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PROTECTION OF CULTURAL HERITAGE OF AFRICA UNDER THE INTERNATIONAL LEGAL FRAMEWORK: A RHETORIC OR SUBSTANTIVE?

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Abstract: *The protection of cultural heritage of Africa remains a germane issue under international legal regimes. Despite the existence of robust international legal frameworks, which include the UNESCO World Heritage Convention and the Hague Convention, et cetera, the practical implementation and enforcement of these provisions in Africa have more often than not been criticized for enforcement deficits and geopolitical biases. This paper adopts doctrinal legal research methodology to examine the international legal regime for the protection of African cultural heritage assets in a bid to highlight their successes and limitations. It further examines issues of the repatriation of looted artifacts, the destruction of heritage sites during conflicts, and the role of international institutions, including UNESCO. While using Prosecutor v. Ahmad Al Faqi Al Mahdi (2016) as a case study, which addressed the destruction of cultural heritage in Timbuktu, this paper, nevertheless, evaluates the gap between theory and practice. It is revealed that the protection of the cultural heritage of Africa under international legal frameworks is merely rhetoric and far away from the substantive mandate of the law due to variables such as lack of local representation in global decision-making, geographical bias, and systemic inequalities. It is concluded that the protection of the cultural heritage of Africa under the watch of the international legal frameworks remains vulnerable to destruction, neglect, and exploitation.*

Keywords: *Cultural Heritage, International Legal Framework, Africa, UNESCO, Rhetoric, Substantive, and Hague Convention.*

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INTRODUCTION

African cultural heritage encompasses artifacts, indigenous traditions, historical sites, folklore, and music (tangible and intangible elements) that reflect the continent's historical diversity. However, these heritages face various threats, such as illegal trafficking, armed conflicts, and environmental threats, such as climate change. No doubt, international law provides legal frameworks to safeguard such heritage, but they are not adequately enforced, notably through legal instruments like The Hague Convention of 1954 and the UNESCO World Heritage Convention of 1972, focusing on protecting cultural property during armed conflict and emphasizing the identification and protection of cultural heritage of outstanding universal value, respectively.

Despite these various legal frameworks on the ground, the effectiveness of their implementation in Africa has been questioned. Therefore, scholars argue that international legal regimes often prioritize Eurocentric perspectives as opposed afrocentric, thereby marginalizing Africa (Ndulo, 2018). It is on these premises that Okeke (2020) opines that the enforcement of cultural heritage laws in Africa is subverted by systemic inequalities in international relations. In addition, Ndulo (2018) highlights that, looted African artifacts continue to reside in Western museums despite calls for repatriation as advocated by the UNESCO World Heritage Convention (1972). This is exposing a gap between the rhetoric and reality of international legal obligations.

The role of international courts in enforcing cultural heritage laws cannot be de-emphasized. Therefore, this is highlighted in cases such as *Prosecutor v. Ahmad Al Faqi Al Mahdi* (2016), where the International Criminal Court (ICC) prosecuted an individual defendant for destroying cultural heritage in Timbuktu, Mali. This landmark case demonstrated the mandate of international law to address cultural heritage violations. The case, however, revealed limitations in broader enforcement of the law, including restoration efforts. It is against this background that this paper examines and evaluates whether the protection of African cultural heritage assets under international law represents substantive action or mere rhetoric. It interrogates the gaps in enforcement, the biases in international legal frameworks, and the perpetual struggles for repatriation and preservation of stolen African cultural heritage and the existing ones.

METHODOLOGY

This research adopted a doctrinal method of legal research which encapsulates analysis statutes, case law, and academic literature. This method accommodates the use of the Constitution, legal commentaries, textbooks, and peer-reviewed journal articles for a comprehensive analysis of existing legal frameworks and scholarly interpretation.

CONCEPTUALIZING CULTURAL HERITAGE

Cultural Heritage

This can be in the form of either tangible or intangible. Cultural heritage represents the legacy of physical artifacts and intangible heritage inherited from past generations for the benefit of future generations; that is, it is preserved in the present and passed on to future generations. Hence, it encapsulates the identical history and creativity of a community or society. The tangible heritage includes physical objects, structures, and places of historical, aesthetic, or cultural significance, including monuments, buildings, artifacts, archaeological sites, and landscapes. International legal regimes like the UNESCO World Heritage Convention (1972), which focus heavily on this type of

heritage. For illustration, the Great Pyramids of Giza in Egypt and the ruins of Great Zimbabwe are considered perfect examples of tangible cultural heritage. The intangible heritage, on the other hand, consists of practical expressions, knowledge, and skills transmitted through past generations for the benefit of future generations. This form of cultural heritage includes oral traditions, performing arts, and rituals (generally acceptable within a nation); traditional craftsmanship; and social practices. The UNESCO Convention, While Safeguarding of the Intangible, the Cultural Heritage (2003), highlights the essence of preserving such non-physical cultural assets. A perfect example is the Yoruba Ifa divination system, recognized by UNESCO.

Moreover, it is pertinent that both forms of cultural heritage are interconnected and crucial for socio-cultural cohesion and sustainable development as advocated by and in alignment with the Rio de Janeiro (1992). However, intangible heritage is, more often than not, overlooked in legal frameworks, particularly in Africa, despite its significance to indigenous communities.

Overview of "Rhetoric" in the Context of International Legal Protections of Cultural Heritage

According to Kennedy (2007), Aristotle defined the term rhetoric is the faculty of observing in any given case the available means of persuasion. Accordingly, this definition highlights rhetoric as a practical skill considered for identifying effective ways to persuade an audience in different contexts. Aristotle viewed rhetoric not as mere persuasion but as an art that bridges logic (logos), emotion (pathos), and credibility (ethos) (Barnes,1984).

This paper leverages Aristotle's definition of the term "rhetoric" to mean persuasive or impressive language that may lack substantive action in its actual sense or meaning. Rhetoric, in the context of international legal protections of cultural heritage is, therefore, implying a dichotomy between the lofty promises of legal frameworks and their actual implementation over the mandate of cultural heritage protection. No doubt that the international treaties and conventions ostensibly protect cultural heritage, but it has been argued due to a number of criticisms that these laws are often more symbolic than logical and functional in addressing Africa's unique challenges facing the actual protection required of their cultural heritage (Adeyemi & Nwankwo, 2022). Take it for instance: the Hague Convention of 1954 outlines provisions to protect cultural property during armed conflicts, yet enforcement of this provision during conflicts in Sudan and Mali has been noticeably limited without any reason to substantiate under the watch of this law (UNESCO, 2024). In addition to the instance, the repatriation of stolen artifacts, such as the Benin Bronzes, has witnessed slow progress (Hicks, 2020). These instances are collectively revealing that there are gaps between legal commitments and actual restitution of property and stolen artifacts decisively. In the opinion of this paper, there is no iota of actual correlation between the laws and implementation towards such protection as mandated. Hence, this rhetorical approach undermines the credibility of international frameworks and disproportionately affects regions like Africa, where colonial legacies and geopolitical dynamics complicate implementation.

THEORETICAL FRAMEWORK

Critical Legal Studies (CLS)

The Critical Legal Studies (CLS) is a school of critical theory developed in the United State in the 1970s. It challenges the objectivity and neutrality of international law in the context of the impact on Africa's cultural heritage. The CLS argues that it often reflects the interests of dominant states and thereby perpetuates systemic inequalities. According to the CLS's scholars (e.g., Unger and Kennedy), they argue that international legal regimes marginalize African voices, prioritizing Western concepts of heritage over indigenous traditional practices. Accordingly, Unger (1986), a

pioneer of CLS, criticises the inherent biases in legal systems and calls for transformative legal reforms, while Kennedy (1997) explores the intersection of power, law, and politics, emphasising the role of legal structures in perpetrating inequalities. By this paper, the word 'perpetrating inequality' implies bias in the international law against the protection of Africa's cultural heritage. For illustration, the UNESCO conventions successfully emphasize tangible heritage (monuments and artifacts) but fail to adequately address intangible heritage (spiritual practices and oral traditions) vital to African identity. CLS calls for a deconstruction of these power dynamics and a reimagining of legal frameworks to be inclusive and equitable to accommodate the real African traditions in formulating the legal regime.

Cultural Relativism

Cultural relativism theory, or school of thought, emphasizes that norms, values, and practices are specific to each culture and must be understood within their cultural context. The theory advocates for the protection and preservation of cultural heritage in a manner that respects the uniqueness of each culture (Boas, 1940). Work of Herskovits (1948) expanded on Boas' ideas, as he emphasized the significance of cultural relativism in understanding societal differences all over the world.

In the African context, international legal frameworks prioritize Western ideals, leading to a failure to adequately protect indigenous cultural heritage. This is why Adisa (2012), in his studies, has contributed to the understanding of how indigenous practices intersect with international legal norms. His work often emphasizes cultural relativism within African traditions. For instance, certain practices such as traditional healing rituals or sacred lands in Africa, such as the Osun Osogbo Sacred Grove in Osun State, Nigeria, may not align with Western legal frameworks, as they hold profound cultural significance apparently different from the Western culture upon which the international legal regimes have been based. No doubt that Africa's cultures are diverse, even within Africa, making it so difficult to understand them all.

This paper aligns with the position of the cultural relativist, as all cultures should be somewhat understandable while setting an international legal framework for regulating world cultural heritage. This way the issue of whether the international legal regimes on cultural heritage are rhetoric or substantive would be put to a minimal rest.

Functionalism

The functionalism school of thought views cultural heritage as an integral part of societal systems. According to Durkheim (1915) in this school, fulfilling specific functions such as fostering identity, social cohesion, and continuity in norms, values, and practices amounts to keeping of cultural heritage. To support the stand, Malinowski (1944) in his work emphasized the functional roles that cultural practices have in fulfilling the needs of individuals within a society. At this juncture, it is unequivocal that cultural function is the key to every societal well-being and peace. Thus, taking away such culture implies taking away peace and well-being from the society; hence, cultural heritage must be adequately protected by law.

Moreover, in African societies, for instance, cultural heritage acts as a source of unity and development, as festivals, oral traditions, and architectural designs are not just aesthetic but also serve as a means of transmitting knowledge, uniting communities, and supporting economic development. Adenle (2020) emphasizes the critical role of cultural heritage in fostering national identity and unity in Nigeria. Accordingly, he views festivals such as the Osun Osogbo Festival as functional elements that strengthen communal bonds and attract tourism, thereby contributing to reasonable economic development in the society and Nigeria as a whole. In addition to Adenle's

view is the opinion of Layiwola (2017) who explores the functionality of architectural and artistic heritage in Nigeria. She highlights how traditional designs, such as the Benin bronzes, serve as repositories of historical knowledge and tools for teaching communal values. Furthermore, Okeke-Agulu (2015) critically examines the modification of Nigerian artifacts and hence stresses the importance of preserving their socio-cultural contexts. He argues further that these artifacts are functional tools for education and unity as opposed to merely objects of aesthetic value.

In all, drawing on the functionalist perspective to the cultural heritage in Africa and given the functionalist emphasis, legal frameworks to regulate Africa's cultural heritage like other parts of the world under the watch of international laws, need to prioritize the protection of the intangible aspects of cultural heritage, such as oral traditions and rituals, alongside tangible artifacts, promote and safeguard local participation and benefits, and develop policies to support community-led heritage preservation initiatives because of the functional role of the cultural heritage to socio-economic development. Thus, this paper is of the view that both the local and international legal frameworks on cultural heritage need to focus on the preservation and continuation of these functions, not just the artifacts themselves.

Legal Positivism and the Application of International Law

Legal positivism is championed by theorists like Austin (1832) and Hart (1961). Austin opines that international law does not strictly qualify as law in the positivist sense because there is no aorta of sovereign authority to enforce it. However, he considers international law to be a set of positive moral rules or guidelines adhered to by states out of mutual convenience and without legal compulsion. Similarly, Hart argues that international law, unlike domestic laws, lacks the sophisticated structure because it does not have a central legislative authority, a judiciary with binding jurisdictions, or an executive body to enforce its rules. International is therefore viewed as a primary rule (obligation and guideline), while the domestic law is a secondary rule (adjudicative, enforcement, and legislative amendment. Accordingly, the legal positivist views the legitimacy of law as contingent upon its formal enactment by a recognized body or authority, as opposed to its moral or cultural underpinnings, including the motives and background of such law. Thus, the positivist approach/perspective vividly, in its entirety, influences the structure and application of international law, which relies on state consent for its validity and enforceability. In international realms, the positivist emphasis on sovereignty and voluntarism implies that laws are only binding on states by agreements they have willingly ratified.

However, treaties such as the UNESCO World Heritage Convention 1972, as an international law, are only binding on states when they have ratified them (see Article 26, Vienna Convention, 1969). For illustration, states party who ratified the UNESCO Convention has automatically undertaken obligations to protect cultural heritage sites within their jurisdictions. In contrast to this, enforcement mechanisms depend on the compliance of state parties and the willingness of international institutions or mechanisms like UNESCO to intervene. In the opinion of this paper, this willingness on the side of the international institutions undermines positive enforcement in developing states, including states in Africa, which spring up weaknesses in African contexts. Furthermore, legal positivism often overlooks the realities of developing nations, especially in Africa, where cognisant variables such as weak state institutions and resource limitations impede enforcement of obligations under international treaties, and the notion of sovereignty under Article 2(7) of the UN Charter limits external interventions, even in cases where states fail to protect cultural heritage.

Moreover, for practical examples, on the looted African artifacts, the Western states are often reluctant to repatriate stolen artifacts, despite international legal frameworks, highlighting the

shortcomings of positivist approaches. This position of the positivist is upheld by the international conventions like the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Heritage, which are binding only on state parties. By implication, non-parties, or those whose acts predate ratification, can evade responsibility. In the same vein, the protection of cultural heritage during armed conflicts governed by the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict is yet to be enforced in war-torn regions like Libya and Mali, which remains sporadic due to state fragility and resource constraints (Okeefe, 2006).

Post-Colonial Critiques of International Legal Regimes

One of the scholars that championed these critiques included Anghie (2005). Anghie argues that colonialism shaped the principles and practices of modern international legal regimes, as it marginalized non-European perspectives and legitimized the exploitation of colonized regions. Thus, post-colonial critiques highlight the Eurocentric foundations of international legal frameworks, which often prioritize Western cultural heritage at the expense of African perspectives.

Moreover, the international community has historically undervalued Africa's cultural contributions, as seen in the limited global recognition of intangible African heritage. This is why Okeke (1973) critiques the failure of international legal frameworks to account for the historical injustices of colonialism, particularly in relation to cultural heritage in Africa. In addition, international legal regimes fail to address the colonial origins of heritage theft, such as the looting of artifacts during European colonization in Africa. For example, the continued display of African artifacts in Western museums, despite international calls for repatriation, reflects a post-colonial imbalance. Critics argue that these artifacts symbolize cultural domination and that their return is essential for restoring Africa's cultural heritage and values. For illustration, the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi* (2016) highlights the selective application of international law. While Al Mahdi was prosecuted for destroying Timbuktu's cultural heritage in Mali, the international community has done little to address the systemic looting of African artifacts by colonial powers. Similarly, the Benin Bronzes (part thereof recently repatriated) controversy underscores the inadequacy of existing international legal mechanisms to compel Western states to repatriate stolen artifacts (Mbow, 1978).

In the opinion of this paper, post-colonial critiques emphasize the need for a decolonized approach to cultural heritage protection to ensure that international legal regimes reflect the voices and interests of Africans. In alignment with post-colonial critiques, it views the protection of Africa's cultural heritage under the watch of the international legal regimes as imperfect to realise the mandate for which the regime is established.

INTERNATIONAL LEGAL FRAMEWORK FOR CULTURAL HERITAGE PROTECTION

Key Legal Instruments

i. UNESCO World Heritage Convention (1972)

The UNESCO World Heritage Convention of 9172 is one of the key legal instruments adopted in 1972 that seeks global protection of both the cultural and natural heritage for an outstanding universal value. This instrument adopts international cooperation in identifying, protecting, and preserving such heritage for the present and future generations. Article 1 thereof defines Cultural Heritage" as including monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave

dwellings, and combinations of features; Groups of buildings: Groups of separate or connected buildings which, because of their architecture, their homogeneity, or their place in the landscape; and Sites: Works of man or the combined works of nature and man, and areas including archaeological sites. Similarly, Article 2 thereof includes natural features: consisting of physical and biological formations or groups of such formations; geological and physiographical formations: including the habitat of threatened species of animals and plants; and natural sites: precisely delineated natural areas of outstanding universal value.

In addition to the definition, Articles 4 to 7 impose obligations on State Parties to safeguard heritage within their territories and cooperate internationally for protection of heritage (cultural and natural heritage). Furthermore, Article 8 establishes the World Heritage Committee, which is charged with the responsibility of maintaining the World Heritage List and administering the World Heritage Fund meticulously.

In contrast to the mandates stated, inter alia, Ndulo (2018) critiques the Convention for its Eurocentric criteria in defining "universal value," which more often than not marginalizes African cultural contexts. However, Okeke (2018) highlights its successes, such as the designation of the Great Zimbabwe Ruins as a World Heritage Site, but notes enforcement challenges in conflict zones in Africa. In corroborating this stand, *the Prosecutor v. Ahmad Al Faqi Al Mahdi* (2016), where the ICC recognized the destruction of Timbuktu s heritage sites as part of UNESCO-listed as a war crime under international law, reinforcing the Convention s principles.

ii. Hague Convention for the Protection of Cultural Property in Armed Conflict (1954)

The Hague Convention (1954) was the first international treaty aimed at protecting cultural property/heritage during armed conflicts. The convention was adopted following World War II, which was filled with widespread destruction of cultural heritage. In Article 1 of the treaty, "cultural property" is defined to cover, irrespective of origin or ownership: (a) movable or immovable property of great importance to the cultural heritage of every people ((including monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books, and other objects of artistic, historical, or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property), (b) buildings, including museums, large libraries, and depositories of archives, as well as refuges intended to shelter, in the event of armed conflict, the movable cultural property whose main and effective purpose is to preserve or exhibit the movable cultural property, as defined in sub-paragraph, (c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), and the obligations of states to protect such property in times of war are adequately outlined, while Article 2 defines the protection of cultural property to include safeguarding of and respect for such property. It is pertinent to note that this treaty introduces the Blue Shield emblem to identify and safeguard protected property. Similarly, the Second Protocol of 1999 strengthens enforcement mechanisms and defines individual criminal responsibility in connection with the cultural property.

Moreover, this legal instrument gained global attention, especially among the Africans. On this note, Toman (1996) lauds the Convention as a milestone in cultural heritage protection but criticizes the lack of enforcement mechanisms in early conflicts that arose in jurisdictions like those in Libya and Sudan. In contrast, Boylan (2001) argues that the Second Protocol to the Convention has improved its effectiveness, especially in prosecuting violations. For instance, in *ICTY Prosecutor v. Jokić,I* (2004) Miodrag Jokić, a former Yugoslav Navy Admiral, was charged before the

International Criminal Tribunal for the Former Yugoslavia (ICTY) for his role in the 1991 shelling of Dubrovnik, Croatia, during the Croatian War of Independence. Dubrovnik, a UNESCO World Heritage site, suffered extensive damage during the attacks, including willful damage to cultural and historical monuments. The Trial Chamber accepted Jokić's guilty plea and found him responsible for war crimes under Articles 3(b) and 3(d) of the ICTY Statute, and subsequently sentenced to seven years imprisonment. The judgment reinforced the importance of protecting cultural and historical monuments under international law and referencing the Hague Convention.

iii. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995)

The scope and mandates of the UNIDROIT Convention (1995) encompass combating the illicit trade of cultural property. These are being carried out via the establishment of various mechanisms for restitution and return of any illicit trade. This convention complements UNESCO conventions by focusing on private law issues, including ownership disputes. Under the Convention, Articles 3 to 6 establish rules for the restitution of stolen cultural objects and the return of all such illicitly exported property to the jurisdiction of its original origin. Accordingly, Article 10 of the the convention encourages States to create national legislation for effective implementation by domesticating the provisions of the convention. No doubt that the convention presupposes an addendum to the UNESCO framework, and this is why Prott and O Keefe (1995) emphasize the convention s significance in addressing gaps left by the UNESCO framework, particularly in private law. However, Vadi (2014) critically examined the Convention and observed that the convention is being limitedly ratified by the African states, which, in contrast, undermines its potential to address illicit trade in African artifacts. For instance, the case of *Attorney General of New Zealand v. Ortiz,* (1984) (though the case predates the UNIDROIT Convention) exemplifies the legal complexities in recovering stolen cultural property, which the Convention seeks to simplify such processes.

Other Relevant Legal Frameworks

a. UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (1970)

This Convention corroborates the UNIDROIT Convention, to a certain extents, as it addresses the illicit trade of cultural property, encouraging sovereign States to regulate import/export and promote restitution. Articles 2 and 3 therein define illicit import, export, and transfer of cultural property ownership and declare that illegal export and import of cultural property are offenses against cultural heritage, which must be so condemned. Hence, Article 7 of the Convention mandates cooperation among State Parties to return stolen artifacts. Thus, it is condemned in its entirety, the stealing of another's cultural heritage. This position of the law gives the convention an invaluable stand. On this note, Greenfield (2007) regards the Convention as a cornerstone of international cultural heritage law while noting that it is not without weak enforcement mechanisms.

b. UN Declaration on the Rights of Indigenous Peoples (2007)

This Declaration concentrates on the rights of indigenous peoples to man and control their cultural heritage, including traditional knowledge. Article 11 therein recognizes the right of indigenous peoples to demand redress and restitution for cultural property taken without consent. In the same vein, the Convention under Article 31 affirms the indigenous people's right to man and protect cultural heritage. On this note, Gilbert (2011) in his study, recognizes the Convention's relevance for Africa s indigenous communities and, however, stressed that it lacks binding legal force, which undermines its enforcement.

In sum, this study aligns with the fact that the international legal framework for cultural heritage protection comprises a range of treaties and conventions that aim to safeguard cultural assets.

However, enforcement challenges and structural biases undermine their effectiveness in the African context to adequately protect Africa's cultural heritage as claimed to be by the key international legal frameworks. This illustrates the gap between rhetoric and reality, hence emphasizing the need for more inclusive and robust mechanisms that are so imperative. .

CASE STUDIES: AFRICAN CONTEXT

The Destruction of Timbuktu (Mali): Prosecutor v. Ahmad Al Faqi Al Mahdi (2016)

The destruction of cultural heritage in Timbuktu, Mali, took place during the 2012 armed conflict by jihadist groups, proving the vulnerability of African heritage despite the extant international legal regimes in place. During that conflict, Ahmad Al Faqi Al Mahdi, a leader of Ansar Deen, was prosecuted in the case of *the Prosecutor v. Ahmad Al Faqi Al Mahdi* (2016) by the International Criminal Court (ICC) for war crimes, subject to 8(2)(e)(iv) of the Rome Statute, which criminalizes attacks on buildings dedicated to religion or historic monuments. Subsequently, Al Mahdi pleaded guilty to the destruction of nine mausoleums and a mosque in Timbuktu and he was sentenced to nine years in prison by the ICC, marking the first time the court prosecuted the destruction of cultural heritage as a war crime in Africa. This sentence, though, aligns well with the Hague Convention (1954) and its Second Protocol (1999), which emphasize the protection of cultural heritage during armed conflict. It is pertinent to underscore that Vadi (2014) lauded the case as a milestone in cultural heritage protection but criticized the ICC for focusing on symbolic cases rather than broader systemic issues and argued that the sentence failed to address the broader consequences of cultural destruction on Malian communities. In the opinion of this paper, the stand of Mackenzie exhibited some traces of unprompted action for invoking the Hague Convention and the power of the ICC to prosecute in the context. Furthermore, this, to a certain extent, has exhibited elements of being biased in the enforcement of the relevant international legal frameworks.

Looting of Artifacts in Africa

Examples of Stolen Artifacts in Western Museums, including Artifacts such as the Benin Bronzes, Nok terracotta, and the Rosetta Stone, remain in Western institutions, despite their illicit acquisitions during colonial rule in Africa. Repatriation efforts have always been serious debates. For emphasis, the Benin Bronzes, looted during the British expedition to Benin, Nigeria, in 1897, had been at the centre of restitution debates for an unbelievably long period of time. Germany returned about 20 Benin Bronzes to Nigeria in 2022. This is a positive alignment with the international advocacy and progress, though it is highlighting the slow pace of global repatriation efforts despite the prevalence of UNIDROIT Convention (1995), which provides mechanisms for the restitution of stolen cultural objects. It is significantly necessary to underscore that there is limitation of the international law in enforcing the return of artifacts (Merryman, 1986). In addition, Greenfield (2007) critized the reluctance of the western museums to comply with prompt restitution demands, viewing this new colonialism.

Armed Conflicts in Africa

Armed conflicts in Africa have undoubtedly damaged the continent's heritage of culture. The damage includes the destruction of historical places, looting, and the illegal trafficking of artifacts. Hence, an overview of selected African armed conflict cases is discussed below:

i. Sudan Conflict

The conflict in Sudan has led to attacks, destruction, and looting of cultural heritage. Notable, inter alia, is the attack on the Sudan National Museum in Khartoum as the region has suffered looting,

with a number of artifacts surfacing online, like on eBay and all that (The Sunday Times, 2023). Subsequent to the conflict, Sudanese artifacts have been illicitly trafficked and often mislabeled to conceal their origin. UNESCO has raised alarms over the unprecedented threat to Sudan's cultural heritage and discouraged the purchasing of these items; the deed has been done, though. This paper opines that the play out during those incidents accounts for international intervention bias to protect the cultural heritage in the region and so amounts to a weak enforcement of the legal frameworks in place.

ii. Ethiopia Tigray Conflict

The conflict in the Tigray region of Ethiopia that took place for about two years (2020-2022) has resulted in substantial damage to cultural sites in the region. This included the looting of manuscripts and destruction of religious institutions (Heritage for Peace (2024). Subsequently, the cultural heritage tourism attractions in northern Ethiopia, such as those in Dessie and its environs, were attacked, damaged, vandalized, and looted during the war. This led to a decline in heritage tourism in the region despite the international legal frameworks in place (Ahmed & Oumer, 2022).

iii. Libya Post-2011 Instability

Following the 2011 civil war in Libya, that part of the continent has experienced significant threats to its cultural heritage. For illustration, sites like Leptis Magna have been exposed to vandalism, neglect, damage, and looting due to the consistent instability (Ndolo, 2021).

iv. Nigeria Boko Haram Conflict

In the case of Nigeria with the Boko Haram attacks on the world heritage site of Sukur Cultural Landscape, there has been a deafening silence from either UNESCO or any other relevant international organization or country despite the jurisdiction conferred on them to act (Ndolo, 2021). This, in the opinion of this study, epitomizes that there are unrealistic protections on Africa's cultural heritage, as well as biased interventions by the international institutions that are legally required to act, but refuse to.

CHALLENGES TO THE PROTECTION OF AFRICA'S CULTURAL HERITAGE

The following pose challenges to the effective protection of Africa's cultural heritage:

i. Weak Enforcement Mechanisms: International treaties and conventions that stand to protect Africa's cultural heritage often lack binding enforcement mechanisms, particularly in conflict zones.
ii. Lack of Political Will and Resources: Many African states lack the internal resources and institutional capacity to safeguard cultural heritage within Africa's states.
iii. Colonial Legacies and Eurocentric Biases: Due to the long-term colonialism in most of the African states, Western frameworks to protect Africa's cultural heritage prioritize tangible heritage over intangible African traditions, reflecting colonial perspectives about Africa.
iv. Limited Representation of African Voices: No doubt that African states are under-represented in global heritage bodies, limiting their influence and vote weight on decision-making.
v. Cultural Appropriation and Illicit Trafficking: The illicit trade in artifacts, often facilitated by weak border controls, undermines efforts to internally arrest illicit trade and trafficking to protect Africa's cultural heritage.

IS INTERNATIONAL LEGAL PROTECTION A RHETORIC OR SUBSTANTIVE?

The curiosity as to whether international legal protection efforts, via the extant legal frameworks, discussed earlier on global cultural heritage, is a rhetorical or substantive one remains the core objective of this paper. No doubt, there exist a number of significant challenges in bridging the gap between theoretical provisions (legal frameworks) and practical implementation (enforcement), particularly in conflict-ridden regions such as Africa. Thus, ascertaining whether such protection by the international legal frameworks is rhetoric or substantive, having analysed the provision of the relevant laws and various schools of thought, is further expounded below:

a. Analysis of the Gap between Provisions of Laws and Practical Implementation

International treaties and conventions frequently set ambitious goals that encounter obstacles during implementation. For instance, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) aims to safeguard the rights of internally displaced persons (IDPs) during conflicts, attacks, or emergencies. Despite its adoption, effective enforcement remains limited (Soares, (2018). As of 2018, seven of the top ten countries with the highest IDP populations were in Africa, indicating challenges in translating the provisions of the convention into substantive protections. Discriminatory practices, customary norms, and weak enforcement mechanisms contribute to a gap between legal provisions and actual practice, necessitating supportive frameworks to translate legal provisions into practical outcomes (African Union, (2009).

b. Evaluation of Structural Biases and Dominance of Western Narratives in International Frameworks

A critique of the international legal frameworks expounded earlier in this paper has identified structural biases that marginalize non-Western perspectives in the international legal regimes. The dominance of Western narratives in defining "universal values" can lead to the marginalization of African heritage and its indigenous knowledge systems that are intangible heritage (Oguamanam, 2023). Take for instance, the legal protection of indigenous knowledge in Africa has been critically examined, revealing that existing frameworks often fail to adequately recognize and protect indigenous knowledge systems, thereby perpetuating structural biases.

c. Critique of Selective Enforcement and Geopolitical Interests

Adjudicating on Timbuktu, Mali's cultural heritage destruction case (*Prosecutor v. Ahmad Al Faqi Al Mahdi,* 2016) by the International Criminal Court (ICC) has faced criticism for being perceived and identified as a form of selective enforcement, particularly its focus on African cases. While it is an undisputed fact that the case marked a significant step in recognizing the destruction of cultural heritage as a war crime, it raised questions about the ICC's focus on African cases and the potential neglect of similar crimes in other regions.

This paper opines that such selective enforcement reflects geopolitical interests rather than a consistent application of international justice principles in contrast to the mandate of the international legal frameworks. This perception undermines the legitimacy of international legal institutions, including UNESCO and their purported universality. Furthermore, this paper argues that the international legal protections are established with the intent of upholding universal rights and justice; their effectiveness is often compromised by implementation gaps, structural biases, and selective enforcement, thereby suggesting that the international legal framework meant for the protection of Africa's cultural heritage is rhetorical in nature.

RECOMMENDATIONS

The following are recommended for sustainable protection of the Africa's cultural heritage:

1. Enhancing enforcement mechanisms through strengthening of international treaties with binding provisions and accountability measures over failure to comply with various relevant conventions and treaties.
2. Increasing African representation, which ensures African states have greater representation in UNESCO and ICC decision-making processes.
3. Let there be strengthening of regional cooperation, which would, in turn, promote initiatives like the African Union s Charter for African Cultural Renaissance.
4. Let there be consistent advocating for the repatriation of looted artifacts, especially via developing bilateral agreements for the restitution of stolen artifacts and intangible cultural property.
5. Building Local Capacity by Investing in Heritage Conservation and Management Programs across Africa. This would provide first-hand protection for the cultural heritage of African states.

CONCLUSION

It is trite that Africa's cultural heritage faces a series of challenges that hinder its effective protection, ranging from weak enforcement mechanisms at the national and regional levels, corruption, and lack of political will to the selective implementation of international conventions and agreements, which underscores a disconnect between global frameworks and Africa s unique cultural heritage realities. Notwithstanding certain international frameworks, such as the UNESCO 1972 Convention, that are in place to provide a robust foundation for protecting cultural heritage, their efficacy in addressing Africa's distinct challenges remains limited as against the all-encompassing rationale for its establishment. This limitation is due to systemic inequalities, a lack of local representation in global decision-making from Africa, and inadequate adaptation of these frameworks to African contexts. Consequently, under the watch of the international legal frameworks, Africa s cultural heritage remains vulnerable to destruction, neglect, and exploitation. This is unequivocal evidence that the enforcement of the likes of UNESCO mandate is not effective enough to protect Africa s cultural heritage, which is a rich one, in contrast to the mandates of those international legal frameworks. From critiques, it is settled that a more inclusive and decolonized approach is imperative and sacrosanct to execute the substantive mandate of the laws rather than its rhetorical stand.

Furthermore, going by the destruction of cultural sites in Mali during the armed conflicts of 2012 2013, despite the ratification of the UNESCO Convention by Mali, where the international law failed to provide effective protection in the absence of state capacity and slow action in repatriating the stolen artifacts, such as the stolen Benin bronze, Edo State, Nigeria, these are the unequivocal instances of bias and poor enforcement of relevant international laws. On a final note, this paper concludes that protection of Africa's cultural heritage under the watch of international legal frameworks is mere rhetoric that is away from substantive aims of the laws. Thus, only through deliberate and concerted efforts can Africa call for action to effectively protect Africa s cultural heritage for the current and future generations.

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