have expressed fears that the opportunities for corruption will be rife. Given recent events in the Western Cape, where provincial ministers countermanded environmental impact reports and issued development permits in exchange for political contributions, these fears are not far-fetched. On a professional level, the problems inherent in research investigations that cross provincial boundaries have not received much attention: the Palaeontological Society of Southern Africa made representations on this score to the Minister of Arts, Culture, Science and Technology and to various provincial executives, to no effect. If a fossil bed crosses a boundary, as it will in various places in the Karoo, for example, who can claim the fossils for their provincial museum? The problems are not trivial.

In researching this problem, I corresponded with many colleagues in South Africa. Invariably, those who are employed by government institutions of one sort or another (museums, heritage agencies) asked to remain anonymous, for fear of retribution. This is not very encouraging where robust debate is obviously required. Private legal opinion expressed to me is that the National Heritage Act was poorly drawn; that it contains internal contradictions, including constitutional ones relating to national and provincial powers; and that it will provide a field day for lawyers.

It seems that we are stepping on crocodiles. In such circumstances, it is difficult to remember that the original intention was to drain the swamp. In this instance, the problem is even more acute: there was no swamp until the legislators pumped in the water. □

So far as scientific evidence goes, the universe has crawled by slow stages to a somewhat pitiful result on this earth, and is going to crawl by still more pitiful stages to the condition of universal death.

Bertrand Russell

Managing collections of human remains in South African museums and universities: ethical policy-making and scientific value

Judith Sealy*

Studying human remains is one way to learn something of the lives of our ancestors, but there are urgent ethical questions about some remains in collections

SEVERAL ARTICLES IN THIS ISSUE DESCRIBE recent work on fossil hominid remains or on the emergence of modern humans (between 200 000 and 100 000 years ago) — major issues in archaeology and anthropology to which South African finds have made and continue to make a key contribution. Ancient human remains can be meaningfully assessed only in a comparative framework, by tracing the emergence or disappearance of features, or investigating relationships between lineages. The study of recent human skeletons (those from the last 10 000 or so years) plays an important role in such comparisons: a role that can be critical, as in the question of whether early modern humans in South Africa were or were not the direct ancestors of more recent Khoesan populations — an as yet unresolved question.

South African museums and universities house collections of human remains, collected over the past century or so. They range from recent to very ancient: from people who voluntarily donated their bodies to science; through the remains of individuals who died and whose identities could not be established, or whose relatives did not claim their bodies; to archaeological specimens hundreds of thousands of years old. A few skeletons continue to be added to the collections: human remains are frequently exposed by construction or other earth-moving work. Some are relatively recent, but many are hundreds or thousands of years old, and these are removed to medical schools or museums until their future can be decided. In the early 20th century, when South African museum collections were being built up, some curators collected skeletons aggressively from any available source, at times in a manner that is morally unacceptable. As Legassick and

Rassool¹ have pointed out, the ethics of continuing to curate such remains require re-examination.

Some skeletons in museum collections are the remains of people known in life, whose bodies were stolen by unscrupulous collectors. Old Katje, the wife of a San man whose corpse was dug up by an early 20th-century skeleton hunter, is recorded as saying: 'Since I heard that my relatives' bodies were taken and cooked [that is, boiled to skeletonise them] I am sick from sorrow, and I will not recover from the shock for a long time. I wept for days.' (statement to Lance Corporal Ross, CMP, 26/1/1910, quoted in ref. 1). Others are the remains of people hunted down and murdered by commandos, in the appalling acts of genocide committed upon Khoesan people by early colonists. If these peoples' families or communities can be identified, and wish the remains of their kin to be returned to them, this would undoubtedly be the right thing to do.

Legassick and Rassool, who are historians at the University of the Western Cape, support 'a ceremony of mass reburial of the human remains held by museums', and go on to say that 'We submit that there is no conceivable scientific value in the preservation by museums of these remains which outweighs the ethical need for their reburial' (ref. 1, p. 49). This point of view is emotionally compelling, especially in cases such as those of Old Katje, offering a chance to make at least symbolic restitution for past wrongs. But such cases account for only a small proportion of the human remains in collections. Many skeletons are thousands of years old, and their relationships to living populations are unclear. Institutions that house collections of human remains are currently working with interested parties to develop policies for the future of these collections. Options

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