

Legal Pluralism and the Protection and Management of Cultural Landscapes in Nigeria

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Abstract

The protection and management of cultural heritage are central issues of discourse in cultural resources management today. Cultural landscapes constitute part of non-renewable resources that are finite and therefore need to be protected. All over the world especially, in Nigeria, archaeological sites and resources are neglected and to a large extent destroyed due to the inability of the public, stakeholders, educationists, and developers to appreciate the enormous contributions of cultural landscapes to national development. The laws that have been put in place for the protection and management of cultural landscapes, particularly those that prevent them from being destroyed by construction companies and other development projects, are not fully implemented. This paper intends to draw the attention of relevant Nigerian authorities to the applicable laws and the need to enforce them. This will ensure that development does not result in the unmitigated destruction of archaeological sites and cultural heritage.

Keywords: legal pluralism, protection, and management, cultural landscape.

Introduction

Non-compliance to an established set of procedures, rules, regulation, and guidelines in the planning and execution of development projects is one of the many problems confronting the management and protection of cultural landscapes in Nigeria. Current efforts to safeguard cultural landscapes emphasize new mechanisms to the near disregard of traditional methods, which preserved and sustained them. Before European scramble for and partition of Africa, Africans had created social conventions that promoted the preservation of landscapes to sustain the social harmony which existed between nature and the physical environment of man. These conventions were strictly obeyed because it was believed that any breach attracted the wrath of the ancestors and the gods who spared no offender.

Some of the traditional mechanisms adopted to protect cultural landscapes in traditional Africa were varied. Amongst the Tongo-Tenzuk of Ghana, their cultural landscape was preserved through the Gologo festival. It was celebrated to reinforce the community's belief in the Nnooo shrine or Golib god. The taboos and norms surrounding the shrine are respected and helped to maintain some traditional conservation practices to preserve the cultural landscape. These taboos, rules and penalties strengthened the relationship between the people and the shrine (Kankpeyeng, 2005). It was

observed that cultural landscapes were also preserved through the knowledge and maintenance of architectural designs. Traditional building construction could be modified, but it must conform to the social convention of the environment. In southeastern Nigeria, the people of Isiegbu Ozuitem in Abia State Nigeria preserved their stream, Ochuivi for drinking only, to maintain clean water by creating a barrier limiting the space for fetching water and nobody was allowed to cross the barrier or kill any fish even when they come out to relate with humans as they fetch water. Moreover, only Umuada (females of local descent) were mandated to clean the stream, and it was a taboo to exploit any forest resources about fifty metres within its precinct. These social conventions were established to regulate the usage of water and preserve this sacred cultural landscape.

Among Buganda, whenever any Kabaka passed on, each king was buried in a separate tomb, and a royal shrine is thus established to house the Jaw bone of the deceased king which was believed to contain his spirit. Shrines of dead kings were staffed by descendants of the king's leading chiefs and wives, his ritual half-sisters and by spirit mediums. Other mechanisms were the traditional belief in spiritual powers possessed by sacred sites which were believed to have powers of fertility, cleansing and healing. These beliefs helped in protecting the landscape and such sustained the relationship between man and nature. Finally, during the process of the conquest of Africa, traditional African people resisted the destruction of shrines, sacred forests and rivers. All these were mechanisms adopted by traditional Africa to protect and preserve cultural landscapes before European intervention. However, in 1992, the environmental impact assessment decree, now an Act, came in to strike a balance between the protection and preservation of environments and development of projects which has to consider the adverse effects of such projects on cultural landscapes.

The world conservation strategy (WCS) states that humanity, which exists as a part of nature, has no future unless nature and natural resources are conserved. Conservation, therefore, includes both protection and the rational use of natural resources. WCS also emphasized that conservation is not the opposite of development; it stresses the interdependence of conservation and development. It is in this regard that the environmental impact assessment decree no. 86 of 1992, laws of the Federation of Nigeria was enacted which adumbrated the essence of taking into consideration the significant effect that any development project would have on the environment. It stressed that there must be an environmental impact assessment conducted before any project is sited to assess if such project or development could strengthen the existing landscape or disorganize the

existing harmony between nature and man. This decree encourages development projects that do not have significant adverse impacts on the environment. This behoves environmental stakeholders to uphold the moral and legal obligations to protect and enhance the natural environment. This could be achieved by combating destructive environmental projects; promoting ecological sustainability of natural resources, good environmental policy/practice; and striving for environmental justice. It is in this connection that this paper tries to justify the objective of the theme.

Legal pluralism, therefore, refers to efforts to incorporate different or various laws made by international, national or regional and local governments in the management and protection of cultural landscapes. It includes policies, customary laws, and legislation set by the government, people and community that outline the rules and regulations which guide the management and protection of heritage. Roosler (2007) argues that every cultural landscape has a unique complex of cultural and national values and therefore, subject to different legal protection framework and diverse management systems and institutional arrangements.

Cultural landscape on its part can be defined as areas transformed by human activities or sites of historical value. It entails, as Green (2000) puts it, placing sites into a broader context using a full range of archaeological information to interpret them on a regional basis. Significantly, Rosser argues that:

Protected landscape refer to cultural landscapes which have co-evolved with human societies. They are areas where the national landscape has been transformed by human actions and the landscape qualities have shaped the way of life of the people. Cultural landscapes are the interface between nature and culture, tangible and intangible heritage, biological and cultural diversity. They present a highly woven net of relationship that are the essence of culture and people's identity. Cultural landscapes are the centre-piece of protected areas in a larger ecosystem context and symbol of the growing recognition of the intrinsic link between humankind and its national environment.

Eluyemi (2002) asserts that: generally, there is the world-over a concerted effort to preserve national and cultural heritage by individuals, groups of people, organizations, associations and nations by various laws. These laws may be deemed to have begun as Cleere (1989) pointed out, with Swedish Royal proclamation of 1666 which declared all objects of antiquity in Sweden to be the property of the crown. By the end of the 19th century, the ancient monuments of most of Europe were covered by protective legislation of varying degree of efficacy, while the United States of America enacted its first Federal Antiquity law in 1946 (Mc Gimsey and Davies 1984). The United

Kingdom passed its first ancient monuments protection Act in 1882; howbeit legislation was in force over much of the world by the outbreak of the World war 11.

In the past few decades, the exploitation of national resources resulted in widespread deforestation, while mineral extraction, industry, and highway construction devastated great tracts of undisturbed natural and historical landscape in developing countries. For example, Cleere (1989) posits that in Brazil, environmental protection became a major international pre-occupation and in a significant conference in Helisnki in 1972, the United Nations established the United Nation's environmental programme and made funds available to mitigate its impact on development. The United States of America enacted its National Environmental Policy Act in 1969 (Cleere 1989) which stipulates that there should be support from all countries to preserve cultural heritage. Some of these cultural landscapes in Nigeria are the Sukur of Adamawa and the Osun Oshogbo both of which have international status.

Eluyemi (2002) noted that Nigeria was the first country in Africa to ratify the resolution of the 1970 UNESCO convention aimed at prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property. The ratification took place in 1972 and Nigeria was the third country in the world after Bulgaria and Ecuador to sign the resolution. Protected landscapes in Nigeria are usually areas of exceptional beauty and charm or areas of scientific importance. These include areas with rugged land-fall, such as the Ikogosi warm spring in Ondo State, Wikki warm spring in Bauchi, Warm springs along the Benue/Gongola valleys, Nsukka-Udi-Okigwe Cuesta, and so on (Ekechukwu, 2006).

Mcmanamon (2000) defines management and protection of cultural landscape as planning, organizing, controlling to promote heritage as a means of accurate and useful education and outreach that also has a dynamic future and support the long-term preservation of resources and place of history. He posits further that such activities would benefit the cultural resources we seek to preserve by making heritage education outreach more central to everyone's' experience. For Onah (1985) management is "the effective utilization and coordination of resources such as capital, plants, materials and labour to achieve defined objectives with maximum efficiency." This is necessary for these cultural heritage resources which are the inherited endowment of a given community or nation. To protect them, the managers put laws into action to realize the objectives and goals stipulated by the various laws.

Mcmanamon (2000) defines legal pluralism in the national system as various laws, regulations, and guidelines related to the mandate for

identification, evaluation, inventorization, and treatment of archaeological resources and other kinds of cultural resources.

Keefe and Prott (1984) state that most countries have such laws which have developed historically within their country or have been set up during the colonial era by the colonial government. For legal pluralism to be effective for the management and protection of cultural landscapes

- 1) It must be a strong statement of the national intent to preserve and protect cultural sites, structures, and other resources type.
- 2) It must have political support in its implementation.
- 3) It must be implemented cooperatively among agencies, departments or ministries at the national level with other levels of government and with the public (Mcmanamon 2000).

In Nigeria, the driving laws on the cultural property are embodied in Decree No 77 of 1979, now an Act, which established the National Commission of Museum and Monuments (NCMM) Arhuides (1996). The earliest of such laws came with the establishment of legal instrument for the protection and preservation of Nigeria Cultural property which started when the colonial government headed by Sir Benard Boundillion as Governor-general (1935-1945) established the native Authority ordinance No 17 prohibiting sales, destruction, and export of African antiquity and work of arts. As Nzewunwa (1983) rightly observes that the "Antiquities Commission established by this ordinance, sees to the formulation of policies, while the Antiquities Department sees to the practical realization of the goals of the department. The legislation established the institution, organizational procedures, and activities of the department. Its responsibility includes the establishment of Museums, archaeological excavation, declaration and protection of monuments and the control of the movement of antiquities.

The study was necessitated by the desire to address the deliberate neglect of cultural landscapes and the impact of development projects on these sites. Governments have destroyed many cultural landscapes in the name of creating estates, construction of roads and business centres. These have distorted the natural environment. These actions have created disharmony between nature and modern development. It is in this regard that the study tried to examine how these could be checked using secondary data and direct observation.

Existing Laws and Policies

The Antiquities Ordinance No 17 of 1953 provided for a commission, with three operational levels as follows:

- (i) The government represented by the minister,

- (ii) The organizing, control and policy-making body,
- (iii) The division with specified function for achieving the objectives of the department.

The Ordinance made provisions for Regional Committees but did not specify their powers and functions. It also recognized the place of local government authorities by giving them powers to designate antiquities, control the sale, loan, removal, excavation or alteration of antiquities and make bye-laws.

An Executive Director assisted by a Deputy Director sees to the effective functioning of the department by initiating policies within the department. The three sections within the Department of Archaeology, ethnography, and Museums, each had a head responsible to the director and deputy director. The Museum section is the largest and has a more comprehensive organization in terms of personnel, capital input, and representation within Nigeria. The heads of the sections from time to time worked under museum curator, especially when posted out of Lagos, the then Headquarters (Nzewunwa 1983).

In 1974 the military Government of Nigeria passed Decree 9 known as Antiquities (Prohibited transfer) Decree of 1974, which banned the buying and selling of antiquities except through accredited agents. It also conferred on the police and customs the right to search and seize antiquities and impose stiff penalties on offenders (Nzewunwa 1984). In 1979, a comprehensive review of the legislation concerning cultural resources management was carried out. Decree 77 of 1979 provided an explanatory note according to Nzewunwa (1983:118):

"The Decree provides for the dissolution of both the Antiquities commission and the Federal Department of Antiquities and their merger to form the National Commission for Museum and monument while repealing various enactments relating to Antiquities; the Decree consolidates therefore and makes fresh provisions in connection with the declaration of National Monuments. The penalties for the destruction or unauthorized alteration or removal of monuments [were] considerably stiffened up".

The Decree No 77 of 1979 created a Director General who controls the entire operations of the commission, a modification in the existing structure and organization of the Antiquities Department. The Decree also established an Executive Administrative Secretary who may be equated with two Directors the one responsible for museums, the other for Research and training (Ethnography and Archaeology). The Research and trading Division

has incorporated the new section of Natural History and Technology (Nzewunwa 1984).

The Decree assigned roles to certain establishments to fulfil its provisions. These bodies are first the National Commission for Museums and Monuments as the central government agency charged with the protection of cultural property in Nigeria. It is supported by such agencies as the custom Department, the police force and the law courts. In section 3 (1) of Decree No 77 of 1979, the Commission is expected to perform among others the following key functions:

- (a) The establishment and maintenance of National Museums and other outlets for / or in connection with but not restricted only to the following;
- (b) Antiquities (ii) science and technology (iii) warfare (iv) Arts and crafts (v) architecture (vi) natural history (vii) educational services.

Section 1 (2) and section 5 (1) of the Decree, made provision for a Director-General to be appointed by the Federal Government as the chief executive officer and also the appointment of a five-person and nine others as Board members from different states.

Section 12 and 13 (1) deal with the Declaration of Antiquities as national monuments. The Decree in some sections also provides for the protection of Nigeria's cultural property from being looted; ensure that none of the cultural objects leaves the shore of the country while equally making sure that archaeological and historical landscape and sites are protected. Section 23 of the Decree provides that any person who has antiquity in his possession either before or after the commencement of this law if so demanded by accredited agents, should register it, or if not registered it is liable to seizure by the police (Odubayo 2005). Section 21 of the Decree forbids anyone who is not an accredited agent from buying and selling antiquity; section 25 also prohibits export without a permit. Section 22 of the Decree gives both the Nigerian police force and Nigeria custom service a wider scope to arrest illegal traffickers in antiquities especially concerning exportation. Sections 19 and 20 of the Decree made provisions that no person shall by means of excavation or similar operations search for any antiquity unless authorized by a permit issued by the commission. This is to prevent illegal excavation of archaeological sites (Odubayo 2005).

Another related relevant law, for example, is the cultural policy of August 1988 launched by Ibrahim Babangida, then Head of State. The policy made provision for the preservation, promotion, presentation, and establishment of administrative structures and funds for its implementation. Apart from preserving monuments and sites, provision was made to

establish game reserves and natural history museums. The cultural policy is also clear on the direction and target of cultural resources management. Item 3.7 states that:

“The policy shall seek to enhance the efficient management of national resources through the transformation of the indigenous technology design and skill.”

The policy in item 2.3 states that:

It is equally part of the process of retrieving and restoring our history and heritage in order to protect and project it for posterity. As such it forms an integral part of our educational process.

The policy in item 4.2.3 states that for:

Cultural preservation to be meaningful and have integrity it must be aided by research, documentation and audio and videotapes, film and so on.

The policy in item 10.2 calls for:

The establishment of appropriate institutions at state and local government levels to facilitate national co-ordination and cultural exchange.

In item 10.1.5 it also calls on the state:

To ensure the strong representation of related interest groups on the boards of the cultural agencies. This is very important since culture is a social product and its management can only be successful with the involvement of the people.

The policy in item 8.1.2 states that:

The state shall establish a comprehensive communication for:

- 1) Ensuring the effective use of the press, radio, television and film for promoting national consciousness, national self-sufficiency and identity.*
- 2) Establishing adequate institutions and facilities for training media and personnel (cultural policy of Nigeria 1988)*

The cultural policy provides for the management of cultural resources and appropriately addressed some problems in the management of Nigeria's heritage.

Discussion

International laws on cultural property are made by international bodies such as the United Nations Educational Scientific and Cultural Organization (UNESCO), International Commission on Museums (ICOM), and others. These originated from rules drawn to guide the conduct of wars especially after the 18th Century, and have been extended to cater for cultural property at peace times, particularly when they equally fall prey to

destructive forces such as vandalism, theft and illegal exportation. The laws posit that the protection of cultural property is not the sole responsibility of the state in whose landscape the nefarious act is perpetrated, but requires international co-operation and intervention of other states. These legal instruments are known as conventions and charters. They are laid down principles, processes, and measures of good professional practice guiding the protection of cultural heritage as agreed upon and arranged on an international basis. They stand as evidence of mobilized international opinion, while UNESCO General Conference adopts both convention and charter, non-governmental agencies such as ICOM and others working hand in hand with UNESCO draw only charters. The main difference between convention and the other instruments lies in the fact that the former is more legally binding, while charters are more related to ethics. They are descriptive in nature and do not carry proper legal sanction. A convention is binding on a nation only when it ratifies and accepts it.

These conventions and charters include:

- (i) Convention on the protection of cultural property in the events of Armed Conflicts of 1954 (Hague convention).
- (ii) World heritage convention 1972.
- (iii) Unidroit convention 1995.
- (iv) International Charter for the conservation and Restoration of monuments and site/ the Venice charter).
- (v) Charter for the conservation of historic towns and urban Areas, the Washington charter of 1989
- (vi) Charter for the protection and management of Archaeological Heritage of 1996 and so on.

The essence of any law is the effective articulation of agreed policies and definition of measures that would regulate the particular area of concern which in this case is the protection of cultural heritage. The need for this regulating control lies in the significant nature of cultural heritage as tangible manifestation of man's achievement and national cultural patrimony. Therefore, cultural protection which these conventions and charter regulate is very necessary for the sovereignty of each nation (Okeefe and Prott 1984). A typical example is the Sukur Landscape in Nigeria. The United Nations Educational Scientific and Cultural Organization Convention (UNESCO) of 1992:

Identifies Sukur Landscape in Nigeria among others as site of outstanding universal value. The 1992 convention became the first international legal instrument to recognize and protect cultural landscape. The decision was based on years of intensive debate in the world heritage committee

*on how to protect sites where interaction between people
and the natural environment are key focus*

The above convention provides an innovative and powerful opportunity for protection of cultural landscapes and also acknowledges traditional management system, customary laws and long-established customary techniques and knowledge as a means for protecting heritage. Currently, there are 178 state parties that are signatures to the convention and 754 (582 cultural, 149 natural and 23 mixed properties) from a total of 129 countries are included on the world heritage list. In the UNESCO convention for example, Sukur landscape in Adamawa State (Nigeria) is the first landscape from Africa inscribed on the world heritage list among others. The Sukur, with the palace of the Hidi (chief) on a hill dominating the village below, has a sacred symbol and extensive remains of a former flourishing iron industry. It marks a critical stage in human settlement and its relationship with its environment. It is a remarkably intact physical expression of a society and its spiritual and material culture.

As Rossler puts it, the inscription of sites as cultural landscape on the world heritage list had important impacts on the interpretation, presentation and management of the site, increases awareness among the communities, provides new pride in their own heritage and revival of tradition. In other cases, these landscapes become models for sustainable land use and community stewardship including the opportunities for marketing of specific agricultural product or traditional arts and crafts. In this regard, the world heritage convention provided a legal guideline for Sukur site among. In these local communities, participation in every aspect of the identification, planning and management of the area is critical, as these functions are the most effective guardian and custodian of the landscape area, which also make them have a shared responsibility with the state in the maintenance of the site. The cultural landscapes management process also brings people together in caring for the collective identity and heritage and provides shared local vision (Rossler (<http://www.information.com>)).

Conclusion

The nefarious activities of vandals and other threats to cultural landscapes informed the need for appropriate laws to protect and manage them for future generations. These laws are local, national and international in outlook, and when used collaboratively, will help to preserve and protect available cultural landscapes. The essence of any law is to effectively articulate agreed policies and define measures that would regulate the particular areas of concern, which in this case, is the protection of cultural

heritage. The need for this regulating control lies in the significance of cultural heritage as tangible manifestations of man's achievement and natural patrimony.

It is, therefore, important that public education and outreach be used as means of justifying and promoting cultural landscape. The news media such as television, radio, newspapers, public lectures and other communication outfits should be employed to enlighten the present and future generations on the importance of cultural resources, our heritage, history and selves. It is also not enough to enact laws on cultural property, but to judiciously implement them. Therefore, concerned authorities should ensure the effective implementation of various laws enacted for the purpose. The authorities concerned should also provide professional technical assistance in the management, protection and preservation of cultural resources and sites. This assistance may be handled directly or through other levels of government or private sector, but the need for these levels of expertise and technical ability should be recognized.

Indeed, effective management of cultural landscape requires a decision about how the resources can be best protected, preserved, utilized and interpreted. The exact decision should also require consideration of why the resources have been set aside for special treatment, their nature and significance. National laws should always recognize that cultural landscapes of regional or local importance also merit management, protection, preservation and interpretation. Finally, the relevant authorities should work cooperatively with others to accomplish the job of protecting and preserving cultural landscapes.

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