

Policy Brief

The Protection of Cultural Property in Africa: An Analysis of Policies and Practices

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This policy brief reflects the discussion during the high-level virtual dialogue jointly organized by the International Committee of the Red Cross (ICRC), African Union (AU) and Institute for Peace and Security Studies (IPSS) on the 'Impact of Armed Conflicts on Cultural Property: Ensuring the Protection of our Shared Heritage under International Law' held on 6th May 2021. The views in this policy brief are of the author and not intended to reflect an institutional position of the ICRC or IPSS.

Executive Summary

One area where armed conflict affects people's past, present and future lives is in the destruction of cultural properties located within the area of conflict.¹ Protecting cultural property, which represents peoples' identities, becomes important while protecting and respecting individuals under the laws of war. In seeking to balance military objectives and the effects of war on humanity, international humanitarian law (IHL) limits the destruction with the doctrine of military necessity. Despite this, cultural property is still being damaged and destroyed in armed conflicts. There is a great need to examine African states' participation in the 1954 Hague Convention and its protocols. Best practices of protecting cultural property during conflict and mitigation strategies during peace in Africa, in addition to steps taken by states and other stakeholders under the Second Protocol of the Hague Convention, will be considered. Equally apt is a consideration of the factors hindering the efficacy of the 1954 Hague convention and its protocols in African states. This policy will contribute, through its implementation, to the efforts made for the achievement of effective protection of Africa's heritage.

Key points

- Africa's cultural property has suffered from colonisation, wars, civil unrest, plunder, and massive theft, leading to a total loss of valuable information on humankind.
- Africa has not fully embraced the international best practices through the 1954 Hague convention and its protocols to ensure respect for and safeguarding cultural property during peace times and armed conflict.
- In situations where national governments have put mechanisms in place for deriving maximum benefits from the Convention, destruction of cultural property which do not fall under the scope of the Protocol II would be adequately redressed under the national laws.
- Partnership among African states, heritage stakeholders, regional and international organisations and regional committees is fundamental for establishing a solid foundation for heritage protection in Africa.

Introduction

Cultural property was protected from the effects of war one way or the other by some treaties that guided the military's operations during armed conflict before the coming into force of the 1954 Hague Convention. These treaties, from the Francis Lieber Instructions for the Government of Armies of the United States in the Field (the so-called Lieber Code), The Brussels Declaration (1874), the Oxford Manual (1880), The Hague Conventions of 1899 and 1907, the Convention (IV) respecting the Laws and Customs of War on Land and its annexe did not define the term 'cultural property'.² The second world war featured massive destruction of cultural heritage in Europe³ as The Hague Regulation of 1907 and Geneva Convention of 1949 did not provide specific offences against cultural property. This gap was filled by the 1954 Hague Convention, which coined the concept 'cultural property' and defined it to cover movable or immovable property of great importance having architectural, artistic or historical, religious or circular interests.⁴ The 1954 Convention on Safeguarding and respecting cultural heritage⁵ supplements the Geneva Conventions. The principles of the 1954 convention relate to people and humankind,⁶ thus promoting humanity, a fundamental principle of international humanitarian law. The nexus between protecting civilian population and heritage protection was showcased in the Additional Protocol to the Geneva Convention.

The use for military purpose and performance of acts of hostilities towards objects that constitute the cultural and spiritual heritage of the people became prohibited.⁷ The 1954 Convention applies to conflicts of an international character⁸ and disputes that are not of an international nature,⁹ thereby reflecting the humanitarian principle exhibited in article 3 of the four Geneva Conventions. The inadequacies of the 1954 convention led to the birth of the second Protocol to the Convention in 1999. What constitutes an armed conflict, not of an international character, has been laid to rest in Protocol II to the 1954 Hague Convention.¹⁰ Situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of similar nature are outside the scope of Protocol II.¹¹ How Africa has fared in performing its duties under the 1954 Hague Convention, and its protocols is the crux of this policy.

Africa and effect of armed conflict on heritage

Africa has been fraught with armed conflicts caused by bad governance, corruption, poverty, ethnic marginalisation, human rights violations, religious intolerance and the likes. Former President of Nigeria, Olusegun Obasanjo, has referred to Africa as the continent with the greatest number of conflicts.¹² Most of these armed conflicts occurred within national boundaries. In Africa, there has been armed conflict in South Sudan, Burundi, Rwanda and Somalia, Sierra Leone, Liberia, Nigeria, the Democratic Republic of Congo, and Mali, among other hostilities. These conflicts have negatively affected human lives and national development, but they have also caused enormous loss to cultural heritage in Africa. The war between Eritrea and Ethiopia resulted in the Ethiopian army toppling the Stella of Matara, a 2,500-year-old heritage of cultural significance in the region.¹³ Armed conflict in Mali led to the Islamic rebel groups taking over Timbuktu, breaking down Mosques, Mausoleums and Sufi tombs built as far back as the fifteenth century. Manuscripts that depicted the identity of the people were equally not spared in the destruction.¹⁴

During the armed conflict in Cote d'Ivoire, in the regions of Dan and We (Man, Danane, Fakobly, Guiglo, Bangolo etc.), sacred and circular masks were stolen, and some burnt. Also, the Klin Kpli, the sacred talking drum of the Baoule people, was stolen from the royal court of Sakassou.¹⁵ In Senegal, churches, mosques and the sacred forests were not spared from destruction as they were used as places of refuge by the civilians and fallback positions for combatants.¹⁶ During the Nigerian civil war, the Oron Museum located in the Eastern part of the country, which was the conflict zone, was not spared from the effects of the armed conflict. When troops occupied the museum, the Oran Kepi ancestral figures kept in the museum were moved to Umuahia for safekeeping. When the war reached Umuahia, the objects were further transferred to Orlu for safekeeping. Unfortunately, the lack of knowledge concerning their value by the inhabitants of the new location led to the objects being used as firewood by the inhabitants of Orlu after the end of hostilities.¹⁷ The civil war in Sierra Leone led to the severe damage of the Museum in Freetown, leaving bullet holes in some of the objects while others were destroyed by rain due to the damage done to the roof, windows, and doors.¹⁸ The Museum in Liberia was shelled during the armed conflict, and artefacts were looted and vandalised.¹⁹ The armed conflict in Guinea-Bissau left the National Institute of Studies and Research archives destroyed while the library was sacked and pillaged. The Ethnographic

Museum was damaged, and collections pillaged.²⁰ These and many more destructions during armed conflict have had an irreplaceable effect on cultural property in Africa.

International best practices and Mitigation strategies

Heritage protection is multidisciplinary. The 1954 Hague convention imposes duties on state parties to 'take all possible steps to protect cultural property.'²¹ Such protection cannot be effective unless both national and international measures have been taken to organise it in times of peace.²² This can only be done by having in place national rules. Offences against cultural property relate to prohibition, prosecution, punishment of destruction of cultural property, and theft, both in peace times and during armed conflict.²³ Measures towards safeguarding cultural property in peacetimes include having inventories and putting emergency measures and action plans in case of armed conflict. The use of distinctive emblems to mark heritage during armed conflict; military measures; policy measures geared towards disseminating convention principles at the national level; listing heritage for enhanced protection and implementing laws with criminal sanctions against heritage violators.

To respect cultural property, a state party should avoid acts that would expose cultural property to destruction or damage. Article 19(2) of the Convention allows parties to enter agreements on protecting heritage during a conflict that is not of an international character. Protocol II is the most effective tool for protecting cultural heritage against war crimes²⁴, and its scope covers international armed conflict and armed conflict that is not of an international character, excluding situations of internal disturbance and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.²⁵

Cultural heritage exposed to internal disturbance and tensions should enjoy the benefits of protection offered by the 1954 Hague Convention for respect to cultural property and safeguarding cultural property by providing an appropriate protection regime in peace times against the foreseeable effects of an armed conflict.²⁶ Articles 6, 16 and 17 of the 1954 Hague Convention mark identified cultural property with the Convention's special emblem of a blue and white quartered shield. Article 15 provides for an obligation to respect personnel engaged in the protection of cultural property. In contrast, Article 19 stipulates that State Parties are bound to apply the Convention in the event of non-international conflicts within the territory of a State Party. African State parties to the

1954 Hague Convention ought to apply the requirements of Articles 6, 15, 16 and 17 if they have fulfilled their obligations under the Convention by reviewing their domestic laws to reflect the Convention's best practices which should be in conjunction with the heritage sector.²⁷

Statistics of African States that are parties to the Hague Convention and Protocol II

Out of the 54 African countries, 32 have ratified the 1954 Hague Convention, which is 59.26% of African States. 20 States have ratified the First Protocol, and only 14 states have ratified the Second Protocol, amounting to 37.04% and 25.93%, respectively. It should be noted that only states that have ratified the 1954 convention can ratify the protocols. Of these 14 states, only ten have filed periodic reports on the implementation of the Convention and its protocols with the UNESCO secretariat over the years. The ten countries include Burkina Faso, Cote d'Ivoire, Egypt, Ghana, Libya, Madagascar, Morocco, Niger, Nigeria and Tunisia.

Actions taken by governments of African states parties to give effect to the provisions of the 1954 Hague Convention and its protocols

From the periodic reports filed by member states with the UNESCO Secretariat, the latest call for reports covering 2017 to 2020 was due in June 2021. No African member state filed any report

showing how the country has fared within the four years. Morocco and Nigeria filed the latest reports from Africa in 2017.²⁸ The reports show that African states have not fulfilled their duties under the Convention. How they have fared in respect of implementing the provisions of the Convention from their reports is shown below:

1. **Setting up inventories:** Burkina Faso reported that work is ongoing in this regard as a prerequisite to other measures. Madagascar has inventories classifying objects that can be imported or exported under the existing law.
2. **Distinctive emblem:** Madagascar has no distinctive emblem on heritage because they have not been troubled by armed conflict. The reports filed by Morocco and Nigeria state that inventories are being kept. Egypt stresses the importance of marking cultural property with the distinctive sign of the Convention and proposes sharing of maps with cultural property between different countries.
3. **Putting in place military measures:** The report reveals that the Ministry of Defence in Burkina Faso passed Decree No. 94-159/PRES/DEF of 28 April 1994 concerning the institution of international humanitarian law within the armed forces. An Arts and Culture Directorate has been established within the armed forces, which is responsible, among other things, for protecting cultural property in the event of armed conflict. Though there is no legislation implementing the Convention in Nigeria, military personnel were stationed around Sukur Hills, the World Heritage site, and other sites in the north-eastern part of Nigeria during the Boko Haram insurgency. The Nigerian government has not done much in sensitising the army on the authentication and importance of cultural property in armed conflict. No establishment responsible for heritage protection exists within the Nigerian armed forces. Egypt reiterated the need to disseminate information to the military in their report. Madagascar has put in place measures geared towards training military personnel. Morocco has not fulfilled the requirements of military measures.

Mali joined the 1954 Convention and Protocol I in 1961 and joined Protocol II in November 2012. Mali had not filed any report with UNESCO Secretariat since it became a state party and had no legislation implementing the provisions of the 1954 Convention before hostilities began. Hostilities had begun in Mali after the *coup d'état* in March 2012 before Mali joined the Protocol II. Thus, it became impossible to enjoy all the benefits attached to being a member of the Protocol II.²⁹ Assuming all African countries had joined the 1954 Hague Convention and its protocols, the extradition potentials and the offences in the Protocol would have been implementable against the insurgents.

Regional cooperation and joint initiatives towards protecting cultural property

AU Vision 2063: The Africa Agenda 2063 has one of its objectives directed towards harnessing the continental endowments embodied in its people, history, cultures, and natural resources to effect equitable and people-centred growth and development. Measures geared towards protecting heritage in peacetimes and wartimes would go a long way in achieving this objective.

International Organisations and Non-governmental organisations: The United Nations and the African Union (AU) have intervened in conflicts in Africa only to the extent of peace support operations and not for heritage protection.³⁰ Examples are the UN peacekeeping mission in the Democratic Republic of Congo (MONUSCO) and the UN peacekeeping mission in Mali (MINUSMA). In fulfilling their mandates to protecting the civilians, heritage protection can be implied. During the war in Mali, the International Committee of the Blue Shield (ICBS), together with representatives of her five Non-governmental Organisations, which are the International Council on Archives, International Council of Museums, International Council of Monuments and Sites, the International Federal Library Association and Institutions and Coordinating Council of Audiovisual Archives Association assisted with protecting Malian heritage. The United Nations Educational Scientific and Cultural Organization (UNESCO), International Council on Monuments and Sites (ICOMOS) and the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) have spearheaded organising workshops and training for museum professionals and heritage practitioners on heritage protection both for peacetimes and during disasters.

Also noteworthy is the activity of some National Committees of the Blue Shield in Africa geared towards International Cooperation. The German National Committee of the Blue Shield has been able to engage in activities that foster cooperation with the national committees of Mali, Senegal, Cameroon, Niger and Mozambique after receiving funding from the German Federal Foreign Office.³¹ Without funding, many non-governmental organisations would not be able to operate effectively. However, the workshops and training have not achieved the desired results of fully embracing

the best practices and mitigating strategies in the 1954 Hague Convention as there is still a low level of heritage protection in Africa.

Why the low level of heritage protection in Africa?

Political indifference symptomatic of the post-colonial state in Africa is one of the reasons for the lack of respect for cultural property during peace times and armed conflict. Colonisation coupled with globalisation has brought about an identity crisis among Africans in Africa.³² The younger population lack knowledge about the values of protecting cultural property. The level of ignorance among the people has degenerated to the level that youths destroy heritage with impunity under the impression that they are punishing a political authority.³³ There is the failure of African lawyers,³⁴ judges, politicians, and citizens to show interest in the intricate issues involved in respecting and safeguarding cultural property. This lack of interest in the value of heritage has resulted in ignorance of the benefits derived from membership of the Convention. Poverty, institutional weakness, lack of technical know-how are other reasons for the non-implementation of the provisions of the Convention.

Recommendations

- African states that have not ratified the 1954 Convention and its Protocols should do so.
- African governments need to prioritise protecting heritage nationally and exercise political and economic will.
- In line with the 1954 Convention and its Protocols, proper legislation needs to be promulgated at the national level. Civic education about the value of heritage from the grassroots, reawakening the cultural conscience in Africans and community participation is essential in protecting heritage from destruction and illicit trafficking.
- Partnership among heritage stakeholders, international organisations and regional committees is fundamental for establishing a solid foundation for heritage protection in Africa.
- Africans need to invest in documentation and research, inventories and databases of cultural heritage and cultural property both nationally and regionally.
- Cooperation and information sharing are essential for government officials and museum professionals, armed forces, police, and customs personnel.
- The African States should utilise technical assistance available through UNESCO and the ICRC to overcome difficulties and challenges in achieving the Convention's goals.
- At the regional level, there should be a move towards harmonising laws through the African Union.

Conclusion

African states still need to take significant steps to derive maximum benefits from the 1954 Hague Convention, and its protocols. The cultural prowess of the people and the ingenuity of African forbears need to be showcased through African governments prioritising protecting cultural heritage. Universal ratification of the international instruments, with efficient enforcement mechanisms at the domestic level, is essential. The people also need to imbibe a historical conscience to guarantee the sustainability of cultural heritage in Africa both in peace times and during armed conflict.

Adequate protection of Africa's heritage requires strengthening legislation and harmonising it with international best practices. No African country has any legislation specifically aimed at domesticating the provisions of the 1954 Hague Convention and its Protocols, making implementation largely impossible. The efficacy of the Convention in Africa has therefore been hindered.

Endnotes

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