

LAW 3924 of July 26, 1961

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Concerning archaeological and prehistoric monuments

The President of the Republic hereby declares that the National Congress decrees and that he sanctions the following law:

Article 1. Responsibility for the maintenance and protection of the archaeological or prehistoric monuments on the national territory and all constituent elements of such monuments shall lie with the public authorities, in accordance with the provisions of Article 175 of the Federal Constitution.

Paragraph 1. Ownership of land under civil law shall not include ownership of archaeological or prehistoric deposits or of the objects containing therein, in accordance with the provisions of Article 152 of the said Constitution.

Article 2. By archaeological or prehistoric monuments are meant:

- (a) deposits of any kind, origin or purpose containing records of the culture of the pale-Amerindians of Brazil, such as kitchen middens mounds or embankments, burial pits, graves, earthworks, remains of palafittes and any other deposits not specified herein which are of equal significance in the opinion of the competent authority;
- (b) sites containing verifiable traces of pale-Amerindians occupation such as grottoes, caves and rock shelters;
- (c) sites identified as burial grounds, tombs, places of long term settlement, stopping-places or shelter containing human records of archaeological or pale-ethnographic interest;
- (d) rock carvings, furrows created by the polishing of implements and other records of pale-Amerindians activity.

Article 3. Archaeological or prehistoric deposits such as kitchen middens, middens, shell heaps, shell mounds and other shell middens, and the sites, carvings and objects listed on items (b), (c) and (d) of the preceding article may not, in any part of the national territory, be used for financial gain, destroyed or defaced, for any purpose, before they are investigated, with due regard for any previous concessions that are still valid.

Article 4. Any individual or corporate body which, on the date of publication of this law, is already engaged in exploring archaeological or prehistoric deposits, for financial gain or any other purpose, shall report this activity to the National Historical and Artistic Heritage Department within sixty (60) days for the purpose of examination, registration, inspection of the interests of science. Failure to do so shall be punishable by a fine between

Cr\$10,000.00 and 50,000.00 (ten thousand and fifty thousand cruzeiros)

Article 5. Any Act resulting in the destruction or defacement of the monuments referred to in Article 2 of this law shall be deemed a crime against the national heritage and, as such, shall be punishable in accordance with the provisions of the Penal Code.

Article 6. In accordance with the Mining Code, priority shall be given to the study and possible utilizations of deposits classified as kitchen middens reported to the Government of the Union through the agency of the National Historical and Artistic Heritage Department in accordance with the Article 6 and registered in the manner prescribed in Article 27 of this Law.

Article 7. Archaeological or prehistoric deposits of any kind that have not been reported and registered in accordance with the provisions of the Articles 4 and 6 of this law shall be considered, for all purposes, as the property of the Union.

CHAPTER II ARCHAEOLOGICAL EXCAVATIONS CARRIED OUT BY PRIVATE INDIVIDUALS.

Article 8. Permission to carry out archaeological excavations on land in the public and private domain shall be obtained from the Government of the Union through the National Historical and Artistic Department. This right must be respected by the owner or occupier of the land.

Article 9. Applications for permits shall be submitted to the National Historical and Artistic Department accompanied by precise details regarding the location of the site and the scale and approximate duration of the works to be carried out, together with the evidence of the technical and scientific competence and financial resources of the application and the name of the person in charge of the excavations.

Paragraph 1. If the area in which the deposits is located is jointly owned, permission may be sought only by the administrator or representative of shareholders, who shall be elected in accordance with the provisions of the Civil Code.

Article 10. The permit shall take the form of an order issued by the Ministry of Education and Culture, stipulating the conditions to be fulfilled in carrying out the excavations and studies. It shall be entered in the appropriated register of the National Historical and Artistic Heritage Department.

Article 11. If excavations and studies are to be carried out on land that does not belong to the applicant, the written consent of the owner of the land or of the party exercising the right of ownership shall be appended to the application.

Paragraph 1. The excavations must be carried out under the guidance of the holder of the permit, who shall be liable under civil, penal and administration law for any damage caused to the national heritage or to third parties.

Paragraph 2. The excavations must be carried out in accordance with the conditions laid down in the permit. The director of the project may not, under any circumstances, prevent inspection of the works by a specially appointed agent of the National Historical and Artistic Heritage Department, when this is deemed appropriate.

Paragraph 3. The holder of the permit shall submit a quarterly report on the progress of the excavations to the National Historical and Artistic Heritage Department. In addition any exceptional occurrence must be notified immediately so that appropriate action can be taken.

Article 12. The Minister of Education and Culture may withdraw the permit under the following circumstances:

- (a) failure to comply with the provisions of this law or of the permit;
- (b) suspension of the field-work for a period of more than twelve month, save in a duly proven case of *force majeure*;
- (c) Failure to comply with the provisions of the paragraph 3 of the precedent article.

Paragraph 1. In none of the cases listed above shall the holder of the permit be entitled to compensation for the expense incurred.

OF THE UNION, STATES AND MUNICIPALITIES.

CHAPTER III

ARCHAEOLOGICAL EXCAVATION CARRIED OUT BY SPECIALIZED SCIENTIFIC INSTITUTIONS

Article 13. The Union and also the States and Municipalities, subject to federal authorization, may carry out excavations and research in the interests of archaeology and prehistory on privately owned land, with the exception of areas enclosed by walls which contain residential buildings.

Paragraph 1. Failing amicable agreement with the owner of the area in which the deposit is located, the site shall be declared a place of public

interest and occupation thereof shall be authorized for the period necessary for the execution of the studies, in accordance with Article 36 of the Decree Law 3365 of 21 June 1941.

Article 14. In the case of temporary occupation of land for the purpose of carrying out excavations of deposits declared to be place of public interest, an official record of the precise state of the site shall be drawn up prior to the commencement of the studies.

Paragraph 1. After completion of the studies, the site shall, as far as possible, be restored to its original state.

Paragraph 2. In the event of excavation resulting in the destruction of any aspect of the site, the obligation in paragraph 1 above shall apply only if it is proven that the aspect in question offered the owner indisputable advantages.

Article 15. In special circumstances and in the case of deposits of exceptional archaeological significance, the property or a part thereof may be expropriated for reason of public interest, pursuant to Article 5 (K) and (I) of Decree Law Nb.3365 of 21 June 1941.

Article 16. No agency of the federal administration, States or Municipalities, even in the cases falling under Article 28 of this law, may carry out archaeological or prehistoric excavations without having first notified the National Historical and Artistic Heritage Department with a view to recording the excavations in the Register of Archaeological Deposits.

Paragraph 1. Such notification shall specify the location of the site, the type or designation of the deposit, the name of the specialist in charge of the excavations and the data that led to the choice of that particular site. A summary of the results obtained and plans for using the material collected shall subsequently be submitted.

CHAPTER IV

FORTUITOUS DISCOVERIES

Article 17. The possession and safeguarding of property of an archaeological or prehistoric nature shall, in principle, be in inherent right of the Union.

Article 18. Fortuitous discoveries of items of archaeological, prehistoric, historical artistic or numismatic interest shall immediately be reported by the finder or by the owner of the property on which the discovery was made to the National Historical and Artistic Heritage Department or any other authorized official agency.

Paragraph 1. The owner or occupier of the property on which a discovery has been made shall be temporarily responsible for the preservation of the find, pending a statement and decision by the National Historical and Artistic Heritage Department.

Article 19. Failure to comply with the obligation imposed in the preceding article shall result in the summary seizure of the find. The finder shall remain liable for any damage caused to the national heritage as a result of the omission.

CHAPTER V

REMOVAL FROM THE COUNTRY OF OBJECTS OF ARCHAEOLOGICAL, PREHISTORIC, HISTORICAL, NUMISMATIC OR ARTISTIC INTEREST.

Article 20. No object or archaeological, prehistoric, numismatic or artistic interest may be transferred abroad without the express authorization of the National Historical and Artistic Heritage Department. Such authorization shall take the form of a "clearance" permit duly specifying the objects to be transferred.

Article 21. Failure to comply with the provisions of the preceding article shall be punishable by summary seizure of the objects to be transferred, the party responsible remaining liable for further legal penalties for any other offences.

Paragraph 1. Any object seized under the terms of this article shall be handed over to the National Historical and Artistic Heritage Department.

CHAPTER VI

GENERAL PROVISIONS

Article 22. On completion of the scientific exploration process, the deposits referred to in this law may be economically exploited in the manner and in accordance with the conditions specified in the Mining Code, provided that a favorable opinion has been delivered by the National Historical and Artistic Heritage Department or an authorized official agency.

Paragraph 1. Whenever possible or appropriate, a significant portion of every deposit shall be preserved as a sample and protected by appropriate means.

Article 23. The Supervisory Board for Artistic and Scientific Expeditions shall forward to the National Historical and Artistic Heritage

Department any application from a foreign scientist wishing to carry out archaeological or prehistoric excavations in the country.

Article 24. No authorization to investigate or mine deposits of conch limestone possessing the characteristics of archaeological or prehistoric monuments may be issued without a prior hearing on the matter by the National Historical and Artistic Heritage Department.

Article 25. The execution of archaeological or prehistoric excavations in contravention of any of the provisions of this law shall be punishable by a fine between *Cr\$5,000.00 (five thousand cruzeiros)* and *Cr\$50,000.00 (fifty thousand cruzeiros)*. The offence shall also be liable to summary seizure and consequent forfeiture to the national heritage of all the material and equipment found on the site.

Article 26. With a view to more effective enforcement of this law, the National Historical and Artistic Heritage Department may request the assistance of federal, state and municipal bodies and of institutions whose specific objectives include the study and protection of archaeological and prehistoric monuments.

Article 27. The National Historical and Artistic Heritage Department shall keep a Register of the Archaeological Monuments of Brazil containing as record of all deposits reported in accordance with the provisions of this law or brought to light by other means.

Article 28. The powers vested in the Ministry of Education and Culture for the purpose of executing this law may be delegated to any constituent unit of the Federation that has technical and administrative services specially organized for the care, preservation and study of archaeological and prehistoric deposits and sufficient resources to ensure the financing and satisfactory progress of the works.

Paragraph 1. In the case of this article, the proceeds of any fines imposed and any material lawfully seized shall be used for the benefit of the State department responsible for the preservation and study of such monuments.

Article 29. Violations of this law shall be punishable by the penalties stipulated in Articles 163-167 of the Penal Code, depending on the circumstances of the offence and subject to such further penalties as may be imposed.

Article 30. Within 120 days of the entry into force of this law, the Executive shall issue such regulations as are considered necessary for the faithful execution thereof.

Article 31. This law shall enter into force on the date of publication thereof whereupon any legislation contrary to the provisions thereof shall be repealed.

Brasília, 26 July 1961; 140th year of the Independence and 73rd year of the Republic.

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Notes:

National Historical and Artistic Heritage Department = Instituto do Patrimônio Histórico e Artístico Nacional – IPHAN (National Historical and Artistic Heritage Institute)

Federal Constitution: The former one, the new was approved by Congress in November 1988

Ministry of Education and Culture was separated on March 1985, the responsibility for culture heritage belongs since then to the Ministry of Culture.