

A CRITICAL ANALYSIS OF LEGAL AND INSTITUTIONAL FRAMEWORKS OF HERITAGE MANAGEMENT IN ETHIOPIA

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Abstract

Ethiopia is a multinational state rich in unique historical, cultural and natural heritages. So far, eleven of tangible and intangible heritages have been registered as world heritage sites by United Nations Educational, Scientific, and Cultural Organization (UNESCO). The recognition helps build the image of the nation thereby to enhance the development of the tourism industry. These heritages have scientific, aesthetic and environmental values which contribute to the overall sustainable development of the country. However, the benefit that Ethiopia accrues from its heritages could be limited unless proper legal and institutional frameworks that ensure adequate heritage management are in place. The purpose of this article is, thus, to critically analyze the extent to which the existing legal and institutional frameworks designed for heritage management in Ethiopia provide adequate protection for the heritages. The article relied on a review of relevant literature and international best practices designed to protect heritages from potential and actual threat through a scheme that ensures effective management system. This article found out the legal and institutional frameworks that are designed to regulate the management of heritages in Ethiopia are inadequate as examined in light of the international standards and best practices. The article argues that such flouting regime of heritage laws and institutions has contributed to heritage damages, misuse and proliferation of crimes against same. It is concluded that, with some of the recent developments, Ethiopian legislations and institutions that are established to manage natural and intangible heritages should be revisited to conform to the international instruments in order to provide adequate protection to all Ethiopian heritages.

Keywords: heritage, management, heritage law, institutional framework, international standards, Ethiopia

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INTRODUCTION

International conventions and national laws have now established that heritage is a crucial public good that can exist in material, natural or cultural forms with universal values from a historical, anthropological, aesthetic or scientific point of view.¹ In many countries, in addition to their scientific, educational, and cultural values, heritages have proved to be essential for tourist attraction, and employment opportunities.² The optimization of these benefits of heritage demands effective heritage management which is manifested by strong legal and institutional frameworks enforced in a country. As heritages are the paw marks of past generation, the current generation has to manage these universal values to the benefit of the generation to come through proper identification, conservation, promotion and rational use. The issue of heritage management is particularly relevant to Ethiopia as a multinational state rich in unique historical, cultural and natural heritages.³ So far, eleven tangible and intangible heritages have been registered as a world heritage by United Nations Educational, Scientific, and Cultural Organization (UNESCO), which attests their outstanding universal value but at the same time demanding a more improved heritage management in a country.⁴ In recent times, Ethiopia has been praised for its outstanding natural beauty, breathtaking landscapes and ancient culture for which it becomes one of the world best tourist destinations for the year 2015.⁵

In contrast to this potential, the country's use of its heritages in the past suffered from inadequacy of legal and institutional frameworks that suit the specific nature of heritage management.⁶ With the advent of new domestic laws including the constitution, the signing of international heritage treaties and the establishment of a particular institution since 1995 have

¹ Webber Nodoro, *The Legal Definition of Heritage*, in *CULTURAL HERITAGE AND THE LAW: PROTECTING IMMOVABLE HERITAGES IN ENGLISH SPEAKING SUB-SAHARAN AFRICAN STATES* 25-36 (Webber Page ed., 2008).

² *Id.*

³ Millennium Development Goal Achievement Fund, "Harnessing Diversity for Sustainable Development and Social Change: Ethiopia" 2 (Final MDG-F Joint Programme Narrative Report, 2013).

⁴ Until 2015, the World Heritage Committee—a Committee within UNESCO system responsible for cataloguing and protecting world heritage sites, inscribed eleven of Ethiopian Heritages with outstanding values in cooperation with the State and experts.

⁵ It is declared by the European Council on Tourism and Trade, a leading world and regional tourism organization. The Council has acclaimed the efforts of the Ethiopian government to use tourism as a tool for poverty eradication and create an exemplary institution known as 'Tourism Transformation Council' to properly handle the promotion and management of Ethiopian tourism. See Sophie Eastaugh, "Can You Guess the World's Top Tourism Destination?" (CNN International Edition, July 17, 2015).

⁶ Yabibal Mulualem, *Tourist Flows and Its Determinants in Ethiopia* 1 (June 1, 2010) (Unpublished Manuscript) (On file with the author).

addressed some of the basic issues regarding heritage management. However, a close investigation of the legal and institutional frameworks still reveals that it is inadequate when seen in the light of the international instruments and as compared to the practice of heritage endowed nations.⁷ Absence of an ingenious heritage management has long affected the development of history, identity, science and anthropological values in the country.

According to the Millennium Development Goal (MDG) Achievement Fund report, animal and plant species are massively extricated from earth. News on the demolition, destruction and burning of historical monuments, books and inscriptions is regularly heard. Many rivers, lakes and springs are endangered.⁸ The same source also revealed that heritage related crimes such as looting, arson, illegal trading and trafficking, to mention just a few are widely committed even by foreign visitors and religious leaders. Many of our important heritage sites with outstanding values are not enclosed as protected areas and many others are under private possession where heritages are damaged even innocently. Some of the UNESCO registered World Heritage Sites such as the “Simien National Park” are red listed to be annulled if improvements are not made.⁹ Awareness on heritage and heritage management is low as it is only very recently that Ethiopian Universities began to train professionals in the field with in the program “History and Heritage Management’ at the undergraduate level and recently at MA level. Because of limited promotion and flawed interpretation of heritages, the benefit from the tourism sector is found to be insignificant as compared to other African countries.¹⁰ Because of these gaps in the heritage management practices of Ethiopia, the irreplaceable universal values are mislaid and demolished.

In view of the above considerations, it is imperative that academicians and non-governmental organizations as stakeholders are required to gear their efforts to improve the management of these heritages by lobbying the government to improve the legal and institutional frameworks. This should start with re-examination of the existing legal and institutional frameworks of heritage management in the country. This article is meant to provide an analytical insight into the legal and institutional frameworks enacted to the use, protection, conservation and promotion of heritages in Ethiopia. It particularly aims to analyze the extent to which the existing legal frameworks provide protection for heritages and to identify the gaps observed in the area. The

⁷ *Supra* note 3.

⁸ *Id.*

⁹ See generally, Greta Francesca Iori, Analysis of the Current Status of the Simien Mountains in Ethiopia: Managing the Paradox Between Community-Based Tourism, Natural Conservation and National Parks 5 (BSc. Thesis, Breda University of Applied Sciences, 2012), The Simien Mountains National Park is inscribed on the World Heritage List in 1978 on the basis of its importance for biodiversity and its exceptional natural beauty. However, with the then civil war and continued unsuccessful management practices, the World Heritage Committee at its 20th session decided to inscribe the property on the List of World Heritage in Danger. Even if measures were taken to address and examine the threats for which the management of the park was improving, the results on the ground were not yet sufficient to consider the property out of danger until now.

¹⁰ *Supra* note 6.

Article relied on a review of relevant literatures, previous legislations and international practices that are designed for the proper use, conservation and protection of heritages.

Accordingly, the first part provides definition, types and use of heritages in light of international conventions and national laws. It also presents the concepts and elements of effective heritage management within in which heritage legislations and institutions could be devised. The second part provides some comparative insights from legislations of selected countries and international legal instruments that are designed to ensure effective heritage management. Under part three, an attempt is made to critically analyze the legal and institutional frameworks of heritage management of Ethiopia. In doing so, this part also evaluates Ethiopian legal regimes in light of previous laws, and international best practices with a view to demonstrate the extent of its adequacy to effectively protect heritages. The final part summarizes major findings and the way forward.

1. HERITAGE AND HERITAGE MANAGEMENT: A CONCEPTUAL FRAMEWORK

1.1. Definitions and Types of Heritages

Legal definitions of the term “heritage” and the practice of classifying the same have long influenced the administration of heritage in various countries.¹¹ The legal definition of heritage helps to delineate the scope of the subject, to determine the application of legal rules, to regulate the management institution, and to establish the extent of liability when harm occurs. National and international legal instruments at different times have tried to define it from the perspectives of those who held heritage as physical entity fashioned by human action to those who regard it as expression of meanings and values.¹² Historically, the concept of heritage concentrated first on the tangible and immovable cultural elements, and gradually enthused into natural and intangible and then recently to movable heritages. While the International Convention for the protection of historical objects was signed in 1954¹³, Heritage Convention that deals with tangible heritage

¹¹ *Supra* note 1, p. 25, Heritage is known by many names including antiques, artifacts, cultural objects, treasures, etc. But the term heritage is preferred because of its inherent sense of transmission, legacy and inheritance. With this understanding, it was only historical monuments or artifacts to be considered as heritage, which is actually not, however. These differences in characterization, in addition to determining the scope of heritage management, have breed discrepancies in court’s interpretation. The often cited example is the case in the United States in 1974. In the United States, Diaz was convicted in a federal district court under the Antiquities Act for appropriating objects of antiquity from government land. Upon appeal, the appellate court reversed the conviction stating that the act was too vague regarding the definition of “ruin,” “monument,” or “object of antiquity.” *See generally Infra* note 17, p.67

¹² *Id.*

¹³ The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954 (Hereinafter the 1954 Hague Convention).

places came into effect in 1972.¹⁴ However, the Intangible Heritage Convention and the more specialized Cultural Expressions Convention were enacted later in the year 2003¹⁵ and 2005¹⁶ respectively. National heritage legislations have as well experienced the same progress. For example, the United States Antiquities Act of 1906, which is the earliest heritage legislation, has principally been concerned with the protection of historical sites and monuments rather than landscape values or art works.¹⁷ In a similar way, the Ethiopian law that deals with antiques dated back to the year 1966¹⁸ while the law that recognizes intangible and natural heritages comes in 2000 and afterwards.¹⁹

Unlike the earliest antiquity laws that defined heritage as mere tangible historical values such as historical monuments and archaeological findings, the term heritage, under the later legal framework, is defined to include natural landscapes (such as mountains, lakes and rivers), endemic animals and plant species, indigenous knowledge, ceremonies/festivals and other living expressions. In this regard, the World Heritage Convention of 1972 divide heritage into two broad components (cultural heritage and natural heritage). Accordingly, Article 1 of this Convention defined “cultural heritage” as:

monuments: 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 outstanding universal values from the point of view of history, art or science; groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal values from the point of view of history, art or science; Sites: works of man or the combined works of nature and man, and areas including

¹⁴ Convention concerning the Protection of the World Cultural and Natural Heritage, Nov.16, 1972, (Hereinafter The World Heritage Convention of 1972).

¹⁵ Convention for the Safeguarding of Intangible Cultural Heritage, Oct. 17, 2003 (Hereinafter the 2003 Intangible Heritage Convention).

¹⁶ Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions, at preamble, Aug. 4, 2005, (Hereinafter The 2005 Heritage Convention).

¹⁷ Marilyn Phelan, *A Synopsis of the Laws Protecting Our Cultural Heritage*, 28 NEW ENGLAND LAW REVIEW, 63 (1993). Because the Antiquities Act of 1906 was limited in scope, which took no notice of intangible and natural heritages of the country, and because of a growing interest among the populace in protecting historical properties, Congress later adopted a series of supplementary statutes such as the Antiquities Act of 1935, the National Historic Preservation Act of 1966, the Archaeological Resources Protection Act of 1979, the Reservoir Act of 1960 and the National Environmental Policy Act of 1969.

¹⁸ The Imperial Antiques Proclamation, at preamble, EMPEROR’S NEG. GAZETTA, (No.229/1966) As per paragraph 1 of the preamble and article 2(1) of the same proclamation, an antiques is material objects, particularly monuments, archeological; and historical sites, having their origin prior to 1850 E.C.

¹⁹ See, for example, Research and Conservation of Cultural Heritage Proclamation, FED. NEG. GAZETTA, at preamble, (No. 209/2000) (Hereinafter the 2000 Cultural Heritage Proclamation), The Development Conservation and Utilization of Wildlife Proclamation, FED. NEG. GAZETTA, (No. 541/2007) (Hereinafter the 2007 Wildlife Proclamation) and Forest Development, Conservation and Utilization Proclamation, FED. NEG.GAZETTA, (No. 542/2007) (Hereinafter the 2007 Forest Proclamation).

archaeological sites which are of outstanding universal values from historical, aesthetic, ethnological or anthropological point of view.

Similarly, Article 2 of the same Convention Defines “Natural Heritage” as:

Natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal values from the aesthetic or scientific point of view; Geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal values from the point of view of science or conservation; Natural sites or precisely delineated natural areas of outstanding universal values from the point of view of science, conservation or natural beauty.

The above definitions provided by the Convention are adequate to recognize and call for the protection of both natural and cultural heritage in their tangible forms. However, it falls short of defining and providing an international scheme for the use, protection and promotion of intangible heritages of the world. This gap of the convention becomes apparent with the expanding processes of globalization and social transformation, which have an influence on the intangible assets of indigenous people. After years of struggle to understand the meticulous importance of protecting intangible cultural heritages, the 2003 Convention is convened to recognize and extend protections to the intangible heritages of mankind. Article 2 of the same convention has defined intangible heritage as follows:

(1). The “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills as well as the instruments, objects, artifacts and cultural spaces associated therewith that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus, promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

(2). The “intangible cultural heritage”, as defined in paragraph 1 above, is manifested *inter alia* in the following domains:

- a. Oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;

- b. Performing arts;
- c. Social practices, rituals and festive events;
- d. Knowledge and practices concerning nature and the universe;
- e. Traditional craftsmanship.

Yet, the addition of intangible heritage into the international heritage protection system was not found to be sufficient. For this reason, there was understanding as to the fact that cultural diversity forms a common heritage of humanity in creating a rich and varied world which shall, therefore, be preserved for the benefit of all. States have therefore agreed on the Convention for the Protection and Promotion of the Diversity of Cultural Expressions.²⁰ With this conceptual development of heritage, international conventions and national laws have established that the term ‘heritage’ can exist in natural and cultural forms or in tangible and intangible forms as far as they are of universal value from the historical, anthropological, aesthetic or scientific point of view, in spite of their oldness or their share in history.²¹ In the same way, the UNESCO system of recognizing world heritages is made to consider not only old monuments, historic cities, or artifacts but also modern works of architecture, indigenous practices, natural landscapes as well as cultural expressions.²²

It should be noted that everything historical, cultural or natural could not be classified as heritage. The single most general criterion to characterize a thing as heritage (and even for World Heritage listing) is the “Outstanding Universal Value” standard, i.e., whether it transcends national boundaries and to be of common importance for present and future generations of all humanity.²³ However, this standard has long been criticized for visualizing universality in heritage, for it appears to be insincere and hypocritical.²⁴ As almost all heritages are culture-specific, the hallmark of “Universal Value” might be very difficult to define. In order to maintain this standard, however, the framework for assessing heritage qualities provides further specific criteria including wholeness, intactness, material genuineness, genuineness of organization of space and form, continuity of function and continuity of setting.²⁵

²⁰ *Supra* note 16.

²¹ Compare Art. 1 & 2 of the World Heritage Convention of 1973 and Art. 2(4-7) of the 2000 Cultural Heritage Proclamation

²² For example, among the eleven UNESCO recognized world heritage sites of Ethiopia, the Axum’s obelisks, the Monolithic Churches of Lalibela, Fasil Castles of Gondar, Tia’s Carved Standing Stones, Hadar (where the skeleton of Lucy was discovered) and the Walled City of Harar are historical and cultural heritages, the Omo Valley, the Simien Mountain National Park and Tana Lake Minutiae are natural heritages, and the Meskel (the finding of the true cross) Rituals and Konso terracing traditions are intangible heritages.

²³ H. Detlef Kammeier, *Managing Cultural and Natural Heritage Resources: From Concepts to Practice*, 4 CITY AND TIME INTERNET BASED JOURNAL, 1, 5(2008).

²⁴ *Id.*

²⁵ Stovel, H., *Effective Use of Authenticity and Integrity as World Heritage Qualifying Conditions*, 3 CITY AND TIME INTERNET BASED JOURNAL, 21(2007).

1.2. The Need to Protect Heritage

The most relevant issue in the discussion of heritage is why it is important to recognize a thing as tangible or intangible heritage in accordance with both national and universal protection systems. Put differently, why are laws and institutions at national and international levels emphasize the protection of the thing called ‘heritage’? Is it because a given heritage holds legal personality and is protected in its own right or because it is a thing protected for the use/benefit of human beings? These questions lead us to the topic of understanding the ultimate purpose of regulating heritage and heritage management particularly within the context of the typically known debate in environmental law—the debate between “Eco-centric and Anthropocentric Theories of the environment”.²⁶ Eco-centric Approach rejects human domination in nature and asserts that each distinct part of the environment has equal intrinsic value based on which legal personality has to be conferred to exercise their own right at their own behest. On the other hand, Anthropocentric Theory places human beings at the center and other components of the environment as instruments valuable only to the extent to which they can be used and exploited by human beings so that legal personality is bestowed only to human beings. Both theories agreed on the need for proper use, conservation and protection of the environment wherein heritages are essential components.

These approaches differ in that while Eco-centric Approach justifies the need to protect heritages from the vantage point of heritage itself, Anthropocentric Theory rationalizes the same protection with the benefit of human beings. Of course, the conception of personality beyond the class of human beings is one of the most noteworthy features of recent legal imagination and recent legislations, favoring the autonomous claims of the environment in general and heritages in particular. It is also argued that the adoption of the thoughts of the Eco-centric Approach in domestic and international legislations weakens the traditional requirements of “vested interest” in the Civil Procedure Law litigation process. Consequently, environmental cases are stroked out for lack of standing in the court.²⁷ In other words, once the legal personality of heritage is

²⁶ CHRISTOPHER STONE, *SHOULD TREES HAVE STANDING? TOWARDS LEGAL RIGHTS FOR NATURAL OBJECTS*, 455 (Southern California Press, 1972).

²⁷ *Id.* See also The Civil Procedure Code of Ethiopia, IMPERIAL NEG. GAZ., Art. 32(2) and 38 (No. 52/ 1965), The Civil Code of the Empire of Ethiopia, IMPERIAL NEG. GAZ., Arts. 2102(2) and 1790 (No. 2/1960). As per these provisions of the codes, one can conclude that no party may be a plaintiff in a suit unless he/she has a vested interest, or duly represented and has suffered. But recently enacted laws including the Constitution, with a view to provide possible protection to nature, have opened the room for any public spirited person dedicated to public cause thereby standing to bring a common cause before a court of law. See, for example, *Infra* Note 51, Art. 37(2), FDRE Constitution, The Environmental Pollution Control Proclamation, FED. NEG. GAZETA., Art. 11(2) (No. 300/2002).

established, public spirited individuals can initiate public interest litigation as man has no right to reduce the diversity and richness of nature which has an intrinsic value.

In one way or another, the scientific, aesthetic, political, and social value of heritage is now widely acknowledged. Principally, heritage is fundamental to found identity at national, regional, local and even at family level. The preservation of material culture such as objects of art, architecture, landscape form, and intangible culture such as performances of dance, music, theater, and ritual, as well as language and human memory are generally regarded as a shared common good by which everyone benefits.²⁸ Both personal and community identities are formed through such tangible objects and intangible cultural performances. A formation of a strong identity would seem to be fundamentally important in countries like Ethiopia where various nations, nationalities and peoples with their own history and culture are found. Specifically, heritage as expressions of identity plays a major role in enabling the next generation to acquire an extensive and profound awareness about its culture, history, religion, and geography to mention but few. In this context, proper heritage management could be seen not only as a protection of the heritage per se but also as a preservation of national identity.

Heritage has also acquired enormous economic and developmental values as one of the mainstays of tourism industry which is now a global phenomenon with significant spill-over effects in other economic sectors.²⁹ The reports of the World Tourism Organization have showed that the number of international tourist arrivals and what it generates to the world's total Growth National Product is increasing from time to time.³⁰ However, the developed world is taking the lion's share of the market with Europe, North America and East Asia accounting for 76.3% of the international tourists. Though Africa is noted for its tourism potential, the sector is still underdeveloped attracting only 4.81% of the total tourist arrivals in the world.³¹ Likewise, despite recent swift improvements in Ethiopia, it is also one of the poorly performing countries in Africa in terms of tourist arrivals.³² Hence, apart from strengthening the tourism sector, changing the

²⁸ Helaine Silverman, et al., *Cultural Heritage and Human Rights*, in *CULTURAL HERITAGE AND HUMAN RIGHTS* (Helaine Silverman eds., Springer Science & Business Media, LLC, 2007).

²⁹ GODFREY BALDACCHINO, *EXTREME HERITAGE MANAGEMENT: THE PRACTICES AND POLICIES OF DENSELY POPULATED ISLANDS*, 13 (Islands Studies Press, 2012). At national level, several countries, which are known for their cultural, historical and natural heritages, have materially benefited from the tourism industry. While countries such as China, Italy and Egypt are known for their monuments and historical heritages. Many of the Islands are accruing tourism benefits from their natural heritages.

³⁰ ARTHUR PEDERSEN, *MANAGING TOURISM AT WORLD HERITAGE SITES: A PRACTICAL MANUAL FOR WORLD HERITAGE SITE MANAGERS*, 6 (UNESCO World Heritage Centre, 2002).

³¹ *Supra* note 5.

³² Dharmendra Kumar Dube, *Challenges and Prospects for Promotion of International Tourism in Ethiopia: A Case Study of Bahir Dar*, 1 *SCIENCE, TECHNOLOGY AND ARTS RESEARCH JOURNAL*, 95(2012). For example, according to the Ethiopian Ministry of Culture and Tourism, recently, the number of visitors has increased by 10% and hence tourism contributed an estimated 4.5% to the country's GDP in the year 2015, generating nearly a million jobs and over two billion dollars in revenue. In the same year, the accolade of World's Best Tourism Destination has been given to Ethiopia. Yet, compared to its potential, the country has one of the lowest tourism performances in the world.

status quo and harnessing the tourism potential demands reforming the existing heritage management frameworks. On the other hand, other natural heritages such as minerals, water, forest, fishery, wildlife, etc., are proved to be unswerving resources to produce food and energy.³³

In addition, the development of heritage plays a significant role to the advancement of science and to the whole gamut of human knowledge.³⁴ Especially, the protection and conservation of intangible cultural heritages, particularly the protection of indigenous and aboriginal values, oral traditions and expressions, languages, social practices, rituals and festive events, knowledge and practices, traditional crafts, and similar others have of great contribution to the development of science and technology in a nation. Unfortunately, developing countries like Ethiopia are still wadding to exploit these potentials of heritages which demand human and material resources.³⁵

In many countries, protection of heritages in general and natural heritages in particular is associated with the protection of nature and environment.³⁶ According to the study by International Union for the Conservation of Nature (IUCN), 12% of the Earth's surface is a protected area and around 8% of the world's protected areas enjoy World Heritage status which represent one of the principal means by which the world's biological diversity, its ecosystem services and its cultural heritage are conserved.³⁷ Collectively, these irreplaceable areas provide a means of passing on the world's unique natural and cultural heritage values to future generations. Hence, caring for heritage assets is coming to be an important global phenomenon intertwined with other principal objectives such as sustainable development and ecological conservation where the current and future generations have uncompromised interests.

As one of the most important paradigms of our time, sustainable development refers to a pattern of resource use that balances the fulfillment of basic human needs with the wise use of finite resources so that they can be passed on to future generations for their use and development. Since the Rio Earth Summit of 1992, the paradigm of sustainable development has been broadened to include three constituents but mutually supportive elements: environmental protection, economic growth and social equity.³⁸ The issue of sustainable development can be

³³ H. S. SINGH, NATURAL HERITAGE OF GUJARAT: FORESTS AND WILDLIFE IN GUJARAT 3 (Gujarat Ecological Education and Research Foundation, 2011).

³⁴ *Id.*

³⁵ *Id.*

³⁶ International Union for Conservation of Nature, Management Planning for Natural World Heritage Properties: A Resource Manual for Practitioners, 3(IUCN, 2008).

³⁷ *Id.*

³⁸ GAMINI WIJESURIYA *et al*, MANAGING CULTURAL WORLD HERITAGE, 20 (UNESCO World Heritage Centre, 2013).

understood as a concern for sustaining the heritages (intrinsic) and as a possible contribution of heritage and heritage conservation for the environmental, social and economic dimensions of sustainable development (instrumental).³⁹ Generally, the potential of heritages to contribute to environmental protection, social capital and economic growth is coming to be increasingly recognized. The growing concept and use of heritage in the one hand and heritage's finite, non-renewable, and vulnerable nature on the other have now been developed as core points of modern heritage management. In line with this, advocating for the designing of a good legal and institutional framework for heritage and heritage management at national and international level remains to be the responsibility of all.

1.3. The Conception of Heritage Management

In the legal parlance, the term 'heritage management' is nowhere defined under the Ethiopian and international legal instruments. Instead words such as "identification", "conservation", "registration", and "excavation" are used and defined.⁴⁰ The term "heritage management" was originally coined, as was used in the United States in the 1970s, to generally represent the process of identification, protection, and stewardship of heritage in the interest of the current and future generations.⁴¹ This process of heritage management generally requires the enactment of heritage legislation or policies in the one hand and the creation of formal government heritage units on the other.⁴² This is best explained in Wijesuriya *et al.* (2008) that presented nine basic characteristics of heritage management.⁴³ According to these scholars, heritage management system is a broad framework made up of three important elements. The first element refers to a legal framework which usually involves enactment of legislation that empowers people and organizations to act, and defines what constitutes heritage and set criteria for its conservation and management. The second component includes an institution which sets out the operational structure and working methods that allow actions to be taken. The third dimension represents resources which are human, financial and intellectual supply that facilitate decision making and engineered operational capacity.⁴⁴ Accordingly, the legal framework, the institutional set up and the resources of a certain jurisdiction, together, facilitate the planning, implementation and

³⁹ *Id.*

⁴⁰ See for example, Art. 3 (9, 10 & 11) of the 2000 Cultural Heritage Proclamation.

⁴¹ S. K. BHOWMIK, HERITAGE MANAGEMENT: CARE, UNDERSTANDING AND APPRECIATION OF CULTURAL HERITAGE, 24 (Publication Scheme, 2004).

⁴² HILARY DU CROS *et al.*, CULTURAL HERITAGE MANAGEMENT IN CHINA: PRESERVING THE CITIES OF THE PEARL RIVER DELTA, 12 (Routledge Contemporary China Series, 2007).

⁴³ *Supra* note 38, pp. 53-55. These nine components of heritage management are designed to include three elements (Legal Framework, Institutional Framework and Resource), three processes (Planning, Implementation and Monitoring) and three results (Outcomes, Outputs and Improvements).

⁴⁴ *Id.*

monitoring of actions to deliver results/improvements which guarantee the conservation and management of the properties and their associated values in a sustainable way.⁴⁵

Therefore, the effectiveness of heritage management is influenced by the legal and institutional framework enforced in a country. The legal framework of heritage management ranges from applicable international conventions to national legislation, local by-laws, spatial planning frameworks as well as informal customary laws.⁴⁶ Heritage legislations at all levels, like any other legislations, regulate, authorize, proscribe and sanction behaviors for the protection and management of heritage. Since these frameworks constitute the totality of regulatory frameworks for the state to provide sufficient legal protection for heritages, any shortcomings in the legal framework affect the effectiveness of heritage management. In such cases, prompt legal reforms or amendments reflecting the dynamic nature of heritage legislations are relevant.

Institutional framework is another basic element for ensuring the effectiveness of heritage management. It is through these institutions that the conjectural legal stipulations are put into practice and all processes of the management system are facilitated. There are many types of institutional frameworks in different countries anchored in their context. For example, there are single all-powerful heritage institutions, heritage institutions veiled within other organizations, heritage-specific institutions *that are* often inspired by World Heritage inscription, heritage institutions decentralized at local level and hybrid institutions that even involve the private sector to mention a few.⁴⁷ As the organization of the institution itself has a bearing on the effectiveness of heritage management, the structure has to be chosen vigilantly in consonance with national reality.⁴⁸ For example, based on the reality of the country and its constitutional set up, heritage institutions in Ethiopia should be autonomous, decentralized and participatory. Wijesuriya *et al.* have argued that in creating and maintaining an effective institutional framework for heritage, the following key considerations have to be made:⁴⁹

- *Responsiveness and flexibility to cope with emerging concepts, trends and requirements.*
- *Organizational decentralization, when appropriate, to bring decision-making closer to the problems of the property, favoring community participation and the promotion of sustainable approaches.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*, P.71

⁴⁸ *Id.*

⁴⁹ *Id.*, pp. 71-72

- *Giving due attention to the need for new skills to provide adequate and proper management.*
- *Open organizational structure and adequate stakeholder involvement.*
- *Provision of a set of guiding principles for the institutional framework, etc.*

Given the science of heritage legislations and institutions, for the purpose of this article, it is important to note recent developments that heritage management has experienced. With the development of heritage laws and organizations, the practice of heritage management has experienced various transformations. Since heritage is recognized as a common value, heritage management system is made to be transparent, participatory and democratized—“bottom up” decisions than the “top down” process.⁵⁰ Moreover, responsibility for heritage is expanding and heritage management becomes a shared responsibility of the state, voluntary and private sectors.⁵¹ The notion of “community-based heritage management” has grown amid these legal prescriptions.⁵² This dynamics has opened a chance to manage more meaningful but unmanaged heritages behind the scenes in people's lives that are under the disposal of private individuals, religious and customary institutions. Another important trend of the twenty-first century is the amplification on the links between heritage and sustainable development where it becomes clear that heritage is not peripheral to the human person but also pivotal to environmental, economic and social concerns of a country.⁵³

In order to benefit from these developments and optimize the use of heritages, the existences of powerful legal and institutional frameworks are critical at national and/or international levels. Studies show that inadequate legal frameworks and scrappy enforcement of existing clumsy laws are major causes for the loss or threatened condition of heritages.⁵⁴ Hence, in view of such trending problem, evaluating the strength and weakness of the Ethiopian legal and institutional frameworks in a bid to improve heritage legislations and institutional set up for the effective management of Ethiopian heritages is of paramount importance. The next section of this article

⁵⁰ *Id.*

⁵¹ THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA CONSTITUTION, FED. NEG. GAZETA, Art. 92(4) (No. 1/1995) of the FDRE Constitution, *see also* paragraph 5 of the preamble of the 2000 Cultural Heritage Proclamation. With the development of an integrated use and conservation of heritage, there becomes inescapable to involve various state departments and different professionals including architects, archaeologists, planners, historians, ecologists, politicians, lawyers, etc.

⁵² Andrew Hodges and Steve Watson, *Community-based Heritage Management: A Case Study and Agenda for Research*, 6 INTERNATIONAL JOURNAL OF HERITAGE STUDIES, 231, 240(2012).

⁵³ Helsinki Declaration on the Political Dimension of Cultural Heritage Conservation in Europe, Fourth European Conference of Ministers Responsible for the Cultural Heritage, (Helsinki, May 30-31, 1996), This concept is broad and contentious with deceptive dimensions but largely it is perceived as development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs, i.e., development in economic, social and environmental dimensions.

⁵⁴ Staven A. Brandt and Fikri Hassen, DAMS AND CULTURAL HERITAGE MANAGEMENT 6 (World Commission on Dams, 2000).

tries to discuss international standards and best practices in heritage management in general and the legal and institutional frameworks in particular.

2. INTERNATIONAL LEGAL AND INSTITUTIONAL FRAMEWORKS FOR HERITAGE MANAGEMENT

The use, conservation and protection of heritage require the existence of powerful legal and institutional frameworks at national and/or international levels. In this regard, international heritage conventions have provided the need for heritage legislations and institutions in member states. With this development, many countries of the world have reformed their legal and institutional frameworks and improved their heritage management schemes accordingly. The importance of these international conventions is that they impose international obligation on member states to improve heritages and heritage sites located in their territory by articulating heritage legislations and institutional structures in conformity with the minimum international standards. Given the spacious value of heritage and the existing ruthless obliterations, governments are obliged to work on mechanisms that help improve their heritage management system.

The most important development on this point is the orientation to see heritage as a human right imposing correlative duty on state and non-state actors.⁵⁵ However, for the reason that the so called ‘heritage right’ is less developed or unknown in the domain of the international human rights system, it is good to see the intersection of human rights, environment and culture.⁵⁶ This is because the realization of the right to culture and the right to environment has mostly lent a hand to the recognition and practice of cultural and natural heritage interests. Unfortunately, environmental and cultural rights are perhaps the least developed rights in the field of human rights. Scholars attribute this underdevelopment to the precincts of the international human rights themselves and the *de facto* marginalization of economic, social, and cultural rights as second generation rights and environmental rights as third generation rights.⁵⁷ For example, Article 27 of the Universal Declaration of Human Rights casts culture in an open and poorly defined manner. This was the result of the widely argued conception in post-war period that economic, social, and cultural rights are not primary focuses as much as political and civil rights. Moreover, the mechanisms set in place to ensure political and civil rights are highly developed and reflect the priority. This marginalization is significant in the western world. For instance, harmonization of cultural legislation is specifically excluded under Article 128 of the Treaty on the European

⁵⁵ Francesco Francion, *the Human Dimension of International Cultural Heritage Law: An Introduction*, 22 EUROPEAN JOURNAL OF INTERNATIONAL LAW, 9, 10 (2011).

⁵⁶ *Id.*

⁵⁷ *Supra* note 54 at pp.13-14.

Union and hence the Union does not have a common policy where cultural heritage is concerned.⁵⁸

Since the 1990s, the concern to bring this *de facto* marginalization to an end has grown.⁵⁹ For example, there is an increased focus on indigenous peoples including cultural heritage rights. In this regard, the 2003 and 2005 Heritage Conventions have clearly provided for the respect of the right to culture as human rights. In return for these rights, the Conventions provide a number of obligations that are incumbent on the State Parties. Heritage Conventions reaffirmed the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of heritages on their territory.⁶⁰ The aim in reaffirming this right was not of course to establish a State monopoly but rather to put effective heritage governance into practice through institutional responsibility partaking. That is to say, once states avail themselves of heritage Conventions, they are expected to implement the conventions through national measures which can be legal or administrative. Particularly, if the country has a world heritage site, it shall enter into standard legal and national framework. World Heritage Sites now require binding legal regimes, management plans, specific institutional arrangements and full-time professionals.⁶¹ States Parties, through their legislative and regulatory measures at national and local levels, should essentially assure the survival of the property and its protection against developments and changes that might negatively impact the outstanding universal values, or the integrity and/or authenticity of the property. For example, under Article 4 of the world heritage convention, each State Party to the Convention recognizes the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritages situated on its territory.

The question is how the contracting states are able to translate this global responsibility into locally-based management responsibility. The Operational Guidelines for implementing the World Heritage Convention, as a principal instrument aimed at facilitating the implementation of the Convention, have tried to regulate detailed standards of heritage management.⁶² So far, Article 5 of the world heritage convention has adequate stipulation in setting minimum standards of implementation. For instance, in order to ensure effective and active measures for the protection, conservation and presentation of cultural and natural heritages, states have pledged themselves to adopt new heritage legislations, to set up heritage institutions, to conduct scientific researches and to foster awareness creation trainings and forums. The 1972 Convention refers to

⁵⁸ Willem J. H. Willems (eds.), *LAW, LANGUAGE, AND LEARNING MANAGING ARCHAEOLOGICAL HERITAGE RESOURCES IN EUROPE*, (University Press of Florida, 2011).

⁵⁹ *Supra* note 54.

⁶⁰ The 2005 Heritage Convention, Art. 5.

⁶¹ The World Heritage Convention of 1972, Art. 11.

⁶² UNESCO World Heritage Centre, *Operational Guidelines for the Implementation of the World Heritage Convention*, (UNESCO, 2012).

the need for administrative provisions but it does not define specific requirements or characteristics of the institutional framework perhaps because they vary so much from country to country. Yet, a State Party must have a single institution to act as the nodal point for all heritage matters including Periodic Reporting and Communication with the World Heritage Centre.

However, the enactment of national legislations and the constitution of heritage institutions to the wants of international standards have turn out to be unbearable in developing countries. For example, some countries in Africa, with varying degrees, have legal frameworks for conserving heritage and such laws have created administrative structures responsible for the identification, protection and conservation of heritage resources in its various forms.⁶³ Many African countries have included the right to culture and heritage under their constitution and their compliance towards ratifying international heritage conventions and related human right instruments is encouraging.⁶⁴ In some other African countries, specialized and autonomous heritage institutions were established.⁶⁵ For example, the Antiquities Department of Tanzania, the South African Heritage Resources Agency and the National Museums and Monuments of Ghana are mandated with heritage protection in their countries.⁶⁶ The African heritage management system is also known for ranking heritage places according to significance.⁶⁷ For example, in South Africa, national UNESCO World Heritage Sites are at the top of the value scale; provincial monuments or sites occupy the intermediate position and local sites have the least value or significance.⁶⁸

However, heritage protection is often not given sufficient resources when compared to other endeavors such as defense and health in Africa. Accordingly, heritage departments are understaffed or staffed with inexperienced and less qualified employees and low-technology.⁶⁹ As Africa grapples with economic, social and political problems, heritage is often accorded low priority and the shortage of resources has been a mantra for a long time. Furthermore, legal frameworks operating in most countries were gazetted in the 1970s before strong links between heritage protection and environmental stewardship were forged.⁷⁰ Lamentably, such laws have no provisions for pre-development impact assessments or quality-control measures and participation

⁶³ Chirikure S., *Heritage Conservation In Africa: The Good, The Bad, And The Challenges*, 109 *SOUTH AFRICAN JOURNAL OF SCIENCE* 1, 3 (2013).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Infra* note 77.

⁶⁷ *Id.*

⁶⁸ *Id.*, Such practice of heritage ranking would have been good had the goal been specialized management. However, African states have ranked heritages to provide protections only to national heritages, while local sites are sacrificed to accommodate development.

⁶⁹ *Supra* note 63.

⁷⁰ *Infra* Note 77.

of the local commune in developmental works that affect heritages.⁷¹ In a world where the rights of host communities are increasingly becoming more recognized, the contributions of local communities are still not widely used in heritage conservation endeavors in Africa. Even in countries where the law requires community involvement, consultation is often carried out towards the end of projects making them spectators in the study and protection of their own heritage. In this way, African heritage sites are increasingly threatened with various forms of economic development and the rationale from governments is always that they must create job opportunities and uplift underdeveloped areas.⁷² The archaeological sites and monuments of even counties like Egypt, whose management schemes are proved to be advanced, are threatened by urban sprawl, development projects, agricultural expansion, pollution and looting.⁷³ Balancing development interests of the current generation with the universal interest of heritage conservation is usually taxing even for developed nations like China. In China, the extraordinary process of economic growth has had enormous impacts on its heritage.⁷⁴ In particular, infrastructure construction, building activities and the transformation of urban context often represent threats to the existing monuments and this has raised popular dissatisfaction as well as academic and political debate.⁷⁵ In order to answer these questions the government has tried to streamline its management by revising its laws and institutions.⁷⁶

It has become a usual report that African states in general failed to safeguard and appropriately manage heritages. According to Makuvaza, many African countries have few world heritage sites, if not none at all, not because there are no heritage sites but the existing heritage management system is poor.⁷⁷ The UNESCO report also reveals that African governments are not cooperative in the nomination and management of world heritage sites.⁷⁸ Many of the African states have now failed to fulfill the standards set under Article 5 of the world convention, which provides for legislative and administrative measures to ensure the protection of heritage sites in their territory. As such, the continent is losing the basic benefits that accrue from heritages including nation buildings, job creations, education, and safeguarding of cultural values.

However, there are African countries which undertook exemplary legal and institutional reforms in the realm of heritage management. A case in point is Egypt and South Africa. Egypt, being the birthplace of the most resilient great civilizations of the world, is known for its

⁷¹ *Supra* note 63.

⁷² *Id.*

⁷³ *Infra* note 79.

⁷⁴ Luca Zan *et al.*, *MANAGING CULTURAL HERITAGE: AN INTERNATIONAL RESEARCH PERSPECTIVE* 76 (Ashgate Publishing, Ltd., 2015).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Simon Makuvaza, *The Management Of Cultural World Heritage Sites and Development in Africa*, 15 (Springer Science & Business Media, 2014).

⁷⁸ *Id.*

spectacular monuments, mummies and dazzling array of artifacts.⁷⁹ Egypt has over 150 years of modern heritage management experience.⁸⁰ In addition to Egypt's Supreme Council of Antiquities, the most organized government heritage institution, the Egyptian government has established the Egyptian Cultural Heritage Organization (ECHO) with the task of visitors' management, excavations, surveying, protection, conservation, restoration, legislations, looting, ownership, archaeology, site and monument records, interpretation, research and education.⁸¹ ECHO is a charitable company funded by public and private donations to supplement the monies invested in cultural heritage management, research and education.⁸² Egypt has also comparatively adequate legal framework of heritage management. The Egyptian law governing archaeology and the Antiquities Trade Law No. 215/1951, which is later, revised by Laws No. 529/1953, No. 24/1965 and No. 117/1983 is recognized as a detailed law that regulates the definition, ownership, management, use and conservation of historical and cultural Antiquities. Under this law, Antiquities are defined as all movable and immovable objects which are produced by the arts, sciences, literatures, customs, religions, etc. from prehistoric times. All antiquities, either known or concealed, ultimately belong to the State, and are required to be registered on an official inventory. Modification, displacement or demolition of classified antiquities is prohibited.

The State maintains the right to expropriate any antiquity or land containing antiquities. Discovery of antiquities should be reported immediately to the nearest administrative official; the State may acquire any such antiquity for national collections, and the displaying of such antiquity. A permit is legally required for all field researches, the conditions of which are set at the time of granting of the permit. All foreign nationals are required to submit a security declaration form to the Ministry of Culture Security Office via the Supreme Council of Antiquities. Exportation of cultural property including environmental and biological samples is strictly prohibited without a permit which must be obtained 30 days prior to the intended date of export. Movement of antiquities within the country must be approved 15 days prior to their transportation. Dealers in antiquities must be licensed and must maintain a daily register of transactions. Antiquities offered for sale must be authorized by the museums in advance. The Supreme Council of Antiquities under the auspice of the Ministry of Culture is responsible for the restoration and preservation of Egypt's cultural heritages.

⁷⁹ F.A. Hassan and G. J. Tassie (eds.), *MANAGING EGYPT'S CULTURAL HERITAGE*, ii (Golden House Publication, 2009), Literatures have asserted that with the possible exception of Italy, no place in the world contains such a colossal stash of antiquities as Egypt.

⁸⁰ *Id.* at iii

⁸¹ *Id.* at.viii

⁸² Paul Leung Kin Hang & Creamy Kong, *Heritage Management and Control: The Case of Egypt*, 2 *JOURNAL OF QUALITY ASSURANCE IN HOSPITALITY & TOURISM*, 105 (2001).

Finally, it is important to see the practice of South Africa, Australia and Italy regarding their optimum experience of heritage legislation and heritage institution set up. South Africa has important experiences regarding the adjustment of heritage laws to the realities of the time and the country's international obligations. The South African Government has adopted legislation No. 49 of 1999 to facilitate the management of World Heritage properties.⁸³ The purpose of this legislation is to provide for the incorporation and implementation of the World Heritage Convention into South African law. This law has also established new heritage authorities and granted additional powers to the existing organs of state heritage departments by establishing Boards and Executive Staff Components. The success of the Australian government in heritage management is often associated with its comprehensive heritage management guideline called the "*Burra Charter*"⁸⁴ which is prepared as per the international standards for heritage management. This instrument is the principal guiding document for owners, managers and approving authorities to make sound decisions in the conservation and management of a heritage place. In Italy, a country blessed with varied and splendid landscapes as well as historical artifacts and monuments of ancient Rome, the Ministry of Cultural Heritage and Environment was established by legislative decree number 657/1974 with the task of managing all of the Italian culture and environmental heritage in order to ensure its systematic use, protection, conservation and promotion.⁸⁵

Generally, the right to heritage or rights in heritage can easily be read from the national and international laws and heritage, having an intrinsic value, an interest to be conserved, protected and promoted. For the better enforcement of these rights/interests, governments have two basic duties: first, to take legislative and regulatory measures, and second to create institutions in charge of enforcing the laws. Hence, standardizing the Legal and Institutional Frameworks for Heritage Management is a clear obligation to the national government and some countries have discharged it well, as discussed above.

3. THE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR HERITAGE PROTECTION IN ETHIOPIA

3.1. Heritage Laws and Institutions During the Imperial Regime

The period from 15th century to the early 20th century was generally characterized by the imperial reliance on reference to indigenized translated texts based on "imported" biblical and Roman-Byzantine traditions.⁸⁶ It was only after the reign of Emperor Haile Selassie I that

⁸³ *Supra* note 79.

⁸⁴ See the *Burra Charter: the Australian International Council on Monuments and Sites Charter for Places of Cultural Significance* (ICOMOS, 1999).

⁸⁵ *Id.*

⁸⁶ Jacques Vanderlinden, *An Introduction to the Sources of Ethiopian Law*, 3 JOURNAL OF ETHIOPIAN LAW, (1966).

Ethiopia witnessed massive state legislative acts—solidified by mid 1950s and 1960s development of legal codes. In the midst of this legislative history, the first act of state legislation that created the basis for safeguarding heritage was the Imperial Antiques Proclamation No. 229 of 1966, which was buttressed by an order to the creation of an Ethiopian Antiquities Administration of 1966 and the Export of Antiquities Regulations of 1969.⁸⁷ This proclamation had regulated the scope, ownership, exploration, repairing, study, register, disposition and protection of antiques as well as civil and criminal liabilities in case of violations against the law. This law was a pioneer of Ethiopian modern heritage law despite all the loopholes. Article 3 of the Imperial Antiques Proclamation No. 229 of 1966 declares that antiques—movable or immovable—are the property of the state and the imperial authority was empowered to administer all antiques in consultation with the Ministry of Public Works.⁸⁸ The administrative authority was, in particular, responsible for the discovery, protection, preservation and study of antiques in the country.⁸⁹ Any person who discovered antiques or is in possession of any antique is obliged, under the pain of criminal liability under the Penal Code, to promptly notify the administering authority to get them registered accordingly.⁹⁰ Moreover, the authority had the power to require the transfer of antiques under the possession of private individuals as per Article 34 of the Revised Constitution or in agreement with the holder.⁹¹ As per Article 9 of the Imperial Antiques Proclamation No. 229 of 1966, no person shall carry on archaeological exploration activities on private or government lands except with the prior permission of the authority. The sale, barter, transfer or export of antiques without the prior approval of the authority was set to be a criminal act which shall be tried as per the Penal Code of the country.⁹² In this regard, the Civil Code has also played a supporting role by denying the acquisition of ownership of antiques and archeological excavations through mere rules of occupation or finding by giving primacy to the rules of antiquity under Article 1160.⁹³

At this juncture, one of the basic eminences of the imperial antiques proclamation was the establishment of the Ethiopian Antiquities Administration Authority with various specific departments such as archaeological research, preservation and restoration of monuments and antiquities as well as museum management divisions. This heritage institution was the first to replace the Institute of Archaeology which was established in 1952 in collaboration with the

⁸⁷ A friend informed me the existence of heritage laws since the Menilik II era but sources are beyond my reach and I am obliged to limit my discussion beginning from the Emperor's Antiques Proclamation and its regulation.

⁸⁸ The 1966 Antiquities Proclamation, Art. 3.

⁸⁹ *Id.*

⁹⁰ *Id.*, Art. 4 and 5.

⁹¹ *Id.*, Art. 7.

⁹² *Id.*, Art. 6.

⁹³ The Civil Code of 1960, *Supra* note 27.

French Archaeological Mission and continued for 14 years as the first institutional experience.⁹⁴ The Ethiopian Antiquities Administration Authority had continued functional until 1974 before the heritage administration became one department of the Ministry of Culture and Sports Affairs with additional responsibility for arts, culture and sport and thus the autonomy and speciality of the institution gets diminished.⁹⁵

It could be argued that although the imperial proclamation was the first of its kind during that time, it had some limitations. In the first place, it contained only 12 articles regulating the widest area of heritage and heritage management. Secondly, its scope of application was constricted to antiques originated only prior to 1850.⁹⁶ This material and age-based definition has left various heritages of the country such as antiquities after 1850, natural and intangible heritages unprotected. Thirdly, the mode of antiquity ownership, which favored state ownership, creates the impulse in which people have attached less weight for the protection of heritages. Furthermore, as the preservation and use of heritage was limited to the state, national heritages remained secret, unidentified, and unstudied to degree great extent. This undermined the due promotion and rational use of heritage in the country. Exclusive government ownership of heritage has produced another problem as government finance is limited to cover use, conservation and management of the country's diverse and numerous heritages. Fourthly, even though the establishment of the Ethiopian Antiquities Administration Authority was a generous move of the imperial government, it failed to issue detailed regulations on the use, conservation and promotion of antiques which however remained a dream under Article 10 of the 1966 proclamation.⁹⁷ Particularly, since the way private actors and organizations could participate in the exploration, use, transfer and interpretation of antiques was not regulated, the discovery and use of heritages had continued to be uneven and arbitrary.⁹⁸

Finally, the treatment of crimes against antiques under the 1966 proclamation is worth mentioning. Article 11 made simple referral without providing liabilities by itself to the Penal Code saying "any person who violates any of the provisions of this proclamation or any regulation issued pursuant hereto shall be punished in accordance with the relevant provisions of the penal code of 1957". The sole reference to the Penal Code, while it was apparent that crimes against antiques had little or no concern under the 1957 Penal Code, witnesses the poor drafting of the 1966 antiquities proclamation. Under the 1957 Penal Code, it is only Article 646 and Article 803 that tried to criminalize and punish crimes against heritages or antiques.⁹⁹ Article 646

⁹⁴ See generally: <<http://www.mysc.gov.et/ARCCH.html>> (Last visited on august 24/2015).

⁹⁵ *Id.*

⁹⁶ The 1966 Antiquities Proclamation, Art. 2 (a).

⁹⁷ Eugeniusz Gasiorowski, *Legislation for the safeguarding of the cultural heritage of Ethiopia*, 2 (1981) (Unpublished Report, On file with author).

⁹⁸ *Id.*

⁹⁹ The Penal Code of the Empire of Ethiopia (1957) Art. 646 and Art. 803.

tried to regulate misappropriation of antiques as an offence against ownerless property. Under Sub-Article 2, misappropriation or abstracting with intent to obtain an unlawful enrichment of historical, archeological and artistic objects, being the property of the State, is punishable under the ordinary provisions regarding theft or breach of trust. This shows the inadequacy of the penal law to serve the specific nature of the national and universal value of heritage as different from ordinary property. Moreover, under Article 803, crimes against historical, artistic and natural riches are supposed as petty offences against property so that whosoever failed to protect, declare or impair illegal activities against historical, archeological, artistic and natural riches is punishable only with fine or simple arrest. Hence, it is understandable that the deterrence effects of this penal code are futile and hence it had contributed less in the fight of crimes against heritage.

3.2. Heritage Laws and Institutions during the Dergue Regime

On the verge of its fall, the socialist government of the Dergue, proclaimed the Study and Protection of Antiquities Proclamation No. 36/1989—almost two years after the endorsement of the 1987 Constitution of the People's Democratic Republic of Ethiopia.¹⁰⁰ This proclamation repealed the 1966 proclamation and had for the first time produced a detailed legal basis for the use, conservation and management of heritages. Its preamble was so strong in justifying the need to have strong antique laws. The existence of old age antiques in the country, the importance of antiques in the development of science, ideology, ethics, fine arts, research and human knowledge, the existence of poor state of management in the country, and the need to devise immediate means for the full protection and preservation of antiquities in consonance with the national interest and the rights of the people were clearly particularized.¹⁰¹ Of course, the Constitution of the time itself underlined the role of antiquities in imbuing the working people with a spirit of national pride and love for the motherland commensurate with the span of their history and the profundity of their culture, and the protection and preservation of antiquities has been made the responsibility of the state and society.¹⁰²

Compared to the 1966 imperial proclamation, Constitution of the Dergue provides a moderately detailed definition of antiques which was made to include the remains of faunal, floral, human, city (...) remains, graphic documents or cinematography, coins and ornaments,

¹⁰⁰ The 1989 Antiquities Proclamation, Art. 32.

¹⁰¹ *Id.*, The Preamble.

¹⁰² THE CONSTITUTION OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ETHIOPIA, NEG. GAZETTA, (No. 1/ 1987).

places of worship, etc. as artistic, scientific, historical or cultural value.¹⁰³ It avoids age-based definition and set value as a requirement for a thing to be considered as an antique. As opposed to the 1966 proclamation, as not expected in a proclamation enacted during the socialist government, it states that antiques can be owned by the state or any person with a specification of areas where the state may intervene to secure public interest on heritages.¹⁰⁴ This means that individuals can own heritage but this ownership is not like what they have on their personal properties. For instance, owners were required to register heritages under their holdings to the Ministry indicated above, to administer the thing as per the law, to preserve, repair and move the thing without changing its original form, to allow the use of antiques for national exhibition, and to consent to the use of the thing upon permit for research, social, economic or commercial purposes.¹⁰⁵ Transfer through sale, donation, and export is possible but with a permit of the government in which case the government has pre-emption right.¹⁰⁶ The nationalization of heritages under private possession can only be ordered if antiques under the disposal of private individuals are exposed to damage or when its custody in museum is necessary but upon the payment of appropriate compensation.¹⁰⁷ The proclamation also tried to balance the two biggest public interests: the interest in the economic use of antiques *vis-a-vis* the interest in the preservation of antiques.¹⁰⁸ Under Article 9, it is provided that antiquities shall be used for the purpose of promoting the development of science, education, culture and fine arts but the use of antiquities for economic and other purposes may only be allowed if such use is not detrimental to their preservation and does not impair their historical, scientific, cultural and artistic value.

The proclamation further regulated reproduction and removal¹⁰⁹ as well as exploration and discovery of antiques including fortuitous discovery for the first time in history¹¹⁰. The exploration of antiquities is allowed with prior valid permit for professionally and financially competent persons for five renewable years. During exploration, the permit holders were required to keep a special register, make inventories, report their progress, preserve and hand over the

¹⁰³ The 1989 Antiquities proclamation, Art. 2(2).

¹⁰⁴ *Id.*, Art. 3- 15.

¹⁰⁵ *Id.*, Art. 4-8.

¹⁰⁶ Under property law, Right of Pre-emption is a right arising out of a contract or a law whereby the owner of a thing is obliged to sell it to a specified person if and when he/the owner/ decides to sell it. *See* The Civil Code of 1960, Art. 1386-1409.

¹⁰⁷ The 1989 Antiquities Proclamation, Art. 12.

¹⁰⁸ The maintenance of this balance has stayed to be a headache especially for the developing world. The principle is that antiques or heritage in general has to be used for the interest of the current generation and the development of a nation but such use shall not damage the antique, which cannot be or difficult to rehabilitate or restore, thereby compromising the interest of the future generation.

¹⁰⁹ The 1989 Antiquities Proclamation, Art. 13 and 14. Under these provisions, it is clearly ruled that no person may, unless he has a written permit from the Ministry, record antiquities on film or cost or reproduce them in any manner for commercial purposes and no antiquity may be taken out of Ethiopia without the approval of the Council of Ministers.

¹¹⁰ *Id.*, Art.16-25.

discovery. The Ministry of Culture and Sport can supervise exploration, suspend or revoke permit, publish the report or result of exploration and own the discovered antique. On the other hand, fortuitous or accidental discovery has to be reported and delivered with reward. The proclamation also provides for reserved areas that need special care.¹¹¹ Under Articles 28 and 30 of the proclamation, repatriation of Ethiopian antiques held in other countries and duty to cooperate for heritage management were regulated.¹¹²

The final part of this proclamation includes provisions for civil and criminal liabilities.¹¹³ For instance, failure to register, poor management, transfer without permit, failure to report fortuitous discovery to mention but a few are punishable for six months to one year imprisonment and/or a fine ranging from 600–4000 Ethiopian Birr. The most serious crimes committed against heritage constitutes the taking out of antique from Ethiopia, theft and destruction in which case the severe punishments under the proclamation ranges from ten to twenty years of imprisonment. Thus, the provision of this strict and severe criminal liabilities had an unparalleled educative and deterrence effect on the wrongdoer as compared to the clumsy criminal liabilities indicated under the 1966 antiques proclamation. For example, under the then penal code even aggravated theft is punishable only up to 10 years but the proclamation by the Dergue regime provides up to 20 years. However, as it does not regulate the relationship between the proclamation and the Penal Code, for example, it would have stated the application of the penal code in case the proclamation was silent.

The Dergue government also made fundamental changes to the institutional frameworks for heritage management in the country. As of the 1976, the Centre for Research and Conservation of Cultural Heritage was established under the same Ministry, which had continued until 1995, without changing even with the change of government.¹¹⁴ The Centre was empowered with research and conservation activities under the close supervision of the Ministry and the Council of Ministers. The 1989 proclamation has further recognized the “Ministry of Culture and Sport” as an owner institution for the enforcement of the proclamation and implementation regulations.¹¹⁵ It was given a comprehensive power of supervision, issuance/revocation and

¹¹¹ *Id.*, Art. 26.

¹¹² With the same tone, this proclamation grants protection for foreign antiquities brought into Ethiopia in different circumstances. For example, foreign antiquities which are temporarily brought into Ethiopia for the purpose of cultural exchange shall be accorded government protection as necessary.

¹¹³ *Id.*, Art. 31.

¹¹⁴ This institution is made to have sections like archaeology, anthropology and paleontology, monument and object preservation, museum, and several sections including photographic unit and later an inventory and inspection. This structural assortment was an interesting institutional measure.

¹¹⁵ *Id.*, Art 2(1) *Cum* Arts. 16, 19, 21, and 22.

suspension of permit and prior approval in the discovery, use, transfer and conservation of antiques in general.

Generally, it could be argued that proclamation No. 36/1989 was the first of its kind in thoroughly regulating new areas of heritage and heritage management in the country. For instance, it tried to define antiques to include the remains of fauna and flora as well as written and graphic documents and cinematographic works. However, its scope of application was still limited to only antiques or related materials disregarding valuable natural and intangible heritages of the country. This constriction was held on the wrong side of the law seen for the fact that it was enacted after the country has ratified the world heritage convention.¹¹⁶ The second limitation goes to the organization of the heritage institution. Even if the establishment of the Centre for Research and Conservation of Cultural Heritage and the concern given at Ministry and Council of Ministers level was excellent, the structure was designed in a way that weakens the autonomy and specialty of the institutional framework for heritage management. It was a time where the Ministry was preoccupied with other mainstreaming duties such as sport, culture, artistic works and youth activities than with specific thrusts in heritage.¹¹⁷ With these few exceptional gaps, however, the proclamation was highly regarded and that is why its strength perhaps sustained long after the Dergue government lost power, since there is no substantial variation with that of the 2000 proclamation that repealed it.

3.3. The Legal and Institutional Formworks of Heritage Management under the FDRE

Unlike the previous two regimes, the present Federal Structure establishes state and federal sets of laws and institutions. Given that heritage is one of the fundamental areas where the constitutional dream of one economic and political society is supposed to be met, heritage law making is unvaryingly given to the federal government which saves the power of states to make consistent laws for administration purpose.¹¹⁸ Accordingly, there have been continuous attempts to regulate heritage management and to guarantee the use, protection and promotion of both natural and cultural heritages in the country by the federal government. Under Article 89 (5) and 91(1) of the FDRE Constitution, the government is indebted to hold and deploy national heritages for the common benefit and development. It is also stated that all Ethiopians are indebted to protect the natural endowment, historical sites and objects. The constitution has also broadened the application of international heritage conventions by making them parts of the law of the land.

¹¹⁶ Compare Art. 2 of The World Heritage Convention.

¹¹⁷ *Supra* note 97.

¹¹⁸ The Preamble and Art. 51(5), 52(2-d) of the FDRE Constitution. The federal government is empowered to enact laws for the utilization and conservation of (...) natural resources, historical sites and objects, while regions are given power to administer them in accordance with Federal laws.

In the due course, the scope of heritage and heritage management is made to include all natural, historical and cultural heritages, and specific and subsidiary legislations are enacted accordingly. With the change of the government, proclamation No. 36/1989 was maintained governing the historical and cultural heritages of the country. In addition, other specific laws were enacted in a way to make the gaps good. In this regard, the Ethiopian National Archives and Library Proclamation No. 179/1999, which established its own Agency with specific structural and functional frameworks was enacted.¹¹⁹ This proclamation emphasized the need to identify, register, document and maintain archives, books and other documents and make them available for citizens. With this determination, the preamble clearly articulates that archives, libraries and documentation centers play vital role to well organize and enrich information for the current and future generations. A provenance is required to organize and submit records reaching the age of 25 and to notify stolen or lost records and any publisher shall deposit copies in the agency.¹²⁰ Failure to submit records or copies, illegal taking out of books and records from Ethiopia, and illegal transfer are all punishable.¹²¹

Later in the year 2000, the Research and Conservation of Cultural Heritage Proclamation number 209/2000 was legislated as a comprehensive heritage law repealing the Dergue's heritage proclamation of 1989.¹²² The role of heritage as the nations, nationalities and peoples' identity and source of knowledge is clearly objectified and the need to research, register, supervise, conserve and use them for economic and social development is underlined.¹²³ It defined cultural heritages and kinds of cultural heritages.¹²⁴ These definitions have come with no better metaphors than their predecessors except the recognition it gave to intangible heritages. As I have already explained, this proclamation has made no big variance from the 1989 proclamation except the rough arrangements to the new constitutional values. For example, it bestows heritage ownership to both the state and any person with specific duties and government control¹²⁵, allows exploration and discovery of antiques with specific duties and supervision¹²⁶, provides reserved areas that need special care¹²⁷, incorporates repatriation and cooperation clauses¹²⁸ and provides

¹¹⁹ The Ethiopian National Archives and Library Proclamation, FED. NEG. GAZETA, (No. 179/1999).

¹²⁰ *Id.* Art. 13.

¹²¹ *Id.* Art. 18.

¹²² Heritage Proclamation (2000), Art. 47.

¹²³ *Id.* at the Preamble *cum.* Art. 4.

¹²⁴ *Id.* Art. 3 (4-8).

¹²⁵ *Id.* Arts.14-28.

¹²⁶ *Id.* Arts. 29-41.

¹²⁷ *Id.* Art. 42.

¹²⁸ *Id.* Art. 44.

for penalty clauses¹²⁹. What can be mentioned as a peculiar strength here is that this proclamation provides a detailed structural and functional framework for authority for research and conservation of cultural heritage.¹³⁰ It also recognizes intangible heritages of the country but still neglects natural heritages. It has also clearly regulated the relationship between the proclamation and the criminal code on crimes against heritages and hence severe penalty is made to prevail.

As discussed above, the 1989's, 2000's and 2014's proclamations have regulated only the historical and cultural heritages of the country. Given these proclamations, one may conclude that the natural heritages of the country are neglected. Yet, natural heritage laws can be read from the different laws and policies of the country. In this regard, it is better to see laws on wildlife, forest, fishery and biodiversity as an insignia of natural heritage laws. The enactment of "The Development, Conservation and Utilization of Wildlife Proclamation No. 541/2007" can be one of these kinds. This proclamation has confessed that unplanned and inappropriate utilization has resulted in depletion of wildlife, including our endemic heritages and stressed for the delineation and maintenance of boundaries of Wildlife Conservation Areas such as national parks, reserves, sanctuaries, controlled hunting areas, community wildlife development, and protection and utilization areas.¹³¹ It also provides some prohibited and punishable activities, such as hunting without prior permit or license which may entail civil and criminal liability if intruded.¹³² It is enforced by Ethiopian Wildlife Development and Conservation Authority, which is established by Establishment Proclamation No. 575/2008 with particular structure and function. While this wildlife proclamation safeguards the fauna heritage, the Forest Development, Conservation and Utilization, Proclamation No. 542/2007 protects flora heritage. This later proclamation underlines the need to have legislations on the conservation, development and utilization of the remaining limited forest resources of the country including endemic plant species and it provides for the existence of private and state forests.¹³³ The Forest Proclamation pays special and stringent stipulation for the designation, demarcation, registration, use and administration of state and protected forests wherein endemic species can be found.¹³⁴ It prohibited and sanctioned some

¹²⁹ *Id.*, Art. 45, Failure to register, poor management, transfer without permit, failure to report fortuitous discovery, etc. are specifically punishable for 6 months to 5 years imprisonment and/ or 1500 _15,000 birr Theft and destruction are severely punished, 1520 years imprisonment.

¹³⁰ *Id.*, Arts. 2 *Cum.* 4-13, as per Article 2, the Authority for Research and Conservation of Cultural Heritage is established as a government institution with a juridical personality accountable to the Minister of Information and Culture. This proclamation has paid wider space in regulating organization, objectives, budget, powers and duties of the authority.

¹³¹ The Development, Conservation and Utilization of Wildlife Proclamation, FED. NEG. GAZETA, at the preamble and Art. 4-7 (No. 541/2007).

¹³² *Id.*, Art. 8-9 and 12.

¹³³ The Forest Development, Conservation And Utilization Proclamation, FED. NEG. GAZETA, at the Preamble and Art.3 (No. 542/2007).

¹³⁴ *Id.*. Arts. 8-11.

activities such as forest fire, production and movement of forest products as well as cutting, trading or grazing of endangered species.¹³⁵

The Fisheries Development and Utilization Proclamation No. 315/2003 also regulate natural heritages in the fishing sector. This proclamation is a new law of its kind and is aimed at sustainable development and rational utilization of fishery resources.¹³⁶ For this purpose, the proclamation regulates fishing activities and there are some prohibited and punishable activities including overfishing.¹³⁷

In addition to these compulsory statutes, we can find policy frameworks from different policy documents that relate to the promotion of Ethiopian heritages since there is no comprehensive heritage policy. Accordingly, one can find heritage related provisions in the Environment Policy of Ethiopia formulated in 1997. This policy document has clearly recognized heritage as main component in the environment. It divulges Ethiopia's heritage potential and existing severe threats against heritages and affirms to advance sustainable heritage management and to integrate it with the general social and economic development.¹³⁸ Heritage conservation is made to be the responsibility of government and other stakeholders.¹³⁹ The other policy document is the 1997 Cultural Policy of Ethiopia. This policy marks on the equal recognition, protection and preservation of tangible and intangible cultural heritages of Nations, Nationalities and Peoples of Ethiopia, which is a constitutional melody in the country.¹⁴⁰ It emphasizes the need for research, collection, registration, analysis, and preservation of the diversified cultural heritages of Ethiopia.¹⁴¹ The more specific policy document is the 2009 Tourism Policy of Ethiopia that included provisions for the better management and utilization of Ethiopian heritages. It is aimed at ensuring benefits from Ethiopia's heritage through good tourism management.¹⁴² It is worthwhile to find other policy areas such as investment, agriculture, rural and urban development and others that take heritage as a cross-sectorial policy agenda.

In addition to domestic laws and policy scaffolds, the current constitutional framework of the country has favorable rooms for the application of international heritage laws. As it has been

¹³⁵ *Id.* Arts. 12-14.

¹³⁶ The Fisheries Development and Utilization Proclamation, FED. NEG. GAZETA, at the Preamble and Art.3 (No. 315/2003).

¹³⁷ *Id.* Arts. 16 &17.

¹³⁸ FDRE Environment Policy of Ethiopia, 2 (1997).

¹³⁹ *Id.*

¹⁴⁰ FDRE Cultural Policy of Ethiopia, 5 (1997).

¹⁴¹ *Id.*

¹⁴² FDRE Tourism Policy of Ethiopia 7 (2009).

discussed before, international heritage laws can be traced from specific heritage laws as separate branch of international law or from human rights and humanitarian laws, environment, trade and investment laws as an evolving dimension of different areas of international law such as environment, human right, investment, trade, war, etc. To begin with, the right to heritage is made to be an integral element of humanity as implied from the different provisions of UDHR¹⁴³, ICCPR¹⁴⁴ and ICSCER¹⁴⁵. On the other hand, irresponsible threats during war times necessitated the depiction of the 1st and 2nd Hague Conventions that outlaw sieges and bombardments targeting heritages except when used for military purposes.¹⁴⁶ Later, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, for the first time, specifically regulate conducts of belligerents with its 1st and 2nd protocol in 1966 and 1999.¹⁴⁷ We have also specific heritage treaty frameworks under the UN, UNESCO, multilateral treaty system¹⁴⁸ that deal with the core areas of heritage such as cultural and natural heritage, intangible cultural heritage, underground water, cultural diversity and creativity, indigenous values, etc. Compared to national laws, international heritage laws are valiant and comprehensive to regulate heritage and heritage management.

However, there are contemplations on the enforceability of international law as there is no particular authority to put it into effect. Yet, there are various ways where we can graft a tooth to beat. Specially, traditional tools such as reputation, sanction, rewards, reciprocity as provided under international law could alert Ethiopian state to comply with its treaty obligations.¹⁴⁹ Some of the non-ratified laws, principles and judicial decisions related to heritage such as the 1948 UDHR and the 1954 Hague Convention (with its two protocols) have by this time got the status of customary international law and need to be adhered and directly enforced in Ethiopia. Once they are proved to be binding, the first note of these international instruments obliges states to strengthen the institutional framework to enforce international and national heritage laws. Among other things, this may include legislative organ to make laws in line with international laws,

¹⁴³ Universal Declaration of Human Rights, Adopted by the United Nations General Assembly, 1948.

¹⁴⁴ The International Covenant on Civil and Political Rights, Adopted by the United Nations General Assembly, 1966.

¹⁴⁵ The International Covenant on Economic, Social and Cultural Rights, Adopted by the United Nations General Assembly, 1966.

¹⁴⁶ The 1st Hague Convention, Adopted in the Netherlands, May 18, 1899, and The 2nd Hague Convention, Adopted in the Netherlands, October 18, 1907.

¹⁴⁷ The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954 See also the 1st and 2nd protocol of the 1966 and 1999.

¹⁴⁸ For example, the Universal Copyright Convention of 1952 and the International Convention for the Protection of Literary and Artistic Works of 1886; The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970; the Convention Concerning the Protection of World Cultural and Natural Heritage of 1972; The Convention on the Protection of the Underwater Cultural Heritage of 2001; the Convention for the Safeguarding of the Intangible Cultural Heritage of 2003; The Convention on the Protection and Promotion of the Diversity of Cultural Expressions of the 2005 and the UN Council Declaration on the Rights of Indigenous Peoples of 2007.

¹⁴⁹ United Nations Convention on the Law of Treaties, Art. 26, Adopted by the United Nations General Assembly, 1969.

heritage specialized institutions under the executive branch, national court systems to interpret and apply laws to heritage disputes against government or any person. For example, Article 9(4) puts international treaties as part and parcel of the law of the land and Articles such as 10, 13(1) and 92(1) of the constitution have warned the government to respect, protect and fulfill interests in heritage. In this regard, Article 2(3) of *Negarit Gazzeta* Establishment Proclamation has warned the judiciary to take juridical notice of these applicable laws. So far, due to various understanding gaps and lack of political willingness, applying international heritage laws in national courts has remained to be difficult. Hence, one way to address such judicial passivity could be the principles of Public Interest Litigation, which are now familiarly spoken in environmental disputes to foster the implement heritage laws in national courts.

Furthermore, to overcome the problems of scattered heritage legislations, the establishment of concerned and specific heritage institution is an important task. In this regard, in 1995, the Ministry of Culture and Sports Affairs amalgamated with Ministry of Information, the Centre for Research and Conservation of Cultural Heritage became accountable to the Ministry of Information and Culture. In the year 2000, the centre was upgraded to the Authority for Research and Conservation of Cultural Heritage (ARCCH) by proclamation No. 209/2000. In 2001, due to the restructuring program of the Government, the accountability of the Authority has been transferred to the Ministry of Youth, Sport and Culture-by Reorganization of the Executive Organs of FDRE proclamation No. 256/2001. The Ministry embraces four heritage related sectors: Authority for Research and Conservation of Cultural Heritage, National Archives and Library of Ethiopia, Ethiopian Convention Centre and Ethiopian National Theatre.

In 2010, a new ministry was established by proclamation No. 691/2010. Ministry of Culture and Tourism has become the principal owner to enforce or monitor the enforcement of heritage laws. Powers and duties of the former ministry with regard to culture and tourism were transferred to the new ministry. It has five authorities, in charge of administering heritage: Authority for Research and Conservation of Cultural Heritage, National Archives and Library of Ethiopia, Ethiopian Wildlife Research, Use and Conservation Authority, Ethiopian National Theatre, and Ethiopian Tourism Commission. In order to improve the heritage management system in the country, in the year 2014, the proclamation on the classification of cultural heritages into national and regional cultural heritages is decreed.¹⁵⁰ This proclamation has underlined the need to define the particular body responsible for safeguarding heritage through participatory heritage management in the federal set up of the country. The classification is

¹⁵⁰ A Proclamation to Provide for the Classification of Cultural Heritages into National and Regional Cultural Heritages, FED. NEG. GAZETTE, (No. 839/2014).

provided to be compulsory to undertake background works for the nomination of additional cultural heritages of the country for inscription in the World Heritage List.¹⁵¹ In view of that, it defines the role of Federal and Regional organs in the administration of cultural heritages to avoid responsibility overlaps, wastages of resources and establish speedy administrative and procedural system. Accordingly, Article 3 classified cultural heritages into regional and national heritages.¹⁵²

3.4. Identifying Major Gaps in the Ethiopian Heritage Management System

It is previously indicated that well-designed legal framework both at national and international arena facilitates the better use, conservation and management of heritage at the local level. However, legislation that is designed for the protection and preservation of heritage in developing countries is far from satisfactory.¹⁵³ A study by Gasiorowski in the 1980s had shown the futile nature of Ethiopian heritage laws. This paper assessed the long survived problems of Ethiopian heritage laws through its chronological analysis. Under this paper, the competence of Ethiopian laws in defining heritage and regulating ownership, liabilities and enforcement of heritage laws is essentially pondered. In heritage legislation, one of the central concerns worthy of prodigious articulation is the ‘subject’ of a law and the first leaf of many heritage laws is exhausted in defining heritage and delimiting the scope of that law.¹⁵⁴ Even if there is a general trend of ranging the scope and definition of heritage, Ethiopian heritage laws have long been criticized for being narrow. The 1966 Proclamation was constrained to antiquities or historical objects existed before 1850s, and the 1989 and the 2000 heritage laws are limited in scope only to cultural heritage conventions. These laws have neglected natural and intangible heritages of the country. While the problem was by and large attributed to the late development of international legal regimes to protect natural and intangible heritages compared to cultural and tangible heritages, the failure of Ethiopian government to domesticate these laws is not an excuse seen in light of the protection given to tangible heritages so far recognized by UNESCO. Therefore, natural sites and intangible assets found in the different parts of Ethiopia are worthy of inclusion and protection as far as they have outstanding universal value. The trending effort of the

¹⁵¹ *Id.*, The Preamble.

¹⁵² *Id.*, Art. 5. Accordingly, cultural heritages inscribed or will be inscribed in the World Heritage List, paleontological and archaeological sites that evidence human evolution or ancient lifestyle, trans-regional heritage sites, and other tangible and intangible heritages are classified to be national cultural heritages. Sub-article 2 of the same article provides that cultural heritage not classified as national cultural heritage shall be classified as regional cultural heritage. Accordingly heritage management is decentralized at national and regional levels.

¹⁵³ Steven A. Brandt Fekri Hassan, *Dams and Cultural Heritage Management 6* (World Commission on Dams, 2000). See also *Supra* Note 1.

¹⁵⁴ For example, the first provisions of the 1972 world heritage convention, the European heritage convention and the 2000 Ethiopian cultural heritage proclamation have been used to define heritage. Here it should be noted that the determination of the objects of protection is a pertinent job of heritage laws because while narrowed definition excludes essential heritage form protection, broader definition may unduly embrace objects worthy of no protection.

Ethiopian government to register intangible and natural heritage sites as per the requirements of UNESCO conventions could be appreciated though much homework remains at large.¹⁵⁵

Another vital weakness worth motioning is that the existing laws of Ethiopia on natural and intangible heritages are highly disorganized and overlapping. On top of this, the definition and scope of heritage is usually questioned since the criteria to define an object as heritage is not clear as not all objects can be considered as heritage and protected. While some Ethiopian heritage legislations in the past set age¹⁵⁶ of the objects to be protected others set quality or value. The situation in Ethiopia has remained to be very difficult because of the continuing operation of the 1966 proclamation that equate heritage to “antiquities” continued for 100-years.

However, while the 2000 proclamation has made another move by making both age and value as alternative criteria, it also provides a possibility of protecting specified contemporary objects, intangibles and natural heritages without showing their perpetuities.¹⁵⁷ This age independent characterization makes it possible to protect more contemporary objects which are of high quality or outstanding value. The other major gaps of heritage legislations are the concern of determining ownership. In property law, ownership is conceived as an exclusive right to freely use the thing, to collect fruit from the thing and to dispose/ transfer the same subject to definite legal precincts.¹⁵⁸ However, ownership of heritage is defined differently. Consequently, states either provide total public ownership of heritage or restricted private ownership of heritage and we seldom witness exclusive ownership rights.¹⁵⁹ Heritage ownership is recommended to be shared between a state and a private wing (organizations or individuals) and as such the 1989 proclamation has made a magnanimous move and provided the possibility of ownership to private individuals and juridical persons like the church which is affirmed by the 2000 Ethiopian heritage

¹⁵⁵ For example, The Simien Mountains National Parks and the Awash National Park are nationally gazetted, though inadequate compared to the country's potential.

¹⁵⁶ In many jurisdictions (e.g. Luxembourg, Norway, Sweden, Libya and the Philippines), objects more than 100 years old with an important cultural and historical value are determined to be heritages. Of course, it has recently been reduced to 30 years (e.g. in the recent new Danish law) or even altogether abandoned (e.g. no age-criterion in Austria or Poland). In Ethiopia the 1966 proclamation set age as a criterion but the 1989 proclamation had lifted it and replaced value as a criterion, which is affirmed by the 2000 convention.

¹⁵⁷ For strong reason, under Proclamation No. 691/2010 the ministry of culture and tourism is empowered to administer not only historical and cultural objects but also natural and other contemporary heritages of mankind. And the constitution under Article 92(2) calls for the protection of the country's natural endowment, historical sites and objects alike.

¹⁵⁸ See for example, The Civil Code of 1960, Art. 1204 *cum.* 1225.

¹⁵⁹ This model is preferred in order to compromise competing interests in heritage management. On the one hand, heritages are properties of all mankind necessitating public ownership and on the other there is a need for effective conservation and management that obliged states to share out ownership right for privates or religious institutions with some sort of interventions. Hence, total state and private ownership are not the preferred models.

proclamations. Yet, these laws provide various possibilities where governments can intervene to secure the biggest public interests in heritages. Here, the problem is that unlike other countries the practice of public participation in heritage management is low and the awareness of the local people with whom many of heritages are found is stumpy. This causes improper use, damage and destruction. Therefore, the granting of ownership has to be enforced with the constitutional duty of heritage protection.

Finally, it is important to question the organization and availability of these heritage laws to the law enforcing and interpreting organ as well as the local heritage manager, literate or illiterate. A logical organization of heritage laws is critical for the proper comprehension of the heritage management system. As such, compilation of heritage laws in a code form has many advantages. First, it helps by organizing all general areas of definitions and administrative provisions in a single section. Codes also help eliminate duplication of definitions and administrative provisions in individual pieces of legislation. More importantly, codification facilitates compliance of government employees, visitors, owners, and local heritage managers because they know they have all the laws before them when they consult them. In the organization of its formal laws, Ethiopia is squarely in the camp of civil law countries. Since 1950s and 1960s, Ethiopia has organized most of its civil, commercial, and criminal laws and procedures in codes. However, many laws, most notably in the heritage area, have remained outside the code system.

The country has not attempted to organize these laws since modern laws were introduced in the 1960s. To date, the Ethiopian heritage legislation field is disorganized making it difficult for an average man to make sense of its obligations under the various heritage laws in force. As we have seen before, Ethiopian heritage laws are found scattered in cultural, environmental and natural resource laws. It is also commendable to also design heritage law curriculum as part of both law and heritage management departments in Ethiopian universities.

Another important area is the weakness of laws in providing adequately equipped institutional frameworks for the management of heritages in Ethiopia. It is revealed that despite their long history, Ethiopian heritage institutions for heritage management lack specialization, independence and autonomy. This, coupled with lack of skilled human resource and technology, has highly miffed heritage administration and law enforcement in the country. Moreover, there are no specific organs for implementation of some laws such as the newly ratified 2005 convention on cultural diversity.¹⁶⁰ There is an overlapping of power between and among institutions. For example, the authority for administering natural heritage is exercised by the Authority for Research and Conservation of Heritage, the Ministry of Agriculture and Rural

¹⁶⁰Interview with Ato Desalegn Abebaw, Cultural Heritage Research Directorate Director, December 20, 2014.

Development, the Ethiopian Environmental Authority, and Ethiopian Wildlife Conservation and Research Authority. Similarly, the authority that administers the intangible cultural heritage of the country is exercised by the Authority for Research and Conservation of Heritage, the Ethiopian National Archives and Library Authority, and the Ethiopian Intellectual Property Rights Office. Hence, in order to avoid the overlapping administrative power of heritage management institutions, it is important to strengthen and specialize single government departments such as the establishment of non-governmental organizations like that of the charitable company (ECHO) of Egypt working totally on heritage conservation, protection, use, interpretation and promotion.

CONCLUDING REMARKS

The establishment and enforcement of legal and institutional framework is a core element of heritage management in any country. The importance of heritage for national identity and social cohesion, tourism development and employment generation, education as well as cultural and religious values is acknowledged in several countries. Governments of different countries have taken legislative and administrative measures with a view to safeguard heritages and enforce standard heritage management in the use, conservation, protection and promotion as per the minimum requirements of heritage conventions ratified by the states. This article attempted to assess the legal and institutional framework of heritage management in Ethiopia. After a brief conceptual explanation on heritage and heritage management, the international standards and practices of heritage management were briefly outlined in light of member states' obligations to heritage conventions. The heritage laws and institutions designed to protect and manage heritages in Ethiopian were also chronologically examined. It was revealed that Ethiopia has old-age heritage laws starting from the imperial period of Haile Selassie I to the 1987 and 1995 constitution and ratifications of international conventions, enactment of proclamations and regulations embedding various aspects and concerns of heritage protection system. Institutionally, it is indicated that though questions of autonomy and specialization are still problematic, the government has established a heritage institution for heritage conservation, management and research.

However, the legal and institutional frameworks for the management of natural and intangible heritages are not adequate in view of the Ethiopia's long history, rich cultural and natural landscapes and resources. While the world community in general is late to give legal protection to such forms of heritages, the effort of the Ethiopian government in protecting and preserving the intangible heritages of the various peoples of Ethiopia including the natural heritages is not adequate. It is also imperative to learn that the international communities have understood the impacts of poor heritage management on the universal values of mankind and as such gearing the

efforts of states to revise their legal and institutional frameworks thereby to effectively manage and protect recently emerging forms of heritages. While the efforts of the Ethiopian government to help UNESCO register some of its heritages, the evaluations of both heritage laws and institutions indicated the disorganized nature of these frameworks imposing inconsistent or non-uniform duties and penalties. Particularly, the existence of various government bodies responsible for similar accounts of heritage management complicated the issue of heritage management in Ethiopia. The role of some of these laws (such as wildlife and forest proclamations) does not seem to be made for heritage use or protection as it is made with a different motivation. Heritage laws and policy instruments (national and international) are the most neglected issues in law education and court practices. Institutions in charge of enforcing heritage laws lack institutional independence and specialty to enforce national and international heritage laws. The domino effect of these gaps in legal and institutional frameworks is clear and it resulted in poor heritage management in the sense that they lack the adequacy to help in the identification, research, use, conservation and, promotion of heritages thereby causing them to easily deteriorate or decay. In the absence of legal awareness, the occurrence of crimes against heritage such as arson, theft and looting, illegal exporting could be rampant and lingering.

Hence, in order to circumvent inconsistencies in heritage management and meet international standards, the federal government should endorse a comprehensive national guideline that help in the decentralization of heritage management at the local level. It should also work on the compilation of heritage laws to help practitioners, researchers and academicians to work on the identification of legal loopholes that impact the proper management of heritage. This instrument can serve as a principal guiding document for owners, managers and approval authorities to make sound decisions in the conservation and management of heritages. This can best be learnt from Australia, where heritage conservation is guided by the *Burra Charter* throughout the country.