

Cultural Property Preservation and the Challenges of Land use Planning: The Kwara State Experience

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Abstract

Cultural property preservation starts from the identification of what constitute cultural heritage. Cultural property refers to products of human creativity by which a people and a nation reveal their identity. Most cultural property is attached to land and those not attached to land are preserved on land. Therefore, comprehensive land use Planning is important towards the preservation of cultural property. This paper is triggered by a visit to Sobi Hill in Ilorin, the Kwara State capital. Despite the long identification of the Hill as one of the cultural properties with rich history and huge tourism potentials, efforts are not in place towards planning land use and development around the Hill to give room for its preservation. Indiscriminate land development and religious activities on the Hill has really rob off its cultural value. This paper seeks to discuss the connection between land use planning, cultural property preservation and the need for government to come up with policies that would address the shortfalls and poor land planning to preserve cultural tradition. To achieve this, a doctrinal legal research method is employed which involves the examination of international, regional and national laws relating to cultural property and land use in Nigeria. The paper concluded that preservation of the cultural property in the state would be a window to attract huge revenue for the government and open the economy of the state to investors. It recommended that robust policy would go a long way in preserving collective history, culture, value systems, traditions and beliefs of the state' cultural property among which is the hill.

Keywords: cultural heritage, values, beliefs, lifestyles, land management

Introduction

The history of a people is best preserved and taught through the preservation of historical and artistic monuments and no matter how civilized a society is its culture is the bedrock upon which its civilization is premised.

Most monuments are natural endowments, and its preservation is mostly dependent upon the land use and planning policy of government. Several movements have been destroyed as a result of poor planning of land use and those not totally destroyed cannot be easily accessed because of indiscriminate development of land.

Sobi Hill in Ilorin, the Kwara State capital is one of the artistic monuments that needs to be preserved through land use and planning policy of the government. Despite the long identification of the Hill as one of the cultural properties with rich history and huge tourism potentials, efforts are not in place towards planning land use and development around the Hill to give room for its preservation. Indiscriminate land development and religious activities on the Hill has really rob off its cultural value. This paper seeks to discuss the connection between land use planning, cultural property preservation and the need for government to come up with policies that would address the shortfalls and poor land planning to preserve cultural tradition.

To this end, the legislated effort of the government of the Kwara State in ensuring cultural property preservation through adequate land use planning and development is paramount.

Meaning of Cultural Property

Cultural property are artifacts that are expression of the culture of a people. Cultural property are items like historical buildings, works of arts, archaeological sites, libraries that are part of the cultural heritage of a

society.¹ The 1954 Hague Convention for the protection of cultural property in the event of armed conflict defines cultural property as:

*“immovable and movable cultural heritage, including monuments of architecture, arts or history, archaeological sites, works of art, manuscripts, books and other objects of artistic, historical or archaeological interests, as well as scientific collections of all kinds regardless of their origin or ownership.”*²

The Article 1 of the 1970 convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property says:

Property which, on religious or secular grounds, is specifically designated by each state as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following category:

- a) Rare collection and specimens of Fauna, Flora, minerals and anatomy, and objects of palaeontological interest.
- b) Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientist and artist and to events of national importance.
- c) Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries.
- d) Elements of artistic or historical monuments or archaeological sites which have been dismembered.
- e) Antiquities more than one hundred years old, such as inscriptions, coins and engraved seals.
- f) Objects of ethnological interest.
- g) Property of artistic interest such as
 - i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand).
 - ii) Original works of statuary art and sculpture in any material.
 - iii) Original engravings, prints and lithographs.
 - iv) Original artistic assemblages and montages in any materials.
- h) Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary etc.) singly or in collection.
- i) Postage, revenue and similar stamps, singly or in collections.
- j) Archives, including sound, photographic and cinematographic archives.
- k) Articles of furniture more than one hundred years old and old musical instruments.³

Administration of Land in Kwara State

Land is the earth surface, subsoil, the air space above it, as well as things that are permanently attached to it.⁴ The common law maxim “quic quid plantator solo solo credit”, which means that whatever is affixed to

¹ <https://en.m.wikipedia.org>

² The 1954 Hague Convention even though signed on the 4th of May 1954 came into force on the 7th August, 1956

³ The 1970 UNESCO Convention was signed on the 14 November 1970 but became effective on 24 April, 1972

⁴ See general Utuama O.A.A. (1989) Nigerian Law of Real Property, Shareson C.I Limited, Ibadan Nigeria

the soil belongs to the soil, is applicable to the definition of land in Nigeria.⁵ By this designation, the natural content which includes the surface of the earth, the sub soil, things that are grown on it as well as the arterial content in the form of buildings and other permanent fixtures will generally belong to the owner of the land.⁶ However every mineral deposit found in land in any part of Nigeria belong to the federal government.⁷

Prior to the enactment of the Land Use Act of 1978⁸ ownership of land was mostly controlled by the respective customary laws of the place where the land is situated. Ownership of land under the various customary law was absolute. The absolute ownership of land prior to 1978 Act has no sustainable means of managing land resources especially as the resources is not renewable. The drafters believe that if the absolute ownership system by individual is allowed to continue, it will deny so many citizens access to land which will in turn affect food sustainability. Unfortunately, so many lives and property have been lost over the years as a result of conflicts arising from land ownership and use.⁹

The idea of ensuring that all Nigerians have equal access to land is emphasized in the preamble to the 1978 Act thus:

“whereas, it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law; AND WHEREAS it is also in public interest that the right of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof is sufficient quality to enable to provide for the sustenance of themselves and their families, should be assured, protected and preserved.”

The enactment of the Land Use Act was not intended to eradicate existing titles or rights of possession prior to its enactment.¹⁰ Section 36(2) of the Land Use Act provides:

“Any occupier or holder of such land, whether under customary rights or otherwise however, shall of that land on the commencement of this Act being used for Agricultural purpose as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate local government and the reference in this subsection to land being used for agricultural purpose includes land which is in accordance with the custom of the locality concerned, allowed to lie fallow for purposes of recuperation of the soil.”¹¹

The 1978 Land Use Act was enacted to bring land administration and use under the government. This was the first National Law that introduced uniform system of land administration. The opening paragraph of the 1978 Land Use Act provides:

“An act to vest all land comprised in the territory of each state (except land vested in the federal government or its agencies) solely in the governor of the state, who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all Urban areas to individual resident in the state and to organization for residential, agricultural, commercial and other purposes while similar powers will with respect to non-urban areas are conferred on local government.”

The Land Use Act gave sweeping power to the state and local government to do everything necessary to bring or make access to land easy, especially as most lands are controlled by few privileged customary title

⁵ Alloh B. O. (2017) A Review of the Application of the Quicquidplanta Solo Solo cedit Rule in Nigeria, Port Harcourt law Journal Volume 6.

⁶ See generally Adewale T (2011) The Nigerian Land Law, Aberiba Press Ltd, Lagos Nigeria.

⁷ See The Mineral Act, 1946 CAP 121, Laws of Federation of Nigeria 2004

⁸ CAP L8, Law of Federation of Nigeria 2004

⁹ Tukur M. B. Conflict between Transtumant, Pastoralist and farmers in Nigeria, the way out. <http://pastoralistz.wordpress.com>.

¹⁰ See Section 36(2) of the Land Use Act.

¹¹ See CSS Bookshops Ltd V Registered Trustees of Muslims Community in River State (2006) INWLR (Pt 992) 530 at 574 ²²⁷ See Section 35 of Land Use Act

holders. The law gives power to both the state and local government to expropriate land without compensation, except when development is brought unto the land in form of economic trees or buildings.²²⁷

The 1978 reform of land administration in Nigeria was aimed at nationalizing land administration by having uniform laws regulating land use and development. Unfortunately, the reform did not emphasize the need for the preservation of natural monument and flora and fauna that could be of cultural importance. The Kwara State and the local governments in exercising their powers of compulsory acquisition of land do not often considered the cultural importance of land. The application of the overriding public interest condition of public acquisition of land is interpreted to merely mean buildings or economic trees brought unto the land.

Therefore, the indiscriminate allocation of land around the Sobi hill will automatically rob off its value and the preservation of its cultural worth may be impossible. This work seeks to draw the attention of the Kwara State government to this type of allocation.

Cultural Property Preservation

Before the establishment of Jos Museum in 1952 and the enactments of the Antiquities Act of 1953, Nigeria Cultural properties were mostly looted and illicitly traded away by the colonialist.¹² The 1897 British expedition led by Consul James R. Phillips did not only invade the Benin Kingdom in violation of the Benin Tradition but also looted thousands of precious cultural properties.

According to Professor Shyllon; *“the thousands of art pieces involved were first removed to London by the British punitive expedition as spoils of war, from where they were dispersed throughout the world.”*¹³ William Fagg’s made the following remarks on the archaeological riches of Nigeria:

*“When the contribution of all other African countries are added together, they indeed illustrate certain sections or artistic history, but in Nigeria alone can we discern the main stream of artistic development through two millinia and more of all the known works of African sculpture to which we can safely attribute an age of more than a century, probably at least nine-tenths are Nigerian; moreover, this remarkable ratio seems continually to increase as more and more antiquities come to our knowledge on an under the Nigeria soil. Unless some fortunate chance should bring unsuspected sculptural riches to light elsewhere in West or Central Africa, it is to Nigeria that all the African Nations must look as the principal trustee of the more durable fruits of the Negro artistic genius”*¹⁴

The enactment of the National Commission for museum and monuments in 1979 and the establishment of the National Museum gave room for the declaration of cultural properties as national monuments by the National Museum amongst its other functions.¹⁵ The National Museum has declared some cultural properties as National monuments among which are:

- a) The building known as Illojo Bar’, No. 6 Alli Street and 2 Bamgbose Street, Lagos.
- b) Makama’s House (Gidan Makama) in Kano State
- c) Chief Ogiamienc house in Benin City, Edo State
- d) Chief Ekpo Basseyi House at No 19, Boko Street, Calabar, Cross River State.

¹² Shyllon F (1998) Destruction and Neglect of Historic Monuments in Nigeria, Art Antiquity and Law, Kkower Law International Vol. 2 Issue 2

¹³ ibid

¹⁴ Shyllon F (1998) Destruction and Neglect of Historic Monuments in Nigeria, Art Antiquity and Law, Kkower Law International Vol. 2 Issue 2

¹⁵ S. 3 National Commission for Museums and Monuments Act (CAP N 19 Laws of Federation of Nigeria 2004 ²³² Shyllon F. (1998) Destruction and Neglect of Historic Monuments in Nigeria, Op cit P 180.

- e) The Kufana Hill in Zaria, Kaduna State
- f) The Old Iga Building in Iga Idunganran in Lagos State
- g) Owu Waterfall in Kwara State
- h) Esie Museum, Housing Tombstones Images in Kwara State²³²

The establishment of National museum across the country has not really stopped the destruction and looting of cultural properties in Nigeria. The Ife museum was raided in 1993 and 1995. The Ibadan, Abeokuta and Esie Museum in Kwara State have been raided. In Ikere-Ekiti in 1985, five precious beaded crowns belonging to the chief priest, the Olukere, were stolen from the Palace.¹⁶

The preservation of cultural properties goes beyond the establishment of National museum or the declaration of antiquities as National monuments. The preservation of cultural property should rather be the collective responsibilities of the three tiers of government and the traditional institutions who traditionally are the custodian of the culture and history of the people.

The Kwara State Government in an attempt to legislate on the preservation of cultural property in the state merely mentioned it in Town Planning and Development Authority Law²³⁴ and put the responsibility on the Town Planning Authority. Section 5(3) (e) provides:

“Without prejudice to the generality of subsection (1) of this section, it shall be the duty of the Authority to preserve building, objects and other places of architectural, historical, artistic or natural interest and beauty.”

This is the only section in the Town Planning and Development Authority law that made reference to cultural property. This section did not provide for the procedure to be followed in the preservation, and the provision did not also spell out the requirements to be met by a property/building before it could be declared as a cultural property. The provision did not define what constitute a cultural property. The section is also silent on compensation if a private property is to be declared a cultural property.

A visit to the Town planning Authority office in Ilorin, the Kwara State Capital revealed the fact that the authority since its establishment has not identified and declared any building or property as cultural property. No department is dedicated to carry out the identification and declaration of properties or buildings as cultural property. There are no experts with the requisite training and knowledge to carry out its function under Section (5) (3) (e) of its law.

The Challenges of Preservation of Cultural Property

The poor implementation of the Town Planning and Development law of the Kwara State is a major reason cultural property preservation has suffered huge set back. It is the responsibility of the town planning authority to plan, promote and secure the physical and environmental improvement of the state through constant control over development and use of land in the State.¹⁷ Unfortunately, the Town Planning Authority has not lived up to expectation. An example is the Sobi Hill in Ilorin the state capital. Despite the identification of Sobi Hill as a monument of National Importance, the Town Planning Authority failure in the strict enforcement of the building plan and development around the Sobi Hill is grossly affecting the economic potentials of the Hill by the tourism board of the State. The first Ilorin Central Mosque that is over a hundred Years and the Oke Suna historical site where Islamic Scholars first converged over a hundred years ago has also been negatively affected by the ignorance and poor implementation of the planning law of the Kwara State.

¹⁶ Shyllon F. (1998) One Hundred Years of looking of Nigeria Art Treasures Op Cit
P 263 ²³⁴ CAP T 12 Laws of Kwara State, 2006

¹⁷ Sec. S. 5(3)(e) of Town Planning and Development Authority Law CAP T12 laws of Kwara State ²³⁶ See <https://en.m.wikipedia.org>. accessed on the 31/5/2020

Religious belief is another factor that has affected the preservation of cultural property in the Kwara State. Some school of thoughts among the Islamic theologians condemn the preservation of images and monuments for historical or any purpose. There has been destruction of cultural properties by the Islamic state (ISIS) in Iraq and Syria since 2014.²³⁶

The lack of political will on the part of the government to protect cultural property and the lack of fund to build a secured museum in palaces of traditional rulers has really led to the destruction of thousands of antiquities and other historical relics. The declaration of a private property of artistic, architectural and historic importance requires the payment of compensation. Section 44 (1) of the 1999 constitution (As amended) of the Federal Republic of Nigeria provides:

“No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by a law that, among other things –

- a) requires the prompt payment of compensation therefore; and*
- b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.”*

The preservation of cultural properties in the Kwara State has not gotten the required attention because of the absence of comprehensive legislation on its preservation and the dedication of a government department and the necessary human resources with the requisite expertise to implement the provisions of the law if enacted.

Conclusion

It is sad to note that thousands of cultural properties have been lost or destroyed as a result of the failure to strictly implement the Kwara State Town Planning Law. The absence of synergy between the Bureau of land that is saddled with the responsibility of land use and allocation and the Town Planning authority that approves and supervises land development has also led to huge loss in our cultural properties. The Bureau of land should pay attention to natural monument and flora that could be of artistic and architectural and historical importance and ensure such land is not allocated to individuals for general use or taken over by the government except for the purpose of preservation.

Budgetary provisions should be made for the identification and preservation of cultural property. The government at all level should educate the public on the need to promote our culture through the preservation of our cultural properties.