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Abstract: This study explores the dynamics that have influenced the perception, definition and management of heritage in Kenya from the pre-colonial period to the post-devolution era. It demonstrates how, over the years, different actors have influenced the way heritage is perceived and conserved in the country. Different agents have employed various notions, elements and terms in defining, valuing, classifying, researching, conserving, disseminating and publicizing heritage. This is demonstrated by the evolution of customs, terminology, language and laws that the agents have variably continued to adopt in interacting with and enacting heritage. The paper demonstrates that all actors including pre-colonial African communities, the colonial government, the post-independence ethnic communities, post-independence government and its elite, post-devolution national and county/regional governments, as well as the international community and multinational agencies have continuously defined and employed heritage to articulate and fulfil their socio-political and economic interests. The study also demonstrates the complexity that is often occasioned by the ever-changing and intricate interactions among stakeholders' competing and conflicting interests.

Keywords: Heritage, management, conservation, Kenya.

The Historical Dynamics, Perception, Definition and Management of Heritage in Kenya: from Pre-Colonial to Post-Devolution Era

Introduction: defining heritage

According to many, heritage is both the tangible and intangible values, objects, stories, etc., that shape humanity, including those around us. However, what is tangible heritage without the cultural processes and activities that are undertaken at and around them (Smith, 2006)? It is these processes which identify and give meaning and value to the tangible heritage.

In this paper, the definition of heritage is broadly viewed from the international community's perspective, which encompasses historical and cultural sites, natural sites and landscapes, cultural property, as well as intangible heritage. This definition is drawn from UNESCO's conventions, including the *Convention concerning the Protection of World Cultural and Natural Heritage* (1972); the *Convention for the Safeguarding of Intangible Cultural Heritage* (2003); the *Convention on the Protection of the Underwater Cultural Heritage* (2001); and the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970). Kenya has ratified the first two conventions and is in the process of ratifying the other two.

Under these conventions, the following definitions are given:

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Cultural Heritage: a) 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 value from the point of view of history, art or science; b) 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 value from the point of view of history, art or science; c) sites: works of man or the combined works of nature and man, and areas including archaeological sites, which are of outstanding value from the historical, aesthetic, ethnological or anthropological point of view.

Natural Heritage: a) natural features consisting of physical and biological formations or groups of such formations, which are of outstanding value from the aesthetic or scientific point of view; b) geological and physiographical formations and precisely delineated areas, which constitute the habitat of threatened species of animals and plants of outstanding value from the point of view of science or conservation; c) natural sites or precisely delineated natural areas of outstanding value from the point of view of science, conservation or natural beauty.

Underwater cultural and natural heritage: Refers to “all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as: a) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context; b) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and c) objects of prehistoric character.”

Intangible cultural heritage: are practices, representations, expressions, knowledge, skills – as well as beliefs. Natural sites may belong to cultural heritage as cultural identity is strongly related to the natural environment in which it develops. Natural environments bear the imprint of thousands of years of human activity and their appreciation is primarily a cultural construct. These are manifested in the

domains such as oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; performing arts; social practices, rituals and festive events; knowledge and practices concerning nature and the universe and traditional craftsmanship.

In Kenya, the term heritage is defined within the *National Museums and Heritage Act No. 6 of 2006* as “natural and cultural heritage” with a broader meaning assigned to the natural and cultural heritage within the same Act.

Thus, “cultural heritage” under this Act is drawn directly from the definition given in the international meaning above.

“Monument” means— (a) a place or immovable structure of any age which, being of historical, cultural, scientific, architectural, technological or other human interest, has been and remains declared by the Minister under section 25(1)(b) to be a monument; (b) a rock-painting, carving or inscription made on an immovable object; (c) an ancient earthwork or other immovable objects attributable to human activity; (d) a structure which is of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attached to it; and has been and remains declared by the Minister under section 25(1)(b) to be a monument; (e) a shipwreck more than fifty years old, and such adjoining land as may be required for maintenance thereof.

“Natural heritage” is defined yet again from the international definition above but also includes some local natural areas of importance to the Kenyan people particularly areas of religious and traditional significance such as; a) natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; (b) geological or physiographical formations of special significance, rarity or beauty; (c) precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science, conservation or natural beauty; or (d) areas which are or have been of religious significance, use or veneration and which

include but are not limited to Kayas (Coastal sacred forests); “object of archaeological or palaeontological interest” means an antiquity which was in existence before the year 1800; “object of historical, cultural or scientific interest” means an object which came into existence in or after the year 1800.

In a paper by John Giblin, “Heritage and the use of the Past in East Africa” published online on August 2018, the author outlines definition of heritage based on two aspects; the first is exclusive and dependent on the history and effects of the national and international formalization of heritage policies and legislation and their implementation through management strategies while the second is inclusive and centres on the study of heritage as “the use of the past in the present”, which includes top-down heritage formalization and management processes, which have been termed “authorized heritage”, alongside more fluid bottom-up processes, which have been termed “alternative heritage” (Giblin, 2018). According to the author, all of these may exist without the use of the word ‘heritage.’ The first definition presents a narrower and more easily identifiable field of study that is dependent on a Western-driven history of a particular archaeological and architectural formalization of ‘heritage’ that emerged in North America, Europe, and some of Europe’s colonies in the 19th and early 20th centuries and was then spread around the world by continued colonialism and globalization. As a British Colony, Kenya has over the years, beginning in the early 1900s when it became under the British rule, adopted this definition.

It is therefore clear that the definition of heritage in Kenya has been heavily borrowed from the international meaning and is mainly a governance definition and not based on the culture or perception of the local populace. This legal definition begins and ends with objects, monuments or physical structures and spaces/sites. This is hardly surprising, granted the account and inception of the institution mandated with the management and conservation of heritage in Kenya, the National Museums of Kenya (NMK). NMK’s foundation was based on the focus of natural history, archaeological, paleontological and geological

research. Right from the start, the academic subject of history and culture was not of significance within the institution. The definitions are also influenced by previous legislation on the management of Kenya’s antiquities and definitions of NMK’s modus operandi, both of which focused on antiquities, monuments, as well as archaeological, palaeontological and geological fields of study.

Precolonial cultural stewardship

During the pre-colonial period, different parts of today’s Kenya were occupied by various ethnic communities. The members of each of these communities were bound together by a common heritage, including a common ancestry, belief system, rituals and an ancestral homeland which it claims to have occupied since time immemorial. This common cultural heritage was practised and relied upon for the purpose of creating a common identity, solidarity and harmonious coexistence among the members of an ethnic community. As a form of a common code of conduct, the common cultural heritage also guided how the members of an ethnic community interacted with and exploited their environmental resources for survival. In the absence of any written policies, the ethnic communities perceived, defined and safeguarded their heritage through the traditional custodianship system (Taylor, 2005), which consisted of knowledge and practices passed down through generations by oral traditions (Mbiti, 1977; Ogburn, 1922). Through taboos, rituals and regulations, the communities determined what was valued as heritage; by whom, when and how it was accessed; by whom and how it was safeguarded; as well as the incentives and sanctions that were associated with its protection and abuse respectively.

While the adherence to the taboos, rituals and regulations was overseen by community elders and specially designated cultural stewards, the members of the community individually and collectively safeguarded their heritage as part of their day-to-day living. Traditions and cultures were passed on to the youth through songs, dances

and narrations. Daily chores were avenues of these training and specifically during herding/grazing of animals, firewood and water collecting, where the youth were taken through social and survival lessons, particularly by their grandmothers and grandfathers. Governance and leadership were through special elders who had been chosen within communities based mainly on their family lineage and leadership capacity. Material culture and traditions related to everyday life and activities, especially in matters of religion, governance and social fabric within the society, were well identified, protected and passed on from generation to generation.

Perception and management of heritage in colonial Kenya

Kenya's legal protection of heritage began in 1927 with an ordinance to provide for the preservation of ancient monuments and objects of archaeological, historical and artistic interest (Kenya, 1927). This was signed by the then Governor of Kenya, Sir Edward Grigg, and followed the scheme of the Indian Act, which had been advanced by a former Viceroy of India, Marquess Curzon, a statesman of the British Empire. It is said that Kenya may have advocated for the 1927 Ordinance to honour Marquess as many of the administrators in Kenya then had come from India, including Sir Grigg, who had been born in Madras, India. This, therefore, already set forth a legal instrument that was skewed towards the preference of what and how heritage in Kenya was to be protected. The fact that this legal instrument did not have the views of the Kenyan people was a failure as at this time. Kenyans had their own revered customs, cultures and traditions, which were ignored as they were thought to pose resistance and give powers to the people against the colony. Moreover, there had already been interactions between the local and the outside world in the country particularly within the Kenyan Coast where the earliest relations were with the Portuguese and Omani Arabs. These had already made and left their marks within the region through their engagement in trade and control of sea routes

between Europe and Asia. Remains of their settlements, transport and trade goods, vessels and architecture were left as a testimony of their existence within the region.

Their rein was however disrupted by the British rule in the late 19th century when Britain took control of Kenya as a colony. Britain had started protecting its own heritage with the Ancient Monuments Acts of 1882 and 1913. In 1904, India had enacted Act No.7 of 1904 (*Ancient Monuments Preservation Act 1904*), and this was used by the British Colony to develop the Ordinance of 1927 as Kenya's preservation policy. The *Ancient Monuments Preservation Act 1904* of India was for the preservation of ancient monuments and of objects of archaeological, historical, or artistic interest, and its main definition was therefore 'Ancient Monuments.' The term Ancient Monument was defined as any structure, erection or monument or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest, or any remains thereof. Other terms related to heritage which were defined in this Act included antiquities, maintain and maintenance, and land. This meant that this Act did not define some of the most important fields, such as culture, traditions and heritage in general but mainly concentrated on built heritage which was of relevance to India.

The 1927 Ordinance in Kenya would follow the same precedence and thus definitions were heavily similar leaving out most of the terms that related to the Kenyan audience at the time mainly within the cultural intangible field (shrines, traditions, beliefs). This Ordinance was to provide for the preservation of ancient monuments and objects of archaeological, historical and artistic interest just like that of India (*1927 Kenya Ordinance on the Preservation of Ancient Monuments and Objects of Archaeological, Historical and Artistic Interest*). It was enacted by the Governor of the Kenyan Colony with the advice and consent of the legislative council and gazetted on 22nd October 1927. The Ordinance was expedient to provide for the preservation of ancient monuments and antiquities, for the exercise of control over excavations in

certain places, and for the protection and acquisition of ancient monuments and antiquities and objects of archaeological, historical or artistic interest.

Definitions given within the Ordinance included Monument as any structure, erection or memorial or tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of archaeological, historical or artistic interest or any remains thereof. This clearly shows that the interest then was to recognise and protect that heritage which had connections to the colonialists and did not represent the interests of the locals. There was also definition of antiquity which was any movable object that the Governor, by reason of the archaeological or historical associations, may think necessary to protect against injury, removal or dispersion. Again, during this time, there was tremendous earth exploration involving geological and archaeological studies by explorers and, therefore the interest towards this definition. Thus, most of the remnants of Kenya's foreign coastal trade and settlement reins would fall under this protection from the onset. Today, the Coast of Kenya carries most of the protected ancient and historical monuments of national importance protected under the current legislation, the *National Museums and Heritage Act* (Kenya, 2006).

Under the 1927 Ordinance, maintenance of the monuments and antiquities included fencing, covering in, repairing, restoring and cleansing, which again departed from the obvious local inclination where cultural heritage was maintained through narrations, songs, dance and use of shrines and traditional sites. Following the 1927 Ordinance, four other acts came into being for the preservation and protection of Kenya's heritage. These included the acts of 1934, 1962, 1983 and 2005, each of which repealed and replaced its predecessor but clearly heavily borrowed from the predecessor and thus, there was continuity mainly in definitions and areas of protection, particularly in what was termed as monuments. From the onset of these legal instruments, the term heritage was clearly missing and the word monuments was heavily used. Moreover, from the 1927 Ordinance, there was an advancement to

a centralized system of government control in the management and protection of Kenya's historical asserts and this lived up to the Kenya Constitution 2010 with the clamour for devolution where the "function of museums" was devolved to regional or county governments (a subject discussed in details later in this paper).

It is interesting to note that the first legal instrument in the preservation of heritage in Kenya came into force after the colonialists had formally developed a museum at Nyayo House in Nairobi in 1910 to store collections of the East Africa and Uganda Natural History Society, which later came to be called the East African Natural History Society (EANHS) and today's 'Nature Kenya.' This museum was the first formal space for heritage in Kenya. The EANHS society, which oversaw this museum was funded by senior British colonial officials and was made of nature enthusiasts whose collections were particularly of plants and insects, including butterflies. As the collections grew in size, the museum was moved to a larger space in 1922 before being granted a permanent location at its current site on Museum Hill where it was opened in 1930. By this time, the Ordinance of 1927 was already in place, although it was mainly for the protection of built heritage and objects related to archaeological and palaeontological research. Most of the collections within the museum were natural.

In 1962, the 1938 ordinance was replaced by two separate laws namely the *Preservation of objects of Archaeological and Paleontological Interest Ordinance*, and the *Museum Trustees Ordinance* which respectively became Chapters 215 and 216 of the Laws of Kenya. As a carryover of the 1938 Ordinance, the *Preservation of objects of Archaeological and Paleontological Interest Ordinance*, maintained emphasis on monuments, antiquities, archaeological and paleontological materials. The *Museum Trustees Ordinance* introduced the Museums Trustees of Kenya, as an entity in charge of the 'general management and control of all museums in the colony'. During this period, there was an introduction on restrictions by the Minister in charge on searching for objects of archaeological or paleontological interest.



View of Nairobi in the early 20th Century. Postcard.

Colonial disruption and introduction of Western Heritage

The advent of colonialism disrupted the traditional cultural custodianship. In most cases communities were forcefully removed from their ancestral lands and alienated from their cultural shrines and rituals. Moreover, some of the cultural objects which were used by the local people as forms of power were forcefully taken away from them thus denying the people their heritage. An example being the Pokomo Drum, “Ngadji” which today is in storage at the British Museum. The Ngadji was a source of cultural and religious power for the Pokomo people. It was their centrepiece in matters of ancestral religion. Its vibration and sound forced everyone to listen to the community’s oracles. It was therefore considered a threat to colonial rule and that is why it was taken away from the Pokomos in 1908. Besides the physical removal, introduction of Western religion and education system further alienated the communities from their cultural shrines and practices. Christianisation, for instance, entailed condemning of community’s cultural rituals and their associated objects (Munene, 2014).

While imposing the centralised governance and management systems to dominate the Africans, the

colonialists replaced communities’ councils of elders and cultural custodians with colonial chiefs who paid their allegiance not to the community but to the Queen’s authority (Lambert, 1965). The lead role of the cultural custodians was further suppressed and usurped as the colonial government introduced the western perception of heritage, whose objectives, values and standards were totally different from those of the African communities. As earlier highlighted, under the traditional custodianship, heritage perception, definition, valuation and protection

were engrained in the day-to-day living for the purpose of safeguarding the community’s wellbeing. While it was spearheaded by the councils of elders, it was a participatory process where all the members of the society variously participated in perceiving, valuing, ‘practicing’ and protecting cultural heritage.

The colonially imposed concept on the other hand introduced a perception in which definition, valuation, interpretation and protection of heritage was dictated through western standards, policies, rules, regulations and practices formulated by the ‘experts’ and enforced by the government. Under the colonial socio-political prism, African heritage was ascribed new values and purposes. Both movable and immovable items were ascribed ‘heritage value’ based on their exoticness, antiquity, grandness, monumentality, aesthetics and authenticity as perceived by western experts. The intangible cultural values, customs and rituals associated with the objects were largely disregarded by the colonialists. The objects started to be displayed in colonially installed pioneer museums in Africa as a testament to the colonialists’ discovery and domination of their new-found colonies. In the museums that were accessible only to a minority of initiates, under the ritual pontification of a clique of directors and curators (Monreal, 1976), the objects were used to tell the stories of the colonized communities and their

lands to the exploratory western visitors. Other objects were put in research rooms as specimens for continued inquiry into the natives' ancient cultures and environments. By being disconnected from their traditional, cultural and natural settings, these objects lost their cultural meaning, integrity and utility in day-to-day living of their source communities.

As heritage valuation, interpretation and protection became a preserve for a clique of western 'experts' and government operatives, Africans were forced to adhere and conform to the colonially imposed laws. In most cases, the colonial statutes regarded the Africans as potential destroyers of valuable heritage. As such, the laws were geared towards curtailing and excluding the Africans from defining, valuing, enjoying and protecting their own heritage (Beinart, 2003; Ranger, 1989; Castro, 1995). This marked the beginning of institutionalized heritage management in Kenya.

Post-colonial legislation and the management of heritage

As Kenya got her independence in 1963, she inherited and continued using colonial heritage statutes that laid emphasis on monuments, antiquities, archaeological and paleontological objects without recognizing or protecting the cultures and histories of the local communities. In 1984, the two Chapters on heritage and museums; 215 and 216 were enacted as Parliament Acts to provide for preservation of antiquities and monuments and to provide for the establishment, control, management and development of National Museums and connected purposes respectively. The *Antiquities and Monuments Act 1984* Chapter 215 provided for recognition of trust land and definitions of antiquities and powers of the minister.

On the other hand, the *National Museums Act* Chapter 216 provided for the establishment of Board of Governors of NMK and also gave the institution the mandate to be a repository of things of cultural and scientific importance. It also mandated NMK with research and dissemination of knowledge in all fields of scientific, cultural, technological and human interest.

In 1997, the two Acts were consolidated into an Act of Parliament, *The National Museums, Antiquities and Monument Bill 1997*. This then led to a review of this act in 2003 to the *National Museums and Heritage Bill 2003*. The act was to amend and consolidate the law relating to the National Museums and Heritage to provide for the establishment, control, management and development of National Museums and the identification, protection, conservation and transmission of the cultural and natural heritage of Kenya and to repeal the *Antiquities and Monuments Act* and the *National Museums Act and for connected purposes*. This was the first time the term heritage was being used in the Kenyan Law. Similarly, terms such as cultural heritage and natural heritage became prominent in the Act.

In 2006, the 2003 Bill was approved through Parliament as the *National Museums and Heritage Act 2006*. This Act consolidated the law relating to national museums and heritage to provide for the establishment, control, management and development of the National Museums and the identification, protection, conservation and transmission of the culture and natural heritage of Kenya and it repealed the *Antiquities and Monuments Act* and the *National Museums Act and for connected purposes*.

The definitions of heritage within the *National Museums and Heritage Act 2006* were more elaborate and included areas which previously had been ignored particularly those related to traditions and beliefs. Subsequently, subsidiary legislations were also put into effect under this Act for provision of better services. These included:

- a) The National Museums and Heritage (Private Museums) (Licensing) Regulations 2008, whose provision was to govern private museums, including how to license the same through approval by the Minister in Charge of Culture & Heritage.
- b) The National Museums and Heritage (Antiquities Dealers) (Licensing) Rules 2009 whose provision was to deal with antiquities, including matters pertaining to antiquities dealer license, importation and exportation thereof. This cov-

ers all antiquities which are lying in or under the ground, or on the surface of any land already protected under any law as a monument or being objects of archaeological, paleontological or cultural interest.

- c) The National Museums (Open Spaces and Areas of National Heritage) (Protection and Management) Rules 2009 and these rules applied to all open spaces, protected areas, national monuments, protected buildings and areas of cultural, natural or national heritage. The rules govern dealings, access to the public, prohibited activities, public conduct, restoration work, entrance and exit etc. in the specified areas.
- d) The National Museums and Heritage (Exploration Licenses and Export Permits) Rules, 2009 whose provision was for exploration licenses and export permits for buried monuments or antiquities as well as exportation thereof issued under section 27 of the Act. The minister responsible for heritage is authorized to issue export permits, and
- e) The National Museums and Heritage (Admission Fees) Regulations, 2013 to outline the heritage conservation entry fees to the various museums, sites and monuments.

The 2006 legislation's aspiration to establish a 'national repository' for natural and cultural heritage has been seen to face several challenges. One of the major challenges has been identified as lack of funds for heritage research and conservation. According to Kyule, lack of funds to "initiate [heritage] research or conservation projects" (Kyule, 2016), makes the country's premier heritage institution heavily depend on donors for such projects. Besides meeting the country's need to conserve heritage such donor funded projects also ostensibly perpetuate the historical perception of north-south domination in the heritage development field.

The renovation of the Nairobi National Museum that was done between 2005-2008 is an example of a major donor-funded heritage programme in the country. Whereas it transformed the museum into a world-class museum, by installing a commemora-

tive plaque with European Union's symbol, it embedded a perpetual reminder of the global north's influence on heritage management in the country. The renovations were also overseen mainly by expatriates who overshadowed Kenyan experts. Many of the exhibitions were developed under the same expatriates and thus skewed towards the outside world narrative. Overtime, the need for the government to give more funds towards saving "our heritage" has been emphasised by various NMK's Director Generals, including Dr. Mzalendo Kibunja, who in 2015 stated that the NMK was in "a financial crisis [that was] quietly eating it from within" (Musau, 2015).

Perception of heritage in post-colonial times

While observing that neither of the two largest colonially established museums, the Nairobi Museum and Fort Jesus Museum, addressed the histories or cultures of the local communities, Munene (2014) argues that disregarding the communities' histories was part of the colonizers' strategy to perpetuate derogatory identities that had been conferred on communities. Moreover, despite the name of the country's pioneer museum being changed from Coryndon to the National Museum of Kenya after independence, its management changed little (Cole, 1975), with the highest ranked African being a ticket clerk by 1968. As the museum's geographical scope expanded in the 1960s and 1970s, its focus remained on monuments and natural history with prehistoric sites in the rift valley (e.g. Hyrax Hill, Kariandusi and Olorgesailie), and built heritage sites along the coast (e.g. sites within Lamu, Fort Jesus, Jumba la Mtwana and Gede ruins) seeming to dominate (Hart, 2007). In 1968, Robert H. Carcasson described the museum in Nairobi as "the most important natural history museum in Tropical Africa" (Carcasson 1963: 183). A recommendation by Carcasson to establish low-budget cultural museums preserving the traditions 'of particular tribal groups' in the mid-1960s did not bear fruits (Munene, 2014). Even after the museum in Nairobi received its first ethnographic collection as a donation from colonial collectors in 1963, it



Olorgesailie, Rift Valley. Image: Valerie Magar, 2010.



Fort Jesus. Image: Valerie Magar, 2023.

would wait until 1974 to have its first ethnographic exhibition (Lagat, 2017).

Besides the colonial focus on natural history, the other factor that complicated representation of the local communities' cultures and histories in post independent Kenya was the intricacies of ethno-political dynamics of the nascent nation (Lagat, 2017). This became evident as an exhibition that was installed in 1973 (Munene, 2011) to celebrate Kenya's ten years of independence was mutilated for political incorrectness (Hughes, 2017), leav-

ing it 'one sided (Lagat, 2017). When the museum's first ethnographic exhibition was installed 1974, it followed the colonial legacy of focusing on the distinct features of the various ethnic groups as opposed to promoting the highly sensitive debate on nationhood. In this situation, perception, valuation and exhibition of communities' cultural heritages and histories was drawn into the context of ethno-political competitions spearheaded by the post-independence elite. This way heritage identification and display became part of the country's power politics involving ethnic communities led by their leaders.

In the same version that the colonialists had used monuments to stump their authority on Kenyan soil, Kenya's first president invented a heritage that demonstrated his powerful position in the state power. He inaugurated several monuments and imageries, which formed a heritage that symbolically stumped his authority as the country's supreme hero and ruler. This heritage included two imposing monuments of himself in the country's capital city, an image of himself on the Kenyan currency and a gazetted national day named in his honour.

Besides deploying monuments and imagery to stump his authority, the first president also used cultural heritage and traditional oaths to consolidate ethnic loyalty and support. When his leadership faced dissent from the second most populous Kenyan community, the Luo, Kenyatta used the evocation of cultural heritage and identity to invent the ethnic coalition, Gikuyu-Embu-Meru Association (GEMA), which would give his leadership ethnic loyalty and support. Heritage was thus being used for leadership and governance and not for the nation's pride and identity.



Uhuru gardens. Image: public domain.

When President Daniel Toroitich Arap Moi declared that he would follow Kenyatta's footsteps after taking over the country's leadership in 1978, he embarked on installing many more and much larger monuments than those of his predecessor to symbolize his power and authority (Larsen, 2011). The largest of these monuments was inaugurated in 1983 at Uhuru Gardens where it towered Nairobi's landscape at 100-foot tall. Besides commemorating 20 years of independence, like the rest of his monuments, it symbolized the President's and ruling party's control of state-power (Larsen, 2013). As part of stumping his authority in the country, Moi replaced Kenyatta's

image on the currency with his own and established a national day named after him to honour himself. Like Kenyatta before him, Moi's creation of heritage to stump his authority went beyond the installation of monuments and imageries. Using cultural heritage to consolidate ethnic loyalty and support, he invented a coalition of several linguistically related communities who together came to be known as the Kalenjin. They included the Nandi, Kipsigis, Elgeyo, Marakwet, Tugen and Pokot. Onto the Kalenjin coalition, Moi added three more pastoralist communities from the Rift Valley, the Maasai, Turkana and Samburu and formed a larger ethnic coalition that came to be known as Kalenjin-Maasai-Turkana-Samburu (KAMATUSA). This coalition would provide the ethnic loyalty and support that he needed in his political leadership that was facing challenges from dissenting voices, especially the populous Kikuyu and Luo communities.

Throughout the 1970s, 1980s, and 1990s exploration of Kenyan nationhood and national history remained politically sensitive. For this reason, the focus of institutionalized legislation and practice

in the country remained on pre-history and natural history. According to Munene, "natural heritage [was] a politically safe area because it [was] not as contestable and contested as some aspects of cultural heritage" (Munene, 2014: 38). When the first post-independence review of heritage policy in the country was done in 1983, it resulted in the *Antiquities and Monuments Act* and *National Museums Act*. The *Antiquities and Monuments Act*, defined 'antiquity' as "any movable object other than a book or document made in or imported into Kenya before 1895", while 'monument' was defined to include immovable structures, rock paintings, carvings or inscriptions made on immovable surfaces, and earthworks or other immovable objects made by humans, all dating before

1895. It also defined ‘Protected objects’ to include “a door or door frame carved in an African or Oriental style before the year 1946”. The *Antiquities and Monuments Act* also gave the government the role of identification, gazettement and management of antiquities and monuments as well as the issuance of exportation permits.

It was not until towards the end of Moi’s and KANU’s authoritarian reign that heritage associated with communities’ cultures, colonization and struggle for freedom started to be formally recognized. Among the communities’ cultural heritages gazetted during that period was *Mukurwe-wa-Nyagathanga*, the mythical origin of the Kikuyu community; the sacred vales (*Kayas*) of the coastal Miji Kenda people; and a Colonial District Office in Malindi Town (Hart, 2007) The increased inclusion of the communities’ cultural heritages could be attributed to the indigenous Kenyans who had joined NMK in significant numbers since the early 1990s. Dr. Mohamed Isahakia, a veterinarian, became the first Indigenous Kenyan Director of the Museum in 1990. In 1999, Dr. Isahakia, was succeeded by Dr. George Abungu, an archaeologist whose four years at the helm of the country’s heritage management saw many communities’ cultural heritage being gazetted.

As Kenyans’ agitation for democracy culminated with the entry of the country’s third president Mwai Kibaki, it widened the opportunity for the recognition and commemoration of the communities’ cultures and histories, which had hitherto been shunned by the former regimes. Soon after his election, Kibaki unbanned the Mau Mau movement setting the stage for the installation of monuments in different parts of the country to honour freedom heroes whom the previous regimes had shunned. Among the freedom heroes that were honoured through such installations included Jaramogi Oginga Odinga, Paul Ngei, Bildad Kaggia, and Achieng Oneko.

Other heroes who were honoured with monumental installations included the Mau Mau leader, Field Marshal Dedan Kimathi who was slain by the British; Tom Mboya, the Cabinet Minister and trade unionist who was assassinated during Jomo Kenyatta’s regime;

Kisoi Muniyao, who had heroically raised the Kenyan flag on Mt Kenya in the midnight that the country got her independence; and Koitalel arap Samoei, who had led the Nandi people’s resistance of the colonial rule between 1890 and 1906. President Kibaki also dedicated a special space, the *Mashujaa* (heroes) square and spearheaded a law which was later enacted as the *Kenya Heroes Act 2014* (Kenya, 2014), to facilitate the recognition of national heroes. On top of the goodwill and support from the Kenyan government, Mau Mau veterans got some money and a monument installed in their honour as reparations from the British government. The monument which the then British High Commissioner, Christian Turner termed as “a symbol of reconciliation between the UK, the Mau Mau and all those who suffered during the emergency period” (Hughes, 2017), broke the monotony of the capital’s monuments that told the story of the elite and their control of the state power.

Kenya Constitution 2010 and heritage management

The promulgation of the Constitution of Kenya (CoK) in August 2010, brought about constitutional reforms that led to the establishment of the national and county levels of government i.e. devolution (Article 6 and Chapter Eleven CoK). This led to the segregation of functions between the two levels of government as specified in the Fourth schedule to the CoK 2010. The museum function, which relates heavily on the dissemination and conservation of heritage was assigned to the county level of government. The management and protection of ancient and historical monuments of national importance and the research mandate on natural and cultural heritage was assigned to the national level government.

But it is the Kenya Constitution 2010 which gave powers to the populace on matters of culture and heritage. As the overarching statutory regulation for the country, the constitution highly recognizes the importance and protection of cultural and natural heritage. In Chapter One, Article 11 of the Constitution, culture is recognized as the foundation of the nation and

as the cumulative civilization of the Kenyan people and nation. The State is obliged, among other matters, to promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage (Art 11 (2) (a)). Chapter Five, part 2 of the Constitution entrenches provisions on Environment and Natural Resources. Some of these provisions are relevant by virtue of the cross-cutting conservation mandate attributable to cultural and natural heritage. The CoK also obligates the State to ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, Art 69 (1) (a). The CoK further obligates the State to protect genetic resources and biological diversity (Art 69 (1) (e)). This is the first time within the Constitution of Kenya that matters on heritage, have been highly promoted and addressed and more so under the public and local communities. Moreover, the State implements certain international obligations pursuant to International Conventions concerning these matters e.g. the *Convention on International Trade in Endangered Species of Flora and Fauna*, and the *Convention on Biological Diversity*.

After the promulgation of the new constitution in August 2010, the National Policy on Cultural Heritage (NPCH) (Kenya, 2009) which informs the administration of Kenya's heritage in general and which had been launched in February the same year was subjected to review to be in tandem with the constitution. Kenya's National Policy on Culture and Heritage theoretically guides all laws that are enacted to safeguard heritage in Kenya (Kyule, 2016). The policy is known to have been developed to correct the injustices which were apparent with legislations, particularly those that were enacted before independence to take care of heritage in Kenya. The policy is more inclusive in terms of heritage as it has heavily defined and set out aspirations on regulations and rules on intangible cultural heritage. However, the policy does not have the same weight as legislation but gives a basis for the enactment of laws for the same. Some of the recommendations that were made during this review were to

establish community cultural centres in the 47 counties to facilitate people's participation in socio-cultural issues at local, national and international levels. As a tool to implement the national policy on culture and heritage and the constitution's Article 11 on culture, a bill was also formulated. While providing for the preservation of communities' cultural heritage, the bill pushed for the establishment of a national council for culture and arts as well as compensation for the use of communities' cultural heritage. The bill mandated the national government with the establishment of standards and regulations as well as advice to county governments on heritage issues. On the other hand, county governments were mandated with the development of cultural policies that would guide the management of museums and other cultural entities under the counties' jurisdictions.

Similarly, following the promulgation of the 2010 constitution, the National Museums and Heritage Act of 2006 required to be subjected to review. The process for this review aimed to outline the various functions on heritage to be undertaken by the National Government as well as those to be undertaken by the County Governments with respect to the Fourth Schedule (Part 1: Clause 16 on Research by Institutions of Research, Clause 25 on Ancient and Historical Monuments of National Importance and Part 2: Clause 4 (g) on museums). The process led to a Draft Legal Notice which also listed the various monuments, ancient and historical sites, World Heritage Sites, National Statues, Memorials and Mausoleums currently assigned to the National Government as well as museums, parks and sites and land set aside for development of museums under the county governments. Moreover, the Draft Legal Notice also contained a category for shared facilities which host more than one function i.e. museum, research and ancient and historical monuments of national importance. This process was complicated as it is very hard to assign heritage to a level of importance within governance. Besides the review of the above Bill, which was led by the National Museums of Kenya, another review spearheaded by the Senate House was presented through *The Kenya Gazette Supplement* No. 52 (Senate Bills

No. 7). This Bill proposed to amend the National Museums and Heritage Act 2006 by changing the name of the body mandated with heritage management from the National Museums of Kenya to Kenya Heritage Authority. Some of the issues which were noted within the NMK Draft Legal Notice and the Senate Bill included:

- a) Retaining the corporate name of the National Museums of Kenya instead of changing the name to Kenya Heritage Authority. It was noted that as an institution mandated with the management and conservation of heritage in Kenya for over 100 years, NMK had become a brand and forged partnerships and relations world over. It had also built capacity in the heritage sector and has existing heritage spaces and assets which should be guarded zealously for the memory of Kenya's heritage. This should therefore not be wished away but should be enhanced and more partnerships forged with other heritage sectors to make sure that heritage in Kenya is promoted and conserved for prosperity. It was also noted that modalities of cooperating with the county governments and local communities should be enhanced.
- b) That there are international standards, policies and conventions that guide the heritage sector and these should guide the heritage sector in Kenya in developing its own localized standards and policies to make sure that there are mechanisms to protect, conserve and pragmatically manage heritage and its related asserts. There is already the National Policy on Culture and Heritage within the Ministry of Sports, Culture and Heritage under which the heritage sector is anchored on. In addition, there are also International Conventions in the heritage sector which Kenya is a party to and these prudently protect the country's heritage assets for example, repatriation of cultural and heritage artefacts/collections which is a matter of national importance. This means that County Governments and the populace should be cognizant of all these standards, policies and conventions

and use them fully for the management of museums and collections therein.

- c) Similarly, heritage asserts that will be devolved with the museum function should be protected from illegal disposal through sale and ownership. This includes land and collections. This is to make sure that there is proper coordination of the heritage and heritage sector as well as build capacity within the counties.

The two bills were later harmonized into one Bill that would guide heritage management in the country in the post-devolution era. The key highlights of the harmonized draft bill include:

- a) Acquiring a title for the bill that encompasses both levels of government and thus the proposed title is "The Heritage and Museums Bill, 2020".
- b) Defining the bill to give effect to the Fourth Schedule to the Constitution of Kenya 2010; to provide for national and county museums; to provide for preservation, protection and management of cultural and natural heritage at National and County levels of Government and to repeal the *National Museums and Heritage Act 2006*.
- c) Retaining the corporate name of The National Museums of Kenya as it is currently in the *National Museums and Heritage Act, 2006*. The name is a brand and this institution will continue to be the national government entity responsible for cultural and natural heritage, antiquities, ancient and historical monuments of national importance and heritage research
- d) To guide the two levels of governments towards their functions and mandate as per the Kenya Constitution 2010; Part 1 of the Fourth Schedule for the National Government which is mainly research on heritage and ancient and historical monuments of national importance and Part 2 of the Fourth Schedule to the Constitution which assigns museums as a function of County Governments.
- e) To designate heritage of national importance and criteria for declaration thereof and thus allowing the Cabinet Secretary for culture and heritage to

publish in Kenya Gazette, the heritage of National importance if it satisfies the criteria provided.

- f) To identify and protect World heritage sites listed under the UNESCO World Heritage Convention as an international obligation vested under the National Government.
- g) To give guidance on general principles for the management of heritage resources nationally through the Cabinet Secretary giving notice in the Gazette to prescribe principles for the management of the heritage nationally and publish for general information, national policy and standards relating to the management of the heritage nationally.
- h) To provide for enforcement mechanism of the National Museums of Kenya, to ensure compliance with the provisions of the Act with regard to heritage of national importance by use of national heritage inspectors and for County Cultural Inspectors to undertake enforcement of county legislation on county culture and county museums.

This proposed Bill is now with the senate and awaits approval and gazettelement. Should this Bill be published into an Act, heritage management and conservation in Kenya will be more representative under the people. County Governments will have the responsibility to formulate regulations on county museums and private museums, taking into account the set national and international standards on heritage matters and museum functions. This gives the people more powers on matters of heritage as all regulations within counties are debated in county assemblies by the elected representatives of the people. The people have the power to recall these representatives in case of non-performance. Similarly, finances and projects on matters of culture and heritage will be discussed, debated and approved through county assemblies, and thus the people's needs in matters of culture and heritage will be at the forefront.

Whereas devolution promises increased participation of the people in the management of their own affairs, it brought some level of confusion in heritage management. This confusion is associated with what has been seen as lack of clarity in distinguish-

ing between heritage of national and sub-national significance. This confusion has been evidenced by the discourse surrounding the ownership of various heritage items in the country. For example, in 2015, Joseph Nanok, the Governor of Turkana County, argued that the famous 'Turkana Boy' fossil under the custody of the Nairobi National Museum should be returned to Turkana County, from where it was excavated in 1984. Nanok said, "It has no meaning at National Museum in Nairobi. It was found here and so it should rest here" (Burrows, 2015). He argued that his government was planning to build a big museum to boost tourism and economic development in the county and that 1.6 million old fossil would be a major attraction in that museum.

This confusion poses a threat to the management of heritage in the country. This is because most of the collections, which have been displayed at the museum for many years as part of Kenya's national heritage, originally come from various counties. While the counties may constitutionally justify reclaiming 'their objects', removing the objects from the national collection in Nairobi would be like dismantling part of a Kenyan national heritage and identity that has been built over a long period of time. This might not augur well for a country that has struggled with creating a national identity against the backdrop of ethno-regional identities whose manipulation by the political elite has proven detrimental to the cohesion of the Kenyan nation over the years (Mbutia, 2020).

Moreover, capacity in infrastructure and skills/professionals is still lacking within the County Governments. Most of the heritage professionals and infrastructure are still centralized within the National Government under the National Museums of Kenya. Training in this field is also limited within the country, with no heritage management training courses offered in any of the country's public and private universities. However, there is some level of inclusion of the people in Kenya's heritage today. The current construction of a Heroes memorial park at Uhuru Gardens under President Uhuru Kenyatta promises to bring Kenya's material culture related to the nation's history and that of its people together under



Lake Turkana. Image: Public domain.

one park. The stories and narratives being developed are by the Kenyan people and for the Kenyans. This is the beginning of Kenya's history being told by its own the way they see and know it. It is a new dawn for Kenya's heritage, culture and history.

Conclusion

Heritage definition, perception and management in Kenya has been influenced over time, particularly through governance and legislation. From the colonial period, what mattered most was tangible heritage related to monuments and paleontological, archaeological and geological processes, which were more identifiable with the colonial administration. Intangible heritage was less represented and researched as it was perceived to identify mostly with the locals and thus of less value to the colony. However, any cultural collection or process which gave the locals powers against the colony was curtailed through forceful removal or destruction. The people's perceptions of what was important were left to their imagination and fallacy.

During the Post-colonial period, heritage continued to be directed through previous legislation with little inclusion of the people's voices. However, with time, there was more recognition of other forms of culture and heritage, although the definition still remained heavily guided by governance and legis-

lation. Heritage was recognized only if it was historically and politically positively aligned. This meant that the most tangible heritage and culture, which may have represented Kenya's history and defined the country, may have been eroded away and erased. The historical memory of Kenya as a nation and its people was thus left to intangible heritage mainly represented through monuments, some of which were personal.

The Kenya Constitution 2010 might, however, have given heritage ownership to the people, although the definition of heritage remains influenced by legislation and governance. The perception of what is heritage, is now in discourse. There is a lot of demand from the people for inclusivity in matters of heritage, specifically in its identity, documentation, management, definition, conservation and sustainable use. And it is their right to be given the opportunity as they are its custodian and managers. Heritage sustainability in a fast-developing nation requires inclusivity of all stakeholders and more so those that own and understand the meaning and pride in this heritage. A new dawn is envisioned for the Kenyan heritage, particularly through advancing heritage awareness and ownership to the young generation.

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