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Preventive archaeology cultural heritage impact assessment and management.: A public policy comparative analysis between Kenya and France

Lucas Bwire

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THESIS

UNIVERSITÉ DE PAU ET DES PAYS DE L'ADOUR

ECOLE DOCTORALE SCIENCES SOCIALES ET HUMANITES - ED 481

PREVENTIVE ARCHAEOLOGY, CULTURAL HERITAGE IMPACT ASSESSMENT
AND MANAGEMENT



A Comparative Public Policy Analysis between Kenya and France

VOLUME I

A PhD dissertation submitted and publicly defended by **Lucas Leonardo Wandera BWIRE**
in partial fulfilment of the requirement for the award of the degree of Doctor of Philosophy in
History, History of Art and Archaeology

Date: 16th of December 2022

Members of the Jury:

- ❖ Giulia de Palma, Scientific and Technical Director of Research and Valorisation, INRAP, UMR ArScAn
- ❖ Susan MWANGI, Senior Lecturer, Kenyatta University
- ❖ Christian THIBON, Professor, UPPA, LAM, UMR 5115 - President
- ❖ Paul LANE, Professor, Cambridge University
- ❖ Washington NDIIRI, Senior Lecturer, Kenyatta University
- ❖ Ephraim WAHOME, Professor, University of Nairobi
- ❖ François RÉCHIN, Professor, Université de Pau et des Pays De L'Adour, IRAA-CNRS, USR 3155 – Supervisor
- ❖ Lazarus NGARI, Senior Lecturer, Kenyatta University – Supervisor



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**PREVENTIVE ARCHAEOLOGY, CULTURAL HERITAGE IMPACT ASSESSMENT
AND MANAGEMENT****Une Analyse Comparée de la Politique Public entre le Kenya et la France**Thèse de doctorat présenté et soutenu en publique le 16 Décembre 2022 par **Lucas****Leonardo Wandera BWIRE** pour obtenir le grade de Docteur en Histoire, Histoire de
l'Art et Archéologie**Membres du Jury:**

- ❖ Giulia de Palma, Scientific and Technical Director of Research and Valorisation, INRAP, UMR ArScAn
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**PREVENTIVE ARCHAEOLOGY, CULTURAL HERITAGE IMPACT ASSESSMENT
AND MANAGEMENT**

A Comparative Public Policy Analysis between Kenya and France

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DECLARATION

I, Lucas Leonardo Wandera BWIRE hereby declare that this thesis is my original work and no part of it has been submitted at any other institution for evaluation.

Lucas Leonardo Wandera BWIRE

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Signed.....Date..... 20.....

DEDICATION

To my parents Florence Ajiambo and Peter Bwire, to Grifine, Stacy and Celia; my brothers
and sisters;

this far I have come is because you were patient, supportive and believed that it is possible.

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ABREVIATIONS

AAA	American Anthropological Association
AFAN	l'Association pour les Fouilles Archéologiques Nationales
AIA	Archaeological Impact Assessment
BIEA	British Institute in Eastern Africa
BNF	Bibliothèque Nationale de France
CBC	Competence Based Curriculum
CHIA	Cultural heritage Impact Assessment
CNRA	Conseil National Recherche Archéologique
CNRS	Centre National de la Recherche Scientifique
CTRA	Commission Territoriale de Recherche Archéologique
DAF	Direction des Archives de France
DAPA	Direction de l'Architecture et de Patrimoine (Directorate of Architecture and Heritage) Directeur-Adjuant Scientifique et Technique (Assistant Scientific and Technical Director)
DAST	Director)
DBMS	Database Management System
DGP	Direction Générale de Patrimoine - General Directorate of Heritage
DMF	Diréction des Musées de France
DRAC	Diréction Régionale des Affaires Culturelles
EAA	European Association of Archaeologists
EAA	East African Association
EIA	Environmental Impact Assessment
EKC	Environmental Kuznet's Curve
EMCA	Environmental Management and Coordination Act
ESIA	Environmental and Sopcial Impact Assessment
EU	European Union
GDP	Gross Domestic Product
GIS	Geographic Information System
HIA	Heritage Impacty Assessment
IBEACo	Imperial British East African Company International Centre for the Study of the Preservation and Restoration of Cultural
ICCROM	Property.
ICOMOS	International Council on monuments and Sites
ICSID	International Centre for Settlement of Investments Disputes
IFRA	Institut Français de Recherche en Afrique
IGAEM	Inspectors General of Administration on Extraordinary Mission
IINRAP	Institut Nattional de Reecherches Archéologiques Préventives
INHA	Institut National de l'Histoire de l'Art
IUCN	International Union for the Conservation of Nature
KA	Kikuyu Association
KANU	Kenya African National Union

KCA	Kikuyu Central Association
KFRP	Koobi Fora Research Project
KTWA	Kavirondo Taxpayers Welfare Association
LAPSSET	Lamu Port - South Sudan - Ethiopia Transport corridor
MCC	Ministry of Culture and Communication (Ministère de la Culture et de la Communication)
NARC	National Alliance of Rainbow Coalition
NEMA	National Environmental Management Authority
NGO	Non-Governmental Organizations
NMHA	National Museums and Heritage Act (2006)
NMK	National Museums of Kenya
SLO	Social Licence for Operating
SPSS	Statistical Package for Social Sciences
SRA	Service Régional de L'Archéologie
TBI	Turkana Basin Institute
TGV	Trains à Grande Vitesse (High speed railway)
UK	United Kingdom
UNCED	United Nations Conference on Environment and Development
UNDP	United Nations Development Program
UNESCO	United Nations Educational and Scientific Organization
UPPA	University of Pau et des Pays de l'Adour
USA	United States of America
YKA	Young Kavirondo Association

TABLE OF CONTENT

TABLE OF CONTENT

DECLARATION.....	IV
DEDICATION.....	V
ACKNOWLEDGEMENT.....	VI
ABBREVIATIONS.....	VII
TABLE OF CONTENT.....	IX
TABLE OF ILLUSTRATIONS.....	XXVII
TABLE OF FIGURES.....	XXIX
LIST OF TABLES.....	XXXIII
LIST OF MAPS.....	XXXV
TABLE OF ANNEX.....	XXXVII
GENERAL INTRODUCTION.....	1
PART ONE.....	6
HISTORY AND ADMINISTRATIVE ORGANIZATION OF CULTURAL HERITAGE MANAGEMENT AND ARCHAEOLOGICAL RESEARCH.....	6
CHAPTER ONE.....	7
BACKGROUND TO THE STUDY, THEORETICAL FRAMEWORK AND RESEARCH METHODOLOGY.....	7

INTRODUCTION.....	7
1.1 BACKGROUND TO THE STUDY	7
<i>1.1.1 Focus on preventive archaeology and heritage impact assessment as tools for development planning and areas of scientific research.....</i>	<i>8</i>
<i>1.1.2 Emergence of cultural policy studies.....</i>	<i>15</i>
1.2 STATEMENT OF THE PROBLEM AND JUSTIFICATION OF THE STUDY	18
<i>1.2.1 Statement of the problem</i>	<i>18</i>
<i>1.2.2 Justification of the study.....</i>	<i>19</i>
1.3 THEORETICAL FRAMEWORK	21
<i>1.3.1 Research hypothesis</i>	<i>21</i>
<i>1.3.2 Research assumptions.....</i>	<i>27</i>
1.4 DELIMITATIONS OF THE STUDY	28
1.5 RESEARCH METHODOLOGY	36
<i>1.5.1 Research design.....</i>	<i>39</i>
<i>1.5.2 Data collection tools and procedures.....</i>	<i>46</i>
<i>1.5.3 Sample size and sampling procedures</i>	<i>52</i>
1.6 PILOTING AND TESTING OF DATA COLLECTION TOOLS AND PROCEDURES	52
1.7 CONCLUSION	52

CHAPTER TWO	54
HISTORICAL EMERGENCE AND DEVELOPMENT OF THE NOTION OF HERITAGE AND ITS SOCIO-CULTURAL AND GEO-SPACIAL PARTICULARITIES	54
2.1 INTRODUCTION	54
2.2 EMERGENCE OF THE NOTION OF CULTURAL HERITAGE IN FRANCE.....	54
2.3 EMERGENCE OF THE NOTION OF CULTURAL HERITAGE IN KENYA.....	56
2.3.1 <i>The selective process and the choice of a past to accept and conserve</i>	58
2.4 CONSERVATION OF CULTURAL AND ARCHAEOLOGICAL HERITAGE IN FRANCE	64
2.4.1 <i>Jérôme Carcopino and heritage: an ambiguous protection</i>	68
2.4.2 <i>Broadening of heritage consciousness in France</i>	73
2.5 CONSERVATION OF CULTURAL AND ARCHAEOLOGICAL HERITAGE IN KENYA.....	76
2.5.1 <i>Louis and Mary Leakey’s family and cultural heritage in Kenya: an enthusiastic project within an ambiguous protection</i>	77
2.5.2 <i>Limited archaeological research or limited archaeological sites?</i>	78
2.6 DELAYED ENACTMENT OF HERITAGE POLICIES AND ITS IMPACT IN KENYA.....	82
2.6.1 <i>Cultural heritage consciousness and the shortfalls of social history</i>	82
2.6.2 <i>Paradigms shifts in African archaeology and pitfalls in African social history: the case of Swahili culture and civilisation</i>	85
2.6.3 <i>Integration of the cultural policy into development planning in France</i>	91

2.7	CONCLUSION	93
CHAPTER THREE.....		95
CULTURAL HERITAGE MANAGEMENT DURING THE COLONIAL PERIOD: FROM SHRINES TO ANTIQUITIES, HISTORICAL MONUMENTS AND MUSEUMS.....		95
INTRODUCTION.....		95
3.1	EARLY CULTURAL HERITAGE MANAGEMENT IN KENYA UP TO THE 19 TH CENTURY	97
3.1.1	<i>Cultural significance as an unwritten cultural policy in precolonial Kenya.....</i>	<i>99</i>
3.2	PRE-COLONIAL MIGRATIONS, SOCIO-CULTURAL, ECONOMIC AND POLITICAL ORGANIZATION OF THE PEOPLE OF KENYA AND ITS CULTURAL LANDSCAPE	101
3.2.1	<i>Social, Economic and Political Interactions between Eastern Africa Coast and the outside world</i>	<i>104</i>
3.3	HISTORICAL EVOLUTION OF CULTURAL HERITAGE MANAGEMENT IN FRANCE UP TO THE 19 TH CENTURY.....	109
3.3.1	<i>The French Revolution and the call of Victor Hugo.....</i>	<i>113</i>
3.4	DEVELOPMENT OF ARCHAEOLOGY AS A SCIENTIFIC DISCIPLINE.....	117
3.4.1	<i>Nationalism in Europe, Exploration, Colonial conquest and the historical movement.....</i>	<i>120</i>
3.5	HISTORICAL EVOLUTION OF CULTURAL HERITAGE MANAGEMENT IN KENYA DURING THE COLONIAL PERIOD	124
3.5.1	<i>The Triple 'C' impact: the cross, colonization, western civilisation and the African culture</i>	<i>125</i>

3.5.2	<i>Cultural heritage management and archaeological research in Kenya during the colonial period</i>	132
3.6	THE ROLE OF SOCIETIES OF SCHOLARS AND ASSOCIATIONS.....	133
3.6.1	<i>Religion and the State: the impossible creation of a secular state</i>	137
3.6.2	<i>Ideological perspectives of archaeological research and cultural heritage management in Kenya during the colonial period</i>	141
3.6.3	<i>World War II and its impact on archaeological research</i>	144
3.7	CONCLUSION	146
	CHAPTER FOUR.....	147
	PATRIMONIALIZATION AND CULTURAL HERITAGE MANAGEMENT INSTITUTIONS IN THE POST-INDEPENDENCE PERIOD	147
	INTRODUCTION.....	147
4.1	PATRIMONIALIZATION OF HERITAGE.....	148
4.1.1	<i>Contradictions in the conceptualisation and institutional framework on cultural heritage management in Kenya</i>	149
4.2	THE MINISTRY OF CULTURE AND COMMUNICATION (LE MINISTERE DE LA CULTURE ET DE LA COMMUNICATION) – FRANCE.....	155
4.2.1	<i>Organization of the French Ministry of Culture and Communication</i>	158
4.3	CULTURAL CENTERS AND THEATRES: NATIONAL CHOICES VERSUS REGIONAL PREFERENCES	164

4.3.1	<i>National Institute for Preventive Archaeological Research (Institut national de recherches archéologiques preventives - INRAP), France</i>	169
4.4	EMERGENCE OF CENTRAL ADMINISTRATIVE STRUCTURES OF ARCHAEOLOGICAL RESEARCH AND CULTURAL HERITAGE MANAGEMENT IN KENYA.....	177
4.5	ORGANIZATION OF ARCHAEOLOGICAL RESEARCH IN KENYA IN THE POST-INDEPENDENCE ERA	179
4.5.1	<i>The Ministry of Sports, Culture and Heritage in Kenya</i>	182
4.5.2	<i>National Museums of Kenya (NMK)</i>	184
4.5.3	<i>Origin and development of NMK</i>	185
4.5.4	<i>Organization of the National Museums of Kenya</i>	187
4.5.5	<i>Functions of National Museums of Kenya</i>	190
4.5.6	<i>Devolving museums: which way forward for the National Museums of Kenya?</i>	191
4.6	CONTRIBUTION OF THE NATIONAL MUSEUMS TO ARCHAEOLOGICAL RESEARCH AND CULTURAL HERITAGE CONSERVATION	194
4.7	CONCLUSION	198
	CHAPTER FIVE	200
	GLOBALIZATION, DECOLONIZATION, DECENTRALIZATION AND DEMOCRATIZATION OF CULTURAL HERITAGE	200
	INTRODUCTION.....	200
5.1	CONCEPTUALISING GLOBALIZATION, DECOLONIZATION, DECENTRALISATION AND DEMOCRATISATION OF CULTURAL HERITAGE	201

5.1.1	<i>Globalization</i>	201
5.1.2	<i>Decentralization and democratization of cultural heritage</i>	203
5.2	GLOBAL HISTORY AND COMPARATIVE ANALYSIS.....	207
5.3	GLOBALIZATION, DECOLONIZATION, DECENTRALIZATION AND DEMOCRATISATION OF CULTURAL HERITAGE IN FRANCE	209
5.3.1	<i>Cultural decentralisation in France under André Malraux</i>	211
5.3.2	<i>Development of Local Authority Archaeological Services (Les Services archéologiques des collectivités territoriales)</i>	212
5.3.3	<i>Decentralization and cultural heritage management institutions</i>	217
5.4	DECENTRALISATION, DEMOCRATISATION OF CULTURAL HERITAGE AND THE ORGANISATION OF PREVENTIVE ARCHAEOLOGY	219
5.4.1	<i>The role of the public in the conservation of cultural heritage in France</i>	222
5.5	GLOBALIZATION, DECOLONIZATION, DECENTRALIZATION AND DEMOCRATIZATION OF CULTURAL HERITAGE IN KENYA	223
5.5.1	<i>Decolonization, decentralization and the Constitution of Kenya 2010: which impact on cultural heritage management in Kenya</i>	227
5.5.2	<i>National identity and local claims in patrimonialization of heritage</i>	231
5.5.3	<i>Public participation in cultural and archaeological heritage conservation</i>	238
5.6	DEVOLUTION AND PUBLIC PARTICIPATION IN THE CONSERVATION OF CULTURAL HERITAGE IN KENYA	243

5.6.1	<i>Political goodwill and public participation in conservation of heritage</i>	246
5.6.2	<i>Impact of globalisation on cultural heritage conservation</i>	250
5.6.3	<i>Integration of cultural policy into sustainable development policy</i>	254
5.7	CONCLUSION	257
	PART TWO	258
	CULTURAL HERITAGE LEGISLATION AND POLICY	258
	CHAPTER SIX	259
	ASSESSMENT OF CULTURAL VALUES, PATRIMONIALIZATION AND PROTECTION OF CULTURAL HERITAGE IN KENYA	259
	INTRODUCTION.....	259
6.1	THE PROCESS OF PATRIMONIALIZATION	262
6.1.1	<i>Patrimonialization and the emergence of a cultural policy in France</i>	265
6.2	PATRIMONIALIZATION AND THE DEVELOPMENT OF CULTURAL POLICY IN KENYA: WHOSE HERITAGE? 268	
6.2.1	<i>The language policy as an approach to the question of “Whose heritage?”</i>	273
6.2.2	<i>Whose heritage? Communication, political goodwill and patrimonialization</i>	274
6.2.3	<i>Which heritage?</i>	283
6.3	THE PLACE OF CULTURAL HERITAGE IN THE NATIONAL PHILOSOPHIES OF DEVELOPMENT	288
6.3.1	<i>The African Socialism philosophy,</i>	288

6.3.2	<i>Harambee philosophy: self-help and community development</i>	289
6.4	CONSOLIDATING KENYA’S CULTURAL POLICY FOR PEACEFUL COEXISTENCE AND SUSTAINABLE DEVELOPMENT	291
6.4.1	<i>Elements and objectives of the cultural policy in Kenya</i>	292
3.1	.....	295
3.2	.....	295
3.3	.....	295
6.4.2	<i>Integrating Cultural Policy into Sustainable Development Policy in Kenya</i>	295
6.4.3	<i>Kenya Vision-2030 and Foreign Policy</i>	298
6.5	SPECIFIC LEGISLATION ON CULTURAL RESOURCE MANAGEMENT: WHY IS IT IMPORTANT?.....	299
6.5.1	<i>Scientific, historical and social significance of cultural heritage</i>	303
6.5.2	<i>Assessment Criteria of values and significance of cultural heritage?</i>	307
6.5.3	<i>Which marketing approach and economic value for heritage?</i>	310
6.5.4	<i>Funding of archaeological research in Kenya</i>	323
6.6	TEACHING AND TRAINING IN ARCHAEOLOGY: BETWEEN KNOWLEDGE AND COMPETENCY.....	327
6.6.1	<i>Teaching of archaeology and training archaeologists in Kenya</i>	328
6.6.2	<i>Skills development through Competence Based Curriculum: which perspective to cultural resource management in Kenya?</i>	331
6.7	CONCLUSION	331

CHAPTER SEVEN	333
ARCHAEOLOGICAL RESEARCH AND PROTECTION OF CULTURAL HERITAGE FROM LEGISLATION ON ANTIQUITIES AND HISTORICAL MONUMENTS	333
7.1 INTRODUCTION	333
7.2 CULTURAL HERITAGE FROM TRADITIONAL CUSTODIANSHIP SYSTEMS TO THE ANTIQUITIES AND HISTORICAL MONUMENTS	334
7.3 ESTABLISHMENT OF MODERN FORMS AND SYSTEMS OF CULTURAL HERITAGE MANAGEMENT	336
7.3.1 <i>Protection from legislation on historical monuments in France</i>	337
7.4 LEGISLATION ON HISTORICAL MONUMENTS IN FRANCE, GREAT BRITAIN AND THEIR COLONIES; ALGERIA AND KENYA BETWEEN 1870 AND 1930	344
7.4.1 <i>Protection from legislation on historical monuments in Kenya</i>	345
7.5 COLONIAL FOUNDATIONS OF CULTURAL HERITAGE LEGISLATION AND POLICY IN KENYA AND ITS LEGACY	345
7.6 ASSESSMENT OF VALUES OF CULTURAL HERITAGE IN KENYA DURING THE COLONIAL PERIOD	346
7.6.1 <i>The Ancient Monuments Preservation Ordinance 1927 (Kenya)</i>	347
7.6.2 <i>Permission to excavate and export protected antiquities and monuments: The Ancient Monuments Preservation (Amendment) Ordinance 1934 (Kenya)</i>	351
7.7 CONCLUSION	353
CHAPTER EIGHT	354

**CULTURAL HERITAGE PROTECTION FROM LEGISLATION ON URBANIZATION,
ENVIRONMENTAL LAW AND PREVENTIVE ARCHAEOLOGY 354**

INTRODUCTION..... 354

8.1 FORMULATION OF HERITAGE LAWS AND POLICIES ON NATURAL AND CULTURAL HERITAGE..... 355

8.2 SALVAGE ARCHAEOLOGY AND THE LAW ON REGULATION OF ARCHAEOLOGICAL EXCAVATIONS OF
1941 IN FRANCE 356

8.2.1 *Urbanization and its impact on cultural heritage conservation in France..... 356*

8.2.2 *Creation of L'Association pour les Fouilles Archéologiques Nationales (AFAN) (the
Association for National Archaeological Excavations) 1973 359*

8.2.3 *Salvage archaeology and environmental law..... 361*

8.3 CULTURAL POLICY UNDER THE LEFT WING GOVERNMENT, 1981-1995 363

8.3.1 *Gradual increase in activity level of archaeological operations..... 365*

8.4 PROTECTION OF ARCHAEOLOGICAL HERITAGE BY LEGISLATION ON PREVENTIVE ARCHAEOLOGY AND
ENVIRONMENTAL IMPACT ASSESSMENT 371

8.4.1 *Preventive archaeology, law N° 2001-44 of 17th January 2001, France (Loi relative à
l'archéologie préventive), amended in 2003 and 2004..... 371*

8.5 CULTURAL POLICY AND DEVELOPMENT PRIORITIES IN POSTCOLONIAL KENYA..... 373

8.5.1 *Independency development priorities, development plans and associated social and cultural
policy issues 373*

8.5.2 *Post-devolution Development, Environmental Consciousness and Issues of Social Justice in
Kenya 374*

8.6	SALVAGE ARCHAEOLOGY IN KENYA	376
8.6.1	<i>Environmental Management and Coordination Act (EMCA 1999, Kenya)</i>	376
8.6.2	<i>National Museums and Heritage Act (NMHA 2006, Kenya)</i>	377
8.7	CONCLUSION	379
CHAPTER NINE		381
PROTECTION OF CULTURAL HERITAGE BY PENAL LAW, INTERNATIONAL CONVENTIONS, RECOMMENDATIONS AND REGULATIONS		381
9.1	INTRODUCTION	381
9.2	PRINCIPLES OF CRIMINAL RESPONSIBILITY AND SOURCES OF PENAL LAW ON ARCHAEOLOGY AND CULTURAL HERITAGE MANAGEMENT	381
9.2.1	<i>Legislation on the regulations of archaeological excavations in France</i>	384
9.2.2	<i>Protection of archaeological heritage by penal law in Kenya</i>	392
9.2.3	<i>Integrated Protection of Archaeological Heritage</i>	392
9.3	PROTECTION OF CULTURAL HERITAGE BY INTERNATIONAL LAW	394
9.3.1	<i>UNESCO Conventions, Treaties and Recommendations</i>	396
9.3.2	<i>UNESCO Recommendation of 1956 and 1962</i>	398
9.3.3	<i>UNESCO 1964 ICOMOS International Charter for the Conservation and Restoration of Monuments and Sites (Venice Charter)</i>	399

9.3.4	<i>UNESCO Recommendation concerning Preservation of Cultural Property Endangered by Public or Private Works, Paris, 1968</i>	401
9.3.5	<i>UNESCO 1972 Convention concerning the Protection of the World Cultural and Natural Heritage</i>	405
9.3.6	<i>UNESCO Mexico City Declaration on Cultural Policies: World Conference on Cultural Policies Mexico City, 26 July - 6 August 1982</i>	410
9.3.7	<i>UNESCO 1987 ICOMOS Charter for the Conservation of Historic Towns and Urban Areas (Washington Charter)</i>	410
9.3.8	<i>UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005</i>	412
9.3.9	<i>ICOMOS Charter for the Protection and Management of the Archaeological Heritage (1990)</i> 416	
9.4	PROTECTION FROM THE COUNCIL OF THE EUROPEAN UNION	417
9.4.1	<i>Malta Convention (La Valeta) of 16 January 1992</i>	417
9.4.2	<i>Elements of comparative legislation on preventive archaeology in Europe (Sénat, 2011)</i> .	419
9.5	PROTECTION FROM AFRICAN UNION AND THE EAST AFRICAN COMMUNITY	421
9.5.1	<i>The Charter for African Cultural Renaissance adapted in 2006 by African Union (AU)</i>	421
9.6	HOW EFFICIENT IS THE APPLICATION OF INTERNATIONAL PENAL LAW TO THE PROTECTION OF CULTURAL HERITAGE IN KENYA?	423
9.6.1	<i>Elements of Comparative Legislation on Environmental Impact Assessment among member States of the East African Community, the USA and UK</i>	428

9.7	CONCLUSION	432
PART THREE.....		435
PREVENTIVE ARCHAEOLOGY, CULTURAL HERITAGE IMPACT ASSESSMENT AND MANAGEMENT.....		435
CHAPTER TEN.....		436
DEVELOPMENT AND ORGANIZATION OF PREVENTIVE ARCHAEOLOGY IN FRANCE....		436
10.1	INTRODUCTION	436
10.2	EMERGENCE AND DEVELOPMENT OF PREVENTIVE ARCHAEOLOGY.....	437
10.2.1	<i>Origins of rescue archaeology in France</i>	<i>438</i>
10.2.2	<i>Rescue, salvage, commercial, contract, development-led or preventive archaeology: implications of the terminology.....</i>	<i>440</i>
10.2.3	<i>From rescue to preventive archaeology in France.....</i>	<i>445</i>
10.2.4	<i>Diagrammatic representation of the Core Attributes of Preventive Archaeology.....</i>	<i>448</i>
10.2.5	<i>Aims and objectives of preventive archaeology.....</i>	<i>449</i>
10.3	ACTORS AND AGENTS OF PREVENTIVE ARCHAEOLOGY IN FRANCE	450
10.3.1	<i>The developers.....</i>	<i>451</i>
10.3.2	<i>The State.....</i>	<i>452</i>
10.3.3	<i>State consultative organs: CNRA and CTRA.....</i>	<i>457</i>
10.3.4	<i>Consultants of preventive archaeology (les opérateurs).....</i>	<i>458</i>

10.3.5	<i>Other Scientific Interventionist Agencies:</i>	460
10.4	FUNDING OF PREVENTIVE ARCHAEOLOGY.....	466
10.5	PRACTICE OF PREVENTIVE ARCHAEOLOGY.....	467
10.5.1	<i>Procedure and methodology of preventive archaeology</i>	471
10.6	TECHNOLOGICAL EVOLUTION: APPLICATION OF ARCHAEOLOGICAL GEOPHYSICS IN PREVENTIVE ARCHAEOLOGY.....	478
10.6.1	<i>When, where and why to apply geophysics technology</i>	484
10.7	CONCLUSION	486
CHAPTER ELEVEN		488
ENVIRONMENTAL AND CULTURAL HERITAGE IMPACT ASSESSMENT IN KENYA		488
11.1	INTRODUCTION	488
11.2	GROWING ENVIRONMENTAL AWARENESS AND CONCERNS FOR SUSTAINABLE DEVELOPMENT IN KENYA	489
11.3	ENVIRONMENTAL IMPACT ASSESSMENT (EIA).....	492
11.3.1	<i>Establishment of EIA in Kenya</i>	493
11.3.2	<i>The aims and objectives of salvage archaeology and cultural heritage impact assessment in Kenya</i>	501
11.3.3	<i>Actors and agents of heritage impact assessment in Kenya</i>	502
11.3.4	<i>Organisation of Heritage Impact Assessment in Kenya</i>	503

11.3.5	<i>Practice of Environmental Impact Assessment in Kenya</i>	509
11.3.1	<i>Public-Private Partnerships and Environmental Impact Assessment in Kenya</i>	515
11.3.2	<i>Summary of selected EIA reports from NEMA - downloads</i>	517
11.4	CULTURAL HERITAGE IMPACT ASSESSMENT AND RESCUE ARCHAEOLOGY IN KENYA: FROM LEGISLATION TO PRACTICE.....	521
11.4.1	<i>Lamu Port - South Sudan – Ethiopia Transport (LAPSSET) corridor project</i>	526
11.4.2	<i>The place of cultural heritage in the LAPSSET Corridor project</i>	534
11.4.3	<i>Ethiopia-Kenya Power Systems Interconnection Project: An Archaeological Impact Assessment Report Prepared For Gamma Systems Limited</i>	536
11.4.4	<i>Wadh Lang’o and Sondu Miriu Hydroelectric Power Project</i>	541
11.4.5	<i>Contribution of heritage impact assessment to scientific research and cultural heritage management in Kenya</i>	542
11.5	REALIGNMENT OF CULTURAL HERITAGE MANAGEMENT TO DEVOLVED SYSTEM OF GOVERNMENT IN KENYA	545
11.5.1	<i>Urbanisation and Reversal of Rural Urban Migration</i>	545
11.5.2	<i>Devolution and Decentralisation of Government: County Government and focus on rural development</i>	547
11.6	COMPARING THE IMPACT OF PREVENTIVE ARCHAEOLOGY AND HERITAGE IMPACT ASSESSMENT TO SCIENTIFIC RESEARCH AND CULTURAL HERITAGE MANAGEMENT	549
11.6.1	<i>Preventive Archaeological Operations 2001-2014: A case of Iron Age Period in the region of Nouvelle-Aquitaine, France</i>	555

11.6.1	<i>Preventive Archaeology and Cultural heritage Management in Africa: some references for Kenyan system.....</i>	564
11.7	CONCLUSION	564
CHAPTER TWELVE		567
PITFALLS IN CULTURAL HERITAGE MANAGEMENT IN KENYA: STAKES AND PERSPECTIVES ON PATRIMONIALIZATION, COMMUNICATION AND PUBLIC PARTICIPATION.....		567
12.1	INTRODUCTION	567
12.2	THIMLICH OHINGA AND THE DILEMMA OF MANAGING BUILT HERITAGE IN KENYA	568
12.2.1	<i>Thimlich Ohinga Archaeological World Heritage Site: a historical context.....</i>	571
12.2.2	<i>The paradox of conservation of built heritage in Kenya.....</i>	572
12.2.3	<i>Thimlich Ohinga and Archaeological Research in the East African Great Lakes Region</i>	580
12.3	BUILT HERITAGE AND ISSUES OF IDENTITY, CHANGE AND POLITICAL INFLUENCE OVER TIME: BENCHMARKING THIMLICH OHINGA AND FORT JESUS WITH EUROPEAN EXPERIENCE.....	584
12.3.1	<i>Disequilibrium between natural and cultural heritage in environmental considerations in Kenya: the case of the Standard Gauge Railway and Nairobi National Park.....</i>	590
12.3.2	<i>Communication of archaeological information to the public</i>	596
12.3.3	<i>Language of communication as a tool for enhancing public participation in patrimonialization of cultural and archaeological resources.....</i>	597
12.3.4	<i>Mass Media and Cultural Heritage Promotion in Kenya</i>	597

12.3.5	<i>Communication of cultural and archaeological information through public forums and the press</i>	599
12.4	TRANSMISSION OF CULTURAL AND ARCHAEOLOGICAL INFORMATION THROUGH SCIENTIFIC PROGRAMMES.....	601
12.4.1	<i>Main editorial scientific publications for archaeology in France</i>	603
12.5	ANALYSIS OF THE ECONOMIC IMPACT OF COMMUNICATION ABOUT CULTURAL SITES AND EVENTS TO CULTURAL TOURISM DEVELOPMENT	606
12.6	PERSPECTIVES ON CULTURAL HERITAGE MANAGEMENT IN KENYA.....	606
12.6.1	<i>Kenya-INRAP-Pau University-Preventive Archaeology (KIPPA) Project</i>	607
12.6.2	<i>Research and capacity building in cultural heritage management</i>	610
12.7	CONCLUSION	611
	GENERAL CONCLUSION AND RECOMMENDATIONS	613
13.1	GENERAL CONCLUSION	613
13.2	RECOMMENDATIONS.....	620
	BIBLIOGRAPHY	624
	ABSTRACT	688
	RESUME	689
	ANNEX.....	692

TABLE OF ILLUSTRATIONS

<i>Illustration 1 Environmental Kuznets Curve Hypothesis</i>	21
<i>Illustration 2: Relationship between heritage conservation, the policy framework, practice and good coordination among all stakeholders</i>	27
<i>Illustration 3 Relationship between archaeology and other disciplines</i>	44
<i>Illustration 4 Five groups of tasks that can be accomplished by GIS</i>	50
<i>Illustration 5 Organization of salvage and preventive archaeology before 2001</i>	163
<i>Illustration 6 Organigram of the region of Grand Sud-Ouest before the change in the national administrative map (Page 1/2)</i>	171
<i>Illustration 7 Organigram of the former region of the Grand Sud-Ouest (Page 2/2)</i>	172
<i>Illustration 8 General Organigram of INRAP by January 2020</i>	173
<i>Illustration 9 Collections organized according to regions corresponding to former provinces. Courtesy Lucas Bwire</i>	195
<i>Illustration 10 Temple of Abu Simbel in Egypt being remounted in 1964 due to public interest after being threatened by construction of Aswan Dam. Photo courtesy (Demoule, 2005, p. 104).</i>	242
<i>Illustration 11 Diagrammatic representation of the Core Attributes of Preventive Archaeology</i>	448
<i>Illustration 12 Diagrammatic representation of the Core Attributes of Preventive Archaeology</i>	448
<i>Illustration 13 Comparing Two Organizational Models of Preventive Archaeology © L.L. Bwire</i>	470
<i>Illustration 14: Environmental Impact Assessment process based on the EIA Guidelines (Republic of Kenya, 2002)</i>	507

Illustration 15: General EIA Procedure Flowchart © L.L.W. Bwire 508

Illustration 16: General EIA Procedure Flowchart © L.L.W. Bwire 508

TABLE OF FIGURES

<i>Figure 1: Allégorie à Louis XIV, protecteur des Arts et des Sciences by GARNIER Jean (1632 - 1705).....</i>	67
<i>Figure 2: The coast of eastern Africa, showing 7th–10th century sites courtesy Stephanie Wynne-Jones. URL: http://journals.openedition.org/afriques/docannexe/image/1752/img-1.jpg</i>	106
<i>Figure 3 A cover page of a book written by Jacob Spon, published in 1675. Source: Collection of scanned documents from the French National Institute of History of Art (INHA).</i>	110
<i>Figure 4: The Museum of National Archaeology– le Musée d’Archéologie nationale de Saint-Germain-en-Laye (Yveline).....</i>	159
<i>Figure 5: Organizational structure of the National Museums of Kenya</i>	188
<i>Figure 6: Legal status of Museums or ownership of collections in the Musées de France, according to the 2017 survey report by the Ministry of Culture</i>	193
<i>Figure 7: Storage of archaeological collections by Regional Archaeological Service storage facilities in Nouvelle-Aquitaine. Courtesy Lucas Bwire.....</i>	196
<i>Figure 8: Worldwide google trends of searches of museums in east African region from January 2004 to January 2022.....</i>	197
<i>Figure 9: KNM-15000 'Turkana Boy' (Homo erectus or Homo ergaster)</i>	237
<i>Figure 10: Locals (Ekiru Ewaton and his wife Esekon Lowa) at the artistic impression of the Turkana Boy. Photo courtesy Jared Nyataya, Nation Media Group (Nation Media Group, 2015).....</i>	240
<i>Figure 11: THE PROCESS OF PATRIMONIALIZATION. Courtesy (Amougou, 2004a, p. 27).....</i>	264

<i>Figure 12: The Kapenguria Six from left: Paul Ngei, Fred Kubai, Jomo Kenyatta, Achieng Oneko, Kungu Karumba and Bildad Kagia. courtesy Photo File, NATION accessed in The East African Online, 1st July 2017.....</i>	285
<i>Figure 13: Planning Process Methodology. Source (Mason, 2002, p. 6)</i>	308
<i>Figure 14: Part of the exhibit Prisons Today: Questions in the Age of Mass Incarceration at Eastern State Penitentiary. Image: Darryl Moran, 2016, courtesy Eastern State Penitentiary Historic Site, Philadelphia. Source (Mason, 2019)</i>	309
<i>Figure 15: The share of International Arrivals by Purpose of Visit, 2016 (Kenya National Bureau of Statistics, 2017, p. 210)</i>	312
<i>Figure 16: Visitor Arrivals through JKIA and MIA between November 2020 and November 2021 (Kenya National Bureau of Statistics, 2021).....</i>	312
<i>Figure 17: Worldwide Google Trends of searches for various museums in Kenya from 2004 to the present. Source Google Trends accessed on 28th January, 2022</i>	314
<i>Figure 18: Comparison of number of visitors between selected museums in Kenya from the year 2012 to 2016.....</i>	316
<i>Figure 19: Worldwide Google Trends of searches of selected museums in Kenya between January 2004 and January 2022.....</i>	320
<i>Figure 20: Historical monument of the Castle of Campagne. Inset top right: bullet marks of WWII. © L. Bwire.</i>	342
<i>Figure 21: Planning process methodology of assessing values in conservation planning (Mason, 2002, p. 6)</i>	347
<i>Figure 22: Summary of reports on the evolution of the public policy on preventive archaeology in France, 1968-1998.....</i>	370

<i>Figure 23: A synthesis procedure of preventive archaeology in France.....</i>	<i>474</i>
<i>Figure 24: Geophysical and mechanical technics of archaeological research at INRAP</i>	<i>479</i>
<i>Figure 25: Electric conductivity map of a section of the Valley, la vallée de L'Oise.....</i>	<i>482</i>
<i>Figure 26: Map showing the Nairobi-Nakuru-Mau Summit Highway Project. Map prepared by G. Pothier and A. Monnard. Source: WSP CANADA INC. WSP REF.: 201-10312-00 February 16th 2022 Report, pp. xxiii.</i>	<i>513</i>
<i>Figure 27: Fort Jesus World Heritage site museum. Photos by Lucas L.W. Bwire</i>	<i>535</i>
<i>Figure 28: A section of the Standard Gauge Railway passing through the Nairobi National Park.....</i>	<i>543</i>
<i>Figure 29: Results of Palaeolithic diagnostic prospection at Havrincourt, Pas-de-Calais, France (Source Achéopages Hors Série 4, 2016).</i>	<i>553</i>
<i>Figure 30: A Paleo-Christian Baptismal Bath and a small jug typical of North African ceramic production of the sixth century AD discovered at Ajaccio in the region of Méditerranée, Southern France. Source (INRAP, 2005, p. 87).....</i>	<i>555</i>
<i>Figure 31: Map of Iron Age results in Nouvelle-Aquitaine between 2001 and 2014. Map courtesy SRA Nouvelle-Aquitaine, Bilan Scientifique 2016, pp.29.....</i>	<i>561</i>
<i>Figure 32: Thimlich ohinga and related sites</i>	<i>573</i>
<i>Figure 33: Thimlich Ohinga site with a reconstructed luo homestead and the stone wall structures with security features. Photos courtesy Lucas L. W. Bwire.....</i>	<i>583</i>
<i>Figure 34: Kit Mikayi Intangible World Heritage Site in Kisumu. Courtesy Innocent Oleche, The Star</i>	<i>585</i>
<i>Figure 35: Fort Jesus UNESCO World Heritage site. Photo © Lucas Bwire.....</i>	<i>586</i>
<i>Figure 36: Visitor's flyer in Kiswahili with entry amount at Fort Jesus</i>	<i>589</i>

<i>Figure 37: A Typical Structure of an Integral Heritage Management Master Plan. Courtesy (Olivera & Diaz, 2011, p. 42)</i>	<i>592</i>
<i>Figure 38: Integral Heritage Management with a Master Plan linking legal framework to archaeological research and the stakes</i>	<i>593</i>
<i>Figure 39: The Sacred Mijikenda Kayas, UNESCO WHS- based on 2003 Convention on Intangible Heritage. Photo courtesy Okoko Ashikoye</i>	<i>594</i>
<i>Figure 40: Demonstrations for the conservation of Nairobi National Park during the construction of the SGR.</i>	<i>595</i>
<i>Figure 41: Mombasa- Nairobi Standard Gauge Railway showing a fly-over bridge to protect Nairobi National Park. Photo © L. Bwire.</i>	<i>595</i>
<i>Figure 42: The integrated site-museum of Ahrweiler (DE). The glass display on the site showing ceramic objects (Rousseau, 2011).....</i>	<i>599</i>

LIST OF TABLES

<i>Table 1 Key questions that require the application of GIS as a research methodology.....</i>	<i>46</i>
<i>Table 2 Graphical representation of gender parity and age brackets of staff at INRAP (Inrap, 2015).</i>	<i>177</i>
<i>Table 3: Number of Visitors to Museums, Snake Parks and Historical Sites in Kenya, 2012-2016.....</i>	<i>315</i>
<i>Table 4: Funding strategy for the expansion of museums in Kenya, 1973 - 1978 (Ndeti, 1975, p. 59).....</i>	<i>325</i>
<i>Table 5: Comparative legislation on monuments before independence era, Britain, France and Kenya</i>	<i>350</i>
<i>Table 6: Rural and urban populations in France from 1700 to 1975 (Fourastié, 1979, p. 133)</i>	<i>357</i>
<i>Table 7: Elements of Comparative Legislation on Environmental Impact Assessment among member States of the East African Community, the USA and UK.....</i>	<i>431</i>
<i>Table 8: Mixed Research Units (UMR) regrouping researchers working on archaeology in Metropolitan France</i>	<i>464</i>
<i>Table 9: Mixed Research Units (UMR) regrouping researchers working on archaeology in Metropolitan France – Composition of each team.....</i>	<i>465</i>
<i>Table 10 Participation of different institutions in preventive archaeological operations in Midi-Pyrénées in the year 2014.....</i>	<i>477</i>
<i>Table 11 Advantages and disadvantages of geophysics in preventive archaeology.....</i>	<i>483</i>
<i>Table 12: Examples of different environmental aspects that are addressed in EIA and ESIA</i>	<i>504</i>
<i>Table 13: Summary of EIA reports by NEMA accessed online from NEMA Downloads</i>	<i>519</i>
<i>Table 14: ANNEX 3 ARCHAEOLOGICAL IMPACT ASSESSMENT.....</i>	<i>539</i>

Table 15 Archaeological and historical periods 552

*Table 16: Cultural phenomena presenting the principal concepts by order (top down) of the growth of
selection of cultural criteria (Mohen, 1999, p. 14)..... 571*

LIST OF MAPS

<i>Map 1: Geographical delimitation of the study, LAPSSET Corridor project in Kenya. Photo courtesy Wikipedia.....</i>	<i>32</i>
<i>Map 2: Regional Organization of INRAP as at 1st January 2020, Map courtesy Lucas L. W. Bwire</i>	<i>33</i>
<i>Map 3: Regional Organization of the National Museums of Kenya (NMK), Map courtesy Lucas L. W. Bwire</i>	<i>34</i>
<i>Map 4: Territorial Organisation of INRAP as at 31st December 2021. Map realised by the author.</i>	<i>170</i>
<i>Map 5 Regional Organization of the National Museums of Kenya</i>	<i>189</i>
<i>Map 6: Geophysical operations conducted by the section of geophysics at INRAP. Photo by G. Hulin, INRAP, March 2021</i>	<i>480</i>
<i>Map 7: Northern Economic Corridor Connecting East African Countries.....</i>	<i>522</i>
<i>Map 8: Lamu Port-South Sudan-Ethiopia-Transport corridor project</i>	<i>528</i>
<i>Map 9: LAPSSET Corridor with Affected Constituencies and the Nairobi-Mombasa SGR Railway.....</i>	<i>529</i>
<i>Map 10: Preventive archaeology diagnostic surveys : the case of the Sud-Europe-Atlantique High Speed Railway.....</i>	<i>530</i>
<i>Map 11: Wadh Lang'o at the site of Sondu Miriu Hydroelectric Power Project</i>	<i>541</i>
<i>Map 12 Standard Gauge Railway network. Courtesy Google maps</i>	<i>543</i>
<i>Map 13: The railway line built during the conquest of East Africa (Source Pollard, F.A.).....</i>	<i>544</i>
<i>Map 14: Map of archaeological operations in Aquitaine region, 2015. Courtesy Ministry of Culture and Communication, SRA Aquitaine, Billan Scientifique 2015, p.13.....</i>	<i>559</i>

- Map 15: Map of archaeological operations in Nouvelle-Aquitaine region in the year 2016. Courtesy Ministry of Culture and Communication, SRA Aquitaine, Bilan Scientifique 2016, p.59..... 560*
- Map 16: Map of First and Second Iron Age results respectively in Nouvelle-Aquitaine between 2001 and 2014. Map courtesy SRA Nouvelle-Aquitaine, Bilan Scientifique 2016, pp.32 and 28 respectively 563*
- Map 17: Ohingni and related sites in Western Kenya. Map by Elizabeth Vignati 582*

TABLE OF ANNEX

<i>Annex 1: Lawyer gives secret to winning Cortec case : Kenya - The Standard, 30/10/2018</i>	692
<i>Annex 2: Kenya: Kenya: Resistance to the Sondu Miriu Dam Project</i>	693
<i>Annex 3: KENYA: Japan Suspends Funding for Sondu Miriu Dam</i>	695
<i>Annex 4: The reform of preventive archaeology in 2012 with the list of signatures</i>	697
<i>Annex 5: INTERNATIONAL CHARTER FOR THE CONSERVATION AND RESTORATION OF MONUMENTS AND SITES (THE VENICE CHARTER 1964)</i>	708
<i>Annex 6: The Antiquities and Monuments Act Cap 215</i>	714
<i>Annex 7: The Law N° 2016-925 of 7 July 2016 relative à la liberté de la création, à l'architecture et au patrimoine (1)</i>	733

GENERAL INTRODUCTION

This PhD thesis is a comparative public policy analysis of cultural heritage management in Kenya in the context of rapid economic development characterised by the boom in infrastructural projects, increased urbanization and the associated environmental considerations since the past two decades. The conservation of cultural heritage is threatened by globalization as African economies open up to new realms of growth in the international markets while increased building construction, infrastructural expansion as well as terrorism destroy existing heritage assets (Kibunja, 2016). The infrastructure boom is the real threat to Africa's archaeological resources even though the opposite could be true (Arazi, 2011) if there is balance between infrastructural development, scientific research and heritage conservation.

I therefore consecrated this thesis to the comparative analysis of the historical evolution of cultural heritage management, its institutional, policy and regulatory framework as well as its practice in Kenya and France. Salvage, commercial or preventive archaeology attests nowadays to the most widely practiced form of archaeology within Europe and the United States, especially since the application of the "polluter pays" principle (Organisation for Economic Cooperation and Development, 1992) or the replacement of governmental funding by developer funding for rescue or salvage excavations (Arazi, 2011; Aitchison, 2000). I looked at preventive archaeology in France as a well-organized system with a semi-autonomous institution so as to benchmark with environmental impact assessment in Kenya as the tool for the protection of archaeological and cultural heritage threatened by development projects. I applied both qualitative and quantitative research methodologies

through a multidisciplinary comparative analysis approach so as to conduct an in-depth and detailed study of dynamics in environmental considerations through application of Environmental Kuznets's Curve based on a tripartite perspective that cuts across the history, the policy framework and the practice over a long period of time.

Environmental impact assessment is the tool for sustainable development planning that ensures the protection of cultural heritage in the context of development in Kenya and Africa at large. Preventive archaeology, as defined in the French Heritage Code, is the integral part of archaeological research that aims to ensure an equilibrium between economic development, conservation of cultural heritage and scientific research.

In this thesis I interrogate Kenya's cultural policy in the context of rapid economic development which has been taking place since the past two decades cutting across all the keys sectors of the economy (Fouéré, et al., 2020). I also look at how the young democracy has grappled with economic realities of the twentieth and twenty first centuries as social, economic and political challenges have persistently called for integrated policy interventions for national integration, resilience and sustainable development. The challenges such as the 2007-2008 post-election violence, which left about 1200 deaths and hundreds of thousands of internally displaced people (IDP), range from social, economic to political issues whose answer necessitate the integration of the cultural policy into sustainable development policies. Heightened negative ethnicity during the pre-election campaigns, for instance, coupled with historical injustices, social, economic and political marginalization of the youth and some parts of the country, socio-economic inequalities and lack of inclusivity in governance have regularly plunged the country into violence (Josse-Durant, 2021, p. 155) during each election period since the 1992 re-introduction of multi-party democracy in Kenya. In the 2007-2008 post-election violence, all the other factors fuelled and aggravated

negative ethnicity which has been manipulated as a political tool and thrived on the premise that the Kenyan society was ill-informed on their history and culture. The limited knowledge, limited access and use of the various items of cultural heritage by the general public delayed the realisation of an integrated nation-state.

I conducted this study after the promulgation of the Constitution of Kenya which occurred in the year 2010. The constitutional reform was a source of hope to Kenyans as it ushered in unprecedented social, political and economic reforms with a devolved system of government (Josse-Durant, 2021). Article 4 (2) of the Constitution declares that the Republic of Kenya shall be a multi-party democratic State founded on the national values and principles of governance referred to in Article 10. The national values and principles of governance as stipulated in Article 10 (2) include: (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of people; (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; (c) good governance, integrity, transparency and accountability; and (d) sustainable development. One decade since its promulgation, there is still more hope even as there is some disillusionment in the spirit of the Constitutional reforms (Josse-Durant, 2021). In this study I looked at cultural policy as the roadmap to patriotism, national unity, democracy, human rights, human dignity, social justice and sustainable development as some of the national values and principles of governance well-articulated in article 10 of the Constitution.

At the core of this study I interrogate Article 11 of the Constitution of Kenya. Article 11 (1) recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation. This cumulative civilization is reflected through the traces of the past whose protection is the work of preventive archaeology and cultural heritage

management. Article 11 (2) is where the Constitution laid the foundation for Kenya's cultural policy as well as this study by stipulating that the State shall (a) promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage; (b) recognise the role of science and indigenous technologies in the development of the nation; and (c) promote the intellectual property rights of the people of Kenya. These are the building blocks of this comparative public policy analysis.

This thesis is therefore divided into three main parts. Part one is about the history and administrative organization of cultural heritage management and archaeological research. I begin by providing the background to the study and the research methodology in chapter one. Chapter two is about the historical development of the notion of cultural heritage and its socio-cultural and geospatial particularities. In chapter three I present the history of cultural heritage management during the colonial period, the time when archaeology was introduced thus a shift from traditional custodianship characterised by shrines to antiquities, historical monuments and museum practices. Chapter four talks about patrimonialization and institutional framework on cultural heritage management in the post-independence period. In chapter five I talk about globalization, decolonization, decentralization and democratization of cultural heritage.

Part two of this thesis concerns the legal, regulatory and policy framework on cultural heritage management. It opens with chapter six which looks at the assessment of cultural values, the process of patrimonialization and protection of cultural heritage in Kenya. In chapter seven I look at the archaeological research and protection of cultural heritage from legislation on antiquities and historical monuments. Chapter eight is about cultural heritage protection from legislation on urbanization, environmental law and preventive archaeology.

In chapter nine the study examines the protection of cultural heritage by penal law, international conventions, recommendations and regulations.

Part three of this thesis presents the analysis and discussion of the findings of this thesis. It is about the organization and practice of preventive archaeology, cultural heritage impact assessment and management in Kenya and France. Chapter ten opens this part by looking at the development and organization of preventive archaeology in France. In chapter eleven I analyse the practice of environmental impact assessment and cultural heritage impact assessment and management in Kenya. It was necessary to do the comparison using two chapters because the comparison was much more detailed and complex hence the need for clarity while attempting to pay attention to the details. Last but not least, in chapter twelve I analyse cultural heritage management in Kenya while identifying the stakes and perspectives on patrimonialization, communication and public participation.

PART ONE

HISTORY AND ADMINISTRATIVE ORGANIZATION OF CULTURAL HERITAGE MANAGEMENT AND ARCHAEOLOGICAL RESEARCH

In this part I talk about the history of administrative and institutional framework on cultural heritage management and administration of archaeological research in Kenya and France. Given the centrality of cultural heritage to the national identity, economic development and national cohesion, both countries established the ministries in charge of culture to provide policy direction. The ministries give direction on formulation and implementation of each country's cultural policy thus serving as key comparative elements of each country's cultural policy. In the chapter I trace the history of cultural heritage management systems in the two countries while analysing the challenges, strengths and weaknesses across cultural institutions over time based on major events in the history of each country. The event based analysis is based suited to the comparative analysis of public policies for culture since culture influences how individuals behaves in an event whereas the major historical events like the French Revolution (in France) and colonization (in Kenya) redefine what is called a nation. Major historical and political events like wars and colonization have a devastating impacts on cultural heritage as they may lead to attempts to instrumentalize heritage in the search for victory or rationalization of irrelevant ideologies. It was during the Second World War, for instance, that the state put in place a legal framework to control archaeological research in France. Part one of the thesis aimed to attain the first research objective which is to analyse the administrative institutions of archaeological heritage management, research and their historical evolution. It includes perspectives on globalization, the process of decentralization and democratization of cultural heritage as a human right.

CHAPTER ONE

BACKGROUND TO THE STUDY, THEORETICAL FRAMEWORK AND RESEARCH METHODOLOGY

Introduction

In this chapter I provide the background to the study, the theoretical framework and the research methodology. It is subdivided into the three sections respectively.

1.1 Background to the study

I developed the interest for this study after undertaking Bachelor of Education (Arts) degree at Kenyatta University where I specialised in History and Kiswahili language. Throughout my first degree studies, I came across various gaps and challenges in the sources of African history including archaeology, oral and written sources. The double heritage from history and Kiswahili language plus literature provided a good foundation for a multidisciplinary research approach that I have applied in this thesis. History in general and the historical development of Kiswahili and the Swahili culture delved in length on the challenges of African history which are more pronounced in archaeology as a discipline. During my first degree studies I did not participate in archaeological excavations but I was involved in various field excursions to the archaeological and pre-historic sites in Kenya.

The foundations of the present study were laid down through masters' studies beginning with Master 1 in Culture, Art and Societies then Master 2 in History, Culture and Heritage. While the former was concerned with preventive archaeology and heritage impact assessment in Kenya, the latter looked at the question of cultural heritage conservation, decentralization and scientific research in France. The two studies shaped the theoretical and

conceptual framework of the present study based on the two different geographical areas. The systems of cultural resource management in the two countries are different as they emanated from different social, political and historical backgrounds. Whereas Kenya was a colony, France was a colonial power and while Kenya is an industrialising country, France is an industrial power. Nevertheless, the common denominator is that heritage legislations were developed through transfer from one country to another especially in Europe and across the colonial empires (Swenson, 2011; Basu & Damodaran, 2015). This was partly the rationale of employing such comparative approach beyond which any attempt at comparing the two systems was almost impossible. However, the more the differences the more the questions were raised because any comparative study about cultural issues must begin by acknowledging that public policy for culture is as diverse as cultural diversity. This inspired and guided the pursuit of a comparative public policy analysis study. The complexity of the research questions, the research hypothesis adopted and the circumstances under which I carried out this study guided the choice of the theoretical framework and research methodology as illustrated through the sources of data, data collection tools, data analysis and interpretation.

1.1.1 Focus on preventive archaeology and heritage impact assessment as tools for development planning and areas of scientific research

In the recent years, a lot of attention has been concentrated on the history of scientific research in its diversity. The aim has been to analyse and better define the objectives that can be set as well as understanding the progress that has been made by the various approaches arising from the growing demand for knowledge (Leclant, 1998). Such epistemological perspective was particularly significant for archaeological research especially in Africa. Archaeological research was fundamental in the scientific discovery,

conquest and understanding of the ancient civilizations with the aim of appreciating the present and planning for the future. Like the Greek and Roman philosophers, saint Augustin affirms that it is impossible to do a reflection on the present and the future without a clear conscience of the origins and a mastered analysis of the beginning (Schnapp, 2018). Beyond the archaeological objects, historical monuments and sites, archaeological research is about a continuously renewed discovery of humanity in its diversity (Leclant, 1998, p. 7).

Archaeological research in Kenya constitutes an important research field though still occupies a rather marginal part in the scientific research programmes. The rapid economic development that has been witnessed since the past three decades has revealed the shortcomings of the existing legal and policy framework on this area of research and also pointed out the weaknesses in the institutional framework on both environmental and cultural heritage management. Despite the fact that the upsurge in infrastructural development projects since the turn of the twenty first century has unfolded new opportunities as well as challenges in environmental and cultural heritage management, efforts are yet to be made to fully integrate the cultural and environmental policies into sustainable development planning. This necessitates an interrogation of the policy and institutional framework, the international instruments of environmental impacts assessment and auditing, the methodology and the means of controlling against environmental degradation and destruction of cultural heritage in Kenya.

It calls for an epistemological shift in focus from the colonial, Eurocentric and Afrocentric approach to African past towards the focus on patrimonialization and heritage conservation in the context of development across the study period. The main focus is on cultural resource management and preventive archaeology as tools to protect archaeological heritage in the context of economic development. The study dissects through issues in the process of

patrimonialization, the choice of sites and cultural items for conservation, the theoretical framework and methodology in the practice of archaeological research and cultural resource management.

The understanding of patrimonialization as a process in Kenya entails a historical inquiry into the legal, institutional and policy framework on cultural resources management since the precolonial era to the post-independence and contemporary period (Amougou, 2004b; Amougou, 2004a). The study also interrogates contemporary issues of decolonizing historical research in Africa and issues emanating from the international conventions and their impact on the conservation of heritage in Africa. Throughout this research, we were confronted with questions of the incomparability of the French and Kenyan cultural systems because they were on the opposing sides of the colonial equation. It was therefore unthinkable to compare the two systems where one country was a colonial master and the other a colony. However, this is what the present study considered as its uniqueness as it does not consider the colonial question as a limiting factor in the comparative public policy analysis process. Each systems was considered as unique and highly responsive to the context within which it was developed. Nevertheless, the key elements of each system were taken as items to guide the analysis. The historical, socio-economic and political backgrounds and contexts of each system were the key elements for benchmarking between the two systems.

The term heritage can be defined as our legacy from the past, what we live with in the present, and what we pass on to future generations, to learn from, to marvel at, and to enjoy (Jopela, 2011, pp. 103; SAHRA, 2005). Heritage protection in the 21st century is an issue that raises a number of questions – regarding the concept of cultural heritage and how the law embraces that concept and sets its boundaries; regarding the fundamental purpose which

is to preserve and to transmit as implied by the term heritage; regarding the multiple legal environments at the regional, national and international levels in which heritage law stands (Cornu, 2014, p. 197).

Cultural heritage impact assessment has been generally accepted as a tool for the protection of cultural heritage in the context of development planning mainly through the Environmental Impact Assessment. In Africa, however, tension has always existed between development and conservation of the environment which has rendered the work of cultural heritage managers more difficult as they often get less support from the governments. Many governments have reluctantly embraced the EIA as a result of pressure from multilateral donors which demand them before funds are released (Prins-Solani, 2010, p. x). This has left Africa's cultural heritage vulnerable to the adverse impacts of major development projects.

Kenya has witnessed an upsurge in infrastructural development projects since the past two decades which have had a positive impact on the country's economic development through the opening up of the country's economy to both regional and international trade. The major infrastructural projects include the Nairobi-Thika Super-Highway, the Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) corridor, the Mombasa -Nairobi-Kisumu Standard Gauge Railway and the Nairobi-Nakuru-Mau Summit highway project. Such projects serve as impetus for the growth and expansion of the country's cultural tourism industry. However, the magnitude of such development requires a robust environmental and cultural management system that can ensure effective preventive measures to safeguard the country's natural and cultural heritage. Massive destruction of cultural heritage is highly linked to gaps in cultural heritage policy framework, challenges in the legal and institutional framework and incoherence in the practice of environmental impact assessment. These hinders effective realization of cultural heritage impact assessment as well as conservation and management

of cultural resources in most of the developing countries. Given the magnitude of infrastructural development in Kenya, a comprehensive cultural policy and a well detailed legislation on environmental impact assessment are fundamental as requirements for sustainable economic development.

Kenya is rich in both natural and cultural heritage including World Heritage sites such as Lamu Old Town, Fort Jesus, Mount Kenya National Park, Lake Turkana National Park, the Great Rift Valley Lake system and now the newly inscribed Thimlich Ohinga Archaeological World Heritage site and Kit Mikayi Intangible World Heritage site.

At the backdrop of the rich natural and cultural heritage there is also a rich natural endowment of mineral resources with the recent discovery of oil in the North-West region of the country adding to the list. The discovery of oil in Turkana County in the year 2012 attests to the country's economic viability which is continually attracting both local and international investment hence the need to integrate cultural policy into sustainable development policy. Being home to the 'Turkana Boy', an almost complete skeleton of *Homo erectus* discovered in 1984 among other significant archaeological discoveries, the region occupies a central place in the archaeological research. The discovery has attracted scholarly attention in different fields of study but more importantly this work considers the discovery as one of the major events that can inspire environmental and cultural policy reforms. This is because the drilling, production, transportation and exportation of oil will call for the Social Licence to Operate (SLO) which is increasingly used in extractive industries both as a response to calls for greater community engagement and as a corporate sustainability strategy (Meestersa & Behagela, 2017).

Article 11 (1) of the Constitution of Kenya 2010 recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation. According to the policy statement of the National Policy on Culture and Heritage (2009), the Government shall take all necessary steps to ensure the protection and promotion of culture and of cultural diversity among Kenyans. It shall take all necessary steps to ensure the protection and promotion of the Country's national heritage.

As the cradle of humankind, the country is one of the global tourist destination as well as an economic hub in the East African region which attracts both local and international investment across various economic sectors. However, as scientists, historians and archaeologists continue to uncover, study and promote access to tangible and intangible heritage as justly observed by Mzalendo Kibunjia¹, “globalization and opening up of African economies to new realms of growth in the international markets, increased building construction, infrastructural expansion as well as terrorism are among the factors that threaten the existing heritage assets” (Kibunjia, 2016, p. v). Noémie Arazi concurs that ‘a real threat to the continent’s archaeological resources is Africa’s current infrastructure boom, even though the opposite could be true’ (Arazi, 2011, p. 28).

In addition to the infrastructure boom, there was enactment and promulgation of the Constitution of Kenya 2010 that established two levels of government, the National and County Governments, which was a major constitutional milestone in the country since independence (Ndi, September 2010). Management of the country’s cultural resources is

¹ Mzalendo Kibunjia is the Director General of the National Museums of Kenya.

one of the devolved functions as stipulated in the Fourth schedule of the Constitution of Kenya 2010.

This requires new approaches and strategies in the process of formulation of policies and legislative framework to guide cultural resource management both at the county and national level. Currently, there are a lot of discrepancies between the two levels with most of the counties lacking a cultural policy and the legal framework on cultural heritage conservation.

Among the strategies, comparative public policy studies within a global historical perspective that focuses on public policy in cultural heritage management are key to the understanding of trends in cultural heritage management. Paradoxically, comparative studies that attempt to focus on public policy in heritage conservation and management, more precisely those that compare public policy in archaeological heritage conservation and management between former colonial empires and former colonies as well as between Francophone and Anglophone cultural systems are very rare.

The present study is a comparative public policy analysis of cultural heritage management between Kenya and France. The study focuses on preventive archaeology, cultural heritage impact assessment and management. The study is interested in a systematic analysis of the institutional framework, public policies, their origins, implementation and the subsequent impact on cultural heritage conservation. The study seeks to do an inventory of cultural heritage by focusing on the process of patrimonialization through the local communities, the institutions as manifestations of power and academic research. The analysis is crucial to the better understanding of the causes, factors and institutional or actor constellations that bring about different kinds of policy decisions (Schmitt, 20 Nov. 2012) and the subsequent outcome. As any other comparative policy researcher, we seek to explain why and under

what conditions policy-makers agree on what policies (Schmitt, 20 Nov. 2012) while focussing on the two countries within different historical, socio-economic and geopolitical contexts.

1.1.2 Emergence of cultural policy studies

The approaches to cultural heritage conservation are as diverse as cultural diversity. The UNESCO Convention on the conservation of world cultural and natural heritage of 1972 inspired a series of studies on cultural policies across the world. The methods of development of a cultural policy, just like those of general development policy, have certain common problems. The problems are largely institutional, administrative and financial in nature thus the need has increasingly been stressed for exchanging experiences and information about them (Ndeti, 1975, p. 5). A series of country-specific studies of the cultural policy were undertaken through the initiative of the UNESCO in the 1970s to determine how cultural policies were planned and implemented among its Member States. They provided the basis for comparative studies of cultural policy.

The studies, which cover countries belonging to differing social and economic systems, geographical areas and levels of development, present a wide variety of approaches and methods in cultural policy. Taken as a whole, they can provide guidelines to countries which have yet to establish cultural policies, while all countries, especially those seeking new formulations of such policies, can profit by the experience already gained (Ndeti, 1975, p. 5).

Cultural policy research is a very recent category of public intervention in most countries in Africa and even globally. According to P. Poirrier, cultural policy studies are often government-sponsored and have for a long time limited themselves to examining or

assessing the socio-economic aspects of the past and future policy. The interest in the history of cultural policies and institutions is therefore a comparatively recent phenomenon in France (Piorrier, 2004, p. 394). Until the last quarter of the 20th century, according to Roland Drago, a complete study of archaeological law and policy had not yet been done in France. Archaeological legislation was not yet harmonised but it existed in a complex form which rendered it difficult to have a specific definition nor a reflection on archaeology as a university discipline since it was drawn from the laws on museums and historical monuments. In this domain which was not yet referred to as ‘cultural’, there were limited legal regulations which were found within the general public and private law. Manifestations of specialization began after the enactment of the law on the historical monuments of 31st December 1913 and more particularly the law about the regulation of archaeological excavations [*la loi Carcopino*] of 27th September 1941 (Drago, 1996, p. 9).

However, it is good to distinguish between regulations on archaeological excavations and archaeological law. For a period of more than half a century archaeology as a discipline has witnessed tremendous progress not only in the technics but also in terms of the principles especially with the emergence of the notions such as those of national heritage and of cultural world heritage (Drago, 1996, p. 9). The 1996 publication of the PhD thesis which was presented by Catherine Rigambert that was defended at the University of Paris II was a major contribution towards a comprehensive research about archaeological law in France (Rigambert, 1996). In the same year Anne Vatan did her PhD thesis on the ‘*Histoire de*

l'archéologie celtique en Champagne, des origines à 1941', presented at the University of Paris².

The national legislation regarding development and cultural resource management are among research avenues in certain countries where cultural resource management occupies a tiny but growing aspect of archaeology (McIntosh, 2017, p. 16). In the context of the rapid infrastructural development projects, the need for such study cannot be over emphasised. In Africa and more precisely Kenya, gaps persist between economic development and cultural policy as well as between the existing policy framework and practice on the ground (discussed in detail in part two and part three of this thesis).

The legal and regulatory framework on cultural resource management derives from various sources including customary law, the existing legal and policy framework within a given country, international recommendations, international conventions and best practices adhered to by a given State Party. The role of protection in archaeology is as important as that of field research. Indeed, insofar as excavation destroys its own material, the implementation of protection by law is the only means to disseminate the knowledge resulting from such research. To some extent, it is also a means on whose limit is the justification of the utility of archaeological science: a science exercised for itself is a dead science (Rigambert, 1996, p. 113). For such a cultural policy to effectively govern the cultural heritage management process, there must be the necessary legal tools that are designed to overcome the challenges posed by the quest for cultural intellectual property

² Anne Vatan, 1996, *Histoire de l'archéologie celtique en Champagne, des origines à 1941*. Thèse de doctorat nouveau régime. EPHE, Paris, inédit.

rights, recognition of local ownership, and justifiable means of compensation for the use of cultural heritage (Mwanzia, 2016, p. 30)³.

1.2 Statement of the problem and justification of the study

1.2.1 Statement of the problem

This study was a comparative approach to the law and public policy in preventive archaeology, cultural heritage impact assessment and management between Kenya and France in the context of development projects. The objectives of this study were:

- i. To do a comparative historical analysis of the institutional framework on cultural heritage management and archaeological research in Kenya and France;
- ii. To identify and compare cultural policies and legislation and how they have influenced the conservation of cultural and archaeological heritage in Kenya and France, with focus on preventive archaeology, cultural heritage impact assessment and management;
- iii. To describe the impact of international conventions on the law, public policy and practice of cultural heritage management in Kenya and France;
- iv. To evaluate the role of academic research in the implementation of archaeological legislation and policy through scientific research, patrimonialization, cultural heritage management, conservation, and promotion.

For effective realisation of the above objectives the study sought to corroborate the theoretical and legislative framework with the reality on the ground through

³ Ndeti 1975; Greaves 1996; Mumma 2009; Adam 2012 cited in (Mwanzia, 2016, p. 30)

participatory/active observation of both preventive archaeology and heritage impact assessment.

1.2.2 Justification of the study

This study found its justification in Article 11 (1) of the Constitution of Kenya which recognises culture as the foundation of the nation and the cumulative civilizations of the Kenyan people and nation. Article 11(2) stipulates that the State shall -

- (a) Promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage; and
- (b) Recognise the role of science and indigenous technologies in the development of the nation;

This particular Article puts culture at its rightful place in the life of the nation. In this consideration, the conservation of archaeological heritage is both a cultural as well as scientific undertaking. In recognising the role of science and indigenous technologies, it should be noted that indigenous technologies have existed in the country since the prehistoric period thus the contemporary technologies are a progression from the ancient civilizations. In this case the best understanding of the role of indigenous technologies requires a systematic study of the entire history of technological revolution in Kenya right from the Palaeolithic through the Iron Age to the modern technologies.

The thesis also found its justification in the Article 69 (f) of the Constitution of Kenya which requires the State to establish systems of environmental impact assessment, environmental audit and monitoring of the environment. This provision finds its legal framework in the Environmental Management and Coordination Act (EMCA 1999) part IV; the

Environmental (Impact Assessment and Audit) Regulations 2003 and the National Museums and Heritage Act (NMHA 2006).

The Constitution also devolved the government and shared functions between the National Government and the County Governments. Among the functions that were devolved in Article 186, as stipulated in the Fourth Schedule include the management of cultural resources.

Similarly, the justification was drawn from the existing gaps between the legal, regulatory, policy as well as institutional framework on one side and practice on the other in the protection, conservation and management of cultural resources in Kenya (Abungu, 2008, p. 159; Oloo & Namunaba, 2010; Mwanzia, 2016).

Cultural Diplomacy is one of the five inter-linked pillars of diplomacy on which the management of the Kenya's foreign policy was anchored as stipulated in the Kenya Foreign Policy. Culture *'is a critical component of international relations and has a great contribution to a country's image. The potential of Kenya's cultural heritage is enormous and there is need for Kenya to exploit this potential to promote the country'*.⁴

Besides, Kenya's economy is increasingly drifting towards service industry especially due to the development in information and communication technology (ICT), infrastructural development and growth in tourism industry. As such, artistic products and cultural tourism are mushrooming into a big cultural industry that can accommodate a great proportion of the unemployed youth in the country. This therefore calls for innovative legal and policy

⁴ Former Minister of Foreign Affairs and current Minister of Culture, Art and Sports, Amina Mohamed, in Forward to the Cultural Diplomacy Strategy 2017/2018 - 2018/2019.

framework based on research in the cultural heritage field to guide on the establishment of relevant institutions to enhance and develop such alternative sources of employment. According to Mzalendo Kibunja, as the complexity of challenges increases and other disciplines advance, with their handlers seeking an ear in the administration of public knowhow, the need for cross-disciplinary approaches is inevitable (Kibunja, 2016, p. vi).

1.3 Theoretical Framework

1.3.1 Research hypothesis

This study was based on selected environmental and globalization theories and hypotheses that explain the different aspects considered for analysis and their interaction within the entire process of cultural heritage conservation. First, the study explores a globalization hypothesis known as Environmental Kuznets's Curve (EKC) hypothesis (Illustration 1).

The Environmental Kuznets's Curve (EKC) hypothesis demonstrates that environmental pollution tends to increase with the increase in the country's per capita income up to a certain

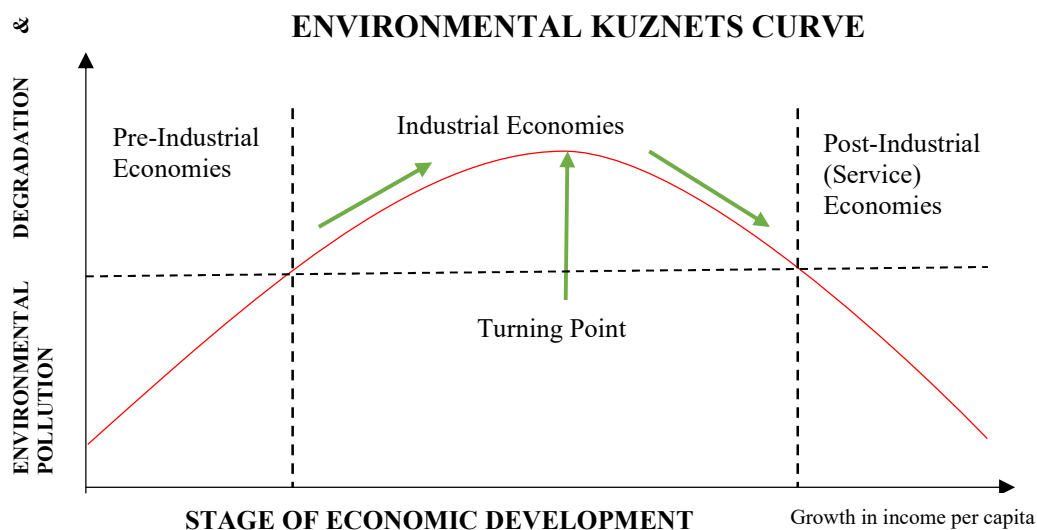


Illustration 1 Environmental Kuznets Curve Hypothesis

point where it levels off. 'In the early stages of economic development degradation and

pollution increase, but beyond some level of income per capita, which will vary for different indicators, the trend reverses so that at high income levels economic growth leads to environmental improvement' (Stern, 2004). EKC demonstrates that 'the world's poorest and richest countries have relatively clean environments, while middle-income countries are the most polluted. Because of its resemblance to the pattern of income inequality described by Simon Kuznets (1955), this pattern of pollution and income has been labelled an environmental Kuznets curve (EKC)' (Levinson, 2014 ; Stern, 2004).

The Environmental Kuznets's Curve hypothesis as applied in this study holds that the world's poorest and richest economies have a relatively good record of heritage management while developing economies have a relatively poor record of cultural heritage management in the context of development.

Various studies have been conducted by applying the EKC hypothesis using varied pollution indicators. Environmental economists have challenged the validity of the environmental Kuznet's curve for being a weak economic hypothesis. However, this study finds it relevant for the comparison between the two systems of heritage management from two different countries; Kenya being an emerging economy and France being a post-industrial economy. The hypothesis applies due to the general consensus that in rapidly growing middle-income countries the scale effect, which increases pollution and other degradation, overwhelms the time effect. In wealthy or post-industrial economies, however, growth is slower therefore, pollution reduction efforts can overcome the scale effect. This is the basis of the apparent EKC effect (Stern, 2004) which qualifies it as one of the hypotheses for this study.

The theoretical foundation and the rationale for the application of the Environmental Kuznet's Curve hypothesis in this study is the United Nations Conference on Environment

and Development (UNCED), also known as the 'Earth Summit', which was held in Rio de Janeiro, Brazil, from 3-14 June 1992. The conference highlighted how different social, economic and environmental factors are interdependent and evolve together, and how success in one sector requires action in other sectors to be sustained over time. The primary objective of the Rio Conference was to produce a broad agenda and a new blueprint for international action on environmental and development issues that would help guide international cooperation and development policy in the twenty-first century (United Nations , 1992).

The principle number eleven of the Rio Declaration stipulates that 'States shall enact effective environmental legislation' and goes ahead to paraphrase the scale factor as elaborated in the Environmental Kuznet's Curve by declaring that 'Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries' (United Nations , 1992). The Environmental management and Coordination Act, EMCA 1999 (Revised 2015) is the cornerstone environmental legislation in Kenya whose environmental considerations took into account the cultural heritage components of sustainable development planning.

Since the past three decades Kenya has emerged into a middle-income economy with a boom in infrastructural development, new discoveries in the energy sector such as the discovery of oil in Turkana and an increase in demand for housing due to increased urban population and urbanisation. During the same period, there was the emergence of a Kenyan middle class which adds to the factors necessitating a comparative study in cultural heritage management and sustainable development policy. Alongside these changes, there is globalization which

affects both tangible and intangible heritage in varying but more pronounced ways that need a scientific and forecast approach to public policy formulation for sustainable development planning.

Focussing on cultural heritage management in the context of rapid urbanization and economic development, Wahome, Mugwima and Nyanchwaya concur that conservation is the single most challenging social dilemma in a developing urban centre. Just as uncontrolled development is usually averse to the notion of preservation especially in an economically vibrant environment (Wahome, et al., 2018), globalization greatly affects the management and conservation of cultural heritage, be it tangible or intangible.

Globalization is both a cultural and anthropogenic process as it is also a socio-economic and political phenomenon refers to the process of international integration resulting from the exchange of worldviews, products, ideas and mutual sharing, and other aspects of culture⁵. In a comparative study such as the present work, globalization theories are important for the analysis, description and comparison of complex and interrelated processes that influence the enactment and adoption of various cultural policies.

Kenya as an emerging economy with many development projects across all sectors falls into the category of the industrialising economies as per the above hypothesis. For the past two decades, the country has witnessed significant economic development. Examples include the recently completed major infrastructural development projects such as the Thika Road Super Highway, the Mombasa-Nairobi Standard Gauge Railway project and the current Lamu Port South Sudan Ethiopia Transport (LAPSSET) corridor projects (discussed in details in part

⁵ Al-Rodhan, R.F. Nayef and Gérard Stoudmann. (2006),1pdf ; Albrow, M. and E., King.,1990.

three). Developments in the energy sector such as the construction of the Sondu Miriu Hydro-Electric power plant (also discussed in part three as a case study), construction of mega dams among other important development projects add to the list of projects that have attracted public interest in the management and conservation of environmental and cultural resources.

There has been increased urbanisation through growth, development and expansion of major towns and cities in Kenya.

In the span of the past two decades, Kenya has also improved on its record of cultural heritage sites listed on the list of the UNESCO World Heritage sites.

The major infrastructural developments such as the LAPSSET corridor project, the expansion of the Nairobi-Thika road to a super highway, the construction of the Mombasa-Nairobi standard gauge railway and the Nairobi-Nakuru Mau summit road projects have presented a lot of significant impact, both positive and negative, on the cultural properties. LAPSSET project has been a major concern when it comes to its potential impact on the management and conservation of the Lamu Old town, a UNESCO World Heritage site, together with its biophysical and natural environment.

This study thus applied EKC hypothesis to cultural heritage management since there is a high correlation between the environmental and cultural preoccupations in development planning. Similarly, the emergence and development of the environmental laws in the 1960s served as the basis upon which those concerning the protection of cultural heritage and rescue or preventive archaeology evolved. The assumption is that environmental impact assessment, rescue and preventive archaeology all follow the same developmental trend when it comes to the enactment and implementation of protective laws. Environmental

concerns played a major role in the emergence and development of rescue and preventive archaeology in the USA and Europe thus leading to increased awareness about cultural heritage issues in development planning.

The adoption of globalization theories was fundamental because globalization is the process which has to do with human mobility, cultural exchanges and diverse interaction with equally significant implications both on the natural and cultural landscape. At the level of the discipline we can now talk about a global or world archaeology as can be observed through methodology, practice and global conferences. This demonstrates that archaeology and cultural heritage management at the era of global history, are founded on the general agreement that all humanity has a claim to the prehistory of any other human society from any part of the world no matter where they are found (Schlanger & Taylor, 2012, pp. 11-28; Demoule, 2020, p. 154). This is because historical, archaeological as well as anthropological and sociological research have shed a lot of light on the world civilizations and the principal technological developments as well as the associated cultural past upon which such civilizations were founded, developed, how they evolved and collapsed or translated into new civilizations. The global or world approach to history and archaeology though a recent epistemological phenomenon (Demoule, 2020, p. 154), has been decisive in the understanding of the history and archaeology of individual societies for a long time.

Secondly, in its analysis of different actors, this work postulates that there is interdependence among the different actors in the development of a cultural policy (Pongy & Saez, 1994, p. 17). This intertwines with the notion of power and social networks with reference to the management of cultural heritage, both tangible and intangible heritage as an administrative and legislative process. Archaeologists frequently use the concept of networks metaphorically to convey interdependence among people and things (Schortman, 2014, p.

168). This implies that the task of conservation and management of cultural heritage involves different actors and groups of people at different societal levels as well as ‘a large range of different professionals: politicians, anthropologists, philologists, researchers, filmmakers, actors, teachers etc’ (Muñoz Viñas, 2005, p. 41). The premise, as noted by Schortman, is that such connections condition human interactions at any moment and affect long-term culture change trajectories (Schortman, 2014, p. 168; Robb 2013; Scott 1988).

1.3.2 Research assumptions

Following from the above hypotheses, we arrived at a research assumption that the protection of the natural and cultural heritage in the context of development depends on the policy framework, its implementation on the ground and the coordination among all the stakeholders (Illustration 2)

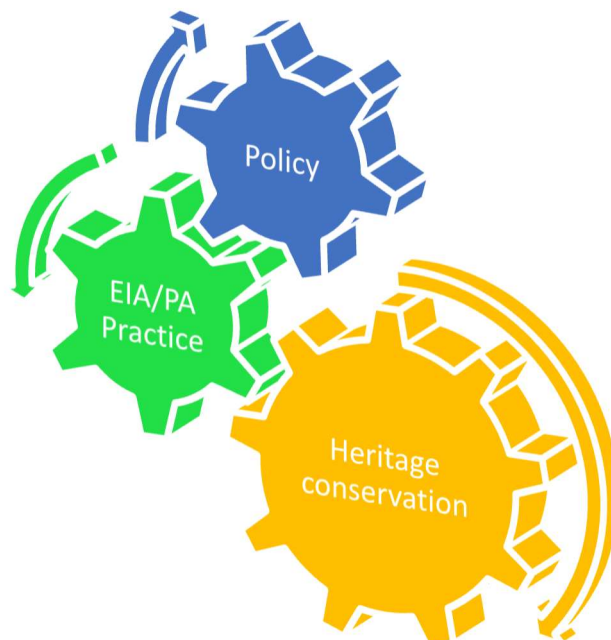


Illustration 2: Relationship between heritage conservation, the policy framework, practice and good coordination among all stakeholders

If there is enactment of relevant laws and policies which is signified by the blue wheel in clockwise direction in the figure, followed by appropriate implementation on the research ground as signified by the green colour wheel which is propelled by the law and policy framework, leading to effective protection and conservation of heritage as signified by the yellow wheel. The harmonious motion among the three elements in the figure represents the good coordination among all the stakeholders. In this assumption the law is the driving force of practice which translates the energy to yield positive results. In the case where the law is moving in the anti-clockwise direction, the entire system will be affected and the results will be negative.

This assumption takes into account an ideal situation where the law functions with limited external influence in the implementation process. It therefore holds constant variables such as corruption, availability of the necessary human and capital resources and political interference.

1.4 Delimitations of the study

This study focuses on the topic *Preventive Archaeology, Cultural Heritage Impact Assessment and Management: a comparative public policy analysis between Kenya and France*. Right from the topic it can be noted that this is a broad and wide topic which calls for clear demarcation of what was dealt with in the long run. Therefore, two case studies were selected from the two countries.

The study dealt with public policy and legislation on preventive archaeology, heritage impact assessment and cultural heritage management in the two countries. In this perspective, the study looked at cultural heritage legislation, conservation and management in its global sense

then narrowed down to archaeological research and archaeological heritage conservation in Kenya. The study compared the Kenyan system of environmental impact assessment with the French system of preventive archaeology in what can be qualified as benchmarking between the two systems. The French system of cultural heritage management and by extension preventive archaeology is highly structured, very complex and unique in terms of its general administrative organisation at the national and regional levels. For this reason it was necessary to take specific region for analysis without neglecting the national structure. The focus was on region of Nouvelle-Aquitaine in the South West of France.

The study compared public policies on cultural heritage impact assessment and management in Kenya and those on preventive archaeology in France while contextualizing the two systems within their respective geopolitical and socio-economic environments. This does not exclude programmed archaeological research (*archéologie programmée*) which provided a broad chronological account of the emergence and development of archaeology in Kenya and France. It was this long term focus that generated answer to the most complex questions pertaining to the similarities and differences of the two systems. Going back in time and space was necessary to the understanding of the background to the contemporary approaches to cultural heritage management in the two countries.

1.4.1.1 Case studies

In France, the study looks at the evolution of legislation on archaeological research and its administration up to the contemporary practice of preventive archaeology. It also focuses on the organization of preventive archaeology at the National Institute of Preventive Archaeology (*l'Institut national de recherché archéologique preventive*, INRAP) as it emphasizes on the region of the Nouvelle-Aquitaine, Map 2. It has as well taken a keen

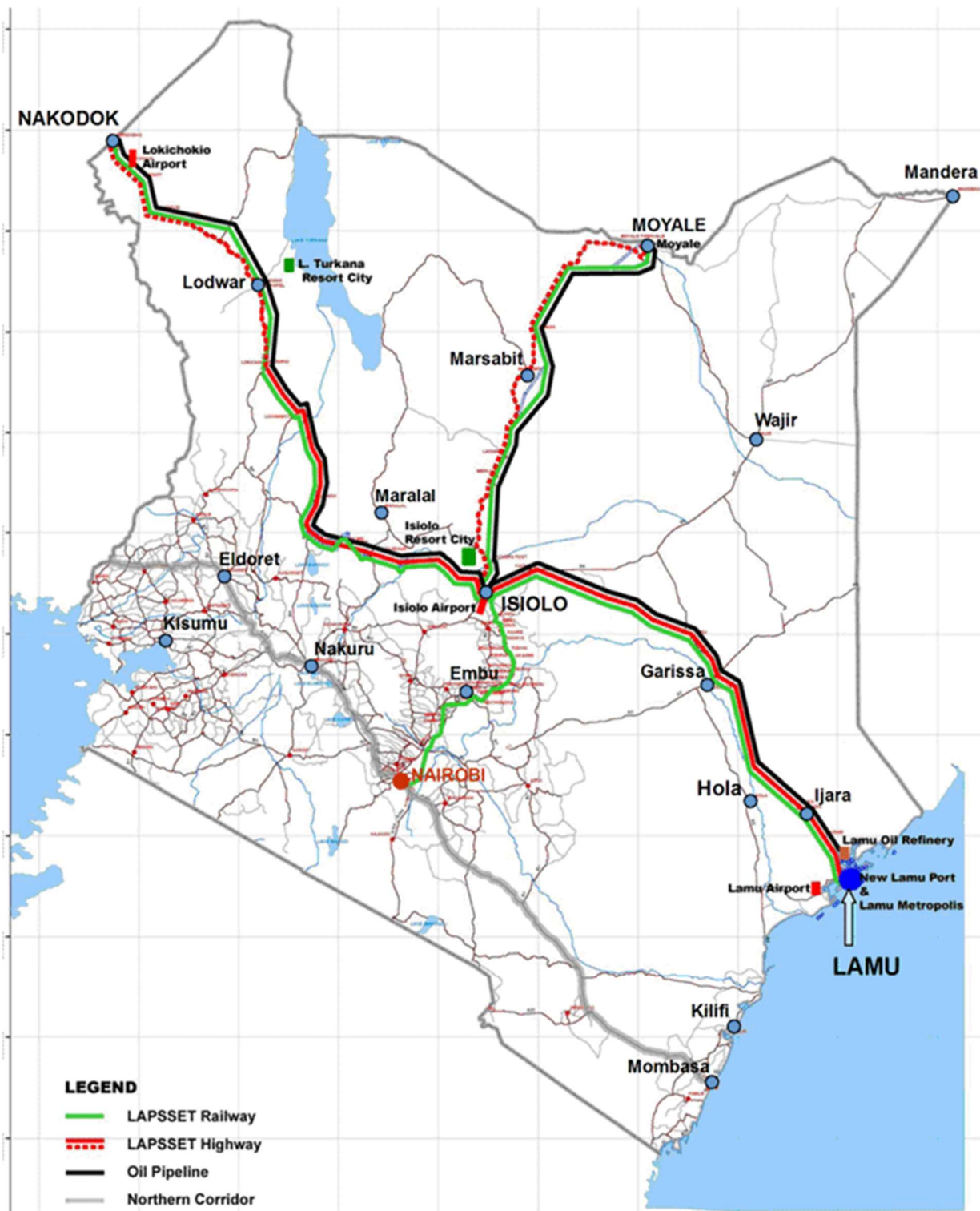
interest in the other organs and institutions, both private and public that are involved in the archaeological research such as private institutions and regional archaeological services.

In Kenya, the study looks at the evolution of archaeological research since the colonial period to the present. It then focuses on the organization of cultural heritage impact assessment as exercised in the mandate of the National Museums of Kenya while concentrating on various infrastructural development projects such as Lamu Port - South Sudan – Ethiopia Transport (LAPSSET) corridor and Sondu Miriu Hydro-Electric Power Project. LAPSSET corridor as a case was looked at in the master 1 study about “*Archéologie préventive et heritage impact assessment au Kenya: politique et pratique*” (Bwire, 2016) where emphasis was put on the Lamu port and its environs. However, due to time constraint, the study did not look at the project comprehensively basically because first, it is a big infrastructural project touching the three countries, Kenya, South Sudan and Ethiopia.

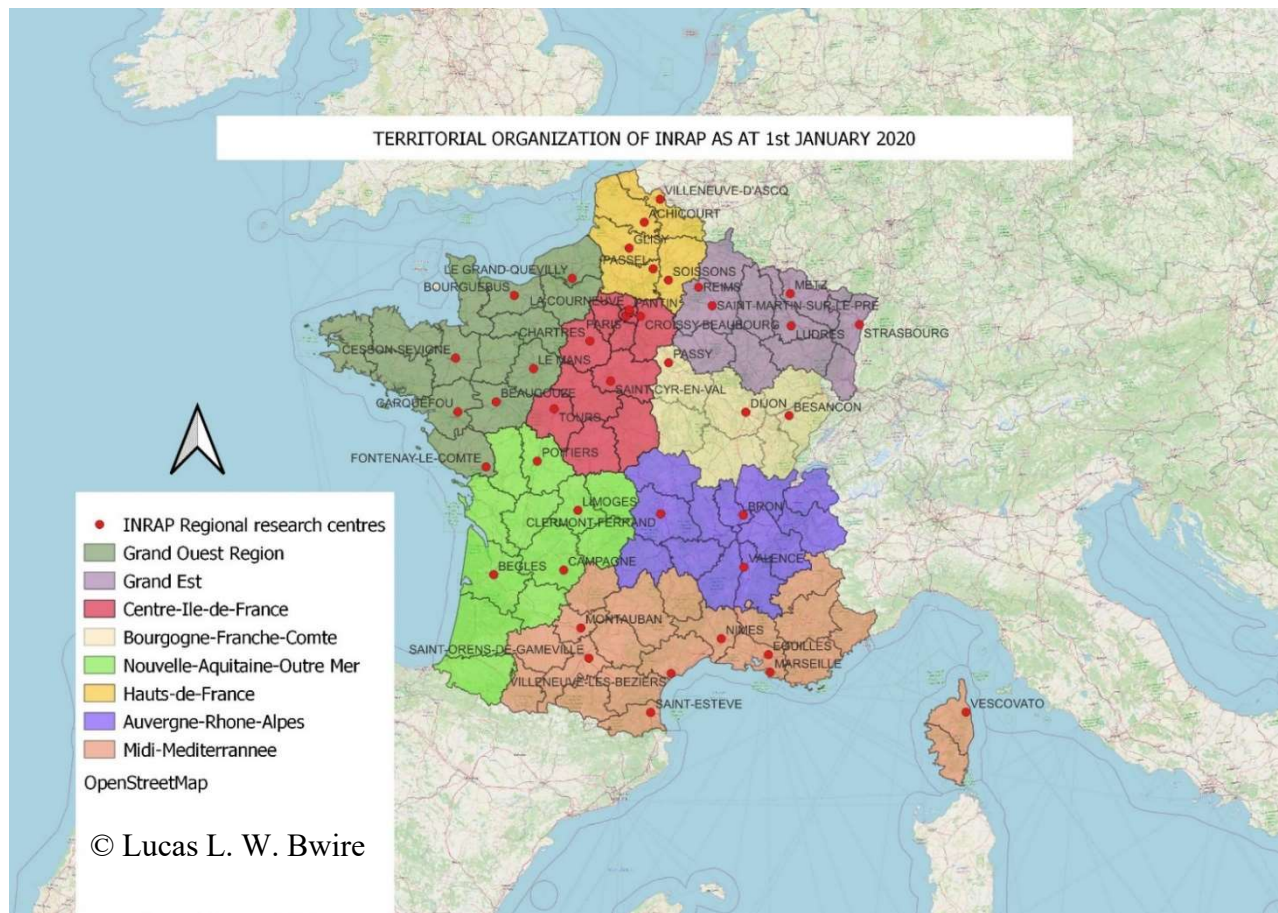
Secondly, the project has witnessed various challenges during the implementation phase thus affecting its anticipated progress and hence it was still underway by the end of the study. This study therefore took a wider perspective on the LAPSSET corridor project (Map 1) to use it as a sampling strategy since it cuts the country diagonally traversing the nine counties of Lamu, Garissa, Isiolo, Meru, Laikipia Baringo, Samburu, Marsabit and Turkana. It cuts across communities along the route within territories that had not been affected neither by mega infrastructural projects of such magnitude nor by systematic archaeological research. Therefore the underground archaeological potential of the greatest part of the project was less known apart from the Turkana area which has attracted a lot of scientific research for a long period of time yielding significant discoveries including the discovery of the Turkana Boy.

The LAPSSET corridor is a mega infrastructure project with two main components. The first will comprise of a 500 meter wide infrastructure corridor that will host all the trunk components among them the highways, the railway, the oil pipelines, and the utilities. The second component is space spanning 50 kilometres on either side of the infrastructure corridor which is planned to host economic activities to create business and generate cargo for the infrastructure. Among the activities planned include special economic zones, industrial parks, agro-processing plants, irrigation schemes, mining and exploration and blue economy activities (LAPSSET Corridor Development Authority, September 2017).

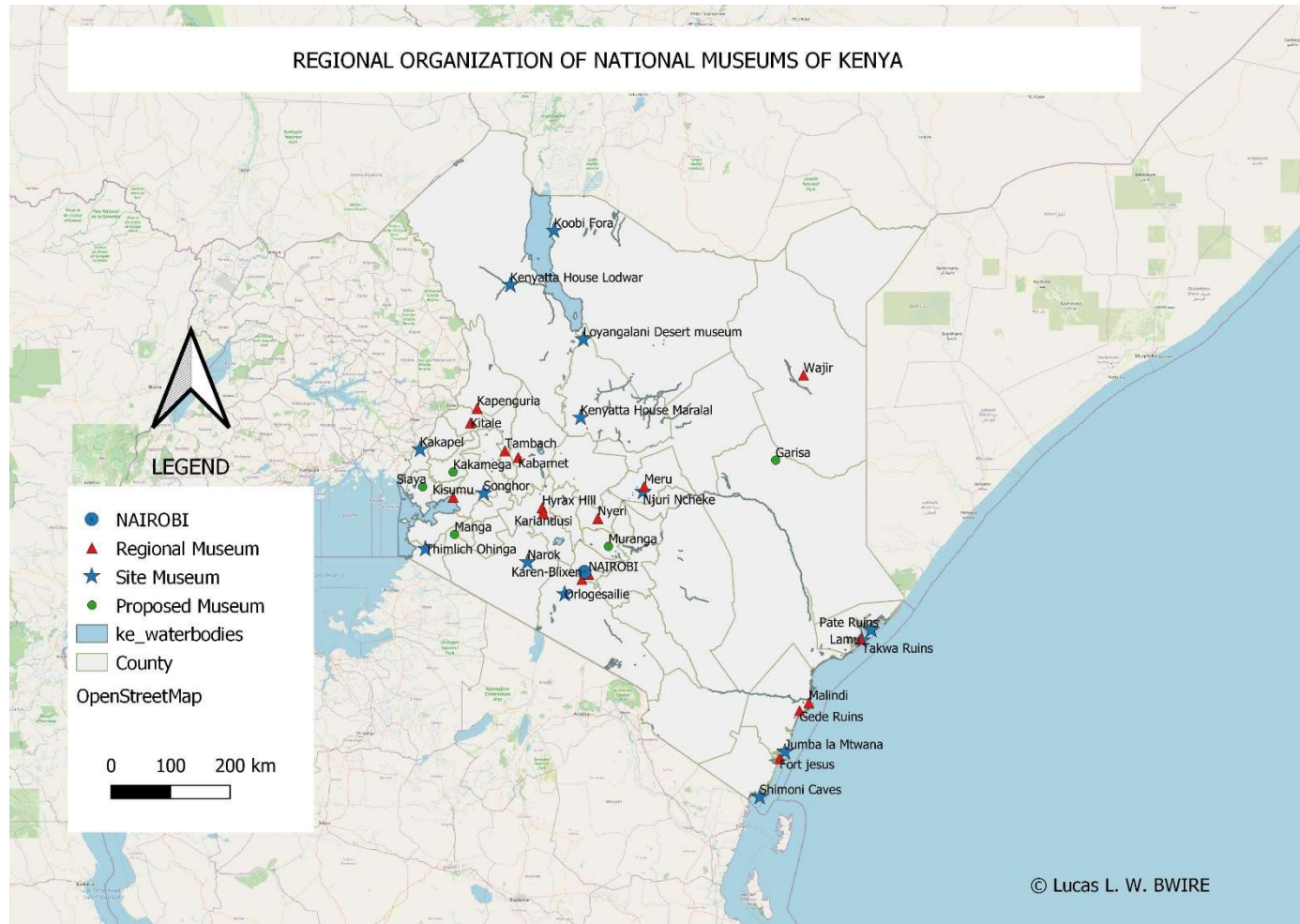
The study looks at LAPSSET and other similar projects including the Nairobi-Mau Summit Highway project, the Mombasa-Nairobi Standard Gauge Railway and the Sondu Miriu Hydroelectric power plant while paying attention to the organization of Kenyan heritage management system around the National Museums of Kenya (NMK) Map 3 vis a vis the organization of the French National Institute of Preventive Archaeological Research (INRAP), Map 2.



Map 1: Geographical delimitation of the study, LAPSSET Corridor project in Kenya.
Photo courtesy Wikipedia.



Map 2: Regional Organization of INRAP as at 1st January 2020, Map courtesy Lucas L. W. Bwire



Map 3: Regional Organization of the National Museums of Kenya (NMK), Map courtesy Lucas L. W. Bwire

1.4.1.2 *Limitations of the study*

Cultural heritage studies are both interesting and challenging. Any attempt to compare Francophone and Anglophone cultural systems especially between a former Anglophone colony and France, a former colonial power may seem almost impossible. Also, France comprises of the Metropolitan and the Overseas Territories (Territoires et départements d'Outre Mer) which poses the challenge when it comes to sampling procedures.

Besides, cultural heritage as a societal construction means different things to different people in different civilizations, place and time. For this purpose we have embraced a wider definition of cultural heritage to include both tangible as well as intangible heritage. The study subscribes to the fact that every culture is unique and worthy of conservation.

Subjectivity of the researcher is another limiting factor that the study has not overlooked. To start with, according to Livingstone Smith and MacEachern, 'archaeology, like any historical discipline, is immersed within the social context in which it is practiced. Interpretation of archaeological data may therefore be affected by the interests of a researcher or of the community he/she belongs to' (Livingstone Smith & MacEachern, 2017, p. 8). This knowledge was important in conducting this comparative research especially where two widely different archaeological contexts were involved. Thus the study avoided any attempt towards judgemental generalizations by adapting a parallel system of comparison where each variable was first analysed in depth then followed by a comparative synthesis of each part.

The study used diverse sources both in English, French and Kiswahili thus making it necessary to translate some the sources. This has some implications in terms of language use and meaning of some vocabulary. This is because the same term in French may have a

different meaning in English while bearing the same form. Giligny (2009) affirms that one of the greatest challenges in archaeology is to arrive at a rigorous definition of a common vocabulary. A similar term may have different meanings from one individual to another, from one school of thought to another and from one language to another (Giligny, 2009, p. 142). A good example is the term “heritage” which exists in both French and English languages with different meaning. Therefore, under such a situation unless specified the English meaning of the term prevails.

1.5 Research methodology

The choice of a research methodology is determined by the discipline (Collar, et al., 2014). Collar, Brughmans, Coward and Lemercier observe that researchers generally consider the nature and limits of their sources, the manner in which they formulate, treat and discuss research questions as unique and different from how related disciplines treat similar questions. Historical and archaeological research often seem to belong to traditions that would be incompatible because they would deal with different empirical material. Written text on the one hand and the data bases about artefacts on the other hand would require different approaches to the criticism of the sources and would not tackle similar questions. Based on the two distinct research approaches, written sources and material remains have given birth to two different accounts of the past. Despite these different perceptions about the best means to achieve their goals, archaeologists and historians have the same objective: the understanding of past human behaviour and their change (Collar, et al., 2014).

This study employed a multidisciplinary comparative analysis methodology. This was due to the length and breadth of this research in terms of the sources, the research questions, objectives, hypotheses as well as the geopolitical and chronological delimitations of the

study. As such, it is a historical study which employed a qualitative as well as quantitative research methodologies through a comparative analysis approach to public policy in cultural heritage management and preventive archaeology under the study area. Though complex, the adoption of this methodology was inspired by the set objectives and the fact that each researcher creates his or her own new path by matching where no other person had made attempt⁶. Thus the study looks at questions that fall under different disciplines in social sciences while maintaining a historical enquiry approach.

A historical work on one hand is supposed to demonstrate the specificity of the discipline by emphasising the descriptive and interpretive approaches while ignoring comparative analysis to other social science disciplines such as sociology, political science and economics. On the other hand, however, a global approach to history is universal in nature where its research field and objectives call for a comparative study either in a static form focussing on comparative tables or a dynamic form based on an evaluation of a study problem⁷. The dilemma towards a comparative analysis was accentuated by the paradigm shift in historical and cultural research approach towards global historical study among Francophone as well as the Anglo-Saxon researchers. In methodological terms, according to Sanjay Subramanyam, ‘an argument is made for the connectedness of cultural histories that are all-too often artificially separated; a plea is thus made for a return to a history on a world-scale, which should however be neither purely materialistic nor based merely on a form of

⁶ According to Montesquieu, “les gens d’esprit se font des routes particulières: ils ont des Chemins caches, nouveaux; ils marchent là où personne n’a été encore” cited in (Dumez, 2013, p. 5).

⁷ The debate about global history, contemporary history and comparative analyses has existed among researchers with a more remarkable line being drawn between the Francophone and Anglo-Saxon researchers over the subject since the 1970s . It has been elaborated in details by Christian Thibon in the *Dossier d'habilitation: Présentation générale, état des travaux, problématiques, réflexions méthodologiques et perspectives*. UPPA, p. 92-97 under the title ‘*Une histoire sociale du politique comparée*’.

semiotic "free association "" (Subrahmanyam, 2001). In the cited article, Subrahmanyam goes back to the events in history right from the 16th century, that makes the world more connected through the early Portuguese exploration missions in the Indian Ocean⁸.

Being a comparative analysis study focussing on cultural policy, archaeology and cultural heritage management, it was imperative to consider the key aspects of social science study; taking into account the three main categorisations in any social science which are the concepts of the society, culture and personality (Barbu, 1971) in the context of archaeological research and cultural heritage management. In as much as the three terms may not be clearly demonstrated through direct reference to their various elements, these are key aspects that guide any qualitative research. They highly influenced the manner in which the researcher classified various phenomena under study so as to provide the basis of understanding why different societies arrive at the choices they make at a particular time.

Simply put, the process of conceptualization, enactment and adoption of any legislation and public policy is a threefold phenomenon. First, it is a social phenomenon because the laws,

⁸ Commençons par une série d'incidents révélateurs remontant au xv^e siècle, qui nous place néanmoins au cœur de la question qui nous préoccupe. En 1513, le gouverneur portugais de YEstado da índia (« l'État des Indes »), le célèbre Afonso de Albuquerque, pénètre dans la mer Rouge avec sa flotte⁸. Au large de la côte ouest du Yémen, près de l'île de Kamaran, il prétend être témoin d'un signe céleste qui le conforte dans ses divers projets:

attaquer et détruire les villes saintes musulmanes de La Mecque et de Médine, bâtir une alliance avec le légendaire Prêtre Jean, souverain d' Ethiopie, et consolider le destin du Portugal en créant un empire universel qui s'étendrait jusque dans l'océan Indien. Dans une lettre à son ami le courtisan et intellectuel Duarte Galvão (où il traite un sujet également abordé dans une autre missive, celle-ci adressée au roi), Albuquerque écrit :

[Notre flotte] étant ainsi à l'ancre dans cette mer, un signe apparut dans le ciel en direction de la terre du Prêtre Jean, une grande croix très brillante, aux contours très nets et des plus resplendissantes : je vis un nuage s'en approcher, mais au moment où il allait l'atteindre, il se brisa en morceaux et ne la recouvrit pas ; le signe demeura ainsi longtemps dans le ciel, vu et adoré par beaucoup, et certains furent tellement saisis de ferveur qu'ils éclatèrent en sanglots, car Notre Seigneur nous montrait ce signe en direction des terres du Prêtre Jean où Il se tenait lui-même pour que nous le servions au mieux ; et nous, hommes de trop peu de foi, n'osâmes pas nous lancer dans cette direction

policies and regulations that are enacted originate and seek to establish and control human relations and interactions in a society. Secondly, it is a cultural phenomenon since the process has to consider the already established norms, beliefs, ideas and values which can be moral, religious, artistic, scientific, economic and technological in nature. Thirdly, it is a personality phenomenon because laws, policies and regulations also seek to respond to problems that emanate from the people's mental structure. These include individual impulses and emotions, perceptions and intellectual functions, interests, aspirations and values (Barbu, 1971, p. 3).

Archaeology being a unique discipline that brings together both social and natural science tools, our study also had to look at the study questions in the light of the subject matter in archaeology; the material evidence of man's past such as the tools they made, sites and monumental heritage, their conservation systems, legal and policy frameworks. These were looked at both as testimonies of the heritage management practices and as part and parcel of the subject matter of the study.

1.5.1 Research design

Being a public policy analysis, this study employs both qualitative and quantitative research designs within the framework of a multidisciplinary research approach. As a recent field of study, public policy analysis constitutes a body of knowledge at the interception of already established fields of study from which it borrows its principles. More than often, reference is made to law, economics, management, sociology or psychology (Muller, 2018 (1990)), which are related fields that complement public policy analysis as a new branch of political

science. For a more comprehensive and inclusive work, any study of African past should employ a multidisciplinary approach.⁹

The study employed a historical approach because it best suits the analysis, study, interpretation and description of the legal and policy framework of archaeological heritage conservation. It is also important to use a historical approach for a chronological comparative work that relies on archaeological resources, interviews, documented historical work, reports and archival information.

The sociological and anthropological approaches were suitable for the research methodology where passive and active observation were involved as data collection tools through involvement in the field work with the different actors. It was also relevant for the study of ethnographic data accompanied by the use of interviews (Dumez, 2013, p. 9) and questionnaires. It is also important to note that cultural historians all over the world, as observed by M. Amutabi, are reconstructing the past using anthropological tools that have long been used in Africa such as art, architecture, perception and senses, production and consumption, the body, popular culture and class identity, mentalities, emotions, memories and music (Amutabi, 2002, p. 71). This approach also agrees with the concepts of society, culture and personality where people's mentalities, emotions, memories and music play a crucial role in their day to day way of life hence enhancing and influencing their culture. In

⁹ This was evident in the recent inauguration of a Chair of African History and Archaeology at the Collège de France, whose first Chair is François-Xavier Fauvelle. *'Le Collège de France, en créant une chaire d'histoire consacrée à l'Afrique et confiée à François-Xavier Fauvelle, fait le choix d'un archéologue. Le travail sur le continent doit en effet être pluridisciplinaire.'* France Inter, on the inauguration of the Chair for African History and Archaeology at the Collège de France. Accessed on URL: <https://www.franceinter.fr/emissions/la-marche-de-l-histoire/la-marche-de-l-histoire-24-octobre-2019>

Africa, unlike in the case of Western Europe where written work has a long history, oral traditions played a significant role in the transmission of knowledge and culture which was later used in the writing of the continent's history by pioneer historians. To date, songs, poems, riddles and oral narratives remain important in the understanding of historical and cultural facts.

Given that this is a comparative public policy analysis, the study also employed a political science perspective to 'systematically describe and explain the decisions of different governments, their timing and content' (Schmitt, 20 Nov. 2012) of their public policies. It was also necessary to show the relationship between the various actors in the field of cultural heritage management and public policy. The role of power and social networks was among the key elements of comparative public policy in this study. This was especially necessary given the level of influence of political actors on the choice of action, decisions, their input and output as well as the final outcome in terms of the real impact of the set policies. The political and cultural issues are inseparable since the former is indeed a concrete product of the latter. Preventive archaeology is more or less a political issue in the sense where it engages the manner in which the society, through its representatives, perceives its historical trajectory; but also its definition by law – as a necessary reconciliation, by the State, between the conservation of national archaeological heritage, scientific research and economic as well as social development (Demoule, 2009c, p. 289).

From the qualitative research approach, it was necessary to demonstrate and analyse various actors (individuals, the State as well as organisations), their intentions (scientific, social, economic or political), discourse, actions and interactions, both from their point of view as well as from the point of view of the researcher (Dumez, 2013, p. 13) and provide a synthesis of the result of their actions.

An interdisciplinary research design was chosen as an affirmation of the interdisciplinary nature of cultural history and heritage studies which overtakes the traditional scholarly and professional focus on architectural and archaeological preservation of monuments and sites. In the new field of heritage studies, cultural heritage is perceived as *'a social and political construct encompassing all those places, artefacts and cultural expressions inherited from the past which, because they are seen to reflect and validate our identity as nations, communities, families and even individuals, are worthy of some form of respect and protection'* (Logan & Smith, 2018). According to Logan and Smith, the interdisciplinary discipline has been well established in many parts of the world. The new approach to cultural heritage differs from the traditional scholarly and professional activities which had a narrow focus on architectural and archaeological preservation of sites and monuments. This study considers that the traditional approach remains important in the context of modernization and globalization whose impact threatens natural environments, archaeological sites, historical monuments, traditional buildings, arts and crafts. However, all these are *'subsumed within a new field that sees 'heritage' as a social and political construct which encompasses all those places, artefacts and cultural expressions inherited from the past which, because they are seen to reflect and validate our identity as nations, communities, families and even individuals, are worthy of some respect and protection'* (Logan & Smith, 2018).

The end of the 20th century, according to Michel al Maqdissi, was an important moment which was marked by the rapid transformation in terms of the relationship between archaeology and its role. However, there was the challenge of finding the relationship between archaeology and other social, economic and even political domains (Braemer &

Angevin, 11/04 /2011, p. 17)¹⁰. Our approach therefore takes a broader perspective in regard to this observation as it recognizes that archaeology is a discipline at the interception of scientific, social, economic, legal and political issues. Archaeological research and cultural heritage management are highly affected by prevailing socio-economic and political circumstances including but not limited to the country's level of economic development, leadership, natural disasters, conflicts, war and terrorism. Its development is also linked to the development in other related disciplines and sectors of the society. It relates to issues that cut across various aspects of societal life while retaining its uniqueness as a scientific discipline (*Illustration 3*). The study also aims at bridging the gap between history, academic archaeology and cultural resource management. While the first two have had a long history of coexistence, the latter is generally considered as a separate entity that is more or less a commercial undertaking than an intellectual and academic exercise. Nevertheless, it was partly through the emergence and development of rescue or preventive archaeology generally termed as cultural resource management that archaeological research has witness significant progress especially in the western world.

¹⁰ Michel al Maqdissi 2010 p. 6 cited in Braemer, F., & Angevin, R. (11/04 /2011) accessed on URL file:///F:/Rapport_Mission_Archeo.pdf



Illustration 3 Relationship between archaeology and other disciplines

The research is mainly qualitative but it also employs a quantitative approach where statistical and empirical data was required. Thus, in order to realize the set objectives this research employed a descriptive and analytical approach with an empirical perspective being incorporated for the purposes of comparison, graphical representation of data, geographical referencing and spatial representation of archaeological structures, sites and showing activity levels of various archaeological centres and institutions. Quantitative analysis was imperative when putting in place Geographical Information System database especially the creation of shapefiles and their correlation in the database.

Since 1990s the use of GIS for archaeological research entered its post-pioneer phase. This was as a result of calls from researchers such as Kvamme who urged archaeologists to take an integrated approach to special statistics and GIS, having noted how GIS might be

combined with one-sample tests to examine association between site location and environmental parameters (Kvamme, 1990)¹¹.

Geographical Information System (GIS) was not only used for illustration purposes but as an integral part of research methodology (*Table 1*) where the study recognizes the fact that GIS can now be used to solve archaeological problems. According to James Conolly¹² and Mark Lake¹³, GIS is no longer a reserve of experts who – in the eyes of cynics – chose their archaeological case studies solely to illustrate solutions to GIS problems. GIS has much to offer archaeology and the key to success is to use GIS appropriately. The appropriate utilization of GIS means *remaining cognisant of the theoretical encumbrances inherent within it and having adequate technical command of the powerful and diverse possibilities it offers* (Conolly & Lake, 2006, p. 1).

From the considerations stated above, the kind of questions that can be answered as illustrated by Conolly and Lake are the subject matter of any archaeological investigation. The present study thus finds it necessary to take advantage of technological advances of the 21st century by employing GIS as a scientific tool especially since it covers issues that are diverse in time and space. The study relies on it as a scientific tool for the acquisition of data, spatial data management, database management, data visualisation and spatial analysis

¹¹ Kvamme 1990 cited in (Conolly & Lake, 2006, p. 7)

¹² James Conolly is former lecturer in Archaeology at University College London (UCL) before becoming Canada Research Chair in Archaeology at Trent University, Canada. Alongside Archaeological uses of GIS, his research interests include settlement and landscape archaeology, quantitative methods and population history.

¹³ Mark Lake is a lecturer at the Institute of Archaeology, UCL, where he coordinates M.Sc. GIS and Spatial Analysis in Archaeology. His research interest include early prehistory, spatial analysis and evolutionary archaeology.

(Conolly & Lake, 2006, p. 11). This study therefore employs GIS to respond to the research problem by providing answers to the following questions:

Question type	Example	Aim
Location	At which part of the proposed road were archaeological sites/objects found?	Give spatial distribution of findings
Condition	What was the state of preservation of the objects/sites found?	Evaluate the relevance of recommendations by experts in line with the findings
Trend	How were sites/objects distributed along the study area?	Test research methodology and tools adopted, their efficiency and relevance to the archaeological realities
Pattern	Do HIA studies vary with location e.g. cities, towns and rural areas?	Describe the variations in HIA; and analyse reasons for variations (e.g. the impact of population characteristics on EIA, CHIA or preventive archaeology).
Modelling	Which model is efficient and effective between EIA/CHIA, and contract or preventive archaeology based on the policy framework, organization, resources and the outcome of the process?	To compare the efficiency between preventive archaeology and CHIA in terms of policy framework, organization, resources and the outcome of the process.

Table 1 Key questions that require the application of GIS as a research methodology

1.5.2 Data collection tools and procedures

Data collection involved both primary and secondary sources. The primary sources include scheduled oral interviews with the professionals, local administration, the public, pressure and interest groups such as Non-governmental Organizations, consulting the correspondence in the archives, drawing inferences from iconographic sources, testimonies, individual autobiographies and testimonies.

There was also participatory observation through researcher's active participation in the various activities in the respective cultural heritage institutions. This tool of data collection was effective for the collection of bulky information with the advantage of gaining validity in the process as one directly takes part in the various activities on the ground as a member

of the research team. However, this has the disadvantage of the researcher trying to identify with the group being observed hence problems of objectivity may arise. To counter this, the researcher ensured that there was a guide throughout the process based on the set objectives.

Part of primary data was collected during internship at INRAP and NMK. The internship at INRAP between 5th March and 1st June 2017 was a great opportunity especially for the knowledge and understanding of the French system of preventive archaeology. It yielded a lot of first-hand data on the legal framework, the administrative organisation and the implementation of public policy about preventive archaeology. The administrative part of it was conducted at Bègles - Bordeaux and at Campagne in the region of Dordogne. The fieldwork involved participation in preventive diagnostic excavation at Haut-Mauco near Mont-de-Marsan.

The field experience on the ground of preventive archaeological survey excavation was important in the understanding of the process in terms of planning, the constitution of the research team, the allocation of resources and their utilization for the maximum and more reliable scientific results.

There was also a three month's internship in Kenya at the NMK which provided the opportunity to know the system of heritage impact assessment in Kenya, its organisation, the legislation and the bodies responsible for the practice of CHIA and EIA. The observation of the two systems revealed a great deal of differences in the perception of cultural resource management under preventive archaeology and environmental impact assessment. The differences were precisely based on the organization, planning, coordination, resource allocation and execution of preventive/rescue archaeology.

The exposure to both the French and Kenyan systems of higher education was also a key element of this research which helped in the analysis and comparison of the teaching approaches of cultural heritage management and archaeology in both systems. It was especially important to understand the teaching-learning process, the attitude of learners towards the discipline and the general attitude towards cultural heritage management.

Talking about attitude triggers the researcher to ask some questions such as what motivated the learner's choice to pursue archaeology, for instance for their masters studies. Such and more aptitude tests were pursued through organised class participation. The offers to teach some units at Kenyatta University and at the University of Pau as a part-time lecturer were important opportunities which provided direct feedback from learners about teaching and learning archaeology and cultural heritage management in Africa and Europe. The attitude, expectations, fears as well as hopes that students attach to a given discipline are important indicators of how it is considered in the general public by virtue of the role it plays in the life of the society. Classroom interaction through lectures, questions, answers, discussions and participation in assignments, field excursions and finally the results reflect the degree of learner's concentration and to some extent reveal the source of motivation towards selecting the course, for instance, in case of an elective unit.

The official reports about EIA/CHIA as well as preventive archaeology and archive data were part of the primary sources of data for this work. They qualify in this category since they provide first-hand information from the researchers as well as the administrative authorities concerning the practice. Reports about EIA in Kenya were accessed online on the website of NEMA and some were accessed from the NMK resource centre/library during the internship.

Secondary data involved library research for literature review through consulting the written work in books, scientific journals, master and Ph.D. theses related to the study, scientific reviews, magazines, the archives, the print and broadcast media, iconographic, artistic, phonographic and photographic sources as well as the internet. Some of the official sources of secondary data included official reports accessed through the media, legislative texts, policies, decrees and development plans.

Another category of sources of data was the critical analysis of the biographical documents particularly from people that held strategic leadership positions in the society that had direct or indirect impact on cultural heritage management.

There was creation of a Geographic Information System (GIS) database necessary for this study. According to Conolly and Lake, a *database is a collection of information that is structured and recorded in a consistent manner. A GIS needs to store, manage and retrieve both geographical and attribute data* (Conolly & Lake, 2006, p. 51) the combination of which constitutes a geodatabase that is key to our study. This involves the collection, analysis and interpretation of data by filling in the attribute tables then generating different layers that represent various entities under study. The attribute tables and layers can then be useful for comparison purposes with other tables and layers on a similar variable. The five main groups of tasks that are performed by GIS have been illustrated below (Illustration 4).

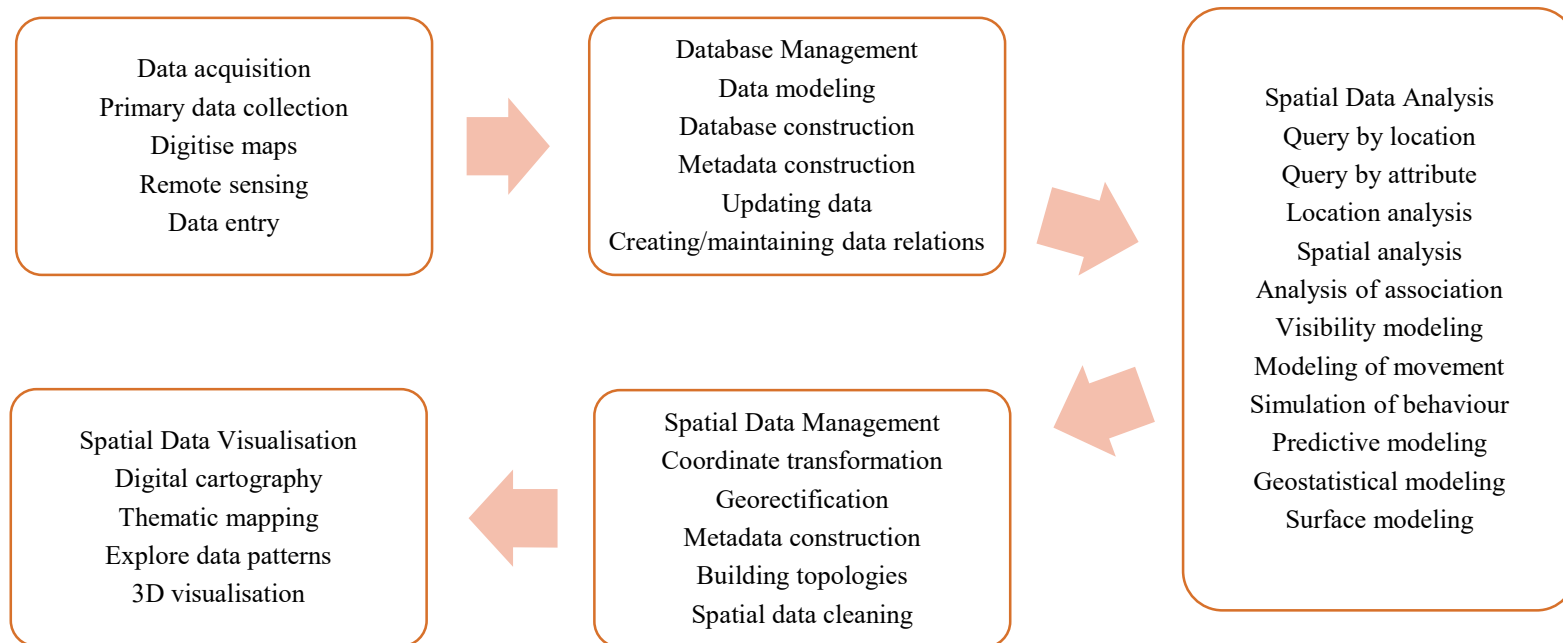


Illustration 4 Five groups of tasks that can be accomplished by GIS

The application of GIS was imperative for the creation of a Database Management System (DBMS) whose main functions are usually to provide:

- i. *Quick access to, and the ability to select subsets of data, potentially by several users at the same time;*
- ii. *A facility for input, editing and updating data;*
- iii. *The ability to define and enforce rules to ensure data accuracy and consistency;*
- iv. *The ability to protect data against unintentional or malicious destruction*
(Conolly & Lake, 2006, p. 51)¹⁴.

Fieldwork research in Kenya, France and other field excursions provided the primary and secondary data that informed this study. Data analysis was done using the Statistical Package for Social Sciences (SPSS). The findings were presented and interpreted in the form of charts, graphs, diagrams, images, tables, mind-maps, models and maps.

Attendance and participation in seminars, lectures and conferences complemented the sources and provided the means for continued exchange of ideas with different professionals for purposes of enhancing objectivity, self-criticism, evaluation and testing of the validity, accuracy and reliability of data collection tools and procedures. The series of doctoral seminars organised by the Doctoral School at the University of Pau et des Pays de l'Adour (UPPA) were very instrumental for the realisation of this objective.

¹⁴ Burrough and McDonnell 1998, p. 50 cited in (Conolly & Lake, 2006, p. 51)

1.5.3 Sample size and sampling procedures

Considering the research objectives, it was difficult to arrive at a sample size that would serve as a representative of the study area given that it is a comparative study that compares two separate and mutually exclusive entities from different geographical, historical and sociocultural backgrounds.

1.6 Piloting and testing of data collection tools and procedures

This research is a continuation of Master 1 and Master 2 studies that were built on the foundations of history, archaeology and political studies established during my undergraduate studies at Kenyatta University. The two pieces of work in masters were instrumental in developing and testing the data collection tools that were as well proven to be relevant and valid for this study. The work has embraced an elaborate qualitative research approach which has inculcated a quantitative methodology thanks to the training about *Méthodologie qualitative* as one of the series of training programs.

The research tools that were adopted after masters were tested through participation in scientific programs such as seminars, conferences and attending PhD defence sessions in order to benchmark the tools for their relevance, validity and effectiveness to the study. It is noteworthy that most of the research tools used are not new but have just been redeployed from other social sciences as well as some from natural sciences.

1.7 Conclusion

It was imperative to define the methodological and conceptual framework so as to guide this study. From the onset, the title of this study clearly sets out a broad field of study by the

choice of words as spelled in the topic. It looks at cultural heritage in its broad sense and archaeological heritage as an area of particular interest within this study. While cultural heritage is a broad concept that includes different categories of preservation objects (Muñoz Viñas, 2005), archaeological heritage constitutes an important category of such heritage that comprises of various objects, sites as well as monuments as evidence of man's past social, economic and political development through artistic, scientific and technological inventions and innovations. It is therefore necessary to make clear the terms cultural heritage as a broad categorisation of conservation objects and archaeological heritage as a particular category of cultural heritage that deserves special attention in the context of economic development. For this reason the study narrows down to preventive archaeology and its variants such as salvage archaeology, cultural heritage impact assessment and cultural resource management. These are areas of concern which are very close in reference to their aims and objectives but very different in practice and legal framework.

This study is therefore divided into three major parts which are developed through various chapters dealing with specific questions under investigation.

CHAPTER TWO

HISTORICAL EMERGENCE AND DEVELOPMENT OF THE NOTION OF HERITAGE AND ITS SOCIO-CULTURAL AND GEO-SPACIAL PARTICULARITIES

2.1 Introduction

Africanist archaeology is a western dominated field of study. This chapter explores the historical emergence and development of the notion of heritage in the light of archaeological research. It also examines the associated socio-cultural and geographical particularities that accord cultural heritage its unique cultural values, some of which can be characterised as outstanding universal values. The chapter also highlights and corroborates literature on the development of cultural heritage conservation in France and Kenya so as to identify the elements of continuity and change in the public policy on cultural heritage management.

2.2 Emergence of the notion of cultural heritage in France

In France, the emergence of the notion of heritage (*le patrimoine*) dates back to the revolutionary period between 1789 and 1830. It was in the context of the French Revolution that the idea of a "heritage" was developed, the value of which would be greater than the vicissitudes of history and which would belong to the nation as well as the associated instruments of preservation; museums, inventories, classification, reutilisation {author's translation from French} (Tanchoux, 2011)¹⁵. The ravage of symbolic monuments and the

¹⁵ C'est dans le contexte de la révolution française que sont élaborés l'idée d'un « patrimoine » dont la valeur serait supérieure aux vicissitudes de l'histoire et dont la nation serait le titulaire, ainsi que les instruments de préservation qui lui sont associés (musées, inventaires, classement, réemploi) (Tanchoux, 2011, p. 47).

systematic destruction of the works of art became a topic of violent criticism. The term ‘vandalism’ was for the first time applied in 1793 to denounce the massive destruction of monuments in France. At the same time, the properties that were confiscated from the church, the nobility and the royal family acquired the status of ‘national property’ (*biens nationaux*). Henceforth, they became the heritage of the Nation, which has the responsibility to choose the one that merits transmission to future generations¹⁶. A body of laws relating to cultural heritage was adopted since the Restoration period (Direction de l’information légale et administrative, 2013). In the course of the nineteenth century the enthusiasm for preservation had acquired a complex legislative dimension. There had been sporadic calls for Monument Laws since 1830s, but in the period from 1870 to the outbreak of the Great War, the preoccupation with legislation became almost obsessive’ (Swenson, 2011, p. 140). Initially the focus was on antiquities, the works of art, as was the case across Western Europe. During the French Revolutionary period, Victor Hugo advocated for the conservation of the architectural heritage (Demoule, 2005).

Muñoz Viñas describes the historical evolution of the practice of conservation showing the difference between various conservation objects as well as between archaeological and cultural heritage.

Since the Renaissance, many objects from classical times have been appreciated in different ways with special reverence by cultivated scholars. However, some of their contemporaries

16

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjJv4jX3JnxAhXMx4UKHRflCi8QFjAEegQIBhAE&url=http%3A%2F%2Fwww.culture.gouv.fr%2FMedia%2FRegions%2FDrac-Paca%2FFiles%2FProvence-Alpes-Cote-d-Azur-en-images%2FExposition-Patrimoine-des-Hautes-Alpes-1913-2013-Centenaire-de-la-loi-sur-les-monuments-historiques%2FLa-notion-de-patrimoine-Bien-commun-de-la-Nation&usg=AOvVaw3PXO6ZLpbEY3D6_XGllkiW

would freely use pieces from abandoned old monuments to build their own houses (Muñoz Viñas, 2005, pp. 29-30) as can be observed in some of the buildings of the Renaissance period. The mansions of educated noblemen had ‘chambers of wonders’ which were not only filled with rare natural samples or delicate mechanical toys but also old statues, jewellery and pieces of pottery from Egypt, Greece and Rome. The latter were not ‘wonders’ or ‘curiosities’ but antiquities. Thus the notion of antiquity became widespread as it was used to describe early conservation objects (Muñoz Viñas, 2005, pp. 29-30) then later used together with the notion of monuments in laying the foundations for the early legislative frameworks on cultural heritage conservation in the Western countries before being used in their colonies (Chirikure, et al., 2015; Ndanga, 2008; Pikirayi, 2016; Ndoro, 2018).

2.3 Emergence of the notion of cultural heritage in Kenya

The term ‘cultural heritage’ came to existence in the twentieth century to refer to cultural objects that needed conservation. Cultural heritage came to compliment, and more often to replace preceding notions as it includes *intangible* heritage, such as traditional dances, languages, handicrafts or religious rituals (Muñoz Viñas, 2005, p. 30). It was from this global perspective that the notion of cultural heritage became applicable across various cultural management systems including in Kenya.

In the second half of the 20th century, the terms ‘cultural goods’ and ‘cultural property’ were developed to generally refer to all objects of cultural value that warrant conservation practices regardless of the conservation field that was to be concerned. According to Salvador Muñoz Viñas, the lack of agreement, as to how to describe the category of conservation objects as manifested in the different terminologies used to describe objects of conservation, testifies that no notion is fully satisfactory or clearly superior to the other ones

nor fully coincident with the objects that actual conservation deals with (Muñoz Viñas, 2005, p. 31).

The term heritage refers to that which has been inherited from past generations by the present generation and which the people of the present generation are keen to be associated with (Wahome, 2015). The term ‘heritage’ can be presented as a sociocultural process in which negotiated relationships are formed between legacies of the past and stewards of the present. The product of such a relationship is an ethos of conservation for future generations (Gabriel, 2016, p. 35; citing Milliken 2012). Cultural heritage refers to a broad category of cultural resources. Tangible cultural behaviour includes artefacts such as buildings, archaeological materials, art and crafts. Intangible culture primarily encompasses areas such as music, dance and belief systems (Ndoro, et al., 2018). The two definitions have got similar concepts of cultural heritage with a lot of significance in relation to this study. The key statements in the two definitions are:

- ✓ that which has been inherited from past generations by the present generation
(a sociocultural process)
- ✓ which the people of the present generation are keen to be associated with
(negotiated relationships are formed between legacies of the past and
stewards of the present) and;
- ✓ the product of such a relationship is an ethos of conservation for future
generations.

The definition demonstrates that cultural heritage is the product of a selective process that is guided by social and cultural norms based on value judgement of the past. The process ascribes some cultural values to whatever has been passed from past generations to the

present before choosing what should be considered for conservation. The two scholars are in agreement that there must exist consensus among the members of the present generation over what can be summed up into the 5W+H of cultural properties selection strategy that is:

1. What do we conserve?
2. When was it produced, used and abandoned?
3. Why should we (the present generation) conserve it?
4. Where was it made and where should it be conserved?
5. Whose heritage is it, who made and used it and who will benefit from its conservation?
6. How should it be conserved?

2.3.1 The selective process and the choice of a past to accept and conserve

The definition of cultural heritage emphasizes on the notion of choice. Cultural heritage is a politicized and contested social construction (Munjeri, 2005, p. 3). It implies that what is considered as ‘cultural heritage’ depends to a greater extent on the political choices of the day (Vadelorge, 2003 a) and partly on the societal considerations of what should be conserved as part of their common heritage (Chenevez, 2011). The question is ‘which kind of the past will Kenyans [...] use to create a national identity and write their national history?’ (Pradines, 2017).

Before becoming a public policy issue, cultural heritage is in the first place a collection of societal objects and sites with symbolic meaning (Muñoz Viñas, 2005). Heritage emanates from a process of selection which is usually initiated by the government then supported by official regulation (Logan & Smith, 2018). The selection of the objects and elements of cultural heritage is a collective responsibility process through which an object is identified,

defined, studied then set aside for conservation by creating a catalogue of conservation objects in a particular society at any particular time. The same logic applies to the conservation of cultural heritage in the context of large infrastructural development projects.

Cultural creativity as can be observed through literature, technological evolution, artistic expressions and scientific inventions and innovations is the source of human progress; and cultural diversity, being a treasure of humankind, is an essential factor of development (UNESCO, 1998). Classification of cultural properties should thus aim at establishing an effective management system rather than a discrimination against some cultural expressions as either less important or barbaric. Just as it might be difficult to differentiate between what is an art from what is not based on individual tastes and preferences, cultural properties may vary but the fact remains that the value of each cultural item is relative to its cultural significance.

The World conference on cultural policies held in Mexico from 26th July to 6 August 1982, entitled the Mexico City Declaration on Cultural Policies provides the definition of culture in its widest sense. Culture may now be said to be the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. It includes not only the arts and literature, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs (Republic of Kenya, 2009, p. 2; UNESCO, 1982).

Heritage is a dynamic process more broadly related to a perception generally shared in a society at a given moment. All societies do not have the same conception of heritage, all do not seek to protect, preserve, and transmit it (Pontier, 2011, p. 93). As cultural values change over time, the notion of cultural heritage being subject to the same conditions will also evolve

leading to the general conclusion cited below that contemporary societies are in the real sense heirs of a cultural heritage left behind by their ancestors.

«Dans le sens commun, nous serions dans nos sociétés contemporaines les héritiers d'un patrimoine culturel [...] légué par nos ancêtres. Notre devoir collectif serait alors de le recevoir, de le conserver, de le faire fructifier et de le transmettre, assurant la continuité générationnelle, à l'instar d'une famille. Contre cette idée, l'observation scientifique montre que l'héritage culturel est au contraire une rupture avec le passé [...]. Nous choisissons dans le présent les éléments de passé qui nous représentent pour le présent» (Chenevez, 2011, p. 79)

In this sense therefore the collective duty of the contemporary societies would be to receive their cultural heritage, preserve it, make it fruitful and transmit it, ensuring generational continuity, like a family. Contrary to common sense, as observed by Chenevez in the above quote, scientific observation shows that cultural heritage is on the contrary a break with the past. We choose in the present the elements of the past that represent us for the present (Chenevez, 2011, p. 79).

Putting it in the African context, in Kiswahili for instance, the term heritage is translated as 'Urithi'. According to the Swahili Oxford *living* Dictionaries, the term 'urithi' is a noun (*nomino*) which refers to '*mtu, mali au vitu vinavyoachwa na marehemu na kupewa mtu fulani, agh. wa ukoo*'¹⁷ [Urithi is a noun which refers to a person, property or goods that are

¹⁷ <https://sw.oxforddictionaries.com/ufafanuzi/urithi>

left by the deceased and which are given to someone especially a kinsman]. This sense, however, does not necessarily refer to cultural heritage but inheritance in general.

The National Museums and Heritage Act 2006 (revised 2009) Article 2 defines **'heritage'** as **both natural and cultural heritage**. In this Article, cultural heritage refers to:

- (a) Monuments;
- (b) architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of universal value from the point of view of history, art or science;
- (c) groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding value from the point of view of history, art or science;
- (d) works of humanity or the combined works of nature and humanity, and areas including archaeological sites which are of outstanding value from the historical, aesthetic, ethnological or anthropological point of view;

and includes objects of archaeological or palaeontological interest, objects of historical interest and protected objects.

The definition of cultural heritage in this law therefore omitted some elements of cultural heritage which are presented as intangible heritage with reference to the 2003 UNESCO Convention about the conservation of intangible heritage. Ironically, in Kenya, it is the intangible heritage which has been highly cherished and which most people have easily been identified with as their cultural heritage.

On the other hand, Article L.1 of the French heritage policy (*Code du Patrimoine*) is all inclusive and defines cultural heritage as all public or private property, of historical, artistic, archaeological, aesthetic, scientific or technical interest. It also includes elements of the intangible cultural heritage, within the meaning of Article 2 of the International Convention for the Safeguarding of the Intangible Cultural Heritage, adopted in Paris on 17 October 2003 (République française, 2005).

Having said that intangible cultural heritage has been highly cherished in Kenya does not imply that it has been accorded the necessary legal protection. Music and songs for instance have benefited from property rights in form of Copy Rights for quite a long time yet music piracy has continued to be a major threat to the development of music industry in Kenya. Maasai dance which is a typical Maasai culture has been presented at various occasions with less or no inclusion of the Maasai people. In this case therefore the rights of the producers are violated especially where the reproduction of their artistic services has been used to generate income to those involved.

The proper appreciation and hence development of cultural heritage for the benefit of all was supposed to privilege the owners or groups that are associated with the invention of a given piece of art in its economic exploitation. This is because some of these groups form the greatest part of the marginalised groups in the society whose means of survival have remained dismal since time immemorial. This study thus argues that the misinterpretation of cultural heritage creates legal loopholes for the economic exploitation of some cultural products in a manner to deprive the rightful owners their rights.

Cultural heritage can be defined as those things which are of value to communities, including tangible objects, the landscape, and intangibles such as myths, legends and music that are

articulated by the tangible objects (Kiriama, et al., 2010 , p. 2; Smith and Akagawa 2009; Blake 2009; Harrison et al 2008; Munjeri 2004; UNESCO 2003). Cultural heritage, according to Kiriama, Odiaua and Sinamai, include tangible heritage such as ‘archaeological sites and objects, architectural buildings, memorials, sacred sites and objects, cultural landscapes, and intangible heritage like performance and rituals, myths legends and folklore, music and dance’ (Kiriama, et al., 2010 , p. 4). While cultural heritage managers endeavour to protect these heritage resources as a whole, their effort is limited by the scarcity or lack of knowledge of the broader meaning of cultural heritage among developers and those implementing EIA. According to Kiriama *et.al*, this problem probably arises from the environmental legislations themselves. Most of them mention cultural heritage in passing and do not explain to practitioners what cultural heritage is even after sensitization by some governments (Kiriama, et al., 2010 , p. 4).

Given that language is a living culture, an intangible one in this case, and a vehicle for transmitting cultural values, France has a long history of a common cultural heritage dating back to 1539 when French became the official language. Unlike France, however, Kenya is yet to be identified as a Nation-State and Kiswahili language was only adopted as a National language in the aftermath of independence. It was recently upgraded to become both a national and official language through Article 7 (1) and (2), of the Constitution of Kenya.

From the key statements identified in the above definitions of heritage, the phrases; ‘that which has been inherited from past generations by the present generation’ and ‘a sociocultural process’ show the relationship between people and their heritage. The definitions imply that the selection process of conservation objects that constitute cultural heritage is a complex process where items are subjected to a critical analytical study before choosing those to be conserved and those to be abandoned.

2.4 Conservation of cultural and archaeological heritage in France

According to a recent comparative study of cultural policy, the four democracies of Eastern Europe, that is Germany, Italy, Spain and France have in common a democratic approach to the economic, social and political domains of the society. There is freedom and expression of choice with institutionalisation of the opposition, systems of checks and balances of power based on the principal of separation of power, a State with human rights based on the respect of the constitution (Pongy & Saez, 1994, p. 14). These economic, social and political systems of organisation of the society present a greater advantage in the public intervention in all sectors of societal life including but not limited to cultural heritage. Spain, though the most recent of the four in terms of democratisation space, has learned from the four and her constitution pays more attention to the question of public intervention as compared to the rest¹⁸.

The study was interested in two fields of research which are similarly central to the understanding of cultural heritage management from our comparative approach even though the present study does not take the entire Eastern Europe as a level of comparison. The first field was that of territorial organisation of the states and the evolution of relationships between central governments and the intermediate and local authorities. Since the second half of the 19th century there has been increased decentralisation and regionalisation among the four countries coupled with international comparative studies.

¹⁸ Bonet L., Duenas M., Portell R. (1992) *El sector cultural en Espana ante et proceso de integracion europea*, Madrid, Centre d'Estudis de planificacio, Ministère de la Culture, p.37 cited in (Pongy & Saez, 1994, p. 14).

The second field which underlines the core of our study was that of public policy analysis which focused mainly on national levels but rarely on regional levels of administration within countries. The argument was that local/regional political entities within Eastern European countries, with the exemption of the federal States, did not have significant political authority and public intervention structures. Nevertheless, since 1970s a greater part of traditional sectors of public intervention has received the attention of researchers. However cultural policy did not receive a similar scientific attention because it is generally perceived as a relatively new field whose public policy qualities have just been recently acknowledged (Pongy & Saez, 1994, p. 14).

The history and the choice of a French national cultural heritage has its genesis in Article 111 of the 1539 ordinance called *Ordonnance de Villers-Cotterêts*¹⁹ which was put in place by King François I of France concerning the elevation of French as the official language.

State intervention in cultural affairs begun with King Louis XIV, commonly referred to as *Le Roi Soleil*, who institutionalised the efforts towards the conservation of French cultural heritage as the protector of arts and sciences. It was also one of the major political strategy to legitimise his absolute political power; using his love for art and culture as a gifted musician to enhance his public image and consolidate his political power. He was interested in painting/art, architecture, music and most importantly dance. He practiced dancing for two hours on a daily basis for twenty years. Right from the beginning of his personal reign

¹⁹ Ordonnance de Villers-Cotterêts du 1539. L'Article 111 de l'**Ordonnance du 25 août 1539 sur le fait de la justice (dite ordonnance de Villers-Cotterêts)** désigne la langue française comme langue officielle de la France: «Et pour ce que telles choses sont souvent advenues sur l'intelligence des mots latins contenus esdits arrests, nous voulons d'oresnavant que tous, arrests, ensemble toutes autres procédures, soient de nos cours souveraines archéologique et autres subalternes et inférieures, soient de registres, enquestes, contrats, commissions, sentences testaments, et autres quelconques, actes et exploits de justice, ou qui en dépendent, soient prononcés, enregistrés et délivrés aux parties en langage maternel français et non autrement». <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070939> accessed on 12/02/17 at 14:33:55 and 01/08/2019 at 15:25:02 CET.

in 1661, Louis XIV pays particular attention to the arts - he organizes parties, musical and dance performances, assembles a vast collection of paintings as well as artists. This interest would later transform into organisation of cultural institutions as well as development of those that were already existing which became the cornerstone of the cultural policy as desired by the king. These include the Royal Academy of Painting and Sculpture which was reformed in 1663, while the Royal Academy of Dance was created in 1661, the French Academy in Rome in 1666, the Academy of Architecture in 1671 and the Royal Academy of operas in 1669, which would become the Royal Academy of Music in 1672. The brilliant artistic and cultural policy of the "century of Louis XIV" was thus launched (Dupuy, 2013) using culture as a soft power to unite the kingdom.

The analysis of a portrait through history of art provides a good examples where culture was employed as a soft power to unite the kingdom under King Louis XIV and later used to create a united and indivisible republic after the French Revolution. A portrait of Louis XIV by Jean Garnier (1632 – 1705), according to the interpretation by P. Depuy, is a direct representation of the person and character of the King²⁰.

²⁰ Louis XIV was a talented musician who was gifted in playing the guitar. *«Si les instruments de musique prennent une part considérable dans la grammaire symbolique du tableau, en raison de l'attention que leur accordait Louis XIV – lui-même musicien doué notamment pour la guitare –, Garnier n'a pas oublié les objets faisant référence aux sciences. On trouve ainsi, outre une pile de livres, symboles du savoir et de la sagesse, d'autres objets qui évoquent la connaissance de l'Univers, un compas emblème des sciences exactes et de la rigueur mathématique, ainsi qu'un globe céleste.*



Figure 1: Allégorie à Louis XIV, protecteur des Arts et des Sciences by GARNIER Jean (1632 - 1705)

*Details of the image*²¹

The juxtaposition of musical instruments and fruits gives the painting its allegorical meaning. By this, the painter signifies the abundance of the kingdom and ‘the harmony or the perfect agreements which are found in the governance of the State’, as had already indicated by then, Guillet de Saint-Georges, the first historiographer of the Academy. The painting takes up an ancient tradition since the Italian Renaissance which mixes objects of

²¹ Photo details :

Photo title : Allégorie à Louis XIV, protecteur des Arts et des Sciences

Author : GARNIER Jean (1632 - 1705)

Dimensions: Height 163 - Length 204

Place of conservation : musée national du château de Versailles (Versailles)

Contact copyright : © Photo RMN-Grand Palais (Château de Versailles) / Daniel Arnaudet / Hervé Lewandowski accessed on URL : <https://histoire-image.org/fr/etudes/louis-xiv-protecteur-arts-sciences>

everyday life in allegorical paintings of famous figures, thus giving a character of intimacy to the portrait (Dupuy, 2013).

Certainly the history of conservation of the French cultural heritage begins in the period of the French Revolution, when an abbot of the Third Estate, the Abbé Grégoire, initiated the idea of entrusting to the State the responsibility, in the name of the Nation, to protect and preserve heritage (the patrimony). It also opened the access to heritage, which was formerly monarchical and aristocratic property, to the greatest number of people rather than to organize its destruction (Négrier, 2017, p. 1). For a long time, according to Alain Chenevez, heritage has served as an ‘ideological apparatus’ of memory by the State to build the republican nation, in its indivisible and universal dimension. This tradition has its roots in the French Revolution, from the reaction to ‘vandalism’ and finds its institutional basis in the general creation of historical monuments (Chenevez, 2011, pp. 80-81).

2.4.1 Jérôme Carcopino and heritage: an ambiguous protection²²

The history of cultural policy in France oscillates between major historic events and associated individual personalities that have played a major role in the creation of the nation-state founded on a common heritage, shared values and history. With its roots in the Revolutionary period, cultural heritage emerges as one element that emanates from and forms the fundamentals of nationalism not only in France but also in Europe at large. The more people’s national consciousness is challenged by various historic events and the more they interact through cultural activities the more they realise and appreciate their unique past

²² Adopted from Stéphanie Corcy-Debray’s article entitled; ‘*Jérôme Carcopino et le patrimoine: une protection ambiguë*’ (Corcy-Debray, 2003).

and shared cultural values thus cementing their social ties and national identity. This would weave a new socio-cultural, economic and political web that culminates into a more harmonised and organised society.

Just like during the Revolutionary period when historical monuments and some artistic and cultural heritage of the ancient regime were under threat of extinction, the Germany invasion and occupation of France during the World War II posed serious threats not only to territorial sovereignty but also to her architectural and archaeological heritage. It was within such circumstances that we observe the role of individual personalities like Victor Hugo in the revolutionary period and Jérôme Carcopino, the then Minister of national education and youth affaires under the Government of Vichy²³. Victor Hugo declared war against the demolishers of monuments during the French revolution while Jérôme Carcopino enacted a law to control archaeological excavations in metropolitan France and exportation of artistic work during World War II. This led to the creation of a national archaeological heritage protection service. Though not his priority, according to S. Corcy-Debray, the protection of cultural heritage was part of the preoccupations of the minister who came up with crucial reforms in the national education system²⁴ thus establishing the control of archaeological excavations and exportation of artistic collections in the Metropolitan France²⁵ (Corcy-Debray, 2003, pp. 321-322).

²³ The Government of Vichy refers to the section of the French regime that surrendered and chose to collaborate with the Nazi regime of German under Adolf Hitler. It's headquarters was at Vichy hence the name.

²⁴ The Ministry of Culture was not yet in place by then. It was created in 1959.

²⁵ Archéologie Métropolitaine

According to S. Corcy-Debray, the laws for the organisation and protection of archaeology in France were born within a favorable atmosphere at the intersection between a political good-will and a scientific demand. This was because under Vichy, the Government had an interest in the enhancement of the national heritage revealing, in particular, an awareness of the decline of rural societies that began in the inter-war period. Apart from this interest, Jérôme Carcopino himself was an incarnation of both a political good-will, which made concrete the archaeological heritage projects, and scientific good-will shared among the French scientific community. As an expert, Carcopino occupied a strategic political position but also he had trained as an archeologist and historian which enhanced his scientific and administrative qualifications. More still, he had a good network of specialists in the field who were conscious of the fact that the development of national archaeology was late as compared to the flourishing overseas French archaeological institutions in Africa, in the Mediterranean region and in the Middle-East. Among them were his colleagues such as Albert Grenier, Eugène Albertini and Raymond Lantier (Corcy-Debray, 2003, p. 325).

The end of World War II and the events that followed, including the Cold War and the search for global peace through establishment of international organizations such as the United Nations, had a profound impact on the global scene which influenced reforms across the globe. The events raised a lot of questions than answers about how social, economic and political interactions can contribute to lasting international peace and security. This culminated into the creation of the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 16th November 1945 with the aim of promoting international peace and security through cooperation in education, science and culture.

In France, cultural policy in the strict sense of the term emerged in the year 1959 with the creation of the Ministry of Cultural Affairs. Prior to 1959, various cultural institutions were

organized separately which rendered it difficult to talk about a cultural policy. The administration of historical monuments for instance was put under the Ministry in charge of urbanization or public works while that of *Beaux-Arts* was under the Ministry of Education (Négrier, 2017, p. 2).

According to Philippe Urfalino, the circumstances under which the cultural policy was born and the choices made by André Malraux, the first Minister of Cultural Affairs, defined cultural policy as a social, aesthetic and reformatory project. Urfalino postulates that '*the singularity of this invention resides in the opposition, which the major part of the initiative of the ministry took, between the idea of project and that of institution*' {Author's translation from French}²⁶ (Urfalino, 2004, p. 10). This particular point of view of cultural policy focused on the centrality of cultural heritage as a unifying factor towards the creation of a cohesive nation-state. At this particular time there was need of national policies that aimed at identifying the socio-cultural and aesthetic values to spearhead rapid national reforms in response to the prevailing changing political climate. The most dramatic and decisive post World War event that had a great impact on global geopolitics as well as intra-country social, economic and political reforms was the Indochina War. The end of the first phase of the Indochina War (1946 to 1954) and the associated agony was crucial for internal reforms in France and United States of America with its impact being felt in China, the former Soviet Union and other countries (Thee, 1976). In France the reforms were spearheaded by the General Charles de Gaulle who played a crucial role in the WWII when he chose to resist the German invasion. De Gaulle ascended to power as President of the French Republic in

²⁶ « La singularité de cette invention réside dans l'opposition, que la majeure partie des initiatives du ministère a manifestée, entre l'idée de projet et celle d'institution. » (Urfalino, 2004, p. 10).

January 1959 and initiated radical social, economic and political reforms for faster economic recovery and reconstruction of the destroyed infrastructure.

The period also witnessed increase in anticolonial campaigns and other political events that shaped global politics leading to the end of colonial empires hence the creation of the French Republic. The example of the Vietnamese resistance had a profound influence on the evolution and revolution in the Third World. Consequently the struggle for independence gained momentum (Thee, 1976). Thus, as General De Gaulle was embarking on nation building there emerged the challenge of the Algerian war of independence. It is rare to associate such major political events in the world to some public policy choices within specific countries especially cultural policy at a time when it was yet to take shape. However, it is during such events that civilizations collapse as new ones emerge through evolution, revolutions and negotiations between different parties and forces. At each stage recourse is made to the building blocks of such civilizations which necessitates a call to trace the historical, cultural and scientific foundations of the civilization in question. It is at the interception of the three, i.e. history, culture and science that the strength of any civilization can be gauged.

The creation of the Ministry of Cultural Affairs in 1959, according to Philippe Urfalino, was a moment of invention and rapture. This demonstrated how exemplary the history of the politics of *les maisons de la culture* is to the understanding of the history of cultural policy (Urfalino, 2004). To achieve his objectives, the Minister André Malraux chose a strategy that was based on the already existing cultural structures. These included the use of the *maisons de la culture* as the effective places for the implementation of cultural policy. It was a strategic model aimed at cooperating with the communities as well as a model for

democratisation of culture with the focus on the artistic excellence but also a political model (Urfalino, 2004, pp. 11-12).

2.4.2 Broadening of heritage consciousness in France

However, apart from the works of Paul Léon, Louis Réau and some articles of André Chastel, it was in the mid-1970s that the notion of cultural heritage broadened thanks to research work that was dedicated to heritage (Vadelorge, 2003 a, p. 11). Yet still, according to Loïc Vadelorge, these studies did not focus on the notion of cultural heritage but on historical monuments. It was in the 1970s that heritage consciousness broadened with a shift in public opinion towards archaeological heritage. This went hand in hand with growing interest in archaeological and urban heritage in some urban centres such as in Loiret, in the Val-d'Oise, at Chartres, Orléans, Tours and Bourges among others. However, the resources that were channelled towards archaeology were still limited hence only one archaeologist was recruited in each urban centre. The status, roles and functions of the recruited archaeologist were diverse and varied depending on the different institutions to which they were attached. This was the genesis of territorial or local authority archaeological services (Héron, 2010, p. 12).

A major turning point was between the year 1968 and 1984 due to various reasons on the political scene as well as social and cultural way of life of the people. On the political scene the country was witnessing an evolving political environment post the May 1968 events where the youth became more and more sensitive to issues of governance with a growing demand for change through modernization. The 1968 nationwide demonstrations and strikes that were ignited by student demonstrations of 22 March 1968 sounded the trumpet for change in the cultural policy and its institutional framework across the nation (Urfalino,

2004, pp. 236-237). In May and June, the event gained momentum by bringing together students, white collar as well as blue collar workers to nationwide demonstrations. The events revived the spirit of mass action as was witnessed in the French Revolution of 1789 thus leaving a lasting mark on associative life. On the cultural scene, a lot of changes occurred following the impact of this event. During the demonstrations there was a double criticism of the cultural policy from both the right and the left political wings stressing different issues that had a point of convergence in the cultural policy. The criticism of cultural democratization process by the left wing was of profound impact as it generated a belief in cultural democratization (Urfalino, 2004, pp. 236-237).

The political transition to a socialist government in 1981 with President François Mitterrand as the first socialist President in the Fifth Republic was preceded by a cultural revival during the campaigns with cultural policy featuring as among the priorities of the campaign. It was in this context that the government launched a national heritage sensitization campaign called *L'année du patrimoine* (the year of heritage) where the whole year of 1980 was fully dedicated to the celebration of the French national cultural heritage with high public participation. The entire year was marked by a lot of mobilization and sensitization of the general public towards the notion of cultural heritage. The campaign followed two other important campaigns of a similar magnitude which inspired President Valéry Giscard d'Estaing to dedicate an entire year to national heritage; the year of the woman (*L'année de la femme*) in 1978 and the year of childhood (*L'année de l'enfance*) in 1979²⁷.

²⁷ President Valery Giscard d'Estaing is remembered as a French reformist despite him having served just for one term, from 27th May 1974 to 21st May 1981. Having arrived at the helm of power at the age of 48 years, he was a symbol of change and modernity as well as the youngest French President in the Fifth Republic until the arrival of President Emmanuel Macron in May 2017 at the age of 39.

The impact of the 1980 cultural heritage campaign was experienced at two levels: on one part new fields of public intervention were put in place while on the other part there was an interrogation of the social and historical meaning of the notion of cultural heritage (Vadelorge, 2003 a, p. 12). The first reflection on the concept of heritage was found in the work of André Chastel (1980). Chastel's research together with the pioneer work of Marc Guillaume (1980) and the publication of a report, *rapport Querrien* (1984) are considered as the point of departure of a reflection that will mobilise the scientific community for more than a decade (Vadelorge, 2003 a, p. 12).

Buttressed in criticism and debates within different academic circles among them historians, sociologists, ethnologists and philosophers, the term heritage was interpreted in various ways to suite the demands of each domain. Its chronological background was traced to the Revolutionary period with its historiography being concluded in the 1990s by legal and economic studies (Vadelorge, 2003 a, p. 14). This was due to the professionalization of heritage which was associated with the significant research work that was being realised by the *École national du patrimoine* (National College for Heritage studies) which had just been created. In such fluctuating context deriving from the laws of decentralization, the European construction and globalization, Pierre-Laurent Frier reconstructs the genealogy of the great French heritage institutions. According to him, the economy of cultural tourism and natural spaces fills some gaps and signals areas of investigation that contemporary historians were beginning to address. The flourishing bibliography in this field of study testifies to the professionalization of heritage²⁸ (Vadelorge, 2003 a, pp. 14-15).

²⁸ « Dans un contexte rendu fluctuant par les lois de décentralisation, la construction européenne et la mondialisation, Pierre-Laurent Frier restitue la généalogie des grandes institutions patrimoniales françaises. De son côté, l'économie de tourisme culturel et des espaces naturels vient combler quelques lacunes et signaler

It is noteworthy that the interest in archaeological heritage came at a time when there was a general expansion in the perspective of what was to be considered as cultural heritage other than monumental and artistic heritage. According to Guy Saupin the interest in the new heritage was as a result of the ambition to provide the key to the understanding of a cultural phenomenon which has characterised European societies for over a half of a century, with a limitless expansion in the heritage field. This was first witnessed in the tangible heritage before seeing an interest in the intangible heritage as has been observed in the last two decades (Saupin, 2015).

2.5 Conservation of cultural and archaeological heritage in Kenya

While cultural initiatives have become a strategic element of economic development, studies analysing the cultural practices, cultural events and cultural centres in the emerging economies and third world countries are very rare as compared to those dealing with commerce, industry, transport, populations and more recently, suburbs²⁹ (Augustin & Lefebvre, 2004, p. 9). In the developing and emerging economies such as Kenya, the situation can be attributed to the difficulty to discern the subject matter of study among social scientists particularly those in the field of geography and planning, as noted by Augustin and Lefebvre (2004), who abandon the field to other humanities that are less attentive to the

des champs d'investigation que les historiens contemporains commencent à aborder. Cette floraison bibliographique témoigne de la professionnalisation du patrimoine » (Vadelorge, 2003 a, pp. 14-15).

²⁹ The term suburbs as used here refers to the French term '*Banlieues*'. According to Larousse English-French/French-English Dictionary (1995), the word '*banlieue*' in France is often associated with social problems. The translation was based on the context in which it was employed in the original text:

Alors que les initiatives culturelles deviennent un élément stratégique de développement, Jean-Pierre Augustin et Alain Lefebvre constatent que « les études analysant les pratiques, les événements et les lieux culturels, sont moins nombreuses que celles étudiant le commerce, l'industrie, les transports, les populations ou plus récemment, les banlieues » (Augustin & Lefebvre, 2004, p. 9).

socio-spatial dimension of the phenomenon. Cultural change occurs at the interception between the cultural centres and cultural practices and hence it is at this interception where questions concerning administrative as well as institutional organisation and public policies emerge (Augustin & Lefebvre, 2004, p. 9). While such cultural centres can be clearly identified in the Western world, it might not be easy to clearly delineate such places in the Kenyan context. This does not imply that such places do not exist because there exists a long list of cultural centres and sites. What is implied here is in reference to the conception and perception of what constitutes a cultural site in the minds of a researcher in Africa. The study of cultural and social spaces including that of urbanisation has for a long time been ignored by researchers in the archaeological field in Africa. It is just recently that the study of social space has become a central concern of African archaeology more precisely over the past three decades (Klehm & Gokee, 2020).

2.5.1 Louis and Mary Leakey's family and cultural heritage in Kenya: an enthusiastic project within an ambiguous protection

Archaeological heritage is today one of the major sources of African prehistory and history which has greatly revolutionised Africa's image as a 'dark continent'. Archaeological discoveries have put Kenya and Africa at the forefront of major global debates about prehistory and history ranging from hominin evolution, origin of agriculture to the associated technological inventions and innovations, emergence of the state, religion, elite formation as well as development of long distance trade and evolution of complex societies (Arazi & Thiaw, 2013).

In the early stages of its development, African archaeology was an enterprise of a small and relatively homogeneous group of fieldworkers who were all European, a fact that united

them in terms of archaeological practice and interpretation, more than they were divided by their different nationalities (McIntosh, 2005).

In Kenya, we cannot talk about the historical development of heritage and archaeology without mentioning the key personalities in this development. The two paleoanthropologists Louis and Mary Leakey are among the pioneers of archaeology in Kenya who have played a major role in the development of heritage management system in Kenya. Their son Richard Leakey was a palaeontologist and an archaeologist who continued the work of his parents and was credited for the immense contributions to archaeological research in Kenya more remarkably as one of the directors of the National Museums of Kenya and the discovery of the Turkana Boy. Richard Leakey's wife Meave Leakey, a palaeontologist, later became famous for her discovery of *Kenyanthropus platyops* ("flat-faced man from Kenya"). Their daughter Louise Leakey continues in her parents' and grandparents' footsteps, having completed a Ph.D. in palaeontology in 2001, and is actively conducting paleoanthropological research in Kenya (New World Encyclopedia, 2019).

The influence of the Leakey family in Kenyan heritage went beyond prehistoric and archaeological domain to touch on the natural heritage through Richard Leakey's environmental activism punctuated with his role in the Kenyan politics.

2.5.2 Limited archaeological research or limited archaeological sites?

It is difficult to draw a line between cultural places when we do a critical study of African cultural landscape, sites as well as cultural practices and the complexities of their expression. Even as the limited archaeological research has been cited as a key factor impeding the study of social space, the problem of identification of cultural sites and heritage has been attributed to the shortcomings of cultural heritage management and conservation during the colonial

period. As a total way of life, a society's culture is manifested through individual and group actions, emotions, norms, values, artistic expressions, oral literature, religious practices and belief systems. In Africa it was difficult to separate an individual from their cultural and religious beliefs no matter their social status and role in the society.

The degree of resilience of Africa's cultural heritage depends on various factors key among them being the manner in which it was transmitted across generations. Cultural beliefs, values and norms were passed from one generation to another through the practice of oral traditions and apprenticeship. A number of African traditional religious practices as forms of intangible cultural heritage were highly resistant and resilient during the colonial period because they were part of everyday life and were evoked in every social, economic and political activity or event. In the words of J.S. Mbiti, an African is 'notoriously religious'³⁰. The religious heritage, according to Aderibigbe, 'though contemporarily more dynamically evidenced, has a long history and influence. In the case of African traditional religion, it can be traced back to the very beginning of the emergence of African peoples' (Aderibigbe, 2015, p. 7). The search for the origins of the African people and their cultural past has been of great interest to the school children, college and university students who have always been confronted with questions of how humanity came to existence. While such questions may weigh differently between those who have never been exposed to the world outside the African continent and those in the diaspora, there has been a growing need to rediscover the African heritage which, according to Mbiti, is deeply religious (Mbiti, 1970).

³⁰ John S. Mbiti cited in (Aderibigbe, 2015, p. 7).

Cultural heritage management in Africa has a long history that predates the bureaucratization, centralization and creation of formal cultural management structures during the colonial period. This negates the misconception that there was no heritage management and conservation in pre-colonial Africa and that the practice started during the colonial period. Such misconception was baseless and unfounded because many heritage sites encountered by European scholars had only survived intact because of local forms of traditional management (Arazi & Thiaw, 2013, p. 214; Ndoro, et al., 2018, pp. 3 citing Joffroy, 2005; Chirikure & Pwiti, 2008). However, the introduction of universalist heritage management and conservation systems started during the colonial period. The introduction of archaeological research in most countries of sub-Saharan Africa begun in the wake of the 20th century and in most of the countries still, it begun in the independence era in the second half of the 20th century (Sutton, 2017a). The delay in the establishment of a legal framework to regulate and guide archaeological research was particularly more pronounced in the former British colonies as compared to the French colonies precisely in northern Africa countries like Algeria. In Algeria and Tunisia for instance, the legal framework preceded that of metropolitan France yet they were both considered as an extension of France. (Swenson, 2011, p. 139; Dondin-Payre, 2003)³¹ This does not necessarily imply that the protection of archaeological heritage was better in the French colonies than in the British since they had different approaches to the question but in the case of the French, according to Gran-Aymerich, archaeology was part of their conquest mission (Gran-Aymerich, 1998, pp. 64-82). Talking about the management of Algerian heritage, M. Dondin-Payre refers to the situation as both ‘destruction and protection’ (*Destruction et protection*) in the sense that

³¹ A chronological analysis of the establishment of archaeological legislation in Algeria during the colonial period has been done as an annex to the article by (Dondin-Payre, 2003, pp. 166-168).

the colonial impact permanently distorted the concept of Algerian heritage³² (Dondin-Payre, 2003, p. 156). The colonial system in Algeria, for instance, emphasised architectural and artistic values at the expense of the cultural values and associated history. According to M. Dondin-Payre, 'We cannot, as is often done, consider the heritage of North Africa as a whole because, despite a certain historical common destiny, the impact of colonization has permanently distorted the perception of Algerian heritage' (Dondin-Payre, 2003, p. 156).

Kenya like any other British colony, and contrary to Algeria which was annexed by France then integrated as part of her territory, was under the Imperial British East African Company (IBEACo) rule for a long time before becoming a British colony on 23 July 1920. Cultural heritage conservation was not part of the priorities of the IBEACo company rule nor that of the colonial administration. In addition, the colonial administration in Kenya applied both direct and indirect systems of administration. In the beginning especially after the construction of the Kenya-Uganda railway, it was not certain how the protectorate could be developed and help recover the railway construction cost since the greatest part of the interior of Kenya was perceived to be less productive. At the backdrop of all these emerged conflicting interests among the three groups, the native Africans, the settlers and the Asians.

In the 1920s archaeology started to take shape in East Africa as a more rigorous scientific discipline prompting the establishment of legal frameworks on archaeology. In Kenya the first law on protection of archaeological heritage was put in place in 1927 by the then

³² « On ne peut, comme on le fait souvent, envisager comme un tout le patrimoine de l'Afrique du Nord car, en dépit d'une certaine communauté de destin historique, l'impact de la colonisation a gauchi durablement la perception du patrimoine algérien ».

Governor Sir Edward Grigg who had been transferred from the British Indian colony where he had put in place a similar legislation.

2.6 Delayed enactment of heritage policies and its impact in Kenya

The delay to enact laws and regulations on cultural heritage conservation and archaeological research persisted in many African countries (Ngoro, et al., 2018, pp. 8 - 9). In Lesotho, P. Mitchell observes that the country had a total lack of archaeological infrastructure until 1986 when there was a recommendation to create a Lesotho Heritage and Scientific Research Organization (Mitchell, 2018, p. 165). According to François-Xavier Fauvelle-Aymar it was the delay in the constitution of an African bourgeoisie which hindered the emergence of an awareness of a national heritage in Africa. It is the middle class, once sufficiently structured, that end up requiring that the archaeological sites be protected and that preventive excavations be made mandatory prior to the construction of buildings or motorways (Fauvelle-Aymar, 2013), an observation which echoes our research hypothesis.

2.6.1 Cultural heritage consciousness and the shortfalls of social history

Africa as a continent and Kenya in particular is generally acknowledged as the cradle of mankind. However, the general public is rarely aware of the events following this almost mythical beginning (Livingstone Smith & MacEachern, 2017, p. 8).

It was on the eastern side of Africa that man emerged as an erect and toolmaking animal around 3 million years ago. For this reason the history of this part of the world has been longer than elsewhere, and in particular the Stone Age here was more extended than in other continents and other

parts of Africa. It began when the first hominids started to make recognizable tools of stone of predetermined shapes and patterns as a regular activity. This combination of bodily and mental powers to produce tools, in other words to improve biology, and the growing dependence on these extra-biological, that is, cultural, abilities and activities are what distinguish man from other animals and define humanity (Sutton, 1981, p. 452).

The African continent has a past whose knowledge, according to A. Livingstone Smith and S. MacEachern, is partial, filtered and sometimes biased. It is partial not only because of lack of enough research but also due to the fact that scientific research during the colonial period was dominated by evolutionist thought as it dwelt on the distant past. It is also ‘related to the international slave trade and the politics of colonial expansion, which certainly did not leave much room for mutual respect and enlightened exchange...’ (Livingstone Smith & MacEachern, 2017, p. 8). This greatly affected archaeological research which still faces challenges such as inadequate data to ascertain what has already been said and to advance on new knowledge about the continent’s social, economic and political past. It was filtered because most of the pioneer historians had to grapple with the issues that were dear to the colonial administration while at the same time they were supposed to maintain a more scientific and objective view of the continent.

The scientific attention turns to the archaeological resources which constitute the major source material for the study of the Pre-colonial, colonial and post-colonial history of most African countries, and have largely contributed to revising Africa’s portrayal as the ‘dark continent’ (Arazi & Thiaw, 2013, p. 213; Pradines, 2017). History, sociology, historical

linguistics, anthropology and archaeology have provided a lot of data on the history of Kenya and East African coast. The data still has pitfalls and gaps which reveal the need for more archaeological research in Kenya to bridge the various knowledge gaps that exist in these fields of study especially in the Great Lakes region (Onjala, 2019, p. 109) and along the East African coast. This was echoed by Christopher Ehret while giving a linguistic approach to the diffusion of American plants in East Africa during a seminar, *Globafriq*, which was held at the University of Pau on 10th and 11th October 2017. Anthropologists, sociologists, and linguists, according to S. Pradine, are looking at us, the archaeologists. S. Pradine thus asks the most important question in this regard which is: ‘what will people do with these archaeological publications? Africanist archaeologists have to understand that sites and monuments are not only material culture. Heritage carries also strong political and emotional issues’ (Pradines, 2017).

Cultural heritage has been at the centre of development strategies and issues in many countries for many years (Bélaval, 2012, p. 10). It gives a particular identity to a society because cultural goods are results of a natural ability of humanity to shape its environment in order to satisfy their own daily needs. Creating a national identity and a national history begins by recognising the cultural diversity within the territorial borders. Cultural heritage is an indispensable element of ‘cultural diversity’. This is because it offers a quality environment that is generally respectful of the ‘ecosystem constraints’ of which it is the product. Cultural heritage also represents a development opportunity based on the endogenous assets of a territory and as such it often requires a social approach to promote its preservation (Jolie, 2012) as it constitutes the key elements of creating the social history of a people. In this respect, reflections on urban planning, the modernization of the living environment, economic development and social cohesion cannot be dissociated from those

relating to heritage. It is undisputable that the latter, far from being opposed to these fundamental issues, can make a powerful contribution to their realization while attracting great benefits at the same time (Bélaval, 2012, p. 10; Bwire, 2017, p. 6).

2.6.2 Paradigms shifts in African archaeology and pitfalls in African social history: the case of Swahili culture and civilisation

The management of cultural heritage in Kenya has suffered from the various paradigms shifts under different historical contexts that have shaped, defined and even to a greater extent altered the social, economic and political history of the country and the African continent at large. Since the past two decades, Africanist archaeologists have been debating about the future of African archaeology and the relevance of western theoretical framework in interpreting African past. The emergence of *New Archaeology* as a paradigm shift has posed challenges especially in archaeological research along the East African coast. More than often, archaeologists theorise by considering the past in terms of material remains which has its limitations when it comes to the scientific generalisation of the findings in some African settings. This is the case of the study of the Swahili culture and civilisation along the East African coast.

How the Swahili feel with this new history sometimes very different from what they know and what they live? We will try to answer to the following questions. Are archaeologists recreating a new history of Swahili, written without the Swahili? Are we witnessing a process of monopolization of an African culture by theorists drawn largely from Europe or North America? What is the role of archaeologists in the construction of memory and

identity? Do we have a dichotomy between what the anthropologists know and the archaeologists say?

At the continental level, contemporary heritage management in Africa has been considered to be inefficient by researchers who have associated the heritage management issues to Western roots³³. Ironically, according to S. Chirikure, Webber Ndoro and J. Deacon, the same researchers and practitioners have failed to develop theories and traditions of local heritage management to serve as the best alternative to the existing systems. The practitioners *hardly make efforts to develop theories and traditions of local practices of heritage management*³⁴. To some professional therefore, African matters in two distinct ways: in one way it matters as an example of regional management practices that are not found in other places while in the other way, the continent is only considered as a testing ground for ideas developed elsewhere (Ndoro, et al., 2018). The topic of our study and the comparative methodological approach taken aimed at finding a point of divergence between the two ways by not recommending a copy and paste approach to cultural resource management but digging deeper into the history behind each particular system under study then identifying the key elements that can enhance efficiency. To attain our objectives, the present study focused on selected examples from the two countries for reference.

Environmental Impact Assessment is currently ‘one of the few legal frameworks allowing for the protection of archaeological resources impacted by infrastructure. EIA has become a standard procedure for evaluating the impacts that infrastructure projects are likely to have

³³ Arezi 1998, Abungu 2006, Ndoro and Pwiti 2001, Chirikure and Pwiti, 2008, cited in (Ndoro, et al., 2018).

³⁴ Chirikure 2016 cited in (Ndoro, et al., 2018).

on the environment (Campbell 2000)³⁵, including cultural heritage and archaeological sites' (Arazi, 2011, p. 28). This is usually the case where there is a clear and more inclusive definition of the environment. A broad and holistic definition of 'environment' in the context of environmental impact assessment can be found in the Pacific context:

*EIA legislation in Pacific island countries and territories typically defines 'environment' to include natural and biophysical, social (people, culture, health, heritage, amenity) and economic aspects, as well as the relationships between these different aspects. This broad, holistic definition is particularly important in the Pacific context, with extensive customary land ownership and direct linkages between community livelihoods, subsistence lifestyles, natural resource conditions and sustainable and resilient development. The EIA Guidelines use the term 'environment' in line with this broad definition; i.e. references to 'environment' and 'environmental' encompass social and economic considerations.*³⁶

Despite the outspoken advocacy for environmental considerations and the need for cultural heritage protection, tension has always existed between development and conservation of the environment which has made the work of cultural heritage managers more difficult as

³⁵ Cited in (Arazi, 2011, p. 28)

³⁶ Strengthening Environmental Impact Assessment: Guidelines for Pacific Island Countries and Territories. Accessed on URL: <https://wedocs.unep.org/bitstream/handle/20.500.11822/9963/strengthening-env-impact-assessment.pdf?sequence=1&isAllowed=y>

they often don't get any support from the government. Governments only respond to demands by multilateral donor organizations who insist on the requirement for heritage impact assessment before they release funds (Prins-Solani, 2010, p. x). However, even in the projects funded by the World Bank, whose mechanisms are very thorough, it has been observed that 'many projects are being approved without any professional assessment and/or implementation of a cultural resource management plan' (Arazi, 2011, p. 28). Deirdre Prins-Solani³⁷ therefore calls on the civil society organizations, local communities and heritage organizations to lobby for the recognition and safeguarding of cultural values in the landscape in all development processes. They should put pressure on government and government agencies to set up smoother systems for mitigating negative impact and loss without negatively affecting national development goals (Prins-Solani, 2010).

The current infrastructural developments in Africa and Kenya in particular impose real threats and challenges to archaeological as well as cultural heritage conservation and management. In such a context preventive archaeology also referred to as contract, development-led or public archaeology is the best option that can ensure a reconciliation between development and conservation of archaeological heritage. N. Arazi proposes salvage, preventive or commercial archaeology also known as contract archaeology which "attests nowadays to the most widely practiced form of archaeology within Europe and the United States, especially since the application of the "polluter pays principle" (Arazi, 2011, p. 3)³⁸.

³⁷ Deirdre Prins-Solani was the Director, Centre for Heritage Development in Africa, Mombasa, Kenya

³⁸ "What is known as salvage, preventive or commercial archaeology attests nowadays to the most widely practiced form of archaeology within Europe and the United States, especially since the application of the "polluter pays" principle (Organization for Economic Cooperation and Development 1992) or the replacement

Development and cultural conservation are not necessarily antagonistic. Economic development and valorisation of heritage can be mutually reinforcing. Many archaeological sites in Africa were discovered during railway and road building, mining, development of water projects and construction of hydroelectric dams. There are numerous examples across Africa which have delivered interesting results. These include the Bakouma and Ndassima mining projects in the Central African Republic under AREVA and AXIMN multinational companies respectively whose rescue excavations led to the discovery of a number of sites rich in lithics, ceramics, megalithic monuments, hollows and rock art sites. However, preventive archaeology is not yet fully established in the Central African Republic despite there being a lot of development projects with elevated risks on the cultural and archaeological heritage (Ndanga, et al., 2017). In the case of Mpolongwé-Kribi in Cameroun, P; Nled and R. Oslisly provided the first results showing the discovery of a total of 37 hollow structures, 12 levels of occupation and a forge. There were also a lot of archaeological material characterised with a lot of ceramic remains, lithics, iron weighing about 392 kg and glass (Nlend & Oslisly, 2017). In Kenya, Sondu-Miriu archaeological impact assessment which was conducted by the National Museums of Kenya (NMK) in cooperation with the British Institute in East Africa (BIEA) delivered a great deal of archaeological material (Onjala, et al., 1999 , online 26 Feb 2010)³⁹.

Given the magnitude of development and the potential impact on cultural and natural heritage, Environmental Impact Assessment (EIA) and monitoring need to be part of

of governmental funding for rescue or salvage excavations by developer funding (Aitchison 2000)” (Arazi, 2011, p. 3).

³⁹ This is one of the case studies selected for this study and will be discussed in details in part III of this thesis in the chapter dedicated to EIA in Kenya.

development activities within the context of integrated conservation and sustainable development (Eboreime, 2008, p. 1). The close association between cultural heritage and development may yield positive results if the two can be unified by a clear, well integrated legislation and public policy framework.

N. Arazi has examined policies, methods and issues of compliance and noncompliance in relation to the safeguarding of archaeological cultural resources in Africa. Taking a comparative approach where the study compares the World Bank's physical cultural resources policy and the European Commission's policies, Arazi observes that issues of compliance still persist more particularly in regard to the management of Africa's cultural resources (Arazi, 2011). The choice of mobilising culture for national cohesion is a path that most African independence regimes failed to take and which is yet to be fully embraced. This is despite the role played by culture in the struggles against colonial rule and later on the numerous political challenges in most African countries whose foundations can be traced to cultural and economic roots.

While public archaeology is neither absent nor prevalent on the continent, there has emerged an unstoppable trend in heritage studies and protection where people demand the return of their past for their use and for the benefit of generations to come (Abungu, 2016, p. 47). According to Abungu, this can be attributed to the increased awareness in archaeology of the need to engage with the society within which archaeologists work as has been witnessed in the past two decades. Archaeologists have also shifted from the traditional archaeological research which was conspicuously elitist and was conducted in secrecy to a more inclusive approach. Today there exist partnerships and the voice of communities is also heard thus yielding to public archaeology where locals can also participate without necessarily being required to be knowledgeable in archaeological practice. For instance, during the

archaeological impact assessment at Sondu Miriu hydroelectric power project, there were local assistants who were integrated into the NMK-BIEA research team. However, public archaeology is prevalent in developed world and is yet to be fully embraced in the developing countries (Abungu, 2016, p. 46; Onjala, et al., 1999 , online 26 Feb 2010).

2.6.3 Integration of the cultural policy into development planning in France

In order to create a balance between development and the conservation of cultural heritage in France, there was first political good will which was expressed through establishment of commissions of enquiry whose findings led to the passing of sound public policies. This was well integrated into sustainable development by integrating the cultural policy into developmental sectoral policies. The roadmap to the preventive archaeology law of 2001 was born out of these efforts through a series of commissions of reports that were realised by different scientific teams. It took time and commitment with the European Union setting the centre stage for the enactment of such policies through the European Convention on the Protection of the Archaeological Heritage passed on 16th January 1992.

From the French example, it is worth observing that the amount of resources that can be set aside for the conservation of cultural heritage cannot be compared to the amount of resources that a government spends on other sectors such as agriculture, management of environment, public health, education, infrastructure, housing and national security yet cultural issues are very crucial for the effective realisation of these development goals. Developed countries such as France, the United States of America, the United Kingdom and Japan, to mention but a few, realised the interplay between cultural and environmental issues versus sustainable development plans. They acknowledged that cultural heritage is a living resource whose life is dependent on the decisions that are taken from day to day in the process of development

and urban planning. To ensure its future, those states put in place relevant policies, protection laws and institutions whose mandate is to preserve the society's cultural resources for posterity. As such, the society's inventions and innovations find a true point of reference. However, the development of protective policies and archaeological heritage management systems in the western countries and by extension in the rest of the world faces serious challenges from various factors both within and outside the archaeological research field. The most recent as well as current challenge to cultural and archaeological management systems is the world economic recession which has been witnessed since the wake of the 21st century. At a session entitled "*Archaeology and Global Crisis: multiple impacts, possible solutions*", held on the 17th of September 2009 at the 15th annual meeting of European Association of Archaeologists (EAA) in Riva del Garda in Italy, researchers focussed their attention on the impact of the economic crisis on archaeological research, legislation and archaeological heritage management across various western countries⁴⁰. The meeting was intellectually sponsored by three committees of the EAA which are:

- The Committee on archaeological legislation and organization in Europe chaired by Christopher Young and Jean-Paul Demoule.
- The Committee on professional associations in archaeology, chaired by Kenneth Aitchison. It is the committee that is concerned with the working practices in European archaeology and how they are being affected by the economic situation.
- The Working party on "ACE-Archaeology in Contemporary Europe: professional practices and public outreach" (Schlanger & Aitchison, 2010, p. 7).

⁴⁰https://www.academia.edu/20634249/The_end_of_a_golden_age_The_impending_effects_of_the_economic_crisis_on_archaeology_in_higher_education_in_the_UK?email_work_card=title

In France, cultural legislation in the field of archaeological research is protected by diverse texts, regulations and legislations. These include protection drawn from the criminal protection (*protection pénale*), civil or state protection, those related to the legislation on historical monuments, urban planning and those resulting from international acts (Rigambert, 1996, p. 113).

2.7 Conclusion

Culture is the foundation of a nation as can be attested to by the emergence of the notion of cultural heritage in France during the French Revolution. Based on the cumulative civilizations as expressed through shared values, language, both tangible and intangible heritage, culture gives a national identity and hence a key factor of national cohesion. The enactment of the first law about the control of archaeological research in France occurred during another historic event, the Second World War, and its aim was to prevent any excavation by the German who were occupying the French territory by then.

The role of individual personalities like Victor Hugo and Jérôme Carcopino in France was paramount to the ultimate establishment of the legal and regulatory framework on cultural and archaeological heritage management. In Kenya the personalities that have played a major role in the development of archaeology and establishment of heritage institutions include Louis Leakey and Mary Leakey who are among the founders of Kenyan archaeological research. Their son Richard Leakey was a palaeontologist, an archaeologist a politician and an environmental activist whose contributions extend both to understanding

our prehistoric past and to the protection of the environment for our future (New World Encyclopedia, 2019)⁴¹.

⁴¹ **Richard Erskine Frere Leakey** (born December 19, 1944 died January 2, 2022) was a Kenyan palaeontologist, archaeologist and an activist, famous for his discovery of "Turkana Boy" and his fight to preserve wildlife of the African continent. The son of well-known paleoanthropologists Louis and Mary Leakey, Richard, along with his wife and daughter, has continued the family tradition of research in East Africa. In addition to his contribution to our knowledge of human evolution, Richard Leakey has devoted his life to wildlife preservation and environmental activism. Thus, his contributions extend both to understanding our prehistoric past and to the protection of the environment for our future (New World Encyclopedia, 2019).

CHAPTER THREE

CULTURAL HERITAGE MANAGEMENT DURING THE COLONIAL PERIOD: FROM SHRINES TO ANTIQUITIES, HISTORICAL MONUMENTS AND MUSEUMS

Introduction

This chapter focuses on an important period in the history of cultural heritage management in Africa which was very decisive in the laying down of the contemporary systems of cultural heritage management. It is a brief history of transition from early management systems to the contemporary systems. The arrival of the Christian missionaries, the scramble and colonization of Africa had far reaching impact on identification, protection and management of heritage in Kenya. The chapter analyses step by step the social, economic and political developments that ushered in the new era of cultural heritage management in Kenya. The aim of this chapter is to identify and describe the foundations and development of contemporary Kenya's cultural diversity and cultural management systems. It is interested in:

- i. Who were the major actors in the development of Kenya's cultural diversity and cultural heritage management systems?
- ii. What objects, items, or sites were considered for study and conservation as actual representations of Kenya's cultural past?
- iii. What were the short-term and long-term impacts of colonialism on cultural heritage conservation and management systems in Kenya?
- iv. When and where were formal cultural management systems established?
- v. Why were some objects or sites considered than the rest?

- vi. How were different members of the society involved in the process of patrimonialization?
- vii. How did the ideological orientation of archaeological research in Africa during the colonial period affect the later development of the discipline and its role in the writing of Kenya's and African history in general?

The chapter looks at the development of the administrative structures of cultural heritage management and archaeological research in Kenya with reference to the French system since pre-colonial to the end of the colonial period. The chapter then pays attention to the colonial period due to the following reasons:

- i. the precolonial systems of cultural heritage management underwent significant transformation during the colonial period especially through the definition, classification and the consequent centralization of cultural heritage in most of the African states;
- ii. it was during colonial period that archaeology was introduced in the majority of African countries and Kenya in particular;
- iii. archaeology as a scientific discipline witnessed important developments during this particular time not only in Africa but also in the United States of America, the Middle and Far East as well as in the Western European countries including France and;
- iv. the decolonization process was very decisive in the development of archaeology as a scientific discipline and the establishment of cultural heritage management systems in the newly independent African states. This was based on Pan Africanism, which was manifested through the process of *africanisation*. The discipline also acquired new ideological dimensions and perspectives from the then emerging African intellectuals in the social and natural sciences.

This chapter therefore lays the foundation for this study as it seeks to address the foundations upon which archaeological research was developed and the evolution of cultural heritage management system in Kenya.

In order to bridge the gap between the traditional African custodianship, early cultural heritage management systems and the development of archaeology and modern systems of cultural resource management, the chapter takes the study back to the 19th century. This was the time when archaeology was born out of the activities of state officials and armatures through important historical events during the 19th century that had a greater impact and significance to the development of the discipline globally. It was also in the 19th century that first legal frameworks on archaeological disciplines begun to emerge in the Western world before being introduced to the rest of the world through colonial regimes. The chapter then progressively looks at the evolution of the administration and management of archaeological research and heritage conservation systems throughout the 20th century up to the second half of the 20th century. This chapter can therefore be broken into three main areas of focus which have been subdivided into major sub-headings; the early cultural heritage management systems, historical evolution of cultural heritage management, development of archaeology as a discipline, and cultural heritage management and archaeological research during the colonial period.

3.1 Early Cultural Heritage Management in Kenya up to the 19th century

Kenya has rich cultural and natural heritage that dates back to the origin of humanity. There are a lot of historical monuments and archaeological sites spread across the country with the coastal region possessing a significant number of historical monuments some being World Heritage sites with many archaeological sites are spread in the hinterland. Apart from

historical monuments and archaeological sites, there are numerous religious sites that have served and still serve as centres of religious rituals, sacrifices and worship within various Kenyan communities. Such sites have been very important in the conservation of intangible heritage in various communities and a good testimony of public participation in cultural heritage conservation and transmission of cultural values across generations.

Since the beginning of the first millennium the East African coast started to interact with the external world through contacts across the Indian Ocean and regional long distance trade (Pradines, 2017). The inhabitants of the Kenyan coastal region were in contact with the outside world for a very long period of time before the establishment of colonial rule. They interacted with Arabs, Europeans and communities along the Indian Ocean such as the Asians (Ndeti, 1975). Such contacts greatly enriched the culture of the East African Coast (Pradines, 2017) and enabled its history to appear in some of the earliest records about Africa. Written documents that were found along the East African coast date back to two thousand years ago and consist of various categories.

The earliest documents that talk about the East African Coast include the writings of historians, travellers and geographers. Greek and Latin written works of Aristodemus, Herodotus, Polybius and Strabo talked about Egypt while more accurate information about Egypt, Ethiopia, the Horn of Africa and the East African Coast appearing after the advent of Christianity (Ojany & Ogendo, 1988 (1973), p. 2). They include:

- (i) Ptolemy's Geography (c.140) edited by Y. Kamal as *Monumenta cartographica Africae et Aegypti* (16 volumes Cairo/Leyden 1926-1951);
- (ii) *The Periplus of Erythraean Sea* (c. 230) edited by F. Muller as *Geographi Graeci Minores* (Paris 1853) and;

(iii) *Topographica Christiana* (c.535) by Cosmas Indicopleustes.

Greeks and Roman writers referred to East African Coast as *Azania*. Arabs used the term *Zenj*, which meant the land of the black people, to describe what was later called Kenya and Somalia coast. The Zenj Empire was founded about A.D. 998 and the present Sanye and Boni ethnic groups are probably its only known descendants. Rhapta, near Rufiji delta was its best known town (Ojany & Ogendo, 1988 (1973), p. 2).

3.1.1 Cultural significance as an unwritten cultural policy in precolonial Kenya

Cultural institutions that existed in Africa and more precisely Kenya during the precolonial period were generally synonymous with the social, economic and political organization of each society. As elsewhere in the world, most of the Africa's cultural sites sprung from religious practices and rituals. Most of the sites that were discovered, studied then conserved during the colonial period emerged from religious centres such as shrines, places of worship or centres of religious rituals set aside for offering sacrifices to supernatural powers that were believed to be sources of a community's livelihood. The development of early cultural heritage management systems was greatly influenced by natural phenomena and environmental preoccupations that aimed at the sustainability of an ecologically viable ecosystem (Ndeti, 1975). The socio-economic and political fabric of the African society was structured in form of cultural norms, practices and belief systems which were inherent and unique to each group within the society and which were transmitted from one generation to the other through oral traditions and apprenticeship. Political leadership and cultural management were merged into a system where leadership was based on one's cumulative knowledge and understanding of all aspects of the society's way of life. It was the cultural norms, values and belief systems whose disregard was an automatic disqualification from the exercise of power. Throughout Africa oral literature has demonstrated that a person who

ignored ones traditions was considered as a slave hence unfit to exercise power. In the Swahili oral literature there is a proverb that says '*Mwacha mila ni mtumwa*' which means that he/she who disregards or abandons his/her traditions is a slave.

In the early cultural conservation practices in Kenya the concept of 'cultural heritage' as it is understood in the contemporary conservation practices was not in use since it emerged in the twentieth century. Cultural resources were conserved and passed from one generation to another in different forms. In the case of places, most of them were preserved as shrines and protected through customary laws that guided the access and use of the property. Issues of accessibility and use of cultural places was easily regulated by strict rules that guided the kind of rituals that were associated with each site. Access was supposed to follow specific procedures which suggests that there were forms of training before one was entrusted with any task that would require him or her to access and use those shrines and religious places.

Before colonialism, for instance, Khami World Heritage site and related places in Zimbabwe were managed using traditional management systems to preserve their sacredness and spirituality. According to oral traditions Khami was a major Kalanga religious centre (Chirikure, et al., 2015, pp. 2-3; Robinson 1959). Spiritually, Sinamai and Chirikure argue that Khami was part of a network of ancestral sites connected by a tunnel (Chirikure, et al., 2015, p. 3; Sinamai, 2003). Such sites were strictly prohibited from the general public since their accessibility and use was regulated by taboos and other barriers that were strongly adhered to by all members of the society. Failure to observe such taboos could attract serious consequences thus playing a central role in the entire management system that may not be even compared to the modern management systems regulated by penal law. As Pwiti observes, taboos were central to the management of Khami and related places (Chirikure, et al., 2015, p. 3; Pwiti, 1996) such that nobody was allowed to repair or rebuild collapsed walls

and even cut trees because such actions disturbed the resting ancestors (Chirikure, et al., 2015, p. 3; Sinamai, 2003).

In Europe, early cultural heritage conservation revolved around the concept of antiquities and historical monuments. The concept of cultural heritage however, as it is applied in relation to memory and history was introduced in the French law for instance in the 1970s. The notion of historical monuments was used to refer to architectural heritage as manifested through buildings such as castles and cathedrals. It also referred to objects especially those with artistic and historical interest (Cornu, 2014, p. 198).

3.2 Pre-colonial migrations, socio-cultural, economic and political organization of the people of Kenya and its cultural landscape

Among the first major scientific steps that were initiated immediately after independence concerned the research and documentation of the history of migration and settlement of the people of Kenya (Ndeti, 1975). This opened the chapter in Kenyan history of local historical paradigms with less efforts to research and documents the national and nationalism history (Hughes, 2014). For this purpose this study cannot ignore such section of the Kenyan historiography since the emergence of major development projects coupled with efforts to incorporate cultural objectives into the sustainable development planning can offer a good opportunity to rewrite local history and the develop national history.

Migration as a human phenomenon can be defined as the movement of people from one place to another due to various factors including but not limited to ecological changes in their initial habitat, internal or external strife and spirit of adventure among other factors. Migrations, linguistic interactions, social, cultural and economic exchanges as well as political organization of pre-colonial African communities and the subsequent settlement of

the various linguistic groups provided a clear and elaborate foundation of the cultural landscape of the continent.

Kenya's cultural landscape was greatly influenced by the migrations and interactions of different groups of people from different language groups. This formed the basis of the emergence and development of Kenya's cultural diversity. This diversity, however, rendered it difficult to establish a cohesive and well-coordinated national cultural infrastructure. The result was a fragmented cultural infrastructure characterised by a complete lack of communication between the various cultural components (Ndeti, 1975, p. 43). Fragmented cultural infrastructure coupled with the divergent modes of historical understanding in African history and the absence of documentary evidence have made the work of African historians, anthropologists and archaeologists both exiting and very complicated at the same time.

The social, political and economic interactions during and after the migration and settlement of the people of Kenya led to what we can refer to as the cultural map of the country. Throughout Africa migration routes and linguistic interactions such as borrowing of words constitute a key aspect in the study of the historical and cultural past. Some communities became much aware and attached to their common heritage thus preserving the main cultural sites that were considered as important in shaping their history. This was the case, for instance, of the Mijikenda Kayas in Kenya. However, due to the challenges of oral history not all communities were able to keep a record of the historical account of their past. This has had an impact on the conservation of cultural sites in the country. The main problem in this case concerns the issues of the identification of the original users or the builders of certain monuments for instance Thimlich Ohinga (discussed in part three of this thesis). African history, perhaps more than other domains of history according to B. M. Cooper, has

had to be inventive in its sources and eclectic in its approach to evidence. Africanist historians, as Cooper justly observes, rely on linguistic, archaeological, ethnographic, genealogical, oral-performative, and oral-interview evidence to complement the documentary sources which are conventionally understood as primary sources within history as a discipline. (Cooper, 2005, p. 191). The absence of a coherent oral history, limited documented written documents, poor system of archives and limited archaeological research have thus made it difficult to comprehensively document the history of Kenya, especially the cultural and social history of some communities that were marginalised and given a peripheral role in the reconstruction of the country's history.

The linguistic and socio-cultural structure of the precolonial Kenyan societies reflects the manner in which the inhabitants were prepared to adapt to their diverse environmental challenges (Ndeti, 1975, p. 14). The study of paleo-environmental changes has been key to the understanding of the human technological and biological evolutionary history. Natural and environmental phenomena played a fundamental role in the entire process of the migration and settlement of human populations across the world. The same natural and environmental factors were responsible for the emergence and development of early civilizations. Study shows that the interest in the ancient civilizations in the Mediterranean, the Middle-East, Asia and Africa especially the Northern part of Africa, was instrumental to the development of archaeology and conservation of some of the cultural heritage properties with outstanding values in these parts of the world. Since the 19th century archaeology in Greece was characterised by competition among English and French architects (Gran-Aymerich, 1998, pp. 178 - 202) and this competition continued at a different magnitude even after the 19th century (Demoule, 2020, pp. 143 - 153).

3.2.1 Social, Economic and Political Interactions between Eastern Africa Coast and the outside world

The development of robust cultural heritage management systems cannot happen without the understanding of the underlying cultural fabric that can best be uncovered through the systematic study of the underground archives and the vice vasa. There exists a lot of literature on the social, economic and political interaction between the East African coast and the outside world prior to the 19th century. This literature is just but an iceberg when put in the context of discourse in the global or world history and archaeology. In the forward to the book *L'Afrique Ancienne: De l'Acacus au Zimbabwe*, F.-X. Fauvelle begins with an interesting and challenging question asked by a spectator after a conference on African history: 'Are you sure that this continent has got a history?' (Fauvelle, 2018, p. 5). This question can summarise the dilemma in which the history of the continent is found today despite the efforts made towards its documentation.

Archaeological research has greatly contributed to the study and understanding of the settlements of eastern Africa's coastline through cross referencing with written and oral sources that add detail for specific places and times. J. Hawkes⁴² and S. Wynne-Jones⁴³ observe that from the 7th century onwards, archaeology has demonstrated the existence of a series of densely settled villages on the littoral and offshore islands (Hawkes & Wynne-Jones, 2015). The study has shown some of the earliest sites that demonstrate the contact between eastern African coast and the outside world between the 7th and 10th centuries (Figure 2: The coast of eastern Africa, showing 7th–10th century sites courtesy Stephanie

⁴² Jason D. Hawkes, Institute of Culture and Society, Aarhus University

⁴³ Stephanie Wynne-Jones, Department of Archaeology, University of York and Department of Archaeology and Ancient History, Uppsala University

Wynne-Jones. URL: <http://journals.openedition.org/afriques/docannexe/image/1752/img-1.jpg>

The study of coins and coinage along the eastern African coast has provided tangible evidence of early development of contacts between the societies along the eastern Africa coast and the outside world. J. Perkins observes that coins and coinage are an important class of evidence for understanding the economies, societies, and political histories of the Indian Ocean prior to the arrival of the Europeans in this region. A distinctive feature of these towns along the Swahili Coast was that they minted and used their own coins, probably from as early as the mid-9th century and in some places possibly up to the 15th century (Perkins, 2015).

The social, economic and political organization of the East African coastal communities was well structured around a common language and culture for quite a long period of time (Omar, 2018; Fauvelle, 2018, pp. 143 -169). The coastal civilizations were in direct contact with the Kingdoms of the interior of Eastern Africa and the Great Lakes Region which provided the market for the Long Distance and the Indian Ocean trade.

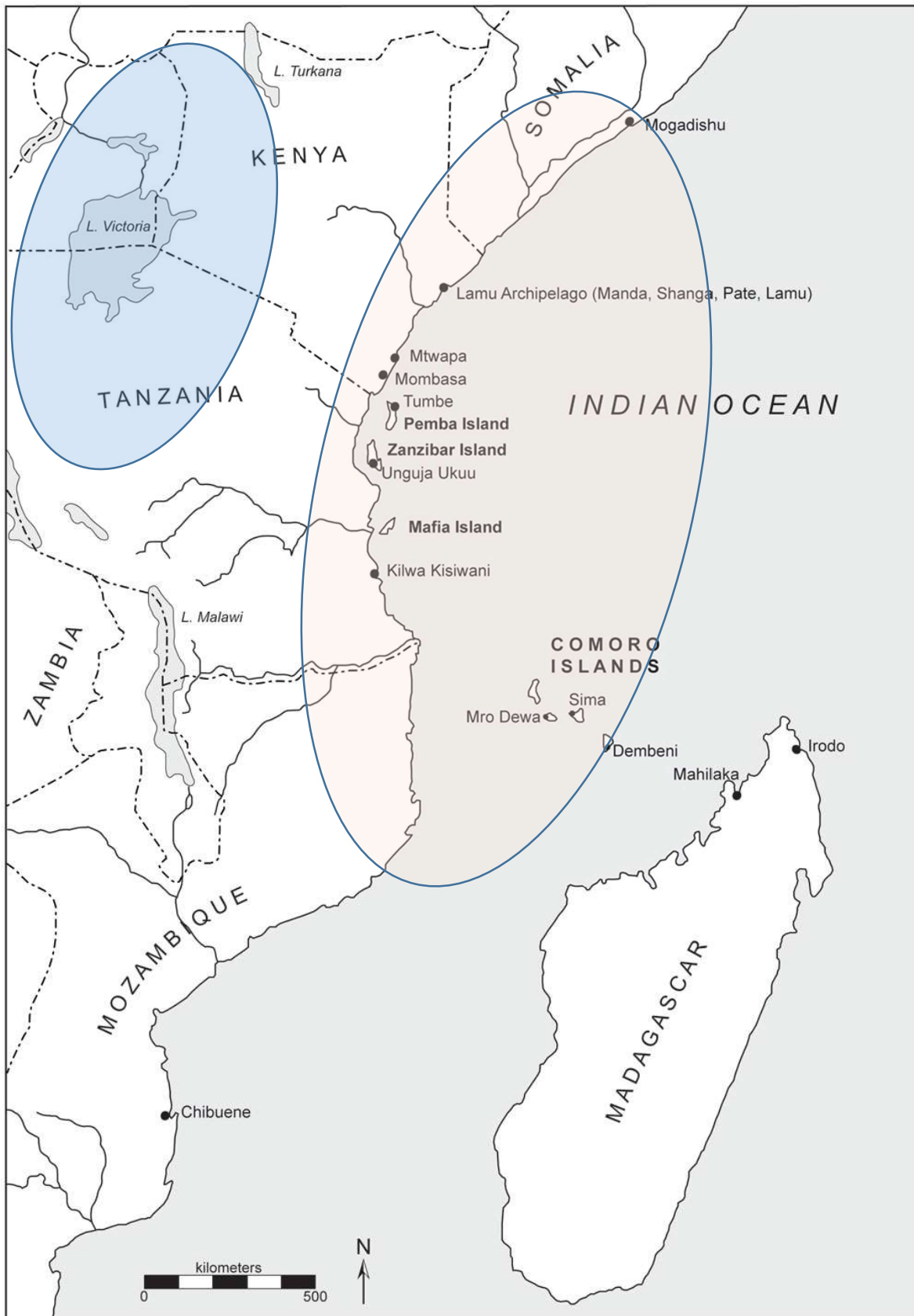


Figure 2: The coast of eastern Africa, showing 7th–10th century sites courtesy Stephanie Wynne-Jones. URL: <http://journals.openedition.org/afriques/docannexe/image/1752/img-1.jpg>

Presently sub-Saharan Africa is no longer considered as a dark continent which had no written history. Apart from the Egyptian hieroglyphics, there existed *Meroetic* writings during the antiquity (between 300 BC and 350 AD) with transcriptions of a language belonging to a Nilo-Saharan group of languages; *tifinagh* language. These comprised of various writings referred to as *lybicoberberian* and they date back to the 2nd century AD; or the Ethiopian alpha-syllabic type of writing dating back to the 4th century AD. The later was derived from a Saudi Arabic writing style whose first appearance can be traced to the Ethiopian-Eritrean plateau in the 7th century BC. Greek and Coptic writings existed from the medieval period. However, only two major poles developed literature of historic nature: the Ethiopian pole consisting of *Geeze* and alpha-Arabic Ethiopian writings on one side and the societies whose Islamic elite composed texts in Arabic writings. Local languages were later written in Arabic. On the East African Coast there existed Swahili city-states with Arabic writings (Fauvelle, 2018, pp. 375 - 401).

Due to limited material evidence, the challenges of oral and archival sources it is difficult to write a more cohesive and comprehensive precolonial and even colonial history of African societies from primary and more reliable sources. Triangulation and critical interpretation of the material evidence of the rich history of this part of the world is difficult due to gaps in the archaeological sources. Even in the western civilizations with a long history of written work there is still a lot that has been discovered since the development of contract and preventive archaeology (Demoule, 2019; Demoule, mars 2002; Demoule, et al., 2009d; Demoule, 2004c; Demoule, 2007; Demoule, 2020) and much more remains to be discovered.

The pioneer historians and archaeologists in Africa were faced with challenges relating to the ideology where they generally adopted a word by word comparative approach to African history. They thus justified themselves, according to F.-X. Fauvelle (2018), by coming up

with generalised statements such as Africans *also* have a history, in Africa we can *also* trace a history of great civilisations, of towns, of women, of commerce, of peasantry, of technologies, of art, of food. Some historians, using the same analogies went to the extreme of even negating the existence of such a history by trying to find the similarities between the past of the continent and that of the rest of the world especially Europe based on the absence of written sources. This methodological shortcoming left limited room for independent reasoning about the discoveries that were made across the continent (Fauvelle, 2018, p. 5). The situation was worsened by technological limitations like was the case of Louis Leakey in his endeavours to excavate and document sites in the Kenya Highlands during the colonial period (Sutton, 2007). The pioneer archaeologists in Africa, just as in the Middle East and Asia, had also to grapple with challenges of understanding the native languages within each area of study. They had to understand local languages, for instance, so as to interpret the epigraphic inscriptions and rock art engravings in order to decipher the meaning and reconstruct history from the material remains of the past. The contribution of ethnography and ethno-archaeology greatly improved the scientific interpretation of the various technological developments across the world. This pinpoints to the fundamental role that language plays as a vehicle through which cultural, artistic, scientific and technological inventions and innovations are preserved and transmitted from one generation and society to another. The understanding of Iron Age technology and various pottery industries went hand in hand with the understanding of the contemporary society within whose territory the discoveries were made.

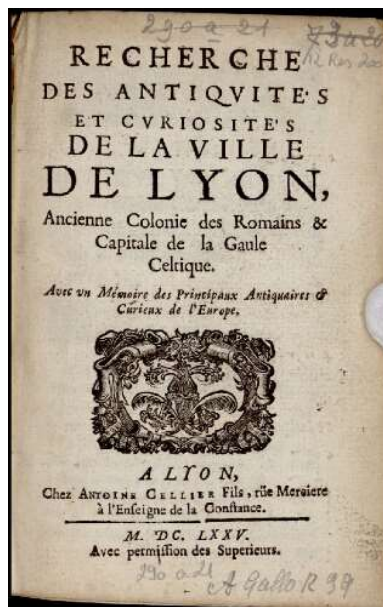
The arrival of explorers, traders, missionaries and the establishment of the British administration first through the Imperial British East African Company (IBEACo) then the colonial administration had a lot of impact on the conservation of the African cultural

heritage. The history of the contacts between the East African Coast and the outside world especially that of long distance trade, slavery and slave trade is well documented with the emergence and development of the Swahili culture being one of the topics that have attracted a lot of research in this area (Vernet, 2009; Fauvelle, 2018; Omar, 2018).

3.3 Historical Evolution of Cultural Heritage Management in France up to the 19th century

The interest to protect the material remains of the past in France appeared towards the end of the medieval period. Early efforts towards the conservation of cultural heritage especially archaeological heritage in Europe and precisely France were undertaken by the antiquarians whose interest was the search for and collection of the antiquities. Gradually, as the attention shifted from the collections to that of a particular object with observation of specific rules, archaeology developed as an independent discipline, separate from that of collectors, philology and history of philosophy (Gran-Aymerich, 1998, p. 25). The change came as a result of the growing interest in the history of a people based from the material evidence such as monuments and objects. In the ancient Gallo-Roman city of Lyon, for instance, the interest in its historic past did not emerge with the modern interest in the importance of cultural heritage. On the contrary, this ancient religious and economic medieval metropolitan city developed an early interest to establish its past roman roots as a capital and cradle of Christianity in the land of the Gallic people. It was the search for a federal sanctuary and an ancient amphitheatre that would gradually direct this dialogue with the past (Lasfargues, 1985, p. 147).

Among the earliest works on the antiquities of Lyon city was a book written by Jacob Spon which was published in 1673⁴⁴ and 1675 under the title:



Recherche des Antiquités et curiosités de la ville de Lyon, ancienne colonie des Romains et capitale de la Gaule Celtique : Avec un Mémoire des principaux antiquaires et curieux de l'Europe

Figure 3 A cover page of a book written by Jacob Spon, published in 1675. *Source: Collection of scanned documents from the French National Institute of History of Art (INHA)*⁴⁵.

⁴⁴ The date of publication of this book as presented on the official website of the National Institute of History of Art (INHA) differs from that stated by J. Lasfargues (Lasfargues, 1985, p. 149) under the same title. This could imply that the book was edited and published in 1675 as the two have different cover page but the same title. This is because the exact dates of publication as written on the book covers in roman numerals are MDCLXXIII which gives us 1673 and MDCLXXV which gives us 1675. In this study we have consulted the one which was scanned and put online by INHA on its official website thus the reference date of 1675 has been used in the citation.

⁴⁵ This image was downloaded from the website of National Institute of History of Art (INHA) under the title: *Recherche des Antiquités et curiosités de la ville de Lyon, ancienne colonie des Romains et capitale de la Gaule Celtique : Avec un Mémoire des principaux antiquaires et curieux de l'Europe* on URL :

J; Spon has been credited as the first one to have accorded the term ‘archaeology’ its modern sense in 1679. He recommended a critical method for the study of inscriptions and supported the validity of archaeological testimony/evidence. It was from then that archaeological science was established and organised first in the domain that was more privileged by the humanists of the Renaissance period, in the Greek and Roman civilisations then gradually in the in the Middle East. In the above work J. Spon asks a fundamental question which triggers researchers to reflect on the sources:

May someone tell me why so much struggle to search for ancient history from broken marbles or half-erased stones if we can learn it from the books, that we have in our shelves which are plenty and easier to understand? [Author’s translation from 17th century French] ⁴⁶.

This is a question that is still very relevant even today especially in the African context where issues of sources of history are still of great concern to the researchers in the related social sciences. Contrary to the European context of the 16th and 17th centuries where, as observed by J. Spon, there were plenty of written sources such as books, a researcher in Africa today cannot depend on such sources. Some of the great scholars of the 16th and 17th century such as Erasmus, Julius Caesar Scaliger (1484-1558)⁴⁷, Meric Casaubon (1599-1671)⁴⁸, Justus

<https://bibliotheque-numerique.inha.fr/collection/item/12773-recherche-des-antiquits-et-curiosits-de-la-ville-de-lyon->

⁴⁶ *Mais quelqu’un me dira, pourquoi tant de peine de rechercher l’histoire ancienne sur les marbres rompus ou à des pierres à demi effacés si nous pouvons l’apprendre par les Livres, que nous avons dans nos Cabinets qui sont & plus ample, & plus aisé à comprendre?* (Spon, 1675).

⁴⁷ Jules César Scaliger (1484-1558) born at Riva, Italy on 23rd 04, 1484 and died at Agen (Lot-et-Garon) France on 21st 10, 1558 was a humanist philologist of Italian origin who did translations from ancient Greek to Latin. https://data.bnf.fr/fr/12060425/jules_cesar_scaliger/

⁴⁸ Meric Casaubon (Méric Casaubon) also known as Méricus Casaubonus (1599-1671) was a Swiss national and speaker of Latin. He wrote his works in French, English and did translation from ancient Greek to Latin.

Lipsius (1547 - 1606)⁴⁹, Claude Saumaise (Claudius Salmasius ,1588 - 1653)⁵⁰ and Onofrio Panvinius [Onofrio Panvinio (1530-1568)] were the great minds behind such paradigm shift. Palvinus, for instance, was an Italian scholar, a specialist of the Augustinian period of the Antiquity who was both a historian and an archaeologist that worked as an editor at the Library of Vatican (Bibliothèque nationale de France-BnF, 2018)⁵¹.

J. Spon's work sought to write the ancient history in a more original manner not necessarily through simple and blind reliance on the then existing literature in books but by returning to the primary sources. This shift in the method towards primary sources of history turned the attention to the antiquities which privileged the works of art, monuments, epigraphic inscriptions, various objects such as medals and worked stone material. The result was a discovery of a lot of errors committed by some historians who wrote their works without critically cross-checking the authenticity and the reliability of their sources. This was a real interdisciplinary approach to social science research. For instance, it was discovered that some authors did not know the names of the historical figures and where the names of some

⁴⁹ It was interesting to know a little bit of the biographical data about the people that J. Spon mentioned in his work so as to help us understand the level of development of archaeological, artistic and historical research as well as the relationship between various disciplines.

The name Justus Lipsius (1547-1606) was also written in the following forms:

Joest Lipss (1547-1606)

Justo Lipsio (1547-1606)

⁵⁰ Claude Saumaise (Born at Semur-en-Auxois France on 15th 04, 1588– died at Spa Belgium on 3rd 09, 1653) was also known by the following names:

Claudius Salmasius (1588-1653)

Franciscus Francus (1588-1653)

Gelasius de Valle-Umbrosa (1588-1653)

Alexius a Messalia (1588-1653)

Walo Messalinus (1588-1653)

Walo Messalinus (1588-1653)

Simplicius Verinus (1588-1653)

Source : French National Library (BnF) on URL: https://data.bnf.fr/fr/12003602/claude_saumaise/ accessed Friday, 03 April 2020 CET.

⁵¹ The name Onofrio Panvinio was also written in forms such as Onuphrius Panvinius (1530-1568), Honofrio Panvinio (1530-1568) Scholars of the renaissance were important in influencing the works of historians and antiquarians. This information was accessed from the online resources of French National Library on the URL: https://data.bnf.fr/fr/13090310/onofrio_panvinio/

of the key historical figures such as the various leaders and rulers in Roman Empire were mentioned they were not consistently used in the written work. An individual historical figure would bear a name which could be presented in different forms by different authors. *Lamprides and almost all the Latin authors would refer to the son of Macrinus, Diadumenus instead of Diadumenanus* [Author's own translation from 17th century French] (Spon, 1675).

The renaissance and enlightenment scholars played a crucial role towards the development of an interest in archaeological resources. This was the formative period which laid the foundations for what would later be referred to as archaeology and cultural heritage management. As cultural resources which reflect all aspects of human life, archaeological resources as sources of history when carefully sorted and studied gives birth to a much more reliable scientific work in social science. This can be attested to by the work of Onofrios Palvinus which immensely contributed to the modern history of the ancient Rome, more precisely that of the roman triumph and early modern English culture (Miller, 2001).

In 1546 *fasti triumphales* were discovered. These were *tablets from the Roman Forum listing triumphs*⁵² *from the foundation of the city to the end of the republic* (Miller, 2001, p. 47).

3.3.1 The French Revolution and the call of Victor Hugo

During the French Revolution there was a change in perspective where cultural heritage phenomenon was diverted towards the political centralization of power (Tanchoux, 2011, p. 45). It was during the revolutionary period that the notion of cultural heritage as we know it

⁵² In ancient Rome, a triumph was the procession of a victorious consul from the Campus Martius, around one or more circuses, through the Forum, where an encomiastic oration might be delivered, to the Temple of Jupiter Capitolinus, where the consul offered sacrifices (Miller, 2001, p. 1).

today emerged between 1789 and 1830 (Direction de l'information légale et administrative, 2013) because the French Revolution created the sense of a common past in the paradox where the revolution was destroying a great deal of the country's heritage. It was in the context of massive destruction of historical monuments that Victor Hugo took the initiative to declare a war against demolishers (*Guerre au démolisseurs*) in 1825. Victor Hugo called for action against the hammer that was mutilating the face of the country:

Let us repeat here what we said about it in 1825: 'We must stop the hammer that mutilates the face of the country. A law would suffice; let it be done. Whatever the property rights, the destruction of a historical and monumental building should not be allowed' (Demoule, 2005).

The political centralization of power which was widely used by the old regime, was reinforced on November 2, 1789 when the property of the Church was made available to the Nation by the decree of the Constituent Assembly. The public approach to heritage in France is thus a recent phenomenon that finds its roots in the French Revolution. The creation of a secular, universal, egalitarian and democratic heritage was supposed to allow for the construction of a new national culture that was both very educative for the citizen and unifying for the country (Tanchoux, 2011, p. 45).

On September 7, 1790 the National Archives were created by decree. The Monuments Commission was created on October 13, 1790, to study the fate of 'monuments of the arts and sciences'. The commission was created as a result of the introduction of a motion by Charles de Talleyrand at the Constituent Assembly about the conservation of masterpieces of the arts. After creating the Monuments Commission, there was the publication of an

instruction concerning the conservation of the manuscripts, monuments, statues, tables, drawings, and other objects coming from the furniture of ecclesiastical houses, and forming part of the national cultural goods was put in place on November 22, 1790 (Direction de l'information légale et administrative, 2013).

In 1792, two events that marked an important stage in the history of the French cultural policy took place. On August 14, 1790 the Legislative Assembly passed a decree authorizing the destruction of the symbols of the old regime. Then, on September 16, the Assembly voted to preserve 'masterpieces of the arts' threatened by the revolutionary movement (Direction de l'information légale et administrative, 2013). These two very particular legislative actions clearly demonstrate the political nature of cultural heritage as a product of political choices. In this case the choice was not about artistic or monumental characteristics, it was about which art or monument and which cultural symbol to protect. The selection criteria was simple as it was already inscribed in the prevailing historical context and revolutionary ideals.

On June 4th 1793 Joseph Lakanal (1762 - 1845) asked for punishment for the degradation of public monuments in his report on the protection of monuments of Fine Arts. This was a step towards the adoption of a penal code concerning cultural resources. In the same year, July 27th, a decree concerning the Museum of the Republic (*Le Muséum de la République*) was issued. On October 24, a decree was adopted to limit abuses aimed at eliminating all signs of royalty and feudalism in gardens, parks, enclosures and buildings. The latter decree was a result of a report presented by Charles-Gilbert Romme (1750 - 1795) before the National Convention, on behalf of the Public Education Committee (*Le Comité d'instruction publique*), concerning 'official vandalism' (Directorate of Legal and Administrative Information, 2013).

On March 15th, 1794, an instruction was published, proposed by the Temporary Commission for the Arts and adopted by the Committee for Public Education, on how to do the inventory and conserve all the objects that could be used for the arts, sciences and education. Then on June 25, 1794 the law concerning the organization of archives established with the National Representation. On August 31st, 1794 Father Grégoire presented his Report before the National Convention on the destruction carried out by vandalism and on the means of suppressing it. He pleaded for the conservation of the 'property of the people'. The same day the decree concerning vandalism was adopted (Direction de l'information légale et administrative, 2013).

In the year 1795, nationalized civil buildings were assigned to the General Council of Civil Buildings which was a state service that was created for that purpose (Michel & Maréchal, 2008).

On October 26th, 1796 there was the creation by law of archive services in each district (*department*). Thereafter, the Minister of the Interior Jean-Antoine Chaptal presented his report to the consuls of the Republic on the creation of provincial museums which was followed by the adoption on September 1st 1796 of a consular decree. Subsequently Alexandre Lenoir put together all the works that he secured from destruction thus creating at the Parisian convent of the Petits-Augustins the museum of French Monuments (Michel & Maréchal, 2008).

At the Restoration this work continued culminating into a royal ordinance to reorganize museums on July 22nd, 1816. The first inventory of monuments was also published at the same time (Direction de l'information légale et administrative, 2013). The introduction of the inventory system and the application of the term historical monument ushered in a system

of protection whose main focus was on monuments with much emphasis on the aesthetic and architectural values of the buildings. This was a common trend across the western world with a lasting impact on the rest of the world when the same were transferred by colonial governments and applied in the colonies forming the genesis of legal protection of cultural heritage in most of the African countries including Kenya.

3.4 Development of archaeology as a scientific discipline

Archaeology as a scientific discipline has its roots in the activities of the antiquarians since the Renaissance period. Having been strongly attached to philology, archaeology progressively developed into a scientific discipline whose rapid evolution was remarkable in the first half of the 19th century. Major historical events of the time played a key role in the development of archaeological investigations, for instance the Egyptian expedition (1798-1801) and the discovery of hieroglyphics by Jean-François Champollion in September 1822 as well as the discoveries in Mesopotamia by Paul-Emile Botta at Khorsabad in 1844 (Gran-Aymerich, 2009, p. 7).

Nationalism and the conquest of other countries contributed to the development of the discipline across the world and more particularly in Africa. This was the case of those countries that were deemed to have a significant amount of archaeological material that was necessary for the study of ancient civilizations. The development of archaeological research in Algeria for instance correlates with her conquest and the consequent colonial policy that was put in place (Gran-Aymerich, 2009, p. 10)⁵³. The French interest in the East and North

⁵³ M. N. BOURGUET, B. LEPETIT, D. NORDMAN, M. SINARELLIS. *L'Invention scientifique de la Méditerranée. Egypte, Mérie, Algérie*. Paris, éditions de l'Ecole des hautes études en sciences sociales, 1998, cited (Gran-Aymerich, 2009, p. 10).

Africa started in the 18th century through the efforts of some exceptional scholars, epigraphists, and philologists who were committed to the interpretation of epigraphic inscriptions and identification of ancient languages. Epigraphic inscriptions discovered in Tunisia in the years around 1820, followed by more discoveries in Algeria around 1830 unleashed the interest in the civilizations of the people of North Africa (Gran-Aymerich, 1998, p. 64).

Besides, there were expeditions by travellers who developed the interest in research of the ancient civilizations in the Near East. The rediscovery of Nineveh was made by the very first known European traveller in the Near East, Benjamin son of Jonah, a Jewish rabbi of Tudela, in the kingdom of Navarre⁵⁴. In the 12th century A.D. (1160—1173) he travelled to Palestine, from where he crossed the desert by way of Tadmor, crossed the Euphrates, and journeyed on to the Tigris, where he visited the Jews of Mosul (Pallis, 1954). In 1779 one of France's most famous geographers, Jean Bourguignon d'Anville established as a fact that Nineveh had been situated opposite to the city of Mosul (Pallis, 1954, p. 5). In his account Bourguignon d'Anville noted that '... the remnants of Nineve are conserved on the opposite [river] bank or the left of the river and that the oral tradition about the preaching of Jonah is not yet forgotten over that place' {Author's translation from French}⁵⁵. Such contributions left a significant impact on the development of archaeology as a science.

⁵⁴ It is noteworthy that the Kingdom of Navarre covered the region between the present day France and Spain and one of its kings, King Henry III became King Henry IV, King of France and Navarre.

⁵⁵ 'On sait que la rive opposée, ou la gauche du fleuve, conserve des vestiges de Nineve, et que la tradition sur la prédication de Jonas n'y est point oubliée'

Jean Bourguignon d'Anville, 1779, *L'Euphrate et le Tigre*, p. 88 cited in (Pallis, 1954, p. 5).

The period between the Egyptian Expedition, 1798 and the closure of Khorsabad excavations was marked by the emergence of archaeology as a ‘science of objects’ and ground activity. Scholars of the time called for more research to be done so as to bridge the knowledge gap that existed in their knowledge of the ancient civilizations of Italy, Greece, Egypt or Mesopotamia through the study of material remains, inscriptions, artistic objects and monuments that were collected by travellers, painters and architects from other places to France. Scholars engaged in the administrative work, philologists and epigraphists got the reinforcement of groundsmen who opened excavations of unmatched scale on the classical lands in Egypt and in Mesopotamia thus ushering in a new era. The new era emerges after 1848 whose rapture inspired the development of French archaeology with the launch by the State of new archaeological missions which begun in 1850. The State also elevated the status of l’Ecole Française d’Athènes which was created in 1846 and put in place new institutions that were responsible for the development of archaeology in metropolitan France (Gran-Aymerich, 1998, p. 109).

Various individuals who visited countries bordering the Mediterranean Sea were very instrumental in the development of archaeology. They include aristocratic individuals like Louis Linant de Bellefonds, Alexandre de Laborde and his son Léo, and the Duke of Luynes. The latter was a founding member of the Institute of Archaeological Correspondence⁵⁶.

⁵⁶ The Institute of Archaeological Correspondence was founded in 1828 thanks to the hereditary prince Frederick William of Prussia. The aim of the Institute was to collect archaeological news through the members in Italy and abroad, and to publish them in the two reviews, *Bullettino dell’Istituto di Corrispondenza Archeologica*” and the *Annali*. The international character of the Institute was guaranteed by a direction composed of Italians, Germans, French and English scholars and by the protection of Prince Frederick William. Over time, the Institute, and its library, became a center for archaeological studies in Rome and in 1871 became one of the scientific institutions of the new German Empire. Retrieved on URL: <http://www.aiac.org/en/history-aiac>

3.4.1 Nationalism in Europe, Exploration, Colonial conquest and the historical movement

The beginning of the 19th century was characterised by numerous explorations where some scientific explorers accompanied military expeditions of colonial powers. Conquering the past was considered as an element of conquering the mind which would in turn lead to an archaeological approach towards colonial domination (Gran-Aymerich, 1998). The events that were prevailing around that period of time had a great impact on the development of archaeology in Africa and Asia.

Gran-Aymerich notes that through the Egyptian expedition in 1798 by Napoleon, which was accompanied by a team of scientists in his quest for conquest, a new kind of colonial enterprise was emerging. The colonial states financed large explorations which were also prestigious operations because the conquest of the past was one of the elements of the conquest of the minds before turning them into tools of domination. Thus, Egypt, Mesopotamia, and the Levant gradually became lands of archaeological missions after Rome and Greece, in which the Western countries wanted to illustrate their power. The Far East also became the target of explorations in the late nineteenth century after the Middle East, as sources of collections which sometimes involved looting (Gran-Aymerich, 1998; Ndoro, et al., 2018, p. 7)⁵⁷. In Africa, according to Ndoro et al., Egypt, the Sudan and North African countries had a sustained history of looting of their cultural heritage.

⁵⁷ « Le début du XIXe siècle est celui des grandes explorations dont certaines accompagnes sans hésitation les expéditions militaires des puissances coloniales. Avec l'expédition d'Égypte (1798), et le collège de savants qui accompagnèrent Napoléon dans sa tentative de conquête, un nouveau type d'entreprise se fait jour. Les Etats coloniaux financent de grandes explorations qui sont aussi des opérations de prestige : la conquête du passé est l'un des éléments de la conquête des esprits avant d'être un outil de domination. Ainsi, de proche en proche, l'Égypte, la Mésopotamie, le Levant devient-t-ils des terres de mission archéologique dans lesquelles, après Rome et la Grèce, le principaux pays d'Occident veulent s'illustrer. Après le Proche-Orient, l'Extrême-

The beginning of the Franco-Prussian war had a significant impact on the organisation and development of French archaeology with a great role played by some personalities such as Ernest Renan and Albert Dumont in the organisation of scientific research in France (Gran-Aymerich, 2009, p. 203). The participation of Léon Renier in the *Corpus Inscriptionum Latinarum* of the Berlin Academy was postponed and the project of establishing a French College at Rome was aborted. In Greece, the archaeological excavations that were anticipated by Paul Foucart for Delphes were also nullified. The reforms of the Ecole Française d'Athènes, prepared since 1867 after the disappearance of its director, Amédée Daveluy, were as well postponed until 1874. At the same time, Charles Clermont-Ganneau who had promised to continue with the works of Ernest Renan pulled out from the mission in Phoenicia and Palestine (Gran-Aymerich, 2009, p. 203). This event had an impact on the approach of the State and scientists towards archaeological research in metropolitan France. Until then, focus was mainly on the overseas missions within the spirit of nationalism and colonial expansion.

However, the emergence of concrete administrative institutions responsible for archaeological heritage in France can be traced back to the period of Restauration. The Ministry of Culture in itself has its origins in the Ministry of Interior where was attached the section of Fine Arts (*Beaux-Arts*) since the year 1832. Prosper Mérimée became the Inspector of Historical Monuments in 1834. The emergence of administrative structures of archaeological research was therefore identical with the emergence of structures for the administration of historical monuments as the two had a very close association for a long time (Rigambert, 1996, p. 15). This long relationship between historical monuments, fine

Orient à la fin du XIXe siècle devient une terre d'exploration, de collection et parfois de pillage» (Gran-Aymerich, 1998).

arts (*beaux-arts*) and archaeology could perhaps be part of the reason it took long to put in place national institutions as well as legislations specifically dedicated to archaeology.

The development of administrative institutions was also synonymous with a wave of change that sought to reaffirm the role of the State in relation to antiquarian societies (Rigambert, 1996, p. 15). Since long time, cultural heritage has served as an ideological apparatus of memory by the State to build a Republican Nation, in its indivisible and universal dimension. This tradition has its roots in the French Revolution, more particularly from the counter-reaction to "vandalism" and finds its institutional basis in the creation of historical monuments (Chenevez, 2011, pp. 80-81).

For a long time in France, archaeology was exercised by passionate private 'antiquarians' until the end of 19th century while at the same time the State was involved in the organization of foreign archaeological excavations. The State had already established research institutions that were responsible for foreign archaeological excavations which include the Ecole Française d'Athènes (1846), Ecole Française de Rome (1873), Institut Français d'Archéologie Orientale (1880) of Cairo and Ecole Française d'Extrême Orient (1900). While various personalities played a crucial role at this initial stage of the development in the domain of archaeological research, according to Jean Leclant, the role of institutions was very decisive. In general the institutions that were credited for the development of archaeology as a scientific discipline include:

- i. Académie des inscriptions et belles-lettres,
- ii. Société asiatique,
- iii. Bureau des missions scientifiques et littéraires and Le Comité des travaux historiques du ministère de l'instruction publique,

- iv. Commission des fouilles du ministère des Affaires étrangères,
- v. Musée de Louvre,
- vi. Centre nationale de la recherche scientifique (CNRS),
- vii. Les grandes Ecoles et les instituts à l'étranger :
 - a. Ecole Française d'Athènes (1846),
 - b. Ecole Française de Rome (1873),
 - c. Institut Français d'Archéologie Orientale of Cairo (1880),
 - d. Casa de Velázquez (1916),
 - e. Ecole Française d'Extrême Orient (1900) and,
 - f. IFAPO (Beyrouth, Damas, Amman), Téhéran, Istanbul, Mexico... (Leclant, 1998, p. 8)

Since the Egyptian expedition in 1798 to the explorations in the Middle East that culminated in the creation of L'Institut Français du Liban at Beirut, institutions that were put in place were based on two main factors. On one side, there were political and State interests that emanated from the prevailing historical events of the time. On the other side, there were the demands from a science whose development required research instruments. The convergence of scientific and political interests continued throughout the 19th century. For instance, the expeditions of Meroe and of Lebanon that were sent for the rescue of the Greeks and the Christians of the Middle East (les chrétiens du Levant) were accompanied by a delegation led by scholars. At the same time, the conquest of Algeria led to the creation of a commission at l'Académie des Inscriptions et Belles-Lettres. The commission established research programmes in history and in archaeology that aimed at enhancing the French 'works of civilization' based on both a military and scientific framework (Gran-Aymerich, 1998, p. 469).

3.5 Historical Evolution of Cultural Heritage Management in Kenya during the colonial period

The arrival of Christian missionaries followed by the scramble and partition of Africa, the colonisation as well as the western civilization mission had irreversible consequences on cultural heritage management in Africa. It did not only alter the African cultural fabric and landscape but also introduced new belief and value systems that gradually rendered most of the African cultural values 'backward' and redundant. The traditional management systems were replaced by formal western systems characterised by strict observation of written regulations and laws that barred people from the access and utilisation of their cultural sites such as the Great Zimbabwe. The scramble, partitioning and colonisation of Africa also involved land alienation and creation of African reserves. Displacement of people from their ancestral lands to the reserves directly created a physical and spiritual separation between them and their cultural sites (Ndoro, et al., 2018) thus tampering with the conservation and management of majority of sites especially those whose continued existence was based on their religious values. The fear and respect of sites that were considered as the dwelling places of the departed ancestral spirits was interpreted by Eurocentric cultural heritage management specialists as ignorance and neglect of such sites hence warranting intervention measures including restoration. However, some of the restoration measures were contradictory to the very values that were supposed to be preserved in the sight of the traditional African custodianship and the necessary requirements for authenticity in cultural heritage conservation (Ndoro, 2018; Muñoz Viñas, 2005).

3.5.1 *The Triple 'C' impact⁵⁸: the cross, colonization, western civilisation and the African culture*

The direct and lasting impact of the cross, colonization and introduction of western civilisation (what can be referred to as *The Triple 'C' impact*) on the African perspectives of cultural heritage created a big cultural dilemma across the continent. The arrival of Western religion on the African continent may be considered as a period of rupture in terms of the general African approach to their cultural heritage, both tangible and intangible. This was the period when a lot of African cultural values were put to question and examined against value systems that were considered as universal religious values. In the first place African traditional religious values were regarded as barbaric and backward. Their cultural practices and religious rituals were characterised with multiple contradictions leading to misinterpretations as well as misrepresentation qualifying them as animism. As V. Osuagwu notes, Western religion termed the people's heritage 'pagan' or 'fetish' and introduced the attitude of disallowing the local communities from carrying out their traditional practices at some heritage sites (Osuagwu, 2018, p. 118). African culture was judged as outdated, primitive and savage. Subsequently, various initiatives were put in place in the efforts to transform the 'barbaric' African cultural practices and beliefs into modern western civilizations.

⁵⁸ In this study I use Triple C impact to refer to the impact of the cross, colonization and western civilisation on African perspectives on their cultural heritage.

The first initiative was the substitution of the traditional African religious beliefs and practices by western religious beliefs and practices. In the name of religion, African culture was destroyed⁵⁹.

This initiative was successful since it targeted the core of the society's identity and main life support system which is culture. Even though missionary work faced some mixed reactions based on the clash between the African values and those promoted by the new religion, the alternative standard of living was so appealing to the majority of the Africans that it became generally accepted as the point of reference when evaluating people's way of life. The impact of Christianity in Africa cannot be overemphasized. Africans being notoriously religious, Christianity as a religion founded and developed within western culture and civilization had to assimilate some of the African cultural values in order to be fully accepted in some parts of Africa but it was also accepted in whole as a way of modernization.

The new religion, other than assimilating cherished African cultural values, it also provided what seemed to be the best alternative to the already existing religious as well as social and

⁵⁹ President Jaque Chirac once demonstrated the impact of religion and colonial rule on Africa : *M. Chirac improvisa sur-le-champ une réponse qui surprit l'assistance par sa véhémence. Le chef de l'Etat se métamorphosa subitement en un avocat de l'Afrique contre l'Eglise donneuse de leçons. "Nous avons saigné l'Afrique pendant quatre siècles et demi, commença-t-il. Ensuite, nous avons pillé ses matières premières ; après, on a dit : ils (les Africains) ne sont bons à rien. Au nom de la religion, on a détruit leur culture et maintenant, comme il faut faire les choses avec plus d'élégance, on leur pique leurs cerveaux grâce aux bourses. Puis, on constate que la malheureuse Afrique n'est pas dans un état brillant, qu'elle ne génère pas d'élites. Après s'être enrichi à ses dépens, on lui donne des leçons."* Bernard, P. & Tuquoi, J.-P., 2007. *France-Afrique : la fin des "années Chirac". Le Monde-Afrique.* [Online] Available at: https://www.lemonde.fr/afrique/article/2007/02/13/france-afrique-la-fin-des-annees-chirac_866796_3212.html

[Accessed 21 September 2020]

'Mr. Chirac immediately improvised a response which surprised the audience with his vehemence. The head of state suddenly metamorphosed into an advocate for Africa against the Church giving lessons. "We have bled Africa for four and a half centuries," he began. "Then we plundered its raw materials; then we said: they (Africans) are no good. In the name of religion, its culture has been destroyed and now, as things have to be done with more elegance, it suffers brain drain through scholarships. Then, we see that the unhappy Africa is not in a brilliant state, that it does not generate elites. After self-enrichment at its expense, it is given lessons.

political organisation of the society. Prior to Christianity and by extension Islam, the kind of inter-personal relationship that existed in majority of African communities was highly influenced by religious beliefs which defined the top-down leadership structure of the society. Most of the political leaders were also religious leaders who wielded a great deal of power based on the status accorded to them by the society with regard to the supernatural powers they were believed to have. The introduction of Christianity followed by the establishment of colonial rule subsequently put those beliefs and powers to question.

Initially, just like in the European medieval period, people could not communicate directly to their deity, be it their gods or their departed ancestors but they did so through selected mediators who could directly converse with the spirits of their ancestors as well as their gods. Christianity challenged this ritualistic practice by declaring that there is only one God and one saviour Jesus Christ and that everyone could communicate directly with his or her God through the saviour. This summarily dismantled the African religious ladder by removing the place of the ancestral spirits and that of diviners and other mediators from the organisational structure of the African worship. Gradually, the once cherished culture became barbaric and those who still held firmly its ideals declared witches and sorcerers. Visiting such people in search of any solution to a problem became an act of witchcrafty hence people had to take distance from such practices. Those who saw it inevitable had to visit them with a lot of secrecy thus affirming that the act in itself was shameful. There was no any better way to 'civilise' an African than turning them away from their cultural beliefs then giving them western formal education where teaching and learning process rarely talked about their culture and if it did, it was to a great extent derogatory and dehumanising.

The provision of formal education services in Kenya greatly benefited from church support. Education as a key agent of socialization process also involved the acquisition of religious

values based on the sponsoring religious institution (Gertzel, et al., 1969, p. 53). There were missionary schools as well as Muslim schools and those for the Indians. Those who were close to the main missionary associations in Kenya were highly privileged to go to school hence forming the cream of the society that would later form the African elite. The first class of the elite had a big role to play in the society. They had a great influence in shaping the thinking within the society and were on the forefront in setting the agenda for the public policy and legislation on all matters including cultural and educational (Gertzel, et al., 1969, p. 53).

The fact that church leaders and the missionary educated Africans were capable of influencing the political agenda automatically qualifies them as part of the civil society that wielded what is called *soft power*, as coined by the Harvard political scientist Joseph Nye in 1990. By the term ‘soft power’, Nye refers to the power of co-opting or ‘*getting others want what you want*’. Nye (1990) wanted to distinguish between the command power that the United States of America possessed in ample measure (based on its economic and military resources) and the co-optive or ‘soft’ power (based on its ability to set the agenda and determine the framework of a debate). This power rests on the attraction of one’s ideas or on the ability to set the political agenda in a way that shapes the *preferences* that others are led to express (Isa, et al., 2015, p. 367). According to Nye:

... political leaders and philosophers have long understood the power that comes from setting the agenda and determining the framework of a debate. The ability to establish preferences tends to be associated with intangible power resources such as culture, ideology and institutions. (Isa, et al., 2015, pp. 367 citing Nye 1990, p. 32)

Even though the term was coined recently, it can still apply to the interpretation and understanding of the international relations during the precolonial and colonial period.

It was relatively easier to convert Africans due to the fact that though there existed belief systems, they were not generally shared across different ethnic groups. In a society without a concrete common culture what matters is the proportion of the population with shared cultural values. Fragmented and ethnocentric cultural and traditional religious beliefs to some extent demonstrated the vulnerability of the African cultural heritage. Each ethnic group and community believed that their god or deity was the most powerful. Such kind of cultural system could not withstand the test of a relatively well organised cultural and religious belief system like Christianity or Islam. Sooner than later the two religions commanded a lot of power given the number of their followers drawn from different ethnic groups across the nation. This does not imply that majority of Africans were their followers because in the first decade of the independent Kenya majority of Africans still belonged to the traditional religions. However, the various traditional religions that existed were founded on the diverse ethnic groups with some such as Legio Maria and Israel Nineve churches, generally referred to as separatist churches, being declared 'enemies of the state' (Gertzel, et al., 1969, pp. 67 - 69). In 1967 the then ruling party Kenya African National Union (KANU) alleged that separatist churches were engaging in political activity as was once reported in the news of the time;

*KANU Alleges Separatist Churches Engaged in Political Activity*⁶⁰

⁶⁰ This was one of news headlines in the *East African Standard*, 25th March 1967.

People who idly roamed in Nyanza province wearing white clothes, claiming that they were followers of religious sects, were the greatest enemies of Kenya's development, the vice-chairman of KANU South Nyanza branch, Mr. Osuri K. Otieno, said this week.

Speaking at Kisumu, he alleged that he had seen a large number of people who claim to be followers of Legio Maria sect roaming about in South Nyanza District. Women, he claimed, had abandoned their homes permanently and some had deserted their husbands.

He urged the Government to take action against these people.

He claimed that members of Legio Maria and Israel Nineve Churches were taking part in politics and many of their leaders were opposed to the Government. (Gertzel, et al., 1969, p. 68)

Armed with written laws and well documented doctrines, Christianity was clear, simple and direct. It was an alternative belief system which provided religious principles that were generally universal in nature. It offered well elaborate answers to questions relating to the beginning of life, the family, leadership and power as well as giving new perspectives about oppression, pain, suffering, death and life after death.

It only called for the translation of the Bible for the missionaries to easily win many converts. This would give Christianity an upper hand as compared to Islam despite the fact that Africans especially in the East African Coast came into contact with the latter long before the arrival of the former (Gertzel, et al., 1969). There were, however, some aspects such as the value of polygamy in Islam which rendered it more acceptable in some communities as compared to Christianity.

The practice of polygamy was generally shared across Africa. However, this practice conflicted with the Christian values such as celibacy for those who were called upon to shun marriage and offer their lives at the service of the church. For those who proceeded into marriage it was expected of them to be monogamous and have just but one wife. As a practice, polygamy was founded on the African values for the family as a key institution upon which the society is founded. Polygamy was grounded in the cultural, economic and political systems within each society where it was cherished.

Land was and still is the key factor of production in the majority of communities in Africa and Kenya in particular. From archaeological and historical evidence, women were on the forefront in the invention of agriculture. In Africa, women were and are still the main actors in the agricultural sector especially in small holder and subsistence agricultural exploitations. Traditionally, one who had a large family comprising of two wives or more was expected to be wealthy and influential in the society. This is evident from African literature, oral traditions and in historical research. In some African societies land was allocated to men depending on the size of their family (Schmidt, 2013, p. 126).

This clash did not only affect the cultural aspects of the African society but also the social, economic and political way of life of the African people. This is basically because Africans, according to J.S. Mbiti, are notoriously religious. In Africa religion is intertwined with all aspects of life right from conception to life after death. Just like elsewhere in the world, religion greatly influenced African cultural values to the extent that there was a very slim line between traditional African religious practices and African cultural way of life. Religious centres were also cultural shrines and the vice versa. Therefore the introduction of mainstream religions such as Christianity, Islam and Judaism followed by colonization and the introduction of western formal education had a profound lasting impact on the

conservation of African cultural heritage. Any conversation about the conservation of cultural heritage in Africa cannot be concluded without paying attention to the impact of these aspects of its history where more questions than answers can be posed.

3.5.2 Cultural heritage management and archaeological research in Kenya during the colonial period

Colonial perspectives of cultural heritage management in Africa were diverse and varied according to the forms of interaction that were defined by the status of individual communities within the complex colonial administrative and political organization. The definition of what heritage to be protected differed from one colonial power to the other and rarely considered the values of the local people (Ngoro, et al., 2018; Ngoro & Pwiti, 2001; Chirikure, et al., 2010). The attempt at comparing Kenya (a former colony) to France (a former colonial empire) must find a common ground for comparison while being conscious of each country's status and role during the colonial period in order to arrive at the identification of the different parameters to guide the public policy analysis process for this period.

While there already existed cultural institutions that were based on the traditional African custodianship, it was during the colonial period that formal systems of cultural heritage management were introduced across Africa (Ngoro & Pwiti, 1999; Jopela, 2011). At the same time new concepts were integrated into the system such as 'antiquity' and 'monuments' with a change in cultural values to accommodate artistic and historical interests of cultural objects, notions that had already been introduced in the Western cultural conservation systems as can be observed in most of the legislation on heritage within Europe. It was during the colonial period that Western conservation values and practices that emphasise the idea

of materiality and the authenticity of fabric were exported to African colonies in the late nineteenth and early twentieth centuries (Chirikure, et al., 2015, pp. 1-2; Shepherd 2002; Chirikure et al. 2010).

3.6 The role of societies of scholars and associations

In the absence of central administrative structures of cultural heritage management and archaeological research, societies of scholars and associations played a key role both in Kenya and France in the organization of archaeological research (Ndeti, 1975; Rigambert, 1996, p. 16; Demoule, 2009b). The National Museums of Kenya has its origins in the East Africa Natural History Society that was created in 1910. In France, the associations for the protection of nature such as the League for the Protection of Birds (*la Ligue pour la protection des oiseieux*) and the National Society for the Protection of Nature (*la société nationale de protection de la nature*) came together in 1923 at the Society of Protection of Landscape of France to organise the first international congress for the protection of nature with a sub-title: fauna, flora, sites, natural monuments (*faune, flore, sites, monuments naturels*) (Raffin, 1995).

The cultural heritage system that was introduced in Kenya as in many other British colonies put a lot of emphasis on archaeological sites while in the French colonies the emphasis was on the architectural heritage. Archaeological research was thus introduced and well developed in Kenya during the colonial period (Ngoro, et al., 2018, p. 5). It was first practiced by a few professional and amateur archaeologists working under foreign-led research operations before being formally established by law and organised under administrative and research institutions in Kenya. This phenomenon was observed in many countries where archaeology emerged through foreign missions conducted by amateur

archaeologists or professional researchers whose main interest was not necessarily the cultural or historical aspects of the antiquities but the artistic and material value of the objects they discovered in their ‘treasure hunt’ (Sutton, 2007, p. 304) to fill western museums. This marked the centralization of cultural properties under the British colonial administration in all its colonies and protectorates.

In Sri Lanka (formerly known as Ceylon until 1972), which was part of the British Empire, the Antiquities Ordinance of 1940 expressly gave ownership rights of all antiquities to the Crown as was stipulated in the sections 2 of the ordinance:

- 1) No antiquity shall, by reason only of its being discovered in or upon any land in the ownership of any person, be or be deemed to be the property of such person: Provided that such person shall be deemed to be interested in such antiquity in accordance with the provisions of this Ordinance.
- 2) Every ancient monument which on the date on which this Ordinance comes into operation is not owned by any person or the control of which is not vested in any person as trustee, incumbent or manager, shall be deemed to be the absolute property of the Crown.
- 3) All undiscovered antiquities (other than ancient monuments), whether lying on or hidden beneath the surface of the ground or in any river or lake, shall be deemed to be the absolute property of the Crown, subject to the provisions of this Ordinance (Government of Ceylon, 1956 (1940)).

In section 3 the ordinance stipulated that ‘On the discovery of any antiquity (other than an ancient monument), Archaeological Commissioner, on behalf of the Crown, shall be entitled to the custody and possession of such antiquity, unless in any case the Archaeological

Commissioner does not consider it necessary that such antiquity shall be retained by the Crown'. The Archaeological Commissioner was to be paid by the Crown half of the market price of the antiquity if he was not the owner of the land or full market price if the commissioner was also the owner of the land upon which it was discovered. If the discovery was made by any other person on the Crown land then the person was to be paid half the market price (Government of Ceylon, 1956 (1940)).

A similar approach as to the one applied in Sri Lanka was put in place in Kenya. Louis Leakey, who was instrumental in the development of archaeology in Kenya during the colonial period, started his career after being selected in London when he was in his undergraduate studies to participate in the 1924 excavation of dinosaur bones with the Natural History Museum to Southern Tanganyika (present day Tanzania). The 1924 expedition was conducted with the objective of collecting impressive specimens and reconstructible dinosaurs to grace the Museum's galleries. Leakey's selection was based on his East African background and his knowledge of Swahili language. It was through his role as the assistant director of the project that Leakey learned the skills of retrieving, recording and safe handling of fossils, skills that became more useful as he embarked on his career as a professional archaeologist in Kenya (Sutton, 2007, pp. 303 - 304).

The legal emphasis and the subsequent concern for artistic and historical interests was the genesis of the development of an elitist approach (Cornu, 2014, p. 198) to archaeological research and cultural heritage management. In France, this was introduced through the 1887 law and that of 31st December 1913 while in Kenya it was introduced by the 'Ancient Monuments Preservation Ordinance' of 1927 whose date of commencement was 22nd October, 1927. These common features were as a result of the Kenyan law borrowing from the British law by importing from the British Indian colony. Cultural legislation in European

countries had many common elements since countries borrowed from each other's legislation. Both the Kenyan law of 1927 and the French law of 1913, for instance, introduced a public easement that had never been applied before in the heritage field. Through such provision in the French law, 'the owner of a building classified as a historical monument was placed under supervision and was forbidden from making any changes that might alter the physical integrity of the property without the permission of the Minister of Culture' (Cornu, 2014, p. 198). Similarly, article 2 (c) of the 1927 Kenyan law restricted 'the owner's right to destroy, remove, alter or deface the monument or antiquity or to build on or near the site of the monument or antiquity' (Colony and Protectorate of Kenya, 1927).

Unlike in Kenya, archaeological research in France is one of the key research interests that have preoccupied the country's scientific endeavours locally and abroad since the 19th century. Even though the enactment of legislation that particularly address metropolitan⁶¹ archaeological research was done at a later date, French foreign research institutions in Greece, Egypt, Syria and in the Far-East as well as in her spheres of influence and colonies such as Tunisia and Algeria had well organised archaeological research programmes since the second half of the 19th century. This was the case especially in those countries whose underground was determined to be richly endowed with material heritage that could interest scientific research. (Rigambert, 1996). French archaeology abroad boasts of a tradition of a long experience of excellence in research which has been carried out alongside France's partners since the end of the 19th century. In this regard, archaeological research is one of the scientific fields that have made a significant contribution to the country's international

⁶¹ The term metropolitan here has been used to distinguish between the two main territorial boundaries of France; mainland France generally referred to in French language as '*la France métropolitaine*' and the French Overseas territories called '*les Départements d'Outres Mers*'.

influence as may be attested to by the various French centres of archaeological research abroad. To these ends, host countries also commit themselves in terms of human and financial resources. This demonstrates that France's expertise is widely recognized and that local governments are interested in setting up scientific partnerships, which not only help train archaeology and heritage professionals but also ensures sustainable economic development (The French Ministry of Foreign Affairs and International Development, 2014, p. 8).

3.6.1 Religion and the State: the impossible creation of a secular state

The link between religion, education, politics and the state power existed in Africa and more precisely in Kenya prior to the colonial period both in the centralised and the acephalous precolonial African societies. In most of the centralised communities, the political leader was also a religious leader and the chief custodian of the community's culture. The arrival of Christian missionary societies therefore found an already established social structure with a direct link between the Traditional African Religion and the state as well as a good relationship between social networks and power in the decentralised African societies. The African religious beliefs were however dismissed and referred to as pagan or animism which had the negative impact on the development and conservation of African heritage associated with the dismissed belief and value systems. African dignity and respect was thus dependent on one's acceptance of mainstream western religions thus loss of dignity to those who persisted in such beliefs and practices (Thurston, 2015, pp. 338-340).

There also existed along the East African Coast well developed states where the line between religious and political power was very slim. It was thus inevitable for the colonial

administration to take this similar trajectory given that they also had a similar past since the antiquity and especially as the result of the legacy of the Roman Empire.

During the colonial period this link was politically exploited by being reinforced and enhanced through the missionary work and their role in the introduction of western education in Kenya. Ironically, this was happening at the time when the separation of religion and the state was becoming more and more apparent through the introduction of laws favouring a secular state in the western colonial powers such as the Great Britain and France. In France, for instance, this was formalised through the 1901 law concerning the separation of the State and religion that cut the link. In the Great Britain however, the separation between the state and religion remained unachieved due to the role of the British monarch in the Church of England.

The proliferation of the relationship between religion, politics and the state especially those religions with a lot of influence dealt a major blow on the existence of African religious organisations that were characterised as separatist groups and which did not meet the threshold of the western religious considerations. The earliest formal learning institutions were established and run by the various missionary societies wherever they set their foot on the territory that was to be known as Kenya. Most of the public schools were therefore established under the sponsorship of the Christian missionary societies. By so doing, Christian missionaries were mandated to choose and determine the social-cultural, economic and political destiny of the people of Kenya, a role whose impact cannot be overemphasised in the history of the nation.

The first political organisations in Kenya were led by the mission educated African elite class in the early 1920s. At this early stage the political organisations that emerged were

associations with the East African Association (EAA) being the pioneer African political association led by young mission educated Africans such as the late Harry Thuku. EAA was short lived since it was banned in 1922. In the same year two new associations emerged; Kikuyu Association (KA) and Young Kavirondo Association (YKA) which emerged due to economic changes and as a result of mission education (Schatzberg, 1987, p. 16).

The formation of African associations would have been the best opportunity to create the forum for the defence of African cultural heritage. However, only some specific cultural elements featured among the grievances of some early political associations. KA was an association of headmen, chiefs and missionaries who aimed at negotiating with the colonial government to recover the land that had been alienated and to have a guarantee that there would be no more land alienation for the white European settlers. YKA later transformed into Kavirondo Taxpayers Welfare Association (KTWA) in the western part of Kenya was composed of young Luo and Luhya men who demanded the abolition of *kipande* (an identity card number engraved on a metal) system, reduction of both poll and hut tax rates, and the securing of title deeds for African-owned land so as to avoid land alienation in their region (Schatzberg, 1987, p. 16).

Those associations that were adamant on defending those African values already declared as barbaric and backward were not accepted by the colonial government. Kikuyu Central Association (KCA) which was created in 1924 was more militant as it refused to accept European domination and whose membership was seen as a symbol of dissent. KCA, for instance, sought to protect female genital mutilation. Consequently, many missionaries accepted KA and KTWA but rejected KCA (Schatzberg, 1987, p. 16).

The once cherished religious practices and sites such as shrines gradually started to face growing opposition from the new religious organizations and by extension the colonial state and the new class of the African elite. It was thus an intellectually and politically well thought out idea that was well conceived and nurtured to ultimately turn the minds of future African elite, who were supposed to be the ambassadors of their culture, into intellectual weapons to mutilate and denature their own social and cultural fabric. The more educated the more one has to distance one's self from the 'barbaric and backward' cultural beliefs and the more one holds onto the same values the more one is considered to be an educated zombie. Therefore the African elite had no option but dance to the tune of their masters.

The impact of the formation of the class of African elite, the African intellectual and the ultimate emergence of a Kenyan middle class was multifaceted (even though the latter is yet to be well constituted). The beneficiaries of the missionary education formed the first cluster of African elite and intellectuals who would influence the future policy framework on all aspects of life including but not limited to cultural policy. They became teachers, lawyers, lecturers, law makers and later constituted the independence government.

The ever-growing influence of religion rendered it difficult to establish a secular state in most of the African countries which can be tolerant to divergent religious points of view within the society. Very few people can contest the continued importance that religion holds in African life, not only in terms of numbers of adherents but also the vast scope of religious experiences as well as the links between religion, politics and public life (Abbink, 2014, p. 83). In most of the African countries where political institutions have largely broken down, religious discourse can be seen as an attempted remedy by means of reordering of power (Ellis & Gerrie, 1998). This has led to the emergence of Pentecostalism in Kenyan democracy through the highly selective and State controlled system of manufacturing the

Kenyan elite class, a colonial legacy that was highly exploited by the independence regimes (Maupeu, 2012).

3.6.2 Ideological perspectives of archaeological research and cultural heritage management in Kenya during the colonial period

The historical development of archaeology and cultural heritage management in Kenya went hand in hand with that of the broader East African region and Africa as a whole. The discipline was first introduced in Africa as a colonial science which aimed at helping the colonial powers to understand the people's historical and cultural past before subjecting them to colonial rule. During the colonial period it was used to validate the various Eurocentric stereotypes concerning the black continent. The studies involved to a greater extent, according to Chirikure, Ndoro and Deacon, the establishment of categories, typologies and chronologies with very little efforts being done to link the studies with the African populations who were also themselves seen as objects of study. At this particular time Africans and their cultures were to be discovered, analysed and taxonomies as cultural and geographic entities (Ndoro, et al., 2018, pp. 8 citing Kifle, 1994).

The varied ideological orientation of archaeological research as can be observed in Africa and in the western world corresponds to three divisions of the archaeological field analysed by Trigger (1984) into a number of 'alternative archaeologies' each determined by its position in and orientation towards a global division of wealth and power. The global historical processes that predetermine the kind of archaeological practice are nationalism, colonialism and imperialism (Shepherd, 2002, p. 191).

Shepherd concurs with Trigger's typology which asserts that nationalist archaeologists seek to glorify a national past with the aim of promoting the spirit of unity and cooperation.

Colonialist archaeologies tend to denigrate native societies by representing them as static and lacking-in the initiative to develop without external stimuli. They thus legitimise various colonial projects. Imperialist archaeologies are archaeologies 'with world mission' whose aim is to influence the development of archaeology far beyond the borders of countries in which they arise. These are archaeologists that are associated with a few states that wielded political and economic power (Shepherd, 2002, p. 191).

The countries in the Great Lakes region have to a larger extent a comparatively common cultural history with a lot of relationships in their social, political and economic environment. The development of archaeology followed by the establishment of institutional administrative structures of archaeological research and the subsequent international trends in terms of methodology and theory affected the region in a more or less similar manner. Archaeological research in Kenya was pioneered by Kenyan scholars of foreign descent such as Louis S.B. Leakey, Mary Leakey and Sonia Cole as well as foreign scholars such as G. W. B. Huntingford, Wilson and Murdock (Mutoro & Wafula, 2004, pp. 49, 52; Mwanzia & Onyango-Abuje, 2004). As such, the colonialist archaeology was predominantly practiced during the entire colonial period followed by a nationalist archaeology at independence and the post-independence period but with some persistence of what has been termed as 'neo-colonialism' in the first two decades of post-independence period.

Huntingford and Leakey did the ethnographic, linguistic and archaeological study in the Kenyan Highlands during the high colonial period in the 1920s and 1930s. According to J. S. G. Sutton, neither of them underwent any formal training in archaeological fieldwork methods. Huntingford who emigrated from Britain in 1920/21 soon after leaving school and without professional skills, never attempted serious excavation. He regarded as more important his linguistic and anthropological investigations. Leakey on the other hand, who

embarked on his first research expedition in 1926 and attempts to excavate ancient burials in the same year, seems to have relied on his native intelligence in devising suitable excavation techniques (Sutton, 2007, p. 298). He had just completed his B.A. from Cambridge University where only one year of his study was dedicated to Anthropology without much of a methodological content especially on the archaeological side. This lack of research methods and fieldwork technology has been described as typical of the academic curricula of that time. In order to gain such techniques and methodology, upcoming archaeologists had to assist experienced and senior researchers on excavation sites in Britain or elsewhere but Leakey did not. The methodological and technical know-how of both Leakey and Huntingford, as recommends Sutton, should be put into consideration alongside their broader archaeological outlooks on embarking upon fieldwork in Kenya (Sutton, 2007, p. 298).

It is noteworthy that the foundations of archaeological research in Kenya were laid down in a haphazard way marred with challenges of methodology and more important the ideological challenges. The ideologies were predominantly focused on the evolutionist theory (Mwanzia & Onyango-Abuje, 2004; Mutoro & Wafula, 2004, p. 52). This ideological orientation left out the greatest part of the later prehistoric and historic epochs in the study of African history. Fauvelle points out that it is important to emphasize on what the focus on the origins left outside the field of vision which is the historic periods that followed.. (Fauvelle, 2018, p. 7)⁶². Colonialist Eurocentric scholars were more concerned with the colonialist ideals which emphasised white supremacy while paying little attention to the history of the native people. The best example is the propagation of the ‘Hamitic/Cushitic myth, which constitutes the

⁶² *‘Mais si ces moments premiers ne sont guère contestable, il faut s’aviser de ce qu’une insistance trop exclusive sur les origines laisse en dehors du champ de vision : la suite des temps’* (Fauvelle, 2018, p. 7).

idea that every element of civilization in Africa emanated from the Middle or the Far East' (Mutoro & Wafula, 2004, pp. 50; citing Sanders 1969, p. 521; Zwarnemann, 1983, p. 15, 16; Chami, 1994, p. 19).

3.6.3 World War II and its impact on archaeological research

Archaeological activities in Kenya were very low during the WW II period but in France the German occupation had already posed a challenge on the country's archaeological resources hence prompting urgent legislative measures to curb the situation. The major transformations that brought on board the legal framework and institutions responsible for the regulation of archaeological research in France were witnessed during and after the Second World War. In December 1940, Charles Jacob⁶³ submitted the first annual activity report of CNRS to the then minister of education (by then it was called *le Ministre d'instruction publique*). The report concerned missions and excavations in which was stipulated that missions and excavations concern two distinct fundamental activities regardless of their appearance in the same chapter of the budget. That scientific missions correspond to the recurrent budgetary allocations which are disbursed to researchers at the national research centre while archaeological excavations have to do with a more autonomous organisation that should be preserved and which contributes towards the enrichment of archaeological research within France and across various countries abroad.

« Avec les missions et fouilles, il s'agit de deux fondations très distinctes, quoiqu'elles figurent dans le même chapitre du budget. Les missions

⁶³ Charles Jacob was a member of the Academy of Science, Professor in the faculty of science at the University of Paris and the first director of the National Centre of Scientific Research (CNRS).

scientifiques correspondent à des crédits qu'on retrouvera par ailleurs et qui sont distribués aux chercheurs du centre national, tandis qu'avec les fouilles archéologiques, on a à faire à une organisation autonome, qu'il faut conserver et qui contribue à alimenter des recherches archéologiques dans des pays bien divers, tant en France qu'à l'étranger » (Soulier, 2003, p. 430).

This report was followed by the enactment of the 1941 legislation on the regulations pertaining to archaeological excavations by Jérôme Carcopino. This law was completed by the 1942 law allowing for the application and ensuring the coordination of archaeological operations in the metropolitan France.

In the series of the unfolding events, there appeared *Gallia*, a scientific review of CNRS whose objective was to publish the results of archaeological works in France. The review was enriched by archaeological publications of Raymond Lantier, the conservator of the Museum of the National Antiquities at Saint-Germain-en-Laye (Soulier, 2003, p. 431). This was a big boost to the then on-going efforts to make archaeology an independent scientific discipline. Initially, archaeology had been exercised as part of other disciplines including history, art and architecture. The change in public opinion towards archaeology and the emerging awareness within the academic circles gradually provided a fertile ground for the development of the discipline as can be attested to by a statement (Soulier, 2003, p. 431) in a manuscript cited below:

« Il faut que l'on sache qu'une carrière peut être effectuée dans l'archéologie, et qu'on ne doit pas obligatoirement trouver l'archéologie

comme point d'application d'une autre discipline.» (Soulier, 2003, p. 431).

We should know that it is possible to pursue a career in archaeology and that archaeology should not be considered as an applied field of study for another discipline {Author's translation from French}.

Towards the beginning of the V Republic, various measures had been put in place that gradually led to the emergence of archaeology as an organised scientific discipline with various state organs being put in place to ensure the necessary coordination of archaeological research.⁶⁴

3.7 Conclusion

The introduction of formal systems of heritage management and patrimonialization that took place during the colonial period had both positive and negative impacts on the study, documentation and management of Kenya's heritage. The country prides in her cultural diversity but paradoxically 'remains deeply ill at ease with both national and nationalist history. The state and its citizens have long preferred to take refuge, as it were, in the sub-national histories of individual ethnic communities rather than attempt to produce a comprehensive and inclusive 'story of Kenya' (Hughes, 2014). This is partly a colonial heritage of Kenya's history. In the field of archaeology, the discipline was dominated by western scholars until after independence when natives started to join the field.

⁶⁴ The major transformations that followed the legislative and structural organization of archaeology are discussed in the next chapter and in part two and three of this work.

CHAPTER FOUR

PATRIMONIALIZATION AND CULTURAL HERITAGE MANAGEMENT

INSTITUTIONS IN THE POST-INDEPENDENCE PERIOD

Introduction

In order to comprehensively understand post-independence heritage management and conservation, we need to first analyse and describe the different government choices of action as expressed through legislation and public policy as well as examine the extent to which given laws and policies were and are implemented. The implementation of laws and policies can be understood through the study of the institutions that were established for their implementation, enforcement and evaluation.

In this chapter the study looks at the concept and the process of patrimonialization, centralisation of cultural heritage through the creation of central administrative institutions such as ministries, government departments in charge of cultural affairs and national museums. The chapter analyses the general organization of such institutions, the resources set aside by the various governments. The analysis extends to the choice of some selected personalities that were put in charge of the institutions at a particular moment. The chapter provides a historical account of the development of the cultural heritage institutions with the aim to establish the similarities and differences between the systems in the two selected countries, Kenya and France. The aim of this chapter is to analyse the origin, development, organization and functions of ministries of culture and compare the governments' commitment to the cultural policy through such institutional framework.

Cultural heritage played a central role in the anti-colonial resistance movements in late nineteenth and early twentieth centuries and during the struggle for independence in many African countries. At independence these African countries recognized the unifying role of culture hence giving heritage protection and conservation programmes an impetus. However, the young nations were faced with multiple challenges such as poverty, disease, malnutrition and illiteracy which made it difficult to set priorities that would have led to development of robust cultural management and conservation systems since everything was a priority. Consequently, post-independence heritage protection systems were faced with various challenges which curtailed their success. Apart from poverty, disease, malnutrition and illiteracy, the principal problem was the colonial legacy inscribed in the inherited laws from the colonial regimes where some 'countries such as Lesotho, Malawi and Zimbabwe are still using colonial legislation gazetted before the 1980s' (Ndoro, et al., 2018).

The Post-colonial period was characterised by a new breed of African scholars with Afrocentric perspectives towards the nation's history and national cultural heritage. Unlike during the French Revolutionary period where there were efforts to protect monuments of the ancient regime that were faced by massive destruction, Afrocentrism failed to control and keep track of the then massive social, economic, administrative and political restructuring of the state. Consequently a lot of destruction of cultural heritage, which was perceived as bearing the memories of the colonial regime, took place without record in the name of *africanisation* through the spirit of African socialism.

4.1 Patrimonialization of heritage

'Due to the abundance of heritage issues interpretation and in order to facilitate analysis of the transformation of an object or site (through expertise and instrumentation) into a topic

open to long-lasting cultural consumption, researchers have recently imposed the concept of 'patrimonialization' (Constantinescu, 2019, p. 143). Patrimonialization is a concept that was developed by researchers dealing with heritage and sustainable development issues to refer to the dynamic process of establishment of heritage, managing to confer the status of every constituent representation using management which gives it a central role in the society (Constantinescu, 2019, p. 143).

4.1.1 Contradictions in the conceptualisation and institutional framework on cultural heritage management in Kenya

Although archaeological theory and practice in Africa are not as fragmented and fractionized as they are in Europe and North America, S. McIntosh observes that diverse research styles, different propositions about how the past worked, and different theories about how it should be recovered and interpreted characterize the discipline (McIntosh, 2005, p. 51). The colonial legacy characterised by a highly fragmented cultural infrastructure was inherited with all its challenges and weaknesses. The first development plan of the independence government in Kenya (1964-69) had no cultural component. Cultural component was included in the second development plan (1970-74). By the time the second plan was being laid down, the young nation had already started to suffer from the seeds of the colonial legacy and the centrality of culture for national cohesion became evident. The purpose of the culture programme that was included in the second plan was thus the 'realization of national unity, cohesion and creation of national pride and sense of identity among Kenyans' (Ndeti, 1975, p. 43).

However, the second plan did not provide the necessary machinery to organise and coordinate cultural affairs despite having recognized that it is not enough just to make a

statement. It was until 1972 that the government decided to set up a national body to coordinate cultural activities. Various proposals were set forth in a paper submitted by the Ministry of Cooperatives and Social Services for a National Council of Arts and Culture. The council was created to coordinate the activities of voluntary agencies involved in cultural affairs. As the country's first central organisation, its aim was to enhance Kenya's national pride, sense of belonging and identity among its people, and the preservation and advancement of the national culture (Ndeti, 1975, p. 43).

The emergence and development of archaeology as a scientific discipline during the colonial period took place under contradictory ideological and political circumstances which left a lot to be corrected by scientists that emerged after the formal introduction of African history as a discipline in Kenyan institutions of higher learning. The emergence of African history occurred after the country had attained political independence. It was part of the wave of change that started in the early 1960s when the newly formed independence government adopted African Socialism as a political ideology in order to spearhead African nationalism that saw the formation of a nationalist government dominated by indigenous Africans. Even though there was emergence of a nationalist archaeology with the introduction of African history as a subject in local university curriculum, archaeology as a discipline remained under the influence of colonial interests. The independence era followed by the first two decades of post-independence period from 1960 to 1980 was therefore referred to as neo-colonialism (Mutoro & Wafula, 2004, p. 53). Right from the 1960s the United States of America (USA) emerged as a dominant metropolitan influence on archaeological research in Africa more precisely in the archaeological fields such as human origin research, Egyptology and development of state societies in West Africa (Shepherd, 2002, p. 191).

Cultural heritage management systems in most of the African and by extension Asian countries were imposed during the colonial period which led to the assumption that these continents did not have systems to ensure the conservation of their cultural heritage. This was perhaps due to the fact that those systems remained almost unchanged despite the attainment of independence in those countries. The practices that were introduced in African countries during the colonial period remained intact even after the political independence (Ngoro & Wijesuriya, 2015, p. 131; Chirikure, et al., 2015, p. 2; citing Makuvaza 2008; Taruvinga and Varissou 2013) thus sustaining and even accentuating the already established contradictions in the colonial systems of administration.

At independence there was a decolonisation transition process which, as the name suggests, refers to the transfer of political power from the colonial government to the government of an independent Kenyan state managed by indigenous Africans (Asingo, 2003, p. 16). The newly independent states needed to forge their national identities and for this to be realised cultural heritage was seen as the only unifying factor (Ndeti, 1975). Ethnic and tribal allegiances and tensions were not easily accommodated in most post-colonial states including India, Pakistan, Kenya and Zimbabwe among other young nations (Ngoro & Wijesuriya, 2015, p. 139).

Decolonisation involved fundamental constitutional and institutional engineering aimed at transforming the state apparatus from instruments of repression and exploitation to agents of African development and self-actualisation. Furthermore, the transition aimed at the reinvention of a more dignified African person enjoying a wide latitude of freedoms and rights. This was vital because the African person in the colonial era had been politically disenfranchised, economically exploited, socially segregated and culturally alienated' (Asingo, 2003, p. 16). Such views are shared by the World Congress of Archaeologists

whose policies acknowledge the consequences of the global European colonialism and imperialism. In so doing 'it is trying to make up for past injustices by making extra sure that indigenous interests are prominently represented in its management, its policies and in its conferences and publications' (Holtorf, 2009, p. 673).

The independence cultural institutions in Africa, Asia and Latin America have some common features which stem from their common history under colonial domination. Generally, these are institutions whose main agenda is to reinvent, rediscover, and reappraise their once marginalised cultural heritage in all their forms and revive their glorious, historical, aesthetic, cultural and scientific value. One factor in common across the former colonies is a shared phenomenon where colonial heritage properties are perceived as representations of occupation and unequal power relations in their history (Lueng, 2009, p. 24). This is contrary to the manner in which roman heritage for instance is treated within Western Europe. There is a big difference between the European perceptions of the impact of the Roman Empire on their civilization and conception of the notion of the nation-state and the perceptions of former colonies on the impact of colonial rule. This would partly explain some of the contradictions and differences in approach towards certain categories of cultural heritage among the various countries in Africa as well as between African countries and the Western world.

The predominant principles of cultural conservation since the second half of the 20th century put emphasis on the authenticity of conservation. Safeguarding of authenticity, a notion whose origin is in the history of Western European cultural conservation practices, has to do with the concept of truth in the conservation of culture (Poulios, 2014). The idea of the authenticity and integrity of heritage places and objects is generally considered by UNESCO and the Advisory Bodies as critical to all the cultural values (Ndoro, 2018, p. 39). It was the

adoption of the Venice Charter (ICOMOS 1964) that formerly established the importance of authenticity in cultural heritage. This was followed by the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (UNESCO, 1972).

The concepts of authenticity and integrity may provide us with the basis of evaluation of the cultural conservation systems in the post-independence and contemporary practices. According to the World Heritage Convention, authenticity can be described as ‘effort to ensure that those values are credibly or genuinely expressed by the attributes that carry those values’, and integrity as an ‘effort to refer to the completeness of the cultural heritage system which holds or contains those values’ respectively (Ndoro, 2018, p. 39; Stovel, 2008, p. 131). Despite the *Africanization* process as was witnessed at independence in majority of African young nations, the ‘independence has not always resulted in the breaking off with the cultural heritage protection system installed by the former colonial power’ (Négris, 2005, p. 6). The existing cultural systems are still incomplete given the various contradictions and challenges of identification, interpretation, preservation and valorisation of cultural heritage in all the sectors of the societal life. Such contradictions have rendered it impossible to establish cultural heritage management institutions that would correspond to the reality of the cultural landscape in Africa and more precisely in Kenya.

The colonial cultural management system in Kenya did not establish the criteria for the identification of heritage properties to be protected. There are varied and diverse ways of identifying the values of cultural heritage. This is because it is the values represented in a given property that are preserved and the loss of such values automatically renders a heritage property a mere object unworthy of preservation. The values draw from various motives including, according to Munjeri, economic, political, social, spiritual and aesthetic. ‘As a

result, different ways of valuing have led to different approaches to preserving heritage’ (Munjeri, 2005, p. 3).

In the case of sites considered on the World Heritage List, contradictions were established by the international texts that were put in place to define and demarcate cultural properties for conservation. The World Heritage Convention (UNESCO 1972) and the Operational Guidelines for the World Heritage Committee/for the Implementation of the World Heritage Convention (UNESCO 1977) clearly outlined the criteria for the inscription of sites on the list. The Operational Guidelines concentrate on the ‘outstanding universal value’ of certain sites considered worthy of inscription on the World Heritage List. This saw authenticity of the materials, in terms of ‘design, materials workmanship and setting’, as a key qualifying condition for the inscription of the sites on the List, and formed rigorous classification and measurement of inscription criteria and categories (Ndoro, 2018). Consequently, most of sites, monuments and a great deal of African cultural items were left out for quite a long period of time for failing to meet the criteria. The height of such legislative contradiction was a scenario where some cultural items were listed as African cultural heritage while in the real sense they were representing foreign cultures and memories of early Western European explorations on the African continent. Such sites includes those that point to the Portuguese explorers.

The Nara Document on Authenticity on the other hand adopted a more dynamic understanding of authenticity based on multiple aspects such as ‘form and design, materials and substance, use and function, traditions and techniques, location and setting, and spirit and feeling, and other internal and external factors’ (article 13), which was much later included in the Operational Guidelines of the UNESCO 2005 (Ndoro, 2018). The challenges presented in documents that guided the choice of conservation properties attest to the issues

in the identification of cultural properties for conservation in Africa where the definition of cultural heritage heavily relied on and borrowed from western ideals. This would translate into weaknesses in the institutional framework across the continent beginning with the national institutions such as the ministries in charge of cultural affairs, national museums, research, teaching and learning institutions.

4.2 The Ministry of Culture and Communication (Le Ministère de la Culture et de la Communication) – France

While the events following the French Revolution played a crucial role in the emergence of state intervention in cultural affairs, formal institutions for the management of archaeological research in metropolitan France were yet to be organized. The law of 1 July 1901 about the contract of association gave an exceptional vigour to the collective and social life thus making freedom of association an important element of the French society (Iogna-Prat, 2011, p. 333). This would go further into influencing the creation of associations across all sectors. In the field of archaeology, this change provided the opportunity for volunteer archaeologists to come together against the most spectacular scandalous destruction of archaeological heritage. Then followed the enactment of the "Carcopino law" of 1941 to give archaeology a legal status by providing regulations about archaeological excavations and protection of archaeological heritage from clandestine excavations (Demoule, 2004a, p. 8).

These general tendencies were formalised when the Technical Committee of Archaeological Research (CTRAF) was created in 1948 at the CNRS. It was as a result of the reorganization and modification of the Ministry of Education. Its purpose was to:

- i. ensure the scientific study of the data provided by the excavations in progress or by the reports of the earlier excavations;

- ii. establish all useful links between the researchers; to encourage and guide researchers and guide amateurs who were able to carry out archaeological studies in metropolitan France;
- iii. ensure the rapid publication of the results of the research, in particular in the scientific journal, *Gallia* and in specialized collections;
- iv. give its opinion on any proposals for the creation of organizations involved in archaeological research.

The most decisive State intervention in cultural affairs and which has been described as the moment of the official invention of the French cultural policy was the creation of the Ministry of Culture. This was the moment when the institution of an official policy for culture was consecrated in 1959, in the early days of the Fifth Republic, through the creation of a Ministry of Cultural Affairs headed by André Malraux. The setting-up of this institution resulted in part from Charles De Gaulle's desire to keep André Malraux inside his Cabinet (Piorrier, 2004, p. 394; 398). It is noteworthy that the ministry of culture evolved from the ministry of interior. Since 1832 there was the section of fine arts at the ministry of interior which was under Prosper Mérimée as the inspector general of historical monuments. However, the hierarchy occupied by this section of fine arts at the ministry as a section (division) testifies of less preoccupation by the state of this activity (Rigambert, 1996, p. 20).

Since its creation, the French Ministry of Culture and Communication (Le Ministère de la Culture et de la Communication), in collaboration with other ministries, is the main actor in cultural heritage conservation. It also plays an active role in the scientific research that concerns cultural heritage. The Ministry does not only act at the level of decision-making but also plays a key role in the design and formulation of major research projects that form the basis of decision-making.

The influence of the pioneer Minister of Culture, André Malraux, had far reaching effects in all domains of culture but more particularly on archaeological research and heritage. The Ministry of Culture and Communication in France was created in 1959 by André Malraux (Maréchal, 2014) who was the Minister in charge of cultural affairs for one decade from 1959 to 1969. Based on the chronological and historical evolution of the cultural policy, three philosophical ideologies of the development of the cultural policy in France were identified. The three were in association with the major transformations witnessed from 1959 to the end of the 1980s which have been referred to as:

- a) The cultural action (*action culturelle*) under André Malraux;
- b) Cultural development (*développement culturel*) under Jacques Duhamel and;
- c) Cultural vitalism (*vitalisme culturel*) under Jack Lang (Urfalino, 2004, p. 14).

These three would go a long way in determining and shaping the cultural policy as well as the public policy for culture in the country. Philippe Urfalino uses the concepts '*la politique culturelle*' which is emphasizing on a singular policy and '*les politiques publiques de la culture*' noting its sense in plural to indicate the difference in approach and ideology towards cultural affairs by different regimes. The notion of cultural policy as used by Urfalino refers to a moment of convergence and coherence between the representations of the role that the State can play in art and culture with regard to society on the one hand and, the organization of public action on the other hand. The existence of such a cultural policy requires the capacity and coherence of these representations as the minimum unity of action from the State (Urfalino, 2004, pp. 13-14).

The notions of 'cultural policy' and that of 'public policy for culture' were also used to indicate the evolution of the French cultural policy. The two notions draw a clear line

between the major phases in the development of the cultural policy. The first phase was described as the period of the development of the cultural policy and refers to the cultural initiatives since the creation of the Ministry of Culture under André Malraux up to the moment Jack Lang became the minister of culture. The second phase refers to the transformation of the cultural policy by Jack Lang in the 1980s leading to what has been termed as a public policy for culture. Philippe Urfalino talks about the two concepts first to signal the singularity of the French cultural policy as expressed through the cultural centres (*les maisons de la culture*). Secondly, the concepts also show the shift in philosophical ideologies surrounding the coherence of choices in terms of institutional framework, financial support and the outcome of the cultural policy in cultural affairs in the country under André Malraux and Jack Lang respectively. (Urfalino, 2004, p. 360).

4.2.1 Organization of the French Ministry of Culture and Communication

The Ministry of Culture is composed of a central administration with three types of deconcentrated services and establishments for better execution of its mandate. The three are ; the Regional Directorate of Cultural Affairs (les directions régionales des affaires culturelles - DRAC), public establishments (les établissements publics - EP) and services of national competence (les services à compétence nationale - SCN). The National Archives, the Museum of National Archaeology (Musée d'Archéologie nationale et domaine national de Saint-Germain-en-Laye - Figure 4), and the Museum of Prehistory (Musée de la Préhistoire) are some of the services of national competence under the MCC⁶⁵.

⁶⁵ Source: the French Ministry of Culture, accessed online on URL: <https://www.culture.gouv.fr/Nous-connaître/Organisation-du-ministere> on 21st October 2022.



Figure 4: The Museum of National Archaeology– le Musée d'Archéologie nationale de Saint-Germain-en-Laye (Yveline)

Source: Musée d'Archéologie nationale⁶⁶

At the national level, archaeology is administered through the General Directorate of Heritage (Direction Générale du Patrimoine) under the Ministry of Culture. The ministry has a scientific consultative organ, the Conseil National de Recherche Archéologique (CNRA) which is responsible for all matters concerning archaeology at the national level on the entire French territory. Since the year 2010, the Direction Générale du Patrimoine regroups the Directorate of the Museums of France (Direction des Musées de France - DMF), directorate of the Archives of France (Direction des Archives de France - DAF) and the Directorate of Architecture and Heritage (Direction DAPA).

Archaeology is under the Directorate of Heritage where it is controlled by department of Heritage Services that consists of the sub-direction of Historic Monuments and Protected

⁶⁶ Accessed on 13th July 2022 through URL : <https://www.guestviews.co/wp-content/uploads/2019/04/arch%C3%A9ologie-1000x749.jpg>

Spaces, the sub-direction of Archaeology and the mission of the general inventory of cultural heritage.

The French National Council of Archaeological Research (*Conseil national de la recherche archéologique* - CNRA) which is attached to the Ministry of Culture, under the Directorate of Heritage give scientific direction on all matters pertaining to archaeological research at the national level. It examines and proposes all the necessary measures to be taken in matters concerning scientific research on archaeological heritage, its inventory, publication and dissemination of the results as well as the protection, conservation and valorisation of archaeological heritage⁶⁷.

One of the most important roles of the CNRA is that after every four years it generates an elaborate report on the status of archaeological research conducted across the national territory. The council may also involve some external experts in the execution of its mandate.

⁶⁷ <http://www.culture.gouv.fr/Nous-connaitre/Organisation/Services-rattaches-au-ministre/Conseil-National-de-la-recherche-Archeologique2>

PREVENTIVE ARCHAEOLOGY, CULTURAL HERITAGE IMPACT ASSESSMENT AND MANAGEMENT : A COMPARATIVE AND FRANCE

INSTITUTIONAL ORGANIGRAMME OF THE MINISTRY OF CULTURE AND COMMUNICATION - F

Rima Abdul Malak
Ministre de la Culture
Cabinet du Ministre

Bureau d

Collège de déontologie
Conseil de l'Ordre des Arts et des Lettres
Conseil national de l'enseignement supérieur et de la
Conseil national de la Culture scientifique, technique
Conseil national de la recherche archéologique (CNRA)
Conseil national des villes et pays d'art et d'histoire
Conseil supérieur de la propriété littéraire et artistique
Conseil supérieur des archives
Haut Conseil de l'éducation artistique et culturelle
Comité d'histoire du ministère de la Culture et des ir
Commission de récolement des dépôts d'œuvres d'art
Commission nationale du patrimoine et de l'architect
Mission interministérielle pour la qualité des constru

Inspection générale des affaires culturelles

Direction générale des médias et des industries culturelles

Service du livre et de la lecture
Service des médias
Délégation aux entreprises culturelles
Délégation à la régulation des plateformes numériques
Département des affaires financières et générales

Délégation générale à la transmission aux territoires à la démocratie culturelle

Haut-Fonctionn
Handicap et à l'i
Délégué ministè
olympiques et p
Sous-direction d
participation à la
culturelle
Sous-direction d
formations et de
Département de
Département de
générales

Secrétariat Général

Haute fonctionnaire adjointe de défense et de sécurité
Haut fonctionnaire au développement durable
Haute fonctionnaire à l'égalité, la diversité et la prévention des discriminations
Mission Cycle des Hautes Etudes de la Culture
Service des ressources humaines
Service des affaires financières et générales
Service des affaires juridiques et internationales
Service du numérique
Délégation à l'information et à la communication
Département de la stratégie et de la modernisation
Département de l'action territoriale
Département des études, de la prospective, des statistiques et de la documentation

Direction générale des patrimoines et de l'architecture

Service de l'architecture
Service interministériel des Archives de France
Service des musées de France
Service du patrimoine
Délégation à l'inspection, à la recherche et à l'innovation
Sous-direction des affaires financières et générales
Mission patrimoine mondial

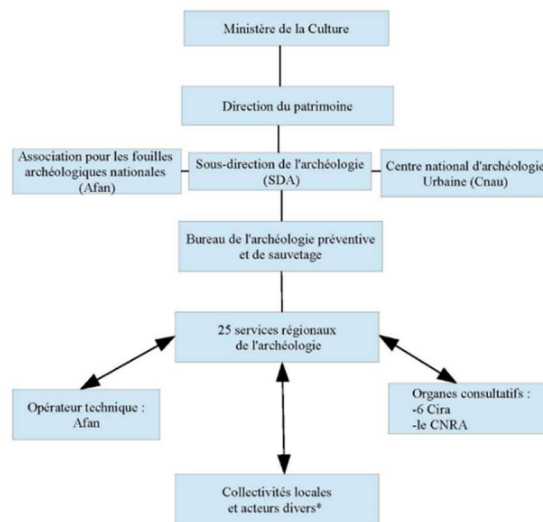
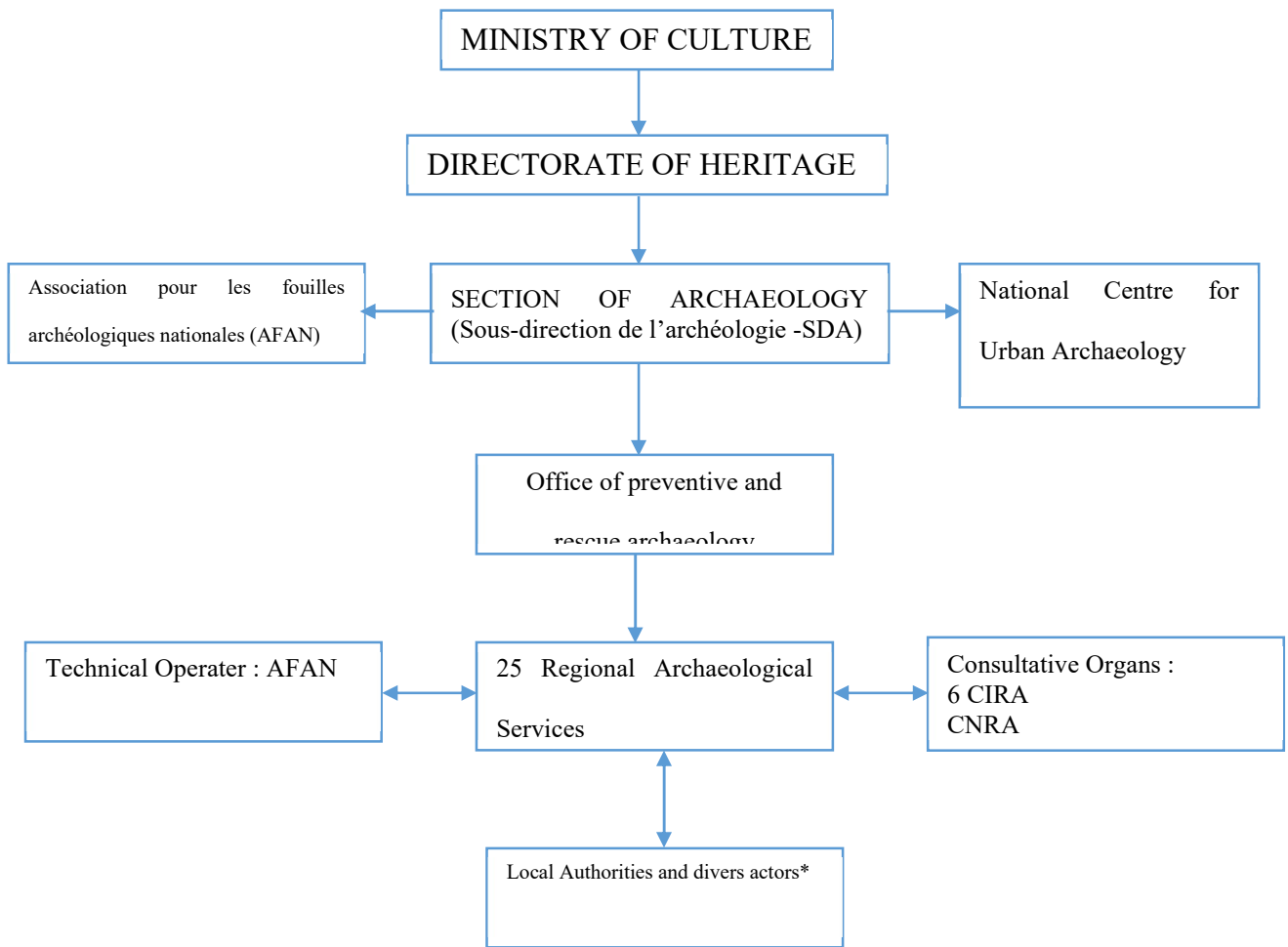
Direction générale de la création artistique

Mission de coordination
Délégation aux arts visuels
Délégation à la danse
Délégation à la musique
Délégation au théâtre et aux arts associés
Sous-direction des enseignements spécialisés et supérieurs et de la recherche
Sous-direction des affaires financières et générales
Inspection de la création artistique
Délégation aux politiques professionnelles et sociales des auteurs et aux politiques de l'emploi
Département de la diffusion pluridisciplinaire et des programmes transversaux

The establishment of a ministry in charge of cultural affairs must not necessarily be for the fundamental domain of functions aimed at creating leisure activities and services. If the creation of a ministry in charge of cultural affairs is justified, as per André Malraux, there must exist an essential domain of functions beyond teaching, entertainment and artistic creations. Together with Gaëtan Picon, André Malraux reserved the role of teaching to the ministry of education; the role of entertainment to the former secretary of State for Fine Arts; and role of leisure to the high commission for the youth and sports (Urfalino, 2004, pp. 42-43). This particular approach to the roles of the ministry generated some questions that called for a keen look at the organisation of the ministries of culture and the subsequent impact in terms of their roles and functions based on the institutions within the ministry as well as the amount of the associated human and financial resources.

Before the creation of INRAP, salvage and preventive archaeology was organised as shown in Illustration 5.

**PREVENTIVE ARCHAEOLOGY, CULTURAL HERITAGE IMPACT ASSESSMENT AND MANAGEMENT :
A COMPARATIVE PUBLIC POLICY ANALYSIS BETWEEN KENYA AND FRANCE**
LUCAS L. W. BWIRE, 16TH DECEMBER 2022



* Services archéologiques territoriaux, chercheurs (CNRS), universitaires, bénévoles, associations de fouilles.

Illustration 5 Organization of salvage and preventive archaeology before 2001

4.3 Cultural centers and theatres: national choices versus regional preferences

The arrival of the Left Wing to power in France in the year 1981 has been described as having been marked by a three-fold break with the past. At the Ministry of Culture change occurred at three important levels which sums up the paradigm shift; change in leadership, increase in financial allocation and change in cultural policy. First, there was change in leadership where Jack Lang who was the new face as the Minister of Culture was the real incarnation of the paradigm shift in the public mind with the unswerving support of the President, François Mitterrand. Secondly, the financial allocation to the ministry increased through doubling the budget of the Ministry of Culture. Thirdly, there was a change of perspective where cultural policy was considered as a priority by the government thus linked to the economic development. The intentional linkage of culture with the economy amounted to a Copernican revolution in the Socialist Left-Wing thinking (Piorrier, 2004, p. 395).

However, while every policy department benefited from these quantitative and qualitative changes, creative activities and the performing arts received more attention than the heritage sector [*le patrimoine*]. Further evidence of the presidential role in cultural policy was provided through the large-scale works program [*les Grands Travaux*], essentially devoted to heritage institutions (Piorrier, 2004, p. 395).

The doubling of the budgetary allocation to the Ministry of Culture occurred during a financial crisis. From the speech given by Jack Lang on 17th November 1981, the then Minister of Culture provided the rationale for prioritising culture with a clear outline of the interception between the ministry and other ministries as well as other sectors of the

economy. The speech begun with a question as to it was reasonable to double the budget for culture during a crisis:

- Monsieur le président, Mesdames, messieurs les députés, doubler le budget de la culture en temps de crise, est-ce bien raisonnable?

Alors même que, sous l'impulsion du Premier ministre, le gouvernement et le pays se mobilisent pour gagner la bataille de l'emploi, l'urgence ne commandait-elle pas d'autres priorités ? ... (Poirrier, 2002, p. 382).⁶⁸

⁶⁸ Source: An excerpt from the Official Journal of the French Republic of the speech delivered by Jack Lang, Minister of Culture; *JORF, Assemblée nationale, 2^e séance, 17 novembre 1981, p. 3870 – 3873.*

INCREASE IN BUDGETARY ALLOCATION AT THE FRENCH MINISTRY OF CULTURE, YEAR 1960 – 1995				
Year	Total (‘000,000 F)	Ordinary Expenditure (Dépenses Ordinaires) (‘000,000 F)	Payments (Crédits de paiement) (‘000,000 F)	Programme Authorization (Autorisation de programme) (‘000,000 F*)
1960	1785	1193	592	680
1970	3165	2146	1019	1197
1981	2600			
1982	5695	4178	1517	2033
1985	11633	7794	3839	5048
1990	12224	8909	3315	4181
1993	13800			
1995	13556	9130	4426	3739

Source: (Poirrier, 2000, pp. 160-161).

F* stands for French Francs.

It was during the administration of Jack Lang as the Minister that the Ministry of Culture witnessed such dramatic expansion in the ministry’s budgetary allocation. Through the unflinching support of the President of the Republic, François Mitterrand, the Ministry's budget doubled in 1982 and then gradually increased from 2.6 billion francs in 1981 to 13.8 billion in 1993. One billion francs was spent annually on historic monuments at the beginning and two at the end of the period. Similarly, resources for archaeology quadrupled and archaeologists were hired. The increase in resources went hand in hand with the increase in the hiring of research personnel which doubled by the end of 1993. As the resources for the national theatres increased, there was also decentralization of drama⁶⁹.

⁶⁹ Ministry of Culture, *Jack Lang: Les axes prioritaires de sa politique*, accessed on URL <http://www.culture.gouv.fr/Nous-connaître/Decouvrir-le-ministère/Histoire-du-ministère/L-histoire-du-ministère/Les-ministres/Jack-Lang>

Apart from the doubled budgetary allocation to the MCC, the original 1959 Decree was amended for the first time under Mitterrand to expand the functions of the Ministry as well as enlarge the meaning of culture to make it more inclusive and accommodative of cultural aspects that were initially ignored. According to the new text which was promulgated on 10 May 1982 (Piorrier, 2004, p. 395):

The Ministry of Culture serves the following purposes among others:

- i. to let all French citizens develop their inventive and creative abilities, freely exercise their talents and receive their choice of artistic training;
- ii. to preserve national and regional heritage and the heritage of the various social groups for the common benefit of the entire community;
- iii. to foster the creation of works of art and of the mind and offer them the widest possible audience;
- iv. to help propagate French culture and art in an unrestricted interchange of all the world's cultures.

The turn of events right from the creation of the MCC to the arrival of the Left-Wing regime and the subsequent development in the cultural policy to this juncture evokes the notion of power and social networks. Just like their fellow social scientists, 'archaeologists have long argued that acquiring, exercising, and challenging power are relational processes enacted through social practices' (Schortman, 2014, pp. 168; citing Bourdieu 1984; Knoke 1994; Knox et al. 2006; Orser 2005, pp. 83-84; Padgett & McLean 2006; Peeples & Haas 2013, p. 232; Smart 1993, pp. 393-94; Wolf 1968). 82; Wrong 1968). One common way of viewing these processes is to see power, the ability to define and achieve goals or to co-opt the efforts of others in meeting those aims (Saitta 1994, Wolf 1990), as occurring within social

networks. Members of these webs, for differing lengths of time and over varying distances, rely on each other to supply knowledge, goods, or symbols that are essential to enacting power in all its forms [...] (Schortman, 2014, p. 168) In the archaeological records such networks can be identified through tracing the movement of people, artefacts and ideas within a given geographical region based on the study of archaeological sites and objects. In anthropology and sociology, such networks are represented by the interactions among people as can be observed through socio-economic and political phenomenon.

The concept of power and social networks has thus been employed to describe more than past political relations as well as human interactions. Schortman provides two approaches to illustrate how power emerges from social interactions organised within social networks. The first one looks at social networks as structures underlying and shaping interpersonal dealings while the second one views these webs as resulting from strategies people deploy to exert control over their own and others' lives. Proponents of the former model measure the positions of individuals or groups within enduring relational structures around which boundaries are drawn. They then consider the variations in the resources available to each occupant of different positions on these graphs to determine how effectively they can define and achieve objectives and exercise dominion. Investigators applying agency-based perspectives see networks as open-ended, their forms materialized in practices through which individuals secure and use knowledge, items, and symbols to exert power. Networks are thus constituted by, and inseparable from, human aims and acts (Schortman, 2014, p. 168).

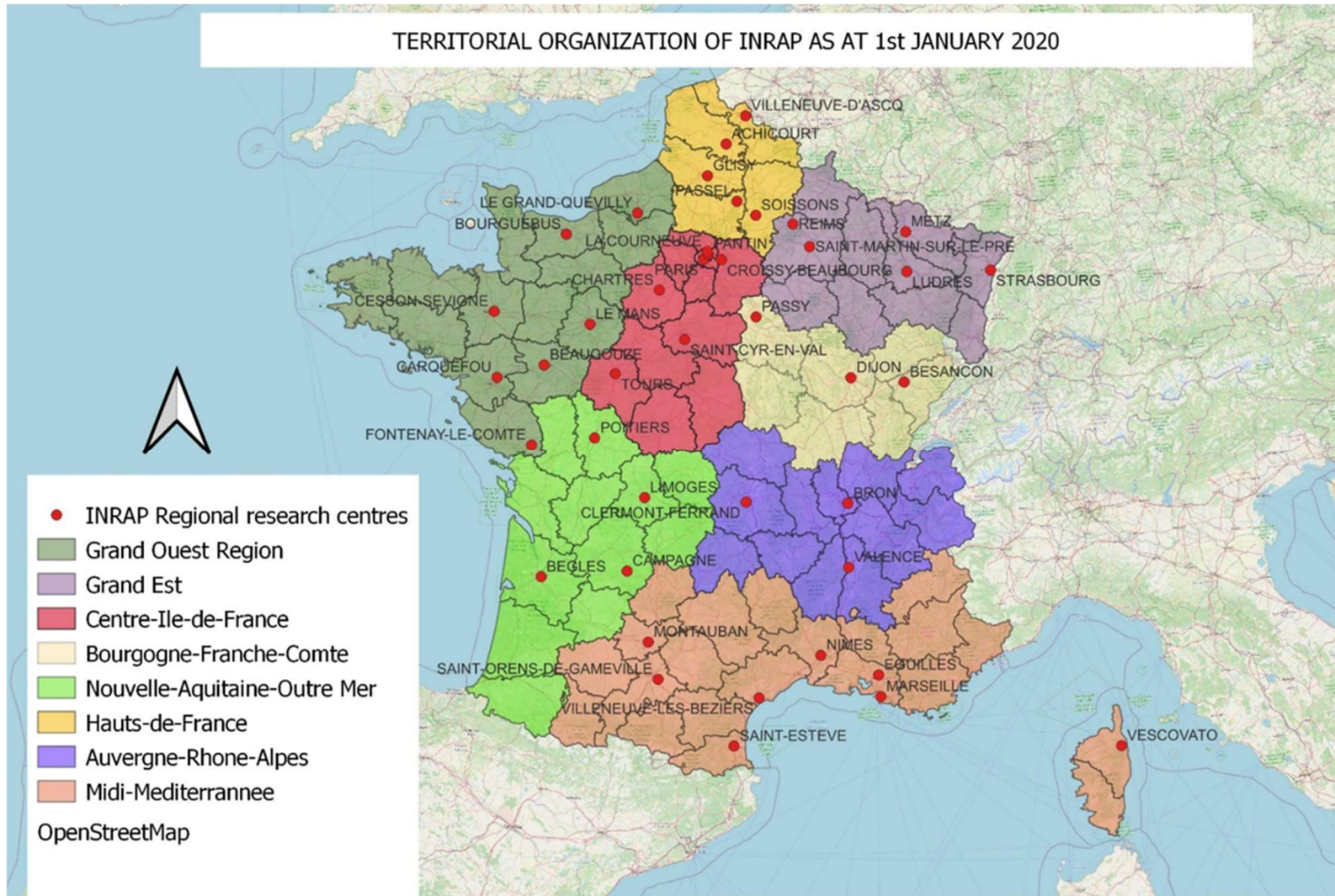
4.3.1 National Institute for Preventive Archaeological Research (Institut national de recherches archéologiques préventives - INRAP), France

4.3.1.1 Origin and Development

The National Institute of Preventive Archaeological Research (l'Institut National de Recherches Archéologiques Préventives - INRAP) was created in the year 2001 by the law number 2001-44 of 17th January 2001 about preventive archaeology. It was born out of the Association for National Archaeological Excavations (l'Association pour les fouilles archéologiques nationales - AFAN) which was created in 1973 to conduct salvage excavations.

4.3.1.2 General Organization of INRAP

INRAP is a semi-autonomous national administrative research institution. It has got a highly structured organization consisting of an Administrative Council (Conseil d'administration), a Scientific Council (Conseil scientifique), a Delegate Director General, Directors of regions regrouping implantations with administrative and research centres (see Illustration 8), and other associate research units through conventions. It has got 43 research centres which are grouped into eight regional and inter-regional directorates with the headquarters in Paris. The latest changes in the national administrative map also modified the regional organization of the institution as can be observed between regions on the maps and the ones mentioned in the organizational structure in the illustration.



Map 4: Territorial Organisation of INRAP as at 31st December 2021. Map realised by the author.

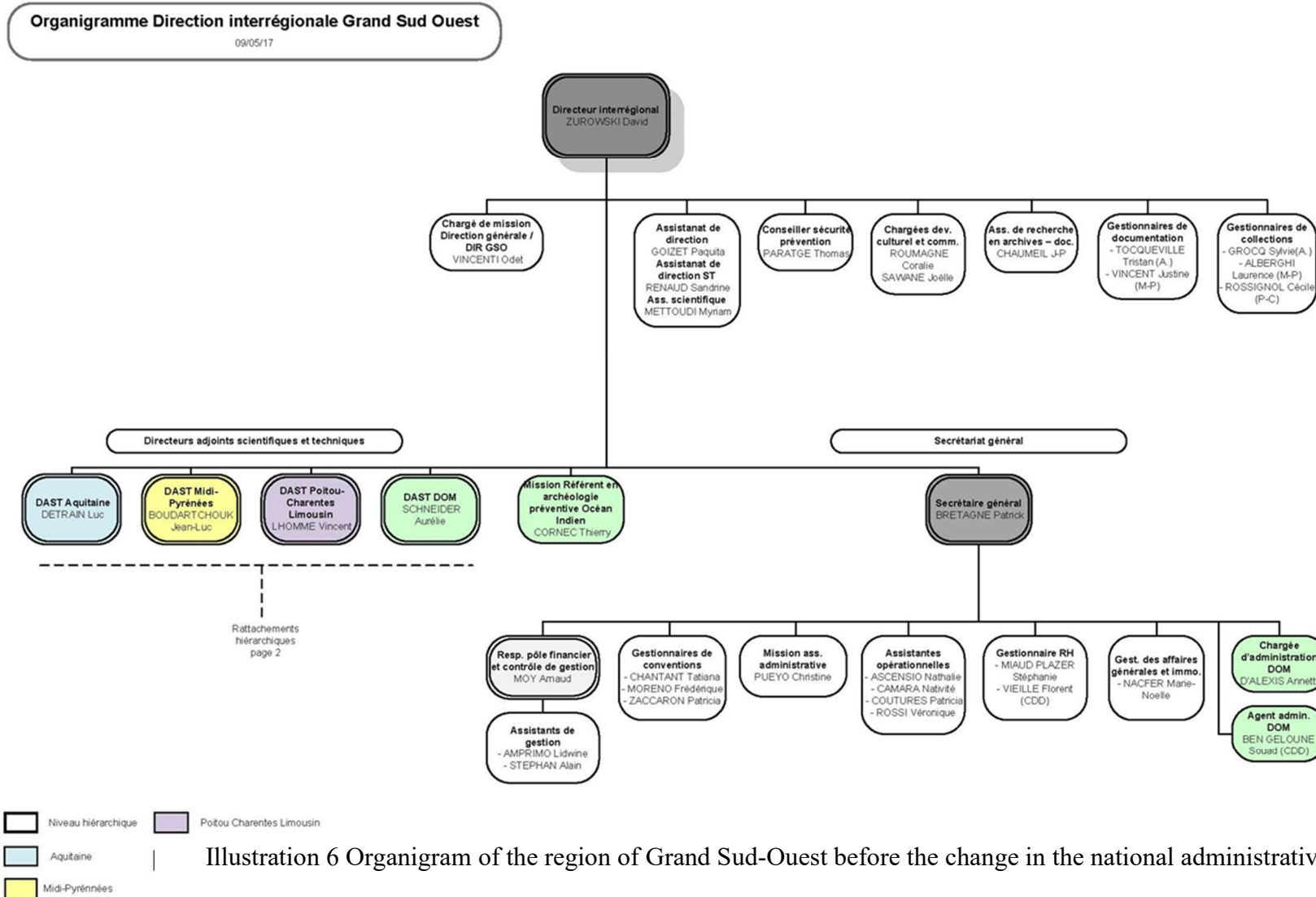


Illustration 6 Organigram of the region of Grand Sud-Ouest before the change in the national administrative map (Page 1/2)

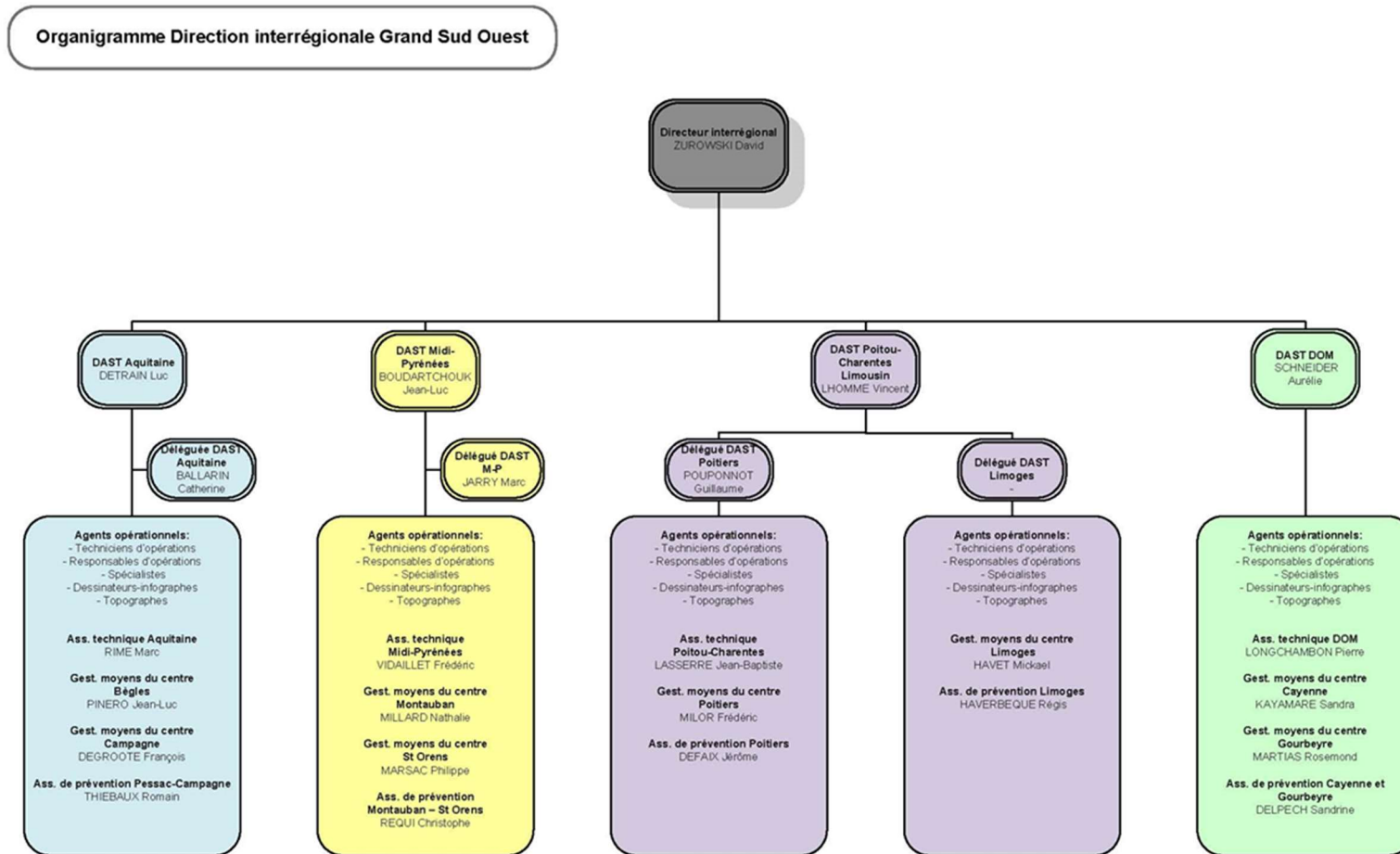


Illustration 7 Organigram of the former region of the Grand Sud-Ouest (Page 2/2)

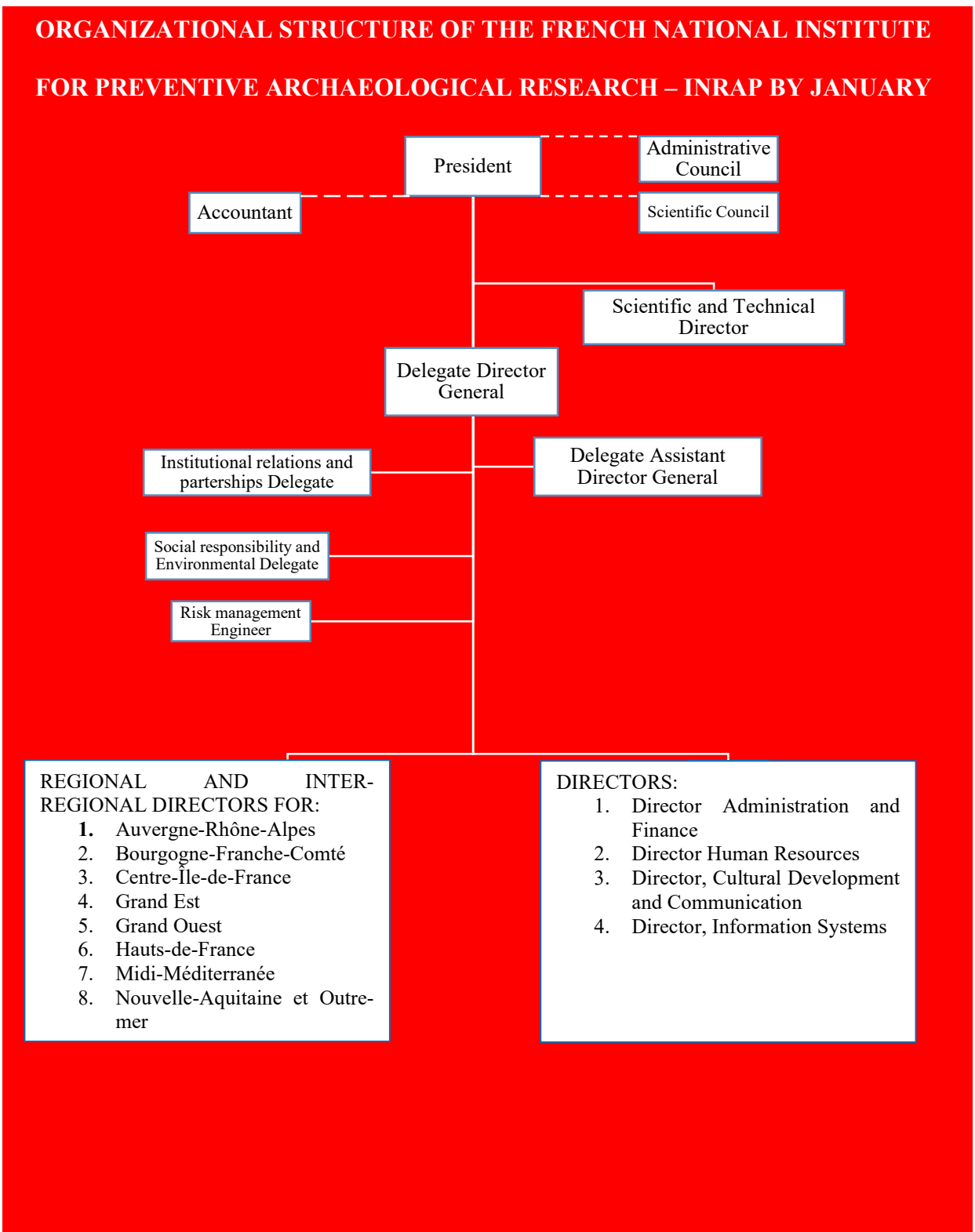


Illustration 8 General Organigram of INRAP by January 2020

At the top of the administrative structure of INRAP there is the President who is the administrative head of the institution. The president operates under the guide of consultative organs including the Administrative Council, Scientific Council and the Accountant.

The Scientific Council is composed of 34 members drawn from the archaeological scientific and research community⁷⁰. This is the key consultative organ of the institution since it is responsible for the scientific control of all research and valorisation activities of INRAP.

The Scientific Council assists the President of INRAP, the Board of Directors and the Delegate Director General in defining the scientific policy of the institute, according to article R 545-46 of the French Heritage Code. It ensures the evaluation of the latter's activities in terms of research and exploitation of results, training, cultural dissemination and promotion of archaeology. In order to execute the functions of a member of the Scientific Council therefore one must have a good knowledge of the specific problems of preventive archaeology (INRAP, 2020 (2016)).

The Scientific Council, whose chairperson is the president of INRAP, meets at least twice a year (precisely four times), when convened by its president. Specialized commissions, made up in part of experts from outside the council, can also attend the meetings.

4.3.1.3 Functions of INRAP

According to Article L 523.1 of the French Heritage Code, INRAP has the mandate to carry out diagnoses and excavations of preventive archaeology. It ensures the scientific

⁷⁰ <https://www.inrap.fr/presentation-du-conseil-scientifique-9833>

exploitation of preventive archaeology operations and the dissemination of their results. It contributes to teaching, cultural dissemination and the valorisation of archaeology:

« L’Inrap réalise les diagnostics et les fouilles d’archéologie préventive. Il assure l’exploitation scientifique des opérations d’archéologie préventive et la diffusion de leurs résultats. Il concourt à l’enseignement, à la diffusion culturelle et à la valorisation de l’archéologie. »

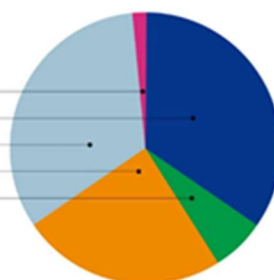
Article L 523.1 of the Code du Patrimoine cited in (Inrap, 2015).

Growth in staff from 2004 to 31st December 2015 based on the 2015 Report

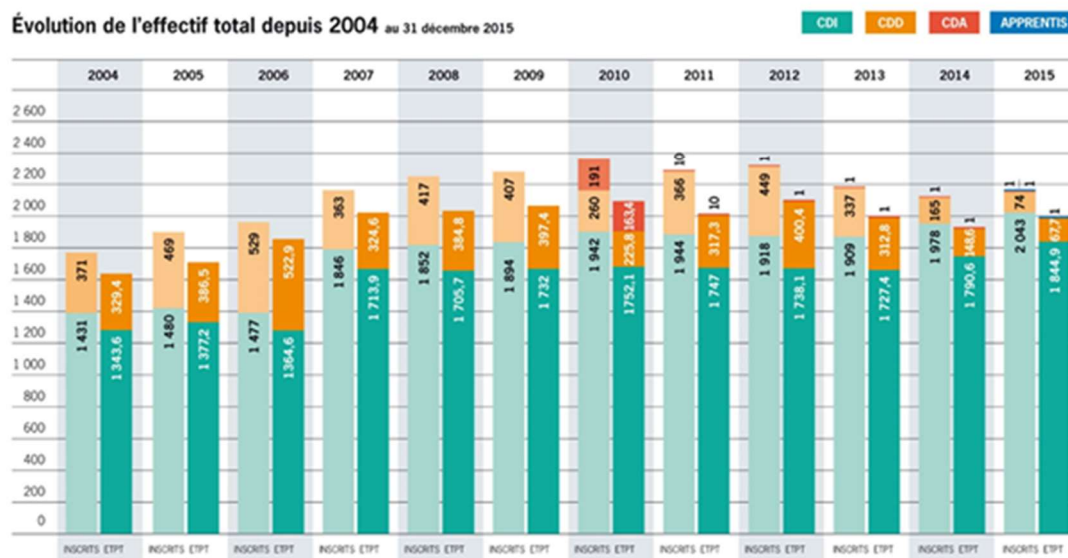
LES RESSOURCES HUMAINES

Répartition des stagiaires
par domaines de formation

Accompagnement individuel	1,7 %
Les métiers de l'archéologie	34,4 %
Prévention des risques	32,8 %
Fonctions support	24,4 %
Encadrement et direction d'équipe	6,6 %



Évolution de l'effectif total depuis 2004 au 31 décembre 2015



Effectifs permanents et non permanents 2015 (moyenne annuelle)

DIRECTION	ETPT (MOYENNE 2015)						APPRENTIS	TOTAL
	CDI			CDD				
	OPÉRATIONNELS	FONCTIONNELS	TOTAL	OPÉRATIONNELS	FONCTIONNELS	TOTAL		
CIF	280,15	54,61	334,76	0,55	0,71	1,26		336,02
GEN	144,67	26,87	171,54	15,37	3,46	18,83		190,37
GES	106,67	26,08	132,75	3,00	1,00	4,00		136,75
GO	236,20	36,07	272,27	4,53	3,10	7,63		279,90
GSO	192,97	40,75	233,72	2,08	3,97	6,05		239,77
MED	170,68	30,35	201,03	13,98	2,62	16,60		217,63
NP	142,78	31,13	173,91	6,40	2,37	8,77		182,68
CSNE				1,72		1,72		1,72
RAA	123,54	31,81	155,36	0,79	0,90	1,64		157,05
Siège	0,79	140,86	141,65	0,27	11,54	11,81	0,29	153,75
	2,38	2,90	5,29					5,29
Total	1400,84	421,45	1822,28	48,65	29,65	78,30	0,29	1900,93

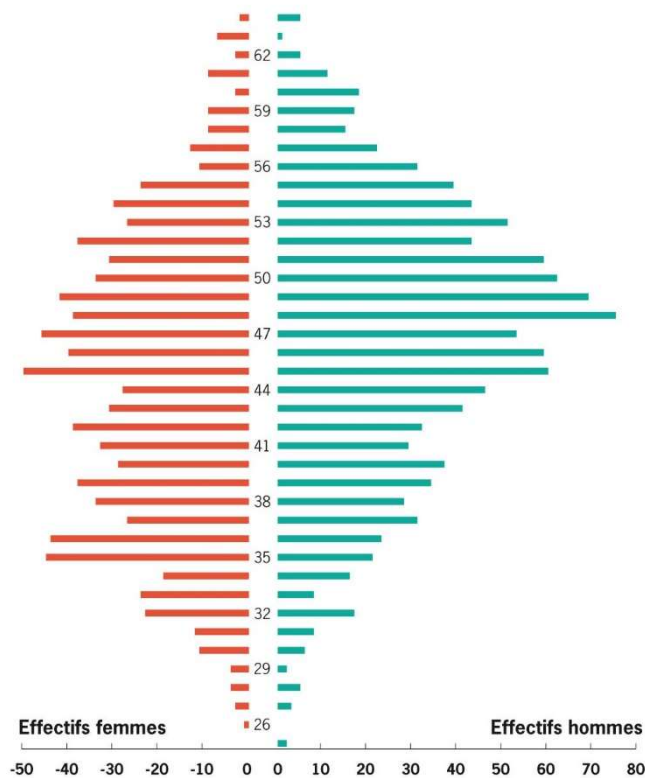


Table 2 Graphical representation of gender parity and age brackets of staff at INRAP (Inrap, 2015).

4.4 Emergence of Central Administrative structures of archaeological research and cultural heritage management in Kenya

From the previous chapter it has been demonstrated that Kenya’s cultural diversity led to a fragmented cultural infrastructure with complete lack of communication between various cultural components. This fragmentation was exploited and accentuated during the colonial period especially by the colonial administrative strategy of divide and rule. The weak and ineffective administrative and institutional framework on cultural heritage management can be explained by the haphazard manner in which culture was administered by the colonial regime. Culture was administered in colonial days by the Chief Native Commissioner in

common with social welfare and community development thus creating the administrative confusion which persisted even after independence. The emergence of central administrative institutions of culture in Kenya is a very recent phenomenon that finds its origin in the second development plan of the first independence government (1970 – 1974) (Ndeti, 1975, p. 43).

In France Legrand d'Aussy was the first person to present a thesis to a National Institute about ancient human remains and an archaeological excavation to be done in their area at the end of the eighteenth century in 1799 (Rigambert, 1996, p. 16)⁷¹. This individual initiative aimed at raising national attention about archaeological research. In Kenya such initiatives were taken by individuals such as Louis S. B. Leakey who did excavations of *Fossil Human Remains from Kanam and Kanjera, Kenya Colony* in 1931 – 1932. These excavations attracted the attention of scholars in the USA and Europe especially in the United Kingdom (UK) following the publications of the report in *Nature*, the journal that necessitated scholarly debate about the discoveries (Leakey, 1936) hence keeping a record that is still accessible to date. However, there were limited attempts to organise archaeological research in Kenya until later after the independence. The efforts of individual researchers and international cooperations prevailed as majority if not all of the researchers were of foreign origin.

⁷¹ Un « mémoire sur les anciennes sépultures et sur un projet de fouilles à faire dans nos départements » cited in A. Querrien et A. Schnapp, dans le deuxième rapport sur la politique de la recherche archéologique en France, Paris 1984 (unpublished)

4.5 Organization of Archaeological research in Kenya in the post-independence era

Since the independence era, archaeological research in Africa has immensely contributed to the scientific and historical knowledge of the African continent which was formerly presumed to be a dark continent without a history. However, the discipline has not yet been fully embraced in most of the countries' educational and research institutions. This is despite the fact that there still exist numerous opportunities to undertake archaeological research in Africa (McIntosh, 2017, p. 15). Unfortunately, there are very few practicing archaeologists in Kenya who are active on the ground to carry out archaeological research and still very few young researchers are willing to choose archaeology as their career research field. This is paradoxical because archaeological research especially at the National Museums of Kenya and the British Institute in Eastern Africa (BIEA) has gradually developed since the past thirty years to attract both male and female researchers. The paradox lies in limited local funding where majority of the researchers are obliged to further their studies abroad through bilateral cooperation available via their institutions. This locks out many students who are not attached nor aware of such opportunities.

For anyone wishing to undertake archaeological research in Africa as S. K. McIntosh notes, 'there are opportunities galore to provide pioneering insights in unstudied areas' (McIntosh, 2017, p. 15).

, , to establish basic chronological frameworks and create reference databases, or to revisit sites excavated in prior decades and expand existing information. The ratio of practicing archaeologists to habitable

land mass in Africa is staggeringly low. In some countries (e.g., Guinea Conakry, Guinea Bissau), there are no professional archaeologists in universities or government offices; at the other pole, uniquely, is South Africa, with numerous and diverse archaeological expertise and well-funded research carried out in numerous institutional contexts. Countries such as Senegal, Morocco, Egypt, Kenya, Botswana, Nigeria, and Ghana occupy positions more or less midway between these two poles (McIntosh, 2017, p. 15).

The numerous opportunities that exist partly stem from the errors committed during the colonial period which Afrocentric researchers aimed at correcting. Even though the discipline played a crucial role in reaffirming the African identity after the colonial period, it attracts very less research interests among the academic and research institutions. Reasons may range from lack of job opportunities, low remuneration of archaeologists as well as lack of funding for research work in archaeology, lack of motivation at learning institutions where teaching is mainly theoretical with some few field excursions.

In Kenya, one of the challenges resides in the general aims of education, the course objectives of the discipline and the choice of the subject matter to be studied within the school curriculum. The lack of or availability of resources is directly proportional to the country's development priorities as defined in the short-term or long-term development plans such as the national philosophies of African Socialism, the *Harambee* Philosophy, the *Nyayo* Philosophy and the Kenya Vision-2030. The government's plan of action towards culture can also be interpreted through its developmental agenda such as the Big Four

Agenda for the Jubilee Government especially how cultural aspects are incorporated into such an agenda.

Archaeological research has also been affected by historical injustices more particularly land issues. According to C. Koff, 'regional archaeological investigations in Kenya have been suppressed outside of the paleoanthropological work ...' (Koff, 1997, p. 53). Citing Schmidt (1995), Koff postulates that to the Kenyan government, this path was taken in order to subdue land claims by the different ethnic groups in the country.

Archaeology, if allowed to flourish at the regional level, can easily be identified with an attempt to valorise the history ... of one ethnic group at the perceived expense of others. The state's deep investment in [paleoanthropological studies] has been an ideal way to neutralize regional histories ... in an enterprise that is extra-ethnic: it focuses on a 'population' devoid of ethnicity indeed, devoid of humanness. State investment in this perspective creates a national identity from a period of history so remote that it imitates mythological time. Using a belief that is globally endorsed, the state can draw on the neutrality of ancient nonhumans to provide Kenya with a new universal myth of origin (Schmidt 1995, 128-9 cited in (Koff, 1997, p. 53)).

When conducted within such an approach, archaeological research becomes an instrument to respond to very limited research questions aimed at solving just but a few imaginary societal issues. It also makes it to remain an elitist discipline exercised by the very few experts without or with limited participation of the local people for whose interest the research is supposed to be conducted. For a long time archaeology in Africa was conducted

without incorporating the interests of the people whose heritage was the subject matter in the study. According to Abungu, only the site and the material evidence of past civilizations were taken into consideration while ignoring the need to create community partnership from which researchers could learn (Abungu, 2016, p. 46). At the same time the prolonged preoccupation with evolutionary history of human kind has hindered the discipline from embracing an interdisciplinary approach and engaging other sciences and humanities that complement the study of the human past.

4.5.1 The Ministry of Sports, Culture and Heritage in Kenya

The ministry responsible for the management of cultural heritage in Kenya is the Ministry of Sports, Culture and Heritage. Given the centrality of culture to the life of the nation other ministries have also been responsible for various cultural aspects such as the Ministry of Education, the Ministry of Environment, the Ministry of Tourism and the Ministry of Foreign Affairs, the Ministry of Internal Security, the Ministry of State for Home Affairs, the Ministry of Finance, the Ministry of Communication among other ministries.

The creation of the ministry in charge of culture represents the major state initiative that demonstrates the manner in which it perceives the country's cultural policy. As it has been described, the creation of the ministry of Culture in France was synonymous with the emergence of the cultural policy in the strict sense of the term. In Kenya however, the invention was not a rapture but rather a long process that is still going on due to the changes in perspective and attitude towards culture by each political regime based on their social, economic and political choices.

Another difference concerns what constitutes culture as perceived through the organization of the Kenyan and French Ministries of Culture. In Kenya, the notion of culture puts

emphasis on the aspects of culture provide quick economic gratification. These include sports, artistic works especially performing arts, music and other literary works that have also attracted a good number of individuals mainly as sources of their livelihood. In most cases it is their economic exploitation that makes them popular rather than the cultural values that they seek to conserve and transmit.

Sports have been at the core of Kenya's Ministry of Culture. They even seem to overrule the importance of the rest of cultural resources due to the fact that they have given the country global recognition as a home of champions especially athletics and hence a key contributor to the economic development of the country.

Despite the rich cultural resources, the evolution of a cultural policy in Kenya can be characterised as a long process with contradictions and ambiguous cultural representations. The contradictions and ambiguities could be attributed to the fact that the country took long to harmonise its public policies for culture into a State institution in the form of a ministry in charge of cultural affairs. The contradictions and ambiguities could also be due to the multiplicity of cultural properties whose identification and protection raises some important questions:

- i. In the absence of a public institution in charge of cultural affairs, who was to make the decision concerning which property to consider for protection?
- ii. Whose values were represented in the cultural property given the diversity of Kenya's cultural heritage?
- iii. What was the impact of such institutional and legislative gap in the management of the nation's cultural heritage at the backdrop of the colonial administration and its legacy?

The precursor to the Ministry of Culture was the Department of Culture at the then Ministry of Cooperatives and Social Services which was established through a Presidential Directive of 1980 (Ndeti, 1975). The main objective was to ensure the coordination of all cultural activities in the country⁷².

The core functions of the Department included:

- i. The promotion, revitalization and development of all aspects of culture. These include performing, visual arts, languages indigenous health, nutrition, environment, and oral traditions; and

Education, information and research on all aspects of the tangible and intangible cultural heritage.

4.5.2 National Museums of Kenya (NMK)

The term “museum” according to the National Museums and Heritage Act revised 2009 (2006) ‘means a public or private institution which collects, preserves, analyses and exhibit objects of cultural and natural heritage’. The “national museum” means a museum vested in the National Museums (Republic of Kenya, Revised 2009 (2006)) where the latter refers to NMK.

During the colonial period, the responsibility over the conservation and management of cultural heritage, sites and archaeological research was under museums, antiquities organizations or societies and universities. The main functions of these institutions were

⁷² Republic of Kenya, Ministry of Sports and Heritage website: <http://www.sportsheritage.go.ke/index.php/2015-03-09-10-56-04>

research and the application of scientific principles. The local communities were excluded in the management and conservation of the cultural heritage where their traditional know-how was overlooked in favour of the established scientific principles (Ndoro, et al., 2018).

4.5.3 Origin and development of NMK

The foundations of Kenya's heritage institutional framework were laid through the establishment of the National Museums of Kenya which traces its origins in the year 1910. It was established by the then East Africa and Uganda Natural History Society [currently the East African Natural History Society (EANHS)] (Karega-Munene, 2014). By then the group comprised of colonial settlers and naturalists who needed a place to keep their collections (National Museums of Kenya, 2018). It was first located where the present Nyayo House stands before being moved near Serena Hotel in 1922 and later at the Museum Hill. It was officially inaugurated on September 22, 1930 and named Coryndon Museum in honour of Sir Robert Coryndon, who was once Governor of Kenya colony and a staunch supporter of Uganda Natural History Society (National Museums of Kenya, 2018).

Since their creation in Kenya at the beginning of the twentieth century, museums have played a significant role in the preservation of the country's cultural and natural heritage. Compared to other sub-Saharan African countries, Kenya is very rich in both cultural and natural heritage making it attract visitors globally to come not only as tourists but also to study and learn about the museum's experience and the origin of humanity (Koobi Fora Research Project, 2022). Most of the earliest African museums were established between the years 1920s and 1930s. During that time Africanist archaeologists were affiliated to the museums and thus they became centres for research and education as well as sites for the conservation and dissemination of archaeological heritage (Arazi & Thiaw, 2013, p. 215). As such these

institutions played a key role in the establishment of centralised cultural heritage management systems in most of the African countries. However, the process of nationalisation and centralisation of cultural heritage which took place during the colonial time dispossessed most of the communities of their right to the management of the cultural heritage. To add on this, according to Posnansky (1982), early archaeological research in Africa was inspired by the western desire to use ancient art and antiquity to equip European museums (Arazi & Thiaw, 2013, p. 215; Sutton, 2007, p. 304). This may have affected the development of national policies on cultural heritage with an impact on the organization, location and functions of national museums in most of African countries. In Kenya it was not until 1968 when the National Museums acquired a national face under the direction of Richard Leakey (Karega-Munene, 2014).

The greatest and most pronounced impact of the colonial foundations of national museums was in the main objective of a national museum in Africa as well as the meaning of a museum to majority of African natives which remained and still is uncertain. They at times served as collections or/and research centres where objects of cultural value would be kept for some time while waiting to finalise the preliminary study prior to their being exported for in-depth study and conservation in Western museums. This may partly explain as to why it is easier to find the most important African collections across the major museums in Europe. This finds its explanation in the design of the Kenyan economic policy during the colonial period. The British had designed the Kenyan economic policy to be complimentary to, not competitive with, the metropolitan economy (Schatzberg, 1987, p. 2). Therefore, the cultural policy especially the legislation on archaeological research and cultural heritage management was based on the socio-economic and political interests of the former colonial power. The Ancient Monuments Preservation Ordinance, for instance, aimed to protect

among others, the graveyards of State officers to preserve the memory of noted men across the country.

At independence in 1963 Kenya had two museums; the Coryndon Memorial Museum in Nairobi which became the National Museum in 1964. It concentrated on natural and prehistoric research. The second was Fort Jesus Museum in Mombasa which dealt with Islamic and Portuguese antiquities (Karega-Munene, 2014).

4.5.4 Organization of the National Museums of Kenya

The organization of the NMK takes a hierarchical order with the NMK Board of Directors being at the top of the hierarchy (Figure 5) and which took all the aspects of the former Board of Governors as mandated by the National Museums and Heritage Act 2006. The 2006 Act was a merger of two Acts; the Antiquities and Monuments Act of 1983 and the National Museums Act of 1983 thus it also failed to include the membership of academics in the Board of Directors (Karega-Munene, 2014).

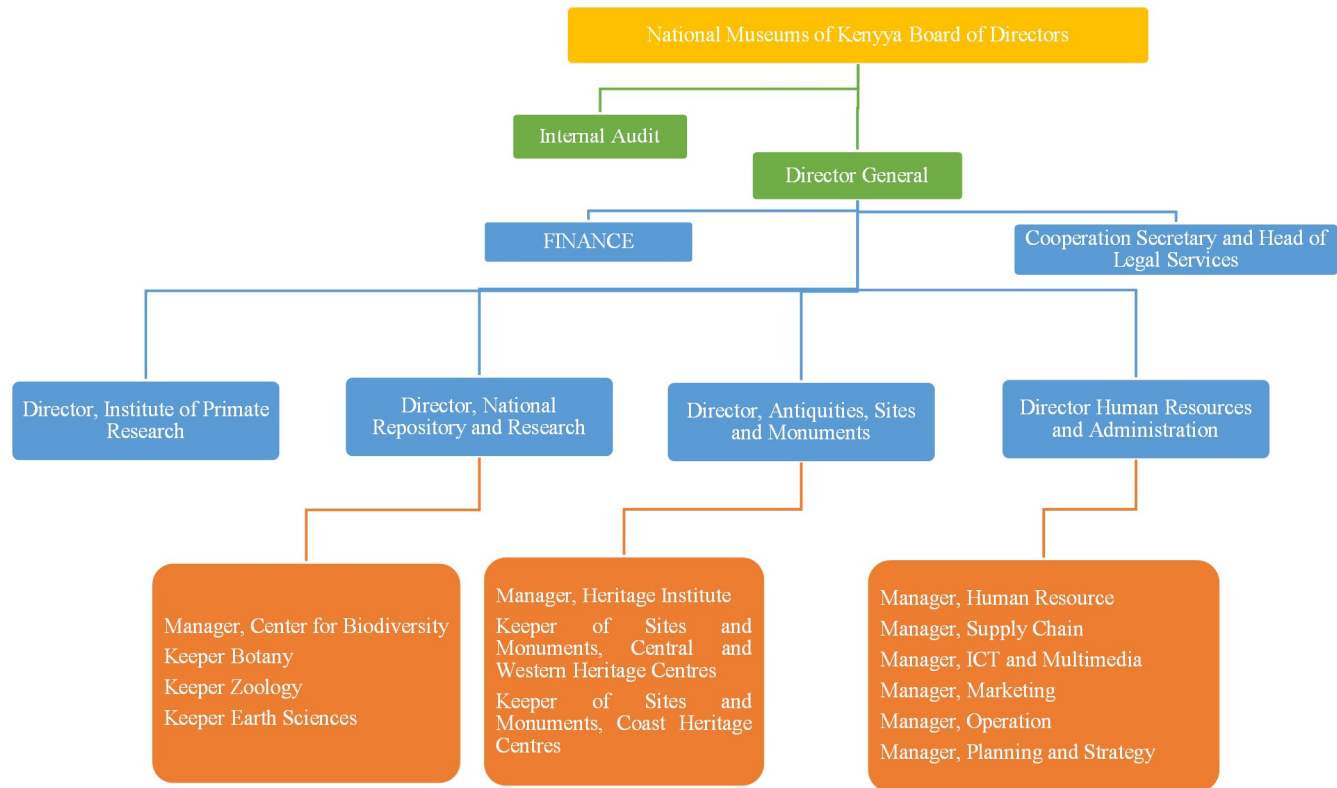
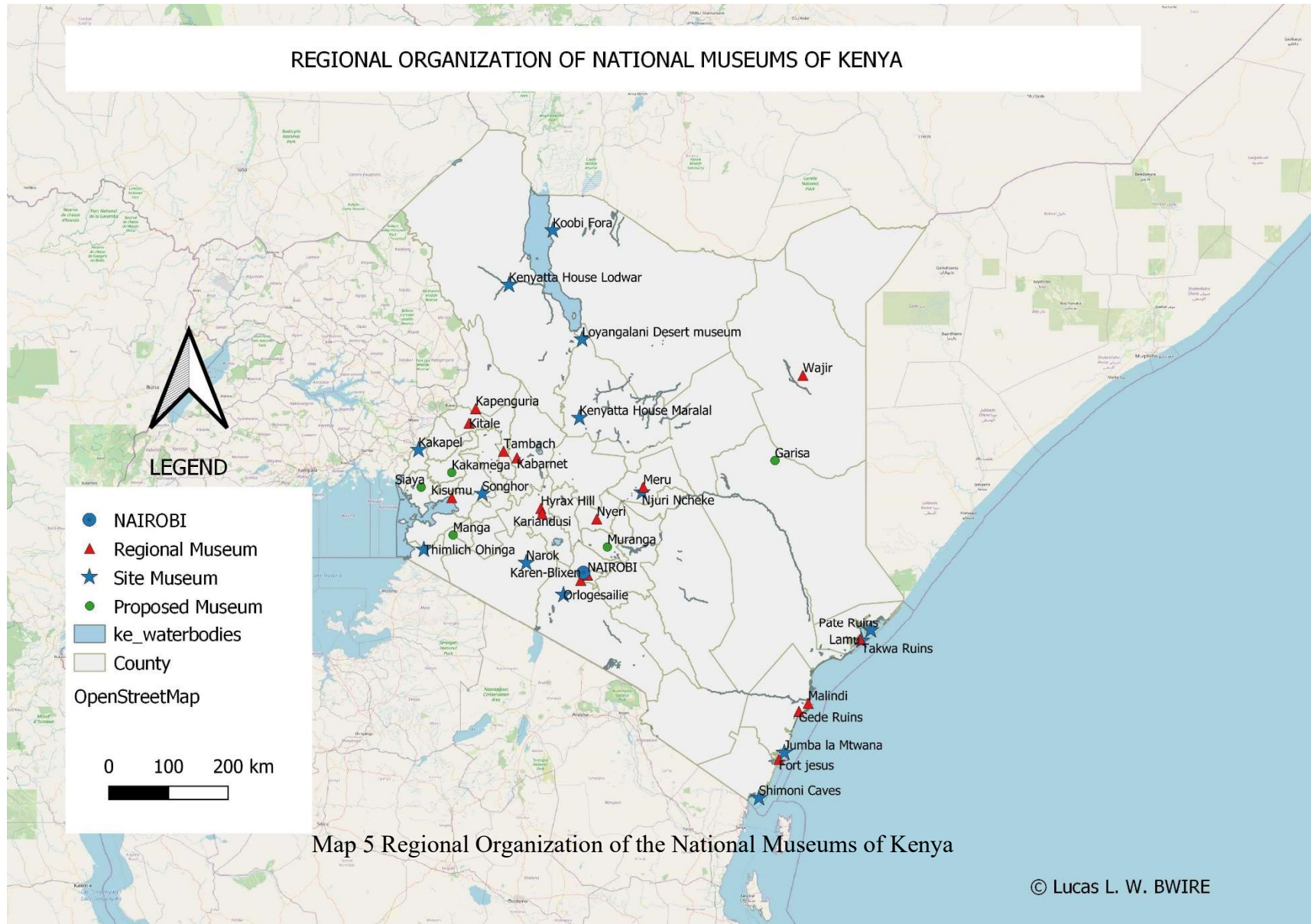


Figure 5: Organizational structure of the National Museums of Kenya



4.5.5 Functions of National Museums of Kenya

The National Museums of Kenya plays a crucial role in the research, collection, documentation and dissemination of scientific information across diverse fields of study both nationally and internationally. It was established by the National Museums and Heritage Act (NMHA) Revised Edition 2009 (2006) which repealed the Antiquities and Monuments Act and the National Museums Act of 1983. It was created to perform the following functions as stipulated in Article 4 of the Act:

- (a) serve as national repositories for things of scientific, cultural, technological and human interest;
- (b) serve as places where research and dissemination of knowledge in all fields of scientific, cultural, technological and human interest may be undertaken;
- (c) identify, protect, conserve and transmit the cultural and natural heritage of Kenya; and
- (d) Promote cultural resources in the context of social and economic development.

In France, the Heritage Code gives four principal functions of the museums of France including; to conserve, restore, study and enrich their collections and to render their collections accessible to the largest public⁷³ (Coye, 2012). In both countries, the functions of national museums are more or less similar. However, in France the function of promotion of cultural resources in the context of social and economic development (the fourth function

⁷³ Code du Patrimoine, Livre IV : « Les musées de France ont pour missions permanentes de : a) Conserver, restaurer, étudier et enrichir leurs collections ; b) Rendre leurs collections accessibles au public le plus large ;... » (Article L441-2).

of NMK) was accorded to a separate institution, INRAP. This particular element gives the French system of preventive archaeology an outstanding character among various systems in Europe and in the world.

Like France, the Kenyan Ministry of Culture was mandated to protect the country's cultural heritage. Article 5 (n) of the National Museums and Heritage Act (NMHA) 2006 gives NMK the mandate to conduct environmental impact assessments (EIA) in coordination with the National Environmental Management Authority (NEMA), subject to the provisions of the Environmental Management and Co-ordination Act No. 8 (EMCA) Revised 2016 (1999). However, apart from the mention in the EMCA law, the NMHA does not provide a clear and detailed legal framework on how EIA or CHIA should be conducted as one of its functions. This created a dilemma between NEMA and NMK thus leading to issues of incoherence and lack of proper coordination in the practice (Oloo & Namunaba, 2010).

4.5.6 Devolving museums: which way forward for the National Museums of Kenya?

The Constitution of Kenya 2010 devolved the management of museums to the County Governments. This move has met mixed reactions where if it is not well regulated there might be issues of ethnicization of museums through creation of ethnocentric community museums. This may be counterproductive if proper policy framework is not done based on comparative studies across world systems where decentralization of museums worked.

The move towards devolution of museums is not new in Kenya. At independence in the mid-1960s, as Karega-Munene observes, Robert Carcasson who succeeded Louis Leaky as the director of Coryndon memorial Museum came up with a proposal to establish two parallel systems of museums; scientific museums and cultural (village or provincial) museums. Scientific museums were to be responsible for the acquisition, housing and preservation of

national scientific collections; serves as research centres; share scientific material and literature abroad; and provide educational services to visitors. The cultural museums were to deal with cultural and historic services. They were perceived as ‘tribal’ institutions as they were to be ‘housed in *buildings of traditional construction* aimed at illustrating and *preserving customs and traditions of crafts and skills of particular tribal groups*’ (Karega-Munene, 2014). Without going into details (see Karega-Munene, 2014) the proposal did not work as the country’s *majimbo*⁷⁴ system of government was abolished.

In the 1990s initiatives were taken by non-state actors to engage in museum services. The two of the actors were Community Museums of Kenya, an NGO operating Kipsaraman Community Museum in Tugen Hills, Baringo and the Community Peace Museums whose creation aimed to use museums as centres of negotiating peace among warring communities in Kenya following the politically instigated violence witnessed after the restoration of multi-party democracy (Karega-Munene, 2014). The two examples illustrate that devolution of museums may work through combined efforts from the State and non-State actors based on an elaborate legal and policy framework.

In France, according to a 2017 survey entitled *l’Enquête sur les musées de France 2017, Musées Territoriaux*, the legal status of museums’ or the collections in the Musées de France; (68%) belong to the municipalities, 10% of museums are owned by departments, 7% of legal persons under private law (Association or Foundation), 5% of an EPCI, 1% other persons under public law and less than 1% by a region. The results of this survey are quite close to the results of the 2017 “DGP 10 museum data”: municipalities 65%, departments 9%, legal

⁷⁴ Majimbo is the Swahili word that means a federal system of government.

entities governed by private law 8%, see Figure 6 (Ministère de la Culture, Direction Générale de Patrimoine, Services des musées de France, 22/11/2019).

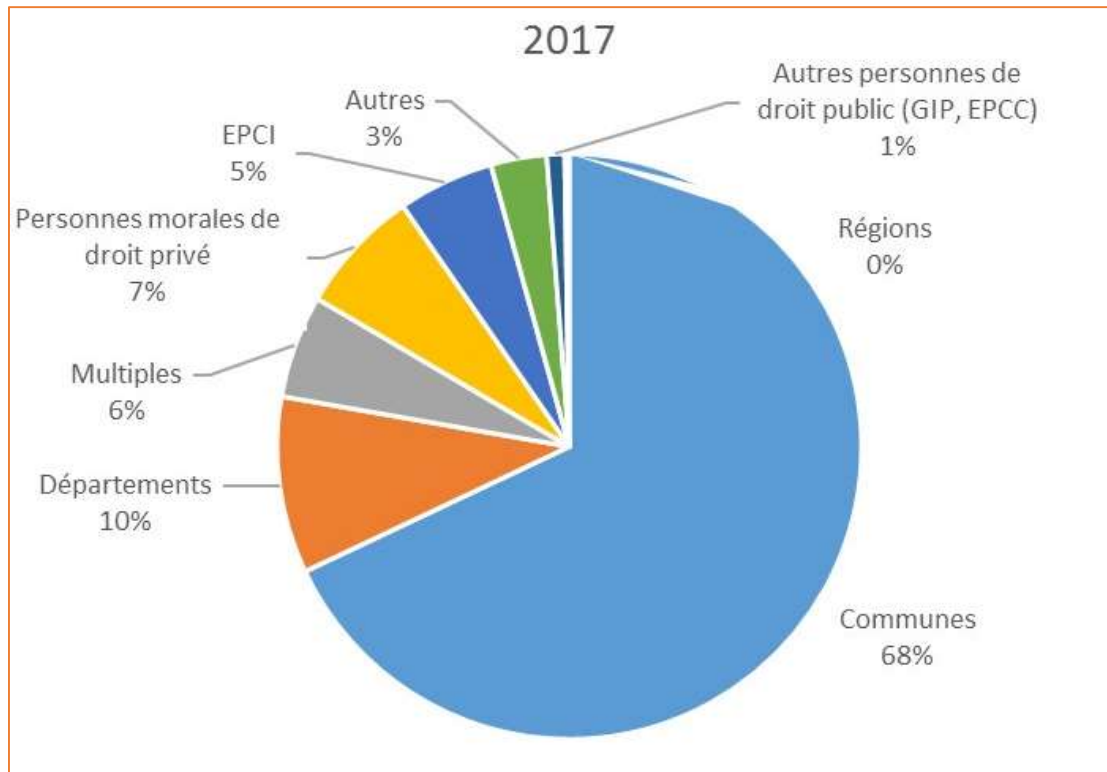
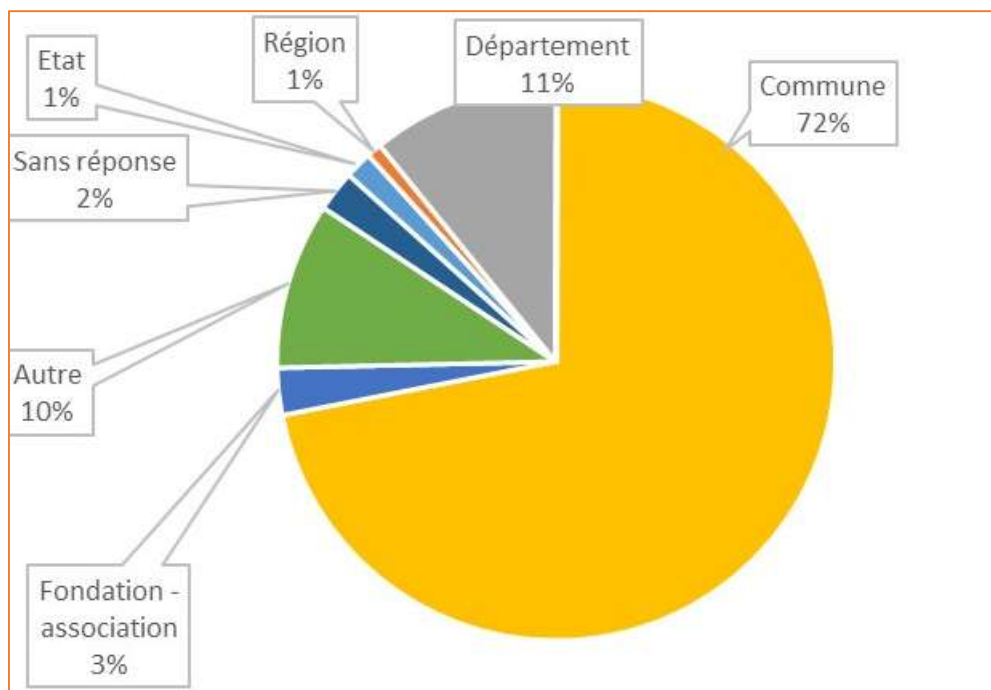


Figure 6: Legal status of Museums or ownership of collections in the Musées de France, according to the 2017 survey report by the Ministry of Culture

The buildings housing the museums are of varied ownership ranging from the State which owns only 1% to the communes which own the majority of buildings representing 72% at the national level including the overseas departments (Départements d'outre mer) (Ministère de la Culture, Direction Générale de Patrimoine, Services des musées de France, 22/11/2019).



4.6 Contribution of the National Museums to archaeological research and cultural heritage conservation

As an emerging country, Kenya has demonstrated that cultural heritage occupies a central place not only as a foundation of the nation but also as one of the source of income that greatly contributes to the country's Gross Domestic Product (GDP). This is due to the fact that Kenya is a global tourist destination and cultural tourism is part and parcel of the centres of interest for most of the tourists. Tourism sector is a key pillar of the economy which makes it possible to put in place measures necessary to protect the industry. The National Museums of Kenya is an institution of research as well as responsible for the management of the country's cultural heritage.



Illustration 9 Collections organized according to regions corresponding to former provinces.
Courtesy Lucas Bwire

This organization of archaeological objects in the museum makes it easy for researchers to access cultural materials based on the system of catalogue that is displayed against each column. It could as well make it easier for the creation of an inventory and a data base; the only challenge being lack of equipment, human and financial resources to accomplish the task.

In Kenya all the collections are kept in the National museums awaiting their study, see Illustration 9 Collections organized according to regions corresponding to former provinces. In case of preventive archaeology, the storage of massive archaeological material collections may be a great challenge. In France there are various storage facilities of collections such as

at various research centres under INRAP, the Regional Archaeological Service (SRA) storage facilities, at universities among others.



Figure 7: Storage of archaeological collections by Regional Archaeological Service storage facilities in Nouvelle-Aquitaine. Courtesy Lucas Bwire.

The National Museums of Kenya deals with both natural and cultural heritage. As such there are various research projects conducted locally and through partnership internationally which range from biodiversity, geological to palaeontology among others. The institution attracts students across the world in varied disciplines within the research areas provided. In this study I used random google trends search results to do a comparison of google trends on museums in East Africa, see Figure 8.

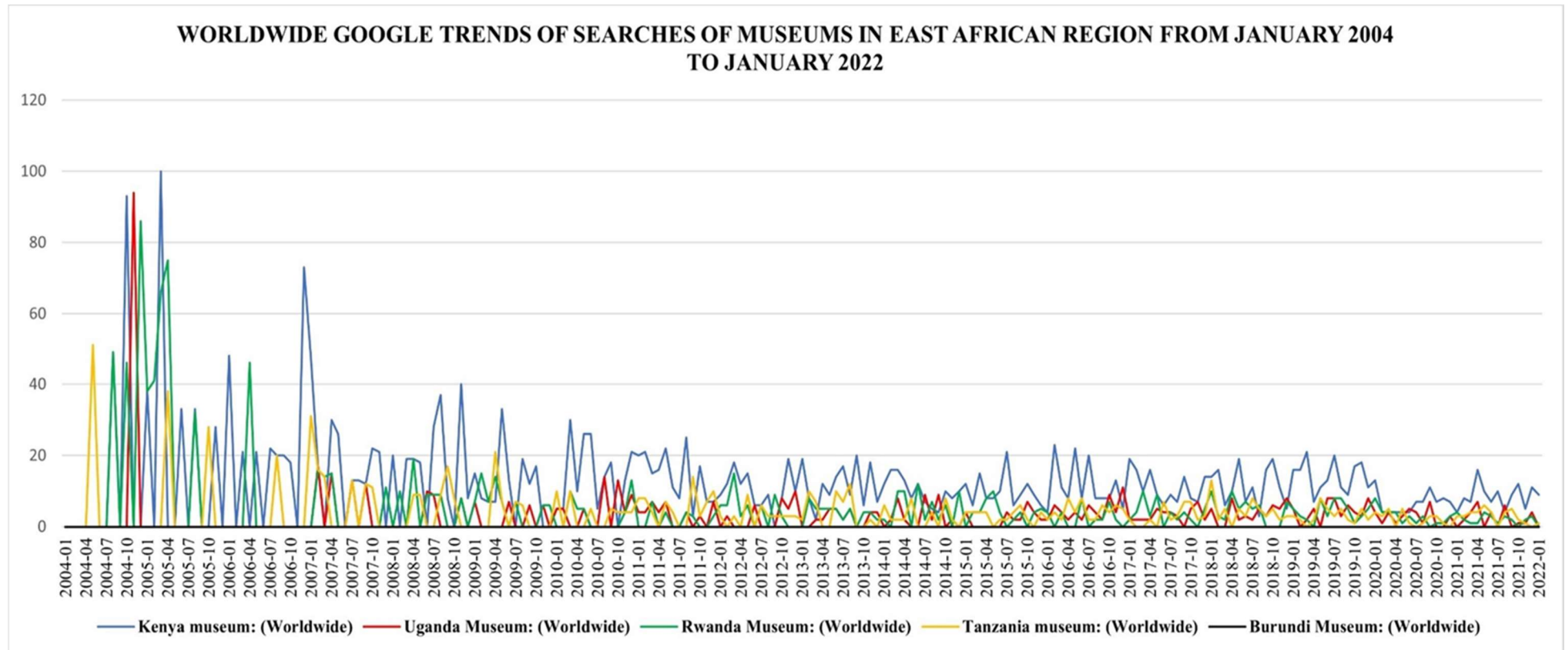


Figure 8: Worldwide google trends of searches of museums in east African region from January 2004 to January 2022

4.7 Conclusion

The establishment of the ministries of culture in both Kenya and France was a fundamental policy issue that demonstrates the government's commitment in ensuring proper coordination, management and protection of each country's cultural heritage. Each of the ministries has got departments under which fall institutions responsible for archaeological research and cultural heritage conservation. This chapter was interested in the historical evolution of cultural institutions and organs that have been in charge of archaeological research and the management of cultural heritage in Kenya and France so as to analyse the policies through the instruments of power and influence.

The individual personalities, especially the political appointees in charge of the institutions play a key role in influencing the evolution of the cultural policy. Those in the various administrative positions may not be active on the ground but they play a very crucial role which determines the outcome of the established legislative, policy and institutional framework. The chapter demonstrates that relying on a political appointee may be counterproductive especially if the process of appointing is not well structured to ensure competent individuals occupy the positions. This was the case in Kenya before the promulgation of the Constitution of Kenya in August 2010. The Constitution of Kenya 2010 changed the process of appointing Cabinet Secretaries to avoid rewarding political confidants with ministerial positions and encouraged the appointment of individuals based on their competence and merit. This is however yet to be realised as various post-2010 governments have gone overboard to reward politicians deemed supportive during the electoral processes in Kenya. Among the ministries that were affected was the Ministry of Culture.

Another challenge is at the level of the organizational structure and functions of institutions that constitute cultural heritage management systems. By the term ‘system’ in this context it implies that cultural heritage management is a process that involves various institutions, organs and individuals who work in harmony to achieve the same objective and any failure of a given part at a given moment translates into the failure of the entire system.

CHAPTER FIVE

GLOBALIZATION, DECOLONIZATION, DECENTRALIZATION AND DEMOCRATIZATION OF CULTURAL HERITAGE

Introduction

This chapter focuses on the methodological approach that has dominated the present study. A comparative historical approach was inevitable given that this is a comparative public policy study. This chapter describes the notion of globalization and its impact on cultural heritage conservation in Africa. The objectives of the African Charter for Cultural Renaissance include to provide people with resources so as to be able to deal with the effects of globalization, to enhance cultural democracy, good governance and conservation of culture for peaceful coexistence. The chapter picks up the decolonization debate while considering its key elements, which are decentralization and democratization of cultural heritage. It then inscribes the debate into the global context by showing the trends in cultural resource management across selected examples in the world. It seeks to make clear the fundamentals of a comparative public policy through based on a historical approach by reflecting on the most contemporary approaches to interdisciplinary research in social sciences.

The relevance of archaeology as a discipline is based on its quest to provide a universal answer to general questions that are asked at different time, in different languages across various geographical and historical contexts. The development of archaeology was as a result of a global attempt to respond to global questions. At the same time the discipline contributes towards the understanding of the emergence and development of globalization. In other

words, the discipline developed in a global perspective that characterised early historical, anthropological and archaeological investigations.

5.1 Conceptualising globalization, decolonization, decentralisation and democratisation of cultural heritage

5.1.1 Globalization

African heritage management, according to S. Chirikure, Webber Ndoro and J. deacon, is becoming more westernized than ever before through the success of globalization. This is because heritage professionals look at the continent from the two opposing points as already stated in chapter one: (i) as an example of regional management practices not found in other places; and (ii) as a testing ground for ideas developed elsewhere (Ndoro, et al., 2018, p. 1). Practiced under these two perspectives, heritage management systems cannot be at the service of the native producers and users of the same but at the service of those who profit from cultural resources as merchandise items in the illicit trade of cultural properties. Despite the world becoming increasingly cosmopolitan, Appiah postulates that local values and ethics are more significant in a globalized knowledge production (Ndoro, et al., 2018, p. 1 citing Appiah 2006).

According to Cambridge English dictionary, globalization refers to:

- a) *the increase of trade around the world, especially by large companies producing and trading goods in many different countries;*
- b) *a situation in which available goods and services, or **social and cultural influences**, gradually become similar in all parts of the world;*
- c) *the **development of closer economic, cultural, and political relations** among all the countries of the world as a result of travel and communication becoming easy;*

d) *the process by which particular goods and services, or social and cultural influences, gradually become similar in all parts of the world* (Cambridge University, 2020).

As used in this work, globalization basically refers to the process of developing closer ties among various countries and nations through social, cultural, economic and political cooperation manifested through flexibility in movement of people, exchange of goods, services and information resulting into cultural modification. It is more or less a cultural phenomenon as well as an economic and political one. The colonialization was a factor that contributed to globalization even as it was a product of the same. In the field of cultural heritage management, this process has had adverse effects on the manner in which African cultural heritage has been perceived both on the continent and abroad. The subjugation of Africans under colonial domination and the subsequent introduction of modern rather Western perceptions of heritage went a long way into determining the continent's identification, definition and conservation of its cultural heritage. This did not only obscure the future of the past in majority of the African countries but also curtailed all the efforts towards the prediction and invention of the future of these countries.

Colonial era definitions of what constitutes heritage, how it is managed, and who should manage it have gained dominance in Asia and Africa, and have been further reinforced by the international organizations such as UNESCO, ICCROM, IUCN, and ICOMOS. The notion of World Heritage made it mandatory for heritage authorities and professionals in the two continents to use so-called doctrines of conservation developed by the Western world (Ndoro & Wijesuriya, 2015, p. 141).

The repercussions of the dominance of western systems of heritage conservation were serious. According to Chirikure, Ndoro and Deacon this dominance rendered some knowledge forms irrelevant if not extinct. ‘The universalism championed by directly transplanting Western ideas into Africa without considering the local situation has suffocated local knowledge systems, which have historically provided context-mediated and outcomes-based solutions to heritage conservation’ (Ndoro, et al., 2018, p. 1).

5.1.2 Decentralization and democratization of cultural heritage

The transition from a highly centralised to a devolved system of government has come with opportunities and challenges in the management of Kenya’s natural and cultural heritage. Decentralization and democratization of cultural heritage management is one of the ways through which local community participation, native best practices and traditional custodianship can get the centre stage in Africa’s cultural heritage management systems at the era of globalization. The third principle of the Intergovernmental Conference on Cultural Policies for Development stipulates that; ‘Access to and participation in cultural life being a fundamental right of individuals in all communities, governments have a duty to create conditions for the full exercise of this right in accordance with Article 27 of the Universal Declaration of Human Rights’ (UNESCO, 1998). This declaration echoes one of the considerations of the UNESCO 1968 Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works. According to the latter, ‘[...] *preserving cultural property and rendering it accessible constitute, in the spirit of the Declaration of the Principles of International Cultural Co-operation adopted on 4 November 1966 in the course of its fourteenth session, means of encouraging mutual understanding among peoples and thereby serve the cause of peace*’ (UNESCO, 1968).

Under globalization heritage management in Africa has been captured by international best practice with rare incorporation of local best practice also referred to as traditional approach or traditional custodianship (Ndoro, et al., 2018, p. 1; Munjeri 2004; Jopela, 2011).

There are as numerous ways to ensure accessibility and public participation in cultural affairs as there are numerous meanings and practice of decentralization. Decentralization is a complex concept that cannot afford a simple definition since its meaning depends on the context within which it is applied.

According to the United Nations Development Program (UNDP), one of the most critical prerequisites to translate decentralization from theory to practice is a clear understanding of the concept. To understand decentralization, how best it can be planned and implemented, what its intricacies are, and how its challenges can be overcome, development practitioners should be equipped with appropriate tools which could provide an analytical knowledge of decentralization from a conceptual viewpoint accompanied by real and field-tested examples of the concept in practice (UNDP, 1999)⁷⁵.

Decentralization, as per the UNDP definition, is not so much a theory as it is a common and variable practice in most countries to achieve primarily a diverse array of governance and public sector management reform objectives. There is no common definition nor understanding of decentralization, although much work has gone into exploring its differing applications. Decentralization means different things to different people, and it is primarily a function of the application (UNDP, 1999, p. 1).

⁷⁵ This was a citation from UNDP, April 1998, Decentralized Governance Monograph: A Global Sampling of Experiences, Management Development and Governance Division, Bureau for Policy Development, p. 6

The UNDP defines decentralization or decentralizing governance, as:

'... the restructuring or reorganization of authority so that there is a system of co-responsibility between institutions of governance at the central, regional and local levels according to the principle of subsidiarity, thus increasing the overall quality and effectiveness of the system of governance, while increasing the authority and capacities of sub-national levels. ... Decentralization could also be expected to contribute to key elements of good governance, such as increasing people's opportunities for participation in economic, social and political decisions; assisting in developing people's capacities; and enhancing government responsiveness, transparency and accountability (UNDP, 1999, p. 2)⁷⁶.

The French Directorate of Administrative and Legal Information provides a simple and direct definition of decentralization as a process of planning the State which consists in transferring administrative powers from the State [central government] to local entities (or communities) distinct from it (Direction de l'information légale et administrative-décentralisation, 2016). Decentralisation is a process of state reform that transfers responsibility for planning, management, and the raising and allocation of resources from the central government to sub-national units or levels of government (Karmel, 2017). These are the processes through which the State transfers certain functions and corresponding resources to the local authorities or governments (Direction de l'information légale et

⁷⁶ UNDP, September 1997, Decentralized Governance Programme: Strengthening Capacity for People-Centered Development, Management Development and Governance Division, Bureau for Development Policy, p. 4.

administrative-Glossaire, 2016). France, previously very centralized, is today a deconcentrated and decentralized State based on the law of February 6, 1992 relating to the territorial administration of the Republic, (*la loi du 6 février 1992 relative à l'administration territoriale de la République, dite «loi ATR»*) and which is enshrined in article 1 of the Constitution, according to which "the organization [of the French Republic] is decentralized".

Similarly, article 6 of the Constitution of Kenya declares that the territory of Kenya is divided into counties. It thus specifies that both the national and county government levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation. The article also stipulates that a national State organ shall ensure access to its services in all parts of the Republic, so far as it is appropriate to do so with regard to the nature of the respective service (Republic of Kenya, 2010). The devolution of functions in chapter eleven especially article 186 gives both levels of government responsibilities over the management of cultural affairs.

Decentralization improves is not an end in itself but can be a means for creating more open, responsive, and effective local government as well as a means for enhancing representational systems of community-level decision making (UNDP, 1999, p. 2) which can translate into enhanced management of cultural heritage. Decentralisation is not a synonym for democracy or an end in itself but a tool for achieving specific social, political and economic goals, and the implemented reforms need to reflect these goals (Karmel, 2017, p. 1).

5.2 Global history and comparative analysis

The choice of a comparative research methodology for this study created a great dilemma. In the first place right from the topic the study was very wide covering complex but equally exiting issues. It was a very difficult and long path to take given the choice of the historical and geographical area of study; Kenya and the Nouvelle-Aquitaine region in the South west of France. The main source of dilemma was the divergent historical trajectory between the two countries, one a former colony and the other a former colonial empire⁷⁷. This raised a lot of uncertainties and dilemma demanding a lot of care in handling the various topics under this study. According to C. Thibon, comparative analysis approach presents itself to a historian as both attractive and repulsive⁷⁸. The critic of a global or rather world history research as an embodiment of comparative analysis was based on two main schools of thought. One school of thought subscribes to the notion of the ‘nation’ which emphasises a nationalistic approach to history. The second school of thought focuses on ‘global or world history’. The debate questions both the general tendencies of a global history and its methodology⁷⁹.

It is noteworthy that this methodology and approach is not new nor unique. It is just a walk on a path that was well traced by other social scientists especially in the fields of anthropology, sociology, economics, political science and history. C. Thibon considers it as

⁷⁷ The question about how to compare France, a former colonial power and Kenya a former colony was posed by the jury during the defence of my master 1 thesis at the University of Pau on 16th June 2016. This was a great inspiration towards pursuing a comparative analysis study by creating the challenge to learn about the historiography and debate surrounding comparative analysis as well as the need for prudence in the task.

⁷⁸ Christian Thibon, *Dossier d'habilitation: Présentation générale, état des travaux, problématiques, réflexions méthodologiques et perspectives*. UPPA.

⁷⁹ Ibid.

a macro-comparative analysis in his comparative analysis of the region of Pyrenees in France and the rural Burundi in the Africa's Great Lakes region. In his case it was the choice of the study area, which focused on the Mountainous agro-pastoral communities drawn from two societies in totally different geographical, economic and historical contexts that provided the justification to pursue a more or less similar path.

If we can narrow down, archaeology and anthropology are two different social science disciplines which have been so close since the past two centuries. The relationship between these two disciplines has not always been clear. They have, however, undergone significant transformations in terms of their aims, their field of action through a process of reorganising their methodology thus repositioning themselves to conform to the varied practices as commanded by emerging intellectual and institutional needs. The difference can be inferred from the terminologies used. The concept of archaeology as applied to the scientific study of human's past material remains has been relatively stable and homogeneous. Nevertheless, the development of the discipline and the definition of its object of study, the past, are currently under review. The concept of anthropology on the other hand is more complex and its definition and use have evolved over time based on different research traditions. In French, anthropology referred almost exclusively to the physical and biological study of humanity in relation to the palaeontological remains of the past or the study of the contemporary populations. The study of cultural norms and customs of the contemporary populations particularly referred to as ethnography, a targeted or monographic research; or their ethnology which takes more general and comparative approaches, corresponds to what is referred to as social or cultural anthropology in the Anglo-Saxon tradition (Schlanger & Taylor, 2012, p. 12).

In northern America this socio-cultural anthropology constitutes a general field of anthropology that includes such fields as linguistics, biological anthropology and archaeology. Schlanger and Taylor observe that this intellectual and institutional link is explicit as well as clear and has made considerable contributions. The *Four field anthropology*, as per the American Anthropological Association (AAA) and other international foundations such as the Wenner-Gren Foundation for Anthropological Research, still calls for collective approaches and research. However, this close link between these disciplines has raised questions precisely about the divergent methodological and epistemological lines of action employed by the professionals in the respective disciplines. Some similarities can be established in the European practice within the Germanic and Scandinavian traditions where the various disciplinary lines still associate archaeology to history or history of art regardless of the fact that prehistoric archaeology consists of a significant component of naturalistic tendencies similar to those of environmental science (Demoule, et al., 2009d; Schlanger & Taylor, 2012, pp. 12-13 ; Biehl et al., 2002 ; THIébault, 2010). The relationship between archaeology and anthropology within the French academic circles on the other hand appears to be less pronounced and less traditional (Schlanger & Taylor, 2012, p. 13).

5.3 Globalization, decolonization, decentralization and democratisation of cultural heritage in France

France is traditionally a centralised State. According to Isabelle Maréchal, this was due to the impact of the legacy from the kings of France and Napoleon which was maintained even after the creation of the Republic (*la République*). However, with the construction of the European Union (EU), this kind of organisation of the State has undergone tremendous modifications. The EU has contributed to the promotion of the regional entity as a territorial

organisational unit which is considered as a crucial element to the EU's organizational structure (Maréchal, 2014).

Setting up of regions as administrative entities in France can be traced back to the beginning of the 20th century. The initial efforts towards creation of regional administrative units include the *Clémentel Plan* of 1917, adopted in 1918, which created seventeen economic regions (Saez & Pogany, 1994, p. 221). It was followed by the creation of urban planning regions in 1935 and that of the regional committees in 1938⁸⁰.

Initiatives that were developed after the Second World War were more consistent. In 1955 there was the creation of the « *programmes d'action régionale* » (programs for regional action) led by the Inspectors General of Administration on Extraordinary Mission (IGAME), which were already existing in the regions since 1948 but without budgetary power. A year later, in 1956, a decree established the boundaries of the regions (*régions de programme*). In 1964, 21 administrative regions were officially created by decree. Regions were further strengthened by the decree of March 14th 1964 which granted powers to regional prefects to execute State services. In addition, the first regional administrative conferences were also instituted, together with the possibility of obtaining 'delegated credits' (*les crédits délégués*). Then the law of 5th July 1972 instituted Regional Public Institutions (*les Établissements Publics Régionaux - EPR*) from an administrative perspective (Saez & Pogany, 1994, p. 221).

The decentralization law of 2nd March 1982 gave the regions a status of local authorities (*collectivités territoriales*). Subsequently, the regions obtained the capacity for general planning through the law of 29th July 1982 which empowered them to protect the economic and social interests of the region. The 1982 decentralization law opened the ground

⁸⁰Auby J.-F., 1985, *Organisation administrative de la France*, Sirey, 37-53, cited in Saez G. et M. Pogany, *Rhone-Alpes: Une construction identitaire difficile*, in Saez G. et M. Pogany (Eds.) 1994, 221.

for regional public policies (Saez & Pogany, 1994, p. 222).

In tandem with the above developments, Article 64 of the Act of 2nd March 1982, about the rights and freedoms of municipalities, departments and regions, affirms the right of the local authority to carry out all operations intended to ‘promote economic, social and cultural development’ of the region which has paved the way for regional intervention in many areas (Saez & Pogany, 1994, p. 223).

5.3.1 Cultural decentralisation in France under André Malraux

In France, to quote J.-M. Pontier, decentralization has a long history that is constantly renewed and which seems not to reach its end because decentralization is often adapted to new and emerging circumstances and demands of the society. In neighbouring countries such as Spain we talk of ‘local autonomy’, an expression used by the ‘charter of local self-government’ signed and ratified by France. In decentralization, power flows from the center where the State recognizes then confers competences to the other territorial and peripheral units (Pontier, 2011, p. 94).

In the field of cultural heritage, according to N. Boillet, decentralization has been analyzed by often distinguishing between competencies related to heritage protection and those related to its management. However, according to Boillet, this analytical approach is not sufficient for analyzing the sharing of responsibilities between the state and local authorities. He suggests that the most suitable domain for decentralization is the one concerning valorization of cultural heritage. This is partly because the State is likely to entrust territorial units with actions of development which are considered ‘less noble’, and partly because local authorities are quite responsive to the theme of valorization (Boillet, 2011, p. 291).

The first tendencies towards decentralization at the Ministry of Culture were manifested through the creation of the Regional Committees of Cultural Affairs (les Comités Régionaux des Affaires Culturelles) on 23rd February 1963, the time when André Malraux was the Minister of Culture. These were the first forms of representation of the Ministry in the regions before the creation of the DRACs (Républic Française, 2019).

The above initiative was followed by the creation of the general inventory of monuments and artistic heritage on 4th March 1964. The inventory aimed at taking a national statistics of all elements of heritage from canton to canton and from the smallest to the largest such as Cathedrals. Under this initiative, Malraux decided to protect a lot of buildings constructed in the 19th and 20th centuries as monuments (Républic Française, 2019).

5.3.2 Development of Local Authority Archaeological Services (Les Services archéologiques des collectivités territoriales)

The expansion and development of archaeology in terms of the subject matter and periods took place in the 1960s and 1970s to include Neolithic and protohistoric archaeology, medieval archaeology precisely upper medieval archaeology. This occurred in the context of rapid infrastructural development which led to the emergence of an archaeological crisis due to limits in the administrative structure and legal framework on archaeology. The 1941 law was described as inefficient which could not tackle the challenges to archaeological heritage emanating from infrastructural development. According to C. Héron the aim of the 1941 Carcopino law as it is commonly referred to, was not to organise archaeological research but it was an ‘administrative police’ kind of law (Héron, 2010, p. 13).

According to I. Maréchal, a double effort of devolution and decentralization was undertaken from 1982 to 1983 where some of the State functions were transferred to the regions, the

departments and the communes (Maréchal, 2014). In the aftermath of the 1982-1983 laws of decentralisation there were 37 archaeologists working in 13 districts (*départements*) and 10 towns.

It was also at this time that regional entities were recognized as fully-fledged local authorities (in 1986). This process has continued in different stages up to date and is probably not yet complete (Maréchal, 2014).

To meet the new demands of decentralization, there was cooperation between the various actors in the field of heritage in France and abroad. Decentralization triggered local authorities in many countries to assume new competences particularly with regard to urban planning in general and the management of already existing cultural centers in particular (ANVPAH & VSSP , 2012). This called for new structures at the local level and redefining the relationship between communities and institutions.

Faced with challenges of decentralization in the fields of urban planning and heritage since 1983, the French local authorities and communities developed skills and tools to meet their needs. These are experiences and technics which they can share with their partners. They intervene more particularly in urban governance, in urban heritage plans thus developing skills, knowledge and tools such as the inventory (ANVPAH & VSSP , 2012) which are very necessary for the effective management of heritage.

The National Association of Cities of Art, History and Protected sectors (*L'Association nationale des Villes et Pays d'art et d'histoire et des Villes à secteurs sauvegardés et protégés*) poses a very fundamental question: How can we support communities in their new

skills and develop participative and modern governance structures in management, planning, urban heritage, and housing as well as in the restoration of the living environment?⁸¹

In order to support the communities the following has to be done:

- i. to identify the distribution of powers between ministries and between ministries and different levels of power in the community;
- ii. to familiarize with the country's legislative system, existing planning tools and documents and how they work;
- iii. to identify the cultural, financial, technical and human resources that can be mobilized;
- iv. to assess the political will (ANVPAH & VSSP , 2012).

The above approach is necessary for the establishment of cooperation among actors and between different levels of government in a decentralized system for an effective system of cultural heritage management. To this end, the question of legislation and regulations can only be tackled in partnership with the responsible authorities such as ministries, parliamentary assemblies, assemblies of elected officials at regional or national level (ANVPAH & VSSP , 2012, p. 50). This is basically because 'the economic, social, cultural and environmental challenges that the world must face will not find a lasting solution without being posed at the level of the citizen, that of local authorities, States or International community' (Jolie, 2012, p. 11).

⁸¹ « Comment accompagner les collectivités dans leurs nouvelles compétences et développer des structures de gouvernance participatives et modernes en matière de gestion, de planification, d'urbanisme patrimonial, d'habitat, de logement et de restauration du cadre de vie ? » (ANVPAH & VSSP , 2012).

It is important to emphasize that in France a clear distinction exists between the notion of "deconcentration" which consists of managing the power of the State at local level through the Prefects, and the notion of "decentralization", on the other part, which is a transfer of powers and functions from the State to a local authority so that it exercises it in an autonomous and complete manner (Maréchal, 2014). This is more or less the same as the kind of decentralization in Kenya where we have both devolution and deconcentration.

At this juncture it is imperative to distinguish the terms devolution and deconcentration based on the UNDP observations. The observation makes it clear that devolution is about local government while deconcentration has to do with local administrative committees.

Devolution: Local Government. This represents a stereotype (or 'ideal type') to which, in reality, no local government will ever fully correspond, even in Western liberal democracies, but which provides a useful framework for assessment and for comparison over time and between countries. Briefly, these features are: a democratically representative and autonomous political authority; a clear mandate to provide a range of significant services; body corporate status, with ability to sue, be sued, enter into contractual arrangements, hold a bank account and employ staff; control of or access to local executive and technical staff; access to adequate funds, control of its own budget and accounts and the ability to raise its own revenue; the ability to make and enforce local bylaws. These features are seen as key to achieving efficient and locally accountable service provision and the related benefits of democratic governance.

Deconcentration: local administrative committees. By contrast, an institution as a deconcentrated local administration is generally characterized as follows: an interdepartmental committee comprising line department heads, usually chaired and controlled by a generalist administrator (governor, prefect, district commissioner); a mandate to plan and coordinate the activities of the constituent departments; status as an administrative body, with no powers to sue, be sued, contract, hold a bank account, or employ staff --such functions are undertaken by either the chairperson or the respective line departments; access to development fun but with recurrent budgeting and expenditure undertaken by line departments; no powers to raise revenues or make and enforce local bylaws (UNDP, 1999).

In this context, the administrative organization of the National Institute for Preventive Archaeological Research (INRAP) is a suitable case in consideration. INRAP is organized on the one hand in a highly centralized manner at the national level with its headquarters in Paris. On the other hand, it has adapted its organization at regional level with each administrative region falling under an Assistant Scientific and Technical Director (Directeur-Adjuant Scientifique et Technique - DAST) corresponding to the decentralized administrative regions of the State. The institution is also semi-autonomous given that it is a national public institution which is administrative in nature that is mandated by Article L523-1 of the French Heritage Code to freely associate with other research institutions undertaking

archaeological research⁸² (République française, 2005) whether public or private, locally, regionally or internationally. The law gave it the character of a moral person which is an essential element of decentralization. For this reason it cooperates with the local authority archaeological services as well as the private archaeological institutions especially through collective research programmes that require a high level of expertise and a large amount of technical, human and financial resources.

5.3.3 Decentralization and cultural heritage management institutions

The decentralization of cultural heritage in France was based on Article 1 of the Constitution of the Fifth Republic of 4th October, 1958 which stipulates that France is an indivisible, secular, social and democratic republic. That it ensures equality before the law of all citizens without distinction of origin, race or religion and respects all beliefs. Its organization is decentralized. In the preamble, the Constitution refers to the Constitution of 27 October 1946 which states that the Nation guarantees equal access for children as well as adults to education, vocational training and culture (République française, Assemblée nationale, 1958).

Since the end of the Second World War, regional cultural initiatives occupy a central place in the public policies in France and Europe at large to the extent that they have become the means and conditions for territorial development. The traditionally omnipresent central government has had to cope with the growing competition from the peripheries in the valorisation and conservation of cultural heritage. This was partly due to the realisation of the inequalities in cultural heritage management that were growing between different

⁸² Pour l'exécution de ses missions, l'établissement public peut s'associer, par voie de convention, à d'autres personnes morales dotées de services de recherche archéologique.

administrative regions and local authorities. In recent times, there has been diversification of the cultural facilities and events between the cities, suburbs and the rural areas, between the classical and contemporary cultures, between open and reserved publics (Augustin & Lefebvre, 2004, p. 9). In France these initiatives were intensified in the 1980s by various decrees and policies that were put in place by the government.

The initiatives first aimed at the creation of an equilibrium both at the local, regional and national level in the State engagement and public participation in cultural affairs. This did not happen by chance but by choice. The arrival of the left wing to power in French has been credited for the significant progress in the decentralization of power followed by a gradual but steady process of decentralization of cultural heritage management. The period witnessed a lot of State engagement in cultural affairs with great support from the then President of the Republic, François Mitterrand who considered culture as one of the priorities of his government. Jack Lang, his Minister of Culture, maintained his post across all the socialist governments hence an incarnation of the change itself who succeeded in making possible the intervention of the apparatus of the State power in the artistic and cultural domains (Poirrier, 2002, p. 377). The personality of Jack Lang in the government of President François Mitterrand can thus be compared to that of André Malraux in the government of General Charles de Gaulle. Both the two statesmen were at the core of power and enjoyed great support from the prevailing regime. André Malraux was very influential and close to power that he could interrupt General Charles de Gaulle in his speech. Similarly, based on the central place that culture occupied in the priorities of the government, Jack Lang would hardly take any decision without consulting the Elysée (Poirrier, 2002, p. 377).

5.4 Decentralisation, democratisation of cultural heritage and the organisation of preventive archaeology

In Europe, various systems of cultural management and organisation of preventive archaeology can be observed (Demoule, 2007, p. 12). Each country has its own system based on the shared values and history with regard to the resources that each State is willing to dedicate to this task. As such there exist variations in the systems of cultural heritage management and more precisely in the administration of contract/developer-funded/preventive archaeology. The models range from highly centralised systems in the socialist States to highly decentralised systems in capitalist States. After examining the system of contract archaeology in Europe, K. Kristiansen observes that there exist national as well as regional variations in developer-funded rescue archaeology across Europe. Although the Valletta Convention of 1992 '*stipulates the basic principles of developer-funded rescue archaeology, its implementation since 1992 among the European nations, and [...] the regions within nations, such as the federal states (landes) in Germany, varies dramatically*'. (Kristiansen, 2009).

According to P. Le Louarn, cultural heritage is well adapted to decentralisation of the means and resources for its management because it is very flexible, much diversified and at the same time it is very general (Le Louarn, 2011, p. 10). It was perhaps from the flexible, diverse and general nature of cultural heritage that generally exists three main types of organization of archaeological research and heritage management (Demoule, 2007, p. 12) in Europe as well as in other developed countries. The first type consists of a decentralised system where archaeology is organised at regional or local level. This system, according to Jean-Paul Demoule, creates room for what can be termed as 'local archaeology' (*archéologie de proximité*) as practised in Hungary, Japan and Germany. In some cases, however, such a

system presents challenges of methodological disharmony when it comes to large scale projects such as those of construction of modern superhighways and railway lines. The disharmony may mainly involve the methodology and data management systems where each sub-unit employs different means to arrive at the same results while it subscribes to a different database which cannot probably be reached by other centres and units working on the same project. This may complicate the study.

The South African National Heritage Resources Act 25 of 1999 aims to promote good government at all levels, and empower civil society to nurture and conserve their heritage resources so that they may be bequeathed to future generations. The law establishes the South African Heritage Resources Agency together with its Council to co-ordinate and promote the management of heritage resources at national level; and a decentralised system where it enables the provinces to establish heritage authorities which must adopt powers to protect and manage certain categories of heritage resources.

The second type of organization consists of a commercialized system of archaeology where private archaeological institutions are more privileged. This system exists in Italy, Great Britain and Spain. The general observation is that this commercial archaeology has gradually been excluded from the national research system hence the greatest part of its results remain unpublished if not lost (Demoule, 2007, p. 12). Looking at it carefully, the Kenyan system generally fits into this category. Even though the National Museums of Kenya is the body that is responsible for the promotion of cultural heritage in the context of economic development, a substantial amount of EIA is done by private institutions that have been certified by NEMA to carry out impact assessment. It thus goes to the extent where the developer looks for their own EIA agents without the knowledge of NMK with the sole aim of getting the NEMA licence. This has led to various malpractices where NMK learns at a

very later stage of such activities after the developer and NEMA gets at logger heads over the latter's dissatisfaction with the submitted report or when they notice some gaps during monitoring and evaluation process of an on-going development project.

The third type of organization presents a national system of archaeological research as exists in Greece, Scandinavia or in some central and eastern European countries. This is the traditional system of archaeology in Europe where the State is responsible for the national archaeological and historical heritage. France's system of preventive archaeology falls in this category, especially with the existence of the National Institute for Preventive Archaeological Research (INRAP) which was created in 2001 as an administrative research institution. However, it is a hybrid system which allows for the development of local archaeological research institutions (*les services archéologiques des collectivités territoriales*) as well as private research institutions that work in harmony and cooperate with INRAP through various agreements. The private archaeological research institutions such as Hadés and Eveha, are licenced to practice archaeological research in different areas of specialisation alongside other national and local authority research institutions based on the 2003 modification of the law on preventive archaeology (Demoule, 2007, p. 12; Bwire, 2017). During the international conference, '*Vingt ans d'archéologie préventive dans le monde*', which brought together over eight hundred participants at the National Library of France (Bibliothèque nationale de France, BNF) in autumn 2005, most of the speakers acknowledged the advantages of a system of organization with a national archaeological research institute (Demoule, 2007, p. 12).

In Norway, for instance, the organization of all archaeological activities ranging from its administration, teaching, museums and research were under one roof. This is a unique characteristic of Norwegian archaeology. The current trend has conferred the activities that

touch on traditional cultural heritage including prospection to the mandate of local authorities. However, the granting of exemptions which was done by university museums became centralised under the Directorate for Cultural Heritage. Universities play executive roles such as organising for excavations based on results from prospections done by the counties and the modification of projects as may be required by the Directorate (Dommasnes, 2007, pp. 166-167).

5.4.1 The role of the public in the conservation of cultural heritage in France

The main preoccupation of the Ministry of Culture at the moment of its creation, according to P. Poirrier, was to make the works of humanity, and France in particular, more accessible to the French public at large; to provide the greatest audience for cultural heritage, and to enhance the creation of works of art. The challenge of equal access and the need for cultural democratisation were essential (Poirrier, 2002, p. 181). This line of action was decisive in putting the citizen at the centre of cultural life and debate rather than being peripheral spectators. It was thus an invitation of the citizens to the cultural debate which would later transform into the creation of the cultural centres referred to as *les maisons de la culture* by the Minister André Malraux.

In the western world, Jean-Paul Demoule observes that there are two contrasting concepts of the society. There is the Anglo-Saxon ‘common law’ tradition whose world view considers that the society regulates itself either through the operations of the ‘hidden hand’ as per Adam Smith’s optimistic world view or by means of ‘struggle for life’ as per the pessimistic version of Neo-Darwinism, socio-biology and economic liberalism. The two world views can shed a lot of light on the different systems of cultural heritage management. In continental Europe, the ‘common law’ tradition stipulates that it is the state, in its role as

the expression of the community of citizens, which organises and regulates social life. In Western Europe most of what can be referred to as of general interest were the responsibility of the state until 1980s. The services that are considered as of general public interest include education, a large part of culture, transport, energy, postal and telecommunication services, banking and insurance services. This kind of organisation of the society was put in question in the 1980s, essentially for reasons of ideology rather than economic inefficiency, and without a real public debate (Demoule, 2010).

Other than providing the audience for the cultural heritage, the public plays a key role in the financial obligations for preventive archaeology. Each citizen pays two euros per annum as tax towards supporting preventive archaeology which enabled the practice to kick-off in France towards the end of the 1970s (Demoule, 2007, p. 13). Citing Japan, J.-P. Demoule contends that the latter is a good example of how the State can establish an efficient system of cultural heritage protection as well as putting in place quality cultural education in museums with considerable popular success through social consensus. It is thus a question of cultural and citizen responsibility from the general scientific community (Demoule, 2007, p. 13).

5.5 Globalization, decolonization, decentralization and democratization of cultural heritage in Kenya

Since the colonial period, the management of cultural resources in Kenya was centralised with majority of the general public being marginalised in the decision making process and formulation of policies that guide the management of their cultural resources. The cultural management system limited people's access to their cultural heritage resulting into the loss of connection between the people and their patrimony. However, local initiatives have

always existed even though some of these efforts rarely received recognition as complementary ways of management and conservation of cultural and natural heritage. Such efforts include those of the custodians of traditional knowledge and indigenous technologies. Traditional custodianship systems of heritage management were just recently recognised internationally and considered in the mainstream system through the provisions of the UNESCO Convention on the conservation of intangible cultural heritage of the year 2003. Consequently, the promulgation of the Constitution of Kenya in the year 2010 took into account the recent developments in the cultural policy by the recognition of the intangible cultural heritage.

Democratization of culture was also one of the objectives of the Charter for African Cultural Renaissance, adapted by the Heads of State and Government of the African Union in January 2006. The objective (b) of the charter is 'to promote freedom of expression and cultural democracy, which is inseparable from social and political democracy'. At the global level, cultural democracy is the connotation of cultural diversity which brings in the sense of cultural globalization that calls for the development of a universal culture across the numerous and unique cultures of the globe.

Article 10 of the 2002 UNESCO Universal Declaration of Cultural Diversity aims to strengthen capacities for creation and dissemination worldwide:

In the face of current imbalances in flows and exchanges of cultural goods and services at the global level, it is necessary to reinforce international cooperation and solidarity aimed at enabling all countries, especially developing countries and countries in transition, to establish cultural

industries that are viable and competitive at national and international level.

The Constitution of Kenya 2010 created two levels of government so as to bring power closer to the people and enhance their participation in the governance and decision making. One of the areas of society life that is much complex and demanding more attention and public participation is the conservation and management of their cultural heritage. Article 10 (2) (a) of the Constitution of Kenya 2010 stipulates that ‘patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people’ are part and parcel of the National values and principles of governance.

In Kenya efforts towards decentralisation of the National Museums of Kenya which begun in the 1980s gained momentum in the beginning of the 21st century. It was under the leadership of the National Alliance of Rainbow Coalition (NARC) that the government increased funds allocation to the NMK in order to restructure the institution and improve its staff welfare. This was enabled through donor funds as observed by the then Vice-President and Minister for Home Affairs Moody Awori (Republic of Kenya, 2004). In the Budget for the financial year 2003/2004, the Government set aside Kshs 100 million for the restructuring of the NMK which was then increased to Kshs. 262 million in the financial year 2004/2005. This period also saw the establishment of a Heroes Square at Uhuru Gardens with the intension of honouring the country’s heroes.

The decentralisation of the national museums involved the establishment of regional museums in the various parts of the country. The museums are administered by the National Museums of Kenya with their headquarters at the Nairobi National Museums. The main purpose of this decentralisation was to enhance local community participation in the

management of their cultural heritage by creating a sense of ownership among various Kenyan communities.

However, the process of decentralisation of museums faced challenges when it came to the objects that were chosen for exhibition at regional level. According to Freda Nkirote, the *'exhibition themes of National Museums are tailored towards a foreign tourism clientele'*. There was also the inheritance of the colonial tendency which encouraged the exclusive exhibition of *'items of the dominant ethnic groups in the regional museums, leaving out the minority groups'* (Nkirote, Conference Paper). Consequently, the exhibitions at regional level favoured the dominant ethnic groups at the expense of the minority groups:

... For example, in Narok district (which was much hit by the ethnic violence), only Maasai cultural items are on museum display; likewise, Kabaranet museum in the Rift Valley (which experienced the most loss in terms of life and property) exhibits feature only the Kalenjin homesteads (unfortunately these were burnt during the ethnic clashes). This is the same with Kisumu museum where the Luo homesteads and their cultural items are displayed. Equally, in Meru museum only the Ameru homesteads and their cultural materials are on display. This kind of museum setting may contribute in giving the dominant groups a feeling of superiority and hence undermine the minority groups, thus promoting animosity in the society... (Nkirote, Conference Paper).

5.5.1 Decolonization, decentralization and the Constitution of Kenya 2010: which impact on cultural heritage management in Kenya

The debate on the decolonization of heritage in Africa is multifaceted as it focuses on a diversity of historical, political, economic and sociocultural issues that have crippled the efforts of former colonies to fully realise state sovereignty in cultural affairs. This was compounded by the inheriting the colonial systems of heritage management in most of the African countries. In Kenya, the colonial ordinances were in place until the independence period and even after their amendment they still carried some grey issues that overshadowed the cultural values of the natives while only privileging those cultural aspects that were deemed pleasing in the eyes of the then heritage practitioners. The decolonization process of cultural heritage in Kenya is thus a long journey which begun at independence through the national philosophies (though they were not very clear on the issue) and which is yet to be fully achieved.

The Kenyan experience demonstrates that decolonization of cultural heritage could be achieved only through the national philosophies. There must be a positive public opinion in the favour of the diverse cultural items based on the values that the local communities attach to their heritage. This was not the case in Kenya not because the people do not value their cultural heritage but partly because they lack knowledge about what there is to be conserved in the first place.

The Constitution of Kenya 2010 in Article 11 (1) recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation. This recognition takes into account the fact that culture is as old as humanity hence its effective management

is crucial not only for the nation's historical records but also for social, political and sustainable economic development.

Management of the country's cultural resources is one of the devolved functions as stipulated in article 186 and specified in the Fourth schedule of the Constitution of Kenya 2010. The National Government shall ensure the protection of the ancient and historical monuments of national importance. This gives the national government the express mandate over all matters relating to the enactment of laws and regulations as well as the public policies necessary for the effective protection of ancient and historical monuments of national importance. To do so it has to harmonise various policies under its docket to incorporate cultural policy. The various functions of the national government as stipulated in article 186 and the fourth schedule (Republic of Kenya, 2010) that may affect cultural heritage either directly or indirectly include:

- i. Foreign affairs, foreign policy and international trade.
- ii. The use of international waters and water resources.
- iii. Language policy and the promotion of official and local languages.
- iv. Police services, including :
 - (a) The setting of standards of recruitment, training of police and use of police services;
 - (b) Criminal law; and
 - (c) Correctional services.
- v. Courts.
- vi. National economic policy and planning.
- vii. Intellectual property rights.
- viii. Education policy, standards, curricula, examinations and the granting of university charters.

- ix. Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, special education, secondary schools and special education institutions.
- x. Transport and communications especially :
 - (a) The construction and operation of national trunk roads;
 - (b) Railways;
 - (c) Pipelines;
 - (d) Radio and television broadcasting.
- xi. National public works.
- xii. Housing policy.
- xiii. General principles of land planning and the coordination of planning by the counties.
- xiv. Protection of the environment and natural resources with a view to establish a durable and sustainable system of development.
- xv. Capacity building and technical assistance to counties.
- xvi. Tourism policy and development.

County Governments on the other hand shall be responsible for the cultural activities, public entertainment and public amenities. Those functions that may directly or indirectly affect cultural heritage management include those that concern:

- (a) cinemas;
- (b) video shows and hiring;
- (c) libraries;
- (d) museums;
- (e) sports and cultural activities and facilities; and
- (f) County parks, beaches and recreation facilities.

Decentralization has been described as an innovative practice of governance. It stimulates the search for program and policy innovation, its implementation calls on local governments to assume new and broader responsibilities in order to provide public services for all (UNDP, 1999). The implementation of the above constitutional provisions requires careful optimism given the central role that culture plays in the life of the nation. More particularly, the law confers the powers to carry out environmental impact assessment to the National Museums and with decentralisation this task can be exercised at both national and regional museums at county level. Even as this can enhance development of museums in counties, it may create disequilibrium in policy and practice across the country since majority of the counties do not have cultural protection as a priority. The general public and some leaders are even unaware of what cultural heritage entails and why it should be protected.

Article 11 (3) (a) of the Constitution stipulates that parliament shall enact legislation to ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage. According to the Fourth Schedule, this was to be done within five years after the promulgation of the Constitution. Through the Protection of Traditional Knowledge and Cultural Expressions Act No. 33 of 2016, County Governments have been mandated to establish and maintain a register which shall contain information relating to traditional knowledge and cultural expressions collected and documented by the county government during the registration process. This is a major step in cultural resource management that keeps inventory of all cultural resources at the county level for effective management (Republic of Kenya, 2016). The Act stipulates the following functions of County Governments in relation to the management of cultural resources:

- a. in relation to the repository and for the purpose of collecting and compiling information relating to traditional knowledge and cultural expressions;

- i. the primary registration of traditional knowledge and cultural expressions within a county for the purposes of recognition under this Act;
 - ii. the receipt, documentation, storage and updating of information relating to traditional knowledge and cultural expressions from communities within a county;
- b. the preservation and conservation of traditional knowledge and cultural expressions;
 - c. the protection and promotion of the traditional knowledge and cultural expressions of communities within a county; and
 - d. the facilitation of collaboration, access to or the sharing of information and data relating to traditional knowledge and cultural expressions between county governments;
 - e. the allocation of financial resources for the promotion of cultural activities; and [...] the establishment of mechanisms for using culture as a tool for conflict resolution and promotion of cohesion.

The National Government on the other hand shall maintain a comprehensive Traditional Knowledge Digital Repository which shall contain information relating to traditional knowledge and cultural expressions that have been documented and registered by county governments” (Republic of Kenya, 2016).

5.5.2 National identity and local claims in patrimonialization of heritage

Since the 1990s reintroduction of multi-party democracy, Kenya has encountered a lot of electoral related violence which have threatened the national cohesion. The eruption of violence in the Rift Valley region left many homeless as they were targets of political machinations due to their support of the opposition politics. In the aftermath of the crises, efforts were made through international well-wishers to champion for peace through peace building initiatives among the affected communities in the Rift Valley. These initiatives were

undertaken through the creation of Community Peace Museums (Karega-Munene, 2014). Despite the efforts, the situation got worse in the 2007 general elections leading to more than one thousand deaths and hundreds of thousands of Internally Displaced People (IDPs).

After the 2007-2008 post-election violence whose aspirations appear to Kenyan-hood over ethnic identities (Karega-Munene, 2014), there has been a positive trend towards development of a national consciousness. The events triggered a national dialogue that culminated into the formation of the Coalition Government whose first agenda was to speed up the Constitutional review process. The aim was to devolve government and reduce the powers of the Executive as well as to foster national cohesion based on democratic principles buttressed in a common history, a sense of patriotism, national unity, human dignity and national values.

The recognition of the role of culture in the society by African leaders occurred through the African Union Charter for Cultural Renaissance adopted in Khartoum, Sudan on 24th January 2006. It aimed to increase access to and use of cultural resources as a democratic right which increases democratic space through political tolerance and mutual understanding. This will gradually reduce impulsive and violent reactions towards political outcomes as it emphasises the understanding of other people's culture and developing cultural tolerance between different communities, among different African states and beyond. Cultural institutions such as the media, the National Museums and learning institutions have been champions of peace through culturally rich information sharing across all generations.

The increase in access to information through the media, the work of the National Museums of Kenya and learning institutions has yielded fruits in the long run. There has been creation of awareness and interest in cultural heritage, how it is conserved and managed both at the

local, county and national levels. At the local level, especially where major scientific discoveries have been made, claims have started to emerge over their spectacular cultural resources conserved far away from home and the management of some sites for generation of income to the local people.

A country's cultural heritage plays a pivotal role in the development of a national identity, national cohesion, integration which translates into peaceful coexistence (Hughes, 2014). The conservation of cultural heritage is thus an investment and not a current expenditure because its returns are invaluable and for eternity. The various national celebrations in developed countries makes reference to the diverse cultural heritage as symbols of the nationhood. I started this thesis after Kenya had celebrated her golden jubilee on 1st June 2013 to mark her 50 years of political independence from the colonial rule. The celebrations were about the country's shortest historic episode which is known and well documented. Apart from the heroic appraisal of the efforts by the founding fathers towards attaining independence and the subsequent social, economic and political development, some items of Kenya's rich and diverse cultural heritage, especially the most popular intangible heritage were also showcased as subjects of celebration and entertainment items through performing arts, music and dance. The golden jubilee was a moment of retrospection where the nation assessed the progress made and the associated challenges within 50 years of independence.

The irony is that Kenya, the home to Turkana Boy, is known worldwide as the cradle of human kind but no reference is made of the long history as observed through the scientific lens in her material remains of the past. The country is as old as the origin of human kind but rarely do people pride in the material evidence and stretch Kenyan or African history beyond a single jubilee and stop blaming the recent colonial past for the present leadership and challenges of democracy.

During the celebration there was no mention of immovable heritage such as sites and monuments that qualify as the markers of the country's national and nationalism history. Consequently there were critics of the Mashujaa Day celebrations in a scenario where even the sites of detention of the freedom fighters like Kapenguria six had been ignored and left at the mercy of the National Museums whose funding was insufficient to warrant their effective management and conservation. The neglect and voluntary omission of the Mau Mau movement stems from the lack of consensus over its role in the national liberation struggles (Branch, 2009).

Kenya as well as other African nations that have recently attained a golden jubilee 'have a particular need to demonstrate what they have achieved since breaking free of the colonial yoke, and seek to reinforce this through curricula, museum exhibits, commemorative events, eulogies to national heroes and heroines, tourism promotion and other means' (Hughes, 2014). In Kenya this has seen the revival of the national and nationalism debate (Branch, 2009) especially after the 2007 post-election violence. This triggered the development of the History of Kenya exhibition at Nairobi National Museum which opened in November 2010 and the recent attempts to identify one hundred cultural items nationwide that did not materialise due to various factors including limited public knowledge and participation in the identification process.

Some of the key narratives in the History of Kenya exhibition which also appears in school textbooks are problematical and at times contradictory (Hughes, 2014). However, the development of the Competency-Based Curriculum (CBC) aimed at finding the solution to many to the challenges in the education system by moving from knowledge based education to value and skill based wholesome learning process. The cultural education challenge was picked up by the Ministry of Culture in coordination with the Ministry of Education through

the Kenya Institute of Curriculum Development and the national Museums of Kenya through collaboration with UNESCO to look into the issues in the curriculum development (Unesco International Bureau of Education, 2017). The UNESCO In-Progress Reflection greatly emphasises the ideals of the Kenyan CBC which echoes the centrality of competency learning and cultural education for sustainable development and peaceful coexistence:

Initially, the focus areas of the In-Progress Reflections series encompass, among others,: (i) Early Childhood Care and Education (ECCE) as a foundation of holistic child development and learning; (ii) Reading and writing in early grades to support the development of essential competencies; (iii) Youth Culture and competencies for Youth in the early 21st century (covering formal, non-formal and informal education); (iv) ICT curricula and inclusive pedagogy contributing to relevant and effective learning outcomes; (v) STEM (Science, Technology, Engineering and Mathematics) curricula to foster sustainable development; (vi) Curriculum for Global Citizenship Education (peace, human rights, sustainable development, values, ethics, multiculturalism, etc.); (vii) Assessment to enhance and support learning opportunities; and (viii) Inclusive education as an over guiding principle of education systems (Unesco International Bureau of Education, 2017).

The curriculum change has come at a time when various communities are gaining interest in their heritage with a growing awareness of its value in development at the local county level especially among the formerly marginalised groups like the Turkana.

5.5.2.1 *The Turkana, the Turkana Boy, the Turkana oil and the Turkana County*

Turkana is one of the regions which had been marginalised in Kenya for a long time. However, important archaeological discoveries and the recent discovery of Turkana oil have drastically shifted the national and global attention to Turkana.

In 1984 Kamoya Kimeu, who was part of the team led by Dr Richard Leakey, a palaeoanthropologist, discovered a 1.6 million-year-old fossil⁸³ at Nariokotome near Lake Turkana in Kenya and named it Turkana Boy or Nariokotome Boy (Brown et al.1985; Leakey and Lewin, 1992; Walker and Leakey, 1993)⁸⁴. The ‘Turkana Boy’ is an almost complete skeleton of an 11 or 12 year old boy, the only major omissions being the hands and feet. According to scientists, the boy was only 9 years old given the explanation that *Homo erectus* was believed to mature faster than the modern humans (Leaky and Lewin 1992).

Turkana Boy is the most complete known specimen of *H. erectus* (Figure 9), and also one of the oldest, at 1.6 million years. The brain size was 880 cc, and it is estimated that it would have been 910 cc at adulthood (a modern human of comparable size would be expected to have a brain size of about 1350 cc). The boy was 160 cm (5'3") tall, and estimates are that he might have been about 185 cm (6'1") as an adult. Except for the skull, the skeleton is very similar to that of modern boys, although there are a number of small differences. The most striking is that the holes in his vertebrae, through which the spinal cord goes, have only about

⁸³ Report by Sammy Lutta, Nation Media Group, on June 07, 2015 about the measures taken by the Turkana County Government to promote tourism by erecting a monument at the site where the Turkana boy was discovered (Nation Media Group, 2015).

⁸⁴ Accessed on URL: <http://www.talkorigins.org/faqs/homs/15000.html>

half the cross-sectional area found in modern humans. One suggested explanation for this is that the boy lacked the fine motor control we have in the thorax to control speech, implying that he wasn't nearly as fluent a speaker as modern humans are (Walker and Shipman 1996).

Since the implementation of devolved government the attention has shifted to the various

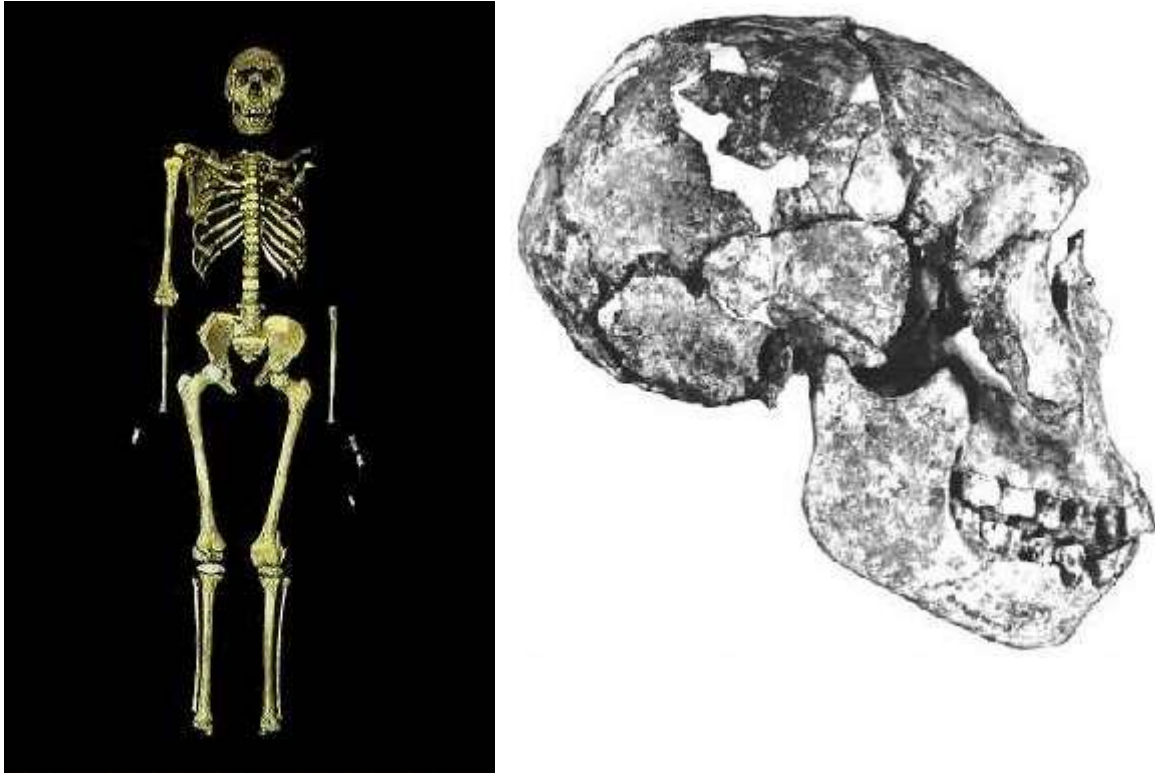


Figure 9: KNM-15000 'Turkana Boy' (Homo erectus or Homo ergaster)

potential sources of income and revenue at the county level. Cultural heritage management is one of the devolved functions whose implementation is yet to be fully realised by majority of the county governments. The management of both natural and cultural heritage has however posed a lot of challenges where the debate over sharing of revenue generated from the exploitation of such resources is concerned.

After devolution and the discovery of oil in Turkana the attention turned to the rich Turkana underground. The Turkana County also realised that oil was not the first and only landmark discovery that placed the name of the county on the World Map. In an area that is rapidly

growing and witnessing its opening up to the global economy at an unprecedented exponential upward trend, the concern has shifted to the age old security challenges. Insecurity has turned pastoralism, their traditional source of livelihood, into a nightmare forcing the County Government to put in place measures not only to boost security but also diversify the economy.

After the discovery of oil and the subsequent upsurge in infrastructural and urban development, increased educational and learning facilities, cultural tourism is gaining momentum to levels where archaeological sites and objects have been embraced both by the people and the County Government as alternative sources of income to Turkana County. Therefore, when the formula for sharing the Turkana oil returns became complex, the Turkana demanded to return their Turkana Boy from Nairobi to Turkana County so as to be able to revamp cultural tourism industry and see the returns from their archaeological resources.

5.5.3 Public participation in cultural and archaeological heritage conservation

Public participation in this chapter refers to the degree of the involvement of the local people in general either collectively, through organized groups or as individuals and communities in the management of their cultural heritage. The term “public” in this case brings together a group of people constituted by the citizens of varied nature. It collectively refers to people of different age brackets, from varied occupations, different political and religious orientations, and people from different socio-cultural and educational background and from diverse economic status. Each one of these categories of people perceive cultural heritage and archaeology in different ways which determines the manner in which they may respond to its protection or destruction.

The Turkana people and Turkana County have in recent days embraced their natural and cultural resources in a unique, proactive and protective manner. The site of discovery of Turkana Boy is one of the rare sites in Kenya that have aroused public interest in the patrimonialization and subsequent management of the site. The efforts by locals to claim the material remains of the Turkana Boy which are kept at the Nairobi National Museums, resulted into measures from the County Government through local initiatives to protect the site by building a monument at the site of the discovery. This was a kind of what is commonly called a bottoms-up approach to governance and cultural heritage management in Kenya.

The local initiatives to accord heritage rights to the fossils were well expressed through owning up the fossil as one of their own son, giving the fossils a local name Brian Ekuru, based on their culture and traditions and appointing a family that shares the same surname to adopt the fossils as one of their children.

“The fossils were discovered at a place where we had built our manyatta and we have renamed him Ekiru since we believe he was born during the rainy season,” explained Mrs Lowa.

According to the County Governor Josphat Nanok; “The story of Turkana County, as the cradle of mankind, will now be well told when people visit this site that has been a bare land” (Nation Media Group, 2015).

The participatory leadership approach by the Turkana County in the past few years since the onset of devolution in Kenya has had a significant impact across various sectors in the

county, including cultural heritage management, education, improved infrastructure and security which are gradually attracting investment in the county.



Figure 10: Locals (Ekiru Ewaton and his wife Esekon Lowa) at the artistic impression of the Turkana Boy. Photo courtesy Jared Nyataya, Nation Media Group (Nation Media Group, 2015)

The local people's and Turkana County government's approach to the management of the Turkana Boy site is partly due to the impact of globalization which enhances democratization through decentralization and thus decolonization of heritage management. Globalization of cultural heritage management through the international organizations like UNESCO and its agencies such as ICCROM, ICOMOS has enabled the application of international best practices in the cultural heritage management in Kenya in cases where the existing legal and policy framework has failed. However, as justly observed by S. Chirikure, W. Ndoro and J. Deacon, heritage practitioners in Africa have rarely incorporated local best practices generally referred to as traditional approach⁸⁵ or traditional management systems (Ndoro, et

⁸⁵ Munjeri 2004 cited in (Ndoro, et al., 2018, p. 1)

al., 2018, p. 1). The 2003 UNESCO Convention on the conservation of world intangible heritage puts emphasis on public participation. The African traditional approach to management of sites and material remains of their culture is manifested through the fusion of both tangible and intangible heritage. The intangible heritage translates the tangible and immovable heritage into a living heritage. The name Ekiru that was given to the Turkana Boy was as a means of improving the local narrative about the fossils and the site. It was also a strategy to inscribe the fossils into the intangible heritage of the locals while demonstrating the continuity of their history. According to the explanation by Mrs Lowa, one of the locals, the fossils were discovered at a place where they had built their manyatta and they renamed him Ekiru since they believe he was born during the rainy season (Nation Media Group, 2015).

Globalization has had both positive and negative impacts on the management of cultural heritage in Africa and Kenya to be precise. In Kenya, issues of public participation in the cultural heritage management stem from the colonial legacy. Colonization was a form of globalization and during the colonial period locals were deprived of the right to participate in the management of heritage where there was the introduction of centralised systems that were based on the Western values and management systems. The practice was a preserve of a few colonial elites. Research has shown that archaeological heritage management in the settler societies in the United States of America, Australia, Africa and Kenya in particular neglected indigenous people in the management of their heritage (Ndoro & Wijesuriya, 2015, p. 132 citing Smith 2004; Byrne 2008).

Public perception and perspective determines public opinion which influences public interest and hence the manner in which they act in any situation. Public interest for archaeological heritage, for instance, has played a very important and significant role by contributing

towards the safeguarding of a number of archaeological sites in the world. The earliest example of preventive archaeology in Africa was that of salvaging the Temple of Abu Simbel in Egypt in 1964 which was extremely threatened by the construction of the Aswan Dam and was at the verge of extinction (Demoule, 2005; Ndoro & Wijesuriya, 2015).

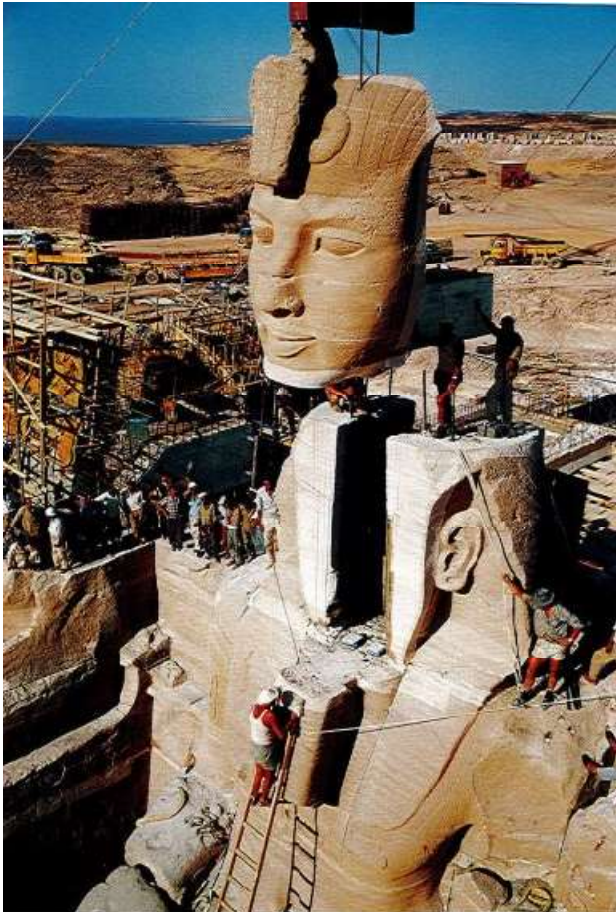


Illustration 10 Temple of Abu Simbel in Egypt being remounted in 1964 due to public interest after being threatened by construction of Aswan Dam. Photo courtesy (Demoule, 2005, p. 104).

The public with all its characteristics ranging from illiterate, semi-literate to the literate members of the society cannot participate without being involved by rolling programmes that are meant to sensitize them about their cultural heritage and the role they may be called upon to play. One of the ways through which this was achieved during Heritage Impact

Assessment in some projects in Kenya was through establishment of links between heritage practitioners and the public.

This strategy was applied in California where volunteer site stewardship was adopted as a means to incorporate the public in the management of archaeological sites. The programme was used for several years making volunteer site stewardship to be recognized as an effective way to help protect archaeological and historical resources. As a result several site stewardship programs were developed throughout the United States (Padon & Padon, 2012).

In Kenya public participation was once achieved by identifying some members of the public that could volunteer in cultural heritage impact assessment at Sondu Miriu hydroelectric dam construction project, at the site of Wadh Lang'o.

5.6 Devolution and public participation in the conservation of cultural heritage in Kenya

There should not exist any conflict between what are simplistically categorised as 'cultural' and 'developmental' interests, as noted by J. Sutton. However, according to J. Sutton, Kenyans who depend primarily on land acquired from their ancestors who struggled to obtain the same 'will understandably view the issue differently from roaming academics and antiquarian-minded visitors from a far, let alone bureaucrats from government agencies armed with copies of the antiquities laws' (Sutton, 2017b, p. 77). The ideals for 'heritage' and the case for protection and conservation need to be pursued by involving local communities and educational interests, both unofficial and official. Such perspective can enable one to identify suitable examples of archaeological features for special marking and listing. Sutton postulates that except for a truly unique features or an exceptional discovery

requiring urgent protection, it should be possible with patience for such selection to be decided locally (Sutton, 2017b, p. 77).

For quite a long time the public has been unaware of the value and hence the need to conserve their cultural heritage in Kenya. This is basically because they have very limited, if any, knowledge about their cultural heritage and if they do they do not appreciate its socio-cultural and economic value due to their historical exclusion from the management of cultural heritage. The public rarely receives direct benefits from these resources thus making it difficult to appreciate their conservation. Archaeological excavations that were conducted during the colonial period in most parts of Africa and Kenya in particular opened a loophole where public participation issues emerged. According to Chirikure, Ndoro and Deacon:

The long history of excavations at such places as Great Zimbabwe, Kilwa, the Rift valley sites in eastern Africa, Jenne–Jenno, Meroe and Mapungubwe left major scars on the fabric and landscapes of these archaeological heritage places (Hall 1909; Fouché 1937; Chittick 1974; Garlake 1982). Local people were only hired for their labour and knowledge of the local history (Shepherd 2003). Although their knowledge was useful in building interpretations, the local informants were rarely acknowledged. One outcome of the earliest archaeological excavations was the looting of archaeological objects (for example in Mali and Egypt), which in some cases precipitated the establishment of legislation to control the largely destructive excavations, protect the fabric of sites and stop the trade in cultural objects (Ndoro, et al., 2018, p. 2 citing Negri 2005).

During the colonial period heritage management in Kenya was systematically alienated from local African communities where culture was exclusively set aside for the elite class of colonial settlers. Apart from management of heritage, they also identified the objectives and defined the rules as well as the principles of archaeological research which set the agenda for heritage practitioners in the country. Given the cultural and natural landscape of East Africa, researchers found it necessary to dwell on the questions of human origin which still persist up to date. The presence of the Great Rift Valley was instrumental in the development of archaeology as it presented a favourable ground in which numerous archaeological sites are situated with a lot of archaeological remains. It acted as a natural trap for such remains. However, the development of an elitist archaeology and the manner in which archaeological excavations were conducted did not allow for the native African communities to be involved. They were unaware of the value of their rich archaeological and cultural resources hence their lack of interest in its protection (Nodoro, et al., 2018, p. 8). This situation has been attributed to the social, economic and political organization of the society during the colonial period where locals were generally alienated from the management, protection and use of their cultural resources. The cultural exclusion, according to Nodoro, Chirikure and Deacon (2018) was further justified and emphasised through teachings in schools and churches where Africans were taught to despise their cultures. In Kenya, South Africa and Zimbabwe, heritage management was a preserve for the elite hence it developed as a highly academic discipline which was not meant for the local African populations who were also considered as objects of study (Nodoro, et al., 2018, p. 8).

Land alienation through colonial land policies which aimed at pushing Africans out of their ancestral land also added to the challenges of heritage management in colonial Kenya as well as in other parts of the continent. It was noted that in some instances this involved

relocation of local communities who could even be moved hundreds of kilometres away from their original homes. In so doing, the authorities were creating physical and spiritual distance between them and their ancestral homes; for example, the creation of the Kruger National Park in South Africa resulted in the relocation of several populations to new areas' (Ndoro, et al., 2018, p. 8).

The Constitution of Kenya 2010 and the subsequent legislative and policy changes were expected to revolutionize cultural resource management in the country. It was anticipated that with devolution there would be more public participation in governance hence they would have greater role in the design, formulation and implementation of heritage policies that would be more responsive to the changing societal values and needs while reflecting the community's cultural aspirations and desires. This is very important since it is through public participation that the society identifies what to preserve as their cultural resources then proposes to the government for its protection. Cultural heritage results from a selection process which is initiated by the Government then supported by official regulation (Ndoro, et al., 2018).

5.6.1 Political goodwill and public participation in conservation of heritage

Public participation is a pertinent issue both in cultural and natural heritage management in Kenya. It takes a coherent and united public advocacy and outcry to stop some development projects from negatively impacting on cultural and natural heritage through lobbying and use of legal redress of issues emanating from biased declarations and inefficient public policies.

Lack of political good and lack of participatory leadership negatively impacts the efforts towards effective management of cultural resources threatened by development projects.

Even in developed countries like the United States of America, cases exist where political decisions negatively affect cultural resource management. This was the case where, for instance, the government decided to reverse some of the cultural and scientific milestones that had been made during the leadership of President Barack Obama. The US government had planned to slash protections for one of North America's richest and best-preserved archaeological landscapes which raised concerns among researchers. This was through the State announcement on 4 December 2017 by the US President that he had cut the Bears Ears National Monument in Utah from 547,000 hectares to 82,000. The action removed protections for thousands of Native American cultural sites, some as old as thirteen thousand years. Following recommendations by the Interior Secretary, the State had significantly reduced the size of Bears Ears and Grand Staircase-Escalante national monuments (Congress, 2019). The former was created by President Barack Obama in 2016 based on the Antiquities Act of 1906 while the latter was created by President Clinton in 1996 using the same law (Udall & Grijava, 2018).

Having set up a monument's boundaries review team, it was expected that the government could have acted in accordance with the law. However, the economic interests in oil, gas and uranium overruled any other reason nor public interest of preserving the boundaries of the monument. According to the United States Congress:

Documents show that Energy Fuels Resources (USA) Inc., a subsidiary of a Canadian energy firm, met with a top Interior official who would be involved with the review before Trump requested it.

When President Barack Obama designated the monument in December 2016, its boundaries encompassed or abutted over 350 uranium claims

... tied to the company. Its uranium processing mill, the only such facility in the United States, was located mere miles from the monument. Proximity to a national monument can lead to additional regulatory scrutiny (Congress, 2019).

The move spurred critics from members of the Congress and the general public whose concern was the manner in which the entire process took place by reducing the monument by 85% of its original area even after having requested for minor boundary adjustments:

Curtis Moore, Energy Fuels Resources vice president of marketing and corporate development, said in a Feb. 26 [2019] email, “Our recollection is that the April meeting was very brief, but we did inquire about the possibility of minor boundary adjustments to move the boundaries away from our existing operations.”

“Nonetheless, our official request was for minor boundary adjustments that would have reduced the area of the monument by a maximum of 2.6 percent. The President reduced the monument by 85 percent. We didn’t ask for that,”[...] (Congress, 2019).

The above case illustrates that even in a big democracy cultural resource management still depends on public scrutiny of political declarations. A well informed public plays an important role in the management of cultural resources but lack of political goodwill may compromise and side-line citizens in the formulation and implementation of cultural policies whose impact may be difficult to reverse in the long run.

In Africa the practice varies from one country to another and from one government regime to another based on the interests of the elite and the ruling class. In Ghana some officials of the Ghana Museums and monuments Board believed that 'in the 1990s the uncompleted Science Museum building in Accra was considered for use as offices of an outfit to do with Foreign Promotion and that it was only a change of government in 2000 that prevented this from being effected' (Boachie-Ansah, 2008, p. 114). Under such circumstances, the powers of the public were very much limited and had to wait for the next regime. Therefore, the role of the public was realised through the election of new leaders with collective consciousness into office.

Collective heritage consciousness may be difficult to achieve even in a democratic system if the masses are misinformed thus open to political manipulation. Through such manipulation the citizens lose hold of their own sense of belonging hence fail to articulate issues that affect cultural heritage management. This was the case in most of the corrupt African regimes where misappropriation of resources was the order of the day. Runaway corruption was and continues to be a big challenge to the effective realisation of public participation in heritage conservation. When large development projects are initiated those who are charged with the planning and execution of the plan would go out of their way to manoeuvre the system so as to get shortcuts in fulfilling the environmental and cultural heritage assessment requirements. They contract cheap EIA services some of which may not even carry out a desktop research to establish the validity of their findings and support their arguments scientifically.

5.6.2 Impact of globalisation on cultural heritage conservation

The theme of change has been at the centre of a series of symposia organised by the ICOMOS Scientific Council since the last decade of the 20th century. Since 2007, ICOMOS adapted a program of interdisciplinary research on Global Climate Change and its effects on cultural heritage. The first event which directly addressed the issue of ‘Heritage and Climate Change’ was held at an Advisory Committee Meeting in Pretoria in 2007. This was followed by another symposium held on 7th October 2009 in Valletta, Malta whose theme was ‘Heritage and Technological Change’. The third in these series of symposium was held in Dublin in the year 2010 with the theme of ‘Heritage and Social Change’. The theme of change was chosen in order to attract the attention of scholars and professionals on the challenges that ICOMOS is facing.

As scholars and professionals in the field of heritage conservation are preoccupied with the question of preserving cultural heritage for the future generations, one of the challenges they face is how to predict the future challenges based on the prevailing circumstances. Right from the start, the 21st century has witnessed tremendous socio- cultural, political and economic transformations through ‘*industrialization, urbanization, mass migration, regional fragmentation, ethnic tensions, and fluctuations of transnational markets that transcend national and cultural boundaries*’ (Jerome, 2010, p. 5). The globalising tendencies, according to P. Jerome, have spared no country nor continent.

No country or continent has remained unaffected by the globalizing tendencies - either in the wholesale obliteration of traditional landscapes and abandonment of distinctive building forms, or in a zealous retreat into

nostalgia and self-representation as picturesque, exotic (and not entirely authentic) tourist destinations. Both responses pose some basic questions for ICOMOS: how do the rapid and far-reaching changes of the present era affect the foundations of heritage practice? How effectively do national heritage codes and categories address the dislocations and today's sweeping development plans? (Jerome, 2010, p. 5).

Globalization has created new research problems and conditions for renewed dialogue among communities as well as new concerns among the contemporary heritage practitioners, scholars, professionals and heritage organizations. As noted by the Intergovernmental Conference on Cultural Policies for Development, new trends, particularly globalization, link cultures ever more closely and enrich the interaction between them, but they may also be detrimental to our creative diversity and to cultural pluralism; they make mutual respect all the more imperative (UNESCO, 1998). Through increased dialogue and interaction globalization has contributed to the dissemination of knowledge about other cultures as well as heightened people's awareness of their own cultures (Matsuura, 2005, p. 12). This has in particular enabled dissemination of information about intangible cultural heritage thus an opportunity to share the world's intangible cultural heritage which has improved its preservation. According to Matsuura, *'the opportunity to share the world's intangible cultural heritage and to promote its preservation is contributing to a better understanding among peoples worldwide and is underlining the value and vibrancy of cultural diversity'* (Matsuura, 2005, p. 12).

In terms of archaeological heritage conservation, globalization has created numerous opportunities through which archaeological research has been funded. Funding for research in archaeology is one of the greatest challenges that archaeological research has faced all

over the world. The research on its own being very expensive to undertake and requiring a lot of time and enormous human and capital resources, it has been recently boosted through an upsurge in development projects that have resulted from globalization. With mass movement of populations came the need for better social amenities, better housing and infrastructural interconnectivity all which have an impact on the natural and cultural heritage. This has prompted governments to intervene through legislation on impact assessment studies hence making it an obligation for both public and private developers to embrace EIA as part of their development plan.

The funding of preventive archaeological excavations in most countries is fully the responsibility of the developer under the polluter-pays principle. As per the Norwegian law, for instance, funding includes the funds for the draft of the report but not the publication of the results. There is no public funding for research because it is not considered as part of salvage operations. This came as a result of the change in the law. However, preventive archaeological excavations were initially considered as the first step of research (Dommasnes, 2007, p. 167).

Citing the example of archaeology in West Africa, Moustapha Sall contends that archaeological research does not benefit from financial support from public authorities in Senegal because priority is given to vital sectors such as health and nutrition. The limited financing, coupled with the high cost of research, still burdens the discipline not only in Senegal but also across the continent. However, Moustapha Sall observes that '*while early methodological orientation (prehistoric site studies with no reference to societal issues interested few students (fewer than 15 per year), the inclusion of the connections between archaeology-heritage and development since the 2000s has attracted many more*' (Sall, 2017, pp. 21-22). This has come as a result of the boom in the infrastructural development

projects whose impact has been significant especially after having associated archaeological research with the socio-economic realities and development activities on the ground through cultural heritage management. Cultural heritage impact assessment has become a key issue for consideration among development planners. This has attracted African students who were impressed with the innovative nature of the discipline that has continued to grow since it started to employ a more interdisciplinary approach.

However, it is noteworthy that the intercultural exchanges brought about by mass migration and technological development lead to significant changes in the societies' lifestyle and values which in turn have an impact on both the form and significance of heritage (Jerome, 2010, p. 5). The infrastructural development that is associated with this mass migration of people also exerted a lot of pressure on the management of built heritage. This prompted ICOMOS to come up with a Tolerance for Change as an alternative strategy to allow development to take place while at the same time conserving cultural heritage especially built heritage. This new approach to heritage has come as a paradigm shift from an initial approach where change was at all cost to be avoided as it was perceived to be opposed to cultural heritage conservation. According to Ana Pereira Roders and Loes Veldpaus, the approach where change was perceived to be an obstacle to heritage conservation and hence was to be avoided at all cost was labelled as *Eurocentric and restrictive, as well as ineffective*⁸⁶. It was Eurocentric given the tradition of European experts routinely endorsing

⁸⁶ Van Oers, R. 'Towards new international guidelines for the conservation of historic urban landscapes (HUL)s', In: *City & Time* 3 (3):3, 2007, pp. 43-51, [online] URL: <http://www.cecibr.org/novo/revista/docs2008/CT-2008-113.pdf> cited in (Pereira Roders & Veldpaus, 2013) retrieved on URL: https://www.researchgate.net/profile/Loes_Veldpaus/publication/260036563_Tolerance_for_change_in_the_built_environment_what_are_the_limits/links/00b7d52f28058cfdbe000000/Tolerance-for-change-in-the-built-environment-what-are-the-limits.pdf

this approach in other socio-historic contexts outside Europe. It was restrictive for focusing primarily on the conservation of the material fabric, imposing standards of authenticity and integrity no matter the cultural heritage property and its significance. It was ineffective given the rapidly developing global economy and inability to handle emergent threats such as aggressive development (Pereira Roders & Veldpaus, 2013).

5.6.3 Integration of cultural policy into sustainable development policy

The major historical events of the 20th century such as the World War I and II, the Cold War and the decolonization process demonstrated that culture plays an important role towards the realisation of peace and harmony in every society and in the world at large. For this to happen, however, cultural policy has to be part and parcel of the sustainable development policy as a key planning tool. Kenya's cultural policy is laconic due to a long period of neglect and ignorance of culture in national development plans more significantly in the first development plan of the independence government (Ndeti, 1975). This prolonged the colonial legacy which 'resulted in lack of opportunity for the local people to become meaningfully involved in decision-making about heritage places' (Ngoro, et al., 2018, p. 1).

The French Government through the Ministry of Interior and Planning designed a national land use policy based on a national debate. The debate whose introductory document, '*Débat National pour l'Aménagement du territoire*' begins by acknowledging the historical legacy right from the Roman Empire to the emergence of a highly centralised State in the 19th century. The centralization of power was homologous with centralization of resources in major cities hence the beginning of a system of urbanization with remarkable disparities in cultural heritage management between urban centres. The result was a web-like urbanization system with Paris at the centre being in command of power and knowledge while the

peripheral urban centres were to implement policies from the centre and to carry out less noble tasks. The Government thus called on the citizens to interrogate such a system and redesign their territory for purposes of a more competitive and cohesive nation with both national and regional identity (French Republic, Ministère de l'Intérieur et de l'Aménagement du Territoire, 1993, pp. 47-48).

In terms of development planning policy therefore, the above debate holds that economic globalization has created a competitive environment which requires that if any town, city or region needs to attract people and investment enterprises, it must first affirm its specificity through which its value shall be recognised nationally and internationally (French Republic, Ministère de l'Intérieur et de l'Aménagement du Territoire, 1993, p. 57). The Government thus came up with a development planning policy which was structured around three organizational zones based on the levels of urbanization of each urban centre so as to design the 21st century France. These were:

- i. zones that were dominantly rural,
- ii. zones that were characterised as intermediate urban centres and
- iii. zones deriving their influence from one or various metropolis (French Republic, Ministère de l'Intérieur et de l'Aménagement du Territoire, 1993, p. 50).

These initiatives among others were crucial for cultural decentralization and development of preventive archaeology in France. The need for equitable distribution of resources across local authorities and various urban centres as well as the desire to link each one of them to the others led to various infrastructural developments that were characterized by the networks of super highways, road networks and high speed railway lines (Lignes à Grandes Vitesse -LGVs) for the high speed trains (*Trains à Grande Vitesse – TGVs*). The resulting

projects posed fundamental cultural and environmental issues which led to the development of better systems of environmental safeguard through which salvage archaeology emerged. Gradually, demand for salvage excavations increased and a lot of discoveries were made which shaped the existing knowledge and history of France since prehistory to the contemporary period hence shifting the public opinion towards archaeology.

The Government aimed at using culture to enhance regional identities by integrating cultural policy into sustainable development policies including but not limited to urban planning and land use policies. In the national planning policy cultural policy was considered to be part of the process based on the fact that there is a very close relationship between cultural places or events and urban planning. Similarly, there already existed a conception of the significance of culture to urban, regional and local development: thus tourism, cultural equipment, festivals and traditions as well as cultural industries had already been established across the country. At the core of these developments was the recognition of the concept that culture has a role to play for social cohesion. Another phenomenon that inspired the integration of cultural policy in planning was the fact that local authorities (*collectivités territoriales*) had played an active role in the cultural domain since the enactment of laws of decentralization representing 62% of the 48 billions of Francs allocated to culture in the year 1990 (French Republic, Ministère de l'Intérieur et de l'Aménagement du Territoire, 1993, p. 65).

Various cultural activities were thus deconcentrated in the efforts towards cultural decentralization. The activities included:

- i. Creating joint national education activities as the first step towards integration and reduction of inequalities. The move entailed artistic education, linking art to university, and pairing learning institutions with cultural institutions;
- ii. Creation of library services through a book and reading network with regional documentation associated to the French National Library services (*Bibliothèque de France*), together with support to bookshops;
- iii. Regional dimension of the television, radio, cinema and new communication technology, as well as regional participation in educational and cultural products undertaken by regional production centres;
- iv. Cultural promotion/valorisation and the creation of departmental cultural agencies;
- v. Networking of cultural equipment;
- vi. A network of scientific and technical cultural centres, that of Eco-museums and City of sciences;
- vii. Participation of artists in coordinating territorial cultural activities;
- viii. Coming up with a development strategy that links promotion of cultural heritage to learning institutions, diffusion networks, public expansion and local resources;
- ix. Decentralisation of multitude of monuments and traditional religious centres including churches, chapels... (French Republic, Ministère de l'Intérieur et de l'Aménagement du Territoire, 1993, pp. 65-66).

5.7 Conclusion

This chapter has analysed the processes of globalization, decolonization, decentralization and democratization of culture. There is a big difference in how these concepts apply to the two systems of heritage management, the Kenyan and the French systems but they find a

point of convergence through the international paradigm shift that was initiated through the 2002 UNESCO Universal Declaration on Cultural Diversity.

PART TWO

CULTURAL HERITAGE LEGISLATION AND POLICY

Qu'on nous permette de transcrire ici ce que nous disions à ce sujet en 1825: « Il faut arrêter le marteau qui mutile la face du pays. Une loi suffirait ; qu'on la fasse. Quels que soient les droits de propriété, la destruction d'un édifice historique et monumental ne doit pas être permise [...]

Let us repeat here what we said about this subject in 1825: "We must stop the hammer that mutilates the face of the country. A law would be enough; let us do it. Regardless of the property rights, the destruction of a historical and monumental building should not be allowed [...] {Author's translation from French} Victor Hugo, 1932 : « Guerre aux démolisseurs » cited in (Demoule, 2005, p. 131).

CHAPTER SIX

ASSESSMENT OF CULTURAL VALUES, PATRIMONIALIZATION AND PROTECTION OF CULTURAL HERITAGE IN KENYA

Introduction

When and why is it important to have a cultural policy? Whose heritage should be preserved? Which cultural heritage do we preserve? These and similar questions led us to the complex challenges of striking the balance between development and cultural heritage conservation. In order to get the equilibrium between the two, stakeholders and policy makers are confronted with a complex process of identifying and ascribing values to various cultural sites, monuments, archaeological objects, natural landscape and immovable cultural heritage.

Value has always been the reason underlying heritage conservation and there is no any society that conserves what it does not value (Torre & Mason, 2002). The term 'heritage values' refers to the meanings and values that individuals or groups of people bestow on heritage (including collections, buildings, archaeological sites, landscapes and intangible expressions of culture, such as traditions) (Diaz-Andreu, 2017, p. 2). In the contemporary postmodern, post-ideology and post-nation-state society, values are a subject of much discussion whose meaning has become a great concern (Avrami, et al., 2000). The assessment of cultural heritage values is a big challenge in the planning for heritage conservation as it is in development planning and promotion of cultural heritage (Mason, 2002).

The important economic questions that should be raised for heritage promotion in the context of sustainable development planning are:

- i. *What is the economic value of preserving our heritage?*
- ii. *Do the social benefits of preserving cultural heritage like historical cities outweigh the costs of restoration and preservation?*
- iii. *Should we allocate more resources to restore and preserve cultural heritage due to the large social benefits observed in the few existing studies that try to value these goods?* (Navrud, 2005, p. 95).

To answer these questions, economists apply techniques that were originally developed to value environmental goods in order to value cultural goods. This perspective is fundamental for the formulation of effective cultural policies, legislations and regulations. This study does not seek to provide the details of economic valuation of cultural goods as that has been done (Mason, 2002; Low, 2002; Heinich, 2009; Mourato & Mazzanti, 2002) but it will use such methodology to illuminate the economic values that may guide government action, since cultural heritage is one of the factors of economic development (Grefe, 1999) and the priority of each government is to create the means and put in place the infrastructure to steer economic development.

Other than the economic valuation of cultural heritage, this chapter also looks at a historical perspective of patrimonialization (Amougou, 2004a) in order to understand the evolution of the concepts of cultural heritage and cultural policy. Patrimonialization is a process that emanates from societal aspirations of creating and reaffirming their identity, tracing their glorious past while keeping track of the societal change over time. The social and anthropological motivation behind cultural policies and legislation (Heinich, 2009). If

cultural policy is a societal choice then social and anthropological perspectives of cultural values are necessary for the understanding of cultural heritage, cultural policy and the need to preserve cultural resources (Low, 2002; Amougou, 2004a).

Why and how would people within a society choose to preserve a certain part of their past and let go of part of the same past? This is a question that drives our attention to the ethnological and anthropological perspectives of heritage (Heinich, 2009, p. 28; Godelier, 2007; Godelier, 1997). Is the notion of cultural heritage homogeneous or heterogeneous? (Amougou, 2004a) How have the notions of society, culture, cultural heritage and cultural policy evolved over the past millennium in the African and Kenyan context? These and many more similar questions can help us understand the challenges, strengths and weaknesses of cultural heritage management system in Kenya considering the cultural diversity of her people.

This chapter gives an assessment of cultural values, patrimonialization and the cultural legislation and policy as essential tools for the protection and conservation of cultural heritage in Kenya. The cultural policy, legislation and regulatory framework are the tools for patrimonialization as a social, economic and political process. The study attempts to identify *whose heritage* and *which heritage* is chosen for protection and conservation. It examines the purpose for which the policy exists and why some cultural items are much more preferred as compared to the rest of the scientific, cultural and historical works of humanity within the society. It also attempts to identify at whose service is the cultural policy put in place. Does cultural legislation and policy, for instance, exist to serve the Kenyan State in the efforts of creating the nation-states? Does cultural policy aim at benefiting the society in general through creation of national cohesion at the expense of building the

various nation-states? How can we assess cultural values by analysing the cultural heritage management system through the society, institutions and academics?

This chapter explores the concept of cultural heritage in its heterogeneous sense ranging from tangible to intangible heritage (Amougou, 2004a). It focuses on the various notions that are used to define objects of conservation (Muñoz Viñas, 2005) as have been applied through a diversity of terminologies employed by different professionals. They include entities such as: ‘heritage’, ‘cultural heritage’, ‘cultural property’, ‘historic monuments’, ‘historic objects’, or ‘archaeological objects’, artworks’, or ‘antiquities’ (Demoule, 2007, p. 31). It also looks at the scientific, historical and cultural significance of archaeological heritage giving some major archaeological discoveries in Kenya that have contributed to the knowledge about the past of the humans and their evolving ecosystem. It then examines an important aspect of archaeological research; the funding of archaeological research. A systematic analysis and evaluation of the funding of scientific research related to cultural heritage conservation sheds a lot of light on the various questions asked in the introduction to this chapter.

6.1 The Process of Patrimonialization

Patrimonialization can be defined as “a social process by which legitimate social agents (or actors if you prefer) intend, through their reciprocal, that is to say interdependent, actions to confer on an object, on a space (architectural, urban planning or landscape) or to a practice (language, ritual, myth, etc.) a set of properties or values recognized and shared first by legitimate agents and then transmitted to all individuals through mechanisms of institutionalization, individually or collectively, necessary for their preservation, that is to

say for their lasting legitimization in a specific social configuration” {translated from French by the author} (Amougou, 2004a, p. 25).

Patrimonialization is a long and complex process. As a process which is determined largely by social and historical questions (Heinich, 2009; Amougou, 2004a) patrimonialization involves public participation through legitimate social agents. This calls for greater public awareness and understanding of their heritage, the history behind it as well as its use in the past, present and future. This knowledge guides their participation and hence allow them to take a central role in the contested struggle of identification, (re)definition, study and enactment of relevant policy and institutional framework for effective protection and conservation. Just like heritage, the society is not homogeneous but consists of various groups and categories of people including the youthful and the elderly generation, the political class and their subjects, the religious groups as well as atheists and a variety of other social groupings based on different ethnic, language and cultural identities within a given territorial boundary (Munjeri, 2005). The aim of selection process is to determine the values associated with the selected cultural items (Heinich, 2009) and to satisfy the social, economic and political needs of all stakeholders for an object, site or artistic performances to qualify as cultural heritage (Low, 2002; Mourato & Mazzanti, 2002).

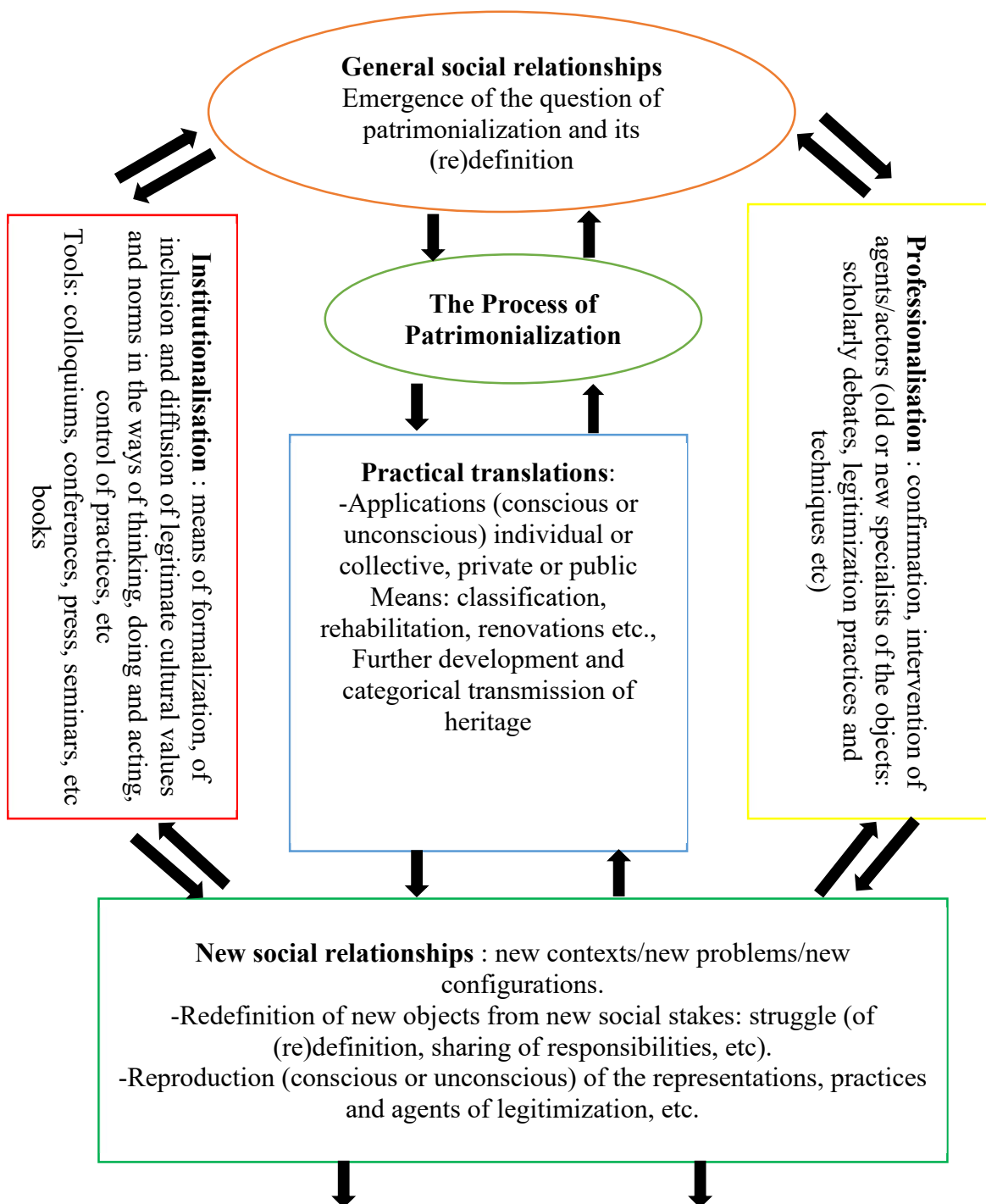


Figure 11: THE PROCESS OF PATRIMONIALIZATION. Courtesy (Amougou, 2004a, p. 27)

6.1.1 *Patrimonialization and the emergence of a cultural policy in France*

The French Revolution of 1789 played a major role in the patrimonialization of monumental and architectural heritage in France (Heinich, 2009). According to A. Chastel, “*the sale of national assets and their more or less honorable reuse, transforming churches, convents and castles into deposits appeared as a necessary social humiliation*” {Authors translation}⁸⁷.

In 1790 people raised their concerns and condemned the disastrous destruction by “*poorly educated citizens or by ill-intentioned men*” {Authors translation}⁸⁸ before the establishment of the Commission of Historic Monuments whose aim was to advise on the buildings symbolising national moral values (Stoessel Rits, 2004, p. 51).

In the beginning of the 19th century the interest in heritage was very low. During that time, according to P. Mérimée, the author of the first inventory, apart from the nobles and the scholars, the knowledge of monuments was scarce⁸⁹{Authors translation} (Stoessel Rits, 2004, p. 51).

The patrimonialization of archaeological heritage occurred during the Second World war through the regulations on archaeological excavations by Jérôme Carcopino in what is generally referred to as the Carcopino laws. The laws had been developed before the

⁸⁷ « *La vente des biens nationaux et leur réutilisation plus ou moins honorable transformant églises, couvents et châteaux en dépôts apparaissent comme une humiliation sociale nécessaire* ». André Chastel, 1997, “La Notion de Patrimoine » in P. Nora (ed.) *Les Lieux de Mémoire* Volume 1 p. 1433 cited in (Stoessel Rits, 2004, p. 51)

⁸⁸ The President of the Commission of the Arts, 1793, cited by A. Chastel, p.1441 and (Stoessel Rits, 2004, p. 51).

⁸⁹ « *Le souci de connaître les monuments est rare, sauf pour quelques notables et érudits. La masse n’est guère motivée et les notables indifférents.* » (0830). P. Mérimée, cited in (Stoessel Rits, 2004, p. 53).

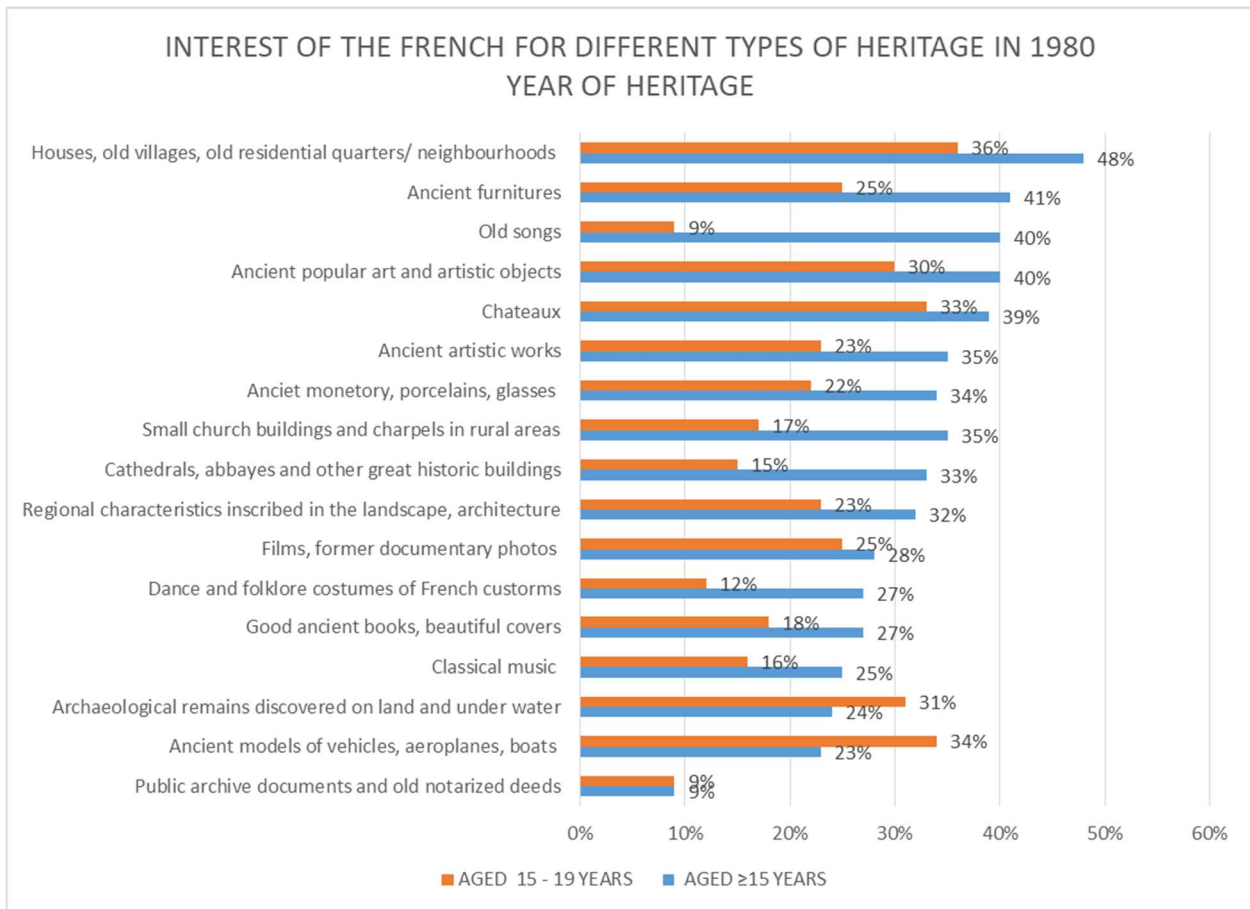
beginning of the war but they were applied following the events of the war then validated after during the restoration period (Gran-Aymerich, 2009; Gran-Aymerich, 1998).

Patrimonialization depends on the political good will which was made available by the political changes and events that occurred in the aftermath of the World War II. The changes led to the creation of the Ministry of Culture with André Malraux as the pioneer minister of culture. Right from its creation, André Malraux initiated reforms in the framework of a cultural project as opposed to an institution (Urfalino, 2004). The ministry's action plan was structured at three levels of public action driven by a philosophy of action, doctrine and situational or case-by-case level of action as demonstrated in the table:

Philosophy of Action	Doctrine	Casuistic/ Situational
The Minister and his cabinet	Department of Theatres, Music and Cultural Action	Relations with the elected local authority leaders
The Director General of Arts and Letters		Relations with the Directors of the cultural centres (<i>les maisons de la culture</i>)

The initiatives that were taken under Malraux from 1959 when the ministry was created to 1973 when Jack Duhamel left the ministry were decisive as they propelled the cultural policy project until the time when Jack Lang arrived at the ministry in 1981. The period between 1973 and 1981 has been described as a period with less national debate about cultural policy. However, towards the end of his era President Valerie Giscard d'Estaing consecrated a whole year to the celebration of the French national heritage. This might have been as a result of critics, as observed by Urfalino, from both the Right wing and the Left wing who had taken up the cultural policy debate (Urfalino, 2004, pp. 305-307).

The most remarkable and significant contribution to the development of cultural policy



between 1973 and 1981 was the campaign of The Year of Heritage in 1980 which mobilized the general public across the nation behind the concept of heritage. The State declaration was the long waited catalyst which activated local authorities among other non-State actors to organise various cultural exhibitions across the country with new types of heritage coming to afore such as rural, industrial and urban heritage (Héron, 2010, p. 12). During the campaign the general public portrayed varied degrees of interest for different types of cultural heritage attraction which was grouped into two according to their age for comparison; the group of the youth aged between 15 and 19 years old and that of the general public aged 15 years and above.

From the graphical comparison, we discern a lot of interest of the youthful generation in the ancient residential neighbourhoods (36%); ancient models of vehicles, aeroplanes and boats (34%); castles (33%) archaeological heritage (31%); ancient popular art and artistic objects (30%). School children were the most concerned public for heritage as testified by their participation in data collection during the organization of the 1980 cultural functions for instance in the Sore school in the Landes⁹⁰.

The events of the 1980 year of heritage in France echoed the concerns by experts of the social value which fostered discussions in the academia, resulting both in the appearance of community archaeology and change in the meaning of public archaeology (Diaz-Andreu, 2017).

6.2 Patrimonialization and the development of cultural policy in Kenya:

Whose heritage?⁹¹

The process of selection of items of conservation begins with “Whose heritage?” as a key question. To begin with, during the period when western systems of conservation were being introduced in Africa there were a lot of interrogations touching the question in one way or another. The notions of a common past, a common heritage and a common destiny seemed alien to Africa. The doubts about if *Africans also have a history* opened a window to a lot of

⁹⁰ <https://fresques.ina.fr/landes/fiche-media/Landes00603/histoires-de-votre-ville-sore.html>

⁹¹ The questions Which heritage?, and Whose heritage?, were raised by Monique Dondin-Payre “*Quel patrimoine? Le patrimoine de qui ?* » with reference to archaeology in Algeria in the work entitled; *L’archéologie en Algérie à partir de 1830 : une politique patrimoniale* (Dondin-Payre, 2003).

challenges in the writing of the African history (Fauvelle, 2018) which clearly reflects the sorry state of affairs in the conservation of African heritage.

Cultural heritage is a highly politicized social construction (Avrami, et al., 2000; Amougou, 2004a, p. 27) that entails a lot of negotiations among the social actors at the local, subnational, national and international levels depending on the values that need preservation.. The social construction is a long process that involves the identification of what to consider for conservation, who are associated with the resources, the location in time and space, why it needs protection as well as how to conserve and promote the cultural resource in question. The question of whose heritage (Dondin-Payre, 2003, p. 146) connotes the notions of authenticity and originality in conservation, notions that call for legitimization through patrimonialization.

These questions become difficult in an extremely centralised cultural management system with limited representation and visibility of the peripheral and rather marginalised parts of the society. Mobilization of resources, both human and financial, towards the conservation and management of cultural sites and objects depends on the prevailing political good will as well as the country's level of economic development. The shift from focus on the site to the adoption of notions of cultural landscape has placed cultural heritage at the interception of social, environmental, economic and political considerations thus making the intra-state and inter-state cultural negotiations a much more demanding and complex process.

When it comes to patrimonialization of cultural assets at the local, sub-national and national levels, other factors play a crucial role in the selection process. These include the social, economic and political factors such as the history associated with the selected site or objects. Does it present local, national or universal values? In a multi-ethnic society at large, ethnic

diversity and other factors that define their national or regional integration also come into play as the main problem remains the economic values associated with a particular site or object. In Kenya, these factors play a major role in determining which heritage should be preserved, where, why and how.

The National Museums of Kenya is the public institution that has been vested with the powers to protect cultural heritage and therefore the one through which patrimonialization is achieved. According to Karega-Munene, 'museums in Kenya are the spaces for selecting, ordering and erasing memories of identity and nationhood' (Karega-Munene, 2011).

Heritage, according to M.-A. Fouéré and L. Hughes, is essentially about power and representations; it is a site of struggle. In this contested struggle, 'belonging, ownership and the control of power underpin heritage and patrimonialization, that is, the space-and time-bound configurations in which heritage is delineated, appropriated, contested, made central in economic, political and social struggles' (Fouéré & Hughes, 2015, p. 2) before being accorded lasting legitimacy (Amougou, 2004a) as authentic and valid. The economic assessment of heritage values and the benefits of heritage conservation demonstrates that cultural heritage is a politicized and contested social construction (Munjeri, 2005; Avrami, et al., 2000; Mourato & Mazzanti, 2002).

Africa, according to J. Fialaire, demonstrates that another name for development is culture and shows the importance of cultural heritage in defining a nation as well as giving it an identity even in the economic negotiations with the international community (Fialaire, 2011, p. 121). Under such circumstances, culture is the people's property which serves as a key element of national identity. In Kenya, archaeological heritage is a key element of the national identity which puts Kenya on the global map as the cradle of humanity and at the

centre of scientific debates about the social, economic and technological evolution and of humanity and subsequent development.

The role of cultural heritage as a symbol of national identity was manifested through the resistance to the introduction of colonial rule among the African societies across the continent and during the independence struggles and negotiations where many African countries realized the importance of their history in inculcating a sense of national pride in their citizens (Ndoro, et al., 2018, p. 8). Cultural heritage was very instrumental throughout the struggle for independence in African countries especially in Kenya. The Mau Mau struggle, however, was highly contested as a national freedom struggle leading to the reluctance in the identification and preservation of the sites and objects associated with it. It was not until the year 2003 that the Kenyan leadership recognised the Mau Mau movement as the war of national liberation in the process of democratization of the past (Branch, 2009; Wahome, et al., 2016). This was under the National Alliance of Rainbow Coalition (NARC) government which ended and succeeded the long reign of the Kenya African National Union (KANU).

Cultural heritage literally gave birth to the newly independent African nations when immediately after independence, some of these countries resorted to renaming their young nations after their most remarkable and outstanding cultural and historical symbols where the famous archaeological site of the Great Zimbabwe gave birth to Zimbabwe as Old Ghana gave birth to Ghana (Ndoro, et al., 2018, p. 8). These were demonstrations that culture is the cumulative civilization of the people and thus the foundation of a nation as stipulated in section 11 (1) of the 2010 Constitution of Kenya. The cultural heritage approach that was applied across Africa for a long time was influenced by the classical perspectives of heritage as disseminated through the official national debates. In such debates, heritage referred to

sites such as the Great Zimbabwe, the old town of Kilwa at Zanzibar and the royal palaces of Abomey as well as the art collections that can be found in the national museums especially those in the former colonial powers (Mambo, 2011, p. 162).

The independence government of Kenya adopted Kiswahili as a national language in a move to create national identity and cohesion through language as a living cultural heritage. However, English remained the only official language until the promulgation of the 2010 Constitution which elevated Kiswahili to both official and national language. Patrimonialization of Kiswahili language thus took almost 50 years and it is yet to be fully achieved as a legitimate and authentic heritage of the people of Kenya and East African Community. This is because the elevation of Kiswahili to an official language through the 2010 Constitution was later affected through the change in the Kenyan education curriculum from the 8.4.4 to the Competence Based Curriculum (CBC). In the new curriculum, the teaching of Kiswahili was highly affected where the number of lessons accorded to the teaching of languages at the lower primary schools (Grades 1, 2 and 3) significantly reduced to three lessons per week as opposed to the former curriculum where the language was taught every day (The Star, 24th August-2021). The change will drastically affect the teaching and learning of Kiswahili in Kenya because there were already challenges relating to its daily use in institutional communication especially in learning institutions where English is the main language of communication. Given that the native mother languages are no longer taught even at the elementary levels, this will greatly impact the teaching of African cultural values.

The Competence Based Curriculum in Kenya employs a value based approach to teaching and learning as opposed to the former 8-4-4 curriculum which was knowledge based (Unesco International Bureau of Education, 2017). Cultural heritage conservation debates also

concern values whose assessment is the object of this chapter. At this juncture therefore, the study interrogates societal values through the question of *whose heritage* do we seek to conserve and transmit to future generations through an educational curriculum? If the mother languages are no longer taught and the national language is poorly taught, the kind of heritage and values that will be preserved and transmitted will more or less be foreign to the people and the nation. In such a scenario we can perhaps talk about universal heritage and values rather than national or a particular ethnic community heritage and values. In the traditional African society, values and knowledge were intertwined and transmitted as a whole package of learning as part of each community's intangible cultural heritage through each mother language such as oral narratives, riddles, songs and proverbs.

Constituting an essential part of an ethnic community, mother language is a carrier of values and knowledge, very often used in the practice and transmission of intangible cultural heritage. The spoken word in mother language is important in the enactment and transmission of virtually all intangible heritage, especially in oral traditions and expressions, songs and most rituals. Using their mother tongue, bearers of specific traditions often use highly specialized sets of terms and expressions, which reveal the intrinsic depth oneness between mother tongue and the intangible cultural heritage.

6.2.1 The language policy as an approach to the question of “Whose heritage?”

Why is the language policy so important in finding the answer to the question of *Whose heritage?* Values are building blocks of the generally acceptable virtues within a given society which are transmitted across generations as their living cultural heritage through

mother language as the vehicle. Language and social life are highly intertwined thus constituting the social characteristics of language as a ‘collective treasure’⁹² with symbolic power (Bourdieu, 2001 (1991)).

At independence, ethnological studies were also conducted whose aim was to trace the history of origin, migration and settlement of the Kenyan people so as to understand and appreciate ethnic diversity in the creation and development of a national identity by ensuring unity in diversity. Language and memory are the founding elements of every civilisation and the authentic study and conservation of cultural heritage requires the minimum understanding of the associated language and history. If such language is not documented, the death of the last person among its speakers translates to the loss of the whole or the greater part of such memory, culture and civilization.

6.2.2 Whose heritage? Communication, political goodwill and patrimonialization

The question of *whose heritage* which is posed during patrimonialization is very fundamental as it forms the philosophical and historical rationale of conservation and patrimonialization process. To respond to this question, I considered the analysis by J. Davallon of how ‘to manufacture’ heritage (“*Comment se fabrique le patrimoine*”) through the process of patrimonialization (Amougou, 2004b, p. 24; Davallon, 2002). As a social and political process, patrimonialization is achieved through a long process during which scientific research and communication plays an important role. The role of the mass media goes hand in hand with the prevailing language policy. Language has symbolic power and

⁹² John B Thompson citing F. de Saussure in the Preface to “Langage et pouvoir symbolique (Bourdieu, 2001 (1991), p. 8).

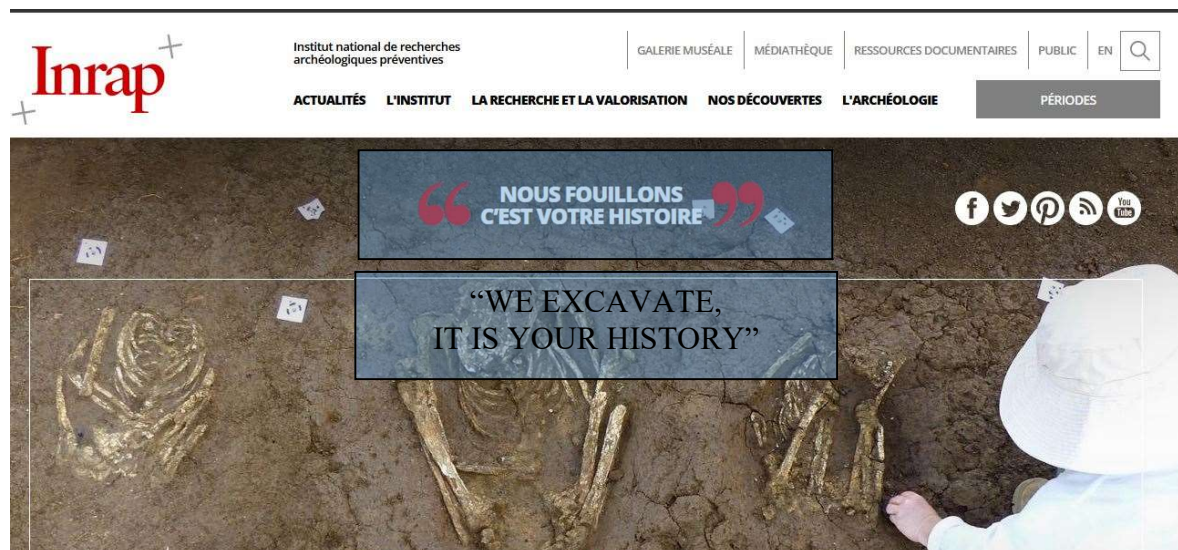
in the contemporary society this power is vested in the people and is exercised through the mass media. The relationship between an object or site and the associated values are established through a selective process where effective communication about an archaeological discovery is the first step of the process of patrimonialization. Therefore, when it comes to the development of archaeological research and cultural resource management or preventive archaeology in a society, the role of the media is to inform and communicate. “*To inform is to transmit a message while to communicate is to establish a relationship*” {Author’s translation from French} (Dureuil-Bourachau, 2005, p. 11).

Patrimonialization is a scholarly concept that is forged around the notion of patrimony (heritage) (Amougou, 2004b), a notion whose common meaning when used alone is very restraint. Since the 12th century the term refers to “inheritance from the father” (*patrimonium* in Latin). Since the Medieval Period and more particularly in the beginning of the 19th century, heritage refers to everything received through inheritance from ascendants, be it biological ascendance at family level or ascendance from the vast national family. The legislations by modern nations thus seeks to protect their national heritage which ties the term heritage to a particular nation and national identity as it is made up of national treasures or their equivalence chosen among items manufactured within the nation or those from other countries that played a historical role in the country (Mohen, 1999, p. 16).

The application of the notion of patrimonialization in the scholarly or ideological approach is common because since every new interrogation in line with conservation of both tangible and intangible items of the past is an opportunity to redefine heritage, without necessarily aiming at the totality of the theoretical understanding of the phenomena they represent (Amougou, 2004b). D. Poulot observes that there is lack of a history that not only looks at the “culture” of heritage as an argument and justification of political projects and the

institutional approaches, but also analyses its implication in the content of scholarly knowledge and legitimate representations (Amougou, 2004b, p. 24; Poulot, 1993)⁹³.

On its official website and in the reports of archaeological operations of the French National Institute for Preventive Archaeological Research, INRAP, the institution's welcome note expressly gives the philosophical and historical rationale of its duty and functions in the society. It is a brief statement which summarily provides the answer to the question of *whose heritage*. The statement, which sounds like the motto of INRAP, establishes the relationship between archaeology and the society within which it is exercised in only six words: "WE EXCAVATE, IT IS YOUR HISTORY" (*NOUS FOULLONS, C'EST VOTRE HISTOIRE*).



⁹³ « Au hasard des débats et des controverses d'intellectuels, le patrimoine a servi à se référer, positivement ou non, à la tradition, à défendre ou à attaquer telle architecture, etc. L'évolution de ces usages demeure mal connue : on manque d'une histoire qui non seulement envisagerait la « culture » du patrimoine comme argument et justification des projets politiques et des démarches institutionnelles, mais analyserait aussi son inscription au sein de la constitution des savoirs savants et des représentations légitimes » (Poulot, 1993) cited in (Amougou, 2004b).

The statement by INRAP gives the objective for eventual interventions that lead to patrimonialization by declaring whose heritage it is. It gives people the sense of ownership and belonging that invites them to interrogate and participate in the reconstruction of their past through preventive archaeology. The aim of preventive archaeology, which is to find an equilibrium between economic development, scientific research and cultural heritage conservation, is therefore achieved with greater success as the process involves community participation through communication and dissemination of information (Dureuil-Bourachau, 2005).

As exercised in France and other western countries, preventive archaeology is a tool of patrimonialization which brings all the social, economic and political actors on board with well-defined and structured roles, duties and responsibilities. The demonstration of the process of patrimonialization (Figure 11) shows all the actors and their roles at each stage which echoes the process of preventive archaeological research. The survey excavation is the first stage at which the questions of patrimonialization emerge. The questions are further developed and confirmed through preventive excavation. The two stages demonstrate the professionalisation of patrimonialization where conservation needs are confirmed and intervention procedures determined by specialists through public participation, dissemination of information through mass media and scientific means and application of conservation technology and technics. The discovered sites and objects are translated into cultural terms by adding recognized and shared properties and values drawn from a specific society. The entire process has been demonstrated in Figure 11.

Despite the efforts, however, some items of conservation that would qualify as cultural heritage have been neglected, ignored or avoided in the national list of sites to be protected. A good example of ‘forgotten’ heritage in the identification and classification process is the

case of Mau Mau sites and memory in Kenya's post-independence cultural heritage management system (Wahome, et al., 2016). Historians, political scientists and anthropologists have studied and theorised about the series of events that occurred in Kenya between the period of the end of World War II and the gaining of independence in 1963 (Branch, 2009) and demonstrated that the Mau Mau struggle remains one of the highly contested struggles. The causes of the Mau Mau insurgency were shrouded within the colonial political economy of Kenya. The studies provide details of members of Mau Mau, the events that took place in the 1950s and considered the tortured position of memories of the rebellion within politics of the post-colonial Kenyan state (Branch, 2009).

The case of Mau Mau sites in Kenya testifies to the reality of heritage as a contested and negotiated past whose conservation is vulnerable to political change, political machinations, instrumentalization as well as cultural and socio-economic misappropriation. The struggle generated multiple memories which have received multiple appropriation in the post-independence Kenyan politics to date. The issues that emerged through Mau Mau movement ranging from ethnicity, land allocation issues, the cult itself and power of arms as well as sorcery still feature within modern Kenyan politics (Lafargue, 2010) some in the form of cultural rituals while some go to the extreme of political coercion. The use of the oath of allegiance, for instance, prior to general elections to persuade some aspirants to remain loyal to particular regional or ethnic based political groupings.

David Branch attempted to engage directly with current debates surrounding the questions of the place of Mau Mau struggle within Kenyan politics, the lessons of imperialism, the nature of contemporary warfare, and the dynamics of civil wars. The most interesting part of the study and which can explain the dilemma of Mau Mau heritage was the divide that

emerged between Mau Mau supporters and those who were loyal to the colonial government (Branch, 2009).

In Africa, citing the example of the Kano Civil War of 1893 – 1894, J. E. Philips observes that history is not written by winners but by survivors. In the case of the Kano Civil War, the first comprehensive account and an abridged version of that account were both written from the losers' point of view. Philips thus concludes that 'Much, perhaps most, of the history of certain periods and events seems to have been written by losers, who returned home to lick their wounds and write self-justifications' (Philips, 2005, p. 26).

The argument that history seems to have been written by losers evokes questions surrounding sampling, data collection, authenticity and reliability of sources. This reveals one of the most intriguing challenges of African history and archaeology which is the underdevelopment of social history. According to I. O. Albert, social history is basically interested in human actions. Human actions everywhere, as Nzemeke notes, have a fundamental similarity, notwithstanding the cultural variations that condition them (Albert, 2005, pp. 287-288; Nzemeke, 1989 cited in Albert, 2005). J. F. A. Ajayi in '*A Critique of themes preferred by Nigerian historians*' poses an important question; why is the social history of Africa left to the tender mercies of political scientists and others who analyse questionnaires and so on? The answer to this question, according to Ajayi (1989) and Albert (2005), lies in the fact that many African historians begin by studying areas which are much more familiar to them based on their own cultural and linguistic competencies which provide an advantage over historians from elsewhere. In the case of the Kenyan archaeology, the practice traces its roots to the beginning of the discipline. Louis Leakey was selected in London to be part of the Natural History Museum team to work in Tanganyika based on his East African background and knowledge of Kiswahili language and not necessarily being an archaeologist from the

beginning (Sutton, 2007, pp. 303 - 304). As Ajayi observes, 'the historian lives in Yorubaland in Nigeria and therefore writes about one small community in Yorubaland, or belongs to the Akan in Ghana and thus focuses attention on those people. Broad based subject matter is simply not of interest' (Albert, 2005, pp. 289 citing Ajayi, 1980). This study concurs with the above critics and thus has attempted to look at cultural heritage from a broader perspective by confronting geopolitical, linguistic and historical limitations so as to respond to the questions more objectively.

Cultural heritage presents an invaluable opportunity for the reconstruction of African history (McIntosh, 2005, p. 52) based on the numerous cultural sites which have not yet been studied. Preventive archaeology thus becomes a fundamental tool for sustainable development planning in Kenya where while meeting the needs of the present generation, the future of the past is directly assured so as to ensure the needs of the future generations are not jeopardised in the long run.

Culture histories are still constructed in parts of Africa today as the main goal of archaeology, however, according to McIntosh the practice of archaeology is characterised by considerable diversity. There are a variety of theoretical stances, as McIntosh observes, about the kind of histories archaeologists should try to write which are sometimes contradictory. Consequently, historians get confused about the manner in which archaeologists reconstruct the past as some of them think that the goal of the latter is to reconstruct particular sequences for individual sites or areas, lamenting that archaeology seemed to eschew generalizing narratives (McIntosh, 2005, p. 52).

The general perception, conception, understanding and approach to cultural heritage varies according to cultural diversity. As such, every cultural legislation and policy is

conceptualised within a given historical, social, economic and political context. It was through the acknowledgement of these facts in the 1972 Convention that UNESCO allowed for each Member State to determine its cultural policy and methods according to its own conception of culture, its socio-economic system, political ideology and technical development (Ndeti, 1975; UNESCO, 1972).

Heritage conservation is the discipline devoted to the preservation of cultural heritage for the future (Muñoz Viñas, 2005, p. 13; Poullos, 2014, p. 11). It emerged from a Western European world that had experienced the Protestant Reformation, the Catholic Counter-Reformation and the Enlightenment, and was based on a firm belief in science and rationality (Poullos, 2014, p. 11). Heritage conservation gradually developed and took shape at the turn of the nineteenth century within the larger package of Western European modernity, identified by industrial capitalism, the nation state, rapid economic development, and a sense of human mastery over the natural world (Poullos, 2014, pp. 11; citing Jokilehto 1995, 20-21; 26-29; Cleere 1989, 1-2 and 7-8). The context within which heritage conservation emerged directly reveals the purpose and the aim of the discipline.

Sometimes a community may not know the value and significance of their cultural heritage until when it is faced with a major threat or calamity that risks to destroy all that there is as cultural heritage. This happens especially during difficult times like external aggression, during war, civil conflicts, under terrorist attack or through catastrophes such as fire and floods but also during the realization of major development projects with significant environmental impacts (Kibunjia, 2016; Arazi, 2009a). Much of Africa's archaeological heritage, as N. Arazi observes, is under threat, partly as a result of modernisation and development. This is due to the current boom in infrastructural projects that have led to an acceleration of irreversible destruction of cultural but more particularly archaeological

heritage. In this context emphasis has been on the integration of both AIA and EIA into the national heritage legislations and operational guideline by international donor agencies. 'However, to achieve this will take concerted efforts by the archaeological community to convince government officials, as well as multilateral development banks, of the socioeconomic benefits of cultural resources' (Arazi, 2009a, p. 95). Placing culture at the heart of development policy, as UNESCO categorically reminds its member states, constitutes an essential investment in the world's future and a pre-condition to successful globalization processes that take into account the principles of cultural diversity (UNESCO, 1982).

Infrastructural boom is not the only challenge to Africa's cultural heritage. In recent times, several countries in Africa and across the globe have faced serious social, economic and political challenges that have had devastating negative impacts on cultural heritage. Cambodia, Egypt, Iraq, Libya, Mali, Syria, and Yemen just to mention but a few of the countries that have faced serious cases of insecurity and political crises of great magnitude whose impact on cultural properties is irreversible. The fire that brought down Brazil Museum on the 2nd of September 2018 left uncountable permanent loss to the country's heritage, leaving just but picture memories in the minds of those who knew what it held in store for generations. According to New York Times, the museum preserved documentation of indigenous languages for which there are no longer any living native speakers. Unless if such documents had a soft copy backup in the form of digital reserve, their total loss without any trace sounds like a permanent sign of the extinction of such group of people with their culture. Under such circumstances a whole history, civilization and a national heritage that is of vital importance to the universal heritage of the humanity is lost. In a move to keep record of what could no longer be restored, *'a group of students issued a call for any*

photographs, videos, even selfies taken with the collection and in the exhibition spaces, to create a digital archive, a kind of virtual bulwark against forgetfulness' (Michael Kimmelman, New York Times, 16/09/2018). In this case we can observe public initiatives that aim at the conservation of the national memory. If those students had perceived the danger in advance and came up with such an idea they could have salvaged almost the entire history and heritage of humanity by creating a parallel system of conservation either in digital form or in any other media. The notion evoked in their call for images to create a virtual museum was the notion of prevention whose aim is to ensure that there is no total loss of a nation's heritage. It is for this reason that countries that have realised the value of their cultural heritage put in place legislations that foresee all circumstances that may pose threats to their cherished heritage and shared values. They do this partly due to the recognition of the fact that a country that has got no past has got no future.

For cultural heritage to be of national significance, according to E. W. Wahome, there is need for conservators and all stakeholders in the field of heritage conservation to design and put in place relevant policies. They should develop policies that would ensure adequate preservation of cultural heritage while aiming at direct benefit to the communities or the rightful custodians of cultural resources. Wahome further argues that developing countries such as Kenya should embrace patenting of the local heritage under the intellectual property rights (Wahome, 2013, p. 90).

6.2.3 Which heritage?

Social scientists have broadly investigated the notion of cultural heritage in time and space thus shedding more light on what can generally constitute cultural heritage (Abungu, 2016; Amougou, 2004b; Amougou, 2004a). However the question of what heritage should be

conserved is very fundamental in the process of patrimonialization (Mason, 2002). As a complementary question to that of whose heritage, the question of which heritage is adapted to specific conservation objects and sites within stated environmental and cultural landscapes. It therefore evokes a multidisciplinary perspective as it deals with the stakes at which related social sciences intercept where sociological, anthropological, psychological and political issues of patrimonialization become necessary in defining heritage values, items, sites and places (Mason, 2019; Amougou, 2004b). The social and political theorists of the environment, for instance, defined the central task of what could be termed as environmental sociology as the study of environmental deterioration and environmental control as a societal phenomenon (Leroy & Nelissen, 1999). With improved systems of environmental management and control in Kenya, the society has the democratic right to public participation in the management, protection and conservation of the environment⁹⁴.

Every society, according to Maurice Godelier, classify things into three main categories: those that should be sold, those that should be given as donation and those that should be preserved (Heinich, 2009; Godelier, 2007; Godelier, 1997). This is the case, for instance, of those sites that have been described as ‘sites of pain’ (Fouéré & Hughes, 2015) or ‘traumatic heritage places’; whose preservation demand more than heritage values hence termed as “non-heritage” sites (Mason, 2019). A case in Kenya are the Mau Mau sites, a movement whose role in the independence struggle has triggered debates between factions comprising of colonial loyalists as opposed to the members of the movement (Hughes, 2014; Branch, 2009). Some of the significant sites associated with the Mau Mau struggle were for a long time left in dilapidated conditions, an example is the Kenyatta House, where the Kapenguria

⁹⁴ Article 69 (1) of the Constitution of Kenya.

Six were detained after their arrest on 20th October 1952 during the state of emergency. The date became a national holiday without the complete memory as this was only observed through political narratives during the Mashujaa Day formerly Kenyatta Day celebrations.

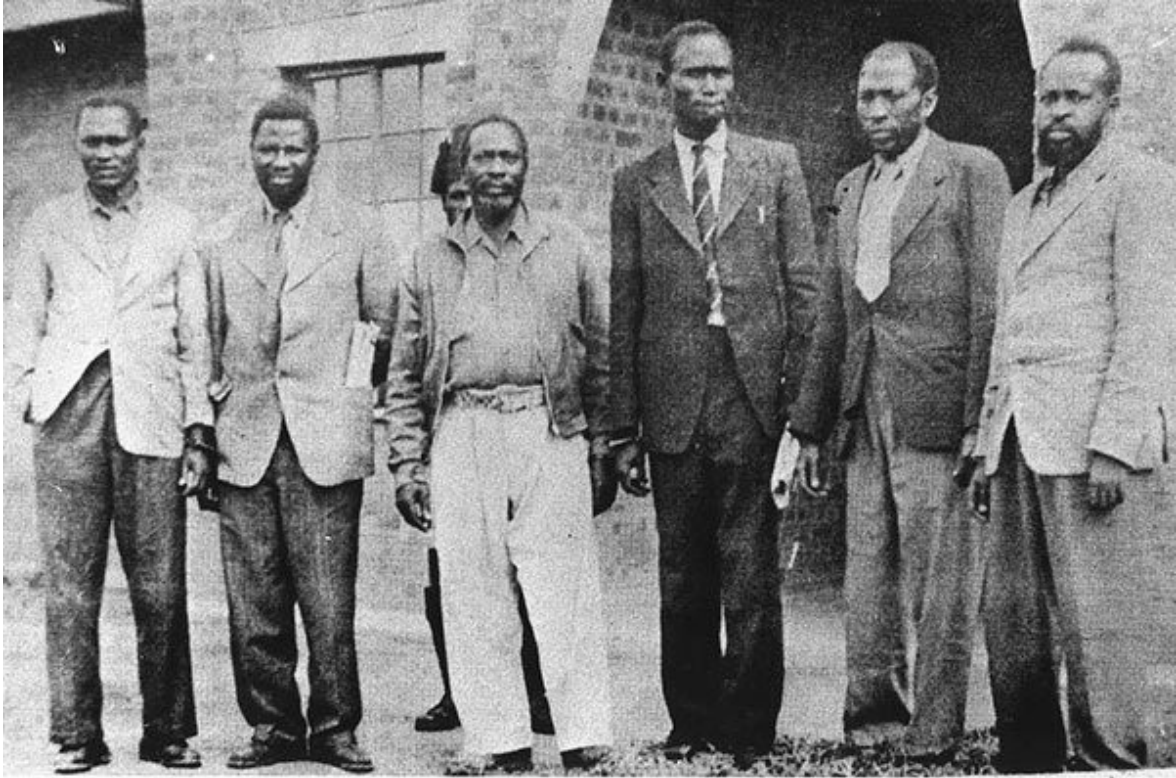


Figure 12: The Kapenguria Six from left: Paul Ngei, Fred Kubai, Jomo Kenyatta, Achieng Oneko, Kungu Karumba and Bildad Kagia. courtesy Photo File, NATION accessed in The East African Online, 1st July 2017.

The Kapenguria Six were taken to Kapenguria in north-western Kenya because it was the most secure place where it was thought the Mau Mau could not break them out (The East African, 2017).

While property rights remain an issue especially when it comes to the protection of scientific and artistic properties, Kenya's cultural heritage management system still shows the contradictions that were evident at independence. Ndeti identified such contradictions as ancient versus modern; rural versus urban; capitalist versus socialist; underdeveloped versus

developed; colonial versus non-colonial. All these factors have their effect on cultural policy (Ndeti, 1975, p. 52 (English); 58 (French))⁹⁵. At the backdrop of these contradictions were various issues that have ailed the Kenyan State since the colonial period to the post-independence era. Key among those issues that may have aggravated the contradictions and made it difficult to establish a coherent and more inclusive cultural policy were historical injustices.

Historical injustices greatly impacted the capacity to deliver social justice to the Kenyan society as is a key factor in sustainable development. This is the case, for instance, of those sites that have been described as sites of pain (Fouéré & Hughes, 2015). In what we can call ‘silencing the past which does not pass’, the post-colonial Kenyan society had difficulties of accepting part of the past thus making it even more difficult, for instance, to establish a systematic and fair way of identification, study, protection and promotion of the cultural elements associated with the Mau Mau⁹⁶ war. The history of the Mau Mau anti-colonial rebellion was largely silenced in national debates in Kenya for forty years (1978 - 2002). It was from the year 2003 that the government started to retrace the Mau Mau struggle for

⁹⁵ This a UNESCO publication consisting of a series of studies on different countries. The purpose of this series, published in English and French, was to show how cultural policies are planned and implemented in various Member States (Ndeti, 1975).

⁹⁶ The history of Mau Mau as a national struggle for independence has for a long time remained a contagious issue among the academics, the elite and the common citizen especially among the Kikuyu of Central Kenya. Branch qualifies it as a war which was ‘too contradictory to be claimed by the new nation-state as one of national liberation after independence in 1963. Lacking a clearly defined nationalist ideology and restricted to the hills of the Kikuyu-dominated Central Province, the Mau Mau insurgents wer not explicitly national in their intellectual or operational scope’ (Branch, 2009, p. xi).

national recognition as a national liberation war as had been earlier envisaged by Ali Mazrui⁹⁷ (Branch, 2009).

The first and second principles of the Intergovernmental Conference on Cultural Policies for Development which was held in Stockholm, Sweden, from 30 March to 2 April 1998 stated that sustainable development and the flourishing of culture are interdependent and that one of the chief aims of human development is the social and cultural fulfilment of the individual. In its first affirmation, the Conference held that cultural policy, as one of the main components of endogenous and sustainable development policy, should be implemented in co-ordination with policy in other social areas, on the basis of an integrated approach. Any policy for development must be profoundly sensitive to culture itself (UNESCO, 1998). The main challenge was that most of those who carried out EIA studies in Kenya were generally natural scientists whose perception of culture vary depending on their experience, background knowledge and awareness of cultural values and the need to protect cultural heritage.

It became a big challenge to talk about archaeological heritage whose aspects are less known among natural scientists. According to Kiriamu, Odiaua, and Sinamai (2010 , p. 4), the latter usually deal with components that are easier to replace which is not possible with cultural heritage; unlike a tree, once a site has been destroyed it can never be replaced. Sustainable development models are therefore quite difficult to apply when it comes to cultural heritage as it is a non-renewable resource (Kiriamu, et al., 2010 , p. 4).

⁹⁷ Mazrui, A., (1963). 'On Heroes and Uhuru-Worship,' *Transition II*, cited in (Branch, 2009, p. xiv).

6.3 The place of cultural heritage in the national philosophies of development

The independence and post-independence governments developed national philosophies as guiding principles of economic development. Each philosophy had its pillars just like any other development blue-print. In order to understand the place of cultural heritage in national development, it is important to look at cultural heritage in the framework of national philosophies in Kenya since independence. The philosophies include:

6.3.1 The African Socialism philosophy,

African Socialism was adopted by the independence government as the country's first economic planning tool which was laid down in the Sessional Paper number 10. This was the best time and opportunity to define the place of culture in the life of the nation and set the pace for it to play its rightful role in the nation building initiatives as well as *africanization* process. However, given that everything was a priority it was difficult to set all the priorities right. The country's cultural heritage presented itself as an opportunity to enhance national identity hence play a significant role in nation building while its cultural diversity was cautiously appreciated. This was particularly the case with the tribal leadership and the various religious organizations that existed in the country since the precolonial period and which had proved to be more determined and well organised during their resistance against colonial domination and the independence struggle contrary to the colonial government's expectations (Ndeti, 1975, p. 19).

In the year 1908, for instance, there was a conflict that later defined the relationship between the three groups; the Indian immigrants, the British settlers and the Africans who provided

labour force for Indian commerce and the European large-scale farmers. The Indians were claiming the annexation of Kenya to the Indian sub-continent demanding its recognition as a province of India. The movement was led by Jevanje and it was accorded significant support in India as well as in the United Kingdom. Theoretically, at that time, one immigrant community could not be dominant over the other. The conflicts persisted until they prompted the Devonshire Declaration of 1923 'which stated that in the event of a conflict of interests between Africans and immigrants, African interests should prevail. The real purpose was to prevent a conflict from giving new ideas to the Africans; it was presumed that it would take several centuries before Africans could rule themselves' (Ndeti, 1975, p. 19).

6.3.2 *Harambee philosophy: self-help and community development*

'*Harambee*' philosophy was Kenya's development philosophy which was inspired by the African Socialism philosophy of development (Onditi, 2019, pp. 378; Government of Kenya, 1965). It embraced key values of the African '*Ubuntu*' which are national unity and collective responsibility towards development. The philosophy also shared some aspects of the Indian community collective bargain during the colonial era (Onditi, 2019, pp. 378; Howell, 1968). The term '*harambee*' has its roots in the Swahili language where it means 'pooling together'.

Harambee as a philosophy was very instrumental in the laying of the foundations for community development at independence. The philosophy was based on the traditionally well embraced and understood African values of pulling together the limited resources for both personal and community development. The philosophy was a key tool in the championing for local area based initiatives towards social, economic and political development. As a philosophy, it was well founded on the key African values thus

incorporating ethnic and political diversity. Schools were built in the spirit of harambee, children were educated through harambee, churches and other religious places were constructed and developed through harambee. In most cases the initiatives were led by local area as well as national leadership.

As a philosophy, harambee was buttressed in the collective action based on the African values of peace, love and unity in all their endeavours. National celebrations would echo harambee spirit and emphasise the need to pool together resources towards development. Given the shortage of resources at independence, every method that would increase the allocation of resources to development was to be utilized (Republic of Kenya, 1965). Self-Help and Community Development (*Harambee*) was thus included in development planning under the Sessional Paper number 10 of 1965 entitled *African Socialism and Its Application to Planning*. This rendered harambee spirit acceptable in the development agenda of the newly independent nation grappling with challenges of ignorance, disease, unemployment and poverty. The section on Self-Help and Community Development precisely summarised how the government perceived and considered self-help as an alternative source of resources for development in the country.

99. In a country short of resources every method that increases the allocation of resources to development must be utilized. Self-help in Kenya has strong roots in African traditions and has therefore important potential for development. But it, too, must be planned and controlled (Republic of Kenya, 1965).

Having a rich cultural foundations rendered *harambee* an inevitable alternative source of development for the development of the nation. However, self-help was described as inefficient and perhaps unreliable because it could not provide all the resources needed to construct a project and keep it running. If there was need for the complementary resources which were not forthcoming or were to be obtained at the expense of other planned developments, self-help was thought to slow growth and frustrate participants rather than promote development and welfare. The secondary schools development programme that had been prepared by the Ministry of Education, targeted the supply of domestic and foreign teachers with a vigorous foreign recruitment programme in for its success. If many "Harambee" secondary schools were constructed, they would either have no teachers, unqualified teachers or qualified teachers taken away from the planned programme. Therefore, self-help projects had to be fitted into the plan and be guided into useful channels as an integral part of planned development (Republic of Kenya, 1965).

Nyayo philosophy was a blend of both African socialism and harambee philosophies which President Daniel arap Moi applied during his reign. Nyayo is the Swahili word for 'foot prints' hence the philosophical ground was already laid and Moi regime was only "*kufwata nyayo za Mzee Jomo Kenyatta*" (to follow the foot prints of the founding President, Mzee Jomo Kenyatta).

6.4 Consolidating Kenya's cultural policy for peaceful coexistence and sustainable development

If cultural questions occupied a very peripheral place in the national development philosophies, it was partly because of the failure to integrate cultural policy into the development planning as per priorities of the various government regimes. The priorities

were stipulated in the political party manifestoes whose aims and objectives were and are always short term. However, this changed for the first time after the change of regimes. The turn of events on the Kenyan political scene has also had an awaken call on the power structures to redefine and conceptualise leadership in the context of an evolving multi-ethnic and culturally diversified society whose history has a lot of hi-cups and painful memories of political, social, cultural and economic under-representation and marginalisation. While these memories have been at the core of political contestations which culminated into various economic and political conflicts that have punctuated the country's democratic history, they have key in peace negotiations and compromises that have led to the crucial constitutional, and governance reforms which began two decades ago.

6.4.1 Elements and objectives of the cultural policy in Kenya

At independence, the young African States were looking for national identity, unity and cohesion as key elements to steer national development. They had to turn to their cultural and archaeological heritage to define and reinforce their national identities. The choice of national and official languages constituted the foundation of a country's cultural policy. Kenya chose Kiswahili as a national language based on it being the language of business generally spoken across the country. Swahili language, culture and civilization has a long history as it is associated with a sub-national cultural group with its unique identity and rich cultural values. Even though this is a Bantu culture and therefore shares much in common with the majority of Bantu cultures in the country, ethnic consciousness thrived over national identity. This makes the Kenyan cultural diversity a strong element of the nation's rich cultural heritage but the same time an element of the abortive project of building a nation-State. If well exploited it may translate into peaceful coexistence through tolerance of cultural differences leading to national harmony and economic prosperity.

Swahili language was protected alongside other native languages but with time some languages started dying due to assimilation and decline in population of native speakers coupled with lack of documentation and poor or lack of a system of archives to conserve indigenous oral and artistic products. This was one of the agendas of the constitutional review process which culminated into the Constitution of Kenya 2010. The protection of indigenous languages as stipulated in Article 7 (3) of the Constitution of Kenya is one of the essential elements of cultural policy which determines the success of the entire cultural management system. This is because culture entails all elements of a given civilization and such elements are best understood in the context of the native language. Article 11 of the Constitution considers cultural expressions to include ‘literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage’.

The indigenous technologies were recognized alongside science as playing a role in the development of the nation [Article 11 (2, b) of the Constitution]. Together with traditional knowledge they constitute elements of intangible heritage that are highly tied to the indigenous languages. The conservation and transmission of such technologies across generations has been through oral literature and thus a reflection of language diversity.

Cultural values are very dynamic with a high degree of accommodating new concepts and changes in the society. Therefore, how can the present or contemporary generation ascribe cultural values to their cultural properties? Which criteria would be more appropriate to apply in this process? Who are the most suited members of the society to do this selection job?

In 1972 a government circular paper, the Kenyan Government stipulated its obligation towards cultural heritage protection:

... to ensure that valuable cultural assets are not irretrievably lost and that the resources of the past are protected and preserved in order that the people may keep in sight their rich heritage and maintain those ties with it which are meaningful in the contemporary world. . . . The main objective of government cultural policy is therefore clear. It is the realization of national unity and cohesion and the creation of national pride and sense of identity among our people. Apart from the need to protect and preserve valuable assets, the part played by culture in national consolidation is recognized as one of fundamental significance since culture is the symbol of nationhood, the grass- roots from which people spring (Ndeti, 1975, p. 35)

The various elements of Kenya's cultural policy were thus analysed by K. Ndeti in his 1975 work; '*Cultural policy in Kenya*'⁹⁸ which was realised within the framework of the *UNESCO studies and documents on cultural policies*. The views were summarised into national objectives of cultural policy which includes:

1. To promote self-awareness and the development of human values;

⁹⁸ The work was published in both French and English. This study consulted both texts where the English version was accessed online while the French text was retrieved from the University of Pau library (LAM library of the UPPA).

2. To promote cultural solidarity and a sense of common destiny in Kenya's heterogeneous population;
3. To bridge the development gap and other differences between rural and urban areas;
4. To enable everyone to participate freely in the cultural life of Kenyan communities;
5. To ensure that quality in cultural terms is not unduly subordinated to quantitative considerations;
6. To reconcile Kenya's cultural heterogeneity with modern scientific views;
7. To facilitate contacts between intellectuals and the common people;
8. To provide art patronage without tribal chauvinism or authoritarian dictation;
9. To help people to appreciate the creative works of Kenyan artists;
10. To link Kenyan culture effectively with Kenya's socio-economic development;
11. To involve national cultural values in all aspects of national development;
12. To provide adequate institutions and services for the propagation of culture and all forms of creative arts;
13. To construct a culture which will work with universal humanism and contribute to it (Ndeti, 1975, p. 35).

6.4.2 Integrating Cultural Policy into Sustainable Development Policy in Kenya

The historical analysis of archaeology and its evolution into a science cannot be limited only to archaeological concepts (Hurel, 2009, p. 67) and perspectives but there is need to contextualise the entire historiography in line with the historical events and the realities of the society and daily life. It is from such an analysis that scientists as well as government authorities, policy makers and the society in general can find the justification for the integration of the cultural policy into sustainable development policy. However, this has not always been the case especially in the Third World countries where development only

emphasizes the economic aspects of development and generally ignores the social and cultural aspects that constitute the core and the greatest percentage of an individual's whole life. Consequently, the approach to cultural resource management remains very superficial. In most cases cultural heritage was perceived from its economic potential in terms of cultural tourism by supplying the necessary collections in the museums with the aim of attracting tourists. The failure to realize the anticipated economic returns would thus translate into the poor organization of cultural management both by law and in practice.

In Ghana, for instance, cultural heritage protection was highly affected by the low gains from tourism. Until quite recently, according to J. Boache-Ansah⁹⁹, 'when tourism started bringing in financial gains and much needed foreign revenue, museums and monuments as well as the Ghana Museums and Monuments Board were seen as a drain on the national economy and of less importance in comparison with [...] transportation, health, agriculture and housing' (Boachie-Ansah, 2008, pp. 113-114). It was indeed this materialistic approach to cultural heritage management that deprived it of its role and significance in the reconstruction of history in majority of the African countries and Kenya in particular.

The significance of archaeological resources in Africa cannot be overemphasized given the pivotal role that archaeological research played and continues to play in the reconstruction of the continent's history and civilizations which has immensely contributed to the change in the perspective on the African continent (Arazi & Thiaw, 2013; Abungu, 2016; Arazi, 2011; Arazi, 2009a; Fauvelle, 2018). However, this observation does not correspond to the efforts by the various nations to recognize the archaeological resources as key to the nations'

⁹⁹ Department of Archaeology – University of Ghana, Accra.

development. Rather, the role of archaeology has remained a topic of scholarly articles and debates while it still occupies a peripheral place in most of the continent's national legal and policy framework (Arazi & Thiaw, 2013, p. 213).

According to Article 1 of the ICOMOS Charter for the Protection and Management of the Archaeological Heritage (1990):

The "archaeological heritage" is that part of the material heritage in respect of which archaeological methods provide primary information. It comprises all vestiges of human existence and consists of places relating to all manifestations of human activity, abandoned structures, and remains of all kinds (including subterranean and underwater sites), together with all the portable cultural material associated with them.

The European Convention on the Protection of the Archaeological Heritage of 1992 (Revised), Article 1 considered to be elements of the archaeological heritage all remains and objects and any other traces of mankind from past epochs:

- i. the preservation and study of which help to retrace the history of mankind and its relation with the natural environment;
- ii. for which excavations or discoveries and other methods of research into mankind and the related environment are the main sources of information; and
- iii. which are located in any area within the jurisdiction of the Parties.
- iv. The archaeological heritage shall include structures, constructions, groups of buildings, developed sites, moveable objects, monuments of other kinds as well as their context, whether situated on land or under water.

6.4.3 Kenya Vision-2030 and Foreign Policy

The Government of Kenya through the Ministry of Foreign Affairs put in place the country's first ever foreign policy since independence in November 2014. This was a milestone policy framework which considers cultural diplomacy as a vital tool in international relations especially through the use of cultural heritage and endowments as the pedestals of the country's foreign engagement. The Policy clearly outlined the five pillars of diplomacy as summarised in the five interlinked pillars of diplomacy namely: Economic; Peace; Environmental; Cultural and Diaspora. Economic diplomacy aims to realize a robust and sustained economic transformation so as to secure Kenya's social economic development and prosperity in line with the goals and aspirations of the Kenya Vision 2030. Peace Diplomacy seeks to consolidate Kenya's legacy in promoting peace and stability as necessary conditions for development and prosperity in countries within the region. Environmental Diplomacy recognizes Kenya's enormous stake in the sustainable management of its own natural resources, both regionally and globally. Cultural Diplomacy aims to use culture as a vital tool in international relations especially through the use of cultural heritage and endowments as the pedestals of foreign engagement. Diaspora Diplomacy recognizes the importance of harnessing the diverse skills, expertise and potential of Kenyans living abroad, and facilitating their integration into the national development agenda. These pillars inform the core priorities and strategies for Kenya's bilateral and multilateral engagement so as to strengthen relationships, enhance social cultural cooperation and promote national interests (Republic of Kenya, 2014).

6.5 Specific legislation on cultural resource management: why is it important?

Archaeology is a discipline whose legal framework may be drawn from diverse legislations (Rigambert, 1996, p. 113; Demoule, 2007, p. 11) touching on different aspects of development including but not limited to the socio-economic (Audebert & Vigreux, 2012), cultural, environmental (Marchand, 2000; Arazi, 2011) and political aspects. As much as this may be advantageous to archaeological research, it may also be a limitation in such a way that it may take long before having a harmonised legislation that is entirely dedicated to the protection of archaeological heritage. While such a situation may not pose a lot of challenges in some countries, it may jeopardise the entire system of archaeological heritage conservation in developing countries.

In Britain for instance, archaeological research which is mainly focused on prevention does not have a particular law but is based on a circular known as 'PG16'. In the case of Japan, the State consecrates a lot of resources to the protection of her archaeological heritage. It was estimated by 2007 that Japan had about 7000 archaeologists without considering other labourers that were involved on the ground during archaeological excavations. The Japanese system was based mainly on consensus rather than on a legislation yet it is one of the best examples when it comes to the protection of archaeological heritage (Demoule, 2007, p. 11).

In Europe, the Malta Convention of 1992 made it mandatory for the member states to enact legislations that would ensure the protection of archaeological heritage as an important element of the collective memory of the past human civilizations. Though not all member States have ratified the Convention, the European Association of Archaeologists (EAA), which was formed in 1994 and the *Europae Archaeologiae Consilium* which is an umbrella

body uniting national archaeological services, have groups that work on the different legislations (Demoule, 2007, p. 11).

In Africa archaeological research may appear to be extremely detached from the realities of the contemporary African society and out of bound to the local communities. The reason is that one of the main objectives of archaeology in Africa is the study of the distant past from the analysis and interpretation of the evidence of the material culture and paleo-environment. According to I. Pikirayi, archaeology should no longer be an exercise in recovering a lost and distant past. Instead, it should be empowering people to engage with that past in ways beneficial to their lives in the present (Pikirayi, 2016, p. 133).

Right from the first step of archaeological research, prospection, all through the excavation, analysis and laboratory study to the final step of dissemination of information, archaeological research needs a clear and precise legal framework which will not only ensure the strict adherence to the fixed norms but also allow all the necessary cooperation among all the stakeholders. This can also instil international best practices within the profession and prevent biased research practices and exclusion of locals from the entire process. G. Abungu observes that one thing archaeologists fail to acknowledge is the destruction they cause through excavation of peoples' pasts, including the threat that this poses to the spirit of the people (Abungu, 2016, p. 49).

To begin with, archaeological excavations in the long run translate into destruction of the site under study as it implies the step by step removal of archaeological objects from their initial context and strata for purposes of their analysis and study. It is therefore the role of the State and by extension the public to ensure that the results of archaeological research are published and disseminated for the benefit of the general public thus giving credibility and

justification of archaeology as a science through protection by law (Rigambert, 1996, p. 113). Archaeology, unlike other social sciences, is a discipline that can affect and be affected by various anthropogenic activities that touch the human ecosystem and more precisely the underground archives of the history and civilization of mankind.

It is also necessary to have a law that pays attention to all aspects of archaeological research and practice. The fact that environmental impact assessment cannot be complete without mention of the social and cultural aspects of the impact, the link between EIA and CHIA law should be made clear and solid by specific laws in the domains of cultural heritage management and archaeology.

Preventive, commercial, development-led or contract archaeology is exercised on the premise that archaeological research and protection of archaeological heritage should not be perceived as an impediment or obstacle to development but as complementary and mutually beneficial aspects of sustainable development process. As such, laws on this kind of research once enacted will save the developers from the loss of time and resources that is caused by interruption of development projects whenever archaeological objects and sites are discovered in the process of construction. This aspect of archaeology puts the discipline at the cross road between natural sciences, social sciences and humanities, law, economics, political and even diplomatic issues thus making the cultural policy one of the key factors to consider when planning for sustainable development.

Conservation of cultural heritage has been described as one of the elements of a collective memory of the history of the humankind. Mackay (2013, 44) agrees that heritage properties are important for the society as part of humanity's inheritance which we have an obligation

to pass to the current generation and transmit to future generations¹⁰⁰. This gives a concise justification for memorialization and conservation (Wahome, et al., 2016, p. 214). One of the central aspects of this memory is the history of social and political struggles. Struggles such as those of independence have shaped the world geopolitics to present societies portraying various identities at local, national, regional and even international levels. For Africa and Kenya in particular such history is yet to be well documented and presented to its heirs in a manner they can appreciate and hence develop a deeper understanding and a sense of nationhood and patriotism. This is the case of Mau Mau struggles for the independence of Kenya, a movement whose actions were buttressed in the African values of fraternity and unity in the fight for a fair, just and democratic society.

Unfortunately, the Mau Mau struggle against the British colonists in Kenya has not been given the attention it deserves. It is not only important for scholars to conduct studies on the movement, but to also document it for the benefit of memorialization and posterity. The Mau Mau sites in Kenya are many and varied, including their complex communication networks, trenches, caves, gun factories, oaths sites, offices, detention camps and burial places. Conserving this heritage would give the general public a chance to appreciate the place of fighters in the history of Kenya (Wahome, et al., 2016, p. 212).

¹⁰⁰ Mackay 2013, pp. 44 cited in (Wahome, et al., 2016, p. 214)

The opening up of Kenya through the transport infrastructure could have served as an important moment for the realisation of such aspirations if there were relevant policies and legislations on preventive archaeology.

In terms of diplomacy and international relations, cultural heritage management is one of the fields through which a lot of cooperation in research programmes have been established at the global scale. This is mainly because cultural heritage and more particularly archaeology is fundamental *‘to the understanding of territories, peoples and their identities, also helps to build lasting relationships with civil societies, including in countries in crisis, by establishing networks to link communities of researchers.’* (The French Ministry of Foreign Affairs and International Development, 2014, p. 8).

Given the nature of archaeological heritage and research, according to C. Rigambert, its protection draws from diverse legislations and policies. The penal law on archaeology focuses on both the material culture as well as the intellectual aspects of research itself. Thus the three levels of penal protection of archaeological heritage as per the law are:

- i. The integrated protection of archaeological heritage
- ii. the protection of archaeological exploitation
- iii. the protection of archaeological heritage from illicit commerce

The three levels of protection represent various actions demanding legal protection within each level that make the totality of the legal protection. (Rigambert, 1996, p. 113).

6.5.1 Scientific, historical and social significance of cultural heritage

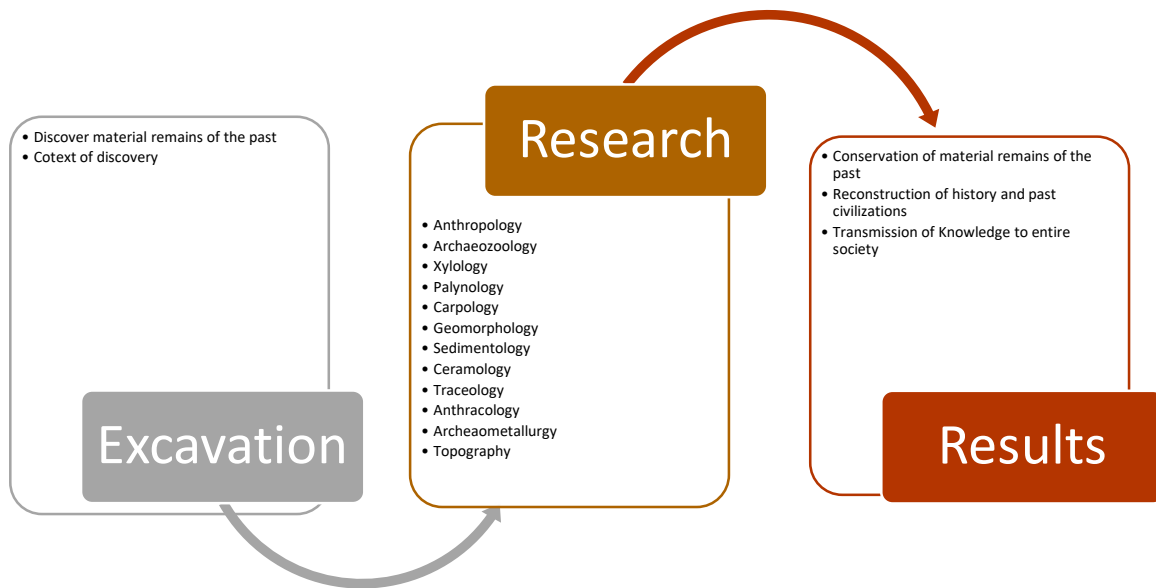
If there is any discipline that can provide answers to most of the contemporary challenges not only in Africa but globally is archaeology. This is because the best historical analysis of

African problems mainly consider the most recent historical evidence while rarely connecting with the distant past. But the historical past of Africa is so recent that in other parts of the world it is more or less in the domain of the contemporary history.

In the preamble to the *European Convention on the Protection of the Archaeological Heritage (Revised)*, the Council of Europe recalls that the archaeological heritage is essential to a knowledge of the history of mankind. Article 1 stipulates that the aim of the Convention was thus to protect the archaeological heritage as a source of the European collective memory and as an instrument for historical and scientific study (Conseil de l'Europe, 1992).

Archaeologists exist and are appreciated in the society because they respond to three kinds of needs. According to Jean-Paul Demoule, these are:

- a. To discover and to conserve the material remains of the past,
- b. To reconstruct the historic past of every present society and,
- c. To transmit this knowledge to the entire society (Demoule, 2009a, p. 248).



These are the scientific roles of archaeologists that in turn translate the material remains into scientific specimens for archaeological research and finally into cultural heritage. At the same time the study enriches the history of a people with supporting facts and evidence of their past civilizations. A good example was demonstrated through a study by François-Xavier Fauvelle-Aymar of Africa's commercial networks during a historical period which is characterised by very scanty documentation. Based on the assemblages of fragmentary archaeological objects, the researcher was able to establish the commercial network that existed between Africa and the rest of the world. This period between the 8th and 15th centuries was referred to by François-Xavier Fauvelle-Aymar as the African Medieval period or African Middle Ages (*le Moyen Âge africain*). The study shows Africa as having occupied the centre stage in the recurrence of the long-distance gold trade, the role of African elites in this trade, and the export from the mainland of processed products with very high added value. In the Medieval Africa, the continent was already connected to the rest of the world (Fauvelle-Aymar, 2013).

Without the fusion between scientific, historical and social realities the final outcome becomes irrelevant to the local community. The valorisation of cultural heritage and communication of results from archaeological research in Africa was done by experts often in their self-serving interests based on a foreign agenda dictated by their institutional timetables (Abungu, 2016, p. 50).

In the African context the significance of archaeological research can be observed through the various roles that have been played by archaeologists who have worked in different parts of the continent. Some archaeologists were even co-opted during the colonial time by the colonial administration to respond to their desire for justification of their ‘civilising’ role. This was the case because some of the archaeologists worked for the colonial administration as soldiers, teachers and civil servants hence were obliged *in their daily tasks to enforce, directly, or indirectly, colonial policies and ideologies*" (Holl, 1995, 193)¹⁰¹. As such some researchers were initially used to validate imperialism and economic policies that favoured settlers through ‘*selective interpretation of archaeological records*’ (Koff, 1997, p. 51). One good example was a 1967 publication in the South African Bureau of Information which had the following information:

South Africa has never been exclusively a Black man's country. The Bantu have no greater claim to it than its white population. Bantu tribes from Central and East Africa invaded South Africa at the time when Europeans

¹⁰¹ Holl, 1995, 193 cited in (Koff, 1997, p. 51)

*landed at the Cape [1652] (South African Yearbook in Gawe and Meli
1990:100 cited in (Koff, 1997, p. 51)).*

6.5.2 Assessment Criteria of values and significance of cultural heritage?

The Getty Conservation Institute research report in the year 2000 observed that cultural heritage is a highly politicized and contested social construction (Avrami, et al., 2000; Munjeri, 2005). Immovable heritage is a medium through which identity, power and society are produced and reproduced. Consequently, the process of patrimonialization (Laermans, 2004) involves a variety of stakeholders which include the individual, the family, the local community, ethnic and religious groups, the nation-state and the world at large; thus creating the concept of a world heritage (Munjeri, 2005, p. 3; Laermans, 2004). The process involves complex criteria and methodologies of ascribing values to cultural heritage such as outstanding universal values, see Figure 13 (Mason, 2002; Mason, 2019). Randal Mason has stretched the notion of values in heritage conservation to what he terms as the ‘Traumatic Heritage Places’ giving examples of ‘an early-nineteenth-century prison in Philadelphia; Rural churches that were transformed into genocide memorials in Rwanda; A newly created memorial to a terrorist attack in rural Pennsylvania’ (Mason, 2019):

They are recently identified heritage sites marking places of cultural trauma, and they are conserved to convey the societal (non-heritage) values ascribed to them by contemporary stakeholders, as well as the heritage values of their buildings, landscapes, and collections. The cultural significance of these places relates strongly to conflicts around

genocide, racial injustice, civil rights, mass incarceration, the specter of terrorism, or other cultural traumas. Like all heritage places, their conservation and management is shaped by the challenges of curating historical fabric (using the sites as archives) as well as the desires projected onto them by broad stakeholder interests located in society at large (using the sites as agents for societal change) (Mason, 2019).

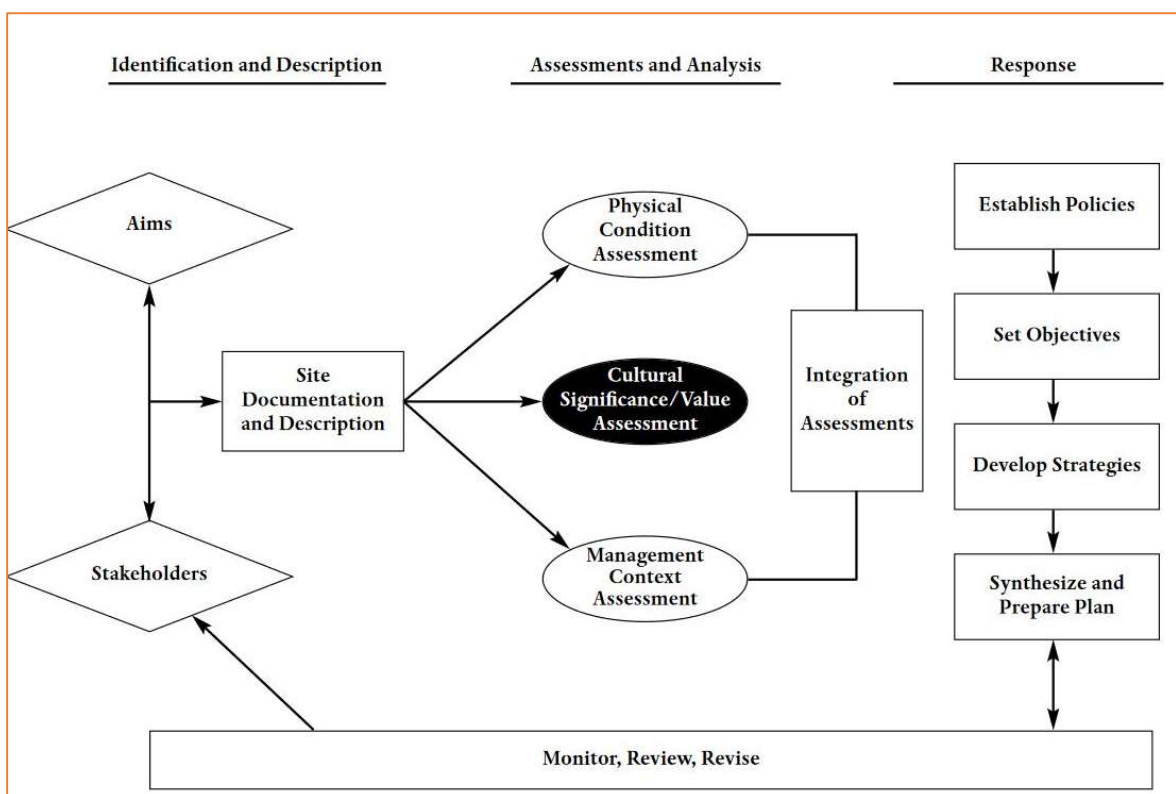


Figure 13: Planning Process Methodology. Source (Mason, 2002, p. 6)

There is need to recognise as well as demonstrate the role of cultural conservation to the modern society by shifting concentration from the issues of physical conditions. Efforts have to be made towards the creation of an understanding of the non-technical complexities of cultural heritage preservation and the role it plays in the modern society. This may be in form of converting the potential visitors into fidelity customers who in turn become partners

rather than just visitors of cultural sites and places such as museums hence adding value to heritage through growth in number of partners. This can be achieved when values become intrinsic but not just economic. By intrinsic heritage values I mean those that go beyond mere aesthetic and economic gratifications as they include a component that seeks the attainment of psychosocial transformation within the society through visits to such places earmarked as traumatic heritage places, see Figure 14.

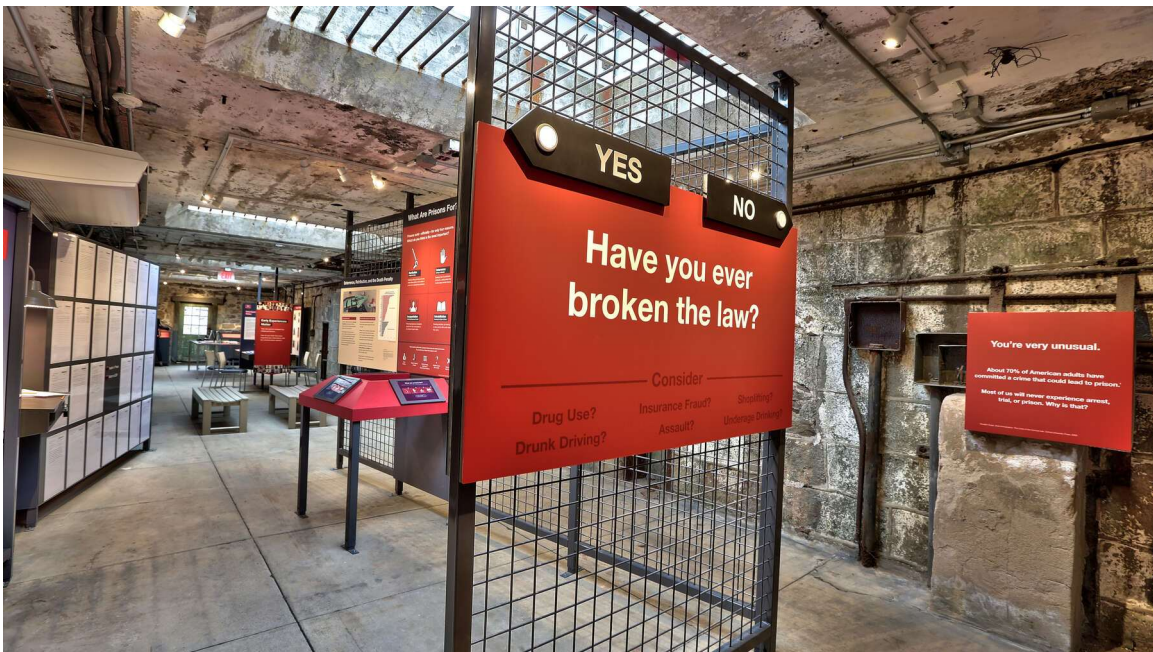


Figure 14: Part of the exhibit Prisons Today: Questions in the Age of Mass Incarceration at Eastern State Penitentiary. Image: Darryl Moran, 2016, courtesy Eastern State Penitentiary Historic Site, Philadelphia. Source (Mason, 2019)

6.5.3 *Which marketing approach¹⁰² and economic value for heritage?*

In economics, cultural heritage goods as well as environmental goods concerns public goods, and therefore non-market valuation techniques need to be applied to estimate their social benefits. While there have been several thousands of applications of these techniques to value changes in environmental quality and natural resources, empirical applications of these techniques to cultural heritage are still scarce (Navrud, 2005, p. 95). Similarly, the empirical application of the Environmental Kuznet's curve as a tool to measure the impact of development on cultural heritage resources is very rare thus the need for a multidisciplinary approach to determine the value of cultural heritage.

Professionals in cultural heritage conservation as well as policy makers have for a long time grappled with issues and challenges of heritage conservation and development partly due to the lack of market value for cultural heritage resources especially archaeological objects, some museum displays and historical sites. Most of the legislations on cultural heritage are dotted with phrases such as 'works of humanity or the combined works of nature and humanity, and areas including archaeological sites which are of outstanding value from the historical, aesthetic, ethnological or anthropological point of view'¹⁰³.

As a field we have come to recognise that conservation cannot unify or advance with any real innovation or vision if we continue to concentrate the bulk of our conservation discourse on issues of physical condition.

¹⁰² See Xavier Greffe in the cited book, who outlines the marketing strategy for heritage where he poses the question of which marketing approach for heritage "*Quelle démarche marketing pour le patrimoine?*" (Greffe, 1999, p. 117)

¹⁰³ Section 2 (d) of the National Museums and Heritage Act Cap 216 of Kenya, 2006 (Revised 2009).

Conservation risks losing ground within the social agenda unless the non-technical complexities of cultural heritage preservation, the role it plays in modern society and social, economic and cultural mechanisms through conservation works are better understood (Munjeri, 2005, p. 4).

Heritage promotion and marketing is part of the non-technical complexities of heritage management. To this effect, the marketing strategy for heritage is a function of a general movement of recentring heritage production around the users and their needs. In the first place, X. Greffe suggests that marketing heritage should focus on the needs of the user once the orientations of heritage institutions are fixed by public power (Greffe, 1999, p. 117).

Kenya is a global destination of tourists and one of the main reasons that can account for the influx of visitors is the need to spend their holiday in the country. This is due to the vast and diverse cultural and natural heritage that is found within the country's territorial borders. The natural landscape on its own, for instance the unique wildlife resources, the Great Rift Valley and its lake systems, and climatic conditions that preconditioned the country's cultural landscape since time immemorial, are part of the key factors influencing the growth and development of cultural tourism in Kenya. The greatest percentage of visitors who

visited Kenya in the year 2016 for instance was for holiday, followed by business, transit and other factors as shown in Figure 15.

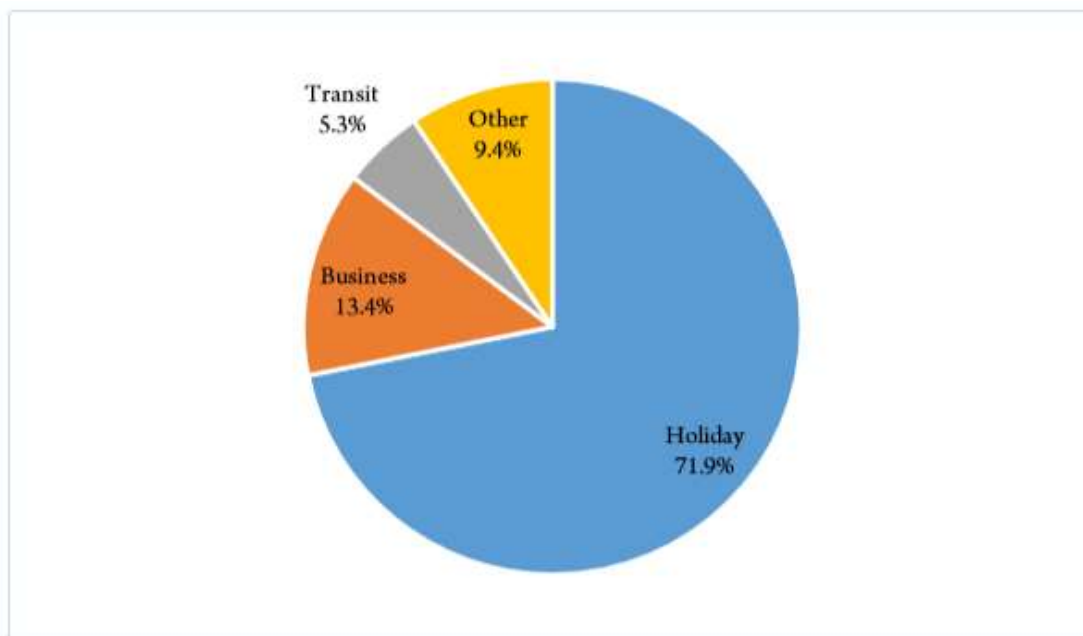


Figure 15: The share of International Arrivals by Purpose of Visit, 2016 (Kenya National Bureau of Statistics, 2017, p. 210)



Figure 16: Visitor Arrivals through JKIA and MIA between November 2020 and November 2021 (Kenya National Bureau of Statistics, 2021)

Kenya's tourism sector injects a substantial amount to the Gross Domestic Product (GDP) thus translating to the economic value of heritage resources in general. This is due to the fact that museums, snake parks and historical sites are some of the key tourist attractions that are visited by the visitors. Archaeological heritage in particular has a special place in this general categorisation of cultural resources since it doubles as a cultural resource and also as an object for scientific research which gives it a double impact on the economy and on the growth of scientific knowledge. Each year Kenya hosts big number of students and scholars who come to advance their knowledge through archaeological research in collaboration with local research institutions such as the NMK and local universities. Such collaborations have got a great impact on the Kenya's economic, cultural and scientific development as well as strengthening her diplomatic relations globally.

The economic value of heritage resources can therefore be ascribed collectively, just like the value of foreign remittances. The visitors that come into the country directly or indirectly purchase the diverse heritage services. Therefore their direct or indirect participation as users of Kenyan heritage services constitutes part of the final quality of heritage goods and services that they receive thus participating in the determination of heritage utility or satisfaction (Grefe, 1999). The subsequent utility and satisfaction, if missed will alter the attitude of the user towards Kenyan heritage hence causing an economic loss to the country when ultimately the user decides to seek such satisfaction elsewhere, for instance going to Tanzania.

The Economic Survey by the Kenya National Bureau of Statistics (KNBS) in the year 2017 indicated that Museums, Snake Parks and Historical sites had registered quite a significant

number of visitors between the years 2012 and 2016 (see *Table 3*). From the table there is a big difference between the numbers of visitors to the various museums across the country.

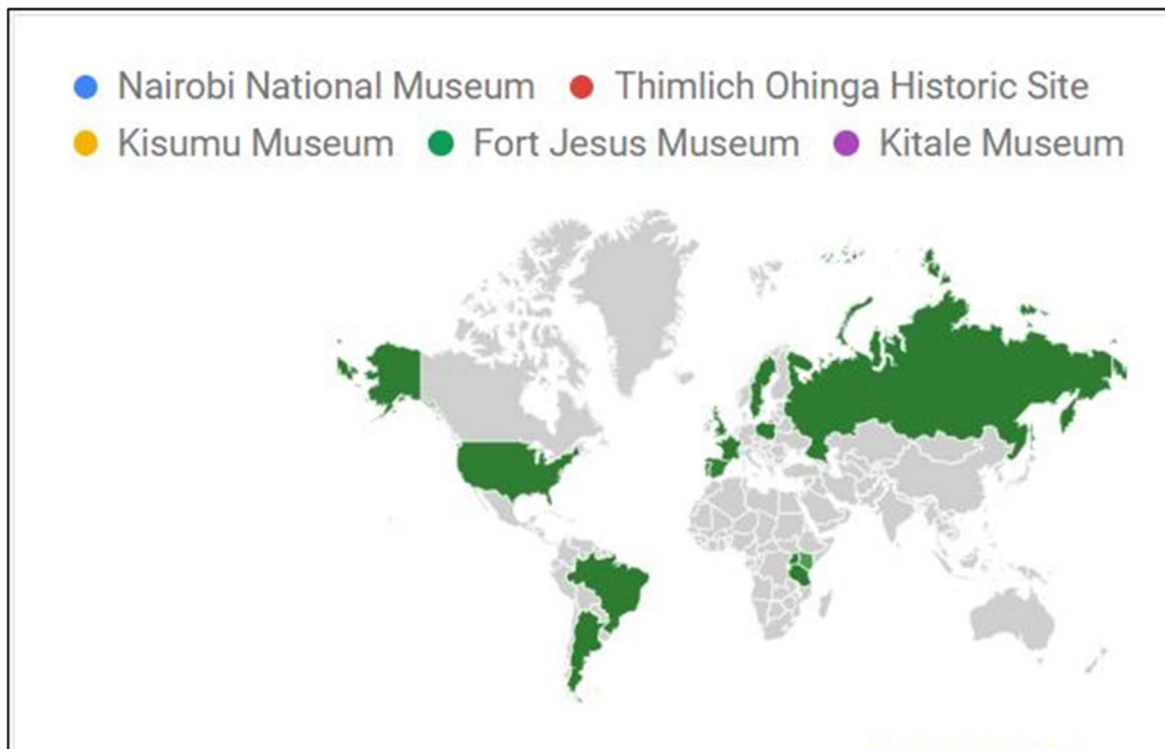


Figure 17: Worldwide Google Trends of searches for various museums in Kenya from 2004 to the present. Source Google Trends accessed on 28th January, 2022

Source: Google Trends accessed on 28th January, 2022

NB: Colour intensity shows the percentage of searches in each region

Number of Visitors to Museums, Snake Parks and Historical Sites, 2012-2016 '000					
Name of Museum	2012	2013	2014	2015	2016*
Nairobi National	184.7	130.9	52.5	264.0	278.7
Nairobi Snake Park	146.4	94.8	33.0	24.0	26.1
Fort Jesus	127.6	152.1	113.4	121.3	150.5
Kisumu	144.9	151.2	219.4	210.6	199.2
Kitale	41.8	54.3	64.8	33.5	55.8
Gede	43.1	54.6	47.5	39.9	55.6
Meru	24.2	26.3	32.8	23.7	19.9
Lamu	2.6	2.8	1.7	1.5	2.7
Jumba la Mtwana	5.7	7.4	5.7	4.3	7.3
Ologessaile	..	..	2.7	1.1	0.4
Kariandusi	10.2	4.3	24.2	11.4	12.3
Hyrax Hill	8.9	5.9	11.6	8.7	29.1
Karen Blixen	54.9	44.7	45.2	25.9	35.8
Malindi	17.9	26.1	21.0	14.7	31.8
Kilifi Mnarani	1.6	0.8	2.5	1.2	0.8
Kabarnet	1.3	1.6	1.7	1.4	3.4
Kapenguria	7.6	8.7	9.7	7.3	12.4
Pete Sites	0.0	0.0	0.0	..	..
Swahili House	0.3	0.3	0.3	0.0	0.1
Narok	0.2	0.6	0.6	0.5	0.9
German Post	0.1	0.1	0.1	0.0	0.0
Takwa Ruins	0.7	0.6	0.6	0.2	0.4
Koobi Fora	..	0.0	..	..	..
Rabai	..	2.7	..	2.4	..
Thilich Ohinga	..	0.1	..	..	..
Lamu Port					0.4
TOTAL	824.6	770.8	690.9	797.5	923.1
*Provisional					
.. not available					
Source: National Museums of Kenya through the (Kenya National Bureau of Statistics, 2017, p. 220) ¹⁰⁴					

Table 3: Number of Visitors to Museums, Snake Parks and Historical Sites in Kenya, 2012-2016

¹⁰⁴ Accessed through the Kenya National Bureau of Statistics, Economic Survey 2017, PDF page 220

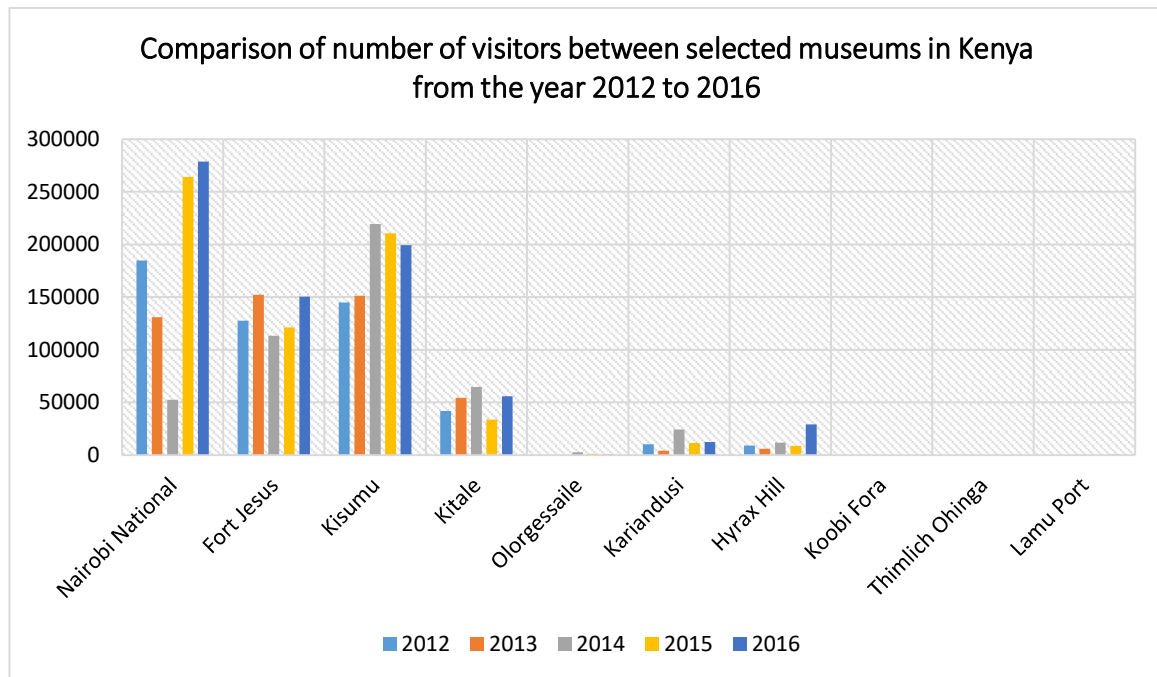


Figure 18: Comparison of number of visitors between selected museums in Kenya from the year 2012 to 2016

There were significant differences in the number of visitors that were recorded between the above selected museums from the year 2012 to 2016. Those differences can be attributed to a number of factors which may include:

- a) The location of the site/museum e.g. in or near a city, town or in remote/rural area;
- b) Accessibility of the site/museum e.g. types of transport that can be used to access the museum;
- c) Availability of and/or proximity to social amenities such as restaurants, hotels, schools and higher institutions of learning;
- d) Demographic and environmental factors such as the characteristics of the surrounding population e.g. average level of education of the surrounding

population, their disposable level of income and main economic activities;
and

- e) Security issues such as threats from terrorist attacks in areas such as Lamu, conflicts among the bordering communities such as cattle rustling among the communities of the Turkana, Pokot and Samburu.

From the graph, it can be noted that there were more visitors to Nairobi National Museums (NNM) than to other museums in the remote areas such as Koobi Fora, Thimlich Ohinga and Lamu Port. This trend does not respect the specific site/museum characteristics but agrees with the above factors. Lamu Port and now Thimlich Ohinga are World Heritage sites which could have been expected to be on the lead. However, Lamu has in the recent past, and more particularly during the period between 2012 to the present, faced a lot of security challenges precisely from the Al-Shabaab terrorist threats.

Nairobi National Museum, Kisumu and Fort Jesus are strategically located in the country's three cities of Nairobi, Kisumu and Mombasa respectively which translates to better security and high accessibility leading to high influx of tourists from overseas.

The three cities also boast of an enlightened population with a lot of social amenities including learning institutions from primary to colleges as well as universities. The high number of research and higher learning institutions particularly high schools, colleges and universities located in the towns and cities add up to the key factors for the high number of visitors to the museums. Kitale, which is located outside the cities but very close to Eldoret town which hosts the University of Eldoret also registered a good number of visitors. The reason for the high correlation between high number of visitors and the proximity of a museum to an institution of higher learning is partly because most of the research projects

in local research institutions dealing with historical, archaeological and palaeontological problems are either developed by research institutions outside (Mwanzia, 2016) the country or conducted through international research and partnership projects.

Air travel is one of the principal means of transport preferred by international tourists thus adding to the factors for high number of visitors to museums such as Nairobi, Kisumu, Fort Jesus and Kitale which is next to Eldoret International Airport. Museums located far away from international airports did not attract many visitors. This does not imply that local communities do not visit museums and historical sites. However, the percentage of local communities is relatively low as compared to the general population that is actively involved in other cultural events such as theatre, music and other forms of artistic cultural events at both local and national levels.

Another key factor which creates a big difference is that of demographic characteristics. Major cities and towns are usually populated by the youth, the people who have increased desire for leisure activities and who can go out of their way to find some time for leisure. Rural and remote areas on the contrary are mainly populated by the elderly whose disposable income is negligible and some don't even have any meaningful income other than the transfer advances from their children in cities and towns.

The location of a site may not be a big issue to its valorisation if there is good will from the responsible authorities and heritage practitioners. There exist examples in the world where cultural heritage resources have been well developed regardless of their geographical location. A good example is the case of the valorisation of the Roman *villas* in western European countries. The *villas* are not necessarily situated in big cities nor town centres but

due to local initiatives coupled with regional collaborations among researchers and heritage practitioners, they have been systematically developed into meaningful cultural resources.

In Figure 18 above it can be clearly observed that visitors frequented the three cities; Nairobi, Mombasa and Kisumu while some museums away from major towns or cities did not get much attention. This can be largely attributed to matters of security since most of the international arrivals especially from Western countries are given travel advisories pertaining to where they can visit and where they should avoid. This can be inferred from the google trend between the year 2004 and 2022 as illustrated in the Figure 19.

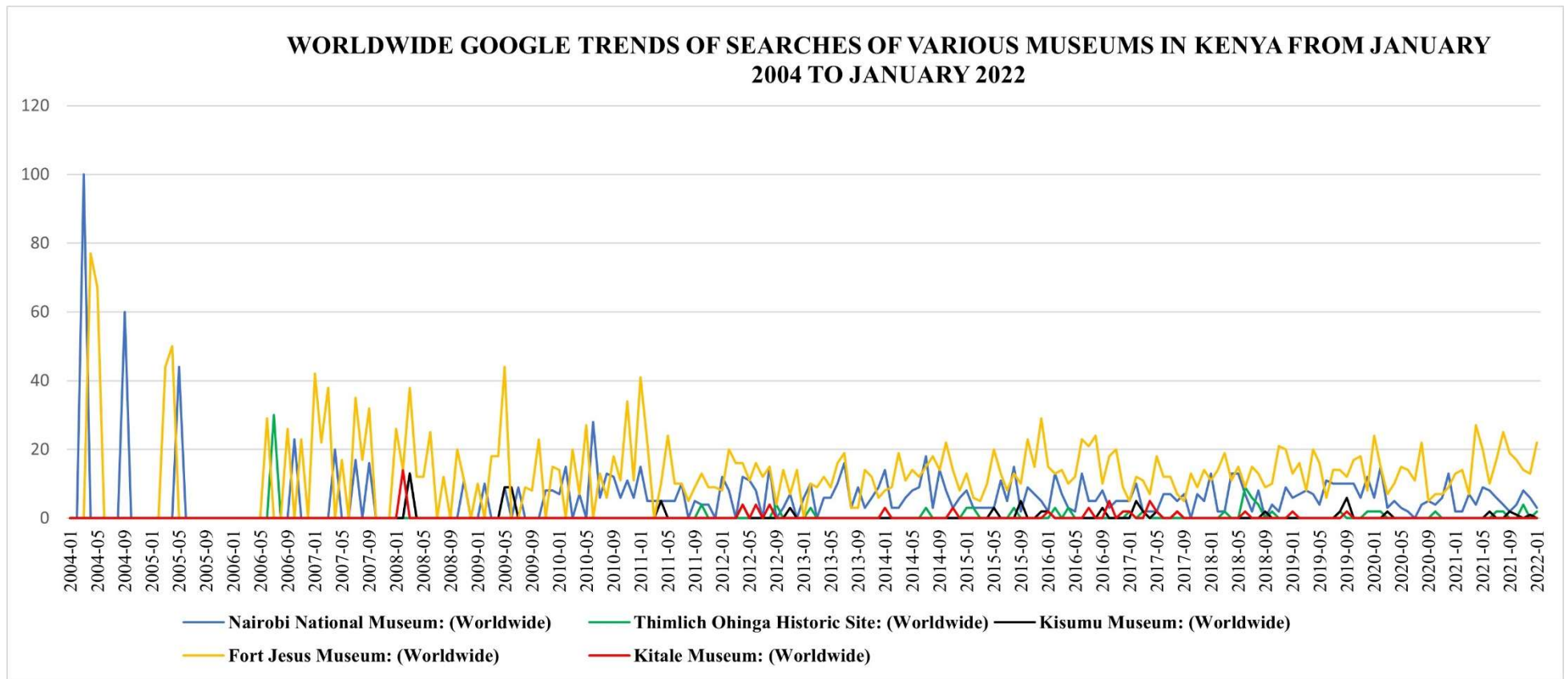
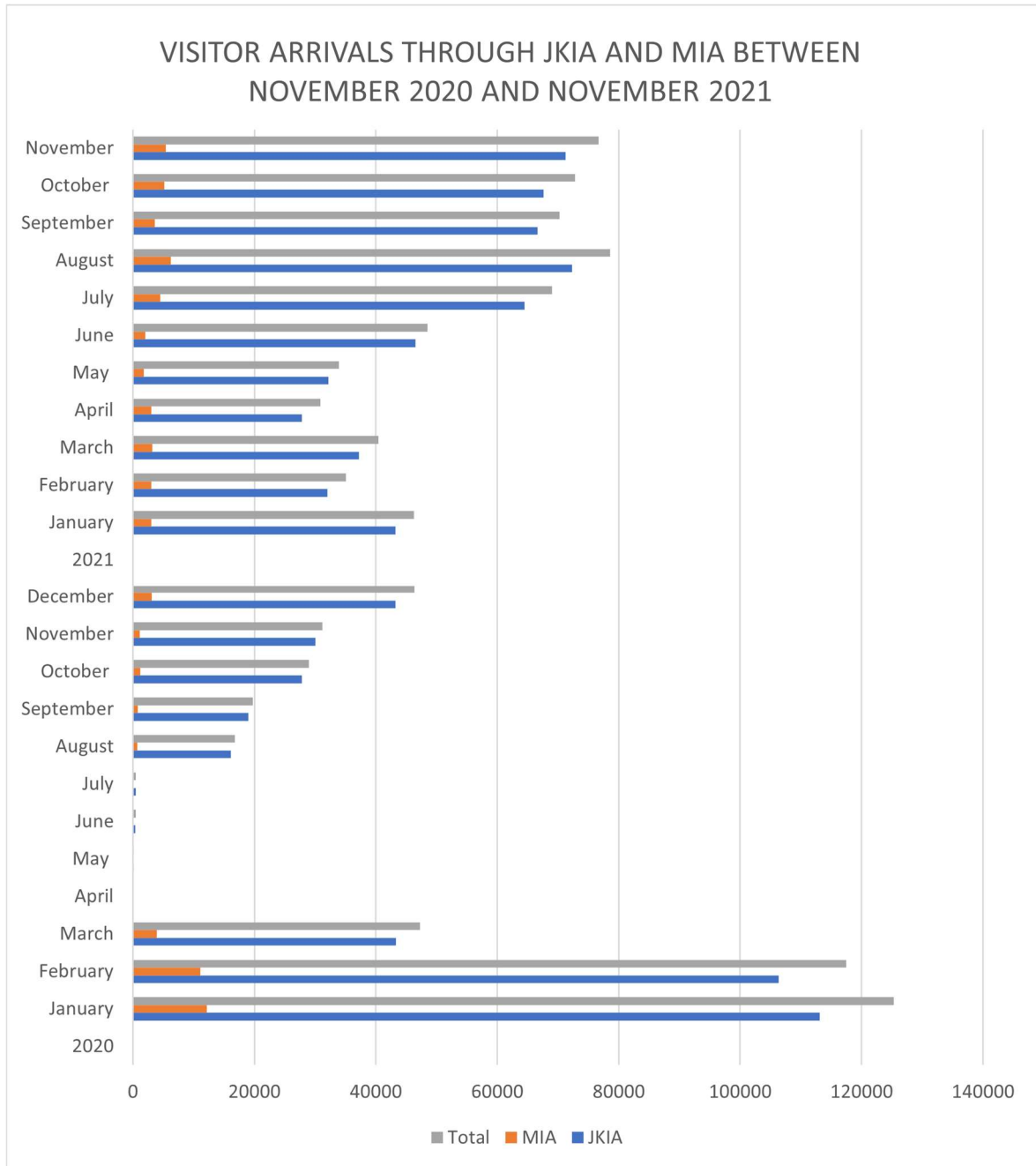


Figure 19: Worldwide Google Trends of searches of selected museums in Kenya between January 2004 and January 2022.



Another approach that can be used to determine the value of heritage is through the opportunity cost of its preservation vis a vis the forgone benefits of a proposed development project when legally contested and stopped due to its potential threats on heritage resources. The bottom line of the argument is that heritage is a public good thus its protection is part of the responsibilities of the State. To illustrate this argument I have taken the case of Cortec

Kenya Limited which had asked for the licence to do mining for Niobium and Rare Earth at Mrima Hills in Kwale County. The licence was cancelled and the company sued Kenya.

6.5.3.1 *Kenya versus Cortec case: Why Kenya won the Kshs 6.2 trillion case at the International Centre for Settlement of Investment Disputes (ICSID) in USA*

In November 2017, Cortec Kenya Ltd had sued Kenya seeking Sh200 billion compensation for loss of mining rights following cancellation of their licence by then Mining Cabinet Secretary Najib Balala in 2013. In the Cortec versus Government of Kenya case at the International Centre for Settlement of Investments Disputes (ICSID) based in the United States of America, Kenya won the case because a letter from the Director General of the National Environmental Management Authority (NEMA), Professor Geoffrey Wahungu argued that there were archaeologically significant sites within the project area (The Standard, 2018). In addition he explained;

The project will be implemented within Mrima Hills within the forest which is gazetted as a nature reserve, forest reserve and a national monument and that the project will lead to massive destruction of the biodiversity,” read part of reasons Wahungu gave for the rejection of the mining licence.

According to the lawyer Kamau Karori, victory of the case saved Kenyans tax payers cash and demonstrated an endorsement of the protected areas (The Standard, 2018).

In this approach the value of heritage is still collective and is both qualitative because public goods have no monetary value and relatively quantitative because we cannot compare

heritage to the estimated value that was lost. Cortec Kenya Ltd estimated that the mineral deposits for niobium and other Rare Earth metals that they aimed at exploiting run into Sh6 trillion billion. From this figure we can deduce that the value of heritage is more than the estimated value of returns that would accrue from the company's exploitation of the mineral resources.

6.5.4 Funding of archaeological research in Kenya

During the colonial period, archaeological research was largely funded by the colonial governments and European universities (Koff, 1997, p. 48). This was due to the fact that the discipline was fundamental to the advancement of academic research in those institutions but it was also a key source of information on the history of the continent which was up to then perceived as a 'dark' continent. At independence, African governments in the newly formed states picked up the role of funding archaeological research through the institutions of higher learning and research that were being developed. Their desire, according to C. Koff, was to respond to the questions of their indigenous history and pre-history. *Some African governments, however, have not transcended the European funding relationship, often because archaeology is not recognized as a discipline that can serve African needs. Therefore, government funds and even university majors are not allocated to the study of the past. Archaeology in those countries is still funded from European institutions.*' (Koff, 1997, p. 48).

In the postcolonial era, precisely in the 1970s, the government of Kenya had a strategy for the expansion of museums whose objective was to provide museums in every province and district to serve as educational as well as show places for cultural or historical material. Government circulars were thus sent to primary and secondary schools regarding the

educational possibilities of museums. The strategy was backed by a five year development plan for the expansion of museums as shown in Table 4.

Museum	1973-74	1974-75	1975-76	1976-77	1977-78	TOTAL (1973-1978)
Natural Science Museum, Mombasa	-	10,000	20,000	20,000	10,000	60,000
Marine sciences	-	10,000	10,000	10,000	15,000	45,000
Gedi extension	10,000	5,000	5,000	-	-	20,000
Coast monuments	4,000	4,000	4,000	4,000	4,000	20,000
General museum, Nyeri	-	5,000	5,000	-	-	10,000
Historical museum, Nairobi	15,000	15,000	5,000	-	-	35,000
Science/Technology Museum, Nairobi	-	100,000	50,000	50,000	50,000	250,000
Institute of African Prehistory, Nairobi	150,000	100,000	-	-	-	250,000
Youth Centre for Sciences	-	-	10,000	10,000	-	20,000
General museum, Nakuru	5,000	5,000	5,000	-	-	15,000
Monument and prehistoric site conservation	3,000	3,000	3,000	3,000	3,000	15,000
General museum, Kisumu	-	10,000	5,000	5,000	3,000	20,000
Education unit, Ritale	-	-	3,000	3,000	-	6,000
Prehistoric site conservation, Western Province	2,000	2,000	2,000	2,000	2,000	10,000
	189,000	269,000	127,000	107,000	84,000	776,000

Table 4: Funding strategy for the expansion of museums in Kenya, 1973 - 1978 (Ndeti, 1975, p. 59)

The disequilibrium between economic development, research and conservation of cultural and natural heritage in Kenya can be observed through funding of research. One of the major challenges that have hindered development of archaeological research in Africa is limited funds. In Kenya professional archaeologists conduct their research through their affiliate institutions of research, which include universities that offer archaeological studies and other government institutions such as the National Museums. As they pursue their professional endeavours, archaeologists in Kenya are limited by legislation and lack of enforcement, 'not to mention low to non-existent levels of funding for their own research and for field training for students. It is not uncommon for research and training funds for entire archaeology departments in Africa to range from several hundred to less than \$5000 per year (McIntosh, 2017, p. 16). Consequently they have to look for funds elsewhere hence restricting their ability to design and pursue their own research projects independently. This opened room to foreign domination of archaeological research both at the universities and other research institutions. Under such circumstances, foreign projects may provide a very welcome opportunity for both research partnerships with local archaeologists and field training for local university students (McIntosh, 2017, p. 16). Mwanza Kyule concurs that:

Any meaningful research activity undertaken under the aegis of NMK is largely by foreign scholars and institutions for purposes of addressing scientific and academic research gaps and questions raised elsewhere, or by entities such as oil exploration and mineral mining companies who sometimes undertake basic heritage surveys as part of NEMA's project environment impact assessment requirements, and also to comply with conservation laws in their countries of origin. The outcome of these

researches and conservation programs rarely reflect or are identifiable with local aspirations and expected benefits, such as the development of business enterprises based on heritage resources (Mwanzia, 2016, p. 38).

Mwanzia associated the situation to the absence of research and conservation funding budgets at the NMK, which in itself is a reflection of a lack of enthusiasm and interest in cultural heritage research at the national level (Mwanzia, 2016, p. 38). If well handled, especially in the Kenyan context, archaeological and cultural knowledge can be a tool for fighting negative ethnicity by enhancing national harmony. Archaeology has been heralded in some African countries as *'a lubricant for extra-ethnic national unity'* while in some countries it has been suppressed for fear that it can lead to *'ethnic struggles as peoples gain 'evidence' for their ancient origins and subsequent rights to land'* (Koff, 1997, p. 47). It is true that the funding of archaeological research in Africa has always been affected by considerations of its role especially the potential to contribute to the economic development of given African countries.

6.6 Teaching and training in archaeology: between knowledge and competency

In France, the training and teaching of archaeology became an important issue since the end of the 1990s, during the expansion of the practice of preventive archaeology. This was made possible at the moment when the change in legislation created a new institutional organisation framework which increased demand and recruitment of archaeologists. These include the Statee, the newly created Institut National de Recherches Archéologiques Préventives (INRAP, created in 2001), development of new local authority archaeological

services (*les services de collectivités territoriales*) and establishment of private institutions since the year 2003 (Adam, et al., 2019).

6.6.1 Teaching of archaeology and training archaeologists in Kenya

Apart from funding, another big drawback to development of archaeological research in Kenya is how the discipline is taught right from the primary school level through secondary to the university. At primary school level, there is no talk of archaeology as a discipline. At secondary school level, archaeology is taught in form of topics in the history subject. Even as such, what matters most at this level is the manner in which the content is delivered. Generally, history classes are not well equipped to transmit such knowledge which requires a lot of illustrations, practical experience coupled with modelling and real world examples in order to understand and motivate learners. There are academic trips for pedagogic reasons which call for adequate preparation of learners for the successful realization of the set objectives. To a greater extent, the trips are affected by limited funds especially in public schools. Consequently, the availability of funds determines the choice of fieldwork and field excursion trips based on factors such as proximity to the site, time and the size of class. The success of the trip would therefore depend on early planning and learners' ability to collect and organise information from the trip with follow up by the subject teacher.

At the university level in Kenya most students particularly those who are pursuing history take archaeology as an elective unit. For those who wish to pursue teaching profession as teachers of history, some archaeology units are offered as core units mostly at first and second year levels. It is a colonial legacy since during the colonial period, archaeology was a preserve of a few elite all from Europe thus the discipline was poorly developed across learning institutions and levels in Kenya and East Africa at large. Even though the situation

has improved since the 1990s when Kenya's heritage sector had become well developed (Karega-Munene, 2014) with the establishment of history, art and archaeology departments, learners at undergraduate level hardly get opportunities to even observe an archaeological excavation. This is because there are limited research opportunities and those that are conducted are often realised through collaborative efforts with foreign research institutions which further limits the participation from local students in archaeology. As a result the youth are less attracted to archaeology since they are attracted to the disciplines which promise quick prosperity and a glittering future. Becoming an archaeologist in Kenya requires a lot of patience because of the expected experience as per the law and a long period of learning and training in order to meet the necessary minimum requirements for one to qualify as a professional archaeologist. Paradoxically, there are limited opportunities for field work with less chances of getting funds for archaeological projects since majority of research projects are programmed research initiatives which concerns remarkable archaeological sites.

Programmed research objectives are of large scale and long term in nature and concern well established and known sites. The Koobi Fora Research Project (KFRP) which was initiated in 1968 is the best example of programmed archaeological research initiatives in Kenya. KFRP forms the backbone of the Turkana Basin Institute (TBI) which offers training opportunities both locally and internationally through the field school. The project has yielded almost 10,000 fossils which have been discovered in Koobi Fora, of which more than 350 are about ancient hominin species among them the Turkana Boy. The investigation of the evolution of human beings and hominin relatives is the primary—although not the only—scientific goal of the KFRP (Thornton, 2022). KFRP's mission is to carry out continued research in the Turkana Basin that will further the global understanding of human

origins and the context in which it occurred through the recovery and investigation of new fossil material from deposits in northern Kenya (Koobi Fora Research Project, 2022). This is through collaboration with the National Geographic Society, the National Museums of Kenya and Stony Brook University with many researchers across various disciplines from both local and international research institutions.

In 2005 Dr Richard Leakey founded the Turkana Basin Institute (TBI) so as to provide the permanent infrastructure to enable year-round research in this remote area of sub-Saharan Africa. The initiative was warmly welcome by the Stony Brook University which raised funds for the construction of temporary facilities for a long-term field camp on the east side of Lake Turkana (TBI-Ileret) that commenced in 2007. The camp was fully operational by year-end and was the site for the first Kenya-based Human Evolution Workshop in 2008. Construction of the first full field center on the west side of the lake (TBI-Turkwel) was completed in 2012 while construction of permanent facilities at TBI-Ileret commenced in 2012, and was completed in 2016. The TBI comprises of TBI-Nairobi, TBI-Turkwel and TBI-Ileret (together known as “TBI Kenya”) and works under an agreement with the Government of Kenya, through the National Museums of Kenya, to serve as a repository for the archaeological and paleontological heritage of the Lake Turkana region. TBI has become an institute of research that hosts international researchers and students, just like any other summer school, with an expanded research perspective from human prehistory to areas of sustainability, climate change, and modern human culture and diversity (Koobi Fora Research Project, 2022).

6.6.2 Skills development through Competence Based Curriculum: which perspective to cultural resource management in Kenya?

In the course of this study I was invited to observe teaching of archaeology to grade six pupils in one of the primary schools in France and the observation was very informative though brief. The class was well organized and well supplied with different material for practical learning where each pupil had an opportunity to interact with an object that represents an actual archaeological object. Hearing that I was from Kenya, pupils asked many questions about archaeological discoveries in Kenya. Such teaching approach is what the Competency Based Curriculum is attempting to introduce in Kenya and is expected to bridge the gap between theory and practice in teaching-learning process across all levels. There are however a lot of challenges pertaining to the implementation of the curriculum because of difficulties to enrich the learning environment due to lack of relevant teaching aids which varies depending on the type of school, its location and parents' ability to support the implementation process which has proven to be expensive and very much involving.

On another occasion I visited the Musée d'Aquitaine on 25th June 2019 and met another class of primary school pupils on a field excursion. I followed the session as they moved from one display to another before assembling at a point for a discussion under the guidance of the teacher.

6.7 Conclusion

In this chapter I have analysed the process of patrimonialization by looking at various aspects and concepts that constitute the entire process. According to E. Amougou, patrimonialization is a social process by which legitimate social agents intend, through their reciprocal actions to confer on an object, on a space or to a practice a set of properties or

values recognized and shared first by legitimate agents and then transmitted to all individuals through mechanisms of institutionalization, individually or collectively, necessary for their preservation, that is to say for their lasting legitimization in a specific social configuration” {translated from French by the author} (Amougou, 2004a, p. 25). It involves conflicting interests, among the group especially if diversity is concerned, which may create the need for a selective procedure. In a well organised system, the selection is very scientific and may go beyond individual dominant group interests. It concerns questions such as whose heritage which in most cases end up being the items and ideas that represent a dominant group.

The process involves institutional and academic choices of action which include the development of a teaching curriculum with aims and objectives. The development of the cultural content in the curriculum thus forms the formal procedure of selective transmission of cultural knowledge which requires a highly participatory approach for purposes of inclusivity and authenticity.

The teaching of archaeology in Kenya is far much different from the manner in which the discipline is taught in France right from the primary school programme through high school to university. This is expected to change through the implementation of the Competency Based Curriculum (CBC) which emphasises learning by doing rather than the extensive transmission of too much information with limited application during the course.

The main challenge to the development of archaeology as a discipline in Kenya is the lack of local funding of archaeological research projects. Generally, cultural education is yet to gain momentum across all learning levels which is also expected to improve through CBC.

CHAPTER SEVEN

ARCHAEOLOGICAL RESEARCH AND PROTECTION OF CULTURAL HERITAGE FROM LEGISLATION ON ANTIQUITIES AND HISTORICAL MONUMENTS

7.1 Introduction

This chapter traces the foundations and development of legal and policy framework on archaeological research and cultural heritage management. Since the introduction of formal legal and regulatory framework, cultural heritage management revolved around two main categories of antiquities and historical monuments. This was the case until the 1970s when the notion of heritage was made global through the UNESCO in its 1972 convention on the protection of World cultural and natural heritage. If traditional custodianship systems of cultural heritage management persisted and assured the survival and conservation of various sites, the introduction of formal institutional and legal frameworks was a turning point in the management of African heritage. It has had a big impact and influence on the history and management of cultural heritage in Africa and Kenya in particular. This was due to the choices that were made especially the focus on the distant past and ignoring the recent past. The chapter is important in understanding the main challenges that have hindered the efforts towards creating a public awareness of their heritage and bringing them on board in the management through participation in policy formulation, enforcement, monitoring and evaluation of environmental impact of projects.

7.2 Cultural Heritage from Traditional Custodianship systems to the Antiquities and Historical Monuments

Traditional societies, be it the precolonial African societies in Kenya, the preindustrial European society like in France during the Ancient Regime, are generally territorial societies. In a traditional society it is their inhabited territory that confers to the individual groups their fundamental identity, as P. Muller observes, because from the beginning we first come from somewhere (Muller, 2018 (1990)). In the contemporary Kenyan society, however, there is an emergence of a Kenyan society which is not tied to any particular territory that can be limited to a particular cultural identity. The term traditional may not be applied to majority of Kenyan communities who now embrace cultural values that transcend their ethnic groups both at locally and nationally. The urge to break loose from what is referred to as traditional is more pronounced among the youthful and young generation of Kenyans whose majority are born in the cities and urban centres where they grow and go to school from elementary to high school. Apart from a few who hail from areas surrounding the Nairobi metropolitan and whose parents have kept close ties with their roots, majority of Kenyan youths are detached from their cultural birth places. Therefore, talking about cultural heritage from a traditional point of view refers to the age old cultural values that were paramount to the consolidation of the various territorial borders into a country now referred to as Kenya. The process involved negotiations with a diversity of cultural identities that existed during the precolonial period and which formed the basis of the contemporary social, economic and geopolitical demarcation of territorial Kenya into various regions, counties, sub-counties, locations, sub-locations and villages.

The transformation that has been observed in the contemporary Kenyan society, as a result of rapid urbanization, globalization and development in science and technology, has made professional identity more fundamental than territorial identity in what can be termed as the decline in the territorial based societies as was the case in France, Great Britain and Germany after the industrial revolution (Muller, 2018 (1990)).

The terms ‘cultural heritage or archaeological heritage’ as it has been discussed are very new in the context of conservation history and foreign in the context of classical African systems of cultural custodianship. It is worth noting that cultural heritage resources as well as systems of management existed in pre-colonial Africa though in forms that may not conform to the modern Western conservation systems (Chirikure, et al., 2015). Cultural resources were protected through varied and culture specific forms of traditional management (Arazi & Thiaw, 2013, p. 214; Ndoro 2004) which enabled each community to conserve their shared heritage and cherished value systems. The common trait in those systems of heritage management was their close association with the community’s sacred belief systems as expressed through the understanding and use of their natural heritage such as the landscape and the ecosystem. The management practices of cultural and natural resources aimed at ensuring sustainability of environmental resources in the ecosystem. The natural environment was believed to be the source of the community’s life and as such it was structured to accommodate the belief systems. The management of cultural resources was based on each community’s sacred belief system. Communities devised totems and oral literature as a way of regulating behaviour and guiding people’s actions.

The traditional custodianship of cultural resources among precolonial Kenyan societies had a way of valorisation of cultural resources based on some intrinsic values that were political, religious, economic and environmental in nature. This was possible through the constant

association between tangible and intangible heritage and that a community's cultural system was necessary for sustaining its life support systems. This was evident in the African oral literature which was the mode of learning and educating the society on their language, history, philosophy, art and culture. African literature was also a means of protection and valorisation of the community's natural and cultural heritage.

7.3 Establishment of Modern forms and Systems of Cultural Heritage Management

The establishment of modern forms and systems of cultural heritage management that took place during the colonial period was based on the many heritage sites that were kept intact thanks to the traditional forms of management (Arazi & Thiaw, 2013, p. 214). Various sites were accorded sacred significance then rules and regulations put in place to control the use and access to such places. The system was enhanced by precolonial property rights and reinforced through environmental consciousness rooted in the rules and regulations of land use. During the precolonial period land was collectively owned by communities (Kameri-Mbote & Cullet, 1997, p. 25) and connected with ancestors (Schmidt, 2006). In precolonial Africa land belonged to the ancestors hence no one could claim private land ownership. Its exploitation was guided by communal land ownership rights and regulations established by the elders of each community. The absence of private property rights over land created the sense of submission, sustainability and responsible utilization of resources. This had a great potential for environmental conservation and by extension the conservation of the natural and cultural landscape. Cultural sites were thus preserved with less efforts as they fell under the community's norms and guidelines for the use of land and natural resources (Kameri-Mbote & Cullet, 1997, p. 25).

Among communities that had rain-making rituals, some shrines were carefully set aside for such rituals. Such shrines were protected without much efforts since in most cases rainmaking was a practice which most people in the society feared. It was associated for instance with snakes, thunder and lightning.

Assuming that the first level of prevention, according to H. Bocoum, is the existence of a formal legal framework or an effective cultural declaration, it can be accepted that protection of cultural heritage in Africa is an age old practice that existed before the creation of the first modern inventory systems. The preservation of sacred forests, memorial places and other kinds of prohibition naturally form part of this framework (Bocoum, 2008, p. 75). However, it was during the colonial period that the notion of archaeological heritage was applied in the African context of heritage management. Cultural heritage protection in its normative meaning can thus be traced to the colonial period (Bocoum, 2008, p. 75). The legal frameworks of colonial powers were thus systematically applied in the colonies, for instance the 1913 and 1941 French laws were applied in the French colonies such as Algeria while the 1887 Antiquities and Monuments Act in Britain was applied in India from where it was later introduced to Kenya.

7.3.1 Protection from legislation on historical monuments in France

The end of the 19th century and the beginning of the 20th century witnessed a growing interest in the conservation and protection of heritage by governments. The trend varies across continents with western world being on the frontline to institutionalise heritage by establishing legal and institutional frameworks on the conservation of heritage beginning with historical monuments then expanding to natural heritage (Soulier, 2010; Swenson, 2011).

Most of the scholars who have worked on cultural heritage policy in France have emphasised on the originality and particularity of the French cultural system which was mainly centred on major symbolic issues raised by the French Revolution and the romantic generation (Vadelorge, 2003 b, p. 67). The events that followed the revolution were very decisive in the affirmation of the role of the State in the management of cultural heritage whose impact gradually gave birth to the cultural policy in France. Within western democracies, the guiding role played by the French government in the development of regulations on cultural and artistic affairs is often regarded as curiosity (Piorrier, 2004, p. 394).

Before this, there was an ordinance of Constable Anne de Montmorency of 1548 which aimed at the protection of antiquities even though it was limited to the city of Nimes (Rigambert, 1996, p. 177).

The terms archaeology and antiquities have existed since ancient times as they were inherited from the Greek and Roman civilizations but they remain modern (Schnapp, 2009, p. 20) and relevant across ages. The formal protection of cultural heritage that was developed in France occurred through the initiatives that were taken during the revolutionary period. Revolutionary preoccupations for the protection of symbolic works of art found its convergence in the interest of antiquarians which had been renewed prior to 1830. At restoration the monuments of the ancient France were the ones that were considered for protection during a period of rapid demolition. In 1810 and 1818 a survey that was initiated concerning '*les chateaux, abbayes and tombeaux*' (castles, abbeys and tombs) of the territory which culminated into a report at the Académie des Inscriptions et Belles-Lettres on the ancient buildings and monumental antiquities. In 1825 it was the monuments of memories attached to the land that were in a circular and the first release of funds voted by the Chamber of Deputies in 1819 targeted the conservation of ancient monuments. At the same time

societies of antiquarians were increasing and the growing interest in the works of the past and national history led to emergence of publications with interest in picturesque or monuments of France (Tanchoux, 2011, p. 50).

The emergence of cultural legislation and policy can thus be traced back to October 21st 1830 when François Guizot presented to King Louis-Philippe I a report concerning the creation of the post of the Inspector General of Historical Monuments (Tanchoux, 2011, p. 51). The first Inspector General of Historical Monuments was Ludovic Vitet. Buildings were the prime target of the Inspector General's census, which set the art and history criteria for elevating a building to the status of a historical monument and hence justify its protection. Buildings were the privileged as the targets for this initiative of enumeration that was carried out by the first inspector general who fixed the artistic and historical criteria that elevates a given structure to the status of a historical monument and justify its protection. Consequently, the first inventory of February 20, 1831 shows that the selected buildings belonged to three domains, archaeology, art and history (Tanchoux, 2011, p. 51). Thus, archaeological activity was a preoccupation of the authorities in France since the 19th century (Rigambert, 1996, p. 75).

In 1832 there already existed a section of fine arts at the ministry of interior which was the third section. After Ludovic Vitet, Prosper Mérimée became the second inspector general of historical monuments in 1834 and occupied the section of fine arts at the ministry of interior (Rigambert, 1996, p. 20). As the interior minister, Prosper Mérimée moved around France and identified a lot of historical monuments. On the 28th September 1837 the Minister of Interior created the Commission of Historical Monuments charged with the responsibility of disbursement of the resources required for the management of protected structures whose first list was established in 1840. The management, conservation and restoration of the listed

monuments was given to selected highly talented architects including Eugène Viollet-le-Duc (1814 - 1879). This was a decisive move towards the establishment of a cultural management system that did not only lay the foundation for the development of specialized cultural conservation professionals but also ensured that conservation and restoration of historical monuments was done by the best in every field that was related to the entire practice. Eugène Viollet-le-Duc for instance, was a great French architect of the 19th century who was well known for his restoration of medieval architectural structures, religious buildings and castles. He was a short time lecturer of art history and aesthetics and was instrumental in the founding of the history of art in France (Baridon, 2010).

The High Commission for Historical Monuments was instituted on 28th September 1837, emanating from the first list of protected historical monuments that was established in 1840. On 22nd December, 1855, a decree was issued which prescribed that all documents of public interest whose conservation was deemed useful should be submitted to the archives of the Empire (Direction de l'information légale et administrative, 2013).

The first circular that provided the regulations concerning archaeological excavations was put forward in the year 1838. The circular illustrated the new public desire to effectively protect the archaeological heritage in particular (Michel & Maréchal, 2008) thus initiating a legislative process that was achieved about a hundred years later¹⁰⁵.

To ensure maximum protection and conservation of historical, aesthetic and architectural values of historical monuments, the State outlawed any modification of historical

¹⁰⁵ It was achieved in 1941, by being harmonised into the law on the regulation of archaeological excavations which will be discussed later in this thesis.

monuments except under authorisation and the control of the minister of interior. In 1841, the State issued a circular which prescribed that no historical monument could be renovated without the consent of the Minister of Interior (Rigambert, 1996, p. 177)¹⁰⁶. The initiative was followed by the law of 30th March, 1887 on the conservation of historical monuments and works of art of national historical and artistic interest. This law standardized the rules concerning the conservation of cultural heritage and determined the conditions of State intervention in the protection of the historical monuments (Direction de l'information légale et administrative, 2013). The first law concerning archaeological heritage which was promulgated on 31st December, 1913 about the conservation of historical monuments completed the first one by introducing its application to the archaeological domain (Rigambert, 1996, p. 75; Demoule, 2009b, pp. 9-10).

¹⁰⁶ Rigambert C., 1996, p. 177 referring to the Circula of 1st October 1841 cited ni Heymann-Doat, 1983 «La protection du patrimoine historique », R.D.P. p. 169. Constable Anne de Montmorency was a Lieutenant General in the army and Duke who was committed to the conservation of the architecture of antiquity.

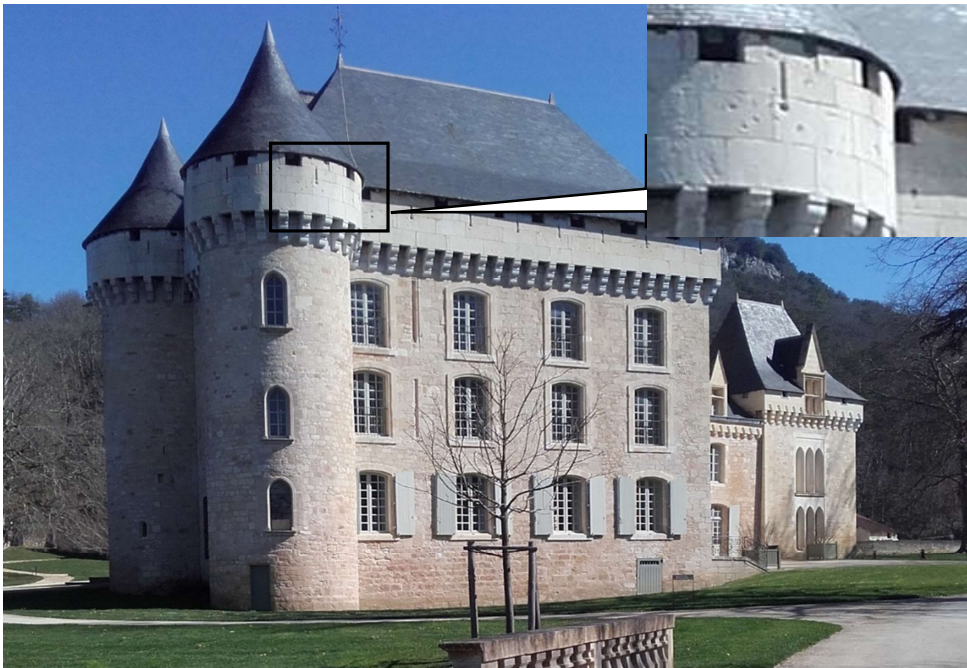


Figure 20: Historical monument of the Castle of Campagne. Inset top right: bullet marks of WWII. © L. Bwire.

Since the middle of the 19th century archaeological excavations and discoveries saw a steady increase in France as well as in Europe. Emperor Napoleon III himself was so impressed by the character of Julius Caesar and had developed a passion for the Gallic military events which drew his attention to archaeological research. The archaeological material collected during the emperor's excavations were accumulated in the attic of the Tuileries and in the Museum of the Louvre. Consequently there were a lot of archaeological collections that found no place in the then existing Parisian museums. Hence there emerged the need for a museum that would be entirely dedicated to the archaeological discoveries from the French national territory (Olivier, 2009). However, this may not fully explain as to why there are no archaeological objects that can be described as “French objects” at the Museum of Louvre. J.-P. Demoule observes that metropolitan archaeology played an insignificant role towards the creation of the national identity which explains as to why there are no “French objects” at the Museum of Louvre. Consequently, metropolitan archaeology was given to the

National Archaeological Museum of Saint-Germain-en-Laye (Musée d'Archéologie nationale de Saint-Germain-en-Laye) (Demoule, 2009b, p. 9).

Napoleon III was very passionate about archaeology at the moment when the science was still at its formative stage. On 8th March 1862 Napoleon III decided to convert the castle, Château-Vieux, into the museum of Celtic and Gallo-Roman antiquities - *le « Musée des Antiquités celtiques et gallo-romaines »* (Olivier, 2009) - which became the National Archaeological Museum. It was attached to the Antiquities Department of the Museum of Louvre. The project of a national museum of archeology was precipitated by the donation from the King of Denmark, Frederick VII, of an important collection of Scandinavian antiquities, offered in 1861 to Napoleon III. King Frederick VII commissioned the director of the Royal Museums of Copenhagen, Christian Jürgensen Thomsen, to present the collections to Napoleon III. The latter wanted to convince Napoleon III to create a large national museum which would bring together prehistoric and ethnographic archeology in one place (Olivier, 2009).

The museum was later classified as a historical monument and accorded the necessary restoration and restructuring in order to accommodate the enormous archaeological collections. They chose to restore the royal building in its Renaissance state, under François I, which implied, among other things, destroying the pavilions added in the 17th century by Hardouin-Mansart. The restoration and restructuring works were entrusted to Eugène Millet who was a student of Viollet-le-Duc. Napoleon III inaugurated the first exhibition rooms from 1867 but the restoration works continued until 1907 (Musée d'archéologie nationale, 2020).

7.4 Legislation on Historical Monuments in France, Great Britain and their colonies; Algeria and Kenya between 1870 and 1930

By the year 1900, as was declared by Louis Grandjean, the then French Inspector of Historic Monuments, all civilised countries in the world had a legislation to protect their historic monuments. Louis Grandjean made this declaration during the exhibition of Historic Monuments organised by the then French Ministry of Public Instruction at the *Exposition Universelle* in Paris in the year 1900 (Swenson, 2011, p. 139). The concerned countries in this declaration were not only European states but also those in America, Asia and Africa especially northern Africa:

All civilised countries have, at the moment, like our own, a legislation that protects historic monuments. This is the case not only in the great European states: England, Germany, Austria, Russia, and Italy, but also in the secondary states: Portugal, Belgium, Netherlands, Denmark, Greece, Bulgaria, Finland etc. The same applies outside Europe: not to speak of Algeria and Tunisia which are, truly speaking, just but an extension of France, we find regulations for the protection of ancient monuments in Egypt, in the Asian part of Turkey, in British India, Japan and as far as China. America did not want to be left behind. Brazil and Mexico also took preservation measures. As for the United States that were born yesterday and settled on a virgin land untouched by previous civilizations [...] they undertook to safeguard the gifts of nature [...].

{Translation from French by Swenson} (Swenson, 2011, p. 139: citing Louis Grandjean).

7.4.1 Protection from legislation on historical monuments in Kenya

7.5 Colonial Foundations of Cultural Heritage Legislation and Policy in Kenya and its legacy

The conservation and management of cultural heritage in Kenya has undergone various phases that are chronologically demarcated by major historical and political events that mark the history of the country. The first phase was the longest yet the least understood; the precolonial period¹⁰⁷ which was characterised by the existence of diverse traditional systems of custodianship of cultural sites. This period extends from the Prehistoric era up to the early 20th century during the colonial era.

The Colonial period, though short (1895-1963), serves as a period of interface in which the country's cultural heritage underwent major social, structural, aesthetic, organisational and administrative transformation to accommodate the newly acquired western and universal values, tastes and even definition. It is during this time that the country's cultural heritage shifted its focus from shrines to historical monuments before incorporating archaeological heritage. The intangible heritage was treated with suspicion before being relegated and termed as superstitious, barbaric and backward. This interface left a lasting legacy to the local, national and by extension regional definition of cultural heritage. It had a great impact on the development of history of the people as it shifted their cultural values where heritage lost its significance to economic development and hence archaeology and heritage conservation and management remained for a long time the interest of foreign researchers.

¹⁰⁷ The precolonial system of heritage management was discussed in details in part 1 of this thesis, chapter two.

7.6 Assessment of values of cultural heritage in Kenya during the colonial period

The introduction of formal cultural conservation system through legislation on ancient monuments and antiquities in Kenya as elsewhere in Africa, Asia and Latin America, lacked the basics of a modern conservation system. The haphazard manner in which legislations on antiquities and monuments were being transplanted on territories that did not share in the artistic and monumental value systems that were being established was tantamount to the annihilation of such societies. This is because cultural heritage ‘is a medium through which identity, power and society are produced and reproduced’ (Munjeri, 2005, p. 3).

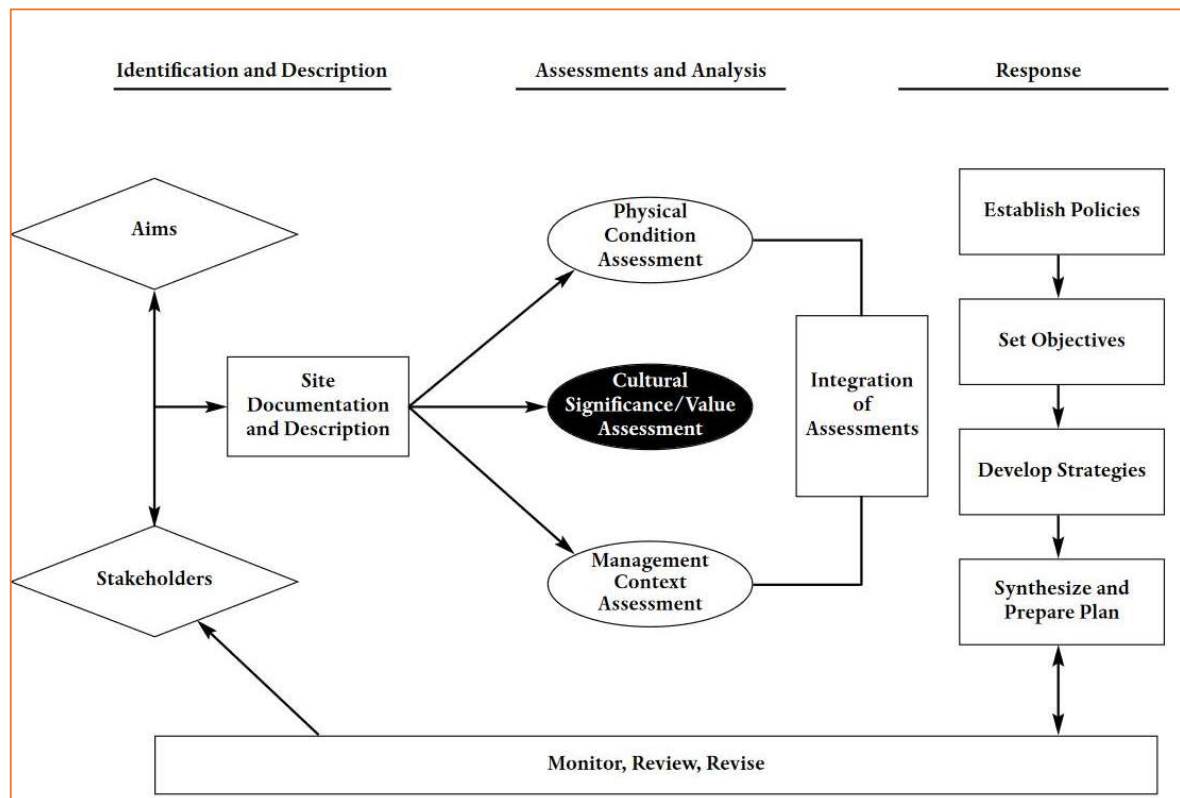


Figure 21: Planning process methodology of assessing values in conservation planning
(Mason, 2002, p. 6)

7.6.1 The Ancient Monuments Preservation Ordinance 1927 (Kenya)

The French cultural policy and archaeological legislation had their origin from the events of the French Revolution (Vadelorge, 2003 b, p. 67) and therefore a strong foundation in the spirit of nationalism and societal values. However, archaeology was introduced in Kenya and Africa in general during the colonial period (Fauvelle, 2018, p. 497) at the time when all was to be discovered about what was initially considered as a black continent without history (Ochieng, 2002). The evolution of the legal framework on archaeological and cultural heritage thus borrowed heavily from the system in the respective colonial powers with the Kenyan system being a hybrid of the Indian and the British heritage laws. In the African context today, as Ndoro and Pwiti justly observe, most legislation dates from the period of colonialism resulting in heritage laws that do not capture the equality of the three principles of value, society and legislation. The drafting of legislation was made difficult due to conflicting cultural values and its often too personal definitions that neglect the general public (Ndoro & Pwiti, 2019, p. 1).

The emergence and development of formal heritage legislation in Kenya is very recent as it traces its roots from the colonial period. The historical origins of Kenya's cultural legislation and policy framework renders the legal perspectives and aspects between the French and the Kenyan systems of cultural heritage conservation different in terms of the rationale and institutional organization. While the first one was based on the societal values and aimed at responding to and preventing further damage to already existing cultural heritage, the latter aimed at the protection of specific cultural and artistic aspects as observed by and in the interest of the colonial power and foreign research programmes. Even as the colonial powers

established a legal framework to protect antiquities and archaeological resources, it was obvious that the interests of colonial governments and researchers were skewed against the interests and cultural values of native indigenous inhabitants of the colonies such as Kenya, India, and Sri Lanka among others.

There were and still exist territorial disparities in the knowledge of African Prehistory due to a disequilibrium in the attribution of research works across the continent. Researchers were for a long time interested in the Northern African countries such as Morocco, Algeria, Tunisia, Egypt, and by extension Ethiopia while neglecting sub-Saharan Africa (Fauvelle, 2018, p. 497). Consequently, many archaeological sites in Africa are yet to be studied with majority of them having been subjected to gradual disintegration and destruction due to demographic pressure and negative impacts of economic development. For instance, ‘many archaeological sites particularly the stone structures in the southwestern Kenya Region, have not been fully studied to realize a complete understanding of the archaeology and history of the region’ (Onjala, 2019, p. 109). A critical examination of the legislative framework on archaeology and the entire cultural heritage management system in Kenya can attest to this knowledge gap.

The management of cultural heritage in Kenya drastically changed during the colonial period. It was during this period that cultural heritage was systematically centralised by the introduction of a centralised system based on the state control by law. The first law that was enacted to regulate archaeological research was the Ancient Monuments Preservation Ordinance which was signed into law by the then Governor of the Colony of Kenya, Sir

Edward William Macleay Grigg¹⁰⁸ on the 22nd October 1927. This was the principal legislation which was instrumental in laying the foundation for the development of legal framework about archaeological research and conservation of cultural heritage in the country. It provided the first definition of what was to be considered as archaeological heritage in terms of historical monuments and antiquities. It also set the framework within which archaeological excavation was to be conducted and defined the ownership of archaeological materials once discovered.

¹⁰⁸ Sir Edward William Macleay Grigg was the Governor of the British Kenya colony from 2nd October, 1925 to 13th February, 1931.

Law :	Britain	France	Kenya
The first law	1882 : Ancient Monuments Protection Act	1887 : Loi relative à la « conservation des monuments et objets d'art ayant un intérêt historique et artistique »	1927 : Ancient Monuments Preservation Ordinance
The first amendment/replacement	1913 : Ancient Monuments Consolidation Bill	1913 : replacement The law of 31 December 1913 : on the classification of monuments	1934 : modified by the Preservation of objects of archaeological and palaeontological interest Ordinance
The second amendment	1931 : Ancient Monuments Act	1930 : amendment then the law of 27 September 1941 : the Carcopino law, which established legal foundations of archaeology and which came into force in 1945 after the liberation	Replaced after independence in 1983

Table 5: Comparative legislation on monuments before independence era, Britain, France and Kenya

The Ancient Monuments Preservation Ordinance heavily borrowed from the Indian law, the Ancient Monuments Preservation Act of 1904 which was modified up to 1949 (Harts, 2007; Basu & Damodaran, 2015). This was because the two were under the British Empire hence their legislation on archaeological heritage conservation was based on the advice from the British Museum authority. By the time of the adoption of this legislation, there already existed archaeological investigations within the Eastern and Southern Africa region. There also existed the precursor to the Coryndon Museum that was created in 1910 which later became the National Museums of Kenya after independence.

7.6.2 *Permission to excavate and export protected antiquities and monuments: The Ancient Monuments Preservation (Amendment) Ordinance 1934 (Kenya)*

The Ancient Monuments Preservation Ordinance of 1927 was amended by the Official Gazette through a Government Notice No. 617 of 25th September 1934. The 1934 Ancient Monuments Preservation (Amendment) Ordinance authorised the Governor to grant permission to any person to excavate and or/ remove from the Colony any monument, antiquity or protected monument or any portion of a monument, antiquity or protected monument. The permission was to be granted subject to conditions upon which the Governor judged to be fit and could include a condition that a portion of the monument, antiquity or protected monument be surrendered to the Crown¹⁰⁹.

The change was informed by the fact that the Ancient Monuments Preservation Ordinance of 1927 did not provide clear guidelines on archaeological excavations nor removal of objects or monument from the territory. Concerning archaeological excavations, the 1927 ordinance only gave the Governor powers to control excavations to protect or preserve any protected monument or antiquity. The 1934 amendment was deemed necessary to enable the Government to extend facilities to a distinguished archaeological expedition that was about to visit the Colony while at the same time the matter had been forwarded to the British Museum authorities for advice (Basu & Damodaran, 2015; Harts, 2007).

¹⁰⁹ Republic of Kenya, Ancient Antiquities and Monuments (Amendment) Ordinance 1934 retrieved on URL: https://books.google.fr/books?id=rZvOLz6L-rcC&pg=PA1246&lpg=PA1246&dq=ancient+monuments+preservation+ordinance&source=bl&ots=xI7iODBrsZ&sig=N5UV4oxoBBh0P3_IIWqH1wiDoW4&hl=en&sa=X&ved=2ahUKewijlKCOuaveAhVHrIkKHdvgArY4ChDoATAHegQIAhAB#v=onepage&q=ancient%20monuments%20preservation%20ordinance%201927&f=false

Given the circumstances under which the amendment was done, a lot of loopholes were created as the hindrance to excavation and removal of antiquities, monuments or protected monuments was lifted. The permission was to be granted to any person to excavate or remove archaeological materials without specifying whether one needed any kind of training related to the field before being granted such permission. The amendment was done in accordance with the then prevailing heritage management practices within colonial powers which were expanded across their colonial empires (Swenson, 2011). This greatly exposed cultural and archaeological resources of colonised countries to unprecedented export, most of which took place without record since such movement was taking place within the respective colonial empire.

The introduction of formal legal framework on the conservation and management of antiquities and historical monuments in Kenya created a highly centralised management system without consideration of private rights over land ownership and private property as was the case in Britain. According to T. Harts, the draconian and highly centralized tenets of the Indian law that were the basis for the 1927 act would not have been accepted by the British parliament or the public. The 1913 Ancient Monuments Act in Britain, for instance, did not establish penalties that may be levied for damaging a monument on its owners; the Indian and Kenyan laws could (and can) fine or imprison owners for altering their own property. Similarly, sanctions were less severe in Britain with a maximum of 5 pounds versus 100 in Kenya, and one month's maximum jail sentence versus six months respectively. They seemed to suit, however, the fundamentally undemocratic nature of Kenya's colonial rule (Harts, 2007).

The formal systems of heritage conservation were enforced through formal legal process and administrative frameworks established by governments with an empirical and philosophical

orientation informed by scientific and technological advances that emphasises the role of ‘experts’ especially with regards to management of immovable heritage (Mumma, 2005; Jopela, 2011). In the case of Kenya and most of the African countries, the challenge emanated from the application and relevance of the term ‘expert’ in relation to the conservation and management of African cultural heritage. The term expert was derived from French ‘expert’ whose origin is the Latin term ‘*expertus*’ meaning a person who is very knowledgeable about and skilful in a particular area. When the formal management systems were applied the traditional custodians of cultural heritage were rarely incorporated as experts hence less involved in the identification, study and conservation of heritage. Perhaps language barrier could have been cited as the greatest impediment but this could only be limited to the approach that was employed by the ‘experts’ in the field of archaeology and cultural heritage. The missionaries had proven that it was possible to begin by learning local languages or teaching the locals the foreign language and even translating the content (like they translated the Bible) into native vernacular languages as a key success factor.

7.7 Conclusion

The introduction of formal heritage management system in Kenya occurred during the colonial period. The application of a highly centralised and rather western system of heritage management had lasting impacts on the post-colonial heritage legislation. The perception and conceptualization of heritage shifted from the native practices to the strict observation of written laws about their heritage but which carried concepts that they hardly found their equivalence within the traditional custodianship. The new concepts such as antiquities and monuments gradually replaced those of shrines which had an impact on their view of their culture and history.

CHAPTER EIGHT

**CULTURAL HERITAGE PROTECTION FROM LEGISLATION ON
URBANIZATION, ENVIRONMENTAL LAW AND PREVENTIVE
ARCHAEOLOGY**

Introduction

This chapter presents the development of heritage protection policies within the context of development. The chapter looks at the development of legislation, policies and regulations that aim at protecting cultural and archaeological heritage from the negative impacts of development. From the onset the chapter attempts to demonstrate the relationship between natural and cultural heritage from which is found the link between environment and urbanization. Consequently, the development of salvage, commercial or preventive archaeology has its antecedents in environmental preoccupations. This chapter adopts a wider but precise comparative approach to the analysis of the French and Kenyan systems of salvage and preventive archaeology respectively within the general global context. The interest is drawn to the framework of commercial archaeology as in the United Kingdom; salvage archaeology as is practiced in Kenya and that of preventive archaeology as it exists in France. Other than the development of legislative framework, the study also looks at the implication and influence of the terms that are used to define the system, the relationship between the system, research community, teaching and learning and the changing economic situation then provides a correlation between the related factors on the development of archaeology.

8.1 Formulation of heritage laws and policies on natural and cultural heritage

The relationship between cultural and natural heritage clearly demonstrates the inseparability of what is cultural from what is natural heritage. Since 3.3 million years ago when man fashioned the first tools, it has been observed that natural heritage has continuously stimulated man's scientific, technological and cultural evolution. Though scientific, technological and cultural evolution, on the other, human activities have continuously affected, shaped and even changed man's natural environment. The interaction between man and his natural environment continues up to a point where concrete environmental changes occur. Such changes ultimately affect the conservation and management of cultural heritage.

Urbanization as one of the elements of economic development has a great impact on the management and conservation of both cultural and natural heritage. Since the second half of the 20th century most of the western countries have integrated aspects of cultural heritage into physical planning policies, environmental laws and other legislations related to urbanization. In France, according to L. Marchand, the notion of archaeological heritage and the need for its protection under all circumstances did not exist until the beginning of excavations done in conformity with environmental considerations. This started in the United States of America (USA) in the 1960s followed by the UNESCO Conference of 1972 in Paris (Marchand, 2000, p. 85) which put in place the Convention on the protection of cultural and natural heritage (UNESCO, 1972).

8.2 Salvage archaeology and the law on regulation of archaeological excavations of 1941 in France

L. Marchand (2000) has examined the question of salvage archaeology in the light of the law of 27th September 1941 demonstrating the changing role of the state as stipulated in the law and in response to the emerging situations. C. Rigambert (1996) has also looked at this question from a legal angle. Prior to 1974 the realization of salvage excavations was conducted under the first section of the 1941 law (*Titre I*) which is about the State control of archaeological excavations. In this case, the practice was totally under the full responsibility of the individuals (private entities) who undertook to carry out salvage excavation. This was because the law of 1941 created two types of excavations: those under the initiative of private individuals (*Titre I*) and those exercised under state initiative (*Titre II*) (Marchand, 2000, p. 78).

8.2.1 Urbanization and its impact on cultural heritage conservation in France

However, the situation gradually changed especially with the increase in infrastructural development projects and urbanization that was being witnessed in the post-World War II period. Jean Fourastié observes that right from 1700 all along to 1975 rural population in France was shrinking while urban population was expanding Table 6. The most decisive moment in this trend was the period referred to as the Glorious Thirties (*Les Trente glorieuses*, 1946 to 1975) where rural population reduced from 47% in 1946 to 32% in 1975 while urban population increased from 53% in 1946 to 68% in 1975. The growing urban population exerted a lot of pressure on the existing infrastructure and housing which had the effect of triggering the infrastructural boom as was witnessed since the 1960s. The upsurge in development projects had a direct impact on not only on the natural environment whose

conservation became an emergence but also on the cultural and archaeological heritage. It was in the course of such development that surpassed the efforts of volunteer armature archaeologists and the general public interested in conservation of archaeological heritage in the context of development.

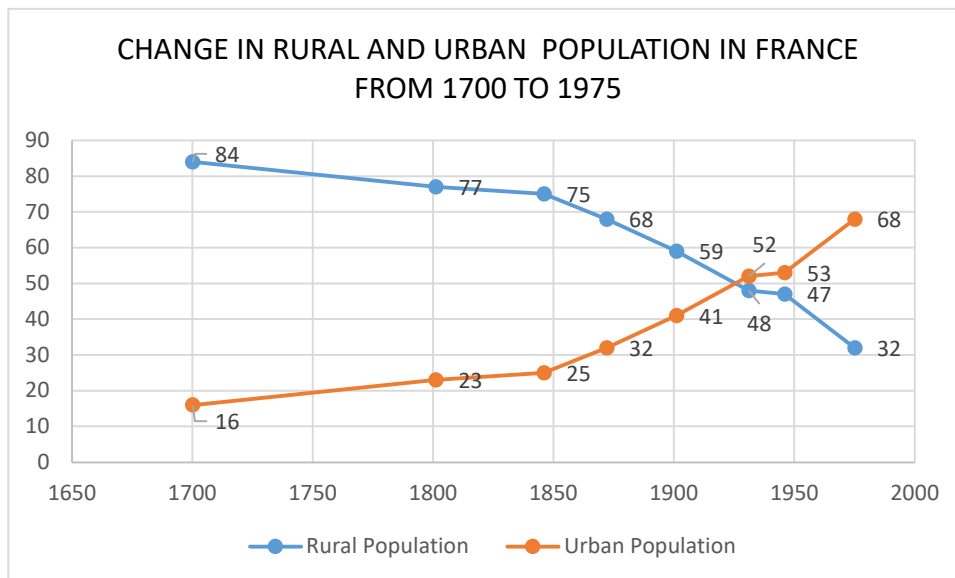
URBAN AND RURAL POPULATION IN FRANCE FROM 1700 TO 1975		
Year	Rural Population %	Urban Population %
1700	84	16
1801	77	23
1846	75	25
1872	68	32
1901	59	41
1931	48	52
1946	47	53
1975	32	68

Table 6: Rural and urban populations in France from 1700 to 1975 (Fourastié, 1979, p. 133)

The general trend was that within a century the rural versus urban population growth underwent an inverted transformation between 1872 and 1975 as shown in Graph 2:
Change in rural and urban population in France from 1700 to 1975

(Fourastié, 1979, p. 133). Such demographic transformation had a lot of implications on cultural heritage management which in the long run resulted into demands for a change in the cultural policy. This was necessary since there was a lot of development in France that was targeting the satisfaction of globalization and the ever increasing urban demands such as the need for housing, office space, improved road and railway transport network as well as parking space for the working class population. There was also construction and

development of the major airports such as Paris-Orly and the Charles De Gaulle airports in Paris.



Graph 2: Change in rural and urban population in France from 1700 to 1975

Urbanisation brings with it a multiplicity of impacts on a country's cultural landscape as well as its heritage management system which may be both positive and negative at the same time. In the first place, urbanisation was important for the development of the cultural industry in France. As such the positive impact of urbanization on the cultural landscape is multifaceted. The increase in urban population when accompanied with high purchasing power triggers the desire for adventure thus leads to increase in per capita leisure activities which translates into increased ecotourism. A population that has the highest capacity to move from one place to another with limited financial constraints is a key ingredient to tourism sector.

At the same time if urbanisation occurs in an environment devoid of relevant cultural protection laws and policies it may lead to a lot of uncontrolled and unsustainable

development. For archaeological heritage, especially in a place which is characterised as possessing an archaeologically rich underground, the situation may be more demanding and even catastrophic. Between 1950 and 1970, for instance, Lasfargues estimated about 17 hectares at the heart of an antic historic site were destroyed without carrying out any serious observation which obliged archaeologists to find the means to safeguard against the massive destruction of archaeological sites using associations and the press in the city of Lyon. A team of archaeologists supported by a local monthly journal in Lyon called *Résonances*, and an association organised open day events (*journées portes ouvertes*) on the matter of construction of buildings along *la rue des Farges* as a first reaction in the city of Lyon which met a lot of success as there were thousands of visitors recorded within a couple of days (Lasfargue, 2009). As such, archaeologists became more audible, a factor that would see the change in the public opinion leading to revocation of construction permit which later influenced the role of the state towards conservation of archaeological sites and heritage. Working through associations founded under the 1901 law would as well improve the status of archaeologists thus the beginning of professionalization of archaeology as a discipline in France (Lasfargue, 2009).

8.2.2 *Creation of L'Association pour les Fouilles Archéologiques Nationales (AFAN)* ***(the Association for National Archaeological Excavations) 1973***

The creation of *l'Association pour les Fouilles Archéologiques Nationales* (AFAN) [Association for the National Archaeological Excavations] on 26th December 1973 marked the formal beginning of salvage archaeology in France. The association was formed under the 1901 law about the formation of associations with the aim of managing the funds for salvage archaeological interventions. It was later transformed into INRAP by the law N° 2001-44 about preventive archaeology in the year 2001.

Right from 1974 onwards, everything changed. The circular signed by J. Gazagnes, the civil Administrator in charge of the *Bureau des Fouilles et Antiquités* (Excavations and Antiquities Bureau), on 28th August 1974, stipulated the notions of salvage excavations and surveys. The circular aimed at determining the responsibility of the state and the archaeologist. According to this circular, the archaeologist was responsible for programmed excavations, prospections and surveys that were deemed not to be of any emergency and at excavator's own initiative (Marchand, 2000, p. 80). Salvage excavations, on the other hand, were first preceded by being defined in terms of emergency:

Rescue is always characterized by emergence, because lack of immediate intervention archaeological remains are at the risk to be destroyed [...] the law of 27th September, 1941 aims at the conservation of these vestiges. That is why the director confers in this case (when there is emergence) the status of public service to the rescue authorization which it issues (Marchand, 2000, p. 80)¹¹⁰.

Consequently, the state took responsibility of salvage excavations, prospections and surveys judged as emergency excavations by the director of antiquities.

¹¹⁰ « *Le sauvetage est toujours caractérisé par l'urgence, car faute d'une intervention immédiate les vestiges archéologiques risquent d'être détruits* » [...] « *la loi du 27 septembre 1941 a pour objet la conservation de ces vestiges* ». *C'est pourquoi « le directeur confère dans ce cas (lorsqu'il y a urgence) le caractère de service public à l'autorisation de sauvetage qu'il délivre.* » cited in (Marchand, 2000, p. 80).

8.2.3 *Salvage archaeology and environmental law*

Since 1974 the French government changed its line of action from that of a spectator to that of being an active player in matters of salvage excavations (Marchand, 2000, p. 100). Due to the upsurge in development projects with high impact on the environmental, natural and cultural heritage and the landscape, the 1976 environmental law in France¹¹¹ made it mandatory for any development project to be preceded by an EIA study. This was further boosted by the law of 1983¹¹² on democratization of public enquiries and protection of the environment. In its article 1 the latter stipulates that all infrastructural development works performed by public or private persons, which, by virtue of their nature, consistency or character of the areas concerned, are likely to affect the environment must be subjected to a public enquiry¹¹³ (Rigambert, 1996, p. 208).

It became part of the environmental stakes of the time that were manifested in the various legislations and decrees that were put in place which gradually brought salvage archaeology into legal framework. Among the laws were that of 10th July 1976 about the protection of nature; the law of 19th July 1976 concerning installations that were classified for the protection of the environment; the law of 3rd January 1977 on architecture; a series of decrees of 7th July 1977 including the decree N° 77-755 which modified the *Code de l'urbanisme*; the decree of 21st September 1977 which aimed at the application of the law of 19th July

¹¹¹ Loi n° 76-629 du 10 juillet 1976 relative à la protection de la nature - Article 2

¹¹² Loi n°83-630 du 12 juillet 1983 relative à la démocratisation des enquêtes publiques et à la protection de l'environnement.

¹¹³ « *La réalisation d'aménagements, d'ouvrages ou de travaux, exécutés par des personnes publiques ou privées, est précédée d'une enquête publique soumise aux prescriptions de la présente loi, lorsqu'en raison de leur nature, de leur consistance ou du caractère des zones concernées, ces opérations sont susceptibles d'affecter l'environnement* ».

1976; decree N° 77-1141 of 12th October 1977 for the implementation of the law of 10th July 1976 (Marchand, 2000, p. 100). These series of laws and decrees formed the basis of the environmental in which was anchored salvage archaeology. Article R. 111.3.2 of the *Code de l'urbanisme* stipulates that ‘the construction permit may be denied or granted subject to the observation of special prescriptions if the constructions are of the nature, by their location, to compromise the conservation or valorisation of an archaeological site or vestiges’¹¹⁴.

According to L. Marchand, the legal foundation of the above article was uncertain since it was out of proportion with the 1941 archaeological law. The latter was silent on such measures as pertains to the safeguard of archaeological heritage threatened by major development projects. The 1941 law was put in place almost two decades before the emergence of EIA hence the notion of salvage excavation was not in the minds by then. L. Marchand argues that such rapture occurs often when new notions emerge corresponding to a new state of civilization. It also echoes the problem of the relationship between regulatory and legislative power (Marchand, 2000, pp. 100-101).

The Environmental Code¹¹⁵, more particularly regulations on environmental impact assessment, Article R122-5 part II, section 1, sub-section 3 about the content of EIA, (clauses 3 and 4) stipulates that there should be a description of the relevant aspects of the ‘current’ [initial] state of the environment, referred to as the ‘reference scenario’, and of their

¹¹⁴ « *Le permis de construire peut être refusé ou n’être accordé que sous réserve de l’observation de prescriptions spéciales si les constructions sont de nature, par leur localisation, à compromettre la conservation ou la mise en valeur d’un site ou de vestiges archéologiques* ».

¹¹⁵ Code de l’environnement - Article R122-5 modified by the Decree No. 2017-626 of 25th April 2017

evolution in case of implementation of the project, as well as an overview of the likely evolution of the environment in the absence of implementation of the project, to the extent that natural changes in relation to the baseline scenario can be assessed through reasonable effort on the basis of environmental information and available scientific knowledge. There should also be a description of the factors to be significantly affected by the project such as population, human health, biodiversity, land, soil, water, air, climate, material goods, heritage including architectural and archaeological aspects, and landscape.

The mention of archaeology in the environmental law gives the legal emphasis on the need to ensure that whenever EIA is done archaeological heritage should not be neglected nor overlooked. However, the consideration of the archaeological heritage in the environmental preoccupations such as in the field of quarries, building and infrastructure implies a minimum of mutual knowledge on the part of the various stakeholders. This is because notions of archaeological objects as well as archaeological heritage are not clear to most professionals in other fields, the general public as well as to the officials in the administration (Lanchon & Maubert, 1989, p. 5).

8.3 Cultural policy under the Left Wing government, 1981-1995

This period witnessed a new wave of administrative decentralization. According to Isabelle Maréchal, the wave of decentralization that was witnessed between 1982 and 1983 was less concerned with the transfer of cultural functions. The reforms that begun with the law of 2nd March, 1982 and that of 7th January, 1983 had little impact on the institutional order. Jack Lang, the then socialist Minister of Culture had expressed his satisfaction with the institutional dimension of the implementation of cultural policy which he judged as stable enough to remain intact. Therefore no change in the distribution of powers was anticipated.

The decentralization of the visual arts (*les arts plastiques*) within the framework of the Regional Fund for Contemporary Art (*Fonds régionaux d'art contemporain* FRAC) and the Regional Museums Acquisition Fund (FRAM), was based on another logic; that of cooperation between levels of administration rather than that of transfer of functions. This logic was anchored in and largely influenced by the model established by André Malraux for the *Maisons de la Culture* since 1962 (Saez & Pogany, 1994, p. 227).

If decentralization laws of 1982-1983 did not change the legislative order that regulates municipal cultural policies, the now asserted and legitimized positions of elected officials in the French political landscape allows a strengthening of local policies including those in the field of cultural heritage (Poirrier, 2000, p. 170).

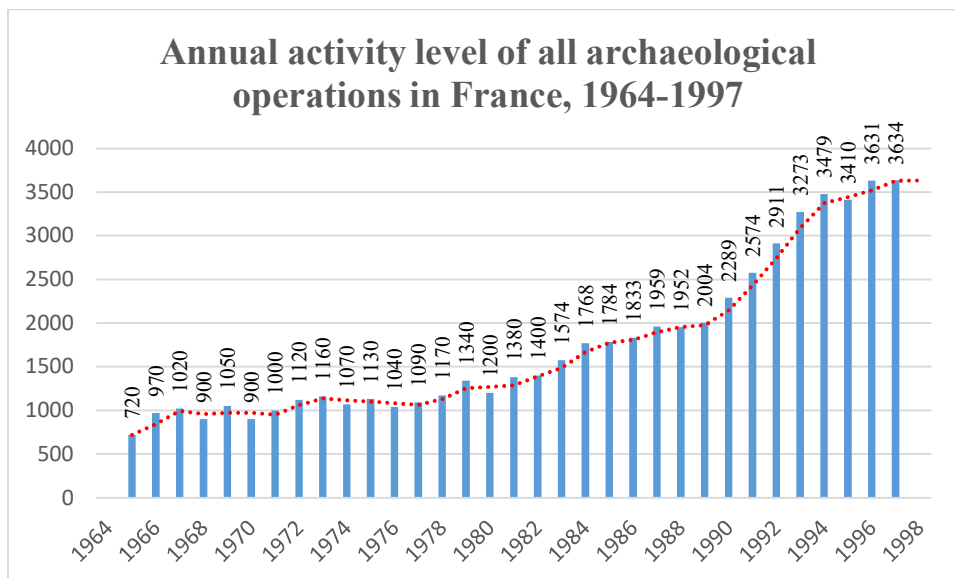
Jack Lang arrived at the Ministry of Culture at a time when decentralization was taking shape through the legislations that have been mentioned above. He was one of the longest served Ministers in this Ministry and has been credited for the acceleration of deconcentration process and the beginning of decentralization (République Française, 2019).

At the beginning of the twenty-first century, according to T. Perrin, J.-C. Delvainquière and J.-M. Guy, cultural policies follow four main lines: 'cultural diversity; equal access through cultural and artistic education; state reform and decentralization of cultural policies; intellectual and artistic property rights in the context of digital globalization' (Council of Europe, ERICarts, 2015).

However, cultural decentralisation in France was undertaken with cautious optimism given a traditionally highly centralised system of cultural heritage management. In matters concerning preventive archaeology the system is not decentralized but rather deconcentrated. One of the most outstanding arguments against decentralization of preventive archaeology

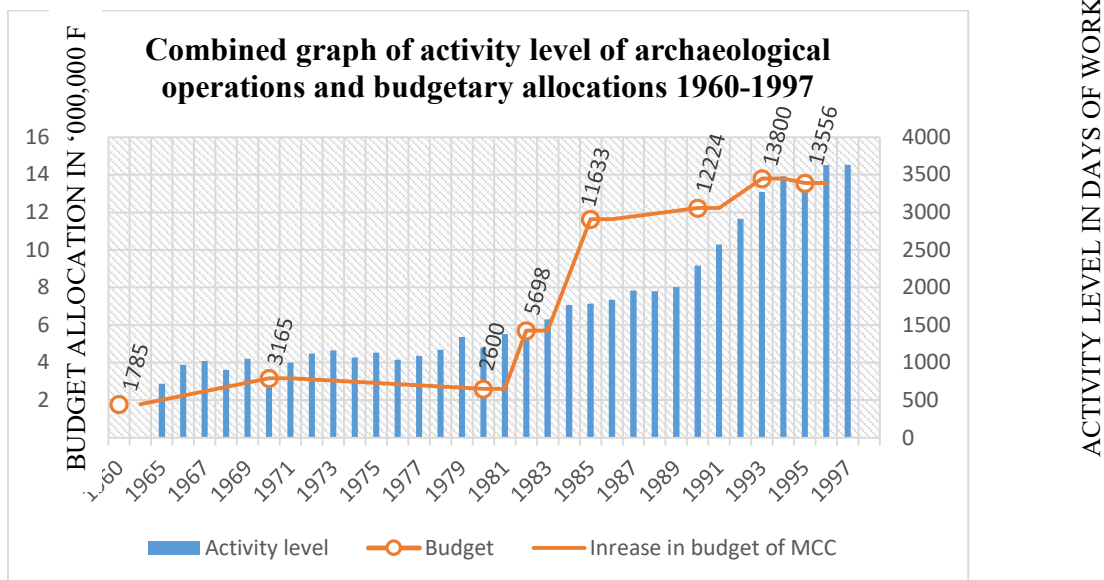
is that there already exist, since 2003, a law on commercialization of preventive excavations. The developer has to make a choice among the various approved archaeological firms, from both private and public domains, of the archaeological body that may proceed to the excavation. The fact that local Authorities possess such services, according to J.-J. Demoule, means that they have partisan interests hence cannot legislate on the matter (Demoule, 2019). Considering this point of view, which is largely shared among the archaeological community especially at the French National Institute of Preventive Archaeology (INRAP) and some members of the public, the commercialization of preventive archaeology created some uncertainties in the practice of preventive archaeology. Henceforth, it did not only make it difficult to tell whether preventive archaeological excavations were of administrative or economic in nature but also made it difficult for the archaeologists to explain the entire practice for the developers to understand (Pot, 2009, p. 268).

8.3.1 Gradual increase in activity level of archaeological operations



Graph 3: Annual activity level of all archaeological operations in France, 1964-1998. Source of data (Verron, 2000, p. 192)

In *Graph 3* above it can be observed that there was an exponential increase in the activity level especially from 1980s. This could be attributed to a number of factors. In 1982, there was a significant quantitative increase in the budgetary allocation for the Ministry of Culture. According to P. Poirrier, the budget for culture doubled and went from three to six billion francs. There had never been under any administration, as was noted by Jack Lang the then Minister of Culture to the National Assembly, such an increase in allocation. Terming it as a rebirth, the Minister affirmed that the mutation was more crucial than at the time of the creation of the Ministry of Culture in 1959 (Poirrier, 2000, pp. 160-161).



Graph 4: Combined graph of activity level and increase in budget (in '000,000 Francs) allocation

Sources: (Verron, 2000, p. 192) and (Poirrier, 2000, pp. 160-161)¹¹⁶.

¹¹⁶ F* stands for French Francs

**PREVENTIVE ARCHAEOLOGY, CULTURAL HERITAGE IMPACT ASSESSMENT AND MANAGEMENT :
A COMPARATIVE PUBLIC POLICY ANALYSIS BETWEEN KENYA AND FRANCE**

LUCAS L. W. BWIRE, 16TH DECEMBER 2022

The developments that were witnessed from the 1960s to the end of the twentieth century saw a series of reports about preventive archaeology from 1968 to 1998 which gave birth to the law on preventive archaeology in the year 2001.

Summary of reports on the evolution of the public policy on preventive archaeology in France, 1968-1998

Les rapports récapitulatifs de l'évolution de la politique relative à l'archéologie préventive, 1968 – 1998

Date	Auteur	Qualité	Titre	Résumé
1968 – 1986 : la prise de conscience				
1968	Henri Seyrig	Directeur de l'Ecole d'archéologie du Caire	Note sur la création d'un Institut national d'archéologie.	Regrouper en un établissement unique tous ceux qui traitent d'archéologie.
1975	Jacques Soustelle	Directeur d'études à l'Ecole des hautes études en sciences sociales, ancien ministre	La recherche française en archéologie et anthropologie	Rapport d'ensemble sur l'état des deux disciplines ; très rapide sur l'archéologie de sauvetage.
1982	Max Querrien	Conseiller d'Etat, ancien directeur de l'architecture, maire de Paimpol	Politique du patrimoine	« L'archéologie est d'abord, et avant tout, une discipline scientifique. »
1986 – 1997 : malaises et replâtrages ()				
1987	Marie-Thérèse Claudé	Conseiller à la Cour des comptes	Audit comptable de l'AFAN	Faire évoluer l'AFAN vers un Epic
1988	Pierre Aigrain	Universitaire, ancien ministre		
1989	Bruno Martin-Laprade	Maître des requêtes au Conseil d'Etat	Rapport sur l'archéologie de sauvetage	
1990	Christian Goudineau	Professeur au Collège de France	Rapport au Premier ministre sur l'archéologie nationale	« L'archéologie ne se découpe pas en tranches, pas plus que l'histoire ou la philosophie, sous peine de perdre conscience de sa finalité. Séparer recherche et urgence, recherche et service, recherche et administration, protection, mise en valeur, etc., est un non-sens. Ce qui ne signifie pas que missions et responsabilités ne doivent pas être clairement identifiées. »

1992	Marc Gauthier 1	Conservateur générale du patrimoine	Le contrôle scientifique de la recherche archéologique en France	
1993	Marc Gauthier 2	Conservateur générale du patrimoine	Le cadre législatif et réglementaire de la recherche archéologique en France	
1996	Marc Gauthier 3 Maurice Méda	Conservateur générale du patrimoine Maître des requêtes au Conseil d'Etat	Situation de l'AFAN	Transformer l'AFAN en Epic (modèle BRGM)
1997	Frédéric Lemoine	Inspecteur des finances	Audit général de l'AFAN	Amélioration depuis 1991, mais encore beaucoup de progrès à faire ; insuffisance chronique de trésorerie
1998 : crise et sortie par le haut (crisis and higher exit)				
1998 : janvier	François Barré	Directeur de l'Architecture et du patrimoine au ministère de la Culture	Propositions pour une politique nationale de l'archéologie	
mai	Conseil de la concurrence	Mouvance du ministère des Finances	Avis sur la nature concurrentielle de l'archéologie de sauvetage	
juillet	Marie-Claude Vitoux	Administratrice civile au ministère de la Culture	Préfiguration d'un établissement public reprenant les missions de l'AFAN	Mission interrompue
novembre	Jean-Paul Demoule Bernard Pêcheur Bernard Poignant	Professeur d'université Conseiller d'Etat Maire de Quimper	L'organisation de l'archéologie préventive en France	Créer un établissement public en mesure d'exercer des prérogatives de puissance publique (donc sous forme d'EPA), mais avec un cadre comptable adapté et un régime

				administratif dérogatoire, notamment en ce qui concerne le statut des personnels.
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Figure 22: Summary of reports on the evolution of the public policy on preventive archaeology in France, 1968-1998

Source : (Gauthier, 2009, pp. 247 - 249)

8.4 Protection of archaeological heritage by legislation on Preventive archaeology and Environmental Impact Assessment

8.4.1 *Preventive archaeology, law N° 2001-44 of 17th January 2001, France (Loi relative à l'archéologie préventive), amended in 2003 and 2004*

The Law No. 2001- 44 of first January 2001 was a culmination of efforts by scientists and various stakeholders who were concerned with the protection of archaeological heritage threatened by development projects. This is the law that established and clearly defined preventive archaeology by providing the legal and policy framework for its application in France. With its roots in the Malta Convention of 1992, this law aimed at putting in place the necessary legal framework for the effective protection of archaeological heritage threatened by development projects with potential impacts on the cultural and archaeological heritage. The 1941 law and that of 1913 were considered as the precursor to the 2001 law on preventive archaeology. The 1941 law had failed to nationalise or to make the underground archaeological resources a public property (Demoule, 2009b, p. 10; Rigambert, 1996) which limited the magnitude of its protection. The ownership of underground archaeological resources was left under the provisions of article 552 of the French Civil Code of 6th February 1804 which stipulates that:

Ownership of the ground entails ownership of the top and the bottom. The owner can make above all the plantations and constructions that he deems appropriate, except for the exceptions established in the title "Easements or land services". He may carry out all the constructions and excavations that he deems appropriate, and draw from these excavations all the products that they can provide, except for the modifications resulting from

*the laws and regulations relating to mines, and from the laws and regulations of police*¹¹⁷.

The 2001 legislation on preventive archaeology did not solve the problem but it had two outstanding impacts which changed the practice of salvage archaeology into a real preventive activity. The first landmark outcome was the official recognition and legalisation of the role of the developer in the protection of archaeological heritage just as they do in the case of environmental degradation resulting from the impact of development. This provided for the legal basis for polluter pay principal as was operational in the Great Britain under development led or commercial archaeology. The second outcome was the transformation of the Association for national archaeological excavations (*l'Association pour les fouilles archéologiques nationales - Afan*) into a semi-autonomous public administrative research institute and hence the creation of INRAP in 2001. Unlike the NMK which is almost fully funded by the exchequer, INRAP has got a high degree of independence accorded by its status as a semi-autonomous administrative institution placed under two ministries; the Ministry of Culture and Communication and the Ministry of Higher Education, Research and Innovation.

One and a half decades later, the 2016 law about the freedom of cultural expression, which has its origins in the 2005 UNESCO Convention on the protection of cultural diversity, came

¹¹⁷ « La propriété du sol emporte la propriété du dessus et du dessous. Le propriétaire peut faire au-dessus toutes les plantations et constructions qu'il juge à propos, sauf les exceptions établies au titre " Des servitudes ou services fonciers ". Il peut faire au-dessous toutes les constructions et fouilles qu'il jugera à propos, et tirer de ces fouilles tous les produits qu'elles peuvent fournir, sauf les modifications résultant des lois et règlements relatifs aux mines, et des lois et règlements de police », Article 552 of the french civil Code of 6th February 1804.

to settle the stalemate by declaring all archaeological material as public property hence modifying the various provisions of 2001 law as well as article 552 of the 1804 Civil Code.

8.5 Cultural Policy and Development Priorities in Postcolonial Kenya

8.5.1 Independency development priorities, development plans and associated social and cultural policy issues

The development of Kenya's cultural policy under colonial domination laid a weak foundation for the subsequent development planning and formulation of a cultural policy in the post-colonial era. Consequently, issues of social and historical injustices have persistently hindered the realisation of national cohesion due to lack of policies that would foster and enhance balanced national development by fully integrating social justice in the post-independence Kenyan society. The colonial legacy also had lasting influence on the post-independence development priorities especially land planning and infrastructural development. This was because the public policy choices that were made at independence greatly influenced sectoral policies across all aspects of social, economic and political life of the independent Kenyan society.

The economic situation at independence coupled with the then prevailing social and political context sent a clear message to the new government that difficult choices were in waiting and a new path was to be taken to create a national identity for the young nation. Given that everything was a priority, the independence government had to set its development agenda by declaring war on the three greatest enemies; poverty, disease and ignorance but ignored cultural policy which is fundamental to the foundation of an independent society. To confront the three enemies of development, the government had to put in place an economic plan and a public policy framework through the Sessional Paper number 10 of 1965 whose

shortcomings have already been discussed. The long term impact of the Sessional Paper Number 10 were felt until the 2010 promulgation of the Constitution that put in place a devolved system of government in Kenya.

8.5.2 Post-devolution Development, Environmental Consciousness and Issues of Social Justice in Kenya

The promulgation of the Constitution of Kenya in the year 2010 was a source of hope to Kenyans as it ushered in unprecedented social, political and economic reforms with a devolved system of government (Josse-Durant, 2021).

Article 4 (2) of the Constitution declares that the Republic of Kenya shall be a multi-party democratic State founded on the national values and principles of governance referred to in Article 10 (2) including: (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of people; (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; (c) good governance, integrity, transparency and accountability; and (d) sustainable development.

One decade since its promulgation, there is disillusionment (Josse-Durant, 2021) as far as the implementation of the constitutional reforms is concerned. Cultural policy that is enshrined in the spirit of the Constitution is the roadmap to social justice which was one of the dominant issues in the 2022 general election campaigns. The campaigns revolved around the necessary social, economic and political reforms to be undertaken in Kenya as part of the continuous constitutional reform agenda.

There is disillusionment where issues of abuse of power through corruption, lack of participatory governance which hinders effective decision making at various levels still persist. Transparent and participatory leadership is key to the formulation of a good public policy for culture that inculcates all aspects of the aforementioned sections of article 10 of the Constitution. It can enhance good management of cultural resources and sustainable development hence balance between economic development, scientific research and conservation of cultural heritage.

Despite the some disillusionment, there is hope in the institutional framework and capacities to face the challenges of democratization which are real and complex. There is hope as observed through improved methods of solving electoral conflicts, for instance during the 2013, 2017 and the just concluded 2022 general elections in Kenya. At each one of the three consecutive elections there were issues surrounding the declaration of presidential results but the decisions of the Supreme Court of Kenya were respected and peace prevailed after each one of them. This was unlike in the 2007 general elections where there was no clear institutional and legal framework to handle the issues thus leading to violent protests across the country. Conflicts are part of the major challenges to cultural heritage management and political instability that is associated with post-election violence destabilises the economy where the cultural industry is the most affected as other nations give advisories that restrict their citizens from visiting any country or areas experiencing violent conflicts. In the year 2017, the Supreme Court of Kenya nullified the Presidential results, a move that instilled public trust in the public institutions and set a precedence in Africa on how to safeguard democracy. It also illustrated the significance of separation of powers and the independence of the three arms of government; the Executive, Legislature and Judiciary.

8.6 Salvage Archaeology in Kenya

Salvage archaeology can be simply defined as the process of conducting archaeological excavation to safeguard archaeological resources in the course of development when the developer stumbles on archaeological objects or sites that are threatened by the ongoing development activities. From this definition, the effectiveness of the process depends on the developer's capacity¹¹⁸ to understand what constitutes an archaeological site or object. This is what is practiced in majority of cases where heritage impact assessment is conducted in Kenya. It has its legal origin in the Environmental Management and Coordination Act of 1999 whose emphasis is on the management of natural environment with little attention on the protection of cultural heritage.

8.6.1 *Environmental Management and Coordination Act (EMCA 1999, Kenya)*

During the construction of the Sondu Miriu Hydroelectric power plant there were a lot of environmental concerns ranging from the natural to cultural environment. The project came at the moment when the country did not have an organised system of environmental impact assessment (EIA) because of lack of any legal framework. Due to public outcry and especially the relentless efforts by the British Institute in East Africa (BIEA) the project was halted to pave way for impact assessment. It was at this moment that EMCA was enacted to provide the legal framework on EIA, the creation of the National Environmental Management Authority (NEMA) and to give the National Museums of Kenya the mandate to do impact assessment where cultural heritage is concerned.

¹¹⁸ The developer can be a real or legal person exercising as a public or private entity.

The Japanese government funded the preliminary impact assessment while BIEA funded the complete archaeological impact assessment at the site that yielded significant results (Onjala, et al., 1999 , online 26 Feb 2010). The results demonstrated the significance of the site in the archaeological research in the area which would have necessitated the modification of the project to preserve the site, given its significance. However, despite its significance and efforts by BIEA to dissuade the developer from its destruction, the site was totally destroyed through the construction of the Sondu-Miriu Hydroelectric power plant. This study sites the case as a success because it presents all the challenges behind the practice of preventive archaeology which provides for the conservation through study as one of the intervention measures under such circumstances.

8.6.2 National Museums and Heritage Act (NMHA 2006, Kenya)

The National Museums and Heritage Act (NMHA 2006, Kenya) was enacted in the year 2006, seven years after the EMCA law. This is the current framework on cultural heritage management that is currently under review to embrace the contemporary issues especially in the area of heritage impact assessment and the ongoing social, economic and political transformations including the devolution of government in the country.

The 3rd Regional Thematic Seminar of Africa 2009 identified key legal issues in cultural heritage management across Africa. The seminar focused on:

- evaluating the current state of legal frameworks for immovable heritage conservation;
- identifying the key issues related to heritage legislation and possible strategies for dealing with them;
- identifying key issues related to the link between formal and informal legislation;

- Developing linkages to support the development of best practices in legal frameworks related to the protection of the immovable heritage legislation (Ndoro & Pwiti, 2019, p. 1).

The issues that were identified in the above seminar are the dominant legal and policy challenges affecting cultural heritage management and promotion in sub-Saharan Africa. The countries represented were Botswana, Gabon, Ghana, Nigeria, Mauritius, Kenya, Tanzania, South Africa, Namibia, Uganda, Zambia and Zimbabwe (Ndoro & Pwiti, 2019, p. 1).

Since independence, Kenya has made efforts to establish a legal and regulatory framework on cultural heritage conservation putting her ahead of most countries in the sub-Saharan Africa. The National Museums and Heritage Act (2006 – revised 2009) attempted to respond to the challenges facing cultural heritage conservation in Kenya. It gives the National Museums of Kenya the mandate to manage, conserve and promote cultural heritage. It is the national repository of the Kenya's cultural heritage. The National Museums of Kenya is also an exemplary heritage institution in sub-Saharan Africa whose history begun in the year 1910 as a centre to store collections before study and it is now a global tourist destination in the East African region as well as a research centre that hosts a lot of students across the world.

Some of the factors that have elevated NMK's resilience is the diversity of research problems that are handled at the institution which are multidisciplinary and touching all periods. The institution has also established a network of partners across especially in the earth sciences which adds to its resilience despite the limited exchequer funding. These resilience factors

are as a result of the provisions of the National Museums and Heritage Act (2006 – revised 2009).

The challenge however remains in the institution's limited power to fully handle heritage cases as such power is either shared or vested in the National Environmental Management Authority, NEMA and the environmental tribunal. It is partly for this reason that efforts were being made to transform the institution through creation of a National Heritage Authority.

8.7 Conclusion

Since the turn of the twenty first century, Kenya has realised a lot of urban and infrastructural developments projects. The environmental considerations emerged in the last quarter of the last century and have steadily increased to include cultural and archaeological heritage thus obliging the establishment of legal and institutional frameworks to ensure protection of heritage in the context of development.

There has been enactment of the Environmental Management and Coordination Act to guide on environmental management which provides for the cultural heritage impact assessment. Following the environmental considerations, and the challenges of the independence legislation, the country put in place the National Museums and Heritage Act 2006 which complements the environmental law and mandates the National Museums of Kenya to conduct heritage impact assessment where it is required. Though this provision, salvage archaeology is conducted for those projects that pose threats to archaeological sites and underground material archives of the past.

Both environmental and heritage legislations, however, do not provide any clear guidelines on how to ensure effective assessment of cultural and archaeological impact which sets the stage for all manner of activities including total negligence of the necessity to do such assessment.

CHAPTER NINE

PROTECTION OF CULTURAL HERITAGE BY PENAL LAW, INTERNATIONAL CONVENTIONS, RECOMMENDATIONS AND REGULATIONS

9.1 Introduction

In this chapter I look at the protection of cultural heritage by penal law and by extension the international law. Whenever the national legal and policy framework does not cover heritage protection in the context of development, there exist international instruments that are applied especially for heritage impact assessment in Kenya and in some cases archaeological impact assessment. Since the aftermath of World War II, the international conventions and recommendations have played a fundamental role in the evolution of cultural heritage management and conservation of archaeological heritage. The analysis of the international conventions and recommendations aims at identifying the role and application of such texts in heritage management in Kenya, giving both the limitations and the positive outcomes.

I will also analyse the international conventions that have influenced the development of preventive archaeology in France and give summaries of regional comparative legislation in selected European and East Africa countries.

9.2 Principles of criminal responsibility and sources of penal law on archaeology and cultural heritage management

The term ‘principles’ can be simply defined as a set of rules. The ‘principles of criminal responsibility’ as applied in this chapter refers to the essence of the legal and regulatory

framework on archaeology and cultural heritage management in a given society. The principles confer criminal responsibility to any individual who acts in contravention with the established laws and regulations concerning archaeological research and cultural heritage management. The principles of criminal responsibility defines the patterns forming the criminal law and criminal responsibility will be described from the point where the committed crime incurs a punishment, provided that such act was culpable and regulated by penal law (i.e. *nullum crimen sine lege certa, nulla poena sine lege poenali anteriori*) etc (Penol, 2019, p. 80)¹¹⁹. In simple language, the principle of criminal responsibility implies that there is no crime without a fixed law and no penalty without prior penal law¹²⁰. This is fundamental and very relevant in the practice of preventive archaeology in Kenya where it is yet to be comprehensively established by law with a well-structured policy framework.

The sources of the penal law on archaeology in this chapter refers to the legal and regulatory instruments that impose the scientific control of archaeological research, protects and controls against trade in cultural, artistic and archaeological resources. Archaeology is a scientific discipline which deals with highly fragile and non-renewable archaeological resources. The legal protection thus plays a fundamental and decisive role in ensuring the protection and conservation of cultural heritage threatened by human activity. The protection of archaeological heritage by penal law occurs at three general levels (Rigambert, 1996) :

- i. Integrated protection of archaeological resources,

¹¹⁹ Michal Penol, Faculty of Law and Administration, University of Szczecin (Poland), Gabriela Narutowicza 17A, 70-240 Szczecin, Polska.

¹²⁰ *Traduction de Latin en Français : Pas de crime sans loi fixe et pas de peine sans loi pénale préalable*

- ii. Control of archaeological research and exploitation, and
- iii. Control of trade in cultural, artistic and archaeological resources.

In France penal protection of archaeology comes from various laws that have been put in place beginning with the 1941 law on archaeological regulations, a 1980 law, two laws enacted in 1989 and the law of 2001 on preventive archaeology which was amended in 2003. The law of 1941 was put in place in a very difficult context politically that its penal character qualified it to be referred to as ‘an administrative police’ kind of law whose aim was protection rather than organization of archaeology. Thus penal aspect of protection was the first to be applied before other aspects such as protection through civil law or legislation on urbanization among other laws (Rigambert, 1996, p. 115)¹²¹.

In Kenya, the aspects of penal law on heritage conservation are drawn from various laws and were first established right from the very first legal framework on monuments through the 1927 law known as the *Ancient Monuments Preservation Ordinance*.

In the year 1934, there was the first amendment of the above pioneer legislation on archaeological research and cultural heritage management. The Antiquities and Monuments Act of the year 1983 replaced the 1927 law more than a half a century later. Fifty years after independence, the National Museums and Heritage Act replaced the 1983 Act in the year 2006 (Oloo & Namunaba, 2010) thus introducing the concept of cultural heritage into the legal framework. Other aspects of protection such as protection under civil, environmental,

¹²¹ ‘Face à une science don’t la fragilité est extreme, la protection joue un role décisif. Ainsi, les deux grands textes législatifs sur l’archéologie que sont la loi de 1941 et celle de 1980 comportent, pour l’une, toute une partie concernant la protection civile, pour l’autre, lui est totalement consacrée’. For more details about penal protection of archaeology see Rigambert, C. (1996). *Le Droit de l’archéologie française*, Paris, Picard.

urban and physical planning legislations draw from and refer to the named pioneering Acts of 1927.

The main aspects of penal protection which distinguishes the two systems stems from the definition of what is to be considered as cultural heritage within the Kenyan and the French systems. Unlike in the Kenyan and in many other legislations, cultural heritage protection in the French legislation is based on the nature of what is to be protected without necessarily emphasizing on the age of the object (Rigambert, 1996, p. 115).

9.2.1 Legislation on the regulations of archaeological excavations in France

The Second World War period was a decisive moment in the protection, management and conservation of archaeological heritage in France. Individuals such as Jérôme Carcopino, who was both a historian and an archaeologist (Rigambert, 1996, p. 75), took necessary measures to protect archaeological heritage from illegal archaeological excavations and illicit exportation of archaeological and artistic heritage during the German occupation. Looking at the divergence between the history and the collective memory of the regime of Vichy, it had a great impact across different domains including cultural heritage policy (Karlsgodt, 2003, p. 301). Despite the importance of various laws enacted by the regime, according to E. Karlsgodt, the history of artistic heritage had a tendency of entirely omitting the fact that the laws were put in place during the German occupation. Karlsgodt postulates that the Second World War was indeed an important moment in the contemporary development of artistic heritage policy (Karlsgodt, 2003, p. 301). It is noteworthy that the development of archaeological policy was to a great extent influenced by artistic and architectural policies.

During the Vichy regime, various legislations were enacted though they were not fully enforced until during the period of restoration. In the aftermath of World War II they formed the basis of legislation that was put in place during the restoration period and thereafter.

The history of cultural heritage under Vichy reflects the dualism of continuity/rupture which often manifests itself in the studies of this period. A dozen of reforms were put in place during the war, more particularly between 1940 and 1942, majority of which had been proposed during the interwar period. The new legislative efficiency under Vichy maybe partly attributed to the circumstances of the war and the occupation. The circumstances included the absence of the Parliament, the need to protect the treasures of art from being bombarded and from German acquisition. There was also the Directorate of cultural services under voluntary high ranking civil servants such as Jérôme Carcopino, the then Minister of National Education (1941 - 1942), Louis Hauteceur, secretary general of arts (beaux-arts), and Jacques Jaujard, director of National museums and l'Ecole du Louvre {author's translation from French} (Karlsgodt, 2003, p. 301).

It was in the 1930s that Grenier, Carcopino and Albertini started to relate the challenge of French metropolitan archaeological excavations to that of French archaeology abroad with the desire to unite the two systems. This was due to a significant reduction in funding of archaeological excavations abroad in 1937 by the National Fund for Scientific Research (*Caisse nationale de la recherche scientifique*). The main aspects of the 1941 archaeological

law were already in place by 1937, having been conceptualised by the small group consisting of Carcopino, Grenier and Albertini (Reboul, 2009, p. 123).

As far as the State control over archaeological research was concerned, it was not until 1941-1942 that there was commitment to the organisation of archaeological research especially by the enactment of the Carcopino laws (Leclant, 1998, p. 7). The law of 27th September 1941 about regulations concerning archaeological excavations as was adopted by Jérôme Carcopino was the first one to establish the legislative framework for the protection of archaeological excavations, being enacted during the German occupation. C. Rigambert agrees with J.-P. Reboul that there was already a framework on archaeological law in the eve of World War II thus Carcopino just adopted it without adding anything to what was there (Rigambert, 1996, p. 75) since the 1941 law was ready by 1937¹²². However, while the above argument is valid, this law as well as that of 1942 may have received a new sense in the cultural project under the Vichy regime (Reboul, 2009, p. 123). The State initiatives of the regime and the attempts of cultural decentralization translates into the political good will of promoting both regional and national cultural heritage. As the Secretary of State under the Vichy regime, Carcopino's actions towards heritage were in two dimensions:

- i. on the one side he was concerned with the protection of artistic collections against illicit exportation and;
- ii. on the other he was concerned with the need to control metropolitan archaeology.

¹²² Gauthier, 1994 P. 7 cited in (Reboul, 2009, p. 123).

Carcopino thus demonstrated the government's defensive role towards cultural heritage protection during the period of German occupation (Corcy-Debray, 2003, p. 321).

The 1941 law remained operational as far as the regulation of archaeological research was concerned for quite a long period of time until it was modified in 2001 by the law concerning preventive archaeology.

Among the key changes that the 1941 law put in place, apart from declaration as stipulated in the 1910 proposed law, were:

- i. It made it mandatory to request for authorisation to conduct any archaeological excavation [Part I (titre I)];
- ii. The law established the framework for the State initiative by carrying out archaeological excavations on its own [Part II (titre II)]; and
- iii. It stipulated that all fortuity discoveries must be declared [Part III (titre III)] (Soulier, 2003, p. 430).

The 1941 law thus institutionalized and created a highly elitist archaeology through the control of excavations. The core aspects of the 1941 law are in the first article: 'No one can do excavation or prospection on his own land or on land belonging to another person in the search for monuments or objects of interest to prehistory, history, art or archaeology without prior permission' [our own translation from French]¹²³ (Reboul, 2009, p. 121). Similar regulations on archaeological excavations had been established by a circular of 13th March in 1838 under the Monarchy but were overturned by the law of 30th March 1887 under the

¹²³ « Nul ne peut effectuer sur un terrain lui appartenant ou appartenant à autrui des fouilles ou des sondages à effet de recherches de monuments ou d'objets pouvant intéresser la préhistoire, l'histoire, l'art ou l'archéologie sans en avoir au préalable obtenu l'autorisation [...] ».

Third Republic. The latter liberalized excavations and was associated with the triumph of intellectual societies prior to the First World War. However, the 1887 law was a stumbling block to the enactment of archaeological legislations until 1941 (Reboul, 2009, pp. 121-122).

The institutionalisation of an elitist archaeology through article 1 of the Carcopino law was officially the first step towards professionalization of archaeology in the metropolitan France. It meant that henceforth, amateurs could hardly initiate archaeological excavations of their interest since one had to prove that he/she was competent to carry out an excavation. However, all was not lost since the same law provided for the dissemination of scientific results from excavations which was no longer being adhered to by the intellectual societies. This was the genesis the *Gallia*, a scientific review (Reboul, 2009, p. 122). This was just the beginning of professionalization of archaeology which attained its fulfilment later under Jack Lang as the Minister of Culture (Soulier, 2003, pp. 441-444).

The law of 21st January 1942 on the other hand provided for the Secretary of State for the National Education and the Youth to be in charge of the national antiquities. At the same time the CNRS (the 15th Consultative Commission) had to assume the scientific direction of archaeological works as well as the publications. These involved the ancient Celtic, Greek and Gallo-roman research. The review, *Gallia* gave an impetus to these publications (Soulier, 2003, p. 431).

The State intervention in archaeological excavations was therefore first manifested through the enactment of the 1941 law on the regulation of archaeological excavations commonly referred to as 'Carcopino' law, after Jérôme Carcopino, the then Minister of Education. The law of 1941 established the State control of archaeological excavations and research. This was to be realised either through state control by way of authorization of excavations and

examination of the process or by State initiative through direct involvement of State agents in archaeological excavations as stipulated in Section I (*Titre I*) and Section II (*Titre II*) of the law respectively. Section I stipulates that the State can authorise anyone to conduct archaeological excavations while section II mandates the State to excavate on its own (Rigambert, 1996, p. 76). Between 1941 and 1974, according to L. Marchand, State intervention was mainly through Section I (*Titre I*) (Marchand, 2000, p. 78)¹²⁴.

The decree of 13th September 1945 reiterated the above two sections by stating precisely the manner in which State intervention was to be realised. The first section established that any person who wanted to carry out archaeological excavation must first get an authorization from the State. The excavation was supposed to ensure strict observation of the procedure as outlined in the law including:

- i. Showing the agreement between the land owner and the researcher, if it was on private land, with names of those to be involved;
- ii. Declaring any archaeological discoveries to the relevant authority;
- iii. The excavation must be done by the person who requested the permission and not to be left to any other person;

Thus the State was obliged to fix the conditions under which the activity was to be conducted, ensure strict observation of the set conditions failure to which it could even revoke the permission if the researcher who contravened the law.

¹²⁴ « Pendant trente ans, la quasi-totalité des fouilles exécuté sur le territoire national a été des fouilles de *Titre I*; ce n'est qu'à partir de 1974 [...] que toutes les fouilles de sauvetage ont été mises sous le régime du *Titre II* » (Marchand, 2000, p. 78)

The application of section I of the 1941 law showed the tendency for minimum State intervention: it only provided for the supervision of the excavation by the State. As such it was upon the researcher to plan for the entire process and to take all the risks since they had full responsibility. The individual researcher was the initiator of the activity and the State could only ensure the scientific control of the excavation based on the already stated research problem and the responses that were provided as well as how the research activity was conducted (Rigambert, 1996, p. 76; Marchand, 2000, p. 79). According to L. Marchand all excavations during that time were authorised under section I as was evident in the statement which appeared in all permissions that were delivered at the time: ‘You will be solely responsible for all accidents and damages that may occur during the work, in accordance with the terms of articles 2 and 3 of the validated law of September 27, 1941 ..., and the restoration of the places’¹²⁵ {Author’s translation from French} (Marchand, 2000, p. 79).

However, no one can proceed to the execution of any research activity without permission from the State even if one was to excavate one’s piece of land. The proprietary rights over land do not guarantee any privilege in this matter even though any precious materials discovered did not belong to the State¹²⁶ (Rigambert, 1996, p. 76).

In some cases, though few, there were prescriptions of excavations under section II, for instance the one at Glanum. In the decree of the State Council of 8th January 1959, it was

¹²⁵ « Vous serez seul responsable de tous les accidents et dégâts qui pourraient se produire lors des travaux, conformément aux termes des articles 2 et 3 de la loi validée du 27 septembre 1941 ..., et de la remise en état des lieux »

¹²⁶ The cave of Lascaux (la grotte de Lascaux) discovered in 1943 did not belong to the State until in the 1970s (Rigambert, 1996, p. 76).

stipulated that the Administration took the responsibility of the damages caused by the researcher¹²⁷. The term salvage excavation appeared for the first time in the decree N° 64-358 of 23rd April 1964 but still operated under section I of the law (Marchand, 2000, p. 79).

After the intervention through regulation of archaeological excavations, the second State intervention in cultural affairs was the 1959 creation of the Ministry of Cultural affairs. As already said, this was the most decisive and thus considered as the moment of the official invention of the French cultural policy (Piorrier, 2004, p. 394; 398).

After a long period of salvage interventions based on the legislation on urban development and the 1941 law, it was evident that the French system of salvage archaeology had loopholes that had to be sealed through a new law. This came as a result of a series of conflicts between archaeologists and developers as the State was held responsible for the shortcomings of the 1941 law. The change was a long process that was shaped across the mandates of various personalities that held the Ministry of Culture with concrete results becoming more evident following the emergence of the Malta Convention.

The arrival of Catherine Trautmann at the Ministry of Culture took place in a context that was quite favourable to the expansion of cultural services at the MCC. This also received the impetus from the influence of the Malta Convention of 16th January 1992 which was ratified by France. In what appeared to be the most decisive move, the minister after considering the grievances of archaeologists aired through the AFAN, requested for a specialised scientific investigation. This culminated in the Demoule-Pêcheur-Poignant

¹²⁷ The excavations in question were initiated in 1921 by J. Formigé and P. de Brun then continued after 1942 by H. Rolland who was designated by the Ministry of Culture, as was elaborated in (Marchand, 2000, p. 79).

report which paved the way for the law N° 2001-44 of 17th January 2001 about preventive archaeology.

9.2.2 Protection of archaeological heritage by penal law in Kenya

In the above discussion it has been observed that the penal protection of archaeological and cultural heritage in France is drawn from laws that were established to specifically protect archaeological research and cultural heritage. In Kenya such protection still draws from the law on national museums and heritage.

9.2.3 Integrated Protection of Archaeological Heritage

The term integrated protection as applied in this topic refers to the wholesome approach to the protection of every cultural heritage that can be identified through archaeological study. This level concerns the protection of the entire archaeological heritage from two main threats; concealing information about archaeological resources and destruction of an archaeological site. Three types of actions are envisaged: the first one is about those actions whose intention is to conceal the knowledge of archaeological heritage in itself: the non-declaration of fortuity discovery and the non-declaration of maritime cultural heritage. The second deals with actions that threaten to directly destroy the archaeological objects or sites. The associated terms include reprimand for destruction of an archaeological site (Rigambert, 1996, p. 116).

In France, all laws and regulations concerning cultural heritage were integrated into one document; the Heritage Code (*Code du Patrimoine, Livre V, Archéologie*). These codifies among others:

- (i) The law of 27th September 1941 about regulations on archaeological excavations(*loi portant réglementation des fouilles archéologiques*);
- (ii) The law N° 89-874 of 1st December 1989 concerning maritime cultural properties (*loi relative aux biens culturels maritimes*);
- (iii) The law N° 2001-44 of 17th January 2001 about preventive archaeology (*relative à l'archéologie préventive*) which was modified by the law N° 2003-707 of 1st August 2003 (Guillot, 2006, p. 23).

The law considers that the essence of scientific work is the in-depth knowledge of the subject matter which is also the main preoccupation of archaeologists. Their first question concerns the presence of archaeological objects, sites, artefacts or fossils, their significance in terms of their concentration and distribution pattern. It is from this knowledge that archaeologists can proceed to the excavations and research which may yield archaeological heritage that merits conservation. It is for this purpose therefore that the law makes it mandatory for any chance discovery to be declared to the relevant authorities for purposes of enhancing research and knowledge about the past.

Article 14 of the 1941 law provided the principle of declaration of all discoveries made by fortuity. The offender if found should pay a fine of between 500 to 1500 Francs which would be equivalent to between 76 and 229 €. This punishment was lenient as compared to the value of the material in question. For instance, if one could come across an artistic material or a treasure whose value exceeded the set penalty, the person may opt for the payment of the penalty and make profit from the illicit trade in the sale of the treasure. However, the 2001 law about preventive archaeology increased the punishment to a fine of 3750 € as stipulated in Article L544-3 of the Heritage Code (*Code de Patrimoine*):

« Le fait, pour toute personne, d'enfreindre l'obligation de déclaration prévue à l'article L. 53114 ou de faire une fausse déclaration est puni d'une amende de 3 750 Euros » (the failure to declare or false declaration by a person attracts a fine of 3750 €).

According to Article L544-1 of the Code de Patrimoine:

Est puni d'une amende de 7 500 Euros le fait, pour toute personne, de réaliser, sur un terrain lui appartenant ou appartenant à autrui, des fouilles ou des sondages à l'effet de recherches de monument ou d'objet pouvant intéresser la préhistoire, l'histoire, l'art ou l'archéologie : a) Sans avoir obtenu l'autorisation prévue aux articles L. 531-1 ou L. 531-15 ; b) Sans se conformer aux prescriptions de cette autorisation ; c) Malgré le retrait de l'autorisation de fouille en application des dispositions de l'article L. 531-6.

9.3 Protection of Cultural Heritage by International Law

The normative protection of cultural heritage at the international level began in the 19th century through the borrowing of legislative frameworks on cultural heritage protection first among the European countries before introducing similar legislations in the rest of the world. This started with the protection of antiquities and historical monuments which led to the enactment of the first laws on the protection of what would later be referred to as cultural heritage. The legislation had a lot of similarities as each system emphasised on the antiquities and monuments. The process involved establishment of networks and collaborations as well

as rivalry among archaeological associations, conservationists and among countries in Europe as they scrambled for colonies in Africa, in the Middle East and the Far East (Gran-Aymerich, 1998). Gradually, administrative systems evolved followed by the emergence of regulations on archaeological excavations (Swenson, 2011, p. 140).

The trend took a different turn in the aftermath of the World War II especially in the Western European countries (Gran-Aymerich, 2009), which were realising unprecedented development works during the reconstruction and the restoration process. The great wars also led to the emergence of new forms of international relations manifested through the development of international organizations such as the League of Nations, the United Nations Organization and the European Union. One of the key aims of the United Nations organization is to promote world peace. Given the centrality of culture in the promotion of world peace, United Nations Educational, Scientific and Cultural Organization was established as one of the UN agencies to promote world peace through cultural cooperation, cultural exchanges and activities among the member states. Through various conventions and recommendations, UNESCO has greatly influenced and impacted cultural policies across the world.

Cultural heritage has received attention from various international organizations including the UNESCO through ICCROM and ICOMOS, the European Union, the African Union and the World Bank. This chapter will not be exhaustive on the contribution of each organization because they have featured at different levels. It will only look at selected elements of international legal framework on cultural heritage management.

9.3.1 UNESCO Conventions, Treaties and Recommendations

Since the end of the World War II cooperation in the field of heritage management has been integrated into various international texts such as the UNESCO recommendations, treaties and conventions as it has been discussed in this section. According to J.-P. Demoule, the international scientific community adopted a number of recommendations and conventions due to the sensitivity to the destruction of archaeological heritage brought about by the rapid economic development of the post-war years (Demoule, 2012, p. 612).

Destruction of cultural heritage and property is an ancient heinous act which has been used both as a source of finances for war activities and as a weapon of war since time immemorial (Isakhan & Meskell, 2019). Just like the violation of other fundamental human rights, destruction of cultural property such as monuments and historical buildings has been variously employed in war to inflict an immeasurable pain to the afflicted as they witness their precious memories perish at the hands of their aggressors. During the Antiquity, the Roman wars of conquest led to the destruction of a lot of valuable cultural property which would have today served as a common heritage for humanity with immense outstanding universal values. The destruction and pillage of the Jewish Great Temple in Jerusalem in 70 AD, the destruction of the city of Carthage and that of Corinth in 146 AD are some examples of such destruction by the Roman wars of conquest (Isakhan & Meskell, 2019).

It was such circumstances among others that rendered it inevitable to consider the protection of cultural heritage not only as a national but also a regional and an international issue. It thus became necessary to formulate and apply international law and standards on cultural heritage not only to protect against devastating effects of war but also to put in place

preventive and remedial mechanisms that may predict the possible impact and prescribe the necessary steps to be taken by governments and cultural heritage practitioners.

In the contemporary history, the vice still persists in many parts of the world with even more devastating impact on cultural heritage than ever before as was the case in Iraq and Syria. In June 2014, for instance, Abu Bakr al-Baghdadi declared the creation of a new Islamic State (IS), which was to stretch across the borders of Iraq and Syria and appointed himself the leader of all Muslims. What followed was a series of events with devastating impacts not only on the lives of humanity as a gift of Mother Nature but also on the future of the memory of the world's most ancient civilizations and the long cherished and invaluable cultural heritage of the people of Syria and Iraq (Isakhan & Meskell, 2019).

[...]As they had done across the vast territories they controlled, after capturing Mosul, the IS unleashed a cataclysmic wave of human suffering and heritage destruction (Isakhan 2015; Kilcullen 2016). In terms of human suffering, the IS enacted genocidal pogroms against several minority communities, executing thousands and dumping their bodies in mass graves, kidnapping women to be used as sex slaves and forcing many thousands more to flee for their lives. In terms of heritage destruction, once they had captured the city of Mosul, the IS undertook a systematic iconoclastic programme which saw the razing of countless cultural and religious sites. Perhaps most notoriously, the IS filmed and then distributed videos of themselves destroying statues at the Mosul Museum as well as blowing up remains at nearby archaeological sites such as Nineveh and Nimrud. As part of this iconoclastic programme, in July 2014,

the IS destroyed the Nebi Yunus mosque, a contemporary mosque built atop an archaeological mound housing the remains of an ancient Assyrian palace dating back to the seventh century BCE. Before they decimated the site, the IS loaded easily moveable valuables into trucks to be carted off for sale. Then, they cleared the mosque and the local area, warning residents of the impending explosion. They rigged explosives across the site before a massive explosion sent a giant brown mushroom cloud into the sky, reducing the mosque to rubble (Isakhan & Meskell, 2019).

9.3.2 UNESCO Recommendation of 1956 and 1962

The Recommendation on International Principles Applicable to Archaeological Excavations was adopted in 1956 at New Delhi by the UNESCO. This recommendation reminds States and all humanity of the responsibility to protect archaeological sites. It goes beyond the responsibility by reaffirming the importance of the knowledge of the past civilization for the better understanding among different groups of people (Demoule, 2012, pp. 612-613). This was followed by the 1962 UNESCO Recommendation concerning the *Safeguarding of the Beauty and Character of Landscapes and Sites*. Being just but recommendations meant that their capacity as binding documents was limited to that of making it an obligation for States to mobilise resources towards protection of sites with minimum consideration of archaeological heritage. They did not have a great influence on the signatory States (Demoule, 2012, p. 613). This necessitated the move by the UNESCO from simple recommendations to include charters, treaties and conventions which are more legally binding documents under the international law.

9.3.3 UNESCO 1964 ICOMOS International Charter for the Conservation and Restoration of Monuments and Sites (Venice Charter)

The International Charter for the Conservation and Restoration of Monuments and Sites (Venice Charter) was born from the second International Congress of Architects and Technicians of Historic Monuments, which met in Venice from May 25th to 31st 1964. It emerged at a time when new and more complex challenges were facing the conservation of monuments and sites across the world. For a period of thirty years, 1964 to 1994 when it was modified by the Nara Document¹²⁸, it was very instrumental in the conservation and restoration of monuments and sites across the world. Brainchild of the Venice Charter, the International Council for Monuments and Sites (ICOMOS) which was created in 1965 in Warsaw has developed partnerships between UNESCO and many States as well as other organizations in the restoration of monuments and sites and has drawn membership from all over the world.

The Venice Charter was the second document after the Athens Charter of 1931 to set the basic principles of conservation. By defining the basic principles for the first time, the 1931 Athens Charter contributed towards the development of an extensive international movement which has assumed concrete form in national documents, in the work of ICOM and UNESCO and in the establishment by the latter of the International Centre for the Study of the Preservation and the Restoration of Cultural Property (ICOMOS, 1965 (1964)).

The principles considers that the historic monuments of generations of people which are imbued with a message from the past remain to the present day as living witnesses of their

¹²⁸ The Nara Document was developed in a meeting in Nara Japan in the year 1994 by Japanese conservation professionals

age-old traditions. In this respect, people are becoming more and more conscious of the unity of human values and regard ancient monuments as a common heritage. Thus the common responsibility to safeguard them for future generations is recognized and it is our duty to hand them on in the full richness of their authenticity (ICOMOS, 1965 (1964)). The Venice Charter formally institutionalised the concept of authenticity which became an important as well as an integral aspect of conservation of monuments and sites at an international level. The concept was also emphasised by the Convention Concerning the Protection of the World Cultural and Natural Heritage (henceforth cited as the *World Heritage Convention*) (UNESCO, 1972; Poullos, 2014, p. 11). Based on this consideration various monuments have been selected for inscription to the World Heritage List. However, scholars have observed that the notion of authenticity was to a large extent based on Eurocentric practices of conservation while disadvantaging quite a majority of heritage practices particularly from Asian, American and African contexts.

The Nara Document was developed in a meeting in Nara Japan in the year 1994. It was developed through concerns by Japanese conservation professionals that their approaches to conservation were being misunderstood by the World Heritage Council and ICOMOS based on the Eurocentric principles of conservation (Stovel, 2008, p. 9). The document improved the principles of conservation by legitimizing Japanese and hence many other conservation practices by recognising that:

...all judgments about values attributed to cultural properties as well as the credibility of related information sources may differ from culture to culture, and even within the same culture. It is thus not possible to base judgements of values and authenticity within fixed criteria. On the

contrary, the respect due to all cultures requires that heritage properties must be considered and judged within the cultural contexts to which they belong.

Under the influence of the Nara Document, several meetings were held in different parts of the world echoing similar concerns. These include several key regional follow-up meetings that applied the themes of Nara in a particular regional context such as San Antonio for the Americas, Great Zimbabwe for Africa, and Riga for Eastern Europe (Stovel, 2008, p. 9).

9.3.4 UNESCO Recommendation concerning Preservation of Cultural Property Endangered by Public or Private Works, Paris, 1968

Among the earliest measures to be taken by the UNESCO with direct reference to preventive or rescue archaeology was the 1968 UNESCO recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works. It was adopted at the UNESCO fifteenth session held in Paris, 1968. This document did not only look at the prevailing challenges of rapid industrialisation and urbanisation but also projected into the future of human civilization.

Among its key considerations was that contemporary civilization and its future evolution rests upon other elements, the cultural traditions of the people of the world, their creative force, and their social and economic development (UNESCO, 1968). The relationship between culture, creativity, social and economic development at such a time when the world and more precisely Europe had been devastated by the World War II sounded like a call for cultural consciousness to the States and scientists. It was partly because Europe was urgently in need of reconstruction of its industrial base and cities which had been devastated by the war. Thus, according to J.-P. Demoule, the urgency had initially pushed rescue archaeology

to the background (Demoule, 2012, p. 612) making it necessary to take such interventional measures.

The emergence of environmental impact assessment in the 1960s and 1970s opened a new chapter in the cultural resource management discourse. This was an important evolution which brought together cultural heritage managers, museum curators, conservation specialists, archaeologists among others to discuss the key issues affecting heritage conservation in the context of urbanization and major economic development projects. The introduction of EIA and the inclusion of CHIA had a great impact on cultural heritage management in Africa as was observed by J. Taboroff and C. C. Cook:

The information assembled for the purpose of making cultural heritage impact assessments can be extremely useful in deepening and extending our knowledge of Africa's past. Development projects that have included archaeological surveys, such as the Volta Basin Project in the mid-1970s, the Kafue Dam in Zambia, and the Lesotho Highlands Water Project, have contributed greatly to African archaeology. To make full use of [EAS], the findings must become part of the information base on cultural heritage. Of equal importance, it must be made accessible to project and government planners, thus requiring a suitable information retrieval system (Taboroff & Cook, 1993, p. 2)

The second consideration refers to cultural property as ‘the product and witness of the different traditions and of the spiritual achievements of the past’ thus acknowledging that it is an indispensable element in the personalities of the peoples of the world. Just like in the

Eric Erickson's psychosocial theory of human development, the human society and people within a given civilization undergo various stages of psychological and social adjustment that translates into their group identity by association. The third consideration complements the second where it emphasizes the need for conservation so that the significance and message of cultural property become a part of the spirit of peoples who may gain consciousness of their own dignity (UNESCO, 1968).

Following systematically from the above, the fourth and fifth considerations talk about peace and well-being of the people. Peace can be achieved through the preservation and rendering accessible of cultural property which promotes mutual understanding among people (UNESCO, 1968). Rendering accessible also has economic value through cultural tourism.

However, while observing the indispensable role of industrialization and urbanization, the committee noted that prehistoric, historic monuments and remains as well as recent structures having artistic, historic or scientific importance are increasingly threatened by public and private works resulting from industrial development and urbanization (UNESCO, 1968). It then recommends that salvage and rescue measures should be taken which should be preventive in nature through measures including:

- a) legislation;
- b) finance;
- c) administrative measures;
- d) procedures to salvage and to preserve cultural property;
- e) penalties;
- f) repairs;
- g) awards;

- h) advice; and
- i) educational programmes.

For more than half a century, this recommendation has had very less impact in most of the signatory States especially in Africa. In most African countries cultural heritage management is yet to be considered as part and parcel of development planning and cultural policy has not yet been fully integrated into sustainable economic development policy. As N. Arazi justly observes, ‘most of heritage legislations in Africa still dates to the 1960s and 1970s, an era during which the notion of protecting cultural heritage from destruction by changing social and economic conditions was only starting to take shape’ (Arazi, 2011, p. 28; Munjeri 2008). In as much as the notion was still at its early stages of evolution, three main zones of organization of preventive archaeology could be discerned in Europe from 1950 to 1980 (Hodder 1991, Gathercole & Lowenthal, 1994, Graves-Brown et al. 1996, Lozny 2011)¹²⁹.

In the Eastern and Central Europe, Demoule describes the organisation of preventive archaeology in the Soviet bloc where the economic system was under State control. Cultural promotion policy was encouraged on behalf of popular education especially in the Balcans. A lot of museums were built presenting archaeology, history and ethnology of each region with significant resources being channelled towards rescue excavations since all developers were dependent on the State. Within the Soviet bloc excavations were organized under a ministry of culture and managed by regional museums with each having its team of archaeologists. However, scientific programs were decided on and carried out in each country by a national archaeological institute dependent on the Academy of Sciences. In

¹²⁹ See (Demoule, 2012, p. 613).

such organization, the role of universities was much limited due to scarcity of resources (Demoule, 2012, p. 613).

The interest of the Marxists being the study of the functioning of the society, they privileged excavating large areas with high quality theoretical and methodological framework. For example the Polish archaeologists, with Stanislas Tabaczinsky, who led the first excavations of medieval villages in France in the 1960s applied a more or less similar perspective (Demoule, 2012, p. 614).

North-western Europe comprising of countries such as Germany, Scandinavia and the United Kingdom, as justly noted by Demoule, kept intact its long standing scientific tradition where large-scale rescue excavations were organized under a national archaeological service. Such national services included the English Heritage in the United Kingdom or the *Rijksdienst voor het Oudheidkundig Bodemonderzoek* (ROB) in the Netherlands (Demoule, 2012, p. 614; Willems et al. 1997).

9.3.5 UNESCO 1972 Convention concerning the Protection of the World Cultural and Natural Heritage

The UNESCO Convention on the Protection of the World Cultural and Natural Heritage of 1972 brought harmony between the conservation of cultural and natural heritage. The convention became influential in shaping environmental and cultural policies globally at the time when environmental considerations for development were just beginning to emerge through the Green Belt Movement especially in Kenya led by Wangari Maathai. France ratified this convention on 27th June 1975 while Kenya ratified the same on the 5th of June 1991. Until the 31st of January 2017, there were 193 State Parties to the Convention.

In the 1972 UNESCO Convention, one of the considerations was that the national protection of cultural and natural heritage remains incomplete *because of the scale of the resources which it requires and of the insufficient economic, scientific, and technological resources of the country where the property to be protected is situated*. In Kenya much attention has been concentrated on the protection of natural heritage because its high economic potential was noticed earlier through tourist activities. It also received a lot of attention due to local and international pressure via some pressure and interest groups as well as individual personalities such as Dr Richard Leakey whose political role and influence led to drastic measures to protect both the natural and cultural heritage in Kenya. Through his efforts the government managed to declare war on poaching of elephant tusks in Kenya.

Through Richard Leakey, Leakey family's commitment to archaeological research in Kenya together with the emergence of local archaeologists such as Karega Munene, Simiyu Wandiba and Henry Mutoro just to mention but a few, cultural heritage received varied and unmatched attention especially through establishment of bilateral and multilateral partnerships with the National Museums of Kenya and local research institutions. This was after noticing the limited availability of funding of archaeology in Kenya coupled with various gaps in the heritage legislation. The gaps ranged from the conceptualization and identification of what constitutes cultural heritage to the assessment of its value and subsequent protection through study, valorisation and promotion at local, national, regional and international levels.

Archaeological heritage is one of those areas that have received divided attention at the local level even as archaeological research in Kenya has attracted global attention while the National Museums of Kenya stands as a key institution in archaeological research within Sub Saharan Africa.

The 1972 UNESCO Convention however failed to provide a platform to revamp cultural heritage management systems in sub-Saharan Africa where the universal approach to heritage led to persistence in the protection of archaeological heritage based on the colonial perspectives and legislations. Even still, there was very less, if any, effort to encourage research in this field within local universities until the 1980s and 1990s when a new breed of researchers started to emerge as the discipline received local graduates.

At the same time since the late 1980s and early 1990s, there came Structural Adjustment Programmes (SAPs) which introduced cost sharing in provision of public amenities including educational services between the government and the citizens. To remain resilient, Kenyan public universities had to embrace a business oriented rather than a purely scientific research policy by coming up with parallel programmes which gradually became expensive while unemployment took an upward trend. The university teaching programmes attests to the fact that courses are dictated by and generated to meet market demands even as they try to address and answer difficult scientific questions. This state of affairs may be attributed to the harsh economic conditions witnessed from the last two decades of the twentieth century, which saw the adoption of Structural Adjustment Programmes (SAPs) in Kenya.

Since the adoption of SAPs, higher learning in Kenya became an individual's burden and the cost of university education has kept on increasing from time to time as the sector was opened to the free market liberal economic principle of demand and supply. Given the high cost of higher education in Kenya, the government established the Higher Education Loans Board (HELB) in order to advance educational loans at a low interest rate to learners. Given the escalating rate of unemployment and the high cost of higher education in Kenya, demand for cultural conservation and related courses declined as demand for business courses increased. Learners' attention automatically shifted to business-oriented courses and highly

competitive disciplines, which have a high potential for job recruitment after graduation deserting areas of public interest. It is at this juncture that the role of the government in the conservation of cultural heritage was negatively impacted. Cultural heritage is a public good thus its protection squarely lies with the government either directly by shouldering the cost or indirectly through appropriate legislation, for instance by replacing government funding with polluter-pay principle. The 1972 Convention advised State Parties to ensure cultural and natural heritage have a function in the community life and to incorporate the protection of this heritage in the development planning but without relevant policies and public good will this was almost impossible in Kenya.

According to article 5 of the 1972 UNESCO Convention, in order to ensure that effective and active measures are taken, for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

- i. to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;
- ii. to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions;
- iii. to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage;

- iv. to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and
- v. to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field (UNESCO, 1972).

In Kenya some of the provisions of this section of the 1972 UNESCO were incorporated into the National Museums Act of 1983. According to section 3 of this act, the functions of the National Museum were; (a) serve as national repositories for things of scientific, cultural, technological and human interest, (b) serve as places where research and dissemination of knowledge in all fields of scientific, cultural, technological and human interest may be undertaken.

This legislation together with the Antiquities and Monuments Act cap 215 of 1983 gave the Minister in charge of Culture the role and gave the National Museums the mandate to ensure the protection and conservation of the country's cultural heritage.

Through ratification and implementation of the UNESCO 1972 Convention, various sites have been identified in Kenya and inscribed into the list of the UNESCO World Heritage Sites. Some of these sites have been discussed in in details in this study including Thimlich Ohinga Archaeological World Heritage site listed in the year 2018 and Lamu Old Town World Heritage site listed in the year 2001, and Fort Jesus World heritage site in Mombasa to mention but a few.

9.3.6 UNESCO Mexico City Declaration on Cultural Policies: World Conference on Cultural Policies Mexico City, 26 July - 6 August 1982

Section 10 of the 1982 UNESCO Mexico City Declaration on Cultural Policies states that culture constitutes a fundamental dimension of the development process which helps to strengthen the independence, sovereignty and identity of nations. It also made an important observation which agrees with the observation made in relation to the prevailing development projects not only in Kenya but also in Africa and beyond. The observation was *that growth has frequently been conceived in quantitative terms, without taking into account its necessary qualitative dimension, namely the satisfaction of man's spiritual and cultural aspirations*. The section thus affirms that the *aim of genuine development is the continuing well-being and fulfilment of each and every individual*. The latter echoes those elements that qualify any development project as sustainable. Even as the quantitative part of any development is important especially due to the perceived immediate economic gratifications, it is the qualitative part that may render the project more acceptable to the target beneficiaries. This is also an element of social licencing to operate (SLO) which emphasizes not only the economic benefits but also by the long term social, cultural, environmental and political outcomes.

9.3.7 UNESCO 1987 ICOMOS Charter for the Conservation of Historic Towns and Urban Areas (Washington Charter)

Following in the spirit of the Mexico declaration and the Venice charter on the conservation of sites and monuments, the UNESCO 1987 ICOMOS Charter for the Conservation of Historic Towns and Urban Areas (Washington Charter) was enacted. The charter begins with an acknowledgement that many historic urban areas are being threatened, physically

degraded, damaged or even destroyed, by the impact of the urban development that follows industrialisation in societies everywhere. To a greater extent the charter agrees with the Environmental Kuznets Curve (EKC) hypothesis which guided this study.

According to the UNESCO "Recommendation Concerning the Safeguarding and Contemporary Role of Historic Areas" (Warsaw - Nairobi, 1976), and other international instruments, "the conservation of historic towns and urban areas" is understood to mean those steps necessary for the protection, conservation and restoration of such towns and areas as well as their development and harmonious adaptation to contemporary life. This study looked at the LAPSSET project in the light of the Environmental Kuznets Curve where development of such magnitude threatens historic towns such as Lamu Old Town which is a world heritage site. Along the entire corridor, the area around Lamu attracted a lot of debate between the State party and the UNESCO especially about the strategic plan to ensure the safeguarding of the old town and its outstanding universal values.

The first principle of the UNESCO 1987 charter categorically states that ' In order to be most effective, the conservation of historic towns and other historic urban areas should be an integral part of coherent policies of economic and social development and of urban and regional planning at every level'. This however was a challenge since the project implementation began long before such measures were fully put in place. The National Museums of Kenya through technical and financial support from UNESCO and the Netherlands Funds-In-Trust conducted an HIA exercise of the LAPSSET project in the year 2014. The charter provides the methods and instruments of conservation of historic towns and urban areas where multidisciplinary studies should precede any planning for such conservation. While planning, all relevant factors should be taken into consideration which include archaeology, history, architecture, techniques, sociology and

economics. Whatever the nature of a disaster affecting a historic town or urban area, the charter recommended the adaptation of preventative and repair measures to the specific character of the properties concerned. This is the aim of preventive archaeology in the context of development which may pose threats to existing or underground heritage resources.

The charter was enhanced by the UNESCO 2005 Vienna Memorandum on World Heritage and Contemporary Architecture – Managing the Historic Urban Landscape.

9.3.8 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005

Despite the fight for independence and the subsequent adoption of the country's first development blue print, the *African Socialism Sessional Paper Number 10*, the independence government failed to consolidate Kenya's cultural policy that embraces the country's cultural diversity for national integration and development. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO, 2005) is one of the texts that have most impacted Kenyan cultural policy in the twenty first century. It was ratified in France on 18th December 2006 and in Kenya on 24th October 2007. The aim of the convention is to support:

- i. National policies and measures that promote creation, production, distribution and access with regard to diverse cultural goods and services and contribute to informed, transparent and participatory systems of governance for culture;
- ii. Preferential treatment measures that facilitate a balanced flow of cultural goods and services and promote the mobility of artists and cultural professionals around the world; and

- iii. Sustainable development policies and international assistance programmes that integrate culture as a strategic dimension.

The Kenya 2016 UNESCO report highlighted the policy measures and activities relevant to the key priority areas of the convention which have been undertaken including; the policies and measures related to provision of enabling environment for enjoyment of culture as a basic fundamental human right, policies related to creation, production and distribution of cultural expressions, protection of copyrights, integration of culture in development and activities related to awareness raising, activities on international cooperation and activities by civil society organizations on promotion of cultural and creative industries in Kenya (UNESCO, 2016).

Some of the main achievements in implementation of the Convention in the four year period under consideration in the report included;

Contribution towards cultural policy reforms where the convention influenced the review of Kenya's National Culture and Heritage Policy which has now incorporated the promotion of creative cultural industries as an important category of the cultural sector. The Convention was one of the key reference documents in the formulation of the draft Culture legislation that envisages establishment of a culture and arts council that will focus on promotion of national cultural expressions. The Board of the council will be representatives from the diverse cultural organization representatives. Also the Convention was a key reference document in formulation of the draft East African Community Creative and Culture Industries Law.

There was enhanced awareness of the contents of the Convention by stakeholders and civil society achieved through collaborations in dissemination workshops and programmes by

the department of culture, Kenya National Commission for UNESCO and Nairobi UNESCO Regional Office for East Africa. The awareness raising targeted county government's officials, cultural actors, artists and civil society.

There is greater participation of cultural actors and civil society in policy reforms in Kenya which has enhanced governance and ensured that government policies are responsive to the needs of the sector. Civil society is now more eager to partner more with government while still keeping government on its toes.

Among the main challenges encountered in implementation of the Convention were;

- i. Lack of a coordinated national framework on implementation of the Convention.
- ii. Lack of official cultural statistics that has negatively affected fiscal and political decisions.
- iii. Inadequate legislative and institutional framework to promote the cultural and creative cultural sector.
- iv. Inadequate cultural infrastructure and spaces for cultural expression
- v. Lack of awareness and non-appreciation on the role of culture in development by key policy makers.

The law that was promulgated on 7th July 2016 in France about the freedom of artistic creativity, architecture and culture was also highly influenced by the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions¹³⁰. It

¹³⁰ « La loi relative à la liberté de création, à l'architecture et au patrimoine a été promulguée le 7 juillet 2016. "Un texte qui porte haut l'ambition de la France pour la culture », a salué la ministre de la Culture et de la Communication.

Grands principes et mesures concrètes : telle est l'alchimie du projet de loi sur la liberté de création, l'architecture et le patrimoine présenté le 8 juillet par la ministre de la Culture et de la Communication en

was a comprehensive legislation which aimed at the modernisation of heritage for better protection. For the very first time, the law provides for the management of UNESCO world heritage properties. It also simplified the different types of protected areas by substituting the unique label into three terms; that of Historic city and makes flexible the urbanization regulations. About preventive archaeology, it also changed the system protection of protection of archaeological heritage by providing a public system of protection of archaeological resources. This law was promulgated after I had defended my master 1 thesis (16th June 2016) when the ownership of archaeological objects was shared between the owner of the land and the person who discovered thus leaving the archaeological heritage at the risk of total disappearance. The new law aims at reducing such risks by making it archaeological heritage discovered during archaeological excavations in France a public property as stipulated in article 70 of the 2016 law. According to the then Ministry of Culture this was for the better protection of heritage:

Mieux protéger le patrimoine

Autre volet important : la modernisation de la protection du patrimoine.

Ainsi, le projet de loi consacre pour la première fois la gestion des biens classés patrimoine mondial de l'Unesco, dont deux nouveaux sites viennent d'être désignés le 4 juillet, la Champagne et la Bourgogne. Il simplifie également les différents types d'espaces protégés en substituant

Conseil des ministres. Lors de l'examen en 2e lecture au Sénat, Audrey Azoulay, a rappelé mardi 24 mai les "enjeux" du projet de loi : "affirmer la liberté de création, et de façon corollaire, la liberté de diffusion et de programmation ; promouvoir la transparence et la concertation dans les industries culturelles ; favoriser la qualité architecturale et encourager l'amélioration de notre cadre de vie ; clarifier les dispositifs et affirmer la responsabilité scientifique de l'État, dans le domaine du patrimoine".

Ministère de la Culture, <https://www.culture.gouv.fr/Actualites/Loi-creation-une-nouvelle-ambition-pour-la-culture>

un label unique à trois appellations : celui de Cité historique, et assouplit les règles d'urbanisme. S'agissant de l'archéologie préventive, le projet de loi met notamment en place un régime public de propriété des biens archéologiques pour l'avenir, rendant possible une meilleure conservation du patrimoine de la Nation. Il consacre la notion d'ensembles mobiliers archéologiques cohérents, visant à diminuer le risque de dispersion des collections archéologiques.

The Constitution of Kenya of 2010 whose article 11 stresses on cultural diversity provided the legal platform to revolutionise the cultural policy. Archaeological heritage however, still receives minimum attention in the practice of environmental impact assessment even in some areas whose underground is potentially rich in archaeological resources. The policy did not provide any framework about archaeological scientific endeavours relating to major development projects with potential threats on heritage.

9.3.9 I COMOS Charter for the Protection and Management of the Archaeological Heritage (1990)

Article 3 of the ICOMOS Charter for the Protection and Management of the Archaeological Heritage (1990) clearly stipulates that ‘the protection of the archaeological heritage should be considered as a moral obligation upon all human beings; it is also a collective public responsibility. This obligation must be acknowledged through relevant legislation and the provision of adequate funds for the supporting programmes necessary for effective heritage management’. In Kenya efforts have been made to put in place the necessary legal and institutional infrastructure but the big challenge remains their effective implementation due to lack of funds and lack of information about archaeological heritage in the general public.

9.4 Protection from the Council of the European Union

9.4.1 Malta Convention (La Valeta) of 16 January 1992

The European Convention on the Protection of Archaeological Heritage commonly referred to as the Valletta Convention of 1992 was a product of international relations which aimed at the achievement of peace through cultural and scientific research. Having much in common in terms of history and cultural heritage, the EU through the Council of Europe sort to protect archaeological heritage threatened by development works as a source of the collective European memory and as an instrument of historical and scientific study (Conseil de l'Europe, 1992). This was a landmark legislation on matters of preventive archaeology which was adopted the State Parties. The Convention echoed the principle ideas of the ICOMOS Charter of 1990 by setting the ground for the adoption of legislations that would oblige State Parties to enhance their legal framework on protection of archaeological heritage.

Given the level of societal consciousness towards archaeological heritage and its role in the understanding of the history of humankind there was the enactment of laws and creation of institutional framework to ensure the effective management of archaeological heritage. Financing of preventive archaeology as also a major legislative issue that was part of the provisions of Malta Convention. However, some differences can be observed across the systems. Key among these touch on the questions of commercialization of preventive archaeology and the necessary State intervention in the matters of scientific control and the management of the archaeological objects discovered.

In the ninth affirmation, the Stockholm Conference on Cultural Policies called on the governments to endeavour to achieve closer partnerships with civil society in the design and

implementation of cultural policies that are integrated into development strategies (UNESCO, 1998). It was the integration of cultural and development policies that led to the mutually satisfying and reinforcing nature of enhanced cultural heritage management systems for sustainable development in France and other countries in Europe.

9.4.2 Elements of comparative legislation on preventive archaeology in Europe (Sénat, 2011)

131

Country	FRANCE (Law N° 2003-707 and 2004-804)	GERMANY	ENGLAND (planning policy guidance 16)	DANEMARK (Law of 7 June 2001)	SPAIN (Law of 13 October 1998, Cantabrie)	ITALY (Legislative decree of 22 Jan 2004)	NETHERLANDS	SWEDEN (Law of 1988 on historical heritage)
Steps								
The triggering event	Development on sites identified as rich in archaeological heritage	Discoveries in fortuity		Works revealing evidence of remains.	Fortuitous discoveries and areas likely to contain vestiges.		Discoveries in fortuity	Discoveries in fortuity
Main institutional actors and bodies competent to prescribe preventive archeologic operations	Exclusive jurisdiction of the State (exercised by the regional prefect).	Competence of the Länder administrations responsible for the protection of the historic heritage, and attached to the Ministry of Culture of each state.	Jurisdiction of counties issuing authorizations and prescribing excavations. Second opinion of English Heritage commission for historical monuments.	Exclusive competence of the Agency for Cultural Heritage, organ attached to the Ministry of Culture, with the assistance of municipal councils and museums.	Competence of the Ministry of Culture of each Autonomous Community (AC) which has its own law for the protection of cultural heritage	Exclusive jurisdiction of the State (Ministry of Cultural Goods and Activities and Superintendencies, Decentralized Services of the Ministry).	Competence of National Service for Archaeological Exploration, and College for Archaeological Quality, attached to the Ministry of Culture. Jurisdiction of municipalities for the prescription of excavation operations	Jurisdiction of the archaeological services of the prefectures (which issue excavation permits) and of the National Directorate of Heritage, attached to the Ministry of Culture.
Bodies competent to	<u>Diagnostic:</u> Inrap or	<u>Liberalized activity,</u> the	<u>Liberalized activity:</u>	<u>Exclusive jurisdiction of</u>	<u>Liberalized activity</u> but	<u>Monopoly of the State to perform</u>	<u>Liberalized activity</u> but the College for	Absence of text. In practice,

¹³¹ SERVICE DES ETUDES JURIDIQUES (octobre 2004) accessed on URL : https://www.senat.fr/lc/lc138/lc138_mono.html ;

https://www.senat.fr/rap/r10-760/r10-760_mono.html

carry out preventive archeologic operations (diagnostics and excavations)	archaeological service of local authorities approved by the Minister of Culture. Excavations: Inrap, local authority or anyone with a license.	excavations are carried out by archaeologists of the administration or by authorized specialized private companies	developers use the company of their choice (establishment of a code of conduct by the Institute of Field Archaeologists).	museum archaeologists , who perform diagnoses and excavations, in accordance with guidelines of the Agency for Cultural Heritage.	under high control: the excavation operators must be accredited by the Ministry of Culture of the Autonomous Community.	diagnostics and excavations but the activity is open to private operators through concession contracts	Archaeological Quality defines quality standards for potential providers and the Archaeological Inspection ensures that operators meet these standards.	traditional public actors and specialized private companies (low market share for private actors).
Financing of preventive archeology	Polluter-pay principle: financing assumed by the developer but French exception: royalty paid by developers to pool funds for diagnostics. The National Fund for Preventive Archeology (FNAP) advance grants to developers.	Polluter-pay principle: financing assumed by development initiator, in "the reasonable limits": if the cost is greater than 1% of the amount of work, the community pays the surplus.	Polluter-pay principle: financing assumed by developer except fortuitous or unpredictable discoveries or vestiges of exceptional interest (in this case, financing by the English Heritage). Criticized Regime.	Polluter-pay principle: excavations and important diagnoses assumed by the developer and simplest diagnoses supported by museums. Possibility of subsidy or state support in certain cases.	Financing by the owner or the developer. Ability to obtain financial assistance from the Autonomous Community if the cost is greater than 2% of the total amount of work.	Public funding for excavations. But in the face of lack of resources, private entrepreneurs also participate in financing (informal mechanism). Criticized Situation.	Polluter-pay principle: financing assumed by the developer in "the reasonable limits ": if the cost is greater than 1% of the amount of work, the community pays the surplus.	Polluter-pay principle: financing assumed by the developer. Main exceptions: vestiges unknown at the beginning of the works, cost of the study which largely exceeds the indications given by the prefectural services, works.

Source : Commission de la culture à partir de l'étude de législation comparée n° 138 sur l'archéologie préventive, octobre 2004, service des études juridiques du Sénat (Sénat, 2011).

9.5 Protection from African Union and the East African Community

9.5.1 *The Charter for African Cultural Renaissance adapted in 2006 by African Union (AU)*

The Charter for African Cultural Renaissance was adapted by the Heads of State and Government of the African Union meeting in the Sixth Ordinary Session in Khartoum, the Republic of the Sudan, from 23rd to 24th January 2006. The charter observes that ‘the unity of Africa is founded first and foremost on its history’ and that ‘the affirmation of cultural identity denotes a concern common to all peoples of Africa’. The charter places culture at the centre of the development agenda as it is the foundation of every society because it gives people the unique and inherent identity. The concept of African cultural renaissance has come when ‘the nationalist project, which seemed so urgent and necessary in the years following independence – is widely acknowledged to be dead or terminally ill, by all but the most ardent nationalist politicians’ (Hughes, 2014).

The objectives and principles of the charter include: ‘to assert the dignity of African men and women as well as the popular foundations of their culture; to promote freedom of expression and cultural democracy, which is inseparable from social and political democracy; to preserve and promote the African cultural heritage through preservation, restoration and rehabilitation; to integrate cultural objectives in development strategies; to strengthen the role of culture in promoting peace and good governance; and to provide African peoples with the resources to enable them to cope with globalization’. I only selected those objectives and principles that can be used to evaluate the whole charter. From the start, the charter demonstrates that fifty years after independence of majority of African states, there is a path that was not taken; that of putting culture at its rightful place in development planning because culture is the foundation upon which civilizations are built. The charter

however seems to be more or less limiting culture to certain forms of cultural expressions while partially paying attention to the real challenges and problems ailing the African continent.

To begin with, the dignity of African men and women has been eroded across the continent due to cultural derailment and poor governance. African leadership in most of the countries rarely considers it worthy to observe the inalienable human rights and human dignity forcing many African men and women to emigrate even through most dehumanising conditions in the hope to find peace and livelihood. The prerequisites to the assertion of the dignity of African people and the popular foundations of their culture is good governance that promotes their freedom of expression and cultural democracy as the charter stipulates. The concept of cultural democracy echoes the UNESCO Universal Declaration on Cultural Diversity which was adopted unanimously at the World Summit on Sustainable Development held in Johannesburg from 26th August to 4th September 2002. It was adopted in a most unusual context after the events of 11 September 2001. The Declaration was the first ever wide-ranging instrument of its kind for the international community. 'It was an opportunity for States to reaffirm their conviction that intercultural dialogue is the best guarantee of peace and to reject outright the theory of the inevitable clash of cultures and civilizations'.

The African Charter for Cultural Renaissance is the necessary tool to unleash Africa's potential for peaceful coexistence and sustainable development. However, there are limited efforts to overhaul outdated heritage legislations and incorporate cultural objectives into development planning except in a few countries including South Africa (1999), Namibia (2004), Botswana (2001) and Kenya (2006) which have put in place new legislations (Arazi, 2011). In the case of Kenya, the 2006 National Museums and Heritage Act has already been

overtaken by events since the promulgation of the new Constitution with devolution of government. It also has shortcomings as it retained most of the elements of the earlier legislations (Basu & Damodaran, 2015; Harts, 2007) including the definition of key terms and the as well as the cut-off dates of 1800, 1895 and 1946 (Karega-Munene, 2014). The NMHA mainly delves on the establishment of the National Museums of Kenya (Mwanzia, 2016; Oloo & Namunaba, 2010). The existing heritage legislations are therefore either outdated or out of touch with the contemporary challenges facing heritage management including terrorism, civil upheavals, corruption, uncontrolled development and other anthropomorphic activities, increased urbanization, population pressure, globalization, poor governance and crime.

Both at the East African Community and African Union, the archaeological heritage receives very limited attention in the legislative debates.

9.6 How efficient is the application of international penal law to the protection of cultural heritage in Kenya?

The ratification of international conventions and domestication of penal international law for the protection of cultural property is one thing while their implementation within specific member states is another. The manner in which ratified conventions are applied in the legal protection of cultural property by a state party depends on various factors:

- i. the existing legal framework in a country,
- ii. the level of public awareness of their cultural heritage
- iii. appreciation of the role played by cultural heritage in the social, economic and political life of a people,

- iv. the level of a country's economic development which determines the development priorities for any government at a given moment in history,
- v. the degree of democratic maturity as can be observed through the existing system of governance within a country and how inclusive it is,
- vi. the financial obligations that are to be tied to the implementation of such policies and,
- vii. the political goodwill from those in power at a particular time.

One of the greatest riches of Africa is its cultural heritage (Abungu, 2008, p. 159). Kenya in particular prides itself as a prodigious habitat for abundant and various natural and cultural heritage assets including archaeological sites, wildlife, landscapes and folklores (Kibunjia, 2016, p. v). Unfortunately, the general demand for African antiquities, the absence of a protective law, the negligence and the insufficient level of investment have adversely affected its protection (Abungu, 2008, p. 159). Kenya as well as most of the African governments are mainly preoccupied by problems of health, education, transport infrastructure, poverty eradication and conflict resolution. Thus, they seem to be unable to protect the cultural resources within the borders of their countries (Mambo, 2011). Lack of funding of cultural heritage conservation initiatives deprives local institutions responsible for heritage conservation the capacity to effectively execute their mandate (Abungu, 2008, p. 159; Kibunjia, 2016, p. v). Legislation alone, however robust it might be, is not enough (Rabault, 1998, p. 32).

Also deplorable is the level of knowledge and training of African police officers who are charged with the enforcement of the law on the illicit exportation of cultural resources. According to G. Abungu, the police officers are not aware of the value of ancient objects. To them, antiquities are negative symbols of backwardness and underdevelopment. This is

the main drawback to the prevention of pillage and illicit trafficking of cultural properties, which denies the African youth an opportunity to know their rich history (Abungu, 2008, p. 159).

Citing examples across the globe, G. Abungu demonstrates how the question of pillage of cultural properties is ever present in those countries with poor or no legal framework to address the vice including Kenya. The fight against pillage is an important aspect of preventive archaeology and preventive conservation of cultural heritage. It is important in preventive archaeological legislation since the process targets those places that may not have been subjected to any prior archaeological investigation. Such areas whose soil has not been classified as being archaeologically rich are the high risk areas in terms of prevention.

On the other hand, overly restrictive laws fail to provide an equilibrium between the international demand for art treasures and the interest of the State of origin to control their supply. Consequently, municipal controls that bar all exports of art objects, such as the Mexican system, create a black market, encourage a cottage industry in forgeries, generate international tensions, and do little to prevent illegal trafficking in antiquities (Nafziger, 1985, p. 845).

According to J.A.R. Nafziger¹³², the efficiency of this comprehensive legal framework is debatable. Its primary effect thus far has not been so much to punish individuals, but rather to facilitate the restitution, return, or forfeiture of cultural property, and to raise public consciousness and respect for the integrity of cultural provenance and property ownership, whether public or private. That was a basic goal, for example, of both the Mexican legislation

¹³² Professor of Law, Willamette University College of Law

and the 1970 UNESCO Convention. The recent television documentary and book concerning the theft of Caravaggio's "Nativity" from Palermo, emphasized that a principal purpose of the UNESCO Convention is to marshal world public opinion (Nafziger, 1985, p. 846).

South Africa (1999), Namibia (2004), Botswana (2001) and Kenya (2006) have overhauled their heritage legislations to adapt to recent international developments in the legal protection of cultural resources¹³³ (Arazi, 2011; Abungu, 2008). The Kenyan law in vigour in this context is the National Museums and Heritage Act (NMHA) of 2006. However, this Act still has various limitations as it mainly concentrates on the establishment of the National Museums of Kenya then focuses on environmental and natural issues with very limited attention being paid to the conservation of cultural heritage (Oloo & Namunaba, 2010, p. 11). The Act repealed, but borrowed heavily from, the Antiquities and Monuments Act, Cap 215 of 1983 and the National Museums Act, Cap 216 of 1983 (Mwanzia, 2016). Cultural heritage conservationists therefore have to rely on the provisions of the Environmental Management and Co-ordination Act (EMCA 1999), international law especially the guidelines from funding organizations like World Bank, African Bank of Development and UNESCO conventions in order to address local legislative deficiencies in this area especially on heritage impact assessment.

Weaknesses in the national legislations on cultural heritage also lead to inability to control against the illicit trafficking of cultural properties, a situation that is generally shared across many countries in Africa (Abungu, 2008, p. 159). The South African National Heritage

¹³³ Ndoro et al. 2008 cited in (Arazi, 2011, p. 28)

Resources Act, 1999. (Act No. 25 of 1999) which repealed the Environment Conservation Act 73 of 1989 has as one of its aims to control the export of nationally significant heritage objects and the import into the Republic of cultural property illegally exported from foreign countries. The law establishes the South African Heritage Resources Agency together with its Council to co-ordinate and promote the management of heritage resources at the national level. The South African system addresses issues of heritage in a more comprehensive and detailed manner. Environmental Impact Assessment law on its cannot assure the protection of cultural heritage resources since some do not even provide for the procedure necessary to conduct heritage impact assessment. It is like a general prescription of the preventive measures to be considered in an Environmental Impact Assessment study to safeguard the entire environment. It leaves the details to be handled through specific legislation on the types of impact raised and through sectoral policies.

9.6.1 Elements of Comparative Legislation on Environmental Impact Assessment among member States of the East African Community, the USA and UK

Country	KENYA	UGANDA	TANZANIA	RWANDA	BURUNDI ***	UNITED STATES OF AMERICA	UNITED KINGDOM
Steps							
Law in vigour	Environmental Management and Co-Ordination Act, 1999 ("EMCA"), as amended (see "Guidance" for 2015 Amendments)	National Environment Act, 2019	Environmental Management Act - EMA 2004	Organic Law No. 04/2005, Determining Modalities of Protection, Conservation, and Promotion of Environment in Rwanda	***	National Environmental Policy Act (NEPA) 42 U.S.C. 4321-4347	Town and Country Planning Act 1990
EIA Regulations	The Environmental (Impact Assessment and Audit) Regulations, 2003 (revised 2012)	The National Environment (Environmental and Social Assessment) Regulations, 2020	Environmental Management (Environmental Impact Assessment and Audit) Regulations, 2005, as amended 2018	Ministerial Order Nos. 003/2008 & 004/2008	***	Council on Environmental Quality Regulations (CEQ Regulations), 40 C.F.R. Part 1500	The Town and Country Planning (Environmental Impact Assessment) Regulations 2017
EIA Guidelines or other guidance	Environmental Management and Co-ordination (Amendment) Act, 2015	Various sectoral guidelines available from the National Environment Authority - NEMA	***	Environmental Impact Assessment Guidelines, 2006	***	CEQ Guidance	Guidance: Environmental Impact Assessment guidelines from various Districts Council Planning Services and on each Council's (website)
Main institutional actors and bodies competent to prescribe EIA	Exclusive jurisdiction of the State through the National Environmental Management Authority – NEMA Kenya	Exclusive jurisdiction of the State through the National Environment Authority – NEMA Uganda	Exclusive jurisdiction of the State through the Council.	Exclusive jurisdiction of the State.	***	Exclusive jurisdiction of the State through the Federal agencies.	Exclusive jurisdiction of the State.
Best practices in lieu of EIA	No.	No.	No.	No.	***	No.	No.
Who conducts environmental screening?	Government. Project proponent submits a project report to the Authority. Within 45 days the Authority must decide whether the proponent must prepare an EIA study. EIA Regulations (2003) secs. 7-10	Government. The Authority and associated lead agency (agencies) – National Environment Act, sec. 112.	Government. Environmental Management Act, sec. 81(1); EIA Regulations, sec. 9.	Government. The Authority and Lead Agencies. Min. Order No. 003/2008, Art. 3; EIA Guidelines, sec. 2.1.1.	***	Government. Federal agencies assess the appropriate level of NEPA review. 40 C.F.R. § 1501.3	Government. Screening is guided by Schedules 1 & 2 of the EIA Regulations. A project proponent may request a screening opinion or direction, or submit an application with an EIA if it is clear that an EIA is

							required. EIA Regulations, sec. 5(2), (3)
Who prepares an EIA report?	Project Proponent (with or without a contractor)	Project Proponent (with or without contractor)	Project Proponent (with or without contractor)	Project Proponent (with or without contractor). Min. Order No. 003/2008, Arts. 4, 5	***	Government (with or without contractor). "Agencies shall prepare environmental impact statements using an interdisciplinary approach that will ensure the integrated use of natural and social science and the environmental design arts." 40 C.F.R. §1502.6.	Project Proponent (with or without contractor)
Contractor qualifications?	Yes.	Yes	Yes	Yes.	***	No.	Yes.
Details of Contractor qualification for EIA	EIA shall be conducted by "individual experts or a firm of experts authorised in that behalf by the Authority." EMCA Act sec. 58(5); EIA Regulations (2003) sec. 14 + Fourth Schedule	Practitioners are licensed by the Authority according to the category of the specialization following their academic qualifications and experience. As part of the terms of reference, the project developer must include a proposed team with requisite qualifications and experience to undertake the ESIA. NEA 2020 Reg., sec. 13(4)(a)	Experts or firms of experts registered by the Council." Env'tl. Mgmt. Act, sec. 83. In addition, the Minister shall prescribe the qualifications of a person who may conduct an EIA. Env'tl. Mgmt. Act, sec. 83(2). See also EIA Regulations, sec. 14 (Registration of Environmental Experts) Regulations, 2005."	An expert approved by the Authority. Min. Order No.003/2008, Art. 5.	***	The document "shall list the names, together with their qualifications of the persons primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement." 40 C.F.R. §1502.18	The law does not specify minimum qualifications however, "the developer must ensure that the environmental statement is prepared by competent experts; and (b) the environmental statement must be accompanied by a statement outlining relevant expertise or qualifications of such experts." EIA Regulations, sec. 18(5)
Who funds EIA?	Polluter-pay principle: The Project Proponent funds EIA - EMCA sec. 58(2).	Polluter-pay principle: The Project Proponent funds?	Polluter-pay principle: The Project Proponent funds.	Polluter-pay principle: Project Proponent funds "The environment impact assessment shall be carried out at the expense of the promoter." Organic Law No. 04/2005, Art. 69	***	Government.	Polluter-pay principle: Developer. EIA Regulations, sec 18(5)
Days for decision maker review	90 days	60 days	90 days	Variable (at least 20 days)	***	30 days	2-4 months

Days for public review of final EIA report	90 days	Not specified. Instead, the Authority will designate the time period on a project-specific basis in the invitation for comments. NEA 2020 Reg. sec. 20(1), (3)	14 days	Not specified	***	30 days	30 days
EIA interdisciplinary team	No.	No.	No.	No. The issue is neither addressed by the EIA law nor regulations.	***	Yes. Agencies "shall prepare environmental impact statements using an interdisciplinary approach" and ensure that the "disciplines of the preparers" are aligned with the scope of the project. 40 C.F.R. §1502.6.	No.
Type of impacts in EIA	Direct environmental impacts Cumulative environmental impacts Social impacts Cultural impacts Health impacts Economic impacts	Direct environmental impacts Cumulative environmental impacts Social impacts Cultural impacts Health impacts Economic impacts Gender equity	Direct environmental impacts Cumulative environmental impacts Social impacts Cultural impacts Economic impacts	Direct environmental impacts Cumulative environmental impacts Social impacts Economic impacts	***	Direct environmental impacts Cumulative environmental impacts Social impacts Cultural impacts Health impacts Economic impacts	Direct environmental impacts Cumulative environmental impacts Cultural impacts Health impacts Economic impacts
Public access to information: Final EIA available?	Yes. EIA study must include times & place where the full report can be inspected. EIA Regulations (2003) sec. 21(3)(d) EIA Report available on internet, at the agency or ministry office. No fee to view or obtain the EIA report.	No. Not clear whether the EIA is easily accessible to the public. NE Act states that EIA is a public document that can be viewed at any reasonable hour by a member of the public. NE Act, sec. 146. According to EIA regulations, the developer shall "ensure that appropriate project information on environmental and social impacts or risks is disclosed to stakeholders in a timely, understandable, accessible and appropriate manner and format, well in advance of the proposed consultations." NEA 2020 Reg., sec 16(2)(d). Payment of fee to view or obtain EIA report.	Yes. Environmental impact statements "shall be kept and maintained by the Council in a public registry and their contents may be searched upon payment of a prescribed fee. " Env'tl. Mgmt. Act, sec. 85(2). The Council shall grant any person who desires to consult an environmental impact statement or EIA access on such terms and conditions the Council considers necessary. EIA Regulations, sec. 39(2).	No. Availability of and access to the environmental impact study is left to the discretion of the Authority. After submitting an EIA report to the Authority, REMA shall publicize the report (excluding the confidential portions). REMA shall also make copies of the EIR for relevant stakeholders." EIA Guidelines, sec. 6.2(c)	***	Yes. Agencies shall "publish" entire draft and final environmental impact statements , and provide either an electronic or paper copy of the statement to any person, organization, or agency that makes a request. 40 C.F.R. §1502.20. Draft and final Report published on internet, at agency or ministry office. No fee to view or obtain the EIA report.	Yes. EIA Regulations, sec. 20(2). Available on the internet and other sources. No fee to access EIA report. Fee to obtain EIA report.

Public participation and public participation opportunities?	Yes. Opportunities: Scoping Public Meetings and/or public hearings Review of final EIA.	Yes. Opportunities: Scoping Terms of reference Public Meetings and/or public hearings Review of final EIA.	Yes. Opportunities: Scoping Public Meetings and/or public hearings Review of final EIA.	Sometimes. Scoping Public Meetings and/or public hearings Review of final EIA.	***	Yes. Opportunities: Scoping Review of draft EIA Public Meetings and/or public hearings Review of final EIA	Yes. Opportunities: Public Meetings and/or public hearings Review of final EIA
Criteria for holding public meeting	Public meeting and/or hearing is automatically required.	Public meetings held sometimes. Ministry or agency has discretion to decide whether to hold a meeting and/or hearing	Public meetings held sometimes. Ministry or agency has discretion to decide whether to hold a meeting and/or hearing	Public meetings held sometimes. Ministry or agency has discretion to decide whether to hold a meeting and/or hearing	***	Public meetings held sometimes. Ministry or agency has discretion to decide whether to hold a meeting and/or hearing.	Public meetings held sometimes. Ministry or agency has discretion to decide whether to hold a meeting and/or hearing.
Citizen administrative review.	No.	Yes. "A person aggrieved by the decision of a lead agency, a technical committee or a public officer in the exercise of delegated functions under this section may appeal to the Authority." NE Act, sec. 9(4).	Yes. "Any person who is aggrieved by the decision of the Minister to approve or disapprove an Environmental Impact Statement may appeal to the Environmental Appeals Tribunal." Env'tl. Mgmt. Act, sec. 95; EIA Regulations, sec. 61. The statute of limitations is 30 days.	No. The EIA law and regulations allow only the project proponent to appeal a decision made by the Authority.	***	Yes. Administrative review mechanisms (if available) are established through statute and/or regulations governing the agency decisionmaker. In some cases, exhaustion of administrative remedies is required before seeking judicial review.	No.
Judicial Review	Yes. "Any person aggrieved by a decision or order of [the] Authority of an environmental impact assessment licence, may within 60 days of such a decision or order, appeal against such decision or order to the High Court." EIA Regulations (2003) sec. 46(2)	Yes. See Judicature (Judicial Review) Rules, 2009	Yes. Decisions of the Environmental Appeals Tribunal may be appealed to the High Court within 30 days. EIA Regulations, sec. 61(2)	Not specified.	***	Yes. "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . is entitled to judicial review thereof." 5 U.S.C. §702	Yes. Application is made directly to the High Court. Town and Country Planning Act 1990, Art. 288

Table 7: Elements of Comparative Legislation on Environmental Impact Assessment among member States of the East African Community, the USA and UK

*** No data.

The gaps in the legal framework make it difficult to establish the criminal responsibility in the context of the implementation of major development projects which is a common phenomenon in developing countries. Investors are therefore left to act on the basis of international and home country's sustainable development compliance requirements.

In the case of LAPSET corridor project in Kenya, the civil society organisations led by SAVE Lamu highlighted various issues of noncompliance which tasked the developer to observe both local and international legislation. The proximity of Lamu Old Town, a UNESCO World Heritage site provided the impetus for the involvement of the international community through ICCROM and ICOMOS which insisted on proper adherence by the State party to the UNESCO regulations and recommendations.

9.7 Conclusion

The challenges of heritage management that are associated with the transfer of values during the colonial period (Mambo, 2011; Amougou, 2004a)¹³⁴ left more questions than answers about the conservation of cultural heritage threatened by human activities such as major development projects in Kenya. There is lack of public awareness and poor assessment of cultural values as a result of the colonial legacy where the importation of formal institutional framework of cultural heritage management altered and replaced local perceptions of cultural values with the artistic and monumental values. This could relate to the fact that much of cultural heritage across Africa is vested in spirits, songs, dances and narrations

¹³⁴ In the case of black Africa, the process of transfer of heritage values was analysed by Alain Sinou, cited in (Amougou, 2004a, p. 44). Sinou, Alain, L'exportation des valeurs patrimoniales en Afrique noire. Une autre valeur du temps, in *Les annales de la Recherche Urbaine*, n° 72, pp. 52-59.

rather than tangible heritage contained in the artistic and monumental heritage spread across Europe and America.

The international conventions that prevailed until recently generally emphasized on artistic and architectural values which greatly disadvantaged most of the cultural sites in Kenya and Africa at large. The ratification and subsequent domestication of such international texts was akin to spreading a cultural cancer through globalization thus contaminating the entire cultural fabric in Kenya, at the local and national levels before spreading to regional and even continental levels. It was not until the year 2003 that the cancer was controlled through the UNESCO Convention on the conservation of world intangible cultural heritage which took a more inclusive approach to conservation of heritage thus including most of the African heritage sites by incorporating intangible cultural expressions. Without the incorporation of intangible heritage, the value and significance of archaeological heritage in Africa remains elusive.

The 2005 UNESCO convention on diversity of cultural heritage complemented the 2003 convention by expanding the field to the interior of Kenya through impacting on the promulgation of the new Constitution which prides in cultural diversity and recognizes culture as the foundation of the nation. This was particularly significant and felt through the Kenya's cultural policy that encourage communities especially those that were initially marginalized to promote their cultural heritage through artistic performances, music, dance and theatre. In the rural set-ups intangible heritage has been to a great extent conserved through myths, legends, songs, proverbs, riddles and cultural ceremonies and events that are conserved through oral traditions and passed intergenerationally. There is however need for more inclusive heritage policies based on research and increased public awareness and participation in the process of patrimonialization at the local community level, county as

well as national level so as to equitably identify and fully assess cultural values across the country.

PART THREE

PREVENTIVE ARCHAEOLOGY, CULTURAL HERITAGE IMPACT ASSESSMENT AND MANAGEMENT

« L'expérience démontre que des conditions semblables et en particulier un niveau culturel équivalent conduisent à des instruments équivalents pour produire des biens nécessaires »¹³⁵

“Experience has shown that similar conditions particularly an equivalent cultural level leads to similar equivalent tools for the production of the necessary goods” {Author’s translation from French} (Demoule, et al., 2002, pp. 21-22).

¹³⁵ Klindt-Jensen, in G. Daniel, *Toward a History of Archaeology*, London, 1981 p. 15, cited in (Demoule, et al., 2002, pp. 21-22).

CHAPTER TEN

DEVELOPMENT AND ORGANIZATION OF PREVENTIVE ARCHAEOLOGY IN FRANCE

10.1 Introduction

Preventive archaeology which is also referred to as rescue excavations, salvage, commercial, contract or development-led archaeology in most of the Anglo-Saxon systems, is currently the most preferred tool for sustainable development planning as it is the most widely practiced form of archaeology within Europe and in the USA (Arazi, 2011, p. 28; Demoule, 2009b; Pinon, 2009; Schnapp, 2009). This chapter looks at the emergence, development and the subsequent organization of preventive archaeology in France and Europe by extension. Various terminologies have been employed to refer to this kind of archaeology, which is also an element of diversity in terms of legislation, institutional framework, training as well as funding of the entire practice.

For comparative purposes, in this chapter I narrowed down to the region of Nouvelle-Aquitaine¹³⁶ by showing the operations in the year 2016 (see Map 15) and the evolution of archaeological operations between 2001 and 2018¹³⁷ while citing various infrastructural

¹³⁶ During masters' study, we looked at the former regional organization of INRAP with reference to the former region of Grand Sud-Ouest (comprising the former region of Aquitaine and the *Département* of Midi-Pyrénées) as per the regional organization of the French National Institute for Preventive Archaeological Research (INRAP) by 31st December 2015. Since the operationalization of the new administrative structure, the regional organization of INRAP also changed to fit into the new national administrative structure hence the region of Nouvelle-Aquitaine.

¹³⁷ The region of Nouvelle-Aquitaine as currently constituted comprises of the former region of Aquitaine plus some other administrative departments but the Iron Age results caters for the whole region including the added departments for the duration of reference between 2001 and 2014..

projects for consideration at the national level. I then selected a series of archaeological research conducted between the years 2001 and 2014 where the Iron Age sites were discovered in the region of Nouvelle-Aquitaine as a practical example of how preventive archaeology has contributed to the development of archaeological research in France. The results were summarised in a table format.

10.2 Emergence and development of preventive archaeology

Preventive archaeology is as old as archaeology itself (Demoule, 2012, p. 612). The earliest archaeological excavations by King Nabonidus in the sixth century BC at Larsa were preventive or rescue excavations. Similarly, the excavations that led to the discovery in 1506 of the marble Laocoön statue in Rome under the supervision of Michelangelo and the unearthing of Pompeii and Herculaneum in the eighteenth century all presented the features and requirements of preventive archaeology. This has led to the general agreement that most of the archaeological discoveries are related to development projects (Demoule, 2012, p. 612 ; Daniel 1975 ; Bahn 1996 ; Schnapp 1997; Gran-Aymerich, 1998).

Rescue excavations, however, remained very limited even in the nineteenth-century Paris, where the urban planning of Baron Haussmann affected about 60% of the city's surface area. The situation persisted into the first half of the twentieth century (Demoule, 2012, p. 612).

The development of largescale rescue or preventive archaeology with formal legal systems in Europe can be traced back to the post World War II period. Immediately after the coming to an end of the World War II there was the need to rebuild the destroyed industrial base, infrastructure and ruined cities in Europe. Despite the many archaeological discoveries made during this period, however, this urgency for reconstruction and development initially pushed rescue archaeology to the periphery as systematic excavations were not always

organized (Demoule, 2012, p. 612; Rigambert, 1996; Schnapp, 2009). This is because there was no legislative framework on this kind of archaeology in France prior to the 2001 law. The 1941 law that provided regulatory framework on archaeological excavations in France during the German occupation did not factor in rescue excavations. The enactment of the law on preventive archaeology came after a series of cultural policy reforms and reports about archaeological research that culminated into the 2001 law about preventive archaeology in France as illustrated through various reports from 1968 to 1998, Figure 22.

10.2.1 Origins of rescue archaeology in France

The origins of the legal framework on rescue archaeology can be attributed to the environmental law especially the law on Environmental Impact Assessment. In France, rescue excavations, as they were practiced within the framework of preventive archaeology¹³⁸, more particularly their management by the developers, had nothing to do with the law of 1941: they were born and developed in the framework of the environmental law. The environmental law of 1976 made it mandatory for any development project with potential impacts on the environment to be preceded by environmental impact assessment (Marchand, 2000, pp. 102-105; Rigambert, 1996, pp. 208-209)¹³⁹.

¹³⁸ While the terms rescue archaeology and preventive archaeology may be used interchangeably in the Anglo-Saxon systems, the two terms mean two distinct systems in the French system. The former refers to the early practices of developmental excavations that were commonly practiced in the 1960s and 1970s to the end of the twentieth century. In French the concept of rescue as was used to refer to rescue archaeology (archéologie de sauvetage) and preventive as used to refer to preventive archaeology (archéologie préventive) put their emphasis on the aim, the manner and the time of intervention.

¹³⁹ Louis Marchand details the development of rescue archaeology from environmental considerations of the post World War II period : « L'examen auquel on vient de soumettre le statut des fouilles de sauvetage avait pour objectif premier d'établir un fait historique: ces fouilles, telles qu'on les pratique aujourd'hui, avec notamment leur prise en charge par les aménageurs, n'ont rien à voir avec la loi de 1941 : elles sont nées et se sont développées dans l'orbite du droit de l'environnement » (Marchand, 2000, p. 105).

It was in the year 1974 that the administration began to take part in salvage archaeology thus changing its practice by making it a State responsibility (Marchand, 2000, pp. 100-103). This period witnessed unprecedented boom in infrastructural development across Europe that necessitated the emergence of rescue archaeology in response to the then ongoing destruction of archaeological heritage. However, these rescue excavations were mostly conducted through self-initiatives by a few trained and some amateur archaeologists. This implies that there was growing public awareness of the need to protect archaeological heritage in the context of development.

In Britain, preventive archaeology had already developed within the framework of commercial archaeology referred to as development-led archaeology.

In Norway, the development of preventive archaeology began between the years 1970 – 1974 in the framework of salvage archaeology. This was a period that witnessed a lot of infrastructural development projects which included Central Hydroelectric projects that made it necessary to carry out high altitude prospections. The overgrowing demand for electricity created the need for the construction of hydroelectric power stations and dams in most of the mountainous regions of Norway. Until then, these regions had not made any contributed to the knowledge of the past of humanity, according to Dommasnes L.-H. , since they had not yet been inhabited during the modern era. The practice took shape since the 1980s but it was between 1990 and 2001 that there was reorganization of preventive archaeology with establishment of laws and regulations (Dommasnes, 2007, p. 167).

The development of preventive archaeology in Europe was based on two fundamental conventions; the European Convention on the Protection of Archaeological Heritage (Valletta) of 1992 (Demoule, 2012, p. 612; Kristiansen, 2009, p. 641) which was further

enhanced by the European Landscape Convention of the year 2000 (Kristiansen, 2009, p. 641).

In French the term '*archéologie de sauvetage*' (salvage archaeology) was considered as inappropriate since it signifies that the archaeological intervention occurs during the implementation of the development project only after stumbling on some fossils, a site or antiquities. The very act of stumbling over a site in the course of a development project negates the notion of prevention which is the pinnacle of preventive archaeology or heritage impact assessment. The term '*archéologie préventive*' (preventive archaeology) was thus coined as it puts more emphasis on prevention rather than rescue nor salvage (Kristiansen, 2009), terms that are generally applied in the Anglo-Saxon systems.

According to Article L521-1 of the French Heritage Code, preventive archaeology is an integral part of archaeology that ensures the detection, conservation or the safeguard by scientific study of the elements of archaeological heritage impacted or susceptible to be impacted by public or private development works within the appropriate timeframe (République française, 2005).

10.2.2 Rescue, salvage, commercial, contract, development-led or preventive archaeology: implications of the terminology

The European Convention about the protection of archaeological heritage, the Malta Convention of 1992 was written in two languages: English and French. This is the convention that gave birth to rescue archaeology, as it was referred to in the English version and '*archéologie préventive*' in French (Article 6 (ii)). The Convention was ratified by all the Member-States making it the key legal framework upon which European systems of preventive, rescue, commercial or development-led archaeology are based.

Since the emergence of the Malta Convention, the enactment and implementation of rescue archaeology policies and legislations became a concern of the Council of Europe through the European Archaeological Association (EAA). Gradually, a debate about the relevance and use of the terms development-led, rescue, salvage or preventive archaeology emerged among scholars in the field. The proponents of preventive archaeology as applied in the French system postulate that the term ‘preventive’ evokes the notion of prevention just like in medicine where there is use of preventive medicine (Demoule, 2019). Demoule cautions that:

developer-led archaeology’ as sometimes used in Anglo-Saxon countries (and in translations into English) is in this respect misleading. In reality, it is not the developers who originated the protective measures such as preventive or rescue archaeology, but rather it is the community of citizens, as expressed through the State, its laws, regulations and policy guidances. It is the State which decrees that archaeological remains need to be studied prior to their destruction. The seemingly innocent term of ‘developer-led’ in this sense reveals wider conceptions of heritage management (Demoule, 2010, pp. 13-14).

The difference between salvage, rescue or preventive archaeology depends on how each system is organised based on the availability of the resources needed to accomplish the task. This draws from article 2 of the 1992 Malta Convention which mandates each Party to institute, by means appropriate to the State in question, a legal system for the protection of the archaeological heritage. Similarly in Article 6 (ii), Parties are called upon to take measures to increase the material resources for rescue archaeology (*à accroître les moyens*

matériels de l'archéologie préventive) ‘for covering, from public sector or private sector resources, as appropriate, the total costs of any necessary related archaeological operations’. This provision gave each State freedom of choice of the system to put in place so as to generate resources for the protection of archaeological heritage.

In Slovenia, for instance, preventive archaeology occupies more than 90% of all field archaeological activities and is understood almost exclusively in the sense of archaeological excavation. According to Bojan Djuric, ‘salvage and rescue excavations were undertaken mainly by the museums until the mid- 1980’s, when the newly established service for the protection of cultural heritage took over the responsibility’ (Djuric, 2007).

However, from the terms rescue, salvage, commercial, developer-pay and preventive archaeology, the various levels of protection can be attributed to the practice. The term “preventive” is an adjective which has its roots in the 15th century Latin term “*praeventus*” which is the past participle of “*praevenire* “ meaning to "come before, anticipate, hinder,"¹⁴⁰. It therefore leads to an attributive meaning of preventive archaeology as a scientific activity which is undertaken in anticipation of an upcoming development project. Just like in medicine, the adjective “preventive” makes archaeological investigation a purely proactive scientific undertaking which intends to take precaution rather than wait for danger to occur then come in to mitigate the damage. This is very important because it would be impossible to successfully reconstitute an excavated site in order to carry out a step by step post-excavation evaluation nor examine the initial state of a site once it has been tampered with

¹⁴⁰ <https://www.etymonline.com/search?q=prevent>

by the bulldozers. The term thus implies a variety of actions to be taken constituting the core attributes which include:

- a) formulation of relevant laws and policies,
- b) establishment of relevant and well equipped institutions,
- c) training of personnel,
- d) public sensitization and participation,
- e) theoretical underpinning of the practice,
- f) methodology and the equipment to be used,
- g) post-excavation laboratory analysis and interpretation of data,
- h) a centralised data management system,
- i) dissemination of the results and
- j) establishment of monitoring and evaluation.

The paradigm shift from rescue to preventive archaeology also took into consideration the fact that archaeological heritage is very fragile. Therefore, to avoid the possible and inconvenient interruption of the development process of any project, all preventive archaeological activities are put in place prior to the commencement of the project. This is done based on the regulatory procedure stipulated in the Heritage Code, Book V. Article L522-1 of the French Heritage Code Book V on Archaeology underlines the role of the State in the protection of archaeological heritage. According to this article, the State prescribes the measures aimed at the detection, the preservation or safeguarding by scientific study of the archaeological heritage, designates the scientific practitioner of any preventive operation and ongoing missions of control and evaluation of these operations. Consequently, the State ensures the reconciliation of the respective requirements of scientific research, heritage conservation and economic and social development (République française, 2005).

10.2.3 From rescue to preventive archaeology in France

The emergence of preventive archaeology in Europe dates back to the post World War II period which witnessed unprecedented infrastructural development projects following the devastating impact of the war and the need for restoration and reconstruction of the industrial base and urbanization. The organization of archaeological research and that archaeological excavation were for a long time separate in terms of their regulatory framework, institutional structure and financial support for the two activities. The gradual emergence and development of systems of rescue archaeology in the 1970s started to exert pressure on the established institutional and fiscal framework before gaining momentum with the intensification of decentralisation of government that begun in 1963. Gradually, the practice started to evolve in terms of technology and methodology based on the growing activity levels within various countries:

In Czechoslovakia in the 1950s, Bohumil Soudsky was probably one of the first archaeologists in the world to use machines to strip the topsoil at the Neolithic site of Bylany, and he was one of the first in the world—already in the 1950s—to implement mechanical, then computerized processing of the excavated data (Pavlu et al. 1983–1987). In Poland, very-large-scale rescue excavations were connected with mining activity and the creation of vast industrial zones (Kobyli' nski 1998), (Demoule, 2012, p. 614).

From the years 1960s to 1970s there emerged salvage archaeology in France that sought to intervene in major infrastructural development projects that risked to destroy archaeological heritage. During that time most of the salvage archaeological investigations were undertaken first by passionate amateur archaeologists then it was progressively and systematically

organized by the Association for National Archaeological Excavations (*Association pour les fouilles archéologiques nationales*, AFAN), which was created in the year 1973 under the 1901 law concerning the creation of associations in France.

The historical evolution of preventive archaeology in France cannot go without the mention of the important role played by the archaeologists under the umbrella organisation of AFAN. As a young discipline by then, archaeology was yet to be generally accepted as a profession. It took the efforts of archaeologists, armatures, volunteers who had passion for the conservation of antiquities, the media, environmentalists and the general public especially those whose heritage was being threatened by the then ongoing projects, to publicly denounce massive loss of archaeological resources through uncontrolled development projects.

In Western as well as Eastern Europe, preventive archaeology, in the modern sense of the term, did not exist prior to the 1990s, with different forms and practices of rescue archaeology being much more common. If one compares Eastern and Western rescue archaeology prior to the 1990s, the major point of resemblance was the fact that they all lacked clear and comprehensive heritage protection systems and practices. Every country had legislation that clearly defined and protected cultural heritage, but none of them had effective mechanisms, criteria and tools for efficient heritage protection, including research into endangered sites. To many it seemed somewhat logical that we were dealing with 'normal' research, albeit in extraordinary conditions, and that practices developed at

academic institutions could also serve to rescue endangered heritage.

(Novaković & Horňák, 2016, p. 27).

What then does the notion of preventive archaeology add to that of archaeology?¹⁴¹ The notion of preventive archaeology, according to A. Schnapp, surpasses that of salvage or *rescue* archaeology (emphasis added). It is about reaffirming that, in the face of erosion and destruction of the past, the memory should be treated with precaution. Preventive archaeology is employed to respond to the notion of emergency that is required of the archaeologist in his relationship with the developer [our own translation] (Schnapp, 2009, p. 20). According to Jacques Lasfargues, it was not easy to find another term and therefore the reflection consisted in evoking the primary objective of the evolution from rescue archaeology, 'to prevent', thus the term "preventive archaeology" (Lasfargue, 2009, p. 182).

¹⁴¹ Citing Alain Schnapp, « Qu'est-ce que la notion d'archéologie préventive apporte à l'idée d'archéologie? » (Schnapp, 2009, p. 20)

10.2.4 Diagrammatic representation of the Core Attributes of Preventive Archaeology

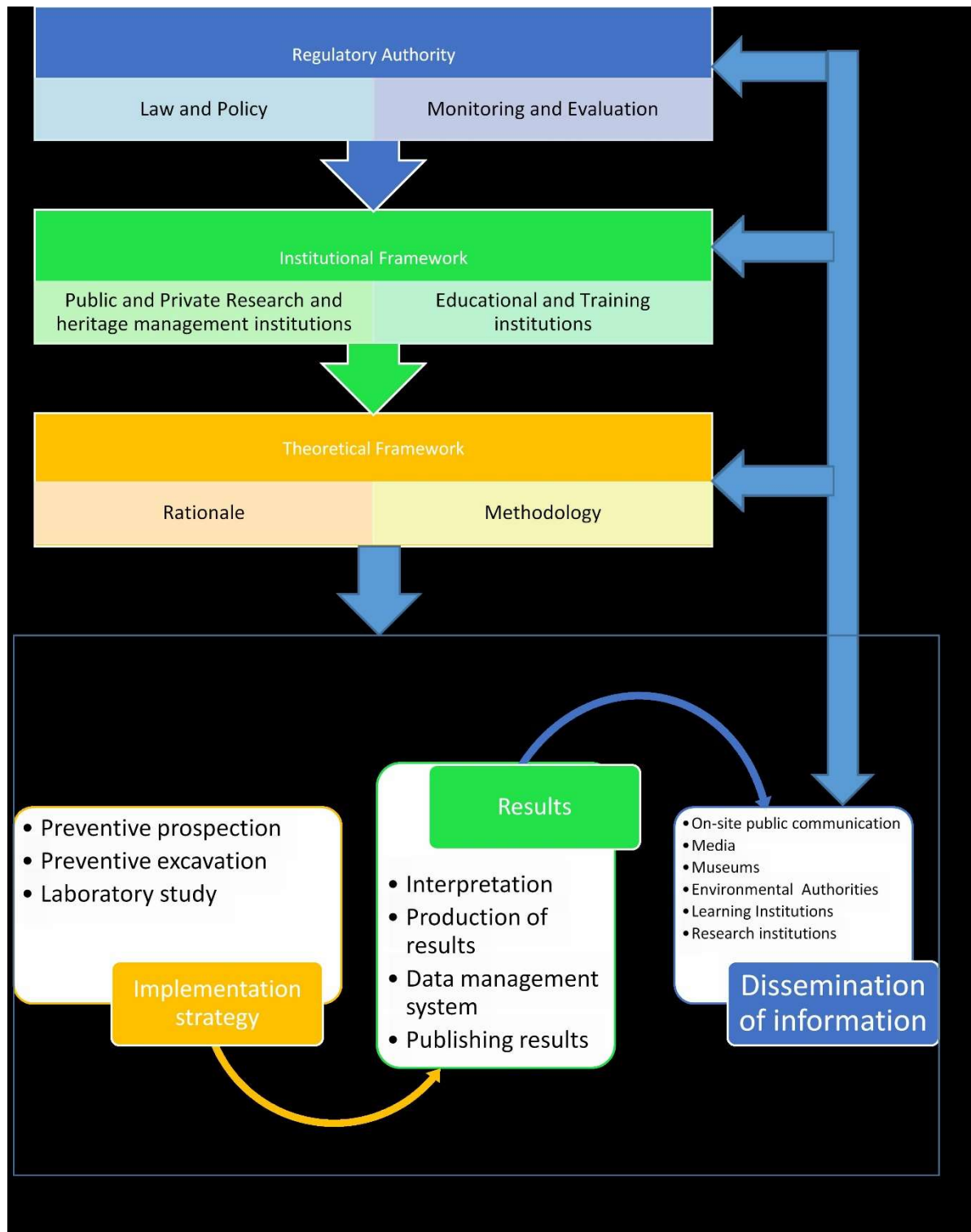


Illustration 11 Diagrammatic representation of the Core Attributes of Preventive Archaeology

10.2.5 Aims and objectives of preventive archaeology

According to the French Heritage Code (Code du Patrimoine, Livre V, Archéologie), Article L521-1 :

L'archéologie préventive, qui relève de missions de service public, est partie intégrante de l'archéologie. Elle est régie par les principes applicables à toute recherche scientifique. Elle a pour objet d'assurer, à terre et sous les eaux, dans les délais appropriés, la détection, la conservation ou la sauvegarde par l'étude scientifique des éléments du patrimoine archéologique affectés ou susceptibles d'être affectés par les travaux publics ou privés concourant à l'aménagement. Elle a également pour objet l'interprétation et la diffusion des résultats obtenus.

Preventive Archaeology, which is a public service mission, is an integral part of archaeological research. It is governed by the principles that apply to all scientific research. Its aim is the detection, conservation or the safeguard by scientific study of the elements of archaeological heritage impacted by public or private development projects. It also aims at the interpretation and dissemination of the results obtained.

From the above quote, we can identify the following aims of preventive archaeology:

- a) The detection of elements of archaeological heritage threatened by a development project;
- b) The conservation or safeguard of elements of archaeological heritage through scientific study;

- c) The interpretation of results from preventive archaeological investigation; and
- d) The dissemination of results from preventive archaeological research.

Right from the planning stage, INRAP ensures that all the above aims are catered for by allocating the necessary resources for each aspect in the budget. The success of any preventive archaeology mission depends to a greater extent on the manner in which the entire process is planned including the constitution of the research team. This calls for a mixed team that brings together various and varied professionals. The measure of an institution's capacity to deal with preventive archaeological research projects depends on its ability to respond to as many questions can be raised across the different archaeological periods and disciplines. This is a key aspect to be considered when selecting the institution to carry out archaeological survey or excavation. It is also the main factor that gives INRAP an upper hand in this field of research that requires speed, efficiency and reliability in terms of resources, techniques and methodology. This saw an increase in the human resource and the personnel of INRAP based on the magnitude of infrastructural development projects that were being witnessed since its inception.

10.3 Actors and agents of preventive archaeology in France

In France, archaeological activity and research, whether carried out in the context of preventive archaeology or programmed archaeological excavations, are organized under the auspices of two ministries: the Ministry of Culture and of Communication and the Ministry of Higher Education and Research (Inrap, 2017). According to Article L522-1 of the French Heritage Code (Legislative Part) Book V Archaeology, "*The State shall ensure the reconciliation of the respective requirements of scientific research, heritage conservation and economic and social development*". This gives the State the entire administrative and

scientific mandate to control the key actors in the protection of cultural heritage. It deals with all the responsibility of prescription: measures aiming at the detection, the conservation or salvaging by scientific study of the archaeological heritage; designates the scientific practitioner in charge of any operation of preventive archaeology and carries out the control missions and evaluation of such operations (République française, 2005, pp. Article L522-1). In addition, the State draws up and updates the national archaeological map. This brings together all the archaeological data available at the national level. In the archaeological map, the State may define areas where development projects affecting the subsoil are presumed to be the subject of archaeological prescriptions prior to their commencement (République française, 2005, pp. Article L522-5).

There are various actors of preventive archaeology in France. They can be drawn from both public and private institutions beginning with the State as the key actor through the Ministries of Culture and Communication and the Ministry of Higher Education and Research.

The general actors of preventive archaeology are:

10.3.1 The developers

Developers are the key players who are, through their development projects, at the origin of the large part of discovery of the rich national archaeological heritage. It is for this reason that the legislation ensured that two representatives of public and private persons concerned with preventive archaeology be part of the Administrative Council of INRAP. The main rationale behind the developers' active role in preventive archaeology is the polluter-pays principle that obliges the developer to fund preventive archaeology because their development projects have potential threats to the underground archaeological material (Audebert & Vigreux, 2012).

10.3.2 The State

Through the Ministry of Culture and Communication (MCC). The MCC has the Directorate General of Heritage under which is found the Department of Heritage Services with the section (*sous-direction*) of archaeology. Similarly, the Ministry of Higher Education and Research is involved in the training and creation of different lines of specialization in archaeology. The various ways of State action include:

10.3.2.1 State intervention through legislation and regulations

In France, archaeological research is conducted under strict State control. State control emanates from article 1 of the law of 27th September 1941 concerning the regulation of archaeological excavations. Article L 522-1 of the Heritage Code declares the role of the State as an affirmation of the 1941 law. Article 2 of the Heritage Code gives the specific intervention of the State in preventive archaeology (Audebert & Vigreux, 2012):

- The State prescribes preventive archaeological diagnostics, excavations or modification of the project;
- Prescriptions concerning diagnostics and preventive archaeology operations must be justified;
- If the archaeological material discovered exhibit the highest heritage interest the State may notify the developer about the classification of the whole or part of the land in accordance with legal provisions for historical monuments;
- The State has the responsibility to elaborate and to update the national archaeological map (Audebert & Vigreux, 2012, p. 26).

10.3.2.2 *Administrative organization*

To ensure effective management and scientific control of archaeological research, the State put in place a system of administration of archaeology under the Ministry of Culture and Communication (MCC). Since 1977 there was administrative decentralization of State functions through deconcentration (*déconcentration*) with creation of the Regional Directorate of Cultural Affairs (DRAC) under the Directorate of Heritage which assures the management and conservation of archaeological heritage. After the enactment of the law of 6th February 1992 about territorial organization of the Republic, DRAC became deconcentrated services of the Ministry of Culture (Audebert & Vigreux, 2012, p. 27).

Under the DRAC are various Regional Archaeological Services (*le Service régionale de l'archéologie*, SRA) which provide an administrative role on archaeology, headed by the Regional Conservators of Archaeology (Conservateur régional de l'archéologie, CRA). The role of the conservator (Conservateur) as used here is not the same as the role of the 'Conservator' as used in the anglo-saxon systems including Kenya, who is responsible for the physical state of heritage. In France, the conservator is the person responsible for the scientific, cultural, legal and administrative protection and management of cultural heritage (Mohen, 1999, p. 183).

DRAC is directly under the prefect of the region who has the mandate to give archaeological prescriptions, authorize archaeological excavations and designate the scientific consultant of preventive archaeology. He does all these with the help of the Territorial Commission of Archaeological Research (CTRA) in accordance with Article R.522-1 of the Heritage Code (Audebert & Vigreux, 2012, p. 27). Thus, the State control of preventive archaeology is a deconcentrated function that is exercised through the prefects of the regions.

According to article 13 of the Decree N° 2004-49 of 3rd June 2004¹⁴², the consultant (l'opérateur) is the scientific manager who acts on behalf of the regional prefect and guarantees the scientific quality of the archaeological operation. As such, he takes, as part of the implementation of the intervention mission, the decisions relating to the scientific conduct of the archaeological operation and the preparation of the scientific report under his direction. The consultant for the realization of the diagnosis may be different from that who will conduct preventive excavation.

10.3.2.3 Prescription

The prescription for preventive archaeology diagnostic operations or preventive excavation is done by the prefect of the region. The general trend shows the national average of prescriptions for preventive diagnosis and excavations between 2003 and 2010.

Year	Number of dossiers received for development projects (D _r)	Number of diagnoses prescribed per year (D _p)	Percentage of prescription D _p /D _r %	Number of excavations prescribed (E _p)	Percentage of prescribed excavations E _p /D _r %
2003	29 363	2 132	7.26%	419	1.43%
2004	35 263	2 603	7.38%	472	1.34%
2005	35 593	2 524	7.09%	541	1.52%
2006	37 663	2 493	6.62%	523	1.39%
2007	36 576	2 438	6.67%	552	1.51%
2008	29 065	1 999	6.88%	595	2.05%
2009	28 125	1 922	6.83%	504	1.79%
2010	32 524	2 389	7.35%	637	1.96%

¹⁴² Décret n°2004-490 du 3 juin 2004 (Dernière modification : 1 janvier 2018) relatif aux procédures administratives et financières en matière d'archéologie préventive. Version consolidée au 10 mars 2011 accessed on 08/05/2019 on URL :

Fig. 1: Prescribed preventive diagnoses and excavations, 2003-2010 courtesy (Audebert & Vigreux, 2012, p. 27)¹⁴³

From *Fig. 1* it can be observed that the national diagnostic prescriptions between the year 2003 and 2010 was at an average of 7%. This, according to Audebert and Vigreux, translates to the willingness by the State to limit fortuity discoveries in favour of preventive archaeology by maintaining a constant and regular prescription of diagnoses. Prescription for preventive excavations, however, between 2003 and 2010 stood at about 2%. (Audebert & Vigreux, 2012, p. 28). This implies that most of the diagnoses did not necessarily yield results to warrant prescription for excavation except in some cases where there was prescription for project modification.

10.3.2.4 Other State organs of intervention

State intervention in archaeology can be realized through public institutions of national character. These include:

a) **The National Centre of Prehistory (*Centre national de préhistoire, CNP*)**

The National Centre of Prehistory was created in 1978 and has its headquarters at Périgueux in Dordogne. It is specialized in multidisciplinary studies, conservation and development of caves and shelters. More particularly CNP deals with the study and contributes to the protection of rock art, notably Palaeolithic ornate caves.

¹⁴³ Source : Ministère de la Culture et de la Communication – sous-direction de l’Archéologie – juin 2011, in Rapport d’information n° 760 (2010-2011) de MM. P. Bordier et Y. Dauge, fait au nom de la commission de la culture, de l’éducation et de la communication, déposé le 12 juillet 2011. <http://www.senat.fr/rap/r10-760/r107601.pdf> cited in (Audebert & Vigreux, 2012, p. 27).

b) **The National Institute of Heritage (l'Institut national de Patrimoine, INP)**

The National Institute of Heritage an institute of higher education whose mission is to train and to competitively recruit the conservators of heritage for the State, for the territorial public service (by a convention with l'Institut national des études territoriales du Centre national de la fonction public territorial, CNFPT), and for the city of Paris. It also does competitive selection and training of restorators of heritage.

c) **The National Institute of Preventive Archaeological Research (INRAP)**

The National Institute of Preventive Archaeological Research (INRAP) was established in the year 2002. According to Article L 523.1 of the Code du Patrimoine, INRAP has the mandate to carry out diagnoses and excavations of preventive archaeology. It ensures the scientific exploitation of preventive archaeology operations and the dissemination of the results. It also contributes to teaching, cultural dissemination and the valorisation of archaeology.

The State also intervenes in archaeology through various national services such as:

d) **The Musée d'Archéologie nationale (et domaine national) de Saint-Germain-en-Laye (Yveline) – [National Archaeological Museum]**

Napoleone III established the National Archaeological Museum in 1862 as the Museum of national antiquities, le Musée des antiquités nationales. It has exclusive archaeological collections of French territory.

e) **The Musée national du Préhistoire (National Museum of Prehistory):** It is located at Eyzies-de-Tayac in Dordogne, in the valley of the Vézère; an environment

rich in prestigious archaeological sites¹⁴⁴. With collections dating to 400 000 years of the history of human kind, the museum was classified as a World Heritage Site.

- f) **The Département des recherches archéologiques subaquatiques et sous-marines (DRASSM)** – Department of Sub-Aquatic And Sub-Marine Archaeological Research.

10.3.3 State consultative organs: CNRA and CTRA

- a) **The National Council of Archaeological Research (Conseil National de Recherche Archéologique - CNRA):**

CNRA was created in 1994. The council is the main advisory organ on matters of archaeological research at the national level. It is placed under the Ministry of Culture and Communication and presided over by the minister.

- b) **The Territorial Commissions of Archaeological Research (Les Commissions Territoriales de la Recherche Archéologique CTRA) :**

Territorial Commissions of Archaeologic Research (*Les Commissions Territoriales de la Recherche Archéologique CTRA*) were established in 2017 by the decree number 2017-156 of 8th February 2017 about the National Council of Archaeologic Research and territorial commissions of archaeologic research¹⁴⁵. They replaced *Interregional* Commissions of

¹⁴⁴ During my Master 2 internship at Campagne in Dordogne, through the invitation of the Scientific and Technical Assistant Director of INRAP in the region of Nouvelle-Aquitaine, Luc Detrain, I was able to visit some of the magnificent archaeological sites in this region of France including the World Centre of Prehistory.

¹⁴⁵ Décret no 2017-156 du 8 février 2017 relatif au Conseil national de la recherche archéologique et aux commissions territoriales de la recherche archéologique.

Archaeologic Research (*Commissions Interrégionales De La Recherche Archéologique - CIRA*)¹⁴⁶ which were created in 1994 following Gauthier report of July 1992 which recommended their creation at interregional level in direct link with the national administrative levels constituting the CNRA (Audebert & Vigreux, 2012, p. 40).

There are six CTRA (Journal Officiel De La République Française, 10 February 2017)¹⁴⁷ whose role is to evaluate archaeological research at the deconcentrated administrative level.

TERRITORIAL COMMISSION	TERRITORIAL AREA COVERED
Commission Centre-Nord	Centre-Val de Loire, Ile-de-France, hauts-de-France
Commission Ouest	Bretagne, Normandie, Pays de la Loire
Commission Est	Grand Est, Bourgogne-Franche-Comté
Commission Sud-Est	Auvergne-Rhône-Alpes, Provence-Alpes-Côte d'Azur, Corse
Commission Sud-Ouest	Nouvelle-Aquitaine, Occitanie
Commission de l'outre-mer	Guadeloupe, Guyane, Martinique, La Réunion, Mayotte, Saint-Pierre-et-Miquelon, Saint-Barthélemy, Saint-Martin

10.3.4 Consultants of preventive archaeology (*les opérateurs*)

There are various consultants responsible for preventive archaeology in France. However, diagnostic survey remains a public service mission exercised by the archaeological services of local authorities where they exist (*les services archéologiques de collectivités*

<https://www.lagazettedescommunes.com/telechargements/2017/02/decret-2017-comm-territ-recher-archeo-jo-pdf-frame.pdf>

¹⁴⁶ Exit les CIRA, voici les CTRA. Dans le milieu de l'archéologie, les sigles qui font le quotidien des conversations professionnelles vont changer : les commissions interrégionales de la recherche archéologique (CIRA) sont remplacées par des commissions territoriales de la recherche archéologique (CTRA). Un changement entré en vigueur avec la publication du décret relatif à la gouvernance de la recherche archéologique paru le 10 février 2017 (décret no 2017-156 du 8 février 2017 relatif au Conseil national de la recherche archéologique et aux commissions territoriales de la recherche archéologique).

¹⁴⁷ <https://www.lagazettedescommunes.com/telechargements/2017/02/decret-2017-comm-territ-recher-archeo-jo-pdf-frame.pdf>

territoriales) failure to which INRAP takes responsibility (Sénat, 2011; République française, 2005).

The Law No. 2003-707 of August 1, 2003 established a competitive system for the conduct of preventive archaeological excavations. The four categories of institutions authorised to carry out preventive archaeological excavation include¹⁴⁸:

- i. The National Institute of Preventive Archaeological Research (Institut National de Recherches Archéologiques Préventives - INRAP)
- ii. Local authority archaeological services (*les services archéologiques de collectivités territoriales*) which must be approved by the State for preventive survey and preventive excavations.
- iii. Other public or private institutions approved by the State for preventive excavations (*opérateurs agréés, privés ou publics*)

These are private or public consultants who have been approved by the State through the Ministry of Culture and Communication for the realization of archaeological excavations.

Unlike INRAP, these are research institutions that have got specific and limited areas of

¹⁴⁸ Conformément aux dispositions du code du patrimoine (art. L.523-8), les opérations de fouilles préventives peuvent être réalisées par différents opérateurs : l'Institut national de recherches archéologiques préventives (Inrap), un service archéologique de collectivité territoriale habilité par l'État ou toute autre personne de droit public ou privé titulaire de l'agrément délivré par l'État.

C'est l'aménageur, maître d'ouvrage de la fouille archéologique, qui choisit l'opérateur et signe avec lui un contrat définissant, sur la base des prescriptions de l'État, le projet scientifique d'intervention et les conditions de sa mise en œuvre (prix, délais...).

[https://www.culture.gouv.fr/Sites-thematiques/Archeologie/Les-operateurs-en-archeologie-preventive#targetText=L.523%2D8\)%2C,agr%C3%A9ment%20d%C3%A9livr%C3%A9%20par%20l'%C3%89tat.](https://www.culture.gouv.fr/Sites-thematiques/Archeologie/Les-operateurs-en-archeologie-preventive#targetText=L.523%2D8)%2C,agr%C3%A9ment%20d%C3%A9livr%C3%A9%20par%20l'%C3%89tat.)

specialization as defined in their certificate of operation hence they are not allowed to do diagnostic survey¹⁴⁹.

For all the above to function harmoniously the State ensures that there is strict observation of the scientific norms as defined by law on matters of archaeological research.

The developers makes their choice of the archaeological experts to carry out the excavation based on the ones preselected by the State through Regional Archaeological Services (SRA) under the Regional Directorates of Cultural Affairs (DRAC).

iv. Associations of consultants

Given the limited level of their scientific competence as per their state approval, several consultants may come together in order to meet the developer's consultation needs to form what is referred to as momentous groups of enterprises (*groupements momentanés d'entreprises GME*) (Audebert & Vigreux, 2012).

10.3.5 Other Scientific Interventionist Agencies:

i. The National Centre of Scientific Research (le Centre National de Recherche Scientifique, CNRS)

¹⁴⁹ L'Inrap est compétent quels que soient la période chronologique et le domaine d'intervention (terrestre, subaquatique, sous-marin). Les autres opérateurs ont un champ de compétence défini par leur habilitation ou leur agrément, comme indiqué dans la "boite" Répertoire des contacts des opérateurs, régulièrement mise à jour.

[https://www.culture.gouv.fr/Sites-thematiques/Archeologie/Les-operateurs-en-archeologie-preventive#targetText=L.523%2D8\)%2C,agr%C3%A9ment%20d%C3%A9livr%C3%A9%20par%20l%C3%89tat.](https://www.culture.gouv.fr/Sites-thematiques/Archeologie/Les-operateurs-en-archeologie-preventive#targetText=L.523%2D8)%2C,agr%C3%A9ment%20d%C3%A9livr%C3%A9%20par%20l%C3%89tat.)

The CNRS does not directly participate in preventive excavations nor diagnostics but it is made up of research teams whose research interests cut across those approved. Given the massive documentation that emanates from preventive research and the challenges of their exploitation in the short run, there often emerge partnerships thus creating multidisciplinary research teams under Mixed Units of Research (Unités Mixtes de Recherche – UMR) supported by the universities (Audebert & Vigreux, 2012).

ii. The Universities

Universities regroup various competencies thus providing a multidisciplinary scientific research environment beyond the field of archaeology that necessitates various partnerships between public consultants such as INRAP and universities.

iii. Associations

There exist some associations that are approved as consultants which can carry out preventive excavation and study but not the diagnostic.

iv. Other providers of scientific services

These are private research laboratories, liberal archaeologists or associations created under the 1901 law capable to do common preventive archaeological study and data analysis such as ceramic studies, archaeozoology, carpology, palynology carbon 14 dating or dendrochronology or the rare studies such as micromorphology, mineralogy, physio-chemical analysis of material among others.

These institutions constitute an important network especially for private or local authority archaeological services which do not have all the scientific specializations thus often call for

support based on the specific requirements exhibited by a particular excavation or to meet the regulatory requirements as issued through the state prescriptions by the prefect.

**Mixed Research Units (UMR) regrouping researchers working on archaeology in
Metropolitan France**

ERL 7230 - LIVE	Laboratoire Image, Ville, Environnement	Strasbourg
FRE 2960 - AMIS	Anthropologie Moléculaire et Imagerie de Synthèse	Toulouse
UMR 5059 - CBAE	Centre de bio-archéologie et d'écologie	Montpellier
UMR 5060 - IRAMAT	Institut de Recherche sur les Archéomatériaux	Belfort, Pessac, Orléans
UMR 5133 - Archéorient	Environnement et sociétés de l'Orient ancien	Lyon
UMR 5138	Archéométrie et archéologie : Origine, Datation et Technologies des matériaux	Lyon
UMR 5140	Archéologie des Sociétés méditerranéennes	Lattes
UMR 5189 - HiSoMa	Histoire et sources des mondes antiques	Lyon
UMR 5199 - PACEA	De la Préhistoire à l'Actuel : Culture, Environnement et Anthropologie	Bordeaux
UMR 5204 - EDYTEM	Environnements, Dynamiques et Territoires de la Montagne	Chambéry
UMR 5594 - ARTeHIS	Archéologie, cultures et sociétés	Dijon
UMR 5600 - EVS	Environnement, ville, société	Lyon
UMR 5602 - GEODE	Géographie de l'Environnement	Toulouse
UMR 5607 - Ausonius	Ausonius : institut de recherche sur l'Antiquité et le Moyen-âge	Pessac
UMR 5608 - TRACES	Travaux et Recherches Archéologiques sur les Cultures, les Espaces et les Sociétés	Toulouse
UMR 6042 - GEOLAB	Laboratoire de Géographie physique et environnementale	Clermont-Ferrand
UMR 6130 - CEPAM	Centre d'Études Préhistoire, Antiquité, Moyen-âge	Nice
UMR 6173 - CITERES	Cités, Territoires, Environnement et Sociétés	Tours
UMR 6223 - CESCO	Centre d'études supérieures de civilisation médiévale	Poitiers
UMR 6249	Chrono-environnement	Besançon
UMR 6273 - CRAHM	Centre Michel de Bouard - Centre de recherches archéologiques et historiques anciennes et médiévales	Caen
UMR 6566 - CREA AH	Centre de Recherche en Archéologie, Archéosciences, Histoire	Rennes
UMR 6572 - LAMM	Laboratoire d'archéologie médiévale méditerranéenne	Aix-en-Provence

UMR 6573 - CCJ	Centre Camille Jullian - Archéologie méditerranéenne et africaine	Aix-en-Provence
UMR 6578	Anthropologie bioculturelle	Marseille
UMR 6636 - LAMPEA	Laboratoire méditerranéen de préhistoire Europe-Afrique	Aix-en-Provence
UMR 7041 - ArScAn	Archéologies et Sciences de l'Antiquité	Nanterre
UMR 7044	Étude des civilisations de l'Antiquité : de la Préhistoire à Byzance	Strasbourg
UMR 7055	Préhistoire et technologie	Nanterre
UMR 7194 - HNHP	Histoire naturelle de l'Homme préhistorique	Paris
UMR 7209	Archéozoologie, archéobotanique : sociétés, pratiques et environnements	Paris
UMR 8096 - ARCHAM	Archéologie des Amériques	Nanterre
UMR 8164 - HALMA-IPEL	Histoire, archéologie, littérature des mondes anciens - Institut de papyrologie d'Égyptologie	Lille
UMR 8546 - AOROC	Archéologies d'Orient et d'Occident et Sciences des textes	Paris
UMR 8589 - LAMOP	Laboratoire de Médiévistique Occidentale de Paris	Paris
UMR 8591 - LGP	Laboratoire de géographie physique "Pierre BIROT"	Meudon
USR 3155 - IRAA	Institut de recherche sur l'architecture antique	Aix-en-Provence, Paris, Pau, Lyon

Table 8: Mixed Research Units (UMR) regrouping researchers working on archaeology in Metropolitan France

Source: Ministry of Culture and Communication – Sub-direction of archaeology - June 2011

PREVENTIVE ARCHAEOLOGY, CULTURAL HERITAGE IMPACT ASSESSMENT AND MANAGEMENT :
A COMPARATIVE PUBLIC POLICY ANALYSIS BETWEEN KENYA AND FRANCE

LUCAS L. W. BWIRE, 16TH DECEMBER 2022

Unit of Research	CNRS	Univ	MCC	INRAP	Coll Terr (L. Auth)	Private	Doct	Assoc	Div	Foreign	Post doc	Total
ERL 7230	16	18		2			17			2	3	58
FRE 2960	8	21		2			10		3		3	47
UMR 5059	10	7		3			9		1		1	31
UMR 5060	28	15	5	9			17		2	1		77
UMR 5133	34	8					42			5	6	95
UMR 5138	19	8	8	24	3	2	3					67
UMR 5140	27	12	12	43	7	3	39	1	25	3	2	174
UMR 5189	18	35										53
UMR 5199	35	15	13	19	3	4	36		21	6		152
UMR 5204*	7	25	2				26		1	1	1	63
UMR 5594	17	38	12	36	9	4	78	9	30	5	2	240
UMR 5600	25	67										92
UMR 5602	17	21					30		4		3	75
UMR 5607*	18	54	3	2			78		3			158
UMR 5608	34	29	17	35	3	1	58	1	22	9	1	210
UMR 6042	6	26	1	5			14		8		5	65
UMR 6130	27	18		6	4		23		12			90
UMR 6173	7	14		18	12				3			54
UMR 6223	7	50	3	1	1				1	4		67
UMR 6249	20	97	7	7	2		59		22		11	225
UMR 6273	7	34	5	12	3		23		15	5		104
UMR 6566	12	29	9	24								74
UMR 6572	23	20	5	8	8	2	44	2	7	6	1	126
UMR 6573	43	34	7	1	17	1	45		27	9	6	190
UMR 6578*	16	20	2	1	1		26		7	3	2	78
UMR 6636	15	6	7	6	1	1	29		17	3		85
UMR 7041	91	123	26	83	13	1	60		21	44	20	482
UMR 7044	10	32	4	13								59
UMR 7055	12	3		1					3		1	20
UMR 7194	34	28	2	2	5		33		18	4	5	131
UMR 7209	23	9		5			13		3	3	6	62
UMR 8096	15	6	5	1			21		16	1	5	70
UMR 8164	16	45	15	11	10	1			2	1		101
UMR 8546	40	38	8	9	6	2	18	2	5	12	4	144
UMR 8589	22	103	7	3	2		114		22	37	1	311
UMR 8591	16	22		4			29		6			77
USR 3155	24	14	1		2		32		4		1	78
	799	1 144	186	396	112	22	1 026	15	331	164	90	4 285
	18.65%	26.70%	4.34%	9.24%	2.61%	0.51%	23.94%	0.35%	7.72%	3.83%	2.10%	

Table 9: Mixed Research Units (UMR) regrouping researchers working on archaeology in Metropolitan France – Composition of each team

Source: Ministry of Culture and Communication – Sub-direction of archaeology - June 2011

Table 9 shows that there were 37 Mixed Research Units (UMR) regrouping 4 285 researchers including 186 from the Ministry of Culture and Communication and 396 from INRAP (Sénat, 2011).

10.4 Funding of Preventive Archaeology

Article L5244-1 of the French Heritage Code established three means of funding preventive archaeology which are¹⁵⁰:

a) Preventive Archaeology Tax (Redevance d'archéologie préventive - RAP)

Article 9 of the law number 2001-44 of 17th January 2001 established the preventive archaeology tax to finance preventive diagnostic survey.

b) The National Fund for Preventive Archaeology [Fonds national pour l'archéologie préventive (FNAP)]

Financing preventive excavations is the responsibility of the developer in the framework of developer-pay or polluter-pay principle. However, there are circumstances in which the State is obliged to cater for the excavation. The National Fund for Preventive Archaeology is used to subsidise the cost of preventive excavations in such particular cases depending on the type of the development for instance building a residential house.

¹⁵⁰ Article L524-1 ; Le financement de l'établissement public mentionné à l'article L. 523-1 est assuré notamment : a) Par la redevance d'archéologie préventive prévue à l'article L. 524-2 ; b) Par les subventions de l'Etat ou de toute autre personne publique ou privée ; c) Par les rémunérations qu'il perçoit en contrepartie des opérations de fouilles qu'il réalise.

c) Polluter-pays principle (Principe de casseur-payer)

The government established the polluter-pays principle to fund preventive archaeological excavations.

10.5 Practice of preventive archaeology

Preventive archaeology, just as it has various terminologies it also has a diversity of organizational framework across various countries in the world and whose legislation keeps evolving to match the emerging issues relating to sustainable development. Even among the Member States of the European Union who are signatories of the Valletta 1992 Convention, significant differences can be discerned in terms of the organization of contract, development-led or preventive archaeology. These variations, according to Kristiansen, represent a laboratory for testing different principles of organization and the implications of these for quality control and research (Kristiansen, 2009, p. 642).

In this respect, there exist two contrasting models of organization of the society which can explain as to why there are such variations in the systems of protection of archaeological heritage. In the first model, according to J.-P. Demoule, the society regulates itself either through the “hidden hand” or through economic liberalism (Demoule, 2010, p. 13). The model thus agrees with economic theories of the organization of the society such as that of Adam Smith and neo-Darwinism respectively. This is what Kristiansen calls a capitalist organization (Kristiansen, 2009).

In the second model, it is the State according to Demoule, in its role as the expression of the community of citizens, which organizes and regulates social life. This is the classical model of the State which was operational in many parts of Western Europe until 1980s when ‘this state of affairs was put into question, essentially for reasons of ideology rather than economic

inefficiency, and without a real public debate' (Demoule, 2010, p. 13). It fits into the socialist model as per the classification two main models described by Kristiansen (Kristiansen, 2009).

In the second model according Demoule, it is the Nation State that is responsible for the protection of archaeological heritage. This can be through a state archaeological service or through dedicated public institutions such as INRAP. The first model however, treats archaeological heritage as merchandise or a service. Demoule argues that in this model commercial archaeological companies are at the service of their client with some observation of code of ethics to ensure quality control in the framework of the free market economy (Demoule, 2010, p. 13).

Right from the legal definition of preventive archaeology in France and the term "development-led" archaeology as used in the United Kingdom, two contrasting organizational systems can be discerned; a socialist system on one side and a capitalist system on the other. Prior to the development of preventive archaeology France had a decentralised system of salvage archaeology which was exercised by the AFAN until the beginning of the twenty first century when INRAP was born out of the law N° 2001-44 on preventive archaeology. After the establishment of INRAP the system became more centralised with administrative de-concentration of powers to the regions.

In the current system, preventive archaeology survey is carried out either by INRAP or by an authorized territorial archaeological service (*Service archéologique des collectivités territoriales*). Preventive excavation, on the other hand can be done by INRAP or territorial archaeological services or by a qualified private company approved by the State. The

developer has to choose the operator to conduct the excavation based on the scientific specifications drawn up by the State and under the scientific control of the State (DRAC).

**COMPARING TWO ORGANIZATIONAL MODELS OF PREVENTIVE
ARCHAEOLOGY**

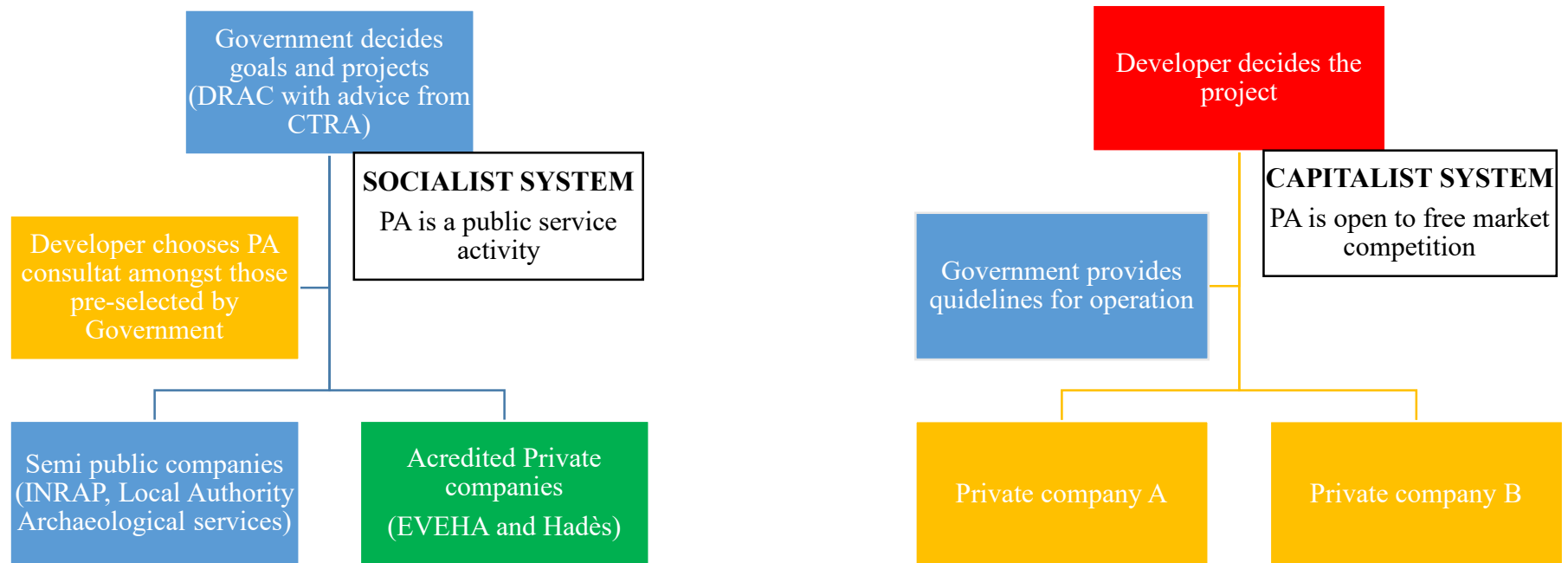


Illustration 13 Comparing Two Organizational Models of Preventive Archaeology © L.L. Bwire

10.5.1 Procedure and methodology of preventive archaeology

The term “preventing” archaeology is predictive of the procedure and the methodology of preventive archaeology. Unlike that of rescue excavation, this procedure is embedded in the notion itself of "preventing", thus underlining the name the aims and objectives of the entire activity. The goal is to identify the threats to archaeological heritage prior to the commencement of development works thus assuring the company a good end, with regard to observation of the set deadlines, the protection of discoveries, their preservation and publication (Schnapp, 2009, p. 20).

The procedure begins with the prefectural decree (*l'arrêté préfectoral*). Before large-scale development works such as superhighways, highways, quarries or when a building permit is submitted for development of a parking or a building, the regional prefect and his archaeological service may issue an order to conduct an archaeological diagnosis (Inrap-Diagnostic, 2016).

According to Article L522-2 of the Heritage Code, prescriptions of the State concerning the preventive archaeology diagnoses and operations are a prerequisite for any development project. Diagnostic prescriptions are issued by the Regional Archaeological Service (SRA) within twenty-one days of receipt of the dossier. This period is extended to two months if the projected works are subjected to an environmental impact assessment in accordance with the provisions of the environmental law. Prescriptions for preventive excavation are issued within three months of the receipt of the diagnostic report. In the absence of prescriptions within the stipulated time frame, the State is deemed to have renounced them.

While the diagnoses of preventive archaeology are highly centralized, preventive excavations are subjected to market competition thus some degree of decentralization.

According to Article L523-1 diagnoses of preventive archaeology are entrusted to a national public administrative body [INRAP] which executes them in accordance with the decisions and requirements imposed by the State and under the supervision of its representatives.

On the other hand, according to Article L523-8 of the Heritage Code, it is the developer who makes the choice of the operator for carrying out preventive archaeology excavations. The operator may be either a public institution [INRAP] or an authorised territorial archaeological service [*un service de collectivité territoriale agréé*], or any other public or private institution as long as its scientific competence is guaranteed by an approval issued by the State (République française, 2005).

Some projects fall under the category of those systematically submitted for automatic assessment to the prefect of the region who then determines the possibility of prescriptions for archaeological assessment. These include:

- i. Projects whose work is subject to obtaining a construction permit to build, develop or demolish a structure and located in an area known for its archaeological sensitivity. The sensitivity is defined by a decree from the prefect of the region;
- ii. Projects requiring prior declaration (if not subject to construction permit and environmental impact study) which comprise of:
 - Levelling or raising of the soil affecting an area greater than 10 000 m² and a height of more than 0.50 meter,
 - Land preparation or planting of trees or vines affecting the soil to a depth of more than 0.50 meters and over an area of more than 10 000 m²,
 - Work of uprooting or destruction of stumps of trees on an area of more than 10 000 m²,

- Projects involving creation of water reservoirs or irrigation channels deeper than 0.50 meters and covering an area of more than 10,000 m².
- iii. Development works that are subject to EIA (Fédération national pour les travaux public, 2013).

Other development projects may be subject to an assessment by the prefect even though they are not part of those in the categories for automatic assessment. Two scenarios exist in this case:

- c) The prefect of the region may subject a project to the procedures of preventive archaeology if information leads him to establish that a project could affect the archaeological heritage;
- d) The competent authority to authorize developments may oblige the prefect to prescribe depending on the site of the project and the location of the known archaeological heritage.

In addition, the developer may initiate an advanced prescription procedure before submitting an application to obtain the necessary authorizations for his project. As such, the developer has the possibility to request the prefect of region to determine in advance if the project is likely to give rise to prescriptions (Fédération national pour les travaux public, 2013).

Summary of Administrative Procedure of Preventive Archaeology in France (Audebert & Vigreux, 2012, p. 93)

(see the chart on the next page)

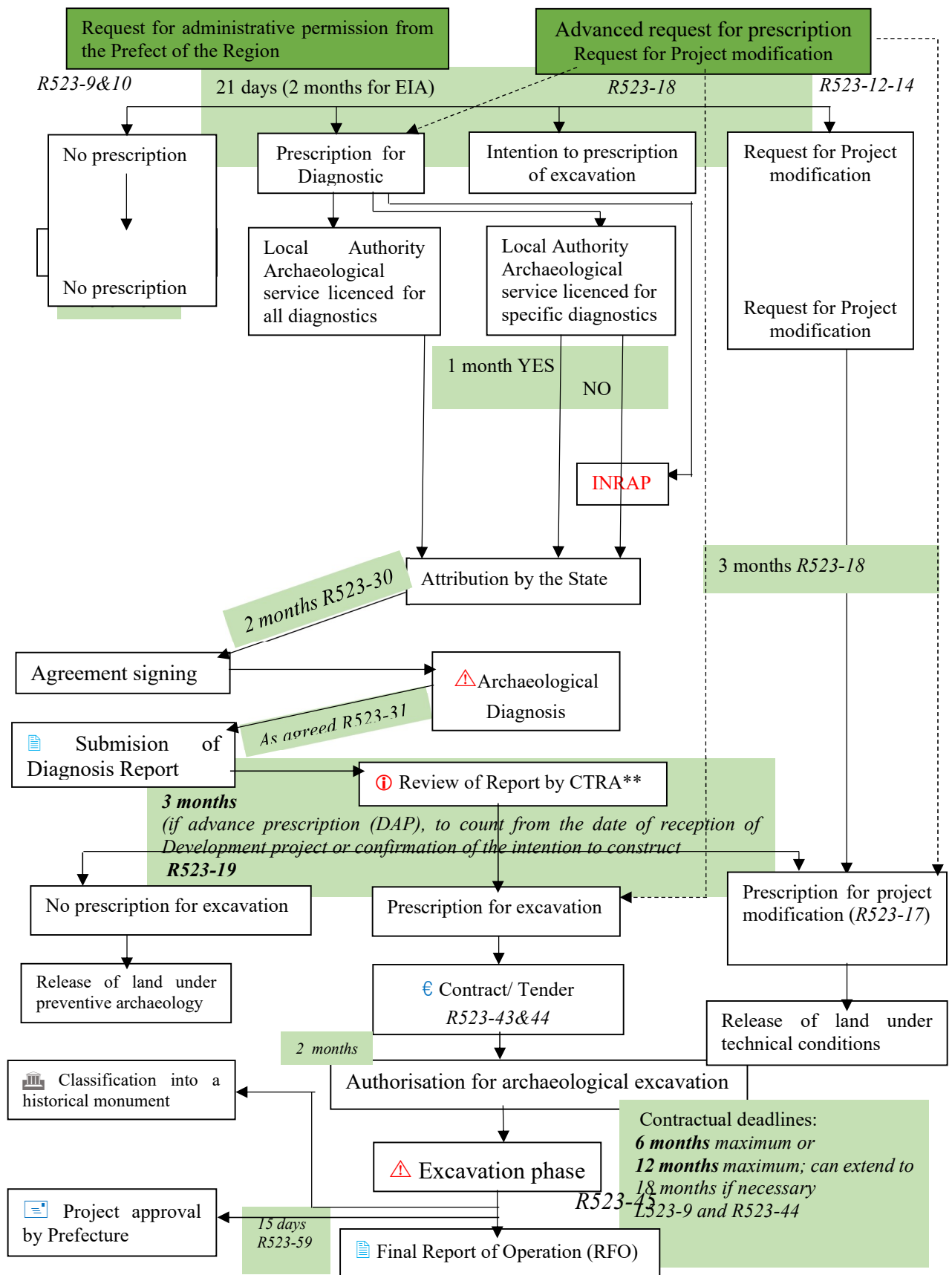


Figure 23: A synthesis procedure of preventive archaeology in France

* Demande anticipée de prescription (DAP)

** Comité Territoriale de Recherche Archéologique (CTRA) formerly Comité interrégional de recherche archéologique (CIRA)

Preventive Archaeological Diagnostic Survey

Most of the activities on the ground involve the survey of various parcels of land on which development projects are anticipated. A preventive archaeology diagnostic operation refers to the archaeological prospection that is conducted on a piece of land before the beginning of any development project that is deemed to have an impact on the archaeological material and sites. The diagnosis is the most fundamental and delicate phase of the whole process of preventive archaeology. As Laurent Deschodt observes, archaeology intervenes armed with the accumulated knowledge gathered beforehand on the place including maps, geotechnical surveys, field visits, and existing documentation about the previous archaeological discoveries in the area surrounding the site. However, the effectiveness of the diagnosis depends mainly on the cumulative experience of the research team in a similar stratigraphic context. In some cases, preliminary studies can be strengthened by recognition of stratigraphic information. This approach, according to Deschodt, becomes more effective through refined knowledge of the stratigraphy, adaptation of the available means to the ground and increased efficiency of the groups, in the case of vast surfaces where the sedimentary context is not recognized (Deschodt, novembre 2010, p. 8). This could be the reason preventive diagnostics are confined to INRAP and local authority archaeological services (*Table 10*) due to their capacity to handle various questions from diverse and more complex site situations.

	Ariège	Aveyron	Gers	Haute-Garonne	Hautes-Pyrénées	Lot	Tarn	Tarn-et-Garonne	Interdepartmental	TOTAL
PREVENTIVE OPERATIONS (ÉVALUATIONS OPD)										
DIAG.	7	6	12	56	3	11	4	13	0	112
INRAP	7	1	12	40	3	11 λ	4	13	0	91
CNRS	0		0	0	0	0	0	0	0	0
Local services (Col.)	0	5	0	16 *	0	0	0	0	0	21
Higher Education	0	0	0	0	0	0	0	0	0	0
Volunteer (BEN)	0	0	0	0	0	0	0	0	0	0
HADES	0		0	0	0	0	0	0	0	0
EVEHA	0	0	0	0	0	0	0	0	0	0
Archeodunum	0	0	0	0	0	0	0	0	0	0
Association 1901 law (ASS)	0	0	0	0	0	0	0	0	0	0
Others	0	0	0	0	0	0	0	0	0	0
SURVEY (SD)	4	4	1	4	0	5	4	0	0	22
INRAP	0	0	0	0	0	0	1	0	0	1
CNRS	1	0	0	0	0	0	0	0	0	1
Local Services (Col)	2	0	0	3 *	0	2λ	0	0	0	7
Departmental Service (SDA)	0	1	0	0	0	1	0	0	0	2
Higher Education	1	0	0	1	0	0	0	0	0	2
Volunteer (BEN)	0	2	0	0	0	1	0	0	0	3
HADES	0	1	1	0	0	0	2	0	0	4
EVEHA	0	0	0	0	0	0	0	0	0	0
Archeodunum	0	0	0	0	0	0	0	0	0	0
Association 1901 law (ASS)	0	0	0	0	0	1	0	0	0	1
Others	0	0	0	0	0	0	1	0	0	1
SALVAGE THROUGH STUDY (OSE)	0	1	1	8	0	4	3	2	0	19
INRAP	0	1	0	4	0	0	0	1	0	6
CNRS	0	0	0		0	0	0	0	0	0
Local Services (Col.)	0	0	0	1*	0	3λ	0	0	0	4
Departmental Service (SDA)	0	0	0	0	0	0	0	0	0	0
Higher Education	0	0	0	0	0	0	0	0	0	0
Volunteer (BEN)	0	0	0	0	0	0	0	0	0	0
HADES	0	0	0	1	0	0	1	1	0	3
EVEHA	0	0	1	0	0	0	0	0	0	1
Archeodunum	0	0	0	2	0	1	1	0	0	4
Association 1901 law (ASS)	0	0	0	0	0	0	0	0	0	0
Others	0	0	0	0	0	0	1	0	0	1
INVENTORY PROSPECTION (PI)	2	6	2	4	1	5	6	3	6	35
INRAP	0	0	0	0	0	0	0	1	0	1

CNRS		0	0	0	0	0	0	0	0	0
Local Services (Col.)	0	0	0	0	0	1 λ	0	0	0	1
Departmental Service (SDA)	0	1	0	0	0	0	0	0	0	1
Higher Education	0	0	0	0	0	0	0	2	0	2
Volunteer (BEN)	2	5	1	4	1	4	5	0	3	25
HADES	0	0	0	0	0	0	0	0	0	0
EVEHA	0	0	1	0	0	0	0	0	0	1
Archeodunum	0	0	0	0	0	0	0	0	0	0
Association 1901 law (ASS)	0	0	0	0	0	0	1	0	0	1
Others	0	0	0	0	0	0	0	0	3	3

Table 10 Participation of different institutions in preventive archaeological operations in Midi-Pyrénées in the year 2014

** Archaeological Services of the Urban Community of Toulouse (Col TLSE : Service archéologique de la Communauté Urbaine de Toulouse)*

λ Departmental archaeological service of Lot (Col 46 : Cellule départementale archéologique du Lot)

From the above analysis of operations carried out in the Midi-Pyrénées in the year 2014 it can be observed that INRAP and local authority services dominated diagnostic operations by sharing the operations at the ratio of 81.25% to 18.75% respectively. On the other hand inventory prospections were mainly conducted by volunteer archaeological services occupying 71.23% of total inventory operations.

10.6 Technological evolution: application of archaeological geophysics in preventive archaeology

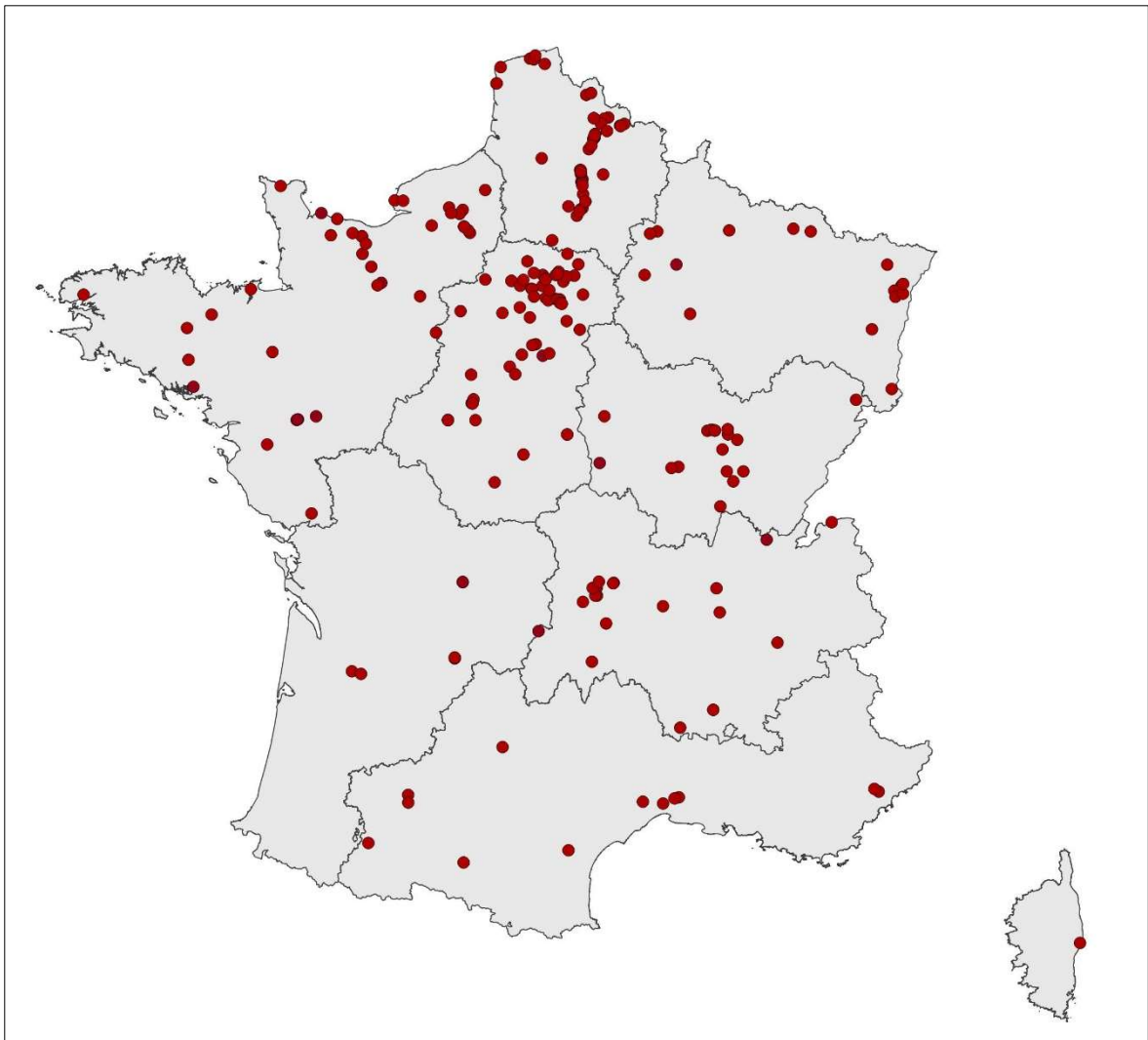
Since 2015 INRAP has developed various technics of geophysics both for preventive and programmed archaeological research to complement the conventional mechanical technics where necessary so as to economise on time, human and financial resources.



Figure 24: Geophysical and mechanical techniques of archaeological research at INRAP¹⁵¹

Key: Top left, geophysics study of electric resistivity at the site called Le Petit Camp de César, La Roche-Blanche (63). Photo courtesy Guillaume Hulin, INRAP, 2017. Top center, geophysics study by the measure of magnetic susceptibility on stripped surface at the place called secteur de l'hippodrome, Ris-Orangis (91). Photo courtesy Philippe Lorquet, Inrap, 2016. Top right, mechanical archaeological diagnostic survey at Haut-Mocau, Mont-de-Marsan. Photo by Lucas Bwire, 2017. Bottom, geophysics acquisition of data by the radar. Photo courtesy Guillaume Hulin, Inrap, 2017.

¹⁵¹ Photos accessed on URL : <https://geophinrap.hypotheses.org/la-geophysique-a-linrap>



Map 6: Geophysical operations conducted by the section of geophysics at INRAP. Photo by G. Hulin, INRAP, March 2021

There has been a debate over the application of archaeological geophysical technics in preventive archaeological prospection for the detection of underground archaeological sites, objects and structures. The debate attracted two opposing camps composed of the pro-geophysics camp and the anti-geophysics camp in general with some scientists being undecided on this matter. Each camp has its concerns with reasons as to why they support or oppose the application of this technology to the archaeological research. The debate elicits some questions: does the application of geophysics to preventive archaeology aim at the improvement of research techniques, methodology and precision or is it about speeding the

process to allow development to take place? Under which circumstances can geophysics be indispensable to preventive archaeology?

To begin with, it is noteworthy that preventive archaeology is part and parcel of archaeological research and hence a purely scientific undertaking. According to Article L521-1 of the Heritage Code in France, preventive archaeology, which is part of public service missions, is an integral part of archaeology and is governed by the principles applicable to all scientific research. However, archaeology is a little bit special given the kind of questions that it seeks to answer. Dealing with material remains of the past human civilizations is like a psychological study which may hardly yield similar results. Each human behaviour and activity is unique and thus human occupations and interaction with the environment also vary according to various ecological factors which also evolve.

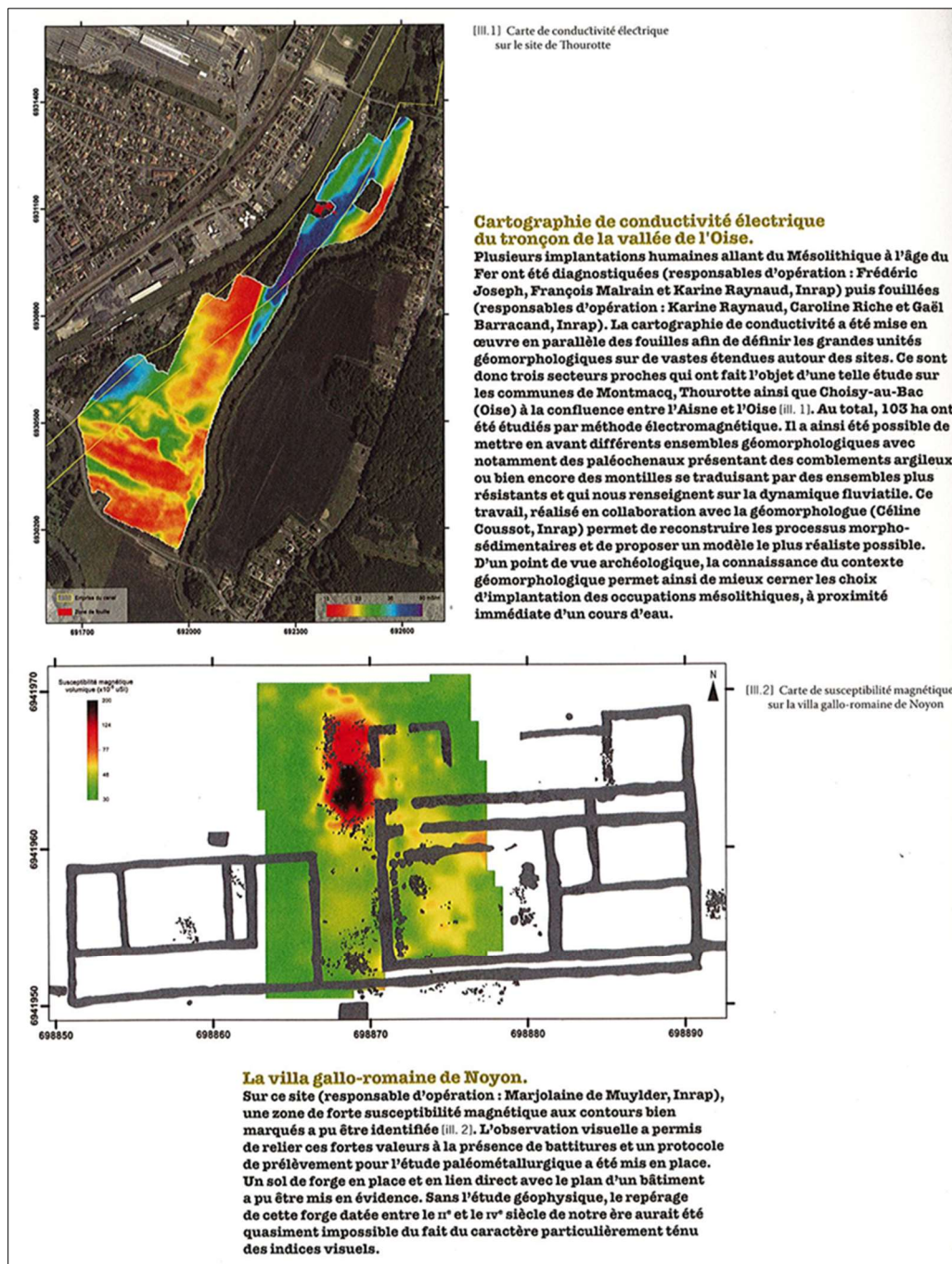


Figure 25: Electric conductivity map of a section of the Valley, la vallée de L'Oise

Michel Dabas¹⁵² identified various advantages and disadvantages of geophysics as illustrated in *Table 11* below (Dabas, 2016).

Advantages	Disadvantages
<ul style="list-style-type: none"> i.Preservation of archaeological structures (non-invasive methodology). ii.Survey is done for over 100% of the surface area to be affected by the project as opposed to 10% when using mechanical trenches. iii.Better definition of the archaeological risk assessment, even before the financial acquisition of the land. iv.Very short delays because geophysics is quick(4ha/day with 1 single operator) v.Better work conditions: less time is spent in the field and more in the office vi.Can be used for a better positioning of trenches both for Archaeology and Geotechnical Engineering works vii.Possible knowledge of the archaeological structures outside the project viii.Delimitation of accumulation/eroded zones(geomorphology, especially for Palaeolithic times). ix.All documents produced are directly integrated in a GIS, 	<ul style="list-style-type: none"> i.No dating and in most cases no idea of the state of preservation. ii.No direct detection of small structures at great depths and of very early structures (for instance Palaeolithic sites). iii.Difficult selection of geophysical instruments and parameters to use because targets are not known in advance. iv.Not applicable in urban conditions.

Table 11 Advantages and disadvantages of geophysics in preventive archaeology

Given the growing demand for the application of the LiDAR in archaeology, the French National Council of Scientific Research (CNRS) organised in September 2019 a training of technicians, engineers, researchers and archaeology professionals who are new to or wish to develop a project involving LiDAR data or who are responsible for appraising projects including LiDAR technology. The training was organised by the CNRS centre for enterprise

¹⁵² Michel Dabas works at the French National Centre for Scientific Research (CNRS) · UMR 8546 CNRS/ENS Archéologie et Philologie d’Orient et d’Occident.

training at Clermont Ferrand. The objective was to help them understand the potentialities and constraints of LiDAR technology especially for archaeological issues; and mastering the minimum knowledge on LiDAR data acquisition modes, data processing and analysis using multiple software and from manipulation of datasets (Georges-Leroy, 2013, p. 249).

The debate about the application of geophysics is fundamental for this study because the two geopolitical areas under comparison have remarkable differences right from the institutional and administrative organisation of cultural heritage management, the policy and legal framework on preventive archaeology and in terms of the underground diversity of archaeological material.

The magnitude of infrastructural development that has been witnessed in Kenya for the past two decades necessitates multiple approaches to the process of Environmental Impact Assessment where anticipatory survey through geophysics can be recommended before the conventional archaeological survey. This is key for purposes of balancing between capacity limits at the institutional level, the development goals and the environmental requirements to be met by the developer. A majority of the sites are, however, those which may not easily be detected through geophysics for instance sites which had negligible impact on the underground soil such as shallow holes and sepulchres thus the need for a multiple approach to the environmental impact assessment where archaeological heritage is concerned.

10.6.1 When, where and why to apply geophysics technology

Even with the recent developments in archaeological geophysics, scientists are yet to agree on a formalised standard to conduct a geophysical survey in preventive archaeology. This has mainly been attributed to the fact that there are many parameters that determine the outcome, and there are various purposes for which the results may be used. There is a variety

of geophysical techniques including magnetometer, earth resistance and ground penetrating radar (GPR) survey. Thus, an archaeological geophysicist will choose a particular methodology for collecting data with any of these techniques (Schmidt, et al., 2015, p. 9).

There is a danger that archaeological features may be entirely missed through over-prescriptive adherence to their 'standard' recommendations under inappropriate circumstances (e.g. use of magnetometer area survey for the investigation of non-magnetic wall footings, just because it is listed in a table; using a 1 m traverse separation when looking for 0.2 m wide post holes) (Schmidt, et al., 2015, p. 9).

Using a Light Detection and Ranging (LiDAR) device, for instance to study ancient human occupations may be challenging and even impossible under some circumstances while it may as well be useful to be employed in some circumstances within the framework of preventive archaeology. Geophysics technology is recommended for use as a complimentary technic especially in forested areas, in urban settings where it is difficult to use the mechanical excavators or in areas with known archaeological sites (Georges-Leroy, 2013, p. 249; Hulin, 2016, p. 101; Dabas, 2016). For urban settings, one of the disadvantages of geophysics as noted by Dabas (Dabas, 2016) is that the technology is not applicable in urban conditions. However, according to Hulin, the technology can be used when the conditions of accessing sites by the mechanical excavators are difficult like in the urban settings. The use may therefore depend on many other factors relating to the characteristics of the area to be impacted, the nature of the project, the time and financial constraints and the specific equipment to be applied. However, this does not rule out the use of the conventional archaeological survey techniques (Hulin, 2016, p. 105).

10.7 Conclusion

The organization of preventive archaeology in France testifies to a greater extent the concept of Public-Private Partnerships (PPPs) in cultural heritage protection. The organization of INRAP involves major private developers as part of the administrative council who take part in the major decisions that concern the institution and preventive archaeology.

The 2017 decree about the governance of archaeological research officially integrated private consultants in the membership of the territorial commissions of archaeological research (CTRA) whose role is to evaluate the reports of preventive excavations.

Right from the formulation of development projects to their implementation through practice on the ground, both public and private developers engage the archaeological institutions to ensure there is anticipation of the archaeological survey before the implementation of the project. Most of the developers in most of the Western European countries demonstrate a high degree of cooperation in matters of preventive archaeology. This is manifested through the established channels of communication, dissemination of information through the national archaeological map and databases and through consultations. The developers engage preventive archaeology practitioners through the Regional Archaeological Services (Service Regionale de l'Archéologie - SRA) within respective local authorities to prepare for the necessary survey and subsequent excavation in time to avoid inconveniences that might be occasioned like in the case of salvage archaeology.

It is at the interception of public and private interests that public consciousness of cultural heritage concerns for development can be observed. In France the State has established the heritage code plus a detailed legal and policy framework. This allows both public and private

developers to systematically do their development plans while considering all environmental and cultural issues. The involvement of key players during policy formulation positively impacts cultural heritage management. Very often, limited success may be registered in terms of the implementation of the policies at the project level if the key players were left out during the elaboration of the policy framework.

CHAPTER ELEVEN

ENVIRONMENTAL AND CULTURAL HERITAGE IMPACT ASSESSMENT IN KENYA

11.1 Introduction

In this chapter I look at environmental and cultural heritage impact assessment which is also known as cultural resource management. I evaluate cultural heritage protection and promotion (valorisation) in the context of development in Kenya for the past three decades. The chapter analyses selected projects and how heritage or archaeological impact assessment was conducted for purposes of understanding the relationship between the legal framework and the practice on one hand; and the academic research, protection and promotion or valorisation of the cultural heritage on the other hand. Its aim is to identify the challenges in cultural heritage impact assessment, archaeological research itself as well as the protection and promotion of cultural resources.

Cultural Resource Management (CRM) can be defined as the framework that guides the administration, study, protection, conservation and use of a people's cultural heritage and their sustainability for the benefit of present and future generations (Mwanzia, 2016, p. 30). Cultural heritage includes various attributes such as archaeological resources (artefacts, ecofacts and features), cultural sites and landscapes, monuments, oral traditions, customs and customary law, indigenous knowledge, history and historical evidence as can be found in art, music and records, and traditional cultural expressions, among others (Mwanzia, 2016, pp. 30 citing Sanders 1999, UNESCO 2003, Von Lewinski 2004 and Ndoro 2009 ; UNESCO, 1972).

In this chapter I considered three projects that were selected among the major development projects that have been launched in the past three decades in Kenya:

- i. Lamu Port - South Sudan - Ethiopia Transport (LAPSSET) Corridor project
- ii. The Ethiopia-Kenya Power Systems Interconnection Project.
- iii. Wadh Lang'o and Sondu Miriu Hydroelectric Power Project

Alongside the three examples, other major development projects that were undertaken in the country in the past three decades such as the Standard Gauge Railway project were considered for illustration. Some of the projects were of particularly importance especially those in the domain of the Public-Private Partnerships (PPPs) involving the government and private developers. The aim of selecting such projects was to determine whether or not the PPPs influence the developer's perspectives on the cultural and environmental considerations. For this purpose the Nairobi-Nakuru-Mau Summit Highway project was selected though not discussed in details due to time constraints.

11.2 Growing Environmental Awareness and Concerns for Sustainable Development in Kenya

Most of the environmental concerns in the context of development in Africa according to Wangari Maathai, are raised from outside. Africans have been slow to recognise environmental problems, even in their own backyards. But by the time an outsider draws attention to the problems, the damage has already been done. Africans must educate themselves and become more conscious about environmental issues on both local and global level – but especially on the local level (Maathai, 1988). According to E. Wahome, linking culture and development provides the best incentive for heritage conservation and reduces the threat of overdependence on outlandish cultural practices which may be averse to

development. After 50 years of independence Kenya, is just beginning to integrate the concept of development into its cultural heritage conservation legislation and policy framework (Wahome, 2015).

Consequently, there is an urgent need to create awareness about cultural heritage and development issues in Kenya in particular especially about matters concerning archaeological and cultural sites. Even though the Kenyan society is becoming more and more aware of environmental concerns of development, the practice of environmental impact assessment in the country is yet to fully embrace the key aspects that are supposed to be addressed through the study by considering the environment in the broad sense of the term. This is partly because the general public is less aware of their cultural resources (Mwanzia, 2016) and its full potential for sustainable development. Consequently, developers are left to make the most crucial decisions about what should be done in an environmental impact assessment, why, when, by who and how. The loopholes in the existing legal framework or lack of such legislation about environmental impact assessment can explain to the chaotic environment surrounding the implementation of major development projects in Africa, which in most cases encounter a lot of resistance from lobby groups, NGOs, environmental conservationists and the international environmental watch dogs who end up in courts over issues of noncompliance (Arazi, 2011).

The Constitution of Kenya of the year 2010 stipulates that sustainable development is one of the national values and principles of governance. It also recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and the nation. In Article 69 the Constitution provides the obligations in respect of the environment which concur with the tenet national values and the principles of governance as established in its Article 10. The four obligations in Article 69 (1) that are fundamental and provide for

the need to create awareness about environmental concerns for sustainable development include the obligation that the State shall:

(a) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;

(d) encourage public participation in the management, protection and conservation of the environment;

(f) establish systems of environmental impact assessment, environmental audit and monitoring of the environment; and

(g) eliminate processes and activities that are likely to endanger the environment.

The evolution of the cultural resource management systems depends mainly on the general public opinion towards such heritage (Abungu, 2016; Demoule, 2004a) and on each country's capacity to put in place the relevant laws, guidelines, the capacity to establish institutional framework and most importantly to mobilise the necessary resources including capacity building for effective implementation (Demoule, 2004a; Soulier, 2003). The differences in the approach to protection of archaeological heritage impacted by development activities draw from each country's history and level of social, economic and political development which play a central role in setting the economic priorities at any particular time in the society. By the time EIA was emerging, Kenya had just attained her political independence in 1963 from British rule while France, a former colonial empire, had just granted independence to her subjects with the independence of Algeria in 1962 being the major turning point. This historical and political trajectory rendered it difficult and

almost impossible to compare the systems of cultural heritage management between the two countries. However, this study has considered such trajectories as important in terms of their significance and influence in the patrimonialization process by determining the public policy and legal framework, the choice of the conservation objects as well as the development of the administrative and institutional organization of cultural heritage management. This historical background was also taken into account when analysing the legal and institutional framework and the ultimate choice of the cultural heritage management systems.

11.3 Environmental Impact Assessment (EIA)

Environmental Impact Assessment (EIA) is a systematic analysis of projects, policies, plans or programmes to determine their potential environmental impacts, the significance of such impacts and to propose measures to mitigate the negative ones (Republic of Kenya, 2002, p. 6). Environmental Impact Assessment has been adopted in Kenya as a planning tool to provide for the identification, study and protection of natural and cultural heritage as one of the requirements of sustainable development. In line with this an EIA course was organised by the Africa 2009 Programme in Sudan from October to November 2009. At the training, a group of African heritage professionals were brought together to share experiences in the use of impact assessment as a tool for the management of heritage resources in sub-Saharan Africa. The main objectives were to introduce participants to Impact Assessment and its use as a heritage management tool, familiarize participants with the practical process of impact assessment as well as to sensitize policy makers on the usefulness of impact assessment for heritage protection (Kiriama, et al., 2010 , p. 1).

The National Environmental Management Authority (NEMA) EIA guidelines state that the underlying key principles of EIA are that every person is entitled to a clean and healthy environment and that every person has a duty to enhance and safeguard the environment.

The other main principles of EIA are:

- (i) Environmental concerns must be accounted for in all development activities
- (ii) Public participation in the development of projects, policies, plans and programmes important
- (iii) Recognition of social and cultural principles traditionally used in the management of the environment and natural resources
- (iv) International cooperation in the use and wise management of shared resources
- (v) Intra-generational and inter-generational equity
- (vi) Polluter-pays principle
- (vii) The precautionary principle (Republic of Kenya, 2002).

It is thus the quest for integration of environmental concerns into development planning for the realisation of sustainable development that triggered the emergence of heritage impact assessment through recognition of social and cultural principles traditionally used in the management of the environment and natural resources.

11.3.1 Establishment of EIA in Kenya

The establishment of the legal framework on environmental and cultural heritage impact assessment in Kenya was a slow, long and complex process (Maathai, 1988). Environmental impact assessment (EIA) was legally established by law in Kenya through the Environmental Management and Coordination Act (EMCA 1999). The law mandated the National Museums of Kenya to carry out environmental impact assessment where cultural heritage

and archaeological sites are concerned. This leaves a difference of twenty two years later since the establishment of environmental impact assessment (EIA) regulations in France. The first law that recognised and considered the protection of archaeological heritage in France dates back to the 7th of July 1977.

Cultural heritage impact assessment in Kenya is conducted through the legal provisions for Environmental Impact Assessment. Both preventive archaeology and cultural heritage impact assessment, as it has already been discussed in the second part of this study, emerged from environmental preoccupations (Marchand, 2000, p. 105) first appearing in the USA in the 1960s and 1970s which led to the emergence of EIA. This was followed by the development of institutional and legal frameworks as well as the establishment of guidelines for EIA, an agenda which was emphasized by the UNESCO through its agencies such as ICOMOS and ICCROM. According to the Environmental (Impact Assessment and Audit) Regulations 2003, 'environmental impact assessment' means a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment (Republic of Kenya, 2003).

The Environmental Management and Coordination Act No. 8 (EMCA) Revised 2012 (1999) begins by stating the reason for which it was enacted; to provide a framework environmental legislation to be promulgated so as to establish an appropriate legal and institutional framework for the management of the environment in Kenya. It then recognises that improved legal and administrative co-ordination of the diverse sectoral initiatives is necessary in order to improve the national capacity for the management of the environment; and that the environment constitutes the foundation of national economic, social, cultural and spiritual advancement.

The Environmental Management and Coordination Act (EMCA 1999) that established the National Environment Management Authority (NEMA) in Kenya was followed four years later by the establishment of the Environmental (Impact Assessment and Audit) Regulations, 2003. NEMA was the first administrative institution that was established to ensure the coordination of all environmental concerns both at the national and currently the county levels of government. EMCA 1999 was enacted against a backdrop of 78 sectoral laws dealing with various components of the environment. The coordination of environmental management by law and a centralised administrative institution was necessary given the upsurge in major infrastructural development projects that have been witnessed since the past two decades. The environmental and development concerns became urgent due to the deteriorating state of Kenya's environment and increasing social and economic inequalities, the combined effect of which negatively impacted on the environment. The supreme objective underlying the enactment of EMCA 1999 was to bring harmony in the management of the country's environment (Republic of Kenya, 2003; Republic of Kenya, EMCA, 1999 (Revised 2015)). However, apart from the mention, archaeological or cultural heritage impact assessment still lacked a clear legal and institutional framework despite the fact that the EMCA law took into consideration all the aspects of the environment including archaeological sites and objects.

A summary of CHIA in Kenya between 2002 and 2006 (Oloo & Namunaba, 2010, p. 10)¹⁵³ shows that EIA in Kenya picked up with significant but varied success across the country due to varied environmental and cultural concerns in each area. There is significant progress in the practice of CHIA in Kenya despite lack of a clear legislations, policy framework and

¹⁵³ This was again presented by Namunaba at the Kenyan Heritage and Prehistory Science Workshop held at the British Institute in East Africa (BIEA) in March 2018.

guidelines that safeguard against cultural and archaeological heritage within the practice of EIA study.

The main challenge that was identified by Oloo and Namunaba (2010) is the lack of a clear policy and a comprehensive legal framework with specific guidelines on CHIA in Kenya. There is also lack of the institutional capacity to deal with all the aspects that should be captured by EIA and CHIA. The only legal framework that caters for archaeological heritage is EMCA 1999 which only mandates the National Museums of Kenya to carry out cultural heritage impact assessment when required to do so. The National Museums of Kenya on the other hand did not have specific regulations and guidelines on how to execute this particular mandate. Consequently the National Museums and Heritage Act (NMHA) 2006 was enacted in order to take into consideration cultural heritage issues (Oloo & Namunaba, 2010). The National Museums and Heritage Act (2006), however, delves mainly on the establishment, powers and functions of the National Museums of Kenya. Rescue archaeology or Cultural Heritage Impact Assessment (CHIA) occupies a very peripheral position where the Act takes into account, though at a legislative level without any clear regulatory framework, the provisions of EMCA 1999 to carry out CHIA (Mwanzia, 2016; Oloo & Namunaba, 2010).

The origin and practice of CHIA in Kenya can thus be attributed to the environmental preoccupations as was the case in most of the western countries in the 1970s. A similar trend can be observed across other African countries that have embraced CHIA like Tanzania, South Africa, and Botswana. In Central African Republic, as A. Ndanga observes, the introduction of preventive archaeology occurred through EIA. This was the first kind of preventive archaeological survey done within the Ouaka Prefecture whose results, according

to Ndanga, were key for the testing of the system that was put in place by the administration of Central African Republic¹⁵⁴ (Ndanga, 2008, p. 157).

The kind of mobilization behind archaeological research that was witnessed in France through the Association for National Archaeological Excavations (AFAN) can hardly be achieved in Kenya where it is even difficult to unite all the archaeologists under an umbrella association. The case becomes much complicated given the limited number of active archaeologists; the elitist approach to archaeological practice which was inherited from archaeological during the colonial period where locals were excluded and less informed about archaeology; the limited amount of airtime accorded by the local media (print, radio and televised media) to the dissemination of information about local cultural and archaeological resources which may not have been classified as items for tourist attraction; and the lack of information about archaeology in the general public.

Unlike France and Western Europe where there are many practicing archaeologists, the number of practicing archaeologists in Kenya and Africa at large is significantly low as compared to the volume of rescue or salvage excavations required in response to the upsurge in development projects with potential impact on archaeological heritage. Forty years ago, Merrick Posnansky (1982) estimated the number of full-time archaeologists in the entire sub-Saharan Africa to be fewer than one hundred. While the number has expanded significantly expanded, as observed by Arazi, 'it is still pitifully small compared to even a small western country' (Arazi & Thiaw, 2013, p. 213). In Kenya as in the rest of sub-Saharan Africa, local archaeologists are overwhelmed with administrative and teaching

¹⁵⁴ L'Archéologie préventive est pour la première fois mise en œuvre dans la préfecture de la Ouaka par le CURDHACA en 2006. Cette étude demandée par un particulier a permis d'avoir des résultats concrets t surtout de tester le mécanisme mis en place par l'administration centrafricaine (Ndanga, 2008, p. 157).

responsibilities, which limits their capacity to be engaged in extensive field research. This is the main challenge when it comes to the development of salvage archaeology in Africa at large and Kenya in particular. This is because scientists can only push for policy reforms and mobilization of resources towards their discipline based on the research questions emanating from their research projects and the degree to which such research projects seek to respond to societal problems. Given this state, it is reasonable to say that ‘the state of archaeology and archaeological heritage management in Africa is precarious’ (Arazi & Thiaw, 2013, p. 213) as the prevailing situation in Kenya testifies to this fact.

The limited archaeological research that originates from local research problems has generally undermined the development of archaeology and the protection of archaeological heritage endangered by uncontrolled development especially sites that have not yet been identified. Cultural policies of many countries in Africa, according to N. Arazi, still neglect archaeological resources (Arazi & Thiaw, 2013, p. 213). However, Kenya has made steps towards the protection of archaeological resources even though various sectoral legislative and policy framework still accord archaeological heritage a peripheral place. This emanates from the colonial legacy where colonial powers defined and structured Africa’s legal heritage by applying a western perspective that emphasized the monumental and the aesthetic values leaving the bulk of archaeological sites, which do not fit into those categories, unprotected and exposed to neglect and destruction by both natural and human activities (Arazi & Thiaw, 2013, p. 213).

The lower the engagement in archaeological research the higher the tendency to ignore the discipline based on the assumption that it does not play a significant role towards local and national development goals. This has to a greater extent demotivated learners in local African universities where teaching is predominantly theoretical. As such, learners tend to be more

inclined towards those disciplines that appear to provide quick answers to their immediate needs such as engineering and natural sciences, business related courses and information communication technology.

In Tanzania CHIA is a very recent phenomenon. Cultural and archaeological heritage impact assessment were recently added to complement ESIA's sustainability (Kaminyonge, 2018, pp. 2 citing Fleming, 2011:2). Cultural and archaeological heritage is either evaluated along with other elements of the environment such as physical, ecological and social concerns or as a separate report regarded as CHIA report (Kaminyonge, 2018, pp. 2 citing Jones, 2010:449; Pinelo, 2008:20). In Kenya CHIA is conducted either as part of Environmental and Social Impact Assessment (ESIA) or separately as CHIA or as Archaeological Impact Assessment (AIA).

Unlike in western countries, the environmental preoccupations which gave birth to the EIA in Kenya and most African countries created a disequilibrium in the practice of CHIA. Henceforth CHIA is conducted as a subset of EIA study with minimal or lack of participation of archaeologists who are rarely consulted except when it becomes inevitable during the review of an EIA report. It is also a challenge to the respective environmental consultants to constitute a team that would combine the expertise of various disciplines in an EIA study since there are few practicing archaeologists. The few practicing archaeologists are at the National Museums of Kenya (NMK) whose expertise is needed for the research programmes within the institution and its partners. Most of the experts at NMK are also sought after to conduct research through international partnerships thus overstressing the already limited capacity. This leaves archaeological heritage at the risk of total destruction and loss in the hands of infrastructural developers and non-experts entrusted with EIA before the implementation of various development projects.

The Economic Commission for Africa (ECA) 2005 showed that 18 African countries had either an enabling legislation and/or specific legislation/regulations on EIA in place (Arazi, 2011, pp. 30 - 31). According to N. Arazi, ten of these countries have explicit formal provisions for public participation. 'Ghana and Tunisia have functional and relatively robust EIA systems, while Benin, Egypt Algeria, Uganda, Botswana and South Africa also have good systems in place'. The rest 'are yet to fully develop the institutional and regulatory frameworks for EIA, which are indeed non-existent or quite rudimentary' (Arazi, 2011, pp. 30 - 31). Kenya's system of EIA can be situated between the two extremes due to lack of dynamism among the key players including the general public whose role is still undefined with majority being spectators. There is also indifference when it comes to archaeological heritage not only on the part of the legislative and administrative power but also on the part of the developers, the consultants and the society (Arazi, 2009a; Arazi, 2009b; Abungu, 2016; Mwanzia, 2016).

While lack of legislation is still a big challenge in CHIA across Africa, the involvement of non-experts is the main drawback to the achievement of high levels of efficiency and international best practices in the protection of archaeological heritage impacted by development projects in most of African States with legal frameworks on CHIA (Arazi, 2009a; Arazi, 2011; Oloo & Namunaba, 2010). This has been attributed to the practice of as part of EIA. The advent of EIA was enabled by natural science professionals and newly formed governmental agencies for environmental protection which had less information about cultural and archaeological heritage. The institutions and professionals responsible for cultural heritage were generally not consulted or included (Arazi, 2011, p. 31). Consequently there is a knowledge and communication gap between environmental and cultural heritage authorities in many countries where cultural heritage component of EIA has

often been treated in a cursory fashion or even neglected (Arazi, 2011, p. 31 citing Fleming and Campbell 2010). The Antiquities Act in Tanzania has got cultural heritage component within an EIA but it has been observed that the teams involved in such assessment do not include cultural resource specialists. As a result of this, there no significant information about cultural resources in the EIA reports if any, the results do not always reach the relevant authorities (Arazi, 2011, pp. 31 citing Ndoro & Kiriamu 2008, p. 60).

CHIA if well embraced may bridge the knowledge gaps that exist in archaeological research. Africanists have generally conducted systematic archaeological surveys only in those semi-arid or arid areas where there is a combination of good ground visibility and low modern population densities (Robertshaw, 1994, p. 112). In the case of Kenya the large infrastructural development projects could serve as an opportunity to open up those areas that have never been subjected to archaeological investigation.

11.3.2 The aims and objectives of salvage archaeology and cultural heritage impact assessment in Kenya

The aims of heritage impact assessment are mainly derived from those of EIA since it is conducted in the same framework. According to Environmental Impact Assessment (2003) Guidelines by the NEMA¹⁵⁵, the overall objective of EIA is to ensure that environmental concerns are integrated in all development activities in order to contribute to sustainable development.

The specific objectives are:

¹⁵⁵ https://www.nema.go.ke/images/Docs/Guidelines/EIA%20GUIDELINES%202002_latest.pdf

- a) To identify potential environmental impacts of proposed projects, policies, plans and programmes
- b) To assess the significance of these impacts
- c) To assess the relative importance of the impacts of alternative plans, designs and sites;
- d) To propose mitigation measures for the significant negative impacts of the project on the environment;
- e) To generate baseline data for monitoring and evaluation of how well the mitigation measures are being implemented during the project cycle;
- f) To present information on the impact of alternatives;
- g) To present results of the EIA in such a way that they can guide informed decision-making.

11.3.3 Actors and agents of heritage impact assessment in Kenya

The main actors and agents of CHIA in Kenya are the state through the Ministry of Sports, Culture and the Arts which has entrusted the NMK with the mandate of a custodian of the country's cultural heritage.

A second key actor in CHIA consist of the respective developers. These are individual developers, public or private companies and multinational companies as well as development agencies such as World Bank. They constitute a key segment of actors given the polluter- pays principle which ensures that developers set aside funds for impact assessment. They are the main source of funds for CHIA in Kenya. The lack of a special consideration of CHIA in the budgetary allocation could imply that protection of the country's cultural heritage is not yet part of the priorities. It is therefore up to the developer to see to it that EIA and CHIA are done in accordance with the existing Kenyan law and the international best practices.

In Africa and Kenya in particular the main development partners are American, European, Chinese, Japanese and most recently the Middle East companies through the United Arab Emirates. Each one of the countries concerned acts in accordance with their foreign policy and the international laws and best practices. Most of the development partners have good cultural heritage management policies and legislations on environmental and heritage impact assessment or preventive archaeology which oblige them to obey home country legislation (Mwanzia, 2016). However, some still treat the question with partiality according to the loopholes within the host country's existing heritage law and policy.

11.3.4 Organisation of Heritage Impact Assessment in Kenya

Cultural Heritage Impact Assessment in Kenya is mainly organised within the framework of Environmental Impact Assessment (EIA). Currently, according to N. Arazi, EIA is one of the few legal frameworks allowing for the protection of archaeological resources impacted by infrastructure. Citing Campbell 2000, Arazi posits that EIA has become a standard procedure for evaluating the impacts that infrastructure projects are likely to have on the environment, including cultural heritage and archaeological sites (Arazi, 2011, p. 28). In those nations with relevant environmental management legislations, EIA has been recognized as a regulatory tool to guide decision making process. It is also considered as a positive process that can improve development initiatives and help to focus on, and realise, the long-term benefits of sustainable development (Barasa, 2014).

Any effective Environmental Impact Assessment Process should adapt a holistic definition of the term 'environment' in the context of EIA¹⁵⁶. It should involve all the aspects of the

¹⁵⁶ Strengthening Environmental Impact Assessment: Guidelines for Pacific Island Countries and Territories. Accessed on URL:

environment taking into consideration the anthropomorphic factors that are determined by the environment itself. It should thus involve the natural and biophysical aspects as well as the socio-cultural and economic aspects as shown in *Table 12*¹⁵⁷.



Table 12: Examples of different environmental aspects that are addressed in EIA and ESIA

EIA laws have been developed in Africa particularly to help deal with the emerging environmental issues in the context of the continent's infrastructural boom. As they seek to improve the livelihoods in their countries, African governments have channelled a lot of resources in the key sectors of the economy including energy, infrastructural development, agriculture and housing with focus on improving tourism and encouraging investment. The

<https://wedocs.unep.org/bitstream/handle/20.500.11822/9963/strengthening-env-impact-assessment.pdf?sequence=1&isAllowed=y>

¹⁵⁷ Strengthening Environmental Impact Assessment: Guidelines for Pacific Island Countries and Territories. Accessed on URL: <https://wedocs.unep.org/bitstream/handle/20.500.11822/9963/strengthening-env-impact-assessment.pdf?sequence=1&isAllowed=y>

heavy building and construction, investment in the energy sector and infrastructural development inevitably lead to modifications to the natural and cultural environments (Kiriama, et al., 2010 , p. 1). Natural environment constitutes a history of the human beings and their insertion in the natural ecosystem while cultural environment is the product of the interaction between nature and ancient generations thus deserving our protection (Marchand, 2000, p. 101).

The laws were put in place as a way to meet the international standards in CHIA and to fulfil the obligations for EIA by development partners the World Bank's operational safeguard policies towards the environment and physical cultural resources (PCRs) in conjunction with large-scale infrastructure projects as observed by Arazi. Ndoro et al. (2008) have argued that until effective in-country legislation and monitoring systems have been established, the confrontation on issues of noncompliance between the various stakeholders will remain a great challenge (Arazi, 2011, p. 28).

EIA in Kenya is conducted under the Environmental Management and Coordination Act (EMCA) of the year 1999 (revised 2016). The Act confers the responsibility of HIA to the NMK. Being a quasi-government body that is 'fully funded by the exchequer to carry out heritage impact assessments and oversee the same' (Abungu, 2016, p. 49), this leaves the NMK in a conflict of interest especially when a conflict emerges where the government's role is questionable. This was the case for instance in the land issues of Lamu where large numbers of immigrants attracted from the interior of Kenya were being allocated land as the local community members watch and remain landless on their own land (Abungu, 2016, p. 49). In the absence of documentation as proof of ownership, according to G. Abungu, the community 'turned to the accumulated vestiges of their heritage citing the graves, ruined mosques and tree crops as signatures of their long-standing ownership [...] *Will NMK*

archaeologists show that the Swahili people around Lamu have always occupied this land and are the rightful owners, when the government that funds NMK is considered the villain?’ (Abungu, 2016, p. 49)¹⁵⁸.

The environmental guidelines of the 2002 Environmental Management and Coordination Act summarised the procedure of environmental impact assessment including the court process where necessary. The guidelines are adhered to but the cultural aspects are rarely

158

<https://books.google.fr/books?id=4hpqDAAAQBAJ&pg=PA49&dq=Archaeological+impact+assessment+kenya&hl=en&sa=X&ved=0ahUKEwix4Njgw6DbAhVBbRQKHfgJCPs4ChDoAQgsMAE#v=onepage&q=Archaeological%20impact%20assessment%20kenya&f=false>

put into consideration as part of the environment as shown in the EIA Guidelines (Republic of Kenya, 2002).

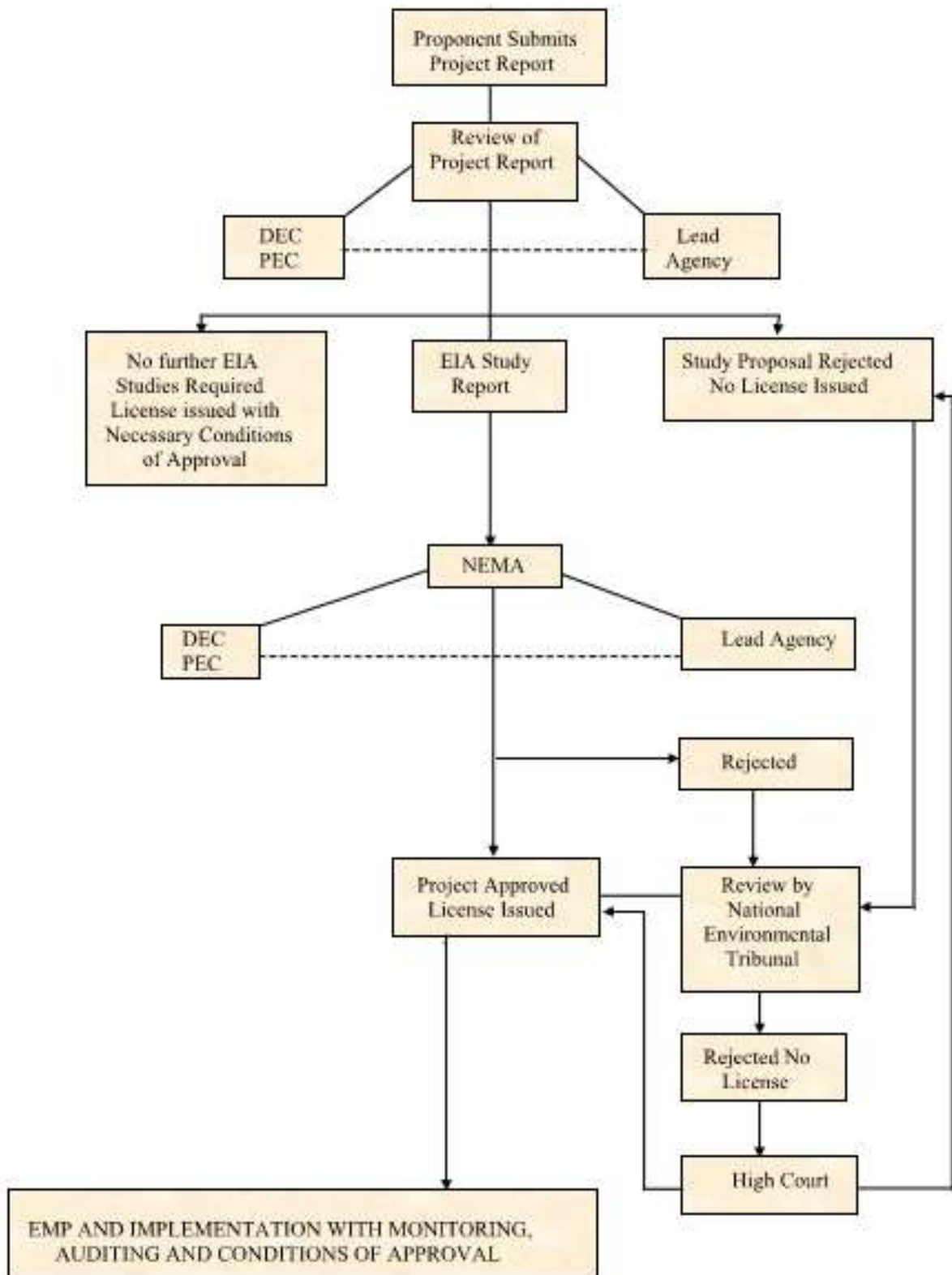


Illustration 14: Environmental Impact Assessment process based on the EIA Guidelines (Republic of Kenya, 2002)

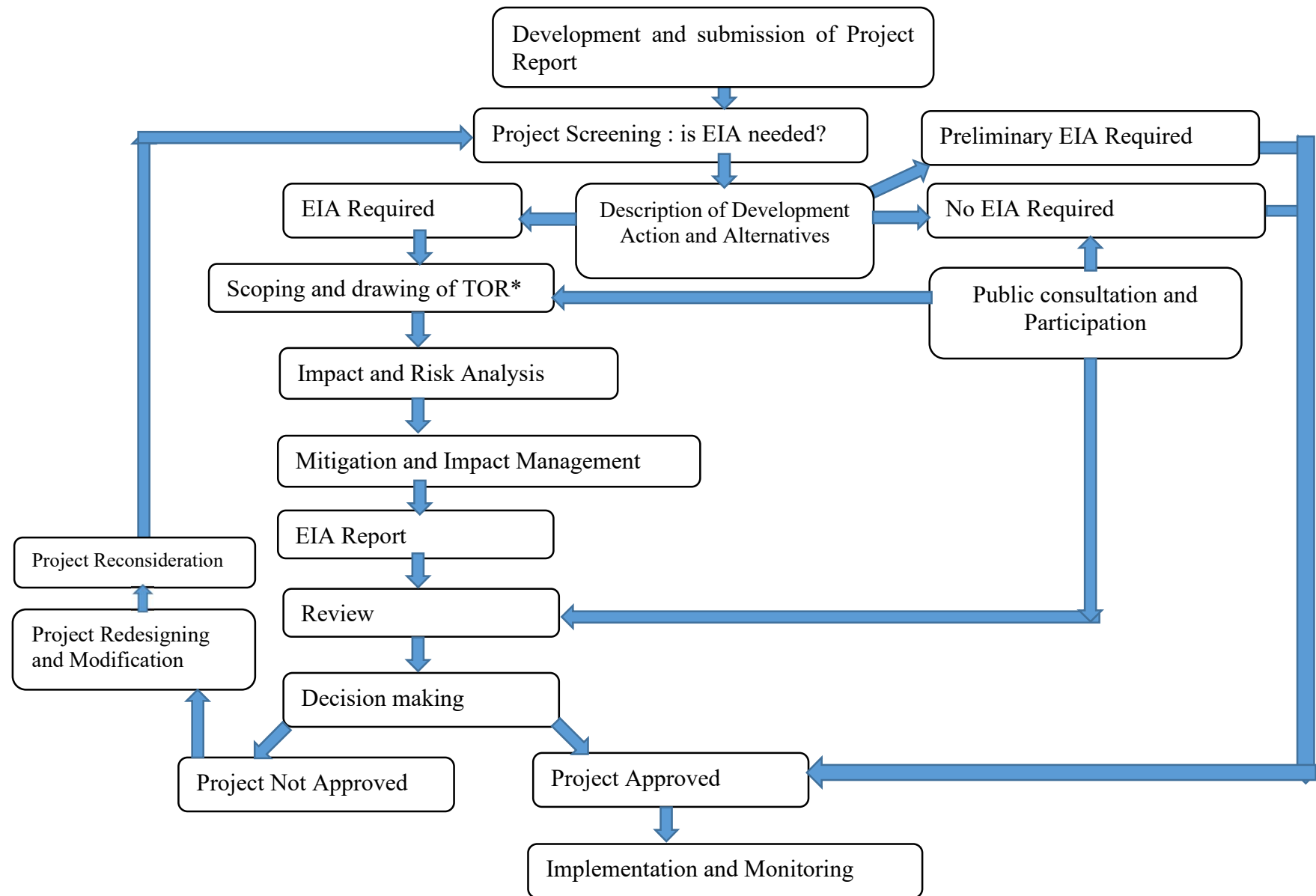


Illustration 15: General EIA Procedure Flowchart © L.L.W. Bwire

TOR: Terms of Reference

11.3.5 Practice of Environmental Impact Assessment in Kenya

Kenya has embraced Environmental Impact Assessment (EEIA) as one of the considerations of sustainable development. However, with reference to cultural heritage impact assessment, this is often done as a fulfilment of donor requirements under international best practices. Many governments have reluctantly embraced EIA as a result of pressure from donor funding organizations such as the World Bank, and the European Union that poses well detailed legal frameworks on the same. The confrontation that exists between development and conservation of the environment, where the latter is considered as a hindrance to the realization of the former, compromises the role of cultural heritage managers since they lack the necessary government support (Prins-Solani, 2010, p. x).

Many governments have reluctantly embraced the EIA as a result of pressure from multilateral donors which demand them before funds are released. It therefore lies with civic society, local communities and heritage organisations to lobby for the recognition and safeguarding of cultural values in the landscape in all development processes. This pressure should also be exerted on government and government agencies to set up smoother systems for mitigating negative impact and loss without negatively affecting national development goals (Prins-Solani, 2010, p. x).

The clash between development and environmental safeguard goals leads to non-compliance with heritage considerations even in cases where donor funding organizations are involved (Arazi, 2011). This creates a lee way for developers who may lack knowledge of existing

policy and regulatory framework pertaining to the observation of environmental impacts of their development plans.

It is therefore the civil society organisations, local communities, NGOs and heritage practitioners who take it upon themselves to lobby for the recognition and safeguarding of cultural values in the context of development in Africa and more particularly in Kenya. Despite the enactment of environmental legislations that accommodate the existing international recommendations on the formulation of environmental policies, legal and regulatory framework as well as international best practices in cultural heritage management, cultural heritage impact assessment still occupies a peripheral position in the development planning in Kenya. Cases where development starts without a comprehensive environmental or cultural heritage impact assessment have been persistent. Under such circumstances developers are permitted to implement their projects on assumption that there are no archaeological resources based on the available knowledge from documentary information. Some consultants do not even consider archaeological resources in their study resulting into reports that are mute on such resources. During project implementation phase some archaeological heritage has been discovered through chance finding for instance along the coastal area.

In the ESIA Study report for *1,050 MW Coal Fired Power Plant, Lamu, Kenya Cultural Heritage Impact Assessment (CHIA)* by Kurrent Technologies Ltd., in July 2016 had observations about the Swahili settlements which are found along the East African coast right from Somali to Mozambique. While those settlements whose walls were built from stone were preserved like Mtwapa and Gede, some ruins were totally buried and submerged in water. According to the report, some ruins were only discovered when the LAPSSET building was under construction (Kurrent Technologies Ltd, 10, July, 2016).

In a similar scenario, on 15th September, 2013, a private developer stumbled over skulls and bones ranging between 40 to 100 while digging up a septic pit for upcoming beach apartments at Kijipwa area in Kikambala, Kilifi County (National Museums of Kenya, 2013). Such cases persist when there is no coordination between National Museums of Kenya (NMK) and the National Environmental Management Authority (NEMA) and when the NMK is not well represented. The problem is also due to lack of stakeholder consultations during the planning and implementation of development projects as part of requirements for sustainable development.

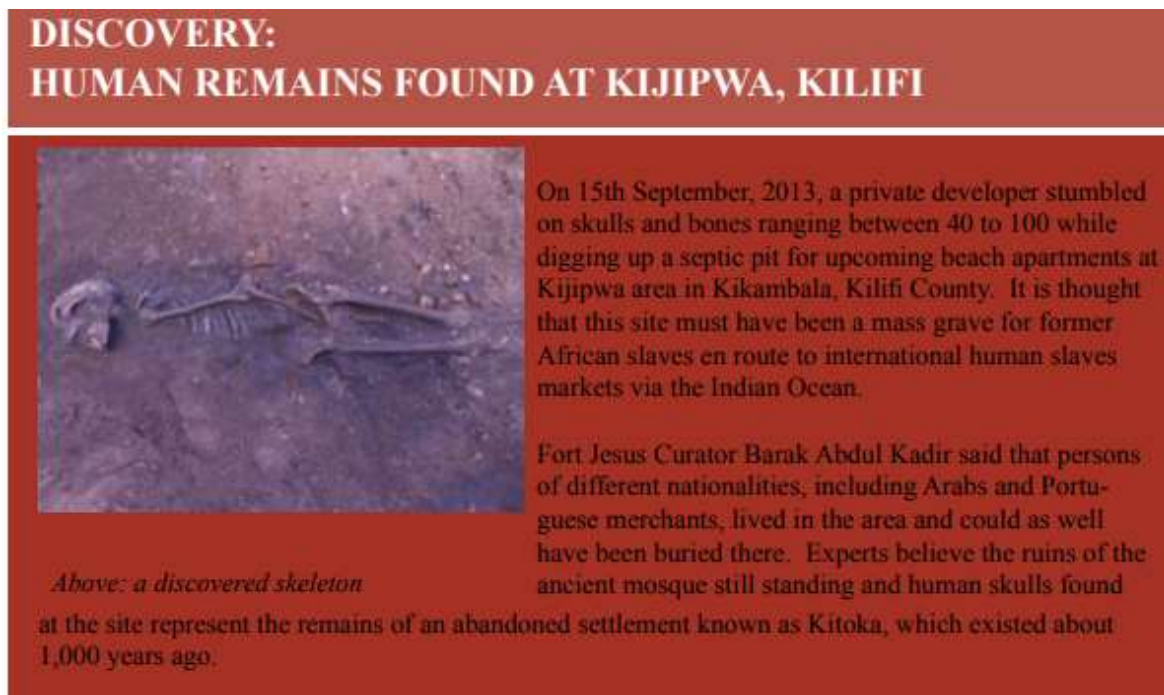


Fig. 2 Discovery of human remains while digging up a septic pit for upcoming beach apartment at Kijipwa in Kikambala Kilifi on 15th September 2013

Source, National Museums of Kenya, Museum News, Quarterly Issue of September 2013¹⁵⁹

¹⁵⁹Accessed on URL:

<https://www.dropbox.com/s/6pr8otdgiv5ryil/Newsletter-%20July-September%202013.pdf?dl=0>

Most of the time governments and private developers neglect and even ignore cultural heritage specialists and public consultations during the planning stages of a development project. Cultural heritage aspects therefore only feature as peripheral elements to be considered where necessary and only if it is mandatory like a fulfilment of donor requirements or to comply with developers' home country environmental considerations. This however depends on developer's sense of responsibility towards all the environmental concerns since some developers may be tempted to overlook the issues if they are omitted in the report. This could be due to the fact that the local regulatory framework is not clear nor strictly adhered to or an assumption that the team of environmental consultants was well constituted hence the report is reliable. This was the case in the ESIA report on the Nairobi-Nakuru-Mau Summit Highway project which only mentions potential impact on indigenous people, the Maasai, as the only cultural aspect that will be affected by the development. The report is silent on the potential impacts on archaeological resources yet the project passes through areas with high potential for archaeological resources (see Figure 26).

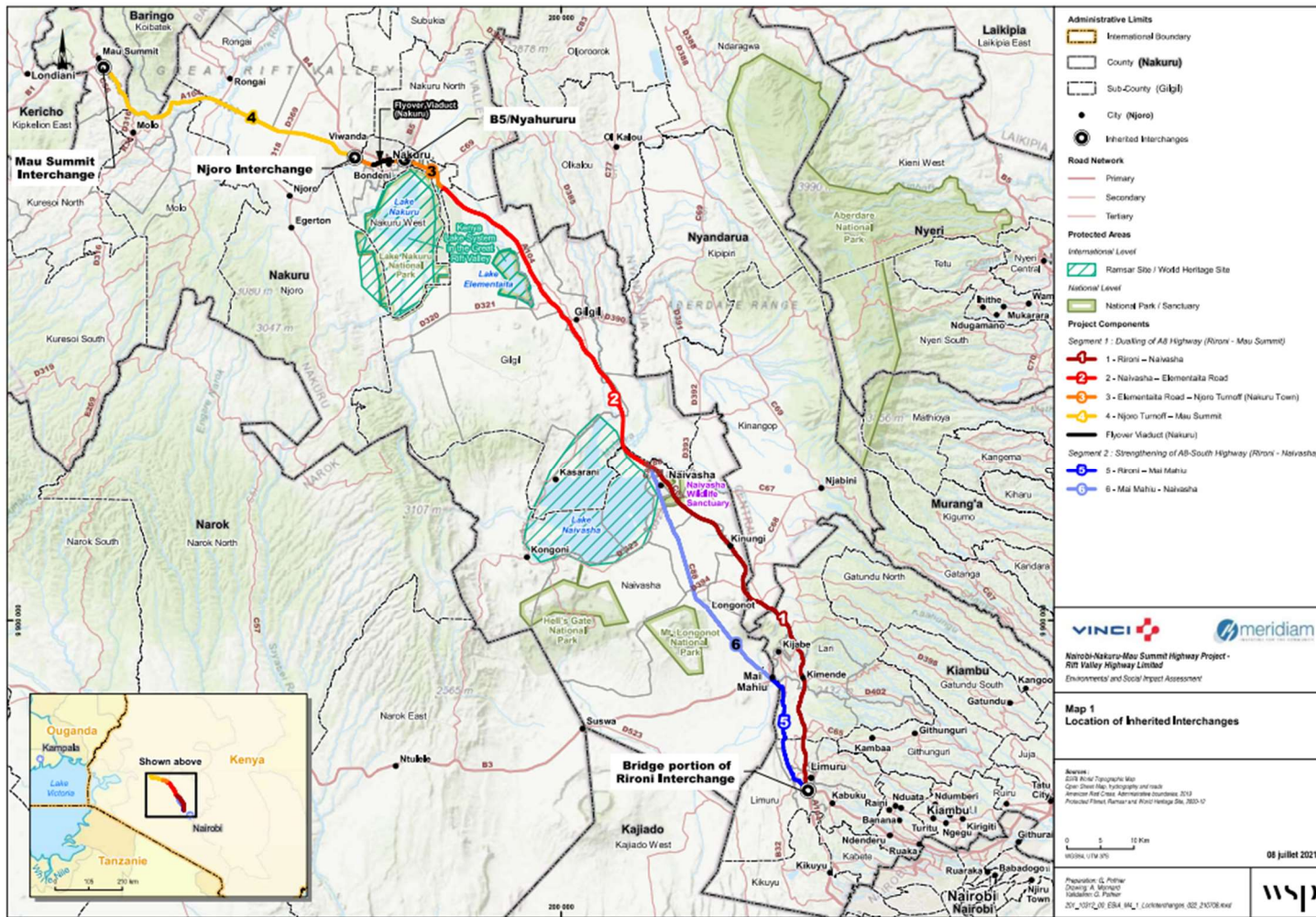


Figure 26: Map showing the Nairobi-Nakuru-Mau Summit Highway Project. Map prepared by G. Pothier and A. Monnard. Source: WSP CANADA INC. WSP REF.: 201-10312-00 February 16th 2022 Report, pp. xxiii.

While European countries consider cultural heritage as a central policy issue to be incorporated in sustainable development, most of the African countries consider the enactment of comprehensive cultural policies and strict adherence to them as an obstacle to development. When cultural heritage impact assessment is carried out in this perspective, the aim is not to protect the heritage and to generate knowledge but to generate a well-structured and systematic report that fulfils all the scientific aspects so as to do away with “obstacles” to development. *‘It is often argued, especially in the context of Africa, that because governments will have to repay those loans, experts need to stay “pragmatic” and “realistic” concerning their recommendations on a project’s socioenvironmental and cultural impacts’* (Arazi, 2011, p. 11).

Consequently, the misunderstanding of the cultural value as well as the economic viability of cultural resources, especially archaeological heritage, is the main impediment to the enactment of appropriate legislation and mobilization of resources towards its safeguard. This laxity and ignorance on the part of the State apparatus has led to immeasurable damage and destruction to these fundamental yet non-renewable resources across the African continent.

The centrality of culture in the realization of a cohesive society can be best summarised in the words of Jean Monnet: *‘If it were to redo, I would begin by culture’* {Author’s translation from French} (Pongy & Saez, 1994, p. 12). In Europe, according to Pongy and Saez, the European community policies were established based on economic factors while the social fabric was structured as an affirmation of the necessity for inter-personal solidarity. As it can be observed today, the cultural Europe is in itself on a high speed positive trend. There are advances in the domain of globalised cultural industries, more particularly the audio-visuals whose economic stakes are very important (Pongy & Saez, 1994, p. 12).

In Kenya, only cultural heritage which exhibit direct economic aspects like attraction of cultural tourism receive much government attention.

11.3.1 Public-Private Partnerships and Environmental Impact Assessment in Kenya

Private sector in Kenya includes a group of both local and multi-national companies (MNCs) that play an active and crucial role in the exploitation of key natural resources in the country such as oil and gas as well as those that are involved in the infrastructural development across the country . The important part of Public-Private Partnerships (PPPs) is that in the case of those MNCs whose home countries possess robust environmental and cultural heritage laws, and which are guided by the international best-practices, their involvement may influence to a greater extent a change of perspective towards cultural heritage. Multinationals working in Kenya such as oil exploration and mineral mining companies are required by law to carry out environmental and social impact assessment studies prior to the implementation of their projects as part of NEMA's environmental requirements for approving any project with potential impacts on the environment. Most of them also do impact assessment to comply with conservation laws in their countries of origin (Mwanzia, 2016, p. 38).

Kenya has embraced PPPs in various development projects where she has entered into bilateral and multilateral agreements of collaboration at various levels across the major sectors of the economy. Even in the proposed National Policy on Culture private sector was not left out as it was called upon to constitute the implementation team made up of stakeholders comprising of government agencies, civil society, community and cultural practitioners and the private sector itself.

The key sectors of the economy that attract PPPs include infrastructure (energy, water and sanitation, transport and telecommunication), agriculture, education, tourism, wildlife and environmental management. These are also the sectors that involve massive development projects with potentially high impacts on natural and cultural heritage, see *Table 13*.

11.3.2 Summary of selected EIA reports from NEMA - downloads

DATE	TITLE OF THE REPORT	Place/ County	Proponent	EIA Consultant	Project Area
March 2018	EIA FOR THE PROPOSED DEVELOPMENT OF RIVER ESTATE HOUSING DEVELOPMENT ,REHABILITATION OF JADONGO ACCESS ROAD AND ASSOCIATED AMENITIES ON PLOT L.R. NUMBER 209/20567 NGARA AREA, NAIROBI COUNTY	Nairobi	Erdemann Property Limited	Katrina Management Consultants Limited	2.302 of a hectare
March 2018	ESIA FOR THE PROPOSED INLAND CONTAINER DEPOT NAIROBI ACCESS ROAD LINE A ALONG THE INNER BOUNDARY OF THE NAIROBI NATIONAL PARK	Nairobi	Kenya Railways	Environmental Management Consultancy (EMC)	4.153km long and 21m wide
February 2018	ESIA FOR RONGAI-KILGORIS HIGH VOLTAGE TRANSMISSION LINE PROJECT	Rongai to Kilgoris	Kenya Electricity Transmission Co. Ltd	Tingori Consultancy Ltd	Rongai - Kilgoris 400kV Overhead Power Line (155km)
2018 (First Report October 2017)	EIA FOR PROPOSED INSTALLATION OF SOLID WASTE INCINERATOR AT LALWET, ON PLOT NO: MITI MINGI/MBARUK BLOCK 4/710 (INGOBOR) NAKURU COUNTY	Nakuru	Health Advantage Kenya Limited	By EIA/EA Lead Expert Team Dr. (eng). James M. Raude and Mrs. Beatrice K. Langat	
FEB 2018	ESIA FOR PROPOSED 20M3 LPG STORAGE AND FILLING PLANT ON LR NO. 27/MWIHOTI/GITHURAI, ROYSAMBU SUB-COUNTY, NAIROBI COUNTY	Nairobi	Ameken Minewest Company Limited	OikosVeritas Services	20 cubic metres
Jan 2018	EIA FOR THE PROPOSED REDEVELOPMENT OF THE CHIROMO LANE MEDICAL CENTRE ALONG MUTHANGARI ROAD, LAVINGTON, NAIROBI, L. R. NO. 3734/37	Nairobi	The Chiromo Lane Medical Centre, Nairobi	Green by Choice Ltd	Approximately 0.752 acres

Nov 2017	EIA FOR THE PROPOSED GODOWN REFURBISHMENT AND SETTING UP A FDG PRODUCTION FACILITY USING CYCLOTRON FOR CANCER MEDICAL IMAGING	Nairobi	Advanced Molecular Imaging Ltd	UMWELT CONSULTS	1.15917 Acre
	EIA FOR PROPOSED RESIDENTIAL DEVELOPMENT (FLATS) ON L.R. NO. 28428/51 OFF KIAMBU ROAD IN THINDIGUA AREA, KIAMBU COUNTY	Kiambu	Krishna Estates Ltd	Report compiled by Lead team led by Wilfred M. Murigi	2 acres
	FOR THE PROPOSED LPG CYLINDER PRODUCTION LINE AND LIQUEFIED PETROLIUM GAS (LPG) REFILLING PLANT ON PLOT NO. MAKUYU/MARIAINI/BLOCK.III/460 IN MAKUYU, MURANG'A COUNTY	Murang'a	Excellent Logistics Ltd	Clamson Ogutu –Lead Expert	
Dec 2017	ESIA FOR THE PROPOSED CONSTRUCTION OF A BULK LPG STORAGE TERMINAL IN MBARAKI, GANJONI DIVISION, MOMBASA COUNTY BY MOMBASA GAS TERMINAL LTD	Mombasa	Mombasa Gas Terminal Ltd (a subsidiary of Milio Group)	Earthview Geoconsultants Ltd	
	EIA FOR PROPOSED CONSTRUCTION OF RESIDENTIAL APARTMENTS ON PLOT 209/14070 NAIROBI CITY COUNTY		United Africa Construction Ltd	Lead Expert M.Ndungu	
Nov 2017	EIA FOR THE PROPOSED FARM EXTENSION IN PRIMAROSA FLOWERS LTD	Nyandarua	Primarosa Flowers Ltd	Paul Onana	
Jan 2018	EIA FOR THE PROPOSED KIAMBU ROAD INVESTMENT LTD. (KRIL) HOSPITAL ON PLOT L.R. NO. 14861/8 AND PLOT L.R. NO. 14861/9 ALONG KIAMBU ROAD, MUTHAIGA NORTH, NAIROBI COUNTY	Nairobi	Kiambu Road Investment Ltd.	Green By Choice Limited (Elizabeth Nzani Wachira (Lead NEMA EIA/EA Consultant) Simon Muthami Nyakweya (Associate NEMA EIA/EA Consultant))	3 acres
Oct 2017	EIA FOR THE PROPOSED GOLD ELUTION AND LEACHING PLANT ON PLOT LR NO MUHURU KADEM / MACALDER / 742, NYATIKE SUB COUNTY MIGORI COUNTY.	Migori	Peggy General Enterprises Ltd	Safeglobal Consultancy Firm Ltd	2.4 hectares
	ESIA FOR KILIMANI GALANA BUTTRESS DAM, KILIMANI LOCATION BURAT WARD	Isiolo	Drought Resilience Sustainable Livelihood Project	Mr. Bonface Manyara Koome, Mr. Banticha Jaldesa, & .N. Omari	

Dec 2017	ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT (ESIA) STUDY REPORT FOR THE PROPOSED RESEARCH AND TEACHING COMPLEX FOR THE EAST AFRICAN KIDNEY INSTITUTE ON KENYATTA NATIONAL HOSPITAL PLAYGROUND - L.R. NO. 209/13978 - ALONG NGONG ROAD, NAIROBI CITY COUNTY, KENYA	Nairobi	Ministry of Health,	Envilead Limited	2.544 Ha
August 2017	ESIA FOR PROPOSED SUGAR COMPLEX FOR TEMBO SUGAR MILLS LTD.	Kilifi	Tembo Farming Limited	HIAGRO (EA) Services Limited	3,300 ha (8,155 acres)
Oct 2017	EIA FOR THE PROPOSED CEMENT PLANT ON PLOT NO. 29124 MARIAKANI, KILIFI COUNTY	Kilifi	National Cement Company Ltd	Edgar Ambaza Ezekiel Olukohe	20.23 hectares
Oct 2017	ESIA FOR THE PROPOSED KITUI-MUTOMOKIBWEZI HIGH VOLTAGE TRANSMISSION LINE PROJECT		Kenya Electricity Transmission Co. Ltd (EIA prepared for Hubei Hongyuan Power Engineering Co., Ltd.)	Thinguri Thomas Lead Expert Tingori Consultancy Ltd,	
February 2017	ENVIRONMENTAL & SOCIAL IMPACT ASSESSMENT PROJECT REPORT FOR THE CONSTRUCTION OF NGONG' BUS TERMINUS IN KAJIADO COUNTY OF NAIROBI METROPOLITAN REGION	Kajiado (Nairobi Metropolitan)	The Senior Principal Superintending Engineer Ministry of Transport, Infrastructure, Housing and Urban Development - State department for Housing & Urban Development,	LEAD EXPERT (NEMA No. 7284) Eng. Stephen Mwaura	4,422 square meters
12 – 26, Sept. 2011	ANNEX 3 ARCHAEOLOGICAL IMPACT ASSESSMENT THE ETHIOPIA-KENYA POWER SYSTEMS INTERCONNECTION PROJECT: REPORT PREPARED FOR GAMMA SYSTEMS LIMITED	(Involved Varoious Counties as below)	Report prepared for Gamma Systems Limited	By Mr. Gilbert K. Wafula (Department of History and Archaeology, UoN)	
10 June 2016	ESIA Study for 1,050 MW Coal Fired Power Plant, Lamu, Kenya Cultural Heritage Impact Assessment (CHIA)	Lamu	Amu Power Company Limited	Kurrent Technologies Ltd	
	TO BE COMPLETED FROM ..\..\EIA Reports Downloads from NEMA\SUMMARY OF EIA REPORTS BY NEMA.docx				

Table 13: Summary of EIA reports by NEMA accessed online from NEMA Downloads

Observations:

- Some EIA reports do not indicate the date of publication or submission
- Some reports do not disclose the exact area to be covered by the project
- Most of the reports did not address cultural heritage issues and if they did, they lack authenticity since most of the experts that form EIA study teams rarely included cultural heritage specialists.
- An ESIA report for **Proposed Sugar Complex for Tembo Sugar Mills Ltd, for instance**, had two reports on the NEMA website. In one copy it talked about potential impact on archaeological materials and gave mitigation measures. However, it was edited and those guidelines were removed. This raises some questions for instance on which ground were those guidelines removed. If it was observed that there were no objects and materials of historical and archaeological interest during the study then it would have been imperative to indicate that there were no indices for such objects.
- Most of the reports did not pay attention to cultural heritage and for those that did they shallowly mentioned cultural heritage in the summary statements in a very general manner.
- Public participation issues were persistent in most of the reports.

In some reports there was no mention of legislation on cultural heritage including international legal framework on cultural heritage management.

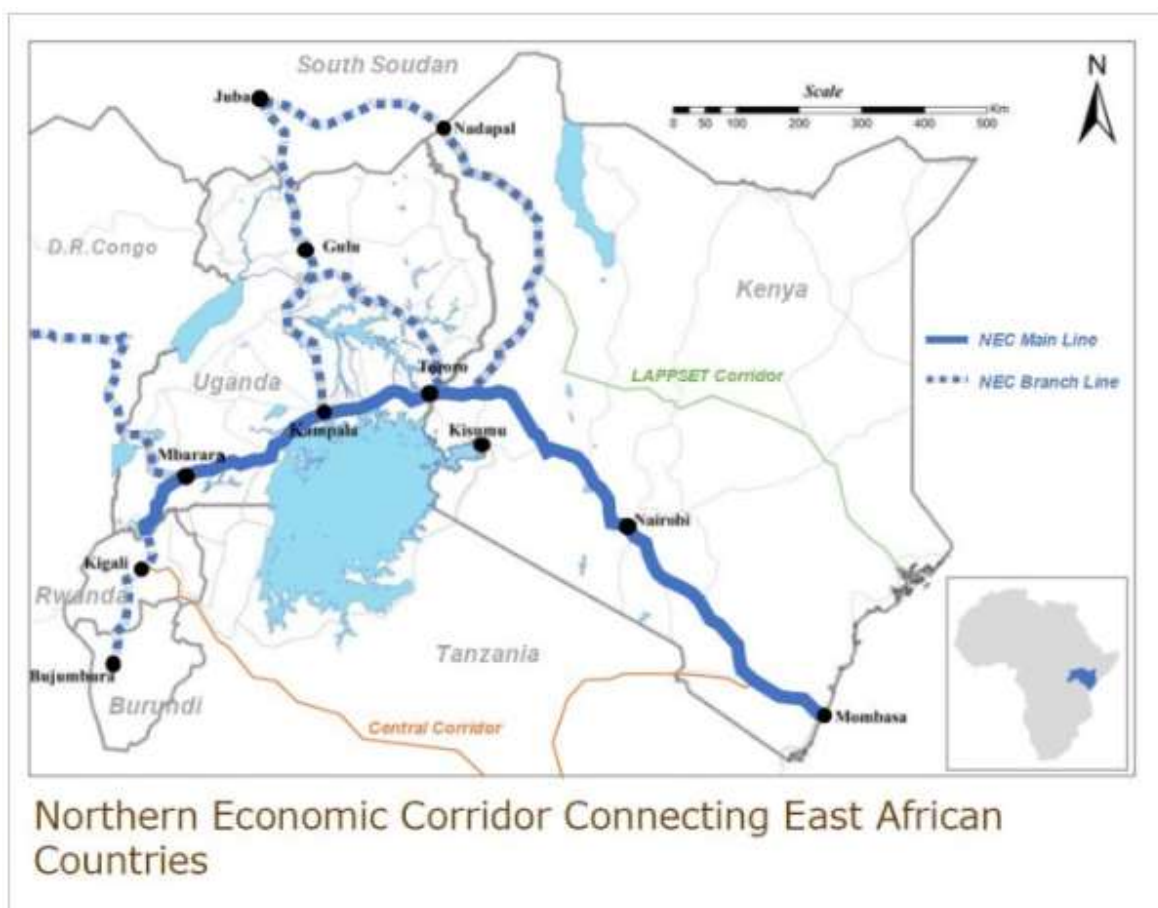
11.4 Cultural Heritage Impact Assessment and Rescue Archaeology in

Kenya: From legislation to practice

The three projects of LAPSSSET, Ethiopia-Kenya Power Systems Interconnection Project and Sondu Miriu Hydro-Electric Power Plant are significant cases of reference that reveal the strengths and weaknesses in the legislative and institutional framework on the cultural resource management in Kenya. For purposes of this study the three projects were selected due to their nature and the complexity of environmental and cultural issues involved. All the stakeholders had different perspectives over the environmental and cultural heritage issues emanating from each project thus raising the stakes.

The Nairobi-Narok-Mau Summit Highway project is another project with equally a lot of concerns for cultural heritage resources. However, this study may not be very exhaustive on the issues due to time constraints.

Apart from the selected case studies, there are other major infrastructural projects with potentially a lot of impacts on cultural heritage in Kenya such as the Northern Economic Corridor connecting the East African countries, as shown in



Map 7: Northern Economic Corridor Connecting East African Countries

Figure 3.

Source¹⁶⁰

¹⁶⁰ Japan International Cooperation Agency (JICA) accessed on Thursday, 24 May 2018 online URL:

https://www.jica.go.jp/english/news/field/2016/170126_01.html

The emergence of rescue, salvage or preventive archaeology in Africa dates back to the colonial period, in the first half of the 20th century. It was through rescue excavations in 1938 that archaeology was introduced in British West Africa, a region which until then was considered as being devoid of archaeological and paleoanthropological interest hence fully dedicated the ethnological studies. It was the 1938 discovery of a remarkable cache of 17 cast brass and bronze heads during the digging of house foundations at Ife in Nigeria that changed the scientific perception of British West Africa (Basu & Damodaran, 2015, p. 13).

Paradoxically, a colloquium which was organised in the year 2007 at Nouakchott was the first one to pay attention to issues of preventive archaeology in Africa. It mainly focussed on francophone Africa due to a very limited participation from the Anglophone African scientific community in the domain. The colloquium was co-organized by the Mauritania Institute of Research - Institut Mauritanien pour Recherche Scientifique (IMRS) and the French National Institute for Preventive Archaeological Research (INRAP) (Naffé, et al., 2008). The publication of the papers presented at this colloquium, according to N. Arazi demonstrates the urgency with which cultural heritage management in Africa should be dealt with by all the stakeholders including but not limited to archaeologists, national governments, international donor organizations and corporations that are currently investing in the continents infrastructural development (Arazi, 2009b).

The papers that were published from the colloquium testify of the country specific variations in the consideration of archaeological heritage as cumulative evidence of a nation's past civilizations and a key component of national heritage. The volume is an expression of both hope and fear about the future of the past of the African continent. Hope was demonstrated through the opportunities that the prevailing development projects present for cultural heritage management if preventive archaeology will be embraced. This will be possible

through enacting relevant laws, establishing institutions or equipping those that are charged with cultural heritage management and incorporating cultural objectives into sustainable development policies.

The publication of the colloquium was a timely testimony of opportunities and stakes provided by Africa's development. Africa's infrastructural boom and the ongoing discovery and consequent exploitation of natural resources such as oil and gas could lead to the establishment of preventive and salvage programmes so as to improve archaeological practices as was the case in the western world particularly Europe and USA in the past decades (Arazi, 2009b). This however may take long given the scanty information about archaeological resources and unfavourable public opinion in Africa against archaeological practices. This can be attributed to lack of comprehensive inventories with up to date archaeological databases both at the regional and national levels. The challenges are partly due to the long history of an elitist archaeological practice across the continent, a colonial legacy which left people with very limited knowledge about archaeology.

The escalation of social and economic pressure coupled with ethnic and political intolerance across Africa which culminated into the 2007 post-election violence in Kenya have persistently pressured the Kenyan society to reinvent the national identity and devise various appropriate approaches to counter the socio-economic and political challenges. However, the African society rarely seeks answers from scientific research as is the case in western civilizations. The development of preventive archaeology in France was partly because the society was much aware of the need to trace their past, especially when public interest shifted in favour of protection of cultural heritage and thus developed a positive attitude towards archaeologists (Demoule, 2005, p. 108).

The fear is that the mention of preventive archaeology, even the term itself when conceived from its etymology, makes some African governments classify archaeologists advocating for preventive archaeology as activists who are opposed to development. To avoid the debate Anglo-Saxon archaeologists have endorsed the terms rescue archaeology, salvage archaeology, contract archaeology, development-led archaeology and commercial archaeology instead of preventive archaeology. The Oxford Advanced Learner's Dictionary, defines the adjective 'preventive' also 'preventative' as 'intended to try to stop something that causes problems or difficulties from happening. For instance in medicine there is preventive medicine. When applied to archaeology, the term preventive does not imply stopping the development but it emphasises the sense of stopping the negative impacts of development projects on the non-renewable cultural and archaeological heritage.

Another source of fear emanates from the behaviour, characteristics and the environmental profile of the development partners in relation to the degree of respect they accord to environmental and cultural issues in their countries of origin. Even though in-country legislations play a major role, the legal framework of a contractor's home country plays equally a major role especially in influencing their degree to obey environmental and cultural requirements in the implementation of development projects. In-country legislation is necessary to define the rules to be followed and the consequences of disobedience. However, this may not change the habits of a contractor who is used to disobedience. Given the precarious state of the legislative and institutional frameworks in most of the African countries, it may be difficult to control contractors if they have already developed an inappropriate attitude and habits towards archaeology and cultural heritage.

Developed countries have got systems of preventive archaeology which vary from one State to another. According to Jean-Paul Demoule Japan stands out among them all as a country

whose system is the most advanced and developed in the world (Demoule, 2019). The situation deteriorates as one moves towards the developing countries (Demoule, 2005, p. 110). This observation reiterates the principles of the Environmental Kuznet's Curve (EKC) as a key theoretical basis for this study. However, there are some special cases which seem to deviate from the main principle of EKC. One of such rare exemptions, according to Demoule, is the rescue of the Temple of Abu Simbel during the construction of the Aswan Dam in Egypt. A parallel can be drawn between what happened in Egypt and the recent construction of dams in China or in Turkey where similar efforts were not observed, not to mention other projects of equally greater magnitude such as construction of highways, mines, petroleum fields, agricultural activities and building projects (Demoule, 2005, p. 110).

The great challenge and thus the main source of fear in Africa is lack of a comprehensive legislation on cultural heritage management and preventive archaeology. Kenya has got a legislation on EIA. However, the existing law does not effectively address issues around preventive archaeology and CHIA (Mwanzia, 2016; Oloo & Namunaba, 2010; Arazi, 2009a). It does not clearly provide the roadmap towards efficient and reliable conduct of CHIA in the most esteemed and satisfactory manner commensurate with the contemporary international best practices.

11.4.1 Lamu Port - South Sudan – Ethiopia Transport (LAPSSET) corridor project

The Lamu Port - South Sudan - Ethiopia Transport (LAPSSET) Corridor project is a mega infrastructure project involving various transport and connected projects aimed at opening up the Eastern part of Africa to the Indian Ocean. The project dates back to the 1970s. Other than aiming to enhance the realisation of regional economic goals, LAPSSET project also








sought to address social, economic and political issues of exclusion and marginalisation of the greatest part of northern and north eastern Kenya. The issues were first addressed through the 2010 constitution which established devolution of power by creation of the 47 county government structures. This major constitutional milestone brought government closer to the people thus making it participatory and more inclusive where the marginalised, the minority communities, the youth, women and the disabled have equal opportunities in decision-making across the social, economic and political platforms.

By opening up the region, LAPSSET project seeks to provide immense opportunities for the communities within the counties and constituencies (Map 9: LAPSSET Corridor with Affected Constituencies and the Nairobi-Mombasa SGR Railwa) concerned by the project to identify, exploit and market their cultural products in the wider cultural tourism industry . Other than opening up the interior to the coast, the project has airports and resort cities which will revamp the cultural industry and unleash the yet to be exploited potentials in the counties along the corridor.

When compared to the Sud-Europe-Atlantique High Speed Railway in France, LAPSSET project alone would have delivered a lot of data on the history of the people within the counties and constituencies across the country. I have given the map of the Sud-Europe-Atlantique High Speed Railway [Ligne à Grande Vitesse (LGV) Sud-Europe-Atlantique] (Direction Regionale des Affaires Culturelles, Service Regionale de L'Archéologie, Poitou-Charentes, 2011).

Case Study: LAPSSET Corridor Project Kenya

Legend

-  Airport
-  Lamu Port
-  Resort City
-  LAPSSET Railway
-  LAPSSET Oil Pipeline
-  LAPSSET Highway
-  County

id	Airport	Cost US\$
1	LAMU	188 M.\$
2	ISIOLO	175 M.\$
3	TURKANA	143 M.\$



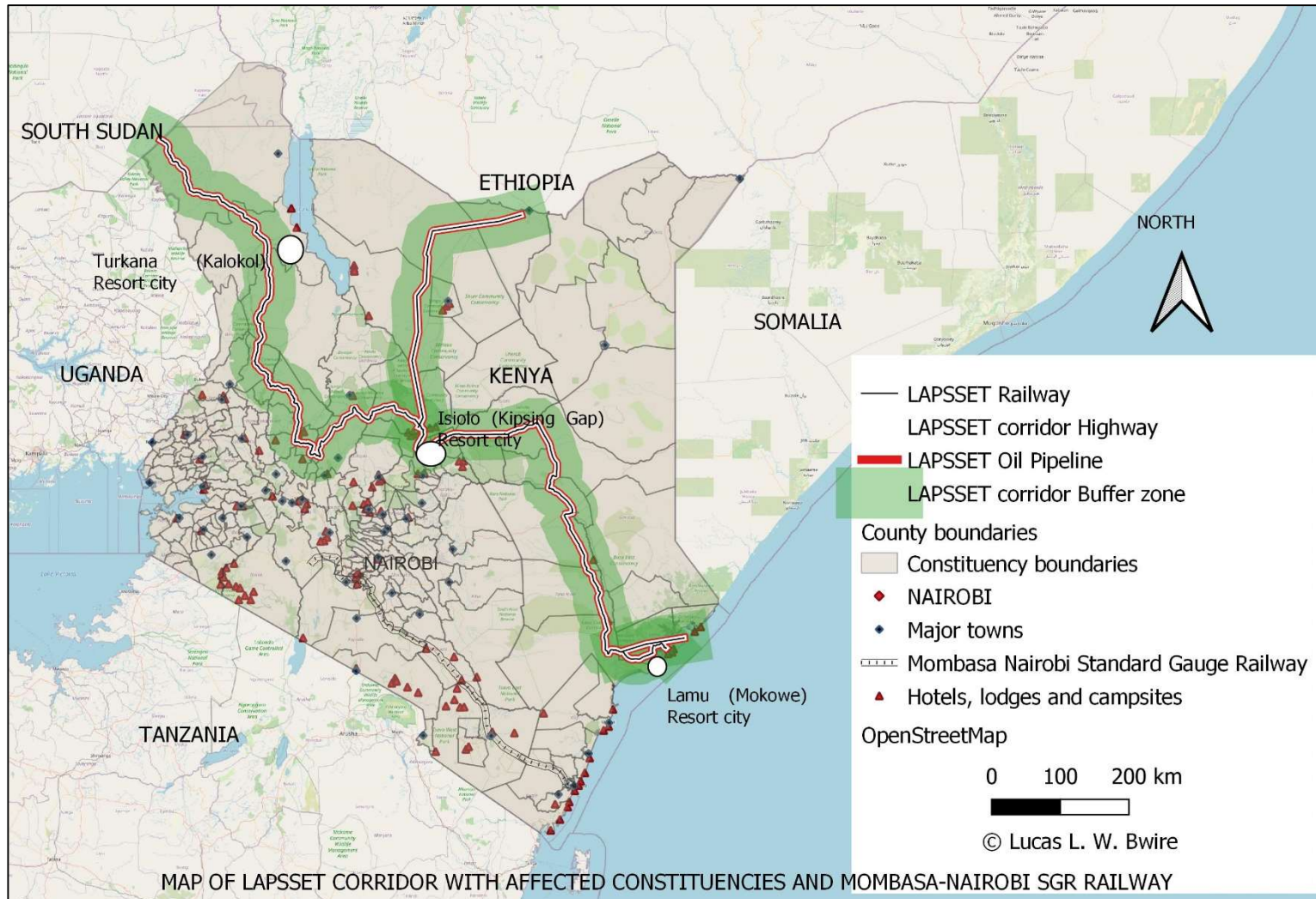
NORTH



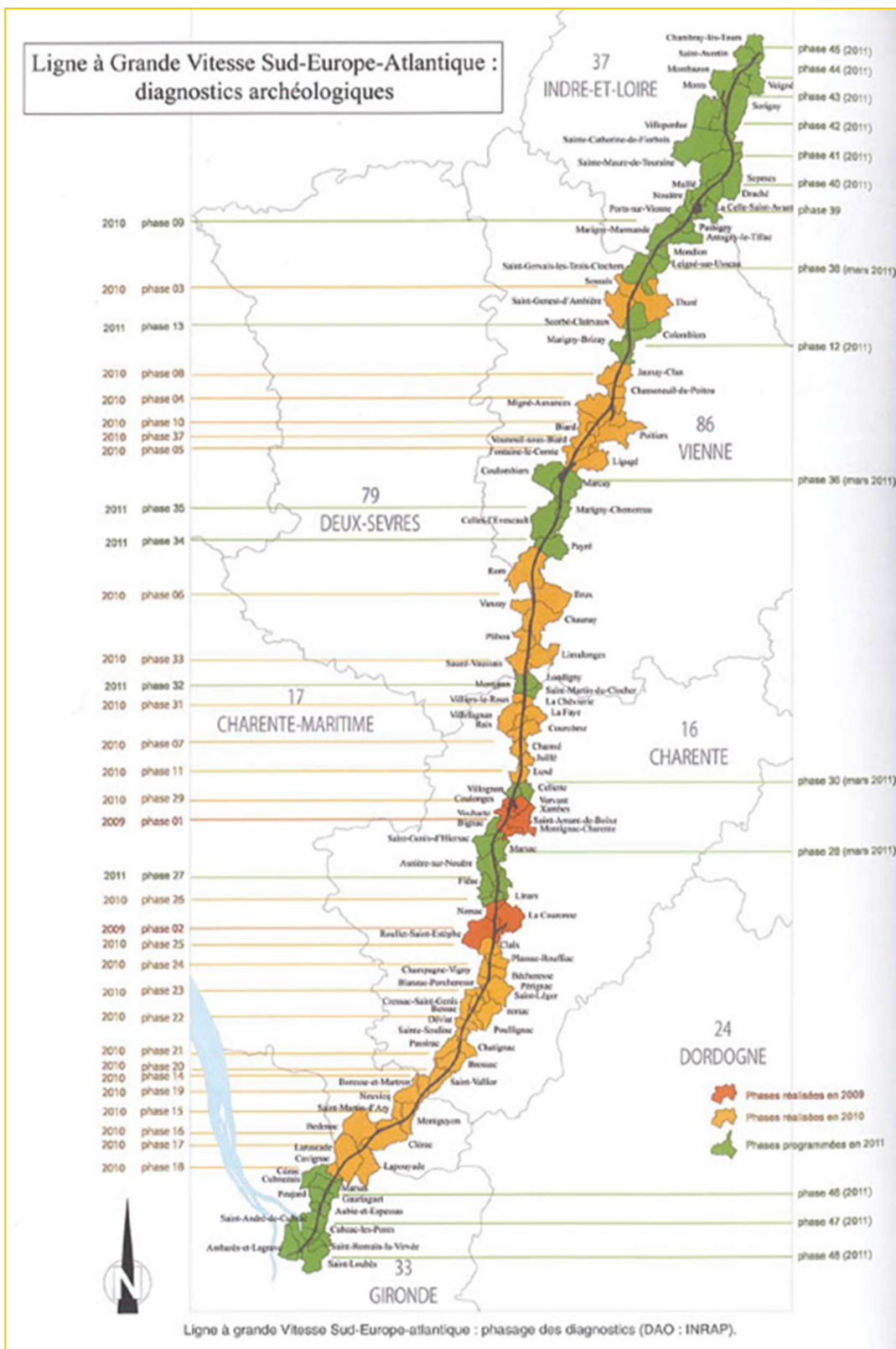
© Lucas L.W. Bwire



Map 8: Lamu Port-South Sudan-Ethiopia-Transport corridor project



Map 9: LAPSSET Corridor with Affected Constituencies and the Nairobi-Mombasa SGR Railway



Map 10: Preventive archaeology diagnostic surveys : the case of the Sud-Europe-Atlantique High Speed Railway

The LAPSSSET project components include:

- i. road network
- ii. railway
- iii. border posts
- iv. port, airport, and inland way
- v. logistic hub
- vi. oil and mining
- vii. agriculture and fishery
- viii. manufacturing
- ix. power
- x. water

Judging from a sample of Environmental and Social Impact Assessment reports, the challenges affecting cultural heritage impact assessment in Kenya are complex and multifaceted. On the one side there are institutional based challenges that are related to the policy and institutional capacities to deal with the issues arising from large scale development projects and rapid urbanisation. The only national institution that deals with heritage management is the National Museums of Kenya. The functions of the National Museums according to the National Museums and Heritage Act 2006, are;

- i. to serve as national repositories for things of scientific, cultural, technological and human interest;
- ii. to serve as places where research and dissemination of knowledge in all fields of scientific, cultural, technological and human interest may be undertaken;
- iii. to identify, protect, conserve and transmit the cultural and natural heritage of Kenya; and promote cultural resources in the context of social and economic development.

The institution has been steadfast in the promotion of cultural resources in the context of development which has not been an easy task. Unlike in the French heritage legislation where all stakeholders are well defined and their roles fixed by the heritage code, the Kenyan legislation is mute on the definition of the key stakeholders and their roles in the conservation of cultural heritage impacted by public and private development projects. There is no co-ordinated scientific control of the process both at the local and national level.

The private heritage consultant agencies have got limited scientific and administrative control. Consequently the Environmental Impact Assessment is conducted based on the demand and conditions of the developer as per the NEMA's prescription of the content of an Environmental Impact Assessment report. Most of them pay very limited, if any, attention to the issues relating to cultural heritage in their study reports unless if the contractor involves heritage professionals subcontractors. The statement of the problems and their mitigation measures speaks volumes about the possible neglect or ignorance of the key issues under the category of heritage. This was observed by Lamu community through SAVE Lamu, a coalition of 36 Community-Based Organisations in Lamu County, in their letter to the National Environmental Management Authority (NEMA) raising concerns over one of the ESIA reports on the LAPSSET project. Three concerns that were raised by SAVE Lamu civil society are pertinent to this study. The first concern was the 'loss of World Heritage Site', the second concern was 'the displacement, domination and loss of the cultural identity and change in the political landscape' and the third concern was that the 'lifestyle of the Boni community will be disrupted by the presence of settlement schemes':

Loss of the World Heritage Site:

“The report loosely states that the mitigation measure for protecting the World Heritage Site is —protection of the world heritage site by ensuring proper mitigation measures are put in place. In other words, the mitigation measure suggested is to create a mitigation measure, a cyclical solution that has no clear focus or action plan. The researchers should suggest clear methods to work with the National Museums of Kenya and suggest clear strategies to be developed, including by-laws to protect the heritage site, a heritage management and development plan—long overdue for Lamu— and a heritage impact assessment. The administrators should also refer to the recommendations provided by UNESCO during their field visit in Lamu in 2018”

Displacement, domination and loss of the cultural identity and change in the political landscape :

While mechanisms to preserve culture are well outlined, they fail to provide the mechanisms for how they will work and who is responsible. The report also fails to propose strategies that tackle disenfranchisement of political disempowerment.

In most of the reports, the indigenous communities are considered though the degree of efficacy of the measures put in place vary and in some cases like Lamu, require public scrutiny. In most of the cases for instance that of Sondu Miriu, Mombasa-Nairobi SGR project, there were issues of corruption which affected the manner in which indigenous communities were compensated (see text in the annex).

Lifestyle of the Boni community will be disrupted by the presence of settlement schemes:

The ESIA report does not provide adequate solutions for the lack of land tenure for hunter-gatherer communities such as the Boni. Considering that the Boni are highly dependent on community land, the support for individual settlement schemes without considering the needs of hunter and gathering communities continues to disenfranchise them. As such, more rigid strategies are needed for empowering this group with community land ownership. (Letter by SAVE Lamu, RE: Environmental Impact Assessment Study Report for Construction of the First Three Berths, 15, April, 2013).

The project had a lot of issues especially concerning the management plan for the Lamu Old Town UNESCO world heritage site, between the State-Party and the UNESCO, following the failure to carry out a full environmental and strategic impact assessment showing all the development aspects and the comprehensive map of the project area with the relevant recommendations for alternative considerations.

11.4.2 The place of cultural heritage in the LAPSSET Corridor project

The LAPSSET Corridor project was conceived as a mega economic game changer not just in Kenya but across all the countries concerned from the east, central and west African region. The main economic impetus alongside the corridor's buffer zone in Kenya include three resort cities of Lamu (Mokowe), Isiolo (Kipsing Gap) and Turkana (Kalokol) to support economic enabling activities at county level so as to harness and tap into the rich tourism potential (LAPSSET Corridor Development Authority, September 2017). Cultural heritage highly features in the environmental impact assessment and LAPSSET Authority reports mainly as part of tourist attraction activities but also for the need to protect the indigenous populations within the corridor area especially in Lamu.

The Lamu Resort City is proposed to be at Mokowe and is premised on the rich cultural history including the Swahili village, beaches, unique cultural identity, world heritage sites and national reserves/parks. Other tourism attractions facilities include mangrove forests, deep sea fishing, archaeological sites and water sporting activities. The construction of the resort city is expected to make Lamu one of the ten long-haul tourist destination in the world (LAPSSET Corridor Development Authority, September 2017).

The cultural considerations of LAPSSET project were inspired by the Vision 2030 economic blue print which provides for heritage promotion as part of the strategies to increase revenue through cultural tourism. Heritage promotion as a concept mainly targets the economic valuation of heritage with limited or no intention of patrimonialization for the sake of writing local or national history. In the case of LAPSSET corridor project, the coastal archaeological and historical heritage accounts to a significant proportion of sites that attract a lot of tourists in Kenya. The museums that attract global cultural tourism in Kenya apart from the Nairobi National Museum are Lamu Old Town and Fort Jesus. The latter are world heritage sites whose link to native history is very significant though fragmented. They have attracted a lot of research globally due to the associated outstanding universal values and their history



Figure 27: Fort Jesus World Heritage site museum. Photos by Lucas L.W. Bwire

attests to the connections between the East African Coast and the outside world prior to the onset of colonialization.

11.4.3 Ethiopia-Kenya Power Systems Interconnection Project: An Archaeological Impact Assessment Report Prepared For Gamma Systems Limited

The Ethiopia-Kenya Power Systems Interconnection Project is one of the success stories of a preventive archaeology exercise in the strict sense of the term. The project was born out of a memorandum of understanding signed on May 7, 2006 between Ethiopia and Kenya that aimed at establishing technical cooperation in power generation, transmission, rural electrification and customer services between the two countries. Before its implementation, an Environmental and Social Impact Assessment (ESIA) study was conducted whose results showed that the project had potential impacts on archaeological resources. It thus made a recommendation for an archaeological impacts assessment which was conducted and gave positive results as per the report.

- The ESIA report established:

Cultural heritage situated at about 600 kilometres south of Addis Ababa, at the southern end of Ethiopia's Rift Valley, 5 23'97" North and 3721'95" East and 1200- 2000 masl, Konso is marked by active geological area (Yonas, 1999:1). Replete with remarkable natural and cultural treasures, such as paleoanthropological sites, beautifully constructed terraces, stone walled towns, wooden and stone funeral statues (the wakas), sacred forests, important ponds and many other antiquities. Konso is registered in June 2011 as the ninth world heritage

site in Ethiopia. In addition to Konso, important heritage resources identified along the route are water wells, and living religious and burial sites located in Boren Administrative Zone.

Following the observations and recommendations an archaeological impact assessment was done and the results were as illustrated (see Table 14). Given that the archaeological material were sparse, the survey did not amount to full scale excavations but the report holds as a good example of a preventive archaeology survey. This was done partly because of the cooperation between the two countries with Ethiopia having a good history of archaeological research and significant sites along the area concerned.

Another possible explanation is the involvement of the African Development Bank Group whose policy on environment was revised in the year 2004 to embrace the dynamics of sustainable development. The policy “stresses the anticipatory nature of sustainable development rather than the reactive responses so predominant in development-related decisions” (African Development Bank Group, 2004). This is in the same spirit as the European Union’s Convention of the Protection of Archaeological Heritage, the Malta Convention of 16th January 1992 that is the origin of the French law about preventive archaeology passed in the year 2001. Apart from the environmental law, the existing policy framework in Kenya does not provide for anticipatory approach in heritage impact assessment to safeguard archaeological heritage threatened by development projects. However, the National Museums of Kenya ensures that where local policy is inefficient, the international best practice is applied by drawing from various international policy frameworks and those of the funding institutions then aligning them with various sectoral legal framework, regulations and statutes such as the environmental policies of Kenya Power

and Lighting Company (KPLC) and the Kenya Electricity Transmission Company (KETRACO).

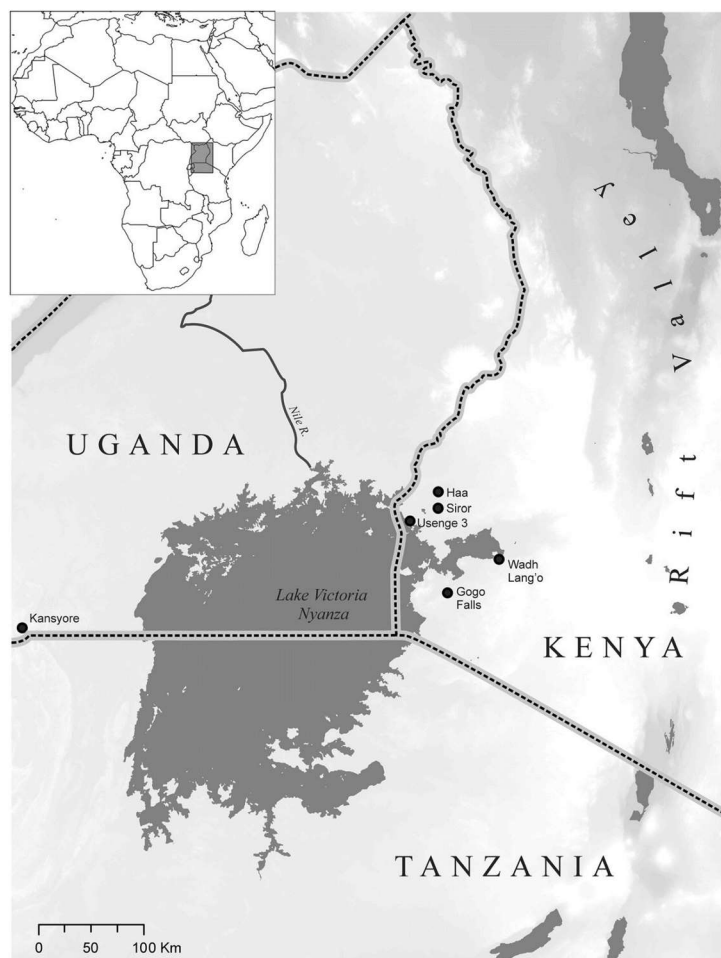
Table 14: ANNEX 3 ARCHAEOLOGICAL IMPACT ASSESSMENT

ANNEX 3 ARCHAEOLOGICAL IMPACT ASSESSMENT					
THE ETHIOPIA-KENYA POWER SYSTEMS INTERCONNECTION PROJECT: REPORT PREPARED FOR GAMMA SYSTEMS LIMITED					
County / Place	RESULTS				
Nakuru County:	Period and findings	Specimen	Frequency	Split / Level	Distribution
1.Kiambogo-Longonot	Later Stone Age Obsidian Lithic specimens of Mode 5 - Lower Eburran Industry	Artefacts	2	Surface	Sparce
		Flaked pieces	3	Surface	Sparce
		Debutage	5	Surface	Sparce
2.Nyamathi I	Later Stone Age Obsidian Lithic specimens of Mode 5 - Lower Eburran Industry	Artefacts	0	Surface	Absent
		Flaked pieces	2	Surface	Sparce
		Debutage	4	Surface	Sparce
3.Nyamathi II	Later Stone Age Obsidian Lithic specimens of Mode 5 - Lower Eburran Industry	Artefacts	1	Surface	Sparce
		Flaked pieces	6	Surface	Moderate
		Debutage	11	Surface	Moderate
4.Maguna Shopping Center	Later Stone Age Obsidian Lithic specimens of Mode 5 - Lower Eburran Industry	Artefacts	7	Surface	Sparce
		Flaked pieces	1	Surface	Sparce
		Debutage	2	surface	sparce
5.Karai Quarry	Later Stone Age Obsidian Lithic specimens of Mode 5 - Lower Eburran Industry	Artefacts	2	Level 1 (subsurface road cutting)	Sparce
		Flaked pieces	4	0	Sparce
		Debutage	0	0	Sparce
6.Customer Site – Mairugushu	Later Stone Age Obsidian Lithic specimens of Mode 5 - Lower Eburran Industry	Artefacts	6	Surface	Moderate
		Flake pieces	6	Surface	Moderate
		Debutage	3	surface	Sparce
7.Kahurugo Village – Karati	Later Stone Age Obsidian Lithic specimens (Mode 4 – Lower Eburran Industry)	Artefacts	8	surface	Sparce
		Flake pieces	5	Surface	Sparce
		Debutage	10	surface	Sparce
8.Light of Hope Childrens’ Home I	Later Stone Age Obsidian Lithic specimens	Artefacts	13	Sub-surface (1.5 m)	Moderate
		Flake pieces	10	Surface	Moderate

	(Mode 4 – Lower Eburran Industry)	Debutage	10	surface	Moderate
9.Light of Hope Childrens' Home II	Later Stone Age Obsidian Lithic specimens of Mode 5 - Lower Eburran Industry	Artefacts	8	surface	Sparce
		Flake pieces	7	surface	Sparce
		Debutage	10	surface	Sparce
Nyandarua					
10. Kimbo Primary School	Later Stone Age Obsidian Lithic specimens of Mode 5 - Lower Eburran Industry (at 1.5m Mode 4 – Lower Eburran Industry)	Artefacts	6	Sub-surface (1.5m below along eroding galley)	Sparce
		Flake pieces	5	Surface	Sparce
		Debutage	8	Surface	Sparce
11.Malewa Ranch	Later Stone Age Obsidian Lithic specimens of Mode 5 - Lower Eburran Industry	Artefacts	15	Surface	Sparce
		Flake pieces	10	Surface	Sparce
		Debutage	8	Surface	Sparce
12.Kamahia Shopping Center	Later Stone Age Obsidian Lithic specimens of Mode 5 - Lower Eburran Industry	Artefacts	5	Surface	Sparce
		Flake pieces	7	Surface	Sparce
		Debutage	2	Surface	Sparce
13.Lake Olobosat Secondary School	Later Stone Age Obsidian Lithic specimens (Mode 5) - Lower Eburran Industry	Artefacts	10	Surface	Sparce
		Flake pieces	8	Surface	Sparce
		Debutage	3	Surface	Sparce
14.Warukira Shopping Center	Later Stone Age Obsidian Lithic specimens (Mode 5) – Lower Eburran Industry	Artefacts	3	Surface	Sparce
		Flake pieces	2	Surface	Sparce
		Debutage	1	Surface	Sparce
15.Ndemi Village	Later Stone Age (Mode 5) – Lower Eburran Industry	Artefacts	10	Surface	Sparce
		Flake pieces	8	Surface	Sparce
		Debutage	4	Surface	Sparce
16. Ndururi Village	Later Stone Age (Mode 5) – Lower Eburran Industry	Artefacts	4	Surface	Sparce
		Flake pieces	4	Surface	Sparce
		Debutage	2	Surface	Sparce

11.4.4 Wadh Lang'o and Sondu Miriu Hydroelectric Power Project

The third project is the Sondu Miriu Hydroelectric Power Project, a big energy project that was undertaken through cooperation between the Kenyan and Japanese governments along the Sondu Miriu River in the Western part of Kenya. The case was especially important since it is considered as the first successful case of salvage or preventive archaeology in Kenya conducted as part of cultural heritage management in the context of the construction of the Sondu Miriu Hydroelectric power plant (Onjala, et al., 1999 , online 26 Feb 2010). Through the rescue archaeological excavation prior to the implementation of Sondu Miriu Hydroelectric project at Wadh Lang'o, there were important discoveries which were well studied and documented through publications. The entire process was well organised



Map 11: Wadh Lang'o at the site of Sondu Miriu Hydroelectric Power Project

through the partnership between the National Museums of Kenya (NMK) and the British Institute in East Africa (BIEA) hence making it unique and fundamental for this study.

11.4.5 Contribution of heritage impact assessment to scientific research and cultural heritage management in Kenya

Cultural Heritage Impact Assessment is the tool that ensures the conservation of archaeological heritage threatened by development activities. As such it has provided opportunities to advance the study of human's past civilization thus developing new insights and improve cultural heritage management.

The major infrastructural development projects such as the Northern Economic Corridor, the Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) corridor and the construction of the Sondu Miriu Hydro-electric power plant are projects which generated heated debates of cultural issues.

The Northern corridor and the Standard Gauge railway projects are of particular interest where the area concerned has a potential significance and importance in the social sciences dealing with the conservation of natural and cultural heritage. The affected area is significant in the study of the social, economic and political interactions of the East African people in the near and distant past. The road and railway networks almost follow from the routes that were used during the Long Distance Trade in East Africa which were later developed during the colonial period.



Figure 28: A section of the Standard Gauge Railway passing through the Nairobi National Park.



Map 12 Standard Gauge Railway network. Courtesy Google maps



Map 13: The railway line built during the conquest of East Africa (Source Pollard, F.A.)

11.5 Realignment of Cultural Heritage Management to Devolved System of Government in Kenya

History has demonstrated that the more inclusive the government is, the easier the decision making process and hence the greater the capacity to come up with people centred, acceptable and realistic policies for peaceful coexistence and sustainable development. Since the introduction of colonial rule, power in Kenya was highly centralised. The centre of power was very far from the local people. Proximity to power depended on the colonial administrative system that was operational within an area as there was the application of both direct and indirect rule by the British colonial administration in Kenya. Through the establishment of indirect rule in the African dominated areas, the colonial administration retained the precolonial power structures based on the chieftaincy and councils of elder which they restructured to fit into the new administrative order. As such, the different acephalous and centralised yet independent political organisations of indigenous communities were integrated into a highly structured centralised administration.

The centralisation of power meant that traditional chiefs had been co-opted and hence they lost their traditional political power. Their integration into the new system also came with a shift in value systems where power was no longer derived from their social and cultural role but from consolidating their power through accumulation of material wealth and social networks beyond the confines of their cultural limits.

11.5.1 Urbanisation and Reversal of Rural Urban Migration

Since time immemorial, people have always been attracted to urban centres for purposes of finding means to earn a living through the various employment opportunities in towns and cities. This trend has had both positive and negative impacts on the protection of cultural

heritage. The usual rural-urban migration trend has been cited as a major factor that hinders rural development in the third world where falls majority of African countries. This may not be easily noticeable in some of the small and predominantly rural or urban countries. In a small and predominantly rural country, the line between urban and rural areas is very slim in terms of the day-to-day direct transactions between the rural and urban inhabitants. In a small and predominantly urban country, almost the entire population lives in urban areas, which diminishes rural-urban migration as people can easily access all the services within their proximity. The urban-rural gap seems to grow with the size of the country, her level of economic development, the diversity and distribution of key economic activities as well as the proximity of the governed to the centre of power. While the gap tends to narrow depending on the level of economic development of a given country, the general trend is that predominantly rural societies tend to have a high rate of rural to urban migration than predominantly urban societies.

In the rural to urban migration, the most devastating impact to cultural heritage management is the emigration of a youthful, more talented and most dynamic population. This deprives rural areas of a vibrant cultural life once the most resourceful population that can provide the necessary skills, knowledge as well as market to the cultural sector leave in search of greener pastures.

Centralisation of administrative power has lasting consequences on a country's cultural heritage management system. The emergence of towns and cities as administrative, commercial, industrial, religious, and educational centres resulted into massive rural-urban migration leading to the imbalance in the socio-economic and cultural development between rural and urban areas. This consequently led to a new cultural landscape with kind of cultural hybridization in the major cities. The rural emigrants in towns and cities had to find a new

kind of identity unique from their original one, universal and generally acceptable to a large group of people from diverse ethnic backgrounds.

One of the areas that were most affected by the rural – urban migrations was Western Kenya region which comprises of the entire Lake Victoria basin and part of the Great Rift Valley from the south to the north.

The rural-urban migration left the elderly, children and women in rural areas who had to earn a living by depending on subsistence agriculture and on transfer funds from their relatives in the major towns and cities such as Nakuru, Kisumu, Mombasa and Nairobi. Agriculture, which is the backbone of the economy in majority of the African countries was adversely affected. The trend created a gender based kind of economy where majority of women would work in the households and farms as house maids and farm labourers respectively with most of them being care-givers in their families. Men would work as casual labourers in blue collar jobs in the urban centres. This kind of social and economic stratification gradually destabilised the link between people and their cultural heritage.

11.5.2 Devolution and Decentralisation of Government: County Government and focus on rural development

Since the establishment of the County Government in Kenya, there has been a positive trend towards promotion of urban- rural migration with the youth being attracted to the opportunities being created through county development projects in the counties. This has seen the revival of some of the initially ignored yet viable sectors of the economy. These sectors include the informal economic sector commonly known as the *Jua Kali* sector as well as the development of some youth initiatives into well organised associations and organisations such as the motor cycle transport services also known as Boda Boda mainly

operated by the youth. The government has encouraged the youth in the informal sector (*Jua Kali*) to unite and form savings and credit cooperative societies (SACCOS) so as to boost the sub sector and improve the living standards of Boda Boda operators in the country. The most outstanding and more evident initiatives have been witnessed through the development of youth projects through the Ministry of Culture, Youth and Sports.

The marginalisation of the youth, the high rate of unemployment and increase in crime in Kenya especially in the major cities and towns led to the government's youth agenda of mainstreaming them in the economic development. As victims of political manipulation, marginalization and general neglect in the development strategies and plans, the youth and the women have of recent been more sensitised on the need for economic empowerment through a variety of government initiatives and programmes targeting them. Key among the empowerment strategies is through education and training where the government has unveiled various programmes including the expansion of Higher Education Loans Board services to technical and vocational training institutions so as to facilitate youth empowerment through skills and training. The institutions which have absorbed majority of the youth are those dealing with cultural tourism industry such as those dealing with hospitality and hotel management, tour guide and tourism management, learning of foreign languages, wildlife management among others.

Since the 2007 post-election violence in Kenya, the Government has made efforts to bring the youth, women and the marginalised groups to the forefront in governance and decision making through constitutional reforms especially devolved government. Counties have been coming up with initiatives targeting the youth and the women. Issues affecting the marginalised groups were at the centre of the constitutional reforms that led to the Constitution of Kenya of the year 2010.

In April 2020 artists were among those who were given priority by the Government in its consideration of shielding citizens against the negative economic impact of the new corona virus disease, Covid-19 pandemic. Most of the artists are the youth.

The youth and women in Kenya have been part of the marginalised and minority groups for quite a long period of time. Ironically these two form the majority of the active population in terms of economic development whose marginalisation has got multifaceted negative effects on the country's Gross domestic product (GDP).

In the cultural tourism industry, the youth and women play a pivotal role first as eco tourists in the cultural tourism industry, as tour guides, as artists that create relevant cultural items to diversify their sources of income and as service providers of a variety of tourist associated services. The impact of cultural activities can be felt in three ways (Grefe, 1999):

- First by mobilisation of a number of activities associated with visit to the monuments, cultural events and sites hence the term 'cultural tourism';
- Through development of skills that are used in the entire economic sector;
- Through reinforcing the capacities for creation and innovation of enterprises (Grefe, 1999, p. 10).

The youth and women are active in all the areas mentioned above through which cultural activities impact the economy.

11.6 Comparing the impact of preventive archaeology and heritage impact assessment to scientific research and cultural heritage management

Since its inception, preventive archaeology has been a key planning tool in the implementation of sustainable development projects in most of the developed countries.

While environmental impact assessment (EIA) is generally acknowledged as a tool to safeguard cultural heritage impacted on by development projects in Kenya, its relevance and efficiency to archaeological heritage protection is limited by the broad and rather general objectives that it seeks to realise. Preventive archaeology, also known as commercial, contract or development-led archaeology is the best alternative to safeguard against archaeological heritage threatened by development. As justly noted by Arazi, this kind of archaeology is ‘the most widely practiced form of archaeology within Europe and the United States, especially since the application of the “polluter pays” principle¹⁶¹ or the replacement of governmental funding for rescue or salvage excavations by developer funding’¹⁶² (Arazi, 2011, p. 28).

This kind of approach gives much emphasis on the notion of prevention which makes it more relevant and efficient in respect to the protection of archaeological heritage. When conducted within the framework of Environmental Impact Assessment (EIA), archaeological heritage is not given the specialised attention that is accorded by specialists when the practice is conducted within the framework of salvage archaeology as was the case at Wadh Lang’o in Kenya or preventive archaeology as conducted in France. This is simply because there are instances where the constitution of most of the EIA teams does not involve archaeologists thus lowering the capacity to deal with the varied and vast archaeological materials that belong to different archaeological periods.

¹⁶¹ Organization for Economic Cooperation and Development 1992 cited in (Arazi, 2011, p. 28).

¹⁶² Aitchison 2000 cited in (Arazi, 2011, p. 28).

Development of archaeology in metropolitan France is quite recent as compared to the French archaeological research abroad (Demoule & Stiegler, 2008). The increase in infrastructural projects since the 1960s and 1970s in France sparked a series of conflicts between archaeologists and developers through scandals (Gauthier, 2009, p. 227) that were made public in the media hence calling on the government and archaeologists to rethink on the approach towards the protection of archaeological heritage. This led to the emergence of salvage archaeology which became preventive archaeology (Demoule, 2009b; Demoule, 2004a) in the 1980s when it was capable of preventing a greater part of potential destructions from development projects and gaining stability in the year 2002 after the creation of INRAP (Demoule & Stiegler, 2008; Blin, 2007).

Since the past three decades there have been a lot of archaeological discoveries through preventive archaeology which have contributed to the renewal of scientific knowledge in the discipline. This has contributed to the rediscovery and re-writing of the history of Europe based on the immense archaeological discoveries which gives archaeology the privilege to interrogate and justify various historical hypotheses and give a well-argued answer to historical questions.¹⁶³ The impact cuts across all the periods from the Palaeolithic period through Neolithic period, Bronze Age, Iron Age, Protohistoric period, Antiquity, Medieval period to the modern era (Demoule, 2009e). The latter is characterised by the international relations from the 19th century establishment of colonial rule through the 20th century cultural interactions in various forms from world wars to the emergence of international cultural institutions such as the UNESCO.

¹⁶³ *Parvenus à un point charnière de leur histoire - les 50 ans de la construction d'une Union qui intègre désormais 27 nations -, les Européens ont-ils vraiment conscience de tout ce qui les rapproche ?*

HISTOIRE	→ Période contemporaine 1789 à hier	<ul style="list-style-type: none"> • conflits mondiaux • industrialisation • Révolution française 	<ul style="list-style-type: none"> • sépulture d'Alain Fournier (55) • mines d'argent du Fournel (05)
	→ Temps modernes 1492 à 1789	<ul style="list-style-type: none"> • siècle des Lumières • centralisation du pouvoir • Renaissance 	<ul style="list-style-type: none"> • habitat colonial de Loyola (Guyane) • épaves de la Natère (35)
	→ Moyen Âge 476 à 1492	<ul style="list-style-type: none"> • royaumes mérovingien, carolingien, capétien et valois 	<ul style="list-style-type: none"> • bourg monastique de Saint-Denis (93) • habitat fortifié de Colletière, Charavines (38)
	→ Antiquité -52 à 476	<ul style="list-style-type: none"> • des Romains aux Francs 	<ul style="list-style-type: none"> • villa gallo-romaine de Loupian (34)
ÂGE DES MÉTAUX	→ Second âge du Fer (La Tène) -450 à -50	<ul style="list-style-type: none"> • cités gauloises 	<ul style="list-style-type: none"> • oppidum de Bibracte, St-Léger/Beuvray (71) • oppidum d'Entremont, Aix-en-Provence (13)
	→ Premier âge du Fer (Hallstatt) -750 à -450	<ul style="list-style-type: none"> • sociétés celtiques 	<ul style="list-style-type: none"> • port antique de Lattes (34) • sanctuaire gaulois de Ribemont-sur-Ancre (80)
	→ Âge du Bronze -2500 à -750	<ul style="list-style-type: none"> • mise en place des échanges commerciaux • apparition de la métallurgie 	<ul style="list-style-type: none"> • gravures rupestres du Mont Bégo, Tignes (06)
	→ Néolithique -6000 à -2200	<ul style="list-style-type: none"> • sédentarisation • développement du mégalithisme 	<ul style="list-style-type: none"> • campement du Grand-Fressigny (37) • alignements de Carnac (56)
PRÉHISTOIRE	→ Mésolithique -9600 à -6000	<ul style="list-style-type: none"> • nomadisme 	<ul style="list-style-type: none"> • campement de Pincevent, La-Grande-Paroisse (77)
	→ Epipaléolithique -12500 à -9600	<ul style="list-style-type: none"> • apparition de l'arc • perfectionnement des techniques de débitage du silex 	<ul style="list-style-type: none"> • grotte ornée de Lascaux, Montignac (24) • grotte ornée de Cosquer, Marseille (13) • grotte ornée de Chauvet, Vallon-Pont-d'Arc (07)
	→ Paléolithique supérieur -40000 à -12500	<ul style="list-style-type: none"> • Homme de Cro-Magnon • développement de l'art pariétal 	<ul style="list-style-type: none"> • squelette de La-Chapelle-aux-Saints (19) • abris du Moustier, Saint-Léon-sur-Vézère (24)
	→ Paléolithique moyen -300000 à -40000	<ul style="list-style-type: none"> • Homme de Néandertal • premières sépultures 	<ul style="list-style-type: none"> • abri sous roche de Merez-Dregan (29)
	→ Paléolithique inférieur -800000 à -300000	<ul style="list-style-type: none"> • Homme de Tautavel • début de l'industrie lithique • domestication du feu 	

Table 15 Archaeological and historical periods

The magnitude of the impact of development may not be known unless if preceded by preventive measures to determine the presence, significance of cultural resources in the

underground archives. A prospection in the Pas-de-Calais in the northern part of France,
an archaeological prospection yielded very rich results of lithic industry (

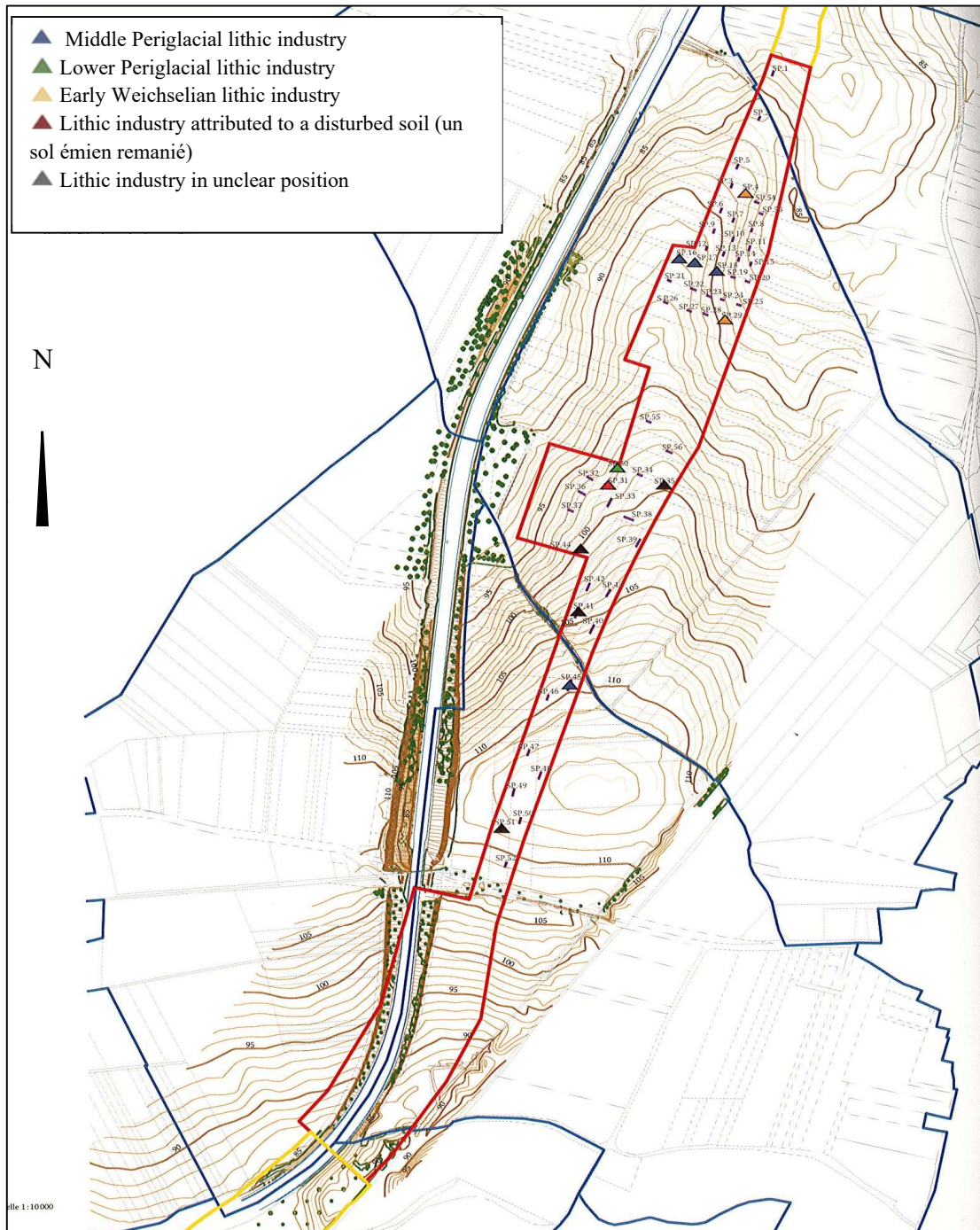


Figure 3).

Figure 29: Results of Palaeolithic diagnostic prospection at Havrincourt, Pas-de-Calais, France (Source Achéopages Hors Série 4, 2016).

The greatest percentage of archaeological investigations since the 1990s in the western European countries was in the framework of preventive archaeology. In north-west Europe the practice is referred to as contract, commercial or development-led archaeology. The increase in development-led excavations since 1990s has improved the understanding of the later prehistoric societies of this region and opened up fresh perspectives on the unity and diversity of human experience as well as cultural developments at different times and places across the entire region that is linked together by the Atlantic Channel and the North Sea (Haselgrove, 2011).

Given the magnitude of preventive archaeological research projects and the massive production of data, it was very difficult to do sampling. However, it was necessary to highlight various examples that this study found interesting for the purposes of demonstration and understanding of the contribution of preventive archaeology which has yielded and continues to yield scientifically interesting results. The discoveries which demonstrated the early Christian and commercial practices in the Mediterranean region such as the discovery of a Paleo-Christian Baptismal bath (Figure 30) and a ceramic jug (**Error! Reference source not found.**) in 2005 at Ajaccio, dating back to the sixth century AD (INRAP, 2005, p. 87) are worth mentioning. The ceramic jug was typical of the North African ceramic production thus testifying to the commercial ties between the two continents during that period of time in history.



Figure 30: A Paleo-Christian Baptismal Bath and a small jug typical of North African ceramic production of the sixth century AD discovered at Ajaccio in the region of Méditerranée, Southern France. Source (INRAP, 2005, p. 87)

11.6.1 Preventive Archaeological Operations 2001-2014: A case of Iron Age Period in the region of Nouvelle-Aquitaine, France

For purposes of comparison, I used a thematic and systematic analysis approach through selection of a case in the Nouvelle-Aquitaine region based on the archaeological research from 2001 to 2018. The development of preventive archaeology greatly impacted archaeological research in France thus yielding a lot of results across all the periods. This made it possible to do an almost complete study of the Iron Age period in the Nouvelle-Aquitaine region based on a combination of results from archaeological excavations between 2001 and 2014 in the region.

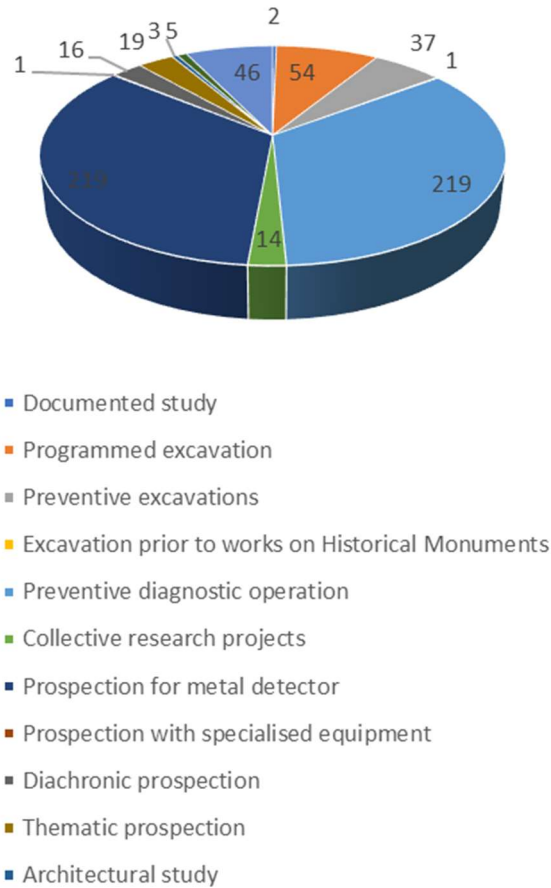
11.6.1.1 Archaeological operations in the Nouvelle-Aquitaine region from 2001 to 2018

The total number of programmed excavations (*fouilles programmées*) in the former Aquitaine region in 2015 was 23, preventive excavations (*fouilles préventives*) was 29 and preventive

diagnostics (*diagnostics/sondages*) was 83 out of the annual total of 199. The activity level illustrates that preventive operations constitute the majority of activities as can be observed from the statistics. We observe a similar trend in the Nouvelle-Aquitaine region operations of the year 2016 with 54 programmed excavations, 37 preventive operations and 219 preventive diagnostics (Service Regional de L'Archéologie, Nouvelle-Aquitaine, December 2018). In 2017 there were 43 programmed excavations, 52 preventive operations and 220 preventive diagnostics (DRAC, Service Regional de L'Archéologie, Nouvelle-Aquitaine, December 2019) while in 2018 there were 35 programmed excavations, 60 preventive operations and 269 preventive diagnostics. The annual number of operations for the three consecutive years since the creation of the Nouvelle-Aquitaine region are as shown in the

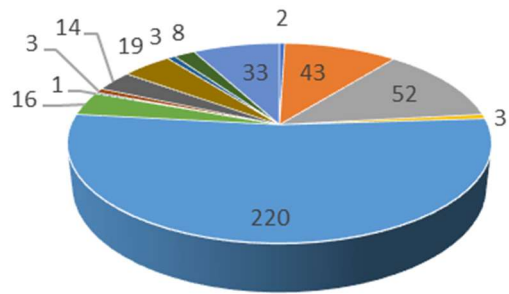
graphical illustrations (sources of data: Ministry of Culture and Communication, SRA Nouvelle-Aquitaine, Bilan Scientifique 2016, 2017 and 2018 respectively)¹⁶⁴.

Archaeological operations in Nouvelle-Aquitaine, 2016



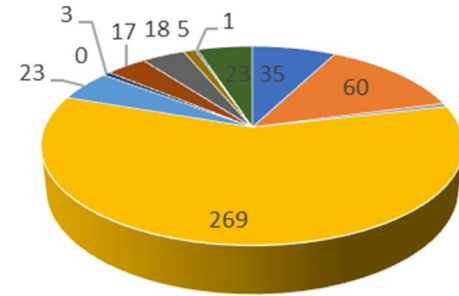
¹⁶⁴ There seems to be an error in the 2016 data concerning the number of prospection for metal detector which is highly elevated at 219 thus equal to preventive diagnostics but the annual total number of operations given in the Bilan Scientifique 2016 was 417.

Archaeological operations in Nouvelle-Aquitaine, 2017

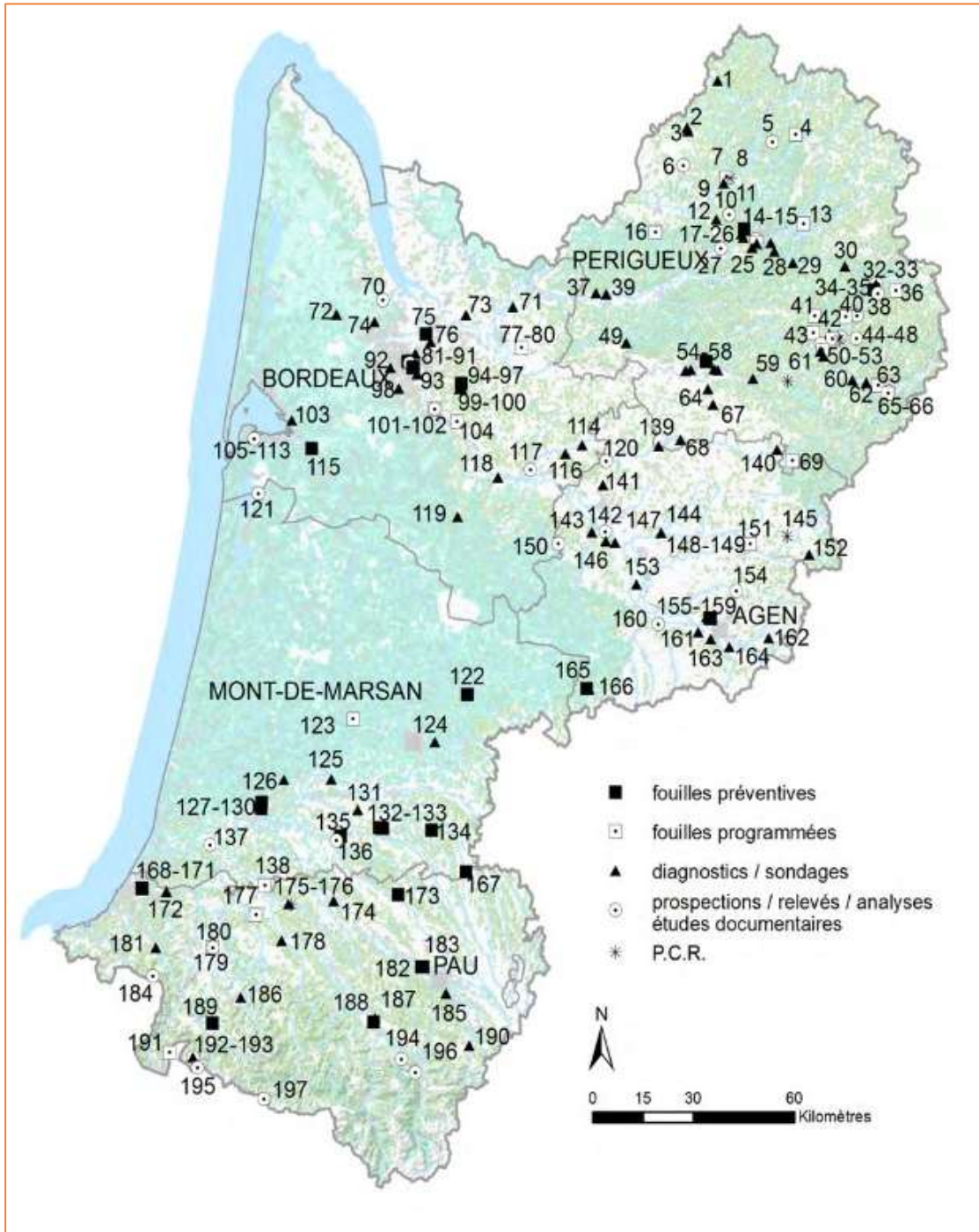


- Documented study
- Programmed excavation
- Preventive excavations
- Excavation prior to works on Historical Monuments
- Preventive diagnostic operation
- Collective research projects
- Prospection for metal detector
- Prospection with specialised equipment
- Diachronic prospection

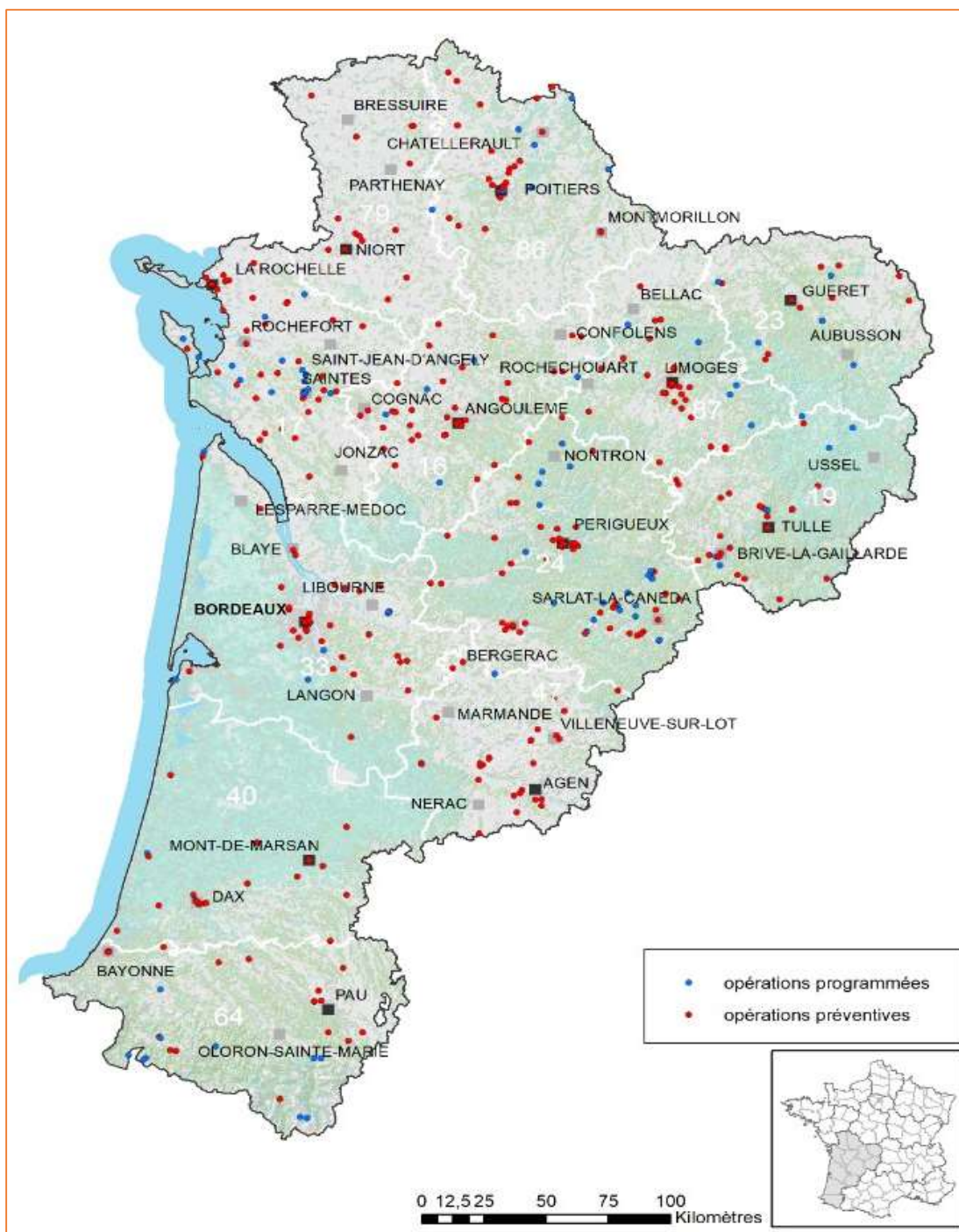
Archaeological operations in Nouvelle-Aquitaine, 2018



- Programmed excavation
- Preventive excavations
- Excavation prior to works on Historical Monuments
- Preventive diagnostic operation
- Collective research projects
- Prospection for metal detector
- Prospection with specialised equipment
- Diachronic prospection
- Thematic prospection



Map 14: Map of archaeological operations in Aquitaine region, 2015. Courtesy Ministry of Culture and Communication, SRA Aquitaine, Billan Scientifique 2015, p.13



Map 15: Map of archaeological operations in Nouvelle-Aquitaine region in the year 2016.
 Courtesy Ministry of Culture and Communication, SRA Aquitaine, Billan Scientifique
 2016, p.59

11.6.1.2 *The case of results of Iron Age research in Nouvelle-Aquitaine between 2001 and 2014*

A combination of preventive and programmed research has yielded a lot of results on Iron Age in the region of Nouvelle-Aquitaine which have rewritten the history of this period within a decade and a half of research.

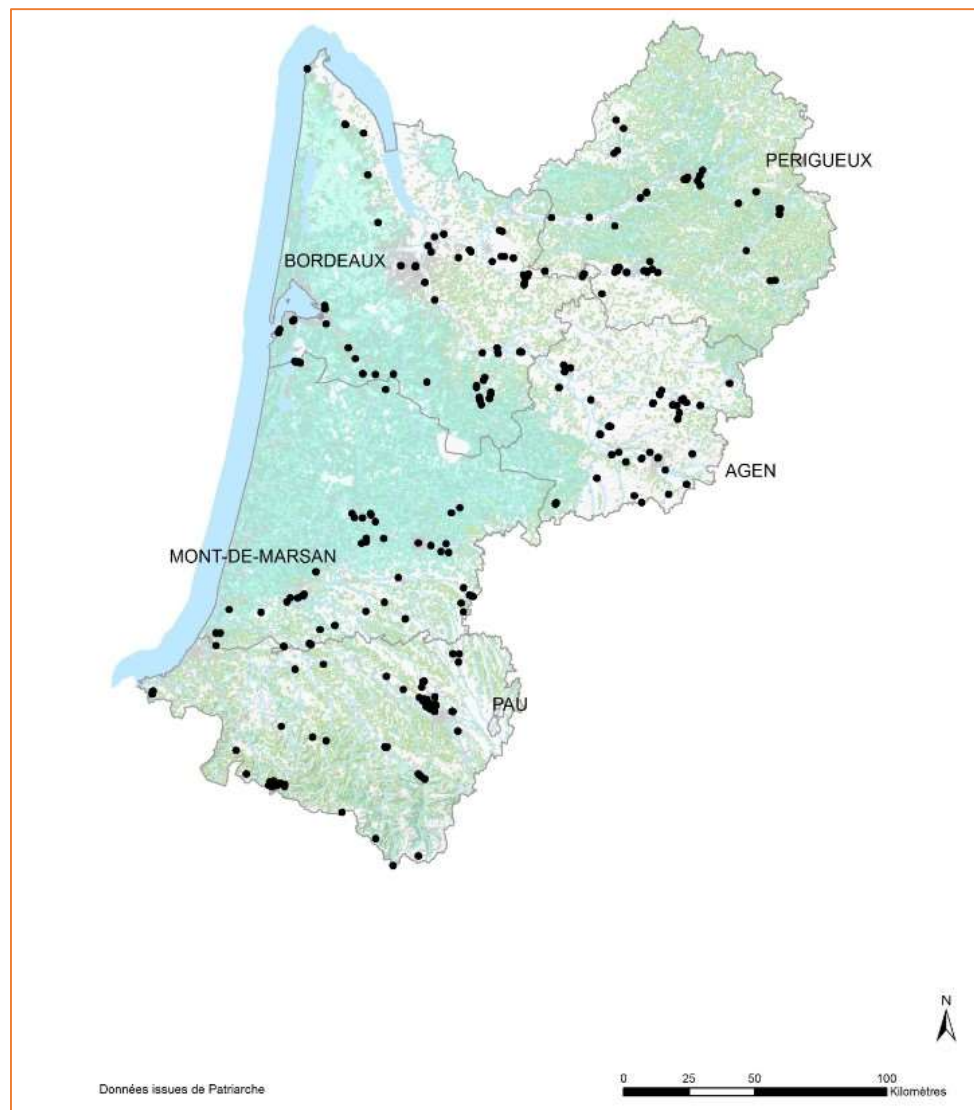
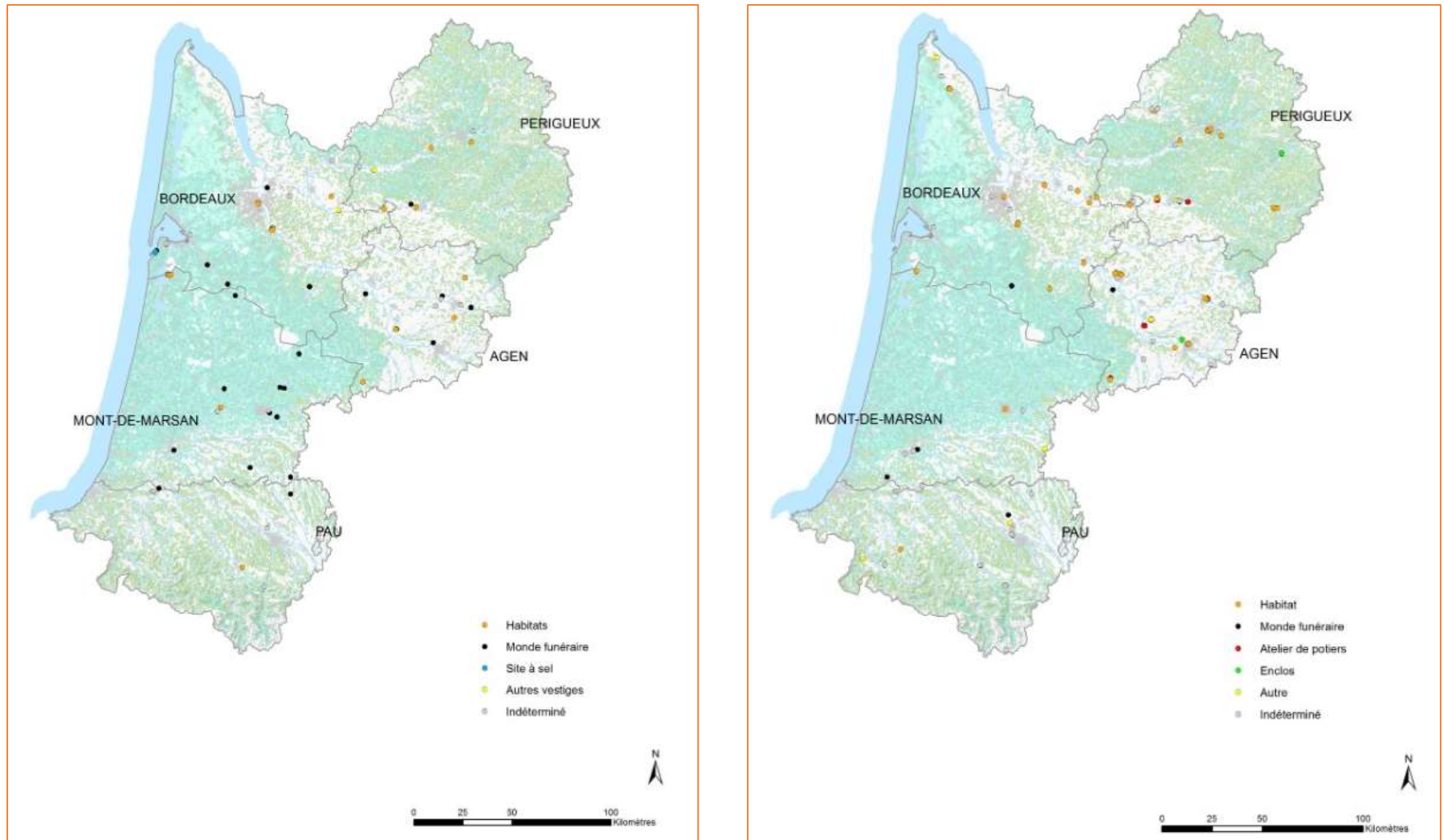


Figure 31: Map of Iron Age results in Nouvelle-Aquitaine between 2001 and 2014. Map courtesy SRA Nouvelle-Aquitaine, Bilan Scientifique 2016, pp.29

The preventive archaeology operations that yielded results on Iron Age between 2001 and 2014 represent 12% of the total operations conducted in the region during this period. 239 operations gave results of Iron Age period while 35 concerned protohistoric period. The level

of activity was stabilised from the year 2004 where between 18 to 29 operations yielded remains of iron Age period annually. Preventive archaeology forms the majority of operations adding up to a total of 130 diagnostics and 41 preventive excavations. From this analysis, about 30% of the diagnostics led to preventive excavations but only half of the total prescriptions for preventive excavation were based on the Iron Age remains. Similarly out of the 30%, some preventive excavations yielded Iron Age results without any indication of the same at the diagnostic stage of the same site (MCC/DRAC/ Service Regional de L'Archéologie, Nouvelle-Aquitaine, December 2018).

The programmed research operations that yielded the results on iron Age were a total of 24, i.e an average of 2 operations per annum. From the two types of operations, preventive archaeology makes the greatest percentage of operations having yielded Iron Age results and INRAP was the main actor taking 100% of the diagnostics while private enterprises took the greatest proportion of the preventive excavations. The two types of operations combined contributed to a more harmonised and generally well detailed collection of data that was necessary to do a comprehensive scientific study within a relatively short period of time (15 years period). In archaeological research, this is a relatively short period of study. The results comprised of both the First and Second Iron Age spread across the period and discovered in different types of archaeological contexts.



Map 16: Map of First and Second Iron Age results respectively in Nouvelle-Aquitaine between 2001 and 2014. Map courtesy SRA Nouvelle-Aquitaine, Bilan Scientifique 2016, pp.32 and 28 respectively

11.6.1 Preventive Archaeology and Cultural heritage Management in Africa: some references for Kenyan system

At the continental level, there exist good examples of projects which incorporated preventive archaeology with success and which serve as evidence that preventive archaeology in the strict sense can be exercised in Kenya. The key reference is the Chad Export project that was undertaken between 1999 and 2010. The project included the largest cultural heritage management ever in central Africa which was undertaken by a consortium of international oil companies led by Exxon, under the aegis of the national governments of Cameroon and Chad and the World Bank Group. The project resulted in the discovery of over 450 archaeological sites, dating from the Middle Stone Age to colonial times. The parties that were concerned in the heritage management project also cooperate towards the publication of the results through academic monographs both in French and English (MacEachern, 2017).

11.7 Conclusion

The main challenges facing environmental and heritage impact assessment in Kenya include the lack of or poor coordination between the two public institutions entrusted with the environmental and heritage management; these are the National Environmental Management Authority (NEMA) and the National Museums of Kenya. The legal and regulatory framework that links the activities of the two institutions does not provide clear guidelines to be followed, like in the case of France where the 2001 law about preventive archaeology clearly accounts for the projects whose implementation should be preceded by environmental impact assessment and thus requiring preventive archaeology measures.

Lack of public participation is a big challenge to cultural heritage management in Kenya. This affects both cultural and natural heritage even though there exist various environmental protection groups whose campaigns have positively impacted the development of environmental degradation control measures. The parent environmental organization was the Greenbelt Movement which was developed by the late Professor Wangari Maathai. Another environmental activist was the late Dr Richard Leakey, a Kenyan palaeontologist and politician whose international influence helped to enhance Kenya's capacity to deal with environmental issues in the last quarter of the twentieth century especially in the Kenya Wildlife Services. He was also instrumental in the development of archaeology and heritage conservation through his role at the national Museums of Kenya.

Other challenges to environmental and heritage impact assessment include insufficient scoping, lack of proper analysis of project alternatives, poor economic justification of projects that fail to take into account cultural issues and archaeological resources. There is also lack of access to information for the affected persons including some developers who only seek to be cleared so as to implement their projects at the expense of environmental considerations unless stopped by court process, like in the case of LAPSSET corridor project.

Flawed environmental and social impact assessment reports plagued with misrepresentations inconsistencies and omissions highly penalises the efforts to protect the natural and cultural heritage from the wrath of the bulldozers.

Last but not least, the lack of sound mitigation measures is a real issue that limits the already limited efforts to salvage cultural and archaeological heritage. Only the indigenous communities attract the attention of the environmental consultants and since they are a living

heritage, they also benefit from the existing national and international instruments which makes it obvious even for the multinationals that ignore other cultural elements such as archaeological heritage. Indigenous communities feature in majority of the reports that I consulted in this study. However, this does not imply that they are accorded their rights as part of the requirements of the social justice for operation since some end up being replaced but fail to be compensated because of corruption and mismanagement of project funds. In the case of archaeological heritage, the most common mitigation measure is the statement that the developer should put in place mitigation measures for their protection in case of any stumbling on archaeological remains which is very tautological and vague.

CHAPTER TWELVE

PITFALLS IN CULTURAL HERITAGE MANAGEMENT IN KENYA: STAKES AND PERSPECTIVES ON PATRIMONIALIZATION, COMMUNICATION AND PUBLIC PARTICIPATION

12.1 Introduction

In this chapter I exit the archaeological excavation field and look at the cultural heritage management process, identifying the stakes and giving the perspectives on patrimonialization process, communication and public participation. It begins with focus on Thimlich Ohinga which is now a UNESCO World Archaeological Heritage site since 2018. The historical evolution of Thimlich Ohinga as a site in the East African Great Lakes region provides a rich ground for the analysis of the stakes and perspectives on heritage management, patrimonialization and promotion of heritage assets. The site also gives indices about communication both as a cultural process and as a tool to enhance the protection of cultural heritage.

I chose a second site which is well documented in Kenya; Fort Jesus site Museum. The two sites are diachronically and symmetrically opposite with historical and cultural particularities that form the basis of comparison at the national level before benchmarking the African experience with the highly structured European experience. The motivation for this benchmarking follows from my observation of a series of studies on the rural world in the Roman period whose results have been regularly presented through the *Circa Villam* series of conferences between French and Spanish researchers.

The chapter explores the communication process by looking at the scientific, media and other channels of communication about archaeological findings. Language is a living culture and therefore language policy and use are part and parcel of the key factors that were considered for the analysis of communication for cultural heritage promotion. This is relevant both in the context of scientific research, economic development and in the process of cultural tourism promotion.

In the context of development the chapter pays attention to data collection and engagement of local communities during environmental impact assessment through public participation forums. In some parts of Kenya, the choice of the language for the dissemination of the information about archaeological research and heritage sites matters. Communication of findings of impact assessment especially for public review and the subsequent dissemination of the final report about salvage archaeology and heritage impact assessment may determine the degree and extent of prevention of potential damage to heritage and enhances the progress of scientific research within the field of archaeology.

12.2 Thimlich Ohinga and the Dilemma of Managing Built Heritage in Kenya

The emergence and development of built heritage has its roots in the early Egyptian and western civilisations. The management of built heritage was well developed in France during the revolutionary period (Swenson, 2011). At the moment the practice was being introduced to Africa, little was known about the past of the people especially in the sub-Saharan part of Africa. This led to the challenges of interpreting built heritage in the early efforts of research, documentation and conservation of historical sites within the East African Great Lakes region. The policy direction on the conservation of built heritage was influenced by the

colonial perspectives of African past, which was initially presumed to be a past without history. This had a great impact on the social, economic and political interpretation of the role and significance of cultural sites and cultural places in Kenya.

The understanding of the cultural and historical significance of a heritage site, object and the associated written or oral literature plays a major role in the establishment of the policy and institutional framework for its protection, conservation and management. The social scientist today is thus faced with the challenge of definition of certain notions under empirical observation from the theoretical framework to the notion of heritage itself that encompasses a heterogeneity of both tangible and intangible heritage (Amougou, 2004a; Mohen, 1999). The general perception of cultural heritage for the general public in Kenya has for a long time been limited to artistic and oral performances especially music dance and theatre. These are however classified in relation to their parent culture and ethnological environment within which they evolve. This perception is shared across Africa as their conservation is largely through individual efforts by the artists who eke a living from their exploitation. They overshadowed the protection of tangible and immovable elements of heritage whose values were suspended or totally evaporated by the importation of western values during the colonial period and the subsequent globalization through introduction of universal values.

The above interpretation of cultural heritage in Africa largely emanates from the tradition where culture especially oral literature is always at the service of the elite and ruling class as it influences and is influenced by political power. This leads us to the second challenge, as observed by E. Amougou, that a social scientist encounters which concerns the social determiners, either conscious or unconscious, of a specialist in his or her 'particular culture': the culture of class and or scholarly culture. Without scientific objectivity and the rigour that should accompany a research, they can easily adopt the dominant point of view. Such a

orientation is likely to favour the analysis of heritage questions in a manner that constructs and articulates issues around the representations and values of the dominant group of the society occupying positions of decision making of the State, and in the scholarly environment, be characterised by the monopoly of definitions of what should be considered to be heritage or not (Amougou, 2004a, p. 11).

The protection of heritage especially built heritage and cultural landscape largely depends on the formal state management mechanisms as expressed in the legal and regulatory framework and defined through the academic research. Culture defines the ensemble of evidence of *tekhnê*, the technic which is inseparable from *logos*, the intention that dictates the intellectual humanity activity. Culture is not opposed to nature but the two are merged and both are situated at the same level of analysis. Cultural heritage is what is selectively transmitted, consciously or unconsciously, from one generation to another through chosen criteria based on values that are defended and taught (Mohen, 1999, p. 15). The selection of cultural criteria has been elaborated by J.-P. Mohen as shown in Table 16. The criteria begins with the term culture which encompasses all cultural items from a philosophical point of view, produced within an inhabited place for a long period of time. Next to culture is the term cultural heritage which refers to cultural properties from an anthropological point of view, that are similarly associated to an inhabited place for a long period of time. The term civilization is used to refer to items of conservation from a historical point of view with reference to a short period of time and they constitute majority of the items on the list of what is referred to as ‘world heritage’. The term site of memory refers to cultural items from a regional perspective describing those items within a given territory for a short time and includes historical monuments and places inhabited by spirits.

Table 16: Cultural phenomena presenting the principal concepts by order (top down) of the growth of selection of cultural criteria (Mohen, 1999, p. 14)

Vocabulary	Approach	Time frame	Geographical space	Materiality
Culture	Philosophical	Long	Inhabited place	All cultural items
Cultural heritage	Anthropological	Long	Inhabited place	Cultural properties
Civilization	Historical	Short	Demarcated area	“world heritage”
Heritage	National	Short	Nation	National treasures
Site of memory	Regional	Short	Territorial	Historical monument, place inhabited by a spirit

12.2.1 Thimlich Ohinga Archaeological World Heritage Site: a historical context

Thimlich Ohinga Archaeological World Heritage Site was considered for reference in this work as an example of archaeological sites that deserve preventive archaeological research measures. Thimlich Ohinga is a cultural site within a historical dilemma both in space and time. If we take a walk in time and localise the site in the precolonial map of the Great Lakes region one may come up with more questions than answers. The main dilemma concerns the geographical location of the site at a very strategic point among the most spectacular and important sites in eastern Africa. Most of these sites in the surroundings such as the Great Zimbabwe have got a long history that stretches back to the precolonial period and were well documented through oral and written literature then protected due to their significance. However, despite the neglect and its seemingly peripheral place in the history of this region, the resilience of Thimlich Ohinga in terms of its resistance to social, economic, political as well as environmental changes for centuries leaves the researcher with many questions. What could be the factors for its resilience in such a context? Is it a demonstration of the changing role and functions of built heritage in the society over time?

12.2.2 The paradox of conservation of built heritage in Kenya

The identification, study, conservation and protection of built heritage in Africa has for a long time faced serious challenges. Such challenges emanate from the continent's unique but highly misrepresented historical and socio-cultural past. This study looks at the paradox of the conservation of built heritage in Kenya in the context of globalization as witnessed during the colonial period. The process of monumentalizing African heritage which aimed at finding African heritage items exhibiting predetermined monumental characteristics based on the western values established a system of conservation that was not adapted to the realities of the already existing African built heritage. The sites such as Thimlich Ohinga were for a long period ignored in the list of sites deserving study and protection when the potentially well informed oral sources were still available. The survival of Thimlich Ohinga for such a long period of time attracts our attention to the resilience factors whose study can an in-depth understanding of the builders, the roles played by the community in the building, the status of the occupants at the given moment in history, the use and the abandonment of the various built heritage sites in the Great Lakes region.

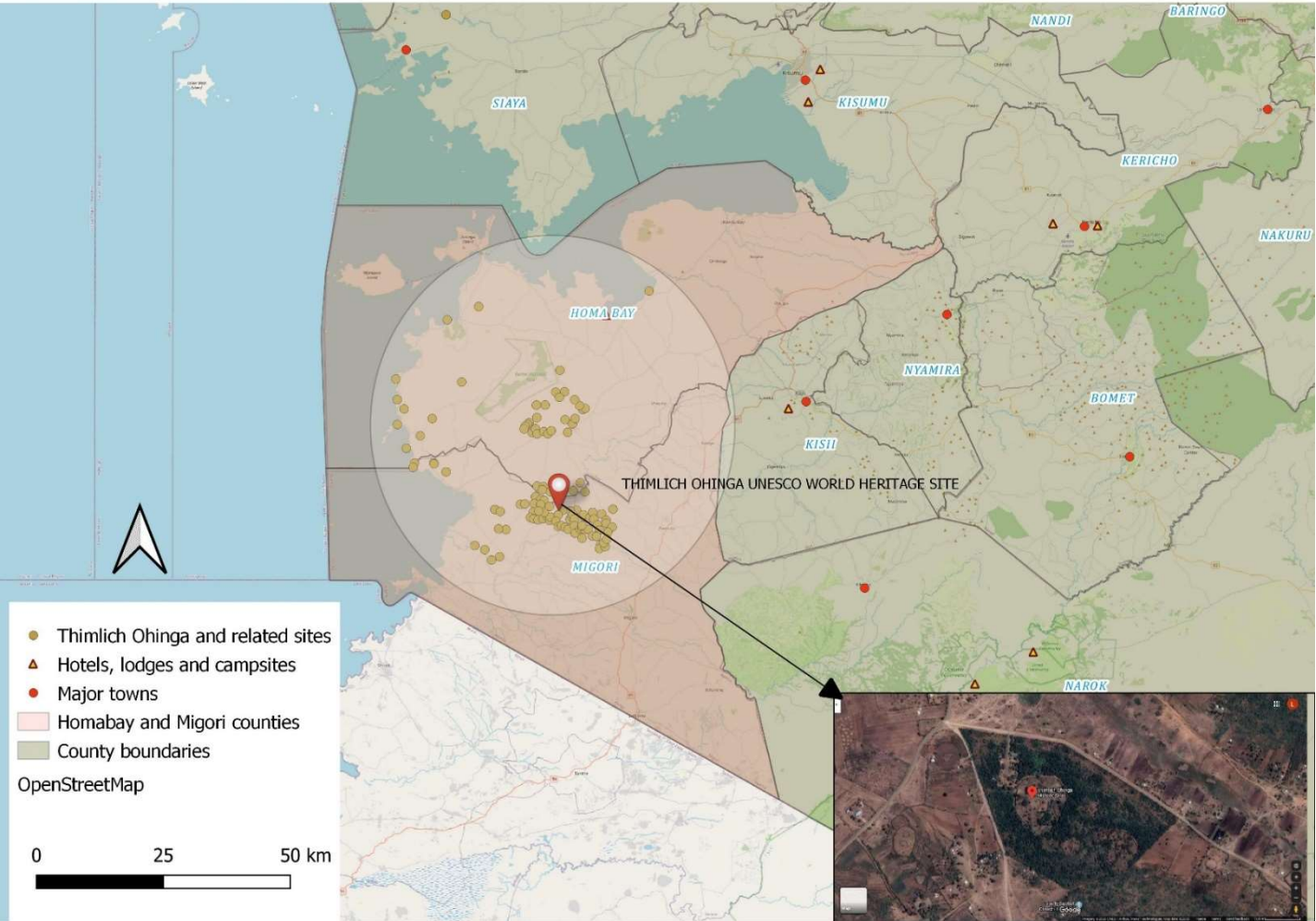


Figure 32: Thimlich ohinga and related sites

Thimlich Ohinga Archaeological site is a dry-stone walled settlement that was probably built in the 16th century AD. The site is now a UNESCO World Heritage site which was listed in the year 2018. It is situated north-west of the town of Migori, to the east of Lake Victoria in Migori County in the Western part of Kenya. As the largest and best preserved of the traditional enclosures known as *Ohinga* (settlement in the local Luo language), it was a fort for communities as well as animals. Based on the ethnological, anthropological and archaeological inferences, the settlement also defined the social entities and relationships linked to lineage within the Great Lakes region and by extension in the sub-Saharan Africa especially among the Bantu and Nilotic language speaking groups. Its persistence from the 16th to the mid-20th century could be an indicator of its value in the society and its most recent use (UNESCO , 2018). Such magnificent archaeological sites in Africa remained intact thanks to traditional custodianship and due to the various belief systems such as the supernatural powers that were associated with some of them. Today the scientific methods of conservation have gradually replaced traditional custodianship in most parts of the continent and traditional belief systems have been substituted with Christianity. The incorporation of traditional custodianship with the modern scientific methods is one of the ways through which cultural heritage management in Africa can be more inclusive (Jopela, 2011). This can enhance local community participation in the identification, protection and management of cultural resources through democratization of heritage (Abungu, 2016; Moldoveanu & Ioan-Franc, 2011; Nkirote, Conference Paper).

Thimlich Ohinga was inscribed as a World Heritage Site in the year 2018 based on criteria iii, iv and v. The following are the details of each criterion hence the outstanding universal values that ought to be protected at Thimlich Ohinga:

- a) According to criterion (iii), Thimlich Ohinga is an exceptional testimony to settlement traditions in the Lake Victoria Basin. It illustrates shared communal settlement, livestock cultivation and craft industry patterns, utilized and practiced by several successive inhabitant groups of different linguistic origin. The archaeological evidence from the site testified to the communities' spatial organization with an elaborate system of interrelations between the different Ohingni within proximity to each other. It therefore allows to understand and do further research on community interaction patterns between the 16th and the mid-20th century in the great lakes region (UNESCO , 2018).
- b) Criterion (iv) concerns the settlements' impressive reference to spatial planning and settlement types in the wider Lake Victoria Basin, at a period in history characterized by increased human mobility as a result of social, economic and environmental pressure that affected human populations in the region. According to this criterion, the massive stone walled enclosures at Thimlich Ohinga mark an important episode in the migration and settlement of the Lake Victoria Basin and sub-Saharan Africa as a whole. The settlement is also an outstanding example of undressed dry-stone construction typology characterized by a three-phase building technology using stones of irregular shapes in two phases joined together by a third middle phase (UNESCO , 2018).
- c) Criterion (v) describes Thimlich Ohinga as the best preserved example of Ohingni which constitutes a representative and outstanding example of Ohingni, a distinctive

form of pastoral settlement that persisted in the Lake Victoria Basin from the 16th to the mid-20th centuries (UNESCO , 2018).

The inscription of this was as a result of a successful collaborative research project conducted under NMK in conjunction with the British Institute in East Africa (BIEA). The outcome was good especially for the protection of archaeological sites in the context where much of research was mainly geared towards those sectors that were traditionally seen as directly linked to cultural tourism such as wildlife protection. The listing was not only positive but also raises more questions than answers for continued archaeological research in the region. Limited archaeological can be described as one of the hindrances towards the identification, study and protection of majority of sites which may be adversely threatened by the upcoming county projects. Given the location of the site, near the border between Migori and Homa Bay Counties¹⁶⁵, the team was purely motivated by the outstanding universal values of the site and its conservation status. Very limited research efforts have been accorded to sites within its locality hence there was and there is still the ‘need for a coordinated excavation at different sites within the region to provide data that may be useful in developing comparisons across sites, and, allowing for general accurate conclusions and inferences to be made about the archaeology and history of the region’ (Onjala, 2019).

The International Charter for the Conservation and Restoration of Monuments and Sites (The Venice Charter 1964) gives the definition of a historical monument that includes such sites

¹⁶⁵ In the effort to bring power closer to the people, various governments of Kenya since independence have tried to enhance decentralisation through various means. Migori was initially part of the former South Nyanza District, which was one of Kenya’s fourth most populous districts. In 1993 South Nyanza was divided into two; Homa Bay and Migori districts of the then Nyanza Province (Oduor-Noah & Thomas-Slayter, 1995, p. 164). Migori district became Migory County through a long Constitutional reforms process that culminated into the promulgation of the Constitution of Kenya in the year 2010 under the Grand Coalition Government of National Unity that created after the 2007 post-election violence.

as Thimlich Ohinga. In article 1 of the Venice Charter, the concept of a historic monument embraces not only the single architectural work but also the urban or rural setting in which is found the evidence of a particular civilization, a significant development or a historic event. This applies not only to great works of art but also to modest works of the past which have acquired cultural significance with the passing of time.





12.2.3 Thimlich Ohinga and Archaeological Research in the East African Great Lakes Region

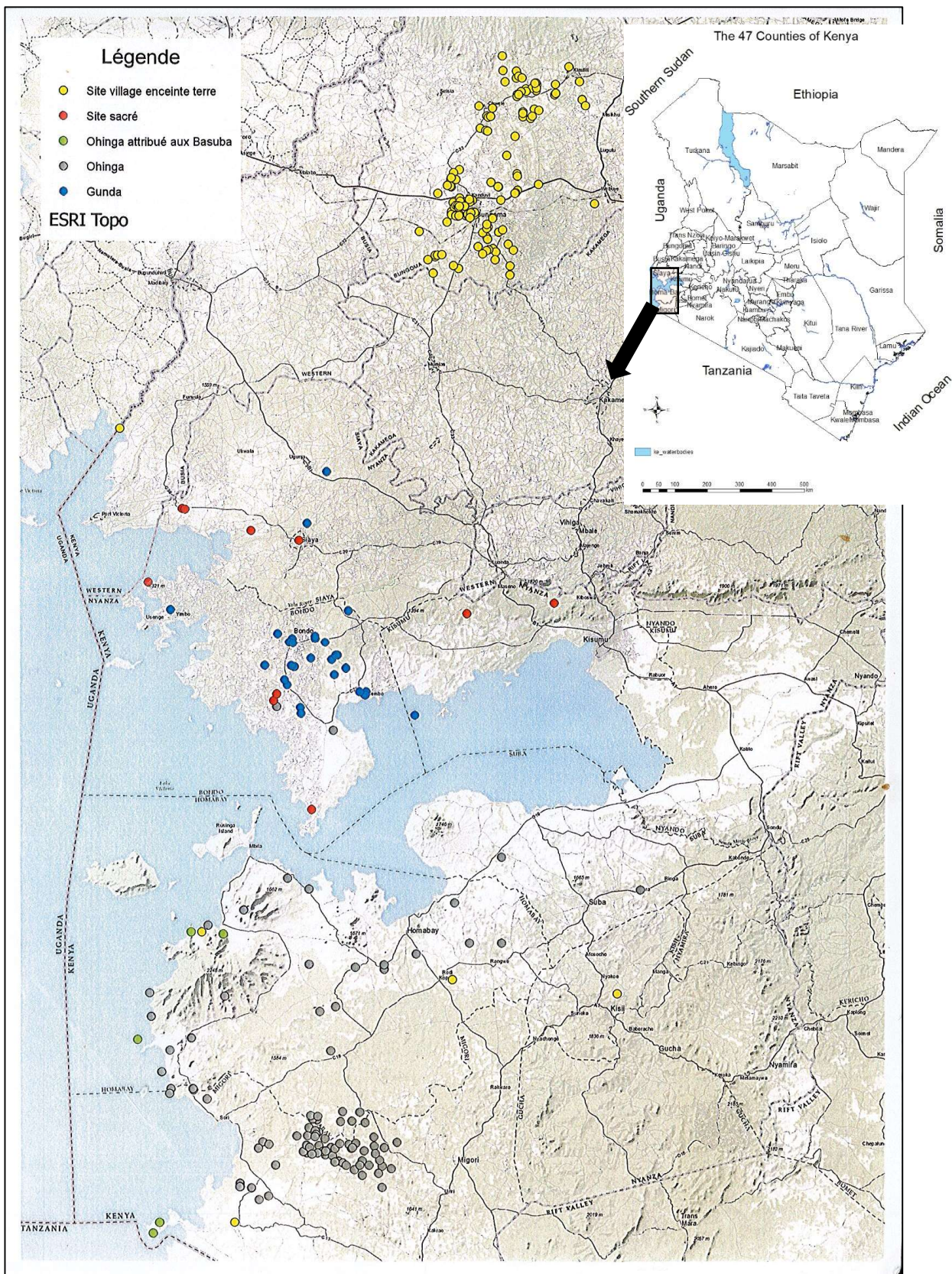
12.2.3.1 Migrations and Settlement in Late Iron Age and Historic period

The location of Thimlich Ohinga both in time and space provides insight into the study of the history of migrations and settlements in the Great Lakes Region especially during the late Stone Age (LSA) and historic period. According to Onjala, early historians who documented the history of this region (Ayot 1977 & 1981, Ochieng' 1985) avoided a discussion on the presence of stone built structures that are widely distributed in the region (Onjala, 2019, p. 114). While the omission has been attributed to the difficulty in finding the link between the settlements, the builders and their inhabitants, it could also be due to limited knowledge about the sites in area and lack of interest in archaeological and heritage studies. Majority of researchers did not visit the sites perhaps due to accessibility challenges or due to the peripheral location of the sites in the context of other sites within the country that had already attracted a lot of research. It could also be due to lack of resources to conduct further research in the field of archaeology since for quite a long period of time this line of research has not been given much attention in local institutions (Mwanzia, 2016; Kibunjia, 2016).

The LIA period has been marked with significant changes in the social, economic and political organization of the communities around the Great Lakes Regions. Thimlich Ohinga Archaeological site itself shows archaeological evidence of iron working in the region. The changes were associated with technological advancements in tool making and hence better farm implements were produced such as hoes and more sophisticated weapons were also manufactured for hunting, protection of the kingdoms and for conquering neighbouring

kingdoms. Such developments saw an increase in mobility hence a lot of migrations were witnessed in the region.

A critical observation of the stone structures and related sites reveals a great deal of social stratification, Map 17. They show evidence of a hierarchical society where sites present evidence of habitats composed of structures ranging from simple earth material to complex dry stone walls. The presence of dry stone structures with characteristics of fortification in some sites indicate that there was social, ecological (Onjala, 2019, p. 113), economic as well as signs of political tension at the time of their construction.



Map 17: Ohingni and related sites in Western Kenya. Map by Elizabeth Vignati



Figure 33: Thimlich Ohinga site with a reconstructed luo homestead and the stone wall structures with security features. Photos courtesy Lucas L. W. Bwire



12.3 Built heritage and issues of identity, change and political influence over time: benchmarking Thimlich Ohinga and Fort Jesus with European experience

The challenges facing the conservation of built heritage in Kenya and Africa at large are diverse and complex. They range from a historical background of instrumentalization of part of built heritage, neglect and exclusion of some heritage (Wahome, et al., 2018; Wahome, 2015) during the colonial time to the contemporary socio-economic, legal, political and cultural issues of the post-independence era (Abungu, 2016; Harts, 2007; Hughes, 2014).

In this study I looked at two sites, Fort Jesus World heritage site at the Coast of Kenya and Thimlich Ohinga World heritage site in Western part of Kenya. Both being world heritage sites at the present time, the ethnic consciousness and claims have been buried through the globalization and universalisation of their values. I then looked at the two from a comparative perspective while factoring in other sites that have recently attracted scientific attention such as Mukurwe wa Nyagathanga (Mbuthia, 2020) and Kit Mikayi, which are good examples of living heritage with high stakes from the local groups as they possess high utilitarian value. The two sites have active religious practices associated with ethnocentric cultural values, belief systems and rituals that confers legitimacy and thus high consideration in the social and political life within the society. The associated intangible heritage as expressed through music, dance, oral narratives, performances and religious rituals, makes the sites play an active role in the community's daily life thus enhancing direct public participation in the conservation process. The conservation of Kenya's intangible and living heritage had been left out in the National Museums traditional valorisation through exhibits.

In December 2019 the UNESCO listed Kit Mikayi Unesco's on its List of Intangible Cultural Heritage in Need of Urgent Safeguarding. The rituals and practices associated with Kit Mikayi shrine in Kisumu stood out as a unique heritage site with a significant representation of an African cultural legacy. The site is threatened by several factors including encroachment on surrounding areas, ageing practitioners and decreased frequency of visits (The Star, 19 December, 2019).

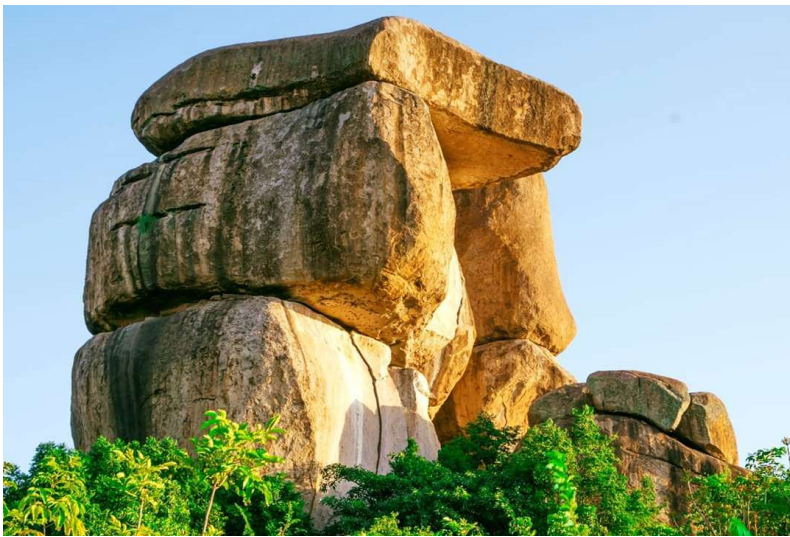


Figure 34: Kit Mikayi Intangible World Heritage Site in Kisumu. Courtesy Innocent Oleche, The Star



Figure 35: Fort Jesus UNESCO World Heritage site. Photo © Lucas Bwire

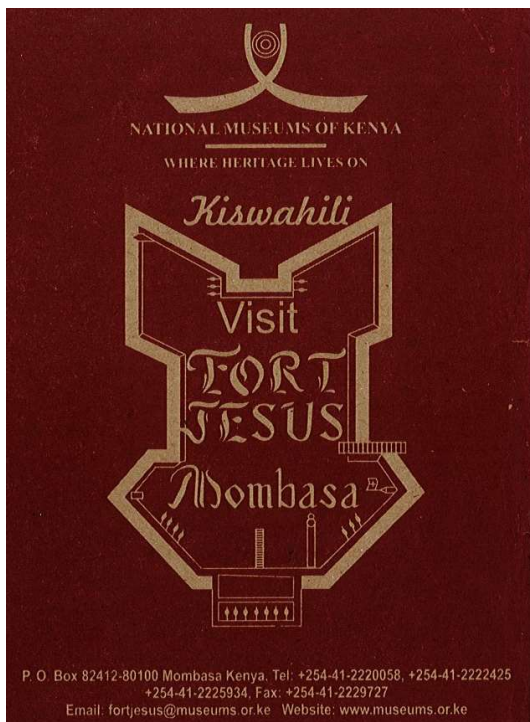
The challenges of conservation of built heritage are mainly due to insufficient archaeological research as well as limited research in the social and political sciences of the environment. There are also the pitfalls in the development of social history where researchers are still grappling with the issues of identity and belonging. This is part of the challenges that researchers face in the efforts to study and document Thimlich Ohinga and associated stone structures in the east African Great lakes region. Limited research in the social and political sciences of the environment has led to inability to identify the research problems that seek to solve contemporary environmental and cultural problems. The insufficiency of research in Kenya is partly due to the political instrumentalization of research which leads to biasness in the public funding of research where the only criteria is to prioritise projects that meet certain politically relevant sectors. The sectors are selected through political campaigns in the form of party manifestos whose term limit is less than five years. An archaeological research, unless if preventive in nature, may hardly be realised within such time limits. This leaves cultural and archaeologic research at the mercy of global funding, well-wishers and

bilateral research programs whose objectives may not march local research needs since such programs often require mutual satisfaction hence very general in nature.

Most of the global research funding institutions also give priority to the areas that have already been earmarked by government development priorities. The priorities are basically outlined in the political party manifestoes hence linked to the prevailing political climate in Kenya. Consequently, most of the research questions in social sciences follow the social, economic and political wind of change instead of being on the forefront to predict and lead the change agenda hence come up with more relevant, innovative and inventive solutions to the society's problems.

During this study I visited Fort Jesus as part of field work but also as a local tourist. The most outstanding narrative at Fort Jesus is that of the Portuguese conquest and everything else is given in relation to the effective date of Vasco da Gama's arrival at the Coast. In what I considered as a local resistance narrative, one of the local guides suddenly interrupted the narrative by an interjection that "someone has stolen our history". This reiterated the dominant question in this thesis which is "whose heritage?" especially in the scenario where the local population is less informed about cultural and environmental considerations of development as part of social justice and the subsequent patrimonialization of local sites. The pre-Fort Jesus history was annexed by the history of Fort Jesus to an extent that the important dates of the fort rarely account for what existed before 1498. This is the problem of problematization of African history prior to the colonial period and the subsequent unmaking of it in the post-colonial development planning which rarely pays attention to the cultural and environmental concerns as key issues of social justice and cultural democracy in the context of urbanization and infrastructural development in Kenya.

I have used Fort Jesus to theorise the problem of heritage promotion in the context of development because the site is one of the best protected sites and nears the Old Mombasa historic town, both of which are in Mombasa city, one of the three cities in Kenya. Its proximity to Lamu old Town also makes it a site of reference through whose conservation policy we can decipher the challenges of patrimonialization along the East African Coast. The gaps in the prehistoric and the pre-Fort Jesus historiography of the site partly explains the gaps and challenges in heritage impact assessment and gaps in the heritage policies in Kenya where urbanization that was realised since independence only considered chance finds but no record of salvage archaeology nor heritage impact assessment on the major infrastructure and urban development projects within such a historically rich environment.



NGOME YESU MOMBASA

Mreno wa kwanza kufika Mombasa ni Vasco da Gama katika mwaka wa 1498. Lakini uhusiano wake na wenyeji haukudumu. Baada ya wiki moja, Wareno waliona bora kuelekea Malindi walipopokewa kwa urafiki ambapo waliweza kuimarisha makao yao ya kwanza katika Afrika Mashariki. Lakini uzuri wa bandari ya Mombasa uliwavutia wageni na punde jeshi la kituruki likajenga ngome yao mwaka wa 1589.

Kwa kuchelea usalama wa safari ya kurejea kwao Ureno, Wareno walishambulia na kuteka Mombasa katika mwaka wa 1593, na wakaanza kujenga ngome kubwa ili kulinda mlango wa Bandari.

Wareno walijichukulia kuwa wao ni wakilishi wa Ukristo kuliko kuwa ni wajumbe wa Ureno. Ndio maana waliposafiri walitumia bendera ya Yesu Kristo. Kwa hivyo jina Yesu likawa ndio jina muafaka kuitwa ngome hii.

Umbo lake la pembe lilitokana na sheria za ulinzi wa kijeshi na msanifu majengo wa Kitaliani kutoka Goa, Ngome sasa imekita kwa utulivu juani. Lakini mambo sivyoyaliyokuwa siku zote. Ngome hii imeshuhudia historia ya mauaji, utekaji nyara, njaa, mashambulio ya makombora na khlana ambayo inafanya uharamia na wizi wa ulimwengu wetu wa sasa kuonekana duni. Zama ya kabla ya kubuniwa redio, tanga lolote likionekana katika upeo wa macho, liliutia wasiwasi mkubwa katika himaya hii ndogo (lilokuwa na jeshi la watu wasiozidi mia moja) waliotengwa na kwao kwa safari ya bahari ipatayo miezi sita.

Ngome hii imehifadhi umbo lilelile lililojengwa zaidi ya miaka mia nne ilopita. Ni jambo la adimu kupata historia yenye kufahamika kama hii, na ikiwa utaondoka Mombasa bila ya kutembelea sehemu hii muhimu katika historia ya Afrika Mashariki utaipa hii kuwa ni sababu ya majuto kwako.

- 1498 Wareno walifika Mombasa lakini baadaye walielekea Malindi.
- 1589 Waturuki walijenga ngome ndogo hapa Mombasa
- 1593 Wareni walihama Malindi na wakaanza kujenga Ngome Yesu.
- 1631 Sultan wa Mombasa alimchoma kisu jemedari wa Kireno na kuteka Ngome.
- 1632 Wareno wafanya majaribio ya kuteka ngome lakini hawakufaulu.
- 1632 Woga ulimwingia mfalme wa Mombasa akakimbia, na Wareno wakaitawala tena Ngome.
- 1661 Mfalme wa Oman akiongoza wanamaji wa Kiomani, wateka nyara Mombasa, lakini alishindwa kushambulia Ngome
- 1696 Jeshi la mfalme wa Oman linazunguka Ngome.
- 1697 Wareno ndani ya ngome wafariki kutokana na njaa na ugonjwa wa tauni.
- 1698 Ngome iliingia katika mkononi mwa Waarabu wa Oman baada ya kuzunguka kwa miaka miwili na miezi tisa.
- 1728 Jeshi lililasi au kuhalfu dhidi ya utawala wa Oman, Wareno waiteka tena Ngome.
- 1729 Waarabu waiteka tena Ngome na Wareno waondoka kabisa.
- 1741 Liwali wa ngomeni, Al-Mazrui, alitangaza uhuru kutoka kwa mliki wa Oman.
- 1746 Al-Mazrui aliluliwa na Waarabu wa Oman. Naye kaka yake aliwauwa majasusi wahusika na akawa Liwali wa Ngome.
- 1824 Liwali Al-Mazrui alitafuta na akapata himaya ya Kiingereza.
- 1826 Himaya ya Kiingereza iliondolewa rasmi kutoka Mombasa.
- 1828 Mfalme wa Oman na Zanzibar, Seyyid Said, apatua himaya yake Mombasa na kurudisha utawala wake katika Ngome.
- 1829 Jeshi la Al-Mazrui lawatesa kwa kuwanjima chakula jeshi la Sultani na kuwafanya watoroke.
- 1833 Majeshi ya Al-Mazrui yalivumilia mashambulio ya makombora ya mfalme Seyyid Said.
- 1887 Liwali wa mwisho wa Kimazrui alisalimu amri kwa mfalme Seyyid Said.
- Ngome ilishambuliwa kwa manuwari za Kiingereza.
- 1895 - 1958 Ngome ilitumiwa kama gereza la serikali ya Kiingereza.
- 1958 Ngome ilitangazwa kama Turathi ya kitaifa ya Kenya.
- 1960 Jumba la makumbusho lilijengwa ndani ya Ngome kwa usaidizi wa taasisi ya Kireno ya Gulbenkian, na Ngome ilifunguliwa kwa wananchi kwa mara ya kwanza kama kumbukumbu ya historia.
- 2011* Ngome hii ilirodeshwa katika Orodha za Turathi za Kiulimwengu.

NGOME YESU Iko wazi kwa watu wote kila siku kutoka saa mbili unusu asubuhi hadi saa kumi na mbili jioni.

KIINGILIO

Kwa wakazi wa Kenya	Shs.
Watu wazima	200.00
Walio chini ya miaka 16	100.00

Rala wa Nchi za Kigeni	Shs.
Watu wazima	1200.00
Walio chini ya miaka 16	600.00

Rala kutoka Afrika Mashariki	Shs.
Watu wazima	400.00
Walio chini ya miaka 16	200.00

Malipo maalum hupatikana kwa vikundi vya wanafunzi Ukiwa Ngomeni tafadhali tembelea duka la zawadi 'Museums Gift Shop' kwa vitabu na zawadi nyengine nyingi. Na kwa vyakula vya Kiswahili na vinywaji baridi usikose kutembelea mkahawa wetu.

Kitabu cha mwongozo kinachoeleza historia kinapatikana kwa bei ya Shs. 150/- katika duka la zawadi au katika ofisi ya malipo. Shule zote za msingi na za upili zitapishwa Kshs. 100/- kwa kila mwanafunzi/Mwalimu iwapo wamejulisha ofisi mapema kuhusu ziara yao. Vyyo vya ufundi au vyyo vikuu vitalipishwa Kshs. 200/- kwa kila mwanafunzi/Mwalimu katika kila makavazi ikiwa watajulisha ofisi mapema kuhusu ziara yao. Hii ndio ada ya kiingilio siku zote.

Tamthilia ya kihistoria ya Ngome inayoonyeshwa kupitia kwa pichaonyesho ya Taa na Sauti pekee, pamoja na chakula cha jioni hufanywa kila wiki. Iwapo utapenda kuhudhuria maonyesho haya mjulisha kiongozi wa matembezi yako au piga simu nambari 041-472213/471895

Tafadhali wakilisha maoni au malalamiko yako kwa Msimamizi wa Ngome Yesu.
S.L.P 82412, Mombasa 80100

Nakala hii imechapishwa na kutolewa bure na Makavazi ya Kitaifa ya Kenya
S.L.P 40658, NAIROBI

Figure 36: Visitor's flyer in Kiswahili with entry amount at Fort Jesus

12.3.1 Disequilibrium between natural and cultural heritage in environmental considerations in Kenya: the case of the Standard Gauge Railway and Nairobi National Park

The recent developments in Kenya have clearly highlighted a relative disequilibrium between the management of natural and cultural heritage. The natural heritage such as wildlife and the associated protected areas have a long tradition and history of protection where Kenya serves as a good example in Africa. There is sound legal and policy framework on the conservation of natural heritage with well demarcated protected areas. As such it was easy to predict the environmental impact of the Mombasa-Nairobi Standard Gauge Railway on the Nairobi National Park which is a major source of income from cultural tourism and ecotourism. However, the potential impact of the same project on the underground archaeological resources in the affected area was undetermined and difficult to predict without a precise archaeological impact assessment.

These issues find a point of convergence in our research hypothesis of Environmental Kuznet's Curve which holds that environmental pollution tends to increase with the increase in economic development. As such, the conservation of both natural and cultural heritage depends on a country's level of economic development. Since the past twenty years, Kenya has recorded a steady economic growth which has led to increased environmental concerns as the magnitude of development calls for vigilance and a lot of attention from the general public and all the stakeholders. While built heritage has faced challenges, Kenya's diverse natural heritage as exemplified through the Kenya Wild Life, has received significant attention in every development project with potential negative impacts on the ecosystem. The public is very much aware of the environmental issues relating to the wildlife and the natural environment thus making it easier for the various NGOs and other civil society

organisations to lobby for the conservation of wildlife and the environment in general. The construction of the Nairobi-Mombasa Standard Gauge Railway through a protected area necessitated alternative measures to safeguard fauna and flora especially in the Nairobi National Park. Due to public outcry (see Figure 40), the park was saved from the potential negative impacts through the construction of a fly over bridge across the affected area, Figure 41.

The challenges in the management and promotion of heritage in the context of development in Kenya demonstrates a broken relationship between the legal framework, the archaeological research, the State and the society. This calls for Integral Heritage Management Master Plan, a conceptual framework developed in heritage management as a result of the need to develop a plan for the promotion and value enhancement of a heritage asset, Figure 37. 'From a theoretical and epistemological point of view, the master plan is a basic management tool which is established to allow different theoretical concepts to be defined as well as different development and the execution phases in the implementation of the project' (Olivera & Diaz, 2011, p. 42).

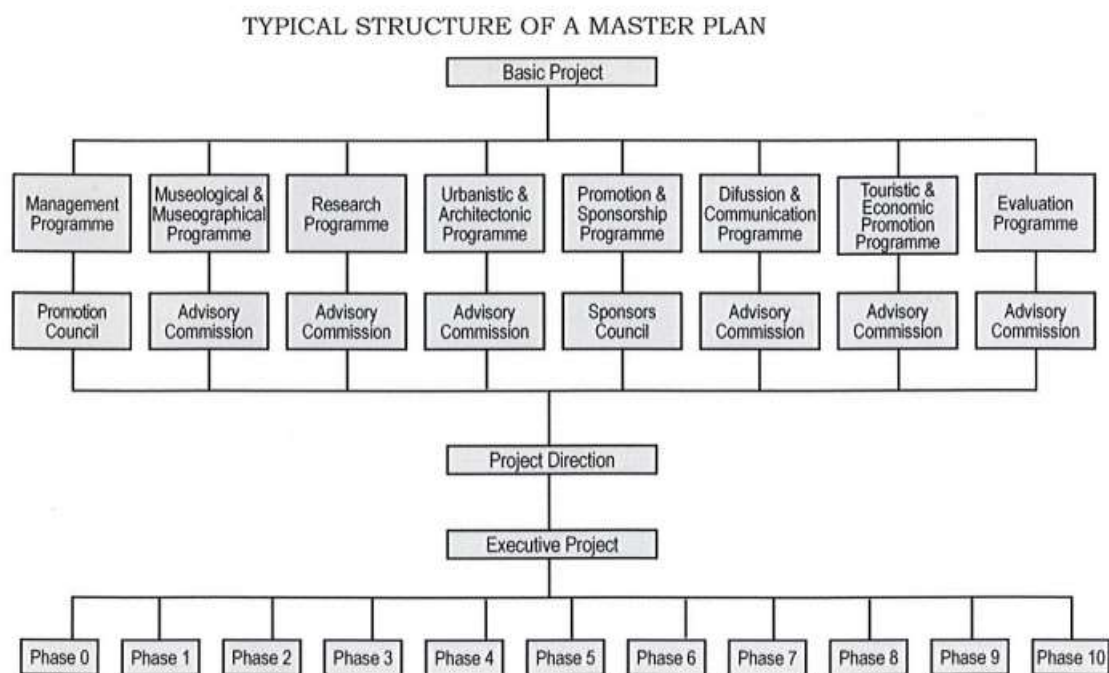


Figure 37: A Typical Structure of an Integral Heritage Management Master Plan. Courtesy (Olivera & Diaz, 2011, p. 42)

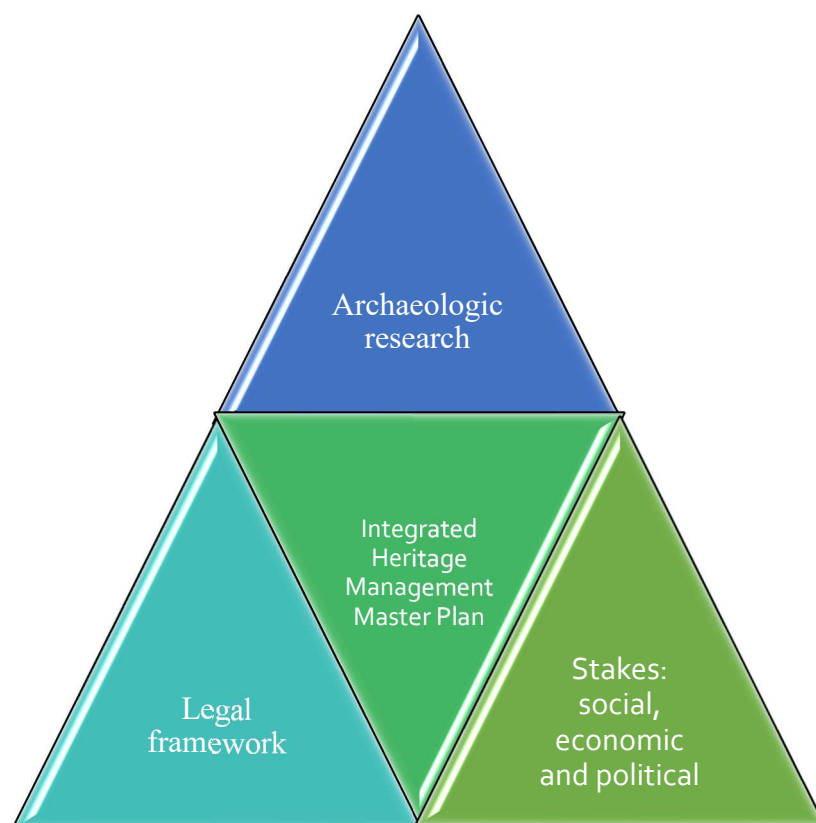


Figure 38: Integral Heritage Management with a Master Plan linking legal framework to archaeological research and the stakes

The kind of mobilisation as witnessed in the picture may rarely occur where the concern is only about archaeological heritage because the general public is rarely informed about the archaeological potential within the environment unless if spectacular discoveries have already been made like in the case of the Turkana Boy. Even the demand to save the Nairobi National Park did not include the demand to conserve the potential underground archaeological material through preventive measures, for instance or through salvage measures.

In the case of built heritage, it may depend on the associated living heritage, its social, economic and political significance and its role or utility in the society like in the case of Mukurwe wa Nyagathanga (Mbuthia, 2020). The social and political theorization of such sites elicits and enhances the individual and societal obligation to preserve and protect them as they play a central and active role in the creation and stabilization of ethnic or national consciousness of a living heritage with stakes and societal contingencies of disregarding them which later influence the general social and political group behaviour. The *Mijikenda Kayas*¹⁶⁶ are also a good example of sites whose conservation was based on utilitarian value that transcends the economically attributed value. The kayas were inscribed on the UNESCO World Heritage list in the year 2008 based on criteria iii, iv and vi. The resilience of the kayas was derived from their being considered as sites inhabited by ancestral spirits of the

¹⁶⁶ Les forêts sacrées de kaya des Mijikenda consistent en 10 sites forestiers distincts qui s'étendent sur près de 200 km le long de la côte. Ils recèlent les vestiges de nombreux villages fortifiés, les kayas, du peuple Mijikenda. Les kayas, créés à partir du XVIème siècle ont été abandonnés dans les années 1940. Ils sont considérés aujourd'hui comme les demeures des ancêtres, révéérés comme des sites sacrés et entretenus par les conseils d'anciens. Le site est inscrit en tant que témoignage unique d'une tradition culturelle et pour ses liens directs avec une tradition vivante.

Source : UNESCO, accessed on URL <https://whc.unesco.org/fr/list/1231/>

Mijikenda. Thus the resilience of similar sites does not depend on their economic viability but their legitimate and authentic ethnocentric, national or historical valuation which is invaluable.

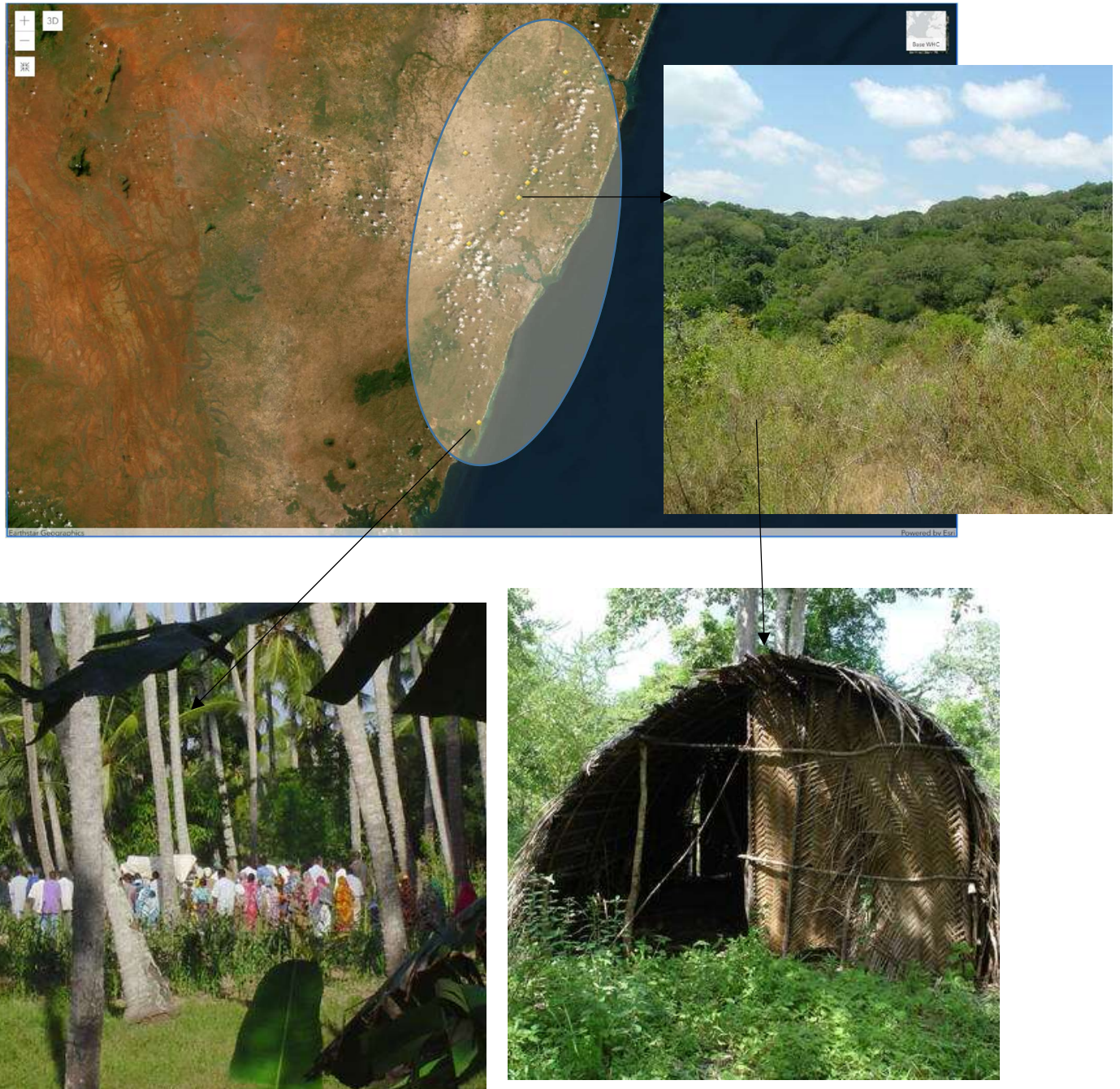


Figure 39: The Sacred Mijikenda Kayas, UNESCO WHS- based on 2003 Convention on Intangible Heritage. Photo courtesy Okoko Ashikoye



Figure 40: Demonstrations for the conservation of Nairobi National Park during the construction of the SGR.



Figure 41: Mombasa- Nairobi Standard Gauge Railway showing a fly-over bridge to protect Nairobi National Park. Photo © L. Bwire.

12.3.2 Communication of archaeological information to the public

The essence and the main goal of scientific research is to find a solution to an existing societal problem and to generate new knowledge within a discipline. Effective communication and dissemination of information about from the beginning to the final results is very fundamental for the impact to be felt across the scientific community as well as the general public. Scientific communication is done in a systematic manner within the scientific circle by employing technical terms that can only be understood by the specialists. However, there is always another mode of communication meant for the general public where a simple and clear language is privileged. This requires a combination of communication tools and media in order to reach the diverse and varied members of the general public. Both as a cultural process and a tool, communication has to be organized according to various factors among them population characteristics such as the age of the target audience, their educational background and level of knowledge about cultural heritage, their language, their degree of appreciation of some specific aspects and disciplines such as archaeology, their profession, their role in the society, their scientific interests and of course their geographic location, their cultural values and belief systems just to mention but a few. Communication is a wide process that entails the encoding and decoding of information and the intended meaning from the sender to the target audience using an effective and most convenient medium of communication.

If there is any area where archaeology has incurred challenges in Africa and Kenya in particular is the area of communication and public participation. Archaeologists have been known to employ a communication jargon that only suits the specialists while ignoring the general public. As such the major part of a people's history, their views and perspectives

concerning their cultural and environmental background is neglected as the specialists only consult the existing written documents, archives and material culture that already exists in local museums and libraries.

12.3.3 Language of communication as a tool for enhancing public participation in patrimonialization of cultural and archaeological resources

Communication is a central factor in ensuring public participation and enhancing patrimonialization of archaeological heritage. In the context of CHIA, communication is affected by various factors including the identification of the appropriate language of communication, the setting of the venue for public forum and the choice of communication media. The various agents of patrimonialization rely on the information that flow across all the stakeholders. They then use the same information to identify, define, describe and designate the various sites and objects so as to come up with the baseline information and establish the terms of reference¹⁶⁷ for the effective realisation of an EIA or CHIA study under the existing cultural law and policy. The language issue was part of the challenges identified in the case of LAPSSET through a letter by the SAVE Lamu lobby group.

12.3.4 Mass Media and Cultural Heritage Promotion in Kenya

The development of cultural programmes for public communication and education through local mass media with all aspects of a communities diverse cultural resources is crucial in the development and promotion of a country's cultural heritage.

¹⁶⁷ Les agents de patrimonialization se basent sur l'information fournie pour établir l'*état de lieu* à fin de réaliser une étude d'impact sur l'environnement très efficace.

The emergence of the Kenyan mass media began in the year 1902 with the establishment of the *East African Standard* as the first newspaper and thus setting the foundation of the development of the print media. The main objective of this paper was to provide information about the activities of the colonial government. This was followed by the establishment of the Kenya Broadcasting Services (KBC) starting with radio broadcasting to compliment the efforts of the print media. Television services came later after independence with all these falling under the then Ministry of Information and Broadcasting Services (Ndeti, 1975, p. 25).

At the Information Department of the Ministry there were four sections; the Press Office, Publications, Provincial Information and Administration. The Publications section produced various periodicals, leaflets, posters and brochures on Kenya's way of life. These included *Kenya Yetu* (Our Kenya) which had a circulation of 100,000 copies. It was the major publication, with illustrated articles on development and culture. Another periodical, *Serikali Yetu* (Our Government) was published monthly with a circulation of 15,000. It talked about reports on the activities of the government and had ad hoc publications that included presidential speeches and *Jifunze Uraia* (Teach Yourself Citizenship). *Inside Kenya* was a quality quarterly publication that was written in English and distributed free in embassies abroad but sold in Kenya. It was, however, described as very controversial and covered many aspects of life in Kenya. *Kenya Sports Review* on the other hand was a quarterly publication with a circulation of 3,000 copies portraying sport as a natural asset because of the international fame won by Kenyan athletes (Ndeti, 1975, p. 26). These publications were fundamental for communication purposes but also for the national integration in the young republic.

12.3.5 Communication of cultural and archaeological information through public forums and the press

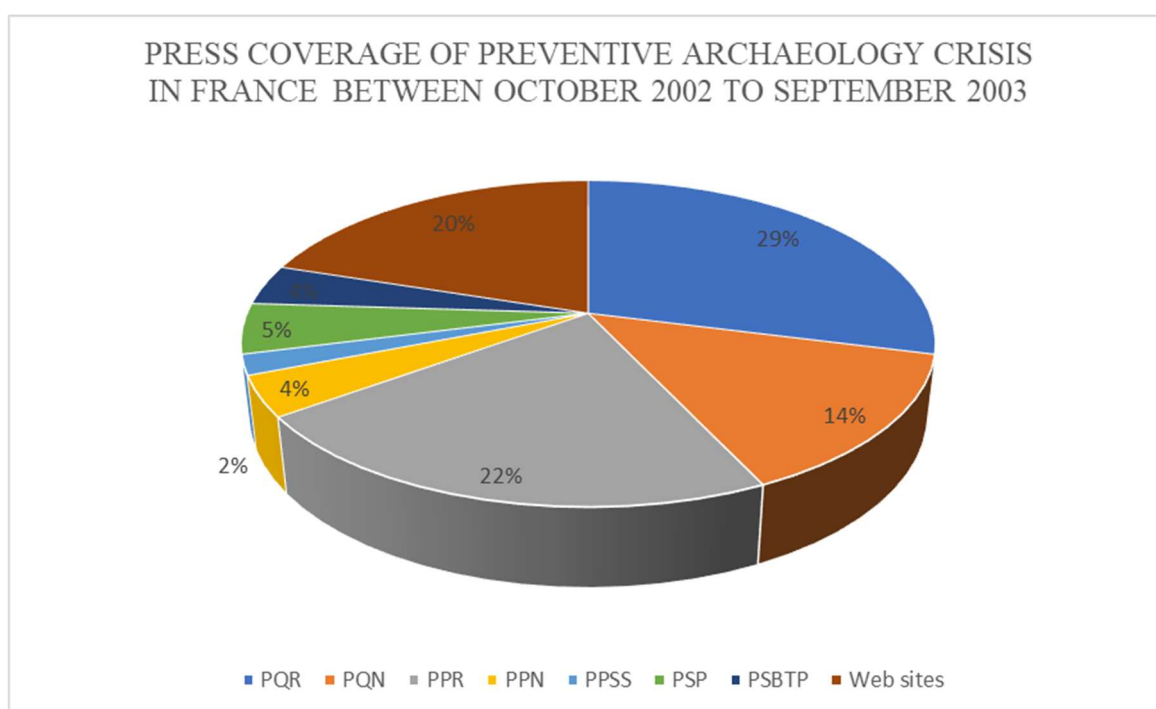


Figure 8. Le site-musée intégré d'Ahrweiler (DE). La vitrine présentant les objets en céramique trouve place sur le site.

Figure 42: The integrated site-museum of Ahrweiler (DE). The glass display on the site showing ceramic objects (Rousseau, 2011)

While mass media targets the masses through multiple channels such as print, radio and audio-visual media, public forums (Figure 42) which are organised for specific target groups at a particular moment and place are very fundamental to effective inclusion of the people in the practice of preventive archaeology, environmental and heritage impact assessment as well as in the cultural heritage conservation practices. Public communication has been accorded an important place in the organization of preventive archaeology at INRAP with sufficient human, time and financial resources being set aside by the institution per each operation. Being a public administrative institution, INRAP is obliged to ensure effective communication with both the general public and the scientific community.

Apart from the institutional efforts, the press played a central role in the development of preventive archaeology in France (Dureuil-Bourachau, 2005). Press coverage of the challenges that face archaeology as a profession especially during the crisis between 2002 and 2003 attests to the major role that the media plays in the choice, definition and development of a public policy (La rédaction, Les Nouvelles de L'Archéologie , 2005).



Regional Daily Press (Press quotidienne régionale)	PQR
National Daily Press (Press quotidienne nationale)	PQN
Periodical Regional Press (Press périodique régionale)	PPR
Periodical National Press (Press périodique nationale)	PPN
General Public Periodical Press Specialised in Science (Press périodique grand public spécialisée en science)	PPSS
Public Sector Specialised Press (Press public spécialisée secteur public)	PSP
Public Works and Building Specialised Press (Press spécialisée batiments et travaux publics)	PSBTP
Web sites (Sites internet)	Web sites

Source: (La rédaction, Les Nouvelles de L'Archéologie , 2005)

12.4 Transmission of cultural and archaeological information through scientific programmes

Organised research networks are fundamental for the effective delivery of research objectives including the transmission of the new knowledge across the scientific community and the general public. The integral heritage management approach works through organised research networks that target a larger spectrum of research problematics within a given geographical and historical framework.

Since masters studies I have participated in a series of scientific colloquium by a regional network under the *Circa Villam* programme, which is a big and long-term research project that aims at the musealization of the Roman villas. The programme started in the year 2005 through collaboration between the Institut de Patrimoni Cultural of the Universitat de Girona and the Grup de Recerca Arqueologica del Pla de l'Estany with the aim of study and dissemination of knowledge of rural world in the ancient Roman times in the Catalan territory and in the neighbouring geographical areas. The group launched a series of annual meetings with a set of monographic publications entitled *Studies on the Rural World in the Roman Period*. From my observation, the establishment of robust legal frameworks on cultural heritage management on its own is not enough. It must find enthusiastic and well organized initiatives for such legislation to yield fruits in the development of archaeological research. It is the scientific networks and cooperations that steer the research agenda and generate new knowledge which they then transmit to younger generation of researchers through colloquiums in which learners at masters and PhD levels develop and nurture their research interest as they familiarise with the regional research problems and their history in general.

Besides scientific networks, which borrows from the societies of scholars, there are a number of scientific publications in France that ensure transmission of new knowledge across the scientific community, the new generation of scholars as well as the students across all levels of learning.

Similar initiatives exist in Kenya through research at the British Institut in Eastern Africa (BIEA) founded in 1960 and the Institut Française de Recherche en Afrique (IFRA) founded in 1977, which have played a major role in the development of research in Africa. In 1966 the BIEA established *Azania*, the journal of history and archaeological research. The interuniversity research initiatives are however limited partly due to the competitive and commercial orientation of higher learning in the region.

12.4.1 Main editorial scientific publications for archaeology in France

Type of publication	Name	Date of creation	Geographical area	chronology	Supplementary, special number or out of series publication
National revues	<i>Quaternaire</i>	1990 (1963 based on the earlier form)		Quaternary	Thematic special issue
	<i>Paléo</i>	1989		Palaeolithic	Supplementaries and out of series
	<i>Bulletin de la Société préhistorique française</i>	1904		Palaeolithic to Iron Age	Numerous series
	<i>Gallia Préhistoire</i>	1958		Palaeolithic to Iron Age	Supplementaries
	<i>Gallia</i>	1943		Iron Age to Antiquity	Supplementaries
	<i>Archéologie médiévale</i>	1971		Medieval period	
	<i>Revue d'archéométrie</i>	1977		All periods	
National reviews that are less used by archaeologists	Bulletin de la société nationale des antiquaires de France	1804		Antiquity to modern period	
	<i>Revue archéologique</i>	1844		Antiquity to the end of Medieval period	
Interregional revues	Aquitania	1983	Aquitaine, Limousin, Midi-Pyrénées, Poitou-Charentes	Neolithic to the end of Medieval period	
	<i>Revue archéologique de l'Ouest (RAO)</i>	1984	Bretagne, Pays de Loire, Haute and Base Normandie	All periods	Out of series, supplementary and documents

Interregional revues	Revue archéologique de Centre de la France (RACF)	1961	Auvergne, Centre, Ile-de-France	All periods	Supplementaries
	Revue du Nord	1910 (1960 for the volume : Archéologie)	Northern France, Belgium, Netherlands	Iron Age to contemporary period	Out of series (coll. Archéologie)
	Revue archéologique de l'Est (RAE)	1950	Alsace, Bourgogne, Champagne-Ardenne, Franche-Comté, Lorraine, Rhone-Alpes	All periods	supplementaries
	Documents d'archéologie méridionale (DAM)	1978	Languedoc-Roussillon, Paca, Midi-Pyrénées, Corse, Rhône-Alpes	Protohistoric period	
	Revue archéologique de Narbonnaise (RAN)	1968	Languedoc-Roussillon, Paca, Rhône-Alpes	Iron Age to Upper Medieval period	Supplementaries
	Archéologie du Midi medieval (AMM)	1983	Languedoc-Roussillon, Paca, Midi-Pyrénées, Rhône-Alpes	Medieval to modern period	supplementaries
Regional revues with intraregional coverage	Revue archéologique de l'Ile-de-France (RAIF)	2008	Ile-de-France	All periods	
	Revue archéologique de Picardie (RAP)	1982 (1974 for les Cahiers archéologiques de Picardie)	Picardie	All periods	Special issue
	Préhistoire, anthropologie méditerranéennes	1982	Paca, Rhône-Alpes, Corse, Maghreb	Palaeolithic to Iron Age	
	Préhistoire ariégeoise	1945	Midi-Pyrénées	Palaeolithic and Neolithic	
	Archéologia Mosellana	1989	Lorraine, Luxembourg, Sarre	All periods	
Regional revues with	Travaux d'archéologie limousine	1981	Limousin	All periods	Supplementaries

intreregional coverage (continued)	Publication de la société archéologique champenoise	1907	Champagne-Ardenne	All periods	Special issues and mémoires de la SAC
	Name		Publisher		
Independent series of revues	<i>Document d'archéologie française (DAF)</i>		Editions de la Maison des sciences de l'homme		
	<i>Mémoires du Musée de Nemours</i>		Association for the promotion of archaeological research in the Ile-de-France		
	<i>Documents archéologiques en Rhône-Alpes et Auvergne (DARA)</i>		Lyonnais Association for the promotion of archaeology in Rhone-Alpes		
	<i>Bibracte</i>		European Archaeologic centre of mount Beuvray		
	<i>Cahiers Ernest-Babelon</i>		Unité de publications du centre de recherches archéologiques de Valbonne, CNRS éditions		
	<i>Actes des rencontres internationales d'Antibes</i>		Association for the promotion and dissemination of archaeological knowledge, Valbonne archaeological research centre		
	<i>Instrumentum</i>		Editions Mergoïl		
	<i>Protohistoire européenne</i>		Editions Mergoïl		
	<i>Etudes massaliètes</i>		Various publishers and centre Camille-Julian		
	<i>Lattara</i>		Association for archaeological research in Languedoc oriental and UMR Lattes (UMR -Mixed Research Unit)		
<i>Monographies méditerranéenne (MAM)</i>	<i>d'archéologie</i>		Association for the development of archaeology in Languedoc and UMR Lattes		

Source: (Héron, 2010, p. 62)

12.5 Analysis of the economic impact of communication about cultural sites and events to cultural tourism development

Cultural heritage, including but not limited to sites and events, is very difficult to evaluate based on market values and mechanisms of demand and supply. However, the impact of communication about cultural sites and events is measurable and can be given qualitative and quantitative attributes that can at last be used to attribute value to the various cultural heritage sites.

12.6 Perspectives on Cultural Heritage Management in Kenya

This study established that a research is still needed in order to establish relevant and effective institutional, legal and policy framework on cultural heritage management in Kenya so as to provide the roadmap to the implementation of the Constitutional reforms. The current institutional and policy framework is yet to respond to the issues of devolving cultural heritage, public participation and heritage impact assessment. In this perspective, a project, Kenya-INRAP-Pau University-Preventive Archaeology (KIPPA) Project, was born with the aim of creating international cooperation in cultural heritage management to enhance local capacities and create a centre of excellence on preventive archaeology and heritage impact assessment in Kenya. The successful development of such a centre of excellence will be beneficial not only at the level of the East African Community but also in the sub-Saharan Africa. The first feasibility study for the project was conducted in December 2018.

12.6.1 Kenya-INRAP-Pau University-Preventive Archaeology (KIPPA) Project

Kenya-INRAP-Pau University-Preventive Archaeology Project was born out of this research work and aimed at enhancing cooperation between Kenyan and French higher learning and research institutions through exchange of knowledge, skills and technology in cultural heritage management and capacity building. Its main objective was to create partnerships between the concerned institutions in Kenya and France so as to build capacity in preventive archaeology and cultural heritage management within Kenyan institutions such as the National Museums of Kenya (NMK) and local research institutions.

The project focussed on complementing the efforts being made at NMK and higher learning institutions in training of professionals in cultural heritage management. It had as one of its goals the establishment of a research centre on preventive archaeology to serve as a centre of excellence at the level of East African Great Lakes region and in sub-Saharan Africa. This was to be achieved through a collaboration between Kenyan and French institutions of higher learning and research.

KIPPA project was inspired by the increase in development projects whose magnitude demands for a better system of cultural heritage management which can effectively ensure proper handling of environmental and cultural heritage impact assessment prior to the beginning of the development work. The challenges of observing environmental and cultural heritage issues in development became evident at the beginning of the 21st century especially during the development of the Sondu Miriu Hydro-electric power plant. The long protracted process of negotiation between the government, the NGOs, the developer, the funding organisation and the community greatly impacted on the implementation process of the set

project. KIPPA's intention was to cut short on time required in the consideration of environmental and cultural components of development.

In the case of Sondu Miriu and all projects prior to 2002, the challenges were due to lack of a legislation on environmental impact assessment as well as lack of a public institution that could be held responsible and accountable for all matters pertaining to environmental Impact Assessment in the country. Even though the national Museums of Kenya existed by that time with the mandate to protect cultural heritage, the institution did not have the relevant legal framework on impact assessment. It was difficult to ensure that environmental impact assessment was done prior to the beginning of any major development project with a potential impact on cultural and archaeological heritage.

The enactment of the EMCA 1999 and the subsequent establishment of the National Environmental Management Authority (NEMA) in 2002 was the government's direct response to all issues that were affecting the environment. NEMA became operational on 1st July 2002 as a government agency to '*exercise general supervision and co-ordination over all matters related to the environment and be the Principal Instrument of Government in the implementation of all policies relating to the environment.*'¹⁶⁸ However, almost two decades after the enactment of the legislative framework on EIA (EMCA 1999, NMHA 2006 and the physical planning act 1996) the challenges still persist. The establishment of NEMA to coordinate environmental issues and work with NMK as the body in charge of promotion of cultural heritage in the context of development has had a little impact on the protection of

¹⁶⁸ A Power Point presentation by Mrs. Betty Nzioka, the then Deputy Director Environmental Awareness & Public Participation entitled: National Environmental Management Authority: Strengthening Public Participation in Environmental Decision-Making: Building Connections for Africa and Middle East held from 7th to 10th January, 2013, Rabat Morocco.

archaeological and cultural sites. The greatest milestone that NEMA first realised was the creation of the space for the public participation in the environmental decisions (Nzioka, 2013). This too has been much beneficial to the impacts on natural environment but little on cultural and archaeological heritage. The reason being that the general public is less informed about their cultural heritage hence cannot effectively participate towards the identification of potential impacts on sites and underground archaeological material.

This project was inspired by the UNESCO ‘efforts in helping Member States address challenges in the safeguarding of heritage’ (UNESCO World Heritage Centre, 14 January, 2015). Due to the increasing need of expertise and know-how for cultural properties, the UNESCO signed an agreement with INRAP through the French Ministry of Culture and Communication to increase French-UNESCO cooperation with the expertise of INRAP. Kenya is one of the Member State of UNESCO whose list of World Heritage Sites continues to grow. AT the same time the country is realising an unprecedented magnitude of economic development with a lot of impact on its cultural and natural heritage. The development projects ranging from infrastructure, energy, agricultural mechanization and building and construction have got a lot of positive impact in terms of economic transformation of people’s lives. Thus this project aims not only at mitigating against the negative impacts but also enhancing Kenya’s capacity to speed-up the realization of her development agenda by improving impact assessment capacities in the local institutions. This will make it possible to obtain construction permits in time by making EIA more responsive, relevant and efficient in order to lower the time period that is spent on environmental requirements for obtaining clearance certificates for development projects.

The first mission took place from 17th to 23rd December 2018. It was funded by the French Institute of Research in Africa (l’Institut Français de Recherche en Afrique -IFRA), the

French Embassy in Kenya, the University of Pau and des Pays de l'Adour (UPPA) and the French National Institute for Preventive Archaeological Research (INRAP).

The institutions involved were:

1. Kenyatta University (KU)
2. National Museums of Kenya (NMK)
3. University of Nairobi (UoN)
4. L'Université de Pau et des Pays de l'Adour (UPPA)
5. L'Institut National de Recherches Archéologiques Préventives (INRAP)

12.6.2 Research and capacity building in cultural heritage management

This project was based on the fact that major funding of archaeological research in Africa is not generally offered to students, but rather to researchers who have already completed their PhDs and generally have some degree of experience (Haour & N'dah, 2017, p. 30). It thus aimed at training young researchers as well as building capacity for those already in practice. This was especially due to the fact that it is very difficult to initiate or organise an archaeological project as a student. It calls for the expertise of those in the field who know the details of such projects and hence can play the role of mentorship as they integrate the young professionals at various levels of project planning, implementation, management monitoring and evaluation.

The most interesting part of training archaeologists is that finding a supervisor who can involve the learner in practical field project research is one of the greatest challenges to the training of archaeologists in Kenya. One of the ways through which students of archaeology

gain field experience is through his or her association with research supervisors who are directly or indirectly involved in ongoing projects.

12.7 Conclusion

This chapter has analysed the management of cultural heritage in Kenya using Thimlich Ohinga World Heritage site as a concrete example of built heritage. The study has identified some challenges which can be addressed through change in the Kenyan cultural policy and heritage legislation so as to incorporate cultural consideration into development planning. The change is also necessary to realign cultural heritage management with the devolved government structure especially by providing a national framework to guide the county legislation.

During the first KIPPA mission which took place between 18th and 23rd December 2018, it was established that the success of KIPPA Project and the consequent improvement in cultural heritage was to a large extent dependent on the changes to the Kenyan cultural policy and legislation, whose bill was still pending the necessary parliamentary procedures before being passed into law.

Since the enactment of the Constitution of Kenya 2010, Kenya initiated the process of reviewing the national policy on culture and heritage. It is noteworthy that the process of developing the National Policy on Culture was to be consultative to allow for the incorporation of the divergent opinions and views from different stakeholders. During the process, Kenyan archaeologists, prehistorians and heritage professionals were among the stakeholders that were called upon to give their views and opinions on what was to be included in the new law. Key among the desired regulations were those touching on protection of cultural heritage in the context of land planning development. Preventive or contract archaeology is

considered as the most effective response to heritage management challenges posed by the boom in infrastructural and major development projects. However, the local capacities in Kenya do not match the needs on the ground.

The consultation process also engaged the UNESCO through various workshops in which UNESCO agencies participated. Among the forums where UNESCO participated was during the National Culture Stakeholders Validation Workshop on Kenya's draft National Culture Policy which took place on 30 November and 1 December 2017 at the Kenya Institute of Curriculum Development (KICD) in Nairobi. The workshop was convened by the Ministry of Sports, Culture and the Arts so as to include the views of a broad range of stakeholders from across the country (UNESCO Office in Nairobi, 2017). The aims of the entire policy review process was to harness the power of culture for sustainable development in Kenya. The forum brought together over sixty stakeholders drawn from national and county government, civil society organizations, community representatives, arts practitioners and religious leaders. Since its last culture policy was elaborated in 2009, Kenya has embraced a new approach of participatory policy development and monitoring, which is promoted by UNESCO, notably through the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Public participation in the formulation of legislation, including review of policies and preparation of bills, is now mandatory and a constitutional requirement in Kenya (UNESCO Office in Nairobi, 2017).

GENERAL CONCLUSION AND RECOMMENDATIONS

13.1 General Conclusion

The growing scholarly literature on the history of heritage legislation across the world has served to establish the contextual background for the discussion of current heritage resource management policies. The historical analysis of heritage legislation has also provided insight into the broader social, political and economic values codified in such laws. This study has employed a three dimensional perspective in the comparative public policy analysis of heritage management which cuts across the historical development of heritage institutions, the policy framework and the practice. I applied the 3-D comparative analysis approach by comparing the French system of preventive archaeology to the Kenyan system of heritage impact assessment so as to be able to deal with heritage throughout all the stages of patrimonialization; from the discovery of an archaeological object, the certification of its origin, the establishment of the world of its origin, its representation of that world, the celebration of the discovery of the object through its display as well as valorisation and finally, the obligation to transmit it to future generations.

The choice of the international scale for comparative analysis while examining concrete national situations was instrumental for an effective comparative approach to cultural heritage management. The present study took the international comparative approach to new levels by comparing a francophone and an anglophone system as well as comparing a former colony to a former colonial power.

The establishment of formal cultural heritage management system in Kenya was highly influenced by the western systems of conservation through the transfer of heritage laws, importation of values and the general institutionalisation of heritage management during the

colonial period. The development of heritage legislation in Europe between 1870 and 1914 illustrates how the process was an arena both for collaboration and rivalry between nations, as the protection of a nation's monuments became an index of its civilized state. Such conceptualization is very fundamental when applied to the emerging States in Africa, more particularly Kenya where the growing in democratic space and the need for national cohesion seeks philosophical and historical foundations.

The migration of heritage laws during the colonial period was not unidirectional. Through comparative public policy analysis we observed that Kenyan cultural heritage legislation and management during the colonial period heavily borrowed from the Indian law of 1904 rather than from the British law which was passed in 1913 under the influence of the stringent Indian law. The Kenyan Ancient Monuments Preservation Ordinance was transferred directly from the British colony of India into Kenya by Sir Edward Grigg in 1927. Despite having been enacted coincidentally with Louis Leakey's first excavations in the Rift Valley, the 1927 ordinance in Kenya was not in harmony with the prevailing developments in archaeological research on the continent. Whereas the Southern Rhodesia and Cyprus laws had introduced measures to regulate the excavation of archaeological sites and control the export of finds, this was inadequately addressed in the Indian legislation on which the Kenyan Ordinance was based and which was concerned chiefly with protecting India's architectural heritage. Consequently it was amended in 1934 in response to the work of Louis Leakey whose discoveries challenged the previous academic consensus that hominid origins lay in Asia by adding East Africa on the scientific map as the cradle of humankind. The amendment was also as a result of the limitations of the 1927 ordinance as revealed through Louis Leakey's paleoanthropological discoveries in the 1920s and 1930s. The discoveries testified of the palaeontological and archaeological significance of the East

African region thus the passing of the Preservation of Archaeological Objects Ordinance in neighbouring Tanganyika in 1929.

However, the 1934 amendment and the introduction of a similar legislation in Uganda in 1934 was not driven by purely scientific interests. It was also influenced by international politics and rivalry between Britain and Italy in relation to Mussolini's expansionist interests in Ethiopia. Unfortunately, the Kenyan legislation remained in vigour for a long period of time with some amendments at independence in 1962, then 1983 before being repealed and replaced by the National Museums and Heritage Act in 2006. The latter was simply a merger of the National museums Act and the Antiquities and monuments Act of 1983 hence retaining all the elements of the two legislations. They all lacked a well-defined national criteria of identifying cultural heritage which delayed the study and documentation of some sites and monuments.

Since the past two decades, however, heritage management in Kenya has witnessed significant developments as well as threats in the context of unprecedented increase in infrastructural, construction and urban development projects as well as high population growth. Developments in heritage management have resulted from a shift in the public opinion followed by the acknowledgement, through the Constitution of Kenya promulgated in the year 2010, that culture is the foundation of the nation. This laid the platform to bridge the artificial gap between economic development, environmental conservation and cultural heritage protection by incorporating environmental considerations into development planning through which archaeological cultural heritage received attention. In Kenya the only national legal framework that provides for the protection of archaeological resources impacted by infrastructure is environmental impact assessment (EIA). EIA is has become a standard procedure for evaluating the impacts that infrastructure projects are likely to have

on the environment, including cultural heritage and archaeological sites but in Kenya the latter is rarely taken into consideration by majority of environmental consultants due to lack of public participation and limited involvement of archaeologists in the environmental scoping process.

On the other side, cultural heritage has witnessed growing threats from unmonitored development activities and globalization as the Kenyan economy has increasingly attracted investment in the real estate and infrastructure, a phenomenon which has opened up the Kenyan economy to the global market. Heritage conservation in Kenya is threatened by globalization as the economy further opens up to new international markets while increased building construction, infrastructural expansion and terrorism destroy existing heritage assets as well as threatening cultural tourism. In recent days terrorism has been a big threat to cultural tourism in Kenya with Lamu County being the most affected.

The National Museums and Heritage Act 2006 serves as the main reference for heritage conservation in conjunction with the Environmental Management and Coordination Act of 1999, the Physical Planning Act, the Wildlife Act and the National Policy on Culture and Heritage, 2009. The promulgation of the new Constitution with a devolved government structure in the year 2010 announced a new era in the history of heritage management in Kenya. The devolution of power necessitated a national debate that interrogates the historical development of heritage management in the country, analyses the existing heritage legislations and the institutional framework in the context of increased opportunities as well as threats to cultural heritage, its democratization and decentralization of its management system at the backdrop of increased globalization. These made it inevitable to do a comparative analysis of the public policy for cultural heritage management by looking at other systems especially in the developed countries with reference to France which is among

the countries that top not only on the list of world heritage sites but also in terms of modernization of heritage management and its institutional framework.

The study applied Environmental Kuznets's Curve hypothesis as the theoretical framework by holding that the world's poorest and richest economies have a good record of heritage management while developing economies have the poorest record of heritage conservation. The hypothesis guided the public policy comparative analysis approach because of the diversity and the evolving nature of the notion of heritage across various systems of heritage management. The hypothesis served as the point of reference as well as convergence in the analysis of cultural heritage management systems in Kenya and France. It also helped me to avoid the more ambiguous terminologies such as traditional versus modernity as often employed whenever attempting a comparison between African and western countries. This is because each cultural phenomenon is very unique and each system develops based on particular values that are ascribed according to what each society selectively defends as the best representative of their acceptable past which they wish to protect, preserve and transmit to future generations as an inspiration to the freedom of creativity, invention and innovation for posterity in the society.

In France, the last three decades have been marked by the enactment of the legislation on preventive archaeology, Law No. 2001-44 of 17 January 2001, based on the provisions of the Malta Convention on the conservation of archaeological heritage. The law established the French National Institute of Research on Preventive Archaeology, (INRAP) in the year 2001 with the full mandate and monopoly to carry out preventive archaeology excavations. However, the law was amended in the year 2003 leading to the market liberalization of preventive archaeological excavations through competitive bidding between public and private institutions. The move was highly contested and discouraged by professionals in the

field arguing that preventive archaeology is not a kind of merchandise. The developer is left to choose the cheapest service rather than the best quality of service which may lead to destruction of heritage if not well controlled scientifically. Consequently, the licensing of private archaeological institutions was based on the specific competencies hence they operate within some limits depending on their license.

The system of preventive archaeology is the most effective system of protection of archaeological and cultural heritage threatened by building, construction and infrastructural development which has been practiced in most of the European countries, in America and Japan. It ensures an equilibrium between economic development, scientific research and cultural heritage conservation through scientific study.

In this study the term preventive archaeology is emphasized because it evokes the very notion that the practice seeks to achieve; prevention rather than rescue as in rescue archaeology. Conversely, rescue is what is often recommended in majority of the environmental impact assessment reports in Kenya where the developer is advised to put in place measures to safeguard against any damage in case they stumble over objects that may interest archaeological research.

In most African countries and Kenya in particular, Environmental Impact Assessment is one of the few legal provisions allowing for the rescue of archaeological resources impacted by infrastructure. This was established through the National Museums and Heritage Act 2006 and the Environmental Management and Coordination Act, 1999. However, the former largely focuses on the establishment of the National museums while the latter mainly caters for natural heritage. The lack of effective coordination between the National Museums of Kenya (NMK) and the National Environmental Management Authority (NEMA) has made

it difficult to effectively detect potential threats to cultural heritage and suggest safety measures for its protection prior to the implementation of development projects.

The lack of a comprehensive legislative and policy framework on cultural heritage management for forty years since independence created an impression that cultural heritage has no significance in Kenya leading to poor protection of heritage resources threatened by development projects in the country. Apart from the environmental considerations, there is no specific legal and regulatory framework on preventive, rescue or development-led archaeology in Kenya. This leaves cultural heritage at the mercy of the developer who conduct heritage impact assessment as an obligation from the donor funding organizations based on international best practices. The limitations of the Kenyan heritage legislation has attracted a lot of research in heritage conservation and history which has provided an opportunity to revisit the national heritage legislation with a view to its realignment with the most current legislations and the devolved system of government. Consequently, as part of the contributions of this study in the Kenyan public policy and legislation on heritage, the Kenyan prehistory and heritage professionals were involved in the discussions about the Heritage and Museums Bill 2021. The Bill as tabled before the National Assembly may not have included all the proposals but shows some developments from the previous ones where the views of professionals were rarely considered. This study aims at bridging the knowledge gaps in the legislation, policy framework and in the scientific and technical practice of archaeology.

The comparative public policy analysis of preventive archaeology in France, cultural heritage impact assessment and management in Kenya sought to expand the existing knowledge about heritage management and provide the reference material and information

for policy formulation and development of relevant heritage institutions in Kenya and many other countries.

13.2 Recommendations

“Is research ever finished?” Meave Leakey asks. “Does research ever get all the conclusions? Does research ever get all the answers? No! There will be finds that make new questions and new things to look at and new ways to discover them.” Observes Meave Leakey (Thornton, 2022). This thesis could not be complete without the way forward and the necessary recommendations following from the observations and discussions in the study. The following are the recommendations:

First and foremost, Kenya should enact a harmonized and comprehensive national heritage policy with a heritage code necessary for the country to fully incorporate all cultural considerations into sectoral and sustainable development policies not just for the sake of economic development but also for the national cohesion in the context of the devolved government. This will enhance heritage management and make it a real socio-economic pillar as envisaged in the pillars of the Kenya Vision 2030; reinforce national identity and play a major role in strengthening the nation-state through national cohesion and peaceful coexistence.

Secondly, Kenya should establish a system of national museums with that of local authority and county museums so as to enhance patrimonialization and cultural heritage management across the country by rendering the devolved system more democratic and highly participatory. This is because the process of patrimonialization should be highly inclusive as it is highly adapted to the decentralization of power and resources. This translate to a more

participatory and inclusive governance which improves cultural heritage management and promotion locally, nationally and globally. The devolution of government in Kenya calls for comprehensive national cultural policy reforms with a harmonized national legislative and regulatory framework to guide heritage legislation and management at the county level of government. This is because the management of museums, public amenities and public entertainment is one of the devolved functions to be undertaken at the county level.

Thirdly, Kenya should establish an effective institutional framework based on the devolved system of government, the constitutional ideals of democratization, inclusivity and national cohesion. Kenya can borrow from the USA and Canada's experience of indigenous community museums and from France where the local authority museums are numerous. This can be achieved through investing in scientific research especially in the social sciences that deal with cultural heritage, social history, environment and sustainable development. Major infrastructure projects like LAPSSET corridor project and the Mombasa-Nairobi Standard Gauge Railway could have been a big national asset in the development of a national history if they were conducted with a lot of transparency and full incorporation of heritage objectives in the development policies right from the planning level.

Fourthly, Kenya should invest in academic research in cultural heritage conservation with a regular assessment of the relevancy of existing legal and institutional infrastructure and level of community participation which is necessary for the effective identification, protection and conservation of heritage. Academic research is fundamental to help communities in the understanding of the entire complex process of patrimonialization and how to be involved through multiple ways including creation of community museums while preserving the national fabric of a cohesive nation-state. Comparative public policy analysis can help to pinpoint the pitfalls in the public policy that emanate from outdated cultural practices that

promote violence and conflicts, cultural misrepresentations, political dogmas and instrumentalization of cultural heritage that mobilize different communities for the wrong cause in the contemporary Kenyan political conflicts like in the case of the 2007 post-election violence. The recent one hundred best sites project by the National Museums would have been successful if it was backed by academic research and evidence rather than the best site competitive approach.

Fifthly, all county governments should establish appropriate legislation, policy and institutional frameworks for cultural heritage management that includes measures to undertake preventive archaeology. The county cultural affairs should be harmonized through a national heritage code, policy and legislation.

Sixthly, there should be international cooperations in building capacities in cultural heritage management within local research and higher learning institutions to improve the practice, teaching and learning. This should involve empowerment of communities especially those in conflict areas to learn about their common heritage and history hence enhance political tolerance and understanding. Community participation in heritage management is a contentious and central issue which serves as an extension of human rights and democracy.

Seventhly, there should be enhanced channels of communication for promotion of local and national heritage through mainstream national audio-visual and vernacular media. It should involve giving more airtime to programmes that teach, inform and promote heritage to enhance public opinion towards heritage and help to effectively identify, study, protect and conserve cultural sites and landscape threatened by major development projects as was the case in France in the 1960s and 1970s. the role of the media is fundamental for safeguarding indigenous communities and archaeological heritage that is threatened by globalization,

increased urbanization and infrastructural development projects. This is especially important because uncontrolled population growth continuously exerts pressure on the already scarce resources where more land is cleared for construction of social amenities and large scale agricultural production to feed the masses in the expanding cities and urban areas thus threatening cultural landscapes.

There should also be creation of a national archaeological map with a centralised database through which any research in the field can access data and information. The system should be digital and georeferenced where any future research can be easily added to update the data. As such, every impact assessment results should be submitted to a public institution for evaluation where possible recommendations can be made for developers to comply with. This may require regional cultural heritage institutions with scientific capacity to work with the county administrative organs to advise and give policy guidelines about heritage issues and development.

Last but not least, there should be incorporation of traditional custodianship into the formal scientific methods so as to fully involve local communities and enhance democratization of heritage for its good management and governance. This will enhance cultural diversity and local community participation in the identification, protection and management of cultural resources thus increased democratization of cultural heritage. The ground is already prepared in Kenya to welcome such initiatives as communities have embraced their various intangible heritage through community festivals across the country.

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ABSTRACT

Since the past two decades, Kenya has realized a lot of major infrastructural, building , construction and dam related development projects which have provided both opportunities as well as challenges to heritage management in the country. In the context of such rapid and rather ambitious development, heritage management measures may be misconstrued to mean opposition to developmental (Prins-Solani, 2010, p. x). Lack of a comprehensive legislative and policy framework on cultural heritage management for over forty years since independence created an impression that heritage is of no use in Kenya (Karega-Munene, 2014). Consequently, the country is yet to fully incorporate cultural objectives into development policies which has led to poor management of heritage resources threatened by development projects in the country. Apart from the environmental considerations, there is no specific legal and regulatory framework on preventive, rescue or development-led archaeology in Kenya which leaves cultural heritage impact assessment to be exercised at will by the developer or as an obligation in respect to demands by the donor funding organizations such as World Bank hence application of international best practices. This study is a comparative analysis between the Kenya system of heritage management and the French system of preventive archaeology. It applies the Environmental Kuznets Curve hypothesis by holding that the world's poorest and richest economies have a good record of heritage management while developing economies have the poorest record of heritage conservation.

Key words: Preventive Archaeology, Cultural Heritage Management, Public policy, Devolution, Patrimonialization, Environmental Impact Assessment

RESUME

Depuis les deux dernières décennies, le Kenya a connu plusieurs projets d'aménagement de territoire qui ont constitué, tout à la fois, des opportunités ainsi que des défis dans le cadre de conservation du patrimoine. Dans le contexte d'un développement aussi rapide et plutôt ambitieux, les exigences de conservation du patrimoine peuvent être considérées comme contraires aux enjeux de développement (Prins-Solani, 2010, p. x). Le manque d'un cadre législatif et politique complet sur la gestion du patrimoine culturel pendant plus quarante ans après l'indépendance a donné l'impression, qu'au Kenya, le patrimoine n'est d'aucune utilité (Karega-Munene, 2014). Par conséquent, le pays n'a jusque-là pas intégré les objectifs culturels dans ses politiques de développement ; ce qui entraîne une mauvaise gestion du patrimoine exposé à des menaces dans le contexte d'aménagement du territoire. Hors des considérations environnementales, il n'y a pas de cadre juridique et réglementaire spécifique sur l'archéologie préventive, ni de sauvetage. Dans ce cas, l'étude d'impact sur le patrimoine culturel relève de la volonté de l'aménageur ou d'un désir de se conformer aux exigences des partenaires financiers internationaux tels que la Banque mondiale ou l'Union Européenne. Ainsi, dans ce dernier exemple, les aménageurs sont dans l'obligation de respecter les bonnes pratiques internationales en matières de patrimoine. Cette étude est une analyse comparée entre le système kenyan d'étude d'impact sur l'environnement et le patrimoine et le système français d'archéologie préventive. Elle se base sur l'hypothèse de la courbe environnementale de Kuznets qui affirme que les économies les plus pauvres et les plus riches du monde ont un bon bilan en matière de la conservation de patrimoine, tandis que les économies en voie de développement ont le mauvais bilan en matière de conservation du patrimoine.

Mots clés : Archéologie préventive, Conserverions de patrimoine culturel , Politique publique, décentralisation, Patrimonialisation, Etude d'impact sur l'environnement.

ECOLE DOCTORALE SCIENCES SOCIALES ET HUMANITES - ED 418

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Cover photos : From top right, Excavation at Le Centquatre Paris, photo courtesy Alexandre Godard, INRAP; top inset right, the Mombasa-Nairobi Standard Gauge Railway (SGR) passing through Nairobi National Park, photo courtesy Lucas L.W. Bwire; top inset left, Turkana Locals (Ekiru Ewaton and his wife Esekon Lowa) at the artistic impression of the Turkana Boy, photo courtesy Jared Nyataya, Nation Media Group. Bottom inset right, diagnostic excavation in May 2017 at Haut-Mocau, Mont-de-Mansin France, INRAP; bottom inset left, Thimlich Ohinga World Archaeological site; bottom, Fort Jesus World Heritage site museum, photos courtesy Lucas L.W. Bwire.

THESIS
UNIVERSITÉ DE PAU ET DES PAYS DE L'ADOUR
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PREVENTIVE ARCHAEOLOGY, CULTURAL HERITAGE IMPACT ASSESSMENT
AND MANAGEMENT



A Comparative Public Policy Analysis between Kenya and France

VOLUME II : ANNEX

A PhD dissertation submitted and publicly defended by **Lucas Leonardo Wandera BWIRE**
in partial fulfilment of the requirement for the award of the degree of Doctor of Philosophy in History,
History of Art and Archaeology
Date: 16th of December 2022

Members of the Jury:

- ❖ Giulia de Palma, Scientific and Technical Director of Research and Valorisation, INRAP, UMR ArScAn
- ❖ Susan MWANGI, Senior Lecturer, Kenyatta University
- ❖ Christian THIBON, Professor, UPPA, LAM, UMR 5115 - President
- ❖ Paul LANE, Professor, Cambridge University
- ❖ Washington NDIIRI, Senior Lecturer, Kenyatta University
- ❖ Ephraim WAHOME, Professor, University of Nairobi
- ❖ François RÉCHIN, Professor, Université de Pau et des Pays De L'Adour, IRAA-CNRS, USR 3155 – Supervisor
- ❖ Lazarus NGARI, Senior Lecturer, Kenyatta University – Supervisor



ANNEX

Annex 1: **Lawyer gives secret to winning Cortec case : Kenya - The Standard, 30/10/2018**

URL: <https://www.standardmedia.co.ke/business/article/2001300858/what-made-kenya-win-cortec-case> 1/3

By Jacob Ngetich | Published Tue, October 30th 2018 at 00:00, Updated October 29th 2018 at 22:07 GMT +3. Accessed Saturday, 29 October 2022.

A letter from a State agency is what helped the Government to win the Sh6.2 trillion mining dispute in a US based tribunal. National Environmental Management Authority (Nema) rejection of any possible mining for Niobium and Rare Earth at Mrima Hills in Kwale County was critical in sealing the fate of the case.

According to the Kenyan lead lawyer Kamau Karori who is a partner with DLA Piper and IKM Advocates, on March 22, 2013, Prof Geoffrey Wahungu, then Nema Director General wrote to Cortec denying them the licence to the mining at Mrima Hills. He instead asked them to explore alternative sites.

In his reasons that later came to save the country a possible slap of billions of shillings at the International Centre for Settlement of Investments Disputes (ICSID), Prof Wahungu argued that there were archaeologically significant sites within the project area.

“The project will be implemented within Mrima Hills within the forest which is gazetted as a nature reserve, forest reserve and a national monument and that the project will lead to massive destruction of the biodiversity,” read part of reasons Wahungu gave for the rejection of the mining licence.

Protected areas

Lawyer Karori said that victory of the case saved Kenyans tax payers cash and demonstrated an endorsement of the protected areas. Cortec Kenya Ltd had sued in Kenya in November 2017 seeking Sh200 billion compensation for loss of mining rights following cancellation of their licence by then Mining Cabinet Secretary Najib Balala in 2013.

In their suit was Cortec a firm associated with the late businessman Jacob Juma, claimed that after they were given the licence, they had planned to invest Sh44 billion in the mining of the rare earth deposits

According to Cortec, the estimated deposits for niobium and other Rare Earth metals run into Sh6 trillion billion. Mr Karori explained that the mining licence that Cortec used to prepare its planned investment was fraudulently obtained. “Cortec mining license was void ab initio given that it did not comply with applicable legal and regulatory provisions relating to the grant of the permit under Kenyan law,” said Karori.

Karori said the ruling by ICSID had helped to create a distinction from bona-fide investment and those illegal deals that are obtained by flouting Kenyan laws. “This is a strong message that the days of dirty deals are over, it is also an endorsement of the local legal teams and their ability to defend even the biggest of cases in the global arena,” said Karori

Annex 2: Kenya: **Kenya: Resistance to the Sondu Miriu Dam Project**

Retrieved from World Rainforest movement website on URL:

<https://wrm.org.uy/articles-from-the-wrm-bulletin/section1/kenya-resistance-to-the-sondu-miriu-dam-project/>

Posted on Jan 13, 2001. Included in Bulletin 42

The Sondu Miriu River is one of the six major rivers in the Lake Victoria basin, which drains 3,470 square kilometres in the western part of Kenya. The company responsible for managing all public power generation facilities in Kenya –KenGen– is planning a dam project to be located about 400 kilometres from Nairobi. Water from the river will be diverted through a 7.2 kilometre long tunnel into a one million cubic meter reservoir and a 60 megawatt hydro power station.

This megaproject is being financed by the Japan Bank for International Cooperation together with KenGen. Kenya is the largest recipient in Africa of Japanese official “aid”: in 1999 Japan devoted more than US\$ 57 million under the form of grants and loans to this aim. The civil

works are being carried out by Konoike Construction JV, Viedekke Heavy Construction Company of Norway and Murray & Roberts Contractors International of South Africa.

Even though the power station is scheduled to be operational in 2003, some of the works –like the construction of camp sites, roads, a bridge, and communication facilities– have already started, and together with them the fears over the environmental and social impacts of the project.

According to the NGO coalition Africa Water Network, the diversion of the river will cause the disruption of the whole hydrological basin, with negative consequences on wildlife. Colobus monkeys and hippopotamus, for example, which are dependent on the river will be forced to seek a source of water at the lower populous Nyakwere plains disturbing their habitat. KenGen is not taking responsibility on the issue, arguing that this is the competence of governmental agencies. The company even claims that a part of the river's flow will keep on running on the original channel. Nevertheless, similar river diversion projects for the Turkwel Gorge and Masinga hydropower dams resulted in the permanent or seasonal drying up of the courses. The blasting needed to build the tunnel will alter the geomorphology of the area, and the entire water table may be also affected by the construction.

Social impacts are already taking place. Since health precaution measures have not been put in place to handle the effects of the great dust clouds that come off the construction project, most members of the community are already suffering from eye and respiratory problems. The diversion of the river will provoke a shortage in the supply of water, which is a vital element for domestic and agricultural use by 1,500 local households. Additionally local communities have denounced that KenGen has not kept its promise of providing them electricity and irrigation facilities, as stated in the initial project documents. Now the company says that such activities are beyond its mandate. Last but not least the project has so far displaced 1,000 households through forced resettlement. In March 2000 KenGen admitted lacking plans to relocate people who will be affected by power transmission lines from the dam.

Resistance to the project is on the rise and so is repression by Kenyan authorities. Last December Argwings Odera –an activist of the Africa Water Network who works with dam affected people– was arrested, beaten and shot in an arm by the police. He is now facing

criminal charges for holding meetings and trying to share information and raise awareness about the project.

Article based on information from: "Kenyan Dam Protester Arrested, Shot"

Annex 3: **KENYA: Japan Suspends Funding for Sondu Miriu Dam**

Published by Environment News Service | By Jennifer Wanjiru | Monday, June 4, 2001

Accessed online from Corpwatch website on URL: <https://corpwatch.org/article/kenya-japan-suspends-funding-sondu-miriu-dam> Thursday, 25 March 2021

The Japanese government has suspended funding to a controversial hydroelectric power project in Western Kenya which is still in the first phase of construction.

Citing "environmental disruption and corruption" in a letter to the government of Kenya, Japan's Foreign Minister Makiko Tanaka indicated that suspension of funding for the Sondu Miriu hydropower dam project was "a response to criticism from environmental campaigners and differences between Kenya and Japan over further funding."

A copy of the letter was sent to the Kenya Electricity Generating company Ltd. (KenGen), which is building the shillings 12 billion project. The Sondu-Miriu project was planned to inject an additional 60 megawatts into Kenya's national electricity grid to ease Kenya's power crisis.

Critics say that abandoning the half-finished dam project will create a serious socioeconomic backlash and an uncontrolled environmental disaster in western Kenya.

Of special concern is the tunnel, which was criticized as an environmental disaster during a meeting of the World Commission on Dams at Cape Town. Once the tunnel was blasted through the Kasaye Hills, the hillside streams have dried up. The diversion of the river bed, the commission said, is not a "standard environmental conservation project."

Japan blames Kenyans for the turn of events. "This is a Kenyan project not for Japanese. Kenyans must resolve their own problems. The problems are yours and have nothing to do with us," said Azumi Arai, the director general in charge of the Japan Bank for International Cooperation (JBIC) which has been funding the project.

The Japanese suspension is viewed as a victory by two Kenyan nongovernmental organizations, Africa Water Network and Climate Network Africa. Their incessant campaign calling attention to the environmental damage the power project was doing on the people of Nyakach prompted the Japanese government to organize six fact finding missions to assess the situation.

"We are not opposed to the project but the manner KenGen is implementing it," said Africa Water Network spokesman, Denis Akumu. Africa Water Network persisted in its lobbying and public protests despite police crackdowns that left at least one man with severe wounds after several days in police custody.

But some local people want the dam building to proceed. Demonstrations are planned in Nyanza to protest at the suspension, a Member of Parliament said yesterday. Nyakach MP Peter Odoyo said leaders would mobilize more than 10,000 villagers to oppose the move before holding a public rally at Kolweny, near the project site, on Thursday.

The project's feasibility study done in 1985 recommended a three phase development. KenGen, a government power generating company, obtained funding from JBIC. The first funds for construction and engineering services were transferred in 1997, and the work began in March 1999. The first phase was expected to be complete by 2004.

But environmentalists have raised concern over the health problems occasioned by the project. "Cases of chest diseases, such as bronchitis have been reported in the area ever since the project began," said Akumu.

The organization has been demanding a halt to the project and another Environmental Impact Assessment. Akumu said that two deaths have been reported and many people have gone blind since the dam building began.

But Kenya's Energy Minister, Francis Masakhalia has said the project will continue. "The government is fully committed to the implementation of this project. Problems that might emerge must be overcome. We cannot abandon this project altogether."

Masakhalia said, "All conditions have been fulfilled and there should be no cause for alarm. An impact assessment test was carried out, and you cannot fault the project. It is superior to other forms of power generation which result in pollution through gas emission."

But the minister failed to respond to the issue of corruption that was also raised by the Japanese government. Figures of displaced people were inflated while compensation money was not handed to the displaced, leading to a public outcry.

An example is Thurdibuoro Secondary School which was quoted to have been rebuilt at sh 180 million but still has no power or water. A bell for the school is said to have been imported at sh 80,00.

"It is a major scandal," said Akumu.

Japan insists further investigations must be carried out before funding is resumed. "I would definitely like to have an opportunity to investigate it. If the project is proceeding despite problematic aspects, then it should be reconsidered," said the Japanese foreign minister.

MP Odoyo, who supported the project from the beginning, said the government of Kenya will send a delegation to Japan to plead their case.

AMP Section Name: Construction

- 107 Energy
- 183 Environment
- 185 Corruption

Annex 4: The reform of preventive archaeology in 2012 with the list of signatures

- **Vers une nouvelle réforme de l'archéologie préventive**

17 Septembre 2012

Source: From the blog of Jean-Paul Demoule accessed on the URL

<https://www.jeanpauldemoule.com/vers-une-nouvelle-reforme-de-larcheologie-preventive/actu>

On trouvera ci-joint le texte signé en juin dernier par une cinquantaine d'archéologues, principalement de l'Université et du CNRS, appelant à une sérieuse réforme de l'archéologie préventive en France. Les défauts et dérives du système actuel ne sont en effet plus à démontrer – le texte précédent de ce blog en ayant relevé un certain nombre. Cet Appel a été remis cet été aux deux cabinets de la Culture et de la Recherche et vient également d'être publié dans la revue *Les Nouvelles de l'Archéologie*. L'effet en avait été immédiat comme, sans forfanterie excessive, nous avons tous pu le constater dans l'important discours que la ministre de la Culture a prononcé dès le 22 juin dernier à Saint-Rémy-de-Provence à l'occasion des Journées de l'Archéologie (téléchargeable, pour celles ou ceux qui l'auraient manqué sur : <http://journées-archeologie.inrap.fr/archeologie-preventive/Actualites/Communiqués-de-presse/Les-derniers-communiqués/Communiqués-nationaux/p-14653-Une-riche-villa-antique-revelee-par-la-fouille-de-la-ZAC-d-Ussol-a-Saint-Remy-de-Provence.htm>). La presse, et notamment *Le Monde*, *Le Nouvel Observateur* et le *Journal des Arts* s'en sont fait l'écho.

La ministre, dans ce discours, a réitéré le caractère de service public de l'archéologie préventive, et en particulier de l'Inrap, « opérateur par excellence en matière d'archéologie préventive » ; elle a annoncé la remise à niveau de la Redevance d'Archéologie préventive (ce qu'avait refusé l'an dernier la précédente majorité parlementaire), et enfin la mise en place à la rentrée 2012 d'une commission chargée de rédiger, d'ici au premier trimestre 2013, un livre blanc de l'archéologie préventive : « C'est en s'appuyant sur ce livre blanc que le ministère de la culture proposera au Gouvernement les décisions nécessaires ». Elle a dit également souhaiter une résorption de la précarité des agents de l'Inrap employés en CDD, et l'établissement de passerelles plus effectives entre les différentes institutions archéologiques publiques. Enfin elle comptait organiser, en concertation avec le ministère de la Recherche, les premières rencontres de l'archéologie préventive, envisagées pour les 21 et 22 novembre prochains.

La ministre, dont il faut saluer la détermination, a précisé tout récemment ses intentions dans un entretien publié par le journal *Le Monde* le 10 septembre dernier (http://www.lemonde.fr/culture/article/2012/09/10/aurelie-filippetti-la-culture-est-le-disque-dur-de-la-politique_1757941_3246.html). Elle y déclare, à propos du projet de loi sur le patrimoine : « Il faut aussi revoir les règles sur l'archéologie préventive, ouverte à la

concurrence depuis dix ans. Des entreprises privées se sont mises sur le marché avec des stratégies particulièrement agressives. Nous allons donc rédiger un livre blanc et défendre l'Institut national de recherches archéologiques préventives (Inrap) ». La feuille de route est donc claire.

La nouvelle commission sur l'archéologie préventive

La commission annoncée vient d'être créée, sous le nom de « Commission d'évaluation scientifique, économique et sociale du dispositif d'archéologie préventive ». Elle doit être mise en place par la ministre, commencer ses travaux à partir du 5 octobre, et remettre son « livre blanc » avant la fin du mois de mars 2013 au plus tard. Elle comprend 25 membres, à savoir, en ventilant par institutions :

- Conseil national de la recherche archéologique (conseil présidé traditionnellement par le ministre de la Culture) : son vice-président actuel, Dominique Garcia (professeur à Aix-Marseille, Institut universitaire de France, protohistorien) et deux de ses anciens vice-présidents : Michel Reddé (professeur à l'EPHE, antiquisant) et François Baratte (professeur à Paris IV, antiquisant) ;
- Inspection des patrimoines au Ministère de la Culture : Gérard Aubin (antiquisant), Elise Boucharlat (médiéviste) ;
- Inspection des Finances : Véronique Hespel ;
- Inspection de l'Équipement : Michel Brodovitch ;
- Collège de France : Jean Pierre Brun (antiquisant, ancien directeur du Centre Jean Bérard à Naples) ;
- Inrap : Jean-Paul Jacob (président, antiquisant), Anne Augereau (directrice scientifique adjointe, protohistorienne), Laurence Bourguignon, préhistorienne) ;
- CNRS : Henri Duday (directeur de recherche, anthropologue), Jean Chapelot (directeur de recherche émérite, médiéviste) ;
- Universités : Isabelle Cartron (professeur à Bordeaux 3, médiéviste), Jean-Paul Demoule (professeur à Paris I, Institut universitaire de France, protohistorien, ancien président de

l'Inrap), Florent Hautefeuille (maître de conférence à Toulouse 2, médiéviste), Florence Journot (maître de conférence à Paris I, archéologie médiévale et moderne), Martial Monteil (maître de conférence à Nantes, antiquisant) ;

– Archéologues de collectivités territoriales : Anne Pariente (service de la ville de Lyon, antiquisante), Jean Luc Marcy (service départemental du Pas-de-Calais), Luc Bernard (communauté d'agglomération du Douaisis ; ancien directeur d'Archéopole) ;

– Conservateurs régionaux de l'archéologie : Dany Barraud (Aquitaine, antiquisant), Murielle Leroy (Lorraine, antiquisante) ;

– Dirigeants d'entreprises privées d'archéologie : Frédéric Rossi (Archeodunum), Julien Denis (Eveha).

Quant à la composition de cette commission, on remarquera un louable effort de parité (presque un tiers de femmes), une répartition variable des institutions et des disciplines, et qu'elle ne compte que deux des signataires de l'Appel ci-dessous. Mais on notera surtout son caractère pléthorique, tout comme la longueur impartie à ses travaux, puisqu'elle est sensée rendre ses résultats d'ici la fin du mois de mars 2013, soit dans six mois.

Par contraste, on peut rappeler que la commission qui a élaboré le projet de loi de 2001 sur l'archéologie préventive, n'était composée que de trois personnes (Bernard Pêcheur, Conseiller d'Etat, Bernard Poignant, alors maire de Quimper, et moi-même), et a eu quatre semaines pour remettre ses travaux, dans un contexte de crise et avec une situation juridique (notamment l'avis du Conseil de la Concurrence de mai 1998) au moins aussi complexe, tout en auditionnant la totalité des partenaires de l'archéologie préventive.

On peut donc faire deux lectures, pas forcément exclusives l'une de l'autre, de cette commission. La première lecture possible est qu'il s'agit de la méthode de concertation approfondie prônée par le président de la République et le premier ministre, par opposition au quinquennat précédent, et qu'il est préférable de mettre ensemble le plus de partenaires possibles – encore que dans le cas présent il n'y ait de représentants, ni des aménageurs publics ou privés, ni des élus locaux ou nationaux. C'est ainsi que, sur les questions du travail et de l'emploi, les partenaires sociaux, syndicats et Medef, ont été invités par le premier ministre à débattre largement jusqu'à la fin de cette année ; ensuite, le gouvernement devra trancher. Dans

le cas présent, le livre blanc devrait faire apparaître la variété des points de vue, mais proposer néanmoins des orientations majoritaires ; et le gouvernement devrait trancher, dans la ligne de la feuille de route tracée par la ministre.

Une lecture pessimiste pourrait en revanche y voir la traditionnelle force d'inertie de la haute administration du ministère de la Culture, qui plus est après dix années passées sous l'ancienne majorité politique. Un dosage subtil entre les partisans d'un grand service public de recherche pour l'archéologie préventive, et quelques opposants notoires, aux motivations d'ailleurs variées, risque d'aboutir à une situation de blocage, donnant l'impression qu'il n'y a pas de consensus au sein de la communauté scientifique et que le *statu quo*, au bénéfice du doute et de l'archéologie commerciale, serait finalement, faute de mieux, la moins mauvaise solution.

Les vraies questions

Rappelons que la question de l'archéologie commerciale n'est pas celle de la qualité de telle ou telle fouille. On pourra toujours trouver sans problème une fouille archéologique techniquement satisfaisante réalisée par une entreprise privée ; et à l'inverse une fouille insatisfaisante, réalisée par un chercheur de l'Inrap, voire du CNRS ou de l'Université ... En outre, nos collègues des Services archéologiques régionaux n'ont pas les moyens techniques et humains de contrôler en détail le déroulement de l'ensemble des fouilles préventives dont ils ont la responsabilité. Par ailleurs, ce ne sont pas les personnes qui sont en cause : c'est faute d'emplois publics suffisants que des archéologues contractuels travaillent dans des entreprises privées ; quant aux responsables de ces entreprises, nul ne songerait à leur faire grief de souhaiter subvenir à leurs besoins.

La question principale, comme elle a pu être constatée dans les pays où l'archéologie commerciale a été mise en place, est celle de l'éclatement des méthodologies et de la documentation, tout comme celle du retard à l'étude et à la publication – précisément ce pour quoi l'Inrap a été mis en place en 2001. De plus, ce n'est désormais plus l'archéologue le plus compétent qui sera choisi pour fouiller un site donné, mais l'employé de la structure la moins chère. A cela s'ajoute évidemment la précarité de l'emploi scientifique, comme on pu le voir lorsque la crise économique a mis au chômage plusieurs centaines d'archéologues privés en Grande-Bretagne, par exemple.

Deux points de vue se sont fait entendre pour, sinon défendre, du moins tolérer l'archéologie privée en France. Le premier, honorable, est celui d'universitaires qui préfèrent voir leurs anciens étudiants employés dans une entreprise privée plutôt qu'au chômage. C'est oublier cependant que la montée en puissance des entreprises privées ne s'est faite que de manière artificielle, en plafonnant autoritairement les effectifs de l'Inrap, au détriment du dogme bruxellois de « la concurrence libre et non faussée ». Les préfets eux-mêmes, tout comme les services du ministère de la Culture, ont eu l'instruction de favoriser l'émergence et le développement de ces structures.

Le second point de vue est celui de certains de nos collègues des services régionaux de l'archéologie, qui ont vécu comme une perte de pouvoir (symbolique) l'autonomisation de l'Inrap et qui, après avoir mené contre cet institut une assez stérile guérilla au nom de « l'autorité de l'Etat », se sont retrouvés paradoxalement à favoriser, par divers procédés, lesdites entreprises privées afin d'affaiblir l'Inrap. Notre collègue Christian Stouvenot, du SRA de Guadeloupe, a fort bien, courageusement et crûment, résumé cette situation dans son commentaire à mon précédent papier sur ce même blog : « Beaucoup de SRA aiment bien le privé (et ils défendent leur point de vue), car le privé a plus le doigt sur la couture alors que l'Inrap est vraiment trop indépendant du "pouvoir SRA" (<http://jeanpauldemoule.wordpress.com/2012/05/23/leurope-et-larcheologie/#comments>). Or, dans un certain nombre de cas et même si les preuves écrites manquent souvent, vouloir favoriser peut conduire rapidement au délit de favoritisme – pour en rester à la seule logique commerciale.

La loi de 2001 n'avait fait qu'inscrire deux revendications de longue date de la communauté scientifique : légaliser la contribution des aménageurs aux fouilles préventives (le principe « pollueur = payeur ») ; transformer l'Association pour les fouilles archéologiques nationales (Afan) en institut public de recherche. Mais elle avait aussi institué le principe d'un monopole public pour l'archéologie préventive. Rappelons inlassablement que cette loi a été validée en France par le Conseil constitutionnel et le Conseil d'Etat, et que la Commission de Bruxelles a rejeté les plaintes déposées contre elle. La loi de 2003 n'est donc venue que de la volonté politique et idéologique de la majorité politique d'alors. Aujourd'hui, si le constat des faiblesses scientifiques du système actuel de la concurrence commerciale n'est guère difficile à faire, l'essentiel des solutions tient surtout à des questions juridiques et sociales.

La communauté scientifique, mais pas seulement elle, doit donc rester fortement mobilisée. Nous devons, dans les circonstances politiques actuelles, rester résolument optimistes, d'autant que nous demandons moins un supplément de crédits dans une situation de crise budgétaire difficile, qu'une architecture institutionnelle au service de la recherche publique et de sa diffusion. Nous devons donc rester très attentifs.

APPEL

L'archéologie préventive doit être réformée ! [Appel des archéologues – PDF à télécharger](#)

En 2003, dénaturant la loi de 2001 votée sous le gouvernement dirigé par Lionel Jospin, le parlement et le gouvernement français décidaient, contre l'avis de l'ensemble de la communauté scientifique (et notamment du Conseil national de la recherche archéologique), que l'archéologie préventive ne relevait plus essentiellement de la responsabilité de l'État mais devenait une affaire de « marché », dans le cadre d'une « concurrence libre et non faussée ». Si les diagnostics préalables continuaient de relever de services publics (Inrap et aussi services archéologiques de collectivités territoriales, dont le développement est très opportun) afin, de l'aveu même du ministre de la Culture, « d'en garantir l'objectivité », les fouilles proprement dites sont devenues le lieu d'une concurrence commerciale entre l'Inrap, les services de collectivité et des entreprises privées.

Il est temps près de dix ans plus tard, de dresser un bilan :

1) La concurrence commerciale n'a pas été une demande des aménageurs économiques mais une décision politique émanant de la majorité parlementaire et du gouvernement de 2003, comme le reconnaissait à l'époque le ministre Jean-Jacques Aillagon – alors même que le dispositif de 2001 avait été validé par le Conseil constitutionnel, le Conseil d'État et la Commission de Bruxelles.

2) Dans le dispositif législatif actuel, c'est l'aménageur économique qui choisit, avec ou sans appel d'offre selon les cas, l'intervenant archéologique, choix pour lequel il n'a évidemment aucune compétence. Ce dispositif ne peut être pérennisé : **l'État doit reprendre la maîtrise d'ouvrage.**

3) Si le principe d'une recherche privée n'est pas en soi critiquable dans des domaines où un contrôle de qualité est possible a posteriori, ce n'est évidemment pas le cas de la fouille archéologique qui ne peut être recommencée. Cette situation est aggravée par le manque cruel en moyens humains des services archéologiques régionaux du ministère de la Culture, **qui doivent être renforcés.**

4) Les employés de ces entreprises privées ne sont pas personnellement en cause. Il s'agit pour la plupart d'archéologues qui n'ont pu trouver d'emploi dans des structures de recherche publiques. Mais ils sont prisonniers d'une logique commerciale qui n'a rien à voir avec celle de la recherche scientifique.

5) Le mécanisme de la concurrence commerciale segmente de manière incohérente entre des intervenants disparates et successifs la chaîne de traitement de l'information archéologique et aboutit à ce que les responsables d'une fouille ne sont pas les meilleurs spécialistes disponibles, mais les employés de la structure « la moins chère », comme dans tous les pays qui s'y sont essayés.

6) Le système de financement de l'Inrap, dix ans après sa création, n'est toujours pas stabilisé. En 2011 encore, la majorité parlementaire a refusé une proposition réaliste et argumentée de l'Inspection générale des finances, qui aurait permis de régler ce problème. Ce déficit persistant et voulu, permet d'entretenir artificiellement l'idée que l'Inrap ne fonctionne pas bien.

7) Ce déficit – permanent et entretenu – est, en outre, aggravé par l'absence sur ce dossier du ministère chargé de l'Enseignement supérieur et de la Recherche, pourtant cotutelle de l'Inrap avec celui de la Culture. **Il doit donc reprendre son rôle en main.**

8) Malgré de nombreux résultats spectaculaires que l'on peut mettre au crédit de l'INRAP, la loi de 2003 empêche cet établissement public de remplir sa mission essentielle, prévue par la loi et justification de l'archéologie préventive : sauver le patrimoine de la nation en produisant de la connaissance scientifique pour la restituer auprès du public.

9) La loi de 2003 n'est même pas appliquée dans son intégralité, faute de moyens mais aussi de volonté, alors qu'elle prévoit la remise à l'Inrap, à fins d'étude et de publication, de l'intégralité de la documentation recueillie par les fouilles des entreprises commerciales d'archéologie.

En conséquence, nous demandons :

A) Que soit amendé fortement le principe du « marché » concurrentiel des fouilles préventives, créé artificiellement en 2003.

B) Que soit revalorisée la « redevance d'archéologie préventive » pour qu'elle atteigne le niveau préconisé par le rapport de l'Inspection générale des finances, afin de sortir définitivement de la crise de l'archéologie préventive, et donc des difficultés persistantes avec les aménageurs et les élus – redevance à compléter par une subvention du Ministère chargé de la Recherche, qui doit s'emparer du dossier.

C) Que le maître d'ouvrage, mais aussi le propriétaire des vestiges archéologiques enfouis, soit, comme dans beaucoup de pays, l'État, c'est à dire l'ensemble des citoyens.

D) Que soit renforcée et harmonisée la coopération scientifique entre l'ensemble des institutions publiques de recherche archéologique, Universités, CNRS, Inrap, services régionaux du ministère de la Culture, services archéologiques de collectivités territoriales, dans le cadre par exemple d'un plan pluriannuel de développement.

Premiers signataires (par ordre alphabétique) : Sophie Archambault de Beaune (professeur à l'Université Jean Moulin Lyon 3, ancienne directrice scientifique adjointe au CNRS), Françoise Audouze (directrice de recherche émérite au CNRS, ancienne directrice du Centre de recherche archéologique du CNRS), Alain Beeching (professeur à l'Université de Lyon II), Patrice Brun (professeur à l'Université de Paris I), Joëlle Burnouf (professeure à l'Université de Paris I, ancienne conservatrice régionale de l'archéologie), Anick Coudart (directrice de recherche au CNRS, ancienne directrice de la revue Les Nouvelles de l'Archéologie), Eric Crubézy (professeur à l'université de Bordeaux, directeur de l'UMR 5288), Jean-Paul Demoule (Professeur à l'Université de Paris I, membre de l'IUF et ancien président de l'Inrap), Françoise Dumasy (professeur émérite à l'Université de Paris I, ancienne directrice de l'UFR d'art et archéologie), Roland Etienne (professeur émérite à l'université de Paris I, ancien directeur de l'Ecole française d'Athènes), François Favory (professeur à l'Université de Franche-Comté, ancien directeur scientifique adjoint au CNRS), Jean-Luc Fiches (directeur de recherche au CNRS, ancien sous-directeur du Centre de recherches archéologiques de Valbonne), Stephan Fichtl (professeur à l'Université de Tours), Philippe Fluzin (directeur du laboratoire Métallurgies et Cultures, Université technologique de Belfort-Montbéliard), Henri-Paul

Francfort (directeur de recherche au CNRS, président du Comité de l'Archéologie du CNRS), Gérard Fussman (professeur honoraire au Collège de France), Pierre Garmy (ancien conservateur régional de l'archéologie, ancien directeur de l'UMR 5140), François Giligny (professeur à l'Université de Paris I), Christian Goudineau (professeur honoraire au Collège de France, ancien vice-président du Conseil national de la recherche archéologique), Michel Gras (ancien directeur de l'Ecole française de Rome, ancien vice-président du Conseil national de la recherche archéologique), Jean Guilaine (professeur honoraire au Collège de France, membre de l'Institut), Xavier Guthertz (professeur à l'Université de Montpellier, ancien conservateur régional de l'archéologie), Augustin Holl (professeur, vice-président de l'Université de Paris-Ouest), Jacques Jaubert (professeur à l'Université de Bordeaux I, ancien directeur de l'UMR Pacea, président de la Société préhistorique française), Xavier Lafon (professeur à Aix-Marseille Université, ancien directeur de l'Institut de recherche sur l'architecture antique), Olivier Lemercier (maître de conférence à l'Université de Bourgogne), Patrick Le Roux (professeur émérite à l'Université de Paris 13), Laurence Manolakakis (chargée de recherche au CNRS, directrice de l'UMR 8215 Trajectoires), Gregor Marchand (sous-directeur de l'UMR 6566 CReAAH, Rennes), Pierre Moret (directeur de recherche au CNRS, Directeur de l'UMR 5608 Traces, Toulouse), Anne Nissen-Jaubert (professeur à l'Université de Paris I), Laurent Olivier (Conservateur au Musée d'Archéologie Nationale), Jacques Pellegrin (directeur de recherche au CNRS, directeur de l'UMR 7055, Nanterre), Catherine Perlès (professeur émérite à l'Université de Paris-Ouest, ancienne directrice de laboratoire), Nicole Pigeot (professeur à l'Université de Paris I), Patrick Pion (maître de conférence à l'Université de Paris-Ouest), Michel Reddé (directeur d'études à l'EPHE, ancien vice-président du Conseil national de la recherche archéologique, ancien directeur des Sciences humaines et sociales au Ministère de la Recherche), Hervé Richard (directeur de recherche au CNRS, vice-président de l'université de Franche-Comté), Pierre Rouillard (directeur de recherche au CNRS, directeur de la Maison de l'archéologie et de l'ethnologie, Nanterre), Valentine Roux (directrice de recherche au CNRS, ancienne directrice de laboratoire), Maurice Sartre (professeur honoraire à l'Université de Tours et à l'Institut universitaire de France, premier président du Conseil scientifique des Rendez-vous de l'Histoire de Blois), Gilles Sauron (professeur à l'Université de Paris IV – Sorbonne), Alain Schnapp (professeur à l'Université de Paris I, ancien directeur de l'Institut national d'histoire de l'art), Philippe Soulier (ingénieur de recherche au CNRS, ancien sous-directeur de l'UMR 7041), Laurence Tranoy (maître de conférence à l'Université de La Rochelle), Boris Valentin (professeur à

l'Université de Paris I), Jean-Denis Vigne (directeur de recherche au CNRS, directeur de l'UMR 7209, Museum).

PART II: CITED TEXTS, INTERNATIONAL TREATIES, RECOMMENDATIONS, CHARTERS AND CONVENTIONS

INTERNATIONAL CHARTER FOR THE CONSERVATION AND RESTORATION OF MONUMENTS AND SITES (THE VENICE CHARTER 1964)

Annex 5: INTERNATIONAL CHARTER FOR THE CONSERVATION AND RESTORATION OF MONUMENTS AND SITES (THE VENICE CHARTER 1964)

IInd International Congress of Architects and Technicians of Historic Monuments, Venice, 1964.

Adopted by ICOMOS in 1965.

Imbued with a message from the past, the historic monuments of generations of people remain to the present day as living witnesses of their age-old traditions. People are becoming more and more conscious of the unity of human values and regard ancient monuments as a common heritage. The common responsibility to safeguard them for future generations is recognized. It is our duty to hand them on in the full richness of their authenticity.

It is essential that the principles guiding the preservation and restoration of ancient buildings should be agreed and be laid down on an international basis, with each country being responsible for applying the plan within the framework of its own culture and traditions.

By defining these basic principles for the first time, the Athens Charter of 1931 contributed towards the development of an extensive international movement which has assumed concrete form in national documents, in the work of ICOM and UNESCO and in the establishment by the latter of the International Centre for the Study of the Preservation and the Restoration of Cultural Property. Increasing awareness and critical study have been brought to bear on problems which have continually become more complex and varied; now the time has come to examine the Charter afresh in order to make a thorough study of the principles involved and to enlarge its scope in a new document.

Accordingly, the IInd International Congress of Architects and Technicians of Historic Monuments, which met in Venice from May 25th to 31st 1964, approved the following text:

DEFINITIONS

- **Article 1.**

The concept of a historic monument embraces not only the single architectural work but also the urban or rural setting in which is found the evidence of a particular civilization, a significant development or a historic event. This applies not only to great works of art but also to more modest works of the past which have acquired cultural significance with the passing of time.

- **Article 2.**

The conservation and restoration of monuments must have recourse to all the sciences and techniques which can contribute to the study and safeguarding of the architectural heritage.

- **Article 3.**

The intention in conserving and restoring monuments is to safeguard them no less as works of art than as historical evidence.

CONSERVATION

- **Article 4.**

It is essential to the conservation of monuments that they be maintained on a permanent basis.

- **Article 5.**

The conservation of monuments is always facilitated by making use of them for some socially useful purpose. Such use is therefore desirable but it must not change the lay-out or decoration of the building. It is within these limits only that modifications demanded by a change of function should be envisaged and may be permitted.

- **Article 6.**

The conservation of a monument implies preserving a setting which is not out of scale. Wherever the traditional setting exists, it must be kept. No new construction, demolition or modification which would alter the relations of mass and colour must be allowed.

- **Article 7.**

A monument is inseparable from the history to which it bears witness and from the setting in which it occurs. The moving of all or part of a monument cannot be allowed except where the safeguarding of that monument demands it or where it is justified by national or international interest of paramount importance.

- **Article 8.**

Items of sculpture, painting or decoration which form an integral part of a monument may only be removed from it if this is the sole means of ensuring their preservation.

RESTORATION

- **Article 9.**

The process of restoration is a highly specialized operation. Its aim is to preserve and reveal the aesthetic and historic value of the monument and is based on respect for original material and authentic documents. It must stop at the point where conjecture begins, and in this case moreover any extra work which is indispensable must be distinct from the architectural composition and must bear a contemporary stamp. The restoration in any case must be preceded and followed by an archaeological and historical study of the monument.

- **Article 10.**

Where traditional techniques prove inadequate, the consolidation of a monument can be achieved by the use of any modern technique for conservation and construction, the efficacy of which has been shown by scientific data and proved by experience.

- **Article 11.**

The valid contributions of all periods to the building of a monument must be respected, since unity of style is not the aim of a restoration. When a building includes the superimposed work of different periods, the revealing of the underlying state can only be justified in exceptional circumstances and when what is removed is of little interest and the material which is brought to light is of great historical, archaeological or aesthetic value, and its state of preservation good enough to justify the action. Evaluation of the importance of the elements involved and the decision as to what may be destroyed cannot rest solely on the individual in charge of the work.

- **Article 12.**

Replacements of missing parts must integrate harmoniously with the whole, but at the same time must be distinguishable from the original so that restoration does not falsify the artistic or historic evidence.

- **Article 13.**

Additions cannot be allowed except in so far as they do not detract from the interesting parts of the building, its traditional setting, the balance of its composition and its relation with its surroundings.

HISTORIC SITES

- **Article 14.**

The sites of monuments must be the object of special care in order to safeguard their integrity and ensure that they are cleared and presented in a seemly manner. The work of conservation and restoration carried out in such places should be inspired by the principles set forth in the foregoing articles.

EXCAVATIONS

- **Article 15.**

Excavations should be carried out in accordance with scientific standards and the recommendation defining international principles to be applied in the case of archaeological excavation adopted by UNESCO in 1956. Ruins must be maintained and measures necessary

for the permanent conservation and protection of architectural features and of objects discovered must be taken. Furthermore, every means must be taken to facilitate the understanding of the monument and to reveal it without ever distorting its meaning. All reconstruction work should however be ruled out "a priori". Only anastylosis, that is to say, the reassembling of existing but dismembered parts can be permitted. The material used for integration should always be recognizable and its use should be the least that will ensure the conservation of a monument and the reinstatement of its form.

PUBLICATION

- **Article 16.**

In all works of preservation, restoration or excavation, there should always be precise documentation in the form of analytical and critical reports, illustrated with drawings and photographs. Every stage of the work of clearing, consolidation, rearrangement and integration, as well as technical and formal features identified during the course of the work, should be included. This record should be placed in the archives of a public institution and made available to research workers. It is recommended that the report should be published. The following persons took part in the work of the Committee for drafting the International Charter for the Conservation and Restoration of Monuments:

Piero Gazzola (Italy), Chairman

Raymond Lemaire (Belgium), Reporter

José Bassegoda-Nonell (Spain)

Luis Benavente (Portugal)

Djurdje Boskovic (Yugoslavia)

Hiroshi Daifuku (UNESCO)

P.L. de Vrieze (Netherlands)

Harald Langberg (Denmark)

Mario Matteucci (Italy)

Jean Merlet (France)

Carlos Flores Marini (Mexico)

Roberto Pane (Italy)

S.C.J. Pavel (Czechoslovakia)

Paul Philippot (ICCROM)

Victor Pimentel (Peru)

Harold Plenderleith (ICCROM)

Deoclecio Redig de Campos (Vatican)

Jean Sonnier (France)

Francois Sorlin (France)

Eustathios Stikas (Greece)

Gertrud Tripp (Austria)

Jan Zachwatowicz (Poland)

Mustafa S. Zbiss (Tunisia)

Annex 6: The Antiquities and Monuments Act **Cap 215**

Antiquities and Monuments Act, Cap 215

(Repealed by The National Museums and Heritage, Cap 6)



LAWS OF KENYA

The Antiquities and Monuments Act

Cap 215

Published by the National Council for Law Reporting
With the Authority of the Attorney-General

ANTIQUITIES AND MONUMENTS ACT

CHAPTER 215

ARRANGEMENT OF SECTIONS

PART I-PRELIMINARY

Section

- 1-Short title
- 2-Interpretation
- 3-Application

PART II-PROTECTIVE DECLARATIONS

- 4-Declaration of monuments, etc.

PART III-SEARCHES AND DISCOVERIES

- 5-Exploration licences

- 6-Conditions and form of exploration licence
- 7-Entry on to land under exploration licence
- 8-Notification of discovery otherwise than under exploration licence
- 9-Restriction on moving objects
- 10-Offences under Part III and penalties

PART IV-PROTECTED AREAS

- 11-Where protected are is Trust land.
- 12-Control of access, etc., to protected area
- 13-Compensation to owner of land
- 14-Offences under Part IV and penalties

PART V-MONUMENTS

- 15-Inspection and repair of monuments
- 16-Acquisition of monuments
- 17-Guardianship of monuments
- 18-Agreements for protection or preservation of monuments
- 19-Enforcement of agreements for protection or preservation of monuments
- 20-Compulsory purchase of monuments
- 21-Duties of authority to protect and maintain monuments
- 22-Power of authority to relinquish rights over monuments
- 23-Offences under Part V and penalties

PART VI-ANTIQUITIES AND PROTECTED OBJECTS

- 24-Antiquities property of Government
- 25-Information concerning antiquities and protected objects
- 26-Prohibition of removal of antiquities and protected objects
- 27-Prohibition of sale, etc., of antiquities and protected objects
- 28-Compulsory acquisition of antiquities and protected objects
- 29-Offences under Part VI and penalties

PART VII-EXPORT

- 30-Conditions relating to export
- 31-Notice of Minister to acquire by compulsory purchase
- 32-Export through Customs port of entry
- 33-Offences under Part VII and penalties

PART VIII-POWERS OF ENFORCEMENT

- 34-Power of authority to inspect and order cessation of work
- 35-Appointment of honorary antiquity wardens
- 36-Power of honorary antiquity wardens to inspect
- 37-Power of police and honorary antiquity wardens to arrest and search
- 38-Power of Customs officers
- 39-Forfeiture to Government after seizure
- 40-Notices
- 41-Offences under Part VIII and penalties

PART IX-MISCELLANEOUS

- 42-Burden of proof
- 43-Advisory Council
- 44-Exemption from stamp duty
- 45-Immunity from suit in certain cases
- 46-Rules

THE ANTIQUITIES AND MONUMENTS ACT

2 of 1983

Commencement Date: 1983-01-21

An Act of Parliament to provide for the preservation of antiquities and monuments

PART I-PRELIMINARY

Short title.

1. This Act may be cited as the Antiquities and Monuments Act.

Interpretation.

2. In this Act, except where the context otherwise requires -

“antiquity” means any movable object other than a book or document made in or imported into Kenya before the year 1895, or any human, faunal or floral remains of similar minimum age which may exist in Kenya;

“authority” means the National Museums Board and any other person or body of persons which may be authorized by the Minister to perform the duties of an authority under this Act;

“exploration licence” means an exploration licence issued by the Minister under section 5;

“export permit” means a permit to export a monument or part thereof, an antiquity, or a protected object, issued by the Minister under section 30;

“honorary antiquity warden” means a person appointed as such under section 35;

“maintenance” includes the fencing, covering in, repairing, restoring and cleansing of a monument or the fencing or covering of a protected area, and the doing of any act which may be necessary for the purpose of maintaining or protecting a monument or a protected area or of securing convenient access thereto;

“monument” means -

(a) an immovable structure built before the year 1895 other than an immovable structure which the Minister may by notice in the Gazette either specifically or by reference to all

immovable structures in a specified area declare not to be a monument for the purposes of this act;

(b) a rock-painting, carving or inscription made on an immovable surface before that year;

(c) an earthwork or other immovable object attributable to human activity constructed before that year;

(d) a place or immovable structure of any age which, being of historical, cultural, scientific, architectural, technological or other human interest, has been and remains declared by the Minister under section 4(1)(a) to be a monument.

and includes the site thereof and such adjoining land as may be required for maintenance thereof;

“National Museums Board” means the National Museums Board of Governors established under the National Museums Act;

“object of archaeological or palaeontological interest” means an antiquity which was in existence before the year 1800;

“object of historical interest” means an antiquity which came into existence in or after the year 1800;

“owner” includes a joint owner invested with powers of management on behalf of himself and other joint owners, and an agent or trustee exercising powers of management over a monument, and the successor in title of any such owner and the successor in office of any such agent or trustee; but nothing in this Act shall be deemed to extend the powers which may be lawfully exercised by the Joint owner, agent or trustee;

“permit” means a valid and subsisting permit issued by the Minister under the provisions of this Act;

“private land” means lands privately owned and land the subject of a grant, lease or licence from the Government, and includes Trust land;

“protected area” means a site on which a buried monument or object of archaeological or palaeontological interest exists or is believed to exist, and such adjoining land as may be required for maintenance thereof, which has been and remains declared by the Minister under section 4 (1) (b) to be protected area;

“protected object” means -

(a) a door or door-frame carved in an African or Oriental style before the year 1946;

(b) any other object or type of object, whether or not part of an immovable structure, which being of historical or cultural interest has been and remains declared by the Minister under section 4 (1) (c) to be a protected object.

Application.

3. The application of this Act shall extend to monuments and antiquities on the seabed within the territorial waters of Kenya.

PART II-PROTECTIVE DECLARATIONS

Declaration of monuments, etc.

4. The Minister may, by notice in the Gazette, declare -

(a) a specified place or immovable structure which he considers to be of historical interest, and a specified area of land under or adjoining it which is in his opinion required for maintenance thereof, to be a monument within the meaning of this Act; or

(b) a specified site on which a buried monument or object of archaeological or paleontological interest exists or is believed to exist, and a specified area of land adjoining it which is in his opinion required for maintenance thereof, to be a protected area within the meaning of this Act; or

(c) a specified object or type of object, whether or not part of an immovable structure, which he considers to be of historical or cultural interest, to be protected object within the meaning of this Act;

and the notice shall state that objections to a declaration thereby made shall be lodged with the Minister within one month from the date of publication of the notice.

(2) A copy of every notice published under subsection (1) shall, if referring to an immovable object or site, be posted by an authority forthwith in a conspicuous place on or near that object or site or on the area to which it relates, and if referring to a specified movable object, be delivered or sent by an authority forthwith to the person in whose possession that object is or is believed to be.

(3) On the expiration of the period of one month, the Minister, after considering the objections, if any, shall confirm or withdraw the notice.

(4) A notice published under this section shall be effectual for all purposes of this Act unless and until it is withdrawn.

(5) An object or area of land declared by or under the Preservation of Objects of Archaeological and Paleontological Interest Act (now repealed) to be a monument shall be deemed to be a monument or an antiquity or a protected area, as the case may be, within the meaning of this Act. Cap 251 (1962).

PART III-SEARCHES AND DISCOVERIES

Exploration licenses.

5. (1) Unless authorized by an exploration licence issued by the Minister, no person shall by means of excavation or surface operations search for a buried monument or buried part of a monument, or for a buried antiquity, whether or not in a protected area.

(2) The Minister shall, before issuing an exploration licence, satisfy himself that the applicant is competent by both training and experience to carry out an exploration or excavation in accordance with the most recent scientific methods, and that the application is recommended by an authority, and may require the applicant to satisfy him that he has the support, financial and otherwise, of an archaeological or scientific society or institution of repute.

(3) There shall be implied on the part of every person to whom an exploration licence issued under this section an undertaking that he, or the institution which he represents, will, at such intervals or within such period as may be specified by that licence, produce an adequate report or publication on the results of the exploration and excavation, and will deposit with the Minister two copies of the report or publication.

(4) An exploration licence may specify, in regard to the acts which it authorizes, such limitations and conditions as the Minister may consider necessary in order to protect a monument or antiquity from injury, removal or dispersion, or may authorize removal of finds to a place within Kenya, or temporarily to a place outside Kenya for the purpose only of special examination or preservative treatment, subject to such limitations and conditions as the Minister thinks fit.

Entry on to land under exploration licence.

7. (1) For the purposes of an exploration licence, the holder thereof may, under written warrant from the Minister, enter upon any area of land specified in the warrant, whether or not private land, and whether or not a protected area, and exercise there all rights conferred by the exploration licence, for such period and subject to such limitations and conditions as may be stated in the warrant.

(2) Where the holder of an exploration licence intends, pursuant to any warrant under subsection (1), to enter upon private land, he shall give not less than forty-eight hours' notice to the occupier, and if practicable to the owner of the land, and shall, if required by the owner or occupier, give security in such sum and by such means as the Minister may direct for meeting any compensation payable under subsection (3):

Provided that in the case of Trust land -

(i) service on the county council in which the land is vested of a written notice, specifying the exploration licence and the nature and duration of, and the land affected by, the warrant, shall be sufficient notice of all subsequent activities in accordance with the warrant and the exploration licence, both to the county council and to the residents for whose benefit the council holds the land; and

(ii) the rights of those residents to require security shall be exercisable by the county council.

(3) Whenever, in the course of operations carried on by the explorer, disturbance of the rights of the owner or occupier of private land, or damage to the land, or to crops, trees, buildings, stock or works therein or thereon, is caused, he shall be liable on demand to pay or make to

the owner or occupier such compensation as is fair and reasonable having regard to the extent of the disturbance or damage and to the interest of the owner or occupier in the land.

(4) If the holder of an exploration licence fails to pay or make compensation when demanded under subsection (3), or if an owner or occupier is dissatisfied with the amount or nature of any compensation offered to him thereunder, the owner or occupier may, within six months of the date on which the demand or offer is made, but not in any case later than two years after the occurrence of the disturbance or damage, take proceedings before a court of competent jurisdiction for the determination and recovery of the compensation (if any) properly to be paid or made under subsection (3).

(5) In the case of disturbance of the rights of occupiers of Trust land, or damage to any such land-

(a) an occupier who claims to be entitled to compensation under subsection (3) shall, within six months after the occurrence of the disturbance or damage, apply to the District Commissioner of the district in which the land is situated;

(b) the District Commissioner shall notify the explorer of the application and afford him a reasonable opportunity of being heard in relation thereto;

(c) if the District Commissioner is satisfied that the applicant is entitled to compensation, he shall make an award in his favour in accordance with subsection (3);

(d) the District Commissioner shall give notice in writing to the applicant and to the explorer of the award or of the rejection of the award;

(e) any such award shall be subject to review by a magistrate's court of the first class upon an application by either party filed within thirty days from notification of the award;

(f) a party to an appeal to the magistrate's court who is dissatisfied with the decision may, within thirty days of that decision, appeal to the High Court, whose decision shall be final;

(g) a sum payable under an award shall be deposited by the explorer with the District Commissioner upon the expiry of thirty days from notification of the award or from a final appeal decision, as the case may be;

(h) the District Commissioner shall be responsible for paying the compensation awarded to the person entitled thereto, and every such payment shall be made in a single payment;

(i) an award made under this subsection shall be enforceable as if it were a decree of a competent court.

Notification of discovery otherwise than under exploration licence.

8. (1) Where a person discovers a monument or object of archaeological or palaeontological interest he shall, without undue delay, give notice thereof, indicating the precise site and circumstances of the discovery, to an authority, and shall, if so instructed by that authority, deliver the object to the authority.

(2) Every authority shall from time to time, but at least once in every calendar year, notify the National Museums Board of any discovery of which it has received notice under this section, and the National Museums Board shall maintain a register of all such discoveries.

Restriction on moving objects.

9. No person shall move a monument or object of archaeological or palaeontological interest from the place where it has been discovered otherwise than in such manner and to such place as may be allowed or by written permit from the Minister.

Offences under Part III and penalties.

10. A person who -

(a) engages in a search contrary to section 5;

(b) being the holder of an exploration licence, fails to conform with any of his express or implied obligations under the licence;

(c) being the holder of a warrant issued under section 7, enters upon private land pursuant to the warrant without having given previous notice and such security, if any, as may have been directed in accordance with subsection (2) of that section; or

(d) fails to comply with the provisions of section 8 (1); or

(e) moves a monument or object of archaeological or palaeontological interest contrary to section 9,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both.

PART IV-PROTECTED AREAS

Where protected area is Trust land.

11. A protected area or part thereof which is an area of Trust land may be set aside as such in accordance with the provisions of section 118 of the Constitution.

Control of access, etc., to protected area.

12. The Minister may, in respect of a protected area, from time to time -

(a) by notice in the Gazette, prohibit or restrict access thereto, or any development thereof, or the use thereof for agriculture or livestock, or any other activity thereon which in his opinion is liable to damage a monument or object of archaeological or palaeontological interest therein;

(b) place the protected area under the control of the National Museums Board, on such terms and with and subject to such powers and duties as he may direct;

(c) take, or authorize the National Museums Board to take, such steps as are in his opinion necessary or desirable for the maintenance thereof;

(d) make, or authorize the National Museums Board to make, by-laws for controlling access thereto, with or without payment, and the conduct therein of visitors thereto.

Compensation to owner of land in protected area.

13. (1) Where private land is included in a protected area, and the development or other use of that land by the owner or occupier thereof is prohibited or restricted by the Minister, or, by reason of any steps taken by the Minister, or by the National Museums Board with the authority of the Minister, on or in relation to the private land, the rights of the owner or occupier are disturbed in any way, or damage to the land, or to crops, trees, buildings, stock or works therein or thereon is caused, the Government shall on demand pay or make to the owner or occupier such compensation as is fair and reasonable having regard to the extent of the prohibition, restriction, disturbance or damage and to the interest of the owner or occupier in the land.

(2) The provisions of subsections (4) and (5) of section 7 shall apply mutatis mutandis to a claim for compensation under this section.

Offences under Part IV and penalties.

14. A person who -

(a) enters upon a protected area or does therein any act or thing contrary to a prohibition or restriction of which notice has been given by the Minister under paragraph (a) of section 12; or

(b) commits a breach of any by-law made by the Minister or by the National Museums Board under paragraph (d) of section 12,

shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding three months or to both.

PART V-MONUMENTS

Inspection and repair of monuments.

15. An honorary antiquity warden, or any other person authorized in writing by an authority, may at any reasonable time -

(a) enter and inspect a monument; or

(b) make photographs, measurements, drawings or other records of particulars of a monument; or

(c) carry out, at the expense of an authority requiring them, repairs to a monument; but where a monument is inhabited, not less than one month's previous notice in writing shall be given to the occupier of the intention to carry out repairs thereto.

Acquisition of monuments.

16. The Government or, with the sanction of the Minister, the National Museums Board, may purchase or take a lease or accept a gift or bequest of a monument.

Guardianship of monuments.

17. (1) The owner of a monument may, by written instrument, constitute an authority the guardian of the monument, if the authority and the Minister agree; and the Minister shall so constitute an authority the guardian of any monument which is the property of the Government or has no apparent owner.

(2) An instrument which constitutes an authority the guardian of a monument shall provide for the matters mentioned in section 18 (2) as if it were an agreement under that section.

(3) The owner of a monument of which an authority has been constituted guardian shall, except as expressly provided by this Act, continue to have the same estate, right, title and interest in and to the monument as theretofore.

Agreements for protection or preservation of monuments.

18. (1) An authority may, with the sanction of the Minister, enter into a written agreement with the owner of a monument and any other person or persons for the protection or preservation of the monument.

(2) An agreement under this section may provide for all or any of the following matters -

(a) the maintenance of the monument;

(b) the custody of the monument and the duties of any person who may be employed in connection there with;

(c) the occupation or use of the monument by the owner or otherwise;

(d) the restriction of the right of the owner or occupier to build or to do other acts or things on or near the site of the monument;

(e) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the authority to inspect or to maintain the monument;

(f) the notice to be given to the authority in case the owner intends to offer the land on which the monument is situated for sale, lease or other disposal thereof, and the right to be reserved to the authority to have first refusal of any such sale, lease or other disposal;

(g) the payment of any expenses incurred by the owner or by the authority in connection with maintenance of the monument;

(h) the removal of the monument or any part thereof, subject to the provisions of this Act, to a place of safe custody;

(i) any other matter connected with the protection or preservation of the monument which is a proper subject of agreement between the owner and the authority;

(j) the duration of the agreement, with provision for earlier termination thereof by any party thereto; and

(k) the procedure relating to the settlement of any dispute arising out of the agreement.

(3) The terms of an agreement under this section may be altered from time to time with the sanction of the Minister and the consent of all parties thereto.

(4) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates through or under a party by whom or on whose behalf the agreement was executed.

(5) Any rights acquired by the authority or by the owner in respect of expenses incurred in maintenance shall not be affected by the termination of an agreement under this section.

Enforcement of agreements for protection of monuments.

19. (1) if the owner or any other person who is bound by the terms of an instrument which constitutes an authority of monuments, guardian of a monument under section 17 or of an agreement for the protection and preservation of a monument under section 18 refuses to do an act which is in the opinion on the authority concerned both necessary for the protection, preservation or maintenance of the monument and the responsibility of the owner or other person in accordance with the terms of the instrument or agreement, or neglects to do the act within such reasonable time as may be fixed by the authority, the authority may authorize any person to do that act, and the expense thereof, if and so far as it is established to have been the responsibility of the owner or other person, shall be recoverable from him.

(2) If an authority establishes that the owner or occupier of a monument which is the subject of any such instrument or agreement intends to build or to do any other act or thing in contravention of the terms of the instrument or agreement, the High Court may grant an injunction to restrain that building or other act or thing.

Compulsory purchase of monuments.

20. If the Minister apprehends that a monument is in danger of being destroyed, injured or allowed to fall into decay, he may acquire the monument by way of compulsory purchase under the provisions of the Land Acquisition Act (Cap. 295);

but that power shall not be exercised -

(a) in the case of a monument which, or any part of which, is periodically used for religious observances;

(b) so long as the monument is under the guardianship of an authority as provided by section 17 or the subject of an agreement for its protection and preservation as provided by section 18;

(c) if the owner of the monument is willing to constitute an authority guardian thereof as provided by section 17 or to enter into an agreement for its protection as provided by section 18, or to give, sell or lease it to the Government or the National Museums Board on acceptable terms, and has executed the necessary instrument or agreement for that purpose within two months after being invited so to do.

Duties of authority to protect and maintain monuments.

21. (1) A monument which is for the time being owned by the National Museums Board or by another authority, or under the guardianship of an authority as provided by section 17, or the subject of an agreement for protection or preservation as provided by section 18, shall be properly maintained by that authority, except so far as its maintenance is the responsibility of the owner of the monument or of any other person.

(2) The authority shall enforce all obligations of the owner of the monument or of any other person to maintain it.

(3) When any such monument or any part thereof is used periodically for religious observances, the authority shall make due provision for the protection of the monument from pollution or desecration -

(a) by prohibiting entry therein, except in accordance with by-laws made with the concurrence of the persons in religious charge of the monument or part thereof, of any person not entitled so to enter by the religious usages of the sect or community by which the monument or part thereof is used; or

(b) by taking such other action as the authority may think necessary in that behalf.

(4) Subject only to any by-laws made under subsection (3) in respect of a monument or part thereof used for religious observances, and to the terms of any instrument whereby an authority has been constituted guardian or of any agreement for protection or preservation of a monument, the public shall have right of access to a monument referred to in subsection (1) on such conditions as regards payment, if any, and otherwise as the Minister may from time to time approve.

Power of authority to relinquish rights over monuments.

22. Subject to the sanction of the Minister, and to the conditions of any instrument or other transaction, an authority may -

(a) where rights have been acquired by it in respect of a monument by virtue of a sale, lease, gift or bequest, relinquish, those rights in favour of the person who would for the time being be the owner of the monument if those rights had not been acquired; or

(b) relinquish any guardianship which the authority has accepted under the provisions of this Act.

Offences under Part V and penalties.

23. A person who -

(a) destroys, removes, injures, alters or defaces or does any act that imperils the preservation of a monument;

(b) obstructs the exercise by an honorary antiquity warden or other duly authorized person of any of the powers conferred by section 15; or

(c) commits a breach of any by-law regulating the entry of persons into a monument which is used for religious observances, or of any other condition of access to a monument,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both, and on conviction of an offence against paragraph (a) may be ordered by the convicting court to pay to an authority for the purpose of making good any damage caused by that offence such sum of money as may be found by that court to be necessary to defray the cost thereof.

PART VI-ANTIQUITIES AND PROTECTED OBJECTS

Antiquities property of Government.

24. All antiquities which are lying in or under the ground, or on the surface of any land already protected under any law as a monument or National Park at the commencement of this Act, or being objects of archaeological or palaeontological interest are first discovered in a part of Kenya after the commencement of this Act, shall be the property of the Government.

(2) The Minister may, on behalf of the Government, disclaim in writing the ownership of any such antiquity.

Information concerning antiquities and protected objects.

25. (1) A person shall, if so required in writing by an authority, 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 knows or has reason to believe to be antiquities or protected objects.

(2) Every authority shall from time to time, but at least once in every year, notify the National Museums Board of all antiquities and protected objects of which the authority has been furnished with particulars, and the National Museums Board shall maintain a register of all such antiquities and protected objects.

Prohibition of removal of antiquities and protected objects.

26. The Minister may, by notice in the Gazette, prohibit removal, without permit from the Minister, of a specified antiquity or protected object, or of a specified class or type thereof respectively, from the place where the antiquity or protected object or class or type thereof is then situated.

Prohibition of sale, etc., of antiquities and protected objects.

27. (1) No person shall, without a permit from the Minister, sell or otherwise part with ownership or possession of a protected object.

(2) No person shall buy or take by way of exchange an antiquity unless he has been licensed by the Minister to deal in antiquities.

(3) No person shall sell or give by way of exchange an antiquity to a person who has not been licensed by the Minister to deal in antiquities.

(4) The provisions of this section shall not apply to acquisition by the Government or by the National Museums Board of a protected object or antiquity by way of sale, exchange, gift, bequest or loan.

Compulsory acquisition of antiquities and protected objects.

28. (1) If the Minister considers that an antiquity or protected object is in danger of being destroyed, injured or allowed to fall into decay, or of being unlawfully removed, he may acquire the antiquity or protected object by way of compulsory purchase, on the grounds that acquisition is necessary in the interests of the utilization of the antiquity or protected object by preservation and display for the public benefit, subject to the prompt payment of full compensation as provided by section 75 of the Constitution:

(2) The power of compulsory acquisition under subsection (1) shall not be exercised if the owner of the antiquity or protected object is willing to deposit it with the National Museums Board by way of loan either permanently or for such period as the Minister deems necessary, and has executed the necessary agreement for that purpose within one month after being invited so to do.

Offences under Part VI and penalties.

29. A person who -

(a) without just cause fails to furnish an authority with full particulars of all objects in his possession which he knows or believes to be antiquities or protected objects, after being required in writing by the authority so to do within the period lawfully specified by the notice, as provided by section 25 (1); or

(b) wilfully destroys or damages an antiquity or protected object; or

(c) removes an antiquity or protected object contrary to section 26; or

(d) sells or otherwise parts with ownership or possession of a protected object, or sells or buys or gives or takes by way of exchange an antiquity, contrary to section 27,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both.

PART VII-EXPORT

Conditions relating to export.

30. (1) No monument or part thereof or antiquity or protected object may be removed from Kenya unless its removal has been authorized by an exploration licence, or by an export permit issued by the Minister under this section on the recommendation of an authority.

(2) An application for an export permit shall be made in writing to the Minister, and shall contain a full description of the monument or part thereof, or antiquity or protected object in respect of which it is made, the reason for the proposed removal, the place to which and the persons into whose care it is to be removed, and such further information as may be prescribed.

(3) Before issuing an export permit the Minister may cause an inspection to be made, and the monument, antiquity or protected object to be sealed or placed in the custody of an authority.

(4) The Minister may issue an export permit subject to such terms and conditions as he may deem fit, or may, without assigning any reason, refuse to issue any export permit in respect of a specified monument or part thereof, an antiquity, or a protected object.

(5) An export permit -

(a) may in particular be made subject to all or any of the conditions that -

(i) the subject-matter thereof shall be deposited in a specified place and in the care of specified persons;

(ii) the subject-matter thereof shall be returned to Kenya within a specified period;

(iii) a specified portion of the subject-matter thereof shall be surrendered to the Government or to the National Museums Board, or be deposited with the National Museums Board by way of loan permanently or for a specified period;

(b) shall be in the prescribed form.

Notice to Minister to acquire by compulsory purchase.

31. (1) In the event of the Minister refusing to issue an export permit for an object of historical interest, or imposing conditions which the owner does not accept, the owner may by written notice at any time thereafter require him, as an alternative to issuing an export licence, to acquire the object by way of compulsory purchase as provided by section 20.

(2) The Minister shall, within one month after the receipt by him of a notice under this section, either grant an unconditional export licence in respect of the object or proceed without undue delay to acquire it by way of compulsory purchase.

Export through Customs port of entry.

32. No monument or part thereof or antiquity or protected object shall be removed from Kenya otherwise than through a Customs port of entry; and the relevant export licence, or a copy of the relevant exploration licence certified by or on behalf of the Minister, shall be surrendered to a Customs officer before removal from Kenya is effected or allowed.

Offences under Part VII and penalties.

33. A person who -

(a) removes a monument or part thereof, an antiquity, or a protected object, from Kenya contrary to section 30 or section 32; or

(b) fails to comply with any of the terms or conditions of an export permit; or

(c) obtains an export permit by an application containing information which he knows to be false or incomplete in any material particular,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both.

Power of authority to inspect and order cessation or work.

34. (1) The authorized representative of an authority may at any time inspect work being done in connection with a monument or object of archaeological or palaeontological interest, and may for that purpose without warrant enter any premises, and may order the cessation of any such work pending further order from the Minister.

(2) The authority shall forthwith report to the Minister any such order for cessation of work and the reasons for the order.

Appointment of honorary antiquity wardens.

35. The Minister may appoint persons recommended by an authority to be honorary antiquity wardens for the purpose of enforcing this Act.

Power of honorary antiquity wardens to inspect.

36. An honorary antiquity warden may at any reasonable time inspect an antiquity or protected object which is the subject of a notice under section 26, and may for that purpose without warrant enter premises where the antiquity or protected object is or should be, and require the production of the antiquity or protected object or information as to its whereabouts.

Power of police and honorary antiquity wardens to arrest and search.

37. A police officer or honorary antiquity warden may -

(a) require any person who he has reason to believe has committed an offence against his Act to supply his name and address and reasonable evidence of his identity, and may without warrant arrest a person who refuses to comply with those requirements;

(b) at any time without warrant search any person or the premises occupied by any person whom he reasonably suspects of having acquired ownership or possession of a protected object, or of having bought or taken by way of exchange an antiquity, contrary to section 27, and seize anything which has been so acquired, bought or taken by way of exchange, together with any container thereof.

Power of Customs officers.

38. A Customs officer may at any time without warrant search anything intended to be removed from Kenya, or any person intending to leave Kenya, if he reasonably suspects that thing or person of containing or carrying a monument or art thereof, or an antiquity or protected object, and seize anything which he believes to be a monument or part thereof or antiquity or protected object that is in process of being removed from Kenya contrary to section 30 or section 32, together with any container thereof.

Forfeiture to Government

39. (1) Anything seized under section 37 or section 38 shall as soon as possible be taken before a magistrate who -

(a) in respect of seizure under section 37, shall order forfeiture to the Government of the thing seized together with any container thereof if it is established that the thing seized is a protected object the ownership or possession of which has been acquired, or an antiquity that has been bought or taken by way of exchange, contrary to section 27;

(b) in respect of seizure under section 38, shall order forfeiture to the Government of the thing seized together with any container thereof if it is established that the thing seized is a monument or part thereof or antiquity or protected object that was in process of being removed from Kenya contrary to section 30 or section 32,

whether or not he also convicts any person of an offence against this Act in relation to the same thing and imposes on that person any other penalty.

(2) Anything forfeited to the Government under subsection (1) shall, unless the Minister sees fit to restore it to its owner, be deposited with the National Museums Board.

Notices.

40. An authority may attach to or erect on a monument or protected area such notice or notices as it deems necessary for the better protection of the monument or protected area.

Offences under Part VIII and penalties.

41. A person who -

(a) obstructs an authorized representative of an authority, police officer, honorary antiquity warden, or Customs officer, in the exercise of his powers or duties under this Act; or

(b) fails without reasonable cause to comply with a lawful order or requirement of an authorized representative of an authority, police officer, honorary antiquity warden, or Customs officer, under this Act; or

(c) destroys, removes or damages a notice attached or erected by an authority in exercise of the power conferred by section 40,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both.

PART IX-GENERAL

Burden of proof.

42. In any proceedings under this Act, where the Minister has certified in writing that in his opinion, on the advice of an authority, a thing is a monument or object of archaeological or palaeontological interest or object of historical interest or protected object, as the case may be, the burden of proof shall lie upon any person who asserts the contrary.

Advisory Council.

43. The Minister shall appoint an Advisory Council, of which all the members shall be appointed by name and not by office, to advise him on matters relating to this Act.

Exemption from stamp duty.

44. An instrument or agreement executed under section 17 or section 18 shall be exempt from stamp duty.

Immunity from suit in certain cases.

45. No suit for compensation, except as expressly provided by this Act, shall lie against the Minister or a public servant, authority, authorized representative of an authority or honorary antiquity warden in respect of an act done in good faith in the exercise of a power or duty under this Act.

Rules.

46. The Minister may make rules for carrying out any of the purposes of this Act, and without prejudice the generality of the foregoing for all or any of the following purposes -

(a) prescribing the forms of, and conditions to be implied in export permits;

(b) controlling access to monuments or to protected areas;

(c) prescribing the fees to be charged for access to monuments or to protected areas;

(d) regulating the management of a protected area;

- (e) controlling the reproduction of objects of archaeological or palaeontological interest;
- (f) licensing dealers in antiquities;
- (g) prescribing the composition, terms of reference and procedure of the Advisory Council;
- (h) prescribing penalties for breach of any such rules.

SUBSIDIARY LEGISLATION

Declaration under section 4

G.N. 1116/1983

L.N. 224/1983

MONUMENTS

SHAKA

All that area of land known as Shaka situated three kilometers south-east of Kipini in Tana River District, Coast Province, the boundary of which is defined on three sides by cut lines and on the fourth side by the high water mark and marked by concrete beacons at the corners: the north side cut line being 821.92 metres at a bearing 98.15°; the east side cut line being 302.62 metres at a bearing of 183.50 °; the south side being the shoreline and the west side cut line being 261.71 metres at a bearing of 004 °.

KWA WANAWALI SABA

All that area of land known as Kwa Wanawali Saba situated seven kilometers south-east of Kipini in Tana River District, Coast Province, the boundary of which is defined on three sides by cut lines and on the fourth side by the high water mark and marked by concrete beacons at the corners: the north side cut line being 1,225.35 metres at a bearing of 068 °; the east side cut line being 348.35 metres long at a bearing of 171 °; the south side being the shoreline and the west side being, 541.10 metres at a bearing of 356 °.

KWA WA UNGWANA WA MASHAA

All that area of land known as Kwa Wa Ungwana Wa Mashaa situated two kilometers south-east of Kipini in Tana River District, Coast Province, the boundary of which is defined by four cut lines and marked at the corners by concrete beacons: the north side cut line being 666.10 metres long at a bearing of 118 °; the east side cut line being 437.30 metres long at a bearing of 194 °; the south side cut line being 1,251.95 metres long at a bearing of 280 ° and the west side cut line being 939.00 metres at a bearing of 57 °.

CONFIRMATION OF A MONUMENT

IN EXERCISE of powers conferred by section 4(3) of the Antiquities and Monuments Act, the Minister for heritage and sports confirms the area of land set out in the Schedule, as a monument within the meaning of the Act.

SCHEDULE

All that area of forest land on L.R. No. 209/6559/6 measuring approximately 29.74 hectares known as City Park in Nairobi Province.

Annex 7: The Law N° 2016-925 of 7 July 2016 relative à la liberté de la création, à l'architecture et au patrimoine (1)

Loi n° 2016-925 du 7 juillet 2016 relative à la liberté de la création, à l'architecture et au patrimoine (1)

Titre II : DISPOSITIONS RELATIVES AU PATRIMOINE CULTUREL ET A LA PROMOTION DE L'ARCHITECTURE

Chapitre II : Réformer le régime juridique des biens archéologiques et des instruments de la politique scientifique archéologique

Article 70

« Chapitre I^{er} « Régime de propriété du patrimoine archéologique

« Section 1 « Biens archéologiques immobiliers

« Art. L. 541-1.-Les dispositions de l'article 552 du code civil relatives aux droits du propriétaire du sol ne sont pas applicables aux biens archéologiques immobiliers mis au jour à la suite d'opérations archéologiques ou de découvertes fortuites réalisées sur des terrains dont la propriété a été acquise après la publication de la loi n° 2001-44 du 17 janvier 2001 relative à l'archéologie préventive. Ces biens archéologiques immobiliers appartiennent à l'Etat dès leur mise au jour à la suite d'opérations archéologiques ou en cas de

découverte fortuite.

« L'Etat verse au propriétaire du fonds où est situé le bien une indemnité destinée à compenser le dommage qui peut lui être occasionné pour accéder audit bien. A défaut d'accord amiable sur le montant de l'indemnité, celle-ci est fixée par le juge judiciaire.

« Art. L. 541-2.-Lorsque les biens archéologiques immobiliers sont mis au jour sur des terrains dont la propriété a été acquise avant la promulgation de la loi n° 2001-44 du 17 janvier 2001 relative à l'archéologie préventive, l'autorité administrative statue sur les mesures définitives à prendre à l'égard de ces biens. Elle peut, à cet effet, ouvrir pour ces biens une instance de classement en application de l'article L. 621-7.

« Art. L. 541-3.-Lorsque le bien est découvert fortuitement et qu'il donne lieu à une exploitation, la personne qui assure cette exploitation verse à l'inventeur une indemnité forfaitaire ou, à défaut, intéresse ce dernier au résultat de l'exploitation du bien. L'indemnité forfaitaire et l'intéressement sont calculés en relation avec l'intérêt archéologique de la découverte.

« Section 2

« Biens archéologiques mobiliers
 « Sous-section 1
 « Propriété
 « Art. L. 541-4.-Les articles 552 et 716 du code civil ne sont pas applicables aux biens archéologiques mobiliers mis au jour à la suite d'opérations de fouilles archéologiques ou de découvertes fortuites réalisées sur des terrains dont la propriété a été acquise après la date d'entrée en vigueur de la loi n° 2016-925 du 7 juillet 2016 relative à la liberté de la création, à l'architecture et au patrimoine. Ces biens archéologiques mobiliers sont présumés appartenir à l'Etat dès leur mise au jour au cours d'une opération archéologique et, en cas de découverte fortuite, à compter de la reconnaissance de l'intérêt scientifique justifiant leur conservation.
 « Lors de la déclaration de la découverte fortuite qu'elle doit faire en application de l'article L. 531-14 du présent code, la personne déclarante est informée, par les services de l'Etat chargés de l'archéologie, de la procédure de reconnaissance de l'intérêt scientifique de l'objet susceptible d'être engagée. L'objet est placé sous la garde des services de l'Etat jusqu'à l'issue de la procédure.
 « La reconnaissance de l'intérêt scientifique de l'objet est constatée par un acte de l'autorité administrative, pris sur avis d'une commission d'experts scientifiques.

L'autorité administrative se prononce au plus tard cinq ans après la déclaration de la découverte fortuite. La reconnaissance de l'intérêt scientifique de l'objet emporte son appropriation publique. Cette appropriation peut être contestée pour défaut d'intérêt scientifique de l'objet devant le juge administratif dans les délais réglementaires courant à compter de l'acte de reconnaissance.

« Quel que soit le mode de découverte de l'objet, sa propriété publique, lorsqu'elle a été reconnue, peut être à tout moment contestée devant le juge judiciaire par la preuve d'un titre de propriété antérieur à la découverte.

« Art. L. 541-5.-Les biens archéologiques mobiliers mis au jour sur des terrains acquis avant la date d'entrée en vigueur de la loi n° 2016-925 du 7 juillet 2016 relative à la liberté de la création, à l'architecture et au patrimoine sont confiés, dans l'intérêt public, aux services de l'Etat chargés de l'archéologie pendant le délai nécessaire à leur étude scientifique, dont le terme ne peut excéder cinq ans.

« L'Etat notifie leurs droits au propriétaire du terrain et, en cas de découverte fortuite, à l'inventeur. Si, à l'issue d'un délai d'un an à compter de cette notification, le propriétaire et, en cas de découverte fortuite, l'inventeur n'ont pas fait valoir leurs droits, une nouvelle notification leur

est adressée dans les mêmes formes.

« Si, à l'issue d'un délai d'un an à compter de cette nouvelle notification, le propriétaire et, en cas de découverte fortuite, l'inventeur n'ont pas fait valoir leurs droits, la propriété des biens archéologiques mobiliers mis au jour est transférée à titre gratuit à l'Etat.

« Chacune des notifications adressées au propriétaire et, le cas échéant, à l'inventeur comporte la mention du délai dont il dispose pour faire valoir ses droits et précise les conséquences juridiques qui s'attachent à son inaction dans ce délai.

« Lorsque seul l'un des deux a fait valoir ses droits, les biens archéologiques mobiliers sont partagés entre l'Etat et celui-ci, selon les règles de droit commun.

« Les biens qui sont restitués à leur propriétaire à l'issue de leur étude scientifique peuvent faire l'objet de prescriptions destinées à assurer leur bonne conservation et leur accès par les services de l'Etat. Les sujétions anormales qui peuvent en résulter sont compensées par une indemnité. A défaut d'accord amiable, l'action en indemnité est portée devant le juge judiciaire.

« Sous-section 2

« Ensemble archéologique mobilier et aliénation des biens mobiliers

« Art. L. 541-6.-Lorsque les biens archéologiques mobiliers mis au jour constituent un ensemble cohérent dont

l'intérêt scientifique justifie la conservation dans son intégrité, l'autorité administrative reconnaît celui-ci comme tel. Cette reconnaissance est notifiée au propriétaire.

« Toute aliénation à titre onéreux ou gratuit d'un bien archéologique mobilier ou d'un ensemble n'appartenant pas à l'Etat reconnu comme cohérent sur le plan scientifique en application du premier alinéa, ainsi que toute division par lot ou pièce d'un tel ensemble, est soumise à déclaration préalable auprès des services de l'Etat chargés de l'archéologie.

« Section 3

« Transfert et droit de revendication

« Art. L. 541-7.-L'Etat peut transférer à titre gratuit la propriété des biens archéologiques mobiliers lui appartenant à toute personne publique qui s'engage à en assurer la conservation et l'accessibilité sous le contrôle scientifique et technique des services chargés de l'archéologie.

« Art. L. 541-8.-L'Etat peut revendiquer, dans l'intérêt public, pour son propre compte ou pour le compte de toute personne publique qui en fait la demande, la propriété des biens archéologiques mobiliers, moyennant une indemnité fixée à l'amiable ou à dire d'expert désigné conjointement.

« A défaut d'accord sur la désignation de l'expert, celui-ci est nommé par le juge judiciaire.

« A défaut d'accord sur le montant de l'indemnité, celle-ci est fixée par le juge

judiciaire.

« Art. L. 541-9.-Les modalités d'application du présent chapitre sont fixées par décret en Conseil d'Etat. » ;

18° La section 1 du chapitre IV du titre IV est complétée par un article L. 544-4-1 ainsi rédigé :

« Art. L. 544-4-1.-Est puni de 3 750 € d'amende le fait, pour toute personne, d'aliéner un bien archéologique mobilier ou de diviser ou aliéner par lot ou pièce un ensemble de biens archéologiques mobiliers reconnu comme cohérent sur le plan scientifique sans avoir préalablement établi la déclaration mentionnée à l'article L. 541-6. »

II.-Dans un délai de cinq ans à compter de la promulgation de la présente loi, le Gouvernement conduit une évaluation des conséquences de la reconnaissance de l'appartenance à l'Etat des biens archéologiques mobiliers, découverts fortuitement et ayant un intérêt scientifique justifiant leur conservation ainsi que sur le nombre de biens découverts fortuitement et déclarés à l'Etat. Cette évaluation est rendue publique, au plus tard, un an après son début.

ECOLE DOCTORALE SCIENCES SOCIALES ET HUMANITES - ED 418

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Cover photos : From top right, Excavation at Le Centquatre Paris, photo courtesy Alexandre Godard, INRAP; top inset right, the Mombasa-Nairobi Standard Gauge Railway (SGR) passing through Nairobi National Park, photo courtesy Lucas L.W. Bwire; top inset left, Turkana Locals (Ekiru Ewaton and his wife Esekon Lowa) at the artistic impression of the Turkana Boy, photo courtesy Jared Nyataya, Nation Media Group. Bottom inset right, diagnostic excavation in May 2017 at Haut-Mocau, Mont-de-Mansin France, INRAP; bottom inset left, Thimlich Ohinga World Archaeological site; bottom, Fort Jesus World Heritage site museum, photos courtesy Lucas L.W. Bwire.