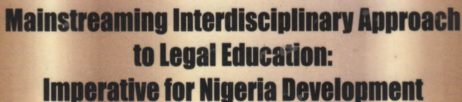

PROCEEDINGS OF THE 48th ANNUAL CONFERENCE OF THE NIGERIAN ASSOCIATION OF LAW TEACHERS (NALT)

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at
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Ass. Professor E. Smaranda Olarinde

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PROCEEDING OF THE 48TH ANNUAL CONFERENCE OF NIGERIAN ASSOCIATION OF LAW TEACHERS

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Theme: Mainstreaming Interdisciplinary Approach to Legal Education: Imperative for Nigeria Development

PROCEEDINGS OF THE 48TH ANNUAL CONFERENCE OF NIGERIAN ASSOCIATION OF LAW TEACHERS

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THE SIGNIFICANCE OF CULTURAL HERITAGE LAW IN NIGERIA'S LEGAL EDUCATION AND ITS RELEVANCE TO OTHER FIELDS OF LAW

John Oluwole A. Akintayo *

Afolasade A. Adewumi **

ABSTRACT

Besides the fact that Africa is considered to be the cradle of civilization, it is widely acknowledged to be rich in culture. In fact, what Africa lacks in science and technology is compensated for in her rich cultural past, a heritage that is increasingly being assailed and plummeted by contemporary popular cultures especially from the western world. Whereas academics and culture experts have devoted considerable attention to the study of different aspects of African culture, legal academics apparently due to their adherence to traditional law subjects and perhaps limited training and exposure have hitherto abandoned discourse on cultural issues beyond the narrow confines of customary law to scholars and culture experts from among archaeologists, anthropologists, sociologists, ethnographers etc. This regrettable trend is being reversed with the introduction of Cultural heritage law, a relatively new field of law in Nigeria, at the Master's level in the University of Ibadan. Though the course is relatively new, successive LL.M students are finding it attractive. The aims of this paper are two. First is to

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highlight the significance of Cultural heritage law in the law curriculum in view of the peculiar position of Nigeria in the cultural heritage map of the world. Secondly, this work will attempt to reveal the interface between cultural heritage law and other areas of law. The main goal is to demystify cultural heritage law and project beyond the successful experiment at the University of Ibadan by exploring how more students of law especially at the LL.B level can be introduced to the interesting union between law and material and ethereal culture.

Keywords Cultural Heritage Law; Legal Education; Curriculum review; University of Ibadan.

1.0 INTRODUCTION

Culture is the totality of the way of life of a group of people. Akin Ibidapo-Obe after identifying three levels of culture: namely, ideological, material and behavioural,[1] has described culture as evels of culture: nambehaviour patterns and institutions of a human group shared and transmitted socially." Heritage may be defined as 'valued things (or 'assets') that have been passed down from previous generations or items of current cultural significance' some of which may be intangible; such as cultural practices, languages, music and sport but much of which is 'material' and touchable such as historic sites and ruins, shipwrecks, buildings, parks and gardens and objects (or 'cultural property') such as paintings, jewellery, literature, sculpture and ceramics.[2] From this definition, the expression 'parks and gardens' brings to the fore the fact that the natural heritage is depicted in

[1] Akin Ibidapo-Obe, 'The Legal Protection and Preservation of Cultural and Religious Diversities in a Globalized World' in Ibidapo-Obe A, *A Synthesis of African Law (* Lagos, Concept Publications 2005) 227, 236.

[2]Heritage and Cultural Property Crime National Policing Strategic Assessment 2013, United Kingdom <www.museumsassociation.org/download?id=1038797> accessed 17 October 2014.

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the cultural heritage and cannot be separated from it as it has a major part to play in shaping the way of life of a people. Cultural heritage has been referred to as a pillar of civilization and of peoples' identities.[3]

Cultural heritage appears to be characterised by the 'semiotic link' between an 'item' and a group.[4] The Convention for the Safeguarding of the Intangible Cultural Heritage (CSICH) demonstrates this conceptual approach to cultural heritage when it states thus:

The "intangible cultural heritage" means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that *communities, groups and, in some cases, individuals recognize as part of their cultural heritage.*[5]

At the international plane, there are a number of conventions and international instruments at the global and regional levels that deal with the protection of the Cultural Property and Cultural Heritage of humanity. These include the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954, Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict and the Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954, the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999, Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of

[3] D. Max, 'Preface' in Jorge A.S. (ed.) *The 1970 UNESCO Convention New Challenges* (Mexico: Universidad Nacional Autonoma de Mexico 20130) xi-xiv, xi

[4] Y Radi, 'Cultural Interests and Investors' Interests in International Investment Treaties and Arbitration' in *Transnational Dispute Management* (2013) Vol. 10, issue 5 available at <www.transnational-dispute-management.com> quoting Clémentine Bories, *Le patrimoine culturel en droit international* (Pédone, 2011) 41-50.

[5] Convention for the Safeguarding of the Intangible Cultural Heritage (CSICH), Article 2.

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Cultural Property 1970, the Convention concerning the Protection of the World Cultural and Natural Heritage 1972, the Convention for the Protection of the Architectural Heritage of Europe 1985, the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995, Convention on the Protection of Underwater Cultural Heritage 2001, Convention for the Safeguarding of the Intangible Cultural Heritage 2003, Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005, Council of Europe Framework Convention on the Value of Cultural Heritage for Society 2005, Declaration on Principles of International Cultural Diversity 2001, UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage 2003, United Nations Declaration on the Rights of Indigenous People 2007. Regional instruments are European Convention on the Protection of the Archaeological Heritage (Revised) 1992, European Landscape Convention 2000.

The conventions listed above have defined the idea of heritage (both cultural and natural) for the purposes of each convention. From the definitions of heritage implicated in the conventions above, aspects of the law curriculum such as investment law, environmental law, humanitarian law, intellectual property law, criminal law, tourism law, land law and human rights are implicated.

This paper is divided into four sections including this introductory part. The second section deals with the significance of cultural heritage law in Nigeria's legal education. The third part focuses on the introduction of Cultural Property Law in the University of Ibadan. In the fourth part, we examine the relevance of cultural heritage law to other fields of law. Our conclusion is that every law lecturer has a role in raising consciousness about cultural heritage law even when the course is not taught especially at the undergraduate level.

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2.0 THE SIGNIFICANCE OF CULTURAL HERITAGE LAW IN NIGERIA'S LEGAL EDUCATION

There is a distinction between knowledge of law and its practice. Legal practitioners are authorised to practise law and are accorded exclusive privilege in this regard.[6] However, knowledge of law is open to all. Legal knowledge or its awareness imbues in an individual the capacity to demand justice, accountability and effective remedies at all levels. Law, among many other functions, determines the boundaries of human behaviour which determines the limits of transgression as well as compliance. Everyone is supposed to know the law and it is an inveterate legal maxim that ignorance of law does not excuse anyone.[7]

Universities are established primarily to advance knowledge relevant to each society. James Perhin has observed as follows:

Every civilised society tends to develop institutions which will enable it to acquire, digest, and advance knowledge relevant to the tasks which it is thought, will confront it in future. Of these institutions, the University is the most important.[8]

Legal training in Nigeria must necessarily connect with the society. First, because the nature of law as a discipline demands it; and secondly, because a significant aspect of legal education is undertaken in the university, which as shown above, is

[6] The Legal Practitioners Act, Cap 207 Laws of the Federation of Nigeria (LFN) 1990, as amended, defines "legal practitioner" to mean "a person entitled in accordance with the provisions of this Act to practise as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedingsceedingsost common form of entitlement to practise is by enrolment at the Supreme Court of Nigeria pursuant to S. 2 of the Act. Reference is made to Cap 207 of LFN 1990 because the version of the Legal Practitioners Act in LFN 2004 did not incorporate post 1990 pre 2002 legislation. LFN 2004 captures laws made before 2002.

[7] F.C Krishnamurthy, 'Legal Education and Legal Profession in India' (2008) 36 International Journal of Legal Information Iss. 2, Article 9. Available at <http://scholarship.law.cornell.edu/ijli/vol36/iss2/9>

[8] J Perhin, *The University in Transition* (Princeton (New Jersey), Princeton University Press 1966) 3,4.

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an important institution for the advancement of knowledge useful to solving societal problems. Law curriculum must be structured in such a way to meet the demands of the society because the primary role of law is to serve the community. Honourable Justice A.G. Karibi-Whyte, made the same point when he said with regards to the training for the legal profession as follows:

The articulacy and proficiency of members of the profession will depend essentially on the relevance of the subject content of the degree to the demand of the society and the standard of performance prescribed for admission into the profession.[9]

The relevance of curriculum was at the heart of the proponents of local training of lawyers in Nigeria as local training was conceived to correct the obvious defect in the training in England of lawyers that would eventually practise in Nigeria.[10] This was partly occasioned by their inadequate or lack of instruction in customary law.[11] First generation Faculties of Law in Nigeria[12] that were immediately established to fill the palpable gap in English legal education, concentrated largely on the traditional law subjects following the curricula in British universities interspersed with consideration of legal principles directly relevant to the Nigerian legal landscape. These universities exercised considerable latitude in populating their course contents and since the courses were structured to accommodate both Nigerian and English laws, from the inception of legal education in Nigeria, legal

[9] A.G Karibi-Whyte, 'The Future of the Legal Profession in Nigeria' in Y Akinseye-George (ed.) *Law, Justice and Stability in Nigeria: Essays in Honour of Justice Kayode Eso* (Ibadan, JSMB) 83 - 110.

[10] T.O Elias, 'Legal Education in Nigeria' (1962) 6 Journal of African Law, No. 2, pp. 117-125

[11] See generally, Government of the Federation of Nigeria, *Report of the Committee on the Future of the Nigerian Legal Profession* (Lagos, October 1959).

[12] The list would include the Faculties of Law in the following universities: Obafemi Awolowo University (formerly University of Ife), University of Nigeria, Ahmadu Bello University and University of Lagos.

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curricula were comparative[13] and international in outlook.[14] The National Universities Commission pursuant to its enabling law[15] prescribes undergraduate curriculum for Nigerian universities. The traditional subjects in law are prescribed in NUC instrument, the current one being the Benchmark for Minimum Academic Standards (BMAS). In addition, there is Customary Law. With regard to Customary Law, Akintunde Emiola observed as follows:

When the National Universities Commission [NUC] placed the study of Customary Law on the curriculum of the law programme in our universities, it was the only subject, unlike the others, for which no course outlines were provided. That apparently was because the Commission was not sure of what the course content was to be.[16]

Curriculum review is an on-going process and it is especially so in the discipline of law. As M. A. Ajomo put it: "Law is growing and dynamic discipline. The need to be contemporary and live with the times demand continual curricular development.[17] As soon as a new curriculum is approved and its implementation begins, the journey to improve it starts. The NUC has made efforts to improve LL.B Curriculum through the introduction of the Benchmark. Minimum Academic

[13] Karibi-Whyte (n 9) 87.
[14] Samuel O Manteaw, 'Legal Education in Africa: What Type of Lawyer Does Africa Need?' (2008) 39 McGeorge Law Journal 903- 976.
[15] The National Universities Commission (NUC) is established under the National Universities Commission Act, Cap N 81, LFN 2004.
[16] A Emiola, *The Principles of Customary Law* (2nd edn, Ogbomoso, Emiola (Publishers) Ltd 2005) vii. It is remarkable to note that in the *Benchmark Minimum Academic Standards for Undergraduate Programmes in Nigerian Universities: Law*, 2007 released by NUC in April 2007 Customary Law was also listed but no course description was furnished.
[17] M.A Ajomo, 'How to Develop, Systematize and/or Improve the Teaching of IHL in Nigerian Universities' in A Ajala and I Sagay (eds.) *Teaching of International Humanitarian Law in Nigerian Universities* (Lagos, Regional Delegate of the International Committee of Red Cross (ICRC 1998)) 37, 47.

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Standards (BMAS).[18] However, Popoola's observation when the NUC Minimum Academic Standards (MAS), the precursor to the BMAS, was in operation is still relevant today. According to the learned writer:

If we are serious about creating Universities that will address our specific needs we cannot ignore the relevance of African traditional modes of juristic thought. The premise of African law is that the individual should be seen in the light of the whole; and that meaning, significance and value depend on the art of integration. Besides, African traditional concept of law hinged heavily on "the moral solidarity" of the community, and was never divorced from sociological considerations. Unfortunately, this perspective on law has practically been abandoned in Africa by practitioners of the English type legal system. We need an integrated curriculum, one that will reflect and integrate the African mode of thought and Islamic Jurisprudence with the English Common Law.[19]

It is an indisputable fact that law schools and faculties should organise their courses so as to contribute as much as possible to the recognition and implementation of the rule of law in all its ramifications. Students must be instructed both in general legal principles and in reasoning on specific legal problems. All courses must be taught with emphasis on their social, economic, political and historical background.[20] In doing this, the essence of the cultural and natural heritage cannot be ignored in view of the position of Nigeria in the World Cultural Heritage map.

[18] National Universities Commission, *Benchmark Minimum Academic Standards for Undergraduate Programmes in Nigerian Universities: Law*, 2007.
[19] A.O Popoola, 'Restructuring Legal Education in Nigeria: Challenges and Options' in I.A Ayua and D.A Guobadia (eds.) *Legal Education for the Twenty-First Century Nigeria* (Lagos, Nigerian Institute of Advanced Legal Studies, 2000) 233, 246.
[20] The Role of Legal Education in a Changing Society in *The Rule of Law and Human Rights* <www.globalwebpost.com/genocide1971/h_rights/rol/7_legal_ed.htm>

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Though the introduction of local legal education in Nigeria was informed by the need to ensure the law students were fully prepared for the challenges they would meet in practice, this concern was essentially limited to undergraduate education. Leading authorities and institutions concerned with legal education have made a case for the introduction of additional courses in the LL.B Curriculum either as compulsory or optional courses on account of their relevance to the legal environment in Nigeria. The courses implicated include Customary Law,[21] Sharia (Islamic) Law (Karibi-Whyte),[22] Conflict of Laws (Agbede),[23] International Humanitarian Law,[24] and Intellectual Property Law,[25] to mention a few. In the present instance, though we do not recommend Cultural Heritage Law as a compulsory course, however, we believe it is imperative that law teachers become familiar with this field to improve the overall world views of law graduates and make them connect with Africa's rich cultural past which is increasingly being assaulted and is at the verge of extinction. This position is based on the fact that a law student at both undergraduate and postgraduate levels cannot possibly offer all

[21] See generally, L.O Ogiji, 'The Place of Humanities in Legal Education' in F Agom & P.O Igoche (eds.) *Ogebe & The Law: Legal Essays in Honour of Justice James Ogenyi Ogebe* (Zaria, Commercial Law Department, ABU 2010) 401 -411, 411.

[22] A.G Karibi-Whyte (n 9) 83 -110 at pp. 90 – 91 said "...the syllabus for the Degree of LL.B must provide for such subjects of Customary Law and Sharia Law which touch and concern the ways of life of the Nigerian."

[23] I.O Agbede, 'Law in time and space: The doctrinal bases and judicial practice' (1993) Vol. 1 No. 1 Nigerian Current Law Journal 83 -105, 105: "All students should be exposed to the technique of conflict of laws either in the University or at the Nigerian Law School."

[24] See generally, A Ajala and I Sagay (eds.) *Teaching of International Humanitarian Law in Nigerian Universities*, Lagos, Regional Delegate of the International Committee of Red Cross (ICRC), 1998; and A Ajala and I Sagay (eds.), *Implementation of the International Humanitarian Law in Nigeria*, Lagos, Regional Delegate of the International Committee of Red Cross (ICRC) 1997.

[25] In September 1999, the World Intellectual Property Organization (WIPO) organised a workshop in Abuja on the teaching of intellectual property in tertiary institutions in Africa: see F Shyllon, *Intellectual Property Law in Nigeria, Munich, Max Planck Institute for Intellectual Property and Tax Law* Verlag C.H. Beck, 2003, 71.

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law courses. A law graduate after graduation or a lawyer after qualification must realise the significance of continuing legal education as a means of engaging with emerging areas of law or even traditional areas where he or she could not obtain formal training in the university. It is therefore of utmost importance that the present scheme of continuing legal education in the legal profession looks beyond the narrow compass of practice-based courses.

The World Cultural Heritage map reveals the precarious state of Nigeria. Though Nigeria is recognised as a culturally rich, a considerable portion of its cultural objects and antiquities are scattered in different parts of the world especially in foreign public and private museums; it is a source country for cultural objects.[26] The cultural treasures of Nigeria have been vulnerable to despoliation in diverse forms. The state of Nigeria's historic monuments is also deplorable due to long term neglect and lack of the political will to develop the cultural heritage sector. Thus, the capacity of Nigeria to make significant contribution to the cultural heritage of the world is increasingly been depleted and it behoves lawyers to use the instrumentality of the law to arrest this unfortunate phenomenon. It is therefore imperative to instil awareness of cultural heritage law in all lawyers in training.

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[26] Countries are classified as either source or market countries. Cultural objects are trafficked from source countries and sold in market countries where the major auction houses are located. For instance, most African and Asian countries are source countries while the United States and Britain are essentially market countries. Italy is both a source and market country.

3.0 EXTENDING THE FRONTIERS OF LAW CURRICULUM: UNIVERSITY OF IBADAN EXPERIENCE WITH THE TEACHING OF CULTURAL PROPERTY LAW IN THE LLM PROGRAMME.

Under its general role of ensuring quality assurance in University education generally, the NUC plays some role in postgraduate education.[27] NUC gives approval to Faculties of Law to run postgraduate programmes and of late it sets out courses which Faculties of Law may run as part of the Master of Laws (LL.M) programmes.[28] However, universities still exercise considerable latitude in the specific courses they mount and this explains the diversity observed in the system of postgraduate legal education in Nigerian universities. In most Faculties of Law, postgraduate education at the Master's level is structured in such a way that a candidate selects a number of courses from the pool of courses made available by each Faculty from year to year. Such programmes are also guided by the regulations applicable generally for postgraduate programmes in each university. For instance, the University of Nigeria,[29] runs, in addition to the regular LL.M degree, an LL.M by Thesis Programme whereby a candidate in each university. For instance, the University of Nigeria, Such education in Nigerdefence just like Ph.D. degrees while until recently writing a research project was not a compulsory module in some LL.M degree programmes.[30] The duration of the LL.M programme

[27] The National Universities Commission gives approval to Nigerian universities to run postgraduate programmes after conduct of a visitation exercise.

[28] On Wednesday, 30 November 2011 the Hon. Minister of Education received Draft of BMAS for postgraduate programmes in the 13 disciplines of the NUC; see *NUC Newsletter* of 5 December 2011 "FME Receives Draft PG BMAS". The NUC has commenced implementation of the PG BMAS for Law Faculties starting with those who desire to establish fresh postgraduate programme.

[29] The Faculty of Law, University of Nigeria is located at the Enugu Campus (UNEC) of the University though the university'niv Faculty of Law, Nsukka.

[30] This was the position in the University of Lagos up to the 1990s.

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is also determined by university regulations.[31] It is against the background that we shall examine the introduction of Cultural Property Law in the University of Ibadan.

The University College, Ibadan was established as a College of the University of London in 1948. In 1962, it became an autonomous university with the enactment of the University of Ibadan Act.[32] The law programme in the University of Ibadan (UI) began in 1981 while the Bachelor of Laws (LL.B) degrees were conferred on the first set of graduates in 1984.[33]

The Faculty of Law, University of Ibadan (UI) commenced postgraduate studies in law in the 2001/2002 session. The approved Curriculum for the Master of Laws (LLM) programme listed several courses including those taught in other LLM programmes within and outside Nigeria. Cultural Property Law[34] stood out among

[31] The LL.M programme in the University of Ibadan at its inception was a 12 calendar month programme but at present all academic masters'ast at pprogrammes in the University of Ibadan, including the LL.M run for a minimum of three semesters. The first two semesters are exclusively devoted to coursework while the third and final semester is for writing research project. There are cases of many candidates who completed the coursework but could not meet the deadlines for submission of their research projects.

[32] This is now contained in the University of Ibadan Act Cap. U6 LFN 2004

[33] The early history of the Faculty of Law has been documented: see F Shyllon,'Faculty of Law 1981-1998' in Mojuetan B.A (ed.) *Ibadan at Fifty, 1948-1998 Nigeria's Premier University in Perspective* (Ibadan, Ibadan University Press 2000)

[34] An LL.M course is taught over a period of 2 semesters hence each course is divided into two. The Course Outline for Cultural Property Law I and Cultural Property II are spelt out below:

Cultural Property Law I (LPI 723): Definition, Nature and Classification of Cultural Property; Sources of Cultural Property Law; Legal, Cultural, Economic and Ethical Issues surrounding ownership, access to and trade in movable cultural property (art, artefacts, archaeological remains); National Legislation on Protection of Cultural Property; Responsibilities of National Institutions on Cultural Heritage Management: National Commission on Museum and Monuments; National Archives; etc.

Cultural Property Law II (LPI 724) : International Treaties on Cultural Heritage: 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflicts and its Protocols; UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970, World Heritage Convention 1972; 1995 UNIDROIT Convention; the Convention on the Protection of the Underwater Cultural Heritage 2001, the Convention for the Safeguarding of the Intangible Cultural Heritage 2003; etc.

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the taught LL.M courses.[35] The introduction of the course was the initiative of Professor Folarin Shyllon the Foundation Dean of UI Faculty of Law (1984-1991). Before the LL.M programme began, Professor Shyllon had developed interest in Cultural Property Law from his interaction with leading experts in the field, especially Australian Professors Patrick J. O'Keefe and Lyndel V. Prott. Professor Shyllon'eefe and Lyndel V. Prott. Professor Shylloniative of Professor Folarin Shyllon the Foundation Dean of UI Faculty of Law (1984-[36] enriched his capacity to engage actively with the issues around which Cultural Property revolve. Before then, University of Ibadan Law Faculty's only experience of introducing a course not taught in any other Faculty of Law in Nigeria was at the LL.B level with respect to Environmental Law in the 1983/84 session. The Faculty of Law, UI was the first and for many years the only faculty to teach Environmental Law to final year students.[37]

Over the years, Professor Shyllon has been assisted by John Oluwole A. Akintayo, a law teacher in the Faculty of Law. Dr Akintayo joined the LLM Classes in Cultural Property Law, engaged with the field through what could be described as an immersion process, interacted with Professor Shyllon outside class setting and

Rights of indigenous peoples; Responsibilities of public and private institutions, private individuals and the State in the protection of Cultural Property with emphasis on UNESCO, UNIDROIT, International Commission of Museums (ICOM), AFRICOM, ICOMOS, INTERPOL, etc.

[35] To the best of the knowledge of these writers no Faculty of Law in a Nigerian university had mounted the course before then.

[36] Some of Professor Shyllon'h works in Black Studies included F Shyllon, *Black People in Britain 1555-1833,* (Oxford, Oxford University Press 1977); and F Shyllon, (l974) *Black Slaves in Britain,* (London, Oxford University Press 1974); F Shyllon, *James Ramsay: The Unknown Abolitionist* (Edinburgh, Canongate 1977).

[37] See F Shyllon, 'Introduction' in F Shyllon (ed.) *The Law and the Environment in Nigeria* (Ibadan, Vantage Publishers 1989) x – xiii, x.

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engaged in intellectual discourses on cultural property law.[38] In addition, he had offered postgraduate courses including Anthropology of Africa and Theory and Practice of Field Investigation at the Institute of African Studies, University of Ibadan. It would therefore appear that an inter-disciplinary or multi-disciplinary background is helpful in engaging with issues in Cultural heritage law. There are social, economic, political, environmental, cultural (including religious) and ethical considerations that underpin legal arguments in cultural heritage discourses. This field of learning benefits from the contributions of lawyers and non-lawyers. In the light of the theme of this conference, which is "Mainstreaming interdisciplinary approach to legal education: Imperative for Nigeria's development", we contend that harnessing and protecting Nigeria's cultural heritage are veritable means of attaining genuine development. Cultural heritage law offers a platform for lawyers to come out of what we may describe as their comfort zones and engage other disciplines with a view to ensuring adequate protection of Nigeria's cultural identity. Other professionals and experts in this field are eagerly waiting for lawyers to come and play the significant role in this arena.

Table 1 below is a list of students who have participated in Cultural Property Law since the inception of the LL.M programme.

Table 1

Number of Students who sat for examinations in

Cultural Property Law in the LLM Programme 2001/2002 to 2013/2014

[38] See generally, J. O. A Akintayo, 'Regional Workshop on the UNESCO Conventions Protecting Cultural Property' (2005) 12 International Journal of Cultural Property 483-485.

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Academic Session	No of Registered Students who wrote examinations in LPI 723	No of Registered Students who wrote examinations in LPI 724
2001/2002	5	5
2002/2003	2	2
2003/2004	13	12
2004/2005	11	10
2007/2008	4	4
2008/2009	4	4
2011/2012	2	2
2012/2013	14	14
2013/2014	7	7

Source: Office of the Sub Dean (Postgraduate), Faculty of Law, University of Ibadan

Instruction in Cultural Property Law is predominantly by lecture pedagogy. The classes are however interactive permitting students to make contributions in class.

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However, this has been complemented by visits to relevant institutions,[39] research papers and seminar presentation by students.

Like other LLM courses, examination is taken at the end of each semester. It is a three-hour examination where candidates attempt three out of five questions. In view of the huge number of international instruments in Cultural Property Law, and the emphasis on the ability of candidates to demonstrate sufficient understanding and effective use of the instruments rather than ability to memorise their provisions, some years after the commencement of the LLM programme, it was decided that candidates be permitted to bring into the examination hall unmarked copies of the relevant instruments. Assessment is based generally on performance in written examinations and written essays.

Right from the beginning of the LL.M programme, some candidates have elected to write their LLM Research Projects on Cultural Property Law. Such topics are selected or refined after engagement with a Faculty member and the research project is undertaken under the supervision of a lecturer. Some candidates have examined the interaction between cultural property and other areas of law. Final scores in research projects are based on a combination of the examiner/supervisor's assessment and the grade returned by a panel of examiners at an oral presentation made by a candidate in the presence of the External Examiner for LL.M programme. Table 2 captures some of the candidates who wrote their LL.M Research Projects in Cultural Property Law in the period under consideration.

Table 2

[39] The places visited have included the Museum of National Unity, Dick Road, Alesinloye, Ibadan; University of Ibadan Cultural Heritage Museum, Trenchard Hall, University of Ibadan; National Archives, Ibadan (located on the campus of the University of Ibadan).

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LLM Research Projects in Cultural Property Law (2002 to 2015)

	Year of submission	Candidates' Initials	Topics
1.	2002	BJKF	Cultural Heritage Besieged: Preservation and Prospects in Nigeria
2.	2002	CMO	Cultural Property Law and the Challenge of Regaining Nigeria's Lost Heritage
3.	2005	OA	Legal Framework for the Reversal of Africa's Cultural Hemorrhaging
4.	2005	KAI	An Overview of International Laws, Rules and Obligations on the Protection of Cultural Property during Armed Conflicts
5.	2014	EOA	Protection of Cultural Heritage in the Event of Armed Conflict
6.	2014	OAO	The impact of Existing legal regime on the Protection of Cultural Property: Africa as a Weeping Continent

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7.	2015	AOA	The Legal Framework for the sustenance of Intangible Cultural Heritage in Nigeria
8.	2015	OAD	Conflict of Law Issues in Cultural Property
9.	2015	TOE	Conservation, Preservation and Legal Protection of Folklores under Cultural Property and Intellectual Property Regimes
10.	2015	DAO	Law and Management of World Heritage Sites in the Sub-Saharan Africa

Source: Office of the Sub Dean (Postgraduate), Faculty of Law, University of Ibadan

Some other academic programmes in the University of Ibadan in general and in the Faculty of Law have benefitted from the introduction of Cultural Property Law in the LLM programme. For instance, some LL.B undergraduates have shown interest in writing their Final Year Long Essays on Cultural Property Law related topics while the first Ph.D. student in Cultural Property Law has reached an advanced stage in her programme. The Faculty also attends to requests from students and researchers from other branches of learning especially from the fields of Archaeology, Anthropology, Ethnography, African Studies, Tourism etc., working

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on Cultural Resource Management. The Faculty had also consulted for a Ph.D. candidate from a Nigerian university working on Cultural Heritage Law. From the teaching and research activities of the Faculty of Law under the leadership of Professor Shyllon, there is no doubt that the Faculty of Law, University of Ibadan deserves its recognition by UNESCO as a partner institution in cultural property in 2011. The other African university listed is the University of Cairo, Egypt.[40]

Some distinguished Nigerian law academics have made significant contribution to the field of Cultural Heritage Law. Professor Folarin Shyllonst book *Cultural Heritage Law and Management in Africa,*[41] is a collection of essays that appeared over a period of fifteen years. Professor Akin Ibidapo-Obect book, *A Synthesis of African Law,*[42] devotes one of its four sections to Cultural rights. Two of the three essays in this section, "An International Legal Agenda for the Repatriation of Plundered African Art" and "The Legal Protection and Preservation of Cultural and Religious Diversities in a Globalised World" deal essentially with cultural heritage law. Outside the academia there are also lawyers and cultural studies experts associated with the National Commission on Museum and Monuments (NCMM) who publish on Cultural Heritage Law.[43] Due to the late arrival of lawyers in this field, non-lawyers had taken up the gauntlet to examine how some aspects of

[40] UNESCO, *The Fight against the Illicit Trafficking of Cultural Objects: The 1970 UNESCO Convention: Past and Future, Information Kit* 2011 <www.unesco.org/new/fr/culture/themes/illicit-traffic-of-cultural-property/1970-convention/>
[41] F Shyllon, *Cultural Heritage Law and Management in Africa* (Lagos, CBAAC 2013).
[42] A Ibidapo-Obe, *A Synthesis of African Law* (n 1) 207 -280.
[43] These articles are published mainly in *Nigeria Heritage*, the Journal of the National Commission for Museums and Monuments.

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cultural heritage interface with the law.[44]The contribution of non-lawyers in this filed is significant reinforcing the view expressed earlier regarding the dichotomy between knowledge and practice of law.

To a large extent one can safely contend that the through the teaching of Cultural Property Law, the Faculty of Law UI is meeting some of the objectives of its postgraduate programmes. These include e include safely contend that the through the teaching of Cultural Property Law, the Faculty of Law UI is meeting some of the objectives of its postgraduate Monuments (specialised fields of law" and "to create an avenue for lawyers to acquire new skills and competence whilst abreast of latest developments in the legal professions around the world".[45]

The Faculty is not resting on its oars. It is working towards a change in the nomenclature of the course to Cultural Heritage Law and to introduce an elective law course, Introduction to Cultural Heritage Law, in the LL.B programme. Before the latter objective is realised, it is important to note that even in the universities and Faculties of Law where Cultural Property or Heritage Law is not taught as a stand-alone course, the consciousness of Nigerian students about it can be raised in other courses. The next section of this work will address how cultural heritage is related to other law courses.

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[44] Se generally, O Eluyemi, 'The Federal Act and Nigerian Archaeology' in K Effah-Gyamfi (ed.) *Archaeology and Cultural Education in Nigeria* (Proceedings of the Fourth Annual Conference of the Archaeological Association of Nigeria 24-27 June 1982, Ahmadu Bello University, Zaria) 143.
[45] See generally, Faculty of Law, University of Ibadan, *Regulation on the Interdepartmental Master of Laws Degree Programme,* 2001.

4.0 THE RELEVANCE OF CULTURAL HERITAGE LAW TO OTHER FIELDS OF LAW.

Traditional subjects in the LL.B Curriculum that have some close relevance to Cultural heritage law include Constitutional Law/Administrative Law, Nigerian Legal System,[46] Law of Contract/Commercial Law/Law of Commercial Transactions,[47] Criminal Law, Law of Torts,[48] Law of Evidence,[49] Land Law, Law of Equity and Trusts,[50] Conflict of Laws,[51] and Jurisprudence and Legal Theory.[52] In varying degrees, the Cultural heritage law intersects these areas of law. However, we shall focus only on a few of the above and other areas of law.

[46] Courts have enormous responsibility in the protection of cultural objects. Magistrates Courts are vested with jurisdiction to try cases on theft and stealing of antiquities. A case has been made for the transfer of this jurisdiction to the High Court because of undue delay in deciding such cases. See generally, F Shyllon, 'Cultural Heritage Legislation and Management in Nigeria' (1996) 5 No.2 International Journal of Cultural Property, pp. 235 - 268 at p. 260.

[47] Arguments have been canvassed for licit trade in cultural objects even though it is acknowledged that some rules which govern transfer of private goods have to be varied: see generally J. H Merryman, 'A Licit International Trade in Cultural Objects' (1995) 4 International Journal of Cultural Property 13-60; C Coggins, 'International Trade in Ancient Arts: Let There Be Light' (1995) 4 International Journal of Cultural Property 81-90.

[48] A community through its accredited representatives can pursue a legal claim in tort apart from a criminal action in respect of its cultural object illegally taken away.

[49] Ascertaining antiquities is a matter of evidence as Nigerian law stipulates that the object in some instance must be in existence on a particular date. The use of carbon dating and other scientific devices to detect age of an object is a matter that touches on evidence.

[50] The trust concept is useful in determining ownership rights in cultural property just like in communal land. Equity also provides useful arguments in making a case for reparation for cultural objects transferred in unconscionable circumstances.

[51] See generally L.V Prott, 'Problem of Private International Law for the Protection of the Cultural Heritage' (1989) Recueils des Cours vol. V, 224-317. F Shyllon, 'Cultural Heritage Legislation and Management in Nigeria' (n 41) 254-256 discussed the Canadian case of *R. v. Heller* (1987) 27 Alta. L.R. (2d) 346 which involved Nigerian and Canadian laws; and the 1972 German case of *Allgemeine Versicherungsgesellschaft v. E.K BGHZ* 59, 83 which involved Nigerian and German laws reported in 73 *International Law Reports* 226 and in L.V Prott and P.J O'Keefe, *Law and the Cultural Heritage: Vol. 3. Movement* (London, Butterworths 1989) 659-660.

[52] The philosophies that underpin Natural law theory, the sociological and historical schools movement provide theoretical foundation for cultural identity which is the dominant idea in Cultural heritage law.

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4.1 CULTURAL HERITAGE LAW AND CONSTITUTIONAL LAW AND ADMINISTRATIVE LAW

The Constitution in Nigeria is the supreme law of the land hence all laws flow directly or ultimately from it. Justice Felix Frankfurter of the U.S Supreme Court in his concurring opinion in *Graves* v. *New York ex rel. O'Keefe*,[53] made the oft-quoted statement that: "The ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it." It is therefore apposite to examine aspects of the Constitution of the Federal Republic of Nigeria 1999, as amended, closely associated with cultural heritage.

The Constitution of the Federal Republic of Nigeria, 1999 places matters that revolve around antiquities and monuments and archives in both the Exclusive Legislative List (ELL) and the Concurrent Legislative List (CLL) at the same time. The federal structure of the country makes it imperative to examine which tier of government has legislative competence regarding cultural heritage. Item 60 on the ELL provides *inter alia*:

The establishment and regulation of authorities for the Federation or any part thereof-

..

(b) to identify, collect, preserve or generally look after ancient and historical monuments and record and archaeological sites and remains declared by the National Assembly to be of national significance or national importance;

(c) to administer museums and libraries other than museums and libraries established by the Government of a State…

[53] 306 U.S. 446 (1939)

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It is pursuant to the above constitutional provisions that very important institutions in the cultural heritage sector like the National Commission for Museums and Monuments, the National Archives and the National Libraries are established. In the case of Item 60 (b) institutions, the National Assembly must declare the monuments and records to be of "national significance or national importance". Where they are not so declared, then the State Houses of Assembly may regulate them. Regulating the delicate balance between the respective scopes of powers of the federal legislature vis-à-vis state legislative bodies is a matter of significant constitutional importance.

Paragraphs 3, 4, 5 and 6 of the CLL are relevant to the present discussion. They state as follows:

3. The National Assembly may make laws for the Federation or nay part thereof with respect to such antiquities and monuments as may, with the consent of the State in which such antiquities and monuments are located, be designated by the National Assembly as National Antiquities or National Monuments but nothing in this paragraph shall preclude a House of Assembly from making Laws for the State or nay part thereof with respect of antiquities and monuments not so designated in accordance with the foregoing provisions.

4. The National Assembly may make laws for the Federation or nay part thereof with respect to the archives and public records of the Federation.

5. A House of Assembly may, subject to paragraph 4 hereof, make laws for that State or any part thereof with respect to archives and public records of the Government of the State.

6. Nothing in paragraphs 4 and 5 hereof shall be construed as enabling any laws to be made which do not preserve the archives and records which are in existence at

the date of commencement of this Constitution, and which are kept by authorities empowered to do so in any part of the Federation.

From the phraseology of the provisions regarding antiquities and monuments in the CLL, the Constitution contemplates cooperative action between the federal and state governments. Where antiquities and monuments are to be designated as National Antiquities or National Monuments the consent of the hosting State is required.

Shyllon's article on "Constitutional Provision for the Preservation of Cultural Heritage in Africa",[54] is a survey of African constitutional texts and it is obvious that Nigeria has a lot to learn from other African States.

In teaching Constitutional Law, it is important to observe that some fundamental rights provisions especially with the right to freedom of thought, conscience and religion may be construed to protect cultural heritage.

The relevance of Administrative Law to Cultural Heritage Law is demonstrated in many ways. The authorities contemplated by Item 60 of the ELL are administrative bodies governed by the general principles of Administrative Law in their operations. The basic national legislation on antiquities and monuments in Nigeria is the National Commission for Museum and Monuments Act which was promulgated as a military decree in 1979. No amendment to the legislation has been made since that time.[55] There is no doubt that the law is grossly out of date and in need of a complete overhaul. Shyllon's article on ly out of date and in need

[54] F Shyllon, 'Constitutional Provisions for the Preservation of Cultural Heritage in Africa' (1999) 4 Issue 1, *Arts, Antiquities and Law*, pp. 65-68. Shyllon, *Cultural Heritage Law and Management in Africa* Chapter, 11, pp. 271 -279

[55] Adewumi, A. A. "An Appraisal of the National Commission for Museums and Monuments (NCMM) Act, 1979" (2014) *Ife Juris Review (IFJR)* Pt. 1: pp. 43-60

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of a complete overhaul[56] underscores the fact that Nigeria can learn from England where effective heritage management is achieved through the instrumentality of subordinate legislation. This is another lesson from Administrative Law.

4.2 CULTURAL HERITAGE LAW AND ENVIRONMENTAL LAW

Ideas of heritage and conservation are common to both Cultural Heritage Law and Environmental Law. The possibility of cultural heritage scholars interacting with the subject area from the background of Environmental Law is there. The Convention concerning the Protection of the World Cultural and Natural Heritage, (also known as the World Heritage Convention), according to Maria Susana Pataro, is considered one of the major environmental treaties.[57] An important aspect of environmental law that has a bearing on cultural heritage is in the area of climate change. The pestilential effect of climate change impinges biodiversity, landscape, the lives of people and cultural heritage. Climate change and cultural heritage have both been seen as 'a public good'[58] respectively under different international instruments.

The adverse effects of climate change have consequences for the products of human creativity. As regards built cultural heritage, climate change causes damages ranging from direct physical effects to effects on social and cultural structures and

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[56] Shyllon, F., "Towards a Proactive Protection of our Monuments" (1999) 64 Pts 1-2 *The Nigerian Field.* pp. 43 -50. Shyllon, *Cultural Heritage Law and Management in Africa*, Chapter 3, pp. 140-156.

[57] Pataro, M, S., ""M, S., , S., Shyllon, *Cultural Heritage Law and Management in Africa* pp. xiii – xxviii at p. xxi

[58] In economic literature, a 'global public good' is one that is characterized by non-rivalry (anyone can use a good without diminishing its availability to others) and non-excludability (no one can be excluded from using the good). The term is used in international law discourse to refer to values that are fundamental for the international community as a whole and that transcend the interests of individual States. See Kaul, I., Grunberg. I., and Stern, M. A., (eds.), *Global Public Goods. International Cooperation in the 21st Century (*Oxford, OUP 1999) and "Symposium: Global Public Goods and the Plurality of Legal Orders-rivalry *Eur J Intl L* 643.

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habitats.[59] This alteration of the climatic equilibrium of the planet does not only severely affect monuments, sites and biodiversity, but has also an impact on people. Thus, the assessment of the effects of climate change must account for the interactions within and between natural, cultural and societal systems.[60]

Social and cultural structures such as the buildings, sites and landscapes where people live, work, worship and socialise bear evidence of the adverse impacts of climate change. The way people relate to these spaces is also altered by climate change. For instance, desertification, flooding or sea-level rise forces populations to migrate, leading to the abandonment of property.[61] This raises an important concern in contexts where traditional knowledge and skills are essential to ensure a proper maintenance of these properties.

Conservation is affected by biological changes (with species shifting ranges), with the reduction of availability of native species to repair structures and buildings. In addition, the migration of people results in the break-up of communities leading to the eventual loss of social structures, traditional knowledge, cultural identity, rituals and the cultural memory of former inhabitants.[62] For instance, temperature increase in high northern latitudes leading to the melting of ice caps and the arctic

[59] UNESCO World Heritage Centre, 'Case Studies on Climate Change and World Heritage' (2007) <http://whc.unesco.org/en/activities/473>.

[60] Report on Predicting and Managing the Effects of Climate Change on World Heritage (para. 32) <http://whc.unesco.org/en/climatechange>.

[61] Gruber S, "The Impact of Climate Change on Cultural Heritage Sites: Environmental Law and Adaptation" (2008) Sidney Law School-Legal Studies. Research Paper 8/117, 15-16, <*http://papers.ssrn.com/sol3/papers.cfm*? abstract id=1285741> accessed 26 July 2013. See also Kim, H., "Changing Climate, Changing Culture: Adding the Climate Change Dimension to the Protection of Intangible Cultural Heritage" (2011) *Intl J Cultural Property* 259.

[62] UNESCO World Heritage Centre. <http://whc.unesco.org/en/world-heritage-centre>.

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ground ice has already had an impact on the traditional livelihoods and means of survivals of the local indigenous peoples.[63]

Also noteworthy is the fact that though climate change had not emerged as an injurious phenomenon when heritage conventions came into existence, these legal instruments contain references to some of the effects of climate change or to atmospheric pollution. For instance, the World Heritage Convention[64] states that cultural property can be inscribed in the List of World Heritage in Danger if "threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration,, abandonment, landslides, changes in water level, floods and tidal waves, calamities and cataclysms".

Also, the 1978 Recommendation for the Protection of Movable Cultural Property[65] emphasises that cultural property "is liable to deterioration as a result of [...] atmospheric pollution [...], which in the long run may have more serious effects than accidental damage or occasional vandalism".

1.3. CULTURAL HERITAGE LAW AND CRIMINAL LAW

Cultural heritage laws often adopt the penal technique to achieve their objective;[66] it is not too difficult to imagine how this is done in a domestic setting.[67]

Antiquities, however, can be distinguished from other goods trafficked in three regards. The first is that cultural heritage is a finite resource that cannot be

[63] Mutter, J. C. and Barnard, K. M., "Climate Change, Evolution of Disasters and Inequality", in Humphreys, S., (ed.), *Human Rights and Climate Change,* Cambridge, Cambridge UP 2010, 275-276.

[64] World Heritage Convention, Article 11(4)

[65] 1978 Recommendation for the Protection of Movable Cultural Property, Article 6

[66] See generally, Manacorda, S., and Chappell, D., (ed.) *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property,* New York, Springer, 2011.

[67] See generally, Adewumi, A. A. and Bamgbose, O. A., "Inhibiting Nigerian Cultural Heritage Crimes through Penal Laws" (2014) *Ife Juris Review (IFJR)* Pt. 3: pp. 484-500.

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cultivated or manufactured, profits increase progressively from source to market, and artifacts must be laundered in order to appear legitimate.[68] Secondly, antiquities are derived solely from looting cultural sites. Looters can be highly skilled at locating sites and knowledgeable about the local landscape, but they often lack the means to transport artifacts out of their immediate region or across international borders.[69] Antiquities are therefore typically transferred to participants with the means and knowledge to transport illicit commodities internationally. Thirdly, those that loot and transport them lack the knowledge to judge the value of these antiquities, including whether they are real or fake[70] or the ability to appear legitimate to collectors.

The international dimension of the interface between cultural heritage law and criminal activities threatens the national security and economies of States. The *United Nations Office on Drugs and Crime* (UNODC) has recognised that the actions of illicit traffickers in art and antiquities have many similarities to those engaged in other organised transnational criminal activities, including narcotic drugs, arms trafficking and money laundering.[71]

The United Nation's Commission on Crime Prevention and Criminal Justice (UNCCP) developed a surge of interest in combatting the illicit trade in art and

[68] Campbell, P. B., "The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage" (2013) 20 International Journal of Cultural Property 113–153.

[69] ibid

[70] ibid

[71] Burke, K. T., "International Transfers of Stolen Cultural Property: Should Thieves Continue to Benefit from Domestic Laws Favoring Bona Fide Purchasers?" (1990) 13 *Loy. L.A. Int'l & Comp. L. Rev.* 427 - 466 at 427as far back as 1990 noted as follows: "Art theft has in recent years become the second most serious international crime form after drug smuggling. Estimates show that, worldwide, 45,000 to 53,000 art thefts occur annually. At one point, 450 to 500 art objects were disappearing throughout the world each day."

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antiquities.[72] The UNCCP, comprising 40 elected nations from among the members of the UN, oversees the programme and activities of the Vienna-based UN Office on Drugs and Crime (UNODC). UNODC is of the opinion that illicit trafficking in art and antiquities are activities which might be better targeted by collaborative law enforcement efforts using the powers already given by an international instrument like the UN Convention against Transnational Organised Crime, agreed in 2000 in Palermo, Italy. The UNCCP has also given fresh consideration to the acceptance of a model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property – a model treaty whose terms were first proposed nearly two decades ago at the 1990 Eighth UN Congress on the prevention of crime and the treatment of offenders held in Havana, Cuba.[73]

Also, to curb the illicit trafficking of cultural objects, the UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects and their explanatory guidelines[74] were made. These instruments were the results of the work done by the group of experts convened by the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation and the UNIDROIT Governing Council secretariats to bring about uniformity in the definition of undiscovered cultural objects.

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[72] Economic and Social Council 2010.

[73] Manacorda S., and Chappell, D., "From Cairo to Vienna and Beyond: Contemporary Perspectives on the Dialogue About Protecting Cultural Artefacts from PlundertsCulManacorda S. & Chappell D. (eds.) *Crime in the Art and Antiquities World, Illicit Trafficking in Cultural Property*. New York. Springer, 2011, p. 1

[74] UNESCO-UNIDROIT *Model Provisions on State Ownership of Undiscovered Cultural Objects*. Retrieved 27 October, 2014 from http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/UNESCO-UNIDROIT_Model_Provisions_ en.pdf.

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Focusing on undiscovered cultural property as well as the methods by which it is enforced domestically and internationally, the Model Provisions were designed to be brief, approachable and intelligible. The principle of inalienability is extended to all cultural property, both discovered and not, or through authorised excavation and otherwise.[75]

1.4. CULTURAL HERITAGE LAW AND PUBLIC INTERNATIONAL LAW

Public International Law is the aspect of law that deals with the relationship among sovereign states.[76] Under public international law, organisations exist to ensure coalition among states for just cause. Such organisations such as the ones discussed below have assisted in the protection of cultural heritage. Public International Law has served the cause of Cultural Property law as it has provided the vehicle for the negotiation and conclusion of bilateral agreements and international instruments which state parties subsequently incorporate into their domestic legislation depending on their constitutional arrangements. A critical challenge for most African states is the reluctance to incorporate international treaties in their domestic laws. In addition to state actors, some non-state actors also play prominent roles in the protection of cultural property in the international arena.

[75] ibid

[76] Umozurike, U. O *Introduction to International Law* (2nd edn, Ibadan, Spectrum 1999) at p. 1 defined International Law as "the rules and principles that govern states in their relations inter se. He however noted: "Although States are primary subjects of international law, the development of international relations in recent times especially the setting up of great number of international institutions and the international recognition of the rights and duties of groups and individuals have to that extent brought these entities within its purview."

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4.4.1 THE INTERNATIONAL CRIMINAL POLICE ORGANIZATION (ICPO/INTERPOL)

ICPO/INTERPOL, is a governmental organisation currently consisting of 176 member countries. The organisation was established in the early part of the 20th century in Europe, initially to encourage a greater liaison between police forces especially with regards to the exchange of criminal intelligence of an international nature. This organisation has been of tremendous help in the task of the return and restitution of cultural property. It is on record that on the 15th November 1983, seven paintings, two by Raphael, valued at approximately 35 million US Dollars, were stolen from the Fine Arts Museum in Budapest, Hungary. An alert was given immediately through Interpol channels and the relevant notice published and circulated. The Hungarian, Greek and Italian police worked together closely which resulted in the arrest of the ten persons involved. All of the paintings were recovered in 1984.

Also, when it was discovered that a number of libraries situated at universities and similar institutions were being forcibly entered and extremely valuable books of a religious nature and published in the Hebrew and Latin languages stolen a working group was organised to study the problem and to attempt to identify any common pattern leading to the identification of the place of disposal of the books.[77]

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[77] For further information see The International Criminal Police Organization ICPO/ INTERPOL. A paper presented by Romeo Sanga during the Regional Workshop on the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property - held in Jomtien, Thailand, February 24-28, 1992; see also, Akintayo, J. O.A., "Regional Workshop on the UNESCO Conventions Protecting Cultural Property"

4.4.2 THE WORLD CUSTOMS ORGANISATION (WCO)

The WCO is the only international organisation with competence in Customs matters and can rightly call itself the voice of the International Customs community.[78]

WCO's activities to combat the illicit traffic in cultural property are in three categories:

1. *Activities directed at creating awareness of the issue in its members*: this was spearheaded by the council adopting a Resolution concerning action against smuggling of works of art and antiquities, at its June 1976 Sessions. Members' attention are also drawn to the growth in cases of smuggling and theft involving cultural property, as well as the serious harms that countries suffer as a result of these offences relating to the preservation of their artistic and cultural heritage. The Resolution further makes it possible to invite its members to accede to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

2. *Drafting legal instruments for co-operation:* In this area, the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Offences (also known as the Nairobi Convention) of 9 June 1977 is the most important.

At Customs level, Annex XI of this Convention deals with assistance in action against the smuggling of cultural property thereby supplementing the provisions of the 1970 UNESCO Convention. The Annex actually provides an important legal instrument which covers both the smuggling of cultural property and the financial operation undertaken in connection with such smuggling. The Annex has mechanisms set in place for-

[78] WCO in brief.

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- exchange of information between Contracting Parties as regards operations suspected to constitute smuggling of cultural property, persons engaged in such acts and the methods used for perpetrating the act.
- providing a legal framework for assistance, on request, relating to surveillance as regards ingress or *egress* of suspected professional smugglers of cultural items, illicitly trafficked cultural items, means of trafficking the items.
- communicating a report of its discovery after investigation to the requesting Customs administration.
- assisting within or outside the territory of a state party to gather information concerning smuggling of cultural property.

3. Setting up of an information pooling system: WCO Secretariat has a computerised database, the Central Information System (CIS), for providing information and intelligence back up to the enforcement services of Member administration. This central index covers the various types of Customs fraud. The database contains details communicated by Members about cases of trafficking in cultural property, as well as of information furnished by UNESCO and ICPO/INTERPOL. The data in their possession are used to prepare summaries and studies on new or well-established trends in the smuggling of cultural property. That information is then circulated to Members, as well as to UNESCO and ICPO/INTERPOL via the *WCO Enforcement Bulletin.*

Operational information requiring urgent circulation such as cases of thefts of cultural property notified to the Secretariat by UNESCO and ICPO/INTERPOL, is sent out through a special 'alert' to member states.

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4.4.3 UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC)

The impact of this body as regards cultural heritage has been discussed under criminal law above.

1.5. CULTURAL HERITAGE LAW AND HUMAN RIGHTS

There is a relatively recent trend of looking at cultural heritage from the human rights perspective which indicates that human rights should be understood as heritage. Also, a real connection exists between heritage and human rights. This is deducible from the fact that heritage can be used positively by governments to give a sense of belonging to non-identical groups and individuals or to create jobs on the basis of cultural tourism. It can also be used as a tool by government to advance respect for cultural and social diversity and to challenge prejudice and misrecognition. On the other hand, heritage can be used prejudicially to cause civil and international wars, ethnic cleansing and genocide. Therefore it can be used to advance human rights or violate human rights.

Cultural heritage can also be linked with human rights as follows:

1. Art. 13 UN Charter depicts Cultural rights as human rights by stating Cultural rights as part of the body of human rights law. Human rights may therefore be violated through the destruction of 'culture', for example if cultural property or cultural heritage is destroyed with ulterior motives, such as to eradicate a group identity. Such acts against cultural property or heritage may, for example, reveal the intent necessary to establish a crime against humanity or genocide.

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2. Cultural rights protection is an indirect way of protecting human rights in a wide and general form.[79] Protecting cultural property and cultural heritage may also concurrently protect human beings as it presumes the observance of certain values. Whoever destroys objects or expressions of 'culture' will be more likely to violate human rights.

Protecting human identity is one of the aims of Cultural heritage and human rights. Cultural identity in its individual dimension of human identity is an aspect of human dignity. Thus, the protection of cultural property or heritage can be seen as protecting a human right.[80] Cultural identity in its collective dimension may contribute to constituting a group and hence be one factor giving rise to the right to self-determination.[81]

3. Cultural Heritage and human rights may be in conflict or one may be a source of threat to the other. A concept of cultural heritage may be used as a justification for restricting human rights by those who violate human rights. Human rights might require the eradication of 'outdated' cultural practices and heritage.[82] This clash leads to the core of the arguments around the universal *versus* relative nature of human rights themselves.

4. There may be a parallel on the level of norm enforcement. Individual criminal liability may be incurred for the violation of both human rights and cultural property or heritage law. The intentional destruction of the Buddha of Bamiyan or

[79] Ziegler, K., "Cultural Heritage and Human Rights" in Milano, G. (ed.), *Alberico Gentili: La Salvaguardia Dei Beni Culturali Nel Diritto Internazionale,* University of Oxford Faculty of Law Legal Studies Research Paper Series. Working Paper No 26/2007, 2007
[80] ibid
[81] ibid
[82] ibid

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the shelling of the Old Town of Dubrovnik or the looting of the Baghdad Museum may lead to such individual responsibility.[83]

1.6. CULTURAL HERITAGE LAW AND HUMANITARIAN LAW

Eliminating the tangible memory and the self-pride of an identity reflected in the products of a culture through devastation of cities and destruction of cultural heritage has constantly been perceived as a necessary side-effect of armed conflicts. The international community, by the beginning of the 20th century brought into existence legal norms aimed at preventing belligerent acts against cultural property and enforcing their punishment, with the specific purpose of protecting the interest of the territorial state in the preservation of its own cultural items. From Article 27 of the Regulations annexed to Convention IV on the Laws and Customs of War of 1907,[84] the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict,[85] the two 1977 Protocols to the Geneva Conventions on Humanitarian Law of 1949,[86] the

[83] ibid

[84] Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, 18 Oct. 1907. Article 27 states that, *'In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes'*. The same principle is also expressed by Article 5 of the Convention (IX) Concerning Bombardment by Naval Forces in Time of War. See <http://www.icrc.org/ihl.nsf>

[85] 249 UNTS 240. See generally, Toman, J., *The Protection of Cultural Property in the Event of Armed Conflict: commentary on the Convention for the Protection of Cultural Property in the Event of Armed Conflict in the event of Armed Conflict and its protocol, signed on 14 May 1954, in the Hague, and on other instruments of international law concerning such protection*, Aldershot, Hants, Dartmouth, & UNESCO Publishing, 1996.

[86] *See* Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 5. According to Article 53:

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international

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Statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY)[87] and the International Criminal Court (ICC), the Second Protocol to the 1954 Hague Convention,[88] to the 2003 UNESCO Declaration on the

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instruments, it is prohibited: (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; (b) to use such objects in support of the military effort; (c) to make such objects the object of reprisals.
In addition, Article 85 considers the act of 'making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, subparagraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives' as a grave breach of the Protocol, amounting to a war crime. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609, affirms at Article 16 that
'[w]ithout prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort'; see Lenzerini, F., "The Role of International and Mixed Criminal Courts in the Enforcement of International Norms Concerning the Protection of Cultural Heritage", in F Francioni, F and J Gordley (eds.), *Enforcing International Cultural Heritage Law* (Oxford University Press 2013)

[87] ICTY Statute is available at <www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf>

[88] Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 1999, 2253 UNTS 172. The whole Chapter 4 of the Protocol deals with the issue of criminal responsibility and jurisdiction. Article 15, in particular, in listing the acts which are considered as serious violations of the Protocol, states:
1. Any person commits an offence within the meaning of this Protocol if that person intentionally and in violation of the Convention or this Protocol commits any of the following acts: a. making cultural property under enhanced protection the object of attack; b. using cultural property under enhanced protection or its immediate surroundings in support of military action; c. extensive destruction or appropriation of cultural property protected under the Convention and this Protocol; d. making cultural property protected under the Convention and this Protocol the object of attack; e. theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention. 2. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the offences set forth in this Article and to make such offences punishable by appropriate penalties. When doing so, Parties shall comply with general principles of law and international law, including the rules extending individual criminal responsibility to persons other than those who directly commit the act.

Intentional Destruction of Cultural Heritage,[89] cultural heritage has evolved into being seen as a common interest of humanity, thus making crimes against cultural heritage war crimes.

Also, when people die and communities are wiped out as a result of armed conflict, the intangible heritage such as language, tradition and way of life of the people are equally wiped out.

4.7 CULTURAL HERITAGE LAW AND INVESTMENT LAW[90]

The three cases of *Southern Pacific Properties (SPP)* v. *Egypt*,[91] *Santa Elena* v. *Costa Rica*[92] and *Parkerings* v. *Lithuania*[93] show that the proximity of a World Heritage site is a risk factor with respect to foreign investment except the investment is directly related to activities linked to the site. In all three cases, the presence of a World Heritage site ultimately directly or indirectly hindered an investment. This brings to fore the fact that before investing in a particular area, an investor should determine, first, whether the host state has ratified the World Heritage Convention of 1972 (which is the most emblematic of the heritage conventions) and, second, whether the targeted investment area is near or may

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[89] Article VII, in proclaiming the principle of individual criminal responsibility for acts of destruction of cultural heritage, affirms: States should take all appropriate measures, in accordance with international law, to establish jurisdiction over, and provide effective criminal sanctions against, those persons who commit, or order to be committed, acts of intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization.

[90] de Germiny, L.I., "Considerations before Investing near a UNESCO World Heritage Site" *Transnational Dispute Management*, Vol. 10, issue 5

[91] *Southern Pacific Properties* v. *Egypt*, ICSID Case No. ARB/84/3, Award, 20 May 1992. pp. 42-43

[92] *Compa粪据粪 de Desarrollo de Santa Elena, S.A.* v. *Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award, 17 February 2000 p. 18

[93] *Parkerings-Compagniet AS* v. *Republic of Lithuania* ICSID Case No. ARB/05/8, Award, 11 September 2007. pp. 1, 51, 72, 385.

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negatively affect a listed site. Industries such as mining companies are increasingly taking into account the existence of World Heritage sites in their risk assessment of possible investment projects.[94]

Investors should equally examine whether the investment area is near a site in the List of World Heritage in Danger.[95] This list enumerates sites that the World Heritage Committee believes requires "*major operations ... and for which assistance has been requested*"[96] for their protection. Registration of a site in this list not only alerts the international community, but also enables the World Heritage Committee to allocate to it immediate assistance from the World Heritage Fund. Investment near endangered World Heritage sites necessarily presents a heightened risk factor.

Nearness of the investment area to a possible world heritage site is part of what an investor must look out for. An investor may for instance check the State Party's "Tentative List" of World Heritage sites.[97] These lists include properties that State Parties consider to be cultural and/or natural heritage of outstanding universal value and therefore suitable for inscription on the World Heritage List. Investing in the state before the state ratifies the World Heritage Convention does not justify the continuing existence of the investment once it serves as a threat to a world heritage site. In the cases of *SPP* and *Santa Elena above*, the investors had invested in the host states before they had even ratified the Convention. Investors in a state that has ratified the World Heritage Convention and that does so near a potential World Heritage site (whether it be on the state's Tentative List or not) should be aware of the state's duties under the Convention to protect that site.

[94] Affolder, N., er, NMarket for Treaties, (2010) 11 *Chicago J. of Intl. Law* 159
[95] See <http://whc.unesco.org/en/danger/>
[96] World Heritage Convention, Art. 11(4).
[97] See <http://whc.unesco.org/en/tentativelists/>

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1.8.1. CULTURAL HERITAGE LAW AND INTELLECTUAL PROPERTY LAW

Cultural Property Law and Intellectual Property Law are often confused. Though there is a growing area of convergence especially with respect to the protection of folklore and indigenous or traditional knowledge which can safely be described as intangible cultural heritage, the philosophy driving the two regimes often differs. The fundamental philosophy in Cultural Heritage Law is protection of cultural identity while commercial interest is given a more prominent place in Intellectual Property Law. The intersection of Cultural heritage and intellectual property law has been most profound regarding protection of folklore.[98]

1.9. CULTURAL HERITAGE LAW AND TOURISM LAW

Though a number of factors drive recreational tourism the richness of a particular location in terms of cultural and natural heritage is a prominent one. Millions of tourists flock to cultural and natural heritage sites all year round. They thereby contribute to the growth and development of the economy of host communities. The implication of the decision of the Supreme Court of Nigeria in *Hon Minister and Attorney General of the Federation* v. *Hon Attorney-General of Lagos State*,[99] is that State Houses of Assembly are the appropriate bodies to enact laws with

[98] Grad, R., "Indigenous Rights and Intellectual Property Law: A Comparison of the United States and Australia" (2002) 13 Duke Journal of Comparative and International Law 203-231; see Chapter 5 Shyllon. F., *Intellectual Property Law in Nigeria, op. cit.,* pp. 71-78 on folklore. In the Preface to the book (p.vi) he noted that a chapter on folklore is unusual in a book on Intellectual Property; see also Oyewunmi, A., "From Preservation to Commodification of Culture: Emerging International Standards and Prospects for Enhanced Protection of Cultural Heritage Goods under the Nigerian Intellectual Property Regime" (2013) 2 *EBSU* Journal of International Law & Juridical Review 1-17.

[99] [2013] 7 SC (Pt. 1) 10

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regard to regulation of hospitality and tourism enterprises in their respective states. The Supreme Court declared sections 4(2) (c) and (d), the Regulations made thereunder and section 7 of the Nigerian Tourism Development Corporation (NTDC) Act[100] as *ultra vires* the legislative authority of the National Assembly or the Federal Government.[101] However, it is important to raise a constitutional amendment to protect the growth of the tourism sector. In the meantime, the Federal Government by virtue of its direct control of hospitality and tourism enterprises within the Federal Capital Territory and the States should collaborate to ensure the gains recorded in the sector in terms of standardization are not wiped off.

1.10. CULTURAL HERITAGE AND LAND LAW

Black's *Law Dictionary* offers the following statement as part of its definition of land:

An immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on or permanently affixed to it. [102]

Utuamaac definition of land as "the earth surface, subsoil, the air space above it, as well as things that are permanently attached to it" [103] has the same character.

[100] Cap N137 LFN 2004

[101] See generally, Akinwunmi, S., "Regulatory Framework on Hospitality and Tourism Business in a Federal System: The Nigerian Experience", paper delivered at The Seminar "The Economy, Hospitality, Tourism and the Law organised by the Law Firm of G. M. Ibru & Co. Monday 11 November 2013 at the Sheraton Hotel, Lagos,(hereafter 2013 G. M. Ibru & Co. Seminars) pp. 1-6; see also Agbu, C., "Beyond the Supreme Court Judgment in Attorney-General of the Federation v. Attorney-General of Lagos State: Blueprint for the Regulation of Hospitality and Tourism in Nigeria" Paper presented at 2013 G.M Ibru & Co. Seminars, pp. 1 -13.

[102] Garner, B. A., (ed.) *Black's Law Dictionary*, 9th ed., St Paul (Minnesota), West & Thomson Reuters, 2009, p. 955

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These definitions would suggest that the owner of a parcel of land owns any items including cultural property found in the subsoil.

Some statutory definitions of land reflect the above common law position but repudiate the absolute ownership feature evident in them. For instance, the Interpretation Act,[104] defines "Immovable property" to mean land. It also defines land to include "any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals."

From the foregoing, it is apparent that land has both natural and artificial content. The natural content consists in the ground and its subsoil and things growing naturally on it while the artificial content includes buildings and other structures or trees added to the ground.[105] However, it is problematic to place cultural property found in the subsoil as a result of excavations. The exclusion of individual ownership made with respect to mineral resources is an indication that state interest may trump individual interest in some circumstances. Regarding cultural property excavated from any land, the adoption in Nigeria of the position in Egypt, where state ownership is entrenched, is recommended. Through Law No. 117 of 1983 as amended, Egypt has made tremendous effort to safeguard and protect her rich cultural patrimony. The situation in Nigeria, is partly ameliorated by the provisions of the Land Use Act.[106] By vesting the title of all land comprised in the territory of a state in the Governor of the State, it implies a holder of a right of occupancy may

[103] Utuama, A. A. *Nigerian Law of Real Property: An Introduction*, Ibadan, Shaneson, 1989, p. 4.
[104] The Interpretation Act, Cap. I 23, LFN 2004.
[105] Nwabueze, B. O., *Nigerian Land Law*, Enugu & New York, Nwamife Publishers & Oceana Publications, 1972, p. 1
[106] See generally, S. 1 of the Land Use Act vests all the land in each State in the Governor of the State for the benefit of all Nigerians.

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not be able to assert any claim otherwise regarding improvements he has made on a parcel of land.

The exact place of human remains in the soil is problematic. For instance, forced movement from one location to another outside the framework of armed conflict, raises cultural heritage issues. Following the decision of the International Court of Justice declaring Bakassi Peninsula as part of the Republic of Cameroon,[107] Nigerians resident there raised the pungent issue of what would happen to the graves of their ancestors in the place they were being asked to vacate.

In some other contexts, especially where indigenous land rights are concerned cultural property arguments have been employed to assert land claims.[108]

6.0 CONCLUSION

An attempt has been made in this work to underscore the fundamental importance of curriculum review in legal education to make law curricula at both undergraduate and postgraduate levels robust and dynamic. Law curriculum must connect with the felt need of each community. The essence is to make lawyers more relevant to the society and better equipped to assume their proper roles. This work has highlighted what we may describe in Nigeria as the new field of Cultural Heritage/Property Law. It is imperative for African scholars to project African viewpoints in this important area where commercial arguments and individualistic views obfuscate the contours of legal discourse. The intersection with other areas of law demonstrates that we can all "think" cultural heritage by making our modest efforts to protect our cherished cultural heritage. If indeed "the progress of

[107] See generally the judgment of the International Court of Justice in *Cameroon* v. *Nigeria* [2002] 43 WRN 43 (ICJ)

[108] See generally Wiersma, L. L. "Indigenous Lands as Cultural Property: A New Approach to Indigenous Land Claims" (2005) 54 Duke Law Journal 1061-1088 on the arguments of the Cultural School of Cultural Property.

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countries is measured by their success in keeping hold of their culture and heritageres[109] Nigerian legal academics must contribute their quota in raising the consciousness of the coming generation of lawyers in thinking about cultural heritage.

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[109] Ministry of Culture, Supreme Council of Antiquities, (Egypt) " Introduction" Law No 117 of 1983 as amended by Law No. 3 0f 2010