

Legislative and Administrative Implementation of 1970 UNESCO Convention by African States: The Failure to Grasp the Nettle

Folarin Shyllon*

INTRODUCTION

Thirty African countries¹ are members of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Only two countries (Gabon and Nigeria) have joined the complementary 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. The 30 member countries are Algeria, Angola, Burkina Faso, Cameroon, Central African Republic, Chad, Cote d'Ivoire, Democratic Republic of the Congo, Egypt, Equatorial Guinea, Gabon, Guinea, Lesotho, Libya, Madagascar, Mali, Mauritania, Mauritius, Morocco, Niger, Nigeria, Rwanda, Senegal, Seychelles, South Africa, Swaziland, Tunisia, United Republic of Tanzania, Zambia, and Zimbabwe. Notable among the countries that are not States Parties are Ethiopia,² Ghana, and Kenya. Geographically, six out of seven North African countries are States Parties.³ West Africa has a good representation, while Southern Africa is poorly represented. Linguistically, Francophone countries are better represented than Anglophone ones.

The purpose of this article, originally a paper presented at the second meeting of States Parties to the 1970 Convention is to examine the legislative and administrative measures in place in African countries to combat theft, looting, pillage, and illegal excavation of archaeological sites and the illicit trafficking in cultural

*Faculty of Law, University of Ibadan, Nigeria. Email: foshyllon@gmail.com.

Note: Revised paper delivered at the Second Meeting of States Parties to the 1970 UNESCO Convention, Paris, UNESCO Headquarters, 20–21 June 2012. The author is responsible for the choice and presentation of the facts contained in the article and for the opinions expressed herein, which are not necessarily those of UNESCO and do not commit the organization to any position.

property as envisaged by the 1970 Convention. It highlights the provisions of a sample of legislations and notes how they address the problems legally and administratively. It then goes on to make recommendations on the contents and forms of legislative and administrative measures that should be taken.

It begins with a country survey—snapshots—of States Parties' legislation before looking at the inadvertent efforts of nonmember countries. The country survey is intended to reveal models, best practices, and weak laws. However, before going into the country survey, a general observation can be made. National legislations in Africa for the protection and preservation of cultural goods are of two types: the general and the particular (the *grundnorm*). Postindependence constitution making in Africa saw some countries like Burkina Faso, Mauritania, and Madagascar enshrining the protection of the cultural heritage in the fundamental law (*grundnorm*) of the land. Other countries that are doing so are Benin, Burkina Faso, Cape Verde, Congo (Brazzaville), Equatorial Guinea, Egypt, Ethiopia, Ghana, Guinea, Guinea-Bissau, Madagascar, Sao Tome and Principe, Seychelles, Somalia, and Uganda. The Burkina Faso constitution of 1991 takes the protection of cultural heritage further in Africa by conferring a positive right of action in the form of an *actio popularis* on every Burkinabian who detects anyone or any agency harming the country's cultural heritage. Article 30 provides for this in full: "Every citizen shall have the right to initiate an action or to join a collective action under the form of a petition against these acts: harming the public heritage; harming the interests of social communities; harming the environment or the cultural or artistic heritage."⁴

COUNTRY SURVEY—MEMBER STATES⁵

Algeria

Algeria joined the Convention on 24 June 1974. It enacted Ordinance 67-281 in 1967 on the Protection of Sites, Historical and Natural Monuments. Decree 87-10 of January 1987 sets up the National Agency of Archaeology and the Protection of Sites and Monuments, while Decree 858-279 of November 1985 establishes the National Museums for Antiquities. These laws, however, neither prohibit nor control the import of cultural objects into the country. According to Ridha Fraoua,⁶ Algeria has established a specialized service to prevent and combat trafficking. It is known as the Sub-Directorate for Cultural Property Security, and it forms part of the Directorate for the Legal Protection of Cultural Property. Algeria also has a central squad for the protection of national cultural heritage, attached to the National Security Directorate. This squad is responsible, in particular, for operational investigations into various acts against the national cultural heritage: the theft of and trafficking in archaeological objects, antiquities, and works of art; damage to and looting of archaeological sites; and artistic forgeries. It directs investigations conducted by other judicial police departments and formulates strategies

to combat trafficking in cultural property. It acts in close cooperation with the Division for the Protection of Cultural Property, the Cultural Property Management and Exploitation Office, the National Archaeology Centre, and museum curators. The national *gendarmerie*, too, has established heritage inspection units. Algeria has signed a specific agreement, bilateral treaty to protect cultural heritage against trafficking, with Argentina for the reciprocal protection of cultural property in the event of trafficking and is considering concluding two similar bilateral agreements with China and Peru.

Cote d'Ivoire

Cote d'Ivoire joined the Convention in 1990. The Law of 28 July 1987 relative to the protection of Ivorian cultural heritage provides in Article 37 that all archaeological projects are subject to authorization from the government. In Article 38 it is provided that the author of any discovery, fortuitous or not, resulting notably from officially authorized excavations or from public or private works, must declare the discovery to the Ministries of Cultural Affairs and Mines. The author of any discovery is personally and financially responsible for the safekeeping of the antiquities, which can in no event be sold, transferred, or distributed before the government decides upon their permanent status.

Democratic Republic of Congo

Article 34 of the Democratic Republic of Congo's (DRC's) law concerning the protection of cultural property of 1971 has a unique provision attempting to deter illegal export. It provides that no person living abroad who habitually or occasionally purchases objects of antiquity for resale may collect in the DRC such objects of DRC's origin whether they are classified or not. Moreover, the same prohibition applies to any person acting as agent for some other person even if he or she resides in the DRC.

Egypt

Egypt became a member of the 1970 Convention on 5 April 1973. In 1983 the country promulgated what can be called its implementation act with the enactment of the pivotal Antiquities' Protection Law No. 117 of 1983, as amended by Law No. 3 of 2010 Promulgating the Antiquities' Protection Law. According to Article 1, the term *antiquity* is any movable or immovable object that is a product of the various civilizations that span the entire Egyptian history reflecting the arts, sciences, humanities, and religions of the successive historical periods and that is more than 100 years old. Article 6 declares that all antiquities are strictly regulated and considered to be the property of the state. Article 7 prohibits trade in antiquities, while Article 8 proscribes possession of antiquities. The only exceptions are antiquities whose ownership or possession was already established at the time

the law came into operation. In such a situation an individual in possession of antiquities shall notify the Egyptian Antiquity Authority of the antiquity in his possession within six months of the law coming into operation and shall safeguard it until it is registered by the authority. Anyone who fails to declare an antiquity in his or her possession within the stipulated time shall be deemed to be an unlawful possessor. Inventories of antiquities in sites and museums are accomplished by two centers of documentation, for Egyptian antiquities and for Islamic and Coptic antiquities through the information center of the Supreme Council of Antiquities. Inventories are done by electronic database systems.

Article 9 permits a possessor of antiquity to dispose of it provided he or she obtains prior written approval and provided the disposition does not result in exporting it. In all cases the authority shall have the right of preemption, in return for fair compensation. Egypt has an antiquities police squad or police of antiquities dedicated exclusively to combating trafficking in cultural property, and it is supported by the central police authorities.

All archaeological material, ancient art, and artifacts of any kind that are discovered or found within the republic of Egypt are *regulated cultural property*. Export restrictions are in place and enforced at all Egyptian airports, ports, and border crossings. Any person who unlawfully smuggles an antiquity outside Egypt or participates in such an act shall be liable to a prison term with hard labor and a fine. Under Article 24, anyone who fortuitously discovers a movable antiquity must notify the nearest administrative authority within 48 hours and safeguard it until the Egyptian Antiquities Authority takes possession of it. Failure to comply is deemed as unauthorized possession. Article 15 declares that no prescriptive ownership of antiquities shall accrue to any individual or corporate entity by adverse possession from the use of an archaeological site, land, or structure of historic value.

Through Law 117 and the vigorous application of it Egypt has been able to secure the return of thousands of antiquities smuggled out of the country.

Article 35 provides that all antiquities discovered by foreign archaeological missions are state-owned property. However, the Supreme Council of Antiquities can decide to reward those missions that do particularly remarkable work in excavation and restoration by offering some of the movable antiquities recovered by the mission to a museum that the council indicates so that they are displayed there on its behalf. This can occur if there are similar items recovered from the same excavations that have been studied and classified. Article 36 confers “all rights of intellectual property and trademark” exploitation on the Supreme Council of Antiquities including “archaeological objects and sites owned by the Council.” The idea is to impose intellectual property rights control on key Egyptian images and monuments, such as the pyramids.

Egypt has signed several bilateral agreements to protect its cultural heritage against trafficking, notably with Italy, Greece, and Denmark, and is currently negotiating a major agreement with the United States.

Madagascar

Madagascar became a member of the Convention in 1989. Article 25 of the Legislation/Decree 82-029 of 6 November 1982 on the Protection, Safeguarding and Conservation of the National Heritage prohibits the export of antiquities. Article 39 stipulates that archaeological excavations cannot be undertaken without the authorization of the minister concerned, and Article 42 provides that the state has the right to ownership of all property discovered during excavations and as a result of research. Article 45 states that the finder of cultural objects as a result of excavation is obliged to notify the local authorities within three days following such a discovery. Article 49 stipulates that any national heritage property acquired in breach of the order will be confiscated by the state. Finally, Article 56 provides that anyone who destroys, damages, mutilates, or knocks down classified or registered cultural property will be sentenced to a period of imprisonment ranging from one month to two years, and to a fine.

Mali

Under the leadership of Alpha Oumar Konare, Mali has a proactive legislative and management policy for the protection of Mali's cultural heritage. Konare was head of the national historic and ethnographic heritage division from 1976 to 1978, Minister of Culture from 1978 to 1980. From 1989 to 1992 he was the president of the International Council of Museums. In 1992 he was elected president of Mali and served two terms, stepping down in 2002. Under his leadership, a legal framework was set up allowing for an effective campaign against looting and trafficking. Starting in 1985 a series of laws were passed, and in 1987 Mali ratified the 1970 Convention. On 26 July 1985 Law No. 85-40 concerning the protection and promotion of the national cultural heritage was passed. This was followed on 4 November 1985 by the enactment of Decree 275 regulating archaeological excavations. Under Article 11 of this decree, all objects of a movable or fixed nature discovered in the course of excavations performed on or in the soil of the public domain are the property of the state. On 26 July 1986 Law 86-61, controlling traders in cultural objects, was promulgated; thus Mali followed France as one of the few countries controlling the activities of dealers in items of cultural heritage. Another decree was promulgated on 19 September 1986 (Decree No. 999), regulating the excavation and marketing of cultural objects. Finally, in the framework of the 1970 Convention, Mali and the United States signed an agreement in 1997 restricting the import of the Niger Valley's archaeological heritage and items from the tellem caves of Bandiagara.⁷ Mali is the only African country that has taken advantage of the U.S. scheme.

Mauritania

Mauritania became a member of the 1970 Convention on 27 April 1977. Earlier, on 31 July 1972, Mauritania promulgated the law relating to the Preservation and

Cultural Promotion of the National Prehistorical, Historical and Archaeological Heritage. Article 1 provides that the following are considered as state property: all movable and immovable property of national interest from the viewpoint of prehistory, pre-Muslim history, Muslim history, philosophy, or art and archaeology, existing on and in the ground of real property belonging to the public or private domains of the state, of local authorities, or of public establishments, regardless of whether the said property has been subject to any kind of concession. Such movable and immovable property is imprescriptible, and can be neither disposed of nor destroyed without authorization from the Ministry of Cultural Affairs. By virtue of Article 2, private individuals in ownership and possession of cultural antiquities remain undisturbed in their ownership and possession thereof; the state, however, reserves the right to establish servitudes over them on the ground of public interest, including the right of authorities to carry out investigations, visiting rights of the public, and obligatory upkeep. In the latter case, state aid would be available in the case of large-scale repair work and/or restoration. The exportation of antiquities is forbidden. Article 17 makes provisions for rescue archaeology. According to Ridah Fraoua,⁸ Mauritania's regulations governing the import of cultural objects are distinguished by particular rules that are found occasionally in other legislation of the Arab states and that implement the provisions of the 1954 and 1970 Conventions. Under the 2005 law for the protection of the tangible heritage, imported cultural objects must be declared to customs officers. A receipt must be issued to the possessor by the customs authorities. The receipt constitutes proof in the event of re-export. Illegally imported cultural objects are seized and placed under the protection of the state; on condition of reciprocity, they are returned to their countries of origin in accordance with international agreement. The requesting state must bear the cost of restitution. The export and transfer of ownership of cultural objects originating from a country occupied by a foreign power are considered to be illegal.

Nigeria

Following the dispersal of the Ife bronze heads, the colonial government hurriedly made an order in council to control the export of antiquities. The 1938 order was replaced by another order in council in 1943, and finally by the 1953 Antiquities Act. A supplemental law, the Antiquities (Prohibited Transfers) Act was enacted in 1974. The current legislation is the National Commission for Museums and Monuments Act of 1979. The act abolished the Antiquities Commission and the Federal Department of Antiquities set up under the 1953 Act as the agencies of the federal government responsible for the protection and conservation of Nigeria's cultural heritage property. A new commission, the National Commission for Museums and Monuments, was established with responsibility for the conservation, preservation, and restoration of the nation's historical, cultural, artistic, and scientific relics. The commission is authorized to declare as monuments

any antiquity it considers as needing protection or preservation in the national interest. The declaration of an antiquity as a monument must be gazetted. When an antiquity has been declared a national monument, the owner shall be entitled to compensation. The merit of the act is in strengthening the offence provisions for unauthorized dealing in cultural objects and trafficking in them. However, the act makes no provisions compelling archaeological survey and rescue excavations on land for development projects unless the area has been adjudged to contain items of importance to the cultural heritage of the country. The combined effects of Sections 19 and 20 of the act is that there is no restriction on any individual, company, or group from developing their land and doing away with its contents in the manner they think fit. As a result, Nigerian cultural heritage undiscovered by archaeological survey is now under constant threat of permanent destruction by roads, housing, water irrigation, and mineral prospection projects. The report of the Inter-Ministerial Committee on the Looting of Nigerian Cultural Properties in 1996 recommended, among others, various amendments to the 1979 Act, but so far they have not been carried out. Unlike the repealed 1953 Antiquities Act, which gave a prominent role to local government authorities in cultural heritage management and granted them the power to make bylaws and regulations with regard to cultural property in their area of jurisdiction, the 1979 Act does not involve the local government. This is hardly in accord with the latest thinking, namely, that for the proper management and preservation of historical artifacts and sites, direct local participation is crucial. Although Nigeria was the third member nation that ratified the 1970 Convention on 1 January 1972, it has done very little to implement the Convention.

South Africa

South Africa is a recent State Party to the 1970 Convention, its membership taking effect from 18 December 2003. In South Africa cultural property is protected by the comprehensive National Heritage Resources Act 1999. The preamble states that the objective of the act is to introduce an integrated and interactive system for the management of the national heritage resources, to promote good government at all levels, and to empower civil society to nurture and conserve their heritage resources so that they may be bequeathed to future generations. Part 2 of Chapter I (Sections 11–26) of the act establishes the South African Heritage Resources Agency (SAHRA) together with its council to coordinate and promote the management of heritage resources at national level. Section 23 provides for the establishment of a provincial heritage resources authority. This is a welcome regulation. Too often, cultural heritage laws in Africa are top-down instead of bottom-up. They do not involve local authorities and local people, who in many cases are the best custodians of the heritage. Section 8 declares a three-tier system for heritage resources management, in which national level functions are the responsibility of SAHRA, provincial level functions are the responsibility

of provincial heritage resources authorities, and local level functions are the responsibility of local authorities.

Section 32(19) controls the export of nationally significant heritage objects, and Section 33 controls the importation of cultural property illegally exported from foreign countries. Both SAHRA and provincial authorities must maintain databases and heritage registers.

Thus, before South Africa joined the 1970 Convention on 18 December 2003, it had in place legislation fulfilling most of the requirements of membership demanded by that Convention. Section 50(1) grants to SAHRA and provincial authorities power to appoint heritage inspectors, and by force of the section, each member of the South African Police Services and each customs officer is deemed to be a heritage inspector. They must be able to identify a heritage object about to be exported and confiscate it if a permit is not available. One of the strengths of the South African system is the administrative regime and training in place. There is the National Forum for the Law Enforcement of Heritage-related matters established in 2005 as the forum for a close working relationship between law enforcement and heritage officials. This allows for the dissemination of information and the sharing of ideas regarding the protection of cultural property. Members include the South African Police, INTERPOL, SAHRA, ICOM-South Africa, and Customs. Training seminars for the police are held at the University of Pretoria. These officers are made aware of the importance of combating heritage-related crimes. They are trained in identification, handling, and storing of heritage objects. In addition, a list with the contact information of experts is distributed to the police, in case they find a stolen heritage object, so that they could immediately contact an expert who could identify the object and advise on its correct handling and storage.

Tanzania

The first legal measure to protect Tanzania's cultural heritage, the Monuments Preservation Ordinance, was promulgated by the British colonial government in 1937. The ordinance empowered the governor to declare and gazette structures of historic significance as monuments, and sites of archaeological, scientific, and historic significance as reserved areas. It was also in 1937 that the King George VI Memorial Museum was established for the preservation of the movable heritage. It was renamed the National Museum in 1962, two years after Tanganyika's independence. However, it was not until 1957 that the government established an agency, the Antiquities Department, to handle the management and conservation of immovable cultural property. In 1964 the Monuments Preservation Ordinance was repealed and replaced by the Antiquities Act of that year. It remains the principal legislation, although it was modified by the Antiquities (Amendment) Act of 1979. The 1979 Act empowers the appropriate minister, after consultation with the minister for lands, to declare as a conservation area any area or site that (a) is a valuable national heritage for its aesthetic value; (b) contains a homogeneous

group of monuments; or (c) contains buildings, structures, or other forms of human settlement that constitute a valuable national heritage for their historical, architectural, social, or cultural value.

Zambia

Zambia became a member state of the 1970 Convention on 21 June 1985. Heritage law in Zambia dates back to 1912, when the Bushmen Relics Proclamation was introduced to protect relics associated with Africans. This was followed by the Archaeological Ordinance of 1930 and then by the Natural and Historical Monuments and Relics Act of 1948. The current law is the National Heritage Conservation Commission Act 1989. In its totality, the new law is an attempt to update and to broaden the scope of what is protected. Terminologies such as *heritage* were added to the language, and penalties were made stiffer. There is an export permit provision in Section 34(1), whereby anyone who desires to export from Zambia any antiquity or cultural object must apply for an export permit. The 1989 Act Section 40(1) provides that no person shall excavate, collect, or export, as the case may be, any ancient heritage, any relic or part thereof, or alter, destroy, damage, or remove from its original site any ancient heritage, national monument, or relic in disregard of the provisions of the act. The aforementioned provisions include obtaining a permit to export or excavate. Section 42 provides that any person who discovers what appears to be an ancient heritage or relic shall (a) report his discovery to the Commission within fourteen days; (b) suspend his operations in the immediate vicinity of his discovery until thirty days after the delivery of his report, unless the Commission authorises their continuance; and (c) deliver to the Commission as soon as practicable, or request the Commission to examine and remove, any object which is, or appears to be a, relic. There is however no express rescue archaeology provision.

Zimbabwe

Zimbabwe joined the Convention on 30 May 2006. Cultural Heritage is protected in Zimbabwe by the National Museums and Monuments Act 1972. This law replaced the colonial Monuments and Relics Act 1936, which in turn replaced Ancient Monuments Protection Ordinance 1902 and Bushmen Relics Ordinance 1912. Although the act was amended in 1976, 1984, 1990, and 2001, Zimbabwe is an illustration of the fact that independence has not been used as the opportunity of breaking off with the cultural heritage legislation installed by the former colonial power. There are rather few provisions for the protection of cultural goods in the act, concentrating as it does on the establishment of the board of trustees of the national museums and monuments, the staff, and pension matters. Section 24 prohibits excavation without the consent of the executive director of the National Museums. There is no provision on rescue archaeology.

There are no provisions on illicit traffic in cultural property or on import and export of cultural objects.

COUNTRY SURVEY—NONMEMBER STATES

Benin

Article 32 of Order on the Protection of Cultural Property of 1 June 1968 forbids exporting cultural property. The export of objects may, however, be authorized on an exceptional basis, by the minister in charge, on the condition that the objects in question have an equivalent either in a general form or in a collective form. Article 29 provides that where objects of antiquity are discovered, the finder and the proprietor of the building where the discovery is made are obliged to make an immediate declaration to the local administrative authority. The local authority will then notify the national authority. Article 33 also provides that antiquities discovered but yet to be classified are not to be exported without the authorization of the appropriate authority. Breaches of Articles 32 and 33 are punishable in accordance with the regulations provided for in customs-related matters. Under Article 15, no person has the right to carry out excavations or surveys on land belonging to him or her or any other person, of objects from the viewpoint of prehistoric, historic, ethnological, artistic, or archaeological interest without the prior authorization of the minister in charge. Benin's Law 20 of 2007 on the Protection of Cultural and Natural Heritage declares in Article 2 as state property the result of archaeological excavations, regular or clandestine. Under Article 82, archaeological goods movable or immovable, discovered in the territorial water of Benin are regarded as Beninese state-owned property.

Botswana

Unlike most other former British colonies, Botswana did not inherit any form of museums at independence in 1966. On attainment of independence, it lost no time establishing the National Museum and Art Gallery in 1968 by virtue of the provisions of National Museum and Art Gallery Act of 1967. This legislation, however, apart from the virtue of giving Botswana its first museum, does not have any policies or guiding principles for any fundamental museum functions such as collection, acquisition, documentation, de-accessioning, and exhibition. The Monuments and Relics Act 1970, which was reenacted with amendments in 2001, however, fills some of the void. Of particular note are Sections 12 and 19. Section 19(2) provides that an archaeological and pre-development impact assessment study and an environmental impact assessment study, shall be done by any person wishing to undertake major development, such as construction or excavation, for the purposes of mineral exploration and prospecting, mining, laying of pipeline, construction of roads or dams, or erection of any other structure, which will physically disturb the

earth's surface. It goes on to define "pre-development impact assessment" as the study by an archaeologist of an area in which development or any ground disturbing activity is to be carried out, to determine the likelihood of the development or activity impacting negatively on any cultural material or evidence that may be present in the area to be disturbed. No construction or excavation can take place until the relevant authority has considered the report and given permission. Approval may be subject to conditions to protect the natural or cultural heritage. Section 12 deals with rescue archaeology providing that on the discovery of any artifact, relic, or any other discovery of an archaeological nature, the discoverer and also the owner or occupier of the land shall without delay notify the Commissioner of Monuments and Relics. The discoverer must immediately suspend the excavation or construction until the commissioner has directed whether the excavation or construction can continue; and if so, the manner in which it may continue. The state has the option to acquire the land. By the provision of Section 18(5), no person shall without the written consent of the minister export from Botswana objects discovered as a result of archaeological excavation. The regulations set out in Sections 12 and 19 are distinguished by being only occasionally found in legislations of other countries.

Ethiopia

The Proclamation to Provide for Research and Conservation of Cultural Heritage was decreed 27 June 2000 under the authority of Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia 1995. The Authority to Research and Conservation of Cultural Heritage is established by Article 1. Article 3, the definition section, defines inter alia cultural heritage, movable cultural heritage, immovable cultural heritage, tangible cultural heritage, and intangible cultural heritage. Article 4 states that one of the objectives of the proclamation is to protect the cultural heritage against manmade and natural disasters. Article 14(1) provides that cultural heritage may be owned by the state or by any person. Article 14(2), however, declares that undiscovered cultural heritage is owned by the state. Under Article 26 the state may expropriate any cultural heritage that is not properly protected, repaired, and restored; or whose custody in a museum is deemed necessary; or which has been confiscated while being illegally taken out of Ethiopia. Article 26 also provides that Ethiopia's cultural heritage held illegally in other countries shall be repatriated. It also directs that data on Ethiopia's cultural heritage held in other countries shall be collected and publicized. Part 3 of the proclamation has provisions on exploration and undiscovered cultural heritage. After the usual provisions for obtaining prior permission and strict supervision by the Authority for Conservation of Cultural Heritage in an earlier article, Article 41 declares that any person who discovers any cultural heritage in the course of excavation connected with mining explorations, building works, road construction, or other similar activities or in the course of any fortuitous event, shall forthwith report the

same to the authority, and shall protect and keep same intact until the authority takes delivery. Under Article 42, a permit must be obtained before any building works or road construction or excavations can be conducted in Reserved Areas, as declared by the Council of Ministers and consisting of immovable cultural heritage or an area deemed to be an archaeological site. Any person who holds a permit and who discovers cultural heritage in the course of construction activities shall stop the construction forthwith and report the same in writing to the authority. The article, however, fails to go on to make provisions for rescue archaeology. There is a provision for the appointment of cultural heritage inspectors in Article 43. An inspector is authorized to enter at reasonable hours any place where there is any cultural heritage and conduct an inspection to ensure that the cultural heritage is properly maintained and protected. Finally, in Article 45, penalties are prescribed for violations of various provisions of the Proclamation. After stating the penalties for minor infractions, Article 45(2)(a)(b)(c) states that unless a more severe penalty is prescribed by the Penal Code, any person who commits a cultural heritage offence shall be punished with rigorous imprisonment of not less than seven years and not exceeding 10 years. Those who destroy the cultural heritage intentionally will be punished with rigorous imprisonment of not less than 10 years and not exceeding 20 years. And officials who destroy or damage cultural heritage or guilty of unlawful enrichment shall be liable to rigorous imprisonment of not less than 15 years and not exceeding 20 years.

Kenya

In Kenya, calls for the preservation of the cultural heritage were made as early as the first decade of the last century, and in 1927 some coastal sites were protected under the Ancient Monuments Preservation Ordinance, and the National Museums of Kenya was also established. The 1927 Ordinance was repealed and replaced in 1934 by the Preservation of Objects of Archaeological and Paleontological Interest Ordinance. This legislation protected sites and monuments demarcated and published in the Kenya Gazette. In 1983 Kenya enacted new laws concerning the protection of the cultural heritage, namely, the National Museums Act, and the Antiquities and Monuments Act. In 2006 Kenya enacted consolidating legislation, the National Museums and Heritage Act of 2006, which inter alia provides for the identification, protection, conservation, and transmission of the cultural and natural heritage of Kenya; and Kenya repealed the 1983 laws. Under Section 46, all antiquities that are lying in or under the ground, or being objects of archaeological, paleontological, or cultural interest discovered in any part of Kenya after the commencement of the act “shall be the property of the government.” Section 49 prohibits anyone from buying, selling, or exchanging an antiquity unless he or she has been licensed to deal in antiquities. Section 50 authorizes the minister to compulsorily purchase an antiquity or protected object if he or she considers that it is in danger of being destroyed, injured, or allowed to fall into decay, or of being unlawfully removed.

The purchase must be on the grounds of preservation and display for the public benefit. Perhaps in order to assist in the compilation of a national database of Kenya's antiquities, Section 47 of the act provides that a person shall, if so required in writing by the National Museums, within such period not being less than one month as may be specified by the notice, furnish the authority with full particulars of all objects in his possession which he or she knows or has reason to believe to be antiquities or protected objects. Section 52 prohibits removal from Kenya of an antiquity or protected object unless its removal has been authorized by an exploration license, or by an export permit. An application for an export permit must be made in writing to the responsible minister, who may issue an export permit subject to such terms and conditions as he or she may deem fit, or without assigning any reason refuse to issue any export permit.

Rather than copy South Africa's system of heritage inspectors, the Kenyan consolidating legislation at Section 57 introduced the system of heritage wardens. The minister is given the power to appoint heritage wardens for the purpose of enforcing the act. Under the section, a heritage warden may, with the leave of the attorney-general, be appointed prosecutor for purposes of prosecuting offences committed under the act. This presupposes that he or she would be a lawyer. Section 58 confers on heritage wardens the authority at any reasonable time to inspect an antiquity or protected object. Section 59 confers on a police officer or heritage warden power of arrest with or without a warrant (the latter subject to conditions set out in the section). Section 60 gives power to a customs officer to search without warrant anything intended to be removed from Kenya, or any person intending to leave Kenya, if the officer reasonably suspects that thing or person of containing or carrying a monument or part thereof, or an antiquity or protected object and seize it. Anything seized under Sections 59 and 60 shall be forfeited to the government after being taken before a magistrate.

Lesotho

The heritage of Lesotho is protected under the Historical Monuments, Relics, Fauna and Flora Act 1967. The principal museum curator of Lesotho alleged at the September 2011 Windhoek workshop on the Prevention and Fight against Illicit Traffic of Cultural Goods that there are no operational bodies such as heritage council or commission, which are meant to add support to the efforts of the department of culture in the preservation of the cultural objects.⁹ She also revealed that there is no adequate inventorying of cultural objects. Lesotho has only one museum, the Morija Museum. There is now in the offing the National Heritage Resources Bill of 2011. It is not clear whether or not it has been passed. The draft bill is available on the Internet, and it is a vast improvement on the existing law of 1967.

Malawi

The Monuments and Relics Act 1990 makes provisions for the conservation and preservation of cultural heritage; and it also provides for the declaration of protected monuments and relics and acquisition by the government of rights and trusteeship over monuments and relics for the preservation thereof by agreement with the owners. It also makes provisions for a procedure to be followed upon the discovery; excavation; removal; trade; export and import of monuments, relics, and collections of cultural and natural heritage. Section 25 provides that all monuments and relics, whether movable or immovable, lying on or beneath the surface of the ground or in a river, a lake, or other waters, are the absolute property of the government, except privately owned monuments whose owners establish their title thereto. Section 26(5) provides that ownership of any land shall not, in itself, entitle the owner of the land to dispose of monuments or relics on or under the surface of that land. Section 36 is another example similar to that of Mali to control the activities of dealers in antiquities. It provides that no person shall be involved in trade in cultural objects unless he or she has a valid license. He or she must keep a detailed inventory of the stock and daily sale and purchase transactions. Sections 41–48 have detailed provisions on the export of cultural objects. Section 49 provides that the responsible minister shall within the terms laid down in agreements, treaties, and recommendations of international organizations arrange to recover cultural objects smuggled or otherwise taken out of Malawi and may assist in returning those brought into Malawi from other countries.

Namibia

Namibia's National Heritage Act 2004 states in its preamble that it seeks to provide for the protection and conservation of places and objects of heritage significance and the registration of such places and objects in the National Heritage Register. It establishes the National Heritage Council as the administrative body for the management of Namibia's cultural heritage. Section 24 provides for the establishment of Namibian Heritage Register with respect to places and objects of heritage protected under the act. Section 55 declares all archaeological and paleontological objects and meteorites the property of the state. It further prohibits activities likely to endanger archaeological or paleontological sites or meteorite. Section 57 declares that remains of all ships that have been situated on the coast or in the territorial waters or the contiguous zone of Namibia for 35 years or more are historic shipwrecks, and articles associated with such ships are historic shipwreck objects. It is the duty of the council to recommend to the responsible minister that the place where the remains of a ship are located be declared protected place, and an article associated with a ship be declared a protected object. Section 60 authorizes the appointment of heritage inspectors, in addition to each member of the Namibian Police Force and each customs and excise officer being a heritage inspector.

A heritage inspector may at all reasonable times enter upon any land or premises for the purpose of inspecting any protected heritage resource. Section 65 has a provision uncommon in heritage legislation in Africa. It sets out how the council is to perform its educational function. The council is urged among other things to:

- (a) liaise and consult with local authorities and community leaders in relation to the protection, conservation and maintenance of protected places and protected objects and their environment;
- (b) educate and encourage owners of land and members of the public to report and protect discoveries of places and objects of cultural, artistic, natural, palaeontological, archaeological, historical or scientific interest;
- (c) publish or promote the publication of guidebooks and similar publications, having an educational purpose in respect of all or any parts of Namibia and its heritage;
- (d) carry out and encourage research into national, regional and local history of Namibia and its heritage, and publish the useful results of the research;
- (e) encourage public awareness and participation in heritage matters.

The suggestion for the involvement of local authorities is noteworthy.

UNESCO CULTURAL HERITAGE LAWS DATABASE

The database as UNESCO itself says aims at making the cultural heritage legislation of states easily available on the Internet. It is particularly useful to organizations, institutions, private entities, or individuals having legal questions concerning an object that may have been stolen, pillaged, illegally excavated, illegally exported, or illegally imported, and /or be subject to state ownership under the relevant legislation. In particular, it provides purchasers and dealers with easy access to legislative texts, thereby facilitating due diligence efforts. Of the 54 African Union (AU) members, one member, Liberia, has an extract of its legislation in the database. However, 11 others do not have any legislation in the database: Cape Verde, Central African Republic, Equatorial Guinea, Eritrea, Guineas-Bissau, Mozambique, Sahrawi Republic (Western Sahara), Sao Tome and Principe, Sierra Leone, Somalia, and South Sudan. While the absence of Sahrawi Republic, Somalia, and South Sudan is understandable, the absence of the other nine is not.

REFLECTIONS ON COUNTRY SURVEY

The Ethiopian legislation is a good example in terms of simplicity and packing a lot into a short legislation. In terms of detail and specificity, the South African law is a model. In North Africa, Egyptian Law 117 is exemplary. Malawi, Mauritania, and Namibia have some excellent specific provisions, which have been highlighted.

With regard to general cultural heritage legislation, some countries do not have precise laws and regulations that protect cultural heritage. Others, like Madagascar and Mauritania, have tried to put in place worthwhile laws. Yet these laws have not taken a holistic approach and are deficient in some respects. The Mauritanian law was passed in 1972, and that of Madagascar in 1982. In some significant respects the provisions were ahead of their time and anticipated Egyptian Law 117 of 1983. It is important in the present period of looting and illicit trafficking of cultural goods to declare and create state ownership of all undiscovered antiquities. Such a pivotal provision has been of immense help to Egypt, whose 1983 Antiquities Protection Law has helped Egypt to secure return of stolen antiquities. Egyptian Law 117 prohibits private ownership, possession, or trade in undiscovered and registered antiquities, and imposes sanctions for violations including prison terms with hard labor. In the celebrated Frederick Schultz case, when asked who owns all recently discovered antiquities, one of the witnesses, Gaballa Ali Gaballa, then the Secretary General of Egypt's Supreme Council of Antiquities, responded, "the Egyptian government, of course." He also said that a finder of an Egyptian antiquity could never legally keep it. It has long been argued by the art trade and many collectors that "nationalization laws" are somehow not legal, and that the courts in the West, particularly those in the two main market countries, the United States and the United Kingdom, should disregard them. The Schultz case and the conviction of Tokeley Parry appear to reject that thinking. Egyptian Law 117 should therefore be adopted by African countries.

It does not appear that any country in Africa that is a State Party to the 1970 Convention, whether south of the Sahara or not, has any implementing legislation for the proper operation of the Convention in their countries. But then looking at the issue globally, the United States is one of the few Member States that has enacted legislation through the 1983 Convention on Cultural Property Implementation Act. Australia is another country that has enacted legislation through the Protection of Moveable Cultural Heritage Act 1986. Even Egyptian Law 117 is not expressly designated as implementation legislation. Some countries, however, have enacted laws that have inadvertently implemented the Convention in their countries. Member States need not in fact enact implementing legislation. They may operate the Convention through another act or a raft of legislative provisions. For example, in the United States, the Stolen Property Act and Archaeological Resources Protection Act (and others) have been used to combat illicit trafficking of cultural property. The United Kingdom has not passed new legislation since it became a member of the Convention in 2002 but uses existing powers under other acts and one new piece of legislation on criminal import of illicitly exported cultural objects: Dealing in Cultural Objects (Offences) Act of 2003. The danger in this approach is that if the relevant laws are not clearly spelled out, anyone wishing to recover an object may have a difficult time establishing his or her case.

REASONS FOR NONACCESSION

The reasons why sub-Saharan African states have been slow to embrace the Convention include:

1. The failure of African lawyers to show interest in the intricate issues involved in the return and restitution of cultural objects, resulting in ignorance of the benefits to be derived from membership of the Convention.
2. The cost and duration of pursuing cases in foreign courts.
3. The failure of previous attempts to recover cultural objects in foreign courts.
4. Erroneous belief that a good domestic legislation could be sufficient. Thus at the Windhoek workshop, speakers from those countries (e.g., Botswana and Namibia) that had not ratified the Convention emphasized the fact that they have legislation that protects cultural objects, as if that was equivalent to membership of the Convention. Indeed, the representative of Botswana claimed that it had “inadvertently implemented [the two Conventions] through the return and existing requests for restitution of some of the country’s heritage in foreign countries.”
5. The protracted nature of negotiation for the return of stolen or illegally exported cultural objects. Thus the negotiation between Tanzania and the Barbier Mueller museum in Switzerland for the return of the Makonde mask stolen from the National Museum of Tanzania took 20 years.

UTILIZING U.S. IMPORT CONTROL MECHANISMS

An import control regime that enforces another country’s export restrictions at the national level within narrow limits was one of Paul Bator’s most significant proposal in his then seminal article,¹⁰ but it did not immediately receive the attention it deserved. Fortunately, the United States has now taken the lead in this matter. The 1983 Convention on Cultural Property Implementation Act enables the United States to implement the 1970 Convention and to enter into bilateral or multilateral agreements “to apply import restrictions ... to the archaeological or ethnological material of [a] State Party the pillage of which is creating jeopardy to the cultural patrimony of the State Party.” Such an agreement is effective for five years and may be extended for additional periods of five years. The ultimate goal of this international framework of cooperation is to reduce the incentive for pillage and unlawful trade in cultural objects. The State Parties with which the United States has signed agreements include Bolivia, Cambodia, China, Cyprus, El Salvador, Greece, Guatemala, Italy, Mali, and Peru.

Of the 30 African States Parties to the Convention, only Mali has entered into the special bilateral agreement with the United States. Admittedly, presenting a request to the United States government is a highly technical and formidable challenge. However, that should not constitute an insurmountable obstacle. Given

the pivotal position of the United States as an art-importing nation, sub-Saharan African countries such as Burkina Faso, Cameroon, Chad, Cote d'Ivoire, Niger, and Nigeria (which are also on ICOM's "Red List") may think, as Mali did, of going through the rigor of negotiating a bilateral treaty with the United States. Though, as it has been pointed out by Patrick O'Keefe in his commentary on the 1970 Convention, demanding bilateral agreement to implement Article 9 of the Convention was not intended by its drafters.¹¹ However, the U.S. example has now been followed by Switzerland and Japan.

PARTICIPATION IN INTERGOVERNMENTAL COMMITTEE FOR RETURN OR RESTITUTION

The first United Nations General Assembly resolution (Resolution 3187 of 1973) on the subject of cultural property is titled, "Restitution of Works of Art to Countries Victims of Expropriation." The 12 states that sponsored it were all African. The resolution in its preamble deplored "the wholesale removal, virtually without payments, of objects d'art from one country to another, frequently a result of colonial or foreign occupation." It went on to maintain in the first substantive paragraph that "the prompt restitution to a country of its works of art, monuments, museum pieces and manuscripts and documents by another country, without charge," will constitute "just reparation for damage done." It was a reaction within UNESCO to UN General Assembly Resolution 3187 of 1973, which led to the establishment of the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation in 1978.

African countries whose agitation at the UN General Assembly led to the establishment of the Intergovernmental Committee have made little use of the committee's good offices in the recovery of their expropriated cultural property. At the fifth session of the committee in April 1987, "a member of the Committee remarked that few complaints were received from Africa."¹² One explanation might be the difficulty of completing its Standard Form concerning Requests for Return or Restitution. But UNESCO assistance is always available to Member States in this regard. Tanzania is the only African country that has filed a case, in connection with its stolen Makonde mask. Botswana in its report of the application of the Convention in its country stated that Botswana is not involved in the work of the Intergovernmental Committee. African countries can point to the fact that Greece's request for the return of the Parthenon Sculptures, which goes back to 1984, remains unrequited. But Greece offers African countries an object lesson in determination and persistence, for it has never failed to raise the return of the sculptures at all subsequent meetings of the committee in spite of the regular negative British response. Indeed, the fourth committee session was convened at Athens and Delphi and the seventh in Athens, in 1985 and 1991, respectively, at the invitation of the Greek government. African countries must therefore become active actors in the work of the committee, file requests for the return of notable African objects in foreign countries,

particularly those in the countries of former colonial powers, and test their goodwill for the return of their “irreplaceable” cultural property to use former Director-General of UNESCO Amadou-Mahtar M’Bow’s phrase.

PARTICIPATION IN THE SUBSIDIARY COMMITTEE OF THE 1970 CONVENTION

The second meeting of States Parties to the 1970 Convention, which met in Paris 21–22 June 2012, adopted the creation of a Subsidiary Committee. It comprises 18 States Parties (three each by regional group). The African members are Chad, Madagascar, and Nigeria. The functions of the committee include (a) to identify difficult situations resulting from the implementation of the Convention, including topics regarding the protection and return of cultural property, and (b) to establish and maintain coordination with the “Return and Restitution Committee” in connection with capacity-building measures to combat the illicit trafficking of cultural property. The three African regional members should therefore ensure active participation in the work of the committee.¹³

COMBATING ILLICIT TRAFFICKING: MEASURES, ACTIONS, AND PROBLEMS

Effective combat of illicit trafficking of cultural property require resources in the form of money, trained personnel, facilities, and logistics. The recurring issues are the need for proper legislation, adequate security of museums, capacity building of museum professionals, adequate database, promoting public awareness, and training of law enforcement personnel.

STRENGTHENING AND UPGRADING LEGISLATION

Attention should first be drawn to UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects. In six short and simple paragraphs, the group of experts that prepared the Model Provisions seeks to encourage the protection of archaeological objects and to favor their restitution to the state where illicit excavation took place. Provision 1 provides that the state shall take all necessary and appropriate measures to protect Undiscovered Cultural Objects. The new law should incorporate Provisions 2–6. Provision 2 states: “Undiscovered cultural objects ... include objects which, consistently with national law, are of importance for archaeology, prehistory, literature, art or science and are located in the soil or underwater.” Provision 3 declares: “undiscovered cultural objects are owned by the State, provided there is no prior ownership.” In Provision 4, it is declared that “Cultural objects excavated contrary to the law or licitly excavated but illicitly retained are deemed to be stolen objects.” “The transfer of ownership of a cultural object deemed to be stolen under Provision 4,” Provision 5 adds, “is null and void, unless it can be established

that the transferor had a valid title to the object at the time of the transfer.” Finally, Provision 6 declares: “For the purposes of ensuring the return or the restitution to the enacting State of cultural objects excavated contrary to the law or licitly excavated but illicitly retained, such objects shall be deemed stolen objects.”¹⁴

In order to ensure the legislative implementation of the Conventions, the provisions highlighted below should be incorporated into any new law. Clear legislation is advocated, defining cultural property and establishing state ownership of cultural heritage. The following provisions are suggested:

1. Establishment of a heritage resources agency (or by any other name) as the supreme coordinating body for the protection and preservation of cultural heritage.
2. Establishment of an advisory body to deal with such matters as acquisition and de-accession.
3. Cultural property may be owned by the state or any person.
4. All archaeological undiscovered objects belong to the state.
5. Antiquities owned by private individuals must be registered.
6. Trade in antiquities must be strictly regulated.
7. Licit market in cultural property and activities of dealers should be adequately regulated.
8. Export of cultural objects without the state’s license must be prohibited.
9. Import control.
10. Clear guidelines on lending of antiquities for exhibition abroad.
11. Offences, sanctions, and penalties.
12. Impact assessment prior to any excavation.
13. Rescue archaeology programs must be guaranteed.
14. Close supervision of archaeological excavations.
15. Restriction on use of metal detectors.
16. Coordination of the work of the national police, customs, and immigration.
17. Compilation of inventories of heritage in and out of museums.
18. Prompt communication of precise details of losses to INTERPOL, ICOM, etc.
19. Educating the public and school children of the harmful effects of illicit traffic.
20. Local government authorities should be involved in cultural heritage management.
21. Acquisition and de-accessioning must conform to ICOM standards.
22. Obligation to enter into beneficial bilateral and multilateral cooperation agreements with other countries.
23. Introduce the system of heritage inspectors/wardens encompassing national museum officers, the police, and customs with police powers of search and arrest.
24. Establish a cogent administrative machinery to supervise the implementation of the legislation.

25. Establish a national forum for the enforcement of heritage related issues.
26. Compilation of inventories of cultural property outside the country.
27. Impose intellectual property rights control over key images of objects and monuments.

ADMINISTRATIVE MEASURES

In Articles 5 and 14 of the 1970 Convention, States Parties undertake to set up, as appropriate for each country, one or more national services for the protection of cultural heritage, with qualified staff and an adequate budget. Legislation alone cannot safeguard the cultural heritage or prevent trafficking in cultural objects. Administrative measures must also be deployed to strengthen legislative and regulatory measures. The following administrative measures are recommended:

1. Draw up a strategy for preventing and combating illicit traffic.
2. Integrate this strategy into the overall strategy for the protection, management, and promotion of the cultural heritage.
3. Complete the inventory of private and public cultural objects preferably according to "Object-ID" standard.
4. Complete inventory of archaeological sites.
5. Enhance security in all museums, particularly the national museums, with the latest state-of-the-art technology, including closed circuit television.
6. Establish a national database of cultural property in national and regional museums.
7. Prepare management plans for archaeological sites that focus particularly on key security issues.
8. Step up the surveillance of archaeological sites, museums, and depositories.
9. Improve and strengthen controls at frontier posts and airports.
10. Compile and maintain up-to-date statistical records of thefts and of illicit exports and imports of cultural objects.
11. Create a national database of stolen or illicitly exported cultural objects.
12. Take the necessary administrative measures to ensure that putting cultural objects for sale on the Internet does not promote illicit traffic.
13. Establish an antiquities police squad.
14. Introduce training and advanced training programs for members of the administrative, police, and judicial authorities involved in the implementation and application of the illicit traffic prevention strategy.
15. Draw up a general, long-term information strategy, aimed at mobilizing efforts of all sections of civil society to prevent and combat illicit traffic.
16. Improve the quality of the content of awareness-raising campaigns and of the selection of the target groups for the campaigns.

17. Encourage the development of the activities of national sections of National Commission for UNESCO, ICOM, AFRICOM (International Council of African Museums), and ICOMOS (International Council on Monuments and Sites).
18. Coordinated action especially between the police and customs services and relevant international organizations such as INTERPOL and WCO (World Customs Organization).
19. Establish a national committee to combat trafficking in natural and cultural property, including fauna and flora.
20. Provide adequate financial and personnel resources.
21. Establish bilateral cooperation on illicit trafficking, particularly with countries with common borders.

TOWARD HARMONIZATION OF AFRICAN CULTURAL HERITAGE LAWS

The next stage should be the harmonization of laws through the AU (originally through subregional groupings like the Economic Community of West African States), as is being done in the European Union, for example, through the Council Regulation and Directive.¹⁵

AWARENESS

Nonetheless, no legislation, no matter how well crafted, will of itself end the looting of archaeological sites and illicit traffic in cultural property. It can, however, minimize and reduce these damaging and nefarious activities. It must be complemented by education and public awareness programs. The local people can be educated about the laws prohibiting looting of sites, and their attention drawn to the irreparable damage being done to their heritage. This could raise the awareness of the local people and encourage them to get involved in protecting their heritage. In other words, the locals can become the curators of their treasures. The general public should be sensitized, too. At the Windhoek workshop, one speaker was of the view that looting and trafficking is done in the rural areas where most of the prized objects are, and the locals are convinced or bribed into selling, sometimes for a very small fee.

What is responsible for the current unfortunate situation is the breakdown in the old social constraints. When Leo Frobenius, the intrepid German explorer, visited Ibadan in South West Nigeria in 1910, he found to his dismay that the people could not be cajoled into parting with their cultural and spiritual objects: "A man most decidedly runs the risk of being jeered at everywhere for selling what is sacred to others, but belongs to him alone." In one place he had marked down "a fine lot of ceremonial furniture in the temples, but not a soul had any idea of selling." And whenever he found anyone willing to sell, one of two things happened: Either such a price was asked "as to place them beyond the reach of acquisition for museums," or rich relatives offered poor relatives willing "to part with a good antique ... substantial sums in order to retain the family possessions."¹⁶

SENSITIZING ENFORCEMENT AGENCIES

Law enforcement agencies, particularly the police and customs, must be able to identify historical artifacts. This means training them to identify what are and what are not antiquities. At the Windhoek workshop of 2011, speakers for South Africa and Namibia, who had introduced the system of heritage inspectors with police powers, emphasized the need to train these inspectors. The contribution by the representatives of South Africa shows that it has perhaps the most sophisticated training scheme, worthy of emulation by other countries. There are training seminars about illicit trafficking at the University of Pretoria, and police officers are made aware of the importance of combating heritage-related crimes. The training includes how to identify, handle, and store heritage objects, and the list of contact details of experts is distributed to the police. This is to ensure that, should the police find a possible stolen heritage object, they could be in immediate contact with an expert who could identify the object and advise on correct handling and storage. Other initiatives include a brochure containing reporting procedures; the purpose of the brochure is to create awareness of reporting procedures within the heritage community. This will ensure that museums and other custodians of heritage objects follow correct procedures after thefts, which could expedite police processes. When it comes to national cooperation, the National Forum for the Law Enforcement of Heritage Related Matters (NALEH) has been established to create a platform for a working relationship between law enforcement and heritage officials. This allows for the dissemination of information and the sharing of ideas regarding the protection of cultural property. Since its inception in 2005, it has been reported that NALEH has had a number of success stories. Members of NALEH include the South African Police Service, Customs, INTERPOL, SAHRA, ICOM–South Africa, and the University of South Africa.¹⁷

SENSITIZING THE LOCAL COMMUNITIES

There is certainly the need to educate “source” communities in the fight against illicit trafficking of cultural property not to dispose of their cultural objects to dealers. Also, they must be educated to spurn the allure that could be derived from illegal archaeological digging. As Klena Sanogo has revealed with regard to Mali, the actual looters (the first link in the chain) are local people who are completely unaware of the notion of cultural patrimony and are concerned only with problems of survival, and they do not come into direct contact with the art market.¹⁸ The speaker from Botswana at the Windhoek workshop spoke in the same vein. The people of the source communities have a low understanding of trafficking. To them, as long as there is money given in return for what is taken, they regard it as a legal transaction. Therefore most of the looting and trafficking is done in the rural areas where most of the prized objects are, and the locals are convinced or bribed into selling, often for a very small fee. On the other hand, the most worrying

category of looters are the organized groups, who as Sanogo writes, are recruited and supported by the antiquities dealers. There is, therefore, an urgent need to call public education aimed at building capacity of communities. Sanogo, in his article on the situation in Mali, discloses that the attitude of local people changes radically when their cultural relations with archaeological sites are established. For example, although the inland delta of the Niger is the area where looting is most severe, a site such as Toguere Somo is completely protected simply because it is accepted that it sheltered Sekou Amadou, the founder of the Peul Empire of Macina, just before one of his battles. Affinity to the local people is the best guarantee for the protection of cultural material, since it is ensured by the people themselves.¹⁹ This confirms the practical experience of the West African Museum Program (WAMP), which asserts that in the preservation of the cultural heritage of the community, the main responsibility falls more on the local museums than on the centrally controlled national museum.²⁰

SECURITY OF MUSEUMS

The representative of Zimbabwe at the Windhoek workshop warned that museum buildings should not be the weakest link in the fight against illicit trafficking in cultural property. This is an important point to make. Unfortunately, in sub-Saharan Africa, (subject to few exceptions—e.g., South Africa), the museums lack adequate security. At the Windhoek workshop, the representative of Malawi admitted that security measures in museums need to be tightened to prevent theft of objects. Lesotho frankly admitted the “absence of a museum structure” in the country having as a consequence that “the objects are not well documented. This can lead to easy trafficking of them.” With regard to Nigeria, I wrote in 1996: “At the moment, national museums across the country lack critical security infrastructure, namely, well trained security personnel, electronic burglary alarm systems and close circuit television monitoring systems.”²¹ After 16 years the situation has not changed. Small wonder then that at the Conference on the Protection of African Cultural Heritage held in Amsterdam in 1997, some Western experts demanded that Africa should first put its house in order.²² Appropriately, the speaker on behalf of Zimbabwe at Windhoek suggested that museum professionals should not allow unauthorized access through break-ins, and “museum buildings that exist need strengthening by prioritizing physical security.” He concluded: “Electronic systems to assist more effective monitoring of movement; entry and exit into and from different security areas of the museum building should be installed.” This passage is gently also hinting at the issue of corruption among some of Africa’s museum professionals. Professor Frank Willet, a specialist in Benin art, was reported in the London *Times* of 7 December 2001 as saying that “the bronzes could not go back to Nigeria while there were allegations of corruption and museum staff selling items.” The management of museums must ensure that the gamekeepers do not become poachers.

DATABASE

If inventories and accurate descriptions of cultural objects do not exist, it will be very difficult subsequently to establish where an object came from and to whom it really belongs. Successful lawsuits for the return of cultural objects generally occur where the objects are documented and their ownership is clear. The critical role of adequate registration and documentation in the fight against illicit traffic in cultural property has been emphasized again and again in discussions at every session of the Intergovernmental Committee to date. At the committee's inaugural session held at the UNESCO headquarters in Paris in May 1980, "several delegates and observers brought up the question of inventories of cultural property, stressing the fundamental importance of such instruments."²³ And at the 10th session in Paris in January 1999, it was concluded that "documentation is of crucial importance for the protection of cultural property, since, without a precise description and photographs, it is difficult for the legitimate owner to recover it."²⁴ Botswana's report at the Windhoek workshop is not encouraging. The collections at the Botswana National Museum, it was reported, have been documented manually, but electronic documentation is lagging behind. Without a proper electronic documentation and inventorying system, the collections are not well organized. Therefore, in the case of theft, it was noted it is not easy to pass information to the law enforcement agencies, let alone post information on the Internet for the international audience. Lesotho said inventorying in the only museum in the country, the Morija Museum, is done regularly. Namibia confessed it had inadequate inventory system. Swaziland too did not indicate any satisfactory inventorying system. Its inventorying system appears to be done manually. "Objects, photographs, artworks, etc., kept in the national museum and the national archives are securely kept and marked to be easily detected for the purpose of protecting them from would be smugglers and thieves. They are marked and these marks cannot be easily removed," Swaziland's report optimistically said. An indication of the sophistication of South Africa's system has already been given. It was indicated that most museums in the country establish and update their own inventories independently. A major challenge is the lack of a centralized national database. SAHRA is in the process of identifying and inventorying state-owned collections and objects, especially focusing on those at risk. The medium- and long-term outcome of the project was to establish the South African Heritage Resources Information System (SAHRIS), which will serve not only as a digitized inventory of cultural resources, but also as a management tool to effectively and efficiently monitor cultural property. It is obvious that South Africa is forging ahead in establishing a first-rate inventorying system. Other countries should also give utmost priority toward adopting electronic and digitized inventorying system.

HARMONIZATION OF OBJECT IDENTIFICATION USING *OBJECT-ID*

The *Object-ID* project, was originally created and coordinated by the Getty Information Institute, but now managed and promoted by ICOM was the outcome of

collaboration among UNESCO, the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe, the European Union, ICOM, INTERPOL, and the United States Information Agency (USIA). The General Conference of UNESCO, at its 30th session in November 1999, recommended that all Member States use and promote Object-ID following its endorsement by the Intergovernmental Committee at its 10th session as the international core documentation standard for recording minimal data on movable cultural property and for identifying cultural objects with a view to combating illicit traffic in cultural property. Object-ID is also compatible with other existing databases, as well as with the CRIGEN-ART form used by INTERPOL to collect information on stolen cultural property. Its adoption by all African countries is therefore strongly recommended. Thus at the Windhoek workshop, Karl-Heinz Kind, Coordinator of the Works of Art Unit at INTERPOL, emphasized that Object-ID is regarded as an important strategy for the recovery of stolen objects. Sub-Saharan African countries' participation is seriously hampered by the very inadequate inventorying systems of several countries. Thus Kind reported that sub-Saharan African representation in its database is almost nil. He said INTERPOL's "most important tool" against trafficking in stolen cultural property is its database currently holding about 38,000 records, of which only 0.5% are from African countries.

THE FLEDGING ART MARKET—LICIT TRADE

John Henry Merryman once suggested that until recently retentive nationalism dominated thinking about the international movement of cultural property, while the international interest in active licit trade has been ignored.²⁵ In fact, an African had, before Paul Bator suggested it, felt that a licit internal trade in cultural objects was one sure way of stemming the outflow of antiquities.²⁶ At the 1972 University of Ibadan, Institute of African Studies, symposium on Nigerian Antiquities, the issue of a licit trade was the centerpiece of Bamisaiye's paper. "There should ... be a legal outlet for the sale of Nigerian antiquities. A branch of the Department of Antiquities can be set up solely for the purpose of collecting and selling antiquities." The licit market, he argued, will ensure that the country no longer loses "invaluable art objects without monetary compensation for them." The proposal had nothing to do with "cultural nationalism" or "cultural internationalism." It was borne out of the practical necessity of obtaining a fair price for what is left. As he put it: "It's a purely monetary deal, no sentiments."²⁷

While the Nigerian proposal remains on paper, the Chinese government now has a semi-official policy under which excess archaeological materials are channeled to the free market.²⁸ As Gimberé has observed, a normal international traffic of objects that are not of outstanding cultural importance to a particular culture is desirable. This has been going on for centuries.²⁹ A licit international trade will only be meaningful to Africans, however, if it reverses the present derisory sums trickling into the local economy. If it could stop the present inadequate prices being

obtained in the underground markets by the dealers, it would be worthwhile. The Chinese example is therefore recommended for adoption by African states such as Nigeria and Mali still rich in archaeological materials.

The licit trade, however, should be governmental and not be linked to auction houses and dealers. This is because, as Simon Mackenzie has explained, there is no black trade and white trade in the antiquities market. The interpenetration of illicit into the licit market (a form of “laundering”) is substantial, and the whole market is gray. Auction houses and dealers cannot be relied on to accept only materials that are legally acquired. Mackenzie’s conclusion is uncompromising:

A study of the antiquities market reveals the interface between illegitimate and legitimate as paramount in allowing crime to profit in the market. The grey market nature of the antiquities trade, where illicitly obtained objects become effectively laundered by insertion into the legitimate streams of supply, allows them then to be sold at high prices they would not command were it indisputable they were illicit.³⁰

In Cote d’Ivoire, Mali, Nigeria, Senegal, and South Africa, art markets have started emerging and some are even flourishing, such as the Dakar African Art Biennial and the Johannesburg Art Fair. Lagos has ArtHouse Contemporary. They deal mostly in contemporary art, and the arrival of auctions have turned this *modus operandi* into a preferred venue for the sale of artworks. The public nature of auctions encourages greater transparency of pricing. ArtHouse in Lagos has held eight auctions since it started in 2008.

The auction houses now constitute new stakeholders in the struggle against illicit traffic in cultural property. Thus they should be invited to future UNESCO regional workshops in Africa on the matter. At one level they have to be inducted into the ethics of their profession as far as the sale of genuine items is concerned. They must subscribe to the various codes of ethics enjoining art dealers and auctioneers not to acquire, buy, or handle objects of doubtful provenance. At another level, with the proliferation of fake Djenne (Mali) and Nok and Ife (Nigeria) terra cottas, they must not be involved in the sale of forgeries. They also have responsibility to cooperate with the law enforcement agencies.

CAPACITY BUILDING FOR MUSEUM PROFESSIONALS

Inadequate conservation capacity was the bane of movable and immovable heritage management in sub-Saharan Africa three decades ago. Thanks to the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) Program *Prévention dans les Musées Africains* (PREMA) the situation of movable heritage has drastically changed. PREMA’s actions at capacity building started in 1986, and several hundred museum personnel have been trained. The PREMA program came to an end in 2000 and was succeeded by the *École du Patrimoine Africain* (EPA) for French-speaking African countries in 1998 and the Program for Museum Development in Africa (PMDA) for English-speaking

African countries in 2000. In 2004, PMDA was renamed CHDA—Centre for Heritage Development in Africa, based in Mombasa, Kenya. EPA, based at Porto-Novo in Benin, is the result of the union between PREMA and the National University of Benin, and it was created jointly by ICCROM and the National University of Benin. Both CHDA and EPA share coverage of Portuguese-speaking sub-Saharan Africa. CHDA provides quality and innovative training and development support programs and activities to professionals and institutions responsible for movable and immovable heritage in sub-Saharan Africa. EPA likewise provides training and researching, and it specializes in the conservation and development of movable and immovable cultural property. The countries that have benefited from CHDA thus far are Angola, Botswana, Djibouti, Ethiopia, Eritrea, the Gambia, Ghana, Kenya, Lesotho, Liberia, Namibia, Nigeria, Malawi, Mauritania, Mozambique, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe.³¹

CONCLUSION

At the Amsterdam Conference on the Protection of African Cultural Heritage in 1997, some Western experts demanded that Africa should put its house in order. African states must indeed do so. Becoming a State Party to the UNESCO 1970 Convention and 1995 UNIDROIT Convention is an important step toward inclusion in the community of states combating the rising tide of theft and pillage of cultural goods all over the world. The 25 African countries that have not joined the UNESCO Convention and 53 African nations that are yet to become States Parties to the UNIDROIT Convention should ratify or accede to the Conventions. In addition, those with weak legislation should upgrade their laws and make them comply with the 1970 Convention. Furthermore, adequate administrative and technical measures should be put in place for the security of museums, capacity building of museum professionals, inventorying, training of law enforcement officers, and public sensitization. It is obvious that enough has not been done on the matter of illicit trafficking in cultural property by African states. The time is ripe to be proactive on the matter. There is no hope of Africa's emigrated objects coming home unless the continent devotes extra care and attention to the protection of what remains in its possession.

ENDNOTES

1. See List of States Parties to the Convention in alphabetical order, www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha, accessed 26 September 2013. There are 55 countries on the continent of Africa. All are members of the AU except Morocco. Morocco withdrew from the Organization of African Unity (OAU), AU's predecessor, in 1984 following the recognition of Sahrawi Arab Democratic Republic declared by the Polisario Front by the majority of OAU members. I am aware that under UNESCO regional grouping, 48 sub-Saharan African

countries comprise Group V (a), while seven, namely Algeria, Egypt, Libya, Mauritania, Morocco, Sudan, and Tunisia, are classified as Group V (b).

2. Ethiopia ratified the 1970 Convention, and the Decree was published in the National Gazette (*Federal Negarit Gazeta*, 28 October 2003, containing the proclamations number 373/2003 and 374/2003 of the ratifications of the 1954 Hague Convention and its First Protocol as well as of the 1970 UNESCO Convention). However, in the official UNESCO lists of States Parties to the Conventions, Ethiopia is missing. This means that the official instruments of ratification have never been deposited with the UNESCO Director General or the Director of the Office of International Affairs. Therefore, Ethiopia cannot be listed as a Party. I am grateful to Edouard Planche of UNESCO for drawing my attention to this situation.

3. Algeria, Egypt, Libya, Mauritania, Morocco, and Tunisia. Sudan is the only nonmember.

4. Shyllon, "Constitutional Provisions for the Preservation of Cultural Heritage in Africa."

5. See generally UNESCO Database of National Cultural Heritage Laws, www.unesco.org/culture/natlaws.

6. Fraoua, "Legislative and Institutional Measures."

7. Sidibe, "Mali: When Farmers Become Curators."

8. Fraoua, "Legislative and Institutional Measures."

9. UNESCO, *Report of the Workshop of Prevention and Fight against Illicit Traffic of Cultural Goods in Southern African Region*.

10. Bator, "An Essay on International Trade in Art," 275.

11. O'Keefe, *Commentary on the 1970 UNESCO Convention*, 100–13.

12. UNESCO, *Report of the Intergovernmental Committee for Promoting the Return of Cultural Property*, Fifth Session.

13. www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/meetings/subsidiary-committee/ and UNESCO, *Illicit Trafficking of Cultural Property, First Session of the Subsidiary Committee*, <http://www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/meetings/subsidiary-committee/first-session-of-the-subsubsidiary-committee>, accessed 27 September 2013.

14. www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/UNESCO-UNIDROIT_Model_Provisions_en.pdf

15. European Council Regulation on the Export of Cultural Goods (the "Council Regulation") of 9 December 1992, and the European Council Directive on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State ("the Council Directive") of 15 March 1993.

16. Frobenius, *The Voice of Africa*, vol. 1, 50–51.

17. UNESCO, *Report of the Workshop of Prevention and Fight against Illicit Traffic of Cultural Goods in Southern African Region*.

18. Sanogo, "The Looting of Cultural Material in Mali."

19. Sanogo, "The Looting of Cultural Material in Mali."

20. Ardouin and Arinze, *Museums and the Community*.

21. Shyllon, "Cultural Heritage Legislation and Management in Nigeria."

22. Leyten, "African Museum Directors."

23. UNESCO, *Report of the Intergovernmental Committee for Promoting the Return of Cultural Property*, First Session.

24. UNESCO, *Report of the Intergovernmental Committee for Promoting the Return of Cultural Property*, Tenth Session.

25. Merryman, "Two Ways of Thinking," 831–853, 835–836; Merryman, "A Licit Trade," 13; Coggins, "A Licit International Traffic," 61; Merryman, "The Retention of Cultural Property," 477.

26. Bator, "An Essay on International Trade in Art," 275.

27. Bamisaiye, "Investment Possibilities in Nigerian Art," 93.

28. Murphy, "The People's Republic of China," 236; Murphy, "The Imperilment of Cultural Property," 91–118.

29. Gimbere, "Illicit Traffic in Cultural Property," 59–60.

30. Mackenzie, "The Market as Criminal and Criminals in the Market," 9.

31. ICCROM, *Newsletter*, 8; ICCROM, *Newsletter*, 30; PREMA, *Newsletter*, 3–5.

BIBLIOGRAPHY

Ardouin, Claude Daniel, and Arinze Emmanuel. *Museums and the Community*. London: James Curry, 1994.

Bamisaiye, A. "Investment Possibilities in Nigerian Art." *African Notes: Journal of the Institute of African Studies, University of Ibadan* (Special Number) (1972): 92–94.

Bator, Paul. "An Essay on International Trade in Art." *Stanford Law Journal* 34 (1982): 275.

Coggins, Clemency Chase. "A Licit International Traffic in Ancient Art: Let There Be Light." *International Journal of Cultural Property* 5 (1995): 61.

Ellis, Richard. "The Fred Schultz Case—An Example of International Cooperation between Police, Archaeologists, and Legal Experts." Paper presented at the International Expert Meeting on the Return of Cultural Property and the Fight against Its Illicit Trafficking. Korean National Commission for UNESCO and Cultural Properties Administration of the Republic of Korea, 30 September—3 October 2002.

Fraoua, Ridha. "Legislative and Institutional Measures to Combat Trafficking in Cultural Property in Arab States." Paper presented at the Second Meeting of States Parties to the 1970 UNESCO Convention, Paris, 20–21 June 2012.

Frobenius, Leo. *The Voice of Africa: Being an Account of the Travels of the German Inner Africa Expedition in the Years 1910–1912*, 2 volumes. Translated by R. Blind. London: Murray 1913.

Gimbere, S. "Illicit Traffic in Cultural Property and National and International Law." In *Illicit Traffic in Cultural Property: Museums against Pillage*, edited by Harrie M. Leyten, 53–60. Amsterdam: Royal Tropical Institute, 1995.

International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM). *Newsletter* 25 (1999): 8.

———. *Newsletter* 26 (2000): 30.

Leyten, Harrie M. "African Museum Directors Want Protection of Their Cultural Heritage." *International Journal of Cultural Property* 7 (1998): 261–65.

Mackenzie, Simon. "The Market as Criminal and Criminals in the Market: Reducing Opportunities for Organized Crime in the International Antiquities Market." In *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, edited by Stefano Manacorda and Duncan Chappell, 69–85. New York: Springer, 2011.

Merryman, John Henry. "A Licit International Trade in Cultural Objects." *International Journal of Cultural Property* 4 (1995): 13–60.

———. "Two Ways of Thinking about Cultural Property." *American Journal of International Law* 80 (1986): 831–53.

———. "The Retention of Cultural Property." *University of California at Davis Law Review* 21 (1988): 122–56.

Murphy, J. D. "The Imperilment of Cultural Property in the People's Republic of China." *University of British Columbia Law Review* Special Number (1995): 91–118.

———. “The People’s Republic of China and the Illicit Trade in Cultural Property: Is the Embargo Approach the Answer?” *International Journal of Cultural Property* 3 (1993): 227–42.

O’Keefe, Patrick J. *Commentary on the 1970 UNESCO Convention*. Leicester: Institute of Art Law, 2007.

Program Prévention dans les Musées Africains (PREMA). *Newsletter* 8: 3–5.

Sanogo, Klena. “The Looting of Cultural Material in Mali.” Translated from French by Katie Boyle. *Culture Without Context* 4 (1999): 1–4.

Syllon, Folarin. “Constitutional Provisions for the Preservation of Cultural Heritage in Africa.” *Art Antiquity and Law* 4 (1999): 65–68.

———. “Cultural Heritage Legislation and Management in Nigeria.” *International Journal of Cultural Property* 5 (1996): 235–68.

———. “The Recovery of Cultural Objects by African States through the UNESCO and UNIDROIT Conventions and the Role of Arbitration.” *Uniform Law Review* 5 (2000): 219–41.

Sidibe, Samuel. “Mali: When Farmers Become Curators.” *UNESCO Courier*: 26–27. <http://unesdoc.unesco.org/images/0012/001222/122266e.pdf#122277> (April 2001).

United Nations Educational, Scientific and Cultural Organization (UNESCO). *Report of the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation*. First Session, UNESCO Doc. 21 C/83. (1980).

———. *Report of the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation*. Second Session, UNESCO Doc. CC-811.CONF.203/10. (1981).

———. *Report of the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation*. Fifth Session, UNESCO Doc. 24/C/94. (1987).

———. *Report of the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation*. Tenth Session, UNESCO Doc. 30/C/REP.4. (1999).

———. *Report of the Workshop of Prevention and Fight against Illicit Traffic of Cultural Goods in Southern African Region: Current Situation and Way Forward*, 14–15 September 2011, Windhoek, Namibia.