

THE LEGAL REGIME FOR THE PROTECTION OF CULTURAL PROPERTY IN NIGERIA*

Abstract

From time immemorial, cultural property have always attracted the attention of mankind. This rather strange attraction stems from the beauty and/or significance of the cultural object. Cultural property have been used as objects of trade by some people while others, however, have used them as gift items. In war period, they are always looted or taken as booties and sometimes used as payments for troops by the victorious side. They are also destroyed by troops during warfare as a way of humiliating and weakening the moral of their enemies. In a bid to preserve cultural heritage of mankind from destruction and illicit trade, nations of the world have come up with Conventions, Treaties and/or legislations to ensure that they are protected. The extant law on the protection of cultural property in Nigeria is the National Commission for Museums and Monuments Act, 1979. This paper aims at appraising the legal regime for the protection of cultural property in Nigeria. It concludes that there is absolute need for preservation and protection of her cultural property for the benefit of prosperity.

Keywords: Legal Regime, Cultural Property, Protection, Nigeria

1. Introduction

Cultures all over the world as have been observed, use properties or objects as medium of expression¹. The cultural property or objects are what that constitute the cultural heritage of the people. Cultural property can be arts, sculptures, architectures, paintings, moments, literatures and other innumerable forms of aesthetic manifestations. It can also be in the intangible form. If the cultural manifestations transcend geopolitical boundaries, they readily become the cultural heritage of mankind irrespective of the fact that they are products of individual talent or of group effort². From the vista of specific culture, the cultural property that such culture produces is an overt mark of its identity³, a repository of its cultural and traditional information⁴, and an essential thing for cultural group's self-understanding⁵. It is unfortunately the mankind's sad experience that armed conflicts always result in intentional and or unintentional destruction of enemy's cultural properties as a measure of annihilation of the enemy's power⁶. Such destructions of cultural properties, offend intergeneration equity and impoverish the world's intellectual and artistic attainments. The anger, frustration and depression that suppression of cultural property breeds especially in the context of armed conflict, feed the subsequent generations' motives for retaliation. The conference of signatory nations to the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict in November 1996 at UNESCO Headquarters in Paris, discussed ways in which member states can effectively implement the treaty on the protection of cultural property. At the conference, it was discovered among other things that making all the national and international instruments functional would be the only true and acceptable way to combat the new issues in cultural property protection and preservation. Although the human will has to be in the foreground of all steps undertaken, it is at the same time a legitimate task to protect and preserve the cultural property of all people and nations as the cultural heritage of mankind. This is so because all cultural properties do not simply belong to the state on whose soil they happen to be found but rather to all humanity.

2. Cultural Property

Cultural property are physical items that are part of the cultural heritage of a group or society⁷. They include but not limited to such items or objects as works of art, museums, libraries, archeological sites, historical buildings

*By **Fidelis C. UWAKWE, PhD**, Lecturer, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus. Tel: 08033921593; and

***Theophilus Williams NWOKE, LLB, LLM, PhD (in view)**, Legal Practitioner, Sammy Sparkle Complex Obunagu Rd. Awka. 08195251994

¹Tagore, R., 'Wealth and Welfare' in modern Review, February 1905

²Para .3 of The Hague Convention for the Protection of Cultural property in the Event of Armed conflict 1954 says among other things that: '...Damage to International property belonging to any people whatsoever means damage to cultural heritage of all mankind...'

³Clements, R., 'Misconceptions of culture: Native Peoples and Cultural property under Canadian Law', *University of Toronto, Faculty of Law Review*, Vol. 10 (1991) P. 4g.

⁴Mories, R.A., 'Legal and Ethical Issues in the Trade in cultural Property', *New Zealand Law Journal*, Vol. 40 (1990) p. 4.

⁵Preamble to the UNESCO Convention 1970 views amount other things says that know ledge of cultural property increased the knowledge of civilization of man.

⁶Right to booty of war was recognized ever since Greek times. Xenophon said, 'it is a universal and eternal law that, in a city captured by enemies in a state of war, everything, both persons and goods, shall belong to the conquerors'. Xenophon, *cyropaedia (The Education of Cyrus)*

⁷Sullivan, A.M., 'Cultural Heritage 8 New Media: A Future for the Past', *15 J. Marshall Rev. Intell. Prop. L.* 604 (2016).

etc. Cultural property, more so, can include tangible and intangible things which form the cultural heritage of a group or society. According to Article 1 of the 1954 Hague Convention⁸:

the term 'Cultural Property' shall cover, irrespective of origin or ownership, movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which as a whole are of historical or artistic interests; as well as scientific collections and important books or archives of reproductions of the property defined above. It also covers buildings whose main and effective purpose is to preserve or exhibit the movable cultural property, such as museums, large libraries, and archives and refuges and also centres containing a large amount of cultural property as defined above

All property listed or scheduled by high contracting parties form considerable segment of cultural heritage⁹. In his address at the celebration of the Twentieth Anniversary of The Hague Convention, judge Nagendra Singh stated that 'the cultural objects and properties which make up (one state's) national heritage (are), consequently, the world's heritage'.¹⁰

From the foregoing, it can be rightly said that all cultural property though might be of an individual, state or nation are all mankind's cultural heritage. Cultural heritage of mankind is an aggregate of diverse particularism and this is the 'practical realization of the principle that in international relations, the cultures of individual nations are equal'¹¹.

3. Historical Overview of the Protection of Cultural Property

A cursory look at morality and religion reveals that there are avalanches of the principles of humanism in them. However, inspite of these glaring principles of humanism, wars throughout history, were fought with ruthless and unmitigated savagery. The holy books of many religions and notable works of religious and historic figures are replete with principles of humanism. The holy Quoran, for example, prohibits fighting in sacred places like mosques¹². Manu holds that the victorious king should worship in the temples, honour the priests, and proclaim peoples' safety in the country¹³ and according to Agnipurana, the concept of just war ordained the parties to leave the temples and other places of worship as well as the fruit and flower garden unmolested¹⁴. In Truce of God (1085 AD), St. Augustine preached against looting and desecrations of places of worship¹⁵. No rule or law prevented troops in war times in the past from annihilating a country or from taking over the enemy's goods, the destruction of cultural property being then considered an inevitable consequence of war. The reason for engaging in war then was for booty. A popular saying then had it that 'the property of the vanquished belonged to the conqueror'.

According to Xenophon, 'it is a universal and eternal law that, in a city captured by enemies in a state of war, everything, both persons and goods, shall belong to the conquerors'¹⁶. For the Romans, the aim of warfare was conquest, and conquest was followed by destruction of cultural property, pillage, massacre etc. in the middle ages, the situation was not any different as castles, towns, historical sites, villages and cultural property including churches were ruthlessly destroyed. The German troops and the crusaders were noted for laying everything waste as they advanced and moved to enemy territories. In mediaeval India, the story was also the same as large scale of destruction and plundering of places of worship during war were witnessed¹⁷. The same was also the story in many African wars. In Nigeria, for instance, the Nigeria-Biafra War witnessed large destruction of cultural property. The troops lay waste vandalizes and looted cultural heritage of the people as they advanced.

The first display of a wish to protect works of art was seen in the Renaissance period. In the 16th and 17th centuries, the first references to the protection of cultural property appeared among works of writers on international law. For example, Jacob Przymuski in his work stated that every belligerent should show regard for a work of art, but

⁸Hague convention on the protection of Cultural Property in the Event of Armed conflict, 1954

⁹'Legality of the Threat or use of Nuclear Weapons: Advisory Opinion'. ICT Reports (1997) p. 226 at p. 467

¹⁰Address by Nagendra Singh at celebration of the Twentieth Anniversary of The Hague Convention, at Indonesia, 1984 Reports, UNESCO DOC CLT/MD/3p. 14 at 15.

¹¹Nicc, 'Sovereign Rights to Cultural Property'. *Polish Year Book of International Law*, Vol. 4 (1971) pp. 239-250.

¹²Koran, Chapter 11 verse 191

¹³Manu, VII, 201; also see katyayana, 21

¹⁴Agniputra 236, 61-65

¹⁵St. Augustine preached, 'To wage war for loot is a sin (propter praedam militare peccatum)'.

¹⁶Xenophon, *Cyropedia* (The Education of Cyprus) VII, 5m 73

¹⁷See K.A. Neelakanta Shastri *et al.*, *Advanced History of India* (ed. 2) (Allied Publishers, 1990), pp. 335-band p. 508.

not solely because of its religious nature¹⁸. Similar opinion was also held by Alberic and Justin Gentilis¹⁹. Beginning with the peace of Westphalia (1648), we found more and more clauses providing for the restoration of things (cultural property) to their places of origin, first of archives alone and then of works of art, displayed in the course of fighting²⁰.

The Leiber Code of 1863 provides that the property belonging to churches, establishments of education, and museums of the Fine Arts shall be considered as public property and hence immune from appropriation by the victorious army²¹. Following the Leiber Code, the English, Italian, Spanish, German and Japanese codes all provide that movable and immovable properties dedicated to science or Art, churches, Museums, libraries, collection of Arts and archives shall be treated as private property and be protected and or shielded from bombardment²². The atrocities and misappropriation of cultural property were brought to bare in the Nuremberg Trial²³. It was at this juncture that the UNESCO which shoulders the burden of preservation of the cultural heritage of mankind commenced the move for the cultural property convention in 1949. The result was the celebrated Hague convention of 1954 for the protection of cultural property and the 1999 additional protocol.

4. Policies and Measures for the Protection of Cultural Property

The international communities have initiated ideas and steps on how cultural property of mankind can be protected and preserved. These initiatives are otherwise referred to as the policies and measures for the protection of cultural property. The policies and measures for the protection of cultural property can be found in many international conventions, protocols and accepted norms, and the whole scheme includes but not limited to: obligation to safeguard and respect cultural property, prohibition of destruction of cultural property, special and enhanced protection, transportation of cultural property and creation of public opinion through dissemination of message underlying the law.

Obligation to Safeguard and Respect Cultural Property

The high contracting parties signatory to the Hague Convention of 1954 have the obligation or duty cast upon them to protect cultural property situated within their territory against the foreseeable effect of war and this obligation is to be discharged by marking necessary and adequate preparations during peace time²⁴. They are to make Blue Shield Flag and provide special shelter for the cultural property or evaluate and transport them to safer place²⁵.

Prohibition of Destruction of Cultural Property

Parties in warfare under the laws and customs regulating aerial warfare, land warfare and war at the sea are enjoined to take all necessary steps to spare as far as possible, buildings dedicated to public worship, art, science or charitable purposes, historic monuments and hospitals²⁶. It is forbidden to commit any act or acts of hostility against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and use them in support of the military effort²⁷. This prohibition of act of hostility against the aforementioned is also contemplated in Articles 2, 3 and 4 of The Hague convention of 1954.

Special and Enhanced Protection

Cultural property which are of special importance as cultural heritage of mankind are to be given special and enhanced protection. The 1999 additional protocol in order to discharge this duty constituted a committee for the protection of cultural property and entrusted upon the committee the exclusive power to suspend or cancel any cultural property that fall short of the requirements for such special protection. To have special and enhanced protection, the cultural property must satisfy the following conditions:

- i. It should be cultural heritage of the greatest importance for mankind.
- ii. It is so recognized and protected by adequate measures.

¹⁸Jacob, P., *Legessee Statuta ac Privilegia poloniae, cra cow, 1553*, pp. 87577

¹⁹Justin, G., *Dissertation de equodin bello licet*, p. 21 et seq. argentorati, 1690

²⁰Stanislaw, E.N., 'Protection of Cultural Property', in *International Dimension of Humanitarian Law*, Paris/Geneva, Henry Dunant Institute/UNESCO/Martinusni, hoff publishers, 1988, pp. 203-4.

²¹See Pietroverrio, 'The condition of cultural property in Armed conflicts: from Antiquity to World War II, *International Reviews of Red Cross* n. 24b (1985) pp. 62

²²See Pietroverrio, note 29 pp. 128-129

²³*Ibid.* pp. 20-21

²⁴See Article 3, Hague Convention of 1954

²⁵Articles 12-15, and 18 of The Hague Convention of 1954

²⁶Article 27 of the Hague Regulations Respecting the Laws of War on land, 1967

²⁷Article 16 of the 1977 protocol 11 to Geneva Convention, 1949

- iii. It is not used for military purpose and the party under takes not to use it for same.

Transportation of Cultural Property

Transportation of cultural property as a measure of protection whether within a territory or to another territory under international supervision on and with the display of emblem, may take place at the request of the concerned High Contracting party²⁸. Provisions about transportation of cultural property in urgent cases, immunity of cultural property from seizure, capture and prize and protection of the persons engaged in same are made in Articles 13, 14 and 15 of The Hague Convention of 1954.

Dissemination of Message on the Need to Respect the Leads on Protection of Cultural Property

In order to ensure the observation of the Hague Convention, the High contracting parties are obligated to inculcate among the members of armed forces, a spirit of respect for the culture and cultural property of all peoples by adequate training in peace time²⁹. Further, they shall undertake dissemination of the text of the Hague Convention so that its principles are made known to the whole populace³⁰.

It is worthy of note that the provisions of the Hague Convention on the protection of cultural property still apply in cases of non-international armed conflict³¹. The ever-increasing number of non-international armed conflicts has necessitated the application of The Hague Convention provisions in both International and non-International armed conflicts. Moreso, the 1999 additional protocol makes it clear that the provisions of the protocol shall also apply to situations of international disturbances and tensions such as acts of violence, riots and other similar acts.

5. The Legal Regime for the Protection of Cultural Property in Nigeria

The Initiative to protect and preserve Nigerian cultural heritage started as far back as 1950s when it was observed or noticed that there were serious destruction and demolition of cultural properties such as buildings and the replacement of same with modern ones by people. The Bill (perhaps the first of its kind) for the protection and preservation of cultural property as the cultural heritage of Nigeria was introduced in 1953³². The Bill articulated in clear terms the need to protect and preserve the traditions, history and artistic relics of the people of Nigeria. It was this Bill that later became the Antiquities Ordinance of 1953 also known as Ordinance 17 of 1953. The Antiquities Ordinance of 1953 created a Department and Commission known as and called National Department of Antiquities and the Antiquities Commission. This was created to take the responsibilities of establishing museums, declaring and protecting monuments, supervising archeological excavations as well as controlling the movement of antiquities.

In 1957, legislation was made to regulate the movement of antiquities out of Nigeria³³. This legislation as it were was followed by yet another legislation known and called Antiquities (Prohibited Transfer) Decree of 1974³⁴. The Decree prohibited the buying and selling of antiquities save and except through accredited agents. The Decree among other things gave the Nigerian Police and the Nigerian Customs the Powers to search without warrant and if found seize the antiquities. Also provided by the Decree is the registration and compulsory purchase of antiquities. It imposed heavy and 'stiffer' penalties for offenders. The Decree was born out of the need to check and prevent the loss of cultural heritage through official and unofficial transfers during the post independent era.

The above legal regimes, sadly, did not properly and adequately provide protection for cultural property in Nigeria especially the immovable cultural heritage. It was against this back ground that a new legislation, Decree 77 of 1979, was made. The Decree 77 of 1979 is also known as and called the National Commission for Museums and Monuments³⁵. It dissolved the National Department of Antiquities and the Antiquities Commission. The Act provided for the protection of immovable cultural heritage and also made new provisions for the declaration of National monuments and protection of same. It is charged with the responsibilities of administering National Museums, Antiquities and Monuments; establishing and maintaining National Museums and other outlets; to

²⁸Article 12, Hague Convention of 1954 and Articles 17-19 of Hague Rules 1954.

²⁹Article 7 of the Hague Convention of 1954.

³⁰Article 25 of the Hague Convention of 1954

³¹Article 19 of the Hague Convention of 1954

³²The former Prime Minister of Nigeria, Sir Abubakar Tufawa Belewa who was then Minister of Works was the one that introduced the Bill in the House of Representatives.

³³The Antiquities (Export Permits) Regulations 1957.

³⁴The Antiquities (Prohibited Transfer) Decree of 1974 is also known as Decree 9 of 1974.

³⁵Now the Nigerian National Commission for Museums and Monuments Act 1979 Cap. N 19 Laws of the Federation of Nigeria (LFN), 2004.

make recommendations concerning the establishment and management of Museums and the preservation of the antiquities and monuments and to approve private museums³⁶

6. Problems with the Legal Regime for the Protection of Cultural Property in Nigeria

The extant law for the protection of cultural property in Nigeria is the National Commission for Museums and Monuments Act, 1979, the other enactments having been repealed³⁷. Although the National Commission for Museums and Monuments Act 1979 has helped greatly in maintaining the various cultural property scattered across the nation, it has many shortcomings. The Act, for example, covers only tangible cultural property without providing for intangible cultural property as envisaged in the 2003 Convention for the Safeguard of the Intangible Cultural Heritage. The Act ignored our spiritual and immaterial cultural heritage as it were. It does not at all provide for traditional protection, management and enforcement mechanisms for the country's cultural property. The local communities as usually represented by traditional rulers were not involved in the formulation of the legislation for the protection of the Nigerian cultural property. These were people who hitherto had been the ones protecting and guarding jealously the Nigerian cultural property before the coming of the white men and the subsequent government takeover of the cultural property protection. Although the Act by section 3(2)(b) provides that it is its responsibility to take steps to maintain cultural heritage with the consent of the owner, there is no provision however for an owner of a cultural property to be required to take care of it.

In Egypt, it is the duty of an owner of a cultural property to preserve, repair and restore an antiquity (Movable and Immovable), and there is an obligation to observe regulations and directions for the proper handling and use of antiquity³⁸. Nigeria should copy this from Egypt. There is also a provision in section 18(3) of the National Commission for Museums and Monuments Act which permits the destruction of monument if it is within the area to which mining title relates so far the commission is informed about the destruction. The trouble with this provision is that monuments could be destroyed under the guise of possessing mining title. Aside problems associated with the provisions and non-provision of the Act, there is also the problem of enforcement of the legislation. The Commission has no inventory of privately-owned cultural monuments and most times, you will find out that some individuals are so attached to their cultural heritage that they do not give room for the commission to access the cultural property. This makes maintenance and monitoring of the cultural property difficult for the commission.

7. Conclusion and Recommendations

It is abundantly clear, from the foregoing, that the National Commission for Museums and Monuments Act, 1979 which is the extant law for the protection of cultural property is not only out of date but grossly inadequate. The Act seems to have been hurriedly drafted as it does not provide for the protection of immaterial or intangible cultural property in Nigeria. The provisions it made for the sanction and punishment of offenders are not just adequate. One can readily violate the provisions of the Act knowing that the punishment and or sanction is not stiff. It is very unfortunate that the Act permits the destruction of a monument if it is within the area to which mining title exists once the commission has been communicated of it. The National Commission for Museums and Monuments as an institution lack adequate resources to manage, preserve, and protect Nigeria Cultural heritage. It is recommended that the National Commission for Museums and Monuments Act, 1979 should be reviewed and detailed provisions for the protection of both tangible and intangible cultural property be made. The Act has just paltry 33 sections and a mere 18 pages or less of print compared to Namibia's National Heritage Resources Act, 1999 which has 70 sections and sits on 71 pages of print. The Act should also be widened to contain some departments which will help in administration of Nigeria cultural property. Nigeria should follow or better still copy the 1962 Korean Law on cultural property administration which provides for the following departments: The Department of Tangible Cultural property, The Department of Intangible Cultural Property, The Department of Monument, The Department of Cultural Property Management, The Department of Palace Management and The Department of Cultural Property repairs. There should be increased funding by government and much more awareness should be created on the need to not only preserve our cultural property as the cultural heritage of our people but also protect and guard them jealously. Nigeria and in deed Nigerians should know that a people without culture are dead. They should know this and participate actively in the preservation and protection of their cultural property.

³⁶See section 3(1) (a) – (d) of the National Commission for Museums and Monuments Act, 1979.

³⁷Section 31 of the National Commission for Museums and Monuments Act, 1979 repealed all enactments relating to Antiquities.

³⁸Proclamation No 36/1989. A proclamation to provide for the study and protection of antiquities.